European judicial systems
Efficiency and quality of justice

CEPEJ STUDIES No. 26

2018 Edition (2016 data)

An overview

cepej
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1. INTRODUCTION

With this seventh biennial evaluation cycle, the CEPEJ aims to provide policy makers and justice professionals a practical and detailed tool to better understand the operation of the public service of justice in Europe in order to improve its efficiency and its quality in the interest of close to 850 million Europeans, and beyond.

The CEPEJ presents today the 2018 Edition of its report, based on the 2016 data. The report has been adopted by the CEPEJ in July 2018[1]. The number of subjects and States that are addressed make it unique.

The methodology used, alongside the important contribution and support of the member States of the Council of Europe and the observer States concerned, makes it possible to present an analysis, which is increasingly detailed from one edition to another, of the judicial systems of 47 States[2].

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.

The quality of the data available allows to compose and analyse statistical series. These series are designed to measure the main trends in Europe as regards the evolution of judicial systems and reform processes. Relying on those data, the CEPEJ can propose concrete solutions to evaluate and improve the quality and efficiency of justice in Europe.

The CEPEJ highly encourages policy makers, legal professionals and researchers to use this unique information to develop studies and feed the indispensable European debate and reforms, the necessity for which is regularly reminded by the case-law of the European Court of Human Rights and the events in the member States.

The purpose of this document is not to provide a synthesis of the above-mentioned report, but only to highlight, in an easily readable format, some of its elements and incite the readers into taking time “to go further”. In this overview, only brief comments follow the figures and tables extracted from the report, but they refer to the full report which enables a deeper approach with all the necessary methodological elements for rigorous analysis and comparisons. All data can also be found in the public interactive data base: CEPEJ-STAT. See **www.coe.int/CEPEJ.**

[1] The report is based on a draft prepared by the CEPEJ working group chaired Jean-Paul JEAN (France), and composed of Ramin GURBANOV (Azerbaijan), Adis HODZIC (Bosnia and Herzegovina), Simone KREβ (Germany), Georg STAWA, President of the CEPEJ (Austria), Jaša VRABEC (Slovenia), Martina VRDOLJAK (Croatia). They were supported by the scientific experts Julinda BEQIRAJ (Associate Senior Research Fellow in the Rule of Law, Bingham Centre for the Rule of Law, London, United Kingdom),
Caroline EXPERT-FOULQUIER (Associate Professor of Public Law, University of Limoges, Deputy Director of the "*Institut de préparation à l'administration générale*" (IPAG) of Limoges, France), Fotis KARAYANNOPOULOS (Lawyer, Athens, Greece), Christophe KOLLER (Operational Director, ESEHA, Berne, Switzerland), Ivana NINČIĆ (Consultant for Reform of Legal professions, Ministry of Justice, Serbia), Hélène PAULIAT (Professor of Public Law, Honorary President of the University of Limoges, France), Francesco PERRONE (Judge, Court of Padua, Italy) and Federica VIAPIANA (Researcher and Consultant, Bologna, Italy).

[2] 45 member States out of 47 have participated in the evaluation process. Only Liechtenstein and San Marino, were not able to provide data for this report. Israel and Morocco participated in this exercise as observers of the CEPEJ. The results for the United Kingdom are presented separately for England and Wales and Scotland, as the judicial systems are organised on different basis and operate independently from each other (for this cycle, Northern Ireland did not provide data).

1. INTRODUCTION

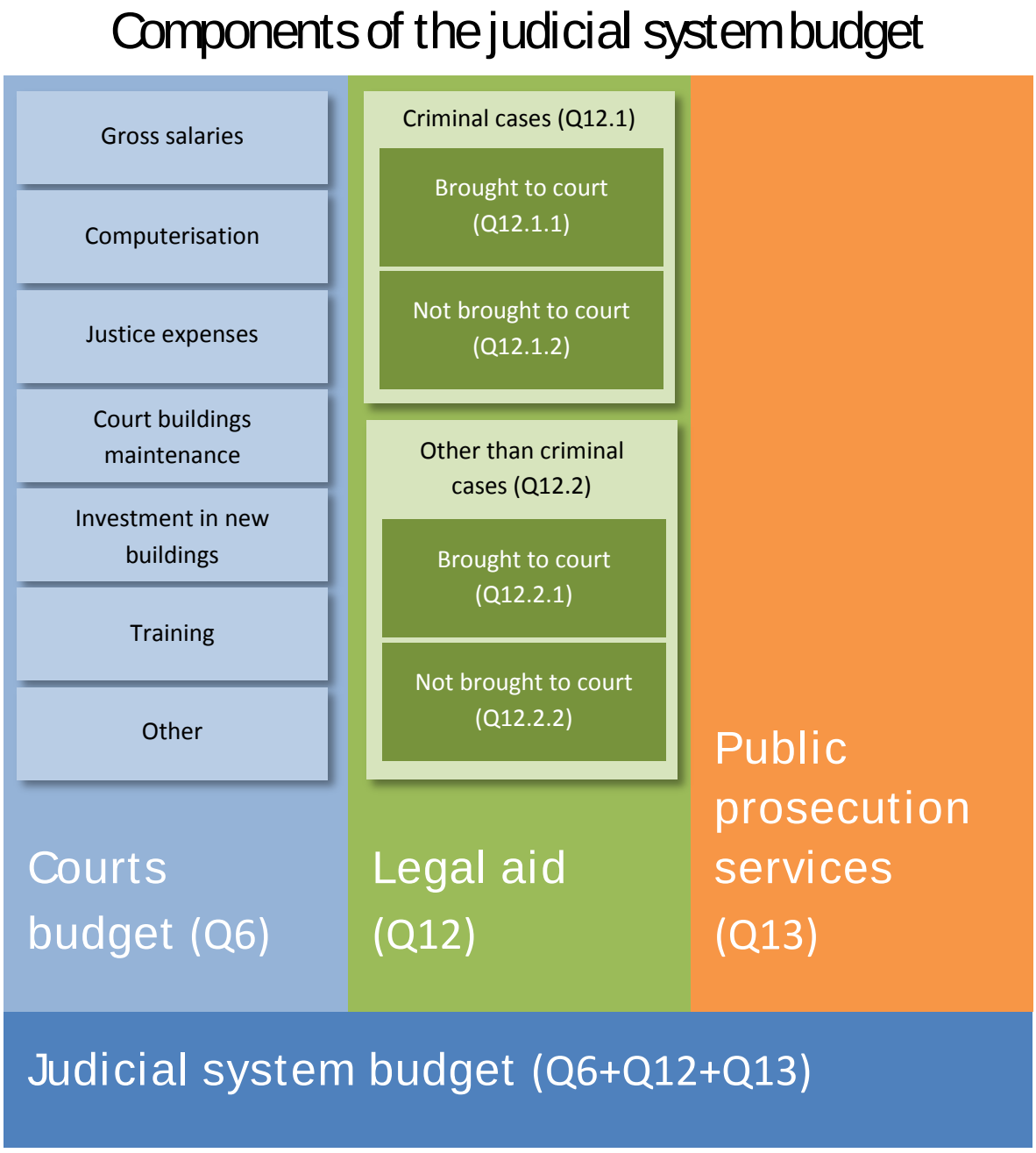
Warning

Throughout its report, the CEPEJ has highlighted the numerous methodological problems encountered and the choices which have been made. It is advisable to refer to them constantly to avoid hasty analyses and meaningless conclusions. Comparing quantitative and qualitative data from different States and entities, with different historical, geographical, economic, and judicial situations is a difficult task which must be addressed cautiously. To compare the judicial systems of various States, it is in particular necessary to highlight the specificities which explain variations from one State to another (level of wealth, different judicial structures, data collection). A detailed attention was paid to the terms used and to the definition and use of concepts, which were specified with the national correspondents entrusted with the coordination of data collection in the States and entities. Only a careful reading of the report and a rigorous comparison of data can make it possible to draw analyses and conclusions. Figures cannot be passively taken one after the other, but must be interpreted in the light of the methodological notes and comments.

Comparing is not ranking. But each rigorous reader has with this report a sum of data and methodological elements for an in-depth study by choosing relevant clusters of States and entities: according to the characteristics of the judicial systems (for instance civil law and common law entities; countries in transition or with old judicial traditions), geographical criteria (size, population) or economic criteria (for instance within or outside the Euro zone, level of wealth). The size of States is also a discriminating factor. Other complementary comparisons are proposed, by using ratios such as the GDP and the average gross annual salary.

2.1. Budget of judicial systems

One of the goals of the CEPEJ is to know, understand and analyse the budgets allocated to the functioning of justice. This document focuses primarily on the budgets allocated to the courts, the public prosecution services, and the legal aid, the total of which defines the **judicial system budget as defined by CEPEJ** and described below.



2. BUDGET

Public budget allocated to the judicial system per capita in €

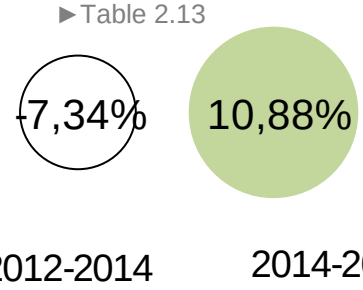
► Figure 2.7

	2014	2016
ALB	9,3 €	10,4 €
AND	NA	99,2 €
ARM	NA	8,4 €
AUT	95,9 €	107,3 €
AZE	16,4 €	7,8 €
BEL	85,5 €	82,3 €
BIH	29,9 €	33,7 €
BGR	32,5 €	37,0 €
HRV	51,0 €	53,6 €
CYP	NA	61,5 €
CZE	44,7 €	47,7 €
DNK	82,5 €	83,7 €
EST	40,4 €	43,1 €
FIN	71,1 €	76,5 €
FRA	64,4 €	65,9 €
GEO	9,6 €	9,7 €
DEU	NA	121,9 €
GRC	43,9 €	41,3 €
HUN	41,0 €	43,8 €
ISL	NA	111,0 €
IRL	48,1 €	50,2 €
ITA	72,7 €	75,0 €
LVA	37,3 €	39,8 €
LTU	33,4 €	40,3 €
LUX	139,4 €	157,3 €
MLT	35,1 €	36,7 €
MDA	8,1 €	8,3 €
MCO	NA	163,8 €
MNE	42,4 €	NA
NLD	122,3 €	119,2 €
NOR	78,0 €	80,6 €
POL	48,5 €	51,8 €
PRT	51,7 €	56,6 €
ROU	35,1 €	30,4 €
RUS	31,8 €	24,2 €
SRB	NA	NA
SVK	NA	49,6 €
SVN	89,8 €	89,7 €
ESP	76,6 €	79,1 €
SWE	103,2 €	118,6 €
CHE	218,9 €	214,8 €
MKD	18,2 €	20,2 €
TUR	20,9 €	18,2 €
UKR	9,4 €	8,1 €
UK:ENG&WAL	91,6 €	78,7 €
UK:SCO	78,3 €	79,1 €
ISR	NA	82,7 €
MAR		16,1 €
average	58,1 €	64,5 €
median	46,4 €	52,7 €

approved budget
implemented budget

Variation of the average European budget of the judicial systems per capita in Euro*

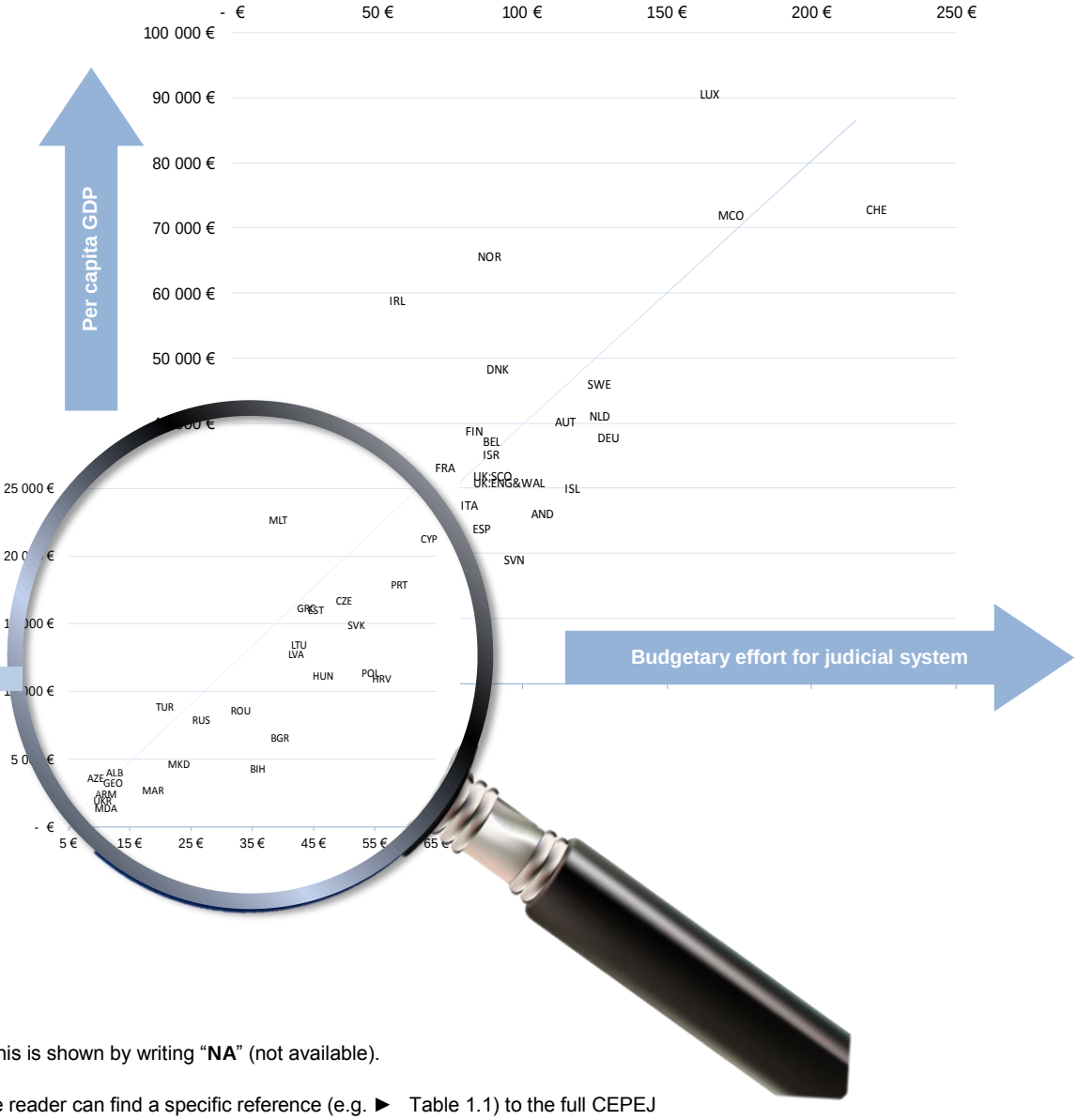
► Table 2.13



* Increase of absolute values, excluding impact of exchange rate or inflation

Budgets allocated to the judicial systems per capita and per capita GDP in 2016

► Figure 2.8



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

Following the title of each figure, the reader can find a specific reference (e.g. ► Table 1.1) to the full CEPEJ Report: "European judicial system – 2018 Edition" containing detailed figures, information and comments.

In most of the States and entities, the evolution of the budget allocated to the judicial system follows the evolution of public expenditure. Overall, the European trend remains a gradual, moderate and continuous increase (smoothed over a decade) in the budgets of judicial systems.

However, the evaluation of the budgets allocated to judicial systems reveals strongly contrasted situations in Europe. There are States and entities where the budget of the judicial system increases regardless of the compression of public expenditure, and, on the contrary, where the decrease in the budget of the judicial system is higher than the reduction in public expenditure. Several States that had experienced decreases in the budgets of the judicial systems because of the economic and financial crisis from 2008 now seem to have gone out of this logic; some of them are gradually moving towards the levels they had known before the crisis.

The European average concerning the budgets of judicial systems is 64 € per inhabitant in 2016 (6 € per inhabitant higher than in 2014). This increase is in a big extend result of the availability of data in this cycle from **Andorra**, **Germany**, **Iceland** and **Monaco** who are among wealthier countries that invest in their judicial system amounts higher than European average. Moreover, in 5 States the expenditure per inhabitant is lower than 10 €, whereas in 7 States and entities the expenditure is higher than 100 €.

The differences in the level of wealth, measured by GDP, obviously explain these differences in absolute terms.

The figure above puts into perspective the budget allocated per inhabitant to the judicial system and the wealth of the States and entities represented by the per capita GDP, thereby giving a more meaningful representation of the effective budget efforts.

The data shows that there is a positive correlation between the level of wealth of the States and entities and the resources allocated to the judicial systems. This positive correlation means that in general richer States spent more on their judicial systems. Nevertheless this correlation is not purely linear and for illustrative purposes, **Spain** may be taken as a benchmark. It can be noticed that the budgets allocated to the judicial system in Spain and **Norway** are 79,05 € and 80,63 € respectively. The figure confirms that, despite a budget per inhabitant almost identical to that of **Norway**, **Spain** achieves a much greater budgetary effort insofar as its level of wealth is almost three times lower than that of **Norway**.

At the same time, per capita GDP of **Spain** (23 985 €) is comparable to the per capita GDP of **Malta** (22 664 €). However, the budget discrepancy is particularly noticeable insofar as the budget per inhabitant allocated to the judicial system in **Spain** is more than two times higher than in **Malta**.

Following this correlation, four clusters of states may be identified:

- the first group includes 13 States whose judicial system budget per inhabitant and per capita GDP are up to 40 € and 10 000 € respectively: **Republic of Moldova**, **Ukraine**, **Morocco**, **Armenia**, **Georgia**, **Azerbaijan**, **Albania** , **Bosnia and Herzegovina**, **"the former Yugoslav Republic of Macedonia"**, **Bulgaria**, **Russian Federation**, **Romania** and **Turkey**;
- the second group gathers 8 States whose judicial system budget per inhabitant is included between 40 € and 50 € and per capita GDP is included in the range

between 10 000 € and 20 000 €: **Latvia**, **Lithuania**, **Greece**, **Estonia**, **Hungary**, **Czech Republic** and **Slovakia**. **Portugal**, despite falling outside the cluster because of the value of budget per inhabitant (56,60 €), is situated in a comparable position;

- 6 States or entities, whose budget per inhabitant is close to the reference value of 80 € and per capita GDP is included in the range between 30 000 € and 40 000 €, constitute the third group: **UK-England and Wales**, **UK-Scotland**, and **Belgium**. **Finland** and **Italy** are in comparable position. Outside the group of member States, **Israel** presents parameters fully compatible with the range of the cluster;
- Monaco, despite its outlier position due to its particularly high per capita GDP and judicial system budget per inhabitant, is situated in immediate proximity to the trend; the situation is the same in **Switzerland**, where the judicial system budget per inhabitant is easily the most significant in Europe.

Among the States and entities which do not follow this tendency, **Slovenia**, **Andorra** and **Iceland** seem to have made the most significant budgetary efforts given their wealth. Also **Bosnia and Herzegovina**, **Bulgaria**, **Croatia** and **Poland** have made significant investments with budgetary efforts comparable to the effort performed by the leading group of States.

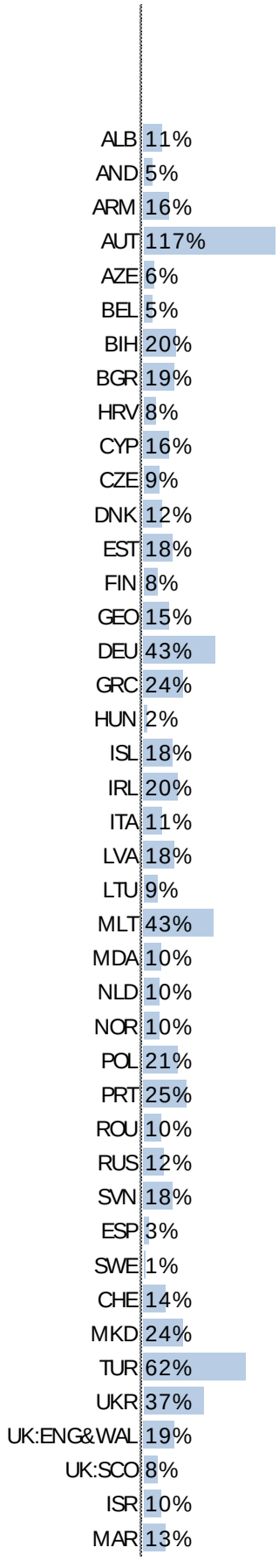
Among the States and entities situated above the trend line, **Denmark**, **Ireland**, **Norway** and **Luxembourg** are in the most advanced position. The data might give the impression that these States do not make a significant budgetary effort from the perspective of their level of wealth. Nevertheless, it should be taken into account that, at least in respect of Norway and Luxembourg, budgets allocated to the judicial system appear remarkable in their volume.

Finally, it should be recalled that some States have benefited in recent years from significant assistance, in particular from the European Union and other international donors for the operation of the rule of law (**Bulgaria**, **Lithuania**, **Slovenia**, **Slovakia**). **Turkey** has indicated that the European budget allocated to such projects has not been included in the presented budget.

Generally speaking, the court budget represents the largest part of the budget allocated to the judicial system: 66% on average. 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 in 2016: 69% on average of the budgets allocated to the courts. Compared to the European average, a higher part of the judicial budget (around 30%) is allocated to the public prosecution services in the Eastern European countries, whereas Northern European countries tend to invest more in legal aid (more than 30% of the budget of the judicial system).

Part of the taxes and court fees in the budget of the judicial system budget

► Figure 2.33



Average 19 %
Median 14 %

Payment of court fees is a key characteristic of the judicial system in Europe: the tax payer is not the only one to finance the system, as the court user is requested to contribute too. Only **France**, **Luxembourg** and now **Spain** foresee access to court free of fees. The revenues generated by court fees vary from less than 1% to over 50 % of the court budget, and even, in some States, correspond to more than half of the budget of the judicial system. For the majority of States, in particular those where the courts get the revenues of the registers (of the companies and commercial affairs or the real estate transfers, for example), accounts for a significant resource covering a major part of their court operating costs, and in the case of **Austria**, generating amounts that far exceed the operating cost of the whole judicial system.

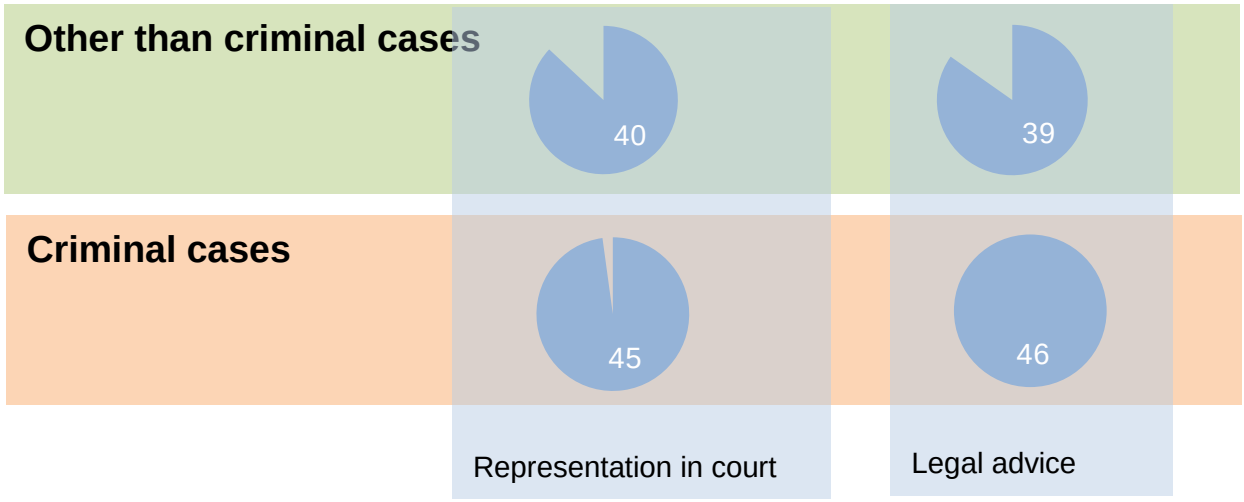
2.2 Legal aid

Legal aid 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.

The CEPEJ has strived to collect data on legal aid granted by the States and entities outside the courts, to prevent litigation or 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 an extensive interpretation, covering both the jurisdictional aid (allowing litigants to finance fully or partially their court fees when acting before tribunals) and the access to information and to legal advice.

Number of States and entities which provide legal aid

► Figure 2.32



Costs covered (number of States and entities)

► Figure 2.36

Implemented budget of legal aid per capita in 2016

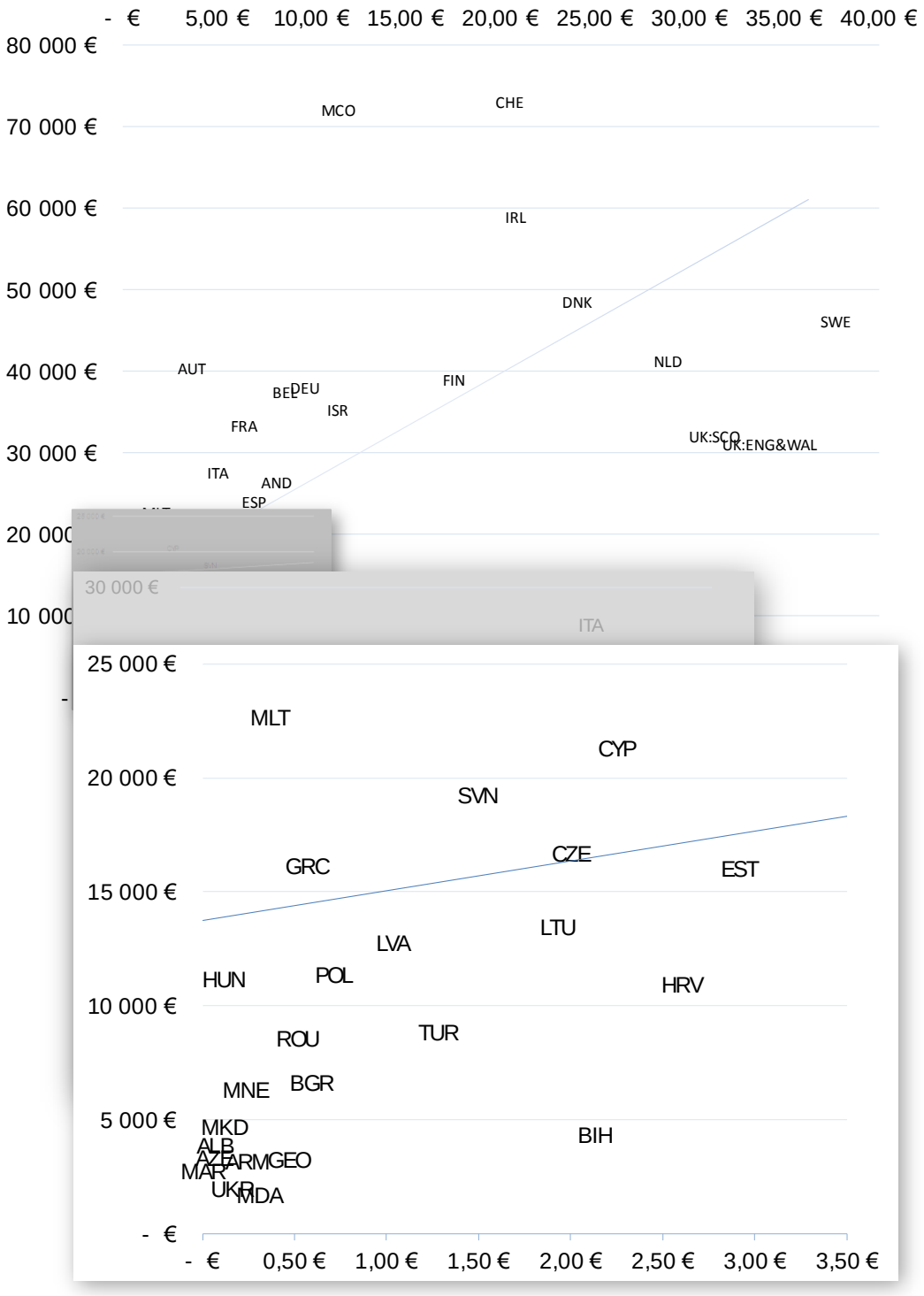
ALB	0,07 €
AND	6,66 €
ARM	0,25 €
AUT	2,25 €
AZE	0,06 €
BEL	7,32 €
BIH	2,13 €
BGR	0,59 €
HRV	2,60 €
CYP	2,25 €
CZE	2,00 €
DNK	22,59 €
EST	2,91 €
FIN	16,24 €
FRA	5,06 €
GEO	0,47 €
DEU	8,23 €
GRC	0,57 €
HUN	0,12 €
IRL	19,61 €
ITA	3,85 €
LVA	1,03 €
LTU	1,93 €
MLT	0,37 €
MDA	0,31 €
MCO	9,85 €
MNE	0,23 €
NLD	27,42 €
POL	0,71 €
PRT	5,85 €
ROU	0,52 €
SVN	1,50 €
ESP	5,64 €
SWE	36,21 €
CHE	19,07 €
MKD	0,12 €
TUR	1,28 €
UKR	0,16 €
UK:ENG&WAL	31,00 €
UK:SCO	29,26 €
ISR	10,18 €
MAR	0,004 €

GDP per capita

average 6,96 €
median 2,19 €

Implemented budget of legal aid and GDP in 2016, per capita and in €

► Figure 2.44

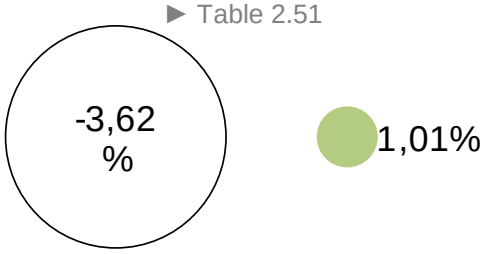


2. BUDGET

Figure above relates the implemented budget of legal aid per inhabitant with the per capita GDP in each State and entity. The trend line suggests a positive relation: the budget of legal aid increases with the increase in GDP. States located below the trend line make a more significant budgetary effort to facilitate the access to justice through legal aid.

Evolution of the European average of approved public budget allocated to legal aid

▶ Table 2.51

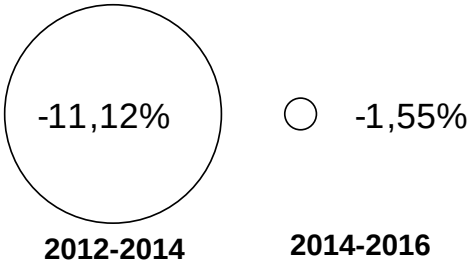


The figure highlights the significant effort made by **Bosnia and Herzegovina** and **Portugal** to enable litigants who do not have the necessary financial resources to have access to justice. These two States stand out very clearly from their respective groups of States and entities with similar levels of wealth.

In the group of countries with good financial wealth, this chart confirms the efforts of **Netherlands**, **Sweden**, **UK-England and Wales**, and **UK-Scotland**, compared to **Ireland**, **Monaco**, and **Switzerland** for example.

Evolution of the European average of implemented public budget allocated to legal aid

▶ Table 2.52



The amount of implemented budget per inhabitant allocated to legal aid is very variable across the States and entities, depending on their level of wealth and their policy of access to justice, varying, from a minimum of 0,06 € in **Azerbaijan** to a maximum of 36,21 € per inhabitant in **Sweden**. The average is 6,5 € per inhabitant, while the median value is 2,1 €.

The variation between the last two cycles shows a slight decrease in the implemented average budget for legal aid per inhabitant (-1,55%).

Total number of cases (per 100 000 inhabitants) with granted legal aid and amount of the implemented budget allocated to legal aid per case in 2016

► Figures 2.49 and 2.46

All cases

	Number of cases	Budget per case
ARM	335	74 €
AUT	234	963 €
BIH	827	257 €
BGR	642	92 €
HUN	139	83 €
IRL	1 772	1 107 €
LTU	3 002	64 €
MLT	210	175 €
MDA	1 401	22 €
MCO	2 149	458 €
MNE	228	101 €
NLD	2 159	1 270 €
NOR	1 447	NA
PRT	1 503	389 €
ROU	417	124 €
SVN	356	420 €
TUR	177	721 €
UKR	832	20 €
UK:ENG&WAL	2 340	1 325 €
UK:SCO	3 535	828 €
MAR	9	49 €
Average	658	429 €
Median	489	175 €

Cases brought to court

AZE	301	21 €
FRA	1 231	370 €
ITA	581	663 €
LTU	1 442	NAP
MLT	210	175 €
MDA	310	96 €
MCO	2 149	458 €
ROU	417	124 €
TUR	177	721 €
UKR	270	44 €
UK:ENG&WAL	912	2 851 €
MAR	9	49 €
Average	463	196 €
Median	299	196 €

In order to refine the analysis of policies related to securing access to law and justice through legal aid, the CEPEJ's aim has been to link the number of cases granted legal aid for 100 000 inhabitants, with the amounts granted by case. Complete information is available for 20 States and entities.

UK-England and Wales, **Netherlands** and **Ireland** are confirmed to be the most generous States in terms of the amount of money allocated to legal aid per case, whereas **UK-Scotland**, **Monaco** and **Portugal** have a high number of legal aid cases per 100 000 inhabitants with a lower amount allocated. To a lesser extent, **Lithuania**, **Bulgaria**, **Republic of Moldova**, **Romania** and **Ukraine**, extend the eligibility to a relatively large number of cases but limit the amount allocated.

Finally**, Armenia**, **Hungary**, **Malta** and **Morocco** limit both the number of eligible cases and the amount spent per case.

There are some States that did not provide the data presented in the figure above for all cases but they provided the data for cases brought to court. In that respect **France** and **Italy** could be compared where France has twice has much cases per inhabitant compared to Italy but in average grants a lower amount per case. **Azerbaijan** belongs to the group with lower amounts per case.

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. However, attention should be drawn to the fact that the median is 2 €, meaning that nearly half of the States and entities have budget per inhabitant lower than this amount.

According to the variations when considered in Euros and without taking into account the inflation parameter, 17 States and entities have reduced their legal aid budget, while 19 States and entities have increased it. In **Azerbaijan**, the decrease observed in the budget allocated to legal aid (approved and implemented) is due to two devaluations of the national currency. In local currency, the budget increased.

2. BUDGET

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 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;

- **non-professional judges** who are volunteers, are compensated for their expenses and give binding decisions in courts.

A variable part of the litigation can also be ensured according to States by the *Rechtspfleger* (see below).

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.

3. PROFESSIONALS

Professional judges per 100 000 inhabitants in 2016

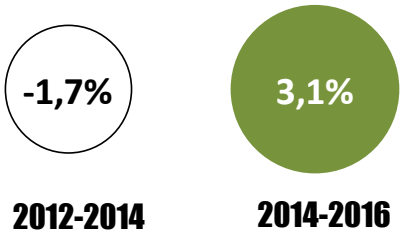
► Table 3.6

Average 21
Median 18

ALB	12,6
AND	35,6
ARM	7,7
AUT	27,4
AZE	5,2
BEL	14,1
BIH	28,9
BGR	31,8
HRV	43,3
CYP	13,1
CZE	28,4
DNK	6,5
EST	17,6
FIN	19,4
FRA	10,4
GEO	7,5
DEU	24,2
GRC	25,8
HUN	28,7
ISL	15,7
IRL	3,5
ITA	10,6
LVA	25,5
LTU	27,3
LUX	31,7
MLT	10,2
MDA	11,8
MCO	98,5
MNE	51,3
NLD	13,6
NOR	10,6
POL	26,0
PRT	19,3
ROU	23,6
RUS	18,0
SRB	38,5
SVK	24,1
SVN	42,6
ESP	11,5
SWE	11,8
CHE	14,9
MKD	27,3
TUR	14,1
UKR	14,6
UK:ENG&WAL	3,0
UK:SCO	3,7
ISR	8,5
MAR	8,4

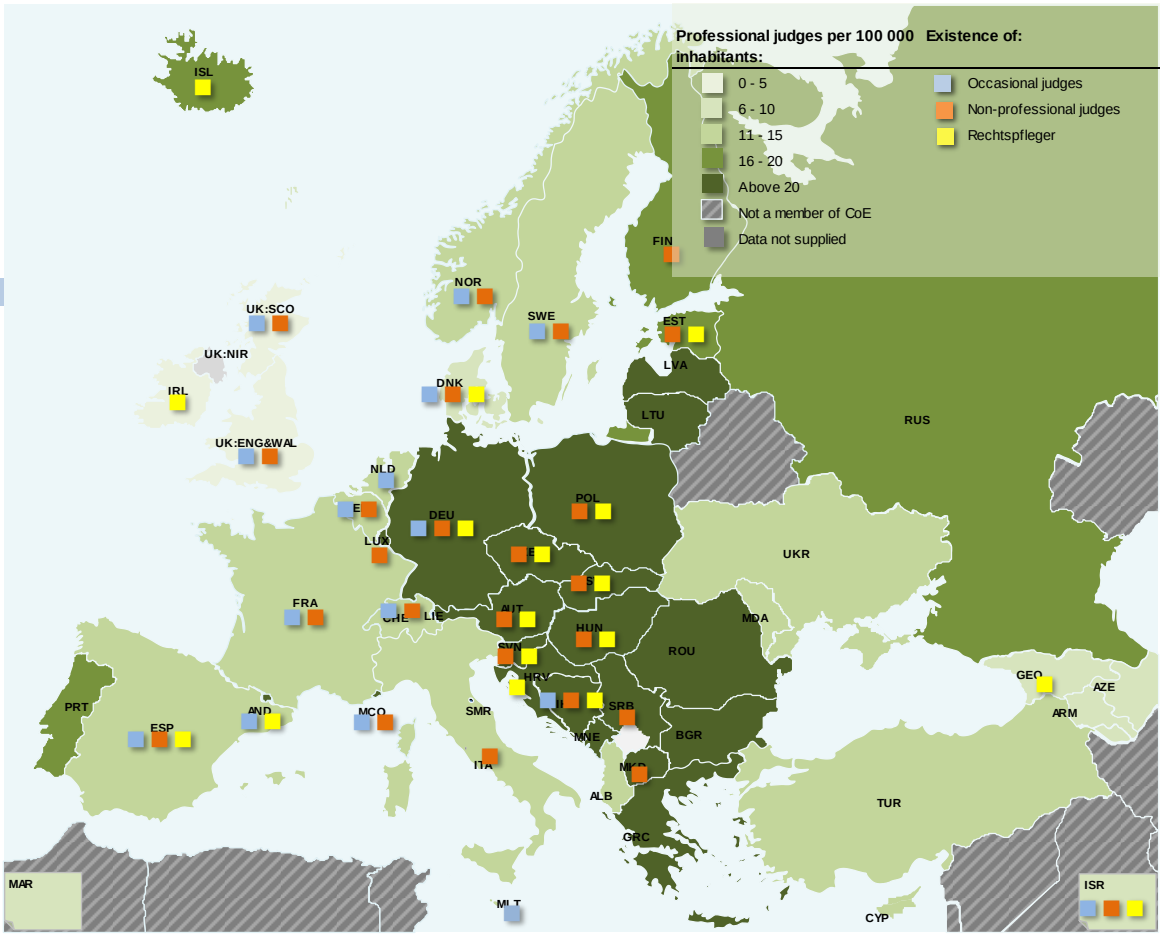
Evolution of the European average of professional judges

► Table 3.10



Professional judges per 100 000 inhabitants in 2016

► Tables 3.6 and 3.45



*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 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.

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**, **Slovenia** and **Spain** assign to them labour disputes, social litigation, commercial litigation or a part of the family disputes. However around 15 States and entities, 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.

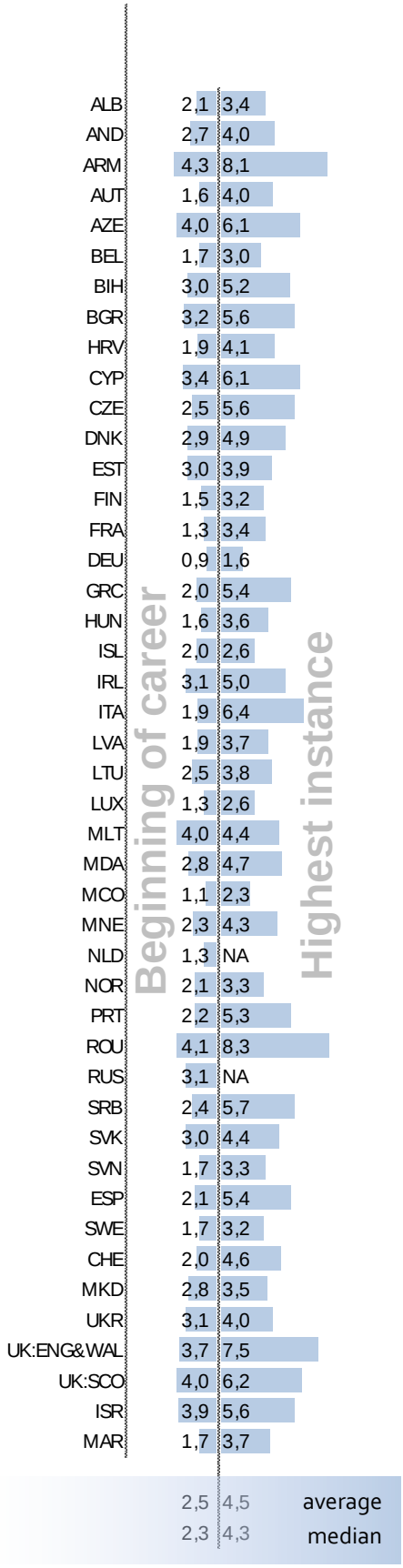
The number of professional judges remains broadly stable in the different States and entities. These are persons recruited to perform the function of a judge as a main occupation. Evolutions observed in certain States have particular explanations. The number of judges increased in **Albania**, as a consequence of the increased number of appellate judges following the entry into force of a new appeal procedure in 2013. The number of judges in **Austria** evolved due to the creation of administrative courts in 2014. In **Bosnia and Herzegovina**, the High Judicial Council has increased the number of judges in several courts in light of the number of cases to be dealt with and in order to avoid excessive delays in trials. **Turkey** also shows a significant increase. This difference is due to the fact that in 2015 the courts of appeal were not yet operational and therefore no judge had yet been recruited at this level. The situation of **Ukraine** is characterised by a significant decrease in the number of judges, due in particular to the implementation of a major judicial reform in 2016.

Eastern European countries traditionally have a much higher per inhabitant rate of judges and civil servants.

The small number of professional judges per inhabitant in **UK-England and Wales**, as in **UK-Scotland** and **Ireland**, is consistently explained by the very high proportion of cases tried by non-professional *magistrates*. In **France**, the judges sitting in labour law and commercial courts are non-professionals.

Average gross salaries of judges in relation to the national average gross salaries in 2016

► Table 3.21



The level of judges' remuneration contributes to their independence. Judges should be offered a level of remuneration corresponding to their status and responsibilities.

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" . 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 comparisons made by the CEPEJ are based on two indicators: first, the salary of a judge at the beginning of his/her career, with the need to integrate as a parameter the recruitment procedure; indeed, if a judge is recruited after his/her graduation from the judicial training school following a competition, he/she takes office relatively young and the remuneration he/she receives is a starting salary; it will not be the same if the judge is recruited after a long professional experience, the remuneration will necessarily be higher. The second indicator is the average salary of judges of the Supreme Court who are at the top of the judicial hierarchy.

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.

The increase in remuneration in **Romania** is a result of a change in the interpretation of the law on remuneration in the civil service given by the Constitutional Court. Wages have been frozen in **Slovakia** as a result of the crisis and opposite in **Lithuania** justice budgets and judges' salaries have increased in as a result of the end of the economic crisis.

It is noteworthy that in **Andorra**, a 2016 law on the salaries of judges, magistrates, prosecutors and members of the High Judicial Council reduced the salaries of judges at the beginning of their careers but now provides for the salaries of full-time judges. A reduction in judicial salaries has been decided in **Ireland**. Some States focus more on the seniority of the judge than on the court to which s/he is assigned at the end of his/her career; this is the case in **Italy** where only

seniority counts in determining remuneration. A new system of remuneration of judges and prosecutors has been introduced in the **Republic of Moldova**, resulting in a significant increase in the remuneration of judges.

In order to assess the level of remuneration of judges, it is important to compare it to the average salary in the State/entity concerned. It is also important to consider the wealth of the State/entity that can influence the level of the average salary. To analyse the remunerations at the beginning of a career, it is also necessary to dissociate the States and entities where the judges are recruited from experienced lawyers and those where they are recruited after a judicial training.

Several groups of States and entities can then be specified:

- the salaries of judges are the lowest at the beginning of their career, compared to the average salary (less than twice the average salary) in **Belgium**, **Germany**, **Iceland**, **Latvia**, **Netherlands**, **Slovenia**, **Sweden;** but a significant catch-up can be noted during the career (salary of judges of the highest instance multiplied by 2 to 2,5 against the beginning of career) in **Austria**, **Croatia**, **Finland**, **Hungary**, **Luxembourg**, **Monaco**, **Morocco**, and even more (salary of judges of the highest instance multiplied by more than 2,5 against the beginning of career) in **France**, **Greece**, **Italy**;

- the salaries of judges are quite high at the beginning of their career, compared to the average salary (between 2 and 4 times the average salary) in **Albania**, **Andorra**, **Bosnia and Herzegovina**, **Bulgaria**, **Cyprus**, **Denmark**, **Estonia**, **Lithuania**, **Republic of Moldova**, **Montenegro**, **Russian Federation**, **Slovakia**, **"the former Yugoslav Republic of Macedonia"**, **Ukraine**; and in the **Czech Republic**, **Portugal**, **Serbia** and **Spain**, the remuneration increases more during the career (salary of judges of the highest instance multiplied by more than 2 against the beginning of career); this amount should be put into perspective in **Ireland**, **Malta**, **Norway**, **Switzerland**, **UK-England and Wales, UK-Scotland**, **Israel** as judges are recruited among already experienced lawyers;

- the salaries of judges are high (at the beginning of the career judges earn more than 4 times the average salary, and at the end of their career, more than 6 times the average salary) in **Armenia**, **Azerbaijan**, **Romania**; in **UK-Scotland** this amount should be put into perspective as judges are recruited among already experienced lawyers.

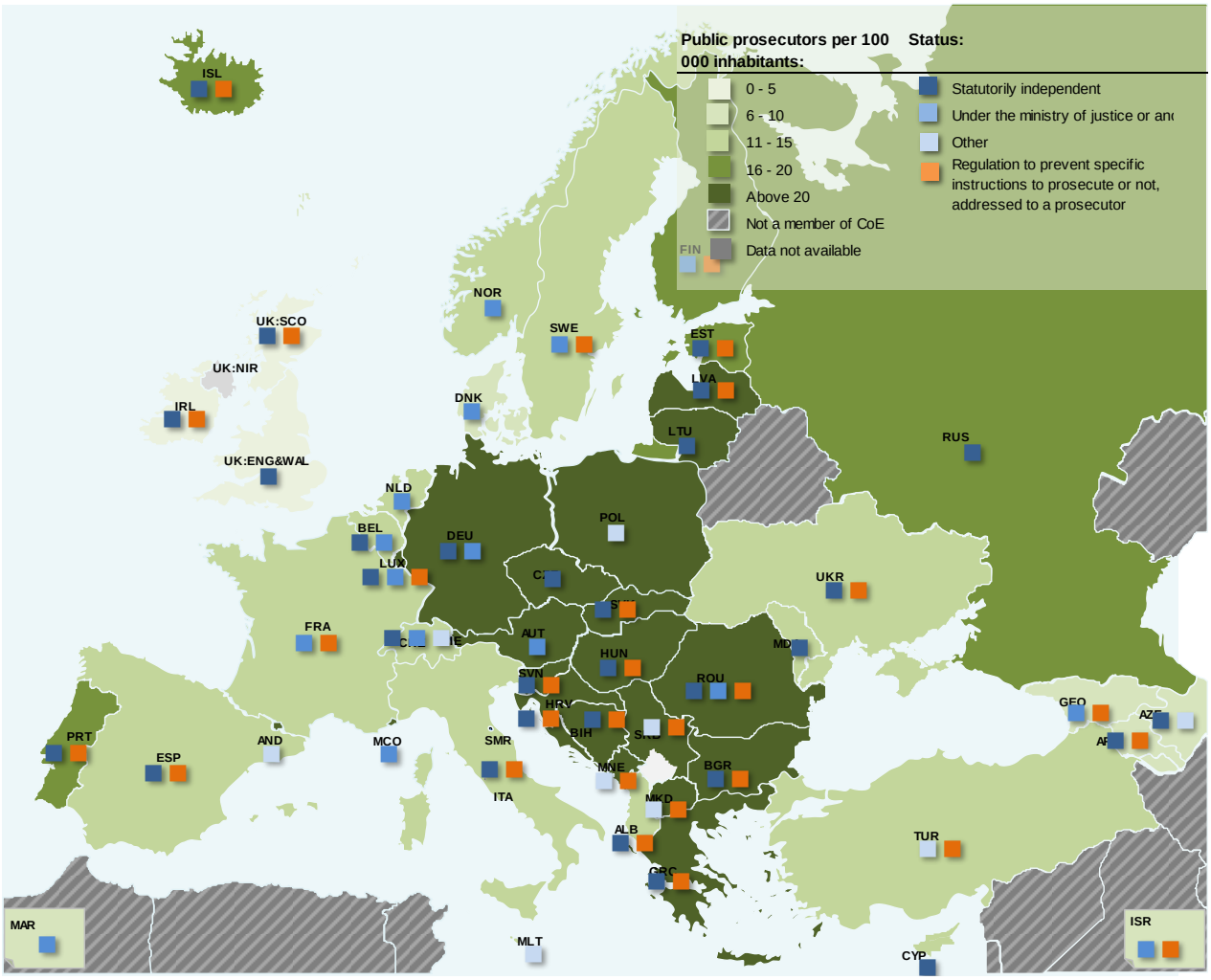
3.2 Prosecutors

Recommendation Rec(2000)19 on the Role of the Public Prosecutor's Office in the Criminal Justice System, adopted by the Committee of Ministers of the Council of Europe on 6 October 2000, defines prosecutors 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 report focuses on a formal statutory approach, distinguishing statutory independence from attachment to the authority of a ministry, with precision on the instructions given in particular cases, which makes it possible to analyse the type of intervention in judicial cases. But much also depends on real practices, linked to the cultural traditions of different States and entities. The distribution in the different categories carried out by the States must be enlightened by the clarifications provided. The legitimate hesitations highlight the complexity of the national situations for which the real status of relative autonomy or not of the public prosecutions services sometimes depends more on practices and traditions than texts.

Prosecutors per 100 000 inhabitants in 2016

► Tables 3.21 and 3.24



The public prosecutor is declared statutorily independent in 30 States and entities.

Some States stress the complexity of the situation, with public prosecution services declared statutorily independent but, at the same time, under the authority of another central authority (such as the Ministry of Justice). In **Belgium**, the Constitution provides that the Public Prosecutor's Office is independent in the exercise of individual investigations and prosecutions, without prejudice to the right of the competent Minister to order prosecutions and to issue binding criminal policy directives, including in the area of investigation and prosecution policy. In **Germany**, while the Minister of Justice exercises administrative control over public prosecutors' offices, as a general rule, no individual instructions relating to the activities of the public prosecutor's office are given in established practice. **Luxembourg** is also part of this context.

9 States stress that the public prosecutor is statutorily placed under the formal authority of the Ministry of Justice or other authority, while most often stating that prosecutors enjoy a certain degree of independence. **Finland**, for example, specifies that the Public Prosecutor's Office is under the administrative authority of the Ministry of Justice, but as far as jurisdiction is concerned, it is independent. **France** specifies that the principle of prohibiting instructions from the Minister of Justice to the Public Prosecutor's Office in individual cases has been enshrined in law. Thus, the Minister of Justice conducts the criminal policy determined by the Government. It shall ensure the consistency of its application on the territory. To this end, it issues general instructions to public prosecutors. In **Georgia**, the Constitution provides for the Public Prosecutor's Office to be placed under the auspices of the Ministry of Justice. However, the legislation guarantees its full independence and autonomy. The Minister of Justice is not empowered to intervene in investigations and prosecutions. In **Monaco**, prosecutors are placed under the authority of the Director of Judicial Services which directs the public action, without being able to exercise it him/herself, nor to stop or suspend its course. **Norway** states that the prosecution services are officially placed under the authority of the Ministry of Justice. According to the Law on the Status of Judges and Prosecutors in **Romania**, prosecutors are independent. According to the Judiciary Act, prosecutors carry out their activities in accordance with the principles of legality, impartiality and hierarchical control, under the authority of the Minister of Justice. In **Sweden**, the Public Prosecution is placed under the authority of the Minister of Justice, but its functional independence is guaranteed. The government may issue general regulations to the authorities but, according to the Constitution, it must not give directives in ongoing cases. **Israel** specifies that the prosecution services are placed under the auspices of the Ministry of Justice or the police, but they are professionally independent. **Morocco** underlines that prosecutors are under the authority of the Minister of Justice insofar as they are required to make written requisitions in accordance with the instructions given to them, but they may freely develop oral observations that they deem necessary in the interests of justice.

9 States and entities answer "Other", i.e. neither statutorily independent nor under the authority of the Ministry of Justice or another central authority even if their classification would be closer to the "statutorily independent" category.

In **Switzerland**, 10 out of 26 Cantons have a statutorily independent prosecutor, 6 out of 26 have a prosecutor under the authority of the Minister of Justice or another central authority and 8 Cantons fall into the category “Other”.

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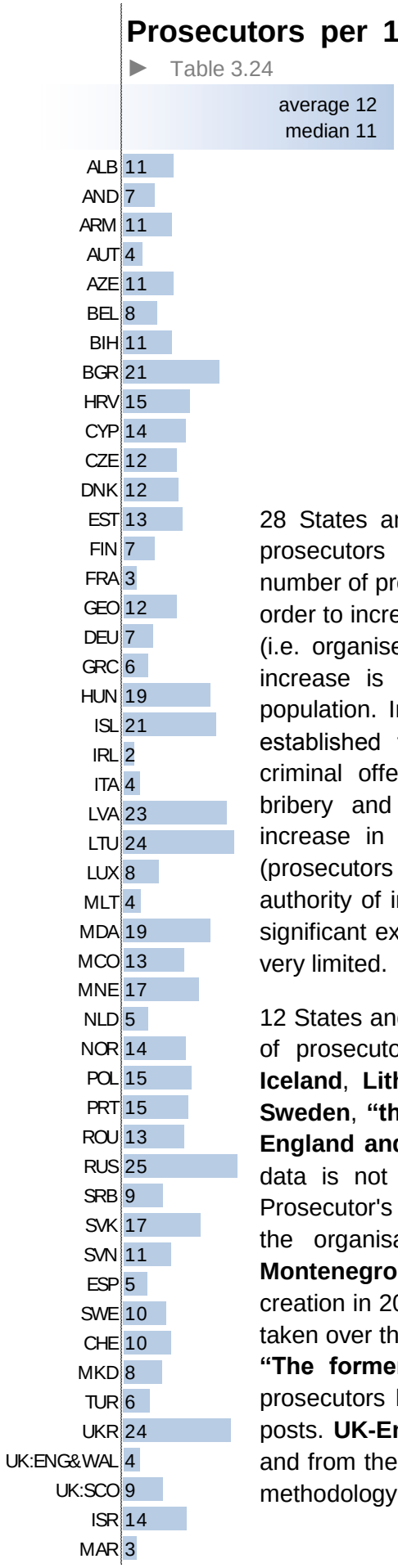
28 States and entities have regulations in place prohibiting specific instructions to prosecutors to prosecute or not to prosecute. This shows how sensitive this issue has become in the relationship between the executive branch and the prosecutors, requiring a specific text.

Either way, conclusions as regards the independence of the public prosecutors could only be established by examining the status of public prosecutors together with the appointment and promotion rules that concern them.

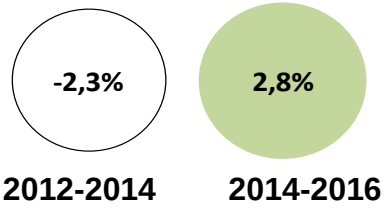
Prosecutors per 100 000 inhabitants in 2016

► Table 3.24



Evolution of the European average of the number of prosecutors

► Table 3.34



28 States and entities have experienced an increase in the number of prosecutors since 2010. **Bosnia and Herzegovina** stresses that the number of prosecutors at the Supreme Court level was increased in 2015 in order to increase their ability to investigate the most serious types of crimes (i.e. organised crime and terrorism cases). With regard to **Georgia**, the increase is only apparent because of the significant decrease in the population. In **Slovenia**, the legislation on public prosecution (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*. The strong increase in **Switzerland** is due to changes in the criminal procedure (prosecutors have been given investigative powers previously under the authority of investigative judges). The variations noted in **Andorra** are not significant expressed in percentage, because the number of prosecutors is very limited.

12 States and entities have experienced a negative variation in the number of prosecutors between 2010 and 2016: **Denmark**, **Finland**, **France**, **Iceland**, **Lithuania**, **Luxembourg**, **Republic of Moldova**, **Montenegro**, **Sweden**, **"the former Yugoslav Republic of Macedonia"**, **Ukraine**, **UK-England and Wales**. The **Republic of Moldova** indicates that the 2016 data is not comparable to the previous data of a law on the Public Prosecutor's Office in December 2016 which implied a new conception of the organisation and functioning of the Public Prosecutor's Office. **Montenegro** explains the difference in the number of prosecutors by the creation in 2015 of the Office of the Special Prosecutor General, which has taken over the activities of the Department for Combating Organised Crime. **"The former Yugoslav Republic of Macedonia"** explains that some prosecutors have retired and there are not enough candidates to fill their posts. **UK-England and Wales** refers to the fact that data from this cycle and from the previous cycle may not be comparable due to changes in the methodology.

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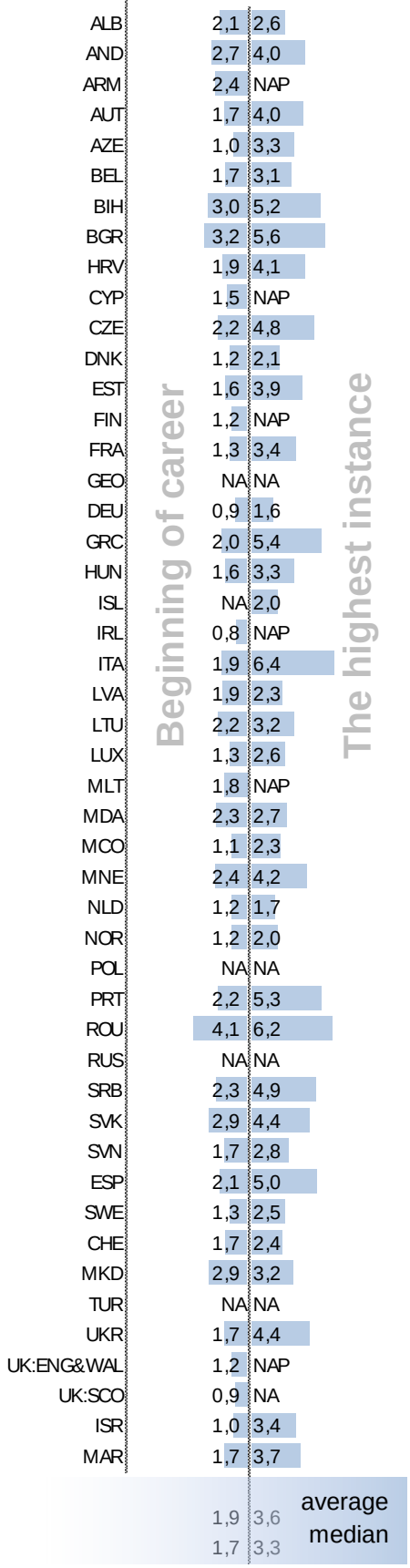
Average gross salaries of prosecutors in relation to the national average gross salaries in 2016

► Table 3.38



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, generally, 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.

For the other States and entities, generally, the salary of judges is on average higher than that of prosecutors. Nevertheless, this observation should be nuanced for the salaries at the beginning of the career by recalling that the average calculated in respect of judges includes States and entities 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**). In addition to these differences explained by the recruitment system for judges, the largest disparities (in favour of judges) can be noted in **Azerbaijan**, **Cyprus**, **Malta**, **Norway**, **Israel**, but also at the beginning of their careers only in **Estonia** and **Ukraine**.

As for judges, in order to assess the level of remuneration of prosecutors, it is important to compare it to the average salary in the State/entity concerned and its wealth of that can influence the level of the average salary.

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Workload of prosecutors in 2016

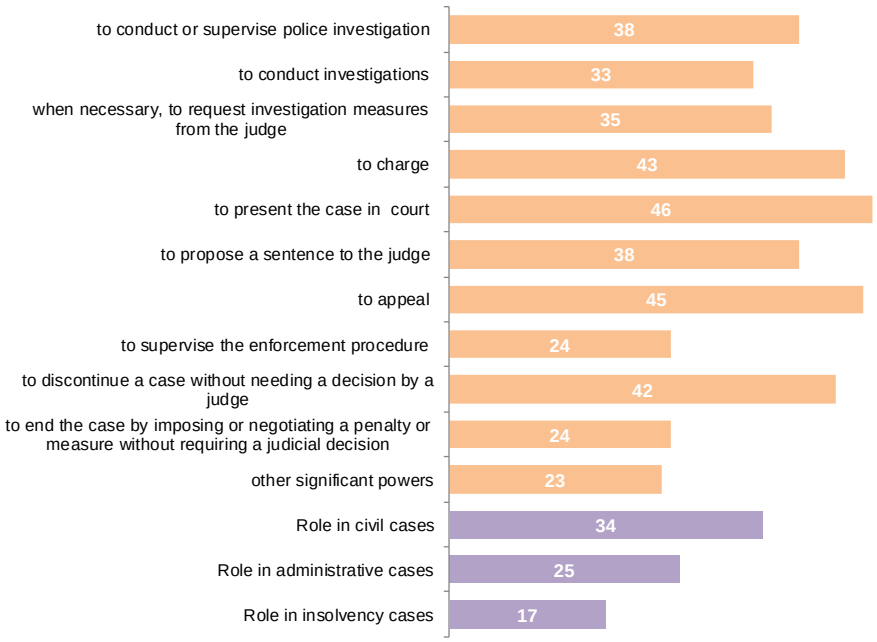
► Table 3.29

	Number of prosecutors per 100 000 inhab.	Number of cases received per 100 inhab.	Number of roles of prosecutors
ALB	11	1,5	11
AND	7	6,5	9
ARM	11	0,1	9
AUT	4	5,9	10
AZE	11	NA	9
BEL	8	NA	12
BIH	11	1,9	12
BGR	21	1,8	13
HRV	15	1,7	12
CYP	14	NA	7
CZE	12	2,3	12
DNK	12	3,0	7
EST	13	NA	10
FIN	7	1,5	6
FRA	3	7,5	13
GEO	12	1,2	10
DEU	7	6,3	10
GRC	6	NA	10
HUN	19	1,9	14
ISL	21	2,0	9
IRL	2	0,3	6
ITA	4	5,2	8
LVA	23	0,7	13
LTU	24	2,7	13
LUX	8	9,7	12
MLT	4	NA	6
MDA	19	1,9	11
MCO	13	6,2	14
MNE	17	1,5	12
NLD	5	1,1	12
NOR	14	6,5	8
POL	15	2,3	11
PRT	15	4,3	13
ROU	13	3,5	12
RUS	25	0,6	6
SRB	9	1,6	11
SVK	17	1,4	13
SVN	11	3,3	11
ESP	5	NA	11
SWE	10	4,6	8
CHE	10	6,9	10
MKD	8	1,4	7
TUR	6	4,2	11
UKR	24	NA	10
UK:ENG&WAL	4	0,9	5
UK:SCO	9	3,6	8
ISR	14	4,0	11
MAR	3	4,2	12
average	12	3,1	
median	11	2,2	

Roles and powers of prosecutors in 2016

(Number of States / entities)

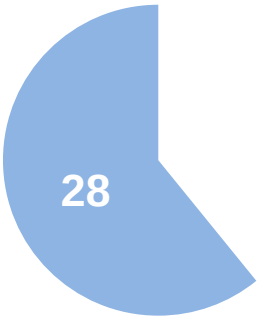
► Figures 3.26 and 3.27



Other persons with duties similar to those of prosecutors

(Number of States / entities)

► Figure 3.31



3. PROFESSIONALS

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, prosecutors having the heaviest workload remain 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 (7,45 cases per 100 inhabitants), while having to fill a record number of different functions (13). In the light of these criteria, prosecutors in **Austria** 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 phenomenon on the workload of prosecutors. The **Netherlands** and **UK-England and Wales** also have a small number of prosecutors, but the number of proceedings received is much lower – and the powers of prosecutors in **UK-England and Wales** more limited.

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 3 cases per 100 inhabitants), even if their jurisdiction is wide (around 10 different competences). The history of these countries partly explains this situation. This is particularly the case of the **Russian Federation** (over 25 prosecutors per 100 000 inhabitants and 0,65 proceeding per 100 inhabitants to deal with), **Bulgaria**, **Hungary**, **Latvia**, **Lithuania**, **Republic of Moldova**, **Montenegro**, **Poland**, **Slovakia**. This phenomenon is accentuated in some countries where other staff exercise functions similar to those of prosecutors.

The figures shown above help measure the competence gaps between prosecutors of different States and entities differentiating from States (**Hungary** and **Monaco**) where public prosecutors have jurisdiction over all fourteen assignments listed; or all but one: **Bulgaria**, **France**, **Latvia**, **Lithuania**, **Portugal** and **Slovakia** to those that conversely, only have jurisdiction over half or less of these assignments: **Cyprus**, **Finland**, **Ireland**, **Malta**, **UK-England and Wales**.

In all States and entities prosecutors are responsible for submitting cases to the courts. With the exception of **UK-England and Wales** (except for the most serious crimes, according to specific modalities), prosecutors from all States and entities may appeal. They carry the charge in all States and entities, with the exception of **Armenia**, **Russian Federation** and **UK-Scotland**.

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 34 States and entities and in insolvency matters in 17 States and entities.

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.

3.3 Non-judge staff

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 German and Austrian 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 granting nationality, payment orders, execution of court decisions, auctions of immovable goods, criminal cases, and enforcement of judgments 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 type of non-judge staff.

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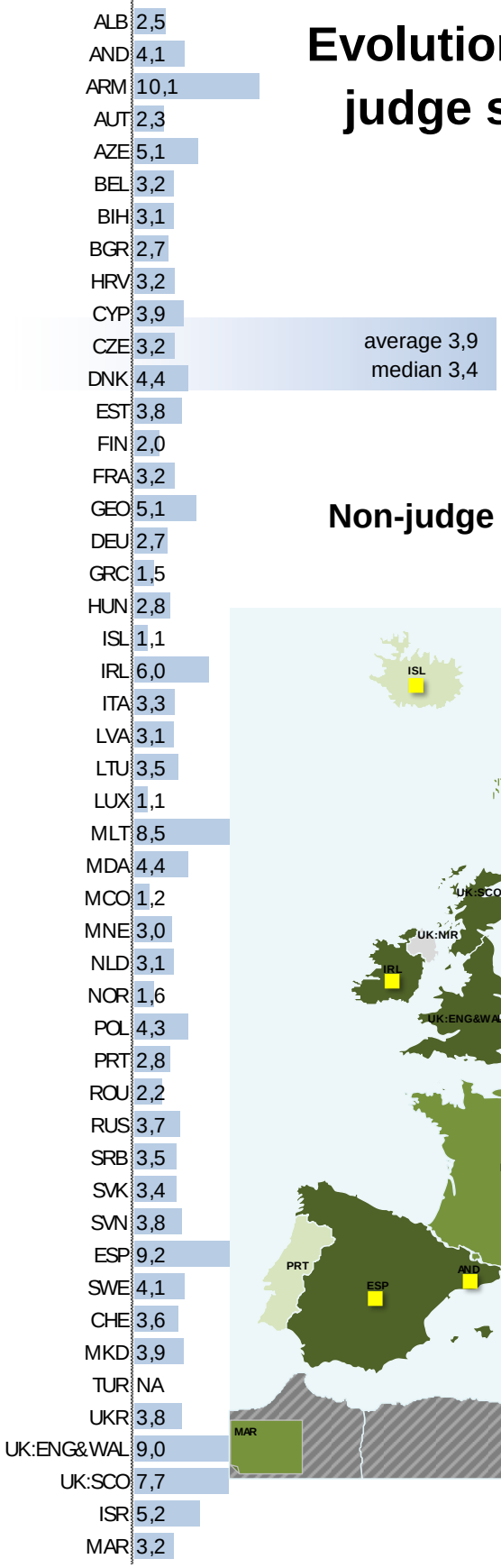
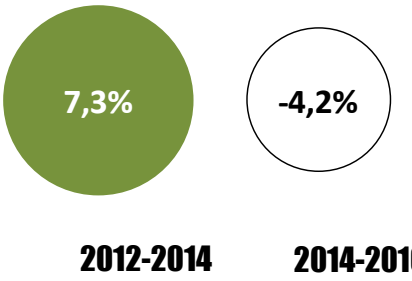
Non-judge staff per each professional judge in 2016

► Table 3.43



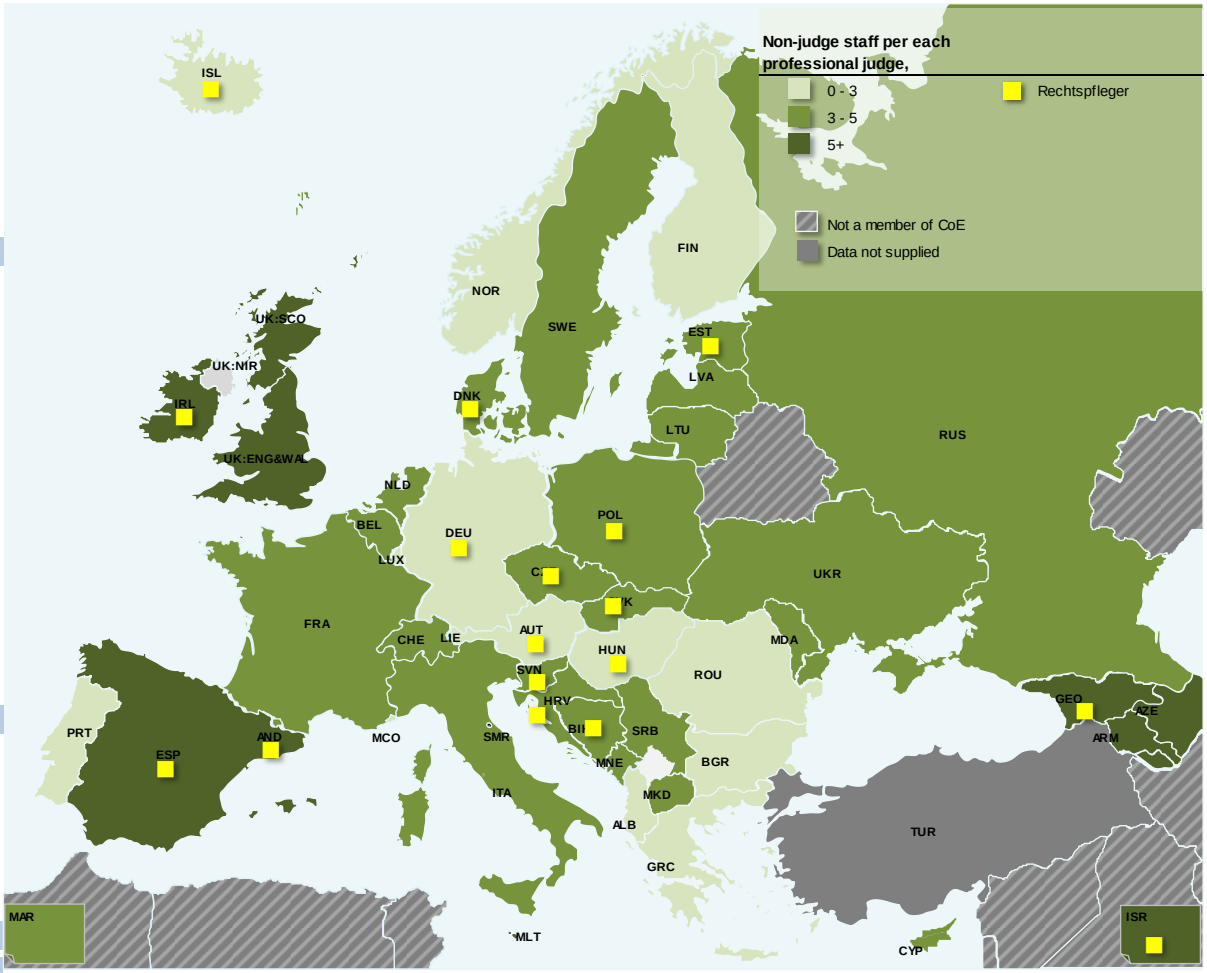
Evolution of the European average of non-judge staff per each professional judge

► Table 3.43



Non-judge staff per each professional judge in 2016

► Tables 3.43 and 3.45

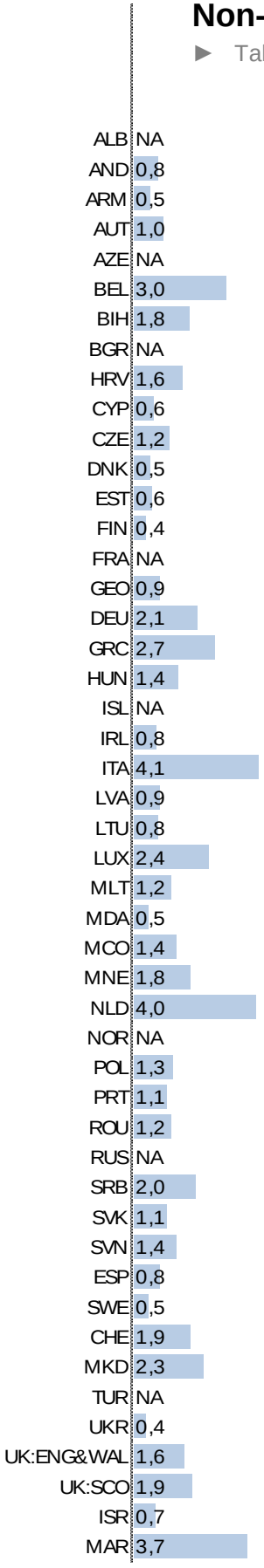


The ratio between non-judge staff and professional judge allows to assess how the judge is assisted but it must be analysed with caution for different reasons especially as mentioned for judges, a considerable part of the judicial functions may be entrusted to non-professional judges who must also be 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.

17 States indicated the number of *Rechtspfleger* or equivalent staff. The latter carry out independently judicial functions and therefore cannot be considered as assistant judges. States using *Rechtspfleger* are: **Andorra**, **Austria**, **Bosnia and Herzegovina**, **Croatia**, **Czech Republic**, **Denmark**, **Estonia**, **Georgia**, **Germany**, **Hungary**, **Iceland**, **Ireland**, **Poland**, **Slovakia**, **Slovenia**, **Spain** and **Israel**.

Non-prosecutor staff per each public prosecutor in 2016

► Table 3.50



3.4 Staff attached to the public prosecution services

Like 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.

The average number of staff assigned to the prosecutor is 1,4 in 2016, the minimum being 0,4 (**Finland**) and the maximum 4,1 (**Italy**).

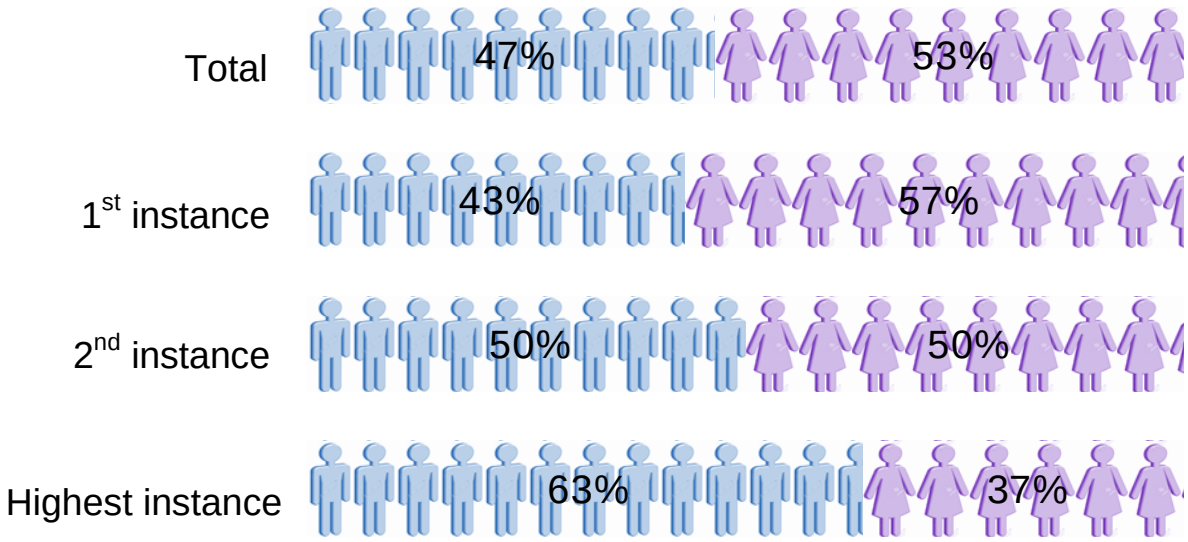
Here data does not show a decrease in the number of non-prosecutor staff over the period 2010-2016 but in contrast an average decrease in 2016 compared to 2014 and 2012. **"The former Yugoslav Republic of Macedonia"** experienced the largest increase over the period 2010-2016, while **Andorra**, **Austria**, **Denmark**, **Finland**, **Ireland**, **UK-Scotland** experienced significant decreases.

Denmark specifies that Public Prosecution staff (other than public prosecutors) are divided between the police and prosecution services (first instance). **France** recalls that the staff assisting the Public Prosecution is composed of all Registry staff under the direction of a Director of the Registry. The latter works closely with the president of the court and with the prosecutor in court. Consequently, the data on Public Prosecution staff are, to date, indistinct from that of court staff. **Slovenia** recalls that there had been a substantial increase in the number of jobs in prosecutors' offices in 2014 as a result of the Government's decision to strengthen the fight against corruption and other areas of crime defined in the prosecution policy. In **"the former Yugoslav Republic of Macedonia"**, in order to incorporate the competencies of the new Criminal Procedure Act (in force since 2013), the number of prosecution staff increased in 2014. In 2016, the increase is due to the inclusion of the staff of the new Special Public Prosecutions. It should also be noted that this number does not include investigators who work for the prosecution as members of the judicial police and who are employed mainly by the Ministry of the Interior. **Turkey** cannot separate the number of non-judge employees from the number of employees (other than prosecutors) assigned to the Public Prosecution. **UK-Scotland** reports various efficiency savings over the years, taking into account the increased use of digital solutions, which has resulted in staff savings. In **Israel**, the data provided include the number of non-prosecutor officers attached to both the State Prosecutor's Office and the Police Prosecutor's Office.

3.5 Ensuring gender balance

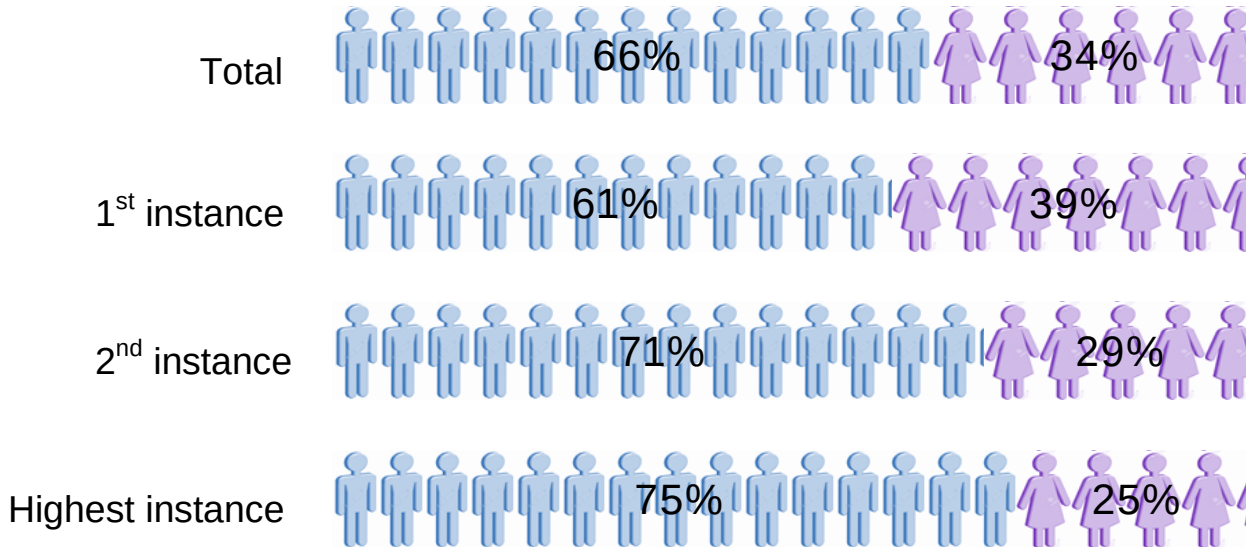
Distribution in % of professional judges per instance and by gender in 2016

► Figure 3.14



Distribution in % of court presidents per instance and by gender in 2016

► Figure 3.16



3. PROFESSIONALS

Gender inequality is particularly marked in access to positions of responsibility. Since 2014, the CEPEJ measures the glass ceiling by the percentage distribution of court presidents per instance.

On average, the percentage of male heads of court or jurisdiction is 66% overall compared to 34% of women (the percentage was 67-33 in 2014). For heads of first instance courts, the ratio is 61-39 in favour of men (64-36 in 2014). In **Latvia**, the court reform has led to a reduction in the number of courts and thus a reduction in the number of court presidents. This is also the case in **Lithuania** with groupings of courts, effective since 1 January 2018. There is also a difference in the number of heads of court in the **Netherlands** because of some groupings. Conversely, **Serbia** has increased significantly the number of basic courts so there has been an increase in the number of presidents since 1 January 2014. In **Spain**, there are no presidents of courts of first instance as courts are composed of a single judge; as for presidents of second instance courts, the percentage is 71% men and 29% women (75-25 in 2014). In **Finland**, the decrease in the number of male presidents of second instance courts is due to the merger of two courts of appeal in 2014 and the appointment of a female president in 2014. The percentage is 75% men and 25% women at Supreme courts level (82-18 in 2014).

The evolution is barely noticeable, but with the pool of women increasing in almost all countries, it is logical to think that career progression will follow. 11 States indicate that 100 % of the presidents of the court of appeal are men. Women fill 50 % of the posts of professional judges at second instance, but only 29 % of the posts of presidents of these courts. Additional measures must therefore be taken to facilitate career development. It should be noted, however, that some States have seen changes in the number of heads of courts compared with previous years: this is the case in **Belgium**, which has carried out a reform of the judicial map mainly concerning first instance courts. In **Estonia**, not all courthouses have a president.

The feminisation of functions of professional judge is a confirmed European trend, although it is less obvious in the common law countries. The glass ceiling is still a reality when it comes to accede to functions of responsibility of head of court and the percentage of women decreases as one moves up through the judicial hierarchy. Some States have become aware of this discrepancy and have started to put in place mechanisms to encourage, in case of equal competences, the recruitment of women to senior positions (infra). In those cases, the principle of merit-based recruitment for heads of courts or jurisdictions must be reconciled with gender sensitivity in an attempt to promote the under-represented sex.

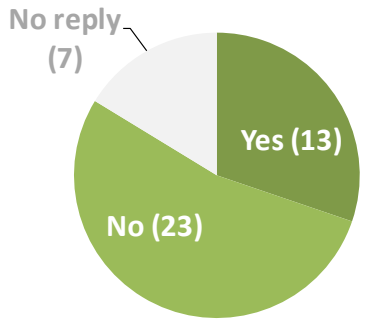
The strengthening of continuous training aimed at management functions could be a tool to encourage women to take an early interest in accessing positions of responsibility.

The CEPEJ has focused its study on the issue of the distribution females/males within the professions of the justice sector. Action by States and entities in the area of equality between men and women in the justice sector is rare. The measures are often not specific to the judicial system but aimed more broadly at all public professions, or even more broadly at all professions, including the private sector.

While the female proportion is increasing among judges and prosecutors, professions such as lawyers, notaries and enforcement agents are predominantly male. Recruitment conditions, as well as working conditions, in these different professions may explain certain situations.

National programme or orientation document to promote gender equality

► Table 3.66



While almost a third of the member States have carried out recent surveys and reports on gender equality in the legal professions (see Figure above), there are in fact few States and entities in which specific provisions in favour of gender parity in recruitment in the justice sector have been enacted and implemented. In most cases, general provisions or mechanisms apply aimed at avoiding gender discrimination. Only **Germany** seems to have developed a global policy in favour of parity, for the recruitment of judges and lawyers, notaries and enforcement agents.

Other States and entities appear to be particularly concerned about ensuring parity in promotion mechanisms, for judges and prosecutors, and also more broadly in the majority of legal professions. **Norway** and **Sweden** seem to take this requirement into account in the provisions put in place.

There are no specific mechanisms in place to enable females to have access to positions of responsibility within the courts; the organisation of judicial systems does not currently meet this objective, with very rare exceptions. This would indeed imply reviewing the initial training and continued training of magistrates, internal management methods in order to succeed in setting up new working organisations, and an overall reflection which does not yet seem to have been carried out by the States and entities.

3.6 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*"[3].

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 and 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).

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 for a reasonable cost.

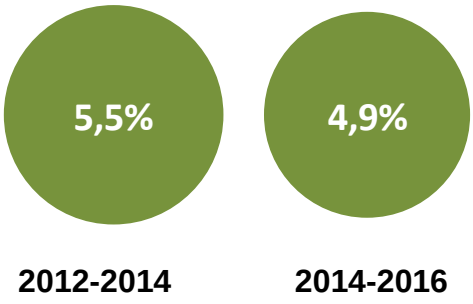
[3] Committee of Ministers of the Council of Europe, *Freedom of Exercise of the Profession of Lawyer*, Rec(2000)21, 25 October 2000.

Lawyers per 100 000 inhabitants in 2016

► Table 3.52

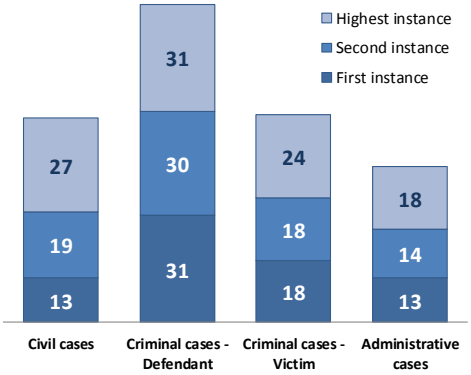
Evolution of the European average of lawyers

► Table 3.52



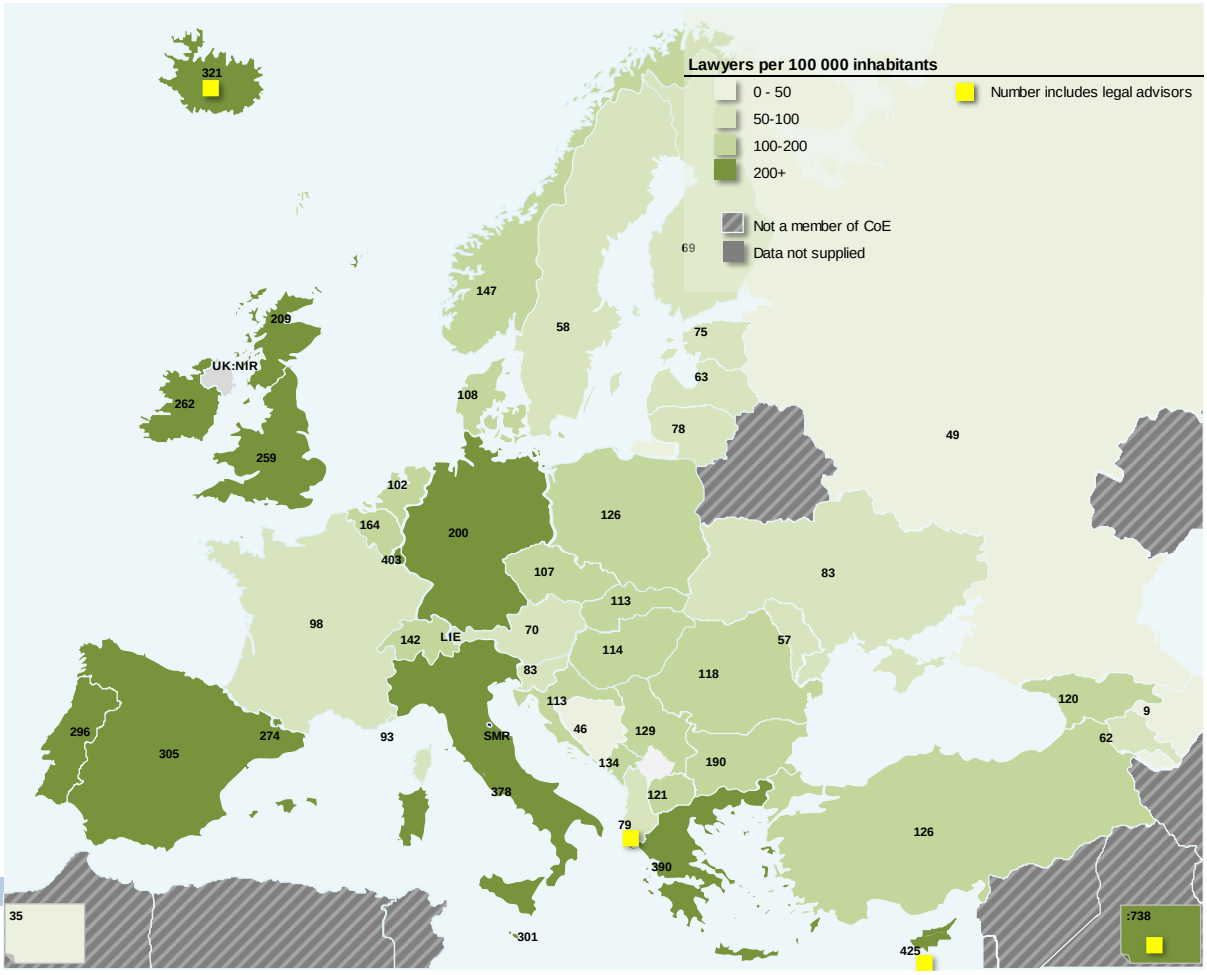
Lawyers' monopoly for representation in courts

► Figures 3.54, 3.55, 3.56



Lawyers per 100 000 inhabitants in 2016

► Table 3.52



3. PROFESSIONALS

The number of lawyers per 100 000 inhabitants increased in 2016, as in the previous three exercises. However, the average increase for the period 2010-2016 is only 3 %. It seems that recently the trend slows down.

However there is a large gap between States. This can also be explained by the legal traditions, the definition and scope of the lawyers' skills, as well as the old or recent development of the rule of law. The lowest number in 2016 was 9 lawyers per 100 000 inhabitants in **Azerbaijan** and the highest 425 lawyers in **Cyprus**, which however includes lawyers who advise but do not represent their clients in court. Several other States are close to 400 lawyers per 100 000 inhabitants: **Luxembourg** , **Greece** and **Italy**.

Lawyers' compulsory representation in courts shows that monopoly reaches its highest levels at last instance. 18 States and entities have declared that there is a monopoly of legal representation at third instance in civil cases, criminal cases (with regard to victims as defendants) and administrative cases. There are only 13 States and entities where this is the case at second instance and 11 at first instance.

It is mainly the defendants in criminal cases who are represented by a lawyer (31 States at first instance, 30 States at second instance and 31 at last instance). For civil and administrative cases, the monopoly is best illustrated at the level of third instance (27 and 18 States and entities, respectively). This is also the case for the representation of victims at third instance (the monopoly exists in 24 States and entities, whereas it exists in 18 at first instance).

4.1 Organisation of the court system

Courts perform different tasks according to the competences that are described by law. In the majority of cases, courts are responsible for dealing with civil and criminal law cases, and possibly administrative matters. In addition, courts may have a responsibility for the maintenance of registers (land, business, 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.

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".

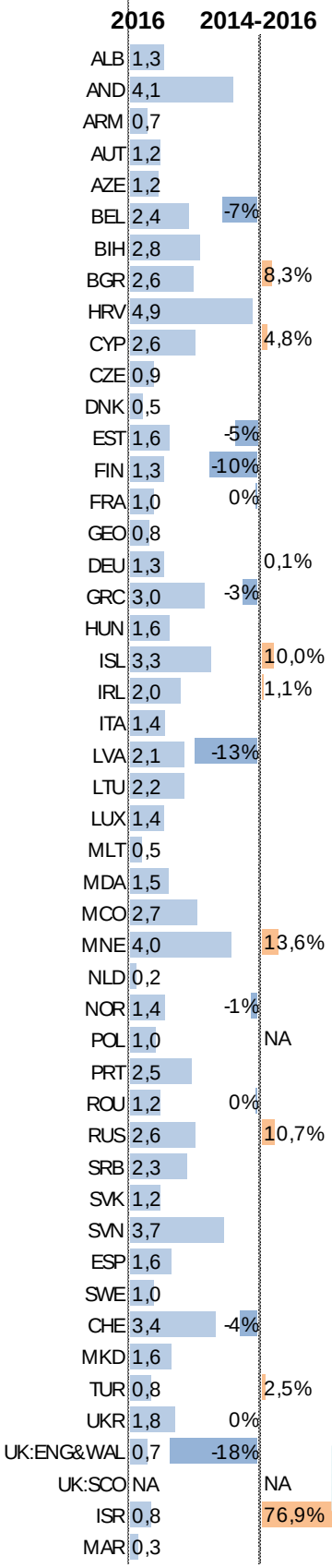
In this section, the notion of courts takes into account the following elements:

- *first instance courts of general jurisdiction (legal entities)*: these courts deal with all issues which are not attributed to specialised courts, and specific cases of common jurisdiction referred to in this chapter,
- *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 courts in the same place (city/district, county, department, region, *etc*.), this must be taken into account. The figures include the locations of the first instance courts of general jurisdictions and first instance specialised courts, second instance courts (courts of appeal) as well as the locations of the courts of highest instance and/or supreme courts,

The data contained in this chapter must be treated with caution because the jurisdiction of a court or the name of a case may correspond to different concepts in different States or entities. For some States and entities, for example, the courts of peace are not considered as courts of first instance. Besides the differences related to the definitions, the geographical density can also be a differentiating factor for comparable countries in terms of the development of their judicial systems. Due to short distances, jurisdictions are more clustered and therefore fewer in number. Thus, States with a high population density may mechanically have a low number of jurisdictions per capita (**Netherlands**;, **Denmark**), as opposed to larger ones (**France**, **Germany**).

Number of all courts (geographic location) per 100 000 inhabitants in 2016 and variation between 2014 and 2016

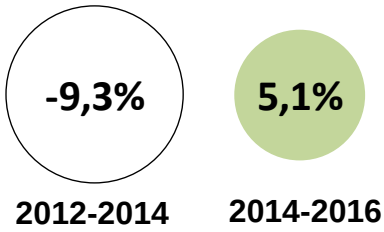
► Tables 4.1 and 4.11



Average 1,9
Median 1,6

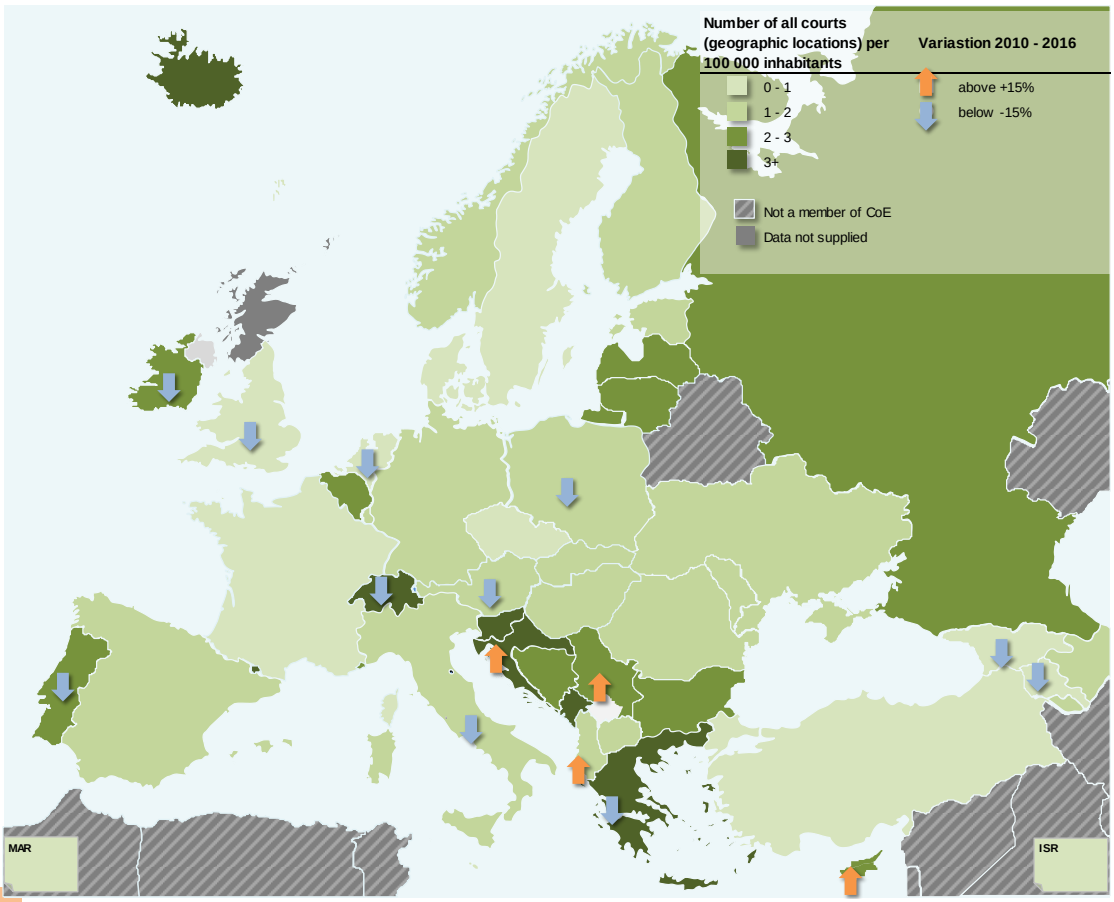
Evolution of the European average of all courts (geographic location)

► Table 4.11



Number of all courts (geographic location) per 100 000 inhabitants in 2016 and variation 2010-2016

► Tables 4.1 and 4.11



A comparison of data on the total number of courts counted as geographical entities per 100 000 inhabitants, totalling all courts shows an average of 1,9 courts per 100 000 inhabitants and in 20 States and entities (**Albania**, **Austria**, **Azerbaijan**, **Estonia**, **Finland**, **France**, **Germany**, **Hungary**, **Ireland**, **Italy**, **Luxembourg**, **Republic of Moldova**, **Norway**, **Poland**, **Romania**, **Slovakia**, **Spain**, **Sweden**, **"The former Yugoslav Republic of Macedonia"** and **Ukraine**) there are between 1 and 2 courts. Some countries have a high number of courts per capita: in particular **Croatia** or **Montenegro** and opposite as mentioned before, the **Netherlands** or **Morocco** have a very low number of courts per inhabitant.

Comparison on the basis of data accounting for courts as a legal entity or administrative structure would provide a more accurate picture of the number of courts, in the common sense of the term. However, as for legal entities, the CEPEJ data is limited to the first instance courts and do not take into account the many courts of second instance or courts of appeal, as well as the supreme courts, that are generally one per State or entity.

It is nevertheless useful to note that while the two ways of counting the courts give a general idea of the number of courts per State and entity, some States have a total number of courts (geographical locations) much lower than the number of first instance courts (as legal entities), which suggests that States have already made efforts to group the courts together, thus facilitating access to justice and probably rationalising certain operating costs: **Austria**, **France**, **Portugal**, **Russian Federation**, **Spain**, **Switzerland**, **Turkey** and **Israel**. The same is true in **Malta** and **Monaco**, where this geographical rationalisation is more evident. Depending on the State and entity, this may be an old judicial organisation or a reform of the judicial map.

In order to analyse the phenomenon of jurisdictions' concentration, it is more accurate to look at possible variations in the number of courts according to the geographical location. But an analysis of the number of legal entities (general jurisdiction and specialised courts of first instance) will make it possible to understand whether this is a global phenomenon or whether reductions or increases in the number of courts concern only a few courts (for example, in **Albania,** the 22,6 % increase in the number of geographical locations and the 600 % increase in the number of specialised courts only correspond in reality to the creation of 6 new specialised courts between 2012 and 2014).

The map shows the density of all courts (geographic locations) and also indicates States and entities with significant variations in the number of courts between 2010 and 2016 that exceeds ±15%.

It should also be noted that some States, in their judicial reform, have decided to increase their number of specialised courts: between 2010 and 2016 in **Italy**, the number of first instance specialised courts increased by 111 % (while in the same period, courts of general jurisdiction decreased by more than 58 %), in **Portugal** by 109 % (increase of only 35 % for courts of general jurisdiction) and in **Switzerland** (with an increase of 116 % of specialised courts and a decrease of 35 % of courts of general jurisdiction), these figures concern the creation of almost a hundred courts between 2012 and 2014.

It is important to highlight that **Croatia** has considerably reduced the number of its courts (legal entities) following its judicial map reform in 2015, while having an increasing number of geographical locations, due to a change of jurisdiction in matters of appeal. **Armenia** for its part has chosen to transfer to the notaries some powers previously granted to the courts.

4.2 Use of information technology in European courts

In pursuit of better access to justice, easier procedures in every branch of the law (civil, criminal and administrative) and closer cooperation between judicial and administrative authorities in different countries, a large number States have been intent on developing information technology (IT) for courts (variously known as e-Justice, e-courts, Cyberjustice, electronic justice, etc.) for over ten years now. This intent is reflected in their commitment, to varying degrees, to IT development in courts and public prosecution services in order to improve the efficiency of judicial systems.

The CEPEJ carried out for a second time thorough evaluation of the use of information technology (IT) in the judicial systems of the Organisation's member States as part of the CEPEJ's 2016-2018 cycle.

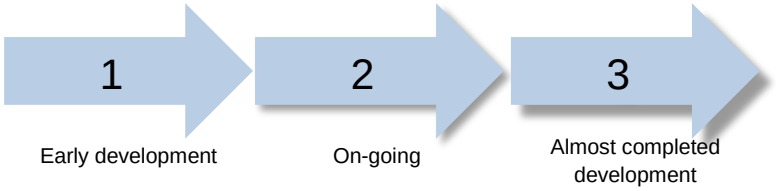
The aim was not only to draw up an inventory of the development of information technology tools and applications in the courts and prosecution services but also to identify very first means of analysis of their impact on the efficiency and quality of the public service of justice.

Level of development of information technology (IT) in courts in 2016

► Figure 4.14

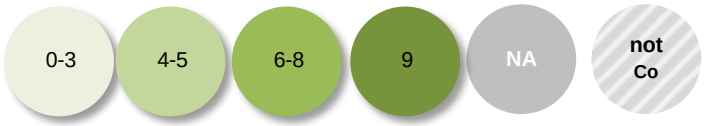
	Equipment	Legal framework	Governance
ALB	2	1	1
AND	2	1	2
ARM	2	1	2
AUT	3	3	3
AZE	2	2	2
BEL	2	1	2
BIH	2	1	2
BGR	2	1	2
HRV	2	1	2
CYP	1	1	2
CZE	2	2	3
DNK	2	2	2
EST	3	3	2
FIN	2	3	2
FRA	2	2	2
GEO	2	2	2
DEU	3	2	2
GRC	2	2	1
HUN	3	3	3
ISL	2	2	2
IRL	2	2	2
ITA	2	2	2
LVA	3	2	3
LTU	2	2	2
LUX	2	1	2
MLT	2	2	3
MDA	2	2	2
MCO	2	1	2
MNE	2	1	3
NLD	2	1	3
NOR	2	2	3
POL	2	1	2
PRT	3	3	2
ROU	3	2	2
RUS	2	2	2
SRB	2	1	1
SVK	2	2	1
SVN	3	2	2
ESP	3	3	3
SWE	2	2	2
CHE	2	2	2
MKD	2	2	2
TUR	3	3	3
UKR	2	2	2
UK:ENG&WAL	2	2	3
UK:SCO	2	1	2
ISR	3	2	3
MAR	2	1	2

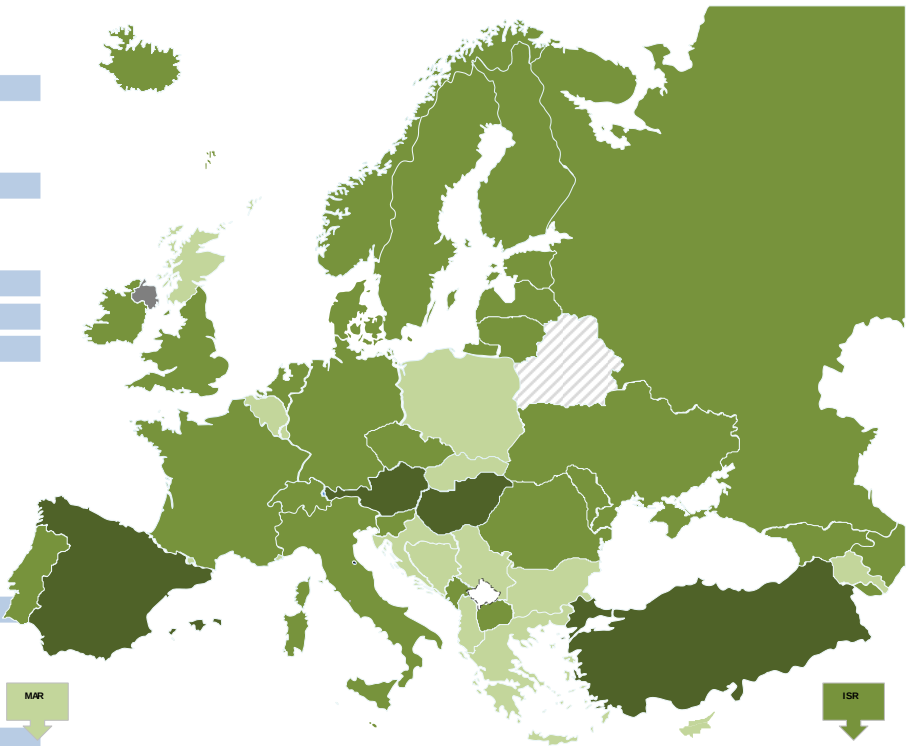
Indices used for IT evaluation



Sum of IT indices in each field in 2016

► Figure 4.14





4. COURTS AND USERS

The analysis of the state of development of IT leads to a confirmation of the trend outlined in previous reports: most countries have continued to invest significantly in IT for the functioning of their courts.

The direct assistance devices to judges, prosecutors and clerks and court management tools remain, however, far more developed than the electronic communication tools with professionals and court users.

The civil, commercial, criminal, administrative and "other" matters appear broadly to have been invested in in the same way by the States. Similarly, no priority seems to have been given to the development of IT tools to improve the quality of the public service of justice (internally as regards the operation of the court and externally as regards the relationship with clients and professionals) compared to those improving efficiency.

This preliminary finding makes it possible identifying other trends regarding the impact of IT from the perspective of efficiency and quality.

It seems that the good level of development of IT tools cannot be systematically linked to a good level court performance. Indeed, the most technologically advanced countries do not always have the best indicators for efficiency. The reason for increased (or reduced) performance is in fact to be found in the combination of several factors such as the resources allocated, but also methods of evaluating court performance, and the use of IT as a lever for improvement rather than as an end in itself).

The impact felt by the users could not be measured in this report, but it can be deducted from the median European development index on electronic communication (measured at 4,4 out of 10) that this areas still requires investment in many countries. Using the internet to not only communicate information to litigants but also to enable them to conduct online procedures, follow their case, obtain an extract, are features that contribute not only to bring the public service of justice closer to the citizens but also to create a high level of trust in the system.

The consequences of the development of artificial intelligence (essentially machine learning) in judicial systems remain complex to evaluate, since the initiative comes essentially from the private sector (legaltech in particular) for private actors (insurance companies, legal departments, lawyers). The CEPEJ is assessing the current situation through a multidisciplinary approach in order to constitute the first European ethical charter in the light of the requirements of the European Convention on Human Rights. States will be invited to apply the principles of this Charter in their judicial systems which, without hampering public or private initiative, will support development which respects human rights.

More generally, States should be encouraged to continue their investment in IT, relying in particular on good practices. The CEPEJ guidelines relating to Cyberjustice (CEPEJ(2016)13), is a key document to be taken into consideration when developing public policies of reorganisation of judicial services based on information technology.

4.3 Information of the court users

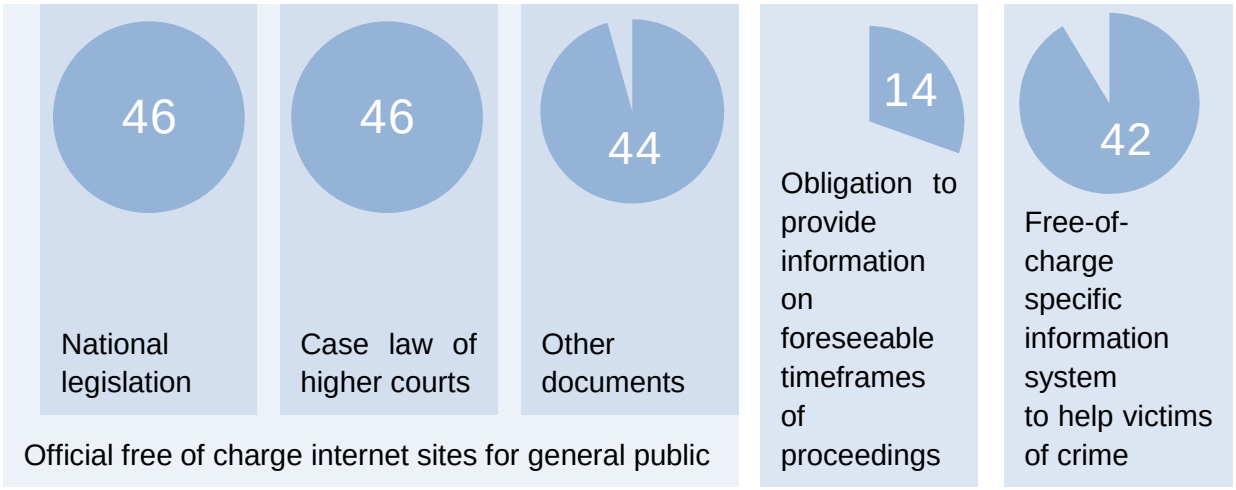
Getting correct and sufficient information is essential to guarantee an effective access to justice. On the one hand judicial systems should strive to inform and educate the general public and potential court users on the work and competences of courts, nature of judicial proceedings, roles of different professionals involved in procedures, legal representation, possibilities of legal aid, rights and obligations of individuals, how to start a procedure, timeframes of judicial proceedings, expected costs and duration, relevant legislation, case-law, etc. On the other hand, once the procedure has started, the party should have open access to information about the procedure – the stages of the procedures, the planned hearings and expected timeframes, as well as access to the case file.

The use of IT tools can help court users understand their position within a procedure better, accelerate the exchange of documents and information, reduce costs, increase environmental responsibility and release judicial staff from unnecessary tasks. It enables easy and free access to information on legislation, legal procedures, as well as forms and documents of individual courts. The CEPEJ encourages the use of new technologies to help inform users of justice and to ease communication with the stakeholders of the judicial system.

Obligation to provide information to courts users

(Number of States / entities)

► Figure 4.17



Every State or entity has established websites making available national legislation and court case-law and practical information for court users. In some countries such information is provided by courts, in others by the Ministry of Justice. The access to case-law differs considerably (as to the level of court, the share of cases published, the frequency of providing new case-law, the equipment of judgments with keywords or identifiers to ease the search, etc.).

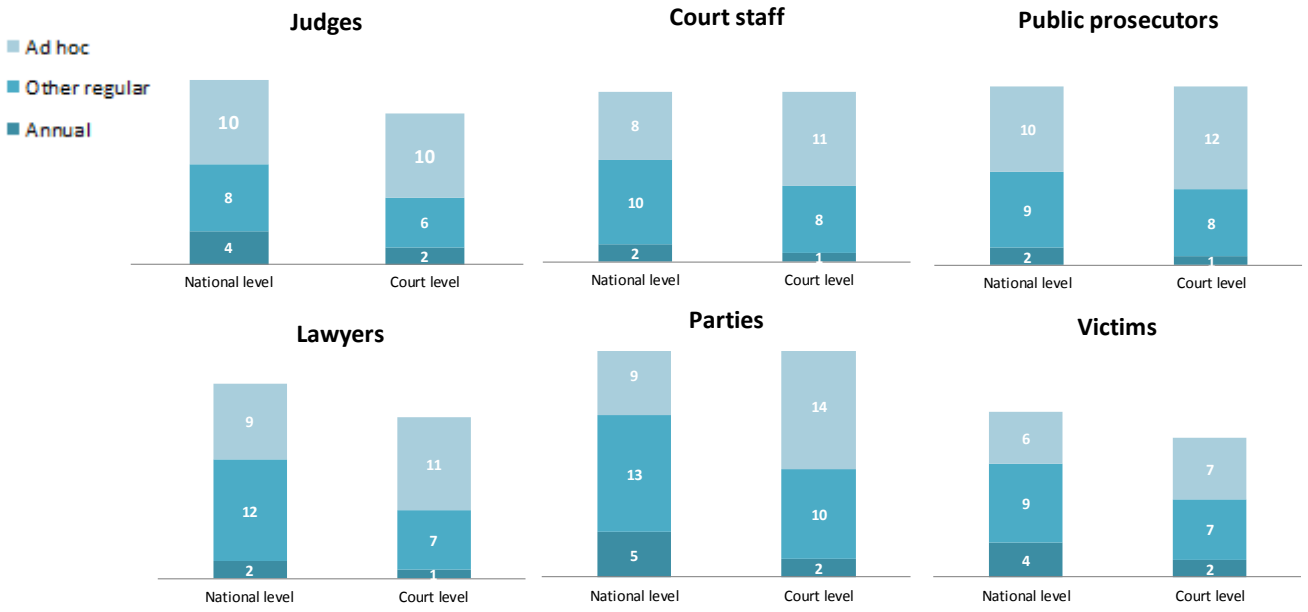
Most of the States offer other documents as well. In this category practical information and (model) forms can be mentioned, as well as different forms of e-filing. The practical information to court users can be rather general and basic or well organised according to life or legal events, specifically adapted in terms of the language(s) used, visual presentation, etc. It can address only the general public or give comprehensive information on the stage of proceedings to individuals.

An interesting example that uses new technologies to help court users understand the judicial system better by presenting roles and functions of different people involved in different types of proceedings is the interactive Virtual court room from **Lithuania.**[4] Another advanced example comes from **France** that offers a user-friendly easily understandable intuitive search system for most common proceedings and legal situations. [5] Similarly, **Turkey** set up a website, addressing the most frequent questions in a simple and understandable language for domestic users as well as foreigners.

Existence of surveys to measure the trust in justice and the satisfaction with the services delivered by the judicial system for:

(Number of States / entities)

► Figure 4.22



[4] See http://sale.teismai.lt/en, available also in English, where the user can choose different roles and procedures and follow a typical court case.
[5] See https://www.justice.fr/.

Court satisfaction surveys are an important tool for the quality policy of a judicial system. These surveys can be directed at different stakeholders (litigants, legal professionals (lawyers, public prosecutors), experts, interpreters, general public, judges and court staff, specific categories of court users, such as children, victims, people with disabilities, etc.). The methods to gather information can differ considerably – from quantitative telephone interviews, on-line questionnaires, in-house printed questionnaires to various qualitative approaches such as workshops, focus groups, in-depth guided interviews, observation, analyses of social media activity, etc. Each method has advantages and disadvantages, each measuring different aspects of judicial quality (the level of satisfaction with services for people who had actual contact with the court on one hand and trust and confidence in the judicial system among the general public on the other).

Each year more and more States and entities decide to conduct court user satisfaction surveys. In 2016, 35 States and entities have set up mechanisms to assess the perception of court users of the service delivered by the judicial system. Only 11 States reported no such activity (**Andorra**, **Bulgaria**, **Cyprus**, **Czech Republic**, **Estonia**, **Georgia**, **Germany**, **Greece, Italy**, **Luxembourg** and **UK-Scotland).** These surveys are mostly addressed to parties (30), legal professionals – lawyers (27) and public prosecutors (24). Another important category that should not be let out are judges (24) and court staff (25). Other surveys include also victims (21) or other court users (24) or specific categories not mentioned (18).

4. COURTS AND USERS

5. Efficiency and quality of the activity of courts and public prosecutor services

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.

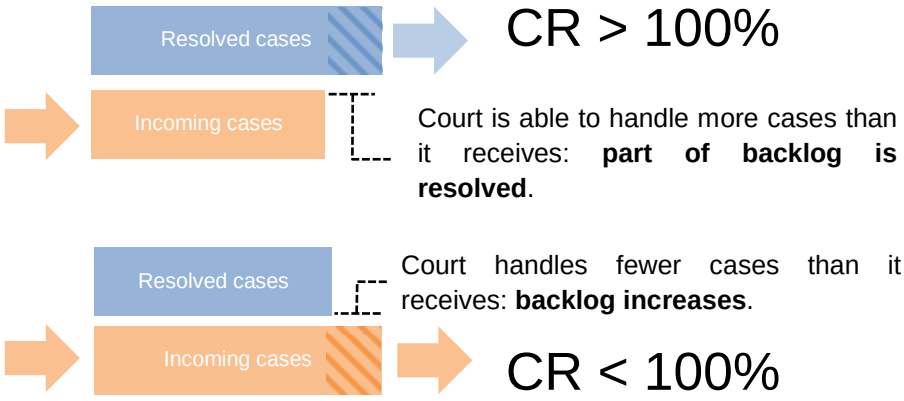
This synthesis provides basic facts and figures on the performance of courts. It treats all analysed jurisdictions equally and does not intend to promote any particular type of justice system. Its approach, however, is inspired by the acknowledgement of the fact that the safeguarding of the fundamental 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 on 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.

Data analysed here is primarily related to courts of first instance and the analysis is extended on higher instance only for civil and commercial litigious cases. Court performance is assessed in the context of specific sectors of justice, i.e. criminal, civil (with regard to civil and commercial litigious cases), and administrative cases. Additionally, this cycle includes a brief presentation on pending cases of more than 2 years.

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. Nevertheless, the information gathered from states and entities highlights important differences in the way specific groups of cases are computed within the categories of the CEPEJ questionnaire; 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 on the specifics of each jurisdiction valid for both the civil and criminal sectors.

Clearance Rate (CR)

The Clearance Rate (CR) is a simple ratio, obtained by dividing the number of resolved cases with the number of incoming cases, expressed as a percentage:



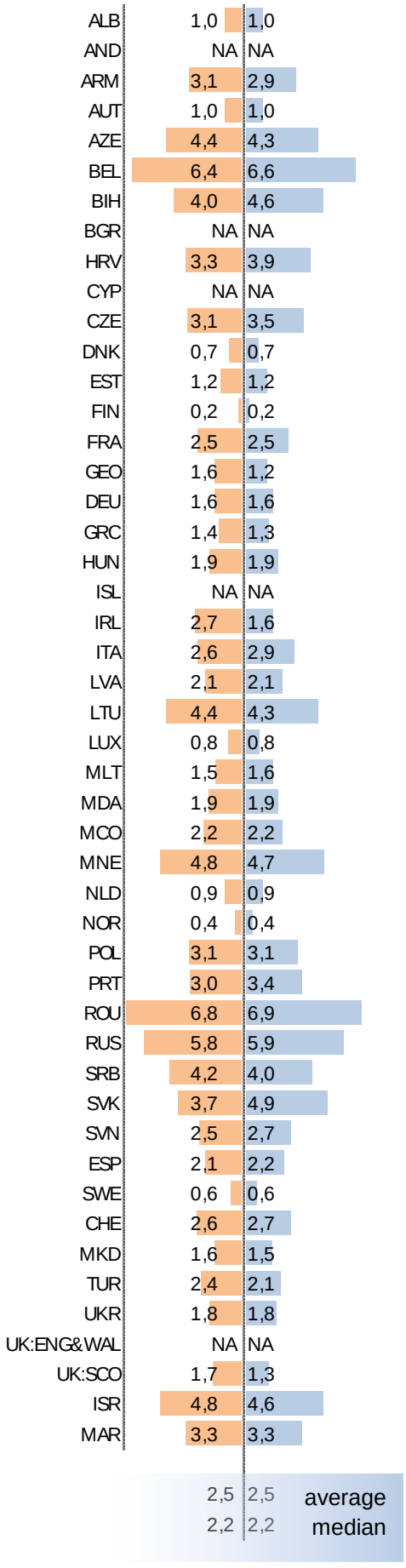
Essentially, the Clearance Rate shows how the court or judicial system is coping with the in-flow of cases. It allows comparisons even when the parameters of the cases concerned in different countries are not identical in every respect.

Disposition Time (DT)

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):

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 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 10th day and the second on the 90th 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.

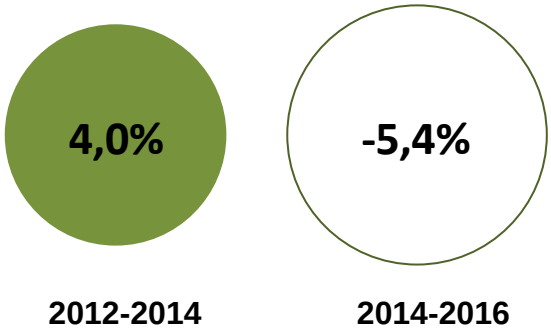


Incoming and pending first instance civil and commercial litigious cases per 100 inhabitants in 2016

► Figure 5.5

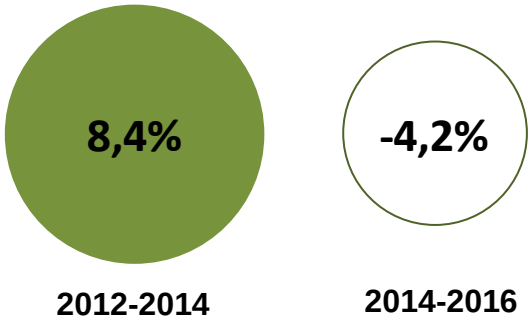
Evolution of the European average of incoming civil and commercial litigious cases per 100 inhabitants

► Figure 5.5



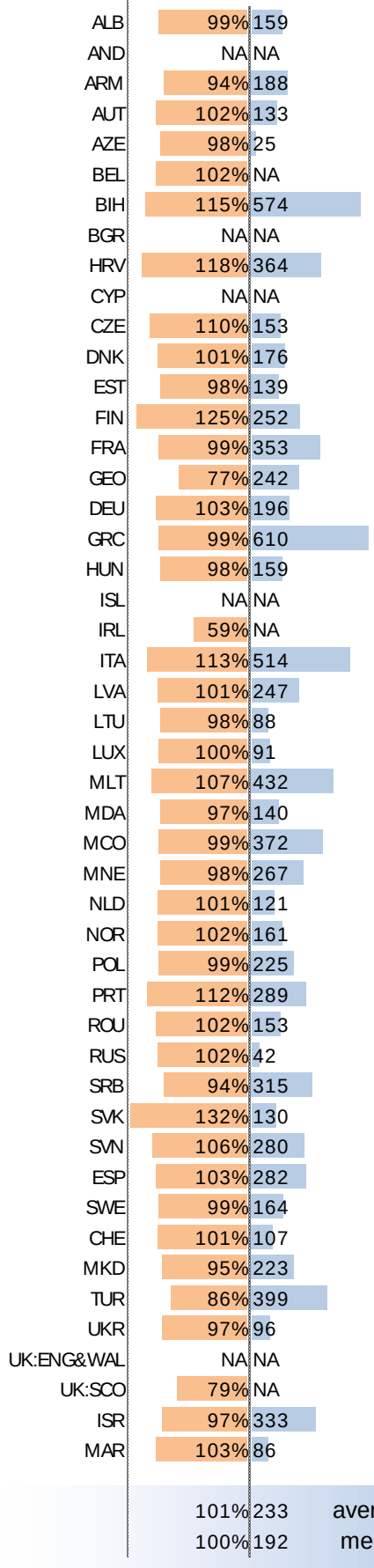
Evolution of the European average of pending civil and commercial litigious cases per 100 inhabitants

► Figure 5.9



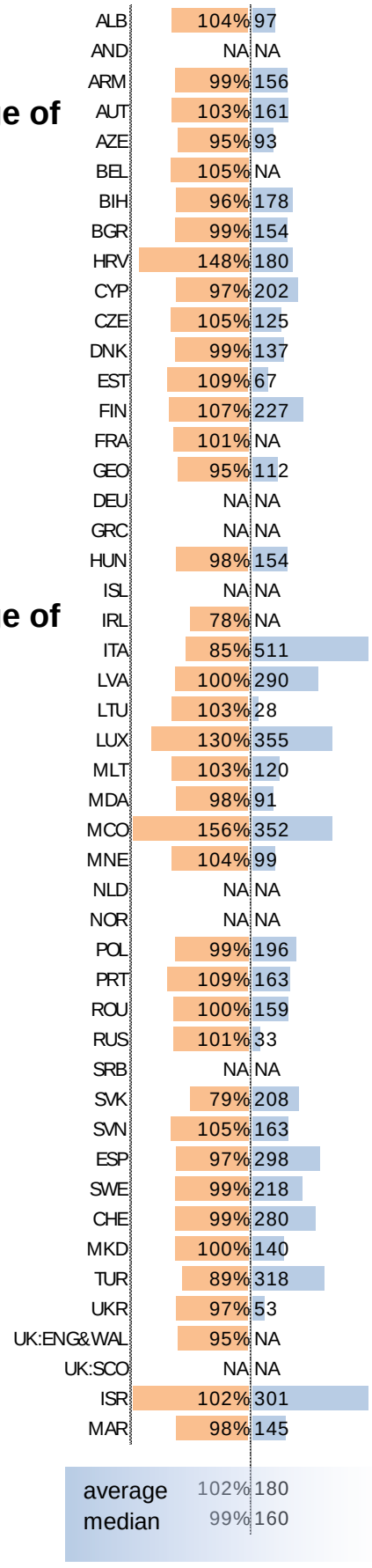
CR and DT of civil and commercial litigious cases in 2016

► Tables 5.7 and 5.8



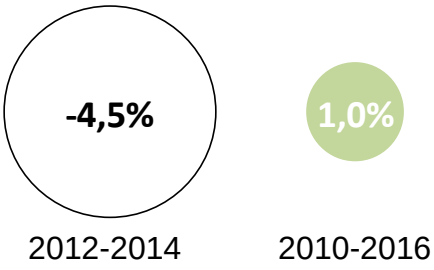
CR and DT of litigious divorce cases in 2016

► Figure 5.12



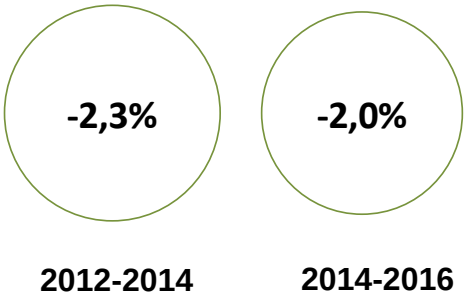
Evolution of the European average of CR of civil and commercial litigious cases

► Table 5.7



Evolution of the European average of DT of civil and commercial litigious cases

► Table 5.8



Evolution of CR and DT of first instance civil and commercial litigious cases 2010 - 2016

► Tables 5.7 and 5.8

	CR				DT			
	2010	2012	2014	2016	2010	2012	2014	2016
ALB	93%	97%	100%	99%	173	192	171	159
AND	99%	95%	103%	NA	189	264	460	NA
ARM	101%	103%	75%	94%	163	168	230	188
AUT	100%	101%	103%	102%	129	135	130	133
AZE	98%	100%	99%	98%	43	52	33	25
BEL	NA	NA	98%	102%	NA	NA	NA	NA
BIH	94%	116%	114%	115%	826	656	603	574
BGR	NA	NA	NA	NA	NA	NA	NA	NA
HRV	102%	95%	113%	118%	462	457	380	364
CYP	84%	NA	NA	NA	513	NA	NA	NA
CZE	103%	99%	105%	110%	128	174	163	153
DNK	102%	109%	102%	101%	182	165	177	176
EST	98%	112%	104%	98%	215	167	125	139
FIN	93%	103%	105%	125%	259	325	289	252
FRA	98%	99%	94%	99%	279	311	348	353
GEO	96%	102%	93%	77%	94	62	100	242
DEU	102%	100%	100%	103%	184	183	198	196
GRC	79%	58%	113%	99%	190	469	330	610
HUN	102%	105%	104%	98%	160	97	144	159
ISL	NA	NA	NA	NA	NA	NA	NA	NA
IRL	NA	NA	56%	59%	NA	NA	NA	NA
ITA	118%	131%	119%	113%	493	590	532	514
LVA	86%	118%	98%	101%	315	241	255	247
LTU	102%	101%	97%	98%	55	88	97	88
LUX	139%	173%	97%	100%	200	73	103	91
MLT	89%	114%	101%	107%	849	685	536	432
MDA	95%	100%	97%	97%	110	106	127	140
MCO	76%	117%	109%	99%	743	433	347	372
MNE	92%	102%	84%	98%	271	254	298	267
NLD	NA	NA	99%	101%	NA	NA	132	121
NOR	101%	100%	97%	102%	158	160	176	161
POL	95%	89%	99%	99%	180	195	203	225
PRT	102%	98%	NA	112%	417	369	NA	289
ROU	90%	99%	109%	102%	217	193	146	153
RUS	100%	99%	98%	102%	13	40	37	42
SRB	92%	116%	92%	94%	316	242	359	315
SVK	98%	82%	92%	132%	364	437	524	130
SVN	99%	101%	109%	106%	315	318	270	280
ESP	93%	100%	98%	103%	314	264	318	282
SWE	98%	99%	104%	99%	187	179	157	164
CHE	100%	100%	101%	101%	132	127	116	107
MKD	95%	131%	117%	95%	259	175	132	223
TUR	NA	115%	96%	86%	NA	134	227	399
UKR	104%	106%	102%	97%	52	70	68	96
UK:ENG&WAL	NA	NA	NA	NA	NA	NA	NA	NA
UK:SCO	NA	85%	85%	79%	NA	NA	NA	NA
ISR		101%	102%	97%		340	334	333
MAR				103%				86

Pending civil and commercial litigious cases of first instance older than 2 years

► Table 5.10

AUT	14%
AZE	1%
BIH	45%
HRV	33%
EST	2%
GEO	2%
LTU	6%
MDA	8%
MCO	22%
PRT	30%
ROU	4%
SRB	18%
SVN	23%
SWE	3%
CHE	7%
TUR	22%
ISR	15%

5. EFFICIENCY

Data collected in the last four evaluations show a positive trend of improvement of the Clearance Rate over the long period (2010 to 2016) as well as an improvement compared to the last cycle, in respect of both the average and the median. The average Clearance Rate increased from 98 % in 2010 to 101 % in 2016, and the median from 98 % to 100 %.

While most jurisdictions have experienced an improvement of the Clearance Rate between the first and the last evaluation, 2 States, **Finland** and **Switzerland** have continuously improved and/or maintained stable their positive Clearance Rate.

After increases between 2010 and 2014, the Clearance Rate decreased in **Austria**, **Romania**, **Slovenia**, and **Sweden** in 2016. Between 2010 and 2016, the Clearance Rate has decreased from positive into negative values in **Armenia**, **Hungary**, **Lithuania** and **Ukraine**. In **Georgia**, the Clearance Rate has remained within negative values and decreased significantly from 96 % in 2010 to 77 % in 2016. In **Luxembourg**, the Clearance Rate has also decreased over the long period but settled at the 100 % threshold level in 2016.

6 States have performed particularly well over the long period and have been able to bring the Clearance Rate from negative to positive values: **Bosnia and Herzegovina**, **Finland**, **Malta**, **Slovenia**, **Slovakia** and **Spain**. The situation in **Bosnia and Herzegovina** (from 94 % to 115 %) and **Slovakia** (from 98 % to 132 %) is particularly noticeable. **Greece** and **Monaco** have also improved the Clearance Rate since 2010, which is now set at 99 % for both countries.

The average Disposition Time of civil and commercial litigious cases has slowly but continuously improved over time (from 267 days in 2010, to 233 days in 2016). Median values have also slightly improved in the long period (from 195 days in 2010, to 192 days in 2016).

Bosnia and Herzegovina, **Croatia**, **Malta**, **Portugal**, **Switzerland** and **Israel** have constantly improved their Disposition Time at each evaluation cycle. In particular, the Disposition Time in **Croatia** has dipped below one year, marking a significant improvement compared to the level recorded in 2010 (462 days). In **Malta** the Disposition Time decreased from 849 days in 2010, to 432 days in 2016; in **Bosnia and Herzegovina**, from 826 to 574 days. The regular reduction of the Disposition Time of civil and commercial litigious cases in **Bosnia and Herzegovina** is linked to the implementation of domestic measures aimed at improving court efficiency.

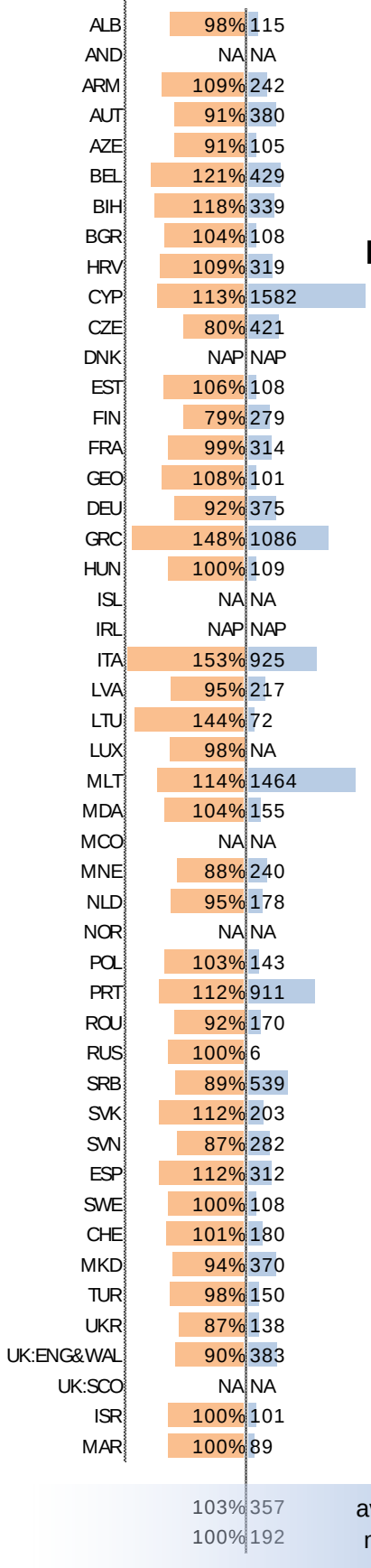
By contrast, in **France** and **Poland** the Disposition Time has increased over time but is still below one year. **Andorra** also has experienced a constant deterioration of the Disposition Time, which increased from 189 days in 2010, to 264 days in 2012, and to 460 days in 2014. Data from 2016 are not available for **Andorra,** to be able to see how the situation has evolved.

An important evolution of the Disposition Time has taken place in **Slovakia**: where Disposition Time decreased to 130 days due to changes in the way that the Ministry of Justice structures the data. An opposite development has taken place in **Georgia**: where situation has deteriorated, and during the last evaluation cycle the Disposition Time increased significantly compared with previous.

The situation in 3 other States should be mentioned. In **Greece**, the Disposition Time has increased between 2010 and 2016, and almost doubled between 2014 and 2016. Between 2012 and 2016, **Turkey** also has seen a significant increase in the Disposition Time for civil and commercial litigious cases at first instance. In contrast, **Italy** has been slowly but constantly improving the Disposition Time in the last 3 cycles, following the implementation of reforms to improve performance and to enhance the quality of statistical information.

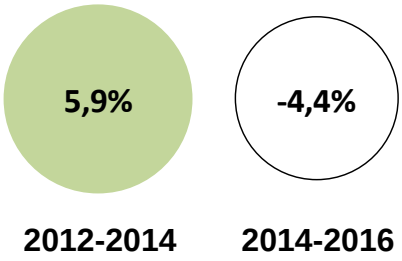
CR and DT of administrative cases in 2016

► Tables 5.25 and 5.26



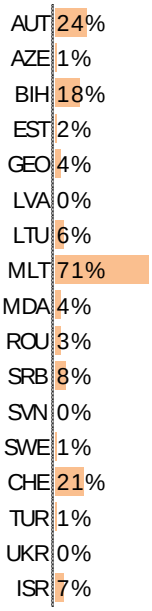
Evolution of the European average of CR of administrative cases

► Table 5.25



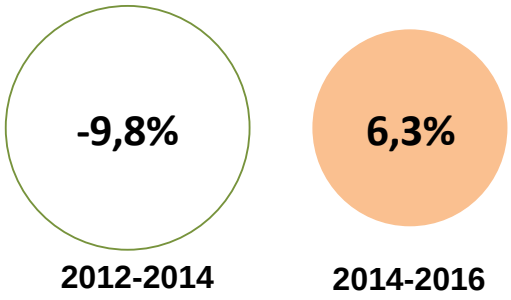
Pending administrative cases older than 2 years

► Table 5.28



Evolution of the European average of DT of administrative cases

► Table 5.26



5. EFFICIENCY

The Clearance Rate of administrative law cases at first instance improved continuously between 2010 and 2014 from negative (99 % in 2010) to positive values (108 % in 2014), decreasing slightly in 2016 (103 %). Significant decreases in the Clearance Rate in a few States and entities (e.g. **Armenia**, **Finland**, **Latvia**, **Malta**, **Romania**, **Slovenia**, **UK-England and Wales**) have affected the decrease of the average figures between 2014 and 2016. However, important differences can be highlighted between the States and entities presented.

Only **Cyprus** and **Greece** show a regular improvement in their court performance since 2010, while in **Italy** and **Slovenia** the Clearance Rate has decreased in the course of the four evaluation exercises. Statistics for **Andorra** are not available in 2016, so it is unclear whether the steady decrease has continued. The **Russian Federation** has maintained a positive Clearance Rate in the last three cycles.

Armenia, **Latvia**, **Malta**, **Romania**, "**the former Yugoslav Republic of Macedonia"**, and **UK-England and Wales** recorded an improvement in their court performance between 2010 and 2014, but inverted this trend in the last cycle. In **Latvia**, **Romania** and **UK-England and Wales** the Clearance Rate dropped. In contrast, the 2016 Clearance Rate for **Armenia** and **Malta** remained positive, despite the decrease compared to the 2014 cycle.

Major improvements in the Clearance Rate between 2014 and 2016 can be observed in **Belgium**, **Bosnia and Herzegovina**, **Croatia**, **Estonia**, **Hungary**, **Lithuania**, and **Poland**. The courts in these countries were able to take the Clearance Rate from negative values beyond the 100% mark.

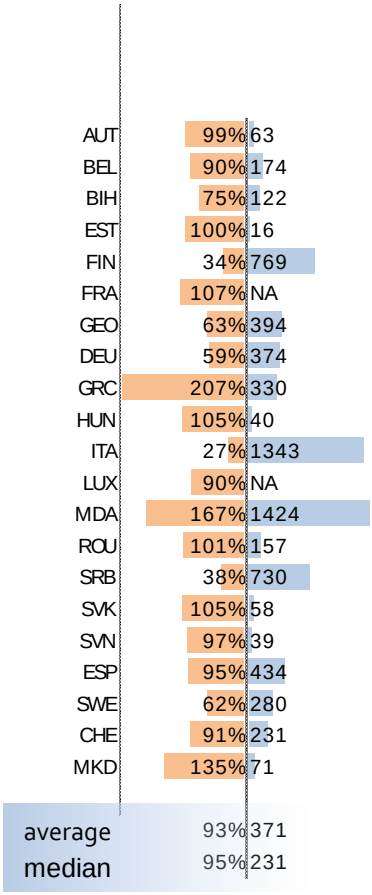
A better understanding of the data on pending cases for the purpose of guaranteeing the "reasonable time standard" can be obtained from the analysis of the cases that are older than 2 years at each instance.[6] The 2018 evaluation exercise (2016 data) collects such data, for the first time.

Not all States and entities were able to provide this information but from the available data we can conclude that 71% of administrative pending cases in **Malta** are older than 2 years. States with backlog around 20% are **Austria**, **Bosnia and Herzegovina** and **Switzerland**.

[6] See "*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", Françoise Calvez and Nicolas Régis, 2012.*

CR and DT of cases relating to asylum seekers in 2016

► Table 5.38



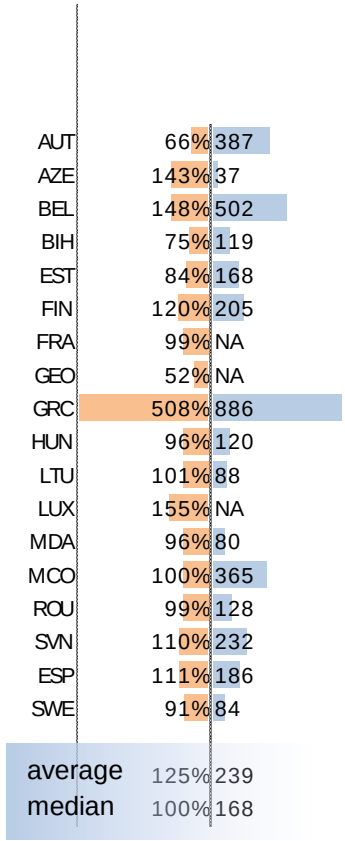
24 States have been able to provide data. The impact of these two disputes related to migration is significant regarding the judicial disputes (new cases) in 9 countries of Western Europe: **Austria**, **Belgium**, **Finland**, **France**, **Germany**, **Italy**, **Spain**, **Sweden**, **and Switzerland**. However these countries present big differences regarding the disputes involved.

The court disputes that specifically concern asylum seekers (appeal against a decision refusing to grant the status) are present in 21 States but have only a significant impact in 7 of them (more than 5000 cases) where seekers wish to live in: **Belgium**, **Finland**, **France**, **Germany**, **Italy**, **Sweden**, **Switzerland**.

The legislation and practice of asylum seekers explain, for example, the fact that the impact on **Greece** (being country of entrance) or **Spain** seems less important because the identification of the individual upon arrival, or even an asylum application that can be made in these countries can be the subject of another application followed by a litigation in another European country.

CR and DT of cases relating to the right of entry and stay for aliens in 2016

► Table 5.38



Concerning the disputes regarding the entry and stay for aliens, 17 States have been able to provide numerical data, only 5 States seem to have a significant impact (more than 5 000 cases): **Belgium** (9 292), **Sweden** (12 065), **Austria** (21 383), **France** (22 511), **Spain** (22 736).

5. EFFICIENCY

In view of the high scale of migratory waves in Europe, for the first time, the CEPEJ has measured the specific impact of the disputes regarding asylum seekers and aliens' rights (entry and residence) on the judicial systems.

It emerges that the impact of these two migration-related disputes appears significant on court litigation in 9 Western European States: **Austria**, **Belgium**, **Finland**, **France**, **Germany**, **Italy**, **Spain**, **Sweden** and **Switzerland**.

This impact also depends on the possibilities for judicial remedy available in each country and their use by applicants. The information collected among the States provide a legal and organisational overview of the litigations relating to asylum applications and the entry and residence of aliens.

Cases handled by public prosecutors in 2016

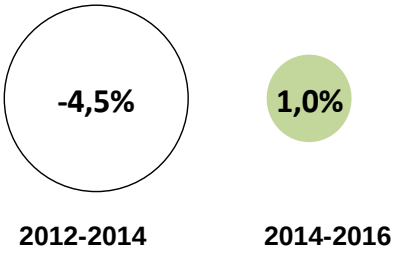
► Table 5.40

*Cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor

	Dismissed	Concluded* by a penalty	Charged before the	Total
ALB	82%	NAP	31%	113%
ARM	158%	NAP	81%	239%
AUT	81%	4%	13%	98%
BIH	16%	21%	20%	58%
BGR	94%	NAP	27%	121%
HRV	44%	0%	26%	71%
CZE	68%	8%	29%	105%
DNK	15%	29%	82%	125%
FIN	32%	1%	64%	97%
FRA	66%	12%	12%	90%
GEO	51%	26%	33%	110%
DEU	59%	3%	19%	82%
HUN	14%	6%	86%	106%
ITA	70%	0%	17%	88%
LVA	8%	12%	70%	89%
LTU	38%	NAP	44%	82%
MDA	19%	11%	22%	51%
MCO	59%	6%	20%	85%
MNE	35%	8%	38%	81%
NLD	22%	22%	55%	99%
NOR	44%	21%	22%	87%
POL	34%	16%	31%	82%
ROU	76%	13%	7%	96%
RUS	0%	NAP	94%	94%
SRB	59%	22%	37%	118%
SVK	34%	3%	34%	71%
SVN	25%	3%	15%	42%
SWE	37%	13%	39%	89%
CHE	17%	80%	2%	100%
MKD	36%	2%	61%	98%
UK:ENG&WAL	10%	NAP	107%	117%
ISR	34%	0%	47%	81%
MAR	35%	15%	38%	88%
	43%	14%	39%	96% average
	36%	11%	31%	94% median

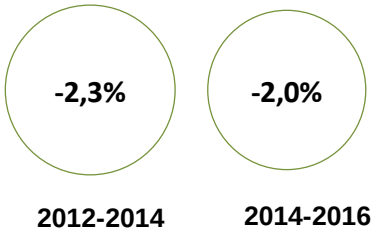
Evolution of the European average of CR of criminal cases (points of percentage)

► Table 5.46



Evolution of the European average of DT of criminal cases

► Table 5.47



CR and DT of criminal cases in 2016

► Tables 5.46 and 5.47

ALB	104%	97
ARM	99%	156
AUT	103%	161
AZE	95%	93
BEL	105%	NA
BIH	96%	178
BGR	99%	154
HRV	148%	180
CYP	97%	202
CZE	105%	125
DNK	99%	137
EST	109%	67
FIN	107%	227
FRA	101%	NA
GEO	95%	112
HUN	98%	154
IRL	78%	NA
ITA	85%	511
LVA	100%	290
LTU	103%	28
LUX	130%	355
MLT	103%	120
MDA	98%	91
MCO	156%	352
MNE	104%	99
POL	99%	196
PRT	109%	163
ROU	100%	159
RUS	101%	33
SVK	79%	208
SVN	105%	163
ESP	97%	298
SWE	99%	218
CHE	99%	280
MKD	100%	140
TUR	89%	318
UKR	97%	53
UK:ENG&WAL	95%	NA
ISR	102%	301
MAR	98%	145
average	102%	180
median	99%	160

5. EFFICIENCY

Data collected for the 2016-2018 CEPEJ evaluation cycle show that public prosecutors received on average 3,14 cases per 100 inhabitants (a slight decrease on the 3,4 cases recorded in 2014). Approximately 42% of these were discontinued by the public prosecution services and 28 % were charged by the public prosecution services before the courts. Another 27 % of cases in 2016 resulted in a penalty or measure imposed or negotiated by the public prosecutor.

The average rate of cases solved by the public prosecutor against cases received is 96%. Rates range from 42 % in **Slovenia** to 239 % in **Armenia** (which recorded the lowest number of incoming cases per 100 inhabitants in 2016).

The highest number of cases received by public prosecutors appears in **Luxembourg** – a total of 9,69 cases per 100 inhabitants. High figures of incoming cases (above 6 cases per 100 inhabitants) are also recorded in **Andorra**, **France**, **Germany**, **Monaco**, **Norway** and **Switzerland**. In **France,** about two thirds of cases received by the public prosecutor are discontinued. In **Monaco**, roughly 59% of cases are discontinued. **Norway** has reported errors in its statistical recording which may account for the high rate of incoming cases. **Switzerland** explains the increase in the number of discontinued cases by the general surge in the amount of criminal cases processed by the public prosecutor's office.

The Clearance Rate of criminal law cases at first instance remained positive throughout the evaluation cycles between 2010 and 2016. Nonetheless, important differences can be highlighted between the States and entities evaluated.

5 States, **Lithuania**, **Malta**, **Portugal**, the **Russian Federation** and **Spain**, have shown a regular improvement in their Clearance Rate across the different evaluations. In 2016, **Malta** attained a positive Clearance Rate for the first time since 2010, while **Spain** achieved a positive rate in 2012 and has continued to improve the rate further since that time.

5 other States that previously displayed a positive trend, decreased the Clearance Rate in 2016: **Austria**, **Cyprus**, **Finland**, **Norway** and **Romania**. While **Austria** and **Cyprus** retain a positive rate, in **Finland**, **Norway** and **Romania** the figure has dropped below 100 %. In particular, **Romania** has recorded the largest decrease by 11 % between the last two cycles (from 101 % to 90 %).

Germany has registered a continuous decrease in the Clearance Rate, and recorded, for the first time in 2016, a negative Clearance Rate (99 %). By contrast, in 2016 **Italy** displays for the first time a positive Clearance Rate of criminal cases at first instance. **Estonia** and **Switzerland** also display a positive performance in 2016 and were able to improve the negative trend recorded in 2012 and 2014. **"The former Yugoslav Republic of Macedonia"** has shown a positive Clearance Rate across all four evaluation cycles, but in the last evaluation it recorded the most significant improvement compared to its 2014 performance (from 100 % to 12 6%).

Between 2014 and 2016, 16 States saw a decline in their Clearance Rate. Of those, **Austria**, **Bulgaria**, **Croatia**, **Cyprus**, **Hungary**, **Monaco** and **Slovenia** maintained a positive Clearance Rate, while **Azerbaijan**, **Finland**, **Germany**, **Latvia**, **Norway**, **Romania**, **Sweden** and **Ukraine** experienced a drop below 100 %. **Ireland's** Clearance Rate remains particularly low. In the group of States now showing negative indicators, the performance of

the relevant judicial bodies could be at risk in the future if this trend persists. However, as has been pointed out previously, the statistics reported and their evolution over time need to be carefully addressed with regard to the specific conditions in each State.

Major improvements in the Clearance Rate between 2014 and 2016 can be observed in **Denmark**, **Estonia**, **France**, **Georgia**, **Italy**, **Malta**, **Switzerland** and **UK-England and Wales.** In all 8 States and entities, the Clearance Rate has increased so as to take it beyond the 100 % mark. In **Georgia**, a series of law reforms is said to have improved the effectiveness of criminal investigations.

Morocco shows a positive Clearance Rate of 104 % in its first contribution to the evaluation exercise.

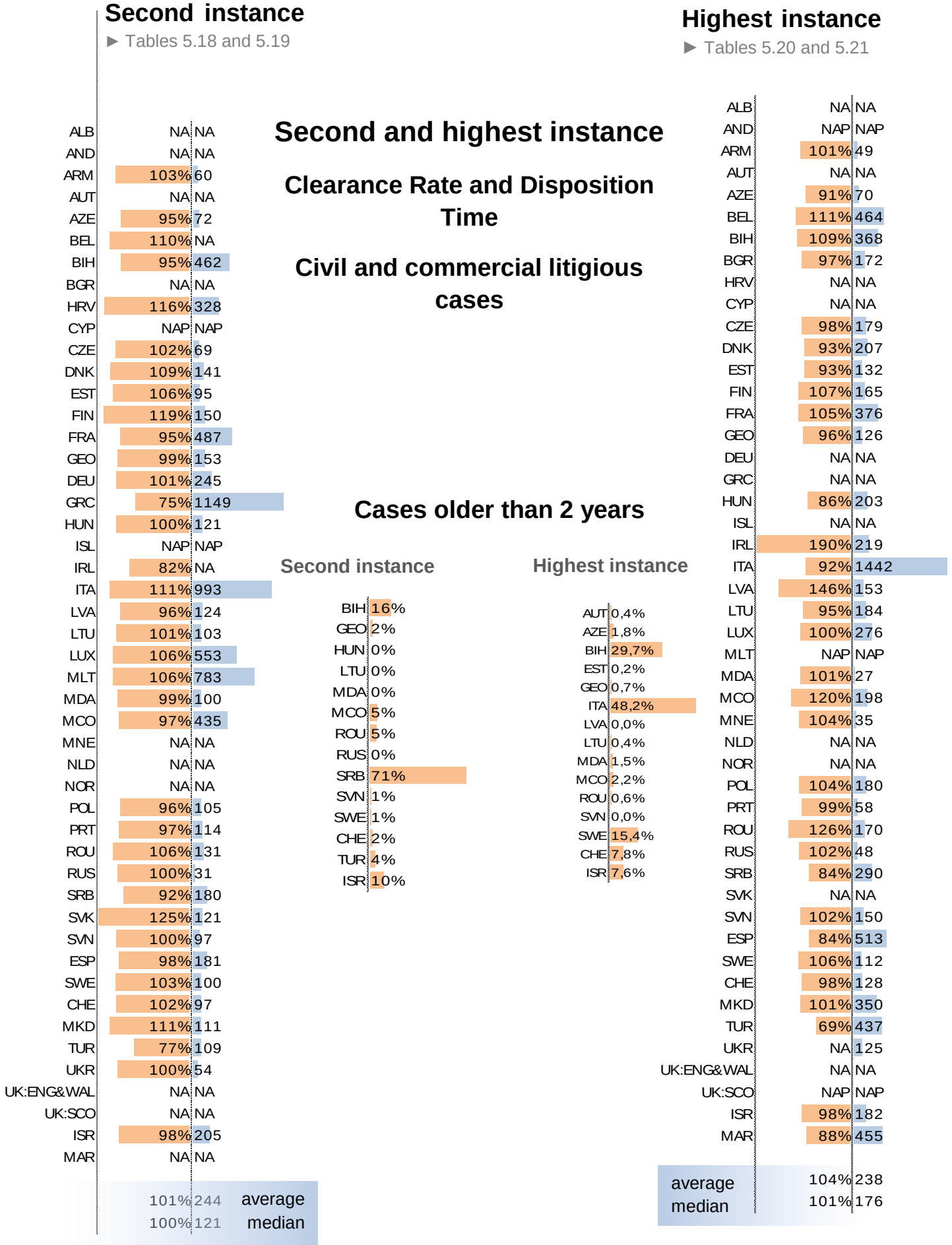
The average Disposition Time of first instance criminal cases improved between 2010 and 2014 – from 152 days to 133 days – but increased slightly in 2016 (138 days). On average, an overall improvement of this indicator can be seen in the long period. By contrast, median values, which are slightly lower, show a slight increase of the Disposition Time between 2010 and 2016.

5. EFFICIENCY

Second and highest instance

Clearance Rate and Disposition Time

Civil and commercial litigious cases



Overall, the Clearance Rate at second instance is positive. Data shows the distribution of States and entities by court performance at second instance in 2016. 16 States have a satisfactory level of court productivity: **Armenia, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Lithuania, Romania, Russian Federation, Slovakia, Slovenia, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia"** and **Ukraine**.

In 8 other States the Clearance Rate is slightly lower than 100 % but the Disposition Time can be considered satisfactory (below the average of 244 days): **Azerbaijan**, **Georgia**, **Latvia**, **Republic of Moldova**, **Poland**, **Portugal**, **Spain** and **Israel**.

The **Russian Federation** (31 days), **Ukraine** (54 days) and **Armenia** (60 days) have a particularly low Disposition Time.

The situation requires a specific attention in those States and entities that have a particularly low Clearance Rate or a very high Disposition Time, or both: **Bosnia and Herzegovina** (DT 462 days; CR 95 %), **France** (DT 487 days; CR 95 %), **Italy** (DT 993 days, but CR 111 %), **Malta** (DT 783 days, but CR 106 %), and **Turkey** (CR 77% but DT only 109 days). Of particular concern is the situation of court performance at second instance in **Greece,** with a Disposition Time of 1 149 days and a Clearance Rate of 75 %.

Overall court performance at the highest instance in 2016, as regards civil and commercial litigious cases is positive. The average Clearance Rate is positive, at the average of 104 % (median 101 %), and the average Disposition Time is below one year (238 days; median 176 days). Compared to the other instances, the Clearance Rate at third instance is the same as for first instance, and higher than at second instance (101 %). The average Disposition Time is also similar to the other instances.

There are however important differences between the States and entities.

Data collected for the last four evaluations shows a continuous improvement of the average Clearance Rate of civil and commercial litigious cases at the level of the highest instance, between 2010 and 2016. However, only **Finland** and **Ireland** have experienced a constant improvement of the Clearance Rate

5. EFFICIENCY

Trends and conclusions

States continue their efforts towards a deeper understanding and an improvement of the activity of their courts, concerning the monitoring of compliance with the fundamental requirements enshrined in the ECHR as regards case-flow management and length of proceedings.

The 2016-2018 evaluation of courts' efficiency in the **civil justice sector** (mainly civil and commercial litigious cases) shows that:

- At first instance, the inflow of cases has remained rather stable between 2010 and 2016, while the number of resolved cases has decreased, both in the long period and compared to the last cycle. The data collected displays a positive average performance (i.e. Clearance Rate) of first instance courts in this sector in respect of all previous evaluation cycles (except for 2010) but it can be noted a reduced average number of resolved cases in courts in the whole period. The average Disposition Time for this category of cases has slowly but continuously improved over time (from 267 days in 2010, to 235 days in 2016).

- At second instance, the average number of incoming civil and commercial litigious cases has changed throughout the four evaluation cycles, decreasing in the long period. An overall positive performance can be noted in 2016 (Clearance Rate: 101%), but the average number of resolved cases in courts has decreased between the last two cycles. The Disposition Time has improved both over the long period and (slightly) since the last evaluation.

- At the highest instance, despite fluctuations, the average number of both incoming and resolved civil and commercial litigious cases has decreased between 2010 and 2016. Despite a reduced number of incoming cases, supreme courts in a number of States and entities faced difficulties in coping with the inflow of cases. There has also been a reduction in the capacity of courts to resolve cases since the previous evaluation (0,08 case in 2014 and 0,07 case in 2016). The Disposition Time has improved both over the long period and since the last evaluation.

The data for the 2016-2018 evaluation cycle of courts' efficiency in the **administrative justice sector** confirm that:

- At first instance, the average Clearance Rate of administrative cases improved constantly between 2010 and 2014 from negative (99 % in 2010) to positive values (108 % in 2014), decreasing slightly in 2016 (103 %). This is reflected in the general decrease in the number of pending administrative law cases between 2010 and 2014, followed by an increase in 2016, and in the analogous evolution of the Disposition Time. In contrast with the trend of civil and commercial litigious cases (improvement over all 4 evaluations) the Disposition Time of administrative cases improved steadily between 2010 and 2014, slightly deteriorating in 2016. The average Disposition Time of administrative cases in 2016 (357 days) is also significantly higher than that of civil and commercial litigious cases (235 days).

- At second instance, in 2016, European courts handling administrative cases had difficulties in coping with the inflow of cases. The 2016 average Clearance Rate was 95% with a number of States displaying a particularly low Clearance Rate. Data show a worsening of the situation since the last evaluation, as well as in the long period (since 2010). The average Disposition Time in 2016 was 315 days (median: 241 days), which is lower than the respective figure at first instance. While slightly increasing between 2014 and 2016, the Disposition Time at second instance has improved during the long period (2010-2016).

- At the highest instance, the average Clearance Rate of administrative cases shows an improvement between 2010 and 2012, a slight decrease in 2014, and again a slight increase in 2016. The average Disposition Time decreased steadily between 2010 and 2014, but saw a sharp increase in 2016.

2016 data concerning courts' efficiency in the **criminal justice sector** shows that:

- In 2016, public prosecutors received on average 3,14 cases per 100 inhabitants. Approximately 42 % of these were discontinued by the public prosecutor and in 28 % of these cases were charged by the public prosecutor before the courts. Another 27 % of cases in 2016 resulted in a penalty or measure imposed or negotiated by the public prosecutor. The average rate of cases solved by the public prosecutor (discontinued by the public prosecutor, concluded by a penalty or a measure imposed or negotiated by the public prosecutor or charged by the public prosecutor before the courts) against cases received is 96 %.

- At first instance, courts received on average 2,3 criminal cases per 100 inhabitants and managed to resolve the same amount of cases during 2016. The Clearance Rate of criminal law cases has remained positive between 2010 and 2016. The average Disposition Time improved between 2010 and 2014 but increased slightly in 2016 (138 days). Despite fluctuations, the number of pending cases shows a decrease both over the long period and since the last evaluation.

- At second instance, data show a steady improvement in the Clearance Rate for criminal cases over the long period, from negative into positive values. This is in part similar to the first instance trend, which however remained positive over all four evaluation cycles. The average Disposition Time shows a very slight increase between 2010 and 2016, and is only marginally longer than the Disposition Time recorded at first instance (138 days).

- At the highest instance, the Clearance Rate of criminal cases has decreased since the last measurement (albeit remaining above the efficiency limit), but an improvement can be noted in the long period. The average Disposition Time has on the whole worsened between 2010 and 2016. The 2016 Disposition Time figure is slightly longer than the average Disposition Time calculated at second instance.

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On a more general level the 2016-2018 evaluation suggests the following trends of development with regard to understanding and improving court efficiency:

1. A number of States and entities have continued to undergone reforms of the judicial sector, aimed at improving court efficiency. The results thereof are not always visible in the statistics for the 2018 evaluation (2016 data), but are expected to show in the next evaluation cycles and should be closely followed in the future.

2. An increasing number of States and entities has adapted the methodology of collecting and reporting statistics to be in line with the CEPEJ methodology. While this may create inconsistencies between the data reported in the different cycles and reduce the reliability of the analysis on evolution trends, it enables more accurate comparisons within the same cycle and improved statistics in future evaluations.

3. 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 coming years.

4. Availability of disaggregated data is crucial to a better understanding of the efficiency 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 under way. The CEPEJ welcomes and promotes these efforts as an invaluable tool in the collection of comparative data necessary to improve court performance.

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The CEPEJ internet statistical database is available for everyone on : **www.coe.int/cepej**

www.coe.int

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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