

9 December 2019

CEPEJ- GT-EVAL(2019)9Final

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

**DRAFT**

Note: This document is a contribution written by the EEEI which is a think tank in the form of an association with both institutional members (courts of appeal, bar associations, universities, associations of experts) and individual members, such as judges, lawyers, experts and academics, which aims to improve the quality of expertise in Europe. For this work, the EEEI has used the 2016 statistics supplied by the CEPEJ, to which have been added analysis, opinions and conclusions based on its own experience and networks. The evaluation report of the judicial systems of the CEPEJ 2014 edition (2012 data) is also often included in this study since it is the latest version to include developments concerning experts. From the 2016 edition (2014 data), the data collected by the CEPEJ concerning experts are available on CEPEJ-STAT. The information and views set out in this study are those of the authors and do not necessarily reflect the official position of the CEPEJ. The CEPEJ, does not guarantee the accuracy of the data, analyses, opinions and/or conclusions included in this study. Neither the CEPEJ nor any person acting on the CEPEJ's behalf may be held responsible for the use which may be made of the information contained therein.

## 1. INTRODUCTION : JUDICIAL EXPERTS: A PROFESSION IN SEARCH OF AN IDENTITY

Judicial experts are experts appointed by the judge or the parties to provide scientific and technical knowledge for legal proceedings to the courts and who have obligations towards the judge rather than a party, even if that party has instructed them.

A judicial expert is thus different from a consultant or private expert employed by one party to provide assistance.

In some legal systems judicial experts are certified or accredited by the judicial authority or another public authority. In others, their knowledge and experience are simply recognised for practical purposes by their peers, the parties and the latter's lawyers.

The expert's work is usually done individually and incidentally to his/her occupation, although it may be the primary activity in some fields such as forensic DNA profiling and is then mostly carried out by legal entities.

Experts contribute to the efficiency of justice by giving judges clear and reasoned replies on the specific and complex issues put to them. The way in which expert evidence is used and overseen during legal proceedings determines the quality of the ruling and the duration of the case.

While expert evidence is governed by the rules of evidence in every judicial system, the recruitment of experts, the ways in which they testify before the courts and their rights and obligations vary enormously. Their numbers differ considerably between states, and it is difficult to count them, since, firstly, there is no agreed definition of a judicial expert, secondly, information about them is not centralised, particularly in the most populous countries, and thirdly, in the great majority of countries these experts are not represented at their own national authorities.

However, since the CEPEJ 2014 edition (2012 data) of the evaluation report of the judicial systems, which noted that there was no consensus in Europe on either the definition of a judicial expert or the standards applying to experts and expert evidence, CEPEJ adopted on 12 December 2014 guidelines on the role of technical experts (see below for the different types of judicial expert) and in October 2015 published the *Guide to Good Practices in Civil Judicial Expertise in the European Union* for both technical and common-law experts. This guide was the outcome of a European consensus conference organised by the EEEI with financial support from the European Union's Directorate- General for Justice.

These two documents show a genuine awakening concerning the importance, firstly, of expert evidence in settling cases, even if the judge is under no obligation to accept an expert's conclusions, and secondly, of overseeing the quality of experts.

This work has also been an opportunity to reflect on how to define the concept of a judicial expert, which might perhaps lead in the future to a change in the terminology hitherto used to classify the different types of expert.

## 2. DIFFERENT TYPES OF JUDICIAL EXPERT

### a) The data collected by the CEPEJ

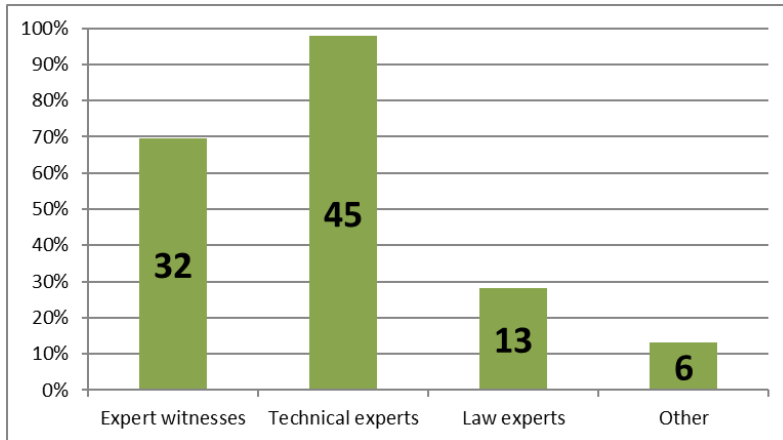
The CEPEJ's evaluation questionnaire distinguishes four categories of expert:

- **Technical experts**, who provide the courts with scientific and technical knowledge to settle questions of fact.
- **Expert witnesses**, who are designated by the parties, primarily in common-law systems, to offer their knowledge in support of the parties' arguments.
- **Legal experts**, who are consulted by judges on particular legal issues, including those relating to foreign law, or are requested to assist the judge in his/her judicial work (without being involved in the ruling).
- The category – "**Other**" –, for example, authorities who give opinions in youth courts on the educational measures needed in the best interests of juvenile offenders.

## Type of judicial experts in 2016 (Q202)

States/entities	Expert witnesses	Technical experts	Law experts	Other
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Iceland				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
North Macedonia				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
Turkey				
Ukraine				
UK-England and Wales				
UK-Scotland				
Israel				
Morocco				
<b>Yes</b>	<b>32</b>	<b>45</b>	<b>13</b>	<b>6</b>
<b>No</b>	<b>14</b>	<b>1</b>	<b>33</b>	<b>40</b>

### Number of countries where expert participate in judicial procedure by type of expert



#### b) Data analysis

All States/ entities answered this question.

Furthermore, apart from **Scotland**, every States /entities responded to have technical judicial experts in their judicial systems. This answer should be carefully considered in the context of the next data collection. The actual situation in both countries seems to be much the same, since, as far as we are aware, in civil cases a Scottish judge may decide a particular question to be “remit to a man of skill”.

The majority of states/entities (33, including **Israel** and **Morocco**) indicate that they have both technical experts and expert witnesses, while 14 States/entities have only technical experts and one (**Scotland**) has only expert witnesses.

Expert witnesses seem more prevalent in common-law countries but are also to be found in other countries.

The fact that there are so many expert witnesses outside common-law countries raises questions as to the relevance of the classification used so far and the replies provided, owing to possible confusion between expert witnesses as they exist in common-law countries and experts of the parties, who are also hired and paid by the parties to support their arguments but are not subject to the strict professional standards of expert witnesses.

Thus, for a number of continental-law countries (**Estonia, Germany, Hungary, Netherlands and Norway**), the data collected suggests that in civil cases expert evidence is ordered by the judge either of his/her own motion or at the parties’ request. In such cases, the fact that the parties can ask the judge to order expert evidence complementing the evidence that they themselves are required to bring, or even to be involved in designating the expert, is not enough to make these persons expert witnesses.

Legal experts exist in 13 countries (**Albania, Estonia, Germany, Greece, Ireland, Luxembourg, Malta, Netherlands, Norway, Poland, Russian Federation, Spain and Turkey**).

Comparison with the statistics from the 2014(2012 data) report shows that the number of countries with law experts has risen (from 10 to 13). It may therefore be asked whether this is a new practice for these countries or rather of a different interpreting the definitions.

We should also note the appearance in six countries (**Denmark, Germany, Lithuania, Malta, Spain and Sweden**) of “other experts”, although it is impossible to tell, as things stand, whether this is actually a real, new phenomenon or whether it springs from a broader use of the term “judicial expert” by the countries concerned.

### **3. STATUS OF JUDICIAL EXPERTS**

#### **a) Data collected by the CEPEJ**

The questionnaire covered various aspects of the expert's status:

- Protection of the judicial expert's title and function
- Legal rules governing judicial experts' work
- Judicial experts' obligation to report conflicts of interest
- Courts' responsibility in recruiting experts
- Judges' oversight of progress in expert evidence work

## Status of judicial experts in 2016 (Q203, Q204, Q204.1, Q207, Q207.1)

States/entities	Protection of the title of judicial expert	Function of judicial expert regulated by legal norms	Obligation to report all conflict of interest	Responsibility of courts to select judicial experts		Control of the progress of investigations by the judge
				for recruitment and/or appointment for a specific term of office	for recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings	
Albania						
Andorra						
Armenia						
Austria						
Azerbaijan						
Belgium						
Bosnia and Herzegovina						
Bulgaria						
Croatia						
Cyprus						
Czech Republic						
Denmark						
Estonia						
Finland						
France						
Georgia						
Germany						
Greece						
Hungary						
Iceland						
Ireland						
Italy						
Latvia						
Lithuania						
Luxembourg						
Malta						
Republic of Moldova						
Monaco						
Montenegro						
Netherlands						
North Macedonia						
Norway						
Poland						
Portugal						
Romania						
Russian Federation						
Serbia						
Slovakia						
Slovenia						
Spain						
Sweden						
Switzerland						
Turkey						
Ukraine						
UK-England and Wales						
UK-Scotland						
Israel						
Morocco						
Yes	31	38	42	9	28	23
No	15	8	4	37	18	23

## b) Data analysis

### ▪ Protection of the judicial expert's title and function

Thirty-one States and entities protect the title of expert, and 38 have rules governing the expert's function. There has thus been a change since the 2014 edition report, with a bolstering of the status of judicial expert, since four new countries now protect the title (**Belgium, Denmark, Portugal and Turkey**) – two of which (**Portugal and Turkey**) already had provisions governing the expert's function – and four more now have provisions governing this function (**Austria, Belgium, Denmark and Ireland**), although Ireland does not protect the title.

By contrast, **Cyprus** apparently no longer protects the title, while **Germany** apparently no longer has provisions governing exercise of the function. This raises the question of whether **Cyprus** had previously protected it, although it is governed by common law, and whether **Germany** has answered in the negative, while it had responded positively in 2012, for the sole reason that it did not have specific federal legal provisions for the status of expert, while the German Code of Civil and Criminal Procedure establishes rules concerning time limits and remuneration and the process of recruitment of experts by Chambers of Commerce and Industry in Germany is widely formalised, even though it is largely out of the hands of the judiciary.

### ▪ Rules governing experts' work (2014 edition report, 2012 data)

Thirty-nine states or entities have stated that they have procedural provisions governing the quality of judicial experts.

They are often statutory provisions (**Albania, Georgia, Germany, Iceland, Lithuania, Montenegro, Netherlands, Norway, Portugal, Romania, Spain, North Macedonia and Turkey**).

In most countries there are binding provisions specifying time-limits for carrying out assignments and submitting reports: **Albania, Austria, Bosnia and Herzegovina, Bulgaria, Finland, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Portugal, Serbia, Slovenia, Spain, Turkey and UK-England and Wales**.

However, this is not the case everywhere: in **Slovakia**, the law does not prescribe any time-limits for providing expert evidence and submitting a report.

The judge gives the expert an appropriate time-limit in his/her decision. In the **Russian Federation**, the time-limits for expert evidence are laid down by the judges and there are no binding legal provisions in this respect. In **Ukraine**, there are no binding provisions in this field either.

As for the period allowed for performing the function of a judicial expert, we find varying degrees of flexibility. There are three main options :

- The period may be set by law, with a maximum time-limit: in **Albania**, if there is a large number of facts and the expert cannot respond immediately, the prosecuting authority gives him/her a maximum time-limit of sixteen days. If he/she has to carry out a very complicated examination, this term may be extended more than once for periods not exceeding thirty days but never for over six months in total; in **Italy** the maximum time- limit is 60 days, in **Portugal** 30 days, in **North Macedonia** between 45 and 60 days, and in **Turkey** between 3 and 6 months.
- The judge may set a maximum period, as is the case, for example, in **the Russian Federation, Serbia, Slovakia** and **UK-England and Wales**.
- The period may result from an agreement sanctioned by law, as is the case in the



Netherlands, where the designating authority and the expert agree on the time-limit.

Failure to meet a time-limit may have financial repercussions for the expert: in **Montenegro**, if the expert fails to submit his/her findings and opinion within a given period, he/she may incur a fine of up to 500 euros; in **Slovenia**, a judicial expert who submits his/her technical report after the time-limit set by the court will be liable to penalties: his/her remuneration will be reduced by 1% for every day of delay, up to a maximum of 50%, unless the judicial expert can prove that the delay was for legitimate and justifiable reasons.

Binding provisions may also specify situations in which an agreement is necessary (in **Belgium**, for expert evidence on DNA) as well as professional standards (**UK-Northern Ireland**) or prerequisites for being registered as an expert (**Slovakia**).

#### ▪ **Experts' independence**

According to the most recent data (2016 data), almost all states (42 out of 46) mention the requirement for an expert to indicate any conflicts of interest, reflecting a shared view that an expert must not only be independent but also be seen to be so.

Only four countries did not mention this requirement (**Finland, Germany, Switzerland and UK-England and Wales**). It is understandable that for common-law countries, the requirement is not self-evident, since appointment and remuneration by a party faces the expert witness, if not with a permanent conflict of interest, at least with a conflict of loyalty to his/her duty to justice and the court and his/her duty to the party.

On the other hand, the absence of any reference to this requirement in a continental-law country such as **Germany** may seem strange, because there is no doubt that the judicial expert is required to give his opinion independently.

However, it is not clear whether all the countries that have mentioned this obligation require their experts to complete a declaration of interests before beginning work or whether some simply settle for the existence of a challenge procedure (found in all states), and an expert's widely recognised right to refuse an assignment, to assert the existence of this obligation.

#### ▪ **Recruitment and appointment of experts**

It seems from the answers given that the terms "recruitment", "appointment" and "designation" are considered synonymous, since they often cover actions by the same authority. However, for closer analysis of the different judicial systems, these three actions must be more clearly differentiated.

In some countries, when a judge orders expert evidence, he/she does not necessarily designate the expert for the case, as this power may be exercised by a different judge. In other countries, the judge hearing the case designates a judicial expert already recruited and appointed in this capacity by a judicial or administrative authority, particularly when lists of judicial experts have been drawn up.

In yet others, a judge may combine these three powers for a specific case, particularly if he/she is allowed to designate an expert who does not appear in an existing list of judicial experts.

It emerges from the answers that judicial experts may be recruited or appointed by the courts, but 17 states or entities do not believe that the courts should be responsible for selecting experts. This figure is higher than that in the previous report 2014 edition (2012 data), since six states have removed this responsibility from the courts (**Andorra, Belgium, Estonia, Montenegro, Portugal and the Russian Federation**), while three other States attributed the responsibility to them (**the Netherlands, Romania, Slovenia**).

If experts are not recruited or appointed by the courts, they are usually selected by the Ministry of Justice directly or through one of its component entities (**Azerbaijan, Hungary, Romania, Serbia, Slovakia and Slovenia**).

Experts may also be selected directly by the parties (**Cyprus, Ireland and UK-England and Wales**), assisted by experts' associations (**UK-England and Wales**) or heads of state forensic expert institutions (**Russian Federation**). In the **Czech Republic** and **Romania**, for instance, the status of judicial expert is acquired through an examination or interview organised by the Ministry of Justice.

In **Romania**, individuals having acquired this title are then entered in a list of names, depending on their qualifications and geographical area, by the Central Office for Judicial Technical Expertise within the Ministry of Justice. Local offices for judicial technical and accountancy expertise attached to the courts give the courts, prosecuting authorities and other judicial bodies a list of experts and specialists qualified to provide forensic reports.

Judicial experts are recruited and/or appointed by a court in 29 states or entities. This recruitment and/or appointment may be both/either for a specific term (9 countries) – on the basis of a list from which the judge can choose experts for a particular case, for example – and/or on an ad hoc basis, depending on the proceedings before the court, in the majority of states and entities (28 countries).

Lists of judicial experts are prepared according to a wide range of rules, with close or not so close involvement of the courts in selection of experts and using broad or narrow selection criteria. In **Germany**, experts other than doctors are entered in lists published by the Chambers of Commerce and Industry after a rigorous scrutiny of their technical expertise that falls outside the courts' jurisdiction. In **France**, regional lists and the national list are drawn up and the selection made solely by judges of the courts of appeal and Court of Cassation on the basis of applications submitted by candidates of their own volition, while the experts already registered are consulted through their representatives only when registrations are renewed, every five years. In **Spain**, the lists are prepared by the courts on the basis of applications submitted by associations or professional bodies. In **Italy**, lists are prepared by ad hoc committees set up for every court of first instance, solely on the basis of the qualifications presented by the candidates and a character investigation, with the successful candidates being registered for life.

Courts are not responsible for appointment in the **Netherlands**. Experts are recruited and selected by the prosecutor and professional associations of judicial experts.

In **Finland**, in administration matter the appellate authority may obtain an opinion from an individual expert on a matter requiring particular expertise. If a party instructs an expert not designated by the appellate authority, the provisions relating to examination of witnesses are applied.

Experts are selected mainly on an ad hoc basis, depending on the specific requirements of particular proceedings. The courts select them from an official list supplied by the Ministry of Justice (**Bosnia and Herzegovina, Luxembourg, Slovakia and Sweden**) or a list of persons recognised for their expertise (**Portugal**), and sometimes with the consent of the parties (**Luxembourg and Portugal**).

A judge may also simply name a centre of expertise, and it is the director of this institution who decides which employee is available and best qualified to be assigned to the case (**Republic of Moldova**).

A judge may also rule that expert evidence is required and the expert is then designated by another judge (**Spain** for parties entitled to legal aid, and in certain fields such as parentage).

Sometimes a court is supposed to choose from a list provided by the ministry but may also select and appoint an ad hoc expert if the list has no expert in the requisite field or if the relevant expert is unable to act (**Slovakia**).

In **Finland**, for instance, a court may obtain a statement on the question from an agency, a public official or any other person known for his/her integrity and expertise in the field under consideration.

The parties must be consulted before an expert is designated. In **Montenegro**, the party requesting expert evidence must state its subject and scope in the application and also propose a person appearing on the list of certified experts. The opposing party must then make a statement on the proposed expert. If the parties cannot reach an agreement on the person to be designated as an expert as well as the subject and scope of the appraisal, the court will rule on this matter. Whether the parties agree or not, the court may designate another expert if it considers the examination to be complex.

Experts are mostly chosen from judicial experts approved for a specific type of expert evidence. More complex expert evidence may also be entrusted to professional institutions (hospitals, universities, chemistry laboratories, etc.).

#### ▪ **Oversight by the judge**

Only 23 states have mentioned judges' oversight of expert evidence, that is, almost half of Council of Europe member states. The same proportion obtains within the European Union, where the need for judicial co-operation between judges within a more unified judicial area is nevertheless much greater.

While the absence of oversight is understandable in common-law countries, since expert evidence is often ordered prior to the proceedings and overseen by the party requesting it, lack of oversight of technical experts by the judges designating them is more surprising.

Unless oversight of the costs and duration of expert evidence work is entrusted to the court's administrative department rather than the judge himself/herself, it is to be feared that, at least in states with no statutory time-limits for provision of expert evidence, the judge's lack of interest in enforcing his/her order for this evidence will be an important factor in significantly lengthening the proceedings while facilitating delaying tactics by the parties.

## **4. NUMBER OF JUDICIAL EXPERTS**

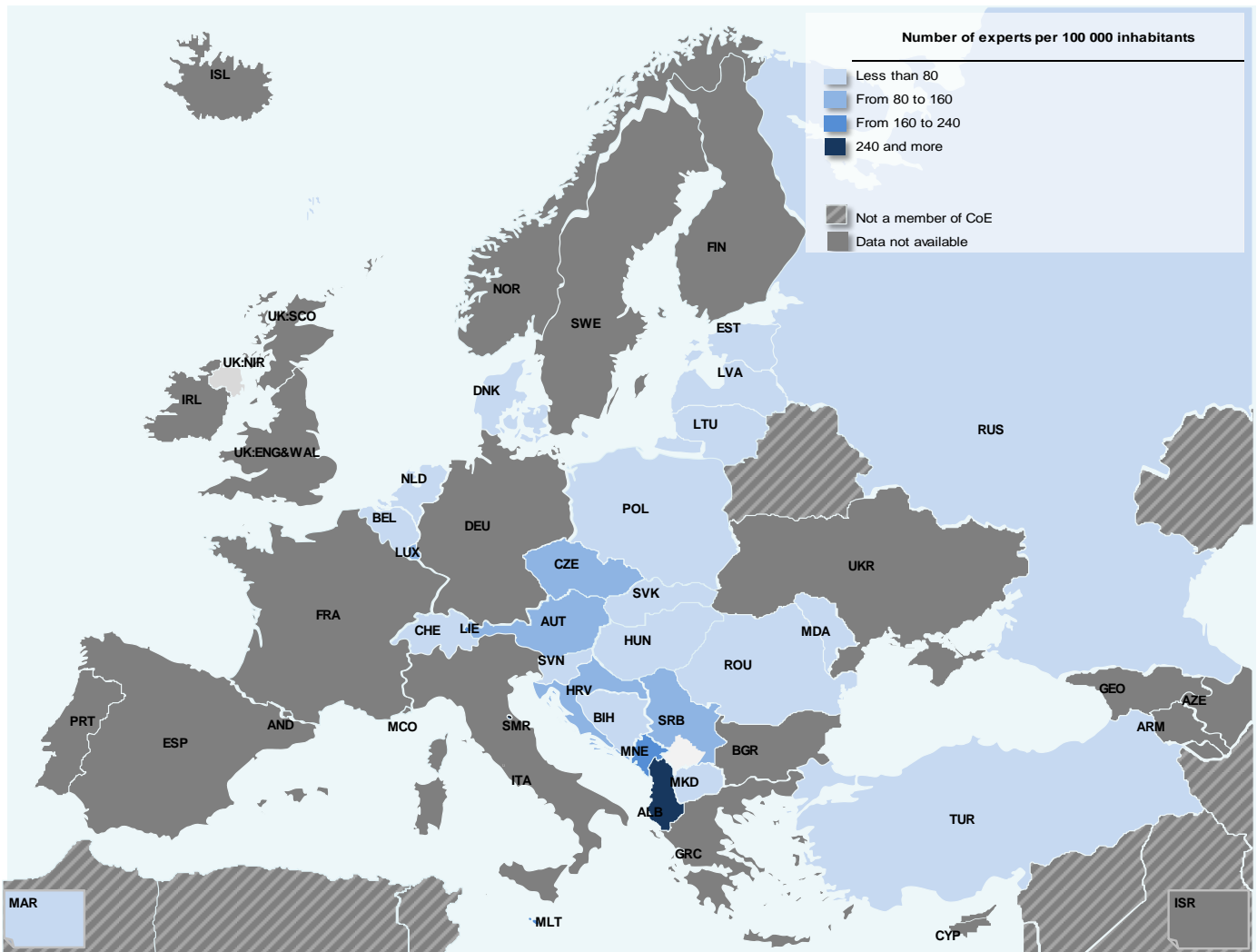
### **a) Data collected by the CEPEJ**

#### **Evolution of the number of registered judicial experts 2010 - 2016 (Q1, Q205)**

States/entities	2010		2012		2014		2016	
	Absolute value	Per 100 000 inh.	Absolute value	Per 100 000 inh.	Absolute value	Per 100 000 inh.	Absolute value	Per 100 000 inh.
Albania	NA	NA	1 757	62,4	10 162	351,3	9 645	335,3
Andorra	NA	NA	NA	NA	NAP	NAP	NAP	NAP
Armenia	NA	NA	NA	NA	NA	NA	NA	NA
Austria	8 998	107,3	9 193	108,8	9 483	110,5	9 489	108,6
Azerbaijan	NA	NA	NA	NA	NAP	NAP	NAP	NAP
Belgium	NA	NA	NA	NA	NA	NA	1 823	16,1
Bosnia and Herzegovina	1 303	33,9	1 772	46,2	1 840	48,1	2 416	68,8
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	3 429	77,7	NA	NA	3 753	88,8	3 345	80,5
Cyprus	NA	NA	NA	NA	NA	NA	NA	NA
Czech Republic	10 161	96,6	9 857	93,8	9 459	89,9	8 908	84,2
Denmark	NA	NA	NA	NA	210	3,7	390	6,8
Estonia	NAP	NAP	138	10,7	150	11,4	150	11,4
Finland	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP
France	NAP	NAP	NAP	NAP	NA	NA	NA	NA
Georgia	NA	NA	NA	NA			NAP	NAP
Germany	NA	NA	NA	NA	NA	NA	NA	NA
Greece	NA	NA	NA	NA	NA	NA	NA	NA
Hungary	516	5,2	4 000	40,4	4 000	40,6	4 000	40,8
Iceland	NA	NA	NAP	NAP	NA	NA	NAP	NAP
Ireland	NA	NA	NA	NA	NA	NA	NA	NA
Italy	NA	NA	NA	NA	NA	NA	NA	NA
Latvia	272	12,2	293	14,3	310	15,5	316	16,0
Lithuania	355	10,9	385	12,8	373	12,8	373	13,1
Luxembourg	1 348	263,4	750	142,9	NA	NA	812	137,5
Malta	NAP	NAP	NAP	NAP	NA	NA	915	207,8
Republic of Moldova	299	8,4	335	9,4	272	7,7	283	8,0
Monaco	NA	NA					NAP	NAP
Montenegro	520	83,9	751	121,1	271	43,7	1 042	168,1
Netherlands	195	1,2	412	2,5	696	4,1	569	3,3
North Macedonia	2 126	103,3	NA	NA	1 021	49,3	1 171	56,5
Norway	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP
Poland	NA	NA	NA	NA	13 200	34,3	19 658	51,1
Portugal	NA	NA	NA	NA	NA	NA	NA	NA
Romania	4 587	21,4	4 836	22,7	8 317	37,3	10 019	51,0
Russian Federation	NA	NA	1 501	1,0	1 700	1,2	6 810	4,6
Serbia	5 351	73,4	5 342	74,2	6 893	96,9	6 882	97,8
Slovakia	2 802	51,6	2 825	52,2	2 901	53,5	2 866	52,7
Slovenia	1 600	78,0	1 450	70,4	1 386	67,2	1 232	59,6
Spain	NA	NA	NA	NA	NA	NA	NA	NA
Sweden	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP
Switzerland	NA	NA	NA	NA	NA	NA	42	0,5
Turkey	133 508	184,0	191 013	252,6	198 783	255,8	54 763	68,6
Ukraine	7 328	16,0	6 350	14,0	10 006	23,3	NA	NA
UK-England and Wales	NA	NA	NA	NA	NA	NA	NA	NA
UK-Scotland	NA	NA	NA	NA	NA	NA	NA	NA
Israel			NAP	NAP	NAP	NAP	NA	NA
Morocco							3 321	9,5

## b) Analysis of collected data

### Number of registered judicial experts per 100 000 inhabitants in 2016 (Q205)



Out of the 46 states or entities using technical experts, only 25 have been able to provide the number of accredited experts in 2016. There has nevertheless been some progress in awareness of the numbers, since in the report edition 2014 only 20 states out of 44 were able to provide statistical data for 2012.

Despite this positive trend since 2012, the fact remains that because of, amongst other things, the lack of national databases, the local or regional nature of recruitment or the federal structure of states, the majority of the most populous countries have provided no data for assessing the number of experts they have.

This is the case for **France, Germany, Italy, Spain and UK-England and Wales.**

It is also the case for **Switzerland**, which by declaring only 42 experts has confined itself to the number of experts listed in just two cantons.

▪ **Change in number of registered experts**

The above trends between 2012 and 2016 are confirmed over the 2010-2016 period. The number of states able to provide data rose from 18 to 25.

Leaving aside **Turkey**, which, unlike the other countries, has reduced the number of its registered experts by almost three quarters to a figure very close to the average for 100 000 inhabitants in 2016, the underlying trend is a significant increase in the number of experts per 100 000 inhabitants, since the average has risen from 59 to 70.

Over this period some countries have seen a sharp rise in expert numbers, particularly in Eastern

Europe. In some (**Albania** and **Montenegro**) these increases have taken them further from the average, whereas in others (**Bosnia and Herzegovina, Romania and Serbia**) they have brought them closer. Yet others have recorded more or less marked adjustments downwards (**the Czech Republic, Luxembourg and Turkey**), while in other countries the figures have remained very steady despite considerable variation from the average (**Baltic states**) and a small number of experts.

Subject to closer analysis, it is as if all the states, apart from the last-mentioned, were converging towards the average by either increasing or reducing the number of their experts, without its being possible to tell whether this continuing convergence reflects a concern to improve quality by greater selectiveness or simply a recognition of the needs of courts with burgeoning and increasingly complex cases, or else reliability problems with the figures collected.

#### ▪ **Number of accredited or registered technical judicial experts per 100 000 inhabitants in 2016**

There has been an appreciable increase in the average number of experts per 100 000 inhabitants, which has risen from 59.02 in 2012 to 70 in 2016, with the median up from 43.3 to 52.7.

Admittedly, the total number has dropped from 244 157 to 147 649, but we must take into account the case of **Turkey**, which alone has seen a reduction from over 191 000 experts to 54 763, which allows to realize the preceding figures.

This increase does not necessarily reflect greater use of experts, inasmuch as two more countries (**Poland and Switzerland**), one of which (**Poland**) is among the most populous, have provided data for the first time, and a third, **the Russian Federation**, has provided more comprehensive statistics than in the past.

The above adjustment to the number of experts in **Switzerland** does not fundamentally change the country's position in terms of experts per 100 000 inhabitants; even with a figure of 3.5 rather than 0.5 it is still very far below the overall average.

#### ▪ **Number of technical judicial experts per judge in 2016**

No data have been provided for 2016 in this field. However, collation of the data supplied on the number of professional judges and *Rechtspfleger* per 100 000 inhabitants and the number of experts per 100 000 inhabitants shows a slight drop in the average number of experts in relation to judges and *Rechtspfleger* (to 2.78 in 2016 from 2.89 in 2014) and a rise in the median (to 2.6 from 1.5 in 2014), which has become closer to the average, from which we may perhaps infer a degree of harmonisation of the rules and practices regarding recruitment of experts. Considerable variations still exist, since **Poland**, for example, has one expert for 1.6 judges, **Hungary** 0.79 for one judge, and **Slovenia** 0.88, the **Netherlands** 0.24, the **Czech Republic** 1.64, **Albania** 26 and **Luxembourg** 4.33 experts for one judge.

## 5. TRAINING OF JUDICIAL EXPERTS

### a) Data collected by CEPEJ

The following table shows the data collection findings on training requirements for experts and the content of refresher training for technical expertise and for legal procedures.

## Training of judicial experts in 2016 (Q203.1, Q203.2)

States/entities	Obligation of training		Content of the training		
	Initial training	Continuous training	Proceeding	Profession of expert	Other
Albania					
Andorra					
Armenia					
Austria					
Azerbaijan					
Belgium					
Bosnia and Herzegovina					
Bulgaria					
Croatia					
Cyprus					
Czech Republic					
Denmark					
Estonia					
Finland					
France					
Georgia					
Germany					
Greece					
Hungary					
Iceland					
Ireland					
Italy					
Latvia					
Lithuania					
Luxembourg					
Malta					
Republic of Moldova					
Monaco					
Montenegro					
Netherlands					
North Macedonia					
Norway					
Poland					
Portugal					
Romania					
Russian Federation					
Serbia					
Slovakia					
Slovenia					
Spain					
Sweden					
Switzerland					
Turkey					
Ukraine					
UK-England and Wales					
UK-Scotland					
Israel					
Morocco					
Yes	23	22	18	27	8
No	23	24	28	19	38

## b) Analysis of collected data

We find, first of all, that 20 States/entities out of 48 have failed to answer this question and 34 have not commented on their reply, which does not allow a precise interpretation. Experts have to undergo mandatory training in just over half the countries (26 out of 48).

In most, this consists of initial training and further training as long as the expert continues to perform his/her duties.

Only the **Czech Republic, Georgia, Greece, Ireland and Israel** provide only mandatory initial training.

Conversely, only **Montenegro, Romania and North Macedonia** only know further training.

**Norway's** reply also raises questions, since, on the one hand it states that there is no mandatory initial or further training but, on the other, specifies that training content covers both technical and procedural fields.

It is also surprising that there are no answers some of the most populous from European countries: **France, Germany, Italy** and the **United Kingdom**.

## 6. REMUNERATION OF JUDICIAL EXPERTS

### a) Data collected by CEPEJ

The table below shows the raw data from the survey.

#### Who sets the expert remuneration and binding provisions regarding the exercise of the function in 2016 (Q205.1, Q206)

States/entities	Remuneration set by	Binding provisions
<b>Albania</b>	Instruction of the council of ministers Nr. 4, dated 12.12.2012 For setting the expert expenditure and payment measure and witnesses during the judicial process	
<b>Andorra</b>	l'expert	
<b>Armenia</b>	A judge sets the remuneration by his/her decision. The remuneration is paid by the Judicial Department.	
<b>Austria</b>	The remuneration of experts appointed by courts is governed by the Fees Claim Act (Gebührenanspruchsgesetz). It is fixed by the court on the basis of the time and effort expended, taking into account the income the experts can expect in their professional lives. In some proceedings, among others on nonlitigious matters, proceedings in which one of the parties receives legal aid, and in criminal cases some experts charges have to be fixed according to rates determined by law. The expert is furthermore compensated for costs such as travel expenses, assistants etc. The remuneration of the expert as part of the costs of litigation is paid by the litigant(s) having lost the case In civil cases. In criminal proceedings the State has to pay the expert, which is final following an acquittal; a convicted person is liable to bear these costs.	
<b>Azerbaijan</b>	No comment	
<b>Belgium</b>	procédures pénales: un tarif réglementé procédure civile: rémunération déterminée par les partis	
<b>Bosnia and Herzegovina</b>	In a verdict or other decision concluding criminal proceedings a conclusion shall be made as to the amount and who will cover the costs of the proceedings.	
<b>Bulgaria</b>	The body which has assigned the expert expertise in compliance with the terms and conditions for the payment of fees to the judicial experts according to the Ordinance № 2 of 29 June 2015.	
<b>Croatia</b>	Ministry of Justice of the Republic of Croatia	
<b>Cyprus</b>	the parties	



States/entities	Remuneration set by	Binding provisions
<b>Czech Republic</b>	the court	
<b>Denmark</b>	The Court Administration (the Administration of Justice Act article 93)	
<b>Estonia</b>	The Estonian Forensic Institute	
<b>Finland</b>	Witnesses and experts have a right to receive reasonable compensation for the costs caused by the hearing and financial loss. Experts also have a right for a reasonable compensation for their work. The party who has called the witness is responsible for paying said compensation, unless the expenses are paid by the state (for example when the prosecutor has called the witness or when the party receives public legal aid; there are separate provisions on remuneration in these cases). If the witness/ expert and the calling party cannot agree on the compensation, the court will decide on the remuneration.	
<b>France</b>	Certaines expertises sont tarifées par des textes réglementaires. En l'absence de tarification, l'expert fixe librement sa rémunération. Cependant, lorsque les expertises sont prises en charge par la juridiction sur le budget des frais de justice et que le montant prévu de ses frais et honoraires est supérieur à 460 euros, l'expert désigné doit transmettre un devis au magistrat commettant (article R.107 du code de procédure pénale). Cependant, le devis validé ne lie pas le magistrat qui taxe le mémoire de frais. En matière de contentieux privé, les frais d'expertise sont pris en charge par les parties. Dans ces procédures, l'expert fixe le montant de ses frais et honoraires. Le juge qui ordonne l'expertise ou le juge chargé du contrôle fixe le montant d'une provision à valoir sur la rémunération de l'expert aussi proche que possible de sa rémunération définitive prévisible et désigne la ou les partie(s) qui devront consigner.	
<b>Georgia</b>	Remuneration is set by the contract.	
<b>Germany</b>	The remuneration of experts has been provided for by law (Act on the Remuneration of Experts, Interpreters and Translators as well as the Compensation of Honorary Judges, Witnesses and Third Parties, Justizvergütungs- und –entschädigungsgesetz, JVEG). It is permissible to conclude fee agreements with experts who are involved on a recurrent basis. The amount of the remuneration agreed may not exceed the amount of the remuneration provided for by said Act.	
<b>Greece</b>	the law	
<b>Hungary</b>	If appointed by the court or other (investigating) official, the remuneration shall be based on the relevant Ministerial Decree of Experts' remuneration [(3/1986 (II. 21.) decree of the Minister of Justice on the remuneration of forensic experts]. If appointed by the interested party, the remuneration is subject to the agreement of appointer and appointee.	
<b>Iceland</b>	The Court.	
<b>Ireland</b>	NA	
<b>Italy</b>	Remuneration is set by Law.	
<b>Latvia</b>	Forensic expert service costs in criminal and administrative proceedings are covered from the budget of the institutions (according to the Law), the private expert service is covered by the Cabinet regulations. Forensic expert service costs in civil proceedings are covered by the Cabinet regulations.	
<b>Lithuania</b>	The performance of forensic examination in state forensic institution in criminal cases is free of charge. But the court shall remunerate expenses of forensic expert due to appearing in court, travelling. Private forensic experts should be paid for the performance of their examination and shall be reimbursed for any expenses they incur due to appearing in court, travelling, and accommodation and be paid a daily allowance. In civil cases, all expenses independently of the institution or persone performing forensic examination should be covered by the court. The expenses for forensic examination in state forensic institution are counted on the rulings approved by Ministry of Justice or Ministry of Health of the Republic of Lithuania. This amount cannot exceed the work and material costs necessary to make an forensic examination. The private forensic experts regulate the amount of expenses by their one. The court shall cover the expenses for forensic experts (or institutions) when they have performed their duties in accordance with the invoice presented after the examination has been performed. Expenses experts incur due to appearing in court, travelling, and accommodation and a daily allowance are paid according to the legislation on official missions in the Republic of Lithuania.	
<b>Luxembourg</b>	Free	
<b>Malta</b>	Experts' remuneration is laid out in the Code of Organisation and Civil Procedure (Chp 12) of the Laws of Malta, Schedule A.	
<b>Republic of Moldova</b>	Judicial experts hired in judicial expertise public institutions are paid according to the provisions of the legislation (Law 355 of 23 December 2005 on the remuneration system in the budgetary sector and the Government Decree 122 of 7 February 2007 on the remuneration of staff in the field of judicial expertise, technical and forensic findings). The remuneration of independent judicial experts is for their own account.	
<b>Monaco</b>	-le juge chargé du contrôle de l'expertise en matière civile (articles 344 à 373 du Code de procédure civile), -le juge d'instruction ou la juridiction de jugement en matière pénale, -le juge tutélaire dans le cadre des demandes de mise sous protection judiciaire (tutelle, curatelle)	

States/entities	Remuneration set by	Binding provisions
<b>Montenegro</b>	Judge	
<b>Netherlands</b>	The Minister of Security and Justice	
<b>North Macedonia</b>	It is regulated by secondary legislation adopted by the Minister of Justice.	
<b>Norway</b>	If the expert is appointed by the Court, he or she receive remuneration determined by the state. The hourly rate is currently 115 Euro (1045 NOK).	
<b>Poland</b>	Judge, court referendary or the authority conducting the preparatory proceedings.	
<b>Portugal</b>	The expert remuneration is established by the Regulation of Judicial Fees (article 17 and Annex IV)	
<b>Romania</b>	The authority which has ordered the expertise .	
<b>Russian Federation</b>	Experts receive remuneration for the work performed by them on behalf of the court if this work is not a part of their official duties as employees of a state institution. The amount of remuneration to experts is determined by the court upon confirming with the parties and by the consent of the experts.	
<b>Serbia</b>	The amount and manner of compensation of costs and remuneration is determined in accordance with the regulation governing the reimbursement of costs in legal proceedings – a Ministry of Justice bylaw, Rulebook on Remuneration for Expenses in Judicial Proceedings ("Official Gazette of RS No. 9 of 5 February 2016 and no. 62 of 13 July 2016), which can be found at the following link: <a href="https://www.mpravde.gov.rs/tekst/18081/pravilnik-o-naknadi-troskova-u-sudskim-postupcima-.php">https://www.mpravde.gov.rs/tekst/18081/pravilnik-o-naknadi-troskova-u-sudskim-postupcima-.php</a> .	
<b>Slovakia</b>	see general comment	
<b>Slovenia</b>	The remuneration is set by Minister of Justice (tariff in Rules on court experts and court appraisers).	
<b>Spain</b>	The definitive remuneration is set by the expert himself, in accordance with the rules of his profession. The initial provision of funds is approved by the Lawyer of the Administration of Justice.	
<b>Sweden</b>	The Government sets the experts' remuneration.	
<b>Switzerland</b>	Cf. JB.	
<b>Turkey</b>	There is a tariff on the remuneration of the experts. This tariff is regulated by MoJ annually, Department of Expertise. (Code on Experts no 6754 Article 6, MoJ Regulation on Experts Article 19)	
<b>Ukraine</b>	The Cabinet of Ministers of Ukraine	
<b>UK-England and Wales</b>	NA	
<b>UK-Scotland</b>	n/a	
<b>Israel</b>	The Court	
<b>Morocco</b>	Le tribunal	

## **b) Analysis of collected data**

The situation varies greatly between countries.

The rules for determining experts' remuneration differ considerably: eight countries mention official involvement in determining remuneration or bearing its cost (**Croatia, Denmark, France** (criminal cases), **Greece, Latvia, Netherlands, Sweden and Ukraine**) and 12 report legislation applying either to criminal cases or to both civil and criminal cases.

Eleven countries mention involvement by a judge, who may or may not use a statutory scale to determine remuneration. **Norway** has set an hourly rate of €115 for experts.

However, eight countries state/entities that it is the parties who determine the expert's remuneration; this covers either common-law countries or else civil cases only, without any indication of whether the judge arbitrates in the event of disagreement between the expert and the parties.

Estonia mentions involvement of an association of experts, and three other countries report determination by the experts themselves (**Andorra, Spain and Moldova** for private experts), which suggests that they are remunerated at the market rate for their professions.

**Alain Nuée and Eric Parize**

**April 2019**