

# **European judicial systems**

**Edition 2008 (data 2006):  
Efficiency and quality of justice**

**European Commission for the Efficiency of Justice  
(CEPEJ)**

French edition:

*Systèmes européens judiciaires – Edition 2008*

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## Foreword

by Fausto de Santis, President of the CEPEJ

This new Edition of the CEPEJ report on the functioning of the judicial systems of the Council of Europe's member states remains in line with the process carried out by our Commission since 2002. Relying on a methodology which has already proven itself, widely acknowledged by the European legal community, this unique study has been conceived above all as a tool for public policy aimed at improving the efficiency and the quality of justice. To have the knowledge in order to be able to understand, analyse and reform, such is the objective of the CEPEJ which has drafted this report, intended for policy makers, legal practitioners, researchers as well as for those who are interested in the functioning of justice in Europe.

Through the scheme developed by the CEPEJ and aimed at examining a judicial system (this scheme has been refined on the basis of the experience from the previous evaluation cycles), thousands of quantitative and qualitative data have been collected, processed and analysed. The CEPEJ has tried to draw some main European trends and conclusions regarding the application of the fundamental principles and European standards in the field of justice.

This major scale work, carried out in a very short time, is the result of an excellent collaboration between national correspondents (responsible for collecting data in the countries from the various bodies concerned), the scientific experts, the members of the Working Group (passionately and rigorously headed by Jean Paul Jean), the members of the CEPEJ and the Secretariat of the Council of Europe. May they all be warmly thanked for their investment in this project.

The relevance of this report is due, in particular, to the fact that it is prepared within the framework of an ongoing process. Such a process would not have been possible without the political support of the Committee of Ministers who has wished the Council of Europe to be able to use regularly a detailed state of affairs on justice in Europe. It is a fundamental element to ensure the effective implementation of the fundamental principles that the Council of Europe must defend and promote, to be able to reinforce mutual confidence between the judicial systems and to strengthen the citizens' confidence in their own justice.

I wish every reader to make the best use of this report, by always keeping in mind the methodological indications that the authors have taken care to underline, so that this particularly rich information is used with discernment. This information would thus be a pre-eminent source to understand the functioning of the European judicial systems, to grasp the main trends, to identify the difficulties and to orient public policies of justice.



# 1. The evaluation process of the CEPEJ

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

## 1.1 European Commission for the Efficiency of Justice

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

- promoting the effective implementation of existing Council of Europe instruments relating to the organisation of justice (normative "after sale service");
- ensuring that public policies concerning the courts take account of the needs of users of the justice system; and
- helping to reduce congestion in the European Court of Human Rights by offering states effective solutions prior to application to the Court and preventing violations of Article 6 of the European Convention on Human Rights.

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

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

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

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

## 1.2 Scheme for evaluating judicial systems

The CEPEJ set up a Working Group on the evaluation of judicial systems (CEPEJ-GT-EVAL)<sup>1</sup> to update and revise the Evaluation Scheme (questionnaire and explanatory note) in the light of the conclusions of the 2004–2006 evaluation cycle, to ensure the collection and processing of new figures and to prepare the draft report.

The main purpose of revising the Scheme was to come up with a questionnaire that could be used systematically in future evaluation exercises, so as to work on stabilised data and to start working on

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<sup>1</sup> Composed of:

- Fausto de SANTIS, Director General, Ministry of Justice, Italy (President of the CEPEJ)
- Elsa GARCIA-MALTRAS DE BLAS, Public Prosecutor, Legal Advisor at the Directorate General of International Legal Cooperation, Ministry of Justice, Spain
- Beata Z. GRUSZCZYŃSKA, Institute of Justice, Ministry of Justice, Poland
- Adis HODZIC, Head of the Budget and Statistics Department, Secretariat High Judicial and Prosecutorial Council of Bosnia and Herzegovina
- Jean-Paul JEAN, Public Prosecutor, Court of Appeal of Paris, Associated Professor at the University of Poitiers, France (President of the CEPEJ-GT-EVAL)
- Georg STAWA, Public Prosecutor, Directorate for Central Administration and Coordination, Federal Ministry of Justice, Austria
- Dražen TRIPALO, Judge, Criminal Department, Supreme Court of the Republic of Croatia
- Frans van der DOELEN, Programme Manager of the Department of the Justice System, Ministry of Justice, The Netherlands
- Mikhail VINOGRADOV, Senior Consultant, Assistant of the Deputy Chief of the Office, Government of the Russian Federation / Konstantin KOSORUKOV, Assistant on Legal Affairs, Permanent Representation of the Russian Federation to the Council of Europe

The Group also benefited from the valuable contribution of Julien LHUILLIER, Researcher at the Law Faculty of Nancy 2, France.

biannual series which enable the analysis of evolutions. To revise the Evaluation Scheme and its explanatory note<sup>2</sup>, the CEPEJ relied on the principles which were used for the drafting the previous versions. In particular, it had in mind the principles identified in the Resolution Res (2002)12 which establishes the CEPEJ as well as the Council of Europe's Resolutions and Recommendations in the field of efficiency and fairness of justice. It also took into account the proposals for amendments submitted by the CEPEJ members, observers, and national correspondents within the framework of previous evaluation cycles. Specific attention was paid to the explanatory note, aimed at helping national correspondents to answer the questions in a homogeneous way. In particular, more precise definitions have been introduced with a view to reducing difficulties in interpretation.

The CEPEJ-GT-EVAL prepared the updated Scheme which was adopted by the CEPEJ at its 9th plenary meeting (June 2007) and approved by the Ministers' Deputies at their 1005th meeting (September 2007). The revised Scheme and the subsequent explanatory note were made available to the member states in September 2007, in order to receive new data at the beginning of 2008.

### **1.3 Data collection and processing**

To facilitate the process of collecting and processing judicial data, an online electronic version of the Scheme has been created. Each national correspondent could accede to a secured webpage to register and to submit the relevant replies to the Secretariat of the CEPEJ.

This report is based on figures from 2006. As the majority of the countries were only able to issue judicial figures for 2006 in the autumn of 2007, the CEPEJ was not able to gather figures before the beginning of 2008, which left only three months for member states to collect and consolidate their individual replies to the Evaluation Scheme and less than four effective working months for the experts to process them and prepare the report.

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

The CEPEJ instructed its Working Group, under the chairmanship of Jean-Paul JEAN (France), with the preparation of the report. The Secretariat of the Council of Europe appointed Ms. Marta ZIMOLAG (Poland), as scientific expert in charge of processing the national figures submitted by member states and preparing the preliminary draft report, together with the Secretariat of the CEPEJ<sup>3</sup>.

The national correspondents were considered to be the main interlocutors of the Secretariat and of the experts when collecting new figures and as those primarily responsible for the quality of figures used in the survey. All individual replies of the member states were recorded in a database by the scientific expert.

The scientific expert was frequently in contact with national correspondents to validate or clarify the figures and their adjustment continued until shortly before the final version of the report. The CEPEJ experts agreed that the figures would not be changed *ex officio*, unless the correspondents explicitly agreed to such changes. All changes to them were approved by the national correspondents.

The meeting between the scientific experts, the CEPEJ-GT-EVAL and the network of national correspondents (Strasbourg, May 2008) was an essential step of the process, aimed at validating figures, explaining or amending, on the same questions, significant variations between 2004 and 2006 data, discussing decisions of the experts and improving the quality of the figures provided.

#### **Responding states**

By May 2008, 45 states had participated in the process: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia"<sup>4</sup>, Turkey, Ukraine and the United Kingdom<sup>5</sup>. It should be noted that Albania has provided very

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<sup>2</sup> See Appendix.

<sup>3</sup> The Ministries of Justice of the Netherlands and France seconded to the Secretariat of the CEPEJ respectively Pim ALBERS and Guy MAGNIER to work as Special Advisors.

<sup>4</sup> Mentioned as "FYROMacedonia" in the tables and figures below.

few answers to the questionnaire, which explains why information on this country is missing in some parts of this report.

Only Liechtenstein and San Marino<sup>6</sup> have not been able to provide data for this report. Hopefully they will be included in the next exercise, as was the case for the previous cycle. Switzerland and "the former Yugoslav Republic of Macedonia", which were not able to participate in the previous cycle, have been able to provide their data this time.

In federal states or states with a decentralised system of judicial administration, the data collection has different characteristics compared to those of centralised states. The situation is frequently more complex there. In these states, data collection at a central level is limited, while at the level of entities, both the type and the quantity of figures collected may vary. In practice, several federations have sent the questionnaire to each of its federal entities. Some states have extrapolated their answers for the whole country from the figures made available from the federated entities, taking into account the number of inhabitants of each component. To facilitate the data collection process, a modified version of the electronic questionnaire has been developed, at the initiative of Switzerland, which made it possible for this country and for Germany to delegate the questionnaires to the *cantons* and the *Länder*.

All the figures provided for by individual member states have been made available on the CEPEJ Website: <http://www.coe.int/CEPEJ>. National replies also contain descriptions of legal systems and explanations that contribute greatly to the understanding of the figures provided. They are therefore a useful complement to the report, although because of the need to be concise and consistent, it was not possible to include all this information in this report. Thus, a genuine data base on the judicial systems of the Council of Europe's member states is easily accessible to all citizens, policy makers, law practitioners, academicians and researchers.

## **1.4 General methodological issues**

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

This report does not pretend to have exploited exhaustively all the relevant information that has been forwarded by the member states, as a huge volume of data has been submitted. The CEPEJ tried to address the issues in this report, bearing in mind, first of all, the priorities and the fundamental principles of the Council of Europe. Beyond the figures, the interest of the CEPEJ report lies in the main trends, evolutions and common issues for European states.

This report has a place within the framework of a continued and dynamic process carried out by the CEPEJ. When preparing the report, experts and national correspondents were encouraged to bear in mind the long term objective of the process: defining a set of key quantitative and qualitative data to be regularly collected and equally processed in all member states, bringing out shared indicators of the quality and efficiency of court activities in the member states of the Council of Europe and highlighting organisational reforms, practices and innovations, which enable improvement of the service provided to court users.

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

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

The CEPEJ has chosen to process and present only the figures which presented a high level of quality and credibility. It decided to disregard the figures which were either too varied from one country to another or which did not present sufficient guarantees of reliability. The information that was not included in this report has been collected and is available on the CEPEJ Website ([www.coe.int/cepej](http://www.coe.int/cepej)).

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<sup>5</sup> The results for the United Kingdom are presented separately for England and Wales, Scotland and Northern Ireland, as the three judicial systems are organised on different basis and operate independently from each other.

<sup>6</sup> The reply from San Marino to the Scheme had not been received in due time to be processed in the report. However, it appears on the website of the CEPEJ: [www.coe.int/cepej](http://www.coe.int/cepej).

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

A specific effort has been made to ensure the coherence of data. This work aimed at identifying material errors, typing mistakes, missing answers, non applicable situations. As regards the figures and their exactness, new data have been compared to the 2004 data, which has enabled us to identify those answers which show large or small variations which cannot be explained. Through these comparisons, methodological problems have been identified and corrected. On the other hand, strong increases have been confirmed and explained by economic growth – for instance strong economic growth in **Azerbaijan, Armenia, Romania, and Poland**. Others can be explained because of changes in the method used for calculating or collecting data at national level (for instance annual gross salary in **France**, state expenditure in **the Netherlands**, court activity in **Denmark**). Some 2004 data, provided by the states, have been corrected by the states themselves since they have been published in the 2006 Edition (**Cyprus, Iceland, Moldova, Serbia, Turkey, UK-Scotland, UK-England and Wales**). Finally, at the origin of some significant variations between the 2004 and 2006 data are structural and organisational reforms, political decisions or the implementation of new mechanisms, procedures or measures (for instance the legal aid budget in **Estonia** and **Slovenia**, the number of courts in **Denmark**, the number of professional judges in **Georgia**). For these reasons, a chronological comparison between the 2004 and 2006 data must be made only with caution.

The CEPEJ has set up in 2008 a peer evaluation pilot process concerning the systems for collecting and processing judicial data in the member states. This process aims at supporting the states in improving the quality of their judicial statistics and developing their statistics system so that such statistics are in line with the common indicators defined through the CEPEJ's Evaluation Scheme. It is also due to facilitate exchange of experiences between national judicial statistics systems, share good practices, identify benchmarks and facilitate knowledge transfer. Thus it should contribute to ensuring the transparency and accountability of the CEPEJ process for evaluating European judicial systems. Three volunteer member states (**Bosnia and Herzegovina, France** and **Poland**) have been visited by experts so far in order to analyse the organisation of CEPEJ's data collection and transmission to the Secretariat of the Council of Europe. The practical way of responding to selected questions of the Evaluation Scheme and on the content of these answers have also been analysed specifically, namely questions related to budgetary issues, types (professional, lay judges) and number of judges, litigious civil cases and calculation methods of length of proceedings. The CEPEJ will study the conclusions of this pilot process so as to extend it to all its members.

Furthermore, the CEPEJ is currently drafting Guidelines on judicial statistics for the relevant services in the member states. These Guidelines aim at ensuring quality of national judicial statistics collected and processed by the member states, as a tool for public policy. They should also facilitate comparison of data on European countries by ensuring adequate homogeneity despite the substantial differences between countries (as regards judicial organisation, the economic situation, demography, etc.).

### ***The comparability of figures and concepts***

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

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

In this context and as the aim of this report is to give an overview of the situation of the European judicial systems, the CEPEJ has generally decided to present the information of member states in alphabetical order. Comparing is not ranking. However, this report gives the reader tools for an in-depth study which

would then have to be carried out by choosing relevant clusters of countries: according to the characteristics of the judicial systems (for instance civil law and common law countries; countries in transition or with old judicial traditions), geographical criteria (size, population) or economic criteria (for instance within or outside the Euro zone). In a second stage, the CEPEJ itself will carry out, as it was done for the previous exercise, its own analysis on the basis of this report.

The CEPEJ questionnaire was filled in by small states. **Andorra** and **Monaco** are territories which are, due to their scale, not comparable with other countries. Consequently the figures compared according to a scale "per 100.000 inhabitants" must be interpreted cautiously for these countries.

Financial values are reported in Euros. Because of this, some problems have occurred while using exchange rates for countries outside the Euro zone. Exchange rates vary from year to year. Since the report focuses mainly on 2006, the exchange rates of 1 January 2007 were used. For countries with high inflation rates, very high figures can be presented; their interpretation should therefore be viewed within their specific context. The high variation of the exchange rate might have a considerable effect on the figures for the countries outside the Euro zone. For some of them, a more advantageous exchange rate than in 2005 has strengthened the budgetary or monetary increase once expressed in Euros. Therefore special attention should be given to this issue while comparing monetary figures of the 2006 and 2008 editions. Very high differences can be found for example for **Azerbaijan** or **Armenia**: those two countries have faced rapid economical growth. The twelve new members of the European Union have benefited from a good economical climate too. All these factors, combined with advantageous exchange rate, have an impact on the high variation of budgetary data.

### ***Chronological comparisons of figures***

Comparing the data of the 2006 and 2008 editions can be of great interest for some issues. However the reader must remain cautious and take carefully into account the comments made in this report when trying to compare. Indeed the data collected through the Evaluation Scheme have not all been stabilised so far: as it is mentioned above, the definitions and variables used might have changed from one exercise to another, some questions have evolved, in particular as regards budgetary data (see specific comments in chapter 2). Therefore some data cannot be compared between the two exercises, but the process of improvement leads progressively to more stabilised data. This should be noticed in the next evaluation cycle.

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

Since 2006, some member states of the Council of Europe have implemented fundamental institutional and legislative reforms of their legal systems. For these states, the situation described in this report may be completely different from today's situation when reading the report. Therefore the states were invited to indicate whether reforms had been implemented since 2006 or whether other reforms are under way. This enables to identify main trends related to priority reforms in the various justice systems.

### ***Presentation of data***

In the 2006–2008 evaluation cycle, the CEPEJ has tried to take a global approach of the judicial systems of 47 states or entities. In order to highlight some particularities of European judicial systems, several indicators have been developed or calculated: ratios, rates, averages, deviation from the mean, indexes, etc. Some tables include replies as given by the countries. Other tables show the replies processed together or presented according to aggregated figures. Figures show, more often than not, global answers at a European level. Some indicators are shown using maps.

Next to descriptive analysis and simple data processing, the CEPEJ has tried to show a more complex analysis: factorial analysis followed by classifications. Such analysis, very often used in social sciences, enables us to consider a greater number of data and highlight trends, similarities or differences. Therefore the models which result from such a presentation are obviously approximations. The advantage of this methodology lies in its capacity to present a synthesis of the information on a unique figure or table and to avoid presenting selected raw data one by one. Then clusters can be created. In this report, clusters of countries have been created around main factors.

## 1.5 General economic and demographic data

These figures, which almost every state was able to provide, give comprehensive information on the general context in which this study was made. In particular, they enable, as was the case in the previous exercise, to relativise the other figures and to put them in context, particularly budgetary figures and figures relating to court activity.

The figures also enable the reader to measure the enormous variations in the population and the size of the countries concerned, from **Monaco**, with less than 33.000 inhabitants, to the **Russian Federation** with more than 142 millions. This demographic variable must always be borne in mind. The population concerned by this study is roughly 796 million people, which means almost the whole of the population concerned, as only Liechtenstein and San Marino are not present in this 2008 Edition.

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

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

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

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

It was decided to use mainly two ratios usually used in such surveys for comparisons, in particular budgetary comparisons through graphs: the number of inhabitants and the per capita GDP, which will be included in the relevant graphs.

The figures on population were provided by all member states. They will be used in all ratios which measure an impact per inhabitant. Only the states of similar size will then be compared.

Figures related to per inhabitant GDP were provided by almost all the countries. Only **Albania** was not able to provide them, and will therefore be excluded from the comparative tables and graphs prepared on the basis of such variable. Here again, huge disparities in the per capita GDP can be noted and must always be kept in mind when considering the subsequent results. For instance, two extremes can be noted: on the one hand the countries with a per capita GDP below 2.000 € (**Armenia, Azerbaijan, "the former Yugoslav Republic of Macedonia", Georgia and Moldova**), and on the other hand, **Luxembourg** with a reported per capita GDP 36 times higher.

**Table 1. Economic and demographic data in 2006 in absolute values (Q1 to Q4)**

| Country                | Population  | Total of annual state public expenditure including regional or federal entity level (in €) | Total of annual public expenditure at regional or federal entity level (in €) | Per capita GDP (in €) | Average gross annual salary (in €) |
|------------------------|-------------|--|---|-----------------------|------------------------------------|
| Albania                | 3 152 000   | nr   |   | nr                    | nr                                 |
| Andorra                | 81 222      | 340 496 000  |   | 29 621                | 20 424                             |
| Armenia                | 3 222 900   | 1 183 965 910  |   | 1 587                 | 1 476                              |
| Austria                | 8 281 948   | 116 273 000 000  |   | 31 140                | 40 320                             |
| Azerbaijan             | 8 532 700   | 3 508 645 540  |   | 1 880                 | 1 559                              |
| Belgium                | 10 511 382  | 153 522 400 000  | 44 169 200 000  | 30 000                | 37 674                             |
| Bosnia and Herzegovina | 3 842 762   | 3 918 540 977  | 3 553 989 866   | 2 536                 | 5 332                              |
| Bulgaria               | 7 679 290   | 9 349 700 000  | 1 704 100 000   | 3 278                 | 2 210                              |
| Croatia                | 4 442 884   | 14 636 754 400   | 1 935 218 620   | 7 076                 | 10 871                             |
| Cyprus                 | 772 600     | 6 419 733 886  |   | 18 039                | 22 636                             |
| Czech Republic         | 10 287 189  | 51 188 666 900   |   | 11 067                | 8 808                              |
| Denmark                | 5 427 000   | 113 740 000 000  |   | 40 492                | 48 307                             |
| Estonia                | 1 342 409   | 4 144 993 239  |   | 10 092                | 7 215                              |
| Finland                | 5 255 580   | 39 582 000 000   |   | 31 723                | 34 081                             |
| France                 | 63 195 000  | 587 100 000 000  | 199 300 000 000   | 28 536                | 30 367                             |
| Georgia                | 4 394 700   | 2 076 000 000  | 381 000 000   | 1 389                 | 1 480                              |
| Germany                | 82 351 000  | 697 211 000 000  | 414 423 000 000   | 28 012                | 41 952                             |
| Greece                 | 11 125 179  | 10 885 300 000   |   | 19 194                | 23 037                             |
| Hungary                | 10 066 000  | 46 654 900 000   |   | 8 926                 | 8 178                              |
| Iceland                | 299 899     | 3 580 000 000  |   | 39 951                | 41 648                             |
| Ireland                | 4 239 848   | 59 900 000 000   | na  | 41 205                | 31 080                             |
| Italy                  | 58 751 711  | 462 417 000 000  | na  | 26 492                | 34 437                             |
| Latvia                 | 2 294 590   | 5 064 207 410  |   | 7 005                 | 5 156                              |
| Lithuania              | 3 403 284   | 5 990 351 000  | 1 577 457 000   | 6 996                 | 5 196                              |
| Luxembourg             | 472 700     | 13 083 200 000   |   | 71 600                | 40 575                             |
| Malta                  | 408 000     | 2 372 324 450  |   | 12 568                | 12 800                             |
| Moldova                | 3 589 936   | 668 168 423  |   | 745                   | 1 235                              |
| Monaco                 | 33 000      | 789 132 221  |   | 49 899                | na                                 |
| Montenegro             | 620 145     | 462 347 709  |   | 2 864                 | 4 528                              |
| Netherlands            | 16 334 210  | 408 647 000 000  |   | 32 698                | 45 800                             |
| Norway                 | 4 681 100   | 100 079 922 020  |   | 56 000                | 43 921                             |
| Poland                 | 38 125 479  | 57 430 900 000   |   | 7 169                 | 7 664                              |
| Portugal               | 10 569 592  | 70 196 000 000   |   | 14 657                | 15 010                             |
| Romania                | 21 610 213  | 12 386 210 810   |   | 6 876                 | 3 667                              |
| Russian Federation     | 142 000 000 | 371 582 148 035  |   | 6 690                 | 4 678                              |
| Serbia                 | 7 411 569   | 6 402 792 430  |   | 3 407                 | 4 525                              |
| Slovakia               | 5 389 180   | 9 401 469 000  |   | 8 820                 | 6 540                              |
| Slovenia               | 2 003 358   | 7 628 519 734  |   | 15 167                | 14 556                             |
| Spain                  | 43 758 250  | 378 648 000 000  |   | 22 418                | 26 611                             |
| Sweden                 | 9 113 357   | 165 988 000 000  |   | 35 417                | 46 948                             |
| Switzerland            | 7 459 100   | 105 150 000 000  | 72 170 000 000  | 40 016                | 42 291                             |
| FYROMacedonia          | 2 038 514   | 940 967 794  |   | 2 491                 | 4 519                              |
| Turkey                 | 73 425 000  | 54 099 521 205   |   | 4 361                 | 8 406                              |
| Ukraine                | 46 646 000  | 21 082 612 000   |   | 1 728                 | 2 187                              |
| UK-Northern Ireland    | 1 741 619   | 24 218 912 882   |   | 22 599                | 24 219                             |

| Country              | Population | Total of annual state public expenditure including regional or federal entity level (in €) | Total of annual public expenditure at regional or federal entity level (in €) | Per capita GDP (in €) | Average gross annual salary (in €) |
|----------------------|------------|--|---|-----------------------|------------------------------------|
| UK-Scotland          | 5 116 900  | 44 181 918 000   |   | 30 473                | 35 645                             |
| UK-England and Wales | 53 728 000 | 822 040 208 488  |   | 28 600                | 35 940                             |

## 1.6 Analysing the findings of the report

The ultimate aim of the regular evaluation exercise is to develop recommendations and set up concrete tools to improve the quality, equity and efficiency of judicial systems. Some qualitative indications and main trends are highlighted in the report. They appear in conclusion (chapter 16). However it is only during a second phase that the CEPEJ will be able to make a more in-depth analysis, from the whole of the data processed, addressed prospectively<sup>7</sup>.

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### Keys

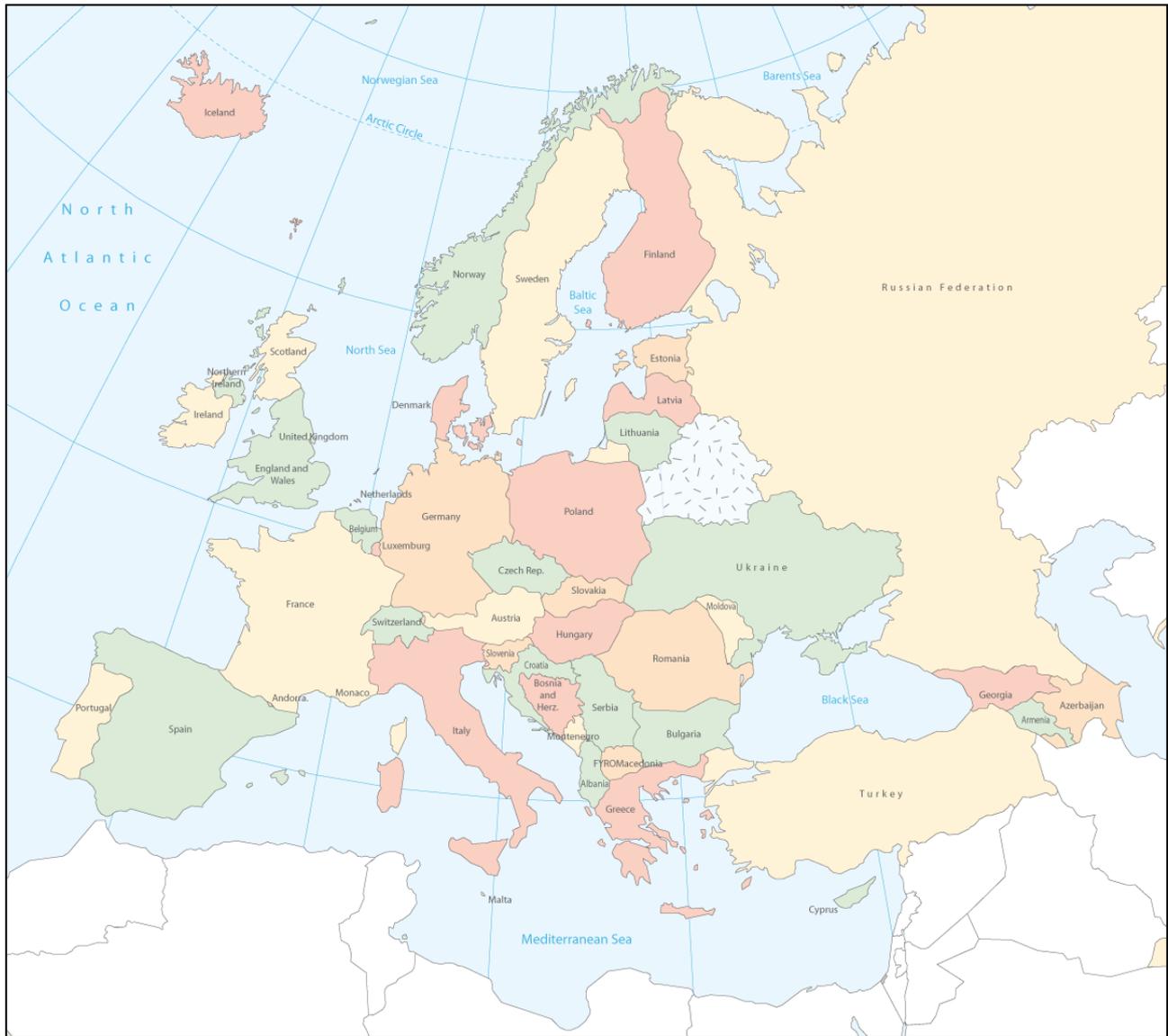
In the report – especially in the tables presented – a number of abbreviations have been used:

- (Q x) refers to the (number of the) question in the Scheme which appears in appendix, by which the information has been collected.
- If a certain country left a question open, this is shown as “n.r.” (no reply) or a blank (“”).
- If there was a reply, saying no (valid) information was available, this is shown as “n.a.” (Not available).
- In some cases, a question could not be answered, for it referred to a situation that does not exist in the responding country. These cases, and cases in which an answer was given that clearly did not match the question, are shown as “n.a.p.”.
- fte = full time equivalent; number of staff (judges, prosecutors, etc.) are given in full time equivalent so as to enable comparisons.
- "UK–England and Wales" / "UK–Scotland" / "UK–Northern Ireland" corresponds to the territories of the United Kingdom concerned by the figures reported.

<sup>7</sup> The 2006 Edition of the report had been followed by the drafting of 5 in-depth studies published within the framework of its series "CEPE Studies":

- N 6: Monitoring and evaluation of court system: a comparative study by Gar Yein Ng, Marco Velicogna & Cristina Dallara
- N 7: Use of information and communication technologies (ICT) in European judicial systems by Marco Velicogna
- N 8: Enforcement of court decisions in Europe by the Research Team on enforcement of court decisions (University Nancy (France) / Swiss Institute of comparative law) Julien Lhuillier, Daria Lhuillier-Solenik, Géraldine Carmela Nucera & Jacqueline Passalacqua
- N 9: Access to justice in Europe by the Research Team on enforcement of court decisions (University Nancy (France) / Swiss Institute of comparative law) Julien Lhuillier & Daria Lhuillier-Solenik
- N 10: Administration and management of judicial systems in Europe Observatory of Institutional and Legal Change – OMIJ, EA 3177) University of Limoges, Laurent Berthier & Hélène Pauliat

**Figure 1. Countries having participated in the study**



## 2. Public Expenditures: courts, prosecution system and legal aid

### 2.1 Introduction

This chapter focuses on the financial means that are related to the operation of courts, public prosecution services and legal aid. Among the 47 countries or entities concerned, 46 are considered in this chapter. No budgetary data has been provided by **Albania**.

The methodology that is used to present the figures follows that of the 2006 Edition of this report. There are, according to States, common or distinct financing modalities of courts, public prosecution services and legal aid. Consequently, it is for example not possible, for some countries, to provide data separated out for courts and public prosecution services, which are included in a same budget (**Austria, Belgium, Denmark, Germany, Greece, Luxembourg, Spain, Turkey**). **France** and **Iceland** are in the same position, but have been able to provide an estimation of the respective parts of the budgets allocated to the courts and to the prosecution system. Concerning legal aid, the budgetary data could be isolated, even if, for certain countries, these sums are included in the court budget or are not funded by the State. For example in the **Czech Republic**, legal aid is funded both by the State budget and the budget of the Czech Bar Association.

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

- the budget allocated to the courts, which will be used in the part of the report concerning the activities of the courts (chapter 5),
- the budget allocated to the public prosecution, which will be used in the part of the report concerning the activities of the public prosecutor (chapter 10),
- the budget designated to legal aid which constitutes an indicator of the efforts devoted by a country to making their legal systems accessible, and which will be used in the part of the report devoted to access to justice (chapter 3).

Table 2 presents the background information which enables comparison for each of these three budgets: the courts (C) (first column), the legal aid system (LA – Legal Aid) (second column), the public prosecution (PP) (third column).

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

- 4<sup>th</sup> column: budget allocated to access to justice and the courts (LA + C) : total budget allocated to the courts and to the legal aid in 2006;
- 5<sup>th</sup> column: budget allocated to the whole of the bodies dealing with prosecution and judgment (PP + C) : total budget allocated to the courts and to the public prosecution in 2006 (without legal aid);
- 6<sup>th</sup> column: budget allocated to the whole of three budgets (C + LA + PP) : total budget allocated to the courts, the legal aid and the public prosecution in 2006.

As a result, any State will be able to compare itself to other countries deemed as similar. It will then, in the same way, be able to refer to the results on activity.

In order to contribute to these reasoned comparisons, all the figures transmitted and used have been made available. Ratios have been highlighted, to allow comparisons with comparable categories, by connecting the budgetary figures to the number of inhabitant and the GDP per capita, in the form of graphs.

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

Each of the points studied differentiates a part on “data and methodological remarks” and a part on “comments”.

#### **Note for the reader**

The interpretation of the comparison needs to be handled with care, since some of the budgetary components that have been included in the 2008 report are different from the components used in the 2006 Edition (for instance, the budget of the judicial training schools has now been included into the composition of the budget). Moreover, some questions are formulated in another way, to draw lessons of the previous

exercise and improve the pertinence of comparisons. Thereby, in the 2006 Edition, the budget really spent on judicial institutions and legal aid was requested; for the present edition, the approved budget allocated to judicial institutions and legal aid was requested.

For the countries which are not part of the Euro area, the CEPEJ was very attentive to the variation in the exchange rates between the national currency and Euro (value on 1st January 2007). Moreover, wherever possible, we have been pointed out the financial contributions by international and European organisations to the judicial institutions within the framework of their programmes for strengthening the rule of law (for example, **Croatia** and **Hungary** referred to World Bank loans, EU donations and support programmes). The rapid development of some national economies, or inflation, explain certain significant budgetary evolutions.

Of the 46 States or entities concerned, only 3 have not been able to give the total of the three budgets (courts + legal aid + prosecution service): **Denmark** (budget of the prosecution service not available, depending partly on the budget of the police), **Portugal** (budget of the prosecution service not available) and **Serbia** (specific data on legal aid not available).

For some of the others, the amount for the three components has been evaluated. However the exact figures for each of the components are not known, because of the structural particularities of the national budgets. In **Norway**, the budget of the prosecution system is partially funded through the budget of the police. Therefore, the amount indicated as the budget of the prosecution service is under-estimated. In **Turkey**, the budget of the prosecution service is included in the budget of the Ministry of Justice. In **Austria**, **Belgium**, **Germany**, **Greece**, **Luxembourg** and **Spain**, courts and prosecution services are funded through a single budget, as well as in **France** and **Iceland** which have been able to give an estimate of their budget allocation to the prosecution service.

As regards legal aid in **Croatia**, **Cyprus**, **Montenegro**, **Serbia** and **Turkey**, it has not been possible to exclude this budget from the court budget. In **Croatia** different forms of legal aid are, depending of the type of procedure: when the court approves legal aid, the funds are secured within the framework of the budget of courts; if legal aid is provided by the Croatian Bar Association, it is covered by the Bar itself; other individual bodies provide certain forms of legal aid too. In **Montenegro** and **Cyprus**, the legal aid budget is included in the court budget, but is not precisely identified. In the budget system of **Turkey**, the courts, the prosecution service and legal aid are funded by the budget of the Ministry of Justice. The exact amounts of these components cannot be isolated. In 3 countries (**Estonia**, **Lithuania** and **Slovenia**) which have separated budgets for the functioning of the courts, the Ministry of Justice bears nonetheless some expenses such as IT equipment, judicial training, investment programmes or building leases.

For a more in-depth analysis of the specificities in the budgets of the various member States, the reader is invited to examine the detailed answers by each State which appears on the CEPEJ's Web site: [www.coe.int/cepej](http://www.coe.int/cepej).

**Table 2. Public budget allocated to courts, legal aid and public prosecution in 2006, in € (Q6, Q13 and Q16)**

| Country                | Total annual approved public budget allocated to all courts with neither prosecution nor legal aid | Total annual approved public budget allocated to legal aid | Total annual approved public budget allocated to the public prosecution system | Total annual approved public budget allocated to all courts and legal aid | Total annual approved public budget allocated to all courts and public prosecution | Total annual approved public budget allocated to all courts, public prosecution and legal aid |
|------------------------|--|--|--|---|--|---|
| Andorra                | 5 396 607  | 300 000  | 544 858  | 5 696 607   | 5 941 464  | 6 241 464   |
| Armenia                | 4 189 496  | 129 925  | 4 193 973  | 4 319 421   | 8 383 469  | 12 702 890  |
| Austria                | na   | 17 700 000   | na   | na  | 554 313 000  | 572 013 000   |
| Azerbaijan             | 11 339 059   | 226 484  | 14 812 092   | 11 565 543  | 26 151 151   | 26 377 635  |
| Belgium                | na   | 43 137 000   | na   | na  | 823 600 000  | 866 737 000   |
| Bosnia and Herzegovina | 65 293 506   | 1 606 129  | 16 144 684   | 66 899 635  | 81 438 190   | 83 044 319  |
| Bulgaria               | 64 532 705   | 1 804 100  | 29 853 310   | 66 336 805  | 94 386 015   | 96 190 115  |
| Croatia                | na   | na   | 32 241 063   | 206 261 500   | na   | 238 502 563   |
| Cyprus                 | na   | na   | 12 555 469   | 25 778 787  | na   | 38 334 256  |
| Czech Republic         | 223 477 624  | 15 672 575   | 69 619 179   | 239 150 199   | 293 096 803  | 308 769 378   |
| Denmark                | 183 000 000  | 2 869 941  | na   | 185 869 941   | na   | na  |
| Estonia                | 24 220 267   | 2 567 320  | 7 933 295  | 26 787 587  | 32 153 562   | 34 720 882  |
| Finland                | 221 971 000  | 55 105 000   | 31 324 000   | 277 076 000   | 253 295 000  | 308 400 000   |
| France                 | 2 377 000 000  | 303 000 000  | 670 000 000  | 2 680 000 000   | 3 047 000 000  | 3 350 000 000   |
| Georgia                | 11 760 558   | 53 000   | 8 000 000  | 11 813 558  | 19 760 558   | 19 813 558  |
| Germany                | na   | 557 000 000  | na   | na  | 8 174 000 000  | 8 731 000 000   |
| Greece                 | na   | 1 700 000  | na   | na  | 332 875 000  | 334 575 000   |
| Hungary                | 277 551 019  | 198 981  | 116 005 000  | 277 750 000   | 393 556 019  | 393 755 000   |
| Iceland                | 12 300 000   | 1 500 000  | 4 200 000  | 13 800 000  | 16 500 000   | 18 000 000  |
| Ireland                | 81 687 000   | 63 600 000   | 30 154 000   | 145 287 000   | 81 687 000   | 175 441 000   |
| Italy                  | 2 665 347 471  | 86 562 704   | 1 336 199 023  | 2 751 910 175   | 4 001 546 494  | 4 088 109 198   |
| Latvia                 | 32 416 128   | 1 072 771  | 17 113 881   | 33 488 899  | 49 530 009   | 50 602 780  |
| Lithuania              | 58 150 487   | 3 226 245  | 27 638 149   | 61 376 732  | 85 788 636   | 89 014 881  |
| Luxembourg             | na   | 2 949 983  | na   | na  | 54 384 465   | 57 334 448  |
| Malta                  | 8 701 000  | 15 000   | 2 569 000  | 8 716 000   | 11 270 000   | 11 285 000  |
| Moldova                | 3 002 838  | 126 614  | 4 135 134  | 3 129 452   | 7 137 972  | 7 264 586   |
| Monaco                 | 4 111 500  | 220 000  | 1 219 300  | 4 331 500   | 5 330 800  | 5 550 800   |
| Montenegro             | na   | na   | 1 762 362  | 8 664 682   | na   | 10 427 044  |
| Netherlands            | 774 368 000  | 344 666 748  | 494 335 000  | 1 119 034 748   | 1 268 703 000  | 1 613 369 748   |
| Norway                 | 175 013 040  | 151 635 000  | 12 384 000   | 326 648 040   | 187 397 040  | 339 032 040   |
| Poland                 | 1 190 027 000  | 21 724 000   | 295 928 000  | 1 211 751 000   | 1 485 955 000  | 1 507 679 000   |
| Portugal               | 506 493 713  | 35 829 192   | na   | 542 322 905   | na   | na  |
| Romania                | 261 911 826  | 6 065 759  | 114 927 466  | 267 977 585   | 376 839 292  | 382 905 051   |
| Russian Federation     | 2 401 660 110  | 85 020 103   | 1 060 382 372  | 2 486 680 213   | 3 462 042 482  | 3 547 062 585   |
| Serbia                 | 156 098 339  | na   | 13 864 244   | na  | 169 962 583  | na  |
| Slovakia               | 108 697 924  | 2 779 410  | 39 331 000   | 111 477 334   | 148 028 924  | 150 808 334   |
| Slovenia               | 131 981 456  | 1 858 859  | 17 893 000   | 133 840 315   | 149 874 456  | 151 733 315   |
| Spain                  | na   | 167 331 526  | na   | na  | na   | 2 983 492 000   |
| Sweden                 | 452 000 000  | 150 764 128  | 134 529 613  | 602 764 128   | 586 529 613  | 737 293 741   |
| Switzerland            | 626 145 213  | 47 203 730   | 175 402 199  | 673 348 943   | 801 547 412  | 848 751 142   |
| FYROMacedonia          | 21 341 001   | 900 277  | 3 592 283  | 22 241 278  | 24 933 284   | 25 833 561  |
| Turkey                 | na   | na   | na   | na  | na   | 522 486 876   |
| Ukraine                | 276 961 140  | 294 730  | 120 125 950  | 277 255 870   | 397 087 090  | 397 381 820   |
| UK-Northern Ireland    | 89 229 990   | 95 772 010   | 41 600 000   | 185 002 000   | 130 829 990  | 226 602 000   |

| Country              | Total annual approved public budget allocated to all courts with neither prosecution nor legal aid | Total annual approved public budget allocated to legal aid | Total annual approved public budget allocated to the public prosecution system | Total annual approved public budget allocated to all courts and legal aid | Total annual approved public budget allocated to all courts and public prosecution | Total annual approved public budget allocated to all courts, public prosecution and legal aid |
|----------------------|--|--|--|---|--|---|
| UK-Scotland          | 120 852 210  | 239 947 427  | 147 511 549  | 360 799 637   | 268 363 759  | 508 311 186   |
| UK-England and Wales | 1 504 095 309  | 3 020 104 244  | 819 000 000  | 4 524 199 553   | 2 323 095 309  | 5 343 199 553   |

It should be noted that the budgetary figures for the court budget may not be completely comparable, as some member States have not been in a position to follow the prescription of question 6 and its subsequent explanatory note or have interpreted them according to the particularities of their system:

- in **Azerbaijan**, the Constitutional court's budget is included in that of the courts;
- **Bulgaria** has excluded the budget of the Supreme Court and the Administrative Tribunal;
- in **Estonia** the costs for information technology (2 748 200€) are not included in the court budget;
- **France** included in the budget of the courts costs (117 million €) related to the transportation of detained persons (from the prison to court), 31 million € for OPM, 81 million € for the security costs of the court rooms / buildings and 46,5 million € which is the cost of hiring judicial buildings put at the disposal of the State for free by local authorities within the framework of the transfer of costs resulting from decentralisation;
- in **Denmark** the total annual approved public budget allocated to legal aid only relates to civil cases;
- **Greece** has indicated a budget including the cost of the salaries and operational costs;
- for **Moldova** the court budget relates only to first instance courts;
- **Hungary, the Netherlands** and "**the former Yugoslav Republic of Macedonia**" have included the budget of the Council for the judiciary;
- **Slovenia** has not been able to include the amounts allocated to investments and renting of buildings, as they are funded directly by the Ministry of Justice and cannot be estimated.

It is of note that **Monaco, Switzerland, Andorra, Slovenia, UK-Northern Ireland, Sweden, the Netherlands** and **Italy** present the highest amounts of budget allocated to the courts per inhabitant. A relatively low budget allocation to courts per inhabitant is to be found in: **Armenia, Azerbaijan, Georgia** and **Moldova**.

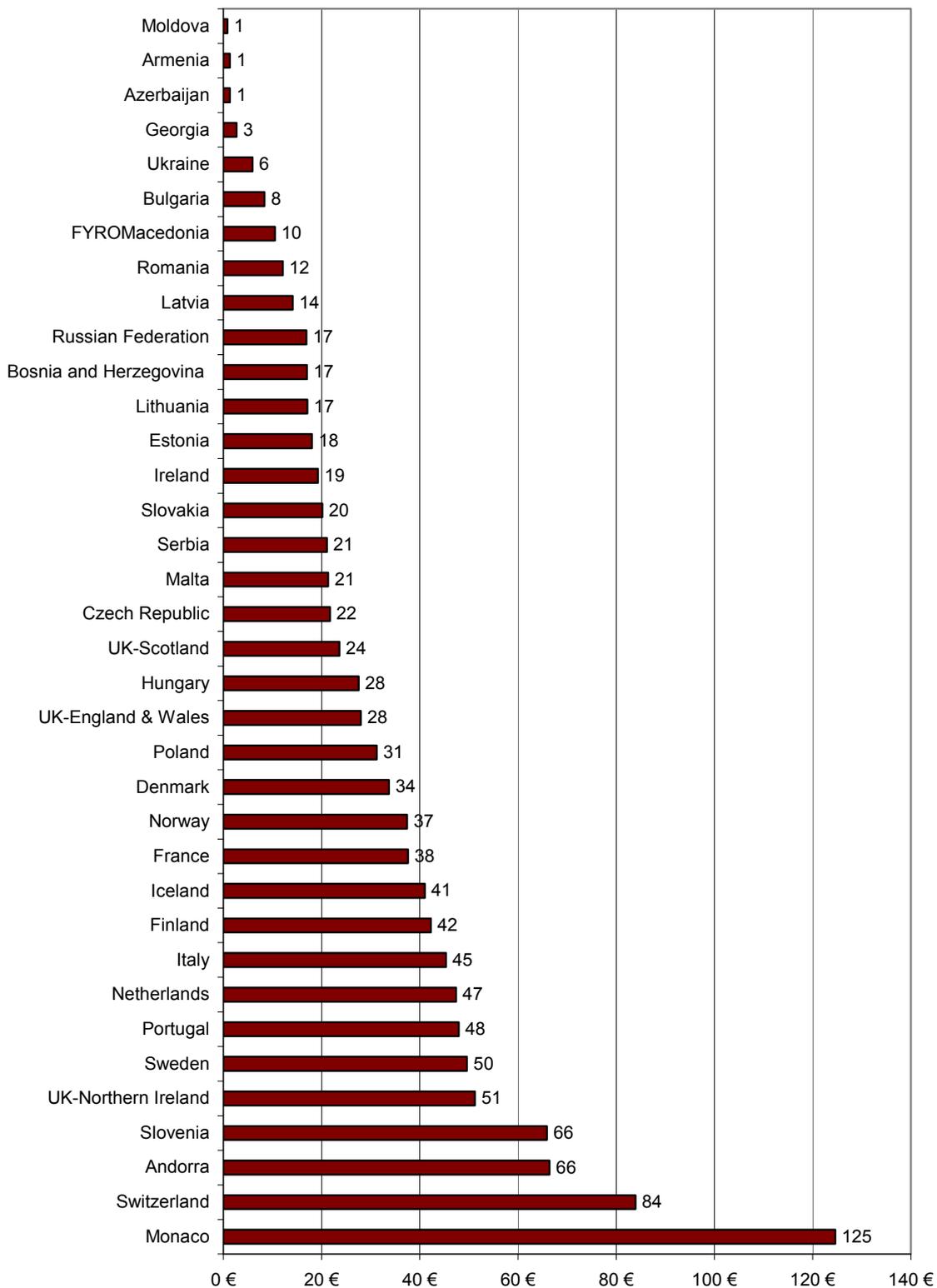
Generally speaking, there is an indication that the national budgets for financing the courts have increased over the last few years. This is also confirmed when analysing the results from question 9 (*is there an increase / decrease of the court budget over the last five years?*): 41 countries or entities on 46 replied that, over the last five years, more financial means have been allocated to the courts.

## 2.2 Composition of the public budget allocated to the courts

This section measures the efforts that each State or entity makes to the proper functioning of its court system. The efforts are set against the number of inhabitants (figure 2) and then the GDP (figure 3).

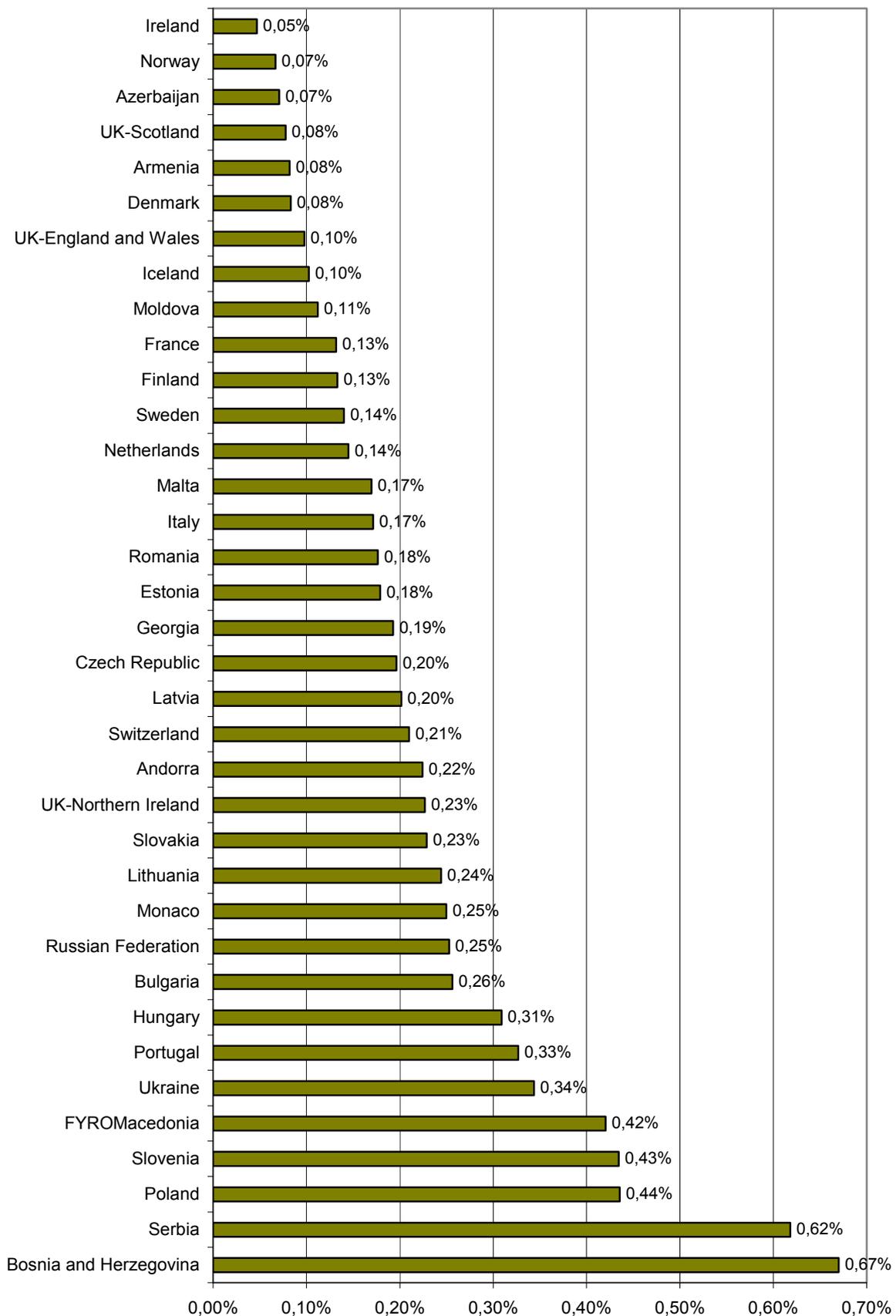
Among 46 States or entities, 36 have been included in figure 2. This figure takes into consideration only those states providing a distinct budget allocated to courts and to the public prosecution service or that could separate these budgets. It does not include the budget allocated to legal aid.

**Figure 2. Annual public budget allocated to all courts per inhabitant in 2006 (without prosecution and legal aid), in €**



It is clear that the "richest" States allocate a higher amount in their budget to their courts in terms of absolute values. Therefore, it is important to consider such data through a ratio calculated with the GDP per inhabitant.

**Figure 3. Annual public budget allocated to all the courts without prosecution and legal aid in 2006, as a percentage of per capita GDP**



An analysis of the budget allocated to the courts when compared to the State's prosperity in terms of per capita GDP, shows a different perspective. States which benefit from large scale assistance in particular from the European Union or other international organisations for improving the rule of law automatically

allocate relatively high proportions of their budget to their judicial system. This is the case for **Bosnia and Herzegovina, Croatia, Hungary, Serbia, Slovenia** and "**the former Yugoslav Republic of Macedonia**".

Consequently, Western European countries, which have higher national level of wealth such as **Iceland, Ireland, Norway, UK-England and Wales, UK-Scotland, Denmark, France, the Netherlands, Finland** and **Sweden**, seem to spend a smaller amount (per capita GDP) for financing the courts. Eastern European countries have also a quite large number of public officials and used fewer new technologies.

To the specific question (Q9) aimed at knowing how the budgets allocated to courts had evolved between 2001 and 2006, 41 countries replied that there had been an increase. Some countries explained the reasons for the increase. For example, in **Austria, Finland, Latvia** and **UK-England and Wales**, a rise in the salaries caused the increase. Higher costs for rents or upgrading of court buildings concern, for example, **Finland, Latvia** and **Malta**. A general increase in the State budget or only in that of the Ministry of Justice may positively influence the court budget (for example in **Poland** or **Slovakia**). But the explanation can also lay in financial factors, such as inflation or a rise in the living standards (**Iceland** and **Switzerland**). In **UK-England and Wales**, a large court restructuring programme has resulted in a significant increase in the court budget, since the 42 magistrate courts have become a part of the Court Service. It must be noted that, for this country (as well as for **Italy**), efficiency savings are realised by implementing specific programmes in this area.

#### ***The various components of the budget allocated to courts***

Within the framework of the 2006 – 2008 evaluation cycle, the CEPEJ has tried to analyse more precisely the content of the various components of the budgets allocated to courts, singling out various parts (Q 8): gross salaries of staff, IT (computers, software, investment and maintenance), judicial fees (such as the remuneration of interpreters or experts), the costs for hiring and ensuring the operation of the buildings, investment in buildings, training.

43 countries or entities have been able to indicate figures regarding the salary budgets. A more detailed level of expenses remains imprecise. However, it has been possible to create a break-down of the main components of the court budgets.

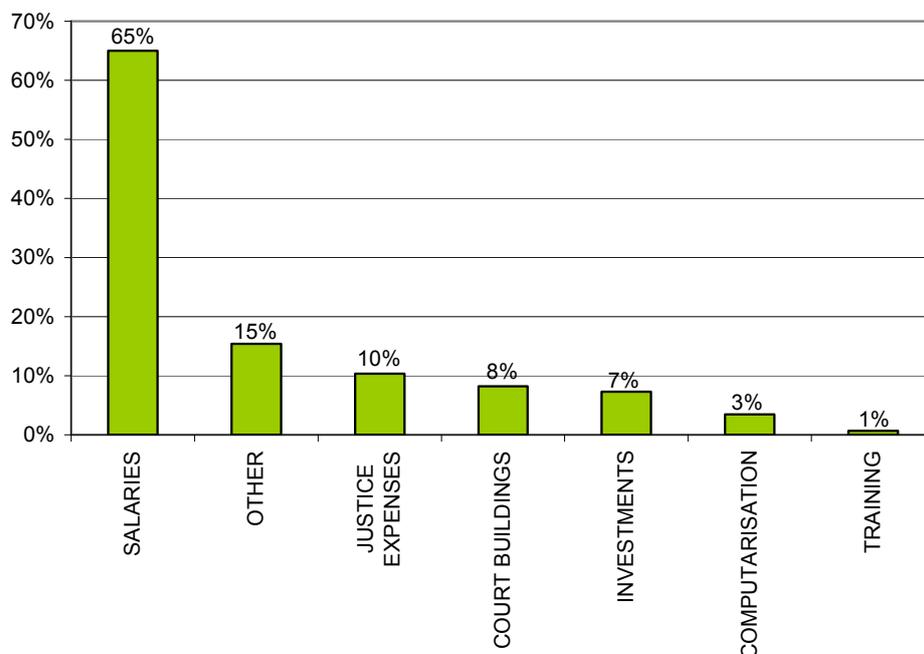
**Table 3. Break-down by component of court budgets in 2006, in € (Q8)**

| Country                | Annual public budget allocated to (gross) salaries | Annual public budget allocated to computerization (equipment, investments, maintenance) | Annual public budget allocated to justice expenses | Annual public budget allocated to court buildings (maintenance, operation costs) | Annual public budget allocated to investments in new (court) buildings | Annual public budget allocated to training and education | Other         |
|------------------------|--|---|--|--|--|--|---------------|
| Andorra                | 4 918 539  |   |  | 469 421  |  | 20 850   |               |
| Armenia                | 2 745 119  |   | 355 679  | 250 009  |  | 146 926  | 18 919        |
| Austria                | 310 000 000  | 34 000 000  | 38 000 000   | 53 500 000   |  |  |               |
| Azerbaijan             | 8 909 337  |   |  | 972 000  | 249 760  |  |               |
| Belgium                | 572 600 000  | 20 917 000  | 84 088 000   | 54 333 204   | 11 129 000   | 2 274 000  |               |
| Bosnia and Herzegovina | 40 931 066   | 602 275   | 3 277 073  | 5 600 600  | 305 210  | 749 488  |               |
| Bulgaria               | 35 591 745   | 78 865  | 3 415 039  | 2 374 540  | 1 820 311  | 32 519   |               |
| Croatia                | 129 973 907  | 6 900 243   | 42 495 747   | 8 234 468  | 9 211 507  | 714 132  | 8 290 322     |
| Cyprus                 | 14 877 258   | 18 610  |  | 830 430  | 4 924 866  | 15 621   |               |
| Czech Republic         | 256 650 345  | 2 148 275   |  | 2 429 132  |  | 549 546  |               |
| Denmark                | 129 817 880  | 13 746 211  |  | 31 529 115   |  | 1 475 203  | 6 490 894     |
| Estonia                | 19 031 617   |   | 151 838  | 2 785 033  |  |  |               |
| Finland                | 168 417 000  | 8 042 000   | 5 900 000  | 28 110 000   |  |  | 16 934 000    |
| France                 | 1 573 600 000                                      | 24 531 558  | 379 400 000  | 701 530 000  | 117 000 000  | 65 000 000   |               |
| Georgia                | 5 435 868  | 419 298   | 967 417  | 95 501   | 3 653 564  | 51 102   | 1 137 808     |
| Germany                | 5 000 000 000                                      | 192 000 000   | 1 376 000 000                                      | 268 000 000  |  |  | 1 895 000 000 |
| Greece                 | 322 950 000  | 4 345 000   | 4 600 000  | 4 600 000  | 2 500 000  | 160 000  |               |
| Hungary                | 221 600 000  | 3 200 000   | 13 200 000   | 29 800 000   | 7 900 000  | 700 000  |               |
| Ireland                | 50 282 000   | 9 367 000   | 3 083 000  | 16 132 000   | 19 632 000   | 1 181 000  | 12 135 000    |
| Italy                  | 1 912 287 450                                      | 45 929 981  | 455 000 000  | 223 556 520  |  | 1 650 000  | 113 486 221   |
| Latvia                 | 22 134 811   | 1 233 493   | 114 881  | 5 815 877  |  | 248 957  | 2 868 109     |
| Lithuania              | 33 216 520   | 547 382   | 15 454 414   |  | 8 491 659  | 162 187  | 278 325       |
| Luxembourg             | 47 499 711   | 7 11 500  | 2 183 100  | 640 353  |  | 57 500   |               |
| Malta                  | 6 520 000  |   |  | 133 000  | 923 000  | 14 000   |               |
| Moldova                | 2 194 994  | 5 018   |  | 128 904  | 19 257   | 2 466  | 652 199       |
| Monaco                 | 2 980 000  |   | 660 000  |  |  |  | 691 500       |
| Montenegro             | 6 181 096  | 416 280   |  | 40 600   | 102 000  |  | 300 000       |
| Netherlands            | 510 422 164  | 239 945 809   | 4 008 757  | 102 558 832  |  | 17 307 390   | 15 000 000    |

| Country             | Annual public budget allocated to (gross) salaries | Annual public budget allocated to computerization (equipment, investments, maintenance) | Annual public budget allocated to justice expenses | Annual public budget allocated to court buildings (maintenance, operation costs) | Annual public budget allocated to investments in new (court) buildings | Annual public budget allocated to training and education | Other       |
|---------------------|--|---|--|--|--|--|-------------|
| Norway              | 104 288 492  | 9 468 323   |  | 35 236 667   | 3 740 253  | 2 262 061  |             |
| Poland              | 603 512 000  | 32 804 000  | 154 114 000  | 77 853 000   | 178 787 000  | 631 000  | 164 050 000 |
| Portugal            | 345 675 546  | 4 740 390   | 33 746 479   | 18 941 113   |  |  | 103 390 184 |
| Romania             | 232 105 356  | 20 728 665  | 5 854 032  | 17 935 550   | 30 120 659   | 128 016  |             |
| Russian Federation  | 1 524 674 016                                      | 28 446 183  | 65 421 440   | 157 947 516  | 138 342 484  |  | 421 566 595 |
| Serbia              | 105 940 693  | 2 730 696   | 39 549 823   |  | 7 877 126  |  |             |
| Slovakia            | 58 097 410   | 1 229 303   | 4 113 635  | 4 336 213  |  | 115 784  | 43 584 989  |
| Slovenia            | 94 219 262   | 4 743 950   | 23 542 464   | 4 238 174  |  |  |             |
| Spain               | 1 994 391 570                                      |   |  |  |  |  |             |
| Sweden              | 317 860 130  |   |  |  |  | 6 705 452  |             |
| Switzerland         | 484 811 239  |   |  |  |  |  |             |
| FYROMacedonia       | 17 820 451   |   | 916 625  | 1 090 371  | 261 566  | 523 949  |             |
| Ukraine             | 191 875 330  | 2 430 600   | 90 856 900   | 5 174 000  | 4 812 030  | 2 794 940  |             |
| UK-Northern Ireland | 26 040 000   | 1 805 000   | 20 116 000   | 35 303 000   |  | 507 000  | 101 231 000 |
| UK-Scotland         | 43 261 355   | 4 915 860   | 28 644 825   | 34 041 698   | 2 391 660  | 799 702  |             |

At a European level, significant variations between the countries are apparent, on average. However the main expenditure of courts is linked to the remuneration of judges and court staff (65%). A significant part of the budget (15%) is allocated to premises (operational costs 8%) and investment (new buildings and renovation of the old ones 7%). Judicial fees represent 10% of the court budget. 3% is allocated to IT. This last budgetary component will necessarily increase in the coming years. Less than 1% (0,8%) is allocated to training.

**Figure 4. Average percentage of the main components of the court budget at European level in 2006 (Q8)**



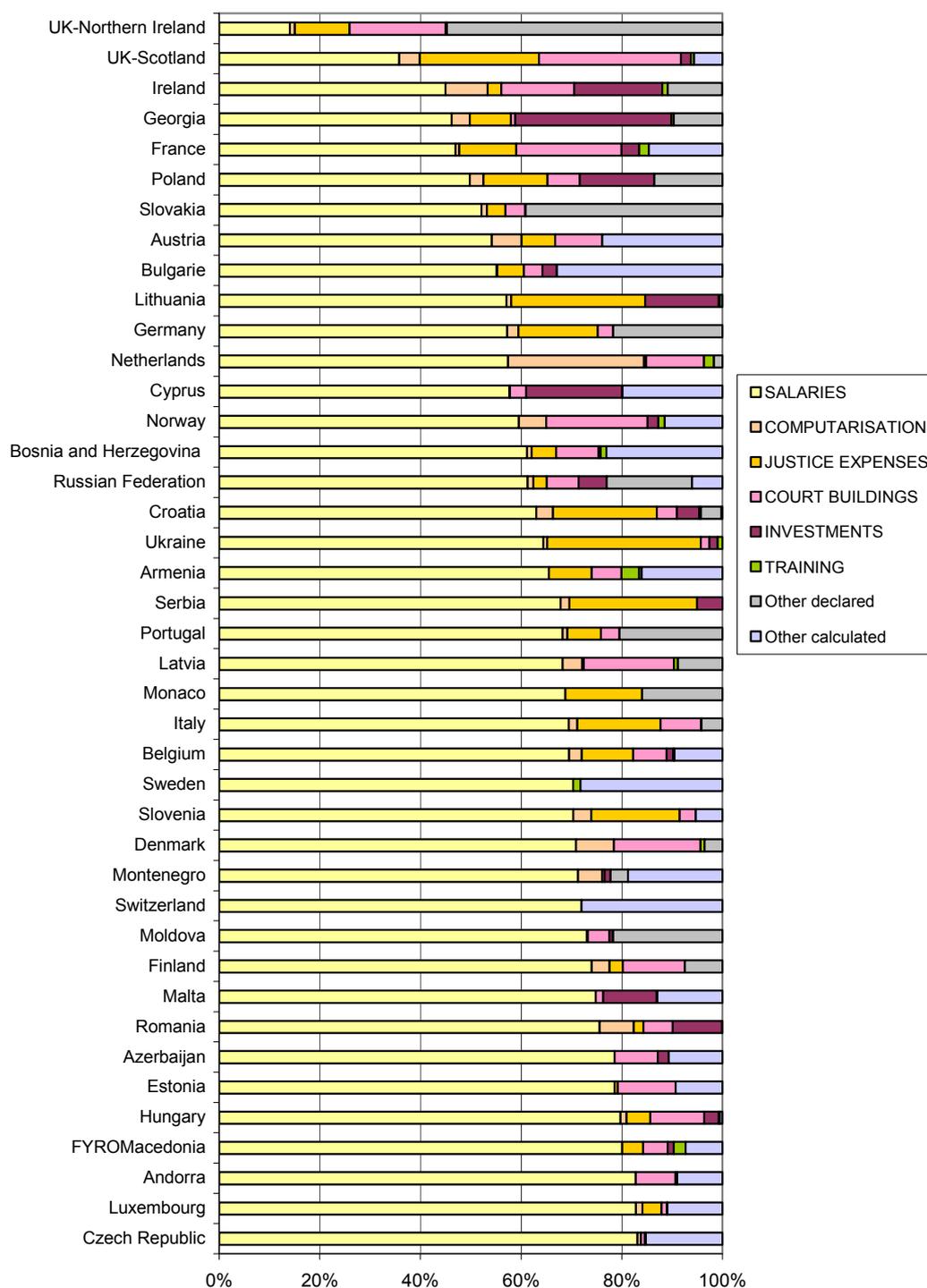
A study by country highlights substantial variations in the break-down of the various budgetary components (figure 4). The countries which have been able to communicate the amount allocated just to salaries, or to two or three elements, appear in this chart next to those countries which have indicated figures for all the budgetary categories. For the former countries, the difference between the sum of the elements indicated and the court budget has been included in the category "other calculated". This category "other calculated" is thus over-estimated here, as it can also include the budgets allocated, for instance, to investment or training. Therefore the average representation (figure 4) keeps this error linked to the non-reply and missing data, but remains a fairly accurate approximation of the European average (with an acceptable possibility of error).

The graph allows a basic understanding of the budgetary structure of every country. 27 countries dedicate more than 60% of their budget to staff costs. Large variations might result from the mode of counting and integration of real estate expenses. A point that should be raised is the important proportion (+ 5%) designated to IT budgets in the **Netherlands, Ireland, Austria, Denmark, Montenegro, Norway and Romania**. 26 countries out of 32 sent data showing that less than 5% of their budget was allocated to the computerization of their courts.

A significant proportion of the budget is designated to real estate investment, construction or renovation in: **Ireland, Georgia, Cyprus, Poland, Lithuania, Malta and Romania**. A substantial part of the court budget is filled by the judicial fees in **UK-Scotland, Poland, France, Croatia, Ukraine, Lithuania, Italy, Monaco, Germany, Serbia and Slovenia**. It must be mentioned that for **Lithuania** (and other countries) the court fees are not a source of income for the courts. They are a part of the whole budget of a State.

The category "other calculated" includes all the posts that could not be communicated; justice expenses, computerisation, training, buildings, investment. The category "other declared" contains all other expenditures did not specified in the question.

**Figure 5. Distribution of the main budgetary posts of the courts, in percentage by country (Q8)**



**Comments**

- **Greece** and **Spain** do not appear in the figure as they have indicated only the part allocated to salaries.
- for **Switzerland**, the category “other calculated” includes: computerization, justice expenses, investments in new buildings and maintenance, the costs for the training of judges and staff.

***The budgetary process for financing all the courts***

The budgetary process (from preparation, adoption and management to evaluation of the budget expenditure) is, in the majority of the member states, organised in a similar manner. It is mostly the Ministry

of Justice which is responsible for the preparation of the budget (proposals). In some countries however, other ministries can also be involved: this is especially the case for countries where specialised courts are not under the responsibility of the Ministry of Justice - for example, where a labour court is financed by the Ministry of Social Affairs (**Germany**). The role of the Ministry of Finances (27 countries) is often mentioned in the comments to this specific question, as being involved in (a part of) the budgetary process of the courts.

To a lesser extent, the courts themselves (20 countries), a Council for the judiciary (15 countries) or a Supreme Court (14 countries) play a central role in the preparation process.

**Table 4. Authorities responsible for the (general) budget allocated to the courts (Q18)**

| <b>Authorities formally responsible for the budget allocated to all courts</b> | <b>Preparation</b> | <b>Adoption</b> | <b>Management</b> | <b>Evaluation</b> |
|--|--------------------|-----------------|-------------------|-------------------|
| Ministry of Justice  | 27                 | 5               | 22                | 20                |
| Other Ministry   | 21                 | 5               | 4                 | 12                |
| Parliament   | 2                  | 39              | 1                 | 15                |
| Supreme Court  | 14                 | 2               | 11                | 10                |
| Council for the Judiciary  | 15                 | 1               | 6                 | 6                 |
| Courts   | 20                 | 2               | 13                | 9                 |
| Inspection body  | 0                  | 0               | 2                 | 11                |
| Others   | 14                 | 4               | 12                | 15                |

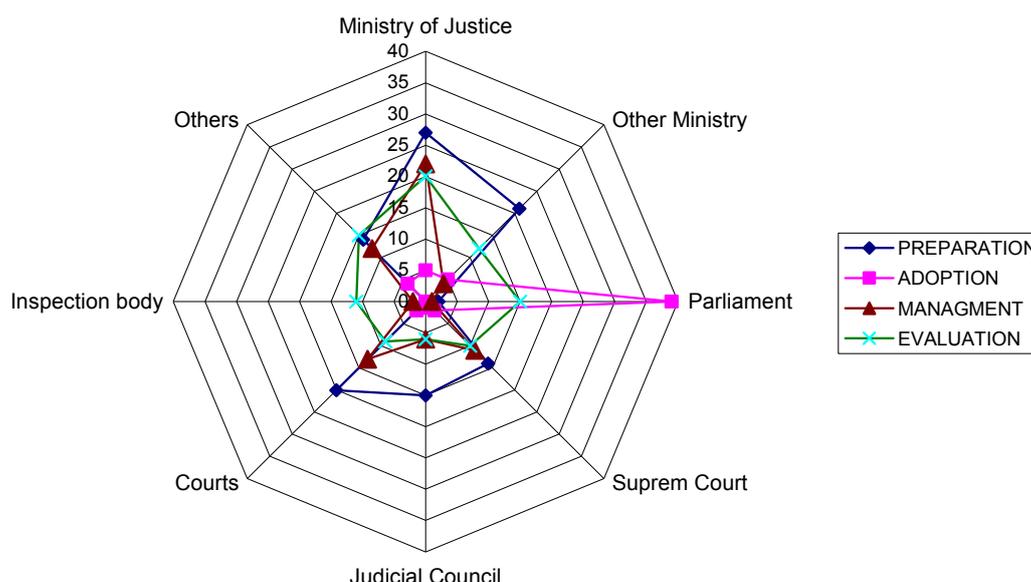
Looking at the replies, it is obvious that the adoption of a budget proposal is the key responsibility of a parliament (39 countries out of the 46 responding entities).

Concerning the management of court budgets at a general level, the Ministry of Justice is involved in the majority of countries (22). To a lesser extent, courts (13 countries) or the Supreme Court (11 countries) are involved in the management of the general court budget.

Concerning the evaluation, authorities can be involved at different levels: mostly, it is the Ministry of Justice which evaluates (20 countries), followed by the Parliament (15 countries), an inspection body (11 countries), the Supreme Courts (10 countries) or another authority (15 countries). In a majority of countries, the evaluation of the budgetary process is carried out by an auditing body. Countries which explicitly mention this are: **Denmark** (General Auditing Bureau), **Finland** (National Audit Office), **France** (*Cour des Comptes*), **Germany** (Court of Auditors), **Hungary** (State Audit Authority), **Iceland** (National Auditor Office), **Ireland** (Office of the Controller and Auditor General), **Latvia** (State Audit Office), **Luxembourg** (Directorate of Financial Control, General Inspectorate of Finances, *Cour des Comptes*, parliamentary Commission for the execution of the budget), **Sweden** (National Audit Office), **Turkey** (Court of Accounts) and **Ukraine** (Accounts Chamber).

The results are summarized in a radar figure (figure 6).

**Figure 6. Authorities formally responsible for the budget of the courts (Q18)**



### 2.3 Budget allocated to the prosecution service

The budget allocated to the prosecution service (Q16) is given in table 2.

In the large majority of the countries or entities (36), public prosecution services are fully separate from courts and have their own budget.

In 11 countries, courts and prosecution systems are managed together or come under a single budget. **France** and **Iceland** have been able to estimate the amounts of their budget allocated to courts and to the prosecution service. Therefore, they appear in the table. In contrast, 9 other States (**Austria, Belgium, Denmark, Germany, Greece, Luxembourg, Portugal, Spain** and **Turkey**) were unable to estimate these amounts and therefore do not appear in the table.

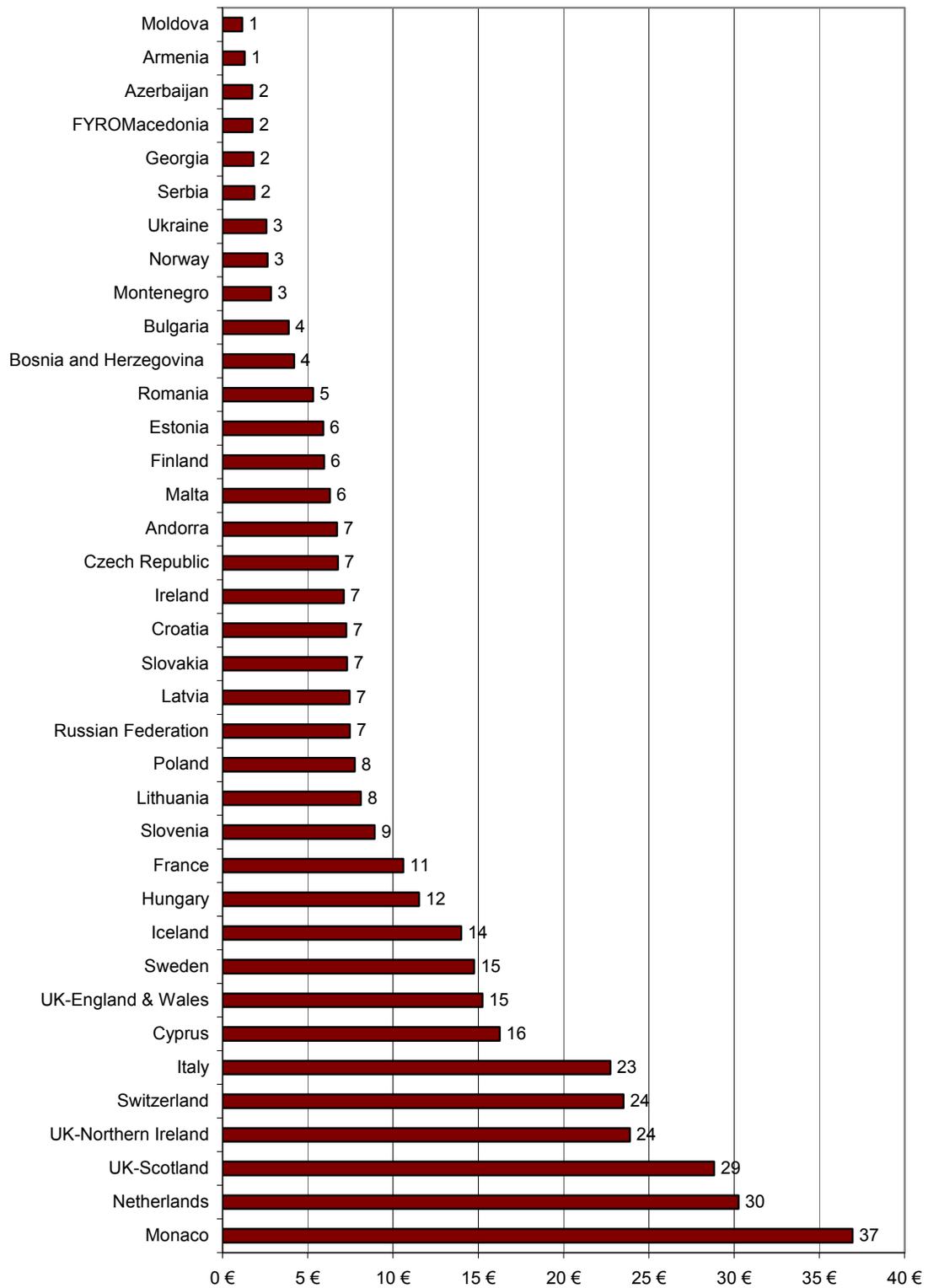
The results given in raw data do not vary much in comparison to 2004 data (figure 7).

The more a country is rich, the more it dedicates significant amounts in absolute value to the prosecution services. Therefore, it is necessary to cross this first analysis with one other, which balances this element, namely by comparing this sum to the GDP per capita (figure 7). Thus, in 6 countries or entities (**Monaco, the Netherlands, UK-Scotland, UK-Northern Ireland, Switzerland, Italy**), the amount that is devoted to the functions of the public prosecution is equal or exceeds the 20 € per capita.

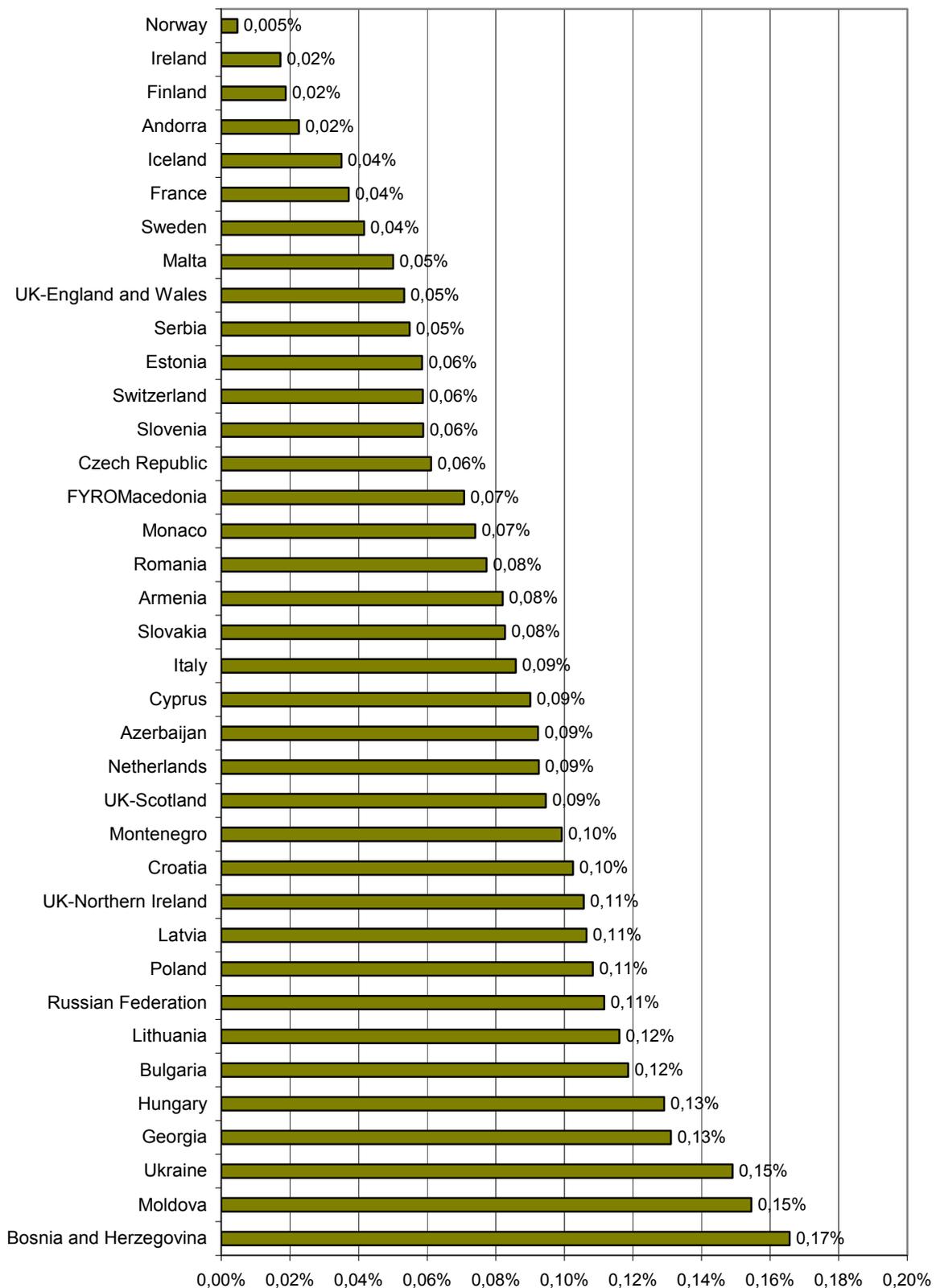
But it is in **Bosnia and Herzegovina, Moldova, Ukraine** and **Georgia** that this amount is the highest compared to the GDP per capita.

It should be noted that for **Norway**, the budget allocated to the prosecutors in the police is part of the budget for the police. The budget reported in the figures is therefore limited to the Higher Prosecuting Authority and forms only a small part of the overall budget for the public prosecutor. It is for the time being not possible to extract the budget for the prosecutors in the police from the overall budget for the police. Just to illustrate the relation between the prosecuting authority in the police and the Higher Prosecuting Authority, the number of prosecutors in the police is approximately 620, while the number of prosecutors in the Higher Prosecuting Authority is 81.

**Figure 7. Annual budget per inhabitant allocated to the prosecution service in 2006, in € (Q13)**



**Figure 8. Public budget allocated to the prosecution service, as a percentage of the GDP per capita, in 2006**



The very marked differences between the competence and the organisational structure of the public prosecution should be taken into account when examining the amounts allocated to the public prosecution. This information appears later in the report, along with other important and relevant data, in particular the number of staff and their jurisdiction.

## 2.4 Budget allocated to the legal aid system

When the 2006 data of the budget allocated to the legal aid system are compared with the 2004 data<sup>8</sup>, a sharp increase of the budget can be noticed in certain countries.

This may be partly caused by changes in the exchange rate, modifications in living conditions, corrections in the figures provided or due to a specific policy to stimulate the use of legal aid. Unfortunately, the exact relationships between the causes for an increase of the budget cannot be given, due to a lack of additional information. Therefore, no detailed information on the variations of the legal aid budgets between the 2004 - 2006 cycle and the 2006 - 2008 cycle appears in the tables. Only the information on the year 2006 is presented.

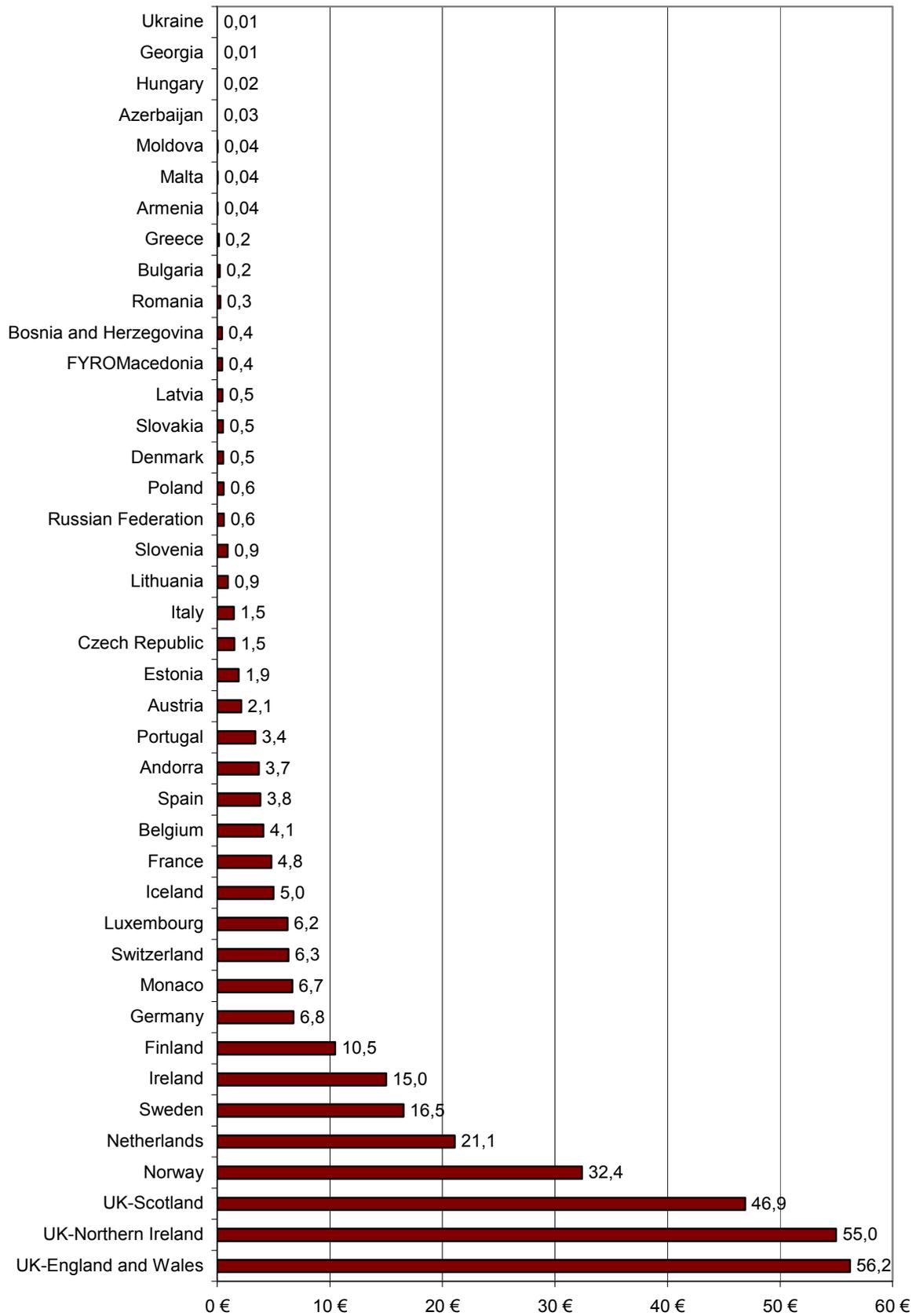
A significant increase in the legal aid budget (more than 50% vis-à-vis 2004 data) can be seen in **Armenia, Estonia, Greece, Latvia, Lithuania, Monaco, Romania and Sweden**. Legal aid budgets in these countries represented a very small part of State expenditure. An increase of between 20% and 40% can be seen in 11 countries: **Andorra, Belgium, Czech Republic, Iceland, Ireland, Italy, Poland, Portugal, Slovakia and Spain**. In some of these countries, the increase is explained by a recent policy for implementing legal aid systems and / or extending such systems (**Estonia, Slovakia, Slovenia**). In the other countries, such an increase is the result of a policy aimed at improving access to justice. In contrast, a trend can be noticed for the stabilization of these budgetary components or the decrease in the legal aid budget in the following countries: **Bosnia and Herzegovina, Georgia, Malta, the Netherlands and Norway**.

As it was the case in the year 2004, a relatively high budget for legal aid (gross data per inhabitant) is spent in: **Norway, UK-Scotland, UK-Northern Ireland and UK-England and Wales** (figure 9). A relatively high amount can also be seen in **the Netherlands, Sweden, Ireland and Finland**. Once again, introducing the reference to the GDP is useful to measure the impact of the budgetary amount allocated to legal aid, in relation to the States' prosperity, to help those people who do not have sufficient means.

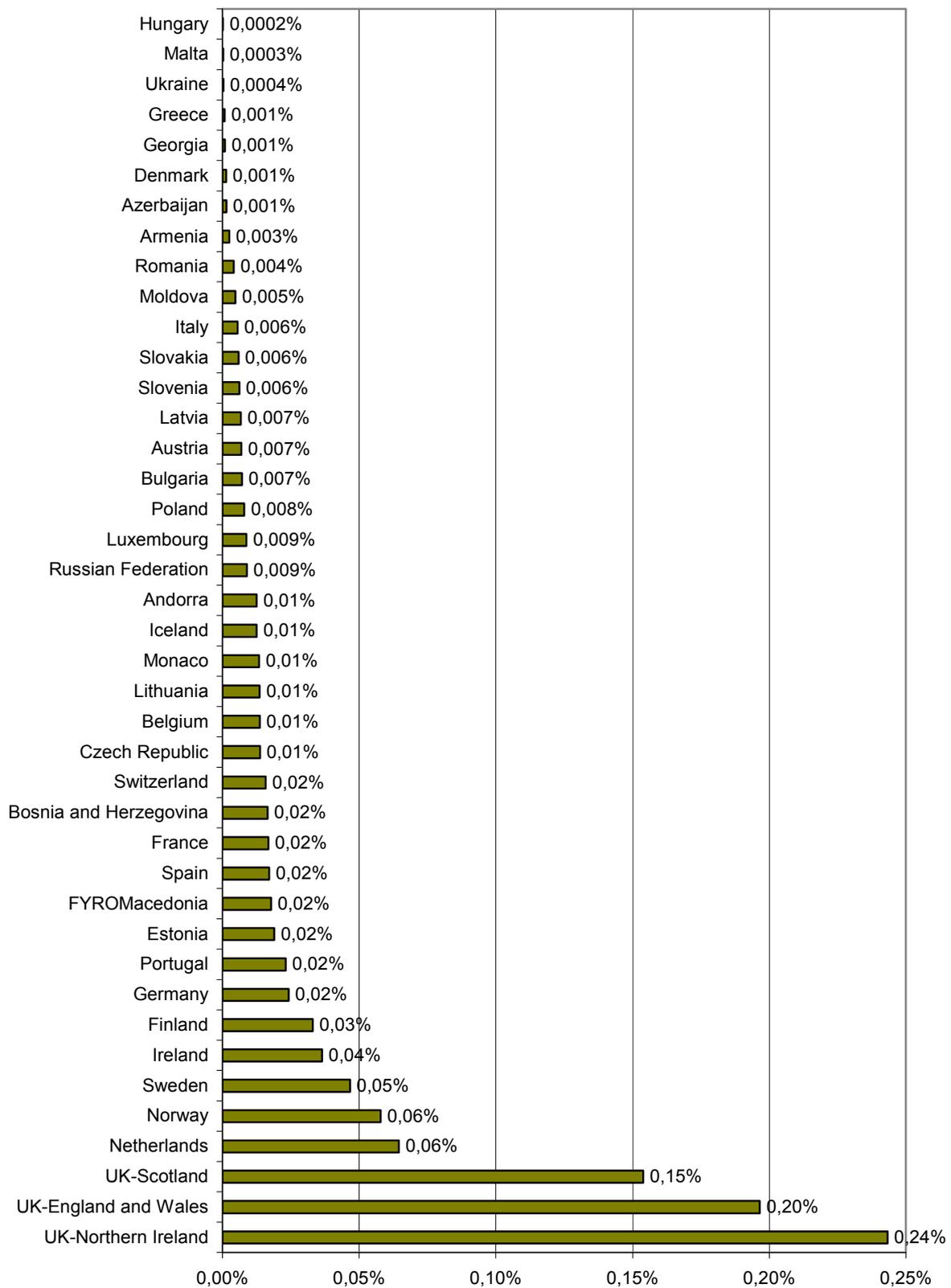
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<sup>8</sup> See the CEPEJ's Report "European judicial systems - Edition 2006".

**Figure 9. Annual public budget allocated to legal aid per inhabitant in 2006, in € (Q13)**



**Figure 10. Annual public budget allocated to legal aid per inhabitant as a percentage of per capita GDP in 2006**



## 2.5 Total public budget of the courts and the prosecution services (without legal aid)

A comparison, which concerns 39 countries or entities, refers to the sum of the budgets for courts and the prosecution services. This data allows an integration of the countries where the court budget cannot be separated from the budget allocated for the prosecution services (**Austria, Belgium, Denmark, Germany, Greece, Luxembourg, Spain, Turkey**).

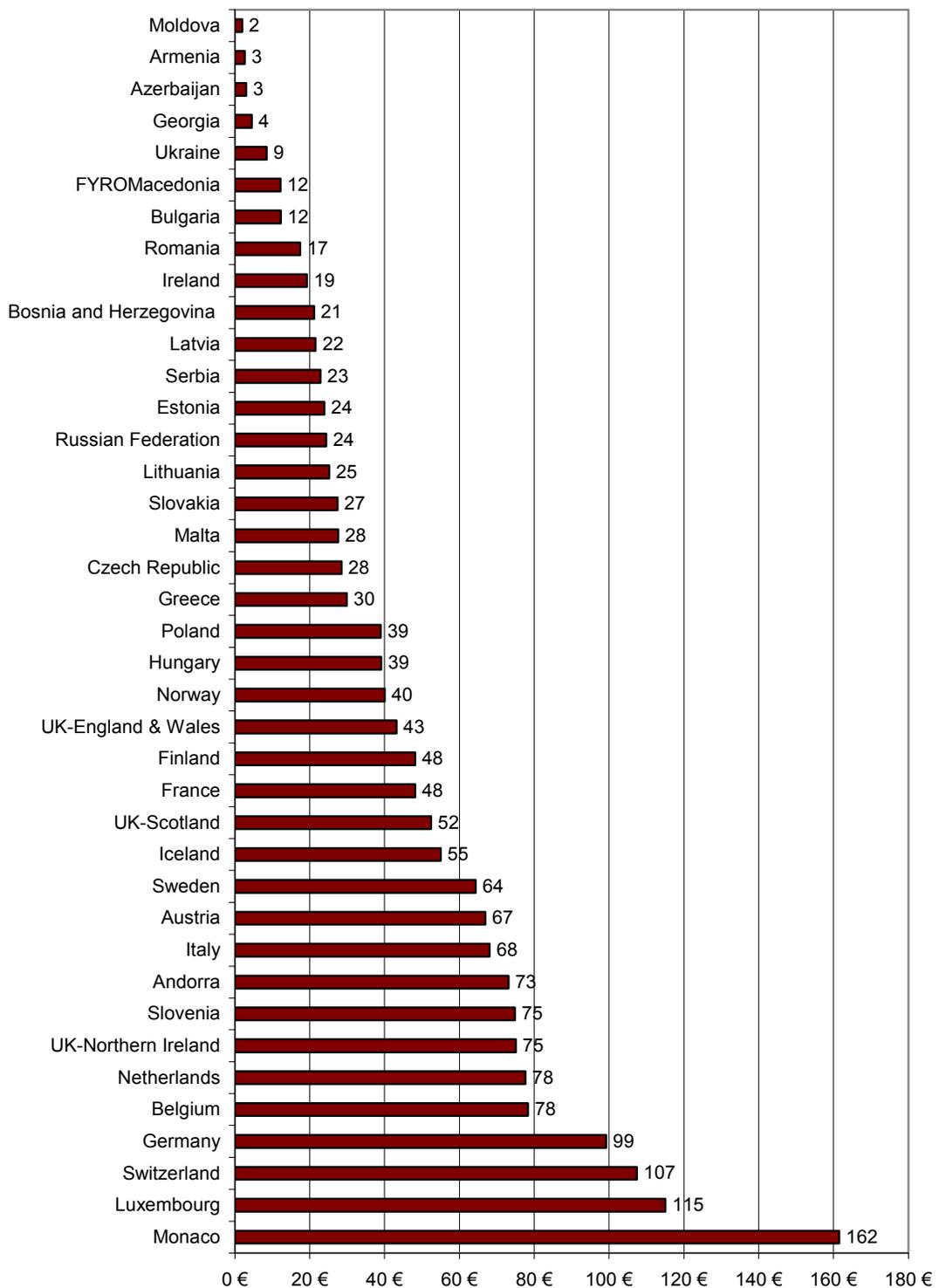
When the 2006 data are compared with the 2004 data<sup>9</sup>, it can be concluded that in **Armenia, Romania, Serbia** and **Ukraine** the budget has been significantly increased. On the other hand, there are some countries where there is an indication that the total budget for courts and prosecution services has not been increased or has even been slightly reduced over the last two years (**Germany, Czech Republic, Hungary, Ireland, Italy, Sweden**). However, in these countries, the legal aid budget has been significantly increased, the budget of the prosecution service has been slightly increased and the court budget has not evolved.

Confirming the 2004 data, a pretty high budget is allocated to the prosecution and judgment services (gross data per inhabitant) in the following countries: **Monaco, Luxembourg, Switzerland, Germany** (figure 11). However, comparisons can be only made between groups of countries at a comparable level of development. Here again, the ratio integrating the GDP allows a measure of the budgetary effort in respect of the prosperity of the country for the judiciary system as a whole (figure 12). A considerable budget is then allocated in **Bosnia and Herzegovina, Slovenia, Poland, Serbia, Ukraine, "the former Yugoslav Republic of Macedonia"**.

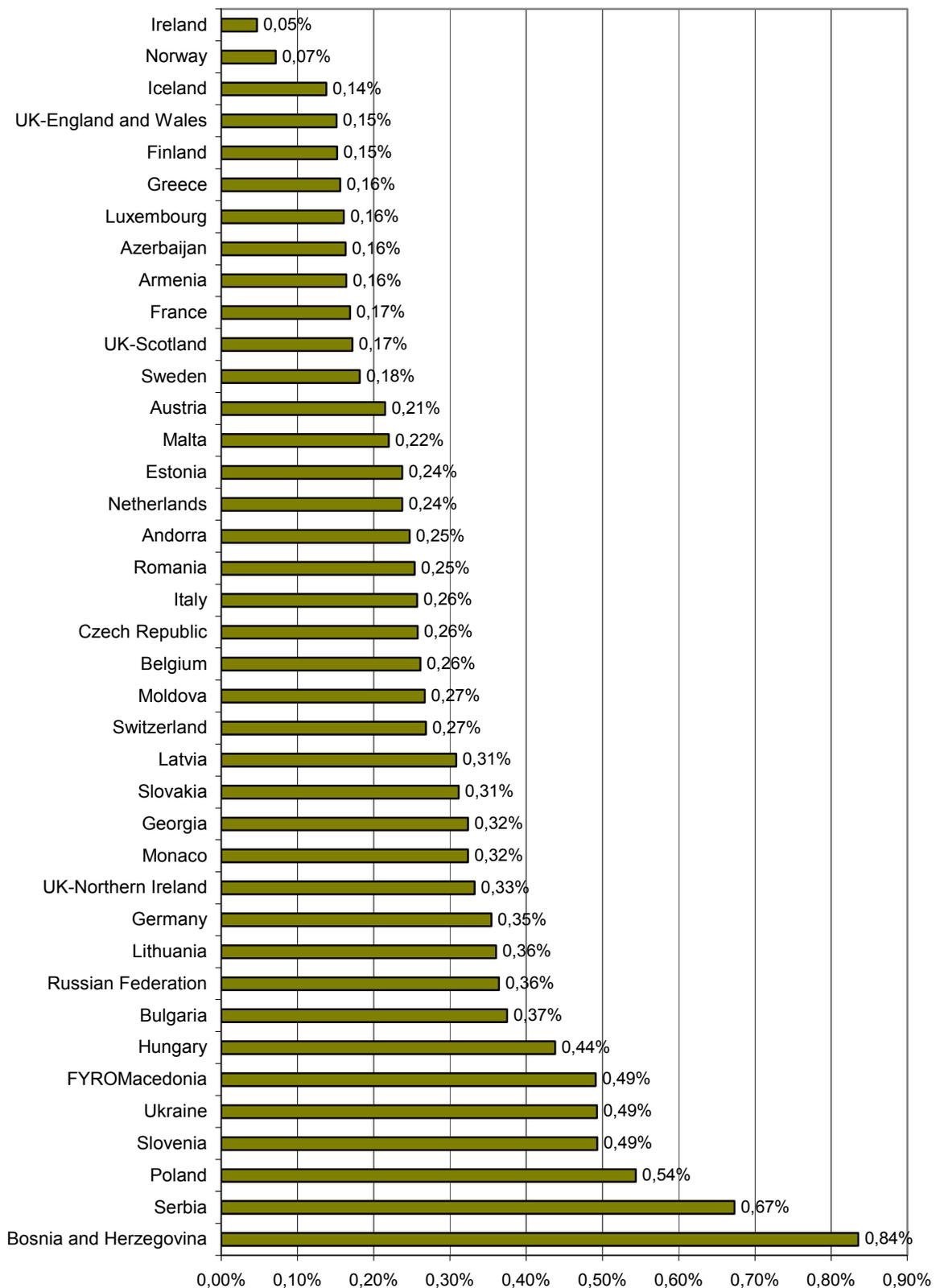
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<sup>9</sup> See the CEPEJ's Report "European judicial systems - Edition 2006".

**Figure 11. Total annual budget allocated to all courts and public prosecution (without legal aid) per inhabitant in 2006, in €**



**Figure 12. Total annual public budget allocated to all courts and public prosecution (without legal aid) in 2006, as a percentage of per capita GDP**



## **2.6 Public budget allocated to courts and legal aid in 2006 (without public prosecution)**

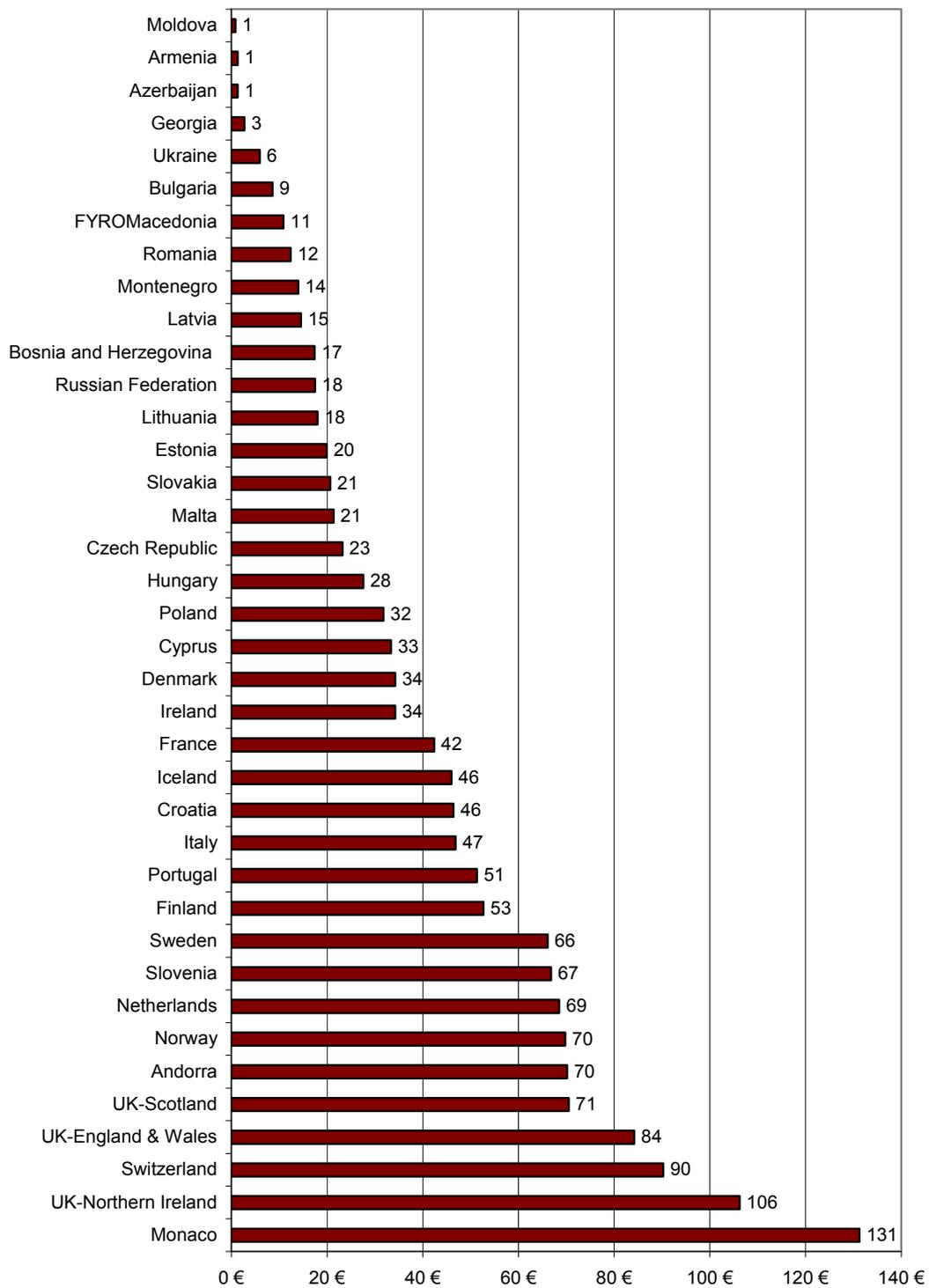
In this paragraph it is possible to compare countries with each other on their budgetary figures for courts and legal aid. In certain countries, the legal aid budget is an integral part of the court budget.

When only the budget for courts and legal aid are used to compare countries, it is clear that the countries that spend a relatively large amount on legal aid are at the top (per 100.000 inhabitants). The figures (per 100.000 inhabitants) for the court budget, including legal aid, are especially high in **Monaco, UK-Northern Ireland, Switzerland** and **UK-England and Wales**. However, especially for the **United Kingdom**, this high amount is mainly related to a high budget for legal aid.

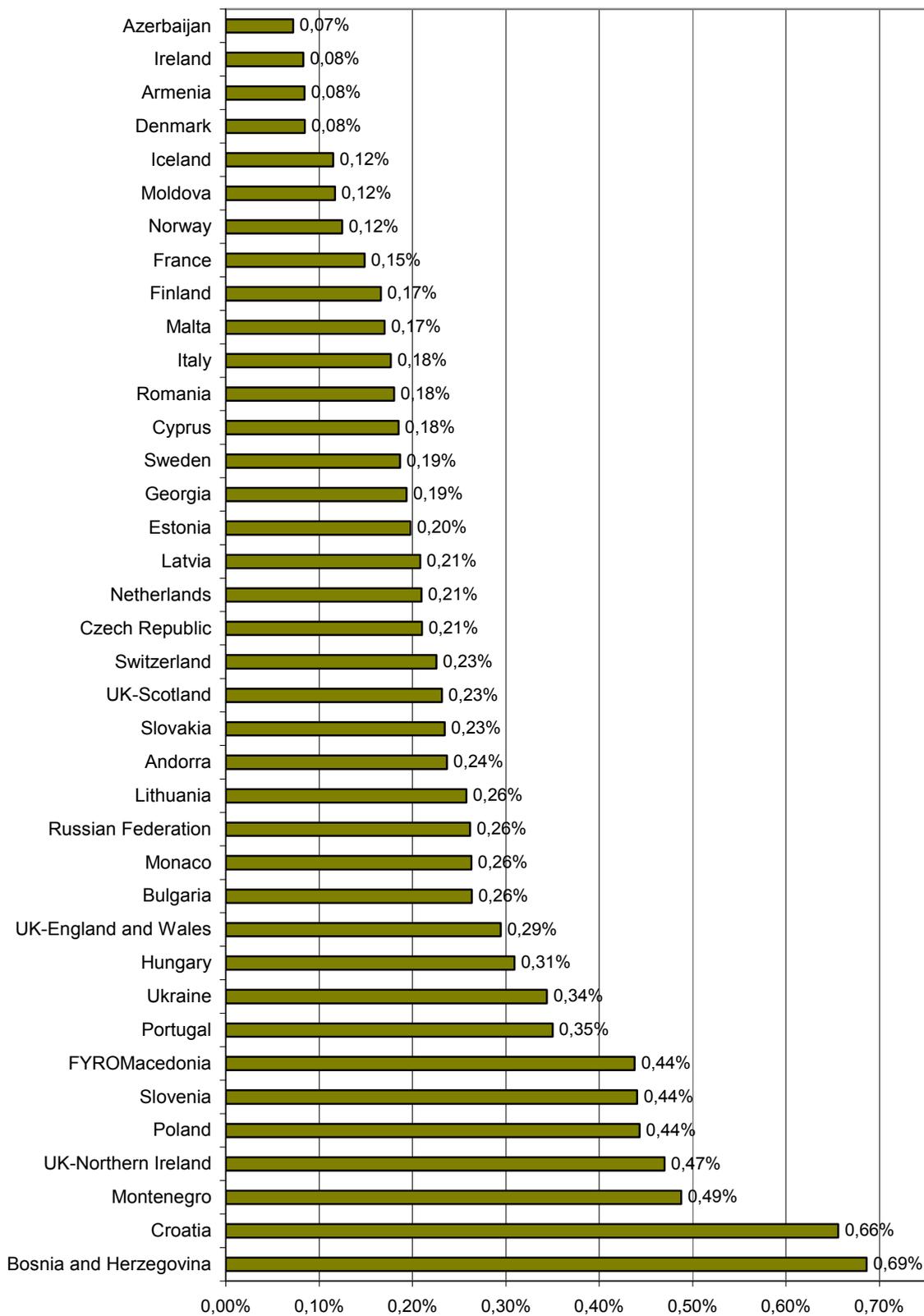
The court budget contributes to a much lesser extent to the total figure for the budget for the courts and legal aid. For **Norway** and **the Netherlands**, the two budgets are more equal. In these countries, there is a relatively high budget (per 100.000 inhabitants) for the courts and for legal aid.

The results are different if the percentage of GDP is used for calculating ratios. The budget for the courts and legal aid as a percentage of GDP is high for a number of South-eastern European countries (**Bosnia and Herzegovina, Montenegro, "the former Yugoslav Republic of Macedonia), Croatia, Poland, Slovenia** and **UK-Northern Ireland**.

**Figure 13. Total annual budget allocated to all courts and legal aid (without prosecution) per inhabitant in 2006, in €**



**Figure 14. Annual public budget allocated to all courts and legal aid (without prosecution) as a percentage of per capita GDP**



## 2.7 Total budget allocated to the judicial system (budget allocated to all courts, legal aid and prosecution service)

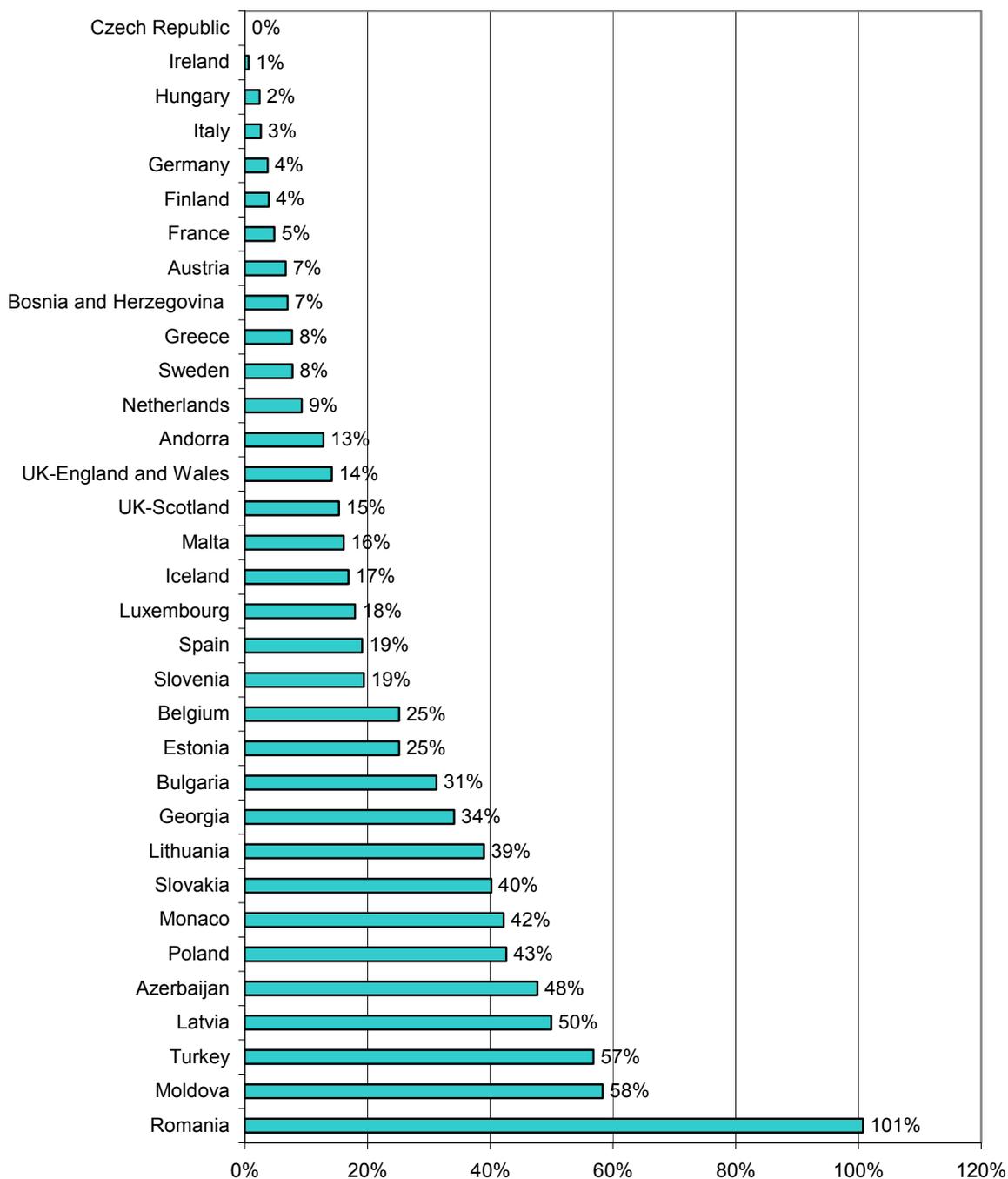
This part gives an overview of the budget allocated to the judicial system, when looking at courts, legal aid and the prosecution service together. It gives an idea of the amount that is allocated to access to justice and the operation of courts and prosecution services.

Comparing the 2006 data with the 2004 data, there are countries which seem to have increased the budget for the year 2006. It should be recalled here that three different budgetary components are addressed: the variations in the total budget allocated to the justice system should only be analysed through the analysis of each of these components. An increase in the budget allocated to the justice system between 2004 and 2006 of more than 30% can be seen in **Armenia, Bulgaria, Georgia, Lithuania, Slovakia, Monaco, Poland, Azerbaijan, Latvia, Turkey, Moldova and Romania**. Variations from 10% to 30% can be observed in **Andorra, UK-England and Wales, UK-Scotland, Malta, Iceland, Luxembourg, Spain, Slovenia, Belgium and Estonia**. On the one hand, they result from structural reforms, such as in **UK-England and Wales**. On the other hand, they result from a real increase in the budgets allocated to legal aid (**Andorra and Spain**) or to the prosecution service (**Malta**). The other countries experience an increase of less than 10% (**the Netherlands, Greece, Bosnia and Herzegovina, Austria, Sweden, France, Finland**) or a stabilization of the overall budget of the judicial system (**Germany, Italy, Hungary, Ireland, Czech Republic**).

When comparing the figures for the integral budget of courts, legal aid and public prosecution per inhabitant, it appears that **Luxembourg, Germany, the Netherlands, Switzerland, UK-Scotland, UK-Northern Ireland and UK-England and Wales** spend relatively high amounts on their judicial systems. In 2004, these countries already allocated the highest amounts to their judicial systems. With the percentage of GDP as the common ratio, the order between the countries differs: in **Bosnia and Herzegovina, Croatia, Montenegro, UK-Northern Ireland, Poland, "the former Yugoslav Republic of Macedonia", Slovenia and Ukraine** (figure 17) a high budget, as a percentage of per capita GDP, is allocated to the justice system (legal aid, courts and prosecution). See the following figures.

More countries have been able to give data for the year 2006 and they appear in figure 16. However the following countries: **Bosnia and Herzegovina, Poland, Slovenia and Hungary**, keep their rank among the countries whose expenditure vis-à-vis GDP remains among the highest.

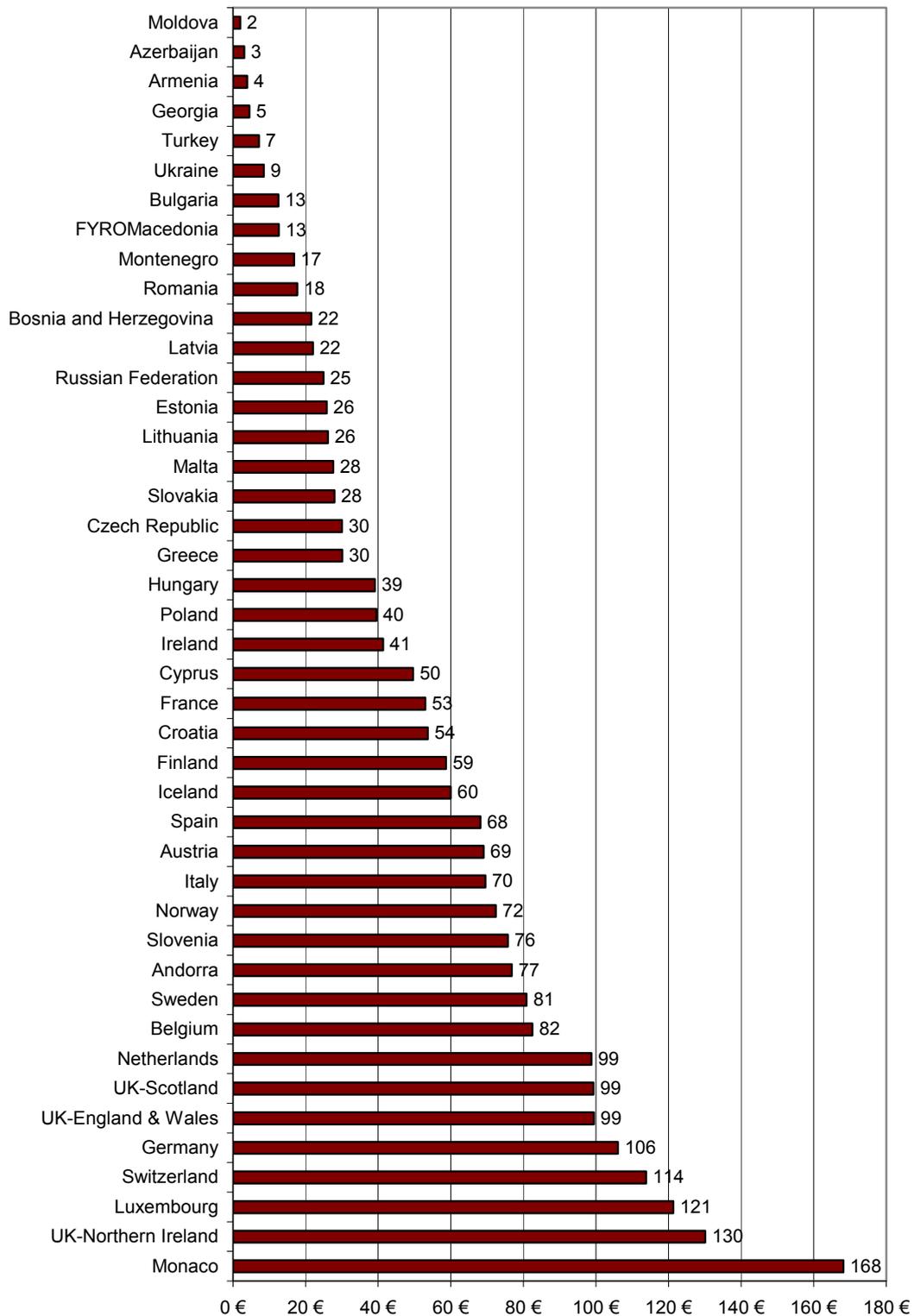
**Figure 15. Relative variation of the total budget allocated to the judicial system between 2004 and 2006\***



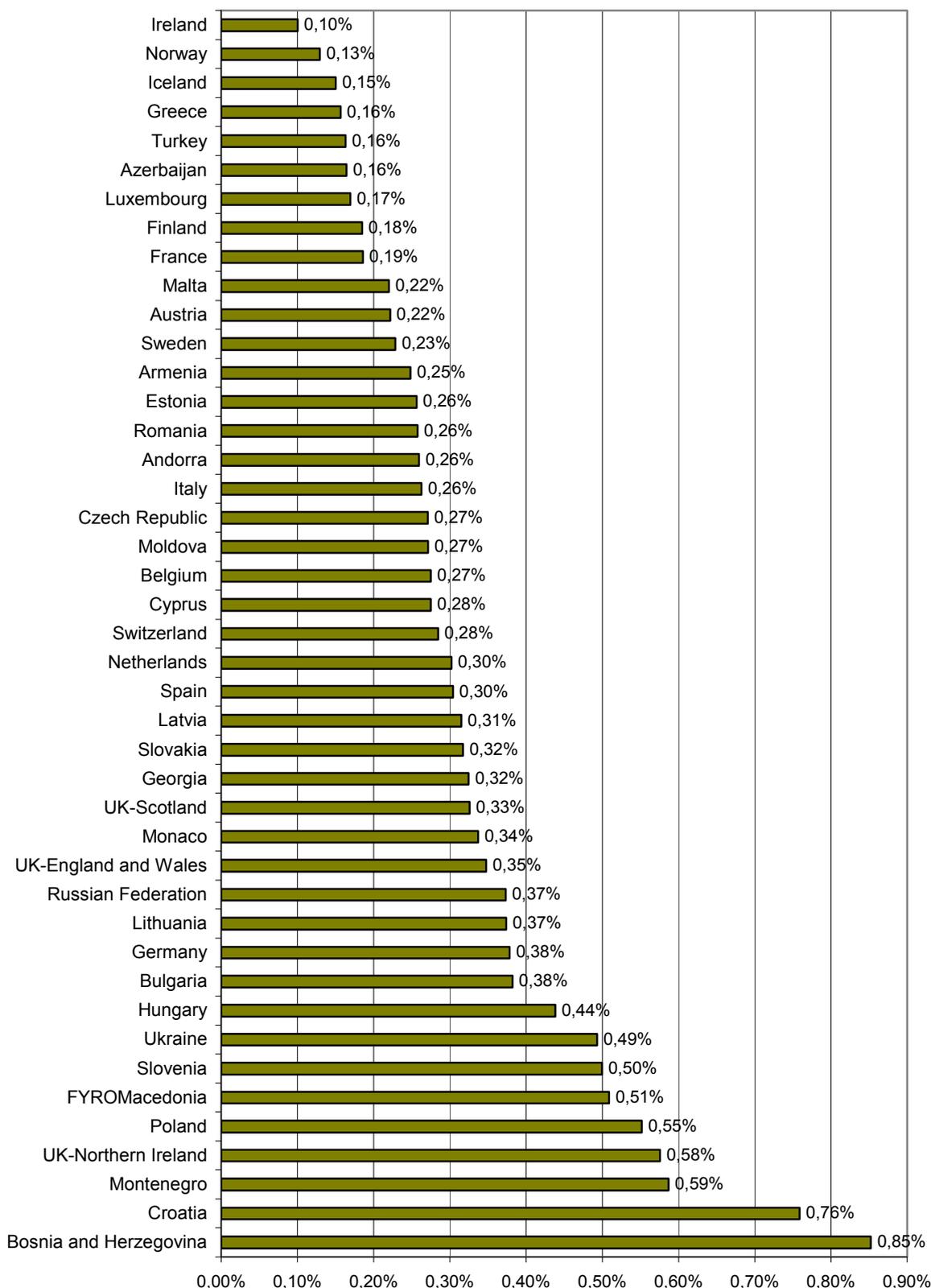
\* The variation rate 2004-2006 takes into account the modifications indicated by 9 countries to some 2004 budgetary data. These updates concern: Cyprus, Iceland, Moldova, Serbia, UK-England and Wales, Austria, Greece, Estonia, Sweden. Norway is not presented in the table as the public prosecution budget is under-estimated.

The budget of judicial system of **Armenia** has been multiplied by 5 between 2004 and 2006. Armenia does not appear in this table to keep the comparative scale for the rest of the countries.

**Figure 16. Total public budget allocated to the judicial system (courts, prosecution and legal aid) per inhabitant in 2006, in €**

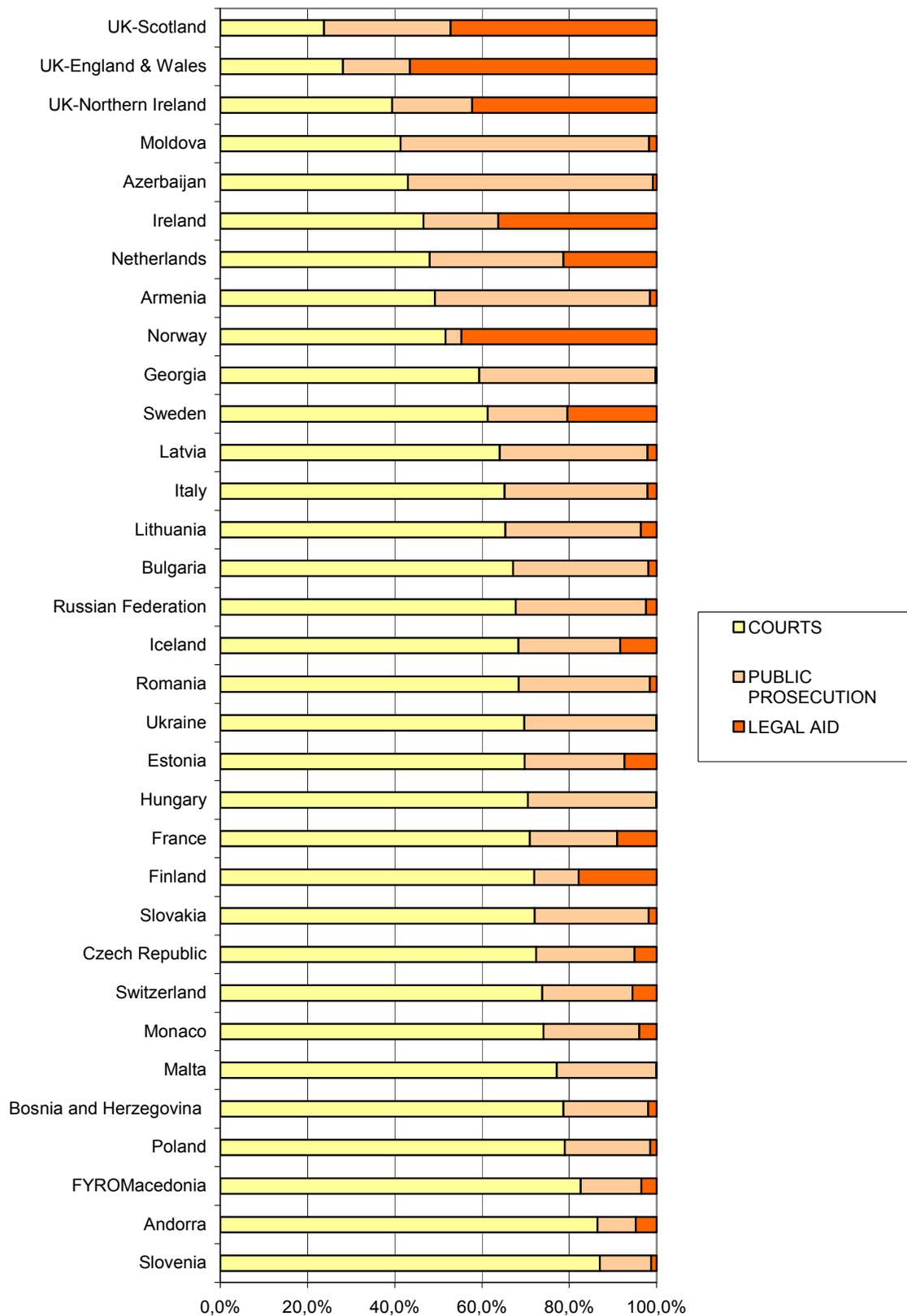


**Figure 17. Total public budget allocated to the judicial system (courts, prosecution and legal aid) in 2006 as percentage of per capita GDP**



As it has already been indicated above, for a certain number of countries, the legal aid budget contributes significantly to the total amount (courts, legal aid and prosecution services). This is especially true for **UK-England and Wales, UK-Northern-Ireland** and **UK-Scotland**. In these entities, a relatively low amount of public budget is spent on the courts. In a number of eastern European countries, most of the total budget is allocated to the public prosecution: **Armenia, Azerbaijan, Moldova** and **Georgia**.

**Figure 18. Relative distribution between the budget of the courts, prosecution and legal aid**



## 2.8 Trends and conclusions

In most of the member States of the Council of Europe, the budget allocated to the courts has increased over the last five years. Reasons for this increase are related to the rise in personnel costs, higher costs for renting, the functioning and/or maintenance of court buildings, inflation or a rise in the living standards, or the implementation of a judicial reform programme.

Concerning the budgetary components of the court budget, most of the costs are related to the payment of the salaries of judges and court staff. To a much lesser extent, judicial expenses contribute to the court budget. Maintenance and investment in court buildings is a substantial share of the total court budget in **Cyprus, Ireland, Georgia** and **UK-Scotland**.

With a growing computerization of society, it is expected that courts will invest more in IT. Large shares of the IT budget related to the total court budget can be found in **the Netherlands, Ireland, Austria, Denmark** and **Romania**.

In the majority of the countries, a budget for legal aid is available. As it is the case with the court budget, this budget varies from country to country. In **the Netherlands, Norway, Ireland** and in the **United Kingdom**, a relative high budget for legal aid is available.

As regards the budget for public prosecution, a high proportion of the budget is allocated to this end, especially in central and eastern European countries. A high number of public prosecutors, the organisation of the public prosecution in a given country, differences in the powers of the public prosecutors may lead to the variation in the budget.

### **3. Access to justice**

#### **3.1 Introduction**

Legal aid is an essential to guaranteeing equal access to justice for all, as provided for by Article 6.3 of the European Convention of Human Rights, which relates to criminal law cases. In particular, for citizens who do not have sufficient financial means, it increases the possibility of initiating for free (or for limited expenses) court proceedings with the help of legal professionals or to provide legal assistance in criminal cases.

Beyond the European Convention of Human Rights and the case law of the Court of Strasbourg, the Council of Europe encourages its member states to develop legal aid systems and has adopted several Recommendations and Resolutions in this field: Resolution 76 (5) on legal aid in civil, commercial and administrative matters; Resolution 78 (8) on legal aid and advice; Recommendation 93 (1) on effective access to the law and justice for the very poor and Recommendation 2005 (12) containing an application form for legal aid abroad for use under the European Agreement on the transmission of applications for legal aid and its additional protocol<sup>10</sup>.

Legal aid is defined in the explanatory note to the Evaluation Scheme as: aid given by the State to persons who do not have sufficient financial means to defend themselves before a court (or to initiate a court proceeding). In this definition, legal aid mainly concerns legal representation before the court. However, legal aid consists also in legal advice. In fact, not all citizens who are faced with judicial problems initiate judicial proceedings before the court. In some cases legal advice can be sufficient to solve a legal issue.

#### **3.2 Various types of legal aid**

It is worth mentioning that all the member states comply (at least as far as the legal norms are concerned) with the minimum requirement of the European Convention of Human Rights, providing legal aid for legal representation in criminal law cases. In the majority of the member states, legal aid is provided for legal representation, legal advice or other forms of (legal) assistance. A number of countries grant legal aid for legal representation or legal advice in non-criminal cases too.

On the basis of the replies received, it is possible to cluster the member states in five classes (from the lowest level – legal aid only in criminal matters - to the widest range of legal aid - legal advice and representation in criminal and non-criminal cases (including other forms of legal aid). In the following table the clusters are laid out.

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<sup>10</sup> This Recommendation enables to use common forms to the European Union and the Council of Europe which are in line with Directive 2003/8/CE of 27 January 2003 on legal aid.

**Table 5. Types of legal aid granted in criminal and other than criminal cases (Q20)**

| Country                | Criminal cases           |              |       | Other than criminal cases |              |       |
|------------------------|--------------------------|--------------|-------|---------------------------|--------------|-------|
|                        | Representation in courts | Legal advice | Other | Representation in courts  | Legal advice | Other |
| Albania                | Yes                      |              |       |                           |              |       |
| Andorra                | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Armenia                | Yes                      | Yes          |       |                           |              |       |
| Austria                | Yes                      | Yes          | Yes   | Yes                       | Yes          | Yes   |
| Azerbaijan             | Yes                      | Yes          |       |                           |              |       |
| Belgium                | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Bosnia and Herzegovina | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Bulgaria               | Yes                      | Yes          | Yes   | Yes                       | Yes          | Yes   |
| Croatia                | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Cyprus                 | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Czech Republic         | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Denmark                | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Estonia                | Yes                      | Yes          | Yes   | Yes                       | Yes          | Yes   |
| Finland                | Yes                      | Yes          |       | Yes                       | Yes          |       |
| France                 | Yes                      | Yes          | Yes   | Yes                       | Yes          | Yes   |
| Georgia                | Yes                      | Yes          | Yes   |                           |              |       |
| Germany                | Yes                      | Yes          | Yes   | Yes                       | Yes          | Yes   |
| Greece                 | Yes                      | Yes          | Yes   | Yes                       |              |       |
| Hungary                | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Iceland                |                          | Yes          |       | Yes                       | Yes          |       |
| Ireland                | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Italy                  | Yes                      |              | Yes   | Yes                       |              |       |
| Latvia                 | Yes                      | Yes          | Yes   | Yes                       | Yes          | Yes   |
| Lithuania              | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Luxembourg             | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Malta                  | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Moldova                | Yes                      |              |       | Yes                       |              |       |
| Monaco                 | Yes                      |              |       | Yes                       |              | Yes   |
| Montenegro             | Yes                      | Yes          | Yes   | Yes                       | Yes          | Yes   |
| Netherlands            | Yes                      | Yes          |       | Yes                       | Yes          | Yes   |
| Norway                 | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Poland                 | Yes                      |              | Yes   | Yes                       |              | Yes   |
| Portugal               | Yes                      | Yes          | Yes   | Yes                       | Yes          | Yes   |
| Romania                | Yes                      |              |       | Yes                       |              | Yes   |
| Russian Federation     | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Serbia                 | Yes                      |              |       | Yes                       |              |       |
| Slovakia               | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Slovenia               | Yes                      | Yes          | Yes   | Yes                       | Yes          | Yes   |
| Spain                  | Yes                      | Yes          | Yes   | Yes                       | Yes          | Yes   |
| Sweden                 | Yes                      |              | Yes   | Yes                       | Yes          | Yes   |
| Switzerland            | Yes                      |              | Yes   | Yes                       |              | Yes   |
| FYROMacedonia          | Yes                      | Yes          |       | Yes                       | Yes          |       |
| Turkey                 | Yes                      |              |       | Yes                       |              | Yes   |
| Ukraine                | Yes                      | Yes          |       | Yes                       | Yes          |       |
| UK-Northern Ireland    | Yes                      | Yes          |       | Yes                       | Yes          |       |
| UK-Scotland            | Yes                      | Yes          |       | Yes                       | Yes          |       |
| UK-England & Wales     | Yes                      | Yes          |       | Yes                       | Yes          |       |

**Comment: Armenia** - the Code of Civil Procedure guarantees free legal aid in specific civil law cases.

Other forms of legal aid (in addition to legal representation and legal advice) that can be granted by member states are: the preparation and drafting of legal documents (including contracts, wills, individual acts, etc), the funding of the costs for a private detectives (**Italy**), mediation (**France** and the **Netherlands**), the exoneration of court fees or postponement of judicial fees (**Poland, Romania, Sweden**), payment of the costs for the execution (**Sweden**) or the payment of the costs for the hire of an expert (**Slovenia, Romania**).

37 countries have replied that legal aid exists to cover or exonerate court fees (Q22). This is not the case only in 10 countries is this not the case: **Azerbaijan, Cyprus, Georgia, Latvia, Moldova, the Netherlands, Romania, Russian Federation, Serbia** and **Ukraine**.

### 3.3 Budget for legal aid

In chapter 2, budgetary data are given on the budget for legal aid in the member states in absolute numbers, per capita and as a percentage of per capita GDP. In addition to this information, it is important to identify the number of cases (criminal and other than criminal cases) that are supported through legal aid. On this basis, a calculation can be made on the average amount of legal aid allocated per case.

Only 26 countries have been able to provide figures on the number of cases concerned by legal aid. For those countries which have supplied the relevant information, the average amount of legal aid can be calculated.

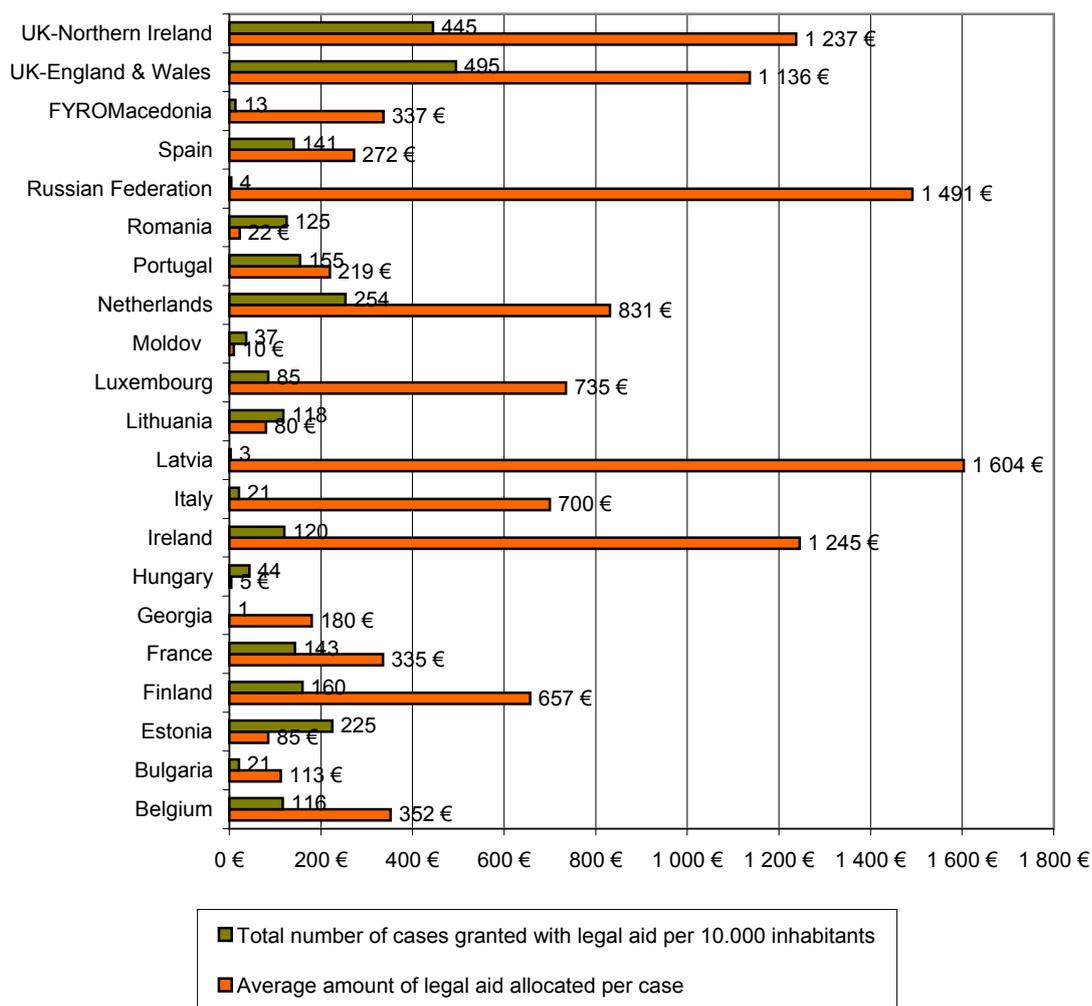
A few countries have communicated the partial statistics of cases granted with legal aid. In **Turkey** only the number of cases where a person granted with legal aid is represented by a lawyer (29.753 in criminal cases and 9.703 in civil cases) is known. In **Croatia** approximately 70.000 cases a year are granted with legal aid financed from the funds of NGOs and from donations. The forms of legal aid financed from the regular funds provided for the operation of courts are not recorded or monitored separately and systematically at the moment. However, some framework figures can be given: mandatory representation of parties was ordered in 1.324 cases (including 420 civil cases). In 3.148 cases the parties were exempted from payment of court costs. In 1.879 criminal cases there were court appointed defence attorneys. In **Spain**, in addition to the whole number of 615.465 cases granted with legal aid, there were 1.495.000 cases of legal assistance to arrested persons, which implies the assistance of a lawyer when the arrested person's statement is taken but does not include the defence through the whole duration of the case. It should be noted that the data presented by the **Czech Republic** are the data of legal aid that derived from the State budget. Besides that legal aid can be provided by the bar association or by the lawyers themselves. This budget however is not part of the budgetary data provided.

**Table 6. Number of legal aid cases per 10.000 inhabitants and the average amount of legal aid spent per case in 2006, in € (Q24)**

| Country  | Total number of cases granted with legal aid per 10.000 inhabitants | Number of criminal cases granted with legal aid per 10.000 inhabitants | Number of other than criminal cases granted with legal aid per 10.000 inhabitants | Average amount of legal aid allocated per case | Average amount of legal aid allocated per criminal case | Average amount of legal aid allocated per other than criminal case |
|----------|---|--|---|--|---|--|
| Austria  |   |  | 14  |  |   |  |
| Belgium  | 116   |  |   | 352 €  |   |  |
| Bulgaria | 21  |  |   | 113 €  |   |  |
| Estonia  | 225   | 223  | 2   | 85 €   | 77 €  | 842 €  |
| Finland  | 160   | 70   | 90  | 657 €  |   |  |
| France   | 143   | 62   | 82  | 335 €  | 254 €   | 396 €  |
| Georgia  | 1   | 1  |   | 180 €  | 180 €   |  |
| Germany  |   |  | 72  |  |   |  |
| Hungary  | 44  | 0  | 44  | 5 €  |   |  |
| Ireland  | 120   | 98   | 22  | 1 245 €  | 1 003 €   | 2 305 €  |
| Italy    | 21  | 14   | 7   | 700 €  | 840 €   | 402 €  |
| Latvia   | 3   | 0  | 3   | 1 604 €  |   |  |

| Country             | Total number of cases granted with legal aid per 10.000 inhabitants | Number of criminal cases granted with legal aid per 10.000 inhabitants | Number of other than criminal cases granted with legal aid per 10.000 inhabitants | Average amount of legal aid allocated per case | Average amount of legal aid allocated per criminal case | Average amount of legal aid allocated per other than criminal case |
|---------------------|---|--|---|--|---|--|
| Lithuania           | 118   | 105  | 13  | 80 €   |   |  |
| Luxembourg          | 85  |  |   | 735 €  |   |  |
| Moldova             | 37  | 37   |   | 10 €   | 9 €   |  |
| Netherlands         | 254   | 94   | 160   | 831 €  | 1 024 €   | 718 €  |
| Portugal            | 155   |  |   | 219 €  |   |  |
| Romania             | 125   | 121  | 4   | 22 €   | 23 €  | 0 €  |
| Russian Federation  | 4   |  |   | 1 491 €  |   |  |
| Slovakia            |   |  | 1   |  |   |  |
| Slovenia            |   |  | 101   |  |   | 92 €   |
| Spain               | 141   |  |   | 272 €  |   |  |
| Sweden              |   |  | 7   |  |   |  |
| FYROMacedonia       | 13  | 13   | 0   | 337 €  |   |  |
| UK-England & Wales  | 495   | 297  | 198   | 1 136 €  | 977 €   | 760 €  |
| UK-Northern Ireland | 445   | 189  | 255   | 1 237 €  |   |  |

**Figure 19. Number of legal aid cases per 10.000 inhabitants and average amount of legal aid granted per case in 2006, in €**



It is thus possible to identify three clusters of countries or entities. Those which allocate a significant amount to legal aid, between 800 € and 1700 € per case (**Latvia, Russian Federation, Ireland, UK-Northern Ireland, UK-England and Wales, the Netherlands**), those which allocate between 200 € and 700 € per case (**Luxembourg, Italy, Finland, Belgium, "the former Yugoslav Republic of Macedonia", France, Spain, Portugal**) and the countries which have recently started to develop a legal aid system (**Georgia, Bulgaria, Estonia, Romania, Moldova, Hungary**). For this last category, significant efforts have been noted in this field since the previous evaluation cycle, except for **Hungary** (however the data of 4 € per case allocated to legal aid indicated in 2004 was an estimate, which might have been wrong at that time).

Some countries have chosen to define a strictly limited number of cases which can benefit from legal aid but allocate high amounts per case (**Russian Federation, Latvia, Italy** for example), whereas other states, on the contrary, have chosen to limit the amounts allocated per case but in opening more widely the conditions for acceding to legal aid (for example **Belgium, France, Portugal, Spain**). Other states are both generous as regards the amounts allocated per case and the number of cases which can benefit from legal aid (**UK-Northern Ireland, UK-England and Wales, the Netherlands**).

### 3.4 Conditions for granting or refusing legal aid

Legal aid as such is, in the majority of cases, granted only if certain conditions are met. This may have to do with the financial position of the applicant or the merit of a case.

It is not possible to refuse legal aid in other than criminal cases for lack of merit of the case only in 7 countries (**Andorra, Belgium, Bosnia and Herzegovina, “the former Yugoslav Republic of Macedonia”, Norway, Romania, Russian Federation**) In **Albania, Azerbaijan and Georgia** granting legal aid in other than criminal cases is not provided for by the law. In the other countries, there is always a possibility that a request for legal aid in other than criminal cases can be refused. The decision refusing legal aid is mostly taken by the courts (13 countries) or an external authority (15 countries). For example, in **the Netherlands**, it is a Council of Legal Aid which is responsible for granting or refusing legal aid. In **Bulgaria, Cyprus, Finland, Ireland, Italy, Monaco, Sweden, Turkey and Ukraine**, it is a mixed decision making authority (court and external representatives) which is responsible for this decision (see table).

For the member states of the European Union, it is in principle possible to refuse legal aid in other than criminal cases for lack of merit of a case (EU Directive 2003/8/EC) – **Belgium** has not commented on the impossibility to refuse legal aid in civil law cases.

**Table 7. Possibility to refuse a request for legal aid in other than criminal cases and organ responsible for granting or refusing legal aid (Q27 and Q28)**

| Refusal of granting legal aid in other than criminal cases for lack of merit of the case | Refusal possible and the decision of the refusal is granted |                                       |  |
|--|---|---------------------------------------|--|
|  | By the court  | By an authority external to the court | By a mixed decision-making authority (court and external body) |
| Refusal impossible   |   |                                       |  |
| Andorra  | Armenia   | Croatia                               | Bulgaria   |
| Belgium  | Austria   | Denmark                               | Cyprus   |
| Bosnia and Herzegovina   | Czech Republic  | France                                | Finland  |
| Norway*  | Estonia   | Iceland                               | Ireland  |
| Romania*   | Germany   | Latvia                                | Italy  |
| Russian Federation   | Greece  | Lithuania                             | Monaco   |
| FYROMacedonia  | Hungary   | Luxembourg                            | Sweden   |
|  | Moldova   | Malta                                 | Turkey*  |
|  | Montenegro  | Netherlands                           | Ukraine  |
|  | Poland  | Portugal                              |  |
|  | Serbia  | Slovakia                              |  |
|  | Slovenia  | Spain                                 |  |
|  | Switzerland   | UK-Northern Ireland                   |  |
|  |   | UK-Scotland                           |  |
|  |   | UK-England & Wales                    |  |
| 7  | 13  | 15                                    | 9  |

#### Comments

**Norway:** grants legal aid regardless of the income and property in serious criminal cases and other specific types of cases that has a serious impact on people's integrity.

**Romania:** legal aid may be refused in situations of abuse or in situations where the costs are disproportionate in relation to the value of the dispute.

**Turkey:** the decision for refusing legal aid is granted by the instance receiving the request of legal aid: court or the legal aid office of the Bar Association.

### 3.5 Court fees, taxes and reimbursements

In the majority of countries, litigants have to pay a court tax or a court fee to initiate a non criminal proceeding (40 countries). For certain specific criminal proceedings in **Austria, Belgium, Cyprus, Germany, Portugal, Switzerland** and **Ukraine**, the litigants have to pay a court tax or court fee as well.

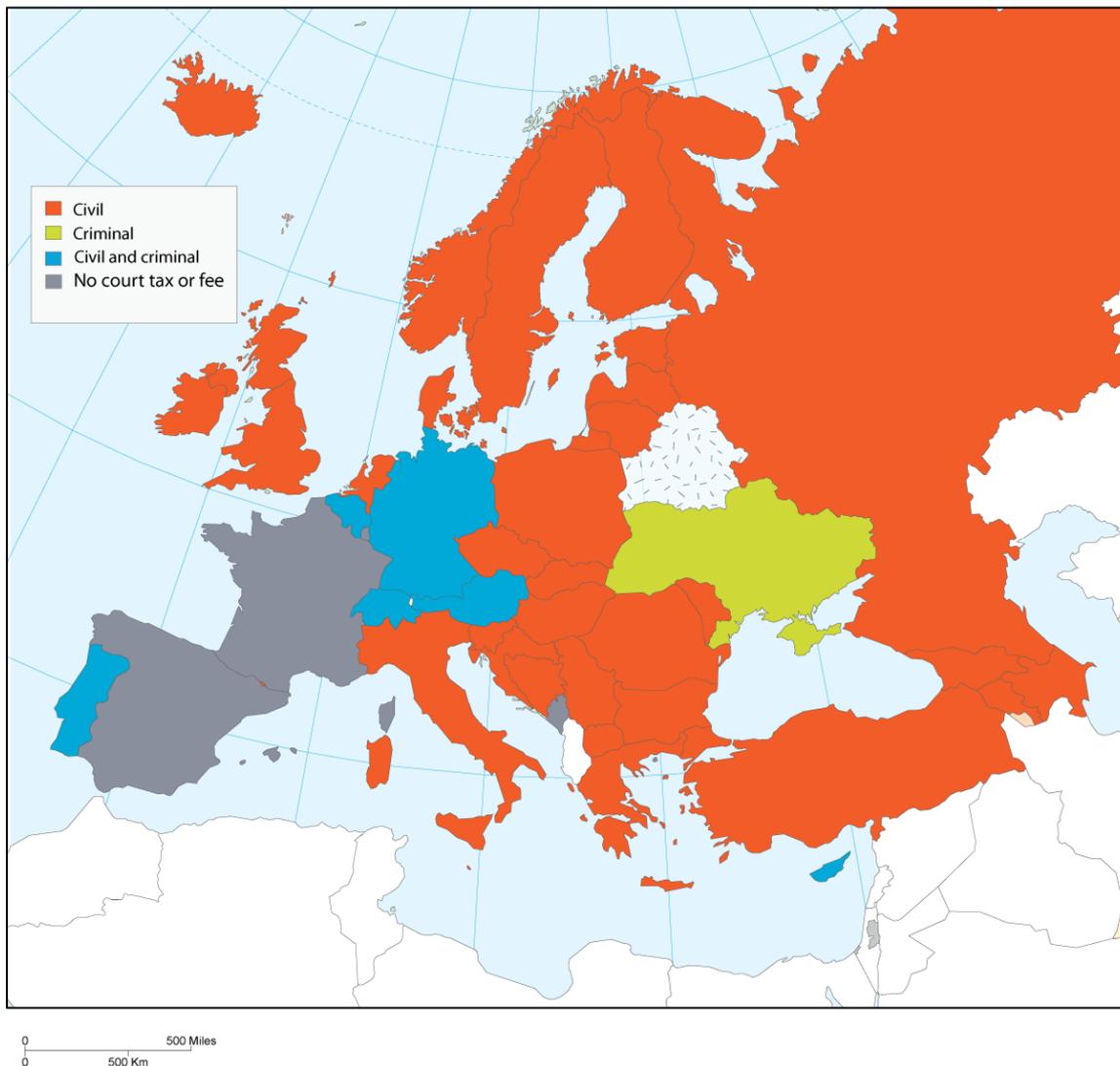
**Table 8. The requirement to pay a court fee or tax to initiate a judicial procedure (Q10) and legal expenses insurance (Q29)**

| Country                | Are litigants required to pay a court tax or fee to initiate a proceeding for criminal cases? | Are litigants required to pay a court tax or fee to initiate a proceeding for other than criminal cases? | Is there a private system of legal expense insurance enabling individuals to finance court proceedings? |
|------------------------|---|--|---|
| Andorra                | No  | Yes  | No  |
| Armenia                | No  | Yes  | No  |
| Austria                | Yes   | Yes  | Yes   |
| Azerbaijan             | No  | Yes  | Yes   |
| Belgium                | Yes   | Yes  | Yes   |
| Bosnia and Herzegovina | No  | Yes  | No  |
| Bulgaria               | No  | Yes  | No  |
| Croatia                | No  | Yes  | No  |
| Cyprus                 | Yes   | Yes  | No  |
| Czech Republic         | No  | Yes  | No  |
| Denmark                | No  | Yes  | Yes   |
| Estonia                | No  | Yes  | Yes   |
| Finland                | No  | Yes  | Yes   |
| France                 | No  | No   | Yes   |
| Georgia                | No  | Yes  | No  |
| Germany                | Yes   | Yes  | Yes   |
| Greece                 | No  | Yes  | No  |
| Hungary                | No  | Yes  | Yes   |
| Iceland                | No  | Yes  | Yes   |
| Ireland                | No  | Yes  | Yes   |
| Italy                  | No  | Yes  | Yes   |
| Latvia                 | No  | Yes  | No  |
| Lithuania              | No  | Yes  | Yes   |
| Luxembourg             | No  | No   | Yes   |
| Malta                  | No  | Yes  | No  |
| Moldova                | No  | Yes  | No  |
| Monaco                 | No  | No   | Yes   |
| Montenegro             | No  | No   | No  |
| Netherlands            | No  | Yes  | Yes   |
| Norway                 | No  | Yes  | Yes   |
| Poland                 | No  | Yes  | No  |
| Portugal               | Yes   | Yes  | Yes   |
| Romania                | No  | Yes  | No  |
| Russian Federation     | No  | Yes  | No  |
| Serbia                 | No  | Yes  | No  |
| Slovakia               | No  | Yes  | No  |
| Slovenia               | No  | Yes  | Yes   |
| Spain                  | No  | No   | Yes   |
| Sweden                 | No  | Yes  | Yes   |
| Switzerland            | Yes   | Yes  | Yes   |

| Country             | Are litigants required to pay a court tax or fee to initiate a proceeding for criminal cases? | Are litigants required to pay a court tax or fee to initiate a proceeding for other than criminal cases? | Is there a private system of legal expense insurance enabling individuals to finance court proceedings? |
|---------------------|---|--|---|
| FYROMacedonia       | No  | Yes  | No  |
| Turkey              | No  | Yes  | No  |
| Ukraine             | Yes   | No   | No  |
| UK-England & Wales  | No  | Yes  | Yes   |
| UK-Northern Ireland | No  | Yes  | Yes   |
| UK-Scotland         | No  | Yes  | Yes   |

In the next figure, the geographical distribution is presented for the countries where must be paid: (1) only a court fee to initiate a civil proceeding (orange colour), (2) only a court fee to initiate a specific criminal procedure (yellow colour), (3) court fees for civil and certain categories of criminal cases (blue colour). In grey are presented the countries where the court proceedings are free of charge (this is the case for **France, Luxembourg, Monaco, Montenegro** and **Spain**). In **Spain** there are court taxes in civil and administrative proceedings which do not apply to natural persons nor to those legal persons that are total or partially exempted from taxation.

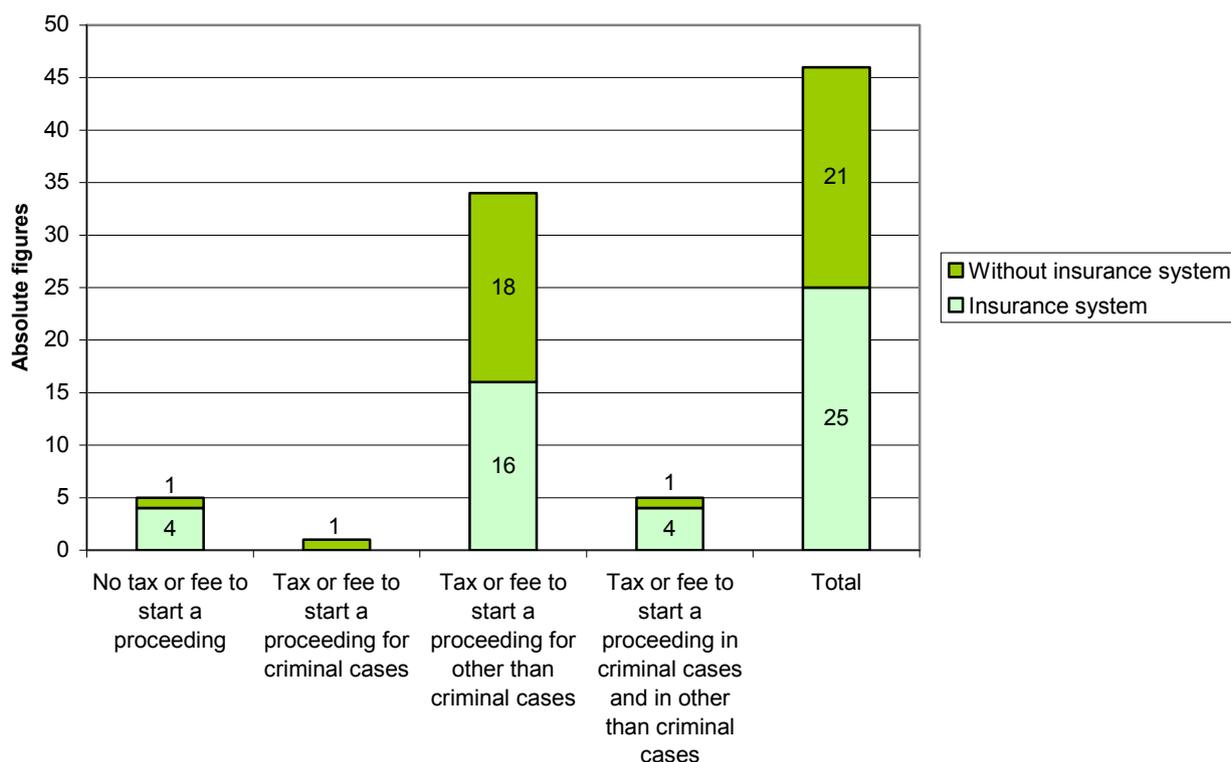
**Figure 20. Payment of court fees or court taxes in Europe (Q10)**



One development facilitating access to justice in European countries is related to the growth of private legal expense insurance. Citizens can insure themselves for costs that are related to court proceedings, legal assistance or legal advice. In 25 countries, citizens have the possibility to insure against the costs that are connected with the (court) proceedings, legal assistance and representation. In 21 European countries, this is not the case.

In the following diagram, the number of countries where litigants must pay a court fee or court tax but where a private legal expense insurance scheme is available to cover judicial costs is given.

**Figure 21. Number of positive replies regarding the existence of legal expenses insurance scheme (Q10 and Q29)**



The costs for judicial proceedings are not only related to the costs for legal representation, legal advice, court fees/court taxes, but may include also costs to be paid by the losing party. This can include compensation, costs related to the damage caused or all the legal costs that were engaged by the winning party. Generally speaking, in all the countries which have replied, judicial decisions have an impact on who bears the legal costs in other than criminal cases (Q30). There is no impact for the costs in criminal cases in: **Armenia, Georgia, Ireland, Lithuania, Moldova, Monaco, the Netherlands, Norway, Serbia and Slovakia.**

### 3.6 Revenues of justice

The amount of court fees or court taxes can vary, according to the type, complexity of a case and the monetary value at stake in the case. In certain countries, court fees or court taxes are used to cover the operational costs of courts. These countries have chosen to generate a certain level of income for justice (or the courts). As a result, courts may be "self-sufficient" (**Austria**). When the annual income from court fees or court taxes received by countries are compared with the budget allocated to courts, there are countries where the income is almost at the same level of the expenditure for courts or deliver a substantial input for the judicial budget. However, in the majority of countries, where court fees or court taxes are applied, the income is not "earmarked" for the payment of the costs related to the operation of courts but it is defined as general income for the state or regional budget.

In the following table, income from court fees or court taxes is shown next to the column containing the budgets allocated to the courts (Q6). Countries which receive a substantial amount in court fees as a source of income are: **Austria, Germany, Italy, the Netherlands, Poland, Romania, Turkey and UK-England and Wales.** For a large part, the high level of court fees for **Austria, Germany, Poland, Turkey and UK-England and Wales** can be explained because the courts are responsible for the land registers. Acquiring information from these registers or for recording modifications fees must be paid. In three of these countries (**Austria, Germany and Poland**) revenues are also generated through business registers. For **Italy, the Netherlands and Romania**, there is no clear relationships between court fees and registers. A possibility is that in these countries – and in other countries as well – court fees are only connected with a judicial proceedings (and not with registration tasks).

In **Austria**, generally, court users have to pay a certain fee for most of judicial services. The level of court fees depends on the type, complexity of a case and the financial amount that is related to the case. If the users are not able to pay, legal aid is available.

A high degree of standardization and computerization of the judiciary and the use of court clerks or “Rechtspfleger” especially in the branches with large numbers of cases (land registry, business registry, family law, enforcement cases, and payment orders) enable courts to keep the costs low. Therefore it is possible to finance the court system, including criminal proceedings (which are never cost covering), through the fees paid by the users.

**Table 9. Annual amount of court fees (or taxes) received by the state (Q11), in €, and the approved allocated budget for the courts (Q6)**

| Country                | Total annual approved budget allocated to all courts | Annual revenue of court fees (or taxes) received by the state | Share of court fees (or taxes) in the court budget in % |
|------------------------|--|---|---|
| Andorra                | 5 941 464  | na  |   |
| Armenia                | 4 189 496  | na  |   |
| Austria                | 572 013 000  | 614 000 000   | 107,3%  |
| Azerbaijan             | 11 339 059   | 231 000   | 2,0%  |
| Belgium                | 823 600 000  | 31 249 127  | 3,8%  |
| Bosnia and Herzegovina | 66 899 635   | 24 261 154  | 36,3%   |
| Bulgaria               | 64 532 705   | 22 241 197  | 34,5%   |
| Croatia                | 206 261 500  | 23 586 403  | 11,4%   |
| Cyprus                 | 25 778 787   | 5 200 662   | 20,2%   |
| Czech Republic         | 308 769 378  | 3 125 972   | 1,0%  |
| Denmark                | 183 000 000  | 51 699 166  | 28,3%   |
| Estonia                | 24 220 267   | 3 433 269   | 14,2%   |
| Finland                | 221 971 000  | 33 000 000  | 14,9%   |
| France                 | 3 350 000 000  | nap   |   |
| Georgia                | 11 760 558   | 1 580 572   | 13,4%   |
| Germany                | 8 731 000 000  | 3 977 000 000   | 45,6%   |
| Greece                 | 332 875 000  | na  |   |
| Hungary                | 277 750 000  | na  |   |
| Iceland                | 12 300 000   | 671 176   | 5,5%  |
| Ireland                | 111 841 000  | 12 686 000  | 11,3%   |
| Italy                  | 2 751 910 175  | 229 284 156   | 8,3%  |
| Latvia                 | 32 416 128   | 9 238 216   | 28,5%   |
| Lithuania              | 58 150 487   | 4 084 743   | 7,0%  |
| Luxembourg             | 57 334 448   | na  |   |
| Malta                  | 8 716 000  | na  |   |
| Moldova                | 3 002 838  | 2 091 212   | 69,6%   |
| Monaco                 | 4 331 500  | na  |   |
| Montenegro             | 8 664 682  | 6 027 791   | 69,6%   |
| Netherlands            | 774 368 000  | 170 237 000   | 22,0%   |
| Norway                 | 175 013 040  | 19 741 970  | 11,3%   |
| Poland                 | 1 211 751 000  | 363 099 000   | 30,0%   |
| Portugal               | 506 493 713  | 88 647 943  | 17,5%   |
| Romania                | 267 977 585  | 180 000 000   | 67,2%   |
| Russian Federation     | 2 486 680 213  | na  |   |
| Serbia                 | 156 098 339  | 73 462 953  | 47,1%   |
| Slovakia               | 111 477 334  | 37 967 321  | 34,1%   |
| Slovenia               | 133 840 315  | 34 581 038  | 25,8%   |

| Country             | Total annual approved budget allocated to all courts | Annual revenue of court fees (or taxes) received by the state | Share of court fees (or taxes) in the court budget in % |
|---------------------|--|---|---|
| Spain               | 2 983 492 000  | na  |   |
| Sweden              | 452 000 000  | 3 500 000   | 0,8%  |
| Switzerland         | 673 348 943  | 88 811 872  | 13,2%   |
| FYROMacedonia       | 22 241 278   | 8 912 212   | 40,1%   |
| Turkey              | 522 486 876  | 279 094 188   | 53,4%   |
| Ukraine             | 276 961 140  | na  |   |
| UK-England & Wales  | 1 504 095 309  | 671 000 000   | 44,6%   |
| UK-Northern Ireland | 185 002 000  | 15 033 000  | 8,1%  |
| UK-Scotland         | 120 852 210  | 23 988 950  | 19,8%   |

### 3.7 Trends and conclusions

In all the member states, as part of the guarantee of access to justice, legal aid is provided. However, types of legal aid may vary. In certain countries, only legal representation or legal advice is given in non-criminal cases, whilst in other countries aid is arranged for criminal matters as well as for financing mediation or other specific costs that are related to judicial proceedings (for example the costs of expert witnesses, investigators, etc).

One of the solutions to minimize the costs for the users for legal representation, legal advice or other legal costs is the introduction of a private system of legal expense insurance. In 25 member states there is a possibility for a citizen to insure themselves against legal costs. In 21 countries this is not the case.

Access to justice may also be influenced by the existence of court fees. However, concerning the fees, it is important to make a distinction between fees that are related to requests for information, modifications in land, business or other registers and court fees that are related to judicial proceedings. Especially for the last item, it is necessary - for a proper guarantee on access to justice - that the fees do not become an obstacle for citizens to initiate a judicial proceeding. In certain countries, there is no need to pay court fees to initiate a proceeding (for example **France** or **Spain**) whilst in other countries the level of the fees may be directly related to overall costs of a judicial proceedings or the type of cases (for instance in the **United Kingdom**, the determination of the level of court fees is connected with the operational costs of court proceedings).

Land registers and business registers can be a part of the public services delivered by the courts. In some countries this will result in revenue for the courts. As it is the case with the court fees/taxes for initiating judicial proceedings, the level of fees for a request concerning a land - or business - registry must not become an obstacle. A sufficient level of access to justice in land registry and business registry matters is necessary. The same is true for the fees directly related to judicial proceedings. In some countries, like **the Netherlands** and **Italy**, a substantial amount of revenue is received from fees paid to initiate proceedings before the court. To avoid a reduction of (financial) access to justice the level of the fee must be not too high.

Some states (**Georgia, Bulgaria, Estonia, Romania, Moldova**) are developing or significantly improving their legal aid system, which is a positive trend since the last evaluation cycle.

In order to improve access to justice, it is important that the Council of Europe's member states are able to give precise data on the amount of the budget allocated to legal aid as well as the number of cases covered by that amount. Some countries should improve their systems of statistics in this area.

## 4. Users of the courts (rights and public confidence)

### 4.1 Introduction

The judicial system is entrusted with a mission of public service for the sake of the citizens. The rights of court users must then be safeguarded. These rights can be protected and improved in various ways.

One of the means of doing so is to provide them with (practical) information about relevant legal texts, the case law of higher courts, electronic forms and court websites.

For certain categories of citizens, vulnerable people such as victims, minors, minorities, disabled persons, etc., special provisions may be put in place when court proceedings are introduced. Where citizens are victims of a crime, a specific compensation may be provided.

Dysfunctions may occur within the courts. Therefore the court users must be able to be granted means of redress (for instance the possibility to make a request or file a complaint and/or to initiate a compensation procedure).

Furthermore, courts may have already introduced a quality control system in their organisation. As a part of this system, court user satisfaction surveys can be conducted.

This chapter describes the means and procedures implemented by the public services of justice to protect and improve court users' rights.

### 4.2 Provisions regarding the information of the users of the courts

With the ever-expanding possibilities of the internet, it is easier to provide information regarding laws, procedures, forms, documents and courts compared with the *'pre-internet'* era. 45 of the 47 countries or entities replied that legal texts and case-law of the higher courts are available for consultation free of charge. Only in **Greece** and **Monaco** are citizens not able to search on the internet and retrieve information on relevant case-law of higher courts. With respect to online retrieval of (electronic) documents and submitting forms or files, the majority of the member states replied that such a service is available. The exceptions are: **Andorra, Armenia, Bosnia and Herzegovina, Cyprus, Georgia and Monaco.**

It is not only important to provide general information on websites, but in order to manage the expectations of the users of the courts, it is also important that users can receive information concerning the *'foresee ability'* of procedures, i.e. the expected timeframe of a court procedure. Only a small number (8) of countries said that they have an obligation to provide information on the expected duration of proceedings (**Albania, Finland, France, "the former Yugoslav Republic of Macedonia", Georgia, Latvia, Moldova and Norway**) (see table). In certain countries the obligation to provide information does not exist, however sometimes they do present information on the foreseeable timeframes or specific mechanisms to prevent excessive duration of proceedings. For example in **Serbia**, the parties can complain against excessively long proceedings; the president of the court then has an obligation to address these allegations within 15 days. As a part of a best-practice programme in **Turkey**, information is given on the duration of court proceedings. The **UK-entities** do not have prescribed timeframes for certain procedures in the law, but information on time schedules and necessary steps that need to be taken are written in practical documents or (citizens) charters. In **Spain**, in principle, procedural provisions set statutory timeframes of the proceedings.

**Table 10. Obligation to provide information to the parties concerning the foreseeable timeframe of proceedings (Q32)**

| <b>Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?</b> |                        |
|---|------------------------|
| <b>YES</b>  | <b>NON</b>             |
| Albania   | Andorra                |
| Finland   | Armenia                |
| France  | Austria                |
| Georgia   | Azerbaijan             |
| Latvia  | Belgium                |
| Moldova   | Bosnia and Herzegovina |
| Norway  | Bulgaria               |
| FYROMacedonia   | Croatia                |
|   | Cyprus                 |
|   | Czech Republic         |
|   | Denmark                |
|   | Estonia                |
|   | Germany                |
|   | Greece                 |
|   | Hungary                |
|   | Iceland                |
|   | Ireland                |
|   | Italy                  |
|   | Lithuania              |
|   | Luxembourg             |
|   | Malta                  |
|   | Monaco                 |
|   | Montenegro             |
|   | Netherlands            |
|   | Poland                 |
|   | Portugal               |
|   | Romania                |
|   | Russian Federation     |
|   | Serbia                 |
|   | Slovakia               |
|   | Slovenia               |
|   | Spain                  |
|   | Sweden                 |
|   | Switzerland            |
|   | Turkey                 |
|   | Ukraine                |
|   | UK-Scotland            |
|   | UK-Northern Ireland    |
|   | UK-England & Wales     |
| <b>8</b>  | <b>39</b>              |

A category of citizens in need of special attention is that of victims of crime. Especially for this group, it is important that (practical) information about their (legal) rights can be found easily. In 35 countries information is available free of charge for victims of crimes. In **Andorra, Armenia, Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia", Italy, Malta, Monaco, Russian Federation, Serbia, Slovak Republic, UK-Northern Ireland and Ukraine** such a facility is not available (see table). With the help of NGOs, support programmes of the European Commission or other countries projects, **Croatia** and **"the former Yugoslav Republic of Macedonia"** are improving information provision to victims of crime. In the **Slovak Republic**, NGOs fulfil an important role in this area too.

**Table 11. Free of charge specific information system to inform and to help victims of crimes (Q33)**

| <b>Is there a public and free-of-charge specific information system to inform and to help victims of crimes?</b> |                        |
|--|------------------------|
| <b>YES</b>   | <b>NO</b>              |
| Albania  | Andorra                |
| Austria  | Armenia                |
| Azerbaijan   | Bosnia and Herzegovina |
| Belgium  | Croatia                |
| Bulgaria   | Italy                  |
| Cyprus   | Malta                  |
| Czech Republic   | Monaco                 |
| Denmark  | Serbia                 |
| Estonia  | Slovakia               |
| Finland  | FYROMacedonia          |
| France   | UK-Northern Ireland    |
| Georgia  | Ukraine                |
| Germany  |                        |
| Greece   |                        |
| Hungary  |                        |
| Iceland  |                        |
| Ireland  |                        |
| Latvia   |                        |
| Lithuania  |                        |
| Luxembourg   |                        |
| Moldova  |                        |
| Montenegro   |                        |
| Netherlands  |                        |
| Norway   |                        |
| Poland   |                        |
| Portugal   |                        |
| Romania  |                        |
| Russian Federation   |                        |
| Slovenia   |                        |
| Spain  |                        |
| Sweden   |                        |
| Switzerland  |                        |
| Turkey   |                        |
| UK-Scotland  |                        |
| UK-England & Wales   |                        |
| <b>35</b>  | <b>12</b>              |

### **4.3 Protection of vulnerable persons**

For vulnerable people (victims of rape, terrorism, domestic violence, children's/witnesses/victims, ethnic minorities, disabled persons, juveniles) special mechanisms may be used to protect and to strengthen their legal rights during court proceedings. There are different ways to do so, for example, by introducing specific information mechanisms (telephone hotlines, internet sites, leaflets, etc) for the various vulnerable groups. Another possibility is the use of special hearing procedures. For example, minor offenders can be protected by holding closed-door court session. Victims of certain crimes can be protected during a court hearing by making use of a one-way screen. Specific procedural rights can also contribute to the protection of vulnerable persons. For ethnic minorities this can be related to use of court interpreters and the freedom to speak in their own language.

As it was the case in the 2006 Edition, most protection through special provisions is provided to victims and juvenile offenders. The protection of other vulnerable groups of users seems less assured.

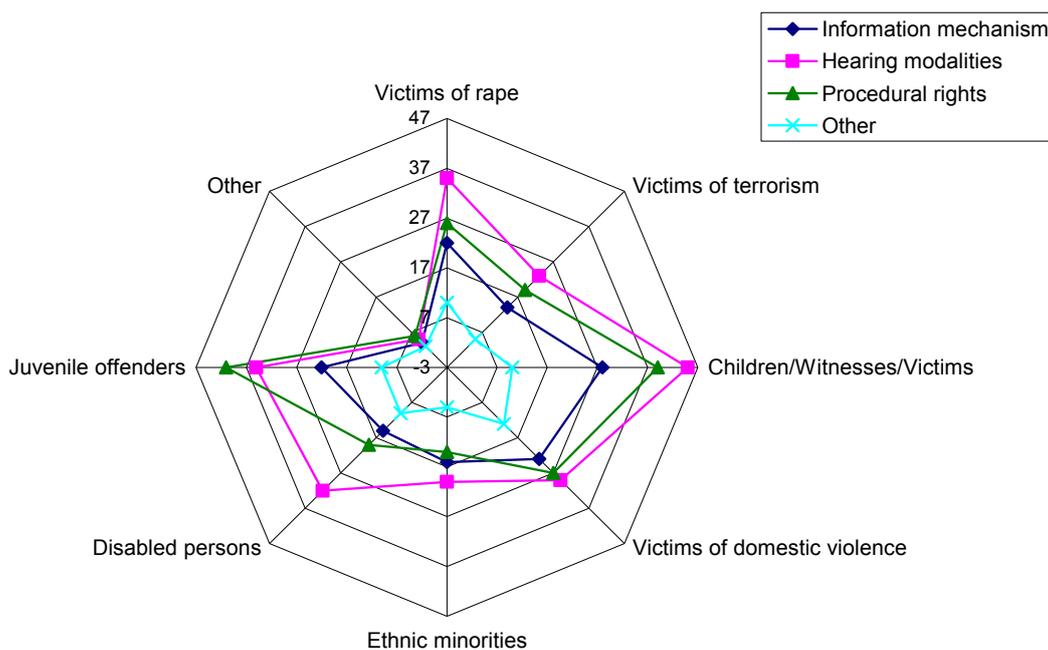
**Table 12. Number of positive answers on special arrangements to be applied during judicial proceedings to categories of vulnerable persons (Q34)**

| Category of vulnerable person | Information mechanism | Hearing modalities | Procedural rights | Other |
|-------------------------------|-----------------------|--------------------|-------------------|-------|
| Victims of rape               | 22                    | 35                 | 26                | 10    |
| Victims of terrorism          | 14                    | 23                 | 19                | 5     |
| Children/Witnesses/Victims    | 28                    | 45                 | 39                | 10    |
| Victims of domestic violence  | 23                    | 30                 | 27                | 13    |
| Ethnic minorities             | 16                    | 20                 | 14                | 5     |
| Disabled persons              | 15                    | 32                 | 20                | 10    |
| Juvenile offenders            | 22                    | 36                 | 41                | 10    |
| Other                         | 4                     | 6                  | 7                 | 3     |

**Comment:** The data is non available for **Albania** and **UK-Northern Ireland**. 45 countries or entities have replied to this question.

The same information is presented in the following radar-graph. As it can be seen from this graph, at a European level, the measure that is the most used for vulnerable groups is the application of hearing modalities, followed by procedural rights. Information mechanisms are also often used (compared to the other categories).

**Figure 22. Special arrangements for vulnerable groups and victims by type of mechanism (Q34)**



**Table 13. Number of categories of vulnerable persons or victims concerned by special arrangement and mechanisms (Q34)**

| Country                | Information mechanisms | Special hearing modalities | Special procedural rights | Other special arrangements | Total |
|------------------------|------------------------|----------------------------|---------------------------|----------------------------|-------|
| Austria                | 8                      | 8                          | 8                         | 8                          | 32    |
| UK-Scotland            | 7                      | 7                          | 7                         | 7                          | 28    |
| Norway                 | 8                      | 3                          | 6                         | 8                          | 25    |
| Bulgaria               | 8                      | 8                          | 8                         | 0                          | 24    |
| Iceland                | 7                      | 7                          | 7                         | 3                          | 24    |
| Romania                | 5                      | 7                          | 7                         | 5                          | 24    |
| Cyprus                 | 7                      | 7                          | 7                         | 0                          | 21    |
| Portugal               | 0                      | 7                          | 7                         | 7                          | 21    |
| FYRO Macedonia         | 7                      | 7                          | 7                         | 0                          | 21    |
| UK-England & Wales     | 7                      | 7                          | 7                         | 0                          | 21    |
| France                 | 5                      | 5                          | 4                         | 6                          | 20    |
| Azerbaijan             | 6                      | 6                          | 6                         | 0                          | 18    |
| Finland                | 5                      | 6                          | 7                         | 0                          | 18    |
| Germany                | 5                      | 7                          | 3                         | 2                          | 17    |
| Spain                  | 4                      | 6                          | 5                         | 1                          | 16    |
| Netherlands            | 4                      | 6                          | 5                         | 0                          | 15    |
| Russian Federation     | 0                      | 7                          | 7                         | 1                          | 15    |
| Switzerland            | 5                      | 5                          | 5                         | 0                          | 15    |
| Bosnia and Herzegovina | 0                      | 6                          | 6                         | 2                          | 14    |
| Montenegro             | 0                      | 7                          | 7                         | 0                          | 14    |
| Sweden                 | 0                      | 7                          | 7                         | 0                          | 14    |
| Luxembourg             | 2                      | 3                          | 4                         | 4                          | 13    |
| Croatia                | 7                      | 2                          | 2                         | 1                          | 12    |
| Denmark                | 4                      | 4                          | 4                         | 0                          | 12    |
| Ireland                | 6                      | 4                          | 2                         | 0                          | 12    |
| Malta                  | 0                      | 6                          | 4                         | 2                          | 12    |
| Poland                 | 4                      | 3                          | 2                         | 3                          | 12    |
| Slovenia               | 1                      | 6                          | 3                         | 2                          | 12    |
| Ukraine                | 5                      | 3                          | 4                         | 0                          | 12    |
| Belgium                | 0                      | 4                          | 5                         | 2                          | 11    |
| Latvia                 | 6                      | 1                          | 4                         | 0                          | 11    |
| Andorra                | 3                      | 4                          | 2                         | 0                          | 9     |
| Armenia                | 0                      | 8                          | 1                         | 0                          | 9     |
| Estonia                | 0                      | 7                          | 2                         | 0                          | 9     |
| Hungary                | 1                      | 4                          | 3                         | 1                          | 9     |
| Georgia                | 0                      | 5                          | 3                         | 0                          | 8     |
| Lithuania              | 0                      | 6                          | 2                         | 0                          | 8     |
| Moldova                | 0                      | 4                          | 3                         | 0                          | 7     |
| Turkey                 | 0                      | 3                          | 3                         | 1                          | 7     |
| Czech Republic         | 2                      | 2                          | 2                         | 0                          | 6     |
| Greece                 | 3                      | 3                          | 0                         | 0                          | 6     |
| Italy                  | 0                      | 4                          | 1                         | 0                          | 5     |
| Serbia                 | 1                      | 2                          | 2                         | 0                          | 5     |
| Slovakia               | 1                      | 1                          | 2                         | 0                          | 4     |
| Monaco                 | 0                      | 2                          | 0                         | 0                          | 2     |

The countries where the highest number of special modalities are available for the majority of the categories of vulnerable persons are: **Austria, Azerbaijan, Bulgaria, Cyprus, France, Finland, Iceland, Norway,**

**Portugal, Romania, “the former Yugoslav Republic of Macedonia”, UK-England and Wales and UK-Scotland.** Seven of these countries have mentioned that they also use *other types of special modalities* for vulnerable persons (**Austria, France, Iceland, Norway, Portugal, Romania and UK-Scotland**).

*Hearing modalities* and *special procedural rights* for almost all the categories of vulnerable people and victims can be found in: **Bosnia and Herzegovina, Malta, Montenegro, Russian Federation and Sweden.** *Information mechanisms* and *other special arrangements* are practically absent.

Another group is composed of the countries providing mostly and for almost all the categories of the victims special *hearing modalities*: **Armenia, Estonia, Georgia, Lithuania and Slovenia.** Very few categories are concerned by other arrangements in those 5 countries.

A group which develops mostly *information mechanisms* can be identified. Other types of special arrangements concern a smaller number of categories of vulnerable persons and victims. This is the case for **Croatia, Ireland, Latvia and Poland.**

In **Andorra, Denmark, Germany, Luxembourg, Netherlands, Spain and Switzerland,** special *information mechanisms, hearing modalities and procedural rights* are developed in average for 4 categories of vulnerable persons and victims for each arrangement. *Other special mechanisms* are almost non-existent.

And the last group of countries having very few special arrangements and for very few categories of vulnerable persons and victims are: **Czech Republic, Greece, Hungary, Italy, Moldova, Monaco, Serbia, Slovakia and Turkey.**

#### **4.4 Role of the public prosecutor in protecting the rights or assisting the victims of crimes**

In 29 countries the public prosecutor can play a specific role in criminal proceedings for the protection and assistance of victims (see table 14).

Such a specific role is often linked to providing victims with information about their rights, in particular to receive compensation (for example **Portugal, Spain**). Sometimes it also comprises the provision of information on certain developments of the procedure like the final decision or the moment the defendant is released (for example **Norway**). In **Luxembourg,** most of the assistance provided to victims is organised at the level of the general prosecutor's office. In many cases, the role of the public prosecutor also includes support to or the introduction of a civil claim on behalf of the victim (for example **Andorra, Finland, Spain**) or making sure the victim receives compensation (for example the **Netherlands**).

**Table 14. Specific role of the public prosecutor with respect to the victims (Q38)**

| <b>Specific role for the public prosecutor with respect to the (protection of the position and assistance of) victims</b> |                        |
|---|------------------------|
| <b>YES</b>  | <b>NO</b>              |
| Albania   | Armenia                |
| Andorra   | Austria                |
| Belgium   | Azerbaijan             |
| Bulgaria  | Bosnia and Herzegovina |
| Cyprus  | Croatia                |
| Denmark   | Czech Republic         |
| Finland   | Estonia                |
| France  | Ireland                |
| FYRO Macedonia  | Italy                  |
| Georgia   | Latvia                 |
| Germany   | Malta                  |
| Greece  | Monaco                 |
| Hungary   | Montenegro             |
| Iceland   | Slovakia               |
| Lithuania   | Slovenia               |
| Luxembourg  | Switzerland            |
| Moldova   | Turkey                 |
| Netherlands   | UK-England and Wales   |
| Norway  |                        |
| Poland  |                        |
| Portugal  |                        |
| Romania   |                        |
| Russian Federation  |                        |
| Serbia  |                        |
| Spain   |                        |
| Sweden  |                        |
| Ukraine   |                        |
| UK-Northern Ireland   |                        |
| UK-Scotland   |                        |
| <b>29</b>   | <b>18</b>              |

Sometimes a public prosecutor can decide not to continue a criminal case and to stop a criminal investigation procedure. For the countries where public prosecutors are free to act as described, there may be a possibility for a victim of crime to contest the decision of the public prosecutor. 40 countries replied that there is a possibility to contest a decision of a public prosecutor to discontinue a case. In countries where such a possibility does not exist, the right of victims to have their case heard is often guaranteed in different ways. For example **Bosnia and Herzegovina** reported the possibility to file a complaint against a prosecutor (in many other countries this is also possible). Sometimes victims can become a formal party themselves, introducing civil and/or criminal claims even when the prosecutor has decided not to prosecute. **Serbia** describes the possibility (after a termination of the procedure) of a private request for prosecution. In **Belgium**, victims of crimes are advised to initiate a civil procedure against a criminal offender if a prosecutor decides not to continue a case. The last method is common in Europe. Finally, in countries where prosecutors do not have the power to end a case by dropping it without judgment, the victim is often given the right to contest the judicial decision to discontinue a case (for example in **Spain**).

#### **4.5 Compensation procedures**

In criminal proceedings, a compensation procedure can enable a victim of crime or his/her relatives to be compensated. Sometimes there is a special public fund for which the intervention of a judge is not requested. In other cases, a judgment is necessary to benefit from such a public fund. In a limited number of countries, there are private funds for victims of crimes (**Greece** and **Luxembourg**). In **Greece**, such a private fund (private insurance) for crimes is related to property damage. In **Luxembourg**, **Germany** and other states, it is possible to initiate civil proceedings against an offender.

43 countries or entities replied that they have a compensation procedure for victims. The exceptions are: **Andorra, Ireland and Moldova**. In the following table a distribution is given for the various modalities on the ways victims can be compensated (or not compensated). **Bulgaria, Lithuania and Serbia** indicate that they have introduced compensation procedures recently.

**Table 15. Compensation procedures for the victims of criminal offences (Q36)**

| No compensation procedures | Public fund         | Court decision         | Public fund and court decision |
|----------------------------|---------------------|------------------------|--------------------------------|
| Andorra                    | Azerbaijan          | Armenia                | Austria                        |
| Ireland                    | Czech Republic      | Bosnia and Herzegovina | Belgium                        |
| Moldova                    | Estonia             | FYRO Macedonia         | Bulgaria                       |
|                            | Finland             | Georgia                | Croatia                        |
|                            | Germany             | Malta                  | Cyprus                         |
|                            | Hungary             | Montenegro             | Denmark                        |
|                            | Iceland             | Russian Federation     | France                         |
|                            | Italy               | Serbia                 | Latvia                         |
|                            | Portugal            | Ukraine                | Lithuania                      |
|                            | Slovenia            |                        | Luxembourg                     |
|                            | Switzerland         |                        | Monaco                         |
|                            | Turkey              |                        | Netherlands                    |
|                            | UK-Northern Ireland |                        | Norway                         |
|                            | UK-Scotland         |                        | Poland                         |
|                            | Greece              |                        | Romania                        |
|                            |                     |                        | Slovakia                       |
|                            |                     |                        | Spain                          |
|                            |                     |                        | Sweden                         |
|                            |                     |                        | UK-England & Wales             |
| <b>3</b>                   | <b>15</b>           | <b>9</b>               | <b>19</b>                      |

#### Comments

**Albania:** reports having compensation procedures but does not specify the type of the compensation procedure.

**Greece:** public fund and private fund.

**Luxembourg:** public fund, court decision and private fund.

Studies have been undertaken in 10 countries to assess the rate of recovery of damages. Most of the studies do not specify the exact level of recovery. A **French** study showed that 16% of the victims received a full recovery of the damages and 12% received a partial compensation of damage. According to a study in **Poland**, only 11% of the damage is covered. These are in contrast with **Norway**, where a recovery rate of 90% is common.

## 4.6 Compensation of the users for dysfunction and complaints

All the responding countries (45), with the exception of **Malta**, have a compensation mechanism for a wrongful arrest or condemnation. This situation may differ when it comes to compensation for excessively long proceedings or non-execution i.e. late execution of a court decision.

27 countries report having compensation procedures for excessively long proceedings and 18 for the non-execution of the court decisions (table 16).

When analysing the replies of the countries on the type of compensation, 4 cases can be highlighted:

- in 14 countries there is a compensation mechanism only for excessive length of proceedings;
- in 5 countries the compensation is provided for only for non-execution of court decisions;
- in 13 countries compensation is possible both for excessive length of proceedings and non-execution of court decisions;
- in 14 countries the victims cannot be compensated (see table 17).

**Table 16. Number of positive replies regarding compensation of users for the dysfunction (Q40)**

| System for compensating users in case of: | Number of countries |
|---|---------------------|
| Excessive length of proceedings           | 27                  |
| Non-execution of court decisions          | 18                  |
| Wrongful arrest                           | 45                  |
| Wrongful condemnation                     | 45                  |

Since the 2006 Edition, 6 more countries have implemented the compensations for excessively long proceedings: **Czech Republic, Germany, Lithuania, Monaco, Montenegro, Russian Federation.**

**Table 17. Compensation for excessive length of proceedings and non-execution of court decisions (Q40).**

| No compensation for excessive length of proceedings and non-execution of court decisions | Compensation for excessive length of proceedings only | Compensation for non execution of court decisions only | Compensation for both excessive length of proceedings and non execution of court decisions |
|--|---|--|--|
| Armenia  | Austria   | Greece   | Andorra  |
| Azerbaijan   | Croatia   | Moldova  | Bulgaria   |
| Belgium  | Czech Republic  | Romania  | Lithuania  |
| Bosnia and Herzegovina   | Denmark   | Serbia   | Luxembourg   |
| Cyprus   | France  | Turkey   | Monaco   |
| Estonia  | Germany   |  | Norway   |
| Finland  | Hungary   |  | Poland   |
| Georgia  | Iceland   |  | Portugal   |
| Ireland  | Italy   |  | Russian Federation   |
| Latvia   | Montenegro  |  | Spain  |
| Malta  | Slovakia  |  | Sweden   |
| Netherlands  | Slovenia  |  | UK-Scotland  |
| UK-Northern Ireland  | Switzerland   |  | UK-England & Wales   |
| Ukraine  | FYROMacedonia   |  |  |
| <b>14</b>  | <b>14</b>   | <b>5</b>   | <b>13</b>  |

In addition to the possibility of a compensation procedure, in almost all of the responding countries (43) there is a (national or local) remedy allowing users to file a complaint concerning the performance or the functioning of the judicial system (Q43). Only in **Armenia, Ireland** and **Monaco** such a facility does not exist.

Various organs or authorities can be entrusted with the examination and processing of the complaint. It might be a Supreme Court, the Ministry of Justice, a Judicial Council or another external organ (such as the Ombudsman).

Out of the 43 countries that have set up a national system to allow a complaint against their judicial system to be lodged, 31 report that the relevant body to deal with such a complaint is given a timeframe in which to reply. 12 countries declare that the relevant bodies are not subject to a timeframe in which to reply to the plaintiff (**Bulgaria, Denmark, Finland, France, Germany, Greece, Luxembourg, Slovenia, Sweden, Switzerland, Turkey**). Nevertheless, in these countries, appeals against court dysfunctions are possible.

Countries which replied positively to the existence of a timeframe to deal with complaints on the performance of courts also detailed the authorities in charge of dealing with such complaints. As a whole, a Court of higher instance (25 countries) is responsible. Courts (20 countries), the Ministry of Justice (18 countries) or a

Council for the Judiciary (19 countries) may also be responsible for dealing with such complaints. The shared configuration, the joint study of the complaint is a recurrent feature (a mixed configuration between 2 and 5 authorities can be found in 21 countries). One single body entitled to deal with complaints is found only in 4 countries (Court of Appeal in **Italy** and the Supreme Court in the **Netherlands**, the Council for the Judiciary in **Romania** and the Ombudsman in **Malta**). The opposite situation, whereby 5 bodies deal with such requests can be found in **Azerbaijan**, **Iceland**, **Serbia** and "**the former Yugoslav Republic of Macedonia**". To a lesser extent, complaints are also dealt with by external bodies (14 countries). In most countries, apart from the existence of a timeframe to reply to the complaints, there is also a maximum timeframe to deal with the complaints.

**Table 18. Number of positive answers to the question concerning the authority responsible for responding to and dealing with the complaints on the functioning of the judicial system (Q44)**

| Competent authority                           | Time limit to respond | Time limit for dealing with the complaints |
|---|-----------------------|--|
| Court concerned                               | 20                    | 16   |
| Higher court                                  | 25                    | 22   |
| Ministry of Justice                           | 18                    | 14   |
| High Council of the Judiciary                 | 19                    | 18   |
| Other external organisations (e.g. Ombudsman) | 14                    | 8  |

#### 4.7 Assessment of the satisfaction of users

As a part of quality-control policies of courts or as an information source for courts or other judicial bodies, information on court users' and court employees' (judges and staff) satisfaction levels (and trust in the courts), satisfaction surveys may be carried out. In the countries where surveys are used, it is common to make a distinction between the general public, court visitors (citizens, litigants), legal professionals (lawyers, interpreters, public prosecutors) and court employees (judges and court staff).

28 countries have indicated that they use surveys of court users or legal professionals. In 18 countries this is not the case.

**Table 19. Surveys conducted amongst users or legal professionals to measure public confidence and satisfaction (Q41)**

| Satisfaction surveys |                        |
|----------------------|------------------------|
| YES                  | NO                     |
| Austria              | Andorra                |
| Azerbaijan           | Armenia                |
| Belgium              | Bosnia and Herzegovina |
| Bulgaria             | Croatia                |
| Denmark              | Cyprus                 |
| Finland              | Czech Republic         |
| France               | Estonia                |
| Germany              | Georgia                |
| Hungary              | Greece                 |
| Iceland              | Luxembourg             |
| Ireland              | Malta                  |
| Italy                | Moldova                |
| Latvia               | Monaco                 |
| Lithuania            | Poland                 |
| Montenegro           | Russian Federation     |
| Netherlands          | Slovakia               |
| Norway               | Turkey                 |
| Portugal             | Ukraine                |
| Romania              |                        |
| Serbia               |                        |

|                      |           |
|----------------------|-----------|
| Slovenia             |           |
| Spain                |           |
| Sweden               |           |
| Switzerland          |           |
| FYROMacedonia        |           |
| UK-Scotland          |           |
| UK-England and Wales |           |
| <b>28</b>            | <b>18</b> |

To illustrate the growing attention paid to the use of surveys, it is of note that surveys are organised amongst the users of the courts / courts visitors in at least 23 European countries. This reflects the fact that satisfaction surveys are not only aimed at legal professionals but also at citizens (visitors of the courts), which is in line with the consideration of justice as a public service. 16 countries have replied that they conduct surveys of judges (**Austria, Azerbaijan, Denmark, Hungary, Iceland, Lithuania, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", UK-Northern Ireland and UK-England and Wales**). Almost the same number of countries answered that court staff surveys are conducted (**Austria, Azerbaijan, Denmark, Germany, Hungary, Iceland, Ireland, Italy, the Netherlands, Norway, Portugal, Sweden, Switzerland, UK- Northern Ireland, UK-Scotland and UK-England and Wales**). In at least 23 countries there are surveys amongst the court users /court visitors.

**Table 20. Target groups of legal professionals or users of the courts for the satisfaction surveys (Q41)**

| Satisfaction survey aimed at:     | Number of countries |
|-----------------------------------|---------------------|
| Judges                            | 16                  |
| Court staff                       | 17                  |
| Public prosecutors                | 14                  |
| Lawyers                           | 13                  |
| Citizens (visitors of the courts) | 23                  |
| Other users                       | 13                  |

In the following table, the frequency and the level of surveys is presented. Only the countries conducting the survey are counted in the table (28 countries). Out of them, 10 countries apply surveys at a regular interval at the national level. 9 countries conduct surveys on a regular basis at a court level. Most of the countries that use surveys conduct them occasionally at a national level (18 countries) or a court level (13 countries).

**Table 21. Frequency and level of the surveys (Q42)**

| Country              | Surveys at a regular interval at national level | Surveys at a regular interval at court level | Incidental surveys at national level | Incidental surveys at court level |
|----------------------|---|--|--------------------------------------|-----------------------------------|
| Austria              | Yes   | Yes  | Yes                                  | Yes                               |
| Spain                | Yes   | Yes  | Yes                                  |                                   |
| Belgium              | Yes   |  | Yes                                  | Yes                               |
| Denmark              | Yes   | Yes  |                                      |                                   |
| Netherlands          | Yes   | Yes  |                                      |                                   |
| Azerbaijan           | Yes   |  | Yes                                  |                                   |
| Slovenia             | Yes   |  |                                      | Yes                               |
| UK-Northern Ireland  |   | Yes  | Yes                                  |                                   |
| Romania              |   | Yes  | Yes                                  |                                   |
| Italy                |   | Yes  |                                      | Yes                               |
| UK-England and Wales |   | Yes  |                                      | Yes                               |
| Bulgaria             |   |  | Yes                                  | Yes                               |
| Finland              |   |  | Yes                                  | Yes                               |
| Hungary              |   |  | Yes                                  | Yes                               |
| Norway               |   |  | Yes                                  | Yes                               |
| Sweden               |   |  | Yes                                  | Yes                               |
| FYROMacedonia        |   |  | Yes                                  | Yes                               |

|              |           |          |           |           |
|--------------|-----------|----------|-----------|-----------|
| UK-Scotland  |           |          | Yes       | Yes       |
| Iceland      | Yes       |          |           |           |
| Lithuania    | Yes       |          |           |           |
| Serbia       | Yes       |          |           |           |
| Switzerland  |           | Yes      |           |           |
| France       |           |          | Yes       |           |
| Ireland      |           |          | Yes       |           |
| Latvia       |           |          | Yes       |           |
| Montenegro   |           |          | Yes       |           |
| Portugal     |           |          | Yes       |           |
| Germany      |           |          |           | Yes       |
| <b>Total</b> | <b>10</b> | <b>9</b> | <b>18</b> | <b>13</b> |

This table includes only the 28 countries conducting the satisfaction survey in the courts (Q41).

To get a better view of which countries are using a survey for which types of professional users and/or court visitors, a classification can be made. In the following table are presented 6 categories around those countries aiming in their surveys at the same groups of users or of professionals.

**Table 22. Clusters of countries using surveys at the courts level according to different target groups (Q42)**

| Satisfaction survey aimed at:     | Cluster 1 | Cluster 2 | Cluster 3 | Cluster 4 | Cluster 5 |
|-----------------------------------|-----------|-----------|-----------|-----------|-----------|
| Judges                            |           |           | X         | X         | X         |
| Court staff                       |           | X         |           | X         | X         |
| Public prosecutors                |           | X**       | X*        |           | X         |
| Lawyers                           |           | X**       |           |           | X         |
| Citizens (visitors of the courts) | X         |           | X*        | X         | X         |
| Other clients                     | X*        |           |           | X         | X*        |

X – all the countries in the cluster indicate the modality

X\* - no more than 70% of the cluster indicate the modality

X\*\* - no more than 50% of the cluster indicate the modality

The first cluster contains the countries conducting surveys amongst citizens/users of the courts and/or other clients. The second cluster of countries is made of those which conduct surveys among court staff, public prosecutors and/or lawyers. In cluster 3, judges, prosecutors and citizens are surveyed. In the fourth cluster, all the target groups are surveyed, with the exception of prosecutors and lawyers. In the fifth cluster, a survey is conducted for all the target groups. In the following table, the countries are clustered according to the various criteria.

**Table 23. Clusters of countries according to the use of surveys for different target groups**

| Cluster 1                                | Cluster 2                           | Cluster 3                   | Cluster 4 | Cluster 5   |
|--|-------------------------------------|-----------------------------|-----------|---|
| Belgium                                  | Ireland                             | Lithuania*                  | Denmark   | Austria*  |
| Bulgaria                                 | Italy*                              | Romania                     | Sweden    | Azerbaijan  |
| Finland*                                 | UK-Scotland**                       | Spain**                     | Norway    | Germany   |
| France*                                  |                                     |                             |           | Hungary   |
| Latvia*                                  |                                     |                             |           | Iceland*  |
| Montenegro                               |                                     |                             |           | Netherlands*  |
| Serbia*                                  |                                     |                             |           | Portugal  |
| Slovenia                                 |                                     |                             |           | Switzerland   |
|  |                                     |                             |           | FYROMacedonia   |
|  |                                     |                             |           | UK-Northern Ireland*                                      |
|  |                                     |                             |           | UK-England and Wales*                                     |
| * surveys aimed at other clients as well | *surveys aimed at lawyers as well   | *citizens are not aimed     |           | *other clients of the courts aimed by the surveys as well |
|  | **surveys aimed at citizens as well | **prosecutors are not aimed |           |   |

**Table 24. Additional information about the surveys conducted in some countries (Q41)**

| Country     | Details of the surveys   |
|-------------|--|
| Austria     | "Image der Justiz in Österreich 2006" ("Image of the Austrian Judiciary 2006"). See: <a href="http://www.bka.gv.at/DesktopDefault.aspx?TabID=3758&amp;Alias=BKA&amp;cob=4654">www.bka.gv.at/DesktopDefault.aspx?TabID=3758&amp;Alias=BKA&amp;cob=4654</a> , <a href="http://www.bka.gv.at/2004/4/22/mystery-shopping_Teil1.pdf">http://www.bka.gv.at/2004/4/22/mystery-shopping_Teil1.pdf</a> and <a href="http://www.bka.gv.at/2004/4/22/mystery-shopping_Teil1.pdf">http://www.bka.gv.at/2004/4/22/mystery-shopping_Teil1.pdf</a>  |
| Belgium     | These reports of the High Council of Justice can be consulted on the following website: <a href="http://www.csj.be">www.csj.be</a> .   |
| Denmark     | Surveys on <a href="http://www.domstol.dk">www.domstol.dk</a> (User Survey 2005).  |
| Finland     | Marjukka Litmala (ed.): Oikeusolot 2004, National Research Institute of Legal Policy publication, 210/2004. Marjukka Litmala (ed.) Law and the Citizen (summary), National Research Institute of Legal Policy publication, 173/2000 Tapio Lappi-Seppälä and Jyrki Tala and Marjukka Litmala and Risto Jaakkola: Luottamus tuomioistuimiin, National Research Institute of Legal Policy publication 160/1999. Hannu Niskanen and Timo Ahonen and Ahti Laitinen: Suomalaisten luottamus tuomioistuimiin, The University of Turku 1999. |
| France      | A survey measuring the public satisfaction has been conducted in 2006 over 5000 victims of crimes which were given a solution by the judiciary in 2005: <a href="http://intranet.justice.gouv.fr/dage/sdsed/EtudesStat/accompvictim0107.pdf">http://intranet.justice.gouv.fr/dage/sdsed/EtudesStat/accompvictim0107.pdf</a>  |
| Germany     | In North Rhine Westphalia, eight surveys have been conducted which included interviews with staff members, citizens, lawyers and notaries <a href="http://www.fhr.nrw.de/fachbereiche/Forschung/index.php">http://www.fhr.nrw.de/fachbereiche/Forschung/index.php</a> . The survey results are in parts online on <a href="http://www.fhr.nrw.de/publikationen/Schriftenreihe/index.php">http://www.fhr.nrw.de/publikationen/Schriftenreihe/index.php</a>  |
| Latvia      | The surveys are available in the Court Administration web site: <a href="http://www.ta.gov.lv">www.ta.gov.lv</a> .   |
| Netherlands | There is a regular national survey that contains indicators of national trust and satisfaction with the judiciary. (SCP - Sociaal Cultureel Planbureau). Regular standardised customer satisfaction surveys according a model for quality management is conducted by PRISMA: <a href="http://www.prismaweb.nl">www.prismaweb.nl</a>  |
| Portugal    | <a href="http://opj.ces.uc.pt/portugues/estudos/index.html">http://opj.ces.uc.pt/portugues/estudos/index.html</a>  |
| Romania     | <a href="http://www.csm1909.ro/csm/linkuri/20_12_2006_7233_ro.doc">http://www.csm1909.ro/csm/linkuri/20_12_2006_7233_ro.doc</a>  |
| Slovenia    | <a href="http://www.cjm.si">http://www.cjm.si</a>  |
| Spain       | The General Council of the Judiciary has elaborated in 2007 its annual report on the situation of the Justice system: "Panorámica de la Justicia en 2006". It can be found in the CGPJ's website ' <a href="http://www.poderjudicial.es">www.poderjudicial.es</a> ) under the heading "Actividad judicial".  |

## 4.8 Trends and conclusions

There is a trend in Europe by which citizens and legal professionals can retrieve information about relevant laws, courts and legal proceedings easily and free of charge via the Internet. Only a limited number of countries have specific arrangements to inform the (potential) users of the courts on the foresee ability of procedures i.e. the expected timeframes of a procedure.

With respect to vulnerable persons, victims of rape, children, and juvenile offenders are the categories which are the best protected in judicial proceedings. This is done mostly by providing these categories with special hearing arrangements, special procedural rights or support in terms of a specific supply of information adapted to their needs. In 30 countries, public prosecutors have a role to play in assisting victims of crimes. The majority of countries also have a compensation procedure for victims of crimes. Often a public fund is set up. A judicial decision is usually necessary to obtain compensation.

As a part of the protection of the court users against dysfunctions of the courts, judicial systems may have implemented compensation procedures. In 27 countries, there is a compensation mechanism for excessively long proceedings and/or non-execution of a court decision. Almost all the countries have a provision for compensating a person in cases of wrongful arrest or wrongful condemnation.

Due to increasing attention paid to the needs and expectations of the court users, there is a growing trend in Europe for the introduction and use of specific tools, surveys, to evaluate court users' level of satisfaction or public confidence in courts. In most of the European countries, it is not common practice to conduct a survey

at a national level or the level of the courts on a regular basis. If surveys are used, they are often applied on an occasional basis. Exceptions can be found in the countries where quality-control systems for the courts have been introduced or where the assessment of court users is common practice: **Austria, Finland, the Netherlands, Spain and Switzerland.**

## 5. The courts

### 5.1 Introduction

In this part, the main developments in court organisation in Europe are described. A difference is made between a *court (first instance courts of general jurisdiction)*, a *geographical court location* and *specialized first instance courts*. In the explanatory note of the evaluation questionnaire, a *court* is defined as a body established by law and appointed to adjudicate on specific type(s) of judicial disputes within a specified administrative structure where one or several judge(s) is/are sitting, on a temporary or permanent basis. A *first instance court of general jurisdiction* is described as those courts which deal with all those issues which are not attributed to specialised courts owing to the nature of the case. *Geographical court locations* are premises or a court building where judicial hearings take place. The figures provided should include the locations for the courts of first instance of general jurisdiction and the specialised courts of first instance. If there are several court buildings in the same city of a country, they should be included as well.

In this chapter, the relevant basic facts concerning the courts can be found. Please be aware that this report/chapter delivers facts, figures and their trends. They may have very different causes (economical, political or others). For further examination of the figures, the national response given by each country might have taken into consideration.

### 5.2 Court organisation

Courts perform different tasks according to the competences that are ascribed in law. In the majority of cases, courts are responsible for dealing with criminal and civil law cases – and possibly administrative law: administrative law disputes are addressed by courts of general jurisdiction (for example in **the Netherlands**) or by specialized administrative courts (in **France**, for instance). In addition, courts may have a responsibility for the maintenance of registers: courts can have special departments for land registry, business registers and even for civil registers (birth, marriage, etc). This variety can influence the workload of the courts differently. Therefore a comparison between the courts in the countries needs to be addressed with care. In the following table the absolute number of courts (general, specialised) and court locations are visualised.

When comparing the 2006 data and the 2004 data, it seems that in a limited number of countries there has been a reduction or increase of the number of first instance courts of general jurisdiction. Countries where the number of first instance courts has been reduced considerably are: **Albania, Denmark, Estonia, Norway, Serbia** and **Sweden**. This happened mostly due to reforms of the court network. A substantial increase of the absolute numbers of first instance courts of general jurisdiction can be found in **Cyprus** and **Turkey**. For **Turkey**, the change is related to a court reform that has been implemented. In total, in 15 countries the number of first instance courts of general jurisdiction has been reduced. 8 countries reported an increase.

**Table 25. Trends in number of first instance courts 2004 – 2006**

| Trends in number of first instance courts 2004-2006 |                    |                        |
|---|--------------------|------------------------|
| Unchanged   | Increase           | Reduction              |
| Andorra   | Azerbaijan         | Albania                |
| Armenia   | Cyprus             | Bosnia and Herzegovina |
| Austria   | Georgia            | Bulgaria               |
| Belgium   | Poland             | Denmark                |
| Croatia   | Portugal           | Estonia                |
| Czech Republic                                      | Russian Federation | Finland                |
| Hungary   | Spain              | France                 |
| Iceland   | Turkey             | Germany                |
| Ireland   |                    | Greece                 |
| Italy   |                    | Norway                 |
| Latvia  |                    | Serbia                 |
| Lithuania   |                    | Sweden                 |
| Luxembourg  |                    | FYROMacedonia          |
| Malta   |                    | Ukraine                |

| Trends in number of first instance courts 2004-2006 |          |                      |
|---|----------|----------------------|
| Moldova   |          | UK-England and Wales |
| Monaco  |          |                      |
| Montenegro  |          |                      |
| Netherlands   |          |                      |
| Romania   |          |                      |
| Slovakia  |          |                      |
| Slovenia  |          |                      |
| UK-Scotland   |          |                      |
| UK-Northern Ireland                                 |          |                      |
| <b>23</b>   | <b>8</b> | <b>15</b>            |

With respect to the number of courts, many countries reported a change. In some countries courts have been closed, whereas in a limited number of countries, new courts have been created. The range of the question grows when *specialized courts* are considered. When comparing the 2006 data and the 2004 data, a mixed trend can be seen. In a majority of countries (25), the number of specialized courts is unchanged. Only in 7 countries has there been an increase. For 8 countries, a reduction of the number of specialized courts was reported.

**Table 26. Trends in number of specialized courts 2004-2006**

| Trends in number of specialized courts 2004-2006 |                      |           |                                      |
|--|----------------------|-----------|--------------------------------------|
| Unchanged  | Increase             | Reduction | Data non available or not applicable |
| Albania  | Azerbaijan           | Estonia   | Andorra                              |
| Armenia  | Cyprus               | Germany   | Bosnia and Herzegovina               |
| Austria  | France               | Ireland   | Bulgaria                             |
| Belgium  | Russian Federation   | Norway    | Czech Republic                       |
| Croatia  | Slovakia             | Poland    | Georgia                              |
| Denmark  | Spain                | Serbia    | FYROMacedonia                        |
| Finland  | UK-England and Wales | Sweden    |                                      |
| Greece   |                      | Turkey    |                                      |
| Hungary  |                      |           |                                      |
| Iceland  |                      |           |                                      |
| Italy  |                      |           |                                      |
| Latvia   |                      |           |                                      |
| Lithuania  |                      |           |                                      |
| Luxembourg                                       |                      |           |                                      |
| Malta  |                      |           |                                      |
| Monaco   |                      |           |                                      |
| Moldova  |                      |           |                                      |
| Montenegro                                       |                      |           |                                      |
| Netherlands                                      |                      |           |                                      |
| Portugal   |                      |           |                                      |
| Romania  |                      |           |                                      |
| Slovenia   |                      |           |                                      |
| Ukraine  |                      |           |                                      |
| UK-Scotland                                      |                      |           |                                      |
| UK-Northern Ireland                              |                      |           |                                      |
| <b>25</b>  | <b>7</b>             | <b>8</b>  | <b>6</b>                             |

The countries which have a relatively high number of specialized courts are: **Belgium** (most of these courts are related to the justices of the peace), **Croatia** (especially due to the high number of misdemeanour courts), **Cyprus** (specialized criminal courts, family courts, military courts, rent control tribunals and industrial dispute tribunal), **Finland** (Administrative Courts, Market Court, Labour Court and Insurance Court), **France**

(*conseils des prud'hommes*, commercial courts, minor courts, social courts, *tribunaux paritaires des baux ruraux*), **Luxembourg** (justices of the peace, labour courts, *conseils supérieur et arbitral des assurances sociales*, administrative courts), **Germany** (specialized courts at the level of Länder in the administrative, tax, labour and social fields), **Monaco** (labour courts, judge for working accidents, *commission arbitrale du loyer commercial, commission arbitrale des loyers, commission administrative de la caisse des retraites*), **Spain** (labour courts, administrative courts, juvenile courts, commercial courts, family courts, mortgage courts, warship courts, violence against women courts<sup>11</sup>), **Switzerland** (*tribunal des baux et loyer, tribunal de prud'hommes*, administrative courts, social courts, minor courts, economic courts, specialised federal criminal court, specialised federal administrative court) and **Turkey** (peace criminal courts, land registry court, enforcement courts, labour courts, family courts, commercial courts, consumer courts, intellectual property civil courts, juvenile courts, maritime court, intellectual property criminal court, specialised high criminal court, juvenile high criminal court).

In 3 countries: **Andorra, Bosnia and Herzegovina** and **Czech Republic**, there is no first instance specialised courts.

When considering, at a general level, the type of disputes, most specialized courts can be found in the area of: labour disputes, disputes concerning the renting of houses, social affairs or welfare disputes, commercial disputes and administrative law disputes. Specific "target groups" for specialized courts are: children, juveniles, companies, military officers, welfare clients, victims of domestic violence (**Spain**), citizens (to initiate an administrative law proceeding) and citizens who committed small (criminal) offences (car offence or other minor criminal offences).

Specialisation in courts is a growing trend amongst European countries. The CEPEJ is aware of the importance that specialised courts can play in improving the efficiency of justice as well as adapting it to the society's evolutions but at the same time this process should not generate confusion, conflicts of jurisdiction or even have consequences on costs of justice for users.

### Court locations

In 13 countries, there is a reduction in the number of *court locations* per 100.000 inhabitants, when comparing 2006 data and 2004 data. For 10 countries, there is an increase. In 18 countries it seems that there is no change in the number of court locations per 100.000 inhabitants.

**Table 27. Trends in number of geographical court locations (2006 data compared with 2004 data)**

| Trends in number of geographic location 2004-2006 |                        |                      |                                      |
|---|------------------------|----------------------|--------------------------------------|
| Unchanged   | Increase               | Reduction            | Data not available or not applicable |
| Andorra   | Azerbaijan             | Denmark              | Albania                              |
| Armenia   | Bosnia and Herzegovina | Germany              | Serbia                               |
| Austria   | Cyprus                 | Greece               | Turkey                               |
| Belgium   | Croatia                | Ireland              | Ukraine                              |
| Bulgaria  | Finland                | Malta                | UK-Scotland                          |
| Czech Republic                                    | Georgia                | Norway               |                                      |
| Estonia   | Poland                 | Netherlands          |                                      |
| France  | Spain                  | Portugal             |                                      |
| Hungary   | Sweden                 | Romania              |                                      |
| Iceland   | FYROMacedonia          | Russian Federation   |                                      |
| Italy   |                        | Slovakia             |                                      |
| Latvia  |                        | UK-England and Wales |                                      |
| Lithuania   |                        | UK-Northern Ireland  |                                      |
| Luxembourg  |                        |                      |                                      |
| Moldova   |                        |                      |                                      |
| Monaco  |                        |                      |                                      |
| Montenegro  |                        |                      |                                      |

<sup>11</sup> For **Spain** it should be noted that courts are defined in a specific manner. A judge, a panel of judges or court departments can be defined as a court. The same is true for **Turkey**.

| Trends in number of geographic location 2004-2006 |    |    |    |
|---|----|----|----|
| Slovenia  |    |    |    |
|   | 18 | 10 | 13 |
|   |    |    | 5  |

In the following table, the general figures are presented for the number of courts, court locations and specialized courts. The absolute figures are also given for the year 2004, so that a comparison with 2006 can be made.

**Table 28. Number of courts considered as legal entities (administrative structures) and geographic locations (Q45) – comparison 2004-2006**

| Country                | First instance courts of general jurisdiction |      | Specialized first instance courts |      | Total number of courts (geographic locations) |      |
|------------------------|---|------|-----------------------------------|------|---|------|
|                        | 2004  | 2006 | 2004                              | 2006 | 2004  | 2006 |
| Albania                | 29  | 21   | 1                                 | 1    | 39  | nr   |
| Andorra                | 1   | 1    | 0                                 | 0    | 1   | 1    |
| Armenia                | 17  | 17   | 1                                 | 1    | 21  | 21   |
| Austria                | 153   | 153  | 7                                 | 7    | 149   | 149  |
| Azerbaijan             | 85  | 85   | 16                                | 19   | 106   | 112  |
| Belgium                | 27  | 27   | 262                               | 262  | 320   | 320  |
| Bosnia and Herzegovina | 66  | 65   | 0                                 | 0    | 72  | 93   |
| Bulgaria               | 145   | 140  | na                                | 28   | 153   | 153  |
| Croatia                | 108   | 108  | 123                               | 123  | 252   | 256  |
| Cyprus                 | 4   | 7    | 10                                | 11   | 14  | 18   |
| Czech Republic         | 86  | 86   | 0                                 | 0    | 98  | 98   |
| Denmark                | 82  | 24   | 1                                 | 1    | 86  | 30   |
| Estonia                | 16  | 4    | 4                                 | 2    | 22  | 22   |
| Finland                | 63  | 58   | 11                                | 11   | 130   | 132  |
| France                 | 1143  | 1138 | 1207                              | 1246 | 773   | 773  |
| Georgia                | 60  | 66   | na                                | na   | 65  | 69   |
| Germany                | 791   | 782  | 262                               | 261  | 1147  | 1136 |
| Greece                 | 455   | 435  | 4                                 | 4    | 460   | 435  |
| Hungary                | 131   | 131  | 20                                | 20   | 157   | 157  |
| Iceland                | 8   | 8    | 2                                 | 2    | 9   | 9    |
| Ireland                | 3   | 3    | 3                                 | 1    | 187   | 180  |
| Italy                  | 1013  | 1014 | 58                                | 58   | 1291  | 1292 |
| Latvia                 | 34  | 34   | 1                                 | 1    | 41  | 41   |
| Lithuania              | 59  | 59   | 5                                 | 5    | 67  | 67   |
| Luxembourg             | 5   | 5    | 5                                 | 5    | 8   | 8    |
| Malta                  | 1   | 1    | 1                                 | 1    | 3   | 2    |
| Moldova                | 46  | 46   | 2                                 | 2    | 55  | 55   |
| Monaco                 | 18  | 18   | 6                                 | 6    | 1   | 1    |
| Montenegro             | 17  | 17   | 3                                 | 3    | 22  | 22   |
| Netherlands            | 19  | 19   | 2                                 | 2    | 61  | 52   |
| Norway                 | 79  | 68   | 7                                 | 6    | 93  | 71   |
| Poland                 | 353   | 360  | 29                                | 27   | 301   | 326  |
| Portugal               | 229   | 231  | 116                               | 116  | 333   | 326  |
| Romania                | 188   | 188  | 4                                 | 4    | 250   | 249  |
| Russian Federation     | 9170  | 9846 | 82                                | 119  | 2812  | 2696 |
| Serbia                 | 169   | 138  | 18                                | 17   | na  | 199  |
| Slovakia               | 45  | 45   | 3                                 | 4    | 58  | 51   |
| Slovenia               | 55  | 55   | 5                                 | 5    | 66  | 66   |
| Spain                  | 1976  | 2016 | 572                               | 760  | 683   | 703  |
| Sweden                 | 91  | 76   | 15                                | 11   | 132   | 135  |

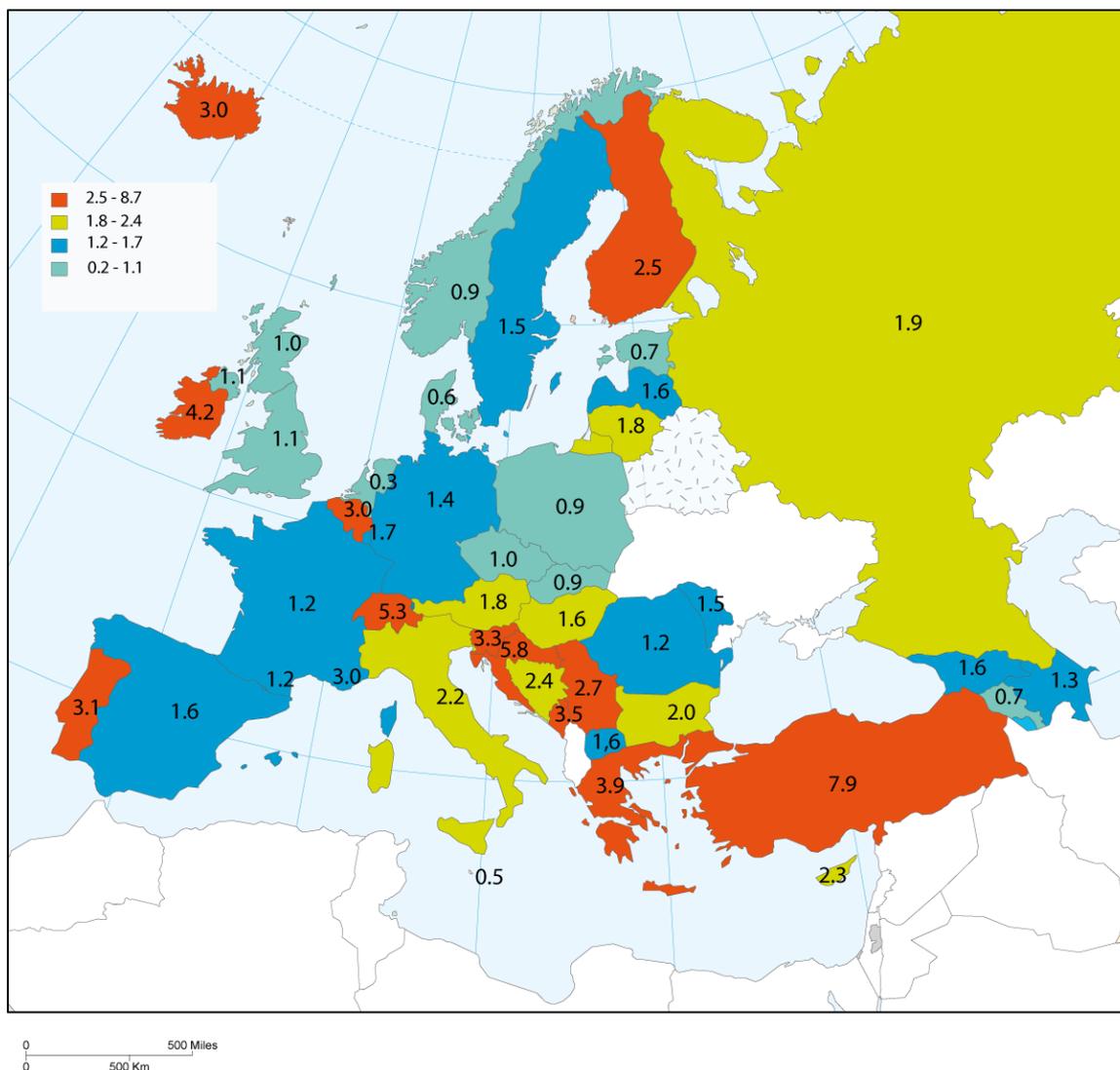
| Country              | First instance courts of general jurisdiction |      | Specialized first instance courts |      | Total number of courts (geographic locations) |      |
|----------------------|---|------|-----------------------------------|------|---|------|
|                      | 2004  | 2006 | 2004                              | 2006 | 2004  | 2006 |
| Switzerland          | na  | 302  | na                                | 93   | na  | 394  |
| FYROMacedonia        | 27  | 25   | na                                | 3    | 31  | 33   |
| Turkey               | 2502  | 4723 | 1135                              | 868  | na  | 5767 |
| Ukraine              | 722   | 679  | 54                                | 54   | 790   | na   |
| UK-Northern Ireland  | 22  | 22   | 2                                 | 2    | 21  | 19   |
| UK-Scotland          | 22  | 22   | 22                                | 22   | na  | 50   |
| UK-England and Wales | 710   | 660  | 18                                | 25   | 711   | 595  |

\*The following countries: **Croatia, Estonia, Lithuania, Ireland, Italy, Monaco** and **Moldova** have updated some figures communicated as number of courts for 2004 in order to keep the coherence with the 2004 data obtained with a method of classification different from the one applied for the year 2006. For **Spain**, the variation between the number of specialized courts in 2004 and 2006 is due to the fact that certain civil courts counted as general courts in 2004, have been now highlighted as specialized courts, in line with the concept given in the explanatory note.

In the following figures the number of first instance courts of general jurisdiction and court locations per 100.000 inhabitants is presented in a geographical map.



Figure 24. Court locations per 100.000 inhabitants in 2006



### 5.3 Small claims, dismissal cases and robbery cases

In the following table, the figures are presented with respect to the number of courts which are competent for the debt collection of small claims, dismissal and/or robbery cases. The figures in the table are related to courts of general jurisdiction or specialized courts. Due to the manner in which the information has been collected, it is not possible to make a distinction between the two types of courts (this information could help to identify trends in increasing the number of specialized courts competent for small claims, dismissal cases or robbery).

As can be derived from the table, a significant number of courts (absolute figures) competent for dealing with small claims can be found in: **Austria, Belgium, Croatia, France, Germany, Italy, Poland, Portugal, Romania, Russian Federation, Serbia, Spain, Switzerland, Turkey and UK-England and Wales.** There is a large number of courts competent for dismissal cases (mostly specialized courts) in: **France** (conseils des prud'hommes), **Germany** (labour courts), **Italy, Poland, Russian Federation, Serbia, Spain** (labour courts), **Switzerland, Ukraine and Turkey** (labour courts). As an example of criminal offences, courts competent for robbery cases are identified. A high number can be found in: **Bulgaria, Croatia, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Russian Federation, Spain<sup>12</sup>, Switzerland, Turkey, Ukraine and UK-England and Wales.** These high numbers may partly be explained by the fact that in these countries there are specialized courts for small criminal offences.

<sup>12</sup> In **Spain**, all criminal cases, except offences regarding juveniles or violence against women are treated by criminal courts of general jurisdiction.

**Table 29. Number of first instance courts competent for a case concerning: a debt collection for small claims, a dismissal, a robbery (Q48)**

| Country                      | Debt collection for small claims |                         | Dismissal |                         | Robbery |                         |
|------------------------------|----------------------------------|-------------------------|-----------|-------------------------|---------|-------------------------|
|                              | Number                           | per 100.000 inhabitants | Number    | per 100.000 inhabitants | Number  | per 100.000 inhabitants |
| Andorra                      | 1                                | 1,23                    | 1         | 1,23                    | 1       | 1,23                    |
| Armenia                      | 17                               | 0,53                    | 17        | 0,53                    | 17      | 0,53                    |
| Austria                      | 140                              | 1,69                    | 16        | 0,19                    | 16      | 0,19                    |
| Azerbaijan                   | 90                               | 1,05                    | 85        | 1,00                    | 3       | 0,04                    |
| Belgium                      | 187                              | 1,78                    | 21        | 0,20                    | 27      | 0,26                    |
| Bosnia and Herzegovina       | 48                               | 1,25                    | 48        | 1,25                    | 48      | 1,25                    |
| Bulgaria                     | na                               | na                      | 112       | 1,46                    | 112     | 1,46                    |
| Croatia                      | 120                              | 2,70                    | 65        | 1,46                    | 172     | 3,87                    |
| Cyprus                       | 6                                | 0,78                    | 1         | 0,13                    | 9       | 1,16                    |
| Czech Republic <sup>13</sup> | 86                               | 0,84                    | 86        | 0,84                    | 86      | 0,84                    |
| Denmark                      | 24                               | 0,44                    | 24        | 0,44                    | 24      | 0,44                    |
| Estonia                      | 4                                | 0,30                    | 4         | 0,30                    | 4       | 0,30                    |
| Finland                      | 58                               | 1,10                    | 58        | 1,10                    | 58      | 1,10                    |
| France                       | 476                              | 0,75                    | 276       | 0,44                    | 186     | 0,29                    |
| Georgia                      | 66                               | 1,50                    | 66        | 1,50                    | 66      | 1,50                    |
| Germany                      | 666                              | 0,81                    | 121       | 0,15                    | 666     | 0,81                    |
| Hungary                      | 111                              | 1,10                    | 20        | 0,20                    | 131     | 1,30                    |
| Iceland                      | 8                                | 2,67                    | 8         | 2,67                    | 8       | 2,67                    |
| Ireland                      | 1                                | 0,02                    | 1         | 0,02                    | 2       | 0,05                    |
| Italy                        | 849                              | 1,45                    | 165       | 0,28                    | 165     | 0,28                    |
| Latvia                       | 34                               | 1,48                    | 34        | 1,48                    | 39      | 1,70                    |
| Lithuania                    | 54                               | 1,59                    | 59        | 1,73                    | 54      | 1,59                    |
| Luxembourg                   | 3                                | 0,63                    | 3         | 0,63                    | 3       | 0,63                    |
| Malta                        | 1                                | 0,25                    | 1         | 0,25                    | 1       | 0,25                    |
| Moldova                      | 47                               | 1,31                    | 46        | 1,28                    | 47      | 1,31                    |
| Monaco                       | 1                                | 3,03                    | 1         | 3,03                    | 2       | 6,06                    |
| Montenegro                   | 15                               | 2,42                    | 18        | 2,90                    | 15      | 2,42                    |
| Netherlands                  | 52                               | 0,32                    | 52        | 0,32                    | 19      | 0,12                    |
| Norway                       | 71                               | 1,52                    | 71        | 1,52                    | 71      | 1,52                    |
| Poland                       | 315                              | 0,83                    | 275       | 0,72                    | 360     | 0,94                    |
| Portugal                     | 231                              | 2,19                    | 59        | 0,56                    | 233     | 2,20                    |
| Romania                      | 178                              | 0,82                    | 41        | 0,19                    | 178     | 0,82                    |
| Russian Federation           | 7367                             | 5,19                    | 2479      | 1,75                    | 2479    | 1,75                    |
| Serbia                       | 146                              | 1,97                    | 136       | 1,83                    | na      | na                      |
| Slovakia                     | 45                               | 0,84                    | 45        | 0,84                    | 45      | 0,84                    |
| Slovenia                     | 44                               | 2,20                    | 4         | 0,20                    | 11      | 0,55                    |
| Spain                        | 1722                             | 3,94                    | 316       | 0,72                    | 1471    | 3,36                    |
| Sweden                       | 53                               | 0,58                    | 53        | 0,58                    | 53      | 0,58                    |
| Switzerland                  | 233                              | 3,12                    | 131       | 1,76                    | 126     | 1,69                    |
| FYROMacedonia                | 26                               | 1,28                    | 26        | 1,28                    | 26      | 1,28                    |
| Turkey                       | 824                              | 1,12                    | 1116      | 1,52                    | 1152    | 1,57                    |
| Ukraine                      | na                               | na                      | 706       | 1,51                    | 679     | 1,46                    |
| UK-England and Wales         | 220                              | 0,41                    | na        | na                      | 440     | 0,82                    |

<sup>13</sup> . In the **Czech Republic** all types of disputes are treated by courts of general jurisdiction

For small financial claims, there is a large variety between the countries with respect to the height of the financial amount of the dispute. This is partly caused by variation in the economic situation of countries, the civil procedural rules that are applied and the level of specialisation of courts in this area. In the following table, the monetary values of the small claims are provided.

**Table 30. Monetary value of a small claim in 2006 (Q48)**

| Country                | Financial value of the claim                             | Country             | Financial value of the claim                                |
|------------------------|--|---------------------|---|
| Albania                | NA   | Luxembourg          | ≤ 10 000€   |
| Andorra                | ≤ 1 200€   | Malta               | ≤ 3 488€  |
| Armenia                | The amount must not exceed 5000 times the minimum salary | Moldova             | No definition   |
| Austria                | ≤ 10 000€  | Monaco              | ≤ 1 800€  |
| Azerbaijan             | No definition  | Montenegro          | ≤ 500€  |
| Belgium                | ≤ 1 860€   | Netherlands         | ≤ 5 000€  |
| Bosnia and Herzegovina | ≤ 1 500€   | Norway              | ≤ 2 500€  |
| Bulgaria               | No definition  | Poland              | ≤ 2 578€  |
| Croatia                | ≤ 683€   | Portugal            | ≤ 14 963€   |
| Cyprus                 | ≤ 50 000£  | Romania             | Not applicable  |
| Czech Republic         | ≤ 63€  | Russian Federation  | ≤ 1 470€  |
| Denmark                | ≤ 50 000DKK  | Serbia              | ≤ 100 000 DINARS  |
| Estonia                | No definition  | Slovakia            | No definition   |
| Finland                | The category of a small claim does not exist             | Slovenia            | ≤ 845€  |
| France                 | ≤ 4 000€   | Spain               | ≤ 3 000€  |
| Georgia                | ≤ 2 000GEL   | Sweden              | ≤ 2 235€  |
| Germany                | ≤ 600€   | Switzerland         | From 310€ to no more than 21 400€ - according to the canton |
| Greece                 | ≤ 800€   | FYROMacedonia       | ≤ 980€  |
| Hungary                | ≤ 20 000€  | Turkey              | ≤ 2 959€  |
| Iceland                | No definition  | Ukraine             | No definition   |
| Ireland                | ≤ 2 000€   | UK-Northern Ireland | No definition   |
| Italy                  | ≤ 2 582€   | UK-Scotland         | ≤ 750£  |
| Latvia                 | No definition  | United Kingdom      | ≤ 7 297€  |
| Lithuania              | ≤ 290€   |                     |   |

**Comment:** some monetary values are presented in the local currency.

## 5.4 Budgetary powers at the level of the courts

The organisation of the competence and responsibility for the budgets can differ from country to country. It can be the main responsibility of the court president. Other options are that a court administrative director is in charge of the budget or even a management board where one of the members is tasked with managing the budget. In the following table, the number of countries is shown, by taking into account the various steps of the process from preparation, arbitration to the management of the budget and the evaluation of the budgetary cycle. In most of the countries, the court president is involved in all the steps of the budgetary process, followed by a court administrative director or another person, i.e. authority. To a much lesser extend, courts may have a management board or a head of the court clerk office for leading the budget cycle.

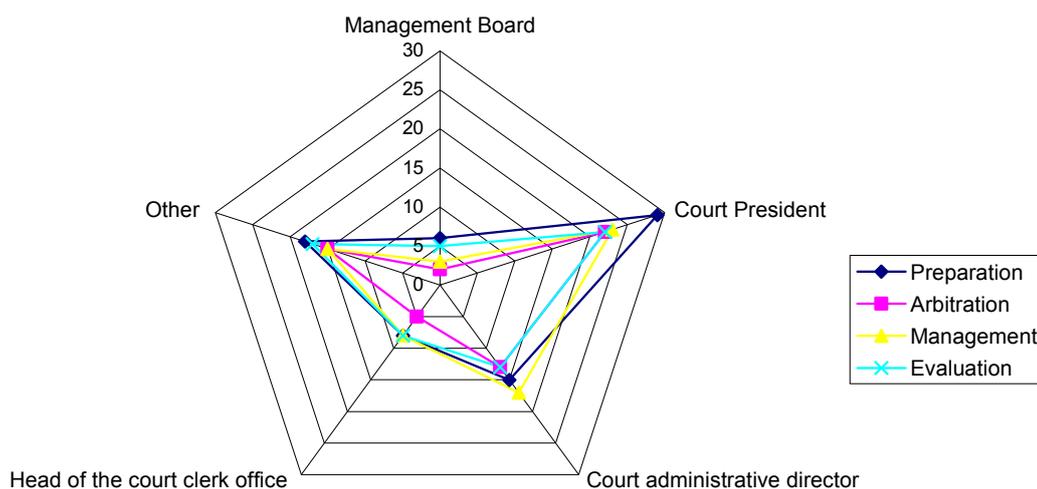
**Table 31. Instances responsible for individual court budget (Q60) – number of positive responses (Q60)**

| Instances responsible for individual court budget | Preparation | Arbitration | Management | Evaluation |
|---|-------------|-------------|------------|------------|
| Management Board                                  | 6           | 2           | 3          | 5          |
| Court President                                   | 29          | 22          | 23         | 22         |
| Court administrative director                     | 15          | 13          | 17         | 13         |
| Head of the court clerk office                    | 8           | 5           | 8          | 8          |
| Other   | 18          | 15          | 15         | 17         |

**Comment:** 46 countries provided a reply to the question regarding the budgetary powers at the level of the courts. In **Spain** there is no responsible person or power for the individual court budget. In **Switzerland** the instances responsible for the individual court budget vary according to the entities (*cantons*). In **Turkey** there is no individual court budget. Therefore the table presents the data of 43 countries or entities.

In the radar-figure the distribution of the powers is visualized in a different manner.

**Figure 25. Distribution of budgetary powers at the court level**



With respect to the category "other", many different replies were given. Namely the Ministry of Justice, presidents of higher courts, a collective group of presidents of higher courts (constitutional court, Supreme Court, and appellate courts), a national court administration service, court accountants were mentioned. It is clear that in most countries the budgetary process for the court is arranged at different levels (from national level to regional (appeal) or local level (courts)). At each level various actors are involved in the process.

## 5.5 Information and communication technology in the courts (e-justice and e-courts)

### ***Applications for the direct assistance of a judge or court staff***<sup>4</sup>

Courts can use information and communication technology for different purposes. The most commonly-used field of application is related to the direct assistance to a judge or court staff. One of the "basic" applications concerns *word processing / office facilities* where a judge or staff member can draft his/her decisions or the preparation of a court case in an "*electronic file*". The diffusion of basic office technology started in the 1980s; however only during the 1990s many governments began the process of supplying computerized office equipment to the courts. As can be derived from the table, in almost all the courts in Europe, word processing facilities or other office applications have been put in place. It must be noted that the high numbers may not indicate that the equipment is "*state of the art*". Some courts may have very old computer office equipment.

In addition to the implementation of basic office applications, one of the areas where ICT for direct assistance of a judge can be found is in the field of legal research. Several applications, from CD-ROMs to Intranet and Internet software, makes it possible for a judge to gain access to statute law, appellate decisions, rules, court working methods, etc. Online legal research is becoming a growing field, according to the intensified use of specialised websites. In a large majority of countries it is possible to retrieve legal information by making use of *electronic databases of jurisprudence*. Concrete examples of applications can be found in **Ireland** (the '*Electronic Benchbook*'), **UK-England and Wales** ('*eLis*': the electronic library and information services that provides legal information for the judiciary) and **Italy** where the Centre of Documentation of the Supreme Court provides free online access to the database of the jurisprudence of the Supreme Court and other courts.

Office applications, together with tools for jurisprudence, can be combined with facilities in the field of "*standard-decisions*" models or templates that can be used by judges to reduce their workload when drafting a judgment. In **Finland**, the case management information system *Tuomas* allows judges to retrieve information from court cases and use this information to produce new decisions. 65 % of all the court cases registered are *electronic documents* stored in relational databases that can be used for future purposes.

*E-mail facilities* can be found in almost all the member states. In most cases, e-mail is used as an informal means of communication between courts, judges or court staff. Within the environment of the court, the use of e-mail may be limited, as in certain countries the law requires certified e-mail and a digital signature on official documents to be sent to courts (for example in **Belgium, France, Greece, Switzerland and Italy**).

*Internet connections* are more and more common in courts in Europe. Especially with an intensified use of Web applications and it is expected that this will grow in the future. In 32 countries, all the courts have an internet connection.

### ***Systems for the registration of cases and management***

The second general area of application of court information technology is related to the registration and management of cases, and the monitoring of the financial affairs of a court. Court automation in this area starts mostly with the automatization of repetitive and executive tasks. Traditional court docket books and other registers are replaced by computerized databases with court records. The advantage of these applications lies in the fact that the registration of similar data can be reduced and that manually recorded data can be replaced by electronic registration of information (for example by using scanned documents). Most of the countries replied by saying that they apply electronic registration systems for cases. In addition to this there seems to be a tendency to install case management information systems in the courts. These systems are not limited in registration of case information, but they introduce functionalities in the area of the management of cases. Fields of applications are: the generation of information concerning the performance of courts, financial management of courts and (non-)judicial case management support systems (for case tracking, case planning and document management). Given the higher complexity of this type of information one might expect a lower degree of installation in courts around Europe. However, in 20 countries a 100 % implementation has been achieved for court management information systems. 26 countries replied that such a level is accomplished in the field of financial management too. Examples of applications can be found in **Ireland** and **Finland**. In **Ireland**, the *Court Service* has implemented a number of strategic systems which can generate management and executive information. Case management systems and court decision

<sup>14</sup> Detailed information is described in: Velicogna M. (2007), *Use of Information and Communication technology in European Judicial systems*, CEPEJ Study N° 7 (Strasbourg).

systems in **Finland** automatically produce information and reports for the use of the courts and the ministry of justice. It should be noted that in **Croatia**, as a part of the Integrated Case Management System, a system will be developed to detect and produce statistical information concerning the causes for the backlog of cases in the courts. Another application is *E-Statistics* in **Croatia**: with this web-based software it is possible to collect, process and publish court performance data.

### ***Electronic communication and information exchange between the courts and the environment***

To facilitate communication with professional users and (potential) court users, other fields of application may be installed in the courts. One of the most 'basic' applications is the use of a *court website*. According to the 2006 data in only 14 countries do 100 % of courts have court websites. With respect to the organisation of the web information there are different strategies used in the countries. In some cases, web information organisation and provision is centralized (highest courts, ministries of justice or councils for the judiciary determine the '*web-templates*' for the courts and the manner in which the information is presented on a website). In other countries, this is left to the courts themselves. For example in **Austria**, the ministry of Justice determines what information and how the information is presented on court website. A similar rule can be found in the **Netherlands** where the Council for the Judiciary has a key responsibility in the rules of publication of information on court websites. In **Belgium** and **France** courts can develop their own websites, following guidelines established by the Ministry of Justice<sup>15</sup>.

Information on court websites can be divided into 4 types<sup>16</sup>: general information, information on court activities and organisation, legal information and case information.

General information is related to the purpose of the court, the court location, and opening hours. Sometimes it is possible to download forms or to send an e-mail to a court (for example to request information). In **UK-England and Wales**, *CJS-online* even makes it possible to have a virtual visit of the Crown Court.

Information on courts' activities is mostly related to statistics on the court performance, quality-control policies and the publication of judgments. This type of information can be found only on a very few countries' websites. Mostly, it is general information that is available from the websites of ministries of justice, councils for the judiciary or higher courts.

Legal information on court websites can be divided between general legal information and specific (case) law information. Examples of general legal information are the provision of information on how to start court proceedings, general working practices of a court and sometimes also specific forms (to submitting a case to the court). On many court websites it is possible to *download forms*. However, in most cases, completed forms cannot be sent directly to the courts via a web-application, but must be printed and submitted in a paper format. Case law data is connected with online access to databases of court judgments. Some countries provide access to case law free of charge (for example **Finland**, **Ireland**, **Norway** and **United Kingdom**), whilst in other countries case law is only available through a restricted access area (only open for specific users, like in **Italy**). **Switzerland** offers to the users a multilingual online data base (called "ATF online ") with advanced research tools enabling, in addition to the search within the integral text, to search through meta-data such as legal norms or key-words; this data base includes both the decisions of the Swiss Federal Court and a selection of decisions of the European Court of Human Rights.

Case information containing docket reports, case files and other relevant court documents is only available online in a very limited number of countries. The exception to this rule is information related to *electronic registers* such as business registers and land registers. For example, in **Austria** citizens, can obtain (generally after the payment of a fee) access to the Austrian Land Register, the Austrian Company Register, the Legal Information Register, the Edicts Database and the Database for Auctions for real estates. Lawyers also have the possibility of searching databases of enforcement cases.

An example of *other (successful) areas of electronic communication* is the processing of small claims and undisputed debt-recovery. Successful examples of *e-justice* in this area can be found in **Austria** (Austrian Electronic Legal Communication System), **Germany**, **Finland** (the *Tuomas* and *Santra* systems) or in the **United Kingdom** (MoneyClaimOnline).

There are countries where *videoconferencing* techniques are used in the courts. Particularly in criminal cases, this may reduce time and costs for judges and courts. For example, the transportation of detainees can be reduced, when instead of transporting prisoners from prison to court, they can be interviewed by

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<sup>15</sup> See Velicogna (2007), p. 22.

<sup>16</sup> Idd., p. 23.

judges by making use of videoconferencing facilities. Examples of countries that use videoconferencing are: **Austria, Germany, Italy** and the **Netherlands**.

An integrated approach of the court computerization can be found in **Turkey**. As a part of the Turkish National Judicial Network project, all court cases are online and accessible for judges. Criminal records and files are accessible online and connections can be made with other registers (for example with the birth certificate register, land registers and driver license registers). Through a dedicated internet portal, lawyers are able to review cases and submit a petition online. Court fees can be paid electronically by using on-line financial facilities. The litigants have the possibility of submitting a claim before the court via an Internet application. They can also follow cases online. Pilot projects have been started to inform parties on the state of affairs of cases by making use of SMS-messages on mobile phones.

### **European (EU) developments e-justice portal**

Another development that is currently being undertaken concerns the creation of *European e-justice portals* for the member states of the European Union<sup>17</sup>. This initiative seeks to create portals which enable users to retrieve information from other countries and courts located in other countries. The content of the portal should make communication between the courts, other public authorities and interested parties possible. It should also facilitate access to legal data by the general public (by making use of current internet pages, available as part of the European Judicial Network in civil and commercial matters and the European Network in criminal matters). In principle, one of the areas in which the e-justice portal will be of use is electronic registers (insolvency registers, commercial registers, land registers and criminal records). A pilot project has been launched by a limited number of member states of the European Union to network insolvency registers. In addition, a prototype of the *e-justice* portal has also been developed.

### **Facts**

In the following table, the replies of the countries are provided for the three general areas of use. In most of the countries, computer facilities for the direct assistance of judges and staff can be found in the courts. Less applied are case registration systems, court management information systems and financial information systems. The last area of use is the communication between courts, legal professionals and (potential) court users. In 14 countries all the courts have a special website. In 11 countries electronic forms can be downloaded and uploaded to all the courts. An identical score (14 countries) can be found for the 'other' exchange of information.

**Table 32. ICT in the courts for three areas of use (Q62, Q63 and Q64)**

| Function   | Computer facilities                       | 100% of courts | + 50% of courts | - 50% of courts | - 10% of courts | Number of responses |
|--|---|----------------|-----------------|-----------------|-----------------|---------------------|
| <b>Computer facilities used within the courts for direct assistance to the judge</b>               | Word processing                           | 42             | 4               | 0               | 0               | 46                  |
|  | Electronic data base of jurisprudence     | 33             | 7               | 2               | 1               | 43                  |
|  | Electronic files                          | 18             | 12              | 4               | 7               | 41                  |
|  | E-mail                                    | 33             | 9               | 2               | 1               | 45                  |
|  | Internet connection                       | 33             | 6               | 6               | 1               | 45                  |
| <b>Computer facilities used within the courts for administration and management</b>                | Case registration system                  | 26             | 10              | 5               | 3               | 44                  |
|  | Court management information system       | 20             | 12              | 4               | 6               | 42                  |
|  | Financial information system              | 26             | 8               | 2               | 6               | 42                  |
| <b>Computer facilities used within the courts for communication between courts and the parties</b> | Electronic web forms                      | 11             | 3               | 5               | 20              | 39                  |
|  | Special Website                           | 14             | 7               | 9               | 11              | 41                  |
|  | Other electronic communication facilities | 15             | 3               | 6               | 11              | 34                  |

<sup>17</sup> On 20 May 2008 the European Commission communicated a document titled "towards a European strategy on e-justice".

**Comment:** 46 countries have replied to the questions on the IT equipment.

By making use of a classification methodology, it is possible to cluster countries according to the level of implementation of the various computer applications. In the following tables the countries are clustered according to their level of computerization (*all of the three functions*) (very good level, good level, moderate level and low level of computerization). The calculation of the scores is based on a recode of the three relevant questions 62, 63 and 64.

**Table 33. Classification of countries on the level of computerization of courts for *the three areas of application***

| Very high level of computerization<br>>39 points | High level of computerizations<br>(32-38) | Moderate level of computerizations<br>(26-31) | Low level of computerisation<br>(less than 25) |
|--|---|---|--|
| Austria  | Czech Republic                            | Belgium                                       | Cyprus   |
| Denmark  | Romania                                   | Italy   | Ukraine  |
| Estonia  | Slovenia                                  | Georgia                                       | FYROMacedonia                                  |
| Finland  | Iceland                                   | Luxembourg                                    | Serbia   |
| Hungary  | UK-Northern Ireland                       | Poland  | Armenia  |
| Malta  | Germany                                   | Andorra                                       | Monaco   |
| UK England and Wales                             | Lithuania                                 | Ireland                                       | Russian Federation                             |
| Switzerland                                      | France                                    | Azerbaijan                                    | Bosnia and Herzegovina                         |
| Portugal   | Latvia                                    | Croatia                                       | Montenegro                                     |
| Slovakia   | Netherlands                               | Greece  | Moldova  |
| UK-Scotland                                      | Sweden                                    |   |  |
| Norway   | Bulgaria                                  |   |  |
| Spain  |   |   |  |
| Turkey   |   |   |  |
| <b>14</b>  | <b>12</b>                                 | <b>10</b>                                     | <b>10</b>                                      |

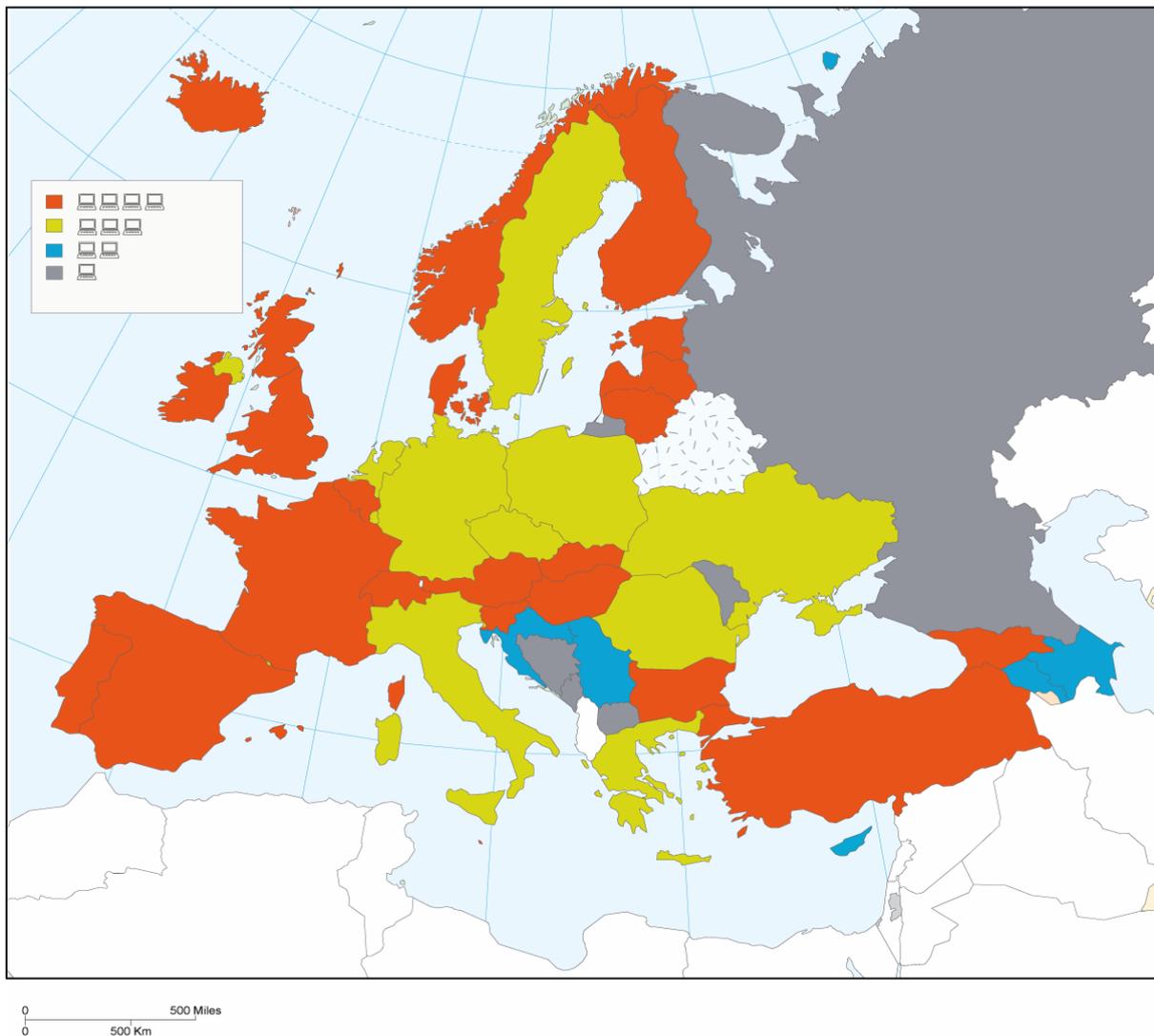
**Comments:**

A 100% reply was attributed the highest score: 4; a reply >50%: 3; a reply <50%: 2; a reply <10%: 1. The scores can vary from 44 points (the maximum) to 11 points when a country reports that it has only less than 10% of the courts equipped with new technologies. The responses were placed into 4 classes. We can see a very good level of computerization (more than 39 points), a good level of computerization (between 28 and 38 points), a moderate level (between 26 and 31) and a lower level with less than 25 points of the score.

The classification based on the score is not a perfect picture of courts' equipment. It is a global image of their level of computerization. Inside the less equipped classes, answers with a score of 4 can still be found. However, the average number of the lower scores influenced the final score on the classification of a country.

Using the same methodology of attributing a score to countries, the level of implementation of computer technology for the direct assistance of a judge or non-judge staff can be shown. The countries with a very high or high level of implementation are coloured in orange (four computer symbols) or in yellow (three computer symbols).

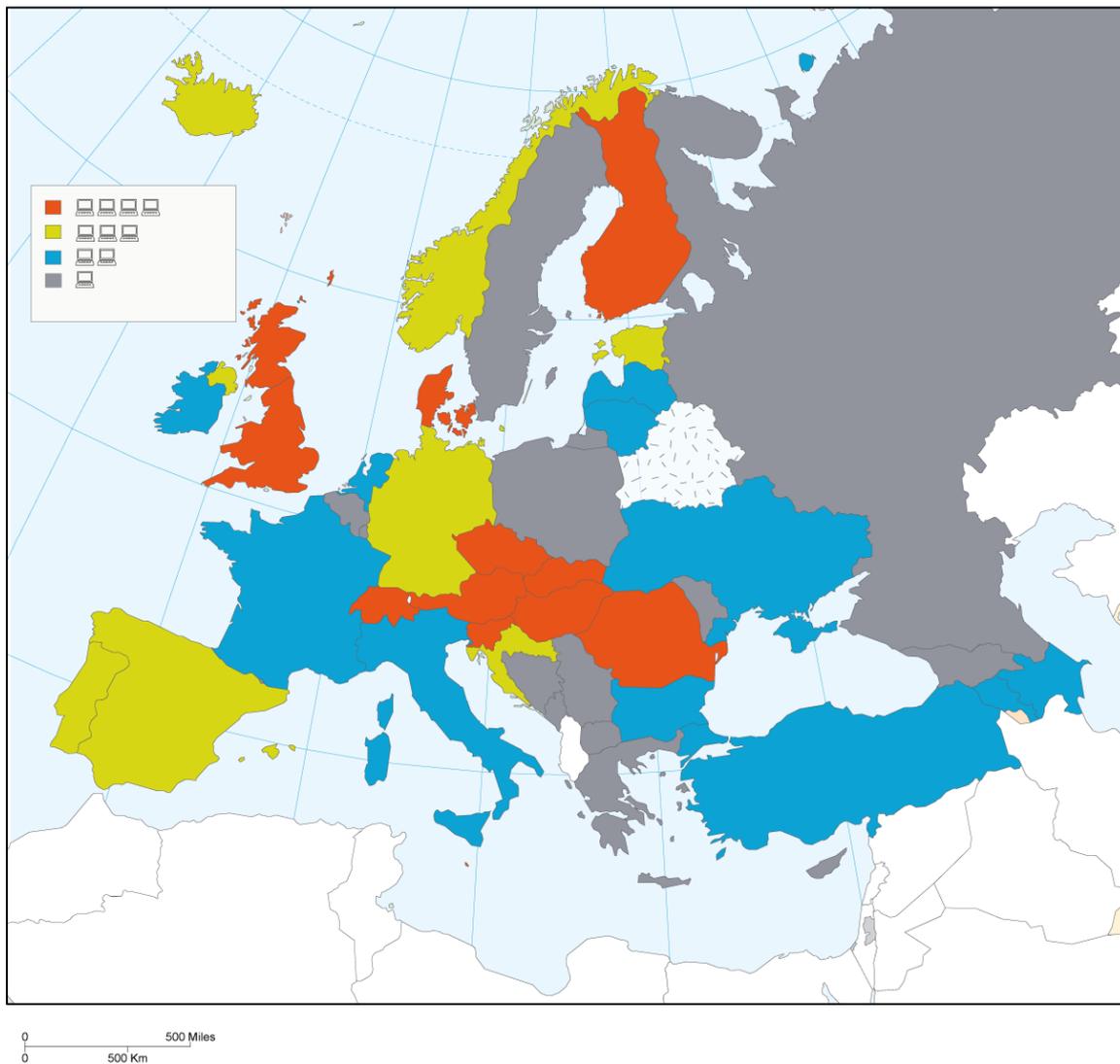
**Figure 26. Level of implementation of computer equipment for the direct assistance of a judge or non-judge staff (Q62)**



A *moderate level* of computerization of judges and court staff can be found in **Azerbaijan, Croatia, Serbia, Armenia** and **Cyprus** (blue: two computer symbols). According to the scoring method in **Montenegro, Bosnia and Herzegovina, Russian Federation, “the former Yugoslav Republic of Macedonia”** and **Moldova** there is a *low level* of implementation of computers for the direct assistance of judges and staff in the courts (grey colour; 1 computer symbol).

A different description can be given on the level of implementation of computers, used to facilitate the communication between the courts and their environment. Countries with a *high level* of implementation are: **Austria, Czech Republic, Denmark, Finland, Hungary, Malta, Slovakia, Romania, Slovenia, Switzerland, UK-Scotland** and **UK-England and Wales** (orange colour; four computer symbols). A *good level* of computer facilities for communication is found in: **Iceland, Portugal, UK-Northern Ireland, Croatia, Germany, Norway, Spain** and **Estonia**. Countries with a moderate level or a low level are displayed in the blue colour (two computer symbols) respectively in the grey colour (one computer symbol).

**Figure 27. Level of implementation of computer equipment for the communication between the courts and their environment (Q64)**



## 5.6 Evaluation and monitoring

### *Monitoring*

As part of the management of courts, a periodic evaluation and monitoring of the court performance and the quality of justice is recommended. Also, for the external orientation of the judiciary, annual (public) reports should be generated and provided to the public. In a large majority of countries (43 countries) who have replied, this is the case. 46 countries or entities answered that, on a regular basis, they conduct monitoring activities concerning the number of incoming cases. An almost identical number (45 countries) replied that the number of decisions is monitored too. In 38 countries, the number of postponed cases and the length of the procedures are monitored as well.

**Table 34. Number of positive responses to the modalities of monitoring systems (Q66, Q67)**

| Monitoring system of court activities  | Number of countries which have replied positively |
|--|---|
| Are the courts required to prepare an annual activity report?                                      | 43  |
| Does the regular monitoring system of court activities concern the number of incoming cases?       | 46  |
| Does the regular monitoring system of court activities concern the number of decisions?            | 45  |
| Does the regular monitoring system of court activities concern the number of postponed cases?      | 38  |
| Does the regular monitoring system of court activities concern length of proceedings (timeframes)? | 38  |
| Does the regular monitoring system of court activities concern other elements?                     | 20  |

An example of an annual court report at a national level can be found in the **Netherlands**. Each year the Dutch Council for the Judiciary publishes an Annual Report with data concerning the overall productivity of the courts, incoming cases, completed cases, productivity in relation to incoming cases and the costs of the judicial system, its quality and finances. Similar annual reports can be found in other countries too (for example in **Finland**).

**Evaluation**

36 countries replied that they use a regular system to evaluate court performance. In 10 countries there exists no such system (see table with the countries listed).

**Table 35. Do you have a regular system to evaluate the performance of each court? (Q68)**

| Do you have a regular system to evaluate the performance of each court? |            |                        |
|---|------------|------------------------|
|   | YES        | NO                     |
|   | Andorra    | Monaco                 |
|   | Austria    | Montenegro             |
|   | Azerbaijan | Netherlands            |
|   | Bulgaria   | Norway                 |
|   | Croatia    | Poland                 |
|   | Cyprus     | Portugal               |
|   | Denmark    | Romania                |
|   | Estonia    | Serbia                 |
|   | Finland    | Slovakia               |
|   | France     | Slovenia               |
|   | Georgia    | Spain                  |
|   | Germany    | Sweden                 |
|   | Greece     | Switzerland            |
|   | Hungary    | FYROMacedonia          |
|   | Italy      | Turkey                 |
|   | Latvia     | UK-Northern Ireland    |
|   |            | Armenia                |
|   |            | Belgium                |
|   |            | Bosnia and Herzegovina |
|   |            | Czech Republic         |
|   |            | Iceland                |
|   |            | Ireland                |
|   |            | Luxembourg             |
|   |            | Malta                  |
|   |            | Russian Federation     |
|   |            | Ukraine                |

| Do you have a regular system to evaluate the performance of each court? |                      |           |
|---|----------------------|-----------|
| Lithuania   | UK-Scotland          |           |
| Moldova   | UK-England and Wales |           |
| <b>36</b>   |                      | <b>10</b> |

Most court performance evaluation is based on the use of court statistics (number of cases, backlog, pending cases, decisions, the workload of judges and the court, productivity, etc). In certain instances the results are compared with targets that must be met (for example in **Norway** and **UK-England and Wales**).

In the majority of countries (36), performance indicators are used to measure the performance of the court. In 10 countries no performance indicators are applied.

**Table 36. Concerning court activities, have you defined performance indicators? (Q69)**

| Concerning court activities, have you defined performance indicators? |                      |                |
|---|----------------------|----------------|
| YES   |                      | NO             |
| Armenia   | Montenegro           | Andorra        |
| Austria   | Netherlands          | Azerbaijan     |
| Bosnia and Herzegovina  | Norway               | Belgium        |
| Bulgaria  | Poland               | Czech Republic |
| Croatia   | Portugal             | Germany        |
| Cyprus  | Romania              | Iceland        |
| Denmark   | Russian Federation   | Luxembourg     |
| Estonia   | Serbia               | Malta          |
| Finland   | Slovakia             | Moldova        |
| France  | Slovenia             | Ukraine        |
| Georgia   | Spain                |                |
| Greece  | Sweden               |                |
| Hungary   | Switzerland          |                |
| Ireland   | FYROMacedonia        |                |
| Italy   | Turkey               |                |
| Latvia  | UK-Northern Ireland  |                |
| Lithuania   | UK-Scotland          |                |
| Monaco  | UK-England and Wales |                |
| <b>36</b>   |                      | <b>10</b>      |

In the Evaluation Scheme, countries were asked to list the four most important performance indicators needed to be defined (or already used) to generate adequate information for the proper functioning of courts. According to the results, the four top-ranking indicators for the courts who *do use performance indicators* are: length of proceedings (29 countries), pending cases and backlogs (28 countries), closed cases (27 countries) and incoming cases (22 countries).

A similar score can be found for the countries where, at the moment, no performance indicators are used. *If* they had performance indicators the four main important ones are: closed cases (9 countries), length of proceedings (8 countries), incoming cases (8 countries) and pending cases/backlogs (6 countries).

### **Targets for judges or courts**

From the 46 countries that replied to questions 71 and 72, 18 countries said that they have defined and used targets for judges and 24 have done so for courts. 17 countries replied that they have no targets for judges or for courts.

In **Latvia**, the setting of general targets is the responsibility of the Ministry of Justice. In **Norway**, general targets for the courts are set in terms of processing time in civil and criminal cases. For the last category of cases, the Norwegian Ministry of Justice and the police are involved too. **Switzerland** replied by saying that performance objectives for judges are used in only four *Cantons* - for courts performance indicators are used in 12 *Cantons*.

An illustration of the evaluation of the court performance and the performance of judges can be found in **Slovenia**. In this country, the Council for the Judiciary is competent for adopting criteria for the minimum expected quantity of work of judges and criteria for the quality of the performance of judges taking into account the type and complexity of cases, the method of resolving cases, cooperation with judicial advisors, assistants and other judicial personnel. The Council is entitled to monitor and to analyze the effectiveness of the individual judges (which is recorded annually).

**Table 37. Targets defined for the judges and at the courts level – possible configurations (Q71, Q72)**

| No targets for judges or at the court level | Targets defined for judges only | Targets defined at the court level only | Targets defined for judges and at the court level |
|---|---------------------------------|---|---|
| Andorra                                     | Croatia                         | Denmark                                 | Armenia   |
| Austria                                     | Greece                          | France                                  | Azerbaijan  |
| Belgium                                     | Montenegro                      | Iceland                                 | Bosnia and Herzegovina                            |
| Cyprus                                      | Romania                         | Italy                                   | Bulgaria  |
| Czech Republic                              | Spain                           | Monaco                                  | Finland   |
| Estonia                                     |                                 | Netherlands                             | Georgia   |
| Germany                                     |                                 | Slovakia                                | Hungary   |
| Ireland                                     |                                 | Sweden                                  | Poland  |
| Latvia                                      |                                 | Ukraine                                 | Serbia  |
| Lithuania                                   |                                 | UK-Northern Ireland                     | Slovenia  |
| Luxembourg                                  |                                 | UK-England and Wales                    | FYROMacedonia                                     |
| Malta                                       |                                 |   | Turkey  |
| Moldova                                     |                                 |   | UK-Scotland                                       |
| Norway                                      |                                 |   |   |
| Portugal                                    |                                 |   |   |
| Russian Federation                          |                                 |   |   |
| Switzerland                                 |                                 |   |   |
| <b>17</b>                                   | <b>5</b>                        | <b>11</b>                               | <b>13</b>   |

#### **Authorities responsible for setting the targets**

In the majority of countries, court performance is evaluated on a regular basis. However, in 6 countries, the evaluation is carried out on an occasional basis: **Armenia, Bosnia and Herzegovina, Czech Republic, Iceland, Malta and Ukraine**.

The authority responsible for the evaluation is different according to the institutional arrangements in a given country. It may be the responsibility of the Ministry of Justice, a Council of the Judiciary, an inspection authority, a Supreme Court, an external organisation or another authority. Combinations of organisations responsible for court performance evaluation are also possible. Many countries replied that there is a strong role for a (high) Council for the Judiciary (18 countries), followed by 'other' instances (19 countries), a Ministry of Justice (15 countries) or the Supreme Court (12 countries).

**Table 38. Aggregated numbers of positive responses regarding the authority responsible for the evaluation of the court performance (Q75)**

| Authority responsible for the evaluation of the performances of the courts | Council for the judiciary | Ministry of Justice | Inspection authority | Supreme Court | External audit body | Other |
|--|---------------------------|---------------------|----------------------|---------------|---------------------|-------|
| Yes  | 18                        | 15                  | 8                    | 12            | 2                   | 19    |
| Non  | 28                        | 31                  | 38                   | 34            | 44                  | 27    |
| Non-reply  | 3                         | 3                   | 3                    | 3             | 3                   | 3     |

The "other" category of bodies responsible for the evaluation encompasses a number of different possibilities. For example in **Armenia**, it is a Council of the Court Presidents. In **France**, the head of the courts, the Director of the budget and the Parliament play an important role in the assessment of the court performance. Due to the federal structure in **Germany**, various authorities are involved. At the federal level

(for the federal courts of justice), it is the Federal Ministry of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Patent Court, the Federal Ministry of Labour and Social Affairs and the Federal Ministry of Defence (for the court martial). At the regional level (*Länder*), it is mostly a Ministry of Justice of the *Land*, however it is possible that other ministries are responsible too. In **Malta**, a Commission for the Administration of Justice evaluates, whilst in **UK-Northern Ireland** the Lord Chief Justice organises the evaluation.

## 5.7 Quality for courts and the judiciary

To underline the growing importance for the development of a quality policy for the courts and the judiciary, the CEPEJ has created a special working group and has adopted a Checklist for the promotion of quality of justice and courts: a practical tool that can be used by the courts to introduce specific quality measures<sup>18</sup>. Another important area is the use of court user (satisfaction) surveys. It is expected that guidelines for the creation and implementation of such a survey are made available in the coming months.

In the Evaluation Scheme, countries were asked to provide information concerning the use of quality standards and the possibility that specialised court staff (for example a quality officer or a quality manager) are nominated to address the issue of court quality. 19 countries have replied that they have defined quality standards for the courts. In 10 countries (**Bulgaria, Croatia, Germany, Latvia, Montenegro, Norway, Romania, Slovakia, UK-Northern Ireland** and **UK-Scotland**), there are specialised staff members designated in the area of quality policies.

**Table 39. List of countries having defined quality standards and having specialised staff entrusted with the quality policy (Q76 and Q77)**

| Quality standards (organisational quality and/or judicial quality policy) formulated for the courts | Specialised court staff which is entrusted with quality policy and/or quality systems for the judiciary |
|---|---|
| Armenia   | Bulgaria  |
| Azerbaijan  | Croatia   |
| Bulgaria  | Germany   |
| Croatia   | Latvia  |
| Finland   | Montenegro  |
| Georgia   | Norway  |
| Germany   | Romania   |
| Greece  | Slovakia  |
| Hungary   | UK-Northern Ireland   |
| Latvia  | UK-Scotland   |
| Montenegro  |   |
| Netherlands   |   |
| Poland  |   |
| Romania   |   |
| Serbia  |   |
| Spain   |   |
| UK-Northern Ireland   |   |
| UK-Scotland   |   |
| UK-England and Wales  |   |
| <b>19</b>   | <b>10</b>   |

In the majority of countries, a general quality policy is created by law or refers to the presence of a system of appeal. A limited number of countries made an explicit reference to quality criteria or quality systems that have been introduced. For example, in **Finland** a quality project has been implemented in the jurisdiction of the Court of Appeal of Rovaniemi. The main working method in this project concerns a systematic collection of relevant data, discussions between judges and the organisation of meetings with stakeholders. Every year, four working groups are set up to work on specific quality issues. The outcome of the working groups is presented at a conference on quality and published in the Annual Quality Report.

<sup>18</sup> CEPEJ(2008)2.

In **Germany**, various strategies are used for quality assurance. Examples are the application of: cost-output accounting, controlling and budgeting of personnel costs, benchmarks, the Balanced Scorecard principle, the EFQM-model (European Foundation on Quality Management), workload and workflow models, surveys amongst lawyers, citizens and staff. Another part of the quality policy concerns the optimization of the need-based training for judges.

**Greece** reported that as a part of the law, inspectors draft detailed reports of the functioning of courts and judges taking into account the following quality criteria: moral conduct and character, scientific knowledge, perception and sound judgment, diligence, hard work and professional performance, the capacity to draft clear decisions and the judicial conduct in general and in particular during the hearing of cases.

A comprehensive quality system can be found in the **Netherlands**, defined as "*RechtspraakQ*". It includes a mixture of instruments to assess the quality of courts at the individual level and at a national level. Examples of measures are: court surveys, peer-reviews of judges, a periodic review of the quality of the judiciary at a national level, etc.

## 5.8 Measurement of backlog of cases

41 countries replied that a system is used to measure the backlog of cases in civil and criminal matters. In 36 countries, the backlogs are also measured for administrative disputes. In the **Czech Republic, Ireland, Portugal, Ukraine** and **UK-Scotland** there is no system for the measurement of backlogs. In five countries, backlogs are measured in civil *and* criminal cases (**Austria, Greece, Italy, Malta** and **Norway**). In the majority of other countries which apply a measurement system for backlogs in all three areas of law (civil, criminal and administrative law), information is collected on the timeframes of judicial proceedings.

**Table 40. Possible combinations of systems measuring backlogs (Q78)**

| System measuring the backlogs does not exist | System enabling to measure the backlogs in civil cases and criminal cases | System enabling to measure the backlogs in civil cases, criminal cases and administrative cases |                      |
|--|---|---|----------------------|
| Czech Republic                               | Austria   | Andorra   | Moldova              |
| Ireland                                      | Greece  | Armenia   | Monaco               |
| Portugal                                     | Italy   | Azerbaijan  | Montenegro           |
| Ukraine                                      | Malta   | Belgium   | Netherlands          |
| UK-Scotland                                  | Norway  | Bosnia and Herzegovina  | Poland               |
|  |   | Bulgaria  | Romania              |
|  |   | Croatia   | Russian Federation   |
|  |   | Cyprus  | Serbia               |
|  |   | Denmark   | Slovakia             |
|  |   | Estonia   | Slovenia             |
|  |   | Finland   | Spain                |
|  |   | France  | Sweden               |
|  |   | Georgia   | Switzerland          |
|  |   | Germany   | FYROMacedonia        |
|  |   | Hungary   | Turkey               |
|  |   | Iceland   | UK-Northern Ireland  |
|  |   | Latvia  | UK-England and Wales |
|  |   | Lithuania   |                      |
|  |   | Luxembourg  |                      |
| <b>5</b>                                     | <b>5</b>  | <b>36</b>   |                      |

With respect to the analysis of "*waiting times*" (the time within a proceeding where nothing happens with a filed case), the majority of countries (25) replied that they do not have a specific methodology. In 21 countries, there are ways of analyzing the waiting (or queuing) times of cases.

In the following table a list of countries who have replied to the question on the waiting time of court proceedings is given (Q79).

**Table 41. List of responding countries in regards to the way of analysing waiting time during the court proceedings (Q79)**

| Do you have a way of analysing waiting time during court procedures? |                        |
|--|------------------------|
| YES  | NO                     |
| Armenia  | Andorra                |
| Azerbaijan   | Austria                |
| Finland  | Belgium                |
| Georgia  | Bulgaria               |
| Hungary  | Bosnia and Herzegovina |
| Ireland  | Croatia                |
| Latvia   | Cyprus                 |
| Lithuania  | Czech Republic         |
| Luxembourg   | Denmark                |
| Malta  | Estonia                |
| Montenegro   | France                 |
| Norway   | Germany                |
| Poland   | Greece                 |
| Romania  | Iceland                |
| Serbia   | Italy                  |
| Slovenia   | Moldova                |
| Spain  | Monaco                 |
| Switzerland  | Netherlands            |
| Turkey   | Portugal               |
| UK-Northern Ireland  | Russian Federation     |
| UK-Scotland  | Slovakia               |
|  | Sweden                 |
|  | FYROMacedonia          |
|  | Ukraine                |
|  | UK-England and Wales   |
| <b>21</b>  | <b>25</b>              |

In most cases where it is possible to analyse the case backlogs and waiting times, case management information systems are used. Concrete examples are: **Finland** (a computer-based case management system provides information about the length of proceedings, if necessary for a single case), **Hungary** (a special database management system is used allowing courts to measure waiting times during court proceedings), **Luxembourg** (for the civil procedure, a computer application has been implemented - JU-MEE – and a computer application is under preparation in the criminal law field - project JU-CHA). **Malta** has a timeframe analysis system. **Spain** replied that every court can use their electronic court management system. In **Turkey**, as a part of the UYAP project, court inspectors have access to an electronic environment containing all the relevant information. As part of this environment, inspectors can retrieve information on: hearings that have not been held on the scheduled data, work schedules, a list of court files where judgments have not been written in the time demanded by the law, etc. In **UK-Northern Ireland**, waiting time is analyzed by statisticians using more than 70 statistical data bases. In **UK-England and Wales**, a diary management system in civil matters is used.

In **Slovenia**, a slightly different approach is followed: court backlogs are precisely defined by the Court Rules. For each type of case the norms for timeframes are defined.

## 5.9 Court reforms

In a period of two years (between 2004 and 2006), the landscape of the judicial map can change drastically due to court reform projects. 29 countries reported that there is a change foreseen in their court structure.

**Table 42. List of countries in regards to the replies concerning the change foreseen in the structure of the courts (Q47)**

| Is there a change in the structure of the courts foreseen (for example a reduction of the number of courts (geographic locations) or a change in the powers of courts) |                        |
|--|------------------------|
| YES  | NO                     |
| Albania  | Andorra                |
| Armenia  | Austria                |
| Azerbaijan   | Bosnia and Herzegovina |
| Belgium  | Bulgaria               |
| Croatia  | Cyprus                 |
| Denmark  | Czech Republic         |
| Estonia  | Germany                |
| Finland  | Greece                 |
| France   | Hungary                |
| Georgia  | Iceland                |
| Ireland  | Latvia                 |
| Italy  | Lithuania              |
| Malta  | Luxembourg             |
| Montenegro   | Moldova                |
| Norway   | Monaco                 |
| Poland   | Netherlands            |
| Portugal   | Slovenia               |
| Romania  | Sweden                 |
| Russian Federation   |                        |
| Serbia   |                        |
| Slovakia   |                        |
| Spain  |                        |
| Switzerland  |                        |
| FYROMacedonia  |                        |
| Turkey   |                        |
| Ukraine  |                        |
| UK-Northern Ireland  |                        |
| UK-Scotland  |                        |
| UK-England and Wales   |                        |
| <b>29</b>  | <b>18</b>              |

In a majority of countries, the reforms aim at a reduction of the number of courts or court locations (25 countries). However, in a limited number of countries, new (specialized) courts are also being introduced. In 10 countries, the reform proposals are directed at a change in courts' competences, whilst in a limited number of countries specific measures are being introduced to increase the efficiency and effectiveness of courts by introducing new working methods in the courts or the management of courts. In the following table, the main goals for court reforms are summarized.

**Table 43. Goals of some court reforms**

| Character of the reform         | Country and description   |
|---------------------------------|---|
| Change of competences of courts | <p><b>Finland:</b> transfer of land registry cases from the district courts to the National Land Survey.</p> <p><b>France:</b> changes in the judicial map (from 2007). As part of these changes, certain court jurisdictions will be modified and new court procedures introduced (for example an increase in the possibilities of initiating proceedings without a legal representative).</p> <p><b>Georgia:</b> change in the jurisdiction of courts.</p> <p><b>Portugal:</b> court reform programme aimed at changing the</p> |

|  |  |
|--|--|
|  | <p>judicial map, jurisdiction of courts and management of courts.</p> <p><b>Romania:</b> proposals concerning the change in jurisdiction of courts.</p> <p><b>Serbia:</b> modifications in the jurisdiction of courts.</p> <p><b>Switzerland:</b> introduction of two levels of instances before going to the Federal supreme court; unification of the criminal law procedure at the national level; unification of the civil law procedure at a national level; changes in the legal procedures in the <i>Cantons</i>.</p> <p><b>FYROMacedonia:</b> new administrative court; changes in the jurisdiction of the basic court of Skopje between civil and criminal cases.</p> <p><b>Turkey:</b> the existing two-tier system will be replaced by three-tier system with the operation of the regional courts of appeal – they will have at least 3 civil and 2 criminal divisions and a Chief Public Prosecutor’s Office.</p> <p><b>UK-England and Wales:</b> creation of the Tribunals Service as an executive agency of the ministry of Justice.</p>  |
| Change in number of courts (locations)                         | <p><b>Azerbaijan:</b> increase of number of courts (and judges).</p> <p><b>Croatia:</b> proposals for a reduction of the number of courts.</p> <p><b>Denmark:</b> the number of district courts is reduced from 82 to 24, to modernise the judicial system so as to ensure the highest possible level of professional competence, flexibility and service as well as efficient case administration.</p> <p><b>Estonia:</b> Two of the three existing courts of appeal will be combined for efficiency reasons.</p> <p><b>Georgia:</b> reduction of the number of first instance courts.</p> <p><b>Germany:</b> the majority of the <i>Länder</i> are not planning any changes to their court structures; the changes in the few <i>Länder</i> that have planned or already implemented changes are largely aimed at the reduction in the number of local courts (<i>Amtsgerichte</i>).</p> <p><b>Finland:</b> the reduction of number of first instance courts in foreseen by 2010 from 54 to 27.</p> <p><b>France:</b> as a part of a large reform programme, reduction in the number of courts (and locations) is foreseen.</p> <p><b>Ireland:</b> introduction of two new district courts.</p> <p><b>Italy:</b> (proposal) to reduce the number of justice of the peace offices and small courts.</p> <p><b>Norway:</b> reduction of the number of first instance courts.</p> <p><b>Poland:</b> splitting of overpopulated and overloaded courts (designed to improve access to justice and produce a better management of caseloads).</p> <p><b>Russian Federation:</b> (small) change in the number of courts (47 small composition courts will be abolished).</p> <p><b>Portugal:</b> a large court reform project is underway aimed at restructuring the number of court locations (reduction) and introducing more specialised courts.</p> <p><b>Serbia:</b> introduction of new courts and as part of a change in jurisdiction; some courts will be closed.</p> <p><b>Slovakia:</b> 7 new district courts are in operation (2007).</p> <p><b>Sweden:</b> a proposal to reduce the number of administrative courts;</p> <p><b>Switzerland:</b> proposal to create new courts of appeal in certain cantons.</p> |
| Introduction of new (specialised courts)                       | <p><b>Azerbaijan:</b> increase of the number of economic courts.</p> <p><b>Belgium:</b> introduction of new enforcement courts.</p> <p><b>Ukraine:</b> creation of 27 administrative local courts and 7 appeal administrative courts.</p>  |
| Measures to improve efficiency and effectiveness of the courts | <p><b>Montenegro:</b> network of court analysis intended to introduce proposals for shortening the length of proceedings, assignment of cases, etc.</p> <p><b>Portugal:</b> a new model on the management of courts will be introduced as a part of the reform programme.</p> <p><b>Spain:</b> several changes are being pursued to achieve a modernisation of the justice administration from the point of view of two closely related aspects: the new organisation of the Judicial Office and the use of ICT.</p>   |

## 5.10 Trends and conclusions

There is a trend by which – as a part of court reform programmes – the number of court (locations) in many countries is reduced: mostly small-sized courts are closed and merged with other courts. This as a part of efficiency measures that are introduced. On the other hand, in a limited number of countries new specialized courts are being set up.

The "*distance-gap*" between users and courts can be reduced by means of information technology and efficient court procedures for certain disputes. Interactive websites, online-forms, special proceedings for small claims and even videoconferencing can help to guarantee or improve access to justice. Many countries are investigating or using video-conferencing techniques as a part of '*e-justice*'. As a result of this the transportation of detained persons from prisons to courts v.v. can be reduced and this also presents an advantage for the protection of vulnerable people (victims) due to the fact that these people do not need to go to the court, but can be interviewed from a remote site by the courts. Even in cross-border disputes, there is a trend for using more and more videoconferencing. Parties do not need to travel to the country where the court session is taking place, but can be interviewed in their country of residence.

Improvements in registers (business registers, land registers, insolvency registers) are a primary concern for a majority of countries where these registers belong to the competence of the courts. As a part of the '*e-justice*' programme initiated by the Council of the European Union, a pilot project is underway to make it possible for - through an '*e-justice webportal*' – one country of the European Union to have access to the registers of other member states of the European Union. Even for criminal registers, it is expected that, in the future, enforcement agents, public prosecution agencies and the courts will have access to the criminal records in the different countries belonging to the territory of the European Union.

With respect to the operation of courts, there is a trend towards rationalisation and an increasing use of performance indicators. Because of an increasing need for accountability and due to the growing possibilities provided by new information technology (especially court management information systems), more and more attention is given to the collection of performance data. What is unclear is the quality of the data and to what extent information on court performance is systematically collected. More accountability and the rationalisation of the functioning of courts may also be the subject of "*quality policies*". The majority of countries replied that quality indicators have been defined and are applied. Only in a very few countries have integrated quality-control systems for the courts been introduced.

## 6. Alternative Dispute Resolution (ADR)

### 6.1 Introduction

Since the importance of the use of ADR is growing in the various European countries, the CEPEJ has decided to present this topic in a separate chapter. The use of Alternative Dispute Resolution (ADR) can contribute to improved judicial efficiency by providing citizens alternatives to regular judicial proceedings or are as part of the judicial process.

The Committee of Ministers of the Council of Europe adopted several Recommendations on mediation. Recommendation 98(1) concerns mediation in family matters, particularly in the area of divorce matters (and custody cases of children). The aim of this Resolution is not only to reduce the workload of the courts, but it is also meant to create a better and more acceptable solution for the parties and (in the case of children) to better protect the welfare of children. Recommendation 99(19) for mediation in criminal matters aims to enhance the active participation by the victim and the offender in criminal proceedings. The recommendation seeks, on the one hand, to recognise the legitimate interest of victims to have a stronger voice in dealing with the consequences of their victimisation and to communicate with the offender, and on the other hand, to encourage the offenders' sense of responsibility by offering possibilities of reintegration and rehabilitation. Mediation in civil matters is addressed in Recommendation 2002(10), where a definition is given: "*a dispute resolution process whereby parties negotiate over the issues in dispute in order to reach an agreement with the assistance of one or more mediators*". This definition is used for the purpose of this Report. Guidelines have been adopted by the CEPEJ in 2007 to aid proper implementation of these recommendations in the member states<sup>19</sup>.

Other examples of ADR are arbitration and conciliation. *Mediation* is voluntary, non-binding private dispute resolution processes in which a neutral, i.e. independent person assists the parties to try to reach a negotiated settlement in a dispute. In *arbitration* parties select an impartial third party, known as an arbitrator. Parties can present evidence and testimonies before the arbitrator who makes the (final) decision. A *conciliator* has, compared to a mediator, more powers. For example a conciliator can suggest to the parties proposals for the settlement of a dispute. A conciliator is also more proactive than a mediator, who facilitates the process of the dispute resolution.

### 6.2 Judicial mediation

In this chapter *judicial* mediation is concerned. In this type of mediation there is always intervention by a judge or a public prosecutor to advise on, decide on or/and approve the procedure. For example in civil disputes or divorce cases, judges may refer parties to a mediator if he/she believes that more satisfactory results can be achieved for *both* parties. In criminal law cases, a public prosecutor can propose that he/she mediates a case between an offender and a victim (for example to establish a compensation agreement).

In terms of judicial *mediation*, 38 countries have replied that a specific procedure exists. In only 8 countries this is not the case.

**Table 44. Existence of a judicial mediation procedure (Q 142)**

| Does a judicial mediation procedure exist? |                    |            |
|--|--------------------|------------|
| YES  |                    | NO         |
| Austria                                    | Monaco             | Andorra    |
| Belgium                                    | Montenegro         | Armenia    |
| Bosnia and Herzegovina                     | Netherlands        | Azerbaijan |
| Bulgaria                                   | Norway             | Cyprus     |
| Croatia                                    | Poland             | Estonia    |
| Czech Republic                             | Portugal           | Georgia    |
| Denmark                                    | Romania            | Moldova    |
| Finland                                    | Russian Federation | Ukraine    |
| France                                     | Serbia             |            |
| Germany                                    | Slovakia           |            |

<sup>19</sup> See [www.coe.int/cepej](http://www.coe.int/cepej)

| Does a judicial mediation procedure exist? |                      |          |
|--|----------------------|----------|
| YES  |                      | NO       |
| Greece                                     | Spain                |          |
| Hungary                                    | Sweden               |          |
| Iceland                                    | Switzerland          |          |
| Ireland                                    | FYROMacedonia        |          |
| Italy                                      | Turkey               |          |
| Latvia                                     | UK-Northern Ireland  |          |
| Lithuania                                  | UK-Scotland          |          |
| Luxembourg                                 | UK-England and Wales |          |
| Malta                                      |                      |          |
| <b>38</b>                                  |                      | <b>8</b> |

### Organisation of judicial mediation

Mediation can be a part of judicial proceedings. For example during proceedings, a judge may recommend that the parties visit a mediator. This is, for example, the case in certain disputes in the **Netherlands**. Mediators can be specially trained professionals, certified lawyers or other private (legal) professionals hired by the parties. In other situations, courts may even offer an "in-house" service - the "multi-door courthouse principle". Judges or other court staff may be nominated as a mediator and help the parties to settle a dispute. In criminal law cases, a public prosecutor may even fill the role of mediator, for example, to arrange (financial) compensation for the victim of a crime.

Most judicially approved private mediations or court-annexed mediations occur in disputes that are related to civil and commercial cases, employment dismissal cases and family law cases (i.e. divorce cases). To a much lesser extent, a judge or a public authority may be involved in resolving disputes in this area.

Even if mediation is used in administrative law cases it is, for the most part, a private mediator or a court-annexed mediation procedure that will be applied.

A public prosecutor in the role of mediator is common in several countries in *criminal proceedings*. For example, in **Germany** exists – as a part of criminal law proceedings - a victim / offender mediation procedure (TOA). The mediators in these procedures can be an independent service, a specialized centre or a victim assistance organisation. Victim/offender mediation cases can also be found in **Ireland**, where any of the parties connected to a case can suggest mediation. Similar approaches are found in **Luxembourg, Sweden, Slovenia, Croatia** and **Turkey**. In **France**, mediation in criminal matters is used for minor offences (and/or juvenile offenders); part of the proceedings may consist in a contract with the victim or in the application of alternative sanctions (instead of fines or imprisonment, for example community welfare work).

**Table 45. Organisation of judicial mediation by type of cases (Q142)**

| Organisation of judicial mediation                           | Type of cases                  | Number of positive responses |
|--|--------------------------------|------------------------------|
| <b>Approved private mediation or court annexed mediation</b> | Civil and commercial cases     | 22                           |
|  | Family law cases (ex. divorce) | 24                           |
|  | Administrative cases           | 8                            |
|  | Employment dismissals          | 20                           |
|  | Criminal cases                 | 12                           |
| <b>Private mediator approved by the court</b>                | Civil and commercial cases     | 24                           |
|  | Family law cases (ex. divorce) | 20                           |
|  | Administrative cases           | 8                            |
|  | Employment dismissals          | 18                           |
|  | Criminal cases                 | 9                            |
| <b>Public authority</b>                                      | Civil and commercial cases     | 7                            |
|  | Family law cases (ex. divorce) | 10                           |
|  | Administrative cases           | 3                            |
|  | Employment dismissals          | 11                           |
|  | Criminal cases                 | 8                            |

| Organisation of judicial mediation | Type of cases                  | Number of positive responses |
|------------------------------------|--------------------------------|------------------------------|
| <b>Judge</b>                       | Civil and commercial cases     | 8                            |
|                                    | Family law cases (ex. divorce) | 8                            |
|                                    | Administrative cases           | 3                            |
|                                    | Employment dismissals          | 9                            |
|                                    | Criminal cases                 | 5                            |
| <b>Prosecutor</b>                  | Civil and commercial cases     | 2                            |
|                                    | Family law cases (ex. divorce) | 2                            |
|                                    | Administrative cases           | 1                            |
|                                    | Employment dismissals          | 1                            |
|                                    | Criminal cases                 | 7                            |

**Comment: Denmark and UK-Northern Ireland** report that they provide mediation. However, they could not give details about the type of cases concerned and authorities involved in mediation.

When the countries which have answered saying that they have judicial mediation procedures are further examined, it is possible to create an overview by country of the areas of law or types of cases where mediation is used. In **Turkey**, judicial mediation is only available in criminal law cases. Mediation in *all* the types of disputes listed is provided in: **Austria, Croatia, Czech Republic, Hungary, Iceland, Montenegro, Poland, Serbia and Slovenia**. Various intermediary configurations of mediation by type of case are obviously possible and the details are presented in the table below.

**Table 46. Type of cases concerned by judicial mediation (Q 142)**

| Country                | Civil and commercial case | Family law cases | Administrative cases | Employment dismissals | Criminal cases |
|------------------------|---------------------------|------------------|----------------------|-----------------------|----------------|
| Turkey                 |                           |                  |                      |                       | Yes            |
| Luxembourg             |                           |                  |                      |                       | Yes            |
| FYRO Macedonia         | Yes                       |                  |                      | Yes                   |                |
| Greece                 | Yes                       | Yes              |                      |                       |                |
| Malta                  | Yes                       | Yes              |                      |                       |                |
| UK-Scotland            | Yes                       | Yes              |                      |                       |                |
| UK-England and Wales   | Yes                       | Yes              |                      |                       |                |
| Russian Federation     | Yes                       | Yes              |                      |                       | Yes            |
| Monaco                 | Yes                       | Yes              |                      | Yes                   |                |
| Norway                 | Yes                       | Yes              |                      | Yes                   |                |
| Portugal               | Yes                       | Yes              |                      | Yes                   |                |
| Slovakia               | Yes                       | Yes              |                      | Yes                   |                |
| Spain                  | Yes                       | Yes              |                      | Yes                   |                |
| Sweden                 | Yes                       | Yes              |                      | Yes                   |                |
| Switzerland            | Yes                       | Yes              |                      | Yes                   |                |
| Belgium                | Yes                       | Yes              |                      | Yes                   | Yes            |
| Bosnia and Herzegovina | Yes                       | Yes              |                      | Yes                   | Yes            |
| Finland                | Yes                       | Yes              |                      | Yes                   | Yes            |
| France                 | Yes                       | Yes              |                      | Yes                   | Yes            |
| Ireland                | Yes                       | Yes              |                      | Yes                   | Yes            |
| Italy                  | Yes                       | Yes              |                      | Yes                   | Yes            |
| Latvia                 | Yes                       | Yes              |                      | Yes                   | Yes            |
| Romania                | Yes                       | Yes              |                      | Yes                   | Yes            |
| Bulgaria               | Yes                       | Yes              | Yes                  | Yes                   |                |
| Germany                | Yes                       | Yes              | Yes                  | Yes                   |                |
| Netherlands            | Yes                       | Yes              | Yes                  | Yes                   |                |

| Country        | Civil and commercial case | Family law cases | Administrative cases | Employment dismissals | Criminal cases |
|----------------|---------------------------|------------------|----------------------|-----------------------|----------------|
| Lithuania      | Yes                       | Yes              | Yes                  | Yes                   |                |
| Austria        | Yes                       | Yes              | Yes                  | Yes                   | Yes            |
| Croatia        | Yes                       | Yes              | Yes                  | Yes                   | Yes            |
| Czech Republic | Yes                       | Yes              | Yes                  | Yes                   | Yes            |
| Hungary        | Yes                       | Yes              | Yes                  | Yes                   | Yes            |
| Iceland        | Yes                       | Yes              | Yes                  | Yes                   | Yes            |
| Montenegro     | Yes                       | Yes              | Yes                  | Yes                   | Yes            |
| Poland         | Yes                       | Yes              | Yes                  | Yes                   | Yes            |
| Serbia         | Yes                       | Yes              | Yes                  | Yes                   | Yes            |
| Slovenia       | Yes                       | Yes              | Yes                  | Yes                   | Yes            |

**Comment: Luxembourg** - Mediation in criminal law cases and in administrative law cases are provided for by the law. However only the mediation in criminal law cases can be seen as a judicial mediation as it is ordered by a judicial authority, e.g. the State Prosecutor, who can order it prior to his/her decision to prosecute.

### 6.3 Types of mediators: private mediators, judges or prosecutors, (other) public mediators

Various people can be appointed as mediators (private mediator, public authority, a judge, a prosecutor or people nominated as a part of the judicial mediation procedure). In the following table, the people/authorities responsible for mediation are listed for each country.

**Table 47. Authorities responsible for mediation procedures (Q142)**

| Country                | Private mediation or court annexed mediation | Private mediator | Public authority | Judge | Prosecutor |
|------------------------|--|------------------|------------------|-------|------------|
| Austria                | Yes  | Yes              | Yes              |       |            |
| Belgium                | Yes  | Yes              |                  |       |            |
| Bosnia and Herzegovina | Yes  | Yes              |                  |       |            |
| Bulgaria               | Yes  | Yes              |                  |       |            |
| Croatia                | Yes  | Yes              | Yes              | Yes   | Yes        |
| Czech Republic         | Yes  | Yes              | Yes              |       |            |
| Finland                | Yes  | Yes              | Yes              | Yes   |            |
| France                 | Yes  | Yes              | Yes              |       | Yes        |
| Germany                | Yes  | Yes              |                  |       |            |
| Greece                 |  | Yes              |                  |       |            |
| Hungary                | Yes  | Yes              | Yes              |       |            |
| Iceland                |  |                  |                  | Yes   |            |
| Ireland                | Yes  | Yes              | Yes              |       |            |
| Italy                  | Yes  | Yes              | Yes              | Yes   |            |
| Latvia                 | Yes  | Yes              | Yes              |       |            |
| Lithuania              | Yes  | Yes              | Yes              | Yes   |            |
| Luxembourg             | Yes  | Yes              | Yes              |       |            |
| Malta                  | Yes  | Yes              | Yes              |       |            |
| Monaco                 | Yes  |                  | Yes              | Yes   | Yes        |
| Montenegro             | Yes  |                  |                  | Yes   | Yes        |
| Netherlands            | Yes  |                  |                  |       |            |
| Norway                 |  | Yes              | Yes              | Yes   |            |
| Poland                 |  | Yes              |                  |       |            |
| Portugal               | Yes  | Yes              | Yes              |       |            |
| Romania                | Yes  | Yes              | Yes              |       |            |

| Country              | Private mediation or court annexed mediation | Private mediator | Public authority | Judge | Prosecutor |
|----------------------|--|------------------|------------------|-------|------------|
| Russian Federation   | Yes  |                  | Yes              |       | Yes        |
| Serbia               |  |                  |                  | Yes   | Yes        |
| Slovakia             |  | Yes              |                  |       |            |
| Slovenia             | Yes  |                  | Yes              |       | Yes        |
| Spain                |  |                  | Yes              | Yes   |            |
| Sweden               | Yes  | Yes              |                  | Yes   |            |
| Switzerland          | Yes  |                  |                  |       |            |
| FYRO Macedonia       |  | Yes              |                  |       |            |
| Turkey               | Yes  | Yes              |                  | Yes   | Yes        |
| UK-Scotland          | Yes  | Yes              |                  |       |            |
| UK-England and Wales | Yes  | Yes              |                  |       |            |

**Comment:** only the countries providing mediation are listed in the table (excepted **Denmark** and **UK-Northern Ireland** which have not replied to the question 142).

## 6.4 Legal aid for mediation

With growing attention paid to and use made of mediation and to guaranteeing sufficient access to justice, some countries have decided to grant legal aid for this specific form of dispute resolution. 22 countries which have declared having a mediation procedure have answered that legal aid is possible for this procedure.

**Table 48. Legal aid for mediation procedures (Q143)**

| Legal aid for mediation procedures |                        |
|------------------------------------|------------------------|
| YES                                | NO                     |
| Belgium                            | Austria                |
| Croatia                            | Bosnia and Herzegovina |
| Denmark                            | Bulgaria               |
| Finland                            | Czech Republic         |
| France                             | Germany                |
| Greece                             | Hungary                |
| Luxembourg                         | Iceland                |
| Malta                              | Ireland                |
| Monaco                             | Italy                  |
| Montenegro                         | Latvia                 |
| Netherlands                        | Lithuania              |
| Norway                             | Poland                 |
| Russian Federation                 | Portugal               |
| Serbia                             | Romania                |
| Slovenia                           | Slovakia               |
| Spain                              | Switzerland            |
| Sweden                             |                        |
| Turkey                             |                        |
| FYRO Macedonia                     |                        |
| UK-Northern Ireland                |                        |
| UK-Scotland                        |                        |
| UK-England and Wales               |                        |
| <b>22</b>                          | <b>16</b>              |

Only those countries which have a mediation procedure are included in this table.

## 6.5 Accredited mediators and number of cases

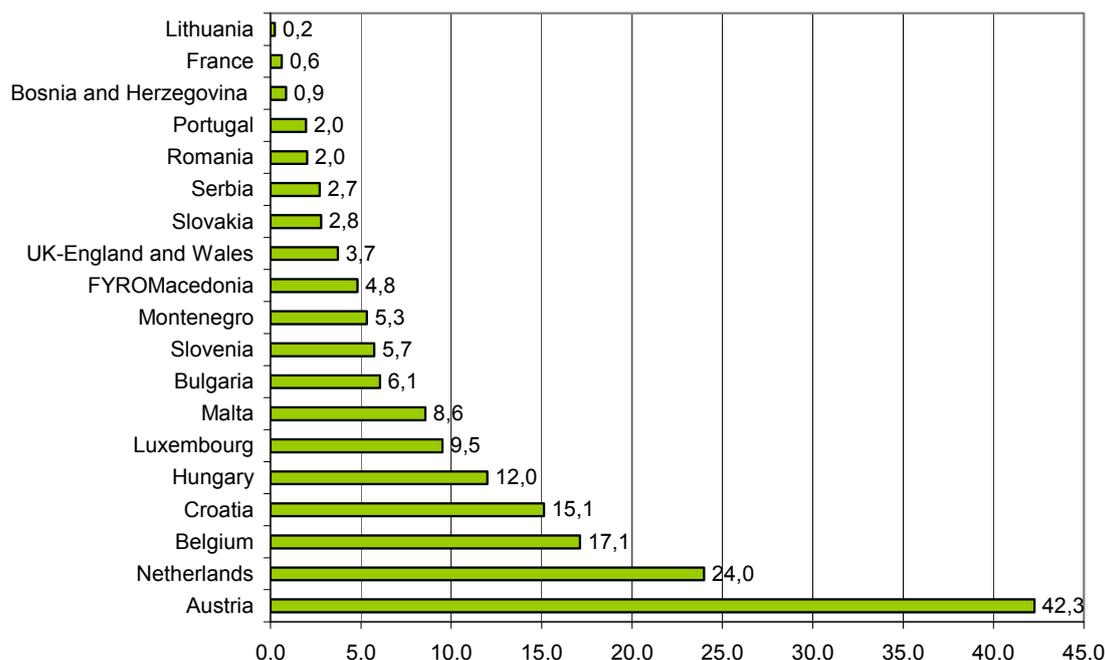
To have an overview of the number of cases and mediators that are involved in mediation, countries were invited to submit details on this issue. Only a limited number of countries were able to present figures on the number of accredited mediators (19 countries). Information is available on the number and the type of cases involved in mediation procedures. In the **Netherlands**, there are a large number of mediation cases relating to family law (divorce) and to dismissal from employment. In **Austria, France, Hungary, Poland** and **Slovenia** mediation is often used in criminal law cases.

**Table 49. Number of accredited mediators and mediation procedures (Q144, Q145)**

| Country                | Accredited mediators |                         | Total number of judicial mediations in: |              |                      |                       |                |
|------------------------|----------------------|-------------------------|---|--------------|----------------------|-----------------------|----------------|
|                        | Number               | Per 100 000 inhabitants | Civil cases                             | Family cases | Administrative cases | Employment dismissals | Criminal cases |
| Austria                | 3500                 | 42,3                    |   |              |                      |                       | 44959          |
| Belgium                | 1800                 | 17,1                    |   |              |                      |                       |                |
| Bosnia and Herzegovina | 33                   | 0,9                     | 352                                     |              |                      | 198                   |                |
| Bulgaria               | 465                  | 6,1                     |   |              |                      |                       |                |
| Croatia                | 672                  | 15,1                    |   |              |                      |                       |                |
| Czech Republic         |                      |                         |   |              |                      |                       | 700            |
| France                 | 395                  | 0,6                     |   | 2460         |                      |                       | 28555          |
| Hungary                | 1207                 | 12,0                    | 1131                                    |              |                      |                       | 1822           |
| Latvia                 |                      |                         |   |              |                      |                       | 317            |
| Lithuania              | 8                    | 0,2                     | 2                                       |              |                      |                       |                |
| Luxembourg             | 45                   | 9,5                     |   |              |                      |                       |                |
| Malta                  | 35                   | 8,6                     | 10                                      | 1322         |                      |                       |                |
| Monaco                 |                      |                         | 1                                       | 11           |                      |                       |                |
| Montenegro             | 33                   | 5,3                     |   |              |                      |                       |                |
| Netherlands            | 3917                 | 24,0                    | 2300                                    | 11000        | 1000                 | 9000                  |                |
| Norway                 |                      |                         | 1972                                    |              |                      |                       |                |
| Poland                 |                      |                         | 1448                                    | 318          |                      | 34                    | 5052           |
| Portugal               | 208                  | 2,0                     | 1706                                    | 13           |                      |                       |                |
| Romania                | 440                  | 2,0                     | 307                                     | 75           |                      | 40                    | 384            |
| Serbia                 | 202                  | 2,7                     | 1075                                    | 1            |                      | 48                    | 5              |
| Slovakia               | 151                  | 2,8                     |   |              |                      |                       |                |
| Slovenia               | 115                  | 5,7                     |   |              |                      |                       | 1001           |
| FYROMacedonia          | 98                   | 4,8                     |   |              |                      |                       |                |
| UK-England and Wales   | 2000                 | 3,7                     |   |              |                      |                       |                |

In the following diagram, the number of accredited mediators per 100.000 inhabitants is given. In particular, in **Belgium, Croatia, the Netherlands** and **Austria** there are large numbers of mediators. For the **Netherlands**, the high figures can be explained by the fact that the Ministry of Justice introduced mediation several years ago through specific ADR programmes, especially in the area of civil law (commercial cases), family law (divorce cases) and administrative law. The majority of the accredited mediators in the Netherlands are lawyers who have received a special training in mediation. Citizens are encouraged to use mediation and if they do not have sufficient financial resources they can apply for legal aid. More details concerning mediation procedures are described and explained in a separate table in the appendix.

**Figure 28. Number of accredited mediators per 100.000 inhabitants in 2006**



## 6.6 Conciliation and arbitration

Conciliation and/or arbitration are also used in certain countries as alternative dispute resolution. 16 countries said that they provide a possibility for conciliation (these ADR are often much more used than mediation). Sometimes it is a part of court proceedings and conducted by judges (for example, this is the case of **Luxembourg, Switzerland** and “**the former Yugoslav Republic of Macedonia**”). In other situations, there are special conciliation boards or tribunals created. An area where conciliation is often used is for the protection of consumer rights. If, for example, a consumer is not satisfied with a certain product, after-sales service or other services that have not been supplied, he or she may complain to a conciliation board. Another area where conciliation is mentioned is that of family law, especially for divorce or where custodial rights over children are concerned (**Finland, Latvia, Sweden** and **UK-England and Wales**). Other examples of areas where conciliation is used are labour disputes (**France** and **Hungary**), telecom disputes (**Austria**), housing disputes (**Austria**), commercial cases, banking disputes and or insurance disputes (**Italy** and **Sweden**).

Compared to conciliation, arbitration was more often reported as one of the alternative dispute resolution mechanisms available. In at least 33 countries, arbitration is possible. In all cases, it is related to commercial disputes i.e. disputes concerning contracts (the interpretation and enforcement of contracts, the (non) delivery of services or goods) and (intellectual) property rights. In most of the countries, at a national level, there is an arbitration tribunal responsible for the arbitration of national commercial disputes. For commercial disputes between undertakings based in different countries, different rules of arbitration apply. Often the UNCITRAL Model Law on International Commercial Arbitration is used as a main source of reference. Other areas where arbitration is used and that were mentioned are: disputes related to damage caused by traffic accidents (**Malta, Portugal**), sporting disputes (**Hungary**), urban rentals (**Portugal**), employment disputes (**Hungary, Serbia**), banking disputes (**Armenia**) and disputes related to lawyers (**Austria**). See table.

**Table 50. Countries reporting the possibility of conciliation or arbitration**

| Conciliation | Type of disputes/authority                 | Arbitration            | Type of disputes/authority  |
|--------------|--|------------------------|---|
|              |  | Armenia                | Banks, commercial cases, NGO's                                    |
| Austria      | Disputes on accommodation, telecom matters | Austria                | Tribunals for centres of lawyers association (incl. conciliation) |
|              |  | Belgium                |   |
|              |  | Bosnia and Herzegovina |   |
|              |  | Croatia                | Commercial cases  |

| Conciliation                | Type of disputes/authority  | Arbitration                 | Type of disputes/authority  |
|-----------------------------|---|-----------------------------|---|
|                             |   | Czech Republic              | Property cases  |
|                             |   | Denmark                     |   |
|                             |   | Estonia                     | Commercial cases  |
| Finland                     | Family conciliation (municipal social welfare authorities); divorce                 |                             |   |
| France                      | Labour disputes   | France                      |   |
|                             |   | Georgia                     | Property cases, commercial cases  |
| Germany                     | For example consumer cases  | Germany                     | Commercial cases  |
|                             |   | Greece                      |   |
| Hungary                     | Consumer rights, labour cases   | Hungary                     | Commercial cases, sport cases, labour cases   |
| Ireland                     | Labour disputes   |                             |   |
| Italy                       | Commercial cases, banking cases   |                             |   |
| Latvia                      | Dissolution or annulment of a marriage  | Latvia                      |   |
|                             |   | Lithuania                   | Commercial cases  |
| Luxembourg                  | By judges   | Luxembourg                  |   |
|                             |   | Malta                       | Traffic accident cases (not exceeding 11.600 Euro and bodily harm), commercial cases  |
|                             |   | Moldova                     | Commercial cases, (intellectual) property cases   |
| Monaco                      | Civil cases   | Monaco                      | Civil and commercial cases  |
|                             |   | Montenegro                  | Commercial cases  |
|                             |   | Norway                      |   |
|                             |   | Portugal                    | Commercial disputes, private/public work sector, intellectual property, urban rentals, motor vehicle accidents, consumers and sport |
| Romania                     | Commercial cases  | Romania                     | Commercial cases  |
| Serbia                      | Collective labour disputes  | Serbia                      | Individual labour disputes  |
|                             |   | Slovakia                    | Commercial disputes   |
| Slovenia                    | Offered by NGO's  | Slovenia                    | Offered by NGO's  |
|                             |   | Spain                       | Commercial disputes   |
| Sweden                      | Consumer disputes, insurance cases, family counselling (and cooperation discussion) | Sweden                      | Commercial disputes   |
| Switzerland                 | By judges   | Switzerland                 | Commercial disputes   |
| FYRO Macedonia              | Done by judges  | FYRO Macedonia              | Commercial cases (by Commercial chamber)  |
|                             |   | Ukraine                     | Property rights, commercial cases   |
| UK-England and Wales        | Family law cases (concerning children)  | UK-England and Wales        | Commercial cases  |
| <b>16 countries replied</b> |   | <b>33 countries replied</b> |   |

## 6.7 Trends and conclusions

Compared with the 2006 Edition of the Evaluation report, more information is available on mediation. There is a trend by which mediation is applied in a growing number of European countries: in 38 countries mediation procedures are used. In civil law cases (commercial disputes, family law, and employment dismissal cases), it is often a private mediator (for example a lawyer) or a judge who mediates. Where administrative law is a separate area of law, it is often a private mediator who intervenes in disputes between citizens and the government. With respect to criminal law cases there can be various types of people responsible for the mediation: a judge, a prosecutor or a private mediator.

To guarantee access to justice in mediation procedures, a legal aid scheme may be introduced. In 22 countries, it is possible to receive legal aid in mediation procedures.

From the countries where quantitative information was received concerning the number of accredited mediators and the type of mediation cases, it can be concluded that in **Austria, Belgium, Croatia** and the **Netherlands**, followed by **Hungary, Luxembourg** and **Malta** there is a high number of accredited mediators (per 100.000 inhabitants). The areas where judicial mediation is used most are: criminal law cases, family law (divorce) and civil cases (in general). In the **Netherlands** large numbers of employment dismissal cases are settled with mediation.

Other forms of alternative dispute resolution concerned conciliation and arbitration. Areas where conciliation is often used are consumer disputes and family disputes. Arbitration is used in at least 33 countries and is mainly used in the field of commercial disputes (contracts and (intellectual) property rights).

## 7. Judges

### 7.1 Introduction

A judge is a person entrusted with giving or taking part in a judicial decision opposing parties who can be either physical or moral entities, during a trial. This definition should be viewed in the light of the European Convention of Human Rights and the case law of the European Court of Human Rights. In particular: "*the judge decides, according to the law and following organised proceedings, on any issue within his/her jurisdiction*".

To better take into account the diversity in the status and functions which can be linked with the word "*judge*", three types of judges have been defined in the CEPEJ's scheme. *Professional judges* are described in the explanatory note of the evaluation scheme (Q 49) as "those who have been trained and who are paid as such (and where their main function is to work as a judge)". *Professional judges who sit in a court on an occasional basis* (and who are paid as such). *Non-professional judges* (volunteers who are compensated for their expenses) give binding decisions in courts (Q52).

For these three categories, and in order to better assess the real activity, member states have been requested to specify the posts effectively occupied and in full time equivalent (ftp) for professional judges, practicing full time or on an occasional basis.

**Table 51. Type and number of judges in 2006 (Q49, Q50 and Q52)**

| Country                | Professional judges (fte) |                         | Professional judges occasionally presiding over a hearing (gross figure) |                         | Non-professional judges (lay judges) (gross figure) |                       | Nbr of non professional judges / Nbr of professional judges |
|------------------------|---------------------------|-------------------------|--|-------------------------|---|-----------------------|---|
|                        | Number                    | Per 100.000 inhabitants | Number   | Per 100.000 inhabitants | Number  | Per 100.000 habitants |   |
| Andorra                | 22                        | 27,1                    | 2  | 2,5                     |   |                       |   |
| Armenia                | 179                       | 5,6                     |  |                         |   |                       |   |
| Austria                | 1 674                     | 20,2                    |  |                         |   |                       |   |
| Azerbaijan             | 494                       | 5,8                     |  |                         |   |                       |   |
| Belgium                | 1 567                     | 14,9                    |  |                         | 2 557   | 24,3                  | 1,63  |
| Bosnia and Herzegovina | 846                       | 22                      | 58   | 1,5                     | 167   | 4,3                   | 0,20  |
| Bulgaria               | 1 821                     | 23,7                    |  |                         |   |                       |   |
| Croatia                | 1 924                     | 43,3                    |  |                         | 5 268   | 118,6                 | 2,74  |
| Cyprus                 | 98                        | 12,7                    |  |                         |   |                       |   |
| Czech Republic         | 2 995                     | 29,1                    |  |                         | 6 893   | 67,0                  | 2,30  |
| Denmark                | 359                       | 6,6                     |  |                         |   |                       |   |
| Estonia                | 239                       | 17,8                    |  |                         | 802   | 59,7                  | 3,36  |
| Finland                | 901                       | 17,1                    |  |                         | 3 689   | 70,2                  | 4,09  |
| France                 | 7 532                     | 11,9                    | 570  | 0,9                     | 3 299   | 5,2                   | 0,44  |
| Georgia                | 272                       | 6,2                     |  |                         |   |                       |   |
| Germany                | 20 138*                   | 24,5                    | na   |                         | 98 002  | 119,0                 | 4,87  |
| Greece                 | 3 163                     | 28,4                    |  |                         |   |                       |   |
| Hungary                | 2 838                     | 28,2                    |  |                         | 4 382*  | 43,5                  | 1,54  |
| Iceland                | 47                        | 15,7                    | na   |                         |   |                       |   |
| Ireland                | 132                       | 3,1                     |  |                         |   |                       |   |
| Italy                  | 6 450                     | 11,0                    |  |                         | 7 321   | 12,5                  | 1,14  |
| Latvia                 | 510                       | 22,2                    |  |                         | 2 525   | 110,0                 | 4,95  |
| Lithuania              | 732                       | 21,5                    |  |                         |   |                       |   |
| Luxembourg             | 174                       | 36,8                    |  |                         | 127   | 26,9                  | 0,73  |
| Malta                  | 34                        | 8,3                     |  |                         |   |                       |   |
| Moldova                | 431                       | 12,0                    |  |                         |   |                       |   |
| Monaco                 | 18                        | 54,5                    | 14   | 42,4                    | 118   | 357,6                 | 6,56  |
| Montenegro             | 231                       | 37,2                    |  |                         |   |                       |   |
| Netherlands            | 2 072                     | 12,7                    | 900  | 5,5                     |   |                       |   |
| Norway                 | 512                       | 10,9                    | 61   | 1,3                     | 70 000  | 1 495,4               | 136,72  |
| Poland                 | 9 853                     | 25,8                    |  |                         | 43 613  | 114,4                 | 4,43  |
| Portugal               | 1 840                     | 17,4                    |  |                         | 454   | 4,3                   | 0,25  |
| Romania                | 4 482                     | 20,7                    |  |                         |   |                       |   |

| Country              | Professional judges (fte) |                         | Professional judges occasionally presiding over a hearing (gross figure) |                         | Non-professional judges (lay judges) (gross figure) |                       | Nbr of non professional judges / Nbr of professional judges |
|----------------------|---------------------------|-------------------------|--|-------------------------|---|-----------------------|---|
|                      | Number                    | Per 100.000 inhabitants | Number   | Per 100.000 inhabitants | Number  | Per 100.000 habitants |   |
| Russian Federation   | 30 539                    | 21,5                    |  |                         |   |                       |   |
| Serbia               | 2 506                     | 33,8                    |  |                         | 4 678   | 63,1                  | 1,87  |
| Slovakia             | 1 337                     | 24,8                    |  |                         | na  |                       |   |
| Slovenia             | 1 002                     | 50,0                    |  |                         | 4 065   | 202,9                 | 4,06  |
| Spain                | 4 437                     | 10,1                    | na   |                         | 7 681   | 17,6                  | 1,73  |
| Sweden               | 1 270                     | 13,9                    |  |                         | 8 500   | 93,3                  | 6,69  |
| Switzerland          | 1 229                     | 16,5                    | 697*   |                         | 2 613*  |                       |   |
| FYROMacedonia        | 624                       | 30,6                    |  |                         | 2 480   | 121,7                 | 3,97  |
| Turkey               | 6 593                     | 9,0                     |  |                         |   |                       |   |
| Ukraine              | 6 893                     | 14,8                    |  |                         |   |                       |   |
| UK-Northern Ireland  | 371                       | 21,3                    |  |                         | 788   | 45,2                  |   |
| UK-Scotland          | 227*                      | 4,4                     |  |                         | 749   | 14,6                  | 3,30  |
| UK-England and Wales | 3 774                     | 7,0                     | 8920   | 16,6                    | 28 865  | 53,7                  | 7,65  |

\*see comments below

Table 51 includes information on the number of professional judges, judges sitting in court on an occasional basis and non professional judges. In the countries for which the data are not given in this table, the categories of judges sitting on an occasional basis and non professional judges do not exist.

For 3 countries (**Spain, Germany, Iceland**) the data on the number of judges sitting on an occasional basis are not available. Data from **Switzerland** on the number of judges sitting on an occasional basis and non professional judges have been given by some of the cantons (see comments below). **Slovakia** has not been able to provide information on non professional judges.

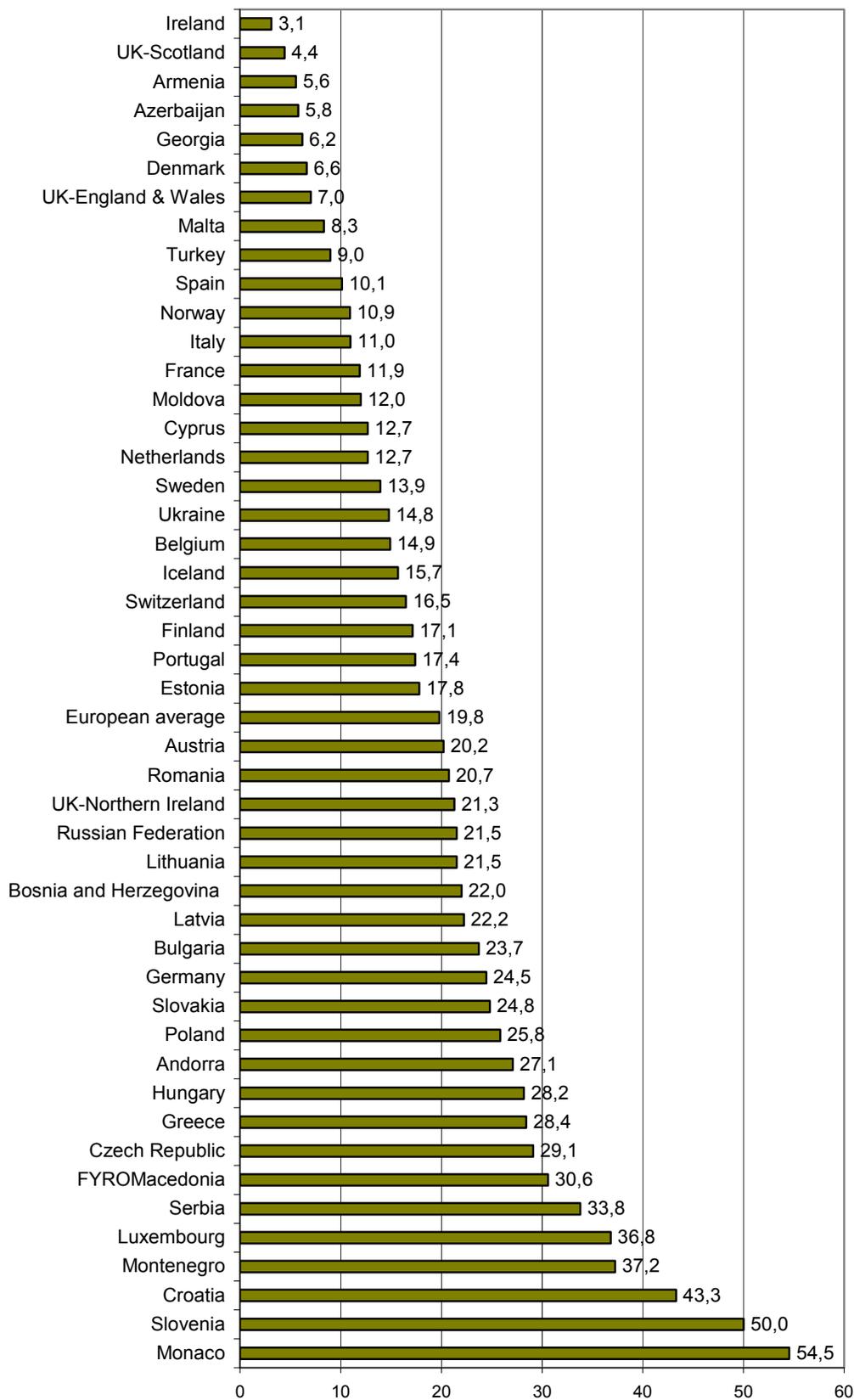
## 7.2 Professional judges

Professional judges can be defined as judges who have been recruited, trained and are paid to practice solely as a judge.

The number of professional judges presiding in a jurisdiction per 100.000 inhabitants varies considerably according to countries and judicial systems.

A distinction can be made, at the two extremes, between the systems where all judges are professional (**Andorra, Armenia, Austria, Azerbaijan, Bulgaria, Cyprus, Denmark, Georgia, Greece, Ireland, Iceland, Lithuania, Malta, Montenegro, Moldova, Netherlands, Romania, Russian Federation, Turkey, Ukraine**) and the systems of the **United Kingdom** where the role of the *lay judges / magistrates* is essential in all legal fields (see infra).

**Figure 29. Number of professional judges sitting in courts (fte) per 100.000 inhabitants in 2006 (Q49)**



## Comments

**Azerbaijan:** As a result of legal reforms in 2006 the number of courts and judges increased: the number of courts of appeal has been increased from 3 to 6, of specialised courts from 16 to 19 (by increasing the number of economic courts). The number of judges has been increased from 338 to 494.

**Belgium:** The difference between 2004 and 2006 data is due to the fact that in 2004 presiding judges and public prosecutors were taken as a whole.

**Croatia:** Out of 1924 professional judges sitting in courts there are 256 presidents of the courts (in the courts with more than 20 judges, the president of the court can perform only duties of court management) and 300 are investigative judges.

**Finland:** 901 - Number of judgeship man-years: 225 man-years (Administrative Courts, Supreme Administrative Court, Market Court and Insurance Court), 480 man-years (District Courts), 175,4 man-years (Courts of Appeal), 18,6 man-years the (Supreme Court) and the Labour Court 2 man-years.

**Georgia:** As regards to the reduction of the number of judges and court staff, this is of no surprise since a large scale judicial reform has been launched since 2005. The main goal of the reform is to establish strong, independent and effective judiciary. As a result of the mentioned reform, a certain number of judges were dismissed on the bases of disciplinary prosecution, some even charged with corruption offences. All this contributed to the reduction of the number of judges in 2006. However, due to periodical competitions held for filling the existing vacancies, the number of judges substantially increased in 2007. In addition, the process of enlargement of first instance district courts into much bigger city courts that ensures more effective administration of justice has been launched. This mostly contributed to the reduction of court staff.

**Germany:** Figures given in the response to question Q49 include the number of part-time judges.

**Greece:** From the Directorate of Court Function and Judiciary of the Ministry of Justice, the following figures can be provided for the period 2004-2006: Judicial Functionaries sitting in court in 2006: Civil and Criminal Courts Judges - 1.625, Administrative Courts – 913, District Courts - 625.

**Ireland:** All judges work on a full-time basis.

**Latvia:** Number of professional judges for the year 2006 is: 510 on 31.12.2004, the number was 381. In the previous Evaluation the number of professional judges was indicated on 03.01.2005. – 384. The increase is related to establishment of Administrative courts in 2004. In 2004 the Administrative courts were not completely commissioned. Also the increase is related to development of investigation judges.

**Lithuania:** Number of judges: in district courts – 469, regional courts – 144, Court of Appeal – 27, Supreme Court – 34, regional administrative courts – 43, Supreme Administrative Court – 15. The quantity of civil and administrative cases have increased, therefore the number of judges in the courts has increased.

**Luxembourg:** Luxembourg's judicial system does not know professional judges who work occasionally and who are paid in consequence. The administrative jurisdictions are endowed with deputies, recruited among magistrates from the judiciary system. Five deputies bear the title of deputy counsellor for the Administrative court. Nine magistrates bear the title of deputy judge for the Administrative court.

**Malta:** In the replies of 2004 had only been given the amount of Judges (18); in the last reply have been included the Magistrates who have the same function but different legal competences

**Russian Federation:** The institution of the non-professional judges was abolished in 2005. At present there are only professional judges. To the submitted number 23172 plus 7367 (justices of the peace) Justices of the Peace are judges of general jurisdiction in the Russian Federation and fulfill their duties on the professional basis.

**Slovenia:** It should also be mentioned, that not all of the 1002 judges are actually judging – within this number are also judges who are absent due to e.g. maternity leave (one should bear in mind that 75% of judges are women) and that maternity leave which can effectively last up to 2 years; an estimation of the Ministry of justice is, that there are between 15% and 20% of judicial posts, that are in fact vacant due to this reasons.

**Sweden:** Out of the professional judges: 966 are professional regular judges, the rest are assistant or associate judges. Approximately 300 assistant judges that exclusively work with preparing cases for the regular judges are excluded. (This category of judges was included in the figures of the 2004-2006 evaluation).

**Switzerland:** All the cantons and the Confederation have replied to question 49.

**Turkey:** This number covers the number of judges working in the Court of Cassation, Constitutional Court and in field of administrative judiciary.

**(UK) Northern Ireland:** Northern Ireland (UK) Judiciary: Lord Chief Justice – 1, Lord Justices of Appeal -3, High Court Judges – 10, Masters of Supreme Court - 7, Official Solicitor - 1, County Court Judges -17, District Judges - 4, Resident Magistrates (Includes 2 part-time RMs ) - 21 , Chief Social Security and Child Support Commissioner - 1, Social Security and Child Support Commissioner - 1, Coroners - 3, Lay Magistrates - 243

Deputy Judiciary: Deputy High Court Judge - 1, Deputy County Court Judges - 31, Deputy Resident Magistrates -19, Deputy District Judges - 5, Deputy Social Security Commissioners – 3. Upon appointment all 4 District Judges were also appointed as Deputy County Court Judges and are therefore included in these figures.

**(UK) Scotland:** 34 Supreme Court judges, 136 full time sheriffs, 4 stipendiary magistrates. These figures are approximate and taken from 2004.

Here again, the ratios for the small countries must be addressed with care, such as for **Monaco**, where the population structure (small number of inhabitants), has the impact on the level of the indicator (scale effect).

Comparing the number of professional judges with the number which appears in the 2006 Edition 2006, a quite significant decrease can be seen for **Denmark, Estonia, Georgia, Belgium** and **Sweden**. For the three first countries, structural operational reforms have led to a reduction in posts. For the two latter

countries, the 2004 data included other categories (prosecutors in **Belgium** and deputy judges in **Sweden**); this has been corrected here.

Increases in the number of judges are the result, in the majority of cases, of structural changes in the judicial system: for instance the setting up of new courts (**Azerbaijan, Latvia, Portugal** and **Turkey**). **Lithuania** has increased the number of posts to deal with increasing demand on the courts. For the year 2006, **Slovakia** included the posts which remain vacant.

To sum up: of 46 states or entities, 5 have seriously increased the number of professional judges, 3 have decreased their judicial staff; in 12 countries there have been almost no change in the number of judges. In the other states (22), increases or decreases remain limited.

### 7.3 Professional judges sitting occasionally

In order to tackle a legitimate demand from their citizens for a “*neighbourhood*” and rapid justice, some countries have reinforced the number of judges by bringing in judges who occasionally preside over a case.

In other countries, these professional judges are sometimes called “*non presiding judges*” or “*deputy judges*”. This option is available in common-law countries to lawyers who are to become full-time judges. They are therefore experienced legal professionals who have a solid basis of legal training and who have already benefited from specific training.

Practicing as a judge usually means a limited number of court sessions throughout the month: maximum 6 sessions of 4 days per month for the neighbourhood judges in **France** and between 15 and 30 days per year for **UK-England and Wales**.

Another major characteristic is in the way these judges are paid, based on the number of sessions they have undertaken throughout the month.

**Table 52. Comparison between the number of full time and occasional professional judges (Q51)**

| <b>Countries</b>       | <b>Number of “permanent” judges (fte)</b> | <b>Number of “occasional” judges (gross figure)</b> |
|------------------------|---|---|
| Andorra                | 22  | 2   |
| Bosnia and Herzegovina | 846                                       | 58  |
| France                 | 6728                                      | 570   |
| Germany                | 20138                                     | na  |
| Iceland                | 47  | na  |
| Monaco                 | 18  | 14  |
| Netherlands            | 2072                                      | 900   |
| Norway                 | 512                                       | 61  |
| Spain                  | 4437                                      | na  |
| Switzerland            | 1229                                      | 697*  |
| UK-England and Wales   | 3774                                      | 8920  |
| UK-Scotland            | 227                                       | 80  |

#### Comments

**France:** Proximity judges work approx. 6,5 days per month. Since the 1<sup>st</sup> of January 2005, proximity judges work in the Magistrates’ courts. Where there are no proximity judges, the district judges give the decision as proximity judges.

**Germany:** There are no figures available for this question. Number of professional judges includes the number of part-time occasional judges.

**Iceland:** 1 month job.

**Netherlands:** Approximation.

**Spain:** 551,26 p/day The figure refers to replacement or substitute Judges, who might act, depending on the cause that leads to their call, during a certain period of time (ie. illness, maternity leave, etc).

**Switzerland:** The number of occasional professional judges corresponds to the number of persons given by 22 cantons and the Confederation.

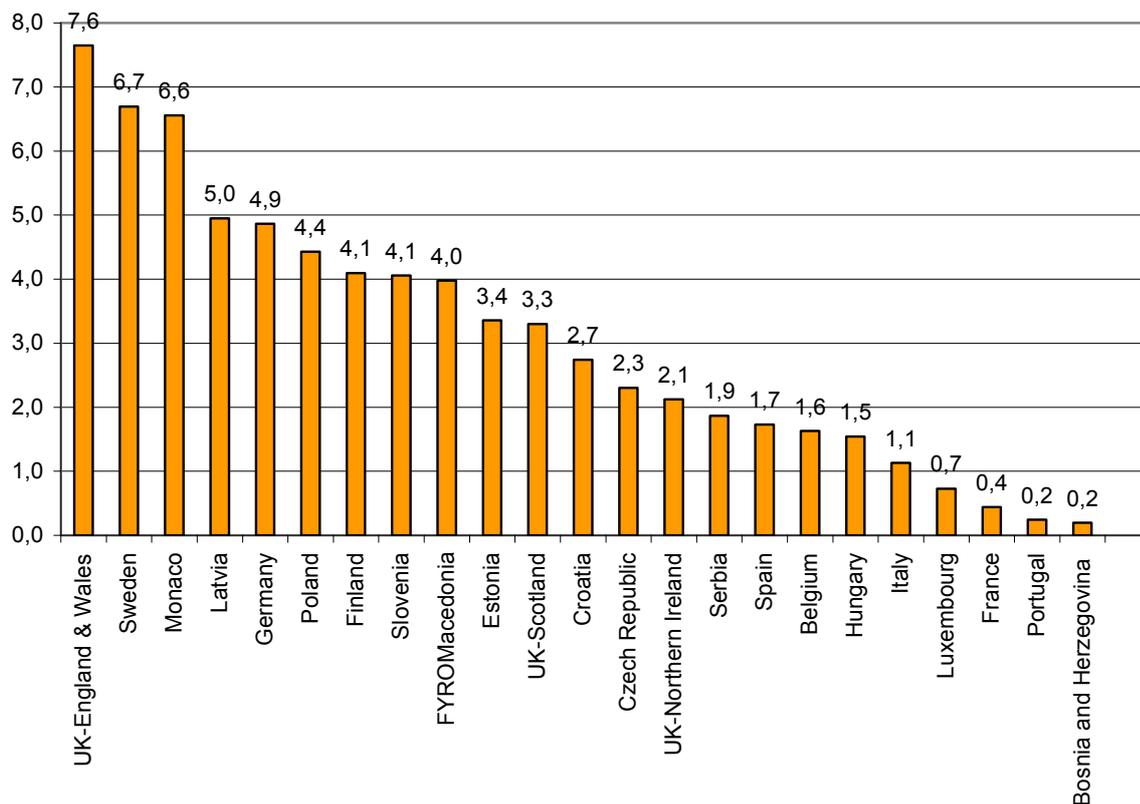
**UK-England and Wales:** The inclusion of the Tribunal Service has increased the figures since the last evaluation. Those sitting on an occasional basis: Recorders: 1,401, Deputy District Judges: 840, Deputy District Judges: 158 Fee paid members of the Tribunal Service: 6521

**UK-Scotland:** part time sheriffs (80 in 2006).

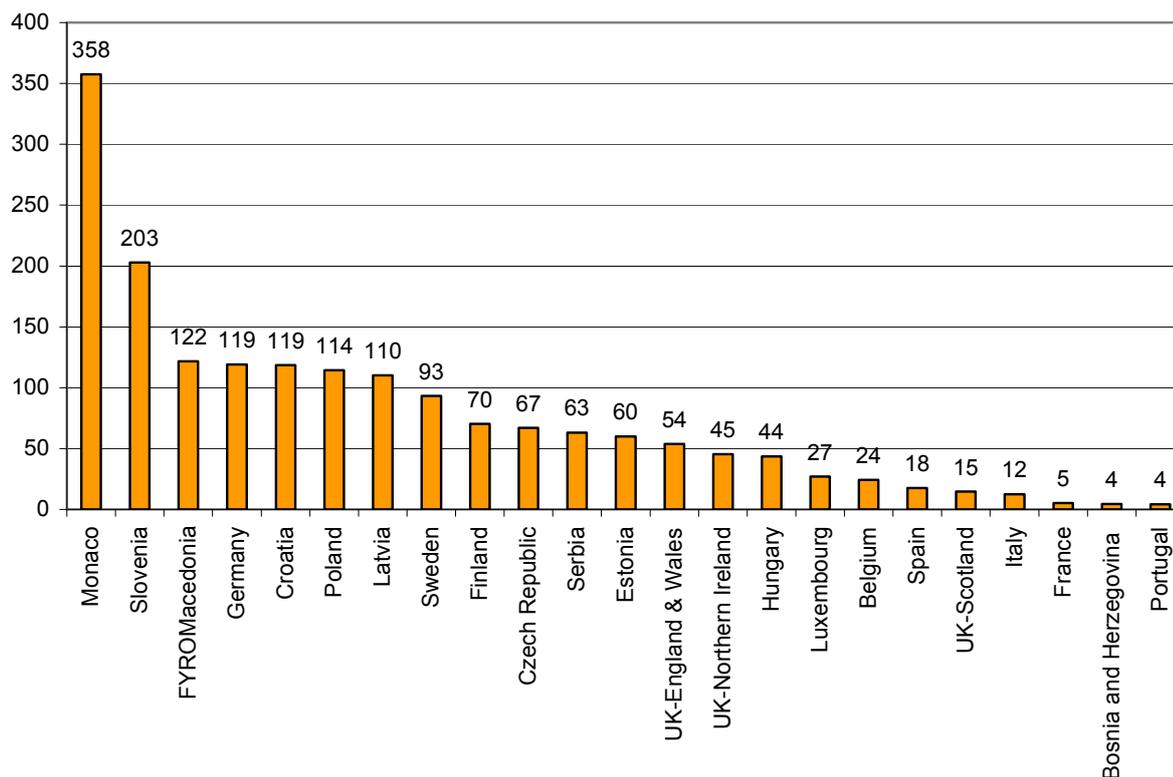
Among the 9 countries which reported using professional judges occasionally, the number of “occasional” judges is generally low. Comparisons with professional judges should be made with care as professional judges are considered in full time equivalent whereas judges sitting on an occasional basis are counted per capita. However, it is of note that in **Monaco**, the **Netherlands** and **Switzerland** judges sitting on an occasional basis essential contribute to solving cases. In **UK-England and Wales**, part-time judges are more common than professional judges, which is a particularity of the common law countries.

## 7.4 Non-professional judges

Figure 30. Number of non-professional judge per professional judge in 2006 (Q52)



**Figure 31. Number of non-professional judges per 100.000 inhabitants in 2006 (Q 52)**



**Comments**

**Belgium:** Deputy counsellor Courts of Appeal – 114, Deputy judges - 1524, Consular judges– 939.

**Bosnia and Herzegovina :** Lay judges play a role in the judicial system, due to application of previous civil and criminal procedural laws used to play. However, most of the procedural laws changed in 2003 in a way that participation of lay judges is not required any longer, but due to a backlog of cases, their participation is still needed.

**Croatia:** Lay judges participate in delivering the court decisions only in criminal proceedings, but they are not authorised to make independent decisions. Lay judges are remunerated for their work. Municipal courts sit in panels of one judge and two lay judges. First instance county courts sit in panels of one judge and two lay judges, in panels of two judges and three lay judges when considering offences punishable by imprisonment for a term of more than fifteen years or by long-term imprisonment. County courts sit in panels of two judges and three lay judges when they decide at a trial at second instance.

**Czech Republic:** There are 6.893 lay judges, who sit usually 20 calendar days in a year.

**Estonia:** The number of 802 lay judges, is the maximum number of lay judges courts can nominate. Most of them participate very seldom in the judicial process. Lay-judges are mainly used in general procedures in criminal cases. The number of proceedings in which lay-judges are compulsory have been reduced. The amount of lay-judges has been reduced on account of this.

**Finland:** There are 3689 lay members in District Courts.

**Germany:** It is assumed that the question refers to all citizens who work as non-professional judges alongside professional judges and thus can make legally binding decisions. This composition of the bench exists in varying shapes at criminal courts, administrative courts, labour courts, financial courts, constitutional courts and the chambers for commercial cases at the civil cases section of ordinary jurisdiction. There are 35 995 lay judges as main lay judges (Hauptschöffen) at criminal courts. Additionally there is an equally large number of substitute lay judges (Hilfsschöffen). These will be called when the main lay judge is unavailable, be it for reasons of illness, relocation to another district or bias.

**Italy:** 3403 Justices of the Peace, 2066 honorary judges in the courts with non permanent post, 402 non professional judges in the courts, 359 Component private at the minors section of the courts of appeal, 640 Component private at the courts of minors, 451 Others

**Hungary:** The increase in the number of non-professional judges between 2004 and 2006 can be justified by the fact that the 2006 figure includes the new category of part-time working judges as well.

**Latvia:** Number of lay judges for the year 2006 of 2.525 is the number of elected lay judges. For the year 2004 the number of lay judges was 4.058, which corresponded to the number of determined lay judges’ positions. This explains the big difference.

**Norway:** As stated in the last evaluation round, the total number is approximatively 70 000

**Portugal:** This includes the number of social judges in actual service. This number refers to the people designated as social judges, as published in the Official Journal. Being on those lists does not mean actually participating on the judicial

decision making but only on the possibility of being called to participate in very specific proceedings. It is impossible to determine the quantity of non-professional judges who have actually participated in judgments in 2004.

**Russian Federation:** The institution of the non-professional judges was abolished in 2005. At present there are only professional judges

**Slovenia:** The above number represents a pool of lay-judges but data on actual sitting days are not available. Although lay-judges are in full capacity of a judge as a member of a panel of judges, they cannot solve cases on their own.

**Slovakia:** The president of every district court determines the adequate number of the lay judges for the district. The lay judges are after that elected by the local/municipal council for the term of 4 years. The lay judges perform their judicial function only in certain criminal cases specified by the Code of the criminal proceedings.

**Spain:** The Justice of Peace is composed of lay judges in charge of petty cases in municipalities that (not being the principal city of a judicial district) do not have a professional First Instance court.

**Switzerland :** 2613 (incomplete data) 10 cantons out of 26 have not replied to the question or have given a result close to zero which is unlikely. At the courts' Confederation level, there are no "lay judges".

**FYROMacedonia:** Lay judges participate in a trial where this is stipulated by law. They are elected and dismissed by the Judicial Council. The Judicial Council of the Republic of Macedonia determines the number of lay judges in each court.

**UK-Northern Ireland:** 788 justices of Peace

**UK-Scotland:** 749 Justices of the Peace (approx.)

Non professional judges can be *lay judges*, without any legal training. Lay judges can be recruited (usually on a case-by-case basis) for their specific expertise or to ensure citizens' participation in legal activities.

Lay judges often sit in colleges. In **UK-England and Wales** for example, in the *Magistrates' courts*, a college of *lay judges* has the power to rule on offences, for which the penalty is no more than 6 months imprisonment and/or 500€ fine. It is estimated that 95% of criminal offences are treated by non-professional judges. But there are cases when a lay judge sits as a single judge.

Another type of non-professional judge is the District judge. These judges deal principally with the treatment of civil complaints of minor importance (or minor offences). In certain countries, the District judge is a professional judge paid on an occasional basis, whereas, in other countries, he/she is considered to be a non-professional judge. This element must be taken into consideration when comparing the ruling capacities of courts.

Non-professional judges are primarily concerned with dealing with non-criminal cases. They intervene in cases related to labour and commercial law. They are sometimes elected by local or regional councils (**Czech Republic**) or by the members of their own sector of activity (courts specialised in labour law in **France, Luxembourg, Monaco, Romania**, and in commercial matters in **France and Monaco**).

## 7.5 Trial by jury

24 countries or entities have indicated that their system includes the participation of citizens sitting in a jury. Only 8 countries (**Croatia, Germany, Ireland, Malta, Russian Federation, Serbia, Spain and UK-England and Wales**) have been able to give the number of citizens involved in a jury in 2006. The strongest participation of citizens to the judicial activity vis-à-vis the whole population can be found in **Ireland**, followed by **UK-England and Wales**.

**Table 53. Jury with the participation of citizens (Q53, Q54)**

| Jury with the participation of citizens | Number of citizens having participated in a jury | For 100.000 inhabitants |
|---|--|-------------------------|
| Austria                                 | na   |                         |
| Azerbaijan                              | na   |                         |
| Belgium                                 | na   |                         |
| Bulgaria                                | na   |                         |
| Croatia                                 | 5268   | 119                     |
| Denmark                                 | na   |                         |
| France                                  | na   |                         |
| Germany                                 | 35995  | 44                      |
| Greece                                  | na   |                         |
| Ireland                                 | 91118  | 2149                    |
| Italy                                   | na   |                         |
| Malta                                   | 180  | 44                      |
| Monaco                                  | 0  |                         |

| Jury with the participation of citizens | Number of citizens having participated in a jury | For 100.000 inhabitants |
|---|--|-------------------------|
| Montenegro                              | na   |                         |
| Norway                                  | na   |                         |
| Portugal                                | na   |                         |
| Russian Federation                      | 18450  | 13                      |
| Serbia                                  | 2998   | 40                      |
| Spain                                   | 1962   | 4                       |
| Sweden                                  | na   |                         |
| Switzerland                             | na   |                         |
| Ukraine                                 | na   |                         |
| UK-Northern Ireland                     | na   |                         |
| UK-Scotland                             | na   |                         |
| UK-England and Wales                    | 450000   | 838                     |

## Comments

**Austria** : for offences which might be punished by at least five years of imprisonment.

**Azerbaijan**: for the crimes which can be punished by b imprisonment for life - if the accused person requests it.

**Belgium**: District courts

**Bulgaria**: in criminal proceedings where the criminal offence entails more than five t years of deprivation of liberty as punishment.

**Croatia**: only in criminal proceedings.

**Denmark**: in criminal cases.

**France**: to judge the most serious offence in the *cour d'assises*.

**Germany**: in criminal proceedings for moderate and serious offences.

**Greece**: citizens chosen by lot, for trial of felonies and political crimes.

**Ireland**: for cases classed as non-minor offences under the Constitution or in which either the accused or the prosecution has exercised an entitlement to have the case tried before a jury.

**Italy**: only in criminal cases for serious criminal offences

**Malta**: for offences which might be punished by above 10 years imprisonment

**Monaco**: Criminal court only (3 permanent jurors by case plus one deputy if necessary).

**Montenegro**: the participation of lay judges in civil procedure was cancelled in the middle of 2004. In criminal procedures lay judges adjudicate along with professional judges in first instance only.

**Norway**: mandatory for offences which might be punished by more than 6 six years of imprisonment

**Portugal** : required by the Public Prosecution, the plaintiff or the defendant, for cases that refer to crimes against cultural identity and personal integrity and crimes against the State security or to those crimes in which the sanction, abstractedly applied, is greater than 8 years of imprisonment and which are not or cannot be judged by a singular court.

**Russian Federation**: at the defendant's request, the chamber of 12 jurors consider some types of criminal cases.

**Serbia**: in civil matters in municipal courts, as well as in panels processing family relations cases, in commercial courts: for economic offences and copyright disputes, in district courts: in civil law matters, paternity and maternity disputes, disputes concerning copyright and related rights, etc, as well as in panels for juveniles

**Spain**: for offences against the person (by public officials in the exercise of their duties) against honour, against liberty and security, arson.

**Sweden**: only for Press libel/Freedom of speech cases.

**Switzerland**: Some cantons still have assizes' courts including juries; the juries will disappear at the end of 2009 with the coming into force of the new criminal proceedings code.

**UK-Northern Ireland**: trials by jury but some matters are considered too sensitive and in these there would not be a jury.

**Ukraine**: for criminal and civil cases.

**UK-England and Wales**: criminal cases.

The table above should be considered with care, as some states have also *lay judges* included in their figures (for instance **Germany** in criminal matters) or non professional judges sitting in panels, with professional judges (**Greece, Montenegro Portugal, Slovenia**). The countries which have explicitly mentioned having juries are: **Belgium, Denmark, France, Italy, Norway, Portugal, Russian Federation, Spain, Sweden, Switzerland** and **UK-England and Wales**.

## 8. Non-judge staff

### 8.1 Introduction

The existence, alongside judges, of competent staff with defined roles and a recognised status is an essential condition for the efficient functioning of the judicial system.

In table 54, an overall view is given of non-judge staff who works in courts. The table shows the difference between members of staff who are involved in judicial proceedings and those who have a purely administrative role. A distinction is made between four types of non-judge staff.

A specific category of non-judge staff are the "Rechtspfleger", inspired by the German system. In the European Union's model Rechtspfleger statute, a Rechtspfleger is defined as follows: "*An independent judicial body, defined by the tasks that are attributed to it by law. As a judicial body, the Rechtspfleger is anchored in the constitution of the countries.*" This is for instance the case in **Austria** (article 87a of the federal constitution), but such a provision is not provided for by the Constitution in **Germany**.

The second category of non-judge staff is that of non-judge staff whose task it is to assist judges directly. They may be referred to as judicial advisors or registrars. For the most part, they play a role in hearings assisting judges or panels of judges; they provide assistance in the drafting of judgments or they research case law.

The third category concerns staff that are responsible for different administrative matters, as well as court management. Thus for example, heads of the administrative units of the courts, financial departments or information-technology departments would fall into this category. Administrative staff responsible for the registration of cases or the filing of cases are also included in this category. In some countries, these administrative and management tasks can be combined with the functions of Rechtspfleger or of non judge staff involved in the judicial process mentioned above, for instance in **France** or in **Germany**.

The last category relates to technical staff in the courts. For example personnel responsible for IT-equipment, security and cleaning.

43 countries or entities (excepted **Albania**, **Andorra**, **Ukraine** and **UK-Northern Ireland**) have provided the total number of non-judge staff working in courts. 29 have been able to communicate the detailed figures of the non-judge staff according to the 3 categories of personnel. 12 countries provided the numbers of *Rechtspfleger*. They constitute a fourth category in the table.

**Table 54. The distribution of non-judge staff in courts (Q55, Q56)**

| Country                | Number of non-judge staff working in courts (fte) | Non-judge staff (Rechtspfleger) |       | Non-judge staff whose task is to assist the judges such as registrars |       | Staff in charge of different administrative tasks as well as of the management of the courts |       | Technical staff |       |
|------------------------|---|---------------------------------|-------|---|-------|--|-------|-----------------|-------|
|                        |   | Number                          | %     | Number  | %     | Number   | %     | Number          | %     |
| Andorra                |   |                                 |       | 79  |       | 22   |       |                 |       |
| Armenia                | 965   |                                 |       |   |       |  |       |                 |       |
| Austria                | 4 735   | 718                             | 15,2% | 33  | 0,7%  | 3 901  | 82,4% | 83              | 1,7%  |
| Azerbaijan             | 1 723   |                                 |       | 646   | 37,5% | 536  | 31,0% | 547             | 31,6% |
| Belgium                | 5 835   |                                 |       | 1 872   | 32,1% | 2 888  | 49,5% | 1 075           | 18,4% |
| Bosnia and Herzegovina | 2 563   | 113                             | 4,4%  | 1 138   | 44,4% | 959  | 37,4% | 353             | 13,8% |
| Bulgaria               | 4 271   |                                 |       |   |       |  |       |                 |       |
| Croatia                | 7 168   | 202                             | 2,8%  | 779   | 10,9% | 2 985  | 41,6% | 3 202           | 44,7% |
| Cyprus                 | 440   |                                 |       | 318   | 72,3% | 24   | 5,5%  | 107             | 24,3% |
| Czech Republic         | 8 911   | 1 637                           | 18,4% | 4 420   | 49,6% | 1 867  | 21,0% | 987             | 11,1% |
| Denmark                | 1 424   |                                 |       |   |       |  |       |                 |       |
| Estonia                | 1 021   | 83                              | 8,1%  | 842   | 82,5% | 83   | 8,1%  | 13              | 1,3%  |
| Finland                | 2 554   |                                 |       |   |       |  |       |                 |       |
| France                 | 15 199  |                                 |       | 1 864   | 12,3% |  |       |                 |       |
| Georgia                | 718   |                                 |       | 599   | 83,4% | 74   | 10,3% | 45              | 6,3%  |
| Germany                | 57 530  | 11 821                          | 20,5% | 37 035  | 64,4% | 11 977   | 20,8% |                 |       |
| Greece                 | 6 500   |                                 |       |   |       |  |       |                 |       |
| Hungary                | 7 937   | 464                             | 5,8%  | 3 264   | 41,1% | 2 912  | 36,7% | 1 297           | 16,3% |
| Iceland                | 60  | 10                              | 16,7% | 32  | 53,3% | 18   | 30,0% |                 |       |
| Ireland                | 1 080   | 38                              | 3,1%  | 128   | 2,7%  |  |       |                 |       |
| Italy                  | 27 067  |                                 |       |   |       |  |       |                 |       |
| Latvia                 | 1 444   |                                 |       | 827   | 57,3% | 437  | 30,3% | 180             | 12,5% |
| Lithuania              | 2 613   |                                 |       | 1 230   | 47,1% | 1 001  | 38,3% | 382             | 14,6% |
| Luxembourg             | 245   |                                 |       | 126   | 51,4% | 112  | 45,7% | 7               | 2,9%  |
| Malta                  | 354   |                                 |       | 150   | 42,4% | 146  | 41,2% | 58              | 16,4% |
| Moldova                | 1 636   |                                 |       | 653   | 39,9% | 260  | 15,9% | 723             | 44,2% |
| Monaco                 | 47  |                                 |       | 17  | 36,2% | 25   | 53,2% | 5               | 10,6% |
| Montenegro             | 868   |                                 |       |   |       |  |       |                 |       |
| Netherlands            | 5 160   |                                 |       |   |       |  |       |                 |       |
| Norway                 | 891   |                                 |       |   |       |  |       |                 |       |
| Poland                 | 31 623  | 1 417                           | 4,5%  | 20 543  | 65,0% | 5 915  | 18,7% | 3 748           | 11,9% |
| Portugal               | 7 187   |                                 |       | 6 500   | 90,4% | 372  | 5,2%  | 312             | 4,3%  |
| Romania                | 9 359   |                                 |       |   |       |  |       |                 |       |
| Russian Federation     | 62 075  |                                 |       | 39 369  | 63,4% | 22 506   | 36,3% | 200             | 0,3%  |
| Serbia                 | 10 696  |                                 |       | 3 730   | 34,9% | 3 364  | 31,5% | 2 353           | 22,0% |
| Slovakia               | 4 282   | 813                             | 19,0% | 2 233   | 52,1% | 970  | 22,7% | 266             | 6,2%  |
| Slovenia               | 2 705   |                                 |       |   |       |  |       |                 |       |
| Spain                  | 40 513  | 3 020                           | 7,5%  |   |       |  |       |                 |       |
| Sweden                 | 3 251   |                                 |       |   |       |  |       |                 |       |
| Switzerland            | 4 127   | 64*                             |       |   |       |  |       |                 |       |
| FYROMacedonia          | 2 061   |                                 |       | 1 746   | 84,7% | 148  | 7,2%  | 167             | 8,1%  |
| Turkey                 | 23 832  |                                 |       | 20 050  | 84,1% | 138  | 0,6%  | 229             | 1,0%  |
| UK-Scotland            | 1 231   |                                 |       |   |       |  |       |                 |       |
| UK-England and Wales   | 26 000  |                                 |       |   |       |  |       |                 |       |

## Comments

**Armenia:** The figure of non judge staff is an absolute number (not in fte).

**Belgium:** Court clerks and *référéndaires*: 1.872; administrative staff within the clerk office: 2.888.

**Bulgaria:** The figures for non-judge staff were calculated on 28.02.2007.

**Croatia:** The purpose of non-judge staff is to assist judges (preparing files, helping in the course of hearings, taking minutes at meetings, drafting judgments).

**Finland:** The Ministry of Justice – 2.554,4 (the number of man-hours) – 450,3 man-hours for administrative courts, 2.104.1 man-hours for the courts with a general jurisdiction.

**France:** In the courts, it is difficult to distinguish civil servants who assist judges from those who only perform administrative tasks and those who only provide technical support. It can be said that there are man-hours equivalent to 1000 full-time civil servants attributed solely to the SARs and to the secretariat of the heads of the courts.

**Germany:** A list of people employed at the local, regional and federal levels in regional “*Länder*” courts for 2006, with the exception of staff of the general prosecutor, given as the equivalent to full-time staff (Personalübersichten zum TFP of staff of der-, Land-und Oberlandesgerichte der Länder for 2006, excluding staff der Staatsanwaltschaften, excluding staff in training - Angabe in Arbeitskraftanteilen). The numbers of civil servants at the constitutional court and at specialised courts (employment courts, administrative courts etc.) are not included. The number of non-judge staff (8.517,58) includes social services posts in the upper grades of the civil service (2.100,82); posts in the lower grades of the civil service (5.830,95); Cleaning staff and other workers (585,81).

**Greece:** the figure of non judge staff is an absolute number (not in fte).

**Italy:** Question 55: the figures for 2004 have changed – the number of non-judge staff who works in the Courts is 27.607.

**Moldova:** Statistics from the High Council of the Judiciary to question 55 – the numbers of non-judge staff working at the Supreme Court of Justice were included (172).

**Romania:** The different categories of staff are not well defined.

**Serbia:** The figure of 18.171 in 2004 represents civil servants at courts of first instance and attached to the public prosecutor.

**Slovenia:** Non-judge personnel are distributed as follows: 20 general secretaries, 276 others and 2.409 judicial advisors. The latter can be grouped with registrars as they undertake work principally linked to hearings involving parties, witnesses and experts. They also work on preparatory documents for the main proceedings and write reports for the sessional committee. They prepare draft judgments under a judge's supervision or they enforce judges' orders. In general, they hold a law degree. Alongside these highly qualified members of staff, there are members of staff who do not have a law degree and who maintain different registers (of land or of companies) and enforce judgments.

**Sweden:** In 2004, only court secretaries (excepting registrars) were included in the non-judge staff category. The figure for 2004 is actually about 2.900 people including registrars and administrative staff. This means that there was an increase of 10% in non-judge staff in the Courts between 2004 and 2006.

**Spain:** Within the Justice Ministry's area of competence, the numbers of civil servants working for the administration of justice are: 3.016 (Cuerpo de Gestión Procesal); 3.983 (Cuerpo de Tramitación Procesal); and 1.804 (Cuerpo de Auxilio Judicial). For staff that was transferred to the autonomous communities, the figures are: 8.831 (Cuerpo de Gestión Procesal); 12.696 (Cuerpo de Tramitación Procesal) and 5.734 (Cuerpo de Auxilio judicial). The figures match the maximum employment numbers applicable to the Ministry of Justice. In reality, since the transfer of the management of staff to the autonomous communities, it is impossible to determine staff numbers with accuracy. The number of Secretarios Judiciales (registrars) has been added to the number of 37.493 non-judge members of staff.

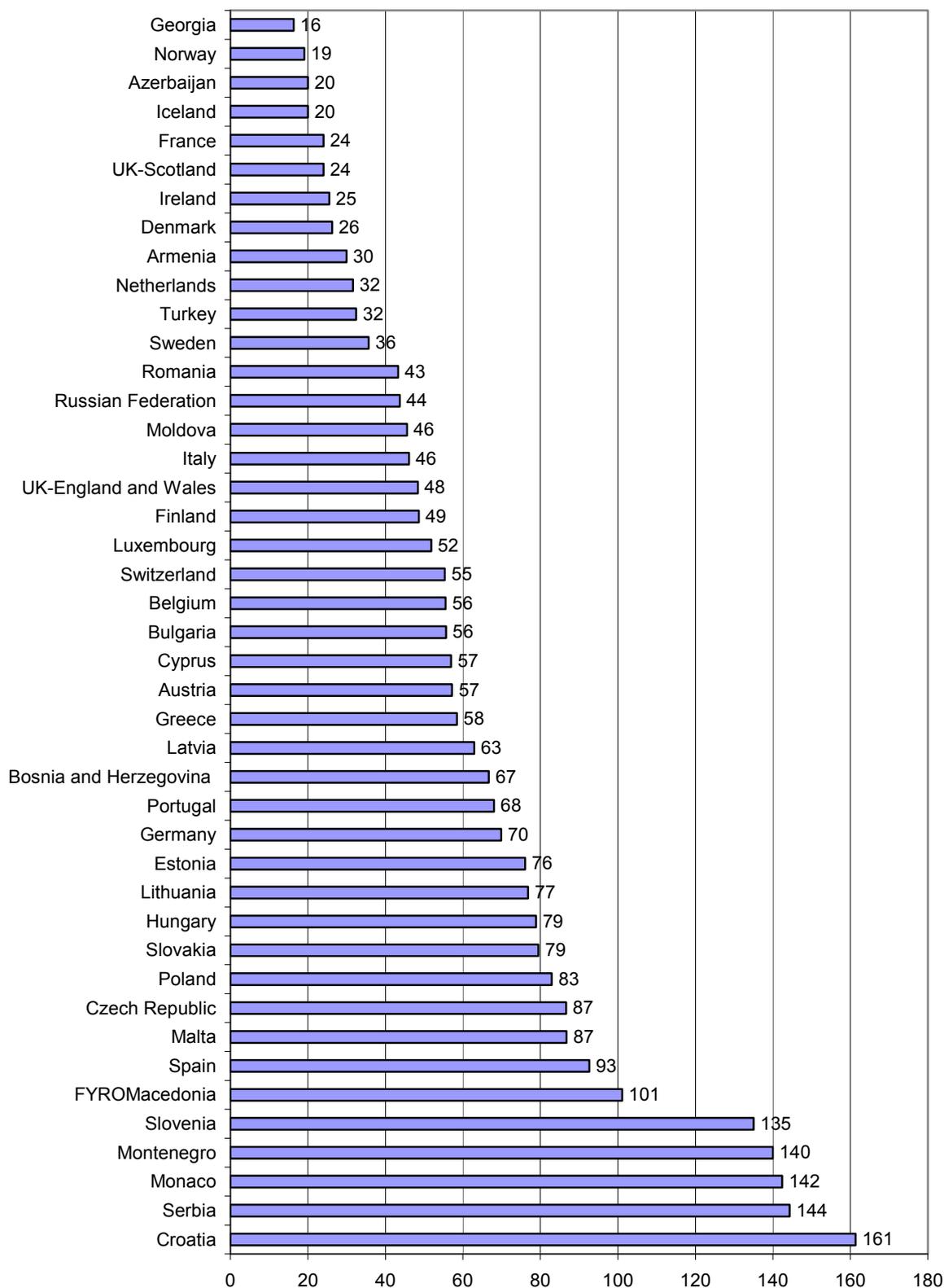
**Switzerland:** 4 cantons only.

In the table above, are included the details of total number and the break-down of non-judge staff as well as the percentage of the total number of non-judge staff represented by each category.

A distinction is made between non-judge staff who are involved in the judicial process itself (Rechtspfleger or registrar) and those who are not (administrative and technical staff).

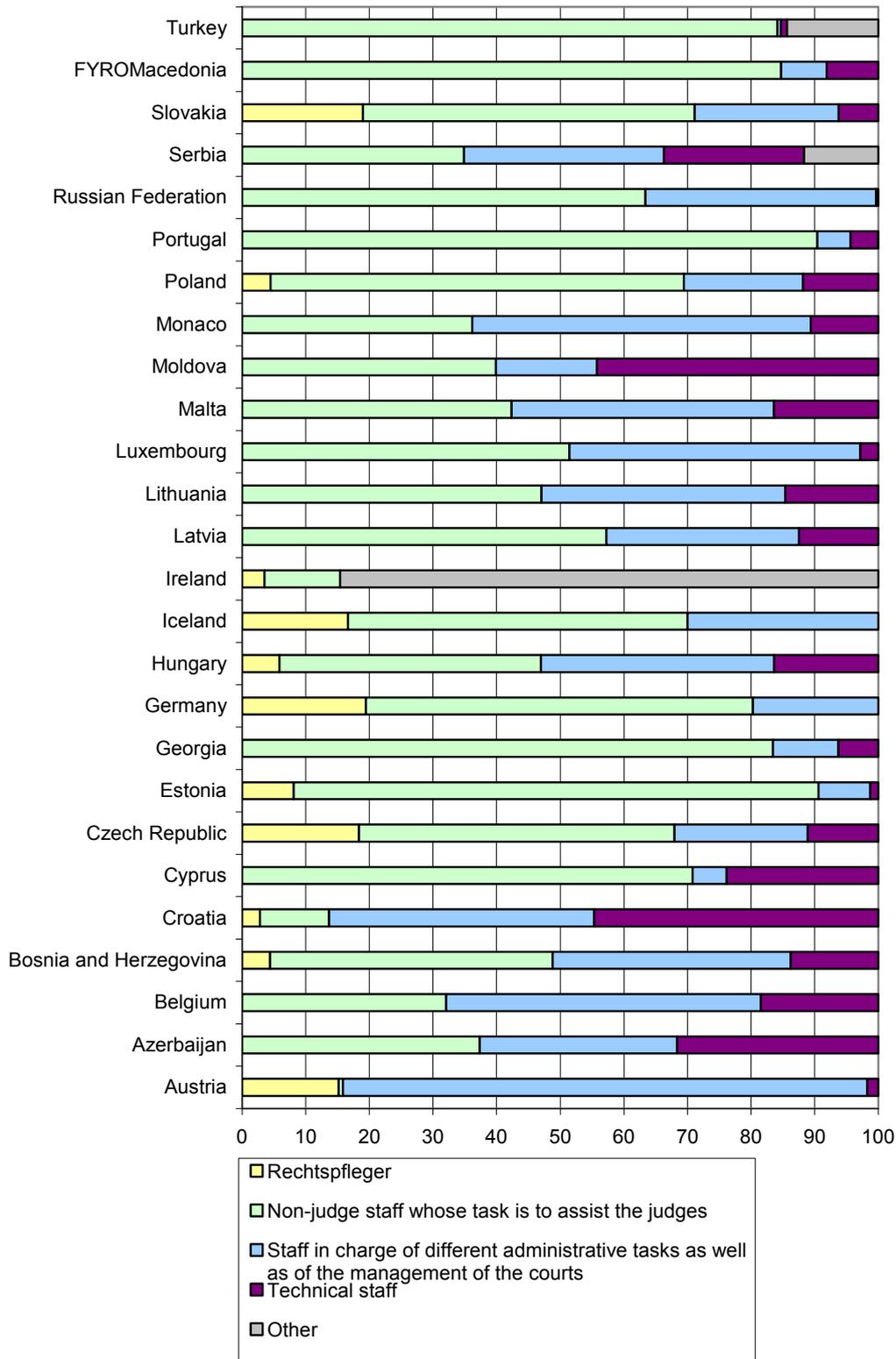
In each country that supplied a useable reply, staff are civil servants or people who work for governmental bodies.

**Figure 32. The number of non-judge staff for 100.000 inhabitants in 2006 (Q55)**



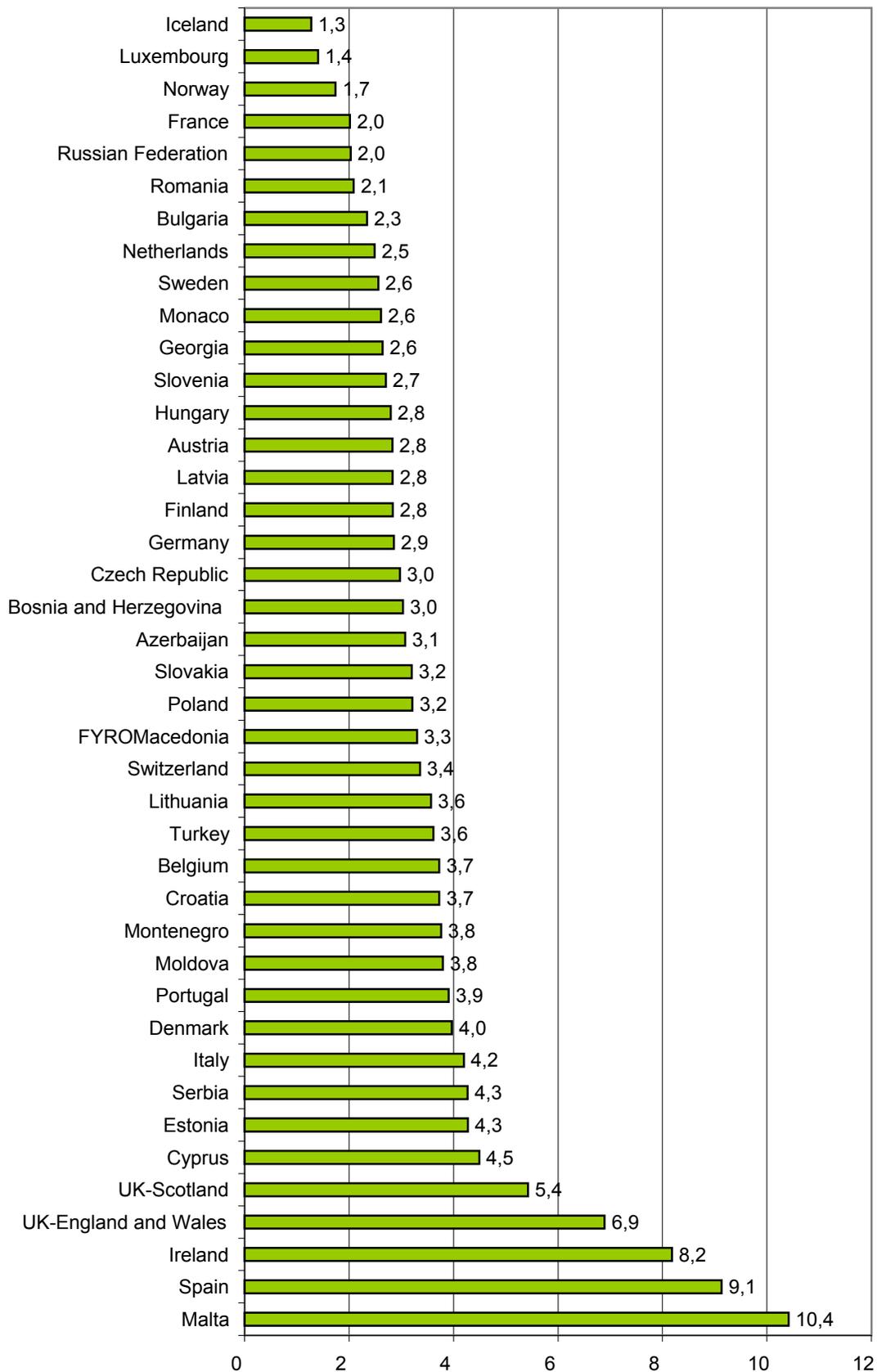
This data should be interpreted with caution, because, in practice, some categories of staff undertake tasks that are not ordinarily attributed to them. In some countries the personnel of the courts fulfil multiple tasks (for instance in **Denmark**). Some countries have also included or excluded certain groups of posts in the questionnaire's proposed categories.

**Figure 33. The proportional distribution of court staff (Q56)**



This chart shows that **Estonia, Georgia, Portugal, "the former Yugoslav Republic of Macedonia"** and **Turkey** appear to attribute 80% of their non-judge staff to aiding judges directly. This figure remains higher than 50% for **Cyprus, Germany, Iceland, Latvia, Luxembourg, Poland, Czech Republic, Slovakia** and **Russian Federation**. Less than half of non-judge staff are attributed to these jobs in **Azerbaijan, Belgium, Bosnia and Herzegovina, Hungary, Lithuania, Malta, Moldova, Monaco** and **Serbia**. It is about 10% in **Croatia** and **Ireland** and only residual in **Austria**. However, 80% of non-judge staff perform administrative tasks in **Austria** although the mean average is around 35%, reaching a minimum in **Turkey, Portugal, Estonia, "the former Yugoslav Republic of Macedonia", Estonia, Cyprus** and **Georgia**.

**Figure 34. The number of non-judge staff for each professional judge (Q55)**



## 8.2 Rechtspfleger

Rechtspfleger may carry out various tasks, for example, in the areas of family and guardianship law, the law of succession, the law of land registry, commercial registers, decisions about the granting of nationality, payment orders, execution of court decisions, auctions of immovable goods, criminal cases, the enforcement of judgments in criminal cases (with the issue of arrest warrants), with regard to orders enforcing non-custodial sentences or community service orders, prosecution in district courts, decisions concerning legal aid, etc.

Twelve European countries indicated that they have a Rechtspfleger system (or a post with a similar job description).

**Table 55. The number of Rechtspfleger in Europe in 2006 (Q56)**

| Country                | Number of Rechtspfleger (gross figure) | Number of professional judges (fte) |
|------------------------|--|-------------------------------------|
| Austria                | 718                                    | 1 674                               |
| Bosnia and Herzegovina | 113                                    | 846                                 |
| Croatia                | 202                                    | 1 924                               |
| Czech Republic         | 1 637                                  | 2 995                               |
| Estonia                | 83                                     | 239                                 |
| Germany                | 11 821                                 | 20 138                              |
| Hungary                | 464                                    | 2 838                               |
| Iceland                | 10                                     | 47                                  |
| Poland                 | 1 417                                  | 9 853                               |
| Slovakia               | 813                                    | 1 337                               |
| Spain                  | 3 020                                  | 4 437                               |
| Switzerland            | 64                                     | 1 229                               |

### Comments

**Ireland** does also have court officers (who are not judges) exercising quasi-adjudicative functions.

**Switzerland:** only 4 cantons out of 26 cantons have the function of a Rechtspfleger.

## 8.3 Non-judge staff involved in the judicial process

Staff responsible for assisting a judge directly with his or her judicial tasks generally intervene during a hearing procedure or have a certification role. They can also provide assistance in researching case law or in drafting judicial decisions. This category includes judicial advisors and registrars.

Access to these roles is largely only possible with a legal education, but in Common Law countries, no legal education is required (**England and Wales (UK), Scotland (UK) and Northern Ireland (UK)**).

The function of registrars is predominantly that of informing the public regarding the different possible procedures whilst remaining neutral concerning those procedures and not giving any legal advice. They have an important role in preparing files before hearings (summons, classification of documents etc.) and helping judges in their work.

During hearings, the registrar takes notes on the debates and produces a judicial stenography (**Hungary**). In many countries, the registrar ensures that the procedure respects the law and certifies it as having done so (**Germany, France**). After a hearing, the registrar can be asked to undertake legal research and/or to draft a judgment (**Estonia, France, the Netherlands**). The registrar produces copies of documents and may become involved in the enforcement of judgments.

## 8.4 Non-judge staff not involved in the judicial process

Staff responsible for the logistical requirements of courts include administrative and management staff. These include heads of administrative teams, financial departments and IT departments.

This category is also made up of the technical staff of the courts: IT or building technicians, staff responsible for the security or the cleaning of buildings and staff responsible for cars.

The functioning of the courts requires the existence of support staff. These people ensure the day-to-day running of the courts in a material sense.

## 8.5 Trends and conclusions

Apart from the technical staff, whose activity in courts has no specificity, two types of network stand out in the courts. The first network is essentially administrative and mainly consists in the administration of human resources and equipments necessary to the functioning of the jurisdictions. The second is clearly judicial and consists either in assisting the judge in the procedural acts or in the decision-making process, or in the exercise of fulfilling quasi-judicial tasks at the agent's own initiative. The duties and the autonomy conferred to them are recognised by law (**Germany**) or even by the Constitution (**Austria**).

Major disparities can be noted concerning the distribution of different kinds of staff, although their number cannot appear as a relevant indicator of quality or efficiency. In **Portugal**, 90% of the non-judge staff is assigned to judges' assistance, whereas **Austria** only appoints 1% of its staff to this task. To the contrary, 80% of the non-judge staff in **Austria** works on courts management, whereas **Turkey** uses less than 1% to fulfil this task.

These disparities can be partly explained by a current trend to change the court structures in order to realise efficiency gains. Thus, in many member states can be observed a rationalisation of means which leads to the reduction of small structures and to the incorporation of the staff in other courts. Correlatively, a change in the relevant level of management together with the diminution of the staff dedicated to this task in the jurisdictions and their transfer into more important structures can be observed.

It is worth noticing that some member states (**Bosnia and Herzegovina, Croatia**) have adopted the German-oriented system of *Rechtspfleger* and advanced thinking could lead to their establishment in other states.

## 9. Fair trial and court activity

### 9.1 Introduction

One of the most important elements of the proper functioning of the courts is the safeguard of the principle of a fair trial within a reasonable time (Article 6 of the European Convention on Human Rights). This principle must be fully taken into account when managing the workload of a court, the duration of the proceedings and specific measures to reduce their length and improve their efficiency and effectiveness. As part of the survey, countries were asked to provide information concerning cases brought before the European Court of Human Rights on the basis of Article 6, with case information and information on measures designed to increase effective court proceedings.

In this chapter, basic facts and figures on the performance of courts are given. Since most of the figures provided are primarily related to first instance courts, the court performance information is limited to these courts. For the other courts (appeal and supreme courts) the relevant tables can be found in the appendix. In the last part of the chapter, examples are given of possible measures that may increase the efficiency and quality of justice. These vary from the introduction of simplified procedures, to procedures where urgency is required, to trial modalities concerning procedural arrangements between judges and lawyers.

An added value compared to the 2006 Edition of the report is that detailed case information is given for land registry cases, business registry cases, administrative law cases and enforcement cases. The definition of civil cases and the calculation of their number remain difficult. However a distinction has been made in this 2008 Edition between litigious, non litigious and registers cases which allows a sharper analysis.

The same can be said about the distinction between severe criminal cases and minor criminal offences. Again, given the different legal categories of offences depending on the country, the CEPEJ has chosen to rely on the distinction between Anglo-Saxon *petty offences* and *crimes* which allows common reference in several countries. But there is always a problem of comparability of data, in a manner identical to those of *European Sourcebook* of the Council of Europe which was the reference methodology of the report concerning the two categories of criminal cases.

In this Report, it has also been possible to introduce *performance indicators* at a European level. The first indicator is the *clearance rate*. This allows a useful comparison even though the perimeters of the cases concerned are not identical in all respects. This indicator can be used to see if the courts are keeping up with the number of incoming cases without increasing the backlog of cases. The second indicator is the *calculated disposition time*. By making use of a specific calculation method, it is possible to generate data concerning the time that is needed to bring a case to an end. This method can provide relevant information on the overall functioning of the courts of a country. Gradually, the report of the CEPEJ will enable to follow, using comparable data, the functioning of judicial systems in dealing with case flows.

### 9.2 Legal representation in court

One aspect of the principles of a fair trial according to Article 6 of the European Convention on Human Rights concerns legal representation of the parties before a court. In certain situations, users may not be present at a court hearing. The European Court of Human Rights considers (see *Krombach vs France*, 2001) that even when absent, a person can always be represented by a lawyer. The percentage of criminal cases trialled in the presence of the accused may be an indicator of the quality and efficiency of a system: people can defend themselves personally and the judgment is more likely to be executed.

In the following table, information is given on the percentage of first instance judgments in criminal cases where the accused person is absent from the court hearing or not represented by a legal professional (default cases). For the countries which were able to provide the relevant figures, the percentages vary from 6 % (**Andorra**) to 38 % (the **Netherlands**). However, for an accurate interpretation of such data, it would be necessary to have more information on the type of criminal cases that are involved. For example, the relative high figures in the **Netherlands** may be explained by the fact that they concern minor criminal offences where an offender can defend his/herself in person and where the level of possible sanctions is low.

**Table 56. Percentage of first instance judgements in criminal matters where the suspect does not attend in person or is not represented by a legal professional during a court session in 2006 (Q82)**

| Country                | Percentage of default cases |
|------------------------|-----------------------------|
| Andorra                | 6,3%                        |
| Armenia                | 0                           |
| Bosnia and Herzegovina | 0                           |
| Cyprus                 | 20%                         |
| Denmark                | 26%                         |
| Finland                | 22%                         |
| France                 | 16,6%                       |
| Hungary                | 20,5%                       |
| Iceland                | 10%                         |
| Luxembourg             | 18,3%                       |
| Malta                  | 0                           |
| Monaco                 | 34%                         |
| Netherlands            | 38%                         |
| Poland                 | 0                           |
| Switzerland            | 26%                         |
| FYROMacedonia          | 9,5%                        |

### 9.3 Possibilities to challenge a judge

In almost all the member states it is possible for a party to challenge the participation of a particular judge. However, only 5 countries (**France, Hungary, Italy, Monaco** and **Poland**) are able to provide information on the number of successful challenges in a year. The high number of challenges in **Hungary** can be explained by the awareness of the Hungarian citizens and their sensitivity regarding impartiality in court proceedings. **Italy** has also indicated 1 successful challenge in 2006 at the level of the Supreme Court.

**Table 57. Number of successful challenges of a judge in 2006 (Q83)**

| Country | Number of successful challenges |
|---------|---------------------------------|
| France  | 77                              |
| Hungary | 4150                            |
| Monaco  | 1                               |
| Poland  | 522                             |

### 9.4 Cases related to Article 6 European Convention on Human Rights

The Council of Europe and its European Court of Human Rights pay specific attention to the "*reasonable time*" of judicial proceedings and the effective execution of judicial decisions. The countries have been asked to provide information for civil and criminal cases regarding duration of proceedings and/or non-execution of decisions on: the number of cases declared inadmissible by the European Court, the number of friendly settlements, the number of cases concluded by a judgement of violation or non violation of Article 6 of the European Convention on Human Rights.

Compared to the 2006 Edition, it can be underlined with satisfaction that more countries are now able to give data on the cases related to Article 6 ECHR before the Court in Strasbourg. Such developments in the statistical systems must be welcomed, as they are an essential tool for remedying to the dysfunctions highlighted by the Court and preventing further violations of the Convention.

According to the figures provided by the countries, the Court declares inadmissible many cases (civil and criminal) that it receives. A significant number of civil cases concerning length of proceedings were concluded by a friendly settlement in the year 2006 for **Croatia, Czech Republic** and **Poland**.

Looking at the figures for civil cases, a significant number of violations of Article 6 because of excessive length of proceedings can be noted in 2006 in the following countries: **Croatia** (14), **Cyprus** (14), **Czech Republic** (22), **France** (21), **Greece** (21), **Hungary** (25), **Italy** (10), **Poland** (42), **Slovak Republic** (25), **Slovenia** (177), **Turkey** (38) and **Ukraine** (46). Such data must be interpreted considering the number of inhabitants in the countries. It must also be noted that **Iceland, Italy, Latvia, Norway, Serbia, UK-England and Wales** were not able to give data.

**Table 58. Number of cases regarding Article 6 of the European Convention on Human Rights - civil proceedings; length of proceedings in 2006 (Q84)**

| Country        | Cases declared inadmissible by the Court | Friendly settlements | Judgments establishing a violation | Judgments establishing a non violation |
|----------------|--|----------------------|------------------------------------|--|
| Austria        | 0  | 2                    | 0                                  | 0                                      |
| Azerbaijan     | 8  |                      | 1                                  |  |
| Belgium        |  | 3                    | 2                                  |  |
| Bulgaria       |  |                      | 3                                  | 1                                      |
| Croatia        | 5  | 14                   | 14                                 | 0                                      |
| Cyprus         |  |                      | 14                                 | 1                                      |
| Czech Republic | 3  | 23                   | 22                                 | 0                                      |
| Denmark        | 2  | 0                    | 1                                  | 0                                      |
| Estonia        | 0  | 0                    | 0                                  | 0                                      |
| Finland        | 1  | 2                    | 2                                  |  |
| France         | 0  | 0                    | 21                                 | 0                                      |
| Germany        | 2  | 2                    | 3                                  | 0                                      |
| Greece         | 30                                       | 0                    | 21                                 | 3                                      |
| Hungary        | 1  | 0                    | 25                                 | 0                                      |
| Ireland        |  | 0                    | 0                                  | 0                                      |
| Italy          |  | 0                    | 10                                 |  |
| Lithuania      | 8  | 0                    | 0                                  | 0                                      |
| Luxembourg     | 0  | 1                    | 1                                  | 1                                      |
| Moldova        | 1  | 1                    | 3                                  |  |
| Monaco         | 0  | 0                    | 0                                  | 0                                      |
| Montenegro     | 0  | 0                    | 0                                  | 0                                      |
| Netherlands    | 0  | 0                    | 0                                  | 0                                      |
| Poland         | 1  | 3                    | 42                                 | 5                                      |
| Portugal       | 0  | 0                    | 0                                  | 0                                      |
| Romania        | 1  | 1                    | 6                                  |  |
| Slovakia       | 8  | 5                    | 25                                 | 0                                      |
| Slovenia       |  | 16                   | 177                                | 9                                      |
| Sweden         | 0  | 1                    | 2                                  | 0                                      |
| Switzerland    | 2  |                      |                                    |  |
| Turkey         | 4  | 5                    | 38                                 |  |
| Ukraine        | 6  |                      | 46                                 |  |

**Comment:** Only countries that provided data are shown in the table. **Iceland, Italy, Latvia, Norway, Serbia** and **UK-England and Wales** declared that data were not available. For the rest of the countries, it was impossible to identify whether such data was unavailable or whether there were no relevant cases.

The number of violation of Article 6 ECHR for *non-execution of decisions* in civil matters is lower than for the previous category of cases. For **Romania** and **Ukraine** the European Court decided in 15 cases and 245 cases respectively on a violation of the Convention as regards the non-execution of judicial decisions. Such violations can also be noted, in a smaller number of cases in: **Bosnia and Herzegovina, Bulgaria, Croatia, France, Georgia, Lithuania, Moldova** and **Switzerland**. Such data must be interpreted considering the number of inhabitants in the countries. It must also be noted that several states have not been able to provide data.

**Table 59. Number of cases regarding Article 6 of the European Convention on Human Rights - civil proceedings; non execution of court decisions in 2006 (Q84)**

| Country                | Cases declared inadmissible by the Court | Friendly settlements | Judgments establishing a violation | Judgments establishing a non violation |
|------------------------|--|----------------------|------------------------------------|--|
| Austria                | 0  | 0                    | 0                                  | 0                                      |
| Bosnia and Herzegovina |  |                      | 1                                  |  |
| Bulgaria               |  |                      | 3                                  |  |
| Croatia                | 0  | 0                    | 2                                  | 0                                      |
| Czech Republic         | 1  | 0                    | 0                                  | 0                                      |
| Denmark                | 0  | 0                    | 0                                  | 0                                      |
| Estonia                | 0  | 0                    | 0                                  | 0                                      |
| France                 | 0  | 0                    | 2                                  | 0                                      |
| Georgia                | 1  |                      | 1                                  |  |
| Germany                | 0  | 0                    | 0                                  | 0                                      |
| Greece                 | 1  | 0                    | 0                                  | 1                                      |
| Hungary                | 0  | 0                    | 0                                  | 0                                      |
| Ireland                |  | 0                    | 0                                  | 0                                      |
| Italy                  |  | 0                    |                                    |  |
| Lithuania              | 1  | 0                    | 2                                  | 1                                      |
| Luxembourg             | 0  | 0                    | 0                                  | 0                                      |
| Moldova                | 4  |                      | 4                                  |  |
| Monaco                 | 0  | 0                    | 0                                  | 0                                      |
| Montenegro             | 0  | 0                    | 0                                  | 0                                      |
| Netherlands            | 0  | 0                    | 0                                  | 0                                      |
| Portugal               | 0  | 0                    | 0                                  | 0                                      |
| Romania                | 3  | 3                    | 15                                 |  |
| Slovakia               | 0  | 0                    | 0                                  | 0                                      |
| Sweden                 | 0  | 0                    | 0                                  | 0                                      |
| Switzerland            |  |                      | 1                                  |  |
| Ukraine                | 17                                       | 39                   | 245                                |  |

**Comment:** Only countries that provided data are presented in the table. **Iceland, Italy, Latvia, Norway, Serbia, UK-England and Wales** declared that data were not available. For the rest of the countries, it was impossible to identify whether such data was unavailable or if there was no case concerned.

Compared to the civil law cases (duration and non-execution), the numbers of violations of Article 6 because of excessive length of proceedings in criminal matters are lower. The majority of the cases brought to the Court are declared inadmissible. Violations can be noted in the following countries: **Bulgaria, Czech Republic, Finland, France, Greece, Hungary, Lithuania, Moldova, Poland, Portugal, Romania, Slovakia, Slovenia, Switzerland** and **Ukraine**. In **Sweden** 12 cases were concluded by a friendly settlement.

**Table 60. Number of cases regarding Article 6 of the European Convention on Human Rights - criminal proceedings; length of proceedings in 2006 (Q84)**

| Country        | Cases declared inadmissible by the Court | Friendly settlements | Judgements establishing a violation | Judgements establishing a non violation |
|----------------|--|----------------------|-------------------------------------|---|
| Austria        | 0  | 0                    | 0                                   | 0                                       |
| Belgium        | 1  | -                    | -                                   | 1                                       |
| Bulgaria       |  |                      | 6                                   |   |
| Croatia        | 0  | 0                    | 0                                   | 0                                       |
| Czech Republic | 0  | 2                    | 4                                   | 0                                       |
| Denmark        | 3  | 0                    | 0                                   | 0                                       |
| Estonia        | 0  | 0                    | 0                                   | 0                                       |
| Finland        | 2  | 1                    | 5                                   |   |
| France         | 0  | 0                    | 1                                   | 0                                       |
| Germany        | 1  | 0                    | 0                                   | 0                                       |
| Greece         | 6  | 0                    | 9                                   | 1                                       |
| Hungary        | 3  | 0                    | 5                                   | 0                                       |
| Ireland        |  | 0                    | 0                                   | 0                                       |
| Italy          |  | 0                    | 0                                   |   |
| Lithuania      | 2  | 2                    | 9                                   | 0                                       |
| Luxembourg     | 0  | 0                    | 0                                   | 0                                       |
| Moldova        |  | 1                    | 1                                   |   |
| Monaco         | 0  | 0                    | 0                                   | 0                                       |
| Montenegro     | 0  | 0                    | 0                                   | 0                                       |
| Netherlands    | 0  | 0                    | 0                                   | 0                                       |
| Poland         | 10                                       | 1                    | 5                                   | 1                                       |
| Portugal       | 0  | 0                    | 1                                   | 0                                       |
| Romania        | 2  |                      | 2                                   | 1                                       |
| Slovakia       | 0  | 0                    | 2                                   | 0                                       |
| Slovenia       |  | 1                    | 6                                   | 2                                       |
| Spain          | 3  |                      |                                     |   |
| Sweden         | 0  | 12                   | 0                                   | 0                                       |
| Switzerland    | 2  |                      | 1                                   |   |
| Ukraine        |  |                      | 8                                   |   |

As it can be seen in chapter 4 above, a number of countries have introduced compensation mechanisms for excessively long proceedings (**Austria, Croatia, Czech Republic, Denmark, France, , Germany, Hungary, Iceland, Italy, Montenegro, Slovakia, Slovenia, Switzerland** and “**the former Yugoslav Republic of Macedonia**”). Comparing this information to the figures provided, there is an indication that such mechanism has a positive effect on the number of violations of Article 6 for: **Austria, Germany, Italy, Montenegro** and **Switzerland**. This is also visible (to a lesser extent) in **Croatia, Slovakia** and **Slovenia**.

## **9.5 Civil (commercial) litigious and non-litigious cases at first instance courts (basic figures)**

Countries have been invited to supply information on civil litigious and non-litigious cases and the number of administrative law cases (if applicable). For each of the main types of cases, the number of pending cases at the beginning of the year (1 January 2006), the number of incoming cases, the number of judgments and pending cases at the end of the year (31 December 2006) have been asked.

To give a comparative view of the different judicial systems in Europe, separate tables are generated for civil litigious and civil non-litigious cases. The reason for this separation is that there are countries where non-litigious cases, for example land registry cases or business registry cases, form a major part of the workload of the courts, whilst in other countries these task are addressed to other instances.

## Litigious civil cases

In the following table, figures for *litigious civil (commercial) cases* are given. A high *absolute* number of incoming civil litigious cases is to be found in: **France, Germany, Italy, the Netherlands, Poland, Russian Federation<sup>20</sup>, Spain, Turkey** and **UK-England and Wales**. Especially for **France** and **Italy** the high workload (in terms of incoming cases) resulted, at the end of 2006, in a relatively high number of pending cases.

**Table 61. Number of civil (commercial) litigious cases at first instance courts in 2006 (Q88)**

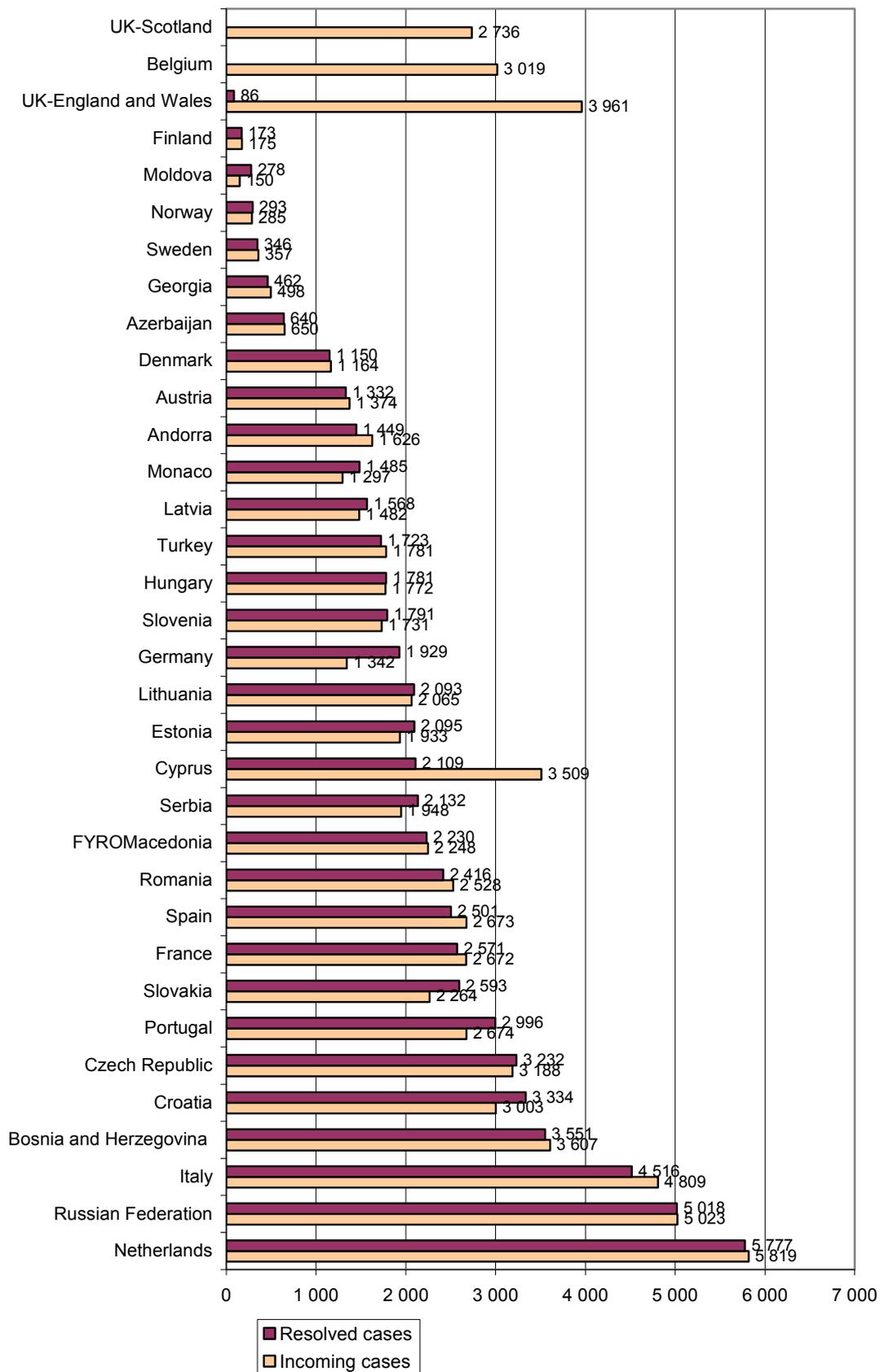
| Country                | Pending cases on 1 January 2006 | Incoming cases | Resolved <sup>21</sup> cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|------------------------------|-----------------------------------|
| Andorra                | 1 621                           | 1 321          | 1 177                        | 1 765                             |
| Austria                | 37 260                          | 113 774        | 110 302                      | 40 732                            |
| Belgium                |                                 | 317 290        |                              |                                   |
| Azerbaijan             | 5 406                           | 55 431         | 54 612                       | 6 225                             |
| Bosnia and Herzegovina | 259 821                         | 138 598        | 136 439                      | 261 980                           |
| Croatia                | 232 491                         | 133 421        | 148 134                      | 217 778                           |
| Cyprus                 | 33 259                          | 27 114         | 16 296                       | 30 008                            |
| Czech Republic         | 169 208                         | 327 964        | 332 478                      | 164 694                           |
| Denmark                | 26 678                          | 63 171         | 62 427                       | 28 036                            |
| Estonia                |                                 | 25 943         | 28 118                       |                                   |
| Finland                | 5 089                           | 9 200          | 9 072                        | 5 368                             |
| France                 | 1 101 709                       | 1 688 367      | 1 624 484                    | 1 165 592                         |
| Georgia                | 10 417                          | 21 877         | 20 299                       | 11 995                            |
| Germany                | 615 454                         | 1 104 828      | 1 588 198                    | 544 751                           |
| Hungary                | 87 739                          | 178 338        | 179 317                      | 86 760                            |
| Italy                  | 3 515 535                       | 2 825 543      | 2 653 113                    | 3 687 965                         |
| Latvia                 | 17 463                          | 34 010         | 35 972                       | 15 501                            |
| Lithuania              | 9 038                           | 70 284         | 71 219                       | 8 103                             |
| Moldova                | 5 665                           | 5 397          | 9 987                        | 1 075                             |
| Monaco                 |                                 | 428            | 490                          |                                   |
| Montenegro             | 16 352                          | 15 739         | 17 707                       | 14 384                            |
| Netherlands            |                                 | 950 450        | 943 590                      |                                   |
| Norway                 | 7 450                           | 13 335         | 13 737                       | 7 050                             |
| Poland                 | 384 200                         | 1 019 912      | 1 006 947                    | 395 878                           |
| Portugal               | 423 227                         | 282 590        | 316 649                      | 389 168                           |
| Romania                | 117 821                         | 546 222        | 522 112                      | 141 931                           |
| Russian Federation     | 473 000                         | 7 133 000      | 7 126 000                    | 480 000                           |
| Serbia                 | 113 916                         | 144 356        | 158 036                      | 100 236                           |
| Slovakia               | 166 041                         | 122 002        | 139 767                      | 148 276                           |
| Slovenia               | 53 407                          | 34 683         | 35 880                       | 52 210                            |
| Spain                  | 732 590                         | 1 169 750      | 1 094 505                    | 781 754                           |
| Sweden                 | 16 752                          | 32 514         | 31 501                       | 17 765                            |
| FYROMacedonia          | 33 013                          | 45 816         | 45 458                       | 33 371                            |
| Turkey                 | 682 186                         | 1 307 698      | 1 264 886                    | 724 998                           |
| UK-Scotland            |                                 | 140 000        |                              |                                   |
| UK-England and Wales   |                                 | 2 127 928      | 46 198                       |                                   |

<sup>20</sup> All the data concerning the number of cases in this chapter for the Russian Federation does not concern commercial cases.

<sup>21</sup> To avoid confusion between the concept of "*decisions on the merit*", the CEPEJ has decided to use the following terminology: *resolved cases* i.e. all the cases that has been put to an end by the court / judge.

The fact that the countries are in a different order results from the ratio based on the number of cases per number of inhabitants. Countries which are confronted with a high number of incoming civil litigious cases per 100.000 inhabitants are: the **Netherlands, Russian Federation, Italy, UK-England and Wales, Bosnia and Herzegovina** and **Cyprus**. Especially for a small country like the **Netherlands**, these cases are numerous. However, the number of judicial decisions in this country is in line with the workload of the court. It does not seem to be the case in **UK-England and Wales** and (to a lesser extent) in **Cyprus** where the number of decisions are relatively low, when compared with the incoming cases.

**Figure 35. Number of first instance incoming and resolved litigious civil cases per 100.000 inhabitants in 2006 (Q88)**



### Non-litigious civil cases

The countries where the courts perform tasks related to registers are confronted with large numbers of non-litigious civil cases. This is especially true for: **Austria, Croatia, Finland, Germany, Hungary, Italy, Poland, Serbia and Spain**. For **Austria, Germany, Italy, Poland and Spain**, this also leads to a high number of pending cases at the end of the year 2006. However it should be noted that for those countries, it is difficult to reduce the number of pending cases, since at the beginning of the year 2006, there were already many non-litigious civil cases in the courts' "in-trays". It should also be noted that **the Netherlands and Portugal** have not provided all the figures.

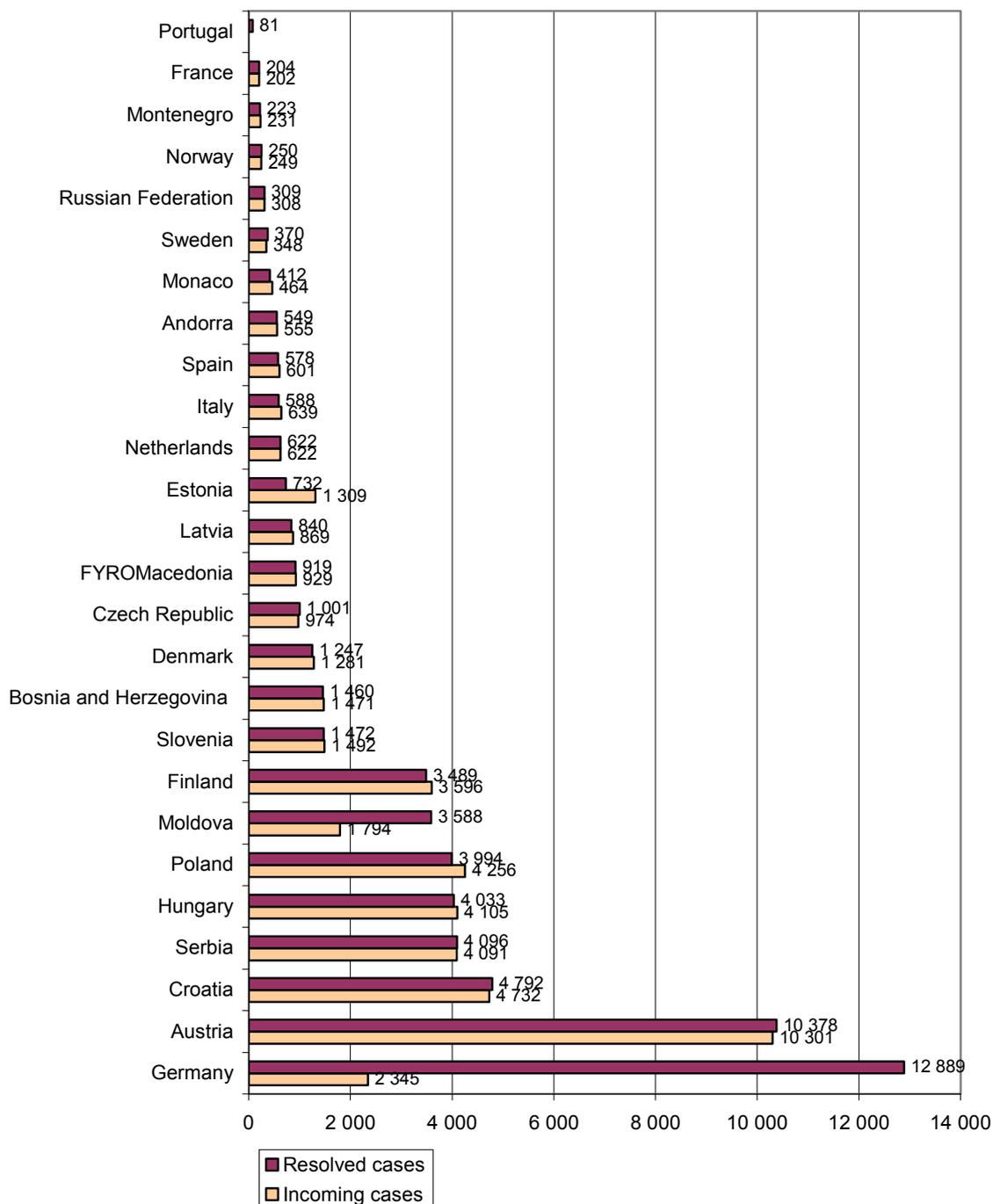
**Table 62. Number of non litigious civil (commercial) cases at first instance courts in 2006 (Q88)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Resolved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|----------------|-----------------------------------|
| Andorra                | 51                              | 451            | 446            | 56                                |
| Austria                | 171 181                         | 853 155        | 859 534        | 164 802                           |
| Bosnia and Herzegovina | 54 941                          | 56 542         | 56 106         | 55 377                            |
| Croatia                | 29 205                          | 210 233        | 212 882        | 26 556                            |
| Czech Republic         | 34 692                          | 100 232        | 103 012        | 31 912                            |
| Denmark                | 12 959                          | 69 537         | 67 649         | 15 149                            |
| Estonia                |                                 | 17 574         | 9 820          |                                   |
| Finland                | 36 957                          | 188 984        | 183 361        | 42 858                            |
| France                 | 13 541                          | 127 721        | 128 722        | 12 540                            |
| Germany                | 1 500 708                       | 1 931 275      | 10 614 058*    | 1 543 969                         |
| Hungary                | 29 093                          | 413 159        | 405 984        | 36 268                            |
| Italy                  | 71 533                          | 375 593        | 345 499        | 101 627                           |
| Latvia                 | 1 409                           | 19 933         | 19 279         | 2 063                             |
| Lithuania              | 8 282                           | 75 421         | 74 067         | 9 636                             |
| Moldova                | 73 462                          | 64 405         | 128 810        | 9 057                             |
| Monaco                 |                                 | 153            | 136            |                                   |
| Montenegro             | 396                             | 1 433          | 1 382          | 447                               |
| Netherlands            |                                 | 101 580        | 101 580        |                                   |
| Norway                 | 5 564                           | 11 636         | 11 712         | 5 488                             |
| Poland                 | 208 619                         | 1 622 544      | 1 522 585      | 308 564                           |
| Portugal               |                                 |                | 8 533          |                                   |
| Russian Federation     | 27 000                          | 438 000        | 439 000        | 26 000                            |
| Serbia                 | 38 825                          | 303 227        | 303 579        | 38 473                            |
| Slovakia               | 96 464                          | 115 984        | 130 491        | 81 957                            |
| Slovenia               | 17 852                          | 29 893         | 29 481         | 18 264                            |
| Spain                  | 86 176                          | 262 932        | 252 735        | 92 283                            |
| Sweden                 | 19 969                          | 31 750         | 33 711         | 18 008                            |
| FYROMacedonia          | 2 493                           | 18 944         | 18 744         | 2 693                             |

**Comment: Germany** – approximately 8.6 mio cases of the payment order procedure (*Mahnverfahren*) have been counted as non-litigious cases rather than litigious cases. However, concerning the *Mahnverfahren* cases it is not possible to present data on pending or incoming cases because these cases are processed in general within a few days, and the incoming cases are not counted separately from decisions.

In the following chart, the number of incoming non-litigious cases is compared with the number of decisions per 100.000 inhabitants. Especially in **Germany, Austria, Croatia, Poland, Hungary, Serbia and Finland**, many incoming non-litigious cases must result in a decision taken by a judge or another competent judicial officer of the court. The significant difference between incoming and resolved cases in **Germany** is due to the fact that the high number of cases which is treated within few days is not counted separately from the resolved cases (see the comments above regarding the *Mahnverfahren* procedure).

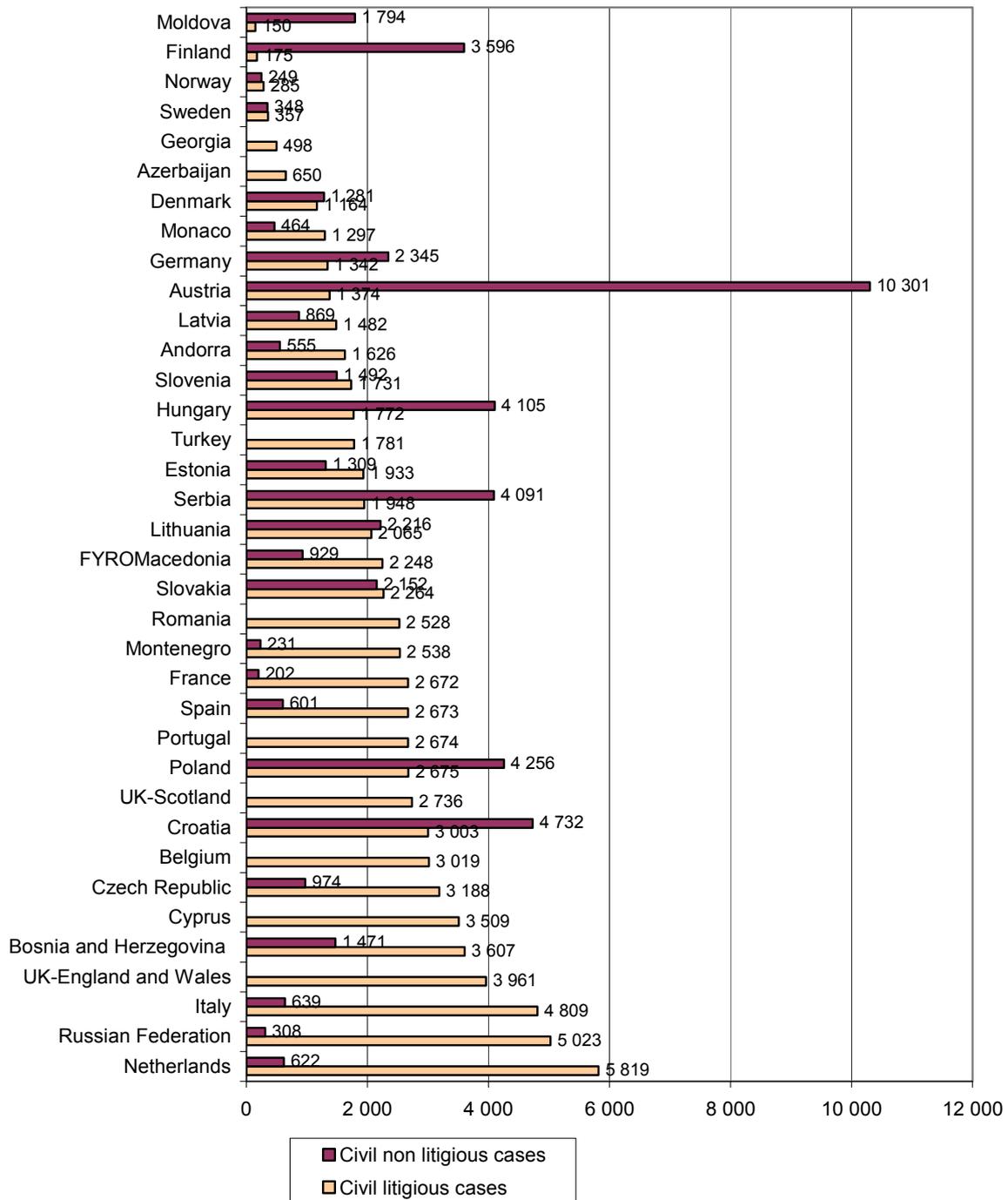
**Figure 36. Number of first instance incoming and resolved non litigious civil cases per 100.000 inhabitants in 2006 (Q88)**



***Litigious and non-litigious civil cases compared***

When data on litigious and non-litigious civil cases in each country are compared, it appears that, at first instance, there are countries where the workload of the courts is heavily influenced by non-litigious cases, whilst in other countries litigious cases constitute the main work of first instance courts. For example, in **Austria**, a major part of the work of the courts concerns the treatment of non-litigious civil cases. This is also the case for **Poland, Serbia, Finland, Hungary and Croatia**. Countries where there are a relative high number of litigious civil law cases – compared to the non-litigious cases – are the **Russian Federation, the Netherlands, Italy, Czech Republic, Spain, France, Bosnia and Herzegovina and Cyprus**.

**Figure 37. Number of incoming first instance civil litigious and non litigious cases per 100.000 inhabitants in 2006 (Q88)**



### **Clearance rates of litigious and non-litigious civil cases**

The clearance rate, expressed as a percentage, is obtained when the number of resolved cases is divided by the number of incoming cases and the result is multiplied by 100:

$$\text{Clearance Rate (\%)} = \frac{\text{resolved cases}}{\text{incoming cases}} \times 100$$

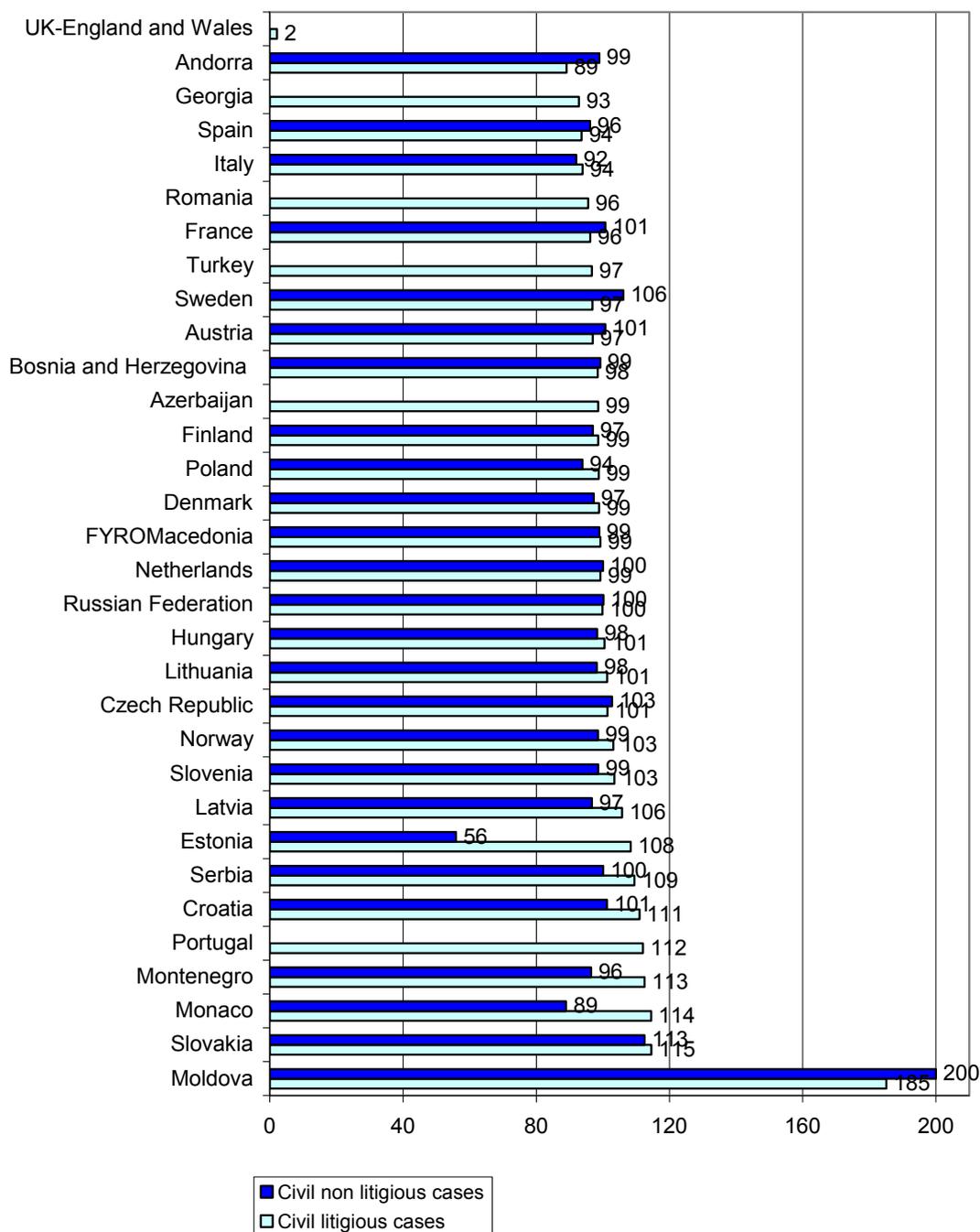
A clearance rate equal to 100% indicates the ability of the court or of a judicial system to resolve cases received within the given time period. A clearance rate above 100% indicates the ability of the system to resolve more cases than received, thus reducing any potential backlog. Finally, if received cases are not resolved within the observed period, the clearance rate will fall below 100%. When a clearance rate goes below 100%, the number of unresolved cases at the end of a reporting period (backlog) will rise.

Essentially, a clearance rate shows how the court or judicial system is coping with the in-flow of cases.

In most of the member states, the clearance rate for non-litigious and litigious civil cases is within a bandwidth between 98 % and 100 %. However when comparing individual countries on the litigious civil cases, there are countries where the clearance rate is around 90 % (**Andorra, Georgia, Italy and Romania**). These countries may be confronted with an increase of the number of incoming cases. High clearance rates for litigious civil cases can be found in: **Estonia, Serbia, Croatia, Portugal, Montenegro, Monaco, Slovakia and Moldova**. The countries listed may be able to produce more decisions and to reduce their backlog.

Regarding the clearance rate of *non-litigious civil cases*, low figures are given by **Italy, Estonia and Monaco**. In these countries, the courts may not be able to keep up with the pace of incoming non-litigious civil cases. High clearance rates for non-litigious civil cases are given by **Sweden, Slovakia and Moldova**. It should be noted that the clearance rate for **UK-England and Wales** is low. Due to their legal system (common law) many cases do not end in a judgment.

Figure 38. Clearance rate of litigious and non litigious civil cases in 2006, in % (Q88)



### 9.6 Land registry cases

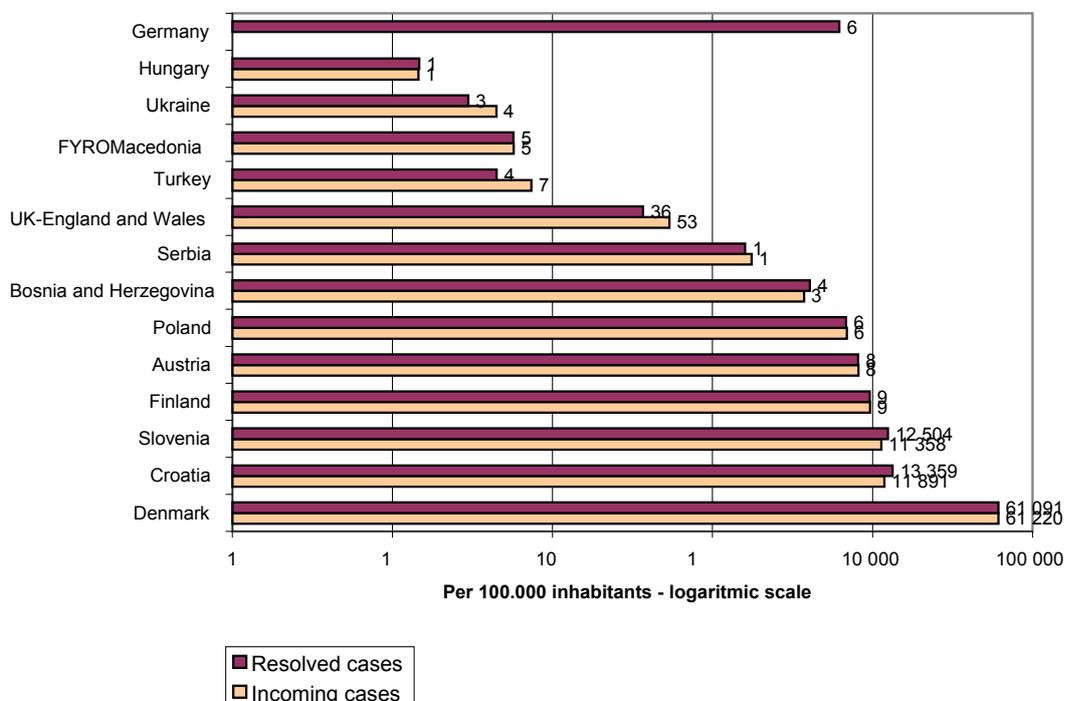
Countries where the administration of the land registry is an important task for the courts can often be found in South-eastern European countries (, **Bosnia and Herzegovina**, **Serbia** and “**the former Yugoslav Republic of Macedonia**”), central European countries (**Austria**, **Croatia**, **Hungary**, **Poland**, **Slovak Republic**, **Slovenia**). In **Finland**, **Germany**, **Denmark**, **Turkey**, **Ukraine** and **UK-England and Wales**, the courts have a role to play in land registries too.

**Table 63. Number of land registry cases at first instance courts (Q88)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Resolved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|----------------|-----------------------------------|
| Austria                | 12 481                          | 677 363        | 674 338        | 15 506                            |
| Bosnia and Herzegovina | 92 320                          | 143 429        | 156 231        | 79 518                            |
| Croatia                | 214 528                         | 528 298        | 593 523        | 149 303                           |
| Denmark                |                                 | 3 322 420      | 3 315 403      |                                   |
| Finland                | 15 742                          | 508 116        | 505 667        | 18 149                            |
| Germany                |                                 |                | 5 122 001      |                                   |
| Hungary                | 405                             | 1 459          | 1 479          | 385                               |
| Poland                 | 295 727                         | 2 639 389      | 2 606 013      | 334 169                           |
| Serbia                 | 22 447                          | 130 254        | 118 740        | 33 961                            |
| Slovenia               | 103 839                         | 227 538        | 250 493        | 80 884                            |
| Turkey                 | 30 458                          | 54 339         | 32 870         | 51 927                            |
| FYROMacedonia          | 0                               | 1 168          | 1 163          | 5                                 |
| Ukraine                | 4 553                           | 20 823         | 13 915         | 5 828                             |
| UK-England and Wales   |                                 | 289 291        | 197 688        |                                   |

When the incoming land registry cases and decisions are recalculated per 100.000 inhabitants, large numbers of incoming cases and decisions are handled by **Denmark, Croatia, Slovenia, Finland and Austria**. To a lesser extent, in **Poland and Germany** many judgments are given in the field of land registry cases (for **Germany** no information is available on the number of incoming cases). Concerning the number of pending cases (absolute figures) it can be noted that in **Croatia and Poland** there is an especially high number. This may have a negative effect on the length of proceedings for land registry cases.

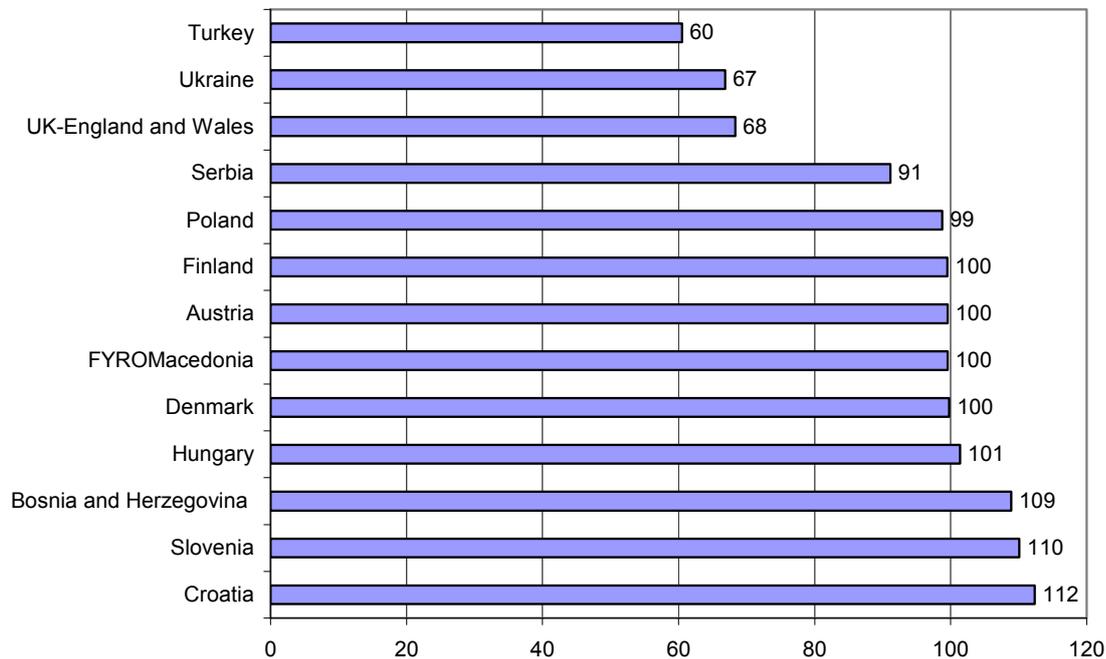
**Figure 39. Number of incoming and resolved land registry cases per 100.000 inhabitants in 2006 (Q88)**



As for litigious and non-litigious civil cases, the clearance rate for land registry cases can be calculated. Considering the responding countries, in **Turkey, Ukraine and UK-England and Wales** in particular, the clearance rates are far below 90%. High clearance rates exist in **Bosnia and Herzegovina, Slovenia and**

**Croatia.** Especially for the last country, large numbers of judgments are given compared with the number of incoming cases. However there are also many old land registry cases pending.

**Figure 40. Clearance rate of land registry cases in 2006, in % (Q88)**



## 9.7 Business register cases

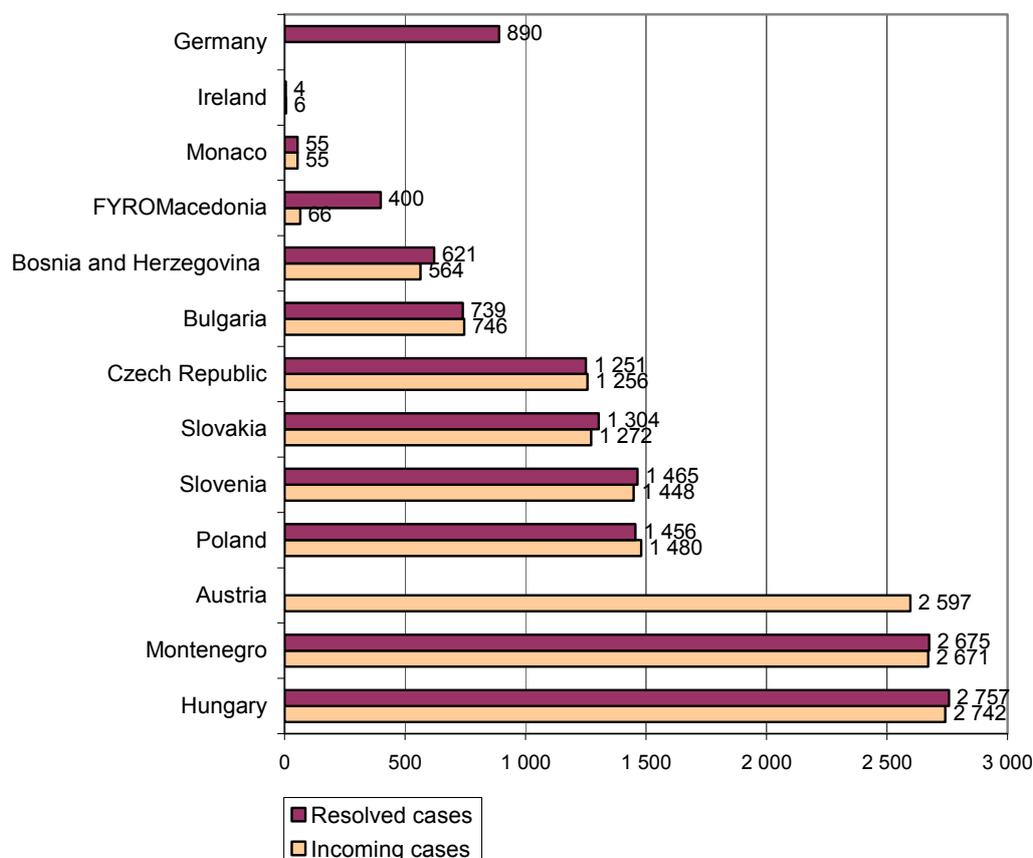
At least 13 countries have provided figures on the number of business registry cases. For these countries, it is assumed that the maintenance of these registries is the responsibility of a court, which influences the total workload of a court. High absolute number of decisions in business registries can be found in **Germany**, **Hungary** and **Poland**. It should be noted that for **Hungary**, **Poland** and **Slovakia** there is also a high number of pending cases by the end of the year 2006.

**Table 64. Number of business register cases at first instance courts in 2006 (Q88)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Resolved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|----------------|-----------------------------------|
| Austria                |                                 | 215 119        |                |                                   |
| Bosnia and Herzegovina | 4 309                           | 21 682         | 23 865         | 2 126                             |
| Bulgaria               | 1 410                           | 57 289         | 56 777         | 1 922                             |
| Czech Republic         | 3 656                           | 129 251        | 128 710        | 4 197                             |
| Germany                |                                 |                | 733 127        |                                   |
| Hungary                | 24 022                          | 276 013        | 277 493        | 22 542                            |
| Ireland                | 16                              | 262            | 189            | 73                                |
| Monaco                 | 18                              | 18             | 18             | 18                                |
| Montenegro             | 128                             | 16 562         | 16 589         | 101                               |
| Poland                 | 15 869                          | 564 350        | 555 297        | 22 548                            |
| Slovakia               | 13 906                          | 68 561         | 70 266         | 12 201                            |
| Slovenia               | 2 345                           | 29 018         | 29 341         | 2 022                             |
| FYROMacedonia          | 6 822                           | 1 344          | 8 150          | 16                                |

In the following chart, the number of incoming cases and resolved cases per 100.000 inhabitants is shown. Especially in **Montenegro** and **Hungary**, high numbers of resolved cases per 100.000 inhabitants are given in the area of business registries.

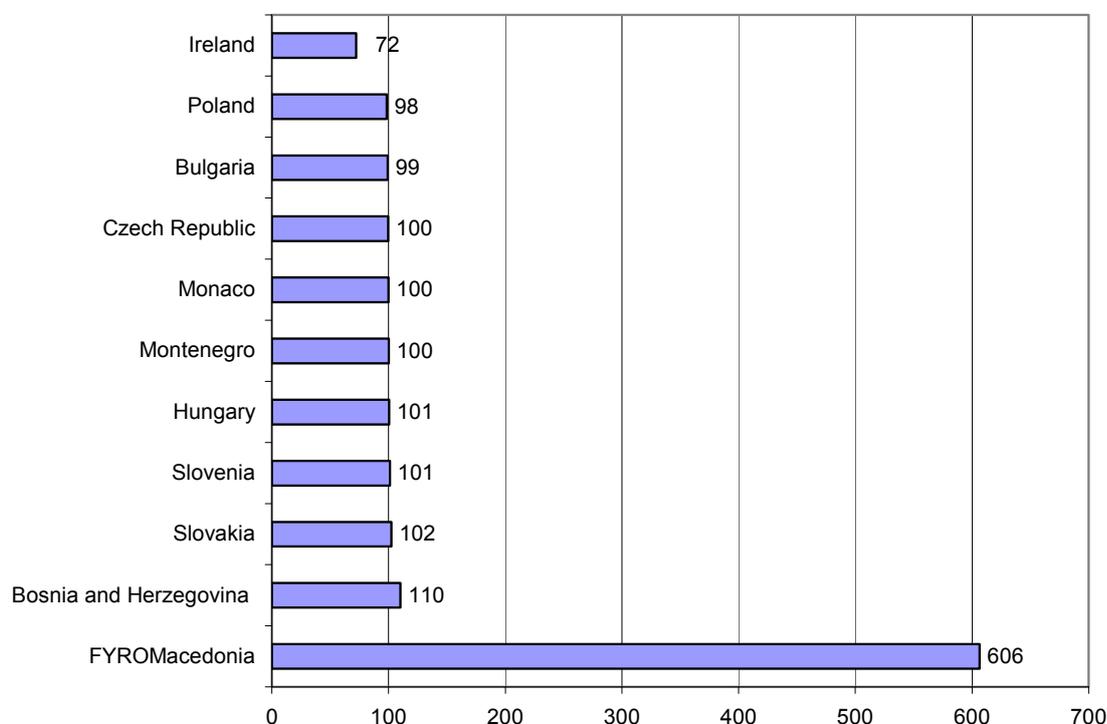
**Figure 41. Number of incoming and resolved business register cases per 100.000 inhabitants in 2006 (Q88)**



As regards clearance rates, most of the countries are able to give a similar number of judgments given the number of incoming business registry cases. Extremes on the positive side (more decisions) or on the negative side (less decisions) can be found for “the former Yugoslav Republic of Macedonia” and

Ireland respectively. A possible reason for “the former Yugoslav Republic of Macedonia” may be that – as an effect of automatization of the business registers, many pending cases are resolved in a very short period. In general it must be noted that in a certain number of (Eastern European) countries – as a part of *e-justice* – the business registers and land registers are transferred from paper based registers to databases.

**Figure 42. Clearance rates of business register cases in 2006, in % (Q88)**



## 9.8 Administrative law cases

Disputes between a citizen and the government can be settled as civil law proceedings. However in a number of countries, administrative law is a separate area of law. The settlement of these disputes can be the competence of specialised administrative law tribunals or units within a court of general jurisdiction. For at least 27 countries, the detailed data could be provided on the number of administrative law cases at first instance. Courts in **France, Germany, Moldova, the Netherlands, Romania, Russian Federation, Spain, Sweden, Turkey, Ukraine** and **UK-Scotland** have received in 2006 a significant absolute number of administrative cases. A high number of pending cases at the end of 2006 can be found in: **France, Germany, Spain and Turkey**.

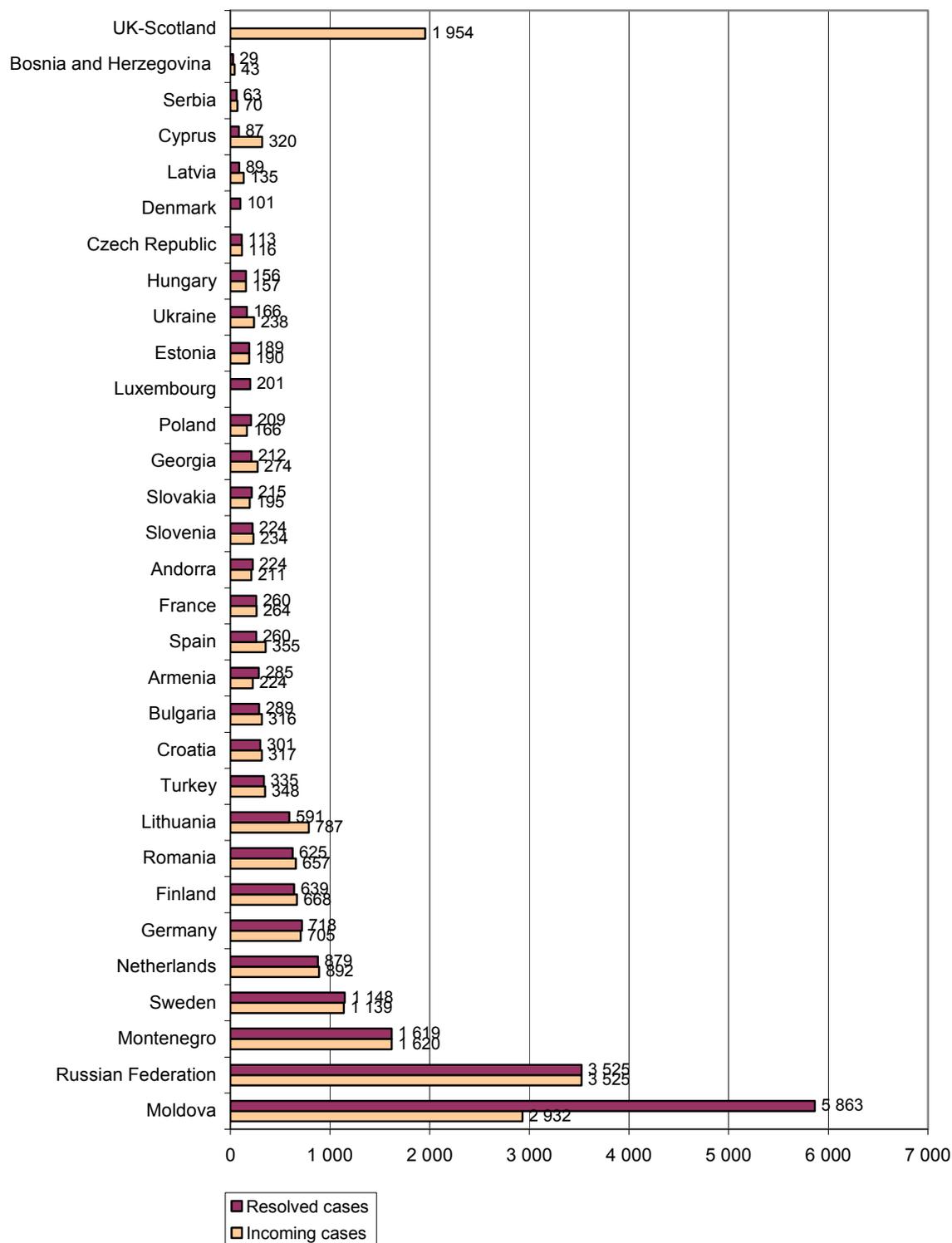
**Table 65. Number of administrative law cases at first instance courts in 2006 (Q88)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Resolved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|----------------|-----------------------------------|
| Andorra                | 103                             | 171            | 182            | 92                                |
| Armenia                | 3 699                           | 7 225          | 9 198          | 1 726                             |
| Bosnia and Herzegovina | 1 137                           | 1 639          | 1 111          | 1 665                             |
| Bulgaria               | 13 193                          | 24 281         | 22 195         | 15 279                            |
| Croatia                | 39 219                          | 14 068         | 13 388         | 39 899                            |
| Cyprus                 | 2 757                           | 2 470          | 674            | 3 711                             |
| Czech Republic         | 7 927                           | 11 901         | 11 631         | 8 197                             |
| Denmark                |                                 |                | 5 465          | 1 986                             |
| Estonia                | 1 111                           | 2 552          | 2 542          | 921                               |
| Finland                | 28 636                          | 35 083         | 33 574         | 30 145                            |
| France                 | 209 547                         | 166 785        | 164 342        | 211 990                           |

| Country            | Pending cases on 1 January 2006 | Incoming cases | Resolved cases | Pending cases on 31 December 2006 |
|--------------------|---------------------------------|----------------|----------------|-----------------------------------|
| Georgia            | 3 062                           | 12 031         | 9 334          | 2 734                             |
| Germany            | 609 124                         | 580 922        | 591 468        | 598 575                           |
| Hungary            | 5 859                           | 15 757         | 15 705         | 5 911                             |
| Latvia             | 2 814                           | 3 104          | 2 040          | 3 878                             |
| Lithuania          | 2 677                           | 26 781         | 20 123         | 9 335                             |
| Luxembourg         |                                 | 1024           | 949            |                                   |
| Moldova            | 106 815                         | 105 239        | 210 478        | 1 576                             |
| Montenegro         | 1 450                           | 10 046         | 10 038         | 1 458                             |
| Netherlands        |                                 | 145 660        | 143 500        |                                   |
| Poland             | 43 969                          | 63 260         | 79 541         | 27 688                            |
| Romania            | 32 566                          | 141 879        | 134 975        | 39 470                            |
| Russian Federation |                                 | 5 005 000      | 5 005 000      |                                   |
| Serbia             | 1 050                           | 5 163          | 4 700          | 1 513                             |
| Slovakia           | 10 590                          | 10 521         | 11 604         | 9 507                             |
| Slovenia           | 5 210                           | 4 678          | 4 481          | 5 407                             |
| Spain              | 85 287                          | 155 403        | 113 937        | 129 171                           |
| Sweden             | 44 231                          | 103 784        | 104 647        | 45 094                            |
| Turkey             | 131 086                         | 255 464        | 246 180        | 140 370                           |
| Ukraine            | 14 611                          | 110 929        | 77 325         | 18 915                            |
| UK-Scotland        |                                 | 100 000        |                |                                   |

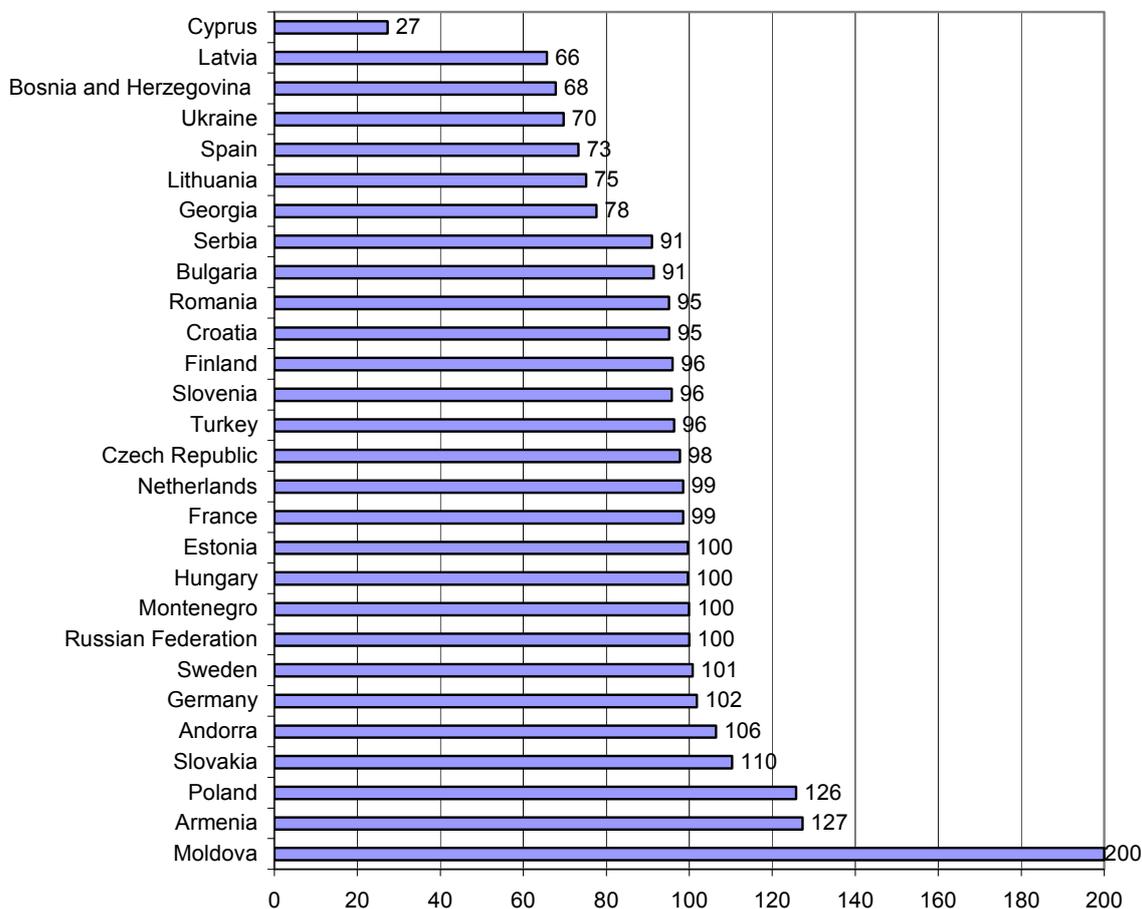
In the following chart the number of incoming administrative law cases and resolved cases per 100.000 inhabitants are given. Countries with a relatively high number of incoming cases and judgments per 100.000 inhabitants are: **Russian Federation, Moldova, Montenegro, Sweden and the Netherlands.**

**Figure 43. The number of incoming and resolved administrative cases at first instance courts per 100.000 inhabitants in 2006 (Q88)**



With respect to the clearance rates, there is a diverse image of the various European countries. There are countries where the number of decisions are lower than the number of incoming cases (in particular **Cyprus, Latvia, Bosnia and Herzegovina, Ukraine, Spain, Lithuania and Georgia**) and countries with a high clearance rate (**Poland, Armenia and Moldova**). For 17 countries the clearance rates balances between 91 % and 106 %.

**Figure 44. Clearance rate of administrative cases in 2006, in % (Q88)**



### 9.9 Enforcement cases (non-criminal litigious cases)

Since the enforcement of judicial decisions is followed in particular by the Committee of Ministers of the Council of Europe, the CEPEJ has also asked the countries to provide information on the number of enforcement cases (litigious cases regarding the (non) execution of court decisions).

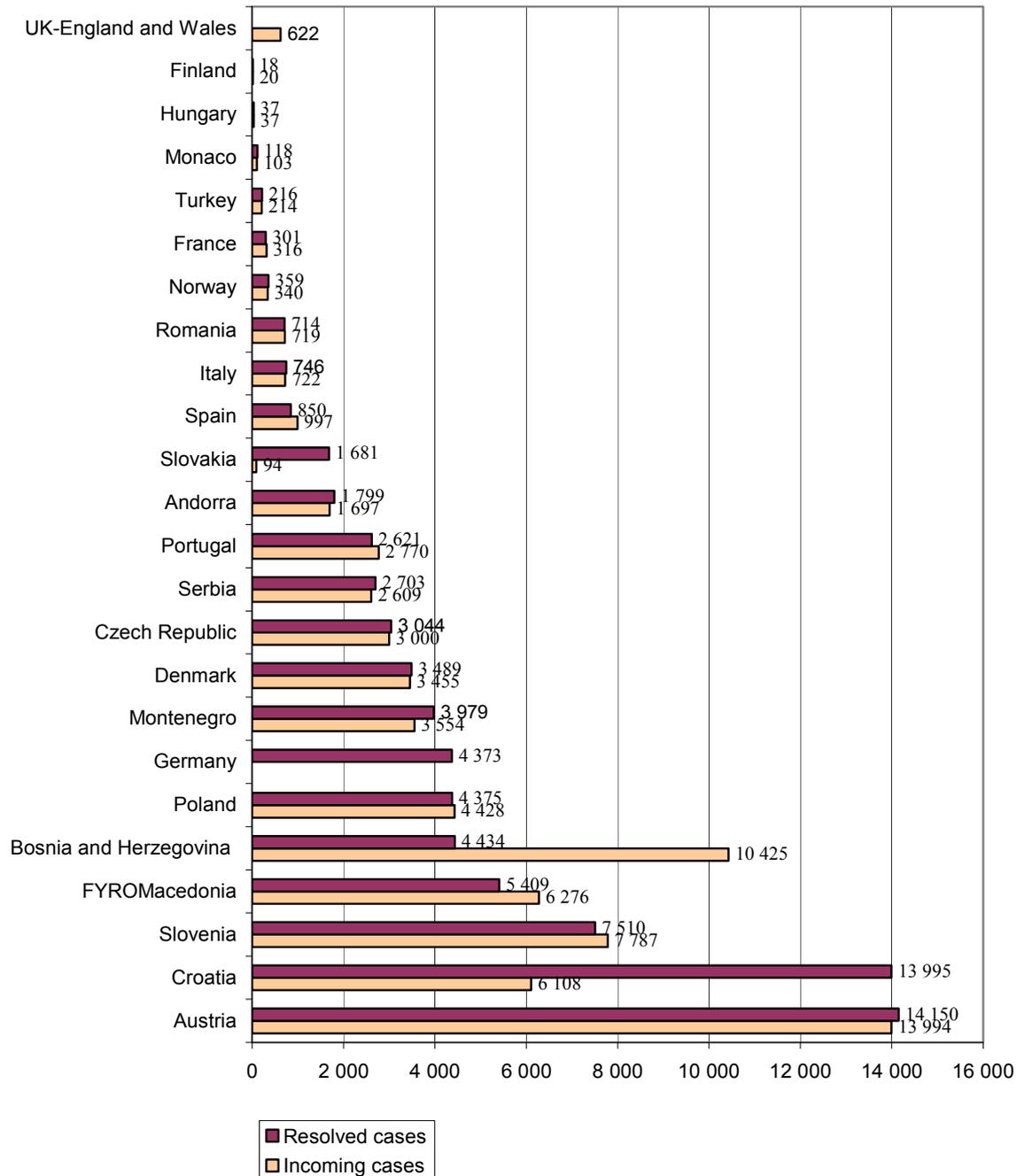
For 24 countries, figures were supplied on the number of enforcement cases. It is assumed that enforcement in these countries is a part of the judicial system. In the following table, the pending cases, incoming cases and resolved cases are presented.

A significantly high absolute number of incoming enforcement cases can be found in the following countries: **Austria, Germany and Poland. Bosnia and Herzegovina, Poland, Portugal and Spain** are confronted with a large amount of pending enforcement cases by the end of the year 2006. The number of incoming enforcement cases per 100.000 inhabitants is high in **Croatia, “the former Yugoslav Republic of Macedonia”, Slovenia and Austria**.

**Table 66. The number of enforcement cases (litigious and non-criminal cases) at first instance courts in 2006 (Q88)**

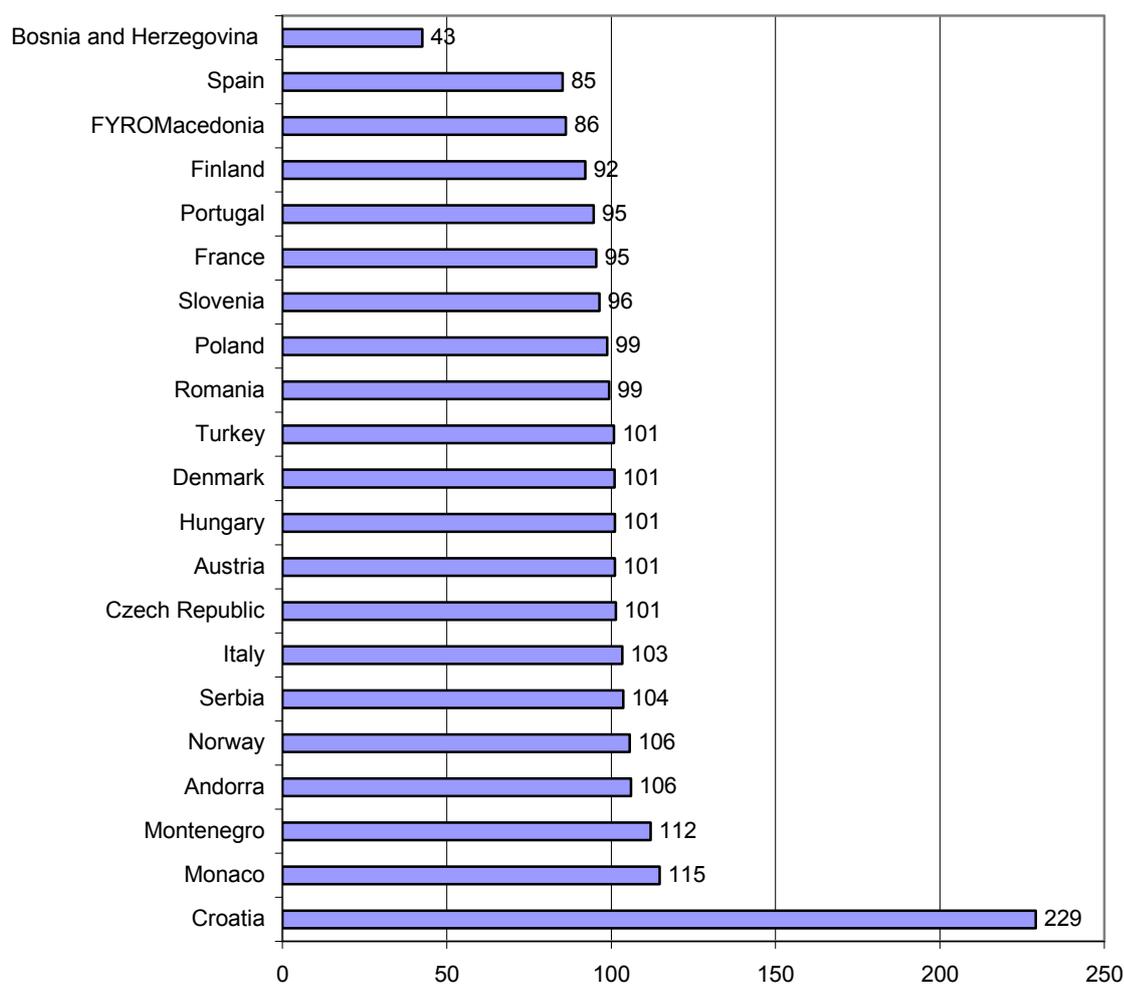
| <b>Country</b>         | <b>Pending cases on 1 January 2006</b> | <b>Incoming cases</b> | <b>Resolved cases</b> | <b>Pending cases on 31 December 2006</b> |
|------------------------|--|-----------------------|-----------------------|--|
| Andorra                | 1 524                                  | 1 378                 | 1 461                 | 1 441                                    |
| Austria                | 311 434                                | 1 159 004             | 1 171 894             | 298 544                                  |
| Bosnia and Herzegovina | 849 730                                | 400 618               | 170 393               | 1 079 955                                |
| Croatia                | 493 827                                | 271 357               | 621 800               | 143 384                                  |
| Czech Republic         | 22 987                                 | 308 612               | 313 105               | 18 494                                   |
| Denmark                | 28 649                                 | 187 518               | 189 357               | 28 728                                   |
| Finland                | 252                                    | 1 032                 | 951                   | 339                                      |
| France                 | 18 815                                 | 199 469               | 190 428               | 27 856                                   |
| Germany                |  |                       | 3 601 586             |  |
| Hungary                | 987                                    | 3 687                 | 3 728                 | 946                                      |
| Italy                  | 571 802                                | 423 899               | 438 116               | 557 585                                  |
| Monaco                 | 118                                    | 34                    | 39                    | 113                                      |
| Montenegro             | 27 653                                 | 22 038                | 24 675                | 25 016                                   |
| Norway                 | 7 932                                  | 15 907                | 16 804                | 7 032                                    |
| Poland                 | 1 962 148                              | 1 688 256             | 1 668 136             | 1 982 268                                |
| Portugal               | 952 489                                | 292 735               | 277 069               | 968 155                                  |
| Romania                | 7 588                                  | 155 357               | 154 325               | 8 620                                    |
| Serbia                 | 139 679                                | 193 351               | 200 358               | 132 674                                  |
| Slovakia               | 136 467                                | 5 043                 | 90 597                | 50 913                                   |
| Slovenia               | 283 081                                | 155 995               | 150 456               | 288 580                                  |
| Spain                  | 946 619                                | 436 286               | 372 048               | 1 008 871                                |
| FYROMacedonia          | 372 239                                | 127 935               | 110 270               | 389 904                                  |
| Turkey                 | 44 916                                 | 157 246               | 158 509               | 43 653                                   |
| UK-England and Wales   |  | 334 000               |                       |  |

**Figure 45. Number of first instance incoming and resolved enforcement cases per 100.000 inhabitants in 2006 (Q88)**



As regards the clearance rates in enforcement cases, low figures are presented by: **Bosnia and Herzegovina, Spain, "the former Yugoslav Republic of Macedonia", Finland, Portugal, France and Slovenia. Montenegro, Monaco and Croatia** experience high clearance rates in enforcement cases. This means that more judgments are given than the number of incoming cases.

**Figure 46. Clearance rates of enforcement cases in 2006, in % (Q88)**



**Comment:** the clearance rate in the **Slovak Republic** reaches 1790%. The data seems coherent, but is – due to a lack of explanation – not inserted into the graph.

### 9.10 Calculated disposition time for civil cases at first instance courts

Apart from the clearance rate indicator, a case turnover ratio and a disposition time indicator provide further insight into how a judicial system manages its flow of cases. Generally, a case turnover ratio and disposition time compare the number of resolved cases during the observed period and the number of unresolved cases at the end of observed period. The ratios measure how quickly the judicial system (or a court) turns over received cases – that is, how long it takes for a type of cases to be resolved.

The relationship between the number of cases that are resolved during an observed period and the number of unresolved cases at the end of the period can be expressed in two ways. The first requires a calculation of the number of times during the year (or other observed period) that the standardized case types are turned over or resolved. The case turnover ratio is calculated as follows:

$$\text{Case Turnover Ratio} = \frac{\text{Number of Resolved Cases}}{\text{Number of Unresolved Cases at the End}}$$

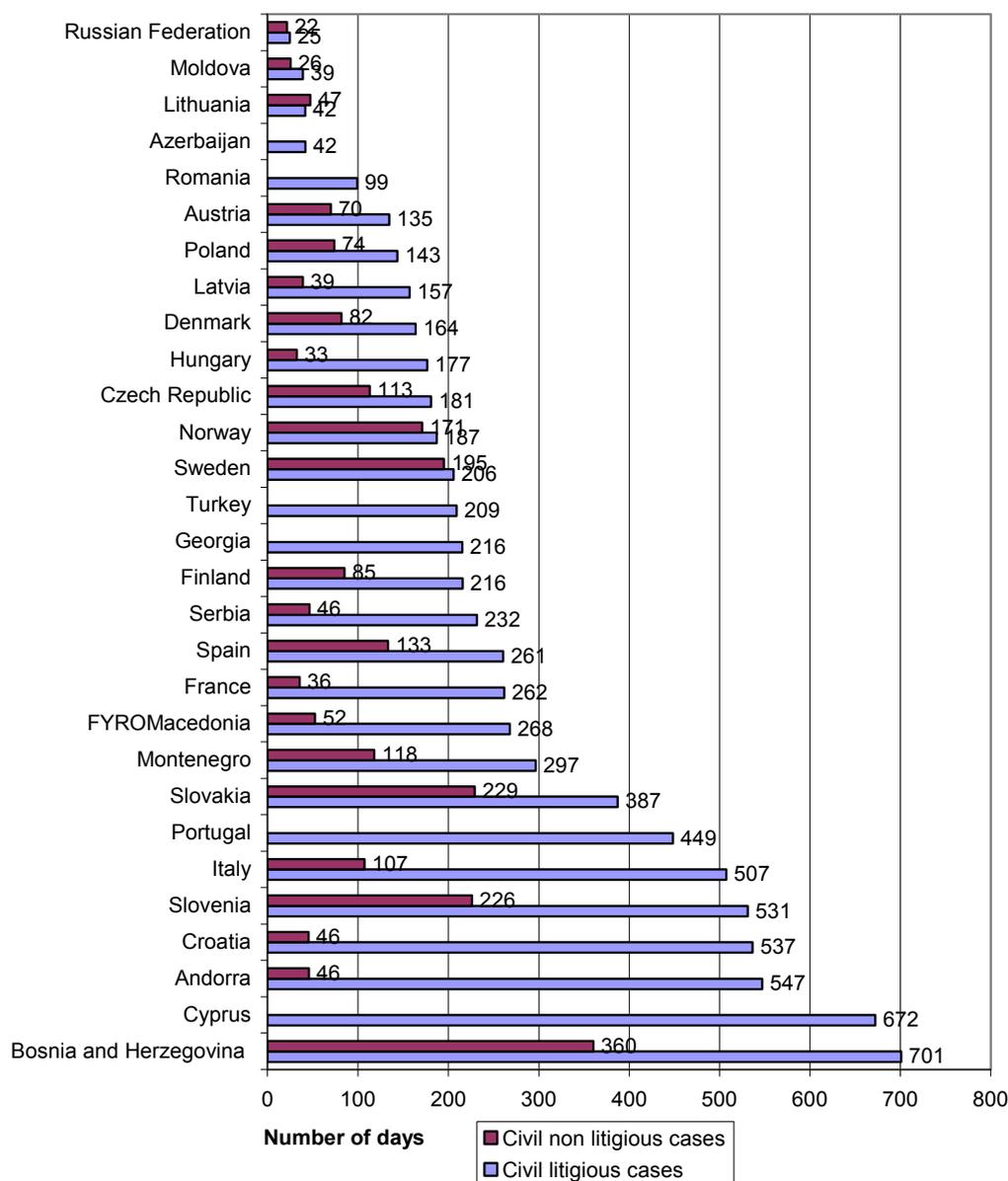
The second method determines the number of days that cases are outstanding, or remain unresolved in court. It is also known as the disposition time indicator and it is calculated by dividing 365 days in a year by the case turnover ratio as follows:

$$\text{DispositionTime} = \frac{365}{\text{CaseTurnoverRatio}}$$

The additional effort required to convert a case turnover ratio into days is justified by the simpler understanding of what this relationship entails. For example, a protraction in a judicial disposition time from 57 days to 72 days is much easier to grasp than a decline in case turnover ratio from 6.4 to 5.1. The conversation to days also makes it easier to compare a judicial system's turnover with the projected overall length of proceedings or established standards for the duration of proceedings.

In the following chart, the calculated disposition time is given for litigious and non-litigious civil cases.

**Figure 47. Disposition time of litigious and non litigious civil cases at first instance courts in 2006 (in days)**



As regards the calculated disposition time for *litigious cases*, there are countries where the cases are treated in a short period: **Russian Federation** (25 days), **Moldova** (39 days), **Lithuania** (42 days) and **Azerbaijan** (42 days). At the other end of the spectrum, the calculated disposition time for **Italy** (507 days), **Slovenia** (531 days), **Croatia** (537 days), **Andorra** (547 days), **Cyprus** (672 days) and **Bosnia and Herzegovina** (701 days) is relatively high. This means that in those countries the time that is needed to finalise a litigious civil case is long.

Concerning the *non-litigious civil law cases*, short disposition times can be seen for: **Russian Federation** (22 days), **Moldova** (26 days), **Latvia** (39 days), **Hungary** (33 days) and **France** (36 days). It takes a long period to finalise a non-litigious civil case in: **Bosnia and Herzegovina** (360 days), **Slovenia** (226 days) and **Slovak Republic** (229).

In a similar manner, the disposition time can be calculated for enforcement cases, land registry and business registry cases. For *enforcement cases*, there are 10 countries where enforcement may take more than one year (or even a couple of years). This is the case for: **Bosnia and Herzegovina** (2313 days), **“the former Yugoslav Republic of Macedonia”** (1291 days), **Portugal** (1275 days), **Monaco** (1058 days), **Spain** (990 days), **Italy** (465 days), **Poland** (434 days), **Montenegro** (370 days) and **Andorra** (360 days). Short enforcement proceedings can be found in: **Denmark** (55 days), **France** (53 days), **Czech Republic** (22 days) and **Romania** (20 days).

With respect to the *land registry cases*, the disposition time is long for **Turkey** (577 days), **Ukraine** (153 days) and **Bosnia and Herzegovina** (186 days). The shortest disposition time for land register cases is seen in **Finland** (13 days).

For *business registries*, there is also a large variation between the countries regarding the calculation of the disposition time. This varies from: 1 day (**“the former Yugoslav Republic of Macedonia”**) to 365 days (**Monaco**).

**Table 67. Disposition time of enforcement, land registry and business register cases in 2006 (in days)**

| Country                | Enforcement cases | Land registry cases | Business register cases |
|------------------------|-------------------|---------------------|-------------------------|
| Bosnia and Herzegovina | 2313              | 186                 | 33                      |
| FYROMacedonia          | 1291              | 2                   | 1                       |
| Portugal               | 1275              |                     |                         |
| Monaco                 | 1058              |                     | 365                     |
| Spain                  | 990               |                     |                         |
| Slovenia               | 700               | 118                 | 25                      |
| Italy                  | 465               |                     |                         |
| Poland                 | 434               | 47                  | 15                      |
| Montenegro             | 370               |                     | 2                       |
| Andorra                | 360               |                     |                         |
| Serbia                 | 242               | 104                 |                         |
| Slovakia               | 205               |                     | 63                      |
| Norway                 | 153               |                     |                         |
| Finland                | 130               | 13                  |                         |
| Turkey                 | 101               | 577                 |                         |
| Austria                | 93                | 8                   |                         |
| Hungary                | 93                | 95                  | 30                      |
| Croatia                | 84                | 92                  |                         |
| Denmark                | 55                |                     |                         |
| France                 | 53                |                     |                         |
| Czech Republic         | 22                |                     | 12                      |
| Romania                | 20                |                     |                         |
| Bulgaria               |                   |                     | 12                      |
| Ireland                |                   |                     | 141                     |
| Ukraine                |                   | 153                 |                         |

## 9.11 Criminal law cases (severe criminal offences) and misdemeanour cases (minor offences) at first instance courts

In the Evaluation scheme, countries were asked to submit information concerning criminal law cases. These cases are categorized by the CEPEJ into two types: *severe criminal cases* and *minor offences*. Examples of severe criminal cases are: murder, rape, organised crime, fraud, drugs trafficking, trafficking of human beings, etc. Minor offences may be shoplifting, certain categories of driving offences, disturbance of the public order, etc. However, it should be noted that for both categories of cases there is a possibility that countries classify criminal law cases in a different manner. For instance there may be countries where small traffic offences are not part of the criminal law, but are dealt with through administrative law. What is defined as a minor offence or a misdemeanour in a given country can be a severe criminal case in other countries.

The CEPEJ has decided to use the same terminology and definitions as are used in the "European Sourcebook of Crimes and Criminal justice". The total number of criminal offences includes all offences defined as criminal by any law, including traffic offences (mostly dangerous and drink driving). Criminal offences include acts which are normally processed by the public prosecutor, whereas offences which are processed directly by the police, such as minor traffic offences and certain breaches of public order are not included.

Due to the high variation in the classifications used in criminal cases by the various countries, the data presented should be interpreted with care, since the figures provided may not reflect the real situation in a country. However, to understand better the main trends in Europe, a distinction between minor criminal offences and severe criminal acts is necessary, since for minor criminal offences, shorter court proceedings and/or other details of the treatment of a case (the imposition of an administrative fine, a sanction imposed by a public prosecutor without the intervention of a judge, police sanctions, etc) may be used, compared with severe criminal cases. Special tribunals, courts or judges can also be competent for small criminal offences (for example misdemeanour courts, police courts or police judges, administrative tribunals). In addition, there may be the possibility to use mediation for minor criminal offences.

To give a concrete idea of the different classifications used in the various countries here we give a few examples. In **Andorra** misdemeanour offences are those where a maximum of 2 years imprisonment is applied. In **Austria**, minor offences including cases with pecuniary penalties or imprisonment of up to 1 year and are dealt with by District Courts. Severe criminal cases include all other criminal cases dealt with by Regional courts, Courts of Assize or Jurors' courts both allocated to the Regional Courts. In **Azerbaijan** cases are divided into criminal offences which are not of high social danger (maximum of 2 years of prison), less serious criminal offences (maximum of 7 years of prison), serious criminal offences (maximum of 12 years of prison) and very serious criminal offences (more than 12 years of prison). **Bosnia and Herzegovina** does not use a classification of severe and non-severe criminal cases. A criminal case is an unlawful act that is prescribed as a criminal offence by law, the characteristics of which are specified by law and for which a criminal sanction is prescribed by law. On the other hand, a minor offence is a violation of the public order or economic and financial regulations as provided in laws. In addition to this, a procedure for determining criminal liability is different from that of determining liability in minor offence cases. In **Bulgaria** a differentiation is made between a severe crime (any crime for which the law provides punishment by deprivation of liberty for more than five years, life imprisonment or life imprisonment without substitution) and a minor case (in which the crime perpetrated, in view of the lack of or insignificance of the harmful consequences, or in view of other attenuating circumstances, constitutes a lower degree of social danger). In **Georgia** minor offences are those with a maximum of 5 years of prison. In **Germany**, severe criminal cases are defined as a criminal act perpetrated intentionally and punishable by imprisonment of two or more years. Every other act of crime laid out in the Criminal Code is a minor criminal offence. Criminal offences are punishable by imprisonment, community service work or fines, as well as by some ancillary punishments. Misdemeanour offences are dealt with in administrative law proceedings. In **Hungary** minor offences are punishable by imprisonment, community service work or fines as well as some ancillary punishments. Misdemeanour offences are dealt with following administrative law procedures and are not regarded as a criminal act. In **Latvia**, criminal law cases are cases heard following criminal law procedure. Misdemeanour cases are cases heard in the first instance district courts following administrative law procedure. In **Luxembourg**, minor criminal offences are treated by police judges, whilst severe criminal cases are handled by other courts. In **Moldova** cases are defined as: *minor offences* - criminal acts punishable by a prison sentence of up to 2 years; *less serious offences* - criminal acts punishable by deprivation of freedom of up to 5 years; *serious crimes* - criminal acts punishable by a prison sentence of up to 15 years; *extremely serious offences* - intentional criminal acts punishable by a prison sentence exceeding 15 years; *exceptionally serious offences* -- intentional criminal acts punishable with imprisonment

for life. In **Poland** minor offences are punished with a maximum imprisonment of 1 year and/or a fine up to 1289 €. **Portugal** considers as severe criminal offences all criminal cases regardless of their seriousness or abstract legal sanction which may be imposed, except misdemeanours and administrative offences (both included in minor offences and the only categories which were counted as minor offences). In **Spain** there is a three-fold classification of criminal offences: *serious crimes*, *less serious crimes* and *misdemeanours*. Such a classification is, to a great extent, of a formal character in the sense that it depends on the different types of penalties envisaged. *Serious crimes* are those punished with serious penalties (namely imprisonment and disqualifications of more than 5 years). *Less serious crimes* are those punished with less serious penalties (namely imprisonment of 3 months to 5 years, most criminal fines and, with some exceptions, disqualifications under 5 years). Both categories of criminal cases represent the vast majority of offences. *Misdemeanours* are punished with minor penalties (for example small fines or driving disqualifications up to one year) which do not include imprisonment. In **Turkey** the cases handled by the Peace Criminal Courts, Enforcement Criminal Courts and Traffic Courts are included under "misdemeanour cases" (punished by an administrative sanction). The other case categories are included under "severe criminal cases". In **UK-England and Wales** criminal cases (tried before the Crown court) are placed in one of three categories: Class 1 - the most serious crimes such as murder and treason; Class 2 - serious cases such as rape; Class 3 - all other offences such as burglary, grievous bodily harm and robbery. Summary cases are those which are dealt with in Magistrates' Courts. These are offences which will attract a maximum six month sentence or a maximum £5,000 fine. Either-way cases are slightly more serious and can be dealt with in the Magistrates' Courts or the defendant can elect for trial by jury. Indictable offences are committed to the Crown or High Court. 95% of the offences are received and concluded in the Magistrates' Courts.

In the following table, the number of *severe criminal cases* (pending cases at the beginning of the year, incoming cases and decisions) is shown. The figures indicate that **Bosnia and Herzegovina, Croatia, France, Germany, Italy, Poland, Russian Federation, Spain, Turkey** and **UK-England and Wales** are confronted with an especially high absolute number of incoming (severe) criminal cases.

**Table 68. Number of criminal cases (severe criminal offences) at first instance courts in 2006 (Q88)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Resolved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|----------------|-----------------------------------|
| Andorra                | 240                             | 188            | 228            | 200                               |
| Austria                | 6 104                           | 26 989         | 26 969         | 6 124                             |
| Azerbaijan             |                                 | 1 394          |                |                                   |
| Belgium                | 13 578                          | 42 330         | 47 436         |                                   |
| Bosnia and Herzegovina | 24 774                          | 93 798         | 93 631         | 24 941                            |
| Croatia                | 46 693                          | 88 092         | 89 296         | 45 489                            |
| Denmark                | 3 646                           | 15 506         | 15 068         | 3 980                             |
| Estonia                | 2 266                           | 10 687         | 9 353          | 2 418                             |
| France                 |                                 | 609 564        | 655 737        |                                   |
| Germany                | 297 355                         | 854 099        | 864 231        | 287 223                           |
| Hungary                | 55 887                          | 135 449        | 136 524        | 54 812                            |
| Ireland                |                                 | 2 667          |                |                                   |
| Italy                  | 1 142 110                       | 1 230 085      | 1 168 044      | 1 204 151                         |
| Latvia                 | 3 594                           | 9 706          | 10 065         | 3 235                             |
| Lithuania              | 2 879                           | 15 207         | 15 257         | 2 829                             |
| Luxembourg             |                                 |                | 6 567          |                                   |
| Malta                  | 18                              | 15             | 12             | 37                                |
| Moldova                | 9 476                           | 7 856          | 15 712         | 1 620                             |
| Monaco                 |                                 |                | 318            |                                   |
| Montenegro             | 8 426                           | 7 304          | 7 176          | 8 554                             |
| Netherlands            |                                 |                | 156 160        |                                   |
| Poland                 | 171 094                         | 560 539        | 542 346        | 189 277                           |
| Portugal               | 141 509                         | 115 934        | 110 977        | 146 466                           |
| Russian Federation     | 61 000                          | 437 000        | 437 000        | 61 000                            |
| Serbia                 | 46 614                          | 60 951         | 59 881         | 47 684                            |

| Country              | Pending cases on 1 January 2006 | Incoming cases | Resolved cases | Pending cases on 31 December 2006 |
|----------------------|---------------------------------|----------------|----------------|-----------------------------------|
| Slovenia             | 24 150                          | 19 145         | 20 035         | 23 260                            |
| Spain                | 190 638                         | 240 345        | 388 317        | 205 898                           |
| FYROMacedonia        | 9 834                           | 15 116         | 15 165         | 9 785                             |
| Turkey               | 730 117                         | 692 987        | 725 418        | 697 686                           |
| UK-England and Wales | 80 262                          | 392 288        |                | 70 610                            |

As regards *misdemeanour cases (minor offences)*, the workload of the first instance courts (in terms of an absolute high number of incoming cases) is significantly influenced in: **Croatia, France, Germany, Ireland, the Netherlands, Poland, Russian Federation, Spain, “the former Yugoslav Republic of Macedonia”, Turkey and UK England and Wales.**

**Table 69. Number of misdemeanour cases (minor offences) at first instance courts in 2006 (Q88)**

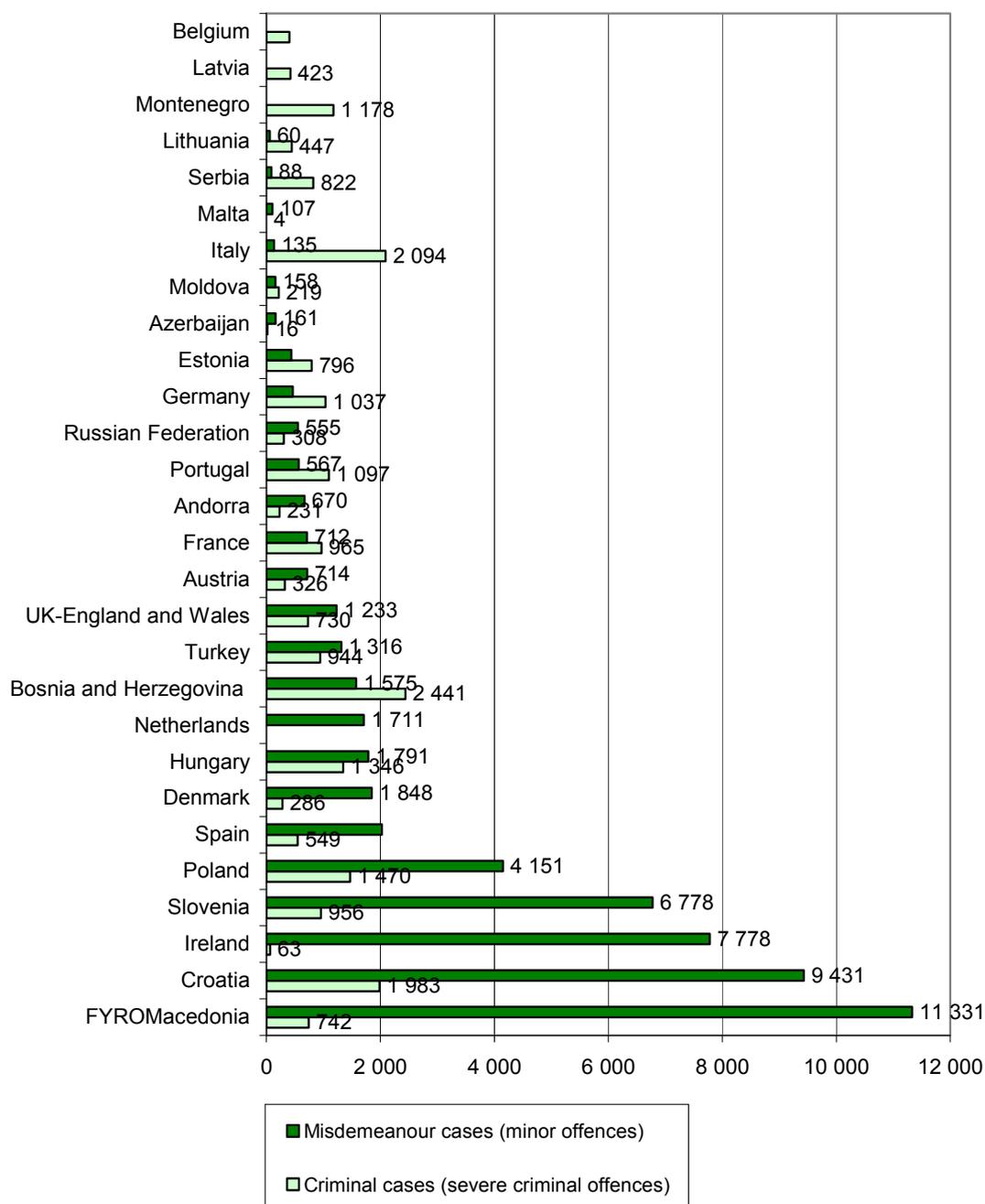
| Country                | Pending cases on 1 January 2006 | Incoming cases | Resolved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|----------------|-----------------------------------|
| Andorra                | 383                             | 544            | 456            | 246                               |
| Austria                | 22 447                          | 59 155         | 60 888         | 20 714                            |
| Azerbaijan             |                                 | 13 721         |                |                                   |
| Belgium                |                                 |                | 256 584        |                                   |
| Bosnia and Herzegovina | 391 434                         | 60 522         | 64 720         | 387 236                           |
| Croatia                | 285 585                         | 418 997        | 441 254        | 263 328                           |
| Denmark                | 17 722                          | 100 285        | 98 138         | 19 310                            |
| Estonia                | 838                             | 5 851          | 4 587          | 1 652                             |
| France                 |                                 | 450 258        | 390 296        |                                   |
| Germany                | 95 269                          | 382 716        | 389 883        | 88 102                            |
| Hungary                | 18 735                          | 180 294        | 182 393        | 16 636                            |
| Ireland                |                                 | 329 775        |                |                                   |
| Italy                  | 65 522                          | 79 449         | 59 995         | 84 976                            |
| Latvia                 |                                 |                | 23 731         |                                   |
| Lithuania              | 380                             | 2 038          | 1 968          | 450                               |
| Luxembourg             |                                 |                | 5 444          |                                   |
| Malta                  | 145                             | 438            | 400            | 165                               |
| Moldova                | 6 511                           | 5 661          | 11 322         | 850                               |
| Monaco                 |                                 |                | 236            |                                   |
| Netherlands            |                                 | 279 440        | 278 790        | 45 660                            |
| Poland                 | 171 983                         | 1 582 561      | 1 556 712      | 195 092                           |
| Portugal               | 60 192                          | 59 922         | 58 836         | 61 278                            |
| Russian Federation     | 110 000                         | 788 000        | 788 000        | 110 000                           |
| Serbia                 | 4 972                           | 6 535          | 7 291          | 4 216                             |
| Slovenia               | 83 713                          | 135 788        | 119 782        | 99 719                            |
| Spain                  | 203 285                         | 886 871        | 883 992        | 208 885                           |
| FYROMacedonia          | 239 905                         | 230 985        | 284 586        | 186 304                           |
| Turkey                 | 320 509                         | 966 156        | 846 512        | 440 153                           |
| UK-England and Wales   | 102 899                         | 662 624        |                | 93 985                            |

**Comment: Turkey** - the number of misdemeanour cases does not include the cases punished by administrative sanctions, although they are considered as misdemeanour cases.

When the figures are compared with the number of inhabitants, a different order between the countries can be made. A relative high number of *severe incoming criminal offences per 100.000 inhabitants* can be found in: **Bosnia and Herzegovina, Croatia, Italy, Poland, Hungary and Montenegro** followed by **Portugal, France, Germany, Slovenia and Turkey**. With respect to the *minor offences per 100.000 inhabitants*, many

of these incoming cases are present in: **Croatia, Slovenia, “the former Yugoslav Republic of Macedonia”, Ireland and Poland** followed by **Hungary, Turkey, the Netherlands, Bosnia and Herzegovina, Denmark and Spain.**

**Figure 48. Number of incoming criminal cases (severe criminal offences) and misdemeanour cases per 100.000 inhabitants in 2006 (Q88)**



**Comment:** for a correct interpretation of the graph it is necessary to take into account the differences in defining severe and minor offences in the various countries.

### 9.12 Case categories compared: procedure and length

To get a better understanding of the workload of the courts in Europe and to compare the figures in a more reliable manner, four case categories have been selected in the Evaluation Scheme for additional analysis. The case categories concerned are based on the assumption that in all the courts in Europe, similar kinds of disputes or offences are treated. The four cases are defined in the explanatory note of the Evaluation Scheme as followed:

1. *Litigious divorce cases*: i.e. the dissolution of a marriage contract between two persons, by the judgement of a competent court. The data should not include: divorce ruled by an agreement between the parties concerning the separation of the spouses and all its consequences (procedure by mutual consent, even if they are processed by the court) or ruled on through an administrative procedure.
2. *Employment dismissal cases*: cases concerning the termination of (an) employment (contract) at the initiative of the employer (working in the private sector). These do not include dismissals of public officials, following a disciplinary procedure for instance.
3. *Robbery* concerns stealing from a person with force or threat of force. If possible these figures should include: muggings (bag-snatching, armed theft, etc) and *exclude* pick pocketing, extortion and blackmail (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts.
4. *Intentional homicide* is defined as the intentional killing of a person. Where possible the figures should include: assault leading to death, euthanasia (where this is forbidden by the law), infanticide and *exclude* suicide assistance (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts.

**Table 70. Number of incoming cases of litigious divorces, dismissals, robberies and homicides per 100.000 inhabitants in 2006 (Q92)**

| Country              | Divorces | Dismissal cases | Robbery cases | Homicides |
|----------------------|----------|-----------------|---------------|-----------|
| Andorra              |          |                 | 23,4          | 1,2       |
| Armenia              | 44,3     | 6,4             | 2,3           | 2,6       |
| Austria              | 91,0     |                 |               |           |
| Azerbaijan           | 106,0    | 5,6             | 1,1           | 3,5       |
| Belgium              | 381,6    |                 |               |           |
| Bulgaria             | 154,5    | 26,4            | 18,9          | 2,1       |
| Croatia              | 166,9    | 41,1            |               |           |
| Cyprus               | 195,7    | 80,9            |               |           |
| Czech Republic       | 347,4    |                 |               |           |
| Denmark              | 105,7    |                 |               |           |
| Finland              | 342,2    | 9,8             | 8,6           | 1,7       |
| France               | 169,6    | 195,1           |               |           |
| Georgia              | 0,2      | 6,4             | 72,1          | 6,0       |
| Hungary              | 353,3    | 47,9            |               |           |
| Iceland              |          |                 | 4,0           | 2,0       |
| Ireland              | 94,9     |                 | 577,0         | 0,8       |
| Italy                | 34,3     |                 |               |           |
| Latvia               | 367,8    | 6,4             | 19,2          | 4,1       |
| Lithuania            | 238,3    | 6,6             | 140,6         | 7,1       |
| Moldova              | 366,1    | 9,6             | 4,1           | 6,2       |
| Monaco               | 251,5    | 327,3           | 0,0           | 0,0       |
| Montenegro           |          |                 | 123,2         | 1,1       |
| Netherlands          | 206,3    | 405,9           |               |           |
| Poland               | 276,8    | 55,0            |               |           |
| Portugal             | 90,1     |                 |               |           |
| Romania              | 289,3    | 7,2             | 8,4           | 4,4       |
| Russian Federation   | 368,3    | 21,1            | 236,6         | 16,9      |
| Slovakia             | 239,0    |                 |               |           |
| Slovenia             | 103,1    | 49,4            |               |           |
| Spain                | 127,2    | 148,9           | 176,0         | 0,2       |
| Sweden               | 284,8    |                 |               |           |
| Turkey               | 211,3    |                 | 15,9          | 14,2      |
| Ukraine              | 348,2    |                 | 76,3          |           |
| UK-England and Wales | 276,5    | 82,8            | 24,6          | 1,3       |

## Litigious divorces

Most of the countries were able to provide absolute figures on the number of divorce cases at the first instance courts (Q92). These figures are presented in the following table.

**Table 71. Number of litigious divorces at 1st instance courts in (Q92)**

| Country              | Pending cases on 1 January 2006 | Incoming cases | Decisions | Pending cases on 31 December 2006 |
|----------------------|---------------------------------|----------------|-----------|-----------------------------------|
| Armenia              | 202                             | 1 429          | 1 491     | 140                               |
| Austria              | 3 482                           | 7 537          | 7 677     | 3 342                             |
| Azerbaijan           | 1 594                           | 9 044          | 7 068     | 1 621                             |
| Belgium              |                                 | 40 114         | 38 889    |                                   |
| Bulgaria             | 4 819                           | 11 866         | 12 075    | 4 610                             |
| Croatia              |                                 | 7 415          |           |                                   |
| Cyprus               | 689                             | 1 512          | 1 353     | 661                               |
| Czech Republic       | 18 663                          | 35 735         | 38 820    | 15 886                            |
| Denmark              | 1 541                           | 5 735          | 5 465     |                                   |
| Finland              | 12 050                          | 17 986         | 17 915    | 12 092                            |
| France               |                                 | 107 207        | 97 906    |                                   |
| Georgia              | 3                               | 10             | 7         | 3                                 |
| Germany              |                                 |                | 236 548   |                                   |
| Hungary              | 14 101                          | 35 561         | 35 705    | 14 357                            |
| Ireland              |                                 | 4 025          | 3 767     |                                   |
| Italy                | 32 818                          | 20 136         | 17 576    | 35 378                            |
| Latvia               | 2 531                           | 8 440          | 8 305     | 2 666                             |
| Lithuania            | 847                             | 8 111          | 8 913     | 45                                |
| Luxembourg           |                                 |                | 1 221     |                                   |
| Moldova              | 1 300                           | 13 141         | 13 145    | 1 296                             |
| Monaco               |                                 | 83             | 78        | 41                                |
| Netherlands          |                                 | 33 701         | 44 690    |                                   |
| Poland               | 67 809                          | 105 534        | 120 808   | 52 535                            |
| Portugal             | 10 033                          | 9 524          | 9 220     | 10 337                            |
| Romania              | 18 453                          | 62 516         | 59 653    | 21 316                            |
| Russian Federation   | 47 000                          | 523 000        | 521 000   | 49 000                            |
| Slovakia             | 12 706                          | 12 880         | 16 548    | 9 038                             |
| Slovenia             | 1 235                           | 2 066          | 2 157     | 1 161                             |
| Spain                | 26 632                          | 55 672         | 46 411    | 36 245                            |
| Sweden               | 13 002                          | 25 953         | 25 953    | 13 002                            |
| FYROMacedonia        |                                 |                | 1 475     |                                   |
| Turkey               |                                 | 155182         | 154 945   |                                   |
| Ukraine              | 17 662                          | 162428         | 134 731   | 16 856                            |
| UK-England and Wales |                                 | 148 564        | 133 157   |                                   |

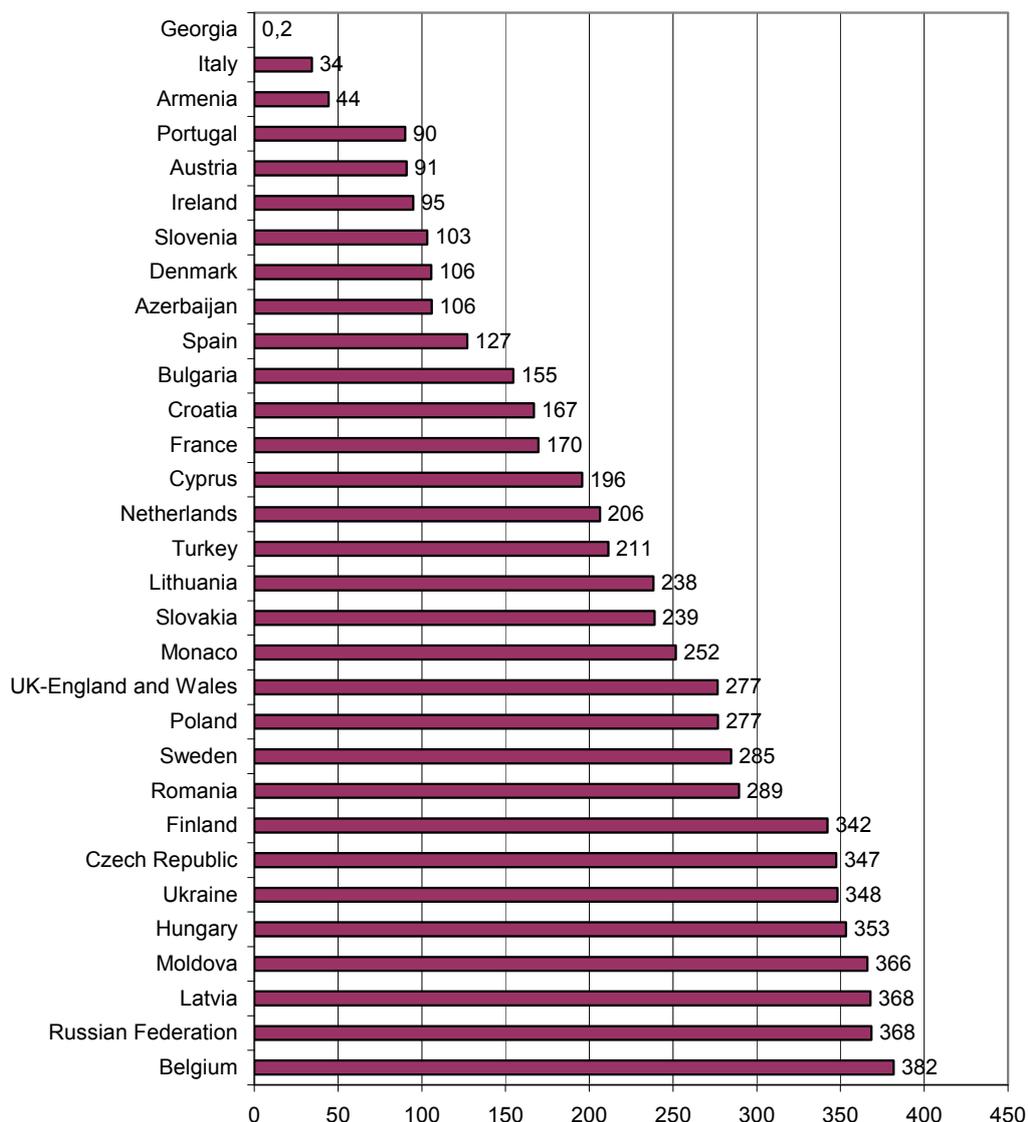
**Comment:** Finland - divorce cases are only non litigious cases; so the figures are only presented as an example.

A relatively high number of incoming litigious divorce cases per 100.000 inhabitants can be found in **Belgium, Russian Federation, Latvia, Moldova, Hungary, Ukraine** and **Czech Republic**. Relatively low numbers of incoming litigious divorce cases were reported for **Georgia, Italy** and **Armenia**.

### Note for the reader:

This indicator should be used with caution. The number of reported divorces does not reflect the real amplitude of divorce in the general population. As with most demographical indicators, its meaning only extends to the reference population, which is, here, the number of married couples and the number of married people. This indicator should not be used to describe the density of divorce in the population.

**Figure 49. Number of incoming litigious divorce cases per 100.000 inhabitants in 2006 (Q92)**



In addition to the number of incoming cases, information was asked for about the percentage of decisions subject to appeal, the percentage of pending cases for more than 3 years and the average length of proceedings in days. Only a few countries were able to supply detailed information for the four case categories concerned.

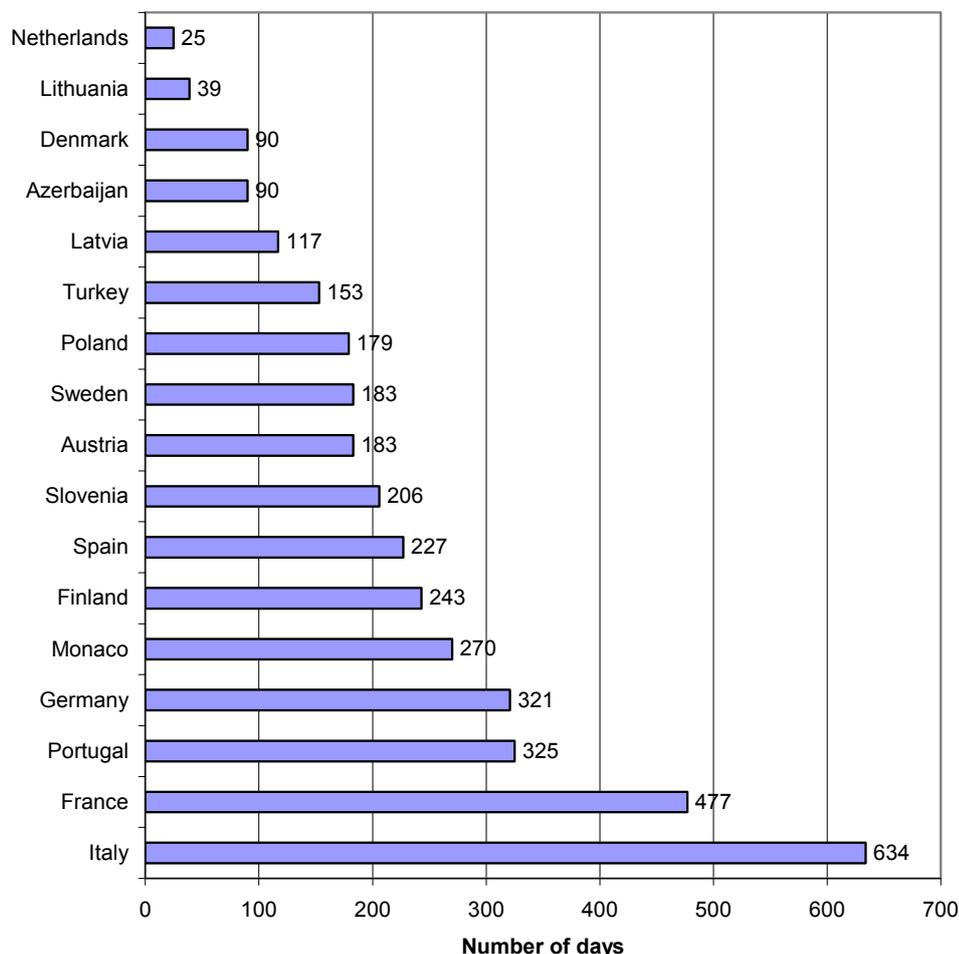
26 countries provided detailed information on the appeal percentage, the long pending cases and/or the average duration of *litigious divorce proceedings*.

**Table 72. Appeal percentage, long pending cases and average length of litigious divorce proceedings in 2006 (Q93)**

| Country              | Percentage of decisions subject to appeal | Percentage of cases pending more than 3 years | Length of proceedings at 1st instance court (in days) | Length of proceedings at 2nd instance (in days) | Length of proceedings - Total of procedure (in days) |
|----------------------|---|---|---|---|--|
| Austria              |   | 2,7%  | 183   |   |  |
| Azerbaijan           |   |   | 90  | 90  | 60   |
| Belgium              |   |   |   | 564   |  |
| Bulgaria             | 9%  |   |   |   |  |
| Czech Republic       |   |   |   |   | 602  |
| Denmark              |   | 0%  | 90  | 90  | 180  |
| Finland              | 0%  | 0%  | 243   |   | 243  |
| France               | 11,6%                                     |   | 477   | 396   | 515  |
| Germany              | 1,8%                                      |   | 321   |   |  |
| Hungary              | 3,2%                                      |   |   |   |  |
| Italy                |   |   | 634   |   |  |
| Latvia               | 1,6%                                      | 0,2%  | 117   | 84  | N.A.   |
| Lithuania            |   |   | 39  |   |  |
| Monaco               |   | 14,6%   | 270   | 240   | 510  |
| Netherlands          |   |   | 25  |   |  |
| Poland               | 2,9%                                      | 0,9%  | 179   | 89  |  |
| Portugal             |   |   | 325   | 114   |  |
| Romania              | 7,4%                                      | 0%  |   |   |  |
| Russian Federation   | 0,9%                                      | 0%  |   |   |  |
| Slovenia             | 7,6%                                      | 1,4%  | 206   | 78  |  |
| Spain                |   |   | 227   |   |  |
| Sweden               |   |   | 183   |   |  |
| Turkey               |   |   | 153   |   |  |
| UK-Scotland          |   | 0%  |   |   |  |
| UK-England and Wales |   | 0%  |   |   |  |

As it can be derived from the table, only a few countries were able to collect information on the percentage of *litigious divorce cases* subject to appeal or the percentage of pending cases for more than 3 years. More information is made available on the average length of proceedings at first instance courts. As the next graph shows, the length of a litigious divorce is relatively long in: **Germany** (321 days), **France** (477 days), **Italy** (634 days) and **Portugal** (325 days). In **the Netherlands** and **Lithuania**, relatively short durations of litigious divorce proceedings were reported. Due to a lack of additional information, no explanation can be given for the variation in the length of litigious divorce proceedings for the countries which have provided the quantitative figures.

**Figure 50. Average length of proceedings for litigious divorce cases at first instance courts in 2006, in number of days (Q93)**



A compared analysis of the length of divorce litigation procedures cannot be made without taking into account the specificities peculiar to divorce proceedings in different countries, briefly presented above, which can highly influence the result of the proceeding.

In many countries divorce cases are subject to specific procedures to take into account the various interests at stake, in particular the interests of the children. 24 countries have given details on the divorce procedure. In several countries, for litigious divorces, a period of reflection can be foreseen (which must be taken into account while considering the duration of the procedure). This is for instance the case in **Azerbaijan, Croatia, Finland, Montenegro, Portugal, Russian Federation, Sweden and Turkey**. In some case the period of reflection is mandatory for all kind of divorce procedure (**Azerbaijan, Montenegro**) whereas in other cases it is mandatory only under certain circumstances, such as the presence of children or if the divorce is requested only by one of the spouses. It is not mandatory in other cases such as the continuous break in the common life or mutual consent (**Russian Federation, Sweden**). The period of conciliation can have various durations (from 3 to 9 months in case of an appeal in **Azerbaijan**, 1 month in **Montenegro**).

During this period of reflection, mediation procedures can be foreseen to seek for agreements between the parties in particular as regards child custody or the common house. Recommendation R(98)1 on family mediation invites the states (para.11) to *"take or reinforce all measures they consider necessary with a view to the (...) use of family mediation as an appropriate means of resolving family disputes."* In **Poland** the judge can order a mediation procedure with the consent of the parties, considering the conditions of the marriage. In **Portugal** mediation prior to the divorce is mandatory when the request for divorce is introduced only by one of the spouses. In addition the judge must inform the parties on the possibility and advantages of mediation.

The divorce procedure might be a specialized procedure as regards the various steps of the procedure (**Bosnia and Herzegovina, Ireland, Montenegro**) or the jurisdiction of the judge (family court) or other competent bodies (**Greece, Iceland, Turkey, Ukraine**). In **Bosnia and Herzegovina** at least one specialized judge in divorce cases must sit in the court and the divorce procedure must be addressed expediently and as a priority vis-à-vis other civil proceedings. In some countries as **Croatia**, judges are often assisted by other specialized professionals in family issues (mediator, social worker, etc.). Divorce is not possible when the wife is pregnant or the child below one year old. Some countries provides for a divorce procedure, in addition to the judicial divorce, before public civil servants (**Estonia, Ukraine**).

In **Malta**, divorce is not legal. In **Monaco**, divorce by fault was the only one existing until 2007, but since has been introduced divorce by breaking the common life, divorce by mutual consent or demanded by one party and accepted by the other. In the **Czech Republic**, divorce cannot be pronounced before a definitive and final decision has been taken on the children's situation. In the **Russian Federation** as well, the court has to give a decision on the children's situation in the absence of parental agreement. In **Montenegro**, decision on divorce must also include a decision on exercising or limiting parental rights. Such a decision can be challenged in case of an important violation of proceedings arrangements or if consent was given by mistake or under the influence of force or by fraud. In **Poland** there are two options for the termination of a marriage: a divorce or a separation. A separation is decided by the court when there is a complete (but not irremediable) disintegration of matrimonial life. The judicial decree of separation has, in principle, the same effect as a divorce. However the most significant difference is that the separated spouses are not allowed to remarry. Proceedings for the termination of a marriage are initiated by lodging a petition for divorce or separation by one of the spouses in a Circuit Court. A lawyer is not obligatory in dissolution proceedings. Marriages are dissolved when the judgment becomes final. In **Italy** as well separation is prescribed; this procedure can influence the couple's decision to get divorced: in this country the amount of divorce per inhabitant is quite low. In **Portugal**, litigious divorces can be required by any one of the spouses if the other violates their marriage responsibilities. A friendly separation for a year is also possible under certain circumstances. Within the litigious divorce there must always be an attempt at conciliation by the spouses.

#### ***Dismissals cases, robberies, intentional homicides***

Only 13 countries were able to give valuable data on the length of proceedings for *dismissal cases* (**Austria, Azerbaijan, Finland, France, Italy, Latvia, Lithuania, Luxembourg, Monaco, Netherlands, Slovenia, Spain, Poland**) and 8 countries for *robberies and intentional homicides* (**Czech Republic, Finland, France, Latvia, Lithuania, Poland, Portugal and Turkey**).

Due to this limited number of replies, the CEPEJ has considered that it was not relevant to compare the countries with each other.

The CEPEJ commends on the efforts of those countries that are already able to collect this information and which are then able to use essential tools for improving the efficiency of their judicial systems. The CEPEJ encourages the other member states to develop their system of statistics accordingly, so as to be able to get more accurate data for the next evaluation process. It is expected that the work of the CEPEJ's SATURN Centre will support the member states in improving the collection of relevant data on judicial timeframes.

Some data on the percentages of appeals and long pending cases for dismissals cases, robberies and intentional homicides appear in appendix.

### **9.13 Measures to increase the efficiency of judicial proceedings**

#### ***Simplified procedures***

One way to increase the efficiency of judicial proceedings concerns the introduction of simplified procedures. These procedures are often less costly and the decision-making process in the court is shorter. One of the most popular simplified civil procedures that has been introduced in many countries is related to uncontested financial claims (for example *Mahnverfahren* in **Germany** and *Moneyclaim online* in the **United Kingdom**). For criminal law and administrative law cases, simplified procedures can also be implemented. 41 countries replied that they have simplified procedures for civil cases. For criminal cases, 37 countries have these kinds of procedures. Less common are the 18 countries that have introduced simplified procedures for administrative law cases.

**Table 73. Number of positive responses regarding simplified procedures (Q85Q86)**

|  | Civil cases | Criminal cases | Administrative cases |
|--|-------------|----------------|----------------------|
| Positive procedures as regards simplified procedures | 41          | 37             | 18                   |

Only in **Belgium** and **Iceland**, are there no simplified procedures for civil, criminal and administrative law cases. Simplified procedures are used only in civil cases in **Austria, Malta, Romania** and **Turkey**. In 15 countries simplified procedures are applied in all the areas of law (civil, criminal and administrative law). See table.

**Table 74. Configuration of responses given in regards to simplified procedures (Q86)**

| No simplified procedures | Simplified procedures concern: |                  |                                |                          |  |
|--------------------------|--------------------------------|------------------|--------------------------------|--------------------------|--|
|                          | Only criminal cases            | Only civil cases | Civil and administrative cases | Civil and criminal cases | Civil, criminal and administrative cases |
| Belgium                  | Czech Republic                 | Austria          | Armenia                        | Andorra                  | Azerbaijan                               |
| Iceland                  | Latvia                         | Malta            | Georgia                        | Bosnia and Herzegovina   | Croatia                                  |
|                          | Netherlands                    | Romania          | Luxembourg                     | Bulgaria                 | Cyprus                                   |
|                          |                                | Turkey           |                                | Denmark                  | France                                   |
|                          |                                |                  |                                | Estonia                  | Germany                                  |
|                          |                                |                  |                                | Finland                  | Hungary                                  |
|                          |                                |                  |                                | Greece                   | Montenegro                               |
|                          |                                |                  |                                | Ireland                  | Portugal                                 |
|                          |                                |                  |                                | Italy                    | Russian Federation                       |
|                          |                                |                  |                                | Lithuania                | Spain                                    |
|                          |                                |                  |                                | Moldova                  | Switzerland                              |
|                          |                                |                  |                                | Monaco                   | UK-Northern Ireland                      |
|                          |                                |                  |                                | Norway                   | Ukraine                                  |
|                          |                                |                  |                                | Poland                   | UK-Scotland                              |
|                          |                                |                  |                                | Serbia                   | UK-England and Wales                     |
|                          |                                |                  |                                | Slovakia                 |  |
|                          |                                |                  |                                | Slovenia                 |  |
|                          |                                |                  |                                | Sweden                   |  |
|                          |                                |                  |                                | FYROMacedonia            |  |
| <b>2</b>                 | <b>3</b>                       | <b>4</b>         | <b>3</b>                       | <b>19</b>                | <b>15</b>                                |

In at least 20 countries the simplified procedure in civil cases refers to payment orders or small claims procedures. Examples of simplified criminal law procedures are found mostly in the area of minor criminal offences, resulting in a fine or a prison sentence for a limited period (for example: **Azerbaijan, Finland, Hungary, Lithuania, Luxembourg, Moldova, Montenegro, Norway, Poland, Portugal** and **Turkey**). Sometimes the case is decided by written proceedings by the public prosecutor without a charge before a court (**Finland**). In certain instances, cases might be heard in the absence of the criminal offender (**Hungary**). Expeditious procedures may be used if the circumstances of a case are clear and the defendant does not request more time to prepare his/her defence (**Lithuania**). Other examples of the imposition of criminal sanctions without holding a trial are also provided (**Montenegro**). A sentence proposed by a prosecutor may come before a judge when the accused person confesses in court (**Norway**). In **Poland**, there is a short procedure for certain criminal offences treated by "24-hour courts". In the **Netherlands** certain small criminal offences can be treated within the field of the administrative law.

Examples of simplified administrative law procedures are procedures without the presence of the parties (**Georgia, Germany**), or where a hearing can be replaced by a written procedure (the **Netherlands** for example).

### **Urgent procedures**

**Table 75. Number of positive responses regarding specific procedures for urgent matters (Q85)**

|   | Civil cases | Criminal cases | Administrative cases |
|---|-------------|----------------|----------------------|
| Positive responses as regards urgent procedures | 44          | 37             | 30                   |

In 44 countries specific procedures exist for urgent cases in civil law. Concerning criminal law (37 countries) and administrative law (30 countries), member states replied that their legal system allows for urgent procedures. In the following table the results are described for the individual countries.

**Table 76. Configuration of responses given in regards to specific procedures for urgent matters (Q85)**

| Specific procedures for urgent matters in concern: |                  |                                |                          |  |
|--|------------------|--------------------------------|--------------------------|--|
| No specific procedures for urgent matters          | Only civil cases | Civil and administrative cases | Civil and criminal cases | Civil, criminal and administrative cases |
| Czech Republic                                     | Austria          | Armenia                        | Andorra                  | Azerbaijan                               |
|  | Bulgaria         | Estonia                        | Bosnia and Herzegovina   | Belgium                                  |
|  | Ireland          | Netherlands                    | Croatia                  | Cyprus                                   |
|  |                  | Turkey                         | Denmark                  | Finland                                  |
|  |                  | Ukraine                        | Italy                    | France                                   |
|  |                  |                                | Malta                    | Georgia                                  |
|  |                  |                                | Moldova                  | Germany                                  |
|  |                  |                                | Norway                   | Greece                                   |
|  |                  |                                | Poland                   | Hungary                                  |
|  |                  |                                | Serbia                   | Iceland                                  |
|  |                  |                                | Slovakia                 | Latvia                                   |
|  |                  |                                | FYROMacedonia            | Lithuania                                |
|  |                  |                                |                          | Luxembourg                               |
|  |                  |                                |                          | Monaco                                   |
|  |                  |                                |                          | Montenegro                               |
|  |                  |                                |                          | Portugal                                 |
|  |                  |                                |                          | Romania                                  |
|  |                  |                                |                          | Russian Federation                       |
|  |                  |                                |                          | Slovenia                                 |
|  |                  |                                |                          | Spain                                    |
|  |                  |                                |                          | Sweden                                   |
|  |                  |                                |                          | Switzerland                              |
|  |                  |                                |                          | UK-Northern Ireland                      |
|  |                  |                                |                          | UK-Scotland                              |
|  |                  |                                |                          | UK-England and Wales                     |
| <b>1</b>   | <b>3</b>         | <b>5</b>                       | <b>12</b>                | <b>25</b>                                |

**Comment:** **Andorra** - specific procedures for urgent matters concerns only criminal cases.

In civil law, urgent procedures are mostly related to the following situations: employment disputes (**Azerbaijan, "the former Yugoslav Republic of Macedonia", Moldova, Ukraine**), to secure money claims (**Austria, Norway, Poland, Turkey**), to prevent imminent danger or irretrievable damage to the claimant (**Austria**), alimony disputes (**Azerbaijan, Ukraine**), in cases concerning the custody of a child (**Denmark**), in disputes where an interim/preliminary decision is necessary (**France, the Netherlands**), summary procedures in legal actions related to liability for damages caused by judges (**Hungary**), bills of exchange (**Hungary**), to secure the property interests of the claimant (**Lithuania**), to defend the rights and interests of minors/children (**Moldova, Norway**), in family matters as a part of the fast-track procedure (**UK-England and Wales**).

In criminal law, urgent procedures are provided for in: juvenile offender cases (**FYROM, Hungary, Moldova, Norway, Serbia**), the pre-trial investigation phase where the accused is (on a provisional basis) detained (**France, "the former Yugoslav Republic of Macedonia", Hungary, Moldova, Montenegro, Norway, Portugal, Russian Federation, Serbia, Slovak Republic**), activities that are a part of the investigation of the police (**Denmark**) or the seizure of certain goods or evidence (**Georgia**).

Examples of urgent procedures in administrative law cases are: situations where there may be an immediate and direct threat to the state security, human life or health (**Georgia**), in situations where the party asks for a temporary suspension of an administrative act/decisions (**France, Luxembourg, Romania**), to take preservative measures (**France**), cases related to a judicial review of administrative decisions concerning family affairs (**Hungary**), in situations of an administrative offence (**Russian Federation**) and cases related to elections or to the rights of convicted persons (**Serbia**).

### ***Modalities in the proceedings***

To improve the efficiency of judicial proceedings, the parties (and their lawyers) might have the possibility to negotiate with the judge on the modalities for addressing a case. 24 countries replied that such a possibility is available in their country (Q87). Illustrations of this relate to: the submission of information/evidence to the court (**France, "the former Yugoslav Republic of Macedonia", Georgia, Sweden**), the determination of the dates of the court hearings (**Denmark, Finland, France, "the former Yugoslav Republic of Macedonia", Moldova**), the timeframes for the defence to reply (counterclaim) (**Georgia**), a possible extension of a legal or court deadline (**Germany**), the taking of evidence on an informal basis (**Germany**), the agreement to continue the proceeding in writing (**Germany**), issues of law and fact that can be agreed by the parties in advance of a hearing (**Ireland**), determination of the date to send the conclusions of a lawyer to the court (**Monaco**), a reduction of the legislative time limits or the limits established by the court with the agreement of the parties (**Norway**) or the use of court annexed mediation and accelerated civil litigation programme (**Slovenia**).

## **9.14 Trends and conclusions**

Compared with the 2006 Edition, it should be noted that more detailed information is available on the cases addressed by the courts. Differences can be identified between litigious and non-litigious civil cases. A better understanding of the workload of the courts is possible for those countries where land registries and business registries are a part of the jurisdiction of the courts. The same can be said concerning administrative law cases and enforcement cases. With respect to the registers, this may be the positive effect of the automatization of land registers and business registers in a large number of countries. A similar influence is visible concerning the basic court case information in civil, criminal and administrative matters. Many countries are able to produce the figures requested by the CEPEJ. In that respect *e-justice* will be more and more present in the European courts.

The measurement of the length of proceedings and the variation in definitions in the criminal law cases remain difficulties. Only few countries could provide this relevant information. More attention for the measurement of judicial timeframes is necessary in the future. One possible explanation for the lack of data in the criminal field has to do with the differentiation between severe criminal cases and minor offences. Many countries use a different classification of criminal cases.

Despite these difficulties, significant progress has been made concerning the measurement of court performance since two calculated performance indicators have been introduced: the clearance rate and the disposition time. This makes it possible to compare the performance of the judicial systems for certain case categories between the countries.

It is expected that, in the future, as the result of the work of the CEPEJ's SATURN Centre<sup>22</sup>, even more knowledge is available on the common case categories and the measurement of length of proceedings. This information will be used to improve the CEPEJ's evaluation process on these topics and to enhance the quality of the data on court performance.

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<sup>22</sup> The CEPEJ's SATURN Centre is entrusted to study and analyse judicial time management in the member states of the Council of Europe.

## 10. Prosecutors

### 10.1. Introduction

In Recommendation 2000(19), adopted by the Committee of Ministers of the Council of Europe on 6 October 2000 prosecutors are defined as: *"public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system."*

Every country has, sometimes under a different name, a public authority entrusted with qualifying and carrying out prosecutions. But it is apparent that, where the office of a judge seems to be relatively homogeneous in the member states, that of a prosecutor is much less so. Partly this is caused by the difference between an inquisitorial system (applied in civil law countries) and an accusatory system (in common law systems).

This analysis is further strengthened when observing the role of public prosecutors within the justice system and its level of independence vis-à-vis other systems. In all the European countries they play an important role in the prosecution of criminal cases, however there are also countries where they have a responsibility in the civil (and even administrative) law area. Another important aspect that needs to be taken into account concerned the different level of autonomy of a prosecutor. In some countries they have the same protection of independence than a judge, whilst in other countries the criminal policies is being directed from a ministry of Justice and the level of independence is limited.

When reading this chapter, such a dichotomy (coming from the history) must be kept in mind in order to understand the differences in the statutes and functions of public prosecutors.

### 10.2 Number of public prosecutors (and staff of the prosecution services)

In the following table, the number of prosecutors and staff of the prosecution agencies are given. Many public prosecutors (per 100.000 inhabitants) can be found in the central and eastern European countries (for example: **Bulgaria, Hungary, Latvia, Lithuania, Moldova, Russian Federation, Poland and Ukraine**). **Norway** has also a high number of prosecutors per 100.000 inhabitants – this figure represents the prosecuting authority in the police, the public prosecutors and The Director of Public Prosecution; the two latter parts are called Higher Prosecuting Authority. In other countries, other officials may also fulfil tasks of prosecution. For example in **Austria**, certain members of the Public Prosecutor's Office (*Bezirksanwälte*) are judicial officers specially trained and allowed to act under the supervision of a prosecutor. In **Ireland**, private lawyers may be entrusted with the duties of a public prosecutor.

**Table 77. Prosecutors and staff attached to prosecution services per 100.000 inhabitant in 2006 (Q57 and Q59)**

| Country                | Number of prosecutors | Number of prosecutors per 100 000 inhabitants | Number of staff attached to the public prosecution | Number of staff attached to the public prosecution per 100 000 inhabitants | Number of non-prosecutor staff per prosecutor |
|------------------------|-----------------------|---|--|--|---|
| Andorra                | 4                     | 4,9   | 4  | 5  | 1,0   |
| Armenia                | 419                   | 13,0  | 272  | 8  | 0,6   |
| Austria                | 219                   | 2,6   | 166  | 2  | 0,8   |
| Azerbaijan             | 1 060                 | 12,4  | 700  | 8  | 0,7   |
| Belgium                | 790                   | 7,5   | 2 814  | 27   | 3,6   |
| Bosnia and Herzegovina | 281                   | 7,3   | 422  | 11   | 1,5   |
| Bulgaria               | 1 558                 | 20,3  | 1 730  | 23   | 1,1   |
| Croatia                | 575                   | 12,9  | 806  | 18   | 1,4   |
| Cyprus                 | 109                   | 14,1  |  | 0  |   |
| Czech Republic         | 1 201                 | 11,7  | 1 599  | 16   | 1,3   |
| Denmark                | 560                   | 10,3  |  |  |   |

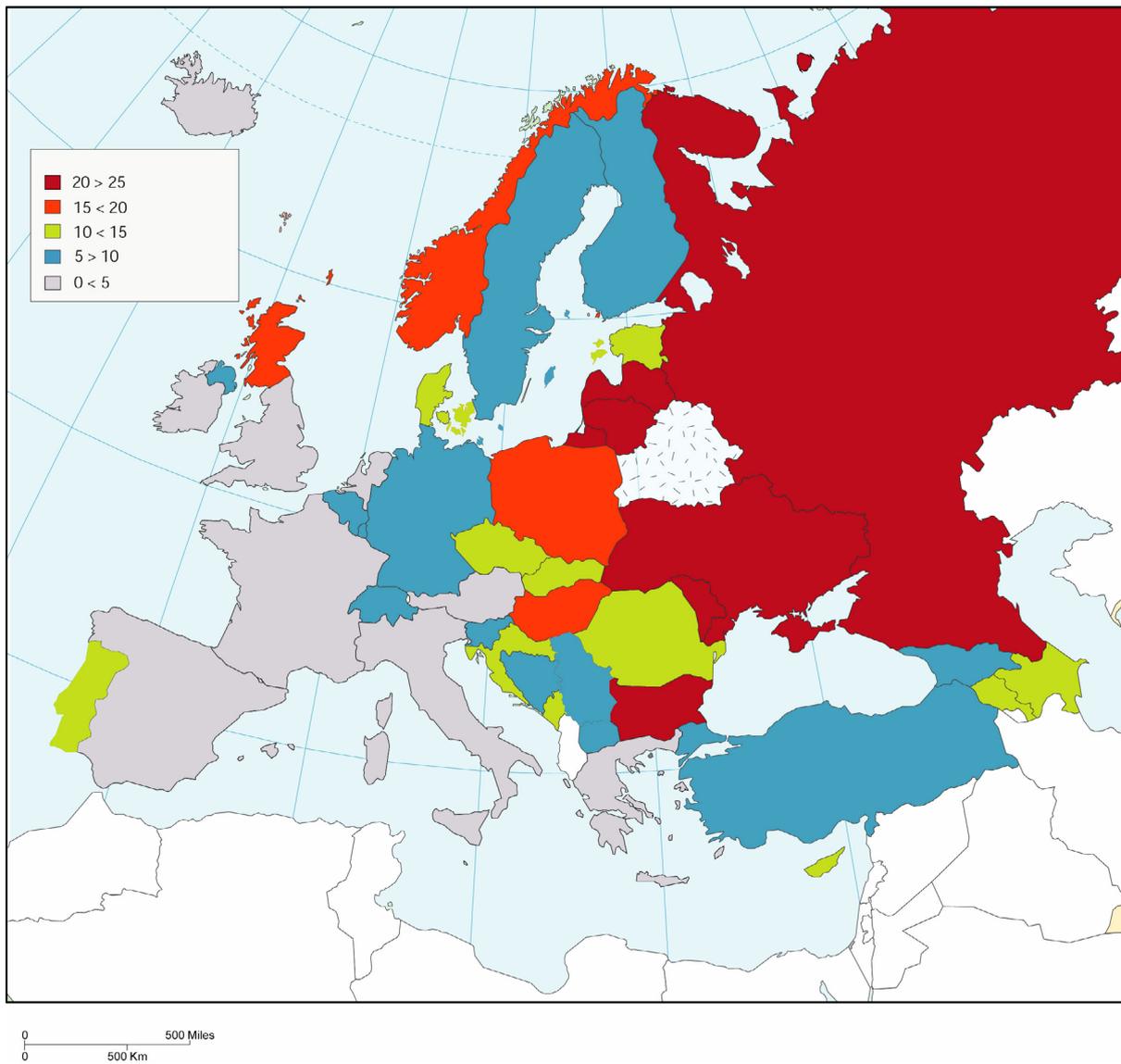
| Country              | Number of prosecutors | Number of prosecutors per 100 000 inhabitants | Number of staff attached to the public prosecution | Number of staff attached to the public prosecution per 100 000 inhabitants | Number of non-prosecutor staff per prosecutor |
|----------------------|-----------------------|---|--|--|---|
| Estonia              | 191                   | 14,2  | 85   | 6  | 0,4   |
| Finland              | 314                   | 6,0   | 197  | 4  | 0,6   |
| France               | 1 834                 | 2,9   | 5 067  | 8  | 2,8   |
| Georgia              | 483                   | 11,0  | 232  | 5  | 0,5   |
| Germany              | 5 084                 | 6,2   | 11 731   | 14   | 2,3   |
| Greece               | 527                   | 4,7   | 1 710  | 15   | 3,2   |
| Hungary              | 1 743                 | 17,3  | 2 394  | 24   | 1,4   |
| Iceland              | 6                     | 2,0   | 57   | 19   | 9,5   |
| Ireland              | 100                   | 2,4   | 168  | 4  | 1,7   |
| Italy                | 2 231                 | 3,8   | 9 795  | 17   | 4,4   |
| Latvia               | 549                   | 23,9  | 372  | 16   | 0,7   |
| Lithuania            | 854                   | 25,1  | 709  | 21   | 0,8   |
| Luxembourg           | 43                    | 9,1   | 39   | 8  | 0,9   |
| Malta                | 6                     | 1,5   | 39   | 10   | 6,5   |
| Moldova              | 772                   | 21,5  | 798  | 22   | 1,0   |
| Monaco               | 4                     | 12,1  | 6  | 18   | 1,5   |
| Montenegro           | 83                    | 13,4  | 95   | 15   | 1,1   |
| Netherlands          | 675                   | 4,1   | 3 575  | 22   | 5,3   |
| Norway               | 730                   | 15,6  | 56   | 1  | 0,1   |
| Poland               | 5 951                 | 15,6  | 4 692  | 12   | 0,8   |
| Portugal             | 1 321                 | 12,5  | 1 664  | 16   | 1,3   |
| Romania              | 2 743                 | 12,7  | 1 432  | 7  | 0,5   |
| Russian Federation   | 29 311                | 20,6  | 11 874   | 8  | 0,4   |
| Serbia               | 689                   | 9,3   | 834  | 11   | 1,2   |
| Slovakia             | 745                   | 13,8  | 777  | 14   | 1,0   |
| Slovenia             | 180                   | 9,0   | 210  | 10   | 1,2   |
| Spain                | 1 974                 | 4,5   | 1 929  | 4  | 1,0   |
| Sweden               | 905                   | 9,9   | 668  | 7  | 0,7   |
| Switzerland          | 402                   | 5,4   | 916  | 12   | 2,3   |
| FYROMacedonia        | 179                   | 8,8   | 172  | 8  | 1,0   |
| Turkey               | 3 936                 | 5,4   |  |  |   |
| Ukraine              | 9 786                 | 21,0  | 3 950  | 8  | 0,4   |
| UK-Northern Ireland  | 131                   | 7,5   | 460  | 26   | 3,5   |
| UK-Scotland          | 458                   | 9,0   |  |  |   |
| UK-England and Wales | 2 446                 | 4,6   | 6 183  |  | 2,5   |

With respect to the staff of the prosecution agencies often a high number can be found in those countries which have a high number of prosecutors. This is the case for: **Bulgaria, Hungary, Lithuania** and **Moldova**. On the other side, there are countries where the number of public prosecutors is limited and the number of staff is high (**Belgium, Italy, Malta, the Netherlands** and **UK-Northern Ireland**). In these countries, a significant number of preparatory tasks may be delegated from the prosecutor to the staff members.

On the contrary another category includes the countries with a high number of public prosecutors and a low number of staff: **Armenia, Azerbaijan, Estonia, Finland, Latvia, Romania, Russian Federation** and **Ukraine**.

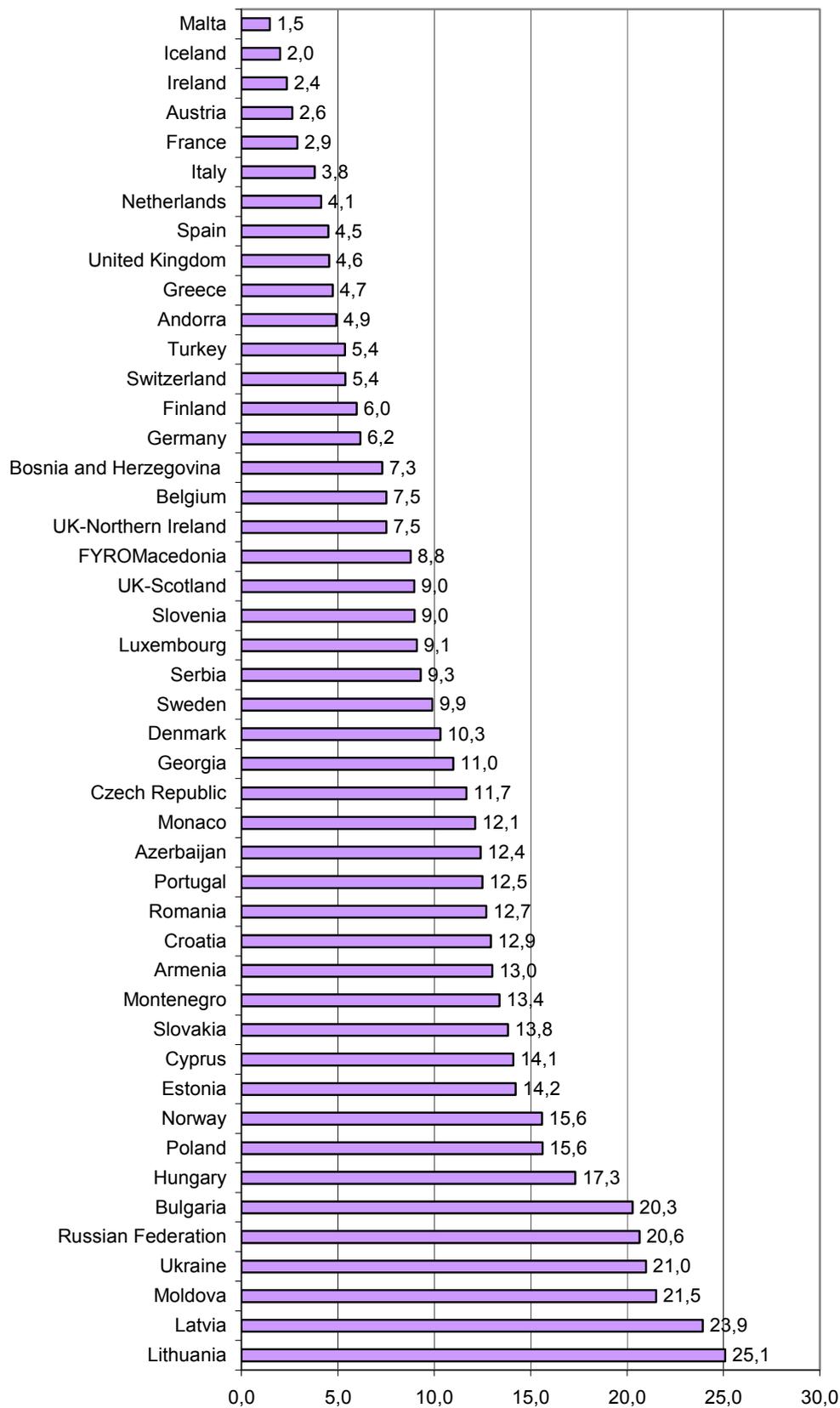
The map below, which gives the number of prosecutors per 100.000 inhabitants, shows that Western European countries have proportionally fewer prosecutors than Eastern European countries.

**Figure 51. Geographical map of the number of public prosecutors per 100.000 inhabitants in 2006 (Q57)**



The detailed figures of the number of prosecutors per 100 000 inhabitants can be found in the following graph too.

**Figure 52. Number of public prosecutors per 100.000 inhabitants en 2006 (Q57)**



The Prosecution system is organised differently in the various member states of the Council of Europe. In certain countries, like **Austria, France, Poland or Turkey**, the Ministry of Justice is responsible for the public prosecutors office, whilst in **Belgium and the Netherlands** a collective authority heads the prosecution services. However, in the majority of countries, there is a State Prosecutor General (or at the top of the system): **Andorra, Cyprus, Czech Republic, Denmark, Estonia, Finland, Hungary, Iceland,**

Ireland, Latvia, Malta, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, UK-England and Wales, UK-Scotland.

### 10.3 Role and powers of public prosecutors

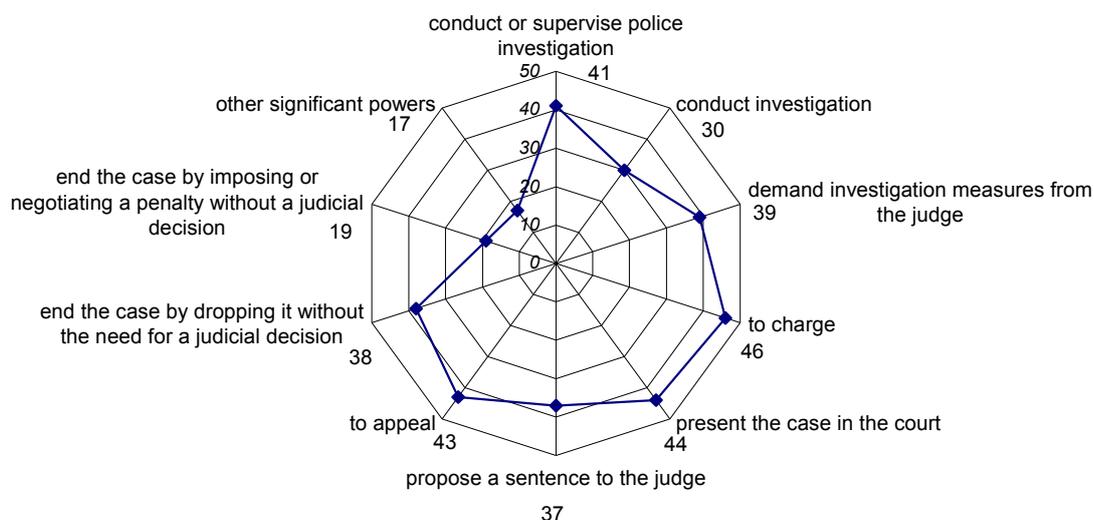
At question 96, states were invited to describe the role and the power of a prosecutor. In all the countries the prosecutor fulfils a role with respect of charging a criminal case. 44 countries or entities replied that they have a responsibility to present the charge before the court. In 37 countries they can also propose a sentence to a judge. Concerning the appeal in 43 countries the prosecutor has the power to decide to start an appeal proceeding before a higher court (with the exception of **UK-Northern Ireland, UK-Scotland and UK-England and Wales**).

Before bringing a case before the court the public prosecutor has an important role to play in the investigation phase of a criminal case. In 41 countries the prosecutor is responsible for the supervision of the police investigation. In 30 countries the public prosecutor can conduct an investigation at his/her own initiative. Demands for concrete investigation measures (for example a house search for finding evidence) from the judge are part of the law enforcement procedure in 41 countries.

In the majority of the member states (38 countries), it is not mandatory that a public prosecutor presents a criminal charge before a court. Other options than the prosecution may be possible, such as the termination of a case (dropping of a case) without the need of a judicial decision. In 19 countries there is also the possibility that a public prosecutor can negotiate or impose a sanction without the intervention of a judge. This is for example the case for: **Belgium, Finland, Latvia, Luxembourg, Netherlands, Norway, Slovakia, Sweden, Switzerland and Turkey**.

The figure below highlights the main powers and competences of public prosecutors.

**Figure 53. Role of and attributions of the public prosecutor (Q96)**



### 10.4 Role of public prosecutors beyond the criminal law field

It is evident that a public prosecutor has an important task in prosecuting criminal cases. However, 33 countries replied that there is a role for the prosecutor to play in civil or administrative matters. This is not the case for: **Estonia, Finland, Georgia, Germany, Iceland, Ireland, Malta, the Netherlands, Sweden, Switzerland, "the Former Yugoslav Republic of Macedonia, UK-Northern Ireland, UK-Scotland and UK-England and Wales**.

**Table 78. Intervention of the public prosecutor in the civil and/or administrative law area (Q97)**

| Intervention of the public prosecutor in the civil and/or administrative law area |                    |                      |
|---|--------------------|----------------------|
| Yes   |                    | NO                   |
| Andorra   | Luxembourg         | Estonia              |
| Armenia   | Moldova            | Finland              |
| Austria   | Monaco             | Georgia              |
| Azerbaijan  | Montenegro         | Germany              |
| Belgium   | Norway             | Iceland              |
| Bosnia and Herzegovina  | Poland             | Ireland              |
| Bulgaria  | Portugal           | Malta                |
| Croatia   | Romania            | Netherlands          |
| Cyprus  | Russian Federation | Switzerland          |
| Czech Republic  | Serbia             | FYROMacedonia        |
| Denmark   | Slovakia           | UK-Northern Ireland  |
| France  | Slovenia           | UK-Scotland          |
| Greece  | Spain              | UK-England and Wales |
| Hungary   | Sweden             |                      |
| Italy   | Turkey             |                      |
| Latvia  | Ukraine            |                      |
| Lithuania   |                    |                      |

In civil cases, the public prosecutor is especially important to defend the interest of *vulnerable persons*. This is for example the situation in **Andorra, Hungary, Latvia, Moldova, Norway, Portugal, Romania, Russian Federation and Spain**. Public prosecutors can defend the rights of minors, disabled persons, incapable persons, disappeared persons and victims. In many countries a public prosecutor represents the *State or the general interest* in civil and/or administrative proceedings. Examples are: **Armenia, Azerbaijan, Croatia, France, Latvia, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Portugal, Russian Federation, Turkey and Ukraine**. Another common area (mostly related to the protection/representation of vulnerable persons) is related to *family law*. Public prosecutors can have a responsibility concerning the annulment of marriages, the obtainment of a nationality, the modification of a family name, the restoration of a custody of a child (or improper removal of a child), deprivation of parental rights and a child's adoption (for example in: **Austria, Bulgaria, Czech Republic, Greece, Italy, Monaco, Spain and Turkey, Sweden**). Other areas of jurisdiction in the civil law field are: special institutional treatment of juveniles, the declaration of admissibility of taking or keeping a person in a medical healthcare institute (**Czech Republic**), disciplinary proceedings against certain professions (**France**), proceedings related to the invalidity of contracts (**Czech Republic**), declaration of the death of a persons (**Czech Republic**), bankruptcy cases and proceedings (**Czech Republic, Luxembourg, Slovak Republic**), compensation proceedings for victims (**Norway, Sweden**), labour accidents and professional illness (**Portugal**).

In a limited number of countries public prosecutors are involved in administrative law cases. For example in **Azerbaijan** the prosecutor can undertake necessary actions for eradication of the breaches of the law made during considering of the administrative cases. In **Denmark** a prosecutor can handle a case administratively when a persons claims damages following a wrongful criminal charge. In **Latvia** a public prosecutor can submit a complaint to a court in administrative cases. With respect to tax cases the public prosecutor in **Portugal** represents the State in the courts. In the **Slovak Republic** the prosecutor supervises the observance of the law by public authorities. In **Spain** public prosecutors can give opinions in matters of jurisdiction between administrative courts.

### 10.5 Other persons who can perform tasks comparable to those of the public prosecutor

A limited number of countries replied that other persons may perform tasks that a comparable with the task of a public prosecutor. Only 5 countries were able to provide figures of the numbers of officials (**Austria, Iceland, Ireland, Italy and Spain**). In **Austria**, some judicial officers with a special legal training may perform tasks of a public prosecutor under the supervision of a public prosecutor (quite similar to the *Rechtspfleger*), but with a lower range of competences and fewer qualifications (they are not included in the total figures of the prosecutors). In **Iceland**, police commissioners have certain powers comparable with those of a public prosecutor. Police officers may also have competences similar to a public prosecutor in the

following countries: **Denmark, Greece, Norway, Malta, Poland** and **France** (*officier du ministère public*). Some countries addressed prosecutorial tasks to specific public authorities. For example in **Germany** financial authorities have the same rights and obligations as a public prosecutor. In **Poland** prosecutorial tasks are addressed to the coast guard, customs, revenue service, forest and wildlife guard and military gendarmerie. In **UK-England and Wales** local authorities can act in the role of a prosecutor. In **Ireland**, there are 16 legal executives employed in the prosecution service that would perform similar duties to prosecutors in particular areas. In **Italy** a numerous amount of *honorary public prosecutors* are active. **Spain** mentioned also *substitute public prosecutors*. Like judges, the substitutes might act, during a certain period of time (i.e. related to illness, maternity leave, etc), as a public prosecutor. Private prosecution or prosecution by one of the aggrieved parties is mentioned by **Germany, Hungary** and **Serbia**.

**Table 79. List of countries where other persons have similar competences as a public prosecutor (Q58)**

| Other persons have similar competences as public prosecutors | Number | Per 100.000 inhabitants |
|--|--------|-------------------------|
| Austria  | 148    | 1,8                     |
| Bulgaria   | na     |                         |
| Denmark  | na     |                         |
| Finland  | na     |                         |
| France   | na     |                         |
| Germany  | na     |                         |
| Greece   | na     |                         |
| Hungary  | na     |                         |
| Iceland  | 16     | 5,3                     |
| Ireland  | 16     | 0,4                     |
| Italy  | 1820   | 3,1                     |
| Malta  | na     |                         |
| Poland   | na     |                         |
| Serbia   | na     |                         |
| Slovenia   | na     |                         |
| Spain  | 262    | 0,6                     |
| UK-Scotland  | na     |                         |
| UK-England and Wales   | na     |                         |

## 10.6 Case processing by public prosecutors

In the next table the number of cases addressed by the public prosecutor is given. In the second column, the number of cases received by the prosecutor is displayed followed by three modalities concerning an early termination of a case by a public prosecutor (due to unknown identity of the offender, legal reasons (for example lack of evidence) or reasons of opportunity). In 19 countries there is a possibility that a prosecutor decides on a sanction or negotiates with the offender. In the last column the number of cases charged before the court are presented.

**Table 80. Case management by the public prosecutor in 2006 (Q98)**

| Country    | Received by the public prosecutor | Discontinued by the public prosecutor: |  |   |                           | Concluded by a penalty, imposed or negotiated by the public prosecutor | Charged by the public prosecutor before the courts |
|------------|-----------------------------------|--|--|---|---------------------------|--|--|
|            |                                   | Total of discontinued cases            | because the offender could not be identified | due to the lack of an established offence or a specific legal situation | for reason of opportunity |  |  |
| Andorra    | 36                                |  |  |   |                           | 21   |  |
| Armenia    | 2 857                             | 3 658                                  | 1 693  | 698   | 1 267                     | 2 857  |  |
| Austria    | 616 304                           |  |  | 179287*   |                           | 77 118   |  |
| Azerbaijan | 2 203                             | 2 281                                  | 1 890  | 203   | 188                       | 9 770  |  |
| Belgium    | 737 963                           | 535 689                                | 212 926                                      | 132 686   | 173 897                   | 7 537  |  |
| Bosnia and | 71 435                            | 24 948                                 |  |   |                           | 2 280  |  |

| Country              | Received by the public prosecutor | Discontinued by the public prosecutor: |  |   |                           | Concluded by a penalty, imposed or negotiated by the public prosecutor | Charged by the public prosecutor before the courts |
|----------------------|-----------------------------------|--|--|---|---------------------------|--|--|
|                      |                                   | Total of discontinued cases            | because the offender could not be identified | due to the lack of an established offence or a specific legal situation | for reason of opportunity |  |  |
| Herzegovina          |                                   |  |  |   |                           |  |  |
| Bulgaria             | 158 242                           |  |  |   | 11 848                    | 7 707  | 29 035   |
| Croatia              | 92 511                            |  | 37 295                                       | 19 447  |                           |  |  |
| Czech Republic       | 83 319                            | 11 059                                 |  | 94  | 10 965                    | 0  | 58 863   |
| Denmark              | 506 556                           |  |  |   |                           |  | 416 488  |
| Estonia              | 14 571                            | 27 555                                 | 19 162                                       | 5 065   | 3 328                     | 5 128  |  |
| Finland              | 85 716                            | 10 730                                 |  |   |                           | 2 305  | 62 596   |
| France               | 5 305 394                         | 3 725 528                              | 2 988 204                                    | 438 465   | 298 859                   | 519 110  | 707 827  |
| Georgia              | 36 304                            | 16 709                                 |  |   |                           | 5 008  | 12 974   |
| Germany              | 4 917 575                         | 1 294 402                              |  |   | 1 294 747                 | 241 102  | 1 187 323  |
| Hungary              | 149 749                           |  |  | 29 810  |                           |  | 76 835   |
| Iceland              | 7 701                             |  |  | 1 916   |                           |  | 5 723  |
| Ireland              | 15 214                            | 3 722                                  |  |   |                           | 0  | 6 445  |
| Italy                | 2 938 649                         |  | 1 247 516                                    |   |                           | *  | 572 887  |
| Latvia               | 12 783                            | 1 173                                  | 25   | 300   | 848                       | 740  | 12 977   |
| Lithuania            | 16 108                            |  |  | 14 836  |                           |  | 17 927   |
| Luxembourg           | 46 673                            |  |  |   |                           | 507  | 12 430   |
| Moldova              |                                   | 3 459                                  |  |   |                           |  | 13 001   |
| Monaco               | 2 639                             | 966                                    | 638  | 163   | 165                       | 0  | 707  |
| Montenegro           | 14 459                            |  | 2 723  | 5 251   |                           |  |  |
| Netherlands          | 267 710                           |  |  | 17 812  | 16 325                    | 77 861   | 150 000  |
| Poland               | 1 556 611                         | 680 343                                | 519 591                                      | 160 752   | 0                         | 244 399  | 428 625  |
| Portugal             | 491 505                           | 411 835                                |  |   |                           | 3 006  | 85 098   |
| Romania              | 108 367                           |  |  |   |                           | 0  | 27 139   |
| Serbia               | 173 838                           |  | 23 717                                       |   |                           | 6 817  | 59 108   |
| Slovakia             | 121 579                           | 71 308                                 | 52 787                                       | 18 521  | 0                         | 2 481  | 22 468   |
| Slovenia             | 93 462                            |  |  | 9 620   | 3 937                     |  | 12 726   |
| Spain                | 4 101 736                         | 2 756 207                              | 2 224 309                                    | 531 898   | 0                         |  | 590 260  |
| Sweden               | 201 274                           | 55 491                                 |  |   |                           | 51 689   | 189 546  |
| Switzerland          | 153 439                           | 19 807                                 | 2 468  | 16 780  | 559                       | 55 930   | 12 152   |
| FYROMacedonia        | 32 082                            | 15 693                                 | 11 308                                       | 4 171   | 214                       |  | 12 721   |
| Turkey               | 2 733 767                         | 1 694 588                              |  |   |                           |  | 725 210  |
| Ukraine              | 546 178                           |  |  |   |                           |  |  |
| UK-Scotland          | 316 377                           |  |  | 2517  |                           | 35539  | 168 690  |
| UK-England and Wales | 1 054 882                         | 225 142                                | 5 408  | 107 163   | 112 571                   | 884 482  | 1 009 067  |

The following countries: **Albania, Cyprus, Greece, Malta, Norway, UK-Northern Ireland** were not able to communicate the data on the activity of the public prosecution service.

It must be noted that **Slovakia, Slovenia** and **Ukraine** mentioned that the public prosecutor does not have the power to discontinue a case. The prosecutors are obliged to prosecute any criminal offence of which he / she has the knowledge. In **Italy** the prosecutor must always obtain decision of judge regarding the outcome of a case or any possible sentence.

It must also be noted that in some countries the cases received by the public prosecutors have already been filtered by the investigation services (**UK-England and Wales**) whereas in other countries the whole procedure is under the supervision of public prosecutors (**France**).

## Comments

**Bulgaria:** 88.619 cases were discontinued because the offender could not be identified (data for 9 months of 2007).

**Czech Republic:** cases where the offender could not be identified are discontinued by the police.

**Georgia:** 16.709 cases are discontinued by the public prosecutor (joint figures for cases discontinued were the offender could not be identified, a lack of an established offence or a specific legal situation).

**Germany:** 1.294.402 cases were discontinued due to a lack of sufficient evidence for a charge. The figures comprises cases where the offender could not be identified and cases that are discontinued due to a lack of a specific legal situation.

**Ireland:** 3.722 cases are discontinued (this figure includes the three options). No separate figures could be provided.

**Netherlands:** the replies are related to crimes only (not misdemeanours or petty offences). The number charged before the courts is an estimate.

**Portugal:** 411.835 cases reported as discontinued by the public prosecutor refer to a general clause of discontinuation and not to the fact that the offender could not be identified.

**Romania:** the figures represent the statistics for the first nine months of 2007.

**Spain:** the investigative phase of criminal proceedings corresponds to the Investigating Judge. Therefore the figures given in the table, following the criteria used also in the 2004 version of the report, refer to criminal cases received, discontinued and charged in Courts. It is also important to indicate that the offences "charged by the public prosecutor" do not only refer to cases filed in 2006, but also include previous years. There are no statistics about the number of cases filed and charged per year. Because the principle of opportunity is not applicable in Spain to criminal proceedings, there are no cases discontinued for reason of opportunity. Regarding cases of negotiated penalty, they must always conclude by a judicial ruling. The Public Prosecutor cannot impose penalties. Therefore a second statistic has been added, which specifically refers to investigative proceedings received and handled exclusively by the Prosecution Office (previous to and independent from judicial proceedings as explained in Q96). Statistic of investigative proceedings by the Public Prosecutor: received by the Public Prosecutor: 10.962; Discontinued by the Public Prosecutor: 308. Brought to Court by formulating the appropriate complaint: 249.

**Sweden:** in approximate 140.000 cases the public prosecution have decided not to initiate investigations or to discontinue investigations. In 29.370 cases the prosecutor has decided not to charge after finishing the investigation.

**Switzerland:** the numbers are only for 14 cantons out of the 26.

In the following table the number of cases received and brought before a court per 100.000 inhabitants and per prosecutor are presented. In **Austria, Belgium, Denmark, France, Luxembourg, Monaco** and **Spain** the ratio of cases received by the public prosecutor per 100.000 inhabitants is one of the highest. Countries with the highest average number of cases per prosecutor are: **Iceland, Italy, Spain, France, Switzerland, Luxembourg** and **Austria**.

**Table 81. Number of cases received by the public prosecutor and charged before the courts per 100.000 inhabitants and per prosecutor in 2006**

| Country                | Number of cases received by prosecutor per 100 000 inhabitants | Average number of cases received by prosecutor | Number of cases charged before the courts per 100 000 inhabitants | Average number of cases charged before the courts per prosecutor |
|------------------------|--|--|---|--|
| Andorra                | 44   | 9  | 26  | 5  |
| Armenia                | 89   | 7  | 89  | 7  |
| Austria                | 7 442  | 2 821  | 931   | 353  |
| Azerbaijan             | 26   | 2  | 115   | 8  |
| Belgium                | 7 021  | 934  | 191   | 25   |
| Bosnia and Herzegovina | 1 859  | 254  | 482   | 66   |
| Bulgaria               | 2 061  | 102  | 378   | 19   |
| Croatia                | 2 082  | 161  |   |  |
| Czech Republic         | 810  | 69   | 572   | 49   |
| Denmark                | 9 334  | 905  | 7 674   | 744  |
| Estonia                | 1 085  | 76   |   |  |
| Finland                | 1 631  | 273  | 1 191   | 199  |
| France                 | 8 395  | 2 893  | 1 120   | 386  |
| Georgia                | 826  | 75   | 295   | 27   |
| Germany                | 5 971  | 967  | 1 442   | 234  |
| Hungary                | 1 488  | 86   | 763   | 44   |
| Iceland                | 2 568  | 1 284  | 1 908   | 954  |
| Ireland                | 359  | 152  | 152   | 64   |

| Country              | Number of cases received by prosecutor per 100 000 inhabitants | Average number of cases received by prosecutor | Number of cases charged before the courts per 100 000 inhabitants | Average number of cases charged before the courts per prosecutor |
|----------------------|--|--|---|--|
| Italy                | 5 002  | 1 317  | 975   | 257  |
| Latvia               | 557  | 23   | 566   | 24   |
| Lithuania            | 473  | 19   | 527   | 21   |
| Luxembourg           | 9 874  | 1 085  | 2 630   | 289  |
| Moldova              |  |  | 362   | 17   |
| Monaco               | 7 997  | 660  | 2 142   | 177  |
| Montenegro           | 2 332  | 174  |   |  |
| Netherlands          | 1 639  | 397  | 918   | 222  |
| Poland               | 4 083  | 262  | 1 124   | 72   |
| Portugal             | 4 650  | 372  | 805   | 64   |
| Romania              | 501  | 40   | 126   | 10   |
| Serbia               | 2 345  | 252  | 798   | 86   |
| Slovakia             | 2 256  | 163  | 417   | 30   |
| Slovenia             | 4 665  | 519  | 635   | 71   |
| Spain                | 9 374  | 2 078  | 1 349   | 299  |
| Sweden               | 2 209  | 222  | 2 080   | 209  |
| Switzerland          | 4 304  | 1 145  | 336   | 111  |
| FYROMacedonia        | 1 574  | 179  | 624   | 71   |
| Turkey               | 3 723  | 695  | 988   | 184  |
| Ukraine              | 1 171  | 56   |   |  |
| UK-Scotland          | 6 183  | 690  | 3 297   | 368  |
| UK-England and Wales | 1 963  | 431  | 1 878   | 413  |

The number of cases brought before the courts by the prosecutors per 100.000 inhabitants is relatively high in **Denmark, Iceland, Luxembourg, Monaco, Spain, Sweden, UK-Scotland and UK-England and Wales.**

In 16 countries there is a possibility that a public prosecutor negotiates or decides on a sanction without the intervention of a judge. In these countries this may lead to a reduction of the workload of the courts. The number of negotiated cases or cases where the prosecutor can impose a sanction is significant in **UK-England and Wales, France, Poland, the Netherlands, Georgia and Belgium** compared with the number of cases brought before the courts.

**Table 82. Number of cases concluded by a penalty, imposed or negotiated cases and cases brought before the courts per 100.000 inhabitants in 2006**

| Country              | Number of cases concluded by a penalty, imposed or negotiated by the public prosecutor per 100.000 inhabitants | Number of cases charged by the public prosecutor before the courts per 100.000 inhabitants | Number of cases brought before the courts / Number of cases concluded by a penalty, imposed or negotiated |
|----------------------|--|--|---|
| UK-England and Wales | 1 646  | 1 878  | 1,1   |
| France               | 821  | 1 120  | 1,4   |
| Poland               | 641  | 1 124  | 1,8   |
| Sweden               | 567  | 2 080  | 3,7   |
| Netherlands          | 477  | 918  | 1,9   |
| Germany              | 293  | 1 442  | 4,9   |
| Georgia              | 114  | 295  | 2,6   |
| Luxembourg           | 107  | 2 630  | 24,5  |
| Bulgaria             | 100  | 378  | 3,8   |
| Serbia               | 92   | 798  | 8,7   |

| <b>Country</b>         | <b>Number of cases concluded by a penalty, imposed or negotiated by the public prosecutor per 100.000 inhabitants</b> | <b>Number of cases charged by the public prosecutor before the courts per 100.000 inhabitants</b> | <b>Number of cases brought before the courts / Number of cases concluded by a penalty, imposed or negotiated</b> |
|------------------------|---|---|--|
| Belgium                | 72  | 191   | 2,7  |
| Bosnia and Herzegovina | 59  | 482   | 8,1  |
| Slovakia               | 46  | 417   | 9,1  |
| Finland                | 44  | 1 191   | 27,2   |
| Latvia                 | 32  | 566   | 17,5   |
| Portugal               | 28  | 805   | 28,3   |

## 11. Status and career of judges and prosecutors

The guarantees given to the judges and prosecutors rest on a deontological requirement and the control of a technical nature. They are essential to protect independence and impartiality during the exercise of their judicial functions. The guarantees are inserted into a specific legal status for members of the judiciary which presents, according to the countries, a legislative or constitutional character. However they must be considered within the framework of the mission of public service which is attached to justice. The Consultative Council of European Judges (CCJE) affirms in its Opinion N°1 (2001): “*Their independence [of the judges] is not a prerogative or privilege in their own interests, but in the interests of the rule of law and of those seeking and expecting justice*”. In the same Opinion, CCJE underlines that: “*every decision relating to a judge’s appointment or career should be based on objective criteria and be either taken by an independent authority or subject to guarantees to ensure that it is not taken other than on the basis of such criteria*” (CCJE’s Opinion N°1 (2001) par.37).

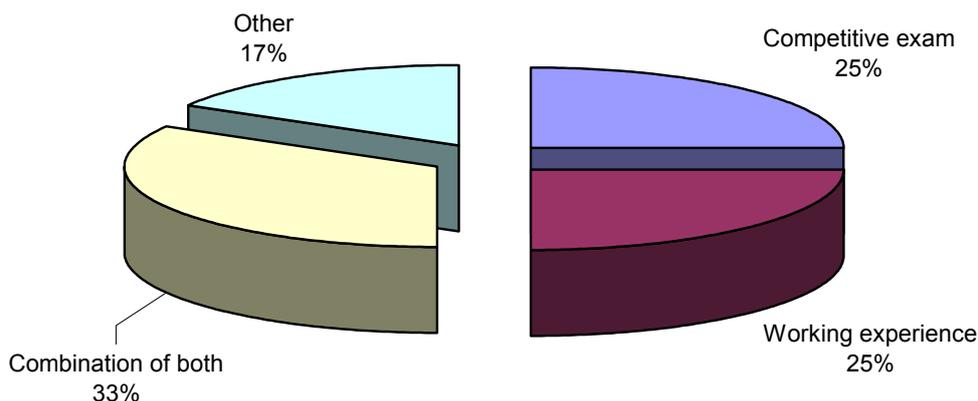
Considering the diversity of the prosecutor’s status according to the member states of the Council of Europe, it is not possible to apply in a similar way the same principles for a judge to the public prosecutor. However, Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system provides that: “*the recruitment (...) of public prosecutors [is] carried out according to fair and impartial procedures embodying safeguards against any approach which favours the interests of specific groups, and excluding discrimination...*”

### 11.1 Recruitment and nomination

#### 11.1.1 Recruitment and nomination of judges

The modalities of recruitment of judges are a sensitive subject because it may influence the independence of the judiciary. Several modalities of recruitment can be found in the member states of the Council of Europe. Countries may recruit judges using a competitive exam or choose them on the basis of working experience in the legal field. There are also countries where there is a combination of competitive exams and an appointment of judges on the basis of experience. The modalities are presented in the following figure.

**Figure 54. Modalities of recruitment of the judges in Europe (Q99)**



**Table 83. Modalities of recruitment of judges (Q99)**

| Modalities of recruitment |                      |                        |             |
|---------------------------|----------------------|------------------------|-------------|
| Competitive exam          | Working experience   | Combination of both    | Other       |
| Andorra                   | Cyprus               | Albania                | Finland     |
| Austria                   | Croatia              | Armenia                | Hungary     |
| Bulgaria                  | Ireland              | Azerbaijan             | Luxembourg  |
| Czech Republic            | Iceland              | Belgium                | Montenegro  |
| Greece                    | Malta                | Bosnia and Herzegovina | Serbia      |
| Italy                     | Norway               | Denmark                | Slovenia    |
| Lithuania                 | Slovakia             | Estonia                | Sweden      |
| Moldova                   | UK-Northern Ireland  | France                 | Switzerland |
| Portugal                  | UK-Scotland          | Georgia                |             |
| Spain                     | UK-England and Wales | Germany                |             |
| Turkey                    |                      | Latvia                 |             |
| Ukraine                   |                      | Monaco                 |             |
|                           |                      | Netherlands            |             |
|                           |                      | Poland                 |             |
|                           |                      | Romania                |             |
|                           |                      | Russian Federation     |             |
|                           |                      | FYROMacedonia          |             |

The variances which are noticed in the modalities are of cultural nature and find their roots in the history of each country. Common law countries favour to recruit judges on the basis of working experiences whilst the majority of the continental European countries often prefer a competitive exam.

Recruitment by competitive exam rests on graduate conditions (for example a Law degree) and personal capacities of the candidate, which must be evaluated by an independent jury not exclusively composed of judges.

In the majority of the member states, the recruitment of judges is the competence of the Ministry of Justice or a (High) Council for the judiciary. Mostly in the recruitment board of the ministry or council for the judiciary also other professions then judges are represented, for example academics (law professors, lawyers, journalists, etc).

Among the countries having selected the category "other modalities", it can be noted that there are systems where law graduates may submit their candidature directly to the courts (**Hungary**) or are nominated as a judge after a training period in the courts (**Finland, Sweden**) and/or in a law firm (**Luxembourg**). Other systems where there are no explicit criteria for the nomination of judges mentioned are **Montenegro, Serbia, Slovenia, Switzerland**.

Irrespective of the modalities of recruitment, it is important that the authorities competent for the recruitment of judges have a certain degree of independence. There are countries where the recruitment of judges is only in the hands of a (panel) of judges, whilst in other countries it can be a mixed authority of judges and non-judges. In a limited number of countries the recruitment of judges is the responsibility of non-judges.

**Table 84. Composition of the authorities competent for the recruitment of judges (Q100)**

| Composition of the authorities competent for the recruitment of judges |                |                        |                      |
|--|----------------|------------------------|----------------------|
| Judges only  | Non-judges     | Judges and non-judges  |                      |
| Cyprus   | Andorra        | Albania                | Netherlands          |
| Latvia   | Czech Republic | Armenia                | Norway               |
| Lithuania  | Luxembourg     | Austria                | Poland               |
|  | Serbia         | Azerbaijan             | Portugal             |
|  | Slovenia       | Belgium                | Romania              |
|  | Ukraine        | Bosnia and Herzegovina | Russian Federation   |
|  |                | Bulgaria               | Slovakia             |
|  |                | Croatia                | Spain                |
|  |                | Denmark                | Sweden               |
|  |                | Estonia                | Switzerland          |
|  |                | Finland                | FYROMacedonia        |
|  |                | France                 | Turkey               |
|  |                | Georgia                | UK-Northern Ireland  |
|  |                | Germany                | UK-Scotland          |
|  |                | Greece                 | UK-England and Wales |

| Composition of the authorities competent for the recruitment of judges |  |            |  |
|--|--|------------|--|
|  |  | Hungary    |  |
|  |  | Iceland    |  |
|  |  | Ireland    |  |
|  |  | Italy      |  |
|  |  | Moldova    |  |
|  |  | Monaco     |  |
|  |  | Montenegro |  |

Some countries have chosen to nominate their judges directly by citizens or, in case of specialized courts, by representatives of an enterprise/company. This is for example the case for **Switzerland**. Also in **France**, judges of labour courts responsible for disputes between employers and employees concerning employment contracts are selected from enterprises/companies.

In **UK-England and Wales**, access to the profession of a judge is reserved for professionals having a significant experience in the legal area (as a lawyer or a barrister). The Judicial Appointments Commission (JAC) is an independent non departmental public body (NDPB), set up by the Constitutional Reform Act in 2005, to select candidates for judicial office. Selection is on merit, through fair and open competition, from the widest range of eligible candidates. The JAC primarily selects judicial office holders in England and Wales and on occasion makes appointments in **UK-Scotland** and **UK-Northern Ireland**. Scottish appointments are primarily made by the Judicial Appointments Board for Scotland and those in Northern Ireland by the Northern Ireland Judicial Appointments Commission.

In many member states of the Council of Europe, a Council for the judiciary plays an important role in the nomination of judges. This is the case for **Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, France, Georgia, Hungary, Lithuania, "the former Yugoslav Republic of Macedonia", Moldova, Montenegro, Romania, Serbia, Slovenia, Sweden, Turkey**. The Supreme Court is competent in **Iceland** and the **Russian Federation**.

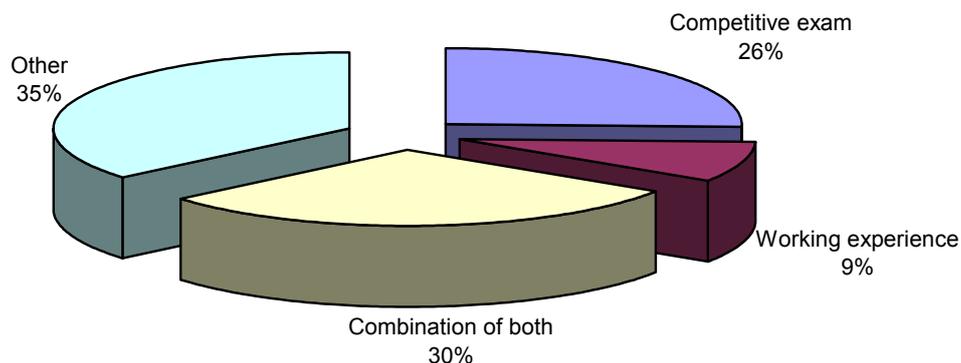
The majority of the councils for the judiciary are composed of members of the judiciary and external professions (academics, lawyers and sometimes representatives of the Ministry of Justice). Generally, the councils for the judiciary take an opinion for the nomination of judges and prosecutors, which is sometimes mandatory to the formal authority entrusted with the nomination of a judge or a prosecutor. Mostly, this formal authority is given to the executive power, either the Head of the State (**France, Hungary, Lithuania, Luxembourg, Moldova, Monaco, Romania**) or the government (**Malta, Sweden**). Nominations resulting from the legislative power are less common (**Serbia, Slovenia**).

In the other countries, there are judiciary commissions or consultative councils responsible for the nomination. This is the case of the following countries: **Denmark, Finland, Ireland, Latvia, Norway, Poland**. The majority of these councils are composed of members of the judiciary and law practitioners. Often the council is responsible for the drafting of a proposal for nomination. This proposal is addressed to the Ministry of Justice or to the Parliament, which are competent for the formal nomination/appointment of the judges. However in **Finland** it is the responsibility of the President of the Republic to formally appoint a judge on the recommendation of the Minister of Justice, as nominated by the Judicial Appointment Board. It must also be noted that in **Switzerland** the judges of the supreme courts of the cantons and of the Federal court are generally appointed by the parliaments of the cantons and the Federal Parliament and the first instance judges by the judges of the supreme courts of the cantons.

### 11.1.2 Recruitment and nomination of prosecutors

Concerning the recruitment and nomination of prosecutors, it is important to make a distinction between the procedures for nominating a General Prosecutor or a State prosecutor (since they are responsible for the control and policy making of the public prosecution and receive more influence from the side of politics) and procedures related to the *ordinary* public prosecutors.

**Figure 55. Modalities of recruitment of prosecutors in the European countries (Q103)**



As it is the case with the recruitment of judges, there are three or four different modalities of recruitment of public prosecutors: (1) competitive exams, (2) recruitment on the basis of working experience, (3) a combination of both or (4) even other modalities.

**Table 85. Modalities of recruitment of the prosecutors (Q103)**

| Modalities of recruitment |                      |                        |                  |
|---------------------------|----------------------|------------------------|------------------|
| Competitive exams         | Working experience   | Combination of both    | Other modalities |
| Andorra                   | Croatia              | Albania                | Cyprus           |
| Armenia                   | Germany              | Belgium                | Finland          |
| Austria                   | Iceland              | Bosnia and Herzegovina | Hungary          |
| Azerbaijan                | Ireland              | Estonia                | Luxembourg       |
| Bulgaria                  | Norway               | France                 | Malta            |
| Czech Republic            | Russian Federation   | Georgia                | Monaco           |
| Denmark                   | Switzerland          | Netherlands            | Montenegro       |
| Greece                    | FYROMacedonia        | Poland                 | Serbia           |
| Italy                     | UK-England and Wales | Romania                | Ukraine          |
| Latvia                    |                      | Slovakia               |                  |
| Lithuania                 |                      | Slovenia               |                  |
| Moldova                   |                      | Sweden                 |                  |
| Portugal                  |                      | UK-Northern Ireland    |                  |
| Spain                     |                      | UK-Scotland            |                  |
| Turkey                    |                      |                        |                  |

With respect to the different systems (prosecution on the basis of legality or opportunity), the role and the modalities of recruitment of prosecutors may vary.

Among countries indicating 'other modalities', there are systems where prosecutors are recruited after finishing Law school and a training period (**Finland, Luxembourg, Ukraine**), after making a request to the General Prosecutor (**Hungary**), by a final decision (not appealable) of a superior body (**Monaco**) or of the Parliament (**Montenegro**).

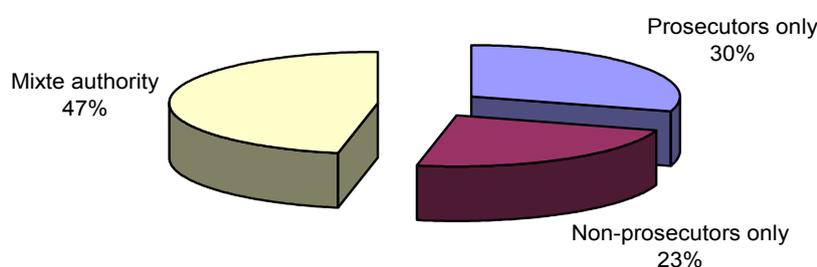
In many countries the conditions for entering the profession of the public prosecutor are different compared with the recruitment and appointment of judges.

**Table 86. Composition of the authorities competent for the recruitment of prosecutors (Q104)**

| Composition of the authorities competent for the recruitment of prosecutors |                      |                                 |                    |
|---|----------------------|---------------------------------|--------------------|
| Prosecutors only  | Non Prosecutors      | Prosecutors and non prosecutors |                    |
| Azerbaijan  | Andorra              | Armenia                         | Romania            |
| Finland   | Austria              | Belgium                         | Russian Federation |
| Hungary   | Cyprus               | Bosnia and Herzegovina          | Slovenia           |
| Ireland   | Czech Republic       | Bulgaria                        | Spain              |
| Iceland   | Germany              | Croatia                         | Switzerland        |
| Latvia  | Greece               | Denmark                         | FYRO-Macedonia     |
| Lithuania   | Iceland              | Estonia                         | Turkey             |
| Moldova   | Luxembourg           | France                          |                    |
| Poland  | Monaco               | Georgia                         |                    |
| Slovakia  | Serbia               | Italy                           |                    |
| Sweden  | UK-England and Wales | Malta                           |                    |
| Ukraine   |                      | Montenegro                      |                    |
| UK-Northern Ireland   |                      | Netherlands                     |                    |
| UK-Scotland   |                      | Norway                          |                    |
|   |                      | Portugal                        |                    |

It can be noticed that in the majority of countries the members of the public prosecution are represented in the authorities responsible for the recruitment.

**Figure 56. Distribution of the responses according to the body responsible for the recruitment of the prosecutors (Q104)**



The prosecutor is on the one hand an actor of the judicial power but on the other hand he represents, as a part of his specific function, the executive power as well (representation of the state power). The modalities of recruitment of prosecutors are an indicator of the balance between state's powers. If the executive power is often present in the recruitment of public prosecutors, it represents an organic rule in prosecutor's nomination. In fact in many countries the public prosecutors are members of the judiciary and representatives of the executive power: **Germany, Austria, Belgium, Croatia, Italy, Netherlands, Romania, Slovenia.**

A large influence of the executive power in the nomination is especially present in: **Austria, Belgium, Denmark, France, Malta, Poland, Czech Republic, Slovenia, Switzerland** (in some cantons), **Turkey, UK-Scotland, UK-England and Wales.** Less frequently the parliament can also have an influence in the nomination. For example in: **Hungary, Moldova, Norway, Slovakia, Switzerland** (the General Prosecutor is nominated by the Parliament in certain cantons). Exceptionally prosecutors are recruited by an authority

only composed of public prosecutors (“**the former Yugoslav Republic of Macedonia**”) or directly by citizens (in some cantons of **Switzerland**).

In the majority of the countries prosecutors are nominated after a recommendation of a special section of the Council for the Judiciary: (**France, Greece, Italy, Portugal, Slovenia, Sweden, Turkey**); a Prosecutor’s Council (**Montenegro**), the Ministry of Justice (**Czech Republic**) or the Head of State (for some categories of prosecutors in **Austria**).

## 11.2 Training

### 11.2.1 Training of judges

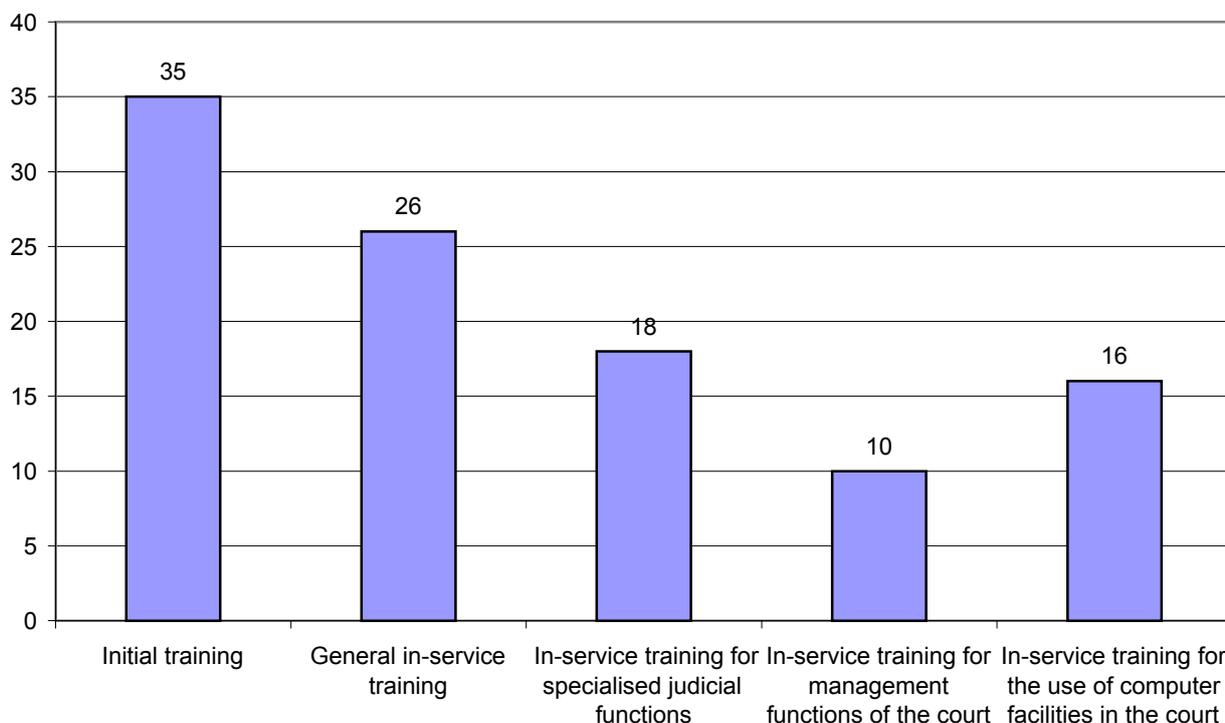
Many European countries have specialized institutes (judicial schools) for the training of judges. The Consultative Council of European Judges (CCJE) underlines that the authority competent for supervising the quality of the training programmes should be independent from the executive and the legislative powers and that at least half its members should be judges (CCJE’s Opinion N°4 (2003), par. 13 and 16). The CCJE recommends also that training should be ensured by an independent body with its own budget and which is competent for the preparation of training programmes (par. 17).

#### *Initial training*

The specific knowledge which is necessary to practice the function of a judge is often acquired through initial training. In the majority of countries this is mandatory. Only in 11 countries the initial training is facultative (**Armenia, Bosnia and Herzegovina, Cyprus, Croatia, Czech Republic, Estonia, Finland, Malta, Moldova, Serbia and Slovenia**).

Concerning the length of the training there is a large difference. In some countries the initial training is a couple of days like **UK-England and Wales** whilst in other countries it is a number of years **the Netherlands** (6 years).

**Figure 57. Mandatory trainings for the judges in the European countries by type of the training (Q110)**



The CCJE recommends adapting mandatory initial training according the working experience of the appointed persons. This means in practice that an experienced lawyer needs lesser training compared to a candidate who comes straight from the university (CCJE’s Opinion N°4 (2003), par. 24 and following).

In addition to the initial training other types of training can be set mandatory for judges during their career: general in-service training, general in-service training for specialized functions and for the management functions and training for the use of computer facilities. The following table presents the countries according to the types of training offered and imposed to the judges.

**Table 87. Types of mandatory trainings for judges (Q110)**

| No mandatory training | Initial training     | All trainings except for specific functions | At least 2 types of training | All trainings mandatory |
|-----------------------|----------------------|---|------------------------------|-------------------------|
| Croatia               | Austria              | Greece                                      | Andorra                      | Georgia                 |
| Cyprus                | Azerbaijan           | UK-Scotland                                 | Armenia                      | Hungary                 |
| Czech Republic        | Bulgaria             | Iceland                                     | Belgium                      | Lithuania               |
| Finland               | Ireland              |   | Bosnia and Herzegovina       | Montenegro              |
| Serbia                | Italia               |   | Denmark                      | Norway                  |
| Slovenia              | Luxembourg           |   | Estonia                      | Romania                 |
|                       | Portugal             |   | France                       | FYROMacedonia           |
|                       | Russian Federation   |   | Germany                      | Sweden                  |
|                       | Spain                |   | Latvia                       | Ukraine                 |
|                       | Switzerland          |   | Malta                        |                         |
|                       | UK-England and Wales |   | Monaco                       |                         |
|                       | UK-Northern Ireland  |   | Netherlands                  |                         |
|                       |                      |   | Poland                       |                         |
|                       |                      |   | Slovakia                     |                         |
|                       |                      |   | Turkey                       |                         |
|                       |                      |   |                              |                         |

In 6 countries (**Croatia, Cyprus, Czech Republic, Finland, Serbia and Slovenia**) no specific type of training among the initial training, general in-service training, training for specialized and management functions and technical training can be found as mandatory to enter the profession of judge. On the opposite side are the following countries: “**the former Yugoslav Republic of Macedonia**”, **Georgia, Hungary, Lithuania, Montenegro, Norway, Romania, Sweden and Ukraine**, where all types of training are mandatory. Between the two groups, in 12 countries (see the table), the initial training for judges is required. There is also a numerous group of countries where the mandatory training offered is more heterogeneous and variable from one country to another (see the appendix). In **Switzerland**, professional judges are usually requested to have an overall legal education and a professional experience, for instance as a lawyer, prosecutor or court clerk.

### **General in-service training**

The constant changes in our society require a permanent training and education of judges. Judges may benefit from a training programme not only in technical areas, but also in social and cultural matters.

**Table 88. Nature and frequency of the training of the judges (Q111)**

| <i>Nature of the training of judges</i>                   | <i>Frequency</i> | <i>Number of replies</i> |
|---|------------------|--------------------------|
| Initial training  | Annual           | 9                        |
|   | Regular          | 15                       |
|   | Occasional       | 2                        |
| General in-service training                               | Annual           | 9                        |
|   | Regular          | 26                       |
|   | Occasional       | 10                       |
| In-service training for specialised judicial functions    | Annual           | 7                        |
|   | Regular          | 19                       |
|   | Occasional       | 19                       |
| In-service training for management functions of the court | Annual           | 3                        |
|   | Regular          | 15                       |
|   | Occasional       | 18                       |
| In-service training for the use of computer facilities    | Annual           | 2                        |
|   | Regular          | 15                       |
|   | Occasional       | 20                       |

43 countries / entities ensure continuous in-service general training for judges in various forms (annual, regular or occasional). Also prevalent (41 countries) is the training connected with the performance of

specialized functions. The judges in 33 countries can benefit from training to perform specific (management) functions and in 34 countries training on information technology is provided.

Some countries foresee a tutoring period for new judges after the nomination. This is the situation for **Portugal** and **The Netherlands**.

### 11.2.2 Training of prosecutors

#### *Initial training*

According to the Recommendation R(2000)19 paragraph 7, training is both a right and a duty for the prosecutors, both before starting the function and during their career.

**Figure 58. Mandatory training for the prosecutors by type of training (Q112)**



36 of the 47 countries or entities replied (Q 112) that an initial training for prosecutors is mandatory. In 10 countries such training is not necessary for entering the function of prosecutor: **Armenia, Bosnia and Herzegovina, Cyprus, Croatia, Denmark, Russian Federation, Finland, Iceland, Czech Republic, Serbia**.

**Table 89. Types of mandatory trainings for prosecutors (Q112)**

| No mandatory training | Initial training     | At least 2 trainings are mandatory |                     | All the trainings are mandatory |
|-----------------------|----------------------|------------------------------------|---------------------|---------------------------------|
| Croatia               | Austria              | Armenia                            | Norway              | Georgia                         |
| Cyprus                | Azerbaijan           | Azerbaijan                         | Serbia              | Hungary                         |
| Czech Republic        | Belgium              | Bosnia and Herzegovina             | Slovenia            | Lithuania                       |
| Denmark               | Bulgaria             | France                             | Spain               | Montenegro                      |
| Finland               | Estonia              | Germany                            | Turkey              | Romania                         |
|                       | Italy                | Greece                             | UK-Northern Ireland | Slovakia                        |
|                       | Luxembourg           | Ireland                            | UK-Scotland         | Sweden                          |
|                       | Poland               | Latvia                             |                     | Ukraine                         |
|                       | Portugal             | Malta                              |                     | FYRO Macedonia                  |
|                       | Russian Federation   | Moldova                            |                     |                                 |
|                       | Switzerland          | Monaco                             |                     |                                 |
|                       | UK-England and Wales | Netherlands                        |                     |                                 |

5 countries (**Croatia, Cyprus, Czech Republic, Denmark** and **Finland**) have indicated that no specific training is required. For 12 countries only initial training is required. Next comes a group of 19 countries requiring prosecutors at least 2 types of training. Because of the wide variety of configurations detailed responses are presented in the appendix. Finally the group of countries requiring prosecutors to follow all types of training are: **Georgia, Hungary, Lithuania, Montenegro, Romania, Slovakia, Sweden, Ukraine** and “**the former Yugoslav Republic of Macedonia**”. In **Switzerland** prosecutors are usually requested to have an overall legal education and a professional experience, for instance as a lawyer, prosecutor or court clerk.

#### ***In-service training of prosecutors***

According to Recommendation R(2000)19 the in-service training is necessary to optimize international cooperation and to perceive a current view on the state of affairs in crimes and its evolution. Such training of prosecutors is provided by 44 states. In the majority of cases it is made on a regular basis (22 countries) and occasionally in 10 countries.

**Table 90. Nature and frequency of the training of prosecutors (Q113)**

| Nature of the training of prosecutors          | Frequency  | Number of replies |
|--|------------|-------------------|
| Initial training                               | Annual     | 7                 |
|  | Regular    | 19                |
|  | Occasional | 1                 |
| General in-service training                    | Annual     | 12                |
|  | Regular    | 22                |
|  | Occasional | 10                |
| In-service training for specialized functions  | Annual     | 5                 |
|  | Regular    | 17                |
|  | Occasional | 16                |
| In-service training for specific functions     | Annual     | 2                 |
|  | Regular    | 14                |
|  | Occasional | 12                |
| In-service training to use computer facilities | Annual     | 3                 |
|  | Regular    | 9                 |
|  | Occasional | 19                |

Important achievements have been made by countries in specializing prosecutors (37 countries) and in using computer facilities (31 countries). More than a half of prosecutors in Europe can benefit from specific training for particular missions (28 countries).

## 11.3 Salaries of judges and prosecutors

### **Salaries of judges**

The remuneration of judges is a sensitive issue. The objective is to give to the judge a fair remuneration which takes into account the difficulties related to the practice of this function (see supra) and which allows him/her to protect from pressure which might challenge his/her independence and impartiality. The remuneration is composed of a basic salary, which may be supplemented with premiums and/or other diverse (material or financial) advantages.

Recommendation R94(12) on the independence, efficiency and the role of the judges provides that the judges remuneration should be guaranteed by law and "*commensurate with the dignity of their profession and burden of responsibilities*". The CCJE's Opinion N°1 (2001) par. 61 confirms that an adequate level of remuneration is necessary to guarantee that judges could work freely "*in shielding from pressures aimed at influencing their decisions and more generally their behaviour*".

Data which are presented in the next table must be taken with caution, as the allocated salaries depend on several factors which are connected with the living standards, modalities of recruitment, seniority, etc. As a result, a "new" judge in countries of *common law* is a legal professional who benefits from a long working experience (see supra) and then naturally benefits from a high salary (100.000 € per year), which is not easy to be compared with junior judges in other countries.

The main remuneration may not be linear during the career of judge. It varies considerably between the beginning and the end of career, but also according the age of access to the function of judge.

### **Salaries of prosecutors**

The same reservations as those concerning the salary of judges should be made here. The salaries of prosecutors are composed of a basic salary that can be supplemented with premiums and/or other benefits.

Paragraph 5 D. Recommendation of the R2000 (19) provides: "the law guarantees to perform his duties, reasonable conditions, including status, remuneration and a pension in accordance with the importance of the tasks performed, and an appropriate age for retirement. "

The main salary is not linear during his career prosecutor. It varies considerably between the beginning and end of their careers, but also in terms of responsibilities entrusted by each public prosecutor.

**Table 91. Gross and net annual salaries of judges and prosecutors at the beginning of the career in 2006, in € (Q114)**

| Country                | Judge – gross salary (€) | Judge – net salary (€) | Gross salary of a judge in regard to average gross annual salary | Prosecutor – gross salary (€) | Prosecutor – net salary (€) | Gross salary of a prosecutor in regard of the average gross annual salary |
|------------------------|--------------------------|------------------------|--|-------------------------------|-----------------------------|---|
| Andorra                | 67 581                   | 63 526                 | 3,3  | 67 581                        | 63 526                      | 3,3   |
| Armenia                | 7 618                    | 5 501                  | 5,2  |                               |                             | 0,0   |
| Austria                | 43 393                   |                        | 1,1  | 46 073                        |                             | 1,1   |
| Azerbaijan             | 7 176                    |                        | 4,7  | 3 436                         |                             | 2,2   |
| Belgium                | 56 487                   | 30 632                 | 1,5  | 56 487                        | 30 632                      | 1,5   |
| Bosnia and Herzegovina | 24 024                   | 14 946                 | 4,5  | 24 024                        | 14 946                      | 4,5   |
| Bulgaria               | 5 676                    |                        | 2,6  | 5 676                         |                             | 2,6   |
| Croatia                | 22 930                   | 13 983                 | 2,1  | 22 930                        | 13 983                      | 2,1   |
| Cyprus                 | 52 616                   |                        | 2,3  |                               |                             | 0,0   |
| Czech Republic         | 21 838                   |                        | 2,5  | 18 438                        |                             | 2,1   |
| Denmark                | 91 904                   |                        | 1,9  | 40 269                        |                             | 0,8   |
| Estonia                | 24 840                   | 19 127                 | 3,4  | 15 384                        | 11 845                      | 2,1   |
| Finland                | 50 000                   | 34 000                 | 1,5  | 35 000                        | 26 000                      | 1,0   |
| France                 | 35 777                   | 30 623                 | 1,2  | 35 777                        | 31 171                      | 1,2   |
| Georgia                | 4 320                    | 3 801                  | 2,9  | 5 184                         | 4 560                       | 3,5   |
| Germany                | 38 829                   |                        | 0,9  | 38 829                        |                             | 0,9   |
| Greece                 | 33 226                   | 28 000                 | 1,4  | 33 226                        | 28 000                      | 1,4   |
| Hungary                | 30 430                   | 13 789                 | 3,7  | 30 430                        | 13 789                      | 3,7   |
| Iceland                | 97 240                   | 63 418                 | 2,3  |                               |                             | 0,0   |
| Ireland                | 127 664                  |                        | 4,1  |                               |                             | 0,0   |
| Italy                  | 37 454                   | 25 039                 | 1,1  | 37 454                        | 25 039                      | 1,1   |
| Latvia                 | 13 677                   | 9 471                  | 2,7  | 15 257                        | 10 607                      | 3,0   |
| Lithuania              | 14 816                   | 10 680                 | 2,9  | 12 286                        | 8 900                       | 2,4   |
| Luxembourg             | 76 607                   |                        | 1,9  | 76 607                        |                             | 1,9   |
| Malta                  | 27 524                   |                        | 2,2  | 24 873                        |                             | 1,9   |
| Moldova                | 2 352                    | 1 934                  | 1,9  | 2 165                         | 1 712                       | 1,8   |
| Monaco                 | 41 238                   | 38 923                 |  | 41 238                        | 38 923                      |   |
| Montenegro             | 14 760                   | 9 726                  | 3,3  | 14 760                        | 9 726                       | 3,3   |
| Netherlands            | 70 000                   | 40 000                 | 1,5  | 85 000                        | 45 000                      | 1,9   |
| Norway                 | 87 000                   |                        | 2,0  | 66 000                        |                             | 1,5   |
| Poland                 | 14 904                   | 12 232                 | 1,9  | 14 904                        | 12 232                      | 1,9   |
| Portugal               | 33 477                   |                        | 2,2  | 33 477                        |                             | 2,2   |
| Romania                | 6 936                    | 4 835                  | 1,9  | 7 936                         | 4 835                       | 2,2   |
| Russian Federation     | 14 967                   | 12 261                 | 3,2  | 9 523                         | 8 284                       | 2,0   |
| Serbia                 | 13 991                   | 8 328                  | 3,1  | 13 991                        | 8 328                       | 3,1   |
| Slovakia               | 18 995                   | 14 030                 | 2,9  | 17 299                        | 13 091                      | 2,6   |
| Slovenia               | 23 736                   |                        | 1,6  | 26 016                        |                             | 1,8   |
| Spain                  | 45 230                   | 33 923                 | 1,7  | 45 230                        | 33 923                      | 1,7   |
| Sweden                 | 96 500                   | 38 000                 | 2,1  | 64 500                        | 29 500                      | 1,4   |
| Switzerland            | 88 044                   |                        | 2,1  | 73 062                        |                             | 1,7   |
| FYROMacedonia          | 12 165                   | 7 160                  | 2,7  | 12 165                        | 7 160                       | 2,7   |
| Turkey                 | 17 251                   | 13 940                 | 2,1  | 17 251                        | 13 940                      | 2,1   |
| Ukraine                | 5 640                    | 4 710                  | 2,6  | 1 938                         | 1 502                       | 0,9   |
| UK-Northern Ireland    | 140 608                  | 101 000                | 5,8  | 39 525                        | 41 340                      | 1,6   |
| UK-Scotland            | 170 000                  |                        | 4,8  | 37 500                        |                             | 1,1   |
| UK-England and Wales   | 143 708                  |                        | 4,0  | 28 463                        |                             | 0,8   |

**Table 92. Gross and net annual salaries of judges and prosecutors at the Supreme Court (or at the level of the highest instance) in 2006, in € (Q114)**

| Country                | Judge – gross salary (€) | Judge – net salary (€) | Gross salary of a judge in regard of average gross annual salary | Prosecutor – gross salary (€) | Prosecutor – net salary (€) | Gross salary of a prosecutor in regard of the average gross annual salary |
|------------------------|--------------------------|------------------------|--|-------------------------------|-----------------------------|---|
| Andorra                | 36 430                   | 34 244                 | 1,8  | 100 100                       | 94 000                      | 4,9   |
| Armenia                | 11 594                   | 6 601                  | 7,9  |                               |                             | 0,0   |
| Austria                | 105 251                  |                        | 2,6  | 105 251                       |                             | 2,6   |
| Azerbaijan             | 11 968                   |                        | 7,7  | 7 540                         |                             | 4,8   |
| Belgium                | 122 196                  | 60 184                 | 3,2  | 122 169                       | 60 184                      | 3,2   |
| Bosnia and Herzegovina | 41 223                   | 25 646                 | 7,7  | 41 223                        | 25 646                      | 7,7   |
| Bulgaria               | 11 136                   |                        | 5,0  | 11 136                        |                             | 5,0   |
| Croatia                | 52 054                   | 27 337                 | 4,8  | 52 054                        | 27 337                      | 4,8   |
| Cyprus                 | 93 525                   |                        | 4,1  |                               |                             | 0,0   |
| Czech Republic         | 42 760                   |                        | 4,9  | 39 579                        |                             | 4,5   |
| Denmark                | 130 341                  |                        | 2,7  | 80 537                        |                             | 1,7   |
| Estonia                | 34 115                   | 26 259                 | 4,7  | 23 846                        | 18 361                      | 3,3   |
| Finland                | 105 000                  | 61 000                 | 3,1  | 63 000                        | 41 000                      | 1,8   |
| France                 | 105 317                  | 90 087                 | 3,5  | 105 317                       | 90 087                      | 3,5   |
| Georgia                | 8 580                    | 7 550                  | 5,8  | 6 192                         | 5 460                       | 4,2   |
| Germany                | 86 478                   |                        | 2,1  | 86 478                        |                             | 2,1   |
| Greece                 | 73 716                   | 65 000                 | 3,2  | 73 716                        | 65 000                      | 3,2   |
| Hungary                | 42 154                   | 19 119                 | 5,2  | 42 154                        | 19 119                      | 5,2   |
| Iceland                | 130 000                  | 87 105                 | 3,1  |                               |                             | 0,0   |
| Ireland                | 222 498                  |                        | 7,2  |                               |                             | 0,0   |
| Italy                  | 122 278                  | 100 405                | 3,6  | 122 278                       | 100 405                     | 3,6   |
| Latvia                 | 31 686                   | 22 151                 | 6,1  | 29 689                        | 20 443                      | 5,8   |
| Lithuania              | 30 852                   | 21 900                 | 5,9  | 27 366                        | 18 584                      | 5,3   |
| Luxembourg             | 140 201                  |                        | 3,5  | 140 201                       |                             | 3,5   |
| Malta                  | 32 480                   |                        | 2,5  | 32 630                        |                             | 2,5   |
| Moldova                | 4 390                    | 3 621                  | 3,6  | 2 502                         | 2 026                       | 2,0   |
| Monaco                 |                          |                        |  | 118 616                       | 111 960                     |   |
| Montenegro             | 19 005                   | 12 480                 | 4,2  | 21 994                        | 14 400                      | 4,9   |
| Netherlands            | 115 000                  | 60 000                 | 2,5  | 115 000                       | 60 000                      | 2,5   |
| Norway                 | 125 000                  |                        | 2,8  |                               |                             | 0,0   |
| Poland                 | 37 403                   | 25 537                 | 4,9  | 37 403                        | 25 537                      | 4,9   |
| Portugal               | 80 478                   |                        | 5,4  | 78 134                        |                             | 5,2   |
| Romania                | 34 082                   | 23 760                 | 9,3  | 28 153                        | 19 628                      | 7,7   |
| Russian Federation     | 35 220                   | 30 642                 | 7,5  | 24 982                        | 21 734                      | 5,3   |
| Serbia                 | 22 258                   | 13 249                 | 4,9  | 22 258                        | 13 249                      | 4,9   |
| Slovakia               | 27 438                   | 20 450                 | 4,2  | 26 458                        | 20 406                      | 4,0   |
| Slovenia               | 48 660                   |                        | 3,3  | 48 036                        |                             | 3,3   |
| Spain                  | 115 498                  | 72 764                 | 4,3  | 115 498                       | 72 764                      | 4,3   |
| Sweden                 | 152 000                  | 53 000                 | 3,2  | 143 500                       | 50 000                      | 3,1   |
| Switzerland            | 204 968                  | 192 546                | 4,8  | 131 000                       | 105 000                     | 3,1   |
| FYROMacedonia          | 14 870                   | 8 749                  | 3,3  | 14 870                        | 8 749                       | 3,3   |
| Turkey                 | 28 988                   | 22 991                 | 3,4  | 28 988                        | 22 991                      | 3,4   |
| Ukraine                | 35 259                   | 34 388                 | 16,1   | 8 160                         | 6 528                       | 3,7   |
| UK-Northern Ireland    | 288 905                  | 191 500                | 11,9   | 50 003                        | 81 900                      | 2,1   |
| UK-Scotland            | 255 000                  |                        | 7,2  | 46 000                        |                             | 1,3   |
| UK-England and Wales   | 233 742                  |                        | 6,5  | 128 774                       |                             | 3,6   |

**Albania, Armenia, Cyprus, Iceland and Northern Ireland** have not provided replies to the question concerning the salary of public prosecutors.

In the following graphs the salaries of judges and prosecutors are visualised and ranked on the basis of the gross annual salary of a judge or prosecutor at the beginning of their career.

**Figure 59. Gross annual salaries of judges in 2006, in € (Q114)**

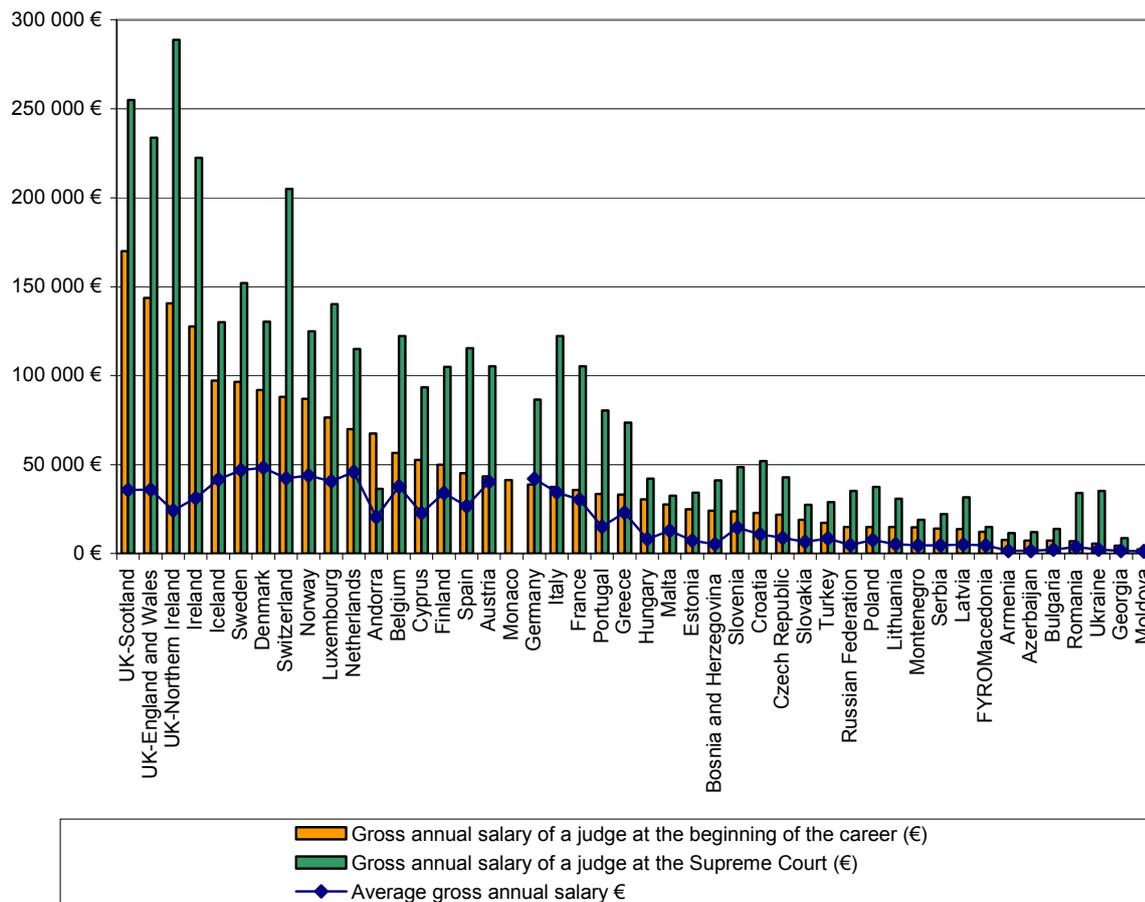
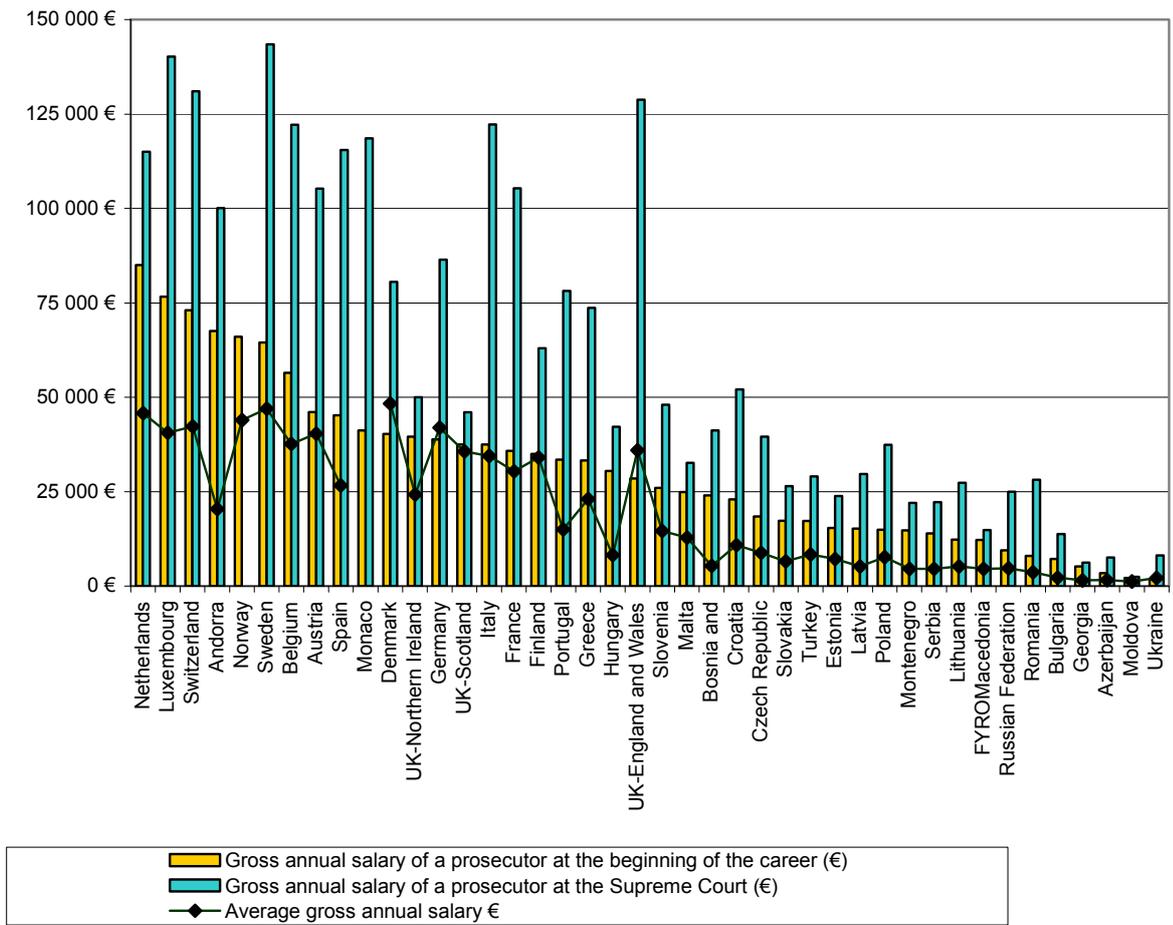


Figure 60. Gross annual salaries of public prosecutors in 2006, in € (Q 114)



**Table 93. Comparative, detailed table of judges and prosecutors salaries in 2006, in € (Q114)**

| Country                | Gross annual salary of a first instance professional judge at the beginning of his/her career | Gross annual salary of a judge of Supreme Court or of the highest appellate court | Gross annual salary of the prosecutor at the beginning of his/her career | Gross annual salary of a public prosecutor of the Supreme Court or of the highest appellate court | Salary of a judge in regard of that of a prosecutor at the beginning of their careers | Salary of a judge in regard of that of a prosecutor at the end of their careers |
|------------------------|---|---|--|---|---|---|
| Andorra                | 67 581  | 36 430  | 67 581   | 100 100   | 1,0   | 0,4   |
| Armenia                | 7 618   | 11 594  |  |   |   |   |
| Austria                | 43 393  | 105 251   | 46 073   | 105 251   | 0,9   | 1,0   |
| Azerbaijan             | 7 176   | 11 968  | 3 436  | 7 540   | 2,1   | 1,6   |
| Belgium                | 56 487  | 122 196   | 56 487   | 122 169   | 1,0   | 1,0   |
| Bosnia and Herzegovina | 24 024  | 41 223  | 24 024   | 41 223  | 1,0   | 1,0   |
| Bulgaria               | 5 676   | 11 136  | 5 676  | 11 136  | 1,0   | 1,0   |
| Croatia                | 22 930  | 52 054  | 22 930   | 52 054  | 1,0   | 1,0   |
| Cyprus                 | 52 616  | 93 525  |  |   |   |   |
| Czech Republic         | 21 838  | 42 760  | 18 438   | 39 579  | 1,2   | 1,1   |
| Denmark                | 91 904  | 130 341   | 40 269   | 80 537  | 2,3   | 1,6   |
| Estonia                | 24 840  | 34 115  | 15 384   | 23 846  | 1,6   | 1,4   |
| Finland                | 50 000  | 105 000   | 35 000   | 63 000  | 1,4   | 1,7   |
| France                 | 35 777  | 105 317   | 35 777   | 105 317   | 1,0   | 1,0   |
| Georgia                | 4 320   | 8 580   | 5 184  | 6 192   | 0,8   | 1,4   |
| Germany                | 38 829  | 86 478  | 38 829   | 86 478  | 1,0   | 1,0   |
| Greece                 | 33 226  | 73 716  | 33 226   | 73 716  | 1,0   | 1,0   |
| Hungary                | 30 430  | 42 154  | 30 430   | 42 154  | 1,0   | 1,0   |
| Iceland                | 97 240  | 130 000   |  |   |   |   |
| Ireland                | 127 664   | 222 498   |  |   |   |   |
| Italy                  | 37 454  | 122 278   | 37 454   | 122 278   | 1,0   | 1,0   |
| Latvia                 | 13 677  | 31 686  | 15 257   | 29 689  | 0,9   | 1,1   |
| Lithuania              | 14 816  | 30 852  | 12 286   | 27 366  | 1,2   | 1,1   |
| Luxembourg             | 76 607  | 140 201   | 76 607   | 140 201   | 1,0   | 1,0   |
| Malta                  | 27 524  | 32 480  | 24 873   | 32 630  | 1,1   | 1,0   |
| Moldova                | 2 352   | 4 390   | 2 165  | 2 502   | 1,1   | 1,8   |
| Monaco                 | 41 238  | Compensations   | 41 238   | 118 616   | 1,0   |   |
| Montenegro             | 14 760  | 19 005  | 14 760   | 21 994  | 1,0   | 0,9   |
| Netherlands            | 70 000  | 115 000   | 85 000   | 115 000   | 0,8   | 1,0   |
| Norway                 | 87 000  | 125 000   | 66 000   |   | 1,3   |   |
| Poland                 | 14 904  | 37 403  | 14 904   | 37 403  | 1,0   | 1,0   |
| Portugal               | 33 477  | 80 478  | 33 477   | 78 134  | 1,0   | 1,0   |
| Romania                | 6 936   | 34 082  | 7 936  | 28 153  | 0,9   | 1,2   |
| Russian Federation     | 14 967  | 35 220  | 9 523  | 24 982  | 1,6   | 1,4   |
| Serbia                 | 13 991  | 22 258  | 13 991   | 22 258  | 1,0   | 1,0   |
| Slovakia               | 18 995  | 27 438  | 17 299   | 26 458  | 1,1   | 1,0   |
| Slovenia               | 23 736  | 48 660  | 26 016   | 48 036  | 0,9   | 1,0   |
| Spain                  | 45 230  | 115 498   | 45 230   | 115 498   | 1,0   | 1,0   |
| Sweden                 | 96 500  | 152 000   | 64 500   | 143 500   | 1,5   | 1,1   |
| Switzerland            | 88 044  | 204 968   | 73 062   | 131 000   | 1,2   | 1,6   |
| Turkey                 | 17 251  | 28 988  | 17 251   | 28 988  | 1,0   | 1,0   |
| FYROMacedonia          | 12 165  | 14 870  | 12 165   | 14 870  | 1,0   | 1,0   |
| Ukraine                | 5 640   | 35 259  | 1 938  | 8 160   | 2,9   | 4,3   |
| UK-Northern Ireland    | 140 608   | 288 905   | 39 525   | 50 003  | 3,6   | 5,8   |
| UK-Scotland            | 170 000   | 255 000   | 37 500   | 46 000  | 4,5   | 5,5   |
| UK-England and Wales   | 143 708   | 233 742   | 28 463   | 128 774   | 5,0   | 1,8   |

In 19 countries salaries for judges and prosecutor at the beginning of their careers are the same: **Andorra, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, France, Germany, Greece, Hungary, Italy, Luxembourg, Montenegro, Monaco, Poland, Portugal, Serbia, Spain, Turkey, “the former Yugoslav Republic of Macedonia”**. On the other hand it means that in 24 countries there is a difference between the salary of judges and prosecutors. This difference in salary at the beginning of career is not large (more or less 0.2%) in 9 states. The salaries of judges are slightly lower than those of prosecutors in **Austria, Georgia, Netherlands, Latvia, Romania, Slovenia** and slightly higher than those of prosecutors in **Malta, Moldova and Slovakia**.

Larger differences in salaries can be found in: **Azerbaijan, Denmark** where a judge has a salary two times superior in respect to a public prosecutor at the beginning of his career. This difference in salaries is triple in **Ukraine** or even five times superior in some common law countries (**UK-Scotland** and **UK-England and Wales**). Looking at those important differences in salary, it can easily be understood that the activities related to these professions can be really different, and a simple comparison is not possible.

**Table 94. Comparative table of the salaries of judges and prosecutors at the beginning of the career (Q114)**

| Relative difference between the salaries of judges and prosecutors at the beginning of the career |               |                |                    |                      |
|---|---------------|----------------|--------------------|----------------------|
| Equal salary or difference of +/- 20%   |               | 20 et 50 %     | 50% et 100 %       | > 100 %              |
| Andorra   | Moldova       | Czech Republic | Estonia            | Azerbaijan           |
| Austria   | Monaco        | Finland        | Russian Federation | Denmark              |
| Belgium   | Montenegro    | Lithuania      | Sweden             | Ukraine              |
| Bosnia and Herzegovina  | Netherlands   | Norway         |                    | UK-Scotland          |
| Bulgaria  | Poland        | Switzerland    |                    | UK-Northern Ireland  |
| Croatia   | Portugal      |                |                    | UK-England and Wales |
| France  | Romania       |                |                    |                      |
| Georgia   | Serbia        |                |                    |                      |
| Germany   | Slovakia      |                |                    |                      |
| Greece  | Slovenia      |                |                    |                      |
| Hungary   | Spain         |                |                    |                      |
| Italy   | FYROMacedonia |                |                    |                      |
| Latvia  | Turkey        |                |                    |                      |
| Luxembourg  |               |                |                    |                      |
| Malta   |               |                |                    |                      |

Taking into account the differences of +/- 20% between the salaries of judges and prosecutors at the beginning of their career, there is a significant difference in favour of judicial salaries in one third of the total number of the countries which have replied.

**Table 95. Comparative table for the remuneration of judges and prosecutors at the end of their career (Q114)**

| Relative difference between the salaries of judges and prosecutors at the end of the career |                |                    |                      |                     |
|---|----------------|--------------------|----------------------|---------------------|
| Equal salary or difference of +/-20%  |                | 20 et 50 %         | 50% et 100 %         | > 100 %             |
| Austria   | Montenegro     | Georgia            | Azerbaijan           | Ukraine             |
| Belgium   | Czech Republic | Estonia            | Denmark              | UK-Scotland         |
| Bosnia and Herzegovina  | Latvia         | Russian Federation | Switzerland          | UK-Northern Ireland |
| Bulgaria  | Lithuania      | Romania            | Finland              |                     |
| Croatia   | Poland         |                    | Moldova              |                     |
| France  | Portugal       |                    | UK-England and Wales |                     |
| Germany   | Serbia         |                    |                      |                     |

|             |               |  |  |  |
|-------------|---------------|--|--|--|
| Greece      | Slovakia      |  |  |  |
| Hungary     | Slovenia      |  |  |  |
| Italy       | Spain         |  |  |  |
| Luxembourg  | Turkey        |  |  |  |
| Malta       | Sweden        |  |  |  |
| Netherlands | FYROMacedonia |  |  |  |

Differences of salaries at the Supreme Court affect the same number of countries and virtually the same countries. The exception of **Andorra** can be noted, where the basic salary of judges at the end of their career remains lower than that of prosecutors because of indemnity system of remuneration of judges (see below). Differences lesser of + / -20% can be noted in **Montenegro, Russian Federation, Czech Republic, Latvia, Lithuania and Sweden**. The equality is maintained for: **Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, France, Germany, Greece, Hungary, Italy, Luxembourg, Poland, Portugal, Serbia, Slovakia, Spain, Turkey, "the former Yugoslav Republic of Macedonia"**, and appears for: **Austria, Malta, the Netherlands and Slovenia**. There is also evidence that the already large gap recorded in **Ukraine** and in some common-law countries tends to grow since the difference between the salary of a judge and prosecutor at the end of their career pass three to four times in **Ukraine** and tends to sextuple in **UK-England and Wales**.

### Comments on the salaries of judges and prosecutors

#### *Salaries of judges*

**Andorra:** It seems that higher salaries are allocated to beginner judges compared to the level of more graded judges. This is due to the fact that these judges are recruited in France or Spain to sit on an occasional basis in court sessions. They are remunerated according to the number of performed court sessions whereas first instance judges fulfill full time missions.

**Azerbaijan:** The salaries of the judges of the Supreme Court are defined according to the law "On courts and judges". Presented salaries are without any additions (such as additions for professional years, for PHD and etc.).

**Belgium:** The salaries of judges at the beginning of their career vary according to the number of working years in the judiciary. Other factors like matrimonial status, number of children also determine the individual remuneration. The given salary of the judge at the beginning of the career corresponds to the salary of a judge with 3 years of experience, married and with 2 children. The salary of the judge at the supreme court is the one of the supreme court president married without children.

**Bosnia and Herzegovina:** The indicated salaries of the judges and prosecutors correspond to first instance professional judge at the beginning of his/her career with 3 years of experience and to judges of the Supreme Court or the Highest Appellate Court with 20 years of experience.

**Bulgaria:** Regional court judge: 5676 € (basic annual salary), Judge of the Supreme Court or the Highest Appellate Court – 11136 € (basic annual salary).

**Croatia:** The indicated salaries of judges at the Supreme Court correspond to judges with 15 years of working experience

**Cyprus:** The provided amount of salaries for the judges at the supreme court is the salary at the beginning of their career.

**Czech Republic:** Salaries of judges at the Supreme Court is the lowest average salary at the Supreme Court.

**Estonia:** According to the Courts Act the judges' salary is the national average annual salary multiplied by 4 (first instance judge) and by 5,5 (a judge of the Supreme Court). When a judge is appointed to the Supreme Court, his or her salary is not different from the judges already in function.

**Finland :** The salary of a justice in the Supreme Court is a fixed amount for all justices regardless how long they have served the court.

**Georgia:** The indicated salary is the maximum gross salary of judges at supreme court in general. The Chairman of the Court earns 15.660€. The Chairman or Deputy Chairman of that court beyond managing functions, operate as judges as well.

**Germany :** The gross annual salary of 38.828,52 € means the basic annual remuneration of a judge at the beginning of the career and on average 29 years of age on the basis of Salary Group R 1 (Besoldungsgruppe R 1). The gross annual salary of 86.478,12 € is the basic annual remuneration on the basis of Salary Group R 6 in addition there are allowances that are granted of variable amounts across the Länder. Usually there is an annual special payment of about 60 % of the basic monthly remuneration and, depending on the family status of the judge, an additional family allowance. The gross salary of a judge working in the New Länder is 7.5 % lower.

**Hungary:** The salaries of judges of the Supreme Court correspond to the starting salary at that court. The salaries increase gradually, calculated on the length of their service period

**Ireland:** The figure given for a first instance judge is that of a District Judge. The corresponding figures for the Circuit and High Courts are: Circuit Court: €153.198 High Court: €209.734

**Latvia:** The indicated salary of judge of the Supreme Court is the annual salary for oldest senator (cassation instance).

**Lithuania:** Since the salary depends on various factors (the court where a judge is working, his/her experience) it has been produced the average salary. First instance professional judge at the beginning of his/her career: - average salary of a judge in biggest and smallest district courts. Judge of the Supreme Court or the Highest Appellate Court: average salary of a judge of the Supreme Court with experience of 10-30 years.

**Luxembourg:** The gross annual salary includes the entry-level salary, the end of year benefit and food allowance. It does not include family allowance (29 grade related points) which depends on the magistrate's family situation, or special indemnities (see question 16) allowed for some jurisdictional functions. At the beginning of their career, judges and prosecutors have the LLM and 380 grade related points. Their gross annual salary is determined as follows: entry-level salary multiplied by grade related point's value, plus end of year benefit multiplied by grade related point's value, plus food allowance. The salary for judges of the Superior Court of Justice, the *Parquet général* and the Administrative Court is not uniform. Indeed, this salary is determined by the rank of the judge on the one hand (M 4, M 4bis, M 5, M 6 et M 7) depending on the exercised function, and by the amount of grade related points on the other hand (range between 410 and 700 grade related points) which is linked to the seniority of the judge. The figures given in the table correspond to the functions of president of the Superior Court of Justice, of president of the Administrative Court and of General State prosecutor. These high judges have a M7 rank and 700 grade related points.

**Montenegro:** The salary of judge at the Supreme Court corresponds to the starting salary at the highest instance Court

**Netherlands:** The salary mentioned is the average salary. Starting salary is impossible to answer.

**Poland:** The amount of remuneration of the Superior Court Judge is imposed by law and is at the same amount for the beginners and those whose career lasts longer. It may differ slightly in case of President and Deputy President of the Court who are entitled for special salary additions. The long work additions are granted up to first 20 years from the beginning of whole professional career. In theory, if someone is nominated for Supreme Court Judge during this period, he can obtain additions each subsequent year up to 20.

**Romania:** A judge, at the beginning of his activity at the Supreme Court, earns 23.760 euro/year (net annual salary) and a prosecutor earns 19.628 euro/year (net annual salary). The difference between the salary of a first instance professional judge and prosecutor at the beginning of his/her career and the salary of a judge or a prosecutor, at the beginning of his/her activity at the Supreme Court is obvious and it is due to the fact that judges and prosecutors, at the beginning of their activity at the Supreme Court, have already worked in the judicial system for at least 12 years.

**Slovakia:** The difference between the salary of first instance professional judge and the public prosecutor at the beginning of their career is under the law 5%. The salaries of the judge of the Supreme Court and prosecutor of General prosecution (highest instance) are the same. The higher difference should be caused by the different system of counting at the Ministry of justice (for judges) and General prosecution office (for prosecutors).

**Slovenia:** The number given as gross annual salary of the judge at the supreme court is an average annual salary, calculated from actual data.

**Spain:** The net annual salary is after personal income tax (assuming the tax payer has no children).

**Sweden:** The salary of "first instance professional judge" is the salary of a regular permanent (professional) judge. When calculating the gross annual salary, social expenses and pension schemes are included with 54 % of the sum of the net salary and the tax deduction.

The justices of the Supreme Court have the same salary except for the president of the court.

In 2004 the information was related to the salary of an associated judge (at the age of 25-30 years).

**Turkey:** in July 2006 the salaries of judges have been increased approximately by 50%. The average salary calculated is below the amount of the real salary of the second half of 2006.

**FYROMacedonia:** Presented salaries are for the judges in basic courts as first instance courts and Supreme court as highest court.

**UK-Northern Ireland:** all Judges of a particular judicial office receive the same salary rate. There is no salary progression dependant upon length of service. Also, there is no career judiciary. While it is possible for someone holding one office to be appointed to a different office in a higher salary group, e.g. for a serving District Judge to be appointed as a Circuit Judge, or for a serving Circuit Judge to be appointed as a High Court Judge, such in-service appointments are not classed as promotions and are the exception rather than the rule.

The lower salary corresponds to the salary of a District Judge and the higher to that of a Senior Lord of Appeal in Ordinary

**UK-England and Wales:** as all holders of a particular judicial office receive the same salary rate, there is no salary progression dependant upon length of service and therefore no "starting salary". Also, we do not have a career judiciary. While it is possible for someone holding one office to be appointed to a different office in a higher salary group, e.g. for a serving District Judge to be appointed as a Circuit Judge, or for a serving Circuit Judge to be appointed as a High Court Judge, such in-service appointments are not classed as promotions and are the exception rather than the rule.

The salary of a judge at the beginning of the career corresponds to that of District Judges.

The salary of a judge of the supreme court is the one of the High Court Judge

### **Salaries of prosecutors**

**Bosnia and Herzegovina:** The indicated salaries of the prosecutors correspond to public prosecutor at the beginning of his/her career with 3 years of experience and to public prosecutor of the Supreme Court or the Highest Appellate Instance with 20 years of experience.

**Bulgaria:** Regional prosecutor: 5.676 € (basic annual salary); Prosecutor of the Supreme Prosecution Office of Cassation and the Supreme Administrative Prosecution Office: 11.136 € (basic annual salary).

**Croatia:** The salaries of prosecutors at the Supreme Court: Deputy state prosecutor with 15 years of working experience.

**Denmark:** The salary of a public prosecutor at the supreme court depends on various factors: length of service, fulfilled function etc. The average salary is not possible to be determined. Communicated figure is one of the lowest but not the starting salary. The maximum salary at the supreme court is of 147.651€.

**Estonia:** The system used for judges applies basically to prosecutors as well. When a person is appointed to be a prosecutor at the supreme court, then his or her salary is no different to a prosecutor already in the office

**Hungary:** The salaries of prosecutors of the Supreme Court correspond to the starting salary at that court. The salaries increase gradually, calculated on the length of their service period

**Ireland:** The questions relating to prosecutors cannot be answered in their current form. Freelance lawyers undertake many prosecutions on behalf of the state, and are paid on a case-by-case basis. It is not therefore possible to speak of 'salaries'.

**Slovakia:** The difference between the salary of first instance professional judge and the public prosecutor at the beginning of their career is under the law 5%. The salaries of the judge of the Supreme Court and prosecutor of General prosecution (highest instance) are the same. The higher difference should be caused by the different system of counting at the Ministry of justice (for judges) and General prosecution office (for prosecutors).

**Slovenia:** There has not been any change in salary system from 2004 to 2006 that would result in the decrease of prosecutor's salaries. This slight decrease is probably the result of currency conversion (from tolar to euro), different workers years of service and some other circumstances.

**Sweden:** In the Swedish prosecution system it is difficult to identify "Prosecutors of the Supreme Court" as a group. There are a couple of prosecutors (4 or 5) working only with cases pending in the Supreme Court but they are often assisted by the prosecutor that has been in charge of the case at the district court and the court of appeal. The salaries of the prosecutors depends a lot of their seniority. There is no particular starting salary at the beginning of the career. When calculating the gross annual salary, social expenses and pension schemes are included with 54% of the sum of the net salary and the tax deduction.

**Turkey:** in July 2006 the salaries of prosecutors have been increased approximately by 50 percent. The average salary calculated is below the amount of the real salary of the second half of 2006.

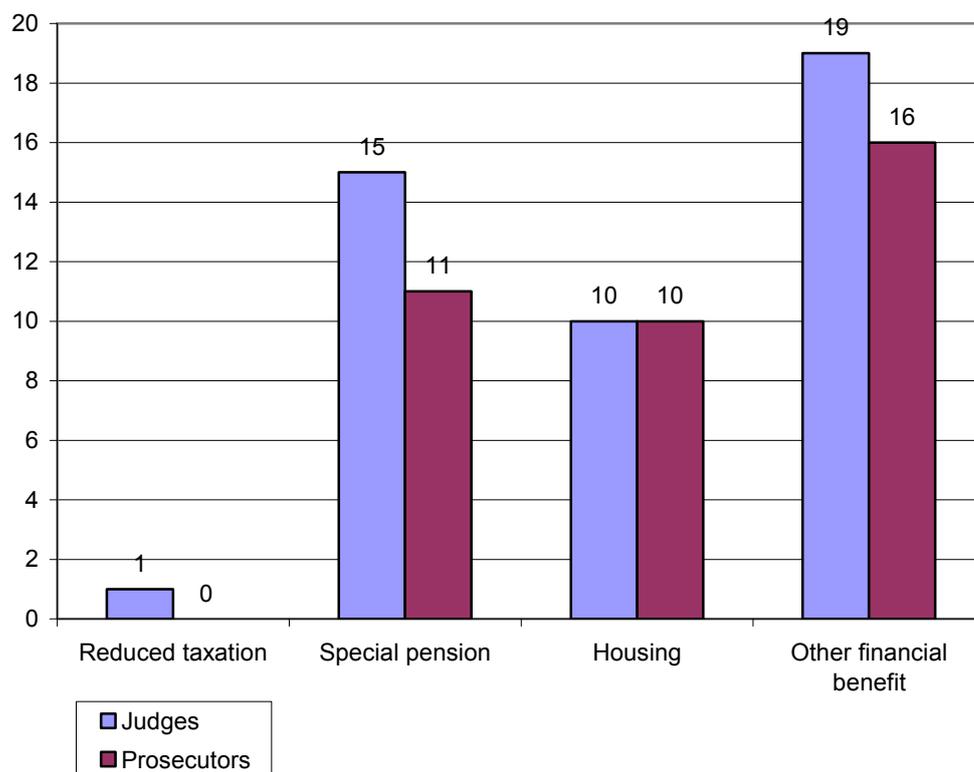
**UK-Northern Ireland:** Prosecutor's salaries corresponds to the lowest remuneration that prosecutor can gain and to highest remuneration of the salaries scale.

**UK-England and Wales:** The salary of the prosecutor at the beginning of the career is the average of national and London salaries. The starting salary for a prosecutor at the beginning of their training contract or pupillage (i.e. beginning of their career) is: London – 2004: £19,441 - 2006: £19,621; National - 2004: £18,425 - 2006: £18,605. Regarding the annual salaries for Public Prosecutor of the Supreme Court or the Highest Appellant Court. Unlike many other countries, the Crown Prosecution Service (CPS) does not undertake advocacy in all cases, in particular in the highest courts, where Counsel would be instructed. The starting salary for Principal Crown Advocates (i.e. the highest level of crown prosecutors), who were recruited in 2006: £100 000. In 2004 a senior prosecutor would have been expected to earn up to £53 601 nationally and up to £59 033 London. Staffs in London regions are also in receipt of an additional £3000 Recruitment and Retention Allowance. The disparity between both salaries stems from the fact that the Principal Crown Advocate grade did not exist prior to 2006. Some prosecutors may be paid a higher income than others in some instances – this is especially true of instructed Counsel - as specific cases raise complex issues that require particular expertise

## 11.4 Premiums and other profits for judges and prosecutors

In some countries judge's may have additional benefits other than the basic remuneration, for example a production bonus or other advantages such as: specific retirement schemes (this is especially the case for the judges of the Supreme Court of **Iceland**), housing facilities, special systems of welfare insurance, cars provided by the government or reduced/free access to public transports to and from the court building etc. Some countries mentioned the existence of other advantages like apartments, special holidays bonuses related to the age and seniority, life and security insurance or even allowances for representation costs.

**Figure 61. Number of countries having indicated additional benefits for judges and prosecutors (Q115)**



Judges can benefit from special additional advantages of different nature, such as: special health insurances (**Latvia, Romania, Russian Federation, Germany, Hungary**), reduced housing loans (**Poland, Russian Federation, Ukraine, Hungary**), representation costs (**Czech Republic, Hungary**), housing arrangements (**France, Georgia, Hungary, Russian Federation, Ukraine**), refunds of cloths allowances (**Hungary, Russian Federation**), use of official cars (**Cyprus, Montenegro, Russian Federation, Turkey, Ukraine**) or transport facilities to reach working place (**Romania**), salary bonuses (**Cyprus, Estonia, Georgia, Luxembourg, Montenegro, Portugal, Serbia, Switzerland**) and specific retirement arrangements (**Estonia, Latvia, Slovakia, Iceland**).

In addition to their basic salary, prosecutors in some countries can get premiums and other significant benefits such as: specific retirement arrangements (**Estonia, Hungary, Latvia, Romania, Slovakia, Iceland**), housing facilities or reduced loan for housing (**Hungary, Poland, Portugal, Czech Republic, Ukraine, France**), special health insurance (**Georgia, Latvia, Hungary, Germany**), use of official cars or transport facilities to reach working place (**Montenegro, Ukraine, Romania, Turkey**), security systems in their place of residence (**Ukraine**). Certain countries offer prosecutors other specific advantages: apartments, holiday bonuses related to seniority (**Georgia**), specific life or health insurances (**Hungary, Latvia, Romania**) or allowances for representation costs (**Czech Republic**). However, it can be noticed that these benefits for prosecutors seem less common compared to judges, for example in the **Russian Federation** where tax benefits are only awarded to the prosecutors' offices and not to the prosecutors themselves.

Only 4 countries: “**the former Yugoslav Republic of Macedonia**”, **France, Serbia** and **Spain** (presented in the table below) have replied that additional financial compensation is given on the basis of the realisation of specific quantitative targets.

**Table 96. Bonus granted to judges based on the fulfilment of quantitative objectives relating to the delivering of judgments (Q121)**

| Country              | Details   |
|----------------------|---|
| <b>France</b>        | Judges / prosecutors of the ordinary judicial system: YES. A variable bonus is given to judges and prosecutors. The rate varies from 0 to 15 % of the gross index (the average rate is 9 % from 1 October 2005). It is paid monthly. The individual rate is defined by the head of appeal court on the proposal of the heads of courts, according to the contribution of the judges / prosecutor to the smooth functioning of justice as regards quality and volume of work.<br>Judges of the administrative judicial system: YES. A bonus is given taking into account the results achieved and the <i>manière de servir</i> (so-called individual part). The rate of reference is at 1 January 2007, 13 % of the gross salary. The bonus is decided by the head of the court and paid annually. |
| <b>Serbia</b>        | <i>No information provided.</i>   |
| <b>Spain</b>         | Judges receive a variable remuneration if they reach a productivity level of 120% in respect of the demanded productivity.  |
| <b>FYROMacedonia</b> | In 2006 there was not such provision in the legislation. In 2007 the Law on salaries of judges was adopted. Implementation of this Law will start from 1st of January 2008. In Article 8 of mentioned Law it is proscribed that judges in the courts which decrease backlog (1/3 or 1/2 of backlog in court) has right to receive last salary increased for 70% or 100%.  |

## 11.5 Career of judges and prosecutors

### 11.5.1 Terms of office

Among the 47 states or entities which have replied to question 107 concerning the terms of office (mandates), 40 countries affirmed that judges do not have a determined period for their terms of office. **Andorra, Georgia** and the **Switzerland** have replied that they have a fixed mandate for exceptional categories of judges. Countries with fixed mandates can also be found in **Bosnia and Herzegovina, Finland, Monaco** and **Norway**.

**Azerbaijan, Germany, Bulgaria, Croatia, Hungary, Latvia, Lithuania, Luxembourg, Malta** and **Moldova** have a probation period for a judge ranging from 1 to 5 years.

In countries that do not have a fixed period for the mandate given to judges, they can exercise their functions until retirement age (up to the age limit of 72 years in **UK-Northern Ireland**).

The mandate of the prosecutor meanwhile, is renewable on a larger number of countries: **Andorra, Iceland, Malta, Montenegro, Switzerland, UK-Northern Ireland, UK-Scotland** and **UK-England and Wales**. Its duration may be up to 6 years. In **Malta** and 3 entities of the **United Kingdom**, the period is determined individually.

**Table 97. Characteristics of the mandate of judges and prosecutors (Q107, Q108)**

| Country                | Length of the mandate of judges |                              |                    | Length of the mandate of prosecutors |                              |                    |
|------------------------|---------------------------------|------------------------------|--------------------|--------------------------------------|------------------------------|--------------------|
|                        | Undetermined                    | If mandate renewable, length | A probation period | Undetermined                         | If mandate renewable, length | A probation period |
| Albania                | Yes                             |                              |                    | Yes                                  |                              |                    |
| Andorra                | <b>No</b>                       | 6 years                      |                    | <b>No</b>                            | 6 years                      |                    |
| Armenia                | Yes                             |                              |                    | Yes                                  |                              |                    |
| Austria                | Yes                             |                              |                    | Yes                                  |                              |                    |
| Azerbaijan             | Yes                             |                              | 5 years            | Yes                                  |                              |                    |
| Belgium                | Yes                             |                              |                    | Yes                                  |                              |                    |
| Bosnia and Herzegovina | Yes                             | Exception*                   |                    | Yes                                  |                              |                    |
| Bulgaria               | Yes                             |                              | 5 years            | Yes                                  |                              | 5 years            |
| Croatia                | Yes                             |                              | 5 years            | Yes                                  |                              | 5 years            |
| Cyprus                 | Yes                             |                              |                    | Yes                                  |                              |                    |
| Czech Republic         | Yes                             |                              |                    | Yes                                  |                              |                    |
| Denmark                | Yes                             |                              |                    | Yes                                  |                              |                    |
| Estonia                | Yes                             |                              |                    | Yes                                  |                              |                    |
| Finland                | Yes                             | Exception*                   |                    | Yes                                  | Exception*                   |                    |
| France                 | Yes                             |                              |                    | Yes                                  |                              |                    |
| Georgia                | <b>No</b>                       | 10 years                     |                    | Yes                                  |                              |                    |
| Germany                | Yes                             |                              | 1 to 5 years       | Yes                                  |                              |                    |
| Greece                 | Yes                             |                              |                    | Yes                                  |                              |                    |
| Hungary                | Yes                             |                              | 3 years            | Yes                                  |                              | 3 years            |
| Iceland                | Yes                             |                              |                    | <b>No</b>                            | 5 years                      |                    |
| Ireland                | Yes                             |                              |                    | Yes                                  |                              |                    |
| Italy                  | Yes                             |                              |                    | Yes                                  |                              |                    |
| Latvia                 | Yes                             |                              | 3 years            | Yes                                  |                              |                    |
| Lithuania              | Yes                             |                              | 5 years            | Yes                                  |                              |                    |
| Luxembourg             | Yes                             |                              | 1 an               | Yes                                  |                              | 1 an               |
| Malta                  | Yes                             |                              | 5 years            | <b>No</b>                            | Contract                     | 5 years            |
| Moldova                | Yes                             |                              | 5 years            | Yes                                  |                              |                    |
| Monaco                 | Yes                             | 3 years renewable once*      |                    | Yes                                  | 3 years renewable once*      |                    |
| Montenegro             | Yes                             |                              |                    | <b>No</b>                            | 5 years                      |                    |
| Netherlands            | Yes                             |                              |                    | Yes                                  |                              |                    |
| Norway                 | Yes                             | Exception*                   |                    | Yes                                  |                              |                    |
| Poland                 | Yes                             |                              |                    | Yes                                  |                              |                    |
| Portugal               | Yes                             |                              |                    | Yes                                  |                              |                    |
| Romania                | Yes                             |                              |                    | Yes                                  |                              |                    |
| Russian Federation     | Yes                             |                              |                    | Yes                                  |                              |                    |
| Serbia                 | Yes                             |                              |                    | Yes                                  |                              |                    |
| Slovakia               | Yes                             |                              |                    | Yes                                  |                              |                    |
| Slovenia               | Yes                             |                              |                    | Yes                                  |                              |                    |
| Spain                  | Yes                             |                              |                    | Yes                                  |                              |                    |
| Sweden                 | Yes                             |                              |                    | Yes                                  |                              |                    |
| Switzerland            | <b>No</b>                       | 4 to 6 years                 |                    | <b>No</b>                            | 4 to 6 years                 |                    |
| FYRO Macedonia         | Yes                             |                              |                    | Yes                                  |                              |                    |
| Turkey                 | Yes                             |                              |                    | Yes                                  |                              |                    |
| Ukraine                | Yes                             |                              |                    | Yes                                  |                              |                    |

| Country              | Length of the mandate of judges |                              |                    | Length of the mandate of prosecutors |                              |                    |
|----------------------|---------------------------------|------------------------------|--------------------|--------------------------------------|------------------------------|--------------------|
|                      | Undetermined                    | If mandate renewable, length | A probation period | Undetermined                         | If mandate renewable, length | A probation period |
| UK-Northern Ireland  | Yes                             |                              |                    | No                                   | Individual contract          |                    |
| UK-Scotland          | Yes                             |                              |                    | No                                   | Individual contract          |                    |
| UK-England and Wales | Yes                             |                              |                    | No                                   | Individual contract          |                    |

### **Exceptions on the mandate given to judges:**

**Bosnia and Herzegovina:** There is only one exception. The High Judicial and Prosecutorial Council of BiH may appoint persons on a temporary basis to act as reserve judges, in order to assist courts in reducing case backlogs, or where the prolonged absence of a judge in a court requires additional judicial resources. The Council may appoint reserve judges upon application by the president of a court, provided the application is supported by evidence indicating the need and sufficient funding for the reserve judges.

**Finland:** Mandate is given for an undetermined period but there is also a system of temporary judges. They are either deputies or temporary for some period (at times if there is a need to appoint a judge for a fixed period)

**Monaco:** The term of office is permanent for Monegasque judges. It is limited to 3 years, renewable once for French magistrates transferred in the Principality (siège ou Parquet) by the French Ministry of Justice.

**Norway:** Sometimes judges may be appointed for a limited period, varying from a few months up to a maximum of two years. The appointment is renewable.

**Suisse:** In most of the Cantons, the term of office is fixed, even though less frequent permanent terms of office exist in some Cantons.

### **Exceptions on the mandate given to prosecutors:**

**Finland:** Mandate is given for an undetermined period but there is also a system of temporary prosecutors. They are either deputies or temporary for some period (at times if there is a need to appoint a prosecutor for a fixed period)

**Monaco:** Permanent terms of office for all Monegasque prosecutors. It is limited to 3 years, renewable once for French magistrates transferred in the Principality (siège ou Parquet) by the French Ministry of Justice.

## **11.5.2 Promotion**

More than half of the countries which replied to the question 101 answered that the authority responsible for the first nomination of judges deals also with the promotion of judges.

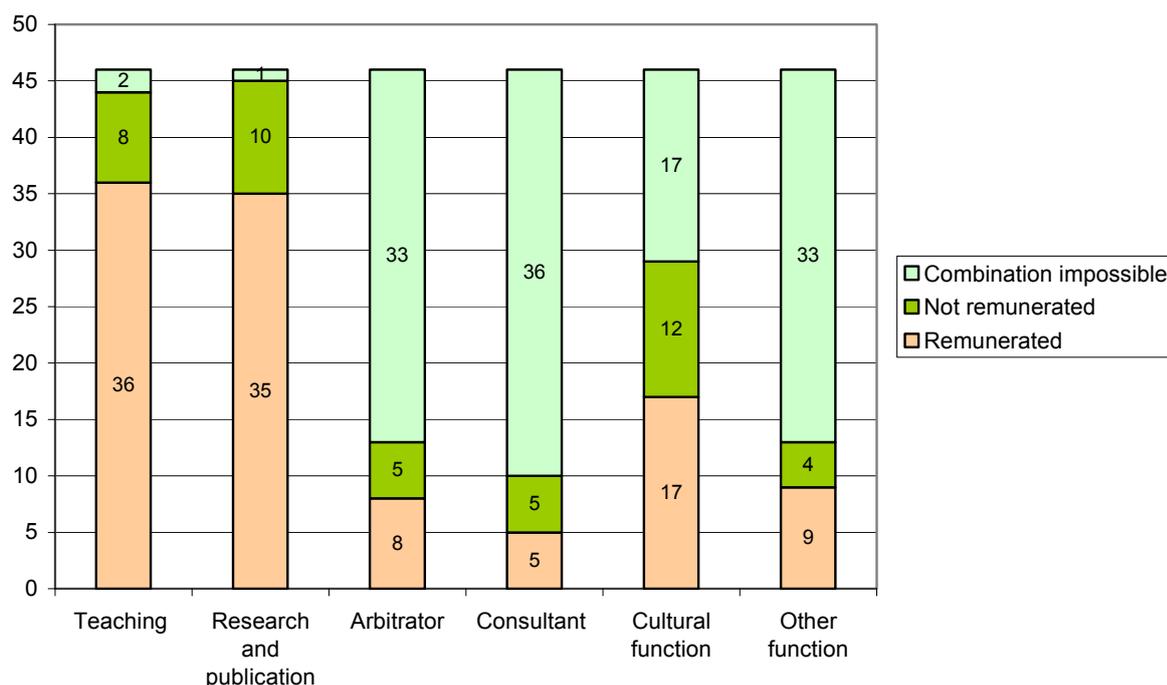
In a large majority of the countries, the body dealing with nomination of prosecutors is also responsible for the management of the career of prosecutors. Recommendation Rec(2000)19 on the role of the public prosecution in the criminal justice system states that changing in functions as well as promotion of prosecutors should be made respecting the principles and objectives related to the exigencies of their function: *"are carried out according to fair and impartial procedures embodying safeguards against any approach which favours the interests of specific groups..."* (para. 5).

## **11.6 Combination of work with other activities**

### **11.6.1 Possibility to combine work with other activities for judges**

To guarantee sufficiently the independence and impartiality of judges, many countries prohibit or limit the possibility for judges to exercise other professions next to their regular function as judges. As it is recommended by the CCJE judges should *"refrain from any professional activity that might divert them from their judicial responsibilities or cause them to exercise those responsibilities in a partial manner"* ( CCJE Opinion N°3 : 2002; para. 37).

**Figure 62. Combination of a judge work with other activities – number of countries concerned (Q117)**



It must be noted that in the **Netherlands** there is no prohibition for judges to have remunerated activities other than judge's functions whilst in **Croatia** a judge is not allowed to exercise any other public function (paid or unpaid).

In the majority of member states judges are allowed to exercise other activities, especially in the intellectual or artistic field:

- teaching: for example holding conferences or lectures in professional schools or universities.
- research and publication: like news paper articles or articles in specialized law reviews.
- artistic field: performing concerts, comedy plays, write poems, sell their paintings or sculptures, etc..

This liberty given to judges by the states can find two kinds of limits:

- in some countries judges can have other function only after a preliminary authorization;
- judges are refrained from executing all kind of professional profitable activities.

In conclusion in the majority of countries judges are allowed to have additional functions (remunerated or not) as teaching or research and publication (44 countries) or cultural activities (29 countries). In some cases these activities should be exercised without remuneration: **Georgia, Ireland, Malta, Poland, Portugal, UK-Scotland, UK-England and Wales**. Generally speaking in **Portugal, UK-Scotland** and **UK-England and Wales**, judges are not allowed to get remuneration from other professional activities.

The combination of work as judge and that of arbitrator is forbidden in a majority of countries. Exceptions are: **Germany, Finland, Iceland, Norway, Netherlands, Slovenia, Switzerland** and **Sweden**. In some countries (**Greece, Portugal, UK-Scotland, UK-Northern Ireland** and **UK-England and Wales**) working as arbitrator is permitted, however they should not receive a remuneration for this activity.

In the majority of countries working as a consultant is forbidden too. Judges are allowed to provide advises, with or without a remuneration, to the ministry of Justice, Government or Parliament in **Germany, UK-England and Wales, Austria, UK-Scotland, France, Georgia, Montenegro, Netherlands** and **Czech Republic**. In **Finland** working as a consultant is marginal and judges have the obligation to fill in a declaration of their patrimony when starting the career, so as to be able to check if there id no undue enrichment.

It must be underlined that in *common-law* countries judges during their first nomination (part time job) period are allowed to continue their activity as solicitors.

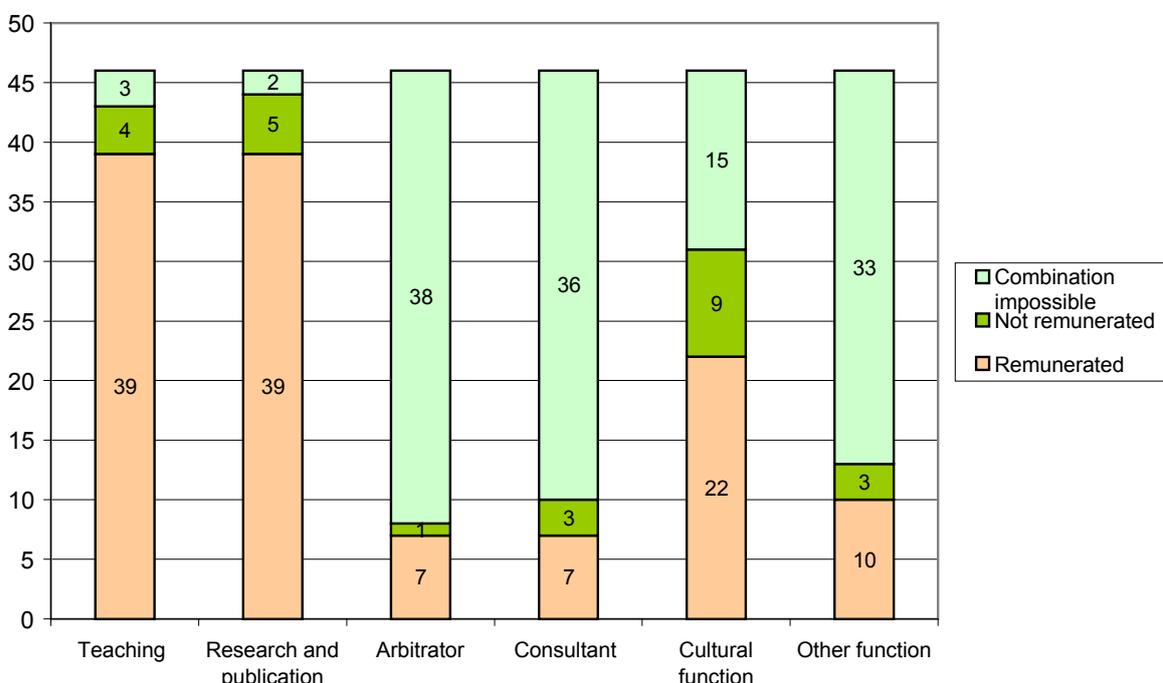
### 11.6.2 Restrictions to the exercise of other functions for the prosecutors

Recommendation R(2000)19 underlines that prosecutors must act in an impartial manner and must be guided only by the concern of the smooth functioning of the criminal law system. Therefore it would be not recommended that a prosecutor exercises another profession which may interfere in his/her decisions or ways of prosecuting.

It can be noted that, as for the judges, the **Netherlands** is the only country where there is no restriction to the exercise of an additional (remunerated) activity together with the functions of prosecutor.

In general, the functions of prosecutors are not compatible with other public functions or remunerated activities. However, the exercise of functions or activities which would not challenge the dignity and impartiality of prosecutors are possible in the majority of countries, in particular for intellectual or cultural activities, as it is the case for judges.

**Figure 63. Combination of prosecutors work with other activities – number of countries concerned (Q119)**



It can be noted that there are very few differences between the manner judges and prosecutors can exercise additional activities. Thus, in almost all the responding countries, prosecutors can exercise training activities remunerated or not in (43 against 44 for judges) research and publication activities (44 against 45 for judges) and cultural activities (31 against 29 for judges). It must also be noted that in some countries, these functions can sometimes be exercised if they are not remunerated: **Germany, Monaco**.

Arbitration activities are forbidden in a large majority of countries, except for **Germany, Greece, Iceland, Ireland, Netherlands, UK-Scotland** and **UK-England and Wales**. In **Denmark**, this activity may be performed but without remuneration.

**Table 98. Combination of judges and prosecutors work with the arbitration (Q117, Q119)**

| Judges      |                      | Prosecutors          |                 |
|-------------|----------------------|----------------------|-----------------|
| Remunerated | Not remunerated      | Remunerated          | Not remunerated |
| Finland     | Greece               | Germany              | Denmark         |
| Germany     | Portugal             | Greece               |                 |
| Iceland     | UK-Northern Ireland  | Iceland              |                 |
| Netherlands | UK-Scotland          | Ireland              |                 |
| Norway      | UK-England and Wales | Netherlands          |                 |
| Slovenia    |                      | UK-Scotland          |                 |
| Sweden      |                      | UK-England and Wales |                 |
| Switzerland |                      |                      |                 |

**Table 99. Combination of judges and prosecutors work with the consultancy (Q117, Q119)**

| Judges         |                      | Prosecutors          |                 |
|----------------|----------------------|----------------------|-----------------|
| Remunerated    | Non-remunerated      | Remunerated          | Non-remunerated |
| Austria        | Georgia              | Austria              | Denmark         |
| Czech Republic | Germany              | Czech Republic       | Germany         |
| Finland        | UK-Northern Ireland  | Ireland              | Lithuania       |
| Montenegro     | UK-Scotland          | Montenegro           |                 |
| Netherlands    | UK-England and Wales | Netherlands          |                 |
|                |                      | UK-Scotland          |                 |
|                |                      | UK-England and Wales |                 |

Recommendation R(2000)19 provides for the freedom of conscious, expression and association of prosecutors, and foresees possibilities of exceptions only where such exceptions would be absolutely necessary to guarantee the role of the prosecutor and would be provided for by the law. Some states have forbidden the membership to political parties (**Hungary**).

## 11.7 Evaluation and Responsibility

### 11.7.1 Concerning judges

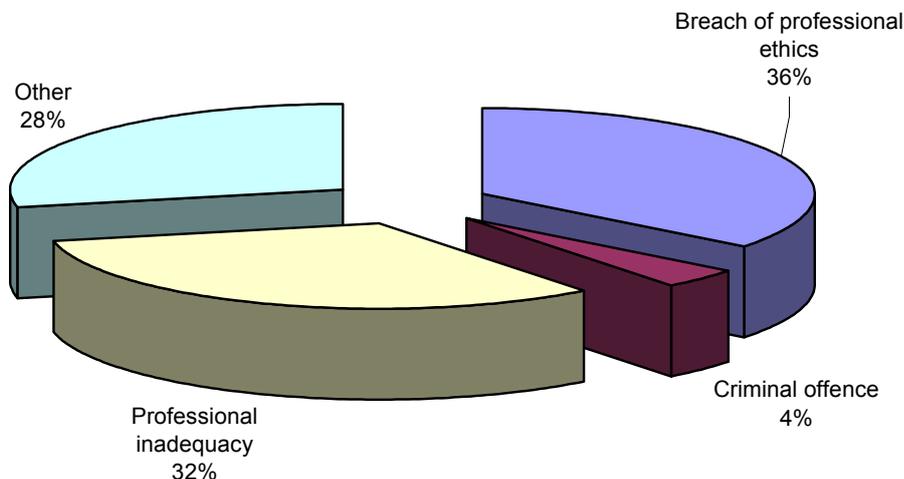
The European Charter on the Status of Judges states that: compensation for illegal prejudices caused by judges' decisions, behaviour or exercising of his functions should provide by the state. When the prejudice that the state has to repair origins from an inexcusable unawareness by the judge of the rules governing his function, the state has the faculty to ask an integral or partial compensation to the judge by an recourse action. This possibility is exceptional and in the majority of cases the only sanction imposed concerns disciplinary proceedings.

In spite of being independent during the exercise of their functions, judges have series of responsibilities which may lead to disciplinary proceedings in case of non-fulfilment. The legacy principle impose that disciplinary actions can only be imposed on judges in cases expressly determined by the judges status which must determinate as well the sanctions that can be imposed.

In the majority of member states, the ethic rules concerning disciplinary misconducts are not determined and only **Spain** provides for a catalogue of faults and sanctions that can be imposed on judges. In the other countries judges responsibilities are not detailed and they are in the majority of cases they have been established by the case law of the authorities dealing with the disciplinary proceeding.

Question 124 concerns the most common disciplinary proceedings imposed by the states. The lack of precise definitions does not permit a larger analysis.

**Figure 64. Distribution of the disciplinary proceedings initiated against judges in the European countries par item in 2006 (Q124)**

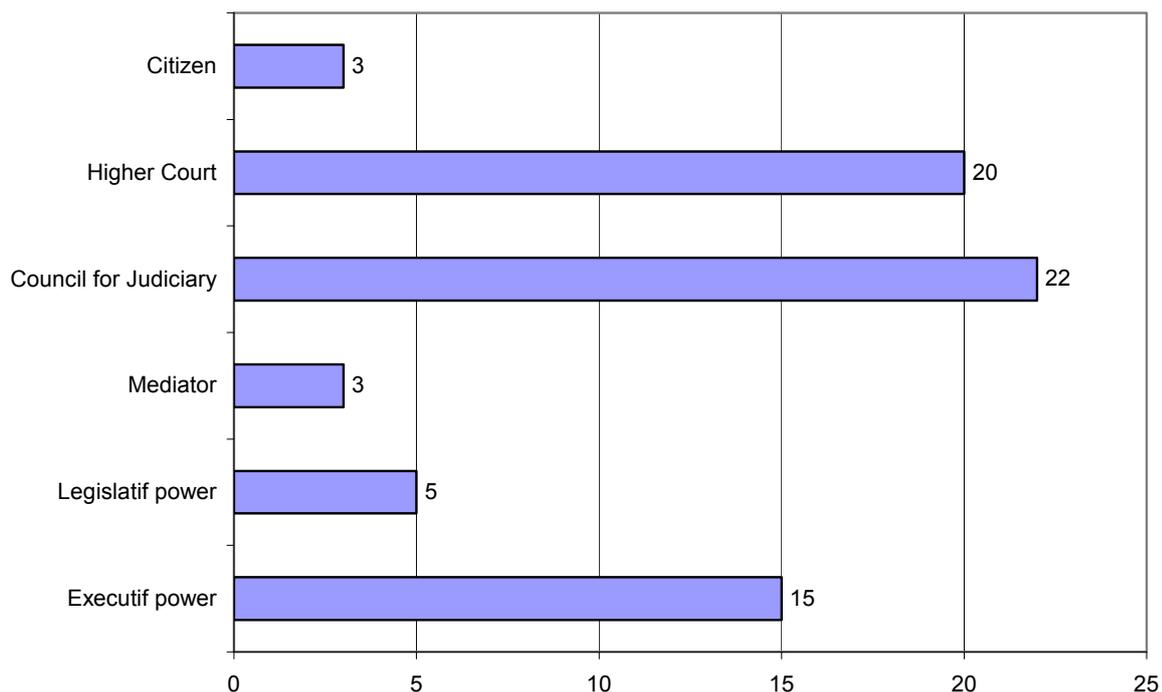


The chart above shows the distribution of disciplinary procedures by type of procedure for 29 countries. Only countries that have communicated the total procedures are included. The details have been kept in the calculation of proportion.

On the whole disciplinary proceedings against the judges that under score of professional misconduct represent 36% of all procedures and are followed by professional incompetence (32% of procedures) and to a lesser extent by criminal offence (4 % of the procedures). Other types of procedures account for 28% of the cases.

Professional misconduct can also be the object of a disciplinary proceeding in some cases. Once a judge has committed a disciplinary fault, it is necessary to know which authority is responsible for the disciplinary proceedings and sanctions. In the majority of countries, it is the same authority which deals with the nomination of judges which is responsible for disciplinary issues; sometimes together with another authority (for example the hierarchical authority and/or the Council for the Judiciary).

**Figure 65. Authorities responsible to initiate the disciplinary proceedings against judges in 2006 – number of positive responses (Q122)**



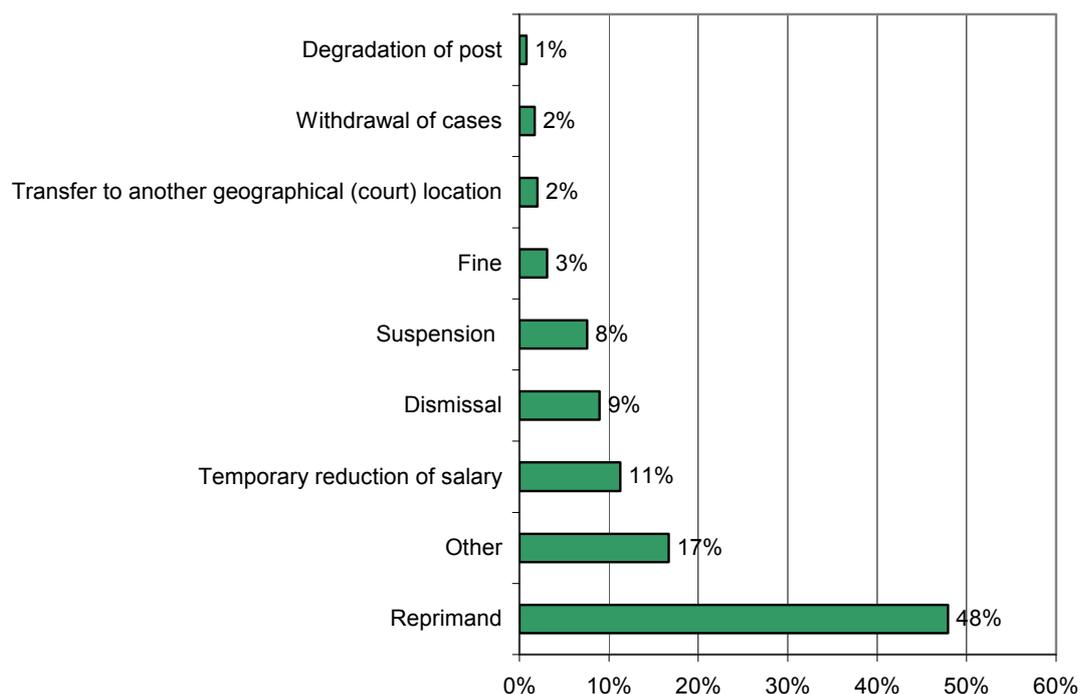
**Norway** and **Denmark** give the opportunity to every user of the court who has been treated in an unfair or irregular way by a judge to appeal directly to a disciplinary body. In **Norway** the disciplinary body can provide fines against the accusing party in case of unjustified proceeding.

With regard to **UK-England and Wales** the Constitutional Reform Act of 2005 gives the Lord Chancellor and the Lord Chief Justice joint responsibility for a new system for considering and determining complaints about the personal conduct of all judicial office holders in England and Wales and some judicial office holders who sit in Tribunals in **Scotland** and **Northern Ireland**. The Office for Judicial Complaints (OJC) was set up on the 3rd April 2006, to handle these complaints and provide advice and assistance to the Lord Chancellor and Lord Chief Justice in the performance of their new joint role.

In **Germany, Italy** and **Spain** there is also the possibility for citizens to activate a disciplinary proceeding even if it is formally assigned to other formal authorities. In **Germany** the judge who has been accused could benefit from the possibility to initiate a disciplinary proceeding at his or her own initiative to prove their innocence.

At the end of the disciplinary procedure, the judge can be considered as not guilty. When the judge is considered guilty, many different types of sanctions are possible. In the next figure the number and different types of sanctions imposed to judges are presented.

**Figure 66. Distribution of the sanctions pronounced against judges at the European level in 2006 (Q125)**



The figure shows the distribution of sanctions for 34 countries. Only those countries which have submitted a total figure for the sanctions and details have been kept in the calculation of proportions.

The reprimand is the most common sanction imposed on judges (48 % of all the sanctions). The other sanctions are related to his/her function as a judge or his/her salary. Outstanding of his functions are sanctioned in 14% of case by allowances (fine in 3% and salary diminution in 11%); in less than 2% of cases judges are obliged to change their residence of work and in 11% of cases the sanction consist in changes of judge's functions (downgrading 1%, suspension 8% or withdrawal of cases in less than 2%). An important consideration is presented by the fact that in 9% of the cases there is a dismissal of the judge.

The "other sanctions" categories that could be find represent 17% of all the sanctions and mostly correspond to variations of sanctions specified above. In some countries for instance, a reprimand can be similar to a blame in **Azerbaijan**, a warning or a simple censure in **Belgium** and **Russian Federation** or even a private recommendation in **Georgia**.

**Table 100. Number of sanctions pronounced against judges (Q125)**

| Country                | Total number of sanctions | Reprimand | Suspension | Withdrawal of cases | Fine | Temporary reduction of salary | Degradation of post | Transfer to another geographical location | Dismissal | Other |
|------------------------|---------------------------|-----------|------------|---------------------|------|-------------------------------|---------------------|---|-----------|-------|
| Andorra                | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| Austria                | 26                        | 6         | 0          | 3                   | 0    | 2                             | 0                   | 0   | 0         | 15    |
| Azerbaijan             | 34                        | 17        | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 17    |
| Belgium                | 6                         | 3         | 1          | 0                   | 0    | 1                             | 0                   | 0   | 0         | 1     |
| Bosnia and Herzegovina | 20                        | 4         | 3          | 1                   | 0    | 5                             | 0                   | 0   | 0         | 7     |
| Bulgaria               | 3                         | 2         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 1         | 0     |
| Croatia                | 9                         | 3         | 0          | 0                   | 0    | 5                             | 0                   | 0   | 1         | 0     |
| Cyprus                 |                           |           |            |                     |      |                               |                     |   | 1         |       |
| Czech Republic         | 22                        | 5         | 0          | 0                   | 0    | 16                            | 0                   | 0   | 1         | 0     |
| Estonia                | 1                         | 0         | 0          | 0                   | 1    | 0                             | 0                   | 0   | 0         | 0     |
| Finland                | 12                        | 12        | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |

| Country              | Total number of sanctions | Reprimand | Suspension | Withdrawal of cases | Fine | Temporary reduction of salary | Degradation of post | Transfer to another geographical court | Dismissal | Other |
|----------------------|---------------------------|-----------|------------|---------------------|------|-------------------------------|---------------------|--|-----------|-------|
| France               | 12                        | 1         | 4          | 2                   | 0    | 0                             | 2                   | 3                                      | 0         | 0     |
| Georgia              | 36                        | 12        | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 6         | 18    |
| Germany              | 25                        | 13        | 0          | 0                   | 3    | 3                             | 0                   | 1                                      | 3         | 2     |
| Greece               |                           | 14        | 8          |                     | 29   |                               |                     |  | 6         | 14    |
| Hungary              | 9                         | 6         | 0          | 0                   | 0    | 2                             | 0                   | 0                                      | 1         | 0     |
| Iceland              | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 0         | 0     |
| Ireland              | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 0         | 0     |
| Italy                | 51                        | 20        | 4          | 0                   | 0    | 0                             | 3                   | 1                                      | 1         | 22    |
| Latvia               | 15                        | 4         | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 3         | 8     |
| Lithuania            | 4                         | 2         | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 0         | 2     |
| Luxembourg           | 1                         | 1         | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 0         | 0     |
| Moldova              | 6                         | 3         | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 0         | 3     |
| Monaco               | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 0         | 0     |
| Montenegro           | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 0         | 0     |
| Norway               | 9                         | 9         | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 0         | 0     |
| Poland               | 44                        | 37        | 0          | 0                   | 0    | 0                             | 0                   | 6                                      | 1         | 0     |
| Portugal             | 25                        | 6         | 3          | 5                   | 5    | 0                             | 0                   | 2                                      | 4         | 0     |
| Romania              | 4                         | 3         | 0          | 0                   | 0    | 1                             | 0                   | 0                                      | 0         | 0     |
| Russian Federation   |                           | 337       |            |                     |      |                               |                     |  | 72        |       |
| Serbia               | 103                       | 36        | 29         | 0                   | 0    | 38                            | 0                   | 0                                      | 0         |       |
| Slovakia             | 1                         | 1         | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 0         | 0     |
| Slovenia             | 1                         | 1         | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 0         | 0     |
| Spain                | 19                        | 4         | 4          | 0                   | 11   | 0                             | 0                   | 0                                      | 0         | 0     |
| Sweden               | 3                         | 3         | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 0         | 0     |
| Switzerland          | 4                         | 1         | 1          | 0                   | 0    | 0                             | 0                   | 0                                      | 1         | 1     |
| FYROMacedonia        |                           |           |            |                     |      |                               |                     |  | 4         |       |
| Turkey*              | 184                       | 121       | 18         | 0                   | 0    | 1                             | 24                  | 20                                     | 0         | 0     |
| Ukraine              | 110                       | 82        | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 19        | 9     |
| UK-England and Wales | 32                        | 13        | 0          | 0                   | 0    | 0                             | 0                   | 0                                      | 16        | 3     |

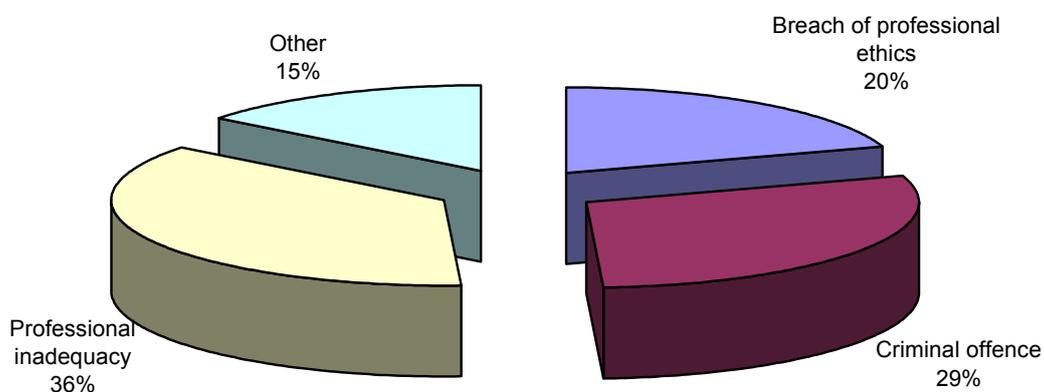
### 11.7.2 Concerning prosecutors

In this part the disciplinary proceedings against prosecutors committing faults during the exercise of their functions are presented.

When a state is asked to recover damages caused by a prosecutor, it is possible that certain states introduce a recourse action against the prosecutor and asks for an integral or partial contribution to recover the damages. As far as the prosecutors concerned, this possibility is really exceptional and the most common applied sanctions imposed on prosecutors are of disciplinary nature.

Differently from the judges who benefit of a strong independence in exercising their functions, prosecutors are subjected to additional obligations which could generate a disciplinary proceeding. However, according to the principle of legality, prosecutors can only be sanctioned in cases determined by the law. And the types of sanctions should be described by the law too. Question number 124 is related to the most common sanctions imposed against prosecutors. The lack of exact definitions of disciplinary fault does not allow a more exhaustive analysis.

**Figure 67. Distribution of the disciplinary proceedings initiated against the prosecutors in the European countries per category in 2006 (Q124)**

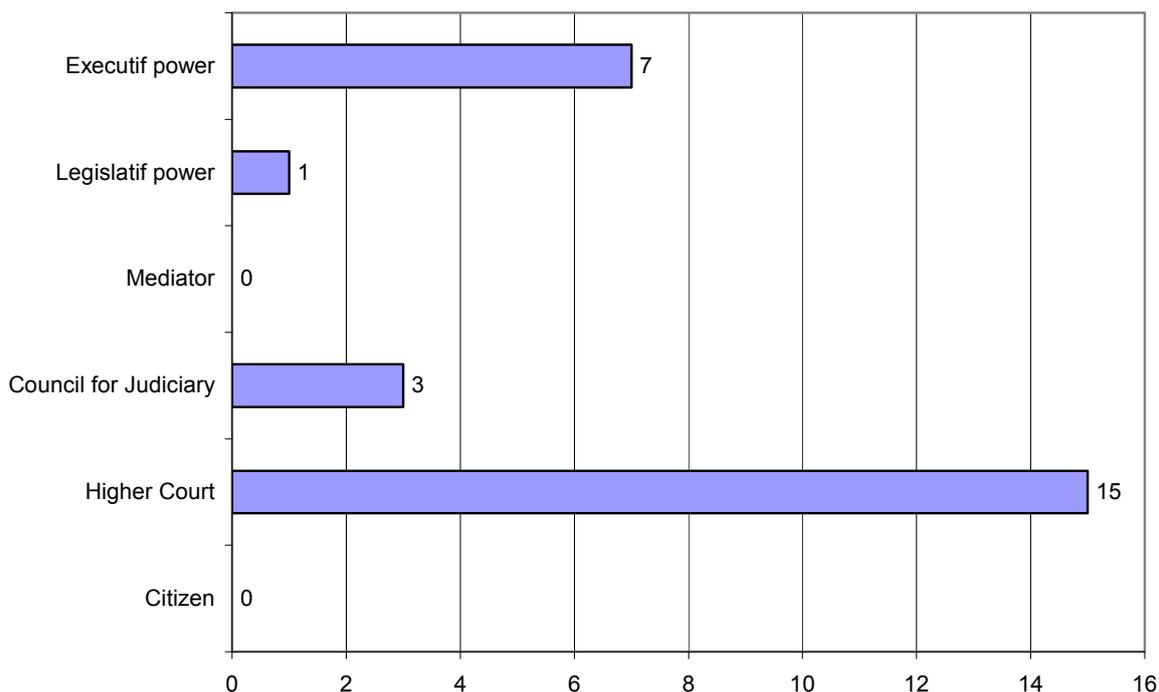


The figure shows the distribution of disciplinary procedures by type of procedure for 28 countries. Only countries that have communicated the total procedures and details have been kept in the calculation of proportion. 1249 cases of other disciplinary procedures recorded in **Ukraine** have been excluded from the calculation to ensure the representativeness of the data - the number: 1249 was too high to be integrated and presented among other countries of not more than 21 cases.

From the countries that have provided details of disciplinary procedures, those procedures initiated because of incompetence constitute 36% of all procedures. 29% of cases are procedures on the basis of criminal offence, followed by ethical misconducts (20% of the procedures).

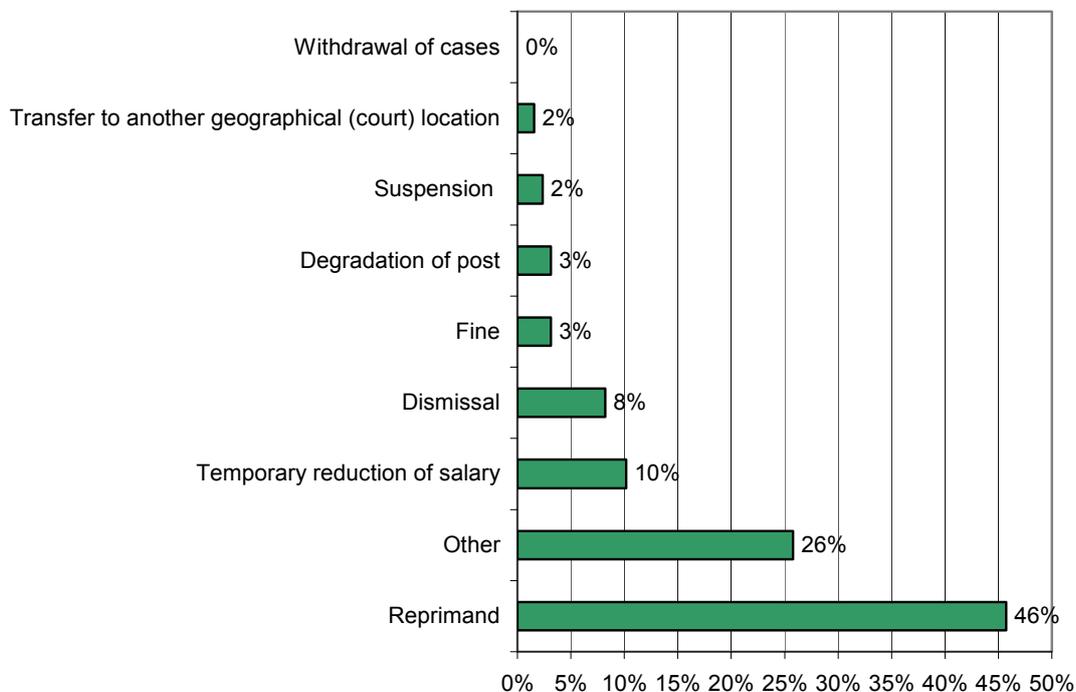
Professional inadequacy can also be sanctioned in some cases by disciplinary proceedings. In these cases the authorities dealing with disciplinary body should be determined.

**Figure 68. Authorities responsible to initiate the disciplinary proceedings against prosecutors – number of positive responses (Q123)**



Concerning the authority in charge of the disciplinary proceedings, it can be noticed that, contrary to the situation of judges, it is normally the hierarchical superior or a member of the executive power (often the Minister of Justice). The users are generally not allowed to complain directly from prosecutors.

**Figure 69. Distribution of the sanctions pronounced against prosecutors at the European level in 2006 (Q125)**



The figure shows the distribution of sanctions for 30 countries. Only those countries which have submitted a total of sanctions and details have been kept in the calculation of proportions. 1054 cases of reprimands recorded in **Ukraine** and 70 cases of resignations have been excluded from the calculation to ensure the representativeness of the data.

Reprimand is the most frequent sanction (46% of all the sanctions). Other sanctions could affect the functions of prosecutors or their salary.

The professional inadequacies are sanctioned in 13% of cases by allowances (fine: 3% or salary reduction: 10%). In less than 6% of cases the prosecutor is obliged to change functions (degradation of post: 3%, suspension: <3%). It should be noticed that in 8% of cases, after a disciplinary proceeding, prosecutors resign before a sanction has been adopted.

**Table 101. Number of sanctions pronounced against prosecutors in 2006 (Q125)**

| Country            | Total number of sanctions | Reprimand | Suspension | Withdrawal of cases | Fine | Temporary reduction of salary | Degradation of post | Transfer to another geographical court location | Dismissal | Other |
|--------------------|---------------------------|-----------|------------|---------------------|------|-------------------------------|---------------------|---|-----------|-------|
| Andorra            | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| Armenia            | 13                        | 6         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 7     |
| Austria            | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| Azerbaijan         | 42                        | 28        | 0          | 0                   | 0    | 0                             | 1                   | 0   | 11        | 2     |
| Belgium            | 1                         | 0         | 0          | 0                   | 0    | 1                             | 0                   | 0   | 0         | 0     |
| Bulgaria           | 3                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 3         | 0     |
| Croatia            | 4                         | 1         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 1         | 2     |
| Czech Republic     | 6                         | 1         | 0          | 0                   | 0    | 3                             | 0                   | 0   | 2         | 0     |
| Estonia            | 1                         | 0         | 0          | 0                   | 0    | 1                             | 0                   | 0   | 0         | 0     |
| Finland            | 2                         | 2         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| France             | 2                         | 0         | 2          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| Georgia            | 145                       | 39        | 0          | 0                   | 0    | 0                             | 0                   | 3   | 70        | 33    |
| Germany            | 4                         | 0         | 2          | 0                   | 0    | 1                             | 0                   | 0   | 1         | 0     |
| Greece             |                           | 5         | 2          |                     | 8    |                               |                     |   | 1         | 11    |
| Hungary            | 5                         | 3         | 0          | 0                   | 0    | 2                             | 0                   | 0   | 0         | 0     |
| Iceland            | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| Ireland            | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| Italy              | 15                        | 4         | 0          | 0                   | 0    | 0                             | 2                   | 1   | 0         | 8     |
| Latvia             | 21                        | 8         | 0          | 0                   | 0    | 4                             | 0                   | 0   | 1         | 8     |
| Lithuania          | 15                        | 6         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 9     |
| Luxembourg         | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| Moldova            | 45                        | 34        | 0          | 0                   | 0    | 0                             | 5                   | 0   | 2         | 4     |
| Monaco             | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| Montenegro         | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| Poland             | 41                        | 7         | 0          | 0                   | 0    | 11                            | 0                   | 2   | 0         | 21    |
| Portugal           | 16                        | 5         | 1          | 0                   | 8    | 0                             | 0                   | 0   | 0         | 2     |
| Romania            | 6                         | 3         | 0          | 0                   | 0    | 2                             | 0                   | 1   | 0         | 0     |
| Russian Federation |                           | 48        |            |                     |      |                               | 920                 |   | 126       | 49    |
| Serbia             | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| Slovakia           | 5                         | 5         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| Slovenia           | 2                         | 0         | 0          | 0                   | 0    | 1                             | 0                   | 0   | 0         | 1     |
| Spain              | 5                         |           |            |                     |      |                               |                     |   |           |       |
| Sweden             | 0                         | 0         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| Switzerland*       | 2                         | 2         | 0          | 0                   | 0    | 0                             | 0                   | 0   | 0         | 0     |
| FYROMacedonia      |                           |           |            |                     | 3    |                               |                     |   | 1         |       |
| Ukraine            | 1305                      | 1054      | 0          | 0                   | 0    | 221                           | 0                   | 0   | 30        | 0     |

| Country              | Total number of sanctions | Reprimand | Suspension | Withdrawal of cases | Fine | Temporary reduction of salary | Degradation of post | Transfer to another geographical court location | Dismissal | Other |
|----------------------|---------------------------|-----------|------------|---------------------|------|-------------------------------|---------------------|---|-----------|-------|
| UK-England and Wales | 5                         | 2         | 1          |                     |      |                               |                     |   |           | 2     |

\* see the comments below.

**Table 102. Disciplinary proceedings initiated and sanctions pronounced per 1000 judges and prosecutors in 2006 (Q124, Q125)**

| Country                | Total number of disciplinary proceedings initiated against : |             | Total number of sanctions pronounced against : |             | Ratio - number of disciplinary proceedings initiated: |                      | Ratio - number of sanctions pronounced: |                      |
|------------------------|--|-------------|--|-------------|---|----------------------|---|----------------------|
|                        | Judges   | Prosecutors | Judges   | Prosecutors | Per 1000 judges                                       | Per 1000 prosecutors | Per 1000 judges                         | Per 1000 prosecutors |
| Andorra                | 0  | 0           | 0  | 0           | 0   | 0                    | 0                                       | 0                    |
| Armenia                | na   | 3           | na   | 13          | -   | 7                    | -                                       | 31                   |
| Austria                | 22   | 0           | 26   | 0           | 13  | 0                    | 16                                      | 0                    |
| Azerbaijan             | 41   | 43          | 34   | 42          | 83  | 37                   | 69                                      | 36                   |
| Belgium                | 22   | 3           | 6  | 1           | 14  | 4                    | 4                                       | 1                    |
| Bosnia and Herzegovina | 17   | na          | 20   | na          | 20  | -                    | 24                                      | -                    |
| Bulgaria               | 3  | 6           | 3  | 3           | 2   | 4                    | 2                                       | 2                    |
| Croatia                | 22   | 2           | 9  | 4           | 11  | 3                    | 5                                       | 7                    |
| Cyprus                 | 1  | na          | na   | na          | 10  | -                    | -                                       | -                    |
| Czech Republic         | 40   | 10          | 22   | 6           | 13  | 8                    | 7                                       | 5                    |
| Estonia                | 2  | 1           | 1  | 1           | 8   | 5                    | 4                                       | 5                    |
| Finland                | 12   | 2           | 12   | 2           | 13  | 6                    | 13                                      | 6                    |
| France                 | 3  | 3           | 12   | 2           | 0   | 2                    | 2                                       | 1                    |
| Georgia                | 84   | 145         | 36   | 145         | 309   | 300                  | 132                                     | 300                  |
| Germany                | 55   | 26          | 25   | 4           | 3   | 5                    | 1                                       | 1                    |
| Hungary                | 14   | 5           | 9  | 5           | 5   | 3                    | 3                                       | 3                    |
| Iceland                | 0  | 0           | 0  | 0           | 0   | 0                    | 0                                       | 0                    |
| Ireland                | 0  | 0           | 0  | 0           | 0   | 0                    | 0                                       | 0                    |
| Italy                  | 68   | 24          | 51   | 15          | 11  | 11                   | 8                                       | 7                    |
| Latvia                 | 15   | 21          | 15   | 21          | 29  | 38                   | 29                                      | 38                   |
| Lithuania              | 4  | 32          | 4  | 15          | 5   | 37                   | 5                                       | 18                   |
| Luxembourg             | 1  | 0           | 1  | 0           | 6   | 0                    | 6                                       | 0                    |
| Moldova                | 9  | 38          | 6  | 45          | 21  | 49                   | 14                                      | 58                   |
| Montenegro             | 0  | 0           | 0  | 0           | 0   | 0                    | 0                                       | 0                    |
| Monaco                 | 0  | 0           | 0  | 0           | 0   | 0                    | 0                                       | 0                    |
| Norway                 | 56   | na          | 9  | na          | 109   | -                    | 18                                      | -                    |
| Poland                 | 60   | 76          | 44   | 41          | 6   | 13                   | 4                                       | 7                    |
| Portugal               | 26   | 24          | 25   | 16          | 14  | 18                   | 14                                      | 12                   |
| Romania                | 11   | 10          | 4  | 6           | 2   | 4                    | 1                                       | 2                    |
| Russian Federation     | 530  | na          |  | na          | 17  | -                    | 0                                       | -                    |
| Serbia                 |  | na          | 103  | 0           | 0   | -                    | 41                                      | 0                    |
| Slovakia               | 18   | 6           | 1  | 5           | 13  | 8                    | 1                                       | 7                    |
| Slovenia               | 1  | 2           | 1  | 2           | 1   | 11                   | 1                                       | 11                   |
| Spain                  | 71   | 155         | 19   | 5           | 16  | 79                   | 4                                       | 3                    |
| Sweden                 | 3  | 0           | 3  | 0           | 2   | 0                    | 2                                       | 0                    |
| Switzerland*           | 28   | 7           | 4  | 2           | -   | -                    | -                                       | -                    |

| Country              | Total number of disciplinary proceedings initiated against : |             | Total number of sanctions pronounced against : |             | Ratio - number of disciplinary proceedings initiated: |                      | Ratio - number of sanctions pronounced: |                      |
|----------------------|--|-------------|--|-------------|---|----------------------|---|----------------------|
|                      | Judges   | Prosecutors | Judges   | Prosecutors | Per 1000 judges                                       | Per 1000 prosecutors | Per 1000 judges                         | Per 1000 prosecutors |
| FYROMacedonia        |  | na          |  | na          | 0   | -                    | 0                                       | -                    |
| Ukraine              | 117  | 1305        | 110  | 1305        | 17  | 133                  | 16                                      | 133                  |
| UK-England and Wales |  | 5           | 32   | 5           | 0   | 2                    | 8                                       | 2                    |

\* see the comments below.

## Comments

**Belgium:** From 22 engaged proceedings, 9 have not led to a disciplinary sanction. 7 files were not closed at the end of 2007. 9 have been followed by disciplinary proceedings in 2006 or 2007.

**Bosnia and Herzegovina:** Suspensions and withdrawals of cases are not sanctions in the disciplinary system

**Italy:** The total number of other disciplinary procedures was for judges: 22 and for prosecutors: 8. The data regarding the judges and prosecutors are estimated.

**Latvia:** In the section "other" of disciplinary proceedings for judges are classified the following types of disciplinary proceedings: main negligence during the adjudication of a case in court, intentional violation of law, as well as breach of job responsibilities. And as regard section other for prosecutors there are classified intentional breach of job responsibilities. In the section "other" for sanctions against judges are classified the following disciplinary sanctions: annotation and cases when disciplinary proceedings are scrutinized and dismissed.

**Lithuania :** A service-related penalty may be imposed on the prosecutor provided that less than six months have lapsed from the commission of the violation of law, misconduct in office or action discrediting the name of the prosecutor. Official inspection shall last for no longer than 30 calendar days. The prosecutor shall be imposed a service-related penalty within 15 calendar days from the date of submission to the Prosecutor General of the conclusion of official inspection.

**Luxembourg:** On demand of the State General Prosecutor, the Superior Court of Justice may pronounce the temporary suspension of all magistrates administratively or judicially sued, during all the proceedings until the final decision. The enforcement of other disciplinary sanctions (reprimand, fine, temporary exclusion of the function, putting out to pasture and revocation) is made by the Superior Court of Justice, sitting as council chamber, on demand of the State General Prosecutor. Decisions of the Superior Court of Justice are legally binding. If the convicted judge has not appeared, he/she can appeal against the decision within 5 days after the decision has been notified.

**Monaco:** The Director for Judicial Services can pronounce sentences of point of order and of reprimand. Sentences of: mere censorship, censorship with reprimand, temporary suspension from 15 days to 6 months, but which can only be carried out if approved by the Prince, are pronounced by the *Cour de révision*. The *Cour de révision* can also, according to the circumstances and the gravity of the case, suggest to the Prince, the dismissal of the prosecuted magistrate.

**Montenegro:** In the evaluation period, there were no disciplinary proceedings initiated toward judges. During the evaluation period, five judges in Montenegro were released from their duty (on the initiatives of the presidents of The Supreme court, and of one basic court). On the initiatives coming from the President of the Supreme court, three proceedings were held and all three judges were released/acquitted from their duty. On the initiatives of the President of one basic court, two judges of that court were released/acquitted from duty.

**Netherlands:** Disciplinary procedures for judges and prosecutors are possible, but hardly ever occur. Data are not available anyhow. The authority of dismissal of judges lies exclusively with the Supreme Court. This hardly ever occurs (1 or 2 cases a year).

**Poland:** Suspension is not listed as a sanction. Within disciplinary proceedings suspension is a procedural measure that may be imposed for the time of disciplinary proceedings. In 2006 such measures were used in 5 cases as concerns judges and 11 prosecutors. Catalogue of sanctions does not include fine.

**Portugal:** In accordance with the 2006 statistical data, 24 disciplinary proceedings were initiated, 3 for professional inadequacy and 21 for other reasons. 16 have been concluded with a sanction and 8 are still pending. As concerns the types of sanctions, the Statute of the Public Prosecutor foresees in its article 166 the following: a) reprimand b) fine c) transfer d) suspension e) withdrawal from active service f) compulsory retirement g) dismissal. Except for the reprimand, all the sanctions applied are always recorded.

**Russian Federation:** Pre-term discontinuation of powers: 67, Warnings: 289, 49 procuracy workers put on trial.

**Serbia:** The number of disciplinary proceedings initiated against judges and prosecutors are not recorded. No sanctions was pronounced against prosecutors in 2006

**Slovakia:** For the less serious imperfections in work or behaviour or for lesser offences the judge can be reprimanded by notice in writing directly by the subject entitled to file a motion to start disciplinary proceedings. The judge can file a motion to disciplinary court to pronounce the invalidity of the reprimand.

**Switzerland:** The above statistical results are obtained by compiling results from 13 cantons. They show a restrained use of the disciplinary power against judges, generally because of the principles of separation of powers and of the judges' independence which must be respected. These principles are even more present in the other cantons which do not even know disciplinary proceedings against judges and prosecutors.

**Turkey:** The numbers mentioned above include the disciplinary proceedings and sanctions against both of judges and prosecutors. The number of suspension sanctions includes the number of dismissal sanctions.

**UK-England and Wales:** "Other" = formal warnings. It is not possible to give figures for the number of disciplinary proceedings initiated against judges. The figures held are categorised by the type of complaint received by the Office of Judicial Complaints, they are not broken down between those allegations made against the main stream judiciary and other judicial office holders such as Coroners, magistrates and Tribunal office holders. Sanctions are pronounced on grounds of personal misconduct. The figures given for sanctions pronounced against Judges cover all judicial office holders which include mainstream judges, coroners, Magistrates and Tribunal judges. After initial investigation suspension was lifted and employee returned to work.

## 12. Lawyers

### 12.1 Introduction

The respect of the lawyer's mission is essential to the rule of law. Recommendation Rec2000(21) on the freedom of exercise of the profession of lawyer, adopted by the Committee of Ministers on 25 October 2000, defines the lawyer as "... a person qualified and authorised according to the national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters".

As it can be derived from this definition, a lawyer may have the task of legal representation before a court, but also in providing legal assistance. The above-mentioned definition is used as a reference point for this questionnaire.

In certain countries, other definitions are used, such as solicitors (a person who gives legal advice and prepares legal documents) and barristers (a person who represents his/her clients in court). The word attorney is also used and is similar to the term "lawyer" as mentioned in this report (a person authorized to practice law, conducts lawsuits or gives legal advice).

For practical purposes in the report, the main reference is made to the definition of a lawyer, as stated in Recommendation (2000)21. Where possible, a distinction will be made between the above-mentioned categories.

### 12.2 Organisation of the profession

In all the member states, lawyers are split up in bar associations. With the exception of **Belgium, Bosnia and Herzegovina, France, Greece and Luxembourg** – where the bar associations operate on a regional and/or local level - there is a national structure for bar associations in 41 states or entities. This national structure can be doubled by the regional and/or local structures. There is a single structure in 25 countries, a double one in 19 states and even a triple one in **Azerbaijan and Spain**.

**Table 103. Organisational structure of lawyers (Q130)**

| Countries              | National | Regional | Local |
|------------------------|----------|----------|-------|
| Andorra                | Yes      |          |       |
| Armenia                | Yes      |          |       |
| Austria                | Yes      | Yes      |       |
| Azerbaijan             | Yes      | Yes      | Yes   |
| Belgium                |          | Yes      | Yes   |
| Bosnia and Herzegovina |          | Yes      | Yes   |
| Bulgaria               | Yes      |          | Yes   |
| Cyprus                 | Yes      |          | Yes   |
| Croatia                | Yes      | Yes      |       |
| Czech Republic         | Yes      |          |       |
| Denmark                | Yes      |          |       |
| Estonia                | Yes      |          |       |
| Finland                | Yes      |          | Yes   |
| France                 |          |          | Yes   |
| Georgia                | Yes      |          |       |
| Germany                | Yes      | Yes      |       |
| Greece                 |          |          | Yes   |
| Hungary                | Yes      |          | Yes   |
| Ireland                | Yes      |          | Yes   |
| Iceland                | Yes      |          |       |
| Italy                  | Yes      |          | Yes   |
| Latvia                 | Yes      |          |       |
| Lithuania              | Yes      |          |       |
| Luxembourg             |          | Yes      |       |
| Malta                  | Yes      |          |       |
| Moldova                | Yes      |          |       |
| Monaco                 | Yes      |          |       |
| Montenegro             | Yes      |          |       |
| Norway                 | Yes      | Yes      |       |
| Netherlands            | Yes      |          | Yes   |

| Countries            | National | Regional | Local |
|----------------------|----------|----------|-------|
| Poland               | Yes      | Yes      |       |
| Portugal             | Yes      |          |       |
| Romania              | Yes      |          | Yes   |
| Russian Federation   | Yes      |          |       |
| Serbia               | Yes      | Yes      |       |
| Slovakia             | Yes      |          |       |
| Slovenia             | Yes      |          |       |
| Spain                | Yes      | Yes      | Yes   |
| Sweden               | Yes      |          |       |
| Switzerland          | Yes      | Yes      |       |
| FYROMacedonia        | Yes      |          |       |
| Turkey               | Yes      |          | Yes   |
| Ukraine              | Yes      |          |       |
| UK-Northern Ireland  | Yes      |          |       |
| UK-Scotland          | Yes      |          |       |
| UK-England and Wales | Yes      |          |       |

**Comment: UK-Northern Ireland** - the organisation of the legal profession is on the same basis as in other parts of the United Kingdom i.e. each jurisdiction has its own national or jurisdiction-wide regulation of lawyers.

### 12.3 Statute and training

In all the member states the legal profession of a lawyer is a liberal profession which is carried out in independence from government and state administration. Lawyers have to be registered in all the member states with the Bar, after having obtained the relevant diplomas and/or passed the relevant examinations which allow them to carry out their profession.

Even if certain countries, such as **France**, have merged the profession of a lawyer with that of a legal adviser, common law countries keep the distinction between *barristers*, who plead a case before the courts, and *solicitors*, who advise clients and put together legal argumentation. However it must be noted that solicitors have gained in the 90ies the additional qualification of solicitor-advocate to plead in front of the higher courts.

**Table 104. Number of lawyers per 100 000 inhabitants and per professional judge in 2006 (Q127)**

| Country                | Number of lawyers (without legal advisors) | Number of legal advisors | Number of lawyers (without legal advisors) per 100.000 inhabitants | Number of lawyers (without legal advisors) per professional judge |
|------------------------|--|--------------------------|--|---|
| Andorra                | 132  | 0                        | 163  | 6,00  |
| Armenia                | 788  |                          | 24   | 4,40  |
| Austria                | 6 956                                      |                          | 84   | 4,16  |
| Azerbaijan             | 542  |                          | 6  | 1,10  |
| Belgium                | 15 212                                     |                          | 145  | 9,71  |
| Bosnia and Herzegovina | 1 241                                      |                          | 32   | 1,47  |
| Bulgaria               | 11 306                                     |                          | 147  | 6,21  |
| Croatia                | 3 281                                      |                          | 74   | 1,71  |
| Cyprus                 | 1 756                                      |                          | 227  | 17,92   |
| Czech Republic         | 8 405                                      |                          | 82   | 2,81  |
| Denmark                | 4 891                                      | na                       | 90   | 13,62   |
| Estonia                | 621  | na                       | 46   | 2,60  |
| Finland                | 1 810                                      |                          | 34   | 2,01  |
| France                 | 47 765                                     |                          | 76   | 7,10  |
| Georgia                | 2 560                                      | 2 000                    | 58   | 9,41  |
| Germany                | 138 104                                    |                          | 168  | 6,86  |
| Greece                 | 38 000                                     |                          | 342  | 12,01   |
| Hungary                | 9 850                                      | na                       | 98   | 3,47  |
| Iceland                | 478  | 240                      | 159  | 10,17   |

| Country              | Number of lawyers (without legal advisors) | Number of legal advisors | Number of lawyers (without legal advisors) per 100.000 inhabitants | Number of lawyers (without legal advisors) per professional judge |
|----------------------|--|--------------------------|--|---|
| Ireland              | 1 539                                      | 7 841                    | 36   | 11,66   |
| Italy                | 170 143                                    |                          | 290  | 26,38   |
| Latvia               | 858  | na                       | 37   | 1,68  |
| Lithuania            | 1 555                                      | na                       | 46   | 2,12  |
| Luxembourg           | 1 363                                      | 0                        | 288  | 7,83  |
| Malta                | 785  | 785                      | 192  | 23,09   |
| Moldova              | 1 050                                      | 0                        | 29   | 2,44  |
| Monaco               | 27   | 20                       | 82   | 1,50  |
| Montenegro           | 479  |                          | 77   | 2,07  |
| Netherlands          | 14 955                                     |                          | 92   | 7,22  |
| Norway               | 5 370                                      |                          | 115  | 10,49   |
| Poland               | 25 972                                     |                          | 68   | 2,64  |
| Portugal             | 25 753                                     |                          | 244  | 14,00   |
| Romania              | 20 485                                     | 17 000                   | 95   | 4,57  |
| Russian Federation   | 63 000                                     | na                       | 44   | 2,06  |
| Serbia               | 6 720                                      |                          | 91   | 2,68  |
| Slovakia             | 4 263                                      |                          | 79   | 3,19  |
| Slovenia             | 1 150                                      |                          | 57   | 1,15  |
| Spain                | 116 394                                    | na                       | 266  | 26,23   |
| Sweden               | 4 427                                      |                          | 49   | 3,49  |
| Switzerland          | 7 530                                      |                          | 101  | 6,13  |
| FYROMacedonia        | 1 698                                      |                          | 83   | 2,72  |
| Turkey               | 57 552                                     | na                       | 78   | 8,73  |
| UK-Northern Ireland  | 552  |                          | 32   | 1,49  |
| UK-Scotland          | 460  | 11 778                   | 9  | 2,03  |
| UK-England and Wales | 12 034                                     | 131 347                  | 22   | 3,19  |

### Comments

**Azerbaijan:** the figure includes the lawyers who are members of the Bar Association. According to Article 4 of the Law “On advocates and advocate’s activity”, only the individual who was admitted as a member to the Bar Association and made an oath has the right to be engaged in advocates activity.

**Cyprus, Denmark, Germany and Norway:** the number of lawyers includes as well the number of legal advisors.

**Sweden:** the figure stated includes only members of the Swedish Bar Association. There are no formal requirements for practising law in Sweden or for appearing before courts.

**UK-England and Wales:** due to the inaccurate definition of roles of barristers and solicitors, the table gives the impression of a low ratio of lawyers per 100.000 inhabitants, which is not in line with the actual situation.

**Albania and Ukraine** did not provide figures.

When analysing this table, a great difference can be noticed between the countries as regards the number of lawyers per 100.000 inhabitants, from **Greece** (342) to **Azerbaijan** (6). The same remark can be made concerning the ratio of lawyers per professional judge. There are on average 7 lawyers per professional judge in the member states of the Council of Europe. But **Cyprus, Malta, Spain** and above all **Italy** (with 26,4 lawyers per professional judge) boost the figures higher than the norm.

**Figure 70. Number of lawyers per 100.000 inhabitants in 2006 (Q127)**

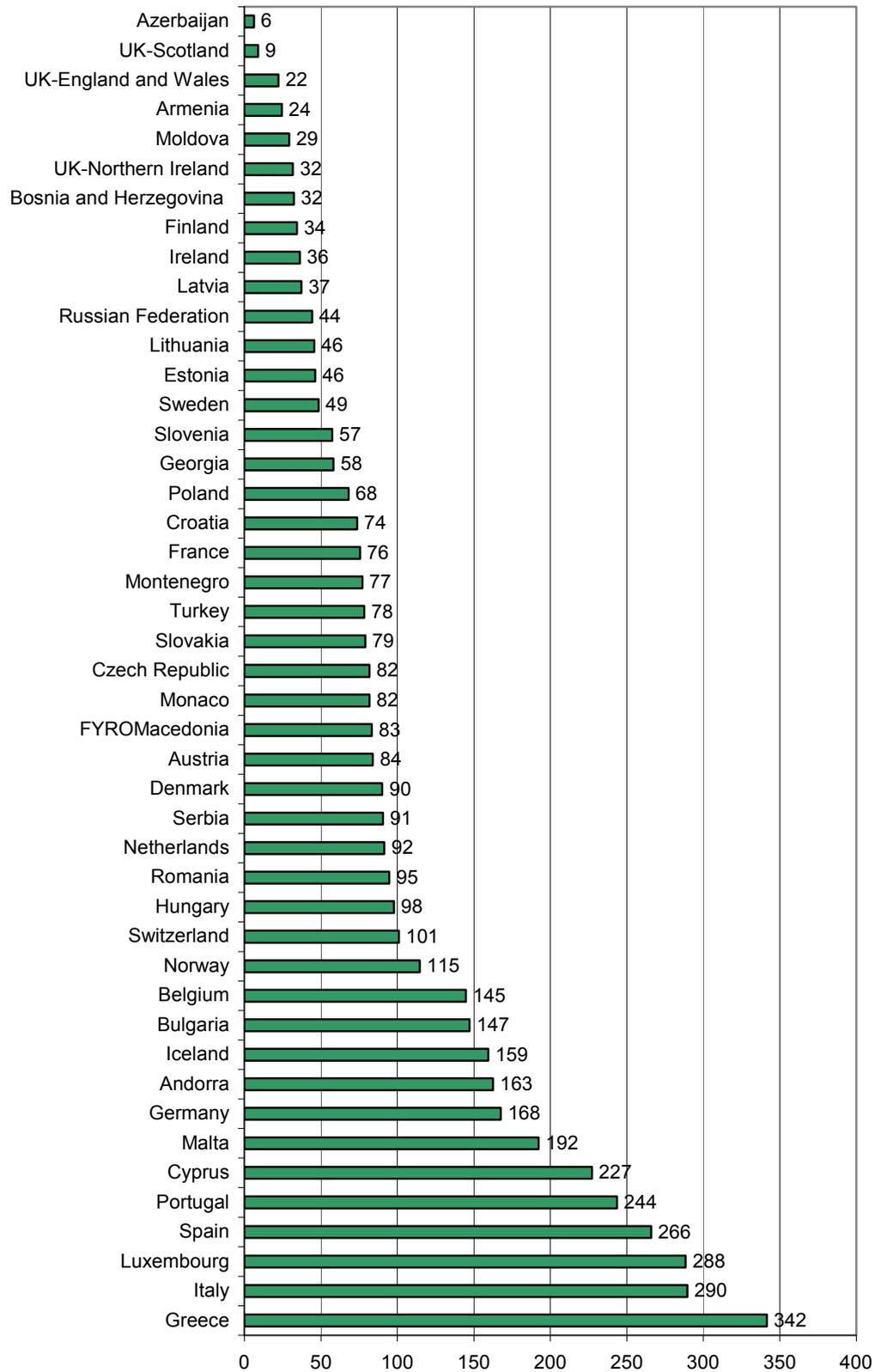
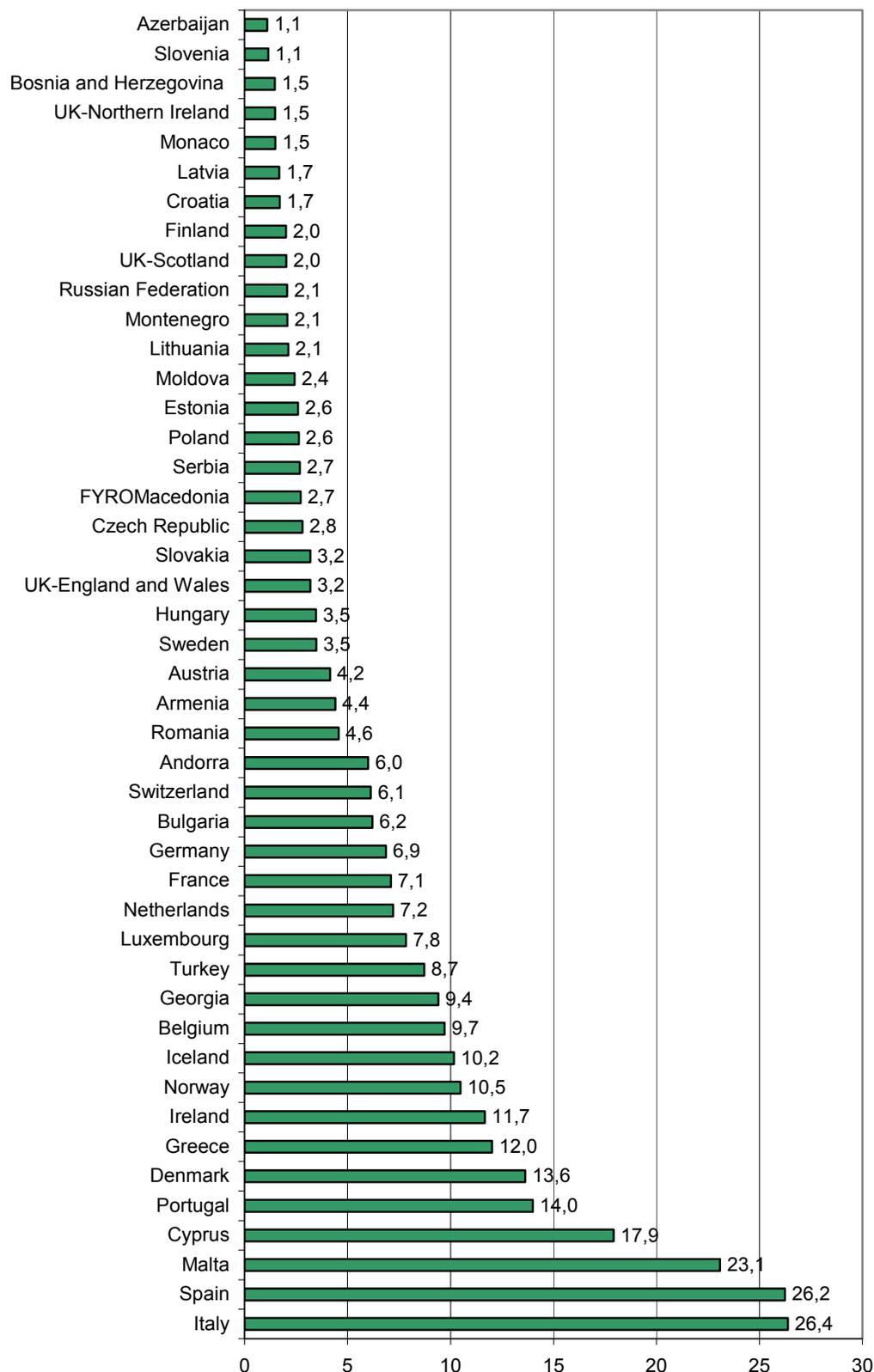


Figure 71. Number of lawyers per professional judge in 2006 (Q127)



With the exception of **Hungary** and **Spain**<sup>23</sup>, practising the profession of a lawyer requires initial and/or continuous training. In **Sweden**, an initial training is mandatory to become a lawyer - member of the Swedish Bar Association. Otherwise, no special requirements are needed to perform as a lawyer. In 44 countries out

<sup>23</sup> **Spain** has a regime of access to the profession regulated by law; however this will only enter into force in 2011.

of the 46 having answered the question, the necessary skills for exercising the lawyer's profession required initial and/or adapted professional entrance examination based on selection.

The necessary adaptation of a lawyer's skills to the legislative changes means that in 25 countries a lawyer must regularly follow training courses in the form of legal courses or conferences.

**Table 105. Types of compulsory training to accede and perform the function of lawyer (Q131, Q132)**

| Compulsory initial training |                      | Compulsory continuous training |                      |
|-----------------------------|----------------------|--------------------------------|----------------------|
| Andorra                     | Luxembourg           | Armenia                        | UK-Scotland          |
| Armenia                     | Malta                | Austria                        | UK-England and Wales |
| Austria                     | Moldova              | Belgium                        |                      |
| Azerbaijan                  | Monaco               | Bosnia and Herzegovina         |                      |
| Belgium                     | Montenegro           | Bulgaria                       |                      |
| Bosnia and Herzegovina      | Netherlands          | Denmark                        |                      |
| Bulgaria                    | Norway               | Estonia                        |                      |
| Croatia                     | Poland               | Finland                        |                      |
| Cyprus                      | Portugal             | France                         |                      |
| Czech Republic              | Romania              | Germany                        |                      |
| Denmark                     | Russian Federation   | Ireland                        |                      |
| Estonia                     | Serbia               | Lithuania                      |                      |
| Finland                     | Slovakia             | Luxembourg                     |                      |
| France                      | Slovenia             | Monaco                         |                      |
| Georgia                     | Sweden               | Montenegro                     |                      |
| Germany                     | Switzerland          | Netherlands                    |                      |
| Greece                      | FYROMacedonia        | Norway                         |                      |
| Iceland                     | Turkey               | Romania                        |                      |
| Ireland                     | Ukraine              | Sweden                         |                      |
| Italy                       | UK-Northern Ireland  | Ukraine                        |                      |
| Latvia                      | UK-Scotland          | UK-Northern Ireland            |                      |
| Lithuania                   | UK-England and Wales |                                |                      |

#### Comments

**Germany:** the German "Referendariat" is not mainly focused on the training to become a lawyer but is a preparation to practice to become a judge, a prosecutor or a lawyer. The "Referendariat" is therefore a compulsory, post university training to access any of these professions.

**Hungary:** the persons graduated as 'jurist' has to spend three years with a lawyer or law office working on practical cases before he or she can undergo the state exam. There is a unified state exam for trainees of all types of legal professions after 3 year of post-university practice. This examination authorises the successful candidates to act individually in any function requiring a law degree (in Hungarian legal provisions this examination is referred to as "bar examination" which is not an entry exam to the bar, despite its name).

**Poland:** in order to become a lawyer one must general pass an entry exam, attend traineeship and then pass a final exam. However, according to the Ethical Bar Code each lawyer is obliged to continuously raise his/her qualifications and ensuring a high-level of professional competence. Therefore, Polish lawyers are not exempted from compulsory training.

In 20 countries or entities, the recognition of a specialisation requires:

- specific additional training in 6 countries: **France, Luxembourg, Romania, Serbia, Slovenia, Switzerland;**
- successfully passing an examination in 7 countries: **Croatia, Hungary, Malta, Portugal, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine;**
- obtaining an authorization in 7 countries: **Czech Republic, Germany<sup>24</sup>, Netherlands, UK-Northern Ireland, UK-Scotland and UK-England and Wales.**

## 12.4 Supervision of lawyers

Lawyers generally practice with the statute of a liberal worker. This independence of the activity does not prevent him/her from respecting ethical rules, the breach of which can lead to disciplinary sanctions.

In almost all the countries, the supervision and control of the lawyer's profession lies with a professional body. The latter can, independently of all judicial proceedings, order an inquiry following a denunciation or *ex officio*. It is its responsibility to defer to the disciplinary bodies in case of professional fault.

<sup>24</sup> For the authorisation to hold the qualification "Fachanwalt" – specialisation – a lawyer has to pass both additional training and examination.

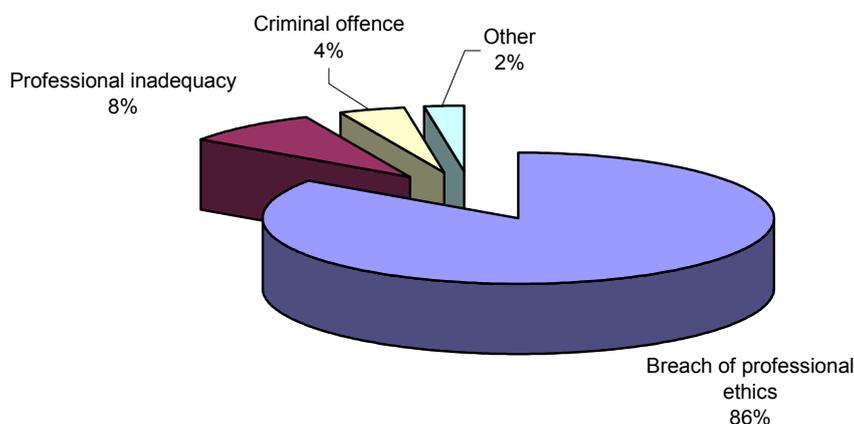
Disciplinary procedures are aimed at establishing and punishing violations in the lawyer's profession. Out of all the countries which replied to question 139, a professional body is the competent body for dealing with disciplinary procedures against lawyers.

**Table 106. Authority responsible for the disciplinary proceedings against lawyers – number of positive replies (Q139)**

| Authority competent for the disciplinary proceedings | Number of countries |
|--|---------------------|
| Judge  | 4                   |
| Ministry of Justice                                  | 3                   |
| Professional authority                               | 46                  |

This competence is jointly exercised with a judge in the **Czech Republic**, in **Germany**, in **Iceland** and in **Monaco**, and with the Ministry of Justice in **Andorra**, **Bosnia and Herzegovina** and **Lithuania**.

**Figure 72. Distribution of the disciplinary proceedings initiated against lawyers in Europe in 2006 (Q140)**



The figure presents the distribution of the disciplinary proceedings of the countries that provided all the necessary information.

29 countries or entities have been able to provide at least the total number of the disciplinary proceedings against lawyers. The detailed data by type of proceeding is not recorded in most of the countries. Among the responses, it can be found that 86 % of indicated disciplinary procedures stemmed from a breach of professional ethics. Criminal offence represents 4 % of proceedings. 8% of the initiated proceedings were set in motion for professional misconduct.

The number of procedures mentioned must be compared to the number of lawyers working in the countries concerned.

**Table 107. Number of disciplinary proceedings per 1000 lawyers in 2006 (Q140)**

| Country                | Number of lawyers without legal advisors | Number of disciplinary proceedings | Number of disciplinary proceedings per 1000 lawyers |
|------------------------|--|------------------------------------|---|
| Andorra                | 132                                      | 0                                  | 0   |
| Bosnia and Herzegovina | 1241                                     | 41                                 | 33  |
| Croatia                | 3281                                     | 424                                | 129   |
| Czech Republic         | 8405                                     | 132                                | 16  |
| Denmark                | 4891                                     | 804                                | 164   |
| Estonia                | 621                                      | 7                                  | 11  |
| Finland                | 1810                                     | 444                                | 245   |
| Georgia                | 2560                                     | 74                                 | 29  |
| Greece                 | 38000                                    | 428                                | 11  |
| Iceland                | 478                                      | 31                                 | 65  |
| Ireland                | 1539                                     | 33                                 | 21  |
| Italy                  | 170143                                   | 174                                | 1   |
| Latvia                 | 858                                      | 4                                  | 5   |
| Lithuania              | 1555                                     | 82                                 | 53  |
| Luxembourg             | 1363                                     | 10                                 | 7   |
| Moldova                | 1050                                     | 104                                | 99  |
| Monaco                 | 27                                       | 0                                  | 0   |
| Montenegro             | 479                                      | 0                                  | 0   |
| Netherlands            | 14955                                    | 781                                | 52  |
| Poland                 | 25972                                    | 1213                               | 47  |
| Russian Federation     | 63000                                    | 4672                               | 74  |
| Serbia                 | 6720                                     | 625                                | 93  |
| Slovakia               | 4263                                     | 51                                 | 12  |
| Slovenia               | 1150                                     | 40                                 | 35  |
| Sweden                 | 4427                                     | 516                                | 117   |
| Switzerland            | 7530                                     | 87                                 |   |
| Turkey                 | 57552                                    | 105                                | 2   |
| FYROMacedonia          | 1698                                     | 167                                | 98  |
| UK-England and Wales   | 12034                                    | 242                                | 20  |

**Comments**

**Bosnia and Herzegovina:** The above information pertains to lawyers of the Republika Srpska Bar Association that provided information about disciplinary proceedings in 2006, while the Federation of Bosnia and Herzegovina Bar Association has not provided information.

**Estonia:** Professional inadequacy is not a reason for disciplinary proceedings, but a reason for assessing professional suitability by a professional suitability assessment committee. Criminal offence is not a reason for disciplinary proceedings, but a reason for removal of membership in case of a court verdict coming into force regarding a lawyer. Violation of legislation which provides for the activities of advocates is a reason for disciplinary proceedings.

**Ireland:** The data in questions 140 and 141 relate to solicitors only. An exact figure is not available in relation to disciplinary proceedings against barristers in 2006. It is known, however, that about 25 cases are dealt with by the Barristers' Professional Conduct Tribunal annually.

**Lithuania:** Data are submitted for the period of 22/04/2006- 20/04/2007.

**Montenegro:** Disciplinary body of Bar Association of Montenegro is formed in the end of year 2007. So far, since of short period after establishing procedure and that body, there are no records of initiated disciplinary proceedings against lawyers.

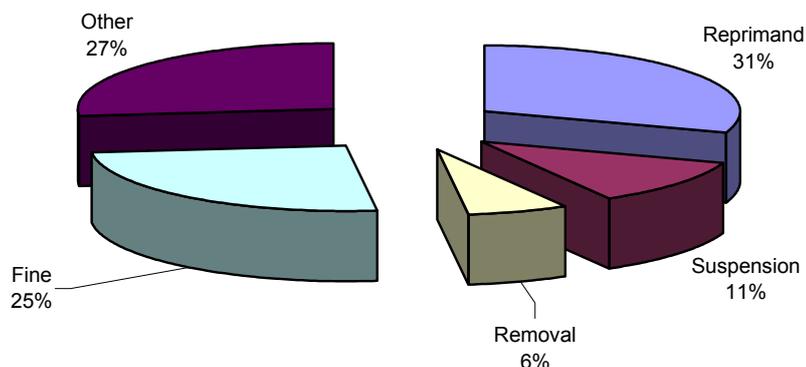
**Russian Federation:** No differentiation of the grounds for initiation of disciplinary proceedings is provided. 2401 lawyers were brought to disciplinary responsibility in total, of which 462 were deprived of the lawyer status.

**Switzerland:** Absolute figures do not reflect the exact situation at the national level as only 12 *cantons* provided their records. As a consequence they should be used in a comparative way (proportion of misconducts among them and proportion of sanctions among them) and carefully.

**FYROMacedonia:** It is important to emphasize that presented data are for the following period: June 2005-April 2006 due to the methodology of the Bar association on collecting and analysing statistical data regarding disciplinary procedure against lawyers.

In almost half of the cases, the nature of the punishment was not mentioned.

**Figure 73. Nature of the sanctions pronounced against lawyers (Q141)**



Reprimand is the most common imposed sanction (31%). It is followed by fines (25%) and by “*other sanctions*” (27%). Temporary and final suspension has been pronounced in 17% cases (suspension: 11%, removal: 6%).

The table below allows to compare the type of punishment imposed with respect to the number of disciplinary proceedings initiated.

**Table 108. Nature of the sanctions pronounced against lawyers in 2006 (Q141)**

| Country                | Total number of disciplinary proceedings initiated | Sanctions pronounced |            |         |      |       |
|------------------------|--|----------------------|------------|---------|------|-------|
|                        |  | Reprimand            | Suspension | Removal | Fine | Other |
| Andorra                | 0  | 0                    | 0          | 0       | 0    | 0     |
| Azerbaijan             | 5  | 5                    | 0          | 0       | 0    | 0     |
| Bosnia and Herzegovina | 41   | 1                    | 0          | 0       | 0    | 0     |
| Bulgaria               | na   | 40%                  | 20%        | 5%      | 25%  | 10%   |
| Croatia                | 424  | 8                    | 2          | 2       | 22   | 0     |
| Czech Republic         | 132  | 12                   | 7          | 0       | 26   | 0     |
| Denmark                | 804  | 59                   | 1          | 0       | 101  | 116   |
| Estonia                | 7  | 1                    | 0          | 0       | 0    | 0     |
| Finland                | 444  | 59                   | 0          | 4       | 4    | 27    |
| Georgia                | 74   | 2                    | 1          | 0       | 0    | 0     |
| Greece                 | 428  | 12                   | 70         | 2       | 12   | 0     |
| Iceland                | 31   | 5                    | 0          | 0       | 0    | 7     |
| Ireland                | 33   | 0                    | 2          | 0       | 29   | 2     |
| Latvia                 | 4  | 2                    | 0          | 1       | 0    | 1     |
| Lithuania              | 82   | 36                   | 0          | 3       | 0    | 4     |
| Moldova                | 104  | 6                    | 4          | 1       | 0    | 7     |
| Monaco                 | 0  | 0                    | 0          | 0       | 0    | 0     |
| Montenegro             | 0  | 0                    | 0          | 0       | 0    | 0     |
| Poland                 | 1213   | 70                   | 38         | 17      | 28   | 74    |
| Portugal               | na   | 65                   | 30         | 1       | 89   | 104   |

| Country              | Total number of disciplinary proceedings initiated | Sanctions pronounced |            |         |      |       |
|----------------------|--|----------------------|------------|---------|------|-------|
|                      |  | Reprimand            | Suspension | Removal | Fine | Other |
| Serbia               | 625  | 0                    | 7          | 0       | 10   | 1     |
| Slovakia             | 51   | 1                    | 0          | 2       | 8    | 0     |
| Slovenia             | 40   | 3                    | 0          | 4       | 13   | 0     |
| Sweden               | 516  | 82                   | 0          | 1       | 2    | 0     |
| Switzerland          | 87   | 14                   | 4          | 0       | 24   | 23    |
| FYROMacedonia        | 167  | 0                    | 1          | 0       | 4    | 0     |
| Turkey               | 105  | 105                  | 16         | 15      | 25   | 86    |
| UK-England and Wales | 242  | 20                   | 32         | 67      | 77   | 46    |

In some countries, like in **Austria**, disciplinary procedures brought for an offence within a professional framework are additional to criminal proceedings stipulated in the law. It is the opposite in other countries: no disciplinary measures are taken if the offence has already instigated criminal proceedings (**Czech Republic**). In other countries, like in **Estonia**, the sentence decided by a court implies a dismissal from the Bar Association. The regulation in this country foresees that a lawyer shall be excluded from the Bar Association by a Resolution of the Board of the Bar Association if the lawyer has been deprived of the right to be a lawyer by a court judgment, for example a judgment of conviction for an intentionally committed criminal offence or any other criminal offence. In **Poland** an appeal is possible concerning final decisions of disciplinary proceedings to the Ministry of Justice. Moreover, the parties, the Minister of Justice, the Ombudsman and the President of the Polish Bar Council may file for cassation to the Supreme Court in cases of blatant violation of law or evident inappropriateness of the disciplinary penalty. Finally, in Poland, the disciplinary procedure is independent from the criminal procedure.

## 12.5 Practicing the profession

### *Representation before a court*

A lawyer's reputation is his/her best guarantee for keeping clients and increasing their numbers. Committing an offence or being negligent can be detrimental to his/her client (e.g.: expiry of a proceedings deadline). It is possible for a client to claim damages for this tort and/or to complaint about the quality of the lawyer's services.

This procedure is possible, generally with the Bar Association, in 35 countries.

33 countries or entities indicated that lawyers have a monopoly of representation. This figure should, however, be treated with caution in certain areas: 11 countries indicated that the representation by a lawyer was mandatory in administrative matters; the figure rises to 15 in civil matters. The approach is slightly different in criminal matters, as it is in the offender's interest, in 32 countries and/or in the victim's in 22 countries, to benefit from a reliable defence performed by a professional. In **Bulgaria** and in **Belgium**, defence by a lawyer is mandatory in penal matters. But it can also be performed by a law professor in **Germany** or by a law graduate in **Estonia** or **Finland**. A court can nominate persons to ensure the defence in **Hungary**, **Iceland**, **Norway**, **Sweden**, **Turkey** as well as in **UK-England and Wales**.

The comments made at question 129 on the obligatory representation by lawyers underline the need for a significant number of exceptions. The latter either concern the level of the court (e.g.: mandatory representation in appeal or before the Supreme Court, but not in a court of first instance in **Hungary**). The defence for particular contentious proceedings can be conducted by trade union organisations. When the financial value of the dispute is slow, representation by lawyers is optional: this is the case in **Austria**, before the *Bezirksgerichte*, if the financial value of the dispute is below 4000 €, or before the Justice of the Peace court in **Luxembourg**, if the financial value of the dispute is up to 10.000 €. This distinction is also made in **Switzerland**, depending on the cantons.

**Table 109. Monopoly of legal representation (Q129)**

| Countries              | Monopoly of representation in justice of lawyers in the following fields: |             |        |                |
|------------------------|---|-------------|--------|----------------|
|                        | Civil   | Penal       |        | Administrative |
|                        |   | Perpetrator | Victim |                |
| Andorra                | Yes   | Yes         | Yes    | Yes            |
| Armenia                |   | Yes         |        |                |
| Austria                |   |             |        |                |
| Azerbaijan             | Yes   | Yes         |        | Yes            |
| Belgium                |   | Yes         | Yes    |                |
| Bosnia and Herzegovina |   |             |        |                |
| Bulgaria               |   |             |        |                |
| Croatia                |   | Yes         |        |                |
| Cyprus                 | Ye  | Yes         | Yes    | Yes            |
| Czech Republic         |   | Yes         |        |                |
| Denmark                |   | Yes         | Yes    |                |
| Estonia                | Yes   | Yes         | Yes    | Yes            |
| Finland                |   |             |        |                |
| France                 | Yes   | Yes         | Yes    | Yes            |
| Georgia                |   | Yes         | Yes    | Yes            |
| Germany                | Yes   | Yes         | Yes    | Yes            |
| Greece                 | Yes   | Yes         | Yes    | Yes            |
| Hungary                |   | Yes         |        |                |
| Iceland                | Yes   | Yes         | Yes    |                |
| Ireland                |   |             | Yes    |                |
| Italy                  | Yes   | Yes         | Yes    |                |
| Latvia                 |   |             |        |                |
| Lithuania              |   | Yes         |        |                |
| Luxembourg             | Yes   | Yes         | Yes    | Yes            |
| Malta                  | Yes   | Yes         | Yes    | Yes            |
| Moldova                |   | Yes         |        |                |
| Monaco                 | Yes   | Yes         | Yes    | Yes            |
| Montenegro             |   | Yes         |        |                |
| Netherlands            | Yes   | Yes         | Yes    |                |
| Norway                 |   | Yes         | Yes    |                |
| Poland                 |   | Yes         | Yes    |                |
| Portugal               |   | Yes         | Yes    |                |
| Romania                |   |             |        |                |
| Russian Federation     |   | Yes         |        |                |
| Serbia                 |   | Yes         | Yes    |                |
| Slovakia               |   | Yes         |        |                |
| Slovenia               |   | Yes         |        |                |
| Spain                  |   |             |        |                |
| Sweden                 |   |             |        |                |
| Switzerland            | Yes   | Yes         | Yes    |                |
| FYROMacedonia          |   | Yes         | Yes    |                |
| Turkey                 |   |             |        |                |
| Ukraine                |   |             |        |                |
| UK-Northern Ireland    |   |             |        |                |
| UK-Scotland            |   |             |        |                |
| UK-England and Wales   |   |             |        |                |

**Comments**

**Denmark:** in civil cases there is no monopoly of lawyers since members of the family and others may represent a client in certain cases, e.g. cases of a less than DK 50.000 value, simple collection proceedings and simple cases of recovery of debts by levying of execution. In administrative cases, family members and others may represent a client before certain types of administrative cases which are handled by e.g. the public administration and public consumer complaints board.

**Estonia:** there is a monopoly of lawyers only in the case of state legal aid and in the Supreme Court.

**Poland:** there is, under certain circumstances, the obligation of representation by lawyers in civil proceedings (in the proceedings before the Supreme Court) and in administrative proceedings (in the case of cassation, the Supreme Administrative Court, instituting a trial de novo before the Supreme Administrative Court or in case of a complaint regarding the rejection of a cassation). Moreover, there is also such an obligation in proceedings before the Constitutional Tribunal (in case of constitutional complaints and complaints about the refusal of a complaint). Therefore the obligation of representation by lawyers is not (only) restricted to penal procedures in Poland.

One can see that:

- representation is not always necessary in the common law countries and in Nordic countries: **UK-England and Wales, UK-Scotland (UK), UK-Northern Ireland, Ireland** (except for the victims of criminal offences), **Finland, Sweden, Latvia**;
- if representation is obligatory to ensure the perpetrator's defence and is widely acceptable in criminal matters, this is not the case in **Armenia, Azerbaijan, Croatia, Czech Republic, Hungary, Lithuania, Moldova, Montenegro, Russian Federation and Slovakia**.

### ***Remuneration of lawyers***

Lawyers can be paid on a freely negotiated basis. Their remuneration are fixed by the Bar Association in 26 countries or imposed by the legislator in 10 countries. In **Germany**<sup>25</sup> and in the **Russian Federation**, their pay is set at a federal level.

The initial information given by the defendant on lawyers' fees is judged transparent and loyal in 36 countries. According to the respondents, some improvements concerning the information about the provisions and the fees are still to be made in: **Georgia, Greece, Hungary, Norway, Poland, Romania, Sweden** and **UK-Scotland**. Lawyers can agree with their client to be "paid on result". But this is dependent on the initial signature of a convention; only an irrevocable judicial decision, ending the originating procedure, allows the payment of a fee.

Disagreements concerning a fee can be brought before the chairman of the Bar or before a judge (**France**). In **Estonia** the Court of Honour is competent to address disputes regarding fees.

## **12.6 Trends and conclusions**

The respect for the lawyer profession is an essential condition for a State governed by the Rule of Law and democratic society.

This profession is generally well organised and the training of lawyers ensure a good performance of the functions they are in charge with.

It can be noted that the number of lawyers for 100.000 inhabitants may vary considerably from one country to another. These differences could be attributed to the level of "judicialisation" of the society but also to the different functions entrusted to lawyers.

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<sup>25</sup> The basis for lawyers' remuneration is the "Rechtsanwaltvergütungsgesetz" (RVG) which is a Federal law. However there are also exceptions; for example a lawyer can arrange with his/her client a so called "Vergütungsvereinbarung" which would be an equivalent to a remuneration agreement.

## 13. Execution of court decisions

### 13.1 Introduction

The effective execution of court decisions is an integral part of compliance with Article 6 of the European Convention of Human Rights. Having regards to the volume of cases currently before the Court and the recent instruments adopted by the Council of Europe in the field of execution, the CEPEJ has decided to pay particular attention to this issue in this Report.

In non criminal matters, the Committee of Ministers of the Council of Europe has adopted two relevant recommendations in the area of enforcement. Enforcement is defined in Recommendation Rec2003(17) as *“the putting into effect of judicial decisions, and also other judicial or non-judicial enforceable titles in compliance with the law which compels the defendant to do, to refrain from doing or to pay what has been adjudged”*. This Recommendation is primarily orientated at the civil law area, whilst Recommendation Rec2003(16) is focused on the execution of judicial decisions in administrative matters.

It is difficult to assess the smooth execution of court decisions in civil or commercial matters on the basis of relevant statistics, as execution is not automatic: it is for the parties who have won the case to decide, where appropriate, whether to request or not the execution of the court decision. Therefore, this report does not focus on the rate of execution of court decisions, but mainly on the organisation of the execution and the role of enforcement agents. The CEPEJ has however tried to assess the length of enforcement procedures, which is part of the reasonable time of proceedings considered by the case-law of the European Court of Human Rights.

In Recommendation Rec2003(17) on enforcement, the tasks and duties of the enforcement agents are described, as well as the enforcement procedure and the rights and duties of the claimant and the debtor. The enforcement agent is defined in this Recommendation as *“a person authorised by the state to carry out the enforcement process irrespective of whether that person is employed by the state or not”*. This definition is used in the context of this report. This definition includes the fact that enforcement agents can be public officials or private officers (for example bailiffs). It therefore concerns about **62 000 agents identified by the member states in 2006**.

In some countries, judges can play a role in the enforcement procedure. However, in most cases, their role is limited to the supervision of the enforcement procedure and not the enforcement itself. Other countries have a mixed system of private and public enforcement officers. For example, in the **Czech Republic**, some bailiffs work within the court whereas private executors also exist. In **Portugal**, the enforcement system includes court officials and execution solicitors.

Moreover, other specific types of enforcement agents exist in **Belgium** (enforcement agents in tax affairs), in **Bosnia and Herzegovina** (court referees), in **France** (*huissiers du Trésor*, responsible for the collection of taxes), in Greece (public notaries), in **Ireland** (sheriff/solicitor and revenue sheriffs responsible for the collection of taxes), in **Portugal** (execution solicitors), in **Slovakia** (distrainers) and in **UK-Scotland** (sheriff and messengers-at-arms).

The enforcement of sentences in criminal matters is of a different nature. It concerns the state authority, often under the supervision of the judge and depends on the choices of criminal policies.

### 13.2 Execution of court decisions in civil, commercial and administrative law

#### 13.2.1 Organisation of the profession

To question 150 on the organisation of the profession of enforcement agents, **Andorra, Bosnia and Herzegovina, Croatia, Denmark, Ireland, Montenegro and Serbia** replied that this activity is not organised. In 31 states, the structure is solely national; it is organised at a regional level in **Austria** and at a local level in **Norway**. The organisation of the profession is both national and regional in **France** and in **Poland** or partly national and partly local in **Belgium** and **Romania**. The organisation is partly regional and partly local in **Azerbaijan, Germany and Switzerland** have a three-tiered organisation: national, regional and local. In **Spain** the Constitution entrusts judges with the task of judging and of enforcing judgments (Articles 117 and 118).

The marked preference for the national structure could be explained by the fact that there is a great interest in creating a group dynamic by establishing a feeling of professional identity while homogenizing competencies and practices.

**Tableau 110. Organisation structure of enforcement agents (Q150)**

| Country                | National | Regional | Local |
|------------------------|----------|----------|-------|
| Albania                | Yes      |          |       |
| Andorra                |          |          |       |
| Armenia                | Yes      |          |       |
| Austria                |          | Yes      |       |
| Azerbaijan             |          | Yes      | Yes   |
| Belgium                | Yes      |          | Yes   |
| Bosnia and Herzegovina |          |          |       |
| Bulgaria               | Yes      |          |       |
| Croatia                |          |          |       |
| Cyprus                 | Yes      |          |       |
| Czech Republic         | Yes      |          |       |
| Denmark                |          |          |       |
| Estonia                | Yes      |          |       |
| Finland                | Yes      |          |       |
| France                 | Yes      | Yes      |       |
| Georgia                | Yes      |          |       |
| Germany                | Yes      | Yes      | Yes   |
| Greece                 | Yes      |          |       |
| Hungary                | Yes      |          |       |
| Iceland                | Yes      |          |       |
| Ireland                |          |          |       |
| Italy                  | Yes      |          |       |
| Latvia                 | Yes      |          |       |
| Lithuania              | Yes      |          |       |
| Luxembourg             | Yes      |          |       |
| Malta                  | Yes      |          |       |
| Moldova                | Yes      |          |       |
| Monaco                 | Yes      |          |       |
| Montenegro*            |          |          |       |
| Netherlands            | Yes      |          |       |
| Norway                 |          |          | Yes   |
| Poland                 | Yes      | Yes      |       |
| Portugal               | Yes      |          |       |
| Romania                | Yes      |          | Yes   |
| Russian Federation     | Yes      |          |       |
| Serbia                 |          |          |       |
| Slovakia               | Yes      |          |       |
| Slovenia               | Yes      |          |       |
| Sweden                 | Yes      |          |       |
| Switzerland            | Yes      | Yes      | Yes   |
| FYROMacedonia          | Yes      |          |       |
| Turkey                 | Yes      |          |       |
| Ukraine                | Yes      |          |       |
| UK-Northern Ireland    | Yes      |          |       |
| UK-Scotland            | Yes      |          |       |
| UK-England and Wales   | Yes      |          |       |

**Comment: Montenegro** - the execution and security are ordered and enforced by the court. Enforcement agents are working in the courts.

### ***Status and competences***

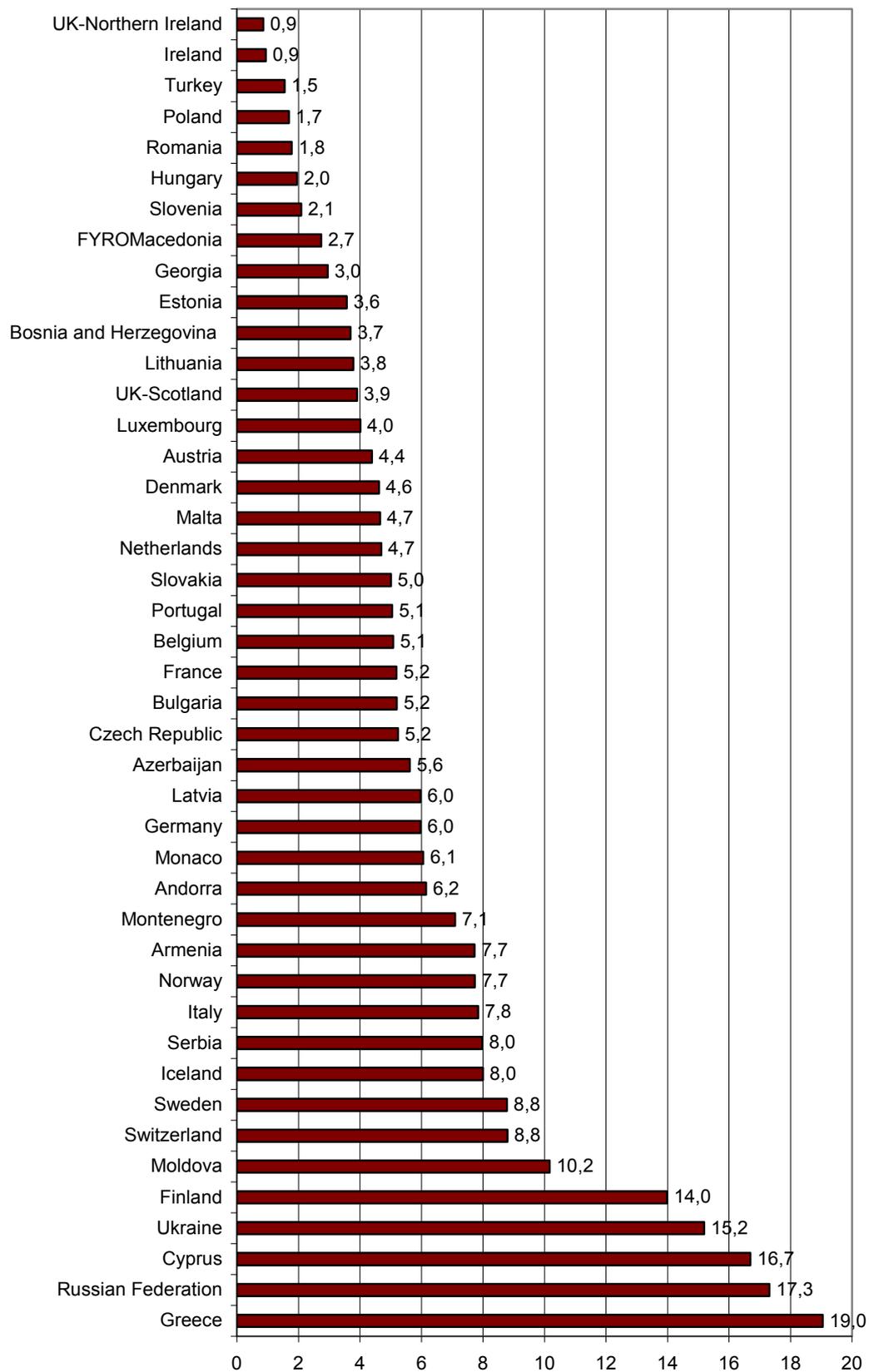
The status of enforcement agents is very variable. In the majority of cases (27 states or entities), an enforcement agent has a public status. This task is given to the judge in **Spain, Croatia** and in **Switzerland**. With the exception of **Spain**, where the task is entrusted to the judge in the Constitution, the competency of the judge in matters concerning the execution of decisions is shared with court bailiffs in **Croatia** and with other enforcement agents in **Switzerland**.

Out of the 47 states or entities, 19 indicated that enforcement agents exercise liberally. In certain countries, bailiffs benefit from a monopoly of decision enforcement in civil matters: **Estonia, Hungary, Latvia, Monaco** and the **Netherlands**.

In certain countries, public and private status co-exists. This is the case in countries where tax collection is the responsibility of state agents (for example debts arising from tax in **Belgium** and in **France**), in countries which have transfers within their organisation, like it is the case in the **Czech Republic**.

The differences in status and missions have consequences on the number of enforcement agents.

**Figure 74. Number of enforcement agents per 100.000 inhabitants in 2006 (Q147)**



### **Required competences and training**

Enforcement agents with good qualifications are vital to achieving the desired results while strictly adhering to the rights of the intervener or of a third party. It is therefore desirable for the enforcement agent to have a law degree which, without being necessarily as demanding as those leading to the function of a judge or a lawyer, should be sufficient for the interested party to get to grips with the various enforcement modalities and to, later on, be able to inform the defendants. This diploma is often supplemented by a practical traineeship.

The majority of countries (34) indicated that initial training or a specific exam was necessary to become an enforcement agent.

**Table 111. Initial training or exam to become an enforcement agent (Q149)**

| YES                |                     | NO                     |  |
|--------------------|---------------------|------------------------|--|
| Albania            | Lithuania           | Andorra                |  |
| Armenia            | Luxembourg          | Bosnia and Herzegovina |  |
| Austria            | Malta               | Croatia                |  |
| Azerbaijan         | Moldova             | Denmark                |  |
| Belgium            | Monaco              | Finland                |  |
| Bulgaria           | Netherlands         | Greece                 |  |
| Cyprus             | Poland              | Ireland                |  |
| Czech Republic     | Portugal            | Montenegro             |  |
| Estonia            | Romania             | Norway                 |  |
| Russian Federation | Slovakia            | Serbia                 |  |
| France             | Slovenia            | Switzerland            |  |
| Germany            | Spain               | Ukraine                |  |
| Georgia            | Sweden              | UK-England and Wales   |  |
| Hungary            | FYROMacedonia       |                        |  |
| Iceland            | Turkey              |                        |  |
| Italy              | UK-Northern Ireland |                        |  |
| Latvia             | UK-Scotland         |                        |  |

**Comment: Switzerland** - an initial training is mandatory only in 9 cantons out of 26.

The other countries often hand over the execution of decisions to staff who have another legal training, either because they are judges (**Bosnia Herzegovina, Croatia, Denmark**) or work under the authority of a judge (**Andorra**), or the execution is entrusted to a public institution (**Azerbaijan, Bulgaria, Greece, Norway**).

In the latter cases, the supervision and control of the execution is carried out differently than in the other countries.

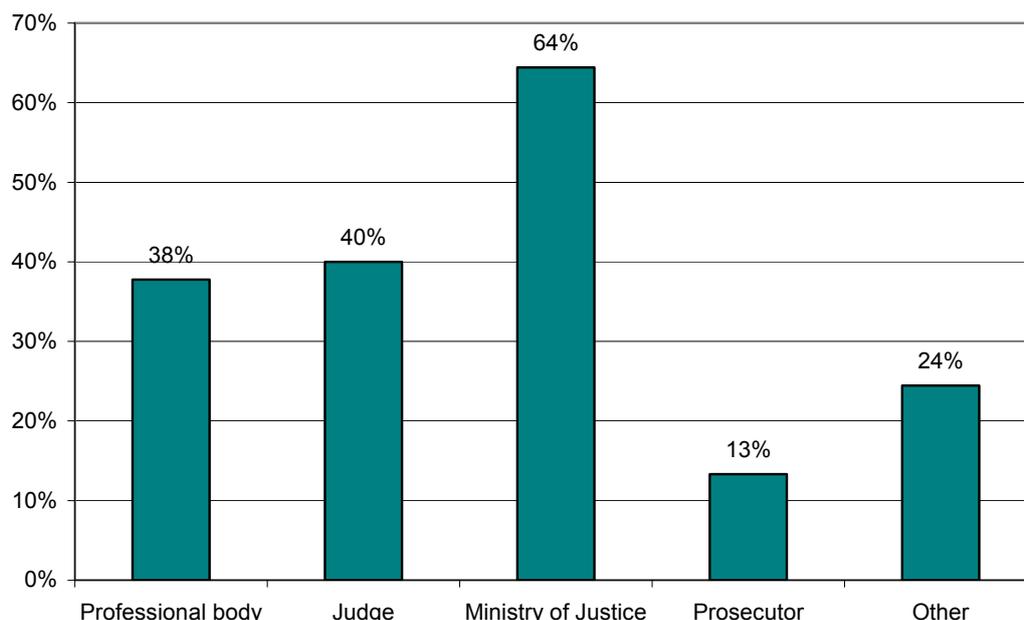
### **The framework for practising as enforcement agents**

In order to guarantee the rights of the defendants, the way and modalities in which the execution of court decisions is done must be controlled. All the countries having replies to question 153 indicated that there is a control system of the activity of the enforcement agent, which can differ according to whether the enforcement agent operates under the status of a public agent (judge, Rechtspfleger, non liberal bailiff) or that of a liberal profession.

The supervision of the activity does not only include looking into the regularity of actions undertaken within the law, but also sometimes what the enforcement agent undertakes of his/her own accord.

The supervisory body is, in most cases, part of a judicial institution. In 21 countries, one notices a stratification of the supervisory bodies. Because of the plurality of the supervisory bodies, the figure below shows a global average rather than one state by state.

**Figure 75. Authority responsible for the control of the enforcement agents (Q154)**



The supervision of enforcement agents is entrusted to:

- the Ministry of Justice in 30 countries, exclusively in 11 countries and jointly in 19 others,
- professional bodies in 17 states, exclusively in **Austria, Moldova, UK-Northern Ireland and UK-Scotland**.
- the judge in 18 countries, exclusively in **Andorra, Bosnia and Herzegovina, Montenegro and Serbia** – this figure is predominant in countries in which the enforcement agent is attached to the court or to a public body; the judge is the authority who decides on whether to proceed with an enforcement act,
- the prosecutor in 6 countries: **Belgium, France, Luxembourg, Monaco, Russian Federation and Turkey** – if a prosecutor acts as a supervisory or controlling body for enforcement agents, he does this together with another body.

More exceptionally, certain countries indicated that the Supreme Court could exercise control (**Cyprus**) or that this power was entrusted to parliamentary commissions (**Sweden**).

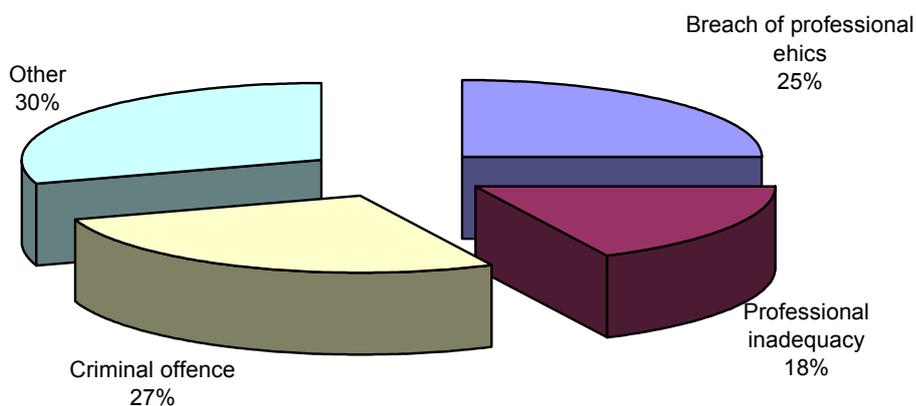
Where there are breaches, the supervisory bodies can begin disciplinary procedures and hand out punishments.

### **Disciplinary procedures and sanctions**

Disciplinary procedures are there to establish and punish breaches in the activity of enforcement agents.

22 countries gave information on question 161 on the nature and number of disciplinary proceedings initiated.

**Figure 76. Distribution of disciplinary proceedings initiated against enforcement agents at the European level in 2006 (Q161)**



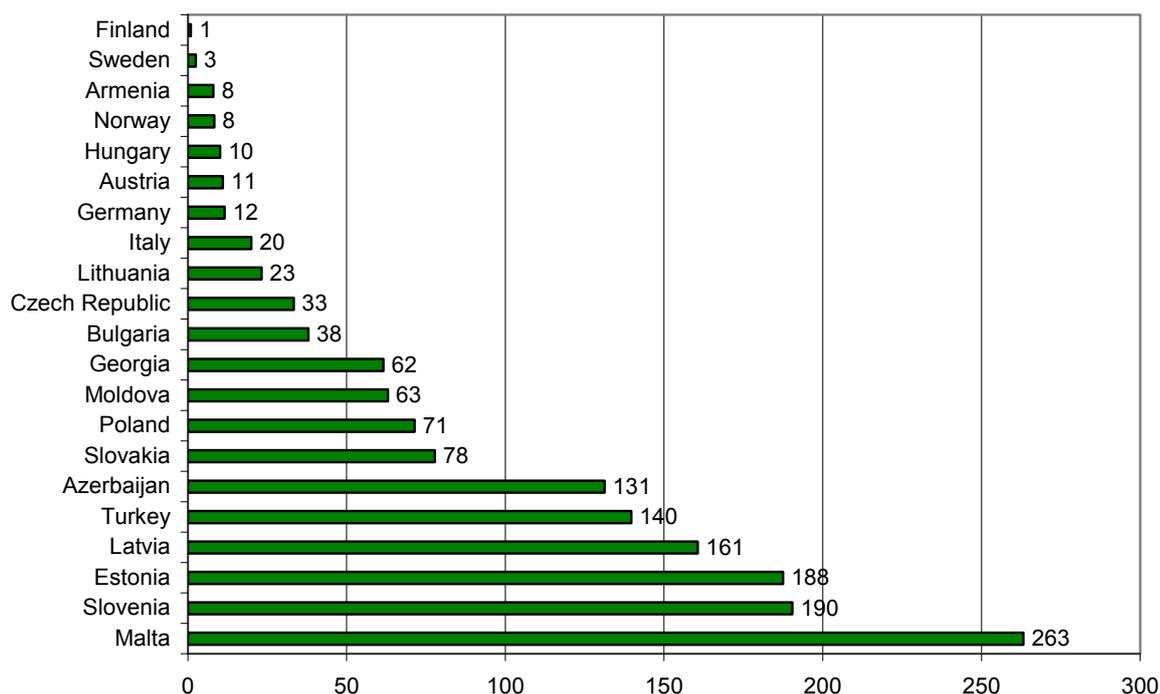
Out of all the countries that replied, 52% of disciplinary procedures were set in motion when an offence was committed (criminal offence: 27 % or breach of professional ethics: 25 %), or professional inadequacy (in 18 % of the cases).

The number of procedures mentioned can be linked to the number of enforcement agents working in a given country.

**Table 112. Number of disciplinary proceedings initiated against enforcement agents per 1000 agents in 2006 (Q161)**

| Country        | Number of disciplinary proceedings initiated | Number of enforcement agents | Number of disciplinary proceedings per 1000 agents |
|----------------|--|------------------------------|--|
| Armenia        | 2  | 249                          | 8  |
| Austria        | 4  | 364                          | 11   |
| Azerbaijan     | 63   | 480                          | 131  |
| Bulgaria       | 15   | 399                          | 38   |
| Czech Republic | 18   | 539                          | 33   |
| Estonia        | 9  | 48                           | 188  |
| Finland        | 1  | 735                          | 1  |
| Georgia        | 8  | 130                          | 62   |
| Germany        | 57   | 4920                         | 12   |
| Hungary        | 2  | 197                          | 10   |
| Italy          | 92   | 4609                         | 20   |
| Latvia         | 22   | 137                          | 161  |
| Lithuania      | 3  | 129                          | 23   |
| Malta          | 5  | 19                           | 263  |
| Moldova        | 23   | 365                          | 63   |
| Norway         | 3  | 362                          | 8  |
| Poland         | 46   | 644                          | 71   |
| Slovakia       | 21   | 270                          | 78   |
| Slovenia       | 8  | 42                           | 190  |
| Sweden         | 2  | 800                          | 3  |
| Switzerland    | 9  | 656                          | 14   |
| Turkey         | 159  | 1138                         | 140  |

**Figure 77. Number of disciplinary proceedings initiated against enforcement agents per 1000 agents in 2006 (Q161)**



With 5 procedures for 19 enforcement agents, **Malta** is well above the average, whereas **Finland**, with 1 procedure for 735 enforcement agents, has the lowest average. It must be noted that a high number of proceedings or sanctions in a given state does not automatically reflect a lack of professionalism among the enforcement agents, as it can also reflect a better system for detecting lacuna, fort complaining and/or a more severe attitude vis-à-vis wrong behaviours.

The table below enables to compare the kind of sanctions given vis-à-vis the number of disciplinary procedures initiated.

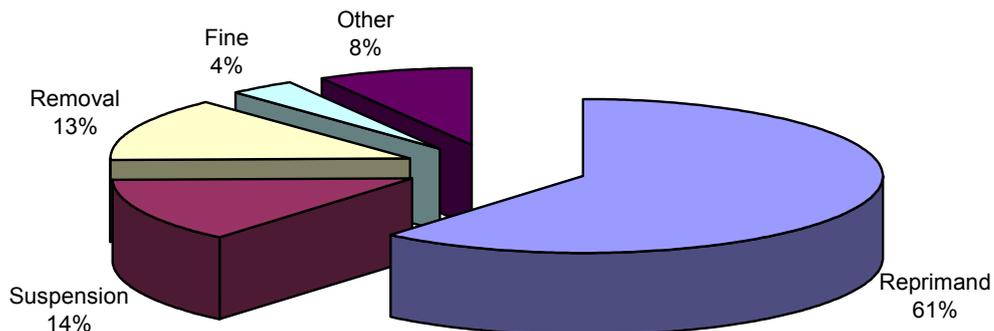
**Table 113. Sanctions pronounced against enforcement agents in 2006 (Q162)**

| Country        | Total number of disciplinary proceedings initiated | Types of sanctions pronounced : |            |           |      |       |
|----------------|--|---------------------------------|------------|-----------|------|-------|
|                |  | Reprimand                       | Suspension | Dismissal | Fine | Other |
| Austria        | 4  | 3                               | 1          |           |      |       |
| Azerbaijan     | 63   | 49                              |            | 46        |      | 7     |
| Bulgaria       | 15   | 2                               |            |           | 5    |       |
| Czech Republic | 18   | 0                               | 0          | 0         | 0    | 0     |
| Estonia        | 9  | 5                               |            |           | 4    |       |
| Finland        | 1  | 1                               |            |           |      |       |
| Georgia        | 8  | 17                              |            |           |      | 13    |
| Germany        | 57   | 14                              | 2          | 2         | 14   |       |
| Greece         |  |                                 |            | 2         |      |       |
| Hungary        | 2  | 1                               |            |           | 1    |       |
| Italy          | 92   | 18                              | 9          | 2         | 4    |       |
| Latvia         | 22   | 4                               | 1          | 6         |      | 11    |
| Lithuania      | 3  |                                 |            | 1         |      | 2     |
| Luxembourg     |  | 0                               | 0          | 0         | 0    | 0     |
| Malta          | 5  | 2                               |            |           |      | 3     |
| Moldova        | 23   | 23                              |            |           |      |       |
| Monaco         |  | 0                               | 0          | 0         | 0    | 0     |
| Norway         | 3  |                                 |            | 3         |      |       |
| Poland         | 46   | 25                              | 1          | 2         | 4    |       |
| Portugal       |  | 61                              | 96         |           | 1    | 8     |
| Slovakia       | 21   | 4                               | 1          | 0         | 4    |       |
| Slovenia       | 8  | 1                               | 1          | 4         |      | 2     |
| Sweden         | 2  | 1                               |            |           |      | 1     |

| Country     | Total number of disciplinary proceedings initiated | Types of sanctions pronounced : |            |           |      |       |
|-------------|--|---------------------------------|------------|-----------|------|-------|
|             |  | Reprimand                       | Suspension | Dismissal | Fine | Other |
| Switzerland | 9  |                                 | 2          | 3         |      | 1     |
| Turkey      | 159  | 44                              | 7          | 2         |      | 29    |

Disciplinary sanctions likely to be inflicted on enforcement agents range from a reprimand or blame to the ban from exercising his/her job, either temporarily (suspension), or definitely (dismissal).

**Figure 78. Distribution of the sanctions pronounced against the enforcement agents at the European level (Q162)**



The figure presents the data of 25 countries

Where there has been non execution of judicial decisions, or it has been dealt with very slowly, the punishment incurred is limited to a reprimand or a fine. This is explained by the opportunity given to the defendant in certain member states to lodge a complaint about the excessive length of the execution, as is the case in **Germany** and thus give rise to compensation, as is the case in **Finland** or in **Sweden**.

**Table 114. Reasons for complaints concerning enforcement procedures – number of responses (Q157)**

|   |    |
|---|----|
| No execution at all   | 12 |
| Non execution of court decisions against public authorities | 4  |
| Lack of information   | 11 |
| Excessive length  | 37 |
| Unlawful practices  | 13 |
| Insufficient supervision                                    | 6  |
| Excessive cost  | 19 |
| Other   | 4  |

### 13.2.2 Efficiency of the enforcement measures

The extent of the efficiency of the enforcement measures implies the determination of a standard allowing to define, according to the case, the result expected (Q155). Out of 46 countries or entities having replied to the question, 29 have indicated that they have quality standards for the executions of judicial decisions. In the case of 15 countries, these standards are directly or indirectly established by the Ministry of Justice, and for 10 countries, by a professional body of enforcement agents and in 3 cases, by the legislative power.

The measure of this efficiency is satisfied both in terms of the timeframe for the enforcement and in terms of cost.

13 countries implement a specific procedure for the execution of decisions given against public authorities: **Austria, Belgium, Bulgaria, France, Germany, Greece, Netherlands, Portugal, Romania, Spain, UK-Northern Ireland, UK-England and Wales, UK-Scotland.**

#### **Enforcement timeframes**

The jurisprudence of the European Court of Human Rights, according to which a judicial decision must be enforced within a reasonable timeframe, has been transposed into the legislation of several member states, namely **Moldova** where there is a general rule requiring that the judicial decision be enforced within a reasonable timeframe while giving the judge objective criteria for determining this timeframe.

It is difficult to determine a foreseeable timeframe for enforcing decisions, as, in a number of countries, the enforcement depends not only on the steps taken by the creditor, but also on the solvency of the debtor.

Out of the 46 countries or entities having replied to question 159, 22 have indicated that they benefit from a rule allowing them to measure the timeframe of the execution procedure in civil matters and 20 countries mentioned the same in decisions given against a public authority. **Andorra** and **Denmark** declared having a rule enabling to measure enforcement timeframes.

The timeframe of notification of parties living in the same jurisdiction as the one dealing with debt recovery served as a basis for question 160.

**Table 115. Timeframe for the notification of a court decision on debt recovery to a person living in the city where the court is sitting (Q160)**

**Between 1 and 5 days:** Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Estonia, France, Georgia, Germany, Iceland, Lithuania, Luxemburg, Malta, Montenegro, Monaco, Russian Federation, Serbia, Switzerland, Turkey, UK-England and Wales

**Between 6 and 10 days:** Cyprus, Finland, Latvia, Moldova, Ukraine

**Between 11 and 30 days:** Bulgaria, Hungary, Monaco, Italy, Norway, Poland, Slovakia, Spain, Sweden, UK-Scotland, UK-Northern Ireland

**More than 30 days:** Czech Republic, Greece.

**Comment: Monaco** – the clerk office has 1 to 5 days to notify a decision to the parties and the bailiff has between 11 and 30 days.

When comparing the same figures for 2004 and 2006 from the table above, one can see the progress made in the execution timeframes by the following countries: **Azerbaijan, Moldova** and **Hungary**.

### 13.2.3 Cost of enforcing decisions

In matters other than criminal ones, it is generally up to the creditor to gauge the opportunity of enforcing a decision with respect to the cost of the enforcement. With the exception of: **Andorra, Denmark, Greece, Lithuania, Ukraine, Turkey**, 41 countries have a transparent view of the foreseeable enforcement costs.

The case of **Andorra** is untypical, as the enforcement costs are directly borne by the state. The execution of decisions is neutral for the creditor, as the enforcement costs are generally borne by the debtor and, in the case of non enforcement, in particular for insolvency, borne by the tax payer.

The enforcement costs are made of enforcement expenses stricto sensu (cost of the procedures) and of the fee of the enforcement agent, which can depend on the result obtained. In question 152, countries were invited to indicate whether the fees were regulated by law or freely negotiated between the enforcement agent and the creditor. The **Netherlands** and **Romania** were the only ones to indicate that the fees are freely negotiated. This question is very important, as, whether in private or mixed systems, enforcement agents are paid in part or in total by enforcement fees, or by bonuses resulting thereof. It must be noted in addition that in **Romania**, the fees are only freely negotiated within a certain bandwidth (containing maximum and minimum fees) which is determined by the law.

In the great majority of states, procedure costs are regulated by the state. This allows a relevant supervision of the cost of the act, but does not permit the check its expediency. It therefore often comes with the possibility of lodging a complaint against the enforcement agent and/or to allow the judge whether to allow the unjustified costs to be paid by the enforcement agent.

### 13.3 Enforcement of judicial decision in criminal matters

The CEPEJ has deliberately not included the prison system in its evaluation of justice systems, which is addressed by other bodies of the Council of Europe (and in particular the European Committee for the Prevention of Torture – CPT). Therefore this chapter is limited to a few data directly in line with the functioning of courts.

The enforcement of decisions in criminal matters is, in almost all the member states, in the hands of a public structure. However, there is great disparity within the competent authorities.

In 21 states, the execution is entrusted to a judge specifically in charge of the enforcement of decisions in criminal matters. Another body, other than the judge, may intervene: prosecutor (**Germany, France, Italy, Monaco** and **Turkey**), prison administration (**Belgium, Moldova, Monaco, Denmark**) or a specialised entity from the Ministry of Justice (**Azerbaijan, Croatia**).

When the judge is not competent to deal with the enforcement, it can be entrusted to the prosecutor (**Belgium, Lithuania, Luxemburg, Poland**), to the Ministry of Justice (**Armenia, Bulgaria, Finland, Georgia, Latvia, Norway, Slovakia, Ukraine**), to the prison administration (**Belgium, Denmark, Iceland**), or to a specialised public enforcement agency (**Russian Federation**) or to the police (**Ireland, Malta**).

**Cyprus** indicated that the enforcement of decisions in criminal matters is dealt with by private firms nominated by the Ministry of Justice.

**Table 116. Authority responsible for the execution of decisions in criminal matters (Q163)**

| Country                | Judge | Other authority | Authority                            |
|------------------------|-------|-----------------|--------------------------------------|
| Albania                |       | Yes             | Prosecutor                           |
| Andorra                | Yes   |                 | Rapporteur judge                     |
| Armenia                |       | Yes             | Body of the Ministry of Justice      |
| Austria                | Yes   |                 | Judge                                |
| Azerbaijan             | Yes   | Yes             | Body of the Ministry of Justice      |
| Belgium                |       | Yes             | Prosecutor and prison administration |
| Bosnia and Herzegovina | Yes   |                 | Judge                                |
| Bulgaria               |       | Yes             | Body of the Ministry of Justice      |
| Croatia                | Yes   | Yes             | Body of the Ministry of Justice      |
| Cyprus                 |       | Yes             | Private body                         |
| Czech Republic         | Yes   |                 | Judge                                |
| Denmark                |       |                 | Prison administration                |
| Spain                  | Yes   |                 | Judge and prison administration      |
| Estonia                | Yes   |                 |                                      |

| Country            | Judge | Other authority | Authority                                |
|--------------------|-------|-----------------|--|
| Finland            |       | Yes             | Body of the Ministry of Justice          |
| France             | Yes   | Yes             | Prosecutor                               |
| Georgia            |       | Yes             | Body of the Ministry of Justice          |
| Germany            | Yes   | Yes             | Judge and prosecutor                     |
| Greece             | Yes   |                 | Judge                                    |
| Hungary            | Yes   |                 | Enforcement judge                        |
| Ireland            |       | Yes             | Police and prison authorities            |
| Iceland            |       | Yes             | Prison administration                    |
| Italy              | Yes   | Yes             | Prosecutor                               |
| Latvia             |       | Yes             | Ministry of Justice                      |
| Lithuania          |       | Yes             | Prosecutor                               |
| Luxembourg         |       | Yes             | Prosecutor                               |
| Malta              |       | Yes             | Sheriff                                  |
| Moldova            | Yes   | Yes             |  |
| Monaco             | Yes   | Yes             | Prison administration                    |
| Montenegro         | Yes   |                 |  |
| Norway             |       | Yes             | Public prosecutor                        |
| Netherlands        |       | Yes             | Prosecutor                               |
| Poland             | Yes   |                 | Enforcement agent                        |
| Portugal           | Yes   |                 | Judge                                    |
| Russian Federation |       | Yes             | Federal enforcement agency               |
| Slovakia           |       | Yes             | Probation service                        |
| Slovenia           | Yes   |                 | Judge                                    |
| Sweden             |       | Yes             | The Swedish Prison and Probation Service |
| FYROMacedonia      | Yes   |                 | Enforcement judge                        |
| Turkey             | Yes   | Yes             | Prosecutor                               |
| Ukraine            |       | Yes             | Ministry of Justice                      |
| UK-Scotland        |       |                 | Sheriffs                                 |

It should be noted that only 17 countries or entities have performed studies on the effective fine collection imposed by a criminal jurisdiction (Q164): **Bulgaria, Finland, France, Hungary, Ireland, Latvia, Malta, Moldova, Montenegro, Netherlands, Poland, Norway, Slovenia, Sweden, UK-Scotland, UK-Northern Ireland, UK-England and Wales.**

#### 13.4 Trends and conclusions

The effective execution of court decisions is an integral part of Article 6 of the European Convention of Human Rights and constitutes a pertinent indicator of the smooth functioning of the judicial system.

The status of enforcement agents is very variable in the different member states. Judges can play a role in the enforcement procedure, but in most cases their role is limited to the supervision of this procedure.

It is essential that the enforcement agents have a reliable and suitable training and an adequate qualification to allow the person concerned to efficiently and reasonably apply enforcement proceedings, while safeguarding the fundamental rights and individual freedoms.

It is therefore logical that the control of the activity concerns not only the regularity of the proceedings undertaken according to the law, but also the opportunity of the acts taken by the enforcement agent.

## 14. The notaries

### 14.1 Introduction

Notary is a legal official who has been entrusted, by public authority, to ensure the freedom of consent and the protection of rightful interests of individuals. The signature of the notary confers to the juridical acts the character of authenticity. Furthermore notaries have duties that exceed the simple authentication of acts, often dealing with citizens advising about different possibilities of adopting acts and their juridical consequences.

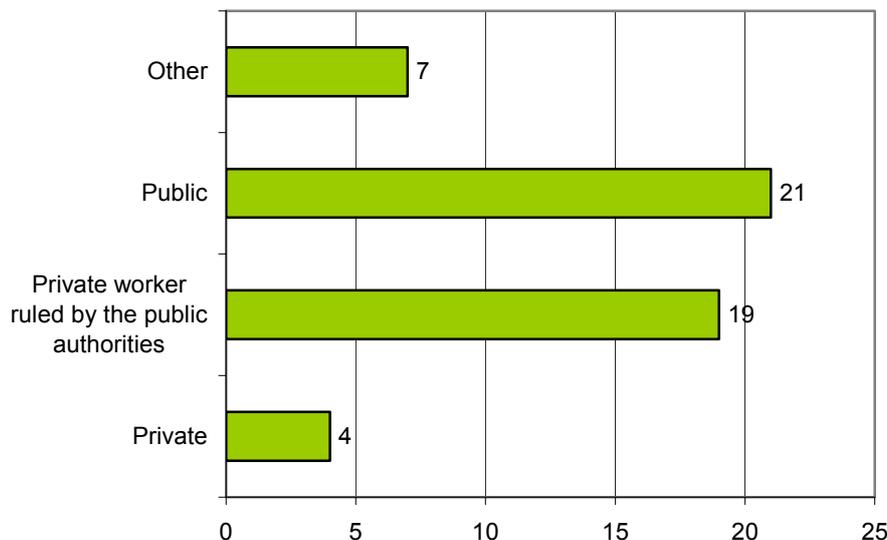
Guarantor of legal security, the notary has an important role to contribute to the limitation of litigations between parties. In this function, he/she is a major actor of preventive justice. It is under this aspect that the CEPEJ has addressed the profession, being aware that notaries, respecting countries specificities, can intervene in other fields, such as in the social or economic fields.

Notary is generally in charge of receiving acts, acknowledge signatures and affirmations, administer oaths, verify legal documents and, in some countries, issue subpoenas in lawsuits or execute courts decisions.

### 14.2 Status and functions

Notary's office is widely spread in member countries, and only **Serbia** and **Sweden** noticed not having this office. Beyond this first consideration it has to be said that different status of notary can coexist in member States. In **Portugal**, **Switzerland** and **Ukraine** they can have a double status (public one or private workers). In the **Russian Federation**, the notaries can fulfil their duties as public, private or private worker ruled by the public authorities.

**Figure 79. Statute of the notaries (Q166) – number of replies**



In the most part of countries, notaries have a public status (21 replies), followed by a private worker status ruled by public authorities (19 replies). They are operating in a strictly private status only in: **Cyprus**, **Slovenia** and **UK-Northern Ireland**.

Like in other sectors, the functions of notaries may vary considerably according to different countries. It can be noticed that countries of **continental Europe** have a different approach on the office of notaries comparing to **UK-England and Wales** where there are *general public notaries* who exercise a full time service and *scrivener notaries* who exercise this profession subsidiary of that of solicitor.

**Table 117. Status and number of notaries in 2006 (Q 166)**

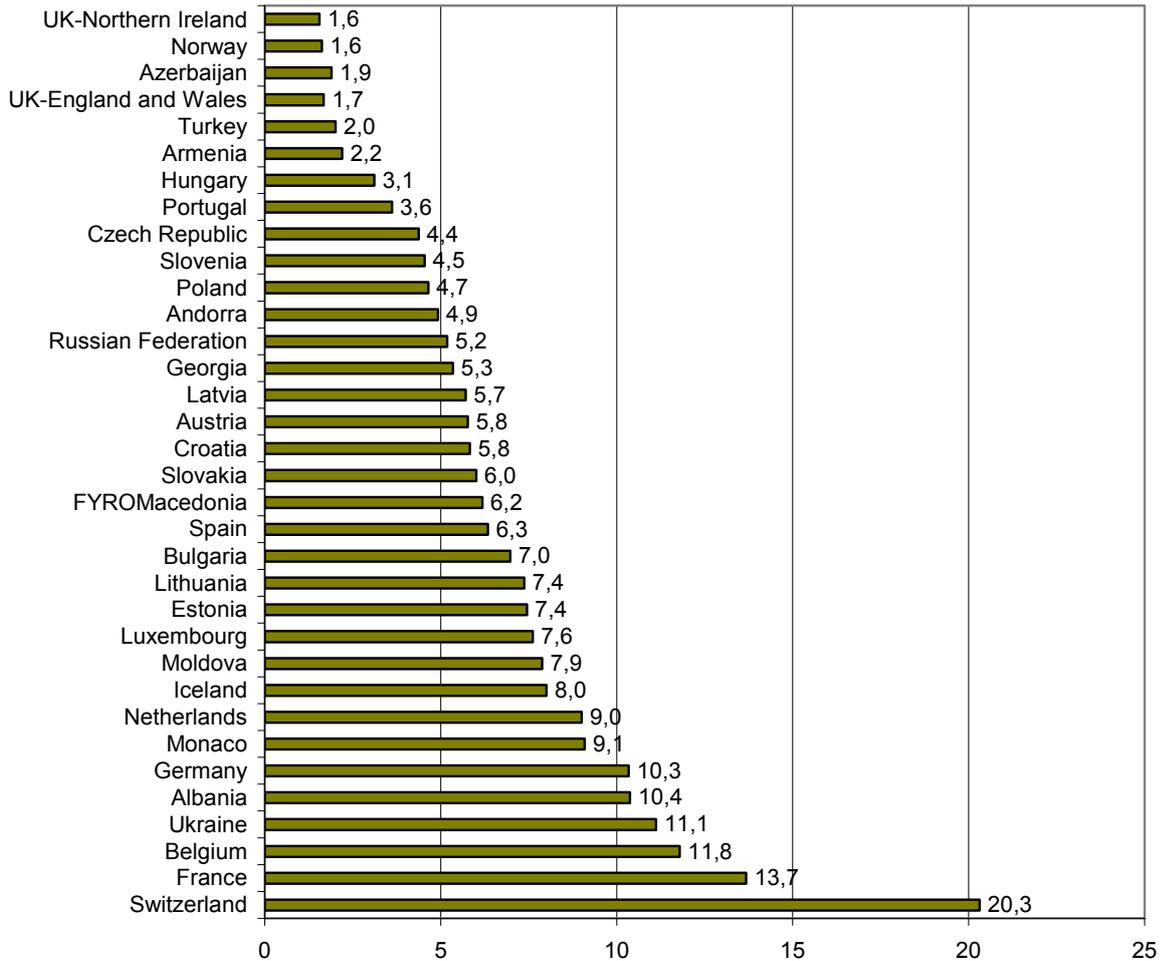
| Country                | Status and number of notaries |    |  |      |        |      |       |      |
|------------------------|-------------------------------|----|--|------|--------|------|-------|------|
|                        | Private                       |    | Private worker ruled by the public authorities |      | Public |      | Other |      |
| Albania                |                               |    | Yes  | 327  |        |      |       |      |
| Andorra                |                               |    |  |      | Yes    | 4    |       |      |
| Armenia                |                               |    | Yes  | 71   |        |      |       |      |
| Austria                |                               |    | Yes  | 478  |        |      |       |      |
| Azerbaijan             |                               |    |  |      | Yes    | 159  |       |      |
| Belgium                |                               |    |  |      | Yes    | 1239 |       |      |
| Bosnia and Herzegovina |                               |    |  |      | Yes    |      |       |      |
| Bulgaria               |                               |    |  |      |        |      | Yes   | 526  |
| Croatia                |                               |    | Yes  | 259  |        |      |       |      |
| Cyprus                 | Yes                           |    |  |      |        |      |       |      |
| Czech Republic         |                               |    | Yes  | 450  |        |      |       |      |
| Denmark                |                               |    |  |      | Yes    |      |       |      |
| Estonia                |                               |    | Yes  | 100  |        |      |       |      |
| Finland                |                               |    |  |      | Yes    |      |       |      |
| France                 |                               |    | Yes  | 8645 |        |      |       |      |
| Georgia                |                               |    |  |      |        |      | Yes   | 235  |
| Germany                |                               |    |  |      | Yes    | 8513 |       |      |
| Greece                 |                               |    | Yes  |      |        |      |       |      |
| Hungary                |                               |    | Yes  | 313  |        |      |       |      |
| Iceland                |                               |    |  |      | Yes    | 24   |       |      |
| Ireland                |                               |    |  |      | Yes    |      |       |      |
| Italy                  |                               |    |  |      |        |      | Yes   |      |
| Latvia                 |                               |    |  |      | Yes    | 131  |       |      |
| Lithuania              |                               |    | Yes  | 251  |        |      |       |      |
| Luxembourg             |                               |    |  |      | Yes    | 36   |       |      |
| Malta                  |                               |    |  |      | Yes    |      |       |      |
| Moldova                |                               |    |  |      | Yes    | 283  |       |      |
| Monaco                 |                               |    | Yes  | 3    |        |      |       |      |
| Montenegro             |                               |    |  |      | Yes    |      |       |      |
| Netherlands            |                               |    | Yes  | 1473 |        |      |       |      |
| Norway                 |                               |    |  |      | Yes    | 76   |       |      |
| Poland                 |                               |    |  |      |        |      | Yes   | 1773 |
| Portugal               |                               |    | Yes  | 351  | Yes    | 31   |       |      |
| Romania                |                               |    | Yes  |      |        |      |       |      |
| Russian Federation     | Yes                           |    | Yes  | 7226 | Yes    | 139  | Yes   |      |
| Slovakia               |                               |    | Yes  | 324  |        |      |       |      |
| Slovenia               | Yes                           | 91 |  |      |        |      |       |      |
| Spain                  |                               |    |  |      |        |      | Yes   | 2775 |
| Switzerland            |                               |    | Yes  | 896  | Yes    | 619  |       |      |
| FYROMacedonia          |                               |    | Yes  | 126  |        |      |       |      |
| Turkey                 |                               |    |  |      |        |      | Yes   | 1473 |
| Ukraine                |                               |    | Yes  | 3897 | Yes    | 1288 |       |      |
| UK-Northern Ireland    | Yes                           | 27 |  |      |        |      |       |      |
| UK-Scotland            |                               |    |  |      | Yes    |      |       |      |
| UK-England and Wales   |                               |    |  |      | Yes    | 900  |       |      |

**Table 118. Number of notaries per 100 000 inhabitants in 2006 (Q166)**

| Country              | Number of notaries | Number of notaries per 100 000 inhabitants |
|----------------------|--------------------|--|
| Albania              | 327                | 10,4                                       |
| Andorra              | 4                  | 4,9  |
| Armenia              | 71                 | 2,2  |
| Austria              | 478                | 5,8  |
| Azerbaijan           | 159                | 1,9  |
| Belgium              | 1 239              | 11,8                                       |
| Bulgaria             | 536                | 7,0  |
| Croatia              | 259                | 5,8  |
| Czech Republic       | 450                | 4,4  |
| Estonia              | 100                | 7,4  |
| France               | 8 645              | 13,7                                       |
| Georgia              | 235                | 5,3  |
| Germany              | 8 513              | 10,3                                       |
| Hungary              | 313                | 3,1  |
| Iceland              | 24                 | 8,0  |
| Latvia               | 131                | 5,7  |
| Lithuania            | 251                | 7,4  |
| Luxembourg           | 36                 | 7,6  |
| Moldova              | 283                | 7,9  |
| Monaco               | 3                  | 9,1  |
| Netherlands          | 1473               | 9,0  |
| Norway               | 76                 | 1,6  |
| Poland               | 1 773              | 4,7  |
| Portugal             | 382                | 3,6  |
| Russian Federation   | 7 365              | 5,2  |
| Slovakia             | 324                | 6,0  |
| Slovenia             | 91                 | 4,5  |
| Spain                | 27                 | 6,3  |
| Switzerland          | 1 515              | 20,3                                       |
| FYROMacedonia        | 126                | 6,2  |
| Turkey               | 1 475              | 2,0  |
| Ukraine              | 5 185              | 11,1                                       |
| UK-Northern Ireland  | 27                 | 1,6  |
| UK-England and Wales | 900                | 1,7  |

**Comment: Switzerland** - has the highest number of notaries per 100.000 inhabitants. However it must be noted that in this country it is (mostly) not a full time profession. Lawyers may combine their work with activities as a notary.

**Figure 80. Number of notaries per 100 000 inhabitants in 2006**



The statutory differences are not without consequences to the competences allocated to the notaries. Competences of the **23717** notaries decline, in the majority of the member states, around the authentication and the certification of acts (41 states) and the juridical advice (29 states). This last domain of activity is particularly developed in **UK-England and Wales**, since scrivener notaries exercise the profession of lawyer at the same time.

**Figure 81. The role of the notaries – number of countries (Q167)**



The notary plays a role in civil procedure in 27 states and benefits from other competences in 17 countries, notably in successions: **Austria, France, Italy, Spain and Poland**, and in protection of promissory note in

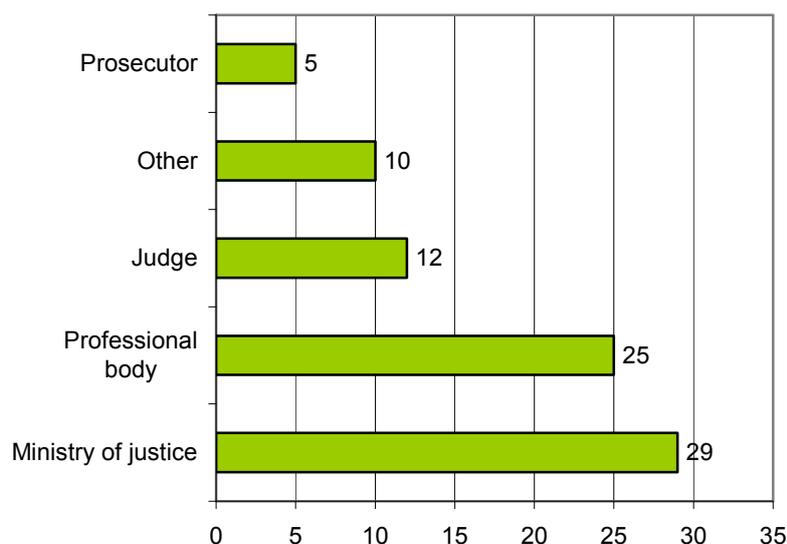
**Norway.** He also constitutes a privileged point of access in relationships between the citizens and the state or private bodies in **Estonia**. In 41 countries, excepting **Armenia, Georgia, Norway** and **Poland**, the notary's role is to authenticate the acts and documents.

### 14.3 Supervision of the profession of notary

By exercise of its prerogatives, the intervention of the notary is a guarantee of juridical security. It is therefore logical that the institution acquires instruments of check to guarantee the convincing force of notarial acts.

All the countries concerned have a system of supervision and control of the notaries' activity. This control is exercised before the nomination and during the exercise of the profession by inspections.

**Figure 82. Authority competent for the supervision and control of the notaries – number of responses (Q169)**



The control of the profession is often jointly exercised by several authorities, combining a control mechanism by peers with supervision by the Ministry of Justice and/or a judicial authority. It should be mentioned that the Ministry of Justice is the authority competent for the supervision in 29 countries, followed by a professional body (in 25 countries). The judge exercises this competence in 12 countries as the prosecutor in 5 countries only.

**Table 119. Authorities responsible for the control and supervision of the notaries (Q169)**

| Country                | The authority responsible is: |       |                     |            |                      |
|------------------------|-------------------------------|-------|---------------------|------------|----------------------|
|                        | Professional body             | Judge | Ministry of Justice | Prosecutor | Other                |
| Albania                |                               |       |                     |            |                      |
| Andorra                | Yes                           | Yes   |                     | Yes        |                      |
| Armenia                |                               |       | Yes                 |            |                      |
| Austria                | Yes                           | Yes   | Yes                 |            |                      |
| Azerbaijan             |                               |       | Yes                 |            |                      |
| Belgium                | Yes                           |       |                     | Yes        |                      |
| Bosnia and Herzegovina | Yes                           |       | Yes                 |            |                      |
| Bulgaria               | Yes                           |       | Yes                 |            |                      |
| Croatia                | Yes                           |       | Yes                 |            |                      |
| Cyprus                 |                               |       |                     |            | Minister of Interior |

| Country              | The authority responsible is: |       |                     |            |   |
|----------------------|-------------------------------|-------|---------------------|------------|---|
|                      | Professional body             | Judge | Ministry of Justice | Prosecutor | Other   |
| Czech Republic       | Yes                           | Yes   | Yes                 |            |   |
| Denmark              |                               | Yes   |                     |            | Local court president   |
| Estonia              | Yes                           |       | Yes                 |            |   |
| Finland              |                               |       | Yes                 |            | Minister of Interior  |
| France               | Yes                           | Yes   |                     |            |   |
| Georgia              |                               |       | Yes                 |            |   |
| Germany              | Yes                           |       | Yes                 |            |   |
| Greece               |                               |       |                     | Yes        |   |
| Hungary              | Yes                           | Yes   | Yes                 |            |   |
| Iceland              |                               |       | Yes                 |            |   |
| Ireland              |                               |       |                     |            | The Chief Justice   |
| Italy                |                               |       | Yes                 |            |   |
| Latvia               | Yes                           |       | Yes                 |            | Regional Courts   |
| Lithuania            | Yes                           | Yes   | Yes                 |            |   |
| Luxembourg           | Yes                           |       | Yes                 | Yes        | <i>Administration de l'Enregistrement et des Domaines</i>       |
| Malta                | Yes                           |       |                     |            |   |
| Moldova              |                               | Yes   | Yes                 |            |   |
| Monaco               |                               |       |                     |            | Commission of Control (5 members elected for their competences) |
| Montenegro           |                               |       | Yes                 |            | President of the court  |
| Netherlands          | Yes                           |       | Yes                 |            |   |
| Norway               |                               |       |                     |            | National Court Administration                                   |
| Poland               | Yes                           | Yes   | Yes                 |            |   |
| Portugal             | Yes                           |       | Yes                 |            |   |
| Romania              | Yes                           | Yes   | Yes                 |            |   |
| Russian Federation   | Yes                           |       |                     |            | Federal registration office                                     |
| Slovakia             |                               |       | Yes                 |            |   |
| Slovenia             | Yes                           | Yes   | Yes                 |            |   |
| Spain                |                               |       | Yes                 |            |   |
| Switzerland          | Yes                           | Yes   |                     |            |   |
| FYROMacedonia        |                               |       | Yes                 |            |   |
| Turkey               | Yes                           |       | Yes                 | Yes        |   |
| Ukraine              |                               |       | Yes                 |            |   |
| UK-Northern Ireland  |                               | Yes   |                     |            |   |
| UK-Scotland          | Yes                           |       |                     |            |   |
| UK-England and Wales | Yes                           |       |                     |            |   |

## 15. Judicial Reforms

### 15.1 General reforms

In the chapter on courts an overview has already been given of the countries which have reduced or increased the number of courts or court locations. In this chapter the judicial reforms are described more in details, based on the last question of the Evaluation Scheme: *Can you provide information on the current debate in your country regarding the functioning of justice? Are there reforms foreseen?*

Looking at the replies to this question, most of the reforms are related to *changes in formal and procedural laws* (civil, criminal and administrative law). In 19 countries, discussions, amendments or introduction of new (procedural) laws are mentioned. Organisational changes in the judiciary and modifications in the statute of judges are (mostly) based on changes in the constitution, *specific laws on courts* or *laws on councils for the Judiciary*; such changes have been described in 8 countries. Sometimes these changes are related to the introduction of new administrative courts (**Armenia**) or the modifications in the competences of a Council for the Judiciary (**Azerbaijan, Georgia, Moldova and Serbia**).

These changes in laws on courts and councils for the judiciary may also be a part of *integral reform plans or strategies*. For example, in **Croatia**, a comprehensive approach is applied aiming at increasing the independence and efficiency of the judiciary. Various activities may be included into the plans, such as a better organisation of the courts, improved unification of case law, a reduction of the backlog of cases, etc. In **Bulgaria** (introduction of an Advisory Council on Penal Policy), **France** (changes in the judicial map), **Georgia** (implementation of a judicial reform strategy), **Montenegro, Slovenia and Ukraine** general reform plans are also implemented.

Changes may be focused on *structural measures*, for example in reducing the number of courts, changing the competences of courts or increasing the (*court*) *capacity* (in terms of judges, prosecutors and staff). For example **Denmark** (reduction of the number of district courts), **Georgia, the Netherlands and Italy** have reduced the number of courts or are discussing plans for reduction (**Italy**: in the field of the judges of the peace). On the other side, there are also examples where new courts are set up: **Luxembourg** (two criminal chambers), **Switzerland** (two new federal courts) and **Slovakia** (9 new district courts). In **UK-England and Wales** the Magistrates' Courts have become part of Her Majesty's Court Service. In **Azerbaijan, Hungary and Spain** the capacity of courts and prosecution agencies are strengthened by recruiting more judges, prosecutors and staff. It must also be mentioned that in **Azerbaijan** the number of appellate courts and economic courts has been increased with the aim of improving access to justice.

Increasing the efficiency of the operation of courts and reducing the number of backlog of cases can be reflected in plans for introducing *new management principles* in the courts, *other working methods* or *backlog reduction measures*. For example in "**the former Yugoslav Republic of Macedonia**" a system has been introduced for the objective allocation and management of cases. In **Germany**, over the last years, many activities have been concentrated on the simplification of the court organisation, new working methods, a widening of powers for court staff, etc. In **Hungary** more powers to the court staff are given as well. In **Croatia, Portugal and Slovenia** the reform plans aim specifically at reducing backlog of cases.

Since information - and communication technology - is one of the solutions for more efficiency and quality, many countries reported the introduction of new computer systems or the automation of registers. Examples are: automatic recording systems for hearings (**Georgia**), a system for a random distribution of cases (**Latvia**), databases for judicial decisions (**Greece**), electronic court files and exchange of information (**Poland and Portugal**), court scheduling systems (**Spain**), case management systems (**UK-England and Wales, Montenegro**), systems for the collection of court statistics (**Slovenia**) and electronic registers (**Hungary, Moldova and Portugal**).

With respect to the *enforcement of judicial decisions*, specific plans are presented too. For example in "**the former Yugoslav Republic of Macedonia**" an Institute for Enforcement Agents is being developed. In **Ukraine**, a law on enforcement has been introduced and in **UK-England and Wales** measures are taken to strengthen the enforcement process. Countries where measures in this field are also underway are: **Andorra, Armenia and Slovenia**.

Regarding the independence and the *statute of judges and prosecutors* countries provide various examples in this field. Measures can vary from: enhancement of the specialisation of judges ("**the former Yugoslav Republic of Macedonia**"), raise in salaries of judges and/or prosecutors (**Armenia, Georgia**), introduction

or modifications of codes of ethics (**Georgia** and **Latvia**), selection and recruitment of judges (**Andorra, Italy, Poland, UK-England and Wales**), mobility (**Slovenia**), disciplinary measures (**Moldova**), creation of a union for judges and prosecutors (**Turkey**).

One of the methods to reduce the workload of the courts or to introduce other ways of settlement of disputes (ADR) is often mentioned in reform programmes. Countries which describe this in their comments are: **Andorra, Bosnia and Herzegovina, Croatia, Germany, Montenegro, Portugal** and **Spain** and “**the former Yugoslav Republic of Macedonia**”.

With respect to the private legal professionals, *lawyers* and *notaries* reforms are described in **Moldova** and **Ukraine** (laws on statutes for lawyers and Bar Associations), as well as in **Bosnia and Herzegovina** and **Turkey** (introduction of amendments in the law on public notaries).

Reforms in the field of *court fees* and/or *legal aid* can be found in: **Bosnia and Herzegovina** (increase of the court fees), **Slovenia** (modifications of the fees), **Georgia** (new law on Legal Aid) and **Ukraine** (plans for the introduction of a system for free legal aid).

A more detailed overview is given below of the different judicial reforms.

## 15.2 Overview

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| <p>Law reforms (civil, criminal, administrative laws)</p> | <p><b>Croatia:</b> process of drafting the new for aligning administrative disputes with the requirements of the <i>acquis communautaire</i>, as well as measures to boost the efficiency and modernisation of administrative law justice system.</p> <p><b>FYROMacedonia:</b> amendments in civil and criminal court proceedings. Strategy for reform of criminal legislation.</p> <p><b>Andorra:</b> small claims proceeding.</p> <p><b>Austria:</b> new law on criminal procedure: the preliminary procedure is now led by a public prosecutor (instead of an investigating judge).</p> <p><b>Bosnia and Herzegovina:</b> changes in criminal, civil and enforcement legislation.</p> <p><b>Bulgaria:</b> introduction of the new Code of Civil Procedure (July 2007). Draft law on amendments to the Code of Penal Procedure, including improvements in the regulations of pre-trial proceedings. Draft Administrative Penal Code.</p> <p><b>Czech Republic:</b> New Insolvency Act (January 2008) with the introduction of personal bankruptcy charge.</p> <p><b>Denmark:</b> new Rule of Class action (providing extending possibilities for handling disputes concerning a large number of uniform claims).</p> <p><b>Estonia:</b> new Code of Civil Procedure (January 2006), especially to expedite small claims proceedings.</p> <p><b>Germany:</b> changes in the Code of Civil Procedure (EGZPO), especially to give the Länder the possibility to transfer certain civil disputes to mediation.</p> <p><b>Greece:</b> a draft law has been prepared on the acceleration of administrative trials.</p> <p><b>Iceland:</b> a new Code of Criminal Procedure is discussed in Parliament.</p> <p><b>Monaco:</b> changes in the law on divorce proceedings and modifications in the Criminal Procedural Law.</p> <p><b>Montenegro:</b> changes are foreseen for the Criminal Code, the Criminal Procedural Code and a new Law on management of seized property gained by the perpetration of criminal offences.</p> <p><b>Netherlands:</b> the public prosecutor will have the possibility to give a sanction to an offender for the majority of crimes. Only in situations where the defendant does not agree with the sanction the case will be transferred to the court.</p> <p><b>Norway:</b> a new Dispute Act has entered force in 2008. The legislation is aiming at a renewed and modern way of handling of most civil cases; judges are expected to play a more active role. In 2009 a revision of the Penal Code is foreseen.</p> <p><b>Portugal:</b> a dematerialization of judicial procedures will take place.</p> <p><b>Romania:</b> drafts of new Civil Procedural Codes and Criminal Procedural Code.</p> <p><b>Slovakia:</b> in 2008 amendments to the Code of Civil Procedure, Code of Criminal Procedure and Criminal Code.</p> |
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|  | <p><b>Sweden:</b> amendments of the Code of Judicial Procedure (November 2008) will modernize the process of the general courts, including the use of videoconferencing. The district courts will have the possibility to decide in cases without holding a main hearing when there is no reason to impose another sanction than a fine.</p> <p><b>Switzerland:</b> a uniform national criminal and civil procedure will be introduced.</p> <p><b>Turkey:</b> amendments are discussed on the Code of Civil Procedure, the Procedure of Administrative Justice Act, the Draft Act on Mediation in Civil Conflicts, draft law on the protection of personal data, draft Commercial law and a draft law on Obligations.</p>   |
| Reforms on law on courts, judges and Judicial councils | <p><b>Armenia:</b> reform of the Judicial Code (implementation in January 2008). A new organization structure has been introduced including the creation of an administrative court and courts of general jurisdiction, civil and criminal courts. A Law on Judicial Service (2006) has entered into force (for increasing the efficiency of the work delivered by judicial services). As a part of this law the salaries has been increased.</p> <p><b>Azerbaijan:</b> As a result of joint work with experts of the Council of Europe the Law "On courts and judges" has been completely revised and a new Law "On Judicial Legal Council" was adopted.</p> <p><b>Croatia:</b> to ensure a uniform procedure in the appointment of judges, amendments to the Courts Act are in discussion at the Parliament.</p> <p><b>Finland:</b> Reduction of the number of District Courts from 58 to 27 in 2010.</p> <p><b>Finland, Denmark, Norway and Sweden:</b> moves of land registers out of the court system to national land survey authorities or specialised courts (rationalisation of the functions of authorities, centralisation and digitalisation).</p> <p><b>Georgia:</b> changes in the law on the High Council for the Judiciary: the President of the Republic is deprived of the right to appoint or dismiss judges and does not chair the Council anymore. Amendments on the Law on Disciplinary administration of justice and disciplinary responsibilities of judges of common courts. Introduction of a new Law on Rules of communication with judges of general courts.</p> <p><b>Latvia:</b> a possible establishment of a Council for the Judiciary is under discussed.</p> <p><b>Moldova:</b> the Law on the Council for the Judiciary has been changed (competences).</p> <p><b>Montenegro:</b> modifications of the Law on Courts and the Law on State Prosecution Office.</p> <p><b>Serbia:</b> as a part of judicial reforms several laws will be changed (on the organisation and competence of courts, the election and termination of services of judges and court presidents, the High Judicial Council, election and termination of office of the public prosecutors and the State Prosecutors' Council).</p> <p><b>Slovakia:</b> amendments of the Act on Judges and the Act on courts.</p> <p><b>Turkey:</b> draft acts on the amendment of the Law of Court of Cassation, amendment of the Law of organisation and functions of the Ministry of Justice and a draft law on the Union of Turkish judges and prosecutors.</p> |
| Judicial schools and training                          | <p><b>Azerbaijan:</b> a Justice Academy has been established to train all representatives of the legal profession (judges, lawyers, prosecutors, justice officials, employees of the legal departments of other state authorities and etc.).</p> <p><b>Croatia:</b> the Judicial Academy of the Ministry of Justice was established in 2004.</p> <p><b>FYROMacedonia:</b> establishment of an Academy for training of judges and prosecutors.</p> <p><b>Armenia:</b> a plan to create a judicial school.</p> <p><b>Georgia:</b> a High School of Justice is into operation from the fall of 2007.</p> <p><b>Moldova:</b> a Law has been adopted on the National Institute of Justice, responsible for the training of judges, prosecutors and staff (2006).</p> <p><b>Poland:</b> a uniform training system for legal professionals will be introduced.</p>   |
| Comprehensive reform plans                             | <p><b>Bulgaria:</b> introduction of an Advisory Council on Penal Policy.</p> <p><b>Croatia:</b> implementation of a strategy approach to the judicial reform (strengthening rule of law and independence of the judiciary; reduction backlog of cases, better court management, free legal aid, better organisation of the</p>  |

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|  | <p>judicial system; better unification of case law, etc.). Attention is also given to the improvement of the relationship with the media and the public.</p> <p><b>France:</b> reform of the judicial map (aiming at changes of competences of courts' jurisdiction and reduction in the number of courts).</p> <p><b>Georgia:</b> implementation of a Judicial Reform Strategy and Criminal Law Reform Strategy.</p> <p><b>Montenegro:</b> a Strategy for Reform of the Judiciary has been adopted in 2007 (aiming at strengthening the independence of the judiciary, efficiency, access to justice and improvement of the public trust).</p> <p><b>Ukraine:</b> implementation of an Action Plan comprises of 70 different activities comprising the adoption and modification of laws, reforms of the judicial and penitentiary systems, enhancing the rules on maintenance of courts, appointment of court presidents, etc.</p>   |
| Mediation/ADR                            | <p><b>Andorra:</b> introduction of ADR is foreseen.</p> <p><b>Bosnia and Herzegovina:</b> introduction of mediation.</p> <p><b>Croatia:</b> expanding the possibilities of mediation and ADR.</p> <p><b>Denmark:</b> following a pilot scheme initiated in 2003 (both lawyers and judges are taking part as mediators in the pilot scheme on court-connected mediation) a bill on new rules on court-connected mediation has come into force on 1 April 2008.</p> <p><b>Germany:</b> as a part of the Code for Civil Procedure mandatory mediation is required for: disputes with a claim below 750 €, disputes between neighbours, disputes in claims on the basis of hurt personal pride (for example discrimination on the basis of race, religion, sex, etc).</p> <p><b>Montenegro:</b> ADR will be stimulated.</p> <p><b>Portugal:</b> ADR will be promoted. The establishment of arbitration centres for Victim-aggressor mediation and administrative arbitration.</p> <p><b>Spain:</b> reform of the Voluntary Jurisdiction. This refers to those proceedings in which a citizen ask for the intervention of a third party invested with authority in cases where there is no conflict or opposing interest. <b>FYROMacedonia:</b> law on Mediation (November 2006).</p>   |
| Enforcement                              | <p><b>Andorra:</b> introduction of a civil enforcement agent.</p> <p><b>Armenia:</b> introduction of a Law on Compulsory Execution of Judicial Acts (for a timely execution of decisions).</p> <p><b>Moldova:</b> different procedural modifications have been introduced concerning the rights and duties of enforcement agents.</p> <p><b>Slovenia:</b> establishment of a quick and efficient system of enforcing penalties.</p> <p><b>FYROMacedonia:</b> establishment of an Institute of Enforcement Agents.</p> <p><b>Ukraine:</b> introduction of a Law on the enforcement of judgments and the application of the case law of the European Court of Human Rights. Implementation of a national plan for the enforcement of judgments.</p> <p><b>UK-England and Wales:</b> improvements in the enforcement will be carried out as the result of a discussion on the Green paper 'towards effective enforcement'.</p>  |
| Management and working methods of courts | <p><b>Croatia:</b> with a view to shortening the length of court proceedings, certain legislative changes were made in the civil and criminal procedure.</p> <p><b>Bosnia and Herzegovina:</b> increased engagement of trainees and judicial associates.</p> <p><b>Germany:</b> simplification of the courts' organisation. Rationalisation of the workflows of courts. The merge of the secretariat and the registry has taken place. Staff members are allocated to individual judges and public prosecutors including the introduction of a system of functional cooperation. A benchmark system is used (a decentralised model of self-control).</p> <p><b>Hungary:</b> examines the possibility to increase the number of court personnel and the widening of the scope of tasks performed by court clerks.</p> <p><b>Moldova:</b> changes have been adopted to make it easier to get access to different registers.</p> <p><b>Montenegro:</b> introduction of a rationalization of the court and state prosecutors' network. Strengthening the capacity of courts and prosecution.</p> <p><b>Portugal:</b> implementation of the reform of the appeal regime.</p> <p><b>FYROMacedonia:</b> establishment of a system for the management of cases.</p> <p><b>UK-England and Wales:</b> in the criminal justice field the CJSSS has been</p> |

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|  | introduced which stands for Speedy, Simple and Summary. The plan must lead to an improvement of the speed and effectiveness of the Magistrates' Courts.   |
| Structural changes of courts or prosecution agencies | <p><b>Azerbaijan:</b> the number of judges and courts has been increased (as the result of the previous evaluation report on Judicial systems).</p> <p><b>Estonia:</b> during the court reform in 2006 first instance courts were reorganised: four regional county courts and two regional administrative courts were created.</p> <p><b>Denmark:</b> court reform programmes aiming at reduction of the number of district courts and to modernise the judicial system. Attention will be given to a reduction in length of procedures and efficient management.</p> <p><b>Georgia:</b> enlargement of small first instance district courts. Introduction of the institution of Magistrate Judges (to ensure that the enlargement of courts will not lead to lesser access to justice in remote areas).</p> <p><b>Italy:</b> a reduction of the number of courts is being discussed. The role of the judges of the peace is discussed as well.</p> <p><b>Luxembourg:</b> introduction of two new criminal chambers.</p> <p><b>Slovakia:</b> 9 new district courts (courts of first instance) have been introduced since January 2008.</p> <p><b>Spain:</b> new post for judges and prosecutors has been created (from 2000 to 2007). A new Judicial Office will improve the efficiency. The new organization tries to make a differentiation between 3 types of activities (jurisdictional, procedural and administrative activities). The first type corresponds with the work of judges, the second to the enforcement agents (bailiffs) and the third to the ministry of justice or the autonomous communities.</p> <p><b>Switzerland:</b> two new courts are created at the Federal level: the Federal criminal court (2004) and the Federal administrative court (2007).</p> <p><b>UK-England and Wales:</b> a unified court system has been created to bring the Magistrates courts into Her Majesty's Court Service, and the Enforcement, Courts and Tribunals Bill.</p> |
| Backlog of cases and efficiency                      | <p><b>Croatia:</b> measures to resolve backlog of cases (with a special emphasis on old cases); shortening duration of proceedings.</p> <p><b>Portugal:</b> simplification of acts and procedures. Elimination of unnecessary acts within the registries and notaries public. Simplifications of acts of administrative control.</p> <p><b>Slovenia:</b> implementation of the Lukenda project aiming at a reduction of a backlog of cases (measures includes: better workplace conditions, additional provision of human resources, complete computerization of courts, better management of courts, stimulation of quality and efficiency of the work of prosecutors).</p>  |
| Information technology                               | <p><b>Estonia:</b> all the court cases processed in one court information system, which is accessible for other courts for court practice and court statistics.</p> <p><b>Bosnia Herzegovina:</b> implementation of information and communication technology in courts and prosecution offices.</p> <p><b>Croatia:</b> investments in infrastructure and equipment.</p> <p><b>Georgia:</b> An automatic recording system for courts has been introduced.</p> <p><b>Greece:</b> the establishment of a database in the courts with a record of judicial decisions.</p> <p><b>Hungary:</b> an electronic company registration system is implemented.</p> <p><b>Latvia:</b> a Court Unified Information System is implemented (January 2007) which enables the random distribution of cases. From December 2007 the distribution of court summons are fully automated.</p> <p><b>Moldova:</b> introduction of an electronic register with judicial Acts (2006).</p> <p><b>Montenegro:</b> full implementation of the PRIS system (judiciary information system), which will not only result in improvement of the management part of the courts but also lead to a better accessibility to court decisions in practice.</p> <p><b>Poland:</b> E-court. Establishing fully digitalized and paperless civil courts for small claims that include: electronic records, electronic files and communication with the parties.</p> <p><b>Portugal:</b> creation of online possibilities of contact and promotion of acts within the field of the registries and the notaries. Systems will be introduced for an electronic circulation of documents.</p>   |

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|                                     | <p><b>Slovenia:</b> establishment of a single statistical database for monitoring of courts and creation of a coordination body responsible for the monitoring.</p> <p><b>Spain:</b> introduction of a Module for Generic Exchange (MIG), a new case management system and a programmed Hearings Agenda. In February 2007 the LEXNET system was implemented for the electronic filing of documents, distribution of copies to legal parties and electronic communication of procedural acts.</p> <p><b>FYROMacedonia:</b> strategy for information and communication technology.</p> <p><b>UK-England and Wales:</b> IT projects are introduced for county courts (LOCCS Local County Courts System) and Magistrates' Courts (LIBRA a network system for Magistrates' Courts).</p>  |
| Financing of courts and investments | <p><b>Azerbaijan:</b> in 2006, financial agreement with the World Bank for modernising justice: construction of 18 modern court houses and rehabilitation of 3 court houses, development of IT and case management systems, etc.</p> <p><b>Bosnia and Herzegovina:</b> plans to solve the problems of financing of courts (and prosecution offices).</p> <p><b>Georgia:</b> court buildings are intensively reconstructed.</p> <p><b>Montenegro:</b> wider independence in the management of the budget allocated to the judiciary.</p> <p><b>FYROMacedonia:</b> gradual increase of the justice budget.</p> <p><b>Ukraine:</b> improvements of the order of funding of courts.</p>   |
| Judges                              | <p><b>Azerbaijan:</b> as a result of comparison made in the previous CEPEJ's report it has been decided to undertake steps toward increasing the salaries of judges.</p> <p><b>Andorra:</b> changes in the statute of judges (career, training, etc.)</p> <p><b>Armenia:</b> an intention to raise the salary of judges.</p> <p><b>Bosnia and Herzegovina:</b> introduction of a system of promotion of judges (and prosecutors).</p> <p><b>Georgia:</b> introduction of specialization of judges. Salaries of judges have been raised. A code of Ethics has been revised in 2007.</p> <p><b>Italy:</b> a separation of careers between judges and prosecutors is debated.</p> <p><b>Latvia:</b> establishment of a Committee of Ethics.</p> <p><b>Luxembourg:</b> discussions concerning the statute of judges.</p> <p><b>Moldova:</b> changes in the statute of judges. Including: the exclusion of an age limit for entering the profession as a judge, a transparent nomination procedure (via the Council for the Judiciary), and objective disciplinary procedures. The Law on the Statute of a Judge has been changed: judges are nominated after a mandatory training at the National Institute of Justice.</p> <p><b>Monaco:</b> a new statute for judges and prosecutors is under preparation.</p> <p><b>Poland:</b> new recruitment methods will be introduced with a wider involvement of already practicing lawyers.</p> <p><b>Portugal:</b> reinforcement of the Judges of the Peace.</p> <p><b>Slovenia:</b> provision of mobility of judges (and or case files).</p> <p><b>FYROMacedonia:</b> enhancement of the specialization of judges.</p> <p><b>UK-England and Wales:</b> the Judicial Appointments Commission is changing the way in which judges are selected and recruited.</p> |
| Public prosecution                  | <p><b>Poland:</b> a reorganisation of the Public Prosecution system will be implemented where a separation of functions will be introduced between the Minister of justice and the Prosecutor General.</p> <p><b>FYROMacedonia:</b> strengthening the competence of the public prosecutor in the pre-investigative and investigative phase.</p> <p><b>Ukraine:</b> reform of the public prosecutors office.</p>   |
| Notaries                            | <p><b>Bosnia and Herzegovina:</b> introduction of the institute of the notary.</p> <p><b>Turkey:</b> Draft Act on the Amendment of the Notary Public Law.</p>   |
| Lawyers                             | <p><b>Azerbaijan:</b> having considered the previous CEPEJ's evaluation report, measures have been taken to increase the number of lawyers: two examinations (test and interview) have been carried out and more than 150 lawyers have been admitted to the Bar Association.</p> <p><b>Moldova:</b> modifications have been implemented in relevant laws and statutes concerning the lawyers (modalities of entering the profession, suspension, bar associations, etc.).</p> <p><b>Ukraine:</b> creation of a Bar Association.</p>   |
| Court fees                          | <p><b>Bosnia and Herzegovina:</b> increase of the court fees.</p>   |

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|           | <p><b>Slovenia:</b> modification of court fees.</p> <p><b>Ukraine:</b> introduction of a Draft Law on the Court Fee.</p>  |
| Legal Aid | <p><b>Croatia:</b> new Act on Free Legal Aid: creation of a comprehensive system of legal aid is created, to be operational in February 2009.</p> <p><b>Estonia:</b> a legal aid system has been implemented.</p> <p><b>Georgia:</b> a new Law on Legal Aid has been implemented (including the creation of legal Aid offices).</p> <p><b>Netherlands:</b> plans are prepared to reduce the budget for legal aid.</p> <p><b>Ukraine:</b> plans for the introduction of a system for free legal aid.</p> |

For further details, please see the "Country profiles" on [www.coe.int/cepej](http://www.coe.int/cepej).

## 16. Towards more efficiency and quality in the European judicial systems

### 16.1 Introduction

The European judicial landscape has significantly evolved when comparing 2004 and 2006 judicial data. The CEPEJ has tried, on the basis of statistical data and qualitative information which appear in this report, to describe this landscape and its main trends.

The Commission was created in 2002 with the aim of improving the efficiency and quality of justice in the European member states of the Council of Europe. Key areas of interest are the promotion and protection of access to justice, efficient and effective court organisations, adequate judicial proceedings adapted to the needs and expectations of the society, the stimulation of alternative dispute resolution mechanisms, the protection of the independence of judges and the statute and role of legal professionals as well as the safeguard of the principles of a fair trial within a reasonable time.

Looking at these key areas and confronting them with the facts and figures addressed in this report, it is possible to draw some conclusions and highlight main trends for the European judicial systems – being understood that these various issues deserve to be further studied, within the framework of an in-depth analysis that the CEPEJ will carry out in a second phase of this evaluation process.

### 16.2 Access to justice

Access to justice is related to many aspects of the functioning of courts.

It is connected with measures that countries may take to remove financial barriers for citizens who do not have sufficient means to initiate a judicial proceeding. In practice this implies the introduction of a system of legal aid. In most of the member states there is a system of *legal aid* available in the form of legal representation or legal advice. It is worth mentioning that all the member states comply (at least as far as the legal norms are concerned) with the minimum requirement of the European Convention of Human Rights, providing legal aid for legal representation in criminal law cases. The European trend seems to go beyond this requirement, in offering legal aid for non criminal cases too. The amount of legal aid per case that is made available by the state varies in Europe from a very small contribution (5 € per case) to a relative high one (1.604 € per case). The same can be concluded for the number of cases that are granted with legal aid. Some states have chosen to allocate high amounts of money to a limited number of cases, whereas other states have made the opposite choice. A limited number of states are generous both as regards the amounts allocated per case and as regards the volume of cases concerned. It must be underlined with satisfaction that the newest member states of the Council of Europe, which had no system of legal aid, are developing such systems now.

Legal aid may be used to pay (partly or as a whole) the costs for hiring a lawyer. In certain countries, lawyers may deliver their services for free as a part of the legal aid system - pro bono system.

Legal aid may also be needed in situations where the parties have to pay a court tax or court fees - it is common in Europe that the litigants must pay court fees/tax for initiating a proceeding before the court; in a limited number of countries this is even necessary for certain criminal law cases (compensation procedures for victims of crimes). To avoid barriers on access to justice, the fees or taxes must not be too high and in accordance with the nature of the case. The same principle should be applied for those countries where land registers, business registers and/or other registers are a part of the responsibilities of a court. It is attractive, from a budgetary perspective, to generate revenues by the fees received for the delivery of services related to the registries. This even leads to situations where judicial systems are "self-supporting or self-supplying". Such a system is acceptable as long as the financial access to justice for court users is sufficiently guaranteed, for example with a system of legal aid or a possibility to be exempted from fees for persons with insufficient financial resources.

Access to justice is not only limited to financial resources, but is also related to the time that is needed to visit a court building (*geographical access to justice*). There seems to be a trend in Europe to decrease the number of court locations. Especially small (one judge) size courts or certain (small) specialised courts (for example for small criminal cases or simple civil cases) are merged. This trend can be explained by the will to reduce the vulnerability of small courts, to make budgetary savings and/or to increase the productivity of the court system (efficiency gains). It may have a positive effect on the efficiency of justice (economies of

scale and efficiency gains, specialisation of some jurisdictions and magistrates in the most complex legal arguments, etc.).

The consequences as regards proximity and the geographical access to court may be partly compensated by other measures. One of the concrete examples is the use of information and communication technology for this purpose (**e-justice**).

For certain proceedings it may not be necessary to visit a court physically. A good example can be found in the procedure for uncontested claims which have been set up in a limited number of countries: traditional court procedures are replaced by a possibility for the claimant to initiate a recovery procedure through the Internet.

Concerning the information of the court users but also **access to law**, there is a trend in Europe to open court websites. Some give access to legal information (in particular to norms and case law) and to authorities or specialised associations to help the persons subject to trial to assert their rights. In addition, on these websites can be found practical information on **access to justice**: opening hours of courts, court proceedings, information concerning legal aid, main judicial decisions, etc. A limited number of countries have the possibility of making use of electronic (registration) forms and an electronic exchange of documents between the litigants, lawyers and the courts. Some of them have already the possibility to pay a court fee online by means of electronic banking. It is expected that this trend for a dematerialisation of proceedings is going to grow up in the European countries. The development of e-justice can have a positive effect on access to justice as it might contribute to reduce backlogs and to shorten court proceedings – or at least to improve their foresee ability.

Access to justice may also be facilitated through the promotion of **alternative dispute resolution** (ADR). They contribute to refrain the need to visit a court and to involve other professionals than judges. From the 2006 data it can be concluded that mediation (recommended, carried out or approved by justice) is a growing field in Europe: more and more countries are introducing mediation and the number of accredited mediators is growing. Especially in the field of family law (divorce cases), commercial disputes and criminal law (compensation procedures for victims) mediation is successfully applied in many countries. In more than half of the member states it is possible to be granted legal aid for initiating a mediation procedure. However it must be noted that other possibilities of ADR are widely used in some member states, such as arbitration and conciliation. Especially in commercial disputes arbitration is often applied in certain countries.

With respect to the protection of access to justice special attention needs to be given to **vulnerable persons** (for example: victims of crimes, children, minorities, disabled persons, etc.). Various solutions are mentioned in states' answers such as special (court) hearing arrangements, information provision adapted to the needs and expectations of these categories, special procedural rights. Many countries in Europe provide for such measures especially for juveniles and women (victims of rape or domestic violence). To a much lesser extent this is the case for disabled persons or minorities – in particular through special hearing modalities.

To guarantee access to justice, the **lawyers' role** is essential. There is a major difference between countries as to their number. In some Southern Europe countries, ratio between the number of lawyers and the number of judges is particularly high, while it seems very low in other countries.

### **16.3 Efficient and effective operation of courts and judicial systems as a whole**

Regarding the **division of responsibilities** between the legislative, executive and judicial powers as regards the operation of justice, various modalities can be noted among European states. In a majority of countries the **ministry of justice** is responsible for the management of the overall budget for the courts, the public prosecution and legal aid. In certain countries this responsibility may be partly delegated to judicial authorities, such as the **Council for the Judiciary** or the **Supreme Court**. Some specialised courts may be funded by other ministries, for example a ministry of finance or a ministry of labour. With respect to **the management of courts** it is first of all the court president, or a court (administrative) director who is responsible for the management of the financial resources at the court level.

A general trend towards the increase of the **budgets allocated to judicial systems** can be noted in Europe (between the years 2002 and 2006). However a large variety can be noted among European states as regards the amounts of these budgets. Although it is not for the CEPEJ at this stage to define the proper level of financial resources to be allocated to the justice system, a correlation can be noted between the lack of performances and efficiency of some judicial systems and the weakness of their financial resources. However the opposite is not always true: high financial resources are not always the guarantee for good performance and efficiency of judicial systems. Other factors must be considered here (relevance of the

procedures, management of the financial and employment resources, role of the players in the judicial system, training, etc). As regards the **distribution of the budget between various budgetary items**, it can be noted that on average at a European level, the main expenditure of courts is linked to the remuneration of judges and court staff (65%). A significant part of the budget (15 %) is allocated to premises. Judicial fees represent 10 % of the court budget. 3 % is allocated to IT - this last budgetary component will necessarily increase in the coming years. 0,8% is allocated to training.

A significant part is dedicated to new buildings and to computer budgets. In this field, some Central or Oriental European countries benefit from specific financial aids from the European Union or other international organisation (from the World Bank, for instance).

The use of new information technologies and of communication being more and more frequent in courts, costs in terms of computer investments and maintenance equally increase. Progress in this budgetary item constitutes a tendency that can only grow stronger in the next following years.

The **number of (professional) judges** and of **court staff** differs from country to country too. Especially certain Southern European countries have a relative high number of professional judges. In other countries some judicial tasks may also be performed by lay-judges. Beyond common law countries where non professional judges traditionally sit, there are other countries where the proportion of professional judges is reduced and judges are assisted by various types of non-judge staff or by staff entrusted with quasi-judicial tasks (Rechtspfleger). In any case, the major part of court budgets is related to the cost of judicial and non judicial staff in all the European states, with the exception of the common law countries, where the major part of judges are non professional judges.

A large majority of countries have indicated that courts produce **annual reports** and that they have a **monitoring system** to measure and manage case flows and the timeframes of proceedings. It has been noticed that techniques and methods inspired by *new public management* and by *case management* are increasingly implemented and imply the definition of figured objectives and the performance evaluation, or even the means allocation to jurisdictions according to the results obtained.

Special attention may be given to the monitoring of **cases with an exceptional duration**. Many countries in Europe apply a system for measurement of backlogs of cases. When looking at the figures presented in this report, it must be underlined that information on the backlogs, in quantitative terms and other court performance related information, are not easy to collect. Due to different definitions and classification of cases and ways for measuring length of proceedings, it is currently not possible to compare the performance of the justice system from one country to another country. However the first steps towards a better understanding of the court performance have been taken in this report by introducing two performance indicators: **the clearance rate** and the **calculated disposition time**.

The CEPEJ's SATURN Centre should bring in the near future a better understanding of the common case categories applied by the courts, including the definitions and the methods used to measure the length of proceedings.

The day-to-day operation of courts is not always concerned by judicial litigious proceedings only. In numerous European countries courts have also a responsibility in the area of **land registers, business registers or other registers**. This activity is different from the litigious proceedings. If it is probably a real burden for the courts (even though computerizing brings significant productivity gains), it generates nonetheless important receipts.

## **16.4 Efficient and effective court proceedings in civil and criminal law**

Many European countries are undertaking court reforms. Courts are restructured, court locations have been changed and other working methods have been introduced. It should result in an improvement of the efficiency and quality of judicial proceedings and a reduction of a number of cases received by the European Court of Human Rights.

For the time being, violations of the **Article 6** of the European Convention on Human Rights related to excessive duration of judicial proceedings remain the first reason for the Court to condemn European states. Previous studies by the CEPEJ have shown that valuable time could be lost in judicial proceedings because cases are at a standstill, without anyone dealing with them. A measuring system of **waiting time** is necessary. Only half of the States members of the Council of Europe have means to analyse this waiting time. More information on this subject should be available in a near future as part of the CEPEJ SATURN Centre's work.

In civil proceedings, efficiency does not only depend on internal courts organisation or on the way that proceedings are prescribed by law. The parties' behaviour and the lawyers' role can have an impact on the length of the proceedings. The promotion of the **early disputes settlement** and the introduction of **specific modalities for the procedure**, aiming for example at setting a term to submit documents, planning hearings, establishing limits to the delivery of new pieces of evidence during the hearing, can help to optimize timeframes of proceedings. In 24 European countries, it is possible for a lawyer to "negotiate" with the judge new procedural arrangements.

The efficiency of judicial proceedings can be improved by introducing changes in the procedural steps, other working methods or the promotion of alternative dispute resolution. In almost all the member states of the Council of Europe **simplified procedures for civil cases** are applied, mostly related to payment orders or small claims proceedings. **Simplified procedures in criminal matters** are often applied too, especially for small criminal offences. For example: providing a public prosecutor the possibility to charge an offender a fine without the intervention of a judge or the use of a simple procedure in situations where the criminal offender has confessed his/her case; another method is the use of an administrative procedure for the treatment of light traffic offences; in **administrative law** procedures (if applicable) oral hearings may be replaced by written procedures.

For a limited number of countries the **non-execution** of judicial decisions is also seen as a problem, given the relatively high number of violations referring specifically to this issue. A solution may lie in the improvement of the execution mechanisms and the development of the role of the **enforcement agents**. The 2006 data show that there is a large variety in the number and status of enforcement agents among European states.

As the result of various European policy programmes and the publication of relevant European norms on **mediation** in civil matters, family law cases and criminal law cases, more and more countries have introduced a system of mediation – sometimes next to other already well developed ADR such as arbitration or conciliation. This trend can be noted from the growing number of accredited mediators and the number of cases that are addressed by a mediator.

## 16.5 Towards quality policies for justice dedicated to users

The independence of the judiciary should go hand in hand with the principle of **accountability**. Information on courts' activities and on the quality of the services they deliver should be easily accessible. Most of the European countries produce annual reports on the judicial system. This information gives insight in the current state of affairs in the functioning of the court system.

In case of **dysfunctions of courts** there shall be **compensation** mechanisms. In 10 European countries such mechanism is not yet available. 27 countries have one to compensate excessive length of proceedings and/or non-execution of judicial decisions. In almost all the countries there is a compensation mechanism for a wrongful arrest or condemnation.

**Surveys** to measure the **public trust** and the level of **satisfaction** of courts' users are introduced, but in a way which is too unpredictable. In 8 countries court user surveys are regularly held; at a national level 10 countries apply a survey (on a periodic basis) to measure the trust or satisfaction of the court users.

A very limited number of European countries carry out **integral quality systems**. Such models measure the satisfaction of the users, but take also into account other elements such as the management of courts, of (personnel, financial and material) resources, the access to law and justice, the processes used in the courts, etc. The CEPEJ has recently adopted a Checklist for the promotion of quality for the judiciary and courts<sup>26</sup> dedicated to policymakers and to law practitioners. Quality systems will play an important and growing role in the day to day functioning of courts.

## 16.6 Protection of the independence of the judiciary and the statute of judges and prosecutors

Recommendations from the Council of Europe insert as fundamental principles the protection and strengthening of the judges' independence (in particular Recommendation R(94)12 on the independence, efficiency and role of judges) and try to guarantee the statutory protection of prosecutors (Recommendation

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<sup>26</sup> CEPEJ(2008)2

R(2000)19 on the role of public prosecution in the criminal justice system). These elements are mainly defined by recruitment mechanisms, training, promotion and financial remuneration.

With respect to the **recruitment, nomination and promotion** of judges and prosecutors, there is in many countries a strong involvement of judges and prosecutors' representatives in competent bodies. However it is regrettable that there are still countries where judges and prosecutors are not represented in such bodies.

It can be noted that the budget allocated to **training** varies significantly among the European states. In most of the countries an initial training for judges or prosecutors is mandatory and its duration can vary from several months to several years. General in-service training is often provided. To a lesser extent, a trend can be noted towards an increasing training in the area of administration and management of courts and of computerization.

The **salaries** of judges and prosecutors must be in accordance with their status and their responsibilities. The European trend is to pay judges and prosecutors well above the gross salary in the country, though large discrepancies can be noted between the states. The highest salaries can often be explained because the judges concerned are recruited from a pool of experienced lawyers.

In a majority of European countries judges and prosecutors are allowed, under some circumstances, to perform **additional functions**, namely in the field of education and research.

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The aim of this Report is to evaluate the functioning of the public service of justice in the member states of the Council of Europe and to promote the tools for analysing the court activities. This evaluation must fully take into account the specificity of this public service: the essential principle of the independence of the judiciary and the impartiality of judges, which is a pillar of a state governed by the Rule of Law. It is only within this framework that policy makers and judicial practitioners have the duty to work towards always more efficiency and quality of their judicial systems, for the sake of 800 millions Europeans.

## APPENDICES

### Additional tables

Table 120. Exchange rate from national currency to Euro on 1st January 2007 (Q5)

| Country                | Exchange rate (NO-Euro zone) – for 1 € on 1 January 2007 |
|------------------------|--|
| Armenia                | 478,73 AMD   |
| Azerbaijan             | 1,1471 AZN   |
| Bosnia and Herzegovina | 1,95583 BAM  |
| Bulgaria               | 1,95583 BGN  |
| Croatia                | 7,3451 HRK   |
| Cyprus                 | 0,5787 Cyprus Pounds                                     |
| Czech Republic         | 27,530 CZK   |
| Denmark                | 745,66 DKK   |
| Estonia                | 15,6466 EEK  |
| Georgia                | 2,2545 GEL   |
| Hungary                | 251,28 HUF   |
| Iceland                | 94,61 ISK  |
| Latvia                 | 0,702804 LVL   |
| Lithuania              | 3,453 LTL  |
| Malta                  | 0,4293 Malta Cents                                       |
| Moldova                | 16,974 MDL   |
| Norway                 | 8,208 NOK  |
| Poland                 | 3,879 PLN  |
| Romania                | 3,38 RON   |
| Russian Federation     | 34,6965 RUB  |
| Serbia                 | 79,577 RSD   |
| Slovakia               | 34,426 SKK   |
| Sweden                 | 9,0155 SEK   |
| Switzerland            | 1,61 CHF   |
| FYROMacedonia          | 61,17 MKD  |
| Turkey                 | 1,8559 YTL   |
| Ukraine                | 6,65 UAH   |
| United Kingdom         | 0,6715 GBP   |

**Table 121. Judicial staff and services in 2006**

| Country                | Courts - structures and geographical locations per 100.000 inhabitants |                                       |                                     | Judges and non-judge staff per 100.000 inhabitants |   |  |   |                             |                         | Prosecutors and non-prosecutor staff per 100.000 inhabitants |                            |  | Number of non-judge staff per non-prosecutor staff | Number of professional judges per prosecutor |
|------------------------|--|---------------------------------------|-------------------------------------|--|---|--|---|-----------------------------|-------------------------|--|----------------------------|--|--|--|
|                        | 1st instance courts of general jurisdiction (Q45)                      | Specialised 1st instance courts (Q45) | Courts (geographic locations) (Q45) | Professional judges (fte) (Q49)                    | Professional judges sitting in courts on occasional basis (Q50) | Non-professional judges not remunerated but who can receive a defrayal (Q52) | Non-judge staff entrusted with judicial or quasi-judicial tasks (Rechtspfleger) (Q56) | Non-judge staff (fte) (Q55) | Prosecutors (fte) (Q57) | Persons who have similar duties as public prosecutors (Q58)  | Non-prosecutor staff (Q59) |  |  |  |
| Albania                | 0,7  | 0,03                                  | na                                  | 27,1   | 2,5   |  |   | 4,9                         |                         |  | 4,9                        |  | 5,5  |  |
| Andorra                | 1,2  | nap                                   | 1,2                                 | 5,6  |   |  | 29,9  | 13,0                        |                         |  | 8,4                        |  | 0,4  |  |
| Armenia                | 0,5  | 0,03                                  | 0,7                                 | 20,2   |   | na   | 57,2  | 2,6                         | 1,8                     |  | 2,0                        |  | 7,7  |  |
| Austria                | 1,8  | 0,1                                   | 1,8                                 | 5,8  |   |  | 17,8  | 13,6                        |                         |  | 8,2                        |  | 0,4  |  |
| Azerbaijan             | 1,0  | 0,2                                   | 1,2                                 | 14,9   |   | 24,3   | 55,5  | 7,5                         |                         |  | 26,8                       |  | 2,0  |  |
| Belgium                | 0,3  | 2,5                                   | 3,0                                 |  |   |  |   |                             |                         |  |                            |  |  |  |
| Bosnia and Herzegovina | 1,7  | nap                                   | 2,4                                 | 22,0   | 1,5   | 4,3  | 66,7  | 7,3                         |                         |  | 11,0                       |  | 3,0  |  |
| Bulgaria               | 1,8  | 0,4                                   | 2,0                                 | 23,7   |   |  | 55,6  | 20,3                        | na                      |  | 22,5                       |  | 1,2  |  |
| Croatia                | 2,4  | 2,8                                   | 5,8                                 | 43,3   |   | 118,6  | 161,3   | 12,9                        |                         |  | 18,1                       |  | 3,3  |  |
| Cyprus                 | 0,9  | 1,4                                   | 2,3                                 | 12,7   |   |  | 57,0  | 14,1                        |                         |  |                            |  | 0,9  |  |
| Czech Republic         | 0,8  | nap                                   | 1,0                                 | 29,1   |   | 67,0   | 86,6  | 11,7                        |                         |  | 15,5                       |  | 2,5  |  |
| Denmark                | 0,4  | 1                                     | 0,6                                 | 6,6  |   |  | 26,2  | 10,3                        | na                      |  |                            |  | 0,6  |  |
| Estonia                | 0,3  | 0,1                                   | 0,7                                 | 17,8   |   | 59,7   | 76,1  | 14,2                        |                         |  | 6,3                        |  | 1,3  |  |
| Finland                | 1,1  | 0,2                                   | 2,5                                 | 17,1   |   | 70,2   | 48,6  | 6,0                         | na                      |  | 3,7                        |  | 2,9  |  |
| France                 | 1,8  | 2,0                                   | 1,2                                 | 10,6   | 0,9   | 5,2  | 24,1  | 2,9                         | na                      |  | 8,0                        |  | 3,7  |  |
| Georgia                | 1,5  | na                                    | 1,6                                 | 6,2  |   |  | 16,3  | 11,0                        |                         |  | 5,3                        |  | 0,6  |  |
| Germany                | 0,9  | 0,3                                   | 1,4                                 | 24,5   |   | 119,0  | 69,9  | 6,2                         | na                      |  | 14,2                       |  | 4,0  |  |
| Greece                 | 3,9  | 0,04                                  | 3,9                                 | 28,4   |   |  | 58,4  | 4,7                         | na                      |  | 15,4                       |  | 6,0  |  |
| Hungary                | 1,3  | 0,2                                   | 1,6                                 | 28,2   |   | 43,5   | 78,8  | 17,3                        | na                      |  | 23,8                       |  | 1,6  |  |
| Iceland                | 2,7  | 0,7                                   | 3,0                                 | 15,7   |   |  | 20,0  | 2,0                         |                         |  | 19,0                       |  | 7,8  |  |
| Ireland                | 0,1  | 0,02                                  | 4,2                                 | 3,1  |   |  | 25,5  | 2,4                         |                         |  | 4,0                        |  | 1,3  |  |
| Italy                  | 1,7  | 0,1                                   | 2,2                                 | 11,0   |   | 12,5   | 46,1  | 3,8                         |                         |  | 16,7                       |  | 2,9  |  |
| Latvia                 | 1,5  | 0,0                                   | 1,8                                 | 22,2   | na  | 110,0  | 62,9  | 23,9                        |                         |  | 16,2                       |  | 0,9  |  |
| Lithuania              | 1,7  | 0,1                                   | 2,0                                 | 21,5   |   |  | 76,8  | 25,1                        |                         |  | 20,8                       |  | 0,9  |  |
| Luxembourg             | 1,1  | 1,1                                   | 1,7                                 | 36,8   |   | 26,9   | 51,8  | 9,1                         |                         |  | 8,3                        |  | 4,0  |  |
| Malta                  | 0,2  | 0,2                                   | 0,5                                 | 8,3  |   |  | 86,8  | 1,5                         | na                      |  | 9,6                        |  | 5,7  |  |
| Moldova                | 1,3  | 0,1                                   | 1,5                                 | 12,0   |   |  | 45,6  | 21,5                        |                         |  | 22,2                       |  | 0,6  |  |
| Monaco                 | 54,5   | 18,2                                  | 3,0                                 | 54,5   | 42,4  | 357,6  | 124,2   | 12,1                        |                         |  | 18,2                       |  | 4,5  |  |

| Country              | Courts - structures and geographical locations per 100.000 inhabitants |                                       |                                     | Judges and non-judge staff per 100.000 inhabitants |   |  |   |                             |                         | Prosecutors and non-prosecutor staff per 100.000 inhabitants |                            |      | Number of non-judge staff per non-prosecutor staff | Number of professional judges per prosecutor |
|----------------------|--|---------------------------------------|-------------------------------------|--|---|--|---|-----------------------------|-------------------------|--|----------------------------|------|--|--|
|                      | 1st instance courts of general jurisdiction (Q45)                      | Specialised 1st instance courts (Q45) | Courts (geographic locations) (Q45) | Professional judges (fte) (Q49)                    | Professional judges sitting in courts on occasional basis (Q50) | Non-professional judges not remunerated but who can receive a defrayal (Q52) | Non-judge staff entrusted with judicial or quasi-judicial tasks (Rechtspfleger) (Q56) | Non-judge staff (fte) (Q55) | Prosecutors (fte) (Q57) | Persons who have similar duties as public prosecutors (Q58)  | Non-prosecutor staff (Q59) |      |  |  |
| Montenegro           | 2,7  | 0,5                                   | 3,7                                 | 37,2   |   |  |   | 140,0                       | 13,4                    |  | 15,3                       | 9,1  | 2,8  |  |
| Netherlands          | 0,1  | 0,01                                  | 0,3                                 | 12,7   | 5,5   |  |   | 31,6                        | 4,1                     |  | 21,9                       | 1,4  | 3,1  |  |
| Norway               | 1,5  | 0,1                                   | 1,5                                 | 10,9   | 1,3   | 1495,4   |   | 19,0                        | 15,6                    |  | 1,2                        | 15,9 | 0,7  |  |
| Poland               | 0,9  | 0,1                                   | 0,9                                 | 25,8   |   | 114,4  | 3,7   | 82,9                        | 15,6                    | na   | 12,3                       | 6,7  | 1,7  |  |
| Portugal             | 2,2  | 1,1                                   | 3,1                                 | 17,4   |   | 4,3  |   | 68,0                        | 12,5                    |  | 15,7                       | 4,3  | 1,4  |  |
| Romania              | 0,9  | 0,02                                  | 1,2                                 | 20,7   |   |  |   | 43,3                        | 12,7                    |  | 6,6                        | 6,5  | 1,6  |  |
| Russian Federation   | 6,9  | 0,1                                   | 1,9                                 | 21,5   |   |  |   | 43,7                        | 20,6                    |  | 8,4                        | 5,2  | 1,0  |  |
| Serbia               | 1,9  | 0,2                                   | 2,7                                 | 33,8   |   | 63,1   |   | 144,3                       | 9,3                     | na   | 11,3                       | 12,8 | 3,6  |  |
| Slovakia             | 0,8  | 0,1                                   | 0,9                                 | 24,8   |   | na   | 15,1  | 79,5                        | 13,8                    |  | 14,4                       | 5,5  | 1,8  |  |
| Slovenia             | 2,7  | 0,2                                   | 3,3                                 | 50,0   |   | 202,9  |   | 135,0                       | 9,0                     | na   | 10,5                       | 12,9 | 5,6  |  |
| Spain                | 4,6  | 1,7                                   | 1,6                                 | 10,1   |   | 17,6   | 6,9   | 92,6                        | 4,5                     | 0,6  | 4,4                        | 21,0 | 2,2  |  |
| Sweden               | 0,8  | 0,1                                   | 1,5                                 | 13,9   |   | 93,3   |   | 35,7                        | 9,9                     |  | 7,4                        | 4,8  | 1,4  |  |
| Switzerland          | 4,0  | 1,2                                   | 5,3                                 | 16,5   | 9,3   | na   | 0,9   | 55,3                        | 5,4                     |  | 12,3                       | 4,5  | 3,1  |  |
| FYROMacedonia        | 1,2  | 0,1                                   | 1,6                                 | 30,6   |   | 121,7  |   | 101,1                       | 8,8                     |  | 8,4                        | 12,0 | 3,5  |  |
| Turkey               | 6,4  | 1,2                                   | 7,9                                 | 9,0  |   |  |   | 32,5                        | 5,4                     |  |                            |      | 1,7  |  |
| Ukraine              | 1,5  | 0,1                                   | na                                  | 14,8   |   |  |   |                             | 21,0                    |  | 8,5                        |      | 0,7  |  |
| UK-Northern Ireland  | 1,3  | 0,1                                   | 1,1                                 | 21,3   |   | 45,2   |   |                             | 7,5                     |  | 26,4                       |      | 2,8  |  |
| UK-Scotland          | 0,4  | 0,4                                   | 1,0                                 | 4,4  |   | 14,6   |   | 24,1                        | 9,0                     | na   |                            |      | 0,5  |  |
| UK-England and Wales | 1,2  | 0,0                                   | 1,1                                 | 7,0  | 16,6  | 53,7   |   | 48,4                        | 4,6                     | na   | 11,5                       | 4,2  | 1,5  |  |

**Table 122. Distribution of the public budget allocated to the courts (Q8)**

| Country                | Total annual budget approved allocated to all courts (in €) | Annual budget allocated to (gross) salaries |      | Annual budget allocated to computerisation (equipment, investments, maintenance) |      | Annual budget allocated to justice expenses |      | Annual budget allocated to court buildings (maintenance, operation costs) |      | Annual budget allocated to investments in new (court) buildings |      | Annual budget allocated to training and education |      | Other         |      |
|------------------------|---|---|------|--|------|---|------|---|------|---|------|---|------|---------------|------|
|                        |   | Amount                                      | %    | Amount   | %    | Amount                                      | %    | Amount  | %    | Amount  | %    | Amount  | %    | Amount        | %    |
| Andorra                | 5 941 464   | 4 918 539                                   | 82,8 |  |      |   |      | 469 421   | 7,9  |   |      | 20 850  | 0,4  |               | 9,0  |
| Armenia                | 4 189 496   | 2 745 119                                   | 65,5 |  |      | 355 679                                     | 8,5  | 250 009   | 6,0  |   |      | 146 926   | 3,5  | 18 919        | 16,5 |
| Austria                | 572 013 000   | 310 000 000                                 | 54,2 | 34 000 000   | 5,9  | 38 000 000                                  | 6,6  | 53 500 000  | 9,4  |   |      |   |      |               | 23,9 |
| Belgium                | 823 600 000   | 572 600 000                                 | 69,5 | 20 917 000   | 2,5  | 84 088 000                                  | 10,2 | 54 333 204  | 6,6  | 11 129 000  | 1,4  | 2 274 000   | 0,3  |               | 9,5  |
| Bosnia and Herzegovina | 66 899 635  | 40 931 066                                  | 61,2 | 602 275  | 0,9  | 3 277 073                                   | 4,9  | 5 600 600   | 8,4  | 305 210   | 0,5  | 749 488   | 1,1  |               | 23,1 |
| Croatia                | 206 261 500   | 129 973 907                                 | 63,0 | 6 900 243  | 3,3  | 42 495 747                                  | 20,6 | 8 234 468   | 4,0  |   |      | 714 132   | 0,3  | 8 290 322     | 8,7  |
| Cyprus                 | 25 778 787  | 14 877 258                                  | 57,7 | 18 610   | 0,1  |   |      | 830 430   | 3,2  | 4 924 866   | 19,1 | 15 621  | 0,1  |               | 19,8 |
| Czech Republic         | 308 769 378   | 256 650 345                                 | 83,1 | 2 148 275  | 0,7  |   |      | 2 429 132   | 0,8  |   |      | 549 546   | 0,2  |               | 15,2 |
| Denmark                | 183 000 000   | 129 817 880                                 | 70,9 | 13 746 211   | 7,5  |   |      | 31 529 115  | 17,2 |   |      | 1 475 203   | 0,8  | 6 490 894     | 3,5  |
| Estonia                | 24 220 267  | 19 031 617                                  | 78,6 |  |      |   |      | 2 785 033   | 11,5 |   |      |   |      |               | 9,9  |
| Finland                | 221 971 000   | 168 417 000                                 | 75,9 | 8 042 000  | 3,6  | 5 900 000                                   | 2,7  | 28 110 000  | 12,7 |   |      |   |      | 16 934 000    | 5,2  |
| France                 | 3 350 000 000   | 1 573 600 000                               | 47,0 | 24 531 558   | 0,7  | 379 400 000                                 | 11,3 | 701 530 000   | 20,9 | 117 000 000   | 3,5  | 65 000 000  | 1,9  |               | 14,6 |
| Georgia                | 11 760 558  | 5 435 868                                   | 46,2 | 419 298  | 3,6  | 967 417                                     | 8,2  | 95 501  | 0,8  | 3 653 564   | 31,1 | 51 102  | 0,4  | 1 137 808     | 9,7  |
| Germany                | 8 731 000 000   | 5 000 000 000                               | 57,3 | 192 000 000  | 2,2  | 1 376 000 000                               | 15,8 | 268 000 000   | 3,1  |   |      |   |      | 1 895 000 000 | 21,7 |
| Greece                 | 332 875 000   | 322 950 000                                 | 95,2 | 4 345 000  | 1,3  | 4 600 000                                   | 1,4  | 4 600 000   | 1,4  | 2 500 000   | 0,7  | 160 000   | 0,05 |               |      |
| Hungary                | 277 750 000   | 221 600 000                                 | 79,8 | 3 200 000  | 1,2  | 13 200 000                                  | 4,8  | 29 800 000  | 10,7 | 7 900 000   | 2,8  | 700 000   | 0,3  |               |      |
| Ireland                | 111 841 000   | 50 282 000                                  | 45,0 | 9 367 000  | 8,4  | 3 083 000                                   | 2,8  | 16 132 000  | 14,4 | 19 632 000  | 17,6 | 1 181 000   | 1,1  | 12 135 000    | 10,9 |
| Italy                  | 2 751 910 175   | 1 912 287 450                               | 69,5 | 45 929 981   | 1,7  | 455 000 000                                 | 16,5 | 223 556 520   | 8,1  |   |      | 1 650 000   | 0,1  | 113 486 221   | 4,1  |
| Latvia                 | 32 416 128  | 22 134 811                                  | 68,3 | 1 233 493  | 3,8  | 114 881                                     | 0,4  | 5 815 877   | 17,9 |   |      | 248 957   | 0,8  | 2 868 109     | 8,8  |
| Lithuania              | 58 150 487  | 33 216 520                                  | 57,1 | 547 382  | 0,9  | 15 454 414                                  | 26,6 |   |      | 8 491 659   | 14,6 | 162 187   | 0,3  | 278 325       | 0,5  |
| Luxembourg             | 57 334 448  | 47 499 711                                  | 82,8 | 711 500  | 1,2  | 2 183 100                                   | 3,8  | 640 353   | 1,1  |   |      | 57 500  | 0,1  |               | 10,9 |
| Malta                  | 8 716 000   | 6 520 000                                   | 74,8 |  |      |   |      | 133 000   | 1,5  | 923 000   | 10,6 | 14 000  | 0,2  |               | 12,9 |
| Moldova                | 3 002 838   | 2 194 994                                   | 73,1 | 5 018  | 0,2  |   |      | 128 904   | 4,3  | 19 257  | 0,6  | 2 466   | 0,1  | 652 199       | 21,7 |
| Monaco                 | 4 331 500   | 2 980 000                                   | 68,8 |  |      | 660 000                                     | 15,2 |   |      |   |      |   |      | 691 500       | 16,0 |
| Montenegro             | 8 664 682   | 6 181 096                                   | 71,3 | 416 280  | 4,8  |   |      | 40 600  | 0,5  | 102 000   | 1,2  |   |      | 300 000       | 22,2 |
| Netherlands            | 774 368 000   | 510 422 164                                 | 57,4 | 239 945 809  | 27,0 | 4 008 757                                   | 0,5  | 102 558 832   | 11,5 |   |      | 17 307 390  | 1,9  | 15 000 000    | 1,7  |
| Norway                 | 175 013 040   | 104 288 492                                 | 59,6 | 9 468 323  | 5,4  |   |      | 35 236 667  | 20,1 | 3 740 253   | 2,1  | 2 262 061   | 1,3  |               | 11,4 |
| Poland                 | 1 211 751 000   | 603 512 000                                 | 49,8 | 32 804 000   | 2,7  | 154 114 000                                 | 12,7 | 77 853 000  | 6,4  | 178 787 000   | 14,8 | 631 000   | 0,1  | 164 050 000   | 13,5 |

| Country             | Total annual budget approved allocated to all courts (in €) | Annual budget allocated to (gross) salaries |      | Annual budget allocated to computerisation (equipment, investments, maintenance) |     | Annual budget allocated to justice expenses |      | Annual budget allocated to court buildings (maintenance, operation costs) |      | Annual budget allocated to investments in new (court) buildings |     | Annual budget allocated to training and education |      | Other       |      |
|---------------------|---|---|------|--|-----|---|------|---|------|---|-----|---|------|-------------|------|
|                     |   | Amount                                      | %    | Amount   | %   | Amount                                      | %    | Amount  | %    | Amount  | %   | Amount  | %    | Amount      | %    |
| Portugal            | 506 493 713   | 345 675 546                                 | 68,2 | 4 740 390  | 0,9 | 33 746 479                                  | 6,7  | 18 941 113  | 3,7  |   |     | 2 082   | 0,00 | 103 388 102 | 20,4 |
| Romania             | 267 977 585   | 232 105 356                                 | 75,6 | 20 728 665   | 6,8 | 5 854 032                                   | 1,9  | 17 935 550  | 5,8  | 30 120 659  | 9,8 | 128 016   | 0,04 |             |      |
| Russian Federation  | 2 486 680 213   | 1 524 674 016                               | 61,3 | 28 446 183   | 1,1 | 65 421 440                                  | 2,6  | 157 947 516   | 6,4  | 138 342 484   | 5,6 |   |      | 421 566 595 | 23,0 |
| Serbia              | 156 098 339   | 105 940 693                                 | 67,9 | 2 730 696  | 1,7 | 39 549 823                                  | 25,3 |   |      | 7 877 126   | 5,0 |   |      |             |      |
| Slovakia            | 111 477 334   | 58 097 410                                  | 52,1 | 1 229 303  | 1,1 | 4 113 635                                   | 3,7  | 4 336 213   | 3,9  |   |     | 115 784   | 0,1  | 43 584 989  | 39,1 |
| Slovenia            | 133 840 315   | 94 219 262                                  | 70,4 | 4 743 950  | 3,5 | 23 542 464                                  | 17,6 | 4 238 174   | 3,2  |   |     |   |      |             | 5,3  |
| Spain               | 2 983 492 000   | 1 994 391 570                               | 66,8 |  |     |   |      |   |      |   |     |   |      |             | 33,2 |
| Sweden              | 452 000 000   | 317 860 130                                 | 70,3 |  |     |   |      |   |      |   |     | 6 705 452   | 1,5  |             | 28,2 |
| Switzerland         | 673 348 943   | 484 811 239                                 | 72,0 |  |     |   |      |   |      |   |     |   |      |             | 28,0 |
| FYROMacedonia       | 22 241 278  | 17 820 451                                  | 80,1 |  |     | 916 625                                     | 4,1  | 1 090 371   | 4,9  | 261 566   | 1,2 | 523 949   | 2,4  |             | 7,3  |
| Ukraine             | 276 961 140   | 191 875 330                                 | 64,4 | 2 430 600  | 0,8 | 90 856 900                                  | 30,5 | 5 174 000   | 1,7  | 4 812 030   | 1,6 | 2 794 940   | 0,9  |             |      |
| UK-Northern Ireland | 185 002 000   | 26 040 000                                  | 14,1 | 1 805 000  | 1,0 | 20 116 000                                  | 10,9 | 35 303 000  | 19,1 |   |     | 507 000   | 0,3  | 101 231 000 | 54,7 |
| UK-Scotland         | 120 852 210   | 43 261 355                                  | 35,8 | 4 915 860  | 4,1 | 28 644 825                                  | 23,7 | 34 041 698  | 28,2 | 2 391 660   | 2,0 | 799 702   | 0,7  |             | 5,6  |

**Table 123. Budget of judicial systems (chapter 2)**

| Country                | Q1. Population 2006 | Q3. Per capita GDP (€) | Q4. Average gross annual salary(€) | Q6. Total annual approved budget allocated to all courts (in €) | Q17. Is the budget allocated to the public prosecution included in the court budget | Q16. Total annual approved public budget allocated to the public prosecution (€) - PP | Q15. Is the public budget allocated to legal aid included in the court budget? | Q13. Total annual approved public budget allocated to legal aid (€) - LA | Total annual budget allocated to all courts without public prosecution nor legal aid (€) - C | Total annual budget allocated to courts and public prosecution (C+PP) | Total annual budget allocated to courts and legal aid (C+LA) | Total public budget allocated to the judiciary systems (courts, public prosecution and legal aid) (C+PP+LA) |
|------------------------|---------------------|------------------------|------------------------------------|---|---|---|--|--|--|---|--|---|
| Albania                | 3 152 000           | nr                     | nr                                 |   |   |   |  | nr   |  |   |  |   |
| Andorra                | 81 222              | 29 621                 | 20 424                             | 5 941 464   | Yes   | 544 858   | No   | 300 000  | 5 396 607  | 5 941 464   | 5 696 607  | 6 241 464   |
| Armenia                | 3 222 900           | 1 587                  | 1 476                              | 4 189 496   | No  | 4 193 973   | No   | 129 925  | 4 189 496  | 8 383 469   | 4 319 421  | 12 702 890  |
| Austria                | 8 281 948           | 31 140                 | 40 320                             | 572 013 000   | Yes   | na  | Yes  | 17 700 000   | na   | 554 313 000   |  | 572 013 000   |
| Azerbaijan             | 8 532 700           | 1 880                  | 1 559                              | 11 339 059  | No  | 14 812 092  | No   | 226 484  | 11 339 059   | 26 151 151  | 11 565 543   | 26 377 635  |
| Belgium                | 10 511 382          | 30 000                 | 37 674                             | 823 600 000   | Yes   | na  | No   | 43 137 000   | na   | 823 600 000   |  | 866 737 000   |
| Bosnia and Herzegovina | 3 842 762           | 2 536                  | 5 332                              | 66 899 635  | No  | 16 144 684  | Yes  | 1 606 129  | 65 293 506   | 81 438 190  | 66 899 635   | 83 044 319  |
| Bulgaria               | 7 679 290           | 3 278                  | 2 210                              | 64 532 705  | No  | 29 853 310  | No   | 1 804 100  | 64 532 705   | 94 386 015  | 66 336 805   | 96 190 115  |
| Croatia                | 4 442 884           | 7 076                  | 10 871                             | 206 261 500   | No  | 32 241 063  | Yes  | na   | na   |   | 206 261 500  | 238 502 563   |
| Cyprus                 | 772 600             | 18 039                 | 22 636                             | 25 778 787  | No  | 12 555 469  | Yes  | na   | na   |   | 25 778 787   | 38 334 256  |
| Czech Republic         | 10 287 189          | 11 067                 | 8 808                              | 308 769 378   | Yes   | 69 619 179  | Yes  | 15 672 575   | 223 477 624  | 293 096 803   | 239 150 199  | 308 769 378   |
| Denmark                | 5 427 000           | 40 492                 | 48 307                             | 183 000 000   | No  | na  | No   | 2 869 941  | 183 000 000  |   | 185 869 941  |   |
| Estonia                | 1 342 409           | 10 092                 | 7 215                              | 24 220 267  | No  | 7 933 295   | No   | 2 567 320  | 24 220 267   | 32 153 562  | 26 787 587   | 34 720 882  |
| Finland                | 5 255 580           | 31 723                 | 34 081                             | 221 971 000   | No  | 31 324 000  | No   | 55 105 000   | 221 971 000  | 253 295 000   | 277 076 000  | 308 400 000   |
| France                 | 63 195 000          | 28 536                 | 30 367                             | 3 350 000 000   | Yes   | 670 000 000   | Yes  | 303 000 000  | 2 377 000 000  | 3 047 000 000   | 2 680 000 000  | 3 350 000 000   |
| Georgia                | 4 394 700           | 1 389                  | 1 480                              | 11 760 558  | No  | 8 000 000   | No   | 53 000   | 11 760 558   | 19 760 558  | 11 813 558   | 19 813 558  |
| Germany                | 82 351 000          | 28 012                 | 41 952                             | 8 731 000 000   | Yes   | na  | Yes  | 557 000 000  |  | 8 174 000 000   |  | 8 731 000 000   |
| Greece                 | 11 125 179          | 19 194                 | 23 037                             | 332 875 000   | Yes   | na  | No   | 1 700 000  |  | 332 875 000   |  | 334 575 000   |
| Hungary                | 10 066 000          | 8 926                  | 8 178                              | 277 750 000   | No  | 116 005 000   | Yes  | 198 981  | 277 551 019  | 393 556 019   | 277 750 000  | 393 755 000   |
| Iceland                | 299 899             | 39 951                 | 41 648                             | 12 300 000  | No  | 4 200 000   | No   | 1 500 000  | 12 300 000   | 16 500 000  | 13 800 000   | 18 000 000  |
| Ireland                | 4 239 848           | 41 205                 | 31 080                             | 111 841 000   | Yes   | 30 154 000  | No   | 63 600 000   | 81 687 000   | 81 687 000  | 145 287 000  | 175 441 000   |
| Italy                  | 58 751 711          | 26 492                 | 34 437                             | 2 751 910 175   | No  | 1 336 199 023   | Yes  | 86 562 704   | 2 665 347 471  | 4 001 546 494   | 2 751 910 175  | 4 098 109 198   |
| Latvia                 | 2 294 590           | 7 005                  | 5 156                              | 32 416 128  | No  | 17 113 881  | No   | 1 072 771  | 32 416 128   | 49 530 009  | 33 488 899   | 50 602 780  |
| Lithuania              | 3 403 284           | 6 996                  | 5 196                              | 58 150 487  | No  | 27 638 149  | No   | 3 226 245  | 58 150 487   | 85 788 636  | 61 376 732   | 89 014 881  |
| Luxembourg             | 472 700             | 71 600                 | 40 575                             | 57 334 448  | Yes   | na  | Yes  | 2 949 983  |  | 54 384 465  |  | 57 334 448  |
| Malta                  | 408 000             | 12 568                 | 12 800                             | 8 716 000   | No  | 2 569 000   | Yes  | 15 000   | 8 701 000  | 11 270 000  | 8 716 000  | 11 285 000  |

| Country              | Q1. Population 2006 | Q3. Per capita GDP (€) | Q4. Average gross annual salary(€) | Q6. Total annual approved budget allocated to all courts (in €) | Q17. Is the budget allocated to the public prosecution included in the court budget | Q16. Total annual approved public budget allocated to the public prosecution (€) - PP | Q15. Is the public budget allocated to legal aid included in the court budget? | Q13. Total annual approved public budget allocated to legal aid (€) - LA | Total annual budget allocated to all courts without public prosecution nor legal aid (€) - C | Total annual budget allocated to courts and public prosecution (C+PP) | Total annual budget allocated to courts and legal aid (C+LA) | Total public budget allocated to the judiciary systems (courts, public prosecution and legal aid) (C+PP+LA) |
|----------------------|---------------------|------------------------|------------------------------------|---|---|---|--|--|--|---|--|---|
| Moldova              | 3 589 936           | 745                    | 1 235                              | 3 002 838   | Non   | 4 135 134   | Non  | 126 614  | 3 002 838  | 7 137 972   | 3 129 452  | 7 264 586   |
| Monaco               | 33 000              | 49 899                 | 0                                  | 4 331 500   | No  | 1 219 300   | Yes  | 220 000  | 4 111 500  | 5 330 800   | 4 331 500  | 5 550 800   |
| Montenegro           | 620 145             | 2 864                  | 4 528                              | 8 664 682   | No  | 1 762 362   | Yes  | na   |  |   | 8 664 682  | 10 427 044  |
| Netherlands          | 16 334 210          | 32 698                 | 45 800                             | 774 368 000   | No  | 494 335 000   | No   | 344 666 748  | 774 368 000  | 1 268 703 000   | 1 119 034 748  | 1 613 369 748   |
| Norway               | 4 681 100           | 56 000                 | 43 921                             | 175 013 040   | No  | 12 384 000  | No   | 151 635 000  | 175 013 040  | 187 397 040   | 326 648 040  | 339 032 040   |
| Poland               | 38 125 479          | 7 169                  | 7 664                              | 1 211 751 000   | No  | 295 928 000   | Yes  | 21 724 000   | 1 190 027 000  | 1 485 955 000   | 1 211 751 000  | 1 507 679 000   |
| Portugal             | 10 569 592          | 14 657                 | 15 010                             | 506 493 712   | No  | na  | No   | 35 829 192   | 506 493 713  | na  | 542 322 905  | na  |
| Romania              | 21 610 213          | 6 876                  | 3 667                              | 267 977 585   | No  | 114 927 466   | Yes  | 6 065 759  | 261 911 826  | 376 839 292   | 267 977 585  | 382 905 051   |
| Russian Federation   | 142 000 000         | 6 690                  | 4 678                              | 2 486 680 213   | No  | 1 060 382 372   | Yes  | 85 020 103   | 2 401 660 110  | 3 462 042 482   | 2 486 680 213  | 3 547 062 585   |
| Serbia               | 7 411 569           | 3 407                  | 4 525                              | 156 098 339   | No  | 13 864 244  | No   | na   | 156 098 339  | 169 962 583   |  |   |
| Slovakia             | 5 389 180           | 8 820                  | 6 540                              | 111 477 334   | No  | 39 331 000  | Yes  | 2 779 410  | 108 697 924  | 148 028 924   | 111 477 334  | 150 808 334   |
| Slovenia             | 2 003 358           | 15 167                 | 14 556                             | 133 840 315   | No  | 17 893 000  | Yes  | 1 858 859  | 131 981 456  | 149 874 456   | 133 840 315  | 151 733 315   |
| Spain                | 43 758 250          | 22 418                 | 26 611                             | 2 983 492 000   | Yes   | na  | Yes  | 167 331 526  |  |   |  | 2 983 492 000   |
| Sweden               | 9 113 357           | 35 417                 | 46 948                             | 452 000 000   | No  | 134 529 613   | No   | 150 764 128  | 452 000 000  | 586 529 613   | 602 764 128  | 737 293 741   |
| Switzerland          | 7 459 100           | 40 016                 | 42 291                             | 673 348 943   | No  | 175 402 199   | Yes  | 47 203 730   | 626 145 213  | 801 547 412   | 673 348 943  | 848 751 142   |
| FYROMacedonia        | 2 038 514           | 2 491                  | 4 519                              | 22 241 278  | No  | 3 592 283   | Yes  | 900 277  | 21 341 001   | 24 933 284  | 22 241 278   | 25 833 561  |
| Turkey               | 73 425 000          | 4 361                  | 8 406                              | 522 486 876   | Yes   | na  | Yes  | na   |  |   |  | 522 486 876   |
| Ukraine              | 46 646 000          | 1 728                  | 2 187                              | 276 961 140   | No  | 120 125 950   | No   | 294 730  | 276 961 140  | 397 087 090   | 277 255 870  | 397 381 820   |
| UK-Northern Ireland  | 1 741 619           | 22 599                 | 24 219                             | 185 002 000   | No  | 41 600 000  | Yes  | 95 772 010   | 89 229 990   | 130 829 990   | 185 002 000  | 226 602 000   |
| UK-Scotland          | 5 116 900           | 30 473                 | 35 645                             | 120 852 210   | No  | 147 511 549   | No   | 239 947 427  | 120 852 210  | 268 363 759   | 360 799 637  | 508 311 186   |
| UK-England and Wales | 53 728 000          | 28 600                 | 35 940                             | 1 504 095 309   | No  | 819 000 000   | No   | 3 020 104 244  | 1 504 095 309  | 2 323 095 309   | 4 524 199 553  | 5 343 199 553   |

**Table 124. Special arrangements for victims of rape (Q34)**

| Country                | Information mechanism | Hearing modalities | Procedural rights | Other |
|------------------------|-----------------------|--------------------|-------------------|-------|
| Andorra                |                       | Yes                |                   |       |
| Armenia                |                       | Yes                |                   |       |
| Austria                | Yes                   | Yes                | Yes               | Yes   |
| Azerbaijan             | Yes                   | Yes                | Yes               |       |
| Belgium                |                       |                    | Yes               | Yes   |
| Bosnia and Herzegovina |                       | Yes                | Yes               |       |
| Bulgaria               | Yes                   | Yes                | Yes               |       |
| Croatia                | Yes                   |                    |                   |       |
| Cyprus                 | Yes                   | Yes                | Yes               |       |
| Czech Republic         |                       |                    |                   |       |
| Denmark                | Yes                   | Yes                | Yes               |       |
| Estonia                |                       | Yes                |                   |       |
| Finland                | Yes                   | Yes                | Yes               |       |
| France                 |                       | Yes                | Yes               | Yes   |
| Georgia                |                       | Yes                |                   |       |
| Germany                | Yes                   | Yes                |                   |       |
| Greece                 |                       |                    |                   |       |
| Hungary                |                       | Yes                |                   |       |
| Iceland                | Yes                   | Yes                | Yes               | Yes   |
| Ireland                |                       | Yes                | Yes               |       |
| Italy                  |                       | Yes                |                   |       |
| Latvia                 | Yes                   |                    | Yes               |       |
| Lithuania              |                       | Yes                |                   |       |
| Luxembourg             | Yes                   | Yes                | Yes               | Yes   |
| Malta                  |                       | Yes                | Yes               |       |
| Moldova                |                       | Yes                |                   |       |
| Monaco                 |                       |                    |                   |       |
| Montenegro             |                       | Yes                | Yes               |       |
| Netherlands            | Yes                   | Yes                | Yes               |       |
| Norway                 | Yes                   |                    | Yes               | Yes   |
| Poland                 | Yes                   | Yes                |                   | Yes   |
| Portugal               |                       | Yes                | Yes               | Yes   |
| Romania                | Yes                   | Yes                | Yes               | Yes   |
| Russian Federation     |                       | Yes                | Yes               |       |
| Serbia                 |                       |                    |                   |       |
| Slovakia               |                       |                    |                   |       |
| Slovenia               |                       | Yes                |                   |       |
| Spain                  | Yes                   | Yes                | Yes               |       |
| Sweden                 |                       | Yes                | Yes               |       |
| Switzerland            | Yes                   | Yes                | Yes               |       |
| FYROMacedonia          | Yes                   | Yes                | Yes               |       |
| Turkey                 |                       |                    |                   |       |
| Ukraine                | Yes                   | Yes                |                   |       |
| UK-Northern Ireland    |                       |                    |                   |       |
| UK-Scotland            | Yes                   | Yes                | Yes               | Yes   |
| UK-England and Wales   | Yes                   | Yes                | Yes               |       |

**Table 125. Special arrangements for victims of terrorism (Q34)**

| Country                | Information mechanism | Hearing modalities | Procedural rights | Other |
|------------------------|-----------------------|--------------------|-------------------|-------|
| Andorra                |                       |                    |                   |       |
| Armenia                |                       | Yes                |                   |       |
| Austria                | Yes                   | Yes                | Yes               | Yes   |
| Azerbaijan             |                       |                    |                   |       |
| Belgium                |                       |                    |                   |       |
| Bosnia and Herzegovina |                       | Yes                | Yes               |       |
| Bulgaria               | Yes                   | Yes                | Yes               |       |
| Croatia                | Yes                   |                    |                   |       |
| Cyprus                 | Yes                   | Yes                | Yes               |       |
| Czech Republic         |                       |                    |                   |       |
| Denmark                |                       |                    |                   |       |
| Estonia                |                       | Yes                |                   |       |
| Finland                |                       |                    | Yes               |       |
| France                 | Yes                   | Yes                | Yes               | Yes   |
| Georgia                |                       | Yes                |                   |       |
| Germany                | Yes                   | Yes                |                   |       |
| Greece                 |                       |                    |                   |       |
| Hungary                |                       |                    |                   |       |
| Iceland                | Yes                   | Yes                | Yes               |       |
| Ireland                |                       |                    |                   |       |
| Italy                  |                       | Yes                |                   |       |
| Latvia                 |                       |                    |                   |       |
| Lithuania              |                       |                    |                   |       |
| Luxembourg             |                       |                    |                   |       |
| Malta                  |                       |                    |                   |       |
| Moldova                |                       |                    |                   |       |
| Monaco                 |                       |                    |                   |       |
| Montenegro             |                       | Yes                | Yes               |       |
| Netherlands            | Yes                   | Yes                | Yes               |       |
| Norway                 | Yes                   |                    | Yes               | Yes   |
| Poland                 |                       |                    |                   |       |
| Portugal               |                       | Yes                | Yes               | Yes   |
| Romania                |                       | Yes                | Yes               |       |
| Russian Federation     |                       | Yes                | Yes               |       |
| Serbia                 |                       |                    |                   |       |
| Slovakia               |                       |                    |                   |       |
| Slovenia               |                       | Yes                |                   |       |
| Spain                  | Yes                   | Yes                | Yes               |       |
| Sweden                 |                       | Yes                | Yes               |       |
| Switzerland            | Yes                   | Yes                | Yes               |       |
| FYROMacedonia          | Yes                   | Yes                | Yes               |       |
| Turkey                 |                       |                    |                   |       |
| Ukraine                |                       |                    |                   |       |
| UK-Northern Ireland    |                       |                    |                   |       |
| UK-Scotland            | Yes                   | Yes                | Yes               | Yes   |
| UK-England and Wales   | Yes                   | Yes                | Yes               |       |

**Table 126. Special arrangements for children/witnesses/victims (Q34)**

| Country                | Information mechanism | Hearing modalities | Procedural rights | Other |
|------------------------|-----------------------|--------------------|-------------------|-------|
| Andorra                | Yes                   | Yes                | Yes               |       |
| Armenia                |                       | Yes                |                   |       |
| Austria                | Yes                   | Yes                | Yes               | Yes   |
| Azerbaijan             | Yes                   | Yes                | Yes               |       |
| Belgium                |                       | Yes                | Yes               |       |
| Bosnia and Herzegovina |                       | Yes                | Yes               | Yes   |
| Bulgaria               | Yes                   | Yes                | Yes               |       |
| Croatia                | Yes                   | Yes                | Yes               |       |
| Cyprus                 | Yes                   | Yes                | Yes               |       |
| Czech Republic         | Yes                   | Yes                | Yes               |       |
| Denmark                | Yes                   | Yes                | Yes               |       |
| Estonia                |                       | Yes                | Yes               |       |
| Finland                | Yes                   | Yes                | Yes               |       |
| France                 | Yes                   | Yes                | Yes               | Yes   |
| Georgia                |                       | Yes                | Yes               |       |
| Germany                | Yes                   | Yes                |                   |       |
| Greece                 | Yes                   | Yes                |                   |       |
| Hungary                |                       | Yes                | Yes               |       |
| Iceland                | Yes                   | Yes                | Yes               | Yes   |
| Ireland                |                       | Yes                |                   |       |
| Italy                  |                       | Yes                |                   |       |
| Latvia                 | Yes                   | Yes                | Yes               |       |
| Lithuania              |                       | Yes                | Yes               |       |
| Luxembourg             | Yes                   | Yes                | Yes               |       |
| Malta                  |                       | Yes                | Yes               |       |
| Moldova                |                       | Yes                | Yes               |       |
| Monaco                 |                       | Yes                |                   |       |
| Montenegro             |                       | Yes                | Yes               |       |
| Netherlands            | Yes                   | Yes                | Yes               |       |
| Norway                 | Yes                   | Yes                | Yes               | Yes   |
| Poland                 | Yes                   | Yes                | Yes               | Yes   |
| Portugal               |                       | Yes                | Yes               | Yes   |
| Romania                | Yes                   | Yes                | Yes               | Yes   |
| Russian Federation     |                       | Yes                | Yes               |       |
| Serbia                 |                       | Yes                | Yes               |       |
| Slovakia               | Yes                   | Yes                | Yes               |       |
| Slovenia               | Yes                   | Yes                | Yes               | Yes   |
| Spain                  | Yes                   | Yes                | Yes               |       |
| Sweden                 |                       | Yes                | Yes               |       |
| Switzerland            | Yes                   | Yes                | Yes               |       |
| FYROMacedonia          | Yes                   | Yes                | Yes               |       |
| Turkey                 |                       | Yes                | Yes               |       |
| Ukraine                | Yes                   | Yes                | Yes               |       |

**Table 127. Special arrangements for victims of domestic violence (Q34)**

| Country                | Information mechanism | Hearing modalities | Procedural rights | Other |
|------------------------|-----------------------|--------------------|-------------------|-------|
| Andorra                | Yes                   | Yes                |                   |       |
| Armenia                |                       | Yes                | Yes               |       |
| Austria                | Yes                   | Yes                | Yes               | Yes   |
| Azerbaijan             | Yes                   | Yes                | Yes               |       |
| Belgium                |                       |                    | Yes               | Yes   |
| Bosnia and Herzegovina |                       | Yes                | Yes               | Yes   |
| Bulgaria               | Yes                   | Yes                | Yes               |       |
| Croatia                | Yes                   |                    |                   | Yes   |
| Cyprus                 | Yes                   | Yes                | Yes               |       |
| Czech Republic         |                       |                    |                   |       |
| Denmark                | Yes                   | Yes                | Yes               |       |
| Estonia                |                       | Yes                |                   |       |
| Finland                | Yes                   | Yes                | Yes               |       |
| France                 | Yes                   |                    |                   | Yes   |
| Georgia                |                       | Yes                | Yes               |       |
| Germany                | Yes                   | Yes                |                   |       |
| Greece                 | Yes                   | Yes                |                   |       |
| Hungary                |                       |                    |                   |       |
| Iceland                | Yes                   | Yes                | Yes               |       |
| Ireland                |                       | Yes                |                   |       |
| Italy                  |                       |                    |                   |       |
| Latvia                 | Yes                   |                    |                   |       |
| Lithuania              |                       | Yes                |                   |       |
| Luxembourg             |                       |                    | Yes               | Yes   |
| Malta                  |                       | Yes                | Yes               |       |
| Moldova                |                       |                    |                   |       |
| Monaco                 |                       |                    |                   |       |
| Montenegro             |                       | Yes                | Yes               |       |
| Netherlands            | Yes                   | Yes                | Yes               |       |
| Norway                 | Yes                   | Yes                | Yes               | Yes   |
| Poland                 | Yes                   |                    |                   | Yes   |
| Portugal               |                       | Yes                | Yes               | Yes   |
| Romania                | Yes                   | Yes                | Yes               | Yes   |
| Russian Federation     |                       | Yes                | Yes               |       |
| Serbia                 |                       | Yes                | Yes               |       |
| Slovakia               |                       |                    |                   |       |
| Slovenia               |                       |                    | Yes               |       |
| Spain                  | Yes                   | Yes                | Yes               | Yes   |
| Sweden                 |                       | Yes                | Yes               |       |
| Switzerland            | Yes                   | Yes                | Yes               |       |
| FYROMacedonia          | Yes                   | Yes                | Yes               |       |
| Turkey                 |                       |                    |                   | Yes   |
| Ukraine                |                       |                    |                   |       |
| UK-Northern Ireland    |                       |                    |                   |       |
| UK-Scotland            | Yes                   | Yes                | Yes               | Yes   |
| UK-England and Wales   | Yes                   | Yes                | Yes               |       |

**Table 128. Special arrangements for ethnic minorities (Q34)**

| Country                | Information mechanism | Hearing modalities | Procedural rights | Other |
|------------------------|-----------------------|--------------------|-------------------|-------|
| Andorra                |                       |                    |                   |       |
| Armenia                |                       | Yes                |                   |       |
| Austria                | Yes                   | Yes                | Yes               | Yes   |
| Azerbaijan             | Yes                   | Yes                | Yes               |       |
| Belgium                |                       | Yes                |                   |       |
| Bosnia and Herzegovina |                       |                    |                   |       |
| Bulgaria               | Yes                   | Yes                | Yes               |       |
| Croatia                | Yes                   |                    |                   |       |
| Cyprus                 | Yes                   | Yes                | Yes               |       |
| Czech Republic         |                       |                    |                   |       |
| Denmark                |                       |                    |                   |       |
| Estonia                |                       | Yes                |                   |       |
| Finland                | Yes                   |                    |                   |       |
| France                 | Yes                   |                    |                   | Yes   |
| Georgia                |                       |                    |                   |       |
| Germany                |                       | Yes                | Yes               |       |
| Greece                 |                       |                    |                   |       |
| Hungary                |                       |                    | Yes               | Yes   |
| Iceland                | Yes                   | Yes                | Yes               |       |
| Ireland                |                       |                    |                   |       |
| Italy                  |                       |                    |                   |       |
| Latvia                 | Yes                   |                    |                   |       |
| Lithuania              |                       | Yes                |                   |       |
| Luxembourg             |                       |                    |                   |       |
| Malta                  |                       | Yes                |                   |       |
| Moldova                |                       |                    |                   |       |
| Monaco                 |                       |                    |                   |       |
| Montenegro             |                       | Yes                | Yes               |       |
| Netherlands            |                       | Yes                |                   |       |
| Norway                 | Yes                   |                    |                   | Yes   |
| Poland                 |                       |                    |                   |       |
| Portugal               |                       |                    |                   |       |
| Romania                | Yes                   | Yes                | Yes               |       |
| Russian Federation     |                       | Yes                | Yes               |       |
| Serbia                 | Yes                   |                    |                   |       |
| Slovakia               |                       |                    |                   |       |
| Slovenia               |                       | Yes                |                   |       |
| Spain                  |                       |                    |                   |       |
| Sweden                 |                       | Yes                | Yes               |       |
| Switzerland            |                       |                    |                   |       |
| FYROMacedonia          | Yes                   | Yes                | Yes               |       |
| Turkey                 |                       |                    |                   |       |
| Ukraine                |                       |                    |                   |       |
| UK-Northern Ireland    |                       |                    |                   |       |
| UK-Scotland            | Yes                   | Yes                | Yes               | Yes   |
| UK-England and Wales   | Yes                   | Yes                | Yes               |       |

**Table 129. Special arrangements for disabled persons (Q34)**

| Country                | Information mechanism | Hearing modalities | Procedural rights | Other |
|------------------------|-----------------------|--------------------|-------------------|-------|
| Andorra                |                       |                    |                   |       |
| Armenia                |                       | Yes                |                   |       |
| Austria                | Yes                   | Yes                | Yes               | Yes   |
| Azerbaijan             | Yes                   | Yes                | Yes               |       |
| Belgium                |                       |                    |                   |       |
| Bosnia and Herzegovina |                       | Yes                | Yes               |       |
| Bulgaria               | Yes                   | Yes                | Yes               |       |
| Croatia                | Yes                   | Yes                |                   |       |
| Cyprus                 | Yes                   | Yes                | Yes               |       |
| Czech Republic         |                       |                    |                   |       |
| Denmark                |                       |                    |                   |       |
| Estonia                |                       | Yes                |                   |       |
| Finland                | Yes                   | Yes                | Yes               |       |
| France                 |                       | Yes                |                   | Yes   |
| Georgia                |                       |                    |                   |       |
| Germany                |                       | Yes                | Yes               | Yes   |
| Greece                 |                       |                    |                   |       |
| Hungary                |                       | Yes                |                   |       |
| Iceland                | Yes                   | Yes                | Yes               |       |
| Ireland                |                       |                    |                   |       |
| Italy                  |                       | Yes                |                   |       |
| Latvia                 | Yes                   |                    | Yes               |       |
| Lithuania              |                       | Yes                |                   |       |
| Luxembourg             |                       |                    |                   | Yes   |
| Malta                  |                       | Yes                |                   | Yes   |
| Moldova                |                       | Yes                | Yes               |       |
| Monaco                 |                       | Yes                |                   |       |
| Montenegro             |                       | Yes                | Yes               |       |
| Netherlands            |                       |                    |                   |       |
| Norway                 | Yes                   | Yes                |                   | Yes   |
| Poland                 | Yes                   | Yes                |                   |       |
| Portugal               |                       | Yes                | Yes               | Yes   |
| Romania                |                       | Yes                | Yes               | Yes   |
| Russian Federation     |                       | Yes                | Yes               | Yes   |
| Serbia                 |                       |                    |                   |       |
| Slovakia               |                       |                    |                   |       |
| Slovenia               |                       | Yes                |                   |       |
| Spain                  |                       | Yes                |                   |       |
| Sweden                 |                       | Yes                | Yes               |       |
| Switzerland            |                       |                    |                   |       |
| FYROMacedonia          | Yes                   | Yes                | Yes               |       |
| Turkey                 |                       | Yes                | Yes               |       |
| Ukraine                | Yes                   | Yes                | Yes               |       |
| UK-Northern Ireland    |                       |                    |                   |       |
| UK-Scotland            | Yes                   | Yes                | Yes               | Yes   |
| UK-England and Wales   | Yes                   | Yes                | Yes               |       |

**Table 130. Special arrangements for juvenile offenders (Q34)**

| Country                | Information mechanism | Hearing modalities | Procedural rights | Other |
|------------------------|-----------------------|--------------------|-------------------|-------|
| Andorra                | Yes                   | Yes                | Yes               |       |
| Armenia                |                       | Yes                |                   |       |
| Austria                | Yes                   | Yes                | Yes               | Yes   |
| Azerbaijan             | Yes                   | Yes                | Yes               |       |
| Belgium                |                       | Yes                | Yes               |       |
| Bosnia and Herzegovina |                       | Yes                | Yes               |       |
| Bulgaria               | Yes                   | Yes                | Yes               |       |
| Croatia                | Yes                   |                    | Yes               |       |
| Cyprus                 | Yes                   | Yes                | Yes               |       |
| Czech Republic         | Yes                   | Yes                | Yes               |       |
| Denmark                | Yes                   | Yes                | Yes               |       |
| Estonia                |                       | Yes                | Yes               |       |
| Finland                |                       | Yes                | Yes               |       |
| France                 | Yes                   | Yes                | Yes               |       |
| Georgia                |                       | Yes                | Yes               |       |
| Germany                | Yes                   | Yes                | Yes               | Yes   |
| Greece                 | Yes                   | Yes                |                   |       |
| Hungary                | Yes                   | Yes                | Yes               |       |
| Iceland                | Yes                   | Yes                | Yes               | Yes   |
| Ireland                |                       | Yes                | Yes               |       |
| Italy                  |                       |                    | Yes               |       |
| Latvia                 | Yes                   |                    | Yes               |       |
| Lithuania              |                       | Yes                | Yes               |       |
| Luxembourg             |                       | Yes                | Yes               | Yes   |
| Malta                  |                       | Yes                | Yes               | Yes   |
| Moldova                |                       | Yes                | Yes               |       |
| Monaco                 |                       |                    |                   |       |
| Montenegro             |                       | Yes                | Yes               |       |
| Netherlands            |                       | Yes                | Yes               |       |
| Norway                 | Yes                   |                    | Yes               | Yes   |
| Poland                 |                       |                    | Yes               |       |
| Portugal               |                       | Yes                | Yes               | Yes   |
| Romania                | Yes                   | Yes                | Yes               | Yes   |
| Russian Federation     |                       | Yes                | Yes               |       |
| Serbia                 |                       |                    |                   |       |
| Slovakia               |                       |                    | Yes               |       |
| Slovenia               |                       | Yes                | Yes               | Yes   |
| Spain                  |                       | Yes                | Yes               |       |
| Sweden                 |                       | Yes                | Yes               |       |
| Switzerland            | Yes                   | Yes                | Yes               |       |
| FYROMacedonia          | Yes                   | Yes                | Yes               |       |
| Turkey                 |                       | Yes                | Yes               |       |
| Ukraine                | Yes                   |                    | Yes               |       |
| UK-Northern Ireland    |                       |                    |                   |       |
| UK-Scotland            | Yes                   | Yes                | Yes               | Yes   |
| UK-England and Wales   | Yes                   | Yes                | Yes               |       |

**Table 131. Special arrangements for other vulnerable persons (Q34)**

| <b>Country</b> | <b>Information mechanism</b> | <b>Hearing modalities</b> | <b>Procedural rights</b> | <b>Other</b> |
|----------------|------------------------------|---------------------------|--------------------------|--------------|
| Armenia        |                              | Yes                       |                          |              |
| Austria        | Yes                          | Yes                       | Yes                      | Yes          |
| Belgium        |                              | Yes                       | Yes                      |              |
| Bulgaria       | Yes                          | Yes                       | Yes                      |              |
| Finland        |                              | Yes                       | Yes                      |              |
| Norway         | Yes                          |                           | Yes                      | Yes          |
| Portugal       |                              | Yes                       | Yes                      | Yes          |
| Ukraine        | Yes                          |                           | Yes                      |              |

**Table 132. Computer facilities used within the courts (Q62, Q63, Q64)**

| Country                | Direct assistance to the judge/court clerk |                                       |                  |        |                     | Administration and management |                                     |                              |                      |                 | Communication between court and the parties |  |  |
|------------------------|--|---------------------------------------|------------------|--------|---------------------|-------------------------------|-------------------------------------|------------------------------|----------------------|-----------------|---|--|--|
|                        | Word processing                            | Electronic data base of jurisprudence | Electronic files | E-mail | Internet connection | Case registration system      | Court management information system | Financial information system | Electronic web forms | Special Website | Other electronic communication facilities   |  |  |
| Andorra                | 100%                                       | 100%                                  | <10%             | 100%   | 100%                | 100%                          | 100%                                | <10%                         | <10%                 | <10%            | <10%  |  |  |
| Armenia                | >50%                                       | >50%                                  | >50%             | <50%   | <50%                | <50%                          | <50%                                | <10%                         | <10%                 | <10%            | <50%  |  |  |
| Austria                | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                          | 100%                                | 100%                         | 100%                 | 100%            | 100%  |  |  |
| Azerbaijan             | 100%                                       | >50%                                  | <50%             | >50%   | <50%                | <50%                          | >50%                                | <50%                         | <50%                 | <50%            | <50%  |  |  |
| Belgium                | 100%                                       | 100%                                  | >50%             | 100%   | 100%                | >50%                          | >50%                                | >50%                         | <10%                 | <10%            | <10%  |  |  |
| Bosnia and Herzegovina | 100%                                       | <10%                                  | <10%             | <50%   | <50%                | <10%                          | <10%                                | <10%                         | <10%                 | <50%            |   |  |  |
| Bulgaria               | 100%                                       | 100%                                  | >50%             | 100%   | 100%                | >50%                          | >50%                                | 100%                         | <10%                 |                 | >50%  |  |  |
| Croatia                | 100%                                       | <50%                                  | <50%             | >50%   | >50%                | <10%                          | <10%                                | 100%                         | <50%                 | >50%            | <50%  |  |  |
| Cyprus                 | 100%                                       | >50%                                  |                  | >50%   | >50%                | 100%                          | >50%                                | >50%                         | <10%                 | <10%            | <10%  |  |  |
| Czech Republic         | 100%                                       | 100%                                  | <10%             | 100%   | 100%                | >50%                          | >50%                                | >50%                         | 100%                 | 100%            | >50%  |  |  |
| Denmark                | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                          | 100%                                | 100%                         | 100%                 | 100%            | 100%  |  |  |
| Estonia                | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                          | 100%                                | 100%                         | 100%                 | 100%            | 100%  |  |  |
| Finland                | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                          | 100%                                | 100%                         | 100%                 | 100%            | 100%  |  |  |
| France                 | 100%                                       | 100%                                  | >50%             | 100%   | 100%                | 100%                          | 100%                                | <10%                         | <10%                 | <50%            | <10%  |  |  |
| Georgia                | 100%                                       | 100%                                  | 100%             | >50%   | >50%                | >50%                          | >50%                                | >50%                         | <50%                 | >50%            | >50%  |  |  |
| Germany                | 100%                                       | 100%                                  | <50%             | >50%   | 100%                | >50%                          | >50%                                | 100%                         | <10%                 | >50%            | >50%  |  |  |
| Greece                 | >50%                                       | 100%                                  | >50%             | >50%   | >50%                | <50%                          | <50%                                | 100%                         | <10%                 | <10%            | <10%  |  |  |
| Hungary                | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                          | 100%                                | 100%                         | 100%                 | 100%            | 100%  |  |  |
| Iceland                | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                          | 100%                                | 100%                         | 100%                 | 100%            | 100%  |  |  |
| Ireland                | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                          | 100%                                | 100%                         | 100%                 | 100%            | 100%  |  |  |
| Italy                  | 100%                                       | 100%                                  | 100%             | >50%   | 100%                | >50%                          | >50%                                | <50%                         | <10%                 | <10%            | <50%  |  |  |
| Latvia                 | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                          | <10%                                | <10%                         | <10%                 | 100%            | <10%  |  |  |
| Lithuania              | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                          | >50%                                | >50%                         | <50%                 | <50%            |   |  |  |
| Luxembourg             | 100%                                       | 100%                                  |                  | 100%   | 100%                | 100%                          | 100%                                | 100%                         | <50%                 | <50%            |   |  |  |
| Malta                  | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                          | 100%                                | 100%                         | 100%                 | 100%            | 100%  |  |  |
| Moldova                | 100%                                       | >50%                                  |                  |        | <50%                |                               |                                     |                              |                      |                 |   |  |  |
| Monaco                 | 100%                                       |                                       | 100%             | 100%   | 100%                | 100%                          |                                     |                              |                      |                 |   |  |  |
| Montenegro             | 100%                                       |                                       |                  | 100%   | 100%                |                               |                                     |                              |                      | >50%            |   |  |  |
| Netherlands            | >50%                                       | 100%                                  | 100%             | <10%   | 100%                | >50%                          | 100%                                | 100%                         | >50%                 | <10%            | <10%  |  |  |
| Norway                 | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                          | 100%                                | 100%                         | <10%                 | <50%            | 100%  |  |  |
| Poland                 | 100%                                       | 100%                                  | <10%             | 100%   | 100%                | >50%                          | >50%                                | 100%                         | <10%                 | <10%            | <10%  |  |  |
| Portugal               | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                          | 100%                                | 100%                         | >50%                 | >50%            | <50%  |  |  |
| Romania                | 100%                                       | 100%                                  | <10%             | 100%   | 100%                | 100%                          | 100%                                | >50%                         | <10%                 | 100%            | 100%  |  |  |
| Russian Federation     | 100%                                       | <50%                                  |                  | 100%   | <50%                | >50%                          | <10%                                | 100%                         | <10%                 |                 |   |  |  |
| Serbia                 | 100%                                       | >50%                                  | <50%             | >50%   | <50%                | <50%                          | <10%                                | >50%                         | <10%                 | <10%            | <10%  |  |  |

| Country              | Direct assistance to the judge/court clerk |                                       |                  |        |                     |                          | Administration and management       |                              |                      |                 | Communication between court and the parties |  |  |
|----------------------|--|---------------------------------------|------------------|--------|---------------------|--------------------------|-------------------------------------|------------------------------|----------------------|-----------------|---|--|--|
|                      | Word processing                            | Electronic data base of jurisprudence | Electronic files | E-mail | Internet connection | Case registration system | Court management information system | Financial information system | Electronic web forms | Special Website | Other electronic communication facilities   |  |  |
| Slovakia             | 100%                                       | 100%                                  | >50%             | 100%   | 100%                | 100%                     | >50%                                | 100%                         | >50%                 | >50%            | 100%  |  |  |
| Slovenia             | 100%                                       | 100%                                  | >50%             | 100%   | 100%                | >50%                     | <50%                                | 100%                         | <10%                 | 100%            | 100%  |  |  |
| Spain                | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                     | 100%                                | 100%                         | 100%                 | <50%            | <10%  |  |  |
| Sweden               | 100%                                       | 100%                                  | <10%             | 100%   | 100%                | 100%                     | 100%                                | 100%                         | <10%                 | <10%            | <10%  |  |  |
| Switzerland          | 100%                                       | 100%                                  | >50%             | 100%   | 100%                | 100%                     | 100%                                | 100%                         | <10%                 | 100%            | 100%  |  |  |
| FYROMacedonia        | >50%                                       | >50%                                  | >50%             | <10%   | <10%                | >50%                     | >50%                                | 100%                         | <10%                 | <10%            | <50%  |  |  |
| Turkey               | 100%                                       | >50%                                  | >50%             | 100%   | 100%                | >50%                     | >50%                                | >50%                         | <10%                 | <50%            | <50%  |  |  |
| Ukraine              | >50%                                       | 100%                                  | 100%             |        | >50%                | <10%                     | <10%                                | <10%                         | <10%                 | <10%            | <10%  |  |  |
| UK-Northern Ireland  | 100%                                       |                                       | 100%             | 100%   | 100%                | 100%                     | 100%                                | 100%                         | 100%                 | 100%            | 0   |  |  |
| UK-Scotland          | 100%                                       | 100%                                  | 100%             | 100%   | 100%                | 100%                     | 100%                                |                              | 100%                 | 100%            | 100%  |  |  |
| UK-England and Wales | 100%                                       | 100%                                  | >50%             | 100%   | 100%                | 100%                     | 100%                                | 100%                         | 100%                 | 100%            | 100%  |  |  |

**Table 133. Total number of civil litigious and non litigious cases, administrative cases and other civil cases at the 2<sup>nd</sup> instance court (Q90)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Andorra                |                                 | 372            | 267          |                                   |
| Armenia                | 653                             | 5 474          | 3 549        | 1 678                             |
| Austria                | 6 253                           | 35 391         | 35 410       | 6 234                             |
| Azerbaijan             | 1 008                           | 9 211          | 8 918        | 1 301                             |
| Bosnia and Herzegovina | 29 567                          | 30 988         | 33 578       | 26 977                            |
| Croatia                | 56 661                          | 83 177         | 70 083       | 56 569                            |
| Czech Republic         | 16 191                          | 70 963         | 69 977       | 17 177                            |
| Denmark                | 4 503                           | 6 973          | 7 186        | 4 230                             |
| Estonia                | 977                             | 3 171          | 3 075        | 930                               |
| Finland                | 2 697                           | 3 666          | 3 976        | 2 387                             |
| France                 | 266 737                         | 228 976        | 249 504      | 246 209                           |
| Georgia                | 2 523                           | 6 719          | 5 306        | 3 626                             |
| Germany                | 51 391                          | 57 270         | 180 113      | 52 011                            |
| Hungary                | 9 789                           | 39 989         | 39 375       | 10 403                            |
| Italy                  | 348 476                         | 155 567        | 112 519      | 391 524                           |
| Latvia                 | 3 896                           | 6 483          | 6 506        | 3 868                             |
| Lithuania              | 2 952                           | 12 661         | 7 128        | 3 456                             |
| Luxembourg             |                                 | 1 206          | 1 154        |                                   |
| Malta                  | 1 162                           | 706            |              | 1 149                             |
| Moldova                | 8 659                           | 7 675          | 15 350       | 984                               |
| Monaco                 | 173                             | 119            | 90           | 202                               |
| Netherlands            |                                 | 32 930         | 32 820       |                                   |
| Norway                 | 1 572                           | 3 160          | 3 323        | 1 415                             |
| Poland                 | 58 308                          | 234 399        | 249 007      | 42 161                            |
| Portugal               | 8 014                           | 18 756         | 18 766       | 8 004                             |
| Romania                | 21 327                          | 35 799         | 41 804       | 15 322                            |
| Russian Federation     | 24 910                          | 651 404        | 614 015      | 26 986                            |
| Slovakia               | 9 404                           | 28 412         | 26 576       | 11 240                            |
| Slovenia               | 12 416                          | 27 151         | 28 227       | 11 340                            |
| Spain                  | 124 705                         | 194 721        | 197 746      | 129 573                           |
| Sweden                 | 17 309                          | 37 870         |              | 16 224                            |
| Switzerland            | 14 487                          | 32 778         | 30 701       | 14 449                            |
| FYROMacedonia          | 2 870                           | 22 444         | 22 590       | 2 724                             |

**Table 134. Total number of civil litigious (and commercial) cases at the 2<sup>nd</sup> instance court (Q90)**

| Country                | Pending cases on 1st January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|-----------------------------------|----------------|--------------|-----------------------------------|
| Belgium                |                                   | 32 822         |              |                                   |
| Bosnia and Herzegovina | 20 353                            | 21 271         | 22 703       | 18 921                            |
| Croatia                | 55 232                            | 80 430         | 67 410       | 55 381                            |
| Cyprus                 | 629                               | 433            | 342          | 719                               |
| Finland                | 2 441                             | 2 749          | 3 047        | 2 143                             |
| France                 | 234 777                           | 207 893        | 223 614      | 219 056                           |
| Georgia                | 1 129                             | 3 122          | 2 809        | 1 350                             |
| Germany                | 31 461                            | 89 719         | 129 551      | 29 671                            |
| Hungary                | 6 995                             | 23 690         | 23 246       | 7 493                             |
| Italy                  | 345 801                           | 149 341        | 107 027      | 388 115                           |
| Latvia                 | 2 721                             | 4 815          | 4 955        | 2 576                             |
| Lithuania              | 1 186                             | 7 071          | 3 087        | 1 572                             |
| Moldova                | 323                               | 292            | 584          | 31                                |
| Monaco                 | 173                               | 119            | 90           | 202                               |
| Montenegro             | 4 540                             | 5 980          | 4 835        | 5 695                             |
| Netherlands            |                                   | 22 770         | 23 360       | 16 580                            |
| Poland                 | 51 008                            | 206 401        | 219 659      | 37 698                            |
| Romania                | 15 857                            |                | 28 421       | 11 529                            |
| Russian Federation     | 16 223                            | 443 041        | 416 731      | 16 414                            |
| Serbia                 | 15 768                            | 78 329         | 70 010       | 24 087                            |
| Slovakia               | 8 217                             | 23 865         | 22 127       | 9 955                             |
| Slovenia               | 9 626                             | 19 677         | 20 759       | 8 544                             |
| Spain                  | 76 534                            | 150 888        | 148 958      | 78 947                            |
| Sweden                 | 1 465                             | 2 605          |              | 1 471                             |
| FYROMacedonia          | 2 870                             | 22 295         | 22 448       | 2 717                             |

**Table 135. Total number of civil non litigious (and commercial) cases at the 2<sup>nd</sup> instance court (Q90)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Bosnia and Herzegovina | 1 243                           | 2 717          | 3 303        | 657                               |
| Croatia                | 1 429                           | 2 747          | 2 673        | 1 188                             |
| Finland                | 151                             | 612            | 619          | 144                               |
| Germany                |                                 |                | 85 420       |                                   |
| Hungary                | 2 428                           | 15 413         | 15 202       | 2 639                             |
| Italy                  | 2 675                           | 6 226          | 5 492        | 3 409                             |
| Latvia                 | 46                              | 185            | 205          | 26                                |
| Moldova                | 6 238                           | 5 347          | 10 694       | 891                               |
| Poland                 | 7 300                           | 27 998         | 29 348       | 4 463                             |
| Slovakia               | 1 144                           | 4 483          | 4 374        | 1 253                             |

**Table 136. Total number enforcement cases at the 2<sup>nd</sup> instance court (Q90)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Bosnia and Herzegovina | 0                               | 0              | 0            | 0                                 |
| Finland                | 77                              | 256            | 257          | 76                                |
| Hungary                | 118                             | 543            | 517          | 144                               |
| Poland                 | 0                               | 0              | 0            | 0                                 |
| Romania                | 991                             |                | 1 281        | 405                               |
| Slovakia               | 1 706                           | 5 495          | 5 480        | 1 721                             |
| Spain                  | 28 139                          | 16 778         | 25 011       | 28 210                            |

**Table 137. Number of land registry cases at the 2<sup>nd</sup> instance court (Q90)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Bosnia and Herzegovina | 0                               | 0              | 0            | 0                                 |
| Finland                | 77                              | 256            | 257          | 76                                |
| Hungary                | 118                             | 543            | 517          | 144                               |
| Poland                 | 0                               | 0              | 0            | 0                                 |
| Romania                | 991                             |                | 1 281        | 405                               |
| Slovakia               | 1 706                           | 5 495          | 5 480        | 1 721                             |
| Spain                  | 28 139                          | 16 778         | 25 011       | 28 210                            |

**Table 138. Number of business register cases at the 2<sup>nd</sup> instance court (Q90)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Bosnia and Herzegovina | 0                               | 0              | 0            | 0                                 |
| Hungary                | 10                              | 12             | 21           | 1                                 |
| Poland                 | 0                               | 0              | 0            | 0                                 |

**Table 139. Number of administrative law cases at the 2<sup>nd</sup> instance court (Q90)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Bosnia and Herzegovina | 7 971                           | 7 000          | 7 572        | 7 399                             |
| Cyprus                 | 464                             | 152            | 94           | 471                               |
| Estonia                | 436                             | 959            | 1 076        | 308                               |
| France                 | 31 960                          | 21 083         | 25 890       | 27 153                            |
| Georgia                | 1 394                           | 3 597          | 2 497        | 2 276                             |
| Germany                | 51 391                          | 57 270         | 56 651       | 52 011                            |
| Hungary                | 366                             | 886            | 927          | 325                               |
| Latvia                 | 1 115                           | 1 283          | 1 158        | 1 240                             |
| Lithuania              | 1 766                           | 5 590          | 4 401        | 1 884                             |
| Luxembourg             | 109                             | 367            | 311          |                                   |
| Moldova                | 2 098                           | 2 036          | 4 072        | 62                                |
| Netherlands            |                                 | 10 160         | 9 460        |                                   |
| Poland                 | 6 848                           | 16 157         | 14 675       | 8 330                             |
| Russian Federation     | 8 687                           | 208 363        | 197 264      | 10 572                            |
| Slovakia               | 43                              | 64             | 75           | 32                                |
| Slovenia               | 2 722                           | 1 830          | 1 807        | 2 745                             |
| Spain                  | 20 032                          | 27 055         | 23 777       | 22 416                            |
| Sweden                 | 14 277                          | 24 087         |              | 13 184                            |
| Turkey                 | 13 180                          | 69 578         | 67 294       | 15 464                            |
| Ukraine                | 1 999                           | 32 672         | 24 839       | 3 266                             |

Table 140. Number of other civil cases at the 2<sup>nd</sup> instance court (Q90)

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Bosnia and Herzegovina | 0                               | 0              | 0            | 0                                 |
| Finland                | 28                              | 49             | 53           | 24                                |
| Monaco                 | 0                               | 0              | 0            | 0                                 |
| Poland                 | 0                               | 0              | 0            | 0                                 |
| Romania                | 4 479                           | 11 011         | 12 102       | 3 388                             |
| Slovakia               | 13                              | 162            | 145          | 30                                |
| Slovenia               | 68                              | 5 644          | 5 661        | 51                                |
| Sweden                 | 1 567                           | 11 178         | 142          | 1 569                             |
| FYROMacedonia          |                                 | 149            |              | 7                                 |

Table 141. Total number of criminal cases (severe criminal offences and minor offences) at the 2<sup>nd</sup> Instance court (Q90)

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Armenia                | 57                              | 653            | 663          | 47                                |
| Austria                | 1 123                           | 9 399          | 9 509        | 1 013                             |
| Azerbaijan             | 152                             | 2 242          | 2 199        | 195                               |
| Bosnia and Herzegovina | 3 306                           | 44 533         | 43 178       | 4 661                             |
| Croatia                | 101 762                         | 77 353         | 31 917       | 89 053                            |
| Cyprus                 | 196                             | 288            | 258          | 226                               |
| Czech Republic         | 1 613                           | 13 545         | 13 584       | 1 574                             |
| Denmark                | 1 487                           | 3 046          |              | 1 384                             |
| Estonia                | 127                             | 1 947          | 1 862        | 134                               |
| Finland                | 4 755                           | 8 188          | 8 437        | 4 505                             |
| Georgia                | 557                             | 3 932          | 3 581        | 750                               |
| Germany                | 21 657                          | 69 860         | 70 378       | 21 139                            |
| Hungary                | 6 044                           | 34 443         | 33 993       | 6 494                             |
| Italy                  | 138 984                         | 85 340         | 71 144       | 153 180                           |
| Latvia                 | 961                             | 2 498          | 2 684        | 775                               |
| Lithuania              | 605                             | 5 699          | 3 332        | 715                               |
| Luxembourg             |                                 |                | 647          |                                   |
| Malta                  | 9 222                           | 14 263         | 14 104       | 9 606                             |
| Moldova                | 305                             | 2 553          | 2 586        | 272                               |
| Monaco                 |                                 |                | 55           |                                   |
| Norway                 | 580                             | 1 389          | 1 448        | 519                               |
| Poland                 | 32 665                          | 361 845        | 361 025      | 32 892                            |
| Portugal               | 6 010                           | 10 986         | 10 992       | 6 004                             |
| Romania                | 4 275                           | 26 340         | 26 216       | 4 399                             |
| Russian Federation     | 11 000                          | 333 372        | 304 942      | 12 052                            |
| Slovakia               | 1 427                           | 4 744          | 4 938        | 1 248                             |
| Slovenia               | 2 134                           | 10 888         | 10 930       | 2 092                             |
| Sweden                 | 3 684                           | 8 767          |              | 3 603                             |
| Switzerland            | 3 655                           | 13 964         | 12 448       | 3 783                             |
| FYROMacedonia          | 337                             | 15 427         | 15 567       | 197                               |

**Table 142. Number of criminal cases (severe criminal offences) at the 2<sup>nd</sup> instance court (Q90)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Andorra                | 8                               | 51             | 45           | 14                                |
| Austria                | 541                             | 6 726          | 6 728        | 539                               |
| Azerbaijan             |                                 | 640            |              |                                   |
| Bosnia and Herzegovina | 3 306                           | 44 533         | 43 178       | 4 661                             |
| Croatia                | 4 565                           | 13 197         | 12 214       | 4 617                             |
| Denmark                | 35                              | 110            |              | 58                                |
| Estonia                | 122                             | 1 778          | 1 708        | 127                               |
| France                 |                                 | 50 222         | 37 517       |                                   |
| Germany                | 20 632                          | 61 792         | 62 235       | 20 189                            |
| Hungary                | 6 020                           | 33 926         | 33 469       | 6 477                             |
| Latvia                 | 773                             | 1 907          | 2 156        | 524                               |
| Luxembourg             |                                 |                | 49           |                                   |
| Malta                  | 18                              | 33             | 20           | 37                                |
| Monaco                 |                                 |                | 17           |                                   |
| Montenegro             | 1 062                           | 3 385          | 3 084        | 1 363                             |
| Netherlands            |                                 |                | 24 740       | 13 510                            |
| Poland                 | 11 928                          | 104 373        | 103 139      | 13 121                            |
| Portugal               | 6 010                           | 10 986         | 10 992       | 6 004                             |
| Slovakia               |                                 |                | 4 680        |                                   |
| Slovenia               | 1 564                           | 4 975          | 4 995        | 1 544                             |
| Spain                  | 19 848                          | 126 614        | 124 930      | 20 674                            |
| FYROMacedonia          | 265                             | 4 914          | 5 035        | 144                               |
| UK-England and Wales   | 51 523                          | 109 524        |              | 52 542                            |

**Table 143. Number of misdemeanour cases (minor offences) at the 2<sup>nd</sup> instance court (Q90)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Andorra                | 39                              | 119            | 110          | 64                                |
| Austria                | 582                             | 2 673          | 2 781        | 474                               |
| Azerbaijan             |                                 | 1 754          |              |                                   |
| Belgium                | 3 183                           | 9 197          | 8 577        |                                   |
| Bosnia and Herzegovina | 0                               | 0              | 0            | 0                                 |
| Croatia                | 97 197                          | 64 156         | 19 703       | 84 436                            |
| Denmark                | 1 452                           | 2 936          |              | 1 326                             |
| Estonia                | 5                               | 169            | 154          | 7                                 |
| Germany                | 1 025                           | 8 068          | 8 143        | 950                               |
| Hungary                | 24                              | 517            | 524          | 17                                |
| Latvia                 | 188                             | 591            | 528          | 251                               |
| Luxembourg             |                                 |                | 598          |                                   |
| Malta                  | 9 204                           | 14 230         | 14 084       | 9 569                             |
| Monaco                 |                                 |                | 38           |                                   |
| Poland                 | 20 737                          | 257 472        | 257 886      | 19 771                            |
| Serbia                 | 2 270                           | 21 175         | 21 188       | 2 257                             |
| Slovakia               |                                 |                | 258          |                                   |
| Slovenia               | 570                             | 5 913          | 5 935        | 548                               |
| Spain                  | 5 681                           | 30 368         | 30 999       | 4 844                             |
| FYROMacedonia          | 72                              | 10 513         | 10 532       | 53                                |

**Table 144. Total number of civil litigious and non litigious cases, administrative law cases and other civil cases at the highest instance court (Q91)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Armenia                | 25                              | 1805           | 1785         | 45                                |
| Austria                | 871                             | 2914           | 2947         | 838                               |
| Azerbaijan             | 428                             | 3272           | 3366         | 334                               |
| Belgium                | 1642                            | 2957           | 2953         | 1646                              |
| Bosnia and Herzegovina | 11664                           | 4013           | 6258         | 9419                              |
| Bulgaria               | 13646                           | 13928          | 14464        | 13110                             |
| Croatia                | 1027                            | 2382           | 2721         | 688                               |
| Czech Republic         | 7150                            | 11700          | 10731        | 6789                              |
| Denmark                | 453                             | 456            | 452          | 449                               |
| Estonia                | 38                              | 266            | 249          | 54                                |
| Finland                | 4031                            | 5465           | 5991         | 3490                              |
| France                 | 33171                           | 29305          | 33659        | 28817                             |
| Georgia                | 1010                            | 1959           | 2179         | 788                               |
| Germany                | 9481                            | 14113          | 13607        | 9987                              |
| Hungary                | 1277                            | 6146           | 5838         | 1585                              |
| Iceland                | 112                             | 425            | 326          | 120                               |
| Ireland                |                                 | 15433          |              |                                   |
| Italy                  | 95081                           | 35169          | 29445        | 100805                            |
| Latvia                 | 244                             | 1690           | 1551         | 383                               |
| Lithuania              | 7                               | 665            | 665          | 7                                 |
| Luxembourg             |                                 |                | 62           |                                   |
| Malta                  | 43                              | 31             |              | 37                                |
| Moldova                | 507                             | 4095           | 4115         | 487                               |
| Monaco                 |                                 | 75             | 42           |                                   |
| Norway                 | 48                              | 91             | 91           | 49                                |
| Poland                 | 17008                           | 6318           | 6554         | 1470                              |
| Portugal               | 886                             | 3499           | 3562         | 823                               |
| Romania                | 40598                           | 183863         | 184495       | 40929                             |
| Slovakia               | 3990                            | 8386           | 8850         | 3526                              |
| Slovenia               | 1365                            | 2390           | 1811         | 1944                              |
| Spain                  | 40995                           | 17717          | 25179        | 34225                             |
| Sweden                 | 7 871                           | 11 796         | 10 813       | 8 854                             |
| Switzerland            | 3056                            | 7239           | 7004         | 3291                              |
| FYROMacedonia          | 5043                            | 4657           | 4823         | 4877                              |
| Turkey                 | 150955                          | 412519         | 390141       | 171161                            |
| Ukraine                | 36 000                          | 16 000         |              | 36 000                            |

**Table 145. Number of civil litigious (and commercial) cases at the highest instance court (Q91)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Bosnia and Herzegovina | 2602                            | 2918           | 2684         | 2836                              |
| Croatia                | 1027                            | 2382           | 2721         | 688                               |
| Czech Republic         | 3916                            | 7507           | 6002         | 4091                              |
| Estonia                | 145                             | 161            | 820          | 32                                |
| Finland                | 441                             | 1010           | 1124         | 324                               |
| France                 | 23 677                          | 19 034         | 22 461       | 20 250                            |
| Georgia                | 525                             | 872            | 1049         | 348                               |
| Germany                | 4868                            | 5906           | 2895         | 5229                              |
| Hungary                | 716                             | 4580           | 4503         | 793                               |
| Italy                  | 95081                           | 35169          | 29445        | 100805                            |
| Latvia                 | 118                             | 994            | 908          | 204                               |
| Moldova                | 219                             | 1881           | 1919         | 181                               |
| Monaco                 |                                 | 64             | 23           |                                   |
| Montenegro             | 12                              | 11             | 13           | 10                                |
| Netherlands            |                                 | 507            | 446          |                                   |
| Romania                | 33958                           | 112141         | 118275       | 27824                             |
| Serbia                 | 4022                            | 8352           | 9019         | 3355                              |
| Slovenia               | 1138                            | 1537           | 1084         | 1591                              |
| Spain                  | 19591                           | 9637           | 12310        | 16918                             |
| Sweden                 | 223                             | 558            | 581          | 200                               |
| Switzerland            | 258                             | 770            | 757          | 271                               |
| FYROMacedonia          | 1011                            | 1635           | 1224         | 1442                              |
| Turkey                 | 69421                           | 325641         | 318355       | 76707                             |
| Ukraine                | 36 000                          | 16 000         |              | 36 000                            |

**Table 146. Number of civil non litigious (and commercial) cases at the highest instance court (Q91)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Bosnia and Herzegovina | 30                              | 242            | 252          | 20                                |
| Finland                | 225                             | 274            | 324          | 175                               |
| Germany                |                                 |                | 2650         |                                   |
| Moldova                | 288                             | 2214           | 2196         | 306                               |
| Montenegro             | 8                               | 78             | 85           | 1                                 |

**Table 147. Number of enforcement cases at the highest instance court (Q91)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Bosnia and Herzegovina | 0                               | 0              | 0            | 0                                 |
| Romania                | 469                             | 828            | 1070         | 227                               |
| Spain                  | 13                              | 18             | 19           | 12                                |
| Switzerland            | 24                              | 230            | 223          | 31                                |

**Table 148. Number of administrative law cases at the highest instance court (Q91)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Bosnia and Herzegovina | 9032                            | 853            | 3322         | 6563                              |
| Bulgaria               | 3917                            | 12914          | 13604        | 3302                              |
| Czech Republic         | 3234                            | 4193           | 4729         | 2698                              |
| Estonia                | 74                              | 105            | 566          | 22                                |
| Finland                | 3095                            | 3793           | 4006         | 2866                              |
| France                 | 9 494                           | 10 271         | 11 198       | 11 198                            |
| Georgia                | 485                             | 1087           | 1130         | 442                               |
| Germany                | 4613                            | 8207           | 8062         | 4758                              |
| Hungary                | 561                             | 1566           | 1335         | 792                               |
| Latvia                 | 110                             | 613            | 569          | 154                               |
| Monaco                 |                                 | 11             | 19           |                                   |
| Montenegro             | 9                               | 116            | 93           | 32                                |
| Netherlands            | 2133                            | 6743           | 7043         | 1833                              |
| Romania                | 6171                            | 42356          | 34899        | 7457                              |
| Serbia                 | 11516                           | 13501          | 10458        | 14559                             |
| Slovakia               | 1681                            | 2751           | 2916         | 1516                              |
| Slovenia               | 32                              | 172            | 186          | 18                                |
| Spain                  | 21391                           | 8062           | 12850        | 17279                             |
| Sweden                 | 6 795                           | 8 071          | 6 967        | 7 899                             |
| Switzerland            | 2774                            | 6239           | 6024         | 2989                              |
| FYROMacedonia          | 4032                            | 3022           | 3599         | 3455                              |
| Turkey                 | 81534                           | 86878          | 71786        | 94454                             |
| Ukraine                | 155                             | 307            | 94           | 155                               |

**Table 149. Number of other civil cases at the highest instance court (Q91)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Bosnia and Herzegovina | 0                               | 0              | 0            | 0                                 |
| Finland                | 270                             | 388            | 537          | 122                               |
| Latvia                 | 16                              | 83             | 74           | 25                                |
| Montenegro             | 732                             | 443            | 958          | 217                               |
| Poland                 | 6                               | 79             | 75           | 10                                |
| Romania                | 7134                            | 28538          | 30251        | 5421                              |
| Slovenia               | 195                             | 681            | 541          | 335                               |
| Sweden                 | 853                             | 3 167          | 3 265        | 755                               |

**Table 150. Total number of criminal cases (severe criminal offences) and misdemeanour cases (minor offences) at the highest instance court (Q91)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Armenia                | 11                              | 352            | 344          | 19                                |
| Austria                | 181                             | 719            | 721          | 179                               |
| Azerbaijan             | 63                              | 754            | 778          | 39                                |
| Belgium                | 439                             | 1697           | 1722         | 414                               |
| Bosnia and Herzegovina | 239                             | 1173           | 1205         | 207                               |
| Bulgaria               | 1636                            | 3274           | 3888         | 1022                              |
| Croatia                | 251                             | 747            | 740          | 258                               |
| Czech Republic         | 204                             | 2351           | 2350         | 199                               |
| Denmark                |                                 | 128            |              |                                   |
| Estonia                | 43                              | 134            | 459          | 25                                |
| Finland                | 543                             | 1075           | 1245         | 373                               |
| Georgia                | 405                             | 2008           | 1160         | 1253                              |
| Germany                | 451                             | 3266           | 3326         | 391                               |
| Hungary                | 161                             | 1420           | 1397         | 184                               |
| Iceland                | 36                              | 248            | 232          | 53                                |
| Italy                  | 32862                           | 48103          | 43526        | 37439                             |
| Latvia                 | 32                              | 768            | 758          | 42                                |
| Lithuania              | 227                             | 898            | 701          | 424                               |
| Luxembourg             |                                 |                | 50           |                                   |
| Moldova                | 98                              | 2073           | 1867         | 304                               |
| Monaco                 |                                 | 22             | 36           |                                   |
| Norway                 | 21                              | 89             | 81           | 30                                |
| Poland                 | 967                             | 2552           | 2672         | 887                               |
| Portugal               | 302                             | 1387           | 1405         | 284                               |
| Romania                | 5218                            | 62584          | 61804        | 5998                              |
| Slovakia               | 278                             | 1835           | 1847         | 266                               |
| Slovenia               | 384                             | 938            | 1026         | 296                               |
| Spain                  | 2525                            | 4345           | 4762         | 2108                              |
| Sweden                 | 255                             | 1 524          | 1 583        | 196                               |
| Switzerland            | 165                             | 621            | 622          | 164                               |
| FYROMacedonia          | 59                              | 781            | 770          | 70                                |
| Turkey                 | 136135                          | 149074         | 144204       | 141005                            |
| Ukraine                | 4210                            | 25488          | 26496        | 3112                              |

**Table 151. Number of criminal cases (severe criminal offences) at the highest instance court (Q91)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Azerbaijan             |                                 | 274            |              |                                   |
| Bosnia and Herzegovina | 239                             | 1173           | 1205         | 207                               |
| Croatia                | 251                             | 747            | 740          | 258                               |
| Estonia                | 16                              | 80             | 74           | 22                                |
| France                 | 2 745                           | 9 205          | 2 297        | 2 903                             |
| Germany                |                                 | 3265           |              | 390                               |
| Ireland                |                                 | 1263           |              |                                   |
| Italy                  | 32862                           | 48103          | 43526        | 37439                             |
| Latvia                 | 16                              | 527            | 518          | 25                                |
| Moldova                | 58                              | 1243           | 1125         | 176                               |
| Montenegro             | 0                               | 280            | 280          | 0                                 |
| Netherlands            |                                 | 3540           | 3079         |                                   |
| Portugal               | 302                             | 1387           | 1405         | 284                               |
| Serbia                 | 1892                            | 7750           | 7606         | 2036                              |
| Slovenia               | 359                             | 896            | 989          | 266                               |
| FYROMacedonia          | 59                              | 781            | 770          | 70                                |
| Turkey                 | 136135                          | 149074         | 144204       | 141005                            |

**Table 153. Average length of litigious divorce proceedings at second instance courts, in days (Q93)**

| Country    | Divorce cases |
|------------|---------------|
| Azerbaijan | 90            |
| Belgium    | 564           |
| Denmark    | 90            |
| Latvia     | 84            |
| Monaco     | 240           |
| Poland     | 89            |
| Portugal   | 114           |
| Slovenia   | 78            |

**Table 154. Average total length of litigious divorce proceedings (including all instances), in days (Q93)**

| Country        | Total length of divorce proceedings |
|----------------|-------------------------------------|
| Azerbaijan     | 60                                  |
| Czech Republic | 602                                 |
| Denmark        | 180                                 |
| Finland        | 243                                 |
| Monaco         | 510                                 |
| Slovakia       | 7,4                                 |

**Table 152. Number of misdemeanour cases (minor offences) at the highest instance court (Q91)**

| Country                | Pending cases on 1 January 2006 | Incoming cases | Solved cases | Pending cases on 31 December 2006 |
|------------------------|---------------------------------|----------------|--------------|-----------------------------------|
| Azerbaijan             |                                 | 543            |              |                                   |
| Bosnia and Herzegovina | 0                               | 0              | 0            | 0                                 |
| Estonia                | 23                              | 54             | 136          | 3                                 |
| Germany                |                                 | 1              |              | 1                                 |
| Ireland                | 0                               | 0              | 0            | 0                                 |
| Latvia                 | 16                              | 241            | 240          | 17                                |
| Moldova                | 40                              | 830            | 742          | 128                               |
| Slovenia               | 25                              | 42             | 37           | 30                                |

**Table 155. Appeal percentage and long pending cases percentage of dismissal proceedings in 2006 (Q93)**

| Country            | Percentage of decisions subject to appeal | Percentage of pending cases more than 3 years |
|--------------------|---|---|
| Bulgaria           | 77%                                       |   |
| Finland            | 48,8%                                     | 0%  |
| France             | 61,9%                                     |   |
| Latvia             | 51,3%                                     | 2%  |
| Monaco             | 39%                                       |   |
| Poland             | 13,9%                                     | 5,2%  |
| Romania            | 57%                                       | 0%  |
| Russian Federation | 8,6%                                      | 0%  |
| Slovakia           | 26,8%                                     |   |
| Slovenia           | 37%                                       | 5,7%  |

**Table 157. Appeal percentage and long pending cases of intentional homicide proceedings in 2006 (Q93)**

| Country            | Percentage of decisions subject to appeal | Percentage of pending cases more than 3 years |
|--------------------|---|---|
| Bulgaria           | 59%                                       |   |
| Finland            | 66%                                       | 0%  |
| Latvia             | 31, %                                     | 1%  |
| Monaco             | 0%  |   |
| Montenegro         | 20%                                       |   |
| Romania            | 63%                                       | 0%  |
| Russian Federation | 10%                                       | 0%  |
| Slovakia           | 82,6                                      |   |

**Table 156. Appeal percentage and long pending cases percentage of robbery proceedings in 2006 (Q93)**

| Country            | Percentage of decisions subject to appeal | Percentage of pending cases more than 3 years |
|--------------------|---|---|
| Bulgaria           | 36%                                       |   |
| Finland            | 38%                                       | 4%  |
| Latvia             | 46%                                       | 3%  |
| Monaco             | 0%  |   |
| Montenegro         | 11%                                       |   |
| Romania            | 83%                                       | 0%  |
| Russian Federation | 0,5%                                      | 0%  |
| Slovakia           | 30%                                       |   |

**Table 158. Types of mandatory trainings for judges (Q110)**

| Country                | Initial training | General in-service training | In-service training for specialised judicial functions | In-service training for management functions of the court | In-service training for the use of computer facilities in the court |
|------------------------|------------------|-----------------------------|--|---|---|
| Andorra                | Yes              | Yes                         | No   | No  | Yes   |
| Armenia                | No               | Yes                         | Yes  | No  | No  |
| Austria                | Yes              | No                          | No   | No  | No  |
| Azerbaijan             | Yes              | No                          | No   | No  | No  |
| Belgium                | Yes              | No                          | Yes  | No  | No  |
| Bosnia and Herzegovina | No               | Yes                         | No   | No  | Yes   |
| Bulgaria               | Yes              | No                          | No   | No  | No  |
| Croatia                | No               | No                          | No   | No  | No  |
| Cyprus                 | No               | No                          | No   | No  | No  |
| Czech Republic         | No               | No                          | No   | No  | No  |
| Denmark                | Yes              | No                          | No   | Yes   | No  |
| Estonia                | No               | Yes                         | Yes  | No  | No  |
| Finland                | No               | No                          | No   | No  | No  |
| France                 | Yes              | Yes                         | No   | No  | No  |
| Georgia                | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Germany                | Yes              | Yes                         | No   | No  | No  |
| Greece                 | Yes              | Yes                         | Yes  | No  | Yes   |
| Hungary                | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Iceland                | Yes              | Yes                         | Yes  | No  | Yes   |
| Ireland                | Yes              | No                          | No   | No  | No  |
| Italy                  | Yes              | No                          | No   | No  | No  |
| Latvia                 | Yes              | Yes                         | Yes  | No  | No  |
| Lithuania              | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Luxembourg             | Yes              | No                          | No   | No  | No  |
| Malta                  | No               | Yes                         | Yes  | No  | No  |
| Moldova                | No               | Yes                         | No   | No  | No  |
| Monaco                 | Yes              | Yes                         | No   | No  | No  |
| Montenegro             | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Netherlands            | Yes              | Yes                         | No   | No  | No  |
| Norway                 | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Poland                 | Yes              | No                          | No   | No  | Yes   |
| Portugal               | Yes              | No                          | No   | No  | No  |
| Romania                | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Russian Federation     | Yes              | No                          | No   | No  | No  |
| Serbia                 | No               | No                          | No   | No  | No  |
| Slovakia               | Yes              | Yes                         | No   | No  | No  |
| Slovenia               | No               | No                          | No   | No  | No  |
| Spain                  | Yes              | No                          | No   | No  | No  |
| Sweden                 | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Switzerland            | Yes              | No                          | No   | No  | No  |
| FYROMacedonia          | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Turkey                 | Yes              | Yes                         | No   | No  | No  |
| Ukraine                | Yes              | Yes                         | Yes  | Yes   | Yes   |
| UK-Northern Ireland    | Yes              | Yes                         | Yes  | No  | Yes   |
| UK-Scotland            | Yes              | Yes                         | Yes  | No  | Yes   |
| UK-England and Wales   | Yes              | No                          | No   | No  | No  |

**Table 159. Types of mandatory trainings for prosecutors (Q112)**

| Country                | Initial training | General in-service training | In-service training for specialised judicial functions | In-service training for management functions of the court | In-service training for the use of computer facilities in the court |
|------------------------|------------------|-----------------------------|--|---|---|
| Andorra                | Yes              | Yes                         | No   | No  | Yes   |
| Armenia                | No               | Yes                         | Yes  | No  | No  |
| Austria                | Yes              | No                          | No   | No  | No  |
| Azerbaijan             | Yes              | No                          | Yes  | No  | No  |
| Belgium                | Yes              | No                          | No   | No  | No  |
| Bosnia and Herzegovina | No               | Yes                         | No   | No  | Yes   |
| Bulgaria               | Yes              | No                          | No   | No  | No  |
| Croatia                | No               | No                          | No   | No  | No  |
| Cyprus                 | No               | No                          | No   | No  | No  |
| Czech Republic         | No               | No                          | No   | No  | No  |
| Denmark                | No               | No                          | No   | No  | No  |
| Estonia                | Yes              | No                          | No   | No  | No  |
| Finland                | No               | No                          | No   | No  | No  |
| France                 | Yes              | Yes                         | No   | No  | No  |
| Georgia                | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Germany                | Yes              | Yes                         | No   | No  | No  |
| Greece                 | Yes              | Yes                         | Yes  | No  | Yes   |
| Hungary                | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Iceland                | No               | Yes                         | No   | No  | No  |
| Ireland                | Yes              | Yes                         | No   | No  | No  |
| Italy                  | Yes              | No                          | No   | No  | No  |
| Latvia                 | No               | Yes                         | Yes  | No  | No  |
| Lithuania              | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Luxembourg             | Yes              | No                          | No   | No  | No  |
| Malta                  | Yes              | No                          | Yes  | Yes   | No  |
| Moldova                | Yes              | Yes                         | No   | No  | No  |
| Monaco                 | Yes              | Yes                         | No   | No  | No  |
| Montenegro             | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Netherlands            | Yes              | Yes                         | No   | No  | No  |
| Norway                 | Yes              | Yes                         | Yes  | No  | No  |
| Poland                 | Yes              | No                          | No   | No  | No  |
| Portugal               | Yes              | No                          | No   | No  | No  |
| Romania                | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Russian Federation     | Yes              | No                          | No   | No  | No  |
| Serbia                 | No               | No                          | Yes  | Yes   | Yes   |
| Slovakia               | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Slovenia               | Yes              | Yes                         | No   | No  | No  |
| Spain                  | Yes              | No                          | Yes  | No  | No  |
| Sweden                 | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Switzerland            | Yes              | No                          | No   | No  | No  |
| FYROMacedonia          | Yes              | Yes                         | Yes  | Yes   | Yes   |
| Turkey                 | Yes              | Yes                         | No   | No  | No  |
| Ukraine                | Yes              | Yes                         | Yes  | Yes   | Yes   |
| UK-Northern Ireland    | Yes              | Yes                         | No   | No  | Yes   |
| UK-Scotland            | Yes              | Yes                         | Yes  | No  | No  |
| UK-England and Wales   | Yes              | No                          | No   | No  | No  |

## Additional comments on mediation (Q145)

**Austria:** Mediation in civil law cases (especially in family law)

**Belgium:** Under the law of 21 February 2005 a federal mediation commission was set up, comprising a general commission and special commissions. The general commission has six members who specialise in mediation, namely two notaries, two lawyers and two representatives of the mediators who are not practising lawyers or notaries. The general commission is responsible for:

1. approving the mediator training bodies and the training courses that they organise;
2. determining the criteria for approval of mediators, according to type of mediation;
3. approving mediators;
4. temporarily or permanently withdrawing the approval granted to mediators who no longer meet the conditions laid down in Article 1726 of the Judicial Code;
5. setting the procedure for the approval and for the temporary or final withdrawal of the title of mediator;
6. drawing up the list of mediators and distributing it to the courts;
7. drawing up a code of good conduct and deciding on the applicable penalties.

**Bosnia and Herzegovina:** Administrative work related to mediations is performed by the AoMBiH (an association of citizens – nongovernmental organisation), while mediations are provided by private mediators, registered by the AoMBiH. Employment dismissals – Mediated cases were related mostly to unpaid salaries to the employees of state owned companies, unpaid social and pension benefits or in some cases dismissals.

Criminal Cases – Matters that can come to mediation are only damage claims related to criminal acts (Laws on Criminal Procedure of Federation BiH and of Republika Srpska). Mediation is regulated as a dispute resolution by the Laws on Civil Procedure on a state level of BiH and entity levels of Republika Srpska and Federation of BiH and Laws on Criminal Procedure on entity levels. On June 29th 2004 The Parliamentary Assembly of BiH adopted the Law on Mediation Procedure in BiH (Official gazette of BiH, 37/04). According to the Law mediation in BiH is a voluntary and out of court dispute resolution. Parties pay fee for mediation to the authorised association. Despite the fact that the Law was inapplicable, due to lack of precision concerning this association, The AoMBiH, in cooperation with the International Finance Corporation, implemented the mediation pilot project in two major cities in the Country, where more than 600 cases were mediated in the period mid 2004 – mid 2007. Cases from two municipal courts (Banja Luka and Sarajevo) were mediated out of court by pilot project mediators and upon settlement the parties would be addressed to court to sign the court settlement. On July 28th 2005 the Law on Transfer of Mediation Activities to the AoMBiH (Official gazette of BiH, 52/05) authorised the AoMBiH to provide mediation services in the Country. Since then, mediation in BiH has had a lot of success; the next challenge is that it should be promoted to the courts / judges Countrywide in order that they set up administrative procedures in all the courts to refer cases to mediation and to the lawyers and general public in order to increase number of cases coming from the community. Further information on mediation in BiH is available on the website of the AoM BiH - [www.umbih.co.ba](http://www.umbih.co.ba) 145) For this question the source is HJPC statistical collection forms for 2006. The data received from AOMBiH are for the period from the 1st of May 2004 till September 30th 2007. According to the answers from the AOMBiH, there were 389 mediations in civil cases, and 236 mediations in employment dismissal.

**Croatia:** Mediation is mandatory in case of a dispute concerning the conclusion, amendment or renewal of a collective agreement or a similar dispute. The Act also provides for the possibility of mediation in individual labour disputes.

Concerning the activities carried out by the Minister of Justice in order to make the Public Prosecution Service and other state bodies use mediation rather than court proceedings for the resolution of disputes in which the Republic of Croatia is a party, it should be mentioned that Criminal Procedure Act was amended on the basis of a proposal from the Minister of Justice. The amendments consist in adding Article 186a to the Criminal Procedure Act which prescribes that persons intending to file a lawsuit against the Republic of Croatia have to submit a request for peaceful dispute resolution to the competent public prosecution service before filing the lawsuit. However, the public prosecution service may decide independently and autonomously whether or not it will resolve a dispute by an out-of-court settlement (Article 2 of the Public Prosecution Service Act). Minister of Justice supports dispute resolution by mediation because it is a quicker, more informal and less expensive procedure, which disburdens the courts, therefore, the aim was to find an arrangement with the Minister of Finance to cover the costs for the purpose of more efficient implementation of the mediation procedure. On 30 May 2006 the Agreement on Joint Participation in PHARE 2005 project “Strengthening of Mediation as a Method of Alternative Dispute Resolution” was concluded between the Ministry of Justice, the Croatian Chamber of the Economy, the Croatian Chamber of Arts and Crafts and the Croatian Employers Association. On the basis of that Agreement, the Ministry of Justice will pay to each of the contracting parties the amount of 350,000,000 in 4 instalments during the next 2 years with the first payment within 30 days from the signature of the Agreement. The purpose is the implementation of mediation proceedings in each of the mediation centres that have been so far established with those legal persons. There were no mediation proceedings conducted by the Croatian Employers Association. The Croatian Chamber of Arts and Crafts has had 4 proposals for mediation submitted since 2005 out of which mediation was not accepted in one, and the other three were successfully conducted. The Croatian Chamber of the Economy received in 2006 the total of 8 proposals for mediation, out of which three ended in a plea bargain, one was unsuccessful and others are pending. Mediation is conducted in the Republic of Croatia in 8 municipal courts and at the Commercial Court in Zagreb. In 2007 and 2008, it is planned to extend mediation to other municipal courts, as a rule those with the largest number of cases pending, and where there are the largest backlogs, as well as to commercial courts. From April 2006 to 20 August 2007, of 500 cases sent for mediation at the Commercial Court in Zagreb, 100 were successfully concluded. An analysis of the survey of parties and attorneys shows that both are very satisfied with the mediation processes implemented. After successful mediation, the parties may make a settlement before a first instance court or a notary public. Adjustments are being made to the provisions of the Civil Procedure Act, which will enable parties to make settlements more simply in second instance courts after successful mediation. Within the framework of the campaign to

inform the public about the application of the mediation procedure, posters and brochures are being prepared to familiarise the public with such possibilities for dispute resolution. 3rd result of the Action Plan for the Implementation of the Strategy of the Reform of the Justice System is the development of mediation as an alternative method of dispute resolution. The Croatian Bar Association is also founding a mediation centre, which should begin work by the end of 2007. In this way, the Bar Association is seeking to contribute to reducing the number of court cases and enable its clients to receive legal protection more quickly.

**Denmark:** The regional state administration offers mediation in family cases.

On 1 March 2003 a pilot scheme on court-connected mediation in civil law cases was initiated in Denmark. The pilot scheme includes four city courts and one High Court. It includes also all civil law cases which are brought before the courts, but not such rights and obligations which are not at the parties' disposal. Both lawyers and judges are taking part as mediators in the pilot scheme on court-connected mediation. The pilot scheme on court-connected mediation in civil law cases was evaluated in March 2005. The evaluation showed that the pilot scheme was a big success. On 28 November 2007 the Minister of Justice introduced a bill on a permanent and nationwide scheme on court-connected mediation in civil law cases. According to the bill the new rules on court-connected mediation will come into force on 1 April 2008.

**Finland:** Act on Court Annexed Mediation in civil cases (663/2005) entered into force on 1 January 2006. According to the Act, disputes can also be mediated at court, as an alternative to civil proceedings. The judge serves as a facilitator of the process. In 2006, 157 civil cases were initiated by the written application for court annexed mediation. 66 of them were concluded during the year, settlement was certified in 44 cases, 6 cases were concluded with settlement otherwise and in 16 cases there was no justification for continuing the mediation. There is also a mediation service in criminal cases, called Conciliation in Criminal and Civil cases, governed by the Act on Conciliation in Criminal and Certain Civil Cases (1015/2005) which entered into force on 1 January 2006.

**France:** Accredited mediators: These may be individuals or legal persons authorised by the public prosecutor or the principal state prosecutor. As at 1 February 2005, 395 individuals had been so authorised, and the latest figures available (2003) show that there were 152 associations with responsibility for following up alternatives to prosecution. Mediators must:

1. not be engaged in judicial activities, participate in the functioning of the courts service or hold an elective office within the district of the court;
2. not have been the subject of a conviction, incapacity or disqualification mentioned on criminal record certificate No. 2;
3. offer guarantees of competence, independence and impartiality. The mediator or the representative of the public prosecutor required to deal with tasks relating to juveniles must also have stood out for showing an interest in childhood issues;
4. not be over the age of 75;
5. unless so authorised by the Minister of Justice, not be the spouse, partner, blood relation or relation by marriage up to the degree of uncle or nephew inclusive of a judge or of an official of the court, or linked to such a person by a civil partnership (PACS).

Mediators are authorised for a probationary period of one year by the public prosecutor or principal state prosecutor. A decision to renew their authorisation for a further period of five years may be taken after the general meeting of judges and law officers has given its opinion. Mediators are bound by the requirements of confidentiality, and swear an oath in the Regional Court or the Court of Appeal. In the case of legal persons, the individuals who are to carry out the task of mediator must be listed. Where the mediator is also the representative of the public prosecutor, he or she may also intervene in respect of the notification of summary orders imposing fines, of reparation measures for juveniles and of sentence reduction credits. Mediators appointed by civil courts offer guarantees of independence, of training or experience appropriate to the nature of the mediation and qualification needed in the light of the nature of the case, and of an absence of criminal or disciplinary judgments against them. A state qualification in family mediation was introduced in 2003 and is awarded to those demonstrating a specific professional capacity to assist families to avoid the damaging effects of unresolved family disputes. Some mediators are self-employed, but most, especially those active in family mediation, are employed by associations.

Family mediation: Introduced to the Civil Code by the law of 4 March 2002 on parental authority, family mediation may be organised by the court, with the parties' consent. The court may also order the parties to attend a meeting, for which no charge is made, to find out about the purpose and conduct of mediation. The law of 26 May 2004 on divorce and the decree of 29 October 2004 on procedure in family cases have expanded the use of mediation. During divorce proceedings, the court may now refer the parties to a mediator, to enable them to reach agreement on all the issues associated with separation, whether these relate to parental, conjugal or pecuniary matters. The use of mediation, which is the main measure that the court may order at the conciliation hearing, is thus encouraged, with a view to facilitating peaceful proceedings and enabling the spouses better to prepare for the consequences of their separation (Article 255 of the Civil Code). With the same aim, the court may, at any stage of the proceedings, approve the agreements reached by the parties (possibly through mediation): these agreements may cover any of the consequences of the divorce, relating to the children or to financial matters, such as pecuniary provision and the liquidation of the matrimonial property regime (Article 268 of the Civil Code). Lastly, the new Code of Civil Procedure (Articles 1442 et seq) lays down conditions for the use of arbitration and requires court approval of the arbitrator's decision.

In criminal cases, alternatives to prosecution are available to the public prosecutor. In 2006, these brought to a conclusion 34% of prosecutable cases (cases prosecuted in the courts, cases in which an alternative to prosecution was pursued, cases discontinued because prosecution was deemed inadvisable). Increasing use is being made of alternatives to prosecution, which brought to a conclusion 28.5% of prosecutable cases in 2004, and 31.5% in 2005. These may involve a reminder of the law (46% of alternatives to the law and composition pénale – conditional settlement without prosecution), a reparation measure against a juvenile (1.5%), a treatment order (1%), a withdrawal by the complainant at the request of the prosecuting authorities (4%), reference to a health, social or professional body (2.5%),

regularisation of the situation at the request of the prosecution service (9%) or composition pénale (10%). Use of the last-named is increasing sharply (25 777 procedures in 2004, 40 034 in 2005 and 50 430 in 2006). It is, in principle, reserved for first offenders whose acts call for a firmer judicial response than the other alternatives provide. This procedure is used on the assumption that the damage suffered by the victim can be quantified without difficulty. It requires the consent of the person against whom the complaint is directed and may lead to validation of a fine as the penalty, of a specific obligation to do or not to do something, or of a requirement to attend a course (such as a road safety awareness or citizenship course). Furthermore, the implementation of action or penalties of a non-criminal nature may lead the prosecuting authorities to decide on discontinuation (removal from French territory, commercial penalties, etc). These represent 20% of discontinuations of proceedings following application of an alternative to prosecution.

Alternatives to prosecution or composition pénale make it possible for judicial action to be taken a short time after the acts were committed and for diversified criminal treatment to be applied that is particularly well-suited to minor and intermediate offences. The procedures concerned, of various types, are based on the assumption that the acts were simple, clearly established and not disputed by their perpetrator. They tend to have an effect on both the causes and consequences of the offence and to make the perpetrator feel responsible, and they take account of both victims' interests and factors in the prevention of any repetition of the offences. Alternatives to prosecution or composition pénale have been confirmed by legislation as fully-fledged criminal responses (law of 9 March 2004 adapting the justice system to changes in criminality), and legislation has further expanded them recently: the law of 5 March 2007 on crime prevention introduced two new courses which may be used as penalties or as alternatives to prosecution (one drawing attention to the risks of drug use, the other on parental responsibility), as well as extending composition pénale to juveniles aged over 13.

**Germany:** The victim offender mediation procedure (TOA = VOM) can be seen as an alternative procedure in criminal law cases. This mediation is carried out outside the actual criminal proceedings. The court may mitigate the sentence on the basis of TOA and in non-serious cases forego a sentence altogether. If the expected sentence is below a certain threshold (minimum custodial sentence of less than one year) the proceedings can be discontinued by the public prosecutor already. The TOA is not mandatory in a criminal proceeding, but at every stage of the proceedings the public prosecution and the court must examine if a TOA would be appropriate for the case and if so, work towards it. Both parties must be willing to participate in a TOA. There is no prescribed TOA procedure. The mediators in a TOA can be independent service providers, e.g. specialised TOA centres or victim assistance organisations or court mediation (judiciary social service) or youth assistance/court mediation (at youth welfare offices or private institutions). The mediators should ideally have the relevant qualifications and be specially trained. TOA is possible, however, in other forms as well, e.g. mediation by lawyers or among the parties themselves without an additional mediator. The legal provisions offer a broad scope for autonomous conflict settlement. The supervision of the TOA to make sure it is a genuine one and to find out in what way it can be taken into consideration for the decision, remains within the court and the public prosecution.

**Hungary:** Under Act LV of 2002 on Mediation, the parties (natural persons, legal persons, business entities without legal personality, other organisations) to a civil dispute connected with their personal and pecuniary rights may, if they so agree and if the law does not limit their right of disposition, use a mediation procedure to seek resolution. They may initiate such a procedure by calling on the services of a mediator. The Act specifies the range of civil legal actions in which mediation is not possible and where its provisions cannot apply to mediation and conciliation proceedings governed by other acts or to mediation in arbitration proceedings. The Ministry of Justice publishes the register of mediators on its website: [www.im.hu](http://www.im.hu). Mediation in healthcare – Under Act CXVI of 2000 on Mediation in Healthcare, a mediation procedure may be used to achieve the out-of-court resolution of legal disputes concerning service provision by healthcare providers to patients and to ensure fast and effective enforcement of the parties' rights. The parties must submit their mediation request to the regional chamber of judicial experts located nearest to the patient's home or to the place where the healthcare services concerned are provided. The healthcare provider must make the register of regional chambers of judicial experts public in an accessible manner. The register of healthcare mediators is kept by the Hungarian Chamber of Judicial Experts (1027 Budapest, Bem rakpart 33-34., I. 122.).

Mediation in matters of child protection – Under the 2003 amendment to Decree No. 149/1997 (IX. 10.) Korm. on child welfare agencies, child protection and child welfare administration, mediation in child protection matters was introduced from 1 January 2005 in cases where the parents or other persons authorised to maintain relations cannot agree on the manner or time of contact. Mediation in child protection matters can be initiated on the basis of a joint application by the parties to a child protection mediator. The register of child protection mediators is kept by the National Institute of Family and Social Policy. The register can be inspected in the official premises of the Court of Guardians and of the child welfare services.

Conciliatory corporate proceedings

a. The Labour Mediation and Arbitration Service established under Act XXII of 1992 on the Labour Code serves primarily to resolve collective labour-related disputes. This body carries out three activities: conciliation, mediation and arbitration. The body's mediation services can also be used to resolve private labour disputes, but the law does not make this compulsory for the parties concerned.

b. To enforce consumer rights, Act CLV of 1997 on Consumer Protection established conciliation bodies attached to the regional economic chambers. The conciliation bodies deal primarily with the out-of-court settlement of consumer disputes relating to the application of rules on the quality and safety of goods and services and product liability, and to the conclusion and implementation of contracts. The aim of the Conciliation Body procedure is to settle disputes between consumers and undertakings by agreement, and failing this to reach a ruling in the interests of enforcing consumers' rights quickly, effectively and simply. The bodies have no jurisdiction in disputes for which a rule establishes the competence of some other authority. Conciliation proceedings are initiated at the request of the consumer or, in the case of more than one consumer and with the authorisation of those concerned, of the civil organisation representing consumer interests.

**Iceland** : Magistrates can serve as mediators according to article 107 of the Code of Civil Procedure. A judge can, upon request of all parties, refer a case to the magistrate if he believes it will lead to a successful conclusion. The parties themselves can also in some instances bring a case before a magistrate without the instrumentality of a judge.

**Ireland**: In criminal cases referred at pre-sentence (Victim/offender) mediation can be suggested/proposed by any of the parties connected to the case. Judge must sanction referral. The participation is voluntary. There are no guarantees for offender that participation will influence court sanction/sentence.

**Latvia**: There is no national authority which is responsible for accrediting mediators. Considering that mediators are certified by non-governmental organizations, statistic data cannot be provided.

Mediation in criminal matters managed by State Probation Service, which offers mediation service since 2004. In total 51 mediation cases in 2004 (the first year when mediation service was provided) and around 50 cases in 2005. In 2006 317 mediation cases were initiated (59 cases were stopped at very early stage, 91% out of 258 mediation cases were successful (a settlement was concluded).

Main activities:

Twining project "Dispute resolution system and provision of training for legal practitioners" November 2005 – August 2007. The project was carried out by the Ministry of Justice and German Foundation for International legal cooperation. The mentioned project contained 25 mediation related activities, for example, creating mediation web-site, organizing awareness campaign (brochures, articles), elaboration of video about family mediation, an action plan of ADR secretary, drafting training curricula, organizing trainings of mediators as well as training of trainers seminars, developing training manuals.

Mediation project managed by the Ministry for Children and Family Affairs Experience: in June 2006 a pilot project for family mediation was started. Taking into account the great success of it, the mediation project in the State program for the improvement of children and family affairs in year 2007 is included as an independent activity. Model: voluntary mediation (frequently recommended by judge). Mediation service is provided by two mediators (a lawyer and a psychologist), in total five sessions (each two hours long) are available for the parties (couples, family members). Number of cases: in total 23 cases (June – December 2006). Cases: dissolution of marriage, property questions, custody and maintenance of children.

Expenses: mediation service is for free. All expenses are covered by the state budget. The development of ADR is one of the strategic goals for the Ministry of Justice in years 2007 – 2009.

**Luxembourg**: Mediation in civil and commercial cases (including family and dismissal cases) is not regulated by law in Luxembourg, which intends to await the outcome of the work at European Union level before it passes the relevant legislation. The Luxembourg Bar Mediation Centre (CMBL) was set up on 13 March 2003 by the Luxembourg Bar, Chamber of Commerce and Chamber of Trades. It is an association open to other regulated professions. The CMBL is for the use of individuals and firms wishing to resolve disputes, whether on civil or commercial matters or relating to industrial relations. It appoints a mediator selected from a list of mediators approved by the Centre, according to the nature of the dispute and the wishes expressed by the parties.

Mediation in administrative cases is governed by the law of 22 August 2003 setting up the institution of mediator. The mediator is responsible for receiving complaints from individuals and private-law legal persons, made on the occasion of a case which concerns them relating to the functioning of state or municipal administrative authorities or of public establishments answerable to the state or municipalities, other than in respect of their industrial, financial or commercial activities.

Mediation in criminal matters is regulated by Article 24 (5) of the Code of Criminal Procedure. Prior to deciding on public action, the state prosecutor may decide to make use of mediation if it seems to him or her that such a measure is likely to provide reparation for the damage caused to the victim, or to put an end to the nuisance resulting from the offence, or to make a contribution to the rehabilitation of the offender. However, mediation may not be used in relation to offences against persons with whom the perpetrator cohabits. The mediator is bound by the requirements of confidentiality.

**Moldova**: In 2006 a draft law on mediation was drawn up, and this was adopted by Parliament on 14 June 2007; entry into force is scheduled for 1 July 2008. A new draft law on arbitration has also been drawn up and is currently being examined in Parliament.

**Monaco**: The new law on divorce, in Article 202, makes provision for a family mediation measure which may be offered to the spouses or ordered at any stage of the procedure.

**Montenegro**: New Law on mediation ("Official Gazzette of Republic of Montenegro" no.30/2005) regulates procedures of mediation in civil matters, including litigations in family, commercial, and other property-related matters in which parties can freely handle with their requests, and in labour disputes in front of courts, if there are no certain provisions that are to be applied. Mediation procedure starts based on agreement of the parties, and if the court proceeding started – based on the recommendation of the court. Parties are involved in mediation procedure voluntary. Regarding to the relation between mediation and court proceedings – if the court dealing with the case estimates that dispute can be successfully solved by mediation – the court shall address the parties into such procedure. If the parties do not solve the dispute within 60 days from date they were addressed to mediation, court must fix date of summons. If the court proceedings are not in progress, duration of mediation procedure is fixed by the parties. If the court proceeding is in progress, parties can accept mediation procedure in each phase of the procedure.

**Poland**: As a general rule mediation is an extrajudicial proceeding. Only judicial (initiated by court within court) proceedings are reflected in a courts' activity reports and statistics. If parties are successful within mediation the court case may be closed in a number of manners depending on the type of case and the parties' request (discontinuation, repeating in a court settlement, reflecting negotiated conditions in final judgement). Because mediation is an extremely decentralized process and there is no statistical instrument for listing all (judicial and extrajudicial) mediations, no accurate numbers can be obtain. An examination performed in this matter by the Council of ADR (consultative community body affiliated at the Ministry of Justice) shows that the number of mediations is growing and reach 36000 cases in 2006 (including these initiated during the court proceeding). For court purposes list of accredited mediators that

are active in courts' jurisdiction are kept by President of the Circuit Court. Mediator to be accredited has to meet requirements set forth by law. In 2005 new law introduced possibility of mediation during the proceeding in civil matters.

**Portugal:** Labour Mediation System – resolve through mediation all labour disputes, with the exception of those related to labour accidents or unavailable rights.

**Romania:** Conflicts of interest in labour cases can be solved by using alternative dispute resolution methods.

**Slovenia:** The Slovenian Association of mediators was established on September 5<sup>th</sup> 2006. Besides court-annexed mediation there are other forms of mediation, conciliation and arbitration offered by NGOs.

None of ADR procedures is a compulsory step in court (or prior to) proceedings – a consent is always required.

In civil and family cases some courts (5) offer court annexed mediation, which is again non-compulsory. If the parties agree, the court orders the mediation proceedings which are performed by mediators provided by courts. The numbers of mediation procedures are not collected on a national level.

Criminal cases: Article 161a (1) The public prosecutor may transfer the report of a crime for which a financial penalty or up to three years in prison is prescribed into the settlement procedure. In so doing, he shall take account of the type and nature of the offence, the circumstances in which it was committed, the personality of the offender and his or her prior convictions for the same type or for other criminal offences, as well as his or her degree of criminal responsibility.

(2) Settlement shall be run by the mediator, who is obliged to accept the case into procedure. Settlement may be implemented only with the consent of the offender and the injured party. The mediator is independent in his or her work. The mediator shall be obliged to strive to ensure that the contents of the agreement are proportionate to the seriousness and consequences of the offence.

(3) On receiving notification of the fulfilment of the agreement, the public prosecutor shall dismiss the report. The mediator is also obliged to inform the public prosecutor of the failure of settlement and the reasons for such failure. The interval for the fulfilment of the agreement may not be longer than three months.

Article 162 (1) The public prosecutor may, with the consent of the injured party, suspend prosecution of a criminal offence punishable by a fine or prison term of up to one year if the suspect binds himself over to behave as instructed by the public prosecutor and to perform certain actions to allay or remove the harmful consequences of the criminal offence. These actions may be: 1) elimination or compensation of damage, 2) payment of a contribution to a public institution or a charity or fund for compensation for damage to victims of criminal offences, 3) execution of some generally useful work, 4) fulfilment of a maintenance liability.

(2) If, within a time limit no longer than six months and in respect of the obligation from the fourth clause no longer than a year, the suspect fulfils the obligation undertaken the crime report shall be dismissed. An example of District Court of Ljubljana (the largest court in the Country): since the beginning of 2001 the District Court in Ljubljana has been offering parties alternative ways of dispute resolution within the program of solving backlogs, in civil, family law and commercial cases. At the District Court of Ljubljana mediation is a voluntary, confidential, fast, free of charge (for the parties) ADR procedure in which a neutral third party helps the parties to find a consensual resolution of their dispute. The procedure is fast, non-binding and confidential and does not affect an eventual later litigation in any way. At the moment about 100 mediators participate in the mediation procedures at the District Court in Ljubljana. Among them are supreme, higher and district court judges as well as the Deputy Human Rights Ombudsman, who carry out mediations free of charge in addition to their regular work. In addition to them, retired judges with wide experience in civil field and advocates participate in mediation procedures on contract basis. All of them have attended specialized training in the field of alternative dispute resolution and use of special communication and negotiation techniques, and have been included on the list of mediators at the District Court in Ljubljana. In year 2006, 806 cases were concluded, out of which 419 cases ended successfully (procedures stopped).

**Spain:** Accredited mediators are: public bodies through conciliation and arbitration in the field of consumers and social law and through mediation techniques in family law.

**Sweden:** There are different private bodies that offer dispute resolution. One such body is the Stockholm Chamber of Commerce Mediation Institute. The Mediation Institute offers dispute resolution to parties that do not wish to engage in formal arbitration proceedings. The salient features of the SCC Mediation Rules are the following: • A sole mediator is appointed, unless otherwise agreed by the parties. The mediator may be appointed by the parties jointly, or by the SCC Mediation Institute. • The time limit for the mediation is two months, unless otherwise agreed by the parties. • After having reached a settlement agreement, the parties may agree to appoint the mediator as arbitrator in order to enable him to confirm the settlement agreement in an arbitral award.

The regional rental and tenancy tribunal can mediate in all rental disputes and disputes involving tenant-owners that occur. Normally, this tribunal makes a proposal for an agreement if the parties themselves fail to reach a settlement in a meeting at the tribunal. Mediation is obligatory in certain cases. The tribunal can issue an opinion in the course of the mediation, for example on market rents for premises. Such an opinion has presumptive effect in any subsequent compensation dispute. Furthermore, even if mediation is not requested, the regional rental or tenancy tribunal must endeavour to reconcile the parties in disputes which the tribunal must examine in accordance with the division of responsibilities between ordinary courts and regional rental and tenancy tribunals. Lastly, ordinary courts can refer cases that they hear for mediation in regional rental and tenancy tribunals. If mediation is unsuccessful, the court decides the case. The tribunal does not levy any charge on the parties. Each party must bear its own costs. The procedure before the regional rental and tenancy tribunal is public.

Victim-offender mediation is for the benefit of both parties, and according to Swedish law (the Mediation Act [lagen 2002:445 om medling med anledning av brott]) its goal is to increase the offender's level of insight into the consequences of the offence, at the same time as the victim is provided with the opportunity to work through his or her experiences. The mediator's role is to help the parties to communicate with one another, and to ensure that a balance is maintained and that neither party is given offence. The Mediation Act constitutes a piece of framework legislation and covers mediation organised by the state or by municipalities. According to the Act, the offence must first have been reported to the police, and the offender must have acknowledged his or her guilt before mediation can be initiated. Participation in mediation is

always voluntary for both parties. Mediation does not constitute a penal sanction or an alternative to the regular justice system, but rather plays a complementary role. It is however possible for the prosecutor to take the fact that mediation has taken place into consideration in relation to the prosecution of young offenders. The mediation projects involve different collaborative partners, such as the police, for example, prosecutors, the social services, other local authorities, schools and victim support agencies. The mediation meeting is normally preceded by one or more preliminary meetings with the victim and the perpetrator by themselves, during which the two parties are prepared for the mediation meeting. At the mediation meeting, the crime is then discussed and the parties are given the opportunity to describe their own version of what happened. The possibility exists for legal guardians or other support persons to be present at both the preliminary meetings and the mediation meeting itself. Certain mediation cases are concluded with an agreement on how the offender may make amends. This may involve some form of economic compensation, compensation in the form of work conducted by the offender, or a contract relating to future behaviour. Of the cases initiated by mediation projects, 74 per cent have been seen through to completion and 40 per cent have been concluded with some form of contractual agreement. The majority of the offenders who have participated in mediation are between fourteen and seventeen years of age. The most common offence types in mediation cases are shoplifting, assault and vandalism. Other common offence types include various categories of theft, threatening behaviour, robberies from shops and muggings. Employers and employees in a contractual relationship who are in dispute with one another must resolve the dispute by means of negotiation or, as a last resort, through proceedings at the Labour Court. There are no alternative dispute resolution mechanisms for legal disputes of this kind. For certain other disputes, however, mediation may be possible. Therefore, the National Mediation Office provides mediators for disputes between employers and employees over negotiations on wages and general terms of employment or for disputes where a company refuses to sign a collective agreement with a professional organisation. The National Mediation Office can appoint mediators at the request of the parties, or even in the absence of such a request, for example if one of the parties has given notice of a conflict and the Office considers that mediators can bring about a successful resolution of the dispute. The procedure is free of charge. As regards main reforms, it should be mentioned that an Inquiry has been looking into the possibility to increase the use of court-annexed mediation in Sweden. It delivered its report this spring. In the report it is suggested that mediation replaces conciliation as the main method for reaching settlements within court proceedings. How to proceed with the proposals in the report is still under consideration within the Swedish Government Offices.

**Turkey:** Mediation is newly and solely adopted on criminal matters for the time being. According to Article 253 of the Code of Criminal Procedure dated 26 October 2004, numbered 5271, the public prosecutor is authorized to apply mediation procedure prior to court proceedings specifically in cases where the crime in question is subject to complaint and where it is appropriate. The public prosecutor is entitled to appoint a lawyer attached to a bar in order to administer the mediation process. Some amendments have been made for the conditions of mediation procedure by the law dated 06 December 2006 and numbered 5560, in order to make this procedure applied easier. According to the amendments, it is now possible for the public prosecutor to act himself as a mediator or to appoint a law school graduate person as a mediator, besides the possibility to appoint a lawyer in order to administer the mediation process. Also, the scope of the mediation procedure has been extended to some specific crimes which are ex officio prosecuted. The details of the mediation procedure have been regulated by the "By-Law On The Implementation Of The Mediation Pursuant To Criminal Procedure Code" (date 26 July 2007).

In relation to the question 145, the total number of judicial mediation procedures is not available. However, for the criminal cases, the total number of non prosecution decisions taken by the public prosecutors because of the mediation agreement is 52949 in the year 2006.

**FYROMacedonia:** In 2006 the Law on mediation was adopted. Hence, mediators are established as physical entities which help the parties to reach an agreement, without the right to put on a solution to the dispute, according to the principles of the mediation procedures. The mediation process is possible for civil, commercial, employment, customer and other disputes among legal and physical entities, according to the Law, before or after the start of the court proceedings, unless something else is proscribed by law. At present the mediators are certified and the bodies of the Chamber are formed.

**Ukraine:** Several draft Laws of Ukraine concerning mediation were elaborated by the Ministry of Justice. Moreover, within the framework of cooperation between the Ministry of Justice of Ukraine and the Council of Europe draft Law of Ukraine "On Mediation In Criminal Matters" and draft Law "On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine with regard to Mediation" were sent to the Council of Europe to carry out their examination. The Council of Europe provided the expert opinion on possibilities for mediation in administrative matters under the current code of administrative procedure as well as the expertise on the draft law on mediation in criminal matters. In the framework of the Joint Programme between the Council of Europe and Ukraine on Improving independence of the Judiciary were also carried out other activities to provide technical assistance in order to improve the Alternative Dispute Resolution Methods to respond to an increasing demand for justice.

**United Kingdom:** As far as mediation in civil matters is concerned HMCS is appointing in-house mediators to deal with small claims cases. For higher value cases parties are referred to the National Mediation Helpline ([www.nationalmediationhelpline.com](http://www.nationalmediationhelpline.com)) which provides a low-cost, time-limited mediation service with an accredited provider. In court conciliation in private law children cases is delivered by the Children & Family Court Advisory & Support Service (CAFCASS.) CAFCASS has been re-focusing its resources away from lengthy report writing to face-to-face dispute resolution, working with families. CAFCASS is also, increasingly, moving towards the delivery of conciliation prior to the first court hearing.

**Scheme for evaluating judicial systems**  
2006-2008 cycle

**1. Demographic and economic data**

**1. 1. General information**

**1. 1. 1. Inhabitants and economic information**

1. Number of inhabitants
2. Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level (in €)

|                         | Amount |
|-------------------------|--------|
| State level             |        |
| Regional / entity level |        |

3. Per capita GDP (in €)
4. Average gross annual salary (in €)
5. Exchange rate from national currency (non-Euro zone) to € on 1 January 2007

Please indicate the sources for questions 1 to 4

**1. 2. Budgetary data concerning judicial system**

**1.2.2. Budget (courts, public prosecution, legal aid, fees)**

6. Total annual approved budget allocated to all courts (in €)
7. Please specify:
8. Does the approved budget of the courts include the following items? Please give for each item (or some of them) a specification of the amount concerned

|   | Yes                      | Amount (Euro) |
|---|--------------------------|---------------|
| Annual public budget allocated to (gross) salaries                                      | <input type="checkbox"/> |               |
| Annual public budget allocated to computerisation (equipment, investments, maintenance) | <input type="checkbox"/> |               |
| Annual public budget allocated to justice expenses                                      | <input type="checkbox"/> |               |
| Annual public budget allocated to court buildings (maintenance, operation costs)        | <input type="checkbox"/> |               |
| Annual public budget allocated to investments in new (court) buildings                  | <input type="checkbox"/> |               |
| Annual public budget allocated to training and education                                | <input type="checkbox"/> |               |
| Other (please specify):   | <input type="checkbox"/> |               |

9. Has the annual public budget of the courts changed (increased or decreased) over the last five years?  
If yes, please specify (i.e. provide an indication of the increase or decrease of the budget over the last five years)
10. In general are litigants required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:

- for criminal cases?  
 for other than criminal cases?

If yes, are there exceptions? Please specify:

11. If yes, please specify the annual income of court fees (or taxes) received by the State (in euros)
12. Total annual approved budget allocated to the whole justice system (in €)
13. Total annual approved public budget allocated to legal aid (in €)
14. If possible, please specify:

|        | the annual public budget allocated to legal aid in criminal cases | the annual public budget allocated to legal aid in other court cases |
|--------|---|--|
| Amount |   |  |

15. Is the public budget allocated to legal aid included in the court budget ?
16. Total annual approved public budget allocated to the public prosecution system (in €)
17. Is the budget allocated to the public prosecution included in the court budget?
18. Authorities formally responsible for the budget allocated to the courts:

|                     | Preparation of the total court budget | Adoption of the total court budget | Management and allocation of the budget among the individual courts | Evaluation of the use of the budget at a national level |
|---------------------|---------------------------------------|------------------------------------|---|---|
| Ministry of Justice | <input type="checkbox"/>              | <input type="checkbox"/>           | <input type="checkbox"/>  | <input type="checkbox"/>                                |
| Other ministry      | <input type="checkbox"/>              | <input type="checkbox"/>           | <input type="checkbox"/>  | <input type="checkbox"/>                                |
| Parliament          | <input type="checkbox"/>              | <input type="checkbox"/>           | <input type="checkbox"/>  | <input type="checkbox"/>                                |
| Supreme Court       | <input type="checkbox"/>              | <input type="checkbox"/>           | <input type="checkbox"/>  | <input type="checkbox"/>                                |
| Judicial Council    | <input type="checkbox"/>              | <input type="checkbox"/>           | <input type="checkbox"/>  | <input type="checkbox"/>                                |
| Courts              | <input type="checkbox"/>              | <input type="checkbox"/>           | <input type="checkbox"/>  | <input type="checkbox"/>                                |
| Inspection body.    | <input type="checkbox"/>              | <input type="checkbox"/>           | <input type="checkbox"/>  | <input type="checkbox"/>                                |
| Other.              | <input type="checkbox"/>              | <input type="checkbox"/>           | <input type="checkbox"/>  | <input type="checkbox"/>                                |

19. If other Ministry and/or inspection body and/or other, please specify (in regards to question 18):

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your budgetary system and the main reforms that have been implemented over the last two years
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process

Please indicate the sources for the questions 6, 7, 13 and 16.

## 2. Access to Justice and to all courts

### 2.1. Legal aid

#### 2.1.1. Principles

20. Does legal aid concerns:

|                         | Criminal cases           | Other than criminal cases |
|-------------------------|--------------------------|---------------------------|
| Representation in court | <input type="checkbox"/> | <input type="checkbox"/>  |
| Legal advice            | <input type="checkbox"/> | <input type="checkbox"/>  |
| Other                   | <input type="checkbox"/> | <input type="checkbox"/>  |

21. Other, please specify (in regards to question 20)

22. Does legal aid foresee the covering or the exoneration of court fees?  
If yes, please specify:

23. Can legal aid be granted for the fees that are related to the execution of judicial decisions?  
If yes, please specify:

24. Number of cases granted with legal aid provided by (national, regional, local) public authorities:

|                           | Number |
|---------------------------|--------|
| Total                     |        |
| Criminal cases            |        |
| Other than criminal cases |        |

25. In a criminal case, can any individual who does not have sufficient financial means be assisted by a free of charge (or financed by public budget) lawyer?

26. Does your country have an income and asset test for granting legal aid:

|                                | No | Yes | Amount |
|--------------------------------|----|-----|--------|
| for criminal cases             |    |     |        |
| for other than criminal cases? |    |     |        |

27. In *other than criminal* cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action)?

28. If yes, is the decision for granting or refusing legal aid taken by:

- the court?
- an authority external to the court?
- a mixed decision-making authority (court and external)?

29. Is there a private system of legal expense insurance enabling individuals to finance court proceedings?  
Please specify:

30. Do judicial decisions have an impact on who bears the legal costs which are paid by the parties during the procedure in:

|                            | Yes                      | No                       |
|----------------------------|--------------------------|--------------------------|
| criminal cases?            | <input type="checkbox"/> | <input type="checkbox"/> |
| other than criminal cases? | <input type="checkbox"/> | <input type="checkbox"/> |

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your legal aid system and the main reforms that have been implemented over the last two years

Please indicate the sources for the questions 24 and 26

## 2. 2. Users of the courts and victims

### 2. 2. 1. Rights of the users and victims

31. Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for the following, which the general public may have free of charge access to:

- legal texts (e.g. codes, laws, regulations, etc.)?

Internet address(es):

- case-law of the higher court/s?

Internet address(es):

- other documents (for examples forms)?

Internet address(es):

32. Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?

If yes, please specify:

33. Is there a public and free-of-charge specific information system to inform and to help victims of crimes?

If yes, please specify:

34. Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:

|                              | Information mechanism    | Hearing modalities       | Procedural rights        | Other                    |
|------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Victims of rape              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Victims of terrorism         | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Children/Witnesses/Victims   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Victims of domestic violence | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Ethnic minorities            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Disabled persons             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Juvenile offenders           | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other                        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

35. Does your country have a compensation procedure for victims of crimes?

36. If yes, does this compensation procedure consist in:

- a public fund?
- a court decision?
- private fund?

If yes, which kind of cases does this procedure concern?

37. Are there studies to evaluate the recovery rate of the compensation awarded by courts to victims?

If yes, please specify:

38. Is there a specific role for the public prosecutor with respect to the (protection of the position and assistance of) victims?

If yes, please specify?

39. Do victims of crimes have the right to contest to a decision of the public prosecution to discontinue a case?

If yes, please specify?

## 2. 2. 2. Confidence of citizens in their justice system

40. Is there a system for compensating users in the following circumstances:

- Excessive length of proceedings?
- Non execution of court decisions?
- Wrongful arrest?
- Wrongful condemnation?

If yes, please specify (fund, daily tariff):

41. Does your country have surveys aimed at users or legal professionals (judges, lawyers, officials, etc.) to measure their trust and/or satisfaction (with the services delivered by the judiciary system)?

- (Satisfaction) surveys aimed at judges
- (Satisfaction) surveys aimed at court staff
- (Satisfaction) surveys aimed at public prosecutors
- (Satisfaction) surveys aimed at lawyers
- (Satisfaction) surveys aimed at citizens (visitors of the court)
- (Satisfaction) surveys aimed at other clients of the courts

If possible, please specify their titles, how to find these surveys, etc:

42. If yes, please specify:

|                           | Yes (surveys at a regular interval:<br>for example annual) | Yes (incidental surveys) |
|---------------------------|--|--------------------------|
| Surveys at national level | <input type="checkbox"/>                                   | <input type="checkbox"/> |
| Surveys at court level    | <input type="checkbox"/>                                   | <input type="checkbox"/> |

43. Is there a national or local procedure for making complaints about the performance (for example the length of proceedings) or the functioning (for example the treatment of a case by a judge) of the judicial system?

44. If yes, please specify:

|   | Time limit to respond (Yes) | Time limit for dealing with the complaint (Yes) |
|---|-----------------------------|---|
| Court concerned                               | <input type="checkbox"/>    | <input type="checkbox"/>                        |
| Higher court                                  | <input type="checkbox"/>    | <input type="checkbox"/>                        |
| Ministry of Justice                           | <input type="checkbox"/>    | <input type="checkbox"/>                        |
| High Council of the Judiciary                 | <input type="checkbox"/>    | <input type="checkbox"/>                        |
| Other external organisations (e.g. Ombudsman) | <input type="checkbox"/>    | <input type="checkbox"/>                        |

Can you give information elements concerning the efficiency of this complaint procedure?

### 3. Organisation of the court system

#### 3.1. Functioning

##### 3.1.1. Courts

45. Number of courts considered as legal entities (administrative structures) and geographic locations (please, complete the table)

|   | Total number |
|---|--------------|
| First instance courts of general jurisdiction<br>Courts ( <i>legal entities</i> ) |              |
| Specialised first instance Courts ( <i>legal entities</i> )                       |              |
| All the Courts ( <i>geographic locations</i> )                                    |              |

46. Please specify the different areas of specialisation (and, if possible, the number of courts concerned):

47. Is there a change in the structure in the courts foreseen (for example a reduction of the number of courts (geographic locations) or a change in the powers of courts)?  
If yes, please specify:

48. Number of first instance courts competent for a case concerning:

|                                    | Number |
|------------------------------------|--------|
| a debt collection for small claims |        |
| a dismissal                        |        |
| a robbery                          |        |

Please specify what is meant by small claims in your country (answer only if the definition has been changed compared to the previous evaluation round):

Please indicate the sources for the question 45

##### 3.1.2 Judges, court staff

49. Number of professional judges sitting in courts  
(present the information in full time equivalent and for permanent posts)
50. Number of professional judges sitting in courts on an occasional basis and who are paid as such:

|   | Number |
|---|--------|
| <i>gross figure</i>                         |        |
| <i>if possible, in full time equivalent</i> |        |

51. Please specify (answer only if the information has been changed compared to the previous evaluation round):
52. Number of *non*-professional judges (including lay judges and excluding juries) who are not remunerated but who can possibly receive a simple defrayal of costs. Please specify (answer only if the information has been changed compared to the previous evaluation round):
53. Does your judicial system include trial by jury with the participation of citizens? If yes, for which type of case(s)?
54. If possible, indicate the number of citizens who were involved in such juries for the year of reference?
55. Number of non-judge staff who are working in courts (*present the information in full time equivalent and for permanent posts*)
56. If possible, could you distribute this staff according to the 4 following categories:
- non-judge staff (*Rechtspfleger*), with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal
  - non-judge staff whose task is to *assist the judges* (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars:
  - staff in charge of different *administrative tasks* as well as of the *management of the courts* (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management):
  - *technical staff*:

Please indicate the sources for the questions 49, 50, 52, 53 and 55:

### 3.1.3 Prosecutors

57. Number of public prosecutors *present the information in full time equivalent and for permanent posts*)
58. Do any other persons have similar duties as public prosecutors? If yes, please specify:
59. Number of staff (non prosecutors) attached to the public prosecution service (*present the information in full time equivalent and for permanent posts*)

Please indicate the sources for the questions 57 and 59:

### 3.1.4 Budget and New Technologies

60. Who is entrusted with the individual court budget?

|                                | Preparation of the budget | Arbitration and allocation | Day to day management of the budget | Evaluation and control of the use of the budget |
|--------------------------------|---------------------------|----------------------------|-------------------------------------|---|
| Management Board               | <input type="checkbox"/>  | <input type="checkbox"/>   | <input type="checkbox"/>            | <input type="checkbox"/>                        |
| Court President                | <input type="checkbox"/>  | <input type="checkbox"/>   | <input type="checkbox"/>            | <input type="checkbox"/>                        |
| Court administrative director  | <input type="checkbox"/>  | <input type="checkbox"/>   | <input type="checkbox"/>            | <input type="checkbox"/>                        |
| Head of the court clerk office | <input type="checkbox"/>  | <input type="checkbox"/>   | <input type="checkbox"/>            | <input type="checkbox"/>                        |
| Other                          | <input type="checkbox"/>  | <input type="checkbox"/>   | <input type="checkbox"/>            | <input type="checkbox"/>                        |

61. **You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **if available an organization scheme with a description of the competencies of the different authorities responsible for the budget process in the court**

62. **For direct assistance to the judge/court clerk, what are the computer facilities used within the courts?**

|                                       | 100% of courts           | +50% of courts           | -50% of courts           | - 10 % of courts         |
|---------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Word processing                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Electronic data base of jurisprudence | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Electronic files                      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| E-mail                                | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Internet connection                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

63. **For administration and management, what are the computer facilities used within the courts?**

|                                     | 100% of courts           | +50% of courts           | -50% of courts           | - 10 % of courts         |
|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Case registration system            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Court management information system | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Financial information system        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

64. **For the communication between the court and the parties, what are the computer facilities used within the courts?**

|   | 100% of courts           | +50% of courts           | -50% of courts           | - 10 % of courts         |
|---|--------------------------|--------------------------|--------------------------|--------------------------|
| Electronic web forms                      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Special Website                           | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other electronic communication facilities | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

65. **Is there a centralised institution which is responsible for collecting statistical data regarding**

the functioning of the courts and judiciary (answer only if this information has been changed compared with the previous evaluation round)? (Q50)

If yes, please specify the name and the address of this institution:

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your judicial system and the main reforms that has been implemented over the last two years

Please indicate the sources for the questions 62, 63 and 64:

### 3. 2. Monitoring and evaluation

#### 3. 2. 1. Monitoring and evaluation

66. Are the courts required to prepare an annual activity report?

67. Do you have a regular monitoring system of court activities concerning the:

- number of incoming cases?
- number of decisions?
- number of postponed cases?
- length of proceedings (timeframes)?
- other?

Please specify:

68. Do you have a regular system to evaluate the performance of each court?

Please specify:

69. Concerning court activities, have you defined performance indicators?

70. Please select the 4 main performance and quality indicators that is used for a proper functioning of courts:

- Incoming cases
- Length of proceedings (timeframes)
- Closed cases
- Pending cases and backlogs
- Productivity of judges and court staff
- Percentage of cases that are treated by a single sitting judge
- The enforcement of penal decisions
- Satisfaction of employees of the courts
- Satisfaction of clients (regarding the services delivered by the courts)
- Judicial quality and organisational quality of the courts
- The costs of the judicial procedures
- Other:

Please specify:

71. Are there performance targets defined for individual judges?

72. Are there performance targets defined at the level of the courts?

73. Please specify who is responsible for setting the targets:

- executive power (for example the ministry of Justice)?
- legislative power?
- judicial power (for example a High Judicial Council or a Higher Court)?
- other?

Please specify:

74. Please specify the main targets applied:
75. Which authority is responsible for the evaluation of the performances of the courts:
- the High Council of judiciary?
  - the Ministry of justice?
  - an Inspection authority?
  - the Supreme Court?
  - an external audit body?
  - other?
- Other, Please specify:
76. Are there quality standards (organisational quality and/or judicial quality policy) formulated for the courts (existence of a quality system for the judiciary)?  
If yes, please specify:
77. Do you have specialised court staff which is entrusted with quality policy and/or quality systems for the judiciary?
78. Is there a system enabling to measure the backlogs and to detect the cases which are not processed within a reasonable timeframe for:
- civil cases?
  - criminal cases?
  - administrative cases?
79. Do you have a way of analysing waiting time during court procedures?  
If yes, please specify:
80. Is there a system to evaluate the functioning of courts on the basis of an evaluation plan (timetable for visits) agreed a priori?  
Please specify (including an indication of the frequency of the evaluation):
81. Is there a system for monitoring and evaluating the functioning of the prosecution services?  
If yes, please specify:

*You can indicate below:*

- *any useful comments for interpreting the data mentioned above*
- *the characteristics of your court monitoring and evaluation system*

Please indicate the sources for the questions 70, 71, 72 and 76:

## 4. Fair trial

### 4. 1. Principles

#### 4. 1. 1. General principles

82. What is the percentage of judgements in first instance criminal cases in which the suspect is not attending in person or not represented by a legal professional (i.e. lawyer) during a court session (in absentia judgements) ?
83. Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?  
If possible, number of successful challenges (in a year):
84. Please give the following data concerning the number of cases regarding Article 6 of the European Convention of Human Rights (on duration and non-execution), for the year of reference

|   | Cases declared inadmissible by the Court | Friendly settlements | Judgements establishing a violation | Judgements establishing a non violation |
|---|--|----------------------|-------------------------------------|---|
| Civil proceedings - Article 6§1 (duration)      |  |                      |                                     |   |
| Civil proceedings - Article 6§1 (non-execution) |  |                      |                                     |   |
| Criminal proceedings - Article 6§1 (duration)   |  |                      |                                     |   |

Please indicate the sources for the questions 82 and 84:

## 4. 2. Timeframes of proceedings

### 4. 2. 1. General information

85. Are there specific procedures for urgent matters as regards:

- civil cases?
- criminal cases?
- administrative cases?

If yes, please specify:

86. Are there simplified procedures for:

- civil cases (small claims)?
- criminal cases (petty offences)?
- administrative cases?

If yes, please specify (for example if you have introduced a new law on simplified procedures):

87. Do courts and lawyers have the possibility to conclude agreements on the modalities for processing cases (presentation of files, decisions on timeframes for lawyers to submit their conclusions and on dates of hearings)?

If yes, please specify:

### 4. 2. 2. Penal, civil and administrative law cases

88. Total number of cases in the first instance courts (litigious and non-litigious); (please complete the table)

|   | Pending cases on 1 Jan. '06 | Incoming cases | Decision s on the merits | Pending cases on 31 Dec. '06 |
|---|-----------------------------|----------------|--------------------------|------------------------------|
| Total of civil, commercial and administrative law cases |                             |                |                          |                              |
| 1 Civil (and commercial) litigious cases*               |                             |                |                          |                              |
| 2 Civil (and commercial) non-litigious cases*           |                             |                |                          |                              |
| 3 Enforcement cases                                     |                             |                |                          |                              |
| 4 Land registry cases**                                 |                             |                |                          |                              |
| 5 Business register cases**                             |                             |                |                          |                              |
| 6 Administrative law cases                              |                             |                |                          |                              |

|   |  |  |  |  |
|---|--|--|--|--|
| 7 Other                                     |  |  |  |  |
| Total criminal cases (8+9)                  |  |  |  |  |
| 8 Criminal cases (severe criminal offences) |  |  |  |  |
| 9 Misdemeanour cases (minor offences)       |  |  |  |  |

89. The cases mentioned in categories 3 to 5 (enforcement, land registry, business register) are excluded from this total and should be presented separately in the table. The cases mentioned in category 6 (administrative law cases) are also excluded from this total for the countries which have specialised administrative courts or units in the courts of general jurisdiction.

\*\* if applicable

Note: for the criminal law cases there may be a problem of classification of cases between severe criminal law cases and misdemeanour cases. Some countries might have other ways of addressing misdemeanour offences (for example via administrative law procedure). Please indicate if possible what case categories are included under "severe criminal cases" and the cases included under "misdemeanour cases (minor offences)".

Explanation:

90. Total number of cases in the second instance (appeal) courts (litigious and non-litigious); (please complete the table)

|   | Pending cases on 1 Jan. '06 | Incoming cases | Decisions on the merits | Pending cases on 31 Dec. '06 |
|---|-----------------------------|----------------|-------------------------|------------------------------|
| Total of civil, commercial and administrative law cases |                             |                |                         |                              |
| 1 Civil (and commercial) litigious cases*               |                             |                |                         |                              |
| 2 Civil (and commercial) non-litigious cases*           |                             |                |                         |                              |
| 3 Enforcement cases                                     |                             |                |                         |                              |
| 4 Land registry cases**                                 |                             |                |                         |                              |
| 5 Business register cases**                             |                             |                |                         |                              |
| 6 Administrative law cases                              |                             |                |                         |                              |
| 7 Other   |                             |                |                         |                              |
| Total criminal cases (8+9)                              |                             |                |                         |                              |
| 8 Criminal cases (Severe criminal offences)             |                             |                |                         |                              |
| 9 Misdemeanour cases (minor offences)                   |                             |                |                         |                              |

91. Total number of cases in the highest instance courts (litigious and non-litigious); (please complete the table)

|   | Pending cases on 1 Jan. '06 | Incoming cases | Decisions | Pending cases on 31 Dec. '06 |
|---|-----------------------------|----------------|-----------|------------------------------|
| Total of civil, commercial and administrative law cases |                             |                |           |                              |
| 1 Civil (and commercial) litigious cases*               |                             |                |           |                              |

|   |  |  |  |  |
|---|--|--|--|--|
| 2 Civil (and commercial) non-litigious cases* |  |  |  |  |
| 3 Enforcement cases                           |  |  |  |  |
| 4 Land registry cases**                       |  |  |  |  |
| 5 Business register cases**                   |  |  |  |  |
| 6 Administrative law cases                    |  |  |  |  |
| 7 Other                                       |  |  |  |  |
| Total criminal cases (8+9)                    |  |  |  |  |
| 8 Criminal cases (severe criminal offences)   |  |  |  |  |
| 9 Misdemeanour cases (minor offences)         |  |  |  |  |

**92. Number of divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and treated by *first* instance courts (complete the table)**

|                             | Pending cases on 1 Jan. '06 | Incoming cases | Decisions | Pending cases on 31 Jan. '06 |
|-----------------------------|-----------------------------|----------------|-----------|------------------------------|
| Divorce cases*              |                             |                |           |                              |
| Employment dismissal cases* |                             |                |           |                              |
| Robbery cases               |                             |                |           |                              |
| Intentional homicide        |                             |                |           |                              |

**93. Average length of proceeding (from the date of lodging of court proceedings)**

|                             | % of decisions subject to appeal | % pending cases more than 3 years | 1 <sup>st</sup> instance | 2d instance | Total procedure |
|-----------------------------|----------------------------------|-----------------------------------|--------------------------|-------------|-----------------|
| Divorce cases*              |                                  |                                   |                          |             |                 |
| Employment dismissal cases* |                                  |                                   |                          |             |                 |
| Robbery cases               |                                  |                                   |                          |             |                 |
| Intentional homicide        |                                  |                                   |                          |             |                 |

**94. Where appropriate, please specify the specific procedure as regards divorce:**

**95. How is the length of proceedings calculated for the four case categories? (please give a description of the calculation method)**

**96. Please describe the role and powers of the prosecutor in the criminal procedure (multiple options are possible):**

- to conduct or supervise police investigation?
- to conduct investigation?
- when necessary, to demand investigation measures from the judge?
- to charge?
- to present the case in the court?
- to propose a sentence to the judge?
- to appeal?
- to supervise enforcement procedure?
- to end the case by dropping it without the need for a judicial decision?

- to end the case by imposing or negotiating a penalty without a judicial decision?  
 other significant powers?  
 Please specify:

97. Does the prosecutor also have a role in civil and/or administrative cases?  
 Please specify:

98. Functions of the public prosecutor in relation to criminal cases– please complete this table:

|   | Received by the public prosecutor | Discontinued by the public prosecutor because the offender could not be identified | Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation | Discontinued by the public prosecutor for reason of opportunity | Concluded by a penalty, imposed or negotiated by the public prosecutor | Charged by the public prosecutor before the courts |
|---|-----------------------------------|--|---|---|--|--|
| Total number of 1st instance criminal cases |                                   |  |   |   |  |  |

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning timeframes of proceedings and the main reforms that have been implemented over the last two years

Please indicate the sources for the questions from 92 to 94 and question 98:

## 5. Career of judges and prosecutors

### 5. 1. Appointment and training

#### 5. 1. 1 Recruitment, nomination and promotion

99. How are judges recruited?

- Through a competitive exam (for instance after a law degree)?  
 A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?  
 A combination of both  
 Other  
 Other, please specify:

100. Are judges initially/at the beginning of their carrier recruited and nominated by:

- An authority composed of judges only?  
 An authority composed of non-judges only?  
 An authority composed of judges and non-judges?

101. Is the same authority competent for the promotion of judges?

If no, please specify which authority is competent for the promotion of judges:

102. Which procedures and criteria are used for promoting judges? (please specify).

103. How are prosecutors recruited?

- Through a competitive exam? (for example after a law degree)  
 A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?  
 A combination of both

Other  
Other, please specify:

104. Are prosecutors initially/at the beginning of their carrier recruited and nominated by:

- An authority composed of prosecutors only?
- An authority composed of non-prosecutors only?
- An authority composed of prosecutors and non-prosecutors?

105. Is the same authority formally responsible for the promotion of prosecutors?  
If no, please specify which authority is competent for promoting prosecutors.

106. Which procedures and criteria are used for promoting prosecutors (please specify)

107. Is the mandate given for an undetermined period for judges?  
Are there exceptions? Please specify:

108. Is the mandate given for an undetermined period for prosecutors?  
Are there exceptions? Please specify:

109. If no, what is the length of the mandate? Is it renewable?

- for judges?
- for prosecutors?

*You can indicate below:*

- any useful comments for interpreting the data mentioned above
- the characteristics of the selection and nomination procedure of judges and prosecutors and the main reforms that have been implemented over the last two years

**5. 1. 2. Training**

110. Nature of the training of judges. Is it compulsory?

- Initial training
- General in-service training
- In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)
- In-service training for management functions of the court (e.g. court president, court managers)
- In-service training for the use of computer facilities in the court)

111. Frequency of the training of judges

|   | Annual                   | Regular                  | Occasional               |
|---|--------------------------|--------------------------|--------------------------|
| Initial training  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| General in-service training   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| In-service training for specialised judicial functions (e.g. judge for economic or administrative issues) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| In-service training for management functions of the court (e.g. court president, court managers)          | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| In-service training for the use of computer facilities in the court)                                      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

112. Nature of the training of prosecutors. Is it compulsory?

- Initial training
- General in-service training

- Specialised in-service training (specialised public prosecutor)
- In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)
- In-service training for the use of computer facilities in the public prosecution service)

**113. Frequency of the training of prosecutors**

|   | Annual                   | Regular                  | Occasional               |
|---|--------------------------|--------------------------|--------------------------|
| Initial training  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| General in-service training   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Specialised in-service training (specialised public prosecutor)   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| In-service training for the use of computer facilities in the public prosecution service)                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

\*\*\*

*You can indicate below:*

- *any useful comments for interpreting the data mentioned above*
- *comments regarding the attention given in the curricula to the European Convention on Human Rights and the case law of the Court*
- *the characteristics of your training system for judges and prosecutors and the main reforms that has been implemented over the last two years*

**5. 2. Practice of the profession**

**5. 2. 1. Salaries**

**114. Salaries of judges and prosecutors (complete the table)**

|  | Gross annual salary (Euro) | Net annual salary (Euro) |
|--|----------------------------|--------------------------|
| First instance professional judge at the beginning of his/her career     |                            |                          |
| Judge of the Supreme Court or the Highest Appellate Court                |                            |                          |
| Public prosecutor at the beginning of his/her career                     |                            |                          |
| Public prosecutor of the Supreme Court or the Highest Appellate Instance |                            |                          |

**115. Do judges and public prosecutors have additional benefits?**

|                         | Judges                   | Public prosecutors       |
|-------------------------|--------------------------|--------------------------|
| Reduced taxation        | <input type="checkbox"/> | <input type="checkbox"/> |
| Special pension         | <input type="checkbox"/> | <input type="checkbox"/> |
| Housing                 | <input type="checkbox"/> | <input type="checkbox"/> |
| Other financial benefit | <input type="checkbox"/> | <input type="checkbox"/> |

**116. If other financial benefit, please specify**

117. Can judges combine their work with any of the following other professions?

|                          | Yes with remuneration    | Yes without remuneration | No                       |
|--------------------------|--------------------------|--------------------------|--------------------------|
| Teaching                 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Research and publication | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Arbitrator               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Consultant               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Cultural function        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other function           | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

118. If other function, please specify

119. Can prosecutors combine their work with any of the following other professions?

|                          | Yes with remuneration    | Yes without remuneration | No                       |
|--------------------------|--------------------------|--------------------------|--------------------------|
| Teaching                 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Research and publication | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Arbitrator               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Consultant               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Cultural function        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other function           | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

120. If other function, please specify

121. Do judges receive bonus based on the fulfilment of quantitative objectives relating to the delivering of judgments?  
If yes, please specify:

Please indicate the source for the question 114:

**5. 2. 2. Disciplinary procedures**

122. Which authority is authorized to initiate disciplinary proceedings against judges and/or prosecutors? Please specify:

123. Which authority has the disciplinary power on judges and prosecutors? Please specify:

124. Types of disciplinary proceedings and sanctions against judges and prosecutors: number of disciplinary proceedings initiated

|                                  | Judges | Prosecutors |
|----------------------------------|--------|-------------|
| <b>Total number (1+2+3+4)</b>    |        |             |
| 1. Breach of professional ethics |        |             |
| 2. Professional inadequacy       |        |             |
| 3. Criminal offence              |        |             |
| 4. Other                         |        |             |

125. Types of disciplinary proceedings and sanctions against judges and prosecutors: number of sanctions pronounced:

|                                    | Judges | Prosecutors |
|------------------------------------|--------|-------------|
| <b>Total number (total 1 to 9)</b> |        |             |

|  |  |  |
|--|--|--|
| 1. Reprimand   |  |  |
| 2. Suspension  |  |  |
| 3. Withdrawal of cases                               |  |  |
| 4. Fine  |  |  |
| 5. Temporary reduction of salary                     |  |  |
| 6. Degradation of post                               |  |  |
| 7. Transfer to another geographical (court) location |  |  |
| 8. Dismissal   |  |  |
| 9. Other   |  |  |

**You can indicate below:**

- *any useful comments for interpreting the data mentioned above*
- *the characteristics of your system concerning disciplinary procedures for judges and prosecutors and the main reforms that have been implemented over the last two years*

## 6. Lawyers

### 6. 1. Statute of the profession

#### 6. 1. 1 Profession

126. Total number of lawyers practising in your country
127. Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court?
128. Number of legal advisors?
129. Do lawyers have a monopoly of representation:
- Civil cases\*
  - Criminal cases - Defendant\*
  - Criminal cases - Victim\*
  - Administrative cases\*

\* If appropriate, please specify if it concerns first instance and appeal. And in case there is no monopoly, please specify the organisations or persons which may represent a client before a court (for example a NGO, family member, trade union, etc) and for which types of cases.

130. Is the lawyer profession organised through?

- a national bar?
- a regional bar?
- a local bar?

Please specify:

Please indicate the source for the question 126:

#### 6. 1. 2. Training

131. Is there a specific initial training and/or examination to enter the profession of lawyer?
132. Is there a mandatory general system for lawyers requiring continuing professional training?
133. Is the specialisation in some legal fields tied with a specific level of training/ qualification/

specific diploma or specific authorisations?  
If yes, please specify:

**6. 1. 3. Fees**

134. Can users establish easily what the lawyers' fees will be?

135. Are lawyers fees:

- regulated by law?
- regulated by Bar association?
- freely negotiated?

**6. 2. Evaluation**

**6. 2. 1 Complaints and sanctions**

136. Have quality standards been formulated for lawyers?

137. If yes, who is responsible for formulating these quality standards:

- the bar association?
- the legislature?
- other?

Please specify (including a description of the quality criteria used):

138. Is it possible to complain about :

- the performance of lawyers?
- the amount of fees?

Please specify:

139. Which authority is responsible for disciplinary procedures:

- the judge?
- the Ministry of justice?
- a professional authority or other?

Please specify:

140. Disciplinary proceedings and sanctions against lawyers:

Disciplinary proceedings initiated

|               | Breach of professional ethics | Professional inadequacy | Criminal offence | Other |
|---------------|-------------------------------|-------------------------|------------------|-------|
| Annual number |                               |                         |                  |       |

141. Disciplinary proceedings and sanctions against lawyers:

Sanctions pronounced

|               | Reprimand | Suspension | Removal | Fine | Other |
|---------------|-----------|------------|---------|------|-------|
| Annual number |           |            |         |      |       |

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning the organisation of the Bar and the main reforms that have been implemented over the last two years

## 7. Alternative Dispute Resolution

### 7. 1. Mediation and other forms of ADR

#### 7. 1. 1. Mediation

142. If appropriate, please specify, by type of cases, the organisation of *judicial* mediation:

|                                | Possibility for private mediation or court annexed mediation | Private mediator         | Public authority         | Judge                    | Prosecutor               |
|--------------------------------|--|--------------------------|--------------------------|--------------------------|--------------------------|
| Civil and commercial cases     | <input type="checkbox"/>                                     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Family law cases (ex. Divorce) | <input type="checkbox"/>                                     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Administrative cases           | <input type="checkbox"/>                                     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Employment dismissals          | <input type="checkbox"/>                                     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Criminal cases                 | <input type="checkbox"/>                                     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

143. Is there a possibility to receive legal aid for mediation procedures?  
If yes, please specify:

144. Can you provide information about the number of accredited mediators?  
If yes, please specify

145. Can you provide information about the total number of *judicial* mediation procedures concerning:

- civil cases?
- family cases?
- administrative cases?
- employment dismissals?
- criminal cases?

Please indicate the source for the question 145:

#### 7. 1. 2. Other forms of alternative dispute resolution

146. Can you give information concerning other forms of alternative dispute resolution (e.g. Arbitration, conciliation)? Please specify:

*You can indicate below:*

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning ADR and the main reforms that have been implemented over the last two years

## 8. Enforcement of court decisions

### 8. 1. Execution of decisions in civil matters

#### 8. 1. 1. Functioning

147. Number of enforcement agents

148. Are enforcement agents:

- judges?
- bailiff practising as private profession ruled by public authorities?
- bailiff working in a public institution?
- other enforcement agents?

Please specify their status:

149. Is there a specific initial training or examination to enter the profession of enforcement agent?

150. Is the profession of enforcement agent organised by?

- a national body?
- a regional body?
- a local body?

151. Can users establish easily what the fees of the enforcement agents will be?

152. Are enforcement fees:

- regulated by law?
- freely negotiated?

Please indicate the source for the question 147:

#### 8. 1. 2. Supervision

153. Is there a body entrusted with the supervision and the control of the enforcement agents?

154. Which authority is responsible for the supervision and the control of enforcement agents:

- a professional body?
- the judge?
- the Ministry of justice?
- the prosecutor?
- other?

Please specify:

155. Have quality standards been formulated for enforcement agents?

If yes, who is responsible for formulating these quality standards and what are the quality criteria used?

156. Do you have a specific mechanism for executing court decisions rendered against public authorities, including for monitoring the execution?  
if yes, please specify

Please indicate the source for the questions 155 and 156:

### 8. 1. 3. Complaints and sanctions

157. What are the main complaints of users concerning the enforcement procedure? (please indicate a maximum of 3).

- no execution at all?
- non execution of court decisions against public authorities?
- lack of information?
- excessive length?
- unlawful practices?
- insufficient supervision?
- excessive cost?
- other?

Please specify:

158. Has your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?  
If yes, please specify:

159. Is there a system measuring the timeframes of the enforcement of decisions :

- for civil cases?
- for administrative cases?

160. As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court seats:

- between 1 and 5 days
- between 6 and 10 days
- between 11 and 30 days
- more

More, please specify

161. Disciplinary proceedings initiated against enforcement agents:

Breach of professional ethics  
Professional inadequacy  
Criminal offence  
Other

162. Sanctions pronounced against enforcement agents:

Reprimand  
Suspension  
Dismissal  
Fine  
Other

*You can indicate below:*

- *any useful comments for interpreting the data mentioned above*
- *the characteristics of your enforcement system of decisions in civil matters and the main reforms that has been implemented over the last two years*

Please indicate the source for the questions 157 and 160:

## 8. 2. Execution of decisions in criminal matters

### 8. 2. 1. Functioning

163. Is there a judge who is in charge of the enforcement of judgments?

If yes, please specify his/her functions and activities (e.g. Initiative or control functions). If no, please specify which authority is entrusted with the enforcement of judgements (e.g. prosecutor):

164. As regards fines decided by a criminal court, are there studies to evaluate the effective recovery rate?

If yes, please specify:

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your enforcement system of decisions in criminal matters and the main reforms that has been implemented over the last two years

## 9. Notaries

### 9. 1. Statute

#### 9. 1. 1. Functioning

165. Do you have notaries in your country? If no go to question 170.

166. Is the status of notaries:

- a private one (without control from public authorities)?
- a status of private worker ruled by the public authorities?
- a public one?
- other?

167. Do notaries have duties:

- within the framework of civil procedure?
- in the field of legal advice?
- to authenticate legal deeds?
- other?

Please specify:

Please indicate the source for the question 166:

#### 9. 1. 2. Supervision

168. Is there an authority entrusted with the supervision and the control of the notaries?

169. Which authority is responsible for the supervision and the control of the notaries:

- a professional body?
- the judge?
- the Ministry of justice?
- the prosecutor?
- other?

Please specify:

You can indicate below:

- any useful comments for interpreting the data mentioned above

- *the characteristics of your system of notaries and the main reforms that has been implemented over the last two years*

## 10. Functioning of justice

### 10. 1. Foreseen reforms

#### 10. 1. 1. Reforms

170. Can you provide information on the current debate in your country regarding the functioning of justice? Are there reforms foreseen? (for example changes in legislation, changes in the structure of the judiciary, innovation programmes, etc). If yes, please specify.

## **Explanatory note to the scheme for evaluating judicial systems 2006 – 2008 cycle**

### I. Introduction

#### *Background*

At their 3<sup>rd</sup> Summit, organised in Warsaw on 16 and 17 May 2005, the Heads of State and government of the member states of the Council of Europe "[decided] to develop the evaluation and assistance functions of the European Commission for the Efficiency of Justice (CEPEJ)".

Relying on the experiences gained from the pilot evaluation process (2002 – 2004) and the first regular process (2004 – 2006) - unanimously welcomed by the Committee of Ministers of the Council of Europe and which was given large echoes among policy makers and judicial practitioners in the members states - the CEPEJ decided, at its 8<sup>th</sup> plenary meeting, to start the next evaluation process in 2007 on the basis of 2006 data.

The CEPEJ is convinced that, by using the methodology developed in the previous exercises and with the help of the national correspondents, it is possible to obtain a general evaluation of the judicial systems containing recent data. This will enable policy makers to act on the basis of that information. Therefore the CEPEJ wishes to pursue the evaluation on a regular basis.

The present Scheme was adapted by the Working group on evaluation (CEPEJ-GT-EVAL) in the light of the problems encountered over the 2004-2006 period, and taking into account the comments submitted by CEPEJ members, observers, experts and national correspondents during this previous evaluation round. The exercise for adapting the Scheme was confined, however, to questions that were problematic or of little relevance, so as to consolidate the body of data collected at regular intervals and to make it easier to draw comparisons and assess trends. The Working group's aims were to identify any gaps in the collection of judicial statistics and facilitate the collection of common, uniform judicial statistics across member states.

The CEPEJ adopted this new version of the Scheme at its 9th plenary meeting (13 – 14 June 2007).

#### *General recommendations*

The aim of this exercise is to compare the functioning of judicial systems in their various aspects, to have a better knowledge of the trends of the judicial organisation and to propose reforms to improve the efficiency of justice. The evaluation Scheme and the analysis of the conclusions which can result from it should become a genuine tool in favour of public policies on justice and for the sake of the European citizens.

Because of the diversity of the judicial systems in the member states concerned, not every state will probably be able to answer all questions. Therefore the objective of the Scheme is also to stimulate the collection of data by the states in those fields where such data are still not available.

It must also be noted that the Scheme neither aims to include an exhaustive list of indicators nor aims to be an academic or scientific study. It contains indicators which have been considered relevant when assessing the situation of the judicial systems and to enable the CEPEJ to work more in depth in promising fields for the improvement of the quality and the efficiency of justice. At the same time, the data collected will enable the CEPEJ to continue to work in depth in new and essential fields for the improvement of the quality and efficiency of justice.

In order to make the process of data collection and data processing easier, the Scheme has been presented in an electronic form, accessible to national correspondents entrusted with the coordination of data collection in the member states. National correspondents are kindly requested to forward the national answers to the Scheme by using this electronic questionnaire.

### II. Comments concerning the questions of the Scheme

This note aims to assist the national correspondents and other persons entrusted with replying to the questions of the Scheme.

a. General remarks

The year of reference for this Scheme is 2006. If 2006 data are not available, please use the most recent figures. In this case, please indicate the year of reference used under the relevant question.

Please indicate the sources of your data if possible. The "source" concerns the institution which has given the information to answer a question (e.g. the National Institute of the Statistics of the Ministry of Justice) in order to check the credibility of the data.

All financial amounts should be given, if possible, in Euros. For the countries which do not belong to the euro zone, the exchange rate should be indicated on 1 January 2007.

For the purpose of this Scheme, and unless specified otherwise in a specific question, "civil law cases" refers in general to all those cases involving private parties, including namely family law cases, commercial cases, employment cases.

When the choice between 'yes' or 'no' is offered, please tick the appropriate box. It may, however, not always be possible to choose between these answers. Please feel free to give a more elaborated answer of your choice. If certain information is not available or not relevant, please use "N.A" (not applicable).

Where appropriate, the corresponding number to the question of the previous Scheme (2004 – 2006 cycle) has been indicated in brackets at the end of a similar question appearing in this new Scheme, to facilitate the work of the national correspondents. When a qualitative answer to a specific question remains unchanged from one evaluation process to the other, the answer can be simply "cut and paste" from the previous exercise. It can also be indicated: "see 2006 answer".

*Complementary comments on the answers*

In general, if certain questions cannot be answered or if you need to give details in particular due to the specificity of your judicial system, please comment on it.

A specific area has been left at the end of each chapter to briefly make, on the one hand, any useful comments for interpreting the data given in the chapter, and, on the other hand, the main characteristics or even make a qualitative description of your system if your state has chosen specific system to cope with a specific situation.

You are not required to fill systematically in this area. On the contrary, please feel free to add comments on certain questions where you deem it useful, even if no specific area for "comments" has been foreseen. Your comments will be useful for the analysis of your replies and for processing data.

If the data indicated for the year of reference (2006) differ significantly from the same data given for the previous evaluation round, please give the explanation for this difference after your answer.

*Help desk*

Should you have any question regarding this Scheme and the way to answer it, please send an e-mail to Pim Albers (pim.albers@coe.int), Stéphane Leyenberger (stephane.leyenberger@coe.int) or Muriel Décot (muriel.decot@coe.int).

b. Comments question by question

|   |
|---|
| <i>I. Demographic and economic data</i> |
|---|

For the data requested in this Chapter, please use if possible the data available at the Council of Europe or, for lack of data at the Council of Europe, the OECD data to ensure a homogenous calculation of the ratios between member states. If the data concerning your country are not available at the Council of Europe (or the OECD), please use another source and specify this source.

#### Question 1

The number of inhabitants should be given, if possible, as of 1 January 2006 (the year of reference). If this is not possible, please indicate which date has been used.

#### Question 2

The Scheme requires an indication of the amount of *public expenditure* (all expenses made by the state or public bodies, including public deficits) instead of the amount of the “budget” which is not precise enough and would not include certain “extra expenditure” which does not fall within the budget. The expression *territorial authorities* has been added in order to include federal states or states where power is shared between the central authorities and the territorial authorities. The reply to this question will enable ratios to be calculated which would measure the total real investment of member states in the operation of justice.

#### Question 3

Please indicate the Gross Domestic Product (GDP) of your country in 2006 (i.e.: the value of all final goods and services produced in a country in one year. GDP can be measured by adding up all of the economy's incomes (wages, interest, profits) or expenditures (consumption, investment, government purchases and net exports - minus imports). This data will be useful to calculate several ratios enabling a comparative analysis.

#### Question 4

Please indicate the average *gross* annual salary and not the *disposable* salary. The gross salary is calculated before any social expenses and taxes have been paid; it is the amount that the employer has actually to pay per employee, but not to the employee.

Please use the same definition for “gross annual salary” in question 96.

The annual gross average salary is an important piece of information in order to calculate ratios which would measure and compare the salaries of the principal “players” involved in the judicial system, in particular judges and prosecutors.

#### Question 5

The exchange rate of the national currency related to the date of reference is important for situations where countries are not able to convert their national currency into the Euros. It should be given on 1 January 2007. Information on the exchange rate may be used in the analysis of the replies.

#### Question 6

Question 6 aims to establish the total amount of the budget covering the functioning of the courts, whatever the source of this budget is. The figures presented must be the figures of the approved budget, e.g. the budget that has been formally approved by the Parliament (or another competent public authority), but not the one effectively executed.

This amount does not include:

- the budget for the prison and probation systems;
- the budget for the operation of the Ministry of Justice (and/or any other institution which deals with the administration of justice);
- the budget for the operation of other organs (other than courts) attached to the Ministry of Justice;
- the budget of the prosecution system;
- the budget of the judicial protection of youth (social workers, etc);
- the budget of the Constitutional courts;
- the budget of the High Council for the Judiciary (or similar organ).

Contrary to the 2004 – 2006 cycle, it has been decided that the budget of the judicial training structures should be included.

Where appropriate, this amount should include both the budget at national level and at the level of territorial entities.

If it is not possible to separate the budget of the courts from the budget for the public prosecution offices, please indicate this and give an estimate of the court budget (compared with the prosecution budget) if possible.

#### Question 8

The budgets to be addressed for the purpose of this question concern only those used for the operation of the courts ((gross) salaries, computer equipment, justice expenses, court buildings (investments in new buildings as well as maintenance costs' of the court buildings, training and education or other). Contrary to the previous process, it has been decided that the costs of training and education should be included into this amount (this evolution will be taken into account in the comments of the final report).

*Salaries* are those of all judicial and non-judicial staff working within courts, with the exception, where appropriate, of the prosecution system (and the non prosecutor staff working for the prosecution system).

*IT (Information Technologies)* includes all the expenses for the installation, use and maintenance of computer systems, including the expenses paid out for the technical staff.

*Justice expenses borne by the state* refers to the amounts that the courts should pay out such as expenses paid for expert opinions. Any expenses paid to the courts by the parties should not be indicated here.

*Court buildings'* budgets includes all the costs' that are related to the maintenance and operation of court buildings (rental costs, costs for electricity, costs for security, cleaning, etc.)

*Investments in court buildings* includes all the costs that are connected with investments in new court buildings.

*Training and education* includes all the costs that are related to training courses or the education of judges and court staff. If the training of judges cannot be separated from the training of prosecutors, please indicate it.

#### Questions 9

This question is posed to identify trends at a European level in the budgets spent on the judiciary over the last five years. If budgetary data are available, please provide the figures (in Euros).

#### Questions 10 and 11

There may be a general rule in some states according to which a party is required to pay a court tax or fee to start a proceeding at a general jurisdiction court. This general rule can have exceptions - please indicate these exceptions. This tax does not concern lawyers' fees. Please also indicate if this court tax applies in criminal cases only or also to other case.

A portion of the budget of courts can be financed by incomes resulting from the payment of such court fees or court taxes by the parties. The figures concerning the total amount (in euros) of court fees or court taxes received by judicial systems must be included under question 11.

For the purposes of this question, *courts of general jurisdiction* means those courts which deal with all those issues which are not attributed to specialised courts according to the nature of the case.

#### Question 12

The total approved budget allocated to the entire justice system (which may include: the budget of the prison system, the operation of the ministry of justice or other bodies, the judicial protection of youth, the public prosecution system, the judiciary, high councils for the judiciary, schools for the judiciary, etc) will enable, for instance, to assess the part of this budget dedicated to the judicial system proper (court system), as stated in question 6.

#### Questions 13

*Annual public budget allocated to legal aid* refers to the amount of the public budget allocated by the Ministry of Justice or the institution dealing with the administration of justice and/or the territorial authorities to legal

aid in its widest sense. This includes both aid given for representation before the courts and legal advice. Further information can be given in Chapter II.A. The total should include only the sums directly paid to those benefiting from legal aid or their lawyers (and not include administrative costs).

Please indicate separately the sums allocated to criminal cases and those allocated to all other cases.

#### Question 15

In certain countries the budget for legal aid forms an integral part of the court budget. To make a better comparison between the countries, an identification of the countries where this is the case is necessary.

#### Question 16

*Public Prosecutor* is to be understood in the sense of the definition contained in Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system: "(...) authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system".

If there is a single budget for judges and prosecutors please indicate, if possible, the proportion of this budget intended for prosecutors. If part of the Public Prosecution's budget is allocated to the police budget, or to any other budget, please indicate it.

#### Question 17

This question is inserted so as to identify those countries where the budget for the prosecution is included into the court budget.

#### Question 18

The aim of this question is to identify the institutions involved in the various phases of the process regarding the global budget allocated to the courts. This question does not concern the management of the budget at individual court level, to be addressed under question 55. Various answers are possible for this question, because in certain countries the management and the allocation of the budget to the courts is for example a combined responsibility of the ministry of justice and of a council for the judiciary. Where there is a combined responsibility, please give a description of how the responsibilities for the allocation of the budgets to the courts are organised. If available, please insert an organisation scheme.

## II. Access to justice and to all courts

As the European Convention on Human Rights guarantees legal aid in criminal matters, the questionnaire specifies legal aid in criminal cases from legal aid in other than criminal cases.

For the purposes of this Scheme, *legal aid* is defined as the aid given by the state to persons who do not have sufficient financial means to defend themselves before a court. For the characteristics of legal aid, please refer to Resolution Res(78)8 of the Committee of Ministers of the Council of Europe on Legal Aid and Advice.

#### Questions 20 and 23

In certain countries the public budget for legal aid is not only aimed at the payment of the lawyers' fees in situations where clients have insufficient financial means, but can also be used for the payment of court fees or court taxes – or be granted through the exoneration of such fees. Legal aid might also be granted to cover the costs related to the enforcement of judicial decisions (for instance to pay the fees of an enforcement agent).

#### Question 24

This question concerns the annual number of cases for which legal aid have been granted to persons going to court. It does not concern legal advice regarding questions that are not addressed by the court.

#### Question 26

If the reply to the question is “yes”, you can indicate in your comments the maximum annual income (if possible for a single person) for which legal aid can be awarded.

#### Questions 27 and 25

These questions require from the states to give an indication on whether it is possible, according to the law, to refuse legal aid in other than criminal matters for specific reasons and on the competent body deciding on this issue.

#### Question 29

This question does not refer to insurances offered to companies. For the purposes of this question, “*legal expenses insurance*” covers the costs of legal proceedings, including lawyers’ fees and other services relating to settlement of the claim. If possible, please give some indications on the development of such insurances in your country. Please also specify whether this is a growing phenomenon.

#### Question 30

For this question, please indicate whether the judicial decision given by the judge has an impact on the allocation of judicial costs. In other words, states should indicate whether, for instance in a civil case, the party which has lost the case has to bear the costs of the winning party. In the affirmative, please indicate whether this concerns criminal cases and/or other cases.

Judicial costs include all costs of legal proceedings and other services relating to the case paid by the parties during the proceedings (taxes, legal advice, legal representation, travel expenses, etc).

#### Question 31

The web sites mentioned could appear in particular on the internet web site of the CEPEJ.

#### Question 32

This question can apply to all types of cases.

A mandatory provision of information to individuals on the foreseeable timeframe of the case to which they are parties is a concept to be developed to improve judicial efficiency. It can be simple information to the parties or for instance a procedure requiring the relevant court and the opposing parties to agree on a jointly determined time-limit, to which both sides would commit themselves through various provisions. Where appropriate, please give details on the existing specific procedures.

#### Question 33

The question aims to specify if the state has established structures which are known to the public, easily accessible and free of charge, for victims of criminal offences.

#### Question 34

This question aims to learn how states protect those groups of population which are particularly vulnerable in judicial proceedings. It does not concern the police investigation phase of the procedure.

*Specific information mechanism* might include, for instance, a public, free of charge and personalised information mechanism, operated by the police or the justice system, which enables the victims of criminal offences to get information on the follow up to the complaints they have launched.

*Specific hearing modalities* might include, for instance, the possibility for a child to have his/her first declaration recorded so that he/she does not have to repeat it in further steps of the proceedings.

*Specific procedural rights* might include, for instance, *in camera* hearing for the victims of rape or the obligation to inform beforehand the victim of rape, in case of the release of the offender.

Please specify if other specific modalities are provided for by judicial procedures to protect these vulnerable groups (for instance, the right for a woman who is a victim of family violence to enjoy the use of the common house).

In this context, ethnic minorities must be addressed in line with the Council of Europe's framework convention for the protection of national minorities (CETS N° 157). It does not concern foreigners involved in a judicial procedures. Special measures for these groups can be, for instance: language assistance during a court proceeding or special measures to protect the right to a fair trial and to avoid discrimination.

This question does not concern compensation mechanisms for the victims of criminal offences, which are addressed under questions 35 to 37

#### Questions 35 to 37

These questions aim to provide precise information on the existing compensation mechanisms for the victims of criminal offences. These details concern the nature of the compensation mechanisms, the type of offences for which compensation can be claimed and the quality of the recovery of damages awarded by the court.

#### Question 38

In certain countries the public prosecutor can play a role in the assistance of victims of crimes (for example to provide them with information or assist them during judicial proceedings, etc). If this is the case, please specify it.

#### Question 39

This question is related to situations where public prosecutors can discontinue a case (for example due to the lack of evidence, when a criminal offender could not be identified or, in some legal systems, for reasons of opportunity). It aims to know whether victims of crimes may have the possibility to contest such a decision, to 'force' the public prosecution to move forward on a criminal case.

#### Question 40

This question concerns every user of justice and the compensation for damage suffered because of dysfunctions of the justice system. Where appropriate, please give details on the compensation procedure and the possible existing scales for calculating the compensation (e.g. the amount per day of unjustified detention or condemnation).

The cases before the European Court of Human Rights show that some member states experience specific difficulties as regards the execution of court decisions rendered against public authorities (at national, regional or local level). If specific mechanisms have been introduced in your country to cope with this situation, please specify it.

#### Questions 41 and 42

These questions concern the surveys aimed at the parties (citizens, lawyers, other legal professionals – court experts, interpreters, representatives of governmental agencies, etc.) who had a direct contact with a court and are directly involved in proceedings. It does not concern general opinion surveys. It contains also appreciation surveys from the persons employed in courts (judges and non judge staff) or the public prosecution agencies (prosecutors and non prosecutor staff).

You can give here concrete examples by indicating the titles of these surveys, the web sites where they can be consulted, etc.

#### Questions 43 and 44

These questions refer to the existence of a procedure enabling every user of the justice system to complain about a fact that he/she thinks to be contrary to the good functioning of the judicial system. If such a procedure exists, please specify the modalities for managing these complaints in the table under question 42. It must be specified what is the competent body for addressing the complaint to and, where appropriate, if this body must, on the one hand, answer this complaint in a given timeframe (to acknowledge receipt of the

complaint, to provide information on the follow up to be given to the complaint, etc.) and, on the other hand, address the complaint in a given timeframe.

One specific type of complaint can be a situation of (possible) corruption of a judge, prosecutor or staff of courts and public prosecution agencies. If there are situations known in your country (underlined in particular in the reports by the Group of States against Corruption - GRECO), please specify it. If possible, you could indicate in particular the number of complaints against judges, prosecutors or staff in potential situation of corruption, the characteristics of the corruption cases and the number of persons convicted for corruption.

If possible, please give details on the efficiency of these procedures, indicating for instance the timeframes or the number of complaints filed.

### III. Organisation of the court system

A court can be considered either as a legal entity or a geographical location. Therefore it is required to number the courts according to both concepts, which allow in particular to give information on the accessibility to courts for the citizens.

#### Question 45

##### *Courts (administrative structure)*

For the purposes of this question, a *court* means a body established by law appointed to adjudicate on specific type(s) of judicial disputes within a specified administrative structure where one or several judge(s) is/are sitting, on a temporary or permanent basis.

For the purpose of this question, a *first instance court of general jurisdiction* means those courts which deal with all those issues which are not attributed to *specialized courts* owing to the nature of the case.

Please give the list of specialised courts and, if possible, their number.

Should the specific nature of your system require it, you could indicate the criteria used to number these courts.

##### *Courts (geographic locations)*

For the purposes of this question, please indicate the total number of geographical locations (premises or court buildings) where judicial hearings are taking place, numbering both the courts of first instance of general jurisdiction and the specialised courts of first instance. Please include in the data the various buildings belonging to the same tribunal in a same city, if these buildings have court rooms (for court sessions).

Should the specific nature of your system require it, you could indicate the criteria used to number these courts.

#### Question 47

This question enables to indicate possible changes in the 'judicial map' for example as a result of a reduction of the number of courts (or geographical court locations) or the merge of different courts (for example the integration of commercial courts into civil courts). If this is the case, please provide information on the type of changes.

#### Question 48

This question aims to compare the number of courts (geographic locations) with jurisdiction for specific and standard cases. It should enable a comparison between member states in spite of the differences in the judicial organisation.

Small claims are not specified to take into account the differences in the living conditions in European states. Please specify the maximum amount to define a "small claim" (i.e. a civil case where the financial value of the claim is relatively low) in your country, which is generally used as criteria of procedural jurisdiction.

Should your system require it, you could indicate the criteria which are used to number these courts.

## Questions 49 to 56

These questions aim to count all persons entrusted with the task of delivering or participating in a judicial decision.

For the purposes of this Scheme, *judge* must be understood according to the case law of the European Court of Human Rights. In particular, the judge decides, according to the law and following an organised proceeding, on any issue within his/her jurisdiction. He/she is independent from the executive power.

Therefore judges deciding in administrative or financial matters (for instance) must be counted if they are included in the above mentioned definition.

### Question 49

For the purposes of the question, *professional judges* means those who have been trained and who are paid as such. Please indicate the number of actually filled posts at the date of reference and not the theoretical budgetary posts. The information should be presented in full time equivalent and for permanent posts.

### Question 50

This question concerns professional judges but who do not perform their duty on a permanent basis.

In a first phase, in order to measure to what extent part time judges participate in the judicial system, the gross data could be indicated.

In a second phase, in order to compare the situation between, member states, the same indication could be given, if possible, in full time equivalent.

### Question 52

For the purposes of this question, *non-professional judges* means those who sit in courts (as defined in question 49) and whose decisions are binding but who do not belong to the categories mentioned in questions 49 and 50 above. This category includes lay judges and the (French) '*juges consulaires*'.

If possible, please indicate, for each category of non-professional judges, the average number of working days per month. Neither arbitrators, nor those persons who have been sitting in a jury (see question 53) are subject to this question.

### Question 53

This category concerns for instance the citizens who have been drawn to take part in a jury entrusted with the task of judging serious criminal offences.

### Question 55

The whole judicial (administrative or technical) non-judge staff working in all courts must be counted here, in full time equivalent for permanent posts. This includes Rechtspfleger, court clerks, secretaries, technical staff, etc. Precisions according to the various categories of non-judge staff can be given under question 56. The information should be given, if possible, in full time equivalent.

### Question 56

This question aims to specify the various functions of non-judge judicial, administrative staff and technical staff working in courts.

*The Rechtspfleger* is included in the list of staff only for those states which experience this quasi judicial function. The Rechtspfleger must be defined as an independent organ of jurisdiction according to the tasks that were delegated to him/her by law. Such tasks can be connected to: family and guardianship law, law of succession, law on land register, commercial registers, decisions about granting a nationality, penal cases, execution of penal cases, order to execute prison sentences as replacement or replacement of this punishment by doing community service, prosecution at district courts, decisions concerning legal aid, etc.

*Non-judge (judicial) staff* directly assisting a judge with judicial support (assistance during hearings, (judicial) preparation of a case, court recording, judicial assistance in the drafting of the decision of the judge, legal counselling - for example court registrars). If data have been given under the previous category (Rechtspfleger), please do not add this figure again under the present category.

*Administrative staff* is not directly involved in the judicial assistance of a judge, but is 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, HRM manager, etc.).

*Technical staff* means staff in charge of execution tasks or assuming technical and other maintenance functions such as cleaning staff, security staff, and staff working at the computer departments of courts or electricians.

#### Question 57

For the purposes of this question, *prosecutors* are defined according to the Recommendation R(2000)19 of the Committee of Ministers on the role of public prosecution in the criminal justice system, as public authorities who, on behalf of society and in 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. The information should be given, if possible, in full time equivalent.

#### Question 58

In some countries, some persons (private workers or police officers) are specifically entrusted with duties similar to those exercised by public prosecutors. Please specify whether these persons are included in the data concerning the number of public prosecutors. Please also give information on these categories (statute, number, functions). This excludes lawyers who are bringing an accusation in a criminal hearing. This excludes also victims who can go directly to the judge without intervention from the public prosecutor.

#### Question 59

For the purposes of this question, please number the non-prosecutor staff working for the prosecution system, even when this staff appear in the budget of the court (where appropriate, and if possible, please give an estimate of the number of non-prosecutorial staff). Please make sure (in case the staff of the prosecution services cannot be separated from the court staff) that the figures presented in question 50 exclude staff which is working for the prosecution. The information should be given, if possible, in full time equivalent.

#### Question 60

Contrary to question 18 which concerns the elaboration of the budget before it is actually allocated between the courts, this question concerns those persons within the courts who enjoy specific powers as regards the budget. Multiple answers are possible. If available, please give a description of the responsibilities of the various actors regarding the individual court budget.

#### Questions 62 to 64

These questions aim to evaluate the quality of the computerised support to judges and court clerks in their various judicial and administrative tasks.

Please tick the boxes according to the rate of courts which are equipped with the computer facilities indicated in the table. For instance, if it is not possible in your country to file a claim by electronic form, tick the case “-10% of courts” in the row “electronic form”.

#### Question 65

The CEPEJ recommends that the collection of judicial statistics is centralised within a specific department.

#### Question 66

The *annual report of the court* includes e.g. data on the number of cases processed or pending cases, the number of judges and administrative staff. It might also include targets and an assessment of the activity.

#### Questions 67 to 81

Various court activities (including judges and administrative court staff) are nowadays subject, in numerous countries, to monitoring and evaluation procedures.

The monitoring procedure aims to assess the day-to-day activity of the courts, and in particular what the courts produce, notably through data collection and statistical analysis.

The evaluation procedure refers to the performance of the court systems with prospective concerns, using indicators and targets. This evaluation can have a more qualitative nature.

#### Question 67

Please indicate the main items which are regularly assessed by the monitoring procedure. The list which is mentioned is not exhaustive and can be completed.

#### Questions 68 to 75

These questions concern the evaluation of the performance of the courts, such as the number of incoming cases, length of proceedings, etc (see the indicators listed under question 70). It does not refer to the general evaluation of the overall functioning of the court (see question 80).

In question 70, it might be interesting to compare among states what are the most important issues to be considered in view of improving their system and to know if the states define specific targets to the courts.

#### Questions 75

The aim of this question is to know which authority is responsible for the supervision on the courts' performances. In some countries this may be the Council for the judiciary, whilst in other countries this is the responsibility of the ministry of Justice, the Supreme Court or a combined responsibility between various bodies.

#### Questions 76 and 77

A recent trend in Europe concerns the introduction of quality systems in courts, for example in the Netherlands (*rechtspraakQ*) and in Finland (Court of appeal of Rovaniemi). It is important to identify these countries and to see if specialised persons working in the courts are also responsible for quality policy.

#### Question 78

*Backlogs* are composed of filed cases which have not yet been decided. Please give details concerning your system to measure backlogs.

For the purposes of this Scheme, "*civil cases*" refer in general to all those cases involving private parties, including namely family law cases, commercial cases, and employment cases.

#### Question 79

Waiting time means time in which nothing happens during a procedure (for instance because the judge is waiting for the report of an expert). It is not the general length of procedure.

#### Question 80

This question does not specifically concern the evaluation of performance indicators, but the overall evaluation of the (smooth) functioning of the court.

The supervision of the courts may have here the character of inspection visits. These visits might be organised by making use of a programme cycle, where courts or groups of courts in a certain region are regularly visited, annually, bi-annually or at another frequency, this plan of visits being made known in advance. Please indicate, if appropriate, the frequency of these inspection visits.

#### Question 81

This question concerns the same types of monitoring or evaluation procedures as those under questions 67 and 68, but applied specifically to the prosecution system.

### IV. Fair trial

#### Question 82

This question refers to situations in which a judgement is given without actual defence. This may occur – in some judicial systems – when a suspect is at large or does not show up for trial. The aim of this question is to find out if the right to an adversarial trial is respected, in particular in criminal cases in first instance. The right to an adversarial trial means the opportunity for the parties to have knowledge of and comment on the observations filed or evidence adduced by the other party (see amongst others Ruiz-Mateos vs. Spain, judgment of the ECHR of 23 June 1993, Series A no. 262, p.25, para. 63).

#### Question 83

This question aims to provide information on procedures which allow to guarantee to the user of justice the respect of the principle of impartiality, in line with Article 6 of the European Convention on Human Rights. If possible, please indicate the number of cases successfully challenged within the year of reference.

#### Question 84

This table concerns the number of cases regarding (the violation) of Article 6 of the European Convention on Human Rights for the year of reference, specifying civil (including commercial and administrative law cases) and criminal cases. In the first column, please indicate the number of cases communicated by the Court to your government, which is the beginning of the adversarial procedure. The main focus of this question is on cases related to the duration of court proceedings and (for civil cases) the non-execution of decisions.

#### *European Convention on Human Rights - Article 6 – Right to a fair trial*

*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

#### Question 85

Such a *procedure of urgency* can be used so that the judge can take a provisional decision (e.g. decision on the right to control and care for a child) or when it is necessary to preserve elements of proof or when there is a risk of imminent or hardly repairable damage (for instance emergency interim proceedings).

#### Question 86

Such a *simplified procedure* can be used in civil matters for instance when it concerns the enforcement of a simple obligation (e.g. payment order).

For criminal matters, the question aims to know whether petty offences (for instance minor traffic offences or shoplifting) can be processed through administrative or simplified procedures. These offences are considered as incurring sanctions of criminal nature by the European Court of Human Rights and shall therefore be processed in the respect of the subsequent procedural rights.

## Question 87

This question refers to agreements between lawyers and the courts which can be concluded in order to facilitate the dialogue between main actors of the proceeding and in particular to improve timeframes of proceedings. Such agreements can concern the submission of files, the setting up of deadlines for submissions of elements, dates for hearings, etc.

## Questions 88 to 91

In Question 88 to 91 countries are asked to provide information on the caseload of the courts (from the first instance courts until the highest courts). In the table to be filled there are two main categories: non-criminal cases and criminal cases. The non-criminal cases are all litigious and non-litigious civil, commercial and (if applicable) administrative law cases.

In some countries commercial cases are addressed by special commercial courts, whilst in other countries these cases are handled by general (civil) courts. Despite the organisational differences between countries in this respect, all the information concerning civil and commercial cases should be included in this table. Examples of litigious civil and commercial cases are litigious divorce cases or disputes on contracts. Non-litigious cases concern for example uncontested payment orders, request for the change of names, divorce cases with mutual consent (for some legal systems), etc.

In some countries administrative law cases are addressed by special administrative courts or tribunals, whilst in other countries disputes between citizens and (local, regional or national) authorities are handled by the civil courts as well. If countries do have separate administrative law procedures or are able to distinguish between administrative law cases (for example cases concerning asylum or the refusal of a construction permit by local government) and civil law cases, these figures should be indicated in the table.

In addition to these types of case, in certain courts, registration tasks and enforcement cases are dealt with by special units or entities. For example: regarding business registers, land registers and enforcement cases. Activities related to business registers could be the registration of new enterprises or companies in the business register of the court or the modification of the legal status of a company. Modifications in the ownership of immovable goods (like land or houses) might be a part of the activities of the courts which are responsible for the land register. The category 'other' can be connected with administrative tasks of the courts, for example with the management of insolvency registers (or bankruptcy registers). If these registration tasks are part of the court activities, please mention the number of cases concerned. It must be noted that, in certain countries, activities concerning the business registers, land register or other types of registers might not be a task of a court, but is carried out by a private organisation of a public agency.

The cases mentioned in categories 3 to 5 (enforcement, land registry, business register) are excluded from the total to be indicated under categories 1 and 2 and should be presented, where appropriate, separately in the table. The cases mentioned in category 6 (administrative law cases) are also excluded from the total under categories 1 and 2 for the countries which have specialised administrative courts or units in the courts of general jurisdiction.

For criminal law cases there may be a problem of classification of cases between severe criminal law cases and misdemeanour cases. Some countries might have other ways of addressing misdemeanour offences (for example via administrative law procedure). Please indicate if possible what case categories are included under "severe criminal cases" and the cases included under "misdemeanour cases (minor offences)".

The definition of the total of criminal offences can be derived from the European Sourcebook of Crimes and Criminal justice. The total of criminal offences include all offences defined as criminal by any law, including traffic offences (mostly dangerous and drink driving). Criminal offences include acts, which are normally processed by the public prosecutor, whereas offences processed directly by the police, such as minor traffic offences and certain breaches of public order are not included.

## Question 92

In this question, case information is requested for four categories, which are (mostly) common in Europe: litigious divorce cases, dismissal cases, robbery cases and intentional homicide cases. For each category information needs to be provided on the number of pending cases at the beginning and the end of the year of reference, the number of decisions, the appeal percentage and the number of pending cases with a duration of over more than three years. Information is also requested regarding the length of court

proceedings in days. If countries only have information on the length of proceedings in months (or years) they need to recalculate the length of proceedings from months/years to days.

The four case categories are:

5. *Litigious divorce cases*: i.e. the dissolution of a marriage contract between two persons, by the judgement of a court of a competent jurisdiction. The data should not include: divorce ruled by an agreement between the parties concerning the separation of the spouses and all its consequences (procedure of mutual consent, even if they are processed by the court) or ruled through an administrative procedure. If your country has a totally non-judicial procedure as regards divorce or if you can not isolate data concerning adversarial divorces, please specify it and give the subsequent explanations. Furthermore, if there are in your country, as regards divorce, compulsory mediation procedures or reflecting times, or if the conciliation phase is excluded from the judicial proceeding, please specify it and give the subsequent explanations.
6. *Employment dismissal cases*: cases concerning the termination of (an) employment (contract) at the initiative of the employer (working in the private sector). It does not include dismissals of public officials, following a disciplinary procedure for instance.
7. *Robbery* concerns stealing from a person with force or threat of force. If possible these figures should include: muggings (bag-snatching, armed theft, etc) and *exclude* pick pocketing, extortion and blackmail (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts.
8. *Intentional homicide* is defined as the intentional killing of a person. Where possible the figures should include: assault leading to death, euthanasia, infanticide and *exclude* suicide assistance (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts.

In the column *decisions (on the merits)*, states are required to count the total number of decisions on the merits which end the dispute at first instance level (provisional decisions or decisions regarding the proceeding should not be counted here). The average length of proceedings concerns the first and second instance proceedings. Only litigious cases are addressed here.

*Pending cases by the year of reference 2006* means cases which have not been completed within the year.

If the average length of proceedings is not calculated from the lodging of court proceedings, please specify the starting point for the calculation. Please calculate the timeframe until the judicial decision is given, without taking into account the execution procedure.

#### Question 95

An explanation can be given on how the length of court proceedings is measured and which definitions are used.

#### Question 96

The role of the prosecutor varies significantly among member states. Therefore the approach that has been used consists in a non exhaustive list of his/her functions, to be answered by choosing the relevant tasks. You can give further details about such functions.

#### Question 97

In civil matters, the prosecutor can, in some member states, be entrusted for instance with safeguarding the interest of children or persons under guardianship. In administrative matters, he/she can, for instance, represent the interest of children vis-à-vis the state or one of its organs.

#### Question 98

This question aims to provide information on the number of criminal cases to be addressed by the prosecutor in first instance. As traffic cases represent a large volume of cases, please specify whether the data indicated includes or not such cases.

*Discontinued criminal cases* mean cases received by the prosecutor, which have not been brought before the court and for which no sanction or other measure had been taken. If information on the number of cases is not available, it can be given in number of persons concerned (a same case may concern several

persons). Please indicate the number of cases discontinued because the case could not be processed, either (i) where no suspect was identified or (ii) due to the lack of an established offence or a specific legal situation (e.g. amnesty) or (iii) for reason of opportunity, where the legal system allows it.

#### V. Career of judges and prosecutors

Questions 99 to 109

Questions 99 to 102 concern only judges and questions 103 to 106 concern only prosecutors. If judges and prosecutors are designated according to the same procedure, please indicate it.

Questions 99 and 103

Judges and prosecutors can be recruited through different procedures. For example students that are recently graduated from law school can be recruited by a competitive exam or a special exam for the entrance of the profession of a judge or a prosecutor (and undergo psychological tests and tests about their legal knowledge). Experienced professionals, for example lawyers or civil servants which have working experience in a legal department of a ministry, might enter the profession of a judge or a prosecution by a special selection and recruitment mechanism. For these category of professionals the length of the (mandatory) training can be shorter, compared to the first category (the students with no or limited working experience in the legal field).

*Recruited and nominated* refers to the whole procedure resulting in the nomination of a judge/prosecutor and not only the formal and official act nominating the person as judge/prosecutor.

*Promotion concerns* the (formal) procedure for granting a higher position or a higher annual salary to a judge or a prosecutor. For example, in some countries the promotion of judges is a responsibility of the Council for the Judiciary whilst in other countries this may be a task of the ministry of Justice or a head of the court (court president). Mixed responsibilities are possible as well. If this is the case, please give a brief description of the promotion procedures, the criteria that are used for promotion and the authorities responsible for the promotion of judges and prosecutors.

Question 107 and 108 on the mandate of judges and prosecutors specify two existing situations: mandate for an undetermined period or mandate for a determined period. If, in your country, judges or prosecutors generally belong to the first category, please specify if there are nevertheless exceptions to this "life term nomination" (e.g. for certain categories of elected judges). If, in your country, judges or prosecutors belong to the second category, please specify if the mandate is renewable.

Question 110

There are substantial differences among European States with respect to the initial training of judges. Some countries offer lengthy formal training in specialised establishments, followed by intensive in-service training. Others provide for a sort of traineeship under the supervision of an experienced judge, who imparts knowledge and professional advice on the basis of concrete cases.

Considering the complexity of cases, judges' specialisation in very specific fields (economy, financial cases, health law, sport law, etc.) has become necessary. This training, which might result in specialised functions, is different from the general in-service training that judges shall or can follow during their career and which namely enables them to remain up to date as regards legislative or case law reforms.

To these two types of training can be added the training for specific *management* functions (e.g. court president) which require from judges, in addition to their judicial functions, to have e.g. administrative, management or financial skills, for which they have not necessarily been trained within the framework of their initial or continuous training, for example a post graduate course in court management or public management.

With a growing influence of the use of computer technology in the courts it is important to know if, in the various countries, specific training is offered to judges and court staff concerning the use of computer technology.

For each of the four types of training, countries are asked to indicate if this training is compulsory or not, as well as the frequency of the training provided (annual, regular (for example every three months) or occasional (sometimes a training course is given)).

In the comment part under question 113 specific information can be provided concerning the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights as an integral part of the training curricula of judges and prosecutors.

#### Question 112

This question, which repeats the content of the question above, concerns the training of prosecutors and is accurate in particular for those judicial systems where the training of prosecutors is different from the training of judges.

#### Question 114

The question concerns the annual gross salary of a full time first instance professional judge at the beginning of his/her career (starting salary), a full time judge of the Supreme Court or last instance judge (maximum annual salary), a full time prosecutor at the beginning of his career (starting salary) and a full time prosecutor working at the Supreme Court or the highest instance (maximum annual salary). If a bonus given to judges significantly increases their income, please specify it and, if possible, indicate the annual amount of such bonus or the proportion that the bonus takes in the judge's income. This bonus does not include the bonus mentioned under question 118 (productivity bonus).

The *gross* salary is calculated before any social expenses and taxes have been paid.

The *net* salary is calculated *after* the deduction of social expenses (such as pension schemes) and taxes (for those countries where they are deducted a priori and automatically from the sources of income; when this is not the case, please indicate that the judge has to pay further income taxes on this "net" salary, so that it can be taken into account in the comparison).

If it is not possible to indicate a determined amount, please indicate the minimum and maximum annual gross and net salary.

#### Question 115

This question aims to provide information on the advantages that judges and prosecutors might be given because of their functions.

#### Questions 116 to 120

*Teaching* means for instance exercising as University professor, participation in conferences, in pedagogical activities in schools, etc.

*Research and publication* means for instance publication of articles in newspapers, participation in the drafting of legal norms.

*Cultural function* means for instance performances in concerts, theatre plays, selling of his/her own paintings, etc.

If rules in this field exist in your country, which require in particular an authorisation to perform the whole or a part of these activities, please specify it.

#### Question 121

This question refers to the productivity bonus that judges could be granted, for instance based on the number of judgements delivered over a given period of time.

#### Questions 122 and 123

These questions specify the authority entrusted with the initiation of a disciplinary procedure vis-à-vis the authority responsible for deciding on a penalty in a disciplinary case.

## Questions 124 and 125

This question, which appears as a table, specifies the number of disciplinary proceedings against judges or prosecutors and the sanctions actually decided against judges or prosecutors. If a significant difference between those two figures exists in your country, and if you know why, please specify it.

In the second column, *breach of professional ethics* (e.g. rude behaviours vis-à-vis a lawyer or another judge), *professional inadequacy* (e.g. systematic slowness in delivering decisions), *criminal offence* (offence committed in the private or professional framework and open to sanction) refer to some mistakes made by judges or prosecutors which might justify disciplinary proceedings against them. Please complete the list where appropriate. The same applies to the type of possible sanctions (*reprimand, suspension, dismissal, fine, and withdrawal of a case, transfer to another location or department, temporary reduction in salary*).

If the disciplinary proceeding is undertaken because of several mistakes, please count the proceeding only once and for the main mistake.

Specific comments could in particular be developed, where appropriate, as regards the procedures initiated and the sanctions pronounced in the case of corruption of judges and prosecutors, notably taking into account the reports by the Group of States against Corruption (GRECO) and possibly by *Transparency International*.

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| VI. Lawyers |
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## Questions 126 to 128

For the purposes of this chapter, *lawyers* refer to the definition of the Recommendation Rec(2000)21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of lawyer: 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 some countries have experienced difficulties to count precisely the number of lawyers according to this definition without taking into account solicitors (lawyers who have no competence to represent users in courts), please give a global figure, and specify whether this figure includes solicitors. If you have figures for both categories, please specify them. If possible, please indicate also whether this figure includes trainees.

## Question 129

This question aims to get information concerning persons entitled, according to the type of cases, to represent their clients before courts and/or at measuring the scope of the "monopoly of lawyers".

The answer to this question might vary whether first or second instances are considered. If appropriate, please specify it.

## Question 130

This question aims to know at which level the profession of lawyer is organised (for instance registration of lawyers, disciplinary procedures, representation of the profession vis-à-vis the executive power). It can be organised both at national and regional/local levels. Where appropriate, please indicate the number of regional or local bars.

## Question 131

If a specific training or exam (for example passing the Bar exam) is not required, please indicate however if there are specific requirements as regards diploma or university graduation.

## Question 132

A European trend can be noticed as regards the development of mandatory continuous training of lawyers. This questions aims at assessing this trend.

### Question 133

*Specialisation in some legal fields* refers to the possibility for a lawyer to use officially and publicly this specificity, such as "lawyer specialised in real estate law".

### Questions 134 and 135

As the systems for defining lawyers' fees vary significantly, and taking into account the principle of freedom for defining fees in numerous countries, the previous evaluation exercises have shown the quasi-impossibility to get detailed information on the amount of lawyers' fees.

Therefore these questions only aim to provide information on the way fees are determined and on the possibility for users to have easy access to prior information on the foreseeable amount of fees (the fees that the lawyer estimates that he/she must request when he/she opens the file).

### Questions 136 and 137

Similar to courts or other legal professionals lawyers might use, as developed by (national, regional or local) bar associations, quality standards. Is this the case, please specify which quality standards and criteria are used.

### Question 138

The question refers to the complaints which might be introduced by users who are not satisfied with the performance of the lawyer responsible for their case. This complaint can concern for instance delays in the proceeding, the omission of a deadline, the violation of professional secrecy. Where appropriate, please specify.

Please specify also, where appropriate, the body entrusted with receiving and addressing the complaint.

### Questions 139 to 141

The question refers to disciplinary proceedings which are generally introduced, for instance by other lawyers or judges. This question, which appears as a table, specifies the number of disciplinary proceedings against lawyers from the sanctions actually decided against lawyers. If a significant difference between those two figures exists in your country, and if you know why, please specify it.

Where appropriate, please complete or modify the list of reasons for disciplinary proceedings and the type of sanctions mentioned in the second column.

If the disciplinary proceeding is undertaken because of several mistakes, please count the proceeding only once and for the main mistake.

The disciplinary proceedings can be the responsibility of a professional organisation (for example Bar associations), a special chamber at a court, the ministry of justice or a combination of them.

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| VII. <i>Alternative Disputes Resolutions</i> |
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A common definition of mediation is difficult to define. States are currently at various stages concerning the development of mediation.

Recommendation Rec(2002)10 of the Committee of Ministers of the Council of Europe gives a definition of the mediation in civil matters: it is a dispute resolution process whereby parties negotiate over the issues in dispute in order to reach an agreement with the assistance of one or more mediators.

Recommendation Rec(1999)19 of the Committee of Ministers of the Council of Europe gives a definition of the mediation in penal matters: it is any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator).

Generally, for the purposes of this Chapter, *mediation* is to be considered as a judicial process, or a process developed within a judicial context (e.g. required by a judge) in which a third party, who has no immediate interest in the matters in dispute, facilitates discussion between the parties in order to help them to resolve their difficulties and reach an agreement.

#### Question 142

This question, which appears as a table, aims to indicate, for each type of cases, the possibility to have private mediation (for example conducted by lawyers who are accredited mediators or psychologists with a mediation specialisation), mediation conducted by a public authority (other than a court) or court annexed mediation. In the last case, the mediator is a court employer (this can be a judge or another employer which is accredited to treat mediation cases).

For the purposes of this specific question, "*civil cases*" exclude family cases and employment cases, to be addressed in the specific rows below in the table.

#### Question 143

Just as they can benefit from legal assistance by making use of the facilities of legal aid (in case a party does not have sufficient financial means) parties can have, in certain countries, the possibility of receiving legal aid to start a mediation proceeding. If this is the case, please specify.

#### Question 144

For this question, deliberately presented open, please indicate, if possible, the number of accredited mediators, the modalities of their designation, their specific attributions, etc. I.e. in certain countries there is a national authority or NGO which is responsible for accrediting mediators.

#### Question 145

This question is mainly directed at those states in which precise figures concerning mediation procedures by types of cases are available. If figures available do not enable you to completely answer the question or, for example, if these figures partially cover civil cases (divorce), please indicate it.

The interest of this question is to understand in which fields mediation is more used and considered as a successful procedure.

For the purposes of this specific question, "*civil cases*" exclude family and employment cases, to be addressed specifically below.

#### Question 146

While questions 142 to 145 concern judicial mediation (as part of the proceeding an intervention of a judge is foreseen - even if there might be private mediation), this question refers to all other types of alternative dispute resolution and in particular to cases which, being non litigious, are brought outside the courts' jurisdiction.

This question aims *inter alia* to identify the type of cases which can be, in some member states, addressed by non judicial bodies (for instance divorce cases addressed by Conciliation Boards in some Scandinavian countries or the use of arbitration).

Please specify the main categories of cases concerned by ADR other than mediation.

### IX. Enforcement of court decisions

In accordance with the definition contained in Recommendation Rec(2003)17 of the Committee of Ministers of the Council of Europe on enforcement of court decisions: the enforcement agent is a person authorised by the state to carry out the enforcement process irrespective of whether that person is employed by the state or not.

Please note that questions 147 to 160 only concern the enforcement of decisions in civil matters (which include commercial matters or family law issues for the purpose of this Scheme).

#### Questions 147 and 148

Some countries have court employed execution officers, some are in the public service outside courts and, in some countries, they work as private professionals (entrusted with public duties).

#### Question 150

This question aims to know at which level the profession of enforcement agent is organised (for instance registration, disciplinary procedures, representation of the profession). It can be organised both at national and regional/local levels.

#### Questions 151 and 152

These questions aim to provide information on the way enforcement fees are determined and on the possibility for users to have easy access to prior information on the foreseeable level of amount of fees in order for an enforcement agent to execute the judicial decision.

#### Questions 153 to 155

Enforcement agents are entrusted with public duties. It is therefore important to know who supervises them, even if their status can be very different. In addition it is important to know if specific quality criteria are used in the profession of the enforcement agents and which criteria are defined.

#### Question 156

Taking into account the amount of cases before the European Court of Human Rights regarding in particular the non execution of court decisions rendered against public (national, regional or local) authorities, it might be interesting, to better assess the situation in the member states, to comment specifically on this situation, if you consider it as a major issue in your country.

#### Question 157

The previous evaluation exercises demonstrated that all the countries that answered provide in their legislation for complaints which can be filed by users against enforcement agents. The answers should give more in-depth knowledge of the reasons of such complaints and if there has been a quality policy formulated for the enforcement agents. Please indicate the four main reasons for complaints vis-à-vis the execution procedure.

#### Question 158

Please indicate, where appropriate, which are the items that your country wishes to improve on, which are the foreseen or the adopted measures undertaken to improve the situation and, where appropriate, which are the difficulties in this field. In other words, please evaluate the situation in the country concerning the enforcement procedures.

#### Question 159

This question refers to the setting up of a statistical system, which can also be used for measuring the length of judicial proceedings, enabling to indicate, in number of days for example, the length of the enforcement procedure as such, from the service of the decision to the parties. One of the reasons for the difficulty to have statistics in this field can be that, in civil matters, the execution of the decision depends on the wish of the winning party.

#### Question 160

The aim of this question, which appears as a specific case, is to compare the situation between countries concerning the notification of the judicial decision enabling the beginning of the enforcement procedure.

## Questions 161 and 162

This question, which appears as a table, specifies the number of disciplinary proceedings against enforcement agents from the sanctions actually decided against them. If a significant difference between those two figures exists in your country, and if you know why, please specify it.

If appropriate, please complete or modify the list of reasons for disciplinary proceedings and the type of sanctions mentioned in the second column.

If the disciplinary proceeding is undertaken because of several mistakes, please count the proceeding only once and for the main mistake.

## Questions 163 and 164

Only few questions have been included in the Scheme as regards the enforcement of court decisions in criminal matters. They are limited to issues directly linked to the functioning of the court system. This issue is further evaluated within the framework of other mechanisms of the Council of Europe.

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| <i>VIII. Notaries</i> |
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## Questions 165 to 169

The functions and status of notaries are very different in the various member states. These questions aim to define only the status and the judicial functions exercised by the notaries (e.g. drawing up friendly settlements), as well as the nature of the supervision when exercising these functions.

## Question 166

In addition to the differentiation between the public and the private status of the notaries, this question aims to differentiate those countries where the notary is a fully private function, with no public nature (first choice), and those where, while exercising the profession as a private worker, the notary is entrusted with public power (second choice), under the supervision of a public authority (for instance the prosecutor or the judge). Please indicate only one possibility.

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## Question 170

As a general conclusion, this open question offers the possibility of indicating general or more specific remarks concerning the situation in the replying countries and the necessary reforms to be undertaken to improve the quality and the efficiency of justice. It could be interesting to indicate whether these reforms are under preparation or have only been envisaged at this stage.

It could be specified in particular whether these reforms concern substantial or procedural law, in civil, criminal or administrative matter (to be specified), or the organisation of the court system, the organisation of legal professions, or any other field.

Though it is not compulsory to reply to this question, concrete suggestions from national experts would be very useful for the future work of the CEPEJ.

Thank you very much for your valuable co-operation!

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