

# European judicial systems

## Efficiency and quality of justice

CEPEJ STUDIES No. 23



Edition 2016 (2014 data)

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REV1

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## Chapter 1. The evaluation process of the CEPEJ

This first chapter describes the evaluation process carried out by the CEPEJ to prepare the present report. It sets out the working principles and methodological choices used in this exercise.

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

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

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

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

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

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

In order to fulfil these tasks, the CEPEJ has undertaken since 2004 a regular process for evaluating every two years the judicial systems of the Council of Europe Member states.

### 1.2 The scheme for evaluating judicial systems

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

The scheme was reviewed by the CEPEJ Working Group on evaluation of judicial systems (CEPEJ-GT-EVAL) in 2015. Its explanatory note aims to facilitate a common understanding by all national correspondents of the questions, allowing to guarantee uniformity of the data collected and processed. It has been recommended to all national correspondents to carefully read the explanatory note before replying to each question.

For the present cycle, the scheme and the explanatory note were submitted to the Member states in June 2015, in order to receive new data at the end of 2015, using the electronic version of this scheme, and allowing each national correspondent to access a secure website to transmit their responses to the Secretariat of the CEPEJ.

### 1.3 Data collection, validation and analysis

This report is based on the data from 2014. As the majority of States and entities were only able to issue judicial figures for 2014 in summer or autumn of 2015, the CEPEJ was not able to gather figures before the beginning of 2016. This left only a few months to the states to collect and consolidate their individual replies to the evaluation scheme and less than four effective working months to the experts to deal with them and prepare the report.

Methodologically, the collection of figures is based on reports of the States and entities, which were invited to appoint national correspondents entrusted with the coordination of the replies to the scheme for their respective State or entity.

The CEPEJ instructed its Working Group, under the chairmanship of Mr Jean-Paul JEAN (France), with the preparation of the report<sup>1</sup>, coordinated by the Secretariat of the CEPEJ.

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

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

The meeting between the CEPEJ-GT-EVAL and the network of national correspondents in Strasbourg, in May 2016 was an essential step in the process, aimed at validating figures, explaining or amending, for the same questions, significant variations in data between 2004 and 2016, discussing decisions of the experts and improving the quality of the figures received.

#### **Responding states**

By May 2016, 45 Member states had participated in the process: **Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus<sup>2</sup>, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova<sup>3</sup>, Monaco, Montenegro, Netherlands, Norway,**

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<sup>1</sup> The Working Group of the CEPEJ on the evaluation of judicial systems (CEPEJ-GT-EVAL) was composed of:

Mr Ramin GURBANOV, Judge at the Baku City Yasamal District court, Azerbaijan,

Mr Adis HODZIC, Head of the Budget and Statistics Department, Secretariat of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina,

Mr Jean-Paul JEAN, President of Chamber at the Court of Cassation, Associated Professor at the University of Poitiers, France (President of the CEPEJ-GT-EVAL),

Ms Simone KREß, Vice-President, Landgericht Köln, Germany,

Ms Mirna MINAUF, Senior Administrative Advisor, Sector for judicial administration and judicial inspection, Directorate for the Organisation of the Judiciary, Ministry of Justice of the Republic of Croatia

Mr Georg STAWA, President of the CEPEJ, Head of Department for Projects, Strategy and Innovation, Federal Ministry of Justice, Austria,

Mr Frans van der DOELEN, Programme Manager of the Department of the Justice System, Ministry of Justice, The Netherlands.

Mr Jaša VRABEC, Senior Judicial Adviser, President's Office, Supreme Court of the Republic of Slovenia,

and supported by the scientific experts:

Ms Juliinda BEQIRAJ, Associate Senior Research Fellow in the Rule of Law, Bingham Centre for the Rule of Law, London, United Kingdom

Mr Didier MARSHALL, Honorary Judge, Dean of the Department of Justice Administration at the French *Ecole Nationale de la Magistrature*, France

Ms Ludivine ROUSSEY, Researcher in economic sciences, University of Paris Descartes, Sorbonne France

<sup>2</sup> The data provided by Cyprus does not include data of the territory which is not under the effective control of the Government of the Republic of Cyprus.

<sup>3</sup> The data provided by the Republic of Moldova does not include data of the territory of Transnistria which is not under the effective control of the Government of the Republic of Moldova.

**Poland, Portugal, Romania, Russian Federation<sup>4</sup>, Serbia<sup>5</sup>, Slovakia, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”<sup>6</sup>, Turkey, Ukraine<sup>7</sup> and United Kingdom<sup>8</sup>.**

Only **Liechtenstein** and **San Marino** have not been able to provide data for this report. In addition, considering the very limited number of responses provided, the CEPEJ-GT-EVAL has decided not to include **Iceland** into some chapters of this study.

**Israel** has participated in the evaluation cycle as an observer state and appears in this report. It should be noted that the data indicated at the end of the tables (averages, medians, etc.) are always calculated only for the Council of Europe Member states in order to provide a picture of the European situation of judicial systems. More generally, it is worth mentioning that the CEPEJ, in line with the general policy agreed by the Committee of Ministers of the Council of Europe, has extended its cooperation with non-Member states within the framework of specific cooperation programmes. **Morocco, Tunisia and Jordan** benefit from such cooperation.

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

National replies also contain descriptions of the judicial systems and comments that contribute greatly to the understanding of the figures provided. They are therefore a useful complement to the report although not all of this information has been included in the interest of conciseness and consistency. A genuine data base of the judicial systems of the Council of Europe Member states is easily accessible to all citizens, policy makers, law practitioners, academicians and researchers. Studies and research can be conducted by research teams with easy access to data in the framework of individual agreements with the CEPEJ and subject to certain terms.

#### **1.4 General methodological issues**

##### ***Objectives of the CEPEJ and scope of this report***

**For the first time, the CEPEJ has decided to modify the manner of presentation of the results of its evaluation cycle. This report is limited to key issues and key data and doesn't pretend to have exploited exhaustively all the information that were provided by the states.**

**This report is only one of the three elements used by the CEPEJ to report on the functioning of the judicial systems in 2014. Those three elements are the following:**

- **a general report including key data and comments (key facts and figures) which makes it possible to evaluate the state of the judicial systems and their evolution (this report);**
- **a specific report focused on the use of IT in courts (theme chosen by the CEPEJ for its 2014-2016 evaluation cycle);**
- **a dynamic data base opened to the public on the Internet, including a data processing system (see: [www.coe.int/cepej](http://www.coe.int/cepej)).**

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<sup>4</sup> All activities of the Council of Europe concerning the Autonomous Republic of Crimea and the City of Sevastopol aim at fostering human rights in the interest of the people living in this territory. They cannot be interpreted as recognising neither the authorities that exercise de facto jurisdiction nor any altered status of the territory in question.

<sup>5</sup> The data provided by Serbia does not include data of the territory of Kosovo\* (\* all reference to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo).

<sup>6</sup> Mentioned as "the FYROMacedonia" in the tables and graphs below.

<sup>7</sup> The data indicated for Ukraine do not include the territories which are not under the control of the Ukrainian government. All activities of the Council of Europe concerning the Autonomous Republic of Crimea and the City of Sevastopol aim at fostering human rights in the interest of the people living in this territory. They cannot be interpreted as recognising neither the authorities that exercise de facto jurisdiction nor any altered status of the territory in question.

<sup>8</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 a different basis and operate independently from each other.



Regarding this report, as it was the case for previous editions, the CEPEJ has tried to approach the analytical topics keeping in mind all the priorities and the fundamental principles of the Council of Europe. Beyond the statistics, the interest of the CEPEJ report consists in highlighting the main trends, evolutions and common issues of the European States.

Compared to the previous report, the main changing in this year's report consists in focusing only on certain key sets of data and providing a more analytical interpretation of the situation in the states. The CEPEJ has decided to present all the data collected in a new dynamic format accessible via internet which will allow all the stakeholders to analyse independently, and according to their needs, a comprehensive volume of data for a specific group of states, or all states concerned.

This report is part of an on-going and dynamic process carried out by the CEPEJ. Throughout the preparation of the report, experts and national correspondents were encouraged to keep in mind the long-term objective of the evaluation process: to define a core of quantitative and qualitative key data to be regularly collected and dealt with in a similar manner in all states, bringing out shared indicators on the quality and the efficiency of court activities in the Member states of the Council of Europe (and in Israel) and highlighting organisational reforms, practices and innovations in a view to enabling the further improvement of the service provided to court users.

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

The quality of the data contained in this report depends very much on the type of questions asked in the data collection instrument, the definitions used by the states, the system of registration, the efforts made by national correspondents, the national data available and the way the figures were processed and analysed. In spite of the improvements resulting from previous experiences, one can assume that some variations occurred when the national correspondents interpreted the questions regarding their country and were attempted to match the questions with the information available. The reader should bear this point in mind and always interpret the statistics by the light of the comments and the detailed explanations given individually by the states.

The CEPEJ has chosen to process and present only the figures which offered a high level of quality and reliability. It decided to disregard the figures which were too disparate from one country to another, or from one evaluation exercise to another, or did not present sufficient guarantees of accuracy.

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

A specific effort of approval of the data was made to ensure their coherence and their reliability and to enable the creation and the analysis of statistical series. These series are designed to measure some evolutions. Such evolutions are often limited to the period 2010 - 2014. Regarding the checking of the accuracy of the figures, an in-depth quality check was made by the CEPEJ Secretariat, including extensive exchanges with the national correspondents. Statistical rules have been applied to compare the data from the three consecutive cycles. Those rules made possible the identification of the replies showing important variations trying to find explanations to it. Through these comparisons, methodological problems have been identified and corrected. In some cases strong variations could also be explained by the evolution of economic situations, structural and organisational reforms, political decisions or the implementation of new mechanisms, procedures or measures.

The approval of the data was made according to a rigorous methodology. However, it is not possible to guarantee the full reliability of all data. The variability of some data were not always explained despite the confirmation of their accuracy by the national correspondents. In case of significant variations (outliers), the results of the analyses were either excluded or kept but with the appropriate disclaimers.

Since 2008, the CEPEJ has implemented a peer evaluation process about the systems collecting and dealing with judicial data in the Member states. This process aims at bringing support to the states in the improvement of the quality of their judicial statistics and the development of their statistical system in order to ensure the coherence with the standards defined in the Evaluation Scheme of the CEPEJ. The evaluation process also facilitates the exchange of experiences between the national systems, the sharing of good practices, the identification of indicators and the transfer of knowledge. It also ensures the transparency and the reliability of the evaluation process of the European judicial systems conducted by the CEPEJ.

Until now, the judicial systems of 21 volunteer states were observed by the peers in order to analyse the organisation of data collection and their communication to the CEPEJ Secretariat: **Austria, Azerbaijan,**

**Bosnia and Herzegovina, Estonia, France, Latvia, Lithuania, Malta, Netherlands, Poland, Russian Federation, Serbia, Slovakia, Switzerland and Turkey**, as well as **Israel**. Furthermore, a visit was organised in **Norway**, bringing together experts from **Denmark, Finland, Iceland and Sweden**. During these visits, the experts appointed by the CEPEJ-GT-EVAL analysed the practical way of answering to some questions of the Evaluation Scheme and the content of the answers, in particular the questions related to budgetary issues, types and number of judges, litigious civil cases and methods of calculating the length of proceedings.

Moreover, the CEPEJ approved a set of guidelines on judicial statistics for the attention of the Member states departments in charge of collecting and dealing with statistics in the field of justice<sup>9</sup>. These guidelines, as a tool of the public policy, aim at ensuring the quality of the judicial statistics collected and processed by the Member states. They should also facilitate the comparison of data between European countries by ensuring adequate homogeneity despite the substantial differences between countries (in relation to the judicial organisation, economic situation, demography, etc.).

### Comparing data and concepts

The comparison of quantitative data from different countries with various geographical, economic and legal situations is a delicate task. It should be approached with great caution by the experts writing the report and by the readers consulting it, interpreting it, and analysing the information it contains.

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

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

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

Monetary values are reported in Euros. For that reason, using exchange rates for states outside the Euro zone caused some difficulties. Exchange rates can actually vary a lot from year to year. Since the report focuses mainly on 2014, the exchange rates of 1 January 2015 were used. For states experiencing high inflation rates, this choice may generate very high figures which must be interpreted within their specific context. The high variation of the exchange rate might have a considerable effect on the figures for the countries outside the Euro zone. For some of them, the exchange rate against the Euro could have been more favourable in 2015 than in 2013. This fact may have strengthened budgetary or monetary increases once expressed in Euros (€). It is therefore, necessary to pay attention to this issue while comparing monetary figures of the 2014 and 2016 editions. A specific table (table 1.3) shows the variation of the exchange rate for the countries outside the Euro zone. As far as possible, this was taken into account while commenting on the tables and figures showing budgetary variations.

<sup>9</sup> Document CEPEJ(2008)11.

Furthermore, for the first time in this edition, the inflation rate was considered in the respective part of this report when interpreting the variations of different judicial budget elements.

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

Since 2014, a few Member states of the Council of Europe have implemented fundamental institutional and legislative reforms of their legal systems. For these states, the situation described in this report may be quite different from the current situation. States were invited to indicate whether reforms were implemented since 2014 or whether other reforms are in progress. This makes also possible the identification of the main trends related to priority reforms in the various justice systems.

In some countries the economic situation has deteriorated since 2014 because of the crisis, which has had a relatively large impact on the functioning of justice. For such states too, the situation described in this report may have evolved.

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

In the 2014–2016 evaluation cycle, the CEPEJ tried to take a global approach of 47 States and entities' judicial systems - plus **Israel**. In order to highlight some particularities of the European judicial systems, several indicators were developed or calculated: ratios, rates, averages and/or medians, indexes, etc.

Several tables include replies as provided by the countries. Other tables show the replies processed together or presented according to aggregated figures. Graphs show more often than not global answers at a European level. Some indicators are shown thanks to maps.

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

- **Average:** represents the arithmetic average which is the outcome of dividing the sum of the observations of a distribution (data supplied) by the total number of countries which indicated the information included into the distribution. The average is sensitive to extreme values (too high or too low).
- **Median:** represents the middle point of a set of ordered observations. The median is the value that divides the data supplied by the countries concerned into two equal groups so that 50% of the countries are above this value and 50% are below it. When there is an odd number of observations, the median is the value that is just in the middle of these two groups. The median is sometimes better to use than the average, as it is less sensitive to extreme values. The effect of the extreme values is then neutralised.

In case of calculated variables, such as ratios for example, the European average or median is calculated as an average or median of the different states' ratios, rather than an average of the phenomenon in Europe. This was considered as a more satisfactory approach to understand the trends.

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

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

## **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 conducted. In particular, they makes it possible, as it was the case in the previous exercise, to relativize the other figures and place them in context, particularly budgetary figures and figures relating to court activity.

The figures also enable the reader to measure the variations in the population and the size of the concerned countries, from **Monaco**, with about 37 000 of inhabitants, to the **Russian Federation** with more than 146 million of inhabitants. This demographic diversity must always be kept in mind. The population concerned by this study is roughly about 820 million people, which is almost the whole population of the Council of Europe's jurisdiction - since only **Liechtenstein** and **San Marino** are absent from the 2016 edition.

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

Therefore comparisons must always be limited to what can be compared. The results that each 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 GDP per capita.

The data regarding public expenditure (Q2) seem to be tied to various public accounting techniques, both regarding the defined perimeters and, for instance, the presentation of deficits. The problematic of the national and regional budgets on public competences as a whole also gives rise to further methodological problems. Therefore, these figures are analysed with care and only in comparison/ratio with other financial data from the same state.

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

Figures related to the GDP per capita were provided by all the participating states. Here again, very large disparities in the GDP per capita 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 GDP per capita around 1 700 € (**Republic of Moldova**), and on the other hand, **Luxembourg** with over 88 000 € reported, a value more than 50 times higher.

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

**Table 1.1 Economic and demographic data in 2014, in absolute value (Q1 to Q4)**

States/Entities	Population	Total annual state public expenditure	GDP per capita (in €)	Average gross salary
Albania	2 893 005	3 134 000 000 €	3 439 €	4 536 €
Andorra	76 949	507 904 545 €	30 342 €	24 563 €
Armenia	3 010 600	2 237 000 000 €	2 910 €	3 444 €
Austria	8 584 926	169 749 434 000 €	38 540 €	30 655 €
Azerbaijan	9 477 100	21 070 153 329 €	6 194 €	5 602 €
Belgium	11 209 044	220 771 900 000 €	36 000 €	41 544 €
Bosnia and Herzegovina*	3 827 343	11 111 457 211 €	3 642 €	7 909 €
Bulgaria	7 202 198	16 607 797 523 €	5 808 €	5 078 €
Croatia	4 225 316	18 855 101 030 €	10 162 €	12 508 €
Cyprus	858 000	8 413 270 610 €	20 454 €	22 764 €
Czech Republic	10 524 783	65 392 858 431 €	14 602 €	11 083 €
Denmark	5 659 715	88 190 700 736 €	45 744 €	52 894 €
Estonia	1 313 271	8 018 188 425 €	15 186 €	12 060 €
Finland	5 471 753	54 587 000 000 €	37 559 €	39 624 €
France	66 317 994	463 300 000 000 €	32 227 €	34 500 €
Georgia	3 729 500	3 268 837 113 €	2 668 €	NA
Germany*	80 780 728	878 654 000 000 €	33 343 €	44 991 €
Greece	10 846 979	128 552 062 742 €	16 250 €	16 243 €
Hungary	9 855 571	53 233 901 490 €	10 500 €	9 759 €
Iceland	329 740	NA	30 000 €	34 363 €
Ireland	4 625 885	72 304 000 000 €	41 011 €	35 768 €
Italy	60 795 612	603 025 223 161 €	26 585 €	29 327 €
Latvia	2 001 468	5 322 754 264 €	12 065 €	9 180 €
Lithuania	2 921 262	7 854 039 330 €	12 381 €	8 129 €
Luxembourg	563 000	NA	88 500 €	46 000 €
Malta	429 344	3 435 413 000 €	18 525 €	16 082 €
Republic of Moldova	3 555 159	2 382 531 977 €	1 687 €	2 634 €
Monaco	37 800	1 085 722 205 €	65 703 €	40 400 €
Montenegro	620 029	1 890 754 552 €	5 635 €	8 640 €
Netherlands	16 902 146	306 527 000 000 €	39 297 €	56 900 €
Norway	5 165 802	174 410 178 800 €	66 797 €	56 087 €
Poland	38 496 000	66 523 473 242 €	10 538 €	10 650 €
Portugal	10 374 822	84 728 800 000 €	16 637 €	20 323 €
Romania	22 279 183	52 010 307 668 €	7 533 €	6 152 €
Russian Federation*	146 267 288	499 928 062 903 €	9 686 €	7 728 €
Serbia	7 114 393	15 533 274 691 €	4 672 €	6 284 €
Slovakia	5 421 349	15 591 320 000 €	13 880 €	10 296 €
Slovenia	2 061 085	18 582 000 000 €	18 065 €	18 483 €
Spain	46 439 864	423 227 347 310 €	22 800 €	22 803 €
Sweden	9 747 355	215 312 490 100 €	42 800 €	39 948 €
Switzerland*	8 237 666	166 893 450 600 €	64 813 €	65 180 €
The FYROMacedonia	2 069 172	1 441 000 000 €	4 130 €	6 112 €
Turkey	77 695 904	232 540 229 181 €	8 022 €	11 643 €
Ukraine	42 929 000	20 241 967 226 €	1 920 €	2 147 €
UK-England and Wales**	57 408 654	641 784 797 124 €	32 033 €	35 510 €
UK-Northern Ireland**	1 840 498	25 751 155 624 €	23 046 €	30 874 €
UK-Scotland**	5 347 600	85 264 240 000 €	33 568 €	34 728 €
Israel	8 296 600	92 939 762 096 €	28 188 €	24 048 €
<b>Average</b>	17 607 274	132 427 713 337	23 147 €	22 872 €
<b>Median</b>	5 471 753	52 010 307 668	16 637 €	17 363 €
<b>Minimum</b>	37 800	507 904 545	1 687 €	2 147 €
<b>Maximum</b>	146 267 288	878 654 000 000	88 500 €	65 180 €

\* The regional level of public expenditure is included in "Total annual state public expenditure".

\*\* For the entities of the United Kingdom, only the regional public expenditures are presented.

## 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 and the efficiency of judicial systems. At the same time, additionally to this report, the CEPEJ prepared an in-depth analysing of the Information Technology used in the court systems. In the future, other in-depth analyses regarding the functioning of judicial systems will be proposed.

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### Keys

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

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

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

(Qx) refers to the (x=number of the) question in the scheme which appears in the appendix, thanks to which information were collected.

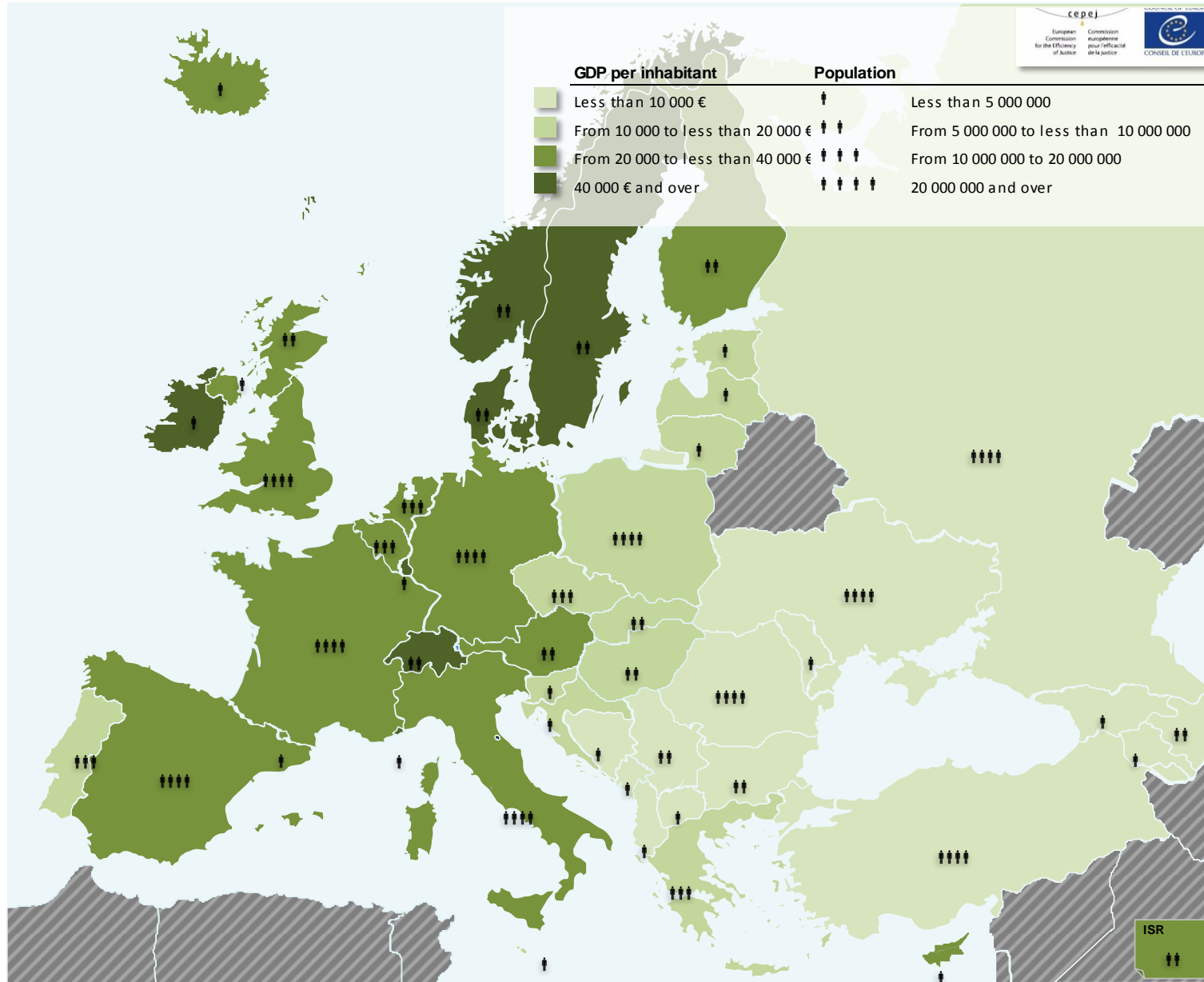
If there was no (valid) information, this is shown by writing "NA" (not available).

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

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

"NQ" indicates that a value has been provided by the state or entity but has not been validated by the Secretariat during the quality control process.

Map 1.2 Level of population and GDP per capita (in €) in 2014 (Q1, Q3)





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

**Table 1.3 Exchange rates and their evolution (Q5) - Amount of local currency needed to obtain 1 €**

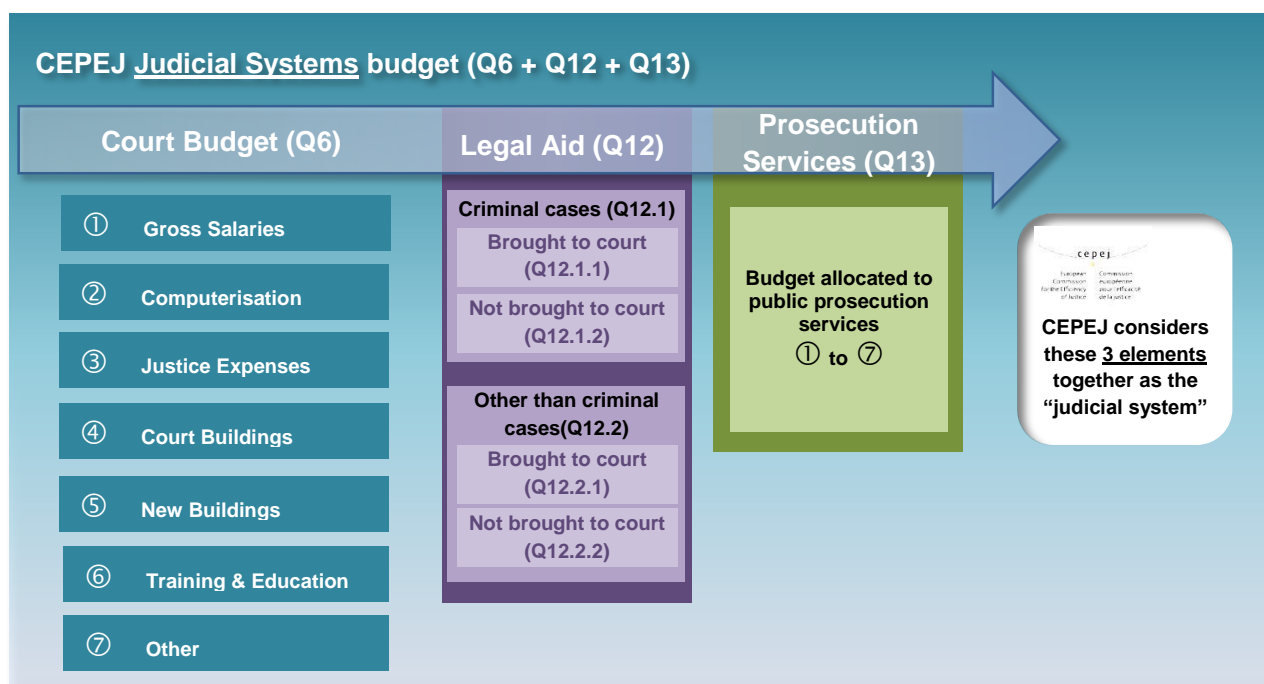
States/entities	Currency	Exchange rate in 2010 (on 1st Jan. 2011)	Exchange rate in 2012 (on 1st Jan. 2013)	Exchange rate in 2014 (on 1st Jan. 2015)	Appreciation of the € (2012-2014)	Depreciation of the € (2012-2014)
Albania	ALL (Lek)	138,77000	139,04000	139,98000	0,68%	
Armenia	AMD (Dram)	481,16000	481,16000	552,11000	14,75%	
Azerbaijan	AZN (Manat)	1,05600	1,01800	0,95220		-6,46%
Bosnia and Herzegovina	BAM (Mark)	2,00000	1,95583	1,95583	0,00%	0,00%
Bulgaria	BGN (Lev)	1,95583	1,95583	1,95583	0,00%	0,00%
Croatia	HRK (Kuna)	7,38430	7,54659	7,65771	1,47%	
Czech Republic	CZK (Koruna)	25,06000	25,14000	27,72500	10,28%	
Denmark	DKK (Krone)	7,45310	7,46040	7,44360		-0,23%
Georgia	GEL (Lari)	2,37080	2,18450	2,28810	4,74%	
Hungary	HUF (Forint)	278,85000	292,96000	315,00000	7,52%	
Iceland	ISK (Krona)	153,80000	169,00000	154,00000		-8,88%
Lithuania	LTL (Lital)	3,45280	3,45280	3,45280	0,00%	0,00%
Republic of Moldova	MDL (Leu)	16,10450	15,99670	18,99660	18,75%	
Norway	NOK (Krone)	8,01000	7,31750	9,05020	23,68%	
Poland	PLN (Zloty)	3,96030	4,08820	4,26230	4,26%	
Romania	RON (Leu)	4,28480	4,41530	4,48210	1,51%	
Russian Federation	RUB (Ruble)	41,48760	40,22860	68,36810	69,95%	
Serbia	RSD (Dinar)	105,00000	113,12770	120,95830	6,92%	
Sweden	SEK (Krona)	8,95000	8,56880	9,43230	10,08%	
Switzerland	CHF (Franc suisse)	1,25040	1,20720	1,20290		-0,36%
The FYROMacedonia	MKD (Denar)	61,10000	61,50000	61,50000	0,00%	0,00%
Turkey	TRY (Lira)	2,07000	2,36000	2,83910	20,30%	
Ukraine	UAH (Hryvnia)	10,57000	10,53000	19,00000	80,44%	
UK-England and Wales	GBP (Pound sterling)	0,85060	0,81546	0,77880		-4,50%
UK-Northern Ireland	GBP (Pound sterling)	0,85060	0,81546	0,77880		-4,50%
UK-Scotland	GBP (Pound sterling)	0,85060	0,81546	0,77880		-4,50%
Israel	ILS (Shekel)		4,92060	4,72460		-3,98%





## Chapter 2. Budgets of judicial systems

One of the goals of the CEPEJ is to know, understand and analyse the budgets allocated to the functioning of justice in the States and entities. Therefore this chapter focuses primarily on the budgets allocated to the courts, the public prosecution services, and legal aid, the total of which defines **the judicial system budget within the meaning of the CEPEJ**. The chapter will also deal with the budget of the justice system as a whole, whose scope varies according to the states and the powers of the ministries of justice. Before considering different budgets in detail, it is necessary to recall the definitions adopted by the CEPEJ for the various concepts in order to be able to compare the different states' or entities' systems.



The budget allocated to the **courts** covers the annual public budget allocated to the functioning of all courts, without the public prosecution services and without legal aid. It includes the budgets for gross salaries of judges and of the entire judicial staff and non-judicial staff working in courts, the computerisation, justice expenses (interpreters, experts, etc.), maintenance, leasing and functioning of court buildings, investment in new buildings dedicated to the courts and training.

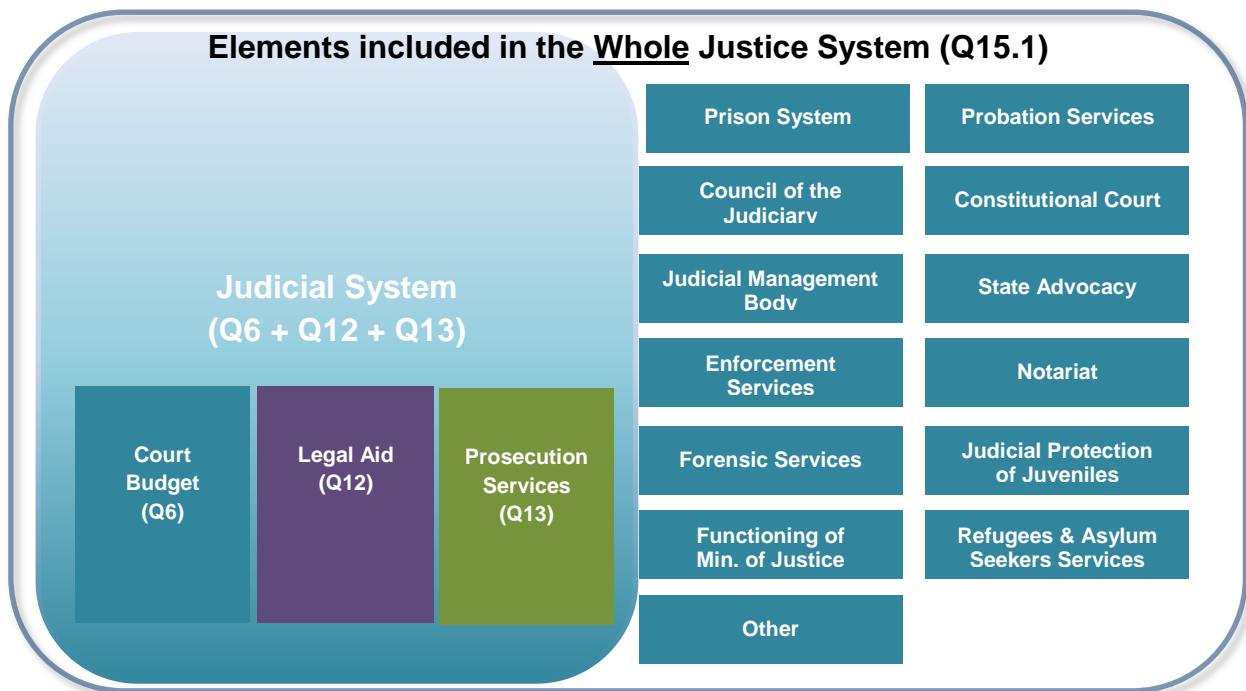
The budget allocated to **legal aid** is interpreted here in a broad sense. It includes the amounts paid to the court users or their lawyers for criminal cases or other than criminal cases brought to court (for instance costs of being represented before the courts) but also amounts paid to individuals in a non-litigious framework of appropriate measures aimed at preventing or accompanying appeals before the courts (for instance conciliation, mediation proceedings, etc.).

The **public prosecutor services**, that is a prosecuting authority composed of prosecutors and staff who assist them, exercise their prerogatives within 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*".

Within the meaning of the CEPEJ, the budget allocated to the **judicial system** includes the budgets of the courts, legal aid and the public prosecutor services as previously defined.

Finally, the **budget allocated to the whole justice system**, integrating in particular the entire budget of the Ministry of Justice, encompasses that of the judicial system and may also include the budgets of the prison system, the probation service, the Councils of the Judiciary, the Constitutional Court, the judicial management body, the State Advocacy, the enforcement services, the notariat, the forensic services, the

judicial protection of juveniles, the functioning of the Ministry of Justice, the refugees and asylum seekers services, some police services, etc.

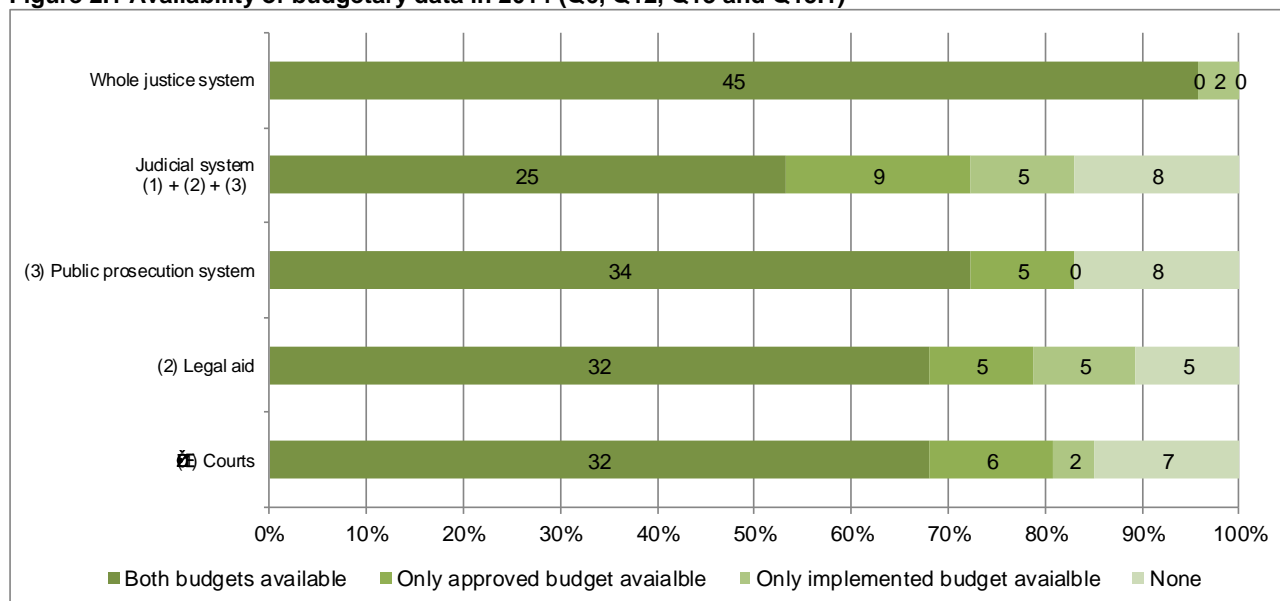


Insofar as the scope of the Ministry of Justice varies from one state or entity to another, the “justice” budget cannot be used for international comparisons. The comparisons are therefore based on the financial resources devoted only to the judicial systems, the analysis of which must be considered the most relevant in the budgetary part of this report. The budgets allocated to the judicial systems could further be compared to the assessment of judicial activity and efficiency, which will make it possible to compare the investments to the results (input/output) on a similar perimeter. See chapter 5 on Efficiency.

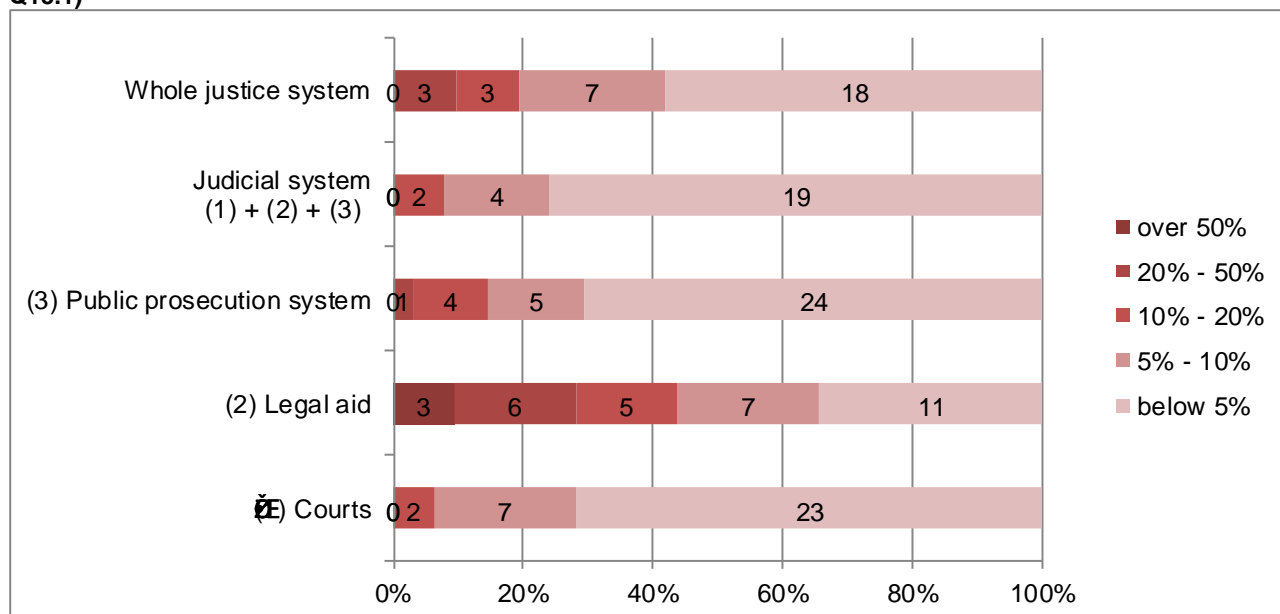
**Note:** the main originality of the 2016 evaluation cycle lies in the fact that States and entities were invited to enter not only the data relating to the various **approved** budgets for the reference year (that is to say to those approved by the Parliament or another competent public authority) - as in the previous cycles - but also the data on **implemented** budgets (that is to say, corresponding to the actual expenditure incurred in the reference year). These implemented budgets make it possible to provide a better insight into the reality of the budgetary efforts made by the States or entities in 2014.

When looking at the availability of data about the approved against the implemented budget, we see that more States and entities are providing data about the approved budget (Figure 2.1). Fortunately, analysing the data from the States and entities that were able to provide both budgets, it can be noted that the values are very close for all budgetary questions except for the legal aid budget and the CEPEJ has therefore decided to analyse with particular interest the approved budgets. Legal aid is understandably an exception to this principle since only a provisional budget is adopted which can only be measured after its implementation has been registered at the end of the year of actual expenditure. For that reason, significant differences have been observed between the approved budgets and the implemented budgets of legal aid, as shown in Figure 2.2. However, it should be noted that in order to make this analysis possible and extend it to as many States or entities as possible, implemented budgets were taken into consideration for States or entities where approved budget was not available. In cases when the tables/graphs presented include a combination of approved and implemented budgets this is highlighted throughout the report.

**Figure 2.1 Availability of budgetary data in 2014 (Q6, Q12, Q13 and Q15.1)**



**Figure 2.2 Difference between the amounts of approved and implemented budget in 2014 (Q6, Q12, Q13 and Q15.1)**



## 2.1 Annual budget of the whole justice system

Each state or entity was asked to indicate the budget allocated to the whole justice system. But the amounts mentioned do not represent the same reality, given the diversity of the scope of justice used among the States or entities. It is therefore once again recalled that the following data does not allow comparisons between the states, except occasionally for those with similar perimeters.

The budget data presented in this section for **Sweden** correspond to the implemented budget of all courts.

### 2.1.1 Composition of the annual budget of the whole justice system

#### 2.1.1.1 Part of the annual budget of the judicial system within the annual public budget of the whole justice system

The proportion of the justice budget dedicated to the judicial system (the courts, the public prosecution services, legal aid) can be measured for 38 States or entities.

**Table 2.3 Annual public budgets of the judicial system compared with the annual public budget of the whole justice system in 2014 (Q6, Q12, Q13 and Q15-1)**

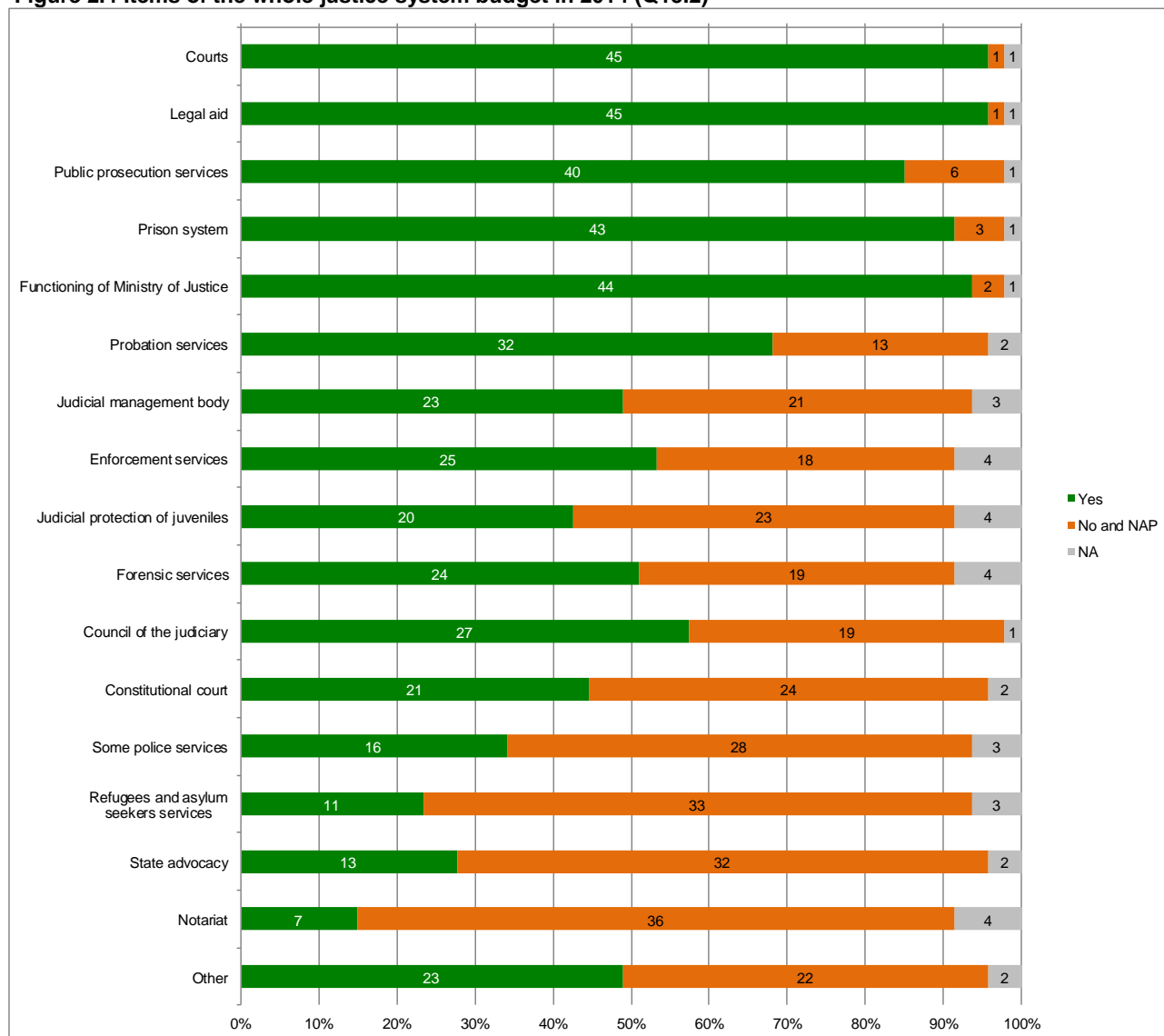
States/entities	Part of the budget of the judicial system in the budget of the whole justice system	The remaining elements of the budget of the whole justice system	Number of other elements included in the budget of the whole justice system
Albania	49,6%	50,4%	8
Andorra	NA	NA	NA
Armenia	NA	NA	NA
Austria	63,4%	36,6%	7
Azerbaijan	57,7%	42,3%	10
Belgium	50,3%	49,7%	7
Bosnia and Herzegovina	58,8%	41,2%	10
Bulgaria	69,4%	30,6%	12
Croatia	68,5%	31,5%	9
Cyprus	NA	NA	NA
Czech Republic	93,3%	6,7%	7
Denmark	NA	NA	NA
Estonia	65,1%	34,9%	12
Finland	42,6%	57,4%	10
France	50,0%	50,0%	10
Georgia	25,1%	74,9%	10
Germany	NA	NA	NA
Greece	75,5%	24,5%	11
Hungary	28,9%	71,1%	10
Ireland	9,9%	90,1%	12
Italy	56,0%	44,0%	9
Latvia	44,8%	55,2%	11
Lithuania	51,9%	48,1%	7
Luxembourg	59,7%	40,3%	11
Malta	16,3%	83,7%	12
Republic of Moldova	43,0%	57,0%	11
Monaco	NA	NA	NA
Montenegro	67,0%	33,0%	11
Netherlands	17,5%	82,5%	15
Norway	12,6%	87,4%	10
Poland	72,8%	27,2%	8
Portugal	35,1%	64,9%	11
Romania	73,2%	26,8%	9
Russian Federation	14,1%	85,9%	12
Serbia	NA	NA	NA
Slovakia	68,8%	31,2%	7
Slovenia	72,7%	27,3%	8
Spain	74,1%	25,9%	13
Sweden	23,0%	77,0%	9
Switzerland	75,5%	24,5%	5
The FYROMacedonia	63,2%	36,8%	9
Turkey	48,8%	51,2%	12
Ukraine	64,3%	35,7%	13
UK-England and Wales	51,1%	48,9%	8
UK-Northern Ireland	18,7%	81,3%	8
UK-Scotland	NA	NA	NA
Israel	NA	NA	NA
<b>Average</b>	50,9%	49%	10
<b>Median</b>	54,0%	46%	10
<b>Minimum</b>	9,9%	7%	5
<b>Maximum</b>	93,3%	90%	15

The participation of the budget of the judicial system into the budget of the whole justice system is on average 50,9 %, with a minimum of about 10 % in **Ireland** and a maximum of 93,3 % in **Czech Republic**. The budget allocated to the judicial system represents 50 % or more of the justice budget in 23 States or entities out of 38. This wide disparity between States or entities can be largely explained by the number of items which are not part of the budget of the judicial system but are nevertheless included in the budget for the whole justice system.

For instance in **Switzerland**, the budget of the whole justice system – constituting 75,5 % of the judicial system budget - has only 5 items. On the contrary, in **Ireland**, the budget of the judicial system represents only 10 % of the whole justice system budget which, however, includes 12 other components.

### 2.1.1.2 The other items constituting the annual budget of the whole justice system

Figure 2.4 Items of the whole justice system budget in 2014 (Q15.2)



As shown in the table above, most of the States or entities include in the overall justice budget the prison system budget and the budget of the functioning of the Ministry of Justice (43 States or entities). The exceptions to this principle are **Armenia** and the **Czech Republic** as regards the budget of the prison system, and **Sweden** and **Switzerland** as regards the budget of the functioning of the Ministry of Justice.

Many states are also likely to consider that the budget of the probation services is part of the justice budget (32 States or entities).

The budget of the notariat is on the contrary very rarely included in this overall budget. It is included in **Azerbaijan, Denmark, Georgia, Germany, Greece, Ukraine and Israel**.

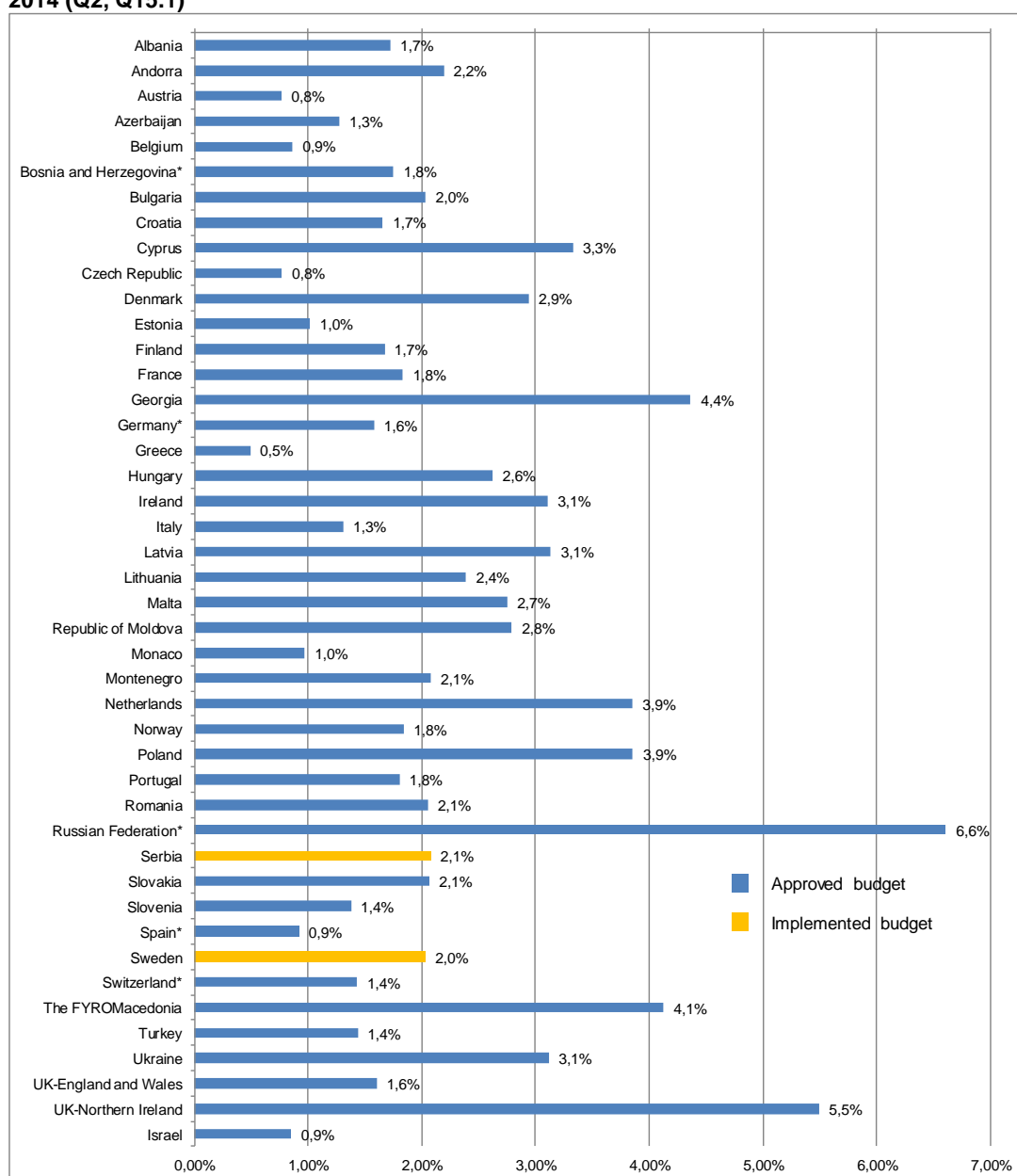
In 16 States or entities, some of the police services are also included in the justice budget. Indeed, in some states, police services cannot only lead the investigation, but also have the power to supervise it and sometimes bring charges before the court. Thus these specialised services perform some of the tasks assigned to the public prosecutor services in other states.

In the end, according to the competences conferred upon the justice system in the States or entities, the overall justice budget may make reference to the aggregation of budgets allocated to a large number of items (15 in the **Netherlands**) or a much more restricted number (5 in **Switzerland**, ). It is therefore important to carefully examine the data on the budget of the whole justice system given the absence of a common definition shared by all States or entities.

### 2.1.2 Portion of the annual justice budget within the total public expenditure

For information purposes, the following figure shows the share of approved budget of the whole justice system within the total public expenditure at the state level (including public deficits), as a percentage. In case of federal states, where the regional public budgets also participate in the functioning of the justice system, this amount is included in the justice budget.

**Figure 2.5 Annual public budget of the whole justice system, as a percentage of the total public expenditures in 2014 (Q2, Q15.1)**



\*Regionals public expenditures (from the various entities of a federal state) are also included in the justice budget

These data should be considered with even more care since the data on state public expenditures - as well as the budget of the whole justice system are subject to differences in definition and calculation methodologies. This figure, however, gives an idea of the budgetary effort made by the public authorities to promote the entire justice system. Where relevant, the CEPEJ has taken into account the public expenditures of those regional entities (various entities within a federation) which have major powers in respect of the funding of justice within the state organisation.

Given the justice systems' diversity, the budgetary assessment in this report is not based on the budget of the whole justice system but on the analysis of budgets of the judicial systems according to the definition established by the CEPEJ with a view of enabling comparisons between States or entities.

## **2.2 Annual public budget of the judicial system**

As indicated before, the budget of the judicial system is understood as the sum of the budgets allocated to the courts, legal aid and the public prosecution services. Such data related to the budget of the judicial system have the advantage of being based on a common definition validated by experience as it is one of the most long-standing CEPEJ definitions. Thus, these data enable a comparative analysis which is, however, relevant only if we put into perspective the budgets of the judicial system in order to place them in their global context (size and wealth of the state or entity, organisation of the judicial system, etc.).

In this part, in order to analyse the largest possible number of States or entities, the approved and executed budgets of the judicial systems are presented together. This means that the budgets in the tables or graphs are the approved budgets when they were provided. Implemented budgets are used for the states where the approved budget is not available, that is to say for **Bosnia and Herzegovina, Croatia, Czech Republic, Italy, and Sweden.**

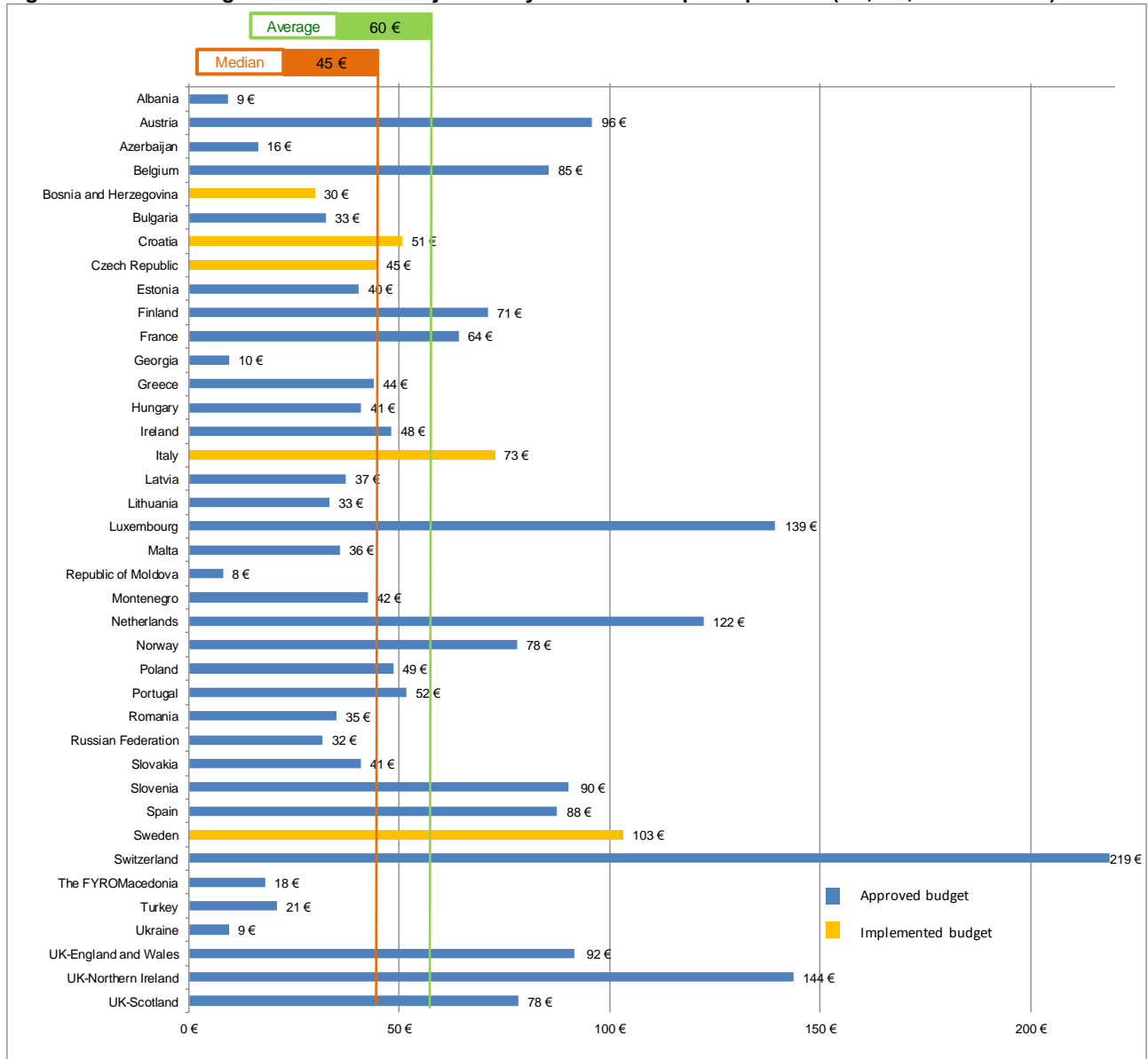


## 2.2.1 Budget allocated to the judicial system in 2014

The analysis of the budget of the judicial system covers 39 States or entities.

### 2.2.1.1 Budget of the judicial system per capita in 2014

Figure 2.6 Public budgets allocated to the judicial systems in 2014 per capita in € (Q1, Q6, Q12 and Q13)



The European average of the budget allocated to the judicial system per capita in 2014 for the responding States or entities is 60 € and the median - less sensitive to extreme values – is 45 €.

This is a result of the outlier values for several wealthy states that influence the average to a considerable extent. Four groups of states can be specified:

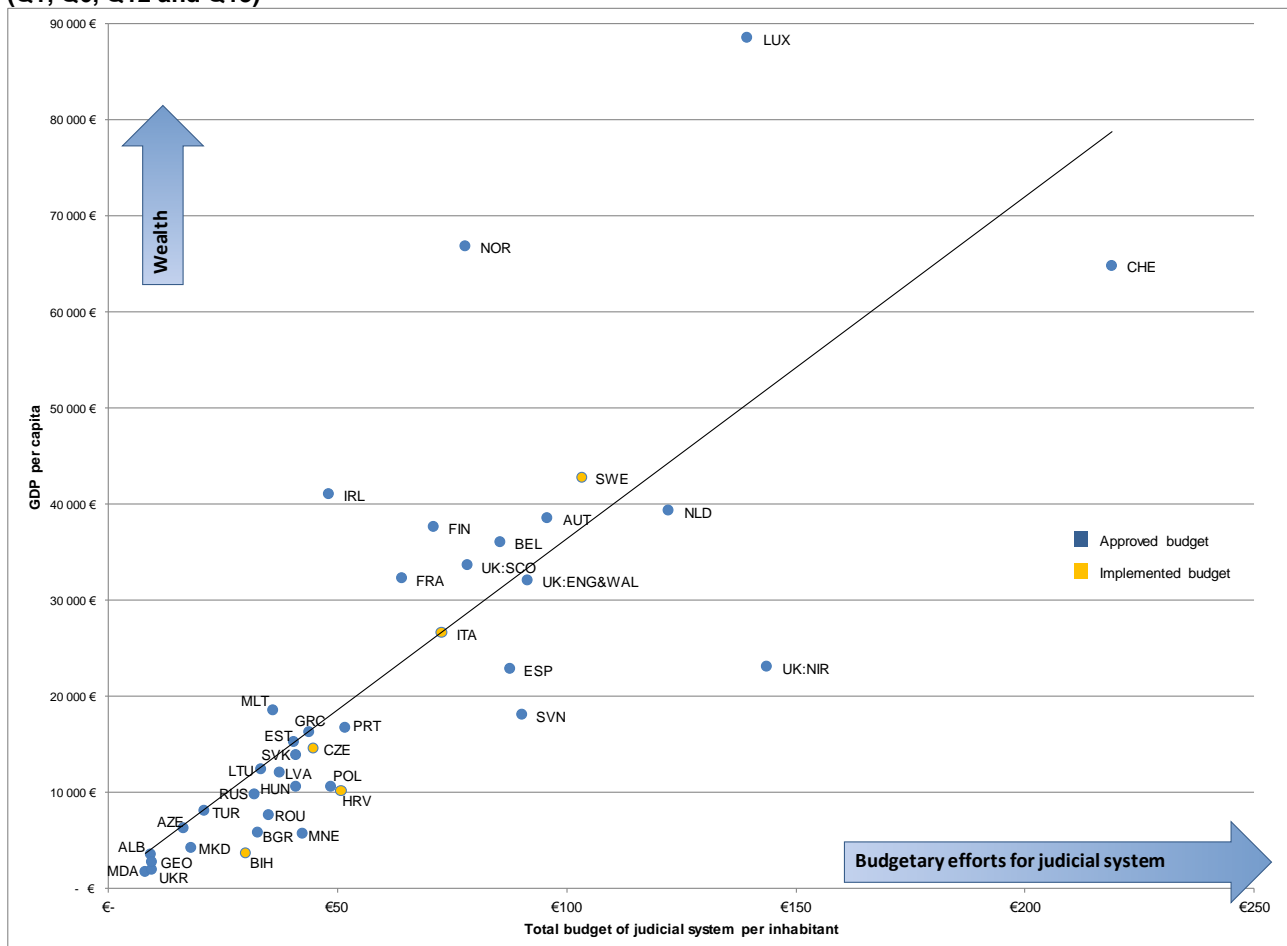
- the states allocating less than 25 € per capita to their judicial systems constitute the first group. It includes 7 states: the **Republic of Moldova** (8 €), **Albania** (9 €), **Ukraine** (9 €), **Georgia** (10 €), **Azerbaijan** (16 €), “**the former Yugoslav Republic of Macedonia**”(18 €) and **Turkey** (21 €),
- the second group includes 17 states with a budget per capita between 25 and 60 €: **Bosnia and Herzegovina** (30 €), **Russian Federation** (32 €), **Bulgaria** (33 €), **Lithuania** (33 €), **Romania** (35 €), **Malta** (36 €), **Latvia** (37 €), **Estonia** (40 €), **Slovakia** (41 €), **Hungary** (41 €), **Montenegro** (42 €), **Greece** (44 €), **Czech Republic** (45 €), **Ireland** (48 €), **Poland** (49 €), **Croatia** (51 €) and **Portugal** (52 €).

- the third group gathers 10 States or entities whose per capita budget allocated to the judicial system is between 60 and 100 €: **France** (64 €), **Finland** (71 €), **Italy** (73 €), **Norway** (78 €), **UK-Scotland** (78 €), **Belgium** (85 €), **Spain** (88 €), **Slovenia** (90 €), **UK-England and Wales** (91 €) and **Austria** (96 €).
- the fourth group includes **Sweden** (103 €), **Netherlands** (122 €), **Luxembourg** (139 €), **UK-Northern Ireland** (144 €) and **Switzerland** (219 €), each allocating over 100 € per capita to their judicial system.

### 2.2.1.2 Annual public budget of the judicial system compared to the wealth of States or entities in 2014

Putting into perspective the budget allocated to the judicial system according to the population is not sufficient to make a meaningful analysis of the data presented. Indeed, two states presenting similar budgets allocated to the judicial system per capita can be very different from the perspective of their level of wealth. Consequently, the same budget per capita does not represent the same budgetary effort depending on whether a country is relatively poor or rich. Therefore, the budget allocated to the judicial system should be put into perspective by comparing it to a measure of the countries' wealth, the GDP per capita.

**Figure 2.7 Budgets allocated to the judicial systems per capita compared with the GDP in 2014 (Q1, Q6, Q12 and Q13)**



The figure above shows that there is a positive correlation between the level of wealth of the States or entities and the resources allocated to the judicial systems. This positive correlation is represented by a trend line.

The states situated below the trend line make a relatively high budgetary effort for their judicial systems given their wealth. The more a state or entity is at the bottom right of the graph, the more its budgetary effort may be considered significant in view of its wealth. States or entities above the trend line are on the contrary states whose budgetary effort seems more moderate compared to their wealth.

For illustrative purposes, it can be noticed that the budgets allocated to the judicial system in **Ireland** (above the trend line) and **Poland** (below the trend line) were 48,1 € and 48,5 € per capita, respectively. The figure supports an understanding that despite a per capita budget almost identical to that of **Ireland**, **Poland** achieves a much greater budgetary effort insofar as its level of wealth is 4 times lower than that of **Ireland**.

Similarly, **Belgium** and **Spain**, although their budgets per capita are close (85 and 87,5 € respectively), cannot be compared in terms of their wealth because the GDP per capita of **Belgium** is about 1,5 times higher than that of **Spain**. It is more relevant to compare **Belgium** with a similar group of states in respect of wealth such as **UK-Scotland**, **France**, **Finland**, **Austria**, **Netherlands**, **UK-England and Wales** and **Ireland**. Within this group, the **Netherlands** perform an effort 2.5 times higher than **Ireland** and 1,9 times higher than **France** in favour of their judicial system.

In a lower range of GDP per capita, **Spain** may be compared to **UK-Northern Ireland**, **Malta**, **Slovenia** and **Portugal**. Within this group of states, comparable in terms of their wealth, budget discrepancies are particularly noticeable. For example, the budget allocated to the judicial system per capita in **UK-Northern Ireland** is 1,6 times higher than in **Spain** and in **Slovenia**, almost 3 times higher than in **Portugal**, and 4 times higher than in **Malta**.

Among the less wealthy European States - whose GDP per capita is less than 10 000 € - **Azerbaijan** and **Bulgaria** have very similar levels of income (around 6000 € per capita). **Bulgaria**, however, invests about 2 times more in its judicial system than **Azerbaijan**. Finally, **Bosnia and Herzegovina** spends about 3 times more than **Albania** although their respective GDPs are at quite similar levels.

The particularly high GDP per capita in **Luxembourg** (approximately 5 times higher than the European median of GDP per capita, **Norway** and **Switzerland** (approximately four times higher than the European median of GDP per capita) deserve to be noted. The data might give the impression that these states do not make a significant budgetary effort for their courts. While the budget of **Switzerland** appears high in its volume, that of **Norway** is close to the budgets of **Belgium**, **Finland**, and **UK-Scotland** and that of **Luxembourg** is close to the budget of **UK-Northern Ireland**, that is still among the highest in Europe.

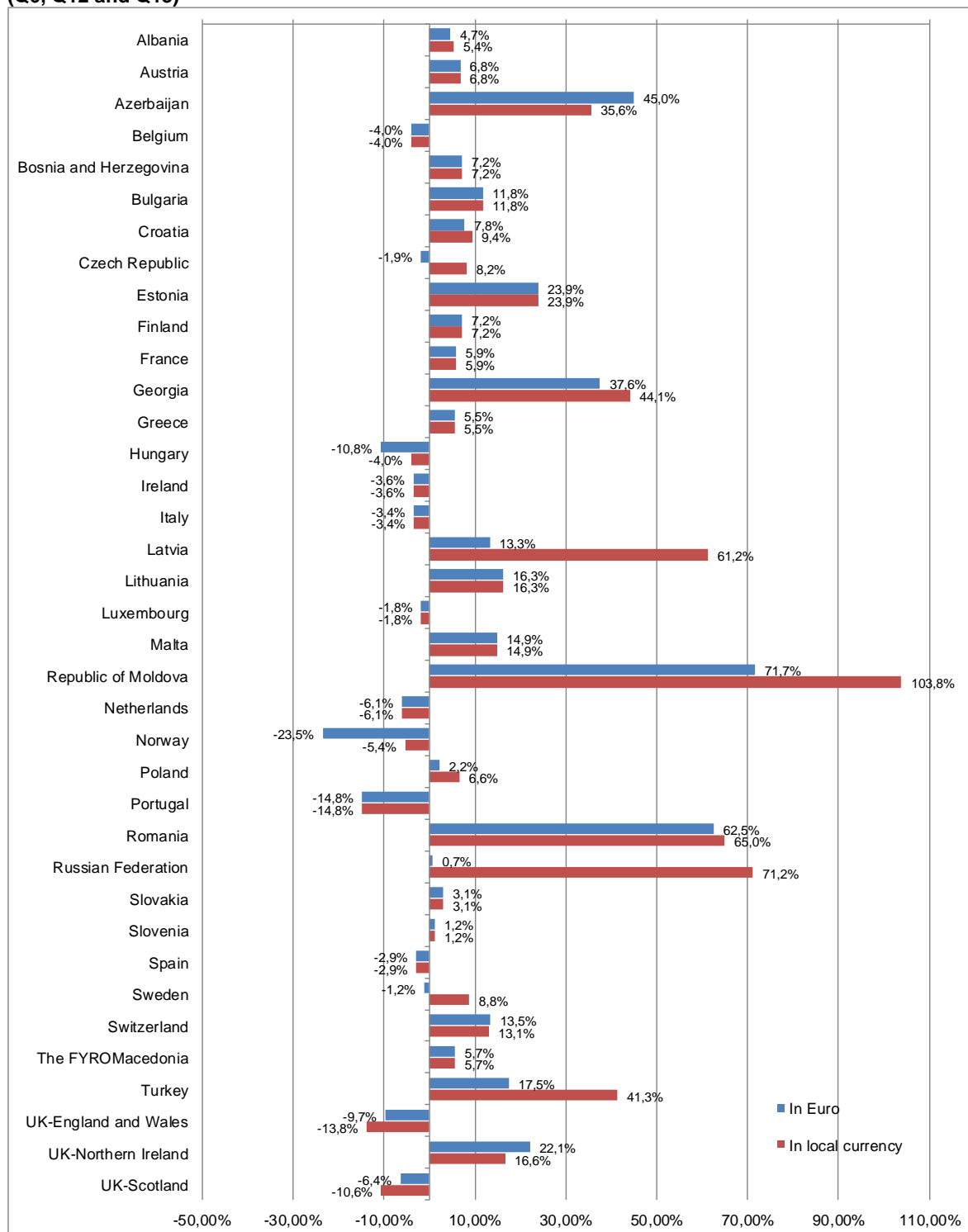
Finally, **Bosnia and Herzegovina**, **Bulgaria**, **Republic of Moldova**, **Montenegro**, **Poland**, **Romania**, **Slovenia**, **Ukraine** and **UK-Northern Ireland** are the States or entities whose investments are the most significant given their wealth. The budgetary efforts of these States or entities have already been highlighted in the previous evaluation cycles. It should be recalled that some states have benefited in recent years from significant assistance, in particular from the European Union and other international assistance for the operation of the rule of law (**Bosnia and Herzegovina**, **Bulgaria**, **Poland**, **Slovenia**).

Of course, if this linkage of budgets per capita allocated to the judicial systems with the wealth of the states leads to a more fine-tuned and more complex analysis than the analysis of raw data, it is however not sufficient to interpret in a fully accurate manner the budget data on judicial systems. The reality of the systems is even more complex. In order to avoid premature comparisons, the specificities of the judicial systems which may explain the variations from one state to another should also be taken into account. Organisational aspects, a particular way of functioning, different processes and a different legal tradition may help explain the discrepancies observed.

## 2.2.2 Evolution of the budget allocated to the judicial system

### 2.2.2.1 Evolution of the budget allocated to the judicial system between 2012 and 2014

Figure 2.8 Variation of budgets of judicial systems between 2012 and 2014 in € and local currency (Q6, Q12 and Q13)



The variation of the budget allocated to the judicial system between 2012 and 2014, expressed in euros, can be measured for 37 States or entities.

**Estonia**, the **Republic of Moldova** and **Spain** have changed their budget calculation mode for the latest evaluation exercise. Budget variations are to be considered carefully.

The disparities among States and entities are very strong : 24 states out of 37 have increased their budget between 2012 and 2014 : **Russian Federation** (+ 0,72%), **Slovenia** (+ 1,16 %), **Poland** (+2,23 %) , **Slovakia** (+ 3,07 %), **Albania** (+ 4,65 %), **Greece** (5,54 %), “**the former Yugoslav Republic of Macedonia**” (+ 5,67%), **France** (+ 5,85 %), **Austria** (+ 6,78 %), **Finland** (+ 7,19 %), **Bosnia and Herzegovina** (+ 7,19 %), **Croatia** (+ 7,8 %), **Bulgaria** (+ 11,76 %), **Latvia** (+ 13,30 %), **Switzerland** (+ 13.47%), **Malta** (+ 14.86%), **Lithuania** (+ 16,29 %), **Turkey** (17,47 %), **UK-Northern Ireland** (+ 22,11 %) , **Estonia** (+ 23,90 %) , **Georgia** (+ 37,58 %) , **Azerbaijan** (+ 44,95 %) , **Romania** (+ 62,49 %) , **Republic of Moldova** (+ 71,66 %).

By contrast, 9 out of 37 States or entities have reduced their budget: **Luxembourg** (- 1,84 %), **Spain** (- 2,88 %), **Italy** (- 3,40 %), **Ireland** (- 3,58 %), **UK-England and Wales** (- 4 %), **Netherlands** (- 6,08 %), **UK-Scotland** (- 6,44 %), **Hungary** (- 10,75 %), **Belgium** (- 11,78 %), **Portugal** (- 14,83 %) and **Norway** (- 23,51 %).

For states outside the Euro zone, these results must be tempered because of the variation in the exchange rates between national currencies and the Euro over the same period. Indeed, major variations in exchange rates can have a significant impact on the budgetary data expressed in euros.

Thus, the increase of the budget allocated to the judicial system is less significant for the States or entities whose currencies have appreciated against the Euro. This is particularly the case for **Azerbaijan** (+ 6,46 %), **UK-Northern Ireland** (+ 4,50 %) and to a lesser extent **Switzerland** (+ 0,36 %).

The decrease in the budget allocated to the judicial system in **UK-Scotland** and **UK-England and Wales** between 2012 and 2014 is amplified when taking into account the appreciation of the Pound Sterling during the period.

However, the growing budgetary efforts in favour of the judicial system are even more important than what appears in the table above, considering the negative variation in exchange rates between 2012 and 2014 in **Albania** (- 0,68 %), **Croatia\*** (- 1,47%), **Georgia** (- 4,74 %), **Republic of Moldova** (-18,75 %), **Poland** (- 4,26 %), **Romania** (- 1,51 %), **Russian Federation** (- 69,95 %) and **Turkey** (- 20,30 %).

In **Norway** and **Hungary**, the decrease in the budget is tempered by the decrease in the exchange rate between the national currency and the Euro (- 23,68 % and – 7,52 %, respectively). In the **Czech Republic** and **Sweden**, the depreciation of the exchange rate over the period (- 10,28 % and – 10,08 %, respectively) gives the illusion of a decrease in the budget allocated to the judicial system, while it has actually increased in local currency.

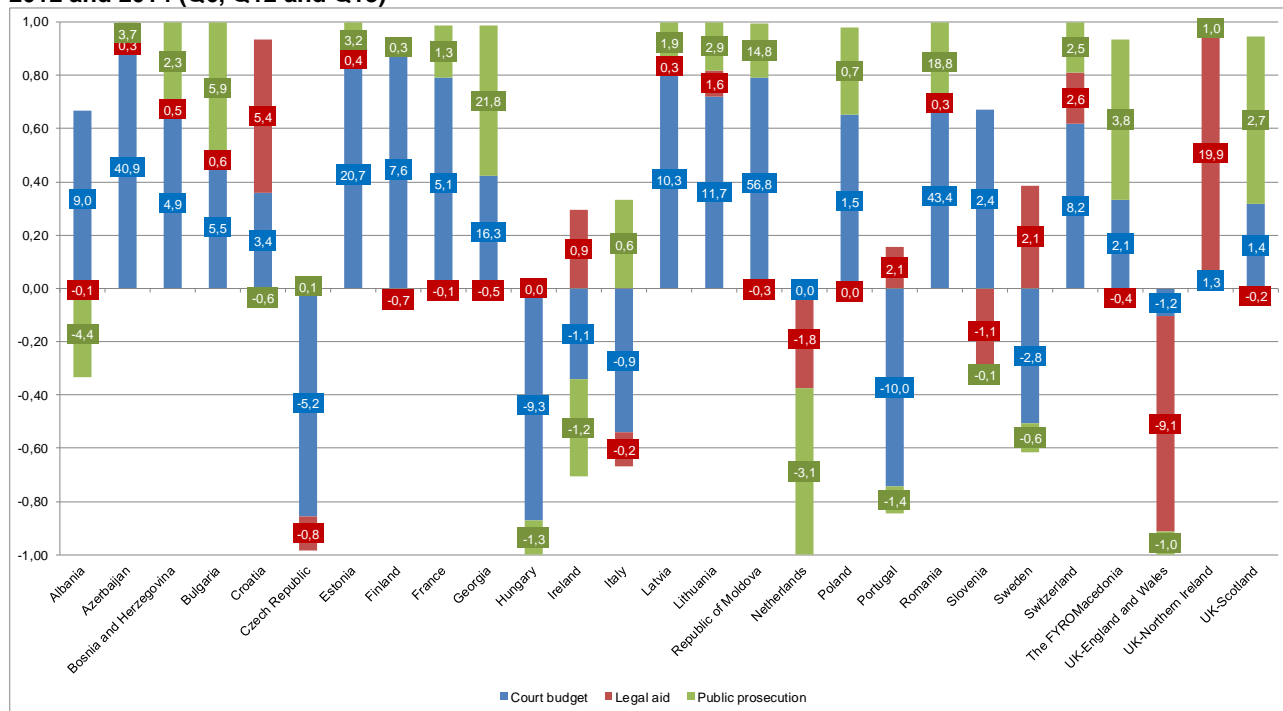
Some budget variations observed here must also be relativized in terms of inflation rates in the states over the period 2012-2014. For example, the high inflation rate experienced by the **Republic of Moldova** and the **Russian Federation** between 2012 and 2014 partially compensate for the decrease in the exchange rate over the same period. High inflation also cancels the budget increases in **Romania**, **Estonia** and **Finland**.

Budget cuts made by **Hungary** and **Norway** between 2012 and 2014 - when measured in real terms (that is to say taking into account the general increase in prices) - are amplified by high inflation rates.

**Note for the reader:** the term “inflation” refers to the widespread and sustainable increase in prices and salaries. To the extent that the budget of the judicial system corresponds to a total expenditure of goods and services, a budget increase can be attributed to 1) an increase in the use of goods and services or 2) an increase in the prices of these goods and services. Taking inflation into account regarding variations in the budget allocated to the judicial system can neutralize the price effect so as to better reflect the capacity of States or entities to devote more resources to their legal system. Thus, the actual budget variation is a better measurement of the efforts made.

In order to reflect the reasons of the evolution of the budget allocated to the judicial system in each state or entity the contributions of the courts budget, legal aid and prosecution services to the overall evolution of the budgets of the national judicial systems can be presented. These contributions have been measured for 27 States or entities.

**Figure 2.9 Proportion of the various components of the budgets of the judicial systems in the variation between 2012 and 2014 (Q6, Q12 and Q13)**



**Note for the reader:** the evolution of the budget allocated to the judicial system can be decomposed into the sum of the contributions of its various components: the court budget, the legal aid budget and the prosecution service budget. The contribution of a component to the evolution of the budget of the judicial system between 2012 and 2014 is equal to the product (multiplication) of the variation rate of this component between 2012 and 2014 and its weight in the budget of the judicial system in 2012. It should therefore be kept in mind that a component can have a significant impact on the evolution of the budget of the judicial system 1) because its weight in the budget of the judicial system is significant and/or 2) because its variations are significant.

In 12 States or entities which increased their budget allocated to the judicial system between 2012 and 2014, the three components of the judicial system (courts, prosecution and legal aid) increased (**Azerbaijan, Bulgaria, Estonia, Latvia, Lithuania, Malta, Republic of Moldova, Poland, Romania, Russian Federation, Switzerland and UK-Northern Ireland**).

However, the table above clarifies that the increase in the budget of the judicial system is mainly due to an increase in the budget allocated to the courts in **Azerbaijan, Estonia, Latvia, Lithuania, Malta, Republic of Moldova and Romania**. It is divided between an increase in the budget allocated to courts and an increase in the budget allocated to the prosecution in **Bulgaria, Poland and the Russian Federation**.

Additional efforts on legal aid also explain for an important part of the increase of the budget of the judicial system in **Switzerland**. In **UK-Northern Ireland**, budgetary efforts mainly focus on legal aid.

In **Finland** and **France**, the budgetary restrictions affecting legal aid are largely compensated by the increase in the court budget. In **Georgia** and **“the former Yugoslav Republic of Macedonia”**, they are compensated by an increase in the budget allocated to prosecution.

In **Spain**, the additional financial efforts regarding prosecution do not compensate for the noticeable decrease in the budget allocated to the courts. The decrease in the budget of the judicial system in **UK-Scotland** is mainly due to budget cuts affecting the legal aid system, while efforts have been made as regards the functioning of the courts and the prosecution.

In **Albania** the budget of the judicial system continues to increase despite a significant decrease in the budget allocated to the prosecution. **Slovenia** increases its financial support for the functioning of the courts in spite of reduced budgets allocated to legal aid and prosecution.

5 states have chosen to reduce the budgets of the three components of the justice system - **Hungary, Ireland, Netherlands, Norway** and **Portugal** - with particular emphasis on the courts in **Hungary** and **Portugal** and on legal aid in **Norway**.

The following sections sets out the reasons for the variations of the various components by state or entity.

## 2.2.2.2 Evolution of the budget allocated to the judicial system between 2010 and 2014

Table 2.10 Evolution of the budgets of the judicial systems between 2010 and 2014, in absolute values (Q6, Q12 and Q13)

States/entities	Budget of the judicial system			Evolution
	2010	2012	2014	
Albania	19 476 006 €	25 573 987 €	26 764 295 €	
Andorra				
Armenia	16 076 398 €			
Austria	709 980 000 €	770 790 000 €	823 053 000 €	
Azerbaijan	80 667 565 €	107 058 274 €	155 184 273 €	
Belgium	934 837 000 €	998 125 000 €	958 368 000 €	
Bosnia and Herzegovina*	99 652 163 €	106 816 022 €	114 496 991 €	
Bulgaria	195 282 117 €	209 739 354 €	234 412 470 €	
Croatia*	252 830 027 €	198 808 412 €	214 245 721 €	
Cyprus		50 109 977 €		
Czech Republic*	458 305 311 €	479 600 709 €	470 508 165 €	
Denmark		421 337 784 €		
Estonia	38 915 167 €	42 819 672 €	53 052 326 €	
Finland	344 103 350 €	362 713 356 €	388 794 000 €	
France	3 935 548 101 €	4 014 305 137 €	4 249 220 442 €	
Georgia	24 628 865 €	25 980 182 €	35 742 630 €	
Germany	8 651 468 596 €	9 170 186 780 €		
Greece	623 500 911 €	450 970 924 €	475 976 539 €	
Hungary	362 127 276 €	452 447 662 €	403 794 297 €	
Ireland	280 011 000 €	230 777 000 €	222 504 000 €	
Italy*	4 427 485 116 €	4 575 001 196 €	4 418 309 125 €	
Latvia	53 676 350 €	65 953 173 €	74 726 905 €	
Lithuania	84 029 050 €	83 783 573 €	97 433 726 €	
Luxembourg	73 458 676 €	79 964 334 €	78 492 650 €	
Malta	12 914 000 €	13 405 486 €	15 397 603 €	
Republic of Moldova	13 203 006 €	16 671 277 €	28 617 298 €	
Monaco	5 387 800 €	5 947 556 €		
Montenegro	25 290 803 €		26 300 915 €	
Netherlands	2 090 383 000 €	2 200 997 500 €	2 067 208 000 €	
Norway	440 129 410 €	526 767 700 €	402 901 906 €	
Poland	1 700 843 570 €	1 827 573 567 €	1 868 303 395 €	
Portugal	700 486 047 €	629 660 262 €	536 304 306 €	
Romania	525 590 308 €	480 890 952 €	781 410 270 €	
Russian Federation	3 953 130 968 €	4 618 618 786 €	4 651 726 759 €	
Serbia				
Slovakia	204 912 226 €	214 796 609 €	221 391 346 €	
Slovenia	203 256 633 €	183 695 911 €	185 824 489 €	
Spain	4 202 016 219 €	4 187 102 620 €	4 066 718 895 €	
Sweden*	880 260 565 €	1 018 131 920 €	1 005 948 856 €	
Switzerland	1 314 140 122 €	1 589 359 782 €	1 803 386 843 €	
The FYROMacedonia		35 542 317 €	37 558 709 €	
Turkey	1 234 286 802 €	1 385 201 689 €	1 627 197 764 €	
Ukraine			405 287 184 €	
UK-England and Wales	4 458 810 000 €	5 824 650 441 €	5 257 469 184 €	
UK-Northern Ireland	222 934 000 €	216 503 000 €	264 381 036 €	
UK-Scotland		447 360 849 €	418 550 612 €	
Israel				
<b>Average</b>	<b>1 124 462 424 €</b>	<b>1 179 164 408 €</b>	<b>1 004 281 152 €</b>	
<b>Median</b>	<b>344 103 350 €</b>	<b>421 337 784 €</b>	<b>402 901 906 €</b>	
<b>Minimum</b>	<b>5 387 800 €</b>	<b>5 947 556 €</b>	<b>15 397 603 €</b>	
<b>Maximum</b>	<b>8 651 468 596 €</b>	<b>9 170 186 780 €</b>	<b>5 257 469 184 €</b>	

\*for these countries in 2014 the approved budget is not available and the implemented budget is presented



Over a longer period, it is possible to analyse the evolution of the budget allocated to the judicial system for 35 States or entities.

Compared to the previous period analysed by the CEPEJ (2010-2012), on average, European States have increased the budget of their judicial system much more significantly (+ 7,11 % in 2010-2012; + 8,58 % in 2012-2014). This very positive trend - which should be confirmed during the next evaluation exercise - seems to mark for most States and entities the end of the budget cuts imposed in recent years as a result of the economic and financial crisis.

It may be noted that for 7 States or entities, the trend changed positively between 2012 and 2014 compared to the previous evaluation (2010-2012). Budgets, which were reduced between 2010 and 2012, have increased between 2012 and 2014 in **Croatia, Greece, Lithuania, Montenegro, Romania, Slovenia** and **UK-Northern Ireland**.

It should be recalled that the previous evaluation highlighted budgetary restriction measures adopted relatively late by some of these states (especially **Croatia, Greece, Lithuania, Romania** and **Slovenia**).

**Greece** still mentions a tight control of expenditure by the Ministry of Finance given the economic situation. However the increase of its budget allocated to the judicial system can be noted. This feature can be explained primarily by major financial efforts accompanying the launch of a computerization project of the courts and by an increase in expenses relating to legal aid. **Lithuania** clearly reports a resumption of investments following the end of the economic and financial crisis. Since 2012-2013, the National Courts Administration is responsible for financing real estate projects, IT, training of personnel and enhancing courts' security. **Lithuania** receives financial support from **Norway** and **Switzerland** in relation to some of these undertakings. A budget increase in **Romania** is partly due to a sharp increase in legal costs following the implementation of the new Code of Criminal Procedure as from February 2014. A significant increase in expenses related to salaries is also linked to regularisations for court staff and prosecution and a growing number of posts filled (resulting in the payment of additional social contributions and more repayments related to transportation expenses, medical expenses, housing, etc.). **Romania** emphasizes the continuous commitment on the part of the state since 2008 to promote legal aid.

Some states which introduced budgetary restraint measures relatively soon after the crisis of 2007-2008 were already able to increase their budget during the period 2010-2012. The continuation of the budgetary catching-up between 2012 and 2014 in **Albania, Bosnia and Herzegovina, Estonia, Finland, Georgia, Latvia** and **Slovakia**, may be noted, which confirms the end of budgetary crisis implications for these states. If in **Estonia** the recent increase of the budget allocated to the judicial system is mainly explained by an increase in payroll (increase of salary, pensions of judges and number of judicial assistants), in **Finland** it is mainly due to an increase in legal costs (costs of translation and interpretation, compensation of witnesses), while in **Albania**, it is mainly explained by expenses related to installing IT systems in seven new administrative courts and by replacing IT systems in ten other courts. The financial efforts of **Latvia** (including through support from the European Union) cover all components of the judicial system. They target courts, through programmes of modernisation of computer equipment, strengthening the security of courts, or legal aid - through the development of a dedicated system – as well as the prosecution services.

The continued increase over the period (2010-2014) of the budgets allocated to the judicial system in **Austria, Azerbaijan, Bulgaria, France, Malta, Republic of Moldova, Poland, Russian Federation, Switzerland** and **Turkey** may also be emphasized (as well as in **Czech Republic** and **Sweden** after taking into account the depreciation of the exchange rate between 2012 and 2014). In **Azerbaijan** and **Republic of Moldova**, the overall increase in the budget allocated to the judicial system is mainly explained by the deployment of financial resources necessary for the implementation of plans for reform and modernisation of the justice sector. In **Republic of Moldova** this reform is supported financially by the European Union. Organizational changes may also explain the increase in the budget allocated to the judicial system. **Bulgaria** refers to a structural reform of the prosecution services, and **Austria** to mergers between courts involving accompanying reconstructions.

Budget cuts have been increased or extended in recent years in **Ireland, Portugal** and **Spain**. In these three states, budgetary restraint measures continue to adversely affect the resources allocated to the judicial system.

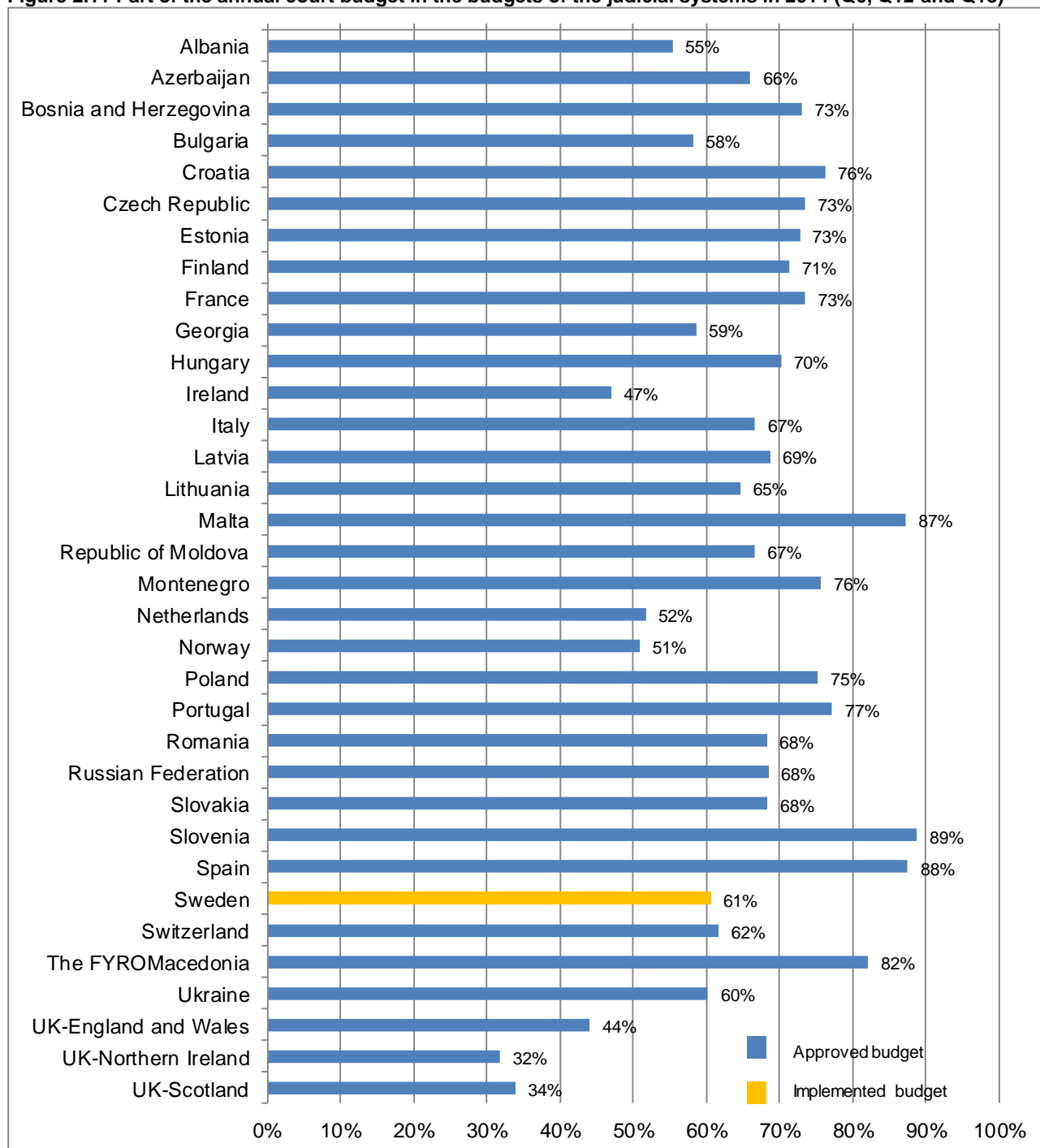
Finally, it may be noted that **Belgium, Hungary, Italy, Luxembourg**, the **Netherlands, Norway** and **UK-England and Wales**, which increased their budget between 2010 and 2012, decreased it between 2012 and 2014.

## 2.3 Budget allocated to courts

This section measures the efforts that each state or entity devotes to the activity of the courts alone (without legal aid and prosecution services). The analysis covers 39 States and entities. For **Serbia** and **Sweden**, budgetary data reported in the tables/graphs and commented upon in the text correspond to the implemented budgets (see above). The budgetary data for **Austria**, **Belgium**, **Cyprus**, **Greece**, **Luxembourg** and **Slovakia** have been excluded from the analysis because the budget allocated to courts cannot be distinguished from the budget allocated to legal aid and/or the budget allocated to prosecution in those states.

### 2.3.1 Part of the court budget in the budget of the judicial systems

Figure 2.11 Part of the annual court budget in the budgets of the judicial systems in 2014 (Q6, Q12 and Q13)



The figure above shows the budget contribution of the States and entities to the functioning of the courts in relation to the budget allocated to the judicial system as a whole (including legal aid and prosecution).

In some States or entities, the court budget comprises a very large share (about 70 % or more) of the budget allocated to the judicial system (**Estonia, Finland, France, Hungary, Latvia, Malta, Montenegro, Poland, Portugal, Spain, Slovenia, “the former Yugoslav Republic of Macedonia”**).

In other States or entities, on the contrary, the budget of the courts represents a more moderate share of the budget of the judicial system (around 50 % or less). This is the case mainly in Anglo-Saxon countries and Northern Europe: **Ireland, Norway, Netherlands, UK-Northern Ireland** and **UK-Scotland**.

These differences may reflect differences in the organisation of judicial systems, as the tasks of the courts may vary from country to country. In some states, courts may have tasks in land or trade registers (e.g. **Poland**), whereas in other states, these tasks can be entrusted to different specialised bodies (**the Netherlands** for example).

The small share of the budget of the judicial system allocated to courts in common law systems is explained by a relatively low number of professional judges. For the Northern European states, part of the explanation also lies in the fact that the society is less litigious but also because ADR<sup>10</sup> is better integrated into these systems than in the rest of Europe: Furthermore, part of the litigation is not addressed within the court system and entrusted to administrative bodies.

### **2.3.2 Annual public budget allocated to courts in 2014**

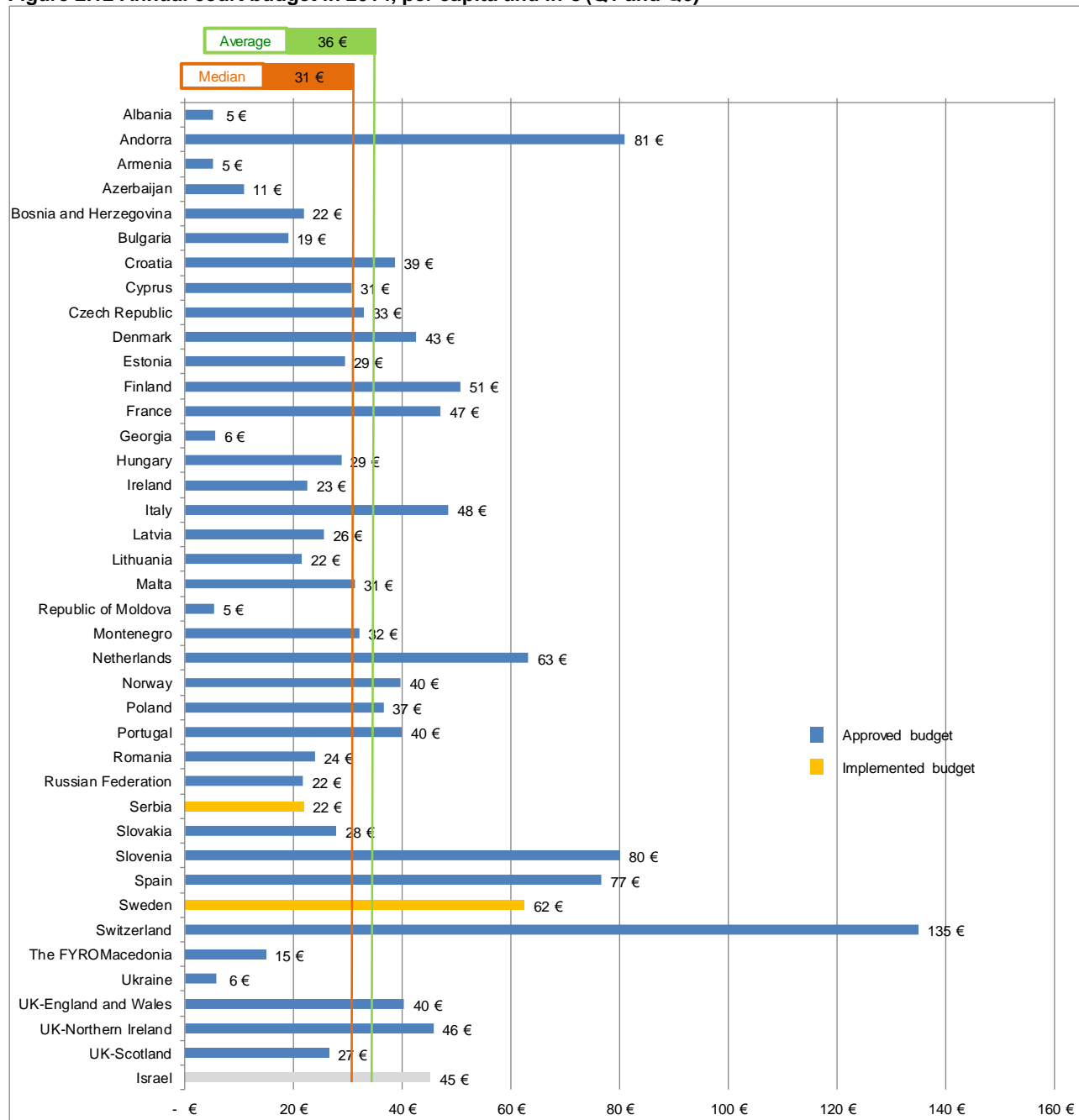
As is the case for the part devoted to the budget allocated to the judicial system, and in order to make meaningful comparisons between the States and entities, the budget allocated to courts in each state or entity is first compared to its population, and then to its wealth.

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<sup>10</sup> Alternative Dispute Resolution.

### 2.3.2.1 Court budget per capita in 2014

Figure 2.12 Annual court budget in 2014, per capita and in € (Q1 and Q6)



On average, European States spent 36 € per capita on the courts in 2014.

The States or entities of Northern and Western Europe (as well as **Slovenia** with 80 € per capita) allocate the largest budgets per capita to the courts: **Norway** (40 €), **Portugal** (40 €), **UK-England and Wales** (40 €), **Denmark** (43 €), **UK-Northern Ireland** (46 €), **France** (47 €), **Italy** (48 €), **Finland** (51 €), **Sweden** (62 €), **Netherlands** (63 €), **Slovenia** (80 €), **Andorra** (81 €), **Switzerland** (135 €).

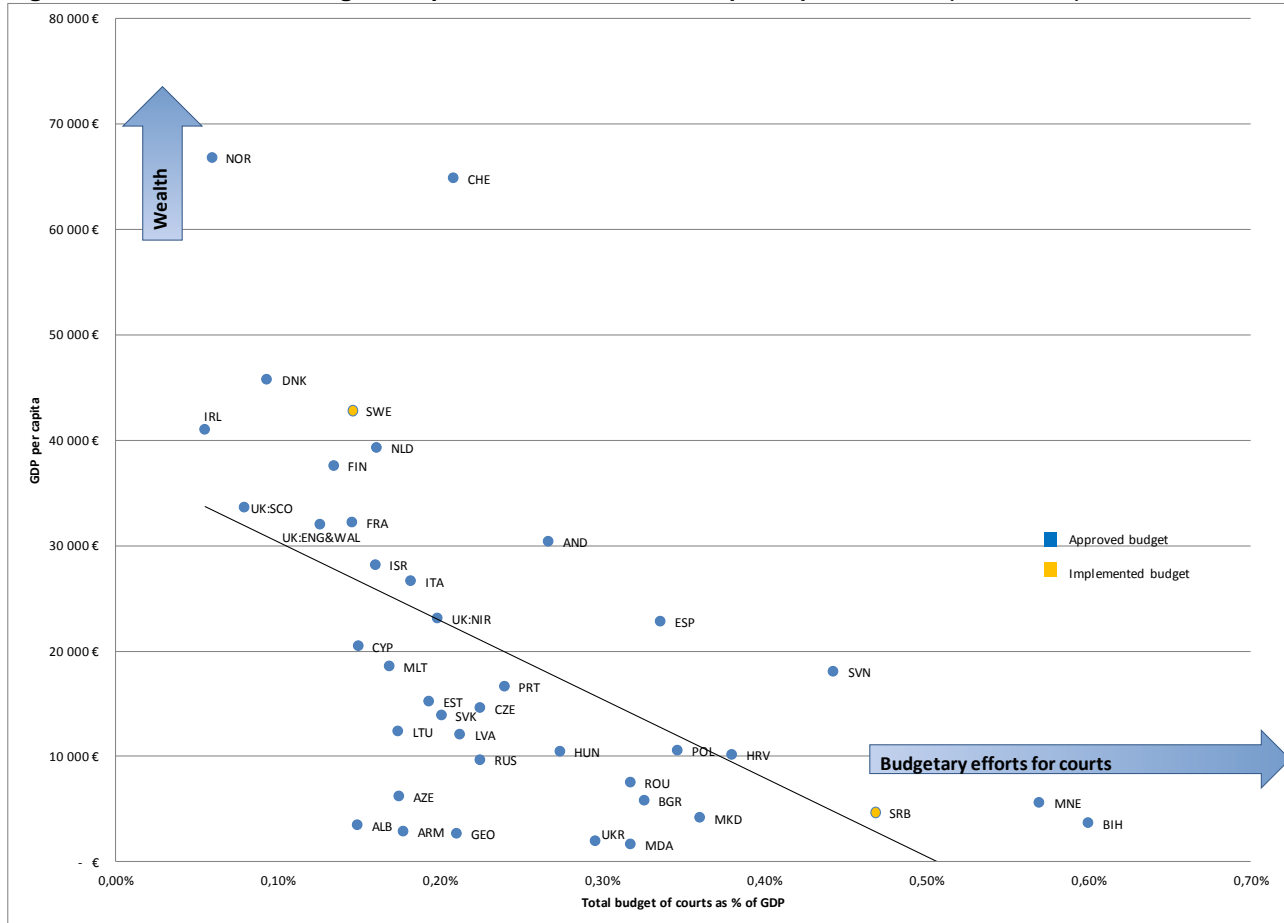
7 Eastern European states spend 15 € or less per capita on the courts: **Albania** (5 €), **Armenia** (5 €), **Republic of Moldova** (5 €), **Georgia** (6 €), **Ukraine** (6 €), **Azerbaijan** (11 €) and “**the former Yugoslav Republic of Macedonia**” (15 €).

The states of Central Europe, together with **UK-Scotland** (27 €) and **Ireland** (23 €), constitute a group of states whose budgets per capita allocated to the courts are of intermediate levels: **Bulgaria** (19 €), **Lithuania** (22 €), **Bosnia and Herzegovina** (22 €), **Serbia** (22 €), **Russian Federation** (22 €), **Romania** (24 €), **Lithuania** (26 €), **Hungary** (29 €), **Estonia** (29 €), **Malta** (31 €) **Montenegro** (32 €), **Czech Republic** (33 €), **Poland** (37 €), **Croatia** (39 €).

Of course, in order to better assess the budgetary efforts made by states towards their courts, the budget per capita should be compared to the wealth of the states (as measured by their GDP per capita).

### 2.3.2.2 Court budget per capita compared to the wealth of the States and entities in 2014

Figure 2.13 Annual court budget compared to the GDP in 2014, per capita and in € (Q1 and Q6)



**Note:** the states that have been supported in particular by the European Union and by international aid for the functioning of the rule of law, have automatically engaged, and in significant proportions, a part of their budget to their courts. Consequently, the Western European states with a higher level of national wealth appear to spend less (in GDP per capita) to finance the courts. This deforming effect should be borne in mind for possible comparisons, not to mistakenly feel that a rich state does not devote a significant effort to the functioning of its courts.

The figure above shows that **Bosnia and Herzegovina, Montenegro, Slovenia, Croatia, “the former Yugoslav Republic of Macedonia”** and **Poland** allocate a relatively large budget to their courts compared to their level of wealth. The budget per capita allocated to courts in **Slovenia** is about 2,5 times that of **Malta** whose level of wealth is similar.

Disparities in the budgets are strong within the group consisting of States or entities whose GDP per capita exceeds 30 000 € (**Andorra, UK-England and Wales, France, UK-Scotland, Finland, Netherlands, Ireland, Sweden, Denmark, Switzerland, Norway**). Within this group, the lowest budgets - **Ireland** and **UK-Scotland**, with less than 30 € per capita per year - are mainly due to the specificity of the common law systems.

Other states which allocate less than 30 € per capita to the courts have a GDP per capita less than or equal to the European median (about 15 000 €). These states are all located below the trend line, indicating a relatively large effort (sometimes supported by a European or international contribution) when considering their level of wealth.

### 2.3.3 Components of the budget allocated to courts and their evolution

In order to understand better the budgets allocated to the courts, the CEPEJ has examined the various components of these budgets, distinguishing different elements: the gross salaries of staff, information and communications technology (computers, software, investment and maintenance), judicial fees and costs (such as the remuneration of interpreters and experts), the costs of rent and operation of buildings, real estate investments and training.

Table 2.14 Annual budget of the courts per component in 2014 (Q1 and Q6)

States/entities	Total annual public budget of all courts* (Q6)	% of the total budget						
		Annual public budget for (gross) salaries	Annual public budget for computerisation	Annual public budget for justice expenses	Annual public budget for court buildings	Annual public budget for investments in new buildings	Annual public budget for training & education	Other
Albania	14 821 816 €	73,4%	2,3%	1,7%	1,9%	2,08%	0,1%	18,4%
Andorra	6 231 437 €	93,0%	1,0%	NA	5,6%	0%	0,4%	0,0%
Armenia	15 528 020 €	79,9%	NA	0,2%	0,1%	0%	NA	NA
Austria	NA	NA	NA	NA	NA	NA	NA	NA
Azerbaijan	102 485 992 €	38,8%	11,7%	NAP	3,5%	42,44%	3,6%	0,0%
Belgium	NA	NA	NA	NA	NA	NA	NA	NA
Bosnia and Herzegovina	83 657 645 €	84,3%	1,6%	0,3%	9,7%	0,53%	0,1%	4,3%
Bulgaria	136 407 333 €	81,0%	0,6%	1,0%	7,9%	NAP	0,0%	9,5%
Croatia	163 302 114 €	80,9%	3,6%	3,4%	4,7%	0%	0,4%	7,0%
Cyprus	26 287 423 €	82,3%	0,3%	8,4%	9,0%	0%	0,1%	NAP
Czech Republic	345 730 027 €	77,3%	0,4%	NAP	0,9%	0,11%	0,0%	21,3%
Denmark	240 945 242 €	60,9%	8,2%	5,2%	20,1%	0%	0,9%	4,7%
Estonia	38 589 501 €	78,4%	0,2%	2,5%	15,1%	0,08%	0,7%	3,0%
Finland	277 295 000 €	69,1%	5,7%	5,5%	12,7%	NAP	0,3%	6,3%
France	3 123 051 554 €	63,4%	1,3%	11,9%	6,5%	4,40%	2,9%	9,6%
Georgia	20 939 664 €	71,7%	0,7%	12,1%	5,9%	2,85%	3,4%	3,3%
Germany	NA	NA	NA	NA	NA	NA	NA	NA
Greece	NA	NA	NA	NA	NA	NA	NA	NA
Hungary	283 479 317 €	50,6%	2,0%	9,3%	2,4%	8,96%	NA	26,8%
Ireland	104 565 000 €	45,6%	3,7%	4,6%	12,5%	5,62%	0,4%	27,5%
Italy	2 945 513 378 €	78,3%	2,0%	11,1%	5,0%	0%	0,0%	3,5%
Latvia	51 305 248 €	70,1%	4,2%	5,2%	18,3%	NA	0,60%	1,6%
Lithuania	62 969 474 €	88,4%	1,3%	0,8%	2,7%	2,30%	0,3%	4,3%
Luxembourg	NA	NA	NA	NA	NA	NA	NA	NA
Malta	13 427 603 €	71,9%	0,1%	8,6%	11,8%	4,13%	0,0%	3,5%
Republic of Moldova	19 058 415 €	62,0%	1,5%	NAP	12,6%	15,17%	0,00%	8,8%
Monaco	NA	NA	NA	NA	NA	NA	NA	NA
Montenegro	19 908 315 €	72,5%	0,3%	12,9%	0,3%	0%	0,5%	13,5%
Netherlands	1 068 474 000 €	73,9%	7,1%	0,3%	11,6%	NAP	2,3%	4,7%
Norway	205 000 000 €	65,6%	6,3%	NAP	21,8%	NAP	1,3%	5,0%
Poland	1 405 850 000 €	66,4%	3,8%	11,4%	6,8%	2,39%	0,4%	8,9%
Portugal	414 114 841 €	83,8%	3,2%	0,1%	11,4%	NAP	1,5%	NAP
Romania	533 090 063 €	40,9%	0,2%	0,2%	5,7%	3,78%	0,0%	49,2%
Russian Federation	3 184 300 240 €	56,4%	4,6%	2,3%	5,9%	3,57%	0,3%	27,0%
Serbia	155 788 380 €	80,8%	0,8%	12,0%	4,4%	NAP	0,0%	6,5%
Slovakia	151 291 595 €	60,4%	1,8%	5,7%	7,1%	0%	0,8%	24,2%
Slovenia	164 850 383 €	70,9%	1,1%	20,4%	7,3%	0%	0,3%	NAP
Spain	3 558 656 779 €	66,0%	3,0%	3,0%	7,8%	1,39%	0,5%	18,3%
Sweden	609 190 589 €	72,0%	1,3%	NA	14,2%	NAP	1,0%	11,5%
Switzerland	1 111 423 623 €	69,3%	3,1%	9,3%	5,0%	NAP	0,4%	12,8%
The FYROMacedonia	30 833 675 €	81,7%	1,7%	3,7%	6,2%	0%	1,8%	4,9%
Turkey	NA	NA	NA	NA	NA	NA	NA	NA
Ukraine	244 189 579 €	82,2%	1,4%	0,01%	0,3%	0,07%	0,4%	15,7%
UK-England and Wales	2 316 791 217 €	54,3%	5,8%	4,15%	18,0%	0%	0,1%	17,6%
UK-Northern Ireland	84 124 036 €	37,2%	9,7%	28,4%	24,7%	0%	0,1%	NA
UK-Scotland	141 908 000 €	38,8%	5,6%	12,2%	25,4%	0%	0,4%	17,7%
Israel	375 113 449 €	66,0%	6,5%	4,0%	13,7%	3,2%	0,8%	5,8%
Average	601 932 731 €	69%	3%	7%	9%	3%	1%	12%
Median	155 788 380 €	72%	2%	5%	7%	0,1%	0,4%	9%
Minimum	6 231 437 €	37%	0,1%	0,01%	0%	0%	0,001%	0%
Maximum	3 558 656 779 €	93%	12%	28%	25%	42%	4%	49%

**Note:** for **Bosnia and Herzegovina**, **Finland** and **Serbia**, the data presented in this table are based on approved or implemented budgets according to their respective availability. This explains why the sum of the components led to a result greater than 100 % for **Serbia**.

The budget variations (in absolute value) presented in the table below correspond to each component of the budget of the courts between 2012 and 2014, with the clarification that the lower the quantitative data, the more significant the variations in percentage may be.

Table 2.15 Variations of the various components of the approved annual budget of the courts between 2012 and 2014 (Q6)

States/entities	Variation of the total budget of the courts 2012 - 2014	Variation as part of the total 2012 - 2014 (in %)							Other
		Annual public budget allocated to (gross) salaries	Annual public budget allocated to computerisation	Annual public budget allocated to justice expenses	Annual public budget allocated to court buildings	Annual public budget allocated to investments in new buildings	Annual public budget allocated to training & education		
Albania	18%	23%	45%	18%	70%	-52%	-16%	13%	
Andorra	3%	-2%	NA	NA	3388%	NAP	-10%	NAP	
Armenia	33%	37%	NA	0%	0%	NA	NA	NA	
Austria	NA	NA	NA	NA	NA	NA	NA	NA	
Azerbaijan	75%	70%	70%	NAP	13%	117%	26%	-100%	
Belgium	NA	NA	NA	NA	NA	NA	NA	NA	
Bosnia and Herzegovina	7%	7%	10%	-32%	14%	NAP	-16%	-6%	
Bulgaria	9%	38%	126%	NA	NA	NAP	-4%	-60%	
Croatia	4%	-11%	-4%	NA	850%	NA	27%	NA	
Cyprus	-14%	-5%	-44%	1775%	-5%	-100%	-72%	NAP	
Czech Republic	-7%	-3%	-79%	NAP	-67%	NAP	-75%	14%	
Denmark	-1%	-7%	22%	25%	11%	NA	0%	-18%	
Estonia	30%	34%	-89%	190%	17%	..	61%	30%	
Finland	11%	2%	24%	94%	2%	NAP	-3%	218%	
France	7%	8%	1%	-3%	1%	22%	32%	10%	
Georgia	25%	59%	-45%	12%	3%	-72%	58%	-26%	
Germany	NA	-5%	NA	6%	NA	NA	NA	NA	
Greece	NA	NA	NA	NA	NA	NA	NA	NA	
Hungary	-13%	-39%	365%	83%	-75%	230%	NA	94%	
Ireland	-2%	-4%	-32%	1%	-3%	-77%	-23%	260%	
Italy	-1%	-1%	-7%	1%	-19%	NA	-1%	10%	
Latvia	15%	10%	107%	3%	29%	NA	24%	10%	
Lithuania	19%	20%	103%	48%	3%	43%	-48%	-13%	
Luxembourg	NA	NA	NA	NA	NA	NA	NA	NA	
Malta	16%	15%	NA	-22%	NA	-31%	0%	NAP	
Republic of Moldova	99%	94%	73%	NAP	32%	..	-98%	13%	
Monaco	NA	NA	NA	NA	NA	NA	NA	NA	
Montenegro	3%	0%	-68%	-1%	0%	NAP	230%	NAP	
Netherlands	0%	0%	-11%	-7%	6%	NAP	-16%	23%	
Norway	-12%	-16%	37%	NAP	-28%	NAP	-31%	NAP	
Poland	2%	4%	-6%	1%	3%	-12%	86%	-6%	
Portugal	-13%	-12%	-45%	-95%	32%	NAP	-17%	NAP	
Romania	64%	17%	19%	818%	-12%	74%	-95%	198%	
Russian Federation	-5%	-7%	-4%	-2%	-4%	-38%	-40%	8%	
Serbia	-12%	-8%	NA	NAP	-56%	NAP	NAP	-60%	
Slovakia	-1%	6%	-23%	2%	-19%	..	-17%	-7%	
Slovenia	3%	0%	-54%	23%	1%	..	-25%	NAP	
Spain	-4%	783%	NA	NA	NA	NA	NA	NA	
Sweden	-4%	-2%	-47%	NA	-5%	NAP	-22%	-9%	
Switzerland	13%	7%	-11%	112%	-9%	NAP	29%	109%	
The FYROMacedonia	2%	3%	303%	-20%	-1%	-100%	0%	34%	
Turkey	NA	NA	NA	NA	NA	NA	NA	NA	
Ukraine	-40%	-18%	-96%	NA	NA	NA	NA	-50%	
UK-England and Wales	-3%	3%	166%	-1%	-1%	..	7%	-31%	
UK-Northern Ireland	3%	-34%	21%	367%	-6%	..	-69%	NA	
UK-Scotland	4%	13%	85%	109%	12%	-100%	-15%	-16%	
Israel	30%	26%	34%	64%	66%	-43%	122%	69%	
<b>Average</b>	9%	27%	27%	121%	119%	-7%	-4%	23%	
<b>Median</b>	3%	2%	-1%	3%	1%	-34%	-13%	9%	
<b>Minimum</b>	-40%	-39%	-96%	-95%	-75%	-100%	-98%	-100%	
<b>Maximum</b>	99%	783%	365%	1775%	3388%	230%	230%	260%	

### 2.3.3.1 Gross salaries of staff

Although there are big differences between the States and entities, the remuneration of staff (judges and non-judges) is the most important item of the court budgets: 69 % on average of the budgets allocated to the courts, with a maximum of 93% in **Andorra** and a minimum of 37 % in **UK-Northern Ireland**.

9 states devote 80 % or more of the court budget to the gross salaries of staff: **Andorra, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Lithuania, Portugal, “the former Yugoslav Republic of Macedonia”** and **Ukraine**.

For 5 States or entities, the share of the court budget allocated to salaries represents less than 50 %: **Azerbaijan, Ireland, Romania, UK-Northern Ireland** and **UK-Scotland**. **Ireland, UK-England and Wales, UK-Northern Ireland**, and **UK-Scotland** are the 4 States or entities where the number of judges per 100 000 inhabitants in 2014 is the lowest (3,30 in **UK-England and Wales**), 3,31 in **UK-Scotland**, 3,46 in **Ireland** and 3,75 in **UK-Northern Ireland**). The 3 entities of the **United Kingdom** and **Ireland** are, together with **Norway**, the States or entities that best remunerate judges (in absolute values and in terms of gross salaries) both at the beginning and at the end of their career, as a consequence of appointment of professional judges from among the most experienced and renowned lawyers.

In **Armenia** and **Azerbaijan**, the low share of salaries of the total budget allocated to the courts must be tempered by the fact that other categories have temporarily absorbed most of the budget increases from which courts have benefited in 2014. Thus, in **Azerbaijan**, 42 % of the court budget was spent on investment in new buildings in order to pursue the modernisation plan of justice and to improve access to the courts. In **Romania**, the category "others", bringing together nearly half of the court budget, actually includes many salary-related expenses that could not be directly allocated to the category "gross salaries of staff".

The increase in the budget allocated to gross salaries between 2012 and 2014 is 20 % or more in **Albania** (+ 23 %), **Armenia** (+ 37 %), **Azerbaijan** (+ 70 %), **Bulgaria** (+ 38 %), **Estonia** (+ 34 %), **Georgia** (+ 59 %), **Lithuania** (+ 20 %), **Republic of Moldova** (+ 94 %) and **Israel** (+ 26 %). These budget increases are generally explained by the increased level of salaries (**Azerbaijan, Georgia, Republic of Moldova**) or social contributions (**Bulgaria**).

Conversely, some states have cut their budget allocated to salaries for the period (**Czech Republic, Norway, Russian Federation** and **Ukraine** cannot be counted here because the trend is biased by the exchange rate), but the observation holds for **Andorra** (- 2 %), **Croatia** (- 11 %), **Cyprus** (- 5 %), **Denmark** (- 7 %), **Germany** (- 5 %), **Hungary** (- 39 %), **Ireland** (- 4 %), **Italy** (- 1 %), **Portugal** (- 12 %), **Serbia** (- 8 %), **UK-Northern Ireland** (- 34 %). In **Andorra, Croatia, Cyprus, Denmark, Germany, Serbia** and **UK-Northern Ireland** these budget cuts between 2012 and 2014 go hand in hand with a decrease in the number of judges during the same period.

### 2.3.3.2 Computerisation<sup>11</sup>

On average, the States or entities spend 3 % of the court budget on equipment in the field of new information and communication technologies.

15 States or entities investing in IT tools are above average (more than 3 % of the courts budget): **Azerbaijan** (12 %), **Croatia** (4 %), **Denmark** (8 %), **Ireland** (4%), **Latvia** (4 %), the **Netherlands** (7%), **Norway** (6 %), **Poland** (4 %), **Portugal** (3,2 %), **Russian Federation** (5 %), **Turkey** (4 %), **UK-England and Wales** (6 %), **UK-Northern Ireland** (10 %), **UK-Scotland** (6 %). The budgetary effort for court computerisation remains low (less than 1% of the courts budget) in 9 states: **Andorra, Bulgaria, Czech Republic, Estonia, Georgia, Malta, Montenegro, Romania**.

9 States or entities have invested massively in court computerisation between 2012 and 2014 (the budget increased by more than half): **Azerbaijan** (+ 70 %), **Bulgaria** (+ 126 %), **Hungary** (+ 365 %), **Latvia** (+ 107 %), **Lithuania** (+ 103 %), **Republic of Moldova** (+ 73 %), **“the former Yugoslav Republic of Macedonia”** (+ 303 %), **UK-England and Wales** (+ 166 %) and **UK-Scotland** (+ 85 %).

Most of these States or entities have indicated that court computerisation is a budgetary priority (**Latvia, UK-Scotland**) and/or they have launched specific programmes of modernisation of courts (**Azerbaijan, Bulgaria, Lithuania, Republic of Moldova**) sometimes partly financed by European funds (**Hungary, Lithuania**) or international funds (**“the former Yugoslav Republic of Macedonia”**).

<sup>11</sup> See in particular the thematic report: “Use of information technology in courts” (CEPEJ(2016)2).

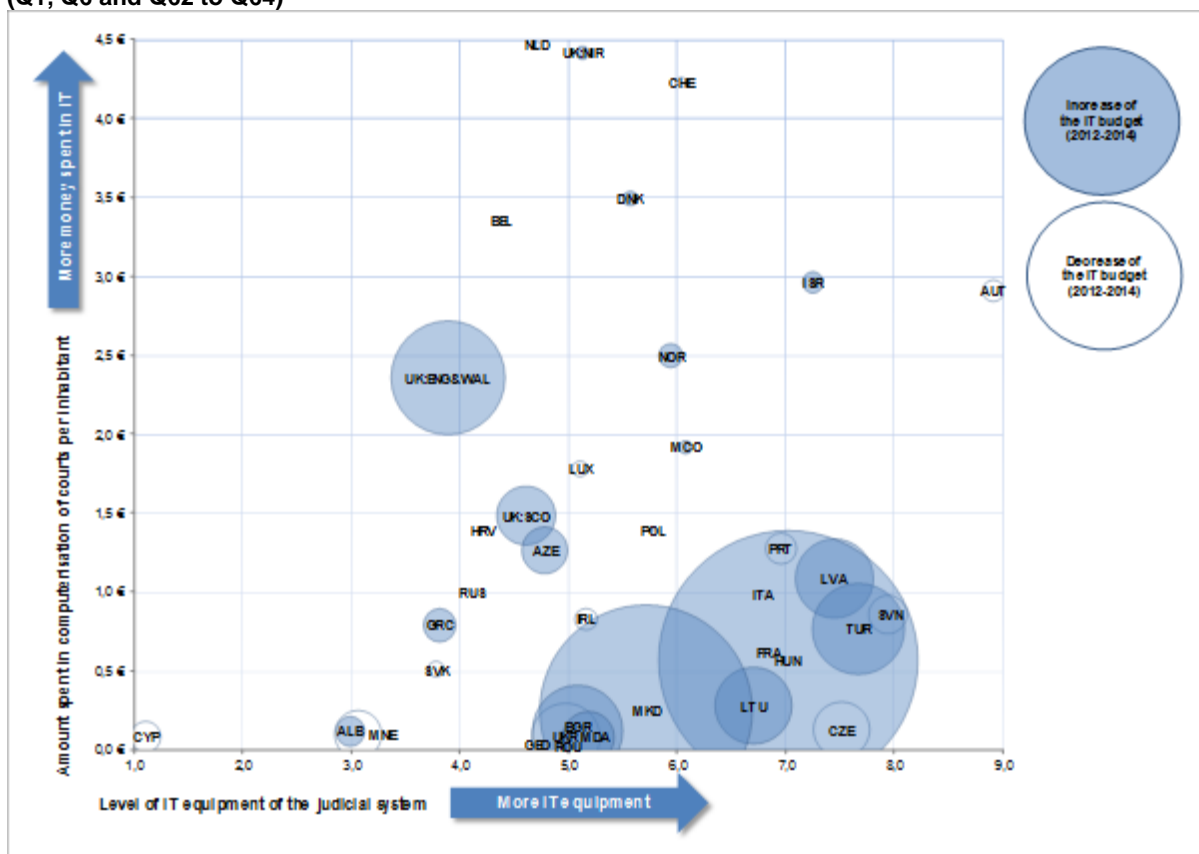


Conversely in **Croatia** (-4 %), **Russian Federation** (- 4 %), **Czech Republic** (- 79 %), **Estonia** (- 89 %), **Georgia** (- 45 %), **Ireland** (- 32 %), **Italy** (- 7%), **Montenegro** (- 68 %), **Netherlands** (- 11 %), **Poland** (- 6 %), **Portugal** (- 45 %), **Slovenia** (- 54 %), **Switzerland** (- 11 %) and **Ukraine** (- 96 %), the budget allocated to courts computerisation has decreased between 2012 and 2014. The small decrease of the computerisation budget of the Russian Federation is actually a large increase in local currency due to inflation.

Investments in budgets allocated to computerisation are made in the framework of programmes with several phases. These data must therefore be analysed over the medium term. In most of these states, the interpretation of budget cuts must be tempered because they come after more or less significant investments made during the previous period (the comments made by the **Czech Republic** and **Montenegro** confirm this). It should also be recalled that the budget variations for the **Czech Republic** and **Ukraine** are to be tempered due to the sharp depreciation of the exchange rate of the local currency against the Euro over the period 2012-2014. Finally, **Slovenia** notes that the majority of its computer equipment projects for courts are financed by European funds not included in the budget provided, which may explain the significant reduction between 2012 and 2014.

Recent or past financial investments in court computerisation can explain the current level of equipment as shown in the figure below.

**Figure 2.16 Overall level of computer equipment compared to the budget of court computerisation in 2014 - approved budgets per capita between 2012 and 2014 / level of computer equipment 2014 (Q1, Q6 and Q62 to Q64)**



Two trends can be observed in this figure. First, for some States or entities, the budget allocated to computerisation decreased between 2012 and 2014, meaning that the financial investments were made before 2012. Second, for States or entities whose budget increased over this period the fact that investments are still ongoing is reflected in the data.

The figure confirms the notion that the states for which a reduction in the budget allocated to information technologies for the courts can be observed during the period 2012-2014 can now ease their budgetary effort while relying on a good level of equipment. Among the states whose budget allocated to computerisation decreased in 2012-2014, 5 have an equipment rate above the European median of 5,46: **Italy, Poland, Portugal, Czech Republic and Slovenia.**

The states having strongly increased the budget allocated to the courts between 2012 and 2014 have, for their part, almost all acquired a level of equipment higher than the median despite a spending per capita that remains lower than, or close to, 1 € (**Hungary**, “**the former Yugoslav Republic of Macedonia**”, **Bulgaria**, **Latvia**, **Lithuania**, **Republic of Moldova**, **Turkey**).

The case of **UK-England and Wales** is special. Its level of computerisation appears relatively low (below the EU median) despite a significant financial effort made between 2012 and 2014, combined with a relatively high level of budget per capita allocated to computerisation. The CEPEJ will be attentive to the evolution of the equipment rate of this entity during the next evaluation cycles in order to determine the impact of the current investments.

### 2.3.3.3 Justice expenses

Justice expenses refer to the amounts that the courts should pay out within the framework of judicial proceedings, such as expenses paid for expert opinions or court interpreters. Any expenses to be paid by the parties (court fees and taxes) or aimed at legal aid are not indicated.

On average, justice expenses represent 7 % of the budget allocated to the courts in 2014<sup>12</sup>.

Depending on the organisation of the judicial system or of the proceedings, justice expenses can represent 20 % or more of the budget of the courts - as in **Slovenia** or in **UK-Northern Ireland** - or an almost negligible part - as in **Armenia** (0,2 %), **Netherlands** (0,3 %), **Portugal** (0,1 %), **Romania** (0,2 %) and **Ukraine** (0,01 %)

Differences in the organisation of the judicial system and of the proceedings explain in particular these disparities. It may be added that if some states account the expenses related to postal services or telephony services in this category (e.g. **Croatia**), others account them in the category "other" (e.g. **Albania** or **Lithuania**), which may also explain the disparities between states.

In some States or entities, the increase in justice expenses is very significant between 2012 and 2014: **Estonia** (+ 190 %), **Hungary** (+ 83 %), **Romania** (+ 818 %), **Switzerland** (+ 112 %), **UK-Northern Ireland** (+ 367 %), **UK-Scotland** (+ 109 %). A less significant increase is also noted in **Lithuania** (+ 48 %), **Denmark** (+ 25 %), **Slovenia** (+ 23 %). The causes of these increases appear much diversified if one refers to the comments of the states.

**Romania** explains this sharp rise by the implementation in February 2014 of the new Code of Criminal Procedure which requires that each defendant receive a copy of his or her indictment, if necessary translated by interpreters. These new provisions generate additional legal costs. In **UK-Scotland**, the increase in the justice expenses could be related to the merger of the Scottish Court Service and Scottish Tribunals. **Lithuania** mentions an additional budget paid to the courts and an additional allocation of 103 000 € in favour of the National Courts Administration in order to cover debts related to judicial expertise. In **Hungary**, due to a change in methodology for the presentation of data, some expenses which were previously included in the category "other" are now included in the category "justice expenses", which explains the variation observed. Finally, in **Estonia**, the sharp increase in justice expenses between 2012 and 2014 is mainly due to an increase in the translation costs linked to the influx of new asylum claims and other costs of proceedings. The extreme variation in **Cyprus** is due to different presentation of data in 2014.

**Russian Federation** decrease of – 2 % should not be considered as a reduction of the justice expenses due to the inflation and depreciation of Russian Ruble.

4 states have on the contrary reduced significantly their justice expenses between 2012 and 2014: **Bosnia and Herzegovina** (-32 %), **Malta** (- 22 %), **Portugal** (- 95 %), and “**the former Yugoslav Republic of Macedonia**” (-20 %). No particular reason is set forth by these states to explain the decreases.

### 2.3.3.4 Buildings

Expenses related to maintenance and the functioning of court buildings - rent, electricity, security, cleaning, maintenance etc. – represent on average 9 % of the court budget. Their share of the court budget is relatively high in **Denmark** (20 %), **Latvia** (18 %), **Norway** (22 %), **UK-England and Wales** (18 %), **UK-Northern Ireland** (25 %) and **UK-Scotland** (25 %). On the contrary, building maintenance is not a heavy

<sup>12</sup> The issue on the budget allocated to justice expenses is not relevant in **Azerbaijan**, **Czech Republic**, **Republic of Moldova** and **Norway**.

budgetary item for the courts (less than 2 % of the court budget) in **Albania, Armenia, Czech Republic, Montenegro** and **Ukraine**.

Variations during the period 2012-2014 concerning the budget allocated to the buildings are very heterogeneous in Europe.

Substantial increases (over 20 %) were noted in **Albania** (+ 70 %), **Republic of Moldova** (32 %), **Portugal** (+ 32 %), **Latvia** (+ 29 %). These budget increases often accompany a justice reform requiring a reorganisation/renovation of the courts. This is the case for example in **Azerbaijan** and **Republic of Moldova**. In **Latvia**, the increase is due to the fact that additional funds were allocated to the courts in 2014 to pay the rent of several courts. Furthermore, additional costs of caretaking have been incurred by strengthening security of buildings and staff.

The states that have significantly decreased the budget allocated to buildings between 2012 and 2014 are **Hungary** (- 75 %), **Czech Republic** (- 67 %), **Serbia** (- 56 %) and **Norway** (- 28 %). It should be stressed that reductions observed in these 4 states should be tempered due to the sharp fall in the exchange rate between 2012 and 2014.

### 2.3.3.5 Investments in court buildings

The share of the court budget allocated to the investment in buildings could be calculated for 28 States or entities.

14 States or entities have made no real investment in court buildings in 2014: **Andorra, Armenia, Croatia, Cyprus, Denmark, Italy, Montenegro, Serbia, Slovakia, Slovenia, “the former Yugoslav Republic of Macedonia”** and the 3 entities from the **United Kingdom**. In the **Czech Republic, Estonia** and **Ukraine**, the investment is a small portion of the budget of the courts (less than 0,2 %). **Denmark** states that the budget allocated to investment in new buildings is part of the overall budget allocated to buildings.

A special budgetary effort can be observed in **Azerbaijan** where investment in new buildings represents 42 % of the budget allocated to the courts and accompanies a justice modernisation program designed in particular to facilitate access to justice.

The share of the court budget devoted to investment is also significant (over 5 % of the court budget) in **Republic of Moldova** (15 %), **Hungary** (9 %) and **Ireland** (6 %).

The 2012-2014 variation of the budget for the construction of new buildings can only be measured for 15 States or entities.

Among these states, 8 have reduced their budget allocated to the investment in buildings: **Cyprus** (- 100 %), **“the former Yugoslav Republic of Macedonia”** (- 100 %), **UK-Scotland** (- 100 %), **Ireland** (- 77 %), **Georgia** (-72 %), **Albania** (-52 %), **Russian Federation** (- 38 %), **Malta** (- 31 %) and **Poland** (- 12 %). 6 have increased this budget: **France** (+ 22 %), **Lithuania** ( + 43 %), **Romania** (+ 74 %), **Azerbaijan** (+ 117 %) and **Hungary** (+ 230 %). **Cyprus, “the former Yugoslav Republic of Macedonia”** and **UK-Scotland**, which reduced their budgets by half, provide no details on the reasons for this decrease.

In **Albania**, the significant slowdown in investment in buildings is linked to a reduction in the total budget for investment in 2014 compared to 2012. **Ireland** explains the decrease in its budget by global austerity measures specifically affecting capital investments. The significant decline in **Malta** can be explained by the fact that the bulk of investment needed for the operationalization of a new building of justice was made in the previous year, although the construction work took place in 2013.

Regarding budget increases, as already mentioned, **Azerbaijan** is overseeing a programme of construction of modern courts and judicial complexes in order to improve access to justice, which explains the acceleration of expenditures between 2012 and 2014. Similarly, a real estate investment programme launched by **Lithuania** explains a strong budget increase between 2012 and 2014. In **Hungary**, significant amounts were spent on the construction of new court houses, explaining the increase of 230 % in the budget allocated to investment in buildings. For similar reasons, the budget increased by 41 % in **Turkey**.

In the case of **Sweden**, this category is not relevant because all Swedish court houses are leased.

### 2.3.3.6 Training of judges and prosecutors

As for the previous cycles, the share of the court budget allocated to judicial training is less than 1 % in 2014. It remains very low (less than 0,1 %) in **Albania, Bulgaria, Czech Republic, Italy, Malta, Republic of Moldova, Romania, UK-England and Wales** and **UK-Northern Ireland**. It can be considered as relatively high (over 2 %) in **Azerbaijan, France, Georgia** and the **Netherlands**. This share in Bulgaria and Lithuania does not reflect the actual budget allocated for training of judges and prosecutors that is provided by the National Institute of Justice and included in separate budget as defined in CEPEJ methodology.

Some states affirm their readiness to accord a high budgetary priority to judicial training. This explains the substantial increases in the budget allocated to training between 2012 and 2014 noted in **Azerbaijan** (+ 26 %), **Estonia** (+ 61 %) and **Georgia** (58 %). The consequential increase in the budget allocated to training in **Montenegro** (+ 230 %) is related to the allocation of additional resources to the functioning of the Judicial Training Centre in order to have an institution independent from the Supreme Court, which was the case as from 2015.

In total, an increase in the budget allocated to the training of judges and prosecutors can be noted in 11 States or entities (**Azerbaijan, Croatia, Estonia, France, Georgia, Latvia, Montenegro, Poland, Switzerland, Turkey, UK-England and Wales**).

By contrast, a decrease in the budget can be observed in 16 States or entities (**Albania, Andorra, Bulgaria, Czech Republic, Ireland, Italy, Lithuania, Republic of Moldova, Netherlands, Norway, Portugal, Romania, Russian Federation, Slovenia, UK-Northern Ireland, and UK-Scotland**). The decrease for **Lithuania** this cycle is only because the budget of the Training Centre of the National Courts Administration was excluded from the budget of the courts according to the CEPEJ definition.

**Lithuania** has specified that the budget declared in 2014 as allocated to training does not include the budget of the Judicial Training Centre. This information is to be considered to the extent that it can explain a 48 % decrease observed between 2012 and 2014.

Similarly, the budgetary decrease of 98 % observed in the **Republic of Moldova** may partly be explained by a change in data presentation: considering the fact that it is not possible to distinguish the public budget allocated to training or to the education of judges and court staff from the budget of the National Institute of Justice, only the amount of the annual public budget allocated to the judicial bodies for vocational training was included in the category "training" in 2014.

### 2.3.3.7 Other

An important part of the court budget (12 % or more) is allocated to other items than those mentioned above in **Ireland** (28 %), **Hungary** (27 %), **Russian Federation** (8 %), **Slovakia** (24 %), **Czech Republic** (21%), **Albania** (18 %), **Spain** (18%), **Ukraine** (16 %), **Montenegro** (14 %), **Switzerland** (13 %), **UK-England and Wales** (18 %), **UK-Scotland** (18 %). It has to be noted that **Romania** spends almost half of the budget allocated to the courts (49 %) in the category "other expenses" which includes a large part of the salaries.

In most states, this category corresponds to expenditures for supplies, transport, postal services, telephony services, insurance, medical costs, electricity, heating, and clothing. It may also include moving expenses (**Denmark**) or the retirement pensions of former judges of the Supreme Court (**Estonia**).

Disparities between states are mainly due to differences in categorisation of expenses. According to national accounting standards and systems, some expenses were included in the category "other expenses" although they are generally related to specific categories. For instance, "other expenses" may include some of the expenses related to training (**Hungary**) or staff remuneration (**Bulgaria**) or a part of the justice expenses (expert and translation costs) (**Russian Federation**).

Changes in categorisation from one cycle to another may also explain significant budgetary variations for this category within a country. For example, in **Bulgaria**, the 60 % decrease in the budget associated with this category is partly linked to the fact that the employer's social contributions are no longer attached to the category "other expenses" in 2014 whereas in 2012 they were.

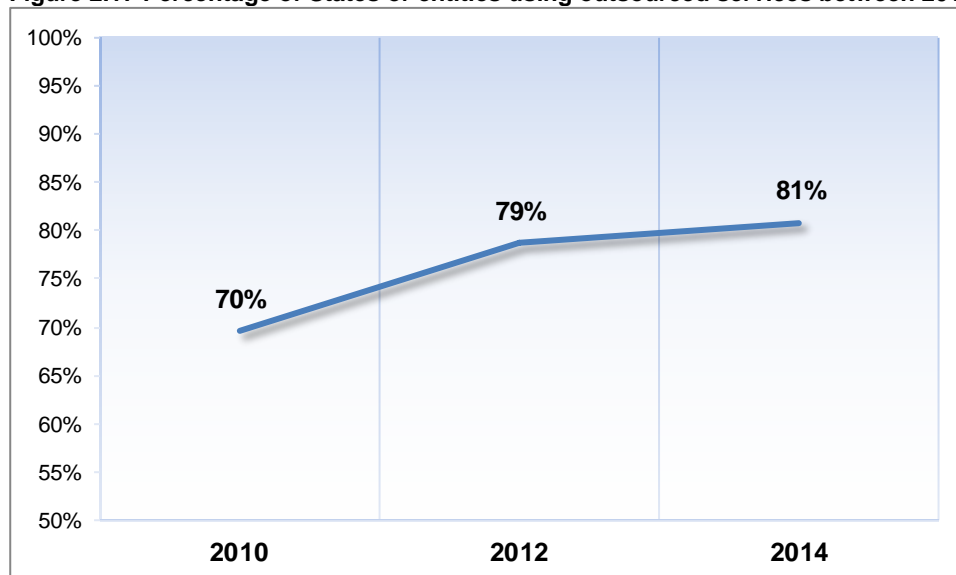
Finally, the very significant increase in the budget dedicated to the category "other expenses" in **Ireland** (+ 260 %) is explained by the fact that the construction, renovation and/or extension of the court houses have

since 2014 partially been done through public-private partnerships, the funding of which is included in the category "other expenses".

### 2.3.3.8 Outsourcing

Beyond the budget variations affecting the courts, there is a trend in respect of organisational changes which reflects a desire to rationalise budgets, going back to 2010. In particular, a propensity for the delegation of some services to the private sector can be noted, such as computer maintenance, continuous training of staff, security, archives, cleaning, etc., as shown by the figure below.

**Figure 2.17 Percentage of States or entities using outsourced services between 2010 and 2014 (Q54)**



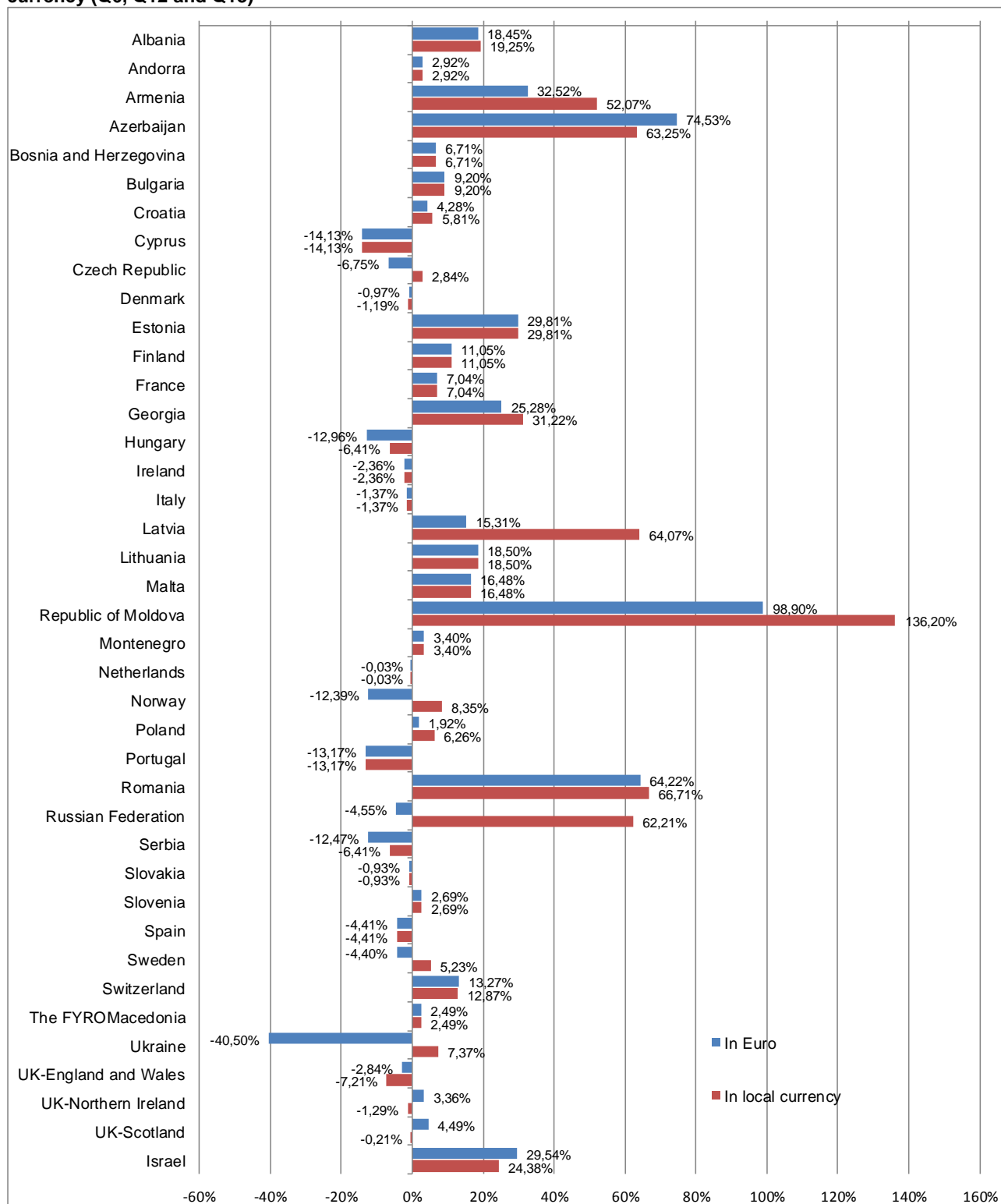
The reduction of non-judge staff between 2010 and 2014 in 17 states (out of 39 states for which the variation could be calculated) and a reduction in technical staff in 14 states (out of 25) could be partially explained by the introduction of outsourcing.

**Bosnia and Herzegovina** for example introduced outsourcing in 2014 and show a reduction in the number of technical staff over the period 2012-2014. However there is also the example of **Estonia** that reported not to have outsourced anymore and the number of technical staff is increasing.

## 2.3.4 Evolution of the budgets of the courts

### 2.3.4.1 Evolution of the court budgets between 2012 and 2014

Figure 2.18 Variation of the approved annual budget of the courts between 2012 and 2014, in € and in local currency (Q6, Q12 and Q13)



**Note:** for **Serbia** and **Sweden**, the variation concerns the budget implemented. For the other States or entities, the variation concerns the approved budgets.

The variation in the budget allocated to the courts between 2012 and 2014 can be measured for 40 States or entities. Tables 2.19 make it possible to understand how variations in the budgets allocated to the various components of the courts' budget have contributed to the evolution of the total courts' budget between 2012 and 2014. It should be recalled here that the contribution of a component to the evolution of the overall

budget of the courts (in percentage points) depends not only on its own variation but also of its weight within the overall budget.

**Table 2.19a Contribution of the various components of the approved budget allocated to the courts - variations between 2010 and 2012, in % points (Q6)**

States/entities	Variation of the total budget of the courts 2010 - 2012	Variation as part of the total 2010 - 2012 (in % points)							
		Annual public budget allocated to (gross) salaries	Annual public budget allocated to computerisation	Annual public budget allocated to justice expenses	Annual public budget allocated to court buildings	Annual public budget allocated to investments in new buildings	Annual public budget allocated to training & education	Other	
Albania	18,6%	5,6%	0,4%	-12,1%	0,8%	1,1%	-0,1%	NA	
Andorra	4,3%	3,6%	NA	0,5%	0,1%	NA	0,1%	NA	
Armenia	3,8%	2,7%	NA	0,0%	-3,6%	NA	-0,5%	6,3%	
Austria	NA	NA	NA	NA	NA	NA	NA	NA	
Azerbaijan	45,7%	2,1%	10,8%	NA	0,9%	26,9%	4,1%	0,9%	
Belgium	NA	NA	NA	NA	NA	NA	NA	NA	
Bosnia and Herzegovina	6,9%	6,8%	0,2%	0,0%	0,0%	NA	-0,1%	0,0%	
Bulgaria	11,3%	3,3%	0,0%	NA	NA	NA	0,0%	12,5%	
Croatia	-25,9%	1,9%	-2,6%	NA	-2,4%	NA	-0,5%	NA	
Cyprus	-8,7%	1,4%	0,0%	0,1%	-0,5%	-9,9%	0,0%	0,2%	
Czech Republic	7,0%	21,2%	-0,3%	1,0%	1,5%	NA	0,1%	-16,4%	
Denmark	12,2%	4,2%	-0,4%	NA	4,6%	NA	0,0%	-0,9%	
Estonia	10,9%	7,2%	2,0%	-1,9%	0,6%	NA	-0,1%	3,2%	
Finland	2,7%	1,5%	0,3%	-0,1%	1,2%	NA	NA	-0,5%	
France	2,0%	3,5%	0,1%	0,1%	-0,6%	-0,5%	0,3%	-1,0%	
Georgia	3,1%	-9,7%	0,9%	-10,2%	6,0%	12,5%	0,2%	3,6%	
Germany	6,6%	3,6%	0,1%	0,8%	-0,4%	0,0%	0,2%	2,2%	
Greece	NA	NA	NA	NA	NA	NA	NA	NA	
Hungary	25,5%	10,0%	-2,4%	-0,6%	0,5%	NA	0,0%	NA	
Ireland	-28,0%	-2,3%	0,1%	3,1%	-3,0%	-21,6%	-0,4%	-3,9%	
Italy	-2,1%	1,5%	0,2%	0,2%	-2,9%	NA	0,0%	-1,2%	
Latvia	20,5%	22,7%	-2,1%	-0,6%	1,6%	NA	0,1%	-1,2%	
Lithuania	5,1%	22,7%	-0,8%	0,2%	0,5%	NA	0,2%	-19,7%	
Luxembourg	NA	NA	NA	NA	NA	NA	NA	NA	
Malta	NA	NA	NA	NA	NA	NA	NA	NA	
Republic of Moldova	13,1%	11,1%	-5,8%	NA	12,0%	-8,4%	-2,1%	6,2%	
Monaco	NA	NA	NA	NA	NA	NA	NA	NA	
Montenegro	NA	NA	NA	NA	NA	NA	NA	NA	
Netherlands	7,6%	6,2%	-0,3%	0,0%	1,2%	NA	0,9%	-0,4%	
Norway	12,6%	13,6%	1,0%	NA	7,5%	-0,8%	0,7%	NA	
Poland	1,0%	0,2%	3,4%	0,8%	1,7%	-0,3%	0,0%	-4,8%	
Portugal	-9,8%	-6,3%	2,5%	-2,6%	-0,5%	NA	-2,9%	NA	
Romania	-8,6%	1,4%	0,0%	0,0%	0,3%	0,0%	0,9%	-11,2%	
Russian Federation	14,5%	2,0%	1,8%	2,1%	0,4%	-1,4%	0,3%	9,5%	
Serbia	60,3%	39,5%	NA	NA	6,3%	NA	NA	14,5%	
Slovakia	9,2%	-2,7%	1,0%	5,8%	3,2%	NA	0,1%	1,9%	
Slovenia	-9,9%	-5,3%	-0,1%	-6,0%	2,4%	-0,6%	-0,3%	NA	
Spain	NA	NA	NA	NA	NA	NA	NA	NA	
Sweden	NA	NA	NA	NA	NA	NA	NA	NA	
Switzerland	7,1%	1,4%	0,1%	-4,3%	0,2%	3,5%	0,0%	6,1%	
The FYROMacedonia	5,4%	1,5%	-0,1%	1,6%	0,7%	-0,6%	0,5%	0,8%	
Turkey	NA	NA	NA	NA	NA	NA	NA	NA	
Ukraine	NA	NA	NA	NA	NA	NA	NA	NA	
UK-England and Wales	101,7%	42,4%	1,8%	2,8%	15,7%	-0,1%	0,0%	39,2%	
UK-Northern Ireland	-2,1%	0,6%	-3,9%	3,2%	-1,8%	NA	-0,2%	NA	
UK-Scotland	-7,2%	-2,8%	-0,4%	-3,7%	-13,1%	NA	-0,3%	5,2%	
Israel	NA	NA	NA	NA	NA	NA	NA	NA	
<b>Average</b>	9,0%	6,2%	0,2%	-0,7%	1,2%	0,0%	0,0%	1,9%	
<b>Median</b>	6,6%	2,7%	0,1%	0,1%	0,5%	-0,4%	0,0%	0,8%	
<b>Minimum</b>	-28,0%	-9,7%	-5,8%	-12,1%	-13,1%	-21,6%	-2,9%	-19,7%	
<b>Maximum</b>	101,7%	42,4%	10,8%	5,8%	15,7%	26,9%	4,1%	39,2%	

**Table 2.19b Contribution of the various components of the approved budget allocated to the courts - variations between 2012 and 2014, in % points (Q6)**

States/entities	Variation of the total budget of the courts 2012 - 2014	Variation as part of the total 2012 - 2014 (in % points)						
		Annual public budget allocated to (gross) salaries	Annual public budget allocated to computerisation	Annual public budget allocated to justice expenses	Annual public budget allocated to court buildings	Annual public budget allocated to investments in new buildings	Annual public budget allocated to training & education	Other
Albania	18,5%	16,5%	0,8%	0,3%	0,9%	-2,6%	0,0%	2,6%
Andorra	2,9%	-1,7%	NA	NA	5,6%	NA	0,0%	NA
Armenia	32,5%	28,4%	NA	0,0%	0,0%	NA	NA	NA
Austria	NA	NA	NA	NA	NA	NA	NA	NA
Azerbaijan	74,5%	27,9%	8,4%	NA	0,7%	40,0%	1,3%	-3,6%
Belgium	NA	NA	NA	NA	NA	NA	NA	NA
Bosnia and Herzegovina	6,7%	6,0%	0,2%	-0,1%	1,3%	NA	0,0%	-0,3%
Bulgaria	9,2%	24,2%	0,4%	NA	NA	NA	0,0%	-15,8%
Croatia	4,3%	-10,9%	-0,2%	NA	4,4%	NA	0,1%	NA
Cyprus	-14,1%	-3,8%	-0,2%	6,8%	-0,4%	-9,8%	-0,2%	NA
Czech Republic	-6,7%	-1,9%	-1,3%	NA	-1,8%	NA	-0,1%	2,4%
Denmark	-1,0%	-4,5%	1,5%	1,0%	2,0%	NA	0,0%	-1,0%
Estonia	29,8%	25,9%	-2,4%	2,1%	2,9%	NA	0,4%	0,9%
Finland	11,0%	1,4%	1,2%	2,9%	0,3%	NA	0,0%	4,8%
France	7,0%	4,8%	0,0%	-0,3%	0,0%	0,9%	0,7%	0,9%
Georgia	25,3%	33,3%	-0,7%	1,7%	0,2%	-9,3%	1,6%	-1,5%
Germany	NA	-2,9%	NA	1,3%	NA	NA	NA	NA
Greece	NA	NA	NA	NA	NA	NA	NA	NA
Hungary	-13,0%	-28,3%	1,3%	3,7%	-6,3%	5,4%	NA	11,3%
Ireland	-2,4%	-1,7%	-1,6%	0,0%	-0,4%	-17,9%	-0,1%	19,4%
Italy	-1,4%	-0,5%	-0,2%	0,1%	-1,2%	NA	0,0%	0,3%
Latvia	15,3%	7,6%	2,5%	0,2%	4,7%	NA	0,1%	0,2%
Lithuania	18,5%	17,6%	0,8%	0,3%	0,1%	0,8%	-0,3%	-0,8%
Luxembourg	NA	NA	NA	NA	NA	NA	NA	NA
Malta	16,5%	10,6%	NA	-2,8%	NA	-2,1%	0,0%	NA
Republic of Moldova	98,9%	59,6%	1,2%	NA	6,1%	NA	-0,3%	2,1%
Monaco	NA	NA	NA	NA	NA	NA	NA	NA
Montenegro	3,4%	-0,2%	-0,6%	-0,2%	0,0%	NA	0,3%	NA
Netherlands	0,0%	-0,2%	-0,8%	0,0%	0,6%	NA	-0,5%	0,9%
Norway	-12,4%	-10,9%	1,5%	NA	-7,6%	NA	-0,5%	NA
Poland	1,9%	2,6%	-0,2%	0,1%	0,2%	-0,3%	0,2%	-0,6%
Portugal	-13,2%	-10,4%	-2,2%	-2,7%	2,4%	NA	-0,3%	NA
Romania	64,2%	9,9%	0,0%	0,3%	-1,3%	2,6%	-1,0%	53,7%
Russian Federation	-4,6%	-3,8%	-0,2%	0,0%	-0,2%	-2,1%	-0,2%	2,0%
Serbia	-12,5%	-6,4%	NA	NA	-4,9%	NA	NA	-8,5%
Slovakia	-0,9%	3,2%	-0,5%	0,1%	-1,7%	NA	-0,2%	-1,9%
Slovenia	2,7%	0,1%	-1,3%	3,9%	0,1%	NA	-0,1%	NA
Spain	-4,4%	56,0%	NA	NA	NA	NA	NA	NA
Sweden	-4,4%	-1,2%	-1,1%	NA	-0,6%	NA	-0,3%	-1,1%
Switzerland	13,3%	5,0%	-0,5%	5,6%	-0,5%	NA	0,1%	7,6%
The FYROMacedonia	2,5%	2,1%	1,3%	-0,9%	-0,1%	-0,2%	0,0%	1,3%
Turkey	NA	NA	NA	NA	NA	NA	NA	NA
Ukraine	-40,5%	-11,1%	-20,5%	NA	NA	NA	NA	-9,3%
UK-England and Wales	-2,8%	1,7%	3,5%	0,0%	-0,3%	NA	0,0%	-7,8%
UK-Northern Ireland	3,4%	-19,7%	1,7%	23,1%	-1,6%	NA	-0,1%	NA
UK-Scotland	4,5%	4,6%	2,7%	6,6%	2,8%	-8,5%	-0,1%	-3,6%
Israel	29,5%	17,8%	2,2%	2,0%	7,1%	-3,1%	0,6%	3,1%
<b>Average</b>	6,2%	0,2%	-0,7%	1,2%	0,0%	0,0%	1,9%	8,5%
<b>Median</b>	2,7%	0,1%	0,1%	0,5%	-0,4%	0,0%	0,8%	2,9%
<b>Minimum</b>	-9,7%	-5,8%	-12,1%	-13,1%	-21,6%	-2,9%	-19,7%	-40,5%
<b>Maximum</b>	42,4%	10,8%	5,8%	15,7%	26,9%	4,1%	39,2%	98,9%



15 States or entities have reduced their budget allocated to the courts between 2012 and 2014, 23 states have increased it. The budget increase in **Israel** is around 30 %. In 3 states, the variation in the budget allocated to the courts is negative when measured in Euros but positive when taking into account the sharp depreciation of the exchange rate during the period analysed (**Czech Republic, Norway, Russian Federation** and **Ukraine**). In 2 entities, on the contrary, the 2012-2014 variation is negative in local currency but positive in Euros given the appreciation of the currency against the euro (**UK-Northern Ireland** and **UK-Scotland**).

**Republic of Moldova** has almost doubled (99 % in total) its budget between 2012 and 2014. This is due in large part (60 % of 99 % total) to the increase in judges' salaries and in some categories of officials within the judiciary.

The investment in favour of courts between 2012 and 2014 is also significant in **Azerbaijan** (+ 74,53 %) and **Romania** (+ 64,22 %) and to a lesser extent in **Georgia** (+ 25,28 %), **Estonia** (+ 29,81 %) and **Armenia** (+ 32,52 %). The salary increases largely contribute to the budget increase recorded in the **Republic of Moldova, Estonia** and **Georgia** while investments in buildings constitute the main factor in **Azerbaijan**. In **Romania**, the increase in the category "other expenses" resulted in the increase of the budget of the courts.

Budget cuts are noteworthy in **Portugal** (-13,17 %) and **Hungary** (-12,96 %). They particularly affect gross salaries in these 2 states. In **Hungary**, they also affect the budget allocated to court buildings but are partially offset by increased budgets for computerisation of courts, justice expenses, investment in new buildings and for the category "other expenses", including in particular maintenance costs, unforeseen staff costs, and a portion of the expenses related to staff training.

The cases of the **Russian Federation** (- 4,6 %), **Czech Republic** (-6,75 %), **Norway** (-12,39 %) and **Ukraine** (-40,50 %) are particular since, despite the fact that the budgetary variations are negative in these states if considered in Euros, they appear as positive in local currencies due to the strong negative impact of the exchange rate.

Budget variations presented in the figure above should be tempered by taking into account the variations in exchange rates between the local currency and the Euro for countries outside the Euro zone. The appreciation of the currency in the **United-Kingdom** between 2012 and 2014 tempers the budgetary variations in **UK-Northern Ireland** (+ 3,36 %) and **UK-Scotland** (+ 4,49 %) which are actually negative, while the increasing budgetary efforts in the **Latvia** (+ 15,31 %), **Armenia** (+ 32,52 %) and **Republic of Moldova** (+ 98,90 %) are even more significant if we consider the negative variation in exchange rates during the same period.

As for the variations in the budgets allocated to judicial systems, these elements are also to be weighted by the rate of inflation observed by states over the same period.

As mentioned above, the decrease for **Ukraine** is only due to the depreciation of the exchange rate against the Euro in local currency; the real budget of **Ukraine** has increased.

### 2.3.4.2 Evolution of the public annual budget of the courts between 2010 and 2014

Table 2.20 Evolution of the approved annual budgets of the courts between 2010 and 2014, in absolute values (Q6)

States/entities	Approved budget for all courts			Evolution
	2010	2012	2014	
Albania	10 552 684 €	12 513 000 €	14 821 816 €	
Andorra	5 803 340 €	6 054 897 €	6 231 437 €	
Armenia	11 285 536 €	11 717 070 €	15 528 020 €	
Austria				
Azerbaijan	40 315 230 €	58 719 620 €	102 485 992 €	
Belgium				
Bosnia and Herzegovina	73 345 061 €	78 397 704 €	83 657 645 €	
Bulgaria	112 211 184 €	124 911 954 €	136 407 333 €	
Croatia	211 304 301 €	156 601 458 €	163 302 114 €	
Cyprus	33 546 827 €	30 611 480 €	26 287 423 €	
Czech Republic	346 497 809 €	370 751 152 €	345 730 027 €	
Denmark	216 795 693 €	243 294 736 €	240 945 242 €	
Estonia	26 797 340 €	29 728 350 €	38 589 501 €	
Finland	243 066 350 €	249 704 356 €	277 295 000 €	
France	2 859 480 770 €	2 917 700 110 €	3 123 051 554 €	
Georgia	16 214 854 €	16 714 717 €	20 939 664 €	
Germany	7 789 169 914 €	8 302 304 846 €		
Greece				
Hungary	259 501 133 €	325 687 695 €	283 479 317 €	
Ireland	148 722 000 €	107 090 000 €	104 565 000 €	
Italy	3 051 375 987 €	2 986 521 397 €	2 945 513 378 €	
Latvia	36 919 820 €	44 494 921 €	51 305 248 €	
Lithuania	50 567 945 €	53 138 612 €	62 969 474 €	
Luxembourg				
Malta	10 260 000 €	11 527 427 €	13 427 603 €	
Republic of Moldova	8 472 063 €	9 581 963 €	19 058 415 €	
Monaco				
Montenegro	19 943 898 €	19 252 931 €	19 908 315 €	
Netherlands	993 086 000 €	1 068 773 500 €	1 068 474 000 €	
Norway	207 841 410 €	234 000 000 €	205 000 000 €	
Poland	1 365 085 000 €	1 379 338 000 €	1 405 850 000 €	
Portugal	528 943 165 €	476 924 836 €	414 114 841 €	
Romania	355 246 737 €	324 611 610 €	533 090 063 €	
Russian Federation	2 912 743 823 €	3 336 134 801 €	3 184 300 240 €	
Serbia	111 016 635 €	177 981 291 €		
Slovakia	139 851 564 €	152 715 786 €	151 291 595 €	
Slovenia	178 158 919 €	160 526 569 €	164 850 383 €	
Spain		3 722 715 019 €	3 558 656 779 €	
Sweden	557 260 358 €	637 246 965 €		
Switzerland	916 146 809 €	981 206 021 €	1 111 423 623 €	
The FYROMacedonia	28 541 751 €	30 084 276 €	30 833 675 €	
Turkey				
Ukraine	228 667 631 €	410 373 391 €	244 189 579 €	
UK-England and Wales	1 182 000 000 €	2 384 439 794 €	2 316 791 217 €	
UK-Northern Ireland	83 154 000 €	81 393 000 €	84 124 036 €	
UK-Scotland	146 420 820 €	135 811 499 €	141 908 000 €	
Israel		289 565 906 €	375 113 449 €	
<b>Average</b>	654 264 471 €	796 532 419 €	613 794 528 €	
<b>Median</b>	148 722 000 €	158 564 014 €	151 291 595 €	
<b>Minimum</b>	5 803 340 €	6 054 897 €	6 231 437 €	
<b>Maximum</b>	7 789 169 914 €	8 302 304 846 €	3 558 656 779 €	

In general, one can note a trend towards the recovery of investment in favour of the courts in 2012-2014 after a period of severe budgetary restrictions as a result of the economic and financial crisis.

The trend observed over the 2010-2014 period is, however, not homogeneous between states. 4 states have increased their budgets allocated to courts during the 2012-2014 period, while they had decreased them in the previous period. This is the case for **Croatia, Montenegro, Romania and Slovenia**. It is also the case for **Armenia, Finland, Georgia, Lithuania, Republic of Moldova, Norway and Poland**. if one considers the adjusted budgetary evolutions following from the variations in exchange and/or inflation rates.

One should also note that between 2012 and 2014, Eastern and South-Eastern Europe states continued their efforts initiated in 2010-2012 after a previous period of budget cuts: **Albania, Estonia, Latvia, Bulgaria and Bosnia-Herzegovina**.

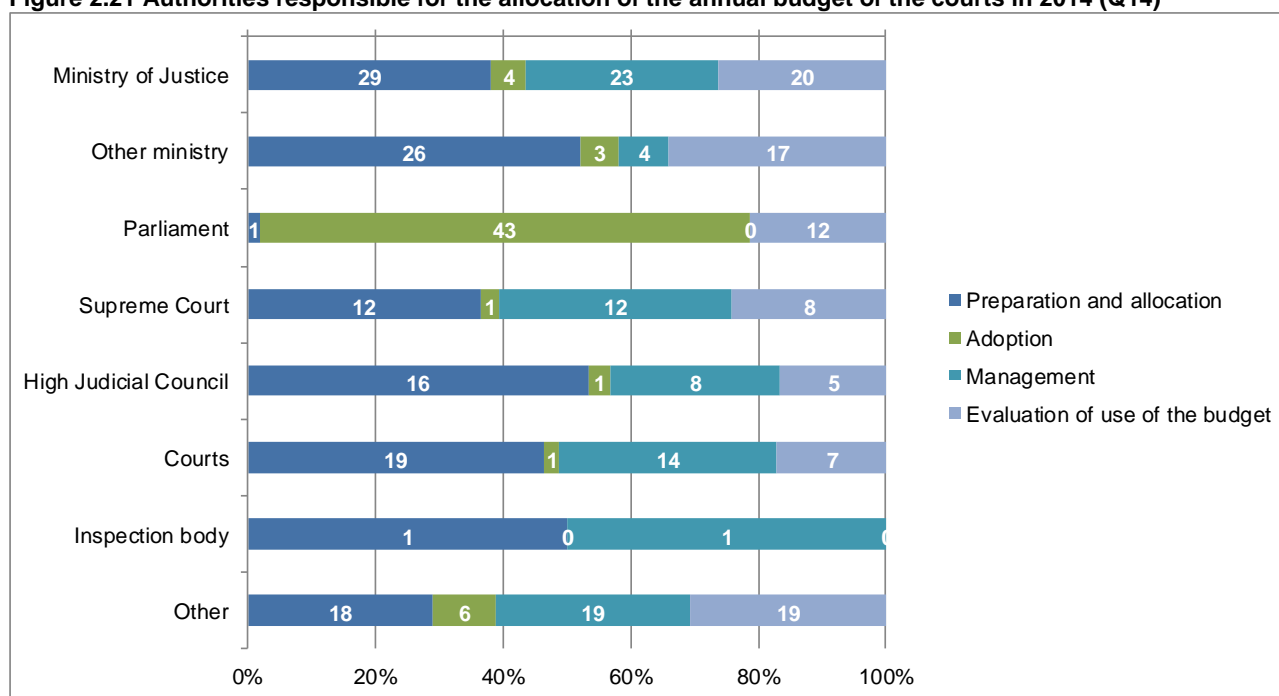
The trend also remains positive over the 2010-2014 period for **Andorra, Azerbaijan, France, Malta and Switzerland** (and the **Czech Republic** after taking into account variations in the exchange rate over the period studied).

5 States or entities (**Denmark, Netherlands, Hungary, Russian Federation and UK-England and Wales**) had to reduce their budgets allocated to the courts between 2012 and 2014, which had increased over the previous period. **Ukraine** should be added to this group, taking into account the high inflation rates between 2012 and 2014.

Budget cuts are continuing in **Cyprus, Ireland, Italy, Portugal, Spain, UK-Northern Ireland and UK-Scotland** considering the budget variations in local currency.

### 2.3.5 Budget process for the funding of courts

Figure 2.21 Authorities responsible for the allocation of the annual budget of the courts in 2014 (Q14)



The figure above brings to light the bodies involved in the different phases of the process related to the allocation of the overall budget devoted to the courts.

Regarding the preparation of the budget, this is often within the competence of the Ministry of Justice (in 30 States or entities). It is not the case in **Albania, Andorra, Armenia, Cyprus, Georgia, Hungary, Ireland, Lithuania, Republic of Moldova, Montenegro, Russian Federation, Slovenia, Switzerland, “the former Yugoslav Republic of Macedonia”, UK-Northern Ireland and UK-Scotland**. Other ministries may also be involved in all or part of the preparation of the overall budget of the courts. This is the case for the Ministry of Finance (in 27 States or entities) or other ministries especially in states where specialised courts are

independent from the Ministry of Justice (for example the Ministry of Budgetary Affairs may fund the competent courts for labour law).

The courts themselves are responsible for the preparation of their overall budget in 20 States or entities. Council for the Judiciary or similar bodies are responsible in 16 states and the Supreme Court in 12 states.

Other bodies or institutions may also be involved in 18 States or entities: the Office of Administration of the Judicial Budget in **Albania**, the Council of Presidents of Courts in **Armenia**, the Inspection body in **Bulgaria**, the General Audit Office in **Denmark**, the Directorate of Judicial Services (exercising comparable powers to those of a Ministry of Justice) in **Monaco**, national administrations of justice in **Norway**, governments and regional assemblies in **Spain**, the Budget Council of Courts in “**the former Yugoslav Republic of Macedonia**”, the state Planning Organisation in **Turkey**, the Council of Courts Service Management in **UK-Scotland**. The Parliament is only involved during the preparation of the budget in **Austria**.

The Parliament is responsible for adopting the overall budget of the courts in the vast majority of the States and entities. Only **Armenia** and entities of the **United Kingdom** replied that Parliament had no jurisdiction in this area but it is likely that these responses reflect a misinterpretation of question 14 regarding the formal adoption of the budget. The Ministry of Justice is involved in 5 states: **Estonia, Iceland, Malta, Portugal** and **UK-England and Wales**. Another ministry is involved in **Estonia, Greece** and **Romania**. The Supreme Court is involved in **Estonia**, the High Council of Justice in **Lithuania** and the courts themselves in **UK-Northern Ireland**. One should also note the specific role of federated or autonomous entities in some federal or decentralised states (including governments and regional assemblies in **Spain**).

Most often, budget management and budget distribution between the courts is ensured by the executive: Ministry of Justice (23 States or entities) and/or other ministries, most of the time the Ministry of Finance (4 states) and/or the judiciary represented by the courts themselves (in 14 States or entities) and / or the Supreme Court (in 12 states) and/or the Council for the Judiciary or similar bodies (in 8 states). The inspection bodies which may intervene in some states in the field budget preparation often have a role to play also in managing the budget.

The task of evaluation of the use of the budget at national level is mainly under the competence of the executive, the Ministry of Justice (20 States or entities) or other ministries (17 States or entities). Parliament is competent in 12 states, the Supreme Court in 8 states, Councils for the Judiciary or similar bodies in 5 states and the courts in 7 States or entities. 19 states resort to other bodies (e.g. an audit body in **Greece, Latvia, Sweden**).

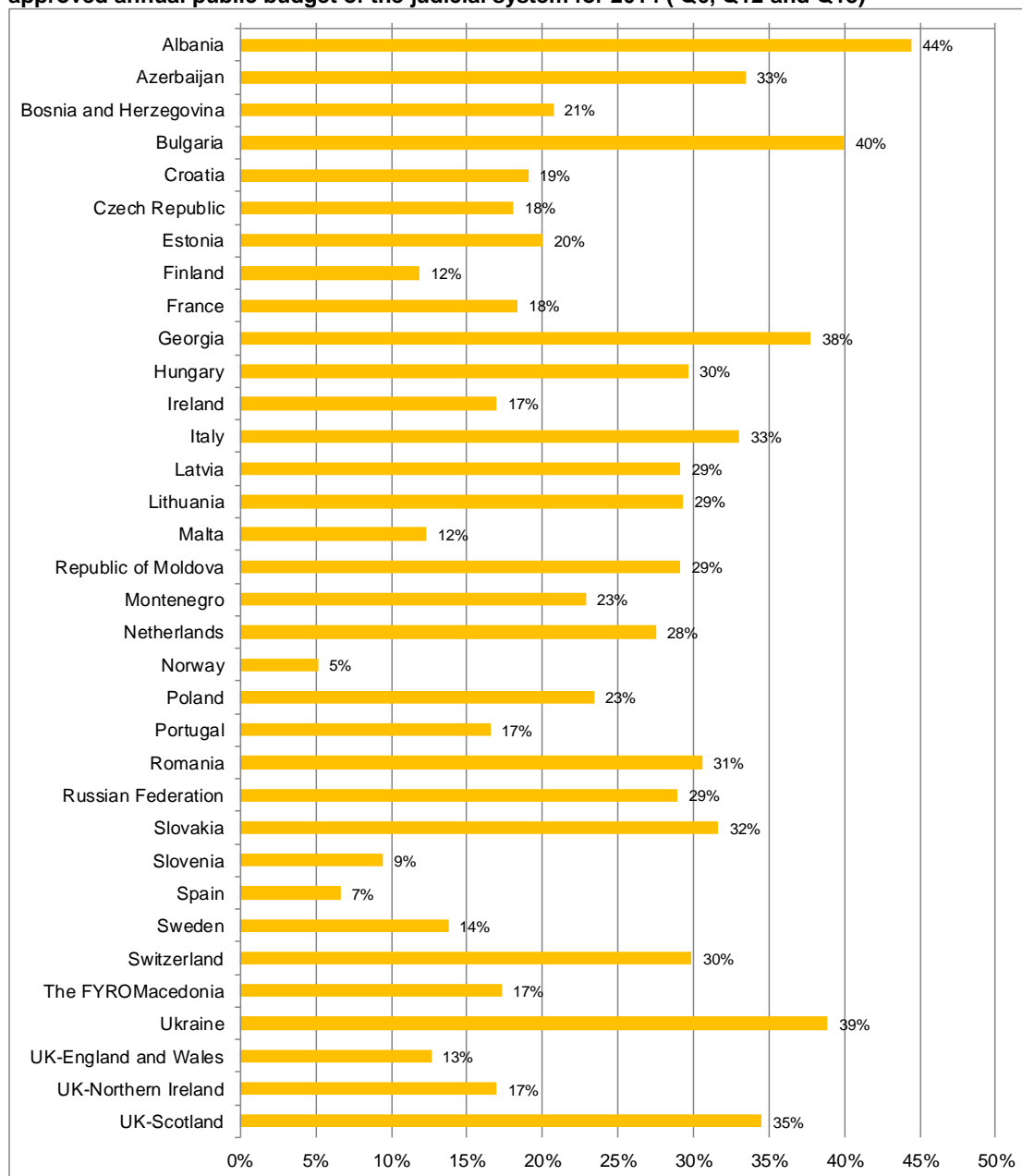
## **2.4 Annual public budget allocated to the public prosecution services**

In Recommendation Rec(2000)19 adopted by the Committee of Ministers of the Council of Europe on 6 October 2000, prosecutors are defined as: "*public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system*".

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

## 2.4.1 Part of the annual public budget allocated to public prosecution services within the total budget of the judicial system

Figure 2.22 Part of the approved annual public budget allocated to public prosecution services within the total approved annual public budget of the judicial system for 2014 ( Q6, Q12 and Q13)



In respect of States or entities for which the part of the annual public budget of the judicial system allocated to public prosecution services could be calculated (35), the average is 25 %. The latter is almost identical to the average identified for the previous evaluation cycles.

South-Eastern and Eastern European states (**Albania, Azerbaijan, Bulgaria, Cyprus, Georgia, Hungary, Latvia, Lithuania, Republic of Moldova, Romania, Russian Federation, Slovakia, Ukraine**) are still characterised by a strong position conferred upon public prosecution services within the judicial system (close to or more than 30 % of the total budget).

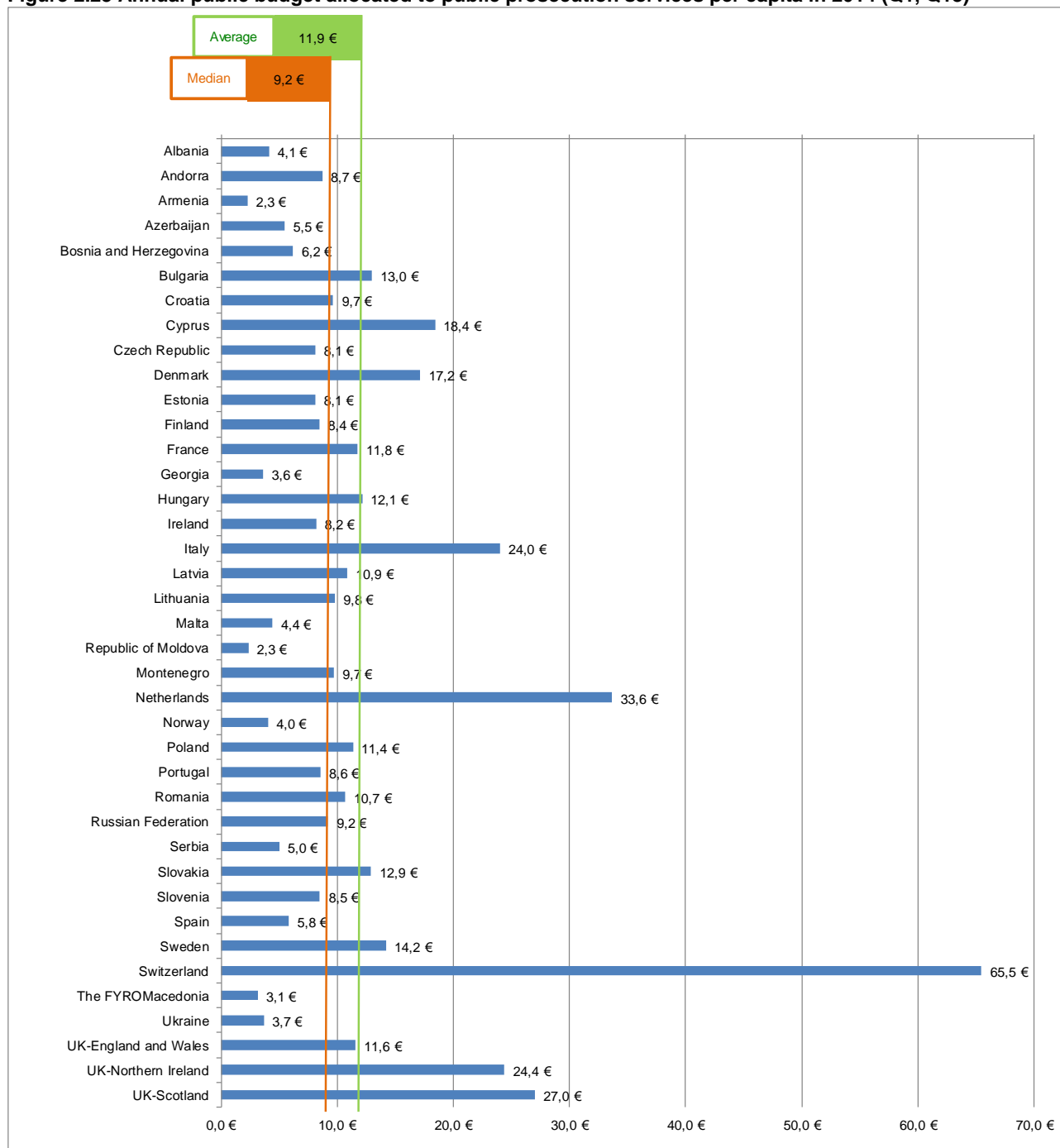
Likewise, in **Switzerland** and **UK-Scotland**, the annual public budget allocated to public prosecution services represents about one third of the annual public budget granted to the judicial system. 3 states confer less than 10 % of the annual public budget of the judicial system to public prosecution services (**Norway, Slovenia** and **Spain**). In 11 States or entities (**Estonia, Finland, France, Ireland, Malta, Montenegro, Netherlands, Poland, Portugal, “the former Yugoslav Republic of Macedonia”** and **UK-Northern Ireland**), the part of the annual public budget allocated to public prosecution services within the total budget of the judicial system is intermediate (between 12 % and 28 %).

## 2.4.2 Annual public budget allocated to public prosecution services in 2014

39 States or entities were able to identify the specific budget allocated to the public prosecution services for 2014. The data is not available for **Iceland**. It cannot be isolated for **Austria, Belgium, Germany, Greece, Luxembourg, Monaco** and **Turkey** since the budgetary management is shared between the public prosecution services and the courts. **France**, which is in the same situation, has retained, with regard to the number of staff, a distribution key by estimating at 25 % the funds dedicated to the public prosecution services.

### 2.4.2.1 Budget allocated to public prosecution services per capita in 2014

Figure 2.23 Annual public budget allocated to public prosecution services per capita in 2014 (Q1, Q13)



The European average as regards the annual public budget allocated to public prosecution services per capita in 2014 is 12 € (11,4 € in 2012).

**Switzerland** confers 65 € per year and per capita upon the Public Prosecution Office which is substantially more than all other states. Indeed, following the abolition of the function of investigating judge, the country has expanded the role and financial resources of the public prosecution services within the criminal proceedings.

Other 4 States or entities allocate more than 20 € per capita: **Netherlands** (34 €), **UK-Scotland** (27 €), **UK-Northern Ireland** (24 €) and **Italy** (24 €).

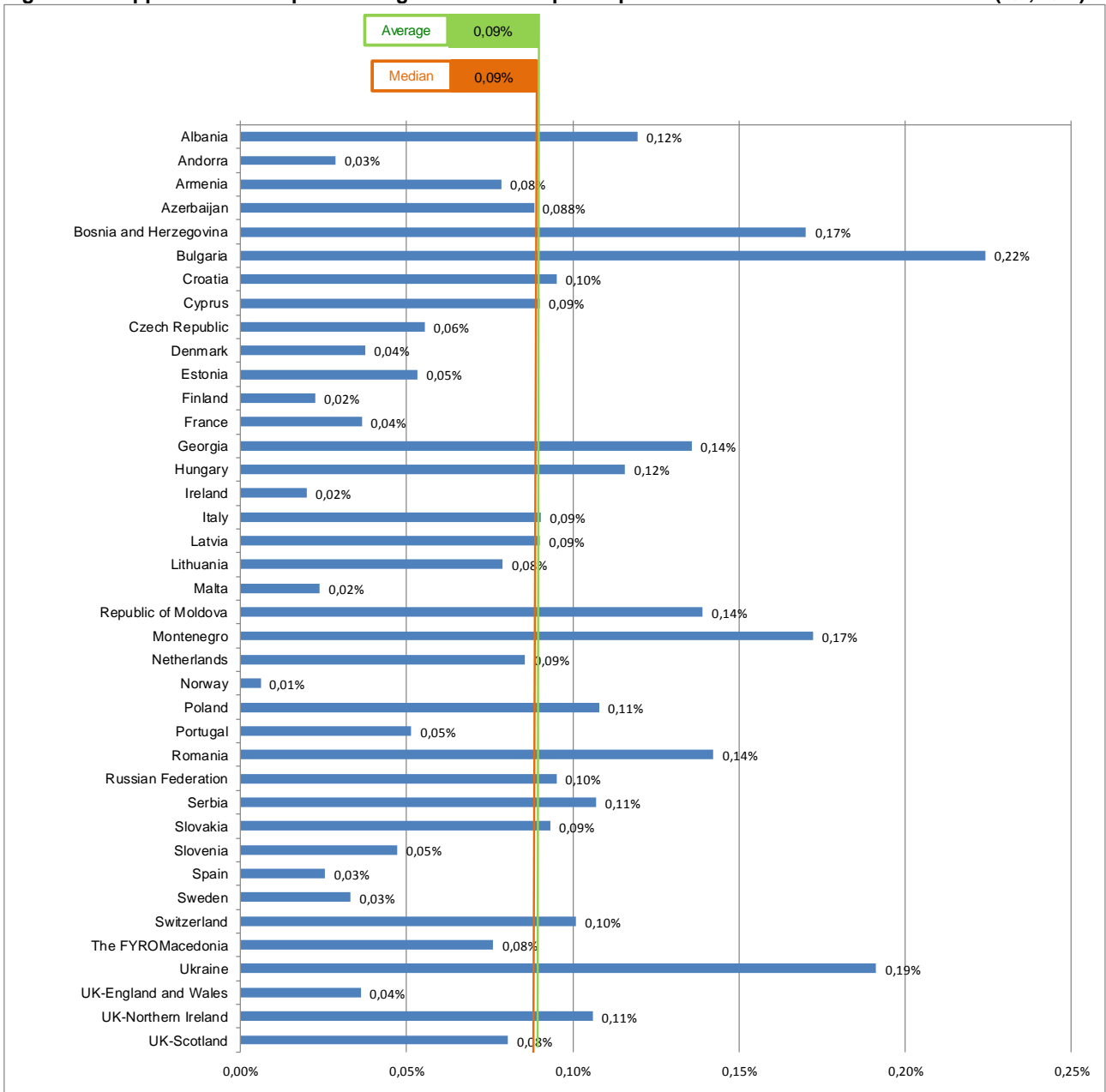
In 14 States or entities, the annual public budget of the public prosecution services is between 10 and 20 € per capita: **Cyprus** (18 €), **Denmark** (17 €), **Sweden** (14 €), **Bulgaria** and **Slovakia** (13 €), **Hungary**, **France** and **UK-England and Wales** (12 €), **Poland**, **Latvia** and **Romania** (11 €), **Lithuania**, **Montenegro** and **Croatia** (10 €).

Lastly, 20 States or entities allocate less than 10 € per year and per capita to the public prosecution services: **Russian Federation**, **Andorra**, **Portugal** and **Slovenia** (9 €), **Finland**, **Ireland**, **Czech Republic** and **Estonia** (8 €), **Serbia**, **Bosnia and Herzegovina** and **Spain** (6 €), **Azerbaijan** (5 €), **Malta**, **Albania**, **Norway**, **Ukraine** and **Georgia** (4 €), "the former Yugoslav Republic of Macedonia" (3 €), **Republic of Moldova** and **Armenia** (2 €).

#### **2.4.3 Annual public budget of the public prosecution services per capita compared to the GDP of States or entities in 2014**

Akin to the annual public budget allocated to the judicial system and the one allocated to courts, the annual public budget of the public prosecution office can be put in perspective with regard to the wealth of States or entities. The following figure shows that **Bulgaria**, **Ukraine**, **Montenegro** and **Bosnia and Herzegovina** realize the most significant budgetary effort in favour of public prosecution services compared to their wealth. It is noteworthy that these states may have received financial support from the European or other international institutions with the purpose of fostering and strengthening the rule of law.

**Figure 2.24 Approved annual public budget allocated to public prosecution services as % of the GDP (Q3, Q13)**



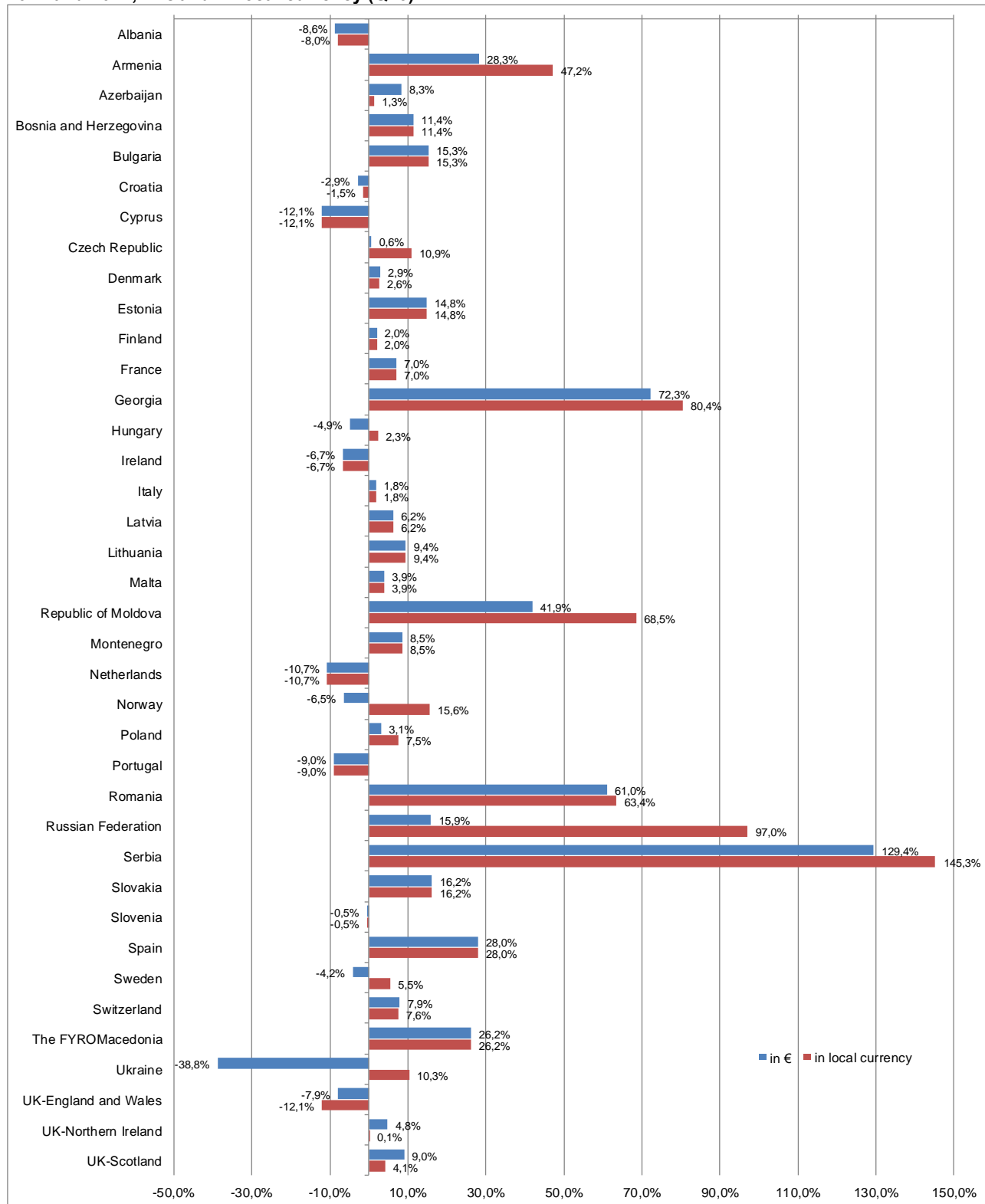


## 2.4.4 Evolution of the annual public budget allocated to public prosecution services

### 2.4.4.1 Evolution of the annual public budget allocated to public prosecution services between 2012 and 2014

The variation in the annual public budget allocated to public prosecution services between 2012 and 2014 could be examined in respect of 38 States or entities.

**Figure 2.25 Variation in the approved annual public budget allocated to public prosecution services between 2012 and 2014, in € and in local currency (Q13)**



For the period 2012-2014, 26 States or entities have increased their budget allocated to public prosecution services (in Euros and in absolute value), while a decrease is observed in this respect in 8 states. In

**Hungary, Norway, Sweden and Ukraine**, the budgetary variation appears as negative in Euros, but it is actually positive if one takes into consideration the negative progression of the exchange rates compared to the Euro. Likewise, on account of the exchange rate depreciation during the period considered, the budgetary efforts by **Armenia, Czech Republic, Georgia, Latvia, Republic of Moldova, Poland, Romania, Russian Federation and Serbia** are actually even more significant than they appears. Conversely, the assessment of the local currency against the Euro results in overestimating the increase in the budget observed in **Azerbaijan, UK-Northern Ireland and UK-Scotland**.

Again, it is worth taking into account the inflation parameter for the period 2012-2014, given that it may qualify the results of the above graph. Thus, the variation (in local currency) in actual value (*i.e.* including the inflation rate) of the annual public budget allocated to public prosecution services is slightly negative in **Azerbaijan, Denmark, Finland, Hungary, Italy, Malta and UK-Northern Ireland**. In fact, in these States and entities, the inflation rate exceeds the increase in absolute value of the public prosecution office's budget within the period under consideration.

Finally, the increase in the public prosecution office's budget (in local currency) is significant (close to or more than 20 %) in **Armenia, Georgia, Republic of Moldova, Romania, Russian Federation, Serbia, Spain** and "**the former Yugoslav Republic of Macedonia**". In **Lithuania**, investments resumed after the end of the economic crisis and the substantial budgetary cuts witnessed until 2012. Turning to the **Republic of Moldova**, the main reason explaining the increase in the budget since 2012 concerns the financial funds allocated for the implementation of actions in connection with the Justice Sector Reform Strategy for the period 2011-2016. To this end, the **Republic of Moldova** benefits from the financial support from the European Union. The main reason for the increase in the approved annual public budget committed by **Romania** to the public prosecution services in 2014 is that funds allocated for the payment of wage rights established by court decisions were higher than in previous years. In **Serbia** the significant increase may be attributed to the comprehensive changes introduced by the new and Criminal Procedure Code enacted in 2011 that increased competences of public prosecutors, taken from investigative judges. In **Spain**, the increase is due above all to changes in the methodology of estimation of the public prosecutor's office budget. In "**the former Yugoslav Republic of Macedonia**", the increase observed in the budget results from the extension of public prosecutors powers on the one hand, and from additional funds granted by international organisations in the framework of specific projects aimed at computerisation, on the other hand.

The most significant decrease in the public prosecution office's budget is to be noticed in **Cyprus, Netherlands and Portugal**. Moreover, in **UK-England and Wales** the reduction in the budget for the Crown Prosecution Service in 2014 reflects a reduction in the overall case load volume and is in line with the 2010 Spending Review.

#### 2.4.4.2 Evolution of the annual public budget allocated to public prosecution services between 2010 and 2014

Table 2.26 Variations in the approved public budgets allocated to public prosecution services between 2010 and 2014, in absolute values (Q13)

States/entities	Approved budget for public prosecution			Evolution
	2010	2012	2014	
Albania	8 901 893 €	13 000 734 €	11 880 336 €	
Andorra	810 965 €		669 347 €	
Armenia	4 496 722 €	5 356 768 €	6 870 600 €	
Austria				
Azerbaijan	40 007 281 €	47 881 654 €	51 878 281 €	
Belgium				
Bosnia and Herzegovina	20 400 465 €	21 290 084 €	23 721 425 €	
Bulgaria	79 203 203 €	81 248 370 €	93 698 490 €	
Croatia	41 296 176 €	42 040 323 €	40 820 393 €	
Cyprus	15 964 412 €	17 971 759 €	15 798 704 €	
Czech Republic	83 446 289 €	84 706 722 €	85 213 339 €	
Denmark		94 400 000 €	97 116 986 €	
Estonia	9 135 614 €	9 256 322 €	10 627 825 €	
Finland	42 937 000 €	45 312 000 €	46 223 000 €	
France	714 870 193 €	729 425 027 €	780 762 888 €	
Georgia	7 333 463 €	7 836 580 €	13 500 000 €	
Germany	479 916 106 €	523 346 503 €		
Greece				
Hungary	102 321 320 €	125 851 993 €	119 744 000 €	
Ireland	43 854 000 €	40 528 000 €	37 813 000 €	
Italy	1 249 053 619 €	1 435 025 477 €	1 460 367 057 €	
Latvia	15 913 545 €	20 495 958 €	21 771 366 €	
Lithuania	29 555 000 €	26 101 135 €	28 563 485 €	
Luxembourg				
Malta				
Republic of Moldova	4 416 909 €	5 877 744 €	8 339 575 €	
Monaco	1 357 600 €			
Montenegro	5 176 984 €			
Netherlands	615 642 000 €	636 924 000 €	568 734 000 €	
Norway	18 298 000 €	22 266 400 €	20 818 906 €	
Poland	312 514 570 €	424 128 567 €	437 424 395 €	
Portugal	119 901 622 €	97 551 326 €	88 786 150 €	
Romania	162 428 333 €	148 321 292 €	238 801 232 €	
Russian Federation	934 551 021 €	1 161 610 701 €	1 346 581 851 €	
Serbia	22 608 698 €	15 498 237 €	35 550 816 €	
Slovakia	63 702 886 €	60 309 536 €	70 099 751 €	
Slovenia	19 263 376 €	17 655 253 €	17 559 460 €	
Spain	NA	211 352 960 €	270 480 209 €	
Sweden	127 316 425 €	144 485 809 €	138 456 474 €	
Switzerland	297 932 258 €	499 544 104 €	539 206 343 €	
The FYROMacedonia	4 740 867 €	5 153 300 €	6 502 821 €	
Turkey				
Ukraine				
UK-England and Wales	755 810 000 €	722 425 593 €	665 125 835 €	
UK-Northern Ireland	43 500 000 €	42 860 000 €	44 923 000 €	
UK-Scotland	135 475 200 €	132 549 350 €	144 512 612 €	
Israel				
<b>Average</b>	179 298 757 €	214 433 044 €	210 803 999 €	
<b>Median</b>	42 937 000 €	54 095 595 €	49 050 641 €	
<b>Minimum</b>	810 965 €	5 153 300 €	669 347 €	
<b>Maximum</b>	1 249 053 619 €	1 435 025 477 €	1 460 367 057 €	

Over a longer period (2010-2014), it is possible to highlight the substantial budgetary efforts of **Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Czech Republic, Estonia, Finland, France, Georgia, Italy, Latvia, Republic of Moldova, Montenegro, Poland, Russian Federation, Switzerland, “the former Yugoslav Republic of Macedonia”**, as well as **Hungary, Norway, Sweden** and finally **Ukraine**, provided that the variation of the exchange rate is taken into account.

The increase in the annual public budget allocated to public prosecution services can be explained, depending on the states, by the increase in the number of prosecutor staff (**Switzerland**), and/or the increase in salaries (**Republic of Moldova**), and/or the extension of the scope of the powers of public prosecutors (**Serbia, “the former Yugoslav Republic of Macedonia”**), the development of new technology and communication tools (**Azerbaijan, “the former Yugoslav Republic of Macedonia”**), the refurbishment of buildings (**Azerbaijan**), or organizational changes requiring financial means (**Bulgaria, Poland**). With regard to **Latvia, Republic of Moldova** and **Poland**, continuing budgetary endeavours for 2012-2014 confirm the end of the crisis observed in the framework of the previous evaluation.

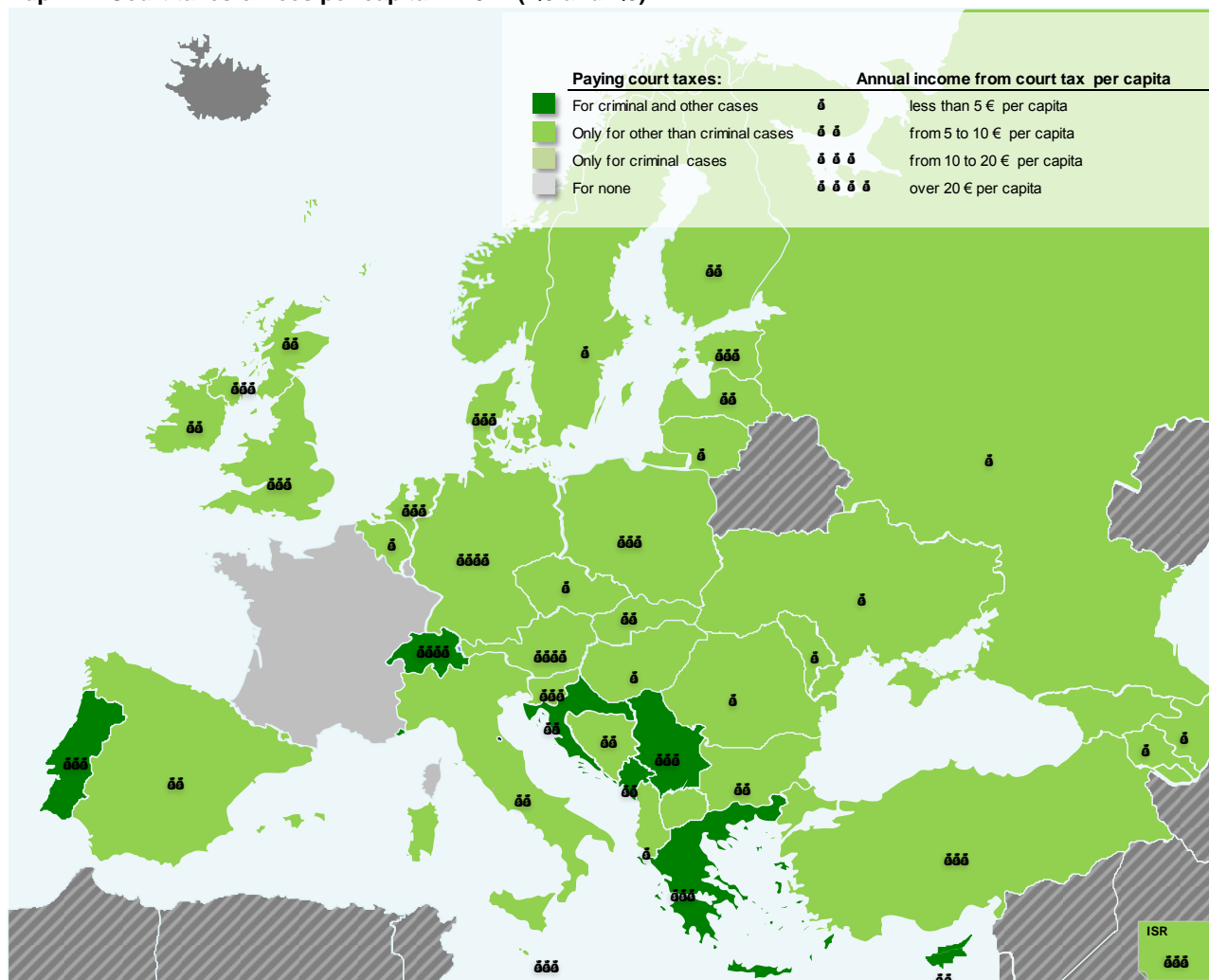
It is noteworthy that **Lithuania, Malta, Romania, Serbia, Slovakia, UK-Northern Ireland** and **UK-Scotland**, which reported budgetary cuts for the previous evaluation cycle, were able to reverse the trend for 2012-2014.

By contrast, some states that increased their public prosecution office’s budget during the period 2010-2012 have reduced it between 2012 and 2014. This includes **Albania, Croatia, Cyprus** and **Netherlands**.

Since 2010, budget cutbacks continue in **Ireland, Portugal, Slovenia** and **UK-England and Wales**.

## 2.5 Court taxes or fees

Map 2.27 Court taxes or fees per capita in 2014 (Q8 and Q9)



In other than criminal matters, litigants are required to pay a court tax or fee to start a proceeding at a court of general jurisdiction in all states, except for **France** and **Luxembourg**. In criminal matters, in states such as **Croatia, Cyprus, Greece, Montenegro, Portugal, Serbia,** and **Switzerland**, parties in the proceedings have to pay court fees which are covered by legal aid when granted.

In **France**, a court fee of 225 € is required from litigants in other than criminal matters only in respect of the appeal procedure (excluding administrative cases) and when legal representation is mandatory.

### **2.5.1 Exemption from paying court taxes or fees**

In the great majority of the States or entities, exemptions from paying court taxes or fees are based on three categories of justifications:

- in case of limited financial resources and/or in respect of persons granted legal aid;
- with regard to certain categories of natural or legal persons, such as non-profit organisations, public administrations, children, persons with disabilities, asylum seekers, foreign citizens on condition of the existence of an international agreement or based on the principle of reciprocity;
- in respect of certain civil procedures in matters of protection of fundamental rights or tenets enshrined in the Constitution or guaranteed by the administrative law; health law; intellectual property law; consumers' rights; trade law; environmental law; labour and/or social law; family law and other fields related to civil capacity, minors, agriculture, taxation, elections or residential rental accommodation.

In some states, court fees have to be paid at the end of proceedings.

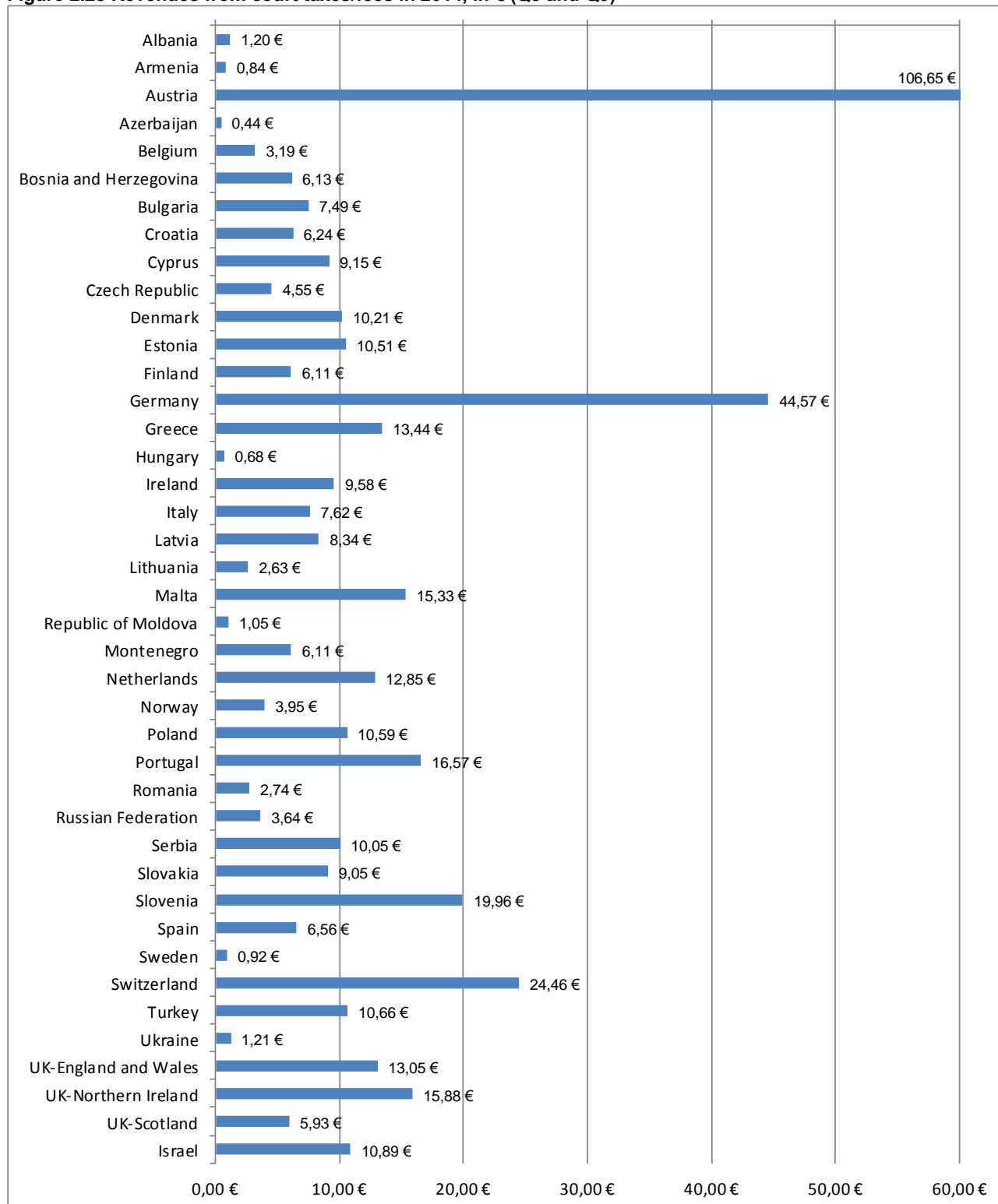
### **2.5.2 Revenues from court taxes or fees**

The level of revenue generated by a state from court taxes/fees depends on several factors, which include: 1) the number of cases brought before a court; 2) the type and complexity of the cases; 3) the value of any claims being disputed in court; 4) the fee structure employed by the state (defining the type of cases for which a fee would be charged); 5) the actual level of fees charged; 6) the categories of persons exempt from paying court fees.

Accordingly, it is difficult to rationalise the reasons behind the varying levels of revenue from court fees across the states. Likewise, when examining an individual state, it is difficult to explain the variations in the revenue from one evaluation period to another as any, or even all, of these factors can change. For this reason, budgetary data presented in the following two subparts must be considered with caution.

### 2.5.2.1 Revenues from court taxes or fees in 2014

Figure 2.28 Revenues from court taxes/fees in 2014, in € (Q8 and Q9)



Revenues from court fees correspond to more or less significant amounts, depending on the states.

They are particularly high in **Austria** (106,65 € per capita), which is more than the public budget allocated to the judicial system (96 € per capita). These revenues represent 20 € per capita or more in **Slovenia** (20 €), **Switzerland** (24,46 €) and **Germany** (44,57 €). To a large extent, the high level of court fees can be explained by the fact that courts are responsible for the registers, in particular land registers. Fees are charged for consulting these registers or recording information. In **Austria** and **Germany**, revenues are also generated through business registers.

In 11 States or entities, the amount of court fees received per capita in 2014 is between 10 and 20 €: **Serbia** (10,05 €), **Denmark** (10,21 €), **Estonia** (10,51 €), **Poland** (10,59 €), **Turkey** (10,66 €), **Israel** (10,89 €), **Netherlands** (12,85 €), **UK-England and Wales** (13,05 €), **Greece** (13,44 €), **Malta** (15,33 €), **UK-Northern Ireland** (15,88 €), **Portugal** (16,57 €).

The revenues generated by court fees are between 5 and 10 € per capita in 12 States and entities: **UK-Scotland** (5,93 €), **Montenegro** (6,11 €), **Finland** (6,11 €), **Bosnia and Herzegovina** (6,13 €), **Croatia** (6,24 €), **Spain** (6,56 €), **Bulgaria** (7,49 €), **Italy** (7,62 €), **Latvia** (8,34 €), **Slovakia** (9,05 €), **Cyprus** (9,15 €) and **Ireland** (9,58 €).

In the **Republic of Moldova** (1,05 €), **Albania** (1,20 €), **Ukraine** (1,21), **Lithuania** (2,63 €), **Romania** (2,74 €), **Belgium** (3,19 €), **Russian Federation** (3,64 €) and **Czech Republic** (4,55 €) the revenues from court fees are between 1 and 5 €.

In 4 states, the court fees revenues represent less than 1 € per capita: **Sweden** (0,92 €), **Armenia** (0,84 €), **Hungary** (0,68 €), **Azerbaijan** (0,44 €).

The significant differences between States and entities in matters of court fee revenues must be taken into account within the comparative analyses of the legal aid budget. In fact, in some states such as **Switzerland**, generally, court users have to pay a certain fee for most of the judicial services, but the existing legal aid system is relatively favourable with regard to individuals with limited financial resources.

## 2.5.2.2 Evolution of the revenues from court taxes and fees between 2010 and 2014

Table 2.29 Evolution of the revenues from court taxes and fees between 2010 and 2014 (Q9)

States/entities	Annual income of court taxes			
	2010	2012	2014	Trend
Albania	2 201 657 €	4 335 000 €	3 458 066 €	
Andorra				
Armenia		2 871 855 €	2 528 252 €	
Austria	779 840 000 €	834 870 000 €	915 619 924 €	
Azerbaijan	779 988 €	1 208 144 €	4 178 305 €	
Belgium	34 408 250 €	34 917 000 €	35 781 147 €	
Bosnia and Herzegovina	26 576 744 €	26 179 300 €	23 467 267 €	
Bulgaria	58 354 136 €	61 595 758 €	53 967 580 €	
Croatia	25 168 311 €	28 759 251 €	26 359 795 €	
Cyprus	9 802 960 €	11 377 030 €	7 851 964 €	
Czech Republic	37 452 793 €	59 014 432 €	47 868 874 €	
Denmark	95 933 236 €	98 520 187 €	57 764 476 €	
Estonia	12 909 414 €	7 219 348 €	13 801 463 €	
Finland	31 284 003 €	33 833 367 €	33 455 279 €	
France				
Georgia				
Germany	3 515 706 357 €	3 567 436 506 €	3 600 787 657 €	
Greece	88 340 000 €	99 050 000 €	145 783 667 €	
Hungary	17 274 015 €	6 159 824 €	6 691 245 €	
Ireland	47 325 000 €	43 720 000 €	44 302 000 €	
Italy	326 163 179 €	465 147 222 €	463 052 628 €	
Latvia	17 650 016 €	16 573 777 €	16 697 327 €	
Lithuania	6 950 880 €	7 600 585 €	7 695 204 €	
Luxembourg				
Malta	6 702 000 €	6 399 974 €	6 583 082 €	
Republic of Moldova		2 341 804 €	3 718 774 €	
Monaco				
Montenegro	6 239 721 €	3 918 273 €	3 785 421 €	
Netherlands	190 743 000 €	237 570 000 €	217 194 000 €	
Norway	21 736 632 €	22 100 683 €	20 420 354 €	
Poland	530 161 000 €	408 787 000 €	407 715 000 €	
Portugal	217 961 874 €	207 899 840 €	171 890 423 €	
Romania	46 177 039 €	54 301 587 €	60 935 285 €	
Russian Federation	426511157	452 826 397 €	533 051 921 €	
Serbia	85 137 114 €	107 047 455 €	71 517 912 €	
Slovakia	57 661 794 €	53 448 064 €	49 053 890 €	
Slovenia	50 858 000 €	40 461 043 €	41 131 998 €	
Spain	173 486 000 €	172 950 000 €	304 416 000 €	
Sweden	4 469 274 €	5 134 908 €	9 011 588 €	
Switzerland	276 870 194 €	239 397 840 €	201 496 138 €	
The FYROMacedonia	10 100 403 €	10 113 139 €		
Turkey	525 138 372 €	637 583 272 €	827 914 488 €	
Ukraine	9 174 192 €	9 174 192 €	52 105 263 €	
UK-England and Wales	545 878 204 €	586 777 526 €	749 451 721 €	
UK-Northern Ireland	34 556 372 €	38 492 000 €	29 232 526 €	
UK-Scotland	26 681 850 €	26 862 101 €	31 733 000 €	
Israel		80 071 536 €	90 378 021 €	
<b>Average</b>	209 311 947 €	213 023 797 €	232 586 773 €	
<b>Median</b>	36 004 583 €	38 492 000 €	42 716 999 €	
<b>Minimum</b>	779 988 €	1 208 144 €	2 528 252 €	
<b>Maximum</b>	3 515 706 357 €	3 567 436 506 €	3 600 787 657 €	



The evolution of the revenues generated by court taxes and fees since 2010 can be measured in respect of 37 States or entities.

In 16 States and entities, the court taxes or fees decreased over the period 2010-2014. For 7 of them, the decrease is considerable, being at, or exceeding, the threshold of 20 %: **Cyprus** (- 20 %), **Portugal** (- 21 %), **Poland** (- 23 %), **Switzerland** (- 27 %), **Montenegro** (- 39 %), **Denmark** (- 40 %) and **Hungary** (- 61 %).

A significant decrease (higher than 10%) can also to be noted in **Bosnia and Herzegovina** (- 12 %), **Slovakia** and **UK-Northern Ireland** (- 15 %), **Serbia** (- 16 %) and **Slovenia** (- 19 %).

The decrease is relatively lower in **Bulgaria** (- 8 %), **Ireland** (- 6 %), **Norway** (- 6 %), **Latvia** (- 5 %) and **Malta** (- 2 %).

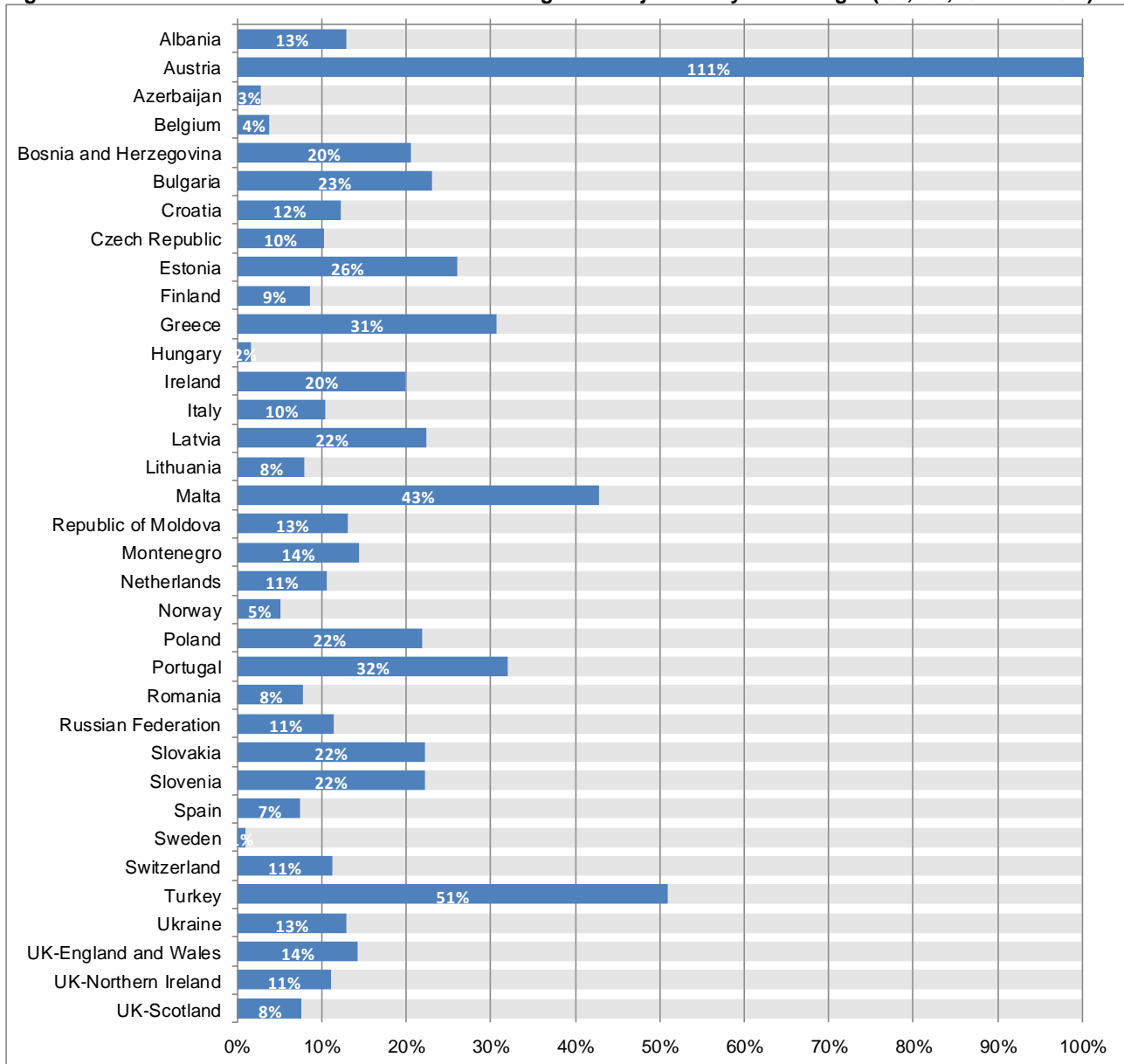
Conversely, in respect of 21 States or entities, the trend for the period 2010-2014 is an increase in the revenues generated by court taxes/fees. The revenue from taxes is higher in 2014 compared with 2010 by +400 % for **Ukraine** (+ 468 %) and **Azerbaijan** (+ 436 %). The reason behind the high increase in **Ukraine** lays in the Law on the "Court Fee" that came into effect from November 2011. Similar effect had a Law on "State Duty" adopted in December 2012 in **Azerbaijan** after which the amount of all court fees increased. During the period under consideration, **Sweden** doubled its revenues from court fees (+ 102 %). An increase exceeding the threshold of 20 % is also to be noticed in **Spain** (+ 75 %), **Greece** (+ 65 %), **Turkey** (+ 58 %), **Albania** (+ 57 %), **Italy** (+ 42 %), **UK-England and Wales** (+ 37 %), **Romania** (+ 32 %), **Czech Republic** (+ 28 %) and **Russian Federation** (+25%).

The other States or entities where the revenues from court taxes/fees increased between 2010 and 2014 are **UK-Scotland** (+ 19 %), **Austria** (+ 17 %), **Netherlands** (+ 14 %), **Lithuania** (+ 11 %), **Finland** (+ 7 %), **Estonia** (+ 7 %), **Croatia** (+ 5 %), **Belgium** (+ 4 %) and **Germany** (+ 2 %).

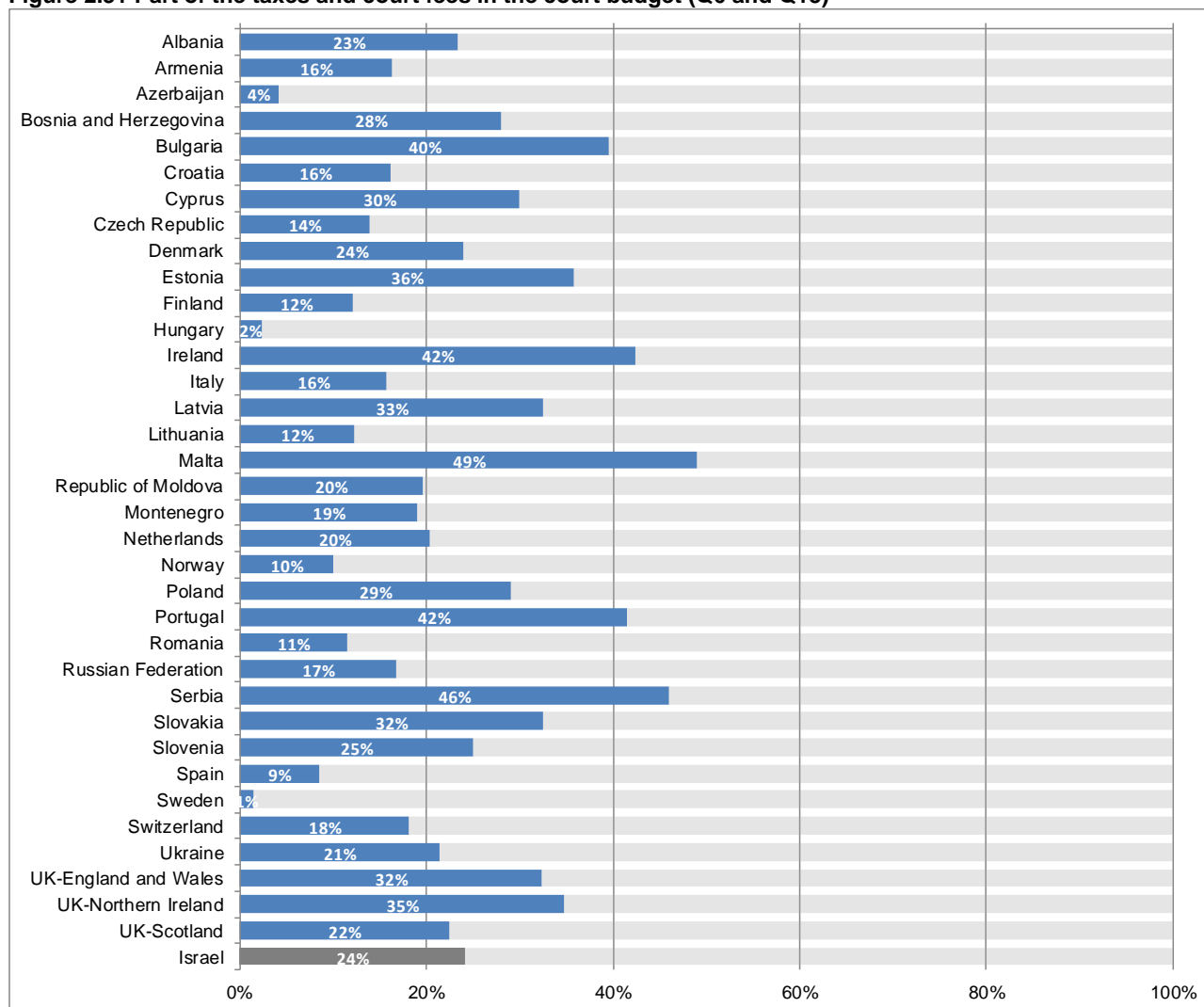
It is noteworthy that the overall variations presented within table 2.29 are expressed in Euros (without the neutralisation of the variations in the exchange rates in respect of states outside the Euro area and the variations of prices). Accordingly, it is necessary to keep in mind that some of the variations observed can be underestimated or overestimated as a result of both these parameters.

### 2.5.2.3 Part of the revenues from court taxes and fees in the budget of judicial systems

Figure 2.30 Part of the taxes and court fees in the budget of the judicial system budget (Q6, Q9, Q12 and Q13)



**Figure 2.31 Part of the taxes and court fees in the court budget (Q6 and Q13)**



It is confirmed that payment of court fees is now a key characteristic of the justice system in many states in Europe: the tax payer is not the only one to finance the system, as the court user is requested to contribute too. Only **France** and **Luxembourg** foresee access to court free of fees.

The revenues generated by court fees can cover a significant part of the budget allocated to the judicial system, **Austria**, is even in the position of generating revenues that exceeds the operating cost of the whole judicial system. They exceed 20% of the budget of the judicial system in more than a quarter of the States or entities, or even 50% of this budget in **Turkey**.

To a large extent, the high level of court fees can be explained by the fact that courts are responsible for the registers (mainly land and business registers). Fees are charged for retrieving information from these registers or for recording modifications.

## 2.6 Annual public budget allocated to legal aid

Legal aid, for the purpose of this evaluation, is defined as the assistance provided by the state to persons who do not have sufficient financial means to defend themselves before a court or to initiate court proceedings (access to justice). This is in line with Article 6.3 of the European Convention on Human Rights as far as criminal law cases are concerned. The CEPEJ makes the distinction between legal aid granted in criminal matters and legal aid granted in other than criminal matters.

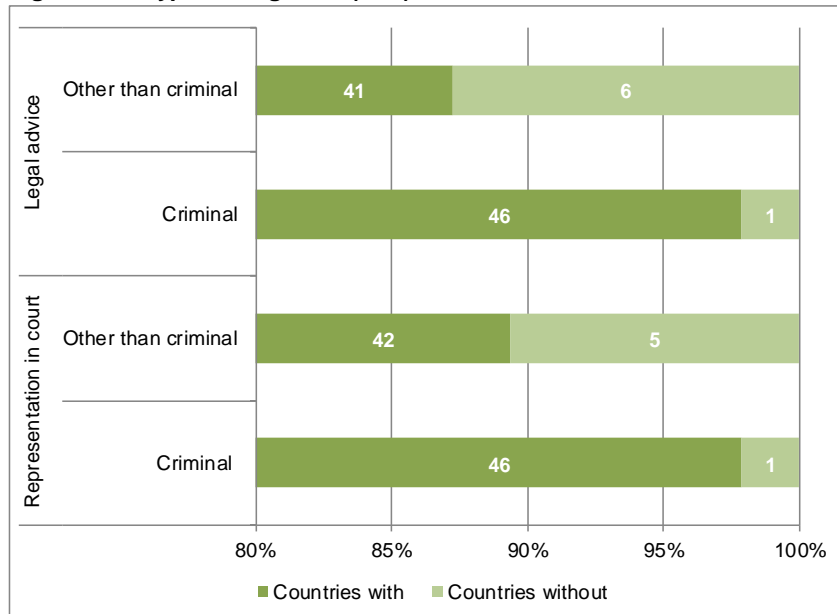
Akin to the previous evaluation cycle, the CEPEJ has strived to collect data on legal aid granted by the States or entities outside the courts, to prevent litigation or to offer access to legal advice or information (access to law). This approach makes it possible to identify and separate both public instruments of access to justice and access to law.

Accordingly, the concept of legal aid has been given in this part an broad interpretation, covering the jurisdictional aid (allowing litigants to finance fully or partially their court fees when acting before tribunals) and access to information and to legal advice.

## 2.6.1 Scope of legal aid

### 2.6.1.1 Various types of legal aid

Figure 2.32 Types of legal aid (Q16)

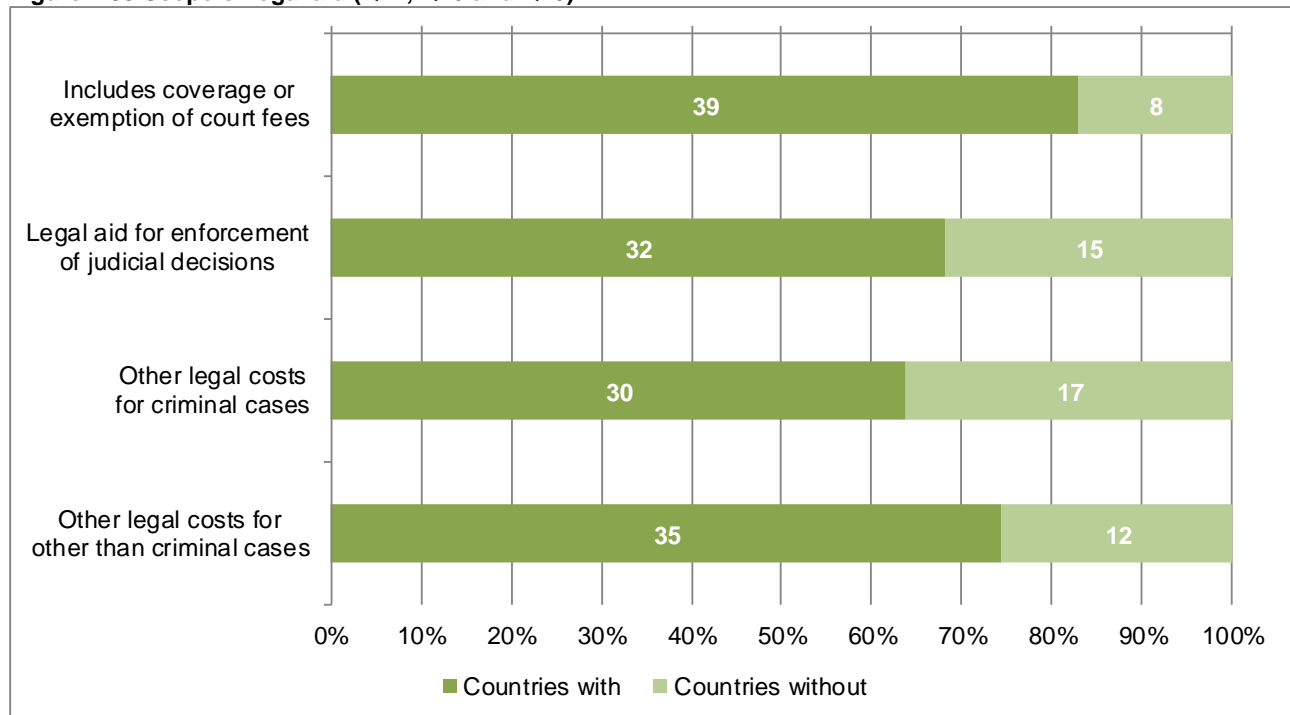


Almost all States and entities provide legal aid in criminal proceedings which is commendable in light of the case law of the European Convention of Human Rights. Most often, the aid provided covers legal representation before courts.

It can be noted that **Azerbaijan, Germany, Iceland, Italy, Malta, Monaco, Poland and Switzerland** offer now an aid through legal advice in criminal matters. However, these states, except for **Germany and Switzerland**, have abandoned their system of mandatory legal representation before courts for other than criminal matters. **Ukraine** does not have such a system either, while

**Germany and Switzerland** introduced free legal advice for other than criminal cases between 2012 and 2014.

Figure 2.33 Scope of legal aid (Q17, Q18 and Q19)

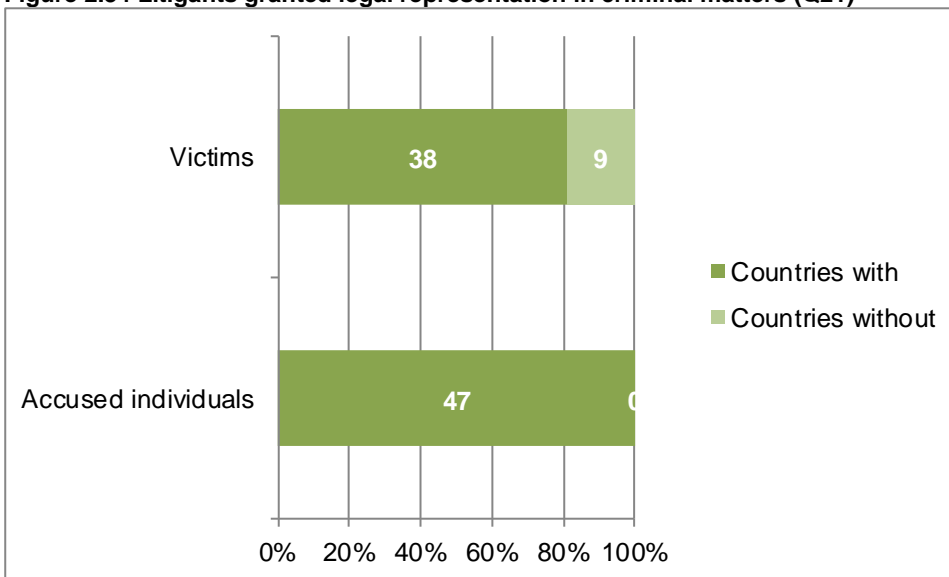


In the majority of states (39 States or entities), the regime of legal aid includes coverage of or exemption from paying court fees, as described in the previous part. There are exceptions to this general trend, namely: **Armenia, Azerbaijan, Bulgaria, Georgia, Latvia, Republic of Moldova, Russian Federation, Slovenia and Ukraine**.

Fees covered by legal aid are not limited to court taxes/fees. For example, in 32 States or entities, the scope of legal aid encompasses fees related to the enforcement of judicial decisions. This is not the case for **Armenia, Azerbaijan, Bulgaria, Croatia, Cyprus, Georgia, Ireland, Latvia, Republic of Moldova, Russian Federation, Slovakia, Switzerland, “the former Yugoslav Republic of Macedonia”, Ukraine and UK-England and Wales.**

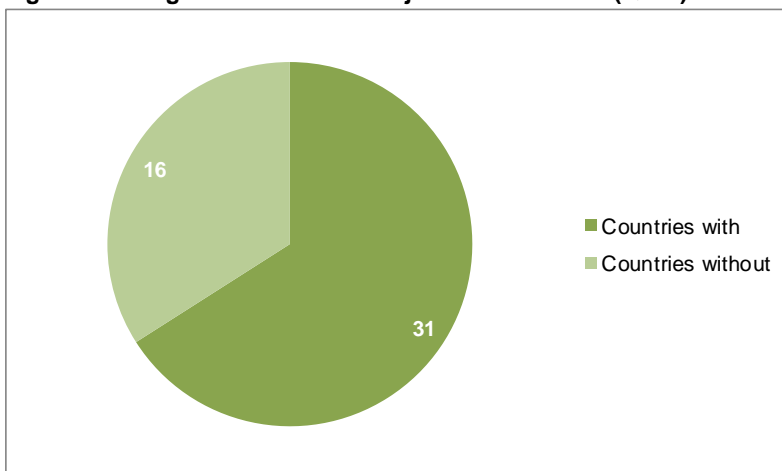
Legal aid can also be granted for other costs in criminal and other than criminal matters: fees of technical advisors or experts in the framework of judicial expertise (**Austria, Belgium, Bosnia and Herzegovina, Croatia, France, Germany, Greece, Ireland, Italy, Monaco, Poland, Romania, Russian Federation, Serbia, UK-Northern Ireland, UK-Scotland, Israel**), fees related to interpretation and/or translation (**Belgium, Croatia, Finland, Germany, Ireland, Italy, Latvia, Lithuania, Netherlands, Norway, Romania, Russian Federation, Serbia, Spain, Switzerland, UK-Northern Ireland, UK-Scotland, Israel**), travel costs (**Albania, Austria, Ireland, Latvia, Lithuania, Netherlands, Poland, Russian Federation, Spain, Sweden, UK-Scotland**), costs related to the preparation of documents and files necessary for the initiation of court proceedings, or coverage (full or partial) of fees concerning other professionals such as notaries, bailiffs (**Belgium, Monaco, Spain**) or even private detectives (**Italy**).

**Figure 2.34 Litigants granted legal representation in criminal matters (Q21)**



Pursuant to Article 6 of the European Convention on Human Rights, an indicted person who does not have sufficient financial means must benefit from free legal representation (financed by a public budget) in criminal matters. Therefore, the States and entities were invited to specify if this individual right is effectively implemented. All of them provided a positive reply for accused individuals. In the majority of the responding States or entities, victims are also granted such a right (except for **Cyprus, Germany, Poland, Russian Federation, Slovakia, Ukraine, UK-England and Wales and UK-Northern Ireland**).

**Figure 2.35 Legal aid in the field of judicial mediation (Q165)**



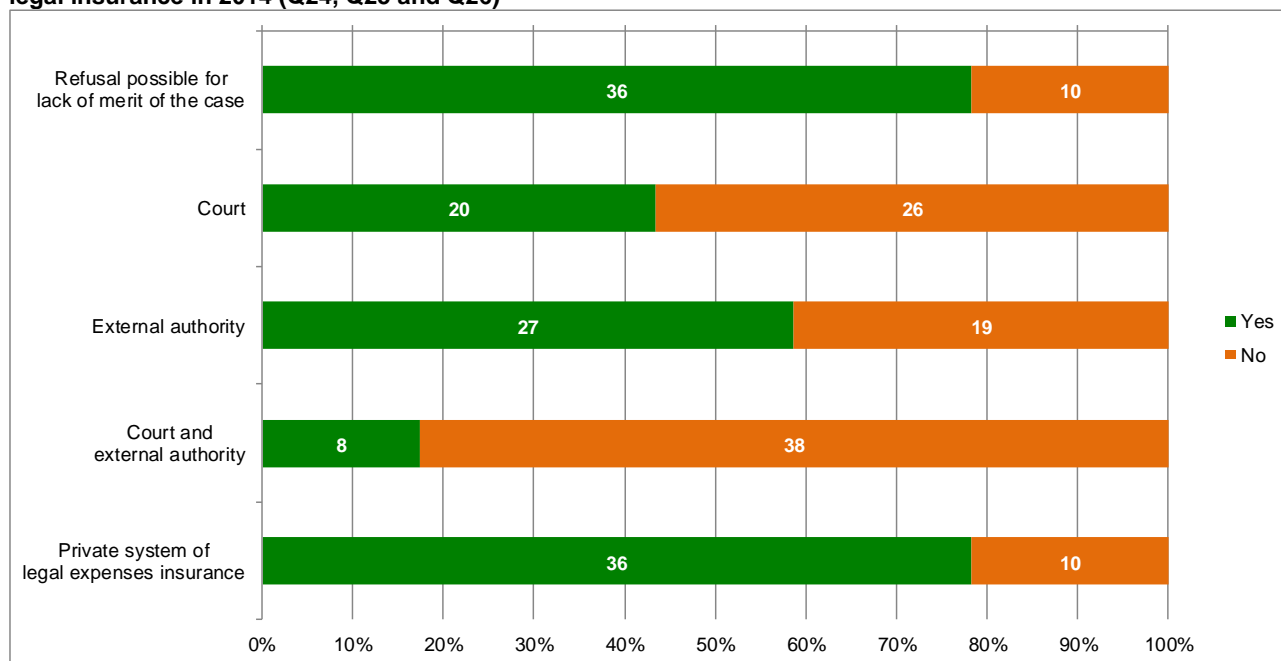
As a matter of fact, 31 States or entities indicated that they apply the regime of legal aid to mediation procedures (exceptions are **Albania, Andorra, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Germany, Latvia, Poland, Russian Federation, Serbia, Switzerland, Turkey, Ukraine and UK-Northern Ireland**).

### 2.6.1.2 Criteria to grant legal aid

Table 2.36 Authorities responsible for granting Legal Aid and existence of private system for legal insurance in 2014 (Q24, Q25 and Q26)

States/entities	Refusal possible for lack of merit of the case	Authorities responsible for granting or refusing Legal Aid			Private system of legal expenses insurance
		Court	External authority	Court and external authority	
Albania					
Andorra					
Armenia					
Austria					
Azerbaijan					
Belgium					
Bosnia and Herzegovina					
Bulgaria					
Croatia					
Cyprus					
Czech Republic					
Denmark					
Estonia					
Finland					
France					
Georgia					
Germany					
Greece					
Hungary					
Ireland					
Italy					
Latvia					
Lithuania					
Luxembourg					
Malta					
Republic of Moldova					
Monaco					
Montenegro					
Netherlands					
Norway					
Poland					
Portugal					
Romania					
Russian Federation					
Serbia					
Slovakia					
Slovenia					
Spain					
Sweden					
Switzerland					
The FYROMacedonia					
Turkey					
Ukraine					
UK-England and Wales					
UK-Northern Ireland					
UK-Scotland					
Israel					
<b>Nb of Yes</b>	<b>36</b>	<b>20</b>	<b>27</b>	<b>8</b>	<b>36</b>
<b>Nb of No</b>	<b>10</b>	<b>26</b>	<b>19</b>	<b>38</b>	<b>10</b>
<b>Total</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>

**Figure 2.37 Overview of the authorities responsible for granting Legal Aid and existence of private system for legal insurance in 2014 (Q24, Q25 and Q26)**



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

The merits of the case or whether the case is well grounded in order to be granted legal aid are irrelevant for criminal law cases. The merit of case test, the test used to decide whether a case should be granted legal aid, takes into account the likeliness of the case to succeed, and whether the benefits of litigation outweigh the cost to public funds. This test is only applicable to non-criminal matters. For the Member states of the European Union, Directive 2003/8/CE provides that it is in principle possible to refuse legal aid in other than criminal cases for lack of merit. In 10 states, **Andorra, Armenia, Azerbaijan, Cyprus, Georgia, Greece, Republic of Moldova, Portugal, “the former Yugoslav Republic of Macedonia” and Ukraine**, it is not possible to refuse legal aid on the basis of the merit of the case.

The decision to grant or refuse legal aid on the basis of the merit of the case is usually taken by the court (20 States or entities) or by an external authority (27 States or entities), or by a court and an external authority (8 States or entities) . The Bar association may be entrusted with such decisions (**Spain**).

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

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

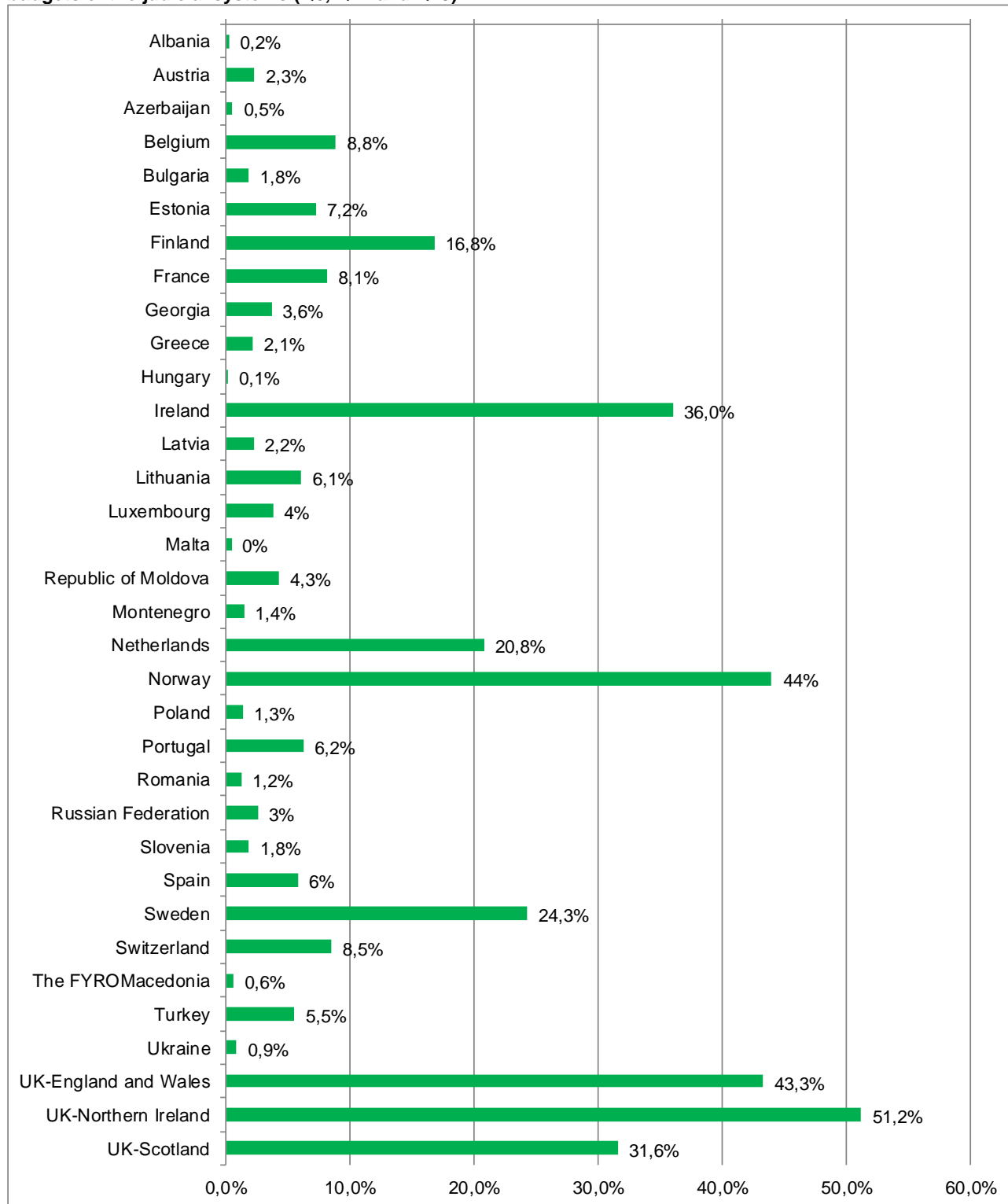
The law can also determine the level of legal aid to be granted, to fully or partly cover the total legal costs (**Austria, Belgium, France**) or define a specific method of assessing the amount of legal aid to award (**Finland, Republic of Moldova**) which can, for instance, depend on the minimum living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

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

users are residents of a European Union member state (with some exceptions for certain administrative cases).

## 2.6.2 Part of the annual public budget allocated to legal aid within the total annual public budget of the judicial system

Figure 2.38 Part of the approved annual public budget allocated to legal aid within the total annual public budgets of the judicial systems (Q6, Q12 and Q13)



Devised on the basis of the right to *Habeas Corpus*, judicial systems of the **United Kingdom** entities have always granted a special priority to legal aid. Accordingly, the legal aid budget represents 51 % of the total budget allocated to the judicial system in **UK-Northern Ireland**, 32 % in **UK-Scotland** and 43 % in **UK-**



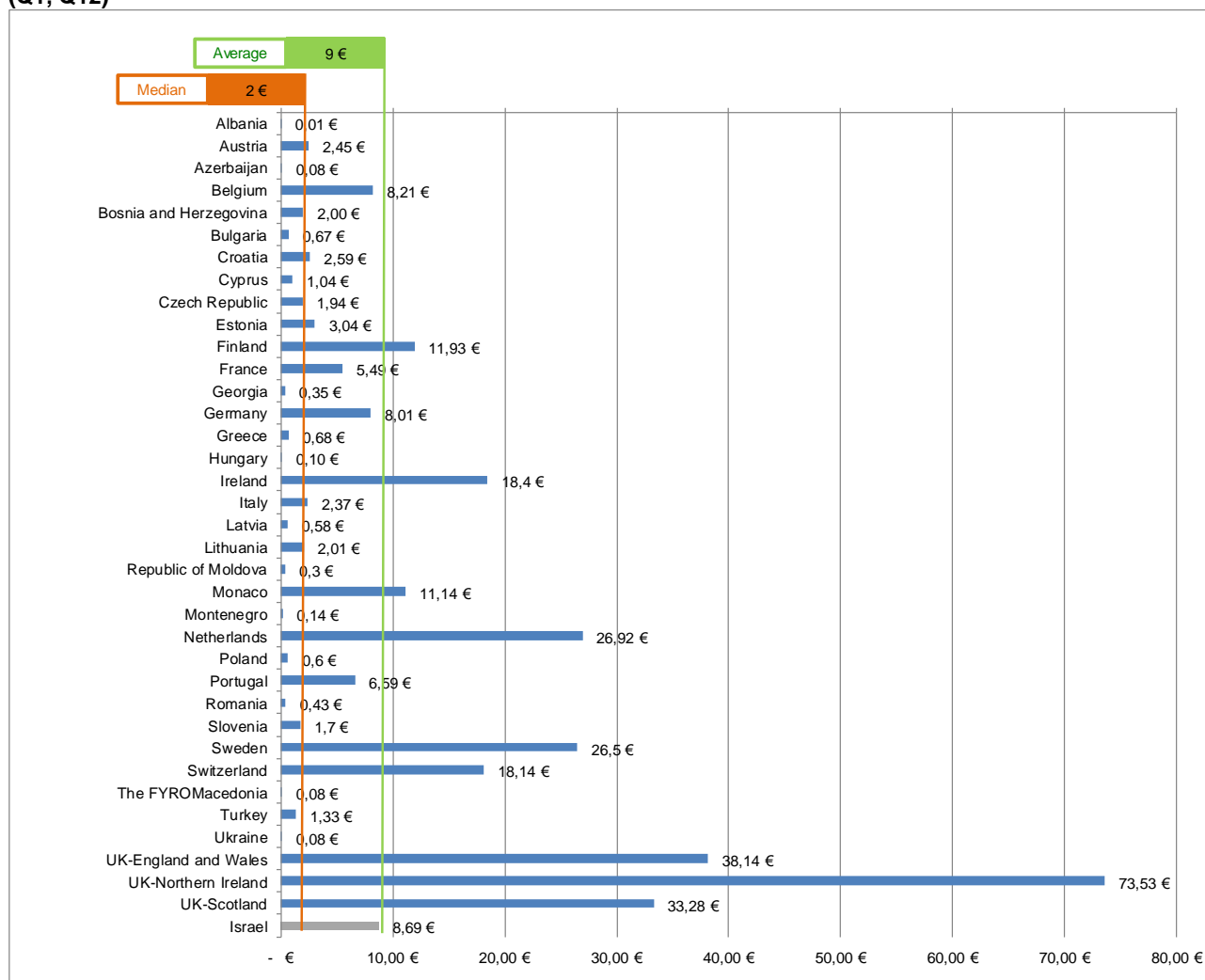
**England and Wales.** Northern European states also have a strong tradition of generous legal aid systems with a significant budgetary share within the total budget of the judicial system: **Norway** (44 %), **Ireland** (36 %), **Sweden** (24 %), **Netherlands** (21 %) and **Finland** (17 %). In some states, legal aid is not yet a priority in terms of budgetary efforts and its budget represents less than 1 % of the budget allocated to the judicial system: **Albania, Azerbaijan, Hungary, Malta, “the former Yugoslav Republic of Macedonia”** and **Ukraine.**

### 2.6.3 Implemented annual public budget allocated to legal aid in 2014

37 States or entities were able to communicate the amount of implemented annual public budget allocated to legal aid in 2014.

#### 2.6.3.1 Implemented annual public budget of legal aid per capita in 2014

**Figure 2.39 Implemented annual public budget allocated to legal aid in 2014 per capita and in € (Q1, Q12)**



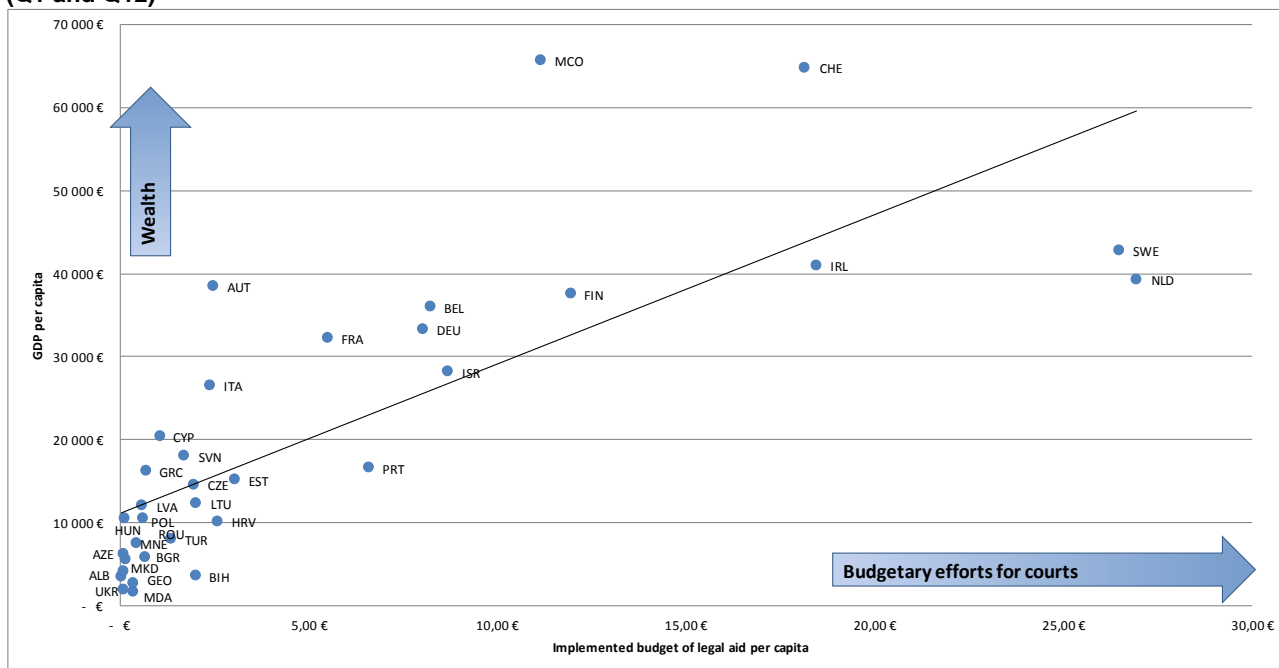
Around 9 € per capita are spent on average by the European states on legal aid. It is noteworthy that behind this average there are significant variations depending on the states. The median is 2 € per capita which implies that half of the responding States or entities spent less than 2 € per capita on legal aid in 2014. Moreover, 13 states are situated under the threshold of 1 € (**Albania, Azerbaijan, Bulgaria, Georgia, Greece, Hungary, Latvia, Republic of Moldova, Montenegro, Poland, Romania, “the former Yugoslav Republic of Macedonia”** and **Ukraine**).

**UK-Northern Ireland** committed the most substantial amount of legal aid per capita in 2014: 73,50 €. The amount per capita allocated by **UK-England and Wales**, the second entity in terms of budgetary efforts in the field of legal aid, is almost two times lower than that of **UK-Northern Ireland** (38 €). Generally speaking,

the Common Law countries and Northern European states commit the largest budgets per capita to legal aid (33,30 € in **UK-Scotland**, 26,90 € in the **Netherlands**, 26,50 € in **Sweden**, 18,40 € in **Ireland**, 11,90 € in **Finland**). A relatively high amount of the budget can also be noted in **Switzerland** (18,10 € per capita) and **Monaco** (11,10 € per capita).

### 2.6.3.2 Implemented budget of legal aid per capita compared with the wealth of the States or entities in 2014

Figure 2.40 Implemented budget of legal aid linked with the GDP in 2014, per capita and in € (Q1 and Q12)



**Note:** the values for **UK-England and Wales**, **UK-Scotland** and **UK-Northern Ireland** do not appear in the figure because they are much higher than for the other states.

The figure above, linking the approved budget of legal aid with the GDP per capita, makes it possible to measure the budgetary effort of the states aimed at enabling litigants who do not have the financial resources required to have access to justice. It does not include the three entities of the **United Kingdom** whose per capita implemented budget for legal aid in 2014 far exceeds that of the other states.

This figure highlights the significant efforts made by **Bosnia and Herzegovina** and **Portugal** to facilitate access to justice through legal aid. These two states stand out very clearly from their respective groups of states with similar levels of wealth.

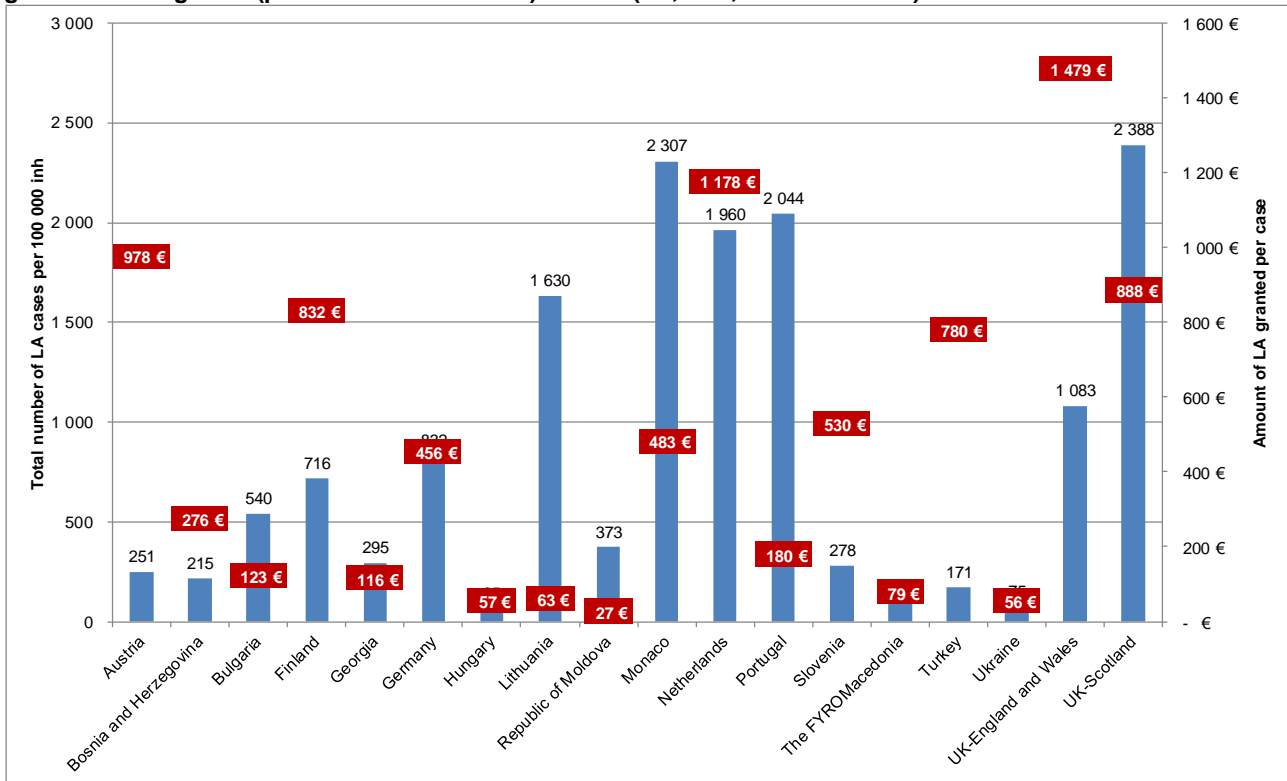
In a category of states with much higher levels of wealth, one can notice the budgetary efforts of the **Netherlands** and **Sweden**, compared to **Austria**, **Finland** and **Ireland** for example.

A note of caution is necessary, as the analysis of legal aid expenditures in the states cannot be complete without taking into consideration the demand (the number of individuals and cases requiring legal aid), the granting criteria (criteria of scope and eligibility used by the state), the case complexity and the level of professional and administrative expenses. It is therefore necessary to always interpret budgetary data with caution.

### 2.6.3.3 Number of cases (litigious or not) for which legal aid is granted and amount allocated to legal aid per case

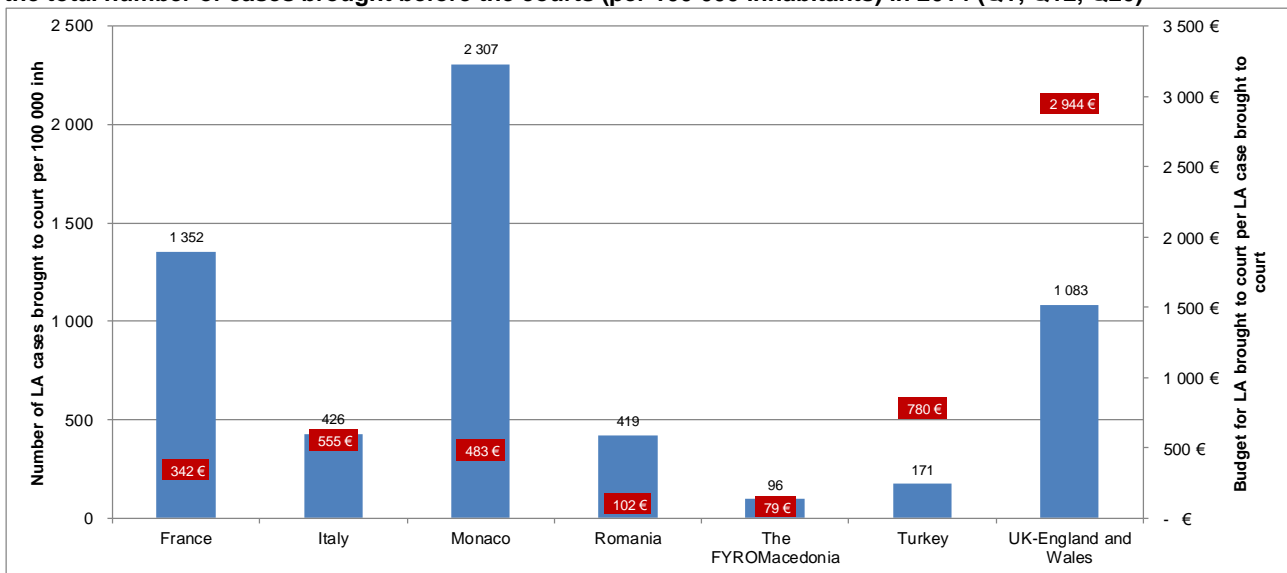
In order to fine-tune the analysis of policies related to securing access to law and justice through legal aid, the CEPEJ's aim has been to link the demand (the number of cases granted legal aid for 100 000 inhabitants, for litigious and non-litigious matters) with the amounts granted by case. The information is available for 18 States and entities.

**Figure 2.41 Amount of the implemented budget allocated to legal aid per case (in €) and total number of cases granted with legal aid (per 100 000 inhabitants) in 2014 (Q1, Q12, Q20 and Q20-1)**



It is regrettable that, as in the previous cycle, more states have not been able to provide such details. Focusing on litigious cases and the corresponding budget, it is possible to draw conclusions for a few more States and entities.

**Figure 2.42 Amount of the implemented budget allocated to legal aid per case brought before the court (in €) and the total number of cases brought before the courts (per 100 000 inhabitants) in 2014 (Q1, Q12, Q20)**



Various public policy choices are made by the states on legal aid, considering the number of eligible cases and the amount allocated per eligible case.

In 2014, the most generous legal aid policies are to be found in the **Netherlands, UK-Scotland and UK-England and Wales**, with a relative significant number of eligible cases and amount of legal aid per case. **Finland, France, Germany and Monaco** remain generous in terms of the amounts allocated but for a smaller number of eligible cases.

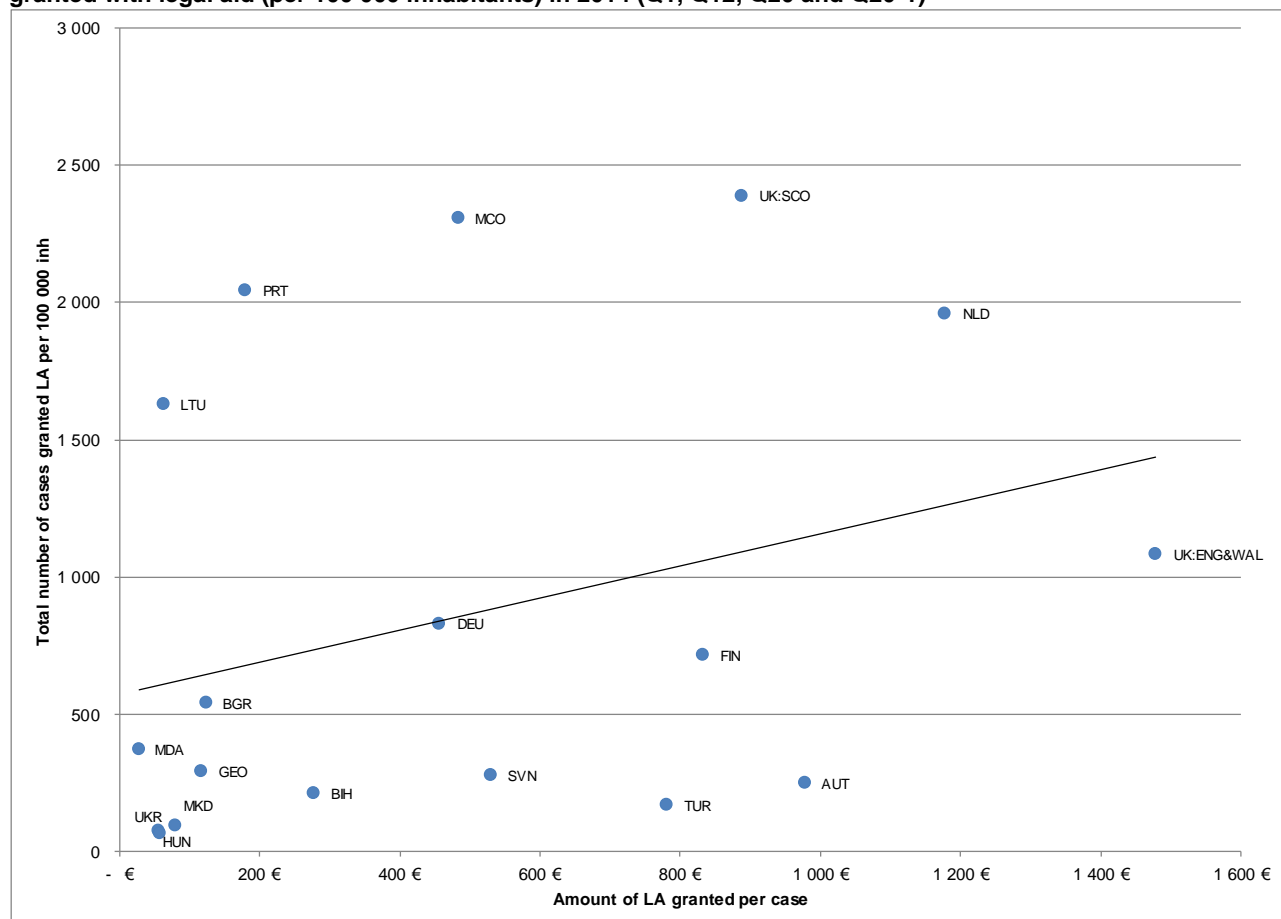
**Austria, Bosnia and Herzegovina, Italy, Slovenia** and **Turkey** have made the choice to allocate significant amounts per case while limiting the number of eligible cases.

On the contrary, **Lithuania, Portugal** and to a lesser extent **Bulgaria, Republic of Moldova** and **Romania** extend the eligibility to a relatively large number of cases but limit the amounts allocated.

Finally, **Georgia, Hungary, Malta, “the former Yugoslav Republic of Macedonia”** and **Ukraine** limit both eligibility and the amount spent per case.

These various policies appear clearly in the figure below.

**Figure 2.43 Amount of the implemented budget allocated to legal aid per case (in €) and total number of cases granted with legal aid (per 100 000 inhabitants) in 2014 (Q1, Q12, Q20 and Q20-1)**



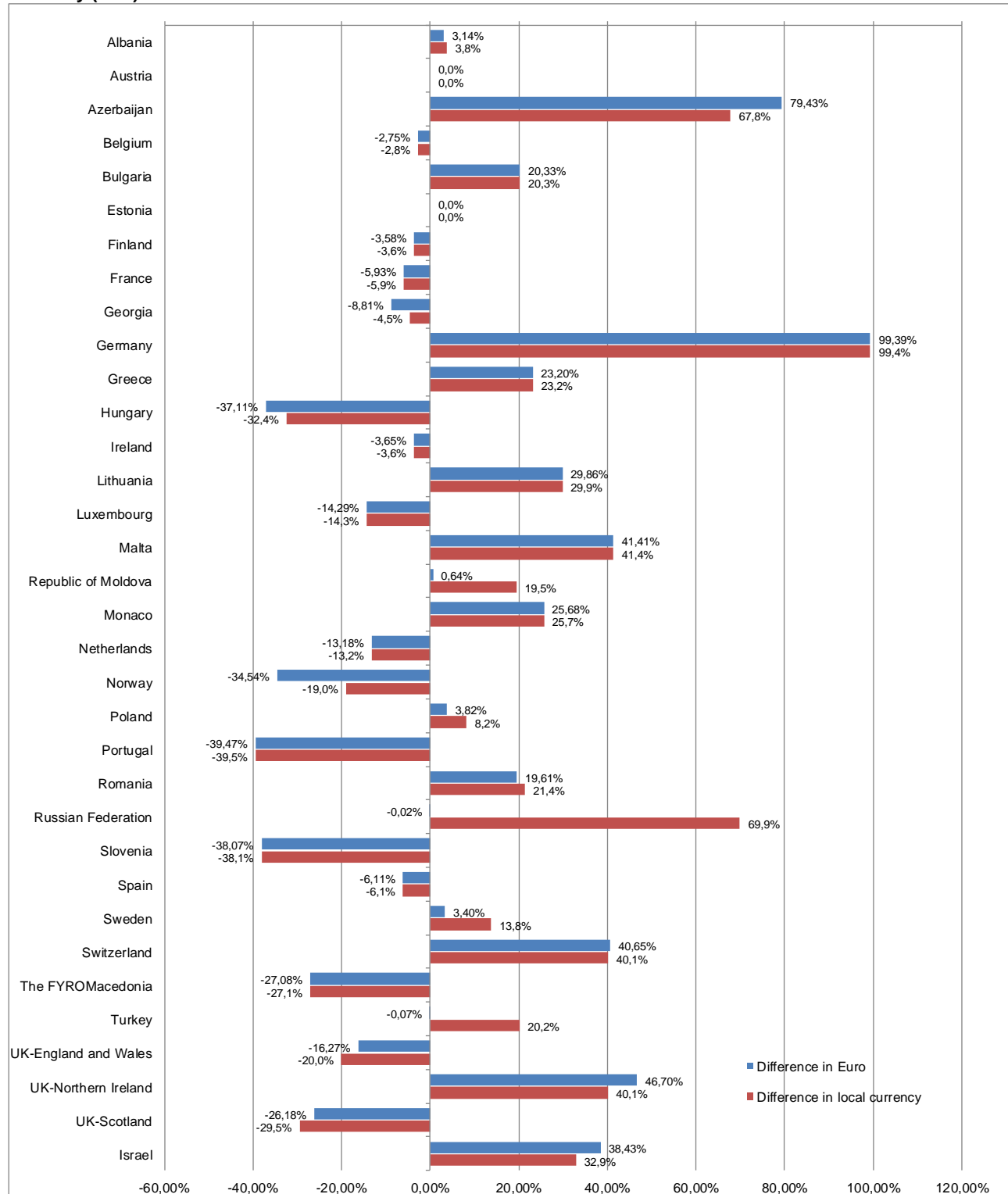
It is important to note that some of the States or entities noted in section 2.6.3 for their relatively generous legal aid system (either in terms of their budget per capita compared to their wealth, the amount of legal aid allocated per case or the number of eligible cases) – for instance **Netherlands, Portugal, Switzerland, Slovenia, UK-England and Wales** and **UK-Northern Ireland** - are also States or entities in which revenues from per capita justice fees or taxes are among the highest. High amounts of justice fees/taxes might lead one to suggest that equal access to justice is not guaranteed. But access to law and justice is actually preserved through the legal aid mechanisms developed for individuals whose financial means are insufficient to defend themselves in court or to initiate a legal action.

## 2.6.4 Evolution of the annual public budget allocated to legal aid

**Note:** this part of the analysis is based on the approved budgets allocated to legal aid, given that the latter are the only ones that have been provided for the previous evaluation cycles.

### 2.6.4.1 Evolution of the annual public budget allocated to legal aid between 2012 and 2014

**Figure 2.44** Variation in the annual public budget allocated to legal aid between 2012 and 2014, in € and in local currency (Q12)



The variation for the period 2012-2014 in the legal aid budget can be assessed in respect of 31 States or entities.

The overall trend is positive and shows that new investments have been made to promote and enhance access to justice and access to law throughout Europe in order to comply with the requirements of the European Convention on Human Rights. This notwithstanding, attention should be drawn to the fact that the median is 0 %, meaning that half of the responding states have restricted their budget allocated to legal aid between 2012 and 2014.

According to the variations when considered in Euro and without taking into account the inflation parameter, 15 States or entities reduced the legal aid budget during the period under analysis, while 17 States or entities increased it. In **Estonia**, the budget remained the same in 2012 and 2014.

**Azerbaijan** (+ 79 %) and **Latvia** (+ 71,50 %) made the most significant investments in the field of legal aid between 2012 and 2014. Nevertheless, the increase observed in **Azerbaijan** must be qualified in the light of the evolution of the exchange rate during the period considered. **Latvia** is not presented in this variation due to the change of currency to Euro, however there is an increase in the annual public budget allocated to legal aid is due to the gradual implementation of a new regulation of December 2009 aimed at developing and improving the legal aid system. The high variation of the level of legal aid which can be noted for **Germany** is only the result of the fact that the 2010 and 2012 data are incomplete and not comparable with the 2014 data.

Among the States or entities that have significantly increased their legal aid budgets for the period considered, reference should be made to **UK-Northern Ireland** (+ 47 %), **Malta** (+ 41 %), **Switzerland** (+ 41 %), **Lithuania** (+ 30 %), **Bulgaria** (+ 20 %) and **Romania** (+ 20 %). In fact, the increase is less significant in **UK-Northern Ireland** if considered against the background of the increase in the exchange rate, in combination with the inflation factor. Moreover, this entity indicated that the 2012 data are based on the original budget at the start of the year, while for 2014 the final outturn is used as reference. Bearing in mind the pressure from the numerous requests addressed during the budgetary year, the amounts observed at the end of the year are always higher than those anticipated at the beginning of the year. In **Malta**, the budgetary variation is difficult to analyse because – in the absence of a specific legal aid budget prior to 2015 – the data communicated reflect the approximate expenditure from the budget of the Office of the Attorney General allocated to legal aid.

In **Switzerland**, following the entry into force of new codes of procedure that have unified cantonal procedures in civil matters on the one hand, and in criminal matters on the other hand, legal aid costs increased strongly. In this respect, analyses have been initiated to determine the reasons for this phenomenon. One possible explanation could be the introduction of the right to legal assistance from the first hour. The increase of more than 38 % in **Israel** (which should, however, be qualified in the light of the increase in the exchange rate and the inflation parameter) can be attributed to a change made by the Ministry of Finance in the allocation of budgets to criminal and civil legal aid. In fact, in previous years, the difference between the approved and implemented budgets for these institutions was extremely significant because they receive their yearly budget in direct correspondence with their yearly activities. In 2014, there was an a-priori decision to decrease the difference between the approved and implemented budgets, thus increasing the approved budget.

Among the States or entities that have significantly reduced their legal aid budgets between 2012 and 2014 are: **Portugal** (- 39,47 %), **Slovenia** (- 38,07 %), **Hungary** (- 37,11 %), **Norway** (- 34,54 %), “**the former Yugoslav Republic of Macedonia**” (- 27,08 %), **UK-Scotland** (- 26,18 %), **UK-England and Wales** (- 16,27 %) and **Netherlands** (- 13,18 %). The decrease in **Norway** is in fact very limited given the variation in the exchange rate for the period considered. **Portugal** explains the observed increase by the current economic and financial situation that led to budgetary limitations. However, it should be underlined that in the past years, the approved legal aid budget has been revised and increased in the course of the year. Legal aid expenses have in fact not decreased, quite the opposite, if one examines the implemented budget. In **Slovenia**, the decreased legal aid budget is a result of amendments to the insolvency legislation in 2013 which abolished the right for legal persons to apply for legal aid for financing the advances of the costs of the bankruptcy proceedings (legal persons are now exempt from paying the advance in bankruptcy proceedings in all cases, without having to apply for legal aid).

In conclusion, two opposing trends coexist in Europe:

- the States and entities endowed with the most generous legal aid systems (**Portugal**, having regard to its wealth, **Slovenia**, having regard to the ratio amount of legal aid granted/number of cases, **Netherlands**, **Norway**, **UK-Scotland**) tend to restrict the budget allocated to legal aid;
- on the contrary, the states where the amounts allocated to legal aid are the lowest (**Albania**, **Azerbaijan**, **Bulgaria**, **Latvia**, **Malta**, **Poland**, **Romania**) tend to increase the legal aid budget in order to comply with the requirements of the European Convention on Human Rights.

## 2.6.4.2 Evolution of the annual public budget allocated to legal aid between 2010 and 2014

Table 2.45 Evolution of the approved public budget allocated to legal aid between 2010 and 2014, in absolute values (Q12)

States/entities	Approved budget for legal aid			Evolution
	2010	2012	2014	
Albania	21 429 €	60 253 €	62 143 €	
Andorra		387 485 €		
Armenia	294 140 €			
Austria	18 400 000 €	19 000 000 €	19 000 000 €	
Azerbaijan	345 054 €	457 000 €	820 000 €	
Belgium	75 326 000 €	87 024 000 €	84 628 000 €	
Bosnia and Herzegovina	5 906 637 €	7 128 234 €		
Bulgaria	3 867 730 €	3 579 030 €	4 306 647 €	
Croatia	229 550 €	166 631 €		
Cyprus		1 526 738 €		
Czech Republic	28 361 213 €	24 142 835 €		
Denmark	87 896 311 €	83 643 048 €		
Estonia	2 982 213 €	3 835 000 €	3 835 000 €	
Finland	58 100 000 €	67 697 000 €	65 276 000 €	
France	361 197 138 €	367 180 000 €	345 406 000 €	
Georgia	1 080 548 €	1 428 885 €	1 302 966 €	
Germany	382 382 576 €	344 535 431 €	686 978 779 €	
Greece	2 500 000 €	8 300 000 €	10 225 994 €	
Hungary	304 823 €	907 974 €	570 980 €	
Ireland	87 435 000 €	83 159 000 €	80 126 000 €	
Italy	127 055 510 €	153 454 322 €		
Latvia	842 985 €	962 294 €		
Lithuania	3 906 105 €	4 543 826 €	5 900 767 €	
Luxembourg	3 000 000 €	3 500 000 €	3 000 000 €	
Malta	85 000 €	49 500 €	70 000 €	
Republic of Moldova	314 034 €	1 211 570 €	1 219 308 €	
Monaco	224 400 €	294 400 €	370 000 €	
Montenegro	169 921 €	NA	375 943 €	
Netherlands	481 655 000 €	495 300 000 €	430 000 000 €	
Norway	213 990 000 €	270 501 300 €	177 083 000 €	
Poland	23 244 000 €	24 107 000 €	25 029 000 €	
Portugal	51 641 260 €	55 184 100 €	33 403 315 €	
Romania	7 915 238 €	7 958 050 €	9 518 975 €	
Russian Federation	105 836 124 €	120 873 284 €	120 844 668 €	
Serbia				
Slovakia	1 357 776 €	1 771 287 €		
Slovenia	5 834 338 €	5 514 089 €	3 414 646 €	
Spain	35 477 067 €	253 034 641 €	237 581 907 €	
Sweden	195 683 782 €	236 399 146 €	244 442 713 €	
Switzerland	100 061 055 €	108 609 657 €	152 756 877 €	
The FYROMacedonia	NA	304 741 €	222 213 €	
Turkey	79 338 098 €	89 840 624 €	89 776 024 €	
Ukraine			3 472 684 €	
UK-England and Wales	2 521 000 000 €	2 717 785 054 €	2 275 552 132 €	
UK-Northern Ireland	96 280 000 €	92 250 000 €	135 334 000 €	
UK-Scotland		179 000 000 €	132 130 000 €	
Israel		39 771 572 €	55 055 454 €	
<b>Average</b>	129 288 551 €	141 109 701 €	153 829 619 €	
<b>Median</b>	13 157 619 €	13 650 000 €	19 000 000 €	
<b>Minimum</b>	21 429 €	49 500 €	62 143 €	
<b>Maximum</b>	2 521 000 000 €	2 717 785 054 €	2 275 552 132 €	

Over the period 2010-2014, it is worth underlining the sustained efforts of **Albania, Azerbaijan, Greece, Lithuania, Monaco, Republic of Moldova, Poland, Romania, Sweden** and **Switzerland**. As indicated before, **Germany's** variation is a result of the fact that the 2010 and 2012 data are incomplete and not comparable with the 2014 data.

**Austria, Ireland, Slovenia** and **Turkey** have budgets for legal aid that are in steady decline since 2010.

Some states which had made significant efforts with regard to legal aid between 2010 and 2012 have restricted their budget between 2012 and 2014. These are **Belgium, Finland, France, Georgia, Hungary, Luxembourg, Netherlands, Norway, Portugal** and **Spain**.

By contrast, other States or entities have increased the budget allocated to legal aid between 2012 and 2014, having decreased it between 2010 and 2012: **Bulgaria, Malta**, and **UK-Northern Ireland**.

Cross-checking these data with the data on the evolution of the court fee revenues during the period under consideration (2010-2014) makes it possible to highlight different dynamics as regards access to justice in states:

- **Azerbaijan, Albania** and **Romania**, where amounts allocated to legal aid are currently relatively low, have invested continuously since 2010 to develop their system of access to justice, in line with Council of Europe recommendations; meanwhile, the increase in court fees or taxes generates additional revenues which make it possible to cover part of the court operating costs; **Sweden**, whose legal aid system is among the most generous in Europe, also increased both the budget allocated to legal aid and the revenues from taxes/court fees during the period 2010-2014;
- some Common-Law and Northern European countries, such as **Finland, Netherlands** and **UK-Scotland**, whose legal aid systems are very developed, tend, for several years now, to decrease the amounts allocated to legal aid; at the same time, their revenues from court fees or taxes tend to increase;
- **Switzerland** and **UK-Northern Ireland**, whose legal aid systems are very generous, confirm their trend of continuous increase in the legal aid budget and decrease in the revenues generated by court taxes/fees.

## 2.7 Trends and conclusions

The evaluation of the budgets allocated to judicial systems reveals strongly contrasted situations in Europe. The European average concerning the budgets of judicial systems is 60 € per capita in 2014, but half of the states spent less than 45 € per capita. Moreover, the differences between the 6 states whose expenditure per capita is lower than 20 € are considerable, as are the differences between the 5 States or entities where the expenditure is higher than 100 €. It is noteworthy that, even if the correlation between the budget allocated to the judicial system and the GDP is positive, the wealthier states are not necessarily those who proportionally make the most considerable budgetary efforts with regard to the judicial system. Attention should also be drawn to the fact that some states carrying out important investments in relation to their wealth benefited from financial support by the international or European community to implement certain projects of modernisation of their judiciaries.

The courts budget represents the largest part of the budget allocated to the judicial system: 66 % on average. The public prosecution services budget represents approximately 24 % and the part allocated to legal aid 10 %. Northern European states and the Common Law entities have a different approach to the distribution of the budget allocated to the judicial system among the different components. In fact, the part dedicated to courts is significantly lower (less than 50 %) while priority is given to legal aid. The latter represents very often around, or more than, 20 % of the budget allocated to the judicial system. In South-Eastern and Eastern European states, the public prosecution office enjoys traditionally a strong position within the judicial system (with around, or more than, 30 % of the budget).

The trend since the last evaluation report has been towards an increase in the budget allocated to the judicial system in most of the states (25 states out of 37). The economic and financial crisis of the end of 2000s resulted in some states in important budgetary cutbacks. In 2014, the states concerned states were able to initiate or continue additional expenditures towards the promotion of their judicial systems (**Latvia, Lithuania, Romania** and **Slovenia**). On the contrary, in **Ireland, Portugal, Spain** and particularly in **Greece**, the judicial system is still undergoing regular budgetary restrictions.



Commitment of considerable funds to improve the functioning of different components of the judicial system characterises **Azerbaijan, Latvia, Lithuania, Malta, Republic of Moldova, Romania** and **Russian Federation**. Financial investments carried out in these states are often synchronised with the implementation of specific programmes related to construction/refurbishment of court buildings, equipment of tribunals with new technologies of information and communication technology or with increases in salaries. Likewise, the same category of states make significant endeavours in developing their legal aid systems in order to improve access to justice for the benefit of persons with limited or insufficient financial means. Put differently, the overall financial effort of these states in the field of the judicial system is commendable and deserves to be highlighted.

The budget allocated to initial and continuous training of judges and prosecutors still represents a very small part of the courts budget (less than 1 %), which can be regretted. Despite the CEPEJ recommendations in this respect, few states increased their budget dedicated to this specific component between 2012 and 2014. It is even possible to notice a decrease in the field in 16 states.

The increase in the revenues from court taxes/fees in some States or entities can be explained by changes of a legislative (**Romania**) or organisational (**UK-Scotland**) nature, or as a result of an increase in the number of cases (**Estonia**). In general, the users of the public service of justice are increasingly called upon to finance the judicial system, through taxes and judicial fees. These revenues represent more than 20% of the public budget allocated to the judicial system in more than a quarter of the States and entities, and even more than 50% in **Turkey**. They remain higher than the budget allocated to the judicial system in **Austria**.

Generally speaking, the trend observed since 2010 has been towards the delegation of certain services, which traditionally fall within the scope of court powers, to private providers (IT services and maintenance, in-service training of staff, security, archives, cleaning *etc.*). This practice of outsourcing the support functions of judicial activity resulted in some states in a cut in non-judge staff and/or technical court staff.

All States or entities have implemented a legal aid system in criminal matters in compliance with the requirements of the European Convention on Human Rights. As a general rule, this system encompasses legal representation before courts and legal advice. With regard to the evolution of the budgets allocated to legal aid, it is possible to distinguish two trends characterizing European States and entities: those endowed with the most generous systems tend to restrict the budget allocated to legal aid and those where the amounts allocated to legal aid are the lowest tend to increase the legal aid budget. More and more it is extended to the enforcement of judicial decisions or judicial mediation. In some States or entities where court users are subject to substantial court taxes/fees, access to justice of persons with limited financial means is, however, efficiently ensured through a generous legal aid system.

## Chapter 3. Judicial staff and lawyers

Among the many data related to staff involved in judicial activity, it has appeared to the CEPEJ appropriate, in the light of current developments within the judiciary in the states, to examine the status of judges, prosecutors, non-judges and non-prosecutors (the *Rechtspfleger*, the clerk and the assistant), and that of lawyers.

### 3.1 Judges

A judge is a person entrusted with giving, or taking part in, a judicial decision opposing parties who can be either legal or natural persons, during a trial. This definition should be viewed in the light of the European Convention on Human Rights and the case law of the European Court of Human Rights. More specifically, "the judge decides, according to the law and following an organised proceeding, on any issue within his/her jurisdiction".

To better take into account the diversity in the status and functions which can be linked to the word "judge", three types of judges have been defined in the CEPEJ's scheme:

- professional judges are described in the explanatory note of the evaluation scheme (Q46) as "those who have been trained and who are paid as such", and whose main function is to work as a judge and not as a prosecutor; the fact of working full-time or part-time has no consequence on their status;
- professional judges who practice on an occasional basis and are paid as such (Q48);
- non-professional judges who are volunteers, are compensated for their expenses, and give binding decisions in courts (Q49 and 49.1).

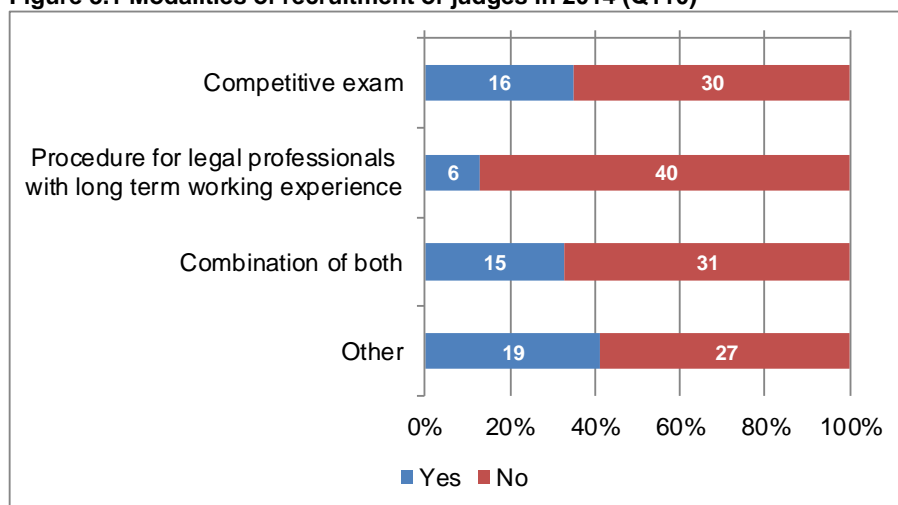
For these three categories, in order to better assess their actual activity, states have been requested to specify in full time equivalents (FTE) the number of professional judges' positions effectively occupied, whether they are practicing full time or on an occasional basis.

The quality and efficiency of justice depend very much on the conditions of recruitment and training of judges, their number, the status that guarantees their independence, and the number of staff working in courts or directly with them as assistants or in the exercise of jurisdictional activity.

It is therefore important to clarify the conditions of recruitment and training of judges, to measure the total number of judges in each State or entity, and to research the security of tenure of their functions and the number of staff who assist them, either directly or indirectly.

#### 3.1.1 The recruitment of professional judges

Figure 3.1 Modalities of recruitment of judges in 2014 (Q110)



16 States and entities have chosen a competitive exam as the ordinary process for recruitment of judges, 6 use a procedure that hires legal professionals with long term experience, 15 apply combination of both while 19 use other procedure.

This recruitment process may be complemented in the same state or entity by alternative methods of recruitment, mainly based on the specific experience of the candidate. Two preliminary comments

deserve attention in this regard. On the one hand, it should be noted that national law often sets the minimum length of the required experience. On the other hand, legal experience can be interpreted broadly, which is most often the case (jurists, lawyers, notaries, legal consultants, clerks and other occupations in the field of law), or narrowly (former magistrates, positions involving acting in judicial functions - *referendary*, assistant judge, associate judge, trainee judge etc.). It is not excluded that qualifications other than judicial

may be relevant, such as a member of Parliament in **Iceland** or as an official of the financial administration under the administrative and tax jurisdictions (**Finland**, some Länder in **Germany**).

In **Albania**, persons with prior professional experience as judges are exempted from training and from the examination at the Judicial Academy. In **Portugal**, relevant experience in the field of law may provide access to the function of judge. In some states, Doctors in law and former judges are exempted from the entrance examination to the judiciary (**Lithuania** regarding former judges of the Supreme Court, the Constitutional Court and European jurisdictions; **Russian Federation**). In **Bosnia and Herzegovina**, candidates who are serving judges are evaluated based on the results of their work and access directly to the interview stage (without taking the written examination). In **Croatia**, persons who have previously worked as judges, lawyers or notaries can be appointed judges in some jurisdictions, after having taken an examination before the Judicial Council other than the final examination of the Judicial Academy. In **France**, alternative competitions for recruitment of judges and prosecutors are open to candidates with previous work experience. Such competitions take place before juries that include also personalities from outside the judiciary. In addition, there is a possibility of recruitment without competition reserved for candidates with professional experience considered to be particularly qualifying for the exercise of judicial functions, following a favourable opinion of a committee composed exclusively of judges from the judiciary, the "promotion commission" (*commission d'avancement*). In "**the former Yugoslav Republic of Macedonia**", until 2013, 50 % of the judges and prosecutors were from other legal professions. However, under new legislation, the initial training provided by the Academy for Judges and Prosecutors is compulsory for all candidates.

In **Estonia** the initial training of candidates selected following a first competition is subject to an examination. While all candidates have to pass this test, those with experience as a lawyer, prosecutor, consultant to the court, clerk or judge, have their training period reduced. Similarly, a formally qualified and experienced lawyer who successfully passes the exam can be appointed directly as a judge in a Court of Appeal.

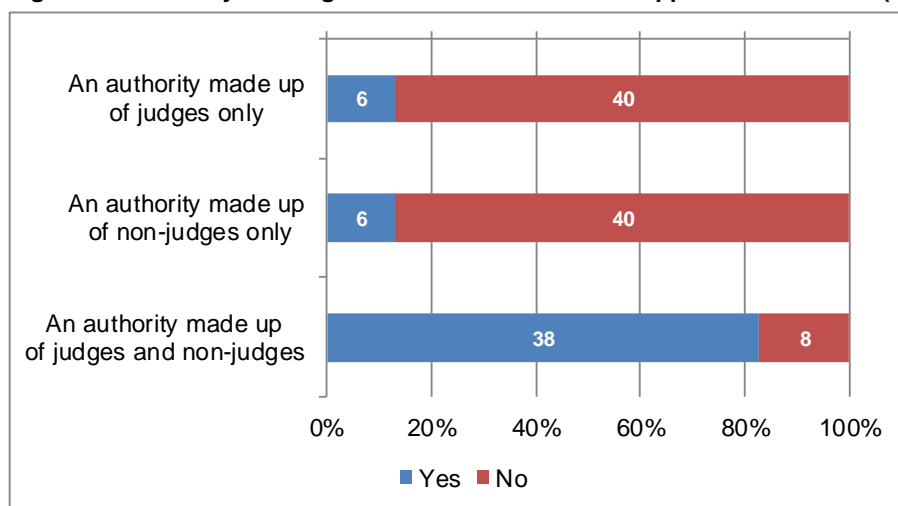
In some States or entities there might not be a specific entrance examination for the judiciary and the initial appointment of judges is subject to the dual requirement of prior legal experience and success in the bar exam (**Montenegro**, **Serbia** (before the legal reform of December 2015), **Slovenia**). Likewise, in **Turkey**, the access to the judicial career is subject to both professional experience and competitive examination. In **Monaco** for example, after succeeding in the entrance examination for the judiciary and before the final appointment, candidate judges must gain experience as judges acting as *referendaries*.

Some States or entities, particularly in common law systems recruit legal professionals mainly with proven experience. For example, in **UK-England and Wales** and in **Ireland** there is no formal entrance examination to the judiciary and the professional experience of candidates is fundamental to the evaluation conducted by the competent authority. In **Denmark**, the university law exam results are the core parameter of selection and the interview is accessible only with very strong exam results. Similarly, in **Switzerland** there is no official curriculum leading to the position of judge. Generally, judges are selected from among experienced legal experts practising as lawyers, legal experts within the administration or companies, and clerks. Although since 2009 there is a Swiss Judicial Academy, the proposed training is not mandatory (except in some cantons). In **Malta**, judges and *Magistrates* are chosen among lawyers, a 12-year experience being necessary to become a judge and 7 years to become a *Magistrate*.

In **Finland** and **Sweden**, the recruitment system is based entirely on experience acquired within the judicial system. Holding a university degree in law, judge candidates evolve within the courts, the practical training involving the consecutive practise of various functions before being permanently appointed: trainee or reporting clerk, *referendary*, temporary judge (and finally, in **Sweden**, associate judge). The exception to this recruitment process is also based on professional experience. In **Finland**, in small administrative courts, experience as a lawyer, prosecutor or tax specialist is sufficient, as is a doctorate degree. In **Sweden**, anyone with a legal qualification as a prosecutor or lawyer can be a candidate.

The professional experience of candidate judges is given more and more importance in the initial appointment process, considered either as an additional asset, as a requirement among others to meet, or as the sole criterion for the selection. This evaluation parameter based on competence should facilitate a better quality of judgements and greater efficiency as regards the justice delivered.

**Figure 3.2 Authority in charge of initial recruitment and appointment in 2014 (Q111)**



Irrespective of the recruitment procedures, an essential guarantee of the objectivity and efficiency of the procedure lies in the sufficient independence of the recruitment authorities. In the vast majority of states, the recruitment is carried out by mixed bodies (judges and non-judges). In a few States and entities, it falls within the competence of a body composed of non-judges (**Andorra, Czech Republic, Malta and UK-Northern Ireland**) or only judges

(**Cyprus, Hungary, Latvia and Lithuania**). In **Germany and Switzerland**, the three types of authorities are present at the level of federal entities, according to their autonomous systems.

Beyond the different appointment systems adopted by the states, an increasingly clear European consensus emerges with regard to the place and role of a "High Judicial Council politically neutral or equivalent body as an effective instrument to ensure respect for basic democratic principles."<sup>13</sup> In several States or entities, a Judicial Council (**Albania, Andorra, Armenia, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, France, Georgia, Hungary, Italy, Lithuania, Republic of Moldova, Monaco, Montenegro, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Switzerland** (in the cantons that have a High Judicial Council), "the former Yugoslav Republic of Macedonia", **Turkey, Ukraine**) or a special committee of selection/evaluation/appointment of judges (**Azerbaijan, Denmark, Estonia, Finland, Ireland, Lithuania, Latvia, Luxembourg, Norway, Russian Federation, Sweden, UK-England and Wales, UK-Northern Ireland, UK-Scotland and Israel**) have a central role. These institutions are often composed of a majority of members of the judiciary which is an essential guarantee of their independence, and legal practitioners which participation is a pledge of democratic legitimacy. **Andorra** is an exception with a High Judicial Council composed exclusively of non-judges. The existence of a selection committee does not rule out the involvement of the High Judicial Council in the appointment procedure (**Azerbaijan, Lithuania, Slovakia**). In **Lithuania**, for example, the President of the Republic appoints judges other than those of the Supreme Court on the recommendation of a selection committee established by him/herself, with the agreement of the Parliament and after having consulted the Judicial Council. While the degree of intervention of the Judicial Councils or other appointing commissions varies – from being charged with making proposal (the great majority of the states) to making the formal appointment (**Andorra, Bosnia and Herzegovina, Croatia, Cyprus** (except for judges of the Supreme Court), **Spain, Montenegro, Slovenia, Turkey**) - they certainly contribute to the quality of justice by providing an initial guarantee of functional independence of judges.

Sometimes, the specific competitive examination that gives access to the profession of judge takes place before a jury composed specially for this purpose. The latter is composed so as to provide guarantees of independence and objectivity similar to those relating to the composition of Judicial Councils and selection committees (**France, Greece, Monaco**).

In many States or entities, the formal appointment of judges rests with the Head of State acting on the proposal of the Judicial Council (**Albania** (except for the judges of the Supreme Court), **Armenia, Austria and Iceland** (for the supreme judges), **Denmark** (the Queen acts on the recommendation of the Minister of Justice, who him/herself acts on the recommendation of the Judicial Appointments Council), **France, Finland** (judges are appointed by the President of the Republic on the recommendation of the Minister of Justice, advised by the Appointment Committee), **Hungary, Ireland, Republic of Moldova, Monaco** (the appointment is made by sovereign order on the report of the Director of judicial services, after consulting the High Judicial Council), **Russian Federation** (regarding federal judges), **Slovakia, Ukraine, Israel**).

The formal appointment can also be the responsibility of the government (**Norway, Germany** (in some federal entities), **Sweden**), and more specifically of the Minister of Justice (**Austria** (for judges other than

<sup>13</sup> Venice Commission, *Judicial Appointments*, Report adopted at its 70th Plenary Session (Venice, 16-17 March 2007), CDL-AD(2007)028, Strasbourg, 22 June 2007, § 22.

Supreme Court Judges), **Germany** (for a significant number of Länder), **Italy**, or another minister (**Iceland** – the Minister of the Interior has jurisdiction with respect to the district court judges). In **UK-England and Wales** and **UK-Northern Ireland** the Lord Chancellor as the Queen's representative appoints judges on the recommendation of an independent commission of appointments. A similar commission exists in **UK-Scotland** and submits proposals to the Prime Minister before sending his/her recommendations to the Queen. In almost all States or entities, the recommendations of the Judicial Council bind the formal appointing authority, if not in law, at least in practice.

It should be recalled that, according to settled case law of the ECtHR, the appointment of judges by the executive or legislative power is acceptable provided that once appointed; they receive no pressure or instructions in the performance of their judicial functions<sup>14</sup>.

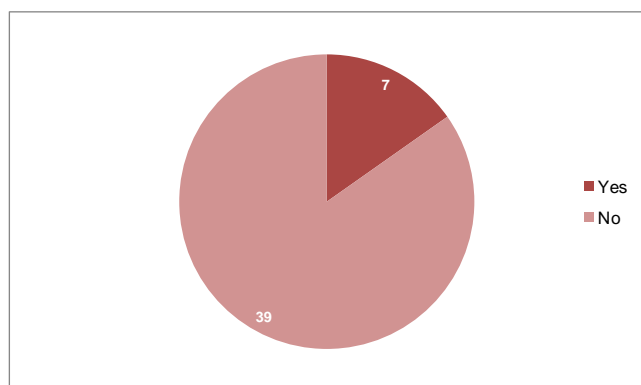
In **Malta**, the recruitment process is managed exclusively by the executive. Judges are appointed by the Head of State on the proposal of the Minister of Justice. This is also the case in the **Czech Republic**, where there is no High Judicial Council, but every court has an advisory body expressing an opinion on the candidates for President and Vice President, on the work plan and other organisational issues. For judge candidates for the Supreme Court, the agreement of the President of that court is required.

Appointments by the legislative power through elections are exceptional. In **Slovenia**, the National Assembly elects the judges on a proposal of the Judicial Council. It is interesting to note that in **Serbia**, the election by the Parliament opens an initial period of 3 years after which the High Judicial Council elects permanent judges. In **Lithuania**, judges of the Supreme Court are elected by the *Seimas* on the proposal of the President of the Republic, while in **Estonia** they are elected by the Parliament on a proposal of the Chief Justice (elected by the Parliament on a proposal from the Head of State). Similarly, judges of the Supreme Court of the **Russian Federation** are elected by the upper house of the Russian Parliament on the recommendation of the Head of State and taking into consideration the opinion of the President of the Supreme Court. At the level of federal entities, judges are elected by the legislative power on a proposal by the president of the relevant court or the governor of the respective entity. In **Switzerland**, judges of second instance and of the Supreme Court are appointed, respectively, by cantonal parliaments and the federal Parliament on the recommendation of political parties and, in most cases, after examination of applications by a parliamentary committee.

In certain rare cases, the right of proposal or formal appointment is entrusted to specific judicial authorities. In **Estonia** for example, first and second instance judges are appointed by the President of the Republic on a proposal from the Plenary Assembly of the Supreme Court. In **Spain**, judge candidates pass a series of examinations before a court of recruitment composed of judges of different levels and other legal practitioners, before being appointed by the General Council of the Judiciary. In **Switzerland**, judges of first instance courts are appointed by the cantonal courts or elected by the public. Finally, in **Finland**, if necessary, the Supreme Court and the Supreme Administrative Court may appoint judges on a temporary basis to ordinary courts for a minimum of one year (for less than one year, the competence is granted to the president of the court in question).

It can be noted that in the case of specialised courts, some states have chosen to elect judges by their peers (**France**: the case of judges of commercial courts or labour arbitration advisers (*conseillers prud'homaux*) on labour law). But they are not professional judges and they don't get any salary for that job, they only get compensations.

**Figure 3.3 Measures to ensure parity between men and women in the recruitment of professional judges in 2014 (Q110-1)**



To date, few States or entities have implemented specific measures to promote gender equality within the judiciary through recruitment. Only **Armenia, Bosnia and Herzegovina, Denmark, Germany, Montenegro, Norway** and **UK-England and Wales** indicate that they apply specific rules in this regard. For example, in **Armenia**, parity between men and women is one of the considerations when drawing up the list of judge candidates, which must contain not less than 25 % of representatives of one gender. In **Bosnia and Herzegovina**, the Law on the High Judicial and Prosecutorial Council is also pursuing

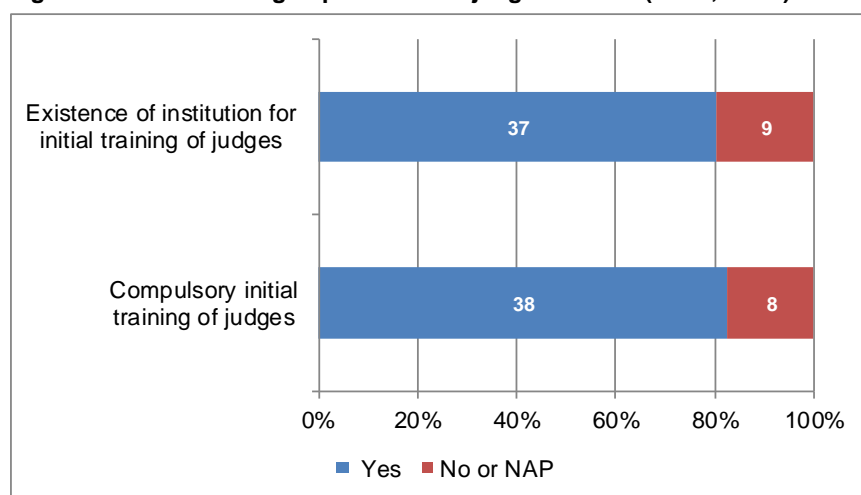
<sup>14</sup> ECtHR, *Flux v. Moldova* (No. 2), Appl. No. 31001/03, 3/10/2007, § 27.

the goal of parity as an obligation of the Council during the proceedings of the appointment and promotion of judges. Similarly, the Judicial Council of **Montenegro** is bound by a legal obligation to ensure parity between men and women as part of the appointment procedure. In **UK-England and Wales** there is a statutory responsibility of the Lord Chancellor and the Lord Chief Justice to ensure such parity.

However, it must be emphasized that the majority of the States or entities have general legislation pursuing the objective of parity between men and women in the public sector which also affects the organisation of their judicial system (**Germany** (at the level of Länder), **Austria, Denmark, Norway** and **Israel** have explicitly indicated the use of these general laws in relation to judicial appointments). In some States or entities, specific action plans were developed from existing rules and general principles to make the judicial profession more accessible to women (some Länder in **Germany, UK-Northern Ireland, UK-Scotland**).

### 3.1.2 The training of professional judges

**Figure 3.4 Initial training of professional judges in 2014 (Q127, Q131)**



Before taking up their duties, judges undergo specific training in a large majority of States or entities. This training is mandatory in most of those States or entities (38).

It should be noted that the definition of the concept of initial training still varies from one State or entity to another.

Differences exist as to the point at which the initial training takes place, i.e. before or after the definitive appointment/election of the judge. It is possible to

distinguish between a mandatory initial training before appointment for judge candidates who passed the entrance examinations (this is the case in the vast majority of states having an entrance examination) and compulsory initial training after the appointment (**Estonia, France, Ireland, Lithuania, Russian Federation, Slovenia**). In **Estonia**, for example, since 2014, judges on probation, that is to say, appointed for less than three years, must obtain a compulsory initial qualification focused on specific skills and qualities determined by the Council responsible for the training. A notable feature of judicial education in Ireland is that a mentor judge is assigned to a newly appointed judge to guide him or her for the first 3 months and to give him advice for a year. In **Lithuania**, an initial qualification of at least one month is required after the formal appointment and before actually taking office. Similarly, in **Slovenia**, the initial qualification that takes place after the election of the judge of first instance includes seminars, workshops organised by senior judges, trial simulations etc. Moreover, in **Bulgaria, Estonia** and **Slovenia** the system provides for compulsory training before and after the formal appointment of judges.

States have differing understandings as to the content of the initial training. It seems logical that in countries where judges are recruited among legal practitioners with long professional experience, the initial training is reduced to simple organisational and administrative formalities. However, in the states where judges are recruited relatively young, having successfully passed the entrance examination, a real training in legal knowledge, along with practical trainings in the courts, is essential for the quality of justice. The responses of States or entities should be read in the light of that preliminary observation.

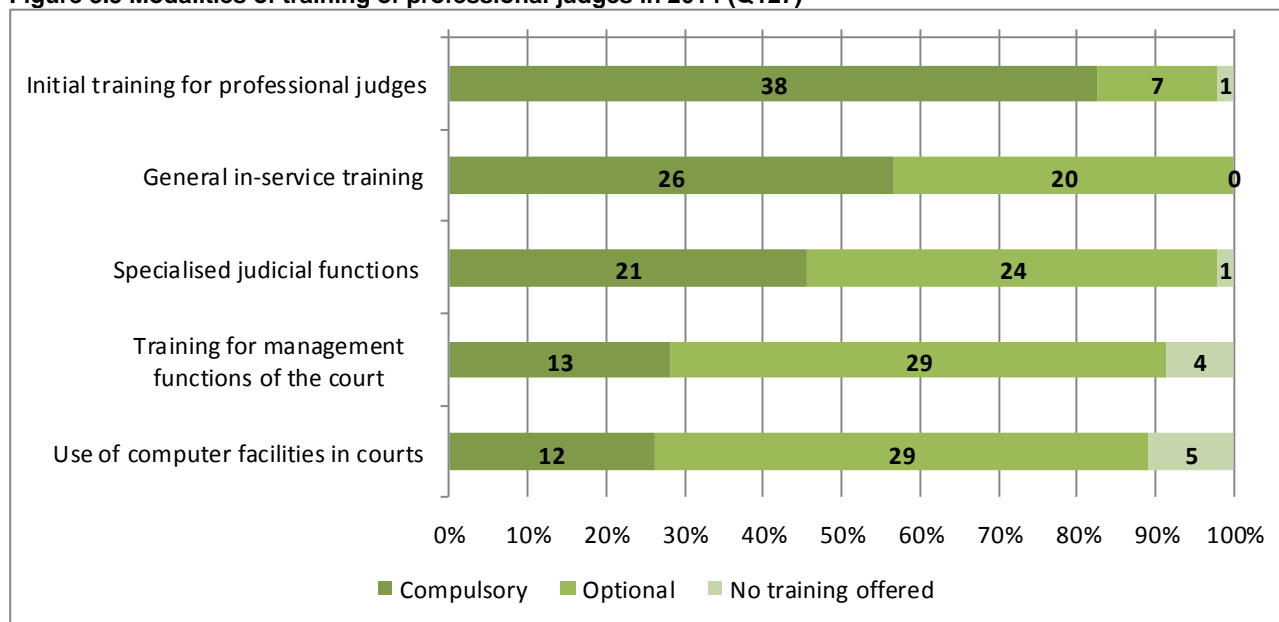
To ensure this initial training of judges, the existence of institutions is becoming increasingly common in Europe, 37 States or entities having such institutions (as compared to 33 in the previous evaluation). The initial training is relatively long in countries where it is provided by a Judicial Academy, a similar institution or through mandatory training programs (**Bulgaria** - 9 months, **France** - 31 months, **Croatia** - 2 years, **Austria** - 4 years). However, in countries where judges come from the ranks of experienced professionals, the training only takes a few days (the countries where common law applies), or it is completely absent (**Malta** where a 12-year experience as a lawyer is required to perform the function of judge).

Initial training is optional in 7 States or entities (**Cyprus, Finland, Montenegro, Serbia, Sweden, Switzerland** and in **UK-Northern Ireland**, where the training provided by the Academy of the Judiciary is



mandatory only in some cantons). While **Finland** and **Sweden** have indicated that the initial training of judges is optional, it should be recalled that access to the profession in those states is subject to a long practical training in courts before appointment. This means that the training proposed after appointment can be described as continuous training rather than initial training. In addition, in **Sweden** there is an alternative way to become a judge through an initial training of four years at the Judicial Academy. Similarly, a legislative reform is under preparation in **Finland**, aimed at introducing a competent training centre in relation to *referendaries*. It should also be noted that in 2014, the Constitutional Court of **Serbia** declared unconstitutional provisions of the *Law on the Judicial Academy* according to which the High Judicial Council (HJC) was obliged to nominate a Judicial Academy graduate if one exists, for the first election to a judicial office. With new amendments of the *Serbian Law on Judges* from December 2015 an entrance exam has been introduced for judges who are elected for the first time, organised by the HJC. Alternatively, a candidate for a first time judge who has completed initial training at the Judicial Academy will not be required to take this exam and his or her expertise and competence will be assessed in the final exam at the Judicial Academy. Finally, in **Slovakia**, initial training prior to the entrance examination is required, but candidates may also participate in the in-service training programs offered on an optional basis.

**Figure 3.5 Modalities of training of professional judges in 2014 (Q127)**



In addition to initial training, all of the States or entities offer the possibility for their judges to be trained during their careers (in-service training); this training is mandatory in most of them (26). However, even when it is optional, a considerable proportion of judges are usually interested by the in-service training. In **Austria**, more than 70 % of judges follow the general in-service training each year.

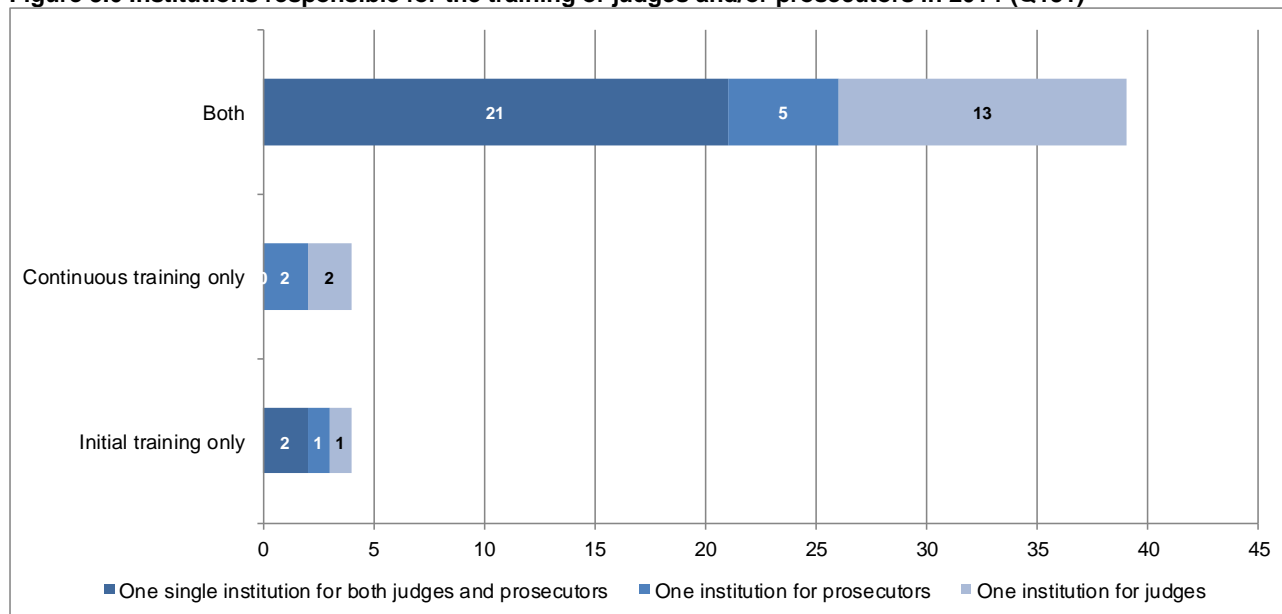
This in-service training is either occasional (in 7 States or entities such as **Malta** where judges organise amongst themselves occasional activities through the Judicial Studies Committee), or regular throughout the career (in 38 States or entities). Sometimes, national legislations provide an interval of time during which each judge has a duty to undergo in-service training: 5 days per year in **France**, every 5 years in **Lithuania**, once every three years in the **Russian Federation**, 5 days a year in **UK-Scotland**. The Dutch law is both precise and flexible - 90 hours for a period of 3 years. It should be noted that in **Lithuania**, in-service training is required beyond the 5-year criteria in case of promotion, transfer from a court of general jurisdiction to a specialised court, or even in case of an evolution in the qualification of the judge, etc.

In the majority of the States or entities, judges are required to follow a general training. However, usually, they remain free to choose the type of training according to their qualifications and needs. In addition, the competent training authorities design programmes based on previously defined priorities and the broader needs of the judicial system, which explains why the programmes change regularly. The training takes the form of lectures, whose content is very diverse, seminars and conferences in-house or abroad, interdisciplinary workshops promoting the exchange of knowledge and experience, training and visits, including to European and international jurisdictions, etc. The in-service training allows the pursuit of the efficiency of justice that results from the increased legal competences of judges and the constant adaptation of the latter to the applicable circumstances, looking beyond the law and case law.

Specific in-service trainings are also organised to fill specialised judicial functions (45 States or entities) with

regard to different areas of law and also in respect of the particularities of a specific subject (juvenile justice, new forms of crime, the status of victims, the protection of children's rights, etc.) or for those who will exercise managerial functions (42 States or entities), essentially concerning the positions of presidents and court administrators or for optimising the use of information technology in courts (41 States or entities). One can observe that the trainings offered are more and more multidisciplinary. In **Austria**, judges are encouraged to develop their economic competence. In **UK-England and Wales** targeted training is offered to judges deciding on economic and administrative issues. In-service trainings are also increasingly internationalised. European law - Council of Europe and European Union – is an integral part of national programmes in a convincing majority of countries. Similarly, these two regional organisations offer many possibilities for training national judges through traineeships, seminars, study visits, etc.

**Figure 3.6 Institutions responsible for the training of judges and/or prosecutors in 2014 (Q131)**



The majority of the training institutions (21 States or entities) cover both judges and prosecutors. In 5 States or entities (**Georgia, Hungary, Russian Federation, Spain, UK-England and Wales**), prosecutors are trained in a specific institution. In 13 States or entities, the training applies only to judges.

**Denmark, Estonia, Ireland, Latvia, Lithuania, Malta, Sweden, UK-Northern Ireland** and **UK-Scotland** have specialised institutions for the training of judges but not for prosecutors. In **Denmark**, they receive an initial training of three years and internal and external in-service training programmes for the prosecution services. In **Estonia** where a specific department of the Supreme Court is responsible for the training of judges, the training of prosecutors is provided by the Office of the Public Prosecutor. In **Latvia**, the cooperation between the Judicial Training Centre and prosecution services is carried out on a continuous basis. In **Lithuania**, prosecutors are encouraged to follow courses for judges. In **Sweden**, the training of prosecutors takes place in the framework of the prosecution services themselves.

In **Spain**, the *Escuela Judicial* provides initial and in-service training of judges while the *Centro de Estudios Juridicos* is responsible for initial and in-service training of other justice officials, including prosecutors. In **Ukraine**, the judges receive initial and in-service training at the National School of Judges, while prosecutors receive in-service training as part of the National Academy of prosecution services. Similarly, in **Georgia**, the High School of Justice provides initial and in-service training of judges, while the training of prosecutors is the responsibility of the Centre of professional development and career management attached to prosecution services. In **Finland**, in-service training programmes for judges are prepared by the Ministry of Justice.

These institutes or centres can be attached to the Ministry of Justice (**Finland, France, Slovakia, Slovenia, Turkey**, for example), the High Judicial Council (**Romania, Spain**), the Supreme Court (**Estonia, Montenegro**) or more generally to the administration of courts (**Norway, Sweden, UK-Scotland**) or operate on an independent or autonomous basis (**Belgium, Croatia Ireland, Italy**, for example). In **Bulgaria**, the National Institute of Justice has functional relationships with both the Ministry of Justice and the High Judicial Council. In **Cyprus**, there is no independent institution for specific training. The judicial training of judges is under the jurisdiction of the Supreme Court, while the training of prosecutors is provided by the Academy of Public Administration. In **Austria**, various authorities are involved in the training of judges and prosecutors through programmes offered to judges: the presidents of the appeal courts, prosecutors' offices, the



### Trends and conclusions

As regards recruitment of judges, European standards appear in general to be well grounded in national constitutional and legislative regulations. The guarantees of independence concerning the recruitment authorities, the proceedings, as well as the role of the High Judicial Council or a similar body, and the conditions determining access to the profession of magistrate, are present. This is the case regardless of the form of appointment preferred and the interpretation of the principle of separation of powers in the national law.

One of the trends to be observed concerns the increasingly important place given to the experience of the judge candidates during the selection process. While at the outset this criterion has been characterizing common law countries, currently it is granted a specific significance in almost all the States and entities. Besides, it is more and more taken into account within the frame of the initial and continuous training of judges by means of extending the programmes at geographic level (mainly at European level) and fostering a multidisciplinary approach within the legal field and beyond the latter.

### 3.1.3 Number of judges

This section assesses the total number of judges in each member State or entity by breaking it down between professional judges working full-time, professional judges sitting on an occasional basis and non-professional judges, with an indication for this third category of the nature of the duties performed.

#### *Professional judges*

It is recalled that professional judges can be defined as those who were recruited, trained and are remunerated to perform the function of a judge as a main occupation. This category does not concern professional judges sitting on an occasional basis.

#### *Professional judges sitting on an occasional basis*

To respond to a legitimate demand of proximity and timeliness, some states reinforce the staff of professional judges sitting permanently by professional judges sitting on an occasional basis. These professional judges are experienced professionals in law. They perform their function on a part-time basis and are generally remunerated based on the number of shifts they carry out.

Common law countries traditionally use this particular category of professional judges (**UK-England and Wales, UK-Northern Ireland, UK-Scotland**). Similarly, this type of judges is part of the *Tribunal de Corts* in **Andorra** and the Review Court and the Supreme Court in **Monaco**. In **Malta**, in addition to the Commissioners for Justice hired on a part-time basis, the Court of minor disputes is chaired by a lawyer appointed for 5 years on a part-time basis. In **France**, local judges (*juges de proximité*) do not intervene before administrative courts. Finally, in **Montenegro** the possibility exists for the Council of Justice to transfer judges temporarily (or permanently) from one court to another.

In some States and entities, judges eligible for retirement may be designated to perform the function of substitute judges (**Denmark, Belgium, Montenegro, Norway, Israel**). In **Israel**, since December 2014, two specific categories are distinguished: retired judges empowered to adjudicate only on conditional release and those who have the power to decide on the merits, like professional judges.

In **Spain**, besides the deputy judges, there are reserve judges. These also characterise the system of **Bosnia and Herzegovina** where they are appointed by the Supreme Council of Judges and Prosecutors at the request of the head of court concerned for a maximum of 2 years and with the aim of reducing the backlog, or provide any replacements. They perform the judicial function on a full time basis and within the same legal framework as regular judges.

#### *Non-professional judges*

Many states entrust judicial activities to non-professional judges. This is consistent with the ECtHR case law which ruled in these terms: "*the participation of lay judges on tribunals is not, as such, contrary to Article 6§1*"<sup>15</sup>).

<sup>15</sup> ECtHR, *Ibrahim Gürkan v. Turkey*, app. N°10987/10, 3/ A07/2012, § 18.

An important number of States and entities resort to non-professional judges. This is the case in **Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Luxembourg, Monaco, Norway, Slovakia, Slovenia, Spain, Sweden, Switzerland** (13 cantons out of 26 have such non-professional judges), **“the former Yugoslav Republic of Macedonia”** or even **UK-England and Wales** and **UK-Scotland**. It may be "lay judges", judges without legal training who sit alone or collegially but without the support of a professional judge (common law countries) or judges who sit as assessors to a professional judge (which is the case for example in **Austria, Belgium, Croatia, Czech Republic, France, Hungary, Germany, Luxembourg, Monaco, Norway, Slovakia, Slovenia, Sweden** or **Israel**). It can also be justices of the peace competent to settle small civil disputes or to adjudicate in respect of minor criminal offences (**Spain, UK-England and Wales, UK-Scotland**).

**Table 3.7 Categories and number of judges in 2014 (Q1, Q46, Q48, Q49, Q50)**

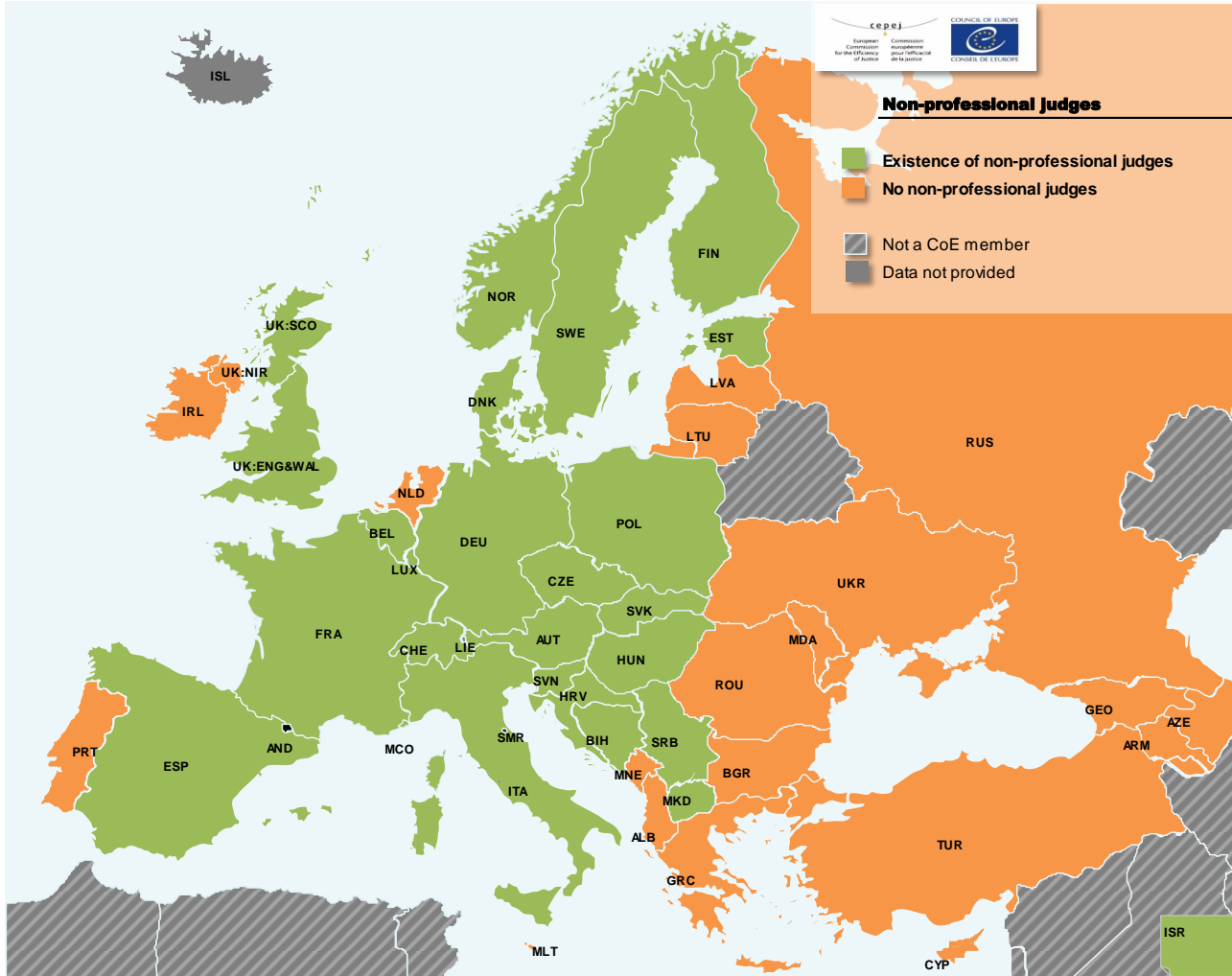
States/entities	Professional judges (FTE)		Professional judges sitting in courts occasionally (gross figures)		Non-professional judges (lay judges) (gross figures)		Trial by jury
	Absolute number	Per 100 000 inhab.	Absolute number	Per 100 000 inhab.	Absolute number	Per 100 000 inhab.	
Albania	363	13	NAP	NAP	NAP	NAP	
Andorra	24	31	2	3	NAP	NAP	
Armenia	226	8	NAP	NAP	NAP	NAP	
Austria	1620	19	NAP	NAP	NA	NA	
Azerbaijan	600	6	NAP	NAP	NAP	NAP	
Belgium	1602	14	61	1	4026	36	
Bosnia and Herzegovina	993	26	101	3	254	7	
Bulgaria	2220	31	NAP	NAP	NAP	NAP	
Croatia	1734	41	NAP	NAP	NA	NA	
Cyprus	97	11	NAP	NAP	NAP	NAP	
Czech Republic	3028	29	NAP	NAP	5669	54	
Denmark	341	6	5	0	12000	212	
Estonia	231	18	NAP	NAP	802	61	
Finland	988	18	NAP	NAP	1738	32	
France	6935	10	510	1	24921	38	
Georgia	254	7	NAP	NAP	NAP	NAP	
Germany	19323	24	NA	NA	97306	120	
Greece	2231	21	NAP	NAP	NAP	NAP	
Hungary	2813	29	NAP	NAP	4500	46	
Ireland	160	3	NAP	NAP	NAP	NAP	
Italy	6939	11	NAP	NAP	3068	5	
Latvia	488	24	NAP	NAP	NAP	NAP	
Lithuania	754	26	NAP	NAP	NAP	NAP	
Luxembourg	227	40	NAP	NAP	NA	NA	
Malta	41	10	15	3	NAP	NAP	
Republic of Moldova	384	11	NAP	NAP	NAP	NAP	
Monaco	36	95	16	42	139	368	
Montenegro	254	41	13	2	NAP	NAP	
Netherlands	2359	14	1185	7	NAP	NAP	
Norway	559	11	47	1	43000	832	
Poland	10096	26	NAP	NAP	13933	36	
Portugal	1990	19	NAP	NAP	NAP	NAP	
Romania	4577	21	NAP	NAP	NAP	NAP	
Russian Federation	NA	NA	NAP	NAP	NAP	NAP	
Serbia	2700	38	NAP	NAP	2564	36	
Slovakia	1322	24	NAP	NAP	NA	NA	
Slovenia	924	45	NAP	NAP	3445	167	
Spain	5353	12	1193	3	7687	17	
Sweden	1150	12	266	3	8318	85	
Switzerland	1290	16	1900	23	1635	20	
The FYROMacedonia	629	30	NAP	NAP	1376	67	
Turkey	8835	11	NAP	NAP	NAP	NAP	
Ukraine	8089	19	NAP	NAP	NAP	NAP	
UK-England and Wales	1893	3	7000	12	19253	34	
UK-Northern Ireland	69	4	589	32	NAP	NAP	
UK-Scotland	177	3	96	2	389	7	
Israel	686	8	52	1	437	5	
<b>Average</b>	2376	21	812	9	12192	109	
<b>Median</b>	993	18	99	3	4026	38	
<b>Minimum</b>	24	3	2	0	139	5	
<b>Maximum</b>	19323	95	7000	42	97306	832	
<b>Nb of Yes</b>							<b>20</b>
Nb of No							<b>26</b>

This table shows the number of judges making up the three groups (professional judges working full-time, judges working on an occasional basis, and non-professional judges). It also includes the possible presence of a jury in the court system. The table shows significant disparities, including between countries of similar size and income level.

This situation is partly explained by the diversity of judicial organisations. Indeed, from one State to another,

professional judges deal with a very variable volume of proceedings, in particular because non-professional judges may be responsible for significant litigations as in **Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Norway, Poland, Serbia, Slovenia, Sweden, “the former Yugoslav Republic of Macedonia”** and **UK-England and Wales**. While the majority of these non-professional judges adjudicate in criminal matters, some states such as **Austria, Belgium, France, Hungary, Monaco** and **Slovenia** assign to them labour disputes, social litigation, commercial litigation or a part of the family disputes. However around 15 states, some of which are young democracies, entrust all their disputes to professional judges and do not use non-professional judges. The contrast already observed among the countries of Eastern Europe having a jurisdictional unit largely or entirely professionalised and the countries of Western Europe, is still topical. The same is the case as regards the conclusion of the Consultative Council of European Judges (CCJE) according to which states emerging from authoritarian regimes see law and justice as providing the legitimacy essential for the reconstruction of democracy<sup>16</sup>.

**Map 3.8 Non-professional judges in 2014 (Q49)**



Out of the 47 States and entities concerned, 20 have a jury comprising jury members who are not judges. Usually these jury members sit with one or more professional judge and mainly hear criminal offences, often the most serious ones. **Azerbaijan** amended the Criminal Procedure Code to abolish the jury system. In countries of the common law tradition, a jury trial is possible in the case of certain categories of civil claim (for example in **Ireland** and **UK-Northern Ireland** in defamation cases in the High Court). However, jury trial in civil matters remains rare (1 % of civil cases in the Court of Session in **UK-Scotland**). It is worth noting that sometimes the distinction between jurors and assessor judges is difficult to make, especially when it is a mixed panel of one or more professional judges and a limited number of non-professional judges (majority) adjudicating together on the verdict and sentence.

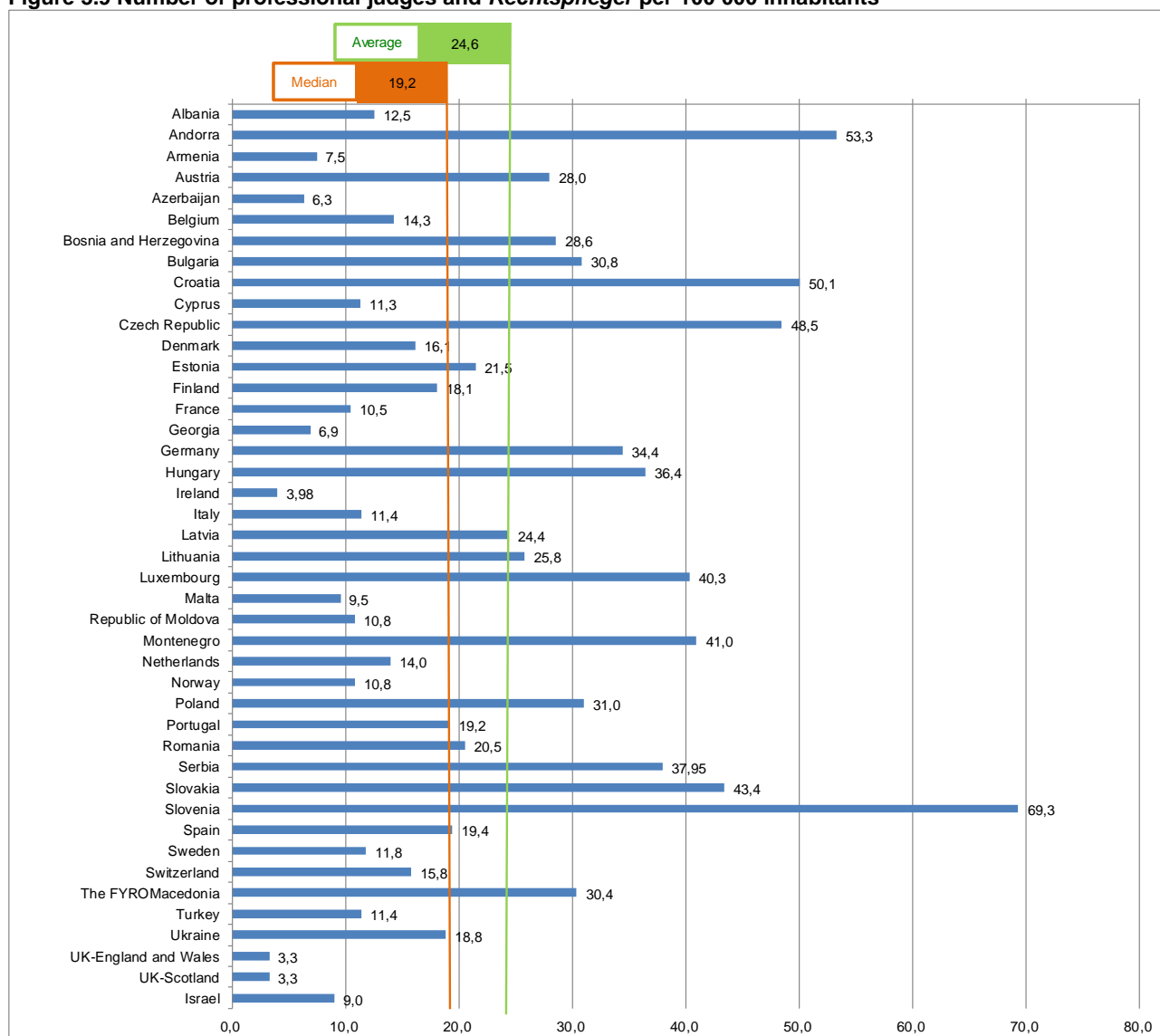
<sup>16</sup> CCJE, Opinion No. 3 (2002) on the Principles and Rules Governing Judges’ Professional Conduct, in Particular Ethics, Incompatible Behaviour and Impartiality, 19 November 2002, §11.

That is the situation in **Bulgaria, Germany, Greece and Portugal** which have responded positively as regards the existence of a jury. However, **Serbia and Slovenia**, which have a similar system provided a negative response. Moreover, in **Denmark** jurors and assessor judges are appointed from the same pre-selected pool of individuals.

The disparity in the number of professional judges per State or entity highlighted in this table obviously results from the difference in human resources allocated within each State to the functioning of the courts. The average number of 21 judges per 100 000 inhabitants (data relatively stable over the four exercises) must be assessed in the light of all these different elements.

It is worth trying to better understand what can represent the number of professional judges per 100 000 inhabitants. Indeed, a variable part of the litigation can be ensured according to the state by professional judges performing on an occasional basis, by non-professional judges and by *Rechtspfleger*. In most cases the latter exercise their activities on a full-time basis. Therefore a table showing the number of judges and *Rechtspfleger* per 100 000 inhabitants has been drawn up, offering a less distorted view of reality.

**Figure 3.9 Number of professional judges and *Rechtspfleger* per 100 000 inhabitants**



**Note:** Monaco, with 95.2 judges per 100 000 inhabitants does not appear in this figure. Indeed, this outlier data results from the small number of inhabitants.

The situation of the very small states and of the states in which a substantial volume of the litigation is settled before the judge's intervention need to be considered with prudence, as do the common law States or entities (for example **UK-England and Wales** and **Malta**).

With all of these reservations, it appears that between countries of the same economic level, having equivalent judicial organisations, the number of professional judges per 100 000 inhabitants may be very

different, and this is likely to reflect the level of resources allocated to justice, as well as the scope of the judges' missions.

**Table 3.10 Evolution of the number of professional judges between 2010 and 2014 (Q46)**

States/Entities	Professional judges per 100 000 inhabitants			
	2010	2012	2014	Variation 2014 - 2010
Albania	11,7	13,5	12,5	7%
Andorra	28,2	31,5	31,2	10%
Armenia	6,7	7,2	7,5	11%
Austria	17,8	18,3	18,9	6%
Azerbaijan	6,7	6,5	6,3	-5%
Belgium	14,8	14,3	14,3	-4%
Bosnia and Herzegovina	24,4	25,1	25,9	6%
Bulgaria	30,0	30,7	30,8	3%
Croatia	42,8	45,3	41,0	-4%
Cyprus	12,9	11,9	11,3	-13%
Czech Republic	29,1	29,1	28,8	-1%
Denmark	6,7	6,6	6,0	-10%
Estonia	16,7	17,7	17,6	5%
Finland	18,0	18,1	18,1	0%
France	10,7	10,7	10,5	-2%
Georgia	5,2	5,4	6,8	30%
Germany	24,3	24,7	23,9	-1%
Greece	29,3	23,3	20,6	-30%
Hungary	29,0	27,9	28,5	-1%
Ireland	3,2	3,1	3,5	8%
Italy	11,0	10,6	11,4	4%
Latvia	21,2	21,5	24,4	15%
Lithuania	23,9	25,6	25,8	8%
Luxembourg	36,7	40,4	40,3	10%
Malta	9,3	9,5	9,5	2%
Republic of Moldova	12,4	12,4	10,8	-13%
Monaco	100,3	102,4	95,2	-5%
Montenegro	41,9	42,4	41,0	-2%
Netherlands	15,2	14,4	14,0	-8%
Norway	11,2	11,0	10,8	-3%
Poland	27,8	26,2	26,2	-6%
Portugal	18,4	19,2	19,2	4%
Romania	19,0	20,2	20,5	8%
Russian Federation	22,6	23,2	NA	NA
Serbia	33,7	40,5	38,0	13%
Slovakia	24,9	24,2	24,4	-2%
Slovenia	49,9	47,1	44,8	-10%
Spain	10,2	11,2	11,5	13%
Sweden	11,5	11,8	11,8	3%
Switzerland	14,5	15,8	15,7	8%
The FYROMacedonia	32,3	32,4	30,4	-6%
Turkey	10,6	10,7	11,4	7%
Ukraine	16,9	17,1	18,8	12%
UK-England and Wales	3,6	3,6	3,3	-8%
UK-Northern Ireland	NA	3,8	3,7	NA
UK-Scotland	3,5	3,5	3,3	-7%
Israel		8,2	8,3	
<b>Average</b>	21,1	21,1	20,7	
<b>Median</b>	17,8	17,9	18,1	
<b>Minimum</b>	3,2	3,1	3,3	
<b>Maximum</b>	100,3	102,4	95,2	

## Comments as regards professional judges

**Albania:** by presidential decree adopted in November 2012, the number of judges in Albania was reviewed, including the number of judges in appellate courts which has been increased. In addition, since 2013, the Appellate Administrative Court is operational.

**Austria:** in 2014, some competent judges who intervene in different areas of law were counted twice which shows an increase in the number of second instance judges.

**Bosnia and Herzegovina:** in 2014, after consultation with the heads of courts concerned and the respective Ministers of Justice, the High Council of Judges and Prosecutors decided to increase the number of judges in some courts for efficiency purposes. This initiative is intended to accelerate the resolution of backlogs and to contribute to reducing the length of proceedings. A similar measure was already adopted in 2009 and 2010. The number of non-judge staff was also revised upward.

**Denmark:** unlike 2010, the 2012 and 2014 data refer only to professional judges sitting permanently, excluding legal assessors and deputy judges.

**Hungary:** in 2014, 26 judges were made available to the National Office of Justice and 7 at the Ministry of Justice. During this period, the judges do not sit in the courts.

**Iceland:** on 1 March 2011, the number of judges was temporarily increased by law because of the workload of the courts.

**Norway:** deputy Judges exercise judicial functions in the first instance courts. However, since they are appointed by the head of courts for a maximum period of 3 years and not on a permanent basis, their number is not counted in the total number provided. For example, in 2010 there were 160 deputy judges, while in 2014 they represented 30 % of judges of first instance courts.

**Switzerland:** the 2014 data are extrapolated from the responses of 25 cantons out of 26. It was indicated that the increased powers of cantonal supreme courts at appeals level and the increased judicial protection conferred on court users were the source of the increase in the number of second instance judges in 2012.

This table shows the evolution in the number of professional judges in each State and entity between 2010 and 2014.

For the vast majority of the States and entities, this number has not changed significantly between 2010 and 2014. The average remains about 21 judges per 100 000 inhabitants.

However for some countries such as **Armenia, Georgia, Latvia, Serbia, Spain** and **Ukraine**, the judge staff has seen a significant increase, while for others such as **Cyprus, Greece** and **Republic of Moldova**, this number has decreased quite significantly. As regards **Georgia, Latvia, Armenia, Cyprus** and **Ukraine**, the evolutions observed are largely explained by the variations more or less important within the population. The data in absolute numbers remain relatively stable. As for **Greece**, unlike the previous evaluation cycles, the number of administrative judges has not been considered for 2014. For the **Republic of Moldova**, the decrease noticed is partly due to judges reaching the mandatory retirement age. In 2010, the Spanish government approved the strategic plan of modernisation of the judicial system to create 134 courts, 16 new judicial positions at the National Supreme Court and the Regional Supreme Courts and 50 positions of territorial judges. This reform has naturally affected the number of judges in **Spain**. Finally, **Serbia** is a special case. Indeed, the variation for the period 2010-2014 stems from the increase in the number of professional judges in 2012 following a decision of the Constitutional Court. Namely, in 2009, the Serbian authorities introduced a reappointment procedure for all existing judges (and public prosecutors) in the country. The decisions that dismissed many of the judges (and prosecutors) were appealable to the Constitutional Court, and the judgements rendered by the Court in 2012 pointed to the shortcomings in the procedure, which led to the need to reinstate all judges (and prosecutors) that had been laid off. In the meantime, new judges (and prosecutors) had been appointed and took office in January 2013, along with those who were reinstated. In addition, a reorganisation of the judicial map in 2014 resulted in the increase in the number of first instance courts which has a direct impact on the number of judges. The factor of population decline does not appear decisive.

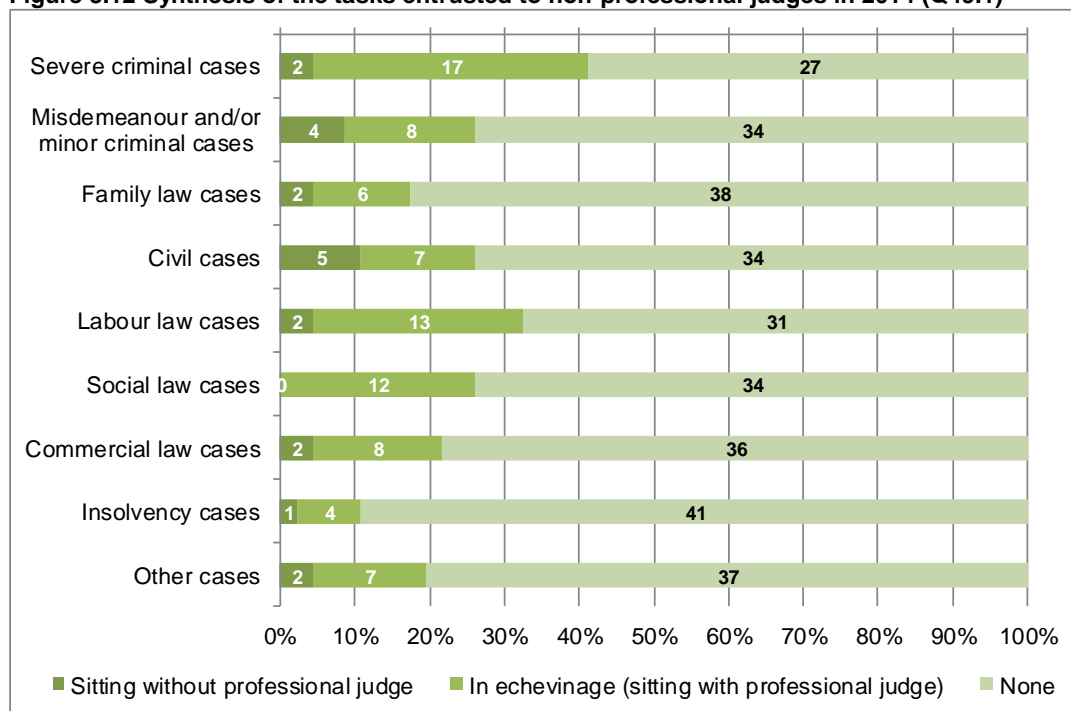
Table 3.11 Number (in absolute value) of non-professional judges and tasks entrusted to them in 2014 (Q49 and Q49.1)

States/Entities	Number of non-professional judges	Non-professional judges by type of cases									Total number of sub-elements
		Severe criminal cases	Misdemeanour and/or minor criminal cases	Family law cases	Civil cases	Labour law cases	Social law cases	Commercial law cases	Insolvency cases	Other cases	
Albania	NAP										NAP
Andorra	NAP										NAP
Armenia	NAP										NAP
Austria	NA										5
Azerbaijan	NAP										NAP
Belgium	4026										8
Bosnia and Herzegovina	254										2
Bulgaria	NAP										NAP
Croatia	NA										NA
Cyprus	NAP										NAP
Czech Republic	5669										4
Denmark	12000										9
Estonia	802										1
Finland	1738										1
France	24921										6
Georgia	NAP										NAP
Germany	97306										7
Greece	NAP										NAP
Hungary	4500										2
Ireland	NAP										NAP
Italy	3068										2
Latvia	NAP										NAP
Lithuania	NAP										NAP
Luxembourg	NA										2
Malta	NAP										NAP
Republic of Moldova	NAP										NAP
Monaco	139										5
Montenegro	NAP										NAP
Netherlands	NAP										NAP
Norway	43000										9
Poland	13933										4
Portugal	NAP										NAP
Romania	NAP										NAP
Russian Federation	NAP										NAP
Serbia	2564										5
Slovakia	NA										2
Slovenia	3445										3
Spain	7687										3
Sweden	8318										4
Switzerland	1635										7
The FYROMacedonia	1376										7
Turkey	NAP										NAP
Ukraine	NAP										NAP
UK-England and Wales	19253										3
UK-Northern Ireland	NAP										NAP
UK-Scotland	389										1
Israel	437										1
Sitting without professional judge		2	4	2	5	2	0	2	1	2	
In echevinage (sitting with professional judge)		17	8	6	7	13	12	8	4	7	
None		27	34	38	34	31	34	36	41	37	

This table shows the number of non-professional judges of each State and entity the litigation entrusted to them.



**Figure 3.12 Synthesis of the tasks entrusted to non-professional judges in 2014 (Q49.1)**



The number of these judges varies widely: it ranges from a few hundreds in **Bosnia and Herzegovina, Estonia, Monaco, or UK-Scotland**, to more than 10 000 in **Denmark, France, Germany, Norway, Poland, and UK-England and Wales**.

Several factors may explain this disparity. Besides population differences that naturally affect the volume of litigation, it must be considered that the activities performed by such non-professional judges varies from one State or entity to another.

These non-professional judges often rule in criminal cases but also in labour disputes or in commercial or civil disputes. In **Croatia, Estonia, Slovakia and UK-Scotland**, they are involved only in the criminal courts. The new criminal legislation of **Bosnia and Herzegovina** no longer provides for the intervention of non-professional judges but courts continue to use it as a mean of decreasing the backlog for cases prior to the entry into force of the reform. **Latvia** has also abandoned the system of non-professional judges in 2009. In **Luxembourg**, non-professional intervene in labour and social matters, in **Israel**, they sit only in labour courts.

In general, non-professional judges sit in panels with one or more professional judges and they are the majority. However, in **Belgium, Italy, Serbia, UK-England and Wales**, they may decide alone. In **UK-Scotland**, they are assisted by advisers with a legal qualification. Likewise, in **Spain**, the 7687 'Peace Judges' who are placed in each village where there are neither professional courts nor professional judges, are competent to know of civil matters under 90 euros, and they are in charge of birth and death registrations in the Civil Register. In **France**, before the labour courts, a judge intervenes if the non-professional judges, in even number, have failed to resolve the dispute, while the majority of commercial and insolvency cases are judged in the commercial courts, fully composed of non-professional judges (experts in the matter).

**Croatia, Estonia, Finland, Hungary, Slovakia, UK-England and Wales** have explicitly stated that non-professional judges only intervene at first instance. However, it is not excluded that such judges hear appeals, which is the case in **Norway and Sweden**. Often national laws define the competence of non-professional judges through specific categories of disputes, offences or sentences.

The system of selection and appointment of non-professional judges differs considerably from one State to another. For example, in the **Czech Republic, Estonia and Slovakia** non-professional judges are elected by local government authorities. Likewise, in **Spain**, peace judges are elected by the Municipal Councils and appointed by the Higher Courts of Justice. In **Denmark**, the individuals designated to participate in the administration of justice may be called upon to perform either the functions of non-professional judges or those of a juror. Therefore, the exact number of non-professional judges cannot be identified. The two assessor judges of the Court for children in **France** are chosen from candidates for their interest and knowledge of youth. In **Norway**, non-professional judges are randomly selected from electronic lists. As for

the eligibility conditions set by domestic law, they are general and relate to the age, the legal capacity, the citizenship or residence of the person, mastery of the official language, etc. Most often no legal qualifications are required, but those selected can be made to follow some training before taking office.

As to the number of non-professional judges in **Estonia**, the number is established for each jurisdiction by regulation of the Minister of Justice. In **Slovakia**, it is determined by the president of each district court. In **Slovenia**, special laws set the number at the level of the district courts and labour courts. Only this figure is available and not the number of judges who actually served in 2014.

**Estonia, Hungary, Slovakia and Spain** have stated that the mandate of non-professional judges is 4 years. In the **Czech Republic**, they perform their function about 20 days per year, while in **Norway** they can only sit in one or two procedures per year. In principle, non-professional judges are not remunerated but may receive compensation.

Finally, some states have referred to more specific areas involving non-professional judges: tenancy cases in **France**; in matters of agriculture, administrative law, finance law, litigation regarding notaries and lawyers in **Germany**; the Arbitration Commission on Commercial Leases or the Commission of the independent pensions fund in **Monaco**; the litigation before the courts for the application of sentences in **Belgium**.

### Trends and conclusions

In general, the majority trend to be noted in Europe is the stability of employment over the last four years with an average of 21 judges per 100 000 inhabitants. However, this figure corresponds to very different realities shaped by the specificities of national judicial systems and the cultural, historical and socio-political context that defines them. Thus, the judicial apparatus of the states of Central and especially Eastern Europe continue to operate with a ratio of judges per capita substantially higher than that of the states of Western Europe. Moreover, this same group of states have a fully professional system, or rarely use lay judges. The use of lay judges remains an essential feature of common law countries and northern Europe.

Common law countries traditionally resort to professional judges sitting on an occasional basis. The involvement of such judges is also justified in small states such as **Andorra** and **Monaco**. In **France**, these are proximity judges intervening only in the ordinary and not the administrative courts. In addition, in some States and entities, judges eligible for retirement may be designated to perform as substitute judges (**Belgium, Denmark, Montenegro, Norway, Israel**). This practice helps to cope with difficulties related to vacancies due to absences or to the backlog affecting the efficiency of the courts. In this regard, the Councils of Justice are often empowered to decide the temporary transfer of judges from one court to another. In **Bosnia and Herzegovina** and **Spain** reserve judges may be called upon to sit to ensure replacements or enhance the capacity of courts to eliminate backlogs.

Europe is divided on the use of juries, which exist in a little less than half of the states. This system remains an essential feature of Western Europe, while the majority of the countries of Central and Eastern Europe do not have it - or have abandoned it symbolically during the democratic transition. Sometimes the distinction is not very clear in practice between jurors and lay judges. Some states report having a jury while it is a mixed panel of professional judges and citizens involved as lay judges. However, besides the difference in the number (higher for a jury than for a mixed panel), the degree of autonomy in decision-making is not the same and constitutes the main trait of distinction.

The composition of the judiciary, more or less professionalised, has a strong impact on the budgetary aspects, including the share going to wages. The latter is very high in states resorting to professional judges and relatively low in countries using lay judges.

#### 3.1.4 Distribution of professional judges between men and women, and between the different levels of jurisdiction

Recognizing that equality between women and men is crucial for the protection of human rights, the functioning of democracy, respect for the rule of law, economic growth and competitiveness, the Committee of Ministers adopted the Council of Europe's Strategy for equality between women and men (2014 to 2017). This transversal programme aims to increase the impact and visibility of equality standards by supporting their application in the states through concrete actions and initiatives in a number of priority areas. In this broader framework, the CEPEJ requests specific data from the states on the male / female distribution among judges.

It is worth recalling that the majority of states, entities or observers have general legislation in place which

pursues the objective of parity between men and women in the public sector and also affects the organisation of their judicial systems (**Austria, Denmark, Germany** at the level of their Länder, **Norway** and **Israel** have explicitly indicated the use of these general laws on judicial appointments). In some countries or entities, specific action plans were developed from existing rules and general principles to make the judicial profession more accessible to women (some Länder in **Germany, UK-Northern Ireland, UK-Scotland**).

Only **Armenia, Bosnia and Herzegovina, Denmark, Germany, Montenegro, Norway** and **UK-England and Wales** specified having in place specific rules designed to foster gender parity as early as at the stage of recruitment to the profession of judge (*supra*).

Table 3.13 Distribution in % of professional judges per instance en 2014 (Q46)

States/entities	Total of professional judges (FTE)	1st instance professional judges	2nd instance professional judges	Supreme court professional judges
Albania	363	72%	24%	5%
Andorra	24	54%	50%	NAP
Armenia	226	75%	17%	8%
Austria	1620	76%	20%	4%
Azerbaijan	600	NA	NA	NA
Belgium	1602	79%	19%	2%
Bosnia and Herzegovina	993	67%	22%	11%
Bulgaria	2220	79%	12%	9%
Croatia	1734	70%	27%	2%
Cyprus	97	87%	13%	NAP
Czech Republic	3028	61%	36%	3%
Denmark	341	66%	28%	6%
Estonia	231	73%	19%	8%
Finland	988	77%	19%	4%
France	6935	70%	25%	5%
Georgia	254	73%	22%	6%
Germany	19323	77%	21%	2%
Greece	2231	69%	21%	10%
Hungary	2813	60%	37%	3%
Ireland	160	88%	6%	6%
Italy	6939	78%	17%	5%
Latvia	488	63%	27%	10%
Lithuania	754	89%	6%	5%
Luxembourg	227	82%	NA	18%
Malta	41	80%	20%	NAP
Republic of Moldova	384	73%	20%	8%
Monaco	36	42%	14%	44%
Montenegro	254	72%	21%	7%
Netherlands	2359	78%	22%	NA
Norway	559	66%	30%	4%
Poland	10096	94%	5%	1%
Portugal	1990	74%	22%	4%
Romania	4577	46%	52%	3%
Russian Federation	NA	NA	NA	NA
Serbia	2700	86%	12%	1%
Slovakia	1322	66%	28%	6%
Slovenia	924	81%	15%	3%
Spain	5353	72%	26%	2%
Sweden	1150	67%	30%	3%
Switzerland	1290	68%	29%	3%
The FYROMacedonia	629	79%	18%	3%
Turkey	8835	92%	NAP	8%
Ukraine	8089	73%	26%	1%
UK-England and Wales	1893	NA	NA	NA
UK-Northern Ireland	69	83%	4%	13%
UK-Scotland	177	90%	10%	NA
Israel	686	70%	28%	2%
<b>Average</b>	2376	74%	22%	6%
<b>Median</b>	993	73%	21%	5%
<b>Minimum</b>	24	42%	4%	1%
<b>Maximum</b>	19323	94%	52%	44%

This table shows the distribution of professional judges between the three levels of jurisdiction. It should be noted that in **Andorra**, **Cyprus** and **Malta** the judicial system is organised in two levels, the appeal court constituting the supreme instance.

In **Turkey** the appellate courts were still not operational in 2015. **Poland** and the **Czech Republic** reported on the peculiarity of their judicial systems where four levels are grouped in three instances.

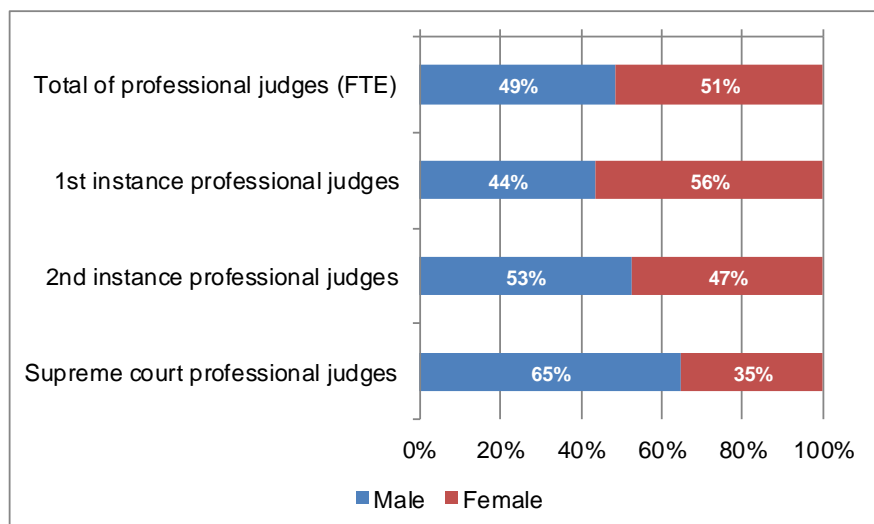
The average distribution of judges between the three levels of jurisdiction is 74 % for first instance courts, 22 % for second instance courts and 6 % for the Supreme Court.

This distribution is primarily due to the fact that only part of the first instance decisions is subject to appeal to a higher court, and possibly to the Supreme Court. But the composition of each jurisdiction should also be taken into account. Often the first instance courts are composed of a single judge, while in the second instance a full bench is often the rule. This collegiality is generally more pronounced in the Supreme Court. In these most common situations, the distribution of judges between the various levels of courts is not only proportional to the volume of litigation handled, but also to the composition of the courts of each level of jurisdiction.

**Table 3.14 Distribution in % of professional judges per instance and by gender in 2014 (Q46)**

States/entities	Total of professional judges (FTE)		1st instance professional judges		2nd instance professional judges		Supreme court professional judges	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	56%	44%	53%	47%	60%	40%	76%	24%
Andorra	42%	58%	31%	69%	75%	25%	NAP	NAP
Armenia	77%	23%	78%	22%	69%	31%	82%	18%
Austria	49%	51%	45%	55%	58%	42%	65%	35%
Azerbaijan	90%	11%	NA	NA	NA	NA	NA	NA
Belgium	48%	52%	47%	53%	53%	47%	79%	21%
Bosnia and Herzegovina	37%	63%	36%	64%	35%	65%	42%	58%
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	30%	70%	27%	73%	35%	65%	60%	40%
Cyprus	55%	45%	52%	48%	69%	31%	NAP	NAP
Czech Republic	39%	61%	34%	66%	45%	55%	73%	27%
Denmark	49%	51%	42%	58%	60%	40%	74%	26%
Estonia	37%	63%	30%	70%	45%	55%	83%	17%
Finland	48%	52%	47%	53%	48%	52%	64%	36%
France	38%	62%	35%	65%	42%	58%	56%	44%
Georgia	51%	49%	50%	50%	49%	51%	79%	21%
Germany	NA	NA	NA	NA	NA	NA	76%	24%
Greece	28%	72%	24%	76%	29%	71%	50%	50%
Hungary	31%	69%	30%	70%	32%	68%	50%	50%
Ireland	68%	33%	66%	34%	80%	20%	70%	30%
Italy	48%	52%	45%	55%	52%	48%	75%	25%
Latvia	23%	77%	20%	80%	23%	77%	38%	62%
Lithuania	39%	61%	37%	63%	55%	45%	71%	29%
Luxembourg	28%	72%	25%	75%	NA	NA	41%	59%
Malta	61%	39%	55%	45%	88%	13%	NAP	NAP
Republic of Moldova	55%	45%	57%	43%	48%	52%	53%	47%
Monaco	58%	42%	40%	60%	40%	60%	81%	19%
Montenegro	43%	57%	44%	56%	41%	59%	44%	56%
Netherlands	44%	56%	40%	60%	55%	45%	NA	NA
Norway	60%	40%	58%	42%	64%	36%	65%	35%
Poland	NA	NA	36%	64%	46%	54%	NA	NA
Portugal	42%	58%	33%	67%	62%	38%	82%	18%
Romania	26%	74%	27%	73%	26%	74%	16%	84%
Russian Federation	NA	NA	41%	59%	NA	NA	NA	NA
Serbia	NA	NA	NA	NA	NA	NA	NA	NA
Slovakia	38%	62%	36%	64%	40%	60%	42%	58%
Slovenia	22%	78%	19%	81%	29%	71%	62%	38%
Spain	48%	52%	41%	59%	65%	35%	87%	13%
Sweden	51%	49%	53%	47%	44%	56%	61%	39%
Switzerland	60%	40%	58%	42%	65%	35%	71%	29%
The FYROMacedonia	41%	59%	40%	60%	44%	56%	55%	45%
Turkey	66%	34%	64%	36%	NAP	NAP	84%	16%
Ukraine	NA	NA	NA	NA	NA	NA	NA	NA
UK-England and Wales	70%	30%	NA	NA	NA	NA	NA	NA
UK-Northern Ireland	77%	23%	72%	28%	100%	0%	100%	0%
UK-Scotland	77%	23%	78%	22%	72%	28%	NA	NA
Israel	49%	51%	46%	54%	53%	47%	80%	20%
<b>Average</b>	49%	51%	44%	56%	53%	47%	65%	35%
<b>Median</b>	48%	52%	41%	59%	49%	51%	68%	32%
<b>Minimum</b>	22%	11%	19%	22%	23%	0%	16%	0%
<b>Maximum</b>	90%	78%	78%	81%	100%	77%	100%	84%

**Figure 3.15 Synthesis of the distribution in % of professional judges per instance and by gender in 2014 (Q46)**



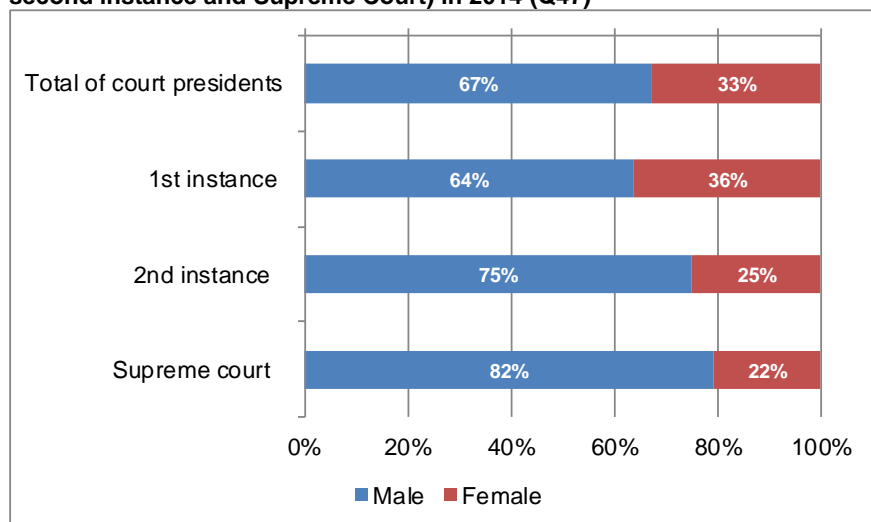
This figure refines the data from the previous table 3.14 by distributing groups of professional judges by gender.

In all jurisdictions, despite large disparities between States and entities, the average gender distribution among judges is now balanced between women and men. However, the analysis by level of court highlights a majority of women in first instance courts (56 %), a situation close to gender balance at second instance, and a majority of men (65 %) in the

Supreme Court. Thus, there is a decrease in the percentage of women judges compared to male judges as one moves up through the judicial hierarchy. In some states, the difference is explained by the relatively recent feminisation of the judiciary, whose effects are currently more noticeable at first instance than at second instance and in the Supreme Court. In **Montenegro**, women judges are a majority at all levels (respectively 56 %, 59 % and 56 %) as in **Bosnia and Herzegovina** (64 %, 65 % and 58 %). In **Romania**, the percentage of women increases with each instance (73 %, 74 % and 84 %).

However, in some States or entities such as **Armenia, Azerbaijan, Ireland, Turkey** and the entities of the **United-Kingdom**, judges are for the majority part men in all instances, while in other states such as **Croatia, Greece, Hungary, Latvia, Luxembourg, Romania** and **Slovenia**, the situation is noticeably reversed especially at first and second instance.

**Figure 3.16 Synthesis of the distribution in % of presidents of courts between the instances (first instance, second instance and Supreme Court) in 2014 (Q47)**



**Table 3.17 Distribution in % of presidents of courts per instance (first instance, second instance and Supreme Court) and by gender in 2014 (Q47)**

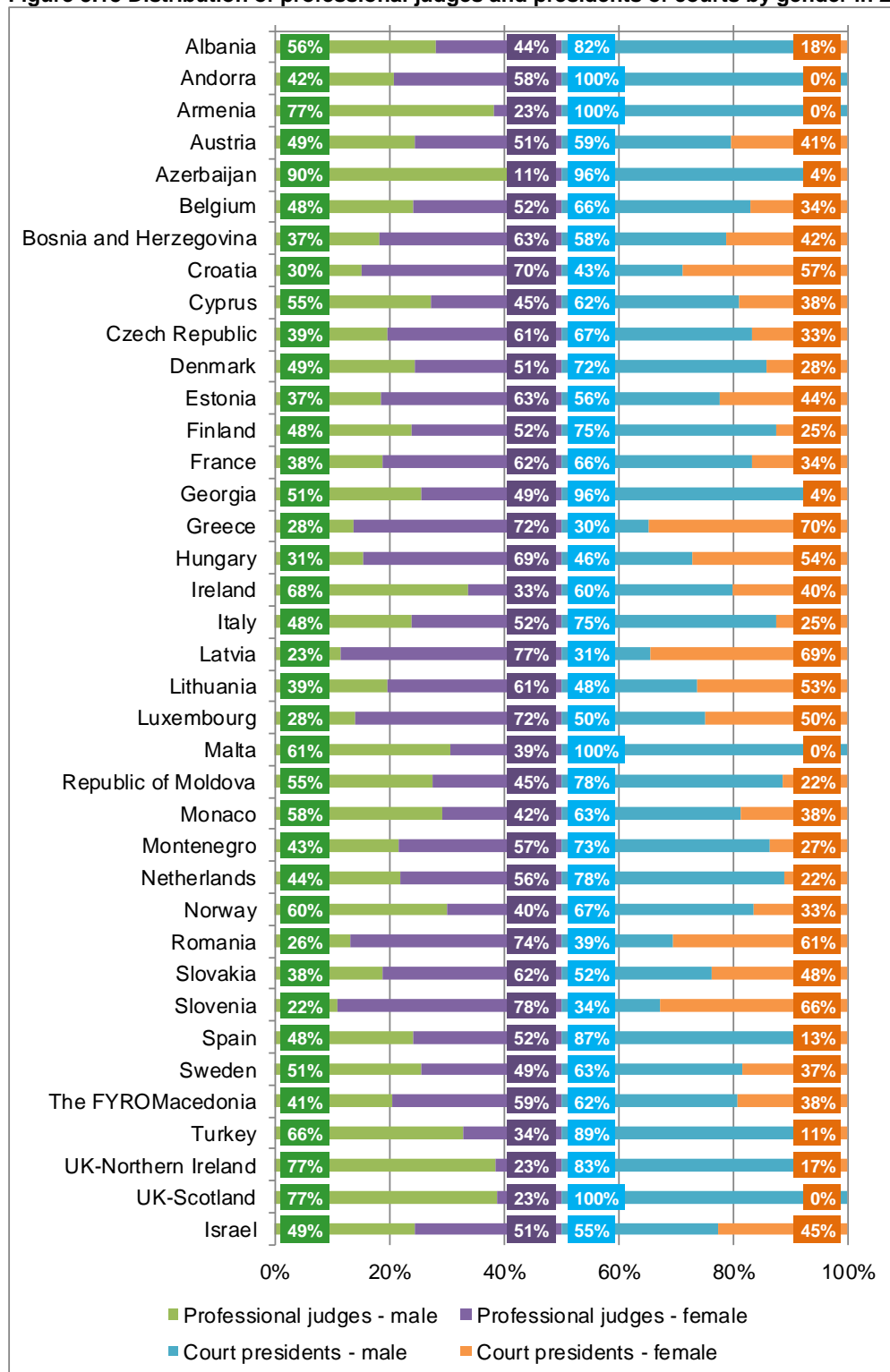
States	Total of court presidents		1st instance		2nd instance		Supreme court	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	82%	18%	83%	17%	75%	25%	100%	0%
Andorra	100%	0%	100%	0%	100%	0%	NAP	NAP
Armenia	100%	0%	100%	0%	100%	0%	100%	0%
Austria	59%	41%	58%	42%	59%	41%	100%	0%
Azerbaijan	96%	4%	97%	3%	83%	17%	100%	0%
Belgium	66%	34%	67%	33%	60%	40%	100%	0%
Bosnia and Herzegovina	58%	42%	58%	42%	53%	47%	67%	33%
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	43%	57%	37%	63%	76%	24%	100%	0%
Cyprus	62%	38%	60%	40%	100%	0%	NAP	NAP
Czech Republic	67%	33%	65%	35%	80%	20%	50%	50%
Denmark	72%	28%	67%	33%	100%	0%	100%	0%
Estonia	56%	44%	50%	50%	50%	50%	100%	0%
Finland	75%	25%	76%	24%	80%	20%	50%	50%
France	66%	34%	66%	34%	68%	32%	100%	0%
Georgia	96%	4%	95%	5%	100%	0%	100%	0%
Germany	NA	NA	NA	NA	NA	NA	NA	NA
Greece	30%	70%	25%	75%	41%	59%	100%	0%
Hungary	46%	54%	45%	55%	48%	52%	100%	0%
Ireland	60%	40%	67%	33%	100%	0%	0%	100%
Italy	75%	25%	73%	27%	91%	9%	100%	0%
Latvia	31%	69%	29%	71%	33%	67%	100%	..
Lithuania	48%	53%	43%	57%	100%	0%	100%	0%
Luxembourg	50%	50%	33%	67%	..	..	100%	0%
Malta	100%	0%	100%	0%	100%	0%	NAP	NAP
Republic of Moldova	78%	22%	75%	25%	100%	0%	100%	0%
Monaco	63%	38%	60%	40%	0%	100%	100%	0%
Montenegro	73%	27%	72%	28%	100%	0%	0%	100%
Netherlands	78%	22%	64%	36%	100%	0%	100%	0%
Norway	67%	33%	65%	35%	83%	17%	100%	0%
Poland	53%	47%	49%	51%	72%	28%	60%	40%
Portugal	NA	NA	NA	NA	NA	NA	NA	NA
Romania	39%	61%	37%	63%	42%	58%	..	100%
Russian Federation	66%	34%	66%	34%	NAP	NAP	100%	0%
Serbia	NA	NA	NA	NA	NA	NA	100%	..
Slovakia	52%	48%	52%	48%	63%	38%	0%	100%
Slovenia	34%	66%	31%	69%	60%	40%	100%	0%
Spain	87%	13%	NAP	NAP	87%	13%	100%	0%
Sweden	63%	37%	61%	39%	80%	20%	50%	50%
Switzerland	NA	NA	61%	39%	NA	NA	100%	0%
The FYROMacedonia	62%	38%	68%	32%	40%	60%	0%	100%
Turkey	89%	11%	89%	11%	NAP	NAP	67%	33%
Ukraine	NA	NA	NA	NA	NA	NA	NA	NA
UK-England and Wales	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP
UK-Northern Ireland	83%	17%	75%	25%	100%	0%	100%	0%
UK-Scotland	100%	0%	NAP	NAP	NAP	NAP	NAP	NAP
Israel	55%	45%	33%	67%	86%	14%	100%	0%
<b>Average</b>	67%	33%	64%	36%	75%	25%	82%	22%
<b>Median</b>	66%	34%	65%	35%	80%	20%	100%	0%
<b>Minimum</b>	30%	0%	25%	0%	0%	0%	0%	0%
<b>Maximum</b>	100%	70%	100%	75%	100%	100%	100%	100%



These tables set out the distribution of presidents of courts between women and men by level of responsibility. The presidents' offices are occupied by men in 67 % of jurisdictions, including 64 % of first instance courts, 75 % of second instance courts and 82 % of Supreme Courts. The situation of each State reveals either a strengthening of this trend in countries where between 90 % and 100 % of the presidents' offices are occupied by men (**Andorra, Armenia, Azerbaijan, Georgia, Malta and UK-Scotland**), or countries, where more than half of the presidents' offices are entrusted to women (**Croatia, Greece, Hungary, Latvia, Lithuania, Luxembourg, Romania and Slovenia**).

Generally, the gender parity in terms of the number of judges that characterises more and more the European judicial systems is still difficult to achieve as far as the presidents of courts are concerned.

**Figure 3.18 Distribution of professional judges and presidents of courts by gender in 2014 (Q46 and Q47)**



This table reflects the difference in the number of positions of professional judges held by women (51 %) and the number of court president positions assigned to them (33 %).

The approximation of data on the distribution of women and men in first instance courts, second instance courts and Supreme Courts, both as judges and presidents, clearly emphasizes that while women occupy 56 % of the positions at first instance, they preside these courts only in 36 % of cases. The same trend can be observed at second instance where they occupy 47 % of the positions of judge, but only 25 % of the positions of president. This should be taken as evidence of the existence of a "glass ceiling" which women judges face and which would block their access to higher responsibilities, despite their skills and number.

These elements complement the observation made earlier by the CEPEJ, of the increasing feminisation of the group of professional judges. This trend, already noted in the previous reports, continued over the years 2012 to 2014 with a further strengthening by 2 % of the female judges. Over a longer period, from 2010 to 2014, this number has increased by 5 %. Women and men are now very nearly equally numerous among the professional judges. Against this background, one would expect this strong and persisting trend to continue with concomitant changes at second instance courts and at Supreme Courts.

### Trends and conclusions

The courts, formerly mainly composed of men who also ensured the presidency, are characterised in recent years and increasingly among states, by a feminisation of the professional judges, mainly at first instance. Today the situation is one of parity between women and men in the composition of the courts, even if large differences can still be observed between the States and entities where men remain widely in majority such as in **Armenia, Azerbaijan, Turkey, Ireland** and the entities of the **United Kingdom**, and other states which are broadly feminised, such as **Croatia, Greece, Hungary, Latvia, Luxembourg, Romania and Slovenia**. Within this overall trend, the situation as regards court presidents stands out, since men still largely predominate in this role. This fact reinforces the idea that, despite their number and their professional qualities, women face more difficulties than men in acceding to positions of higher responsibility.

#### 3.1.5 Term of office of judges

One can but conclude, like the CCJE in its opinion n°1 on *Standards Concerning the Independence of the Judiciary and the Irremovability of Judges*, that "*European practice is generally to make full-time appointments until the legal retirement age*", which "*is the approach least problematic from the viewpoint of independence*"<sup>17</sup>. However, where tenure is provisional or limited, the body responsible for the objectivity and the transparency of the method of appointment or re-appointment as a full-time judge is of special importance<sup>18</sup>.

The irremovability of judges is an essential guarantee of their independence, it may be enshrined in the texts or it may exist only in practice<sup>19</sup>.

On this subject, four questions were asked to the states, entities and observers. First, whether the mandate of judges is indefinite, and, if not, what was the duration of this mandate. The states then had to indicate whether, prior to this appointment, a probation period was imposed on the judge.

The statutory guarantees should be concretely assessed to evaluate their real scope; states were asked about the possibility of transferring a judge without his or her consent from one jurisdiction to another.

<sup>17</sup> CCJE, Opinion No.1 (2001) on *Standards Concerning the Independence of the Judiciary and the Irremovability of Judges*, 23 November 2001, § 48.

<sup>18</sup> *Idem*, §§ 53 and 60.

<sup>19</sup> ECtHR, *Kress v. France*, Appl. No. 39594/98, 7 June 2001, §§ 34 ff.

Table 3.19 Mandate of judges in 2014 (Q121, Q122 and Q125)

States/entities	Mandate of judges		
	Probation period	Appointment until retirement	Renewable contract
Albania			
Andorra			
Armenia			
Austria			
Azerbaijan			
Belgium			
Bosnia and Herzegovina			
Bulgaria			
Croatia			
Cyprus			
Czech Republic			
Denmark			
Estonia			
Finland			
France			
Georgia			
Germany			
Greece			
Hungary			
Ireland			
Italy			
Latvia			
Lithuania			
Luxembourg			
Malta			
Republic of Moldova			
Monaco			
Montenegro			
Netherlands			
Norway			
Poland			
Portugal			
Romania			
Russian Federation			
Serbia			
Slovakia			
Slovenia			
Spain			
Sweden			
Switzerland			
The FYROMacedonia			
Turkey			
Ukraine			
UK-England and Wales			
UK-Northern Ireland			
UK-Scotland			
Israel			
<b>Total</b>	<b>32</b>	<b>46</b>	<b>46</b>
<b>Nb of Yes</b>	<b>18</b>	<b>44</b>	<b>4</b>
<b>Nb of No or NAP</b>	<b>14</b>	<b>2</b>	<b>42</b>
<b>Nb of NA</b>	<b>0</b>	<b>0</b>	<b>0</b>

This table shows on the one hand states imposing a probation period on judges, those in which judges exercise their activity until retirement, and finally those that appoint judges for a renewable period.

With the exception of **Andorra** and **Switzerland**, where judges are appointed for a fixed and renewable term, the judges of the States or entities hold office until the age of retirement. The latter varies between 63 and 70 years, and some states provide for the possibility of postponing this age (**Estonia, France, Italy, Poland, Romania**) for a few years. In **Estonia**, the Supreme Court, with the agreement of the Board of the courts and the judge concerned and upon the proposal of the head of jurisdiction, may raise the retirement age (68 years) by two years when a crucial public interest for the efficient functioning of court warrants it. In **France**, exceptions to retirement at the age of 67 years old are: an extension granted to a judge in order to complete his/her career or when his/her family situation justifies it; maintaining a higher number of judges in a court for the purpose of efficiency (68 years). In **Italy**, the age of retirement (70 years) can be extended by 5 years upon request. In **Hungary**, a reform aimed at gradually reducing the retirement age of judges and prosecutors by aligning it to the general age of retirement (65 years) is still ongoing. In **Slovakia**, there is no mandatory age of retirement for judges. When a judge reaches the age of 65, the Council of Justice shall notify to the President of the Republic who decides to maintain him/her or not in function. In several states, the retirement age is higher for judges of the Supreme Court and other superior courts than for judges of lower courts (**Belgium, Cyprus, France**).

Some states reported other *modus operandi*. The mandate of judges with a high hierarchical position is limited in time in **Belgium, Bulgaria** and **France**. In addition, in **Belgium**, specific mandates such as for investigating judge are temporary. It is the same in **France**, where the following judges are appointed for non-renewable fixed terms: judges on a temporary basis (7 years); counsellors in extraordinary services (8 years); Advocates General on extraordinary service (8 years); proximity judges (7 years). Judicial secondees (senior officials, appointed on record, judges and prosecutors of the judiciary) are appointed for a renewable term of 5 years, as part of their professional duty of mobility. For French judges seconded to **Monaco**, the detachment is secured by a bilateral agreement for a term of three years, renewable once. Finally, some States or entities employ professional judges on a temporary basis (*supra*: professional judges on an occasional basis). Before being appointed, judges from 18 states are subject to a mandatory probationary period, which is usually a period of training or traineeship (**France** – 2 years and 7 months; **Italy** – 18 months; **Portugal** – 2 years). In **Luxembourg**, until 2015, the judicial servants ("*attachés de justice*") were recruited for a term of 18 months renewable once (12 months since the reform). In **Monaco**, the *referendary* judges are assigned to any function as judges or prosecutors, until a maximum of 12 months in each function. They may also, at their request, be assigned to the Directorate for Judicial Services for a period of 6 months. The total assignment period is 2 years. Following a legislative reform in 2015, the entire period of assignment can be enjoyed by the judges or prosecutors. However, for some states, the appointment to definitive duties is preceded by a trial period limited in time: 3 months for judges of the Supreme Court in **Denmark**; 3 years in **Hungary** and **Latvia**, and 5 years in the **Republic of Moldova**, followed by an evaluation possibly giving access to a permanent position. Moreover, in **Latvia**, the 3-year period can be extended for another two years.

All national legislation provides exceptions to the principle of irremovability and list the reasons for the dismissal or removal of judges. In **Estonia**, a judge cannot be removed during the first three years following the appointment.

If judges appointed until the age of retirement unquestionably benefit from a special status to ensure their independence, it is important to know concretely whether, during their career, they may be transferred without their consent.

The principle that a judge should not be transferred to another court without his/her consent follows from the fundamental principle of irremovability from office. However, in certain circumstances and provided certain legal guarantees are in place, this principle must be reconciled with the need for an effective and efficient system of justice and with modern management practices designed to meet this need (for example, the mobility policies implemented). Therefore the Consultative Council of European Judges (CCJE) recommends the involvement of an authority independent of the executive and legislative powers, in particular a judicial council, at all stages of judges' careers<sup>20</sup>.

Under the European Charter on the Statute for Judges<sup>21</sup>, a judge serving within a given court must in principle not be assigned to another court or have his/her duties changed, even entailing a promotion,

<sup>20</sup> CCJE, *Opinion on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges*, 23 November 2001, CCJE (2001) OP n° 1, § 38.

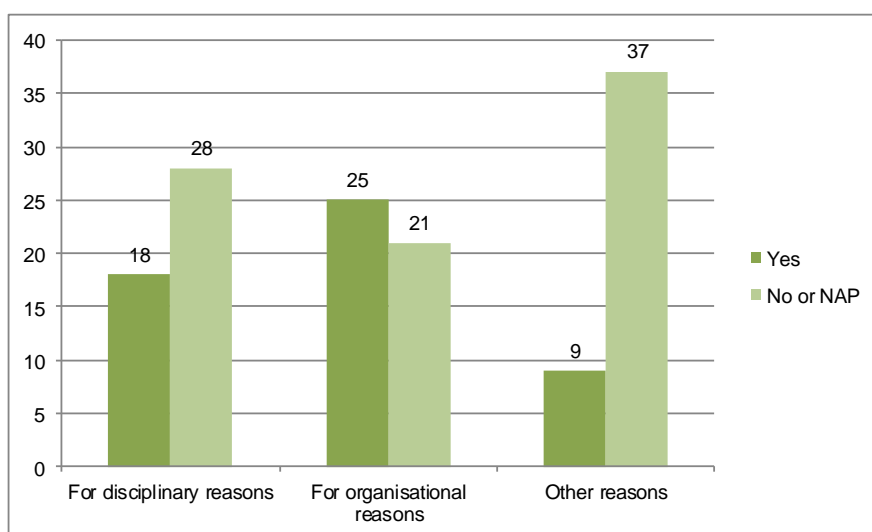
<sup>21</sup> *European Charter on the Statute for Judges*, DAJ/DOC (98) 23, 8-10 July 1998.

without his/her free consent. This applies except where transfer is a disciplinary measure, results from a lawful reorganisation of the court system or takes place on a temporary basis with the purpose of assisting a neighbouring court, in which case the duration of the temporary transfer must be strictly limited (point 3.4). The same core principle is enshrined in the Council of Europe Committee of Ministers' recommendation on independence, efficiency and responsibilities of judges<sup>22</sup>.

Most states have implemented procedures that, upon reading, appear to be effective.

In **Andorra, Ireland, Luxembourg, Republic of Moldova, Monaco, Netherlands, Norway, Russian Federation, Switzerland** and **Ukraine**, the principle of non-removability is regarded as absolute and no transfer is possible without the consent of the judge concerned. In the **Republic of Moldova** a transfer can be decided for organisational reasons by the High Council of the Judiciary at the request of the head of the jurisdiction concerned but the consent of the judge must be given in writing. In **Denmark**, only deputy judges can be transferred to another court without their consent for organisational, training or health reasons. In **Monaco**, judges cannot be assigned to new duties without their consent, even when it concerns a promotion.

**Figure 3.20 Transfer of judges without their consent in 2014 (Q121.1)**



In most States or entities, the transfer may be decided without the judge's consent, for organisational reasons. In this case a transfer safeguard may be provided by law (for example in **Austria, Croatia, Slovenia**), or even in the Constitution (**Croatia, Finland**) and/or by the involvement of a judicial council (for example **Croatia, Latvia, Lithuania**), or again by the possibility of appealing to a competent court (**Estonia, Hungary**). A transfer may take place following a disciplinary action. In this case,

the safeguard lies in the involvement of the disciplinary authority, more often than not the judicial council and/or the right to an appeal. Other reasons related to the system of incompatibilities and disabilities (**Austria**), to impeachment proceedings (**Germany**), or to courts' efficiency in resolving the flow of cases (**Slovenia**) may justify a transfer without the consent of the judge. Sometimes a more general formulation can be the basis of a transfer decision, including the "interest of justice" (**Germany**) or "the normal exercise of judicial power" (**Slovenia**).

### Trends and conclusions

The certainty that a judge will hold office until the age of retirement, except in case of disciplinary incident or health problems constitutes for him/her an actual guarantee of independence in line with European standards. Almost all the states provide statutory provisions in that direction. However, it should be ensured that these provisions are effectively implemented and that a judge cannot be transferred without his/her consent in a discretionary manner.

### 3.1.6 Salary of judges

Judges should be offered a level of remuneration corresponding to their status and their social role, taking into account the constraints of the exercise of this function and so as to facilitate resistance to any pressure aimed at impairing their independence or impartiality. The remuneration generally consists of a main tranche, to which can be added bonuses and other material or financial benefits.

<sup>22</sup> Council of Europe Committee of Ministers, *Judges : independence, efficiency and responsibilities*, Recommendation CM/Rec(2010)12, 17 November 2010, § 52.

Council of Europe Committee of Ministers' Recommendation Rec (2010) 12 on "Judges: independence, efficiency and responsibilities" provides for that judges' remuneration should be guaranteed by law and be "commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions"<sup>23</sup>. Thus, the issue of judges' remuneration requires a comprehensive approach which, beyond the purely economic aspect, takes account of the impact that it can have on the efficiency of justice in terms of independence and hence the fight against corruption within and outside the judicial system.

The CEPEJ retains two indicators that allow comparisons between states. First, the salary of a judge at the beginning of his/her career, with the need to distinguish between countries that recruit judges following their graduation from the national school of magistracy or equivalent, and those who recruit from the ranks of legal professionals with long professional experience, mostly as lawyers. The second indicator is the salary of judges of the Supreme Court/last instance. The comparison between these two sets of data allows one to appreciate the reality of the judges' career. Finally, the ratio between the salary of a judge and the national average salary makes it possible to better gauge his/her social status and what this salary represents at the level of the Member State or entity.

It is agreed that the salaries mentioned do not include the deductions of salaries that are often made under the social security charges and taxes, nor do they include the supplements that may be paid for various items, in particular depending upon the family situation of the judge.

**Note for the reader:** concerning the analysis of salaries, the evolution of exchange rates of national currencies against the Euro for states that do not belong to the Euro zone must be taken into account before drawing conclusions from these data which are all given in euros. An increase in gross salaries in absolute value must be set against any change in the exchange rate appearing over the same period.

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<sup>23</sup> Council of Europe Committee of Ministers, *Judges : independence, efficiency and responsibilities*, Recommendation CM/Rec(2010)12,, *op. cit.*, §§ 53 and 54.

Table 3.21 Average gross salaries of judges, in absolute value and in relation to the national average gross salaries in 2014 (Q4, Q132)

States/Entities	Gross salary of judges		In relation to the average gross salary	
	At the beginning of career	At Supreme Court	At the beginning of career	At Supreme Court
Albania	8 976 €	14 964 €	2,0	3,3
Andorra	73 877 €	39 823 €	3,0	1,6
Armenia	NQ	NQ	NQ	NQ
Austria	50 403 €	121 651 €	1,6	4,0
Azerbaijan	25 318 €	32 551 €	4,5	5,8
Belgium	66 182 €	121 013 €	1,6	2,9
Bosnia and Herzegovina	23 884 €	41 369 €	3,0	5,2
Bulgaria	15 317 €	29 217 €	3,0	5,8
Croatia	22 740 €	50 073 €	1,8	4,0
Cyprus	76 939 €	136 756 €	3,4	6,0
Czech Republic	27 915 €	56 005 €	2,5	5,1
Estonia	40 560 €	53 040 €	3,4	4,4
Finland	62 423 €	131 538 €	1,6	3,3
France	41 552 €	116 751 €	1,2	3,4
Georgia	20 978 €	26 223 €	NA	NA
Germany	45 294 €	110 011 €	1,0	2,4
Greece	30 159 €	84 540 €	1,9	5,2
Hungary	16 411 €	35 060 €	1,7	3,6
Latvia	19 764 €	39 076 €	2,2	4,3
Lithuania	23 976 €	35 676 €	2,9	4,4
Luxembourg	75 316 €	124 051 €	1,6	2,7
Malta	67 047 €	74 155 €	4,2	4,6
Republic of Moldova	6 758 €	10 884 €	2,6	4,1
Monaco	46 226 €	94 408 €	1,1	2,3
Montenegro	20 310 €	25 298 €	2,4	2,9
Netherlands	74 000 €	NA	1,3	NA
Portugal	35 699 €	85 820 €	1,8	4,2
Romania	23 676 €	43 174 €	3,8	7,0
Russian Federation	18 600 €	NA	2,4	NA
Serbia	16 757 €	39 154 €	2,7	6,2
Slovakia	29 710 €	42 916 €	2,9	4,2
Slovenia	31 887 €	60 942 €	1,7	3,3
Spain	47 494 €	106 992 €	2,1	4,7
Sweden	69 473 €	125 937 €	1,7	3,2
Turkey	21 108 €	42 828 €	1,8	3,7
Ukraine	7 693 €	18 169 €	3,6	8,5
Israel	93 603 €	136 070 €	3,9	5,7
<b>Average</b>	36 698 €	65 760 €	2,4	4,3
<b>Median</b>	29 710 €	50 073 €	2,1	4,2
<b>Minimum</b>	6 758 €	10 884 €	1,0	1,6
<b>Maximum</b>	76 939 €	136 756 €	4,5	8,5

## Comments related to salaries of professional judges

**Andorra:** a draft law on salaries of judicial officials is currently presented to the Parliament. This draft provides for different levels of remunerations based on the number of degrees obtained by each judge or prosecutor, his/her seniority, the training conducted and the evaluation results.

**Austria:** it should be noticed that for 2014, the numerical values in the table are rounded. The gross annual salary of a professional judge at the beginning of his/her career is 50 402,80 € while the gross salary of a judge of the Supreme Court is 121 651,25 €.

**Bosnia and Herzegovina:** the following presumptions are used for calculating these amounts: first instance professional judge at the beginning of his/her career – 3 years of work experience; judge of the Supreme Court – 20 years of work experience.

**Bulgaria:** as for the 2012 data, 2014 data indicated amounts do not include the insurance contributions.

**France:** a professional judge of first instance at the beginning of his / her career is a judge at the first step of the second grade (non-specialised judge in a court of first instance – *Tribunal de grande instance*). The judge of the Supreme Court or the last appeal instance is the advisor to the Court of Cassation - step D3 / E.

**Georgia:** salaries for judges of ordinary courts are determined by a special law.

**Germany:** the national average was calculated from the sum of the annual salaries of judges of all the Länder divided by the number of Länder, regardless of the number of judges by Land. Salaries of judges calculated for 2014 were based on the following assumptions: outset of the career – remuneration pursuant to R1, salary bracket 1, single, no children; at the level of the Supreme Court – the basic salary R6 without any allowance for working at one of the highest federal courts and without family allowance.

**Ireland:** data reflects that of a judge of the District Court and a judge of the Supreme Court at December 2014. It is noteworthy that following a constitutional amendment in 2011, legislation was passed (*the Financial Emergency Measures in the Public Interest (Amendment) Act 2011*) to allow for the reductions in the remuneration of judges.

**Republic of Moldova:** the new Act on the remuneration of judges came into effect on 1 January 2014. It introduces a unitary pay system for judges based on the average salary for the year preceding the year in question as a reference unit. The salary of the judge is based on the level of the court, the activity of the judge and the seniority of work. This law led to a considerable increase in the salaries of all judges.

**Monaco:** judges of the Supreme Court - *Tribunal Suprême* and *Cour de révision* - have no fixed salaries to the extent that their jurisdiction is not sitting permanently but in sessions. Judges are paid in allowances and vacations. According to the Statute of the Judiciary, the hierarchy of the judiciary has three grades: 3rd - referendary judges, judges and substitutes to the Attorney General; 2nd – justices of the peace, first judges and first substitutes of the Attorney General; 1st – the vice president of the first instance court, the counselor at the Court of Appeal and the Deputy Attorney General. The following are placed outside the hierarchy: members of the Court of revision, the first president of the Court of Appeal, the Attorney General, the president of the court of first instance, the vice president of the Appeal Court. Pay scales for magistrates are fixed by Order 2010-4 of 25 January 2010. Thus, the reference salary for the "judge of the final court of appeal" (excluding the salary of the First President of the Court of Appeal) is that of a counsellor at the Court of Appeal in the mid-scale.

**Norway:** due to differences in currency rate, the salary of judges reported for 2014 is artificially low.

**Russian Federation:** the average annual salary after tax deduction is determined for each taxpayer (the income tax amount to 13 % of the personal income of each taxpayer).

**Sweden:** the monthly gross salary for a professional judge at first instance at the beginning of his / her career and sitting on a permanent basis is about 54 500 SEK (€5 789). The figure given for the previous years are probably for an associate judge sitting on an occasional basis. For 2014, the gross annual salary for an associate judge would be about €53 000 (480 000 SEK). The 2012 gross annual salary for a permanent judge would be about 620 000 SEK.

**Switzerland:** judges' salaries vary significantly depending on the cantons. Accordingly, the presented data refer to the weighted average salaries by the number of judges of the cantons which provided information.

**Turkey:** there is no difference between the judges' salaries and that of the prosecutors.

**UK-Northern Ireland:** in accordance with the recommendations to the Senior Salary Review Body, the salaries of all judges have been increased by 1% in 2012, 2013 and 2014.

**UK-Scotland:** according to the 2014 data, the salaries are: Lord President – £218,470.00 = €280,537; Lord Justice Clerk – £211,015.00= €270,964; Inner House Judge – £200,661.00 = €257,669; Outer House Judge – £176,226.00=€226,292; Sheriff Principal – £141,332.00= €181484; Sheriff – £130,875.00= €168,057.

This table presents the gross salaries of early-career judges and judges at the Supreme Court/last instance level, compared for each of them to the average salary of the State or entity.

**Note:** it has appeared appropriate to calculate also the average salary of a judge at the beginning of his/her career, excluding the 7 States or entities that recruit judges among experienced legal experts, that is to say among older professionals (**Denmark, Ireland, Norway, Switzerland, UK-England and Wales, UK-Northern Ireland, UK-Scotland**). The average gross salary is then 36 698 € for the European judges at the beginning of their career (2,4 times the average annual salary) and 65 760 € for judges at the level of the Supreme Court (4,3 times the average annual salary).

Judges at the beginning of their career are better paid than the average national gross salary (on average 2,4 times more). The situation in **Germany** (1), **Monaco** (1,1) and, to a lesser extent, in **France** (1,2) and the **Netherlands** (1,3) appears to be in contrast with this trend. However, in these countries, the average national gross salary is high compared to other European States and entities, which explains the slight



difference compared to judges' salaries. The same applies to **Austria, Belgium, Finland and Luxembourg** (1,6). The difference in favour of judges is the most meaningful in **Azerbaijan** (4,5), **Malta** (4,2), **Israel** (3,9), **Romania** (3,8) and **Ukraine** (3,6). Four countries have explicitly indicated that salaries of judges were increased in 2014: **Azerbaijan** and **Republic of Moldova** following a legislative reform, **Bosnia and Herzegovina** due to the pay harmonisation with the growth in average salaries as provided by law, and **UK-Northern Ireland** in accordance with the recommendations to the Senior Salary Review Body. Conversely, in **Slovakia**, the salaries of judges for 2014 were maintained at the same level as in 2012. In fact, the adjustments of salaries for all State officials were stopped in the years 2013 and 2014 due to State expenditures restrictions.

With regard to the national average gross salary, judges' remuneration at the end of career is the most significant in **Ukraine** (8,5), **Romania** (7), **Italy** (6,4), **Cyprus** (6), **Bulgaria** and **Azerbaijan** (5,8). The particularly low figure characterising **Andorra** is due to the peculiarity of its Supreme Court where judges do not sit permanently. The high level of the average national gross salary in **Belgium, Germany and Monaco** results in a less noticeable contrast between the latter and the judges' remuneration at the end of the career.

The difference between salaries at the beginning and salaries at the end of the career is the less significant in **Malta, Montenegro** and "**the former Yugoslav Republic of Macedonia**". In fact, in **Malta**, the salary of a judge at the beginning of his/her career corresponds to the salary of a *magistrate* (competent for hearing all civil cases up to a value of 11 650 € and criminal cases up till a period of imprisonment of 10 years), while the salary of a judge of the Supreme Court reflects the salary of a *judge* who has competence for hearing all the other cases. The difference is the most noticeable in **Ukraine, Italy, Greece and Romania**. It is noteworthy that in **Italy**, the salaries of judges do not depend on the position held but rather on the experience (i.e. years of service). Accordingly, the remuneration of judges working in the lowest courts can be the same as this of judges working in the Highest Appellate Court. Generally, the gap between salaries at the beginning and salaries at the end of the career is greater in States or entities that recruit young judges after completing their law studies, in particular through competitive exams and training in a school for magistracy or (and) after a period as assistant judge or trainee.

#### Trends and conclusions

The evolution of judges' salaries during their career has remained substantially unchanged since 2010. If one takes into account the average salary for all States and entities so as to maintain the same indicator as in the previous reports, the level of judges' salary at the beginning of their career compared to the average salary of the State increased slightly between 2010 and 2014 from a ratio of 2,2 to 1, to a ration 2,5 to 1. The salary level with regard to judges of the Supreme Court also increased from 4,2 to 4,5 to 1.

### 3.2 Prosecutors

In Recommendation Rec(2000)19 on the *Role of Public Prosecution in the Criminal Justice System*, 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*"<sup>24</sup>.

The Consultative Council of European Prosecutors (CCPE) has also reflected on the situation of prosecutors in its opinions on for example "*The role of prosecution services outside the Criminal Law Field*"<sup>25</sup>, "*European norms and principles concerning prosecutors*"<sup>26</sup>, "*The role of prosecutors in criminal investigations*"<sup>27</sup> and other specific issues with a bearing on public prosecution services. This work tends to identify general rules or European standards in an area where the State differences remain sensitive. The present chapter is fully in line with the logic of harmonization based on current trends regarding the prosecution services – such as for example the expansion of prosecutors' field of intervention outside the criminal area, or the extension of their competences in the field of criminal law – and on the principles that have become fundamental, including the functional independence of prosecutors as an indispensable corollary to the independence of the judiciary<sup>28</sup>.

<sup>24</sup> Committee of Ministers of the Council of Europe, *the Role of Public Prosecution in the Criminal Justice System*, Rec(2000)19, 6 October 2000.

<sup>25</sup> CCPE, *The Role of Prosecution Services outside the Criminal Law Field*, Opinion No. 3 (2008), 21 October 2008.

<sup>26</sup> CCPE, *European norms and principles concerning prosecutors*, Opinion No. 9 (2014), 17 December 2014.

<sup>27</sup> CCPE, *The role of prosecutors in criminal investigations*, Opinion No. 10 (2015), 20 November 2015.

<sup>28</sup> CCPE, *European norms and principles concerning prosecutors*, Opinion No. 9 (2014), *op. cit.*, Principle IV of the Rome Charter, Opinion No. 9 (2014) of the CCPE.

The results of a comparative approach as regards the status and functions of prosecutors determine the analysis of the functioning of States or entities' prosecution services.

All States or entities have, sometimes under different titles, a public authority entrusted with qualifying and carrying out prosecutions. It can be noted that, while the role of the judge seems to be relatively homogeneous in the States or entities, that of the prosecutor is much less so. In all European States or entities, prosecutors play an important role in the prosecution of criminal cases. In most of the States or entities, they also have a responsibility in the civil and even administrative law area. Another important aspect to be taken into account relates to the different levels of autonomy of public prosecutors. In some States or entities, they benefit from protection of their independence on an equal level with judges, while in other States or entities, the criminal policies are directed from the Ministry of Justice and the level of independence is limited. In some States or entities (for example, **Denmark, Greece, Malta, Poland, UK-England and Wales, Israel**), specially authorised police officers have prerogatives during the preparatory phase before trial, or even in conducting the prosecution, held exclusively by public prosecutors in other states. A further contrast stems from the opposition between two main principles – legally mandatory prosecution and discretionary power to initiate or not prosecution. The possibility of initiating private prosecutions is another parameter of difference, as is the status of victims.

Throughout this chapter all these elements should be borne in mind when analysing the data relating to the numbers, the functions and status of members of the public prosecution services for each Member State or entity.

### **3.2.1 Status of prosecutors**

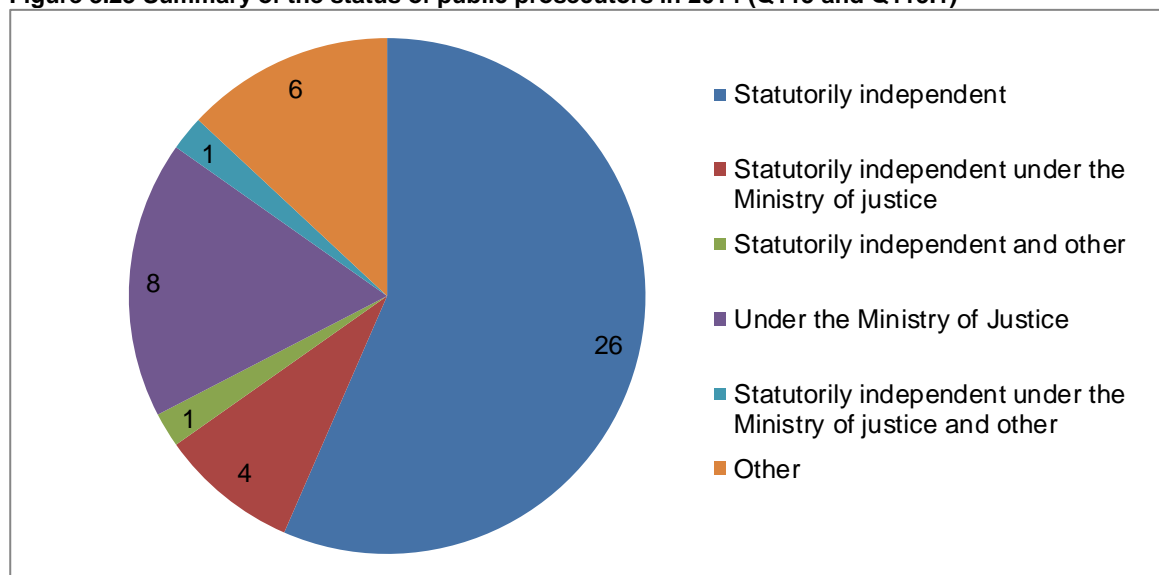
In a state governed by the rule of law, judges are independent from the executive and legislative power. The situation is more complex regarding public prosecutors, whose status differs significantly across states. However this statement must also be qualified because in some states, the independence of the public prosecution from the political power may be confirmed at the statutory level, but does not correspond to reality in the light of the historical tradition of public prosecutors' dependency. In other states, on the contrary, independence is not recognised in legal acts, but the tradition and daily practice demonstrate a real de facto independence.

To understand the reality of the independence of the prosecution, each member State was asked to indicate whether the prosecution service is statutorily independent, or if it is under the authority of the Minister of Justice or another central authority, and finally if it is in another situation. Another question asked was whether a law or regulation prevents specific instructions from being addressed to a public prosecutor to prosecute or not. Beyond the legal acts, the situation of the prosecution services is clearly sometimes linked to the tradition, culture or history of the state or entity.

Table 3.22 Status of public prosecutors in 2014 (Q115 and Q115.1)

States/entities	Status of public prosecutors			Regulation to prevent specific instructions to prosecute or not, addressed to a prosecutor in a court?
	Statutorily independent	Under the Ministry of Justice or another central authority	Other	
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
The FYROMacedonia				
Turkey				
Ukraine				
UK-England and Wales				
UK-Northern Ireland				
UK-Scotland				
Israel				
<b>Total</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>
<b>Yes</b>	<b>32</b>	<b>13</b>	<b>8</b>	<b>25</b>
<b>No or NAP</b>	<b>14</b>	<b>33</b>	<b>38</b>	<b>21</b>
<b>NA</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Figure 3.23 Summary of the status of public prosecutors in 2014 (Q115 and Q115.1)



#### Comments related to the normative rules prohibiting specific instructions to prosecutors

**Andorra:** the prosecution service may receive general instructions from the government to exercise public action. However, it retains a significant functional autonomy.

**Belgium:** according to the Constitution, the prosecution service is independent in the exercise of individual investigations and prosecutions, without prejudice to the right of the competent Minister to order prosecution and to address binding directives on criminal policy, including in matters of policy research and criminal prosecution.

**Georgia:** according to the Constitution, prosecution services are formally under the authority of the Minister of Justice. However, the legislation guarantees their full independence and autonomy, including prohibiting the Minister of Justice from intervening in matters of investigation and prosecution. The Minister of Justice and the Chief of the Prosecution Services may issue general guidelines on the exercise of discretionary powers of prosecutors.

**Germany:** the Minister of Justice is responsible for the administrative supervision of the prosecution services. However, according to an established practice, he/she does not address any individual instruction on the activity of prosecutors.

**Malta:** the Office of the Attorney General is independent from the Government. The Minister of Justice may issue directives to the Office in writing. These directives are mandatory except in cases provided by the Constitution or the law where the Attorney General can decide according to his/her own judgement.

**Monaco:** prosecutors are under the direction and control of the Attorney General, which is under the authority of the Director of Judicial Services. The latter gives, when necessary, instructions (in writing and registered within the proceedings file) to public prosecutors who have to comply with when devising acts of written information. Notwithstanding, prosecutors remain independent when pleading orally.

**Norway:** although the prosecution is under the authority of the Government, the Minister of Justice refrains from providing instructions in individual cases. Prosecutors can receive instructions from the minister only in case of dramatic political changes.

**Sweden:** the Government may issue general instructions to the prosecution services, but according to the Constitution it is not empowered to give instructions regarding the daily activity of prosecutors.

32 States or entities indicate that the independence of the prosecution is statutorily guaranteed, usually by the Constitution. 13 states indicate that their prosecution service is under the authority of the Minister of Justice or another central authority. Finally, 8 states, some of which have already responded positively to the first questions, specified being in a different situation. The comments provided by the states tend to qualify the responses.

Under the principle of statutory independence, the prosecution services can be considered part of the judiciary, or at least as an autonomous body attached to the judiciary (**Azerbaijan, Italy, Latvia, Luxembourg, Republic of Moldova, Spain, Turkey**) or as an independent state authority (**Bosnia and Herzegovina, Malta, Montenegro, Poland, Russian Federation, Serbia, Slovakia, Slovenia**, some cantons in **Switzerland** (12), "**the former Yugoslav Republic of Macedonia**", **UK-England and Wales**).

Among the States or entities where prosecution services are under the authority of the Ministry of Justice or another State authority (the High Council of the Judiciary in **Italy**, the Director of Judicial Services in **Monaco**, the Cantonal Supreme Court or a specific supervisory body in some cantons in **Switzerland**, the police in **Israel**), only 4 have exclusively chosen this option (**Denmark, Monaco, Netherlands and Israel**). The other countries have completed their replies either by the option "statutory independence" or by the option "other" or by the option "prohibition of specific instructions" focusing on the functional independence of prosecutors. In **Finland, Georgia and Sweden**, prosecution services are administratively under the control

of the Minister of Justice, but the national legislation guarantees their complete independence in exercising their jurisdiction. In other countries such as **France**, the independence of prosecutors is ensured through the legal prohibition of specific instructions in concrete cases and any other interference in judicial proceedings. The **Netherlands** also stressed that prosecutors are *formally* under the authority of the Ministry of Justice. Similarly, in **Israel**, prosecutors are under the authority of the Department of Justice or Police while being *professionally* independent. In **Estonia**, the status of the prosecution services of government agency is also reconciled with its independence in the implementation of its responsibilities.

Conversely, some states having described their prosecution services as independent, also have chosen the option "under the authority of the Ministry of Justice" (**Belgium, Germany, Greece, Romania**) and / or "other" (**Azerbaijan**) which once again led to a functional definition of the concept of independence. For example, in **Belgium**, the prosecution service is independent in the performance of individual investigations and prosecutions, without prejudice to the right of the competent Minister to order prosecutions and to prescribe binding directives on criminal policy. In **Germany** and **Norway**, while prosecutors are under the administrative supervision of the Minister of Justice, the practice reflects a total functional independence. In **Greece**, the prosecution service is under the authority of the Minister of Justice only with regard to the budget and the recruitment of prosecutors.

All states having responded by the sole option "other" (**Andorra, Malta, Serbia, "the former Yugoslav Republic of Macedonia", Turkey and UK-Scotland**) refer to the functional independence of prosecutors bound only by general instructions or directives of criminal policy or administrative management. In **Malta**, the role of the Office of the Attorney General of counsellor of the Government does not interfere with its independence vis-à-vis the executive in the exercise of its functions. In **Turkey**, prosecutors are subordinate to the Minister of Justice only as regards their administrative duties. In **Serbia**, prosecution services have both statutory and constitutional independence. Namely, they are independent outwards and autonomous inwards, in the sense that prosecutors and deputies are independent in their work towards everyone outside of the prosecution, but they can depend on prosecution hierarchy within offices.

The peculiarity of the situation in **Switzerland** is the result of the federal structure. In 2014, 12 cantons described their prosecution service as independent, 5 cantons responded that it is under the authority of the Cantonal Minister of Justice and 9 cantons and the Confederation chose the option "other", the prosecution service being under the authority of the Cantonal Supreme Court or of a specific monitoring body. In **Hungary**, the Attorney General is responsible to the Parliament through a system of annual reports.

One of the essential parameters for assessing the functional independence of the prosecution service is the distinction between general instructions and specific instructions addressed to its members by the executive. The general instructions fall under the responsibility of the Minister of Justice to define the general guidelines of criminal policy, while the prohibition of specific instructions constitutes the guarantee of prosecutors' independence. While only 25 states explicitly refer to constitutional texts (**Greece, Italy, Sweden**), legislative texts (**Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Finland, France, Georgia, Ireland, Latvia, Luxembourg, Monaco, Montenegro, Portugal, Slovenia, Spain, Ukraine**) or regulations prohibiting that instructions to prosecute or not to prosecute are given to a prosecutor, almost all States or entities explain in their comments that this distinction between general instructions and specific instructions is effective in their judicial systems. It arises either from the statutory independence of the prosecution service of which it is an inherent corollary (**Azerbaijan, Hungary, Lithuania, Luxembourg, Republic of Moldova, Poland, Russian Federation, Serbia, UK-England and Wales**) or functional independence enshrined in the Constitution (**Belgium, Hungary**) or in the law (**Luxembourg, Malta, Serbia, Turkey, Ukraine**) and / or an established practice (**Andorra, Germany, Netherlands, Norway, UK-Scotland**). In **Serbia**, the guarantee of the prosecutors' independence enshrined in the *Law on Public Prosecution* is extended to the prohibition of any kind of instruction to the Public Prosecution, being general or specific.

Finally, it should be noted that almost all of the States or entities described their prosecution service as a highly centralised and hierarchical system. In this regard, the CCPE had the opportunity to point out that "*In a State governed by the rule of law, when the structure of the prosecution service is hierarchical, effectiveness of prosecution is, regarding public prosecutors, strongly linked with transparent lines of authority, accountability and responsibility*"<sup>29</sup>. On that point, 9 States or entities have explicitly invoked the power of the chief prosecution services and in general that of the hierarchical supervisor to address mandatory instructions to subordinated prosecutors (**Bosnia and Herzegovina, Croatia, Finland, Latvia, Luxembourg, Serbia, Slovenia and Spain**). Most often, the hierarchical supervisor is responsible for formulating mandatory general instructions, but also to take over a case or transmit it to another prosecutor, to request prosecution or to review a decision not to prosecute, to supervise the activity of prosecution, to

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<sup>29</sup> CCPE, *European norms and principles concerning prosecutors*, Opinion No. 9 (2014), *op. cit.*, § 41.

ask to be informed of the results etc. However, an essential guarantee of independence is implemented by national legislation: a prosecutor cannot be forced to act against his/her conviction; in the exercise of his/her activities, he/she is bound only by the rules of law and remains independent in the decision making. The general principle in this matter seems to have been summarized by the CCPE in the Rome Charter "*In a hierarchical system, the superior prosecutor must be able to exercise appropriate control over the decisions of the office, subject to proper safeguards for the rights of individual prosecutors*"<sup>30</sup>,

In **Luxembourg**, only positive injunctions are allowed (instructions to prosecute). The system in **Ireland** is characterised by a unique feature: the possibility for the court to order (at the request of the accused) not to prosecute when it appears that the circumstances are not appropriate for initiating prosecutions. The reasons for such a decision are diverse, but often it is because of the impossibility for the defendant of having a fair trial.

### **Trends and conclusions**

The institutional context of the prosecution service and particularly its relations with the executive vary according to the State or entity. However, the principle of functional independence of prosecutors is emerging as an essential guarantee which has become a true European standard. This independence is assessed vis-à-vis the executive, the legislative, but also all other external authorities or factors of the prosecution services system (*external independence*), as well as in terms of the organisation model of the public prosecution service (*internal independence*). The harmonisation of national laws is an increasingly clear trend in respect of these two aspects.

### **3.2.2 Term of office of prosecutors**

The declaration by many States and entities that their prosecution services are autonomous in performing their duties, or that they are totally independent should be translated into a career path offering real guarantees on this issue.

In this regard, the duration of a contract of a prosecutor is an important component.

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<sup>30</sup> Idem, § 42.

Table 3.24 Mandates of prosecutors in 2014 (Q123, Q124 and Q126)

States/entities	Mandate of prosecutors		
	Probation period	Appointment until retirement	Renewable contract
Albania			
Andorra			
Armenia			
Austria			
Azerbaijan			
Belgium			
Bosnia and Herzegovina			
Bulgaria			
Croatia			
Cyprus			
Czech Republic			
Denmark			
Estonia			
Finland			
France			
Georgia			
Germany			
Greece			
Hungary			
Ireland			
Italy			
Latvia			
Lithuania			
Luxembourg			
Malta			
Republic of Moldova			
Monaco			
Montenegro			
Netherlands			
Norway			
Poland			
Portugal			
Romania			
Russian Federation			
Serbia			
Slovakia			
Slovenia			
Spain			
Sweden			
Switzerland			
The FYROMacedonia			
Turkey			
Ukraine			
UK-England and Wales			
UK-Northern Ireland			
UK-Scotland			
Israel			
<b>Total</b>	<b>46</b>	<b>46</b>	<b>46</b>
<b>Yes</b>	<b>25</b>	<b>40</b>	<b>5</b>
<b>No or NAP</b>	<b>21</b>	<b>5</b>	<b>41</b>
<b>NA</b>	<b>0</b>	<b>1</b>	<b>0</b>

To better understand the reality of the different situations, three questions were asked of the States and entities, similarly to those in respect of the mandate of judges. It is indeed important to know the duration of a contract of public prosecutors, since the length of the performance of their duties is a guarantee of continuity, security which is important precondition for independence. States were also asked whether public prosecutors were subject to a probationary period before being appointed and, in case that their mandate was not indefinite, the duration .

Except for 5 States or entities (**Andorra, Russian Federation, Switzerland, Ukraine and UK-Scotland**), public prosecutors exercise their functions until the retirement age which, akin to the situation of judges, varies from 63 to 70 years. The possibility of extending the mandate beyond the retirement age has been explicitly specified by some States or entities. In **Albania**, this decision belongs to the Prosecutor General and the consent of the concerned prosecutor is required. Likewise, in **Azerbaijan** the retirement may be postponed from the age of 60 to 65 years. In **France**, the same exceptions to the retirement at the age of 67 years old concern judges and prosecutors: an extension granted to a prosecutor in order to complete his/her career or when his/her family situation justifies such extension; an internal administrative decision of maintaining a higher number of judges in a court for the purpose of efficiency (68 years); the status of the head of the prosecution service of the Supreme court (*Procureur général de la Cour de cassation*). In **Norway**, the retirement age may be extended from 67 to 70 years, in **Italy** from 70 to 75, while in the **Russian Federation** where the retirement age is of 65 years, only one extension is possible and it cannot exceed the period of one year. In **Serbia**, a two-year extension may be granted (from 65 to 67) provided that the concerned prosecutor agreed on this measure and only in respect of the already initiated cases. Finally, in “**the former Yugoslav Republic of Macedonia**”, the retirement age for male prosecutors is of 64 years, while for female prosecutors it is of 62 years with the possibility of being protracted till the age of 64 years. The retirement age is different for male and female prosecutors also in **Albania** and **Georgia** (respectively 65 and 60).

In **Andorra**, prosecutors are appointed for a renewable period of 6 years. In the **Russian Federation**, the Prosecutor General, prosecutors of the constituent entities of the Federation, prosecutors of cities, districts and prosecutors equalled thereto are appointed for a 5 year term. The Prosecutor General may, based on the results of the regular evaluation, recommend to the Head of State to renew the mandate of a prosecutor of a federated entity, municipality or district. As regards **Switzerland**, 9 cantons reported that prosecutors are appointed for an undetermined period (most often, judges’ and prosecutors’ mandate is of 4 years, sometimes it is of 6 years and rarely of 10 years). Finally, in **Denmark** and **UK-Scotland**, there is no compulsory retirement age for prosecutors. This is also the case in **UK-England and Wales** with regard to all Civil Service employees. However, judges and prosecutors may choose to retire at any point once they have reached their retirement age (70) under the terms of their pension scheme. Likewise, in **Georgia**, the threshold of 65/60 years for male and female prosecutors is not binding, and makes them "eligible" for retirement.

As do judges, prosecutors with a high hierarchical position are often appointed for a fixed term. This is the case in **Belgium** in respect of heads of offices, in **Bulgaria, Estonia and Lithuania** with regard to managerial positions (5 years), in **Croatia** and **Serbia** for prosecutors (elected by the Parliament for a renewable term of respectively 4 and 6 years) as opposed to deputy prosecutors (appointed for an indeterminate duration).

The status of the Prosecutor General should be granted special attention. As highlighted by the Consultative Council of European Prosecutors, it is important that the method of selection is such as to gain the confidence and respect of the public as well as of the members of the judicial and prosecutorial system and legal profession<sup>31</sup>. Namely, the Prosecutor General should be appointed either for an adequately long period or permanently to ensure stability of his/her mandate and make him/her independent of political changes. For example, the Prosecutor General has a temporary mandate in **Belgium** (*Procureur du roi*), **Croatia** (elected by the Parliament for a renewable four year term), **Estonia** (appointed by the Government for 5 years), **France** (*Procureur de la République* and *Procureur général* are appointed for a term of 7 years), **Georgia** (a non-renewable 6 year term), and “**the former Yugoslav Republic of Macedonia**” (6 year term). In **UK-England and Wales**, the only senior management position which is time-bound is the Director of Public Prosecutions (a renewable 5 year contract). In **Cyprus** and **Malta**, the Prosecutor General enjoys the same guarantees as the other judges and performs his/her functions until the retirement age (respectively 68 and 65).

In some States or entities, there are also specific mandates of an undetermined period of time such as first substitutes in **Belgium**, judicial secondees in France (a renewable 5 year term), or officers of the Police

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<sup>31</sup> CCPE, *European norms and principles concerning prosecutors*, Opinion No. 9 (2014), *op. cit.*, § 56.



Prosecution Department in **Israel** (the term is between 2 and 4 years and may be renewed). In **UK-Scotland**, due to uncertainty of the public sector funding, prosecution services resort to some fixed term contracts that can last for up to 2 years.

Finally, in general, national legislations pinpoint the grounds for dismissal of public prosecutors, mostly related to legal capacity, loss of nationality, existence of a criminal conviction, reorganisation of the prosecution services, disciplinary breaches, *etc.* A particular ground for dismissal or temporary suspension, closely linked to the hierarchical structure of the prosecution services, may be the results of the regular evaluation of prosecutors.

In 25 States or entities, and in **Israel**, the taking of office is preceded by a probationary period which is, as is the case for judges, generally devoted to training.

#### **Trends and conclusions**

After a probationary period, which is usually aimed at training, European public prosecutors overwhelmingly perform their functions until the age of retirement, which is an important guarantee of continuity, enabling functional autonomy and facilitating independence.

### 3.2.3 Number of prosecutors

Table 3.25 Variation in the number of public prosecutors per 100 000 inhabitants between 2010 and 2014 (Q1, Q55)

States/entities	Public prosecutors per 100 000 inhabitants					
	2010	2012	2014	Variation 2010-2012	Variation 2012 - 2014	Variation 2010 - 2014
Albania	9,8	11,7	11,2	19%	-4%	14%
Andorra	3,5	5,2	6,5	49%	24%	84%
Armenia	10,1	10,5	10,1	5%	-4%	1%
Austria	4,1	4,1	4,0	0%	-3%	-3%
Azerbaijan	11,0	11,6	11,3	5%	-3%	2%
Belgium	7,7	7,4	7,6	-4%	3%	-1%
Bosnia and Herzegovina	8,0	8,1	9,7	1%	20%	21%
Bulgaria	19,8	20,1	20,4	2%	1%	3%
Croatia	14,0	14,5	13,4	3%	-8%	-5%
Cyprus	13,2	12,9	12,8	-2%	-1%	-3%
Czech Republic	11,8	11,8	11,7	0%	-1%	-1%
Denmark	13,5	10,1	12,2	-25%	21%	-9%
Estonia	13,1	13,1	12,8	0%	-2%	-2%
Finland	6,9	7,4	6,6	7%	-10%	-4%
France	3,0	2,9	2,8	-4%	-2%	-6%
Georgia	8,0	9,0	11,8	13%	31%	48%
Germany	6,4	6,5	6,5	2%	-1%	1%
Greece	4,8	5,0	5,3	3%	8%	11%
Hungary	17,4	18,3	19,0	5%	4%	9%
Ireland	1,8	1,9	1,9	8%	-1%	7%
Italy	3,3	3,2	3,4	-2%	8%	5%
Latvia	17,5	22,1	22,8	26%	4%	31%
Lithuania	25,7	25,5	24,6	-1%	-3%	-4%
Luxembourg	9,0	9,0	8,3	0%	-7%	-7%
Malta	2,6	3,6	2,8	35%	-21%	6%
Republic of Moldova	20,7	20,9	19,6	1%	-6%	-5%
Monaco	11,1	13,8	10,6	24%	-24%	-5%
Montenegro	20,8	14,7	17,4	-29%	19%	-16%
Netherlands	4,7	4,7	4,7	0%	0%	0%
Norway	11,7	12,2	NA	4%	NA	NA
Poland	14,8	15,7	15,3	6%	-3%	3%
Portugal	13,9	14,9	14,2	8%	-5%	3%
Romania	10,9	12,0	11,8	11%	-2%	8%
Russian Federation	22,1	22,8	23,4	3%	3%	6%
Serbia	8,4	9,2	9,2	9%	1%	10%
Slovakia	17,2	16,7	17,5	-3%	5%	2%
Slovenia	8,0	9,2	9,4	14%	3%	17%
Spain	5,2	5,3	5,2	1%	-2%	0%
Sweden	10,6	10,6	10,4	0%	-2%	-2%
Switzerland	5,5	10,4	10,8	89%	4%	96%
The FYROMacedonia	9,8	10,0	9,7	3%	-4%	-1%
Turkey	5,8	5,8	6,8	-1%	19%	17%
Ukraine	24,9	29,8	30,6	20%	3%	23%
UK-England and Wales	5,2	4,5	3,9	-14%	-13%	-25%
UK-Northern Ireland	9,4	9,7	8,7	3%	-9%	-7%
UK-Scotland	NA	10,4	8,8	NA	-16%	NA
Israel	..	7,5	7,3	..	-2%	..
<b>Average</b>	10,8	11,3	11,3	7%	0%	7%
<b>Median</b>	9,8	10,4	10,4	3%	-1%	1%
<b>Minimum</b>	1,8	1,9	1,9	-29%	-24%	-25%
<b>Maximum</b>	25,7	29,8	30,6	89%	31%	96%

This table provides a measure of the evolution in the number of public prosecutors per 100 000 inhabitants between 2010 and 2014.

In 11 states an upward trend in the number of prosecutors is to be noticed for the period 2010-2012-2014 (**Andorra, Bosnia and Herzegovina, Georgia, Greece, Hungary, Latvia, Russian Federation, Serbia, Slovenia, Switzerland** and **Ukraine**). This evolution is of a particular importance in respect of the first three countries mentioned. However, the situation in **Andorra** should be qualified in the light of the very small number of prosecutors, namely 3 in 2010, 4 in 2012 and 5 in 2014. With regard to **Georgia**, the increase is only apparent because of the significant decrease in the population. As for the substantial increase in the number of prosecutors in **Switzerland**, mainly between 2010 and 2012, it is due to the abolition of the system of investigating judge and the introduction of a system of criminal prosecution entrusted to prosecutors. In **Latvia**, the number of positions in the prosecution services has been increased between 2011 and 2012 which led to the appointment of new prosecutors. In **Bosnia and Herzegovina**, in order to improve the capacity of prosecution services of managing the case flow efficiently and within a reasonable time, the High Judicial Council decided in 2014 to reinforce the staff in several prosecution offices. Similarly, in **Slovenia**, a new legislation on public prosecution adopted in November 2011 has established the Specialised State Prosecutor's Office for dealing with criminal offences against economic sector; cases of organized crime; bribery and corruption; terrorism; human trafficking, *etc.* It is noteworthy that in **Turkey**, even though in 2014 the courts of appeal had not started yet their activity, chief public prosecutors were appointed to carry out the efforts to make these courts operational. In respect of **Serbia**, the number of public prosecutors is stable. The impression of an increase is due to the legislative reform of the judicial map carried out in 2014 and the division of larger offices in smaller ones. The actual workforce is very much the same, although there was a shift in the criminal procedural system in 2013 when criminal investigation was handed over to the Prosecution.

A downward trend in the number of prosecutors is observed in **UK-England and Wales**, but it is far from being noticeable in absolute terms due to the population increase between 2010 and 2012, and 2012 and 2014. A slight downward trend is also noted in respect of **France** and **Lithuania**.

An in-depth analysis reveals a strong decrease in the number of prosecutors in **Bulgaria** between 2012 and 2014. However, this is the result of a different methodology of classification of prosecutors used in 2012 and 2014, the 2014 data excluding the number of investigators. The decrease noticed in **Denmark** between 2010 and 2012 stems from the lack of information in 2012 as regards the number of prosecutors engaged in tasks concerning administrative cases (*Ledelsessekretariat*) and prosecutors employed by the national police (*Rigspolitiet*). Finally, variations affecting the prosecution services staff in **Malta** and **Monaco** should be construed in the light of the limited number of prosecutors in absolute value in these countries (11 (2010), 15 (2012) and 12 (2014) for **Malta** and 4 (2010), 5 (2012) and 4 (2014) for **Monaco**).

**Montenegro** has experienced quite contrasting fluctuations. First, the number of prosecutors dropped significantly between 2010 and 2012 due to retirements or staff leaving the public prosecution services. In addition, the number of deputy prosecutors is prone to vary from one year to another because of those of them who are in a process of re-election. Furthermore, the number of prosecutors increased significantly between 2012 and 2014 as a result of the gradual implementation of the Criminal Procedure Code. The latter endows prosecutors with new competences, including the responsibility for investigating (previously entrusted to courts), the use of new alternative methods of dispute resolution *etc.*

Some additional information may be drawn from the comments provided by the States or entities. Firstly, several countries have indicated that the communicated total reflects the number of prosecutors effectively exercising their profession which is slightly less than the number set by law (**Albania, Bulgaria, Serbia, UK-Scotland**).

Some States or entities have specified that, due to the peculiarities of their systems, the provided data include other staff than prosecutors. **Norway**, for example, has included prosecutors within the police services. The data of the **Russian Federation** reflect the total number of staff in the prosecution authorities of the Federation established by presidential decrees and encompassing prosecutors, federal civil servants and other employees. Conversely, **Ireland** has indicated only the number of solicitors and barristers directly employed by the Office of the Director of Public Prosecutions (DPP), while members of the police force and the independent Bar who are also competent for prosecuting, as well as 32 State Solicitors contracted to provide a solicitor service to the DPP in cases heard outside of the capital, have not been taken into consideration. . Similarly, the total indicated by the **Netherlands** excludes prosecutors at the Supreme Court level who are not employees of the National Prosecution Service. Data provided by **Israel** for 2014 are related exclusively to the State Prosecutor's Office, given that data concerning the Police Prosecution Department was not available (in contrast to the 2012 data).

A final observation concerns the absence of categorisation of public prosecutors depending on the degree of jurisdiction. 14 States or entities provided comments in this respect. Public prosecutors intervene at all court instances in **Andorra, Armenia, Cyprus, Estonia, Finland, Georgia, Ireland, Malta, Monaco, Russian Federation**, and in the vast majority of the cantons in **Switzerland**. In **Luxembourg**, the same prosecutors are competent before the Court of Appeal and the Supreme Court which constitute both together the Superior Court of Justice. The judicial systems of **Lithuania, Spain** and **Sweden** do not distinguish between prosecutors acting at first instance and those intervening at second instance. As for **UK-England and Wales**, there is no definitive separation of prosecutors whereby individual prosecutors are assigned to only either first or second instance courts on a long-term basis. Instead, all prosecutors can practice in the lower, first instance courts which is also the case in **UK-Scotland**.

As a conclusion, the average number of public prosecutors per 100 000 inhabitants remains stable (rising from 11.1 to 11.3 between 2010 and 2014).

Nevertheless, this average covers quite different situations given that some states have more than 20 public prosecutors per 100 000 inhabitants (**Bulgaria, Latvia, Lithuania, Russian Federation, Ukraine**), while in other States or entities the number of public prosecutors is less than 5 per 100 000 inhabitants (**Austria, France, Ireland, Italy, Malta, Netherlands, UK-England and Wales**).

While each state has its culture and history, two other factors may explain this disparity: the scope of the missions entrusted to public prosecutors and the number of proceedings they are dealing with.

### **3.2.4 Scope of the prosecutors' missions**

Each state or entity was asked to indicate, among the thirteen areas of responsibility suggested, which ones are within the competence of public prosecutors.

**Table 3.26 Role of public prosecutors in 2014 (Q105, Q106, Q106.1 and Q36)**

States/entities	Role of public prosecutor											Role in civil and administrative cases	Role in insolvency cases	The victim can dispute a decision of the public prosecutor
	to conduct or supervise police investigation	to conduct investigations	when necessary, to request investigation measures from the judge	to charge	to present the case in court	to propose a sentence to the judge	to appeal	to supervise the enforcement procedure	to discontinue a case without needing a decision by a judge	to end the case by imposing or negotiating a penalty or measure without requiring a judicial decision	other significant powers			
Albania														
Andorra														
Armenia														
Austria														
Azerbaijan														
Belgium														
Bosnia and Herzegovina														
Bulgaria														
Croatia														
Cyprus														
Czech Republic														
Denmark														
Estonia														
Finland														
France														
Georgia														
Germany														
Greece														
Hungary														
Ireland														
Italy														
Latvia														
Lithuania														
Luxembourg														
Malta														
Republic of Moldova														
Monaco														
Montenegro														
Netherlands														
Norway														
Poland														
Portugal														
Romania														
Russian Federation														
Serbia														
Slovakia														
Slovenia														
Spain														
Sweden														
Switzerland														
The FYROMacedonia														
Turkey														
Ukraine														
UK-England and Wales														
UK-Northern Ireland														
UK-Scotland														
Israel														
<b>Total</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>
<b>Yes</b>	<b>39</b>	<b>35</b>	<b>37</b>	<b>43</b>	<b>46</b>	<b>38</b>	<b>45</b>	<b>23</b>	<b>42</b>	<b>24</b>	<b>28</b>	<b>36</b>	<b>17</b>	<b>35</b>
<b>No or NAP</b>	<b>7</b>	<b>11</b>	<b>9</b>	<b>3</b>	<b>0</b>	<b>8</b>	<b>1</b>	<b>23</b>	<b>4</b>	<b>22</b>	<b>18</b>	<b>10</b>	<b>29</b>	<b>11</b>
<b>Nb of NA</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Figure 3.27 Summary of the roles and powers of public prosecutors in criminal matters in 2014 (Q105)**

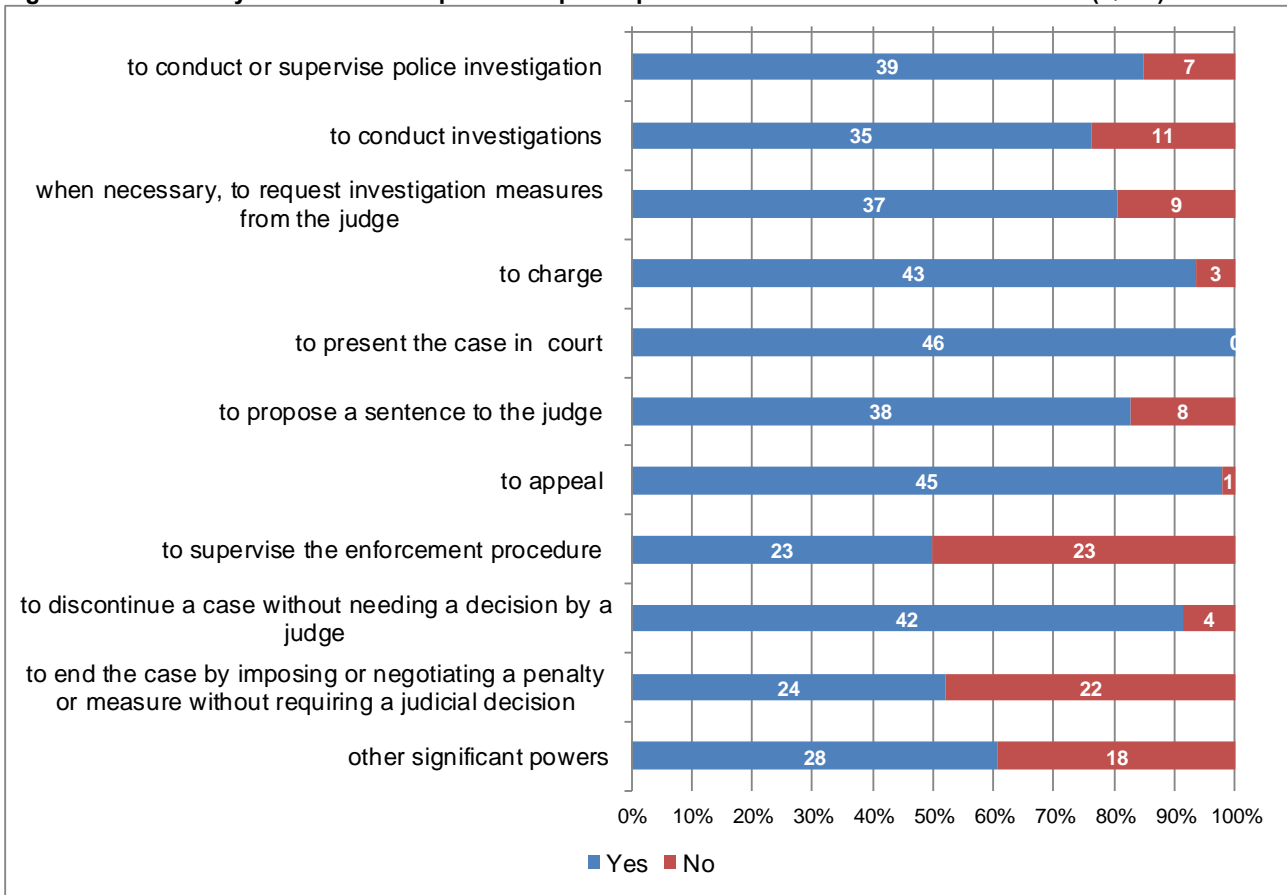


Figure 3.27 shows the answers given to these questions and helps measure the competence gaps between prosecutors of different States and entities. While in 4 states public prosecutors have jurisdiction over all thirteen assignments listed (**France, Hungary, Luxembourg and Monaco**), in 6 States or entities public prosecutors only have jurisdiction over less than half of these assignments (**Cyprus, Finland, Ireland, Malta, UK-England and Wales, UK-Northern Ireland**).

In 39 States or entities prosecutors are entitled to conduct or supervise police investigations, in 35 states they are competent for conducting personally investigations and in 37 countries they may request the judge to order specific investigation measures. In **Finland, Ireland, Malta, UK-England and Wales, UK-Northern Ireland** and **Israel** prosecutors do not intervene in investigative matters within the competence of the police or other specific bodies. Notwithstanding, in **Finland**, a prosecutor cooperates with the police in the pre-trial investigation and serves as the head of the pre-trial investigation in circumstances where the suspect is a police officer. Similarly, in **UK-England and Wales** and **UK-Northern Ireland**, prosecutors may provide advice or suggest lines of enquiry to the police. In **UK-Scotland**, prosecutors have no authority over the police, but are entitled to investigate all deaths which require further explanation. Likewise, in **Slovenia**, police services are technically independent in conducting investigations as to the choice of means and methods but prosecutors can set guidelines, provide expert opinions and proposals. They are also enabled to lead national or international joint investigation teams.

In **Cyprus, Italy, Norway, Sweden**, the **Russian Federation** and **Israel**, prosecutors are not endowed with the responsibility of investigating personally, but they conduct and supervise the police activity. In **Luxembourg**, prosecutors are granted enhanced powers in respect of certain investigative measures for which the police need a prior agreement from the State Prosecutor (e.g. DNA processing, vehicle searches, identity verifications etc.).

Prosecutors may discontinue a case, without the need of a judicial decision in almost all States or entities, except for **Andorra, Italy, Russian Federation** and **Spain**. Only 24 States or entities allow prosecutors to end a case by imposing or negotiating a penalty or a measure without a judge's decision. In **Austria** and **Slovenia**, prosecutors may propose alternative measures to the suspect, which constitute sanctions rather than penalties. In **Bosnia and Herzegovina**, the competent prosecutor or a judge can apply educational recommendations to a juvenile for criminal offences for which a fine or a punishment of imprisonment for a term not exceeding three years is prescribed. Among the countries that provided a negative reply on this

issue, **Finland** has indicated that in clear cases, the prosecutor is competent to self-impose a fine and confiscatory sanction in penal order proceedings, provided that the suspect does not demand that a court hear his/her case. In **Portugal**, a prosecutor may decide on the temporary suspension of the case subject to the fulfilment by the defendant of several payment orders and only with his/her consent, as well as the one of the judge.

In all States or entities prosecutors have competence to present the case in court and in 43 of them they may bring charges (**Armenia, UK-Northern Ireland** and **UK-Scotland** are the only exceptions).

Prosecutors from 38 States or entities may propose a penalty to the judge. This practice does not exist in the systems of **Cyprus, Ireland, Italy, “the former Yugoslav Republic of Macedonia”, Ukraine, UK-England and Wales, UK-Northern Ireland** and **UK-Scotland**. Nevertheless, in **Ireland**, the prosecutor may draw the attention of the judge to the principles of sentencing as enunciated in the case law of the higher courts, or may appeal against the verdict when he/she considers that the sentence is too lenient. In **Austria**, while a prosecutor has to refrain from requesting a concrete term of sentence, he/she has the right to plea with regard to the sentence by referring to the mitigating and aggravating grounds to be applied or by proposing a sentence under probation. In **Sweden** it is not compulsory for the prosecutor to propose a sentence to the judge, but this approach is well implemented in practice.

The prosecutor may appeal the judge's decision in 45 States or entities. If **UK-England and Wales** provided a negative reply, it was clarified that prosecutors have the right to apply to the Court of Appeal for an order quashing the original acquittal and ordering a retrial. This exception to the “double jeopardy” rule is applicable only in relation to the most serious “qualifying offences”, and a prosecutor may only make an application with the written consent of the Director of Public Prosecutions. A new trial is ordered by the Court of Appeal in very limited circumstances.

Prosecutors supervise the enforcement procedure in only 23 States or entities.

In 28 States or entities, prosecutors are entrusted with other significant powers within the criminal field. Some countries invoked the right of the suspect/accused person to plead guilty implying plea bargaining between the prosecutor and the suspect (**Bosnia and Herzegovina, Croatia, Georgia, Malta, Poland, Portugal, Slovakia, Slovenia, “the former Yugoslav Republic of Macedonia”**). Others referred to the specific responsibility of prosecutors to defend the interests of groups of particularly vulnerable individuals: child protection and public policies in matters of fight against illegal labour, domestic violence, racism, discrimination etc. in **France**; protection of minors, incapable persons and prisoners in **Latvia**. In **Estonia**, prosecutors participate in the planning of surveillance necessary to combat and detect criminal offences. **Lithuania** highlighted the involvement of prosecutors in the drawing up and implementation of national and international crime prevention programmes, as well as their participation in the legislative process. In **Hungary**, public prosecutors are bound, among other, by specific duties in the frame of Eurojust. In **Portugal**, prosecutors may carry out arrests of suspects in situations of flagrante crime and conduct house and office searches. In **Ireland**, the prosecutor may advise the police authorities on the making arrests in certain cases and on seeking search warrants authorising the conduct of searches in the course of a criminal investigation. In **Slovenia**, public prosecutors are entitled to file extraordinary legal remedies against final judicial decisions, while in **Sweden** they are granted significant powers in matters of coercive measures. In **Croatia**, the Prosecutor General decides on granting procedural immunity. In **Switzerland**, the prosecutor is competent for imposing sanctions up to 6 months of deprivation of liberty by means of penal order.

Admittedly, public prosecutors have an essential role in criminal matters. However, they are also granted important prerogatives outside the field of criminal law. They intervene in civil and/or administrative cases in 36 States or entities and in insolvency matters in 17 States or entities.

Broadly speaking, the attribution of competences to public prosecutors outside the field of criminal law is justified by their role of representing the general interest. In compliance with the European standards, they act on behalf of society and in the public interest to respect and protect individual rights, enhancing in this way the effectiveness of the rule of law<sup>32</sup>. More particularly, public prosecutors may participate to civil and/or administrative proceedings in order to ensure the defence of the State, its entities or institutions (e.g. **Croatia, Cyprus, Republic of Moldova, Portugal** and **Russian Federation**).

In civil matters, public prosecution services are often endowed with the responsibility of defending the interests of vulnerable individuals such as minors, victims, disabled persons, incapable and missing or

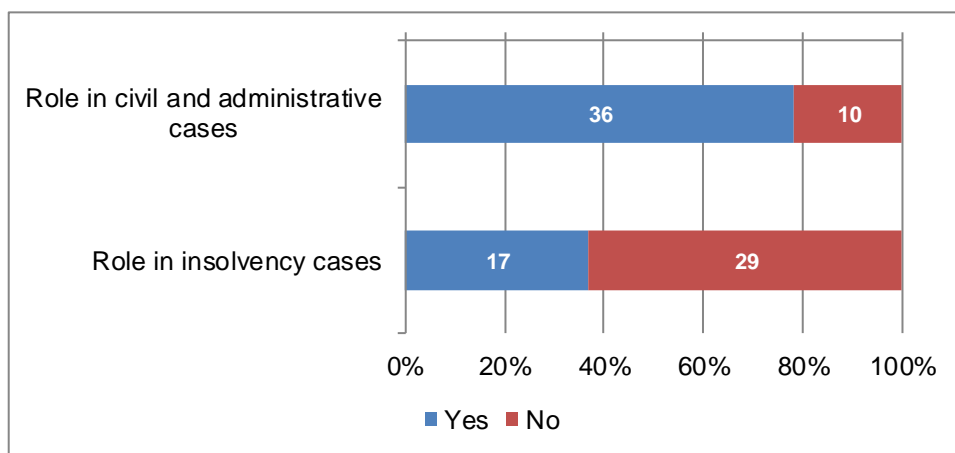
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<sup>32</sup> CCPE, *European norms and principles concerning prosecutors*, Opinion No. 9 (2014), *op. cit.* Roma Charter, points I and II.

absent persons. Their members usually intervene on behalf of the public interest and in compliance with conditions determined by law in proceedings relating to the civil status of individuals (birth certificate application, change of name, acquisition of nationality, declaration of death, questions concerning legal capacity and legal protection of persons etc.), in matters of family law (annulment of marriages, child's adoption, deprivation of parental rights, etc.), labour law (work-related accidents, professional diseases, disciplinary proceedings), commercial law (protection of property, transfer of property, confiscation of property), in proceedings of conflicts of jurisdictions, etc.

Most often and with the exception of the hypothesis when prosecutors represent the State before courts (**Croatia, Portugal**), their participation in administrative proceedings stems naturally from their responsibility of ensuring the proper enforcement of the law, that is to say the legality of the action of the public administration. Therefore, prosecutors may be empowered to refer the case to court and request the withdrawal or cancellation of illegal acts (**Bulgaria, Hungary, Latvia, Lithuania, Slovakia**). In **Slovenia**, Supreme State prosecutors may file an extraordinary legal remedy against final judicial decisions in civil, administrative and minor offences cases on the ground of violation of material or procedural law.

**Figure 3.28 Summary of the other roles and powers of public prosecutors in 2014 (Q106 and Q106.1)**

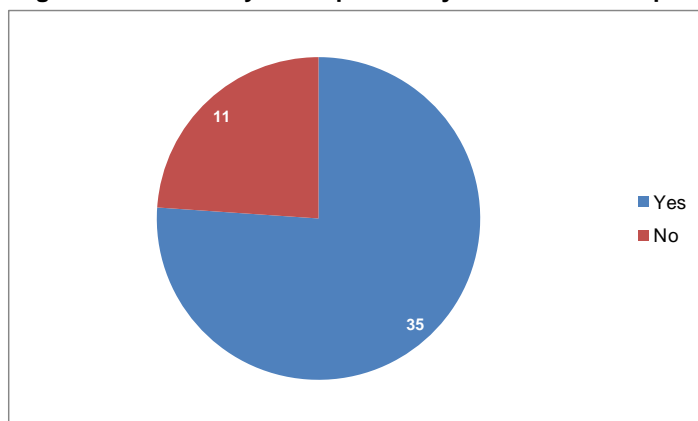


In 17 States or entities prosecutors intervene in insolvency proceedings. However, in **Germany** and **Lithuania**, they are involved in only if the insolvency matter case results in a criminal case (fraudulent bankruptcy). In **Italy** and **France**, this competence is limited to situations where a public interest is at stake. In **Spain**,

public prosecutors intervene in insolvency proceedings to substantiate the facts relevant to a finding of special civil liability (due to malfeasance or negligence) of the debtor.

Prosecutors may intervene outside the field of criminal justice in different ways. For certain matters or types of cases they are entitled to initiate proceedings, for others, they can join on-going trials and become a party to the proceedings. Sometimes, their competence is restrained to the formulation of legal opinions as it is the case in **France** for matters of filiation, guardianship and educational support.

**Figure 3.29 Summary of the possibility for victims to dispute a public prosecutor's decision (Q36)**



In a large majority of States or entities, the right of victims to dispute a public prosecutor's decision to discontinue a case is enshrined in the national legislation. Concretely, victims are entitled to, either exercise a remedy before the judge (**Albania, Austria, Bulgaria, Netherlands, Poland, UK-Scotland**) or file a complaint with the prosecutor's office applying most often to the hierarchically higher authority (**Armenia, Azerbaijan, Bosnia and Herzegovina, Denmark, Estonia, France, Georgia, Germany, Ireland, Lithuania, Republic of Moldova, Norway, Portugal, Serbia, Slovakia, Sweden, "the former**

**Yugoslav Republic of Macedonia"**, **UK-England and Wales, UK-North Ireland**). In **Monaco**, the competent authority to be seized by victims is the Director of Judicial Services.

The procedure may be entirely carried out within the public prosecution services, which is the case in **Bosnia and Herzegovina, Denmark, France, Ireland, Norway, Serbia, Slovakia, Sweden** (initial remedy before the Director of the prosecution services and appeal before the Prosecutor General), and **"the former Yugoslav Republic of Macedonia"**. However, in some countries, the decision of the superior authority may



be challenged before a judge (for example in **Armenia, Estonia, Germany, Lithuania** and **Republic of Moldova**). In **Georgia**, the decision of the superior prosecutor is final and cannot be appealed, unless the crime concerned belongs to the category of serious offences. In **Azerbaijan, Portugal, UK-England and Wales** and **UK-North Ireland**, victims have the alternative to apply either to the office of the prosecutor or to a court. In **Bulgaria**, where the action takes place directly before a court, the judgement may be subject to an appeal initiated by the victim, the prosecutor or the accused before the competent Court of Appeal. In **Lithuania**, the victim should act first before the prosecutor, may challenge the latter's decision before the investigating judge, whose decision may be appealed before a court of second instance. In **Germany**, the application is not admissible if the proceedings refer exclusively to a criminal offence which can be pursued by the aggrieved person by means of a private action, if the public prosecution office has refrained from prosecuting the offence for reasons of discretionary prosecution, or in certain cases in matters of juvenile justice specified by law.

Some states, such as **Belgium, Monaco** and **France**, referred to the right of the victim to file a civil suit before the trial court or the investigative judge. Besides, in some States or entities, the law confers to victims the right to initiate private prosecutions on a subsidiary basis (**Croatia, Finland, Montenegro**), or with regard to certain categories of offenses (**Germany, Hungary, Portugal**).

### 3.2.5 Workload of prosecutors

Table 3.30 Number of public prosecutors per 100 000 inhabitants, number of roles of public prosecutors and number of proceedings received by the prosecution per 100 inhabitants (Q1, Q55, Q105, Q106, Q106-1 and Q107)

States/Entities	Number of prosecutors per 100 000 inhabitants	Number of roles of the public prosecutor	Number of cases received per 100 inhabitants
Albania	11,2	12	1,50
Andorra	6,5	10	6,21
Armenia	10,1	9	NQ
Austria	4,0	10	6,14
Azerbaijan	11,3	8	NA
Belgium	7,6	12	5,90
Bosnia and Herzegovina	9,7	12	1,71
Bulgaria	20,4	12	1,93
Croatia	13,4	12	1,52
Cyprus	12,8	6	NA
Czech Republic	11,7	11	3,77
Denmark	12,2	8	3,56
Estonia	12,8	10	2,44
Finland	6,6	6	1,54
France	2,8	13	7,44
Georgia	11,8	9	1,21
Germany	6,5	11	5,66
Greece	5,3	11	NA
Hungary	19,0	13	1,85
Ireland	1,9	6	0,30
Italy	3,4	8	5,45
Latvia	22,8	12	0,66
Lithuania	24,6	12	3,54
Luxembourg	8,3	13	10,79
Malta	2,8	6	NA
Republic of Moldova	19,6	10	1,87
Monaco	10,6	13	7,16
Montenegro	17,4	11	1,62
Netherlands	4,7	11	1,24
Norway	NA	8	7,41
Poland	15,3	11	2,72
Portugal	14,2	12	NA
Romania	11,8	11	3,54
Russian Federation	23,4	10	0,63
Serbia	9,2	9	2,77
Slovakia	17,5	12	1,85
Slovenia	9,4	10	4,20
Spain	5,2	10	NA
Sweden	10,4	8	5,38
Switzerland	10,8	10	6,64
The FYROMacedonia	9,7	8	1,90
Turkey	6,8	10	4,44
Ukraine	30,6	9	0,04
UK-England and Wales	3,9	5	1,13
UK-Northern Ireland	8,7	5	1,69
UK-Scotland	8,8	8	4,57
Israel	7,3	6	1,26
<b>Average</b>	11,3	10	3,4
<b>Median</b>	10,4	10	2,7
<b>Minimum</b>	1,9	5	0,0
<b>Maximum</b>	30,6	13	10,8

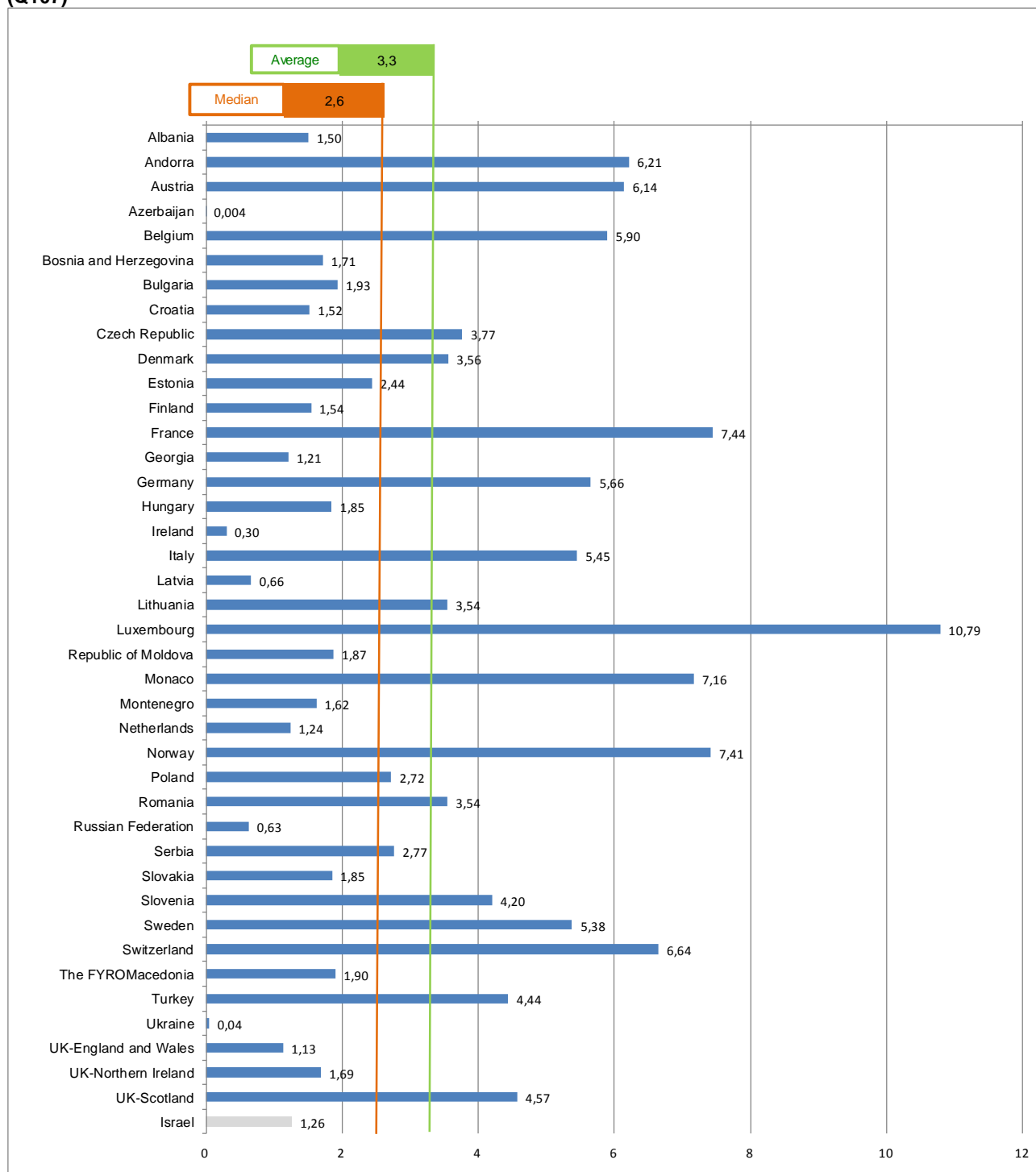
The workload of prosecutors may be measured taking into account the number of public prosecutors (and, if appropriate, the number of other staff having similar duties to prosecutors), the number of proceedings received by prosecutors, and also the diversity of their functions. The table above assesses prosecutors' workload, regard being had to these different parameters.

Beyond question, the prosecutors having the heaviest workload are to be found in **France**, which has nearly the lowest number of prosecutors in Europe (2.8 per 100 000 inhabitants), and must simultaneously cope with the largest number of proceedings received (7 cases per 100 inhabitants), while having to fill a record number of different functions (13). In the light of these criteria, prosecutors in **Austria, Ireland** and **Italy** also have a particularly heavy workload. This observation should be qualified by underlining that in these countries, other staff perform duties similar to those of prosecutors, although it is not possible, from the information available, to measure the impact of this factor on the workload of prosecutors. The **Netherlands** also have a small number of prosecutors, but the number of proceedings received is lower.

Conversely, most countries in Central and Eastern Europe have a significant number of prosecutors (over 10 or over 20 prosecutors per 100 000 inhabitants), for a relatively small number of proceedings received (less than 4 cases per 100 inhabitants), even if their jurisdiction is wide (around 10 different competences). This is particularly the case of **Ukraine** (more than 30 prosecutors per 100 000 inhabitants and less than 1 proceeding per 100 inhabitants), the **Russian Federation** (over 23 prosecutors per 100 000 inhabitants and 1 proceeding per 100 inhabitants), **Bulgaria, Hungary, Latvia, Lithuania, Republic of Moldova, Montenegro, Slovakia, Poland**. This phenomenon is accentuated in some countries where other staff exercise functions similar to those of prosecutors.

In 2014, the number of proceedings received by prosecutors was very low in **Ukraine** (18 985) and, to some extent, in **Ireland** and the **Russian Federation**. In **Ireland**, the police (An Garda Síochána) also exercise prosecution competence in relation to minor offences. Prosecution of offences is undertaken by members of the independent Bar acting on behalf of the Director of the prosecution services and 32 State Solicitors conduct prosecutions under contract for the Head of the prosecution office outside Dublin. The figures provided by both countries relate to cases considered only by the prosecution services themselves.

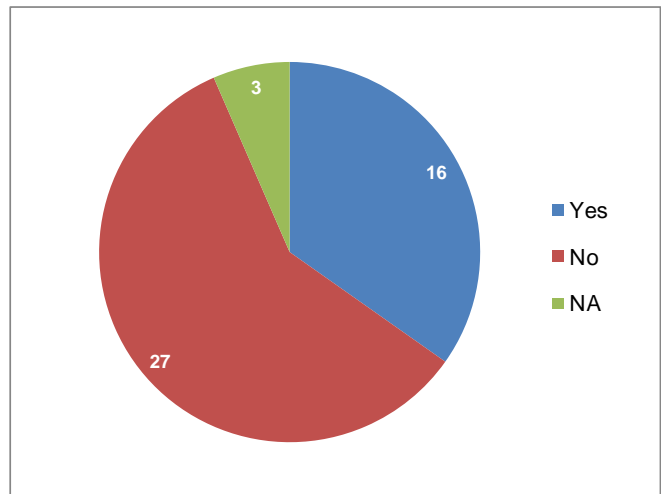
**Figure 3.31 Criminal cases of first instance per 100 inhabitants received by the public prosecutors in 2014 (Q107)**



It also seemed appropriate to complete this analysis of the workload of prosecutors by exploring whether other staff exercises similar duties as public prosecutors within the States and entities.

Table 3.32 Other persons with duties similar to those of public prosecutors (Q57 and Q59)

States/entities	Other persons with similar duties as public prosecutors	If yes is their number included in the number of public prosecutors?
Albania		
Andorra		
Armenia		
Austria		
Azerbaijan		
Belgium		
Bosnia and Herzegovina		
Bulgaria		
Croatia		
Cyprus		
Czech Republic		
Denmark		
Estonia		
Finland		
France		
Georgia		
Germany		
Greece		
Hungary		
Ireland		
Italy		
Latvia		
Lithuania		
Luxembourg		
Malta		
Republic of Moldova		
Monaco		
Montenegro		
Netherlands		
Norway		
Poland		
Portugal		
Romania		
Russian Federation		
Serbia		
Slovakia		
Slovenia		
Spain		
Sweden		
Switzerland		
The FYROMacedonia		
Turkey		
Ukraine		
UK-England and Wales		
UK-Northern Ireland		
UK-Scotland		
Israel		
<b>Total</b>	<b>46</b>	<b>46</b>
<b>Nb of Yes</b>	<b>16</b>	<b>1</b>
<b>Nb of No or NAP</b>	<b>27</b>	<b>45</b>
<b>Nb of NA</b>	<b>3</b>	<b>0</b>



In 16 States or entities, similar tasks to those of prosecutors are performed by other staff. These may include police services. In **Denmark**, the latter are entitled to act before courts on behalf of prosecutors in respect of certain minor offenses. Likewise, in **Greece**, senior police officers have similar competences to these of public prosecutors in respect of petty offences, namely traffic accidents. In **Malta**, police officials act as prosecutors in cases heard in front of the Court of Magistrates. In **Israel**, prosecutorial functions are mainly shared between the public prosecution services and the police. In addition, in **France**, the functions of public prosecutor before the police court and the proximity judge are ensured by a public prosecution service's official in the person of the competent Police Commissioner within the area of their respective jurisdictions. **Monaco** is experiencing a comparable organisation before the police court with a Police Commissioner for public safety.

In some states, specific authorities exercise prosecutorial functions in particular areas such as health and taxes in **Ireland**, environmental protection in **Ireland** and **Israel**, fiscal matters in **Germany**, customs, police, revenue service, forest and wildlife guard, military gendarmerie in **Poland**. In **Finland**, the Chancellor of Justice of the Government and the Parliamentary Ombudsman may also prosecute or order that charges be brought in matters falling within the purview of their supervision of legality. In **Serbia**, misdemeanour cases are not prosecuted by public prosecution.

The staff performing similar duties to those of prosecutors may be a part of the prosecution office as it is the case for the *Bezirksanwälte* in **Austria** who have a comparable status to that of *Rechtspfleger*: judicial officers with legal training, enabled to act for the public prosecutor's offices under the supervision of a public prosecutor. In **Serbia**, prosecutors' assistants can undertake specific procedural activities, authorized by a public prosecutor, i.e. deputy public prosecutor. They are appointed for an indefinite period of time. In **UK-England and Wales**, associate prosecutors are employed by the Crown Prosecution Service and have limited powers in the lower courts to undertake simple trials and non-contentious cases. While they have the right of audience of a Crown Prosecutor to conduct routine cases in the magistrates' courts, they are not entitled to institute criminal proceedings or review whether to continue proceedings instituted by the police. In **Germany**, associate prosecutors at local courts

as well as trainee jurists are competent for performing certain prosecutorial tasks in the frame of individual cases and under the prosecutor's supervision.

Substitute prosecutors in **Spain** and substitutes of deputy prosecutors in **Portugal** are appointed for a limited period of time, most often to replace a prosecutor in cases of illness, maternity leave, vacancy and *etc.* They have the same responsibilities and duties as prosecutors.

In **Switzerland**, the terminology varies depending on the cantons: technical or specialised officials, criminal investigation officers, officers in charge of the taxation of contraventions, prosecutor assistants *etc.* (12 cantons have provided a positive reply). In the **Netherlands**, paralegal workers in the Dutch Public Prosecution Service are by delegation entitled to take over some of the duties of the public prosecutor, for example to decide on whether or not to prosecute and on offering an out of court settlement. On the contrary, they have no competence in matters of pretrial detention of defendants. In addition, since 2014, a new function has been created in the prosecution service – assistant officers who may review cases or bring cases to court and who should be distinguished from assistant prosecutors.

The staff endowed with similar responsibilities to those of prosecutors may also be external to the public prosecution services. This is the case of the "Honorary Deputy Prosecutors" in **Italy**, holding a law degree and appointed for a fixed term by the High Council of the Judiciary. In **Ireland**, the Director of Public Prosecutions (DPP) employs State Solicitors under contract for prosecutions outside Dublin. More generally speaking, in this country, much of the work of the Office of the DPP is carried out by barristers in private practice rather than by barristers in the employment of the State. In **France**, deputy prosecutors (*délégués du procureur*) appointed by the *Procureur de la République* may be individuals or associations. They are not members of the prosecutor's office and are not entitled to initiate proceedings contrary to the officers of the public prosecution services. Criminal mediators also perform certain tasks comparable to those of prosecutors.

Less close to the core prosecutor's function is the activity of advisers in **Estonia** who are entitled to prepare documents and cases. Some countries have also raised the possibility of private prosecution conducted by victims (**Germany** and **Finland**).

Only 10 States or entities could provide quantitative data on persons fulfilling tasks comparable to those of prosecutors. The figures vary from 1 for **Monaco**, corresponding to the prosecution officer at the Police Court, to 1901 in **Italy**, reflecting the number of honorary deputy prosecutors. **France** and **Germany** provided a similar figure (respectively 950 and 941 deputy prosecutors). Three countries reported a value greater than 100 (**UK-England and Wales** (245), **Serbia** (191), **Austria** (150)), while three other communicated a value under this threshold (**Denmark** (86), **Spain** (70), **Ireland** (32)). Indeed, the data is difficult to be collected, or remains approximate. On the one hand, the definition of this category of staff varies from one state or entity to another, depending on the peculiarities of the national judicial systems. On the other hand, these officials are often appointed on a temporary basis and are paid according to their actual interventions.

### 3.2.6 Distribution of prosecutors between the different levels of jurisdiction

Table 3.33 Distribution in % of public prosecutors by instance in 2014 (Q55)

States/entities	Total number of public prosecutors	1st instance	2nd instance	Highest instance
Albania	325	85%	8%	7%
Andorra	5	NA	NA	NAP
Armenia	305	NAP	NAP	NAP
Austria	345	90%	6%	4%
Azerbaijan	1069	NA	NA	NA
Belgium	853	80%	19%	2%
Bosnia and Herzegovina	372	81%	NAP	19%
Bulgaria	1466	64%	28%	8%
Croatia	565	72%	24%	4%
Cyprus	110	NAP	NAP	NAP
Czech Republic	1232	68%	28%	4%
Denmark	690	78%	16%	8%
Estonia	168	NAP	NAP	NAP
Finland	363	NAP	NAP	NAP
France	1882	74%	23%	3%
Georgia	441	NAP	NAP	NAP
Germany	5223	91%	7%	2%
Greece	580	67%	30%	3%
Hungary	1869	62%	32%	6%
Ireland	89	NAP	NAP	NAP
Italy	2088	86%	12%	3%
Latvia	457	65%	18%	17%
Lithuania	720	90%	NAP	10%
Luxembourg	47	72%	NAP	28%
Malta	12	NA	NA	NA
Republic of Moldova	696	77%	4%	20%
Monaco	4	NAP	NAP	NAP
Montenegro	108	69%	17%	14%
Netherlands	796	89%	11%	NAP
Norway	NA	NA	..	..
Poland	5877	66%	32%	1%
Portugal	1476	94%	6%	1%
Romania	2622	45%	34%	21%
Russian Federation	34294	NAP	NAP	NAP
Serbia	657	90%	9%	2%
Slovakia	948	68%	20%	12%
Slovenia	194	74%	19%	7%
Spain	2425	NAP	NAP	2%
Sweden	1015	NAP	NAP	1%
Switzerland	893	NAP	NAP	NAP
The FYROMacedonia	200	80%	16%	5%
Turkey	5306	95%	0%	5%
Ukraine	13134	60%	31%	8%
UK-England and Wales	2247	100%	20%	NA
UK-Northern Ireland	161	NA	NA	NA
UK-Scotland	471	100%	NA	NA
Israel	605	NAP	NAP	NAP
<b>Average</b>	2107	78%	18%	8%
<b>Median</b>	690	77%	19%	5%
<b>Minimum</b>	4	45%	0%	1%
<b>Maximum</b>	34294	100%	34%	28%

The average number is 78 % for the first instance courts, 18 % for the second instance and 8 % for the Supreme Court. While these figures are close to those of judges, it should be noted that the data relating to public prosecutors concern only 30 States or entities out of 47. This situation is due to the fact that in many states, public prosecutors intervene in all courts and are not specifically assigned to a certain instance or level of jurisdiction (**Andorra, Armenia, Cyprus, Estonia, Finland, Georgia, Ireland, Malta, Monaco, Russian Federation**, the great majority of the cantons in **Switzerland**). In **Luxembourg**, the same prosecutors intervene before the Court of Appeal and the Supreme Court, while the judicial systems of **Lithuania** (since 2012), **Spain** and **Sweden** do not distinguish between prosecutors acting at first instance and those intervening at second instance. As previously explained, in **UK-England and Wales**, there is no definitive separation of prosecutors whereby individual prosecutors are assigned to only either first or second instance courts on a long-term basis. Instead, all prosecutors can practice in the lower, first instance courts which is also the case in **UK-Scotland**. For that reason the number provided for first instance is identical to the total (100 %). In **UK-England and Wales** 20 % of the prosecutors can be assigned to second instance. Furthermore, the comparison is also made difficult by the fact that administrative tasks may also be entrusted to public prosecutors of second instance or of a Supreme Court.



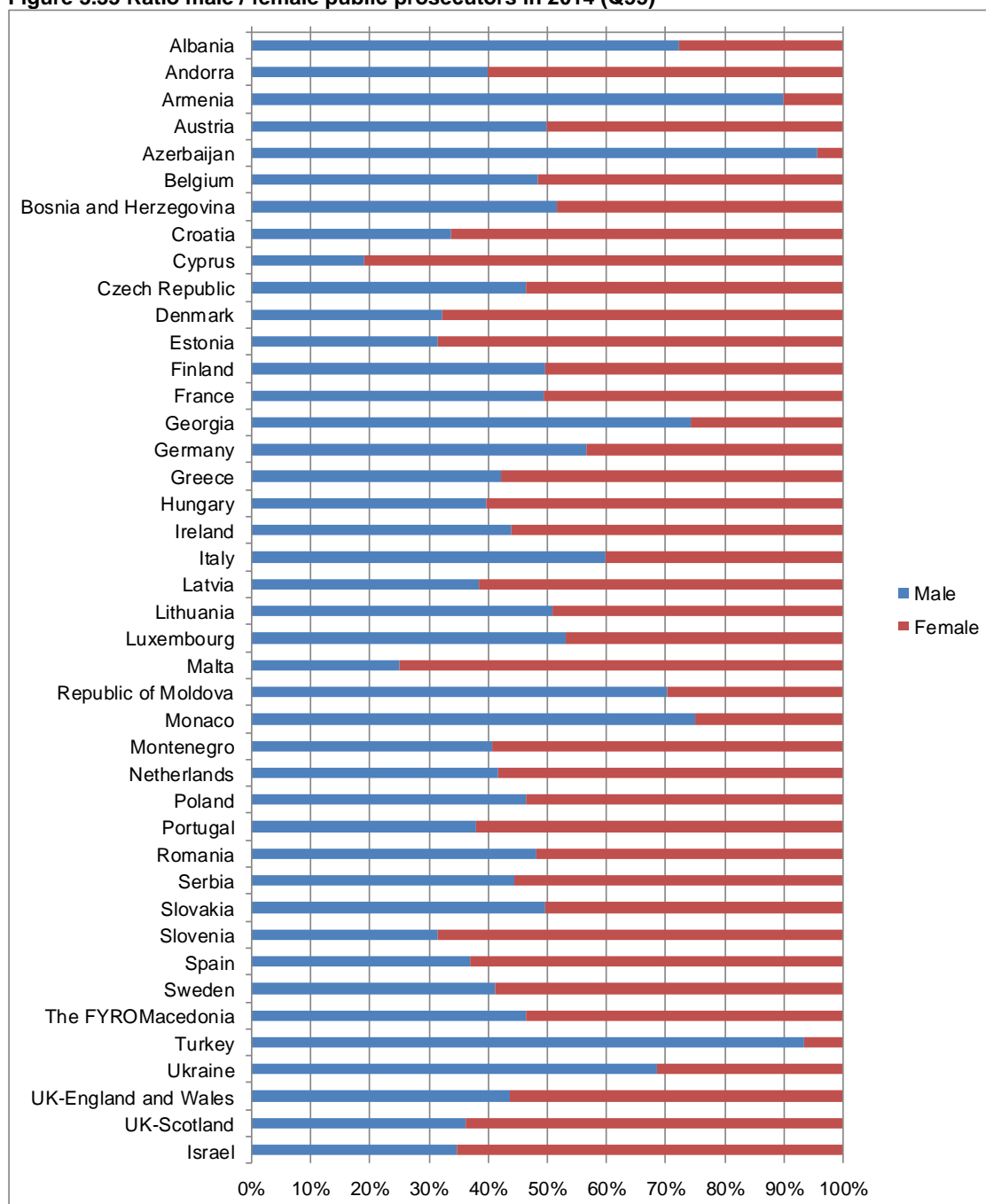
**Table 3.34 Distribution in % of public prosecutors by instance and by gender in 2014 (Q55)**

States/entities	Total of public prosecutors		1st instance		2nd instance		Highest instance	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	72%	28%	70%	30%	85%	15%	83%	17%
Andorra	40%	60%	NA	NA	NA	NA	NAP	NAP
Armenia	90%	10%	NAP	NAP	NAP	NAP	NAP	NAP
Austria	50%	50%	48%	52%	62%	38%	80%	27%
Azerbaijan	96%	4%	NA	NA	NA	NA	NA	NA
Belgium	48%	52%	44%	56%	65%	35%	100%	0%
Bosnia and Herzegovina	52%	48%	51%	49%	NAP	NAP	55%	45%
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	34%	66%	30%	70%	42%	58%	50%	50%
Cyprus	19%	81%	NAP	NAP	NAP	NAP	NAP	NAP
Czech Republic	47%	53%	41%	59%	56%	44%	67%	33%
Denmark	32%	68%	31%	68%	41%	59%	23%	77%
Estonia	32%	68%	NAP	NAP	NAP	NAP	NAP	NAP
Finland	50%	50%	NAP	NAP	NAP	NAP	NAP	NAP
France	49%	51%	46%	54%	56%	44%	75%	25%
Georgia	74%	26%	NAP	NAP	NAP	NAP	NAP	NAP
Germany	57%	43%	55%	45%	68%	32%	78%	22%
Greece	42%	58%	35%	65%	54%	46%	74%	26%
Hungary	40%	60%	36%	64%	45%	55%	53%	47%
Ireland	44%	56%	NAP	NAP	NAP	NAP	NAP	NAP
Italy	60%	40%	57%	43%	72%	28%	91%	9%
Latvia	39%	61%	35%	65%	44%	56%	45%	55%
Lithuania	51%	49%	50%	50%	NAP	NAP	56%	44%
Luxembourg	53%	47%	38%	62%	NAP	NAP	38%	62%
Malta	25%	75%	NA	NA	NA	NA	NA	NA
Republic of Moldova	70%	30%	70%	30%	76%	24%	70%	30%
Monaco	75%	25%	NAP	NAP	NAP	NAP	NAP	NAP
Montenegro	41%	59%	44%	56%	28%	72%	40%	60%
Netherlands	42%	58%	40%	60%	55%	45%	NAP	NAP
Norway	NA	NA	NA	NA	64%	36%	54%	46%
Poland	47%	53%	42%	58%	56%	44%	63%	37%
Portugal	38%	62%	37%	63%	56%	44%	65%	35%
Romania	48%	52%	48%	52%	47%	53%	50%	50%
Russian Federation	NA	NA	NAP	NAP	NAP	NAP	NAP	NAP
Serbia	44%	56%	44%	56%	53%	47%	45%	55%
Slovakia	50%	50%	46%	54%	56%	44%	58%	42%
Slovenia	31%	69%	26%	74%	46%	54%	46%	54%
Spain	37%	63%	NAP	NAP	NAP	NAP	73%	27%
Sweden	41%	59%	NAP	NAP	NAP	NAP	38%	62%
Switzerland	NA	NA	NAP	NAP	NAP	NAP	NAP	NAP
The FYROMacedonia	47%	54%	45%	55%	44%	56%	89%	11%
Turkey	94%	6%	94%	6%	100%	0%	80%	20%
Ukraine	69%	31%	66%	34%	72%	28%	73%	27%
UK-England and Wales	44%	56%	44%	56%	60%	40%	NA	NA
UK-Northern Ireland	NA	NA	NA	NA	NA	NA	NA	NA
UK-Scotland	36%	64%	36%	64%	NA	NA	NA	NA
Israel	35%	65%	NAP	NAP	NAP	NAP	NAP	NAP
<b>Average</b>	50%	50%	47%	53%	58%	42%	63%	38%
<b>Median</b>	47%	53%	44%	56%	56%	44%	63%	37%
<b>Minimum</b>	19%	4%	26%	6%	28%	0%	23%	0%
<b>Maximum</b>	96%	81%	94%	74%	100%	72%	100%	77%

The conclusions drawn in respect of judges are close to those resulting from this table on public prosecutors. Overall, figures are equally balanced between men and women. However, while there is a majority of women at first instance (53 %), men predominate at second instance (58 %) and even more before the Supreme Court (63 %). The recent feminisation of the public prosecution services, akin to the situation of judges, can likely explain this reality. In four years the number of women increased by 4 % among public prosecutors (by 5 % among judges).

In several States or entities, female prosecutors account for the majority at all instances (**Croatia, Denmark, Latvia, Luxembourg, Montenegro, Romania and Slovenia**). A similar positive trend in respect of female prosecutors is observed in **Bosnia and Herzegovina, Hungary and Serbia**. In **Montenegro**, the percentage of female prosecutors is more important before second instance courts and the Supreme Court than before first instance tribunals. The feminisation of the public prosecution services is the strongest one in **Denmark** (68 %), with a higher percentage of female prosecutors before the Supreme Court (77 %) than before first instance jurisdictions (68 %). By contrast, in **Albania, Germany, Italy, Republic of Moldova, Turkey and Ukraine**, male prosecutors still constitute the majority at all instances.

**Figure 3.35 Ratio male / female public prosecutors in 2014 (Q55)**



This figure presents the distribution between male and female prosecutors among the total number of prosecutors. Out of the 42 States or entities which were able to provide the required data, 29 indicate having between 50 % and 81 % female prosecutors. However, the threshold of 70 % is achieved or exceeded only in three of them (**Cyprus, Malta and Slovenia**). In some countries it is possible to notice a perfect parity (**Austria, Finland, and Slovakia**) or near-perfect parity (**Belgium, Bosnia and Herzegovina, Check Republic, France, Lithuania, Poland, Romania, “the former Yugoslav Republic of Macedonia”, UK-England and Wales**). In 13 States or entities, the number of male prosecutors is higher than this of female prosecutors (in 9 of them the threshold of 60 % is reached, in 7 – the percentage is higher than 70 % and in 3 – it is equal or higher than 90 %).

**Luxembourg, Malta, Portugal and Spain** have explicitly drawn the attention on the feminisation of their public prosecution services as a result of the increasing number of female candidate prosecutors. Accordingly, this phenomenon is more visible at first instance, but it is more and more perceptible at the level of the superior courts.

The European average for 2014 corresponds to the perfect parity – 50 % female prosecutors and 50 % male prosecutors. The positive trend of feminisation of the public prosecution services noticed in 2012 (49 % female and 51 % male) continues.

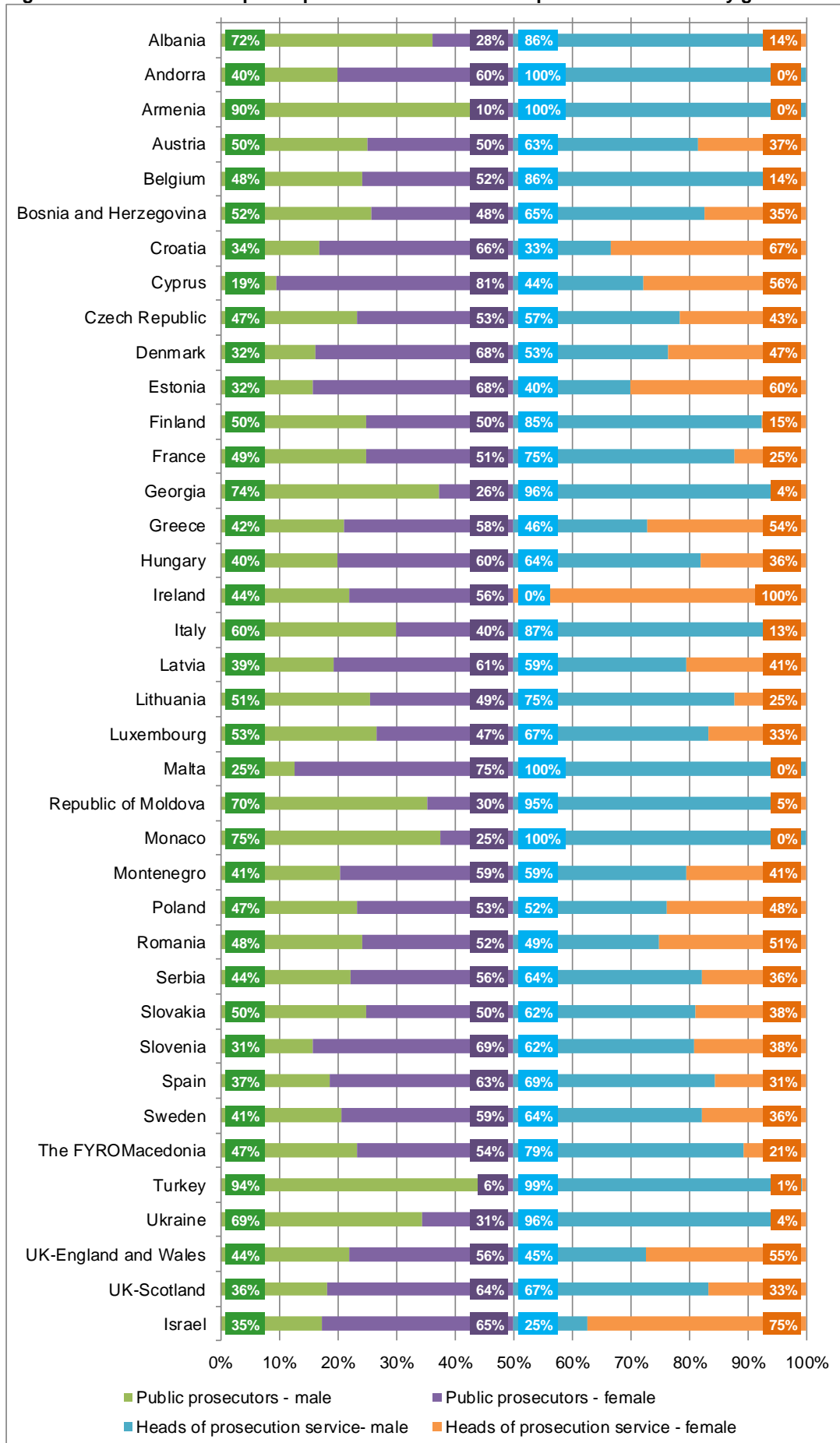
Table 3.36 Distribution in % of the number of heads of prosecution offices by instance in 2014 (Q56)

States/Entities	Total number of heads of prosecution offices	1st instance	2nd instance	Supreme court	Number of prosecutors per one head of prosecution office
Albania	35	66%	20%	14%	9,3
Andorra	1	NAP	NAP	NAP	5,0
Armenia	16	NAP	NAP	NAP	19,1
Austria	27	74%	22%	2%	12,8
Azerbaijan	NA	NA	NA	NA	..
Belgium	29	76%	21%	3%	29,4
Bosnia and Herzegovina	20	85%	NAP	15%	18,6
Bulgaria	155	73%	26%	1%	9,5
Croatia	39	64%	33%	3%	14,5
Cyprus	9	NAP	NAP	NAP	12,2
Czech Republic	95	88%	11%	1%	13,0
Denmark	17	71%	24%	6%	40,6
Estonia	5	NAP	NAP	NAP	33,6
Finland	13	NAP	NAP	NAP	27,9
France	194	81%	18%	1%	9,7
Georgia	51	NAP	NAP	NAP	8,6
Germany	NA	NA	NA	NA	..
Greece	186	75%	24%	1%	3,1
Hungary	163	83%	16%	1%	11,5
Ireland	1	NAP	NAP	NAP	89,0
Italy	170	88%	11%	1%	12,3
Latvia	61	67%	16%	16%	7,5
Lithuania	89	87%	NAP	13%	8,1
Luxembourg	3	67%	NAP	33%	15,7
Malta	1	NAP	NAP	NAP	12,0
Republic of Moldova	82	94%	5%	1%	8,5
Monaco	1	NAP	NAP	NAP	4,0
Montenegro	17	76%	18%	6%	6,4
Netherlands	NA	NA	NA	NA	..
Norway	13	0%	92%	8%	..
Poland	881	84%	15%	0%	6,7
Portugal	NA	NA	NA	NA	..
Romania	277	55%	42%	3%	9,5
Russian Federation	2909	NAP	NAP	NAP	11,8
Serbia	90	94%	4%	1%	7,3
Slovakia	61	85%	13%	2%	15,5
Slovenia	13	92%	NAP	8%	14,9
Spain	116	NAP	NAP	7%	20,9
Sweden	39	NAP	NAP	8%	26,0
Switzerland	115	NAP	NAP	NAP	7,8
The FYROMacedonia	28	82%	14%	4%	7,1
Turkey	242	93%	6%	1%	21,9
Ukraine	671	96%	3%	0%	19,6
UK-England and Wales	53	100%	100%	NA	42,4
UK-Northern Ireland	1	NA	NA	NA	161,0
UK-Scotland	9	100%	NAP	NAP	52,3
Israel	12	NA	NA	NA	50,4
<b>Average</b>	167	79%	24%	6%	21,1
<b>Median</b>	39	83%	18%	3%	12,3
<b>Minimum</b>	1	0%	3%	0%	3,1
<b>Maximum</b>	2909	100%	100%	33%	161,0

**Table 3.37 Distribution in % of the number of heads of prosecution offices by instance and gender in 2014 (Q56)**

States/entities	Total number of heads of prosecution offices		1st instance		2nd instance		Supreme court	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	86%	14%	91%	9%	71%	29%	80%	20%
Andorra	100%	0%	NAP	NAP	NAP	NAP	NAP	NAP
Armenia	100%	0%	NAP	NAP	NAP	NAP	NAP	NAP
Austria	63%	37%	65%	35%	67%	33%	73%	27%
Azerbaijan	NA	NA	NA	NA	NA	NA	NA	NA
Belgium	86%	14%	86%	14%	83%	17%	100%	0%
Bosnia and Herzegovina	65%	35%	59%	41%	NAP	NAP	100%	0%
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	33%	67%	32%	68%	31%	69%	100%	0%
Cyprus	44%	56%	NAP	NAP	NAP	NAP	NAP	NAP
Czech Republic	57%	43%	56%	44%	60%	40%	100%	0%
Denmark	53%	47%	42%	58%	75%	25%	100%	0%
Estonia	40%	60%	NAP	NAP	NAP	NAP	NAP	NAP
Finland	85%	15%	NAP	NAP	NAP	NAP	NAP	NAP
France	75%	25%	78%	22%	63%	37%	100%	0%
Georgia	96%	4%	NAP	NAP	NAP	NAP	NAP	NAP
Germany	NA	NA	NA	NA	NA	NA	NA	NA
Greece	46%	54%	39%	61%	69%	31%	0%	100%
Hungary	64%	36%	60%	40%	85%	15%	100%	0%
Ireland	0%	100%	NAP	NAP	NAP	NAP	NAP	NAP
Italy	87%	13%	85%	15%	100%	0%	100%	0%
Latvia	59%	41%	59%	41%	60%	40%	60%	40%
Lithuania	75%	25%	75%	25%	NAP	NAP	75%	25%
Luxembourg	67%	33%	100%	0%	NAP	NAP	0%	100%
Malta	100%	0%	NAP	NAP	NAP	NAP	NAP	NAP
Republic of Moldova	95%	5%	95%	5%	100%	0%	100%	0%
Monaco	100%	0%	NAP	NAP	NAP	NAP	NAP	NAP
Montenegro	59%	41%	62%	38%	33%	67%	100%	0%
Netherlands	NA	NA	NA	NA	NA	NA	NA	NA
Norway	92%	8%	0%	0%	92%	8%	100%	0%
Poland	52%	48%	48%	52%	73%	27%	75%	25%
Portugal	NA	NA	NA	NA	NA	NA	NA	NA
Romania	49%	51%	50%	50%	48%	52%	63%	38%
Russian Federation	NA	NA	NAP	NAP	NAP	NAP	NAP	NAP
Serbia	64%	36%	NA	NA	75%	25%	0%	100%
Slovakia	62%	38%	62%	38%	63%	38%	100%	0%
Slovenia	62%	38%	58%	42%	NAP	NAP	100%	0%
Spain	69%	31%	NAP	NAP	NAP	NAP	75%	25%
Sweden	64%	36%	NAP	NAP	NAP	NAP	33%	67%
Switzerland	NA	NA	NAP	NAP	NAP	NAP	NAP	NAP
The FYROMacedonia	79%	21%	74%	26%	100%	0%	100%	0%
Turkey	99%	1%	99%	1%	100%	0%	100%	0%
Ukraine	96%	4%	96%	4%	100%	0%	100%	0%
UK-England and Wales	45%	55%	45%	55%	45%	55%	NA	NA
UK-Northern Ireland	NA	NA	NA	NA	NA	NA	NA	NA
UK-Scotland	67%	33%	67%	33%	NAP	NAP	NAP	NAP
Israel	25%	75%	NA	NA	NA	NA	NA	NA
<b>Average</b>	69%	31%	67%	33%	72%	28%	79%	21%
<b>Median</b>	66%	34%	62%	38%	72%	28%	100%	0%
<b>Minimum</b>	0%	0%	0%	0%	31%	0%	0%	0%
<b>Maximum</b>	100%	100%	100%	68%	100%	69%	100%	100%

Figure 3.38 Distribution of public prosecutors and heads of prosecution offices by gender in 2014 (Q55 and Q56)



These tables show first the distribution of the heads of prosecution offices between first instance, second instance and Supreme Court level, second the distribution of these positions between men and women, and third, the male/female distribution of public prosecutors based on their level of responsibility (public prosecutor or head of prosecution office).

It should be noted that it was not possible to get a reply from almost half of the States or entities, which may be explained by the specific organisation of prosecution offices which are not always assigned to a single jurisdiction.

For the States or entities which could make the distinction requested, the average number of heads of prosecution offices is 79 % allocated at first instance level, 24 % at second instance level, and 6 % at Supreme Court level. It is relevant to recall that for court presidents, these averages are respectively 81 %, 19 % and 4 % and that the average number of presidents and heads of prosecution offices is virtually the same, 162 and 167, respectively.

The second table distributes these positions between men and women. It indicates that heads of prosecution offices are men in 69 % of cases, and that the distribution by jurisdiction level is 67 % of men at first instance tribunals, 72 % at second instance courts and 76 % at Supreme Court level. Akin to judges, one can notice that the progressive rebalancing in favour of women observed in the judiciary in general has not yet been materialised at the level of department heads. While women represent 53 % of public prosecutors at first instance level, they hold the position of head of prosecution office in only 33 % of cases. At second instance level, the figures are 42 % and 28 % respectively, and at Supreme Court level, they hold 38 % of the positions but are only heads of these prosecution offices in 20 % of cases. As a matter of fact, the review of the particular situation of each state or entity reveals, perhaps more than for judges that in some countries the positions of heads of prosecution offices are filled in 90 % or 100 % of cases by men (**Andorra, Armenia, Georgia, Malta, Republic of Moldova, Monaco, Norway, Turkey and Ukraine**). Nevertheless, this observation must be qualified regard being had to the fact that in **Andorra, Malta and Monaco** there is a single head of office, namely the Prosecutor General. The situation is similar in **Ireland** with the unique position of Director of Public Prosecutions. However, the latter was occupied by a female prosecutor in 2014. Conversely, the important number of heads of prosecution offices in **Turkey** (242) and **Ukraine** (671) further stresses the difficulty, still perceptible for women, to access to positions of responsibility.

#### **Trends and conclusions**

Akin to the situation of judges, there has been a clear and continuous feminisation of the profession of public prosecutor. With the number of female public prosecutors increased by 4 % in the years 2010-2014, parity is now the rule.

This trend of feminization should continue due to predominantly female recruitment. In respect of heads of prosecution offices, men remain largely predominant at all levels of jurisdiction.

This evolution should be followed carefully to verify in particular if women also reach positions of responsibility in accordance with their number and professional qualities.

### 3.2.7 Salary of prosecutors

Table 3.39 Average gross salary of public prosecutors in absolute terms and in relation to the national average gross salary in 2014 (Q4, Q132)

States/Entities	Gross salary of a public prosecutor		In relation to the average gross salary	
	At the beginning of career	The level at the highest instance	At the beginning of career	The level at the highest instance
Albania	8 988 €	14 976 €	2,0	3,3
Andorra	73 877 €	73 877 €	3,0	3,0
Armenia	NQ	NAP	NA	NA
Austria	53 486 €	121 651 €	1,7	4,0
Azerbaijan	6 427 €	18 891 €	1,1	3,4
Belgium	66 182 €	123 229 €	1,6	3,0
Bosnia and Herzegovina	23 884 €	41 369 €	3,0	5,2
Bulgaria	15 317 €	29 219 €	3,0	5,8
Croatia	22 740 €	50 073 €	1,8	4,0
Cyprus	34 030 €	NAP	1,5	NA
Czech Republic	25 124 €	48 175 €	2,3	4,3
Denmark	53 623 €	103 714 €	1,0	2,0
Estonia	22 440 €	41 520 €	1,9	3,4
Finland	48 619 €	83 827 €	1,2	2,1
France	41 552 €	116 751 €	1,2	3,4
Georgia	9 996 €	33 540 €	NA	NA
Germany	45 294 €	110 011 €	1,0	2,4
Greece	30 159 €	84 540 €	1,9	5,2
Hungary	16 217 €	34 748 €	1,7	3,6
Ireland	30 218 €	NAP	0,8	NA
Italy	56 263 €	186 637 €	1,9	6,4
Latvia	19 369 €	25 800 €	2,1	2,8
Lithuania	16 195 €	31 625 €	2,0	3,9
Luxembourg	75 316 €	124 051 €	1,6	2,7
Malta	30 628 €	NA	1,9	NA
Republic of Moldova	3 217 €	3 301 €	1,2	1,3
Monaco	46 226 €	94 408 €	1,1	2,3
Montenegro	18 453 €	24 587 €	2,1	2,8
Netherlands	81 162 €	158 657 €	1,4	2,8
Norway	NA	111 000 €	NA	2,0
Poland	20 849 €	61 974 €	2,0	5,8
Portugal	35 699 €	85 820 €	1,8	4,2
Romania	23 676 €	35 670 €	3,8	5,8
Russian Federation	NA	NA	NA	NA
Serbia	17 728 €	37 204 €	2,8	5,9
Slovakia	28 060 €	42 916 €	2,7	4,2
Slovenia	31 368 €	52 224 €	1,7	2,8
Spain	47 494 €	106 992 €	2,1	4,7
Sweden	61 480 €	100 673 €	1,5	2,5
Switzerland	116 230 €	155 150 €	1,8	2,4
The FYROMacedonia	17 719 €	20 299 €	2,9	3,3
Turkey	21 108 €	42 828 €	1,8	3,7
Ukraine	5 094 €	27 071 €	2,4	12,6
UK-England and Wales	NA	NA	NA	NA
UK-Northern Ireland	NA	NA	NA	NA
UK-Scotland	42 501 €	NA	1,2	NA
Israel	22 924 €	78 771 €	1,0	3,3
<b>Average</b>	35 220 €	69 974 €	1,9	3,9
<b>Median</b>	30 159 €	51 149 €	1,8	3,4
<b>Minimum</b>	3 217 €	3 301 €	0,8	1,3
<b>Maximum</b>	116 230 €	186 637 €	3,8	12,6



## Comments related to prosecutors' salaries

**Bosnia and Herzegovina:** data are based on the following presumptions: public prosecutor at the beginning of his/her career – 3 years of work experience; public prosecutor of the Supreme Court or the Highest Appellate Instance – 20 years of work experience. In 2014, the salary amounts have been increased due to the pay harmonization with the growth in average salaries as provided by law.

**Bulgaria:** as for the 2012 data, 2014 data indicated amounts do not include the insurance contributions.

**France:** a prosecutor at the beginning of his/her career corresponds to a substitute prosecutor at the first step of the second grade. A prosecutor at the Supreme Court/last instance corresponds to the Advocate General before the Court of cassation – step D3/E.

**Georgia:** prosecutors are not classified depending on the judicial instances. The monthly gross salary of a prosecutor at the beginning of the career is of 833 euros, of a district prosecutor – 1311 euros and of a regional prosecutor – 2795 euros. For information, the monthly gross salary of a head of office is of 3583 euros.

**Germany:** the national average was calculated from the sum of the annual salaries of public prosecutors of all the Länder divided by the number of Länder, regardless of the number of prosecutors by Land. Salaries of prosecutors calculated for 2014 were based on the following assumptions: outset of the career – remuneration pursuant to R1, salary bracket 1, single, no children; at the level of the Supreme Court – the basic salary R6 without any allowance for working at one of the highest federal courts and without family allowance.

**Monaco:** according to the Statute of the Judiciary, the hierarchy of the judiciary has three grades: 3rd - *referendary* judges, judges and substitutes to the Attorney General; 2nd – justices of the peace, first judges and first substitutes of the Attorney General; 1st – the vice president of the first instance court, the counsellor at the Court of Appeal and the Deputy Attorney General. The following are placed outside the hierarchy: members of the Court of revision, the first president of the Court of Appeal, the Attorney General, the president of the court of first instance, the vice president of the Appeal Court. Pay scales for magistrates are fixed by Order 2010-4 of 25 January 2010. The reference salary in respect of a prosecutor at the last instance is that of a deputy general prosecutor in the mid-scale.

**Serbia:** the salary depends on the court instance, *i.e.* judges of higher instance courts have the right to a higher salary. In principle, salaries of judges and prosecutors are equal by the law - they share the same base tenure and denominator on the same levels. Differences can occur due to different numbers of working years' experience and on-call duty hours.

**Slovakia:** the salaries of prosecutors in 2014 were at the same level as in 2012. The adjustments of salaries for all State officials were stopped in the years 2013 and 2014 due to State expenditures restrictions.

**Switzerland:** prosecutors' salaries vary significantly depending on the cantons. Accordingly, the presented data refer to the weighted average salaries by the number of prosecutors of the cantons which provided information. Provided that there is no Supreme Court prosecutor, the provided gross salary of a prosecutor at the end of the career is the salary of a federal prosecutor.

The salary earned by public prosecutors is inevitably affected by the diversity characterising their statutory situation within the states, entities and observers, which makes comparisons more difficult than for judges. In some states, public prosecutors are in a similar situation to that of judges, whereas in other states, the prosecution office's activities are fulfilled, at least partially, by police authorities. The salary levels therefore differ significantly. In **Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, France, Germany, Greece, Hungary, Italy, Luxembourg, Monaco, Portugal, Slovakia, Spain, and Turkey**, the salary of judges and that of public prosecutors are nearly identical, both at the beginning of the career, and at the Supreme Court. Generally, at the beginning of their career, the salary of judges is on average slightly higher than that of prosecutors (except for **Albania, Austria, the Netherlands** and "**the former Yugoslav Republic of Macedonia**"), while at the end of their career, the salary of prosecutors is on average slightly higher than that of judges. Nevertheless, this last observation should be qualified by two remarks. On the one hand, it is noteworthy to recall that the average calculated in respect of judges excludes countries where judges are recruited among experienced lawyers and legal experts, *i.e.* among older professionals whose salary at the beginning of the career is already significant (**Denmark, Ireland, Norway, Switzerland, UK-England and Wales, UK-Northern Ireland, and UK-Scotland**). On the other hand, the average concerning prosecutors' salary at the end of the career is mainly affected by the data of five countries: **Andorra, Georgia, Romania, Serbia** and **Ukraine**. The situation in **Andorra** is justified by the specific status of the Supreme Court judges who have Spanish and French nationality, intervening depending on the work load of the tribunal. As a consequence, the salary of a judge at the end of the career appears very low and creates the contrast with the salary of a prosecutor at the end of the career whose remuneration corresponds virtually to this of judges and prosecutors at the beginning of the career. In the other 3 states, the evolution of the prosecutors' salary during the career is of a particular importance. However, it should be specified that in **Ukraine** where the salary increases more than five-fold between the beginning and the end of the career, it is the salary of the Prosecutor General which has been communicated. Actually, in the great majority of States or entities, the salary of a prosecutor at the end of the career remains lower than the salary of a judge at the end of the career.

Prosecutors at the beginning of their career are better paid than the average national gross salary (on average 1,9 times more), except for **Ireland** where following a constitutional amendment in 2011, legislation was passed to allow for the reduction in the remuneration of public servants, as a financial emergency measure adopted in the public interest. The difference is the most significant in **Romania** (3,8), as well as in

**Andorra, Bosnia and Herzegovina, Bulgaria (3), Ukraine (2,9), Serbia (2,8) and Slovakia (2,7).** Conversely, in **Denmark, Germany, Monaco,** and, to a lesser extent, in the **Netherlands and Switzerland,** the gross salary of a public prosecutor at the beginning of the career is close to the national gross salary, but the latter is considerably higher in real figures in these countries compared to other European States or entities. The situation is different in the **Republic of Moldova** where the prosecutors' salary at the beginning of the career is nearly identical to the national gross salary which is quite low.

With regard to the national average gross salary, prosecutors' remuneration at the end of the career is the highest in **Italy (6,4), Serbia (5,9), Bulgaria, Poland and Romania (5,8).** The slightest difference is to be noticed in **Republic of Moldova (1,3), Denmark and Norway (2), Finland (2,1), Monaco (2,3), Germany and Switzerland (2,4), and Sweden (2,5).** The European average is of 3,9. In respect of **Ukraine** and the important coefficient characterising prosecutors' salary at the end of the career in comparison with the national gross salary (12,6), it should be recalled that this state has indicated in 2014 the salary of the Prosecutor General.

The difference between salaries at the beginning and salaries at the end of the career is the less significant in "**the former Yugoslav Republic of Macedonia, Switzerland, Montenegro, Latvia and Finland.** In **Switzerland,** provided that there is no Supreme Court prosecutor, the indicated salary corresponds to the highest salary of a federal prosecutor classified at the 29<sup>th</sup> step of remuneration scale. The difference is the most noticeable in **Ukraine, Italy, Greece, Poland and Serbia.** In this respect and as specified above, in **Italy,** the salaries of prosecutors do not depend on the position held but rather on the experience. The important evolution of the prosecutors' salary in **Ukraine** stems from the salary of the Prosecutor general indicated as salary of a prosecutor at the end of the career.

#### **Trends and conclusions**

The considerable statutory disparities that affect the situation of public prosecutors of the States and entities make it difficult to draw a relevant comparison between their situation and that of judges. Nevertheless, the trend observed in recent years reveals the rapprochement between judges' and prosecutors' salaries as well at the beginning of the carrier (in more than the half of the States and entities), as at the end of the career (19 States or entities). The remaining discrepancies stem either from the peculiarity of the recruitment procedure of judges (when the legal experience constitutes the core criterion of selection), or from the specificities of the public prosecution services (when prosecution functions are carried out simultaneously by prosecutors and other specific bodies such as the police, or, on the contrary, when for historical reasons, prosecutors are granted a status of particular importance). Besides the States or entities where judges are chosen among experienced professionals justifying a high initial salary, young judges nominated for the first time have a considerably higher salary compared to this of prosecutors in **Cyprus, Estonia, Finland, Georgia, Lithuania, Malta, Republic of Moldova, Sweden, Ukraine and Israel.** Only in 6 states, prosecutors at the end of the career earn more than judges before the Supreme Court (**Andorra** due to the above described status of the Supreme Court judges, **Belgium** where the difference is slight, **Georgia, Romania and Ukraine**).

### 3.3 Other staff in courts

#### 3.3.1 Staff assigned to judges

Having competent staff with defined roles and a recognised status alongside judges is an essential precondition for the efficient functioning of the judicial system.

As in the previous reports, a distinction is made between five types of non-judge staff:

- the “**Rechtspfleger**” function, which is inspired by the Austrian and German systems, is, according to the European Union of *Rechtspfleger* (EUR), an independent judicial body, anchored in the constitution and performing the tasks assigned to it by law; the *Rechtspfleger* does not assist the judge, but works alongside the latter and may carry out various legal tasks, for example in the areas of family or succession law; he/she also has the competence to make judicial decisions independently on the granting of nationality, payment orders, execution of court decisions, auctions of immovable goods, criminal cases, and enforcement of judgements in criminal matters; he/she is finally competent to undertake administrative judicial tasks. The *Rechtspfleger*, to a certain extent, falls between judges and non-judge staff, such as registrars;
- non-judge staff whose task is to assist judges directly. Both judicial advisors and registrars assist judges in their judicial activities (hearings in particular) and may have to authenticate acts;
- staff responsible for various administrative matters and for court management;
- technical staff responsible for IT equipment, security and cleaning;
- other non-judge staff.

Table 3.40 Number of non-judge staff per professional judge and variation between 2010 and 2014 (Q46, Q52)

States/entities	Number of non-judge staff per professional judge			Variation		
	2010	2012	2014	Variation 2010-2012	Variation 2012-2014	Variation 2010-2014
Albania	2,1	2,1	2,4	2%	11%	14%
Andorra	4,7	4,4	4,4	-6%	-1%	-7%
Armenia	2,8	2,8	NA	0%	NA	NA
Austria	3,1	3,0	2,9	-4%	-3%	-7%
Azerbaijan	3,8	3,9	4,3	1%	12%	13%
Belgium	3,5	3,4	3,3	-3%	-3%	-6%
Bosnia and Herzegovina	3,2	3,2	3,1	1%	-3%	-2%
Bulgaria	2,7	2,7	2,7	1%	1%	2%
Croatia	3,7	3,6	4,1	-2%	13%	10%
Cyprus	4,5	4,1	4,8	-8%	16%	7%
Czech Republic	3,1	3,0	3,1	-4%	3%	-1%
Denmark	NA	4,9	5,1	NA	5%	NA
Estonia	4,4	4,2	4,4	-4%	5%	1%
Finland	2,4	2,3	2,2	-4%	-3%	-7%
France	3,0	3,1	3,2	2%	4%	6%
Georgia	6,9	4,8	4,6	-31%	-3%	-33%
Germany	2,7	2,7	2,8	0%	2%	2%
Greece	2,0	2,1	2,5	1%	19%	20%
Hungary	2,7	2,9	2,9	10%	-3%	7%
Ireland	7,0	6,6	5,8	-6%	-12%	-17%
Italy	NA	3,7	3,2	NA	-15%	NA
Latvia	3,4	3,7	3,2	8%	-12%	-5%
Lithuania	3,4	3,4	3,5	0%	1%	1%
Luxembourg	1,6	1,7	0,9	4%	-48%	-46%
Malta	9,6	9,0	9,5	-6%	5%	-1%
Republic of Moldova	3,5	3,4	4,9	-3%	42%	38%
Monaco	1,1	1,1	1,3	8%	13%	21%
Montenegro	4,1	4,0	3,4	-2%	-16%	-18%
Netherlands	2,6	2,6	3,1	-2%	21%	19%
Norway	1,5	1,5	1,5	1%	5%	6%
Poland	3,4	4,0	4,1	19%	2%	22%
Portugal	3,4	3,0	2,9	-10%	-6%	-16%
Romania	2,1	2,2	2,2	4%	3%	7%
Russian Federation	3,0	2,9	NA	-3%	NA	NA
Serbia	4,5	3,5	3,7	-21%	4%	-18%
Slovakia	3,3	3,4	3,4	4%	-1%	2%
Slovenia	3,2	3,4	3,6	7%	6%	14%
Spain	NA	8,7	9,1	NA	5%	NA
Sweden	NA	4,6	4,2	NA	-9%	NA
Switzerland	3,8	3,4	3,6	-11%	5%	-7%
The FYROMacedonia	3,5	3,5	3,7	1%	6%	7%
Turkey	2,8	NA	NA	NA	NA	NA
Ukraine	NA	4,2	NA	NA	NA	NA
UK-England and Wales	10,3	8,6	9,4	-17%	10%	-9%
UK-Northern Ireland	NA	10,5	NA	NA	NA	NA
UK-Scotland	8,1	7,4	8,0	-9%	9%	-1%
Israel	..	5,8	5,5		-5%	
<b>Average</b>	3,8	3,9	3,9	-2%	2%	1%
<b>Median</b>	3,3	3,4	3,4	-2%	3%	1%
<b>Minimum</b>	1,1	1,1	0,9	-31%	-48%	-46%
<b>Maximum</b>	10,3	10,5	9,5	19%	42%	38%

Indicators without United Kingdom entities, Ireland and Malta

<b>Average</b>	3,2	3,4	3,5
<b>Median</b>	3,2	3,4	3,3

**Note:** as concerns **Germany**, the 2014 data was not available. Accordingly, the 2013 data is used within this section. As concerns **Italy**, data related to the administrative courts is not taken into consideration for the reply to question 52.

This ratio allows to assess how the judge is assisted and if this situation has changed.

Does the judge work as a craftsman by fulfilling most tasks him or herself, including research or writing, or on the contrary, has the Constitution or the law entrusted these missions to other positions?

The ratio appearing in the tables must be construed with caution for different reasons:

- As mentioned for judges, a considerable part of the judicial functions may be entrusted to non-professional judges who must also be assisted, which means that some of the non-judge staff is in these cases assigned to non-professional judges activities, thereby modifying the implications of the ratio observed.
- 16 states indicated the number of *Rechtspfleger* or equivalent staff. The latter carry out judicial functions independently and therefore cannot be considered as assistant judges.
- The evolution of the ratio during the last three evaluation cycles must also be construed in the light of the evolution of the numbers of judges and non-judge staff. If a significant number of judges retire without being replaced immediately, the ratio will increase without this evolution originating in a reinforcement of non-judge staff. Similarly, if the recruitment of judges is increasing, then the ratio will decrease while the non-judge staff has remained the same.
- Finally, a review of the comments made by several States or entities shows that the situation in each state or entity is often quite different, especially as regards the scope of the tasks entrusted to these non-judge staff. Accordingly, it is difficult to be certain that the proposed differentiation between the five non-judge staff categories corresponds exactly to the situation of each State or entity. This may call into question the reliability of the data collected and the lessons that may be drawn from it.

It is with these reservations in mind in particular that the average of 3,9 highlighted in the table for the 2014 data must be assessed. It marks a slight increase compared to the 2010 data (3,8) and is identical to that of 2012 (3,9).

But this stability over time encompasses considerable gaps for each evaluation cycle. While in some States or entities the team around the judge is very large (**Malta, UK-England and Wales, UK-Scotland**) with a workforce of between 7 and more than 10 staff members per judge, this is probably due to the judicial organisation specific to the common law. **Spain** also belongs to this group of states. In other states, the number of non-judge staff is much lower (**Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Monaco, Montenegro, Netherlands, Norway, Portugal, Romania, and Slovakia**) with an average of 3 staff or less.

Excluding Common Law States and entities (entities of the **United Kingdom, Ireland and Malta**), the average number of non-judge staff per professional judge for the 2014 drops from 3.9 to 3,5.

Table 3.41 Variation in the number of non-judge staff per 100 000 inhabitants between 2010 and 2014 (Q1, Q52)

States/entities	Number of non-judge staff per 100 000 inhabitants			Variation 2010-2012	Variation 2012 - 2014	Variation 2010 - 2014
	2010	2012	2014			
Albania	24,3	28,7	29,7	18,2%	3,5%	22,3%
Andorra	132,9	139,0	136,5	4,6%	1,8%	2,7%
Armenia	18,9	20,4	NQ	7,8%	NQ	NQ
Austria	55,3	54,8	54,8	1,0%	0,0%	1,0%
Azerbaijan	25,5	25,0	27,2	1,9%	8,9%	6,8%
Belgium	52,0	48,9	47,2	5,9%	3,5%	9,2%
Bosnia and Herzegovina	77,7	80,4	81,0	3,5%	0,7%	4,1%
Bulgaria	79,7	82,6	83,5	3,6%	1,1%	4,8%
Croatia	157,4	162,6	166,5	3,3%	2,4%	5,8%
Cyprus	57,5	49,0	53,8	4,9%	10,0%	6,4%
Czech Republic	90,3	86,9	88,4	3,7%	1,8%	2,1%
Denmark	NA	32,5	31,0	NA	4,7%	NA
Estonia	72,8	74,4	77,4	2,1%	4,1%	6,3%
Finland	42,5	40,8	39,5	4,0%	3,2%	7,1%
France	32,5	33,2	33,7	2,2%	1,6%	3,9%
Georgia	36,3	25,7	31,4	29,3%	22,3%	3,5%
Germany	65,6	66,9	66,0	1,9%	1,3%	0,5%
Greece	59,8	48,2	50,5	9,4%	4,8%	5,6%
Hungary	77,2	82,2	81,4	6,4%	0,9%	5,4%
Ireland	22,4	20,6	20,0	8,3%	2,6%	10,7%
Italy	NA	39,7	36,0	NA	9,2%	NA
Latvia	71,8	78,6	78,8	9,5%	0,3%	9,8%
Lithuania	81,9	87,2	89,3	6,5%	2,4%	9,1%
Luxembourg	59,2	67,6	35,2	4,2%	48,0%	40,6%
Malta	89,6	85,4	90,6	4,6%	6,0%	1,2%
Republic of Moldova	44,1	42,5	52,8	3,7%	24,2%	19,7%
Monaco	105,9	116,2	121,7	9,7%	4,7%	4,9%
Montenegro	171,8	169,5	137,7	1,3%	18,7%	19,8%
Netherlands	40,1	37,3	43,9	7,0%	17,9%	9,6%
Norway	16,2	16,3	16,7	0,1%	2,8%	2,9%
Poland	94,1	106,0	107,9	2,6%	1,8%	4,7%
Portugal	62,3	58,3	54,9	6,5%	5,7%	1,9%
Romania	39,6	43,6	45,5	10,1%	4,5%	5,1%
Russian Federation	67,3	66,6	65,7	1,0%	1,4%	2,4%
Serbia	151,4	143,7	140,3	5,1%	2,3%	7,3%
Slovakia	82,2	82,8	82,4	0,8%	0,5%	0,3%
Slovenia	159,7	161,7	162,8	1,3%	0,6%	1,9%
Spain	NA	97,3	104,6	NA	7,5%	NA
Sweden	NA	54,1	49,2	NA	9,1%	NA
Switzerland	55,5	53,6	55,7	3,5%	4,1%	0,4%
The FYROMacedonia	111,9	113,1	112,6	1,1%	0,5%	0,6%
Turkey	30,3	NA	NA	NA	NA	NA
Ukraine	NA	72,1	NA	NA	NA	NA
UK-England and Wales	37,1	30,6	31,1	7,5%	1,8%	6,1%
UK-Northern Ireland	NA	40,5	NA	NA	NA	NA
UK-Scotland	28,7	25,6	26,6	10,9%	4,0%	7,3%
Israel		47,1	45,4		3,6%	
<b>Average</b>	69,5	68,7	70,0	-0,8%	0,7%	-0,2%
<b>Median</b>	61,1	58,3	55,3	0,1%	1,4%	0,9%
<b>Standard deviation</b>	40,7	40,4	39,7	9,4%	10,7%	12,0%
<b>Minimum</b>	16,2	16,3	16,7	-29,3%	-48,0%	-40,6%
<b>Maximum</b>	171,8	169,5	166,5	18,2%	24,2%	22,3%
<b>Indicators without United Kingdom entities, Ireland and Malta</b>						
<b>Average</b>	72,3	72,2	73,0			
<b>Median</b>	64,0	66,7	60,7			

This table complements table 3.40 by presenting the number of non-judge staff per 100 000 inhabitants.

The average of the last three evaluation cycles is quite stable, going from 69,5 staff in 2010 to 67.5 in 2012 and 70 for 2014. Excluding common law States or entities because of their specific judicial organisation, the average for the 2014 exercise is 73.

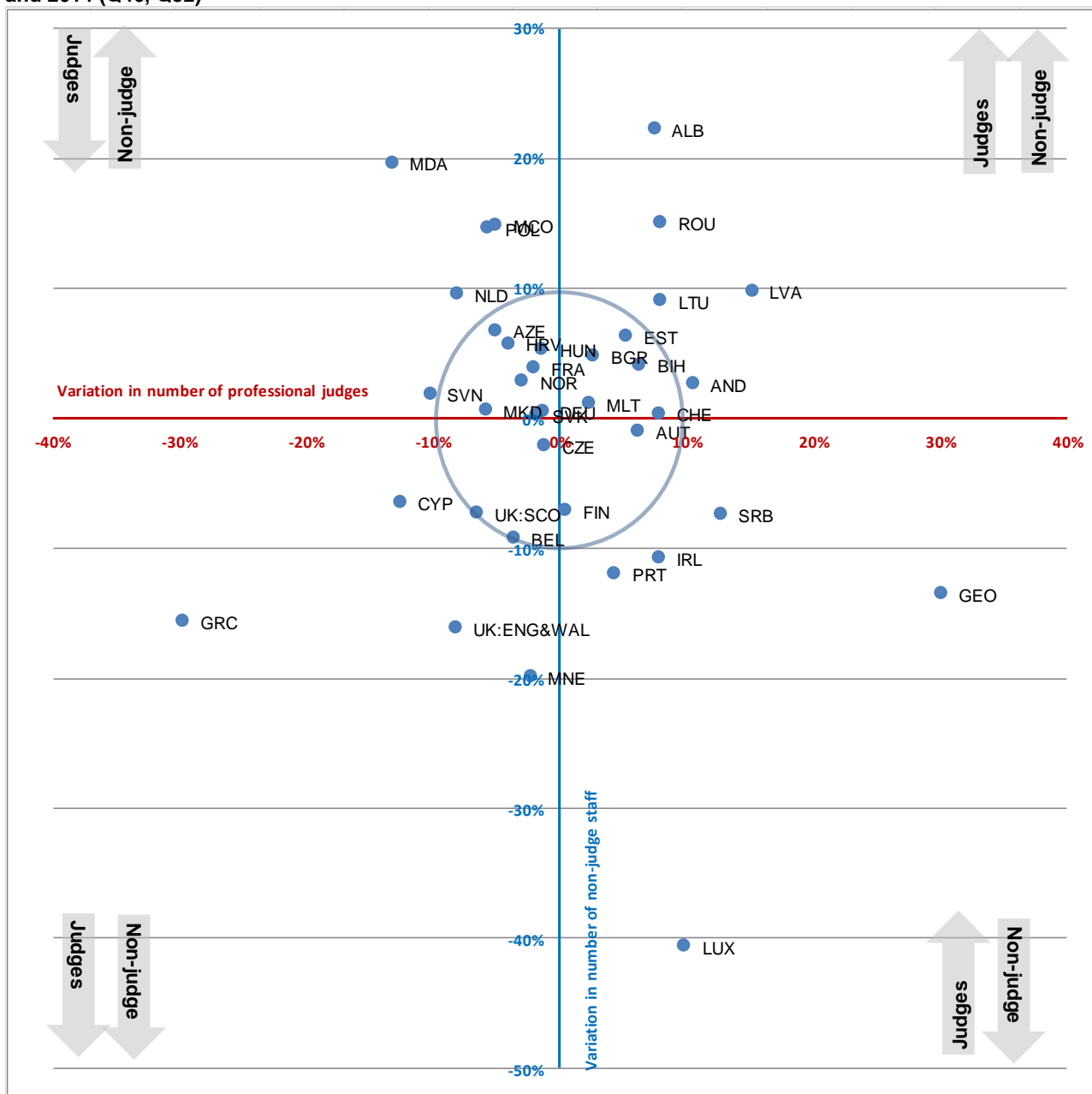
Generally, data on non-judge staff remain stable in the great majority of States or entities, as well with regard to the population, as with regard to the number of judges. In several countries the number of non-judge staff increased for the period 2010-2014 in respect of both factors. This positive trend is most perceptible in **Albania, Azerbaijan, Croatia, Republic of Moldova, Monaco, the Netherlands and Poland**. In **Albania**, the number of technical staff increased between 2012 and 2014 due to the beginning of the activity of 7 administrative courts. As to **Azerbaijan**, e-court services are in process of implementation across the country justifying an increase in the number of information technologies specialists and assistants to judges. Besides, the increase noticed in the **Czech Republic** between 2012 and 2014 is due to the running project on “improvement of the efficiency of courts by strengthening of the administrative capacities”, co-financed from the European Social Fund and the Government. Likewise, a pilot project was introduced in **Estonia** in 2013, consisting in providing each judge with a personal legal assistant. The success of the project in terms of length of proceedings led to its extension to all first and second instance courts. In “**the former Yugoslav Republic of Macedonia**”, in order to strengthen the capacities of courts and to provide more assistance to judges, a significant number of new staff are being employed. In **Slovenia**, the Supreme Court’s strategic orientation consists in decreasing the number of judges, while increasing the number of staff (corresponding mainly to “non-judge” and “administrative” categories). The Supreme Court can, in order to ensure timeliness of proceedings, distribute additional finances, on an yearly basis, for temporary employment of additional staff to individual courts.

On the contrary, in countries such as **Georgia, Ireland, Luxembourg, Montenegro, Portugal Serbia and UK-England and Wales** the number of non-judge staff decreased with regard to both parameters: population and number of judges. Nevertheless, it is noteworthy that the negative evolution observed in **Luxembourg** stems from a new methodology of presentation of data. In fact, the overall administrative tasks carried out within ordinary courts are centralised at the level of the Prosecutor General Office. The same applies to all technical staff. In this respect, the **2014** data reflect for the first time the administrative reality, excluding the staff within the responsibility of the Prosecutor General Office. Likewise, the decrease observed in **Sweden** is essentially due to the fact that 2014 data do not encompass staff on leave, nor the Swedish National Courts Administration staff, which was the case in 2012. Conversely, **Montenegro** and **Portugal** knew a real decrease in matters of non-judge staff. In **Montenegro**, besides the fact that only permanently employed staff were taken into account for 2014, in contrast with 2012 data, in accordance with the Strategy for the reform of the Judiciary, the efficiency of the judiciary was accomplished which resulted in the reduction of the number of non-judge staff. In **Portugal**, the decrease is due to retired staff that were not replaced by new one, as well as to the continuous IT modernization.

The situation in **Greece** has to be highlighted because it reveals the relative nature of the provided data and the need to qualify the analysis. Namely, one can notice a decrease in the number of non-judge staff with regard to the population while it increased in respect of the number of judges.

Finally, some variations may be justified by the fact that the national approaches of classification of non-judge staff do not correspond to the CEPEJ sub-categories. Accordingly, over the evaluation cycles and with the endeavours to improve the reporting method and better fit to the Commission’s methodology, States or entities construe differently each of the items, which can also affect the total beyond the distribution of the staff among the subcategories. As a matter of fact, some States or entities prefer to communicate only the total. Several countries provided comments in this respect, drawing the attention of the peculiarity of the organisation of their systems (**Croatia, Denmark, Estonia, Finland, Georgia, Hungary, Italy, Luxembourg, Montenegro, Slovakia, Slovenia, Spain, Sweden, UK-England and Wales, UK-Northern Ireland**).

Figure 3.42 Variations in the number of professional judges and the number of non-judge staff between 2010 and 2014 (Q46, Q52)



This figure places each state or entity according to the variations between 2010 and 2014 in the numbers of professional judges on the one hand, and non-judge staff on the other. It shows that for a fairly large majority of States or entities, the variations observed are quite slight (+ or – 10 % of each of the data).

The methodological reservations about the difficulty of comparing objectively the assistance received by judges from non-judge staff, particularly because of the variable role of non-professional judges, the specificities of common law, or the differentiated intervention of *Rechtspfleger*, requires a distribution of the assistance by the non-judge staff among the five categories used for several years by the CEPEJ.

This is the purpose of tables 3.43 and 3.44 which present this distribution per 100 000 inhabitants and by percentage. Table 3.44 shows the distribution of non-judge staff by gender for each State.



**Table 3.43 Number of non-judge staff per 100 000 inhabitants and per category in 2014 (Q1, Q52)**

States/entities	Total non-judge staff working in courts (1 + 2 + 3 + 4 + 5)	1. Rechtspfleger (or similar bodies)	2. Non-judge staff whose task is to assist the judges	3. Staff in charge of different administrative tasks and of the management of the courts	4. Technical staff	5. Other non-judge staff
Albania	29,7	NAP	13,8	3,8	8,2	3,9
Andorra	136,5	22,1	84,5	24,7	5,2	NAP
Armenia	NQ	NAP	NQ	NQ	NQ	NQ
Austria	54,8	9,1	0,2	5,1	0,3	40,1
Azerbaijan	27,2	NAP	14,0	8,0	5,3	NAP
Belgium	47,2	NAP	17,2	22,1	7,9	NAP
Bosnia and Herzegovina	81,0	2,6	31,1	38,0	9,2	NAP
Bulgaria	83,5	NAP	62,0	20,7	NAP	0,8
Croatia	166,5	9,0	126,8	13,7	17,0	NAP
Cyprus	53,8	NAP	16,7	0,9	17,6	18,6
Czech Republic	88,4	19,7	43,1	19,1	5,8	0,7
Denmark	31,0	10,1	0,3	19,3	1,2	0,1
Estonia	77,4	3,9	19,0	39,1	12,3	3,3
Finland	39,5	NAP	NA	NA	NA	NA
France	33,7	NAP	28,4	3,8	1,6	NAP
Georgia	31,4	0,1	12,0	2,3	17,1	NAP
Germany	66,0	10,5	35,4	9,3	1,4	9,4
Greece	50,5	NA	NA	NA	NA	NA
Hungary	81,4	7,9	9,2	NA	NA	64,3
Ireland	20,0	0,5	16,7	2,8	0,0	NAP
Italy	36,0	NAP	22,6	6,8	0,8	5,8
Latvia	78,8	NAP	53,5	17,7	7,2	0,4
Lithuania	89,3	NAP	46,9	27,4	12,1	2,9
Luxembourg	35,2	NAP	34,1	0,9	0,2	NAP
Malta	90,6	NAP	53,8	13,7	2,1	21,0
Republic of Moldova	52,8	NAP	26,3	17,1	9,3	NAP
Monaco	121,7	NAP	52,9	34,4	29,1	5,3
Montenegro	137,7	NAP	91,0	6,3	NA	40,5
Netherlands	43,9	NAP	NA	NA	NA	NA
Norway	16,7	NAP	0,4	NA	NA	NA
Poland	107,9	4,8	60,9	19,0	9,7	13,5
Portugal	54,9	NAP	51,0	1,0	2,2	0,7
Romania	45,5	NAP	27,3	7,1	8,3	2,9
Russian Federation	65,7	NAP	32,9	18,6	14,1	NAP
Serbia	140,3	NAP	60,6	48,9	30,9	NAP
Slovakia	82,4	19,0	38,8	NA	NA	24,6
Slovenia	162,8	24,5	52,4	79,5	6,4	NAP
Spain	104,6	7,9	NAP	NAP	NAP	96,7
Sweden	49,2	NAP	33,8	7,3	1,1	7,1
Switzerland	55,7	0,1	25,3	25,9	1,1	3,3
The FYROMacedonia	112,6	NAP	27,1	68,8	7,8	8,9
Turkey	NA	NAP	37,9	0,1	NA	0,7
Ukraine	NA	NAP	53,4	NA	4,6	0,0
UK-England and Wales	31,1	NAP	NA	NA	NA	NA
UK-Northern Ireland	NA	NA	NA	NA	NA	NA
UK-Scotland	26,6	NAP	23,4	3,2	NAP	NAP
Israel	45,4	0,8	9,3	22,8	4,2	8,2
<b>Average</b>	70,0	9,5	36,8	18,2	8,0	15,0
<b>Median</b>	55,3	8,5	32,9	13,7	6,8	5,3
<b>Minimum</b>	16,7	0,1	0,2	0,1	0,0	0,0
<b>Maximum</b>	166,5	24,5	126,8	79,5	30,9	96,7

**Table 3.44 Number of non-judge staff by gender and distribution of the total between the different categories in 2014 (Q52)**

States/entities	Gender		Categories of non-judge staff				
	Male	Female	1. Rechtspfleger (or similar bodies)	2. Non-judge staff whose task is to assist the judges	3. Staff in charge of different administrative tasks and of the management of the courts	4. Technical staff	5. Other non-judge staff
Albania	28%	72%	NAP	46%	13%	28%	13%
Andorra	29%	71%	16%	62%	18%	4%	NAP
Armenia	NA	NA	NAP	NQ	NQ	NQ	NQ
Austria	30%	70%	17%	0%	9%	0%	73%
Azerbaijan	NA	NA	NAP	51%	29%	19%	NAP
Belgium	28%	72%	NAP	36%	47%	17%	NAP
Bosnia and Herzegovina	25%	75%	3%	38%	47%	11%	NAP
Bulgaria	NA	NA	NAP	74%	25%	NAP	1%
Croatia	14%	86%	5%	76%	8%	10%	NAP
Cyprus	39%	61%	NAP	31%	2%	33%	35%
Czech Republic	12%	88%	22%	49%	22%	7%	1%
Denmark	NA	NA	33%	1%	62%	4%	0%
Estonia	12%	88%	5%	24%	50%	16%	4%
Finland	NA	NA	NAP	NA	NA	NA	NA
France	17%	83%	NAP	84%	11%	5%	NAP
Georgia	41%	59%	0%	38%	7%	54%	NAP
Germany	NA	NA	16%	54%	14%	2%	14%
Greece	28%	72%	NA	NA	NA	NA	NA
Hungary	16%	84%	10%	11%	NA	NA	79%
Ireland	39%	61%	3%	83%	14%	0%	NAP
Italy	34%	66%	NAP	63%	19%	2%	16%
Latvia	9%	91%	NAP	68%	22%	9%	1%
Lithuania	NA	NA	NAP	52%	31%	14%	3%
Luxembourg	61%	39%	NAP	97%	3%	1%	NAP
Malta	NA	NA	NAP	59%	15%	2%	23%
Republic of Moldova	22%	78%	NAP	50%	32%	18%	NAP
Monaco	22%	78%	NAP	43%	28%	24%	4%
Montenegro	28%	72%	NAP	66%	5%	NA	29%
Netherlands	NA	NA	NAP	NA	NA	NA	NA
Norway	12%	88%	NAP	2%	NA	NA	NA
Poland	NA	NA	4%	56%	18%	9%	13%
Portugal	36%	64%	NAP	93%	2%	4%	1%
Romania	NA	NA	NAP	60%	16%	18%	6%
Russian Federation	NA	NA	NAP	50%	28%	22%	NAP
Serbia	NA	NA	NAP	43%	35%	22%	NAP
Slovakia	16%	84%	23%	47%	NA	NA	30%
Slovenia	13%	87%	15%	32%	49%	4%	NAP
Spain	NA	NA	8%	NAP	NAP	NAP	92%
Sweden	22%	78%	NAP	69%	15%	2%	14%
Switzerland	34%	66%	0%	45%	46%	2%	6%
The FYROMacedonia	39%	61%	NAP	24%	61%	7%	8%
Turkey	NA	NA	NAP	NA	NA	NA	NA
Ukraine	NA	NA	NAP	NA	NA	NA	NA
UK-England and Wales	29%	71%	NAP	NA	NA	NA	NA
UK-Northern Ireland	NA	NA	NA	NA	NA	NA	NA
UK-Scotland	34%	66%	NAP	88%	12%	NAP	NAP
Israel	24%	76%	2%	21%	50%	9%	18%
<b>Average</b>	26%	74%	11%	51%	24%	12%	20%
<b>Median</b>	28%	72%	9%	50%	18%	9%	13%
<b>Minimum</b>	9%	39%	0%	0%	2%	0%	0%
<b>Maximum</b>	61%	91%	33%	97%	62%	54%	92%

As mentioned above, 16 States or entities have communicated quantitative data in respect of the category of *Rechtspfleger* or similar bodies.

Half of the non-judge staff is composed of clerks and assistants whose task is to assist judges directly in their judicial activities.

The functions of administration and management of courts are provided by about 20 % of non-judge staff,

with certain unusual situations since 7 states declare that the staff specially dedicated to these functions represents more than 40 % of all their non-judge staff (**Belgium, Bosnia and Herzegovina, Denmark, Estonia, Slovenia, Switzerland, “the former Yugoslav Republic of Macedonia”**). In **Switzerland** for example, the category of staff entrusted with duties related to the administration and management of courts encompasses also the staff responsible for the administration and management of trial files.

The most telling evidence concerning the difficulty of identifying a common denominator between European States and entities in matters of non-judge staff is provided by the subcategory “other non-judge staff”. The content of the latter varies from the staff of specific courts or bodies as for example the Supreme Court and the Office for Administration of Judicial Budget in **Albania**, or the Division of Provision of Secrecy Regime and the Supreme Court Division of Case-Law in **Latvia**, to staff responsible for the handling of case files in **Austria** (*Kanzlei*), judicial trainees in the **Czech Republic**, staff in charge of court documentation in the **Czech Republic** and **Monaco**, court interpreters in **Estonia**, assistants, receptionists, porters and others in **Italy**, consultants of the Supreme Court in **Latvia**, translators and court psychologists in **Lithuania**, social workers in **Monaco**, counsellors, secretaries, couriers in **Montenegro**, assistant magistrates, judicial assistants and probation counsellors in **Romania**, court police in “**the former Yugoslav Republic of Macedonia**”, court typists in **Israel** etc. **Hungary** included in this category for 2014 the staff in charge of different administrative tasks and of the management of the courts and the technical staff.

In conclusion, a category-by-category comparison in matters of non-judge staff proves to be inappropriate, or even impossible.

The first part of the Table breaks down non-judge staff between men and women, making it possible to measure the feminisation rate of such staff. The average rate of 74 % is very significant.

#### **Trends and conclusions**

The data which, in the previous report, characterised the distribution of the workload between judges, independent non-judge staff having judicial functions and those who assist the judge directly, focused mainly on the following points:

- a distinction between assistance of the judge in jurisdictional activities, the independent exercise of judicial functions by non-judge staff (the *Rechtspfleger* or its equivalent) and administrative tasks;
- a fairly major difficulty in assessing the content of the missions as regards administrative matters;
- a considerably stable number of staff;
- a strong feminisation of this staff category;
- a transfer to private companies of certain tasks traditionally provided by the administration of justice, such as guarding, maintenance, cleaning of the buildings, IT maintenance or training.

These questions remain largely valid. One should also attempt to better assess the management part within administrative tasks (3rd category of tasks of non-judge staff), and the weight of outsourced tasks. It could also be instructive to better identify innovative organisations in which the Constitution or the law assign judicial functions to independent non-judge staff, thus shortening the timeframe for dealing with a part of proceedings.

#### **3.3.2 Staff attached to the public prosecution services**

As in the case of judges, public prosecutors are assisted by staff performing widely varying tasks such as secretariat, research, case preparation, or assistance in the proceedings. The law may also entrust to non-prosecutor staff (*Rechtspfleger* or its equivalent) some functions of the prosecution services.

Table 3.45 Variation in the number of non-prosecutor staff per prosecutor between 2010 and 2014 (Q55, Q60)

States/entities	Number of non-prosecutor staff per public prosecutor			Variations		
	2010	2012	2014	2010 - 2012	2012 - 2014	2010 - 2014
Albania	NAP	NA	NA	NA	NA	NA
Andorra	1,7	1,0	1,0	-40%	0%	-40%
Armenia	NAP	0,5	0,6	NAP	14%	NAP
Austria	1,0	1,1	1,2	14%	9%	24%
Azerbaijan	1,2	0,7	0,7	-41%	0%	-41%
Belgium	3,3	3,3	2,9	-1%	-11%	-12%
Bosnia and Herzegovina	1,8	2,0	1,7	10%	-15%	-7%
Bulgaria	NA	2,0	2,0	NA	-2%	NA
Croatia	NA	1,8	1,8	NA	3%	NA
Cyprus	0,9	0,7	0,6	-21%	-14%	-33%
Czech Republic	1,2	1,2	1,2	-7%	3%	-4%
Denmark	NA	NA	0,7	NA	NA	NA
Estonia	0,5	0,5	0,5	9%	-6%	3%
Finland	0,5	0,4	0,4	-5%	0%	-5%
France	NA	NA	NA	NA	NA	NA
Georgia	0,7	NQ	0,8	NQ	NQ	25%
Germany	2,0	2,0	2,2	0%	11%	11%
Greece	NA	NA	NA	NA	NA	NA
Hungary	1,3	1,5	1,5	15%	-1%	14%
Ireland	1,3	0,9	1,0	-27%	10%	-20%
Italy	4,8	4,7	4,2	-1%	-10%	-11%
Latvia	1,0	0,9	0,9	-14%	-2%	-15%
Lithuania	0,9	0,7	0,8	-26%	17%	-14%
Luxembourg	0,8	2,3	2,3	188%	0%	188%
Malta	2,3	1,7	1,7	-27%	0%	-27%
Republic of Moldova	0,6	0,5	0,5	-2%	-15%	-17%
Monaco	1,5	1,0	1,5	-33%	50%	0%
Montenegro	1,0	1,5	1,5	48%	-2%	45%
Netherlands	4,9	5,0	4,7	3%	-7%	-4%
Norway	NA	NA	NA	NA	NA	NA
Poland	1,3	1,2	1,2	-7%	1%	-6%
Portugal	1,2	1,1	1,1	-10%	-0,1%	-10%
Romania	1,3	1,2	1,3	-10%	9%	-2%
Russian Federation	0,4	0,4	NA	-4%	NA	NA
Serbia	1,7	1,7	1,8	-5%	10%	5%
Slovakia	0,8	1,0	1,0	34%	-3%	30%
Slovenia	1,4	1,2	1,4	-12%	18%	3%
Spain	0,8	1,0	0,8	23%	-20%	-2%
Sweden	0,4	0,4	0,4	-6%	4%	-3%
Switzerland	1,7	1,9	1,9	16%	0,8%	17%
The FYROMacedonia	1,0	1,0	1,2	-6%	28%	20%
Turkey	3,1	3,0	2,5	-3%	-15%	-18%
Ukraine	NA	NA	0,4	NA	NA	NA
UK-England and Wales	1,7	1,5	1,7	-11%	12%	0%
UK-Northern Ireland	2,2	2,2	2,3	-1%	5%	5%
UK-Scotland	NA	2,1	2,3	NA	11%	NA
Israel	..	0,9	0,9		1,1%	
<b>Average</b>	1,5	1,5	1,5	1%	2%	3%
<b>Median</b>	1,3	1,2	1,2	-5%	0%	-3%
<b>Minimum</b>	0,4	0,4	0,4	-41%	-20%	-41%
<b>Maximum</b>	4,9	5,0	4,7	188%	50%	188%

Note: data submitted by Germany relate to the cut-off date of 31 December 2013.

This table shows the evolution in the number of non-prosecutor staff per public prosecutor between 2010 and 2014. The average number of staff remained stable (1.5) between 2010 and 2014. The main reason of the variations observed for this period relates to changes in the methodology of presentation of data used by the States or entities, due to the existing discrepancies between national definitions of non-prosecutor staff and the CEPEJ terminology. Moreover, **Luxembourg** indicated that there had been a general increase in the number of public servants at all levels in 2012, affecting also the number of staff assisting prosecutors. In **Slovakia**, the increase of the number of non-prosecutor staff resulted from organisational changes in the prosecution services. The military prosecution services were abolished in 2011 and all the staff was assigned to the prosecution services. Finally, the substantial increase in employments in State prosecutor's offices in **Slovenia** in 2014 is the result of the Government's decision to strengthen the fight against corruption and other fields of criminality defined within the prosecution policy.

In some States or entities, the staffing levels are proportionally low since they represent less than one staff member per public prosecutor (**Armenia, Azerbaijan, Cyprus, Denmark, Estonia, Finland, Georgia, Latvia, Lithuania, Republic of Moldova, Spain, Sweden, Ukraine** and **Israel**).

But in other States or entities, these staff represent more than 2 staff members per prosecutor (**Belgium, Bulgaria, Germany, Italy, Luxembourg, Netherlands, Turkey, UK-Northern Ireland** and **UK-Scotland**), which, however, in any case remains modest compared to the situation of non-judge staff in some states (*supra*).

The comments formulated on this point by the States and entities focus essentially on the assessment methods as regards the number of staff working sometimes simultaneously on other tasks, on the fluctuating count at times of this staff who may be attached to different bodies, or on the evolution of the field of their competences. In **France**, prosecutors' assistants are under the responsibility of the director of the register services who works in close cooperation with the president of the court and the respective prosecutor. Accordingly, data on non-prosecutor staff cannot be distinguished from the general data on staff provided in the frame of question 52. In addition, the specialised divisions of the prosecution offices can resort to specialised assistants attached to other administrations in order to deal with the more complex litigations (44 specialised assistants in 2014).

Table 3.46 Variation in the number of non-prosecutor staff per 100 000 inhabitants between 2010 and 2014 (Q1, Q60)

States/entities	Number of non-prosecutor staff per 100 000 inhabitants			Variations		
	2010	2012	2014	2010 - 2012	2012 - 2014	2010 - 2014
Albania	NAP	NA	NA	NA	NA	NA
Andorra	5,9	5,2	6,5	-10,8%	23,9%	10,5%
Armenia	NAP	5,3	5,8	NAP	10,0%	NAP
Austria	4,0	4,5	4,8	14,2%	5,9%	21,0%
Azerbaijan	12,9	8,0	7,8	-37,8%	-2,6%	-39,4%
Belgium	25,5	24,2	22,0	-4,7%	-9,1%	-13,4%
Bosnia and Herzegovina	14,3	15,9	16,1	10,9%	1,6%	12,6%
Bulgaria	NA	41,0	40,5	NA	-1,2%	NA
Croatia	NA	25,7	24,4	NA	-4,9%	NA
Cyprus	12,4	9,6	8,2	-22,9%	-14,9%	-34,4%
Czech Republic	14,5	13,6	13,8	-6,3%	1,8%	-4,7%
Denmark	NA	NA	8,1	NA	NA	NA
Estonia	6,0	6,5	6,0	9,4%	-7,9%	0,8%
Finland	3,1	3,2	2,8	1,4%	-10,6%	-9,4%
France	NA	NA	NA	NA	NA	NA
Georgia	5,4	NQ	10,0	NQ	NQ	85,2%
Germany	12,6	12,9	14,1	1,9%	9,9%	11,9%
Greece	NA	NA	NA	NA	NA	NA
Hungary	22,5	27,1	27,8	20,4%	2,6%	23,6%
Ireland	2,3	1,8	2,0	-20,9%	8,7%	-14,0%
Italy	15,5	15,0	14,6	-3,2%	-3,0%	-6,1%
Latvia	17,7	19,2	19,6	8,5%	1,9%	10,6%
Lithuania	23,9	17,4	19,8	-27,0%	13,2%	-17,3%
Luxembourg	7,2	20,8	19,4	187,2%	-6,7%	167,8%
Malta	6,0	5,9	4,7	-0,9%	-21,5%	-22,2%
Republic of Moldova	11,4	11,2	9,0	-1,5%	-19,9%	-21,1%
Monaco	16,7	13,8	15,9	-17,3%	14,7%	-5,1%
Montenegro	21,6	22,6	26,3	4,5%	16,4%	21,6%
Netherlands	22,9	23,7	22,1	3,6%	-6,7%	-3,4%
Norway	NA	NA	NA	NA	NA	NA
Poland	19,4	19,0	18,7	-1,8%	-1,8%	-3,5%
Portugal	16,5	15,9	15,2	-3,4%	-4,7%	-8,0%
Romania	14,2	14,1	15,1	-0,7%	6,8%	6,1%
Russian Federation	8,3	8,3	NA	-1,1%	NA	NA
Serbia	14,6	15,1	16,8	3,9%	11,1%	15,4%
Slovakia	13,0	16,9	17,2	29,9%	1,8%	32,2%
Slovenia	11,0	11,0	13,3	0,0%	21,0%	21,0%
Spain	4,2	5,2	4,1	24,4%	-21,0%	-1,8%
Sweden	4,7	4,4	4,5	-6,6%	1,8%	-4,9%
Switzerland	9,2	20,2	21,1	119,9%	4,7%	130,2%
The FYROMacedonia	10,0	9,6	11,8	-3,6%	22,8%	18,3%
Turkey	17,9	17,2	17,3	-4,3%	0,7%	-3,6%
Ukraine	NA	NA	13,1	NA	NA	NA
UK-England and Wales	8,7	6,7	6,5	-22,9%	-2,7%	-24,9%
UK-Northern Ireland	21,0	21,4	20,4	2,1%	-4,5%	-2,5%
UK-Scotland	22,7	21,7	20,4	-4,5%	-6,2%	-10,4%
Israel	..	6,6	6,4		-2,7%	
<b>Average</b>	13,0	14,4	14,3	7%	1%	9%
<b>Median</b>	12,9	14,1	14,6	-1%	1%	-3%
<b>Minimum</b>	2,3	1,8	2,0	-38%	-21%	-39%
<b>Maximum</b>	25,5	41,0	40,5	187%	24%	168%

This table shows the number of non-prosecutor staff attached to public prosecutors, per 100 000 inhabitants in 2010, 2012 and 2014.

While the averages remain close from one evaluation to another, going from 13 in 2010 to 14.4 in 2012, then 14.3 in 2014, the gaps between the States or entities are significant, as was the case as regards the differences observed in the number of public prosecutors per 100 000 inhabitants. For some States or entities, the average of non-prosecutor staff exceeds 20 per 100 000 inhabitants (**Belgium, Bulgaria, Croatia, Hungary, Montenegro, Netherlands, Switzerland, UK-Northern Ireland, and UK-Scotland**). Others, however, have a number of staff lower than 5 per 100 000 inhabitants (**Austria, Finland, Ireland, Malta, Spain, and Sweden**).

#### Trends and conclusions

To assess the evolutions in the number of non-prosecutor staff pertinently, one should bear in mind that public prosecution offices are organised very differently from one State or entity to another. In some States or entities, public prosecutors work within courthouses with judges and benefit from assistance from officials attached to public prosecutors or judges rather than to just one of the groups. In other States or entities, public prosecution offices are assisted by specialised police services. Finally, while several States or entities have in place an essentially judicial organisation of the public prosecution office, it is marked by a considerable degree of autonomy in respect of judges. This autonomy is manifested by immovable, technical, statutory or administrative specificities.

The variations observed often do not correspond to modifications in the allocation of human resources leading to significant decreases or increases in the numbers. They are rather due to changes in the method of presentation of data in order to ensure their relevance with regard to the different fields of competence of non-prosecutor staff, the bodies to which the latter are attached and the specificities of the administrative organisation of the different States or entities.

### 3.4 Lawyers

Respecting the lawyer's mission is essential to the rule of law. Recommendation Rec(2000)21 of the Committee of Ministers of the Council of Europe, on the freedom of exercise of the profession of lawyer, defines the lawyer as *"a person qualified and authorised according to the national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters"*<sup>33</sup>.

According to this definition, a lawyer may be entrusted with legal representation of a client before a court, as well as with the responsibility to provide legal assistance.

In certain States or entities, other titles and definitions of a lawyer are used, such as solicitor (a person who gives legal advice and prepares legal documents) and barrister (a person who represents his/her clients in court). In **UK- England and Wales**, in the 1990s solicitors gained additional qualifications of solicitor-advocate and were allowed to plead before the higher courts. Insofar as **Ireland** is concerned, solicitors have had full rights of audience in all courts since the early 1970s. The word "attorney" is also used and is similar to the term "lawyer" as mentioned in this report (a person authorised to practice law, conduct lawsuits or give legal advice).

For practical purposes, the report uses the definition of lawyer set out in Recommendation Rec(2000)21, provided that the possibility to take legal action on behalf of a client determines the activity of the courts. Where possible, a distinction will be made between the above-mentioned categories.

Quality of justice depends on the possibility for a litigant to be represented and for a defendant to mount his or her defence, both functions performed by a professional who is trained, competent, available, offering ethical guarantees and working at a reasonable cost.

<sup>33</sup> Committee of Ministers of the Council of Europe, *Freedom of Exercise of the Profession of Lawyer*, Rec(2000)21, 25 October 2000.

### 3.4.1 Number of lawyers

Table 3.47 Variation in the number of lawyers between 2010 and 2014 (Q146, Q147 and Q148)

States/entities	Number of lawyers			Variation			Number of lawyers include legal advisors that cannot represent clients in court
	2010	2012	2014	2010-2012	2012 - 2014	2010 - 2014	
Albania	5 025	6 070	2 500	21%	-59%	-50%	
Andorra	152	167	186	10%	11%	22%	
Armenia	1 129	1 373	1 600	22%	17%	42%	
Austria	7 510	7 861	8 092	5%	3%	8%	
Azerbaijan	761	818	927	7%	13%	22%	
Belgium	16 517	17 336	18 134	5%	5%	10%	
Bosnia and Herzegovina	1 299	1 350	1 434	4%	6%	10%	
Bulgaria	11 825	12 010	12 696	2%	6%	7%	
Croatia	4 133	4 392	4 487	6%	2%	9%	
Cyprus	2 400	2 558	3 114	7%	22%	30%	
Czech Republic	10 158	10 944	11 842	8%	8%	17%	
Denmark	5 814	6 021	6 134	4%	2%	6%	
Estonia	788	846	934	7%	10%	19%	
Finland	1893	1 935	2 115	2%	9%	12%	
France	51 758	56 176	62 073	9%	10%	20%	
Georgia	3 470	3 703	3 799	7%	3%	9%	
Germany	155 679	160 880	163 513	3%	2%	5%	
Greece	41 794	42 113	42 052	1%	0%	1%	
Hungary	12 099	13 000	13 000	7%	0%	7%	
Ireland	10 933	11 055	11 588	1%	5%	6%	
Italy	211 962	226 202	223 842	7%	-1%	6%	
Latvia	1 360	1 343	1 363	-1%	1%	0%	
Lithuania	1 660	1 796	1 988	8%	11%	20%	
Luxembourg	1 903	2 020	2 180	6%	8%	15%	
Malta	1 600	1 400	1 485	-13%	6%	-7%	
Republic of Moldova	1 676	1 753	1 814	5%	3%	8%	
Monaco	25	31	31	24%	0%	24%	
Montenegro	620	704	756	14%	7%	22%	
Netherlands	16 275	17 068	17 713	5%	4%	9%	
Norway	6 662	6 969	7 333	5%	5%	10%	
Poland	38 750	43 974	52 760	13%	20%	36%	
Portugal	27 591	28 341	29 337	3%	4%	6%	
Romania	20 620	20 919	23 244	1%	11%	13%	
Russian Federation	65 602	68 292	70 000	4%	3%	7%	
Serbia	7 883	8 032	8 399	2%	5%	7%	
Slovakia	4 546	5 210	5 827	15%	12%	28%	
Slovenia	1 294	1 417	1 628	10%	15%	26%	
Spain	125 208	131 337	135 016	5%	3%	8%	
Sweden	5 000	5 246	5 575	5%	6%	12%	
Switzerland	10 129	10 842	11 546	7%	6%	14%	
The FYROMacedonia	2 111	2 498	2 241	18%	-10%	6%	
Turkey	70 332	74 496	86 981	6%	17%	24%	
Ukraine	102 540	111 026	NQ	8%	..	..	
UK-England and Wales	165 128	174 279	180 667	6%	4%	9%	
UK-Northern Ireland	604	804	760	33%	-5%	26%	
UK-Scotland	10 732	11 131	11 181	4%	0%	4%	
Israel		50 850	56 750	..	12%	..	
<b>Average</b>	24998	25850	24900	7%	6%	14%	
<b>Median</b>	6662	6520	6134	6%	5%	10%	
<b>Minimum</b>	25	31	31	-13%	-59%	-50%	
<b>Maximum</b>	211962	226202	223842	33%	22%	42%	

This table presents the number of lawyers in each state or entity, with the specification whether this figure includes or not legal advisors who cannot represent their clients in court. The CEPEJ wished to indicate the number of legal advisors who cannot represent their clients in court, but only **Norway** has been able to provide this data (140 legal advisors out of 7333 lawyers).



Table 3.48 Number of lawyers per 100 000 inhabitants between 2010 and 2014 (Q146)

States/entities	Number of lawyers per 100 000 inhabitant			Trend
	2010	2012	2014	
Albania	157	216	86	
Andorra	179	219	242	
Armenia	35	45	53	
Austria	90	93	94	
Azerbaijan	8	9	10	
Belgium	152	155	162	
Bosnia and Herzegovina	34	35	37	
Bulgaria	161	165	176	
Croatia	94	103	106	
Cyprus	298	295	363	
Czech Republic	97	104	113	
Denmark	105	107	108	
Estonia	59	66	71	
Finland	35	36	39	
France	80	86	94	
Georgia	78	83	102	
Germany	190	201	202	
Greece	370	381	388	
Hungary	121	131	132	
Ireland	239	241	251	
Italy	350	379	368	
Latvia	61	66	68	
Lithuania	51	60	68	
Luxembourg	372	385	387	
Malta	383	332	346	
Republic of Moldova	47	49	51	
Monaco	70	86	82	
Montenegro	100	114	122	
Netherlands	98	102	105	
Norway	135	138	142	
Poland	101	114	137	
Portugal	259	270	283	
Romania	96	98	104	
Russian Federation	46	48	48	
Serbia	108	112	118	
Slovakia	84	96	107	
Slovenia	63	69	79	
Spain	272	285	291	
Sweden	53	55	57	
Switzerland	129	135	140	
The FYROMacedonia	103	121	108	
Turkey	97	99	112	
Ukraine	224	244	NQ	
UK-England and Wales	299	308	315	
UK-Northern Ireland	34	44	41	
UK-Scotland	206	209	209	
Israel		637	684	
<b>Average</b>	136	142	147	
<b>Median</b>	101	110	108	
<b>Minimum</b>	8	9	10	
<b>Maximum</b>	383	385	388	

With the exception of **Albania** and **Ukraine** which report a very significant drop in the number of lawyers, in almost every other member State or entity, the number of lawyers regularly and significantly increased between 2010 and 2014, passing on average from 25.663 to 28.170 lawyers.

**Albania** now makes a distinction between lawyers who actively exercise their profession and those who do not, which explains why the number of lawyers in this State has decreased from 5.025 in 2010 and 6.070 in 2012, to 2.500 in 2014. Not-practicing lawyers possess the license of lawyer but work as judges, prosecutors, lawyers in public administration *etc.*

The situation in **Ukraine** is similar as for 2014 only lawyers duly registered and exercising their profession are taken into account. Thus, the number of lawyers decreased from 102.540 in 2010 and 111.026 in 2012 to 25.123 in 2014. It is specified for this last year that more than 6 000 other lawyers are registered but do not exercise their profession as a result of a disciplinary proceeding against them.

In **Poland**, the number of lawyers increased significantly between 2010 and 2012 as a result of the part-deregulation of the lawyer's profession. The increase in **UK-Northern Ireland** during the same period is explained by various factors, namely an increase of the number being called to the Bar, an increase in the number of applications from solicitors to transfer to the Bar, an increase in the number of temporary call applications from outside the jurisdiction (**Ireland, UK-England and Wales**), and a different administrative system now in operation for recording the issue of practicing certificates.

It should be added that for 4 States and entities the number of lawyers reported includes legal advisors without providing the number of those advisors (**Cyprus, Portugal, UK-England and Wales** and **Israel**). **Finland** has specified that till 2014, jurists who have a Master's degree in law could offer similar legal services than members of the Bar. From the beginning of the year 2014, only advocates, public legal aid attorneys and counsels who have obtained the license referred to in the Licensed Counsel Act are allowed to represent a client in court. The provided data encompasses exclusively members of the Finnish Bar Association who are entitled to use the professional title of "advocate".

#### **3.4.2 Lawyers' monopoly on legal representation**

As a final remark, it is interesting to draw attention to the issue of lawyers' monopoly on legal representation. Such a monopoly exists in criminal matters in 33 States or entities in respect of defendants and in 22 States or entities in respect of victims. With regard to civil proceedings, lawyers have a monopoly in 18 States or entities, while concerning administrative proceedings their monopoly is ensured in 14 States or entities. In 13 States or entities, lawyers do not have monopoly of legal representation as a general rule in all types of proceedings.

Table 3.49 Monopoly of legal representation (Q149)

States/entities	Civil cases	Criminal cases		Administrative cases
		Defendant	Victim	
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
The FYROMacedonia				
Turkey				
Ukraine				
UK-England and Wales				
UK-Northern Ireland				
UK-Scotland				
Israel				
<b>Nb of Yes</b>	<b>18</b>	<b>33</b>	<b>22</b>	<b>14</b>
<b>Nb of No</b>	<b>29</b>	<b>14</b>	<b>25</b>	<b>33</b>

In fact, most of the time, national legislations either establishes as a principle the lawyers' monopoly, enumerating exceptions to this rule (e.g. **Belgium** ; **Croatia**, **Lithuania**, **Monaco**, **Russian Federation** and **Montenegro** in criminal proceedings; **Denmark**, **France**, **Hungary**, **Italy**, **Luxembourg**, **Malta** and **Netherlands** in civil matters; **Slovakia** in administrative matters; some cantons of **Switzerland**; **Turkey**), or it provides for the principle of the absence of such a monopoly except for certain specific categories of cases, proceedings (exceeding certain values), courts (some specialised tribunals and often the Supreme Court and courts of appeal) or persons in respect of which legal representation by a lawyer is mandatory.

Generally, in civil matters before first instance tribunals, including labour and commercial cases, the function of representation before courts may also be exercised by prosecutors (*supra*), representatives of associations, institutions or public authorities, NGO, trade unions, family members (parents, marriage partners, other relatives), notaries, legal advisors or persons with a Master's Degree in law, assistants of attorneys or bailiffs, trainee lawyers, and even by any person of full legal capacity. In a great majority of States or entities, a party can represent him/herself.

In criminal matters, legal representation of victims may be carried out by public prosecutors, members of the family, victim protection associations, persons with a Master's Degree in law, minors' representatives, NGO and other capable persons. In some States or entities, victims can represent themselves before the courts. The principle of lawyers' monopoly applies essentially with regard to defendants, even though there could be exceptions (self-representation, relatives, attorneys' assistants, lecturers at universities *etc.*).

Sometimes, the judge's approval is required in order to depart from the rule of mandatory legal representation by a lawyer (for example in **Germany**, in criminal matters, in respect of other persons than lawyers and law lecturers at German universities; in **Montenegro** in civil and administrative matters; in **Norway** in general, and in the **Russian Federation** in criminal matters and only in addition to a professional lawyer).

In administrative matters, the general rule is the absence of monopoly and the categories of competent persons and authorities for intervening before courts are as various as in civil matters.



## Chapter 4. Court organisation and court users

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

In this section, a distinction is made between:

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

## 4.1 Organisation of the court system

Table 4.1a Number of 1st instance courts as legal entities and number of all courts as geographic locations in 2014 (Q1, Q42)

States/entities	Total number of 1st instance courts	First instance courts of general jurisdiction	First instance specialised courts	% of specialised courts of 1st instance	All courts (geographic location)
Albania	29	22	7	24%	38
Andorra	2	2	NAP	NAP	3
Armenia	17	16	1	6%	21
Austria	147	129	18	12%	103
Azerbaijan	105	87	18	17%	112
Belgium	238	13	225	95%	288
Bosnia and Herzegovina	72	67	5	7%	98
Bulgaria	145	113	32	22%	168
Croatia	139	65	74	53%	203
Cyprus	20	6	14	70%	21
Czech Republic	86	86	NAP	NAP	98
Denmark	26	24	2	8%	29
Estonia	6	4	2	33%	22
Finland	36	27	9	25%	81
France	1 880	786	1 094	58%	643
Georgia	26	26	NAP	NAP	29
Germany	1 008	761	247	25%	1 101
Greece	NA	298	NA	NA	329
Hungary	131	111	20	15%	157
Iceland	10	8	2	20%	10
Ireland	4	3	1	25%	94
Italy	653	515	138	21%	691
Latvia	35	34	1	3%	48
Lithuania	59	54	5	8%	62
Luxembourg	8	5	3	38%	8
Malta	8	1	7	88%	2
Republic of Moldova	48	46	2	4%	53
Monaco	5	1	4	80%	1
Montenegro	18	15	3	17%	22
Netherlands	12	11	1	8%	40
Norway	66	64	2	3%	73
Poland	313	287	26	8%	NA
Portugal	520	292	228	44%	NA
Romania	243	233	10	4%	244
Russian Federation	9 460	9 460	NAP	NAP	3 455
Serbia	155	93	62	40%	162
Slovakia	63	54	9	14%	64
Slovenia	60	55	5	8%	77
Spain	3 667	2 224	1 443	39%	763
Sweden	72	60	12	17%	95
Switzerland	276	167	109	39%	301
The FYROMacedonia	28	25	3	11%	34
Turkey	6 275	4 337	1 938	31%	652
Ukraine	719	665	54	8%	766
UK-England and Wales	482	479	3	1%	482
UK-Northern Ireland	25	25	NAP	NAP	25
UK-Scotland	75	74	1	1%	40
Israel	33	28	5	15%	39
Average*	398	342	142	26%	262
Median*	65	55	9	17%	81
Minimum	2	1	1	1%	1
Maximum	9 460	9 460	1 938	95%	3 455

**Note:** Spain and Turkey are not included in the average and the median for 1st instance courts due to their specific methodology for counting the number of courts (each judge being considered as a court).

**Table 4.1b Number of 1st instance courts as legal entities and number of all courts as geographic locations per 100 000 inhabitants in 2014 (Q1, Q42)**

States/entities	Total number of 1st instance courts per 100 000 inhabitants	First instance courts of general jurisdiction per 100 000 inhabitants	First instance specialised courts per 100 000 inhabitants	All courts (geographic location) per 100 000 inhabitants
Albania	1,0	0,8	0,2	1,3
Andorra	2,6	2,6	NA	3,9
Armenia	0,6	0,5	0,0	0,7
Austria	1,7	1,5	0,2	1,2
Azerbaijan	1,1	0,9	0,2	1,2
Belgium	2,1	0,1	2,0	2,6
Bosnia and Herzegovina	1,9	1,8	0,1	2,6
Bulgaria	2,0	1,6	0,4	2,3
Croatia	3,3	1,5	1,8	4,8
Cyprus	2,3	0,7	1,6	2,4
Czech Republic	0,8	0,8	NA	0,9
Denmark	0,5	0,4	0,0	0,5
Estonia	0,5	0,3	0,2	1,7
Finland	0,7	0,5	0,2	1,5
France	2,8	1,2	1,6	1,0
Georgia	0,7	0,7	NA	0,8
Germany	1,2	0,9	0,3	1,4
Greece	NA	2,7	NA	3,0
Hungary	1,3	1,1	0,2	1,6
Iceland	3,0	2,4	0,6	3,0
Ireland	0,1	0,1	0,0	2,0
Italy	1,1	0,8	0,2	1,1
Latvia	1,7	1,7	0,0	2,4
Lithuania	2,0	1,8	0,2	2,1
Luxembourg	1,4	0,9	0,5	1,4
Malta	1,9	0,2	1,6	0,5
Republic of Moldova	1,4	1,3	0,1	1,5
Monaco	13,2	2,6	10,6	2,6
Montenegro	2,9	2,4	0,5	3,5
Netherlands	0,1	0,1	0,0	0,2
Norway	1,3	1,2	0,0	1,4
Poland	0,8	0,7	0,1	NA
Portugal	5,0	2,8	2,2	NA
Romania	1,1	1,0	0,0	1,1
Russian Federation	6,5	6,5	NA	2,4
Serbia	2,2	1,3	0,9	2,3
Slovakia	1,2	1,0	0,2	1,2
Slovenia	2,9	2,7	0,2	3,7
Spain	7,9	4,8	3,1	1,6
Sweden	0,7	0,6	0,1	1,0
Switzerland	3,4	2,0	1,3	3,7
The FYROMacedonia	1,4	1,2	0,1	1,6
Turkey	8,1	5,6	2,5	0,8
Ukraine	1,7	1,5	0,1	1,8
UK-England and Wales	0,8	0,8	0,0	0,8
UK-Northern Ireland	1,4	1,4	NA	1,4
UK-Scotland	1,4	1,4	0,0	0,7
Israel	33,0	28,0	5,0	39,0
Average*	2,0	1,4	0,8	1,8
Median*	1,4	1,2	0,2	1,5
Minimum	0,1	0,1	0,0	0,2
Maximum	13,2	6,5	10,6	4,8

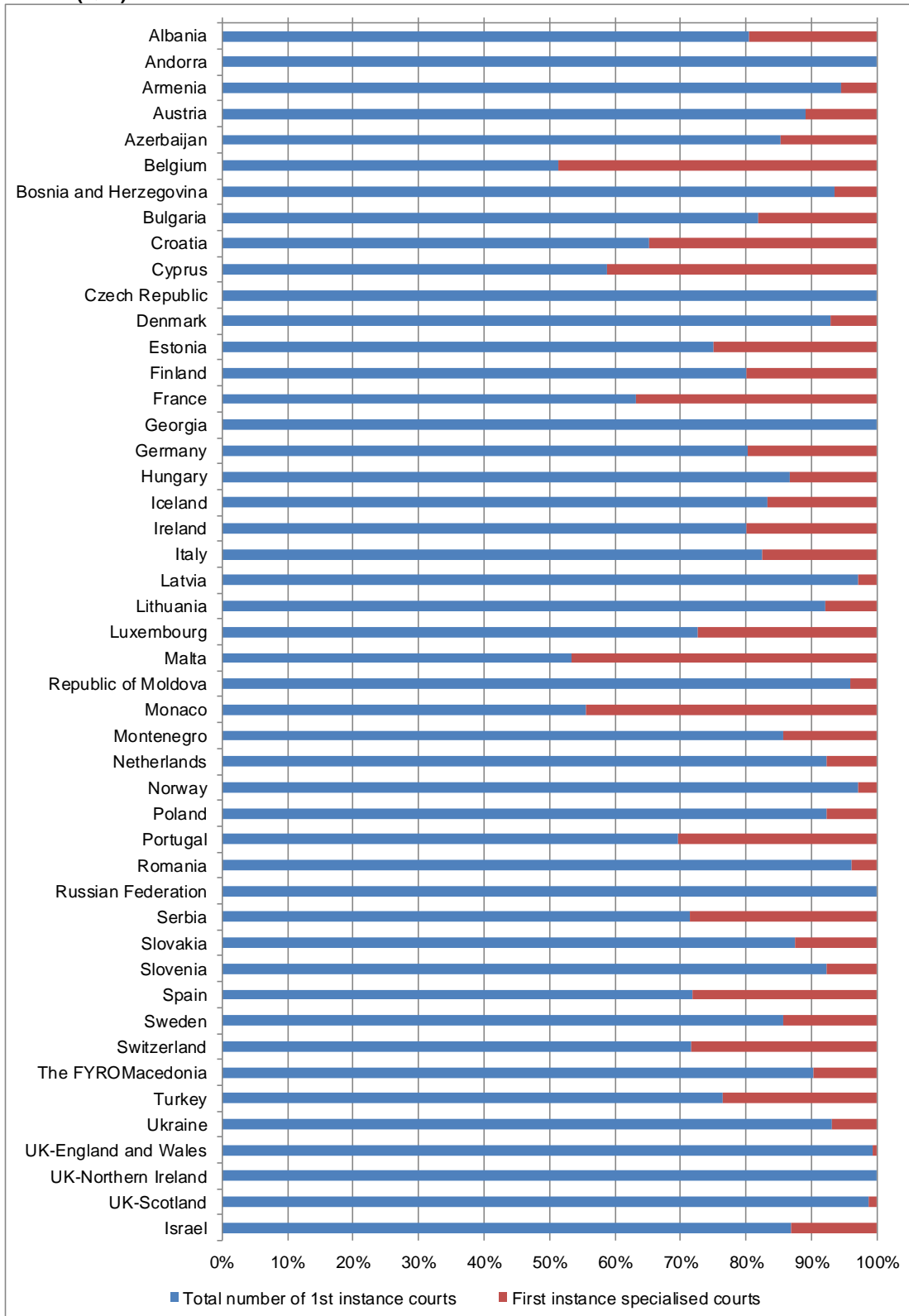
**Note:** Spain and Turkey are not included in the average and the median for 1st instance courts due to their specific methodology for counting the number of courts (each judge being considered as a court).



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

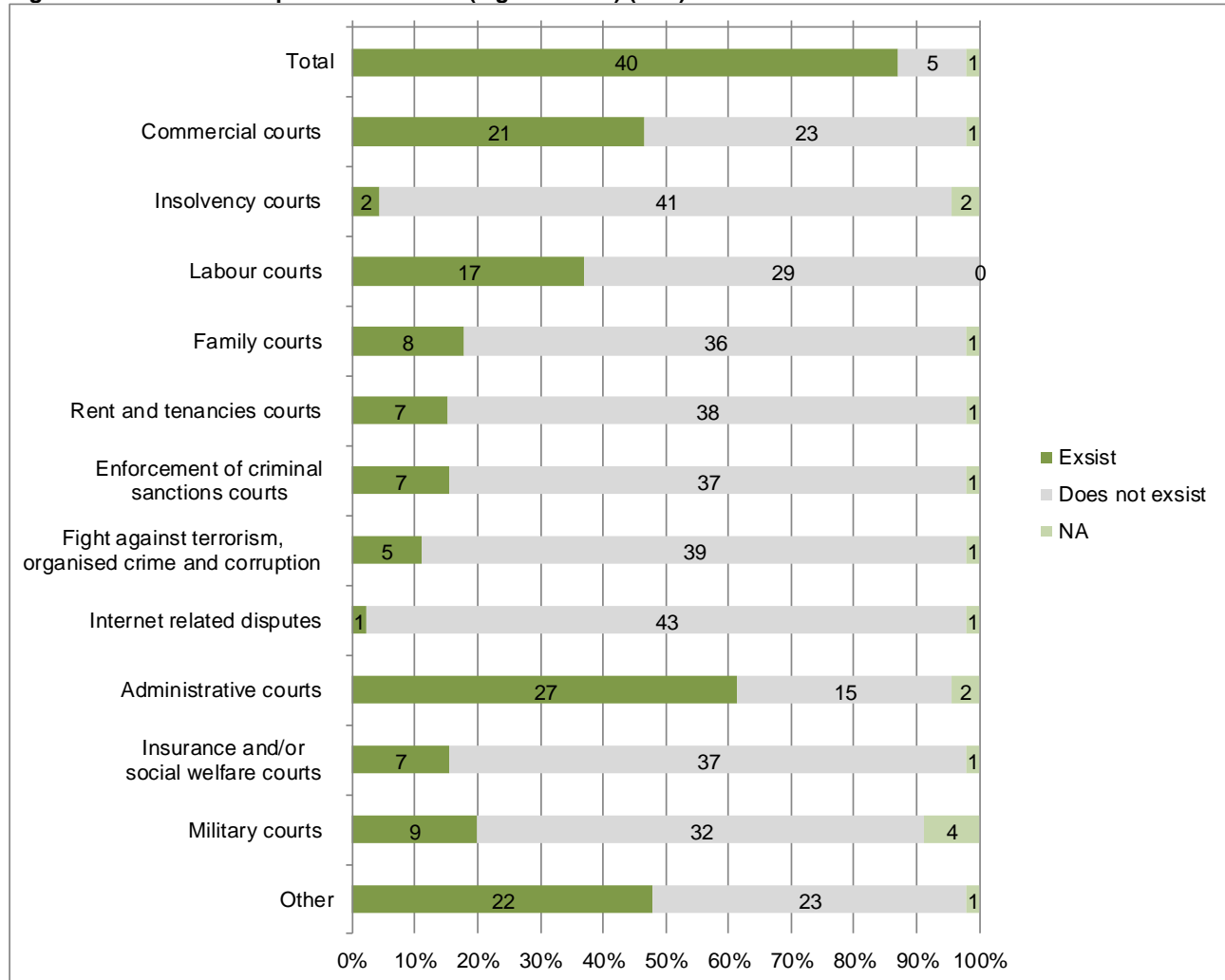
#### 4.1.1 Courts of general jurisdiction and specialised courts

**Figure 4.2 Number of first instance courts of general jurisdiction vs number of first instance specialised courts in 2014 (Q42)**



The court networks in the 48 States or entities concerned differ between those where most of the case categories are addressed by courts of general jurisdiction, and those where a significant part of the disputes are addressed by specialised courts. In 19 States or entities, there are no specialised courts of first instance (**Andorra, Czech Republic, Georgia, UK-Northern Ireland**) or few specialised courts of first instance (**Armenia, Bosnia and Herzegovina, Denmark, Latvia, Lithuania, Republic of Moldova, Netherlands, Norway, Poland, Slovenia, Romania, Russian Federation, “the former Yugoslav Republic of Macedonia”, Ukraine, UK-England and Wales, UK-Scotland**) specialised courts of first instance. On the contrary, specialised courts represent more than 30 % of the first instance courts in **Croatia, France, Portugal** and even close to 50 % in **Belgium, Malta or Monaco**.

**Figure 4.3 Existence of specialised courts (legal entities) (Q42)**



Specialised first instance courts deal with various matters. Most of the responding States or entities mentioned specialised administrative courts, commercial courts and labour courts. Several States or entities listed courts that deal for instance with military cases, family cases, enforcement of criminal sanctions, rent and tenancies. Particular courts exist for example in **Finland** (High Court of Impeachment: charges against Ministers), **Spain** (violence against women) or **Turkey** (civil and criminal intellectual property courts).

#### **4.1.2 Organisation of the court system as regards common case categories: small claims, dismissals and robbery cases**

In order to give a comparative view of the judicial organisation, the CEPEJ proposed to identify specific common cases categories and to indicate the subsequent court organisation.

**Table 4.4 Number of 1st instance courts competent for cases concerning small claims, dismissals and robberies (geographic locations) in 2014 (Q1, Q45)**

States/entities	Debt collection for small claims		Dismissal		Robbery	
	Absolute number	Per 100 000 inhabitants	Absolute number	Per 100 000 inhabitants	Absolute number	Per 100 000 inhabitants
Albania	NAP	NAP	NAP	NAP	NAP	NAP
Andorra	1	1,3	1	1,3	1	1,3
Armenia	NAP	NAP	NAP	NAP	NAP	NAP
Austria	115	1,3	16	0,2	16	0,2
Azerbaijan	87	0,9	87	0,9	5	0,1
Belgium	229	2,0	34	0,3	27	0,2
Bosnia and Herzegovina	56	1,5	51	1,3	51	1,3
Bulgaria	NA	NA	NA	NA	NA	NA
Croatia	88	2,1	75	1,8	53	1,3
Cyprus	6	0,7	3	0,3	6	0,7
Czech Republic	NAP	NAP	NAP	NAP	NAP	NAP
Denmark	24	0,4	24	0,4	24	0,4
Estonia	17	1,3	16	1,2	16	1,2
Finland	27	0,5	27	0,5	27	0,5
France	308	0,5	216	0,3	168	0,3
Georgia	26	0,7	26	0,7	26	0,7
Germany	646	0,8	110	0,1	646	0,8
Greece	NAP	NAP	NAP	NAP	NAP	NAP
Hungary	111	1,1	20	0,2	131	1,3
Iceland	8	2,4	8	2,4	8	2,4
Ireland	84	1,8	NAP	NAP	92	2,0
Italy	370	0,6	145	0,2	145	0,2
Latvia	34	1,7	34	1,7	34	1,7
Lithuania	49	1,7	54	1,8	49	1,7
Luxembourg	3	0,5	3	0,5	2	0,4
Malta	2	0,5	2	0,5	2	0,5
Republic of Moldova	47	1,3	46	1,3	47	1,3
Monaco	1	2,6	1	2,6	1	2,6
Montenegro	15	2,4	15	2,4	17	2,7
Netherlands	11	0,1	11	0,1	11	0,1
Norway	65	1,3	65	1,3	65	1,3
Poland	245	0,6	245	0,6	287	0,7
Portugal	1	0,0	23	0,2	23	0,2
Romania	176	0,8	42	0,2	218	1,0
Russian Federation	NA	NA	NA	NA	NA	NA
Serbia	83	1,2	67	0,9	93	1,3
Slovakia	54	1,0	54	1,0	54	1,0
Slovenia	55	2,7	4	0,2	11	0,5
Spain	1 788	3,9	345	0,7	1 902	4,1
Sweden	48	0,5	48	0,5	48	0,5
Switzerland	112	1,4	91	1,1	82	1,0
The FYROMacedonia	26	1,3	26	1,3	26	1,3
Turkey	NAP	NAP	249	0,3	293	0,4
Ukraine	NAP	NAP	NAP	NAP	NAP	NAP
UK-England and Wales	173	0,3	NA	NA	90	0,2
UK-Northern Ireland	12	0,7	NAP	NAP	17	0,9
UK-Scotland	NAP	NAP	NAP	NAP	39	0,7
Israel	28	0,3	5	0,1	6	0,1
Average*	92	1,1	50	0,9	70	1,0
Median*	52	1,1	31	0,7	31	0,9
Minimum	1	0,0	1	0	1	0
Maximum	1 788	3,9	345	3	1 902	4

**Note:** Spain and Turkey are not included in the average and the median for 1st instance courts due to their specific methodology of counting the number of courts (each judge being considered as a court).

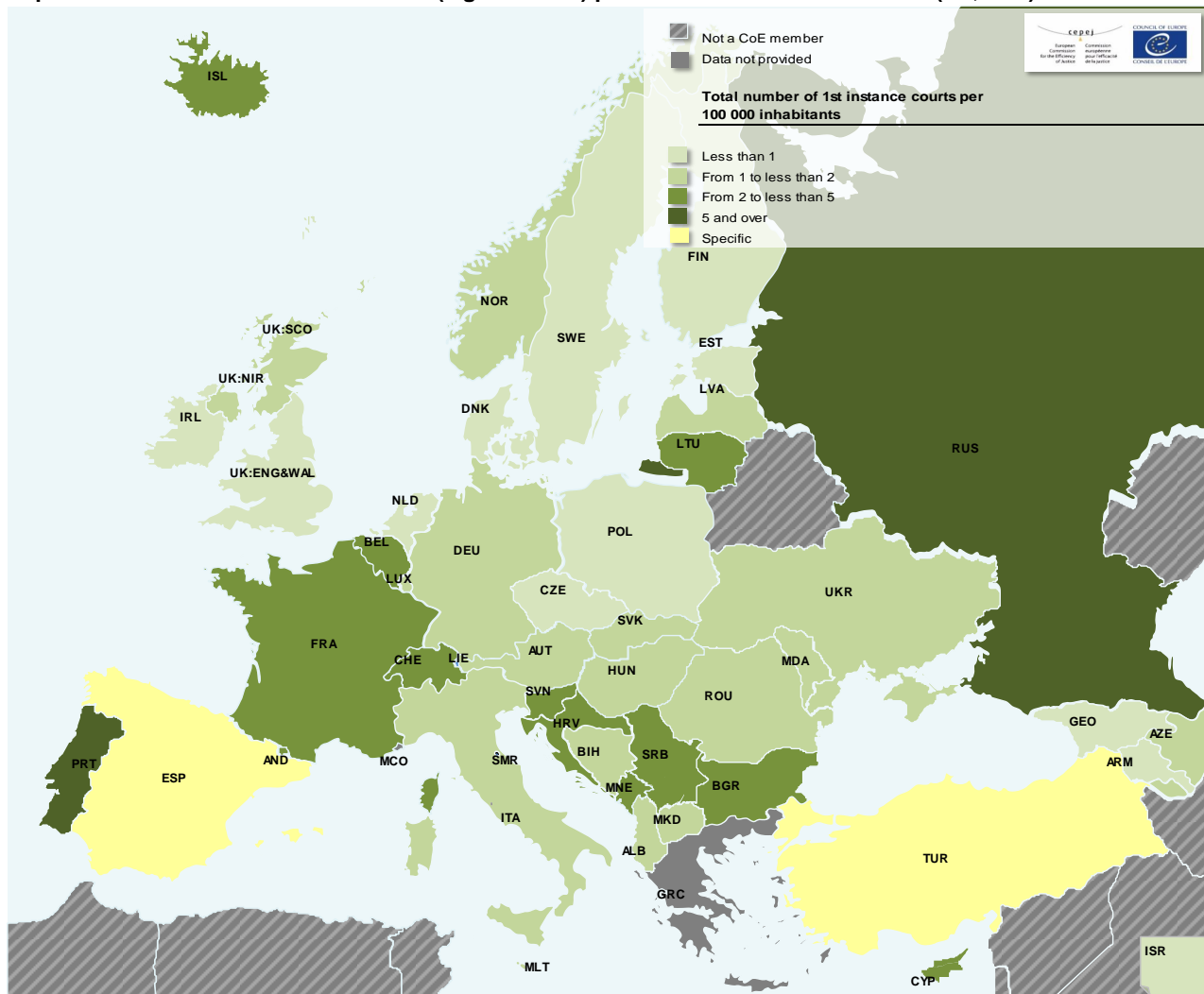
**Note:** for the monetary value of a small claim in 2014 (Q45), please see the CEPEJ dynamic data base ([www.coe.int/CEPEJ](http://www.coe.int/CEPEJ)).

### 4.1.3 Density of the judicial map

Access to courts is a key element of the fundamental principle of access to justice. Therefore it is worth examining how the court system is organised on the territory of the States or entities concerned and then how litigants can physically accede to a judge.

Considering the differences between the systems including, or not, a significant number of specialised courts (see above), this specific analysis is based on the total number of first instance courts (general jurisdiction and specialised courts) in order to highlight the density of the court systems.

**Map 4.5 Number of first instance courts (legal entities) per 100 000 inhabitants in 2014 (Q1, Q42)**



**Note:** in **Spain** and **Turkey**, each individual judge is considered as a court. Therefore the number of “courts” is particularly high and cannot be considered together with the other Member States or entities for the purpose of comparing the systems. For the same reason, the data of these two countries were not considered while calculating the European average and median.

Court organisation on the territory varies significantly among the 48 States or entities considered.

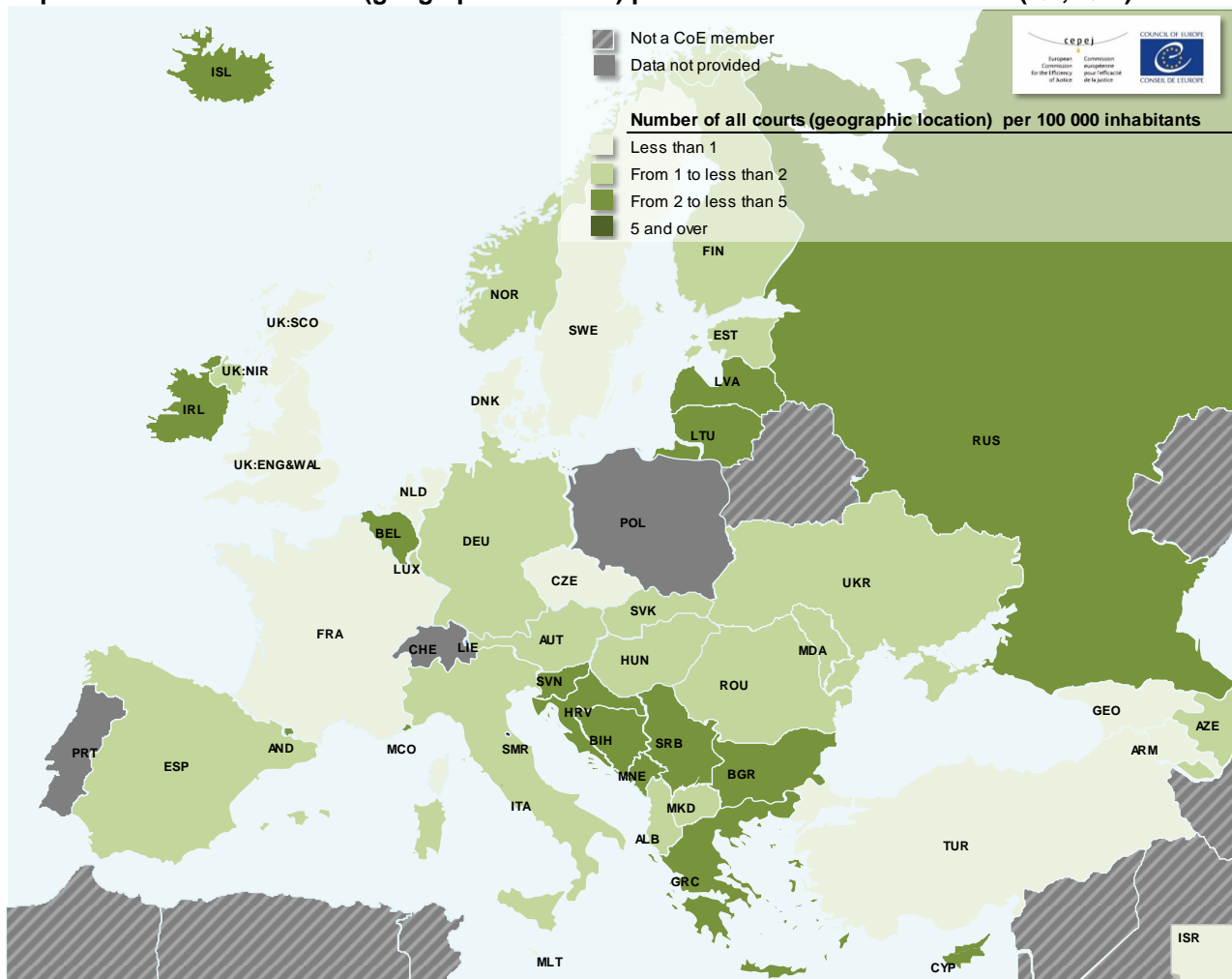
12 States or entities have a network of courts with a low density, offering to the litigants less than one court (considered as a legal entity) per 100 000 inhabitants. However, half of the 48 States or entities considered have less than 1,4 first instance court per 100 000 inhabitants, while only 2 states have a strong density with 5 (**Portugal**) or more (**Russian Federation**: 6,5) courts per 100 000 inhabitants.

This can be interpreted with regard to the number of court buildings available on the territory and to the size of the courts. Some states have made the choice to concentrate their court system and keep a small number of large courts, while others have made the choice to disseminate smaller courts throughout their territory.

To assess this phenomenon, it is proposed to consider first of all, below, the total number of geographic locations of courts (it being understood that the number of courts of appeal and supreme courts, included in the data below, does not have a significant impact on the ratio, except for small states with a small number of first instance courts) against the number of first instance courts considered as legal entities. The following phenomenon can be observed:

- a concentration of courts (legal entities) in the same location (for instance **Austria, France, Russian Federation**),
- a splitting of the same court (legal entity) into various locations (for instance **Bosnia and Herzegovina, Croatia, Estonia, Finland, Latvia, Switzerland**); this phenomenon is of particular importance in **Ireland**, where there are only 4 courts of first instance disseminated through more than 90 locations.

**Map 4.6 Number of all courts (geographic location) per 100 000 inhabitants in 2014 (Q1, Q42)**



#### 4.1.4 Evolution in the judicial maps

In many States or entities, the judicial organisation is old. To take into consideration demographic trends, new technical means of transport and communication of court users, and the increased specialisation of judges, many states have recently set up, or are thinking of setting up (28 States or entities note that changes in the court organisation are foreseen), a new division of jurisdictions that would improve the efficiency of justice while creating economies of scale.

These reforms of the judicial system are often designed to lead to a better management of property assets by grouping jurisdictions together and transferring staff from different small courts into one single place. These reforms have not always generated the expected savings, nor been implemented in full consultation with court staff. They constitute a real challenge for the distribution of the courts on the territory and for the equal access to justice for court users, and even for the redefinition of powers and competences between various courts.

**Table 4.7 Variation of the number of courts between 2010 and 2014 (Q42)**

States/entities	First instance courts of general jurisdiction			First instance specialised courts			All courts (geographic location)		
	2010-2012	2012-2014	2010-2014	2010-2012	2012-2014	2010-2014	2010-2012	2012-2014	2010-2014
Albania	0,0%	0,0%	0,0%	0,0%	600,0%	600,0%	-6,1%	22,6%	15,2%
Andorra	0,0%	0,0%	0,0%	NA	NA	NA	0,0%	0,0%	0,0%
Armenia	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	-22,2%	0,0%	-22,2%
Austria	0,0%	-16,2%	-16,2%	0,0%	157,1%	157,1%	0,0%	-30,9%	-30,9%
Azerbaijan	1,2%	1,2%	2,4%	0,0%	0,0%	0,0%	0,0%	0,9%	0,9%
Belgium	0,0%	-51,9%	-51,9%	0,0%	-14,1%	-14,1%	0,0%	0,0%	0,0%
Bosnia and Herzegovina	4,7%	0,0%	4,7%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Bulgaria	NA	0,0%	NA	0,0%	-5,9%	-5,9%	-7,6%	-1,2%	-8,7%
Croatia	1,5%	-3,0%	-1,5%	5,7%	0,0%	5,7%	2,6%	28,5%	31,8%
Cyprus	0,0%	0,0%	0,0%	27,3%	0,0%	27,3%	16,7%	0,0%	16,7%
Czech Republic	0,0%	0,0%	0,0%	NA	NA	NA	0,0%	0,0%	0,0%
Denmark	0,0%	0,0%	0,0%	100,0%	0,0%	100,0%	0,0%	0,0%	0,0%
Estonia	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Finland	0,0%	0,0%	0,0%	0,0%	-18,2%	-18,2%	0,0%	-1,2%	-1,2%
France	0,5%	1,0%	1,6%	-0,1%	-5,4%	-5,4%	1,6%	0,5%	2,1%
Georgia	-35,0%	0,0%	-35,0%	NA	NA	NA	-32,6%	0,0%	-32,6%
Germany	-1,5%	-0,5%	-2,1%	-2,3%	-1,2%	-3,5%	-1,6%	-0,6%	-2,2%
Greece	-13,0%	-25,9%	-35,5%	NA	NA	NA	-13,0%	-18,2%	-28,8%
Hungary	0,0%	-15,3%	-15,3%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Iceland	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Ireland	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	-11,8%	-10,5%	-21,0%
Italy	0,0%	-58,2%	-58,2%	0,0%	19,0%	19,0%	0,0%	-49,9%	-49,9%
Latvia	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Lithuania	0,0%	-8,5%	-8,5%	0,0%	0,0%	0,0%	0,0%	-7,5%	-7,5%
Luxembourg	0,0%	0,0%	0,0%	-40,0%	0,0%	-40,0%	0,0%	0,0%	0,0%
Malta	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Republic of Moldova	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	-1,8%	-1,9%	-3,6%
Monaco	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Montenegro	-11,8%	0,0%	-11,8%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Netherlands	0,0%	-42,1%	-42,1%	0,0%	0,0%	0,0%	-6,3%	-33,3%	-37,5%
Norway	0,0%	-3,0%	-3,0%	0,0%	0,0%	0,0%	-1,4%	0,0%	-1,4%
Poland	-21,4%	0,0%	-21,4%	-7,1%	0,0%	-7,1%	17,3%	NA	NA
Portugal	6,5%	26,4%	34,6%	-6,4%	123,5%	109,2%	-5,4%	NA	NA
Romania	-0,9%	0,0%	-0,9%	0,0%	0,0%	0,0%	-0,8%	0,0%	-0,8%
Russian Federation	-6,5%	1,4%	-5,2%	NA	NA	NA	NA	1,8%	NA
Serbia	0,0%	55,0%	55,0%	0,0%	0,0%	0,0%	0,0%	25,6%	25,6%
Slovakia	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Slovenia	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	16,7%	16,7%
Spain	4,7%	-5,3%	-0,8%	1,8%	-1,1%	0,7%	1,9%	0,0%	1,9%
Sweden	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Switzerland	-23,6%	-15,7%	-35,5%	72,8%	-22,1%	34,6%	-11,4%	-16,2%	-25,7%
The FYROMacedonia	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Turkey	1,2%	-0,3%	0,9%	46,6%	-8,0%	34,9%	-13,1%	0,0%	-13,1%
Ukraine	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
UK-England and Wales	-20,7%	-3,6%	-23,6%	-25,0%	0,0%	-25,0%	-20,8%	-3,6%	-23,6%
UK-Northern Ireland	0,0%	-7,4%	-7,4%	NA	NA	NA	NA	NA	NA
UK-Scotland	0,0%	-25,3%	-25,3%	NA	NA	NA	0,0%	-37,5%	-37,5%
Israel	NA	-3,4%	NA	NA	0,0%	NA	NA	-9,3%	NA
<b>Average</b>	-2%	-4%	-7%	4%	21%	24%	-3%	-3%	-6%
<b>Median</b>	0%	0%	0%	0%	0%	0%	0%	0%	0%
<b>Minimum</b>	-35%	-58%	-58%	-40%	-22%	-40%	-33%	-50%	-50%
<b>Maximum</b>	6%	55%	55%	100%	600%	600%	17%	28%	32%

Map 4.8 Variation of the absolute number of all courts (geographic locations) between 2010 and 2014 (Q42)

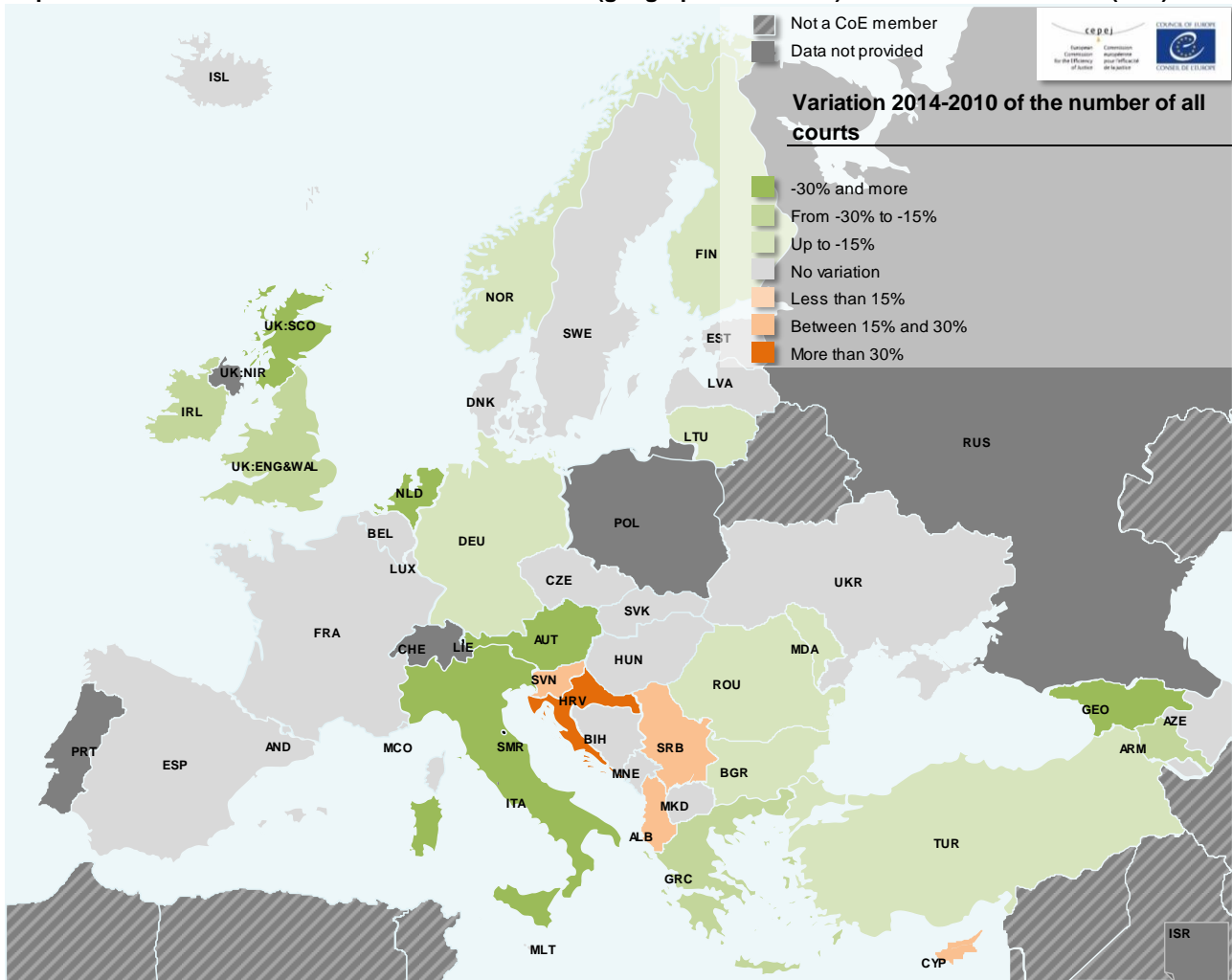
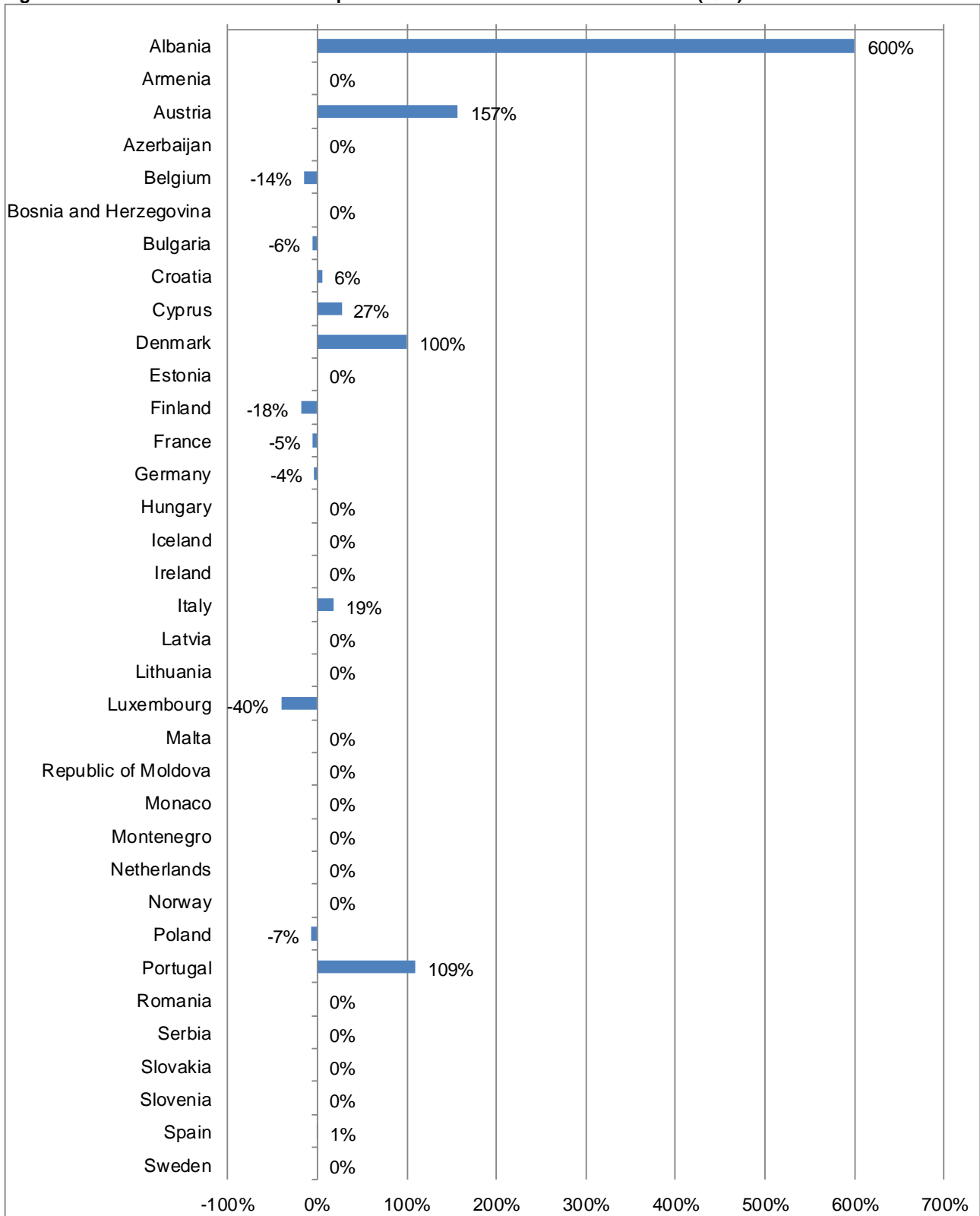
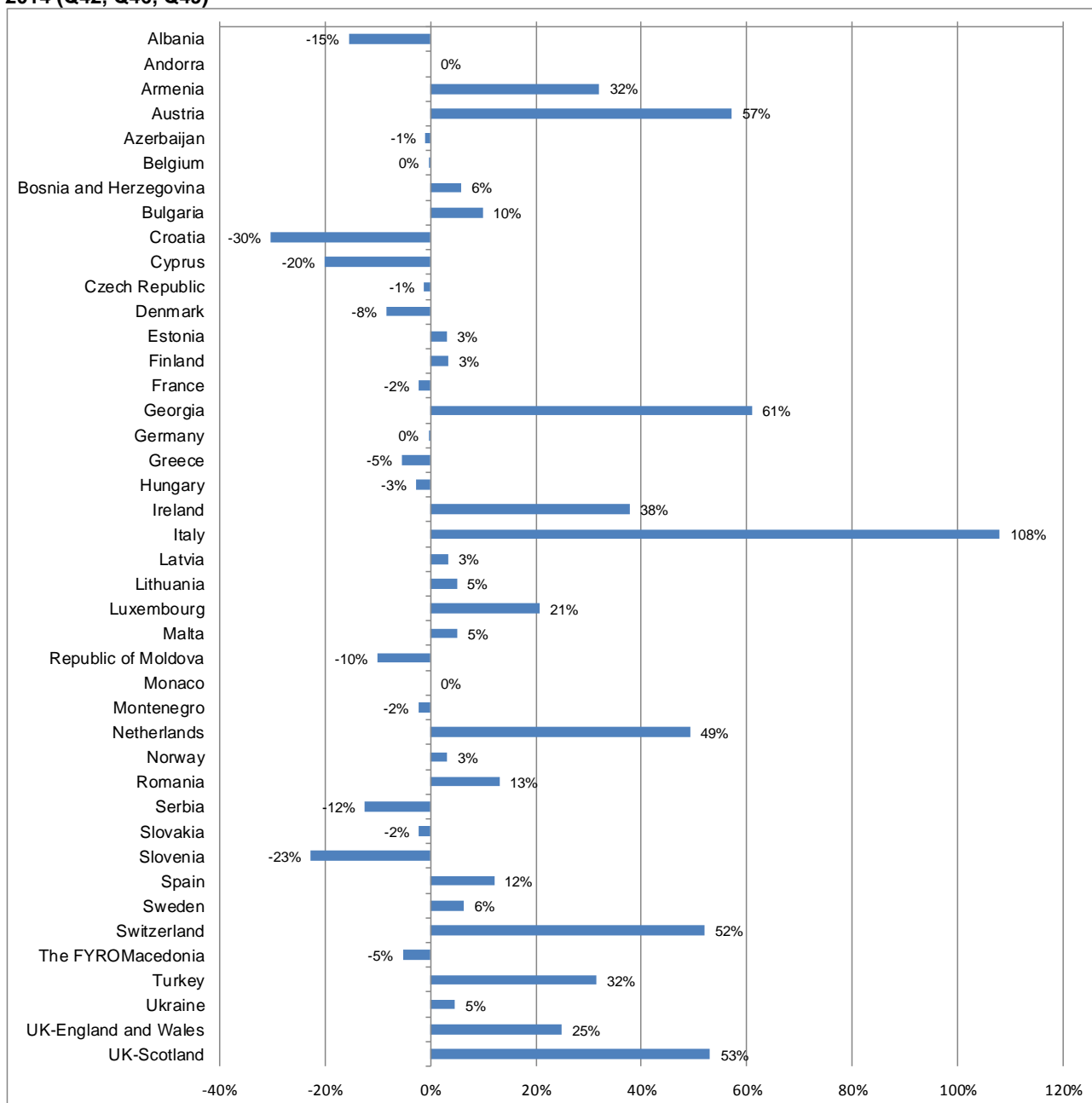


Figure 4.9 Variation of the number of specialised courts between 2010 and 2014 (Q42)





**Figure 4.10 Variation of the average number of first instance judges per first instance court between 2010 and 2014 (Q42, Q46, Q49)**



One third of the States or entities have initiated a concentration of their judicial system and decreased the number of courts between 2010 and 2014, some of them significantly: **Turkey** (- 13 %), **Ireland** (- 21 %), **Armenia** (- 22 %), **UK-England and Wales** (- 24 %), **Greece** (- 29 %), **Austria** (- 31 %), **Georgia** (- 33 %), **Netherlands** (- 38 %), **UK-Scotland** (- 38 %), **Italy** decreasing this number by 50 %. **Poland** and **Switzerland** can be added to this list, although the number of geographic locations, which was chosen here for the analysis, is not available; indeed the number of first instance courts (legal entities) has decreased by 21 % and 35 %, respectively, for these two states during the same period. It can also be noted that **Belgium** has reduced its number of courts (legal entities), but has kept the same number of locations.

Some of these states have decided to accompany the general decrease of the number of courts by a stronger specialisation of their court system (**Austria, Italy**).

Often, the reform of the judicial map goes hand in hand with a strong concentration of judges in the same court. The relevance of this trend could be highlighted by considering the evolution of the number of judges sitting in a court. Considering the data available, it was decided to calculate in Figure 4.10 above the variation of the number of first instance professional judges and non-professional judges (assuming that most of them work at first instance) against the total number of first instance courts. From this partial indicator (which cannot be reasonably used for other purposes than this specific analysis), one can note that

some states, which have significantly reduced the number of their courts, have at the same time concentrated a high number of judges and staff into a restricted number of large courts. This can be underlined in particular for **Italy, Belgium, Georgia, Netherlands, Poland, and UK-Scotland**, where the number of judges per court has significantly increased. At this stage at least, one can think that the concentration of the judicial map has not resulted in a decrease in the judicial staff in these states, unlike in **UK-England and Wales, and Switzerland**.

On the other hand, 6 states have chosen to decentralise their judicial system and have increased the number of courts in the period considered: **Croatia (+ 32 %), Serbia (+ 26 %), Cyprus (+ 17 %), Slovenia (+ 17 %)** and **Albania (+ 15 %)**. **Portugal** can be added to this list, although the number of geographic locations, which has been chosen here for the analysis, is not available. Indeed, the number of first instance courts (legal entities) has increased by + 35 % in the same period. As regards **Croatia**, it is worth mentioning that although the number of court locations has increased, the number of legal entities remains stable, while **Bosnia and Herzegovina** has increased the number of courts (legal entities), but has kept the same number of locations.

This evolution can be explained mainly by a decision to split the existing courts of general jurisdiction into several courts. It can also be explained by the setting up of specialised courts, in addition to the existing courts of general jurisdiction (**Albania, Cyprus, Portugal**) (see below). In **France**, the global number of court locations has slightly increased, but the reform has mainly resulted in the abolition of specialised courts (mainly 70 courts for military pensions).

As we can see from Figure 4.10, the increase of the number of courts has logically resulted in the setting up of smaller courts (decrease in the number of judges per court) in **Albania, Cyprus, and Serbia**. It may be that there is no impact of the reform on the volume of judicial staff – at least at this stage.

In other states, the reform of the court organisation has not had a strong impact on the number of courts itself, but has led to a reduction in the judicial staff in the existing courts – and then, possibly, in their activity. This can be noted in particular for **Denmark, Finland, “the former Republic Yugoslav of Macedonia”, Republic of Moldova, and Czech Republic**.

**Generally speaking the European trend goes towards a decrease in the number of courts and a consequent increase in the size of the courts, including more judges, as well as a stronger specialisation of the judicial system.**

## 4.2 Quality of the court system and court users

### 4.2.1 Information technology (IT) in the European courts

The use of information technologies (IT), ranging from end user applications such as smart phones, personal computers and tablet PCs, to information infrastructures, such as internet and the services deriving from that, are taken more and more for granted. Introduced as a tool to improve performance, IT is proving to be more than a technical element, changing the relations between individuals and between individuals and organisations, both in the private and the public sector.

The CEPEJ has therefore decided to devote a thematic report to this subject, based on the information collected in the 2014-2016 evaluation cycle and the previous cycles. This report (CEPEJ(2016)2) is available on: [www.coe.int/cepej](http://www.coe.int/cepej).

### 4.2.2 Court users

To underline the growing importance of the development of a quality policy concerning courts or the judiciary in general, the CEPEJ created a special working group and adopted a checklist for the promotion of the quality of justice and of the courts: a practical tool that can be used by courts to introduce specific quality measures<sup>34</sup>.

The existence of quality systems and quality standards for the judicial system, individual courts and individual judges, as well as the organisation of their monitoring both at national and at court levels are key

<sup>34</sup> See [www.coe.int/cepej](http://www.coe.int/cepej) - Document CEPEJ(2008)2.

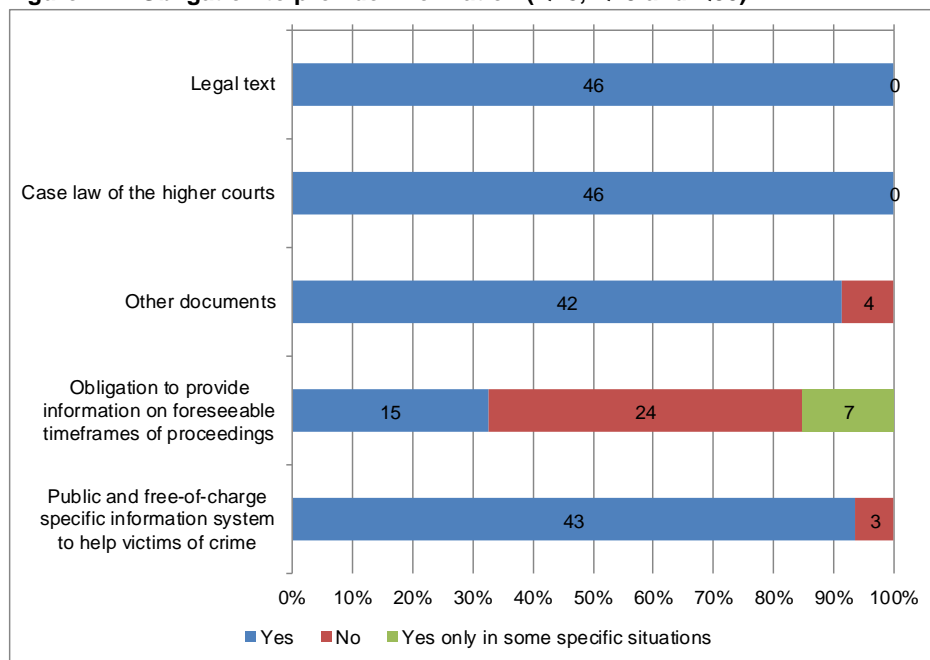
elements to improve the quality of the public service delivered by the judicial system to litigants and to society as a whole. Information on such systems are available in the CEPEJ dynamic data base: [www.coe.int/CEPEJ](http://www.coe.int/CEPEJ).

For this report, the CEPEJ chose to focus on the systems aimed directly at the court users and contributing to the proper implementation of Articles 5 and 6 ECHR in particular.

#### 4.2.1.1 Information of the court users

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

**Figure 4.11 Obligation to provide information (Q28, Q29 and Q30)**



Every state or entity has established websites making available national legislation and court case-law within the Ministry of Justice, Parliament, an Official Gazette, etc. These websites, such as those containing the case law of higher courts, are often used by practitioners.

Court users seeking practical information about their rights or about the courts will make a better use of specific websites offered by the relevant courts or those created in their interest by the Ministry of Justice. Many

States or entities indicate that these websites include forms that users can download to allow them to exercise their rights (**Bulgaria, Estonia, Finland, Greece, Hungary, Lithuania and Portugal**), applications concerning, for example, legal aid (**Finland**) or the getting of certificates (**Serbia**). These "practical" websites are developing in Europe.

#### **Information on timeframes of proceedings**

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

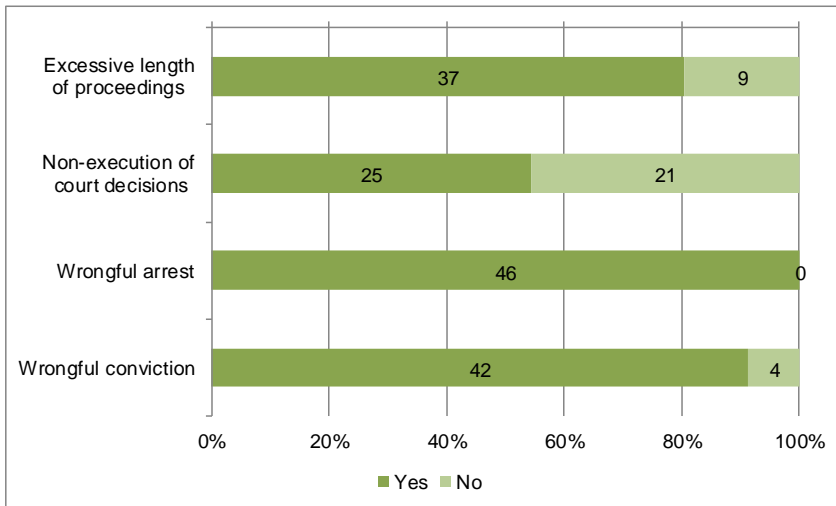
Factors such as an increase in the court case load, the complexity of the case which requires the intervention of experts or other legal actors, or the backlog of courts, make this requirement difficult to meet: indeed, it is not easy for a court to provide the parties with a detailed timetable of the planned procedure or a specific and reliable date for the final hearing. More and more Member states, even if their number is still low (6 in the 2008 edition, 15 for this evaluation exercise) are obliged to provide this information, at least in certain particular circumstances.

#### **Information for victims of crimes**

Almost all the States and entities concerned, except **Andorra, Armenia and Montenegro**, have established free-of-charge information systems. The increasing care devoted to victims by the public service of justice in Europe can again be noticed in this area.

#### 4.2.1.2 Compensation systems

Figure 4.12 Existence of a system for compensating court users in 2014 (Q37)



All the States and entities concerned have set up specific systems which make it possible for the court users to be compensated following dysfunctions within the court system which have affected them.

In the criminal law field, wrongful arrests and wrongful detention can be compensated in almost all the states.

Excessive lengths of judicial proceedings, which remain the main ground raised under ECHR

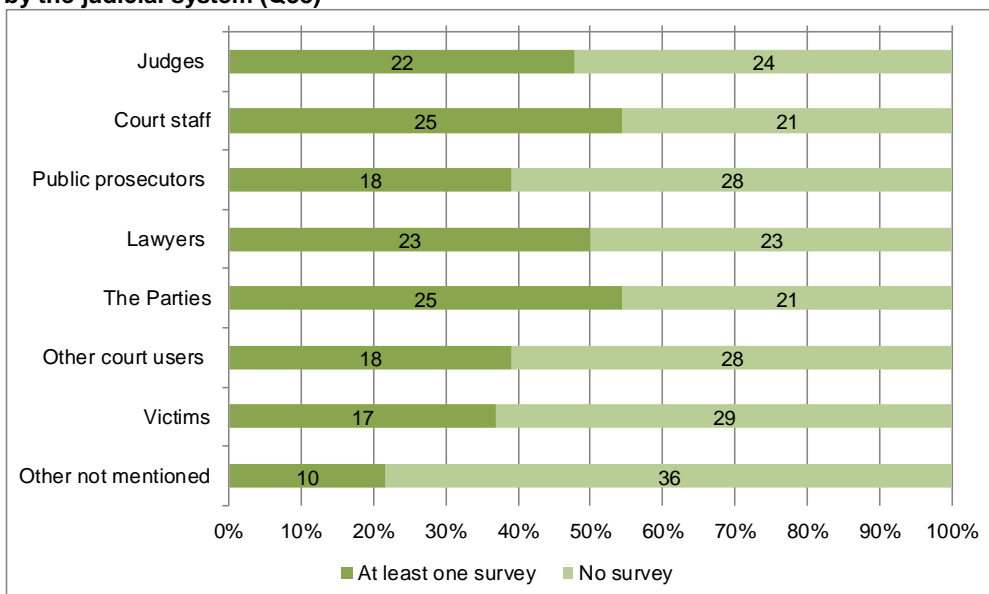
Article 6 by applicants before the European Court of Human Rights, are subject to compensation in a wide majority of States or entities (37). The second main ground raised by applicants regarding ECHR Article 6 is the non-enforcement of national court decisions; this dysfunction can be the subject of a compensation in half of the States and entities concerned (25).

#### 4.2.2.3 Court satisfaction surveys

Information about the level of court users' and court personnel's (judges and staff) satisfaction with (and trust in) the courts are relevant tools for the quality policies of judicial systems. Within its framework, the CEPEJ adopted a model report and a model survey accompanied by a methodology guide, prepared by Jean-Paul Jean and H el ene Jorry<sup>35</sup>.

Surveys to measure the level of satisfaction are conducted among persons who had contacts with a court (litigants, victims, lawyers, other legal professionals - legal experts, interpreters, representatives of government agencies, etc.), and were directly involved in the procedure (e.g. parties, victims). Opinion surveys on justice aimed at the public at large measure only the public perception of the satisfaction in the justice system at a given moment. This also applies to satisfaction surveys conducted among court staff (judges and non-judge staff) or the public prosecution system (prosecutors or non-prosecutor staff).

Figure 4.13 Existence of surveys to measure the trust in justice and the satisfaction with the services delivered by the judicial system (Q38)



<sup>35</sup> CEPEJ Study n 14 "Report on conducting satisfaction surveys aimed at Court users in Council of Europe Member states", Jean-Paul Jean and H el ene Jorry.



32 States or entities have set up mechanisms to assess the perception of the court users of the service delivered by the public service of justice. In one quarter of the States and entities concerned, these systems are aimed at all the actors of the chain of justice: justice professionals, parties, victims.

In other states, they are focused on the parties (logically the most concerned by the surveys) and their representatives (lawyers) and possibly the victims (although this last category remains the least covered by such surveys). Other existing surveys are mainly aimed at court professionals.

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

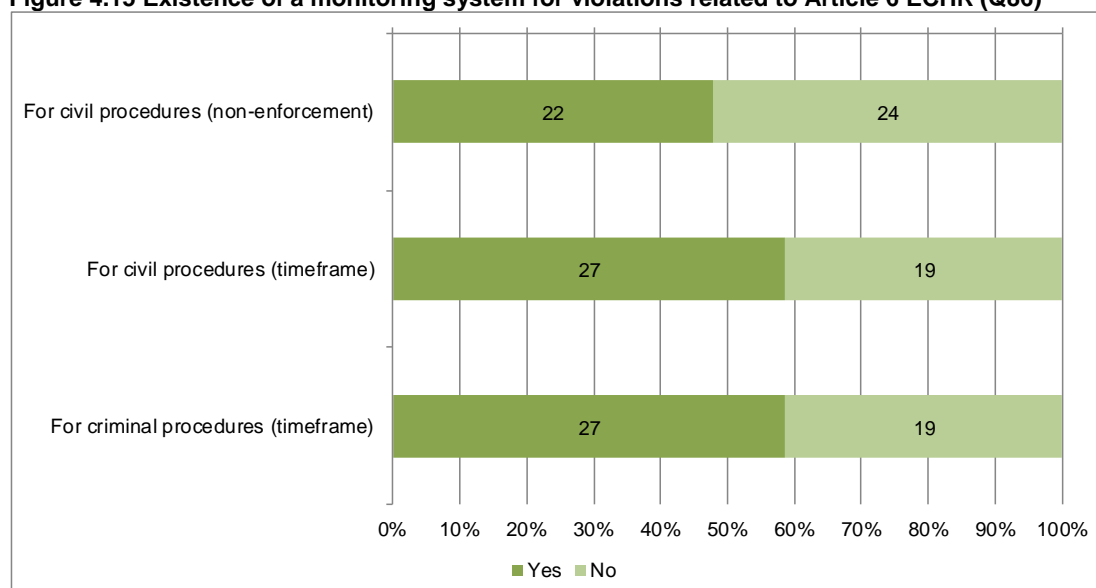
### 4.3 Monitoring of the violations of ECHR Article 6

One of the essential elements for a smooth functioning of courts is the safeguarding of the fundamental right to a fair trial within a reasonable time (ECHR Article 6). This principle must be fully taken into account when managing the workload of a court, the duration of proceedings and specific measures to reduce their length and improve their efficiency and effectiveness. The Council of Europe and its European Court of Human Rights pay specific attention to the "reasonable time" of judicial proceedings and the effective execution of judicial decisions.

On several occasions the European Court of Human Rights considered that one of the ways of guaranteeing the effectiveness and credibility of judicial systems is to ensure that a case is dealt with in a reasonable time (*H. v. France*, No. 10073/82, of 24 October 1989). More recently, the Court said that "significant and recurring delays in the administration of justice were a matter of particular concern and likely to undermine public confidence in the effectiveness of the judicial system", and that in exceptional cases, "the unjustified absence of a decision by the courts for a particularly prolonged period could in practice be regarded as a denial of justice" (*Glykantz v. Greece*, No. 40150/09, of 30 October 2012). With regard to the right to the implementation of justice, the Court asserted that guaranteeing the "right to a court" would be "illusory if a Contracting State's domestic legal system allowed a final binding judicial decision to remain inoperative to the detriment of one party". Accordingly, the execution of a judgement given by any court "must be regarded as an integral part of the "trial" for the purposes of Article 6 [of the Convention]" (*Hornsby v. Greece*, 19 March 1997).

As part of the survey, States and entities were asked to provide information concerning cases brought before the European Court of Human Rights under Article 6, cases brought before national courts, and measures designed to promote effective court proceedings.

**Figure 4.15 Existence of a monitoring system for violations related to Article 6 ECHR (Q86)**



## Comments

**Belgium:** there is no general structural system of monitoring, but a the judgements of the ECtHR are followed if Belgium is condemned because of a violation of Article 6, namely the adoption of individual measures and general measures that can stop the violation and prevent further.

**Bulgaria:** in case of violations and compensation, the responsible institutions are the Ministry of Justice and the Inspectorate to the Supreme Judicial Council (SJC). The Chief Inspector send data quarterly to the SJC concerning the violations found and to the Minister of Justice concerning the benefits paid. The SJC performs each semester an analysis of the causes of the violations and takes measures for their removal. Information on infringements established and benefits paid shall be published in the section of the competent committee to the SJC – the Committee on detection and prevention of conflict of interests and interaction with the Inspectorate by the SJC on the SJC website.

**Croatia:** the Expert Council for the execution of judgements and decisions of the ECtHR is the inter-institutional body responsible for the identification of the concrete measures of execution of such judgements and for monitoring their implementation. It is composed of representatives from all ministries, the Constitutional Court, the Supreme Court, the State Attorneys' Office, the Ombudsman Office, and other government bodies. It is chaired by the Croatian representative before the ECtHR. The main responsibilities of the Expert Council are to define the causes of the violation of the ECHR; to define the bodies responsible for taking measures aimed at fulfilling the obligation of Croatia to enforce judgements of the ECtHR; to define individual measures in order to ensure that the violation has ended and that the injured party is restored, as far as possible, to his/her situation prior to the violation of the Convention, and general measures in order to prevent further violations; to define the terms for the enforcement of judgements; to monitor the implementation of the defined measures and inform the Office of the Representative of the Republic of Croatia before the ECtHR on progress regarding the process of implementation; to review the draft action plans or reports to the Committee of Ministers prepared by the Office of the Representative according to the information on the implementation of measures received from the Expert Council.

**Denmark:** research and analysis are a core part of the Danish Institute for Human Rights' (DIHR) mandate, and a central prerequisite to effect change and promote human rights both in Denmark and abroad. The Research Department aims to ensure that DIHR remains a world-leading knowledge centre renowned for innovative and multidisciplinary research and analysis. It is one of the largest human rights research centres in Europe, serving as a hub at the intersection between human rights scholarship and practice. The research intends to provide innovative, relevant and impactful perspectives on current human rights issues, while simultaneously meeting the highest academic standards. The department also hosts the secretariat of the Association of Human Rights Institutes, the largest international network of human rights research institutions.

**Finland:** the Unit for Human Rights Courts and Conventions of the Ministry for Foreign Affairs is responsible for the development of human rights, including periodic reports and monitoring relating to the implementation of human rights conventions, the supervision of execution measures concerning human rights complaints, the provision of expertise, advice and opinions on human rights law. In addition to the taking of general measures (e.g. changes of legislation) and payment of monetary compensation dealt with by the Ministry for Foreign Affairs, a complaint can be filed under the conditions pinpointed in the Code of Judicial Procedure to the proper Court of Appeal or, if it pertains to a judgement of a Court of Appeal or the Supreme Court, to the Supreme Court.

**France:** in France, regarding the length of civil or criminal proceedings and non-execution of court decisions, it does not exist a specific monitoring system that would follow the finding of a violation of Article 6 of the ECHR apart, if appropriate, of the notification by the services of the Ministry of Justice to the jurisdiction concerned of a European judgement. However, it should be noted that each year, pursuant to an organic law, the Government submit to the Parliament a report detailing, for the previous calendar year, liability actions against the State because of an improper administration of justice, final decisions of the ECHR condemning the state as such and the payment of allowances. Similarly, under an organic law, the special rapporteurs of the finance committees of the Senate and laws of the National Assembly, responsible in a permanent way of the control of the budget execution in their area of activity, send each year questionnaires to ministers, with a view to preparing their reports on the draft budget law. On this occasion, special rapporteurs question each year the Minister of Justice on the state of the ECtHR case law concerning reasonable time and cost of the state budget of the convictions by the Court in Strasbourg. All sentences of France, broken down by item, shall be transmitter to the Finance Committee.

**Greece:** Greece has engaged in a long-term cooperation with the Committee of Ministers of the Council of Europe, leading to a more effective judicial protection scheme as it concerns a domestic compensatory remedy within the field of civil and criminal proceedings.

**Italy:** under the umbrella of the Council of Ministers a specific office is in charge of the relations with the European Court of Human Rights. In particular, this office is competent for drafting an annual report (aimed at the Italian Parliament) regarding the execution of judgements of the ECtHR. Besides, a parliamentary committee performs a cognitive investigation into the protection mechanisms of human rights in Italy.

**Malta:** though not necessarily a monitoring system implementing internal systems and remedial action when violations relating to Article 6 take place, the Civil Court as a Court of Constitutional Jurisdiction as well as the Constitutional Court consider all applications made by aggrieved persons based on violations relating to the ECHR, including Article 6, and the Court does provide some sort of monitoring by ensuring uniformity in interpretation and enforcement, when possible.

**Portugal:** in general, information related to violations of ECHR Article 6 is sent to the concerned court (where the case is or was pending) and to the corresponding High Judicial Council (HJC). In addition, if the case is still pending, information is periodically requested from the court or the HJC. In specific cases that concern the implementation of internal systems intended to prevent other violations and measure the evolution of the established violations, according to the rules established under the Interlaken Process, Portugal has put in place action plans in order to supervise the progress of those cases. Moreover, within the Public Prosecutor Office, a specialized unit is responsible for monitoring these cases together with the Ministry in charge, depending on the subject matter.

**Slovakia:** the Office of the Agent of the Slovak republic before the ECtHR submits to the government an annual report. Besides the statistical data, the report includes the list of judgements and decisions related to Slovakia. The agent

analyses the pending cases as well as the resolved cases monitored by the Committee of Ministers. The Office of the Agent translates the texts of judgements and decisions which are published in a journal issued by the Ministry of Justice.

**Slovenia:** there is no formal monitoring system in place as regards violations related to ECHR Article 6, but the data on legal proceedings can be obtained at the courts level and national level. In the Annual Report on Efficiency and Effectiveness of Courts for 2014, the Supreme Court analysed the situation from the point of view of legal remedies, as well as from other aspects, for the 2012 to 2014 period.

**Spain:** there are several monitoring mechanisms that target those areas, apart from the procedural avenues provided for in Spanish legislation for the applicants to complain in these cases. The General Council of the Judiciary keeps detailed and updated online records of the main parameters that pertain to the functioning of every judicial body, including the timeframe and the enforcement. This activity empowers the Council to adopt more efficient decisions when allocating resources, when dealing with problems related to an unexpected increase of work in certain bodies and/or an unusual decrease in others. From these data, the General Council of the Judiciary performs regularly random and planned inspections of judicial bodies, as reflected in its annual reports, which focus mainly on these potential problems. The Bars play also an active role in analysing and providing evidence of any malfunctioning of judicial bodies. All these measures result in a very small number of applications pending before the ECtHR based on violations of ECHR Article 6. Nevertheless, the Ministry of Justice maintains a webpage devoted to translating into Spanish the judgements issued by the ECtHR when Spain is the respondent State, for general knowledge of the judiciary and the public in general.

**“the former Yugoslav Republic of Macedonia”:** the law on enforcement of ECHR decisions and Law for legal representation of the country before ECHR were adopted in order to establish efficient system for enforcement of the ECHR decisions. For that purpose, the Government has created an inter-ministerial Commission for execution of the ECtHR’s judgements. The main competence of this body is to follow the execution of the judgements. This commission is directed by the Minister of justice. The Commission has the following competences: analyse the judgements of the ECHR in order to identify the main reasons for the violation; give recommendations with individual and general measures to the competent bodies for elimination of the violation identified, as well as elimination of the consequences from it; give recommendation for improving the legal framework for human rights; monitor the execution of the ECHR judgements; provide and exchange information and data in the area of the execution of the decisions of the ECHR; monitor the existing system for executions of the decisions and propose recommendations for improvement.

Only 27 states have established a monitoring system for violations related to Article 6 ECHR as regards judicial timeframes (both in criminal and civil judicial proceedings). Only 22 states have done so as regards the follow-up of the decisions of the European Court of Human Rights regarding the non-enforcement of court decisions.

**The CEPEJ invites the Member states to work further on this issue. It is essential that Member states are able to provide data on the cases related to ECHR Article 6 before the Court in Strasbourg. Such developments in the statistical systems are an essential tool for remedying the dysfunctions highlighted by the Court and preventing further violations of the Convention.**



## Chapter 5. Efficiency and quality of the activity of courts and public prosecutors

Court efficiency plays a crucial role for upholding the rule of law, by ensuring that all persons, institutions and entities, both public and private, including the state, are accountable, and by guaranteeing timely, just and fair remedies. It supports good governance and helps combatting corruption and building confidence in the institutions. An efficient court system is an essential ingredient of an environment that allows individuals to pursue their human development through the effective enjoyment of economic and social rights, and which also promotes investment and encourages business.

This chapter provides basic facts and figures on the performance of courts in 47 States or entities.

Most of the data analysed in this chapter relates primarily to courts of first instance. Information related to the other instances (courts of appeal and supreme courts) is only considered on a few occasions for the purpose of highlighting possible trends. Court performance is assessed in the context of specific sectors of justice, i.e. criminal, civil (mainly with regard to civil and commercial litigious cases), and administrative cases, as well as in relation to particular categories of cases, i.e. litigious divorces, employment dismissals, insolvency, robbery and intentional homicide.

Information has been collected regarding two general categories: “other than criminal cases” and criminal cases”, and a number of sub-categories within each of these groups.

The category of ‘other than criminal’ cases comprises: civil (and commercial) litigious cases; non-litigious cases (including general civil and commercial non-litigious cases and registry cases); administrative law cases; and other cases. There are relevant measurement difficulties related to differences between countries in the definition and categorisation of specific groups of cases. The distinctions employed in the CEPEJ evaluation make it possible to separate categories and facilitate categorisation within each system. Similarly, for the group of ‘criminal cases’, considering the different legal classifications of offences employed in each state or entity, data collection distinguishes between severe criminal cases and minor criminal offences. In this regard, the CEPEJ has chosen to rely on the “European Sourcebook of the Council of Europe”, as a common reference guide regarding the categories of criminal cases in a majority of jurisdictions. Nevertheless, the information gathered from States and entities highlights significant differences in the way specific groups of cases are computed within the categories of the CEPEJ questionnaire; there are also reported differences within one national system over time. As a consequence, the comparability of data across States and entities, and the interpretation of variations over a period of time is scrutinised in close connection with the comments provided by the States and entities on the specifics of each jurisdiction valid for both the civil and criminal sectors.

The chapter treats all analysed jurisdictions equally and does not intend to promote any particular type of justice system. Its approach, however, is inspired by the acknowledgement of the fact that the safeguarding of the fundamental principle of a fair trial within a reasonable time (ECHR Article 6) is a crucial element of the smooth functioning of courts. Accordingly, it builds on the premise that whatever the model of the national justice system or the legal tradition in which it is based, the length of proceedings, the number of pending cases, and the capacity of courts to deal with the caseload - though not exhaustive - are essential parameters of an efficient justice system.

### CEPEJ performance indicators on court efficiency

The Council of Europe and its European Court of Human Rights pay specific attention to the “reasonable time” of judicial proceedings (*H. v. France*, No. 10073/82, of 24 October 1989). The Court, in particular, has established *criteria* for assessing the reasonableness of the length of proceedings and *rules* for calculating the length of proceedings.<sup>36</sup> The first include the complexity of the case; the applicant’s conduct; the conduct of the competent authorities; the type of case, which may involve issues that are of particular concern for the applicant (e.g. labour disputes involving dismissals, or family cases concerning relations between children and parents). The second include an indication of the methods to calculate the length of proceedings. For instance, the starting point of the calculation for civil cases (generally the date on which the case was referred to the court) is different from criminal cases (the starting date may be the date on which the suspect was arrested or charged, or the date on which the preliminary investigation began). Similarly, the end period

<sup>36</sup> These issues are discussed in detail in F. Calvez and N. Regis, CEPEJ, Length of court proceedings in the member States of the Council of Europe based on the case law of the European Court of Human Rights, Strasbourg, 7 December 2012 (CEPEJ Study N°3, updated).

might refer to the date on which the final judgement is given and/or may take into consideration, in some cases, the length of the enforcement procedure (*Hornsby v. Greece*, 19 March 1997). These elements offer a useful benchmark against which State performance in relation to court efficiency (in particular length of proceedings) can be assessed.

In addition to and as a specification of these, the CEPEJ has developed two performance indicators to assess court efficiency at the European level<sup>37</sup>. The first indicator is the *Clearance Rate*, which measures how effectively courts within a State or entity are keeping up with the incoming caseload. The second indicator is the calculated *Disposition Time*, which measures the estimated number of days that are needed to bring a case to an end. The two indicators can be studied together to achieve an initial general picture of the efficiency of courts in a certain country; analysis of their evolution over time allows a better understanding of the efforts of the judiciary to maintain or improve efficiency.

### **Clearance Rate (CR)**

The Clearance Rate is a simple ratio, obtained by dividing the number of resolved cases with the number of incoming cases, expressed as a percentage:

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

A Clearance Rate close to 100 % indicates the ability of the court or of a judicial system to resolve approximately as many cases as the number of incoming cases within the given time period. A Clearance Rate above 100 % indicates the ability of the system to resolve more cases than those received, thus reducing any existing backlog (pending cases). Finally, a Clearance Rate below 100 % appears when the number of incoming cases is higher than the number of resolved cases. In this case the total number of pending cases (backlog) will increase.

Essentially, the Clearance Rate shows how the court or judicial system is coping with the in-flow of cases. It allows comparisons even when the parameters of the cases concerned in different countries are not identical in every respect.

### **Disposition Time (DT)**

Alongside the Clearance Rate, the calculated Disposition Time provides further insight into how long it takes for a type of case in a specific jurisdiction to be solved. The indicator compares the total number of pending cases at the end of the observed period with the number of resolved cases during the same period and converts this ratio into a number of days. This indicator measures the theoretical time necessary for a pending case to be solved in court in the light of the current pace of work of the courts in that country.

Disposition Time is obtained by dividing the number of pending cases at the end of the observed period by the number of resolved cases within the same period multiplied by 365 (days in a year):

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

The conversion into days simplifies the understanding of the relation between pending and resolved cases within a period. The calculated DT would show, for example, that the time necessary for solving a pending case has increased from 120 days to 150 days. This allows comparisons within the same jurisdiction over time and, with some prudence, between judicial systems in different countries. It is also relevant for assessing court efficiency in this regard in the light of established standards for the length of proceedings.

However, it needs to be mentioned that this indicator is not an estimate of the average time needed to process a case but a theoretical average of the duration of a case within a specific system. For example, if the ratio indicates that two cases will be processed within 90 days, one case might be solved on the 10<sup>th</sup> day and the second on the 90<sup>th</sup> day. The indicator fails to show the mix, concentration, or merit of the cases. Case level data of actual duration of cases from functional ICT systems is needed in order to review these details and make a full analysis. In the meantime, this formula may offer valuable information on the estimated maximum length of proceedings.

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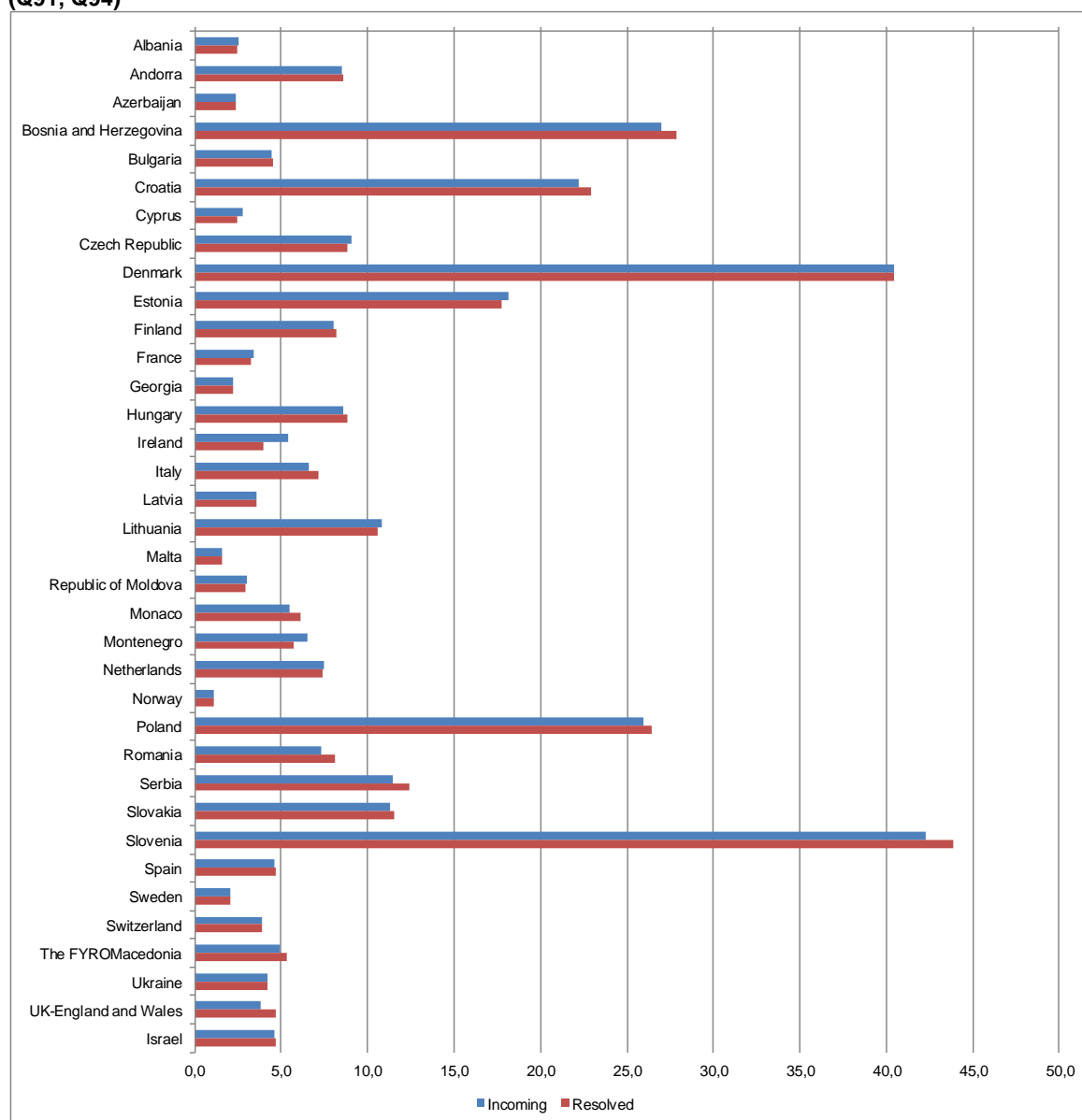
<sup>37</sup> The GOJUST Guidelines invite the CoE member States to organise their data collection system so as to be able to provide the relevant information for calculating such indicators. CEPEJ(2008)11.

## 5.1 General overview of court workload

In the 2014 evaluation, 47 States or entities provided information on criminal cases (distributed by severe criminal offences and misdemeanour offences) and other than criminal cases (distributed by civil and commercial litigious, non-litigious, administrative and other cases). For each of these categories, the number of pending cases at the beginning of the year (1<sup>st</sup> January 2014), the number of incoming cases, the number of resolved cases and the number of pending cases at the end of the year (31<sup>st</sup> December 2014) was recorded. This makes it possible to assess State performance in the light of the CEPEJ indicators on court efficiency (Clearance Rate and Disposition Time).

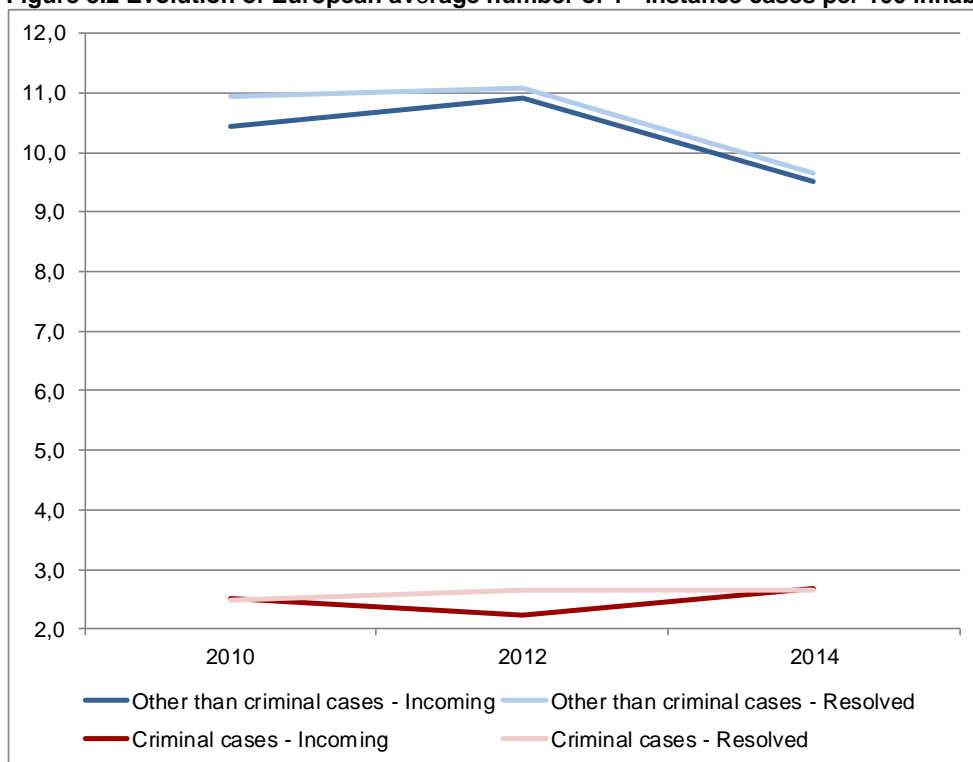
The figure below shows the difference between incoming and resolved first instance cases within the category of 'other than criminal' in 2014. Data from 11 States or entities (**Armenia, Austria, Belgium, Germany, Greece, Luxembourg, Portugal, the Russian Federation, Turkey, UK-Northern Ireland, and UK-Scotland**) was not available. On average, first instance courts received and were able to resolve 9,5 cases per 100 inhabitants. However, figures regarding court workload in specific countries vary considerably and range from more than 40 cases in **Denmark** and **Slovenia** to less than 2 cases in **Norway** and **Malta**. Further significant differences can be noted when analysing the data on specific sub-categories of 'other than criminal cases', such as civil and commercial litigious cases and administrative law cases. These are assessed and discussed in detail in the following sections.

**Figure 5.1 Number of 1st instance incoming and resolved 'other than criminal cases' per 100 inhabitants in 2014 (Q91, Q94)**



The figure below depicts the overall evolution of the average number of first instance incoming and resolved cases between 2010 and 2014, distinguishing between criminal cases and 'other than criminal' cases.

**Figure 5.2 Evolution of European average number of 1<sup>st</sup> instance cases per 100 inhabitants (Q91, Q94)**



When considering comprehensively all the cases handled, it may be noted that in 2014, first instance courts were generally able to resolve a slightly higher number of cases than those received. On average, courts received 9,5 'other than criminal' cases and 2,7 criminal cases per 100 inhabitants. In 2014, criminal cases represented on average 26 % of the total volume of incoming cases, civil and commercial litigious cases 32 %, administrative cases 5 % and non-litigious 36 % and other cases 11%.

The figure shows an overall positive trend of the ability of European courts to cope with incoming cases in the long term. In relation to 'other than criminal cases' this has been a continuous development since the 2010 measurement, while with regard to criminal cases, a positive trend can only be observed since 2012. These trends are particularly significant when considering that there has been a relevant general increase of incoming cases, compared to the previous report (2012 data), in particular, in the criminal sector (42 %), in relation to litigious civil and commercial cases (7 %) and in the administrative sector (12 %). However, the number of non-litigious cases and of cases in the 'other' category has decreased and this explains the decline by 2 % of the total volume of incoming 'other than criminal cases'.

Figures on the number of incoming and resolved cases per 100 inhabitants offer a clear picture of the workload and productivity of the different European judicial systems in general. However, the ability of courts to cope with the caseload is closely related to the number of judges operating in the court system. Additional insight into the functioning of the different judicial systems over Europe could be obtained by calculating and comparing the number of incoming and resolved cases per judge of first instance. Yet, this ratio may not be always representative of how a specific judicial system works in practice, by reason of very relevant differences between countries with regard to the staff exercising judicial and quasi-judicial functions – i.e. professional judges, non-professional judges and *Rechtspfleger*. In many systems, occasional professional judges (e.g. deputy judges in the first instance courts in **Norway**) and non-professional judges (i.e. lay judges such as the (**French**) *juges consulaires*) sit in courts alongside professional judges; additionally, the so called *Rechtspfleger*<sup>38</sup> perform important judicial and quasi-judicial tasks related to land and commercial registers or mediation (e.g. **Austria, Slovenia, Switzerland**). In **Spain**, '*letrados de la administración de justicia*' perform judicial and quasi-judicial tasks in all the judicial proceedings dealt with by the courts,

<sup>38</sup> The *Rechtspfleger* is defined as an independent judicial authority according to the tasks that were delegated to him/her by law. Such tasks can be connected to: family and guardianship law, law of succession, law on land register, commercial registers, decisions about granting a nationality, criminal law cases, enforcement of sentences, reduced sentencing by way of community service, prosecution in district courts, decisions concerning legal aid, etc. The *Rechtspfleger* has a quasi-judicial function. See Chapter 3.

including mediation. Indeed, taking into consideration the work of professional judges alone – in relation to which sufficient data has been collected through the CEPEJ questionnaire – would show a partial picture of the performance of the court system in some States or entities and would distort the analysis for comparative purposes. The CEPEJ questionnaire takes into account such differences, but the quality of the information obtained with regard to the number of non-professional judges and *Rechtspfleger* is not sufficient for drawing comparisons between States or entities. Moreover, there may be differences in the way the authorities define ‘professional judges’ or in the methodology of presentation of data in the course of the different evaluation cycles, and consequently in the reported figures. In **Denmark**, for instance, both ‘legal assessors’ and ‘deputy judges’ perform judicial functions but they have been computed in different categories during the last three evaluation cycles. While Danish ‘deputy judges’ are subsumed in the category of *Rechtspfleger*, in **Norway** deputy judges in the first instance courts are judges by definition, temporarily appointed for a period of maximum 3 years, but nevertheless are not included in the reported number of professional judges. In **Italy**, the administrative courts are not taken into consideration in computing the number of professional judges, and in **Albania**, the total number of judges reported in 2012 encompassed trainee judges.

These are relevant differences and are considered more in depth in the chapter dedicated to judicial staff. As already noted, for the purposes of this part of the report, concerning court efficiency, a simple analysis that does not take into account the peculiarities of the different systems might lead to unjustified conclusions. However, in the future, this phenomenon could be analysed through specialised reports on efficiency, addressing in detail, separately for each State or entity, the data on all personnel performing judicial tasks. This would allow a deeper analysis of the factors having an impact on court efficiency and would enable those jurisdictions where the courts have difficulties to manage case-flows to make informed decisions when reviewing the organisation of the judiciary with a view to balancing the judicial management of the various case categories. Several factors could be involved, including the reallocation of financial and human resources among different legal areas and among the courts to balance the case-flow management according to the volume and the categories of cases, or the diversification of judicial procedures (ADR, simplified or negotiated procedures).

## **5.2 Civil and commercial justice (litigious cases)**

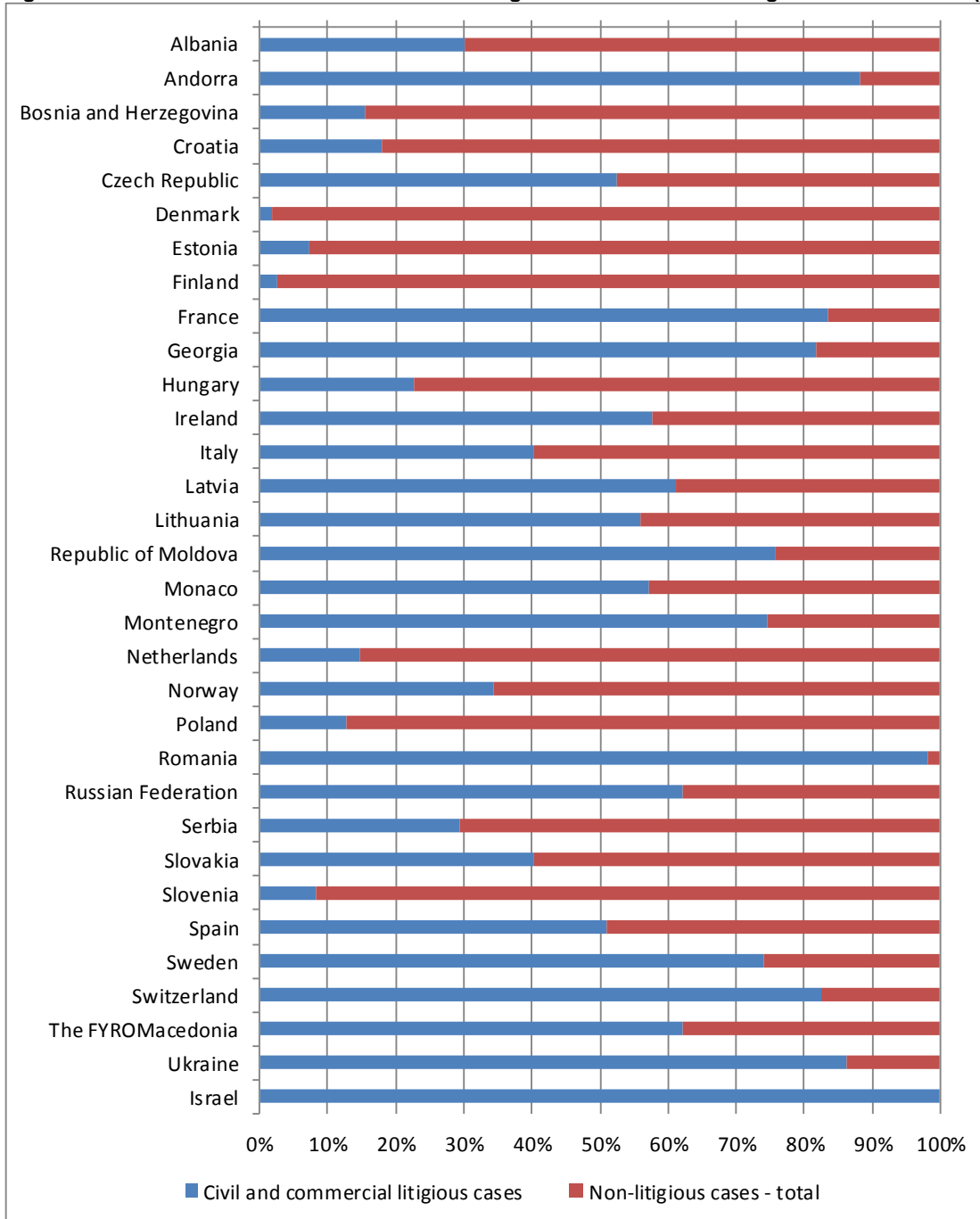
This section analyses predominantly data regarding civil and commercial litigious cases. Although this category of cases represents on average less than one third of the total of ‘other than criminal’ cases, there are two main reasons for a more detailed examination of court workload and efficiency regarding these cases. First, the complementary category of non-litigious cases presents considerable differences among the states. In some jurisdictions, land register cases and business register cases (which involve mainly a formal verification, within a short timeframe, before a registration and the delivery of an attestation), constitute a major part of the measured court activity regarding non-litigious cases, while in others, these tasks are dealt with by other authorities and therefore are not included in the measurement. This affects the scientific significance of the conclusions that can be drawn from the evaluation of the data collected and the extent to which they can be compared. It is therefore preferable to focus the analysis on civil and commercial litigious cases. Secondly, the workload which is directly assigned to judges solving litigious cases is much higher and therefore reflects more closely the actual workload of courts, both quantitative and qualitative.

### **5.2.1 Civil and commercial justice (litigious cases) – 2014 data**

#### ***Court caseload in the civil sector (mainly civil and commercial litigious cases)***

The figure below provides information on 31 States or entities for which data on civil and commercial litigious cases and non-litigious cases (comprising general civil and commercial non-litigious cases, registry cases and other non-litigious cases) was available. It allows a better understanding of the structure of the court activity per state or entity.

**Figure 5.3 Ratio between civil and commercial litigious and total of non-litigious cases in 2014 (Q91)**

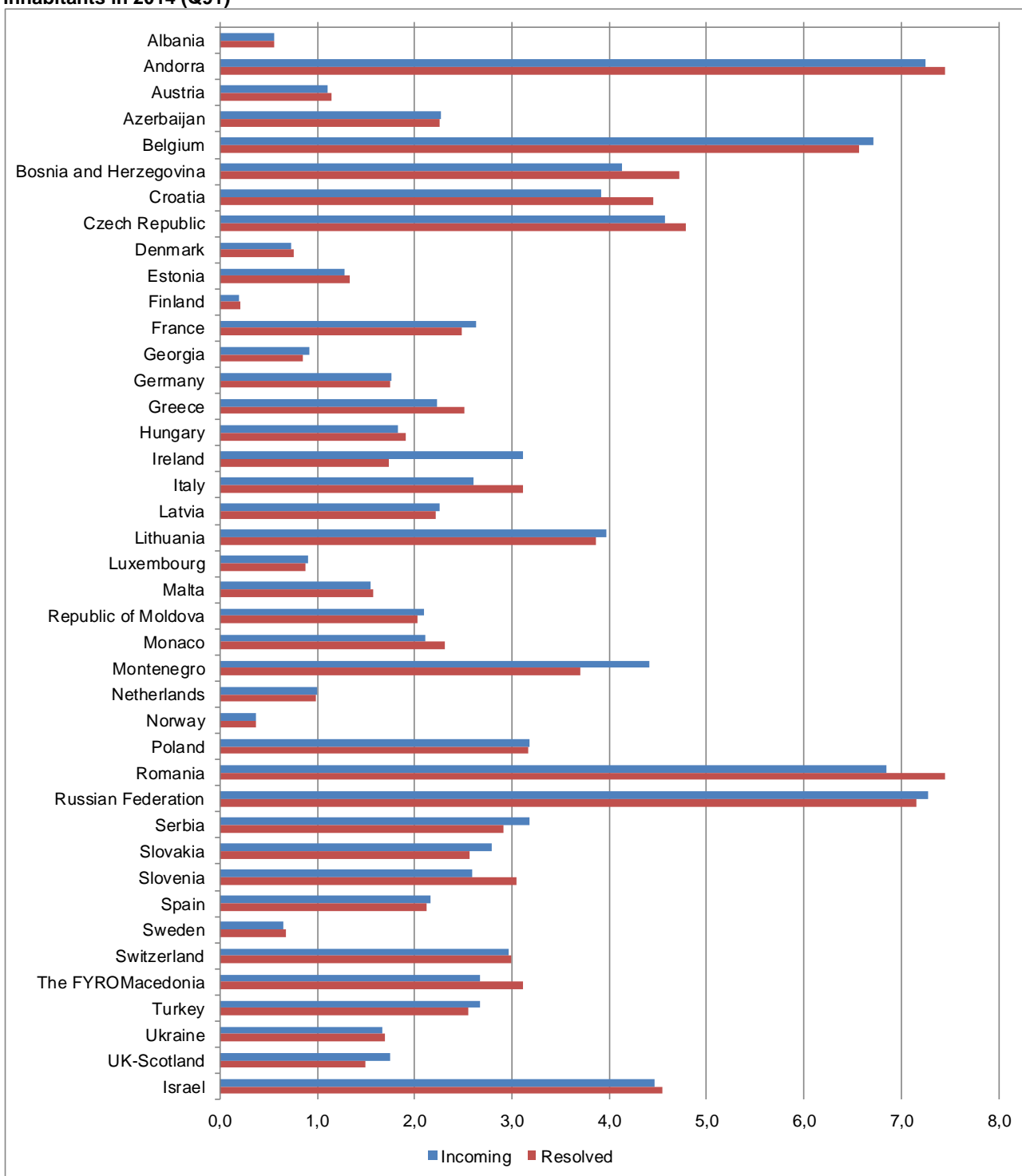


The comparison between the volume of first instance incoming civil and commercial litigious cases and the total of non-litigious cases across States or entities shows that court workload is heavily affected by non-litigious cases in some States or entities, whilst in other States or entities litigious cases constitute the main activity of the courts of first instance. Of the States and entities (31) that provided data distinguishing between civil and commercial litigious cases and non-litigious cases in 2014, a majority (65 %) received more litigious than non-litigious cases. In particular, courts in **Andorra, France, Georgia, Romania, Switzerland** and **Ukraine** received four to seven times more civil and commercial litigious cases than non-litigious cases.

As regards the number of incoming non-litigious cases per 100 inhabitants, there are significant differences between States or entities (from 0,1 case per 100 inhabitants in **Romania** to 37,4 cases in **Denmark**). These can be explained by differences in the respective statistics systems and/or legal categorisations. Examples include the absence of an overall distinction in statistics between litigious and non-litigious proceedings (e.g. **Bulgaria, Cyprus**); the presence or absence within courts of land and business registers (e.g. **Croatia, Denmark, Finland, Estonia**); the impossibility to make a distinction between litigious and non-litigious cases

for incoming or pending cases but only for the resolved cases (e.g. **Netherlands**); or the different allocation of specific groups of cases between the two main categories (e.g. **Poland**).

**Figure 5.4 Number of 1st instance incoming and resolved, civil and commercial litigious cases per 100 inhabitants in 2014 (Q91)**



According to the figure above, in the systems assessed in 2014, the courts of first instance received on average 2,7 civil litigious cases per 100 inhabitants and managed to resolve the same amount of cases during the year. Nevertheless, at the state or entity level, key differences can be highlighted. Courts in 4 states (**Andorra, Belgium, Romania and Russian Federation**) handled more than five civil and commercial litigious cases per 100 inhabitants, while in 7 other states (**Albania, Denmark, Finland, Georgia, Luxembourg, Norway, Sweden**) courts received and solved less than one case per 100 inhabitants. These figures mostly confirm the data from the previous evaluation, showing that individuals in the countries of Northern Europe, and also **Albania** and **Georgia**, make a less frequent use of the court system to solve disputes. While this is not a sociological analysis of the different justice systems, such information might

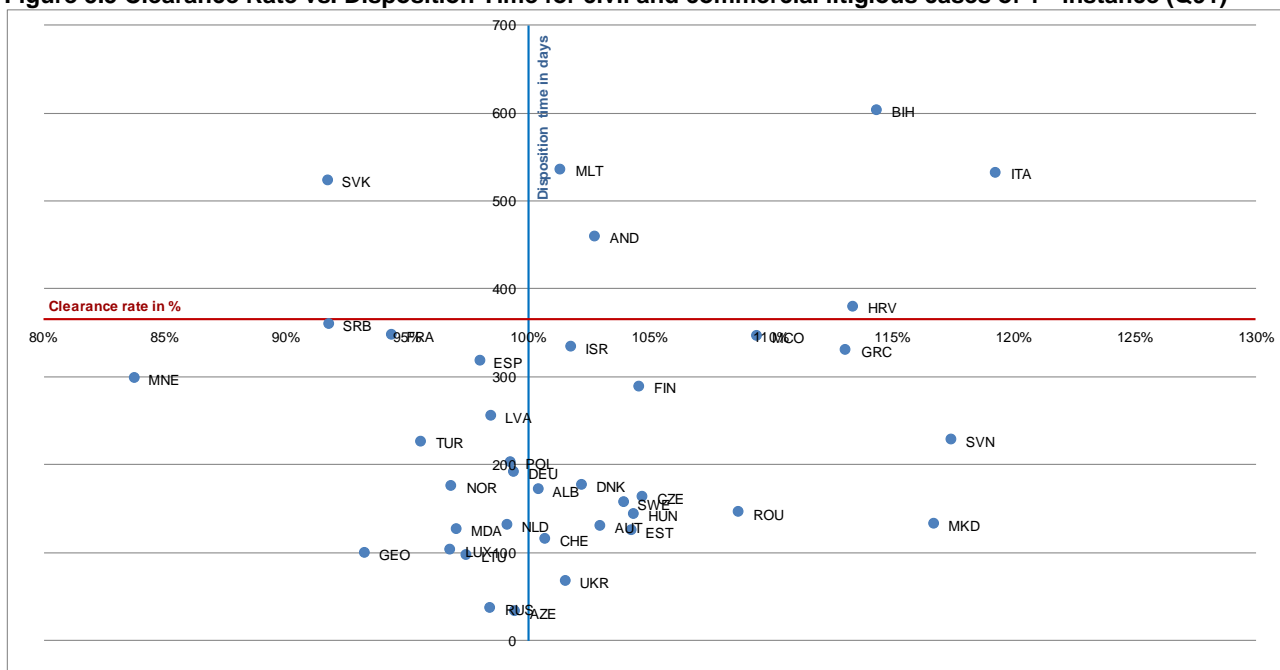
provide a useful hypothesis for in-depth research of the reasons behind these figures. Some of the comments set out in the country reports already highlight possible explanations, including: the availability of alternative mechanisms for dispute resolution which have a filter effect on the number of cases handled by courts (e.g. **Norway**); a system of computing cases that allows courts to modify and update data at any time (e.g. **Estonia, Sweden**); multiple reference numbers for the same case during the process (e.g. **Greece**); reduced access to legal aid (e.g. **Slovenia**); implementation of court fees or changes in the administration of cases by courts (e.g. **UK England and Wales**).

It would also be useful to carry out comparative research on the typology and classification of civil and commercial cases among these states, in order to identify common subcategories. This would lead to a better understanding of the judicial systems, would provide additional insight into the results of the evaluation and would improve comparisons between the states.

### **Performance indicators regarding civil and commercial litigious cases**

The Clearance Rate and the Disposition Time can be studied together to address simultaneously the possible evolution of the backlogs and the time necessary to process pending cases. For 6 States or entities (**Armenia, Bulgaria, Cyprus, Portugal, UK-England and Wales and UK-Northern Ireland**) it has not been possible to calculate both the Clearance Rate and the Disposition Time for civil and commercial litigious cases. For three other States or entities (**Belgium, Ireland and UK-Scotland**), it has only been possible to measure the Clearance Rate but not the Disposition Time. While the Clearance Rate is somewhat below 100% in all three cases, figures regarding **UK-Scotland** (85 %) and **Ireland** (56 %) are particularly low. The explanation for the low Clearance Rate in **Ireland** lies in the procedural requirements relating to civil proceedings. Unless a case has been listed in the court's calendar for the purposes of trial or the fixing of a trial date, parties to civil proceedings in **Ireland** are not generally required to notify either that a case has been settled or that a case is not being pursued further. Consequently, the Clearance Rate emerging from the data provided understates significantly the actual case Clearance Rate because a substantial number of completed cases are not recorded as such.

**Figure 5.5 Clearance Rate vs. Disposition Time for civil and commercial litigious cases of 1<sup>st</sup> instance (Q91)**



In the lower right quadrant of the figure above, court productivity can be considered as satisfactory in 12 States or entities. Indeed, both the Clearance Rate and the Disposition Time (below the average of 237 days) are positive for civil and commercial litigious cases in **Albania, Austria, Czech Republic, Denmark, Estonia, Hungary, Romania, Slovenia, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia” and Ukraine**. The majority of these States confirm the positive results of the last evaluation, including **Albania** where the Clearance Rate has constantly increased since the 2010 measurement and has reached 100 % from 2014.

In 20 other States or entities the situation seems manageable. In **Finland, Greece, Monaco, and Israel** the Disposition Time is above the average (237 days, yet below 365 days) but this is balanced by a positive Clearance Rate (above 100 %). Instead, in **Azerbaijan, Georgia, Germany, Lithuania, Luxembourg,**



**Republic of Moldova, Netherlands, Norway, Poland, Russian Federation and Turkey**, the Clearance Rate is slightly lower than 100 % but the Disposition Time can be considered satisfactory. However, further analysis may be necessary to understand the reasons behind some particularly low figures of the Disposition Time (e.g. slightly more than one month in **Azerbaijan** and in the **Russian Federation**) and their impact on the quality of court services in practice. The situation should be more seriously monitored in **France, Latvia, Montenegro, Serbia** and **Spain** where the Clearance Rate is close to 100 % (slightly higher or lower) but the Disposition Time is higher than the average.

The situation is much more critical in those States or entities which have a particularly low Clearance Rate or a very high Disposition Time, or both: they have difficulties in coping with the volume of incoming cases. Backlogs and lengths of proceedings are likely to get worse in the future if no specific measures are taken. This is notably the case of **Andorra** (Disposition Time: 460 days), **Bosnia and Herzegovina** (Disposition Time: 603 days), **Italy** (Disposition Time: 532 days), **Malta** (Disposition Time: 536 days), **Slovakia** (Disposition Time: 524 days; Clearance Rate: 92 %) and less so of **Croatia** (Disposition Time: 380 days; Clearance Rate: 113 %). Measures for strengthening the courts' productivity are already in place in some of these cases.

## **5.2.2 Civil and commercial litigious cases – 2010 / 2014 evolution**

### ***Evolution of the performance indicators for litigious civil and commercial litigious cases***

The table below presents the evolution of the Clearance Rate for civil and commercial litigious cases between 2010 and 2014. The results of the analysis must be considered cautiously, as the consistency of some data might change within the period observed, which can influence the variations over time.

**Table 5.6 Evolution of the Clearance Rate of civil and commercial litigious cases between 2010 and 2014 (Q91)**

States/entities	Clearance Rate of 1st instance civil and commercial litigious cases			
	2010	2012	2014	Trend
Albania	93%	97%	100%	
Andorra	99%	95%	103%	
Armenia	101%	103%	NQ	
Austria	100%	101%	103%	
Azerbaijan	98%	100%	99%	
Belgium	NA	NA	98%	
Bosnia and Herzegovina	94%	116%	114%	
Bulgaria	NA	NA	NA	
Croatia	102%	95%	113%	
Cyprus	84%	NA	NA	
Czech Republic	103%	99%	105%	
Denmark	102%	109%	102%	
Estonia	98%	112%	104%	
Finland	93%	103%	105%	
France	98%	99%	94%	
Georgia	96%	102%	93%	
Germany	102%	100%	99%	
Greece	79%	58%	113%	
Hungary	102%	105%	104%	
Ireland	NA	NA	56%	
Italy	118%	131%	119%	
Latvia	86%	118%	98%	
Lithuania	102%	101%	97%	
Luxembourg	139%	173%	97%	
Malta	89%	114%	101%	
Republic of Moldova	95%	100%	97%	
Monaco	76%	117%	109%	
Montenegro	92%	102%	84%	
Netherlands	NA	NA	99%	
Norway	101%	100%	97%	
Poland	95%	89%	99%	
Portugal	102%	98%	NA	
Romania	90%	99%	109%	
Russian Federation	100%	99%	98%	
Serbia	92%	116%	92%	
Slovakia	98%	82%	92%	
Slovenia	99%	101%	117%	
Spain	94%	100%	98%	
Sweden	98%	99%	104%	
Switzerland	100%	100%	101%	
The FYROMacedonia	95%	131%	117%	
Turkey	NA	115%	96%	
Ukraine	104%	106%	102%	
UK-England and Wales	NA	NA	NA	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	85%	85%	
Israel		101%	102%	
<b>Average</b>	98%	104%	100%	
<b>Median</b>	98%	101%	100%	
<b>Minimum</b>	76%	58%	56%	
<b>Maximum</b>	139%	173%	119%	

Data collected for the last three evaluations, 2010, 2012 and 2014, shows a discontinued trend in the improvement of the Clearance Rate of civil and commercial litigious cases at first instance. On average, there has been a first a general improvement of the indicator and then an inversion of the trend. The average Clearance Rate has decreased from 104 % to 100 % between 2012 and 2014. However, important differences can be highlighted between the States or entities assessed.

7 states (**Albania, Austria, Finland, Romania, Slovenia, Sweden and Switzerland**) have experienced a regular improvement of the Clearance Rate with regard to civil and commercial litigious cases at first instance. On the contrary, a constant decrease of the Clearance Rate can be noted in **Germany, Lithuania, Norway** and the **Russian Federation**, but in all four cases the Clearance Rate has remained close to 100 %. In the case of **Lithuania** the negative trend should be interpreted in the light of the 2013 judicial reform that involved the closing of eight district courts, while as regards **Norway**, possible inconsistencies in the data have been reported on the basis that according to the procedural law in this country, cases might be divided or united after being registered with the court.

In the period between the last two evaluations (2012-2014) **Montenegro** and **Turkey** recorded a particularly sharp decrease of the Clearance Rate of civil and commercial litigious cases. The trend must be followed with attention, as the performance of the relevant judicial bodies could be at risk in the future, should this development be confirmed. The situation in **Ireland** and **UK-Scotland** should also be monitored closely to understand the actual reasons behind low Clearance Rate levels or behind the negative trends over the long term. Indeed, low Clearance Rate figures may not be directly related to the efficiency of the court system as such, but may rather be the result of other factors, such as the absence of procedural rules requiring the parties to notify the court when a case has been settled or is not being pursued further (e.g. **Ireland**) or the inconsistency of data due to the introduction of new categories of statistics during the different monitoring cycles (e.g. **Montenegro**).

Major improvements in the Clearance Rate can be observed in particular in **Italy, Greece, Monaco** and “**the former Yugoslav Republic of Macedonia**”. In the case of **Italy**, these can be explained by a number of factors that go beyond court efficiency, including a different methodology of classification of civil cases introduced in 2012, the introduction of court taxes that litigants are required to pay to initiate particular types of proceedings, the reduction of incoming civil and commercial cases in general and the filter effect on the litigious incoming files produced by the constantly increasing number of cases resolved through the use of alternative dispute resolution (“ADR”). The positive developments recorded in the period 2010-2014 are therefore partly the result of a decrease in the number of incoming cases rather than exclusively related to an increased number of solved cases. The situation should continue to be monitored in the future, following the major geographic reorganisation of the **Italian** judicial system in the second half of 2013 and the beginning of 2014 which resulted in the closing of almost 1000 courts. As regards “**the former Yugoslav Republic of Macedonia**”, the new methodology of presentation of data and the use of new software in the 2014 evaluation might have resulted in considerable variations in the numbers of cases compared to previous assessments.

Table 5.7 Evolution of the Disposition Time of civil and commercial litigious cases between 2010 and 2014 (Q91)

States/entities	Disposition time of 1st instance civil and commercial litigious cases			
	2010	2012	2014	Trend
Albania	173	192	171	
Andorra	189	264	460	
Armenia	163	168	NQ	
Austria	129	135	130	
Azerbaijan	43	52	33	
Belgium	NA	NA	NA	
Bosnia and Herzegovina	826	656	603	
Bulgaria	NA	NA	NA	
Croatia	462	457	380	
Cyprus	513	NA	NA	
Czech Republic	128	174	163	
Denmark	182	165	177	
Estonia	215	167	125	
Finland	259	325	289	
France	279	311	348	
Georgia	94	62	100	
Germany	184	183	192	
Greece	190	469	330	
Hungary	160	97	144	
Ireland	NA	NA	NA	
Italy	493	590	532	
Latvia	315	241	255	
Lithuania	55	88	97	
Luxembourg	200	73	103	
Malta	849	685	536	
Republic of Moldova	110	106	127	
Monaco	743	433	347	
Montenegro	271	254	298	
Netherlands	NA	NA	132	
Norway	158	160	176	
Poland	180	195	203	
Portugal	417	369	NA	
Romania	217	193	146	
Russian Federation	13	40	37	
Serbia	316	242	359	
Slovakia	364	437	524	
Slovenia	315	318	228	
Spain	289	264	318	
Sweden	187	179	157	
Switzerland	132	127	116	
The FYROMacedonia	259	175	132	
Turkey	NA	134	227	
Ukraine	52	70	68	
UK-England and Wales	NA	NA	NA	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel	..	340	334	
<b>Average</b>	266	243	237	
<b>Median</b>	195	188	177	
<b>Minimum</b>	13	40	33	
<b>Maximum</b>	849	685	603	

The average Disposition Time of civil and commercial litigious cases has slowly declined over time.

A steady improvement of the Disposition Time has been recorded in **Bosnia and Herzegovina, Croatia, Estonia, Malta, Monaco, Romania, Sweden, Switzerland** and “**the former Yugoslav Republic of Macedonia**”. Of particular note, among these, the Disposition Time has sharply decreased in those jurisdictions, such as **Bosnia and Herzegovina, Croatia, Malta** and **Monaco**, that had - and still have - a particularly high Disposition Time (more than one year). The regular reduction of the Disposition Time of civil and commercial litigious cases in **Bosnia and Herzegovina** (from 826 days in 2010, to 656 days in 2012, to 603 days in 2014) is related to the implementation of domestic measures aimed at improving court efficiency. A backlog reduction initiative has been operating since 2009, which is aimed at addressing the sharp rise of the number of pending cases related to a particularly low Clearance Rate in 2008. Similarly, in **Croatia** the reorganisation of the distribution of workload between judges and court advisors resulted in an increase in the number of resolved cases. This has had a positive impact on the calculated Disposition Time, notwithstanding the increase in the number of incoming civil and commercial litigious cases between 2010 and 2014 mostly due to the difficult economic situation in Croatia. Instead, in the case of **Monaco**, the improvement of the Disposition Time in the period between the last two evaluation cycles (2012 and 2014) can be partly explained by the closure of a significant number of long-standing but rather simple commercial cases.

In 7 States or entities, however, a continuous worsening of the calculated Disposition Time over the three evaluation cycles can be observed. The situation in **Germany, Lithuania, Norway** and **Poland** can be considered acceptable because the Disposition Time has remained below 200 days. **Andorra, Slovakia** and (slightly less so) **France** show a worrying trend, as they have a very high Disposition Time for civil and commercial litigious cases. With regard to **Slovakia**, the increase of the number of incoming cases and the methodology for collecting statistical data by the Ministry of Justice could partly explain the (negative) effect on the calculated Disposition Time. Instead, no explanation has been provided in the case of **Andorra**. Differences in the number of incoming cases cannot fully explain the situation but the figures might not be indicative considering the low (absolute) number of cases concerned. Between 2010 and 2012 incoming civil and commercial litigious cases in **Andorra** decreased by 3 % and pending cases increased by 30 %, while between 2012 and 2014 incoming cases increased by 27 % and pending cases by 140 %, despite a positive Clearance Rate.

The situation should be closely monitored in 4 other states: **Greece, Italy, Serbia** and **Turkey**. The first two States have recorded a strong increase in the Disposition Time of civil and commercial litigious cases of first instance between 2010 and 2012 and a reduction thereof between 2012 and 2014. As already noted, both states have enacted reforms to improve performance and to enhance the quality of the statistical information. By contrast, **Turkey** and **Serbia** have recorded a deterioration of the Disposition Time between 2012 and 2014, following a noticeable improvement in the previous period (no data was provided for **Turkey** for 2010). With regard to **Serbia** the trend inversion should be considered in the light of a legislative reform that changed the way of presenting solved and unsolved cases in statistical reports and resulted in the decrease of the number of solved cases.

The variation of the figures on the Disposition Time reported above should also be considered (and can partly be explained) in the light of the changing volume of pending cases in the course of the last three evaluations. The Table below presents the evolution of the volume of 1st instance civil and commercial litigious cases pending on 31 December between 2010 and 2014. On a methodological note, it should be highlighted that a relevant number of States have reported discrepancies and some horizontal incoherence in the data provided, due to several factors, including procedural rules that allow cases to be joined and disjoined during the proceedings (e.g. **Estonia** and **Norway**) or to re-open cases without counting these as such (e.g. **Denmark**); the different moments in time in which information about incoming, resolved and pending cases is retrieved (e.g. **Netherlands**); or omissions in statistical information generated by courts as well as structural changes within the court system (e.g. **Poland**).

**Table 5.8 Evolution of first instance litigious civil and commercial pending cases between 2010 and 2014 (Q91)**

States/entities	Number of 1st instance civil and commercial litigious pending cases 31 Dec			Trend
	2010	2012	2014	
Albania	8219	9741	7520	
Andorra	2323	3015	7222	
Armenia	12114	11644	NQ	
Austria	39762	38918	35068	
Azerbaijan	11465	15038	19225	
Belgium	NA	NA	NA	
Bosnia and Herzegovina	332800	299466	298704	
Bulgaria	NA	NA	NA	
Croatia	189055	217582	195718	
Cyprus	31244	NA	NA	
Czech Republic	165991	171113	225579	
Denmark	32292	22804	20705	
Estonia	12425	8393	5991	
Finland	7164	9496	8834	
France	1347826	1428811	1571438	
Georgia	4764	4181	8750	
Germany	798702	792594	744510	
Greece	187360	478241	246839	
Hungary	89626	120187	74290	
Ireland	NA	NA	NA	
Italy	3828612	3308692	2758091	
Latvia	38271	34227	31084	
Lithuania	31056	26005	30149	
Luxembourg	1595	1635	1382	
Malta	10295	8882	9885	
Republic of Moldova	20809	23865	25143	
Monaco	1605	934	827	
Montenegro	13760	14503	18750	
Netherlands	NA	NA	60160	
Norway	7846	7937	9049	
Poland	385035	505040	676875	
Portugal	366135	364305	NA	
Romania	571950	578043	661619	
Russian Federation	472649	712285	1063531	
Serbia	189859	178229	204297	
Slovakia	122916	157862	199203	
Slovenia	56863	55486	39220	
Spain	1438719	1270383	857047	
Sweden	31872	31684	28516	
Switzerland	61475	79405	78315	
The FYROMacedonia	37755	21646	23388	
Turkey	NA	681156	1231397	
Ukraine	248391	168899	134478	
UK-England and Wales	NA	NA	NA	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel		337154	344349	
<b>Average</b>	295016	312167	313859	
<b>Median</b>	39017	47202	39220	
<b>Minimum</b>	1595	934	827	
<b>Maximum</b>	3828612	3308692	2758091	

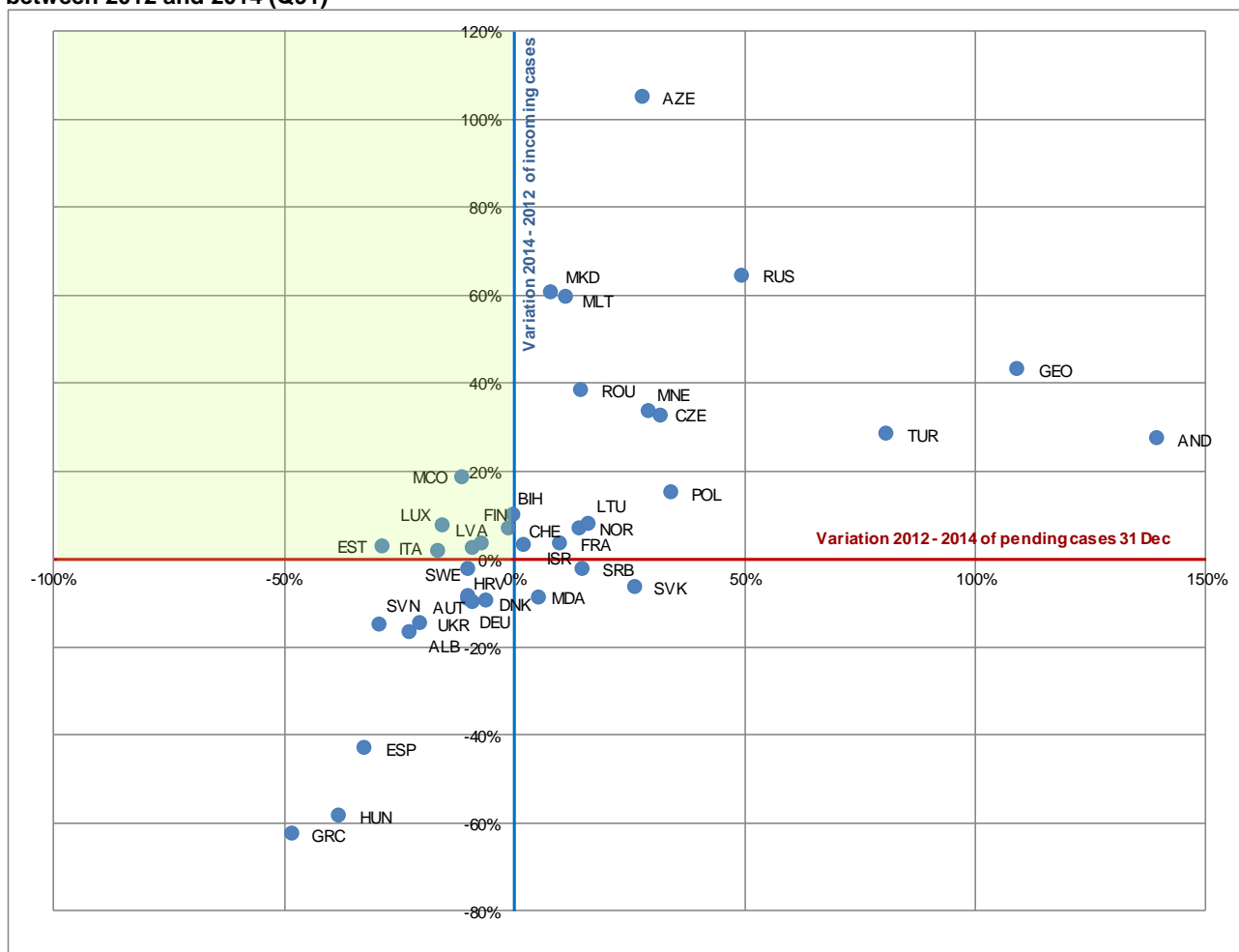
Data collected from the 2010, 2012 and 2014 evaluations shows, on average, an increase in the number of pending cases, by 6 % in 2010-2012 and by 8 % in 2012-2014. Data on 7 States or entities was not available - **Belgium, Bulgaria, Ireland, UK-England and Wales, UK-Scotland, and UK-Northern Ireland**. The data available for **Armenia, Cyprus, Netherlands, Portugal, Turkey and Israel** only cover one or two evaluation cycles. In the last evaluation, almost half of the States or entities (18) for which data was provided reduced the volume of pending cases while the rest (19) registered an increase compared to the 2012 data. There are, however, important differences between jurisdictions and relevant variations within the same jurisdiction throughout the three monitoring cycles.

A particularly positive performance can be noted in the case of **Albania, Croatia Finland, Greece, Hungary, Luxembourg and Switzerland**, which have been able to positively invert the trend and reduce the number of pending cases. In contrast with the figures regarding the period 2010-2012, which showed an increase in the backlog, the 2012-2014 evaluation in these States recorded a decrease of the number of pending cases. A positive trend can also be noted in other jurisdictions where the stock of pending cases has progressively decreased between 2010 and 2014 (**Austria, Germany, Italy, Slovenia, Spain and Sweden**) or where a positive trend in processing backlog has been maintained, albeit at a lower reduction rate for the period 2012-2014 compared to 2010-2012 (**Bosnia and Herzegovina, Denmark, Estonia, Latvia, Monaco and Ukraine**).

These figures, however, need to be interpreted with care. An increase or decrease in the backlog cannot always be related to the level of court efficiency. In 2012-2014, for instance, **Greece** reported a decrease in pending cases of almost 50 %. This development, however, should be considered in the light of a number of contrasting factors, including: an important increase in the backlog in 2010-2012 (155 %) due the referencing methodology of cases (more than one reference per case can be applied throughout the process); a relevant decrease (63 %) in the number of incoming cases in 2012-2014 due to a strike by Greek lawyers; legal reforms that have altered the jurisdiction of courts; and a long period of restraint of lawyers in 2013 and 2014. By contrast, the decrease in the backlog in **Croatia** – despite the increase in the number of incoming civil and commercial litigious cases since 2010 due to the difficult economic situation – can be interpreted in the light of additional efforts on the part of judges and legislative reforms broadening of the scope of powers of court advisers.

A better understanding of the evolution of pending cases over time and therefore of overall court performance can be achieved by considering the figures on the amount of pending cases at the end of the year against the volume of incoming cases. Such analysis enables an in-context interpretation of the data on court efficiency. It complements the picture that emerges from the analysis of the Clearance Rate by showing a dynamic picture of the capacity of courts to clear the workload and reduce the backlog, despite increases in the volume of incoming cases from one evaluation to the other. The figure below depicts the relation between pending cases and incoming cases and the evolution of the backlog between 2012 and 2014.

**Figure 5.9 Variation of 1st instance litigious civil and commercial pending cases 31 Dec v. incoming cases, between 2012 and 2014 (Q91)**



The figure highlights the positive performance of a group of States or entities that were able to reduce the backlog despite an increasing number of incoming cases. The green quadrant above marks the states that, despite an increase in number of incoming cases, are still able to decrease the volume of pending cases (backlog).

While none of the states concerned has maintained a regular trend in this regard across the three evaluations, positive examples include **Georgia** and **Sweden** for the period 2010-2012, and **Estonia**, **Finland**, **Italy**, **Latvia**, **Luxembourg**, **Monaco** and **Switzerland** for the period 2012-2014. The Table also shows that the positive developments in the reduction of pending cases registered in some States between 2012 and 2014 (e.g. **Albania**, **Croatia**, **Hungary**, **Greece**, **Spain** and **Slovenia**) were partly related to a decrease in the number of incoming cases rather than to a more efficient court performance solely.

By contrast, the situation in those States where the number of pending cases has either increased despite a decrease in incoming cases (e.g. **Republic of Moldova**, **Serbia**, **Slovakia**), or increased considerably more than the increase in the number of incoming cases (e.g. **Andorra**, **Georgia**, **Turkey**) should be monitored carefully. Indeed, with the exception of **Andorra** and **Slovakia** the rest of these States experienced a decrease in their Clearance Rate of civil and commercial litigious cases, which fell below 100 % in 2014.

#### ***Evolution of performance and the average duration of procedure indicators for specific categories of civil cases***

Data regarding three specific categories of civil cases, i.e. litigious divorces, employment dismissals and insolvency cases, allows a better understanding of the workload of the courts in Europe, as well as a more reliable comparison of the figures. These categories were selected for additional analysis in the Evaluation Scheme on the assumption that they are dealt with in quite a similar way across European courts.

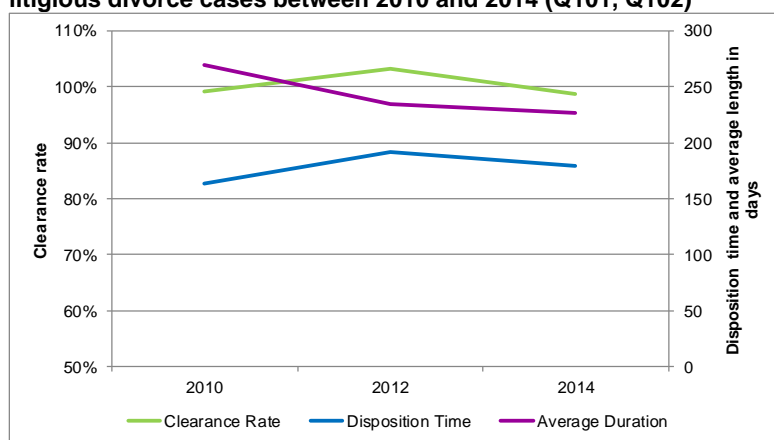
The three categories of 'other than criminal' cases, which concern justice on a daily basis, are defined in the explanatory note to the CEPEJ Evaluation questionnaire as follows:



1. *Litigious divorce cases*: 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 (procedures by mutual consent, even if they are processed by the court) or ruled on through an administrative procedure.
2. *Employment dismissal cases*: cases concerning the termination of (an) employment (contract) at the initiative of the employer (working in the private sector). These do not include dismissals of public officials, following a disciplinary procedure for instance.
3. *Insolvency cases*: cases concerning all the procedures for monitoring the financial situation of an economic actor (company, etc.) and possibly terminating its activity when it is not in a financial position to pursue it, in particular due to the impossibility to pay its debts (including in particular bankruptcy procedures).

### 5.2.2.1 Litigious divorce cases

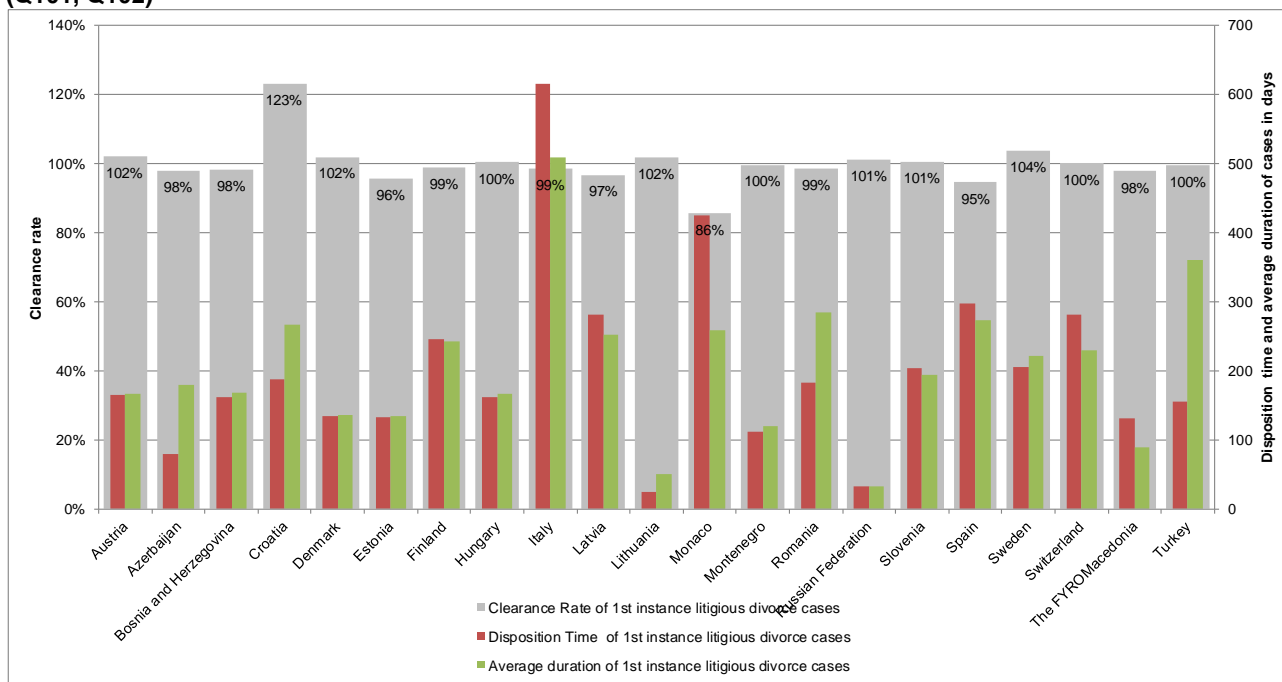
**Figure 5.10 Evolution of the European average Clearance Rate, Disposition Time and length of 1st instance litigious divorce cases between 2010 and 2014 (Q101, Q102)**



The figure above summarizes the average evolution of litigious divorce cases. Between 2010 and 2014 the average Clearance Rate of this category of cases has decreased and is now slightly below 100 %, despite a positive increase in 2012. A negative trend between 2010 and 2014 can also be noted with regard to the evolution of the average Disposition Time, but the situation has improved compared to the 2012 evaluation. By contrast, the average length of the proceedings for this type of cases has regularly improved.

A general observation should be made with regard to the average length as indicator of performance. It should be noted that the indicator does not provide a robust and scientifically reliable measure for comparisons between countries because States have in place very different methodologies for calculating the average length of proceedings. Methodologies may include a calculation of the duration of proceedings in days, in months (e.g. **Latvia**) or in intervals of time (e.g. **Romania**). Additionally, States may consider as a final date for the purpose of measuring the average length either the day when the judicial decision is given (e.g. **Finland**) or the day when the court decision becomes final (e.g. **Slovakia**), which would also include the duration of the appeal instance proceedings. In **France**, instead, the calculation of the average length of litigious divorce cases includes the “reflection break” (*temps de réflexion*) accorded to the parties between the unsuccessful termination of the conciliation procedure and the beginning of the divorce case; this would extend the average length of these cases by approximately 22 %. It follows that the Disposition Time can be considered as a better indicator for making comparisons between countries with regard to the ability of courts to cope with specific case categories. The average length, nevertheless, allows a valuable insight into developments in the case management within the same country over a certain period.

**Figure 5.11 Clearance Rate, Disposition Time, average length of 1<sup>st</sup> instance litigious divorce cases in 2014 (Q101, Q102)**



The figure shows that most of the States or entities for which data was provided registered a positive Clearance Rate of litigious divorce cases in 2014 and in 6 other States the Clearance Rate is very close to 100 % (**Azerbaijan, Bosnia and Herzegovina, Finland, Italy, Romania and “the former Yugoslav Republic of Macedonia”**). A particularly positive performance can be noted with regard to **Croatia**. This can be explained on the one hand by the change in the methodology of categorisation between different types of cases, which allows more accurate and detailed information and on the other hand by additional efforts of judges to increase the number of resolved cases. Moreover, it should be noted that in June 2014 a mandatory counselling and family mediation procedure for spouses with under-age children was introduced in **Croatia**; the impact of this reform should be assessed in the next evaluation cycle.

The situation has improved or has remained more or less stable over the years in many States and entities, for example, in **Georgia, Lithuania** (especially between 2012 and 2014), **Montenegro, Russian Federation, Slovakia, Slovenia, Sweden and Ukraine**. The courts are struggling to cope with the number of litigious divorce cases in **Ireland and Monaco** and to a lesser extent, in **Estonia, Spain or UK-England and Wales**. The particular circumstances concerning the calculation of closed cases in **Ireland** and the consequences for calculation of clearance rates, have already been highlighted. The situation in **Estonia** has evolved positively over the years, mainly as a result of the fact that courts are working more efficiently and have accelerated the proceedings.

The variations in the number of incoming litigious divorce cases in a number of States can be explained by changes in the external environment, i.e. societal and economic, rather than the internal one, i.e. the court system. The decrease in the number of incoming cases in **Latvia and Portugal** between 2012 and 2010, for instance, has been related to factors such as the economic crisis, the decline in the number of marriages or depopulation.

In **Romania**, the Clearance Rate of litigious divorce cases is low and has decreased compared to the 2012 figures. Equally, the Disposition Time has doubled since the last evaluation despite the decrease in the number of cases in 2012 and 2013, which can be explained by social causes and the introduction of alternative instruments to litigious divorces (e.g. procedures before notaries). However, a lower number of incoming cases does not necessarily imply an improvement of the Clearance Rate and of the Disposition Time, because the cases reaching the courts might be more complex.

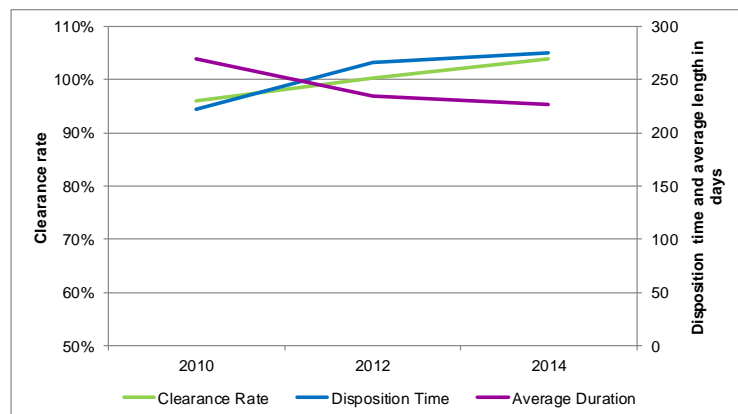
It is interesting to point out that the Disposition Time and the average length of procedures calculated by the States or entities using the real duration of the cases for litigious divorce coincide to a great extent for 15 (out of 21) states for which data is available. Only for 6 States or entities is there a significant difference between these indicators.

Both the average length of proceedings and the calculated Disposition Time vary considerably between the different States and entities, depending on the family law procedures that apply in each system, the method of calculation of the average length and the volume of cases handled by the courts. Rapid procedures (Disposition Time is less than 100 days) can be noted in **Albania, Azerbaijan, Georgia, Lithuania, Republic of Moldova, Russian Federation and Ukraine** and longer procedures (Disposition Time is more than 500 days) in **France** (reported average length of 666 days), **Italy** and **Monaco**. The reported average length of proceedings has been decreasing over the past six years, in particular in **Bosnia and Herzegovina, Denmark, Estonia, Netherlands, “the former Yugoslav Republic of Macedonia” and UK-England and Wales** and has remained more or less stable in more than twenty countries, including for example **Azerbaijan, Germany and Montenegro**. On the contrary, it has been increasing in **France, Latvia and Turkey**. In **Latvia**, for instance, the number of incoming divorce cases has been decreasing but the Clearance Rate, the calculated Disposition Time and the reported average length of proceedings has deteriorated between 2012 and 2014. In other states, a lower number of incoming cases has allowed courts to reduce the backlog and the Disposition Time. However, to measure the real situation of court efficiency in these regards, the average length of proceedings should be considered in the light of the number of cases addressed by the courts.

Comparisons between jurisdictions should be made with some caution and should necessarily take into account the specific features of divorce proceedings in different States; these can significantly influence the result of the analysis. **France** is a noteworthy case in this regard: the litigious divorce procedure in this country consists of two stages, a conciliation phase and the real divorce procedure when the divorce is pronounced by a judge. However, as earlier noted, the average length of proceedings includes the period between the two stages, which is left to the discretion of the parties and can last up to 30 months. Moreover, a legal reform enacted in 2004 generated an increase of divorces by mutual consent, which means that the litigious divorce cases that are brought to court are the most complicated cases which require a long time to be completed, given the level of disagreement between the parties.

### 5.2.2.2 Employment dismissal cases

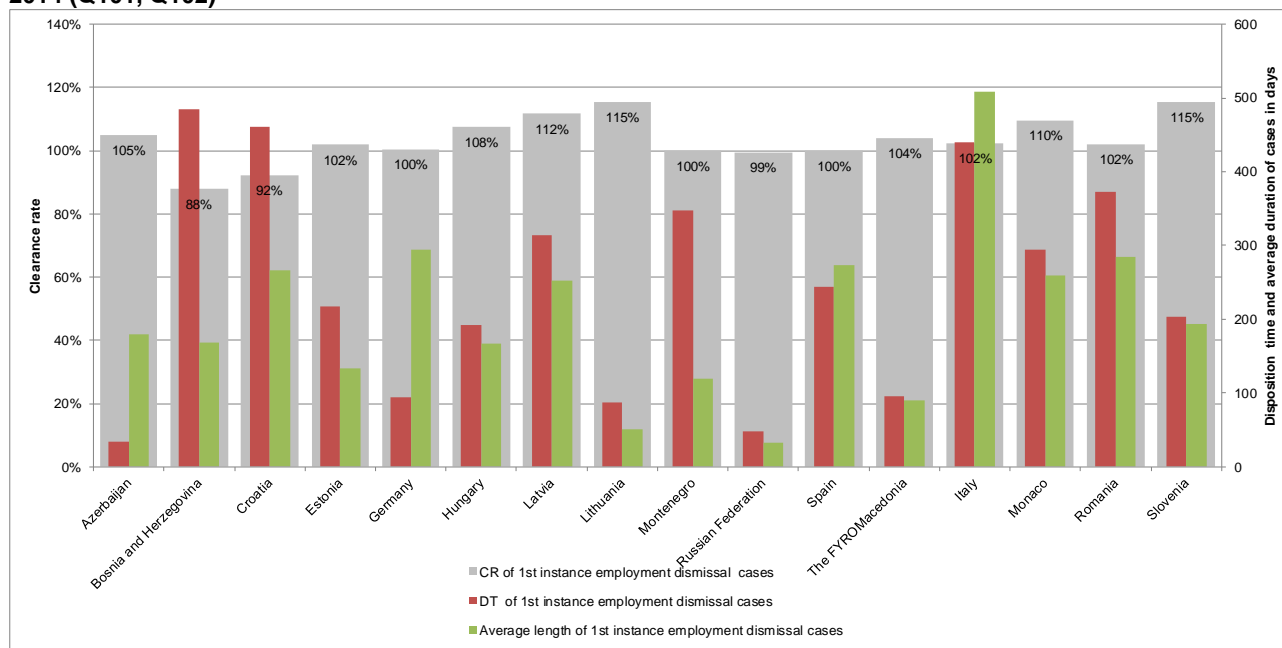
**Figure 5.12 Evolution of European average Clearance Rate, Disposition Time and average length of 1st instance employment dismissal cases between 2010 and 2014 (Q101, Q102)**



Employment dismissal cases represent the only category, among three specific categories of civil cases analysed in this report, which registered a positive Clearance Rate in 2014. Between 2010 and 2014 the average Clearance Rate of employment dismissal cases constantly increased from 96 % in 2010 to 104 % in 2014. Instead, a contrasting trend can be noted with regard to the duration of these cases: the calculated Disposition Time shows a negative trend while the reported average length has regularly improved. As earlier noted, because of important

differences between States regarding the method of calculation of the average length, the Disposition Time serves better the purpose of comparing the length of proceedings between States; instead, the average length helps explain developments within the same State over the years.

**Figure 5.13 Clearance Rate, Disposition Time and average length of 1<sup>st</sup> instance employment dismissal cases in 2014 (Q101, Q102)**



The Clearance Rate of employment dismissals in the great majority of States is higher than 100 %. The ability of courts to reduce the backlog is particularly high in **Ireland, Latvia, Lithuania, Poland, Slovenia** and **UK-England and Wales** (Clearance Rate above 110 %). In **Lithuania**, this has had a positive impact in the reduction of the Disposition Time and of the reported average length for this type of cases. A more irregular trend can be observed in the other States or entities. In **UK-England and Wales**, despite the sharp increase in the Clearance Rate from 90 % in 2012 to 150 % in 2014, the reported average length remained more or less constant. This can be explained by the fact that the increase in the Clearance Rate was largely due to the reduction in the number of incoming cases following the introduction of fees for employment tribunals.

Few states, such as **Bosnia and Herzegovina, Croatia, Cyprus, France or Slovakia** have a low Clearance Rate and a very high Disposition Time and/or average length of proceedings (above one year). The courts in these States are struggling to cope with the volume of cases, which has led to delays and backlogs. However, in the case of **Bosnia Herzegovina** and **Croatia** the figures for the Disposition Time are much higher (approx. between 1.5 and 3 times) than those of the reported average length of proceedings. No explanation has been provided for such an important difference between the two evaluations. Other States, such as **Andorra, Belgium and Italy**, have difficulties in coping with the volume of cases because despite the positive Clearance Rate, the Disposition Time is very high (more than one year).

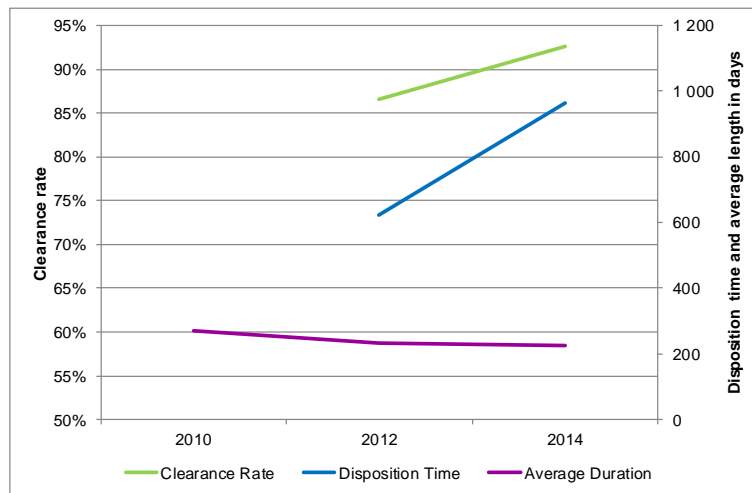
Of the 26 States or entities that were able to calculate the length of proceedings in first instance, **Lithuania**, the **Russian Federation** and “**the former Yugoslav Republic of Macedonia**” have very short timeframes (less than 100 days) while the average length for this category of cases is more than 300 days in **France, Italy** and **Turkey**.

The variations of the performance indicators regarding employment dismissal cases have been justified in several instances (e.g. **Cyprus, Latvia or Spain**) on the basis of external factors, notably the economic crisis, which has resulted in a general increase in the number of cases, especially of complicated cases and in delays and longer proceedings. In other states, a reduction of the backlog and of the duration of proceedings has been attributed to the increased efficiency of the justice system. In **Estonia**, the decrease in the numbers of pending and resolved employment dismissal cases in 2012, accompanied by a reduction in the average length, has been linked to the fact that more cases are effectively resolved by the labour dispute committees and therefore fewer cases arrive before the courts. In **Hungary**, the decrease in the number of pending employment dismissal cases over the period 2012-2014 and the reduction in the Disposition Time are also a consequence of the establishment of new labour courts and labour divisions in 2013, which has increased the overall effectiveness of the system. In **Slovenia**, the number of pending employment dismissal cases has decreased because labour courts give priority to these cases, within the general category labour disputes and pay particular attention to resolving them promptly.

On a more general note, with regard to employment dismissal cases, it should be underlined that the length of court proceedings can also be explained by the fact that some states, through their legal proceedings, have established procedural guarantees and negotiation procedures to strike a balance between the functioning of the economic system and the individual protection of employees. Court efficiency cannot be the only issue at stake in such procedures. States may wish to establish, through their judicial procedures, a proper balance between the functioning of the economic system and the individual protection of employees. In any case, the average length of proceedings must be considered together with the variations in the volume of cases concerned in order to draw in-depth conclusions.

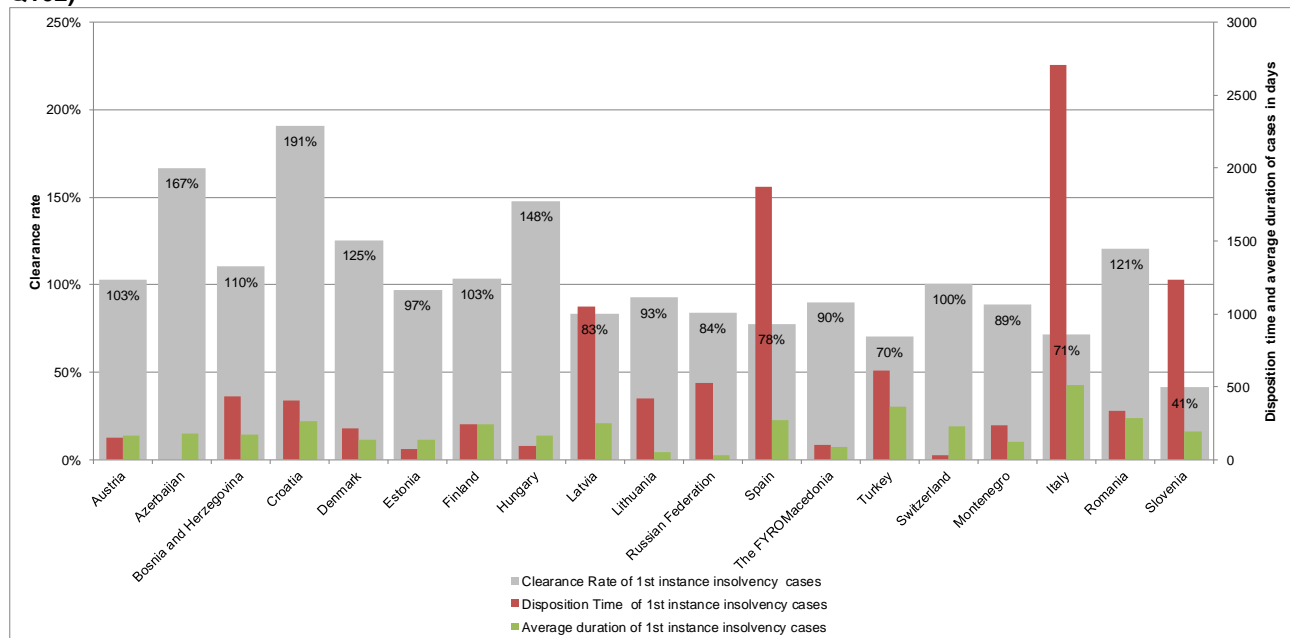
### 5.2.2.3 Insolvency cases

**Figure 5.14 Evolution of European average Clearance Rate, Disposition Time and length of 1st instance insolvency cases between 2010 and 2014 (Q101, Q102)**



The data for 2014 confirms the results from the last evaluation, namely that it is in respect of insolvency proceedings that States or entities experience the greatest difficulties in managing the caseload. Despite an increase since 2012, the average Clearance Rate remains low (93 %). In particular, 60 % of the States for which it was possible to calculate the Clearance Rate in 2014 were able to solve fewer cases than those received. The development with regard to the average Disposition Time of insolvency cases is also of a serious concern because these cases would require more than two and a half years to be solved.

**Figure 5.15 Clearance Rate, Disposition Time, average length of 1<sup>st</sup> instance insolvency cases in 2014 (Q101, Q102)**



While the overall performance of States in dealing with incoming insolvency cases is not a very positive one, Clearance Rate figures in several States are particularly worrying. **Andorra**, for instance, has an extremely low rate (19 %); in the **Czech Republic** and in **Slovenia** the rate ranges around 45 % and in 6 other States (i.e. **Armenia**, **Belgium**, **Ireland**, **Republic of Moldova**, **Turkey** and **Israel**) the Clearance Rate varies between 60 % and 70 %. As already highlighted in the case of **Andorra** (and in general with regard to small States or entities), figures might not be indicative of the real situation considering the very low absolute number of cases concerned.

The reported average length of proceedings, which can be studied for 26 States or entities, can be considered as a complement to the Disposition Time indicator. The reported duration of case proceedings in 2014 was particularly long in **France, Italy and Turkey**.

The length of proceedings, however, must be studied together with the volume of cases and the complexity of the procedures considered in order to allow in-depth conclusions on court efficiency. In **Ireland**, for instance, the significant increase in the number of incoming and resolved insolvency cases between 2013 and 2014 reflects the introduction of a new range of statutory personal insolvency remedies since the previous evaluation. In **Slovenia**, the high number of incoming insolvency cases and the difficulties of courts in keeping up with the caseload can be attributed to a number of factors. First, the financial crisis has resulted in a higher number of insolvent companies as well as in a higher number of proceedings of bankruptcy of physical persons. Secondly, the amendment of insolvency legislation in 2013 abolished the right of legal persons to apply for legal aid for financing the advances of the costs of the bankruptcy proceedings, but they are now exempt from paying the advance in bankruptcy proceedings. Thirdly, the number of pending cases has increased and will probably increase even further, due to the rules governing when the case is deemed resolved. For insolvency cases, this can occur when the assets are liquidated and the creditors are paid (or in case of personal bankruptcy, if the dismissal of debts was requested, until such a decision is taken). In cases of big companies as debtors, the sale of all assets can take various years; and in cases of physical persons the “probation” period, which lasts a minimum of 2 years and maximum of 5 years, must elapse before the court can decide on the dismissal of debts. In **Israel**, the continuous increase of insolvency cases in the past years can also be explained with reference to: economic factors, i.e. the global recession and financial crisis; the legislative setting related to the high probability for debtors to be granted a discharge under the current legislation and the rising awareness of the possibility of receiving a discharge; and social factors, such as a possible reduction in the social stigma associated with bankruptcy.

The impact of the economic situation on the number of incoming cases and the amount of backlog can also explain the deterioration of the situation in the **Czech Republic, Latvia and Spain** and the positive trend registered in **Denmark**, in the context of the 2014 evaluation, due to an improved business situation.

Some general observation can be made based on an overall analysis of state performance with regard to insolvency cases. The economic crisis is certainly one of the main reasons for the increased volume of incoming cases and the extended duration of insolvency cases. Another factor is the level of complexity of judicial procedures in the different national systems, which is often necessary to ensure that insolvency procedures take duly into account both the possibilities for economic restoration of firms and the protection of the individual rights of their employees. For instance, the specificity of the bankruptcy legislation and procedures which make it possible for companies in financial difficulty to remain provisionally under court monitoring, may explain some of the extended durations. However, the balance between market flexibility and social protection might differ between the states.

### 5.2.3 Ratio of first /second instance cases

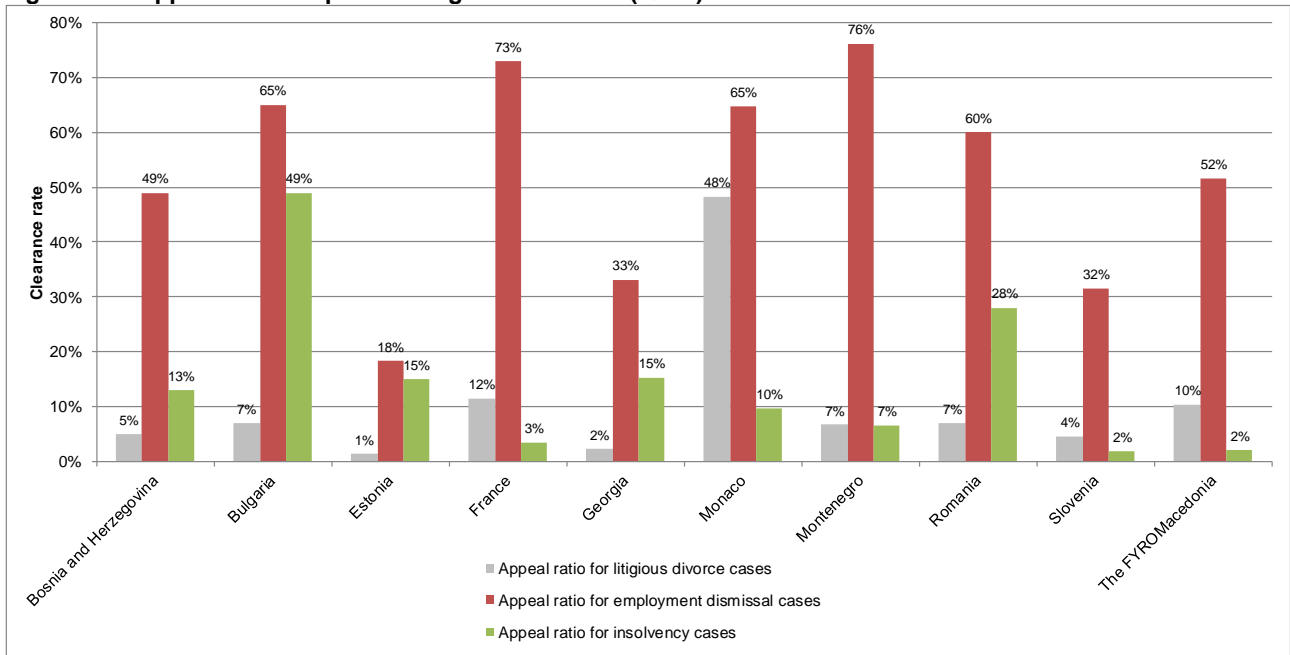
The frequency with which first instance decisions on specific categories of civil cases are challenged in second instance can provide an insight into the functioning of judicial systems in different respects. In addition to providing a clearer picture of the workload of courts it may also suggest an understanding of the level of overall efficiency of the court system in a specific country. However, additional research is required to assess whether lower appeal ratios are the result of a high level of trust and confidence in the judiciary or rather the result of obstacles to an effective access to justice, such as for instance high costs of justice (both court fees and legal assistance and representation).

Despite the increasing figures in the course of the last three evaluations, the number of States able to provide information on the appeal rate of decisions regarding litigious divorces, employment dismissals and insolvency cases is still very low. It ranges between 24 % of the states providing information on insolvency cases and less than 36 % providing figures on divorce cases and employment dismissals.

On average, at the European level, decisions on employment dismissal cases show the highest rate of appeal among the three categories. There has nevertheless been a receding trend over time and in 2014 the first/second instance rate was 39 %. By contrast, the rate of appeal of decisions in litigious divorces and insolvency cases has increased slightly and in 2014 it was set, respectively, at 8 % and 14 %.



**Figure 5.16 Appeal ratio of special categories of cases (Q102)**



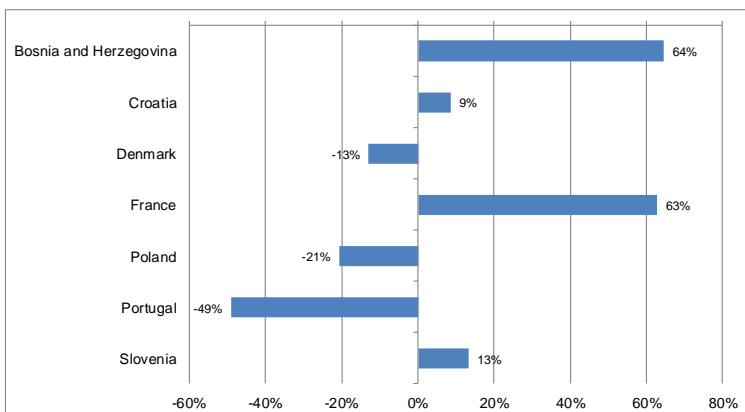
The activity of courts at second instance is particularly high in some States. **Romania** and **Bulgaria**, especially, show a high rate of appeal in second instance of employment and insolvency cases. Decisions on divorce and employment cases are challenged at a very high frequency in **Monaco** (48%) and in **Bosnia and Herzegovina** (49%). **France** and **Montenegro** also show a very high rate of appeal of litigious divorce decisions. These figures should be qualified in the light of the absolute numbers of court cases, because where numbers are relatively small, the observed ratios will be rather high. Other States show a very low appeal rate of the decisions on litigious divorces (less than 1 % in **Azerbaijan**, **Italy** and the **Russian Federation**), employment dismissals (less than 3 % in **Azerbaijan**, **Italy** and **Germany**) and insolvency cases (around 2 % in **Slovenia** and “the former Yugoslav Republic of Macedonia”).

Almost no information is available regarding the reasons for higher or lower appeal rates between first instance and second instance and length of proceedings; such data would make it possible to analyse more in depth the situation in each State. Improving this information should be a clear objective for the next evaluation scheme with a view to understanding the factors behind case flow management and proposing specific tools to strengthen court efficiency accordingly.

#### 5.2.4 Variation of mediation procedures

In different instances, the comments received in State reports highlight that conciliation and mediation procedures have a filter effect on the number of incoming and resolved civil and commercial cases. The figure below summarizes information on 8 States or entities for which it was possible to gather information on the volume of these procedures and their variation over time. 2 other states, **Montenegro** and “the former Yugoslav Republic of Macedonia”, provided data but its variation is unusually high due to very low absolute figures in the previous evaluation cycle. That is logical considering that mediation is recently initiated in these states. For this reasons they have not been included in the figure below.

**Figure 5.17 Variation of civil mediation procedures between 2012 and 2014 (Q167)**



Mediation and conciliation procedures in civil law are also employed in other states in relation to family and employment disputes, including in **Bulgaria**, **Hungary**, **Italy**, **Lithuania** and **Republic of Moldova**, but no specific data was provided for these states. The data shows an increasing trend in the use of these procedures in some states, however, it should be once again highlighted that very few states were able to provide information

in this regard. The data should be analysed with care, not only because of the scarcity of the information available, but also for the reason that the reported data regarding the use of mediation procedures in the civil law area contains big differences due to the role and/or function of these procedures in the specific jurisdictions concerned (e.g. as part of court procedures or as an alternative thereto). Therefore, the expected filtering effect is not always immediately detectable.

### 5.3 Administrative justice

This section addresses separately court workload and performance in relation to cases where one of the parties of the dispute is a public authority. Examples include the rejection of an asylum application or the refusal of an authorization to construct. While disputes between citizens and public authorities can be settled as civil law proceedings, in a number of states, administrative law is a separate area of law. In these cases, the settlement of administrative disputes can fall within the competence of specialised administrative law tribunals or units within a court of general jurisdiction, or may be subject to separate administrative law procedures.

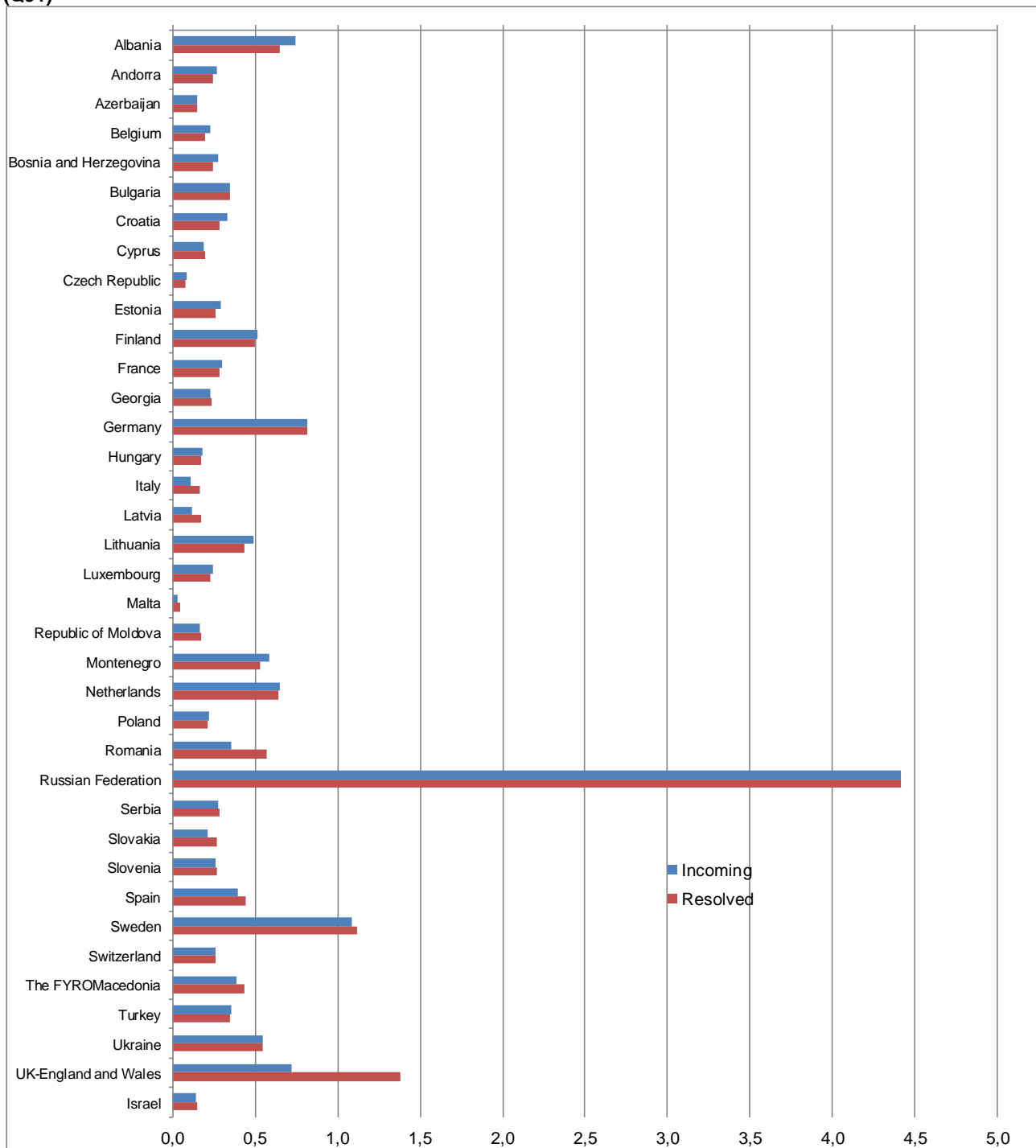
#### 5.3.1 Administrative justice – 2014 data

##### *Court caseload in the administrative sector*

The figure below provides information on 37 States or entities for which data on administrative law cases was made available. With the exception of the **Russian Federation** and **Sweden** (respectively 4,4 and 1.1 cases per 100 inhabitants), first instance courts in the remaining States or entities received less than 1 administrative case per 100 inhabitants. The outstanding high figure in the case of the **Russian Federation** can be related to the broad definition of administrative offences under the federal Administrative Offences Code. The overall average figure of the workload related to first instance administrative law cases in the assessed states in 2014 is 0,5 (incoming and resolved) case per 100 inhabitants. As earlier highlighted, however, administrative law cases constituted only 5 % of the total volume of incoming cases (both criminal and 'other than criminal') in 2014.



**Figure 5.18 Number of 1st instance incoming and resolved, administrative law cases per 100 inhabitants in 2014 (Q91)**



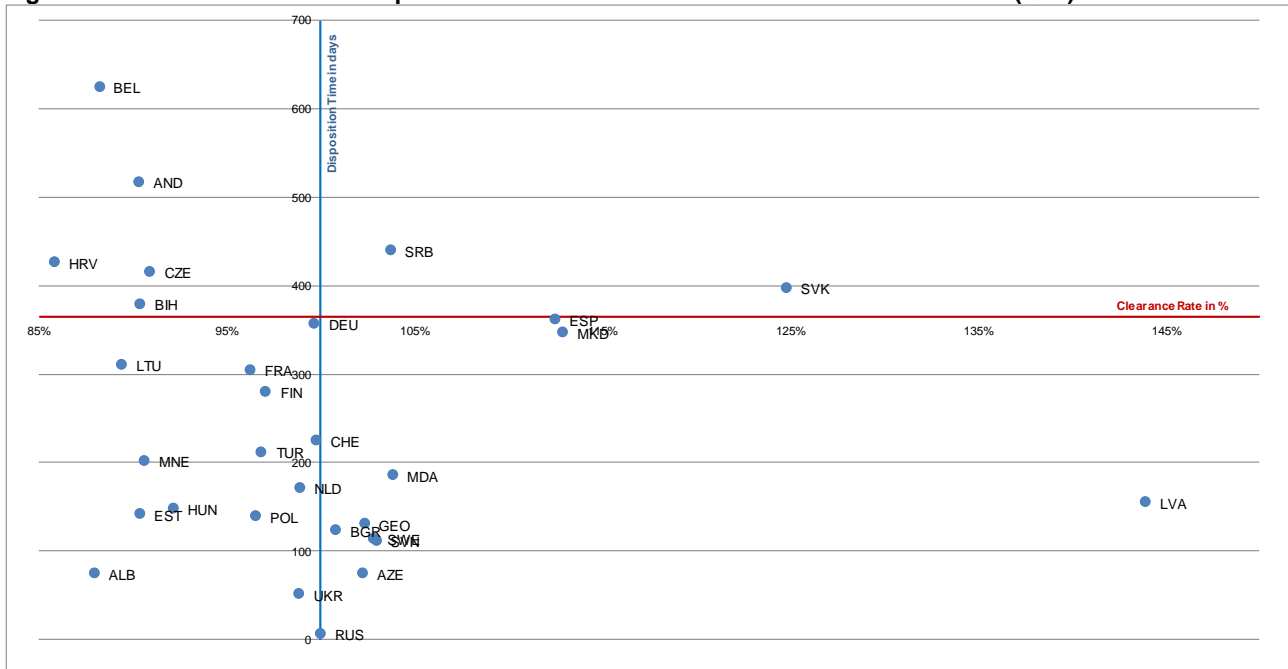
**Performance indicators regarding administrative law cases**

On average, the 2014 performance indicators regarding administrative law cases handled at first instance can be considered as positive. Courts, in average for Europe, managed to resolve the same amount of cases as those received. The average European Clearance Rate of 107 % is even over 100 % and the average Disposition Time calculated from the Disposition Time of all States or entities was slightly lower than a year (341 days). This figure is higher than the corresponding one for civil and commercial litigious cases (237 days).

37 States and entities provided relevant figures on the basis of which it was possible to calculate the Clearance Rate and Disposition Time (except for **Luxembourg**). The figure below illustrates the situation of different States or entities with regard to the Clearance Rate and Disposition Time for administrative law cases in 2014. It offers an insight into the possible evolution of the backlogs and the time necessary to

process pending cases in specific countries. To facilitate the visual representation of the states in the figure, 5 states (**Cyprus, Malta, Italy, Romania and UK-England and Wales**) were not included. However, the figures regarding their performance will be analysed and commented below.

**Figure 5.19 Clearance Rate vs. Disposition Time for administrative cases of 1st instance (Q91)**



For better visibility of the figure the data for **Cyprus, Latvia, Malta** and **UK-England and Wales** is not shown due to high values for Disposition time or Clearance Rate for administrative cases. The Disposition Time for **Cyprus, Latvia, Malta** is 984, 1 408 and 1775 days respectively and Clearance Rate for **UK-England and Wales** is 192 %.

A majority of states in 2014 were able to cope satisfactorily with the volume of incoming administrative cases at first instance. 16 States or entities in the lower right quadrant of the Chart (**Azerbaijan, Bosnia and Herzegovina, Bulgaria, Georgia, Germany, Latvia, Republic of Moldova, Romania, Russian Federation, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”, UK-England and Wales and Israel**) have a positive Clearance Rate (100% or above) and the Disposition Time remains below 365 days. The Clearance Rate was particularly high in **Romania** (161 %) and in **UK-England and Wales** (192 %) and their Disposition Time was below six months. As noted in relation to civil and commercial litigious cases, the Disposition Time in some countries (e.g. **Azerbaijan, Russian Federation, Ukraine**) is particularly low. Additional analysis may be necessary to understand the reasons behind these figures and the resulting impact on the quality of court services.

The situation in 7 other states positioned adjacent to the lower part of the Disposition Time axis seems manageable and can also be considered as satisfactory. In **Finland, Netherlands, Poland, Turkey** and **Ukraine** the Clearance Rate is slightly below 100 % but this should not negatively affect the evolution of the backlogs, considering the positive Disposition Time (approx. between 2 and 9 months). Similarly, in **Serbia** and **Slovakia** (in the upper right quadrant) the positive Clearance Rate should offset the longer Disposition Time (over one year) for administrative cases in terms of possible negative impact on court efficiency.

The situation is more difficult and should be monitored in a few States or entities which have a low Clearance Rate or a very high Disposition Time, or both: they experience difficulties in coping with the volume of incoming cases. Backlogs and lengths of proceedings are likely to deteriorate in the future if no specific measures are taken. This is the case of **Andorra** (Disposition Time: 517 days; Clearance Rate: 90 %),<sup>39</sup> **Belgium** (Disposition Time: 625 days; Clearance Rate: 88 %), **Croatia** (Disposition Time: 426 days; Clearance Rate: 86 %), **Czech Republic** (Disposition Time: 415 days; Clearance Rate: 91 %), **France** (Disposition Time: 305 days; Clearance Rate: 96 %), **Lithuania** (Disposition Time: 310 days; Clearance Rate: 89 %) and less so of **Albania** (Disposition Time: 74 days; Clearance Rate: 88 %), **Estonia** (Disposition Time: 141 days; Clearance Rate: 90 %), **Hungary** (Disposition Time: 148 days; Clearance Rate: 92 %) and **Montenegro** (Disposition Time: 202 days; Clearance Rate: 91 %). The situation should be also monitored in

<sup>39</sup> However, data might not be indicative considering the very low absolute number of cases concerned.

**Cyprus, Italy** and **Malta** where the Clearance Rate is higher or significantly higher than 100 % but the Disposition Time is very long and ranges between 2,7 and 3,8 years. Measures for strengthening the courts' productivity are already in place in some of these cases.

### **5.3.2 Administrative law cases – 2010 / 2014 evolutions**

#### ***Evolution of the performance indicators for administrative law cases***

The Table below presents the evolution of the Clearance Rate for first instance administrative cases between 2010 and 2014. The reported data and the conclusions that can be drawn therefrom should be considered cautiously, as the consistency of some of the figures might vary within the period observed, which can eventually influence performance trends over time.

Table 5.20 Clearance Rate of 1st instance administrative cases 2010 – 2014 (Q91)

States/Entities	Clearance Rate of 1st instance administrative cases			
	2010	2012	2014	Trend
Albania	83%	91%	88%	
Andorra	131%	93%	90%	
Armenia	89%	94%	NQ	
Austria	NA	NAP	NA	
Azerbaijan	NAP	96%	102%	
Belgium	NA	NA	88%	
Bosnia and Herzegovina	83%	105%	90%	
Bulgaria	98%	92%	101%	
Croatia	108%	41%	86%	
Cyprus	74%	74%	103%	
Czech Republic	NA	NAP	91%	
Denmark	NA	NAP	NAP	
Estonia	91%	106%	90%	
Finland	99%	101%	97%	
France	107%	107%	96%	
Georgia	108%	113%	102%	
Germany	96%	102%	100%	
Greece	80%	143%	NA	
Hungary	96%	108%	92%	
Ireland	NAP	NAP	NAP	
Italy	316%	280%	156%	
Latvia	103%	130%	144%	
Lithuania	83%	98%	89%	
Luxembourg	93%	70%	94%	
Malta	29%	40%	149%	
Republic of Moldova	92%	105%	104%	
Monaco	NA	NA	NAP	
Montenegro	99%	87%	91%	
Netherlands	107%	98%	99%	
Norway	NAP	NAP	NAP	
Poland	95%	100%	97%	
Portugal	NA	NA	NA	
Romania	71%	78%	161%	
Russian Federation	NA	100%	100%	
Serbia	86%	81%	104%	
Slovakia	102%	47%	125%	
Slovenia	114%	110%	103%	
Spain	102%	124%	113%	
Sweden	88%	105%	103%	
Switzerland	105%	107%	100%	
The FYROMacedonia	65%	112%	113%	
Turkey	91%	127%	97%	
Ukraine	96%	130%	99%	
UK-England and Wales	85%	85%	192%	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel	..	100%	101%	
<b>Average</b>	99%	102%	107%	
<b>Median</b>	95%	101%	100%	
<b>Minimum</b>	29%	40%	86%	
<b>Maximum</b>	316%	280%	192%	

In the last three evaluations, 2010, 2012 and 2014, the Clearance Rate of administrative law cases at first instance has constantly improved. On average this indicator has increased from 99 % in 2010 to 107 % in 2014. However, important differences can be highlighted between the States and entities assessed. Indeed, the general average improvement is affected by the high increase of the CR in a few specific states (e.g. **Romania** and **Slovakia**), while in a relevant number of States or entities the situation has deteriorated in the last six years or at least since the last measurement.

5 states (**Cyprus, Latvia, Malta, Romania** and **UK-England and Wales**) show a regular trend of improvement of their Clearance Rate with regard to administrative cases at first instance. The strong increase of the Clearance Rate of administrative cases in **Malta**, from 29 % in 2010 to 149 % in 2014, should however be interpreted in the light of two factors. On the one hand, the set-up of the Administrative Court in late 2010 meant that the first reliable set of data for the CEPEJ evaluation was provided in 2012; on the other, the variations between the last two measurements are related to an increase of the judicial personnel at the Administrative Review Tribunal.

By contrast, a continuous decrease of the Clearance Rate can be noted in the course of the last three measurements in **Andorra, France** and **Italy**. In the first two cases the Clearance Rate has dropped from positive values to negative ones (i.e. below 100 %), while in the case of **Italy**, the Clearance Rate figure has remained positive. The decrease from 316 % in 2010 to 165 % in 2014, however, might have a detrimental impact on the reduction of the backlog of administrative cases in **Italy** over time.

The remaining States or entities show a discontinued trend in the evolution of their Clearance Rate. In particular, in the period between 2012 and 2014, 16 other States or entities have experienced a decline of the Clearance Rate regarding administrative law cases at first instance. In **Georgia, Germany, Republic of Moldova, Slovenia, Spain, Sweden** and **Switzerland** the Clearance Rate has remained positive, despite the decreasing trend, while in **Albania, Bosnia and Herzegovina, Estonia, Finland, Hungary, Lithuania, Poland, Turkey** and **Ukraine** the indicator has developed towards negative values. The latter group of cases must be followed with attention, as the performance of the relevant judicial bodies could be at risk in the future, if this trend persists. However, as earlier noted, the data reported and their evolution over time should be addressed with care and the specific conditions in each country need to be taken into consideration. In some cases low Clearance Rate figures may not be directly related to the efficiency of the court system as such, but may rather be the result of other factors, including the organization of the court system in specific States or changes in the reporting methodology during the different monitoring cycles. In the case of **Bosnia and Herzegovina**, for instance, the decrease of the Clearance Rate between 2012 and 2014 (from 105 % to 90 %) is related to the higher number of reported cases (both first and second instance) computed in the 2014 figure, which is due to the way in which administrative law cases are dealt with by the court system in this country.

Major improvements of the Clearance Rate can be observed in **Croatia, Luxembourg, Serbia** and **Slovakia**. In the first two states, the Clearance Rate has increased but still remains below the 100 % threshold, while in the last two states negative figures have been converted to positive. In **Croatia**, the improvement can be explained by the reorganization of the court system, which resulted in the introduction of a two-instance administrative adjudication in 2012 and the establishment of four regional administrative courts handling first instance cases. In the case of **Slovakia**, it has been reported that the higher number of resolved administrative cases in the year 2014 was achieved as a result of the intensive effort of judges and courts to reduce the existing backlogs of administrative cases.

Table 5.21 Disposition Time of 1st instance administrative cases 2010 - 2014 (Q91)

States/entities	Disposition time of 1st instance administrative cases			
	2010	2012	2014	Trend
Albania	264	287	74	
Andorra	222	429	517	
Armenia	223	294	NQ	
Austria	NA	NAP	NA	
Azerbaijan	NAP	103	75	
Belgium	NA	NA	625	
Bosnia and Herzegovina	380	326	379	
Bulgaria	113	150	124	
Croatia	825	523	426	
Cyprus	1340	1270	1775	
Czech Republic	NA	NAP	415	
Denmark	NA	NAP	NAP	
Estonia	146	108	141	
Finland	238	248	280	
France	338	302	305	
Georgia	36	213	130	
Germany	373	354	357	
Greece	2003	1520	NA	
Hungary	202	147	148	
Ireland	NAP	NAP	NAP	
Italy	1037	886	984	
Latvia	439	300	155	
Lithuania	160	144	310	
Luxembourg	172	NA	NA	
Malta	2758	1457	1408	
Republic of Moldova	165	126	186	
Monaco	NA	NA	NAP	
Montenegro	119	210	202	
Netherlands	159	163	171	
Norway	NAP	NAP	NAP	
Poland	121	112	139	
Portugal	NA	NA	NA	
Romania	269	272	179	
Russian Federation	NA	11	7	
Serbia	535	497	440	
Slovakia	66	733	397	
Slovenia	139	130	112	
Spain	433	427	361	
Sweden	190	126	114	
Switzerland	229	217	225	
The FYROMacedonia	797	317	347	
Turkey	187	132	212	
Ukraine	65	33	51	
UK-England and Wales	384	446	169	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel	..	117	99	
<b>Average</b>	445	372	341	
<b>Median</b>	226	272	212	
<b>Minimum</b>	36	11	7	
<b>Maximum</b>	2758	1520	1775	

As regards the evolution of the Disposition Time of administrative cases, the Table above shows that, on average, court performance in relation to this indicator has improved over time. This confirms the trend highlighted in relation to civil and commercial litigious cases. The average Disposition Time, however, is higher for administrative law cases compared to civil and commercial litigious cases. In **Croatia, Latvia, Malta, Serbia, Slovenia, Spain** and **Sweden**, there has been a constant improvement of the Disposition Time of administrative cases at first instance. Of particular note, in the first three countries, the Disposition Time has almost halved between 2010 and 2014; nevertheless, the figure concerning **Malta** remains particularly high (almost 3,9 years). In other 10 States or entities (**Albania, Azerbaijan, Bulgaria, Georgia, Montenegro, Romania, the Russian Federation, Slovakia, UK-England and Wales** and **Israel**) the situation has improved in the course of the last two measurements. With the exception of **Slovakia** (13,2 months) the Disposition Time of administrative law cases in these countries is below 7 months.

By contrast, a constant deterioration of the calculated Disposition Time over the three evaluation cycles can be observed in **Finland**, the **Netherlands** and (more seriously) **Andorra**. Between 2012 and 2014 the Disposition Time of administrative cases has expanded in 14 other countries (**Bosnia and Herzegovina, Cyprus, Estonia, France, Germany, Hungary, Italy, Lithuania, Republic of Moldova, Poland, Switzerland, “the former Yugoslav Republic of Macedonia”, Turkey** and **Ukraine**). However, in these cases - except for **Andorra** (Disposition Time 517 days), **Cyprus** (Disposition Time 1175 days) and **Italy** (Disposition Time 984 days) – the situation can still be considered as acceptable because the maximum Disposition Time is approximately one year.

The evolutions of the Disposition Time of administrative cases discussed here should be considered together with the changing volume of pending cases in the course of the different measurements. The Table below illustrates the evolution of the volume of first instance administrative cases on 31 December between 2010 and 2014. As already noted, a number of States or entities have reported some horizontal incoherence in the data provided, due to several factors, including the organization of the court system between first instance and second instance (e.g. **Bosnia and Herzegovina**) or the change of methodology of presentation of data (e.g. **Greece**).

Table 5.22 Number of 1st instance administrative pending cases 31 Dec 2010 - 2014 (Q91)

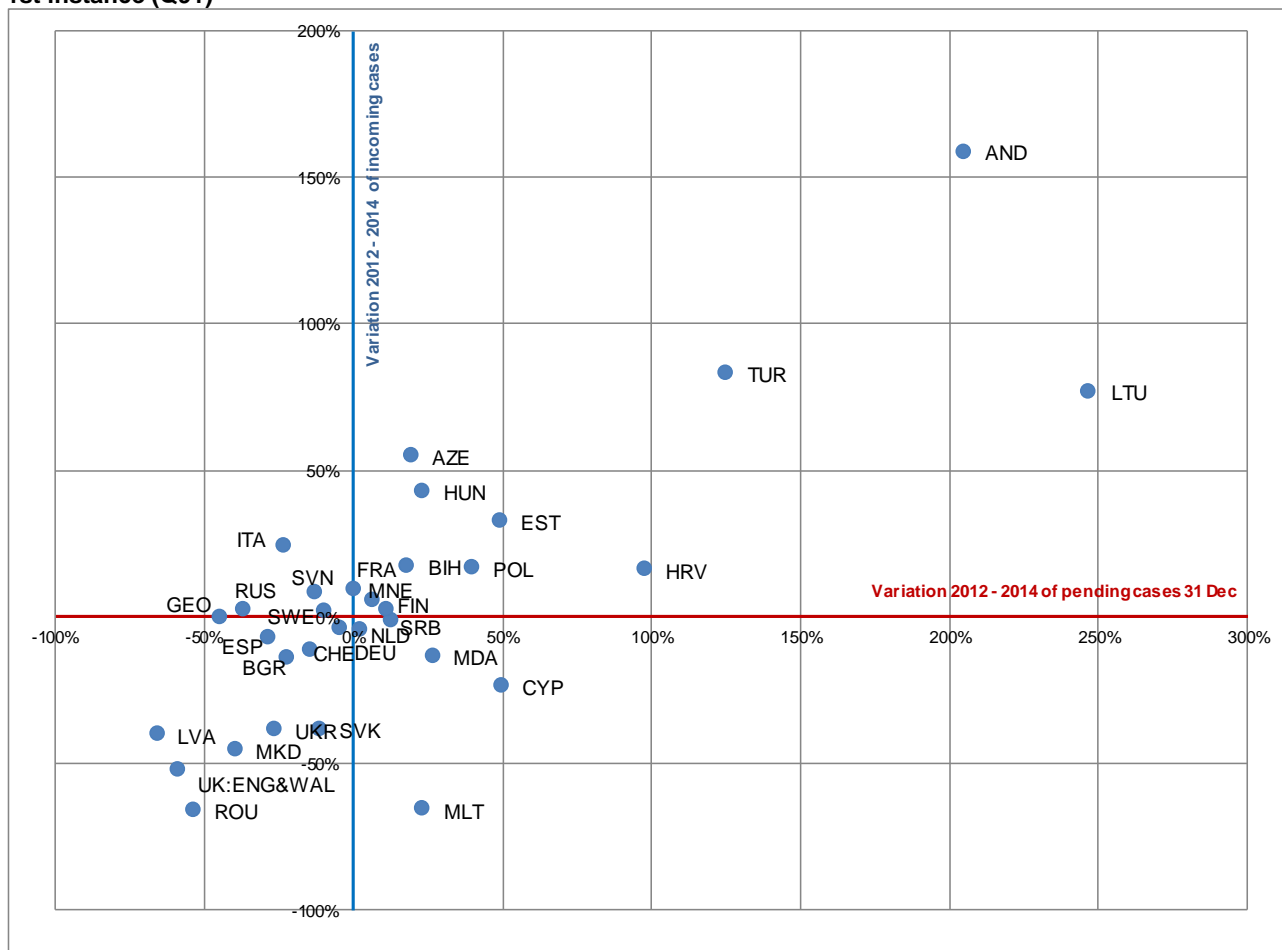
States/entities	Number of 1st instance administrative pending cases 31 Dec			
	2010	2012	2014	Trend
Albania	2700	3811	3841	
Andorra	145	87	265	
Armenia	4065	8912	NQ	
Austria	NA	NAP	NA	
Azerbaijan	NAP	2471	2946	
Belgium	NA	NA	37880	
Bosnia and Herzegovina	7837	8323	9814	
Bulgaria	8261	10886	8444	
Croatia	35303	7075	13976	
Cyprus	5288	5395	8074	
Czech Republic	NA	NAP	9365	
Denmark	NA	NAP	NAP	
Estonia	1301	890	1326	
Finland	20217	18930	21058	
France	173246	157470	157262	
Georgia	1229	5693	3149	
Germany	683432	677447	645014	
Greece	421946	383402	NA	
Hungary	7584	5479	6734	
Ireland	NAP	NAP	NAP	
Italy	509246	348896	267247	
Latvia	5423	4280	1461	
Lithuania	2806	3128	10845	
Luxembourg	129	NA	NA	
Malta	136	555	683	
Republic of Moldova	2333	2460	3112	
Monaco	NA	NA	NAP	
Montenegro	1179	1701	1810	
Netherlands	53410	50010	51020	
Norway	NAP	NAP	NAP	
Poland	21267	22132	30991	
Portugal	NA	NA	NA	
Romania	52374	133484	61838	
Russian Federation	NA	185166	116210	
Serbia	20296	21509	24262	
Slovakia	7838	17815	15772	
Slovenia	2320	1936	1682	
Spain	513236	285005	203406	
Sweden	49538	37675	33986	
Switzerland	13267	15190	13016	
The FYROMacedonia	13810	14228	8577	
Turkey	198349	69700	156595	
Ukraine	289486	44360	32490	
UK-England and Wales	749178	894364	366403	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel		3483	3276	
<b>Average</b>	114064	98568	66587	
<b>Median</b>	10764	14228	13016	
<b>Minimum</b>	129	87	265	
<b>Maximum</b>	749178	894364	645014	



In line with the overall improvement trend of the two performance indicators (Clearance Rate and Disposition Time) in the administrative justice sector, data collected from the last three evaluations shows, a general decrease of the number of pending administrative law cases (by 13,6 % in 2010-2012 and by 32,4 % in 2012-2014). Between 2012 and 2014 half of the States or entities (17) for which information was provided reduced the volume of pending cases while the other half registered an increase compared to the 2012 data. Court performance related to the ability to reduce the backlog of administrative law cases has been particularly positive in **Bulgaria, Georgia, Romania, Slovakia, Switzerland, “the former Yugoslav Republic of Macedonia”** and **UK-England and Wales**. These States or entities have been able to invert the increasing trend of the backlog recorded in 2012 and eventually reduce the number of pending cases in the last measurement. A positive trend can also be noted in 8 other states, where the stock of pending cases has progressively decreased between 2010 and 2014 (**France, Germany, Italy, Latvia, Slovenia, Spain, Sweden and Ukraine**).

These figures, however, need to be interpreted in context. An increase or decrease of the backlog may be related to the level of court efficiency but can also be influenced by other factors, including the number of incoming cases. The figure below, therefore, illustrates the possible relationship between the evolution of the backlog over time and the volume of incoming administrative cases in specific States or entities. However, it should be acknowledged that variations of the amount of pending cases might also be influenced by other circumstances, such as the reporting methodology, alterations of the economic and social context and changes in administrative law or other legal reforms affecting the organization of court workload in a specific country.

**Figure 5.23 Variation of incoming cases vs. pending cases between 2012 and 2014 for administrative cases of 1st instance (Q91)**



The figure highlights the positive performance of a group of States or entities that were able to reduce the backlog despite an increase in the number of incoming cases. Examples in this regard include **Italy** (24 % increase of incoming cases and 23 % reduction of the backlog), the **Russian Federation** (3 % increase of incoming cases and 37 % reduction of the backlog), **France** (10 % increase of incoming cases and 0,1 % reduction of the backlog), **Israel** (9 % increase of incoming cases and almost 6 % reduction of the backlog), **Slovenia** (8 % increase of incoming cases and 13 % reduction of the backlog) and **Sweden** (2 % increase of incoming cases and almost 10 % reduction of the backlog). The significance of these figures should also

take into consideration the Disposition Time indicator, especially when it is particularly high (e.g. **Italy**, 984 days in 2014) or low (e.g. the **Russian Federation**, 7 days in 2014).

The figure also shows that the decreasing number of pending cases recorded in some States or entities between 2012 and 2014 (e.g. **Bulgaria, Germany, Latvia, Romania, Slovakia, Spain, Switzerland, “the former Yugoslav Republic of Macedonia”, Ukraine and UK-England and Wales**) was partly related to a lower number of incoming cases rather than to court efficiency solely. In **Spain**, the decrease in the number of incoming cases is related to a number of factors, including the introduction of court fees for natural persons and of a mandatory requirement to be assisted by a lawyer to file an administrative case complaint. Similarly, in the **UK-England and Wales** the lower volume of incoming administrative law cases, in 2014, is a result of changes of the rules in administrative proceedings, particularly with regard to the mandatory reconsideration for social security/child benefit cases (resulting in more cases being closed prior to going before a tribunal) and the implementation of fees for employment tribunals.

By contrast, the situation in those states where the number of pending cases has either increased despite a decrease in incoming cases (e.g. **Cyprus, Malta**), or increased considerably more than the increase in the number of incoming cases (e.g. **Estonia**) should be monitored more closely. In **Cyprus**, for instance, the increase in the number of pending cases during the last measurement is a result of the bail decision which prompted a high number of lengthy and complicated administrative cases. In **Estonia**, the increase of incoming cases in administrative courts is due to a rise of complaints from prisoners and the matter has been addressed through modifying the procedural law that makes it easier to return unfounded complaints.

## 5.4 Criminal justice

### 5.4.1 Criminal justice – 2014 data

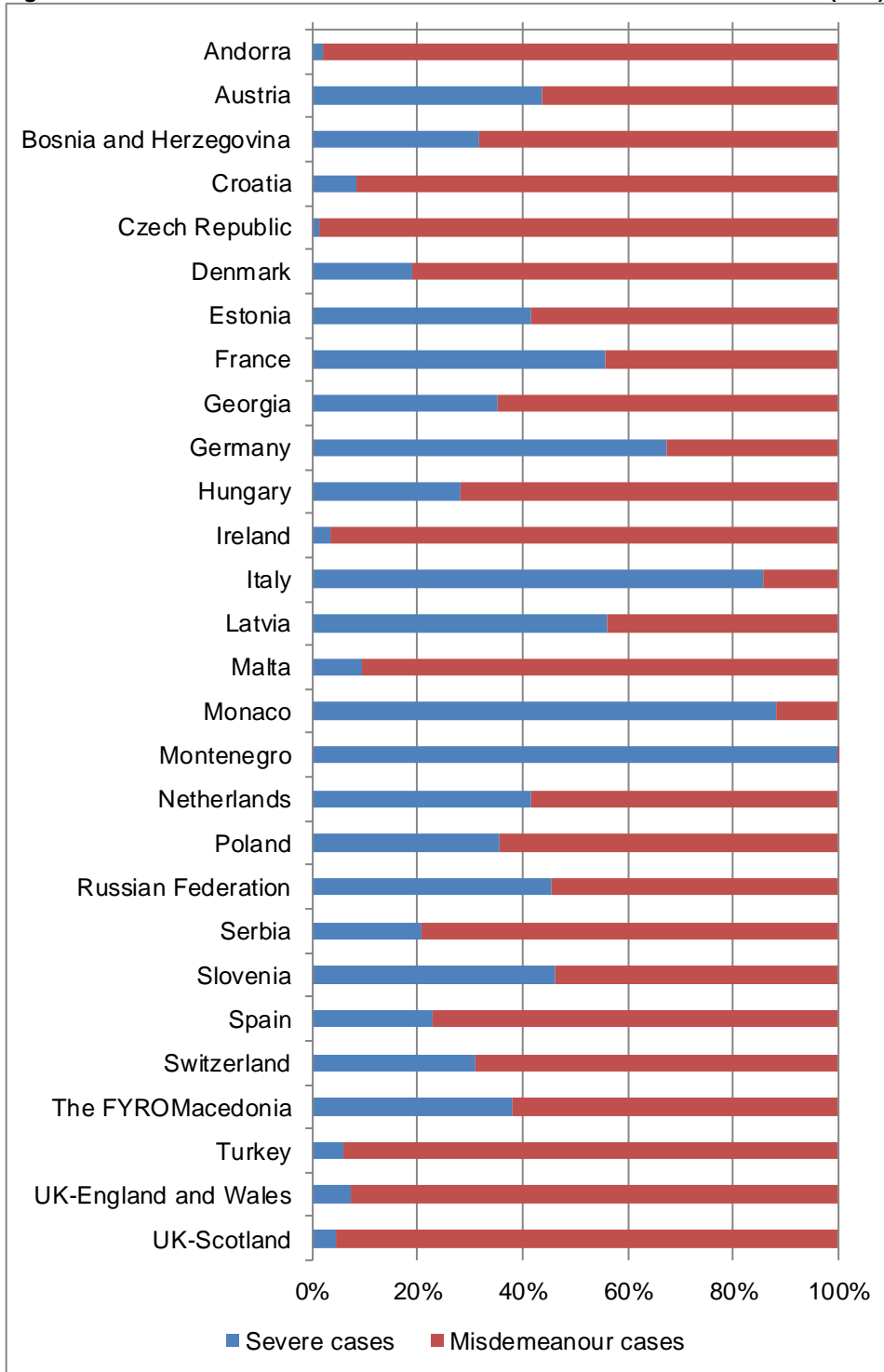
This section employs the terminology and the definitions used in the "European Sourcebook of Crimes and Criminal Justice". It deals with the management of criminal cases by courts, including by public prosecutors. The management of cases by public prosecutors is addressed especially with regard to the pre-trial phase and the actual trial.

Criminal offences comprise all offences defined as criminal by law, including traffic offences (mostly dangerous driving and driving under influence). They include acts which are normally prosecuted by a public prosecutor, whereas offences which are prosecuted directly by the police, such as minor traffic offences, and certain breaches of public order are not included.

To identify and better understand the main trends in Europe, a distinction needs to be made between minor criminal offences (misdemeanours) and severe criminal cases, because in relation to minor criminal offences, shorter court proceedings and/or other details of the handling of a case might apply (e.g. the imposition of an administrative fine, a sanction imposed by a public prosecutor without the intervention of a judge, police sanctions, etc.). Special tribunals, courts or judges can also be competent for minor criminal offences (e.g. misdemeanour courts, police courts or police judges, administrative courts). In addition, there may be a possibility to use mediation, conciliation or other forms of ADR for minor criminal offences.

To differentiate between ‘minor offences’ (misdemeanours) and ‘serious offences’ and to ensure as much as possible consistency and comparability of responses between different systems, the participating States and entities were asked to classify as ‘minor’ all offences for which it is not possible to pronounce a sentence of deprivation of liberty. Conversely, ‘severe offences’ are those punishable with a deprivation of liberty (arrest and detention, imprisonment). Examples of severe criminal cases include: murder, rape, organised crime, fraud, drug trafficking, trafficking of human beings, etc. Minor offences comprise shoplifting, certain categories of driving offences, disturbance of the public order, etc.

Figure 5.24 Ratio between severe criminal cases and misdemeanours in 2014 (Q94)



Data on the proportion between severe and misdemeanour incoming cases in 2014 was available for 28 States or entities. On the one hand, the composition of incoming cases (in terms of the share between minor and severe criminal cases) is expected to have an impact on the quality of the workload and, therefore, on the ability of courts to resolve incoming cases and to reduce backlogs, because severe criminal offences are supposedly more complicated and lengthy. On the other hand, the composition of incoming criminal cases might itself be affected by the way the criminal court system is organised and by the legislative framework or changes thereto. Accordingly, the data presented needs to be interpreted with care. Criminal law cases may be classified differently in the different jurisdictions because of distinctions between legal categories and statistical systems.

### ***Court and prosecutorial caseload in the criminal sector***

The expeditious procedure of criminal offences, consistent with the requirements of due process, is of particular importance for the safeguard of fundamental rights, as regards any case where the deprivation of liberty pending trial arises. Considering that the cluster of jurisdictions providing data on criminal court workload and on the number of cases handled by public prosecutors is different, the general observations made below need to be contextualised on a case by case basis or with regard to the same groups of States or entities.

The Table below provides information on the number of criminal cases treated by public prosecutors per 100 inhabitants. Total figures are indicated because for a number of states it has not been possible to calculate the number of incoming and resolved cases per 100 inhabitants. For **Cyprus, Greece, Malta, Portugal, Spain** this was not possible, either because the data was not available or because the categorisation into severe and minor criminal offences did not apply. Figures from 12 States or entities do not include traffic cases (**Andorra, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Denmark, Greece, Republic of Moldova, Slovakia, Turkey, Ukraine and Israel**).

**Table 5.25 Number of cases handled by public prosecutors per 100 inhabitants (Q107, Q107.1, Q108 and Q109)**

States/Entities	Number of cases per 100 inhabitants			
	Received by the public prosecutor	Discontinued by the public prosecutor	Concluded by a penalty or a measure imposed or negotiated by the public prosecutor	Charged by the public prosecutor before the courts
Albania	1,50	1,12	NAP	0,47
Andorra	6,21	NAP	NAP	1,21
Armenia	NQ	NA	NQ	NA
Austria	6,14	5,32	0,24	0,80
Azerbaijan	0,00	0,07	NAP	0,13
Belgium	5,90	3,99	0,09	0,25
Bosnia and Herzegovina	1,71	0,31	0,39	0,41
Bulgaria	1,93	1,05	NAP	0,49
Croatia	1,52	0,68	0,01	0,46
Cyprus	NA	NA	NA	NA
Czech Republic	3,77	1,73	NAP	0,81
Denmark	3,56	0,42	1,11	2,27
Estonia	2,44	1,78	0,21	0,53
Finland	1,54	0,19	0,01	1,00
France	7,44	4,81	0,87	0,90
Georgia	1,21	0,64	0,40	NA
Germany	5,66	3,18	0,23	1,25
Greece	NA	NA	NA	NA
Hungary	1,85	0,30	0,12	1,54
Ireland	0,30	0,10	NA	0,14
Italy	5,45	3,48	NA	1,01
Latvia	0,66	0,06	0,08	0,45
Lithuania	3,54	1,20	NAP	1,80
Luxembourg	10,79	4,84	0,12	1,85
Malta	NA	NA	NAP	NA
Republic of Moldova	1,87	0,36	0,21	0,39
Monaco	7,16	4,55	0,23	2,39
Montenegro	1,62	0,51	0,12	0,69
Netherlands	1,24	0,25	0,36	0,67
Norway	7,41	3,36	1,30	1,37
Poland	2,72	1,06	0,36	0,48
Portugal	NA	NA	NA	NA
Romania	3,54	2,86	0,39	0,16
Russian Federation	0,63	0,00	NAP	0,59
Serbia	2,77	0,79	0,53	0,58
Slovakia	1,85	0,12	0,04	0,62
Slovenia	4,20	0,84	0,08	0,62
Spain	NA	NAP	NA	NA
Sweden	5,38	1,70	0,71	1,93
Switzerland	6,64	0,99	4,63	0,15
The FYROMacedonia	1,90	1,57	0,01	0,77
Turkey	4,44	2,45	0,01	1,39
Ukraine	0,04	0,02	0,18	0,02
UK-England and Wales	1,13	0,13	NAP	1,16
UK-Northern Ireland	1,69	0,86	NAP	NAP
UK-Scotland	4,57	1,11	1,39	1,85
Israel	1,26	0,71	0,00	0,61
<b>Average</b>	3,35	1,51	0,50	0,88
<b>Median</b>	2,58	0,99	0,23	0,68
<b>Minimum</b>	0,00	0,00	0,01	0,02
<b>Maximum</b>	10,79	5,32	4,63	2,39

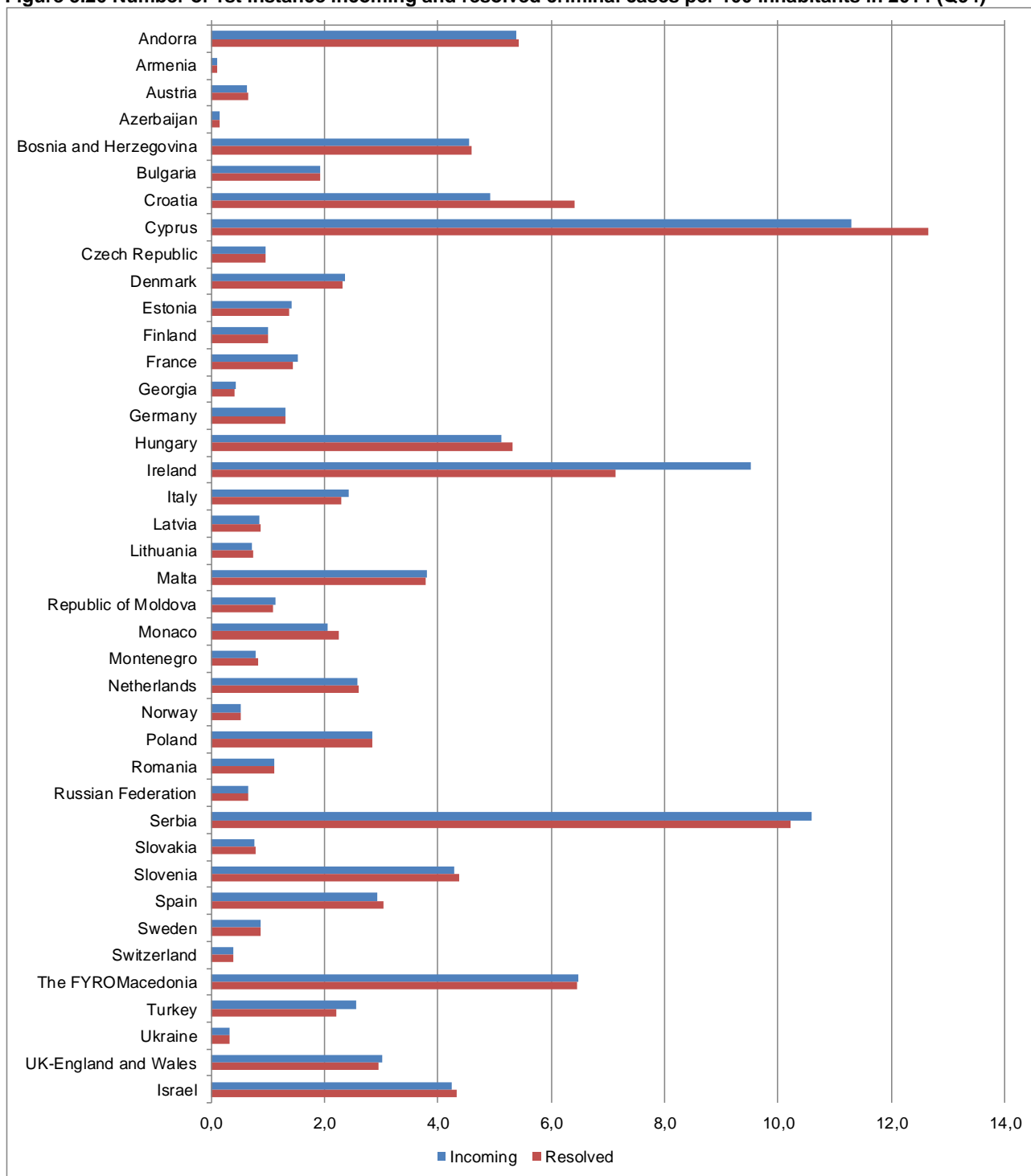
Data collected for the 2014 CEPEJ evaluation shows that public prosecutors receive on average 3,4 cases per 100 inhabitants. Approximately 45 % of these are generally discontinued by the public prosecutor and 25 % of cases charges are brought by the public prosecutor before the courts. The remaining 30 % are concluded by a penalty or a measure imposed or negotiated by the public prosecutor. There are, however, important differences between the states as regards both the share between cases that are discontinued, negotiated or charges brought before a court and variations over time.

In the figures reported by **Austria**, for instance, the 'cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor' are also included in the category 'discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation'. Moreover, cases may be computed more than once, depending on the number of persons concerned in the case at issue. In **Slovenia**, following the new centralised information system of the State Prosecutor's Office, which started functioning in 2013, the State Prosecutor's Office statistics is based on individuals (denounced, charged or sentenced), by contrast to court statistics, which is based on cases (that may include more than one individual) and police statistics which is based on criminal offences. In **Israel** as well, cases are counted differently by the Police Prosecution, the State Prosecution and the Courts' Management. The number of discontinued cases of the Police Prosecution and the State Prosecution, for example, also includes cases which were received during previous years, but which were discontinued during the reporting year, while the number of cases charged before the courts only encompasses some cases that were received during previous years. Moreover, it should be noted that the Police Prosecution handles about 90 % of criminal cases. Instead, in the **UK-England and Wales** the organisation and structure of the criminal justice system requires special attention when interpreting the data for comparison purposes. The figures regarding cases received, for instance, refer to cases received by the Crown Prosecution Service (CPS) after a charge has been made, while the category 'cases charged by the public prosecutor before the courts' refers to the number of defendants prosecuted by the CPS whose case was completed during the year. Also, Crown Prosecutors do not impose or negotiate penalties as these can only be imposed by the courts after a finding of guilt.

Other differences, especially those explaining variations in the course of the last three evaluations are discussed in detail below, in the section devoted to trends in the criminal sector.

The Table below presents information on court caseload regarding criminal cases, (both severe and minor offences). Total figures are presented because detailed data distinguishing between severe and minor criminal offences was not available in a number of States or entities (e.g. **Belgium, Greece, Luxembourg, Portugal, UK-Northern Ireland** and **UK-Scotland**).

Figure 5.26 Number of 1st instance incoming and resolved criminal cases per 100 inhabitants in 2014 (Q94)

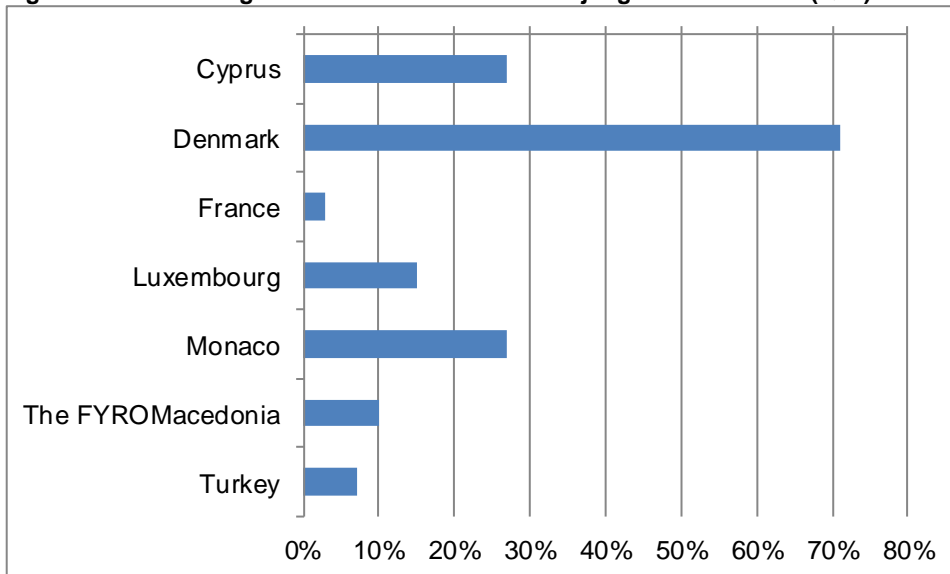


In the States or entities assessed, 19 court systems manage to resolve more and 21 systems less than the average number of 2,2 criminal cases per 100 inhabitants, per year. Minor offences represent bigger part of the workload, generally almost three times the number of severe offences. **Cyprus, Ireland, Serbia** and to a lesser extent “**the former Yugoslav Republic of Macedonia**” have reported a particularly high number in criminal cases per 100 inhabitants, compared to other jurisdictions. The figure regarding **Cyprus** can be explained by the upsurge of first instance criminal cases (an increase of 27 % between 2012 and 2014) resulting from the enforcement of the bail-in confiscation package in 2013. In **Ireland**, it is the practice to count each misdemeanour or summarily triable offence as a criminal “case”. Changes in the reporting methodology (counting cases by reference to the offence(s) charged rather than to the defendant) has resulted in a very significant increase in the number of criminal cases recorded as returned for trial on indictment. In **Serbia**, an important reform of the criminal justice sector consisting in the introduction of an adversarial system within public prosecution and criminal proceedings (instead of the inquisitorial one) prompted an increase in the number of incoming criminal cases. Furthermore, **Serbia** started to report

misdemeanour cases only in the last cycle. Previously, misdemeanour cases were not considered as criminal because under Serbian law they are prosecuted in *ad hoc* misdemeanour courts.

The data collected for the 2014 evaluation scheme allows for some limited analysis of the percentage of first instance *in absentia* judgements. Particularly high numbers of in absentia judgements in some cases can be explained by the fact that the court system might not require a hearing for minor cases, such as unpaid traffic fines (e.g. **Denmark**).

**Figure 5.27 Percentage of 1st instance *in absentia* judgements in 2014 (Q84)**



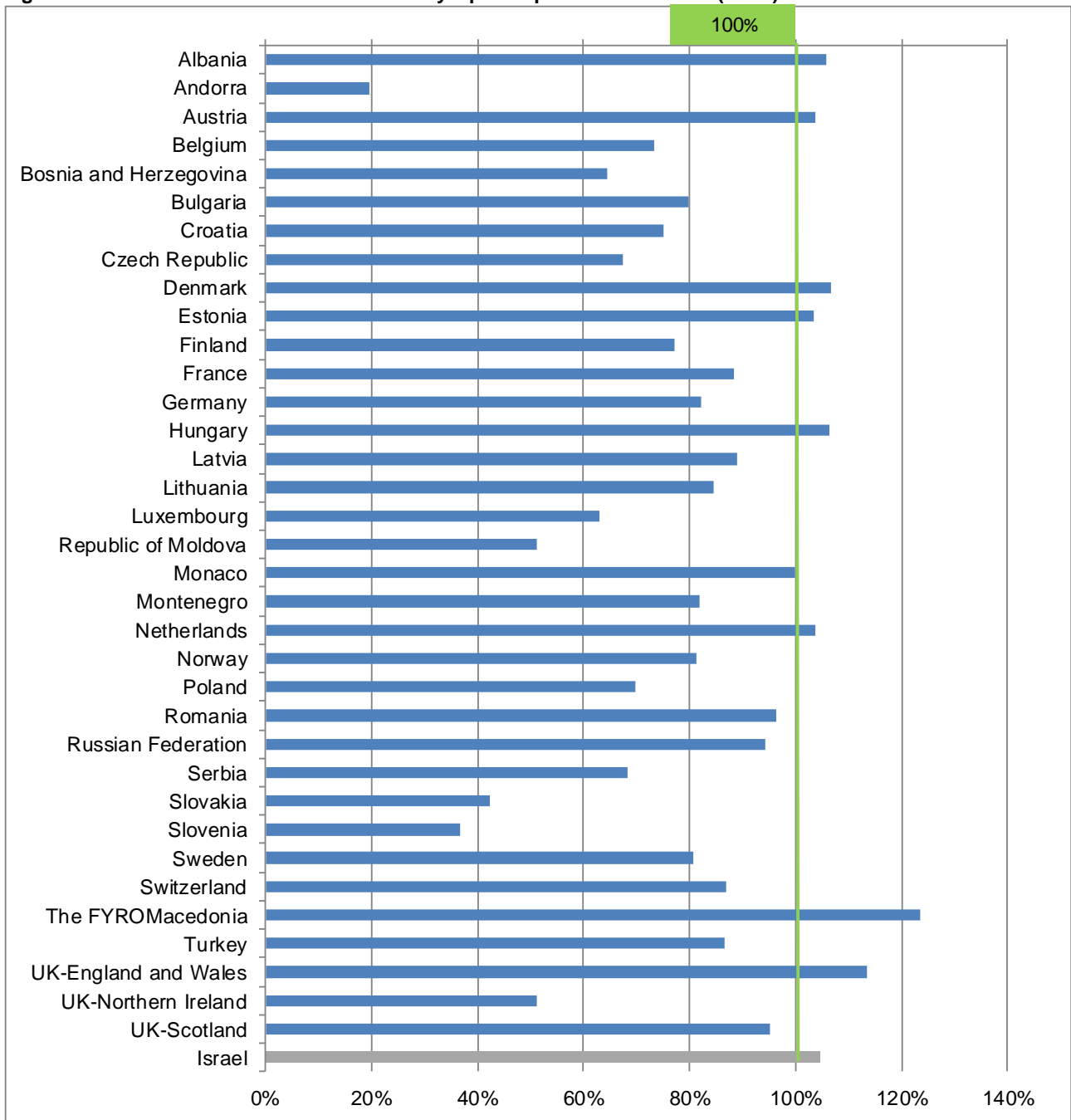
***Performance indicators in the criminal sector***

A general overview of the situation of court management as regards criminal law cases can be obtained using the two CEPEJ indicators of court efficiency: the Clearance Rate and the Disposition Time.

The figure below shows the Clearance Rate of cases handled by prosecutors in 2014.



**Figure 5.28 Clearance rate of cases handled by a public prosecutor in 2014 (Q107)**

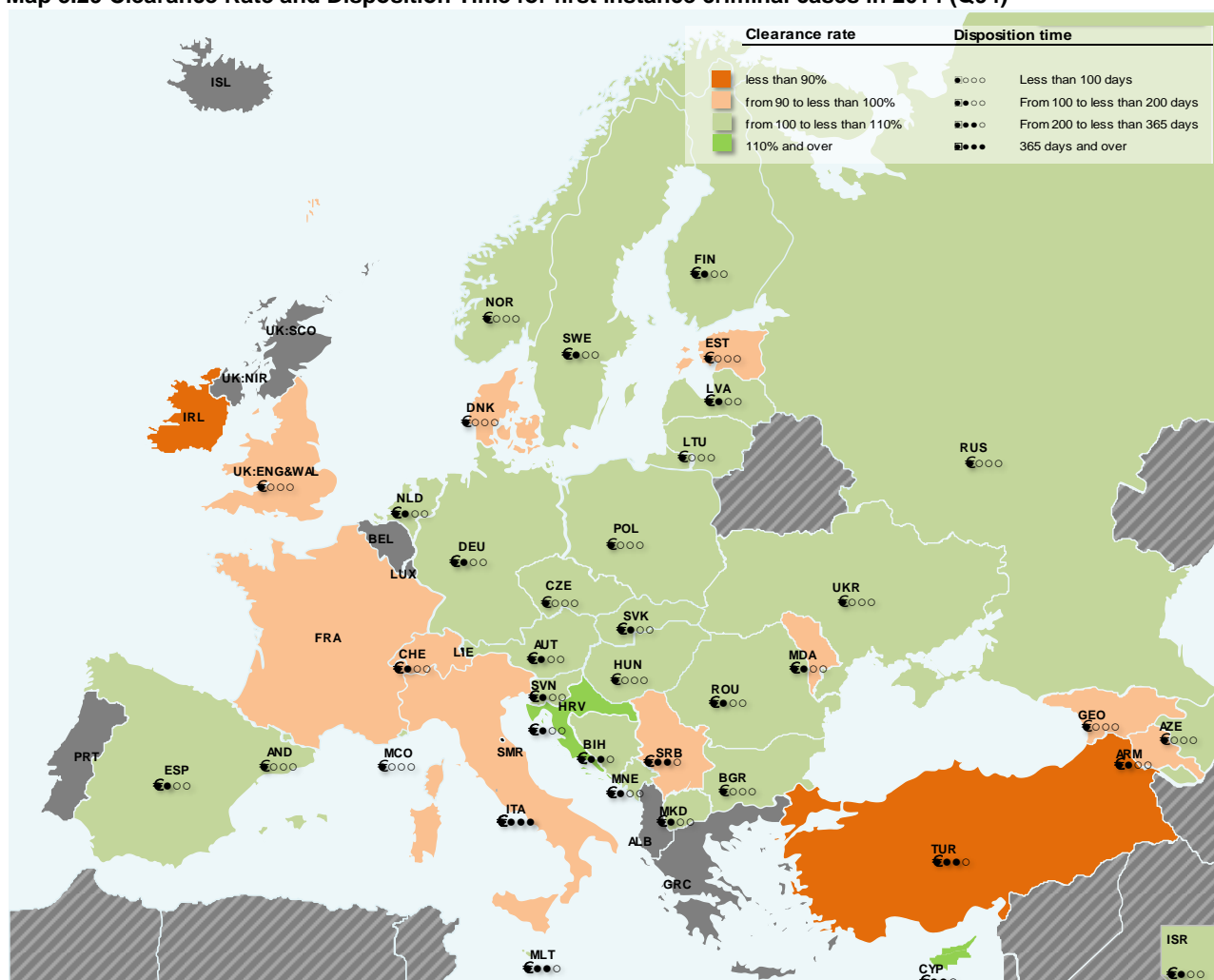


More than 70 % of the states for which data was available show a negative Clearance Rate; only in 10 States or entities the Clearance Rate is above 100 %. The data reported, however, should be interpreted with caution considering the different approach taken in this regard by the jurisdictions assessed. Public prosecutors are often involved in pre-trial proceedings and the moment when a case is reported as completed depends on whether the pre-trial phase is considered separately from the trial phase during which the case is brought before the court. Differences in this respect may have a considerable impact on the Clearance Rate.

As regards the Clearance Rate for criminal law cases solved by courts, the European average is approximately 100 %, which means that courts can resolve more or less a number of cases that equals the volume of incoming cases. A positive note is that the Clearance Rate is higher for the more complicated cases involving severe offenses (103 %) compared to cases concerning minor offenses (97 %). However, in the States or entities where minor offences represent an important share of criminal cases, there is a risk that the backlog might increase. This is however mitigated by the fact that the average Disposition Time for minor offences is 139 days compared to 195 days for severe crimes.

The map below has been produced on the basis of data from States or entities and shows the Clearance Rate and Disposition Time of first instance criminal cases where available.

**Map 5.29 Clearance Rate and Disposition Time for first instance criminal cases in 2014 (Q94)**



For 26 States or entities, court efficiency does not seem to be a major concern in the criminal law field, as both the Clearance Rate and the Disposition Time can be considered as positive, which means that the backlogs are decreasing and that, at the same time, the cases to be handled by the court can be resolved within an acceptable time: **Andorra, Austria, Azerbaijan, Belgium** (data on severe crimes only), **Bulgaria, Croatia, Czech Republic, Finland, Germany, Hungary, Latvia, Lithuania, Monaco, Montenegro, Netherlands, Norway, Poland, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden**, “the former Yugoslav Republic of Macedonia”, **Ukraine and Israel**.

For **Bosnia and Herzegovina** and **Cyprus**, a positive evolution of the case management timeframe could be envisaged as the Clearance Rate is higher than 100 % although the Disposition Time remains high at this stage.

In other states (**Armenia, Denmark, Estonia, France** (Disposition Time not available), **Georgia, Republic of Moldova, Switzerland** and **UK–England and Wales**, the situation should be monitored in the long-term. The courts in these States or entities have difficulties in coping with the volume of cases (CR below 100%); however their Disposition Time can still be considered as highly acceptable at this stage. In **Estonia**, for instance, an agreement has been concluded between the Ministry of Justice and the biggest Estonian court setting the target for eliminating backlogs.

The situation of court efficiency for criminal law cases must be considered with care in **Ireland** taking into account that the Clearance Rate is high (119 %) for severe criminal cases but quite low for minor offences (75 %); no data regarding the Disposition Time was available. It appears more worrying in **Italy, Malta** (particularly high DT for severe criminal cases, 755 days), **Serbia and Turkey** as both the Clearance Rate and the Disposition Time are unsatisfactory.

## 5.4.2 Criminal justice – 2010 / 2014 evolutions

### Evolution of prosecutorial performance

Table 5.30 Evolution of the number of cases handled by the public prosecutor per 100 inhabitants between 2010 and 2014 (Q107)

States/entities	Number of cases Received by the public prosecutor per 100 inhabitants			
	2010	2012	2014	Trend
Albania	0,63	0,99	1,50	
Andorra	5,96	NQ	6,21	
Armenia	0,37	NA	NQ	
Austria	6,61	6,31	6,14	
Azerbaijan	0,01	0,00	0,00	
Belgium	6,54	6,16	5,90	
Bosnia and Herzegovina	1,68	1,73	1,71	
Bulgaria	NA	1,99	1,93	
Croatia	1,96	1,94	1,52	
Cyprus	NA	NA	NA	
Czech Republic	4,03	3,88	3,77	
Denmark	3,05	3,23	3,56	
Estonia	NA	NA	2,44	
Finland	1,57	1,57	1,54	
France	7,64	8,00	7,44	
Georgia	NA	1,07	1,21	
Germany	5,65	5,72	5,66	
Greece	NA	NA	NA	
Hungary	2,23	2,24	1,85	
Ireland	0,35	0,33	0,30	
Italy	5,94	5,77	5,45	
Latvia	0,61	0,65	0,66	
Lithuania	0,51	3,38	3,54	
Luxembourg	11,48	10,86	10,79	
Malta	NA	NA	NA	
Republic of Moldova	1,47	1,65	1,87	
Monaco	7,83	7,73	7,16	
Montenegro	2,10	1,77	1,62	
Netherlands	1,26	1,34	1,24	
Norway	8,33	7,84	7,41	
Poland	3,04	2,99	2,72	
Portugal	5,22	5,26	NA	
Romania	3,68	3,19	3,54	
Russian Federation	NA	0,64	0,63	
Serbia	NA	3,15	2,77	
Slovakia	1,87	1,79	1,85	
Slovenia	4,46	4,66	4,20	
Spain	9,73	NA	NA	
Sweden	6,99	5,55	5,38	
Switzerland	2,91	6,21	6,64	
The FYROMacedonia	1,93	2,10	1,90	
Turkey	8,37	4,04	4,44	
Ukraine	NA	NA	0,04	
UK-England and Wales	1,93	1,64	1,13	
UK-Northern Ireland	NA	1,93	1,69	
UK-Scotland	5,09	5,29	4,57	
Israel	NA	1,23	1,26	
<b>Average</b>	<b>3,97</b>	<b>3,54</b>	<b>3,35</b>	
<b>Median</b>	<b>3,05</b>	<b>3,07</b>	<b>2,58</b>	
<b>Minimum</b>	<b>0,01</b>	<b>0,00</b>	<b>0,00</b>	
<b>Maximum</b>	<b>11,48</b>	<b>10,86</b>	<b>10,79</b>	

The analysis of the evolution of the caseload and the way in which it is managed by public prosecutors highlights two main common trends.

First, several States and entities have reported an increase in the number of discontinued cases by public prosecutors as a result of the non-identification of the offender. There are various explanations for this trend, including the impact of an increased number of incoming cases (e.g. an increase of 55,7 % of incoming cases in **Albania**, in the period 2012-2014); the fact that the majority of cases in this category consists of proceedings where the offender could not be identified and in relation to which status of limitation apply (e.g. **Croatia**); legislative reforms decriminalising certain categories of crimes (e.g. **Croatia**) and the enactment of amnesty laws (e.g. **Monaco**); or an increase in the number of prosecutorial staff (e.g. **Turkey**). **Monaco** represents a particular example because the amnesty laws produced a conspicuous surge of the number of cases in the specific category of discontinued cases by the public prosecutor due to the lack of an established offence or a specific legal situation (an increase of 679 % in 2014 compared to 2012).

Secondly, in another group of jurisdictions, an increase in the number of cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor can be noted. In **Montenegro**, the considerable increase in the number of this type of cases in 2014 is related to the new Criminal Procedure Code and the introduction of alternative methods for resolving criminal procedures that are within the competence of the public prosecutors. Although the new Code entered into force in 2011, a certain amount of time was required to build the necessary conditions, practice and experience for the efficient application of the new elements and the impact appears only in 2014. Analogously, variations may occur in the course of the next evaluation in “**the former Yugoslav Republic of Macedonia**”, as a consequence of the adoption of a new Law on Criminal Procedure that conferred new competences to public prosecutors, namely the responsibility of conducting investigations. This evolution did not have an effect on the number of cases in 2014, but on the volume of the work of public prosecutors with regard to existing cases and it may have an impact on the backlog in the future. Changes in the legislation that extend the possibility for public prosecutors to impose sanctions directly, independently of the judiciary, also explain the increase of the number of cases concluded by a measure imposed or negotiated by the public prosecutor in the **Netherlands**. In **Lithuania**, a legislative reform that concerned substantive law rather than the powers of prosecutors resulted in a higher number of incoming cases. The entry into force of the Law on Domestic Violence in 2011 had a strong correlation with the increase in the number of criminal investigations, on the basis that according to this law criminal investigation is compulsory regarding every incident of domestic violence.

#### ***Evolution of the performance indicators in the criminal sector - trends***

The Table below presents the evolution of the Clearance Rate for criminal cases between 2010 and 2014. The quality of the data reported with regard to some jurisdictions might have differed within the period observed. While this can partly explain variations, analysis must be developed cautiously.

Table 5.31 Evolution of Clearance Rate of 1st instance criminal cases between 2010 and 2014 (Q94)

States/Entities	Clearance Rate of 1st instance criminal cases			
	2010	2012	2014	Trend
Albania	NQ	NQ	NQ	
Andorra	100%	93%	101%	
Armenia	97%	100%	91%	
Austria	100%	101%	103%	
Azerbaijan	99%	101%	100%	
Belgium	NA	NA	NA	
Bosnia and Herzegovina	105%	102%	101%	
Bulgaria	100%	99%	101%	
Croatia	106%	103%	130%	
Cyprus	90%	91%	112%	
Czech Republic	101%	NA	100%	
Denmark	106%	104%	98%	
Estonia	144%	94%	97%	
Finland	97%	98%	100%	
France	95%	102%	95%	
Georgia	147%	101%	96%	
Germany	101%	101%	100%	
Greece	NA	NA	NA	
Hungary	99%	91%	104%	
Ireland	NA	NA	75%	
Italy	95%	94%	94%	
Latvia	100%	95%	102%	
Lithuania	98%	99%	102%	
Luxembourg	80%	NAP	NAP	
Malta	96%	99%	99%	
Republic of Moldova	94%	91%	95%	
Monaco	NA	105%	110%	
Montenegro	110%	96%	105%	
Netherlands	98%	95%	101%	
Norway	97%	100%	101%	
Poland	91%	101%	100%	
Portugal	105%	105%	NA	
Romania	99%	99%	101%	
Russian Federation	NA	99%	100%	
Serbia	78%	105%	96%	
Slovakia	102%	101%	103%	
Slovenia	106%	114%	102%	
Spain	99%	103%	104%	
Sweden	98%	101%	100%	
Switzerland	106%	99%	99%	
The FYROMacedonia	119%	105%	100%	
Turkey	91%	108%	86%	
Ukraine	99%	103%	100%	
UK-England and Wales	NA	102%	98%	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel	..	107%	102%	
Average	101%	100%	100%	
Median	99%	101%	100%	
Minimum	78%	91%	75%	
Maximum	147%	114%	130%	

Differently from the trend observed with regard to litigious civil and commercial cases, data on criminal cases collected by the CEPEJ shows that no changes have occurred in the last six years in respect of the Clearance Rate, which has remained stable at 100 %. There are, however important differences between the jurisdictions evaluated.

A regular improvement of the Clearance Rate of first instance criminal cases can be noted in 10 States (**Austria, Cyprus, Finland, Lithuania, Malta, Monaco, Norway, Romania, Russian Federation and Spain**). On the contrary, 7 other States (**Bosnia and Herzegovina, Denmark, France, Italy, Switzerland, “the former Yugoslav Republic of Macedonia” and Israel**) have experienced a slight deterioration of the Clearance Rate, but in all cases the Clearance Rate has remained very close to 100 %. In **Denmark**, for the period 2010-2012-2014, courts have been able to resolve more civil and commercial cases than the number of incoming cases, mainly due to an overall fall in the number of received cases, but this trend cannot be observed in the criminal sector. The number of cases, especially minor offences, has been increasing, in particular since 2012 and this supposedly resulted in the decrease of the Clearance Rate from 106 % in 2010, to 98 % in 2014. These developments were brought about by a new procedure that allowed the police to send cases to court where individuals have failed to pay fines for traffic offences.

Between 2012 and 2014, **Armenia, Serbia, Turkey** and to a lesser extent **Slovenia** (because the Clearance Rate is still above 100 %) experienced a decrease in the Clearance Rate of criminal cases. Trends in these countries must be monitored closely to understand the actual reasons behind the low Clearance Rate levels or behind negative developments over the longer period. Indeed, negative figures do not always represent the real situation in a specific jurisdiction but may rather be related to the methodology of the presentation of data. **Turkey**, for instance has underlined that the methodology of presentation of data on severe criminal and misdemeanour cases in 2014 and 2012 is different than in 2010 due to more precise interpretation of CEPEJ definitions as well as due to small changes in legislation that lead to different categorisation of cases.

Major improvements in the Clearance Rate of criminal cases can be observed in particular in **Cyprus Hungary and Montenegro**. The Clearance Rate in these states has changed from negative to positive between 2012 and 2014. **Croatia** has also experienced a significant increase in the Clearance Rate - from 103 % in 2012 to 130 % in 2014 - but additional information is needed to understand the significance of this development. This is more generally the case when States experience significant variations in the performance indicators, but nevertheless stay within what is considered a positive area of performance. Accordingly, in order to obtain a better understanding of trends and the reasons behind them, data regarding variations of the Clearance Rate should be read alongside information on the number of incoming cases and the Disposition Time.

Table 5.32 Evolution of Disposition Time of 1st instance criminal cases between 2010 and 2014 (Q94)

States/entities	Disposition time of 1st instance criminal cases			
	2010	2012	2014	Trend
Albania	NQ	NQ	NQ	
Andorra	65	271	88	
Armenia	78	103	135	
Austria	116	115	102	
Azerbaijan	50	56	63	
Belgium	NA	NA	NA	
Bosnia and Herzegovina	345	328	326	
Bulgaria	49	62	74	
Croatia	221	201	144	
Cyprus	254	262	246	
Czech Republic	72	NA	64	
Denmark	99	37	47	
Estonia	60	51	49	
Finland	107	114	121	
France	NA	NA	NA	
Georgia	36	46	65	
Germany	104	104	111	
Greece	NA	NA	NA	
Hungary	104	120	62	
Ireland	NA	NA	NA	
Italy	329	370	386	
Latvia	77	133	133	
Lithuania	104	72	67	
Luxembourg	NA	NAP	NAP	
Malta	331	291	306	
Republic of Moldova	103	156	102	
Monaco	NA	78	81	
Montenegro	160	174	189	
Netherlands	89	99	117	
Norway	91	60	65	
Poland	96	88	99	
Portugal	302	276	NA	
Romania	85	72	111	
Russian Federation	NA	36	37	
Serbia	504	387	255	
Slovakia	168	145	136	
Slovenia	138	124	123	
Spain	162	136	125	
Sweden	135	123	128	
Switzerland	63	137	113	
The FYROMacedonia	212	203	155	
Turkey	314	226	330	
Ukraine	95	79	81	
UK-England and Wales	NA	73	82	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel	..	142	115	
<b>Average</b>	152	146	133	
<b>Median</b>	104	120	111	
<b>Minimum</b>	36	36	37	
<b>Maximum</b>	504	387	386	

On average, the calculated Disposition Time of criminal cases in Europe has progressively decreased over the last years and is now set at less than 5 months. Clearly, the figure is largely affected by the impact of minor offences on the average time. However, depending on the share that minor offences represent within the general category of criminal cases, important differences can be observed.

State performance related to the Disposition Time shows some homogeneous developments within two big groups. 10 states have recorded a constant improvement of the Disposition Time for criminal cases (**Austria, Bosnia and Herzegovina, Croatia, Estonia, Lithuania, Slovakia, Serbia, Slovenia, Spain** and “**the former Yugoslav Republic of Macedonia**”). The majority among them had already relatively low Disposition Time figures. Of particular note, however, **Bosnia Herzegovina, Croatia, Serbia** and “**the former Yugoslav Republic of Macedonia**” which had high Disposition Time and have been able to lower them considerably in the course of the last three evaluations (except for **Bosnia and Herzegovina**). Such positive development may be partly related to the fact that minor offences represent the bigger share of criminal cases in those states and these can generally be concluded within a shorter time.

In 10 other states (**Armenia, Azerbaijan, Bulgaria, Finland, Georgia, Germany, Italy, Latvia, Montenegro** and **Netherlands**) a slow but continuous increase in the Disposition Time can be observed. This trend should be monitored but cannot be considered as worrying for the time being; in all these jurisdictions (with the sole exception of **Italy**) the Disposition Time can be considered as acceptable (approx. below six months). Even the situation of **Italy** should be reconsidered in light of the fact that severe criminal offences constitute more than 85 % of the total of criminal cases within this jurisdiction.

The situation of **Turkey** should be closely monitored. The country has experienced an important deterioration of the Disposition Time between 2012 and 2014 (from 226 to 330 days), following a relevant improvement during the previous period. Moreover, minor offences, i.e. the cases that are expected to be solved more rapidly, represent 96 % of the criminal offences in **Turkey**. The changes to the methodology of categorisation of data in **Turkey** have already been mentioned, but these could only partially explain the development. The variation of the figures on the Disposition Time should also be considered (and can partly be explained) in the light of the changing volume of incoming and pending cases in the course of the three evaluations. Indeed, the improvement of the Disposition Time in **Turkey** between 2010 and 2012 can be a to a lower number of incoming cases while the deterioration that occurred between 2012 and 2014 could be explained in the light of a 2 % increase in the number of cases received and a 19 % increase in the number of pending cases.

The table below presents the evolution of the volume of incoming and pending 1st criminal cases on 31 December between 2010 and 2014.



Table 5.33 Variation of 1st instance incoming and pending criminal cases on 31 December between 2010 and 2014 (Q94)

States/entities	Variation 2010 - 2012		Variation 2012 - 2014	
	Incoming cases	Pending cases 31 Dec	Incoming cases	Pending cases 31 Dec
Albania	NQ	NQ	NQ	NQ
Andorra	-76%	-8%	260%	26%
Armenia	-9%	24%	-6%	12%
Austria	-5%	-6%	-5%	-14%
Azerbaijan	-8%	4%	0%	11%
Belgium	NA	NA	NA	NA
Bosnia and Herzegovina	-7%	-14%	3%	2%
Bulgaria	33%	66%	-12%	8%
Croatia	-9%	-19%	-40%	-46%
Cyprus	1%	6%	-18%	-5%
Czech Republic	NA	NA	NA	NA
Denmark	33%	-51%	-13%	6%
Estonia	12%	-38%	16%	16%
Finland	-3%	5%	-9%	-3%
France	-4%	NA	0%	NA
Georgia	-22%	-31%	78%	138%
Germany	-1%	-2%	-9%	-4%
Greece	NA	NA	NA	NA
Hungary	24%	32%	51%	-11%
Ireland	NA	NA	NA	NA
Italy	-5%	6%	-4%	1%
Latvia	-26%	22%	-14%	-9%
Lithuania	62%	13%	-28%	-30%
Luxembourg	NAP	NA	NAP	NAP
Malta	-8%	-17%	-9%	-4%
Republic of Moldova	19%	72%	241%	134%
Monaco	NA	NA	7%	17%
Montenegro	-16%	-20%	-17%	-1%
Netherlands	-12%	-5%	12%	39%
Norway	75%	18%	-4%	5%
Poland	-10%	-8%	9%	21%
Portugal	-3%	-11%	NA	NA
Romania	12%	-6%	28%	102%
Russian Federation	NA	NA	-1%	4%
Serbia	-6%	-3%	1091%	619%
Slovakia	7%	-8%	-6%	-10%
Slovenia	-33%	-35%	-22%	-31%
Spain	2%	-11%	0%	-8%
Sweden	-3%	-9%	-7%	-3%
Switzerland	-71%	-40%	-45%	-54%
The FYROMacedonia	-9%	-23%	34%	-3%
Turkey	6%	-9%	2%	19%
Ukraine	-7%	-19%	-27%	-28%
UK-England and Wales	NA	NA	32%	42%
UK-Northern Ireland	NA	NA	NA	NA
UK-Scotland	-14%	NA	14%	NA
Israel	..	..	7%	-18%
<b>Average</b>	-2%	-4%	42%	27%
<b>Median</b>	-5%	-8%	-2%	1%
<b>Minimum</b>	-76%	-51%	-45%	-54%
<b>Maximum</b>	75%	72%	1091%	619%

The table highlights the positive performance of a group of states that were able to reduce the backlog despite an increasing number of incoming cases. None of the states concerned has maintained a regular trend in this regard across the three evaluations, however, positive examples include **Denmark, Estonia, Romania, Slovakia, Spain** and **Turkey**, for the period 2010-2012 and **Hungary, “the former Yugoslav Republic of Macedonia”** and **Israel** for the period 2012-2014. The table also provides an insight into the positive developments in the reduction of pending cases registered in some states between 2012 and 2014 (e.g. **Austria, Croatia, Lithuania, Switzerland** and **Ukraine**): these cannot be explained solely on the basis of increased efficiency of the courts but the decrease in the number of incoming cases needs to be taken into account as well.

In another group of States, between 2012 and 2014, the number of pending cases either increased notwithstanding a decrease of incoming cases (e.g. **Armenia, Bulgaria, Denmark, Italy, Norway** and **Russian Federation**), or decreased far more slowly than the number of incoming cases (e.g. **Cyprus** and **Montenegro**). In particular, the situation in **Armenia, Denmark** and **Italy** should be monitored carefully considering that the Clearance Rate in these countries is below 100 % and has been decreasing. Further analysis of the situation in **Cyprus, Montenegro** and **Norway** would help understand why these countries have increased their backlog of criminal cases despite a positive Clearance Rate.

On a general note, while differences due to the specificities of the legal, economic and social context in the different States and entities persist, there are a number of recurrent factors which operate alongside State efforts to improve court efficiency and which might explain the variations and developments in the criminal sector performance indicators over the last three evaluations. These include differences in the categorization of cases and in the reporting system across States and in the context of the different evaluations (e.g. **Estonia, Ireland, Poland, “the former Yugoslav Republic of Macedonia”** and **Turkey**); legislative reforms resulting in an increase or decrease in the incoming and resolved cases and of the backlog (e.g. **Denmark, Hungary, Lithuania, Republic of Moldova, Slovenia, Spain** and **UK England and Wales**); economic downturn and other negative social phenomena (e.g. **Lithuania**).

And finally, as earlier noted, the extreme increase for **Serbia** (excluded from bar line presentation in the table above) can be explained in the light of the fact that misdemeanour cases started being reported only during the last cycle. In the Serbian system misdemeanour cases are handled by dedicated misdemeanour courts and therefore these were not included in the number of criminal in the previous evaluations.

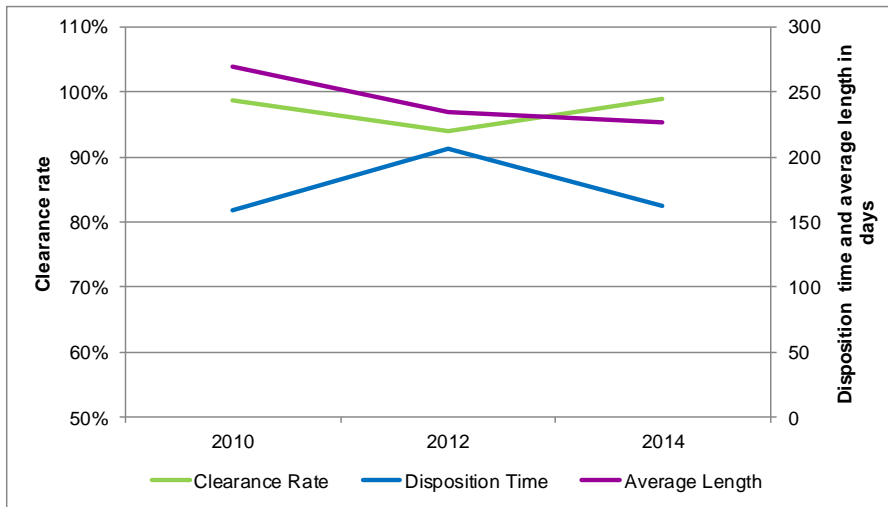
### ***Specific categories of criminal cases***

In the context of the analysis of court efficiency in the civil sector, the 2014 evaluation also collected specific information on two particularly relevant categories of criminal offences, robbery and intentional homicide. These are defined in the Evaluation Scheme as follows:

1. *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.
2. *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.

### 5.4.2.1 Robbery cases

**Figure 5.34 Evolution of the European average of Clearance Rate, Disposition Time and length of 1st instance robbery cases 2010 - 2014 (Q101 and Q102)**

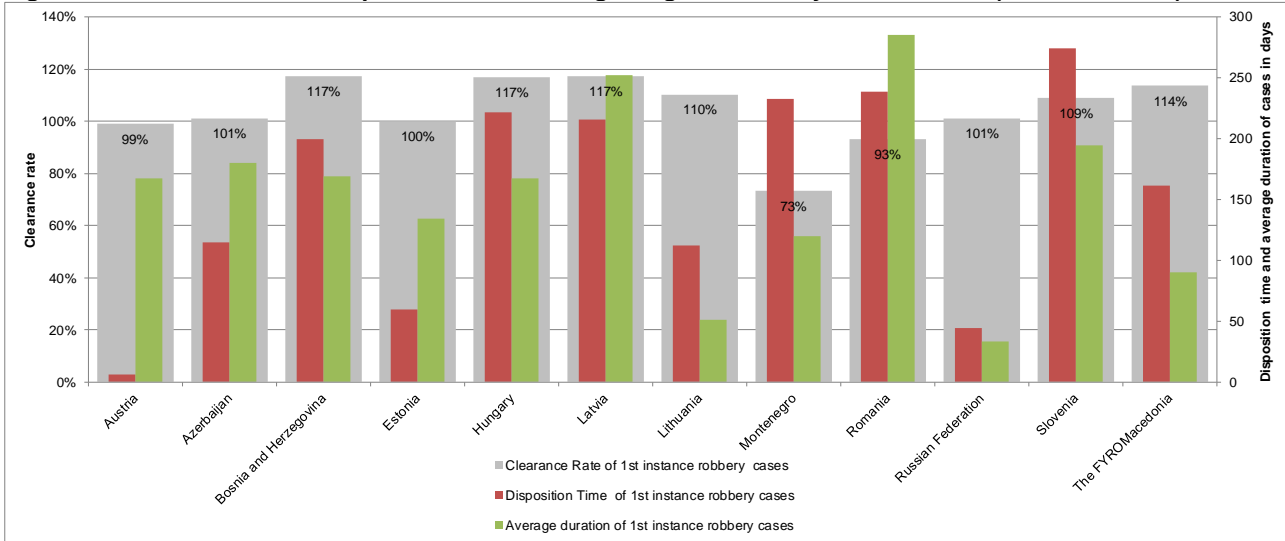


The figure above summarizes the average evolution of indicators regarding robbery cases. Between 2010 and 2014, the average Clearance Rate for this category of cases has remained the same, slightly below 100 %, despite a decrease to 94 % in 2012. A similar trend can be noted with regard to the evolution of the average Disposition Time, which rose slightly from 160 days in 2010 to 163 days in 2014, with an intermediate

relevant increase to 207 days in 2012. By contrast, the average length of the proceedings for this type of cases has improved regularly. Both the Disposition Time and the reported average length for this category of cases are higher than the average for the total of criminal cases.

As it was highlighted earlier in this chapter, Disposition Time can be considered as a better indicator to make comparisons between countries with regard to the ability of courts to cope with backlog, while the average length allows a valuable insight into developments in case management within the same country over the years.

**Figure 5.35 Clearance Rate, Disposition Time, average length of robbery cases in 2014 (Q101 and Q102)**



The figure shows that with the exception of **Montenegro** and **Romania**, all the states for which data was made available registered Clearance Rate of robbery cases close or over 100% in 2014. A particularly positive performance can be noted with regard to **Bosnia and Herzegovina**, **Hungary**, **Latvia** and “**the former Yugoslav Republic of Macedonia**”.

As regards developments over time it can be observed that the evolution of the Clearance Rate of this category of cases has been particularly positive in **Bosnia and Herzegovina**, **Bulgaria**, **Hungary**, **Latvia**, **Lithuania**, **Republic of Moldova**, **Slovenia** and “**the former Yugoslav Republic of Macedonia**”. The Clearance Rate has decreased over the years, particularly, in **Georgia**, **Montenegro** and **UK-England and Wales**. The extreme decrease of the Clearance Rate in **Montenegro** from 119 % in 2010 to 38 % in 2012 and the subsequent increase up to 73 % in 2014 can be explained on the basis of changes in the reporting methodology. In 2010, all cases with elements of robbery were counted, while in 2012 and 2014 only robbery

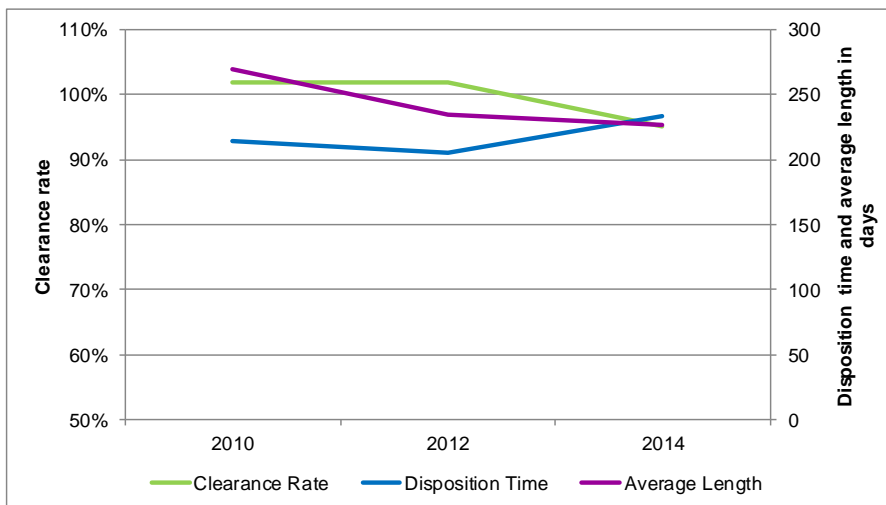
cases were taken into account. The figures produced were lower in the last two evaluations and therefore the number of pending cases had a bigger impact on the Clearance Rate. Similarly, **UK-England and Wales** reported that changes in the case management recording system meant that figures provided with regard to the number of incoming, resolved and pending cases are not comparable across the three evaluations. However, it also specified that the variations observed in 2014 are credible. **Finland** also had a particularly low Clearance Rate in 2010 and 2012 but it was not possible to calculate the figure for 2014.

The reported length of proceedings and the Disposition Time show important variations between the different States and entities, depending on the law procedures that apply in each system, the method of calculation of the average length and the volume of cases handled by the courts. Rapid procedures (Disposition Time is less than 100 days) can be noted in **Austria, Estonia, Russian Federation** and **Ukraine** and longer procedures (Disposition Time is more than 250 days) in **Armenia, Republic of Moldova** and **Slovenia**. The reported average length of criminal proceedings involving robbery cases has been decreasing over the past years, in particular in **Monaco** (from 565 days in 2012 to 259 days in 2014) and **Italy** (from 676 days in 2012 to 509 days in 2014) and has remained more or less stable in **Azerbaijan, Germany** and **Montenegro**. On the contrary, it has grown in **Turkey** (from 171 days in 2012 to 361 days in 2014) and **France** (from 636 days in 2012 to 666 days in 2014).

There are considerable differences between the calculated Disposition Time and the reported average length of proceedings in specific states. Very little information is available as regards the factors behind the observed variations of incoming, solved and pending robbery cases. Information in this regard from the national consultants involved in the reporting procedure should be consolidated with a view to gaining a deeper understanding of the factors behind the changes.

#### 5.4.2.2 Intentional homicide cases

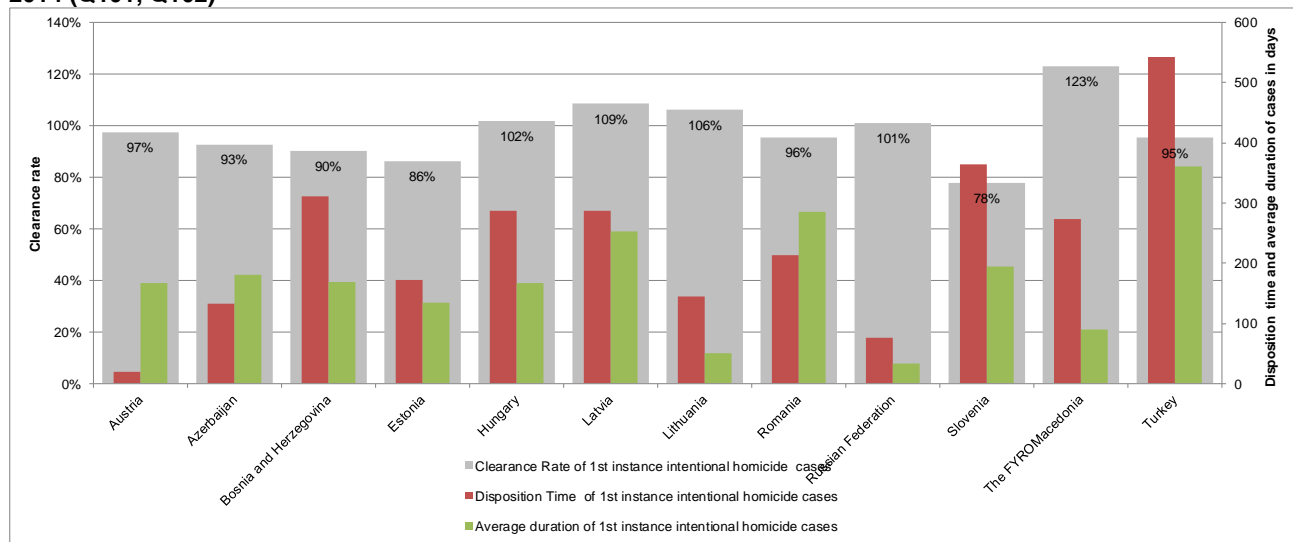
**Figure 5.36 Evolution of European average of Clearance Rate, Disposition Time and length of 1st instance intentional homicide cases 2010 - 2014 (Q101 and Q102)**



The figure above shows the average evolution of the two CEPEJ indicators and the Average length with regard to cases of intentional homicide. Between 2010 and 2014 the average Clearance Rate of this category of cases first remained stable (102 % in 2010 and 2012) and then experienced a significant decrease (to 95 % in 2014). The average Disposition Time has increased slightly over the years, despite a small reduction in 2012, and is now set at 234 days. By contrast,

the reported average length of first instance proceedings for intentional homicide cases has progressively improved. Even in this case, both the Disposition Time and the reported average length are higher than the average for the total category of criminal cases.

**Figure 5.37 Clearance Rate, Disposition Time and average length of 1st instance intentional homicide cases in 2014 (Q101, Q102)**



A particularly positive performance can be noted with regard to the **Lithuania, Russian Federation** and “**the former Yugoslav Republic of Macedonia**”. These states have very positive Clearance Rates and relatively low Disposition Times and average length of intentional homicide cases.

As regards developments over time, **Norway** and “**the former Yugoslav Republic of Macedonia**” have experienced a constant increase in their Clearance Rate over the years, while **Azerbaijan, Bulgaria, Estonia, Georgia** and **Turkey** show a negative trend. In particular, the situation in **Estonia** (Clearance Rate decreased from 120 % in 2010, to 113 % in 2012, to 86 % in 2014) and **Georgia** (Clearance Rate decreased from 155 % in 2010, to 88 % in 2012, to 77 % in 2014) should be monitored closely over the next evaluation. The Clearance Rate in **Ireland** has declined considerably since the last evaluation, and it is not clear to what extent this is related to the reported change in the unit of measurement for criminal cases, from a defendant related unit to an offence related unit. Despite positive variations over time (from 55 % in 2010 to 69 % in 2014) the figures regarding the situation in **UK-England and Wales** are also particularly low.

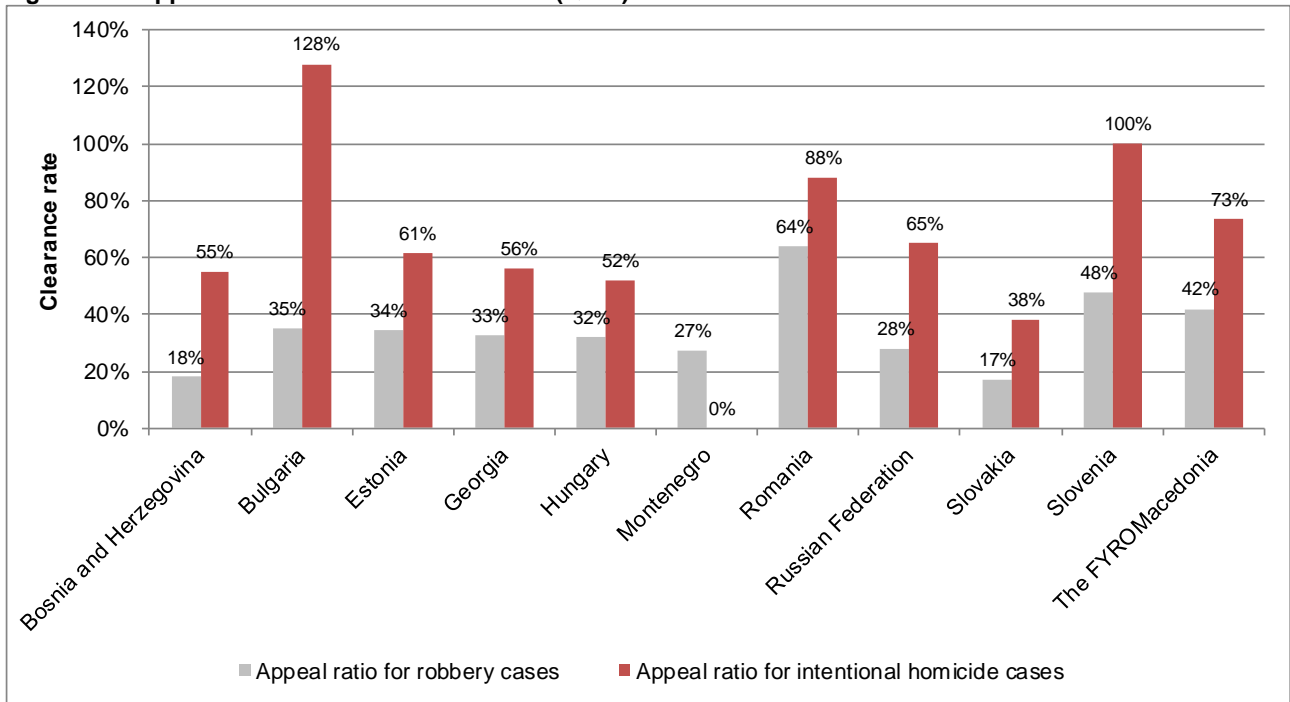
A better understanding of these data and the trends can be obtained by analysing them in conjunction with the volume of incoming cases and the length of the proceedings. Because of the gravity of the offence, the number of intentional homicide cases may be rather limited, compared to other categories of criminal offences. Moreover, homicide cases may be particularly long in some cases for a number of reasons, including the importance of the quality of the presented evidence. A combination of these factors is expected to have a negative effect on the Clearance Rate, which measures the ratio between the number of cases resolved and received within one year. This would explain the particularly low Clearance Rate figures in some cases, and accordingly suggest a reappraisal.

There are considerable differences between the calculated Disposition Time and the reported average length of proceedings in specific countries but too little information is provided to understand the underlying reasons and to draw robust (quantitative or qualitative) conclusions.

### **Ratio of first/second instance for specific categories**

While the focus of this chapter is on first instance judgements the information collected allows assessing the ratio of appeal in the criminal sector. The figure below shows the percentage of robbery and intentional homicide cases that are challenged in second instance.

**Figure 5.38 Appeal rate for some criminal cases (Q102)**

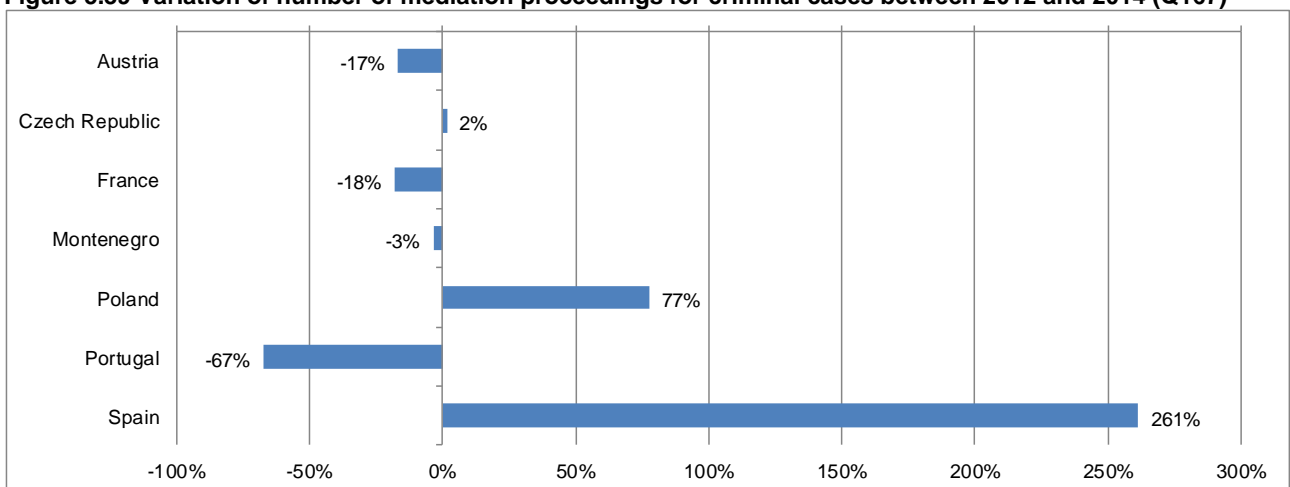


Only very little information is available as regards to percentage of the appeal procedures, and the information received is hardly comparable considering the specifics of the different judicial systems with regard to reporting case numbers, the distinction between first and second instance and the average length of proceedings at each stage. Improving such information will allow the CEPEJ and its Members to strengthen their knowledge of case-flow management in the criminal law field and (propose and) consider specific tools for improving court efficiency.

### 5.4.3 Variation of mediation procedures

As already discussed in the section devoted to civil sector justice, several kinds of policies and measures contribute to facilitate the smooth and efficient functioning of the court system, and improve the services provided to court users. ADR is one of these policies that is made available guaranteeing a timely justice, of quality, while taking into account the type of litigation at stake. It and is progressively being employed in the criminal sector, as well, especially as regards minor offences and in the context of juvenile justice. The table below summarizes information on 7 states for which it was possible to gather information on the volume of these procedures and their variation over time.

**Figure 5.39 Variation of number of mediation proceedings for criminal cases between 2012 and 2014 (Q167)**



In the context of the next evaluation, it would be useful to prompt specific comments on the areas of justice where these procedures are applied and on their impact on overall court workload and performance.

## 5.5 Trends and conclusions

States continue their efforts towards a more detailed understanding of the activity of their courts, as regards the monitoring of compliance with the fundamental principles as protected by the ECHR and in terms of case-flow management and length of proceedings.

The 2016 evaluation highlights a sharp increase in the number of incoming criminal cases, while the category of 'other than criminal cases' has slightly contracted (- 2 %). It also shows an overall positive trend for the ability of European courts to cope with incoming cases in the long term. This has been a constant trend in the civil and administrative justice sector since 2010, and since 2012, also in the criminal sector. These developments are particularly significant if considered in the light of a relevant general increase in the number of incoming cases, compared to the 2012 CEPEJ evaluation, in particular, in the criminal sector (by 42 %) and in relation to litigious civil and commercial cases (by 7 %).

Compared to the previous evaluations, data for the 2014 evaluation of courts' efficiency in the **civil justice sector** (mainly civil and commercial litigious cases) shows that:

- there has been a discontinued trend in the improvement of the Clearance Rate of civil and commercial litigious cases received and solved at first instance; the average value for the Clearance Rate of 100 % in 2014 regarding civil and commercial cases means that States were able to deal with incoming cases in these areas but could not generally make progress in the reduction of backlog;
- the Disposition Time of litigious civil and commercial cases (on average 237 days in 2014) has slightly improved since 2010;
- with regard to pending cases, there has been a low but continuous increase in the backlog of civil and commercial litigious cases since 2010; improvements however can be observed in a number of states.

The data for the 2014 evaluation of courts' efficiency in the **administrative justice sector** confirm that:

- the Clearance Rate of administrative law cases at first instance has constantly improved; the average value has been increasing from 99 % in 2010 to 107% in 2014;
- the Disposition Time of administrative cases (on average 341 days in 2014) has fairly improved since 2010;
- in line with the positive trends regarding the Clearance Rate and the Disposition Time, there has been a general decrease in the number of pending cases, by almost 42 %.

The data for the 2014 evaluation of courts' efficiency in the **criminal justice sector** shows that:

- in the vast majority of the states, public prosecutors were able to solve less cases than those received; by contrast, the average Clearance Rate of criminal cases resolved by courts is approximately 100 %, which means that courts can cope more or less satisfactorily with the incoming workload during the year; however, the Clearance Rate is higher for the more complicated cases involving severe offences (103 %) compared to cases concerning minor offences (97 %);
- unlike for civil and commercial litigious cases, data on criminal cases shows that no changes have occurred in the last six years in respect of the Clearance Rate, which has remained stable at 100 %;
- on average, the calculated Disposition Time for criminal cases in Europe has progressively improved over the last years; as expected, it is higher for severe crimes (195 days) compared to minor offences (133 days);
- the quantity of both incoming and pending cases diminished between 2010 and 2012 but increased substantially between 2012 and 2014.

Data for specific categories of cases offers a deeper insight into the length of proceedings in certain key areas across the sectors of justice (family, employment, commercial or criminal) and reflect better the functioning of justice systems in concrete contexts. However, it appears that the overall performance of states in these cases is less positive compared to the broader categories of civil and criminal law cases, but the limited availability of data means that conclusions must be drawn with some care. The figures show that:

- between 2010 and 2014 the average Clearance Rate of litigious divorce cases has decreased and is now slightly below 100 %, despite a positive increase in 2012. A negative trend between 2010 and 2014 can also be noted with regard to the evolution of the average Disposition Time for this category of cases, but the situation has improved compared to the 2012 evaluation;

- employment dismissal cases represent the only category, among three specific categories of civil cases analysed in this report, which registered a positive Clearance Rate in 2014; they also register the highest rate of appeal among the three specific categories of civil cases that were analysed;
- the 2014 evaluation confirms the results from the previous evaluation, namely that European states experience the most significant difficulties in managing the caseload in respect of insolvency proceedings; the development trend of the Disposition Time of insolvency cases is also of concern;
- States perform better with regard to robbery cases than homicide cases in terms of the ability to cope with incoming cases (i.e. Clearance Rate).

On a more general level the 2014-2016 evaluation cycle suggests namely the following pathways of development with regard to understanding and improving court efficiency:

1. Economic recession has certainly been one of the main reasons for the increased volume of incoming cases and the extended duration of proceedings in some instances. It has already affected the composition of the case-flow and has prompted important legislative reforms in a number of cases to adapt to the change. The impact of the changing economic situation should be closely followed in the future.
2. Economic recession has also had an impact on the resources of courts and on the availability of legal aid for court users. Variations in the number of incoming cases should also be considered in the light of this development.
3. The use of ADR methods (e.g. mediation, conciliation) is promoted and incentivised in Europe, both in civil and criminal matters. While the use of ADR methods is possible without prejudice to the fundamental right to have a remedy before a tribunal, closer attention should be paid to the impact of this trend on the general workload of courts and on the resources that finance these procedures.
4. To improve timeliness and efficiency, online procedures for the processing of certain categories of claims are increasingly being developed and applied in different European States. This is a trend that should be monitored carefully in the following years.
5. Availability of disaggregated data is crucial to a better understanding of the effectiveness of the courts and of the reasons behind variations over time. Important changes to the national statistical methodologies, aimed at bringing domestic systems in line with the CEPEJ methodology, are already in process. The CEPEJ welcomes and promotes these efforts as an invaluable tool in the collection of comparative data necessary to improve court performance.



The new Edition of the report of the European Commission for the Efficiency of Justice (CEPEJ), which evaluates the functioning of the judicial systems in 45 Council of Europe's Member states and an observer state to the CEPEJ, Israel, remains in line with the process carried out since 2002, focusing on the main indicators and present in addition, for the first time, CEPEJ dynamic statistical database on internet. Relying on a methodology which is already a reference for collecting and processing a wide number of quantitative and qualitative judicial data, 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 prepared this report, intended for policy makers, legal practitioners, researchers as well as for those who are interested in the functioning of justice in Europe.



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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.



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