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

### **Working Group on the evaluation of judicial systems (CEPEJ-GT-EVAL)**

### **Specific study of the CEPEJ on the Legal Professions: Judicial Experts**

### **Contribution of the EEEI (European Expert and Expertise Institute)**

Note: This document is a contribution written by the EEEI on the basis of CEPEJ data (mainly 2020 data) and previous evaluation reports and enriched with its analyses, opinions and conclusions based on its networks and experience. The information and positions in this study are those of the authors and do not necessarily reflect the CEPEJ's official position. The CEPEJ cannot guarantee the accuracy of the data, analysis, opinions and/or conclusions of this study. Neither the CEPEJ nor any person acting on its behalf can be held responsible for the use which may be made of this information.

The data were collected not only in the Council of Europe member States, but also in Israel (ISR), Kazakhstan (KAZ) and Morocco (MAR). Unless otherwise specified, the analyses in this study therefore include replies from all of these countries or entities. It is worth mentioning that the three observer States have not been taken into consideration for the establishment of the European medians and averages. The latter are based solely on data provided by the Council of Europe member States/entities.

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## 1. INTRODUCTORY NOTE

*This paper is a contribution by members of the European Expertise and Expert Institute (EEEI)<sup>1</sup>, which is a think tank with collective and individual membership of judges, lawyers, experts and academics, whose aim is to improve the quality of expertise in Europe.*

*For this work, the EEEI relied on the 2020 data provided by the CEPEJ, enriched with its analysis, opinions and conclusions based on its networks and experience.*

*These data for 2020 have been collected from 44 member States of the Council of Europe and three observer States, based on a questionnaire. The questionnaire had been updated for the 2020 - 2022 evaluation cycle, to improve the quality and comparability of the data collected, and to better reflect the situation of judicial experts in Europe.*

*For the sake of continuity, the study follows the structure of the section devoted to judicial experts in the CEPEJ report, written in 2014 based on 2012 data.*

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## 2. JUDICIAL EXPERTS: A POPULATION IN SEARCH OF ITS IDENTITY

Judicial experts are those experts who are certified or accredited by a court or other authority to put their experience at the disposal of the judicial system.

Expert activity is most often carried out by an individual as an addition to a professional activity, but it can be carried out as a principal activity in certain areas such as DNA research and is therefore very often carried out by legal entities.

The role of experts contributes to the efficiency of justice by providing the judge with clear and well-reasoned answers to the specific and complex questions put before them. The implementation and control of expert opinions in the context of the trial determines the quality of the decision and the duration of the proceedings.

Although in all legal systems, expertise is part of the law of evidence, the recruitment of experts, their methods of intervening before the courts, their rights and obligations are very diverse. Their number varies greatly from one State to another, and it is difficult to identify them because of the lack of a common definition of the concept of judicial expert, the lack of centralised information concerning them, particularly in the most populous States, and the absence, in the vast majority of member States, of representation of these experts before their respective national authorities.

However, since the 2014 edition of the European Judicial Systems Evaluation Report based on 2012 data which noted that there was no consensus in Europe either on the definition of a judicial expert or on the standards applicable to the expert and expertise, the CEPEJ adopted on 12 December 2014 the *Guidelines on the role of court-appointed experts in judicial proceedings of Council of Europe's Member States* (cf. below the different types of judicial experts). Moreover, the Guide to Good Practices in Civil Judicial Expertise in the European Union concerning both court-appointed experts and *common law experts* was published in October 2015. This Guide was the result of a European consensus conference organised by the EEEI with the financial support of the Directorate General for Justice of the European Union.

These two documents, supplemented in 2021 by the CEPEJ's Revised guidelines for judicial time management which includes the matters of expertise, show that there is a real awareness, on the one hand, of the importance of expertise for the resolution of the dispute, even if the judge is never obliged to follow the expert's conclusions, and, on the other hand, of the importance of the guarantees of quality of persons acting as experts.

This work has also been the occasion for a conceptual reflection on the definition of the notion of judicial expert, which is still being refined through exchanges between the CEPEJ and the States, contributing in this way to the availability and quality of data collected.

### 3. DIFFERENT TYPES OF JUDICIAL EXPERTS

Among the different types of experts encountered in European states, whose duties vary widely, particular distinction exists between:

- **experts appointed by the court**, who put at the judge's disposal their scientific and technical knowledge to solve issues of facts;
- **experts designated by the parties**, particularly in *common law* systems, to provide knowledge in support of the parties' arguments;

In addition to these two, there are, as we shall see in the following developments, other types of experts who intervene before the courts without being judicial experts.

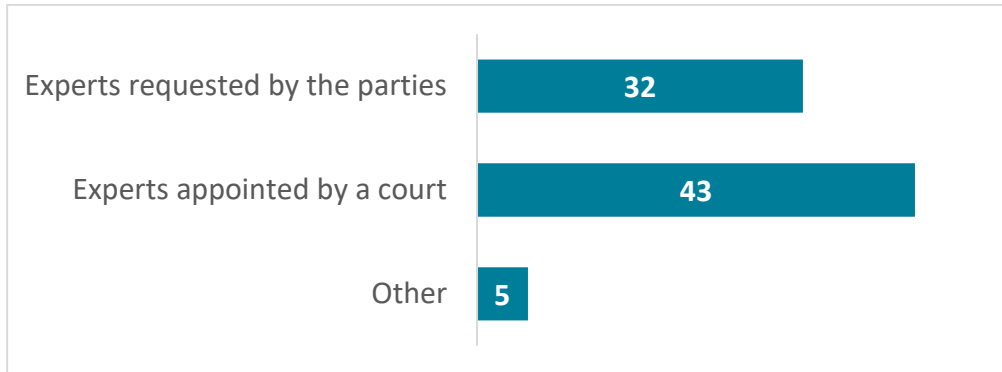
In any event, it is important not to confuse the **party expert** recruited and paid by a party to support its argument, with the **expert designated by the parties in the sense understood here, the best example of which is the "expert witness" in common law member States**. The latter, although appointed and paid by a party, offers guarantees of quality, independence, and impartiality insofar as he has more obligations towards the judge than towards the party that designated him because of the oath taken. In the event of a breach of his duty of loyalty to justice, his criminal, civil and professional liability can be invoked.

From this point of view, the expert *witness* who, contrary to his name, is not a witness insofar as his opinion goes beyond a simple statement of facts, is unquestionably a judicial expert who assists the judge in establishing the truth. On the other hand, the party's expert, who is very present in continental law member States, is not a judicial expert when he draws up a report that is added to the debates in support of the arguments of the party that recruited him, even if he is registered on the lists of judicial experts and acts in this capacity in other trials.

Therefore, the experts appointed by the court, the expert *witnesses* and the experts designated by the parties are, contrary to the party's expert, bound to the court by an obligation of independence and impartiality. They are above all, whatever the authority which appoints and remunerates them, assistants to the judge in relation to whom they have to fulfil the same requirements of competence, independence and impartiality. This justifies that they are all grouped under the same denomination, that of judicial expert.

#### 4. DATA AND ANALYSIS

**Graph 1: Types of judicial experts (Q202)**



The majority of member States (30), as well as **Israel** and **Kazakhstan** have both experts appointed by the court and experts designated by the parties, whereas 13 Member States have only experts appointed by the court and two (**UK - Northern Ireland** and **UK - Scotland**) have only experts designated by the parties.

Experts designated by the parties are more used in *common law* member States.

The small statistical variations since 2016 are mainly due to the lack of response from **Albania** and the fact that statistics of the **Russian Federation**<sup>2</sup> were not taken into account.

The absence of statistical data on “legal experts” which had been provided in 2018 by 11 member States (**Estonia, Germany, Greece, Ireland, Luxembourg, Malta, the Netherlands, Norway, Poland, Spain, UK - England and Wales**) is due to the fact that it no longer seemed useful to keep a specific category for them, even though they differ from other experts only in their field of competence.

Since 2014, experts who do not fall into the above two categories have appeared in seven member States. The list is now reduced to five as **France** and **Lithuania** are no longer included (**Denmark, Germany, Malta, Spain** and **Sweden**).

In 2018, **France** still reported experts designated by the parties with reference to statistically marginal number of cases (e.g. rescission proceedings for damage to property) and to experts who do not fall into either category, referring to guardianship proceedings in which an opinion is obtained without following the expertise procedure from a specialist doctor who is not a judicial expert.

**Denmark** mentions and counts both “expert judges” in ordinary and small claims cases, as well as experts on juvenile matters. **Malta** reports board members/court attorneys and **Sweden** medical experts before administrative courts, particularly in social security matters, and experts appointed by lawyers under legal aid legislation. Also in Sweden, the Judges' Proposal Board can appoint experts as members of the administrative courts which can then engage them if necessary.

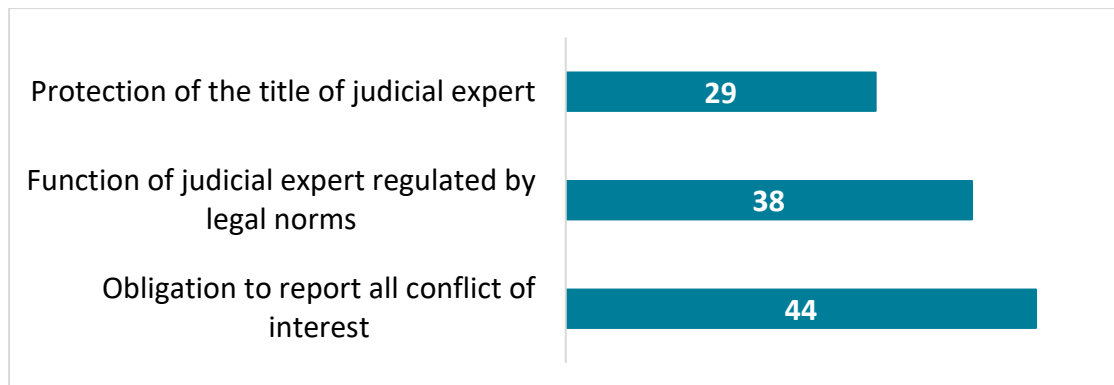
These particular cases illustrate the difficulty of defining the concept of judicial expert. According to the EEEI sources, opinions that often have a decisive influence on the meaning of the judge's decision are obtained in several member States without recourse to the expert opinion procedure and from professionals who do not have the status of judicial expert in order to simplify the procedure and reduce costs. On the other hand, if in certain cases the expert can be a “member of the court” and as such becomes the author or co-author of the legal decision, the expert would then be assimilated to a judge and would no longer be a judicial expert.

Nevertheless, considering that these cases are globally marginal, the dualist classification keeps all its relevance.

<sup>2</sup> Following the adoption of the Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe, the Committee of Ministers decided, in the context of the procedure launched under Article 8 of the Statute of the Council of Europe, that the Russian Federation ceases to be a member of the Council of Europe, as from 16 March 2022.

## 5. STATUS OF JUDICIAL EXPERTS

**Graph 2: Status of judicial experts (Q203, Q204, Q204-1)**



### Protection of the title and function of judicial experts

29 member States (as well as **Kazakhstan**) protect the title of expert as was the case in 2018.

### Rules governing the activity of experts

In 2020, 38 member States reported having rules governing the function, a number unchanged since 2016. This is also the case in **Israel** and **Kazakhstan**.

These rules are either contained in a procedural code (**Armenia, Azerbaijan**) or in a law on the administration of justice (**Denmark**), or in a specific law, or a combination of these three sources. They may also emanate from the rules of the high courts (**Ireland**). They may be limited to a single article that provides that the expert may participate in the judgement with professional judges (**Sweden**) or extend beyond the provisions of a Judicial Code to include a Code of Ethics (**Belgium**).

However, the requirements for judicial experts are very generally laid down in the law.

In most member States there are mandatory provisions for the exercise of the function of judicial expert in the context of judicial proceedings.

As regards the deadlines for completing the mission and submitting the expert report, the law sets in some cases a maximum time limit which the judge has to take into account when determining the deadline in a particular case (e.g. **Croatia, Italy, North Macedonia, Portugal, Serbia**), whereas in other member States the law gives the judge a general competence to determine the time limit in each specific case (e.g. **Austria, Denmark, Germany, Greece, Montenegro, Poland, and Türkiye**). In **Bulgaria**, the Code of Civil Procedure gives the judge a general competence, while the Code of Criminal Procedure distinguishes between the pre-trial phase, for which the judge is free to determine the time limits, and the trial phase, for which a precise limit not to be exceeded is established. Similarly, in **Hungary** the civil judge has general jurisdiction, while the criminal judge is bound by a legal obligation not to exceed a maximum time limit. In **Romania**, the principle is reversed and only the civil judge is bound by a legal limit. In **Ireland**, the court determines, where appropriate and in consultation with the parties, the time limit for transmitting the expert report.

In the **Slovak Republic**, the law does not provide for a deadline for providing the expertise and filing the report. The judge assigns the appropriate time limit to the expert in his decision. In **Latvia**, deadlines are set by a judge in the absence of binding legal provisions, with the exception of forensic expertise. In **UK - England and Wales**, deadlines are set by the court in the exercise of its general case management powers, taking into account the desirability of avoiding excessive costs and delays.

Thus, with regard to **the setting of deadlines**, there may be a greater or lesser degree of flexibility associated with the exercise of the function of judicial expert.

Three main options can be observed:

- the deadline can be legally defined with a maximum threshold: in **Albania**, if there is a large number of facts and the expert cannot respond immediately, the prosecuting authority grants him

a deadline not exceeding sixteen days. In case the expert needs to carry out a very complex verification, this period can be extended more than once for periods not exceeding thirty days, but in no case more than six months; in **Italy** the maximum is 60 days; in **North Macedonia** between 45 and 60 days; in **Portugal** - 30 days;

- the judge can set the maximum deadline, as is the case for example in **Serbia**, the **Slovak Republic**, **Türkiye**, **UK - England and Wales**;
- the deadline may be the result of an agreement authorised by law, as is the case in the **Netherlands** where the appointing authority and the expert agree on the time limit.

There are some special situations. For example, in **Slovenia**, the deadline is set by the court or in administrative proceedings by another state authority. In **Ukraine**, according to the national law, the duration of the expertise is determined by the head of the expertise institution according to the complexity of the expertise, taking into account the workload of specialists.

**Failure to comply with a deadline** can have financial consequences for the expert: in **Montenegro**, if the expert does not submit his conclusions and opinion within a given deadline, he can be sanctioned with a fine of up to 500 Euros. In **Slovenia**, the judicial expert who submits his technical report after the deadline set by the Court is subject to sanctions: his remuneration is reduced by 1% for each day of delay, up to a maximum of 50%, unless the judicial expert proves that the delay is due to legitimate and justifiable reasons.

Whatever the sanctions for failure to comply with the deadlines, it is essential for their effectiveness that the deadlines are controlled. However, it has been noted that only 28 out of 44 member States, as well as **Israel**, report that the court controls the progress of the expert opinion, a figure that is all the more surprising given that only two of the 17 Member States that do not control the progress of the expert opinion do not have experts appointed by the court. However, it is possible that in some of these States, the control of deadlines is carried out not by the judge himself but by an administrative department of the court.

Binding provisions may also specify other obligations, non-compliance with which may be sanctioned. Among the examples gathered by the EEEI, it is worth mentioning: the obligation to obtain an agreement (in **Belgium**, concerning DNA expertise), the obligation to comply with a code of ethics (**UK - England and Wales/UK - Northern Ireland**) or the obligation to fulfil the conditions necessary to be registered as an expert (**Slovak Republic**).

### **Independence of the expert**

Almost all States participating in the last evaluation cycle (45) report that the expert is required to report any conflict of interest, reflecting a common understanding that the expert must not only be independent but must also be seen to be independent.

Only **UK - England and Wales** do not have this requirement.

It is understandable that for *common law* member States this obligation is not self-evident insofar as the appointment and remuneration by a party places the expert *witness*, if not in a permanent conflict of interest, at least in a conflict of loyalty between his duties to the court and justice and his duties to the party. However, all *common law* member States, at least by tradition, with the exception of **UK - England and Wales**, require the expert to report any conflict of interest. This difference between *common law* member States should be clarified.

Despite the fact that almost all States recognise independence as an essential quality of a judicial expert, it is not clear that all member States that have reported this obligation have required experts to formally complete a declaration of interests at the beginning of their operations, in accordance with paragraph 83 of the Guidelines on the role of court-appointed experts in judicial proceedings of Council of Europe's Member States from 11 and 12 December 2014. It is not excluded that some of them rely on the existence of a recusal procedure (existing in all States) and the widely recognised ability of the expert to refuse an assignment, to affirm the existence of this obligation.



## Recruitment and appointment of experts

### Selection of judicial experts for registration in official lists or registers

Judicial experts are recruited and registered by the courts in 13 member States and **Israel**, and this number is increasing over the years.

When experts are not recruited by the courts, the selection is mostly done by the Ministry of Justice (21 member States and **Kazakhstan**). Marginally, some or all of the experts are registered by another administration (3), an independent body (2) and in 6 other member States and entities by other bodies, such as Superior Council of the Judiciary in Andorra.

Where this is the responsibility of the Ministry of Justice, it sometimes may be assisted by a commission including judges and/or representatives of experts (**Azerbaijan, Czech Republic, Hungary, Luxembourg, Malta, Montenegro, North Macedonia, Romania, Serbia, Slovak Republic, Slovenia**) or through a state agency (**Portugal**). In **Denmark**, concerning minors, the Ministry of Social Affairs approves the expert prior to appointment by the Court Administration.

In the **Czech Republic** (source EEEI) and **Romania** (CEPEJ data), for example, qualification as a judicial expert is acquired on the basis of an examination or interview organised by the Ministry of Justice. In **Romania**, persons having acquired this qualification are then registered on a nominative list according to their qualifications and geographical jurisdiction by the central office for judicial experts within the Ministry of Justice. The local offices of judicial experts and accountants at the courts communicate to the courts, prosecution bodies and other jurisdictional bodies the list of experts and specialists qualified to perform judicial expertise.

The drawing up of lists of judicial experts is governed by very different rules, with the courts being more or less closely involved in the selection process and applying more or less broad selection criteria.

Some examples:

In **France**, the regional and national lists are drawn up and the selection made exclusively by the judges of the Courts of Appeal and the Court of Cassation on the basis of the files submitted by the candidates acting *proprio motu*, with experts already on the list being called upon to give their opinion via their representatives only at the time of the renewal of registrations on the lists, which occurs every five years.

In **Spain**, the lists are drawn up by the courts on the basis of applications submitted by professional bodies or associations.

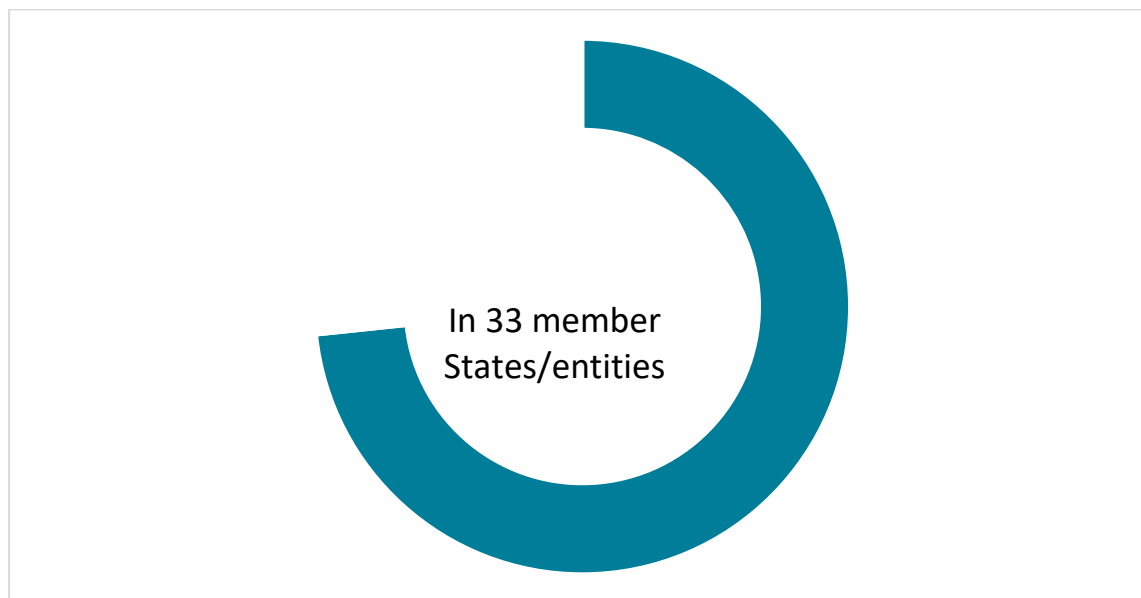
In **Italy**, the lists are drawn up by *ad hoc* commissions established at each court of first instance solely on the basis of the diplomas presented by the candidate and a character investigation, with the admitted candidate being registered for life.

In the **Netherlands**, there is a list only for criminal cases. Recruitment and selection are carried out by the public prosecutor and the professional associations of judicial experts. According to the EEEI sources, strict criteria of competence and independence are used, following a transparent selection procedure. If the desired expert is not on the list, he or she must be appointed by the court.

In **Germany**, judicial experts other than doctors are selected from lists drawn up by public appointment bodies such as chambers of commerce and industry which organise a rigorous examination of technical skills outside the competence of the courts.

## Lists of judicial experts

Graph 3: Existence of a list of registered judicial experts (Q202-1)



According to the 2020 data, 33 member States, as well as **Israel** and **Kazakhstan**, report having lists of judicial experts.

Where such lists exist, they are drawn up either at national level (20 member States, as well as **Israel** and **Kazakhstan**), or at the level of a judicial district (10) or taking account of the administrative division (3), or at a level that varies according to the organisation of the body that recruits and approves them (**Iceland**, **Malta** and **Sweden**). Six member States combine national and local lists, either for geographical and judicial organisational reasons or to distinguish the best experts recruited at local level by including them on a national list.

It should be noted that **Germany** answered negatively on the question relating to the existence of lists of judicial experts due to its particularities: judges who remain free to choose when appointing in a particular case are encouraged by the procedural codes to give priority to appointing experts not on specific lists of judicial experts but on lists of experts drawn up by the bodies responsible for public appointment. Nevertheless, for the purpose of comparing the number of judicial experts per country, the number of experts on these lists remains a useful benchmark for estimating, in the absence of more precise data, the maximum number of German judicial experts, since it is from these that judges generally choose the judicial experts they appoint.

Only 20 out of 44 member States have a registration that is limited in time. In those countries, the recruitment bodies have an effective mean of controlling the maintenance of the expert's qualification over time and his actual activity for the benefit of the judicial institution. Thus, a risk for a judge to appoint an expert on the list who has not practised for a long time, or who has never practised at all, is very much reduced.

The lists of judicial experts are public in 24 Member States and **Kazakhstan**, i.e. in three quarters of the States that have established lists. One may wonder why the other member States maintain the confidentiality of these lists, especially when the appointment of judges in these States is public. Is it to guarantee the security of the expert or to prevent him from being appointed by the parties outside of a judicial procedure? At this point in time, there are no data that would allow answering these questions.

### Way in which the expert is appointed in a particular case.

Unlike the recruitment of experts for registration on a list or other form of official selection for registration as an expert, discussed above, this section analyses the manner in which an expert is chosen where recourse to expertise is considered essential to the resolution of a dispute.

The judge is in the majority of member States responsible for the appointment of the expert (29 out of 45 member States in 2018). From the 2022 evaluation cycle (2020 data), these data are no longer collected by the CEPEJ.

In 34 member States and **Israel** the judge may appoint an expert who is not listed or registered.

This is of course the case when there is no expert in a particular field. The independence of the judge in the appointment is most often affirmed even if he is encouraged by the regulations to choose an expert registered on the lists which, if they give rise to a serious control of competences when they are drawn up, are a guarantee of the quality of the experts who registered in them. In some cases, the judge is required to give reasons for his decision to choose an expert who is not on the list.

The information collected by the EEEI makes it possible to establish a series of interesting observations.

First of all, it should be noted that the judge may or must, depending on the case, first obtain the opinion of the parties or their agreement (**Luxembourg**).

In some member States the appointment of the expert is not the responsibility of the judge but of the specialised department of the State or region which is also responsible for drawing up the list.

In criminal matters, the expert is usually appointed by the investigating or prosecuting authority.

It may also happen that the judge's decision identifies only one expert institution, and it is the director of this institution who decides which employee is available and most qualified to be the expert assigned to the case (for example, **France, Republic of Moldova**).

Sometimes the judge decides on an expert opinion and the appointment of the expert is made by another judge (e.g. in **Spain**, for parties receiving legal aid, or in certain matters such as filiation).

In *common law* member States, experts are chosen by the parties and in the absence of an agreement between them, the judge appoints the qualified person using the register of experts if it exists. Where there is no list or register, experts may be selected directly by the parties (**Cyprus, Ireland, UK - England and Wales**) who are assisted in this selection by associations of experts (**UK - England and Wales**) or even by the head of the state expert agency.

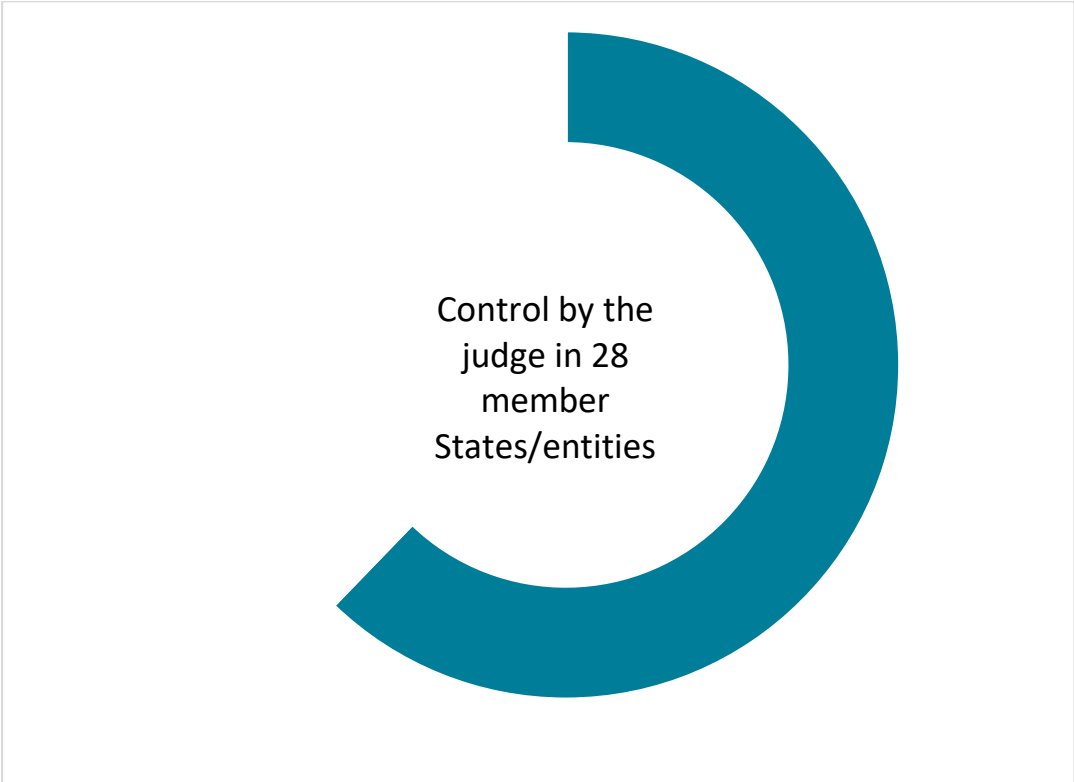
For example, in **Finland**, the court will obtain a statement on the issues under discussion from an agency, public official or other person known to be honest and competent in the field. Before an expert witness is appointed, the parties will be heard on the matter. If a party calls an expert not appointed by the court, the provisions on the hearing of witnesses shall apply.

Expert witnesses are mainly chosen from among judicial experts accredited for a specific type of expertise. More complex expertise may also be entrusted to professional institutions (hospital, chemical laboratory, university, etc.).

### **Judicial control**

28 member States instead of 26 in 2018 and 24 previously (as well as **Israel**), report judicial control over the control the progress of the expertise, i.e. three-fifths of the Council of Europe Member States. Three quarters of them are now found in the EU, where the demand for judicial cooperation between judges within a more unified judicial area is stronger.

**Graph 4: Control of the progress of the expertise by the judge (Q207-1)**

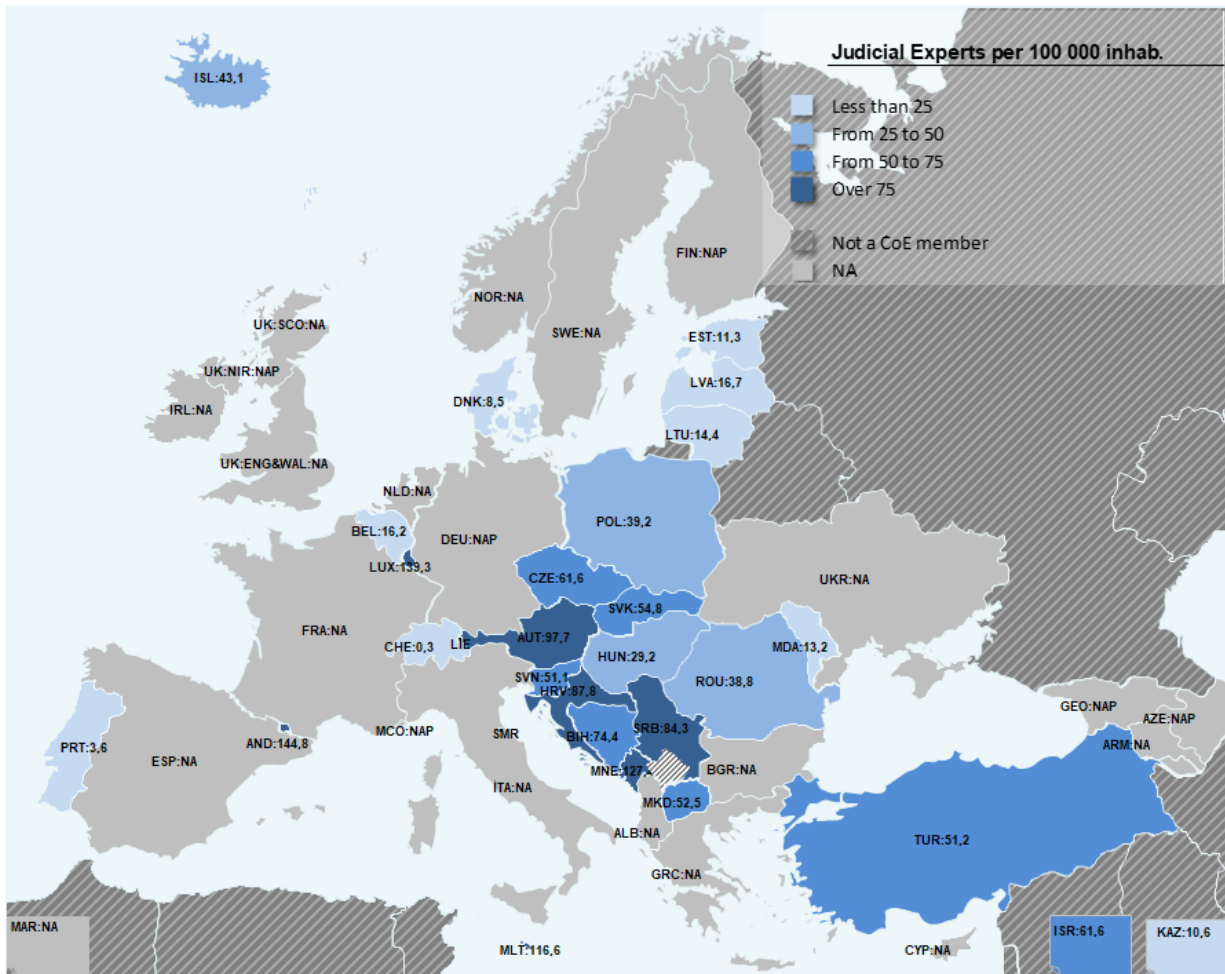


While the lack of control is understandable in *common law* member States, given that the expertise requested often takes place prior to the trial and under the control of the party requesting it, the lack of control of court-appointed experts by the judges who appoint them is more surprising.

Indeed, unless the control over the deadlines and costs of the expertise is entrusted to the court's administrative services and not to the judge himself, it seems important that a judge is able to supervise the execution of the expertise he has ordered, which gives a possibility to avoid the prolongation of the procedural deadlines, in particular delaying actions by the parties.

## 6. NUMBER OF JUDICIAL EXPERTS

Graph 5: Number of registered judicial experts per 100 000 inhabitants (Q1, Q205)



Only experts registered on a list are considered in this section.

Out of 34 States with lists of judicial experts, only 25 member States, **Israel** and **Kazakhstan** are able to provide the number of accredited experts in 2020. **Albania** did not provide data on this point neither in 2018 nor in 2020. However, there has been an improvement in the apprehension of expert populations, as for the year 2012, only 19 states were able to provide these statistics.

Despite this relatively positive development, it should be noted that due to the lack of national databases, the regional or local nature of recruitment or the federal structure of the state, the majority of the most populous member States do not provide sufficient information to assess the number of experts they have. This is particularly the case for **France**, **Germany**, **Italy**, **Spain** and **UK - England and Wales**.

However, it would be useful to have a better idea of the number of registered experts since, according to the information in possession of the EEEI, there seem to be significant differences between States with a large territory covered by continental law (15 000 in **France**, 15 000 in **Italy** for the Naples Court of Appeal alone).

These discrepancies observed since 2012 reflect very significant differences in the accreditation criteria between member States that are satisfied with justifying the theoretical knowledge of the basic profession and member States that practice a selection between professionals with equivalent theoretical qualifications by applying additional selection criteria such as experience, reputation, legal training in the rules of expertise, etc.

## Evolution of the number of registered experts

Graph 6: Evolution of registered judicial experts between 2012 and 2020 (Q1, Q205)

Etats / Entités	2012	2014	2016	2018	2020
ALB	62.4	351.3	335.3		NA
AND	NA	NAP	NAP	NA	144.8
ARM	NA	NA	NA	NA	NA
AUT	108.8	110.5	108.6	101.1	97.7
AZE	NA	NAP	NAP	NAP	NAP
BEL	NA	NA	16.1	14.8	16.2
BIH	46.2	48.1	68.8	69.3	74.4
BGR	NA	NA	NA	NA	NA
HRV	NA	88.8	80.5	78.7	87.8
CYP	NA	NA	NA	NA	NA
CZE	93.8	89.9	84.2	78.7	61.6
DNK	NA	3.7	6.9	8.0	8.5
EST	10.7	11.4	11.4	11.4	11.3
FIN	NAP	NAP	NAP	NAP	NAP
FRA	NAP	NA	NA	NA	NA
GEO	NA		NAP	NAP	NAP
DEU	NA	NA	NAP	NAP	NAP
GRC	NA	NA	NA	NA	NA
HUN	40.4	40.6	40.8	38.1	29.2
ISL	NAP	NA	NAP	31.9	43.1
IRL	NA	NA	NA	NA	NA
ITA	NA	NA	NA	NA	NA
LVA	14.3	15.5	16.0	16.9	16.7
LTU	12.8	12.8	13.1	14.2	14.4
LUX	142.9	NA	137.5	NA	139.3
MLT	NAP	NA	198.8	117.7	116.6
MDA	9.4	7.7	10.2	10.8	13.2
MCO			NAP	NAP	NAP
MNE	121.1	43.7	168.1	62.3	127.4
NLD	2.5	4.1	3.3	NA	NA
MKD	NA	49.3	56.5	67.5	52.5
NOR	NAP	NAP	NAP	NA	NA
POL	NA	34.3	51.1	36.4	39.2
PRT	NA	NA	NA	NA	3.6
ROU	22.7	37.3	51.0	50.3	38.8
SRB	74.2	96.9	97.8	98.4	84.3
SVK	52.2	53.5	52.7	52.5	54.8
SVN	70.4	67.2	59.6	52.2	51.1
ESP	NA	NA	NA	NA	NA
SWE	NAP	NAP	NAP	NA	NA
CHE	NA	NA	0.5	0.4	0.3
TUR	252.6	255.8	68.6	58.8	51.2
UKR	14.0	23.3	NA	NA	NA
UK:ENG&WAL	NA	NA	NA	NA	NA
UK:NIR	NAP	NAP		NAP	NAP
UK:SCO	NA	NA	NA	NA	NA
ISR	NAP	NAP	NA	NA	61.6
KAZ				6.6	10.6
MAR			9.5	9.4	NA
MoyenneCdE	64.0	68.8	72.4	48.7	55.1
Médiane CdE	49.2	43.7	54.6	51.3	51.1

The trend noted between 2012 and 2018 has not been confirmed over the period 2018-2020, while the number of member States able to provide figures has increased from 18 in 2012 to 25 in 2020.

Apart from **Türkiye** which, unlike other member States, has reduced the number of its registered experts by almost four fifths to reach a percentage close to the average per 100 000 inhabitants in 2020, i.e. 51.2%, the trend is towards a decrease in the number of experts per 100 000 inhabitants from an average of 64.0 to 55.1, the latter figure having increased slightly since 2018.

However, the gap between the minimum (0.3) and the maximum (144.8), even though it has been significantly reduced, and the absence of figures from the most populous member States, make it necessary to put the interpretation of the evolution of this average into perspective.

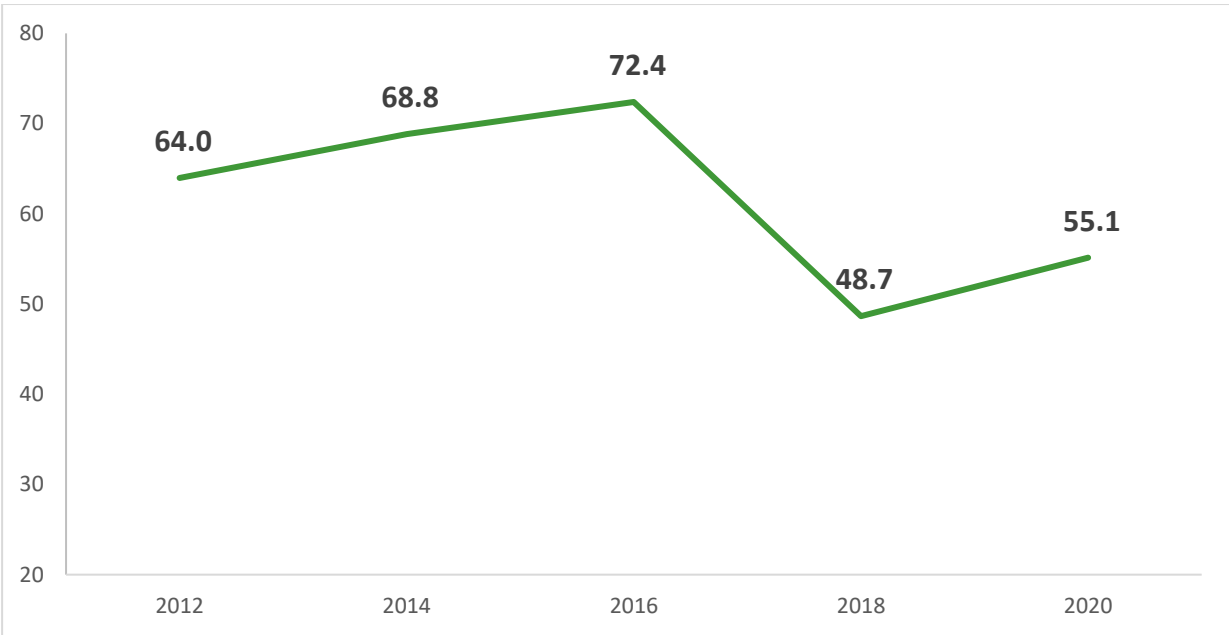
During this period, some countries first experienced a sharp or very sharp increase in their number of experts before registering a form of downward adjustment, particularly in the countries of Eastern Europe (**Romania, Serbia**). **Romania**, for example, went from 4.836 registered experts in 2012 to

9.762 in 2018, the number reduced to 7.438 in 2020, while **Serbia** went from 5.342 in 2012 to 6.893 in 2018 before falling back to 5.859.

The increases have moved them away from the average, while other states (**Bosnia and Herzegovina**) have seen increases that bring them closer to the average. On the other hand, some of them show more or less notable downward variations (**Czech Republic, Türkiye**), while others are very stable despite a significant deviation from this average and a low number of experts (Baltic states, **Switzerland**).

It seems - subject to more detailed analysis - that all the States, with the exception of the previously mentioned ones, had undertaken to converge towards the average, either by increasing or reducing the number of experts, without it being possible to determine the causes of this trend, which is still ongoing (a concern to improve quality through greater selectivity, a smaller number of applications or, in the opposite direction, a simple consideration of the needs of courts faced with more numerous and more complex cases).

**Graph 7: Evolution of the number of accredited or registered judicial experts per 100 000 inhabitants between 2012 and 2020 (Q1, Q205)**



The average number of experts per 100,000 inhabitants, which increased significantly between 2012 (64.0) and 2016 (72.4), fell considerably in 2018 (48.7) to rise to 55.1 in 2020. The median shows a less significant but rising variation: 49.2 in 2012, 43.7 in 2014 and 54.6 in 2016, rising to 51.3 in 2018 and stabilising at 51.3 in 2020.

However, the total number of experts is decreasing. It decreased from 241,459 in 2012, to 144,438 in 2016, to 119,701 in 2018 and to 114,861 in 2020.

In this respect, it is worth noting the case of **Türkiye**, which, following a legislative reform<sup>3</sup>, alone has gone from over 191,000 experts in 2012 to 42,808 in 2020, a decrease of 148,205 during the reporting period.

It would be risky to draw a conclusion from these figures as to whether there should be more limited use of judicial expertise.

<sup>3</sup> According to the Code on Experts that entered into force in 2016, it is not possible to apply for the consultation of an expert on the matters that can be solved by general knowledge or experience or by the legal information required by the judge’s profession.

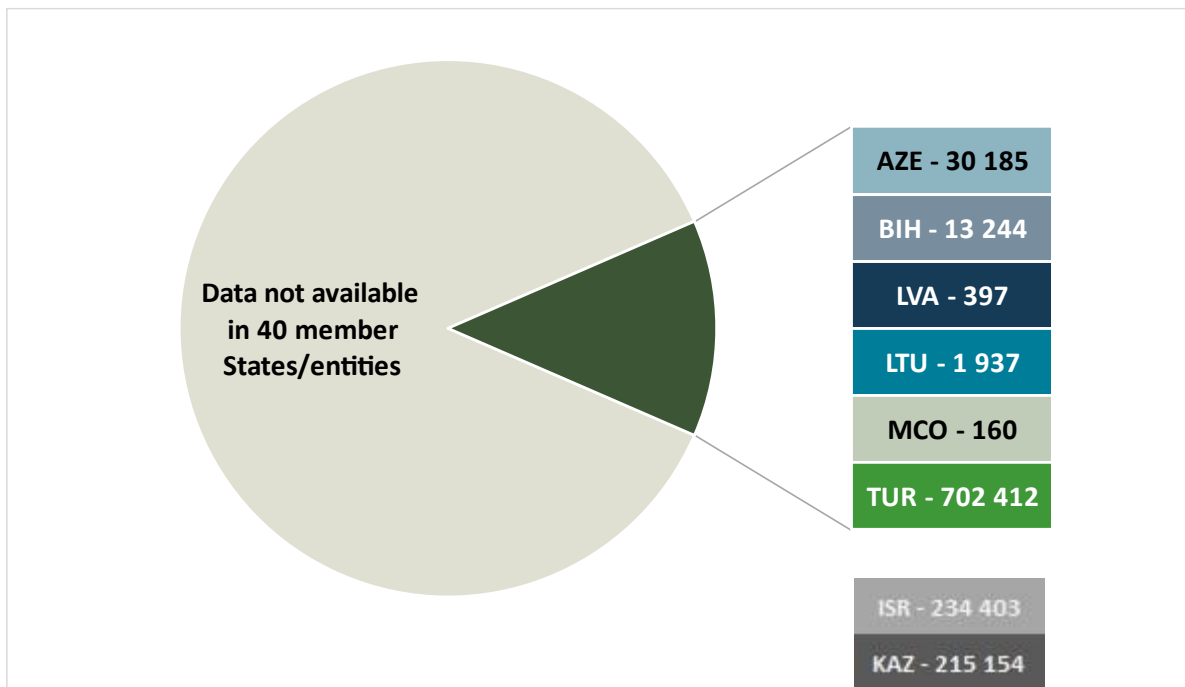
## 7. NUMBER OF EXPERT OPINIONS ORDERED BY A JUDGE OR REQUESTED BY THE PARTIES IN 2020.

Only ten member States were able to provide figures for 2020, representing 22,7% of the member States. **Israel** and **Kazakhstan** were also able to provide the figures.

Across all categories, only six member States were able to provide figures in 2020, representing 13,6% of member States. In 2020, the total is also available for **Israel** and **Kazakhstan**.

In civil and commercial matters, nine member States provided data. The figure is similar in criminal matters. In contrast, only seven member States provided figures for administrative matters.

**Graph 8: Total number of cases where an expert opinion was ordered by a judge or requested by the parties (Q206-1)**



In 2018, **Poland** provided an estimated figure of 320,000 expert opinions for all categories. In 2020, no total figures are provided. Instead, data for civil and commercial matters (136,071) and criminal matters (34,128) are provided. Also, a figure for experts appointed in cases outside the civil, commercial, administrative and criminal fields (105,831) is provided. No figures are provided for administrative matters.

In **Türkiye**, which has experienced a significant decrease in the number of experts, the number of expert opinions is 702 412, mainly in civil and commercial cases (464 587) and criminal cases (100 217), although there is a significant number of cases of unspecified nature (130 361).

No data are available for other states with large populations.

The low number of responses is due to the fact that in many states there are no national statistics on this issue.

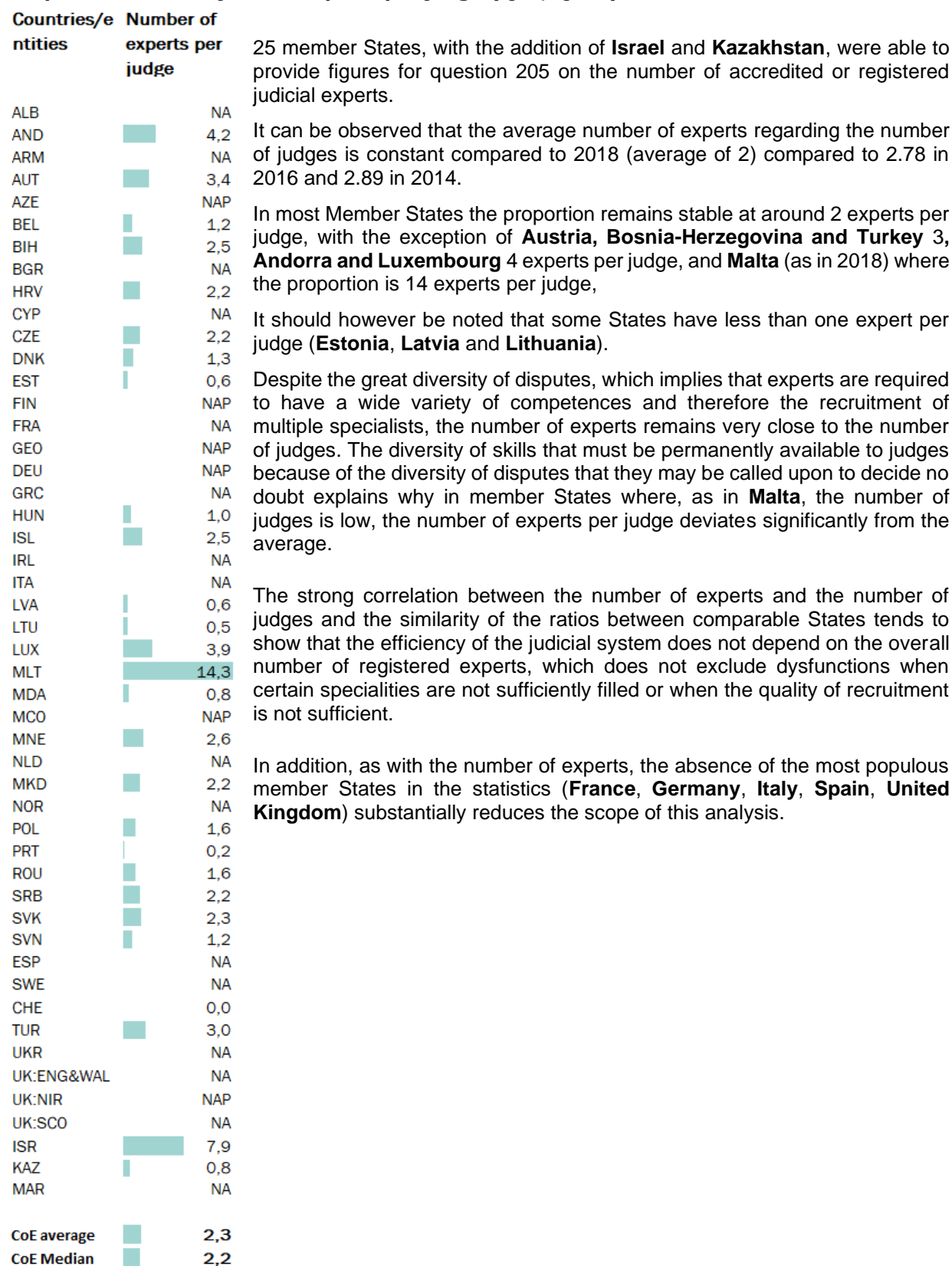
A drop in the number of expert opinions ordered can be seen, even though only six member States were able to provide figures for 2020 (**Azerbaijan, Bosnia-Herzegovina, Latvia, Lithuania, Monaco, and Türkiye**).

It can be imagined that the COVID-19 crisis has had a strong impact on judicial activity in the various member States, justifying the significant drop in the number of expert opinions ordered.



## 8. NUMBER OF EXPERTS PER JUDGE

**Graph 9: Number of judicial experts per judge (Q46, Q205)**



## 9. TRAINING OF JUDICIAL EXPERTS

The following table shows the results of the data collection on the training obligations of experts and the content of the training taken between acquiring and maintaining technical expertise and acquiring and maintaining knowledge of legal procedures.

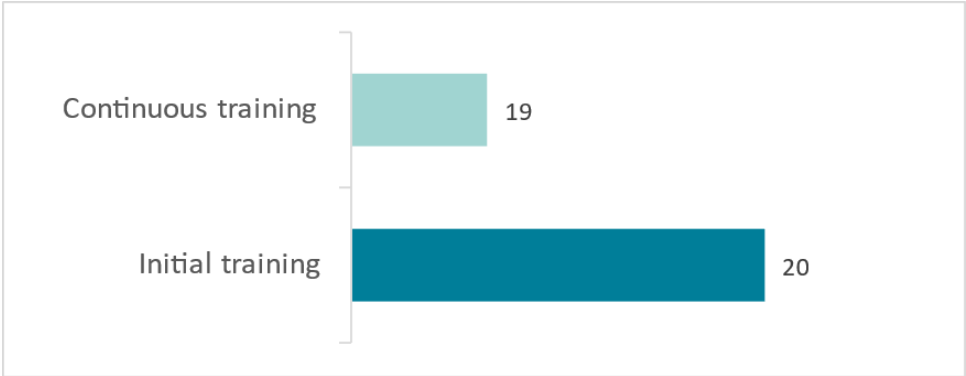
**Graph 10: Training of judicial experts (Q203-1, Q203-2)**

States/entities	Obligation of training		Content of the training		
	Initial training	Continuous training	Judicial proceedings	Profession of expert	Other
ALB					
AND					
ARM					
AUT					
AZE					
BEL					
BIH					
BGR					
HRV					
CYP					
CZE					
DNK					
EST					
FIN					
FRA					
GEO					
DEU					
GRC					
HUN					
ISL					
IRL					
ITA					
LVA					
LTU					
LUX					
MLT					
MDA					
MCO					
MNE					
NLD					
MKD					
NOR					
POL					
PRT					
ROU					
SRB					
SVK					
SVN					
ESP					
SWE					
CHE					
TUR					
UKR					
UK:ENG&WAL					
UK:NIR					
UK:SCO					
ISR					
KAZ					
MAR					
<b>Yes</b>	20	19	18	24	5
<b>No</b>	25	26	8	2	21
<b>Total</b>	45	45	26	26	26

In general, it can be noted that on the issue of expert training, there is a relatively large margin for improvement compared to the 2018 figures.

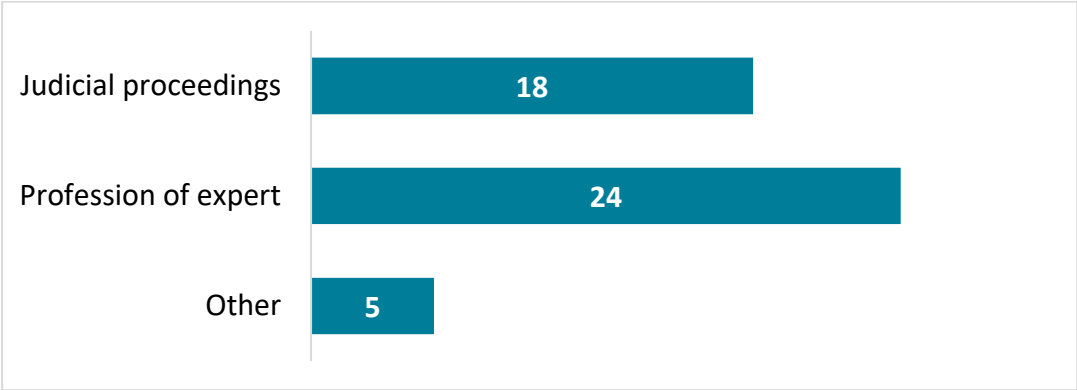
20 member States make initial training compulsory and in 19 member States the continuous training is compulsory, while only 15 member States, or one third, as well as **Kazakhstan** require experts to undergo both initial and continuous training.

**Graph 11: Training of judicial experts (Q203-1)**



The content of this training is technical in 24 member States and **Kazakhstan** and procedural in 18 States, while only 16 States offer training on both technical aspects and procedure. One country was an exception in 2018; it was **Türkiye**, which stood out by including more comprehensive areas of training, particularly with regard to the drafting of expert reports and the rules of ethics which must be followed by the expert. This particularity is no longer reflected in the responses provided in 2020 since the States focus the content of their training on more technical and procedural aspects and, to a lesser extent, on the expert's profession.

**Graph 12: Content of the training of judicial experts (Q203-2)**



In the end, only 11 member States have instituted mandatory initial and continuous training on technical and procedural matters. It should be underlined that training remains one of the most relevant means of strengthening the quality and effectiveness of the activities carried out by the experts.

Finally, five member States refer to other training (**Latvia, Lithuania, North Macedonia, Slovenia and Türkiye**). Among these states, three have also instituted initial and continuous training on technical and procedural rules (**Lithuania, Slovenia and Türkiye**).

Concerning the initial training of judicial experts, in 2020, only 20 member States, as well as **Kazakhstan** consider it mandatory (23 member States and three observers in 2018). As regards continuous training, a stability in the figures can be observed. In 2018, 19 member States imposed a continuous training obligation on judicial experts. This figure remains the same in 2020 and the list of member States concerned by this training obligation also remains unchanged, with the addition of **Kazakhstan**.

In 2020, it is possible to identify 21 Member States (and **Israel**) where no training (neither initial nor continuous) is imposed. In **Armenia**, the expert candidates must justify a certain training in the sense of education and professional experience and not in the sense of training courses followed and validated. In **Iceland**, there is no obligation, but an incentive for judicial experts to undergo training provided by the Court Administration. On the other hand, **Poland**, which did not impose either of these two types of training, raised its requirements by setting up a continuous training obligation. Thus, there is a slight difference in the figures between 2018 and 2020 with regard to countries that have not established any training obligation.

It is important to underline that question 203-1 only concerns the existence of a training obligation. Therefore, a negative answer would not necessarily imply that judicial experts do not receive any training

in the member States concerned, but only that the system does not include mandatory training for them. In other words, the scope of the question, but also the insufficiency of the member States' comments, do not allow at this stage to distinguish between member States where optional training is offered to experts and those where no training takes place. Moreover, this reservation in the interpretation of the data is confirmed by the variation in the responses of some member States, certainly due to a desire to qualify as precisely as possible the training offered to experts - mandatory or optional.

This remark, already made in 2018, remains relevant in 2020 as the distinction between compulsory and optional training is not made in Q 203-1. For some States, the training of experts is not compulsory but is proposed to the experts which can participate on a voluntary basis. For example, **France** replied that it had not set up any compulsory initial training. At the same time, it states that the content of the training covers civil procedure and the training of experts. Therefore, attending the training is not compulsory but is strongly encouraged insofar as it is a criterion which allows a possibility to make a choice between experts. In the same vein, the completion of a training by the expert is checked at the time of re-registration on the lists.

In 2018, six member States selected the option "other" for the content of the training. This number equals to five in 2020. The list has changed slightly. **Lithuania, North Macedonia, Slovenia** and **Türkiye** are among the member States for which the situation seems unchanged since 2018. The **Slovak Republic** had opted for the "other" answer in 2018 but did not do so again in 2020. Conversely, **Latvia** did not choose such a response in 2018, whereas in 2020 it validated the option "other" in addition to the option "the profession of expert".

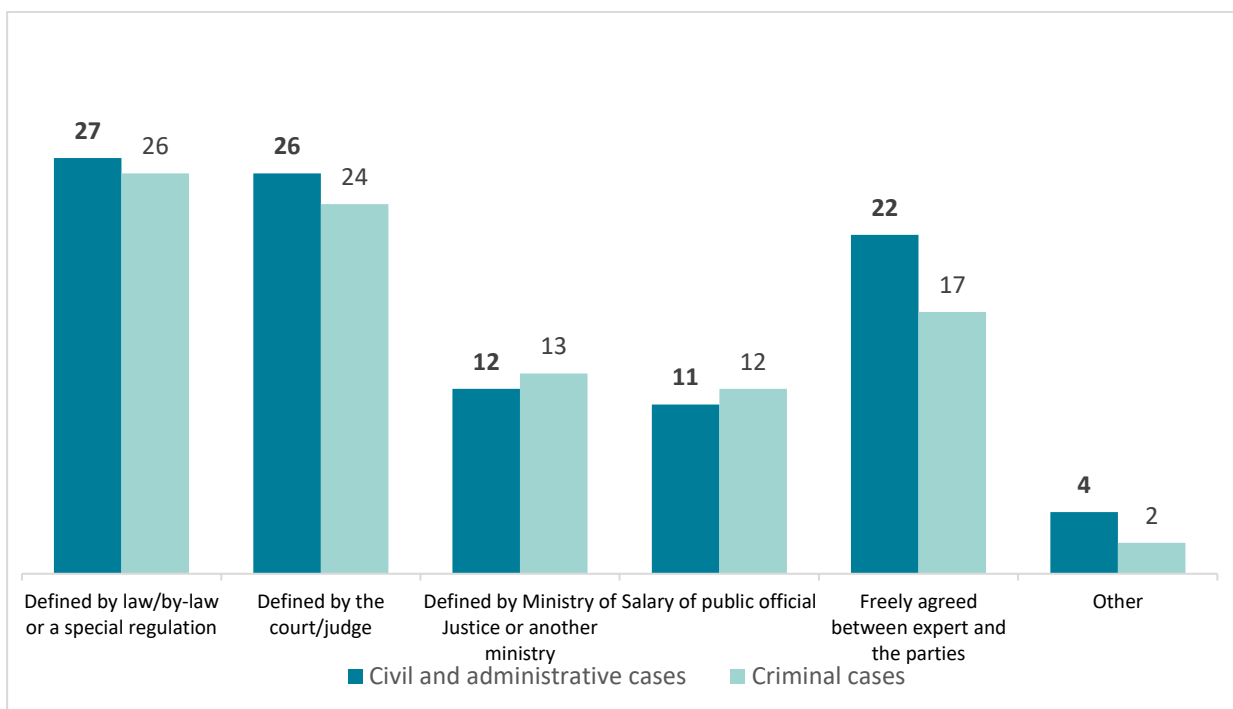
## 10. REMUNERATION OF JUDICIAL EXPERTS

Situations vary greatly from country to country. The issue of remuneration is complex, it is a process that generally involves the expert, the parties, the judge, and all under the "gaze" of the law or a ministerial regulation that can potentially regulate remuneration. Furthermore, practices can be very different depending on the type of proceedings: criminal, civil, administrative.

The rules for determining the remuneration of experts vary widely.

The study of the methods of remuneration of the judicial expert is a new point in the report. The data are classified according to two criteria. On the one hand, they take into account the institution in charge of the remuneration of experts and on the other hand they are based on the field of expertise (civil and administrative or criminal). It is specified that the methods of assessing the expert's remuneration are not incompatible and can easily be combined. The great diversity of forms of remuneration, which has already been pointed out, is still relevant today.

**Graph 13: Remuneration of judicial experts (Q205-1, Q206)**



Remuneration may first of all be defined by law. This method concerns 27 states for civil and administrative matters and 26 for criminal matters.

Remuneration can also be determined directly by the court. This is the case for 26 states in civil and administrative cases and 24 states in criminal cases.

Thirdly, the institution in charge of the remuneration of judicial experts may be the Ministry of Justice or another ministry. This method of establishing remuneration is rarer. 12 states in civil and administrative matters operate in this way and 13 states in criminal matters.

Finally, the remuneration can be granted without control of a state institution. Indeed, the parties and the expert can consensually determine the remuneration. This practice, although inspired by *common law* member States, is found in 22 states in civil and administrative matters and 17 states in the criminal sphere. In the list of states that use this method of remuneration, we obviously find those from the *common law*, such as **Ireland, UK - Northern Ireland** and **UK - Scotland**, but also states with a civil law tradition such as **France, Italy** and **Spain**. For **France**, these comments must however be further specified because, according to EEEI sources, even if the remuneration in civil matters results from a consensus between the expert who requests it and the parties who accept it, it remains under the control of the judge since the fees are arbitrated by the judge in the event of dispute by the parties. In criminal matters, the scales are fixed by law and the remuneration is fixed by the court only for work not foreseen by the scales.

In only eleven States in civil and administrative matters and twelve States in criminal matters, the

remuneration of the judicial expert may take the form of a public salary. This situation mainly concerns member States in Eastern Europe (**Bulgaria, Republic of Moldova, Ukraine**, etc.), the Caucasian region (**Azerbaijan, Georgia**, etc.) and the Baltic region (**Finland, Lithuania**).

As mentioned above, the different modes of remuneration can be combined. By way of illustration, six states combine the first three modes of establishing remuneration presented, namely by law, by the court and by a ministry. In the same vein, although seemingly antinomic, remuneration determined freely between the parties is perfectly applicable with the idea of a public salary. This is the case in 11 States which accept the combination of these two forms of remuneration.

Finally, it should be noted that in the civil and administrative field, four states (**Iceland, Lithuania, Spain and Sweden**) indicated that remuneration could be determined in another way. In the case of **Lithuania, Spain and Sweden**, the methods of remuneration are multiple, since these states combine several forms of establishing remuneration. This is not the case for **Iceland**, which indicated that remuneration was only made in one other way without giving further details. In the criminal field, two states (**Lithuania and Spain**) mentioned that remuneration could take another form without providing further details.

In **Israel**, in all areas of law, the remuneration of judicial experts may be determined either by law, or by the judge, or by agreement between the expert and the parties. In **Kazakhstan**, for all court proceedings, remuneration is paid either on the basis of the law or by the Ministry of Justice or another ministry.

## 11. TRENDS AND CONCLUSIONS

The findings of this report from the 2020 data remain much the same as those from the 2016 and 2018 data.

Despite the awareness of the importance of judicial experts in the process of improving the efficiency of justice, as reflected in the CEPEJ Guidelines on judicial experts and the publication the Guide to Good Practices in Civil Judicial Expertise in the European Union, the very diverse population of judicial experts remains insufficiently defined and not well known, mainly due to a lack of institutional visibility.

Gradually the notion of judicial expert has become more precise, leading to the abandonment of the classification between technical experts, experts designated by the parties, and legal experts, in order to retain only experts appointed by the courts and experts designated by the parties who have the same obligations of competence and independence when submitting their opinion to a court.

It cannot be expected that during the next cycle of evaluation, the member States, in particular the most populated ones, will enhance the collection of statistical data and provide more complete comments.

Nevertheless, it can be noted with all the precautions induced by the absence of data for the majority of the most populous States and the differences recorded for the others, that the convergence in the number of experts per 100 000 inhabitants noted in previous periods is now coupled with a confirmed downward trend, as already noted in the previous report.

The data provided by only six member States and two observer States show a significant drop in the number of expert opinions during the year 2020. However, this decline does not appear to explain the drop in the number of experts as judicial activity was severely disrupted by the Covid-19 epidemic during the reference year.

The strong correlation between the number of experts and the number of judges is only marginally overturned for sparsely populated states where the number of judges is very low.

The insufficient number of responses linked to the shortcomings of the information systems and particularly the statistical systems does not make it possible to know the average number of judicial expert opinions ordered by each judge or the number of expert opinions per expert, which suggests that there is room for improvement in the management of expert opinions in order to improve the efficiency of the judicial systems.

Of course, the number taken from the lists of approved experts provided by the member States leaves in the shadow the experts on the lists drawn up by private bodies and does not reflect the real number of experts who regularly give their opinion in the courts. Indeed, due to a lack of selectivity when drawing up the lists in some member States, judges regularly appoint only a small number of experts from among those on the list and, conversely, the judge is usually free to appoint an expert who is not on a list.

With regard to the training obligation (initial, continuous or both), no major changes can be reported for the period 2016-2020 as the data remain stable. Although training is a key means of improving the quality and effectiveness of experts, it is noted that only 11 member States have introduced compulsory initial and continuous training covering both technical and procedural rules. This finding must be nuanced by the fact that in several Member States, the number of which is not yet known with certainty, optional

training courses organised by the professions, expert associations and universities are offered to candidate experts and experienced experts, and their attendance can be an asset for registration or re-registration on the lists.

It would be useful in the future to make a clearer distinction between member States where experts benefit from voluntary training and member States where no training is offered to experts. At present, the only identifiable group of states is where judicial experts are required to undergo training.

The remuneration, which is under the control of the judge, the law or the administration, except when it is determined by mutual agreement between the expert and the party that appoints him, is subject to complex and variable rules depending on the quality of the client and the matter in which the expertise is carried out. The elements provided, do not yet allow a possibility to determine whether the cost of the expertise is an obstacle to access to the court and whether it ensures that the expert receives sufficient remuneration to guarantee his independence by limiting the risks of harming his integrity.