

SOME ‘LESSONS ‘ON TRAINING OF JUDGES AND PROSECUTORS

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Study session “Going beyond the CEPEJ’s report-some conclusions to be drawn”- 16th plenary meeting (9th December 2010).

Training is an essential component of any efficient legal system capable of providing high quality justice. Investments in human resources and equipment or legal reforms alone are usually insufficient to achieve the expected results if they are not accompanied by appropriate training of legal professionals. Relevant training not only refers to legal skills and principles but also to court administration and managerial skills, the use of IT and case-management tools. Judicial training, in particular, is a guarantee of the independence of judges as well as an element to safeguard the quality and efficiency of the judicial system¹.

It is therefore an element that necessarily interests CEPEJ and that has, since the beginning of its works, found a place in CEPEJ’s report and its evaluation scheme. With this in mind, I propose to look at:

- the kind of questions that the CEPEJ questionnaire devotes to training and the type of information gathered;
- the related findings in the 2010 report and whether it is possible to go beyond them with the existing data; and
- if there are further conclusions on training that we would like to be able to draw and how to do it. This last part is largely subjective and will allow me to share some personal opinions and suggestions.

As a starting point, it is possible to make a clear distinction between questions aimed at obtaining quantitative and qualitative information on training. For each of these two groups of questions I will try to answer the 3 main questions I referred to: what information we have, what conclusions can we draw and we can (or even should) go beyond CEPEJ’s report.

QUANTITATIVE INFORMATION: TRAINING BUDGET

The first time a question on the training budget (Q8) was introduced in the CEPEJ questionnaire was during the 2006-2008 evaluation system. This means that only two reports (the 2008 and the current 2010 edition) contain this information. To an extent this also explains why it has not yet been possible to draw chronological series on this issue. The annual public budget allocated to training and education was introduced as a breakdown element of the total annual approved budget allocated to all courts.

As the Explanatory note to the CEPEJ report reads², it was also decided at this point (contrary to the 2004-2006 cycle) “that the budget of the judicial training structures should be included.”

¹ See Magna Carta of Judges adopted by the CCJE on the occasion of its 10th anniversary during its 11th plenary meeting (Strasbourg, 17-19 November 2010)

² Q6/7 “These questions aim to establish the total amount of the budget covering the functioning of the courts. This amount does not include: the budget for the prison and probation systems /the operation of the Ministry of Justice (and/or any other institution which deals with the administration of justice)/other organs (other than courts) attached to the Ministry of Justice/the prosecution system/the Constitutional courts/the budget of the High Council for the Judiciary (or similar organ). It should include: the budget of the judicial training structures (e.g. National schools of judges and prosecutors)”

This question has allowed training to be introduced in the table reflecting the breakdown by component of court budgets in 2008. The rate of response in the 2010 Edition remained stable in relation to the previous one. Although 12 member states still did not provide information on this element, Albania, the Russian Federation and Switzerland that had not provided data on 2008 were able to do so this year³.

Table 2.6 Break-down by component of court budgets in 2008, in € (Q8)

Country	Annual public budget allocated to [gross] salaries	Annual public budget allocated to computerisation [equipment, investments, maintenance]	Annual public budget allocated to justice expenses	Annual public budget allocated to court buildings [maintenance, operation costs]	Annual public budget allocated to investment in new [court] buildings	Annual public budget allocated to training and education	Other
Albania	8 008 510	71 124	2 127 166	59 992		20 985	440 098
Andorra	5 951 017	17 500	1 079 876			22 561	
Armenia	7 033 543	228 138	NA	446 030		679 053	2 159 528
Austria	332 940 000	28 400 000	258 790 000	47 800 000			
Belgium	579 013 000	30 811 000	89 713 000	67 072 000	9 085 000	2 332 000	72 204 000
Bosnia & Herzegovina	55 058 835	1 173 770	5 597 961	7 338 704	309 603	1 144 385	8 966 713
Bulgaria	76 506 902	854 255	25 441 538	4 172 767	NA	78 222	21 132 479
Croatia	147 758 459	13 294 887	32 551 399	5 829 162	13 814 864	1 650 201	11 076 752
Cyprus	19 170 107	56 808	1 509 155	2 733 106	2 357 920	97 458	
Czech Republic	185 398 380	3 019 657	46 289 115	1 735 763		102 692	
Denmark	146 325 706	14 158 815	8 788 694	40 376 850		2 018 842	10 767 160
Estonia	26 264 172	331 382	959 308	4 835 697		456 543	1 402 650
Finland	183 400 000	8 944 000	6 299 000	29 350 000			28 284 000
France	1 860 379 400	52 050 000	405 000 000	335 300 000	118 000 000	52 000 000	555 000 000
Georgia	8 849 797	191 156	2 531 629	76 359	2 506 388	448 051	325 988
Greece	343 360 000	390 000	4 500 000	8 245 000	862 000	130 000	
Hungary	235 340 150	8 800 000	5 200 000	31 300 000	7 200 000	300 000	
Ireland	58 677 000	9 368 000	120 000	20 754 000	29 632 000	1 229 000	16 415 000
Italy	2 390 027 432	73 987 488	287 571 836	253 913 969		857 675	118 315 458
Latvia	34 710 887	1 395 620	320 668	6 663 457		304 950	2 587 042
Lithuania	41 573 000	721 067		1 989 900	7 314 585	144 810	579 240
Luxembourg	50 400 000	870 000	4 000 000	505 000	759 000	60 000	7 706 000
Malta	6 520 000	54 000	1 260 000	1 239 000	186 000	1 000	
Moldova	5 313 253	182 665	286 677	1 356 535	231 097	90 654	60 131
Monaco	3 569 700		890 000				546 400
Montenegro	14 895 845	144 000	3 646 500	220 000			873 026
Netherlands	620 748 000	69 185 000	4 987 000	104 933 000		20 149 000	40 535 000
Norway	99 347 826	6 326 087		34 021 739	1 630 435	2 010 870	17 826 086
Poland	624 811 000	15 163 000	145 365 000	86 661 000	69 107 000	4 050 000	307 671 000
Portugal	398 809 928	8 455 892		39 802 030			66 445 668
Romania	330 427 080	7 409 000	23 532 000	15 259 755	5 331 256	74 000	3 275 909
Russian Federation	1 445 608 805	41 507 668	120 455 439	145 313 583	216 541 512	2 825 805	449 122 600
San Marino	4 230 000	140 000	210 000				
Serbia	133 565 955		65 377 307		11 949 797		7 121 534
Slovakia	83 100 716	3 651 140	1 001 763	3 773 155	5 218 914	1 537 981	47 300 664
Slovenia	116 500 189	4 710 655	32 374 344	6 801 841	60 000	1 835 808	
Spain	2 489 442 790	59 530 490	2 944 000	56 252 870	33 051 440		1 264 867 050
Sweden	314 083 631	10 305 719		58 392 988		6 150 369	10 892 947
Switzerland	223 450 047	11 323 322	26 862 307	20 784 309	0	6 019 855	14 769 286
FYROMacedonia	20 682 085	108 583	1 772 655	1 665 065	695 000	523 322	1 613 551
Turkey	529 883 710	11 689 140	117 630 542	904 977	126 389 786	4 977	
Ukraine	136 091 227			5 503 109	1 818 182	3 540 627	
UK-England & Wales	881 587 203			274 915 184	95 431 366		177 961 286
UK-Northern Ireland	36 300 000	7 800 000	3 300 000	33 800 000	8 200 000	300 000	71 900 000
UK-Scotland	82 950 000	6 244 146	13 528 983	42 668 332	NAP	1 040 691	14 569 674

This information has also allowed for the presentation of two tables with generic conclusions on the relative weight of training in national court budgets. As opposed to salaries, which constitute the bulk of courts budgets, training is at the bottom of the list, representing on average not more than 1% of courts' budget. This tendency can be observed both at national and at European level⁴.

³ See below table 2.6 of the CEPEJ Report 2008- Edition 2010, p.23.

⁴ See below Figures 2.7 and 2.8 of the CEPEJ report 2008- Edition 2010, p.25-26.

Figure 2.7 Distribution of the main budgetary posts of the courts by country, in % (Q6, Q8)

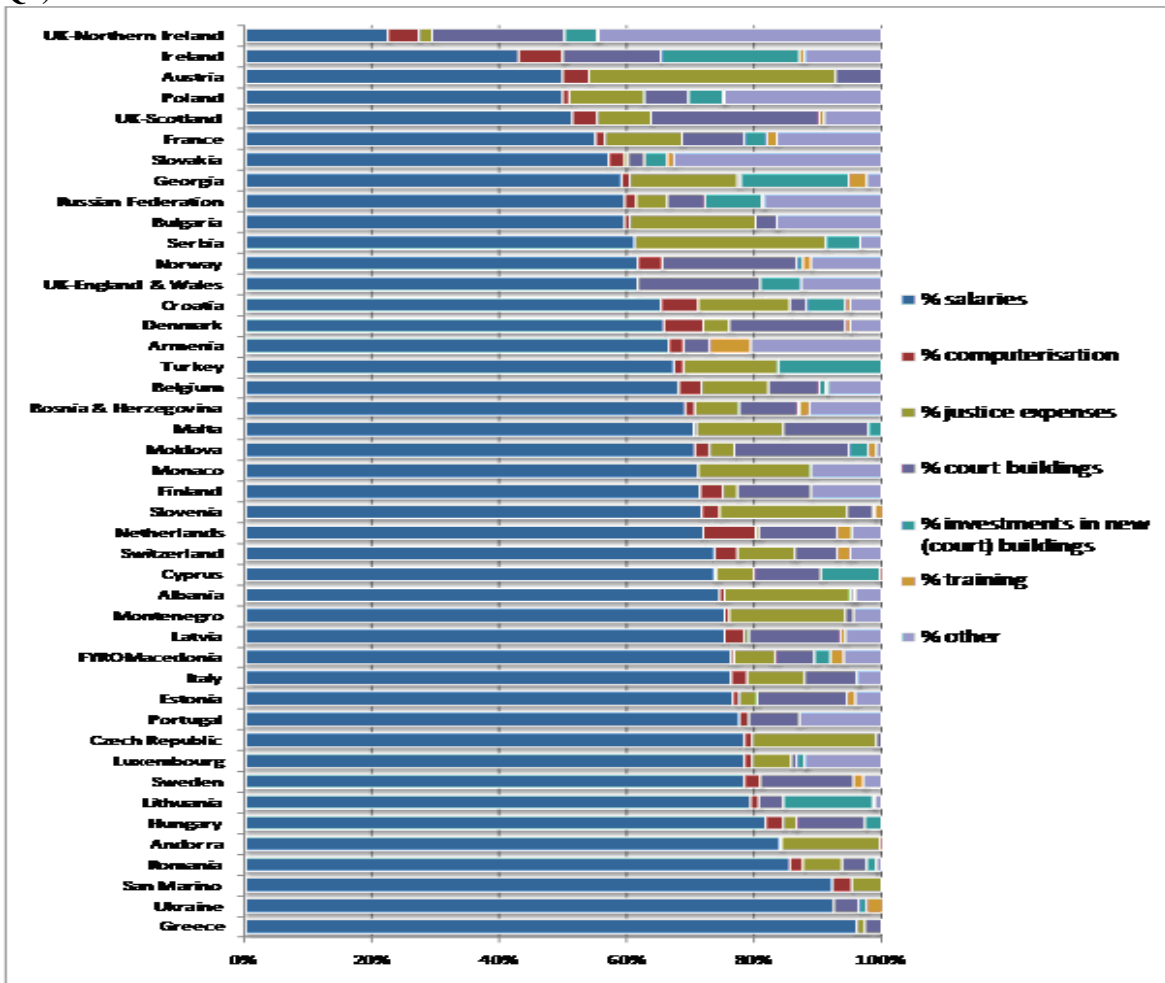
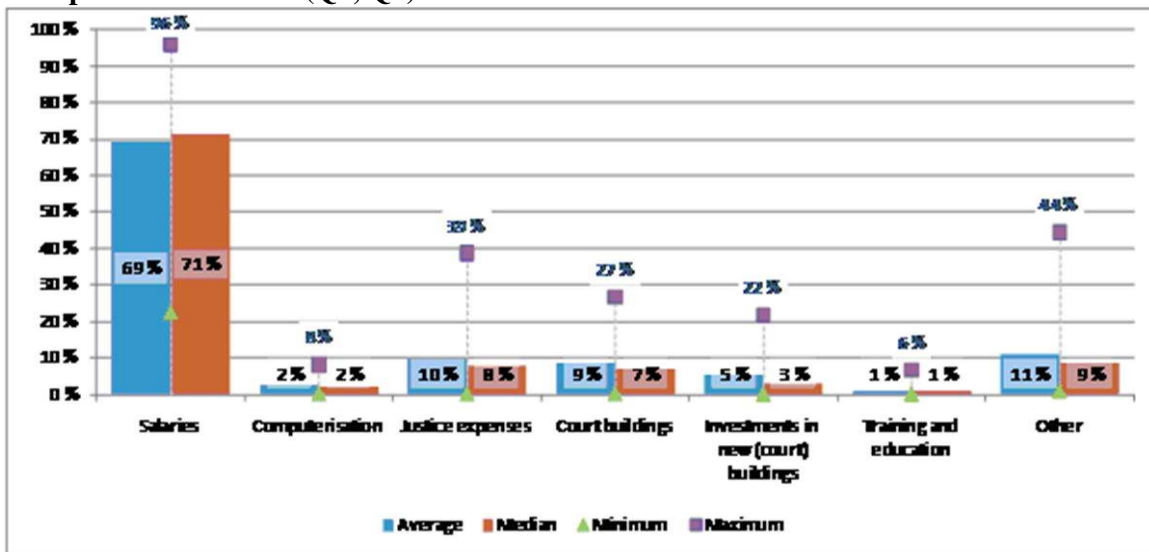
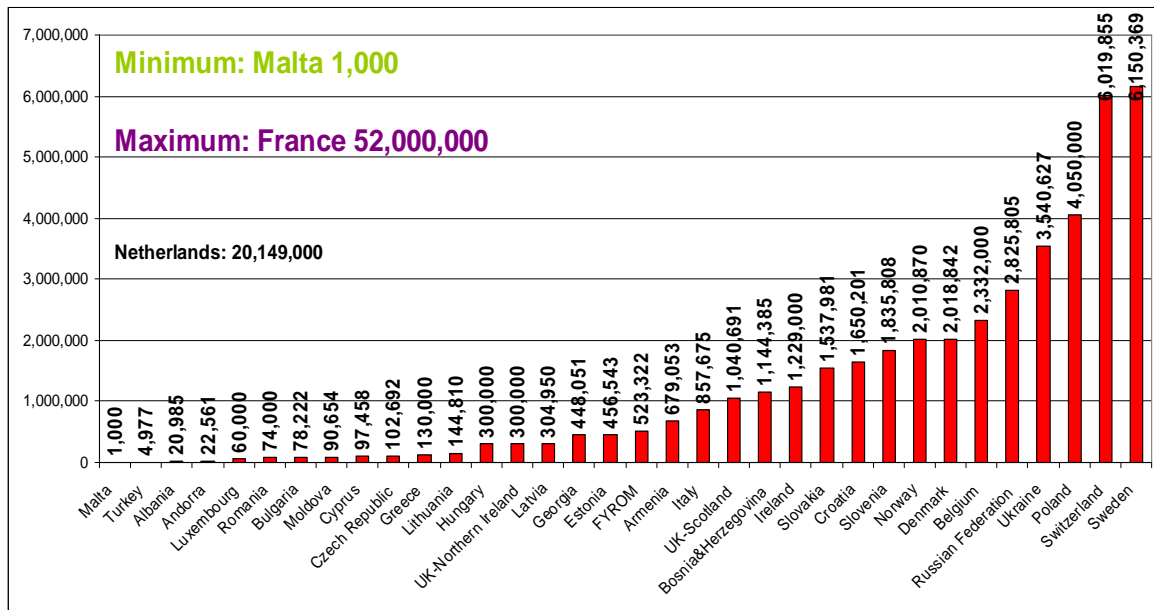


Figure 2.8 Central tendency indicators of the main components of the courts budget at European level in 2008 (Q6, Q8)

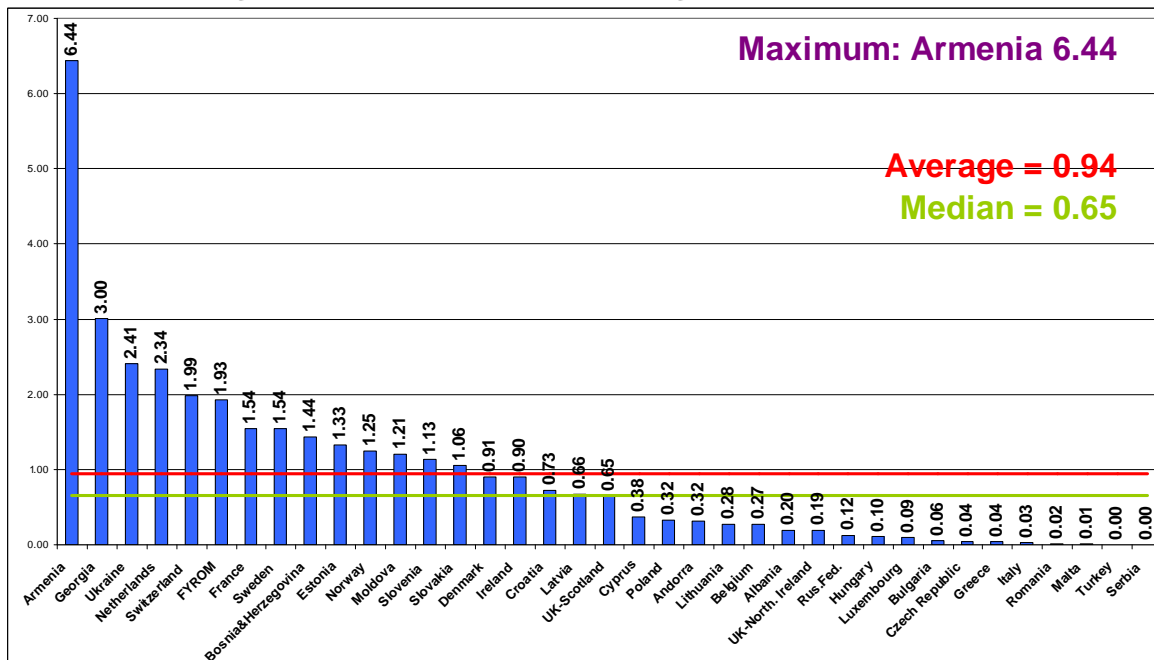


To prepare this presentation, I then tried to test if it was possible to further analyse and hopefully draw new conclusions from this data. The first step would be to try to advance from the generic conclusions and figures to what we often call comparative (not ranking) tables by countries, to see if this would provide other insight⁵. The most obvious thing to try was to combine quantitative data in graphic comparative tables of the absolute amount allocated to training “by country”, as well as the national amount as a percentage of the court budget and of the GDP per capita.

Annual budget allocated to training and education in 2008, in €

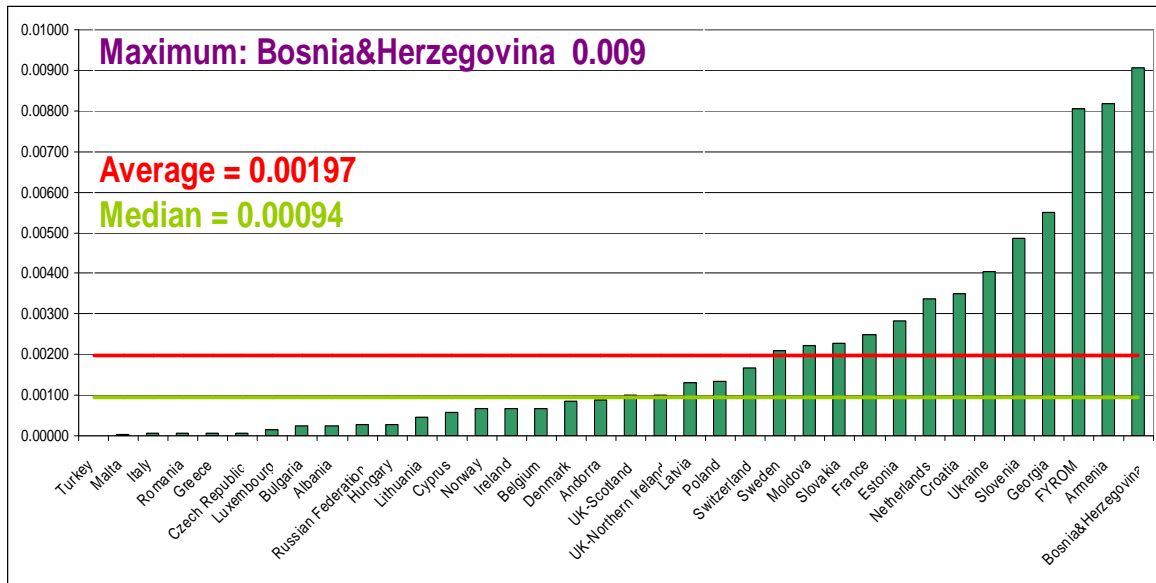


Amount of training and education in the courts' budget 2008 in %



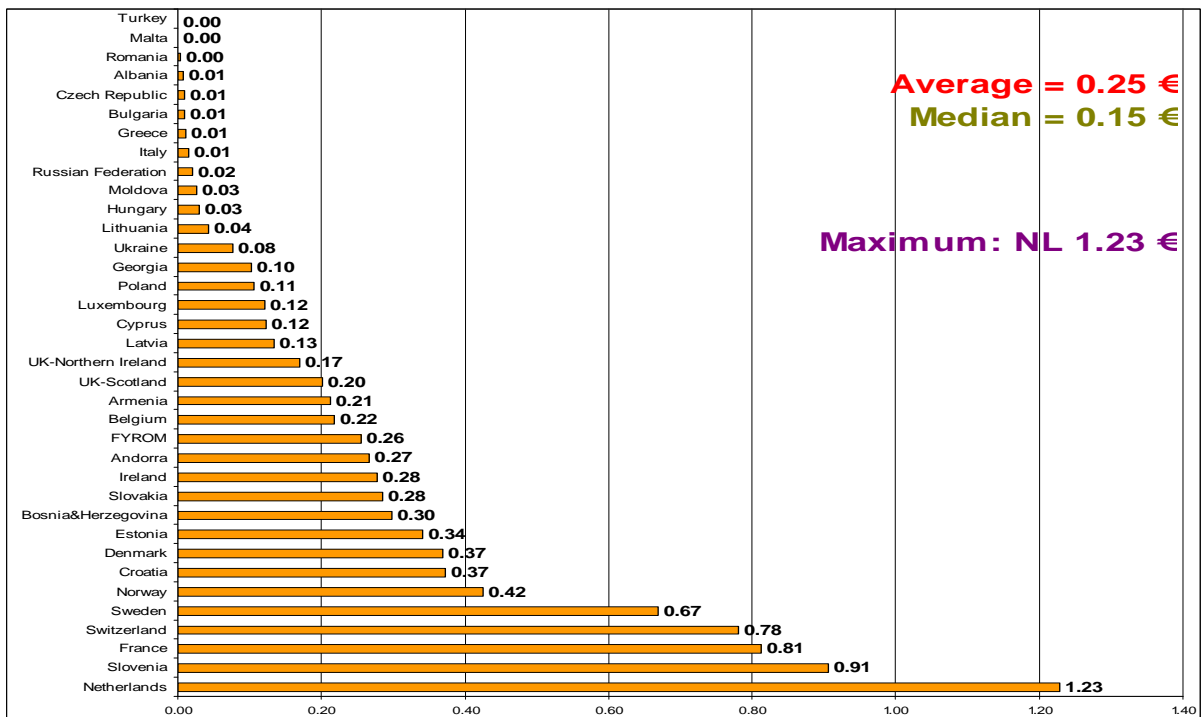
⁵ Thank you to Annette Sattel and, in particular, to Barbara Scheider, for their invaluable help with the tables contained in this article.

Budget allocated to training and education in 2008 as part (in %) of the GDP per capita

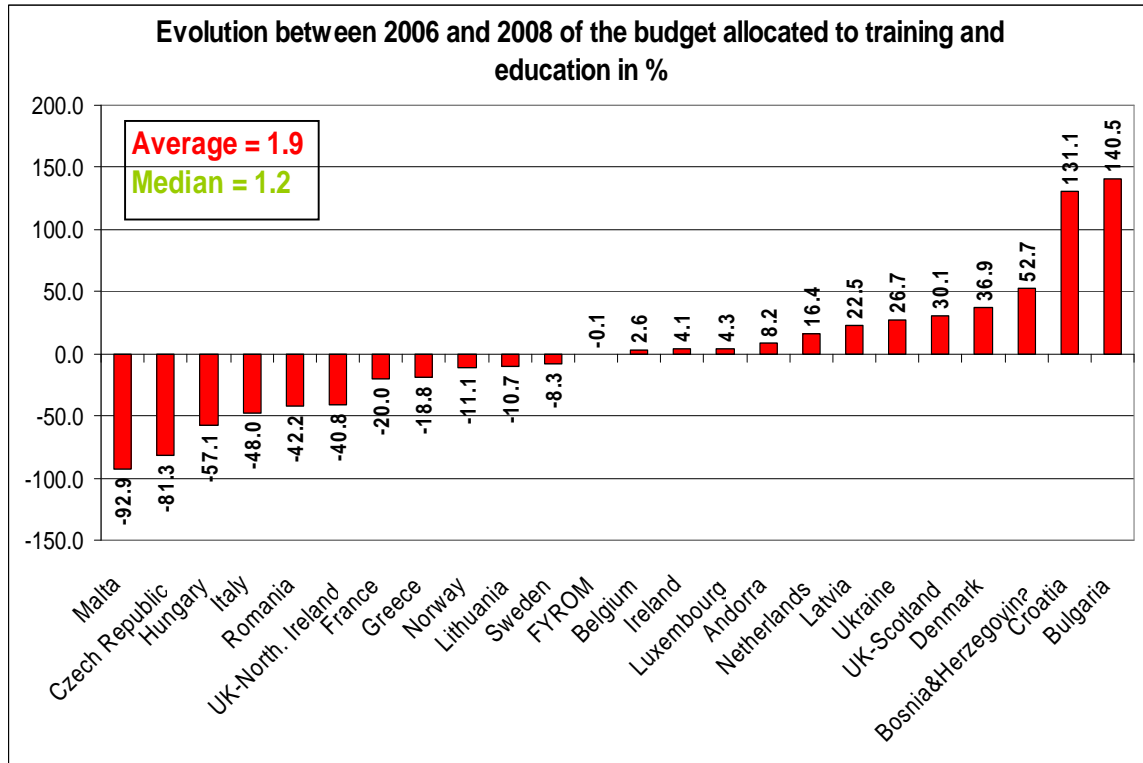


It would have been interesting to compare the training budget allocated per legal profession. For example, how many euro were spent on training per judge or prosecutor and indeed if the amounts were equal for both categories? However, this was not possible, because the amount provided as a reply to Q8 is not individualised and cannot be linked or compared with other information in the report. Our best try was therefore a representation of the budget allocated to training and education per inhabitant.

Budget allocated to training and education in 2008 per inhabitant in (in €)



Finally, I also wanted to include a graph that could show the national evolution of training budgets from 2006 to 2008. As you can see, the table showing this evolution as a percentage shows significant deviations, even if the worst figures (variations over 150%) have been excluded. Barely 11 member states remain within the 20% limit that is mentioned in the methodology of the 2010 report for validation of data.



In view of these tables, I think it is prudent not to draw further conclusions on training based on the replies to Q8 than those already included in the CEPEJ report.

Firstly, due to the diversity of training systems (also related to the procedures for the recruitment of legal professionals) full comparative tables on raw budgetary data make little or no sense⁶. For example, it is widely accepted that the duration and intensity of initial training should be determined in the light of previous professional experience. This will necessarily have an impact on the budget allocated to judicial training, as will, for example, the size of a country's judiciary. Comparison on the basis of the budget alone is therefore insufficient.

As a result, it is necessary to complement quantitative with descriptive information and a possible redefinition of country clusters in relation to training. In order to exploit the data, the criteria (GDP, population) that have been used to identify 16 comparable judicial systems should be revisited in the light of differences in the organisation of judicial training, using even smaller clusters of countries where this aspect is considered comparable, such as the Nordic systems.

Secondly, there is room for improvement regarding the comparability and reliability of data.

⁶ Confr., for example, the divergences between France and Malta in the table on annual budget allocated to training.

Difficulties in comparability become apparent if, for example, we look at the absolute amounts that France and Italy allocate to training and education (52 million euro for France and 857.675 euro for Italy) despite the similarities of their systems and size of their judiciary. This also draws attention to the fact that, unless specified by member states, there is no detailed breakdown of the amount given as a reply to Q8.

Difficulties in reliability are reflected in significant differences (more than 20%) between 2006 and 2008 entries. This obliges to use the data with great caution and explains why the CEPEJ report does not currently go beyond generic conclusions regarding training.

Overcoming such difficulties is a task CEPEJ approaches on a continuous basis. If we focus on training, suggestions for improvement could include:

- integrating this issue in the peer evaluation exercise (for example the peers could visit training institutions/bodies and include this aspect in the analysis and breakdown of budgetary concepts)
- improving the definitions in the explanatory note⁷
- making good use of the Lisbon network, as well as of the relevant CEPEJ observers and consultative bodies. In particular, the Lisbon Network could eventually play a role in the validation of data and the identification of comparable clusters of countries,

A final proposal to improve the relevance of data would be to seek ways to link budgetary data on training to the type of legal professionals who will benefit from it (per judge, per prosecutor, etc). This would allow cross-referencing with other parts of the report.

As a first step, one could envisage that the reference to national public training institutions and their budget contained in the explanatory note, be turned into a specific question, at least as regards judicial training. This could be done as a specification of Q8 or as a self-standing question in the part of the report dealing with training of judges and prosecutors. It could also form part of an independent questionnaire focused on judicial training that could be entrusted to the Lisbon Network. Such a question should allow CEPEJ to gather information both on the budget of national public training institutions and on the number and type of professionals trained.

QUALITATIVE INFORMATION: NATURE AND FREQUENCY OF TRAINING

Once more I will start by focusing on the type of information that is available in the report. Since 2008 qualitative information has focused mainly on judicial training⁸ (judges and prosecutors) and referred to its nature (compulsory or not compulsory) and frequency (annual, regular, occasional) per training category.

⁷ Could the content of the explanatory note and the inclusion of training and education in Q8 be, to a certain extent, misleading? According to the explanatory note, Q6 aims to establish the total amount of the budget covering the functioning of the courts and should also include the budget of the judicial training structures. However it should not include the budget for the operation of the Ministry of Justice or of the High Council of the Judiciary. This may lead make it difficult for countries without a judicial school, where the Ministry of Justice or the High Council of the Judiciary finance certain training actions, to reply to this question.

An additional problem could be that the explanation to Q8 refers to separating the training of judges from the training of prosecutors. However, in some cases both are trained together and in others, where there is a specific prosecution school, the percentage should probably relate to the prosecution budget.

⁸ The report also contains some questions on training of lawyers and enforcement agents.

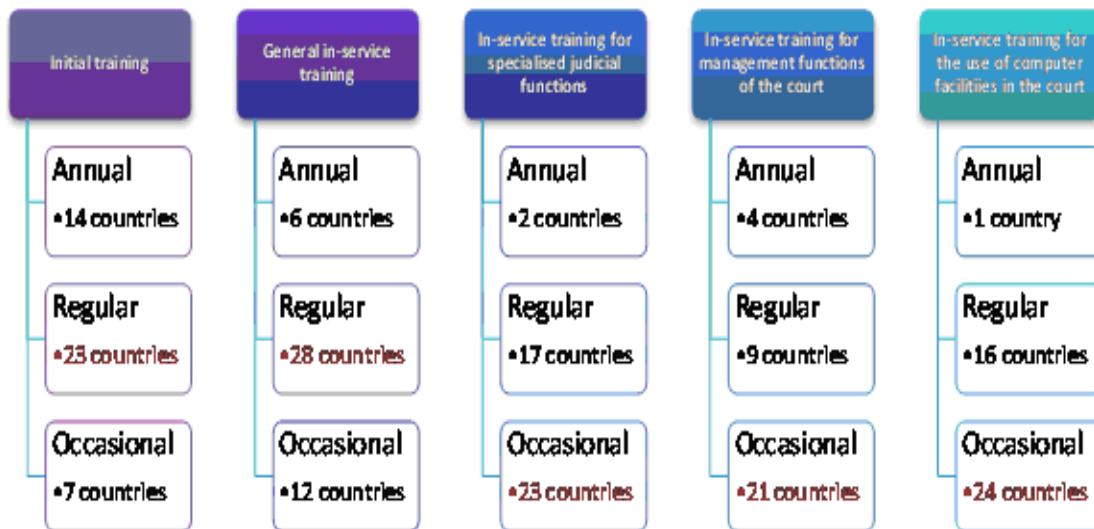
This information is displayed in tables containing the types of compulsory training for judges/prosecutors and the distribution by country according to different categories of mandatory training. There are also figures which combine nature and frequency⁹.

Table 11.5 Types of compulsory trainings for judges (Q114)

Country	Initial training	General in-service training	In-service training for specialised judicial functions	In-service training for management functions of the court	In-service training for the use of computer facilities in the court	Total number of mandatory trainings per country
Albania						5
Andorra						1
Armenia						2
Austria						3
Azerbaijan						2
Belgium						2
Bosnia and Herzegovina						2
Bulgaria						5
Croatia						5
Cyprus						0
Czech Republic						2
Denmark						1
Estonia						1
Finland						0
France						2
Georgia						3
Greece						4
Hungary						5
Iceland						4
Ireland						1
Italy						1
Latvia						3
Lithuania						5
Luxembourg						1
Malta						0
Moldova						5
Monaco						2
Montenegro						4
Netherlands						2
Norway						3
Poland						2
Portugal						1
Romania						5
Russian Federation						5
San Marino						0
Serbia						4
Slovakia						4
Slovenia						1
Spain						2
Sweden						5
Switzerland						1
FR of Macedonia						5
Turkey						3
UK-England and Wales						3
UK-Northern Ireland						5
UK-Scotland						5
TOTAL	(40 countries)	(30 countries)	(24 countries)	(12 countries)	(21 countries)	European Average: 3 mandatory trainings

Types of compulsory trainings for judges

Figure 11.7 Nature and frequency of the trainings for judges (Q115)



Admittedly, not much information can be derived from these tables. It is worth mentioning that although the 2008 scheme simplified the table used in 2006, which combined frequency and nature (compulsory/highly recommended/optional) for each training category, this made almost no difference in the analysis.

⁹ See below, as a reminder, Table 11.5 and Figure 11.7 of the CEPEJ Report 2008- Ed.2010 (p.200-202), regarding the training of judges.

Could more conclusions have been drawn? It could be argued that the objective expressed in the explanatory note¹⁰ (to know if in the various countries, specific training is offered to judges, prosecutors and staff on the use of technology) has not been expressly met. In combination with the question on nature and frequency, it may have been possible to point out if there are countries where such training is not foreseen. This could also be achieved by a targeted question¹¹ or by including the category “non-existent” in the possible answers. A number of countries also referred to training activities related to the ECHR and relevant case-law. A way to further exploit or refine these answers could also be envisaged. Finally, there may be some room for improvement in the explanatory note, which could include definitions of some of the concepts used (ie. initial training).

Apart from these possible improvements it is obvious that there are a number of substantive questions on training that have not been asked in the scheme and that could be of interest, including those covering aspects that appear in Council of Ministers’ Recommendations¹². Some could be tentatively used as indicators of quality and efficiency of justice systems, not to mention aspects related to the efficiency and quality of training itself: methodologies, use of e-learning, evaluation...

However, the question is not so much whether it is desirable to cover new qualitative and substantive aspects related to judicial training, but whether this should be done by means of amending or extending the evaluation scheme.

My personal opinion is that no matter how interesting qualitative information may be, the current evaluation scheme is not the most appropriate means of obtaining it. In fact, questions related to judicial training seem to form part of what we usually refer to in the CEPEJ-EVAL working group as descriptive or “core” information. That is, information that does not and should not usually vary from evaluation cycle to evaluation cycle. National correspondents would also face difficulties in obtaining more specific information.

Similarly, the CEPEJ scheme cannot be extended indefinitely, nor should attempt it to cover every single aspect of European judicial systems. In my opinion, CEPEJ should focus on judicial training. This does not mean forgetting the training of other legal professionals, which could be addressed either by means of limited additions to the scheme¹³ or, more appropriately, as a horizontal issue to be given due attention through in-depth studies targeting certain professions, in cooperation with observer organizations.

My main suggestion for improving qualitative information on judicial training is that CEPEJ makes full use of the assistance that the Lisbon Network can provide in this matter, in addition to the input of relevant observer and consultative bodies (such as the CCJE and the

¹⁰ Explanatory note Q114-117: It is important to know if, in the various countries, specific training is offered to judges, prosecutors and staff on the use of computer technology.

For each of the four types of training, countries are asked to indicate if this training is compulsory or not, as well as the frequency of the training provided (annual, regular (for example every three months) or occasional (sometimes a training course is given)).

In the comment section after question 117, specific information can be provided, in particular concerning the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights as an integral part of the training curricula of judges and prosecutors.

¹¹ Something in the lines of: In the year 2010 was there specific training on the use of IT? Who benefited from it? Judges/prosecutors/others)

¹² For example: the body responsible for training, the duration of initial training, the annual number of activities and participants, the content and number of hours annually devoted to specific topics (such as the ECHR and the ECHR’s case-law, the body of law created by the COE, European law) or to the use of IT equipment and tools, or other aspects to which we know attention will be paid in future (such as the particularities of using interpreters in criminal proceedings).

¹³ For example regarding training of Rechtspfleger or of court interpreters.

CCPE). In this sense, the working groups EVAL and QUAL could refer to the Lisbon Network supporting tasks relevant to their mandates.

In relation to WG EVAL we already mentioned the possible role of the Lisbon Network in the validation of data, the identification of comparable clusters of countries or even in the provision of descriptive information and explanations on judicial training for the report. Taking this possible role one step further, one could even think of the Lisbon Network assisting EVAL in setting up a specific thematic questionnaire on judicial training and providing the relevant data. Special attention could then be given to those aspects that are lacking in the report itself¹⁴. The results of this specific questionnaire or the analysis of the data could be incorporated to the CEPEJ report or presented as an annex, should a system of regular collection of data by the Lisbon network be envisaged.

Similarly, the Lisbon Network and the WG QUAL could give further consideration to issues related to the quality of training such as quality indicators, benchmarks and evaluation of training (ie. multidisciplinary training¹⁵), its impact on judicial systems¹⁶, or the identification and dissemination of best practices (ie. training activities related to quality sentencing, etc)

Finally, training itself has never been the subject of an in-depth study in the framework of CEPEJ's evaluation cycles. This could be another way forward, if it is considered more appropriate for the Lisbon Network's involvement to be of a punctual (one-off) rather than of a continuous nature.

In recent times judicial training has been and will increasingly be in the spotlight. At European Union level, the Lisbon Treaty provides a legal basis for European Union action in the field, notwithstanding the main responsibility of member states. The European Commission is reflecting on how to strengthen judicial training, widely understood to include the training of legal practitioners other than judges and prosecutors, especially in EU law and case law. It is due to present a communication on the subject in the course of 2011.

Judicial training has also been a sustained CEPEJ/COE activity. Very recently the Committee of Ministers adopted Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities (replacing Rec(94)12), which contains several paragraphs on training¹⁷.

¹⁴ For example: how many hours are devoted to training in different skills; how many professionals benefit from a certain type of training; is training on issues identified in opinions or recommendations of COE bodies being provided (such as whether training on deontology is provided or what body provides/supervises judicial training).

¹⁵ OPINION No.4 (2009) OF THE CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE) TO THE ATTENTION OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE ON THE RELATIONS BETWEEN JUDGES AND PROSECUTORS IN A DEMOCRATIC SOCIETY

10. The sharing of common legal principles and ethical values by all the professionals involved in the legal process is essential for the proper administration of justice. Training, including management training, is a right as well as a duty for judges and public prosecutors. Such training should be organized on an impartial basis and regularly and objectively evaluated for its effectiveness. Where appropriate, joint training for judges, public prosecutors and lawyers on themes of common interest can contribute to the achievement of a justice of the highest quality.

¹⁶ Is it possible to establish a link between training and user satisfaction? is there a link between raising awareness on ECHR law/case-law in training activities and a reduction on cases before the Court?

¹⁷ Training

56. Judges should be provided with theoretical and practical initial and in-service training, entirely funded by the state. This should include economic, social and cultural issues related to the exercise of judicial functions. The intensity and duration of such training should be determined in the light of previous professional experience.

57. An independent authority should ensure, in full compliance with educational autonomy, that initial and in-service training programmes meet the requirements of openness, competence and impartiality inherent in judicial office.

So does Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system¹⁸ and several opinions from the CCJE and CCPE.

CEPEJ should be able to play a prominent role in assessing the implementation of these Recommendations and in nurturing and steering the European debate on judicial training.

Thank you very much.

¹⁸ 7. Training is both a duty and a right for all public prosecutors, before their appointment as well as on a permanent basis. States should therefore take effective measures to ensure that public prosecutors have appropriate education and training, both before and after their appointment. In particular, public prosecutors should be made aware of:

- a. the principles and ethical duties of their office;
- b. the constitutional and legal protection of suspects, victims and witnesses;
- c. human rights and freedoms as laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms, especially the rights as established by Articles 5 and 6 of this Convention;
- d. principles and practices of organization of work, management and human resources in a judicial context;
- e. mechanisms and materials which contribute to consistency in their activities.

Furthermore, states should take effective measures to provide for additional training on specific issues or in specific sectors, in the light of present-day conditions, taking into account in particular the types and the development of criminality, as well as international co-operation on criminal matters.