

COMPARATIVE ANALYSIS OF THE NORMATIVE FRAMEWORK GOVERNING COURT AND PROSECUTION OFFICE STAFF IN SELECTED COUNCIL OF EUROPE MEMBER STATES

Identifying efficient human resource management
practices in courts and prosecution offices



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Identifying efficient human resource
management practices in courts
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Uparedna analiza normativnog okvira koji se primenjuje na sudske službenike i službenike u tužilaštvu u odabranim državama članicama Saveta Evrope – *Identifikovanje efikasnih praksi upravljanja ljudskim resursima u sudovima i tužilaštvima*

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Developing modern and efficient human resources management system in Serbia

Strategy on Human Resources (hereinafter: HR) in Judiciary for period 2022-2026 (hereinafter: Strategy) and the accompanying Action Plan (hereinafter: AP) have both been adopted by the Government of the Republic of Serbia on 29 December 2021 and published in the Official Gazette no. 133/2021 from 31 December 2021.

Among numerous different HR issues with which the Strategy and AP have been dealing with, one of the important topics is the status and position of judicial and prosecutorial assistants, as well as other court and prosecution staff.

Inadequate status and position of both judicial and prosecutorial assistants has been pointed out as one of the key problems prompting the adoption of the Strategy. Strategy is focusing on one general goal "Establishment and sustainable development of transparent, modern and efficient system of HR management in judiciary, in order to strengthen the rule of law and legal certainty of citizens". It is further elaborated through three specific goals.

Specific goal 1 is „Establishment of the open, objective and transparent system of HR management in the judiciary“. Its implementation is envisaged by defining several concrete measures in the AP:

- ▶ 1.1 Gap analysis of the current legal framework for selection, competences, transfer and improvement of the court and prosecution staff, in order to develop modern and efficient HR management system
- ▶ 1.2 Preparation and adoption of the legal framework for establishment and sustainable development of the HR management system
- ▶ 1.3 Analysis of the effects of the implementation of the advanced legal framework for establishment and sustainable development of the HR management system

Activities for the implementation of measure 1.2 include 1.2.1 „Analysis of the judicial-organizational and other legislation and its amendments in line with the gap analysis from the measure 1.1“, as well as 1.2.2 „Actual amendments of the said legislation regarding the labour and legal status of the judicial staff“. Activities that are also envisaged for the implementation of measure 1.2 are 1.2.3 „Adoption of special law/amendments of the current laws which regulate labour and legal status, ranks, competences, professional and other qualifications, career development, material status and other issues concerning court and prosecution staff, as well as the HJC and HPC staff“, 1.2.4 „Adoption of the by-laws which are implementing the new/amended laws from activities 1.2.2 and 1.2.3 and the adoption of the codes of ethics for court and prosecution staff, as well as for HJC and HPC staff“ and 1.2.5 „Adoption of the classification and catalogue of working positions and ranks in judiciary, with clear goals and tasks, in line with the advanced legal framework“.

Specific goal 2 of the Strategy is „Establishment of the connections between transparent and efficient system of management, evaluation, career development and professional training of court and prosecution staff“.

Measures to achieve Specific goal 2 are:

- ▶ 2.1 Examination of the effectiveness of the current procedure for the judicial assistants' evaluation
- ▶ 2.2 Examination of the effectiveness of the current procedure for the prosecutorial assistants' evaluation
- ▶ 2.3 Examination of the effectiveness of the current procedure for the evaluation of other court and prosecution staff
- ▶ 2.4 Analysis of the effects of implementation of the advanced procedure for career planning and development, as well as for the system of professional training of court and prosecution staff¹

¹ For more details on concrete Strategy and AP measures and activities, see Strategy on Human Resources in Judiciary for period 2022-2026 and the accompanying Action Plan, Official Gazette no. 133/2021

Methodology applied and issues covered

First part of this analysis contains some general remarks on the importance of judicial staff and its common issues across CoE member states.

■ Taking into account various criteria (such as: size of the country, main features of legal system, etc.) the following CoE Member States have been selected and overview of their systems follows in the second part of the analysis: Germany, Croatia, France, Austria, Portugal and Estonia.

■ All the important aspects are elaborated, such as the main categories of both court and prosecution staff, their main competences, conditions needed for their employment (job requirements) and relevant legal basis (whether they are covered in a separate law or various different laws and/or bylaws). Where applicable, other issues, such as trainings, promotion or salaries are also covered.

■ The focus in the analysis is on the Rechtspflegers (in Germany and Austria), court/prosecution advisers in Croatia and assistant judges in Estonia (both categories are considered to perform competences of Rechtspflegers), as the main and most specific category of court and/or prosecution staff. Other categories of staff have been elaborated more generally and readers are instructed where to find more info on other court and prosecution staff.

■ In the countries which don't have the position of Rechtspflegers, more elaboration has been dedicated to the court and/or prosecution staff which is assisting judges/prosecutors in their work, like the registrars (greffier in France and conservadore in Portugal).

■ Also, for each of the six selected CoE member states, data on total number of court and prosecution staff, their number per categories of court staff, as well as their number per 100 000 inhabitants and their relation per number of judges and prosecutors, have been collected from Dynamic database of European judicial systems, created by European Commission for the Efficiency of Justice (hereinafter: CEPEJ)².

■ In order to enable the institutions responsible to implement the Strategy and monitor its implementation (Ministry of Justice, High Judicial Council, High Prosecutorial Council, Supreme Court, Supreme Public Prosecutor's Office, courts, public prosecutor's offices, Ministry of Finance and Judicial Academy) to better perform all the above mentioned activities and implement measures from AP, the Ministry of Justice requested the production of the Comparative analysis of the normative framework governing court and prosecution office staff in selected Council of Europe (hereinafter: CoE) Member States in order to identify efficient human resource management practices. The production of this analysis was supported by the CoE project „Support for the implementation of the judicial reform“.

² CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

General remarks on court and prosecution staff in Council of Europe member states

It is hard to find a common denominator for such comprehensive topic as is the topic of judicial staff. It encompasses not only courts, but also prosecution offices' staff and ranges from persons who are providing essential expert support to the judges and/or prosecutors to the administrative staff and finally providers of technical support. It is difficult to make a unified list of various categories that fall within the main category of judicial staff because titles/names of different categories of judicial staff, and even more their roles and responsibilities, differ so much from country to country that often they are not even comparable.

CEPEJ has tried to make a list of the main non-judge (as they call it) staff categories in their biannual report on efficiency of CoE member states' judicial systems: „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. The second category is composed of staff that have the task to assist judges directly. The third category concerns staff responsible for different administrative matters, as well as court management. The last category relates to technical staff attached to courts.”³ The CEPEJ report contains also the fifth category, “other types of non-judge staff, including all staff who may not be included in the four categories above”⁴.

CEPEJ Report on “European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice” contains a very interesting table (although over 10 years old, so definitely a little bit outdated) which shows the percentages of above mentioned categories of non-judge staff. The median/average percentages among all CoE member states were as follows: 10.39% of Rechtspfleger, 53.08% of non-judge staff whose task is to assist the judge such as registrars, 21.83% of staff in charge of administrative tasks and management of the courts, 6.96% of technical staff and 8.18% of other non-judge staff⁵.

For the purposes of this analysis, similar concept and methodology has also been applied in relation to prosecution staff to the extent possible, taking into account specificities of prosecutorial profession and differences between judicial systems.

It is also worth mentioning that in the latest CEPEJ report „15 member States and one observer State have set up Rechtspfleger (or similar bodies) with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal”⁶.

At the beginning of this analysis it is important to stress that so-called “Rechtspflegers”, certainly have a unique position within court and prosecution staff and provide the most valuable expert support to the holders of judicial functions (although, as seen above, do not participate with a significant percentage in the overall number of court staff).

3 European judicial systems, Edition 2014 (2012 data): Efficiency and quality of justice, An overview, European Commission for the Efficiency of Justice (CEPEJ), p. 20

4 European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice, p. 174

5 Ibid, p. 180.

6 European judicial systems, CEPEJ evaluation report, 2022 Evaluation cycle, Part 1, p. 57

Therefore, to have a more clear picture of the current situation regarding their responsibilities, the most recent analysis made by the European Union of Greffier/Rechtspfleger/Court Clerks, which has been in February 2023 communicated to SATURN (one of the CEPEJ working groups in charge of the judicial time management), contains a general overview of Rechtspfleger's tasks, as follows:

- ▶ Legal aid in 7 member states (Austria, Czech Republic, Germany, Iceland, Greece, Poland, Spain),
- ▶ Family matters in 8 member states (Austria, Czech Republic, Germany, Hungary, Iceland, Ireland, Slovakia, Spain),
- ▶ Payment orders in 9 member states (Austria, Bosnia and Herzegovina, Czech Republic, Estonia, Germany, Iceland, Poland, Slovakia, Spain),
- ▶ Land register and/or commercial register in 10 member states (Austria, Croatia, Czech Republic, Estonia, Germany, Hungary, Iceland, Poland, Slovakia, Slovenia),
- ▶ Enforcement of civil cases in 10 member states (Austria, Bosnia and Herzegovina, Czech Republic, Germany, Hungary, Iceland, Poland, Slovakia, Slovenia, Spain),
- ▶ Enforcement of criminal cases in 6 member states (Germany, Hungary, Iceland, Norway, Slovakia, Spain)
- ▶ Non-litigious cases in 11 member states (Austria, Bosnia and Herzegovina, Czech Republic, Denmark, Georgia, Germany, Hungary, Ireland, Poland, Slovakia, Spain),
- ▶ Other cases not mentioned in 10 member states (Bosnia and Herzegovina, Georgia, Germany, Hungary, Iceland, Ireland, Poland, Slovakia, Slovenia, Spain)⁷.

■ European Union of Greffier/Rechtspfleger/Court Clerks is a strong advocate of the Rechtspfleger rights and promotor of this profession. It produced several very interesting documents, such as "White Paper for a Rechtspfleger/greffier for Europe" and "Manifesto for Rechtspfleger for Europe"⁸.

7 Similar data, but without listing the concrete member states, are contained also in the European judicial systems, CEPEJ evaluation report, 2022 Evaluation cycle, Part 1, p. 57.

8 For more info, see their website www.eur-online.eu.

Court and prosecution staff in selected countries

GERMANY

Situation

Germany has been included in this document as a role model country of very comprehensive and detailed setup of a specific category of judicial staff, which could be used in Serbia in the process of drafting the new (or amending the existing) laws which are dealing with the issue of court and prosecution staff.

■ As already mentioned, Germany has a specific category of judicial civil servants, called Rechtspfleger or Senior Judicial Officers, which perform a variety of judicial administration tasks in the courts and in the public prosecutor's offices. Their competences are mainly regulated by way of the transfer of decisions and other tasks originally assigned to the judge.

■ Besides Rechtspfleger, there are other court and prosecution employees, like investigative personnel employed by the federal states (Länder), as well as the court registry staff, which exists at every court and every public prosecutor's office, and court bailiffs.

■ The status of Rechtspfleger is regulated by the Law on Rechtspfleger⁹, while the other court and prosecution staff status is regulated by the Courts Constitution Act¹⁰.

■ In 2020, there were altogether 54107 persons employed as court staff, out of which 8642 as Rechtspfleger, 28071 as court staff whose task is to assist the judge such as registrars, 6785 as staff in charge of administrative tasks and management of the courts, 2220 as technical staff and 8389 as other court staff.

■ Total of court staff per 100 000 inhabitants was 65.1, while the CoE member states median was 56.1. Ratio of court staff per judge was 2.6, while the CoE median was 3.3.

■ The number of prosecution staff was 12204, which means that the number of prosecution staff per 100 000 inhabitants was 14.7, while the CoE member states median was 15.2. Ratio of prosecution staff per prosecutor was 1.9, while the CoE median was 1.3¹¹.

⁹ Law on Rechtspfleger (Rechtspflegergesetz), which was first published in Federal Law Gazette (Bundesgesetzblatt) No. BGBl. I S. 675 on 16 December 1963. The latest amendments were published in Federal Law Gazette No. BGBl. I S. 174 on 9 February 2021

¹⁰ Courts Constitution Act (Gerichtsverfassungsgesetz), which was first published in the Federal Law Gazette No. BGBl. I S. 1077 on 9 May 1975. The latest amendments were published in the Federal Law Gazette No. BGBl. I S. 2606 on 19 December 2022

¹¹ CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

Rechtspfleger

The term „Rechtspfleger“ is being used in this document instead of „Senior Judicial Officer“, since it is internationally widely recognized and used in several international documents¹² i da ih lako razlikuje od ostalih sudskih službenika i službenika u tužilaštvu.

Just like judges, Rechtspfleger are not dependent on the instructions of a superior when making their decisions and are only bound by law and order (“objective independence”). An exception to this is the work in the enforcement of sentences at the public prosecutor’s office. Unlike judges, Rechtspfleger are not “personally” independent. For example, a transfer to another court is possible without the consent of the Rechtspfleger if the civil service requirements are met.

Competences

According to the Law on Rechtspfleger, the following tasks shall be assigned to the Rechtspfleger¹³:

1. all of the tasks of the Local Court to be carried out by the judge regarding family matters and matters of non-contentious jurisdiction; cases related to credits for leaseholders; matrimonial property register cases; cases concerned with official records, including acceptance of the declaration; missing persons cases; land register cases, register of ships and register of ships under construction cases, as well as cases of the register for liens in aircraft; proceedings in accordance with the Act on Forced Sale and Sequestration; proceedings for the distribution of the proceeds of a public auction; parent and child cases and adoption cases, as well as corresponding life partnership cases; custodianship cases; inheritance and partitioning cases; cases concerned with the company register, the register of cooperative societies and the partnerships register, as well as proceedings under company law; proceedings in accordance with the Insolvency Statute; proceedings in accordance with the Maritime Distribution Statute;

2. following individually listed tasks:

- ▶ a) in proceedings in accordance with the Code of Civil Procedure,
- ▶ b) in declaratory proceedings,
- ▶ c) of the court in criminal and regulatory fines proceedings,
- ▶ d) in proceedings before the patent court,
- ▶ e) in the field of the recording of declarations,
- ▶ f) in the field of legal advice aid,
- ▶ g) in the field of family cases,
- ▶ h) in proceedings on legal aid in accordance with the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction,
- ▶ i) in international legal transactions,
- ▶ j) of the criminal prosecution office in criminal proceedings and of execution in criminal and regulatory fine cases, as well as of measures to maintain public order and means of coercion

In the Law on Rechtspfleger, there is a specific section stipulating the judicial tasks which Rechtspfleger can not perform, and which are exclusively being performed by judges: „Tasks reserved to the judge in family cases and in the field of non-contentious jurisdiction, as well as in insolvency proceedings and proceedings under maritime law for the distribution of the proceeds of a public auction“¹⁴.

12 E.g. CEPEJ Glossary defines Rechtspfleger as „Independent judicial officer, performing the tasks assigned by law, who is not a judicial assistant but works within the court and may carry out legal tasks in various areas, e.g. family law and guardianship law, law of succession, and the law on the land register and commercial registers; in some States, may also have competence to make judicial decisions independently such as on the granting of nationality, payment orders, execution of court decisions, auctions of immovable goods, criminal cases, and enforcement of judgements in criminal matters, reduced sentencing by way of community service, prosecution in district courts, decisions concerning legal aid, etc.; in some States may also be competent to undertake administrative judicial tasks“

Also in “Manifesto for Rechtspfleger for Europe”, European Union of Greffier/Rechtspfleger/Court Clerks : „Rechtspfleger are an independent organ of the judiciary. In the areas of responsibility assigned to them by law, they make decisions that can only be appealed through the courts. In doing so, they are subject only to the law and their conscience. The position of judicial officers is guaranteed by the Constitution or a special law of a constitutional nature. Rechtspfleger may also perform other tasks relating to the administration of justice and judicial administration, provided they require the qualification of a Rechtspfleger“.

13 For detailed description of assigned tasks, see Section 3 of the Law on Rechtspfleger

14 For detailed description of judicial tasks which Rechtspfleger can’t perform, see Division 2, Sections 14-19b of the Law on Rechtspfleger.

Job requirements

A civil servant of the judicial service who has completed a preparatory service of three years and who has passed the Rechtspfleger examination may be entrusted with the tasks of a Rechtspfleger. The recruitment for the preparatory service is carried out by a recruitment authority, in most German states these are the higher regional courts.

■ Rechtspfleger complete an approximately three-year dual course of study at a state university of applied sciences with practical training sections in courts and public prosecutors' offices.

■ The preparatory service consists of specialist studies of at least eighteen months' duration and of vocational practical study periods. The vocational practical study periods comprises training in the key areas comprised by the tasks of a Rechtspfleger; the practical training may not last less than one year.

■ The course ends with the judicial examination. Passing this examination is a prerequisite for being employed as a civil servant and for being awarded the academic degree Diplom-Rechtspfleger/in. The exam consists of six to ten five-hour exams.

■ Trainees may be assigned to carry out the tasks of a Rechtspfleger on a temporary basis.

■ Promotion of Rechtspfleger to the higher service is also possible. E.g. in Bavaria, when a service law reform came into force in 2011, the career paths were abolished and the job titles changed: In the career path now referred to as the "third qualification level", one begins as a judicial inspector, those who move up to the "fourth qualification level" become judicial councillors, judicial senior councillors, judicial directors etc.

Salaries

The official Rechtspfleger title when they are entering the office is judicial inspector (salary grade A 9). Monthly gross salary is between 3500 and 3900 Euro, while the starting gross salary of a judge is 4.410 Euro.¹⁵ Takođe, vredi napomenuti da, prema podacima CEPEJ-a, nemačke sudije na početku karijere imaju najniže prosečne plate među zemljama članicama SE, kada se uporede sa nacionalnim prosečnim bruto zaradama.

■ It is also worth mentioning that, according to CEPEJ data, German judges at the beginning of their careers have the lowest average salaries amongst CoE member

¹⁵ CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

states, when comparing them to the national average gross salaries. They are at the level of the national gross salary, while, e.g. in Serbia, average gross salary of a judge at the beginning of his/her career is 1.9 times higher than the national average gross salary¹⁶.

Court registry staff

A court registry staff with the necessary number of registry clerks is established at each court and at each public prosecution office.

■ Anyone who has completed two years of preparatory training and passed the examination for the intermediate judicial service or for the intermediate service in the area of labour jurisdiction may be entrusted with the duties of a registry clerk of the court registry. Six months of the preparatory training should consist of a specialised course of instruction¹⁷.

Court bailiffs

The status and duties of the officials entrusted with service, summons and enforcement (court bailiffs) is determined at the Federal Court of Justice by the Federal Minister of Justice and Consumer Protection and at the Regional Courts by the Länder department of justice¹⁸.

Other prosecution staff

The investigative personnel of the public prosecution office is obliged in this capacity to comply with the orders of the public prosecution office of their district and the orders of the officials superior thereto. The Länder governments are authorised to issue statutory instruments designating the groups of civil servants and salaried staff who are to be subject to this provision. The salaried staff must be public service employees, must have attained the age of 21 and must have been employed in the designated groups of civil servants or salaried staff for at least two years. The Länder governments may issue statutory instruments transferring this authorisation to the Länder departments of justice¹⁹.

¹⁶ European judicial systems, CEPEJ evaluation report, 2022 Evaluation cycle, Part 1, p. 80

¹⁷ For more info on court registry staff see Title XI, Section 153 of the Courts Constitution Act.

¹⁸ For more info on court bailiffs see Title XII, Section 154 and 155 of the Courts Constitution Act.

¹⁹ See Title X, Section 152 of the Courts Constitution Act.

CROATIA

Situation

Croatia has been chosen to be included in this analysis because of the similar legal background and comparable status of court and prosecution staff in Croatia and Serbia. In Croatia, the issue of court and prosecution staff is being regulated by various laws and by-laws. At the beginning, it is worth mentioning that the court advisers are even the Constitutional category (Article 118 Paragraph 2 of the Constitution of the Republic of Croatia²⁰: Lay judges and court advisers participate in the trial, in line with the law).

■ Court staff is covered in the Law on Courts²¹, and prosecution staff is within the Law on State Prosecution²². Upon these laws, the bylaw Regulation on court civil servants and public employees²³ has been adopted. It has been accordingly applied on prosecution staff.

■ has been adopted. It has been accordingly applied on prosecution staff²⁴. Although the Article 2 of the mentioned Law stipulates that its provisions are being applied to civil servants in, amongst others, judicial institutions, in practice they are being applied only secondary, if not otherwise prescribed in other specialized laws.

■ In 2020, there were altogether 5886 persons employed as court staff, out of which 553 as Rechtspfleger, 4147 as court staff whose task is to assist the judge such as registrars, 537 as staff in charge of administrative tasks and management of the courts and 649 as technical staff.

■ Total of court staff per 100 000 inhabitants was 145.8, while the CoE member states median was 56.1. Ratio of court staff per judge was 3.6, while the CoE median was 3.3. Although the number of court staff per 100 000 inhabitants is very high compared to CoE median, their ratio per judge is not so high because Croatia is at the top by the number of judges among CoE member states.

■ The number of prosecution staff was 1058, which means that the number of prosecution staff per 100 000 inhabitants was 26.2, while the CoE member states median was 15.2. Ratio of prosecution staff per prosecutor was 1.7, while the CoE median was 1.3²⁵.

■ Court staff in Croatia consists of court civil servants (court advisers, court managers, experts associates, administrative staff) and public employees (technical staff). Same division exists within public prosecution service.

20 Constitution of the Republic of Croatia (Ustav Republike Hrvatske), Official Gazette (Narodne novine) No. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14

21 Law on Courts (Zakon o sudovima), Official Gazette No. 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20, 21/22, 60/22, 16/23

22 Law on Public Prosecution (Zakon o državnom odvjetništvu), Official Gazette No. 67/18, 21/22

23 Regulation on court civil servants and public employees (Pravilnik o sudskim službenicima i namještenicima), Official Gazette No. 55/01, 156/04, 150/05, 28/13

24 Law on Civil Servants (Zakon o državnim službenicima), Official Gazette No. 92/05, 140/05, 142/06, 77/07, 107/07, 27/08, 34/11, 49/11, 150/11, 34/12, 49/12, 37/13, 38/13, 01/15, 138/15, 61/17, 70/19, 98/19, 141/22

25 CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

Court advisers / Rechtspfleger

The Law on Courts prescribes in detail different court advisers' ranks and descriptions of their jobs. They are providing the most important and valuable expert support to the judges and the next logical step in their careers is to become judges. The law distinguishes between court advisers, higher court advisers and higher court advisers specialists.

Competences

Court advisers, higher court advisers and higher court advisers specialists participate in trials and can autonomously conduct certain court proceedings, evaluate the evidence and determine facts. They can draft decisions which must be confirmed by the judges. Their portfolio includes:

- ▶ civil and administrative proceedings in which the value of the subject matter of the dispute doesn't exceed 13.500 Euro,
- ▶ commercial proceedings in which the value of the subject matter of the dispute doesn't exceed 67.000 Euro,
- ▶ labour proceedings deriving from the collective contracts,
- ▶ enforcements,
- ▶ hereditary proceedings,
- ▶ land-registry proceedings,
- ▶ misdemeanours,
- ▶ non-litigation proceedings,
- ▶ registry and short liquidation proceedings.

They can also decide on the costs of the proceedings. At the second instance, as well as in the proceedings upon extraordinary remedies, they can report on the state of the file and prepare drafts of the decisions.

Job requirements

Court advisers can be lawyers with the Bar exam, while higher court advisers (and court advisers at the Supreme Court) besides these qualifications must also have 2 years working experience in judiciary after the Bar exam or 5 years on other legal jobs after the Bar exam. Higher court advisers specialists (and higher court advisers at the Supreme Court) can be lawyers with Bar exam and 4 years working experience in judiciary after the Bar exam or 8 years on other legal jobs after the Bar exam. To become a higher court adviser specialist at the Supreme Court, a lawyer with the Bar exam must also have 6 years working experience in judiciary after the Bar exam or 10 years on other legal jobs after the Bar exam²⁶.

Salaries

The coefficients for the calculation of court advisers' salaries are determined in the separate by-law, the Regulation on the titles of work positions and coefficients of job complexity in the state administration²⁷. The salaries are determined by multiplying coefficient with the base which is the same for all of the civil servants – approximately 890 euro. The coefficient of a higher court adviser specialist working in the Supreme Court is 3.500, the one at the high courts has coefficient 2.666 and the one at the first instance courts 2.252. Higher court adviser at the Supreme Court has a coefficient 2.910, at the high courts 2.182 and at the first instance courts 1.843. Court adviser's coefficients are 2.425 (at the Supreme Court), 1.940 (at the high courts) and 1.552 (at the first instance courts). Monthly gross salary of a court adviser at the first instance court is around 1400 Euro (netto is 900 Euro), while monthly gross salary of a first instance judge at the beginning of his/her career is 2320 Euro (netto is 1480 Euro)²⁸. Judges in Croatia at the beginning of their careers have 1.9 times higher average gross salaries than the national average gross salary, same as in Serbia²⁹.

²⁶ For more info on court advisers, see the Law on Courts, Articles 109 and 110.

²⁷ Regulation on the titles of work positions and coefficients of job complexity in the state administration (Uredba o nazivima radnih mjesta i koeficijentima složenosti poslova u državnoj službi), Official Gazette No. 37/01, 38/01, 71/01, 89/01, 112/01, 7/02, 17/03, 197/03, 21/04, 25/04, 66/05, 92/05, 131/05, 140/05, 81/06, 11/07, 47/07, 109/07, 58/08, 32/09, 140/09, 21/10, 38/10, 77/10, 113/10, 22/11, 142/11, 31/12, 49/12, 60/12, 65/12, 78/12, 82/12, 100/12, 124/12, 140/12, 16/13, 25/13, 52/13, 96/13, 126/13, 2/14, 94/14, 140/14, 151/14, 76/15, 100/15, 71/18, 15/19, 73/19, 63/21, 13/22, 139/22

²⁸ CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

²⁹ European judicial systems, CEPEJ evaluation report, 2022 Evaluation cycle, Part 1, p. 80

Other court staff

The Law on Courts stipulates that the court administration envisages, among others, expert jobs regarding performance of duties and obligations of judges, civil servants and public employees in court, as well as regarding performance of professional training of judges, court advisers, court trainees and other civil servants and public employees in court.

■ As a specific court staff positions, court managers (for first instance courts with more than 15 judges and all higher courts)³⁰ and spokespersons have been particularly articulated in the Law on Courts. Spokespersons can either be judges, court advisers or other court employees. Ministry of Justice keeps the records (personnel files) of judges, court advisers, court trainees and other court employees.

■ Regulation on the internal court organization is adopted by the court president, with the prior consent of the minister of justice, and it determines the work positions of civil servants and public employees in court, needed number of employees per each work position, conditions/terms of reference for each work position, description of jobs for each work position and other issues important for the organization and methodology of performance of a particular court³¹.

Court civil servants and public employees

There are specific provisions in the Law on Courts dealing with civil servants and public employees working in courts. Their main distinction, as prescribed in the Law on Civil Servants, is that civil servants are persons who, as their regular occupation, perform jobs from the jurisdiction of a particular state body in which they are employed (e.g. expert associates, administrative assistants, typists, etc.), while public employees perform auxiliary and technical jobs (e.g. drivers, technicians etc.). Number of civil servants and public employees is determined by the minister of justice and they can be employed only with the consent of the minister.

■ All the provisions on the employment of civil servants and public employees in the court, on court trainees, on the procedure and program of state exam, on the salaries and other rights, duties and responsibilities deriving from employment status, as well as the responsibility for breaches of official duty are prescribed by the legislation on civil servants and public employees and by the general labour law provisions.

■ Civil servant is obliged to pass the special expert exam for judicial bodies' employees, designed for his/her particular work position, at the latest 6 months after passing the general state exam.

■ The Law on Courts stipulates that the minister of justice will adopt a bylaw which will prescribe needed level and type of education, as well as other key qualifications for the employment of civil servants and public employees in courts.

■ The Regulation on court civil servants and public employees is adopted in line with the above mentioned provision from the Law on Courts and it prescribes job descriptions and specific qualifications for work positions regarding the education, skills and years of experience³².

■ All these work positions in courts which are determined in the said Regulation, have higher salaries than the similar work positions of the civil servants and public employees which are working in the state administration. The coefficients for determining their salaries are also prescribed in the Regulation on the titles of work positions and coefficients of job complexity in the state administration. E.g. coefficient for the calculation of the salary of a higher expert adviser in the state administration is 1.523, and for the one working in judiciary it is 1.746. State administration expert advisers have coefficient 1.232 and those working in judiciary have coefficient 1.600. Higher IT administrative's coefficient in the state administration is 0.989 and 1.180 in the judiciary. Typist's coefficient in the state administration is 0.776 and 0.867 in the judiciary³³.

30 For more info on court managers, as one of the specific court staff categories, as defined above in CEPEJ evaluation reports, see Article 35 of the Law on Courts.

31 For more general info on court staff, see the Law on Courts, Articles 29, 37, 42, 72, 73, 76 and 77.

32 For more info on court civil servants and public employees, see the Law on Courts, Article 108, and Regulation on court civil servants and public employees.

33 For more info on coefficients, see Regulation on the titles of work positions and coefficients of job complexity in the state administration.

Court trainees and expert associates

The Law on Court states that the Ministry of Justice determines annually number of the trainee positions in the courts, taking into account available financial resources. Conditions and methodology of appointing court trainees, as well as the duration and method of performance of trainee practice is determined in the Law on Trainees in Judicial Bodies and on Bar Exam³⁴.

■ The Law on Courts also stipulates that a court might employ expert associates with various expertise (e.g. defectologists, sociologists, pedagogues, economists, accountants) who help judges in parts of their work in which that particular expertise is needed.

■ Criteria for determining the number of expert associates, which are being employed in the court departments dealing with family relations, are being set up by the minister of justice³⁵.

■ The coefficients for determining their salaries are also prescribed in the Regulation on the titles of work positions and coefficients of job complexity in the state administration. Expert associate in the state administration has a coefficient 1.164 and in the judiciary 1.309.

Prosecutorial advisers

The provisions are the same as the ones for the court advisers. There are prosecutorial advisers, higher prosecutorial advisers and higher prosecutorial advisers specialists. Prosecutorial advisers, higher prosecutorial advisers and higher prosecutorial advisers specialists support prosecutors or deputy prosecutors in their work, prepare draft decisions and represent the prosecution before the court in cases where the prison sentence of up to 5 years is prescribed.

■ Prosecutorial advisers can be lawyers with the Bar exam, while higher prosecutorial advisers (and prosecutorial advisers at the Chief State Prosecutor's Office) besides these qualifications must also have 2 years working experience in judiciary after the Bar exam or 5 years on other legal jobs after the Bar exam. Higher prosecutorial advisers specialists (and higher prosecutorial advisers at the Chief State Prosecutor's Office) can be lawyers with Bar exam and 4 years working experience in judiciary after the Bar exam or 8 years on other legal jobs after the Bar exam. To become a higher prosecutorial adviser specialist at the Chief State Prosecutor's Office, a lawyer with the Bar exam must also have 6 years working experience in judiciary after the Bar exam or 10 years on other legal jobs after the Bar exam³⁶. Their salaries are the same as are those of the court advisers³⁷.

Other prosecution staff

Everything stated above regarding court staff applies mutatis mutandis also for the prosecution staff. The Law on Public Prosecution stipulates that the prosecutorial administration envisages, among others, expert jobs regarding performance of duties and obligations of prosecutors, deputy prosecutors and prosecution civil servants and public employees, as well as regarding performance of professional training of prosecutors, deputy prosecutors, prosecutorial advisers, prosecutorial trainees and other prosecution civil servants and public employees. It is also clearly stipulated that the prosecutors (heads of every public prosecutor's office) can acquire help for performing their duties by the heads of departments, heads of sections, heads of permanent services, prosecution managers, deputy prosecutors or employees chosen by chief prosecutors.

■ The Law on Public Prosecution foresees prosecution managers (for first instance prosecutor's offices with more than 15 prosecutors and all higher prosecutor's offices) as a specific prosecution staff positions³⁸. Ministarstvo pravde vodi evidenciju (kadrovske dosijee) tužilaca, zamenika tužilaca i drugih državnih službenika i nameštenika u tužilaštvu³⁹.

34 For more info, see the Law on Trainees in Judicial Bodies and on Bar Exam (Zakon o vježbenicima u pravosudnim tijelima i pravosudnom ispitu), Official Gazette No. 14/19.

35 For more info on court trainees and expert associates, see the Law on Courts, Articles 111 and 112.

36 For more info on prosecutorial advisers, see the Law on Public Prosecution, Articles 124 and 125.

37 See Regulation on the titles of work positions and coefficients of job complexity in the state administration.

38 For more info on the prosecution manager, see Article 123 of the Law on Public Prosecution.

39 For more general info on prosecution staff, see the Law on Public Prosecution, Articles 52, 54, 58, 60, 66, 68 and 69.

Prosecution civil servants and public employees

Provisions on prosecution civil servants and public employees are also almost similar as those governing court civil servants and public employees. Number of prosecution civil servants and public employees is also determined by the minister of justice, but the difference here is that this number should be in line with the guidelines for determining number of prosecution civil servants and public employees. They can be also employed only with the consent of the minister, but the specificity here is that they have to undergo security clearance prior the actual employment.

■ All the provisions on the employment of prosecution civil servants and public employees, on the trainee practice, on the procedure and program of state exam, on the salaries and other rights, duties and responsibilities deriving from work, as well as the responsibility for breaches of official duty are, same as for courts, prescribed by the legislation on civil servants and public employees and by the general labour law provisions.

■ The special expert exam should also follow at the latest 6 months after passing the general state exam.

■ The Law on Public Prosecution also stipulates that the minister of justice will adopt a bylaw which will prescribe needed level and type of education, as well as other key qualifications for the employment of prosecution civil servants and public employees. As already stated above, the Regulation on court civil servants and public employees is applied accordingly for the prosecution staff⁴⁰.

■ Same goes for their salaries, which are also higher than the salaries for the similar work positions of the civil servants and public employees which are working in the state administration. The coefficients for the calculation of their salaries are also determined in the Regulation on the titles of work positions and coefficients of job complexity in the state administration. All the prosecution staff has the same coefficient like their colleagues working at the courts⁴¹.

Expert associates and prosecutorial trainees

The Law on Public Prosecution stipulates that a prosecutor's office might employ expert associates with various expertise (e.g. criminologists, defectologists, psychologists, pedagogues, economists, accountants) who help prosecutors or deputy prosecutors in parts of their work in which that particular expertise is needed. The difference from the court expert associates is that prosecution expert associates can also work autonomously, when this is determined by a law or other regulation, and that expert associates who fulfill qualifications set by a specific regulation, can be appointed as financial investigators.

■ Prosecution and court expert associates have same salaries.

■ The Ministry of Justice, same as for the court trainees, determines annually number of the trainee positions in prosecutor's offices, taking into account available financial resources, but the difference is that for the prosecutorial trainees prior opinion of the Chief State Prosecutor is also needed.

■ Conditions and methodology of appointing prosecutorial trainees, as well as the duration and method of performance of trainee practice is also determined in the Law on Trainees in Judicial Bodies and on Bar Exam⁴².

⁴⁰ For more info on prosecution civil servants and public employees, see the Law on Public Prosecution, Article 122, and Regulation on court civil servants and public employees.

⁴¹ See Regulation on the titles of work positions and coefficients of job complexity in the state administration.

⁴² For more info on prosecution trainees and expert associates, see the Law on Public Prosecution, Articles 126 – 128, and the Law on Trainees in Judicial Bodies and on Bar Exam.

FRANCE

Situation

In France, the status of court and prosecutorial staff is regulated in several laws and bylaws, like Law on Judicial Organization⁴³, Criminal Procedure Code⁴⁴ and Decree on the special status of court clerks⁴⁵. Three main categories of court and prosecutorial staff are court clerks, legal assistants and specialized assistants.

■ In 2020, there were altogether 24062 persons employed as court staff. There were no Rechtspfleger in French judicial system, but were 19573 persons employed as court staff whose task is to assist the judge such as registrars, 3045 as staff in charge of administrative tasks and management of the courts, 889 as technical staff and 554 as other court staff.

■ Total of court staff per 100 000 inhabitants was 35.7, while the CoE member states median was 56.1. Ratio of court staff per judge was 3.2, while the CoE median was 3.3.

■ For the CEPEJ stat, France didn't report on having any prosecution staff⁴⁶.

Court clerks

Court clerks (greffier) are specialists in legal procedure who assist the judges in drawing up court documents and are responsible for authenticating the acts of the court, where the law so requires.

Competences

Court clerks work hand in hand with the judge, helping to prepare and process cases and conducting legal research. As instructed by the judges, they draft decisions and pleas. As part of providing information and assistance services to the public, clerks may be entrusted with providing information, guidance or assistance to users in completing judicial formalities or procedures. They may also be assigned professional training duties.

■ Most of a court clerk's duties are performed in the different offices of the courts. Depending on the size and structure of the court, court clerks may occupy management posts as director or deputy director of the Registry of the Court or as head of a department.

■ Court clerks are procedural technicians. They assist the magistrates in the acts of their jurisdiction and authenticate the jurisdictional acts in the cases and according to the conditions provided for by the Law on Judicial Organization, the Labour Code and other laws.

■ The court clerks also exercise the functions of assisting the magistrates in the context of the preparation and processing of files as well as in the context of legal research. According to the directives of the magistrates, they write draft decisions and indictments.

■ As part of a reception and general information service for the public, court clerks may be tasked with the task of informing, guiding and supporting users in carrying out legal formalities or procedures.

■ They may be in charge of professional teaching duties.

■ They carry out, on an ancillary or temporary basis, the management acts necessary for the functioning of the courts in the administrative, budgetary and HR fields.

43 Law on Judicial Organization (Code de l'Organisation Judiciaire), Official Journal (Journal Officiel) of 23 March 1958, www.legifrance.gouv.fr

44 Criminal Procedure Code (Code de Procedure Penale), Official Journal of 12 December 1958, www.legifrance.gouv.fr

45 Decree no 2015/1275 of 13 October 2015 on the special status of court clerks (Decret portant Statut Particulier des Greffiers des Services Judiciaires), www.legifrance.gouv.fr

46 CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

Status and salaries

The status of the court clerks is regulated by the Decree on the special status of court clerks. There are two main categories/levels of clerks: clerks and principal clerks. Clerks are recruited, appointed and established by order of the Minister of Justice.

■ Clerks perform their duties in the judicial services, at the National School of Clerks, at the National School of the Judiciary and at the central administration of the Ministry of Justice.

■ Their monthly gross salaries are around 1500 to 1800 Euro (clerks) and 1800 to 2300 Euro (principal clerks), while the salaries of judges at the beginning of their careers are 3850 Euro. Judges in France at the beginning of their careers have 1.4 times higher average gross salaries than the national average gross salary⁴⁷.

Recruitment and trainings

Court clerks are recruited by the external competitions, the internal competitions open to civil servants, agents of the State and local authorities and by the professional examination open to administrative assistants under the Ministry of Justice who, on 1 January of the year in which this examination is opened, have at least eleven years of public service. The number of positions offered in the external competition or in the internal competition may not be less than 40% of the total number of positions offered for the competitions. Recruitments of administrative assistants have the limit of two-fifths of the total number of appointments.

■ The rules for the general organization of the competitions and professional examination, the nature and the program of the tests are fixed by joint order of the Minister of Justice and the Minister responsible for the public service. Minister of Justice decides on the organization of each competition and the professional examination and appoints the members of the jury.

Job requirements

Trainee clerks recruited through the external and internal competitions receive initial professional training of 18 months and the administrative assistants recruited through professional examination receive initial professional training lasting twelve months. Both trainings are organized under the responsibility of the National School of Clerks. At the start of their training period, trainee court clerks must sign a commitment to remain in the service of the State for a minimum period of four years, increased by the duration of the training period.

■ In the event of failure to comply with this obligation more than three months after the date of taking up duty as a trainee, unless the failure is not attributable to them, the persons concerned must pay to the Treasury a sum equal to the amount of the salary and residence allowance received for the duration of the training, increased by the study costs incurred by the National School of Clerks.

Classification and promotion

Decree establishes very complex system of the levels and grades of court clerks. The duration of the time spent in each of the levels of the clerks of the judicial services is fixed and differentiates 2 main categories: principal clerk and clerk. Within each category a number of levels are determined (11 levels for the category of principal clerk and 13 levels for category of clerk) with set prerequisites of education and duration of working experience for promotion to a higher level.

■ To be promoted, candidates must be registered on a promotion table, established on the basis of the results of a selection organized by means of a professional examination.

■ A joint decree of the Minister of Justice and the Minister responsible for the public service sets the rules relating to the general organization, the nature and the program of the tests of the professional examination as well as to the composition and functioning of the jury.

■ An order from the Minister of Justice organizes the professional examination and appoints the jury.

⁴⁷ CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

■ At least two-thirds of promotions to the grade of principal clerk are by professional examination and at most one-third by choice.

■ Decree also has provisions on conditions needed for each level, incompatibilities, clerks' oath, costumes, annual assessments of their work, secondments, compulsory continuing professional training (lasting a minimum of ten days each year, for the first five years of their tenure), trainees etc.⁴⁸

Legal assistants

The Law on Judicial Organization stipulates that legal assistants are instituted in the courts. Legal assistants provide the legal analysis in civil and criminal cases submitted to them by magistrates and under their supervision. They do not participate in the proceedings or the hearings. They can be employed at the Court of Cassation, the Court of Appeal or the Superior Court of Appeal.

■ They are defined as persons holding a doctorate in law or having legal training at least equal to five years of higher education after the baccalaureate with one year of professional experience in the legal field and whose competence particularly qualifies them to perform these functions. Legal assistants are appointed on a part-time or full-time basis, for a maximum period of three years, renewable once.

■ Legal assistant must have at least two years experience as a lawyer, notary, bailiff, commercial court clerk, judicial administrator or agent-liquidator.

■ Heads of the courts decide on their employment. Law on Judicial Organization has very detailed and technical provisions about various aspects of their work, e.g. reasons for the termination of their contract, right to annual leave and to reduced working time, obligatory trainings (organized by the National School of the Judiciary), taking the oath and maintaining secrecy information on court cases as well as on the acts of the public prosecutor's office.⁴⁹

Specialized assistants

Another important group of judicial employees in France are specialized assistants, which are covered by the provisions of the Criminal Procedure Code. Specialized assistants participate in procedures under the responsibility of magistrates, without however being able to receive delegation of signature. They carry out all the tasks entrusted to them by the magistrates and may in particular assist the investigating judges in all their acts, assist the magistrates of the public ministry in the exercise of public action, assist the judicial police officers acting on delegation from the magistrates, provide the magistrates with summary or analysis of documents which may be added to the case file and the public prosecutor can also ask them to assist him/her before the court of appeal. They have access to the case file for the performance of the tasks entrusted to them and are subject to professional secrecy. They are civil servants which need to have at least four years of higher education after the baccalaureate, fulfill general conditions for access to the public service and have professional experience of minimum four years.

■ Specialized assistants undergo compulsory training prior to taking up their duties.

■ A State Council decree specifies the duration for which the specialized assistants are appointed and the methods according to which they take the oath.

■ The specialized assistants are appointed for a renewable period of three years.

■ The functions of specialized assistant are exclusive of any other remunerated professional activity, with the exception of teaching.

■ The Criminal Procedure Code also stipulates other specialized assistants rights and obligations, e.g. their secondments and taking the oath.⁵⁰

48 For more on court clerks in France see Decree no 2015/1275 of 13 October 2015 on the special status of court clerks, www.legifrance.gouv.fr

49 For more on legal assistants in France see Code of judicial organization, Chapter III bis, Articles L123-4, R123-30 to 123-39, www.legifrance.gouv.fr.

50 For more on specialized assistants in France see Criminal Procedure Code, Chapter III, Articles 706 to 706-1-2, Title XIII, Articles R50bis to R50sexies, www.legifrance.gouv.fr

Situation

In 2020, there were altogether 5270 persons employed as court staff, out of which 801 as Rechtspfleger, 432 as court staff whose task is to assist the judge such as registrars, 873 as staff in charge of administrative tasks and management of the courts, 50 as technical staff and 3114 as other court staff.

■ Total of court staff per 100 000 inhabitants was 59, while the CoE member states median was 56.1. Ratio of court staff per judge was 2, while the CoE median was 3.3.

■ The number of prosecution staff was 364, which means that the number of prosecution staff per 100 000 inhabitants was 4.1, while the CoE member states median was 15.2. Ratio of prosecution staff per prosecutor was 0.9, while the CoE median was 1.3⁵¹.

■ The status of Rechtspfleger is regulated by the Law on Rechtspfleger⁵², while the status of other court and prosecution staff is regulated by various different laws and bylaws: The General Civil Service Law, Law on Court Staff, Law on Prosecution Staff, the Salaries Act and the Code of Conduct for Civil Servants⁵³.

Rechtspfleger

In Austria, Rechtspfleger are an essential pillar of the judicial system. Today, more than 80% of all first-instance court decisions in civil cases are taken by the Rechtspfleger.

Competences

■ Rechtspfleger are appointed in the following work areas:

- ▶ Civil procedure, enforcement and insolvency matters ('debt settlement proceedings')
- ▶ Non-contentious matters
- ▶ Land register and ship register matters
- ▶ Companies register matters.

■ Each of these work areas requires special training and special appointment as a Rechtspfleger in respect of the relevant work area.

■ A Rechtspfleger's sphere of activity does not include all work and decisions arising in the above-mentioned work areas. The business that comes within the Rechtspfleger's sphere of activity is specifically set out in the Law on Rechtspfleger and the extent of the sphere of activity varies from one work area to another.

■ The Law on Rechtspfleger lays down spheres of activity for the individual work areas. These spheres of activity assign specific responsibilities to Rechtspfleger (for example, the sphere of activity in insolvency cases comprises bankruptcy cases before the district courts). Certain responsibilities are reserved for judges.

■ In addition, each sphere of activity comprises, among other things, carrying out 'order for payment' procedures, confirming the legal effect and enforceability of court rulings in the given work area, decisions on applications for legal aid in registrar proceedings, and performing official functions on the basis of a request for judicial assistance by a domestic court or a domestic authority.

51 CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

52 Law on Rechtspfleger (Rechtspflegergesetz), first published in Federal Law Gazette (Bundesgesetzblatt) No. 144/2008.

53 The General Civil Service Law (Allgemeines Verwaltungsrecht), first published in Federal Law Gazette No. 5/1984; Law on Court Staff (Justiz-Bedienstetengesetz), first published in Federal Law Gazette No. 96/1968; Law on Prosecution Staff (Staatsanwaltschafts-Bedienstetengesetz), first published in Federal Law Gazette No. 142/1986; the Salaries Act (Gehaltsgesetz), first published in Federal Law Gazette No. 85/1955; and the Code of Conduct for Civil Servants (Beamtendienstrechtliches Verhaltenskodex), first published in Federal Law Gazette No. 325/2019.

Job requirements

Only judicial staff who have taken the secondary school leaving exam (Matura) or the vocational school leaving exam (Berufsaufreifeprüfung), have completed the practical court office training and have passed the court-office and special-service exams are admitted to pursue Rechtspfleger training. The training takes a further three years and comprises court work including the preparation of dispositions in the relevant work area, participation in a general and work-area-specific training course, and passing the relevant exams. After passing the Rechtspfleger exam, the candidate Rechtspfleger receives a diploma from the Federal Minister for Justice. The diploma must specify the work area. Upon receiving this diploma, the candidate Rechtspfleger is authorised to carry out judicial business coming within their work area within the federal territory, and can therefore work as a Rechtspfleger.

■ The presiding judge of the Higher Regional Court must subsequently determine the court at which the relevant court official is to be employed as a Rechtspfleger and, if applicable, for what period. Within the court determined by the presiding judge, the Rechtspfleger is allocated by management (president or head of the court) to a court department managed by a judge or, if applicable, to a number of court departments.

Status and salaries

Rechtspfleger are specially trained court officials to whom the handling of specifically circumscribed business in civil matters at first instance has been transferred on the basis of the Austrian Federal Constitutional Act (Section 87(a)) and the Law on Rechtspfleger. They are bound only by the instructions of the judge responsible for the case according to the allocation of court business. Judges may at any time reserve the handling of the case for themselves or seize it themselves. Rechtspfleger may only take decisions. Decisions taken by them may be contested, just like judges' decisions. If, because of the amount in dispute, a decision cannot be contested, or can be contested only to a limited extent under general rules, it is also possible to request that the judge responsible for the case takes it up.

■ In practice, Rechtspfleger mostly work independently. Instructions from the judge are not usual and are issued extremely rarely⁵⁴

■ Their gross salaries are around 2500 Euro per month, while the gross salaries of the judges at the beginning of their careers are 4720 Euro. Judges at the beginning of their careers have 1.6 times higher average gross salaries than the national average gross salary⁵⁵.

Other court and prosecution staff

The General Civil Service Law establishes general principles and regulations for the civil service in Austria, including the recruitment, employment and management of civil servants. The Law on Court Staff regulates the status of court staff, including court clerks, administrative staff and other court personnel.

■ The Law on Prosecution Staff regulates the status of prosecution staff, including prosecutors, administrative staff and other prosecution personnel.

■ The Salaries Act establishes the salary and compensation system for civil servants, including court and prosecution staff.

■ The Code of Conduct for Civil Servants establishes the ethical and professional standards that civil servants, including court and prosecution staff, must follow in carrying out their duties⁵⁶.

⁵⁴ For more info on Rechtspfleger, see Law on Rechtspfleger.

⁵⁵ CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

⁵⁶ For more info on other court and prosecution staff, consult above mentioned laws.

PORTUGAL

Situation

In 2020, there were altogether 5779 persons employed as court staff, out of which 5357 as court staff whose task is to assist the judge such as registrars, 104 as staff in charge of administrative tasks and management of the courts, 317 as technical staff and 1 as other court staff. There are no Rechtspfleger in Portuguese judiciary.

■ Total of court staff per 100 000 inhabitants was 56.1 which was exactly the same as the CoE member states median. Ratio of court staff per judge was 2.9, while the CoE median was 3.3.

■ The number of prosecution staff was 1657, which means that the number of prosecution staff per 100 000 inhabitants was 16.1, while the CoE member states median was 15.2. Ratio of prosecution staff per prosecutor was 1.2, while the CoE median was 1.3⁵⁷.

■ Court staff consists of court clerks or registrars, whose status is regulated within Law for the Organization and Operation of Public Registration and Notary Services⁵⁸, and court officials, whose status is regulated by the Law on Court Officials⁵⁹, which establishes the legal framework for the organization and operation of judicial system.

Court clerks / Registrars

Competences

Registrars are public officials with responsibility for registering and publicising legal acts and facts relating to immovable property, moveable property that must be registered, business activity and events in people's lives. Their role essentially involves carrying out legal checks in respect of the above and the related documents and ensuring that the rights contained in the documents attesting to the facts to be registered are correctly defined and comply with the legally stipulated order of registration; they are also responsible for publicising this information and may decide whether or not to enter the legal act or fact into the register.

■ Depending on the subject areas of their duties, registrars may be:

- ▶ Registrars for the civil register (conservadores do registo civil), whose duties involve defining and publicising legal facts and acts relating to the lives of natural persons. Their competence includes the registration of acts such as birth, marriage, death, adoption and the declaration and establishment of maternity/paternity; the organisation of proceedings such as those related to divorce and separation by mutual consent; and the issuing of certificates and copies of registered documents.
- ▶ Registrars for the land register (conservadores do registo predial), who publicise the legal status of land and property with a view to ensuring the legal certainty of property transactions.
- ▶ Registrars for the vehicle register (conservadores do registo de veículos), whose duties relate to the publicity of rights to moveable property that must be registered (motor vehicles, ships and aircraft) and who publicise the legal status of motor vehicles and trailers with a view to ensuring the legal certainty of transactions.
- ▶ Registrars for the commercial register (conservadores do registo comercial), who publicise the legal status of sole traders, commercial companies, civil-law companies having a commercial form, individual establishments with limited liability and other entities that must be registered in the commercial register with a view to ensuring the legal certainty of transactions.

⁵⁷ CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

⁵⁸ Law for the Organization and Operation of Public Registration and Notary Services (Lei da Organizacao e Funcionamento dos Servicos de Registo e do Notariado), Official Gazette (Diario de Republica) No. 75/2013 of 12 September 2013.

⁵⁹ Law on Court Officials (Estatuto dos Funcionários de Justiça), Official Gazette No. 2/2008 of 10 January 2008.

Job requirements

Access to the profession requires a law degree from a Portuguese university or equivalent academic qualification. Candidates must also pass aptitude tests and undertake a six-month long university extension course focusing on the legal and registration-related subjects needed by registrars. They then complete a year-long traineeship, followed by a public competition. Candidates are assessed at every stage of this process and may be eliminated if they are unsuccessful at any stage. The final stage is a public competition organised by the Institute of Registries and Notaries.

■ The Institute of Registries and Notaries is responsible for directing, coordinating, supporting, evaluating and supervising the activity of registry offices⁶⁰.

Salaries

Their gross salaries are around 3000 Euro per month, while the gross salaries of the judges at the beginning of their careers are 4000 Euro. Judges at the beginning of their careers have 2.7 times higher average gross salaries than the national average gross salary⁶¹.

Court officials

Court officials are a category of justice official (funcionário de justiça) who provide procedural assistance in the courts or public prosecution services. However, the notion of justice official also covers IT technicians, administrative, technical and support staff and maintenance workers.

■ Access to the career of a court official starts with the entry-level roles of auxiliary clerk (escrivão auxiliar) in the judicial service and auxiliary legal clerk (técnico de justiça auxiliar) in the public prosecution services. Access is open to persons who have completed a professional training course and who have been approved via an admission procedure.

■ Justice officials play an important role in international judicial cooperation, particularly in terms of implementing EU directives and regulations.

■ The Directorate-General for the Administration of Justice is the Ministry of Justice body with responsibility for recruiting, managing and administering justice officials.

■ The Council of Court Officials is the body responsible for assessing the professional merit of court officials and for exercising disciplinary authority over them⁶².

⁶⁰ For more on court clerks/registrars see Law for the Organization and Operation of Public Registration and Notary Services.

⁶¹ CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

⁶² For more on court officials see Law on Court Officials.

Situation

In 2020, there were altogether 825 persons employed as court staff, out of which 51 Rechtspfleger, 591 as court staff whose task is to assist the judge such as registrars, 77 as staff in charge of administrative tasks and management of the courts, 73 as technical staff and 33 as other court staff.

■ Total of court staff per 100 000 inhabitants was 62.1, while the CoE member states median was 56.1. Ratio of court staff per judge was 3.5, while the CoE median was 3.3.

■ The number of prosecution staff was 89, which means that the number of prosecution staff per 100 000 inhabitants was 6.7, while the CoE member states median was 15.2. Ratio of prosecution staff per prosecutor was 0.5, while the CoE median was 1.3⁶³.

■ The status of court and prosecution staff is regulated by the Law on Courts, Law on Prosecutor's Office, Law on State Public Servants, Labour Code and Civil Service Act⁶⁴.

Assistant judges / Rechtspfleger

Competences

An assistant judge is a court official who performs duties laid down by law. An assistant judge is impartial, but must comply with the instructions of a judge to the extent prescribed by law. An assistant judge is competent to make entries in registers (e.g. the land register, the commercial register) and to issue regulations on the keeping of registers, including orders imposing a penalty. Assistant judges may implement an accelerated procedure for payment orders. The restrictions on holding the office of judge also apply to assistant judges.

Job requirements

Anyone may be appointed as an assistant judge if they have obtained a nationally recognised Master's Degree in law, an equivalent qualification within the meaning of Section 28(22) of the Republic of Estonia Education Act or an equivalent foreign qualification, are proficient in Estonian at C1 level as set out in the Language Act or at an equivalent level, are of high moral character, and have completed the preparatory service to become an assistant judge, unless the selection board has exempted them from said preparatory service. Anyone who has passed the judge's exam may also be appointed as an assistant judge.

■ The following may not be appointed as an assistant judge: anyone convicted of a criminal offence; anyone who has been removed from the office of judge, notary or bailiff; anyone who has been expelled from the Estonian Bar Association; anyone who has been released from the public service for a disciplinary offence; anyone who is bankrupt; anyone whose professional activities as an auditor have been terminated, except where on the basis of the application of the auditor; anyone from whom the right to work as a patent agent has been withdrawn; anyone from whom the right to work as a sworn translator has been withdrawn; anyone removed from the office of judge due to their unsuitability for office – for 3 years following their appointment to office.

■ Assistant judges are appointed through an open competition⁶⁵.

63 CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

64 Law on Courts (Kohtute seadus), Official Gazette (Riigi Teataja) No. RT I, 2005, 35, 255 of 14 June 2005; Law on Prosecutor's Office (Suudistusorganite seadus), Official Gazette No. RT I, 2004, 27, 181 of 13 April 2004; Law on State Public Servants (Avaliku teenistuse seadus), Official Gazette No. RT I, 1994, 83, 1477 of 19 December 1994; Labour Code (Toolepingu seadus), Official Gazette No. RT I, 2009, 36, 241 of 28 June 2009; and Civil Service Act (Ametnike seadus), Official Gazette No. RT I, 1995, 45, 581 of 28 June 1995.

65 For more info on assistant judges, see the Law on Courts.

Salaries

■ Their gross salaries are around 2000 Euro per month, while the gross salaries of the judges at the beginning of their careers are 4330 Euro. Judges at the beginning of their careers have 3 times higher average gross salaries than the national average gross salary⁶⁶.

Judicial clerks

A judicial clerk is a court official who participates, either independently or under the supervision of a judge, in the preparation and the handling of cases to the extent provided for in the Act governing the court procedure. A judicial clerk has the authority to perform all the same acts and make the same judgments as an assistant judge or other court official pursuant to the Act governing the court procedure. A judicial clerk is independent when performing his or her duties, but must comply with the instructions of a judge to the extent prescribed by law.

■ The requirements imposed on judicial clerks are the same as those imposed on assistant judges. A vacant position of a judicial clerk is filled by a public competition.

■ The following may not be appointed as a judicial clerk: anyone who has been punished for an intentionally committed criminal offence; anyone who has been punished for an intentionally committed offence against the State, irrespective of whether the conviction details have been expunged; anyone whose right to work in the role of judicial clerk has been withdrawn under a court judgement having legal force; anyone who is the next of kin or partner of a person directly supervising a judicial clerk⁶⁷.

Other court and prosecution staff

The Law on Prosecutor's Office regulates the status, rights and obligations of prosecutors and other staff members of the prosecution offices, including their appointment, promotion and disciplinary procedures. The Law on State Public Servants and the Civil Service Act establish the legal framework for the recruitment, selection and management of public servants, including court and prosecution staff. These laws set out the rights and obligations of public servants, including their remuneration, working hours and employment conditions.

■ The Labour Code regulates the employment relationship, including for court and prosecution staff. It sets out rights and obligations of employees, including their entitlements to annual leave, sick leave and other benefits⁶⁸.

⁶⁶ CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

⁶⁷ For more info on judicial clerks, see the Law on Courts.

⁶⁸ For more info on other court and prosecution staff, consult above mentioned laws.

CONCLUSION

The efficient human resources management in the judiciary heavily relies not only on the holders of the judicial function (judges and prosecutors), but also on better defining the status, roles, responsibilities and all other important issues regarding the court and prosecutorial staff, which was adequately addressed in the Strategy on Human Resources in Judiciary for period 2022-2026.

■ Certain activities from the Action Plan which is accompanying the Strategy are directly aimed at achieving better, more open, objective and transparent HR management in Serbian judiciary by addressing the judicial staff needs, particularly by e.g. activity 1.2.3 „Adoption of special law/amendments of the current laws which regulate labour and legal status, ranks, competences, professional and other qualifications, career development, material status and other issues concerning court and prosecution staff, as well as the HJC and HPC staff“.

■ It was only natural, while preparing for such comprehensive steps in better defining and enhancing the status, position, responsibilities and rights of the court and prosecutorial staff, to get a better insight on how these issues have been tackled in some other CoE member states.

■ This document is trying to help Serbian authorities to get acquainted with various solutions in a few selected CoE member states, not aiming to provide a definite solution, but rather show the diversity in addressing the topic of court and prosecution staff and provide a kind of compendium of choices which could be useful while defining the path which Serbian relevant bodies will decide to follow.

■ As seen from the examples of different solutions chosen by selected countries, the issue of the judicial staff is a very complex one.

■ The first important topic, which already isn't unified at all, is the very definition of the court and prosecution staff, particularly taking into account one specific segment of the staff (Rechtspfleger or judicial or court and prosecutorial advisers).

■ In some countries, like Croatia, which is closest to Serbia by the general legal origins but also, more specifically, in addressing the concrete topic of judicial staff, there are different organizational laws that are covering this issue. The Law on Courts contains provisions on all of the court staff, including the court advisers, while the Law on Public Prosecution does the

same for the prosecution staff and prosecutorial advisers. Estonia has similar solutions with provisions dedicated to court and prosecution staff within laws which are establishing judicial system.

■ On the other hand, particularities and importance of judicial advisers (or Rechtspfleger) is emphasized in Germany and Austria by adopting the specific Law on Rechtspfleger devoted just to this particular category of judicial staff, while other court and prosecution staff is covered by general laws on judicial organization (in Germany) and other various laws (in Austria).

■ France again has a different approach. Specific legislation is dedicated to the clerks, but on the level of a bylaw (decree), while the status of particular type of staff, called legal and specialized assistants is covered in organizational and procedural laws.

■ Portugal has two specific laws which are regulating two concrete categories of court staff; one is for the court clerks/registrars (or court staff which is assisting judges) and another for court officials (which are providing administrative support).

■ There is certainly no uniform solution and there is also no better or worse option. Adoption of a specific law, dedicated just to the judicial staff (as a whole, or stressing out some particularly important segment, like the court and/or prosecutorial advisers), is not a guarantee of introducing their particular importance, but can definitely go into that direction. The content of the legal norm is more important than the type of legislation where it is contained.

■ The same goes for the definitions of different categories of the court and prosecution staff. Serbian authorities are very well aware of the specific problematics of their judicial staff, which is again adequately addressed in the HR Strategy, particularly by the AP activity 1.2.5 „Adoption of the classification and catalogue of working positions and ranks in judiciary, with clear goals and tasks, in line with the advanced legal framework“.

■ Therefore, this comparative analysis can just show to the Serbian Ministry of Justice what are different categories of judicial staff in selected EU member states, not having in mind to draw any conclusions how they have to be defined in Serbia, but maybe potentially shading a different light on the issue of working positions and ranks and hopefully giving some fresh ideas for future legislative solutions.

The following table presents the categories of court staff, adopted also within CEPEJ reports and documents, in six selected CoE member states:

	Rechtspfleger (Support to judicial officials at decision-making level)	Court staff whose task is to assist the judge such as registrars	Court staff in charge of administrative tasks and management of the courts	Technical staff	Other court staff
Germany	x	x	x	x	x
Croatia	x	x	x	x	
France		x	x	x	x
Austria	x	x	x	x	x
Estonia	x	x	x	x	x
Portugal		x	x	x	x

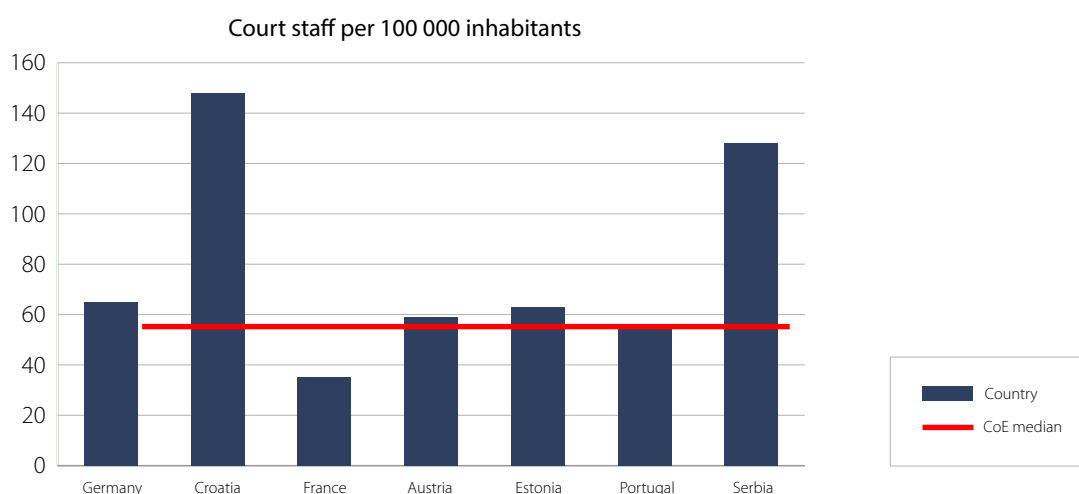
■ The number of court and prosecutorial staff is also an interesting figure. Numbers in six selected CoE members states are mentioned previously in this analysis, under the chapters dedicated to each country.

■ In Serbia in 2020, there were altogether 8909 persons employed as court staff, out of which 3790 as court staff whose task is to assist the judge such as registrars, 3435 as staff in charge of administrative tasks and management of the courts and 1684 as technical staff. There were no Rechtspfleger and other court staff.

■ Total of court staff per 100 000 inhabitants was 128.2, while the CoE member states median was 56.1. Ratio of court staff per judge was 3.3, exactly as the CoE median.

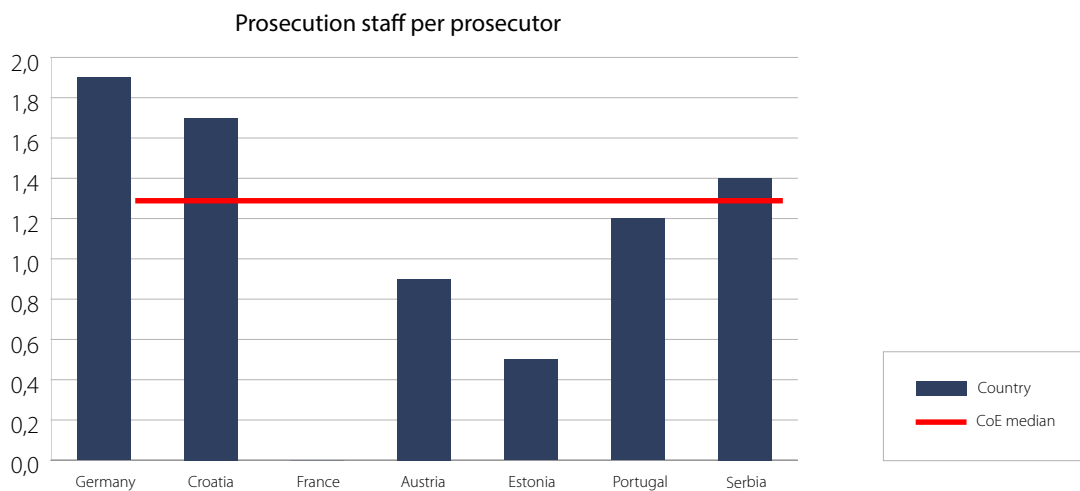
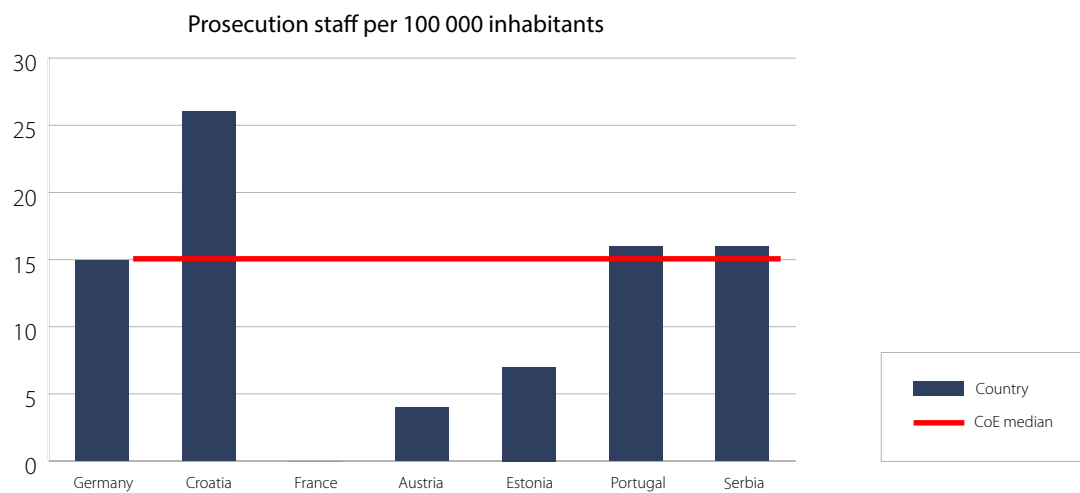
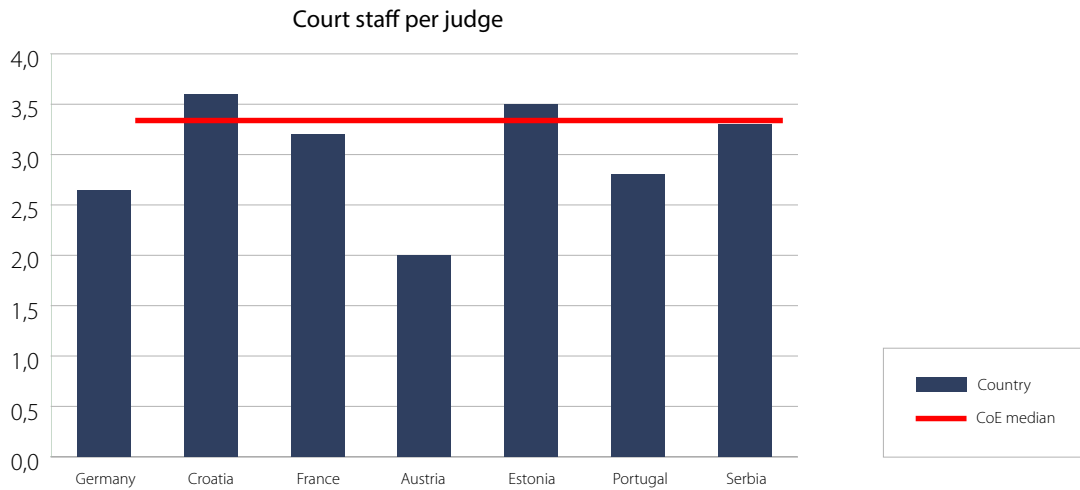
■ The number of prosecution staff was 1117, which means that the number of prosecution staff per 100 000 inhabitants was 16.1, while the CoE member states median was 15.2. Ratio of prosecution staff per prosecutor was 1.4, while the CoE median was 1.3⁶⁹.

■ For easier comparison, number of court and prosecution staff in Serbia is presented in the following tables together with the number in six selected CoE member states⁷⁰:



69 CEPEJ-STAT, Dynamic database of European judicial systems, www.coe.int/en/web/cepej/cepej-stat

70 Ibid.



Besides above mentioned analysis of the relevant legal basis which is establishing court and prosecution staff in six selected CoE member states (in order to determine whether they are covered in a separate law or various different laws and/or bylaws), analysis of the main categories of both court and prosecution staff in those countries according to their main competences, as well as presentation and comparison of data on total number of court and prosecution staff, their number per categories of court staff, their number per 100 000 inhabitants and their relation per number of judges and prosecutors, several other aspects of the topic were also analysed.

■ The analysis of court and prosecution staff main competences in the six selected countries, focusing particularly on the competences of Rechtspfleger (or clerks/registrars in countries which don't have Rechtspfleger), shows again significant differences.

■ Following table provides general competences of four selected CoE member states that have Rechtspfleger in their judicial systems:

	Germany	Croatia	Austria	Estonia
Legal aid	x		x	
Family matters	x		x	
Payment orders		x	x	x
Land register/ Commercial register	x	x	x	x
Enforcement	x	x	x	
Execution in criminal cases	x			
Non-litigious cases	x	x	x	
Other	x	x		

■ Serbian authorities are well aware of the competences of their court and prosecution staff (particularly judicial and prosecutorial assistants and their significance and impact on the overall functioning of the judiciary), which is precisely why they included in the HR Strategy several measures aimed at analyzing the current, as well as establishing and implementing the advanced legal framework for establishment and sustainable development of the HR management system, with particular focus on the court and prosecution staff. The detailed analysis of the competences of the most important court and prosecution employees, contained under the chapters dedicated to each chosen CoE country (Rechtspfleger in Germany and Austria, court clerks/greffier in France, court and prosecutorial advisers in Croatia, registrars/conservadores in Portugal and assistant judges in Estonia) hopefully can be of support while establishing this advanced HR management system.

■ Same goes for the other issues which are, particularly regarding the above mentioned main staff categories, covered under the each country particular chapter, like the job requirements, salaries and/or trainings and promotion, where applicable.

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