

# European judicial systems

## Efficiency and quality of justice

CEPEJ STUDIES No. 26



2018 Edition (2016 data)

**cepej**

European  
Commission  
for the Efficiency  
of Justice

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européenne  
pour l'efficacité  
de la justice

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# **European judicial systems Efficiency and quality of justice**

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## Chapter 1. The evaluation process of the CEPEJ

This chapter describes the evaluation process carried out by the CEPEJ and of which the results are presented in this report. It sets out the working principles and methodological choices used in this exercise.

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

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

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

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

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

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

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

### 1.2 The scheme for evaluating judicial systems

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

The scheme was reviewed by the CEPEJ Working Group on evaluation of judicial systems (CEPEJ-GT-EVAL) in 2017. Its explanatory note aims to facilitate a common understanding by all national correspondents of the questions, allowing to guarantee the uniformity of the data collected and processed. It has been recommended to all national correspondents to carefully read the explanatory note before replying to each question. This cycle, the CEPEJ-GT-EVAL also decided to submit to the CEPEJ national correspondents an additional questionnaire on gender equality in judicial systems.

For the present cycle, the scheme and the explanatory note were submitted to the member States in June 2015, in order to receive new data at the end of 2017, using the new data collection system, CEPEJ-COLLECT and allowing each national correspondent to access a secure tool to transmit their responses to the CEPEJ Secretariat.

### 1.3 Data collection, validation and analysis

This report is based on the data from 2016 as the reference year. As the majority of States and entities were only able to issue judicial figures for 2016 in the summer and autumn of 2017, the CEPEJ was not able to gather any figures before the beginning of 2018.

Methodologically, the collection of data is based on reporting by the States and entities, which were invited to appoint national correspondents entrusted with the coordination of the replies to the CEPEJ Scheme for their respective State or entity.

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

The national correspondents are considered as the main interlocutors of the Secretariat and the experts when collecting new data and the first to be held accountable for the quality of the figures used in the survey. All individual replies were recorded in the new tool CEPEJ-COLLECT.

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

The meeting between the CEPEJ-GT-EVAL and the network of national correspondents in Strasbourg in May 2018 was an essential step in the process, aimed at validating data, explaining or amending, for the same questions in case of significant variations in data between 2018 and previous cycles, discussing decisions of the experts and improving the quality of the data received.

#### **Responding States**

By May 2018, 45 member States had participated in the process: **Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus<sup>2</sup>, Czech Republic, Denmark,**

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<sup>1</sup> The Working Group of the CEPEJ on the evaluation of judicial systems (CEPEJ-GT-EVAL) was composed of: Mr Ramin GURBANOV, Vice-President of the CEPEJ, Judge at the Baku City Yasamal District court, Azerbaijan, Mr Adis HODZIC, Head of the Budget and Statistics Department, Secretariat of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, Mr Jean-Paul JEAN, President of Chamber at the Court of Cassation, Associated Professor at the University of Poitiers, France (President of the CEPEJ-GT-EVAL), Ms Simone KREß, Judge, Vice-President of the Regional court of Köln, Germany, Mr Georg STAWA, President of the CEPEJ, Head of Department for Projects, Strategy and Innovation, Federal Ministry of Justice, Austria, Mr Jaša VRABEC, Head of the Office of Judicial Administration Development, Supreme Court of the Republic of Slovenia, Ms Martina VRDOLJAK, Head of Department of Statistics, Analysis and Strategic Development of the Judiciary, Directorate of Judiciary Organisation, Ministry of Justice, Croatia. The group also benefited from the active support of scientific experts: Ms Julinda BEQIRAJ, Associate Senior Research Fellow in the Rule of Law, Bingham Centre for the Rule of Law, London, United Kingdom, Ms Caroline EXPERT-FOULQUIER, Associate Professor of Public Law, University of Limoges, Deputy Director of the "Institut de préparation à l'administration générale" (IPAG) of Limoges, France, Mr Fotis KARAYANNOPOULOS, Lawyer, Athens, Greece, Mr Christophe KOLLER, Operational Director, ESEHA (Centre of comparative expertise - councils: Administration - State - Society - Economy - History), Berne, Switzerland, Ms Ivana NINČIĆ, Consultant for Reform of Legal professions, Ministry of Justice, Serbia, Mrs Hélène PAULIAT, Professor of Public Law, Honorary President of the University of Limoges, France, M Francesco PERRONE, Judge, Court of Padua, Italy, Ms Federica VIAPIANA, Researcher and Consultant, Bologna, Italy.

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

**Estonia, Finland, France, Georgia<sup>3</sup>, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova<sup>4</sup>, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation<sup>5</sup>, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”<sup>6</sup>, Turkey, Ukraine<sup>7</sup> and United Kingdom<sup>8</sup>** (entities of England and Wales and Scotland).

Only **Liechtenstein** and **San Marino**, as well as **Northern Ireland** (as an entity of the United Kingdom), have not been able to provide data for this report.

**Israel** and, for the first time, **Morocco** have participated in the evaluation cycle as observer States and appear in this report. It should be noted that the data indicated at the end of the tables (averages, medians, etc.) are always calculated only for the Council of Europe member States in order to provide a picture of the European situation of judicial systems.

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

National replies also contain descriptions of the judicial systems and comments that contribute greatly to the understanding of the figures provided. They are therefore an essential complement to the report although in the interest of conciseness and consistency not all of this information has been included. On the other hand, all the data and comments are available in the internet tool "CEPEJ-STAT" the database of the judicial systems of the Council of Europe member States which is easily accessible to all members of the public, policy makers, legal practitioners, academicians and researchers. Studies and research can be conducted by research teams, with easy access to data, in the framework of individual agreements with the CEPEJ and subject to certain terms.

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

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

**This report is limited to key issues and key data and does not pretend to have exploited exhaustively all the information that were provided by the States and entities.**

**This report includes only one of the elements used by the CEPEJ to present the functioning of the judicial systems in 2016. In order to complement in depth the reading of this report, it is particularly useful to consult the dynamic database « CEPEJ-STAT », opened to the public on the Internet and including a data processing system (see: [www.coe.int/cepej](http://www.coe.int/cepej)). This database will allow all the stakeholders to analyse independently and according to their needs, a comprehensive volume of data for a specific group or all States and entities concerned.**

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

<sup>4</sup> The data provided by the Republic of Moldova does not include data of the territory which is not under the effective control of the Government of the Republic of Moldova.

<sup>5</sup> Being committed under the relevant Committee of Ministers decisions (e.g. CM/Del/Dec(2014)1196/1.8, CM/Del/Dec(2014)1207/1.5, CM/Del/Dec(2015)1225/1.8, CM/Del/Dec(2017)1285/2.1bisb) to uphold the sovereignty and territorial integrity of Ukraine, the Council of Europe does not recognise any alteration of status of the Autonomous Republic of Crimea and the City of Sevastopol.

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

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

<sup>8</sup> The results for the United Kingdom are presented separately for England and Wales and Scotland. Northern Ireland has not provided data. The three judicial systems are organised on a different basis and operate independently from each other.

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

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

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

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

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

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

A specific effort of approval of the data was made to ensure its coherence and reliability and to enable the creation and the analysis of statistical series. These series are designed to measure certain evolutions. Such evolutions are often limited to the period 2010 - 2016. Regarding the checking of the accuracy of the figures, an in-depth quality check was carried out by the CEPEJ Secretariat, including extensive exchanges with the national correspondents. Statistical and logical rules have been applied to compare and cross-check data from the three consecutive cycles. Those rules made it possible to identify the replies showing significant variations and to try to find explanations for them. Through these comparisons, methodological problems have been identified and corrected or described. In some cases, strong variations could also be explained by the evolution of economic situations, structural and organisational reforms, political decisions or the implementation of new mechanisms, procedures or measures.

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

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

Until now, the judicial systems of 25 volunteer States were observed by the peers in order to analyse the organisation of data collection and their communication to the CEPEJ Secretariat: **Austria, Azerbaijan, Bosnia and Herzegovina, Czech Republic, Cyprus, Estonia, France, Georgia, Latvia, Lithuania, Malta, Montenegro, Netherlands, Poland, Russian Federation, Serbia, Slovakia, Switzerland and Turkey**, as well as **Israel**. Furthermore, a visit was organised in **Norway**, bringing together experts from **Denmark, Finland, Iceland and Sweden**. During these visits, the experts appointed by the CEPEJ-GT-EVAL analysed the practical way of answering to some questions of the Evaluation Scheme and the content of the answers, in particular the questions related to budgetary issues, types and number of judges, litigious civil cases and methods of calculating the length of proceedings.

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

### Comparing data and concepts

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

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

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

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

Monetary values are reported in Euros. For that reason, using exchange rates for States outside the Euro zone caused some difficulties. Exchange rates can vary from year to year. Since the report focuses mainly on 2016, the exchange rates of 1 January 2017 have been used. For States experiencing high inflation rates and/or variation of exchange rates, this choice may generate very high or low figures which must be interpreted within their specific context. The high variation of the exchange rate has a considerable effect on the figures for the countries outside the Euro zone. For some of them, the exchange rate against the Euro could have been more favourable in 2017 than in 2015. It is therefore, necessary to pay attention to this issue while comparing monetary figures of the 2016 and 2018 editions. A specific table (table 1.3) shows the variation in the exchange rate for the countries outside the Euro zone. As far as possible, this was taken into account while commenting on the tables and figures showing budgetary variations both in Euros and in other currencies.

Furthermore, the inflation rate was also considered in the respective part of this report when interpreting the variations in different judicial budget elements

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

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

Since 2016, a few States have implemented fundamental institutional and legislative reforms of their legal systems. For these States, the situation described in this report may be quite different from the current situation. States and entities were invited to indicate whether reforms have been implemented since 2016 or whether other reforms are in progress. This also makes it possible to identify of the main trends related to priority reforms in the various justice systems.

In some countries, the economic situation has deteriorated since 2016, which has had a relatively large impact on the functioning of justice. For such States too, the situation described in this report may have evolved.

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

In the 2016-2018 evaluation cycle, the CEPEJ has tried to take a global approach to 46 States' and entities' judicial systems - plus **Israel** and **Morocco**. In order to highlight some particularities of the European judicial systems, several indicators were developed or calculated: ratios, rates, averages and/or medians, indexes, etc.

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

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

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

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

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

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

## **1.5 General economic and demographic data**

These figures, which almost every State and entity were able to provide, give comprehensive information on the general context in which this study was conducted. In particular, they make it possible, as it was the case in the previous exercise, to relativize the other figures and place them in context, particularly budgetary figures and figures relating to court activity.

The figures also enable the reader to appreciate the variations in the population and size of the countries involved, from **Monaco**, with about 37 000 inhabitants, to the **Russian Federation** with more than 146 million inhabitants. This demographic diversity must always be kept in mind. The total population concerned by this study is approximately 820 million people, which is almost the whole population of the Council of Europe's jurisdiction - only **Liechtenstein**, **San Marino** and **UK-Northern Ireland** are absent from the 2018 edition.

These data also demonstrate the large differences regarding wealth and living standards through per capita GDP and partially by the amount of global public expenditure (national and regional). The average annual gross salary gives an interesting overview of the wealth and living standards as it involves an economic,

social and demographic component. Though this indicator is not perfect, it nevertheless highlights, again, substantial disparities between the populations.

Finally, the influence of the monetary exchange rate between the "Euro zone" countries and the "others" must be taken into account, as it strongly modifies what salaries represent in terms of quality of life of the inhabitants of each State (see also above).

Therefore comparisons must always be limited to what can be compared. The results that each State would want to measure against other States that appear comparable to it must be balanced, taking into account the specific context. There are obviously threshold effects according to the level of population or level of living standards which are measured through ratios regarding the number of inhabitants and the per capita GDP.

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

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

Figures related to per capita GDP were provided by all the participating States and entities. Here again, very large disparities in the per capita GDP can be noted and must always be kept in mind when considering the subsequent results. For instance, two extremes can be noted: on the one hand the countries with a per capita GDP around 1 700 € (**Republic of Moldova**) and on the other hand, **Luxembourg** at over 90 000 € reported, a value more than 50 times higher.

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

**Table 1.1 Economic and demographic data in 2016, in absolute value (Q1 to Q4)**

States / Entities	Population	Total annual state public expenditure	Per capita GDP (in €)	Average gross salary	
Albania	2 876 591	3 157 253 000 €	3 728 €	4 536 €	
Andorra	73 105	847 860 512 €	26 330 €	21 950 €	
Armenia	2 986 100	2 547 900 000 €	3 192 €	3 936 €	
Austria	8 739 806	179 133 000 000 €	40 420 €	31 752 €	
Azerbaijan	9 705 600	8 723 449 903 €	3 338 €	3 217 €	
Belgium	11 322 088	225 101 100 000 €	37 407 €	41 604 €	
Bosnia and Herzegovina	*	3 509 728	11 450 535 067 €	4 354 €	7 982 €
Bulgaria	7 101 859	16 612 569 143 €	6 645 €	5 900 €	
Croatia	4 154 213	9 142 121 525 €	10 965 €	12 355 €	
Cyprus	848 300	7 398 077 498 €	21 282 €	22 548 €	
Czech Republic	10 578 820	69 602 886 751 €	16 700 €	12 253 €	
Denmark	5 748 769	92 620 223 450 €	48 474 €	41 974 €	
Estonia	1 315 635	8 922 105 298 €	16 034 €	13 752 €	
Finland	5 503 297	55 041 643 000 €	38 959 €	40 416 €	
France	66 991 000	478 600 000 000 €	33 337 €	35 400 €	
Georgia	3 718 200	3 685 737 294 €	3 274 €	NA	
Germany	*	82 175 684	975 095 000 000 €	37 997 €	50 352 €
Greece	10 783 748	86 594 000 000 €	16 154 €	16 243 €	
Hungary	9 797 561	53 529 408 856 €	11 200 €	10 537 €	
Iceland	338 349	729 794 117 €	30 168 €	67 261 €	
Ireland	4 673 700	71 352 000 000 €	58 961 €	36 919 €	
Italy	60 589 445	592 441 373 400 €	27 587 €	29 389 €	
Latvia	1 968 957	5 636 414 986 €	12 762 €	10 308 €	
Lithuania	2 847 904	8 686 661 000 €	13 468 €	9 408 €	
Luxembourg	590 700	16 739 000 000 €	90 700 €	66 300 €	
Malta	440 433	3 770 239 000 €	22 664 €	17 261 €	
Republic of Moldova	3 550 852	2 197 152 831 €	1 722 €	2 719 €	
Monaco	37 550	1 215 332 769 €	72 091 €	42 012 €	
Montenegro	620 029	1 826 000 500 €	6 354 €	9 012 €	
Netherlands	17 081 507	305 249 000 000 €	41 258 €	57 300 €	
Norway	5 258 317	174 969 241 134 €	65 747 €	57 387 €	
Poland	38 433 000	81 638 713 800 €	11 370 €	NA	
Portugal	10 309 573	83 335 700 000 €	17 905 €	16 079 €	
Romania	19 638 309	53 294 642 267 €	8 600 €	7 085 €	
Russian Federation	*	146 804 372	366 744 167 988 €	7 921 €	5 948 €
Serbia	7 040 272	15 385 796 652 €	4 904 €	6 169 €	
Slovakia	5 435 343	15 688 700 000 €	14 910 €	10 944 €	
Slovenia	2 065 895	18 085 190 186 €	19 262 €	19 020 €	
Spain	*	46 528 966	616 052 675 688 €	23 985 €	22 770 €
Sweden	9 995 153	225 251 229 000 €	46 125 €	41 168 €	
Switzerland	8 419 550	195 417 180 450 €	73 006 €	72 700 €	
The FYROMacedonia	2 073 702	1 576 325 203 €	4 691 €	6 404 €	
Turkey	79 814 871	243 823 359 569 €	8 869 €	NA	
Ukraine	42 584 542	25 990 113 000 €	2 001 €	2 376 €	
UK-England and Wales	58 381 300	598 840 732 000 €	31 088 €	33 293 €	
UK-Scotland	5 404 700	82 965 163 696 €	32 051 €	38 588 €	
Israel	8 630 000	118 364 162 421 €	35 323 €	29 079 €	
Morocco	34 852 121	24 856 000 000 €	2 768 €	12 972 €	
<b>Average</b>	18 018 639	132 537 103 707 €	24 564 €	24 756 €	
<b>Median</b>	5 626 033	39 642 377 634 €	17 303 €	17 261 €	
<b>Minimum</b>	37 550	729 794 117 €	1 722 €	2 376 €	
<b>Maximum</b>	146 804 372	975 095 000 000 €	90 700 €	72 700 €	

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

## Keys

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

Code	Name	Code	Name	Code	Name	Code	Name
ALB	Albania	EST	Estonia	LUX	Luxembourg	SVK	Slovakia
AND	Andorra	FIN	Finland	MLT	Malta	SVN	Slovenia
ARM	Armenia	FRA	France	MDA	Republic of Moldova	ESP	Spain
AUT	Austria	GEO	Georgia	MCO	Monaco	SWE	Sweden
AZE	Azerbaijan	DEU	Germany	MNE	Montenegro	CHE	Switzerland
BEL	Belgium	GRC	Greece	NLD	Netherlands	MKD	«l'ex-République yougoslave de Macédoine »
BIH	Bosnia and Herzegovina	HUN	Hungary	NOR	Norway	TUR	Turkey
BGR	Bulgaria	ISL	Iceland	POL	Poland	UKR	Ukraine
HRV	Croatia	IRL	Ireland	PRT	Portugal	UK:ENG & WAL	UK-England and Wales
CYP	Cyprus	ITA	Italy	ROU	Romania	UK:SCO	UK-Scotland
CZE	Czech Republic	LVA	Latvia	RUS	Russian Federation	ISR	Israel
DNK	Denmark	LTU	Lithuania	SRB	Serbia	MAR	Morocco

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

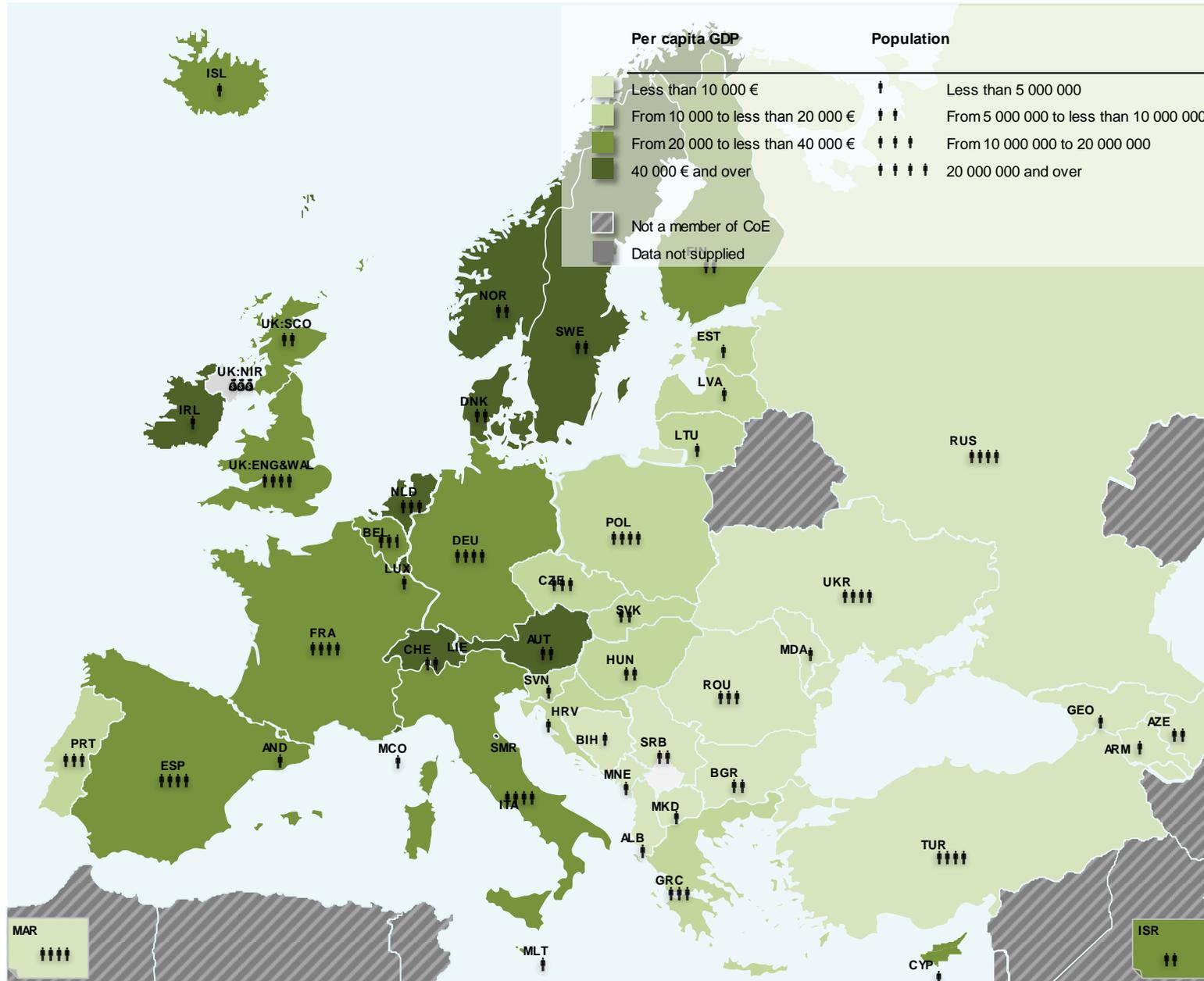
(Qx) refers to the (x=number of the) question in the evaluation scheme, thanks to which information was collected.

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

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

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

Map 1.2 Level of population and per capita GDP (in €) in 2016 (Q1, Q3)



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

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

States/entities	Currency	Exchange rate in 2010 (on 1st Jan. 2011)	Exchange rate in 2012 (on 1st Jan. 2013)	Exchange rate in 2014 (on 1st Jan. 2015)	Exchange rate in 2016 (on 1st Jan. 2017)	Appreciation of the € (2014-2016)	Depreciation of the € (2014-2016)
Albania	ALL (Lek)	138,77000	139,04000	139,98000	135,00000	3,56%	
Armenia	AMD (Dram)	481,16000	481,16000	552,11000	512,20000	7,23%	
Azerbaijan	AZN (Manat)	1,05600	1,01800	0,95220	1,86440		-95,80%
Bosnia and Herzegovina	BAM (Mark)	2,00000	1,95583	1,95583	1,95583	0,00%	
Bulgaria	BGN (Lev)	1,95583	1,95583	1,95583	1,95583	0,00%	
Croatia	HRK (Kuna)	7,38430	7,54659	7,65771	7,55779	1,30%	
Czech Republic	CZK (Koruna)	25,06000	25,14000	27,72500	27,02000	2,54%	
Denmark	DKK (Krone)	7,45310	7,46040	7,44360	7,43490	0,12%	
Georgia	GEL (Lari)	2,37080	2,18450	2,28810	2,79400		-22,11%
Hungary	HUF (Forint)	278,85000	292,96000	315,00000	309,40000	1,78%	
Iceland	ISK (Krona)	153,80000	169,00000	154,00000	119,00000	22,73%	
Lithuania	LTL (Litai)	3,45280	3,45280	3,45280	NAP	NAP	NAP
Republic of Moldova	MDL (Leu)	16,10450	15,99670	18,99660	20,88950		-9,96%
Norway	NOK (Krone)	8,01000	7,31750	9,05020	9,05430		-0,05%
Poland	PLN (Zloty)	3,96030	4,08820	4,26230	4,42000		-3,70%
Romania	RON (Leu)	4,28480	4,41530	4,48210	4,54110		-1,32%
Russian Federation	* RUB (Ruble)	41,48760	40,22860	50,46000	74,06090		-46,77%
Serbia	RSD (Dinar)	105,00000	113,12770	120,95830	123,47230		-2,08%
Sweden	SEK (Krona)	8,95000	8,56880	9,43230	9,56100		-1,36%
Switzerland	CHF (Franc suisse)	1,25040	1,20720	1,20290	1,07210	10,87%	
The FYROMacedonia	MKD (Denar)	61,10000	61,50000	61,50000	61,50000	0,00%	
Turkey	TRY (Lira)	2,07000	2,36000	2,83910	3,71000		-30,68%
Ukraine	UAH (Hryvnia)	10,57000	10,53000	19,00000	28,42000		-49,58%
UK-England and Wales	GBP (Pound sterling)	0,85060	0,81546	0,77880	0,85830		-10,21%
UK-Scotland	GBP (Pound sterling)	0,85060	0,81546	0,77880	0,85830		-10,21%
Israel	ILS (Shekel)		4,92060	4,72460	4,04380		-14,41%
Morocco	MAD (Dirham)				10,61400		

\*The exchange rate used for the Russian Federation is the annual average exchange rate for 2016.

Between the two evaluation cycles significant depreciations of the local currency were observed for **Azerbaijan, Georgia, Russian Federation, Turkey and Ukraine. United-Kingdom** as well as the **Republic of Moldova** also experienced some depreciation but to a smaller extent. **Iceland, Switzerland and Israel** saw an appreciation of the local currency.

When analyzing the variations of different budgets presented in this report, analyses were made both for the Euro and the local currency as a reduction that appears significant in Euros might not represent any change, or even an increase, when observed in the local currency.

It has to be noted that for the **Russian Federation**, an average annual exchange rate for 2016 was used instead of the exchange rate of 1 January 2017 due to large fluctuations of the exchange rate of the Russian during 2016. **Azerbaijan** on the other hand saw two big administrative depreciations of the Manat of 95 % that show big decreases in all budgets when analyzed in Euros. In reality the situation is in most cases stable since the inflation rate according to the World Bank is only 14 % in 2016, while 2015 saw a deflation of - 9 %.

The situation shows the reverse in **Iceland, Switzerland and Israel** where, due to the appreciation of local currencies, investments made appear more significant in Euros for this cycle than when compared with previous ones.

Consequently, both data quality control as well as the analyses were sensitive to this phenomenon to the greatest extent possible.

**Table 1.4 Inflation rate (GDP deflator) (Source: World Bank<sup>10</sup>)**

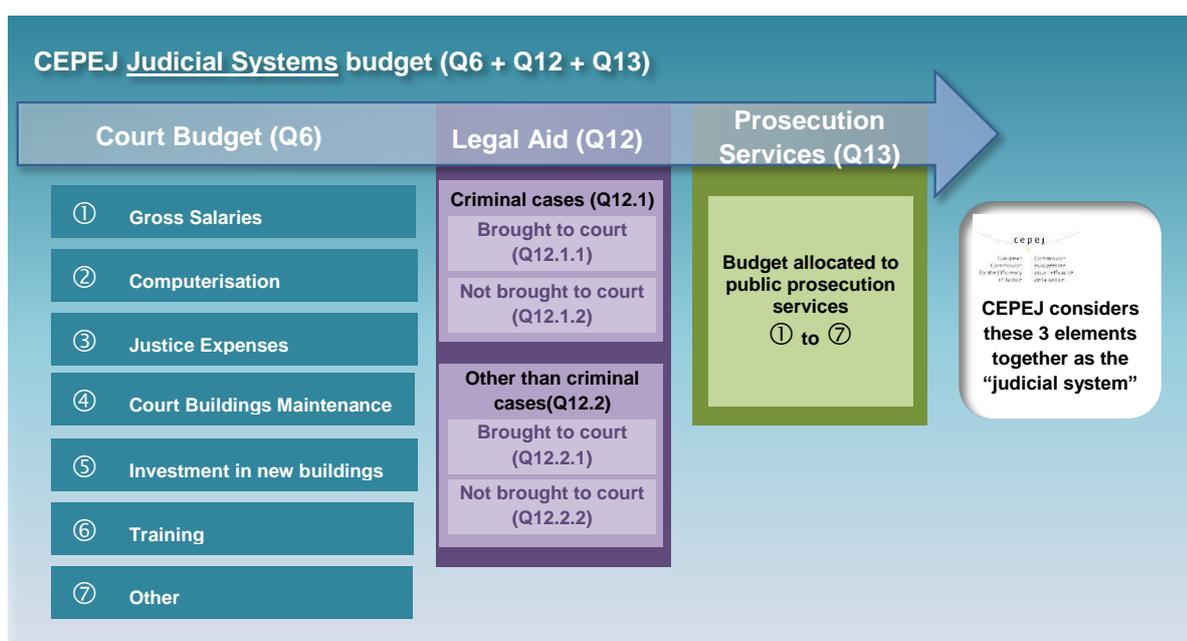
States/entities	Currency	Inflation 2010	Inflation 2011	Inflation 2012	Inflation 2013	Inflation 2014	Inflation 2015	Inflation 2016
Albania	ALL (Lek)	4,49	2,31	1,04	0,29	1,55	0,10	0,21
Andorra		1,60	2,50	1,10	0,00	0,10	0,46	0,69
Armenia	AMD (Dram)	7,77	4,28	5,35	3,37	2,31	1,21	0,52
Austria		0,78	1,95	1,99	1,52	2,17	2,45	1,06
Azerbaijan	AZN (Manat)	13,76	22,57	2,85	0,46	0,56	8,85	14,61
Belgium		1,88	2,00	1,97	1,05	0,67	1,11	1,58
Bosnia and Herzegovina	BAM (Mark)	1,40	2,44	0,80	0,23	1,00	1,37	1,49
Bulgaria	BGN (Lev)	1,11	5,98	1,56	0,70	0,45	2,21	2,25
Croatia	HRK (Kuna)	0,83	1,67	1,58	0,80	0,05	0,01	0,10
Cyprus		2,01	1,91	1,89	1,05	1,57	1,18	0,86
Czech Republic	CZK (Koruna)	1,43	0,02	1,46	1,43	2,48	1,17	1,24
Denmark	DKK (Krone)	3,22	0,64	2,38	0,89	1,03	0,70	0,05
Estonia		1,74	5,26	3,16	3,56	1,47	1,25	1,59
Finland		0,35	2,58	2,95	2,55	1,69	2,01	0,93
France		1,08	0,94	1,16	0,78	0,58	1,09	0,39
Georgia	GEL (Lari)	8,55	9,45	1,07	0,76	3,78	5,89	4,19
Germany		0,76	1,07	1,54	1,97	1,79	2,01	1,33
Greece		0,67	0,80	0,37	2,35	1,83	1,02	0,96
Hungary	HUF (Forint)	2,33	2,27	3,38	2,94	3,38	1,88	0,96
Iceland	ISK (Krona)	5,45	2,97	3,26	1,85	4,06	6,03	2,04
Ireland		3,22	0,37	2,07	1,04	0,40	7,28	0,02
Italy		0,32	1,47	1,38	1,21	0,96	0,86	0,77
Latvia		0,81	6,39	3,62	1,70	1,78	0,00	0,27
Lithuania	LTL (Litai)	2,38	5,22	2,69	1,40	1,01	0,24	1,18
Luxembourg		3,62	4,77	2,56	1,70	1,65	1,32	1,31
Malta		3,83	2,16	2,10	2,00	2,28	2,46	1,60
Republic of Moldova	MDL (Leu)	11,07	7,26	7,89	4,13	6,38	9,82	5,40
Monaco		..	..	..	..	..	..	..
Montenegro		1,60	1,20	0,18	2,07	1,04	2,22	5,10
Netherlands		0,85	0,14	1,42	1,37	0,15	0,81	0,58
Norway	NOK (Krone)	5,95	6,75	3,36	2,54	0,33	2,82	1,11
Poland	PLN (Zloty)	1,66	3,23	2,35	0,29	0,50	0,76	0,42
Portugal		0,64	0,27	0,40	2,27	0,75	2,03	1,43
Romania	RON (Leu)	5,42	4,74	4,69	3,42	1,69	2,59	2,16
Russian Federation *	RUB (Ruble)	14,19	23,64	9,09	5,41	7,50	8,15	3,61
Serbia	RSD (Dinar)	5,88	9,56	6,26	5,44	2,71	2,68	2,53
Slovakia		0,49	1,65	1,26	0,52	0,16	0,15	0,45
Slovenia		0,99	1,12	0,46	1,60	0,79	0,97	0,90
Spain		0,16	0,03	0,07	0,35	0,19	0,61	0,28
Sweden	SEK (Krona)	0,99	1,18	1,06	1,06	1,78	2,07	1,59
Switzerland	CHF (Franc suisse)	0,32	0,34	0,17	0,03	0,63	0,60	0,57
The FYROMacedonia	MKD (Denar)	2,04	3,72	1,00	4,48	1,45	1,89	6,26
Turkey	TRY (Lira)	7,01	8,19	7,42	6,27	7,42	7,83	8,10
Ukraine	UAH (Hrynia)	13,41	14,20	7,79	4,34	15,90	38,88	17,14
UK-England and Wales	GBP (Pound sterling)	1,57	2,01	1,56	1,90	1,72	0,46	2,00
UK-Scotland	GBP (Pound sterling)	1,57	2,01	1,56	1,90	1,72	0,46	2,00
Israel	ILS (Shekel)	1,77	2,40	3,96	2,25	1,04	2,24	0,84
Morocco	MAD (Dirham)	0,98	0,69	0,37	1,31	0,38	2,12	1,60

\*The exchange rate used for the Russian Federation is the annual average exchange rate for 2016.

<sup>10</sup> <http://databank.worldbank.org/data/reports.aspx?source=2&series=FP.CPI.TOTL.ZG&country=IND#>

## Chapter 2. Budgets of judicial systems

One of the goals of the CEPEJ is to know, understand and analyse the budgets allocated to the functioning of justice in the States and entities. Therefore this chapter focuses primarily on the budgets allocated to the courts, the public prosecution services and legal aid, the total of which makes up the **judicial system budget as defined by the CEPEJ**. The definition of the budget devoted to the inputs in the court activity will have to be reported to the outputs, namely the results in terms of the volume of cases processed and in particular of the judicial timeframes. The chapter will also deal with the budget of the justice system as a whole, where the scope varies according to the States and the powers of the Ministries of Justice. Before considering different budgets in detail, it is necessary to recall the definitions adopted by the CEPEJ for the various concepts in order to be able to compare, in a useful way, the different States' or entities' systems.



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

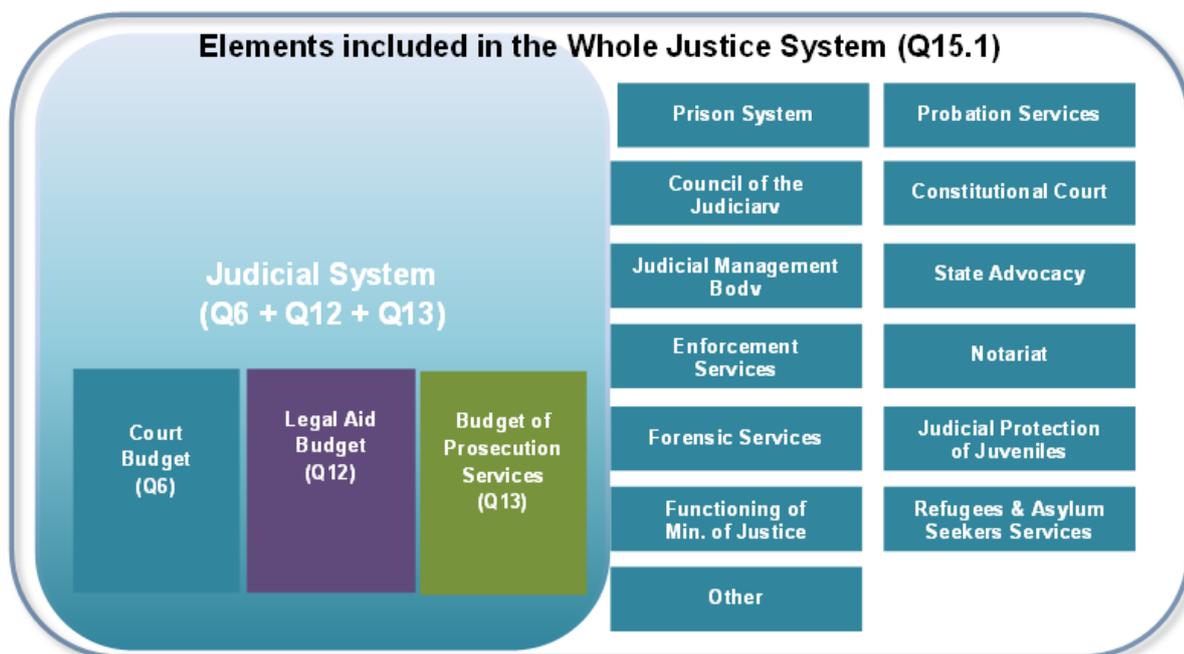
The budget allocated to **legal aid** is interpreted here in a broad sense. It includes the amounts paid to the court users or their lawyers for criminal cases or other than criminal cases brought to court (for instance, costs of being represented before the courts) but also amounts paid to individuals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

The **public prosecution services**, that is a prosecuting authority composed of prosecutors and staff who assist them, exercise their prerogatives within the definition contained in Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system: " (...) authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system".

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

Finally, the **budget allocated to the whole justice system**, integrating in particular but not limited to the entire budget of the Ministry of Justice, encompasses that of the judicial system and may also include the budgets of the prison system, the probation service, the Councils of the Judiciary, the Constitutional Court, the judicial management body, the State Advocacy, the enforcement services, the notariat, the forensic services, the judicial protection of juveniles, the functioning of the Ministry of Justice, the refugees and

asylum seekers services, some police services, etc. Insofar as the scope of the budget of the whole justice system varies from one State or entity to another, the “justice” budget cannot be used for international comparisons.



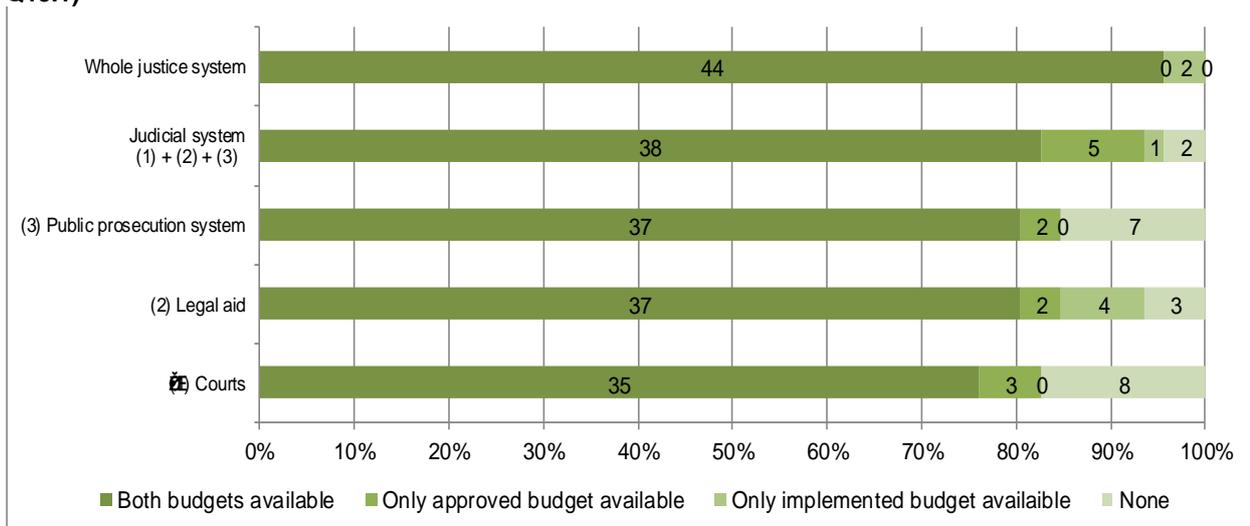
The comparisons are therefore based on the financial resources devoted only to the judicial systems, the analysis of which must be considered the most relevant in the budgetary part of this report. The budgets allocated to the judicial systems could be further compared to the assessment of judicial activity and efficiency, which will make it possible to compare the investments to the results (input/output) on a similar perimeter. See chapter 5 on Efficiency.

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

When looking at the availability of data concerning the approved against the implemented budget, it can be noted that more States and entities are providing data about the approved budget (Figure 2.1). Analysing the data from the States and entities that were able to provide both budgets, it can be noted that the values are very close for all budgetary questions except for the legal aid budget. The CEPEJ has therefore decided to analyse with particular interest the approved budgets.

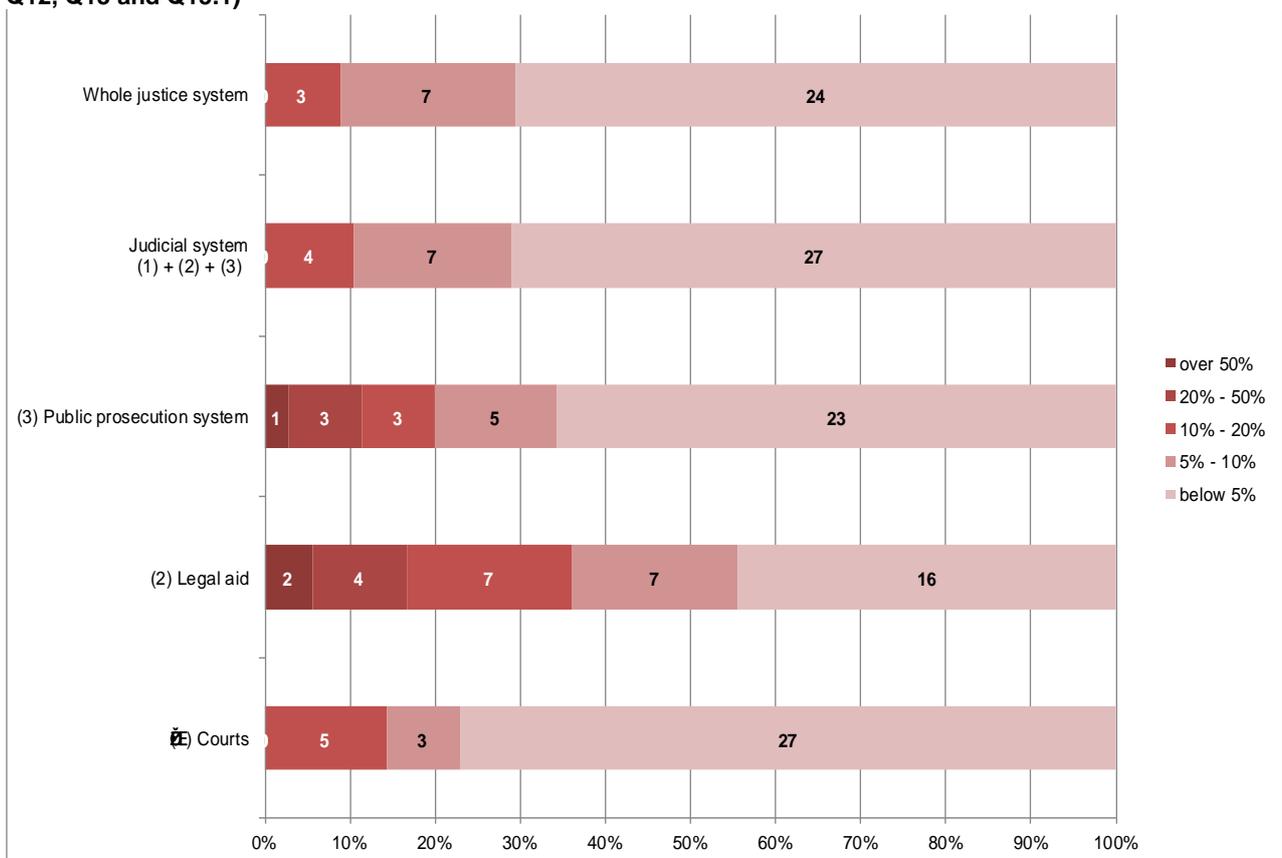
Legal aid is understandably an exception to this principle since a provisional budget is adopted which can only be measured after its implementation has been registered at the end of the year of actual expenditure. For that reason, significant differences have been observed between the approved budgets and the implemented budgets of legal aid, as shown in Figure 2.2. However, it should be noted that in order to make this analysis possible and extend it to as many States and entities as possible, implemented budgets were taken into consideration for States and entities where an approved budget was not available. In cases where the tables/figures presented include a combination of approved and implemented budgets, this is highlighted throughout the report.

**Figure 2.1 Availability of the budgetary data in 2016 (number of States and entities) (Q6, Q7, Q12, Q13 and Q15.1)**



Data concerning both the approved and the implemented budget were available in 44 States or entities for the whole justice system and in 38 States or entities for the judicial system. The approved budget of the whole justice system was not available in **Albania** and **UK-Scotland**. As for the judicial system, only the approved budget was available in **Luxembourg, Norway, Portugal, Russian Federation** and **Spain**, while in **Bosnia and Herzegovina** only the implemented budget was available. In **Montenegro** and **Serbia** neither the implemented nor the approved budget for the judicial sector's data were presented.

**Figure 2.2 Differences between approved and implemented budget in 2016 (number of States and entities) (Q6, Q12, Q13 and Q15.1)**



Only 3 out of 34 States or entities and 4 out of 36 States or entities show substantial differences (more than 10 %) between the approved and the implemented budget for the whole justice system and for the judicial system. As already mentioned, the budget allocated to legal aid has registered a higher percentage of variation between approved and implemented budget; these variations will be analysed in the “legal aid” section.

When the budget of different countries in different years is compared, it is necessary to take into consideration two factors: the exchange rates and the inflation / deflation rates.

**Major variations in exchange rates can have a significant impact on the budgetary data expressed in Euros; at the same time, major increases or decreases in the inflation rate can influence the variation of the budget in time series. The evolution of these rates appears in tables 1.3 and 1.4 in Chapter 1 above.**

Although most of the exchange rates are quite stable, some States/entities have registered some significant variations in the last two years. In **Azerbaijan**, there were two devaluations of the national currency in February and December 2015 of a total of 97 %. From 2014 to 2016, the local currency was also depreciated in **Georgia** (22 %), **Republic of Moldova** (10 %), **Russian Federation** (47 %), **Turkey** (31 %), **Ukraine** (50 %) and **United Kingdom** (10 %). There are also two countries that experienced a significant increase of the local currency exchange rate compared to Euro: **Iceland** (22 %) and **Switzerland** (10 %).

States with major increases in the inflation rate (more than 4 % in two years) between 2014 and 2016 are: **Azerbaijan** (+ 5,7 %), **Bulgaria** (+ 4,4 %), **Georgia** (+ 10,1 %), **Iceland** (+ 8,0 %), **Ireland** (+ 7,3 %), **Malta** (+ 4,1 %), **Republic of Moldova** (+ 15,2 %), **Montenegro** (+ 7,3 %), **Romania** (+ 4,7 %), **Russian Federation** (+ 11,8 %), **Serbia** (+ 5,2 %), “**the former Yugoslav Republic of Macedonia**” (+ 8,1 %), **Turkey** (+ 15,9 %) and **Ukraine** (+ 56 %).

\*\*\*

The following tables show, for each State and entity, the total amount of public expenditure, the approved budget of the whole justice system and the approved budget of the judicial system, in absolute value and in percentage variation from 2012 to 2014 and from 2014 to 2016.

The first table includes all the Eurozone countries plus **Montenegro** which uses Euro, while the second one brings together all the countries that are outside the Eurozone. In the second table, absolute values and all the variation are expressed in local currency.

**Table 2.3 Total public expenditure, approved budget of the whole justice system and approved budget of the judicial system – variation in € (Q1, Q2, Q6, Q7, Q12, Q13)**

States / Entities	Total of annual public expenditure at State level and at regional or federal entity level *	Approved budget of the whole justice system	Approved budget of the judicial system**	Variation 2012 - 2014		Variation 2014 - 2016	
				Total of annual public expenditure at State level and at regional or federal entity level *	Approved budget of the judicial system**	Total of annual public expenditure at state level and at regional or federal entity level *	Approved budget of the judicial system**
Albania	3 157 253 000 €	NA	29 877 086 €	16%	5%	1%	12%
Andorra	847 860 512 €	8 741 924 €	7 248 399 €	-5%	NA	67%	NA
Armenia	2 547 900 000 €	53 033 094 €	25 097 574 €	17%	NA	14%	NA
Austria	179 133 000 000 €	1 462 689 939 €	937 499 939 €	8%	7%	6%	14%
Azerbaijan	8 723 449 903 €	230 961 605 €	75 363 762 €	21%	45%	-59%	-51%
Belgium	225 101 100 000 €	1 860 812 456 €	931 834 849 €	7%	-4%	2%	-3%
Bosnia and Herzegovina	11 450 535 067 €	204 559 416 €	NA	95%	NA	3%	NA
Bulgaria	16 612 569 143 €	377 099 680 €	262 647 839 €	17%	12%	0%	12%
Croatia	9 142 121 525 €	323 169 516 €	222 534 033 €	-53%	4%	8%	3%
Cyprus	7 398 077 498 €	279 943 425 €	52 137 479 €	2%	NA	-12%	NA
Czech Republic	69 602 886 751 €	547 388 294 €	504 229 982 €	-4%	NA	6%	NA
Denmark	92 620 223 450 €	1 932 211 597 €	481 389 060 €	2%	11%	5%	3%
Estonia	8 922 105 298 €	151 571 987 €	56 708 551 €	15%	24%	11%	7%
Finland	55 041 643 000 €	925 500 000 €	421 068 000 €	4%	7%	1%	8%
France	478 600 000 000 €	8 887 412 229 €	4 413 263 514 €	10%	6%	3%	3%
Georgia	3 685 737 294 €	110 004 545 €	36 229 655 €	4%	38%	13%	1%
Germany	975 095 000 000 €	16 190 630 224 €	10 015 509 328 €	0%	NA	11%	NA
Greece	86 594 000 000 €	619 318 531 €	445 529 139 €	-29%	6%	-33%	-6%
Hungary	53 529 408 856 €	1 341 550 100 €	429 598 903 €	3%	-11%	1%	6%
Iceland	729 794 117 €	218 504 202 €	37 546 218 €	NA	NA	NA	NA
Ireland	71 352 000 000 €	2 418 240 000 €	234 448 000 €	4%	-4%	-1%	5%
Italy	592 441 373 400 €	8 039 945 941 €	4 544 426 956 €	13%	NA	-2%	NA
Latvia	5 636 414 986 €	194 261 318 €	78 437 198 €	7%	13%	6%	5%
Lithuania	8 686 661 000 €	214 590 000 €	114 700 187 €	5%	16%	11%	18%
Luxembourg	16 739 000 000 €	149 652 235 €	92 895 711 €	NA	-2%	NA	18%
Malta	3 770 239 000 €	107 856 200 €	16 170 800 €	-6%	13%	10%	7%
Republic of Moldova	2 197 152 831 €	58 470 667 €	29 583 529 €	5%	72%	-8%	3%
Monaco	1 215 332 769 €	11 618 000 €	6 151 500 €	21%	NA	12%	NA
Montenegro	1 826 000 500 €	49 223 592 €	NA	30%	NA	-3%	NA
Netherlands	305 249 000 000 €	11 700 989 000 €	2 036 574 000 €	1%	-6%	0%	-1%
Norway	174 969 241 134 €	1 769 005 666 €	423 966 712 €	26%	-24%	0%	5%
Poland	81 638 713 800 €	2 639 249 000 €	1 991 565 000 €	-14%	2%	23%	7%
Portugal	83 335 700 000 €	1 624 770 130 €	583 253 297 €	5%	-15%	-2%	9%
Romania	53 294 642 267 €	908 247 781 €	597 649 028 €	8%	62%	2%	-24%
Russian Federation	366 744 167 988 €	22 873 398 993 €	3 552 350 764 €	-4%	1%	-27%	-24%
Serbia	15 385 796 652 €	302 980 053 €	NA	8%	NA	-1%	NA
Slovakia	15 688 700 000 €	443 323 127 €	269 697 660 €	0%	NA	1%	NA
Slovenia	18 085 190 186 €	250 570 939 €	185 314 973 €	7%	1%	-3%	0%
Spain	616 052 675 688 €	5 302 201 029 €	3 678 267 652 €	24%	-4%	3%	3%
Sweden	225 251 229 000 €	4 591 423 491 €	1 185 292 414 €	3%	NA	5%	NA
Switzerland	65 848 898 150 €	3 127 710 733 €	1 808 909 868 €	8%	13%	17%	0%
The FYROMacedonia	1 576 325 203 €	67 737 123 €	41 935 302 €	5%	6%	9%	12%
Turkey	243 823 359 569 €	2 998 208 308 €	1 453 183 110 €	0%	17%	5%	-11%
Ukraine	25 990 113 000 €	3 683 477 942 €	343 727 529 €	-50%	NA	28%	-15%
UK-England and Wales	598 840 732 000 €	9 999 388 326 €	4 592 854 000 €	NA	-10%	NA	-13%
UK-Scotland	82 965 163 696 €	NA	427 343 305 €	NA	-6%	NA	0.0 €
Israel	118 364 162 421 €	2 148 001 632 €	714 015 731 €	NA	NA	NA	NA
Morocco	24 856 000 000 €	582 049 152 €	559 746 097 €	NA	NA	NA	NA
<b>Average</b>	129 720 401 918 €	2 710 264 599 €	1 108 697 949 €	6%	9%	3%	1%
<b>Median</b>	39 642 377 634 €	583 353 413 €	421 068 000 €	5%	6%	3%	3%
<b>Minimum</b>	729 794 117 €	8 741 924 €	6 151 500 €	-53%	-24%	-59%	-51%
<b>Maximum</b>	975 095 000 000 €	22 873 398 993 €	10 015 509 328 €	95%	72%	67%	18%

\* For Bosnia and Herzegovina, Germany, Russian Federation and Spain the regional or federal entity level was included as well.

\*\* The budget of judicial systems is the sum of the budget allocated to courts, legal aid and public prosecution services.

**Table 2.4 Total public expenditure, approved budget of the whole justice system and approved budget of the judicial system in 2016, in local currency (Q1, Q2, Q6, Q7, Q12, Q13)**

States / Entities	Total of annual public expenditure at State level and at regional or federal entity level *	Approved budget of the whole justice system	Approved budget of the judicial system**	Variation 2012 - 2014		Variation 2014 - 2016	
				Total of annual public expenditure at State level and at regional or federal entity level *	Approved budget of the judicial system**	Total of annual public expenditure at state level and at regional or federal entity level *	Approved budget of the judicial system**
Albania	426 229 155 000	NA	4 033 406 610 €	17%	5%	-3%	8%
Armenia	1 305 034 380 000	27 163 550 747 €	12 854 977 403 €	34%	NA	6%	NA
Azerbaijan	16 263 999 999	430 604 816 €	140 508 198 €	14%	36%	-19%	-5%
Bosnia and Herzegovina	22 395 300 000	400 083 443 €	NA	95%	NA	3%	NA
Bulgaria	32 491 361 107	737 542 867 €	513 694 523 €	17%	12%	0%	12%
Croatia	69 094 234 640	2 442 447 336 €	1 681 865 489 €	-53%	6%	6%	2%
Czech Republic	1 880 670 000 012	14 790 431 704 €	13 624 294 114 €	6%	NA	4%	NA
Denmark	688 622 099 328	14 365 800 003 €	3 579 079 522 €	2%	11%	5%	3%
Georgia	10 297 949 999	307 352 699 €	101 225 656 €	9%	44%	38%	24%
Hungary	16 561 999 100 046	415 075 600 940 €	132 917 900 588 €	11%	-4%	-1%	4%
Iceland	86 845 499 923	26 002 000 038 €	4 467 999 942 €	NA	NA	NA	NA
Republic of Moldova	45 897 424 063	1 221 422 998 €	617 985 129 €	24%	104%	1%	14%
Norway	1 584 224 000 000	16 017 108 002 €	3 838 721 800 €	56%	-5%	0%	5%
Poland	360 843 114 996	11 665 480 580 €	8 802 717 300 €	-11%	7%	27%	11%
Romania	242 016 299 999	4 124 443 998 €	2 713 984 001 €	10%	65%	4%	-23%
Russian Federation	27 161 403 150 943	1 694 024 515 481 €	263 090 294 698 €	21%	26%	8%	12%
Serbia	1 899 719 699 955	37 409 643 998 €	NA	16%	NA	1%	NA
Sweden	2 153 627 000 469	43 898 599 997 €	11 332 580 770 €	13%	NA	6%	NA
Switzerland	70 596 603 707	3 353 218 677 €	1 939 332 269 €	7%	13%	5%	-11%
The FYROMacedonia	96 943 999 985	4 165 833 065 €	2 579 021 073 €	5%	6%	9%	12%
Turkey	904 584 664 001	11 123 352 823 €	5 391 309 338 €	21%	41%	37%	17%
Ukraine	738 639 011 460	104 684 443 112 €	9 768 736 374 €	-9%	NA	92%	27%
UK-England and Wales	513 985 000 276	8 582 475 000 €	3 942 046 588 €	NA	-14%	NA	-4%
UK-Scotland	71 209 000 000	NA	366 788 759 €	NA	-11%	NA	0,1 €
Israel	478 640 999 998	8 686 088 999	2 887 336 813	0 €	NA	9%	NA
Morocco	263 821 584 000	6 177 869 699	5 941 145 074	NA	NA	NA	NA
<b>Average</b>	<b>2 372 651 335 413 €</b>	<b>110 999 361 469 €</b>	<b>22 195 385 007 €</b>	<b>14%</b>	<b>20%</b>	<b>11%</b>	<b>7%</b>
<b>Median</b>	<b>393 536 134 998 €</b>	<b>11 394 416 701 €</b>	<b>3 890 384 194 €</b>	<b>12%</b>	<b>11%</b>	<b>5%</b>	<b>9%</b>
<b>Minimum</b>	<b>10 297 949 999 €</b>	<b>307 352 699 €</b>	<b>101 225 656 €</b>	<b>-53%</b>	<b>-14%</b>	<b>-19%</b>	<b>-23%</b>
<b>Maximum</b>	<b>27 161 403 150 943 €</b>	<b>1 694 024 515 481 €</b>	<b>263 090 294 698 €</b>	<b>95%</b>	<b>104%</b>	<b>92%</b>	<b>27%</b>

\* For Bosnia and Herzegovina and Russian Federation the regional or federal entity level was included as well.

\*\* The budget of judicial systems is the sum of the budget allocated to courts, legal aid and public prosecution services.

In most of the States and entities, the variation of the budget of the judicial system follows the variation of the budget of the whole justice system, which, in turn, is related to the variation of the total public expenditure.

Some States or entities deviate from this general trend:

- from 2014 to 2016, in **Albania, Ireland and Portugal**, despite the compression of public expenditure, the budget for the judicial system was reinforced, while in **Azerbaijan and Greece** the decrease in the judicial budget was lower than the drop in public expenditure; all these countries show an effort in relation to the judicial system;
- an effort is also noticed in **Austria, Bulgaria, Finland, Hungary, Lithuania, Norway, Russian Federation, Republic of Moldova** and “**the former Yugoslav Republic of Macedonia**”; in these countries, the increase in the budget allocated to the judicial system was higher than the increase in public expenditure;
- at the opposite end, in **Belgium, Netherlands, Romania**, a decrease can be noticed in the budget of the judicial systems while the public expenditures increase; in **Denmark, Estonia, Poland, Turkey, Switzerland, Ukraine**, the increase in the judicial budget was lower than the increase in public expenditure.

## 2.1 Budget of the whole justice system

For each State and entity, the “whole justice system” has a different definition and scope. Therefore these data are only given as a guide to help better understand the administrative and budgetary organisation of each State or entity, but it is not possible to compare the budget allocated to the whole justice system in different States since each State includes different elements in the whole budget.

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

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

Table 2.5 Approved public budget of the judicial system compared with the approved budget of the whole justice system in 2016 (Q6, Q7, Q12, Q13, Q15-1, Q15-2 and Q15-3)

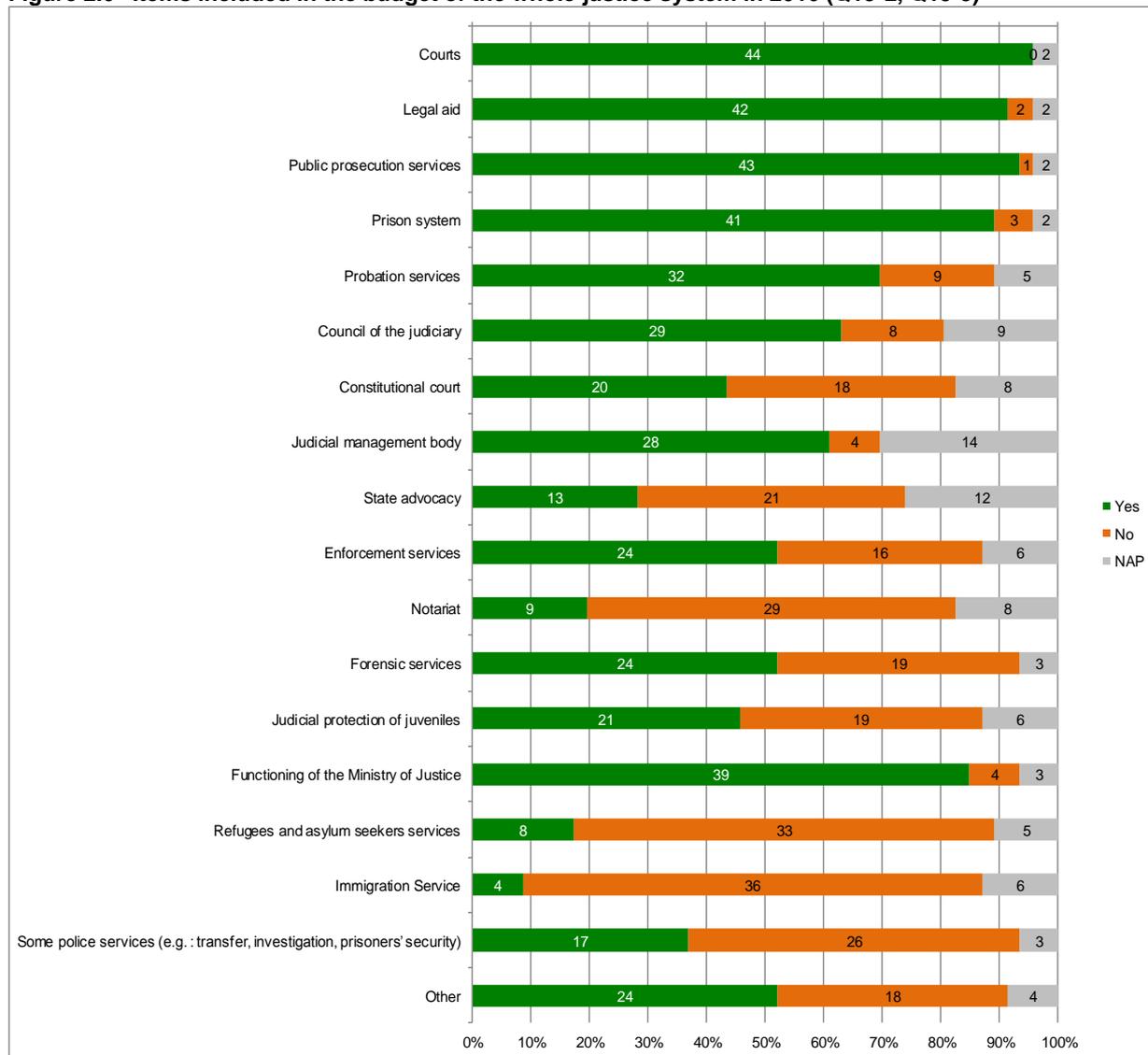
States / Entities	Part of the budget of the judicial system in the budget of the whole justice system	The remaining elements of the budget of the whole justice system	Number of elements included in the budget of the whole justice system
Albania	NA	NA	NA
Andorra	82,9%	17,1%	6
Armenia	47,3%	52,7%	3
Austria	64,1%	35,9%	8
Azerbaijan	32,6%	67,4%	10
Belgium	50,1%	49,9%	8
Bosnia and Herzegovina	57,7%	42,3%	10
Bulgaria	69,6%	30,4%	12
Croatia	68,9%	31,1%	9
Cyprus	18,6%	81,4%	13
Czech Republic	92,1%	7,9%	7
Denmark	24,9%	75,1%	12
Estonia	37,4%	62,6%	12
Finland	45,5%	54,5%	10
France	49,7%	50,3%	10
Georgia	32,9%	67,1%	13
Germany	61,9%	38,1%	9
Greece	71,9%	28,1%	11
Hungary	32,0%	68,0%	11
Iceland	17,2%	82,8%	13
Ireland	9,7%	90,3%	13
Italy	56,5%	43,5%	9
Latvia	40,4%	59,6%	10
Lithuania	53,5%	46,5%	7
Luxembourg	62,1%	37,9%	13
Malta	15,0%	85,0%	16
Republic of Moldova	50,6%	49,4%	11
Monaco	52,9%	47,1%	13
Montenegro	NA	NA	9
Netherlands	17,4%	82,6%	15
Norway	24,0%	76,0%	10
Poland	75,5%	24,5%	10
Portugal	35,9%	64,1%	11
Romania	65,8%	34,2%	9
Russian Federation	15,5%	84,5%	13
Serbia	NA	NA	10
Slovakia	60,8%	39,2%	9
Slovenia	74,0%	26,0%	9
Spain	69,4%	30,6%	14
Sweden	25,8%	74,2%	9
Switzerland	57,8%	42,2%	6
The FYROMacedonia	61,9%	38,1%	10
Turkey	48,5%	51,5%	13
Ukraine	9,3%	90,7%	15
UK-England and Wales	45,9%	54,1%	11
UK-Scotland	NA	NA	NA
Israel	31,3%	68,7%	13
Morocco	71,7%	28,3%	6
<b>Average</b>	47,3%	53%	11
<b>Median</b>	49,9%	50%	10
<b>Minimum</b>	9,3%	8%	3
<b>Maximum</b>	92,1%	91%	16

The quota of the budget of the judicial system included in the whole justice system is on average 47,3 %, varying from a minimum of 9,3 % in **Ukraine** to a maximum of 92,1 % in **Czech Republic**.

In **Norway**, the budget of the whole justice system includes part of the budget of the police.

### 2.1.1.2 Other items constituting the annual budget of the whole justice system

Figure 2.6 Items included in the budget of the whole justice system in 2016 (Q15-2, Q15-3)



Data about **Albania**, **Serbia** and **UK-Scotland** are not available. Every State or entity includes the courts in the whole justice system budget, **UK-England and Wales** is the only entity not including the public prosecution services, while **Andorra** does not include legal aid.

As for the items not included in the judicial system budget but only in the overall justice budget, the prison system and the functioning of the Ministry of Justice are included by most of the States and entities (except **Czech Republic** which does not include the prison system, **Spain** and **Sweden** which do not include the Ministry of Justice and **Albania** and **Andorra** which do not include either).

Many States and entities (32) are also likely to consider the budget of the probation service as part of the overall budget.

The budget of the notariat is on the contrary rarely included in the justice budget. It is included in **Azerbaijan**, **Denmark**, **Georgia**, **Greece**, **Iceland**, **Luxembourg**, **Malta**, **Spain** and **Ukraine**.

Refugees and asylum seekers services are included in the overall budget of **Hungary, Ireland, Malta, Netherlands, Norway, Russian Federation, Ukraine, UK-England and Wales** and **Israel** while in 2016 they were excluded, together with the immigration services, from the budget of **Denmark**. Immigration services are included only in the budget of **Ireland, Norway, Russian Federation** and **Ukraine**.

In 17 States or entities, some of the police services are also included in the justice budget. Indeed, in some States, police services cannot only lead the investigation but also have the power to supervise it and sometimes bring charges before the courts. Thus, these specialised services perform some of the tasks assigned to the public prosecutor services in other States.

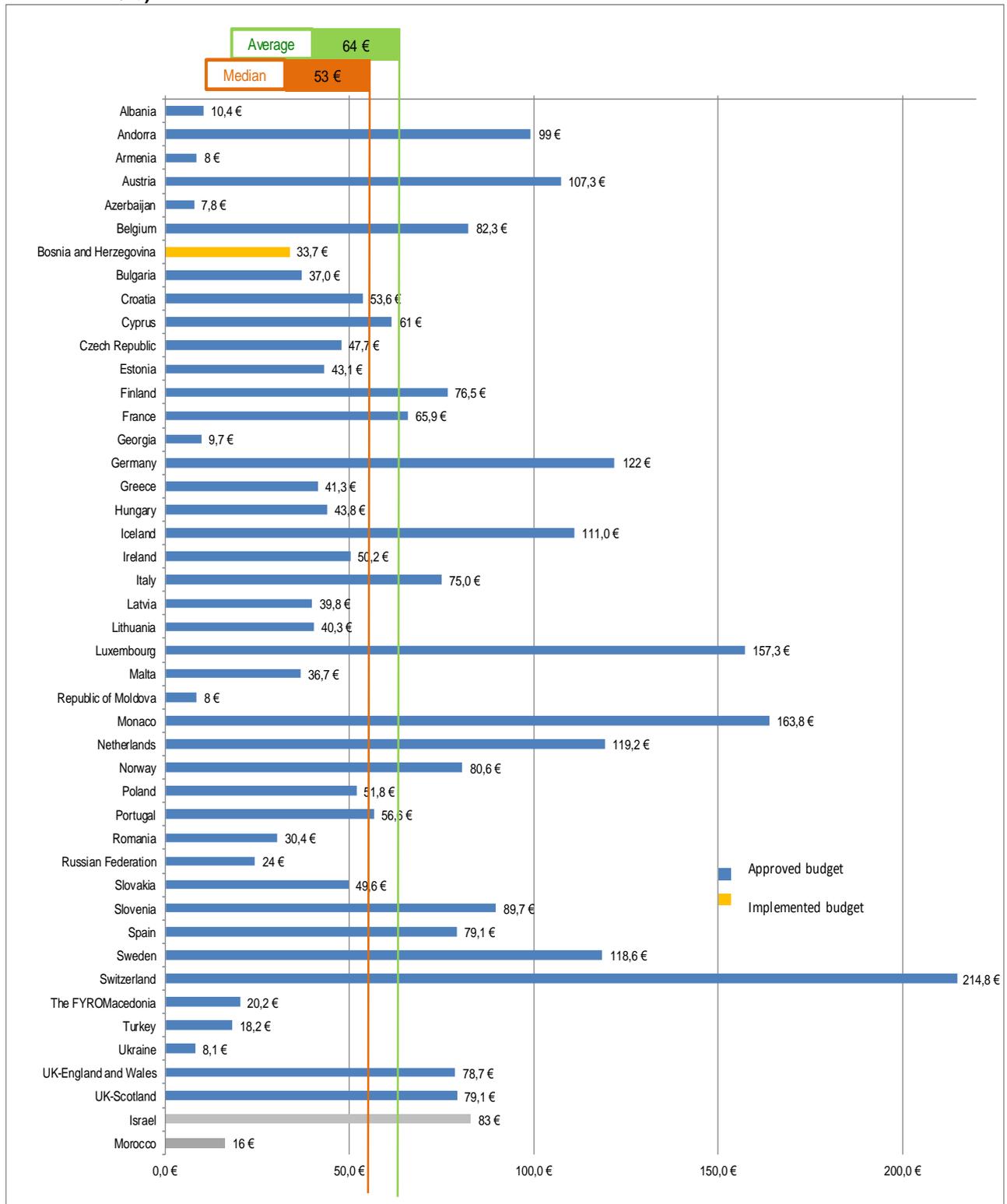
In the end, according to the competences conferred upon the justice system in the States or entities, the overall justice budget may refer to the aggregation of budgets allocated to a large number of items (15 in **Malta**) or a much more restricted number (5 in **Andorra** and **Switzerland**). It is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

### **2.2.1 Budget allocated to the judicial system in 2016**

It is recalled that since the beginning of the work of the CEPEJ, all budgetary comparisons have been based on the same perimeter of the judicial systems, which covers the budgets allocated to the courts, the prosecution services and legal aid. The analysis of the budget of the judicial system covers 48 States or entities. **Montenegro** and **Serbia** were unable to provide the relevant data for this exercise and are therefore excluded from comparisons.

### 2.2.1.1 Budget of the judicial system per inhabitant in 2016

Figure 2.7 Public budgets allocated to the judicial systems in 2016 per inhabitant, in € (Q1, Q6, Q7, Q12 and Q13)



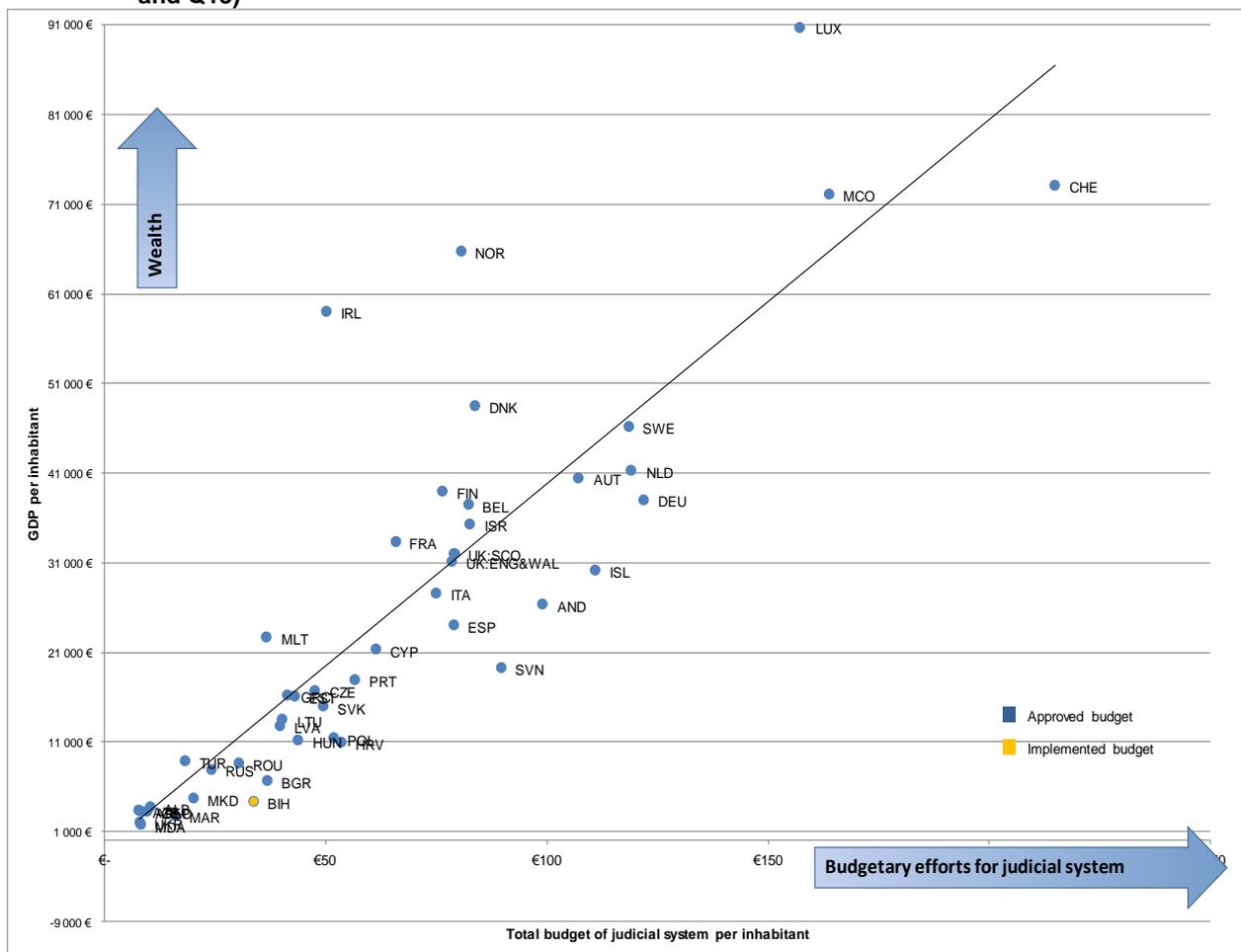
The European average of the budget allocated to the judicial system per inhabitant in 2016 for the responding States or entities is 64 € and the median - less sensitive to extreme values - is 53 €. It should be remembered that, of course, the amount of the sums allocated is to be put into perspective with regard to the level of wealth of each State, measured by its per capita GDP and that the high average is the result of the outlier values for several wealthy states that influence it to a considerable extent.

Four groups of States/entities can be specified:

- 10 States allocate less than 25 € per inhabitant to their judicial system: **Azerbaijan** (7,80 €), the **Republic of Moldova** (8 €), **Armenia** (8 €), **Ukraine** (8,10 €), **Georgia** (9,70 €), **Albania** (10,40 €), **Turkey** (18,20 €), **“the former Yugoslav Republic of Macedonia”** (20,20 €), **Russian Federation** (24 €); outside the member States, **Morocco** has a comparable budget per inhabitant (16 €);
- 15 States allocate a budget per inhabitant between 25 € and 60 €: **Romania** (30,40 €), **Bosnia and Herzegovina** (33,70 €), **Malta** (36,70 €), **Bulgaria** (37 €), **Latvia** (39,80 €), **Lithuania** (40,30 €), **Greece** (41,30 €), **Estonia** (43,10 €), **Hungary** (43,80 €), **Czech Republic** (47,70 €), **Slovakia** (49,60 €), **Ireland** (50,20 €), **Poland** (51,80 €), **Croatia** (53,60 €) and **Portugal** (56,60 €);
- 13 States or entities have a budget per inhabitant allocated to the judicial system between 60 € and 100 €: **Cyprus** (61 €), **France** (65,90 €), **Italy** (75 €), **Finland** (76,50 €), **UK-England and Wales** (78,70 €), **Spain** (79,10 €), **UK-Scotland** (79,10 €), **Norway** (80,60 €), **Belgium** (82,30 €), **Denmark** (84 €), **Slovenia** (89,70 €) and **Andorra** (99 €), to which **Israel** (83 €) can be added as a comparable non-member State;
- the fourth group includes 8 States: **Austria** (107,30 €), **Iceland** (111 €), **Sweden** (118,60 €), **Netherlands** (119,20 €), **Germany** (122 €), **Luxembourg** (157,30 €), **Monaco** (163,80 €) and **Switzerland** (214,80 €), each allocating over 100 € per inhabitant to their judicial system.

### 2.2.1.2 Public budget of the judicial system per inhabitant compared to the wealth of States or entities in 2016

Figure 2.8 Budgets allocated to the judicial systems per inhabitant compared with the GDP in 2016 (Q1, Q6, Q12 and Q13)



Considering the budget allocated per inhabitant in absolute values is not sufficient for representing the effective budgetary effort for the judicial system performed by the States or entities, which can be very

different from the perspective of their level of wealth. The same budget allocated to the judicial system may correspond to a considerably different budgetary effort, depending on the level of the available wealth.

The figure above puts into perspective the budget allocated per inhabitant to the judicial system in absolute values by comparing it to a measure of the wealth of the States and entities, the per capita GDP, thereby giving a more meaningful representation of the effective budget effort for the judicial system performed by each State and entity. It makes it possible to measure the **budgetary effort** devoted by a country to the access to justice and judicial activity.

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

For illustrative purposes, **Spain** may be taken as a benchmark. It can be noticed that the budgets allocated to the judicial system in Spain (below the trend line) and **Norway** (above the trend line) are 79,05 € and 80,63 € respectively. The figure confirms that, despite a budget per inhabitant almost identical to that of Norway, Spain achieves a much greater budgetary effort insofar as its level of wealth is almost three times lower than that of Norway.

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

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

States or entities ideally situated along the trend line are those presenting perfectly the same ratio per capita GDP/budget per inhabitant allocated to the judicial system.

Four clusters of States may be identified along the trend line or in its immediate proximity:

- the first group includes 13 States whose judicial system budget per inhabitant and per capita GDP are up to 40 € and 10 000 € respectively: **Republic of Moldova** (8 € / 1 722 €), **Ukraine** (8,10 € / 2 001 €), **Morocco** (16 € / 2 768 €), **Armenia** (8 € / 3 192 €), **Georgia** (9,70 € / 3 274 €), **Azerbaijan** (7,80 € / 3 338 €), **Albania** (10,40 € / 3 728 €), **Bosnia and Herzegovina** (33,70 € / 4 354 €), **“the former Yugoslav Republic of Macedonia”** (20,20 € / 4 691 €), **Bulgaria** (37 € / 6 645 €), **Russian Federation** (24 € / 7 921 €), **Romania** (30,40 € / 8 600 €) and **Turkey** (18,20 € / 8 869 €);
- the second group gathers 8 States whose judicial system budget per inhabitant is included between 40 € and 50 € and per capita GDP is included in the range between 10 000 € and 20 000 €: **Latvia** (39,80 € / 12 762 €), **Lithuania** (40,30 € / 13 468 €), **Greece** (41,30 € / 16 154 €), **Estonia** (43,10 € / 16 034 €), **Hungary** (43,85 € / 11 200 €), **Czech Republic** (47,70 € / 16 700 €) and **Slovakia** (49,60 € / 14 910 €). **Portugal**, despite falling outside the cluster because of the value of budget per inhabitant (56,60 €), is situated in a comparable position;
- 6 States or entities, whose budget per inhabitant is close to the reference value of 80 € and per capita GDP is included in the range between 30 000 € and 40 000 €, constitute the third group: **UK-England and Wales** (78,67 € / 31 088 €), **UK-Scotland** (79 € / 32 051€) and **Belgium** (79,30 € / 37 407 €). **Finland** (76,51 € / 38 959 €) and **Italy** (75,00 € / 27 587 €) are in comparable position. Outside the group of member States, **Israel** presents parameters fully compatible with the range of the cluster (82,74 € / 35 323 €);
- **Monaco**, despite its outlier position due to its particularly high per capita GDP and judicial system budget per inhabitant, is situated in immediate proximity to the trend line (163,82 € / 72 091 €); the same in respect of **Switzerland**, where the judicial system budget per inhabitant is easily the most significant in Europe (214,85 €), with a per capita GDP of 73 006 €.

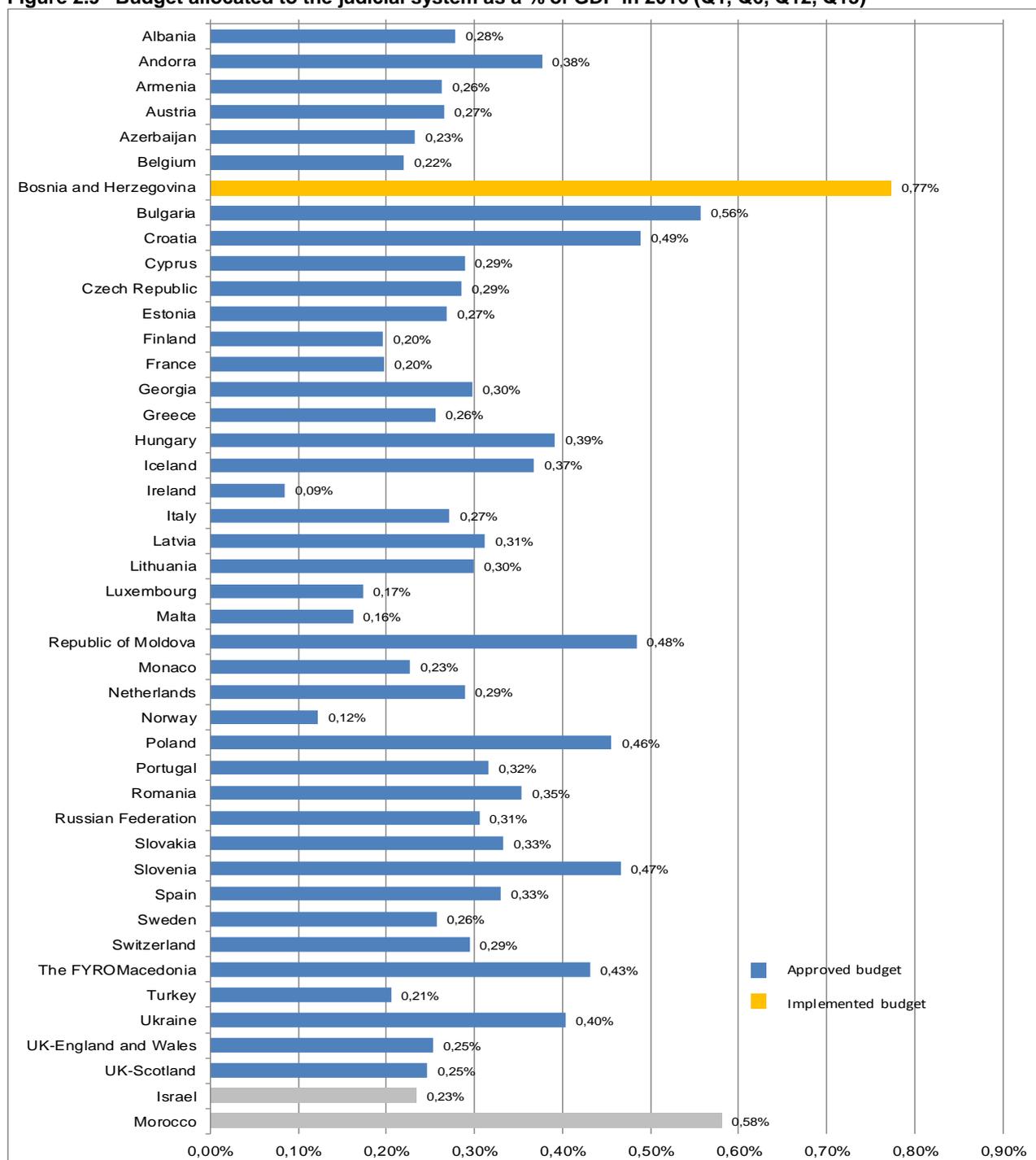
Among the States and entities which are not situated in proximity to the trend line, **Slovenia, Andorra** and **Iceland** seem to have made the most significant budgetary efforts given their wealth (bottom right of the trend line). Also **Bosnia and Herzegovina, Bulgaria, Croatia** and **Poland** have made significant investments with budgetary efforts comparable to the effort performed by the leading group of States.

Among the States and entities situated above the trend line, **Denmark, Ireland, Norway** and **Luxembourg** are in the most advanced position. The data might give the impression that these States do not make a significant budgetary effort from the perspective of their level of wealth. Nevertheless, it should be taken into account that, at least in respect of **Norway** and **Luxembourg**, budgets allocated to the judicial system appear remarkable in their volume. That of **Norway** (80,63 €) is close to the budgets of **Belgium, Finland** and **UK-Scotland** and **UK-England and Wales**. That of **Luxembourg** (157,26 €) is still among the highest in Europe. Consequently, there is no basis for assuming their insufficiency or inadequacy.

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

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

**Figure 2.9 Budget allocated to the judicial system as a % of GDP in 2016 (Q1, Q6, Q12, Q13)**



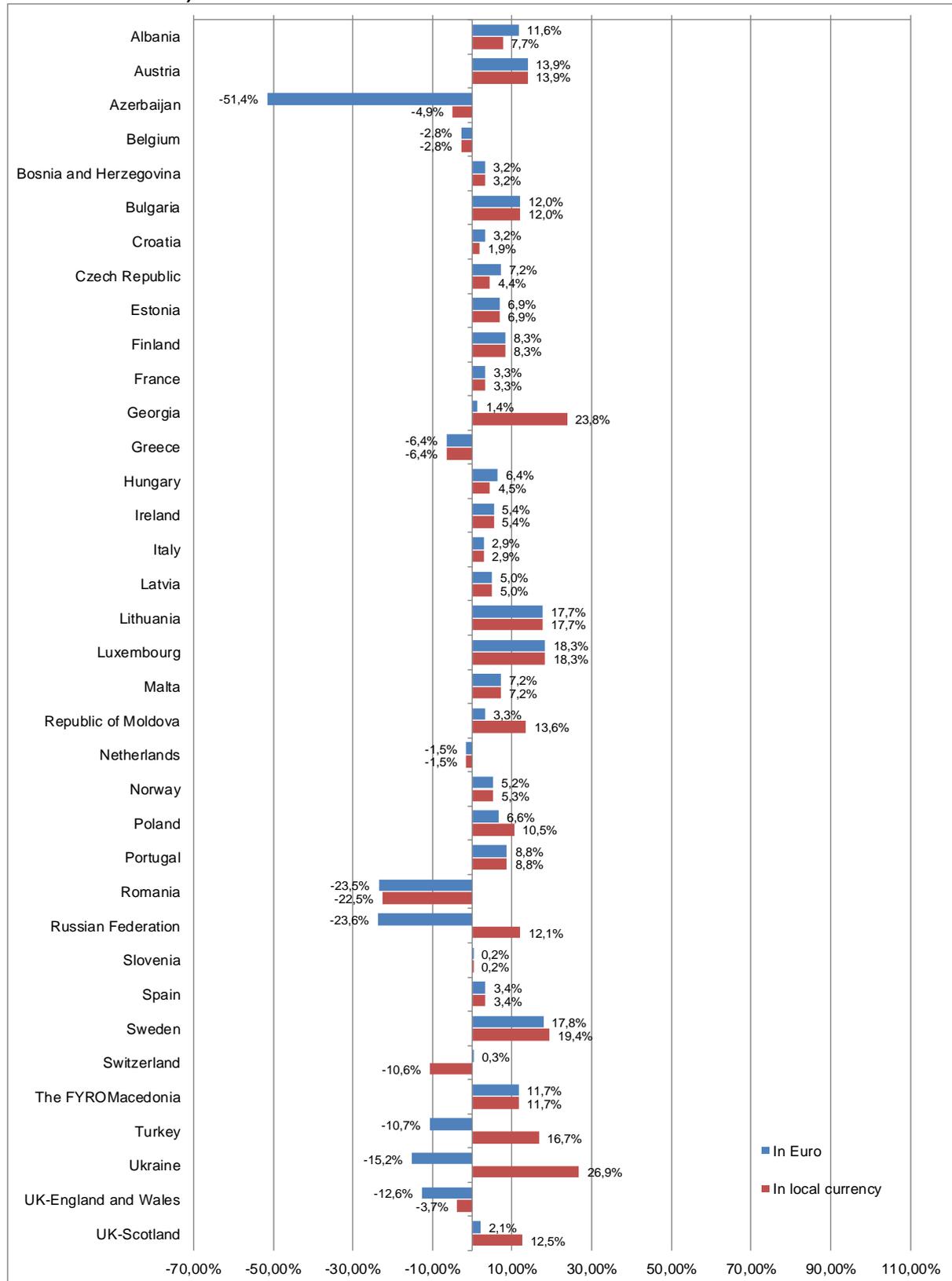
The effective budgetary effort for the judicial system achieved by the States and entities may also be represented as a percentage of the budget allocated to the judicial system within the total GDP of the States or entities in 2016.

The figure above confirms that the most significant budget effort is made by **Bosnia and Herzegovina** (0,77 %), **Bulgaria** (0,56 %), **Croatia** (0,49 %), **Republic of Moldova** (0,48 %), **Slovenia** (0,47 %) and **Poland** (0,46 %). Also **Morocco** shows a comparable budgetary effort (0,58 %).

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

### 2.2.2.1 Evolution of the budget allocated to the judicial system between 2014 and 2016

Figure 2.10 Variation in the budgets of judicial systems between 2014 and 2016, in € and local currency (Q6, Q12 and Q13)



The variation in the budget allocated to the judicial system between 2014 and 2016, expressed in Euros, can be measured for 37 States or entities.

**Cyprus** has changed its budget calculation mode for the latest evaluation exercise. Consequently, budget variations are to be considered carefully. Furthermore, it should be recalled that the budgets allocated by the States and entities to the judicial system are not composed by perfectly homogenous items, insofar as the budget calculation model used may differ from one State to the other. For example, in **Estonia**, the investments in court building are financed by the Public Real Estate Company and do not appear in the budget allocated to the courts, but investment costs are included in the rental costs of courthouses; thus, rental costs are influenced by investment costs and are therefore included in the overall budget of the court system. In **Italy**, the budget allocated to administrative courts is included in a budget different from that allocated to the judicial system. The same applies in respect of the budget for training, which is included within the separated budgets of the School for the Judiciary and the National School of Administration. The **Republic of Moldova** includes in the budget for the judicial system also the budget allocated to the military courts, while it is the opposite case in **Israel**. Also, **Sweden** employs for the judicial system budget a nomenclature which partially differs from the CEPEJ Guidelines. Therefore any comparison should be made with caution. By contrast, **Bosnia and Herzegovina** has implemented a specific methodology of presentation of data in order to ensure a more accurate compliance with the CEPEJ Guidelines.

The disparities among States and entities are very strong. 27 States or entities out of 37 increased their judicial system budget between 2014 and 2016 (expressed in €): **Albania** (11,6 %), **Austria** (13,9 %), **Bosnia and Herzegovina** (3,2 %), **Bulgaria** (12 %), **Croatia** (3,2 %), **Czech Republic** (7,2 %), **Denmark** (3,1 %), **Estonia** (6,9 %), **Finland** (8,3 %), **France** (3,3 %), **Georgia** (1,4 %), **Hungary** (6,4 %), **Ireland** (5,4 %), **Italy** (2,9 %), **Latvia** (5 %), **Lithuania** (17,7 %), **Luxembourg** (18,3 %), **Malta** (7,2 %), **Republic of Moldova** (3,3 %), **Norway** (5,2 %), **Poland** (6,6 %), **Portugal** (8,8 %), **Spain** (3,4 %), **Sweden** (17,8 %), **“the former Yugoslav Republic of Macedonia”** (11,7 %) and **UK-Scotland** (2,1 %). The **Russian Federation** has increased its budgetary effort (+ 12.1 %) when the devaluation of its currency against the Euro is not taken into account.

By contrast, 8 out of 37 States or entities reduced their budgets (expressed in €): **Belgium** (- 2,8 %), **Greece** (- 6,4 %), **Netherlands** (- 1,5 %), **Romania** (- 23,5 %) and **UK-England and Wales** (- 12,6 %). If the appreciation of its currency against the Euro is not taken into account, **Switzerland** has reduced its budgetary effort by 10,6 %. The case of **Azerbaijan** (- 51,4 %) is very specific as the decrease in the exchange rate of the national currency has been actually significant; therefore the decrease noted in the budgetary effort between 2014 and 2016 should be relativised.

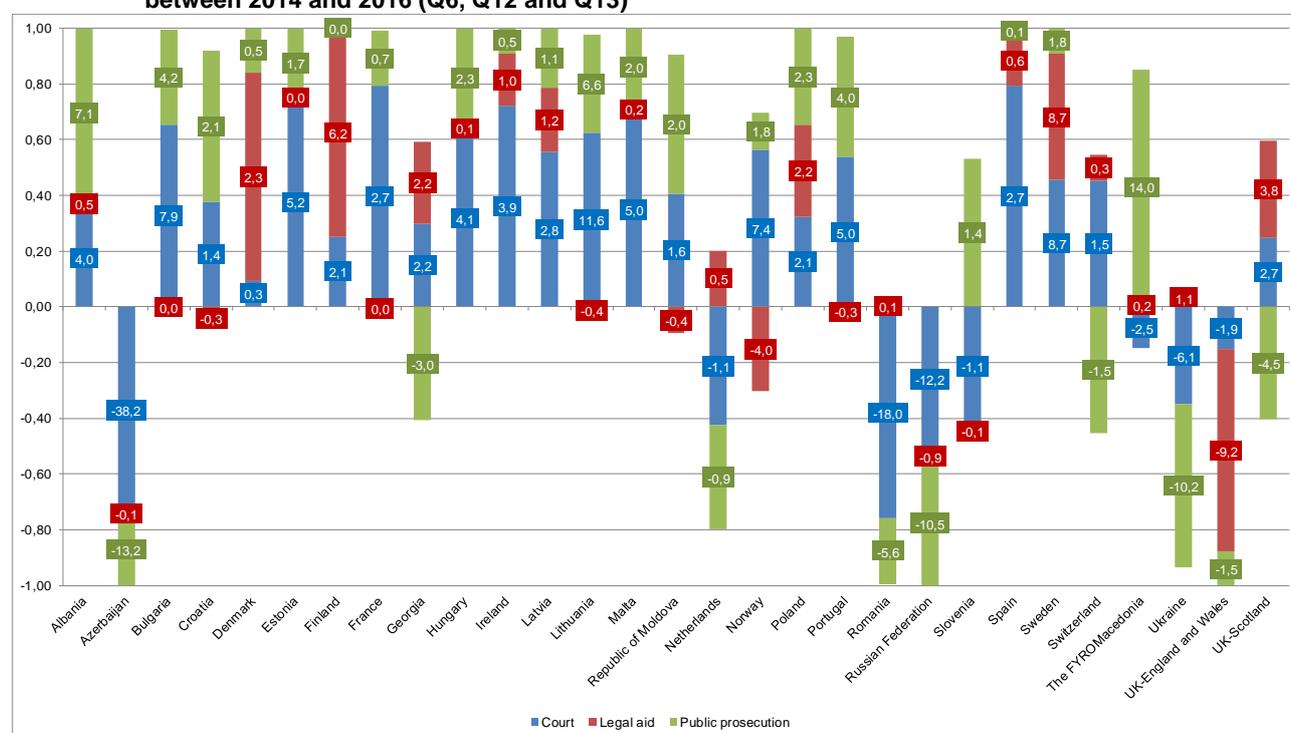
For States and entities outside the Eurozone, these results must be tempered because of the variation in the exchange rates between the national currencies and the Euro over the same period. Indeed, major variations in exchange rates can have a significant impact on the budgetary data expressed in Euros. Thus, the increase in the budget allocated to the judicial system is less significant for States or entities whose currencies have appreciated against the Euro. This is particularly the case for **Albania**, **Croatia**, **Czech Republic**, **Hungary** and **“the former Yugoslav Republic of Macedonia”**. However, the growing budgetary efforts in favour of the judicial system are even more significant than what appears in the table above, considering the negative variation in exchange rates between 2014 and 2016 in **Georgia**, **Republic of Moldova**, **Poland**, **Sweden** and **UK-Scotland**.

In **Romania** and **UK-England and Wales**, the decrease in the judicial system budget is tempered by the decrease in the exchange rate between the national currency and the Euro. The distortive effect triggered by the currency devaluation is even more amplified in **Turkey** and **Ukraine**, where the depreciation of the exchange rate over the period gives the illusion of a decrease in the budget allocated to the judicial system, while it considerably increased in local currency.

Some budget variations observed here must also be relativised in terms of inflation rates in the States over the period 2014-2016. For example, the high inflation rates experienced by **Azerbaijan**, the **Republic of Moldova** and **Ukraine**, between 2014 and 2016 partially compensate for the decrease in the exchange rate over the same period.

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

**Figure 2.11 Contribution of the components of the judicial system to the variation of the judicial system budget between 2014 and 2016 (Q6, Q12 and Q13)**



The evolution of the budget allocated to the judicial system can be decomposed into the sum of the contributions of its various components: the court budget, the legal aid budget and the public prosecution service budget. The contribution of a component to the evolution of the budget of the judicial system between 2014 and 2016 is equal to the product (multiplication) of the variation rate of this component between 2014 and 2016 and its weight in the budget of the judicial system in 2014. It should, therefore, be kept in mind that a component can have a significant impact on the evolution of the budget of the judicial system 1) because its weight in the budget of the judicial system is significant and/or 2) because its variations are significant.

All these contributions have been measured for 29 States or entities: **Albania, Azerbaijan, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Georgia, Hungary, Ireland, Latvia, Lithuania, Malta, Republic of Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”, Ukraine, UK-England and Wales and UK-Scotland.** With regard to **Bosnia and Herzegovina, Czech Republic and Italy,** the legal aid budget is not available, therefore any comparative analysis is to be considered with caution. By contrast, in **Austria, Belgium, Greece, Luxembourg and Turkey,** only the legal aid budget is available and only a very partial analysis is possible.

In 10 out of 29 States or entities, the three components of budget allocated to the judicial system between 2014 and 2016 (courts, prosecution and legal aid) increased: **Albania, Denmark, France, Hungary, Ireland, Latvia, Malta, Poland, Spain and Sweden.**

In **Bulgaria, Estonia and Finland,** only two of the three components increased: in **Finland,** the public prosecution budget did not vary and the same applies in respect of the legal aid budgets in **Bulgaria and Estonia.**

In 10 out of 29 States or entities, the budget allocated to the judicial system increased overall between 2014 and 2016, even though at least one of the three components decreased: **Croatia, Georgia, Lithuania, Norway, Republic of Moldova, Portugal, Slovenia, Switzerland, “the former Yugoslav Republic of Macedonia” and UK-Scotland.** **Slovenia** is the only state where the budget for the judicial system increased overall, despite a decrease in two out of three components (- 1,1 % of the budget for the courts and - 0,1 % of the budget for the legal aid), given the compensatory effect performed by the increase noted in the public prosecution service budget (+ 1,4 %).

The increase in the budget of the judicial system is mainly due to an increase in the budget allocated to the courts in 13 States: **Bosnia and Herzegovina, Bulgaria, Czech Republic, Estonia, France, Hungary, Ireland, Lithuania, Malta, Republic of Moldova, Norway, Spain and Switzerland.** It should be recalled that data concerning legal aid budget is not taken into account by the table above with regard to **Bosnia and Herzegovina** and the **Czech Republic.** The increase in the judicial system budget is divided between a significant increase in the budget allocated to courts and an increase in the budget allocated to the prosecution and/or to the legal aid service in **Croatia, Georgia, Latvia, Republic of Moldova, Portugal, Sweden** and **UK-Scotland.** In **Sweden** and **UK-Scotland,** a significant budgetary effort is focused on legal aid.

In **Georgia, Switzerland** and **UK-Scotland,** the budgetary restrictions affecting the budgets allocated to prosecution are compensated by an increase in the court budget and the legal aid budget. In **Norway,** the budgetary restrictions affecting legal aid budget are compensated by an increase in the budget allocated both to the courts and the public prosecution services. In **Slovenia,** an increase in the public prosecution services budget compensates a decrease in the court budget.

By contrast, in the **Netherland** and **Ukraine,** the additional financial efforts regarding legal aid do not compensate for the noticeable decrease in the budgets allocated both to the courts and the public prosecution services.

4 out of 29 States and entities have reduced the budgets of the three components of the justice system (**Azerbaijan, Russian Federation** and **UK-England and Wales**), with particular emphasis on the court budget in **Azerbaijan, Romania** and **Russian Federation** and on the legal aid budget in **UK-England and Wales.** In **Romania,** the small increase in the budget allocated to legal aid (+ 0,1 %) is largely insufficient to compensate for the decrease in the budget allocated both to the courts and the public prosecution services.

**Table 2.12 Variation in the approved budget of the judicial system between 2010 and 2016 (Q6, Q12, Q13)**

States / Entities	Approved judicial system budget*			Absolute variance of the approved judicial system budget		Contribution of the approved court budget in the variance of the approved judicial system budget		Contribution of the approved legal aid budget in the variance of the approved judicial system budget		Contribution of the approved public prosecution budget in the variance of the approved judicial system budget	
	2012	2014	2016	2012-2014	2014-2016	2012-2014	2014-2016	2012-2014	2014-2016	2012-2014	2014-2016
Albania	25 573 987 €	26 764 295 €	29 877 086 €	4,7%	11,6%	9,0%	4,0%	0,0%	0,5%	-4,4%	7,1%
Andorra	NA	NA	7 248 399 €	NA	NA	NA	NA	NA	NA	NA	NA
Armenia	NA	NA	25 097 574 €	NA	NA	NA	NA	NA	NA	NA	NA
Austria	770 790 000 €	823 053 000 €	937 499 939 €	6,8%	13,9%	NA	NA	0,0%	0,1%	NA	NA
Azerbaijan	107 058 274 €	155 184 273 €	75 363 762 €	45,0%	-51,4%	40,9%	-38,2%	0,3%	-0,1%	3,7%	-13,2%
Belgium	998 125 000 €	958 368 000 €	931 834 849 €	-4,0%	-2,8%	NA	NA	-0,2%	-0,2%	NA	NA
Bosnia and Herzegovina	106 816 022 €	114 496 991 €	118 107 992 €	7,2%	3,2%	4,9%	2,6%	NA	NA	2,3%	1,5%
Bulgaria	209 739 354 €	234 412 470 €	262 647 839 €	11,8%	12,0%	5,5%	7,9%	0,3%	0,0%	5,9%	4,2%
Croatia	206 712 797 €	215 587 165 €	222 534 033 €	4,3%	3,2%	3,2%	1,4%	1,6%	-0,3%	-0,6%	2,1%
Cyprus	50 109 977 €	NA	52 137 479 €	NA	NA	NA	NA	NA	NA	NA	NA
Czech Republic	479 600 709 €	470 508 165 €	504 229 982 €	-1,9%	7,2%	-5,2%	13,9%	NA	NA	0,1%	1,7%
Denmark	421 337 784 €	467 072 384 €	481 389 060 €	10,9%	3,1%	-0,6%	0,3%	10,8%	2,3%	0,6%	0,5%
Estonia	42 819 672 €	53 052 326 €	56 708 551 €	23,9%	6,9%	20,7%	5,2%	0,0%	0,0%	3,2%	1,7%
Finland	362 713 356 €	388 794 000 €	421 068 000 €	7,2%	8,3%	7,6%	2,1%	-0,7%	6,2%	0,3%	0,0%
France	4 014 305 137 €	4 270 701 608 €	4 413 263 514 €	6,4%	3,3%	5,1%	2,7%	0,0%	0,0%	1,3%	0,7%
Georgia	25 980 182 €	35 742 630 €	36 229 655 €	37,6%	1,4%	16,3%	2,2%	-0,5%	2,2%	21,8%	-3,0%
Germany	9 170 186 780 €	NA	10 015 509 328 €	NA	NA	NA	NA	NA	NA	NA	NA
Greece	450 970 924 €	475 976 539 €	445 529 139 €	5,5%	-6,4%	NA	NA	0,4%	0,0%	NA	NA
Hungary	452 447 662 €	403 794 297 €	429 598 903 €	-10,8%	6,4%	-9,3%	4,1%	-0,1%	0,1%	-1,3%	2,3%
Iceland	14 109 339 €	NA	37 546 218 €	NA	NA	NA	NA	NA	NA	NA	NA
Ireland	230 777 000 €	222 504 000 €	234 448 000 €	-3,6%	5,4%	-1,1%	3,9%	-1,3%	1,0%	-1,2%	0,5%
Italy	4 575 001 196 €	4 418 309 125 €	4 544 426 956 €	-3,4%	2,9%	-0,9%	0,6%	NA	NA	0,6%	-1,4%
Latvia	65 953 173 €	74 726 905 €	78 437 198 €	13,3%	5,0%	10,3%	2,8%	1,0%	1,2%	1,9%	1,1%
Lithuania	83 783 573 €	97 433 726 €	114 700 187 €	16,3%	17,7%	11,7%	11,6%	1,6%	-0,4%	2,9%	6,6%
Luxembourg	79 964 334 €	78 492 650 €	92 895 711 €	-1,8%	18,3%	NA	NA	-0,6%	1,3%	NA	NA
Malta	13 405 486 €	15 085 766 €	16 170 800 €	12,5%	7,2%	11,8%	5,0%	0,2%	0,2%	0,5%	2,0%
Republic of Moldova	16 671 277 €	28 648 600 €	29 583 529 €	71,8%	3,3%	57,0%	1,6%	0,0%	-0,4%	14,8%	2,0%
Monaco	5 947 556 €	NA	6 151 500 €	NA	NA	NA	NA	NA	NA	NA	NA
Montenegro	NA	26 300 915 €	NA	NA	NA	NA	NA	NA	NA	NA	NA
Netherlands	2 200 997 500 €	2 067 208 000 €	2 036 574 000 €	-6,1%	-1,5%	0,0%	-1,1%	-3,0%	0,5%	-3,1%	-0,9%
Norway	526 767 700 €	402 901 906 €	423 966 712 €	-23,5%	5,2%	-5,5%	7,4%	-17,7%	-4,0%	-0,3%	1,8%
Poland	1 827 573 567 €	1 868 303 395 €	1 991 565 000 €	2,2%	6,6%	1,5%	2,1%	0,1%	2,2%	0,7%	2,3%
Portugal	629 660 262 €	536 304 306 €	583 253 297 €	-14,8%	8,8%	-10,0%	5,0%	-3,5%	-0,3%	-1,4%	4,0%
Romania	480 890 952 €	781 410 270 €	597 649 028 €	62,5%	-23,5%	43,4%	-18,0%	0,3%	0,1%	18,8%	-5,6%
Russian Federation	4 618 618 786 €	4 651 726 759 €	3 552 350 764 €	0,7%	-23,6%	-3,3%	-12,2%	0,0%	-0,9%	4,0%	-10,5%
Serbia	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Slovakia	214 796 609 €	NA	269 697 660 €	NA	NA	NA	NA	NA	NA	NA	NA
Slovenia	183 695 911 €	184 995 996 €	185 314 973 €	0,7%	0,2%	2,4%	-1,1%	-1,1%	-0,1%	-0,5%	1,4%
Spain	3 722 715 019 €	3 558 656 779 €	3 678 267 652 €	-4,4%	3,4%	-5,6%	2,7%	-0,4%	0,6%	1,6%	0,1%
Sweden	1 018 131 920 €	1 005 948 856 €	1 185 292 414 €	-1,2%	17,8%	-2,8%	8,7%	0,8%	8,7%	-0,6%	1,8%
Switzerland	1 589 359 782 €	1 803 386 843 €	1 808 909 868 €	13,5%	0,3%	8,2%	1,5%	2,8%	0,3%	2,5%	-1,5%
The FYROMacedonia	35 542 317 €	37 558 709 €	41 935 302 €	5,7%	11,7%	2,1%	-2,5%	-0,2%	0,2%	3,8%	14,0%
Turkey	1 385 201 689 €	1 627 197 764 €	1 453 183 110 €	17,5%	-10,7%	NA	NA	0,0%	0,1%	NA	NA
Ukraine	NA	405 287 184 €	343 727 529 €	NA	-15,2%	NA	-6,1%	NA	1,1%	NA	-10,2%
UK-England and Wales	5 824 650 441 €	5 257 469 184 €	4 592 854 000 €	-9,7%	-12,6%	-1,2%	-1,9%	-7,6%	-9,2%	-1,0%	-1,5%
UK-Scotland	447 360 849 €	418 550 612 €	427 343 305 €	-6,4%	2,1%	1,4%	2,7%	-10,5%	3,8%	2,7%	-4,5%
Israel	NA	NA	714 015 731 €	NA	NA	NA	NA	NA	NA	NA	NA
Morocco	NA	NA	559 746 097 €	NA	NA	NA	NA	NA	NA	NA	NA

\* The implemented budget was used in 2014 for Bosnia and Herzegovina, Croatia, Czech Republic, Italy and Sweden and in 2016 for Bosnia and Herzegovina.

The table above shows the extent of the contribution of each component of the judicial system budget (courts, legal aid and prosecution) to the variance of the budget of the judicial system between 2014 and 2016.

Among the 27 States or entities which increased their budget allocated to the judicial system between 2014 and 2016, the most remarkable contribution in the variance of the judicial system budget is performed by an increase in the court budget in **Czech Republic** (+ 13,8 %), **Lithuania** (+ 11,5 %), **Sweden** (+ 8,7 %), **Bulgaria** (+ 7,9 %) and **Norway** (+ 7,4 %). The extent of the contribution of the court budget is less noticeable in **Estonia** (+ 5,1 %), **Malta** (+ 5 %), **Portugal** (+ 5 %), **Albania** (+ 4 %), **Hungary** (+ 4 %), **Ireland** (+ 3,8 %), **France** (+ 3 %), **Latvia** (+ 2,7 %), **UK-Scotland** (+ 2,7 %), **Spain** (+ 2,6 %) and **Bosnia and Herzegovina** (+ 2,5 %) and less than 2 % in **Finland**, **Georgia**, **Poland**, **Republic of Moldova** and **Croatia**.

As regards the contribution of the prosecution service budget in the variance of the judicial system budget, the most important incidence is observed in “**the former Yugoslav Republic of Macedonia**” (+ 13,9 %), **Albania** (+ 7 %), **Lithuania** (+ 6,5 %), **Bulgaria** (+ 4,1 %) and **Portugal** (+ 4 %). In **Poland**, **Hungary**, **Croatia**, **Republic of Moldova**, **Malta**, **Norway**, **Sweden**, **Estonia**, **Czech Republic** and **Bosnia and Herzegovina** the extent of such contribution varies within a range of between 2,2 % (**Poland**) and 1,5 % (**Bosnia and Herzegovina**), while in **Latvia** and **France** it is less than 1,5 %.

The States and entities where the participation of the legal aid budget in the variance of the judicial system budget is the most relevant are **Sweden** (+ 8,7 %), **Finland** (+ 6,2 %) and **UK-Scotland** (+ 3,8 %). It is less significant in **Albania**, **Georgia**, **Ireland**, **Latvia**, **Luxembourg**, **Poland** and **Spain**.

Finally, **Norway** (-9,1 %) and **UK-England and Wales** (-3,9 %) are the States or entities where the decrease in the legal aid budgets shows the most significant contribution to the variance of the whole judicial system budget.

## 2.2.2.2 Evolution of the budget allocated to the judicial system between 2010 and 2016

Table 2.13 Evolution in the approved budgets of the judicial systems between 2010 and 2016, in absolute values, in € (Q6, Q12 and Q13)

States/entities	Budget of the judicial system*				Evolution
	2010	2012	2014	2016	
Albania	19 476 006 €	25 573 987 €	26 764 295 €	29 877 086 €	
Andorra	NA	NA	NA	7 248 399 €	
Armenia	16 076 398 €	NA	NA	25 097 574 €	
Austria	709 980 000 €	770 790 000 €	823 053 000 €	937 499 939 €	
Azerbaijan	80 667 565 €	107 058 274 €	155 184 273 €	75 363 762 €	
Belgium	934 837 000 €	998 125 000 €	958 368 000 €	931 834 849 €	
Bosnia and Herzegovina	99 652 163 €	106 816 022 €	114 496 991 €	118 107 992 €	
Bulgaria	195 282 117 €	209 739 354 €	234 412 470 €	262 647 839 €	
Croatia	263 761 034 €	206 712 797 €	215 587 165 €	222 534 033 €	
Cyprus	NA	50 109 977 €	NA	52 137 479 €	
Czech Republic	458 305 311 €	479 600 709 €	470 508 165 €	504 229 982 €	
Denmark	NA	421 337 784 €	467 072 384 €	481 389 060 €	
Estonia	38 915 167 €	42 819 672 €	53 052 326 €	56 708 551 €	
Finland	344 103 350 €	362 713 356 €	388 794 000 €	421 068 000 €	
France	3 935 548 101 €	4 014 305 137 €	4 270 701 608 €	4 413 263 514 €	
Georgia	24 628 865 €	25 980 182 €	35 742 630 €	36 229 655 €	
Germany	NA	9 170 186 780 €	NA	10 015 509 328 €	
Greece	623 500 911 €	450 970 924 €	475 976 539 €	445 529 139 €	
Hungary	362 127 276 €	452 447 662 €	403 794 297 €	429 598 903 €	
Iceland	12 291 342 €	14 109 339 €	NA	37 546 218 €	
Ireland	280 011 000 €	230 777 000 €	222 504 000 €	234 448 000 €	
Italy	4 427 485 116 €	4 575 001 196 €	4 418 309 125 €	4 544 426 956 €	
Latvia	53 676 350 €	65 953 173 €	74 726 905 €	78 437 198 €	
Lithuania	84 029 050 €	83 783 573 €	97 433 726 €	114 700 187 €	
Luxembourg	73 458 676 €	79 964 334 €	78 492 650 €	92 895 711 €	
Malta	11 009 400 €	13 405 486 €	15 085 766 €	16 170 800 €	
Republic of Moldova	13 203 006 €	16 671 277 €	28 648 600 €	29 583 529 €	
Monaco	5 387 800 €	5 947 556 €	NA	6 151 500 €	
Montenegro	25 290 803 €	NA	26 300 915 €	NA	
Netherlands	2 090 383 000 €	2 200 997 500 €	2 067 208 000 €	2 036 574 000 €	
Norway	440 129 410 €	526 767 700 €	402 901 906 €	423 966 712 €	
Poland	1 700 843 570 €	1 827 573 567 €	1 868 303 395 €	1 991 565 000 €	
Portugal	700 486 047 €	629 660 262 €	536 304 306 €	583 253 297 €	
Romania	525 590 308 €	480 890 952 €	781 410 270 €	597 649 028 €	
Russian Federation	3 953 130 968 €	4 618 618 786 €	4 651 726 759 €	3 552 350 764 €	
Serbia	NA	NA	NA	NA	
Slovakia	204 912 226 €	214 796 609 €	NA	269 697 660 €	
Slovenia	203 256 633 €	183 695 911 €	184 995 996 €	185 314 973 €	
Spain	3 654 891 484 €	3 722 715 019 €	3 558 656 779 €	3 678 267 652 €	
Sweden	880 260 565 €	1 018 131 920 €	1 005 948 856 €	1 185 292 414 €	
Switzerland	1 314 140 122 €	1 589 359 782 €	1 803 386 843 €	1 808 909 868 €	
The FYROMacedonia	NA	35 542 317 €	37 558 709 €	41 935 302 €	
Turkey	1 234 286 802 €	1 385 201 689 €	1 627 197 764 €	1 453 183 110 €	
Ukraine	NA	NA	405 287 184 €	343 727 529 €	
UK-England and Wales	4 458 810 000 €	5 824 650 441 €	5 257 469 184 €	4 592 854 000 €	
UK-Scotland	NA	447 360 849 €	418 550 612 €	427 343 305 €	
Israel	- €	NA	NA	714 015 731 €	
Morocco	- €	- €	- €	559 746 097 €	

\* When not available implemented budget was used in 2014 for Bosnia and Herzegovina, Croatia, Czech Republic, Italy and Sweden and in 2016 only for Bosnia and Herzegovina

<b>Average</b>	906 679 604 €	1 163 094 240 €	1 017 418 852 €	1 086 184 541 €
<b>Median</b>	312 057 175 €	421 337 784 €	404 540 741 €	382 397 765 €
<b>Minimum</b>	5 387 800 €	5 947 556 €	15 085 766 €	6 151 500 €
<b>Maximum</b>	4 458 810 000 €	9 170 186 780 €	5 257 469 184 €	10 015 509 328 €

Over a longer period, it is possible to analyse the evolution of the budget allocated to the judicial system between 2010 and 2016 for 33 States or entities (**Albania, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Georgia, Greece, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Slovenia, Spain, Sweden, Switzerland, Turkey and UK-England and Wales**). As regards **Denmark, Germany, “the former Yugoslav Republic of Macedonia”** and **UK-Scotland**, data on the budget allocated to the judicial system in 2010 are not available. Thus, an analysis of the trend can be carried out only in respect of the period 2012-2016.

Compared to the previous period analysed by the CEPEJ (2012-2014), 20 States and entities have confirmed a positive upward trend in the budget allocated to their judicial system: **Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Georgia, Germany, Latvia, Lithuania, Malta, Republic of Moldova, Poland, Slovenia, Sweden, Switzerland** and “**the former Yugoslav Republic of Macedonia**”.

It may be noted that for 10 States or entities, the trend changed positively between 2014 and 2016 compared to the previous evaluation (2012-2014). Budgets, which were reduced between 2012 and 2014, increased between 2014 and 2016 in **Czech Republic, Hungary, Ireland, Italy, Luxembourg, Norway, Poland, Portugal, Spain** and **UK-Scotland**. In **Portugal**, 2016 seems to mark the end of the budget cuts imposed in recent years as a result of the economic and financial crisis.

In **Bulgaria**, the continuous increase in the judicial system budget mainly results from an increase in the justice expenses budget due to a change in the way of determining the remunerations of court experts such as, for example, translators, interpreters and experts. The comment provided by the State explains that an additional noteworthy impact on the increase in translation and interpretation expenses is determined by a significant increase in the number of asylum seekers claims. Also, **Estonia** and **Finland** recall that the increase observed in translation and interpretation expenses, as well as in legal aid expenses, is explained by an increase in the number of refugees. **Estonia** also reports both rising investments in the construction of a new court building for the Supreme Court and additional financial efforts accompanying the launch of a project concerning the introduction within the judicial staff of the judicial assistant. An increase in the budget for new court building may also be emphasised in **Georgia, Hungary, Latvia** and **Malta**.

In **Croatia, Hungary, Ireland, Latvia** and **Republic of Moldova**, a significant increase in the budget is allocated to computerisation. **Lithuania** receives financial support from European Union, **Norway** and **Switzerland** in relation to some of these undertakings. In **Slovenia**, computerisation is supported financially by the European Union.

In **France**, a significant increase in the budget allocated to training due, *inter alia*, to an increase in recruitment of new judges and prosecutors may be noted. Training investments also increased in **Georgia**.

In **Georgia, Italy, Malta** and **Poland**, a noticeable increase in the judicial budget is due to the expansion of the legal aid service. **Georgia** emphasises its commitment, since 2015, to promoting legal aid in cases concerning family and social assistance issues.

In **Italy**, the increase in the judicial budget is mainly explained by an allocation of extra funds allocated both to additional training for staff transferred to the Ministry of Justice from other administrations and to computerisation.

An increase in the budget allocated to salaries may be highlighted in **Georgia** and the **Republic of Moldova**.

Budget cuts have been increased or extended in recent years in **Belgium, Netherlands** and **UK-England and Wales**. In these three States or entities, budgetary restraint measures continue to adversely affect the resources allocated to the judicial system.

Finally, it may be noted that **Azerbaijan** and **Turkey**, which increased their budget between 2012 and 2014, decreased it between 2014 and 2016. In respect of **Azerbaijan**, the significant incidence of the decrease in the exchange rate of the national currency against Euro between 2014 and 2016 should be recalled (95,8 %). In the **Russian Federation**, the budget has decreased in Euros, but increased in local currency.

**Table 2.14 Evolution of the approved budgets of the judicial systems between 2010 and 2016 per inhabitant, in € (Q6, Q12 and Q13)**

States / Entities	Budget of the judicial system*				Evolution
	2010	2012	2014	2016	
Albania	6,1 €	9,1 €	9,3 €	10,4 €	
Andorra	NA	NA	NA	99,2 €	
Armenia	4,9 €	NA	NA	8,4 €	
Austria	84,6 €	91,2 €	95,9 €	107,3 €	
Azerbaijan	9,0 €	11,6 €	16,4 €	7,8 €	
Belgium	86,2 €	89,4 €	85,5 €	82,3 €	
Bosnia and Herzegovina	25,9 €	27,9 €	29,9 €	33,7 €	
Bulgaria	26,5 €	28,8 €	32,5 €	37,0 €	
Croatia	59,8 €	48,5 €	51,0 €	53,6 €	
Cyprus	NA	57,9 €	NA	61,5 €	
Czech Republic	43,6 €	45,6 €	44,7 €	47,7 €	
Denmark	NA	75,2 €	82,5 €	83,7 €	
Estonia	29,0 €	33,3 €	40,4 €	43,1 €	
Finland	64,0 €	66,8 €	71,1 €	76,5 €	
France	60,5 €	61,2 €	64,4 €	65,9 €	
Georgia	5,5 €	5,8 €	9,6 €	9,7 €	
Germany	NA	114,3 €	NA	121,9 €	
Greece	55,1 €	40,8 €	43,9 €	41,3 €	
Hungary	36,3 €	45,7 €	41,0 €	43,8 €	
Iceland	38,6 €	43,8 €	NA	111,0 €	
Ireland	61,1 €	50,3 €	48,1 €	50,2 €	
Italy	73,0 €	76,7 €	72,7 €	75,0 €	
Latvia	24,1 €	32,3 €	37,3 €	39,8 €	
Lithuania	25,9 €	27,9 €	33,4 €	40,3 €	
Luxembourg	143,5 €	152,3 €	139,4 €	157,3 €	
Malta	26,4 €	31,8 €	35,1 €	36,7 €	
Republic of Moldova	3,7 €	4,7 €	8,1 €	8,3 €	
Monaco	150,2 €	164,6 €	NA	163,8 €	
Montenegro	40,8 €	NA	42,4 €	NA	
Netherlands	125,5 €	131,2 €	122,3 €	119,2 €	
Norway	89,5 €	104,3 €	78,0 €	80,6 €	
Poland	44,5 €	47,4 €	48,5 €	51,8 €	
Portugal	65,9 €	60,0 €	51,7 €	56,6 €	
Romania	24,5 €	22,6 €	35,1 €	30,4 €	
Russian Federation	27,7 €	32,2 €	31,8 €	24,2 €	
Serbia	NA	NA	NA	NA	
Slovakia	37,7 €	39,7 €	NA	49,6 €	
Slovenia	99,1 €	89,2 €	89,8 €	89,7 €	
Spain	79,5 €	80,9 €	76,6 €	79,1 €	
Sweden	93,5 €	106,5 €	103,2 €	118,6 €	
Switzerland	167,1 €	197,7 €	218,9 €	214,8 €	
The FYROMacedonia	NA	17,2 €	18,2 €	20,2 €	
Turkey	17,0 €	18,3 €	20,9 €	18,2 €	
Ukraine	NA	NA	9,4 €	8,1 €	
UK-England and Wales	80,8 €	103,0 €	91,6 €	78,7 €	
UK-Scotland	NA	84,2 €	78,3 €	79,1 €	
Israel		NA	NA	82,7 €	
Morocco				16,1 €	
<b>Average</b>	56,2 €	62,7 €	58,1 €	64,5 €	
<b>Median</b>	44,1 €	48,5 €	46,4 €	52,7 €	
<b>Minimum</b>	3,7 €	4,7 €	8,1 €	7,8 €	
<b>Maximum</b>	167,1 €	197,7 €	218,9 €	214,8 €	

\* When data was not available, implemented budget was used in 2014 for Bosnia and Herzegovina, Croatia, Czech Republic, Italy and Sweden and in 2016 only for Bosnia and Herzegovina

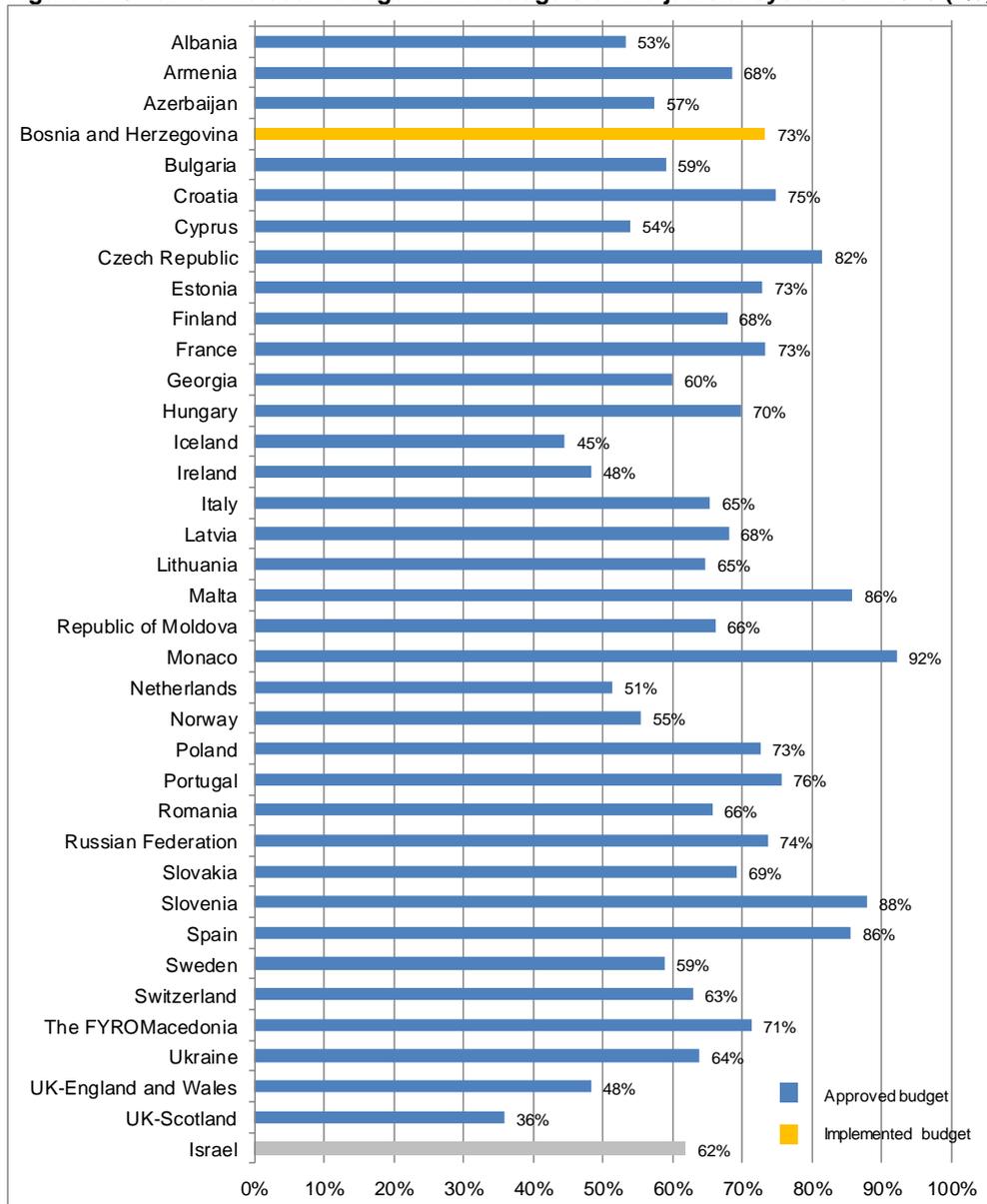
The table above shows that the evolution of judicial systems budgets considered per inhabitant between 2010 and 2016 follows substantially the same trend as the variation in the judicial system's budget considered in absolute values.

## 2.3 Budget allocated to courts

This section measures the efforts that each State or entity devotes to the activity of the courts alone (without legal aid and public prosecution services). The analysis covers 39 States and entities. For **Sweden**, budgetary data reported in the tables/graphs and commented upon in the text correspond to the implemented budgets (see above). The budgetary data for **Andorra, Austria, Belgium, Greece, Luxembourg, Montenegro** and **Turkey** have been excluded from the analysis because the budget allocated to courts cannot be distinguished from the budget allocated to legal aid and/or the budget allocated to public prosecution services in those States. With regard to **Germany**, budgetary data are too difficult to assemble due to the federal structure of the State; furthermore, it is impossible to isolate the budget allocated to courts from the budget allocated to public prosecution services.

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

**Figure 2.15 Part of the court budget in the budgets of the judicial systems in 2016 (Q6, Q12 and Q13)**



The figure above shows the budget contribution of the States and entities to the functioning of the courts in relation to the budget allocated to the judicial system as a whole (including legal aid and public prosecution services). The median value of the share of judicial system budget specifically allocated to court expenses is 67%. The average is almost the same (66%).

In 18 States or entities out of 37, the court budget comprises a large share (more than the median value) of the budget allocated to the judicial system: **Monaco** (92 %), **Slovenia** (88 %), **Malta** (86 %), **Spain** (86 %), **Czech Republic** (82 %), **Portugal** (76 %), **Croatia** (75 %), **France** (73 %), **Bosnia and Herzegovina** (73 %), **Estonia** (73 %), **Russian Federation** (73 %), **Poland** (73 %), “**the former Yugoslav Republic of Macedonia**” (71 %), **Hungary** (70 %), **Slovakia** (69 %), **Armenia** (68 %), **Latvia** (68 %) and **Finland** (68 %). In the **Republic of Moldova** and **Romania**, the contribution of the court budget in the judicial system budget coincides with the average value (66 %).

In other States or entities, on the contrary, the budget allocated to the courts represents a more moderate share of the judicial system budget (less than 60 %). This is the case mainly in Anglo-Saxon countries/entities and Northern Europe: **Denmark**, **Ireland**, **Norway**, **Sweden**, **Netherlands**, **UK-England and Wales** and **UK-Scotland**. The small share of the budget of the judicial system allocated to courts in common law systems is explained by a relatively low number of professional judges. For the Northern European states, part of the explanation also lies in the fact that the society is less litigious and also because ADR (Alternative Dispute Resolution) is better integrated into these systems than in the rest of Europe. Furthermore, part of the litigation is not addressed within the court system and entrusted to administrative bodies.

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

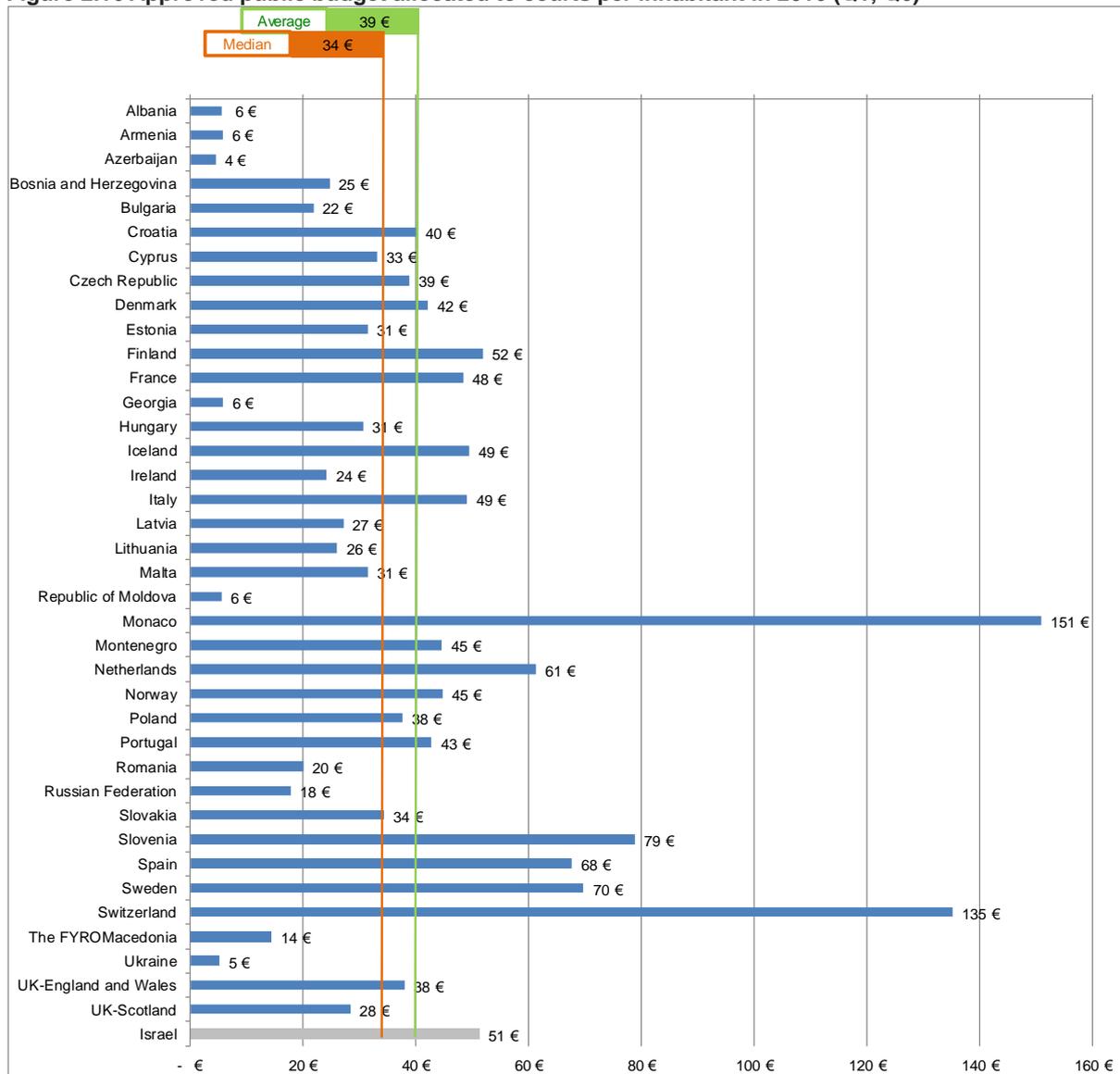
Finally, **Israel** allocates 62 % of the judicial system budget to the functioning of courts.

### **2.3.2 Public budget allocated to courts in 2016**

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

The analysis covers 39 States or entities.

Figure 2.16 Approved public budget allocated to courts per inhabitant in 2016 (Q1, Q6)



On average, European states spent 39 € per inhabitant on court expenses in 2016, 3 % more than in 2014. The median value of the budget per inhabitant allocated to courts is 34 €, which corresponds to the budget per inhabitant invested in **Slovakia**.

Except for **Monaco** and **Switzerland**, where the court budget per inhabitant is considerably higher than in any other State and entity (151 € and 135 € respectively), in 17 out of 39 States or entities the budget per inhabitant allocated to courts is higher than the median value. The budget per inhabitant allocated to courts is more than 60€ in **Slovenia** (79 €), **Sweden** (70 €), **Spain** (68 €) and **Netherlands** (61 €). In **Croatia**, **Czech Republic**, **Denmark**, **Finland**, **France**, **Iceland**, **Israel**, **Italy**, **Montenegro**, **Norway**, **Poland**, **Portugal** and **UK-England and Wales**, the budget allocated to the functioning of the courts is between 52 € (**Finland**) and 38 € (**Poland**).

All other States and entities covered by the present analysis allocate to the functioning of the courts a budget per inhabitant lower than the median value (34 €): not less than 20 € in **Bosnia and Herzegovina**, **Ireland**, **Bulgaria**, **Cyprus**, **Estonia**, **Hungary**, **Latvia**, **Lithuania**, **Malta**, **Romania** and **UK-Scotland**, lower than 20 € in **Albania**, **Armenia**, **Azerbaijan**, **Georgia**, “the former Yugoslav Republic of Macedonia”, **Republic of Moldova**, **Russian Federation** and **Ukraine**.

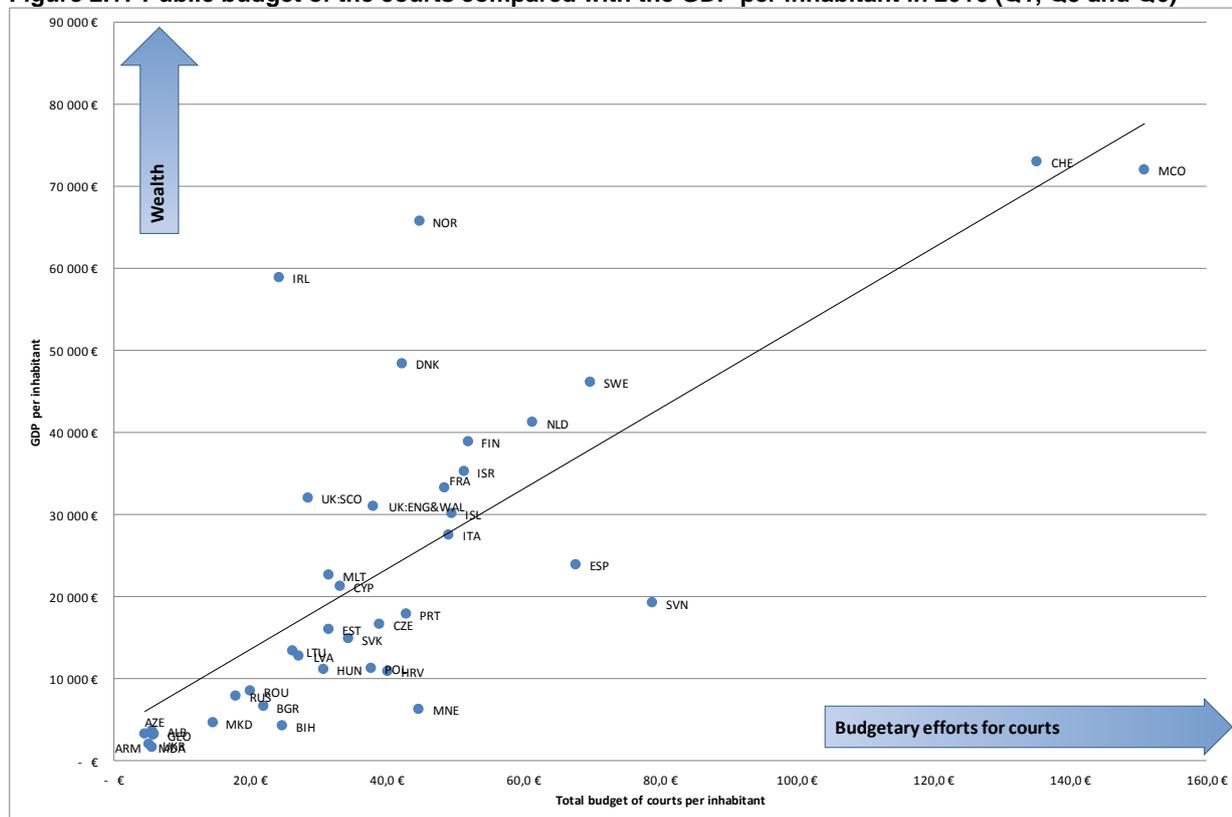
In order to make meaningful comparisons between the States and entities, the total investment of budget allocated to courts in absolute values of GDP can be considered. For instance, in **France** and **Spain**, the amount of GDP invested in the functioning of all courts is about 3 billion €. In **Italy**, **Russian Federation** and

**UK-England and Wales**, it is between 3 and 2 billion €. **Poland, Switzerland and Netherlands** invest an amount of GDP between 2 and 1 billion €. In all the other States and entities, the amount of GDP overall allocated to courts is lower than 1 billion €.

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

### 2.3.2.2 Court budget per inhabitant compared to the wealth of the States and entities in 2016

Figure 2.17 Public budget of the courts compared with the GDP per inhabitant in 2016 (Q1, Q5 and Q6)



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

In order to give a more meaningful representation of the effective budget effort for the judicial system sustained by the States or entities, the figure above puts into perspective the budget allocated per inhabitant to the functioning of the courts in absolute values by comparing it to a measure of the wealth of the States, the per capita GDP.

The figure above shows that **Andorra, Croatia, Iceland, Poland, Spain** and **Slovenia** allocate a relatively large budget to their courts compared to their level of wealth. The budget per inhabitant allocated to courts in **Spain** is about three times that of **Malta**, whose level of wealth is similar.

Within the group of States and entities whose per capita GDP is lower than 20 000 €, the ratio per capita GDP /court budget per inhabitant is quite homogenous and States and entities are generally situated in a position close to the trend line. **Croatia, Poland** and **Slovenia** show a budgetary effort significantly stronger than that performed by all other States and entities included in the group. **Bosnia and Herzegovina, Bulgaria, Hungary, Slovakia** and **Portugal** are all located below the trend line, indicating a relatively strong effort (sometimes supported by a European or international contribution) when considering their level of wealth.

Disparities in the budgets are much stronger within the group consisting of States or entities whose per capita GDP exceeds 20 000 €. Within this group, in **Ireland, Norway, Monaco and Switzerland**, whose per capita GDPs are remarkably high (60 000 € or more), the budgetary effort seems to be particularly low as compared with the trend line. However, in **Norway, Monaco and Switzerland**, budgets allocated to courts per inhabitant, if considered in absolute values, are the most significant in Europe. The modest budget allocated to the functioning of courts in **Ireland** (less than 25 € per inhabitant) and the relatively low budgets in **UK-Scotland** and **UK-England and Wales** (about 30 € per inhabitant) are mainly due to the specificity of the common law systems.

### **2.3.3 Components of the budget allocated to courts**

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

These data must again be interpreted with caution. In fact, in addition to the successive categories selected (courts and within this category, components) budget amounts may represent reduced volumes subject to annual variations, regulations and transfers from one budget item to another during the year. Retaining the executed budgets limits certain variations.

**Table 2.18 Budget of the courts and its components in 2016 (Q1 and Q6)**

States / Entities	Total public budget of all courts (Q6)	% of the total budget*							
		Public budget for (gross) salaries	Public budget for computerisation	Public budget for justice expenses	Public budget for court buildings	Public budget for investments in new buildings	Public budget for training & education	Separate training institution	Other
Albania	15 903 916 €	70,3%	1,7%	2,0%	0,3%	5,08%	0,1%		20,5%
Andorra	NA	NA	NA	NA	NA	NA	NA		NA
Armenia	17 179 503 €	83,6%	0,4%	0,4%	0,1%	0%	2,3%		NA
Austria	NA	NA	NA	NA	NA	NA	NA		NA
Azerbaijan	43 281 253 €	45,3%	12,5%	NAP	1,5%	38,47%	2,2%		NAP
Belgium	NA	NA	NA	NA	NA	NA	NA		NA
Bosnia and Herzegovina	86 590 466 €	83,4%	NA	NA	NA	NA	NA		NA
Bulgaria	154 970 220 €	80,0%	1,5%	1,2%	7,6%	NAP	0,0%		9,7%
Croatia	166 408 056 €	80,4%	6,0%	2,5%	4,0%	1%	0,3%		5,8%
Cyprus	28 107 307 €	81,5%	0,1%	0,4%	9,1%	9%	0,3%		NAP
Czech Republic	411 012 953 €	80,4%	0,8%	NA	0,8%	0,69%	0,0%		17,3%
Denmark	242 289 742 €	61,0%	8,4%	5,1%	19,7%	NA	0,9%		4,9%
Estonia	41 340 192 €	78,3%	0,3%	4,1%	13,8%	NAP	0,7%		2,7%
Finland	285 425 000 €	NA	NA	NA	NA	NAP	NA		NA
France	3 238 063 225 €	61,1%	2,0%	12,8%	9,1%	3,04%	2,9%		9,1%
Georgia	21 718 668 €	75,9%	0,7%	8,4%	6,2%	3,41%	2,5%		2,9%
Germany	NA	NA	NA	NA	NA	NA	NA		NA
Greece	NA	NA	NA	NA	NA	NA	NA		NA
Hungary	299 893 343 €	49,5%	1,8%	10,6%	2,2%	8,72%	NAP		27,2%
Iceland	16 722 689 €	NA	NA	NA	NA	NA	NA		NA
Ireland	113 172 000 €	43,9%	7,4%	3,8%	13,2%	4%	0,3%		27,2%
Italy	2 971 094 830 €	74,4%	3,2%	9,9%	7,8%	0,00%	0,01%		4,6%
Latvia	53 365 154 €	71,2%	2,6%	5,3%	18,7%	0,00%	0,5%		1,7%
Lithuania	74 237 182 €	80,2%	7,7%	0,7%	2,4%	1,64%	1,0%		6,3%
Luxembourg	NA	NA	NA	NA	NA	NA	NA		NA
Malta	13 870 800 €	76,8%	0,2%	8,0%	12,0%	NAP	0,01%		3,0%
Republic of Moldova	19 555 856 €	65,3%	3,5%	NAP	5,3%	15,56%	0,2%		NA
Monaco	5 665 100 €	64,8%	2,8%	17,7%	3,6%	0%	1,0%		10,1%
Montenegro	27 664 139 €	73,3%	1,4%	3,3%	0,2%	6,83%	0,1%		12,8%
Netherlands	1 046 578 000 €	74,5%	8,2%	0,4%	9,6%	NAP	1,9%		5,4%
Norway	235 000 000 €	66,8%	6,3%	NAP	18,7%	NAP	1,1%		5,8%
Poland	1 445 686 000 €	69,3%	3,1%	9,9%	6,7%	2,71%	0,4%		7,9%
Portugal	441 024 845 €	86,1%	2,2%	0,2%	9,9%	NAP	1,6%		NAP
Romania	392 582 194 €	63,4%	0,7%	0,3%	7,7%	2,89%	0,0%		25,0%
Russian Federation	2 614 827 293 €	57,7%	3,9%	1,8%	5,4%	3,65%	0,2%		27,3%
Serbia	NA	NA	NA	NA	NA	NA	NAP		NA
Slovakia	186 576 657 €	53,0%	0,2%	5,8%	8,7%	0%	0,0%		32,2%
Slovenia	162 731 138 €	71,8%	1,3%	18,6%	7,8%	0,08%	0,4%		NAP
Spain	3 145 396 555 €	73,9%	NA	NA	6,7%	1,78%	0,6%		NA
Sweden	697 033 550 €	NA	NA	NA	NA	NA	NA		NA
Switzerland	1 137 821 098 €	77,8%	4,1%	6,7%	4,5%	1%	0,4%		5,7%
The FYROMacedonia	29 899 055 €	82,4%	1,0%	1,6%	7,2%	0,00%	NAP		7,8%
Turkey	NA	NA	NA	NA	NA	NA	NA		NA
Ukraine	219 392 178 €	81,5%	2,3%	0,02%	1,0%	0%	0,0%		15,1%
UK-England and Wales	2 215 993 000 €	52,1%	6,6%	4,1%	16,9%	7%	0,3%		12,7%
UK-Scotland	153 313 246 €	38,0%	2,0%	21,7%	20,3%	0%	0,2%		17,8%
Israel	441 926 855 €	68,1%	6,8%	3,5%	14,4%	3,0%	0,6%		3,5%
Morocco	NA	NA	NA	NA	NA	NA	NA		NA
Average	591 352 274 €	69%	3%	6%	8%	4%	1%		12%
Median	164 569 597 €	74%	2%	4%	7%	1,8%	0,3%		9%
Minimum	5 665 100 €	38%	0,1%	0,02%	0%	0%	0,000%		2%
Maximum	3 238 063 225 €	86%	13%	22%	20%	38%	3%		32%

### 2.3.3.1 Gross salaries of staff

Although there are big differences between the States and entities, the remuneration of staff (judges and non-judges) is the most important item of the court budgets in 2016: 69 % on average of the budgets allocated to the courts, with a maximum of 86,1 % in **Portugal** and a minimum of 38 % in **UK-Scotland** (where the number of professional judges is low). The analysis covers 36 States and entities.

Most States and entities devote to the gross salaries of staff between 70 % and 80 % of the court budget: **Ukraine** (79,6 %), **Estonia** (78,3 %), **Switzerland** (77,8 %), **Malta** (76,8 %), **Georgia** (75,9 %), **Montenegro** (75,3 %), **Netherlands** (74,5 %), **Italy** (74,4 %), **Spain** (73,9 %), **Slovenia** (71,8 %), **Latvia** (71,2 %) and **Albania** (70,3 %). This trend is well represented by the median value of 74 %. In **Israel**, the only non-member State whose court budget is available in all its components, the share allocated to salaries is 68,1 %.

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

For 5 States or entities, the share of the court budget allocated to salaries represents about 50 % or less: **UK-England and Wales** (52,1 %), **Hungary** (49,5 %), **Azerbaijan** (45,3 %), **Ireland** (43,9 %) and **UK-Scotland** (38,0 %).

**Ireland, UK-England and Wales** and **UK-Scotland** are the 3 States or entities where the number of judges per 100 000 inhabitants in 2016 is the lowest (3,0 in **UK-England and Wales**, 3,7 in **UK-Scotland** and 3,4 in **Ireland**). It is also to be noted that in the **United Kingdom** professional judges are appointed from among the most experienced and renowned lawyers. They are not numerous as there are numerous lay judges. Among the States or entities which have chosen a competitive exam as the usual process for recruitment of judges, those with the lower the number of judges per 100 000 inhabitants in 2016 are **Azerbaijan** (5,2), **Denmark** (6,4), **Georgia** (7,4), **Armenia** (7,7), **Malta** (10,2), **France** (10,4), **Italy** (10,5) and **Norway** (10,6).

### 2.3.3.2 Computerisation

On average, the States or entities spend 3 % of the court budget on equipment in the field of new information and communication technologies, with a maximum of 12,5 % in **Azerbaijan** and a minimum of 0,1 % in **Cyprus**. 36 States and entities are covered by the analysis.

15 out of 36 States or entities investing in IT tools are above average (more than 3 % of the court budget): **Azerbaijan** (12,5 %), **Denmark** (8,4 %), **Netherlands** (8,2 %), **Lithuania** (7,2 %), **Ireland** (7,4 %), **UK-England and Wales** (6,5 %), **Norway** (6,3 %), **Croatia** (6,0 %), **Ukraine** (4,6 %), **Switzerland** (4,1 %), **Russian Federation** (3,9 %), **Republic of Moldova** (3,5 %), **Italy** (3,2 %) and **Poland** (3,1 %). In **Israel**, the share allocated to computerisation is 6,8 % of the court budget.

The budgetary effort for computerisation remains low (less than 1 % of the court budget) in 8 States: **Armenia, Cyprus, Czech Republic, Estonia, Georgia, Malta<sup>11</sup>, Romania and Slovakia.**

### 2.3.3.3 Justice expenses

Justice expenses refer to the amounts that courts should pay out within the framework of judicial proceedings, such as expenses paid for expert opinions or court interpreters. Postal and telephone services may be included within the justice expenses, depending on the classification criteria adopted by certain States (for example, this is the case in **Croatia, Israel** and partially **Switzerland**). Furthermore, the comment provided by **Ireland** indicates that also travel expenses are included in the justice expenses, while **Lithuania** explains that postal and travel costs are included within the category “other expenses”. Any expenses to be paid by the parties (court fees and taxes) or aimed at legal aid are not indicated.

On average, justice expenses represents 6 % of the budget allocated to the courts in 2014.

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<sup>11</sup> Court budget allocated to computerisation does not reflect the actual expenditure on IT given that a substantial part of the court expenditure is absorbed by the Office of the CIO. What is stated in the evaluation is the actual budget within the line item of the Department of Courts of Justice, but even the Office of the CIO covers IT-related expenditure for services offered to the courts.

Depending on the organisation of the judicial system or of the proceedings, justice expenses represent a very variable share of the budget allocated to the courts. Four groups of States or entities can be specified:

- the first group includes 5 States allocating 10% or more of the court budget to justice expenses: **UK-Scotland** (21,7 %), **Slovenia** (18,6 %), **Monaco** (17,7 %), **France** (12,8 %) and **Hungary** (10,6 %);
- the second group gathers 8 States whose justice expenses budget is included in the range between 10 % and 5 %: **Italy** and **Poland** (9,9 %), **Georgia** (8,4 %), **Malta** (8,0 %), **Switzerland** (6,7 %), **Slovakia** (5,8 %), **Latvia** (5,3 %) and **Denmark** (5,1 %);
- the third group gathers 9 States and entities whose justice expenses budget is included in the range between 10 % and 5 %: **Estonia** and **UK-England and Wales** (4,1 %), **Ireland** (3,8 %), **Montenegro** (3,3 %), **Croatia** (2,5 %), **Albania** (2,0 %), **Russian Federation** (1,8 %), “**the former Yugoslav Republic of Macedonia**” (1,6 %) and **Bulgaria** (1,2 %); among non-member States, **Israel** is in a comparable position (3,5 %);
- finally, the fourth group includes 6 States which allocate to justice expenses a negligible part of the court budget (less than 1 %): **Lithuania**, **Armenia**, **Netherlands**, **Cyprus**, **Romania** and **Portugal**.

#### 2.3.3.4 Maintenance and operation of the buildings

Expenses related to the maintenance and the functioning of court buildings – rent, electricity, security, cleaning, maintenance etc. – represent on average 8 % of the court budget.

It must be noticed that in some States or entities, parts of these budgets are outsourced (security, maintenance, cleaning...) whereas other states or entities hire civil servants for such tasks. This significant trend had already been noticed in previous reports.

Their share of the court budget is relatively high in **UK-Scotland** (20,3 %), **Denmark** (19,7 %), **Latvia** (18,7 %), **Norway** (18,7 %), **UK-England and Wales** (16,9 %), **Estonia** (13,8 %), **Ireland** (13,2 %) and **Malta** (12 %). On the contrary, building maintenance is not a heavy budgetary item for the courts (less than 3 % of the court budget) in **Lithuania** (2,4 %), **Hungary** (2,2 %), **Ukraine** (1 %), **Azerbaijan** (1,5 %), **Czech Republic** (0,8 %), **Albania** (0,3 %), **Montenegro** (0,2 %) and **Armenia** (0,1 %).

Variations during the period 2014-2016 concerning the budget allocated to the buildings are very heterogeneous in Europe.

Substantial increases (over 40 %) were noted in **Italy** (58 %), **Slovakia** (50 %) and **France** (44 %). In **Slovakia**, the significant increase is due to investments in the reconstruction of the courts' buildings. **France** made a significant budgetary effort accompanying a comprehensive project of renovation of the courts during the period 2014-2016. In **Malta**, the increase is due to the fact that additional funds were allocated to the courts in 2014 for financing additional expenses related to the renovation of the courts' buildings.

Many States have recently set up a new division of jurisdictions that would improve the efficiency of justice while creating economies of scale. These reforms of the judicial system are often designed to lead to better management of property assets by grouping jurisdictions together and transferring staff from different small courts into one single place.

#### 2.3.3.5 Investments in new court buildings

In **Azerbaijan**, the budgetary effort for new buildings continue to be by far the most significant in Europe: the budget share allocated to new buildings in 2016 represents 38,47 % of the budget allocated to the courts and accompanies a justice modernisation programme designed in particular to facilitate access to justice. In the **Republic of Moldova**, a significant share of the court budget has been invested in the renovation of court buildings (15,56 %).

The share of the court budget devoted to investment in court buildings is also significant (over 4 % of the court budget) in **Hungary** (8,72 %), **Cyprus** (8,6 %), **UK-England and Wales** (7,4 %), **Montenegro** (6,8 %), **Albania** (5,0 %) and **Ireland** (4,15 %).

9 States or entities made no real investment in court buildings in 2016 (less than 1 % of the court budget): **Armenia, Czech Republic, “the former Yugoslav Republic of Macedonia”, Italy, Monaco, Slovakia, Slovenia, Ukraine** and **UK-Scotland**.

**Czech Republic** and **Albania** have largely increased the budget allocated to the construction of new buildings between 2014 and 2016. The increase in the budget is also significant in **Ukraine, Georgia** and **Poland**.

In 2016, contrary to the previous years, 4 States allocated less to the investment in new buildings: **Lithuania, Ireland, France** and **Romania**. **Romania** explains that the decrease in the budget for new buildings depends on the budgetary priority given to reconstruction of the existing court buildings. The comment provided by **France** highlights that the decrease can be explained by the fact that the bulk of investment needed for new courts buildings was made in execution of a multiannual plan implemented the previous year and that the corresponding rise in investments allocated the building maintenance in the same period (+ 44 %) confirms the overall significant budgetary effort in the field of the real estate management for the same period. Finally, in **Lithuania**, the decrease between 2014 and 2016 may be explained by the fact that in 2014 an additional budget was provided for financing an investment programme for the construction of new buildings.

### 2.3.3.6 Training of judges and prosecutors

It can be noted that, as for the previous cycles, the share of the court budget allocated to judicial training in 2016 is on average less than 1 %. This budgetary effort is specifically examined under Chapter 3 below.

### 2.3.3.7 Other

An important part of the court budget (on average 12 %) is allocated to other items than those mentioned above. In most States, this category corresponds to expenditures for supplies, transport, postal services, telephony services, insurance, medical costs, electricity, heating and clothing. It may also include travel expenses (**Bosnia and Herzegovina** and **Denmark**), or the retirement pensions of former judges of the Supreme Court (**Estonia**), or other lifetime annuities (**Russian Federation**).

Disparities between States are mainly due to differences in the categorisation of expenses. According to national accounting standards and systems, some expenses are included in the category "other expenses" although they are generally related to specific categories. For example, "other expenses" may include some of the expenses related to training (**Hungary**), staff remuneration (**Bulgaria, Hungary** and **Romania**), computerisation (**Bulgaria**), renovation of buildings (**Bulgaria**) or a part of the justice expenses such as expert's fees and translation costs (**Russian Federation**).

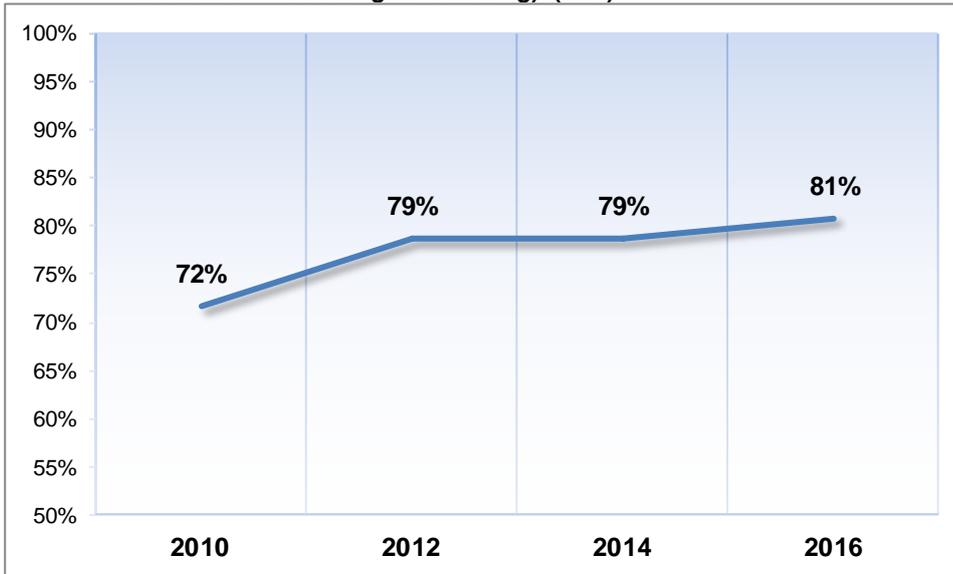
Changes in categorisation from one cycle to another may also explain significant budgetary variations for this category within a country. For example, in **Bulgaria**, the increase in the budget associated with this category (+16 %) is partly linked to the fact that in 2016 expenses for renovation of buildings have been attached to the category "other expenses". In the **Netherlands**, until 2014 the category "other expenses" included the total expenditure for the Supreme Court.

### 2.3.3.8 Outsourcing

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

This trend often corresponds to a budgetary rationalization logic. It is also sometimes justified by an objective of competences: willingness to ensure a higher level of performance and expertise in a given field, for example in computer science.

**Figure 2.19 Evolution of the outsourcing of services by the judicial system between 2010 and 2016 (% of the States / entities using outsourcing) (Q54)**

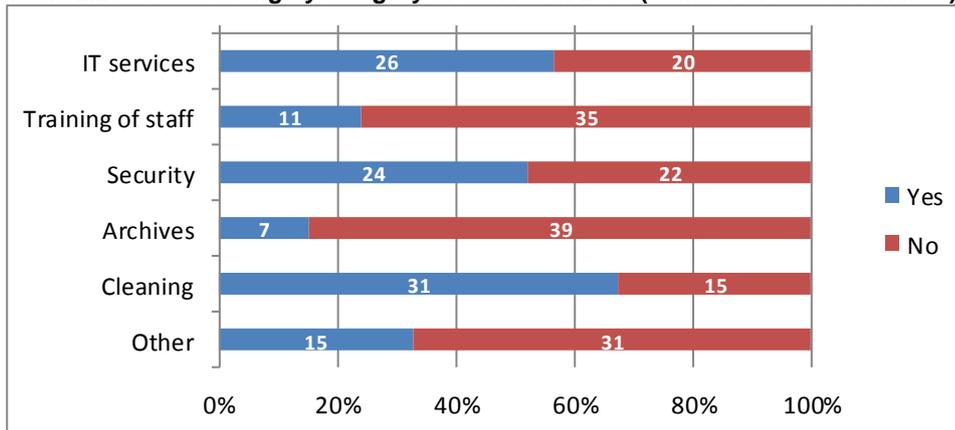


The introduction of outsourcing appears to be related to a downward trend noted in respect both in non-judge staff and technical staff. In 17 States (out of 39 States for which the variation could be calculated) the non-judge staff decreased between 2010 and 2014. In the same period, 14 States (out of 25) saw a reduction in technical staff. Between 2014 and 2016, 19 States or entities out of 42 (**Azerbaijan, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Italy, Luxembourg, Malta, Republic of Moldova, Netherlands, Portugal, Serbia, Slovenia, Sweden, Switzerland, UK-England and Wales and Israel**) reduced non-judge staff by between -10 % and -38 %. The decrease in non-judicial staff was less significant in **Portugal, Sweden, Armenia, Monaco, Latvia, Germany, UK-Scotland, Belgium, UK-England and Wales, Denmark, Serbia, Andorra and Finland** (less - 10 %).

**Table 2.20 Evolution in the number of non-judge staff per 100 000 inhabitants between 2010 and 2016 (Q1, Q52)**

States / Entities	Number of non-judge staff per 100 000 inhabitants				Variations		
	2010	2012	2014	2016	2012 - 2014	2012 - 2016	2014 - 2016
Albania	24,3	28,7	29,7	31,6	3,5%	10,1%	6,4%
Andorra	132,9	139,0	136,5	145,0	-1,8%	4,3%	6,3%
Armenia	18,9	20,4	77,5	78,5	279,7%	284,5%	1,3%
Austria	55,3	54,8	54,8	63,4	0,0%	15,8%	15,7%
Azerbaijan	25,5	25,0	27,2	26,9	8,9%	7,5%	-1,3%
Belgium	52,0	48,9	47,2	44,6	-3,5%	-8,7%	-5,4%
Bosnia and Herzegovina	77,7	80,4	81,0	89,9	0,7%	11,8%	11,1%
Bulgaria	79,7	82,6	83,5	86,9	1,1%	5,3%	4,1%
Croatia	157,4	146,3	143,4	140,3	-1,9%	-4,1%	-2,2%
Cyprus	57,5	49,0	52,2	51,5	6,6%	5,2%	-1,3%
Czech Republic	90,3	86,9	88,4	91,8	1,8%	5,6%	3,8%
Denmark	NA	32,5	31,0	28,6	-4,7%	-12,2%	-7,8%
Estonia	72,8	74,4	77,4	66,7	4,1%	-10,4%	-13,9%
Finland	42,5	40,8	39,5	39,4	-3,2%	-3,4%	-0,2%
France	32,5	33,2	33,7	33,9	1,6%	2,2%	0,6%
Georgia	36,3	25,7	31,4	37,8	22,3%	47,2%	20,3%
Germany	65,6	66,9	66,0	64,7	-1,3%	-3,2%	-1,9%
Greece	59,8	48,2	50,5	39,3	4,8%	-18,4%	-22,2%
Hungary	77,2	82,2	81,4	81,7	-0,9%	-0,6%	0,4%
Iceland	NA	13,4	NA	17,4	NA	30,5%	NA
Ireland	22,4	20,6	20,0	20,9	-2,6%	1,4%	4,1%
Italy	NA	39,7	36,0	35,0	-9,2%	-11,9%	-3,0%
Latvia	71,8	78,6	78,8	80,3	0,3%	2,2%	1,9%
Lithuania	81,9	87,2	89,3	96,2	2,4%	10,3%	7,8%
Luxembourg	NA	NA	34,8	33,9	NA	NA	-2,7%
Malta	89,6	85,4	90,6	87,0	6,0%	1,8%	-4,0%
Republic of Moldova	44,1	42,5	52,8	51,9	24,2%	22,3%	-1,6%
Monaco	105,9	116,2	121,7	122,5	4,7%	5,4%	0,7%
Montenegro	171,8	169,5	137,7	154,5	-18,7%	-8,8%	12,2%
Netherlands	40,1	37,3	43,9	42,8	17,9%	15,0%	-2,4%
Norway	16,2	16,3	16,7	17,1	2,8%	5,3%	2,5%
Poland	94,1	106,0	107,9	112,3	1,8%	6,0%	4,1%
Portugal	62,3	58,3	54,9	54,8	-5,7%	-5,9%	-0,2%
Romania	39,6	43,6	45,5	52,4	4,5%	20,3%	15,1%
Russian Federation	67,3	66,6	65,7	66,8	-1,4%	0,3%	1,8%
Serbia	151,4	143,7	140,3	132,7	-2,3%	-7,6%	-5,4%
Slovakia	82,2	82,8	82,4	82,5	-0,5%	-0,5%	0,1%
Slovenia	159,7	161,7	162,8	161,2	0,6%	-0,3%	-1,0%
Spain	NA	97,3	104,6	105,7	7,5%	8,7%	1,1%
Sweden	NA	54,1	49,2	48,6	-9,1%	-10,2%	-1,2%
Switzerland	55,5	53,6	55,7	53,5	4,1%	-0,1%	-4,0%
The FYROMacedonia	111,9	113,1	112,6	107,3	-0,5%	-5,2%	-4,7%
Turkey	30,3	NA	NA	NA	NA	NA	NA
Ukraine	NA	72,1	NA	55,2	NA	-23,5%	NA
UK-England and Wales	37,1	30,6	31,1	27,0	1,8%	-11,7%	-13,3%
UK-Scotland	28,7	25,6	26,6	28,5	4,0%	11,3%	7,0%
Israel		47,1	45,4	44,7	-3,6%	-5,1%	-1,5%
Morocco				26,6			
<b>Average</b>	69,8	67,8	69,6	68,7	8,3%	8,9%	0,7%
<b>Median</b>	62,3	56,5	55,7	55,2	1,4%	2,0%	0,1%
<b>Minimum</b>	16,2	13,4	16,7	17,1	-18,7%	-23,5%	-22,2%
<b>Maximum</b>	171,8	169,5	162,8	161,2	279,7%	284,5%	20,3%

**Table 2.21 Outsourcing by category of service in 2016 (number of States / entities) (Q54-1)**

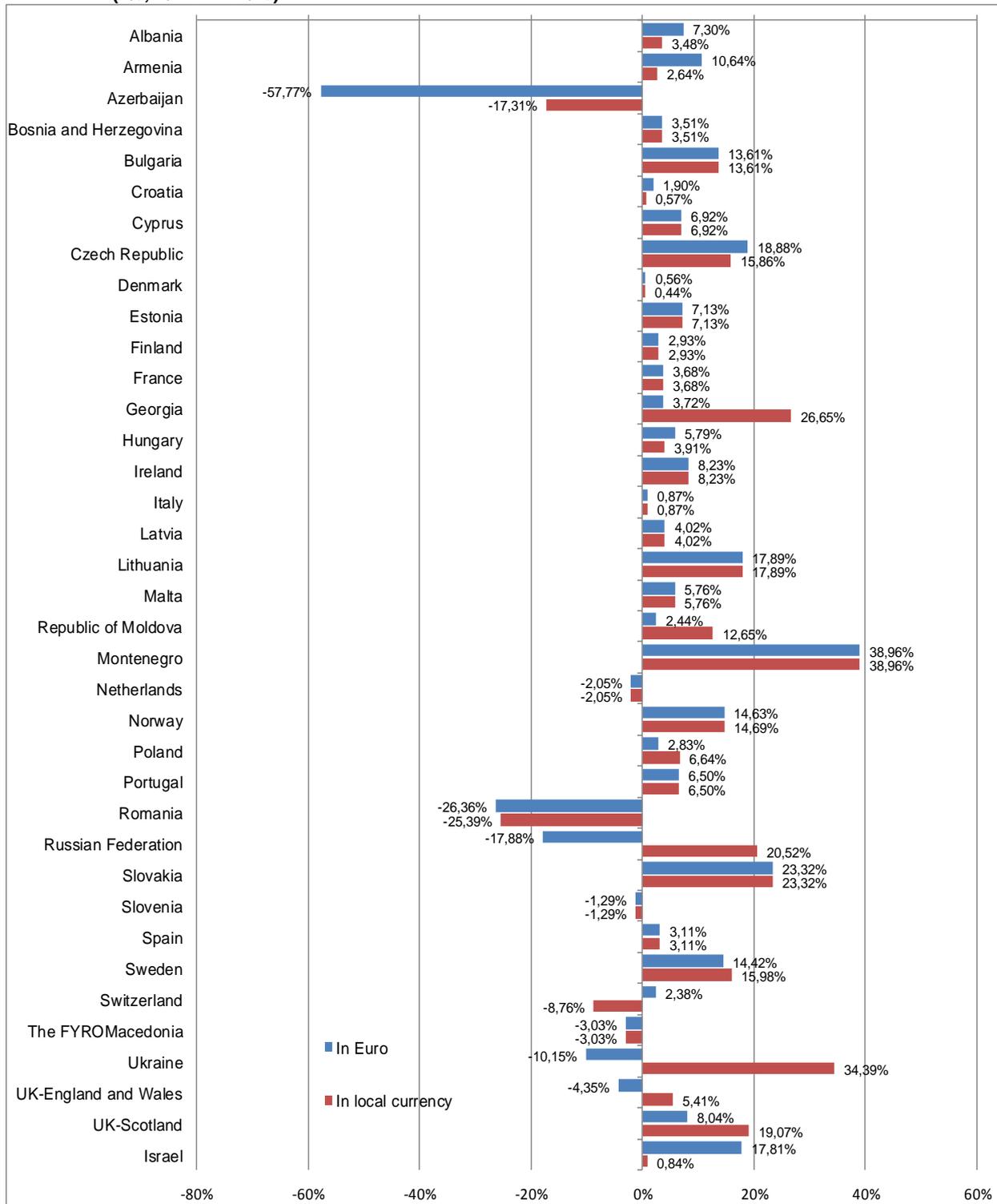


The table above shows the percentage of outsourcing by category of services. The highest ratio of outsourcing regards clearing services (68 %) and IT services (57 %). The management of archives is the service the least outsourced (15 %). It is interesting to note that the staff in charge of judicial training is mainly recruited from the judicial staff: only 23 % of training services are outsourced.

**Bosnia and Herzegovina** and **Germany** outsourced all the categories of services in 2016. In **Austria**, **Ireland**, **Russian Federation**, **Switzerland**, **Turkey**, **Morocco**, 4 services out of 5 were outsourced in 2016.

### 2.3.4.1 Evolution in the court budgets

Figure 2.22 Variation in the approved budget of the courts between 2014 and 2016, in € and in local currency (Q6, Q12 and Q13)



**Table 2.23 Evolution in the approved budget of all courts between 2010 and 2016, in € (Q6)**

States / Entities	Approved budget for all courts				Evolution
	2010	2012	2014	2016	
Albania	10 552 684 €	12 513 000 €	14 821 816 €	15 903 916 €	
Andorra	5 803 340 €	6 054 897 €	6 231 437 €	NA	
Armenia	11 285 536 €	11 717 070 €	15 528 020 €	17 179 503 €	
Austria	NA	NA	NA	NA	
Azerbaijan	40 315 230 €	58 719 620 €	102 485 992 €	43 281 253 €	
Belgium	NA	NA	NA	NA	
Bosnia and Herzegovina	73 345 061 €	78 397 704 €	83 657 645 €	86 590 466 €	
Bulgaria	112 211 184 €	124 911 954 €	136 407 333 €	154 970 220 €	
Croatia	211 304 301 €	156 601 458 €	163 302 114 €	166 408 056 €	
Cyprus	33 546 827 €	30 611 480 €	26 287 423 €	28 107 307 €	
Czech Republic	346 497 809 €	370 751 152 €	345 730 027 €	411 012 953 €	
Denmark	216 795 693 €	243 294 736 €	240 945 242 €	242 289 742 €	
Estonia	26 797 340 €	29 728 350 €	38 589 501 €	41 340 192 €	
Finland	243 066 350 €	249 704 356 €	277 295 000 €	285 425 000 €	
France	2 859 480 770 €	2 917 700 110 €	3 123 051 554 €	3 238 063 225 €	
Georgia	16 214 854 €	16 714 717 €	20 939 664 €	21 718 668 €	
Germany	7 789 169 914 €	8 302 304 846 €	NA	NA	
Greece	NA	NA	NA	NA	
Hungary	259 501 133 €	325 687 695 €	283 479 317 €	299 893 343 €	
Iceland	7 413 547 €	9 602 600 €	NA	16 722 689 €	
Ireland	148 722 000 €	107 090 000 €	104 565 000 €	113 172 000 €	
Italy	3 051 375 987 €	2 986 521 397 €	2 945 513 378 €	2 971 094 830 €	
Latvia	36 919 820 €	44 494 921 €	51 305 248 €	53 365 154 €	
Lithuania	50 567 945 €	53 138 612 €	62 969 474 €	74 237 182 €	
Luxembourg	NA	NA	NA	NA	
Malta	8 355 400 €	11 527 427 €	13 115 766 €	13 870 800 €	
Republic of Moldova	8 472 063 €	9 581 963 €	19 089 717 €	19 555 856 €	
Monaco	NA	NA	NA	5 665 100 €	
Montenegro	19 943 898 €	19 252 931 €	19 908 315 €	27 664 139 €	
Netherlands	993 086 000 €	1 068 773 500 €	1 068 474 000 €	1 046 578 000 €	
Norway	207 841 410 €	234 000 000 €	205 000 000 €	235 000 000 €	
Poland	1 365 085 000 €	1 379 338 000 €	1 405 850 000 €	1 445 686 000 €	
Portugal	528 943 165 €	476 924 836 €	414 114 841 €	441 024 845 €	
Romania	355 246 737 €	324 611 610 €	533 090 063 €	392 582 194 €	
Russian Federation	2 912 743 823 €	3 336 134 801 €	3 184 300 240 €	2 614 827 293 €	
Serbia	111 016 635 €	177 981 291 €	NA	NA	
Slovakia	139 851 564 €	152 715 786 €	151 291 595 €	186 576 657 €	
Slovenia	178 158 919 €	160 526 569 €	164 850 383 €	162 731 138 €	
Spain	NA	3 258 327 418 €	3 050 594 663 €	3 145 396 555 €	
Sweden	557 260 358 €	637 246 965 €	NA	697 033 550 €	
Switzerland	916 146 809 €	981 206 021 €	1 111 423 623 €	1 137 821 098 €	
The FYROMacedonia	28 541 751 €	30 084 276 €	30 833 675 €	29 899 055 €	
Turkey	NA	NA	NA	NA	
Ukraine	228 667 631 €	410 373 391 €	244 189 579 €	219 392 178 €	
UK-England and Wales	1 182 000 000 €	2 384 439 794 €	2 316 791 217 €	2 215 993 000 €	
UK-Scotland	146 420 820 €	135 811 499 €	141 908 000 €	153 313 246 €	
Israel		289 565 906 €	375 113 449 €	441 926 855 €	
Morocco				NA	
<b>Average</b>	652 273 572 €	783 127 969 €	614 386 968 €	591 352 274 €	
<b>Median</b>	148 722 000 €	158 564 014 €	157 296 855 €	164 569 597 €	
<b>Minimum</b>	5 803 340 €	6 054 897 €	6 231 437 €	5 665 100 €	
<b>Maximum</b>	7 789 169 914 €	8 302 304 846 €	3 184 300 240 €	3 238 063 225 €	

Over a longer period, it is possible to analyse the evolution in the budget allocated in Euros to the judicial system between 2010 and 2016 for 36 States or entities.

Compared to the previous periods analysed by the CEPEJ (2010-2012 and 2012-2014), 14 out of 36 States or entities (**Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Estonia, Finland, France, Georgia, Latvia, Lithuania, Malta, Republic of Moldova, Poland and Switzerland**) have confirmed an upward trend showing a continuous increase in the budget allocated to the courts. Also in **Israel**, an increase in the court budget may be noted both in the periods 2012-2014 and 2014-2016. In **Croatia, Montenegro and UK-Scotland**, the budget allocated to courts increased in the periods 2012-2014 and 2014-2016, despite the decreased noted between 2010 and 2012.

The trend changed positively between 2014 and 2016 for 8 out of 36 States or entities, where the budget decreased between 2012 and 2014 and increased between 2014 and 2016: **Cyprus, Czech Republic, Hungary, Italy, Norway, Portugal, Slovakia and Spain**.

**Denmark, Montenegro and UK-England and Wales** show a stable trend between 2012 and 2014, after an increase performed by the court budget between 2010 and 2012.

On the contrary, **Azerbaijan, Romania, Slovenia** decreased their budget between 2014 and 2016, after the increased seen between 2012 and 2014.

The decrease in “**the former Yugoslav Republic of Macedonia**” can be explained by the fact that the budget of the Academy for judges and prosecutors and the budget of the legal aid given by the courts are not included in the court budget, contrary to the previous exercises.

Finally, budget cuts have been increased or extended in recent years in **Ireland and Ukraine**.

For States outside the Eurozone, these results should be tempered because of the variation in the exchange rates between national currencies and the Euro over the same period. Indeed, major variations in exchange rates can have a significant impact on the budgetary data expressed in Euros. Thus, an increase in the budget allocated to the court system is less significant for States or entities whose currencies have appreciated against the Euro (for example, **Albania and Switzerland**). By contrast, in **Georgia, Republic of Moldova and Poland**, the growing budgetary efforts in favour of the courts are even more significant than what appears in the table above, considering the negative variation in exchange rates between 2014 and 2016. In **Azerbaijan, Romania and Ukraine**, the decrease in the budget is tempered by the depreciation in the exchange rate between the national currency and the Euro.

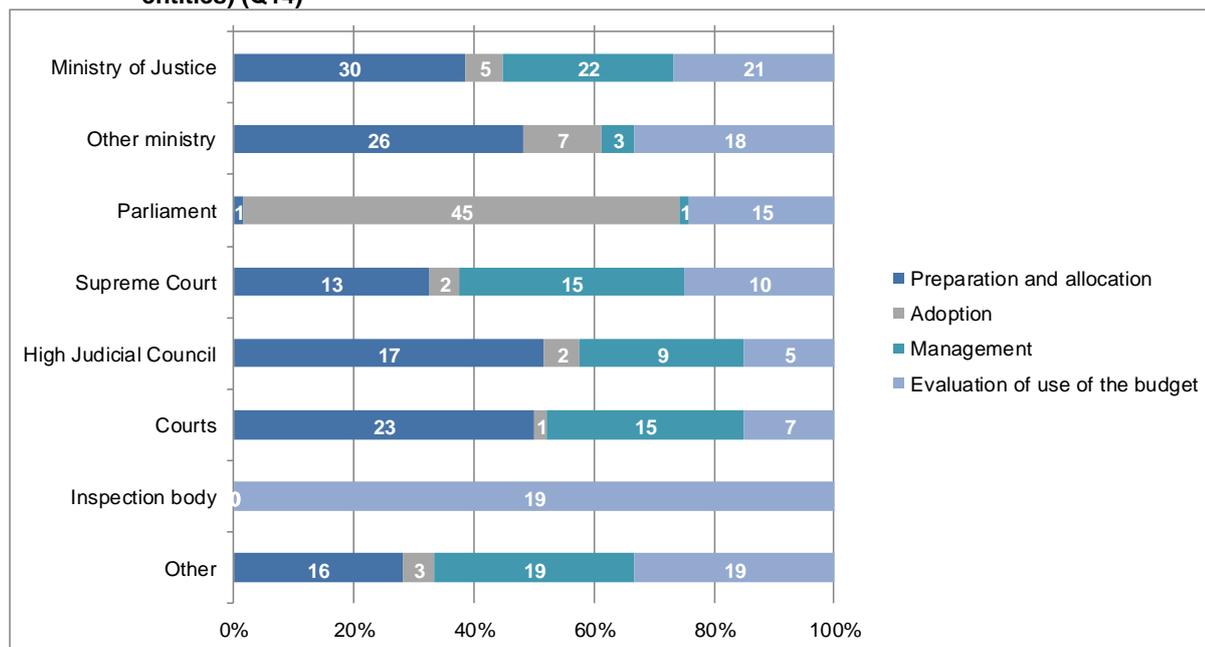
As for the variations in the budgets allocated to judicial systems, these elements have also to be weighted by the rate of inflation observed by States over the same period.

In general, one can note a trend towards the recovery of investment in favour of the courts in 2014-2016 after a period of severe budgetary restrictions as a result of the economic and financial crisis. The salary increases in particular contribute to the budget increase recorded in **Montenegro (+ 32 %), Czech Republic (+ 18,3 %), Armenia (+ 12,5 %), Norway (+ 11 %), Switzerland (+ 10,4 %), Bulgaria (+ 9,9 %), Portugal (+ 8,0 %), Malta (+ 7,6 %), Georgia (+ 7,1 %), Lithuania (+ 6,2 %), Romania (+ 5,8 %), Estonia (+ 5,5 %), Republic of Moldova (+ 5,0 %), Israel (14,3 %)** and **Slovakia (+ 5,0 %)**. Justice expenses constitute the main factor in **UK-Scotland (+ 11,2 %)**, while in **Slovenia** the increase shown by the category "other expenses" (+ 15,5 %) resulted in an increase of one third in the budget of the courts.

### 2.3.5 Budget process for the funding of courts

The figure below brings to light the bodies involved in the different phases of the process related to the allocation of the overall budget devoted to the courts. The analysis covers 48 States and entities, including **Israel and Morocco**. Attention should be drawn to the fact that outcomes regarding **Israel and Morocco** are not included in the Figure 2.24. Therefore, specific reference is made to these two States where relevant.

**Figure 2.24 Authorities formally responsible for the budgets allocated to courts in 2016 (number of States / entities) (Q14)**



The process of allocation of the annual budget of the courts encompasses four phases: 1) preparation and allocation; 2) adoption; 3) management; 4) evaluation of the use of the budget.

### 1) Preparation and allocation

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

The courts themselves are responsible for the preparation of their overall budget in 23 States or entities and also in **Israel and Morocco**. Councils for the Judiciary or similar bodies are responsible in 17 States and the Supreme Court in 13 States. Other bodies or institutions may also be involved in 16 States or entities: for example, the Office of Administration of the Judicial Budget in **Albania**, the Council of Presidents of Courts in **Armenia**, the General Audit Office in **Denmark**, the Directorate of Judicial Services (exercising comparable powers to those of a Ministry of Justice) in **Monaco**, the national administrations of justice in **Norway**, the governments and regional assemblies in **Spain**, the Budget Council of Courts in **“the former Yugoslav Republic of Macedonia”**, the Council of Courts Service Management in **UK-Scotland**. Parliament is only involved during the preparation of the budget in **Austria**.

### 2) Adoption

Parliament is responsible for adopting the overall budget of the courts in all the States and entities, except in **UK-England and Wales**, where the budget is adopted by the Ministry of Justice. In 5 States the Ministry of Justice is involved in the adoption of the budget: **Estonia, Iceland, Malta, Portugal and UK-England and Wales**. Another ministry is involved in **Andorra, Armenia, Estonia, Greece, Malta, Portugal, Romania and Morocco**. The Supreme Court is involved in **Estonia and Iceland**, the High Council of Justice in **Andorra and Lithuania** and the courts themselves in **Austria**. One should also note the specific role of federated or autonomous entities in some federal or decentralised States (including governments and regional assemblies in **Spain**).

### 3) Management

Most often, budget management and budget distribution between the courts is ensured by the executive: Ministry of Justice (23 States or entities) and/or other ministries, most of the time the Ministry of Finance (4 States) and/or the judiciary represented by the courts themselves (in 15 States or entities) and/or the Supreme Court (in 15 States) and/or the Council for the Judiciary or similar bodies (in 9 States). The inspection bodies which may intervene in some States in the area of budget preparation often have a role to play also in managing the budget.

### 4) Evaluation of the use of the budget

The task of evaluation of the use of the budget at the national level is mainly within the competence of the executive, the Ministry of Justice (21 States or entities and also in **Morocco**) or other ministries (18 States or entities, to which Israel is added). Parliament is competent in 15 States and in **Israel** and **Morocco**, the Supreme Court in 10 States, Councils for the Judiciary or similar bodies in 5 States and the courts in 7 States, as well as in **Israel**. 18 States resort to other bodies (for example, an audit body in **Latvia** and **Sweden**).

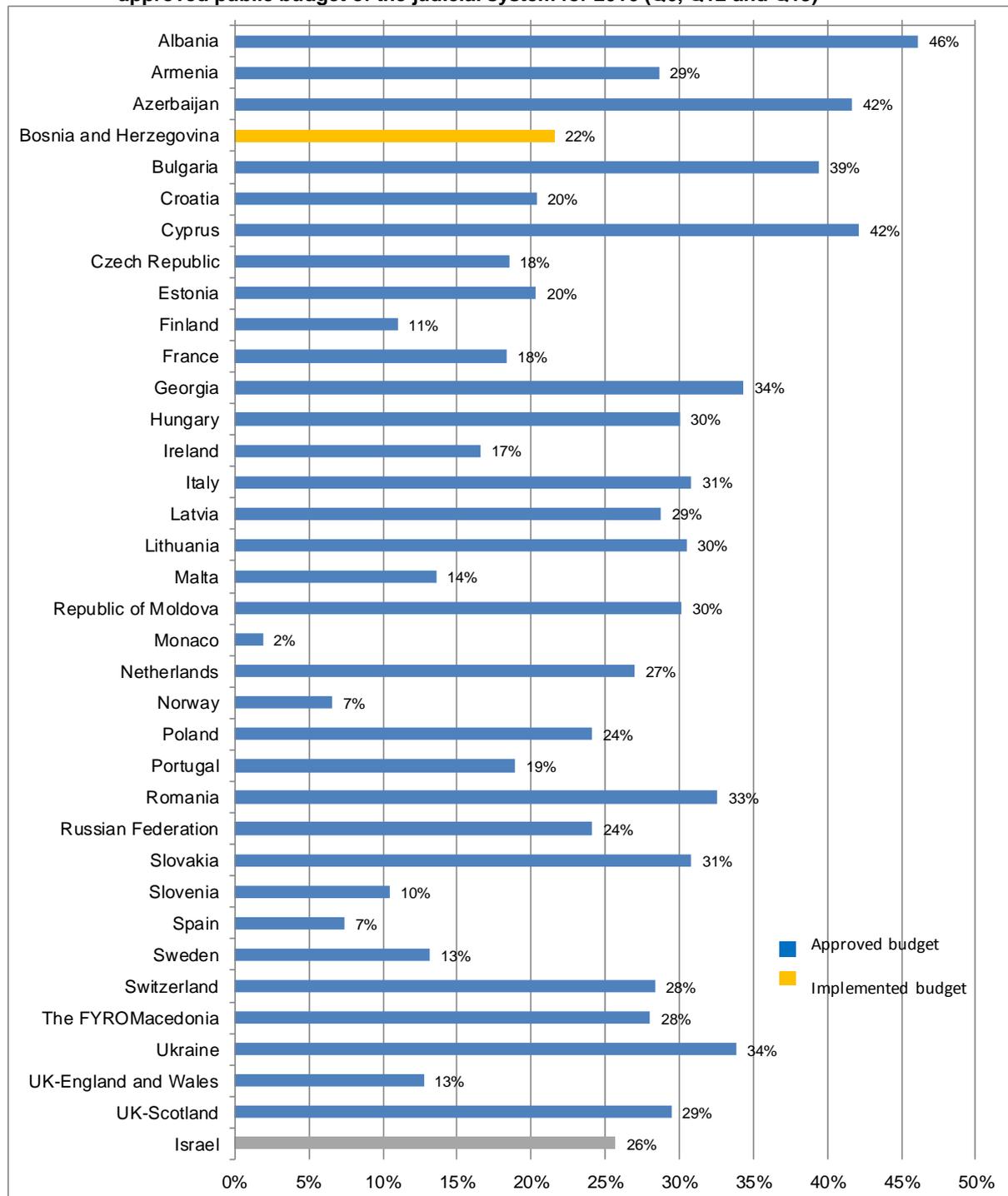
#### 2.4 Public budget allocated to the public prosecution services

In Recommendation Rec (2000)19 adopted by the Committee of Ministers of the Council of Europe on 6 October 2000, public prosecutors are defined as: "*public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system*". The following analysis must take into account the differences between States or entities as regards the scope of the powers granted to public prosecutors in criminal proceedings, as well as possible powers outside the criminal field in some States or entities.

Some States have a common budget between the courts and the prosecution services, the budgetary management depending of ministry of Justice: **Andorra, Austria, Belgium, France, Germany, Greece, Italy, Luxembourg** and **Turkey**. **France** and **Italy** made an estimation of respective budget of courts and prosecution services, based on the number of staff.

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

Figure 2.25 Part of the approved public budget allocated to public prosecution services within the total approved public budget of the judicial system for 2016 (Q6, Q12 and Q13)



Data is available for 37 States or entities (for **Bosnia and Herzegovina** the implemented budget is considered). The average percentage of the approved annual budget allocated to public prosecution services within the total approved annual public budget of the judicial system is 24 %, very close to the average identified in the previous evaluation cycles of 25 %.

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

prosecution services seems rather high for this cycle due to the establishment of the Special Public Prosecution Office. Also in **Italy**, **Switzerland** and **UK-Scotland** the part of the budget allocated to public prosecution services is close to one third. In **Italy**, the budget of prosecution services has been estimated, due to the fact that the respective Ministries of Justice has one single budget which does not distinguish between the budget allocated to courts, the budget allocated to public prosecution services and the one allocated to the administration.

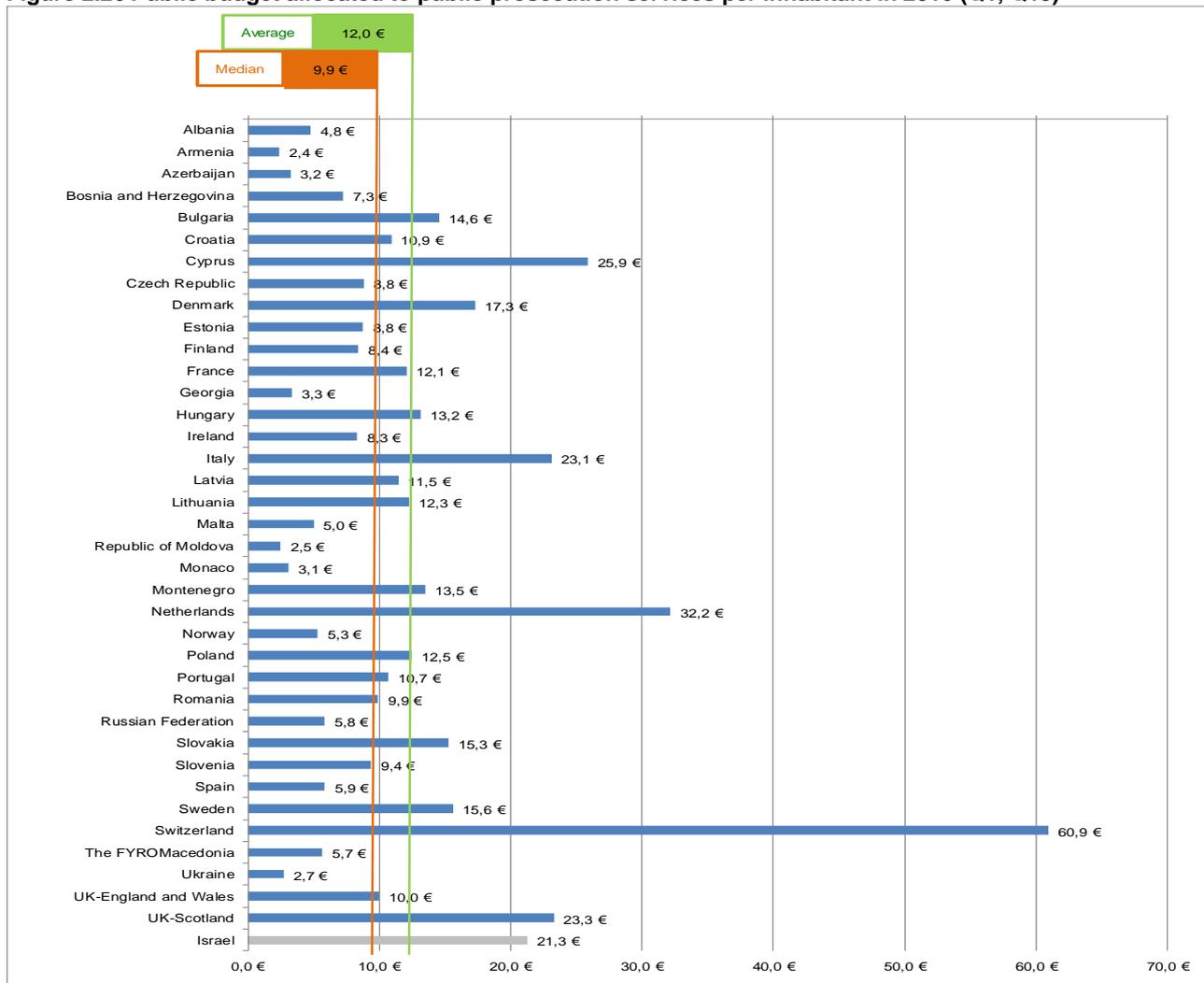
At the opposite end, 3 States confer 10 % or less of the total judicial budget to the public prosecution services, notably **Norway**, **Slovenia** and **Spain**.

## 2.4.2 Public budget allocated to public prosecution services in 2016

38 States or entities were able to identify the specific budget allocated to the public prosecution services for 2016. The data is not available for **Iceland**. As in the previous evaluation cycle, the budget for prosecution services cannot be isolated for **Andorra**, **Austria**, **Belgium**, **Germany**, **Greece**, **Luxembourg** and **Turkey**, since the budgetary management is shared between the public prosecution services and the courts. **France** and **Italy**, which are in the same situation, made an estimation based on the number of staff. In **Denmark**, the system presents the peculiarity of including the budget allocated to public prosecution services within the overall budget of the police. Before 2013, it was not possible to identify the precise expenditures concerning public prosecution services. Since 2013, due to a change in the registration frame, it is easier to estimate the cost of the public prosecution services. Starting from this evaluation cycle, in **Monaco**, it has been possible to separate the budget of prosecution services from the courts' budget.

### 2.4.2.1 Budget allocated to public prosecution services per inhabitant in 2016

Figure 2.26 Public budget allocated to public prosecution services per inhabitant in 2016 (Q1, Q13)



The European average as regards the annual public budget allocated to public prosecution services per inhabitant in 2016 is 12 €, which is identical to the average identified in 2014.

**Switzerland** allocates almost 61 € per year and per inhabitant to the Public Prosecution Office which is substantially more than all other States. Indeed, following the abolition of the function of investigating judge, the country has expanded the role and financial resources of the public prosecution services within the criminal proceedings. 5 other States or entities allocate more than 20 € per inhabitant: **Cyprus** (26 €), **Netherlands** (34 €), **UK-Scotland** (27 €) and **Italy** (24 €), as well as **Israel** (21,30 €).

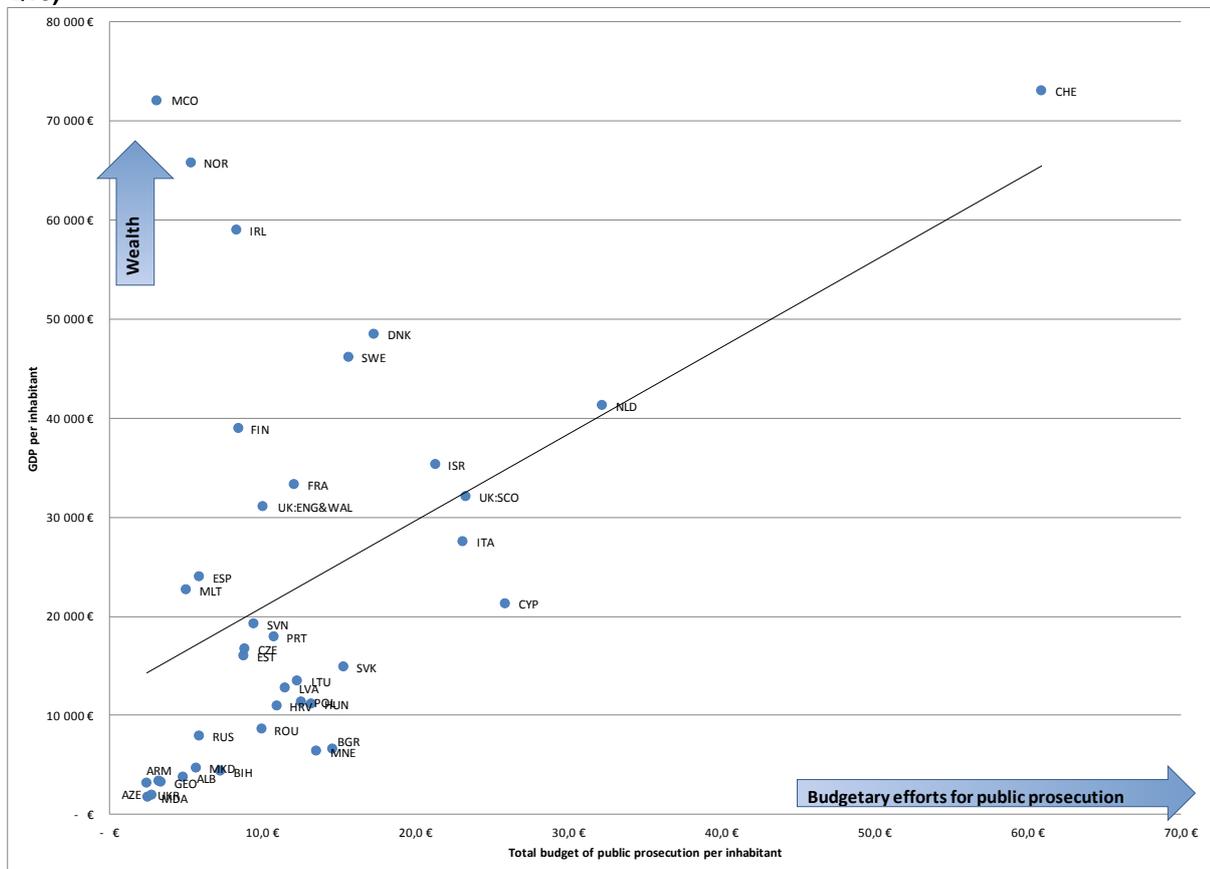
In 13 States or entities, the annual public budget of the public prosecution services is between 10 and 20 € per inhabitant: **Bulgaria** (15 €), **Croatia** (11 €), **Denmark** (17 €), **France** (12 €), **Hungary** (13 €), **Latvia** (11,50 €), **Lithuania** (12 €), **Montenegro** (13,50 €), **Poland** (12,50 €), **Portugal** (11 €) **Romania** (10 €), **Slovakia** (15 €), **UK-England and Wales** (10 €).

Finally, 13 States or entities allocate less than 10 € per year and per inhabitant to the public prosecution services: **Albania** (5 €), **Armenia** (2 €), **Azerbaijan** (3 €), **Georgia** (3 €), **Ireland** (8 €), **Malta** (5 €), **Republic of Moldova** (2 €), **Monaco** (3 €), **Norway** (5 €), **Russian Federation** (6 €), **Slovenia** (9 €), “**the former Yugoslav Republic of Macedonia**” (6 €), **Ukraine** (3 €).

### 2.4.3 Public budget of the public prosecution services per inhabitant compared to the GDP of States or entities in 2016

Like the annual public budget allocated to the judicial system and the one allocated to courts, the annual public budget of the public prosecution services can be put in perspective with regard to the wealth of States or entities. The following figure relates the implemented budget of public prosecution services per inhabitant to the per capita GDP in each State and entity. The trend line suggests a positive relation: the budget of public prosecution services increases with the increase in GDP. States located below the trend line make a more significant budgetary effort in favour of public prosecutors.

**Figure 2.27 Approved budget of the public prosecution per inhabitant compared to GDP per capita in 2016 (Q1, Q13)**

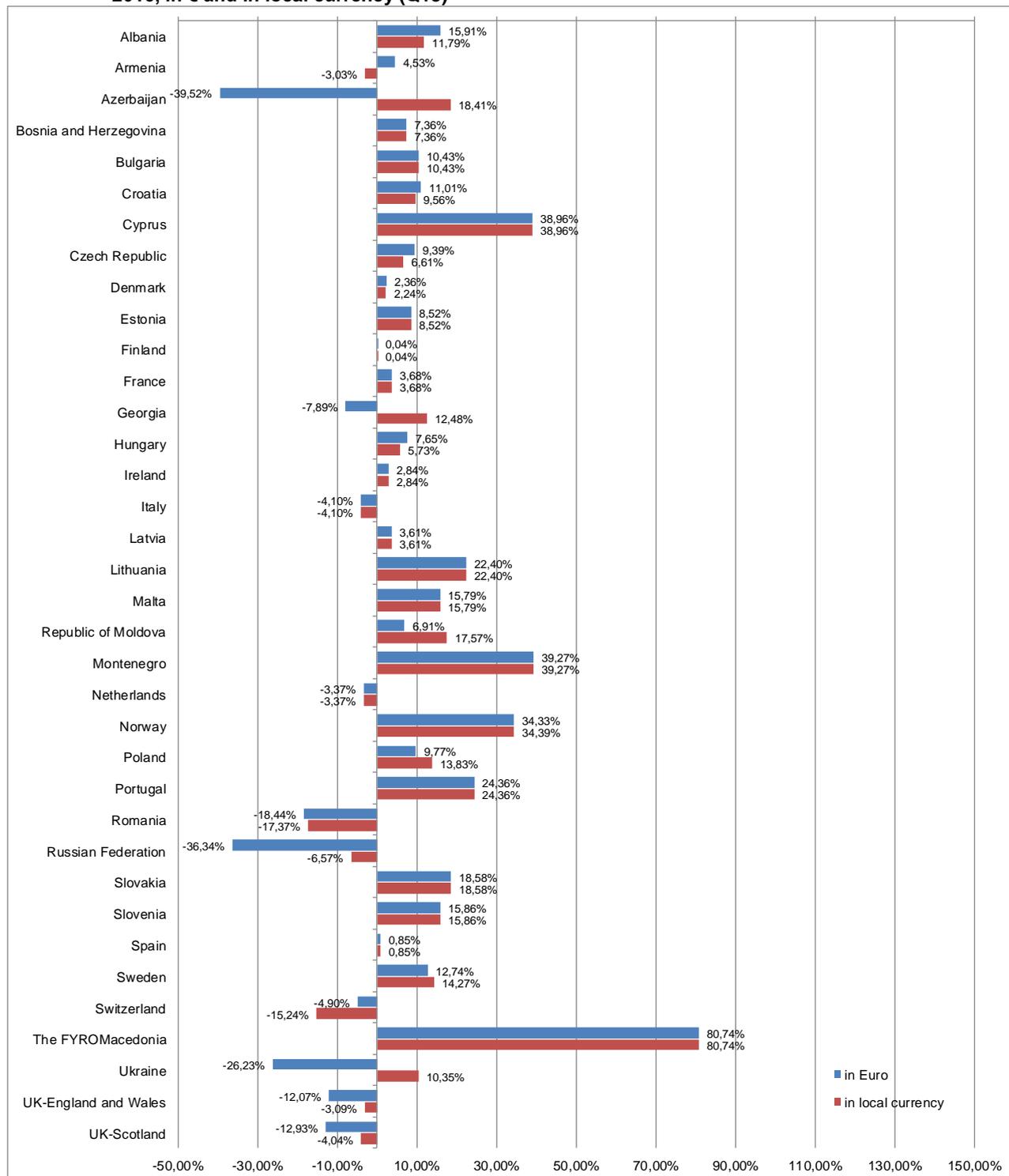


The figure shows that **Bosnia and Herzegovina, Bulgaria, Montenegro** and **Republic of Moldova** carried out the most significant budgetary effort in favour of public prosecution services compared with their wealth, while **Denmark, Ireland, Monaco** and **Norway** allocated less money to prosecution services, compared to the other countries with the same wealth.

## 2.4.4 Evolution in the public budget allocated to public prosecution services

### 2.4.4.1 Evolution in the public budget allocated to public prosecution services between 2014 and 2016

**Figure 2.28 Variation in the approved public budget allocated to public prosecution services between 2014 and 2016, in € and in local currency (Q13)**



The variation in the annual public budget allocated to public prosecution services between 2014 and 2016 could be examined in respect of 36 States or entities.

For the period 2014-2016, 24 States or entities have increased their budget allocated to public prosecution services (in Euros and in absolute value), while a decrease is observed in this respect in 7 States. In **Azerbaijan, Georgia and Ukraine**, the budgetary variation appears as negative in Euros, but it is actually positive if one takes into consideration the negative progression of the exchange rates compared to the Euro. Likewise, due to the exchange rate depreciation during the period considered, the budgetary decreases in **Romania, UK-England and Wales and UK-Scotland** are actually less dramatic than they appear. In the **Russian Federation**, the reduction in the budget is attenuated when it is calculated in local currency. Conversely, in **Switzerland**, this decrease is greater in local currency.

The most consistent increases (more than 20 %) can be found in **Cyprus (+ 39 %)**, **Lithuania (+ 22 %)**, **Montenegro (+ 39 %)**, **Norway (+ 34 %)**, **Portugal (24 %)** and “**the Former Yugoslav Republic of Macedonia**” (+ 79 % in local currency). As concerns “**the former Yugoslav republic of Macedonia**”, this increase is mainly due to the establishment of the Special Public Prosecution Office and the new competences of the public prosecution services set up by the Law on Criminal Procedure.

In 2016, in **Cyprus** there has been an increase in the number of cases following the internal reorganisation, while in **Lithuania**, the increase in the budget allocated to public prosecution services is due to a building renovation; in **Montenegro** it is due to changes in the organizational laws, to the establishment of The Special Prosecutor's Office in 2015 and to a rising in the number of staff, while in **Norway** there was a specific policy consisting in giving political priority to the prosecution services. In **Portugal**, the salaries were increased after being cut in 2012.

## 2.4.4.2 Evolution in the public budget allocated to public prosecution services between 2010 and 2016

Table 2.29 Variation in the approved budget of public prosecution services between 2010 and 2016 in € (Q6)

States / Entities	Approved budget for public prosecution				Evolution
	2010	2012	2014	2016	
Albania	8 901 893 €	13 000 734 €	11 880 336 €	13 771 074 €	
Andorra	810 965 €	NA	669 347 €	NA	
Armenia	4 496 722 €	5 356 768 €	6 870 600 €	7 181 500 €	
Austria	NA	NA	NA	NA	
Azerbaijan	40 007 281 €	47 881 654 €	51 878 281 €	31 373 637 €	
Belgium	NA	NA	NA	NA	
Bosnia and Herzegovina	20 400 465 €	21 290 084 €	23 721 425 €	25 467 215 €	
Bulgaria	79 203 203 €	81 248 370 €	93 698 490 €	103 474 815 €	
Croatia	41 296 176 €	42 040 323 €	40 820 393 €	45 315 977 €	
Cyprus	15 964 412 €	17 971 759 €	15 798 704 €	21 953 972 €	
Czech Republic	83 446 289 €	84 706 722 €	85 213 339 €	93 217 029 €	
Denmark	NAP	94 400 000 €	97 116 986 €	99 406 787 €	
Estonia	9 135 614 €	9 256 322 €	10 627 825 €	11 533 359 €	
Finland	42 937 000 €	45 312 000 €	46 223 000 €	46 243 000 €	
France	714 870 193 €	729 425 027 €	780 762 888 €	809 515 806 €	
Georgia	7 333 463 €	7 836 580 €	13 500 000 €	12 435 110 €	
Germany	479 916 106 €	523 346 503 €	NA	NA	
Greece	NA	NA	NA	NA	
Hungary	102 321 320 €	125 851 993 €	119 744 000 €	128 900 776 €	
Iceland	872 985 €	951 085 €	NA	NA	
Ireland	43 854 000 €	40 528 000 €	37 813 000 €	38 886 000 €	
Italy	1 249 053 619 €	1 435 025 477 €	1 460 367 057 €	1 400 480 991 €	
Latvia	15 913 545 €	20 495 958 €	21 771 366 €	22 557 706 €	
Lithuania	29 555 000 €	26 101 135 €	28 563 485 €	34 962 778 €	
Luxembourg	NA	NA	NA	NA	
Malta	2 569 000 €	1 828 559 €	1 900 000 €	2 200 000 €	
Republic of Moldova	4 416 909 €	5 877 744 €	8 339 575 €	8 916 049 €	
Monaco	1 357 600 €	NA	NA	116 400 €	
Montenegro	5 176 984 €	5 543 766 €	6 016 657 €	8 379 408 €	
Netherlands	615 642 000 €	636 924 000 €	568 734 000 €	549 596 000 €	
Norway	18 298 000 €	22 266 400 €	20 818 906 €	27 966 712 €	
Poland	312 514 570 €	424 128 567 €	437 424 395 €	480 141 000 €	
Portugal	119 901 622 €	97 551 326 €	88 786 150 €	110 412 452 €	
Romania	162 428 333 €	148 321 292 €	238 801 232 €	194 760 300 €	
Russian Federation	934 551 021 €	1 161 610 701 €	1 346 581 851 €	857 204 473 €	
Serbia	22 608 698 €	15 498 237 €	35 550 816 €	NA	
Slovakia	63 702 886 €	60 309 536 €	70 099 751 €	83 121 003 €	
Slovenia	19 263 376 €	17 655 253 €	16 730 967 €	19 383 835 €	
Spain	NA	211 352 960 €	270 480 209 €	272 791 497 €	
Sweden	127 316 425 €	144 485 809 €	138 456 474 €	156 090 472 €	
Switzerland	297 932 258 €	499 544 104 €	539 206 343 €	512 764 887 €	
The FYROMacedonia	4 740 867 €	5 153 300 €	6 502 821 €	11 753 367 €	
Turkey	NA	NA	NA	NAP	
Ukraine	105 519 414 €	257 763 148 €	157 624 921 €	116 282 491 €	
UK-England and Wales	755 810 000 €	722 425 593 €	665 125 835 €	584 861 000 €	
UK-Scotland	135 475 200 €	132 549 350 €	144 512 612 €	125 830 129 €	
Israel		NA	NA	183 558 287 €	
Morocco				NAP	
Average	171 782 447 €	203 661 952 €	202 861 422 €	191 060 784 €	
Median	41 296 176 €	47 881 654 €	49 050 641 €	46 243 000 €	
Minimum	810 965 €	951 085 €	669 347 €	116 400 €	
Maximum	1 249 053 619 €	1 435 025 477 €	1 460 367 057 €	1 400 480 991 €	

Over a longer period (2010-2016), it is possible to highlight the substantial budgetary efforts of **Armenia, Bosnia and Herzegovina, Bulgaria, Czech Republic, Estonia, Finland, France, Latvia, Republic of Moldova, Montenegro, Poland** and “**the former Yugoslav Republic of Macedonia**”, which show an upward trend of uninterrupted increases in the budget allocated to the public prosecution services. In the

shorter period between 2012 and 2014, the trend of the variation in the budget for the public prosecution services is positive also in **Denmark, Lithuania, Malta, Slovakia** and **Spain**. Furthermore, the trend changed positively between 2014 and 2016 for 8 States where the budget was reduced between 2012 and 2014, but increased in the periods 2010-2012 and 2014-2016: **Albania, Croatia, Cyprus, Hungary, Norway, Romania** and **Sweden**, as well as in **Azerbaijan**, provided that the variation in the exchange rate is taken into account. It is noteworthy that **Ireland, Portugal** and **Slovenia**, which reported budgetary cuts for the previous evaluation cycles, were able to reverse that trend for 2014-2016.

In **Ukraine**, the decrease in the public prosecution services budget is only apparent when taking into account the correspondent increase in the exchange rate of the national currency against the Euro.

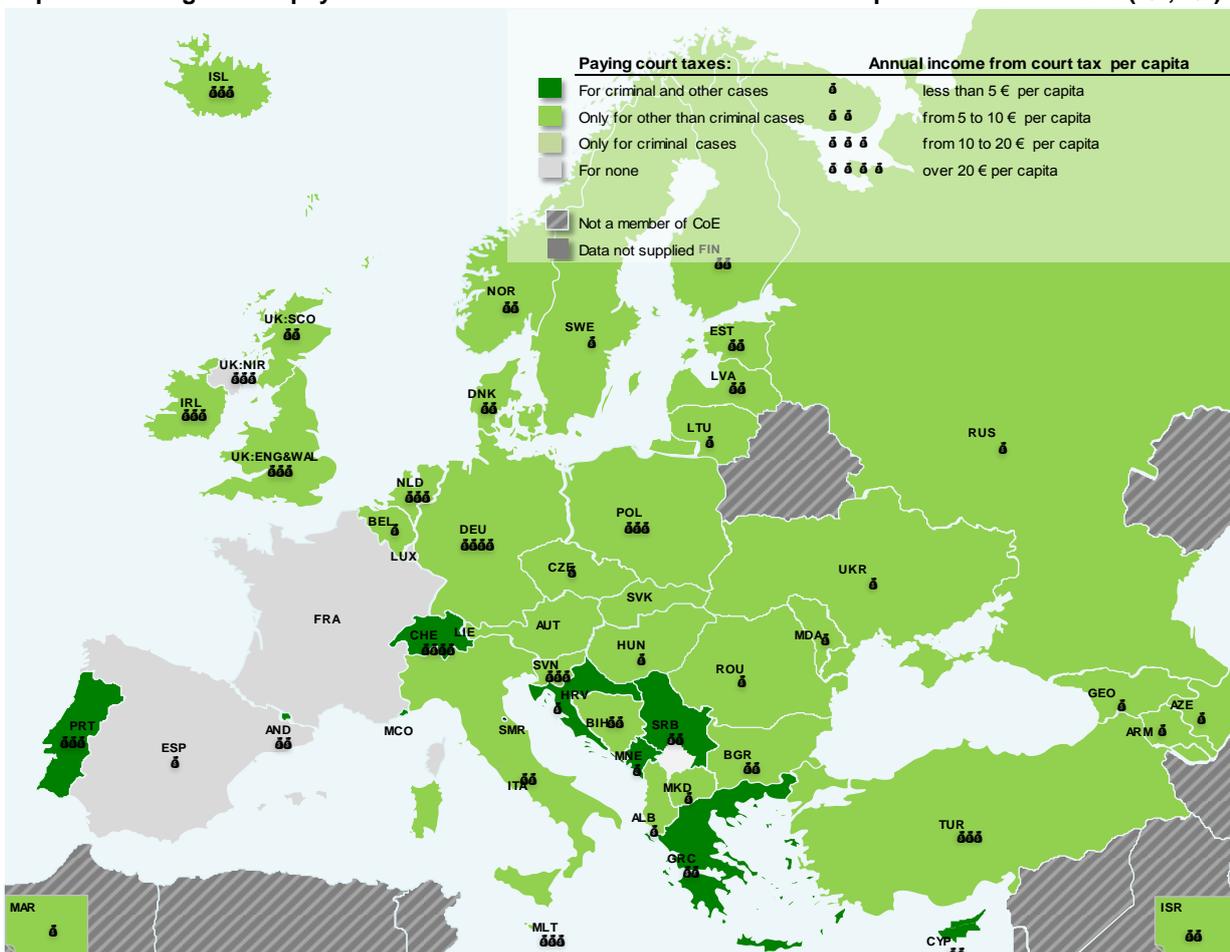
The increase in the annual public budget allocated to public prosecution services can be explained, depending on the States, by the increase in the number of prosecutors (**Montenegro, Slovenia**), the increase in the salaries of prosecutors and in the public prosecution services' staff (**Armenia, Montenegro**), the refurbishment of buildings (**Lithuania, Slovakia**) and the construction of new buildings (**Bulgaria**). Compared to the previous period analysed by the CEPEJ (2010-2014), in **Portugal**, the increase in the budget noted between 2014 and 2016 depends on the end of the budget cuts imposed in 2012 as a result of the economic and financial crisis.

Conversely, some States that increased their public prosecution services' budget during the periods 2010-2012 and/or 2012-2014 reduced it between 2014 and 2016. This includes **Belgium, Georgia, Italy, Netherlands, Russian Federation, UK-England and Wales, Ukraine** and **UK-Scotland**.

In **Georgia**, the decrease in the budget between 2014 and 2016 may be explained by an increase in the number of prosecutors and an extraordinary budgetary effort for bonus funds both carried out in 2014. The decrease in the budget allocated to the public prosecution services in the **Russian Federation** between 2014 and 2016 is tempered when taking into account the evolution in the exchange rate during the period.

## 2.5 Court taxes and fees

Map 2.30 Obligation to pay court taxes and fees and amount of court fees per inhabitant in 2016 (Q8, Q9)



In all the States and entities, except **France, Luxembourg and Spain**, litigants are required to pay a court tax or fee to start a proceeding. In **Spain**, a recent Royal Decree (1/2015) exempted natural persons from fees, which now only companies are required to pay.

In criminal matters, in States such as **Croatia, Cyprus, Greece, Montenegro, Portugal, Serbia and Switzerland**, parties into the proceedings have to pay court fees, which are covered by legal aid when granted.

The methodology used in calculating the amount of court taxes and fees differs from state to state. Some States and entities base the calculation on the value of the dispute, while others base it on the nature of the matter and/or on the level of court concerned. Most of the States and entities use a combination of different methodologies. These differences can explain the varying levels of revenues from court fees across the States and entities.

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

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

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

In some States or entities, court fees have to be paid at the end of proceedings.

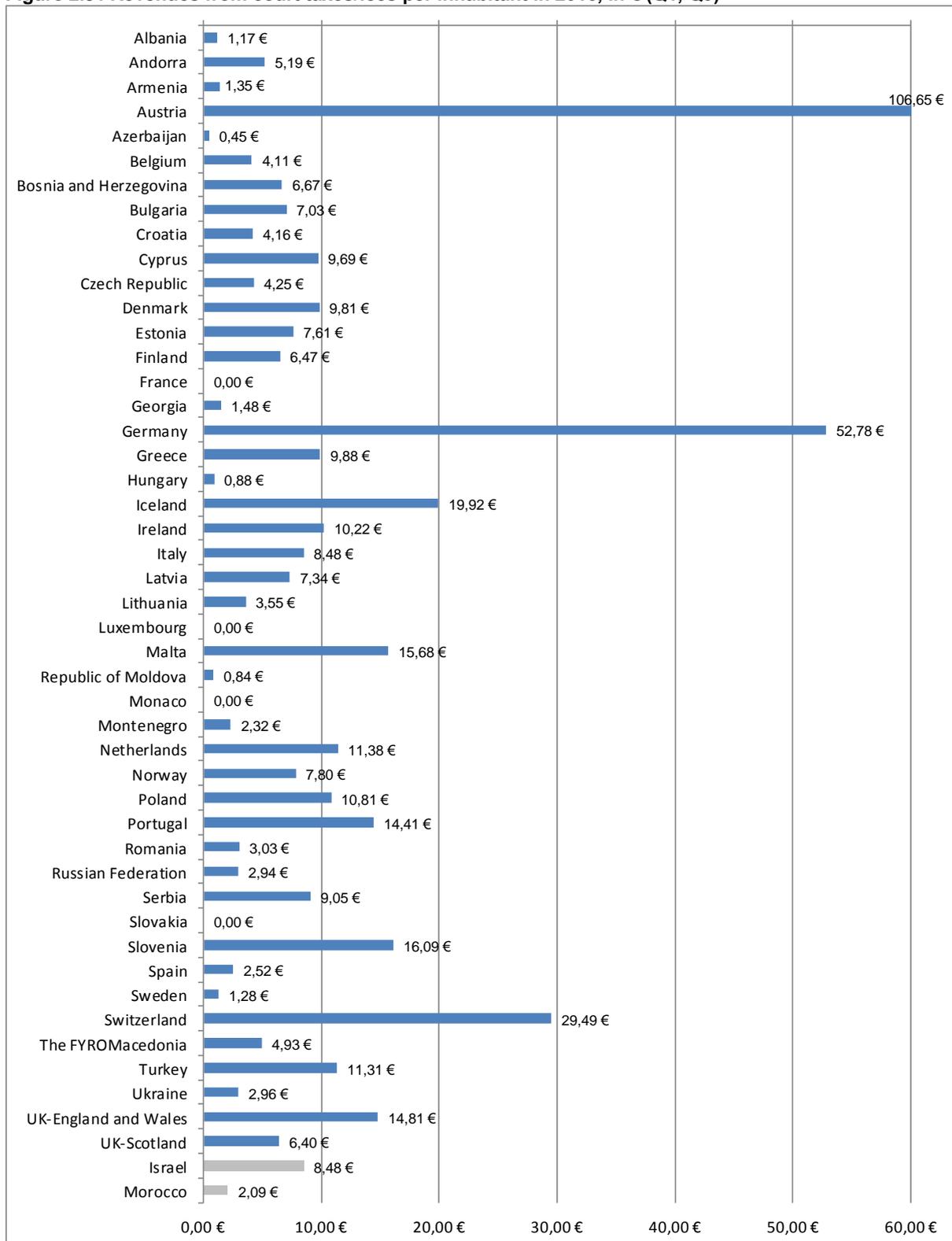
### **2.5.2 Revenues from court taxes or fees**

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

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

### 2.5.2.1 Revenues from court taxes or fees in 2016

Figure 2.31 Revenues from court taxes/fees per inhabitant in 2016, in € (Q1, Q9)



Revenues from court fees correspond to more or less significant amounts, depending on the States and entities. They are particularly high in **Austria** (106,65 € per inhabitant), where courts have to be maintained by court fees, in **Germany** (52,78 € per inhabitant), where in some regions court fees are considered as criminal and administrative fines and in **Switzerland** (29,50 € per inhabitant), where this measure includes all the courts' revenues.

To a large extent, the high level of court fees and taxes can be explained by the fact that some States and entities include in this measure other forms of courts' revenue, such as fees charged for consulting or recording information on land or business registers.

The average value is 11,30 € per inhabitant. In 10 States or entities, the amount of court fees received per inhabitant in 2016 is above the average: **Austria**, **Germany** and **Switzerland**, as already mentioned and **Iceland** (19,90 €), **Malta** (15,70 €), **Netherlands** (11,40 €), **Portugal** (14,40 €), **Slovenia** (16,10 €), **Turkey** (11,30 €) and **UK-England and Wales** (14,80 €).

In 33 States or entity, the revenues generated by court fees and taxes are below the average. Among them, in 16 States or entities the amount is between 5 € and 11,30 € per inhabitant: **Andorra** (5,20 €), **Bosnia and Herzegovina** (6,70 €), **Bulgaria** (7 €), **Cyprus** (9,70 €), **Denmark** (9,80 €), **Estonia** (7,60 €), **Finland** (6,50 €), **Greece** (9,90 €), **Ireland** (10,20 €), **Italy** (8,50 €), **Latvia** (7,35 €), **Norway** (7,80 €), **Poland** (10,80 €), **Serbia** (9 €), **UK-Scotland** (6,40 €) and **Israel** (8,50 €).

In the remaining 17 States, the court fee revenues represent less than 5 € per inhabitant: **Albania** (1,17 €), **Armenia** (1,35 €), **Azerbaijan** (0,45 €), **Belgium** (4,10 €), **Croatia** (4,20 €), **Czech Republic** (4,25 €), **Georgia** (1,50 €), **Hungary** (0,90 €), **Lithuania** (3,55 €), **Republic of Moldova** (0,85 €), **Montenegro** (2,30 €), **Romania** (3€), **Russian Federation** (2,95 €), **Spain** (2,50 €), **Sweden** (1,30 €), **“the former Yugoslav Republic of Macedonia”**(4,90 €), **Ukraine** (3 €). In **Morocco** this is also the case (2,09 €).

In **Monaco** and **Slovakia**, data is not available.

These data should, however, be related to the percentage that these revenues represent in the budget of the judicial system (or the budget of the courts) – see below.

## 2.5.2.2 Evolution in the revenues from court taxes or fees between 2010 and 2016

Table 2.32 Evolution in the revenues from court taxes/fees between 2010 and 2016 (Q9)

States / Entities	Annual income of court taxes				Trend
	2010	2012	2014	2016	
Albania	2 201 657 €	4 335 000 €	3 458 066 €	3 356 344 €	
Andorra	NA	NA	NA	379 594 €	
Armenia	NAP	2 871 855 €	2 528 252 €	4 028 658 €	
Austria	779 840 000 €	834 870 000 €	915 619 924 €	1 099 812 161 €	
Azerbaijan	779 988 €	1 208 144 €	4 178 305 €	4 359 230 €	
Belgium	34 408 250 €	34 917 000 €	35 781 147 €	46 522 120 €	
Bosnia and Herzegovina	26 576 744 €	26 179 300 €	23 467 267 €	23 394 965 €	
Bulgaria	58 354 136 €	61 595 758 €	53 967 580 €	49 902 118 €	
Croatia	25 168 311 €	28 759 251 €	26 359 795 €	17 300 109 €	
Cyprus	9 802 960 €	11 377 030 €	7 851 964 €	8 221 486 €	
Czech Republic	37 452 793 €	59 014 432 €	47 868 874 €	45 005 572 €	
Denmark	95 933 236 €	98 520 187 €	57 764 476 €	56 367 754 €	
Estonia	12 909 414 €	7 219 348 €	13 801 463 €	10 014 384 €	
Finland	31 284 003 €	33 833 367 €	33 455 279 €	35 596 248 €	
France	NAP	NAP	NAP	NAP	
Georgia	NA	NA	NA	5 518 124 €	
Germany	3 515 706 357 €	3 567 436 506 €	3 600 787 657 €	4 336 886 963 €	
Greece	88 340 000 €	99 050 000 €	145 783 667 €	106 539 586 €	
Hungary	17 274 015 €	6 159 824 €	6 691 245 €	8 625 404 €	
Iceland	NAP	NA	NA	6 739 496 €	
Ireland	47 325 000 €	43 720 000 €	44 302 000 €	47 780 000 €	
Italy	326 163 179 €	465 147 222 €	463 052 628 €	513 761 705 €	
Latvia	17 650 016 €	16 573 777 €	16 697 327 €	14 460 678 €	
Lithuania	6 950 880 €	7 600 585 €	7 695 204 €	10 119 000 €	
Luxembourg	NAP	NAP	NAP	NAP	
Malta	6 702 000 €	6 399 974 €	6 583 082 €	6 904 081 €	
Republic of Moldova	NA	2 341 804 €	3 718 774 €	2 990 638 €	
Monaco	NA	NA	NA	NA	
Montenegro	6 239 721 €	3 918 273 €	3 785 421 €	1 440 493 €	
Netherlands	190 743 000 €	237 570 000 €	217 194 000 €	194 428 000 €	
Norway	21 736 632 €	22 100 683 €	20 420 354 €	41 000 000 €	
Poland	530 161 000 €	408 787 000 €	407 715 000 €	415 418 000 €	
Portugal	217 961 874 €	207 899 840 €	171 890 423 €	148 596 268 €	
Romania	46 177 039 €	54 301 587 €	60 935 285 €	59 499 517 €	
Russian Federation	426511157	452 826 397 €	533 051 921 €	432 125 035 €	
Serbia	85 137 114 €	107 047 455 €	71 517 912 €	63 715 886 €	
Slovakia	57 661 794 €	53 448 064 €	49 053 890 €	NA	
Slovenia	50 858 000 €	40 461 043 €	41 131 998 €	33 239 643 €	
Spain	173 486 000 €	172 950 000 €	304 416 000 €	117 458 000 €	
Sweden	4 469 274 €	5 134 908 €	9 011 588 €	12 802 008 €	
Switzerland	276 870 194 €	239 397 840 €	201 496 138 €	248 302 357 €	
The FYROMacedonia	10 100 403 €	10 113 139 €	NA	10 226 793 €	
Turkey	525 138 372 €	637 583 272 €	827 914 488 €	903 013 742 €	
Ukraine	9 174 192 €	9 174 192 €	52 105 263 €	125 937 328 €	
UK-England and Wales	545 878 204 €	586 777 526 €	749 451 721 €	864 436 677 €	
UK-Scotland	26 681 850 €	26 862 101 €	31 733 000 €	34 589 300 €	
Israel		80 071 536 €	90 378 021 €	73 198 477 €	
Morocco				72 980 872 €	
<b>Average</b>	214 035 070 €	217 387 092 €	237 800 984 €	242 162 273 €	
<b>Median</b>	37 452 793 €	37 689 022 €	44 302 000 €	38 298 124 €	
<b>Minimum</b>	779 988 €	1 208 144 €	2 528 252 €	379 594 €	
<b>Maximum</b>	3 515 706 357 €	3 567 436 506 €	3 600 787 657 €	4 336 886 963 €	

The evolution in the revenues generated by court taxes and fees since 2010 can be measured in respect of 40 States or entities.

In 15 States or entities, the revenues from court taxes and fees decreased from 2010 to 2016. In 10 countries, the reduction is considerable, being higher than 20 %: **Croatia** (- 31 %), **Denmark** (- 41 %), **Estonia** (- 22 %), **Hungary** (- 50 %), **Montenegro** (- 77 %), **Poland** (- 22 %), **Portugal** (- 32 %), **Serbia** (- 25 %), **Slovenia** (- 35 %) and **Spain** (- 32 %). In some of these States, the decrease is explained by reforms or reorganizations: for example, in **Denmark** the land registration system was reorganized and revenues related to land registration are now collected directly by the Treasury; in **Serbia**, after the introduction of the notary system in 2014, courts lost some competences; in **Spain**, as already mentioned, natural persons were exempted from fees, which only companies are now required to pay.

A significant decrease (higher than 10 %) can also be noted in **Bosnia and Herzegovina** (- 12 %), **Bulgaria** (- 14 %), **Cyprus** (- 16 %), **Latvia** (- 18 %) and **Switzerland** (- 10 %).

Conversely, in respect of 25 States or entities, the trend for the period 2010 – 2016 is an increase in the revenues generated by court taxes and fees. Increases were particularly high in **Albania** (+ 52 %) **Austria** (+ 42 %), **Azerbaijan** (+ 459 %, + 4 % from 2014 to 2016), **Belgium** (+ 35 %) **Italy** (58 %), **Lithuania** (+ 46 %), **Norway** (+ 89 %), **Sweden** (+ 186 %), **Turkey** (+ 72 %), **Ukraine** (+ 1 273 %, + 142 % from 2014 to 2016) and **UK-England** (+ 36 %).

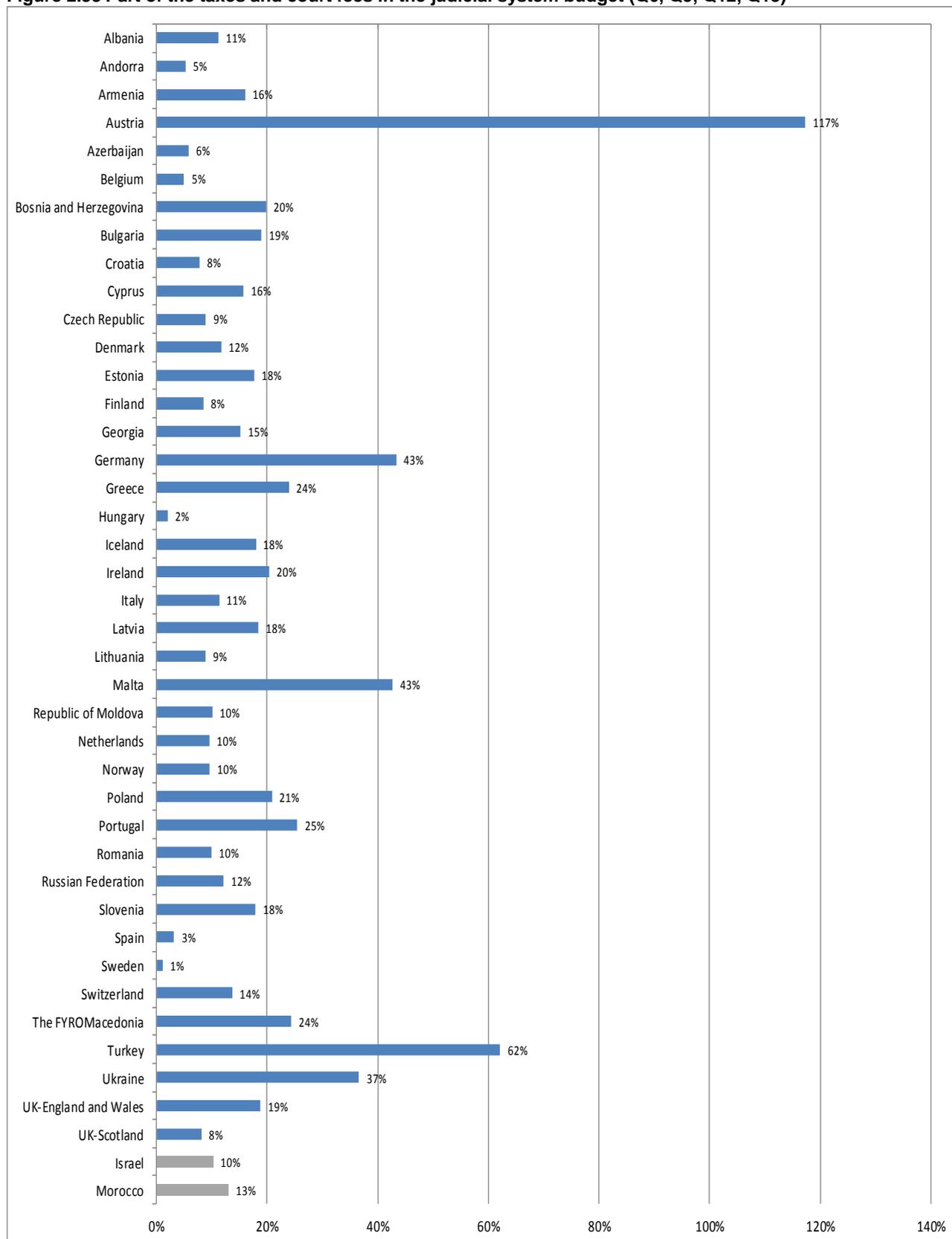
As assessed in the previous edition of this report, the reason behind the high increases in **Ukraine** and **Azerbaijan** lies in the Law of the “Court Fee” that came into effect from November 2011 in **Ukraine** and in the Law of “State Duty” adopted in December 2012 in **Azerbaijan**, after which the amount of all court fees increased. In **Norway** and **Sweden** the increase in the revenues is due to an increase in the court fees as well (from December 2016 in **Norway** and from July 2014 in **Sweden**). In **UK-England and Wales**, policy changes resulted in more court fees being collected than in the previous years.

The other States or entities where the revenues from court taxes and fees increased between 2010 and 2014 are **Czech Republic** (+ 20 %), **Finland** (+ 14 %), **Germany** (+ 23 %), **Greece** (+ 21 %), **Ireland** (+ 1 %), **Malta** (2 %), **Romania** (+ 29 %) and **UK-Scotland** (+ 30 %).

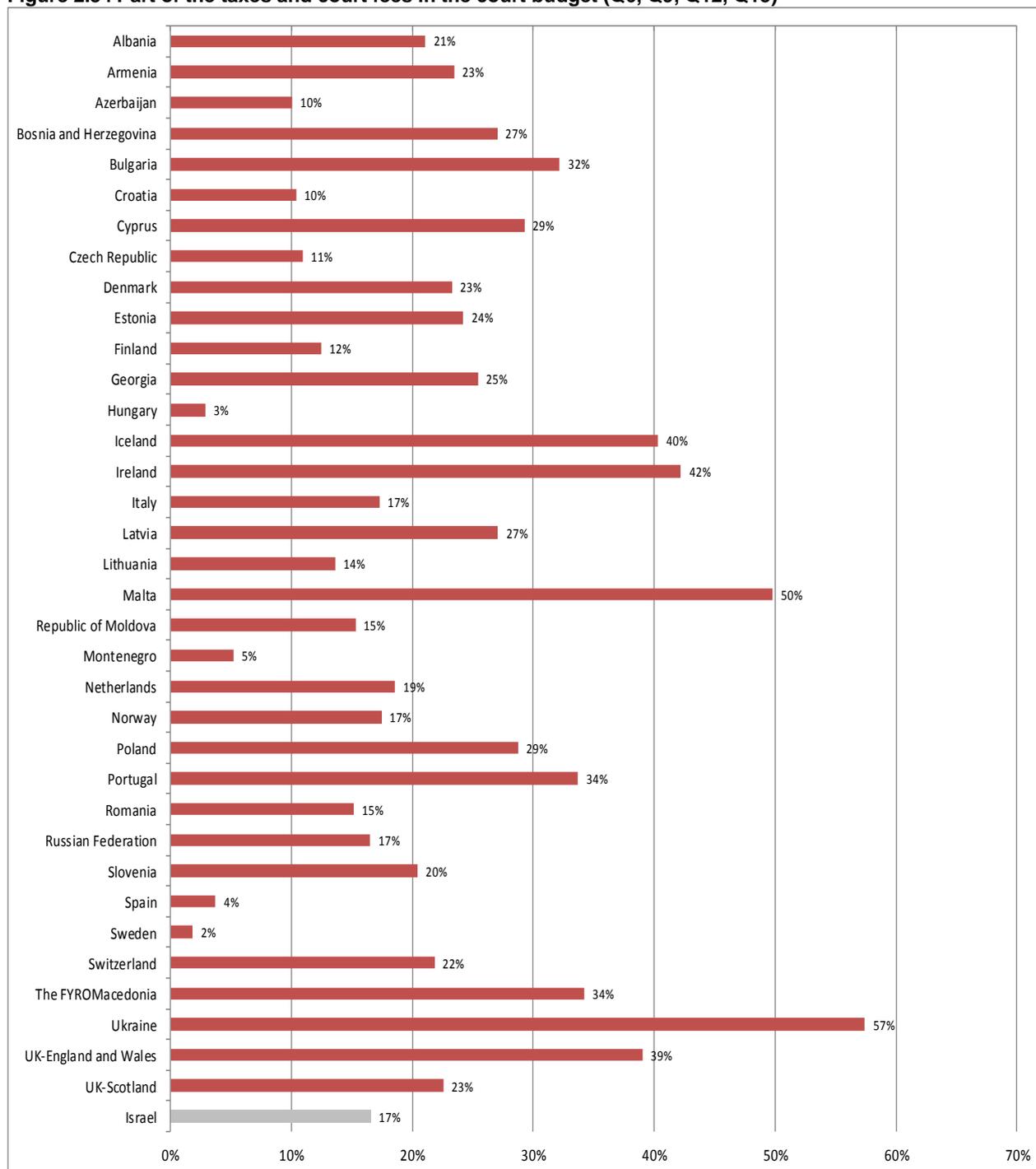
It is noteworthy that the overall variations presented in Table 2.31 are expressed in Euros (without the neutralisation of the variations in the exchange rates in respect of States outside the Eurozone and the variations in prices). Accordingly, it is necessary to keep in mind that some of the variations observed can be underestimated or overestimated as a result of these both parameters.

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

Figure 2.33 Part of the taxes and court fees in the judicial system budget (Q6, Q9, Q12, Q13)



**Figure 2.34 Part of the taxes and court fees in the court budget (Q6, Q9, Q12, Q13)**



It is confirmed that payment of court fees is a key characteristic of the justice system in many States in Europe: the taxpayer is not the only one financing the system, as the court user is requested to contribute too. Only **France, Luxembourg** and, from 2015, **Spain**, foresee access to court free of fees.

The revenues generated by court fees can cover a significant part of the budget allocated to the judicial system. **Austria** is even in the position of generating revenues that exceeds the operating cost of the whole judicial system, due to its high level of automatism, especially in non-litigious land- and business registry cases. In 8 States court revenues cover at least the 20 % of the overall judicial system costs: **Bosnia and Herzegovina** (20 %), **Greece** (24 %), **Ireland** (20 %), **Malta** (43 %), **Poland** (21 %), **Portugal** (25 %), **Macedonia** (24 %) and **Ukraine** (35 %). In 8 States or entities, court fees represent more than 30 % of court budget: **Bulgaria** (32 %), **Iceland** (40 %), **Ireland** (42 %), **Malta** (50 %), **Portugal** (34 %), **Macedonia** (34 %), **Ukraine** (55 %) and **UK-England and Wales** (39 %).

## 2.6 Public budget allocated to legal aid

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

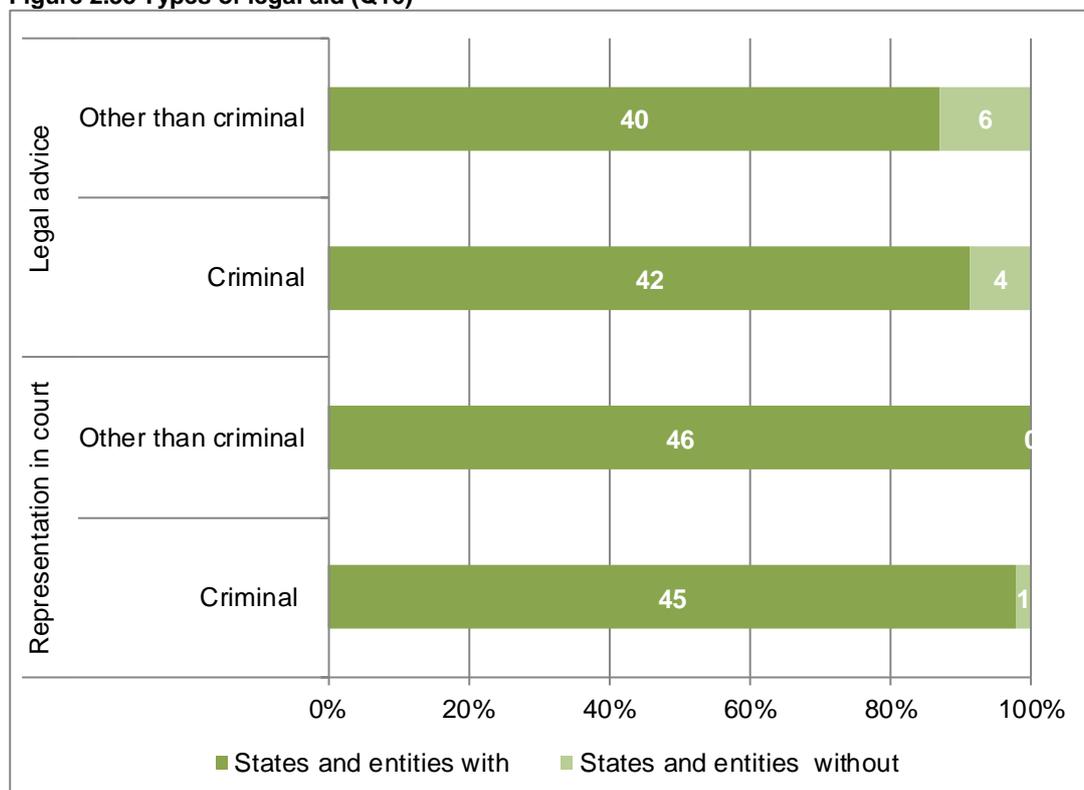
Similar to the previous evaluation cycle, the CEPEJ has endeavoured to collect data on legal aid granted by the States or entities outside the courts, to prevent litigation or to offer access to legal advice or information (access to law). This approach makes possible identifying and separating both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

Accordingly, the concept of legal aid has been given a broad interpretation, covering the jurisdictional aid (allowing litigants to finance fully or partially their court fees when appearing before courts) and access to information and legal advice thus, specifying two different notions: access to justice (taking legal action) and access to the law (knowing one's rights and asserting them, but not necessarily through court review).

### 2.6.1 Scope of legal aid

#### 2.6.1.1 Various types of legal aid

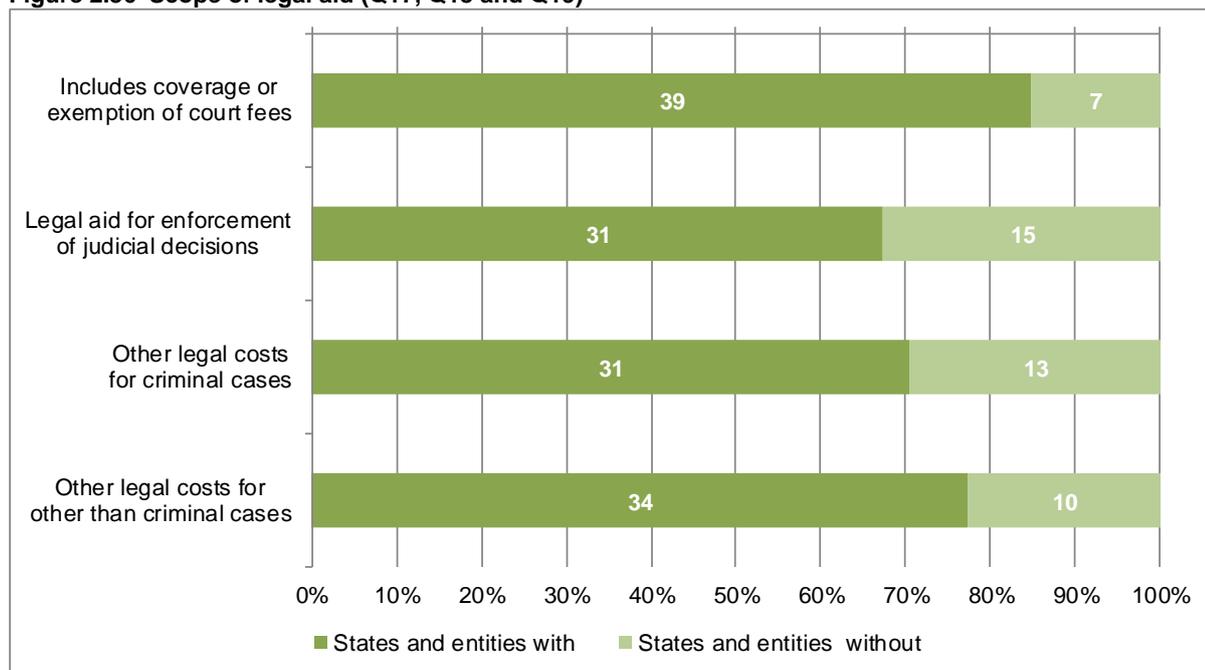
Figure 2.35 Types of legal aid (Q16)



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

Legal advice is not provided in **Azerbaijan, Italy, Malta** and **Monaco**, while in **Iceland** and **Ukraine** it is guaranteed only for criminal cases.

**Figure 2.36 Scope of legal aid (Q17, Q18 and Q19)**

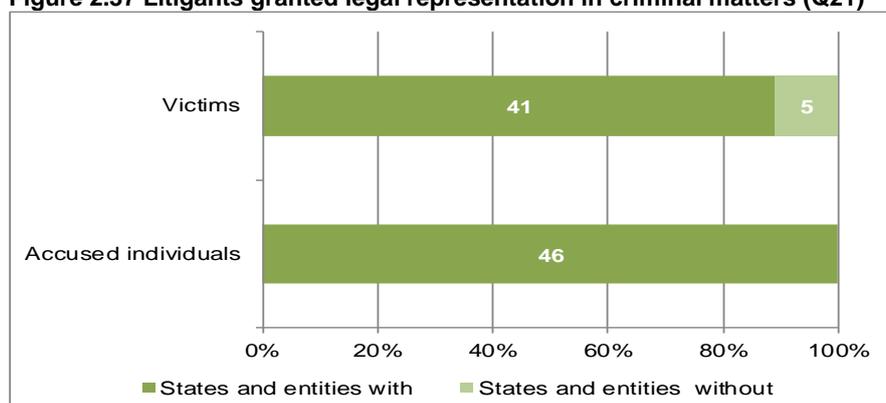


In the majority of States or entities (39), the regime of legal aid includes coverage of or exemption from paying court fees, as described in the previous section. There are exceptions to this general trend, namely: **Armenia, Azerbaijan, Bulgaria, Republic of Moldova, Netherlands, Slovenia and Ukraine**. In the **Netherlands**, court fees are lower for litigants with low incomes. In **Latvia**, from 1<sup>st</sup> January 2016 people accessing legal aid are automatically exempted from paying court fees.

Fees covered by legal aid are not limited to court taxes/fees. For example, in 32 States or entities, the scope of legal aid encompasses fees related to the enforcement of judicial decisions. This is not the case for **Albania, Armenia, Azerbaijan, Bulgaria, Cyprus, Georgia, Ireland, Latvia, Republic of Moldova, Russian Federation, Slovakia, Switzerland, “the former Yugoslav Republic of Macedonia”, Ukraine** and **UK-England and Wales**. In **Croatia**, legal aid for fees related to enforcement has been restored in 2016.

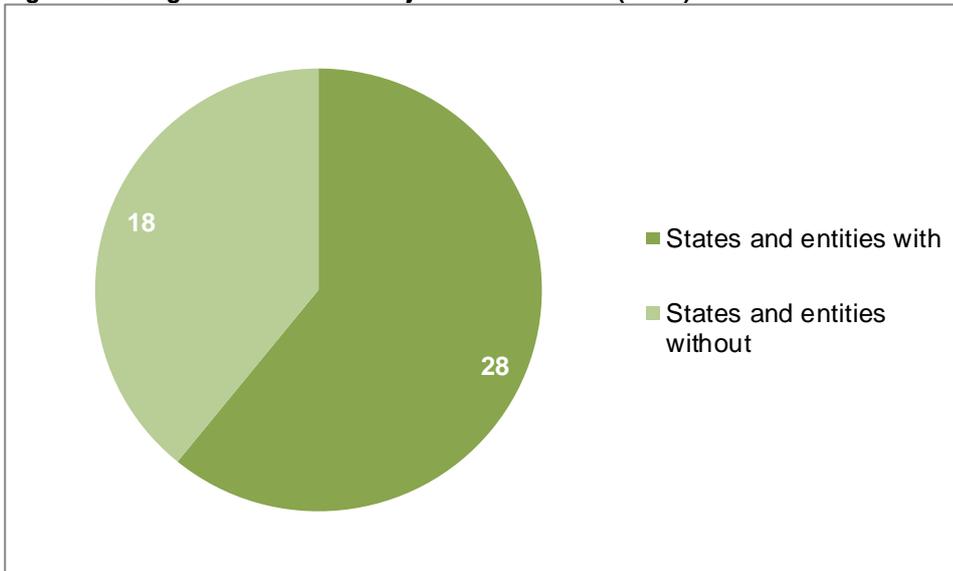
Legal aid can also be granted for other costs in criminal and other than criminal matters: fees of technical advisors or experts in the framework of judicial expertise (**Austria, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, France, Germany, Greece, Ireland, Italy, Monaco, Poland, Romania,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

**Figure 2.37 Litigants granted legal representation in criminal matters (Q21)**



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

**Figure 2.38 Legal aid in the field of judicial mediation (Q165)**



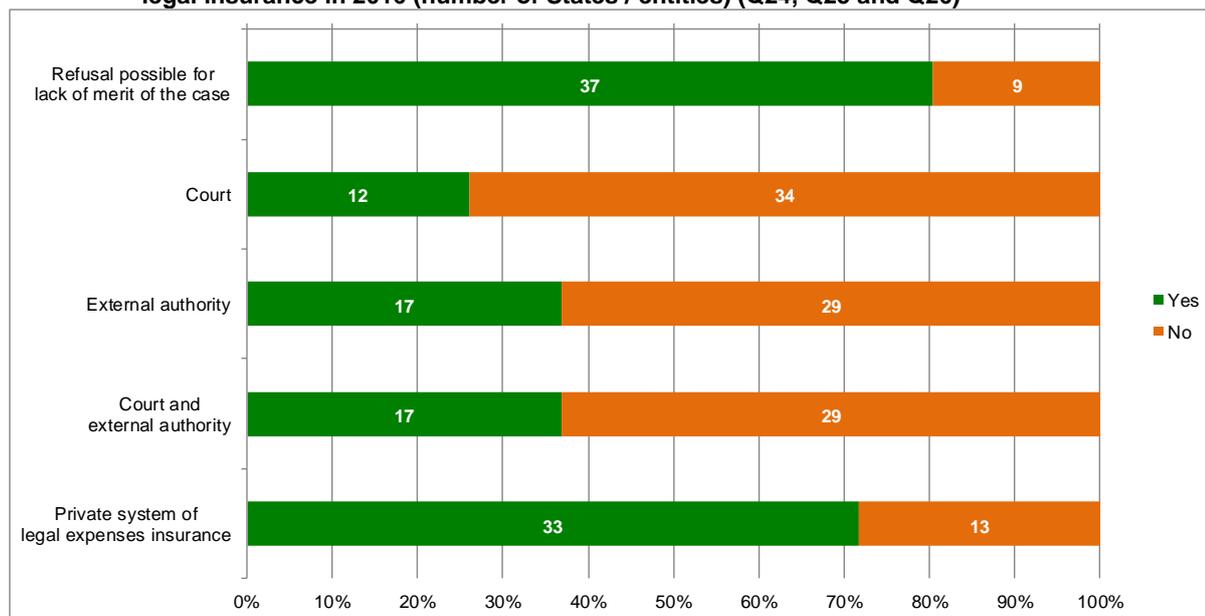
31 States or entities indicated that they apply the regime of legal aid to mediation procedures (exceptions are **Albania, Andorra, Austria, Azerbaijan, Bulgaria, Cyprus, Germany, “the former Yugoslav Republic of Macedonia”, Montenegro, Latvia, Poland, Russian Federation, Serbia, Spain, Turkey, Ukraine**). In **Armenia**, only the first four hours are free, whereas in **Spain**, starting from 2015, the benefit of legal aid no longer includes the exemption of paying the costs of the mediation procedure.

## 2.6.1.2 Criteria for granting legal aid

Table 2.39 Authorities responsible for granting legal aid and existence of a private system for legal insurance in 2016 (Q24, Q25 and Q26)

States / Entities	Refusal possible for lack of merit of the case	Authorities responsible for granting or refusing legal aid			Private system of legal expenses insurance
		Court	External authority	Court and external authority	
Albania					
Andorra					
Armenia					
Austria					
Azerbaijan					
Belgium					
Bosnia and Herzegovina					
Bulgaria					
Croatia					
Cyprus					
Czech Republic					
Denmark					
Estonia					
Finland					
France					
Georgia					
Germany					
Greece					
Hungary					
Iceland					
Ireland					
Italy					
Latvia					
Lithuania					
Luxembourg					
Malta					
Republic of Moldova					
Monaco					
Montenegro					
Netherlands					
Norway					
Poland					
Portugal					
Romania					
Russian Federation					
Serbia					
Slovakia					
Slovenia					
Spain					
Sweden					
Switzerland					
The FYROMacedonia					
Turkey					
Ukraine					
UK-England and Wales					
UK-Scotland					
Israel					
Morocco					
<b>Nb of Yes</b>	<b>37</b>	<b>12</b>	<b>17</b>	<b>17</b>	<b>33</b>
<b>Nb of No</b>	<b>9</b>	<b>34</b>	<b>29</b>	<b>29</b>	<b>13</b>

**Figure 2.40 Overview of the authorities responsible for granting legal aid and existence of private system for legal insurance in 2016 (number of States / entities) (Q24, Q25 and Q26)**



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

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

The decision to grant or refuse legal aid on the basis of the merit of the case is usually taken by the court (12 States or entities) or by an external authority (18 States or entities), or by a court and an external authority (16 States or entities). The external authority can be for example the Bar association (this is the case of **Czech Republic, Spain and Turkey**), or an independent body called “Legal aid board” or “Legal aid agency” (as in **Ireland, Netherlands or UK-England and Wales**).

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

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

Comparing eligibility for legal aid across the States and entities is difficult due to the wide variation in the eligibility rules and financial thresholds.

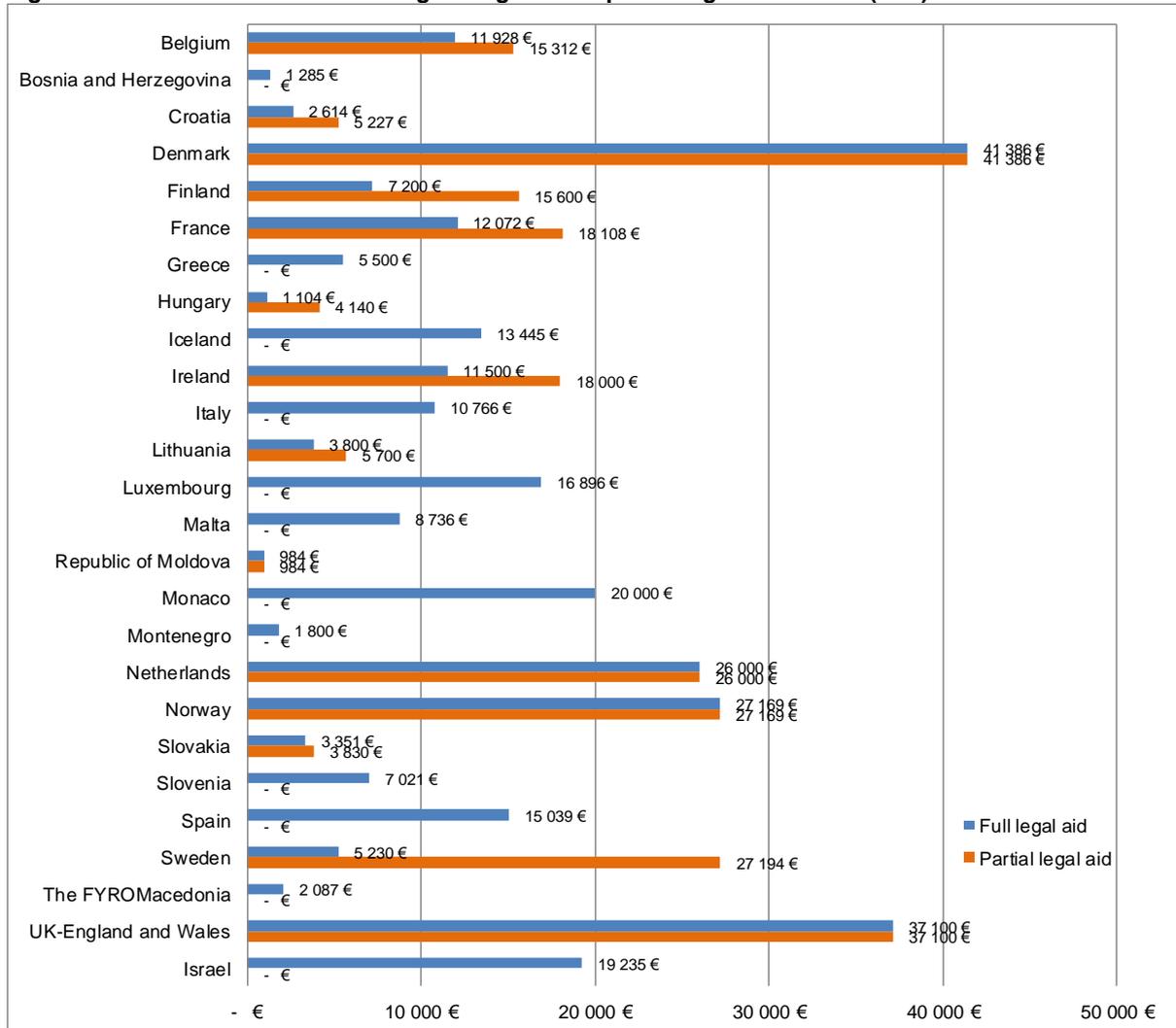
The law can also determine the level of legal aid to be granted, to fully or partly cover the total legal costs (**Austria, Belgium, France**) or define a specific method of assessing the amount of legal aid to grant (**Finland, Republic of Moldova**) which can, for instance, depend on the minimum living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

The majority of the States have eligibility rules based on either personal or household income thresholds. Some of these States and entities also specify, as part of the eligibility rules, categories of persons who are eligible for legal aid without prior examination of the means of the individuals, such as socially vulnerable persons (**Bosnia and Herzegovina, Croatia, Latvia, Monaco, Montenegro, Spain, Turkey**). In **Hungary, Lithuania, UK-England and Wales** and **UK-Scotland**, the decision to grant legal aid is based on more comprehensive eligibility frameworks, which specify in detail income thresholds and categories of beneficiaries. In **Turkey**, court users can be granted legal aid upon presentation of a social certificate. In

certain States and entities, only certain members of society are eligible (as in **Georgia**, where insolvent persons, registered in a United Database of Socially Vulnerable Families, can be granted legal aid).

The following chart resumes the annual income threshold for a single person to have access to legal aid in 24 States or entities. However, it must be considered that in most of the states, as already described, the annual income is not the only criterion adopted, so these data must be compared with caution.

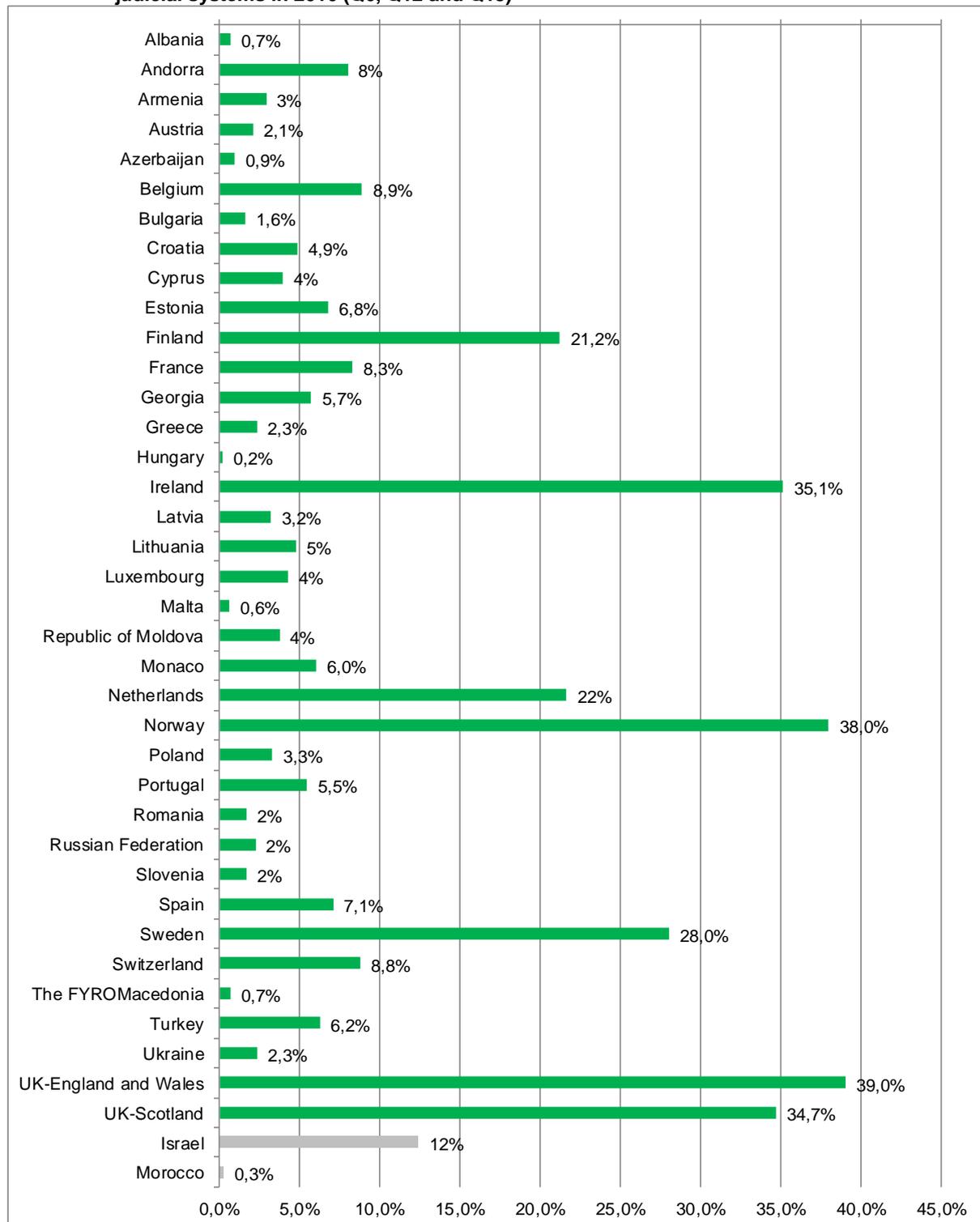
**Figure 2.41 Annual income value for granting full and partial legal aid in 2016 (Q23)**



The Northern European countries have the highest threshold. This can be due partly to the fact that in these countries the per capita GDP is higher and partly to the fact that northern European countries have a strong tradition of generous legal aid systems, which tend to include more people by raising the threshold.

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

Figure 2.42 Part of the approved public budget allocated to legal aid within the total annual public budgets of the judicial systems in 2016 (Q6, Q12 and Q13)



Devised on the basis of the right to *Habeas Corpus*, judicial systems of the **United Kingdom** entities have always granted a special priority to legal aid. Accordingly, the legal aid budget represents 34 % of the total budget allocated to the judicial system in **UK-Scotland** and 39 % in **UK-England and Wales**. Northern European states also have a strong tradition of generous legal aid systems with a significant budgetary share within the total budget of the judicial system: **Norway** (38 %), **Ireland** (35 %), **Sweden** (28 %),

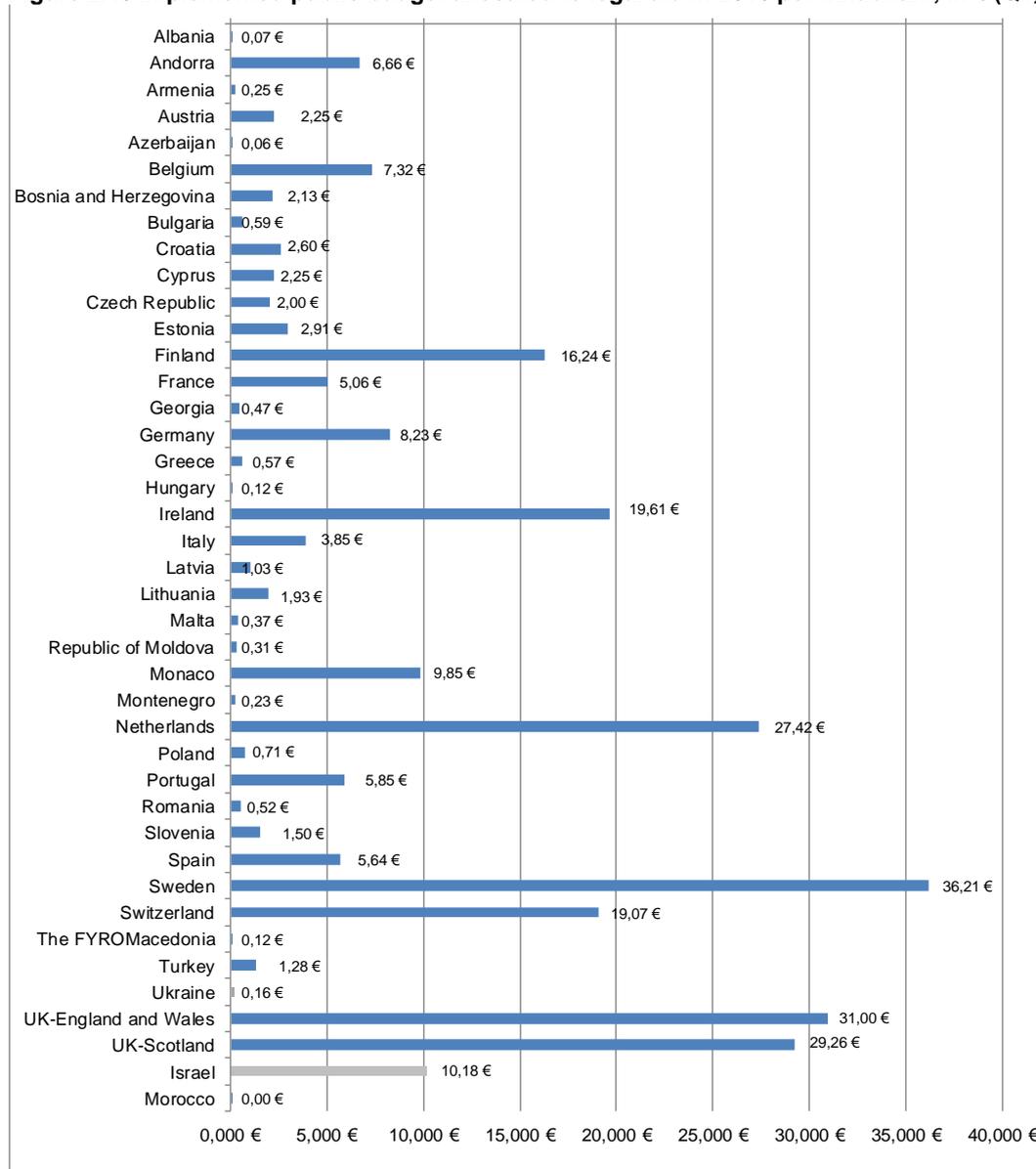
**Netherlands** (22 %) and **Finland** (21 %). In some States, legal aid is not yet a priority in terms of budgetary efforts and its budget represents less than 1 % of the budget allocated to the judicial system: **Albania, Azerbaijan, Hungary, Malta, “the former Yugoslav Republic of Macedonia”** and **Morocco**.

### 2.6.3 Implemented public budget of legal aid in 2016

39 States or entities were able to communicate the amount of implemented public budget implemented in legal aid in 2016.

#### 2.6.3.1 Implemented public budget of legal aid per inhabitant in 2016

Figure 2.43 Implemented public budget allocated to legal aid in 2016 per inhabitant, in € (Q1, Q12)



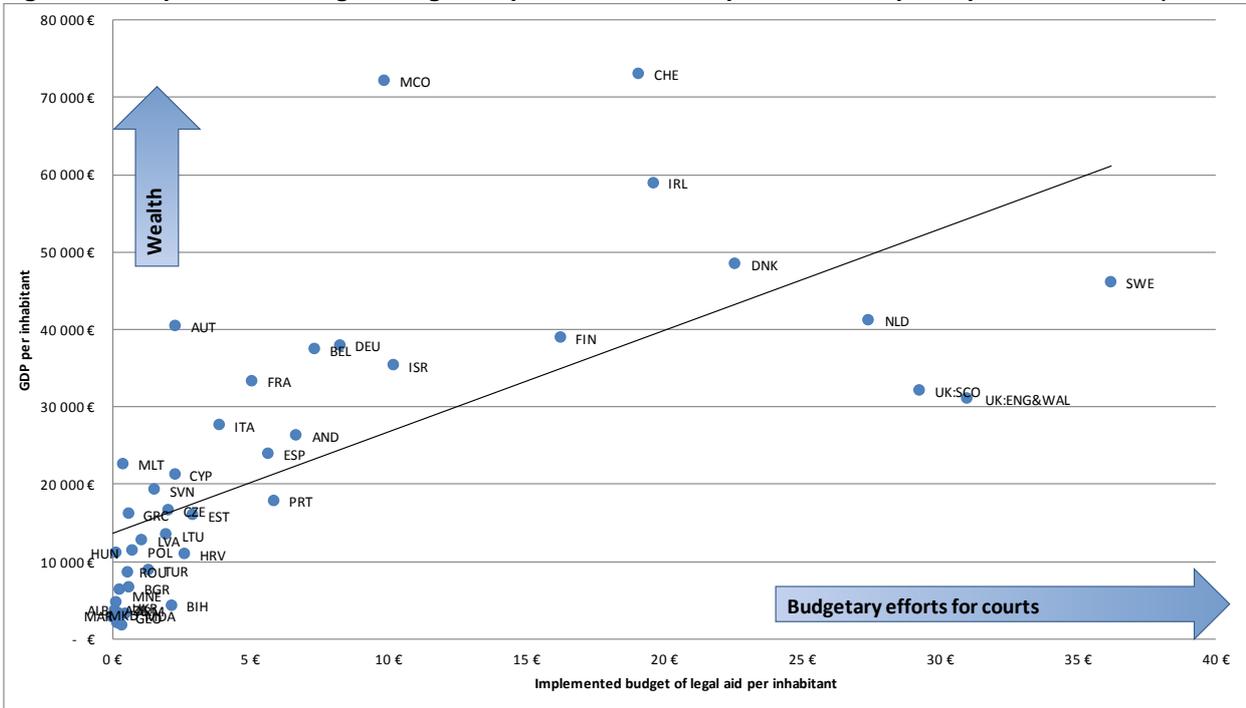
The amount of implemented budget per inhabitant allocated to legal aid is very variable across the States or entities, varying from a minimum of 0,06 € in **Azerbaijan** to a maximum of 36,21 € per inhabitant in **Sweden**. The average is 6,5 € per inhabitant, while the median value is 2,1 €, which implies that half of the States and entities spend less than this amount.

12 States or entities lie above the average, notably: **Andorra** (6,70 €), **Belgium** (7,30 €), **Finland** (16,20 €), **Germany** (8,10 €), **Ireland** (19,60 €), **Monaco** (9,80 €), **Netherlands** (27,40 €), **Sweden** (36,20 €), **Switzerland** (19 €), **UK-England and Wales** (31 €), **UK-Scotland** (29,30 €), **Israel** (10,20 €), while 15 States are situated under the threshold of 1 €: **Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece,**

Hungary, Malta, Republic of Moldova, Montenegro, Poland, Romania, “the former Yugoslav Republic of Macedonia”, Ukraine and Morocco.

2.6.3.2 Implemented budget of legal aid per inhabitant compared with the wealth of the States / entities in 2016

Figure 2.44 Implemented budget of legal aid per inhabitant compared with the per capita GDP in 2016(Q1, Q12)



For better visibility the second chart focuses on the States with lower GDP per inhabitant.

Figure 2.44 Focus on States with lower GDP

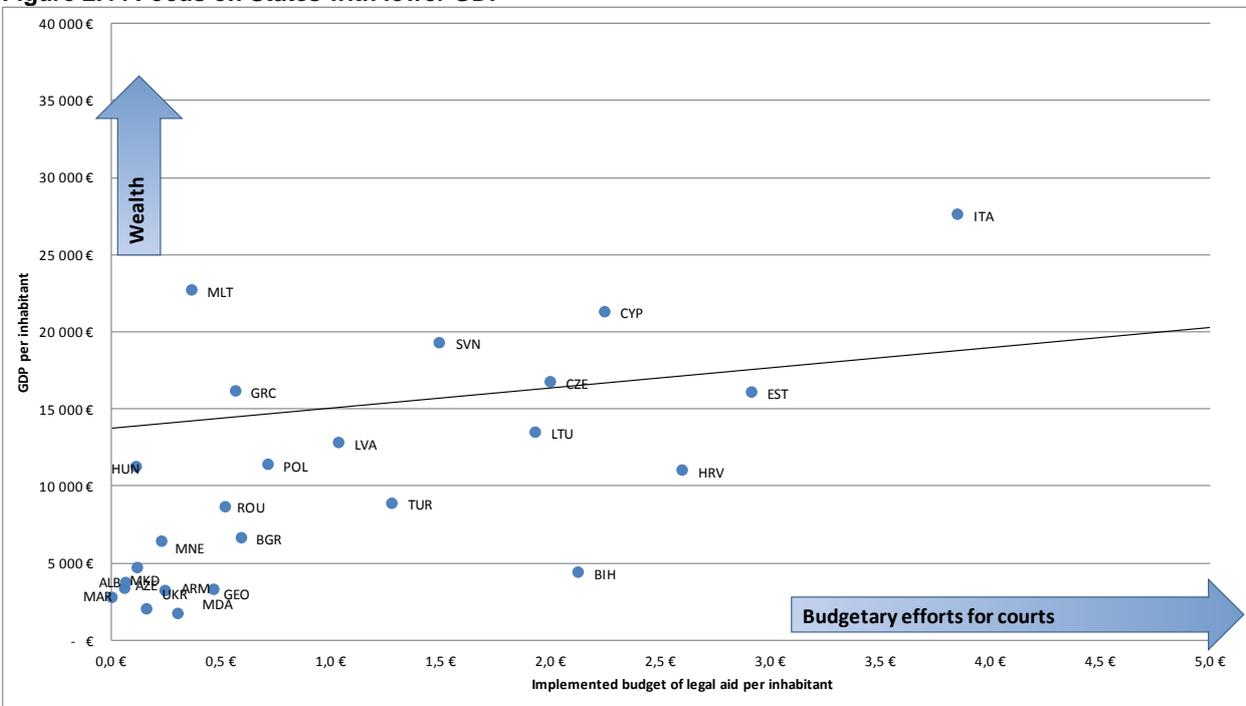


Figure 2.44 relates the implemented budget of legal aid per inhabitant with the per capita GDP in each State and entity. The trend line suggests a positive relation: the budget of legal aid increases with the increase in GDP. States located below the trend line make a more significant budgetary effort to facilitate the access to justice through legal aid.

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

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

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

### **2.6.3.3 Number of litigious and no-litigious cases for which legal aid is granted**

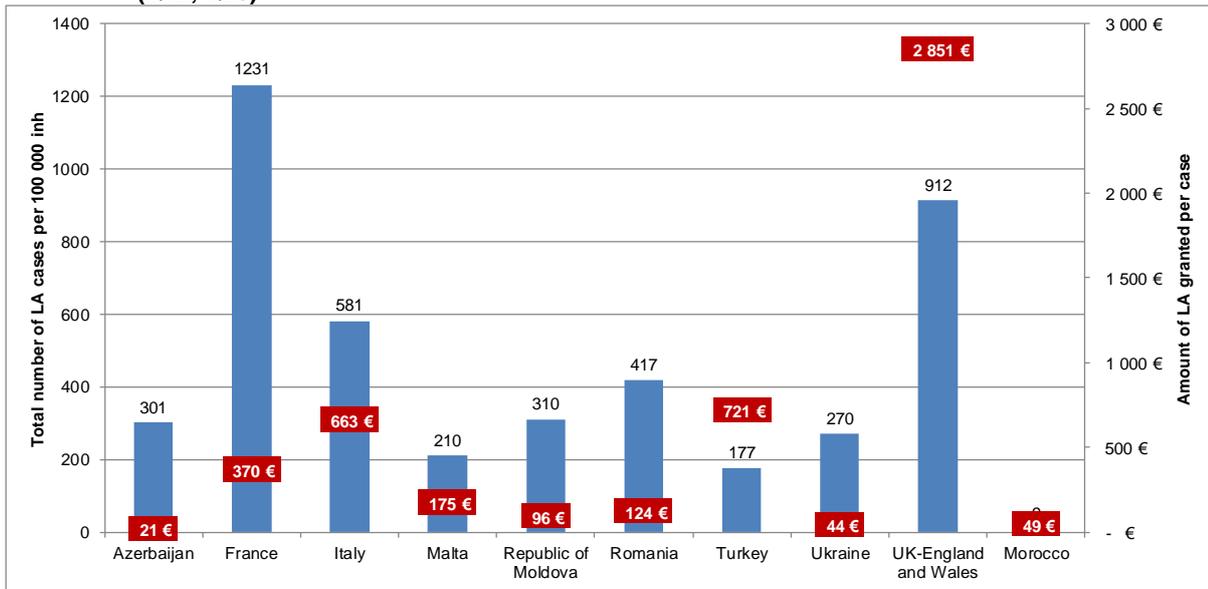
The table shows the number of cases for which legal aid has been granted, distinguishing between criminal and non-criminal cases. Data are available for 29 States or entities.

Data are characterised by a high variance, going from a minimum of 807 total cases in **Monaco** to a maximum of 824 934 cases in **France**. The total number of cases brought to court is directly related to the number of inhabitants; the following chart compares the number of cases for which legal aid has been granted per 100 000 inhabitants.

**Table 2.45 Number of cases brought to court for which legal aid has been granted (Q20)**

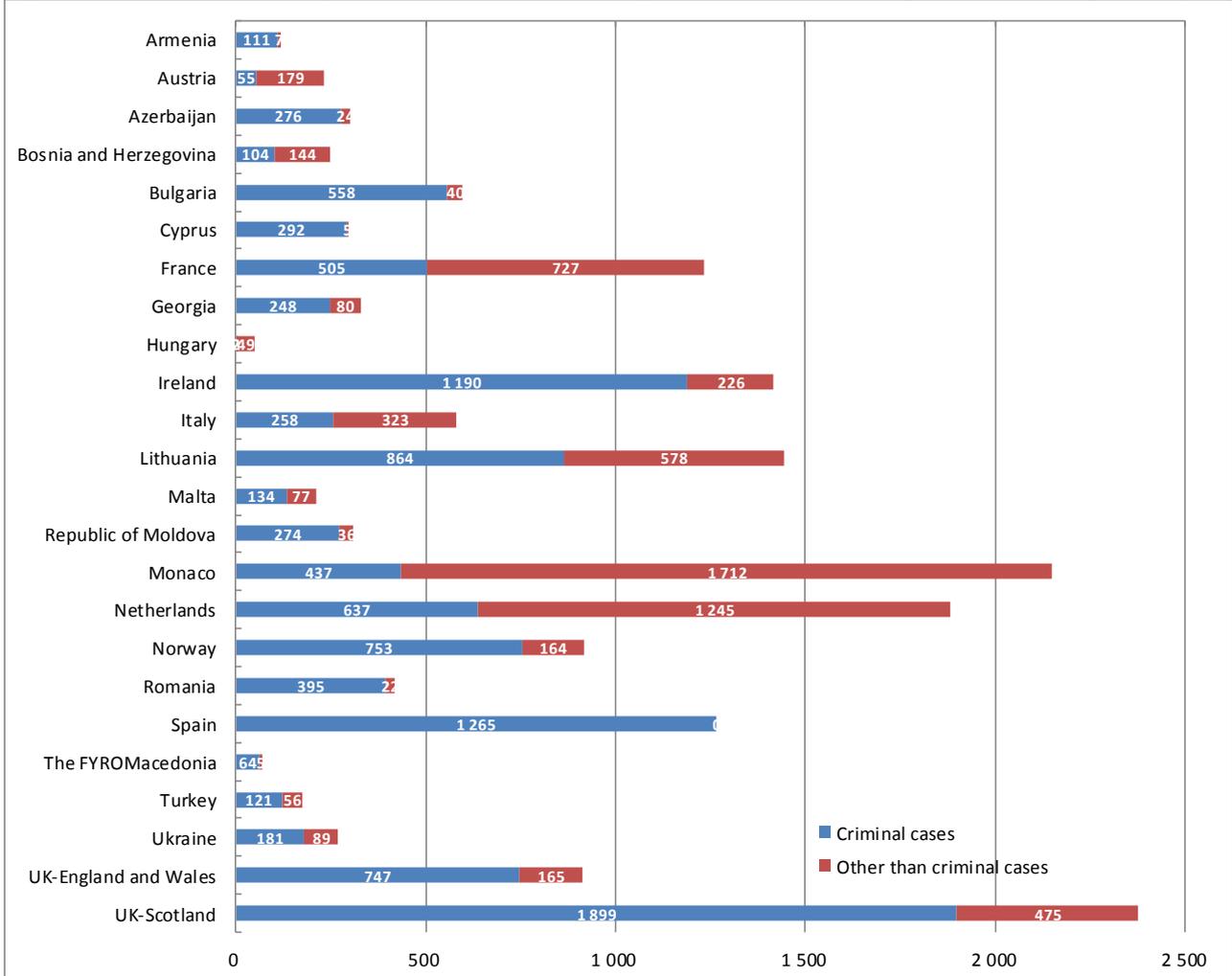
States	Number of cases brought to court for which legal aid has been granted			
	Criminal cases	Other than criminal cases	Criminal cases per 100 000 inh.	Other than criminal cases per 100 000 inh.
Albania	NA	NA	NA	NA
Andorra	NA	NA	NA	NA
Armenia	3 304	198	111	7
Austria	4 842	15 623	55	179
Azerbaijan	26 827	2 375	276	24
Belgium	NA	NA	NA	NA
Bosnia and Herzegovina	3 635	5 059	104	144
Bulgaria	39 599	2 867	558	40
Croatia	NA	6 730	NA	162
Cyprus	2 476	39	292	5
Czech Republic	NA	NA	NA	NA
Denmark	NAP	2 071	NA	36
Estonia	NA	NA	NA	NA
Finland	NA	NA	NA	NA
France	338 055	486 879	505	727
Georgia	9 233	2 987	248	80
Germany	NA	573 869	NA	698
Greece	NA	NA	NA	NA
Hungary	225	4 763	2	49
Iceland	NAP	NA	NA	NA
Ireland	55 617	10 574	1 190	226
Italy	156 454	195 820	258	323
Latvia	NA	NA	NA	NA
Lithuania	24 609	16 454	864	578
Luxembourg	NA	NA	NA	NA
Malta	588	338	134	77
Republic of Moldova	9 734	1 268	274	36
Monaco	164	643	437	1 712
Montenegro	NA	NA	NA	NA
Netherlands	108 886	212 699	637	1 245
Norway	39 600	8 600	753	164
Poland	NA	NA	NA	NA
Portugal	NA	NA	NA	NA
Romania	77 580	4 330	395	22
Russian Federation	NA	244 741	NA	167
Serbia	NA	NA	NA	NA
Slovakia	NA	4 080	NA	75
Slovenia	NA	NA	NA	NA
Spain	588 561	NA	1 265	NA
Sweden	NA	NA	NA	NA
Switzerland	NA	NA	NA	NA
The FYROMacedonia	1 327	100	64	5
Turkey	96 915	44 677	121	56
Ukraine	77 233	37 953	181	89
UK-England and Wales	436 076	96 442	747	165
UK-Scotland	102 628	25 687	1 899	475
Israel	NA	NA	NA	NA
Morocco	NA	NA	NA	NA
<b>Average</b>	91 840	71 710	474	270
<b>Median</b>	33 213	5 895	284	117
<b>Minimum</b>	164	39	2	5
<b>Maximum</b>	588 561	573 869	1 899	1 712

**Figure 2.46 Number of cases brought to court for which legal aid has been granted and average amount per case (Q12, Q20)**



The following figure shows the number of criminal and non-criminal cases per 100 000 inhabitants brought to court with legal aid. Since its population is lower than 100 000 inhabitants, **Monaco** is not represented in the chart.

**Figure 2.47 Number of cases per 100 000 inhabitants brought to court for which legal aid has been granted (Q20)**



**UK-Scotland** is the entity with the highest number of cases per 100 000 inhabitants brought to court for which legal aid has been granted: 2 374 cases, 80 % of which are criminal. In second place is the **Netherlands**, with 1 882 cases, 66 % of which are non-criminal. The States with the lowest number of cases are **Hungary**, **Slovakia** and “**the former Yugoslav Republic of Macedonia**”. In **Spain**, data related to the number of non-criminal cases brought to court with legal aid were not available.

**Table 2.48 Number of cases not brought to court for which legal aid has been granted 2012-2016 (Q20)**

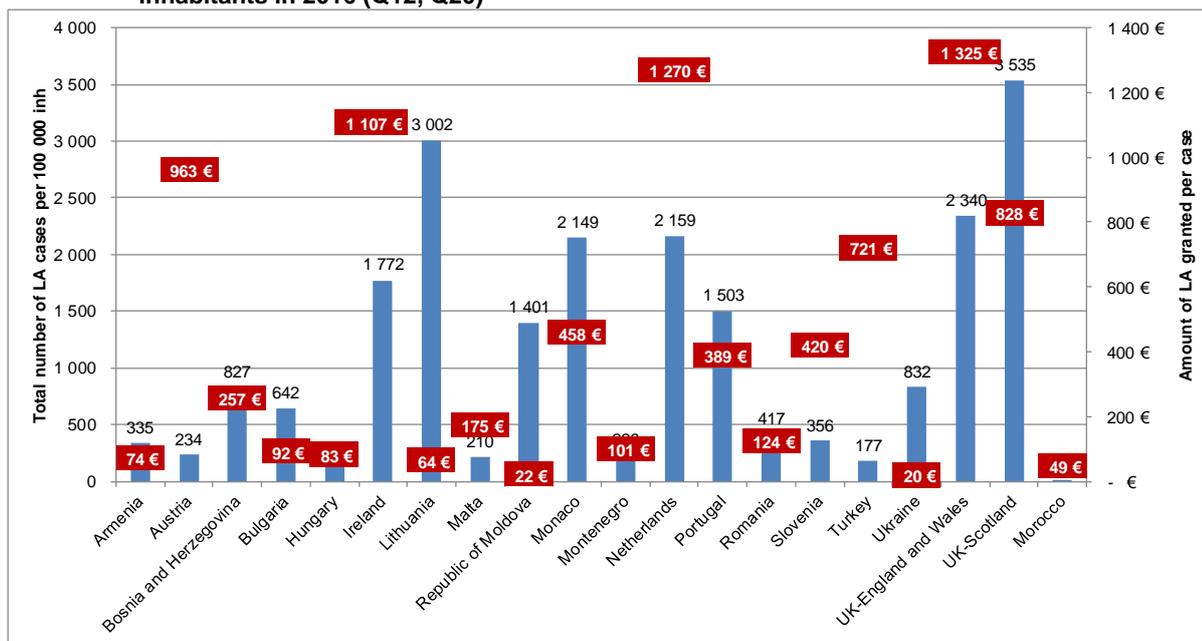
States / Entities	Number of cases not brought to court for which legal aid has been granted			Variations	
	2012	2014	2016	2012-2014	2014-2016
Albania	NA	NA	NA	NA	NA
Andorra	NA	NA	NA	NA	NA
Armenia	172	2 620	6 064	1423,26%	131,45%
Austria	nap	NAP	NAP	NA	NA
Azerbaijan	NAP	NA	NA	NA	NA
Belgium	58 050	NA	NA	NA	NA
Bosnia and Herzegovina	NA	19 418	20 314	NA	4,61%
Bulgaria	2 112	190	3 106	-91,00%	1534,74%
Croatia	465	NA	NA	NA	NA
Cyprus	NA	NA	NA	NA	NA
Czech Republic	NA	NA	NA	NA	NA
Denmark	NA	NA	NA	NA	NA
Estonia	NA	NA	NA	NA	NA
Finland	34 794	39 253	NA	12,82%	NA
France	NA	NA	NA	NA	NA
Georgia	121	201	NA	66,12%	NA
Germany	767 278	748 001	NA	-2,51%	NA
Greece	NA	NA	NA	NA	NA
Hungary	12 414	10 663	8 677	-14,11%	-18,63%
Iceland	NA	NQ	NAP	NA	NA
Ireland	NA	NA	16 649	NA	NA
Italy	NA	NA	NA	NA	NA
Latvia	NA	NA	NA	NA	NA
Lithuania	44 195	45 443	44 445	2,82%	-2,20%
Luxembourg	NA	NA	NA	NA	NA
Malta	NA	NAP	NAP	NA	NA
Republic of Moldova	20 526	29 904	38 741	45,69%	29,55%
Monaco	NAP	NAP	NAP	NA	NA
Montenegro	63	NA	642	NA	NA
Netherlands	60 312	54 908	47 132	-8,96%	-14,16%
Norway	19 048	19 612	27 889	2,96%	42,20%
Poland	NAP	NAP	NA	NA	NA
Portugal	1 359	1 681	1 594	23,69%	-5,18%
Romania	NA	NA	NAP	NA	NA
Russian Federation	NA	NA	NA	NA	NA
Serbia	NAP	NA	NA	NA	NA
Slovakia	13	NA	NA	NA	NA
Slovenia	698	848	731	21,49%	-13,80%
Spain	NA	NA	NA	NA	NA
Sweden	NA	NA	NA	NA	NA
Switzerland	NA	NA	NA	NA	NA
The FYROMacedonia	NAP	NAP	NA	NA	NA
Turkey	NAP	NAP	NAP	NA	NA
Ukraine	NAP	29 525	239 164	NA	710,04%
UK-England and Wales	NA	858 970	833 546	NA	-2,96%
UK-Scotland	NA	72 720	62 720	NA	-13,75%
Israel	NA	NA	NA	NA	NA
Morocco			NAP	NA	NA
<b>Average</b>	63 851	120 872	90 094	124%	183%
<b>Median</b>	7 263	24 569	20 314	8%	-2%
<b>Minimum</b>	13	190	642	-91%	-19%
<b>Maximum</b>	767 278	858 970	833 546	1423%	1535%

Data about the number of cases not brought to court for which legal aid has been granted are available only for 20 States or entities. **UK-England and Wales** is confirmed to be the country with the highest number of cases benefitting from legal aid, followed by **Germany** in 2014 and **Ukraine** in 2016.

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

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

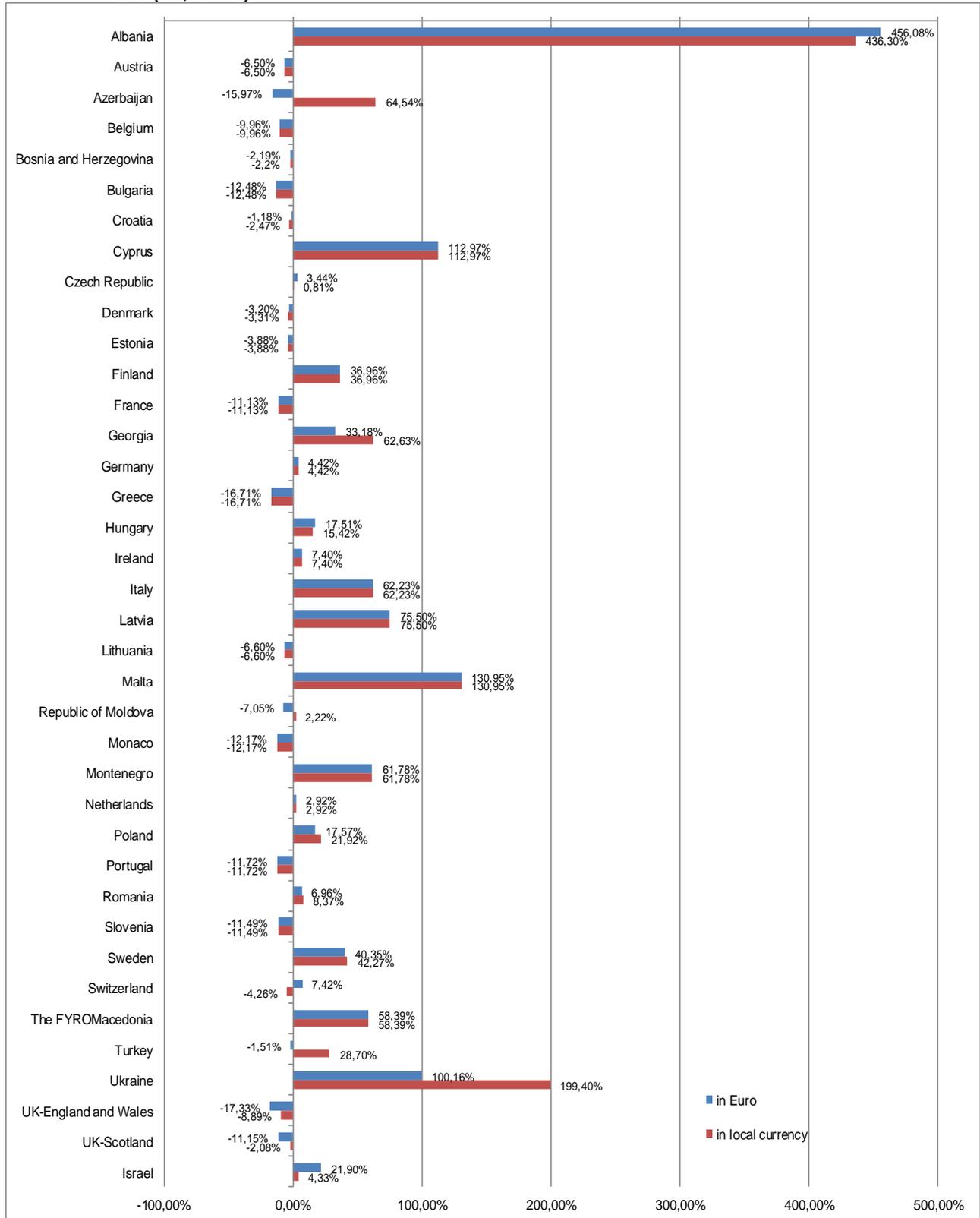
**Figure 2.49 Amount of implemented legal aid per case (in €) and total number of legal aid cases per 100 000 inhabitants in 2016 (Q12, Q20)**



As in the last evaluation cycles, many States have not been able to provide such details. **UK-England and Wales, Netherlands** and **Ireland** are confirmed to be the most generous States/entities in terms of the amount of money allocated to legal aid per case, whereas **UK-Scotland, Monaco** and **Portugal**, have a high number of legal aid cases per 100 000 inhabitants with a lower amount allocated. To a lesser extent, **Lithuania, Bulgaria, Republic of Moldova, Romania** and **Ukraine**, extend the eligibility to a relatively large number of cases but limit the amount allocated.

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

**Figure 2.50 Variation in the implemented budget for legal aid in euros and in local currency between 2014 and 2016 (Q5, Q12-1)**



The overall trend is positive and shows that new investments have been made to promote and enhance access to justice and access to law throughout Europe in order to comply with the requirements of the European Convention on Human Rights. This notwithstanding, attention should be drawn to the fact that the median is 2 €, meaning that nearly half of the States or entities have reduced the implemented budget for legal aid between 2014 and 2016.

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

Two opposite trends can be detected:

- States or entities endowed with the most generous legal aid systems that tend to implement policies that restrict the budget allocated to legal aid;
- States or entities with a lower amount of budget allocated to legal aid that implement policies to extend the number of persons granted with legal aid.

**Netherlands, Portugal** and **UK-England and Wales** belong to the first group: in the **Netherlands**, the State Secretary for Security and Justice developed a policy intended to result in structural savings, which includes measures that limit the access to and cost of legal aid (e.g. reduction of lawyers' fee in time-consuming cases); in **Portugal** the economic and financial situation led to budget cuts; in **UK-England and Wales**, the "LASPO Act" removed several areas of civil and family law from the scope of legal aid. Also in **Croatia**, the budget allocated to legal aid for non-litigious cases has been intentionally reduced.

**Latvia** and **Ukraine** are part of the second group: in **Latvia**, additional funds were allocated from the State budget to extend the provision of legal aid to victims; in **Ukraine**, the government started the reform of the free legal aid and increased the budget for this area.

In other countries, such as **Bulgaria, Cyprus, Finland, Italy, Montenegro, Spain** and **Sweden**, the increase in the implemented budget for legal aid is due to a rising number of incoming cases, especially those regarding refugees.

Table 2.51 Evolution in the approved budget for legal aid between 2010 and 2016 (Q12)

States / Entities	Approved budget for legal aid				Evolution
	2010	2012	2014	2016	
Albania	21 429 €	60 253 €	62 143 €	202 096 €	
Andorra	NA	387 485 €	NA	580 000 €	
Armenia	294 140 €	NA	NA	736 571 €	
Austria	18 400 000 €	19 000 000 €	19 000 000 €	19 500 000 €	
Azerbaijan	345 054 €	457 000 €	820 000 €	708 872 €	
Belgium	75 326 000 €	87 024 000 €	84 628 000 €	82 869 725 €	
Bosnia and Herzegovina	5 906 637 €	7 128 234 €	NA	NA	
Bulgaria	3 867 730 €	3 579 030 €	4 306 647 €	4 202 804 €	
Croatia	11 160 557 €	8 071 016 €	11 464 658 €	10 810 000 €	
Cyprus	NA	1 526 738 €	NA	2 076 200 €	
Czech Republic	28 361 213 €	24 142 835 €	NA	NA	
Denmark	87 896 311 €	83 643 048 €	129 010 156 €	139 692 531 €	
Estonia	2 982 213 €	3 835 000 €	3 835 000 €	3 835 000 €	
Finland	58 100 000 €	67 697 000 €	65 276 000 €	89 400 000 €	
France	361 197 138 €	367 180 000 €	366 887 166 €	365 684 483 €	
Georgia	1 080 548 €	1 428 885 €	1 302 966 €	2 075 877 €	
Germany	NA	344 535 431 €	686 978 779 €	725 056 049 €	
Greece	2 500 000 €	8 300 000 €	10 225 994 €	10 321 925 €	
Hungary	304 823 €	907 974 €	570 980 €	804 784 €	
Iceland	4 004 810 €	3 555 654 €	NA	NA	
Ireland	87 435 000 €	83 159 000 €	80 126 000 €	82 390 000 €	
Italy	127 055 510 €	153 454 322 €	NA	NA	
Latvia	842 985 €	962 294 €	1 650 291 €	2 514 338 €	
Lithuania	3 906 105 €	4 543 826 €	5 900 767 €	5 500 227 €	
Luxembourg	3 000 000 €	3 500 000 €	3 000 000 €	4 000 000 €	
Malta	85 000 €	49 500 €	70 000 €	100 000 €	
Republic of Moldova	314 034 €	1 211 570 €	1 219 308 €	1 111 624 €	
Monaco	224 400 €	294 400 €	370 000 €	370 000 €	
Montenegro	169 921 €	NA	375 943 €	NA	
Netherlands	481 655 000 €	495 300 000 €	430 000 000 €	440 400 000 €	
Norway	213 990 000 €	270 501 300 €	177 083 000 €	161 000 000 €	
Poland	23 244 000 €	24 107 000 €	25 029 000 €	65 738 000 €	
Portugal	51 641 260 €	55 184 100 €	33 403 315 €	31 816 000 €	
Romania	7 915 238 €	7 958 050 €	9 518 975 €	10 306 534 €	
Russian Federation	105 836 124 €	120 873 284 €	120 844 668 €	80 318 998 €	
Serbia	NA	NA	NA	NA	
Slovakia	1 357 776 €	1 771 287 €	NA	NA	
Slovenia	5 834 338 €	5 514 089 €	3 414 646 €	3 200 000 €	
Spain	237 898 199 €	253 034 641 €	237 581 907 €	260 079 600 €	
Sweden	195 683 782 €	236 399 146 €	244 442 713 €	332 168 392 €	
Switzerland	100 061 055 €	108 609 657 €	152 756 877 €	158 323 883 €	
The FYROMacedonia	NA	304 741 €	222 213 €	282 880 €	
Turkey	79 338 098 €	89 840 624 €	89 776 024 €	90 761 996 €	
Ukraine	NA	NA	3 472 684 €	8 052 860 €	
UK-England and Wales	2 521 000 000 €	2 717 785 054 €	2 275 552 132 €	1 792 000 000 €	
UK-Scotland	NA	179 000 000 €	132 130 000 €	148 199 930 €	
Israel		39 771 572 €	55 055 454 €	88 530 589 €	
Morocco				1 413 228 €	
<b>Average</b>	125 903 498 €	139 186 130 €	146 278 620 €	131 722 876 €	
<b>Median</b>	7 915 238 €	8 185 508 €	11 464 658 €	10 321 925 €	
<b>Minimum</b>	21 429 €	49 500 €	62 143 €	100 000 €	
<b>Maximum</b>	2 521 000 000 €	2 717 785 054 €	2 275 552 132 €	1 792 000 000 €	

Table 2.52 Evolution of the implemented budget for legal aid between 2010 and 2016 (Q12)

States / Entities	Implemented budget for legal aid				Evolution
	2010*	2012*	2014	2016	
Albania	21 429 €	60 253 €	35 714 €	198 600 €	
Andorra	NA	387 485 €	NA	487 022 €	
Armenia	294 140 €	NA	NA	736 571 €	
Austria	18 400 000 €	19 000 000 €	21 070 101 €	19 700 000 €	
Azerbaijan	345 054 €	457 000 €	734 600 €	617 312 €	
Belgium	75 326 000 €	87 024 000 €	91 998 158 €	82 832 591 €	
Bosnia and Herzegovina	5 906 637 €	7 128 234 €	7 636 209 €	7 469 095 €	
Bulgaria	3 867 730 €	3 579 030 €	4 796 175 €	4 197 520 €	
Croatia	11 160 557 €	8 071 016 €	10 939 335 €	10 809 907 €	
Cyprus	NA	1 526 738 €	895 700 €	1 907 617 €	
Czech Republic	28 361 213 €	24 142 835 €	20 433 489 €	21 135 536 €	
Denmark	87 896 311 €	83 643 048 €	134 146 776 €	129 857 618 €	
Estonia	2 982 213 €	3 835 000 €	3 989 764 €	3 835 000 €	
Finland	58 100 000 €	67 697 000 €	65 276 000 €	89 400 000 €	
France	361 197 138 €	367 180 000 €	381 268 078 €	338 820 356 €	
Georgia	1 080 548 €	1 428 885 €	1 302 966 €	1 735 348 €	
Germany	NA	344 535 431 €	647 401 631 €	676 027 512 €	
Greece	2 500 000 €	8 300 000 €	7 348 223 €	6 120 564 €	
Hungary	304 823 €	907 974 €	970 353 €	1 140 272 €	
Iceland	4 004 810 €	3 555 654 €	NA	NA	
Ireland	87 435 000 €	83 159 000 €	85 346 304 €	91 666 000 €	
Italy	127 055 510 €	153 454 322 €	143 915 571 €	233 477 724 €	
Latvia	842 985 €	962 294 €	1 159 625 €	2 035 197 €	
Lithuania	3 906 105 €	4 543 826 €	5 883 027 €	5 494 755 €	
Luxembourg	3 000 000 €	3 500 000 €	NA	NAP	
Malta	85 000 €	49 500 €	70 000 €	161 662 €	
Republic of Moldova	314 034 €	1 211 570 €	1 169 715 €	1 087 297 €	
Monaco	224 400 €	294 400 €	421 100 €	369 850 €	
Montenegro	169 921 €	NA	88 577 €	143 299 €	
Netherlands	481 655 000 €	495 300 000 €	455 000 000 €	468 300 000 €	
Norway	213 990 000 €	270 501 300 €	NA	NA	
Poland	23 244 000 €	24 107 000 €	23 328 000 €	27 427 000 €	
Portugal	51 641 260 €	55 184 100 €	68 342 718 €	60 335 899 €	
Romania	7 915 238 €	7 958 050 €	9 511 348 €	10 173 620 €	
Russian Federation	105 836 124 €	120 873 284 €	NA	NA	
Serbia	NA	NA	NA	NA	
Slovakia	1 357 776 €	1 771 287 €	NA	NA	
Slovenia	5 834 338 €	5 514 089 €	3 492 487 €	3 091 043 €	
Spain	237 898 199 €	253 034 641 €	NA	262 316 223 €	
Sweden	195 683 782 €	236 399 146 €	257 883 019 €	361 941 952 €	
Switzerland	100 061 055 €	108 609 657 €	149 445 510 €	160 540 482 €	
The FYROMacedonia	NA	304 741 €	156 322 €	247 592 €	
Turkey	79 338 098 €	89 840 624 €	103 638 593 €	102 074 069 €	
Ukraine	NA	NA	3 472 684 €	6 950 954 €	
UK-England and Wales	2 521 000 000 €	2 717 785 054 €	2 189 363 139 €	1 810 000 000 €	
UK-Scotland	NA	179 000 000 €	177 976 260 €	158 138 180 €	
Israel		39 771 572 €	72 090 759 €	87 877 559 €	
Morocco				154 372 €	
<b>Average</b>	125 903 498 €	139 186 130 €	137 294 791 €	129 075 031 €	
<b>Median</b>	7 915 238 €	8 185 508 €	9 511 348 €	8 821 358 €	
<b>Minimum</b>	21 429 €	49 500 €	35 714 €	143 299 €	
<b>Maximum</b>	2 521 000 000 €	2 717 785 054 €	2 189 363 139 €	1 810 000 000 €	

\* In these cycles only approved budget was collected. However many States and entities provided implemented budget instead.

The same trend can be observed when examining the evolution of the approved budget for legal aid, with some discrepancies between approved and implemented budgets due to a variable number of incoming cases.

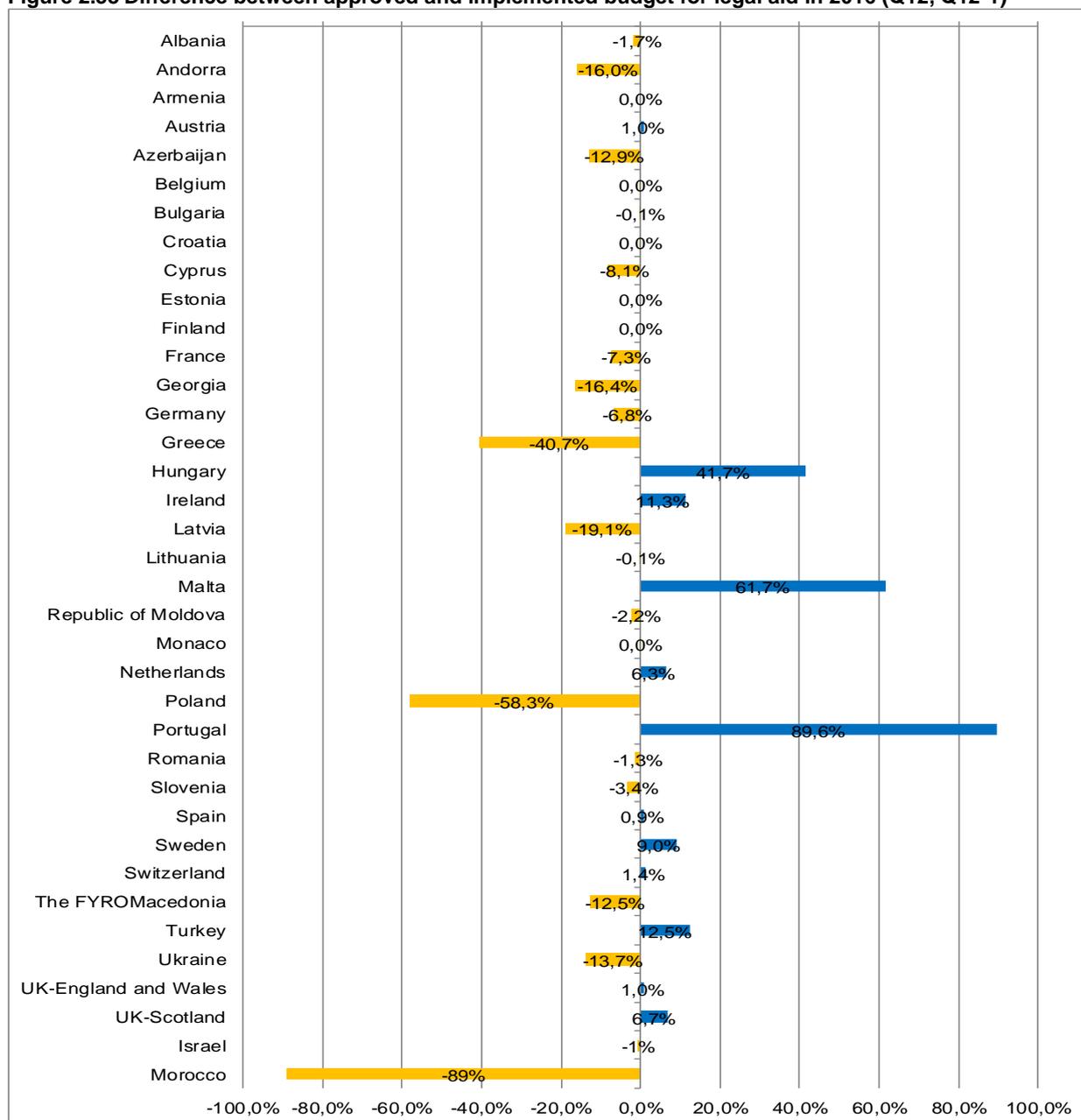
Over the period 2012-2016, it is worth underlining the sustained efforts of **Albania, Austria, Finland, Georgia, Greece, Latvia, Luxembourg, Malta, Monaco, Poland, Romania, Switzerland, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and Israel**. The variation in **Germany** is a result of the fact that the 2010 and 2012 data is incomplete and not comparable with the 2014 and 2016 data.

**Belgium, Norway, Slovenia and UK-England** have budgets for legal aid that are in steady decline since 2012.

Some States which had made significant efforts with regard to legal aid between 2010 and 2014 have restricted their budget between 2014 and 2016. These are **Azerbaijan, Bulgaria, Croatia, Lithuania and Russian Federation**.

By contrast, other States or entities have increased the budget allocated to legal aid between 2014 and 2016, having decreased it between 2012 and 2014: **Ireland, Netherlands and UK-Scotland**.

**Figure 2.53 Difference between approved and implemented budget for legal aid in 2016 (Q12, Q12-1)**



For most of them, there were no major variations, while in 13 States the gap was higher than 10 %.

In **Hungary, Malta, Portugal** and **Sweden**, the implemented budget was higher than the approved budget. This can be explained by the fact that the number of incoming cases benefiting from legal aid was higher than expected.

By contrast, in **Andorra, Azerbaijan, France, Greece, Latvia, Poland, “the former Yugoslav Republic of Macedonia”** and **Ukraine**, the implemented budget was lower than the approved budget. In some countries, this difference is due to a delay in payments (e.g. in **Greece** and **“the former Yugoslav Republic of Macedonia”**), whereas in other countries (e.g. **Latvia** and **Poland**), the number of incoming cases and the costs of legal aid were lower than expected. In **France**, significant budget cuts have affected the legal aid budget; furthermore, the legal aid funding model is under reform.

### Trends and conclusions

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

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

The European average concerning the budgets of judicial systems is 64 € per inhabitant in 2016 (6 € per inhabitant higher than in 2014). This increase is in a big extend result of the availability of data in this cycle from **Andorra, Germany, Iceland** and **Monaco** who are among wealthier countries that invest in their judicial system amounts higher than European average. Moreover, in 5 States the expenditure per inhabitant is lower than 10 €, while in 7 States or entities the expenditure is higher than 100 €. The differences in the level of wealth, measured by GDP, obviously explain these differences in absolute terms. But it should be noted that the richest States are not necessarily the ones with the largest budget efforts in their judicial systems. Nevertheless, at least in respect of **Luxembourg** and **Norway**, the budgets allocated to the judicial system are very significant in their volume.

Generally speaking, the court budget represents the largest part of the budget allocated to the judicial system: 66 % on average (the same percentage as in 2014). Although there are big differences between the States and entities, the remuneration of staff (judges and non-judges) is the most important item of the court budgets in 2016: 69 % on average of the budgets allocated to the courts. Compared to the European average, a higher part of the judicial budget (around 30 %) is allocated to the public prosecution services in the Eastern European countries, whereas northern European countries tend to invest more in legal aid (more than 30 % of the budget of the judicial system).

The recent development of a trend to outsource certain services can be noted, in order to optimize budgetary resources for court management, but also, sometimes, to reinforce specialization and expertise in certain areas.

All of the States or entities have implemented a legal aid system in criminal and non-criminal matters in compliance with the requirements of the European Convention on Human Rights. Almost all States or entities have established a system of legal aid in non-criminal cases. As a general rule, this system encompasses the representation by a lawyer before the court, but also legal advice. With regard to the evolution of the budgets allocated to legal aid, it is possible to distinguish two trends characterizing European States and entities: those endowed with the most generous systems tend to restrict the budget allocated to legal aid and those where the amounts allocated to legal aid are the lowest tend to increase the legal aid budget.

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



## Chapter 3. Judicial staff and lawyers

This chapter deals with judicial staff and lawyers, their recruitment modalities, terms of office, training, remuneration and status in order to measure the continuous efforts of States and entities to improve the judicial staff working conditions and in this way enhance the quality of the service provided to the public in the field of justice. However, it is not always easy to determine, in countries endowed with an autonomous administrative justice system, what specifically falls within its remit. Specific attention is devoted in this chapter to the issue of parity.

### 3.1 Judges

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

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

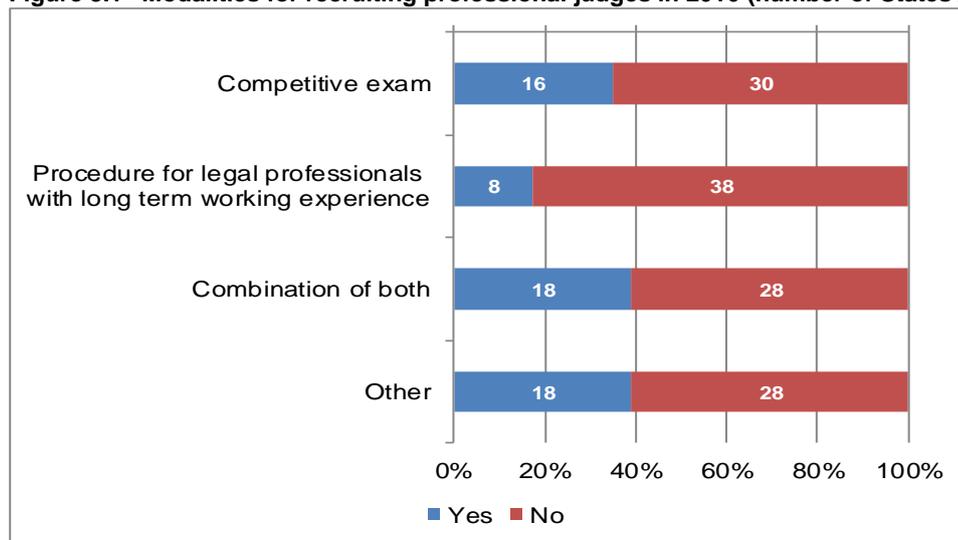
- professional judges are "those who have been trained and who are paid as such" and whose main function is to work as a judge and not as a prosecutor; the fact of working full-time or part-time has no consequence for their status;
- professional judges who practice on an occasional basis and are paid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

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

The quality and efficiency of justice depend largely on the systems for the recruitment of judges, but also on their initial and continuous training, their number, the status which must guarantee their independence and the number of staff working in the courts either as judge assistants or in the exercise of judicial activity. While the recruitment modalities for judges have not changed at all since the last CEPEJ study, it can be noted that some States face difficulties in setting up general and/or compulsory continuous training. Generally, the judges' formal status guarantees their independence. The irremovability principle is widely enshrined. The possibility exists in several States and entities of removing a judge without his/her consent for organisational reasons; it must be ensured that it remains compatible with the principle of independence.

### 3.1.1 Recruitment of professional judges

Figure 3.1 Modalities for recruiting professional judges in 2016 (number of States / entities) (Q110)



Competitive exam is the common way of recruiting judges, chosen by 34 States and entities: 16 as the exclusive way (**Albania, Andorra, Armenia, Austria, Bulgaria, Czech Republic, France, Germany, Greece, Italy, Republic of Moldova, Monaco, Romania, Serbia, Spain, Turkey**) and 18 in combination with another procedure that hires legal professionals with long term experience (**Andorra, Azerbaijan, Belgium, Bosnia and Herzegovina, Georgia, Germany, Latvia, Lithuania, Luxembourg, Monaco, Netherlands, Poland, Serbia, Slovakia, Slovenia, Turkey, Ukraine and UK-Scotland**). In **Morocco** judges are also recruited through a competitive exam but may also be recruited directly following an investigation and a pre-selection interview.

8 have a procedure which relies on experience and seniority among lawyers, without competitive exams (**Albania, Austria, Ireland, Malta, Norway, Switzerland, UK-England and Wales, UK-Scotland** as well as **Israel**).

It should be noted that national law often sets the minimum length of the required experience. On the other hand, legal experience can be interpreted broadly, which is most often the case (jurists, lawyers, notaries, legal consultants, clerks and other occupations in the field of law), or narrowly (former magistrates, positions involving acting in judicial functions - *referendary*, assistant judge, associate judge, trainee judge, etc.).

For example, in **UK-England and Wales** and in **Ireland** there is no formal entrance examination to the judiciary and the professional experience of candidates is fundamental to the evaluation conducted by the competent authority. Similarly, in **Switzerland** there is no official curriculum leading to the position of judge. Generally, judges are selected from among experienced legal experts practising as lawyers, legal experts within the administration or companies and clerks. Although since 2009 there is a Swiss Judicial Academy, the proposed training is not mandatory (except in some cantons). In **Malta**, judges and *Magistrates* are chosen among lawyers, a 12-year experience being necessary to become a judge and 7 years to become a *Magistrate*.

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

In **Portugal**, relevant experience in the field of law may provide access to the function of judge. In some States, Doctors in law and former judges are exempted from the entrance examination to the judiciary (**Lithuania** regarding former judges of the Supreme Court, the Constitutional Court and European jurisdictions; **Russian Federation**). In **Croatia**, persons who have previously worked as judges, lawyers or

notaries can be appointed judges in some jurisdictions, after having taken an examination before the Judicial Council other than the final examination of the Judicial Academy. In **France**, there is a possibility of recruitment without competition reserved for candidates with professional experience considered to be particularly qualifying for the exercise of judicial functions, following a favourable opinion of a committee composed exclusively of judges from the judiciary, the "promotion commission" (*commission d'avancement*).

It is not excluded that qualifications other than judicial may be relevant, such as a member of Parliament in **Iceland** or as an official of the financial administration under the administrative and tax jurisdictions (**Finland**, some Länder in **Germany**).

Other recruitment procedures are used in 18 States and entities, in combination with the aforementioned procedures (14 States and entities) or exclusively (only 4 States and entities).

Some States, such as **Azerbaijan**, have indicated that recruitment takes place in a manner other than competitive exam or professional experience, but the mechanism described is similar to a competition. In **France**, alternative competitions for recruitment of judges and prosecutors are open to candidates with previous work experience. Such competitions take place before juries that include also personalities from outside the judiciary. In **Estonia** the initial training of candidates selected following a first competition is subject to an examination. While all candidates have to pass this test, those with experience as a lawyer, prosecutor, consultant to the court, clerk or judge, have their training period reduced. Similarly, a formally qualified and experienced lawyer who successfully passes the exam can be appointed directly as a judge in a Court of Appeal. A combination of several mechanisms is implemented in **Georgia**: qualification exam and then competition and integration into the High School of Justice. **Hungary** has not introduced a competitive recruitment system: the local Judicial Council (consisting solely of judges elected by their peers) ranks the candidates and the court president makes a suggestion to the President of the National Office of Justice for appointing a judge; this proposal is forwarded to the President of the Republic. **Iceland** has also not adopted the competition mechanism: a committee assessing the abilities of candidates for judicial posts. **Montenegro** resorts to a mechanism involving the Judicial Council (exam followed by interview, ranking by the Council). **Poland** uses at the time examined by this report (2016) a combination of several systems with a major role entrusted to the Judicial Council (appointment of deputy judges, after 36 months evaluation to become judge). The **Russian Federation** has chosen a qualification mechanism valid for three years. In **Austria** the recruitment modalities for judges within administrative courts created in 2014 involves professional experience of 5 years. Only the best candidates are selected for the short-list of three candidates established by the judicial committee of administrative courts, for recruitment by the Administration Office.

In some States there might not be a specific entrance examination for the judiciary and the initial appointment of judges is subject to the dual requirement of prior legal experience and success in the bar exam (**Montenegro, Slovenia**).

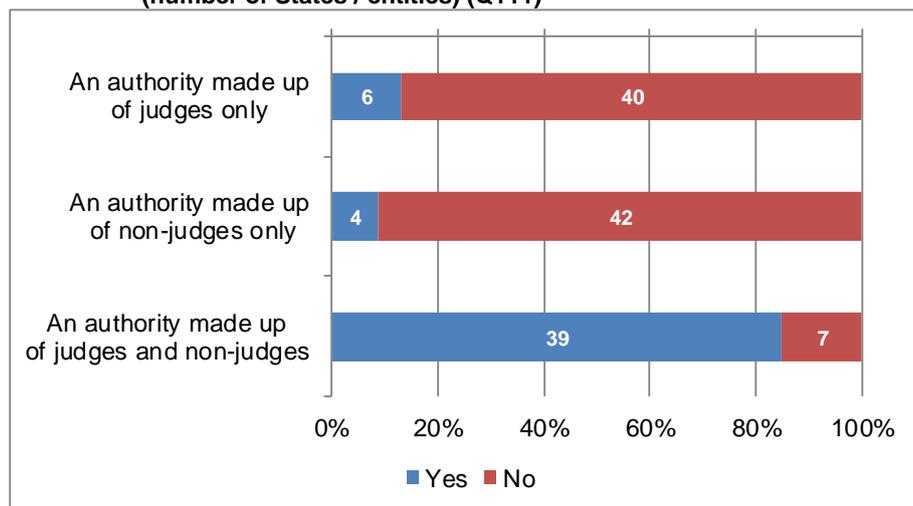
Some federal States, such as **Germany**, practice different procedures given that the recruitment is organised depending on the relevant texts in each Land. **Monaco** is characterised by the peculiarity of distinguishing between the recruitment of Monegasque judges and judges seconded by another State (in particular **France**) to practise in **Monaco**.

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

### ***Authority in charge of initial recruitment and appointment***

All States and entities insist that the authority in charge of recruitment procedures must be independent. Some of them distinguish between the formal authority, which may be the one that appoints (for instance the President of the Republic or the Minister of Justice) and the authority actually in charge of the recruitment process, which must enjoy independence from the executive.

**Figure 3.2 Authorities responsible for initial recruitment and appointment of professional judges in 2016 (number of States / entities) (Q111)**



The authority responsible for the initial and continuous training of judges is either an authority composed exclusively of judges (6 States: **Cyprus, Germany, Hungary, Latvia, Lithuania, Switzerland**), or an authority composed exclusively of non-judges (4 States: **Andorra, Czech Republic, Germany, Switzerland**), or an authority composed of both judges and non-judges (39 States and entities including **Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine, UK-England and Wales, UK-Scotland, Israel, Morocco**). **Germany and Switzerland**, the three types of authorities are present at the level of federal entities, according to their autonomous systems.

Beyond the different appointment systems adopted by the States, an increasingly clear European consensus emerges with regard to the place and role of a "High Judicial Council politically neutral or equivalent body as an effective instrument to ensure respect for basic democratic principles."<sup>12</sup> In several States and entities, a Judicial Council (**Albania, Andorra, Armenia, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, France, Georgia, Hungary, Italy, Lithuania, Republic of Moldova, Monaco, Montenegro, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Switzerland** (in the cantons that have a High Judicial Council), **“the Former Yugoslav Republic of Macedonia”, Turkey, Ukraine**) or a special committee of selection/evaluation/appointment of judges (**Azerbaijan, Denmark, Estonia, Finland, Ireland, Lithuania, Latvia, Luxembourg, Norway, Russian Federation, Sweden, UK-England and Wales, UK-Scotland and Israel**) have a central role. These institutions are often composed of a majority of members of the judiciary which is an essential guarantee of their independence and legal practitioners which participation is a pledge of democratic legitimacy. **Andorra** is an exception with a High Judicial Council composed exclusively of non-judges. The existence of a selection committee does not rule out the involvement of the High Judicial Council in the appointment procedure (**Azerbaijan, Lithuania, Slovakia**). In **Lithuania**, for example, the President of the Republic appoints judges other than those of the Supreme Court on the recommendation of a selection committee established by him/herself, with the agreement of the Parliament and after having consulted the Judicial Council. While the degree of intervention of the Judicial Councils or other appointing commissions varies – from being charged with making proposal (the great majority of the States) to making the formal appointment (**Andorra, Bosnia and Herzegovina, Croatia, Cyprus** (except for judges of the Supreme Court), **Spain, Montenegro, Slovenia, Turkey**) - they certainly contribute to the quality of justice by providing an initial guarantee of functional independence of judges.

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

<sup>12</sup> Venice Commission, *Judicial Appointments*, Report adopted at its 70th Plenary Session (Venice, 16-17 March 2007), CDL-AD(2007)028, Strasbourg, 22 June 2007, § 22.

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

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

It should be recalled that, according to settled case law of the ECtHR, the appointment of judges by the executive or legislative power is acceptable provided that once appointed; they receive no pressure or instructions in the performance of their judicial functions<sup>13</sup>.

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

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

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

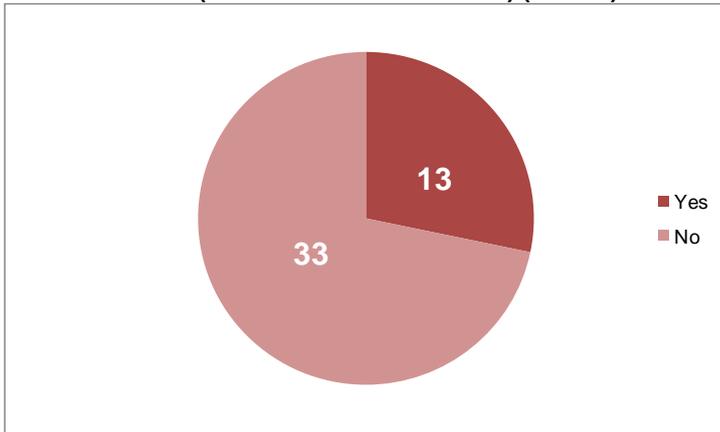
It can be noted that in the case of specialised courts, some States have chosen to elect judges by their peers (**France**: the case of judges of commercial courts or labour arbitration advisers (*conseillers prud'homaux*) on labour law). But they are not professional judges and they do not get any salary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

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<sup>13</sup> ECtHR, *Flux v. Moldova* (No. 2), Appl. No. 31001/03, 3/10/2007, § 27.

**Gender and recruitment**

**Figure 3.3 Measures to ensure parity between men and women in the recruitment of professional judges in 2016 (number of States / entities) (Q110-1)**



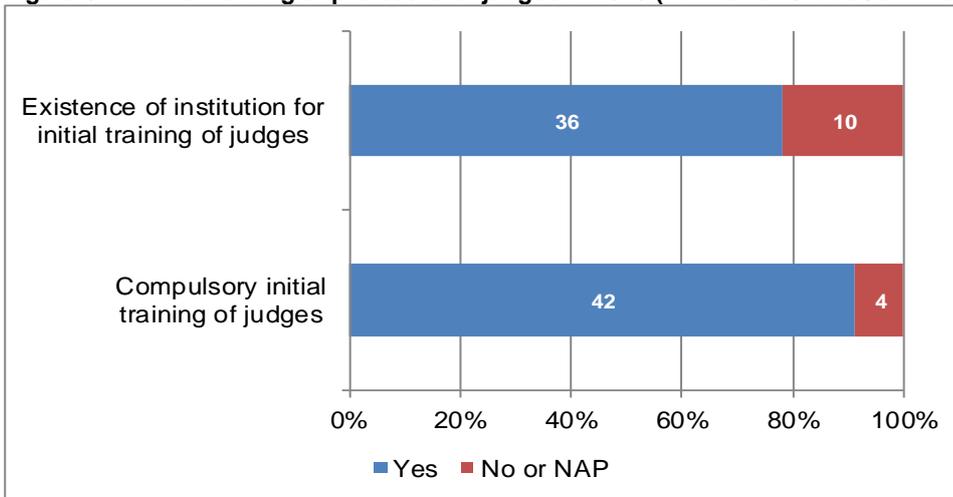
13 States and entities report taking gender into consideration in the recruitment and appointment process (7 in the previous exercise). **Armenia, Austria, Bosnia and Herzegovina, Denmark, Georgia, Germany, Iceland, Montenegro, Norway, Serbia, Spain, UK-England and Wales, UK-Scotland and Israel** indicate that they apply specific rules in this regard. For example, in **Armenia**, parity between men and women is one of the considerations when drawing up the list of judge candidates, which must contain not less than 25% of representatives of one gender. In **Bosnia and Herzegovina**, the Law on the High Judicial and Prosecutorial Council is also pursuing the goal of parity as an obligation of the Council during the proceedings of the appointment and promotion of judges. Similarly, the Judicial Council of **Montenegro** is bound by a legal obligation to ensure parity between men and women as part of the appointment procedure. In **UK-England and Wales** there is a statutory responsibility of the Lord Chancellor and the Lord Chief Justice to ensure such parity.

These replies must be assessed with caution, since in many cases the authorities in charge of recruitment only apply the principle of non-discrimination on the basis of gender; very few States and entities have started building a policy that would effectively take gender into account, either in the form of binding quotas or incentives to recruit persons of the under-represented gender with equal skills.

**3.1.2 Training of professional judges**

**Compulsory initial training of judges and institution in charge of initial training**

**Figure 3.4 Initial training of professional judges in 2016 (number of States / entities) (Q127, Q131)**



In a very large majority of States and entities, before exercising their functions, judges undergo specific training. The latter is compulsory in 42 States and entities. It is not mandatory in 4 States and entities (in the **Netherlands**, the mandatory initial training of 4 years was abolished in 2014).

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

Differences exist as to the point at which the initial training takes place, i.e. before or after the definitive appointment/election of the judge. It is possible to distinguish between a mandatory initial training before appointment for judge candidates who passed the entrance examinations (this is the case in the vast majority of States having an entrance examination) and compulsory initial training after the appointment (**Estonia, France, Ireland, Lithuania, Russian Federation, Slovenia**).

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

To ensure this initial training of judges, the existence of institutions is becoming increasingly common in Europe, 36 States and entities having such institutions (as well as in **Israel** and **Morocco**). **Andorra, Austria, Estonia, Finland, Latvia, Luxembourg, Malta, Monaco, Norway, Switzerland** do not have such institutions. The initial training is relatively long in countries where it is provided by a Judicial Academy, a similar institution or through mandatory training programs (**Bulgaria** - 9 months, **France** - 31 months, **Croatia** - 2 years, **Austria** - 4 years). However, in countries where judges come from the ranks of experienced professionals, the training (which is an initial qualification) only takes a few days (for the countries where common law applies), or it is completely absent (**Malta** where a 12-year experience as a lawyer is required to perform the function of judge).

Initial training is optional in 4 States and entities (**Finland, Serbia, Sweden** and in **Switzerland**, where the training provided by the Academy of the Judiciary is mandatory only in some cantons). While **Finland** and **Sweden** have indicated that the initial training of judges is optional, it should be recalled that access to the profession in those States is subject to a long practical training in courts before appointment. This means that the training proposed after appointment can be described as continuous training rather than initial training. In addition, in **Sweden** there is an alternative way to become a judge through an initial training of four years at the Judicial Academy. In **Serbia** an entrance exam has been introduced for judges who are elected for the first time, organised by the High Judicial Council. Alternatively, a candidate for a first time judge who has completed initial training at the Judicial Academy will not be required to take this exam and his or her expertise and competence will be assessed in the final exam at the Judicial Academy. Finally, in **Slovakia**, initial training prior to the entrance examination is required, but candidates may also participate in the in-service training programs offered on an optional basis.

### ***Continuous training of judges***

In addition to initial training, all of the States and entities offer the possibility for their judges to be trained during their careers (in-service training); this training is mandatory in 19 States and entities. Only 3 States do not offer such continuous training (**Ireland, Malta** and **Spain**). In **Ireland**, judges do not conduct administrative management functions; therefore they do not require training in this area. In **Finland**, starting from 1 January 2017, every judge has the obligation to up-date his/her legal knowledge and train him/herself. However, even when it is optional, a considerable proportion of judges are usually interested by the in-service training. In **Austria**, more than 70 % of judges follow the general in-service training each year. In some States and entities, the fact of following continuous training courses which are optional constitutes a plus in the CV of the judge who wishes to take up other functions.

This in-service training is either occasional (in 7 States and entities such as **Malta** where judges organise amongst themselves occasional activities through the Judicial Studies Committee), or regular throughout the career (in 38 States and entities). Sometimes, national legislations provide an interval of time during which each judge has a duty to undergo in-service training: the duration of the training cannot be: less than 5 days per year and more than 20 days per year in **Albania**, 4 days per year in **Bosnia and Herzegovina**, 5 days per year in **France**, every 5 years in **Lithuania**, once every three years in the **Russian Federation**, 5 days a year in **UK-Scotland**. The Dutch law is both precise and flexible - 90 hours for a period of 3 years. It should

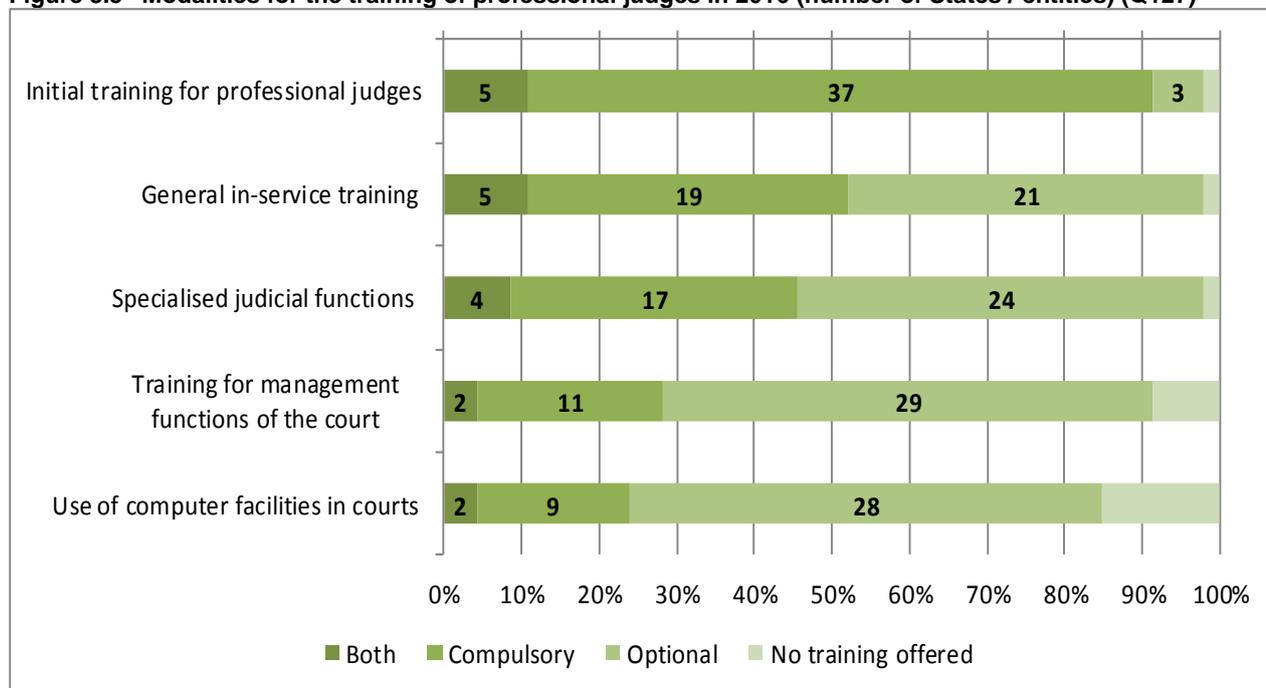
be noted that in **Lithuania**, in-service training is required beyond the 5-year criteria in case of promotion, transfer from a court of general jurisdiction to a specialised court, or even in case of an evolution in the qualification of the judge, *etc.*

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

Specific in-service trainings (mandatory or optional) are also organised to fill specialised judicial functions (42 States and entities) with regard to different areas of law and also in respect of the particularities of a specific subject (juvenile justice, new forms of crime, the status of victims, the protection of children's rights, *etc.*) or for those who will exercise managerial functions (41 States and entities), essentially concerning the positions of presidents and court administrators or for optimising the use of information technology in courts (38 States and entities). In **Bosnia and Herzegovina**, there is a compulsory continuous training for judges who specialise as juvenile judges. 5 days of continuous training in public management are mandatory for the new heads of courts. One can observe that the trainings offered are more and more multidisciplinary. In **Austria**, judges are encouraged to develop their economic competence. In **UK-England and Wales** targeted training is offered to judges deciding on economic and administrative issues. In-service trainings are also increasingly internationalised. The **Netherlands** have developed a particularly comprehensive programme of continuous training (comprehensive curriculum on leadership and management development, conceived upon the request of the Judicial Council and the Council of General Prosecutors, with emphasis on personal leadership).

European law - Council of Europe and European Union – is an integral part of national programmes in a convincing majority of countries. Similarly, these two regional organisations offer many possibilities for training national judges through traineeships, seminars, study visits, *etc.*

**Figure 3.5 Modalities for the training of professional judges in 2016 (number of States / entities) (Q127)**



## Trends and conclusions

In general, when it comes to the recruitment of judges, European standards seem to be well anchored in national constitutional and legislative norms. Guarantees of independence relating to the recruitment authorities, the procedure followed, the role of the Council of Justice or a similar body and the conditions to which access to the function of judge is subject, are indeed present and this, whatever the method of appointment chosen and the conception in domestic law of the principle of separation of powers are. However, it will be necessary to follow further developments in this area, taking into account the reforms initiated since 2016 in some States.

Continuous training is developing. Judges/prosecutors are encouraged to strengthen their skills and knowledge, often in a multi-disciplinary way. While continuous training remains rather optional, its compulsory nature is reinforced when it comes to accede to specialised positions or functions (juvenile judge or head of court for example).

One of the trends to be observed is the growing importance given to the experience of candidate judges in the selection process. Originally characteristic of the common law countries, this parameter is more prominent in almost all States.

### 3.1.3 Number of judges

The CEPEJ categories distinguish between professional judges working full-time, professional judges sitting on an occasional basis and non-professional judges (lay-judges). Citizens sitting on popular juries (19 States and entities) should in principle be addressed outside these categories.

#### *Professional judges*

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

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

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

Common law countries traditionally use this particular category of professional judges (**UK-England and Wales, UK-Scotland**). Similarly, this type of judges is part of the *Tribunal de Corts* in **Andorra** and the Review Court and the Supreme Court in **Monaco**. In **Malta**, in addition to the Commissioners for Justice hired on a part-time basis, the Court of minor disputes is chaired by a lawyer appointed for 5 years on a part-time basis. In **Montenegro** the possibility exists for the Council of Justice to transfer judges temporarily (or permanently) from one court to another.

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

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

### ***Non-professional judges***

Many States entrust judicial activities to non-professional judges. This is consistent with the ECtHR case law which ruled in these terms: "*the participation of lay judges on tribunals is not, as such, contrary to Article 6§1*"<sup>14</sup>.

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

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<sup>14</sup> ECtHR, *Ibrahim Gürkan v. Turkey*, app. N°10987/10, 3/ A07/2012, § 18.

**Table 3.6 Categories and number of judges in 2016 (Q1, Q46, Q48, Q49, Q50)**

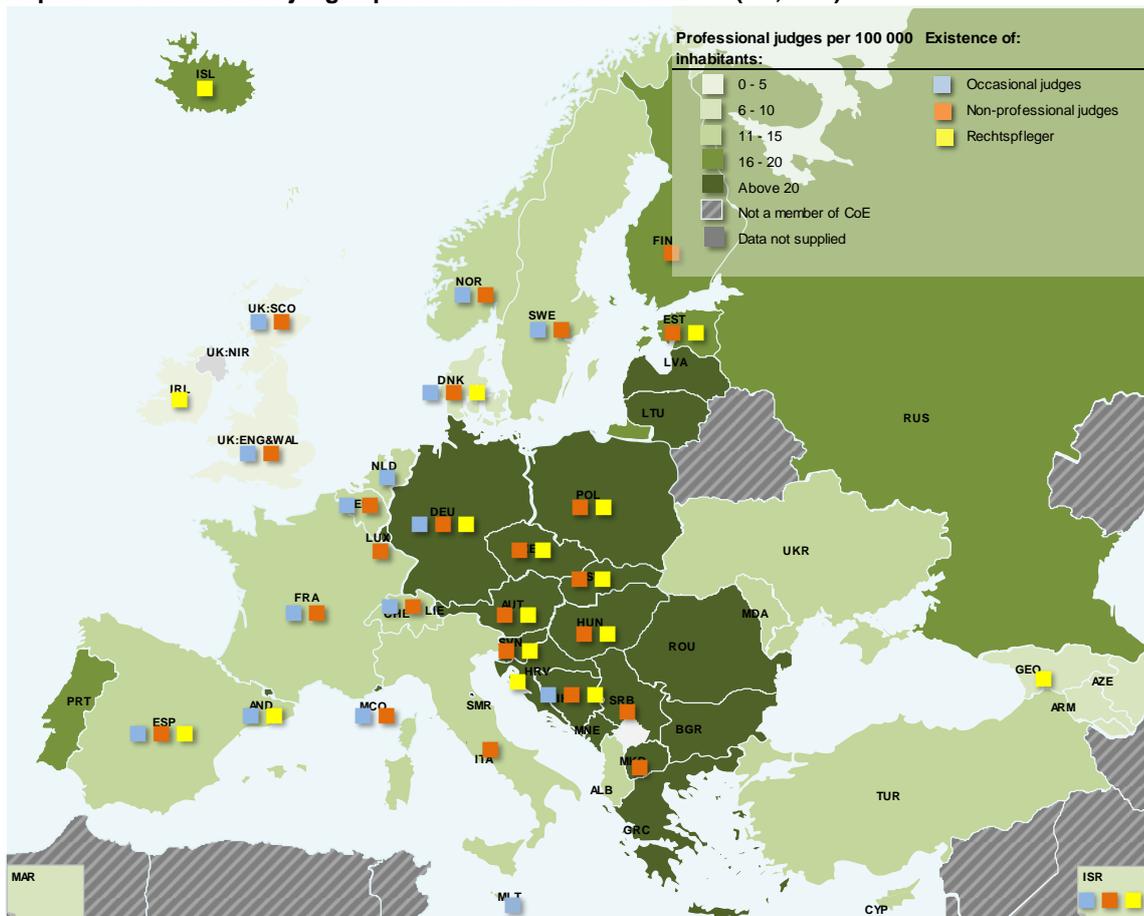
States / Entities	Professional judges (FTE)		Professional judges sitting in courts occasionally (gross figures)		Non-professional judges (lay judges) (gross figures)		Trial by jury
	Absolute number	per 100 000 inhabitants	Absolute number	per 100 000 inhabitants	Absolute number	per 100 000 inhabitants	
Albania	363	13	NAP	NAP	NAP	NAP	
Andorra	26	36	2	3	NAP	NAP	
Armenia	231	8	NAP	NAP	NAP	NAP	
Austria	2 397	27	NAP	NAP	823	9	
Azerbaijan	509	5	NAP	NAP	NAP	NAP	
Belgium	1 600	14	66	1	3 653	32	
Bosnia and Herzegovina	1 014	29	91	3	171	5	
Bulgaria	2 255	32	NAP	NAP	NAP	NAP	
Croatia	1 797	43	NAP	NAP	NAP	NAP	
Cyprus	111	13	NAP	NAP	NAP	NAP	
Czech Republic	3 005	28	NAP	NAP	5 796	55	
Denmark	372	6	NA	NA	10 000	174	
Estonia	232	18	NAP	NAP	502	38	
Finland	1 068	19	NAP	NAP	1 738	32	
France	6 995	10	477	1	24 925	37	
Georgia	278	7	NAP	NAP	NAP	NAP	
Germany	19 867	24	NA	NA	91 717	112	
Greece	2 780	26	NAP	NAP	NAP	NAP	
Hungary	2 811	29	NAP	NAP	4 440	45	
Iceland	53	16	NAP	NAP	NAP	NAP	
Ireland	162	3	NAP	NAP	NAP	NAP	
Italy	6 395	11	NAP	NAP	3 522	6	
Latvia	503	26	NAP	NAP	NAP	NAP	
Lithuania	778	27	NAP	NAP	NAP	NAP	
Luxembourg	187	32	NAP	NAP	28	5	
Malta	45	10	20	5	NAP	NAP	
Republic of Moldova	418	12	NAP	NAP	NAP	NAP	
Monaco	37	99	16	43	148	394	
Montenegro	318	51	NAP	NAP	NAP	NAP	
Netherlands	2 331	14	1 074	6	NAP	NAP	
Norway	559	11	63	1	45 000	856	
Poland	9 980	26	NAP	NAP	12 977	34	
Portugal	1 986	19	NAP	NAP	NAP	NAP	
Romania	4 628	24	NAP	NAP	NAP	NAP	
Russian Federation	26 443	18	NAP	NAP	NAP	NAP	
Serbia	2 707	38	NAP	NAP	2 478	35	
Slovakia	1 311	24	NAP	NAP	1 972	36	
Slovenia	880	43	NAP	NAP	3 445	167	
Spain	5 367	12	946	2	7 692	17	
Sweden	1 179	12	NA	NA	8 363	84	
Switzerland	1 251	15	2 988	35	1 554	18	
The FYROMacedonia	566	27	NAP	NAP	739	36	
Turkey	11 218	14	NAP	NAP	NAP	NAP	
Ukraine	6 203	15	NAP	NAP	NAP	NAP	
UK-England and Wales	1 760	3	6 479	11	16 296	28	
UK-Scotland	200	4	79	1	450	8	
Israel	735	9	53	1	440	5	
Morocco	2 938	8	NAP	NAP	NAP	NAP	
<b>Average</b>	2 939	22	1 025	9	10 351	94	
<b>Median</b>	1 124	18	85	3	3 484	35	
<b>Minimum</b>	26	3	2	1	28	5	
<b>Maximum</b>	26 443	99	6 479	43	91 717	856	

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

The disparity in the number of professional judges per State or entity highlighted in this table obviously results from the difference in human resources allocated within each State to the functioning of the courts. The average number of 22 judges per 100 000 inhabitants (data relatively stable over the last decade) must be assessed in the light of all these different elements.

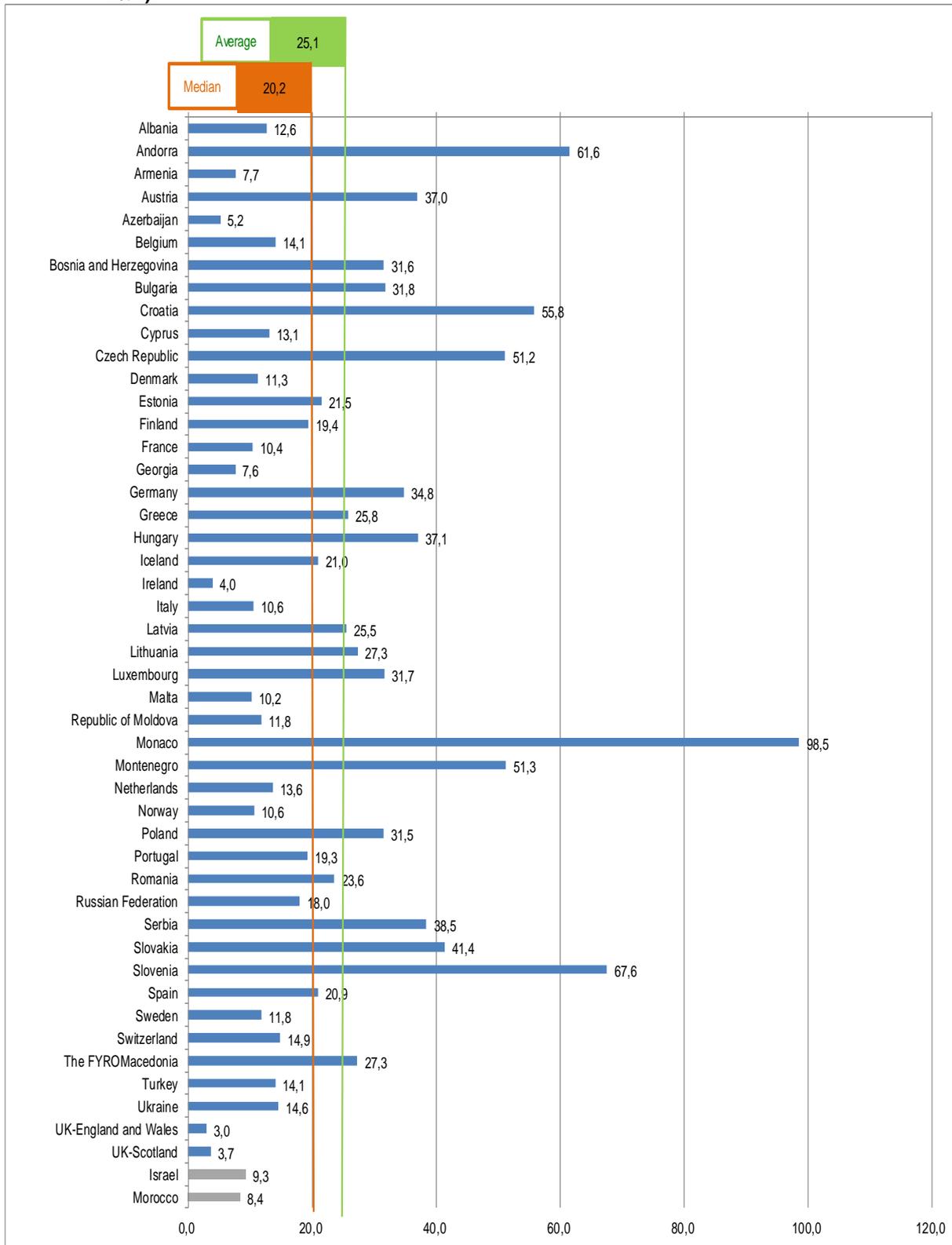
It is worth trying to better understand what can represent the number of professional judges per 100 000 inhabitants. Indeed, a variable part of the litigation can be ensured according to the State by professional judges performing on an occasional basis, by non-professional judges and by *Rechtspfleger*.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

**Map 3.7 Professional judges per 100 000 inhabitants in 2016 (Q1, Q46)**



<sup>15</sup> CCJE, Opinion No. 3 (2002) on the Principles and Rules Governing Judges' Professional Conduct, in Particular Ethics, Incompatible Behaviour and Impartiality, 19 November 2002, §11.

**Figure 3.8 Cumulated number of professional judges and *Rechtspfleger* per 100 000 inhabitants in 2016 (Q46, Q52)**



The evolution in the number of professional judges for the period 2014-2016 follows the trend already observed for the previous period. Data is consistent with regard to the other elements mentioned. Thus, a significant increase is to be noticed in **Austria** (+ 45 %), **Montenegro** (+ 25 %), **Turkey** (+ 24 %), due to the establishment of new courts. **Greece** shows a variation of + 25%, mainly for technical reasons (in 2014, many judges had not been correctly counted in the statistics and administrative judges had not been counted).

**Table 3.9 Evolution in the number of professional judges between 2010 and 2016 (Q46)**

States / Entities	Professional judges per 100 000 inhabitants				Variation		
	2010	2012	2014	2016	2012 - 2014	2012 - 2016	2014 - 2016
Albania	11,7	13,5	12,5	12,6	-7%	-6%	1%
Andorra	28,2	31,5	31,2	35,6	-1%	13%	14%
Armenia	6,7	7,2	7,5	7,7	4%	7%	3%
Austria	17,8	18,3	18,9	27,4	3%	50%	45%
Azerbaijan	6,7	6,5	6,3	5,2	-3%	-19%	-17%
Belgium	14,8	14,3	14,3	14,1	0%	-1%	-1%
Bosnia and Herzegovina	24,4	25,1	25,9	28,9	3%	15%	11%
Bulgaria	30,0	30,7	30,8	31,8	0%	3%	3%
Croatia	42,8	45,3	44,4	43,3	-2%	-5%	-3%
Cyprus	12,9	11,9	11,3	13,1	-5%	10%	16%
Czech Republic	29,1	29,1	28,8	28,4	-1%	-2%	-1%
Denmark	6,7	6,6	6,7	6,5	0%	-3%	-3%
Estonia	16,7	17,7	17,6	17,6	-1%	-1%	0%
Finland	18,0	18,1	18,1	19,4	0%	7%	7%
France	10,7	10,7	10,5	10,4	-2%	-3%	0%
Georgia	5,2	5,4	6,8	7,5	26%	39%	10%
Germany	24,3	24,7	23,9	24,2	-3%	-2%	1%
Greece	29,3	23,3	20,6	25,8	-12%	11%	25%
Hungary	29,0	27,9	28,5	28,7	2%	3%	1%
Iceland	16,3	17,1	NA	15,7	NA	-8%	NA
Ireland	3,2	3,1	3,5	3,5	10%	11%	0%
Italy	11,0	10,6	11,4	10,6	7%	-1%	-8%
Latvia	21,2	21,5	24,4	25,5	14%	19%	5%
Lithuania	23,9	25,6	25,8	27,3	1%	7%	6%
Luxembourg	32,0	34,1	32,7	31,7	-4%	-7%	-3%
Malta	9,3	9,5	9,5	10,2	1%	8%	7%
Republic of Moldova	12,4	12,4	10,8	11,8	-13%	-5%	9%
Monaco	100,3	102,4	95,2	98,5	-7%	-4%	3%
Montenegro	41,9	42,4	41,0	51,3	-3%	21%	25%
Netherlands	15,2	14,4	14,0	13,6	-3%	-5%	-2%
Norway	11,2	11,0	10,8	10,6	-2%	-4%	-2%
Poland	27,8	26,2	26,2	26,0	0%	-1%	-1%
Portugal	18,4	19,2	19,2	19,3	0%	1%	0%
Romania	19,0	20,2	20,5	23,6	2%	16%	15%
Russian Federation	22,6	23,2	17,8	18,0	-23%	-22%	1%
Serbia	33,7	40,5	38,0	38,5	-6%	-5%	1%
Slovakia	24,9	24,2	24,4	24,1	1%	0%	-1%
Slovenia	49,9	47,1	44,8	42,6	-5%	-10%	-5%
Spain	10,2	11,2	11,5	11,5	3%	3%	0%
Sweden	11,5	11,8	11,8	11,8	0%	0%	0%
Switzerland	14,5	15,8	15,7	14,9	-1%	-6%	-5%
The FYROMacedonia	32,3	32,4	30,4	27,3	-6%	-16%	-10%
Turkey	10,6	10,7	11,4	14,1	6%	31%	24%
Ukraine	16,9	17,1	18,8	14,6	10%	-15%	-23%
UK-England and Wales	3,6	3,6	3,3	3,0	-7%	-15%	-9%
UK-Scotland	3,5	3,5	3,3	3,7	-5%	6%	12%
Israel		8	8,3	8,5	1%	4%	3%
Morocco			..	8,4			
<b>Average</b>	20,9	21,3	20,9	21,5	-1%	2%	3%
<b>Median</b>	17,3	17,9	18,1	17,8	-1%	-1%	1%
<b>Minimum</b>	3,2	3,1	3,3	3,0	-23%	-22%	-23%
<b>Maximum</b>	100,3	102,4	95,2	98,5	26%	50%	45%

The number of professional judges remains broadly stable in the different States and entities. These are persons recruited to perform the function of a judge as a main occupation. Evolutions observed in certain States have particular explanations. The number of judges increased in **Albania**, as a consequence of the increased number of appellate judges following the entry into force of a new appeal procedure in 2013. The number of judges in **Austria** evolved from 1 620 to 2 397 due to the creation of administrative courts in 2014; the number of judges increased mechanically due to the fact that the 2016 statistics took into account administrative judges for the first time. Besides, in the 2014 statistics communicated by **Austria** some judges were counted twice given that they were intervening in different fields; since then, **Austria** has changed the way it presents data to comply with the CEPEJ methodology. In **Bosnia and Herzegovina**, the High Judicial Council has increased the number of judges in several courts in light of the number of cases to be dealt with and in order to avoid excessive delays in trials. **Turkey** also shows a significant increase. This difference is due to the fact that in 2015 the courts of appeal were not yet operational and therefore no judge had yet been recruited at this level. The situation of **Ukraine** is characterised by a significant decrease in the number of judges, due in particular to the implementation of a major judicial reform in 2016.

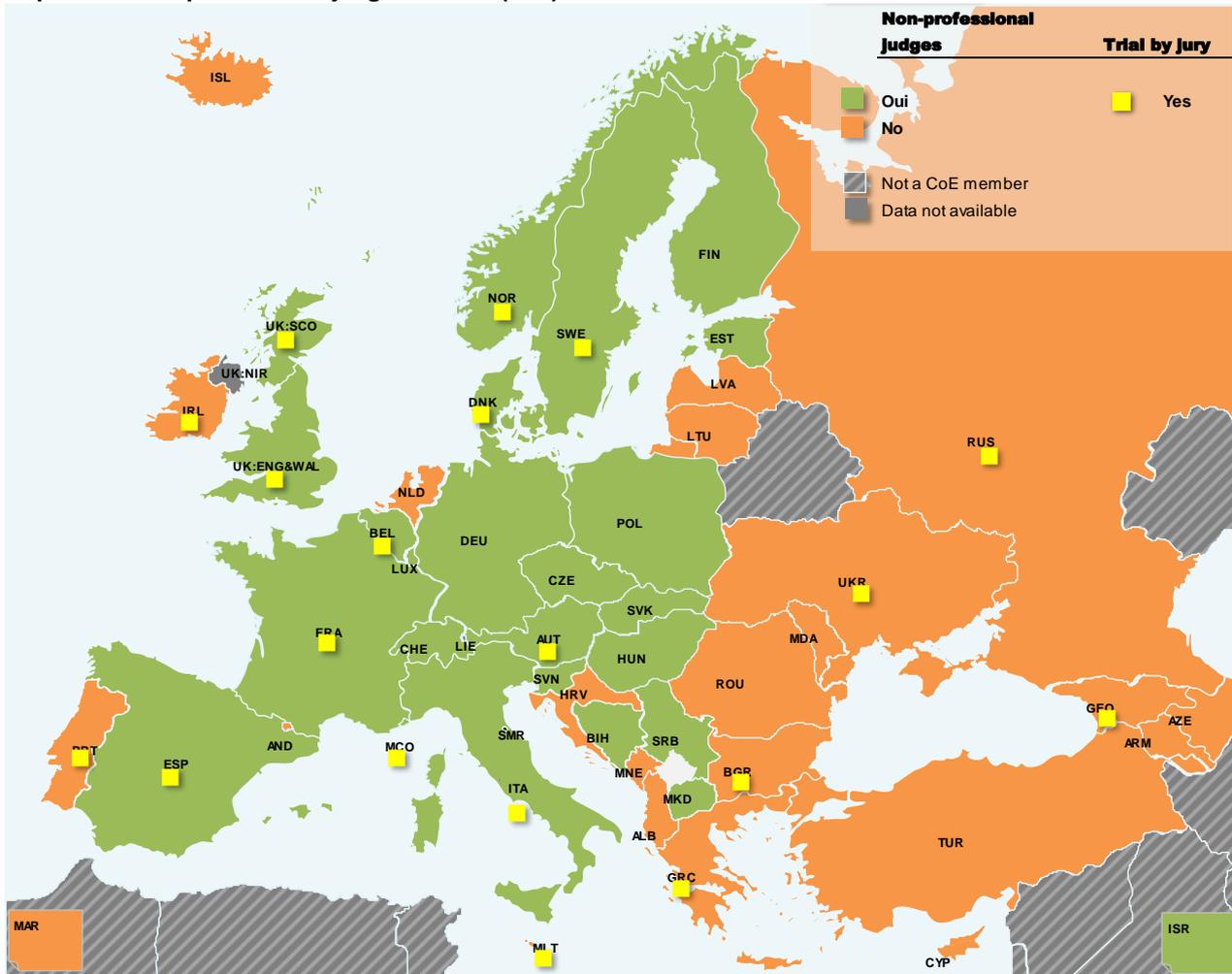
Eastern European countries traditionally have a much higher per inhabitant rate of judges and civil servants.

The small number of professional judges per inhabitant in **UK-England and Wales** (3 per 100 000 inhabitants), as in **UK-Scotland** and **Ireland**, is consistently explained by the very high proportion of cases tried by non-professional *magistrates*. In **France**, the judges sitting in labour law and commercial courts are non-professionals.

It is noteworthy that, despite the fact that States and entities have often insisted on the reforms undertaken within their judicial systems, for example mergers of courts, the impact on the number of professional judges has remained limited. The example of **Bosnia and Herzegovina** is interesting given that the number of judges increased not only due to the reorganisation of the judicial map, but also and especially due to a new methodology of presentation of data based on actual figures rather than estimates. In **Luxembourg**, the number of judges slightly decreased following the creation of the Supreme Court of Justice which brings together since 2016 the Court of Appeal and the Court of Cassation.

The number of professional judges sitting on an occasional basis does not vary significantly. **Belgium** is experiencing a slight evolution (from 61 to 66), retired judges being entitled to exercise the function of judge sitting occasionally. In **Switzerland** the number of professional judges sitting on an occasional basis increased from 1 900 to almost 3 000; the explanation is that on the one hand, the judges have been better classified according to CEPEJ's expectations and, on the other hand, since the number of incoming cases is clearly increasing, more judges sitting on an occasional basis have been appointed.

Map 3.10 Non-professional judges in 2016 (Q49)



Out of the 48 States and entities concerned, 19 have a jury comprising jury members who are not judges. Usually these jury members sit with one or more professional judge and mainly hear criminal offences, often the most serious ones. In countries of the common law tradition, a jury trial is possible in the case of certain categories of civil claim (for example in **Ireland** in defamation cases in the High Court). However, jury trial in civil matters remains rare (1% of civil cases in the Court of Session in **UK-Scotland**). It is worth noting that sometimes the distinction between jurors and assessor judges is difficult to make, especially when it is a mixed panel of one or more professional judges and a limited number of non-professional judges (majority) adjudicating together on the verdict and sentence. In **Denmark** jurors and assessor judges are appointed from the same pre-selected pool of individuals.

Table 3.11 Non-professional judges and tasks entrusted to them, in 2016 (Q49, Q49.1)

States / Entities	Number of non-professional judges	Non-professional judges by type of cases									Total number of sub-elements
		Severe criminal cases	Misdemeanour and/or minor criminal cases	Family law cases	Civil cases	Labour law cases	Social law cases	Commercial law cases	Insolvency cases	Other cases	
Albania	NAP										NAP
Andorra	NAP										NAP
Armenia	NAP										NAP
Austria	823										5
Azerbaijan	NAP										NAP
Belgium	3653										8
Bosnia and Herzegovina	171										2
Bulgaria	NAP										NAP
Croatia	NAP										NAP
Cyprus	NAP										NAP
Czech Republic	5796										3
Denmark	10000										1
Estonia	502										1
Finland	1738										1
France	24925										6
Georgia	NAP										NAP
Germany	91717										6
Greece	NAP										NAP
Hungary	4440										2
Iceland	NAP										NAP
Ireland	NAP										NAP
Italy	3522										2
Latvia	NAP										NAP
Lithuania	NAP										NAP
Luxembourg	28										1
Malta	NAP										NAP
Republic of Moldova	NAP										NAP
Monaco	148										5
Montenegro	NAP										NAP
Netherlands	NAP										NAP
Norway	45000										8
Poland	12977										12977
Portugal	NAP										NAP
Romania	NAP										NAP
Russian Federation	NAP										NAP
Serbia	2478										6
Slovakia	1972										2
Slovenia	3445										3
Spain	7692										2
Sweden	8363										5
Switzerland	1554										8
The FYROMacedonia	739										6
Turkey	NAP										NAP
Ukraine	NAP										NAP
UK-England and Wales	16296										4
UK-Scotland	450										1
Israel	440										1
Morocco	NAP										NAP
Sitting without professional judge		7	7	3	6	5	2	4	1	3	
In echevinage (sitting with professional judge)		12	4	4	2	8	8	5	2	5	
None		27	35	39	38	33	36	37	43	38	

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

The number of non-professional judges did not undergo significant variations. Only **Estonia** shows a significant decrease in the number of such judges, without specific explanations. In **Germany**, the number of lay judges has fallen, but they participate significantly in trials. **Finland** has pointed out that the number of lay judges is decreasing due to the modification of the courts' composition (one professional judge and 2 lay judges instead of 3 lay judges).

It is also possible that some States and entities have classified non-professional judges as citizens who are members of juries, not counted as such by other States. This may in particular affect the comparability of information in criminal matters (serious crimes), where it is difficult to know whether the table reflects a system of *échevinage* (non-professional judges sitting with a professional judge), a jury or non-professional judges sitting (regularly) without a professional judge. Popular juries exist in 19 States and entities.

The matters which may be tried by courts comprising lay judges or composed solely of lay judges are diverse, with and without *échevinage*: in family law, civil law, labour law, social law, commercial and insolvency law.

The selection and recruitment procedure of non-professional judges varies considerably from one State or entity to another. In some cases, these non-professional judges can be elected: **Czech Republic, Estonia, Slovakia, Slovenia, Spain** (peace judges are considered as non-professional judges; they are placed in each village where there are not professional courts; they are competent to deal with civil matters at a very small value).

### Trends and conclusions

The number of professional judges remains stable overall, while numerous States and entities have launched policies of grouping courts. However in some States, reforms have led to a significant increase in the number of professional judges, sometimes to make up for a delay from previous years. The establishment of new procedures (creation of courts of appeal) or new jurisdictions (administrative) has resulted in an increase in the number of judges.

The difference, observed in previous analyses, between Eastern and Western European countries is confirmed as regards the use of lay judges. The judicial systems of the States from Eastern Europe continue to operate with a ratio of judges per capita higher than that of the States from Western Europe. The use of lay judges remains an essential feature of common law countries and those of Northern Europe. At the European level, the professionalisation of judges is increasing, with a downward trend in the number of States using lay judges. There is still the same distrust in Eastern European countries towards non-professional judges and most or almost all disputes are entrusted to professional judges. It seems that the tasks entrusted to non-professional judges, when they are used, tend to evolve. While the system of *échevinage* is commonly used for the resolution of certain disputes, some States have abandoned it.

Common law countries traditionally resort to professional judges sitting on an occasional basis. The involvement of such judges is also justified in small States such as **Andorra** and **Monaco**. In addition, in some States and entities, judges eligible for retirement may be designated to perform as substitute judges (**Denmark, Belgium, Montenegro, Norway, Israel**). This practice helps to cope with difficulties related to vacancies due to absences or to the backlog affecting the efficiency of the courts. In this regard, the Councils of Justice are often empowered to decide the temporary transfer of judges from one court to another. In **Spain** and **Bosnia and Herzegovina** reserve judges may be called upon to sit to ensure replacements or enhance the capacity of courts to eliminate backlogs.

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

The composition of the judiciary, more or less professionalised, has a strong impact on the budgetary aspects, notably on the part devoted to salaries, very high in the States and entities having recourse only to the professional judges and relatively weak in the countries appealing to non-professional judges.

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

The Committee of Ministers has adopted a Council of Europe “Gender Equality Strategy”<sup>16</sup>. This transversal programme aims to increase the impact and visibility of equality standards by supporting their application in the member States through concrete actions and initiatives in a number of priority areas. The CEPEJ has completed the questionnaire on the objective of gender equality so that all the judicial professions are involved and to identify the actions put in place to improve professional gender equality (see below).

The average number of professional judges at first instance is 81 %, 14 % at second instance and 6 % at Supreme Court level. Variations with regard to **Turkey** are explained by the reform creating courts of appeal that entered into force in 2016. The number of second instance judges has slightly increased in **Albania** following the introduction in 2013 of a new appellate procedure before the administrative court of appeal. For other countries, such as **Lithuania**, the percentage is difficult to determine as some courts function as both appellate and first instance courts. The approach may be different for States that are not divided into three but into four levels: in **Poland**, for example, there are four jurisdictional levels in 2016, but three instances; regional courts are competent at first and second instance and judges intervene at both levels. **Romania** presents a similar peculiarity with a shared competence between first and second instance courts. In several countries, first instance courts rule as a single judge, collegiality existing only as from second instance.

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<sup>16</sup> The 2018-2023 Strategy, which follows the 2014-2017 Strategy, was adopted by the Committee of Ministers on 7 March 2018.

Table 3.12 Distribution of professional judges by instance in 2016 (Q46)

States / Entities	Total number of professional judges (FTE)	1st instance professional judges	2nd instance professional judges	Supreme Court professional judges
Albania	363	71%	26%	3%
Andorra	26	65%	35%	NAP
Armenia	231	77%	16%	7%
Austria	2 397	81%	14%	6%
Azerbaijan	509	68%	25%	7%
Belgium	1 600	80%	19%	2%
Bosnia and Herzegovina	1 014	67%	21%	12%
Bulgaria	2 255	79%	12%	8%
Croatia	1 797	71%	27%	2%
Cyprus	111	88%	NAP	12%
Czech Republic	3 005	61%	36%	3%
Denmark	372	68%	27%	5%
Estonia	232	72%	19%	8%
Finland	1 068	78%	17%	5%
France	6 995	70%	25%	5%
Georgia	278	74%	22%	5%
Germany	19 867	77%	20%	2%
Greece	2 780	63%	32%	5%
Hungary	2 811	60%	37%	3%
Iceland	53	81%	NAP	19%
Ireland	162	88%	6%	6%
Italy	6 395	76%	18%	6%
Latvia	503	62%	28%	9%
Lithuania	778	89%	7%	4%
Luxembourg	187	76%	21%	2%
Malta	45	80%	20%	NAP
Republic of Moldova	418	73%	20%	7%
Monaco	37	41%	16%	43%
Montenegro	318	70%	24%	6%
Netherlands	2 331	77%	23%	NA
Norway	559	67%	29%	4%
Poland	9 980	94%	5%	1%
Portugal	1 986	74%	21%	4%
Romania	4 628	44%	53%	2%
Russian Federation	26 443	NA	NA	NA
Serbia	2 707	87%	12%	1%
Slovakia	1 311	66%	29%	6%
Slovenia	880	73%	24%	4%
Spain	5 367	71%	28%	2%
Sweden	1 179	67%	31%	3%
Switzerland	1 251	64%	33%	3%
The FYROMacedonia	566	77%	19%	4%
Turkey	11 218	73%	10%	16%
Ukraine	6 203	78%	21%	0%
UK-England and Wales	1 760	NA	NA	1%
UK-Scotland	200	92%	9%	NAP
Israel	735	70%	28%	2%
Morocco	2 938	69%	25%	7%
<b>Average</b>	<b>2 939</b>	<b>73%</b>	<b>22%</b>	<b>6%</b>
<b>Median</b>	<b>1 124</b>	<b>73%</b>	<b>21%</b>	<b>5%</b>
<b>Minimum</b>	<b>26</b>	<b>41%</b>	<b>5%</b>	<b>0%</b>
<b>Maximum</b>	<b>26 443</b>	<b>94%</b>	<b>53%</b>	<b>43%</b>

The distribution in percentage of professional judges by instance and by gender does not show any significant change compared with previous years, which would be the result of a proactive policy to promote equality between women and men. As regards the total number of professional judges, the overall average is 49 % men and 51 % women, with a general trend towards an increase in the percentage of female professional judges

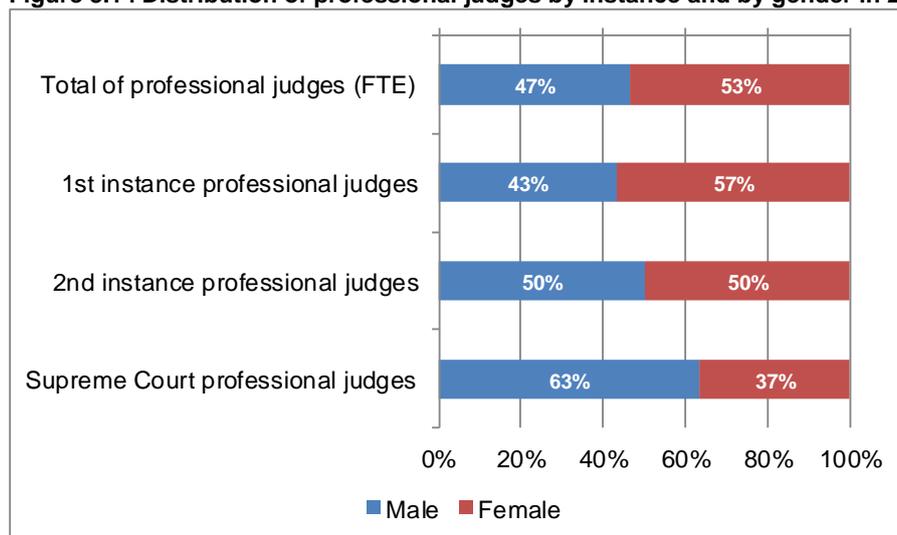
The States and entities with the highest percentage of women in the judiciary are **Belgium, Croatia, Czech Republic, Estonia, France, Greece, Hungary, Latvia, Lithuania, Netherlands, Romania, Serbia, Slovakia, Slovenia**. Feminisation has not yet been felt in **Armenia, Azerbaijan, Ireland, Malta, Norway, UK-England and Wales** and **UK-Scotland**. Generally, it appears that common law countries continue to present a very high percentage of men in judicial office. This high proportion of men is also found in Eastern European countries (such as **Armenia**).

Nevertheless, despite the efforts of the Council of Europe and some States, the global phenomenon of feminisation of judicial functions has a limit, the glass ceiling, that the CEPEJ report has highlighted since 2014. The higher the hierarchical level, the more the number of women (and thus the percentage) decreases. For professional judges of first instance, the average is 43 % men and 57 % women, the proportion rises to 50-50 for second instance professional judges, which is an improvement compared to 2014 data (the proportion was 53-47 in favour of men). At the level of Supreme Courts, the distribution is 63 % men and 37 % women (against 65-35 in 2014). The other aspect is that fewer women are appointed to positions of responsibility (see below).

**Table 3.13 Distribution of professional judges by instance and by gender in 2016 (Q46)**

States / Entities	Total of professional judges (FTE)		1st instance professional judges		2nd instance professional judges		Supreme Court professional judges	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	53%	47%	49%	51%	60%	40%	91%	9%
Andorra	42%	58%	29%	71%	67%	33%	NAP	NAP
Armenia	75%	25%	75%	25%	76%	24%	71%	29%
Austria	51%	49%	48%	52%	56%	44%	70%	30%
Azerbaijan	88%	12%	88%	12%	88%	12%	84%	16%
Belgium	47%	53%	46%	54%	50%	50%	72%	28%
Bosnia and Herzegovina	36%	64%	37%	63%	33%	67%	39%	61%
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	30%	70%	27%	73%	35%	65%	59%	41%
Cyprus	51%	49%	50%	50%	NAP	NAP	62%	38%
Czech Republic	39%	61%	33%	67%	46%	54%	77%	23%
Denmark	49%	51%	44%	56%	58%	42%	68%	32%
Estonia	37%	63%	30%	70%	44%	56%	74%	26%
Finland	45%	55%	44%	56%	46%	54%	66%	34%
France	36%	64%	33%	67%	40%	60%	51%	49%
Georgia	51%	49%	51%	49%	50%	50%	62%	38%
Germany	NA	NA	NA	NA	NA	NA	71%	29%
Greece	29%	71%	27%	73%	28%	72%	55%	45%
Hungary	31%	69%	28%	72%	34%	66%	50%	50%
Iceland	62%	38%	58%	42%	NAP	NAP	80%	20%
Ireland	65%	35%	64%	36%	80%	20%	56%	44%
Italy	46%	54%	43%	57%	48%	52%	70%	30%
Latvia	22%	78%	19%	81%	24%	76%	32%	68%
Lithuania	38%	62%	35%	65%	57%	43%	69%	31%
Luxembourg	35%	65%	34%	66%	33%	68%	100%	0%
Malta	58%	42%	50%	50%	89%	11%	NAP	NAP
Republic of Moldova	52%	48%	53%	47%	48%	52%	55%	45%
Monaco	57%	43%	40%	60%	33%	67%	81%	19%
Montenegro	42%	58%	42%	58%	43%	57%	33%	67%
Netherlands	42%	58%	39%	61%	54%	46%	NA	NA
Norway	59%	41%	56%	44%	64%	36%	67%	33%
Poland	NA	NA	36%	64%	47%	53%	NA	NA
Portugal	41%	59%	33%	67%	59%	41%	80%	20%
Romania	26%	74%	28%	72%	26%	74%	17%	83%
Russian Federation	40%	60%	NA	NA	NA	NA	NA	NA
Serbia	30%	70%	30%	70%	25%	75%	42%	58%
Slovakia	38%	62%	37%	63%	39%	61%	41%	59%
Slovenia	21%	79%	18%	82%	25%	75%	58%	42%
Spain	47%	53%	40%	60%	63%	37%	88%	12%
Sweden	48%	52%	51%	49%	42%	58%	67%	33%
Switzerland	59%	41%	54%	46%	68%	32%	68%	32%
The FYROMacedonia	40%	60%	39%	61%	45%	55%	48%	52%
Turkey	58%	42%	58%	42%	68%	32%	53%	47%
Ukraine	NA	NA	NA	NA	NA	NA	NA	NA
UK-England and Wales	66%	34%	NA	NA	NA	NA	83%	17%
UK-Scotland	74%	27%	74%	26%	65%	35%	NAP	NAP
Israel	48%	52%	45%	55%	54%	46%	71%	29%
Morocco	73%	27%	68%	32%	85%	15%	80%	20%
<b>Average</b>	47%	53%	43%	57%	50%	50%	63%	37%
<b>Median</b>	46%	54%	40%	60%	48%	52%	67%	33%
<b>Minimum</b>	21%	12%	18%	12%	24%	11%	17%	0%
<b>Maximum</b>	88%	79%	88%	82%	89%	76%	100%	83%

**Figure 3.14 Distribution of professional judges by instance and by gender in 2016 (Q46)**



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

It is worth noting that in **Greece**, the term “court president” has a specific interpretation since it designates a title and not a person in charge of the court management. The 2016 data includes those who are actually responsible for the organisation and management of a court, while the previous data referred to court presidents as a title (rank).

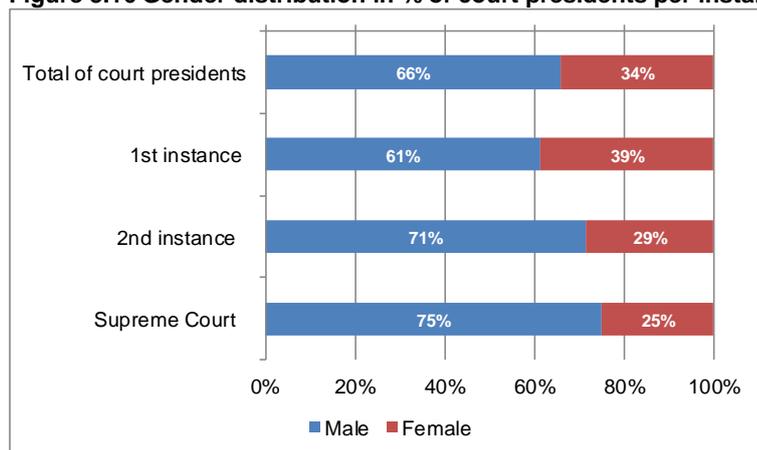
On average, the percentage of male heads of court or jurisdiction is 66 % overall compared to 34 % of women (the percentage was 67-33 in 2014). For heads of first instance courts, the ratio is 61-39 in favour of men (64-36 in 2014). In **Latvia**, the court reform has led to a reduction in the number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

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

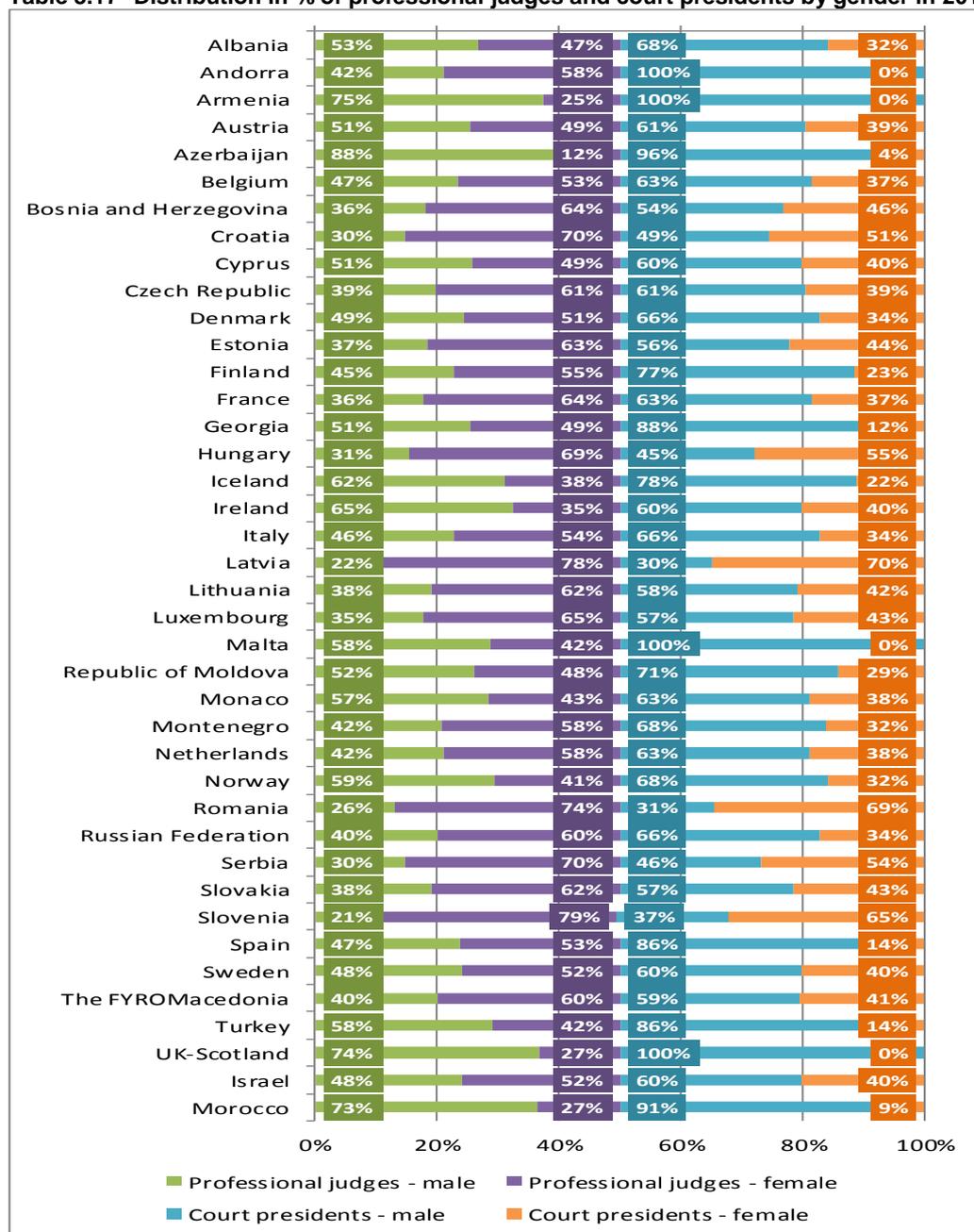
Table 3.15 Gender distribution of court presidents per instance and gender in 2016 (Q47)

States / Entities	Total of court presidents		1st instance		2nd instance		Supreme Court	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	68%	32%	66%	34%	75%	25%	100%	0%
Andorra	100%	NAP	100%	NAP	100%	NAP	NAP	NAP
Armenia	100%	0%	100%	0%	100%	0%	100%	0%
Austria	61%	39%	61%	39%	55%	45%	100%	0%
Azerbaijan	96%	4%	97%	3%	83%	17%	100%	0%
Belgium	63%	37%	63%	37%	60%	40%	100%	0%
Bosnia and Herzegovina	54%	46%	57%	43%	47%	53%	33%	67%
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	49%	51%	37%	63%	86%	14%	100%	0%
Cyprus	60%	40%	58%	42%	NAP	NAP	100%	0%
Czech Republic	61%	39%	55%	45%	100%	0%	100%	0%
Denmark	66%	34%	64%	36%	67%	33%	100%	0%
Estonia	56%	44%	50%	50%	50%	50%	100%	0%
Finland	77%	23%	76%	24%	80%	20%	100%	0%
France	63%	37%	61%	39%	72%	28%	100%	0%
Georgia	88%	12%	91%	9%	100%	0%	0%	100%
Germany	NA	NA	NA	NA	NA	NA	NA	NA
Greece	NA	NA	NA	NA	NA	NA	NA	NA
Hungary	45%	55%	44%	56%	48%	52%	100%	0%
Iceland	78%	22%	75%	25%	NAP	NAP	100%	0%
Ireland	60%	40%	67%	33%	100%	0%	0%	100%
Italy	66%	34%	66%	34%	60%	40%	100%	0%
Latvia	30%	70%	27%	73%	33%	67%	100%	0%
Lithuania	58%	42%	55%	45%	100%	0%	100%	0%
Luxembourg	57%	43%	40%	60%	100%	0%	100%	0%
Malta	100%	0%	100%	0%	100%	0%	NAP	NAP
Republic of Moldova	71%	29%	70%	30%	75%	25%	100%	0%
Monaco	63%	38%	60%	40%	0%	100%	100%	0%
Montenegro	68%	32%	65%	35%	100%	0%	0%	100%
Netherlands	63%	38%	40%	60%	100%	0%	NA	NA
Norway	68%	32%	68%	32%	83%	17%	0%	100%
Poland	50%	50%	50%	50%	45%	55%	0%	100%
Portugal	NA	NA	NA	NA	NA	NA	NA	NA
Romania	31%	69%	32%	68%	29%	71%	0%	100%
Russian Federation	66%	34%	66%	34%	NAP	NAP	100%	0%
Serbia	46%	54%	46%	54%	50%	50%	100%	0%
Slovakia	57%	43%	56%	44%	75%	25%	0%	100%
Slovenia	37%	65%	33%	67%	80%	20%		
Spain	86%	14%	NAP	NAP	86%	14%	100%	0%
Sweden	60%	40%	59%	41%	60%	40%	100%	0%
Switzerland	NA	NA	61%	39%	NA	NA	100%	0%
The FYROMacedonia	59%	41%	68%	32%	20%	80%	0%	100%
Turkey	86%	14%	85%	15%	100%	0%	67%	33%
Ukraine	NA	NA	NA	NA	80%	20%	100%	0%
UK-England and Wales	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP
UK-Scotland	100%	0%	NAP	NAP	NAP	NAP	NAP	NAP
Israel	60%	40%	50%	50%	86%	14%	0%	0%
Morocco	91%	9%	89%	11%	96%	4%	100%	0%
<b>Average</b>	66%	35%	62%	39%	72%	29%	75%	25%
<b>Median</b>	63%	38%	61%	39%	78%	25%	100%	0%
<b>Minimum</b>	30%	0%	27%	0%	0%	0%	0%	0%
<b>Maximum</b>	100%	70%	100%	73%	100%	100%	100%	100%

**Figure 3.16 Gender distribution in % of court presidents per instance in 2016 (Q47)**



**Table 3.17 Distribution in % of professional judges and court presidents by gender in 2016 (Q46, Q47)**



## Trends and conclusions

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

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

### 3.1.5 Terms of office of judges

The Consultative Council of European Judges (CCJE) highlights in its Opinion n°1<sup>17</sup> that full-time appointments until the legal retirement age constitute the general rule, which is without doubt the best way of ensuring judges' independence. However, some States resort to appointments for limited terms of office; in this case and always with a view to guaranteeing the independence of the judge, the appointing authority must offer every guarantee of objectivity, impartiality and transparency so that this mechanism does not in reality lead judges to be subject to political power. The situation in **Switzerland**, where judges are elected in a consensual system, is quite specific.

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<sup>17</sup> CCJE Opinion N°1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges.

Table 3.18 Terms of office of judges in 2016 (Q121, Q122, Q125)

States / Entities	Mandate of judges			Age of retirement
	Probation period	Appointment until retirement	Renewable contract	
Albania				65+
Andorra				
Armenia				65
Austria				65
Azerbaijan				66
Belgium				67 ot 70
Bosnia and Herzegovina				70
Bulgaria				65
Croatia				70
Cyprus				65
Czech Republic				70
Denmark				70
Estonia				68
Finland				68
France				67
Georgia				65
Germany				65-67
Greece				65 and 67
Hungary				65-70
Iceland				70
Ireland				70
Italy				70
Latvia				70
Lithuania				65
Luxembourg				68
Malta				65
Republic of Moldova				65
Monaco				65
Montenegro				67
Netherlands				70
Norway				70
Poland				60 or 65
Portugal				70
Romania				65
Russian Federation				70
Serbia				65 or 67
Slovakia				65
Slovenia				70
Spain				72
Sweden				67
Switzerland				
The FYROMacedonia				64
Turkey				65
Ukraine				65
UK-England and Wales				70
UK-Scotland				70
Israel				70
Morocco				65
<b>Total</b>	<b>38</b>	<b>46</b>	<b>44</b>	
<b>Nb of Yes</b>	<b>18</b>	<b>44</b>	<b>5</b>	
<b>Nb of No or NAP</b>	<b>20</b>	<b>2</b>	<b>39</b>	
<b>Nb of NA</b>	<b>0</b>	<b>0</b>	<b>0</b>	

There are various ways in which professional judges may or may not be appointed on a full-time basis. In 44 States and entities, judges are appointed for an unlimited term of office, i.e. until retirement age **Andorra** and **Switzerland** being the sole exceptions. In these two States, judges are appointed for a fixed and renewable term. In **Andorra**, judges are appointed for a 6-year term (Article 90 of the Constitution); the High Council of Justice grants the renewal of the mandate, unless the person renounces it him/herself; the same Council may also decide not to renew the mandate if the person is guilty of serious misconduct. The term of office of a judge is also fixed in **Switzerland**: 4 years (in most Cantons) or 6 to 10 years (in others), with renewal possible without limitation.

Where the judge is appointed for an unlimited period of time, the threshold of the retirement age varies from State to State, with the possibility, in some States, of extending the age limit. The age of retirement is often 65 years (**Austria, Bulgaria, in Hungary** it decreases progressively from 70 to 65 years, **Ireland** (District Court only), **Turkey**) and can sometimes be extended for specific judicial functions (at the Supreme court for instance) and/or under specific conditions (for instance **Ireland** in District Court only), **Republic of Moldova, Romania, Turkey, Ukraine**). It is set at 67 years in **France** (with exceptions) and in **Germany**; at 68 years in **Estonia** with the possibility of extension for 2 years for exceptional reasons and in **Luxembourg**; at 70 years in **Bosnia and Herzegovina, Croatia, Czech Republic, Iceland, Ireland** (Circuit and Superior Courts) **Norway, Russian Federation, Slovenia, UK-England and Wales**). It has been set at 72 years in **Spain** (since 2015, when the age limit was raised). In **Belgium**, a judge who has reached retirement age may serve as a substitute judge on an occasional basis. No retirement age is fixed by law in **Slovakia**, but when the judge reaches the age of 65, the Judicial Council can address the President of the Republic to decide on the prolongation of the mandate.

The age limit may vary depending on the level at which the judge is practicing, the judge of the higher instances being able to stay in office for a longer period (for instance in **Azerbaijan, Cyprus, Georgia, Serbia, Italy**).

In 18 States there is a probation period. For the States that practice this probation period, the durations vary: 3 years in **Azerbaijan** and **Georgia**, 2 years in **Portugal**, 1 year in **Cyprus**, 6 to 9 months in **Latvia**. In **Denmark** the period of probation exists only for the judges of the Supreme Court (3 months).

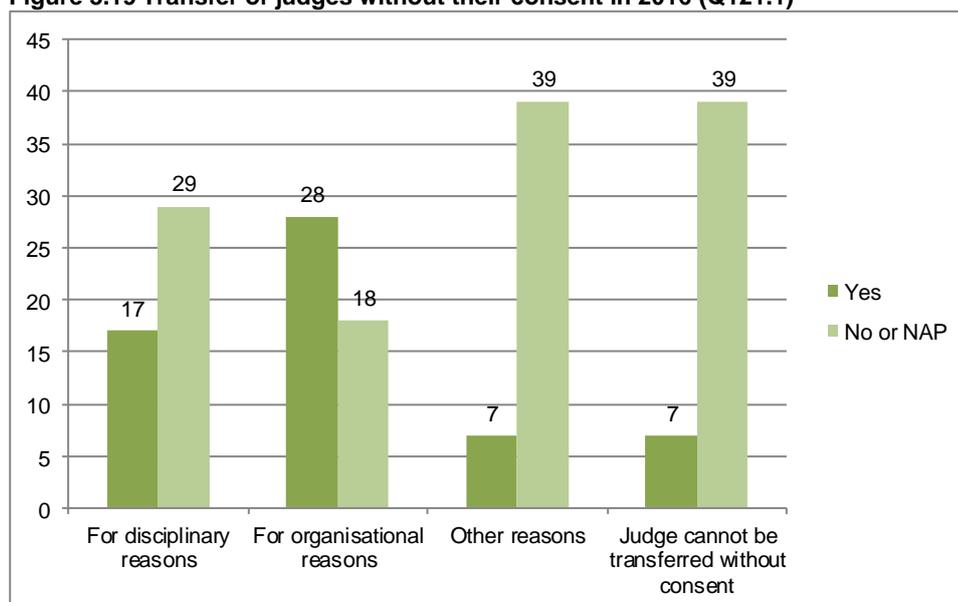
In the **Republic of Moldova**, the judge is first recruited for an initial period of 5 years; it is then evaluated at the end of this period and can then be recruited until the age of retirement.

Some functions are exercised by a judge for a limited period. In **Finland**, since 2017, all Supreme Court judges are appointed for a fixed term of seven years with a renewable mandate. The same situation characterises **France** in respect of court presidents (7 years) and for extraordinary service advisers (10 years).

The principle of irremovability is paramount for the protection of judicial independence. Nevertheless, valid exceptions to this principle exist, offering due safeguards. All States list the grounds for the removal or dismissal of judges (see point 3.3 below).

Special consideration should be given to modalities for changing a posting judge without his/her consent. The principle of irremovability implies that a judge cannot receive a new assignment without his/her consent. This transfer may, however, be made without the consent if it comes after a disciplinary procedure before an independent body. 17 States resort to this possibility: **Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, France, Germany, Italy, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, UK-Scotland, Israel, Morocco**.

**Figure 3.19 Transfer of judges without their consent in 2016 (Q121.1)**



But it seems that more and more States allow the change in the judges' assignments without their consent for organisational reasons. 31 States and entities allow it, within the framework of specific modalities (Albania, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Finland, Georgia, Germany, Greece, Hungary, Iceland, Latvia, Lithuania, Malta, Republic of Moldova, Montenegro, Poland, Portugal, Russian Federation, Serbia, Slovenia, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine, UK-England and Wales, UK-Scotland).

### Trends and conclusions

In most States and entities, judges are recruited for an unlimited period until they reach retirement age. This age shows an increase which seems to be in line with the increase in life expectancy and the budgetary constraints. This retirement age sometimes varies with the level of responsibility entrusted to the judge. It is important that the retirement age and its evolution, cannot be a diverted way to question the irremovability of judges.

Several States impose a time limit on judges in the exercise of certain functions: for example, the latter can only be carried out for a determined period within the same court. This may be helpful in avoiding the appropriation of a post, but this mobility must be surrounded by safeguards to prevent this mechanism from being used to get rid of a judge.

The principle of transfer without the consent of the judge "for organisational reasons" is accepted in many States and seems to be a developing trend. Here again, it is important to provide sufficient safeguards for these procedures so that the search for efficiency of the systems does not take precedence over the fundamental principles of the judge's independence.

### 3.1.6 Salary of judges

The level of judges' remuneration contributes to their independence. Judges should be offered a level of remuneration corresponding to their status and responsibilities. The remuneration generally consists of a main tranche to which can be added bonuses and other material or financial benefits.

Council of Europe Committee of Ministers' Recommendation Rec(2010)12 on "Judges: independence, efficiency and responsibilities" provides for that judges' remuneration should be guaranteed by law and be "commensurate with their profession and responsibilities and be sufficient to shield them from inducements

aimed at influencing their decisions"<sup>18</sup>. Thus, the issue of judges' remuneration requires a comprehensive approach which, beyond the purely economic aspect, takes account of the impact that it can have on the efficiency of justice in terms of independence and hence the fight against corruption within and outside the judicial system.

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

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

**Note: concerning the analysis of salaries, the evolution of exchange rates of national currencies against the Euro for States that do not belong to the Euro zone must be taken into account before drawing conclusions from these data which are all given in euros. An increase in gross salaries in absolute value must be set against any change in the exchange rate appearing over the same period. To put this into perspective in relation to the level of wealth in each State, the ratio between the judge's salary and the average salary in the country concerned allows a more objective measure.**

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<sup>18</sup> Council of Europe Committee of Ministers, *Judges: independence, efficiency and responsibilities*, Recommendation CM/Rec(2010)12, *op. cit.*, §§ 53 and 54.

**Table 3.20 Average gross salary of judges, in absolute value and in relation to the national average gross salary in 2016 (Q4, Q132)**

States / Entities	Gross salary of judges at the beginning of a career		Gross salary of judges at the Supreme Court	
	Absolute number	in relation with average annual gross salary	Absolute number	in relation with average annual gross salary
Albania	9 324 €	2,06	15 535 €	3,42
Andorra	59 098 €	2,69	88 660 €	4,04
Armenia	16 955 €	4,31	32 043 €	8,14
Austria	51 962 €	1,64	126 594 €	3,99
Azerbaijan	12 930 €	4,02	19 718 €	6,13
Belgium	68 856 €	1,66	125 904 €	3,03
Bosnia and Herzegovina	23 996 €	3,01	41 830 €	5,24
Bulgaria	18 867 €	3,20	33 055 €	5,60
Croatia	23 128 €	1,87	50 927 €	4,12
Cyprus	76 939 €	3,41	136 756 €	6,07
Czech Republic	30 377 €	2,48	69 174 €	5,65
Denmark	121 830 €	2,90	207 700 €	4,95
Estonia	41 250 €	3,00	53 040 €	3,86
Finland	62 000 €	1,53	130 000 €	3,22
France	44 864 €	1,27	119 376 €	3,37
Georgia	17 180 €	NA	25 770 €	NA
Germany	47 469 €	0,94	81 565 €	1,62
Greece	31 710 €	1,95	87 256 €	5,37
Hungary	16 916 €	1,61	37 958 €	3,60
Iceland	132 731 €	1,97	173 583 €	2,58
Ireland	114 711 €	3,11	182 895 €	4,95
Italy	56 263 €	1,91	186 637 €	6,35
Latvia	19 764 €	1,92	37 888 €	3,68
Lithuania	23 571 €	2,51	36 149 €	3,84
Luxembourg	83 626 €	1,26	172 172 €	2,60
Malta	68 649 €	3,98	76 130 €	4,41
Republic of Moldova	7 648 €	2,81	12 747 €	4,69
Monaco	46 457 €	1,11	95 202 €	2,27
Montenegro	20 669 €	2,29	38 457 €	4,27
Netherlands	74 000 €	1,29	NA	NA
Norway	120 459 €	2,10	190 170 €	3,31
Poland	21 435 €	NA	NA	NA
Portugal	35 699 €	2,22	85 820 €	5,34
Romania	28 987 €	4,09	58 695 €	8,28
Russian Federation	18 675 €	3,14	NA	NA
Serbia	14 923 €	2,42	34 870 €	5,65
Slovakia	33 377 €	3,05	48 212 €	4,41
Slovenia	32 628 €	1,72	63 660 €	3,35
Spain	48 154 €	2,11	122 818 €	5,39
Sweden	71 064 €	1,73	133 438 €	3,24
Switzerland	145 711 €	2,00	331 854 €	4,56
The FYROMacedonia	17 713 €	2,77	22 699 €	3,54
Turkey	24 103 €	NA	44 241 €	NA
Ukraine	7 318 €	3,08	9 514 €	4,00
UK-England and Wales	124 800 €	3,75	250 800 €	7,53
UK-Scotland	155 547 €	4,03	240 874 €	6,24
Israel	112 799 €	3,88	164 213 €	5,65
Morocco	22 408 €	1,73	47 975 €	3,70
<b>Average</b>	50 529 €	2,46	96 102 €	4,53
<b>Median</b>	34 538 €	2,29	76 130 €	4,27
<b>Minimum</b>	7 318 €	0,94	9 514 €	1,62
<b>Maximum</b>	155 547 €	4,31	331 854 €	8,28
	judges recruited after a long professional experience			

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

It is noteworthy that in **Andorra**, a 2016 law on the salaries of judges, magistrates, prosecutors and members of the High Judicial Council reduced the salaries of judges at the beginning of their careers and now provides for the salaries of full-time judges. A reduction in judicial salaries has been decided in **Ireland**. Some States focus more on the seniority of the judge than on the court to which s/he is assigned at the end of his/her career; this is the case in **Italy** where only seniority (years of service) counts in determining remuneration. A new system of remuneration of judges and prosecutors has been introduced in the **Republic of Moldova**, resulting in a significant increase in the remuneration of judges at the beginning of their career as well as at the end.

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

Several groups of States / entities can then be specified:

- the salaries of judges are the lowest at the beginning of their career, compared to the average salary (less than twice the average salary) in **Belgium, Germany, Iceland, Latvia, Netherlands, Slovenia, Sweden** – where the average salary is particularly high, this information can be put into perspective ;

but a significant catch-up can be noted during the career (salary of judges of the highest instance multiplied by 2 to 2,5 against the beginning of career) in **Austria, Croatia, Finland, Hungary, Luxembourg, Monaco, Morocco** and even more (salary of judges of the highest instance multiplied by more than 2,5 against the beginning of career) in **France, Greece, Italy**;

- the salaries of judges are quite high at the beginning of their career, compared to the average salary (between 2 and 4 times the average salary) in **Albanian, Andorra, Bosnia and Herzegovina, Bulgaria, Cyprus, Denmark, Estonia, Lithuania, Republic of Moldova, Montenegro, Russian Federation, Slovakia, "the former Yugoslav Republic of Macedonia", Ukraine**;

and in the **Czech Republic, Portugal, Serbia and Spain**, the remuneration increases more during the career (salary of judges of the highest instance multiplied by more than 2 against the beginning of career);

this amount should be put into perspective in **Ireland, Malta, Norway, Switzerland, UK-England and Wales, Israel** as judges are recruited among already experienced lawyers;

- the salaries of judges are high (at the beginning of the career judges earn more than 4 times the average salary and at the end of their career, more than 6 times the average salary) in **Armenia, Azerbaijan, Romania**;

in **UK-Scotland** this amount should be put into perspective as judges are recruited among already experienced lawyers.

## 3.2 Prosecutors

Recommendation Rec(2000)19 on the Role of the Public Prosecutor's Office in the Criminal Justice System, adopted by the Committee of Ministers of the Council of Europe on 6 October 2000, defines prosecutors as "public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system"<sup>19</sup>.

Opinion No. 9 of the Consultative Council of European Prosecutors (CCPE) considers that the independence and autonomy of the public prosecutor's office are an essential corollary to the independence of the judiciary<sup>20</sup>. The report examines as well the reality of the functioning of public prosecutors, their tasks and the means at their disposal, in order to measure their effectiveness and their contribution to the effectiveness of the judicial system. The number of staff assigned to prosecutors should be mentioned in this connection, as well as the fact that in some States and entities staff perform tasks similar to those of prosecutors.

States and entities often do not provide specific comments concerning prosecutors or make the distinction with judges, which does not allow for as much of an in-depth analysis as would have been desirable. On the other hand, the issue of equality between women and men is the subject of particular attention, since the functions of public prosecutors involve particular constraints which may constitute barriers to the exercise by women of certain functions.

### 3.2.1 Status of prosecutors

In line with the requirement of Opinion No. 9 of the CCPE mentioned above which states: "the independence and autonomy of the public prosecutor's office is an essential corollary to the independence of the judiciary" and that "the general trend towards strengthening the independence and effective autonomy of the public prosecutor's office should be encouraged", the evolution of the status of prosecutors in the States and entities should be analysed.

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<sup>19</sup> Committee of Ministers of the Council of Europe, Role of the Public Prosecutor's Office in the Criminal Justice System, Rec(2000)19, on 6 October 2000.

<sup>20</sup> CCPE, European Standards and Principles for Prosecutors, Opinion No. 9 (2014), 17 December 2014.

Table 3.21. Status of the public prosecutor in 2016 (Q115 and Q115.1)

States / Entities	Status of public prosecutors			Regulation to prevent specific instructions to prosecute or not, addressed to a prosecutor in a court?
	Statutorily independent	Under the Ministry of Justice or another central authority	Other	
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Iceland				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
The FYROMacedonia				
Turkey				
Ukraine				
UK-England and Wales				
UK-Scotland				
Israel				
Morocco				
<b>Total</b>	<b>46</b>	<b>46</b>	<b>46</b>	<b>46</b>
<b>Yes</b>	<b>30</b>	<b>14</b>	<b>9</b>	<b>28</b>
<b>No or NAP</b>	<b>16</b>	<b>32</b>	<b>37</b>	<b>18</b>
<b>NA</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

The report focuses on a formal statutory approach, distinguishing statutory independence from attachment to the authority of a ministry, with precision on the instructions given in particular cases, which makes it possible to analyse the type of intervention in judicial cases. But much also depends on real practices, linked to the cultural traditions of different States and entities. The distribution in the different categories carried out by the States must be enlightened by the clarifications provided. The legitimate hesitations highlight the complexity of the national situations for which the real status of relative autonomy or not of the public prosecutions services sometimes depends more on practices and traditions than texts.

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

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

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

9 States and entities answer "Other", i.e. neither statutorily independent nor under the authority of the Ministry of Justice or another central authority even if their classification would be closer to the "statutorily independent" category. **UK-Scotland**, for example, states that the Lord Advocate is the head of the prosecution system in Scotland and his/her independence as a prosecutor is enshrined in the law. In **Malta** the Prosecutor General's Office is independent of the government and although it also acts as an adviser to the government, it manages prosecutions independently from any other authority or ministry. In **Andorra** the public prosecution services may receive general instructions from the government to take public action, but retain wide functional autonomy. The Constitution of **Montenegro** provides that the Public Prosecutor's Office is a single independent State authority dealing with the prosecution of criminal and other punishable offences that are prosecuted ex officio. In **Poland**, prosecution services are in principle under the authority of the government - Ministry of Justice, but it is customary for the government to refrain from giving instructions in individual cases. In **Serbia**, the constitutional and legal definition is "autonomous". It is said that sometimes the legal framework uses the word "independence". Yet the framework uses the term "autonomous" in the first place. The difference lies in the meaning of the subject. Prosecutors and their deputies are independent of any person outside the Public Prosecution, while they are not autonomous within the Public Prosecution Office, since senior prosecutors, in accordance with the law, may issue mandatory instructions regarding the management of cases. In "**the former Yugoslav Republic of Macedonia**" members of the prosecutor's office have exactly the same professional status as judges. There

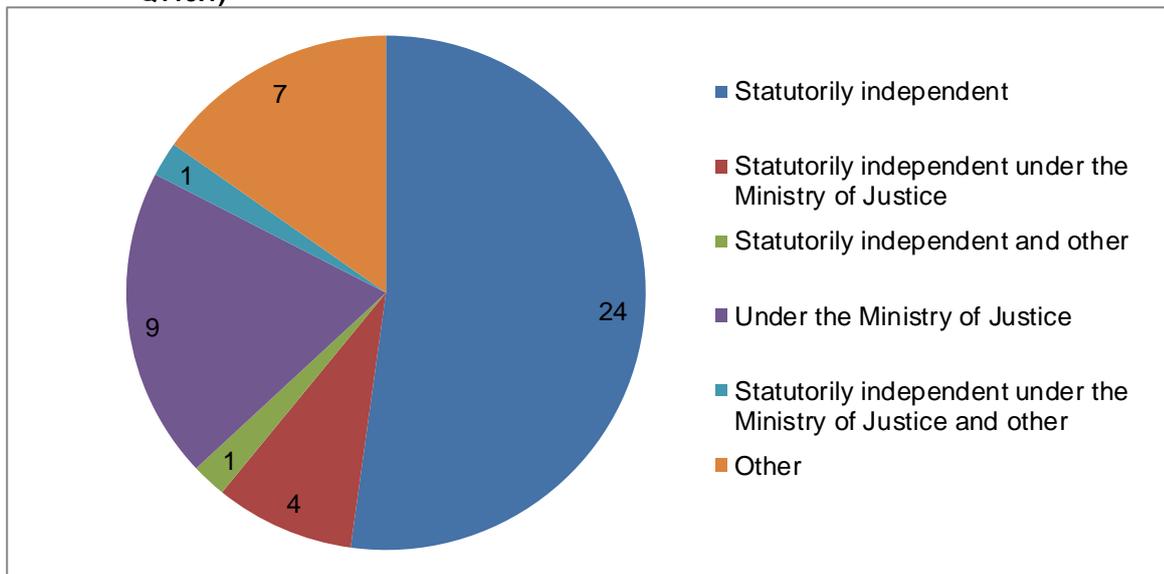
can be no constraining orders from either the internal hierarchy or the Minister of Justice. In **Turkey**, prosecutors have the same constitutional status as judges and are independent in the performance of their judicial tasks.

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

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

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

**Figure 3.22 Summary of the status of the public prosecutor in 2016 (number of States / entities) (Q115 and Q115.1)**



### 3.2.2 Term of office of prosecutors

Table 3.23 Mandate of prosecutors in 2016 (Q 123, 124 and 126)

States / Entities	Mandate of prosecutors		
	Probation period	Appointment until retirement	Renewable contract
Albania			
Andorra			
Armenia			
Austria			
Azerbaijan			
Belgium			
Bosnia and Herzegovina			
Bulgaria			
Croatia			
Cyprus			
Czech Republic			
Denmark			
Estonia			
Finland			
France			
Georgia			
Germany			
Greece			
Hungary			
Iceland			
Ireland			
Italy			
Latvia			
Lithuania			
Luxembourg			
Malta			
Republic of Moldova			
Monaco			
Montenegro			
Netherlands			
Norway			
Poland			
Portugal			
Romania			
Russian Federation			
Serbia			
Slovakia			
Slovenia			
Spain			
Sweden			
Switzerland			
The FYROMacedonia			
Turkey			
Ukraine			
UK-England and Wales			
UK-Scotland			
Israel			
Morocco			
<b>Total</b>	<b>46</b>	<b>46</b>	<b>46</b>
<b>Yes</b>	<b>24</b>	<b>42</b>	<b>4</b>
<b>No or NAP</b>	<b>22</b>	<b>4</b>	<b>42</b>
<b>NA</b>	<b>0</b>	<b>0</b>	<b>0</b>

24 States and entities indicate a probationary period to be appointed as prosecutor, the probation period lasting from 6 months to 5 years. In **Ireland**, as for all civil servants, at the time of appointment all prosecutors are subject to a probationary period of one year before their appointment is confirmed. In **Malta**, the probation period is 6 months. In **Poland**, the probation corresponds to the period of verification of suitability for the profession of public prosecutor (trainee public prosecutor). In **Serbia**, the probation period only concerns deputy prosecutors. In **Spain**, the probation period is 8 months. In **Switzerland**, there are probation periods in 13 cantons, ranging from 1 month to 1 year, the average being 3 months. In **Turkey**, there is no probation period for appointed prosecutors, but there is a trainee period before being appointed as a prosecutor. In **Israel**, the probation period concerns prosecutors in the Police Prosecution Division.

The retirement age is generally between 65 and 70 years, with prosecutors sometimes being able to remain in office under certain conditions and, often, for specific functions. Often the Prosecutors General are appointed for a definite period, renewable or not. In all States and entities, prosecutors may be relieved of their duties in a disciplinary framework.

**Andorra**, the **Russian Federation**, **Switzerland** (for some cantons) and **Israel** indicate that prosecutors, or some of them, are appointed for renewable terms. In some **Swiss** cantons, prosecutors are elected for a fixed term. In **Malta**, after the Public Prosecutors' Office was transformed into an agency under the jurisdiction of the government, prosecutors were employed through a contract of employment, but after more than three years of service, their employment is considered indefinite.

### 3.2.3 Number of prosecutors

Table 3.24. Variation of the number of public prosecutors between 2010 and 2016 (Q1, Q55)

States / Entities	Public prosecutors per 100 000 inhabitants							
	2010	2012	2014	2016	Variation 2010-2012	Variation 2012-2014	Variation 2014 - 2016	Variation 2010 - 2016
Albania	9,8	11,7	11,2	11,2	19%	-4%	-1%	14%
Andorra	3,5	5,2	6,5	6,8	49%	24%	5%	94%
Armenia	10,1	10,5	10,1	10,6	5%	-4%	5%	6%
Austria	4,1	4,1	4,0	4,1	0%	-3%	2%	0%
Azerbaijan	11,0	11,6	11,3	11,3	5%	-3%	0%	2%
Belgium	7,7	7,4	7,6	7,6	-4%	3%	0%	-1%
Bosnia and Herzegovina	8,0	8,1	9,7	10,9	1%	20%	12%	35%
Bulgaria	19,8	20,1	20,4	21,3	2%	1%	5%	8%
Croatia	14,0	14,5	13,4	14,6	3%	-8%	9%	4%
Cyprus	13,2	12,9	12,8	13,7	-2%	-1%	7%	4%
Czech Republic	11,8	11,8	11,7	11,7	0%	-1%	0%	0%
Denmark	13,5	10,1	12,2	12,1	-25%	21%	-1%	-10%
Estonia	13,1	13,1	12,8	13,0	0%	-2%	2%	0%
Finland	6,9	7,4	6,6	6,8	7%	-10%	2%	-2%
France	3,0	2,9	2,8	2,9	-4%	-2%	3%	-3%
Georgia	8,0	9,0	11,8	11,8	13%	31%	-1%	48%
Germany	6,4	6,5	6,5	6,7	2%	-1%	4%	4%
Greece	4,8	5,0	5,3	5,5	3%	8%	4%	15%
Hungary	17,4	18,3	19,0	19,2	5%	4%	1%	10%
Iceland	25,4	25,2	NA	20,7	-1%	NA	NA	-19%
Ireland	1,8	1,9	1,9	2,2	8%	-1%	13%	22%
Italy	3,3	3,2	3,4	3,5	-2%	8%	3%	8%
Latvia	17,5	22,1	22,8	22,9	26%	4%	0%	31%
Lithuania	25,7	25,5	24,6	24,4	-1%	-3%	-1%	-5%
Luxembourg	9,0	8,8	8,3	8,0	-3%	-5%	-5%	-11%
Malta	2,6	3,6	2,8	4,1	35%	-21%	46%	55%
Republic of Moldova	20,7	20,9	19,6	19,2	1%	-6%	-2%	-7%
Monaco	11,1	13,8	10,6	13,3	24%	-24%	26%	19%
Montenegro	20,8	14,7	17,4	16,6	-29%	19%	-5%	-20%
Netherlands	4,7	4,7	4,7	5,4	0%	0%	15%	16%
Norway	11,7	12,2	NA	13,8	4%	NA	NA	18%
Poland	14,8	15,7	15,3	15,2	6%	-3%	0%	2%
Portugal	13,9	14,9	14,2	14,5	8%	-5%	2%	5%
Romania	10,9	12,0	11,8	13,4	11%	-2%	13%	23%
Russian Federation	22,1	22,8	23,4	25,2	3%	3%	7%	14%
Serbia	8,4	9,2	9,2	8,8	9%	1%	-5%	5%
Slovakia	17,2	16,7	17,5	17,1	-3%	5%	-2%	0%
Slovenia	8,0	9,2	9,4	10,5	14%	3%	12%	31%
Spain	5,2	5,3	5,2	5,3	1%	-2%	2%	2%
Sweden	10,6	10,6	10,4	9,6	0%	-2%	-8%	-10%
Switzerland	5,5	10,4	10,8	10,4	89%	4%	-4%	89%
The FYROMacedonia	9,8	10,0	9,7	8,3	3%	-4%	-14%	-15%
Turkey	5,8	5,8	6,8	6,0	-1%	19%	-12%	3%
Ukraine	24,9	29,8	30,6	23,8	20%	3%	-22%	-4%
UK-England and Wales	5,2	4,5	3,9	3,6	-14%	-13%	-9%	-31%
UK-Scotland	NA	10,4	8,8	8,7	NA	-16%	-1%	NA
Israel	..	7	7,3	14,2	..	-2%	95%	..
Morocco	..	..	..	2,8	..	..	..	..
<b>Average</b>	11,2	11,6	11,3	11,7	6%	1%	2%	10%
<b>Median</b>	10,1	10,5	10,5	11,0	3%	-1%	1%	4%
<b>Minimum</b>	1,8	1,9	1,9	2,2	-29%	-24%	-22%	-31%
<b>Maximum</b>	25,7	29,8	30,6	25,2	89%	31%	46%	94%

For the average and median, there is an increase in the number of prosecutors per 100 000 inhabitants.

28 States and entities have experienced an increase in the number of prosecutors since 2010. **Bosnia and Herzegovina** stresses that the number of prosecutors at the Supreme Court level was increased in 2015 in order to increase their ability to investigate the most serious types of crimes (i.e. organised crime and terrorism cases). With regard to **Georgia**, the increase is only apparent because of the significant decrease in the population. In **Slovenia**, the legislation on public prosecution (2011) has established the Specialised State Prosecutor's Office for dealing with criminal offences against economic sector, cases of organized crime, bribery and corruption, terrorism, human trafficking, etc. The strong increase in **Switzerland** is due to changes in the criminal procedure (prosecutors have been given investigative powers previously under the authority of investigative judges). The variations noted in **Andorra** are not significant expressed in percentage, because the number of prosecutors is very limited.

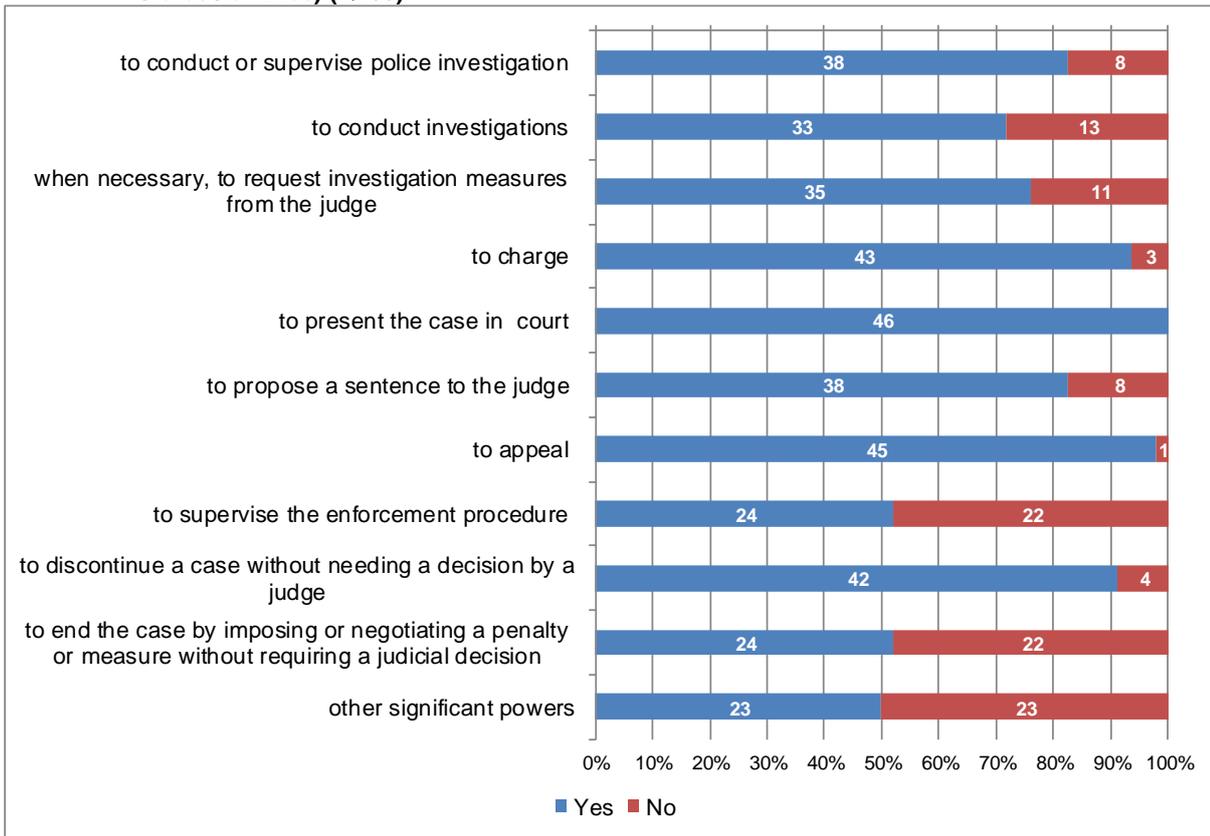
13 States have experienced a negative variation in the number of prosecutors between 2010 and 2016: **Denmark, Finland, France, Iceland, Lithuania, Luxembourg, Republic of Moldova, Montenegro, Sweden, "the former Yugoslav Republic of Macedonia", Ukraine, UK-England and Wales**. The number of prosecutors has not decreased in **Belgium**, the slight decrease in the table being linked to the drop in population in a ratio calculated per 100 000 inhabitants. **Denmark** states that the differences observed are due to ordinary changes in the number of staff. The **Republic of Moldova** indicates that the 2016 data is not comparable to the previous data because the Parliament adopted a law on the Public Prosecutor's Office in December 2016 which implies a new conception of the organisation and functioning of the Public Prosecutor's Office. **Montenegro** explains the difference in the number of prosecutors by the creation in 2015 of the Office of the Special Prosecutor General, which has taken over the activities of the Department for Combating Organised Crime. "**The former Yugoslav Republic of Macedonia**" explains that some prosecutors have retired and there are not enough candidates to fill their posts. **UK-England and Wales** refers to the fact that data from this cycle and from the previous cycle may not be comparable due to changes in the methodology.

### 3.2.4 Scope of prosecutors' missions

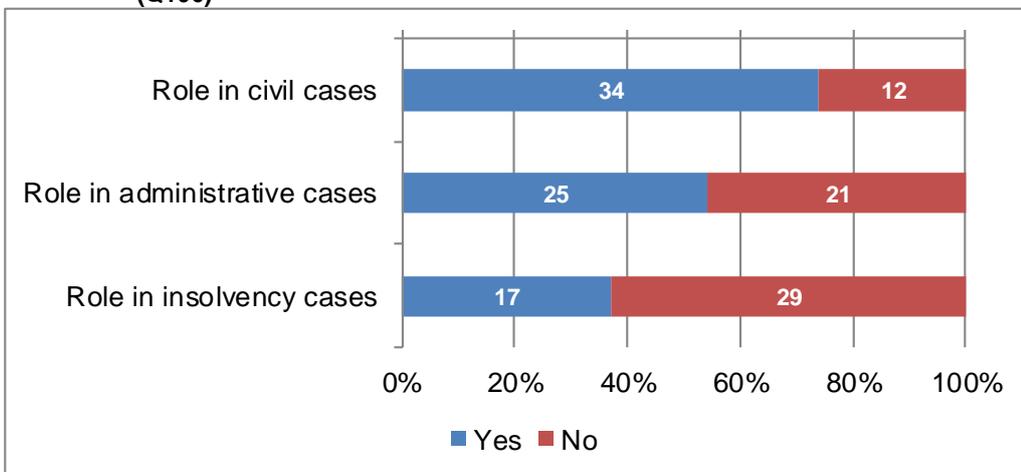
Table 3.25 Roles of the public prosecutor in 2016 (Q105, Q106 and Q36)

States / Entities	Roles of public prosecutor											Roles in different type of cases		
	to conduct or supervise police investigation	to conduct investigations	when necessary, to request investigation measures from the judge	to charge	to present the case in court	to propose a sentence to the judge	to appeal	to supervise the enforcement procedure	to discontinue a case without needing a decision by a judge	to end the case by imposing or negotiating a penalty or measure without requiring a judicial decision	other significant powers	Role in civil cases	Role in administrative cases	Role in insolvency cases
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														
Norway														
Poland														
Portugal														
Romania														
Russian Federation														
Serbia														
Slovakia														
Slovenia														
Spain														
Sweden														
Switzerland														
The FYROMacedonia														
Turkey														
Ukraine														
UK-England and Wales														
UK-Scotland														
Israel														
Morocco														
<b>Total</b>	46	46	46	46	46	46	46	46	46	46	46	46	46	46
<b>Yes</b>	38	33	35	43	46	38	45	24	42	24	23	34	25	17
<b>No or NAP</b>	8	13	11	3	0	8	1	22	4	22	23	12	21	29
<b>Nb of NA</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0

**Figure 3.26 Summary of the roles and responsibilities of prosecutors in criminal matters in 2016 (number of States / entities) (Q105)**



**Figure 3.27 Summary of other roles and responsibilities of prosecutors in 2016 (number of States / entities) (Q106)**



The figures and the table above help measure the competence gaps between prosecutors of different States and entities.

In 2 States (**Hungary** and **Monaco**) public prosecutors have jurisdiction over all fourteen assignments listed. 6 other States have jurisdiction over all these assignments but one: **Bulgaria** (terminating the case by imposing or negotiating a penalty or measure without a court order being necessary), **France** (no role in administrative affairs), **Latvia** (a role in insolvency cases), **Lithuania**, **Portugal** (terminating the case by imposing or negotiating a penalty or measure without the need for a court order), **Slovakia** (supervising the enforcement proceedings).

Conversely, in 5 States and entities public prosecutors only have jurisdiction over half or less of these assignments: **Cyprus, Finland, Ireland, Malta, UK-England and Wales.**

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

In 38 States prosecutors are entitled to conduct or supervise police investigations, in 33 States they are competent for conducting personally investigations and in 35 States and entities they may request the judge to order specific investigation measures.

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

Prosecutors may discontinue a case, without the need of a judicial decision in almost all States and entities, except for **Andorra, Italy, Russian Federation and Spain.**

Only 24 States and entities allow prosecutors to end a case by imposing or negotiating a penalty or a measure without a judge's decision. In **Austria** and **Slovenia**, prosecutors may propose alternative measures to the suspect, which constitute sanctions rather than penalties. In **Bosnia and Herzegovina**, the competent prosecutor or a judge can apply educational recommendations to a juvenile for criminal offences for which a fine or a punishment of imprisonment for a term not exceeding three years is prescribed. Among the countries that provided a negative reply on this issue, **Finland** has indicated that in clear cases, the prosecutor is competent to self-impose a fine and confiscatory sanction in penal order proceedings, provided that the suspect does not demand that a court hear his/her case. In **Portugal**, a prosecutor may decide on the temporary suspension of the case subject to the fulfilment by the defendant of several payment orders and only with his/her consent, as well as the one of the judge. In **Switzerland**, the prosecutor is competent for imposing sanctions up to 6 months of deprivation of liberty by means of penal order.

Prosecutors from 38 States and entities may propose a penalty to the judge. In **Ireland**, the prosecutor may draw the attention of the judge to the principles of sentencing as enunciated in the case law of the higher courts. In **Austria**, while a prosecutor has to refrain from requesting a concrete term of sentence, he/she has the right to plea with regard to the sentence by referring to the mitigating and aggravating grounds to be applied or by proposing a sentence under probation. In **Sweden** it is not compulsory for the prosecutor to propose a sentence to the judge, but this approach is well implemented in practice.

Admittedly, public prosecutors have an essential role in criminal matters. However, they are also granted important prerogatives outside the field of criminal law. They intervene in civil and/or administrative cases in 34 States and entities and in insolvency matters in 17 States and entities.

Broadly speaking, the attribution of competences to public prosecutors outside the field of criminal law is justified by their role of representing the general interest. In compliance with the European standards, they act on behalf of society and in the public interest to respect and protect individual rights, enhancing in this way the effectiveness of the rule of law<sup>21</sup>. More particularly, public prosecutors may participate to civil and/or administrative proceedings in order to ensure the defence of the State, its entities or institutions (e.g. **Croatia, Cyprus, Republic of Moldova, Portugal and Russian Federation**).

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<sup>21</sup> CCPE, *European norms and principles concerning prosecutors*, Opinion No. 9 (2014), *op. cit.* Roma Charter, points I and II.

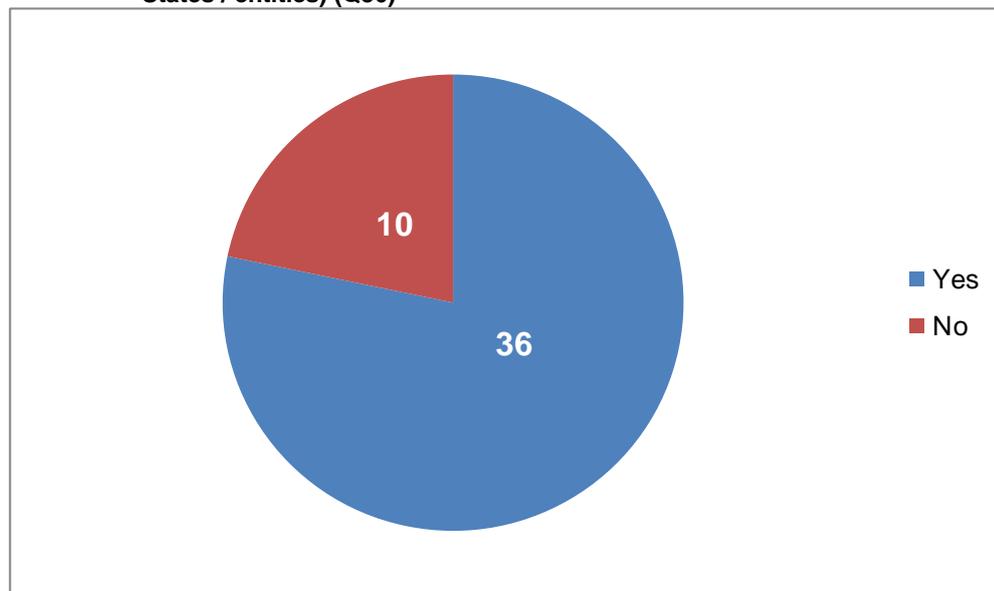
In civil matters, public prosecution services are often endowed with the responsibility of defending the interests of vulnerable individuals such as minors, victims, disabled persons, incapable and missing or absent persons. Their members usually intervene on behalf of the public interest and in compliance with conditions determined by law in proceedings relating to the civil status of individuals (birth certificate application, change of name, acquisition of nationality, declaration of death, questions concerning legal capacity and legal protection of persons, *etc.*), in matters of family law (annulment of marriages, child's adoption, deprivation of parental rights, *etc.*), labour law (work-related accidents, professional diseases, disciplinary proceedings), commercial law (protection of property, transfer of property, confiscation of property), in proceedings of conflicts of jurisdictions, *etc.*

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

In 17 States and entities prosecutors intervene in insolvency proceedings. However, in **Germany** and **Lithuania**, they are involved only if the insolvency matter case results in a criminal case (fraudulent bankruptcy). In **Italy** and **France**, this competence is limited to situations where a public interest is at stake. In **Spain**, public prosecutors intervene in insolvency proceedings to substantiate the facts relevant to a finding of special civil liability (due to malfeasance or negligence) of the debtor.

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

**Figure 3.28 Summary of the possibility of victims appealing against prosecutorial decisions in 2016 (number of States / entities) (Q36)**



The possibility of victims appealing against prosecutorial decisions to discontinue a case continues to expand. 36 States and entities allow victims to challenge a decision of the prosecutor. The **Netherlands** now specifies that the Criminal Code provides that victims (or any person with an interest in the case) may lodge a complaint against the decision of the prosecutor before a court.

States have, moreover, reformed their complaints system with regard to decisions taken by prosecutors. In **Ireland**, when enacted, the 2017 law on criminal justice (victims of crimes) will give complainants the right to request information and a summary of the reasons for the decision to abandon the prosecution. In **Montenegro**, the Code of Criminal Procedure introduces a "Complaint against a decision to reject criminal charges". In **UK-England and Wales**, it exists as from 2013 a Victim Review Right System which allows victims to request a review of decisions not to file a complaint, to abandon or terminate the procedure in any other way. In **UK-Scotland**, until July 2015, there was no right to challenge a decision of the Public Prosecutor's Office, but a person could request the decision to be subject to judicial review.

### 3.2.5 Prosecutor's workload in 2016

Table 3.29 Number of public prosecutors, number of roles and number of cases received by the public prosecutors in 2016 (Q1, Q55, Q105, Q106, Q107)

States / Entities	Number of prosecutors per 100 000 inhabitants	Number of roles of the public prosecutor	Number of cases received per 100 inhabitants
Albania	11,2	11	1,5
Andorra	6,8	9	6,5
Armenia	10,6	9	0,1
Austria	4,1	10	5,9
Azerbaijan	11,3	9	NA
Belgium	7,6	12	NA
Bosnia and Herzegovina	10,9	12	1,9
Bulgaria	21,3	13	1,8
Croatia	14,6	12	1,7
Cyprus	13,7	7	NA
Czech Republic	11,7	12	2,3
Denmark	12,1	7	3,0
Estonia	13,0	10	NA
Finland	6,8	6	1,5
France	2,9	13	7,5
Georgia	11,8	10	1,2
Germany	6,7	10	6,3
Greece	5,5	10	NA
Hungary	19,2	14	1,9
Iceland	20,7	9	2,0
Ireland	2,2	6	0,3
Italy	3,5	8	5,2
Latvia	22,9	13	0,7
Lithuania	24,4	13	2,7
Luxembourg	8,0	12	9,7
Malta	4,1	6	NA
Republic of Moldova	19,2	11	1,9
Monaco	13,3	14	6,2
Montenegro	16,6	12	1,5
Netherlands	5,4	12	1,1
Norway	13,8	8	6,5
Poland	15,2	11	2,3
Portugal	14,5	13	4,3
Romania	13,4	12	3,5
Russian Federation	25,2	6	0,6
Serbia	8,8	11	1,6
Slovakia	17,1	13	1,4
Slovenia	10,5	11	3,3
Spain	5,3	11	NA
Sweden	9,6	8	4,6
Switzerland	10,4	10	6,9
The FYROMacedonia	8,3	7	1,4
Turkey	6,0	11	4,2
Ukraine	23,8	10	NA
UK-England and Wales	3,6	5	0,9
UK-Scotland	8,7	8	3,6
Israel	14,2	11	4,0
Morocco	2,8	12	4,2
<b>Average</b>	11,7	10	3,1
<b>Median</b>	11,0	11	2,2
<b>Minimum</b>	2,2	5	0,1
<b>Maximum</b>	25,2	14	9,7

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

Beyond question, prosecutors having the heaviest workload remain to be found in **France**, which has nearly

the lowest number of prosecutors in Europe (2,8 per 100 000 inhabitants) and must simultaneously cope with the largest number of proceedings received (7,45 cases per 100 inhabitants), while having to fill a record number of different functions (13). In the light of these criteria, prosecutors in **Austria** and **Italy** also have a particularly heavy workload. This observation should be qualified by underlining that in these countries, other staff perform duties similar to those of prosecutors, although it is not possible, from the information available, to measure the impact of this phenomenon on the workload of prosecutors. The **Netherlands** and **UK-England and Wales** also have a small number of prosecutors, but the number of proceedings received is much lower – and the powers of prosecutors in **UK-England and Wales** more limited.

Conversely, most countries in Central and Eastern Europe have a significant number of prosecutors (over 10 or over 20 prosecutors per 100 000 inhabitants), for a relatively small number of proceedings received (less than 3 cases per 100 inhabitants), even if their jurisdiction is wide (around 10 different competences). The history of these countries partly explains this situation. This is particularly the case of the **Russian Federation** (over 25 prosecutors per 100 000 inhabitants and 0,65 proceeding per 100 inhabitants to deal with), **Bulgaria**, **Hungary**, **Latvia**, **Lithuania**, **Republic of Moldova**, **Montenegro**, **Poland**, **Slovakia**. This phenomenon is accentuated in some countries where other staff exercise functions similar to those of prosecutors.

**Table 3.30 First instance criminal cases managed by public prosecutors in 2016 (Q1, Q107)**

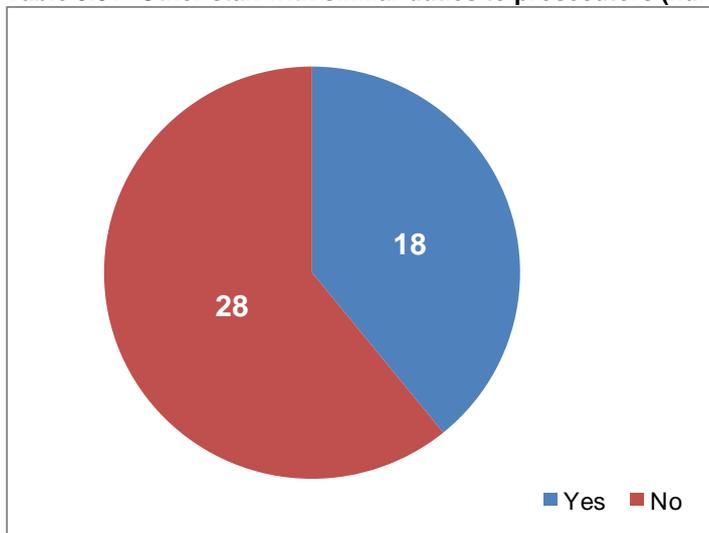
States / Entities	Cases received by the public prosecutor		Cases discontinued by the public prosecutor		Cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor		Cases charged by the public prosecutor before the courts	
	per 100 inh.	per 1st instance prosecutor	per 100 inh.	per 1st instance prosecutor	per 100 inh.	per 1st instance prosecutor	per 100 inh.	per 1st instance prosecutor
Albania	1,5	153	1,2	126	NAP	NAP	0,5	47
Andorra	6,5	NAP	NAP	NAP	NA	NA	NA	NA
Armenia	0,1	NAP	0,2	NAP	NAP	NAP	0,1	NAP
Austria	5,9	1624	4,8	1323	0,2	60	0,8	206
Azerbaijan	NA	NA	0,1	NA	NAP	NAP	0,1	NA
Belgium	NA	NA	NA	NA	NA	NA	NA	NA
Bosnia and Herzegovina	1,9	229	0,3	37	0,4	48	0,4	46
Bulgaria	1,8	145	1,7	137	NAP	NAP	0,5	39
Croatia	1,7	162	0,7	72	0,0	0	0,4	42
Cyprus	NA	NA	NA	NA	NA	NA	NA	NA
Czech Republic	2,3	290	1,6	196	0,2	24	0,7	83
Denmark	3,0	325	0,4	47	0,9	93	2,5	267
Estonia	NA	NA	1,0	NAP	0,2	NAP	0,5	NAP
Finland	1,5	NAP	0,5	NAP	0,0	NAP	0,9	NAP
France	7,5	3465	4,9	2293	0,9	403	0,9	413
Georgia	1,2	NAP	0,6	NAP	0,3	NAP	0,4	NAP
Germany	6,3	1045	3,7	618	0,2	35	1,2	202
Greece	NA	NA	NA	NA	NA	NA	NA	NA
Hungary	1,9	163	0,3	22	0,1	9	1,7	141
Iceland	2,0	NA	0,2	NA	NA	NA	1,7	NA
Ireland	0,3	NAP	0,1	NAP	NA	NA	0,1	NAP
Italy	5,2	1737	3,6	1224	0,0	7	0,9	303
Latvia	0,7	49	0,1	4	0,1	6	0,5	34
Lithuania	2,7	121	1,0	46	NAP	NAP	1,2	53
Luxembourg	9,7	1636	3,6	610	NA	NA	1,9	324
Malta	NA	NA	NAP	NAP	NAP	NAP	3,6	NAP
Republic of Moldova	1,9	139	0,4	26	0,2	15	0,4	30
Monaco	6,2	NAP	3,6	NAP	0,4	NAP	1,3	NAP
Montenegro	1,5	134	0,5	47	0,1	11	0,6	52
Netherlands	1,1	225	0,2	51	0,2	50	0,6	123
Norway	6,5	554	2,9	243	1,4	118	1,4	121
Poland	2,3	235	0,8	80	0,4	38	0,7	74
Portugal	4,3	317	NA	NA	NA	NA	0,5	36
Romania	3,5	581	2,7	444	0,5	76	0,2	41
Russian Federation	0,6	NAP	0,0	NAP	NAP	NAP	0,6	NAP
Serbia	1,6	202	1,0	119	0,4	45	0,6	74
Slovakia	1,4	118	0,5	41	0,0	3	0,5	40
Slovenia	3,3	418	0,8	104	0,1	11	0,5	62
Spain	NA	NA	NAP	NAP	NA	NA	NA	NA
Sweden	4,6	NAP	1,7	NAP	0,6	NAP	1,8	NAP
Switzerland	6,9	NAP	1,2	NAP	5,6	NAP	0,2	NAP
The FYROMacedonia	1,4	211	0,5	76	0,0	3	0,9	129
Turkey	4,2	743	1,4	241	NA	NA	0,9	155
Ukraine	NA	NA	NA	NA	NAP	NAP	NA	NA
UK-England and Wales	0,9	NAP	0,1	NAP	NAP	NAP	1,0	NAP
UK-Scotland	3,6	NA	0,9	NA	1,0	NA	NA	NA
Israel	4,0	NAP	1,4	NAP	0,0	NAP	1,9	NAP
Morocco	4,2	2 103	1,5	317	0,6	317	1,6	794
<b>Average</b>	3,1	578	1,3	329	0,5	53	0,9	121
<b>Median</b>	2,2	232	0,8	104	0,2	30	0,6	74
<b>Minimum</b>	0,1	49	0,0	4	0,0	0	0,1	30
<b>Maximum</b>	9,7	3 465	4,9	2 293	5,6	403	3,6	413

To supplement the comments on the workload of prosecutors, it is interesting to analyse also the part of alternatives to prosecution and the number of cases actually brought before the courts. This also makes it possible to measure the workload assumed by the prosecutors alone against the workload given to judges, for the cases where the authors have been identified.

Here again, it can be noted that a significant part of the judicial activity is based only on prosecutors in **France**: the French prosecutors are those who discontinue the greatest number of cases (4,9 cases per 100 inhabitants, for 7,5 cases received) and pronounce a high number of alternatives to prosecution (sanctions imposed by the prosecutor or negotiated measures imposed by the prosecutor). Less than one case on seven handled by the public prosecutions service are brought to courts. A similar context applies to **Austria**, **Germany** and **Italy**.

There is also a large number of alternatives to prosecutions decided by prosecutors in **Switzerland** (5,6 per 100 inhabitants, for 6,9 cases received). The importance of alternatives to the prosecution decided makes it possible to limit the number of procedures addressed by the courts (only 0,2 case per 100 inhabitants, for 6,9 cases received by the public prosecution services), whereas the rate of cases discontinued remains limited (1,2 case per 100 inhabitants).

**Table 3.31 Other staff with similar duties to prosecutors (number of States / entities) (Q57)**



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

18 States and entities have staff with similar tasks to those of prosecutors. These may include police services. Two States indicate that such staff has been included in the number of prosecutors (**Cyprus** and **France**).

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

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

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

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

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

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

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

It would be useful, in order to refine the analysis, to know the number of persons performing functions comparable to those of prosecutors. This remains difficult to establish. In addition to the difficulty of defining this category of personnel according to the particularities of the national systems, often they are agents appointed on a temporary basis and remunerated according to actual performance.

### Trends and conclusions

In 2016, the average number of prosecutors per 100 000 inhabitants is slightly higher in average and median, while the number of cases received per 100 inhabitants is constant compared to 2014. This may reflect a slight improvement in the situation of prosecutors in terms of workload. But the number of roles is particularly important, the number of prosecutors is relatively low and the number of cases still high.

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

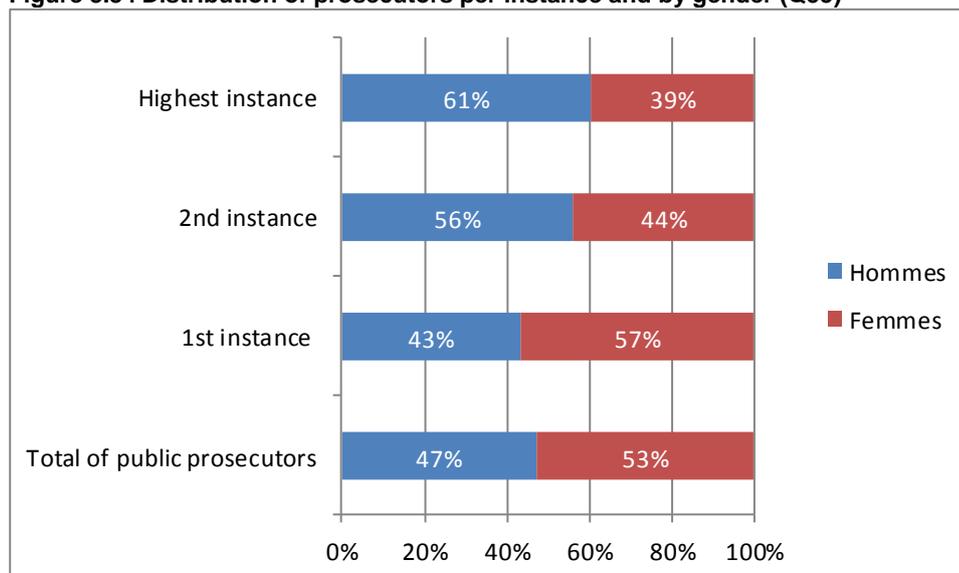
Table 3.32 Distribution of public prosecutors by instances in 2016 (Q55)

States / Entities	Total number of public prosecutors	1st instance	2nd instance	Highest instance
Albania	321	86%	9%	5%
Andorra	5	NAP	NAP	NAP
Armenia	318	NAP	NAP	NAP
Austria	360	88%	7%	5%
Azerbaijan	1092	NA	NA	NA
Belgium	862	81%	18%	2%
Bosnia and Herzegovina	381	78%	NAP	22%
Bulgaria	1511	59%	33%	8%
Croatia	607	70%	26%	4%
Cyprus	116	NAP	NAP	NAP
Czech Republic	1243	68%	28%	4%
Denmark	697	76%	15%	9%
Estonia	171	NAP	NAP	NAP
Finland	372	NAP	NAP	NAP
France	1955	74%	23%	3%
Georgia	437	NAP	NAP	NAP
Germany	5505	91%	7%	2%
Greece	597	66%	31%	4%
Hungary	1882	61%	32%	6%
Iceland	70	NA	NA	NA
Ireland	102	NAP	NAP	NAP
Italy	2138	84%	12%	4%
Latvia	451	66%	17%	17%
Lithuania	696	90%	NAP	10%
Luxembourg	47	74%	NAP	26%
Malta	18	NAP	NAP	NAP
Republic of Moldova	681	70%	3%	26%
Monaco	5	NAP	NAP	NAP
Montenegro	103	66%	26%	8%
Netherlands	927	91%	9%	NA
Norway	727	85%	13%	2%
Poland	5839	66%	33%	1%
Portugal	1499	93%	6%	1%
Romania	2622	45%	35%	20%
Russian Federation	36978	NAP	NAP	NAP
Serbia	617	91%	7%	2%
Slovakia	931	67%	21%	13%
Slovenia	217	76%	19%	5%
Spain	2473	NAP	NAP	2%
Sweden	959	NAP	NAP	1%
Switzerland	877	NAP	NAP	NAP
The FYROMacedonia	173	80%	14%	6%
Turkey	4800	94%	3%	3%
Ukraine	10133	NAP	NAP	NAP
UK-England and Wales	2080	NAP	NAP	NAP
UK-Scotland	471	NA	NA	NA
Israel	1226	NAP	NAP	NAP
Morocco	982	70%	26%	4%
<b>Average</b>	2067	76%	18%	8%
<b>Median</b>	689	76%	17%	5%
<b>Minimum</b>	5	45%	3%	1%
<b>Maximum</b>	36978	94%	35%	26%

**Table 3.33 Distribution of public prosecutors by instance and by gender in 2016 (Q55)**

States / Entities	Total of public prosecutors		1st instance		2nd instance		Highest instance	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	39%	61%	32%	68%	86%	14%	73%	27%
Andorra	40%	60%	NAP	NAP	NAP	NAP	NAP	NAP
Armenia	91%	9%	NAP	NAP	NAP	NAP	NAP	NAP
Austria	49%	51%	47%	53%	67%	33%	61%	39%
Azerbaijan	95%	5%	NA	NA	NA	NA	NA	NA
Belgium	45%	55%	41%	59%	59%	41%	92%	8%
Bosnia and Herzegovina	49%	51%	48%	52%	NAP	NAP	52%	48%
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	32%	68%	28%	72%	41%	59%	46%	54%
Cyprus	19%	81%	NAP	NAP	NAP	NAP	NAP	NAP
Czech Republic	50%	50%	46%	54%	59%	41%	67%	33%
Denmark	32%	68%	30%	70%	41%	59%	27%	73%
Estonia	29%	71%	NAP	NAP	NAP	NAP	NAP	NAP
Finland	45%	55%	NAP	NAP	NAP	NAP	NAP	NAP
France	47%	53%	43%	57%	55%	45%	68%	32%
Georgia	71%	29%	NAP	NAP	NAP	NAP	NAP	NAP
Germany	54%	46%	53%	47%	66%	34%	67%	33%
Greece	45%	55%	38%	62%	55%	45%	81%	19%
Hungary	40%	60%	35%	65%	46%	54%	56%	44%
Iceland	43%	57%	NA	NA	NA	NA	NA	NA
Ireland	43%	57%	NAP	NAP	NAP	NAP	NAP	NAP
Italy	57%	43%	54%	46%	71%	29%	72%	28%
Latvia	38%	62%	35%	65%	42%	58%	47%	53%
Lithuania	49%	51%	50%	50%	NAP	NAP	41%	59%
Luxembourg	53%	47%	57%	43%	NAP	NAP	42%	58%
Malta	39%	61%	NAP	NAP	NAP	NAP	NAP	NAP
Republic of Moldova	68%	32%	67%	33%	65%	35%	73%	27%
Monaco	60%	40%	NAP	NAP	NAP	NAP	NAP	NAP
Montenegro	36%	64%	38%	62%	26%	74%	50%	50%
Netherlands	39%	61%	37%	63%	53%	46%	NA	NA
Norway	43%	57%	40%	60%	60%	40%	64%	36%
Poland	48%	52%	43%	57%	57%	43%	66%	34%
Portugal	38%	62%	37%	63%	59%	41%	59%	41%
Romania	48%	52%	47%	53%	48%	52%	49%	51%
Russian Federation	NA	NA	NAP	NAP	NAP	NAP	NAP	NAP
Serbia	45%	55%	44%	56%	52%	48%	58%	42%
Slovakia	51%	49%	48%	52%	55%	45%	58%	42%
Slovenia	32%	68%	27%	73%	45%	55%	55%	45%
Spain	36%	64%	NAP	NAP	NAP	NAP	63%	37%
Sweden	40%	60%	NAP	NAP	NAP	NAP	57%	43%
Switzerland	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP
The FYROMacedonia	41%	59%	37%	63%	50%	50%	70%	30%
Turkey	68%	32%	67%	33%	90%	10%	80%	20%
Ukraine	65%	35%	NAP	NAP	NAP	NAP	NAP	NAP
UK-England and Wales	45%	55%	NAP	NAP	NAP	NAP	NAP	NAP
UK-Scotland	34%	66%	NA	NA	NA	NA	NA	NA
Israel	36%	64%	NAP	NAP	NAP	NAP	NAP	NAP
Morocco	84%	16%	80%	20%	95%	5%	92%	8%
<b>Average</b>	47%	53%	43%	57%	56%	44%	61%	39%
<b>Median</b>	45%	55%	43%	57%	55%	45%	60%	40%
<b>Minimum</b>	19%	5%	27%	33%	26%	10%	27%	8%
<b>Maximum</b>	95%	81%	67%	73%	90%	74%	92%	73%

**Figure 3.34 Distribution of prosecutors per instance and by gender (Q55)**



While the gender ratio of the total number of prosecutors was equal in 2014, it now favours women in 2016 with 53 % women and 47 % men on average. This suggests an increasing feminisation of the profession of public prosecutor due to the recruitments within the last years. At first instance, the figure is the same as in 2014, with 53 % women and 47 % men, that is more women than men. In the second instance, in 2014 the ratio was already reversed in favour of men (58 % men, 42 % women). In 2016, while the ratio is still favourable to men, a rebalancing begins to take place since there are 56 % men and 44 % women. In the last instance, the rebalancing is also in progress since in 2014 there were 63 % men and 38 % women and in 2016, 61 % men and 39 % women. Feminisation is therefore continuous and has an effect on higher positions.

However some States still have no female prosecutor at second instance (**Turkey**) and highest instance (**Azerbaijan**). In some States (**Azerbaijan, Bulgaria, Iceland, Netherlands, UK-Scotland**) the figures would not be available for all instances.

A strong feminisation can be noted of the function of prosecutors (more than 60 % of women) in : **Cyprus** (81 %), **Estonia** (71 %), **Denmark** (68 %), **Slovenia** (68 %), **UK-Scotland** (66 %), **Spain, Israel, Montenegro** (64 %), **Latvia** (62 %), **Portugal** (62 %), **Albania** (61 %), **Malta** (61 %), **Netherlands** (61 %) **Andorra** (60 %), **Hungary** (60 %), **Sweden** (60 %).

**Table 3.35 Distribution of heads of prosecution office per instance in 2016 (Q56)**

States / Entities	Total number of heads of prosecution offices	1st instance	2nd instance	Supreme Court	Number of prosecutors per one head of prosecution office
Albania	31	74%	23%	3%	10,4
Andorra	1	NAP	NAP	NAP	5,0
Armenia	16	NAP	NAP	NAP	19,9
Austria	30	80%	17%	3%	12,0
Azerbaijan	NA	NA	NA	NA	NA
Belgium	29	76%	21%	3%	29,7
Bosnia and Herzegovina	18	83%	NAP	17%	21,2
Bulgaria	153	75%	25%	1%	9,9
Croatia	32	53%	44%	3%	19,0
Cyprus	9	NAP	NAP	NAP	12,9
Czech Republic	94	88%	11%	1%	13,2
Denmark	18	78%	17%	6%	38,7
Estonia	5	NAP	NAP	NAP	34,2
Finland	13	NAP	NAP	NAP	28,6
France	202	82%	18%	0%	9,7
Georgia	53	NAP	NAP	NAP	8,2
Germany	NA	NA	NA	NA	NA
Greece	83	76%	23%	1%	7,2
Hungary	139	81%	19%	1%	13,5
Iceland	11	82%	9%	9%	6,4
Ireland	1	NAP	NAP	NAP	102,0
Italy	159	86%	14%	1%	13,4
Latvia	61	67%	16%	16%	7,4
Lithuania	81	86%	NAP	14%	8,6
Luxembourg	3	67%	NAP	33%	15,7
Malta	1	NAP	NAP	NAP	18,0
Republic of Moldova	42	76%	17%	7%	16,2
Monaco	1	NAP	NAP	NAP	5,0
Montenegro	17	76%	18%	6%	6,1
Netherlands	61	97%	3%	NA	15,2
Norway	13	0%	92%	8%	55,9
Poland	414	86%	14%	0%	14,1
Portugal	NA	NA	NA	NA	NA
Romania	426	34%	48%	18%	6,2
Russian Federation	2923	NA	NA	NA	12,7
Serbia	90	94%	4%	1%	6,9
Slovakia	63	86%	13%	2%	14,8
Slovenia	13	92%	NAP	8%	16,7
Spain	88	NA	NA	9%	28,1
Sweden	39	NAP	NAP	8%	24,6
Switzerland	120	NAP	NAP	NAP	7,3
The FYROMacedonia	26	81%	15%	4%	6,7
Turkey	237	92%	6%	1%	20,3
Ukraine	195	NAP	NAP	NAP	52,0
UK-England and Wales	18	NAP	NAP	NAP	115,6
UK-Scotland	8	NA	NA	NA	58,9
Israel	20	NAP	NAP	NAP	61,3
Morocco	102	75%	24%	1%	9,6
<b>Average</b>	140	76%	21%	7%	22,0
<b>Median</b>	32	81%	17%	4%	14,1
<b>Minimum</b>	1	0%	3%	0%	5,0
<b>Maximum</b>	2923	97%	92%	33%	115,6

Regarding the direction of the public prosecution services, the trend is confirmed by a strong male presence.

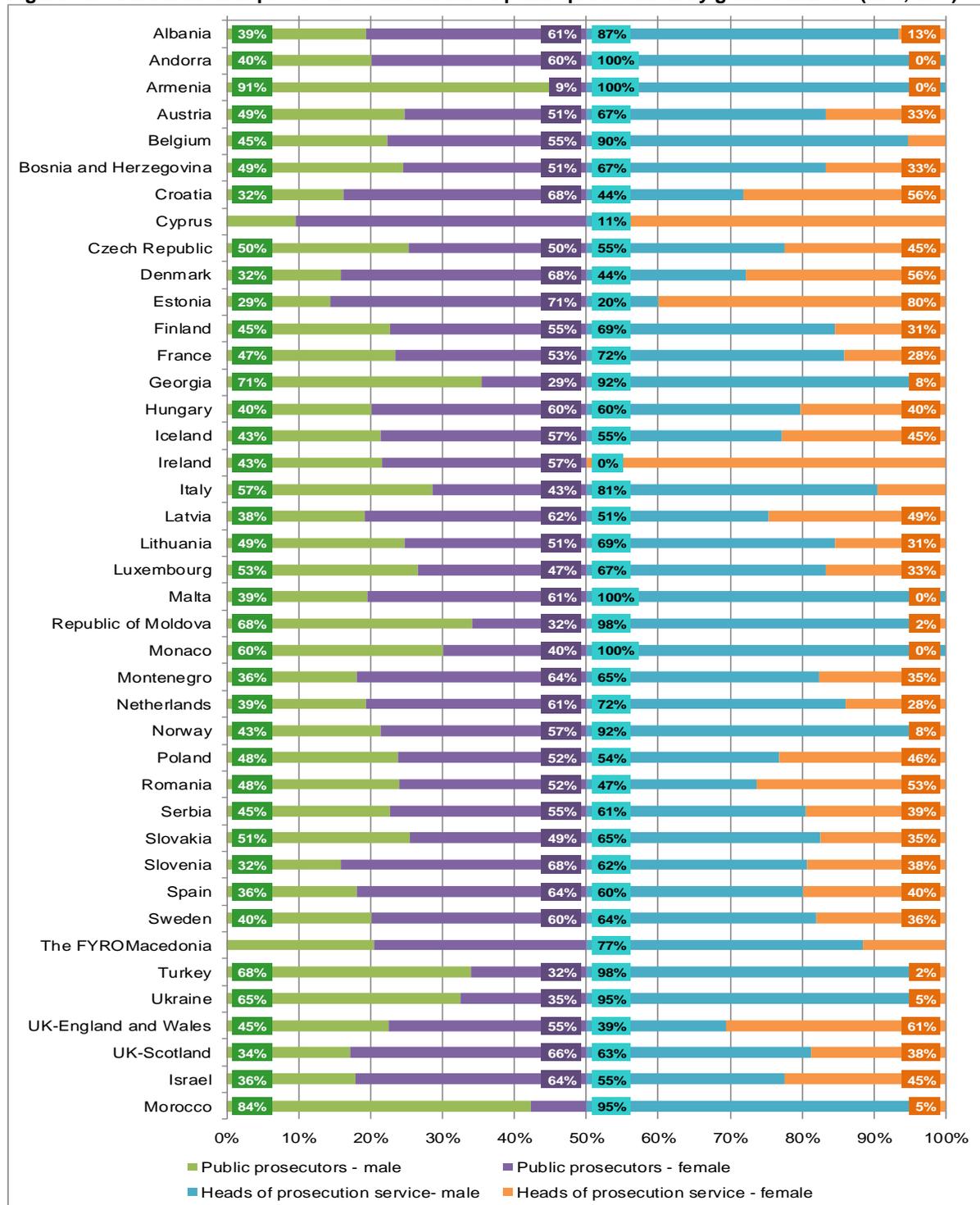
**Table 3.36 Distribution of heads of prosecution office per instances and gender in 2016 (Q56)**

States / Entities	Total number of heads of prosecution offices		1st instance		2nd instance		Supreme Court	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	87%	13%	87%	13%	86%	14%	100%	0%
Andorra	100%	0%	NAP	NAP	NAP	NAP	NAP	NAP
Armenia	100%	0%	NAP	NAP	NAP	NAP	NAP	NAP
Austria	67%	33%	63%	38%	80%	20%	100%	0%
Azerbaijan	NA	NA	NA	NA	NA	NA	NA	NA
Belgium	90%	10%	86%	14%	100%	0%	100%	0%
Bosnia and Herzegovina	67%	33%	60%	40%	NAP	NAP	100%	0%
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	44%	56%	41%	59%	43%	57%	100%	0%
Cyprus	11%	89%	NAP	NAP	NAP	NAP	NAP	NAP
Czech Republic	55%	45%	53%	47%	70%	30%	100%	0%
Denmark	44%	56%	36%	64%	67%	33%	100%	0%
Estonia	20%	80%	NAP	NAP	NAP	NAP	NAP	NAP
Finland	69%	31%	NAP	NAP	NAP	NAP	NAP	NAP
France	72%	28%	74%	26%	61%	39%	100%	0%
Georgia	92%	8%	NAP	NAP	NAP	NAP	NAP	NAP
Germany	NA	NA	NA	NA	NA	NA	NA	NA
Greece	NA	NA	NA	NA	NA	NA	NA	NA
Hungary	60%	40%	54%	46%	85%	15%	100%	0%
Iceland	55%	45%	56%	44%	100%	0%	0%	100%
Ireland	0%	100%	NAP	NAP	NAP	NAP	NAP	NAP
Italy	81%	19%	79%	21%	91%	9%	100%	0%
Latvia	51%	49%	49%	51%	50%	50%	60%	40%
Lithuania	69%	31%	67%	33%	NAP	NAP	82%	18%
Luxembourg	67%	33%	100%	0%	NAP	NAP	0%	100%
Malta	100%	0%	NAP	NAP	NAP	NAP	NAP	NAP
Republic of Moldova	98%	2%	97%	3%	100%	0%	100%	0%
Monaco	100%	0%	NAP	NAP	NAP	NAP	NAP	NAP
Montenegro	65%	35%	62%	38%	67%	33%	100%	0%
Netherlands	72%	28%	69%	29%	100%	0%	NA	NA
Norway	92%	8%			92%	8%	100%	0%
Poland	54%	46%	50%	50%	75%	25%	100%	0%
Portugal	NA	NA	NA	NA	NA	NA	NA	NA
Romania	47%	53%	39%	61%	49%	51%	59%	41%
Russian Federation	NA	NA	NA	NA	NA	NA	NA	NA
Serbia	61%	39%	61%	39%	75%	25%	0%	100%
Slovakia	65%	35%	65%	35%	63%	38%	100%	0%
Slovenia	62%	38%	58%	42%	NAP	NAP	0%	0%
Spain	60%	40%	NA	NA	NA	NA	75%	25%
Sweden	64%	36%	NAP	NAP	NAP	NAP	33%	67%
Switzerland	79%	21%	NAP	NAP	NAP	NAP	NAP	NAP
The FYROMacedonia	77%	23%	71%	29%	100%	0%	100%	0%
Turkey	98%	2%	98%	2%	100%	0%	100%	0%
Ukraine	95%	5%	NAP	NAP	NAP	NAP	NAP	NAP
UK-England and Wales	39%	61%	NAP	NAP	NAP	NAP	NAP	NAP
UK-Scotland	63%	38%	NA	NA	NA	NA	NA	NA
Israel	55%	45%	NAP	NAP	NAP	NAP	NAP	NAP
Morocco	95%	5%	94%	6%	100%	0%	100%	0%
<b>Average</b>	67%	33%	66%	34%	79%	21%	77%	19%
<b>Median</b>	67%	33%	62%	38%	80%	20%	100%	0%
<b>Minimum</b>	0%	0%	36%	0%	43%	0%	0%	0%
<b>Maximum</b>	100%	100%	100%	64%	100%	57%	100%	100%

The figures are not as balanced at the level of the direction of the public prosecution as at the level of the total number of prosecutors. While the number of women heads of public prosecution has increased from 31 % to 33 % in 2014, the percentage of women in the first instance has remained the same; in the second instance and before the Supreme Courts, it has diminished. It should be noted that it has also decreased for men. This is why the overall male/female ratio seems more favourable to rebalancing.

It should also be noted that not all States have provided answers.

**Figure 3.37 Distribution of prosecutors and heads of public prosecution by gender in 2016 (Q55, Q56)**



This figure is particularly illustrative of the imbalance in the direction of the public prosecution services. While there is an overall feminisation of public prosecutions services in Europe, the glass ceiling remains strongly in place for the highest functions.

## Trends and conclusions

The increase in feminisation among prosecutors confirms the trend observed in 2014. The glass ceiling for women's access to the positions of heads of public prosecutors also remains a reality despite a slight tendency to be absorbed by the number of women which progresses slowly in hierarchical levels.

### 3.2.7 Salary of prosecutors

Table 3.38 Average gross salary of a prosecutor in absolute values and in relation to average gross national salary in 2016 (Q4, Q132)

States / Entities	Gross salary of public prosecutor at the beginning of a career		Gross salary of a public prosecutor at the highest instance	
	Absolute number	in relation with average annual gross salary	Absolute number	in relation with average annual gross salary
Albania	9 324 €	2,1	11 652 €	2,6
Andorra	59 098 €	2,7	88 660 €	4,0
Armenia	9 576 €	2,4	NAP	NAP
Austria	55 139 €	1,7	126 594 €	4,0
Azerbaijan	3 283 €	1,0	10 684 €	3,3
Belgium	68 856 €	1,7	128 209 €	3,1
Bosnia and Herzegovina	23 996 €	3,0	41 830 €	5,2
Bulgaria	18 867 €	3,2	33 055 €	5,6
Croatia	23 128 €	1,9	50 927 €	4,1
Cyprus	34 030 €	1,5	NAP	NAP
Czech Republic	27 313 €	2,2	59 339 €	4,8
Denmark	52 000 €	1,2	88 160 €	2,1
Estonia	22 440 €	1,6	53 040 €	3,9
Finland	48 800 €	1,2	NAP	NAP
France	45 780 €	1,3	119 376 €	3,4
Georgia	9 834 €	NA	31 452 €	NA
Germany	47 469 €	0,9	81 565 €	1,6
Greece	31 710 €	2,0	87 256 €	5,4
Hungary	16 916 €	1,6	34 750 €	3,3
Iceland	NA	NA	136 995 €	2,0
Ireland	30 520 €	0,8	NAP	NAP
Italy	56 263 €	1,9	186 637 €	6,4
Latvia	19 368 €	1,9	24 112 €	2,3
Lithuania	20 967 €	2,2	30 425 €	3,2
Luxembourg	83 626 €	1,3	172 172 €	2,6
Malta	30 628 €	1,8	NAP	NAP
Republic of Moldova	6 189 €	2,3	7 381 €	2,7
Monaco	46 457 €	1,1	95 202 €	2,3
Montenegro	21 438 €	2,4	37 749 €	4,2
Netherlands	66 451 €	1,2	99 997 €	1,7
Norway	66 362 €	1,2	115 640 €	2,0
Poland	21 435 €	NA	43 184 €	NA
Portugal	35 699 €	2,2	85 820 €	5,3
Romania	28 987 €	4,1	43 663 €	6,2
Russian Federation	NA	NA	NA	NA
Serbia	13 907 €	2,3	30 313 €	4,9
Slovakia	31 523 €	2,9	48 212 €	4,4
Slovenia	32 103 €	1,7	53 454 €	2,8
Spain	48 154 €	2,1	114 181 €	5,0
Sweden	51 912 €	1,3	104 328 €	2,5
Switzerland	121 566 €	1,7	174 088 €	2,4
The FYROMacedonia	18 445 €	2,9	20 404 €	3,2
Turkey	24 103 €	NA	44 241 €	NA
Ukraine	4 138 €	1,7	10 480 €	4,4
UK-England and Wales	38 399 €	1,2	NAP	NAP
UK-Scotland	35 067 €	0,9	NA	NA
Israel	30 037 €	1,0	99 492 €	3,4
Morocco	22 408 €	1,7	47 975 €	3,7
<b>Average</b>	<b>35 483 €</b>	<b>1,9</b>	<b>71 717 €</b>	<b>3,6</b>
<b>Median</b>	<b>31 076 €</b>	<b>1,7</b>	<b>53 247 €</b>	<b>3,3</b>
<b>Minimum</b>	<b>3 283 €</b>	<b>0,8</b>	<b>7 381 €</b>	<b>1,6</b>
<b>Maximum</b>	<b>121 566 €</b>	<b>4,1</b>	<b>186 637 €</b>	<b>6,4</b>

The salary earned by public prosecutors is inevitably affected by the diversity characterising their statutory situation within the States, entities and observers, which makes comparisons more difficult than for judges.

In some States, generally, public prosecutors are in a similar situation to that of judges, whereas in other States, the prosecution office's activities are fulfilled, at least partially by police authorities. The salary levels therefore differ significantly. In **Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, France, Germany, Greece, Hungary, Italy, Luxembourg, Monaco, Portugal, Slovakia, Spain and Turkey**, the salary of judges and that of public prosecutors are nearly identical, both at the beginning of the career and at the Supreme Court.

For the other States and entities, generally, the salary of judges is on average higher than that of prosecutors. Nevertheless, this observation should be nuanced for the salaries at the beginning of the career by recalling that the average calculated in respect of judges includes States and entities where judges are recruited among experienced lawyers and legal experts, *i.e.* among older professionals whose salary at the beginning of the career is already significant (**Denmark, Ireland, Norway, Switzerland, UK-England and Wales, UK-Northern Ireland and UK-Scotland**). In addition to these differences explained by the recruitment system for judges, the largest disparities (in favour of judges) can be noted in **Azerbaijan, Cyprus, Malta, Norway, Israel**, but also at the beginning of their careers only in **Estonia and Ukraine**.

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

#### **Trends and conclusions**

The considerable statutory disparities that affect the situation of public prosecutors of the States and entities make it difficult to draw a relevant comparison between their situation and that of judges. Nevertheless, the trend observed in recent years reveals the rapprochement between judges' and prosecutors' salaries as well at the beginning of the carrier, as at the end of the career. The remaining discrepancies stem either from the peculiarity of the recruitment procedure of judges (when the legal experience constitutes the core criterion of selection), or from the specificities of the public prosecution services (when prosecution functions are carried out simultaneously by prosecutors and other specific bodies such as the police, or, on the contrary, when for historical reasons, prosecutors are granted a status of particular importance).

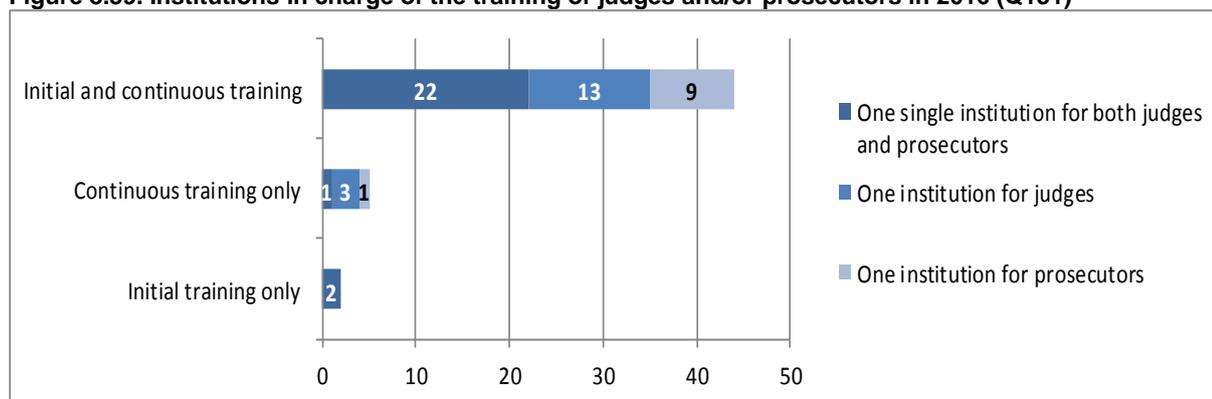
### 3.3 Elements common to judges and prosecutors in matters of training, ethics and responsibility

#### 3.3.1 Training of judges and prosecutors

40 States and entities have a specific training institution. In 24 States and entities the same institution provides training for both judges and prosecutors. 17 States have an institution for judges only and 11 for prosecutors only. **Ireland, Latvia, Lithuania, Malta, Sweden, UK-England and Wales** have a training institution for judges, but not for prosecutors. Some States, because of the small number of judges/prosecutors concerned, do not have an own institution dedicated to training: thus **Luxembourg** has made agreements for the judges to take part in training activities of the French National Judicial School and of ERA in Trier (Germany).

It is not always the same institution that provides initial and continuous training. The institution in charge of continuous training may be a court or a judicial body (in **Cyprus** the Supreme Court). For **Switzerland**, training is provided by universities or private institutions; a Swiss foundation for the continuous training of judges has been set up.

**Figure 3.39. Institutions in charge of the training of judges and/or prosecutors in 2016 (Q131)**



#### *Funding of the training of judges/prosecutors*

**Note:** it is difficult to assess the budget of training institutions depending on practices in different States; in fact, such institutions are not always autonomous from the Ministry of Justice and therefore they are not granted a separate budget. The institution may be responsible for training judges and not prosecutors and it is then important to add up the different budgets allocated. Certain States have no training institution (neither initial, nor continuous). It should also be recalled that, in several States, this share of the court budget is allocated to the training not only of judges, but also of non-judge staff (for example in the Republic of Moldova). Furthermore, there are also States where the share of the court budget allocated to training is entirely devoted to the training of non-judge staff, given that training of judges is financed by a separate budget (for example in Italy and France).

The elements in the table below should therefore be examined with caution. Besides, the budgets of these institutions are sometimes not exclusively devoted to training, due to other tasks related to initial or continuous training entrusted to them. Conversely, an institution may be in charge of training but not be alone in this task, others being likely to intervene as well, which means that the budget allocated to training may be higher than that allocated to the institution alone.

For example, comments made by Bosnia and Herzegovina, Italy, Lithuania, Montenegro, Serbia and Slovenia put an emphasis on the fact that the share of the court budget allocated to judicial training does not reflect the total budget allocated for training of judges and prosecutors, which is provided in Italy by the High School for the Judiciary, in Bosnia and Herzegovina, Lithuania, Montenegro and Slovenia by the Judicial Training Centre and in Serbia by the Judicial Academy.

Overall, the resources devoted to the training of judges/prosecutors remain limited to a small part of the court budget (1 % on average). But more and more States and entities have a training institution for judges/prosecutors, with varying financial means.

**Table 3.40 Training institutions and budgets allocated to training in 2016 (Q6, Q131-0)**

States / Entities	Total annual public budget of all courts* (Q6)	Training institutions for judges and prosecutors					Annual public budget for training & education (budget of courts)	Training budget of courts plus budget of training institutions	
		Separate training institution for judges	Separate training institution for prosecutors	One training institution for judges and prosecutors	No training institution	Total budget for these institutions		Absolute number	per inhabitant
Albania	15 903 916 €					900 000 €	17 258 €	917 258 €	0,32 €
Andorra	NA				No training institution	NAP	NA	NA	NA
Armenia	17 179 503 €					517 679 €	401 687 €	919 366 €	0,31 €
Austria	NA				No training institution	NAP	NA	NA	NA
Azerbaijan	43 281 253 €					1 516 007 €	949 772 €	2 465 779 €	0,25 €
Belgium	NA					4 381 000 €	NA	NA	NA
Bosnia and Herzegovina	86 590 466 €					550 878 €	NA	NA	NA
Bulgaria	154 970 220 €					1 854 199 €	35 231 €	1 889 430 €	0,27 €
Croatia	166 408 056 €					734 000 €	441 551 €	1 175 551 €	0,28 €
Cyprus	28 107 307 €					NA	83 720 €	83 720 €	0,10 €
Czech Republic	411 012 953 €					2 442 847 €	139 504 €	2 582 351 €	0,24 €
Denmark	242 289 742 €					2 330 000 €	2 152 013 €	4 482 013 €	0,78 €
Estonia	41 340 192 €				No training institution	NAP	303 662 €	303 662 €	0,23 €
Finland	285 425 000 €				No training institution	NAP			
France	3 238 063 225 €					31 000 000 €	93 596 131 €	124 596 131 €	1,86 €
Georgia	21 718 668 €					471 531 €	538 604 €	1 010 135 €	0,27 €
Germany	NA					NA	NA	NA	NA
Greece	NA					2 532 857 €	NA	NA	NA
Hungary	299 893 343 €					NA	NAP	NA	NA
Iceland	16 722 689 €					NA	NA	NA	NA
Ireland	113 172 000 €					310 000 €	310 000 €	310 000 €	0,07 €
Italy	2 971 094 830 €					10 537 499 €	256 310 €	10 793 809 €	0,18 €
Latvia	53 365 154 €					260 854 €	288 054 €	548 908 €	0,28 €
Lithuania	74 237 182 €					227 000 €	755 369 €	982 369 €	0,34 €
Luxembourg	NA				No training institution	NAP	NAP	NAP	NAP
Malta	13 870 800 €					9 000 €	1 000 €	10 000 €	0,02 €
Republic of Moldova	19 555 856 €					1 016 562 €	37 485 €	1 054 047 €	0,30 €
Monaco	5 665 100 €				No training institution	NAP	58 800 €	58 800 €	1,57 €
Montenegro	27 664 139 €					379 724 €	23 000 €	402 724 €	0,65 €
Netherlands	1 046 578 000 €					20 100 000 €	20 229 000 €	40 329 000 €	2,36 €
Norway	235 000 000 €				No training institution	NAP	2 600 000 €	2 600 000 €	0,49 €
Poland	1 445 686 000 €					10 528 000 €	5 718 000 €	16 246 000 €	0,42 €
Portugal	441 024 845 €					9 136 275 €	7 090 257 €	16 226 532 €	1,57 €
Romania	392 582 194 €					5 402 826 €	140 935 €	5 543 761 €	0,28 €
Russian Federation	2 614 827 293 €					3 156 447 €	5 828 787 €	8 985 234 €	0,06 €
Serbia	NA					2 272 696 €	NAP	2 272 696 €	0,32 €
Slovakia	186 576 657 €					771 009 €	- €	771 009 €	0,14 €
Slovenia	162 731 138 €					860 867 €	642 715 €	1 503 582 €	0,73 €
Spain	3 145 396 555 €					20 420 052 €	17 345 639 €	37 765 691 €	0,81 €
Sweden	697 033 550 €					6 000 000 €	NA	NA	NA
Switzerland	1 137 821 098 €				No training institution	NAP	5 089 816 €	5 089 816 €	0,60 €
The FYROMacedonia	29 899 055 €					638 081 €	NAP	638 081 €	0,31 €
Turkey	NA					5 691 914 €	NA	NA	NA
Ukraine	219 392 178 €					721 721 €	16 249 €	737 970 €	0,02 €
UK-England and Wales	2 215 993 000 €					12 374 461 €	5 692 000 €	18 066 461 €	0,31 €
UK-Scotland	153 313 246 €					187 580 €	363 136 €	550 716 €	0,10 €
Israel	441 926 855 €					1 418 221 €	2 620 621 €	4 038 842 €	0,47 €
Morocco	NA					4 058 905 €	NA	NA	NA
Average						4 712 752 €	5 348 303 €	9 173 900 €	50%
Median						1 685 103 €	382 412 €	1 339 567 €	30%
Minimum						9 000 €	- €	10 000 €	2%
Maximum						31 000 000 €	93 596 131 €	124 596 131 €	236%

\*Ireland: the budget for training in Ireland is taken only from Q6 regarding the budget for courts since the same amount is also reported in Q130-0. The Committee for Judicial Studies is the body responsible for judicial training however its budget is provided through the Courts Vote and therefore the budget line must be presented in both.

In 9 States, the share of the court budget allocated to judicial training is of 1 % or more: **France** (2,9 %), **Georgia** (2,5 %), **Armenia** (2,3 %), **Azerbaijan** (2,2 %), **Netherlands** (1,9 %), **Portugal** (1,6 %), **Norway** (1,1 %), **Monaco** (1,0 %) and **Lithuania** (1,0 %).

This share is between 0,1 % and 1 % in **Denmark** (0,9 %), **Estonia** (0,7 %), **Spain** (0,6 %), **Israel** (0,6 %), **Latvia** (0,5 %), **Poland** (0,4 %), **Slovenia** (0,4 %), **Switzerland** (0,4 %), **Cyprus** (0,3 %), **Ireland** (0,3 %), **Croatia** (0,3 %), **UK-England and Wales** (0,3 %), **UK-Scotland** (0,2 %), **Russian Federation** (0,2 %), **Republic of Moldova** (0,2 %), **Albania** (0,1 %) and **Montenegro** (0,1 %). In **Romania**, **Czech Republic**, **Bulgaria**, **Italy**, **Ukraine**, **Malta** and **Slovakia** the share of the court budget allocated for training of judges and prosecutors is less than 0,1 %.

In order to represent a framework which may help to better assess the effective budget effort for judicial training performed by the States and entities, four groups of States can be specified:

- the first group gathers the States whose budget for training of judges and prosecutors is entirely included within the court budget: **Cyprus**, **Estonia**, **Monaco**, **Norway**, **Switzerland** and **UK-England and Wales** – most of these States and entities do not have judicial training institutions;
- the second group includes the States whose judicial training budget is entirely (**Serbia**, **Slovakia** and **Morocco**) or almost entirely (**Albania**, **Armenia**, **Bulgaria**, **Czech Republic**, **Italy**, **Malta**, **Republic of Moldova**, **Montenegro** and **Romania**) allocated to a separate budget;
- the third group gathers the States and entities whose judicial training budget is included, in various degrees, either in the court budget or in a separate budget: **Azerbaijan**, **Croatia**, **Denmark**, **France**, **Georgia**, **Israel**, **Ireland**, **Latvia**, **Lithuania**, **Netherlands**, **Poland**, **Portugal**, **Russian Federation**, **Slovenia**, **Spain**, “the former Yugoslav Republic of Macedonia”, **Ukraine** and **UK-Scotland**.

In **France**, the total budget allocated to the judicial training, expressed in absolute value, is the most remarkable in Europe (124 596 131 €, of which 93 596 131 € included within the court budget, 31 000 000 € included within a separate budget). In **Netherlands** and **Spain**, total budgets allocated to judicial training are 40 329 000 € and 34 990 649 € respectively, of which half is included within the court budget and the other half is allocated to a separate budget. Also in **Denmark**, **Georgia**, **Ireland** and **Latvia**, their judicial training budgets are equally shared between the court budget and a separate budget. **Poland** and **Portugal** allocate to judicial training a budget almost identical (slightly lower than 16 500 000 €), but in **Poland**, only one-third of it is allocated as a share of the court budget, while in **Portugal** a trend towards an equal distribution can be noted. In **Italy**, the budget for judicial training (10 793 809 €) is almost entirely allocated to a separate budget.

**Table 3.41 Evolution of the approved court budget allocated to training between 2010 and 2016 (Q6)**

States / Entities	Annual approved court budget allocated to training				Evolution
	2010	2012	2014	2016	
Albania	33 069 €	26 000 €	21 746 €	17 258 €	
Andorra	23 418 €	30 000 €	26 991 €	NA	
Armenia	360 226 €	306 176 €	NA	401 687 €	
Austria	NA	NA	NA	NA	
Azerbaijan	1 293 230 €	2 950 650 €	3 707 657 €	949 772 €	
Belgium	NA	NA	NA	NA	
Bosnia and Herzegovina	152 175 €	106 601 €	89 319 €	NA	
Bulgaria	25 799 €	25 427 €	24 450 €	35 231 €	
Croatia	1 624 490 €	475 248 €	603 604 €	441 551 €	
Cyprus	98 929 €	92 480 €	25 560 €	83 720 €	
Czech Republic	101 057 €	455 033 €	114 013 €	139 504 €	
Denmark	2 012 585 €	2 106 506 €	2 109 194 €	2 152 013 €	
Estonia	214 574 €	177 645 €	285 683 €	303 662 €	
Finland	NA	897 000 €	866 000 €	NA	
France	58 068 026 €	67 420 185 €	89 230 729 €	93 596 131 €	
Georgia	428 188 €	453 189 €	717 702 €	538 604 €	
Germany	56 770 990 €	69 721 400 €	NA	NA	
Greece	NA	NA	NA	NA	
Hungary	247 356 €	318 785 €	NAP	NAP	
Iceland	NA	NA	NA	NA	
Ireland	1 172 000 €	550 000 €	425 000 €	310 000 €	
Italy	755 313 €	229 971 €	228 646 €	256 310 €	
Latvia	211 718 €	249 939 €	309 624 €	288 054 €	
Lithuania	234 882 €	311 973 €	161 091 €	755 369 €	
Luxembourg	NA	NA	NA	NA	
Malta	2 000 €	1 000 €	1 000 €	1 000 €	
Republic of Moldova	201 043 €	25 625 €	31 716 €	37 485 €	
Monaco	NA	NA	80 000 €	58 800 €	
Montenegro	NAP	28 454 €	94 000 €	23 000 €	
Netherlands	20 522 000 €	29 897 000 €	25 004 000 €	20 229 000 €	
Norway	2 470 205 €	3 900 000 €	2 700 000 €	2 600 000 €	
Poland	2 329 000 €	2 822 000 €	5 252 000 €	5 718 000 €	
Portugal	22 594 517 €	7 289 829 €	6 080 423 €	7 090 257 €	
Romania	421 975 €	3 554 195 €	165 410 €	140 935 €	
Russian Federation	7 929 817 €	16 252 538 €	9 791 847 €	5 828 787 €	
Serbia	NAP	NAP	1 021 €	NAP	
Slovakia	1 336 296 €	1 414 040 €	1 169 989 €	0 €	
Slovenia	1 229 741 €	645 870 €	484 628 €	642 715 €	
Spain	NA	NA	NA	17 345 639 €	
Sweden	6 873 752 €	7 706 415 €	6 008 451 €	NA	
Switzerland	3 464 996 €	3 759 005 €	4 864 654 €	5 089 816 €	
The FYROMacedonia	421 588 €	567 970 €	568 228 €	NAP	
Turkey	NA	NA	NA	NA	
Ukraine	NA	NA	933 105 €	16 249 €	
UK-England and Wales	1 000 000 €	1 326 282 €	1 417 565 €	5 692 000 €	
UK-Scotland	1 170 000 €	662 202 €	561 000 €	363 136 €	
Israel	- €	1 329 309 €	2 952 477 €	2 620 621 €	
Morocco	- €	- €	- €	NA	
<b>Average</b>	5 758 675 €	6 298 795 €	4 559 890 €	5 348 303 €	
<b>Median</b>	877 657 €	558 985 €	522 814 €	382 412 €	
<b>Minimum</b>	2 000 €	1 000 €	1 000 €	- €	
<b>Maximum</b>	58 068 026 €	69 721 400 €	89 230 729 €	93 596 131 €	

Some States and entities have a training institutions with a separate budgets not included in the budget of courts. For full overview on the training budget in 2016 see table 3.40 above.

**Table 3.42 Evolution of the approved court budget allocated to training in local currency between 2010 and 2016 (Q6)**

States / Entities	Annual approved court budget allocated to training in local currency				Evolution
	2010	2012	2014	2016	
Albania	4 588 985	3 615 040	3 044 005	2 329 830	
Armenia	173 326 342	147 319 644	NA	205 744 081	
Azerbaijan	1 365 651	3 003 762	3 530 431	1 770 755	
Bosnia and Herzegovina	304 350	208 493	174 693	NA	
Bulgaria	50 458	49 731	47 820	68 906	
Croatia	11 995 717	3 586 504	4 622 223	3 337 150	
Czech Republic	2 532 488	11 439 530	3 161 010	3 769 398	
Denmark	14 999 997	15 715 377	15 699 996	16 000 001	
Georgia	1 015 148	989 991	1 642 174	1 504 860	
Iceland	NA	NA	NA	NA	
Lithuania	811 001	1 077 180	556 215	NAP	
Republic of Moldova	3 237 697	409 915	602 496	783 043	
Norway	19 786 342	28 538 250	24 435 540	23 541 180	
Poland	9 223 539	11 536 900	22 385 600	25 273 560	
Romania	1 808 078	15 692 837	741 384	640 000	
Russian Federation	328 989 076	653 816 850	494 096 600	431 685 211	
Serbia	NAP	NAP	123 498	NAP	
Sweden	61 520 080	66 034 729	56 673 512	NA	
Switzerland	4 332 631	4 537 871	5 851 692	5 456 792	
The FYROMacedonia	25 759 027	34 930 155	34 946 022	NAP	
Turkey	NA	NA	NA	NA	
Ukraine	NA	NA	17 728 995	461 797	
UK-England and Wales	850 600	1 081 530	1 104 000	4 885 444	
UK-Scotland	995 202	539 999	436 907	311 680	
Israel	0	6 540 998	13 949 273	10 597 267	
Morocco	0	0	0	NA	
<b>Average</b>	33 482 565 €	49 895 055 €	32 933 563 €	42 797 864 €	
<b>Median</b>	3 785 164 €	4 076 455 €	3 161 010 €	3 337 150 €	
<b>Minimum</b>	50 458 €	49 731 €	47 820 €	68 906 €	
<b>Maximum</b>	328 989 076 €	653 816 850 €	494 096 600 €	431 685 211 €	

In **Cyprus**, the very significant increase in the share of court budget allocated to judicial training between 2014 and 2016 may be partially explained by the end of the global austerity measures adopted over the years until 2014. The increase of the court budget allocated to judicial training is also considerable in **UK-England and Wales**, **Lithuania** and **Republic of Moldova**. In **UK-England and Wales**, the increase in the training budget is even higher where expressed in local currency: it can be explained by the need to train most of the court staff across the country on how to use the new IT systems that were being developed to digitise the courts. As regards the impressive increase in the budget noted in the **Republic of Moldova**, according to the information provided by the comment, it may be explained as a consequence of the Action Plan for the implementation of the Justice Sector Strategy for 2011-2016.

In **France**, the increasing rise of budget allocated to judicial training may be explained firstly by the massive increase in recruitment, secondly by the extension also to non-judicial staff of the training provided by the National School for the Judiciary. **Italy** explains that the increase in training expenses between 2014 and 2016 was intended to the training of new non-judge staff who joined the Ministry of Justice from other administrations. In **Romania**, despite the decrease in the share of the court budget allocated to training, an overall increase in the total training budget may be noted in 2016 due to the significant rise in the participation in training courses.

In **Georgia**, the share of court budget allocated to judicial training decreased between 2014 and 2016, but it should be taken into account that only in 2014 the budget allocated to the High School of Justice increased as a result of additional resources invested from special funds. In **Montenegro**, the important decrease in the budget noted between 2014 and 2016 is consequential to the allocation of additional resources to the functioning of the Judicial Training Centre implemented between 2012 and 2014 in order to have an institution independent from the Supreme Court. **Russian Federation** explains that the decrease in the court budget allocated to training is the outcome of a spending review on travel and accommodation expenses.

Finally, some States affirm their readiness to accord a high budgetary priority to judicial training in 2017. This is the case of **Israel**, in spite of the decrease in the budget noted between 2014 and 2016.

### 3.3.2 Ethics of judges and prosecutors

There is no evaluation question on the specific subject of ethics. However, some States and entities mention it in their comments. The theme of ethics is addressed at three different levels: the development of standards, recruitment and training. In **Bosnia and Herzegovina**, the powers of the High Council of Justice extend to a reflection on a code of ethics and procedures; it supervises the training of judges and prosecutors. An ethics commission is involved in the recruitment of judges in **Bulgaria**. **Latvia** has a specific institution in charge of training judges, the Judicial Training Centre, which offers training each year in ethics, openness, competence and impartiality. **Slovenia** offers training in the field of ethics to judges at the Judicial Training Centre.

### 3.3.3 Liability of judges and prosecutors

Some States and entities specify the mechanisms of professional responsibility of judges and prosecutors.

While the principle of non-removability is, of course, widely recognised, there are exceptions to this principle and all States list the grounds for suspension or dismissal of judges. These reasons are either explained in the actual text of the Constitution or in legislative provisions. When the suspension is made on disciplinary grounds, it is in principle a Superior Council of Justice or equivalent, in any case a body whose independence and impartiality are guaranteed, which will pronounce this sanction, following a procedure offering a series of safeguards.

In **Andorra**, the major role of the High Council of Justice is not to renew a judge's mandate if the person concerned has been disciplined for two serious or very serious offenses. A Supreme Council of Justice was created in **Armenia** in 2015, but seems to have no disciplinary powers over magistrates. In **Bosnia and Herzegovina**, it appears that the High Council of Justice exercises disciplinary authority essentially with regard to prosecutors and not with regard to judges. The Council of Justice has a traditional disciplinary power over judges in **Croatia**, since it can dismiss a judge from his or her duties in the event of a particularly serious disciplinary breach. A judge may be removed from office in the event of improper conduct or serious incapacity, but it is not clear whether such dismissal is the responsibility of the High Council of Justice in **Cyprus**. In the **Czech Republic**, the dismissal of a judge is a possible disciplinary sanction, but it is not pronounced by a higher council since it does not exist in that country. It is the Special Court of Accusation and Revision that can dismiss a judge in **Denmark** for a serious breach, for a serious physical problem or in case of dementia. The Disciplinary Chamber of Judges may also dismiss a judge in **Estonia**; the procedure is complex for a judge who seems unable to perform his or her duties, with an intervention by the Supreme Court bench. In **France**, it is before the Superior Council of Magistracy that all disciplinary proceedings for judges take place; thus the sanctions of reassignment and withdrawal of the functions, which can lead to the transfer of a judge, can be pronounced only at the end of the disciplinary procedure provided for by the law and by the Superior Council of the Judiciary in its training for judges. The procedure is contradictory and its decisions are subject to appeal before the Council of State. An impeachment procedure may be instituted against a judge in **Germany** only before the Federal Constitutional Court; but disciplinary proceedings are instituted against the judges according to the German judicial law. Disciplinary sanctions that may go as far as dismissal are possible in **Greece**, the dismissal can be pronounced for professional incompetence. In **Iceland**, a judge who does not assume the functions of managing a court can only be dismissed by a court decision (Art. 61 of the Constitution). Another process is in force in **Ireland**, where a judge can only be dismissed after a resolution passed by both Chambers of Parliament for incapacity or misconduct. The dismissal is a disciplinary sanction that can be imposed against a judge who

discredited the function by his or her behaviour in **Lithuania**. The sanction of dismissal can only be pronounced by the Superior Court of Justice in **Luxembourg**. A quasi-judicial procedure may be brought against a judge in **Malta** to identify the charges against him or her and possibly dismiss him or her, following a vote of the Chamber of Representatives by a two-thirds majority. Various sanctions are taken by the High Council of Justice in **the Republic of Moldova** with regard to judges. In **Monaco**, the disciplinary power over magistrates is exercised by the High Council of the Judiciary, on referral to the Director of Judicial Services. It may impose the sanctions of automatic retirement and dismissal which entail the loss of the status of magistrate. The Judicial Council also exercises disciplinary power over judges in **Montenegro**. It is a procedure before the National Council of Justice which leads to impose a disciplinary sanction on a judge in **Poland**. In **Romania** a judge can be dismissed for professional incompetence or as a disciplinary sanction, which is also the case in **Serbia**. It is a Disciplinary Chamber that pronounces the dismissal of a judge in **Slovakia** following a conviction for a serious offense. **Spain** has a three-point system: the offenses are non-serious, serious or very serious. Revocation is also a disciplinary sanction in **Sweden**. The cases in which a judge can be dismissed in **Ukraine** are specified in the amendments to the Constitution.

The States and entities' comments do not always make it possible to distinguish the professional liability of prosecutors from that of judges. Some States, however, specify the mechanisms of professional liability of prosecutors. **Albania** states that a prosecutor is relieved of his or her duties when he or she is punished by a judicial decision for the commission of a criminal offense; following a disciplinary measure; he or she is deemed incompetent in accordance with the procedure laid down by law. In **Belgium**, the law provides that the disciplinary measure of dismissal can only be used in cases where a serious disciplinary offense is found and where the seriousness of the offense clearly shows that the offender is unfit or unworthy to continue to perform his or her duties. **Bosnia and Herzegovina** clarifies that the High Council of the Judiciary has the following powers: to receive complaints against prosecutors, conduct disciplinary proceedings, determine disciplinary liability and impose disciplinary measures on prosecutors; decide on appeals in disciplinary proceedings; decide on the suspensions of prosecutors; decide on incompatibility issues of other functions performed by prosecutors. In **Germany**, the service of a Prosecutor General ends if a disciplinary measure of dismissal from public service is imposed on the Prosecutor General for a serious offense committed in the performance of his or her duties. The service of a public prosecutor ends, for example, with a legally binding criminal judgment in which the public prosecutor has been sentenced to at least one year imprisonment for an intentional offense of closure. In **Italy**, a public prosecutor may be dismissed following disciplinary proceedings instituted by the Prosecutor General of the Supreme Court or at the request of the Minister of Justice. If charges are laid, the Disciplinary Section of the High Council of the Judiciary hears and decides the case, the proceedings are of a judicial nature, the right of defense is guaranteed at all stages and the Code of Criminal Procedure (as in force prior to 1989) applies. The disciplinary decision may be appealed to the Civilian Joint Chambers of the Supreme Court. In **Montenegro**, the public prosecutor is removed from office for committing the most serious disciplinary offense if: 1) he or she is convicted of an offense that renders him or her unworthy to exercise the function of prosecutor; 2) he or she performs a function of prosecutor in an unprofessional or negligent way.

### **Trends and conclusions**

A judge, as well as a prosecutor, can thus be dismissed in case of particularly serious misconduct and this dismissal is usually the result of disciplinary proceedings before an institution with all guarantees of impartiality. Similarly, a transfer can be decided by this institution for a disciplinary reason, the judge or the prosecutor, having obviously been invited to explain. Nevertheless, it is essential that the sanctions measures be pronounced by an independent body according to rules that very strictly guarantee the requirements of impartiality.

### 3.4 Other court staff

Having competent staff with defined roles and a recognised status alongside judges is an essential precondition for the efficient functioning of the judicial system.

As in the previous reports, a distinction is made between five types of non-judge staff:

- the “**Rechtspfleger**” function, which is inspired by the German and Austrian systems, is, according to the European Union of *Rechtspfleger* (EUR), an independent judicial body, anchored in the constitution and performing the tasks assigned to it by law; the *Rechtspfleger* does not assist the judge, but works alongside the latter and may carry out various legal tasks, for example in the areas of family or succession law; he/she also has the competence to make judicial decisions independently on granting nationality, payment orders, execution of court decisions, auctions of immovable goods and enforcement of judgments in criminal matters; he/she is finally competent to undertake administrative judicial tasks; the *Rechtspfleger*, to a certain extent, falls between judges and non-judge staff, such as registrars;
- non-judge staff whose task is to assist judges directly. Both judicial advisors and registrars assist judges in their judicial activities (hearings in particular) and may have to authenticate acts;
- staff responsible for various administrative matters and for court management;
- technical staff responsible for IT equipment, security and cleaning;
- other type of non-judge staff.

The distinction between staff attached to judges and staff attached to prosecutors is not always possible, particularly in States and entities where all or part of the services attached to the courts and the public prosecutor's office are common.

#### 3.4.1 Staff assigned to judges

Concerning non-judge staff per professional judge, the figures show fairly high stability; only **Greece** is in a special situation, probably due to the economic and financial crisis.

Table 3.43 Non-judge staff per number of professional judges between 2010 and 2016 (Q46, Q52)

States / Entities	Number of non-judge staff per professional judge				Variation		
	2010	2012	2014	2016	2012 - 2014	2012 - 2016	2014 - 2016
Albania	2,1	2,1	2,4	2,5	11%	18%	6%
Andorra	4,7	4,4	4,4	4,1	-1%	-8%	-7%
Armenia	2,8	2,8	10,3	10,1	266%	260%	-2%
Austria	3,1	3,0	2,9	2,3	-3%	-23%	-20%
Azerbaijan	3,8	3,9	4,3	5,1	12%	33%	19%
Belgium	3,5	3,4	3,3	3,2	-3%	-8%	-4%
Bosnia and Herzegovina	3,2	3,2	3,1	3,1	-3%	-3%	0%
Bulgaria	2,7	2,7	2,7	2,7	1%	2%	1%
Croatia	3,7	3,2	3,2	3,2	0%	0%	0%
Cyprus	4,5	4,1	4,6	3,9	12%	-4%	-15%
Czech Republic	3,1	3,0	3,1	3,2	3%	8%	5%
Denmark	NA	4,9	4,7	4,4	-5%	-10%	-5%
Estonia	4,4	4,2	4,4	3,8	5%	-10%	-14%
Finland	2,4	2,3	2,2	2,0	-3%	-10%	-7%
France	3,0	3,1	3,2	3,2	4%	5%	1%
Georgia	6,9	4,8	4,6	5,1	-3%	6%	10%
Germany	2,7	2,7	2,8	2,7	2%	-1%	-3%
Greece	2,0	2,1	2,5	1,5	19%	-26%	-38%
Hungary	2,7	2,9	2,9	2,8	-3%	-3%	0%
Iceland	NA	0,8	NA	1,1	NA	42%	NA
Ireland	7,0	6,6	5,8	6,0	-12%	-8%	4%
Italy	NA	3,7	3,2	3,3	-15%	-11%	5%
Latvia	3,4	3,7	3,2	3,1	-12%	-14%	-3%
Lithuania	3,4	3,4	3,5	3,5	1%	3%	2%
Luxembourg	NA	NA	1,1	1,1	NA	NA	0%
Malta	9,6	9,0	9,5	8,5	5%	-5%	-10%
Republic of Moldova	3,5	3,4	4,9	4,4	42%	29%	-10%
Monaco	1,1	1,1	1,3	1,2	13%	10%	-3%
Montenegro	4,1	4,0	3,4	3,0	-16%	-25%	-10%
Netherlands	2,6	2,6	3,1	3,1	21%	21%	0%
Norway	1,5	1,5	1,5	1,6	5%	9%	4%
Poland	3,4	4,0	4,1	4,3	2%	7%	5%
Portugal	3,4	3,0	2,9	2,8	-6%	-6%	-1%
Romania	2,1	2,2	2,2	2,2	3%	3%	0%
Russian Federation	3,0	2,9	3,7	3,7	29%	29%	0%
Serbia	4,5	3,5	3,7	3,5	4%	-3%	-7%
Slovakia	3,3	3,4	3,4	3,4	-1%	0%	1%
Slovenia	3,2	3,4	3,6	3,8	6%	10%	4%
Spain	NA	8,7	9,1	9,2	5%	6%	1%
Sweden	NA	4,6	4,2	4,1	-9%	-11%	-1%
Switzerland	3,8	3,4	3,6	3,6	5%	6%	1%
The FYROMacedonia	3,5	3,5	3,7	3,9	6%	13%	6%
Turkey	2,8	NA	NA	NA	NA	NA	NA
Ukraine	NA	4,2	NA	3,8	NA	-10%	NA
UK-England and Wales	10,3	8,6	9,4	9,0	10%	4%	-5%
UK-Scotland	8,1	7,4	8,0	7,7	9%	5%	-4%
Israel	..	5,8	5,5	5,2	-5%	-9%	-4%
Morocco	..	..	..	3,2	..	..	..
<b>Average</b>	3,8	3,8	4,0	3,9	10%	7%	-2%
<b>Median</b>	3,4	3,4	3,4	3,4	3%	1%	0%
<b>Minimum</b>	1,1	0,8	1,1	1,1	-16%	-26%	-38%
<b>Maximum</b>	10,3	9,0	10,3	10,1	266%	260%	19%

The same is valid for the variation in the number of non-judge staff per 100 000 inhabitants.

**Table 3.44 Non-judge staff per 100 000 inhabitants between 2010 and 2016 (Q1, Q52)**

States / Entities	Number of non-judge staff per 100 000 inhabitants				Variations		
	2010	2012	2014	2016	2012 - 2014	2012 - 2016	2014 - 2016
Albania	24,3	28,7	29,7	31,6	3,5%	10,1%	6,4%
Andorra	132,9	139,0	136,5	145,0	-1,8%	4,3%	6,3%
Armenia	18,9	20,4	77,5	78,5	279,7%	284,5%	1,3%
Austria	55,3	54,8	54,8	63,4	0,0%	15,8%	15,7%
Azerbaijan	25,5	25,0	27,2	26,9	8,9%	7,5%	-1,3%
Belgium	52,0	48,9	47,2	44,6	-3,5%	-8,7%	-5,4%
Bosnia and Herzegovina	77,7	80,4	81,0	89,9	0,7%	11,8%	11,1%
Bulgaria	79,7	82,6	83,5	86,9	1,1%	5,3%	4,1%
Croatia	157,4	146,3	143,4	140,3	-1,9%	-4,1%	-2,2%
Cyprus	57,5	49,0	52,2	51,5	6,6%	5,2%	-1,3%
Czech Republic	90,3	86,9	88,4	91,8	1,8%	5,6%	3,8%
Denmark	NA	32,5	31,0	28,6	-4,7%	-12,2%	-7,8%
Estonia	72,8	74,4	77,4	66,7	4,1%	-10,4%	-13,9%
Finland	42,5	40,8	39,5	39,4	-3,2%	-3,4%	-0,2%
France	32,5	33,2	33,7	33,9	1,6%	2,2%	0,6%
Georgia	36,3	25,7	31,4	37,8	22,3%	47,2%	20,3%
Germany	65,6	66,9	66,0	64,7	-1,3%	-3,2%	-1,9%
Greece	59,8	48,2	50,5	39,3	4,8%	-18,4%	-22,2%
Hungary	77,2	82,2	81,4	81,7	-0,9%	-0,6%	0,4%
Iceland	NA	13,4	NA	17,4	NA	30,5%	NA
Ireland	22,4	20,6	20,0	20,9	-2,6%	1,4%	4,1%
Italy	NA	39,7	36,0	35,0	-9,2%	-11,9%	-3,0%
Latvia	71,8	78,6	78,8	80,3	0,3%	2,2%	1,9%
Lithuania	81,9	87,2	89,3	96,2	2,4%	10,3%	7,8%
Luxembourg	NA	NA	34,8	33,9	NA	NA	-2,7%
Malta	89,6	85,4	90,6	87,0	6,0%	1,8%	-4,0%
Republic of Moldova	44,1	42,5	52,8	51,9	24,2%	22,3%	-1,6%
Monaco	105,9	116,2	121,7	122,5	4,7%	5,4%	0,7%
Montenegro	171,8	169,5	137,7	154,5	-18,7%	-8,8%	12,2%
Netherlands	40,1	37,3	43,9	42,8	17,9%	15,0%	-2,4%
Norway	16,2	16,3	16,7	17,1	2,8%	5,3%	2,5%
Poland	94,1	106,0	107,9	112,3	1,8%	6,0%	4,1%
Portugal	62,3	58,3	54,9	54,8	-5,7%	-5,9%	-0,2%
Romania	39,6	43,6	45,5	52,4	4,5%	20,3%	15,1%
Russian Federation	67,3	66,6	65,7	66,8	-1,4%	0,3%	1,8%
Serbia	151,4	143,7	140,3	132,7	-2,3%	-7,6%	-5,4%
Slovakia	82,2	82,8	82,4	82,5	-0,5%	-0,5%	0,1%
Slovenia	159,7	161,7	162,8	161,2	0,6%	-0,3%	-1,0%
Spain	NA	97,3	104,6	105,7	7,5%	8,7%	1,1%
Sweden	NA	54,1	49,2	48,6	-9,1%	-10,2%	-1,2%
Switzerland	55,5	53,6	55,7	53,5	4,1%	-0,1%	-4,0%
The FYROMacedonia	111,9	113,1	112,6	107,3	-0,5%	-5,2%	-4,7%
Turkey	30,3	NA	NA	NA	NA	NA	NA
Ukraine	NA	72,1	NA	55,2	NA	-23,5%	NA
UK-England and Wales	37,1	30,6	31,1	27,0	1,8%	-11,7%	-13,3%
UK-Scotland	28,7	25,6	26,6	28,5	4,0%	11,3%	7,0%
Israel		47,1	45,4	44,7	-3,6%	-5,1%	-1,5%
Morocco				26,6			
<b>Average</b>	69,8	67,8	69,6	68,7	8,3%	8,9%	0,7%
<b>Median</b>	62,3	56,5	55,7	55,2	1,4%	2,0%	0,1%
<b>Minimum</b>	16,2	13,4	16,7	17,1	-18,7%	-23,5%	-22,2%
<b>Maximum</b>	171,8	169,5	162,8	161,2	279,7%	284,5%	20,3%

Some European States have set up *Rechtspfleger* and there is the question of creating a body of this nature at European level. According to the "White paper for a European *Rechtspfleger*" published in 2016 by the European Union of *Rechtspfleger* (EUR) "*these are judicial civil servants, who in the courts, are responsible for judicial tasks alongside judges and prosecutors, support for judicial activity and management of the courts. The term *Rechtspfleger* corresponds to the professional name of the German and Austrian colleagues who exercise judicial functions in the courts as a result of the transfer of duties of the judges and which makes this profession a full participant in Justice*". The extension of this function to countries in which it does not currently exist would reduce the workload of judges, by entrusting the litigation related to certain cases to these personals.

States using *Rechtspfleger* are: **Andorra, Austria, Bosnia and Herzegovina, Croatia, Czech Republic, Denmark, Estonia, Georgia, Germany, Hungary, Iceland, Ireland, Poland, Slovakia, Slovenia, Spain and Israel** (17 States).

Other non-judge staff have more dispersed missions. **Armenia** states that the increase in the number of technical staff is due to the setting up of 7 administrative courts and that the data provided in 2012 included only staff who directly assist judges, contrary to the next data including also court officials, judicial discipline officials and technical service providers. In **Austria** the administrative courts created in 2014 are taken into account for the first time. **Azerbaijan** specifies that the creation of the new post of "judge assistant", the increase in the number of computer consultants in the courts, etc., are part of measures to increase the productivity of judges resulting in an increase in the number of non-judge employees from 3 to 4 per professional judge. The increase in the number of staff responsible for the various administrative tasks and court management is due in particular to the increase in the number of officers responsible for the implementation of the e-court system. In **Croatia**, the total number of non-judicial employees is the result of a deduction and includes only active staff. Thus, the total does not include staff on leave, suspended after disciplinary proceedings, transferred to other State bodies (e.g. the Ministry of Justice or the Judicial Academy). The reason for the fluctuation and differences in the number of *Rechtspflegers* is that they work for 2 years, are then extended for 5 years before obtaining a permanent position or not. For **Cyprus**, the total number of non-judges includes clerical and bailiffs. For the **Czech Republic**, variations in the data for the different categories of non-judge are due to the difference in reporting methodology used for 2014 and previous evaluations. In **Denmark**, the position of *Rechtspfleger* seems similar to that of deputy judge in the Danish courts. It is clarified that the gap between the 2014 data and the 2016 data is due to an error in the 2014 data. **Georgia** indicates that due to the adoption of amendments to the legislation regarding the questioning of witnesses in court and also due to the very large increase in the number of cases received in general, the number of non-judges increased in 2016. **Germany's** data includes the number of full-time equivalent employees on unpaid leave for training / continuing education purposes, staff released to work in staff representative bodies, as representatives of staff with disabilities and as Gender Equality Commissioners employed in a special facility, employed as reception staff / security, used by the court telephone switchboard, carpool staff, cleaners and other non-salaried staff. **Hungary** includes the secretaries of the Court who are similar employees to the *Rechtspfleger*. These are lawyers who, after graduating from a law school, have passed the bar exam (which requires at least 3 years of professional practice). They are entitled to exercise the functions of judge in cases specifically defined by law. When a court secretary deals with a case, he or she enjoys the same independence as a judge. **Italy** states that the category "other non-judge staff" includes assistants, receptionists, porters and other legal staff. In general, it should be emphasized that the high percentage of "other non-judge staff" is due to a very strict interpretation of the definition of the main categories. For **Latvia**, the data provided for 2014, 2015 and 2016 show a decreasing trend in the number of technical staff, in particular as regards women, but no explanation of these variations has been given so far. **Latvia** also states that general administrative tasks for ordinary courts are centralized at the level of the Prosecutor General's Office. The same goes for the technical staff. Among the 192 people assisting judges, 117 are women. **Lithuania** reports that the number of technical staff has decreased while, at the same time, the number of employees assisting judges has increased. For **Malta**, staff members who are not judges include the Heads of Civil Courts and Personnel, the Head of the Criminal Court and its staff, the Registry of the Criminal Court, the Chief Marshal and Chief, judicial drivers and staff of "Subasti". The **Republic of Moldova** explains that the data discrepancies can be explained by the turnover in of personnel, in particular due to low salaries. In **Montenegro**, this category includes legal advisers, secretaries, technical assistants, delivery agents and accountants. In **Poland**, the other non-judge staff members include 5 859 persons including 5 212 professional probation officers and 647 employees on the Judicial Expert Advisory Team. In **Romania**, the number indicated for the category "non-judicial staff assisting judges" includes clerks; the number indicated for "administrative staff" refers to registration clerks, document clerks, statistical clerks, archivists clerks and public servants; the number

indicated for "technical staff" includes IT staff, contract staff and other staff (drivers, bailiffs, procedural staff, etc.). The category "other" includes the assistant magistrates, the judicial assistants and the advisers on probation. **Slovakia** states that the Ministry of Justice classifies staff members who are not judges into different categories that differ from the categories listed in the CEPEJ questionnaire. For the purposes of this questionnaire, the figures include *Rechtspflegers* (superior bailiffs), district and regional courts, court assistants (clerks) and court secretaries. At the Supreme Court level, it includes judicial assistants (lawyers assisting judges in legal research, drafting decisions and legal support) and clerks. The rest of the total number of court employees who are not judges is also included in this category. These include officials responsible for court administration, supervision of staff, contacts with the public (information centre, filing office), archives, technical staff, drivers, etc. In **Slovenia**, the definitions of the categories are as follows: 1. The category "*Rechtspfleger*" only includes staff (legal assistants and legal advisers) with autonomous competence to adopt final decisions (decisions on the merits of the case), explicitly fixed in the procedural laws. 2. The category "non-judge staff" includes staff whose duties are generally determined by the Court Law. These are the judicial assistants (filing of applications and statements of the parties to the file and, by order of a judge, performing less demanding tasks related to the preparation of the trial or other procedural acts, to the calculation of costs, the preparation of draft decisions and the performance of other duties in judicial proceedings under the orders of a judge) and judicial advisers (performance of work related to the examination of parties, witnesses and experts outside the main hearings), conducting more complex preparatory work for hearings, writing reports at panel meetings, drafting decisions, conducting hearings under the direction of a judge and performing other work under the direction of a judge and a judge's order). All the other staff not mentioned above and not corresponding to 4) "Technical staff" is included in 3) "Administrative staff". The latter includes, in addition to the administration staff, the administrative support staff. **Slovenia** further specifies that between the years, court staff may be assigned to different departments and tasks and, therefore, the variation of staff categories and the ratio of men to women within categories may change, even if no major hiring or firing for different categories of court personnel has taken place. In **Spain**, the data for other non-judge staff members includes judicial officers who are responsible for processing cases, acts of communication and other tasks and are divided into three categories (*Auxilio Judicial, Tramitación Procesal, Gestión Procesal*). Forensic scientists are a special body (not included in the figure provided for this question). **Switzerland** includes trainees, auditors, administrative staff specialising in issues of protection of adults and children, specialised staff of prosecution offices and specifies that the decrease in the number of other non-judges is explained by the fact that this number is dependent on the commitment policy within the judicial authorities. **UK-England and Wales** cannot provide a breakdown of the workforce as described by the CEPEJ. However, they indicate a breakdown between gender, for all categories: men = 29 %, women = 71 %. **Israel** includes the Judicial Guard, a protective security unit under the auspices of the judiciary, which is responsible for maintaining order in the courts and judges' security. Other services, such as maintenance and cleaning, have been delegated to private providers.

It is worth noting the comment from **Estonia** which shows the interest of an effort for the recruitment of such staff while a downward trend is emerging. A pilot project was set up in 2013 in a county court to provide each judge with a personal legal assistant. After the first year of the pilot project, the average procedural time in this court's civil cases increased from 201 days to 160 days; after the second year, the average procedure time fell to 132 days. In 2015, the project was extended to all courts of first and second instance. There are also efforts made by States and entities on new technologies: in 2015, a reform of the Department of Registration and Land Registration was conducted, during which the four districts were grouped together at the County Court of Tartu, thus creating a land registration department and a registry office. The reform resulted in significant optimisation of work processes and files, which led to a reduction of staff working in the registers.

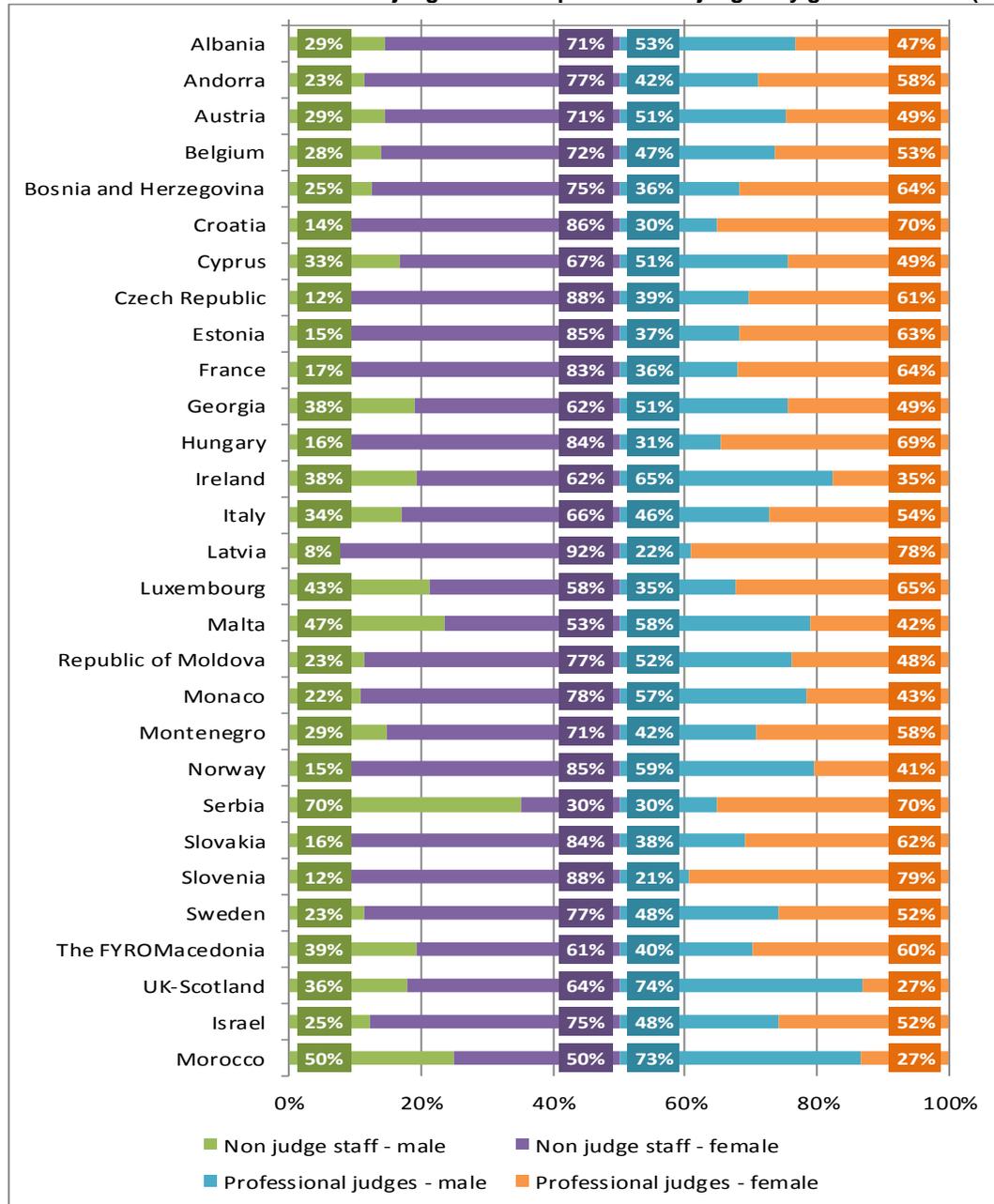
**Table 3.45 Number of non-judge staff per 100 000 inhabitants by category in 2016 (Q1, Q52)**

States / Entities	Total non-judge staff working in courts (1 + 2 + 3 + 4 + 5)	1. Rechtspfleger (or similar bodies)	2. Non-judge staff whose task is to assist the judges	3. Staff in charge of different administrative tasks and of the management of the courts	4. Technical staff	5. Other non-judge staff
Albania	31,6	NAP	15,1	4,8	8,6	3,0
Andorra	145,0	26,0	90,3	21,9	6,8	NAP
Armenia	78,5	NAP	22,0	12,4	18,6	25,4
Austria	63,4	9,6	5,7	7,8	0,6	39,8
Azerbaijan	26,9	NAP	11,2	11,4	4,3	NAP
Belgium	44,6	NAP	17,2	20,6	6,8	NAP
Bosnia and Herzegovina	89,9	2,7	34,7	43,0	9,5	NAP
Bulgaria	86,9	NAP	63,1	16,4	6,8	0,7
Croatia	140,3	12,6	99,3	12,0	16,4	NAP
Cyprus	51,5	NAP	16,3	15,9	15,3	4,0
Czech Republic	91,8	22,8	42,5	19,8	6,2	0,6
Denmark	28,6	4,8	0,2	22,4	1,1	0,1
Estonia	66,7	3,9	46,7	6,2	6,7	3,1
Finland	39,4	NAP	NA	NA	NA	NA
France	33,9	NAP	28,2	3,9	1,4	0,4
Georgia	37,8	0,2	15,1	2,3	20,2	NAP
Germany	64,7	10,6	34,2	7,9	2,3	9,7
Greece	39,3	NAP	NA	NA	NA	NA
Hungary	81,7	8,4	9,2	NA	NA	64,2
Iceland	17,4	5,3	NAP	NA	NA	NA
Ireland	20,9	0,5	16,9	3,4	0,0	NAP
Italy	35,0	NAP	21,9	6,7	0,6	5,7
Latvia	80,3	NAP	54,4	18,0	7,2	0,7
Lithuania	96,2	NAP	53,6	30,0	9,6	3,1
Luxembourg	33,9	NAP	22,2	11,2	0,5	NAP
Malta	87,0	NAP	51,5	13,4	1,6	20,4
Republic of Moldova	51,9	NAP	27,2	16,3	8,4	NAP
Monaco	122,5	NAP	53,3	37,3	26,6	5,3
Montenegro	154,5	NAP	101,4	NA	NA	53,1
Netherlands	42,8	NAP	NA	NA	NA	NA
Norway	17,1	NAP	NA	NA	NA	NA
Poland	112,3	5,6	63,0	20,0	8,5	15,2
Portugal	54,8	NAP	51,8	0,9	2,0	0,1
Romania	52,4	NAP	31,5	8,3	9,3	3,4
Russian Federation	66,8	NAP	33,7	18,8	14,3	NAP
Serbia	132,7	NAP	55,6	47,7	29,4	NAP
Slovakia	82,5	17,2	39,4	NA	NA	25,8
Slovenia	161,2	25,0	40,0	86,9	9,3	NAP
Spain	105,7	9,4	NAP	NAP	NAP	96,3
Sweden	48,6	NAP	33,4	7,1	1,0	7,1
Switzerland	53,5	NAP	21,8	27,8	1,2	2,7
The FYROMacedonia	107,3	NAP	26,6	63,1	8,1	9,5
Turkey	NA	NAP	NA	NA	NA	NA
Ukraine	55,2	NAP	14,9	36,0	4,3	NA
UK-England and Wales	27,0	NAP	NA	NA	NA	NA
UK-Scotland	28,5	NAP	25,6	2,9	NAP	NAP
Israel	44,7	0,8	9,0	22,4	4,2	8,3
Morocco	26,6	NAP	NA	NA	NA	NA
<b>Average</b>	<b>68,7</b>	<b>10,3</b>	<b>36,6</b>	<b>19,6</b>	<b>8,0</b>	<b>16,0</b>
<b>Median</b>	<b>55,2</b>	<b>8,9</b>	<b>32,5</b>	<b>15,9</b>	<b>6,8</b>	<b>5,3</b>
<b>Minimum</b>	<b>17,1</b>	<b>0,2</b>	<b>0,2</b>	<b>0,9</b>	<b>0,0</b>	<b>0,1</b>
<b>Maximum</b>	<b>161,2</b>	<b>26,0</b>	<b>101,4</b>	<b>86,9</b>	<b>29,4</b>	<b>96,3</b>

**Table 3.46 Number of non-judges by gender and distribution of the total across categories in 2016 (Q52)**

States/entities	Total non-judge staff working in courts (1 + 2 + 3 + 4 + 5)	Gender		Categories of non-judge staff				
		Male	Female	1. Rechtspfleger (or similar bodies)	2. Non-judge staff whose task is to assist the judges	3. Staff in charge of different administrative tasks and of the management of the courts	4. Technical staff	5. Other non-judge staff
Albania	908	29%	71%	NAP	48%	15%	27%	10%
Andorra	106	23%	77%	18%	62%	15%	5%	NAP
Armenia	2 344	NA	NA	NAP	28%	16%	24%	32%
Austria	5 544	29%	71%	15%	9%	12%	1%	63%
Azerbaijan	2 610	NA	NA	NAP	42%	42%	16%	NAP
Belgium	5 054	28%	72%	NAP	39%	46%	15%	NAP
Bosnia and Herzegovina	3 156	25%	75%	3%	39%	48%	11%	NAP
Bulgaria	6 174	NA	NA	NAP	73%	19%	8%	1%
Croatia	5 827	14%	86%	9%	71%	9%	12%	NAP
Cyprus	437	33%	67%	NAP	32%	31%	30%	8%
Czech Republic	9 714	12%	88%	25%	46%	22%	7%	1%
Denmark	1 642	NA	NA	17%	1%	78%	4%	0%
Estonia	877	15%	85%	6%	70%	9%	10%	5%
Finland	2 170	NA	NA	NAP	NA	NA	NA	NA
France	22 712	17%	83%	NAP	83%	12%	4%	1%
Georgia	1 405	38%	62%	0%	40%	6%	53%	NAP
Germany	53 181	NA	NA	16%	53%	12%	4%	15%
Greece	4 236	27%	73%	NAP	NA	NA	NA	NA
Hungary	8 003	16%	84%	10%	11%	NA	NA	79%
Iceland	59	NA	NA	31%	NAP	NA	NA	NA
Ireland	975	38%	62%	2%	81%	17%	0%	NAP
Italy	21 182	34%	66%	NAP	63%	19%	2%	16%
Latvia	1 582	8%	92%	NAP	68%	22%	9%	1%
Lithuania	2 740	NA	NA	NAP	56%	31%	10%	3%
Luxembourg	200	43%	58%	NAP	66%	33%	2%	NAP
Malta	383	47%	53%	NAP	59%	15%	2%	23%
Republic of Moldova	1 844	23%	77%	NAP	52%	31%	16%	NAP
Monaco	46	22%	78%	NAP	43%	30%	22%	4%
Montenegro	958	29%	71%	NAP	66%	NA	NA	34%
Netherlands	7 317	NA	NA	NAP	NA	NA	NA	NA
Norway	900	15%	85%	NAP	NA	NA	NA	NA
Poland	43 176	NA	NA	5%	56%	18%	8%	14%
Portugal	5 652	34%	66%	NAP	95%	2%	4%	0%
Romania	10 297	NA	NA	NAP	60%	16%	18%	6%
Russian Federation	98 091	NA	NA	NAP	50%	28%	21%	NAP
Serbia	9 344	70%	30%	NAP	42%	36%	22%	NAP
Slovakia	4 482	16%	84%	21%	48%	NA	NA	31%
Slovenia	3 330	12%	88%	15%	25%	54%	6%	NAP
Spain	49 186	NA	NA	9%	NAP	NAP	NAP	91%
Sweden	4 859	23%	77%	NAP	69%	15%	2%	15%
Switzerland	4 504	29%	71%	NAP	41%	52%	2%	5%
The FYROMacedonia	2 225	39%	61%	NAP	25%	59%	8%	9%
Turkey	NA	NA	NA	NAP	NA	NA	NA	NA
Ukraine	23 492	NA	NA	NAP	27%	65%	8%	NA
UK-England and Wales	15 772	29%	71%	NAP	NA	NA	NA	NA
UK-Scotland	1 540	36%	64%	NAP	90%	10%	NAP	NAP
Israel	3 856	25%	75%	2%	20%	50%	9%	19%
Morocco	9 255	50%	50%	NAP	NA	NA	NA	NA
Average	10 005.2	27%	73%	13%	51%	27%	11%	19%
Median	3 330.0	28%	72%	13%	51%	19%	8%	9%
Minimum	46.0	8%	30%	0%	1%	2%	0%	0%
Maximum	98 091.0	70%	92%	31%	95%	78%	53%	91%

**Table 3.47 Distribution in % of non-judge staff and professional judges by gender in 2016 (Q46, Q52)**



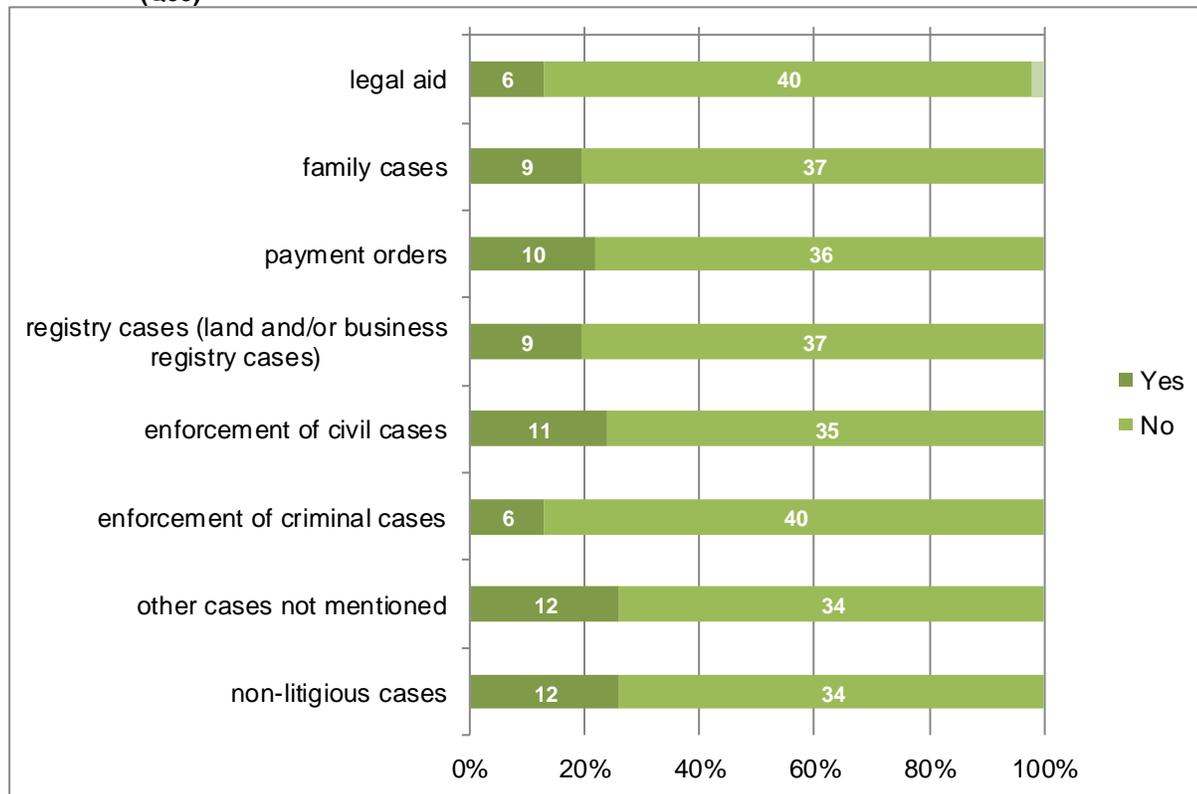
The duties of the *Rechtspfleger* vary. In 6 States, they decide on legal aid (**Andorra, Austria, Germany, Iceland, Poland, Spain**); in 9 States they decide on family matters (**Andorra, Austria, Czech Republic, Germany, Hungary, Iceland, Ireland, Slovakia, Spain**); in 10 States and entities, they rule on orders of payment; in 9 States and entities, they decide on registers; in 11 States and entities, on the preparation of civil cases; in 6, on criminal cases; in 12, on matters of a different nature and in 12 also in gracious cases.

It can be said that **Germany, Austria, Denmark and Spain** involve *Rechtspfleger* in almost all possible fields. In criminal matters in particular, **Germany and Spain** have entrusted *Rechtspfleger* with assignments and they then play a role of true judicial body in the field of execution of sentences, for example. More generally, they take on protection tasks as an independent body (family affairs, guardianship, trusteeship, inheritance, marital property, land register, registers, insolvency and enforcement). In **Spain**, the judicial secretaries (*secretarios judiciales*) have become *Letrados de la Administracion de Justicia* entrusted with enlarged missions in all fields, except in the registers.

Table 3.48 Roles of *Rechtspfleger* (or similar body) in 2016 (Q53)

States / Entities	Rechtspfleger roles								Total number of sub-elements
	legal aid	family cases	payment orders	registry cases (land and/or business registry cases)	enforcement of civil cases	enforcement of criminal cases	other cases not mentioned	non-litigious cases	
Albania									0
Andorra									7
Armenia									0
Austria									6
Azerbaijan									0
Belgium									0
Bosnia and Herzegovina									4
Bulgaria									0
Croatia									1
Cyprus									0
Czech Republic									5
Denmark									1
Estonia									2
Finland									0
France									0
Georgia									2
Germany									8
Greece									0
Hungary									6
Iceland									7
Ireland									3
Italy									0
Latvia									0
Lithuania									0
Luxembourg									0
Malta									0
Republic of Moldova									0
Monaco									0
Montenegro									0
Netherlands									0
Norway									0
Poland									6
Portugal									0
Romania									0
Russian Federation									0
Serbia									0
Slovakia									7
Slovenia									3
Spain									7
Sweden									0
Switzerland									0
The FYROMacedonia									0
Turkey									0
Ukraine									0
UK-England and Wales									0
UK-Scotland									0
Israel									4
Morocco									0
<b>Yes</b>	6	9	10	9	11	6	12	12	
<b>No</b>	40	37	36	37	35	40	34	34	
<b>Total</b>	46	46	46	46	46	46	46	46	

**Figure 3.49 Summary of the different roles of *Rechtspfleger* (or similar body) in 2016 (number of States / entities) (Q53)**



States and entities that have adopted the *Rechtspfleger* make it a real judicial body alongside the judge or magistrate. It is therefore essential, in order to guarantee the effective principle of the separation of powers, that these persons be recruited as true judicial bodies.

**Trends and conclusions:**

The number of States having established a *Rechtspfleger* or equivalent staff is stable. The reforms in the administration of justice, very present in the comments of some countries, do not lead to a definition of the missions of the judge and professions of justice which would make it possible to identify the tasks that may only be carried out by a judge or a prosecutor and what may be carried out by non-judge/prosecutor staff. There is no substantive trend that would bring such a reform in a large number of countries.

The diversity of the tasks entrusted to the *Rechtspfleger* is increasing and several States entrust them with very general missions, in very varied fields; this is essentially the case in **Germany** and **Spain**, but also in **Iceland** and **Slovakia** and to some extent, in **Andorra**.

There is too little data in the specific area of court administration to identify trends. It is certain that several States entrust these personnel with the management of the courts, but the exact extent of this task is not known.

### 3.4.2 Staff assigned to the public prosecution

Table 3.50 Variation in the number of non-prosecutor staff per public prosecutor between 2010 and 2016 (Q55, Q60)

States / Entities	Number of non-prosecutor staff per public prosecutor				Variations		
	2010	2012	2014	2016	2012 - 2014	2012 - 2016	2014 - 2016
Albania	NAP	NA	NA	NA	NA	NA	NA
Andorra	1,7	1,0	1,0	0,8	0%	-20%	-20%
Armenia	NAP	0,5	0,6	0,5	14%	8%	-5%
Austria	1,0	1,1	1,2	1,0	9%	-12%	-19%
Azerbaijan	1,2	0,7	0,7	NA	0%	NA	NA
Belgium	3,3	3,3	2,9	3,0	-11%	-8%	4%
Bosnia and Herzegovina	1,8	2,0	1,7	1,8	-15%	-9%	7%
Bulgaria	NA	2,0	2,0	NA	-2%	NA	NA
Croatia	NA	1,8	1,8	1,6	3%	-9%	-12%
Cyprus	0,9	0,7	0,6	0,6	-14%	-17%	-4%
Czech Republic	1,2	1,2	1,2	1,2	3%	2%	-1%
Denmark	NA	NA	0,7	0,5	NA	NA	-19%
Estonia	0,5	0,5	0,5	0,6	-6%	13%	21%
Finland	0,5	0,4	0,4	0,4	0%	-16%	-16%
France	NA	NA	NA	NA	NA	NA	NA
Georgia	0,7	NA	0,8	0,9	NA	NA	1%
Germany	2,0	2,0	2,2	2,1	11%	6%	-5%
Greece	NA	NA	NA	2,7	NA	NA	NA
Hungary	1,3	1,5	1,5	1,4	-1%	-5%	-4%
Iceland	NAP	NA	NA	NA	NA	NA	NA
Ireland	1,3	0,9	1,0	0,8	10%	-20%	-27%
Italy	4,8	4,7	4,2	4,1	-10%	-13%	-4%
Latvia	1,0	0,9	0,9	0,9	-2%	0%	1%
Lithuania	0,9	0,7	0,8	0,8	17%	17%	0%
Luxembourg	0,8	2,4	2,3	2,4	-2%	3%	6%
Malta	2,3	1,7	1,7	1,2	0%	-27%	-27%
Republic of Moldova	0,6	0,5	0,5	0,5	-15%	-13%	2%
Monaco	1,5	1,0	1,5	1,4	50%	40%	-7%
Montenegro	1,0	1,5	1,5	1,8	-2%	19%	22%
Netherlands	4,9	5,0	4,7	4,0	-7%	-21%	-15%
Norway	NA	NA	NA	NA	NA	NA	NA
Poland	1,3	1,2	1,2	1,3	1%	7,3%	6%
Portugal	1,2	1,1	1,1	1,1	0%	-1%	-1%
Romania	1,3	1,2	1,3	1,2	9%	2%	-6%
Russian Federation	0,4	0,4	NA	NA	NA	NA	NA
Serbia	1,7	1,7	1,8	2,0	10%	22%	11%
Slovakia	0,8	1,0	1,0	1,1	-3%	4%	8%
Slovenia	1,4	1,2	1,4	1,4	18%	14%	-4%
Spain	0,8	1,0	0,8	0,8	-20%	-14%	7%
Sweden	0,4	0,4	0,4	0,5	4%	15,2%	11%
Switzerland	1,7	1,9	1,9	1,9	1%	-3%	-4%
The FYROMacedonia	1,0	1,0	1,2	2,3	28%	137%	86%
Turkey	3,1	3,0	2,5	NA	-15%	NA	NA
Ukraine	NA	NA	0,4	0,4	NA	NA	-15%
UK-England and Wales	1,7	1,5	1,7	1,6	12%	10%	-2%
UK-Scotland	NA	2,1	2,3	1,9	11%	-9%	-18%
Israel		0,9	0,9	0,7	-1%	-24,4%	-24%
Morocco				3,7			
<b>Average</b>	1,5	1,5	1,4	1,4	2%	3%	-1%
<b>Median</b>	1,2	1,2	1,2	1,2	0%	-1%	-4%
<b>Minimum</b>	0,4	0,4	0,4	0,4	-20%	-27%	-27%
<b>Maximum</b>	4,9	5,0	4,7	4,1	50%	137%	86%

These figures show an average decrease over the period 2014-2016 (-1%, the median being -3 %), the largest decrease is – 27 % (Ireland, Republic of Moldova) and the largest increase 86 % (“the former Yugoslav Republic of Macedonia”). The average number of staff assigned to the prosecutor is 1,4 in 2016, the minimum being 0,4 (Finland) and the maximum 4,1 (Italy).

Table 3.51 Variation in the number of non-public prosecutors per 100 000 inhabitants between 2010 and 2016 (Q1, Q52)

States / Entities	Number of non-prosecutor staff per 100 000 inhabitants				Variations		
	2010	2012	2014	2016	2012 - 2014	2012 - 2016	2014 - 2016
Albania	NAP	NA	NA	NA	NA	NA	NA
Andorra	5,9	5,2	6,5	5,5	23,9%	4,3%	-15,8%
Armenia	NAP	5,3	5,8	5,8	10,0%	9,6%	-0,3%
Austria	4,0	4,5	4,8	4,0	5,9%	-12,4%	-17,3%
Azerbaijan	12,9	8,0	7,8	NA	-2,6%	NA	NA
Belgium	25,5	24,2	22,0	22,9	-9,1%	-5,7%	3,7%
Bosnia and Herzegovina	14,3	15,9	16,1	19,3	1,6%	21,9%	20,0%
Bulgaria	NA	41,0	40,5	NA	-1,2%	NA	NA
Croatia	NA	25,7	24,4	23,6	-4,9%	-8,1%	-3,3%
Cyprus	12,4	9,6	8,2	8,4	-14,9%	-12,7%	2,6%
Czech Republic	14,5	13,6	13,8	13,7	1,8%	0,9%	-0,9%
Denmark	NA	NA	8,1	6,5	NA	NA	-19,7%
Estonia	6,0	6,5	6,0	7,4	-7,9%	12,9%	22,6%
Finland	3,1	3,2	2,8	2,4	-10,6%	-23,2%	-14,0%
France	NA	NA	NA	NA	NA	NA	NA
Georgia	5,4	NA	10,0	10,1	NA	NA	0,3%
Germany	12,6	12,9	14,1	14,0	9,9%	8,7%	-1,1%
Greece	NA	NA	NA	14,8	NA	NA	NA
Hungary	22,5	27,1	27,8	27,1	2,6%	0,2%	-2,3%
Iceland	NAP	NA	NA	NA	NA	NA	NA
Ireland	2,3	1,8	2,0	1,6	8,7%	-10,0%	-17,2%
Italy	15,5	15,0	14,6	14,4	-3,0%	-3,9%	-0,9%
Latvia	17,7	19,2	19,6	19,9	1,9%	3,6%	1,7%
Lithuania	23,9	17,4	19,8	19,5	13,2%	11,9%	-1,2%
Luxembourg	7,2	20,8	19,4	19,5	-6,7%	-6,2%	0,6%
Malta	6,0	5,9	4,7	5,0	-21,5%	-15,8%	7,2%
Republic of Moldova	11,4	11,2	9,0	9,0	-19,9%	-20,3%	-0,5%
Monaco	16,7	13,8	15,9	18,6	14,7%	34,7%	17,4%
Montenegro	21,6	22,6	26,3	30,5	16,4%	35,0%	16,0%
Netherlands	22,9	23,7	22,1	21,6	-6,7%	-8,7%	-2,1%
Norway	NA	NA	NA	NA	NA	NA	NA
Poland	19,4	19,0	18,7	19,7	-1,8%	3,7%	5,5%
Portugal	16,5	15,9	15,2	15,3	-4,7%	-4,0%	0,8%
Romania	14,2	14,1	15,1	16,0	6,8%	13,4%	6,2%
Russian Federation	8,3	8,3	NA	NA	NA	NA	NA
Serbia	14,6	15,1	16,8	17,7	11,1%	17,1%	5,4%
Slovakia	13,0	16,9	17,2	18,1	1,8%	7,3%	5,4%
Slovenia	11,0	11,0	13,3	14,3	21,0%	29,9%	7,4%
Spain	4,2	5,2	4,1	4,5	-21,0%	-14,0%	8,9%
Sweden	4,7	4,4	4,5	4,6	1,8%	4,2%	2,4%
Switzerland	9,2	20,2	21,1	19,6	4,7%	-3,0%	-7,4%
The FYROMacedonia	10,0	9,6	11,8	18,9	22,8%	96,9%	60,3%
Turkey	17,9	17,2	17,3	NA	0,7%	NA	NA
Ukraine	NA	NA	13,1	8,6	NA	NA	-34,1%
UK-England and Wales	8,7	6,7	6,5	5,8	-2,7%	-12,7%	-10,4%
UK-Scotland	22,7	21,7	20,4	16,5	-6,2%	-24,2%	-19,1%
Israel		6,6	6,4	9,5	-2,7%	44,0%	48,0%
Morocco				10,5			
Average	12,7	14,2	14,2	13,8	1,0%	3,9%	0,7%
Median	12,8	14,0	14,4	14,6	1,6%	0,6%	0,3%
Minimum	2,3	1,8	2,0	1,6	-21,5%	-24,2%	-34,1%
Maximum	25,5	41,0	40,5	30,5	23,9%	96,9%	60,3%

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

**Denmark** specifies that Public Prosecution staff (other than public prosecutors) are divided between the police and prosecution services (first instance). **France** recalls that the staff assisting the Public Prosecution is composed of all Registry staff under the direction of a Director of the Registry. The latter works closely with the president of the court and with the prosecutor in court. Consequently, the data on Public Prosecution staff are, to date, indistinct from that of court staff. However, some highly specialised Public Prosecution services may be assigned to specialised assistants or sometimes to other jurisdictions in order to assist them in handling the most complex proceedings. These specialised assistants are 60, plus 49 assistant lawyers. For **Germany**, data includes the number of associate prosecutors (i.e. public prosecutors with a right of hearing only before local courts - in German: *Amtsanwälte*). It covers prosecutors' offices and associated prosecutors' offices based in the Regional Courts (1st instance), prosecutors' offices based in the Higher Regional Courts (2nd instance) and the Federal Public Prosecutor's Office (in this case: number of persons, not fte). In **Ireland**, 77 of the staff in the Office of the Director of Public Prosecutions were of administrative grades. **Latvia** takes into account the Administrative Director, the Deputy Administrative Directors and other staff of the Office of the Administrative Director - Chancellery staff, interpreters, IT specialists, personal specialists, car drivers, auditors, as well as prosecutors' assistants. Prosecutors' assistants do not have procedural prosecutorial powers. Their competence and jurisdiction are strictly limited. **Lithuania** includes assistants and lawyers who work directly with prosecutors (363 in total: 81 men and 282 women). In **Malta**, the data relates specifically to staff working in the General Prosecutor Office. The number of registered non-prosecutor agents is broken down as follows: para-legal support clerk staff; lawyers acting as lawyers with prosecutors. In **Romania**, data includes clerks, lawyers, auxiliary staff, officials and contract agents. **Slovenia** recalls that there had been a substantial increase in the number of jobs in prosecutors' offices in 2014 as a result of the Government's decision to strengthen the fight against corruption and other areas of crime defined in the prosecution policy: 40 senior judicial advisers had taken up their duties, as well as 7 other types of civil servants. In 2015, 15 interns were admitted. In **“the former Yugoslav Republic of Macedonia”**, in order to incorporate the competencies of the new Criminal Procedure Act (in force since 2013), the number of prosecution staff increased in 2014. In 2016, the increase is due to the inclusion of the staff of the new Special Public Prosecutions (40 employees). It should also be noted that this number does not include investigators who work for the prosecution as members of the judicial police and who are employed mainly by the Ministry of the Interior. **Turkey** cannot separate the number of non-judge employees from the number of employees (other than prosecutors) assigned to the Public Prosecution, but it specifies that the total number of non-judge officers and public prosecutors is 55 085. **UK-Scotland** reports various efficiency savings over the years, taking into account the increased use of digital solutions, which has resulted in staff savings. In **Israel**, the data provided include the number of non-prosecutor officers attached to both the State Prosecutor's Office and the Police Prosecutor's Office. Data for the Prosecutor General's office does not include national service volunteers and students.

### 3.5 Lawyers

Respecting the lawyer's mission is essential to the rule of law. Recommendation Rec(2000)21 of the Committee of Ministers of the Council of Europe, on the freedom of exercise of the profession of lawyer, defines the lawyer as "*a person qualified and authorised according to the national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters*"<sup>22</sup>.

According to this definition, a lawyer may be entrusted with legal representation of a client before a court, as well as with the responsibility to provide legal assistance.

In certain States and entities, other titles and definitions of a lawyer are used, such as solicitor (a person who gives legal advice and prepares legal documents) and barrister (a person who represents his/her clients in court). In **UK- England and Wales**, in the 1990s solicitors gained additional qualifications of solicitor-advocate and were allowed to plead before the higher courts. Insofar as **Ireland** is concerned, solicitors have had full rights of audience in all courts since the early 1970s. The word "attorney" is also used and is similar to the term "lawyer" as mentioned in this report (a person authorised to practice law, conduct lawsuits or give legal advice).

For practical purposes, the report uses the definition of lawyer set out in Recommendation Rec(2000)21, provided that the possibility to take legal action on behalf of a client determines the activity of the courts. Where possible, a distinction will be made between the above-mentioned categories.

Quality of justice depends on the possibility for a litigant to be represented and for a defendant to mount his or her defence, both functions performed by a professional who is trained, competent, available, offering ethical guarantees and working for a reasonable cost.

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<sup>22</sup> Committee of Ministers of the Council of Europe, *Freedom of Exercise of the Profession of Lawyer*, Rec(2000)21, 25 October 2000.

### 3.5.1 Number of lawyers

Table 3.52 Variation in the number of lawyers per 100 000 inhabitants between 2010 and 2016 (Q146, Q147)

States / Entities	Number of lawyers				Variation			Number of lawyers include legal advisors that cannot represent clients in court (in 2016)
	2010	2012	2014	2016	2012 - 2014	2012 - 2016	2014 - 2016	
Albania	157	216	86	79	-60%	-63%	-9%	
Andorra	179	219	242	274	10%	25%	12%	
Armenia	35	45	53	62	17%	36%	14%	
Austria	66	68	69	70	2%	3%	1%	
Azerbaijan	8	9	10	9	10%	7%	-3%	
Belgium	152	155	162	164	4%	5%	1%	
Bosnia and Herzegovina	34	35	37	46	6%	29%	18%	
Bulgaria	161	165	176	190	7%	15%	7%	
Croatia	94	103	106	113	3%	10%	6%	
Cyprus	298	295	363	425	23%	44%	15%	
Czech Republic	97	104	113	107	8%	3%	-5%	
Denmark	105	107	108	108	1%	1%	0%	
Estonia	59	66	71	75	8%	15%	6%	
Finland	35	36	39	69	8%	93%	44%	
France	80	86	94	98	9%	14%	4%	
Georgia	78	83	102	120	23%	46%	15%	
Germany	190	201	202	200	1%	0%	-1%	
Greece	370	381	388	390	2%	3%	1%	
Hungary	121	131	132	114	1%	-13%	-15%	
Iceland	302	323	NA	321	..	0%	..	
Ireland	239	241	251	262	4%	9%	4%	
Italy	350	379	368	378	-3%	0%	3%	
Latvia	61	66	68	63	4%	-5%	-9%	
Lithuania	51	60	68	78	14%	30%	12%	
Luxembourg	372	385	387	403	1%	5%	4%	
Malta	383	332	346	301	4%	-9%	-15%	
Republic of Moldova	47	49	51	57	4%	15%	10%	
Monaco	70	86	82	93	-4%	9%	12%	
Montenegro	100	114	122	134	7%	18%	9%	
Netherlands	98	102	105	102	3%	1%	-2%	
Norway	135	138	142	147	3%	7%	4%	
Poland	101	114	137	126	20%	10%	-9%	
Portugal	259	270	283	296	5%	9%	4%	
Romania	96	98	104	118	6%	20%	12%	
Russian Federation	46	48	48	49	0%	4%	3%	
Serbia	108	112	118	129	6%	15%	8%	
Slovakia	84	96	107	113	12%	17%	5%	
Slovenia	63	69	79	83	15%	20%	5%	
Spain	272	285	291	305	2%	7%	5%	
Sweden	53	55	57	58	4%	5%	1%	
Switzerland	129	135	140	142	4%	5%	1%	
The FYROMacedonia	103	121	108	121	-11%	0%	10%	
Turkey	97	99	112	126	14%	28%	11%	
Ukraine	224	244	NA	83	..	-66%	..	
UK-England and Wales	299	308	253	259	-18%	-16%	3%	
UK-Scotland	206	209	209	209	0%	0%	0%	
Israel		637	684	738	7%	16%	8%	
Morocco				35				
<b>Average</b>	143	150	151	162	6%	12%	5%	
<b>Median</b>	102	113	110	119	4%	7%	4%	
<b>Minimum</b>	8	9	10	9	-60%	-66%	-15%	
<b>Maximum</b>	383	385	388	425	23%	93%	44%	

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

The comments do not always explain the decreases in **Albania, Azerbaijan, Czech Republic, Germany, Hungary, Malta, Netherlands, Poland, Ukraine, UK-England and Wales**. Part of the explanation probably lies more in a change of classification in response to the CEPEJ questionnaire than in a real decrease in the number of lawyers (**Malta**). **Albania** has explained the decrease by a change in the requirements for the training of lawyers and then a stronger selection. **Malta** explains the decrease in its data in 2016 by the fact that membership of the Chamber of Lawyers, which is the only Bar of Malta, is not compulsory. In recent months, the Ministry of Justice has drawn up the first comprehensive list of lawyers with and without a warrant. The work is still on-going, so it is important to note that the figure quoted above, which is lower than that presented in the previous exercise, reflects a more accurate representation of the number of lawyers with a mandate. **Ukraine** explains that the activity of a high number of lawyers has been suspended or cancelled due to disciplinary proceedings. In **UK-England and Wales**, the number of barristers increased whereas the number of solicitors decreased. Barristers can only practice in the United Kingdom while solicitors can practice anywhere in the European Union. The Irish Law Society also reported that the number of registrations of English and Welsh lawyers in **Ireland** is increasing 275% between 2015 and 2016. Whether this is linked to the United Kingdom leaving the European Union remains an open question for now.

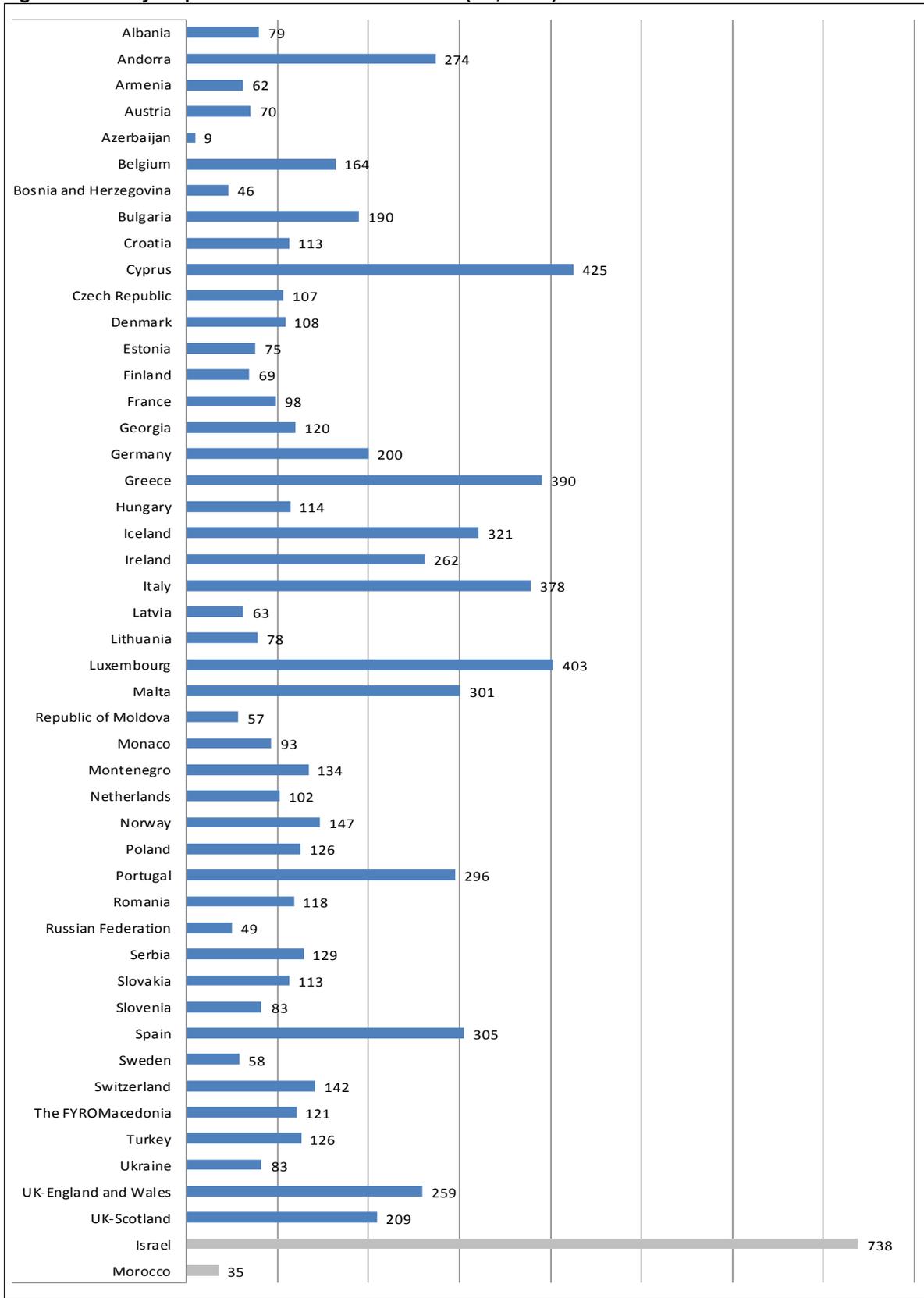
Conversely, **Cyprus** states that three universities offering law degrees have been created, which has increased the number of registered lawyers.

There is a large gap between States. This can also be explained by the legal traditions, the definition and scope of the lawyers' skills, as well as the old or recent development of the rule of law. The lowest number in 2016 was 9 lawyers per 100 000 inhabitants in **Azerbaijan** and the highest 425 lawyers in **Cyprus**, which however includes lawyers who advise but do not represent their clients in court. Several other States are close to 400 lawyers per 100 000 inhabitants: **Luxembourg** (403), **Greece** (390) and **Italy** (378). The figures then decrease for **Iceland** counting 321 per 100 000 inhabitants, **Spain** (305), **Malta** (301), **Portugal** (296), **Andorra** (274), **Ireland** (262), **UK-England and Wales** (259), **UK-Scotland** (209), **Germany** (200), etc. The average in 2016 was 161 lawyers per 100 000 inhabitants and the median 119 lawyers per 100 000 inhabitants.

**Austria** states that the data only includes lawyers registered on the list of Austrian lawyers (6 132) and lawyers registered on the list of established European lawyers (84) registered on 31 December 2016. It does not include lawyers or legal counsellors because these professions or types of service providers do not exist. **Belgium** specifies that it has included 7 930 lawyers for the Order of the French-speaking and German-speaking Bars on 1 December 2016 and 10 602 lawyers for the Flemish Bars. In **Finland**, the number of lawyers indicated for 2012 and 2014 referred to the members of the Finnish Bar who are entitled to use the professional title of *advokat* (lawyer). Law firms also employ associates. In addition, legal aid offices also employ legal counsellors who are not all members of the Bar Association. Until 2014, lawyers (persons holding a Master of Laws) could provide legal services similar to those of members of the Bar. Since the beginning of 2014, only lawyers, public legal aid lawyers and lawyers who have obtained the diploma mentioned in the Approved Lawyers Act are allowed to represent a client in court. In 2016, the total number of lawyers (3 791) comprises 2 119 members of the Finnish Bar Association, 1 540 registered lawyers and 229 public legal aid lawyers (97 public legal aid lawyers are also members of the Finnish Bar Association). Only members of the Finnish Bar Association are now entitled to use the professional title of "lawyer". In **Germany**, all lawyers are entitled to plead in court. No distinction is made between different groups of lawyers. In addition to lawyers, some other persons may also appear in court as "legal advisers" but there is no statistical data on these persons. In **Hungary**, lawyers are those who hold a law degree, who have passed the Bar examination and who are members of the local Bar Association. A lawyer can only work as an individual lawyer, or as a member of a law firm, he or she cannot be an employee. Lawyers who work as employees of a company are called "legal advisers". They have the right to represent their employers in any proceeding, the limitation is that they can only act on behalf of their employers and cannot have other clients. A new Lawyers Act will come into effect on January 1, 2018. Data from **Ireland** show the current membership of the Bar Council of Ireland and the Law Society of **Ireland**. **Lithuania** states that the number of practicing lawyers is provided by the Lithuanian Bar Association but that there are also 870 legal assistants providing legal services. Data for **Malta** refer to the number of lawyers who are also members of the Chamber of Lawyers at the end of 2016. **Portugal** states that only registered lawyers are allowed to practice the

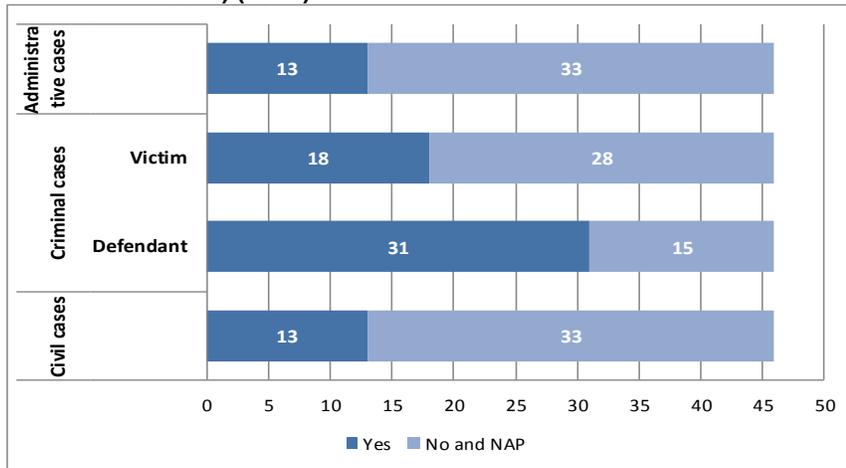
profession of lawyer and to represent persons before the courts. The number of lawyers provided does not include legal advisors of recognised competence and law professors. These professionals are registered with the bar and can give legal advice. In **Serbia**, lawyers are members of their local / regional bar and the national bar association. In **Sweden**, these figures include all members of the Swedish Bar Association: "*advokater*" (lawyers) and associate lawyers in law firms. Only those who are qualified and who have passed all the mandatory requirements may be admitted as members of the Swedish Bar Association. Only members of the Swedish Bar can give legal advice and represent clients in the courts under the professional title "*Advokat*". An interesting feature of the Swedish legal profession is having an open and free legal market and no monopoly for lawyers; everyone can act as legal counsel and represent clients in a court. **UK-England and Wales** have 16 045 practicing barristers and 135 309 practicing solicitors, or 151 354 lawyers in total. **Israel** explains that the total number of practicing lawyers includes all persons with a law degree registered in the Israeli Bar Association and not only practicing as lawyers. This number also includes public administration lawyers (public prosecutors, public defence lawyers and legal advisers), as well as legal counsel for private companies.

Figure 3.53 Lawyers per 100 000 inhabitants in 2016 (Q1, Q146)

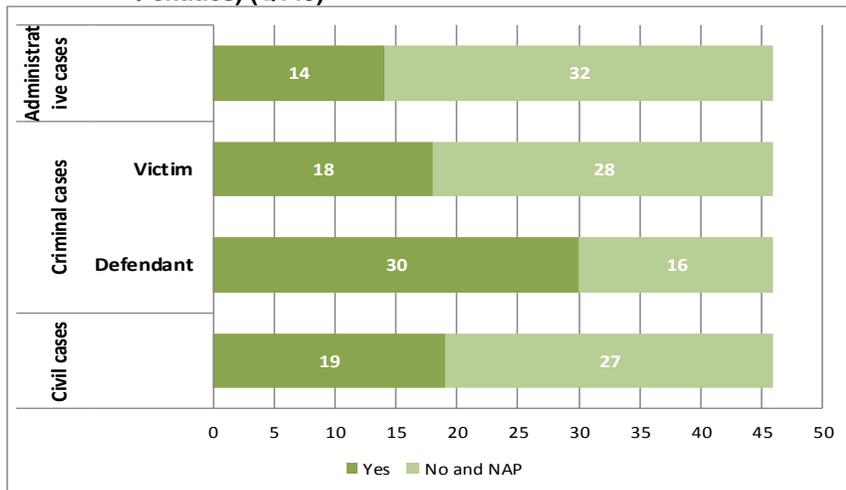


### 3.5.2 Monopoly of lawyers for legal representation

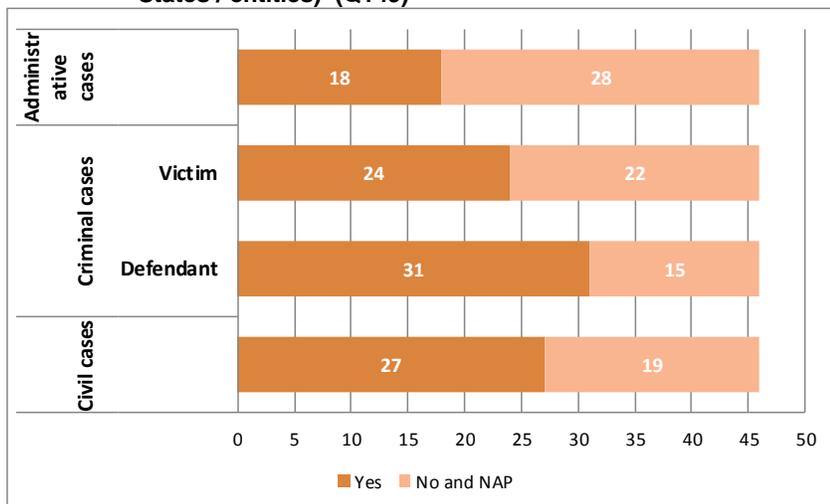
**Table 3.54 Summary of the monopoly of legal representation in courts at first instance in 2016 (number of States / entities) (Q149)**



**Table 3.55 Summary of the monopoly of legal representation in courts at second instance in 2016 (number of States / entities) (Q149)**



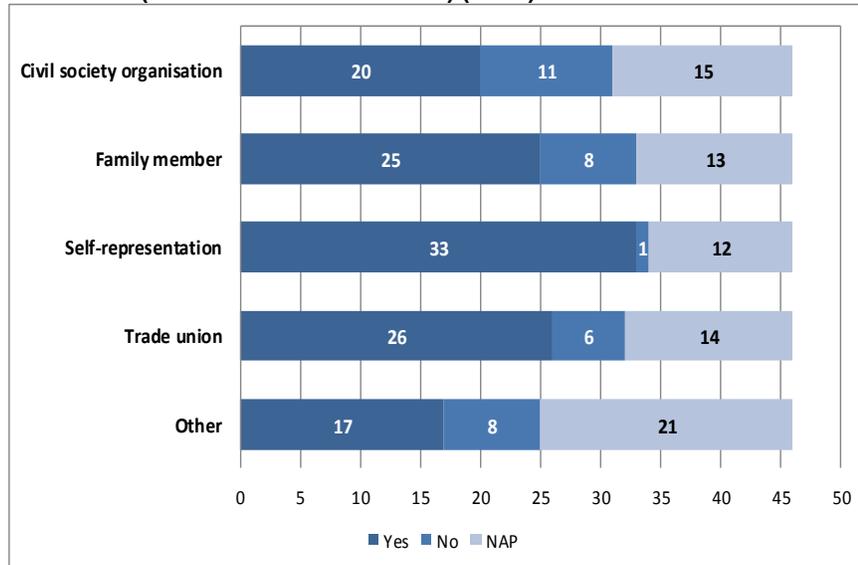
**Table 3.56 Summary of the monopoly of legal representation in courts at the highest instance in 2016 (number of States / entities) (Q149)**



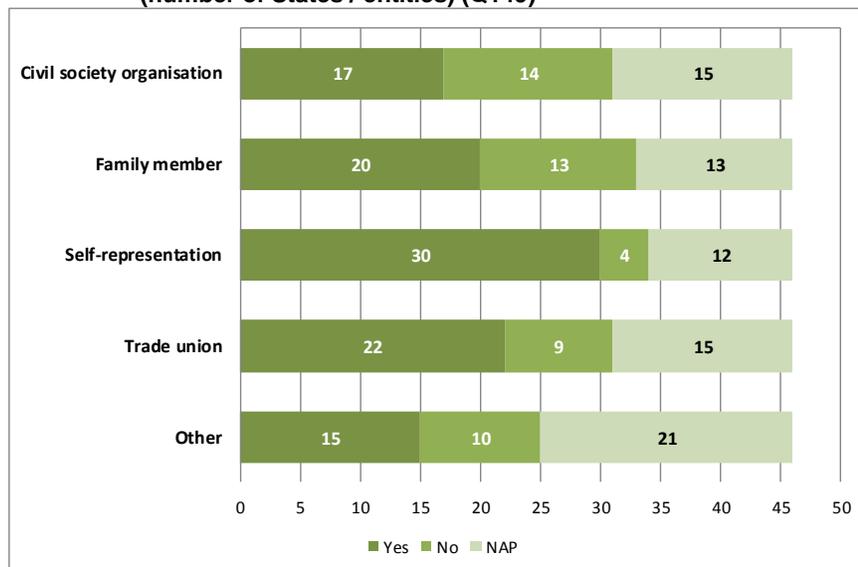
Compulsory representation reaches its highest levels at last instance. 18 States and entities have declared that there is a monopoly of legal representation at third instance in civil cases, criminal cases (with regard to victims as defendants) and administrative cases. There are only 13 States and entities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

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

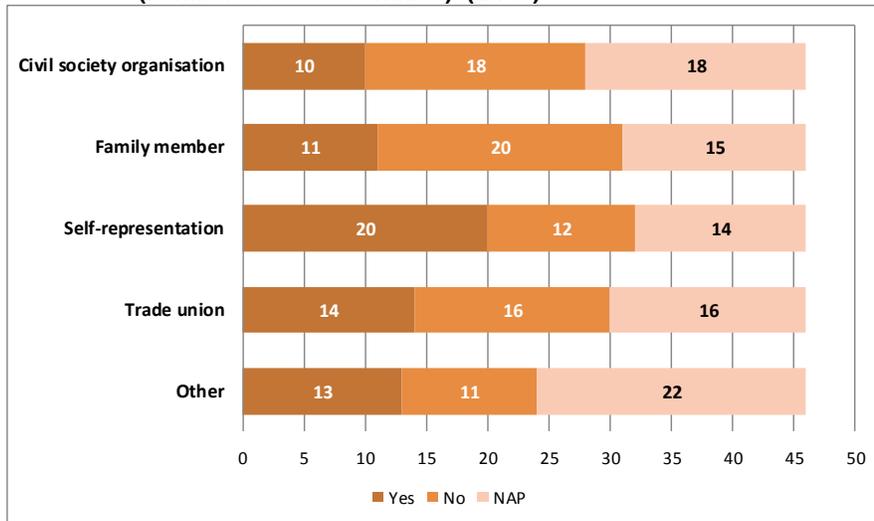
**Table 3.57 Other organisations or persons that may represent a client before a court of first instance in 2016 (number of States / entities) (Q149)**



**Table 3.58 Other organisations or persons that may represent a client before a court of second instance in 2016 (number of States / entities) (Q149)**



**Table 3.59 Other organisations or persons that may represent a client before a court of the highest instance in 2016 (number of States / entities) (Q149)**



Countries that truly diversify the nature of organisations or individuals who may represent a client in court are rare. There are only 9 States and entities that declare at first instance that there is representation by a civil society organisation, by a person in the family, by oneself, by a union or other, 6 at second instance and 5 at the level of the highest instance. Among these five exceptions to the monopoly of representation of lawyers, representation by oneself is the highest at all instances (33 at first instance, 30 at second instance and 20 at the highest instance).

### Trends and conclusions

The number of lawyers is still increasing in Europe, with significant differences between the States and entities.

The increase in the number of lawyers in several States of Central and Eastern Europe reflects the development of the rule of law. The widespread development of legal aid, although uneven across States and entities, may also account for some of the increase in the number of lawyers.

There is still a large number of lawyers in southern European countries, where the societies are more judicialized.

The monopoly of lawyers is not a marked trend, especially in the first instance. It tends to increase at the level of the highest instance.

### **3.6 Gender balance in the justice sector**

As previously indicated, the CEPEJ particularly has focused its study this year on the issue of the distribution females/males within the professions of the justice sector. The study is based on a combination of replies to the general questionnaire and to a specific questionnaire on gender balance.

The number of replies received to the questionnaire specific to gender balance was high: 38 out of 48 States and entities replied fully, 2 partially and only 8 did not reply. Nevertheless, action by States and entities in the area of equality between men and women in the justice sector is rare. The measures are often not specific to the judicial system but aimed more broadly at all public professions, or even more broadly at all professions, including the private sector. Some interesting examples specific to the justice sector are nevertheless worth mentioning.

The analysis of the questionnaires makes it possible to draw up a report and to envisage courses of action for the States and entities, as well as tools to be developed. Causes of inequality can also be identified, based on the examples provided, but the studies are still insufficient and need to be refined.

### 3.6.1 Distribution of females/males in different professions

Some tables and figures are already mentioned in the paragraphs on judges and prosecutors.

**Table 3.60 Professional judges by instance and gender in 2016 (Q46)**

States / Entities	Total of professional judges (FTE)		1st instance professional judges		2nd instance professional judges		Supreme Court professional judges	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	53%	47%	49%	51%	60%	40%	91%	9%
Andorra	42%	58%	29%	71%	67%	33%	NAP	NAP
Armenia	75%	25%	75%	25%	76%	24%	71%	29%
Austria	51%	49%	48%	52%	56%	44%	70%	30%
Azerbaijan	88%	12%	88%	12%	88%	12%	84%	16%
Belgium	47%	53%	46%	54%	50%	50%	72%	28%
Bosnia and Herzegovina	36%	64%	37%	63%	33%	67%	39%	61%
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	30%	70%	27%	73%	35%	65%	59%	41%
Cyprus	51%	49%	50%	50%	NAP	NAP	62%	38%
Czech Republic	39%	61%	33%	67%	46%	54%	77%	23%
Denmark	49%	51%	44%	56%	58%	42%	68%	32%
Estonia	37%	63%	30%	70%	44%	56%	74%	26%
Finland	45%	55%	44%	56%	46%	54%	66%	34%
France	36%	64%	33%	67%	40%	60%	51%	49%
Georgia	51%	49%	51%	49%	50%	50%	62%	38%
Germany	NA	NA	NA	NA	NA	NA	71%	29%
Greece	29%	71%	27%	73%	28%	72%	55%	45%
Hungary	31%	69%	28%	72%	34%	66%	50%	50%
Iceland	62%	38%	58%	42%	NAP	NAP	80%	20%
Ireland	65%	35%	64%	36%	80%	20%	56%	44%
Italy	46%	54%	43%	57%	48%	52%	70%	30%
Latvia	22%	78%	19%	81%	24%	76%	32%	68%
Lithuania	38%	62%	35%	65%	57%	43%	69%	31%
Luxembourg	35%	65%	34%	66%	33%	68%	100%	0%
Malta	58%	42%	50%	50%	89%	11%	NAP	NAP
Republic of Moldova	52%	48%	53%	47%	48%	52%	55%	45%
Monaco	57%	43%	40%	60%	33%	67%	81%	19%
Montenegro	42%	58%	42%	58%	43%	57%	33%	67%
Netherlands	42%	58%	39%	61%	54%	46%	NA	NA
Norway	59%	41%	56%	44%	64%	36%	67%	33%
Poland	NA	NA	36%	64%	47%	53%	NA	NA
Portugal	41%	59%	33%	67%	59%	41%	80%	20%
Romania	26%	74%	28%	72%	26%	74%	17%	83%
Russian Federation	40%	60%	NA	NA	NA	NA	NA	NA
Serbia	30%	70%	30%	70%	25%	75%	42%	58%
Slovakia	38%	62%	37%	63%	39%	61%	41%	59%
Slovenia	21%	79%	18%	82%	25%	75%	58%	42%
Spain	47%	53%	40%	60%	63%	37%	88%	12%
Sweden	48%	52%	51%	49%	42%	58%	67%	33%
Switzerland	59%	41%	54%	46%	68%	32%	68%	32%
The FYROMacedonia	40%	60%	39%	61%	45%	55%	48%	52%
Turkey	58%	42%	58%	42%	68%	32%	53%	47%
Ukraine	NA	NA	NA	NA	NA	NA	NA	NA
UK-England and Wales	66%	34%	NA	NA	NA	NA	83%	17%
UK-Scotland	74%	27%	74%	26%	65%	35%	NAP	NAP
Israel	48%	52%	45%	55%	54%	46%	71%	29%
Morocco	73%	27%	68%	32%	85%	15%	80%	20%
<b>Average</b>	47%	53%	43%	57%	50%	50%	63%	37%
<b>Median</b>	46%	54%	40%	60%	48%	52%	67%	33%
<b>Minimum</b>	21%	12%	18%	12%	24%	11%	17%	0%
<b>Maximum</b>	88%	79%	88%	82%	89%	76%	100%	83%

**Table 3.61 Distribution of different judicial professionals by gender in 2016 (Q46, G1)**

States / Entities	Total of professional judges (FTE)		Public prosecutors		Lawyers		Notaries		Enforcement agents	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Albania	53%	47%	39%	61%						
Andorra	42%	58%	40%	60%						
Armenia	75%	25%	91%	9%	58%	42%	30%	70%	84%	16%
Austria	51%	49%	49%	51%	71%	29%	NA	NA	NA	NA
Azerbaijan	88%	12%	95%	5%	85%	15%	NA	NA	NA	NA
Belgium	47%	53%	45%	55%	NA	NA				
Bosnia and Herzegovina	36%	64%	49%	51%	71%	29%	49%	51%	NA	NA
Bulgaria	NA	NA	NA	NA						
Croatia	30%	70%	32%	68%	54%	46%	38%	62%	63%	37%
Cyprus	51%	49%	19%	81%	47%	53%	NA	NA	86%	14%
Czech Republic	39%	61%	50%	50%	61%	39%	NA	NA	NA	NA
Denmark	49%	51%	32%	68%						
Estonia	37%	63%	29%	71%	53%	47%	22%	78%	41%	59%
Finland	45%	55%	45%	55%	NA	NA	NA	NA	NA	NA
France	36%	64%	47%	53%	45%	55%	61%	39%	66%	34%
Georgia	51%	49%	71%	29%	53%	47%	17%	83%	63%	37%
Germany	NA	NA	54%	46%	60%	40%	84%	16%	NA	NA
Greece	29%	71%	45%	55%	NA	NA	NA	NA	NA	NA
Hungary	31%	69%	40%	60%	NA	NA	NA	NA	NA	NA
Iceland	62%	38%	43%	57%						
Ireland	65%	35%	43%	57%	51%	49%	79%	21%	73%	27%
Italy	46%	54%	57%	43%	53%	47%	66%	34%	48%	52%
Latvia	22%	78%	38%	62%	NA	NA	NA	NA	NA	NA
Lithuania	38%	62%	49%	51%	62%	38%	14%	86%	44%	56%
Luxembourg	35%	65%	53%	47%						
Malta	58%	42%	39%	61%	42%	58%	42%	58%	NA	NA
Republic of Moldova	52%	48%	68%	32%	71%	29%	23%	77%	56%	44%
Monaco	57%	43%	60%	40%	66%	34%	33%	67%	0%	100%
Montenegro	42%	58%	36%	64%	73%	27%	40%	60%	70%	30%
Netherlands	42%	58%	39%	61%						
Norway	59%	41%	43%	57%	67%	31%	NA	NA	85%	15%
Poland	NA	NA	48%	52%	NA	NA	NA	NA	NA	NA
Portugal	41%	59%	38%	62%	46%	54%	24%	76%	35%	65%
Romania	26%	74%	48%	52%						
Russian Federation	40%	60%	NA	NA	59%	41%	16%	84%	21%	79%
Serbia	30%	70%	45%	55%	64%	36%	43%	57%	60%	40%
Slovakia	38%	62%	51%	49%	58%	42%	30%	70%	66%	34%
Slovenia	21%	79%	32%	68%	55%	45%	41%	59%	89%	11%
Spain	47%	53%	36%	64%	NA	NA	69%	31%	NA	NA
Sweden	48%	52%	40%	60%	70%	30%	67%	33%	37%	63%
Switzerland	59%	41%	NAP	NAP	71%	29%	80%	20%	30%	70%
The FYROMacedonia	40%	60%	41%	59%	58%	42%	44%	56%	57%	43%
Turkey	58%	42%	68%	32%	58%	42%	54%	46%	69%	31%
Ukraine	NA	NA	65%	35%	64%	36%	NA	NA	NA	NA
UK-England and Wales	66%	34%	45%	55%	51%	48%	72%	28%	NA	NA
UK-Scotland	74%	27%	34%	66%	46%	54%	49%	51%	NA	NA
Israel	48%	52%	36%	64%	54%	46%	76%	24%	NA	NA
Morocco	73%	27%	84%	16%	77%	23%	84%	16%	87%	13%
Average	47%	53%	47%	53%	59%	40%	46%	54%	57%	43%
Median	46%	54%	45%	55%	58%	42%	43%	57%	61%	39%
Minimum	21%	12%	19%	5%	42%	15%	14%	16%	0%	11%
Maximum	88%	79%	95%	81%	85%	58%	84%	86%	89%	100%

**Table 3.62 Distribution of public prosecutors by instance and by gender in 2016 (Q55)**

States / Entities	Total of public prosecutors		1st instance		2nd instance		Highest instance	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	39%	61%	32%	68%	86%	14%	73%	27%
Andorra	40%	60%	NAP	NAP	NAP	NAP	NAP	NAP
Armenia	91%	9%	NAP	NAP	NAP	NAP	NAP	NAP
Austria	49%	51%	47%	53%	67%	33%	61%	39%
Azerbaijan	95%	5%	NA	NA	NA	NA	NA	NA
Belgium	45%	55%	41%	59%	59%	41%	92%	8%
Bosnia and Herzegovina	49%	51%	48%	52%	NAP	NAP	52%	48%
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	32%	68%	28%	72%	41%	59%	46%	54%
Cyprus	19%	81%	NAP	NAP	NAP	NAP	NAP	NAP
Czech Republic	50%	50%	46%	54%	59%	41%	67%	33%
Denmark	32%	68%	30%	70%	41%	59%	27%	73%
Estonia	29%	71%	NAP	NAP	NAP	NAP	NAP	NAP
Finland	45%	55%	NAP	NAP	NAP	NAP	NAP	NAP
France	47%	53%	43%	57%	55%	45%	68%	32%
Georgia	71%	29%	NAP	NAP	NAP	NAP	NAP	NAP
Germany	54%	46%	53%	47%	66%	34%	67%	33%
Greece	45%	55%	38%	62%	55%	45%	81%	19%
Hungary	40%	60%	35%	65%	46%	54%	56%	44%
Iceland	43%	57%	NA	NA	NA	NA	NA	NA
Ireland	43%	57%	NAP	NAP	NAP	NAP	NAP	NAP
Italy	57%	43%	54%	46%	71%	29%	72%	28%
Latvia	38%	62%	35%	65%	42%	58%	47%	53%
Lithuania	49%	51%	50%	50%	NAP	NAP	41%	59%
Luxembourg	53%	47%	57%	43%	NAP	NAP	42%	58%
Malta	39%	61%	NAP	NAP	NAP	NAP	NAP	NAP
Republic of Moldova	68%	32%	67%	33%	65%	35%	73%	27%
Monaco	60%	40%	NAP	NAP	NAP	NAP	NAP	NAP
Montenegro	36%	64%	38%	62%	26%	74%	50%	50%
Netherlands	39%	61%	37%	63%	53%	46%	NA	NA
Norway	43%	57%	40%	60%	60%	40%	64%	36%
Poland	48%	52%	43%	57%	57%	43%	66%	34%
Portugal	38%	62%	37%	63%	59%	41%	59%	41%
Romania	48%	52%	47%	53%	48%	52%	49%	51%
Russian Federation	NA	NA	NAP	NAP	NAP	NAP	NAP	NAP
Serbia	45%	55%	44%	56%	52%	48%	58%	42%
Slovakia	51%	49%	48%	52%	55%	45%	58%	42%
Slovenia	32%	68%	27%	73%	45%	55%	55%	45%
Spain	36%	64%	NAP	NAP	NAP	NAP	63%	37%
Sweden	40%	60%	NAP	NAP	NAP	NAP	57%	43%
Switzerland	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP
The FYROMacedonia	41%	59%	37%	63%	50%	50%	70%	30%
Turkey	68%	32%	67%	33%	90%	10%	80%	20%
Ukraine	65%	35%	NAP	NAP	NAP	NAP	NAP	NAP
UK-England and Wales	45%	55%	NAP	NAP	NAP	NAP	NAP	NAP
UK-Scotland	34%	66%	NA	NA	NA	NA	NA	NA
Israel	36%	64%	NAP	NAP	NAP	NAP	NAP	NAP
Morocco	84%	16%	80%	20%	95%	5%	92%	8%
<b>Average</b>	47%	53%	43%	57%	56%	44%	61%	39%
<b>Median</b>	45%	55%	43%	57%	55%	45%	60%	40%
<b>Minimum</b>	19%	5%	27%	33%	26%	10%	27%	8%
<b>Maximum</b>	95%	81%	67%	73%	90%	74%	92%	73%

These tables show that the gender distribution among judges and prosecutors favours females, as the professions are largely feminised, even though this increase in females is not reflected in the judicial hierarchy: the higher one rises in the hierarchy, the fewer females there are and even fewer still in the position of heads of courts. But the figures for 2016 are still better than those for 2014, including for the higher hierarchical functions, even if the improvement remains weak.

On the other hand, in the other legal professions, feminisation is less significant. Males are in the majority among lawyers (59 % - 41 %) and among enforcement agents (57 % - 43 %). Males are more often in the majority among lawyers: the proportion exceeds 70% in **Austria, Azerbaijan, Bosnia and Herzegovina, Republic of Moldova, Montenegro, Sweden, Switzerland and Morocco**. As regards enforcement agents, the proportion of males is sometimes considerable and it is difficult to have a proper explanation for that; for instance 84 % of enforcement agents are males in **Armenia**, it is almost the same percentage in **Cyprus, Norway, Slovenia or Morocco**. Females seem to be in the majority among notaries (54 % - 46 %) but these findings are based on an insufficient number of replies. However, it is interesting to note that the percentage of females in notarial professions sometimes exceeds 70 %: **Armenia, Estonia, Georgia, Lithuania, Moldova, Portugal, Russian Federation and Slovakia**. It would therefore seem that the feminisation of notaries is particularly noticeable in Eastern European countries, possibly for reasons linked to the stability of the profession compared to that of lawyer.

### Trends and conclusions

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

It is possible that the profession of judge is considered more stable than that of lawyer, as a study prepared for the European Parliament suggests<sup>23</sup> and for that reason perceived by females as attractive. The report prepared for the European Commission in the framework of the project "Handle with care: assessing and designing methods for evaluation and development of the quality of justice" (Ed. F. Contini, January 2018) also proposes an explanation of this nature.

On the other hand, in the higher levels of the hierarchy, the proportion of the genders changes significantly, where, as the report States, the judge's prestige and salary increase<sup>24</sup>. A recent study conducted by two sociologists, Yoann Demoli and Laurent Willemez, published by the French Ministry of Justice (Infostat Justice No. 161, April 2018) would tend to confirm this thesis for French judges. It also notes that the public prosecutor's office (which can be considered more restrictive in terms of working hours) appears as a function much more often chosen by males than that of judge. The positions of head of court also show that males become heads of court much more frequently than females and younger. While 1,5 % of males aged 35-39 are already head of court, this is the case for four times fewer females (the gender ratio then drops slightly to 2: males being twice as often heads of court at each age as females). The study also shows that males are more numerous in the highest positions. While the age pyramid plays a role on this point because of the logic of seniority of promotion in **France** (66 % of magistrates are females but the number of males increases with age), the study shows that the differences in professional trajectories between males and females play a very important role. The study hypothesises that males would experience, for example, more numerous, more diversified jobs, both functionally and geographically and the differences could be explained by family constraints that males and females experience differently.

<sup>23</sup> « Judicial careers might be more attractive for some women in the first instance than careers in private practice. Judicial careers offer a salaried and fixed income and, at the lower levels, fixed hours. Private practice might not offer either of these things. Judicial careers might seem to be a choice with less stress (i.e. a managed rather than a self-generated workload) less pressure and a clear career path. Advancement in the career judicial may seem less contingent on participation in after-hours social events and the demands of male culture », Mapping the Representation of Women and Men in Legal Professions Across the EU, Wheeler Sally, Irvina Lisa, Hauptfleisch Renate, Korolkova Katja ; Natter Monika, Schultz Urike, European Parliament, 2017, p. 87.

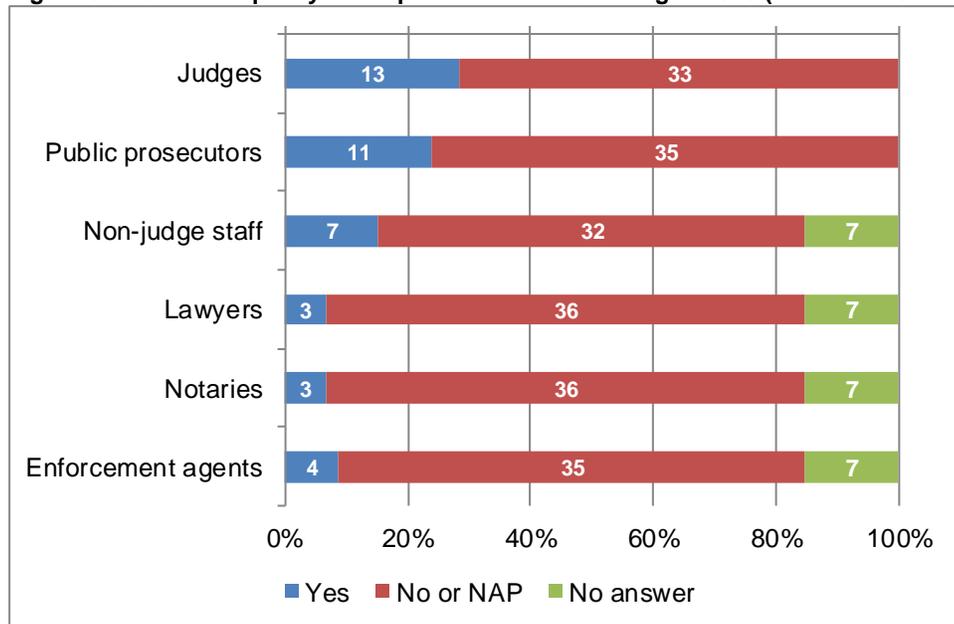
« Handle with care : assessing and designing methods for evaluation and development of the quality of justice » Ed. F. Contini, January 2018, p. 144 and 148.

<sup>24</sup> « Handle with care : assessing and designing methods for evaluation and development of the quality of justice » Ed. F. Contini, January 2018, p. 144 and 148.

### 3.6.2 Special provisions to facilitate gender balance in recruitment procedures

Not all data is available and it is therefore difficult to provide guidelines in particular for judicial professions other than judges and prosecutors.

**Figure 3.63 Gender equality in the procedure for recruiting in 2016 (number of States / entities) (Q110-1, Q117-1, G2)**



As regards judges, 11 States indicate that they have implemented special provisions to facilitate parity between females and males in recruitment procedures. For **Bosnia and Herzegovina**, the data provided in 2014 specified that the law on the High Council of Judges and Prosecutors pursued the objective of parity expressed as an obligation during the appointment and promotion procedures of judges. **Montenegro** does not appear to have any special arrangements, except that the Constitution and the legislation impose and guarantee gender equality in recruitment procedures, which are not specific elements of the justice system; however, information provided in 2014 indicated that the Council for the Judiciary was bound by a legal obligation to ensure gender parity in the appointment procedure.

Provisions exist in **Austria, Denmark, Iceland**. In **Germany**, general provisions promote parity, in particular to promote the recruitment of the under-represented gender, but these provisions do not appear specific to justice and judges; special provisions also promote parity for the recruitment of lawyers, notaries and enforcement agents. **Germany** is the only country to present a global strategy on parity. In **Norway** provisions attempt to facilitate parity in recruitment: the law on gender equality and anti-discrimination requires public authorities to make systematic efforts to promote gender equality in recruitment; the same principle applies to the recruitment of non-judge staff recruited by each court. In **Serbia** it seems that there are no specific provisions, but simply the application of the general principle of non-discrimination. This principle applies in many States such as **Slovakia, Turkey** (a Committee on Equality between Women and Men of the Assembly of Turkey is responsible for promoting equality, but its main task seems to be to lodge complaints), **Ukraine, UK-Scotland** (mixed recruitment committees to promote parity in the recruitment of lawyers), **Israel**. In **UK-England and Wales** provisions for parity-friendly recruitment are applied, not through a quota mechanism but through strong incentives to encourage diversification of professions. Opportunities for judges to work part-time have been strengthened, with a view to encouraging the recruitment of women. The Lord Chief Justice intervened in the appointment of "magistrates" (lay justices of the peace), so that the necessary aptitudes are guaranteed and also gender balance. This mechanism has enabled a very large number of women to be appointed (as from 2011, more than 50 % of magistrates were women).

The **Republic of Moldova** has special provisions in place to promote parity in the recruitment of non-judge staff. In addition, an amendment to the texts took place in 2017 to strengthen equal treatment between females and males in recruitment and promotion mechanisms. **Switzerland** does not have specific mechanisms, but it is interesting to note that in some cantons quotas have been put in place to encourage the recruitment of women.

**Sweden** has put in place provisions to guarantee equality in the recruitment of enforcement agents: thus recruitment is now carried out through tests which seem to guarantee more objectively compliance with the principle of equality.

### Trends and conclusions

There are in fact few States and entities in which specific provisions in favour of gender parity in recruitment in the justice sector have been enacted and implemented. In most cases, general provisions or mechanisms apply aimed at avoiding gender discrimination. Only **Germany** seems to have developed a global policy in favour of parity, for the recruitment of judges and lawyers, notaries and enforcement agents.

### 3.6.3 Special measures to facilitate gender balance in promotion procedures

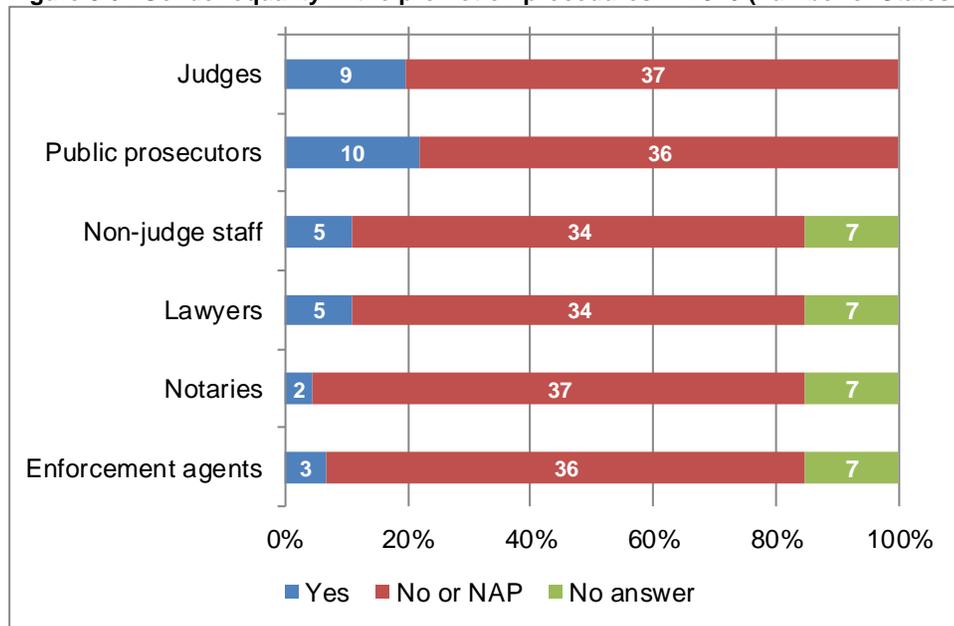
Again, the results here must be examined with caution. 9 States and entities report having measures in place to ensure gender parity in judicial promotion mechanisms (**Armenia, Bosnia and Herzegovina, Denmark, Germany, Montenegro, Serbia, Spain, Turkey, UK-England and Wales**, as well as **Israel**). 10 indicate this for the promotion of prosecutors (**Bosnia and Herzegovina, Denmark, Germany, Montenegro, Norway, Russian Federation, Slovakia, Sweden, Turkey, UK-Scotland**, as well as **Israel**).

As regards the promotion of non-judge staff, only 5 States and entities indicate that they have taken measures to promote parity in promotion mechanisms (**Germany, Ireland, Republic of Moldova, Norway, UK-England and Wales**). 5 States and entities also claim to have taken such measures to promote parity in the promotion of lawyers (**Italy, Norway, Sweden, UK-England and Wales, UK-Scotland**). For notaries, only **Norway** states that it has taken certain measures; 3 States have taken measures for enforcement agents (**Germany, Norway, Sweden**).

In these various cases, **Germany** is the State that stands out since, in accordance with its overall policy in favour of parity between men and women, it has set up special mechanisms to promote parity in promotion procedures for non-judge staff and enforcement agents and for public prosecutors, but not for lawyers and notaries, which can be understood because of the particularities of liberal professions. In **Ireland**, a plan was put in place in 2014 to promote parity in promotions; new measures were announced in January 2017, with a 50/50 promotion target and a strong incentive to give priority to women with equal skills.

**Norway** points to the mechanisms put in place to promote gender balance in promotions to management positions in the police through a five-year plan. **Sweden** has put in place incentives for the promotion of women in the legal profession: guidelines have been given by the Swedish Bar Office to promote parity. Selection tests have also been introduced to promote enforcement agents in a non-discriminatory manner.

Figure 3.64 Gender equality in the promotion procedures in 2016 (number of States / entities) (Q112-1, Q119-1, G3)



For the other States indicated, there are often provisions prohibiting any discrimination based on gender in the promotion procedure, but these provisions are not specific to the field of justice.

### Trends and conclusions

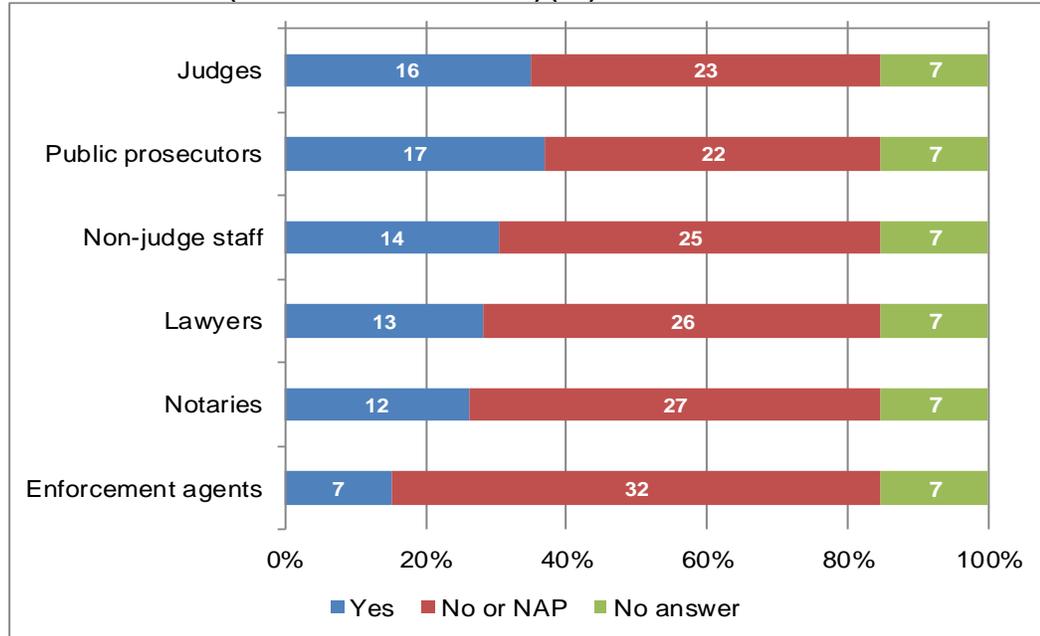
The information contained in the questionnaires is not sufficiently precise to draw perfectly reliable conclusions. However, it is clear that some States and entities appear to be particularly concerned about ensuring parity in promotion mechanisms, for judges and prosecutors and also more broadly in the majority of legal professions. **Germany, Norway and Sweden** seem to take this requirement into account in the provisions put in place. On the other hand, it is not possible to determine the effectiveness of these mechanisms or measures; if only the figures provided are used, it is not certain that the mechanisms are useful, as **Germany**, for example, suffers from an obvious imbalance between males and females in the different categories. The percentage of males and females promoted each year is also missing in relation to the percentage of males and females eligible for promotion. It would also be interesting to know about possible differences in salaries between genders.

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

### 3.6.4 Recent investigations or reports concerning, in whole or in part, the gender distribution within the judicial system

Not all States and entities have the tools to identify precisely where action should be taken to promote gender equality.

**Figure 3.65 Surveys or reports related to - wholly or partly - the distribution males/females within the judicial system in 2016 (number of States / entities) (G4)**



**Spain**, for example, indicated that the Council of Justice carries out the investigations for the distribution between men and women in the case of judges, the Minister of Justice for prosecutors, private academies or autonomous regions for non-judge staff and the General Directorate for the Notariat (within the Ministry of Justice) for notaries. In **Italy** the High Judicial Council provides data for judges and prosecutors, the National Bar for lawyers, the Notaries' Council for notaries and the Minister of Justice for enforcement agents and non-judges. **Finland** has carried out such surveys mainly for lawyers; the Finnish Bar Association has even commissioned a survey on the salaries of males and females in the profession. A specific document focused on the phenomenon of sexual harassment in the profession (2017-2018), a survey inspired by the #metoo campaign. **France** indicates that it only has a report from the Inspectorate-General of Justice on the feminisation of the Ministry of Justice's professions (2017). In **Georgia**, the High Council of Justice provides a number of statistics on the gender distribution for judges; it seems that this type of survey raises awareness of the issue, with an initial increase in the number of females in certain important posts; another institution is in charge of this survey for non-judge staff. In **Ireland**, the survey exists for lawyers, with an annual report from the National Bar Office. In **Lithuania**, a national gender survey was conducted for prosecutors (not judges). A report was presented to Parliament in 2016. In **Montenegro**, a national report on the distribution between men and women for prosecutors exists; the Judicial Council has these elements; the annual report of the Council of Prosecutors contains information on gender in 2016. **Norway** has interesting data on the gender distribution for judges and non-judge staff in each court's annual report. In **Portugal**, the Centre for Judicial Studies has been providing an annual study that integrates gender issues for judges and prosecutors since 2004. These surveys and reports exist globally in **Moldova**, these statistics being necessary within the framework of the United Nations Development Programme. **Serbia** has had surveys on the functioning of the judiciary since 2014: the finding is that there are more females than males in the courts and at all levels of the hierarchy, including the Supreme Court. "**The former Yugoslav Republic of Macedonia**" states that surveys exist for all legal professions. In **Turkey**, the Council of Judges and Prosecutors publishes an annual report with data on gender.

### Trends and conclusions

There is not always a comprehensive strategy in surveys regarding the distribution between men and women in the different professions. There is often a concern to take gender balance into account, but not in an organised way. The data is collected without real planning and with objectives that are not always clearly highlighted.

### 3.6.5 National programme or policy document to promote gender equality in the justice system

13 States and entities report having a national programme or a policy document to promote gender balance in their justice system.

Few States and entities recognise the existence of a specific gender justice programme. In **Armenia**, there is a document to promote parity in candidatures since 2014; an action plan has been adopted for 2015-2017. **Austria** has a specific programme. **Georgia** is considering such a programme: the 2014-2016 action plan was in favour of parity. Consideration was given to including gender considerations in court recruitment mechanisms and the production of gender statistics. These statistics are envisaged in the 2018-2020 plan; a database on gender would be maintained at the level of the jurisdictions. **Norway** does not have a specific programme, but the Judicial Recruitment Office is trying to put in place a policy to promote parity in the appointment of judges. In **UK-England and Wales**, the 2005 constitutional reform generally encouraged diversity and thus parity between females and males and the Judicial Appointments Commission insists on the need for merit-based recruitment, it seeks to encourage diversity in recruitment. A programme exists in **Sweden**. **Morocco** highlights an initiative, the Charter for the reform of the judicial system, in which parity is envisaged by the Bar Council for the legal profession. More generally, there is a Government Equality Plan (2012-2016), which has led to the development of a strategy and implementation plan for gender mainstreaming in the civil service.

Most States and entities admit that there is a programme in favour of parity but that it applies to justice as in other areas, without specificities (including **Azerbaijan, Spain, Italy, Lithuania, Republic of Moldova, Switzerland “the former Yugoslav Republic of Macedonia”, Ukraine**).

### Trends and conclusions

The vast majority of States and entities apply a general programme, valid throughout the civil service, or even in society as a whole, without specific provisions in the field of justice. This means that these States and entities treat the legal professions like any other profession, without taking into account certain characteristics of the judicial professions.

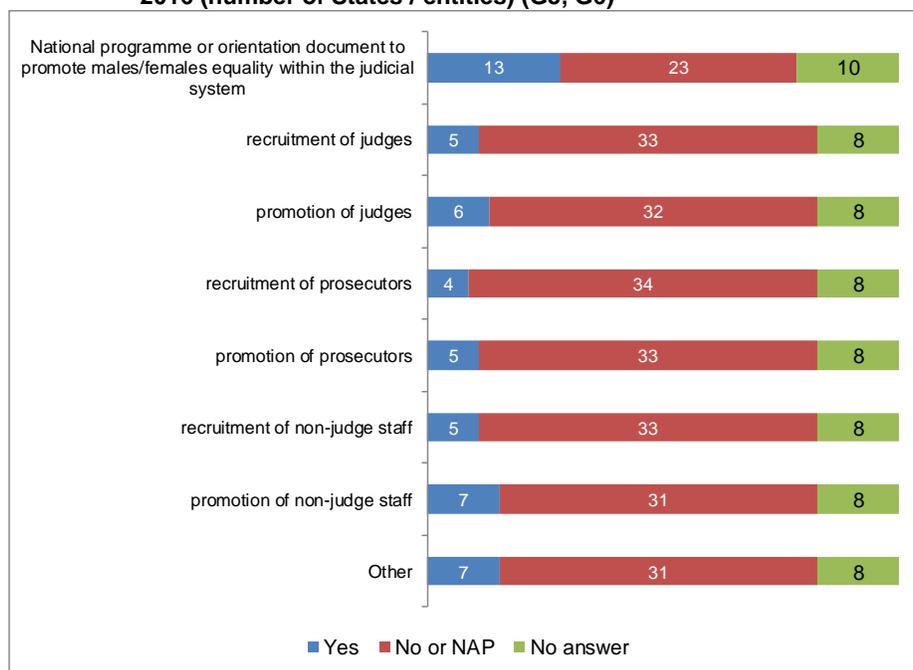
Apart from **Ireland**, no State seems to have begun to reflect on the development of training for judges in favour of gender parity; such training, which could be organised in the context of ethics seminars, does not appear to be planned.

### 3.6.6 Institution with special responsibility for gender issues in the judicial system

Six States and entities indicate that they have an institution specifically responsible for equality issues in the recruitment of judges (**Austria, France, Germany, Spain, UK-England and Wales, Israel**); **Italy** should be added for the promotion of judges. 3 States indicate having a specific institution for the recruitment of prosecutors (**Austria, France, Germany, Israel**); **Italy** should be added for the promotion of prosecutors. **Switzerland** has a body in charge of parity in the recruitment and promotion of non-judge staff. **UK-Scotland** has a specific body for prosecutors but only at court level (Gender Equality Ambassador). **France** states a senior gender equality official, in the Ministry of Justice, is a member of the High Council for Equality. This High Council, created in 2013, draws up an annual report on the state of play in respect of sexism. It intervenes in

particular at the stage of the evaluation of the impact studies of laws in the field of equality; it can issue recommendations to the Prime Minister; it has advisory powers and can seize itself. **Italy** has a specific body for the promotion of judges and prosecutors within the High Judicial Council, which develops criteria in favour of parity. There is also a specific body for non-judge staff, composed of members of the judiciary and union representatives. This body has a presence at the local level, at the level of the courts. In **Serbia**, a commission for the promotion of equality intervenes for non-judge staff, following a particular case; it is an independent body with powers of recommendation. **Spain** has a specific body within the Council for the Judiciary which may recommend to the plenary assembly measures to be taken to actively implement the principle of gender equality. In addition, within the Ministry of Health, social services and equality, the Institute of the woman and particularly the Observatory for equality of opportunities, is formed by representatives of the different ministries (included Ministry of Justice) and proposes policies aimed at improving the situation of women in different areas. **UK-England and Wales** have the Judicial Appointments Commission, an agency of the Department of Justice, which includes a diversity committee; it is making efforts to entice women towards justice and management positions. It is represented at the local level by a Judicial College, responsible for the training of judges, which includes equality and diversity. It has produced a Guide on Equal Treatment.

**Figure 3.66 National programme or orientation document to promote gender equality within the judicial system in 2016 (number of States / entities) (G5, G6)**



Some States do not have a specific body but a general body: **Bosnia and Herzegovina** (Gender Equality Agency, in charge of discrimination-related disputes), **Estonia** (Gender Equality and Equal Treatment Commission), **Finland** (Ombudsman on equality issues), **Georgia** (Gender Equality Council in the Parliament), **Ireland** (Commission for Equality and Human Rights), **Lithuania** (ombudsman for Gender Equality in the Public and Private Sectors), **“the former Yugoslav Republic of Macedonia”** (legal representative for the protection of equal rights between the woman and man, Ombudsman and Commission for Anti-discrimination ), **Malta** (National Commission for the Promotion of Equality), **Monaco** (High Commissioner for the protection of rights and freedoms and for mediation), **Norway** (Ombudsman for equality and non-discrimination; an anti-discrimination tribunal has taken office on 1 January 2018), **Republic of Moldova** (General Commission for Gender Equality), **Sweden** (the national administration has a project manager who deals with gender issues), **Switzerland** (Federal office and cantonal equality offices), **Turkey** (an ombudsman hears complaints related to human rights violations), **Ukraine** (Council on Gender Equality and Non-Discrimination).

## Trends and conclusions

The vast majority of States and entities indicate the existence of institutions in charge of gender parity but which are not specific to the field of justice. In reality, there are very few structures fully dedicated to parity between men and women within the judicial system. **Germany** and **Italy** have local authorities which act in this field.

### 3.6.7 Institution with special responsibility for ensuring gender equality in the organisation of judicial work in courts or prosecution services

See previous section.

2 States however deserve special attention. In **Germany**, the courts have commissioners for equal opportunities, including in the highest courts, who are responsible for judges, prosecutors and non-judge staff and who can intervene in matters of recruitment and promotion. This concerns both the federal state and the Länder. At the federal level, this is organised by the Act of 24 April 2015 on equality between females and males in the federal administration and in federal enterprises and courts ([http://www.gesetze-im-internet.de/englisch\\_bgleig/englisch\\_bgleig.html#p0059](http://www.gesetze-im-internet.de/englisch_bgleig/englisch_bgleig.html#p0059)). An officer for equal opportunities and a deputy are elected in each jurisdiction that normally has at least 100 public sector employees. The officer for equal opportunities is an executive member and reports directly to the President. At the highest level of the federal authorities, it can also report to the head of the central department. The officer for equal opportunities is not bound by instructions in the performance of her duties. The officer for equal opportunities shall be responsible for promoting and monitoring the application of this Law and the Law on General Equal Treatment with regard to the protection of civil servants against discrimination on grounds of gender, in particular discrimination against females.

**UK-Scotland** has a specific body but only for prosecutors: the Equality Ambassador. The Crown Office and Procurator Fiscal Service has appointed a team of equality ambassadors to represent all the characteristics protected by the Law on Equality. In addition to representing staff, they provide advice to staff when dealing with victims and witnesses and expert advice on prosecution issues against those with a protected characteristic. 12 ambassadors represent the protected characteristics: ambassadors representing age, gender, pregnancy and motherhood, religion and beliefs, the Muslim community, the Jewish community, the LGB, transgender and non-binary community, the Traveller community, people with disabilities, mental health, refugees and asylum seekers and each of them has a role to play in reaching out to equality groups as a point of contact. Much of the work is carried out with communities and in schools to raise awareness of roles and responsibilities as a Scottish prosecution service. The Crown Office and Procurator Fiscal Service work to improve the proportion of females in senior management positions: promotion during pregnancy and maternity leave, flexible working hours. They are currently developing a pilot project on working from home based on greater use of IT.

### 3.6.8 Concrete changes in the organisation of judicial work related to the feminisation of certain functions in courts or public prosecution services

Despite a general feminisation of judicial functions, some States and entities indicate that they have not changed the organisation of judicial work: **Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Cyprus, Estonia, Greece, Lithuania, Luxembourg, Monaco, Montenegro, Norway, Poland, Republic of Moldova, Slovakia, Slovenia, Sweden, “the former Yugoslav Republic of Macedonia”, Ukraine, UK-Scotland.**

**Table 3.67 Consequences of the feminisation of certain functions within courts or prosecution services (G8)**

States / Entities	Does the feminisation of certain functions, if it exists in your country, within courts or prosecution services, lead to concrete changes in the organisation of the judicial work in the following areas						
	Assignment in different positions	Workload distribution	Working hours	Modalities of teleworking and presence in the work space	Replacement of absent persons	Organisation of the hearings	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							
Norway							
Poland							
Portugal							
Romania							
Russian Federation							
Serbia							
Slovakia							
Slovenia							
Spain							
Sweden							
Switzerland							
The FYROMacedonia							
Turkey							
Ukraine							
UK-England and Wales							
UK-Scotland							
Israel							
Morocco							
<b>Yes</b>	2	2	5	5	5	2	0
No or NAP	36	36	33	33	33	36	38
No answer	8	8	8	8	8	8	8
% of NA	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
<b>Total</b>	<b>38</b>	<b>38</b>	<b>38</b>	<b>38</b>	<b>38</b>	<b>38</b>	<b>38</b>

Some States have taken measures: **Czech Republic** (possibility of part-time or work at home for the judge or prosecutor to care for a child, this measure applies to both men and women), **Finland**, **France** (home and teleworking hours), **Georgia** (some work organisation facilities for women), **Hungary** (assignment to certain jobs, working hours, replacement of absent persons), **Italy** (reduced working hours for mothers, work at home, replacement of absent persons, organisation of hearings), **Malta** (the court must favour work at home to facilitate family life), **Portugal** (it is possible to replace persons on maternity leave in administrative and tax courts), **Serbia** (replacement of absent persons), **Spain** (working hours, home or teleworking), **Switzerland** (no precise study, but mechanisms are evolving on assignment to certain posts, workload distribution, working hours, work at home and replacement of absent persons), **Turkey** (distribution of workload, working hours).

### Trends and conclusions

Despite the fairly general phenomenon of feminisation of most legal professions, the organisation of work within the judicial system has not evolved greatly changed. The implementation of telework is far from being generalised, the replacement of persons on maternity leave does not seem systematic. It seems that the organisation of work deserves particular attention at the level of the courts of first instance, where women are significantly more numerous.

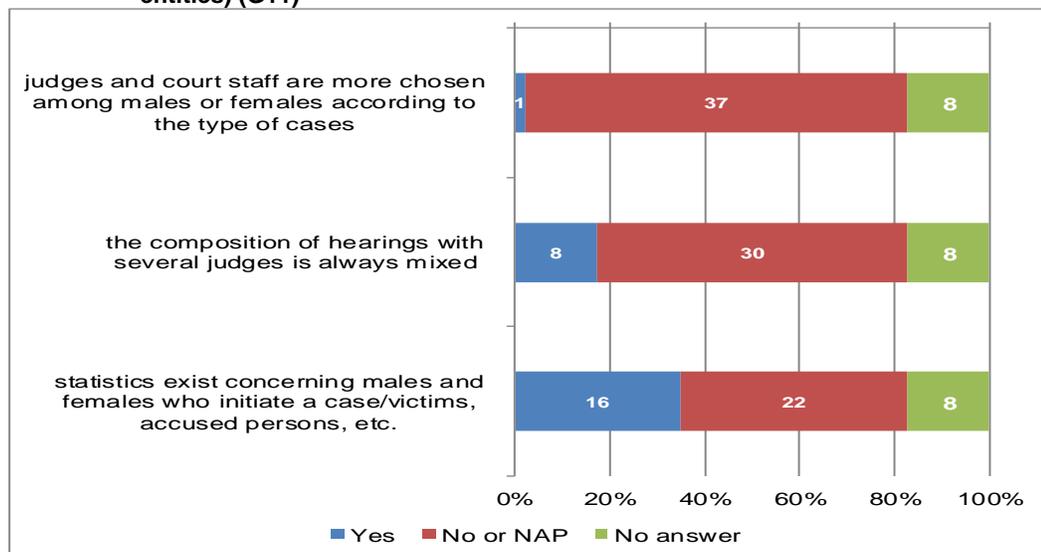
Here again, the absence of an overall strategy seems to lead States to take a succession of measures one after the other, rather than reflecting on an overall plan for the reorganisation of judicial work.

### 3.6.9 Special attention paid to the issue of parity vis-à-vis the public or court users

**Finland** has changed the organisation of hearings as a result of feminisation; it is customary to ensure parity in their composition. In **Italy**, the composition of collegial hearings is mixed. In **Lithuania**, the composition of the courts is transparent. In **Norway**, the composition of collegial hearings is always mixed (a principle enshrined in law). **Sweden** is making an effort to ensure that the composition of the court panels is mixed. In **Switzerland**, judges are more male or female depending on the type of case (cantonal survey). The composition of the collegial hearings is still mixed in “**the former Yugoslav Republic of Macedonia**”. The composition of college hearings is traditionally mixed in **UK-England and Wales**. The distribution of judges in **Morocco** is based on objective criteria; the composition of collegial hearings is sometimes mixed. In addition, the principle of parity, contained in the Organic Law, ensures the representation of women among the 10 members elected in proportion to their presence in the judiciary; 4 females sit on the High Council of the Judiciary (3 elected and one appointed by the King).

The **Czech Republic** keeps statistics on the gender of the victim and the offender in criminal proceedings; there are also statistics in civil proceedings in specific cases. **Hungary** has statistics on the gender of persons bringing cases before the courts. In **Italy**, there are statistics on persons bringing cases before the courts (recent survey by the Ministry of Justice on gender procedures). In **Lithuania**, there are statistics on persons bringing cases before the courts. The **Republic of Moldova** keeps statistics on the gender of accused persons. **Serbia** keeps statistics on perpetrators of criminal offences and their victims. **Slovakia** compiles these gender statistics only for accused persons. **Turkey** keeps statistics on the gender of accused persons and victims in criminal proceedings. In **UK-England and Wales**, gender statistics exist but only for the accused person. In **Morocco**, the computerised management system at court level contains fields relating to the gender of the parties.

**Figure 3.68 Particular attention given to gender issues as regards the public and court users (number of States / entities) (G11)**



**Trends and conclusions**

Generally speaking, even if there are few actions taken to adjust the gender balance within the justice sector professions, the data suggests that the problem is being taken into account in a large majority of States and entities. This observation is supported by the multiplication of studies exploring the topic, providing some answers, but also raising other questions.

The most urgent measures seem to be envisaged in the area of gender equality for higher functions, where inequalities are most significant. Rules or solutions for better responding to the phenomenon of feminisation must also be enacted so that women are not penalised in access to positions of responsibility.

An effort is made as regards the composition of the collegial courts to ensure that they sit on a parity basis; only 7 States and entities have in place an obligation of parity between females and males in this composition of the collegial courts. But there does not seem to be a comprehensive approach to how users can perceive parity within the justice system.

Statistics are often collected on the gender of the accused and convicted persons, sometimes on victims but less commonly. The CEPEJ could deepen its analyses on this basis in its future work.

Although these are mostly liberal professions, professional organisations gathering lawyers, notaries and enforcement agents should be encouraged to implement more favourable recruitment, promotion and working conditions for women.



## Chapter 4. Organisation of courts

### 4.1 Judicial organisation

A *court* is defined in the explanatory note as a “body established by law and appointed to adjudicate on specific type(s) of judicial disputes within a specified administrative structure where one or several judge(s) is/are sitting on a temporary or permanent basis”.

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

- *first instance courts of general jurisdiction (legal entities)*: these courts deal with all issues which are not attributed to specialised courts and specific cases of common jurisdiction referred to in this chapter,
- *first instance specialised courts (legal entities)*,
- all courts considered as *geographical locations*: these are premises or court buildings where judicial hearings take place. If there are several courts in the same place (city/district, county, department, region, etc.), this must be taken into account. The figures include the locations of the first instance courts of general jurisdictions and first instance specialised courts, second instance courts (courts of appeal) as well as the locations of the courts of highest instance and/or supreme courts,
- the *judicial map* at national level and its evolution consisting in the restructuring of the network of courts on national territory,
- the courts perform *different tasks* according to the powers described in the law of each State. In principle, the courts are responsible for dealing with (i) civil cases (disputes between persons and/or legal entities), criminal cases and administrative cases (persons and/or legal entities against the State or State authorities),
- In addition, courts may be responsible for keeping registers (land, commercial, civil, etc.) and may have special services for the execution of cases. For example, in **Bosnia and Herzegovina** the courts are also competent for the registration of companies, in **Poland** the district courts deal with land registers and mortgages and in **Spain** there are 26 specialised civil registry courts.

The data contained in this chapter must be treated with caution because the jurisdiction of a court or the name of a case may correspond to different concepts in different States or entities. For some States and entities, for example, the courts of peace are not considered as courts of first instance. Besides the differences related to the definitions, the geographical density can also be a differentiating factor for comparable countries in terms of the development of their judicial systems. Due to short distances, jurisdictions are more clustered and therefore fewer in number. Thus, States with a high population density may mechanically have a low number of jurisdictions per capita (**Netherlands** 0,2 ; **Denmark** 0,5), as opposed to larger ones (**France** 1; **Germany** 1,3)

#### 4.1.1 Population and number of courts

A comparison of data on the total number of courts counted as geographical entities per 100 000 inhabitants, totalling all courts (Table 4.1 below) shows an average of 1,9 courts and the fact that there are between 1 and 2 courts in 20 States and entities (**Albania, Austria, Azerbaijan, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Republic of Moldova, Norway, Poland, Romania, Slovakia, Spain, Sweden, "the former Yugoslav Republic of Macedonia"** and **Ukraine**). Some countries have a high number of courts per capita: in particular **Croatia** (4,9) or **Montenegro** (4,0). In the opposite direction, the **Netherlands** (0,2) or **Morocco** (0,3) have a very low number of courts per inhabitant.

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

It is nevertheless useful to note that while the two ways of counting the courts give a general idea of the number of courts per State and entity, some States have a total number of courts (geographical locations) much lower than the number of first instance courts (as legal entities), which suggests that States have already made efforts to group the courts together, thus facilitating access to justice and probably rationalising certain operating costs: **Austria, France, Portugal, Russian Federation, Spain, Switzerland, Turkey and Israel**. The same is true in **Malta** and **Monaco**, where this geographical rationalisation is more evident. Depending on the State and entity, this may be an old judicial organisation or a reform of the judicial map (see also part 4.2 below).

**Table 4.1 Number of 1st instance courts as legal entities and number of all courts as geographic locations in 2016 (Q1, Q42)**

States / Entities	First instance courts of general jurisdiction (legal entities)		All courts (geographic location)	
	Absolute number	per 100 000 inhabitants	Absolute number	per 100 000 inhabitants
Albania	22	0,8	38	1,3
Andorra	2	2,7	3	4,1
Armenia	16	0,5	21	0,7
Austria	129	1,5	103	1,2
Azerbaijan	86	0,9	112	1,2
Belgium	13	0,1	267	2,4
Bosnia and Herzegovina	67	1,9	98	2,8
Bulgaria	113	1,6	182	2,6
Croatia	22	0,5	203	4,9
Cyprus	6	0,7	22	2,6
Czech Republic	86	0,8	98	0,9
Denmark	24	0,4	29	0,5
Estonia	4	0,3	21	1,6
Finland	27	0,5	73	1,3
France	786	1,2	641	1,0
Georgia	26	0,7	29	0,8
Germany	761	0,9	1 102	1,3
Greece	289	2,7	319	3,0
Hungary	111	1,1	157	1,6
Iceland	8	2,4	11	3,3
Ireland	3	0,1	95	2,0
Italy	515	0,8	836	1,4
Latvia	28	1,4	42	2,1
Lithuania	54	1,9	62	2,2
Luxembourg	5	0,8	8	1,4
Malta	1	0,2	2	0,5
Republic of Moldova	46	1,3	53	1,5
Monaco	1	2,7	1	2,7
Montenegro	15	2,4	25	4,0
Netherlands	11	0,1	40	0,2
Norway	63	1,2	72	1,4
Poland	363	0,9	401	1,0
Portugal	292	2,8	253	2,5
Romania	233	1,2	243	1,2
Russian Federation	10 039	6,8	3 823	2,6
Serbia	93	1,3	162	2,3
Slovakia	54	1,0	64	1,2
Slovenia	55	2,7	77	3,7
Spain	2 223	4,8	763	1,6
Sweden	60	0,6	95	1,0
Switzerland	167	2,0	290	3,4
The FYROMacedonia	25	1,2	34	1,6
Turkey	4 472	5,6	668	0,8
Ukraine	663	1,6	765	1,8
UK-England and Wales	393	0,7	396	0,7
UK-Scotland	77	1,4	NA	NA
Israel	37	0,4	69	0,8
Morocco	67	0,2	112	0,3
<b>Average</b>	135	1,22	264	1,9
<b>Median</b>	54	1,13	95	1,6
<b>Minimum</b>	1	0,1	1	0,2
<b>Maximum</b>	10 039	6,8	3 823	4,9

\*Russian Federation, Spain and Turkey are not included in the average and the median for 1st instance courts due to their specific methodology of counting the number of courts

#### 4.1.2 General jurisdiction courts and specialised courts

Court organisation systems in Europe can be classified in two major groups:

- States and entities in which most or all disputes and cases are handled by general jurisdiction courts,
- States and entities in which a significant part of the disputes is addressed by specialised courts.

Table 4.2 below shows that in 19 States and entities there are only general jurisdiction courts and no specialised courts of first instance (for example **Andorra, Czech Republic, Georgia**) or few (less than 10 % compared to general jurisdiction courts) specialised courts of first instance (**Armenia** (1), **Bosnia and Herzegovina** (5), **Denmark** (1), **Latvia** (1), **Lithuania** (5), **Republic of Moldova** (2), the **Netherlands** (1), **Norway** (2), **Poland** (26), **Romania** (9), **Russian Federation** (1), **Slovenia** (5), **Ukraine** (54), **UK-England and Wales** (3), **UK-Scotland** (1)).

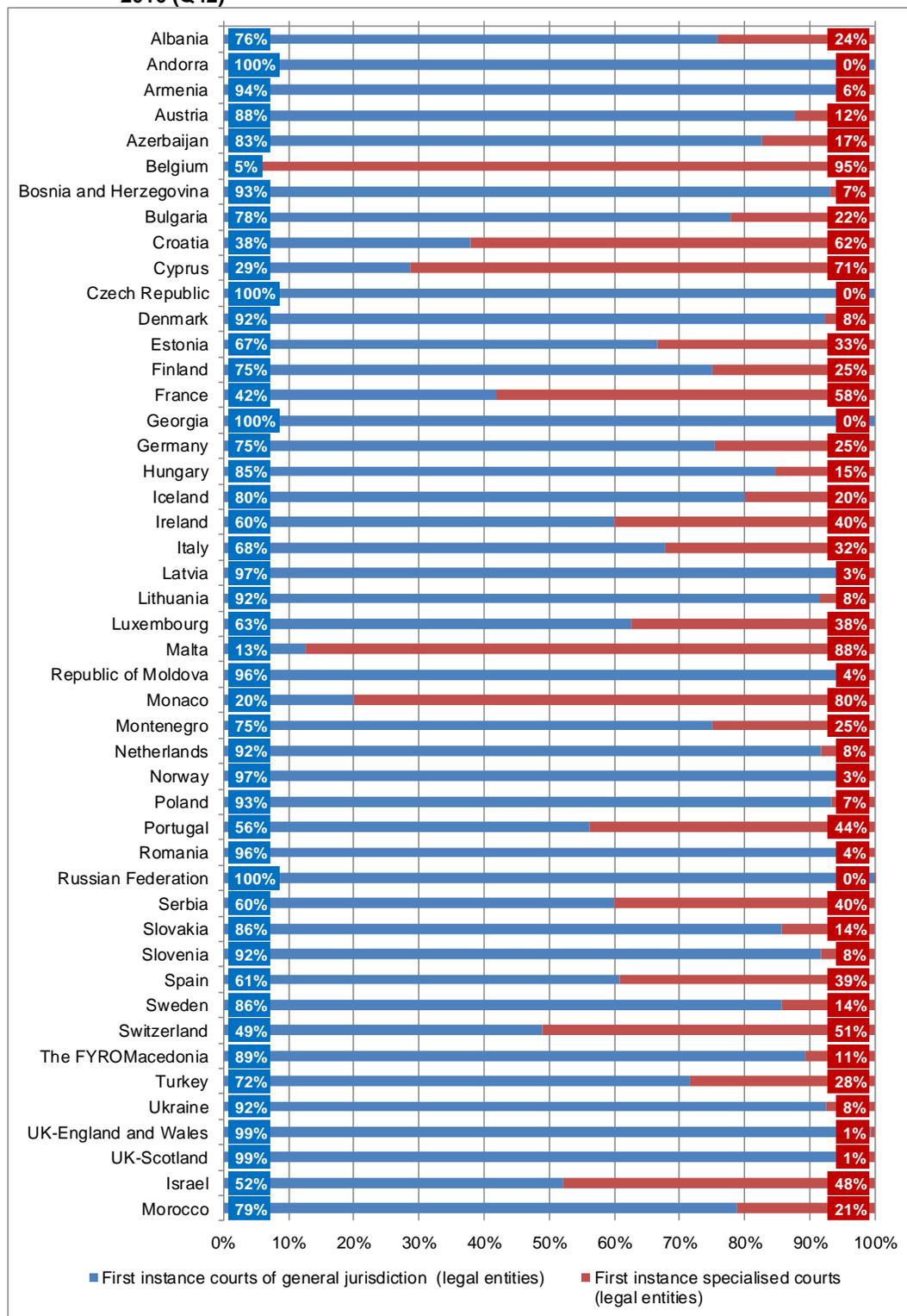
On the contrary, specialised courts represent more than 30 % of the first instance courts in **Estonia** (33 %), **Ireland** (40 %), **Italy** (32 %), **Portugal** (44 %), **Serbia** (40 %), **Spain** (39 %) or **Israel** (48 %), or even more than half in **Belgium** (95 %), **Croatia** (62 %), **France** (58 %) or **Switzerland** (51 %).

**Table 4.2 Number of first instance courts of general jurisdiction and number of first instance specialised courts in 2016 in absolute number and per 100 000 inhabitants (Q1, Q42)**

States / Entities	Total number of first instance courts		First instance courts of general jurisdiction (legal entities)		First instance specialised courts (legal entities)		% of specialised courts of first instance
	Absolute number	per 100 000 inhabitants	Absolute number	per 100 000 inhabitants	Absolute number	per 100 000 inhabitants	
Albania	29	1,0	22	0,8	7	0,2	24%
Andorra	2	2,7	2	2,7	NAP	NA	NAP
Armenia	17	0,6	16	0,5	1	0,0	6%
Austria	147	1,7	129	1,5	18	0,2	12%
Azerbaijan	104	1,1	86	0,9	18	0,2	17%
Belgium	238	2,1	13	0,1	225	2,0	95%
Bosnia and Herzegovina	72	2,1	67	1,9	5	0,1	7%
Bulgaria	145	2,0	113	1,6	32	0,5	22%
Croatia	58	1,4	22	0,5	36	0,9	62%
Cyprus	21	2,5	6	0,7	15	1,8	71%
Czech Republic	86	0,8	86	0,8	NAP	NA	NAP
Denmark	26	0,5	24	0,4	2	0,0	8%
Estonia	6	0,5	4	0,3	2	0,2	33%
Finland	36	0,7	27	0,5	9	0,2	25%
France	1 872	2,8	786	1,2	1 086	1,6	58%
Georgia	26	0,7	26	0,7	NAP	NA	NAP
Germany	1 008	1,2	761	0,9	247	0,3	25%
Greece	NA	NA	289	2,7	NA	NA	NA
Hungary	131	1,3	111	1,1	20	0,2	15%
Iceland	10	3,0	8	2,4	2	0,6	20%
Ireland	5	0,1	3	0,1	2	0,0	40%
Italy	760	1,3	515	0,8	245	0,4	32%
Latvia	29	1,5	28	1,4	1	0,1	3%
Lithuania	59	2,1	54	1,9	5	0,2	8%
Luxembourg	8	1,4	5	0,8	3	0,5	38%
Malta	8	1,8	1	0,2	7	1,6	88%
Republic of Moldova	48	1,4	46	1,3	2	0,1	4%
Monaco	5	13,3	1	2,7	4	10,7	80%
Montenegro	20	3,2	15	2,4	5	0,8	25%
Netherlands	12	0,1	11	0,1	1	0,0	8%
Norway	65	1,2	63	1,2	2	0,0	3%
Poland	389	1,0	363	0,9	26	0,1	7%
Portugal	520	5,0	292	2,8	228	2,2	44%
Romania	242	1,2	233	1,2	9	0,0	4%
Russian Federation	10 040	6,8	10 039	6,8	1	0,0	0%
Serbia	155	2,2	93	1,3	62	0,9	40%
Slovakia	63	1,2	54	1,0	9	0,2	14%
Slovenia	60	2,9	55	2,7	5	0,2	8%
Spain	3 657	7,9	2 223	4,8	1 434	3,1	39%
Sweden	70	0,7	60	0,6	10	0,1	14%
Switzerland	342	4,1	167	2,0	175	2,1	51%
The FYROMacedonia	28	1,4	25	1,2	3	0,1	11%
Turkey	6 240	7,8	4 472	5,6	1 768	2,2	28%
Ukraine	717	1,7	663	1,6	54	0,1	8%
UK-England and Wales	396	0,7	393	0,7	3	0,0	1%
UK-Scotland	78	1,4	77	1,4	1	0,0	1%
Israel	71	0,8	37	0,4	34	0,4	48%
Morocco	85	0,2	67	0,2	18	0,1	21%
<b>Average</b>	193	1,89	135	1,22	65	0,7	26%
<b>Median</b>	62	1,35	54	1,13	7	0,2	16%
<b>Minimum</b>	2	0,1	1	0,1	1	0,0	0%
<b>Maximum</b>	10 040	13,3	10 039	6,8	1 768	10,7	95%

\*Russian Federation, Spain and Turkey are not included in the average and the median for 1st instance courts due to their specific methodology of counting the number of courts

**Figure 4.3 Number of first instance courts of general jurisdiction vs. number of first instance specialised courts in 2016 (Q42)**



These very disparate data between courts of general jurisdiction and specialised courts should be put into perspective because they often result from a difference in the naming or interpretation of the term "specialised" (specialised court or specialised chamber or specialised judge in a court of general jurisdiction), while showing the same reality within the judicial organisation.

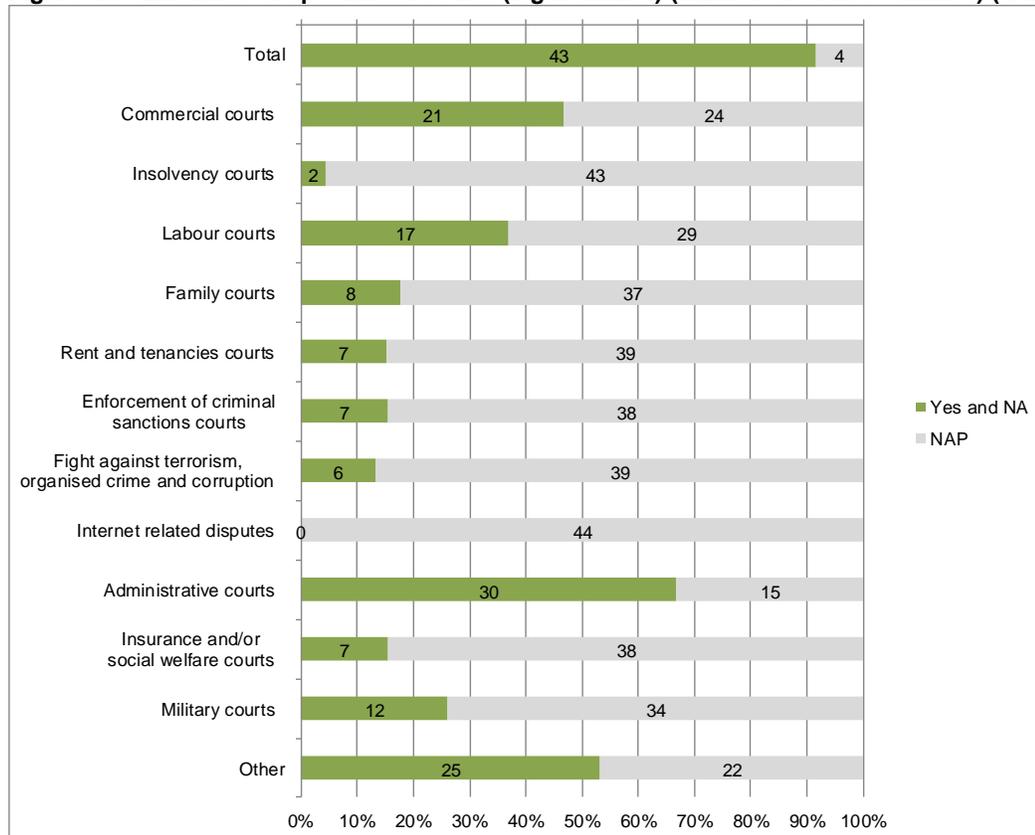
The details provided by the States and entities regarding the subjects treated by these jurisdictions provide a concrete image of the specialised courts (of first instance). Among the 42 States and entities that answered that they have specialised courts, these are:

- administrative courts (for 31 States and entities)
- commercial courts (for 21 States and entities)
- labour courts (for 17 States and entities)
- military courts (for 11 States and entities)

Also, **Israel** reported having labour and military courts and **Morocco** having administrative and commercial courts.

For the rest, these courts are family courts, tenancy courts, social security courts, etc. (see below Figure 4.4).

**Figure 4.4 Existence of specialised courts (legal entities) (number of States / entities) (Q42)**



The category "other" specialised courts is interesting since it concerns 22 States and entities which list a large number of them (making it possible to suggest a change in future to the proposed categories): one example is **Finland** with the High Court of Impeachment which is responsible for adjudicating upon the conduct of senior State officials, which does not have a permanent character and which probably exists in several States. In **Spain** there are many courts with jurisdiction over violence against women and in **Israel** there are about 20 religious courts. **Belgium** includes Justices of the Peace within the category of specialised courts.

The number of specialised courts of first instance increased between 2014 and 2016, notably in **Croatia, Ireland, Italy, Montenegro, Switzerland** and **Israel**.

While the comparison by State shows a diversified image without a general tendency towards specialisation, it is nevertheless useful to mention that specialised courts, chambers or judges can offer the existing judicial organisation a more rapid adaptation to modern litigation and thus a more rapid response to the court user. It would thus be appropriate to provide judges and court staff with continuous training in highly specialised and technical areas (no State or entity mentions, for example, the existence of a court specialising in Internet matters).

**Table 4.5 Number of first instance specialised courts and foreseen change in the organisation of courts in 2016 (Q43, Q44)**

States / Entities	Number of 1st instance specialised courts (legal entities)													
	Total	Commercial courts	Insolvency courts	Labour courts	Family courts	Rent and tenancies courts	Enforcement of criminal sanctions courts	Fight against terrorism, organised crime and corruption	Internet related disputes	Administrative courts	Insurance and/or social welfare courts	Military courts	Other	Foreseen change in court organisation
Albania	7	NAP	NAP	NAP	NAP	NAP	NAP	1	NAP	6	NAP	NAP	NAP	
Andorra	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	
Armenia	1	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	1	NAP	NAP	NAP	
Austria	19	2	NAP	1	NAP	NAP	2	NAP	NAP	11	1	NAP	2	
Azerbaijan	18	7	NAP	NAP	NAP	NAP	NAP	NAP	NAP	7	NAP	6	5	
Belgium	225	9	NAP	9	NAP	NAP	NAP	NAP	NAP	5	NAP	NAP	202	
Bosnia and Herzegovina	5	5	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	
Bulgaria	32	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	28	NAP	3	1	
Croatia	36	8	NAP	1	NAP	NAP	NAP	NAP	NAP	4	NAP	NAP	23	
Cyprus	15	NAP	NAP	3	3	2	NAP	NAP	NAP	1	NAP	1	5	
Czech Republic	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	
Denmark	2	1	1	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	1	
Estonia	2	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	2	NAP	NAP	NAP	
Finland	9	1	NAP	1	NAP	NAP	NAP	NAP	NAP	6	1	NAP	NAP	
France	1086	143	NAP	216	NAP	281	50	8	NAP	42	141	NAP	200	
Georgia	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	
Germany	247	NAP	NAP	110	NAP	NAP	NAP	NAP	NAP	51	68	NAP	18	
Greece	NA	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	30	NAP	NA	NA	
Hungary	20	NAP	NAP	20	NAP	NAP	NAP	NAP	NAP	20	NAP	NAP	NAP	
Iceland	2	NAP	NAP	1	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	1	
Ireland	2	NAP	NAP	NAP	NAP	NAP	NAP	2	NAP	NAP	NAP	NAP	NAP	
Italy	245	22	NAP	NAP	NAP	NAP	58	NAP	NAP	29	NAP	4	132	
Latvia	1	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	1	NAP	NAP	NAP	
Lithuania	5	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	5	NAP	NAP	NAP	
Luxembourg	13	2	NAP	3	2	3	NAP	NAP	NAP	1	1	1	NAP	
Malta	7	NAP	NAP	NAP	1	1	NAP	NAP	NAP	1	NAP	NAP	4	
Republic of Moldova	2	1	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	1	NAP	
Monaco	4	0	0	1	0	2	0	0	0	0	0	0	1	
Montenegro	5	1	NAP	NAP	NAP	NAP	NAP	NAP	NAP	1	NAP	NAP	3	
Netherlands	1	1	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	
Norway	2	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	2	
Poland	26	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	17	NAP	9	NAP	
Portugal	248	20	NAP	44	45	NAP	5	NAP	NAP	20	NAP	NAP	114	
Romania	9	3	NAP	NAP	1	NAP	NAP	NAP	NAP	NAP	NAP	5	NAP	
Russian Federation	1	1	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	
Serbia	62	16	NAP	NAP	NAP	NAP	NAP	NAP	NAP	1	NAP	NAP	45	
Slovakia	9	NAP	NAP	NAP	NAP	NAP	NAP	1	NAP	8	NAP	NAP	NAP	
Slovenia	5	NAP	NAP	4	NAP	NAP	NAP	NAP	NAP	1	1	NAP	NAP	
Spain	1434	64	NAP	345	104	NAP	18	7	NAP	241	NAP	NAP	655	
Sweden	10	NAP	NAP	1	NAP	8	NAP	NAP	NAP	NAP	NAP	NAP	1	
Switzerland	175	4	16	39	16	39	4	1	0	21	9	8	18	
The FYROMacedonia	3	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	1	NAP	NAP	2	
Turkey	1768	192	NAP	322	307	NAP	145	NAP	NAP	127	NAP	28	647	
Ukraine	54	27	NAP	NAP	NAP	NAP	NAP	NAP	NAP	27	NAP	NAP	NAP	
UK-England and Wales	3	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	
UK-Scotland	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	2	
Israel	34	NAP	NAP	5	NAP	NAP	NAP	NAP	NAP	NAP	NAP	7	22	
Morocco	18	8	NAP	NAP	NAP	NAP	NAP	NAP	NAP	7	NAP	NAP	3	
Yes	42	21	2	17	8	7	7	6	0	30	7	11	24	32
NAP	4	24	43	29	37	39	38	39	44	15	38	34	22	14
NA	1	0	0	0	0	0	0	0	0	0	0	1	1	

### 4.1.3 Treatment of ordinary cases: small claims, dismissal and robbery cases

In order to provide a comparative overview of the organisation, the CEPEJ proposed to identify specific categories of ordinary cases and to indicate the resulting judicial organisation.

**Table 4.6 Number of first instance courts competent for cases concerning small claims, dismissals and robbery (geographic locations) in 2016 (Q1, Q45)**

States / Entities	Debt collection for small claims		Dismissal		Robbery	
	Absolute number	per 100 000 inhabitants	Absolute number	per 100 000 inhabitants	Absolute number	per 100 000 inhabitants
Albania	NAP	NAP	NAP	NAP	NAP	NAP
Andorra	1	1,4	1	1,4	1	1,4
Armenia	NAP	NAP	NAP	NAP	NAP	NAP
Austria	115	1,3	16	0,2	16	0,2
Azerbaijan	86	0,9	86	0,9	5	0,1
Belgium	208	1,8	34	0,3	27	0,2
Bosnia and Herzegovina	56	1,6	51	1,5	51	1,5
Bulgaria	113	1,6	113	1,6	145	2,0
Croatia	87	2,1	23	0,6	64	1,5
Cyprus	6	0,7	3	0,4	6	0,7
Czech Republic	NAP	NAP	NAP	NAP	NAP	NAP
Denmark	24	0,4	24	0,4	24	0,4
Estonia	17	1,3	16	1,2	16	1,2
Finland	27	0,5	27	0,5	27	0,5
France	307	0,5	216	0,3	168	0,3
Georgia	26	0,7	26	0,7	26	0,7
Germany	646	0,8	110	0,1	761	0,9
Greece	155	1,4	NA	NA	NA	NA
Hungary	111	1,1	20	0,2	131	1,3
Iceland	8	2,4	8	2,4	8	2,4
Ireland	92	2,0	NAP	NAP	91	1,9
Italy	370	0,6	145	0,2	145	0,2
Latvia	28	1,4	28	1,4	28	1,4
Lithuania	49	1,7	54	1,9	49	1,7
Luxembourg	3	0,5	3	0,5	2	0,3
Malta	2	0,5	2	0,5	2	0,5
Republic of Moldova	47	1,3	46	1,3	47	1,3
Monaco	1	2,7	1	2,7	1	2,7
Montenegro	15	2,4	15	2,4	17	2,7
Netherlands	11	0,1	11	0,1	11	0,1
Norway	64	1,2	64	1,2	64	1,2
Poland	318	0,8	131	0,3	318	0,8
Portugal	1	0,0	23	0,2	23	0,2
Romania	176	0,9	42	0,2	176	0,9
Russian Federation	NA	NA	NA	NA	NA	NA
Serbia	83	1,2	67	1,0	93	1,3
Slovakia	54	1,0	8	0,1	54	1,0
Slovenia	55	2,7	4	0,2	11	0,5
Spain	1 788	3,8	345	0,7	1 545	3,3
Sweden	48	0,5	48	0,5	48	0,5
Switzerland	108	1,3	98	1,2	85	1,0
The FYROMacedonia	26	1,3	26	1,3	26	1,3
Turkey	NAP	NAP	322	0,4	335	0,4
Ukraine	NAP	NAP	NAP	NAP	NAP	NAP
UK-England and Wales	235	0,4	NA	NA	98	0,2
UK-Scotland	NAP	NAP	NAP	NAP	39	0,7
Israel	32	0,4	5	0,1	6	0,1
Morocco	248	0,7	70	0,2	70	0,2
<b>Average</b>	99	1,2	45	0,8	76	1,0
<b>Median</b>	55	1,2	26	0,5	34	0,9
<b>Minimum</b>	1	0,0	1	0	1	0
<b>Maximum</b>	1 788	3,8	345	3	1 545	3

\*Spain and Turkey are not included in the calculation of the average and median due to specific methodology of counting the number of courts

In some States and entities, courts of general jurisdiction are in charge of small claims recovery, dismissal and robbery cases. It is for example the case of **France** (where first instance courts have jurisdiction as of 2017), **Croatia**, **Denmark** or **Serbia**. In some States, the recovery of small claims is part of the jurisdiction of specialised courts: **Finland**, the **Netherlands**. Small claims in **Malta**, for instance, fall within the jurisdiction of the Small Claims Tribunal.

As regards dismissal cases, they are dealt with by specialised (labour) courts where they exist, for example in **Slovenia** and **UK-Scotland**. In **Switzerland**, some cantons attribute dismissal cases to the courts of general jurisdiction. Other cantons bring them before the labour courts. In most States and entities, robbery falls within the jurisdiction of the criminal courts of general jurisdiction.

More specifically, in the case of a small claim and its recovery, which is a good example of an "everyday" litigation, for which the litigant expects and is entitled to expect a rapid response from the courts, it is noted that the amount below which a claim is considered as a "small claim" is generally used as a criterion to designate procedural jurisdiction (often judges of peace or local judges). The analysis of this litigation gives, in general, a good indication of the workload of the first instance courts.

The value of small claims diverges considerably by State, which, of course, must also be related to GDP: 18 € in **Albania**, 354€ in **Armenia** and 370 € in **Czech Republic**, whereas it is 12 703 € in **Norway**, 15 000 € in **Austria** and 25 000 € in the **Netherlands**. For the rest of the States and entities which replied, the small claims value roughly sits between 2 000 € and 6 000 €.

Some States do not have a specific definition in their national legislations concerning the scope or the management of small claims (for example in **Armenia**, **Azerbaijan**, **Iceland** and **Slovakia**), while providing that for small claims appeal is not allowed (**Czech Republic**). The members of the European Union adhere to Regulation No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure. Other States are considering a reform aimed at establishing a specific procedure for small cases (**Armenia**). However, some States foresee different amounts depending on the nature of the claim (**Croatia**, **France**, **Georgia**) or different areas where it is considered to be a small claim but no amount is fixed (**Finland**).

**Map 4.7 Small claims (definition) in 2016 (Q45-1, Q45-2)**

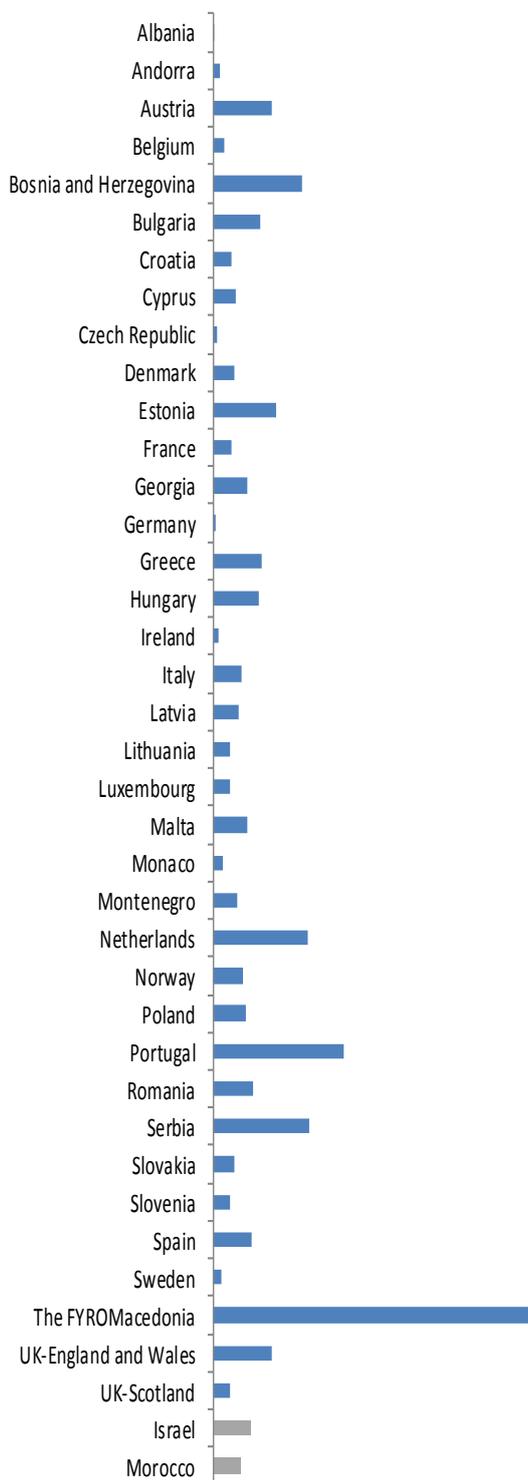


**Table 4.8 Small claims (definition and value) and ratio of a value of a small claim with GDP per capita in 2016 (Q45-1, Q45-2)**

States / Entities	Definition for small claims the same as the one in the Explanatory note	Value of small claim in Euro	Ratio of a value of a small claim with GDP per capita
Albania		18 €	0,005
Andorra		1 200 €	0,046
Armenia		- €	-
Austria		15 000 €	0,371
Azerbaijan		- €	-
Belgium		2 500 €	0,067
Bosnia and Herzegovina		2 500 €	0,574
Bulgaria		2 000 €	0,301
Croatia		1 328 €	0,121
Cyprus		3 000 €	0,141
Czech Republic		370 €	0,022
Denmark		6 718 €	0,139
Estonia		6 400 €	0,399
Finland		- €	-
France		4 000 €	0,120
Georgia		716 €	0,219
Germany		600 €	0,016
Greece		5 000 €	0,310
Hungary		3 232 €	0,289
Iceland		- €	-
Ireland		2 000 €	0,034
Italy		5 000 €	0,181
Latvia		2 100 €	0,165
Lithuania		1 500 €	0,111
Luxembourg		10 000 €	0,110
Malta		5 000 €	0,221
Republic of Moldova		- €	-
Monaco		4 600 €	0,064
Montenegro		1 000 €	0,157
Netherlands		25 000 €	0,606
Norway		12 703 €	0,193
Poland		2 380 €	0,209
Portugal		15 000 €	0,838
Romania		2 202 €	0,256
Russian Federation		- €	-
Serbia		3 000 €	0,612
Slovakia		2 000 €	0,134
Slovenia		2 000 €	0,104
Spain		6 000 €	0,250
Sweden		2 317 €	0,050
Switzerland		- €	-
The FYROMacedonia		9 756 €	2,080
Turkey		- €	-
Ukraine		- €	-
UK-England and Wales		11 650 €	0,375
UK-Scotland		3 495 €	0,109
Israel		8 260 €	0,234
Morocco		471 €	0,170
<b>Average</b>		<b>4 029 €</b>	<b>0,271</b>
<b>Median</b>		<b>2 260 €</b>	<b>0,161</b>
<b>Minimum</b>		<b>- €</b>	<b>0,005</b>
<b>Maximum</b>		<b>25 000 €</b>	<b>2,080</b>

\*Spain and Turkey are not included in the average and the median due to their specific methodology of counting the number of courts

**Figure 4.9 Ratio of a value of a small claim with GDP per capita (Q3, Q45-1, Q45-2)**



#### 4.1.4 Judicial map

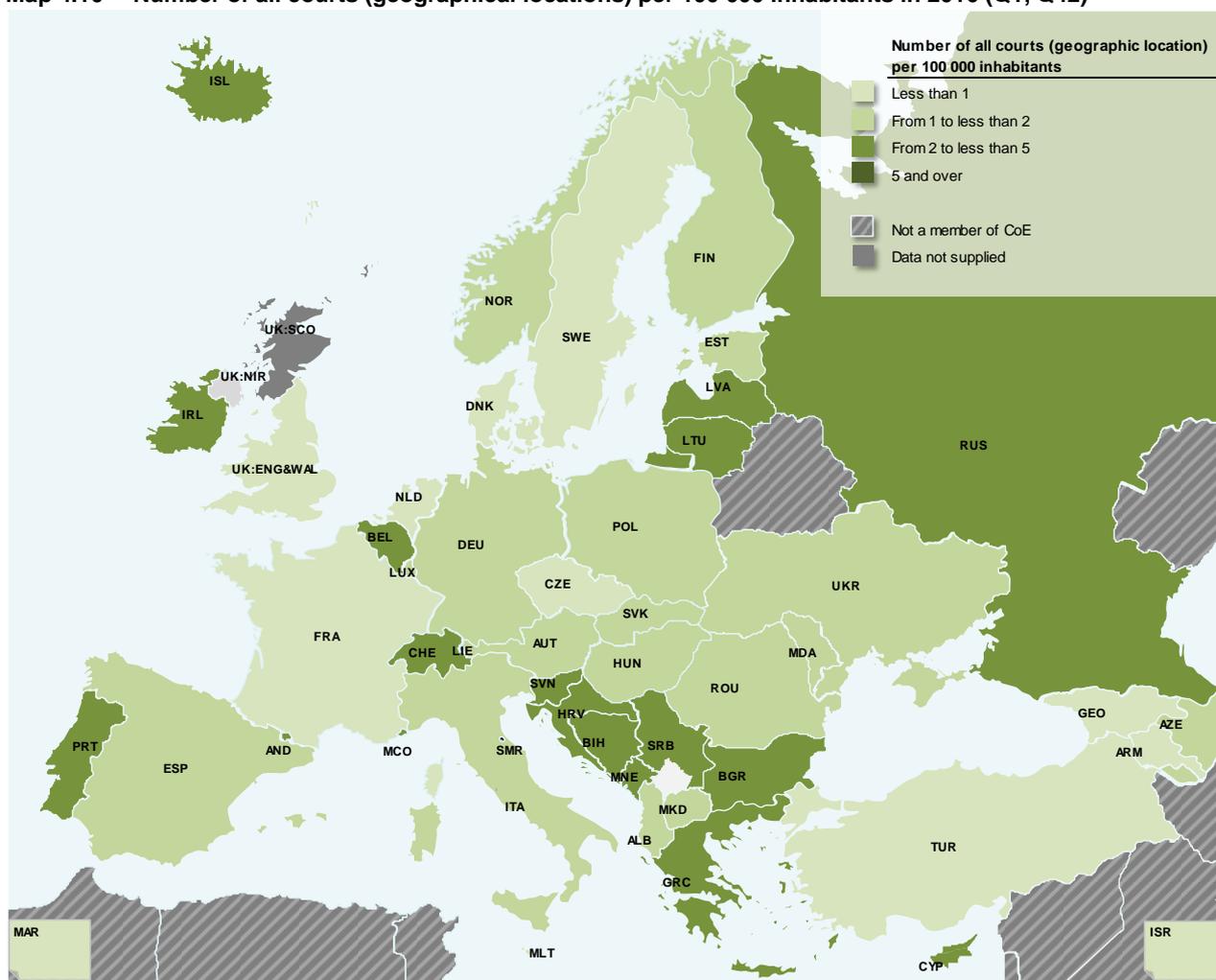
Access to courts is a key element of the fundamental principle of access to justice. Therefore it is worth examining how the court system is organised on the territory of the States and entities and then how litigants can physically accede to a judge.

The remarks made above about the geographical density of countries and thus the distance individuals have to travel to access a jurisdiction are also useful here as an explanatory variable.

Some States have made the choice to concentrate their court system and keep a small number of large courts, while others have made the choice to disseminate smaller courts throughout their territory.

To assess this phenomenon, it is proposed to consider first of all, the total number of geographical locations of courts (it being understood that the number of courts of appeal and supreme courts, included in the data below, does not have a significant impact on the ratio, except for small States with a small number of first instance courts).

**Map 4.10** Number of all courts (geographical locations) per 100 000 inhabitants in 2016 (Q1, Q42)



States having the highest density are **Croatia** (4,9), **Montenegro** (4,0), **Slovenia** (3,7) and **Switzerland** (3,4). The lowest density per capita concerns the **Netherlands** (0,2), **Morocco** (0,3) and **Denmark** (0,5).

In many States and entities, the judicial organisation is longstanding. To take into consideration demographic trends, new technical means of transport and communication of court users and the increased specialisation of judges, many States have recently set up, or are thinking of setting up, a new division of jurisdictions that would improve the efficiency of justice while creating economies of scale (32 States and entities note that changes in the court organisation are foreseen).

These reforms of the judicial map go hand in hand with the use of information and communication methods via the Internet and the dematerialisation of documents, which are developing rapidly in many countries, sometimes accompanying major changes in terms of work organisation: for example, in **Albania** information technologies will be administered by independent institutions of the judicial system, in **Armenia** a new system of automatic distribution of cases is being applied, in the **Czech Republic** an audiovisual system of recording civil cases is provided for in new legislation as well as an automatic generator of random assignment of cases, in the **Republic of Moldova** a system of allocation of cases is in place, as well as audio recordings. **UK-England and Wales** is putting in place online systems for the facilitation of access to courts.

Logically, the greater the density of courts on a State's territory, particularly in the States with a high population density, the more tempting it should be to undertake judicial map reforms. It is not always this criterion which dominates though; others come into play, in particular the legal tradition of easily going or not before a court. It should also be noted that it is easier to undertake a reform leading to the abolition of courts in a small State, in which the fact of having to go to another court does not cause undue inconvenience, either for the litigant or for the staff of the courts.

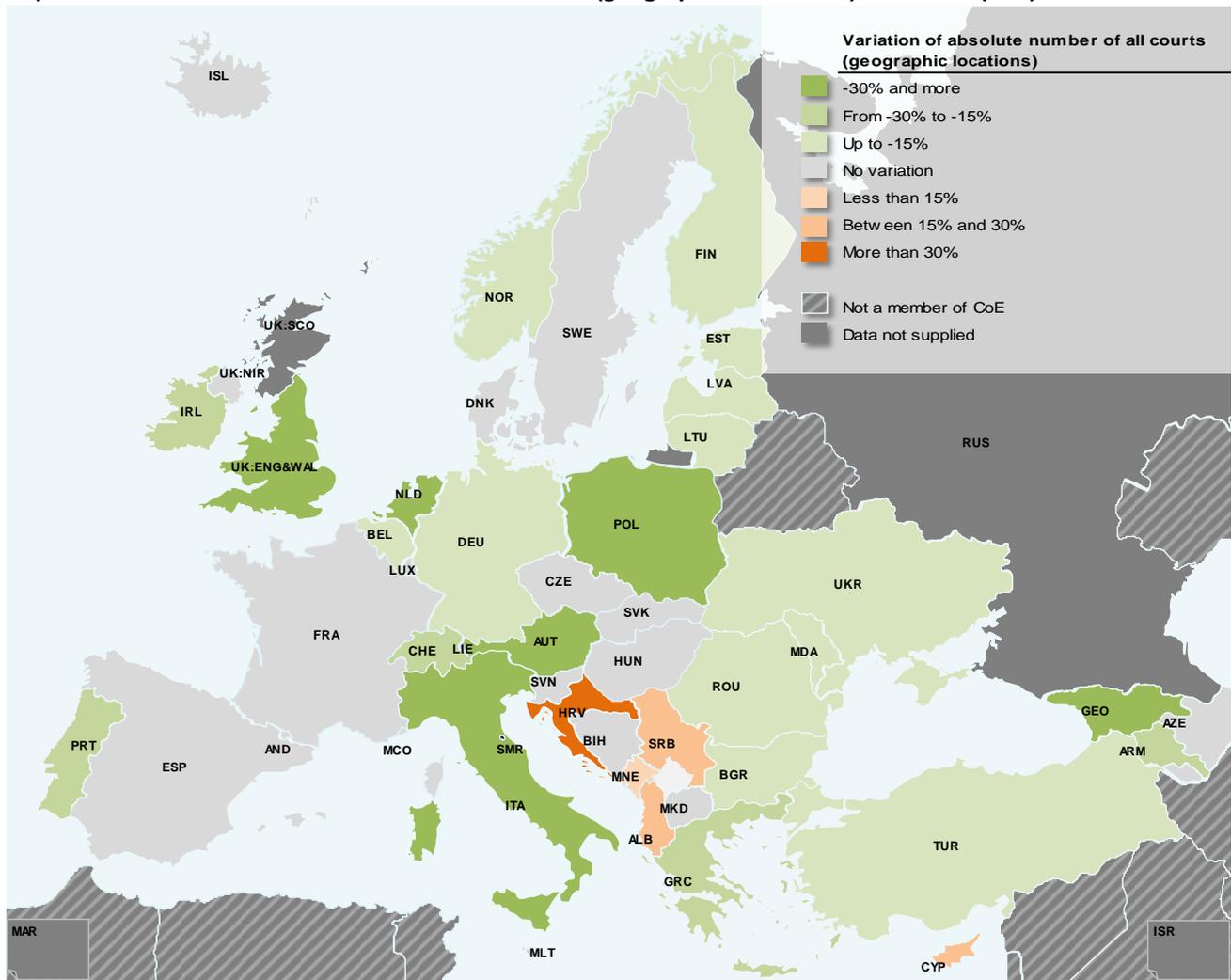
These reforms of the judicial system are often designed to lead to a better management of property assets by grouping jurisdictions together in one place in which are clustered the staff from different small courts. These reforms have not always generated the expected savings, nor been implemented in full consultation with court staff, lawyers or others professional groups.

Changes to the judicial map constitute a real challenge for the distribution of the courts on the territory and for the equal access to justice for court users and even for the redefinition of powers and competences between various courts. Their conceptualisation and implementation require caution (see in particular *CEPEJ Revised Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System* – Document CEPEJ(2013)7Rev1).

**Table 4.11 Variation in the number of courts 2010-2016 (Q42)**

States/ Entities	First instance courts of general jurisdiction					First instance specialised courts					All courts (geographic location)				
	2010	2012	2014	2016	2010-2016	2010	2012	2014	2016	2010-2016	2010	2012	2014	2016	2010-2016
Albania	22	22	22	22	0,0%	1	1	7	7	600,0%	33	31	38	38	15,2%
Andorra	2	2	2	2	0,0%	NAP	NAP	NAP	NAP	NAP	3	3	3	3	0,0%
Armenia	16	16	16	16	0,0%	1	1	1	1	0,0%	27	21	21	21	22,2%
Austria	154	154	129	129	-16,2%	7	7	18	18	157,1%	149	149	103	103	30,9%
Azerbaijan	85	86	87	86	1,2%	18	18	18	18	0,0%	111	111	112	112	0,9%
Belgium	27	27	13	13	-51,9%	262	262	225	225	-14,1%	288	288	288	267	-7,3%
Bosnia and Herzegovina	64	67	67	67	4,7%	5	5	5	5	0,0%	98	98	98	98	0,0%
Bulgaria	NA	113	113	113	NA	34	34	32	32	-5,9%	184	170	168	182	-1,1%
Croatia	66	67	65	22	-66,7%	70	74	74	36	-48,6%	154	158	203	203	31,8%
Cyprus	6	6	6	6	0,0%	11	14	13	15	36,4%	18	21	21	22	22,2%
Czech Republic	86	86	86	86	0,0%	NAP	NAP	NAP	NAP	NAP	98	98	98	98	0,0%
Denmark	24	24	24	24	0,0%	2	2	2	2	0,0%	29	29	29	29	0,0%
Estonia	4	4	4	4	0,0%	2	2	2	2	0,0%	22	22	22	21	-4,5%
Finland	27	27	27	27	0,0%	11	11	9	9	-18,2%	82	82	81	73	-11,0%
France	774	778	786	786	1,6%	1157	1156	1094	1086	-6,1%	630	640	643	641	1,7%
Georgia	40	26	26	26	-35,0%	NAP	NAP	NAP	NAP	NAP	43	29	29	29	-32,6%
Germany	777	765	761	761	-2,1%	256	250	247	247	-3,5%	1126	1108	1101	1102	-2,1%
Greece	462	402	298	289	-37,4%	4	NA	NA	NA	NA	462	402	329	319	-31,0%
Hungary	131	131	111	111	-15,3%	20	20	20	20	0,0%	157	157	157	157	0,0%
Iceland	8	8	8	8	0,0%	2	2	2	2	0,0%	10	10	10	11	10,0%
Ireland	3	3	3	3	0,0%	1	1	1	2	100,0%	119	105	94	95	-20,2%
Italy	1231	1231	515	515	-58,2%	116	116	245	245	111,2%	1378	1378	836	836	-39,3%
Latvia	34	34	34	28	-17,6%	1	1	1	1	0,0%	48	48	48	42	-12,5%
Lithuania	59	59	54	54	-8,5%	5	5	5	5	0,0%	67	67	62	62	-7,5%
Luxembourg	5	5	5	5	0,0%	5	3	3	3	-40,0%	8	8	8	8	0,0%
Malta	1	1	1	1	0,0%	7	7	7	7	0,0%	2	2	2	2	0,0%
Republic of Moldova	46	46	46	46	0,0%	2	2	2	2	0,0%	55	54	53	53	-3,6%
Monaco	1	1	1	1	0,0%	4	4	4	4	0,0%	1	1	1	1	0,0%
Montenegro	17	15	15	15	-11,8%	3	3	3	5	66,7%	22	22	22	25	13,6%
Netherlands	19	19	11	11	-42,1%	1	1	1	1	0,0%	64	60	40	40	-37,5%
Norway	66	66	64	63	-4,5%	2	2	2	2	0,0%	74	73	73	72	-2,7%
Poland	365	287	287	363	-0,5%	28	26	26	26	-7,1%	705	827	NA	401	-43,1%
Portugal	217	231	292	292	34,6%	109	102	228	228	109,2%	336	318	253	253	-24,7%
Romania	235	233	233	233	-0,9%	10	10	10	9	-10,0%	246	244	244	243	-1,2%
Russian Federation	9978	9329	9460	10039	0,6%	NAP	NAP	NAP	1	NAP	NA	3393	3455	3823	NA
Serbia	60	60	93	93	55,0%	62	62	62	62	0,0%	129	129	162	162	25,6%
Slovakia	54	54	54	54	0,0%	9	9	9	9	0,0%	64	64	64	64	0,0%
Slovenia	55	55	55	55	0,0%	5	5	5	5	0,0%	77	77	77	77	0,0%
Spain	2243	2349	2224	2223	-0,9%	1433	1459	1443	1434	0,1%	749	763	763	763	1,9%
Sweden	60	60	60	60	0,0%	12	12	12	10	-16,7%	95	95	95	95	0,0%
Switzerland	259	198	167	167	-35,5%	81	140	109	175	116,0%	405	359	301	290	-28,4%
The FYROMacedonia	25	25	25	25	0,0%	3	3	3	3	0,0%	34	34	34	34	0,0%
Turkey	4298	4349	4337	4472	4,0%	1437	2107	1938	1768	23,0%	750	652	652	668	-10,9%
Ukraine	665	665	665	663	-0,3%	54	54	54	54	0,0%	766	766	766	765	-0,1%
UK-England and Wales	627	497	479	393	-37,3%	4	3	3	3	-25,0%	631	500	482	396	-37,2%
UK-Scotland	99	99	74	77	-22,2%	NAP	NAP	1	1	NAP	64	64	40	NA	NA
Israel		29	28	37			5	5				43	39	69	
Morocco				67										112	
<b>Average</b>	522	495	476	490	-8%	128	150	145	138	28%	236	298	271	284	-7%
<b>Median</b>	60	60	62	58	0%	7	8	9	8	0%	95	97	94	95	-1%
<b>Minimum</b>	1	1	1	1	-67%	1	1	1	1	-49%	1	1	1	1	-43%
<b>Maximum</b>	9978	9329	9460	10039	55%	1437	2107	1938	1768	600%	1378	3393	3455	3823	32%

**Map 4.12 Variation in absolute numbers of all courts (geographical locations) 2010-2016 (Q42)**



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

Table 4.11 above is interesting in that respect because it gives a kind of overview of the courts' organisation in Europe from 2010 to 2016 (without data for **Israel** in 2010 and for **Morocco** from 2010 to 2014).

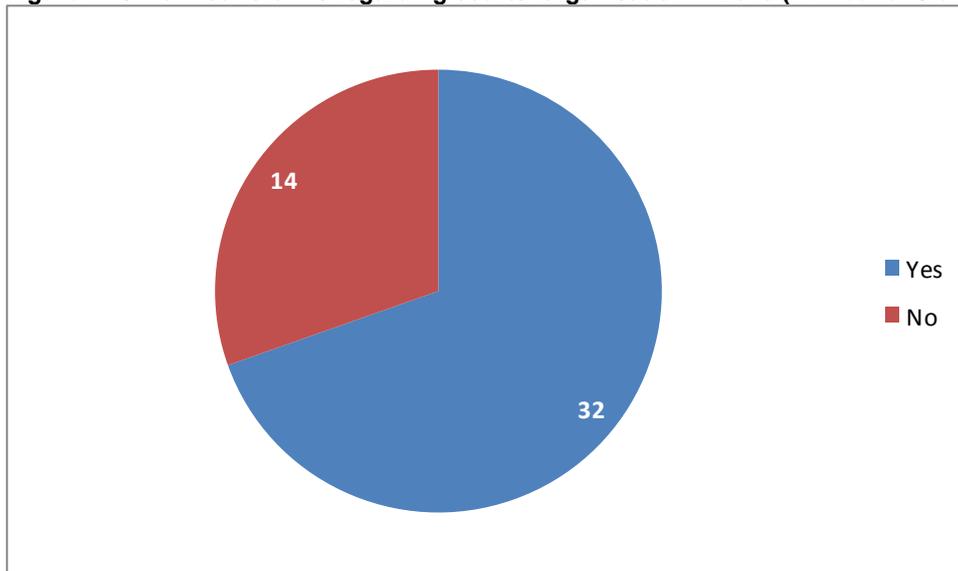
This table provides insight into whether States and entities since 2010, committed to reform the judicial map, have decided, in this framework, to abolish small courts (first instance courts). These small courts, spread out throughout the territory, may involve high maintenance costs for the State, but they have the particular advantage of being close to court users and more affordable than Judicial Houses for people who only resort to the legal system once in their lives. This is the case in **Austria, Belgium, Georgia, Greece, Italy, Latvia, the Netherlands, Switzerland and UK-England and Wales**.

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

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

Map 4.12 presents a less detailed and more superficial picture of the geographical locations' variation, even if it shows that some States have embarked on major judicial map reforms aimed at merging courts (e.g. **Italy, Poland, the Netherlands**) or at increasing the number of courts (e.g. **Russian Federation** or **Serbia**). More generally, it is possible to observe that 18 out of 46 States and entities have slightly or more significantly decreased their number of courts between 2010 and 2016 and only 6 States have increased their number of courts. Therefore, the general trend goes towards a reduction in the number of courts in Europe. This confirms trends already recorded in previous years, particularly in some Northern and Western European countries.

**Figure 4.13 Planned reforms regarding courts' organisation in 2016 (number of States / entities) (Q44)**



Reforms of the judicial map are announced in **Albania, Poland** or **Ukraine** for example. Mergers of courts are under consideration in **Armenia, Austria, Croatia, Finland** and **Malta**. Other reform steps under way relate to the geographical proximity of courts (**Andorra**) and changes in the management of real estate (**Bulgaria**). Some States intend to reform their judicial organisation, which involves reflections as to the optimisation of the number of courts and staff while improving the means of court management (**Azerbaijan, Croatia, France, Georgia, Italy, Republic of Moldova, Montenegro, Switzerland**). These reforms continue the movement initiated several years ago in Europe concerning the reorganisation of the courts.

Generally speaking, the European trend goes towards a decrease in the number of courts and a consequent increase in the size of the courts, clustering more judges and civil servants, as well as a stronger specialisation of the jurisdictions. These reforms, all aimed at reducing the cost of functioning, particularly in terms of buildings, by pooling and rationalising expenditure, oblige court users, court staff and all legal professionals to make an effort to adapt to this new structure of judicial organisation. They can also benefit from real "places of justice" which are easier to use, the development of IT tools amplifying and accompanying these transformations.

Judicial map reforms are under way in almost  $\frac{3}{4}$  of the States and entities. These reforms are sometimes accompanied by steps to develop alternative dispute resolution methods, allowing people to avoid going to court to settle their disputes.

The grouping of jurisdictions is generally concomitant with the development of the use of information and communication methods via the Internet, the dematerialisation of documents, sometimes accompanying major changes in terms of work organisation.

## 4.2 State of Information Technology (IT) Development in European Judicial Systems

The current wave of digital transformation in our societies still affects the European courts unevenly. While the use of computers is now generally established, the exploitation of the full potential of the latest technologies is still extremely disparate: many countries in Europe have already developed highly sophisticated approaches (both at the technological and legislative level), while in others the implementation of a simple, effective management information system would already be a considerable step forward.

Rather than the systematic correlation between the level of development of information technologies and the increase in efficiency one what intuitively expect, some European jurisdictions have in fact experienced significant operating difficulties after the testing or deployment of electronic case management systems. Before convincing the end users, who may be resistant to any change, or the designers, who may not have been attentive enough to the needs of the courts, it is necessary to analyze each specific situation based on objective criteria in order to understand the reasons for these difficulties.

Assessing the impact of information technology on the efficiency and quality of justice has been one of the tasks entrusted to the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe, since its creation in 2002<sup>25</sup>. The measurements carried out in 2016 (2014 data) notably highlighted the lack of a clear correlation between the level of financial investment in IT and the efficiency indicators. The developments observed in the 2016 data, which are not the subject of a specific report as in the previous cycle, will be more succinct and this time will seek to highlight the main features of the current and future trends in information technologies in European courts.

### 4.2.1 Evaluation methodology

As for the 2016 cycle (2014 data), the Working Group on Evaluation of the CEPEJ carried out an analysis of the state of development of information technologies in European courts on the basis of an in-depth questionnaire of forty questions<sup>26</sup>.

These questions have changed slightly since the previous exercise so as to identify new areas of study: open data court decisions, specific areas of statistical collection and electronic evidence. States and entities have, in addition, improved their understanding of the questionnaire and have sometimes been able to provide more precise answers, different from the previous cycle, for identical realities. **These changes do not make the indicators from the 2014 and 2016 data completely comparable** (see the calculation method in the appendix). They are therefore to be considered separately and no evolution can be deduced from the variation in their absolute values. On the other hand, they allow an estimate, for each country or entity, of the level of investment in the various technologies for the year considered.

It should be emphasized that a high level of development does not necessarily mean a high level of actual use and positive impact on the efficiency of the courts: the questionnaire tried to quantify the type of technology invested in and the degree of their dissemination but did not seek to measure the actual degree of use (the answer to a direct question may prove to be highly subjective). Similarly, having in place a large number of technologies does not in itself translate into an improvement in the quality of the public service of justice. The level of development should rather be crossed with other measures such as the processing time of judicial proceedings) when trying to draw any conclusions.

As in the general evaluation exercise, **Lichtenstein, San Marino and UK-Northern Ireland**, have not provided data on the state of information technology in their judicial systems. **Israel and Morocco** have responded to the specialised questionnaire as Observer States of the CEPEJ. European Union initiatives (e-justice, e-Codex for example), involving certain Council of Europe member States, or private sector tools accessible to judicial professions (including judges, prosecutors and clerks), have not been specifically addressed in this study.

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<sup>25</sup> Resolution Res(2002)12 of the Committee of Ministers of the Council of Europe establishing the European Commission for the Efficiency of Justice (CEPEJ).

<sup>26</sup> <http://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-scheme-for-eva/1680788434>

#### 4.2.2 Overall evolution of the situation between 2014 and 2016

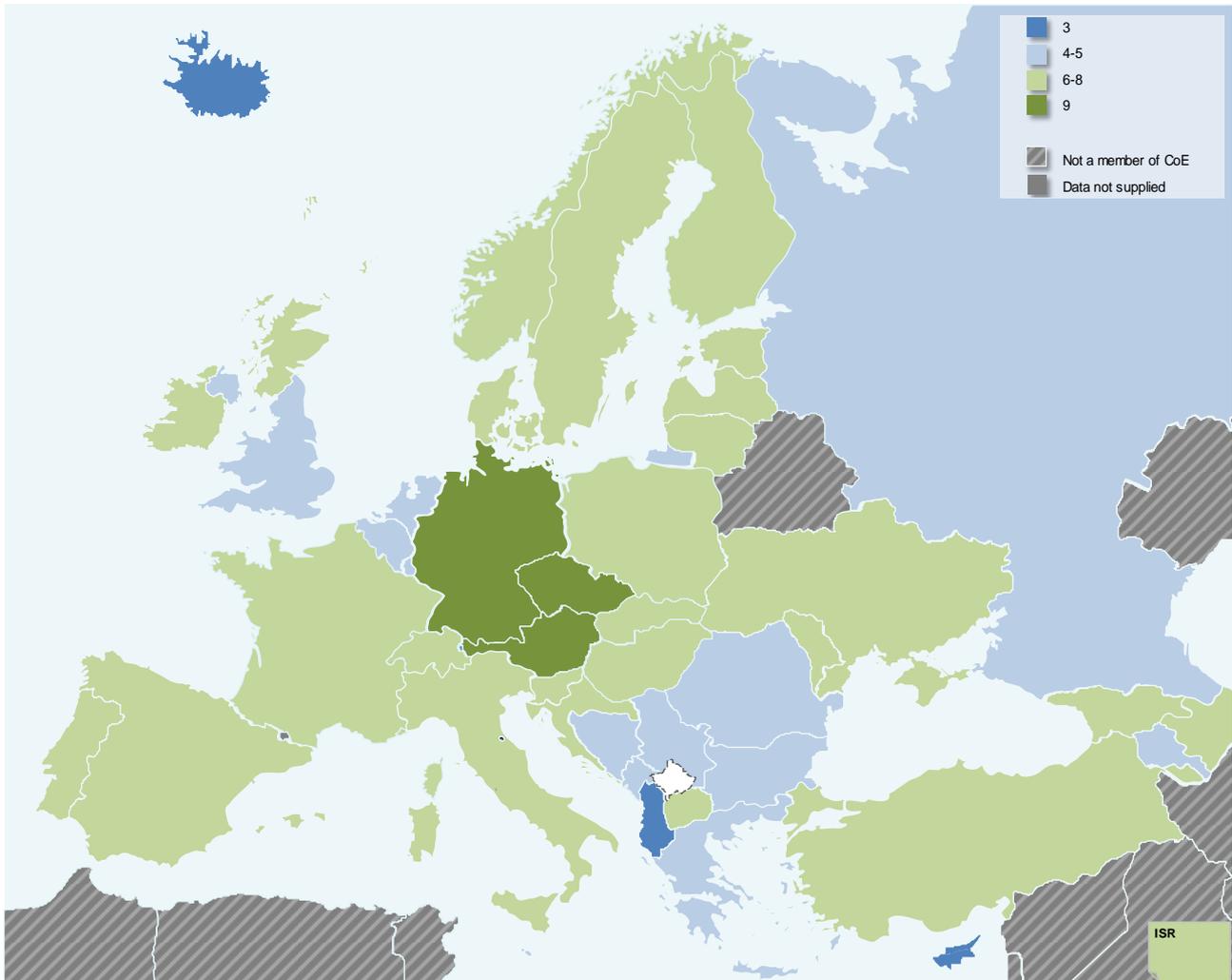
The overall development index presented below includes technological equipment (evaluated from 1 to 3, 3 meaning significant development), the legislative framework for these technologies (1 to 3) and their governance (1 to 3). The minimum index is therefore 3, the maximum 9.

##### *A continuation in technology development efforts*

As in previous cycles, the implementation of information technologies has generally continued in all the countries and entities evaluated. Even if the indices are not fully comparable (see above), it can be seen, based on the 2016 data, that no States or entities remain at the minimum of the global index, whereas, on the basis of their declarations for 2014, 3 had at that point been given the minimum score (**Albania, Cyprus, Iceland**).

**Map. 4.14 Evolution of the global development of information technologies and their support between 2014 and 2016 (Q62 to Q64)**

2014



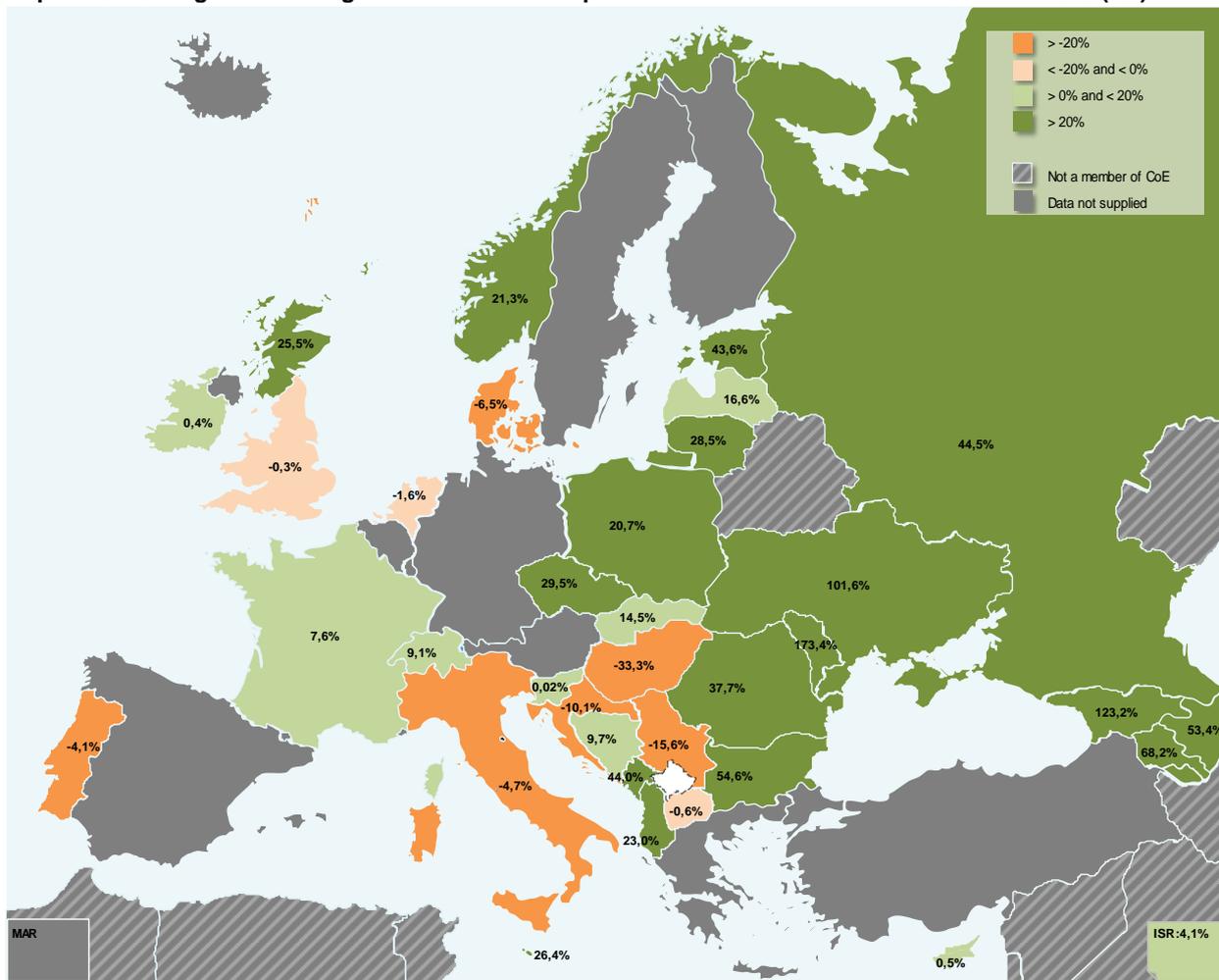


The CEPEJ's Cyberjustice guidelines stressed the need for States and entities to move from a project management culture to genuinely driving innovation, or in other words to develop an overall vision of justice information systems that goes beyond the logic of isolated projects<sup>27</sup>. For this it may be necessary that they, too, be accompanied at their level in the conduct of change by what must be called true drive for innovation.

*Budgetary effort to support the development of information technology in the courts*

It must be immediately noted that the information technology budget effort corresponds to a logic of investment and maintenance. The investment phase results in significantly higher budgets than during the maintenance phases. The apparent decline in absolute value should therefore not be interpreted as a disinvestment of the State or entity concerned.

**Map. 4.15 Change in the budgets allocated to computerisation of courts between 2012 and 2016 (Q6)**



% Change in budgets in absolute terms (local currency without conversion to the Euro for the States and entities concerned)

An examination of the variation in the budgets allocated to the computerization of the courts between 2012 and 2016 clearly shows a continuous and sustained effort of States and entities as regards the development of information technologies in their courts. The significant decline in **Hungary** (- 33 %) is to be tempered in light of the slight increase over the 2014-2016 period (+ 2 %) and an overall level of development which appears to be one of the strongest (see map 1, above).

The overall equipment effort appears more generally in the countries of Eastern Europe. States and entities have not systematically specified whether the amount of this budget includes external funds received to support development (e.g. European Union, EEA/Norway Grants or other). **Slovakia** did stress that their budget includes such funds.

<sup>27</sup> CEPEJ(2016)13 Guidelines on how to drive change towards Cyberjustice - <https://rm.coe.int/16807482de>

The question of the impact of these investments on any improvement in efficiency and in the quality of the service rendered to litigants appears to be more complex. The previous evaluation report highlighted the multiplicity of factors that could have an influence (a change in the organisation of work, active case management in courts, for example) and emphasized that significant financial investments did not systematically correlate with improved efficiency. According to the CEPEJ's Cyberjustice guidelines, the capacity of countries to engage in cycles of continuous improvement, that is to say to regularly evaluate the results of public policies and from them to deduce corrective measures, appears to be the best measure of effective management and of any guarantee of long-term success.

#### 4.2.3 Efficiency and quality of justice: the special case of electronic case management systems

A main driving force behind the activity of courts is electronic case management systems and they have now been established in almost all States and entities. Only **Cyprus** has indicated that it does not have such a system.

The obsolescence of some of these tools, which have sometimes been implemented since the end of the 1990s, has not, however, been measured in the context of this evaluation. The same applies to the actual rate of utilization (some countries and entities still keep paper records in parallel with electronic systems).

Systems such as *e-File* in **Estonia** or *LOVISA* in **Norway** have shown great potential when it comes to improving the functioning of justice. *E-File* was the first tool in Europe to support not only the management of the courts but also their complete dematerialization. *LOVISA*, for its part, has helped to feed statistical bases and mathematical models to assess the workload of the courts and the distribution of resources, both financial and human.

By contrast, the ICMIS system in **Albania**, although established in all jurisdictions (with the exception of Tirana District Court), still faces significant challenges according to its direct users<sup>28</sup>. Paper ledgers continue to be kept in parallel by the registries and the statistical collation is based on manual counts, which are regularly consolidated in Excel sheets that require maintenance on a regular basis. The reasons for this situation, which is far from being unique in Europe, appear to align themselves according to several axes: delegation of the service to a technical third party, lack of effective implication of the users in the design of the tool, change management policies based on fully outsourced training or simply institutional communication plans. Indeed, these issues are often cited as causal factors for such failures<sup>29</sup>. The reluctance of users to accept change should obviously not be minimized but this often proves to be a consequence of past failures and a loss of trust in the execution of these projects.

It should also be remembered that electronic case management systems are also the common thread of a variety of by-products. Thus, any online service for litigants (referral to jurisdiction, business follow-up, decision-making) or lawyers (exchange of conclusions) is now intended to rely on this infrastructure through automatic data exchanges or the exchange of data by use of the same base. The production of reliable statistics is also fully dependent upon the quality of the input into the case management system. Many reports of errors in court statistics are directly attributable to technical or human failures (errors in data entry) becoming visible in the reporting modules of these case management tools. The peer reviews of the CEPEJ Working Group on Evaluation and the CEPEJ's cooperation programmes have confirmed this observation.

It can therefore only be recommended to States and entities to concentrate their efforts on the control and efficiency of their electronic case management systems, by closely associating their information system designers with the end users, before even initiating more sophisticated services.

States and entities are invited to follow the next developments of the CEPEJ's Working Group on Quality of Justice, which is preparing to extend further the Cyberjustice Guidelines with regard to case management systems.

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<sup>28</sup> See report drawn up by the Euralius consortium for example:  
[http://www.euralius.eu/pdf/annex/Annex%20123%20The%20The%20Next%20Generation%20CCMS%202016-05-27%20\(Activity%202.3.2\).pdf](http://www.euralius.eu/pdf/annex/Annex%20123%20The%20The%20Next%20Generation%20CCMS%202016-05-27%20(Activity%202.3.2).pdf)

<sup>29</sup> CEPEJ(2016)13, *op.cit.*

#### 4.2.4 Open data, artificial intelligence, blockchains: distinguishing the “trendy” effect from their real potential

For this cycle, the CEPEJ has attempted to measure emerging policies and technologies in the courts. Information technology follows industrial cycles that Gordon Moore estimated at 18 months<sup>30</sup>. In this race, technologies presented as very promising (such as expert systems in the 80s and 90s) have disappeared while others have emerged as significant factors.

The contemporary era confirms this rule and it is important to distinguish commercial rhetoric and the support of industrial development from real changes. The current digital transformation is much more qualitative than quantitative. Through artificial intelligence (AI), technology rethinks justice and it becomes something more symbolic: the resolution of a conflict by a qualified act (a decision made on behalf of the entire community) fed as much by an algorithm as by the deliberation by the judge. The very place of the law is questioned by modes of conflict resolution that no longer come from the State but from private operators who clearly place themselves in competition with the public service of the courts, without necessarily presenting all the guarantees of a court as defined by Article 6 of the European Convention on Human Rights. The question here is not to criticize alternative dispute resolution methods (encouraged by the CEPEJ), but rather to pay particular attention to the impact of mathematical calculations to resolve disputes or assist in decision-making. Judicial professions as a whole must become familiar with the new language and must integrate these profound changes in the concepts and design of future transformations.

In this sense, in 2016, three topics bore great promise for improving the efficiency and quality of justice:

- the *open data* of judicial decisions, which is a general policy of opening the data to the general public; by authorizing the downloading of the entirety of the databases containing judicial decisions (real "free" fuel)
- AI (engine for the treatment of this fuel), presented by certain private companies as being able to make "predictions" of jurisdictional decisions;
- *blockchains*, distributed transaction registers, made famous by the bitcoin cryptocurrency but whose wider use could revolutionize the business of authorisation of trusted third parties (notaries and bailiffs in particular).

##### *Open data of judicial decisions*

Although some criticize the analogy, it has often been stated that digital data is the oil of the 21st century. The open data are not just any data, however: they are public or private data organized in a database, freely downloadable and re-usable under a simple business user license without financial compensation.

However, this provision of data should not be confused with the public transparency requirements to make available a certain amount of public information. Paradoxically enough, open data is perhaps not very transparent in terms of delivering clear information since the possibility of clicking on a link to download a complete set of raw data is simply overwhelming for most individuals.

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<sup>30</sup> G. Moore, Electronics Magazine, 19 avril 1965.



Out of all States and entities evaluated, only 6 declared that they had not implemented an open data policy for court decisions in 2016. These affirmative responses should be read in view of the confusion of certain answers that equate access to databases of court decisions with open data (**Armenia, Belgium, Bosnia and Herzegovina, Luxembourg, Russian Federation, Turkey**). It nevertheless reveals a clear desire for transparency of the judicial institutions in Europe through the dissemination of jurisprudence.

The experience of **France** is representative of the questions raised by this policy of openness. It is first of all essential to remember that in 2016 France introduced a legislative framework that imposed on its jurisdictions a mandatory dissemination of court decisions and broke with the previous logic of selection of decisions to be disseminated to a wider audience<sup>33</sup>. Since then, the entirety of the jurisdictional production is publishable. The expected results of this very wide dissemination were set out by the Court of Cassation at a conference in October 2016: transparency of the judicial activity, better knowledge of jurisprudential trends by public and professionals and enhanced quality of a justice that is under constant public scrutiny<sup>34</sup>.

This possible ideal availability of jurisprudence using the digital lever would, moreover, be tempered in respect to several elements, technical and fundamental. In addition to the difficulties of collecting decisions or pseudonymisation<sup>35</sup> in the absence of a homogeneous information system and a fully automated mechanism in France, the transformation of the very logic of production of jurisprudence has been considered by some authors<sup>36</sup>. They see the possible enactment of a true standard based on the number of decisions rendered. Such a transformation of the hierarchy of law sources would, however, presuppose the possibility of systematically ensuring that data processing methods can accurately reveal the legal reasoning of judges (see below on the use of AI in connection with judicial decisions).

Regarding the protection of personal data, 23 States and entities declare that they use pseudonymization at least in some litigations (personal status or family cases for example) by obliterating the data making it possible to identify parties or witnesses (names, addresses, phone numbers, ID numbers, bank account numbers, tax numbers, health status, etc.). This work appears to be under the responsibility of judicial staff (e.g. **Republic of Moldova, Israel**) or public operators (e.g. **Bosnia and Herzegovina, Spain**). **Bosnia and Herzegovina** and **Hungary** have explicitly stated that they publish the names of professionals.

The data collected does not make it possible to measure the impact of open data. An evaluation process could, however, be initiated by analyzing the consequences of the processing done using this open data of judicial decisions, including AI.

#### *The use of AI in connection with court decisions*

AI is among the most advanced state-of-the-art technologies in this great digital transformation and appears at the same time as the most spectacular and the most debated<sup>37</sup>, notably in view of the effects of statements by certain legal-tech companies which claim to be able to predict the outcome a case in court<sup>38</sup>.

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<sup>33</sup> In France, article R433-3 of the Code of Judicial Organisation (*code de l'organisation judiciaire*) provided for a principle of selection of "decisions of particular interest rendered by other courts of the judicial order". Articles 20 and 21 of the law for a digital Republic (*Loi pour une République numérique*) now lay down a principle of total openness, except decisions are classified as non-public.

<sup>34</sup> "Jurisprudence in the open data movement" conference, 14 October 2016 (French only) [https://www.courdecassation.fr/institution\\_1/revolution\\_numerique\\_7985/open\\_data\\_7821/jurisprudence\\_mouvement\\_7886/supplement\\_semaine\\_36233.html](https://www.courdecassation.fr/institution_1/revolution_numerique_7985/open_data_7821/jurisprudence_mouvement_7886/supplement_semaine_36233.html)

<sup>35</sup> This term appeared in the debates relating to the implementation of the new general data protection regulation of 27 April 2016 which strictly defines the term anonymisation as being the operation which prevents any direct or indirect re-identification of a natural person. Given the impossibility of carrying out this treatment in the strict sense in court decisions, the term "pseudonymisation" has entered the language to qualify the replacement in published court decisions of the name by letters).

<sup>36</sup> Eloi Buat-Menard et Paolo Giambiasi, « La mémoire numérique des décisions judiciaires », Recueil Dalloz, 2017, p. 1483. (French only)

<sup>37</sup> The term artificial intelligence refers to an automated learning technology called "machine learning".

<sup>38</sup> Applications in the United Kingdom to assess the risk of recidivism by individuals (HART), inspired by software in use in the United States (COMPAS), should also be mentioned but are currently excluded from the scope of the debates in France in view of the obvious questions raised. .

However, a first review of this phenomenon, reveals the need to distinguish commercial speech from reality of design, use and deployment of AI. The practical and daily use of "predictive" software by judges is non-existent in Council of Europe member States or entities in 2016. Local experiments<sup>39</sup> as well as academic work<sup>40</sup> have aimed at exploring the potential of these applications which could be used later, but without any generalized development. Public decision-makers, however, are beginning to be more and more seduced by the potential offered, which they imagine will be able to respond to long-standing concerns such as the transparency, efficiency and predictability of justice, as well as the homogenization of jurisprudence. These perspectives are, however, to be moderated in view of the mechanical reality of machine learning, which produces behavioral models based on correlations and classifications of lexical groups making up decisions, without pretending to model legal reasoning. The risk therefore of transforming "freedom into destiny"<sup>41</sup> on the basis of the fallacious correlations of *big data*<sup>42</sup> is still to be evaluated scientifically.

The CEPEJ (Working Group on Quality of Justice) is assessing the current situation with a multidisciplinary approach in order to develop an ethical charter in the light of the requirements of the European Convention on Human Rights. States and entities will be invited to promote the principles of this charter in their judicial systems which, without hindering any public or private initiative, will support developments that respect fundamental rights.

### *Blockchains*

Blockchains technologies appear likely to offer significant potential for digital transformation but it is necessary to first well understand their technical functionalities.

This technology is to be understood as a distributed computerized register, offering a high level of security by replicating the information of each transaction in specific areas of the network constituted by all the users. In other words, it records the evidence of an exchange of information between a user A and a user B within a book that would not be held by a central authority but in a replicated book in real time in multiple places and protected by cryptographic means. Not all services seem to be adapted to this complex technology, which sometimes comes up short in the presence of a very large number of transactions.

The best-known application is cryptocurrency (such as bitcoin) but the possibilities of use are actually much wider and some are directly useful for the functioning of justice. The execution of a transaction, the certification of a document, any proof of an act, could technically be stored in such records. Judicial professions acting as trusted third parties (notaries, bailiffs) are the first to be affected since this technology proposes a way of certifying in an automated way not only a transaction, but also the filing of a document, with almost no risk of falsification. One can imagine also applications within courts to keep dematerialized minutes of decisions. Another emerging development is that of smart contracts that automate the execution of clauses. These contracts, recorded in blockchains, are not falsifiable, be it as regards their terms or the conditions of their execution.

The review by the CEPEJ of the issue of the admission of electronic modes of evidence did not reveal a fully operational blockchain structure in judicial systems in Europe in 2016. It will be necessary to evaluate in future exercises the areas and functions of these technologies in respect of which States or entities seem most invested.

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<sup>39</sup> For example, Douai and Rennes courts of appeal in France have experimented for one year with predictive software for a panel of judges in civil matters.

<sup>40</sup> Work on a sample of 584 decisions of the European Court of Human Rights: Nikolaos Aletras, Dimitrios Tsarapatsanis, Daniel Preoțiu-Pietro, Vasileios Lampos, "Predicting judicial decisions of the European Court of Human Rights: a Natural Language Processing perspective", published on 24 October 2016, <https://peerj.com/articles/cs-93/>

<sup>41</sup> Antoine Garapon, "La justice prédictive risque de transformer la liberté en destin", in *LePoint.fr*, interview published on 20 September 2017, [http://www.lepoint.fr/chroniqueurs-du-point/laurence-neuer/la-justice-predictive-risque-de-transformer-la-liberte-en-destin-20-09-2017-2158486\\_56.php](http://www.lepoint.fr/chroniqueurs-du-point/laurence-neuer/la-justice-predictive-risque-de-transformer-la-liberte-en-destin-20-09-2017-2158486_56.php) (page consulted on 14 December 2017). (French only)

<sup>42</sup> Cristian S. Calude, Giuseppe Longo, *Le déluge des corrélations fallacieuses dans le big data*, dans *La toile que nous voulons – Le web néguentropique*, B. Stiegler (dir.) : FYP éd., 2017, p. 156. (French only)

The potential of information technology to support the improvement of the efficiency and quality of judicial systems is both known and the object of considerable investment in all Council of Europe member States, entities and observers. The support of the European Union and other donors towards information system projects in European courts follows the same direction of development.

What is now called a digital transformation, however, presents new challenges that go beyond the mere technical equipping of an administration. The latest technological developments are not neutral and the consequence of the treatment of some cases outside the courts by dematerialized channels should not be examined only from the point of view of the optimal case processing. Litigants' understanding of the fact that they are engaged in a judicial court procedure at a given moment, with all the fair trial guarantees this implies, is not necessarily obvious when a case is handled only through website interfaces or video conferencing.

Consequently, the CEPEJ's future evaluations on the use of information technologies in European courts could go beyond the mere quantification of technological development which now exists in all countries and entities and try to understand the consequences of digital transformation for key judicial activities and processes.

### 4.3 Court users

European<sup>43</sup> and international<sup>44</sup> research has shown that there are three major factors determining trust in the judiciary. The first and most important factor is distributive justice – whether people feel that the law is applied equally to everyone and the decisions delivered by a judicial system are just and fair. The second factor is procedural justice – whether people involved in judicial proceedings feel that they have been heard, that they had the opportunity to present their side of the story, that the judge and court staff treated them with dignity and respect, that the procedure was impartial and fair and that the judge was trustworthy as a protector of justice and independent from external influences. The last factor is the perception of efficiency – whether people consider that the judicial proceedings are organised in an efficient manner, carried out without unreasonable delays and that judgments are enforced effectively. When people view the judicial system as a system that provides distributive and procedural justice effectively, they will trust the judicial system more, which leads to better cooperation with judicial authorities, acceptance of individual judicial decisions and of the decisions in general.

The legitimacy of and trust in, courts and the judicial system as a whole are a result of a complex interaction between the activities of courts and judges on the one hand and historical, cultural and social features of a society on the other. Even though the media and opinion leaders greatly influence the perception of the judicial system in a country, court leadership, judges and court staff can still improve the quality of a judicial system by rendering just and good quality decisions in efficiently led proceedings and by systematically addressing the needs and expectations of users of justice.

To underline the growing importance of the development of a quality policy concerning courts and the judiciary in general, the CEPEJ created a special working group and adopted a checklist for the promotion of the quality of justice and of the courts – a practical tool that can be used by courts to introduce specific quality measures.<sup>45</sup> The existence of quality systems and quality standards for the judicial system, individual courts and individual judges, as well as the organisation of their monitoring both at national and at court levels, are key elements to improve the quality of the public service delivered by the judicial system to litigants and to society as a whole.

The focus on court users as the most important stakeholders of a judicial system can be shown through various activities and policies. It can be evident from physical accessibility (the organisation of the judicial map<sup>46</sup>, the organisation and features of the court premises<sup>47</sup>, directions and signalling, special arrangements for vulnerable categories of court users, etc.). Furthermore, the focus on court users can be demonstrated through the work of judges and court staff by providing users with sufficient, timely and comprehensible information (on the nature of the proceedings, on the foreseeable steps of the procedure, on the consequences of judicial decisions, on the possibility to use alternative dispute resolution procedures, etc.).<sup>48</sup> Similarly, the focus on users and their perception of the judicial procedure can be enhanced by providing regular training to judges and court staff on communication with the parties in general and on specific psychological aspects of interaction with parties, possible outcomes of the procedure and their consequences, etc.

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<sup>43</sup> See European Social Survey (2011). *Round 5 Module on Trust in the Police & Courts – Final Question Design Template*. London: Centre for Comparative Social Surveys: City University London - [www.europeansocialsurvey.org/docs/round5/questionnaire/ESS5\\_final\\_trust\\_in\\_police\\_courts\\_module\\_template.pdf](http://www.europeansocialsurvey.org/docs/round5/questionnaire/ESS5_final_trust_in_police_courts_module_template.pdf) and EURO Justis Project at <http://www.heuni.fi/en/index/researchareas/confidenceinthecjs/eurojustis-scientificindicatorsofconfidenceinjusticetoolsforpolicyassessment.html>

<sup>44</sup> See Tyler, Tom. Procedural justice and the courts. *Court review*, 44 (1/2), 26-31. - <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1254&context=ajacourtreview> See also Tyler, Tom and Sevier, Justin, 2014. How do the courts create popular legitimacy? The role of establishing the truth, punishing justly and/or acting through just procedures, *Albany law review*, 77 (3), 1095-1137. - <http://ssrn.com/abstract=2396945>.

<sup>45</sup> See <https://www.coe.int/en/web/cepej/cepej-work/quality-of-justice> - Checklist for the promotion of quality of justice and the courts - Document CEPEJ(2008)2. See also Measuring the quality of justice – Document 12(2016).

<sup>46</sup> See <https://www.coe.int/en/web/cepej/documentation/cepej-documents/guidelines> - Revised Guidelines on the creation of judicial maps to support access to justice within a quality judicial system – Document CEPEJ(2013)7RevE.

<sup>47</sup> See <https://www.coe.int/en/web/cepej/cepej-work/quality-of-justice> - Guidelines on the organisation and accessibility of court premises - Document CEPEJ(2014)15.

<sup>48</sup> See <https://www.coe.int/en/web/cepej/cepej-work/mediation> - Guidelines for a better implementation of the existing recommendation concerning penal mediation - Document CEPEJ(2007)13E, Guidelines for a better implementation of the existing recommendation concerning family and civil mediation - Document CEPEJ(2007)14E, Guidelines for a better implementation of the existing recommendation on alternatives to litigation between administrative authorities and private parties - Document CEPEJ(2007)15E.

When providing information, special attention should be devoted at all times to the preservation of independence and impartiality. On the other hand, comprehensible and up-to-date information should also be available to the general public about the functioning of the judicial system, the legislation and case-law and important judicial decisions. Judicial systems are encouraged to provide relevant and comprehensible information to the general public through an effective public relations organisation, the use of official spokespersons and media judges and proactive communication through different channels (traditional media, websites, printed materials, social media, etc.). As court users form their perception about the functioning of the system based on their user experience in other fields of life, courts should use the opportunity that information and communication technologies offer in the sense of connectivity and interoperability.<sup>49</sup> To achieve this, good practices in communication from other domains, both from the public and the private sectors, could be implemented in the work of courts. By giving the opportunity to people to be informed and to communicate with the judicial system on-line and with mobile technologies, while safeguarding safety and privacy, judicial systems prove their commitment to the users and their ability to adapt and evolve. Nevertheless, special attention should be given to vulnerable categories of users and those who are not familiar with new technologies, so that equal access to justice is guaranteed.

Court users are not only litigants, victims and witnesses, they also include professionals (attorneys, prosecutors, experts, interpreters, bailiffs, notaries, etc.). Systems that include these users and their needs and expectations in their activities through the organisation of regular surveys, workshops, interviews, meetings and other steps that enhance two-way communication, grow organically by including the interests of various stakeholders and in doing so promote quality and responsibility. At the same time it is important to educate potential and future court users through a wide range of activities such as open door days within courts, mock-up court procedures for schools and students and sharing of personal experiences on decision-making by judges in schools, at events or in the media.

The importance that the States and the CEPEJ are placing on court users is evident from the growing number of initiatives and award-winning projects within the Crystal Scales of Justice Competition.<sup>50</sup> Already in 2005, the Court of Appeal in Rovaniemi, **Finland**, prepared a comprehensive quality project, presenting different areas of judicial quality, including different stakeholders in the creation of a better, more user-focused court system.<sup>51</sup> In the Regional Court of Linz, **Austria**, they improved their service by helping court users get all the relevant information and perform services at one single point in court.<sup>52</sup> As the judicial system is complex and rights can be enforced effectively only when users understand them, it is important to provide users with simple and useful information. The Yambol Administrative Court, **Bulgaria**, prepared a project on how to help users better understand judicial procedures and related information.<sup>53</sup> The use of information technology helps speed up procedures and enables better access to justice. The Supreme Court of **Slovenia** improved the efficiency of enforcement procedures by setting up a centralised automated system for enforcement of authentic documents.<sup>54</sup> Similarly, the General Council of Spanish Bars introduced online legal aid.<sup>55</sup> Finally, the physical conditions of court premises and solutions on how to include the needs of courts and users were addressed by the High Judicial Council of **Serbia**.<sup>56</sup>

Best practices from States and entities show that the active involvement of court users in the process of planning and implementing improvements in court services brings multiple positive effects.

**Court users should be the focal point of the activities of judicial systems in order to enhance their quality and strengthen the perceived legitimacy of those services. The CEPEJ invites States to establish regular evaluation activities to gather information on the satisfaction of court users, to inform them properly in a simple and comprehensible way of their individual rights and obligations in specific proceedings, of the foreseeable timeframes, as well as of the functioning of the judicial system as a whole.**

<sup>49</sup> See <https://www.coe.int/en/web/cepej/documentation/cepej-documents/guidelines> - Guidelines on how to drive change towards Cyberjustice – Document CEPEJ(2016)13E.

<sup>50</sup> See <https://www.coe.int/en/web/cepej/events/crystal-scales-of-justice-prize>.

<sup>51</sup> See The Quality Project in the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi, Finland (2005).

<sup>52</sup> See Service and Centers of the Regional Court of Linz, Austria (2006).

<sup>53</sup> See Yambol Administrative Court, Bulgaria (2010).

<sup>54</sup> See Supreme Court of Slovenia, Automated system for enforcement of authentic documents (COVL) (2010).

<sup>55</sup> See The General Council of Spanish Bars - Online legal aid (2014).

<sup>56</sup> See High Judicial Council of Serbia - Model Court Guideline for the Basic and Higher Courts in the Republic of Serbia (2015).

In this report the orientation towards court users is presented and analysed according to four fields – the information given to court users, compensation systems for court users, court satisfaction surveys and the monitoring of violations of ECHR Article 6.

#### **4.3.1 Information for court users**

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

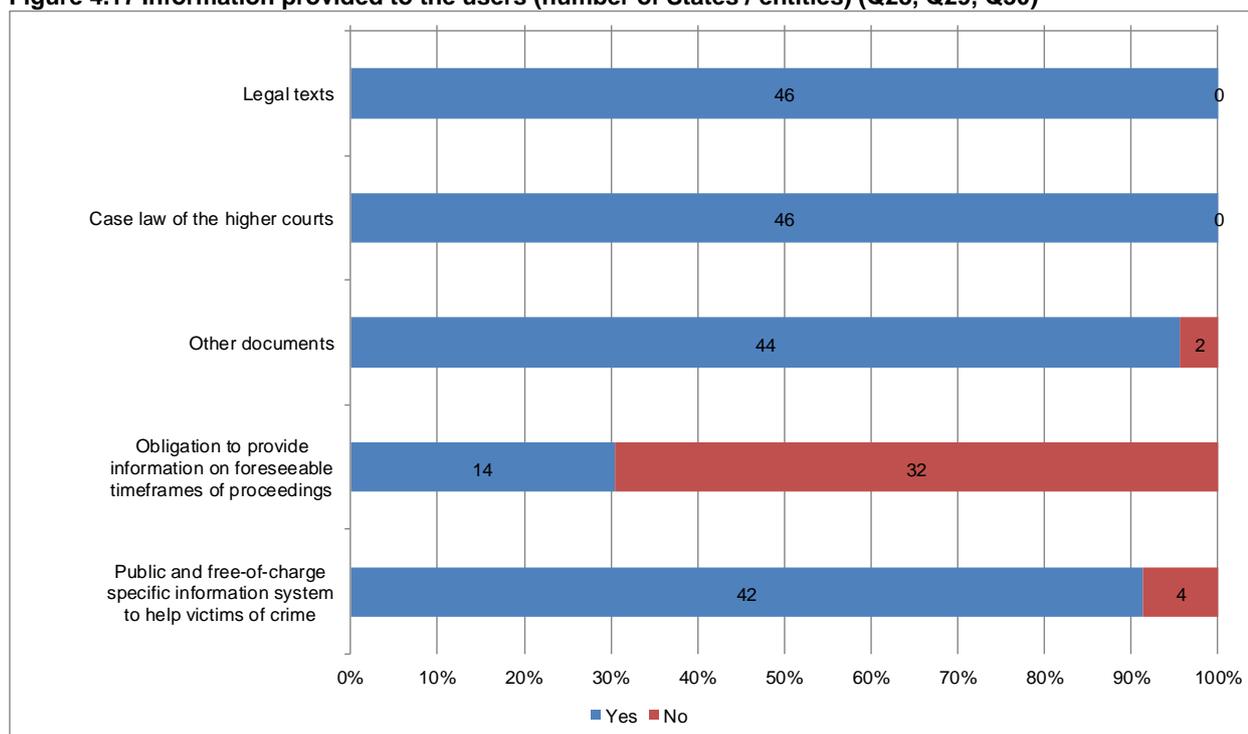
**The use of IT tools can help court users understand their position within a procedure better (and, if necessary, request speeding up the procedure when undue delays are detected), accelerate the exchange of documents and information, reduce costs and increase environmental responsibility and release judicial staff from unnecessary tasks.<sup>57</sup> It enables easy and free access to information on legislation, legal procedures, as well as forms and documents of individual courts. The CEPEJ encourages the use of new technologies to help inform justice users and to ease communication with the stakeholders of the judicial system while ensuring equal access for all to these new technologies.<sup>58</sup>**

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<sup>57</sup> See <https://www.coe.int/en/web/cepej/documentation/legal-instruments> - Recommendation Rec (2001)3 on the delivery of court and other legal services to the citizen through the use of new technologies.

<sup>58</sup> See <https://www.coe.int/en/web/cepej/documentation/cepej-documents/guidelines> - Guidelines on how to drive change towards Cyberjustice – Document CEPEJ(2016)13E.

**Figure 4.17 Information provided to the users (number of States / entities) (Q28, Q29, Q30)**



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

Most of the States and entities offer other documents as well (only two States have indicated no “other” documents). In this category, practical information and (model) forms can be mentioned, as well as different forms of e-filing. The practical information to court users can be rather general and basic or organised according to life or legal events, specifically adapted in terms of the language(s) used, visual presentation, etc. It can address only to the general public or give comprehensive information about the stages of proceedings to individuals.

An interesting example that uses new technologies to help court users understand better the judicial system by presenting roles and functions of different people involved in different types of proceedings is the interactive Virtual court room from **Lithuania**.<sup>59</sup> Another advanced example comes from **France** and offers a user-friendly easily understandable intuitive search system for most common proceedings and legal situations.<sup>60</sup> Similarly, **Turkey** set up a website addressing the most frequent questions in a simple and comprehensible language for domestic users as well as foreigners.<sup>61</sup>

Many States and entities indicate that their websites include (model) forms or documents that users can download (e.g. **Armenia, Austria, Bosnia and Herzegovina, Croatia, Denmark, Georgia, Greece, Hungary, Malta, Republic of Moldova, Monaco, Portugal, Serbia, Slovakia, Slovenia, Spain, Sweden**), or on-line services (i.e. filing and submitting the applications, access to information regarding the case file) to allow them to exercise their rights (e.g. **Armenia, Austria, Georgia, Estonia, France, Hungary, Iceland, Malta, Portugal, Slovakia, Slovenia, Switzerland, Ukraine**). Types of applications may vary, from legal aid (**Bosnia and Herzegovina, Finland, Republic of Moldova and Sweden**) to application, complaint or appeal forms (**Serbia, Spain and Switzerland**).

<sup>59</sup> See <http://sale.teismai.lt/en>, available also in English, where the user can choose different roles and procedures and follow a typical court case.

<sup>60</sup> See <https://www.justice.fr/>.

<sup>61</sup> See [http://www.hukukiyardim.gov.tr/legal\\_aid/index.html](http://www.hukukiyardim.gov.tr/legal_aid/index.html).

Though most of the States and entities indicated that there is no obligation to provide information on foreseeable timeframes of proceedings, different approaches to the issue are reported (e.g. instruments for informing parties in the preparatory phase of the proceedings).

Most States and entities have established a system dedicated to helping victims of crimes, offering specific information and special arrangements in court proceedings.

#### *Information on timeframes of proceedings*

The quality of a judicial system is evident also from the level of information to the court user about the efficiency of courts. On the one hand, this is evident from regular publicly available reports on the work of courts and the average duration of different types of proceedings and stages within a proceeding. On the other hand, specific information about individual proceedings can be given to litigants, thus showing procedural effectiveness as well as procedural fairness. Judicial procedures are generally stressful events that happen rarely in a lifetime and obtaining accurate, comprehensible and up-to-date information on the evolution of a procedure increases the feeling of control, decreasing the stress. Detailed information can only be provided by judiciaries with an advanced case management system, allowing detailed information on stage progress, which can be given to court users through different communication channels (ideally automatically by the system or upon request). Examples of countries that provide such information are **Latvia**,<sup>62</sup> **Turkey**<sup>63</sup> and **Israel**.<sup>64</sup>

The CEPEJ supports the setting of timeframes for different types of judicial procedures and has recently adopted a specific guide.<sup>65</sup> Timeframes are a management tool, which deals with the aggregated caseload of a court or of a judicial system. Timeframes are set for types of procedures and are a different category than time limits or backlogs set in the law. Similarly, they do not refer to the setting of the timetable of hearings, common in preparatory hearings at the beginning of a trial, or schedules of the whole procedure. The figures in the CEPEJ Timeframes guide are just a proposal and States and entities are advised to adopt their own timeframes at the national, district and court level. The nature of judicial procedures, as well as the specificities of different court systems should be taken into account to set realistic timeframes. Open communication between courts and stakeholders on the methodology is advised and a regular revision of the timeframes set. Two countries that report having set up timeframes in line with the CEPEJ SATURN guidelines are **Slovenia** and **Turkey**.

More and more States and entities, even if their number is still low (6 in the 2008 edition, 14 for this evaluation exercise) are obliged to provide information on timeframes of proceedings, at least in certain particular circumstances. Some States and entities use preparatory hearings or similar instruments to, *inter alia*, inform the parties about the dynamics of resolving of their cases (**Albania, Denmark, Estonia, Finland, Italy, Lithuania, Norway, Romania, Slovakia, Sweden, UK-England and Wales**), other countries implemented tools to follow the procedure on-line (**Latvia, Turkey, Israel**). Some have included in the law deadlines for certain procedures or phases within the procedures (**Armenia, Norway, Romania**).

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<sup>62</sup> The Latvian “Track court proceedings” is a free of charge service that is available for the general public on the court portal ([www.tiesas.lv](http://www.tiesas.lv)) enabling to track any court proceeding in any court of Latvia. Information is available on the current status of any specific court proceeding – name and contact information of the court, judge assigned, court hearings scheduled, claims received, court decisions made within the proceeding (without full-text) and information case proceedings throughout other court instances. Information is provided publicly without any personal data exposed.

<sup>63</sup> The judicial IT system UYAP enables all citizens, including victims, to access information about their cases by using the citizen’s portal. Citizens can log into the system either with an e-signature or the national ID number. In addition, victims, parties and other persons, who have subscribed to the UYAP SMS Information System, receive information about the case files and proceedings through an SMS. See <https://vatandas.uyap.gov.tr/index.html>

<sup>64</sup> The online information system MENA provides victims of crime with up-to-date information on issues such as: the status of the complaint they filed with the police, who is handling the complaint, the location of the police station/prosecution unit handling the complaint, information on suspects or offenders (when this information is available). The system also updates victims on their right to voice an opinion during the different stages of the criminal proceedings.

<sup>65</sup> See <https://www.coe.int/en/web/cepej/cepej-work/saturn-centre-for-judicial-time-management> - Towards European timeframes in judicial proceedings – Implementation guide – Document CEPEJ(2016)5.

The set timeframes should enable court users to better understand the administration of justice and have realistic expectations, while providing court management with a better insight into court procedures through the analysis of deviations from the set timeframes which helps to improve the functioning of courts. Two examples of the use of IT to help court management with easily understandable and useful tools showing the performance of courts are the finalists of the Crystal Scales of Justice Competition: **Slovenia**<sup>66</sup> and **Azerbaijan**.<sup>67</sup>

#### *Information for victims of crimes*

Almost all the States and entities concerned, except **Andorra, Armenia, Georgia** and **Montenegro**, have established free-of-charge information systems for victims of crimes. Such systems include information brochures, specific websites and forms, as well as links to governmental and non-governmental organisations devoted to help and support victims of crimes. An example is the Victim Support Europe organisation, offering practical information and help to victims across the European Union.<sup>68</sup>

As timely information can be crucial, some States and entities have established a dedicated telephone line for victim support (e.g. **Albania, Austria, Croatia, France, Hungary, Ireland, Latvia, Republic of Moldova, Romania** and **Israel**). Victim support demands a comprehensive approach, involving not only the judiciary, but also other institutions, such as the police, the national health system, social services, psychological support, etc. Countries which have set up such interdisciplinary and multidimensional systems to better coordinate judicial and non-judicial tasks and services include **Belgium**<sup>69</sup>, **Bosnia and Herzegovina, Bulgaria**<sup>70</sup>, **Croatia**<sup>71</sup>, **Denmark**<sup>72</sup>, **Finland**<sup>73</sup>, **France**<sup>74</sup>, **Ireland**<sup>75</sup>, **Latvia**<sup>76</sup>, **Lithuania, Luxembourg, Malta**<sup>77</sup>, **Monaco, the Netherlands**<sup>78</sup>, **Norway, Poland**<sup>79</sup>, **Romania, the Russian Federation**<sup>80</sup>, **Serbia, Slovakia**<sup>81</sup>, **Slovenia**<sup>82</sup>, **Spain, Sweden**<sup>83</sup>, **Switzerland**<sup>84</sup>, **Turkey**<sup>85</sup>, **UK-England and Wales**<sup>86</sup>, **UK-Scotland**<sup>87</sup> and **Israel**<sup>88</sup>. As States and entities represent an increasingly interconnected environment, it is advisable that the information is available in different languages (e.g. **Finland**).

#### *Vulnerable persons*

Specific attention is given to children and juveniles, ethnic minorities, persons with disabilities, victims of sexual crimes and domestic violence, as well as victims of human trafficking or terrorism. Most of the States and entities offer information mechanisms for the categories of users listed, most notably for minors (39), victims of domestic violence (37) and victims of sexual violence (36). Special arrangements during hearings

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<sup>66</sup> See "The judicial data warehouse and performance dashboards" (2012): <https://rm.coe.int/judicial-data-warehouse-and-performance-dashboards-supreme-court-of-sl/168078b0cb>

<sup>67</sup> See "Court pulse, the management revolution" (2017): <https://rm.coe.int/court-pulse-the-management-revolution-sharing-best-practice-of-azerbai/168078aa8e>

<sup>68</sup> See <http://victimsupport.eu/>, including a presentation video.

<sup>69</sup> See [https://www.belgium.be/fr/justice/victime/aide\\_aux\\_victimes/services\\_d\\_aide\\_aux\\_victimes](https://www.belgium.be/fr/justice/victime/aide_aux_victimes/services_d_aide_aux_victimes)

<sup>70</sup> See <http://www.compensation.bg/en>

<sup>71</sup> See <https://pravosudje.gov.hr/podrska-zrtvama-i-svjedocima/6156>

<sup>72</sup> The Danish Victim Association is an independent organisation which is funded *inter alia* by the Council of the Danish Victims Fund, which in turn is funded by fixed payments by every person convicted of a crime or a traffic violation.

<sup>73</sup> See <https://www.riku.fi/en/home/>, <http://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/apuajatukea.html> and [https://oikeus.fi/material/attachments/oikeus/tietoarikoksenuhrinoikeuksista2017/6hnlisPe2j/Rights\\_of\\_a\\_Crime\\_Victim.pdf](https://oikeus.fi/material/attachments/oikeus/tietoarikoksenuhrinoikeuksista2017/6hnlisPe2j/Rights_of_a_Crime_Victim.pdf).

<sup>74</sup> See <https://www.gouvernement.fr/guide-victimes>

<sup>75</sup> See [www.victimsofcrime.ie](http://www.victimsofcrime.ie)

<sup>76</sup> See <http://www.cietusajiem.lv/en/> and <http://www.jp.gov.lv/par-mums-eng>

<sup>77</sup> See [www.victimsupport.org.mt](http://www.victimsupport.org.mt)

<sup>78</sup> See [www.slachtofferhulp.nl/](http://www.slachtofferhulp.nl/)

<sup>79</sup> See [www.pokrzywdzeni.gov.pl](http://www.pokrzywdzeni.gov.pl)

<sup>80</sup> See <http://soprotivlenie.org>

<sup>81</sup> See <http://www.pomocobetiam.sk>

<sup>82</sup> See <https://www.policija.si/en/index.php/prevention/105-when-i-become-a-victim-of-a-crime>

<sup>83</sup> See <https://www.brottsoffermyndigheten.se/eng>

<sup>84</sup> See <http://www.centrelavi-ge.ch/index.php?q=category/theme/centres-lavi-de-suisse>

<sup>85</sup> See [http://www.hukukiyaridim.gov.tr/legal\\_aid/](http://www.hukukiyaridim.gov.tr/legal_aid/) and <http://www.magdur.adalet.gov.tr/>

<sup>86</sup> See <https://www.victimsupport.org.uk>

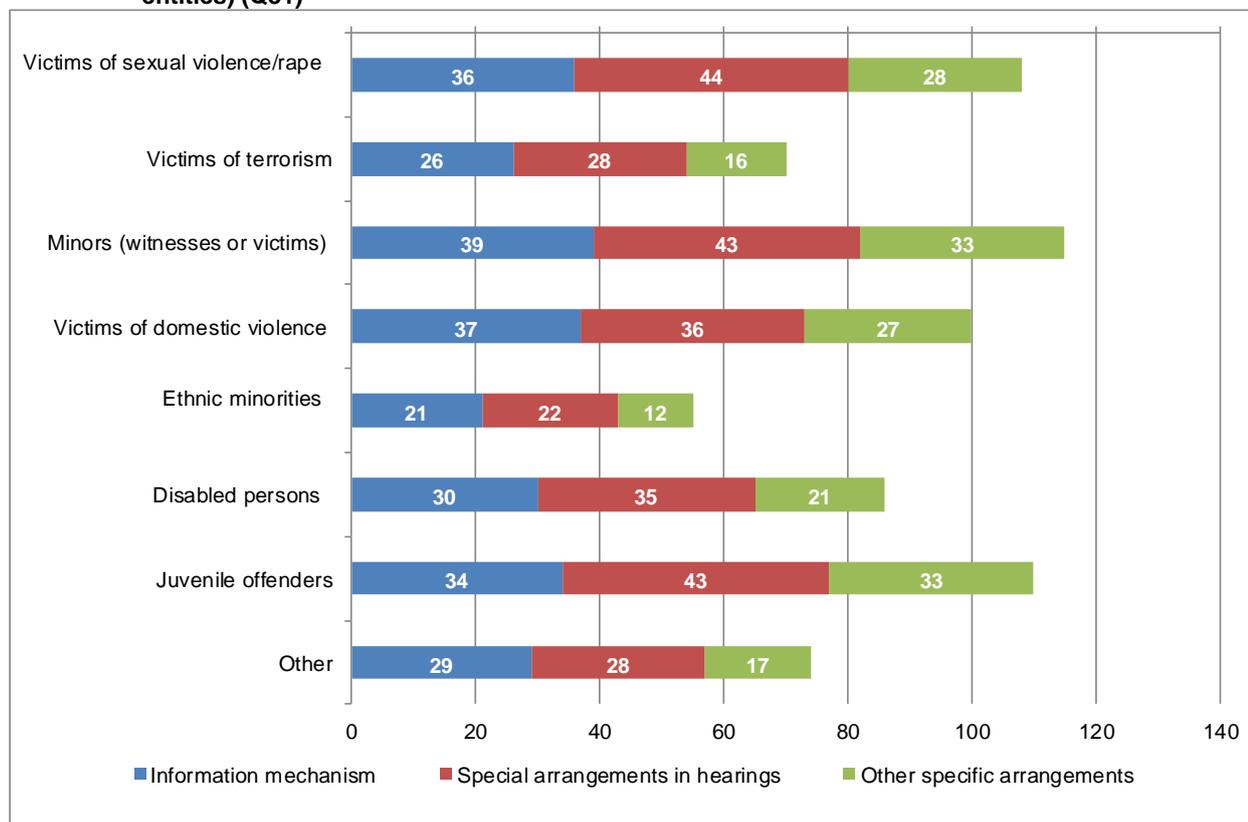
<sup>87</sup> See <https://www.mygov.scot/crime-justice-and-the-law/>

<sup>88</sup> See [https://www.gov.il/en/service/information\\_system\\_for\\_victims\\_of\\_crime](https://www.gov.il/en/service/information_system_for_victims_of_crime)

and other specific arrangements are offered in most countries to the following five categories: victims of sexual violence (44 + 28), minors (43 + 33), victims of domestic violence (36 + 27) and persons with disabilities (35 + 21).

Victims and witnesses as well as their family members should receive adequate support, information and protection not only before and during trial, but also after it has ended. They should be treated with dignity and respect, be fully aware of their rights and be able to participate in the proceedings and, when applicable, receive a fair compensation.

**Figure 4.18 Favourable arrangements during judicial proceedings for vulnerable persons (number of States / entities) (Q31)**



More and more international and national documents and initiatives requiring protection, support and adequate information for victims show an increasing level of care devoted to victims by the public services of justice in Europe.

**The CEPEJ invites States and entities to provide court users with relevant, accurate, comprehensible and up-to-date information on the nature and duration of court proceedings. The use of new technologies offers various communication channels and enables automated and customised information. Special attention should be devoted to informing and helping vulnerable categories of court users, such as victims, children and persons with disabilities.**

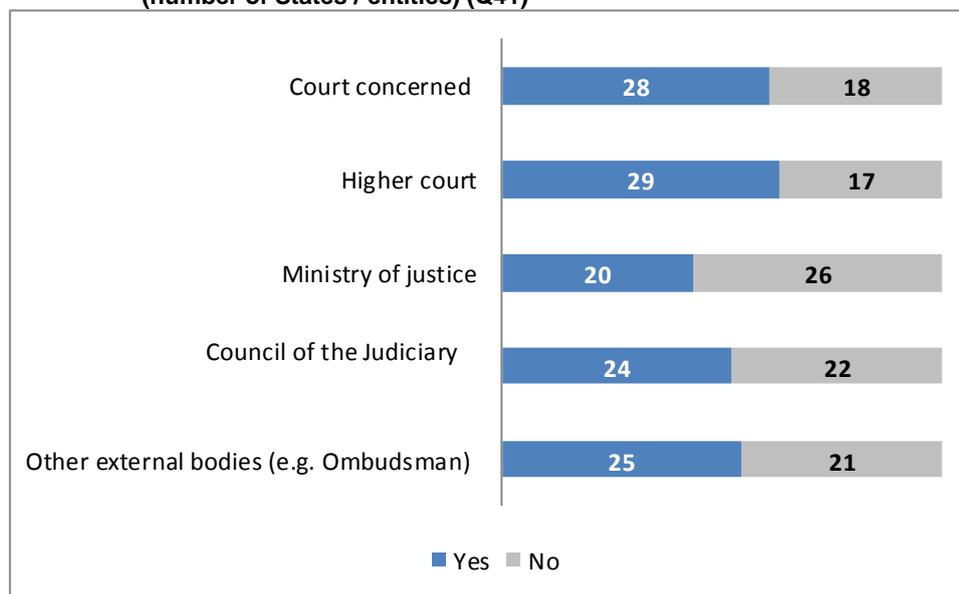
### 4.3.2 Complaint procedures and compensation systems

#### *Complaint procedures*

Apart from the ordinary or extraordinary legal remedies that target individual court decisions, judicial systems offer to court users different ways to challenge the administration of justice. These procedures vary, as they are initiated and dealt with by different institutions. In all such procedures, special attention should be devoted to preserving the independence of judges in their decision-making.

Most of the States and entities have instituted complaints as regards the functioning of justice through the judicial system itself – either through the court concerned (28) or through a higher court (29). Complaints can also be addressed to the Council for the Judiciary (24), the Ministry of Justice (20) or other external bodies such as the Ombudsperson (24). Time limits to deal with the complaints are most common for judicial bodies. Data on the number of complaints and amounts awarded is very limited.

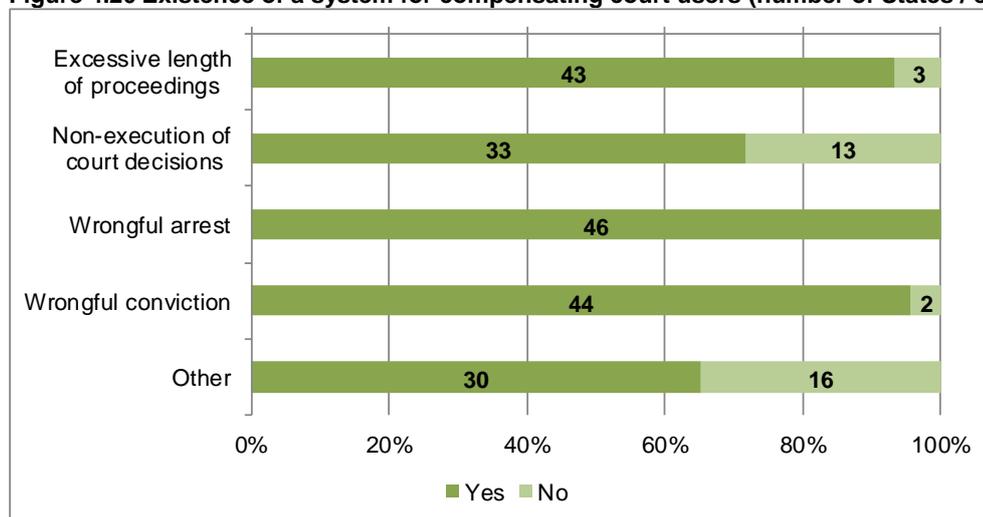
**Figure 4.19 Authority responsible for dealing with the complaint about the functioning of the judicial system (number of States / entities) (Q41)**



#### Compensation systems

All the States and entities concerned have set up specific systems which make it possible for the court users to be compensated following dysfunctions within the court system which have affected them.

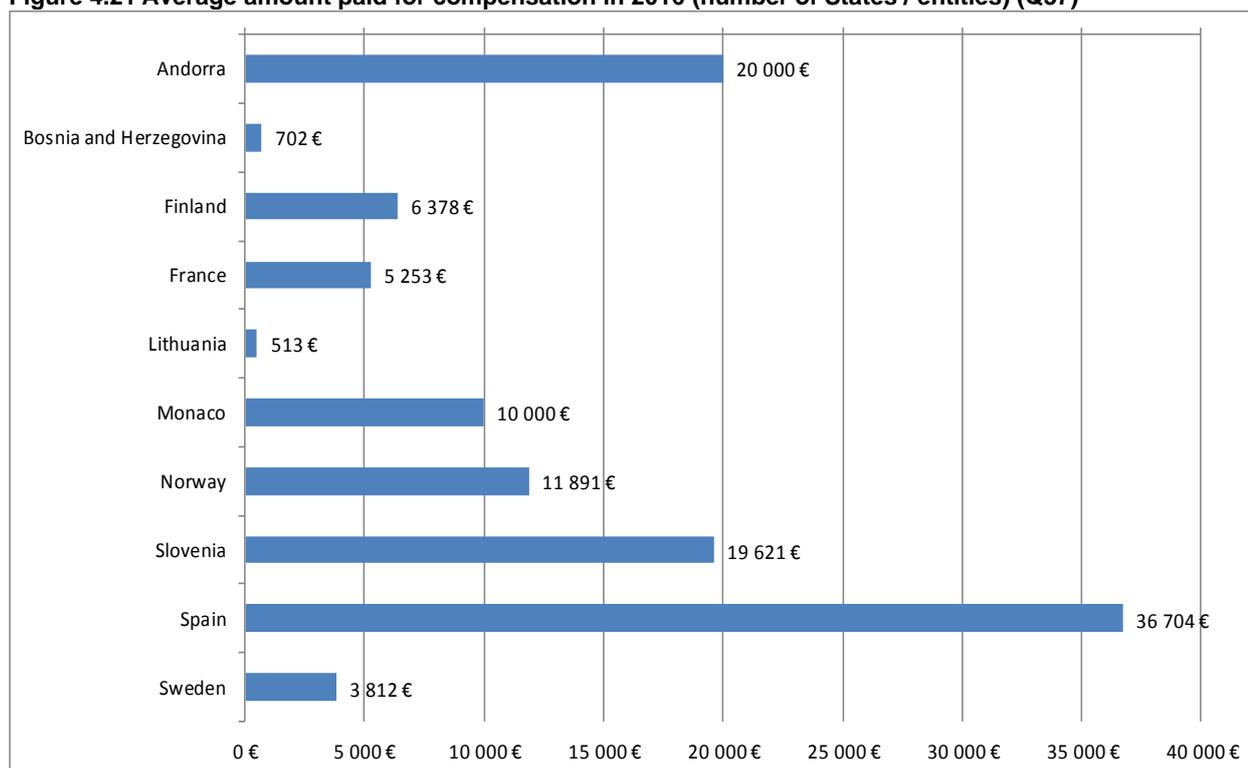
**Figure 4.20 Existence of a system for compensating court users (number of States / entities) (Q37)**



In the criminal law field, wrongful arrests and wrongful conviction can be compensated in almost all the States. There is, however, limited amount of data available on the number of requests for compensation, the number of findings in favour of the complainant, as well as on the amounts awarded in compensation, as more than 75 % of States and entities could not provide such data. It is clear from the information provided by a few States and entities that the values vary considerably.

**The CEPEJ invites States and entities to provide more detailed data on such procedures which could lead to better comparisons between judicial systems.**

**Figure 4.21 Average amount paid for compensation in 2016 (number of States / entities) (Q37)**



Excessive lengths of judicial proceedings, which remain the main ground cited in applications under ECHR Article 6 by applicants before the European Court of Human Rights (ECtHR), are subject to compensation in a wide majority of States and entities (43). Similar to the practice of the ECtHR, States do not have absolute numbers fixing what would constitute an excessive length of proceedings, as all circumstances of the case have to be taken into account, including the complexity of the case, the conduct of the authorities and the conduct of the applicant that might have prolonged the proceedings.<sup>89</sup> The second main ground raised by applicants regarding ECHR Article 6 is the non-enforcement of national court decisions; this dysfunction can be the subject of compensation in more than half of the States and entities concerned (33). Similar to the data on wrongful arrest and wrongful conviction, only one third of States or entities provided data on the number of procedures and amounts awarded regarding excessive length of proceedings and non-enforcement of court decisions (**Andorra, Bosnia and Herzegovina, Croatia, Finland, France, Italy, Latvia, Lithuania, Monaco, Montenegro, Norway, the Russian Federation, Serbia, Slovenia, Sweden, “the former Yugoslav Republic of Macedonia”**). Some States rely on a case-to-case examination for compensation, others have set up a national scheme. In some cases, the amounts awarded can be fixed according to infringements (e.g. a fixed amount per day of wrongful arrest) or may have an upper limit (e.g. **Croatia, Finland**).

Nearly all States and entities (45) have established a compensation system for victims of crime. In half of the States and entities (23), a court decision is necessary in the framework of the compensation procedure. The compensation can come from a public fund (40) or a private fund (1) and in most of the countries the damages and interests come from the person responsible (31).

### 4.3.3 Court satisfaction surveys

As the judiciary represents an independent branch of power it is essential that judicial systems communicate with their stakeholders to understand their needs and expectations. By including court users in their work, judicial systems prove their legitimacy and build trust and confidence.

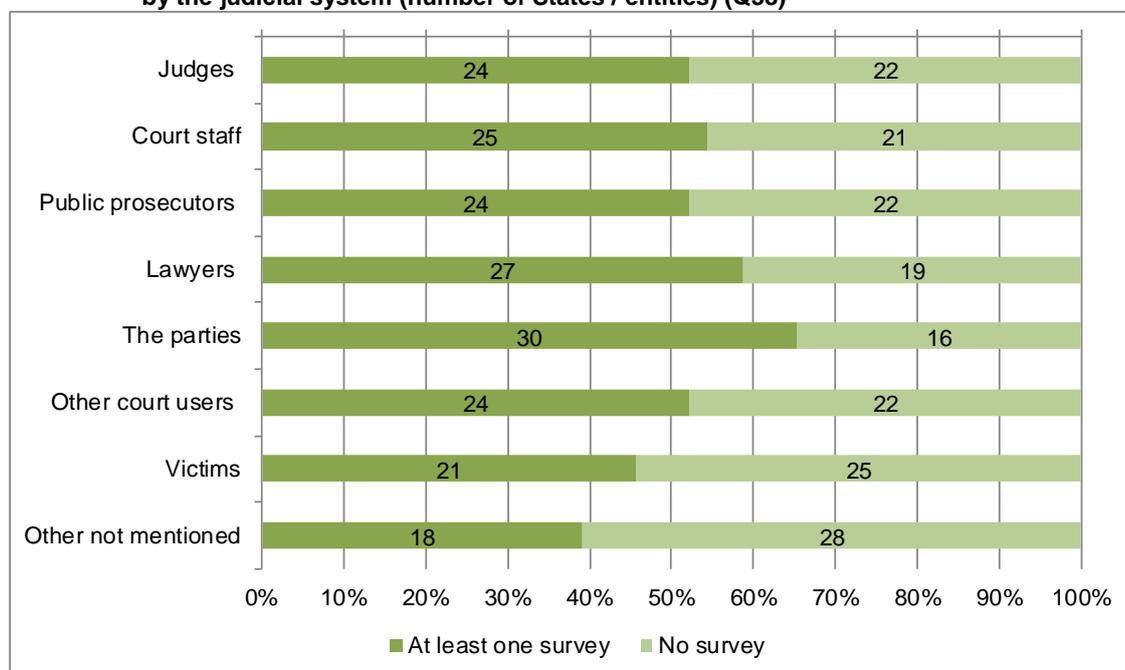
<sup>89</sup> See <https://www.coe.int/en/web/cepej/documentation/cepej-studies> - Length of court proceedings in the member States of the Council of Europe based on the case law of the European Court of Human Rights (2003, revised in 2011) – CEPEJ Studies No. 3. See also Study on Council of Europe member States Appeal and Supreme Courts’ Lengths of Proceedings Edition 2015 (2006-2012 data) – CEPEJ Studies No. 17.

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

In order to help States and entities, or individual courts, conduct satisfaction surveys, the CEPEJ has adopted a model report with a model survey for court users and lawyers together with a methodological guide.<sup>90</sup> The document presents approaches from various countries and, building on their experience, proposes a model version of various questions. These questions refer to the court premises, organisation of work, availability of information, level of service and expertise provided by judges and court staff, the timeliness and legibility of judicial decisions, etc. Not only are States invited to measure the satisfaction with different aspects of judicial service, the importance of each feature could be measured as well, giving court leadership more accurate information on the needs of court users and fixing short term and long term activities of courts to meet these needs.

Court user surveys can be conducted within a court, a region or on a State level (depending on the organisation of the judicial system, the existence of courts of specialised jurisdiction, etc.). What is essential is that such surveys are conducted periodically, so the evolution of satisfaction with specific aspects of court services can be observed and, based on the analyses of the results, specific steps for improvement can be planned. The conduct of court user surveys only once or without the use of the results to plan and execute concrete follow-up projects and actions (such as proposals for legislative change, determination of training needs of judges and staff, etc.), leaves this otherwise strategically important tool and activity empty and almost useless. Best practices show that well planned and organised endeavours to understand and address court users' needs not only improve the service in the eyes of the users, but also the communication and satisfaction of the judges and court staff.

**Figure 4.22 Existence of surveys to measure the trust in justice and the satisfaction with the services delivered by the judicial system (number of States / entities) (Q38)**



<sup>90</sup> See <https://www.coe.int/en/web/cepej/cepej-work/quality-of-justice> - Report on conducting satisfaction surveys of court users in Council of Europe member States - Document CEPEJ(2010)2 – CEPEJ Studies N. 15. See also Handbook for conducting satisfaction surveys aimed at court users in Council of Europe member States – Document CEPEJ(12/2016) and Checklist for court coaching in the framework of customer satisfaction surveys among court users – Document CEPEJ(12/2013).

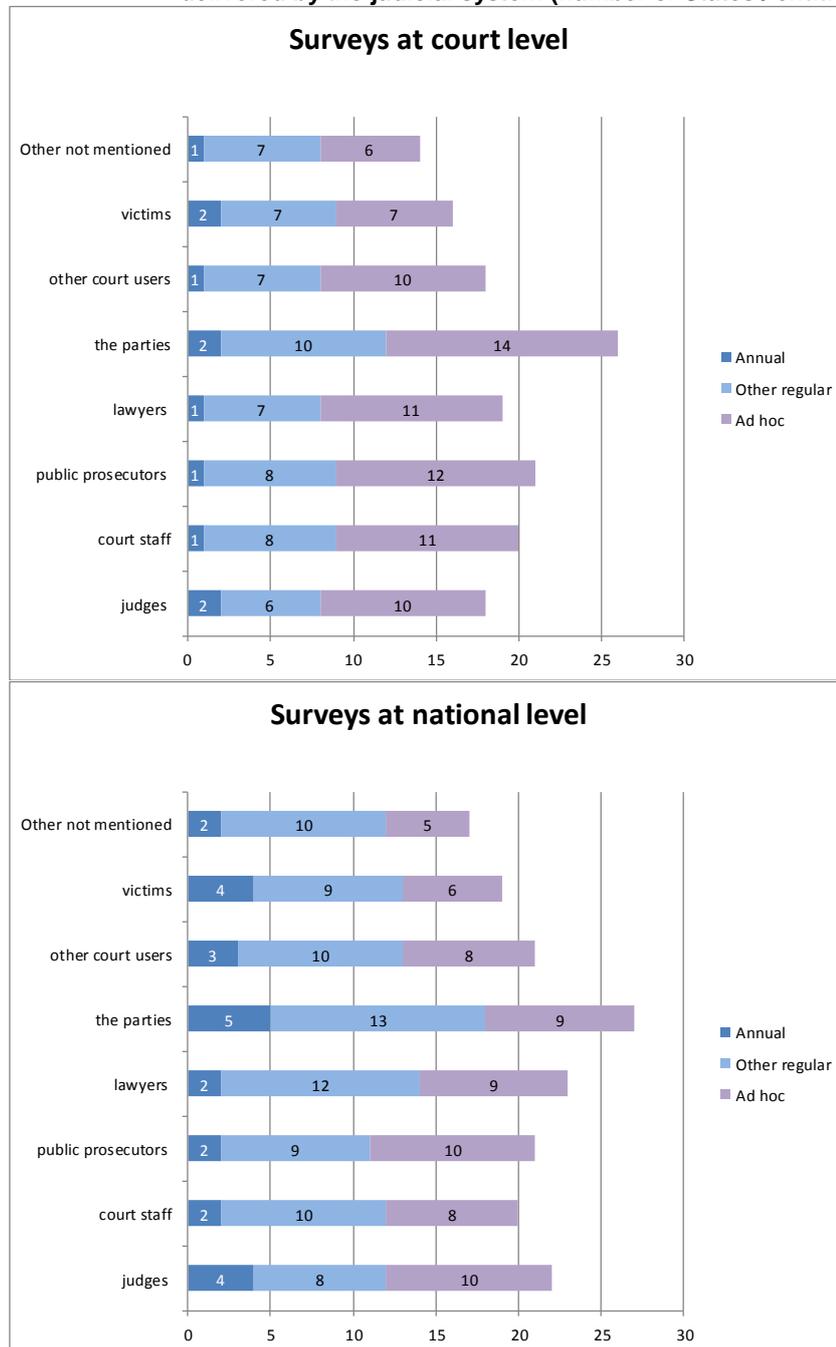
**Table 4.23 Implementation of surveys to measure the trust in justice and the satisfaction with the services delivered by the judicial system (Q38)**

States	Satisfaction surveys aimed at							
	Judges	Court staff	Public prosecutors	Lawyers	Parties	Other court users	Victims	Other not mentioned
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								
Norway								
Poland								
Portugal								
Romania								
Russian Federation								
Serbia								
Slovakia								
Slovenia								
Spain								
Sweden								
Switzerland								
The FYROMacedonia								
Turkey								
Ukraine								
UK-England and Wales								
UK-Scotland								
Israel								
Morocco								
At least one survey	24	25	24	27	30	24	21	18
No survey	22	21	22	19	16	22	25	28

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

The focus on parties, lawyers and public prosecutors is evident both from surveys conducted on a national level and those at court level. The frequency differs considerably – some are done periodically every few years, others are done *ad hoc* just for specific courts or topics. While national surveys are mostly regular, the surveys at court level are more frequently conducted *ad hoc*.

**Figures 4.24 Frequency of surveys to measure the trust in justice and the satisfaction with the services delivered by the judicial system (number of States / entities) (Q38)**



An example of a comprehensive approach to court user satisfaction research is **Slovenia**. Extensive quantitative surveys on satisfaction with the functioning of courts in **Slovenia**, performed by academic institutions, are planned as a bi-annual activity at national level (2013, 2015, 2017). The surveys target the general public, court users in all courts in the country (non-professionals - parties and other persons present at courts, including victims), legal professionals (lawyers, public prosecutors and State attorneys) and employees (judges and court staff). An extensive analysis and complete results of all the surveys are published on the website of the Slovenian judiciary.<sup>91</sup> To complement the quantitative research, a qualitative

<sup>91</sup> See [http://www.sodisce.si/sodna\\_uprava/statistika\\_in\\_letna\\_porocila/zadovoljstvo\\_javnosti/](http://www.sodisce.si/sodna_uprava/statistika_in_letna_porocila/zadovoljstvo_javnosti/) (for now available in Slovenian only).

study of procedural fairness and communication activities was introduced in 2017, including workshops with different stakeholders, in-depth interviews with court users, observation within court premises as well as analyses of social media. The results of these surveys serve as the basis for specific projects and activities (such as simplified guides on court roles and proceedings, improving signalling within court premises, etc.), as such research enables court management to identify more in detail potential areas for improvement.

Not all States and entities conducting surveys publish their results (publication in **Armenia, Germany, Iceland, Latvia, Lithuania, Montenegro, Norway, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, UK-England and Wales, UK-Scotland, Israel**). As already stated, the frequency of the surveys and the follow-up activities are crucial for the success of court user surveys.

**The CEPEJ supports the use of court users' surveys and invites States and entities to conduct regular surveys for different categories of court users at court and State level and to publish the results. Opening the dialogue between courts and users improves communication, helps to deliver a better service, strengthens and affirms the legitimacy and public responsibility of the judiciary.**

#### 4.3.4 Monitoring of the violations of Article 6 ECHR

One of the essential elements for a smooth functioning of courts is the safeguarding of the fundamental right to a fair trial within a reasonable time (ECHR Article 6). This principle must be fully taken into account when managing the workload of a court, the duration of proceedings and specific measures to reduce their length and improve their efficiency and effectiveness.<sup>92</sup> The Council of Europe and its ECtHR pay specific attention to the "reasonable time" of judicial proceedings and the effective execution of judicial decisions. One of the aims of the CEPEJ consists in preventing complaints to the ECtHR based on the poor running of judicial systems by helping to improve the functioning of justice in the European States. The ECtHR has based its rulings in several judgments on certain aspects of the work of the CEPEJ, in particular those aimed at preventing the violation of the requirement of reasonable timeframes of procedures.<sup>93</sup>

On several occasions the ECtHR considered that one of the ways of guaranteeing the effectiveness and credibility of judicial systems is to ensure that a case is dealt within a reasonable time (*H. v. France*, No. 10073/82, of 24 October 1989). More recently, the Court said that "significant and recurring delays in the administration of justice were a matter of particular concern and likely to undermine public confidence in the effectiveness of the judicial system" and that in exceptional cases, "the unjustified absence of a decision by the courts for a particularly prolonged period could in practice be regarded as a denial of justice" (*Glykantzi v. Greece*, No. 40150/09, of 30 October 2012). With regard to the right to the implementation of justice, the Court asserted that guaranteeing the "right to a court" would be "illusory if a Contracting State's domestic legal system allowed a final binding judicial decision to remain inoperative to the detriment of one party". Accordingly, the execution of a judgement given by any court "must be regarded as an integral part of the "trial" for the purposes of Article 6 [of the Convention]" (*Hornsby v. Greece*, 19 March 1997).

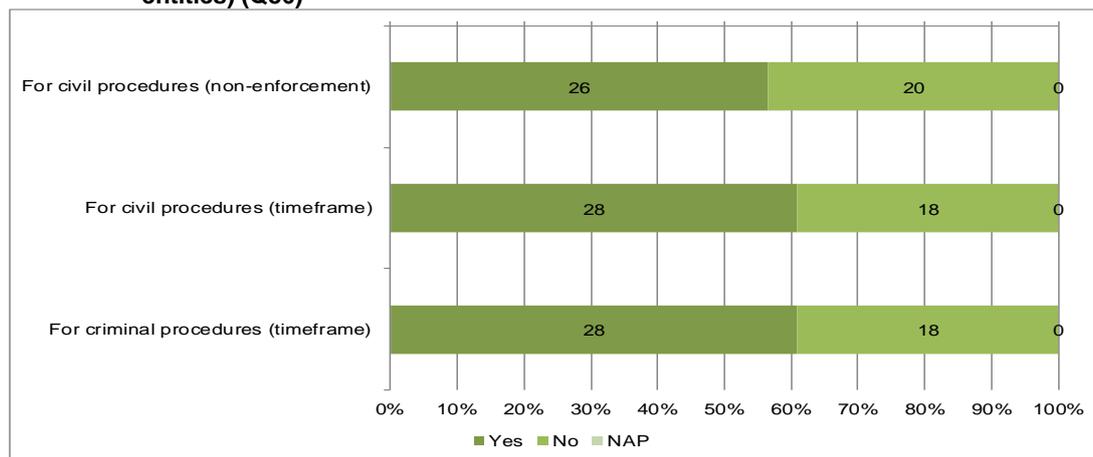
CEPEJ supports States in the creation of monitoring systems for violations of ECHR Article 6. More and more States and entities have set up such mechanisms regarding violations of timeframes for both civil and criminal procedures (28), as well as regarding non-enforcement of judicial decisions in civil procedures (26).

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<sup>92</sup> See <https://www.coe.int/en/web/cepej/documentation/cepej-studies> - Length of court proceedings in the member States of the Council of Europe based on the case law of the European Court of Human Rights (2003, revised in 2011) – CEPEJ Studies No. 3.

<sup>93</sup> See <https://www.coe.int/en/web/cepej/documentation/echr-judgements>.

**Figure 4.25 Existence of a monitoring system for violations related to Article 6 ECHR (number of States / entities) (Q86)**



States and entities were asked to provide information concerning cases brought before the ECtHR under ECHR Article 6, cases brought before national courts and measures designed to promote efficient court proceedings.

Most States and entities report having established mechanisms to adopt individual measures, as well as general measures to prevent further violations. Some countries have set up mechanisms in legislation to speed up the proceedings (e.g. **Republic of Moldova, Montenegro, Russian Federation, Slovenia, Spain**) or to reopen a case, in case of other infringements of ECHR Article 6 (e.g. **Georgia, Latvia, Serbia, Slovenia**). While such remedies do not represent a monitoring system *per se*, they may enable the provision of redress to individuals whose rights have found to have been violated to take steps to remedy the situation, thus helping with the efficiency of ECtHR decisions. Other countries present comprehensive mechanisms aimed at the general prevention of violations, such as the monitoring and dissemination ECtHR case-law (e.g. **Austria, Russian Federation, Spain, Switzerland**), its inclusion in training curricula (**Austria**), reporting to the national parliament or government (e.g. **France, Italy, Slovakia**), preparing systematic changes or action plans to prevent further violations, etc. In most cases, the actions are taken by the Ministry of Justice or the Ministry of Foreign Affairs. Nevertheless, in some States such activities are promoted by other institutions or special bodies (e.g. the Expert Council - representatives of different bodies - in **Croatia**, the Constitutional Court in **Malta**, the Danish Institute for Human Rights in **Denmark**, the National Institution for Human Rights in **Norway**, the inter-ministerial Commission in “**the former Yugoslav Republic of Macedonia**”).

**The CEPEJ invites States and entities to work further on this issue. It is essential that States and entities are able to provide data on the cases brought against them before the Court in Strasbourg which relate to ECHR Article 6. Such developments in the statistical systems are an essential tool for remedying the dysfunctions highlighted by the Court and preventing further violations of the Convention. The CEPEJ supports the creation of specific bodies or working groups from different ministries and fields that can consider the judgments of the Court from different angles to ensure the implementation of prevention mechanisms at State level.**

## **Trends and conclusions**

**The importance of the inclusion of court users in the daily work of the judiciary cannot be stressed enough. More and more States and entities provide specific information to users, both about the judicial system in general and about individual court proceedings, target vulnerable categories of users with specific information and arrangements, offer the possibility of complaints about the functioning of justice and the prospect of compensation, conduct user satisfaction surveys and create monitoring mechanisms as regards violations of the ECHR.**

**In order to improve social responsibility and trust in the judicial system, the CEPEJ invites States and entities to devote resources and staff to a better communication with the primary stakeholders – the users of justice. By using the advantages of information technology, States can inform users better, adapt the availability of information and create sustainable two-way communication with the users, enabling thereby to address issues raised by the users. The analyses and use of data, gathered through quantitative and qualitative research of the satisfaction of court users, strengthens the legitimacy of judicial systems and helps court leaders and court administrations to provide a better and more efficient service of justice. The use of information systems to support such activities is crucial. However, it is procedural justice - the human contact, the treatment of all those involved in judicial proceedings with dignity and respect that substantially helps to provide fair decisions and consequently build trust in justice. Each system is composed of individuals and the CEPEJ invites States and entities to train, support and invest in every person within their judicial system in order to improve the overall quality of justice.**

## Chapter 5. Efficiency and quality of the activity of courts and public prosecution services

Court efficiency plays a crucial role in upholding the rule of law, by ensuring that all persons, institutions and entities, both public and private, including the State, are accountable and by guaranteeing timely, just, fair and equitable remedies. It supports good governance and may lower the risk of corruption and help build confidence in the institutions. An efficient court system is an essential ingredient of an environment that allows individuals to pursue their human development through the effective enjoyment of economic and social rights and which promotes investment and encourages business.

This chapter provides basic facts and figures on the performance of courts in 48 States or entities. The analysis in this chapter concerns the performance of courts of first instance, courts of appeal and supreme courts. Performance is assessed in the context of specific sectors of justice, i.e. criminal, civil (mainly with regard to civil and commercial litigious cases) and administrative and in relation to particular categories of cases, i.e. litigious divorces, employment dismissals, insolvency, robbery, intentional homicide, cases relating to asylum seekers and cases relating to the right of entry and stay for aliens, received and processed by first instance courts.

Information has been collected regarding two general categories: “other than criminal cases” and “criminal cases” and a number of sub-categories within each of these.

The category of “other than criminal” cases comprises: civil (and commercial) litigious cases; non-litigious cases (including general civil and commercial non-litigious cases and registry cases); administrative law cases; and other cases. There are relevant measurement difficulties related to differences between countries in the definition and categorisation of specific groups of cases. The distinctions employed in the CEPEJ questionnaire make it possible, to a certain extent, to separate categories and facilitate categorisation within each system.

Similarly, for the group of “criminal cases”, considering the different legal classifications of offences used in each country, data collection distinguishes between severe criminal cases and minor criminal offences (or misdemeanours). In this regard, CEPEJ relies on the “European Sourcebook of the Council of Europe” as a common reference guide regarding the categories of criminal cases in the majority of jurisdictions. Nevertheless, the information gathered from States and entities highlights important differences in the way specific groups of cases are computed within the categories of the CEPEJ questionnaire; there are also reported differences within the same national system over time, generally to adapt to the CEPEJ methodology. As a consequence, the comparability of data across States and the interpretation of variations over a period of time should be read in close connection with the comments provided by the States on the specificity of each jurisdiction (within both the civil and criminal sectors).

The chapter deals with all analysed jurisdictions equally and does not intend to promote any particular type of justice system. Its approach, however, is informed by the fundamental standard of a fair trial within a reasonable time (ECHR Article 6), which is a crucial element of the smooth functioning of courts. Accordingly, it builds on the premise that whatever the model of the national justice system or the legal tradition on which it is based, the length of proceedings, the number of pending cases and the capacity of courts to deal with the caseload - though not exhaustive - are essential parameters against which to assess the efficiency of a judicial system.

### CEPEJ performance indicators on court efficiency

The Council of Europe and its European Court of Human Rights pay specific attention to the “reasonable time” of judicial proceedings (*H. v. France*, No. 10073/82, 24 October 1989). The Court, in particular, has established *criteria* for assessing the reasonableness of the length of proceedings and *rules* for calculating the length of proceedings.<sup>94</sup> The first include the complexity of the case; the applicant’s conduct; the conduct of the competent authorities; the type of case, which may involve issues that are of particular concern for the applicant (e.g. labour disputes involving dismissals, or family cases concerning relations between children and parents). The second include an indication of the methods to calculate the length of proceedings. For instance, the starting point for the calculation for civil cases (generally the date on which the case was referred to the court) is different from that of criminal cases (the starting date may be the date on which the

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<sup>94</sup> “Length of court proceedings in the member States of the Council of Europe based on the case law of the European Court of Human Rights”, Françoise Calvez and Nicolas Régis, 2012.

suspect was arrested or charged, or the date on which the preliminary investigation began). Similarly, the end period might refer to the date on which the final judgment is given and/or may take into consideration, in some cases, the length of enforcement proceedings (*Hornsby v. Greece*, No. 18357/91, 19 March 1997). These elements offer a useful benchmark against which State performance in relation to court efficiency (regarding the length of proceedings) can be assessed.

In addition to and as a specification of these, the CEPEJ has developed two performance indicators to assess court efficiency at the European level. The first indicator is the *Clearance Rate*, which measures how effectively courts within a State or entity are keeping up with the incoming caseload. The second indicator is the calculated *Disposition Time*, which measures the estimated number of days that are needed to bring pending cases to an end. The two indicators can be studied together to achieve an initial general picture of the efficiency of courts in a certain country. An analysis of their evolution over time allows a better understanding of the efforts of the judiciary to maintain and/or improve efficiency.

### **Clearance Rate (CR)**

The Clearance Rate is a simple ratio, obtained by dividing the number of resolved cases by the number of incoming cases, expressed in a percentage:

$$\text{Clearance Rate (\%)} = \frac{\text{Resolved cases in a period}}{\text{Incoming cases in a period}} \times 100$$

A Clearance Rate close to 100 % indicates the ability of the court or of a judicial system to resolve approximately as many cases as the number of incoming cases within the given time period. A Clearance Rate above 100 % indicates the ability of the system to resolve more cases than those received, thus reducing the number of pending cases at the end of the measurement period, including any existing backlog. Finally, a Clearance Rate below 100 % appears when the number of incoming cases is higher than the number of resolved cases. In this case, the total number of pending cases will increase.

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

### **Disposition Time (DT)**

The calculated Disposition Time measures the theoretical time necessary for a pending case to be solved in court in the light of the current pace of work of the courts in that country or entity.

The Disposition Time is obtained by dividing the number of pending cases at the end of the observed period by the number of resolved cases within the same period multiplied by 365 (days in a year):

$$\text{Calculated Disposition Time} = \frac{\text{Number of pending cases at the end of a period}}{\text{Number of resolved cases in a period}} \times 365$$

The conversion into days simplifies the understanding of the relation between pending and resolved cases within a period. The calculated Disposition Time would show, for example, that the time necessary for solving a pending case has increased from 120 days to 150 days. This allows comparisons within the same jurisdiction over time and, with some prudence, between judicial systems in different countries or entities. It is also relevant for assessing court efficiency in this regard in the light of established standards for the length of proceedings.

It should be noted that this indicator is not a calculation of the average time needed to process a case but a theoretical estimate of the time needed to process pending cases. However, the indicator fails to show the mix, concentration, or merits of the cases. Thus, for example, if the ratio indicates that pending cases will be processed in 90 days, some cases might be solved on the 10<sup>th</sup> day and others on the 90<sup>th</sup> day. Case level data of the actual duration of cases from functional ICT systems is needed in order to review these details and make a full analysis. In the meantime, this formula may offer valuable information on the estimated maximum duration of cases that are still pending.

## 5.1 General overview of court caseload

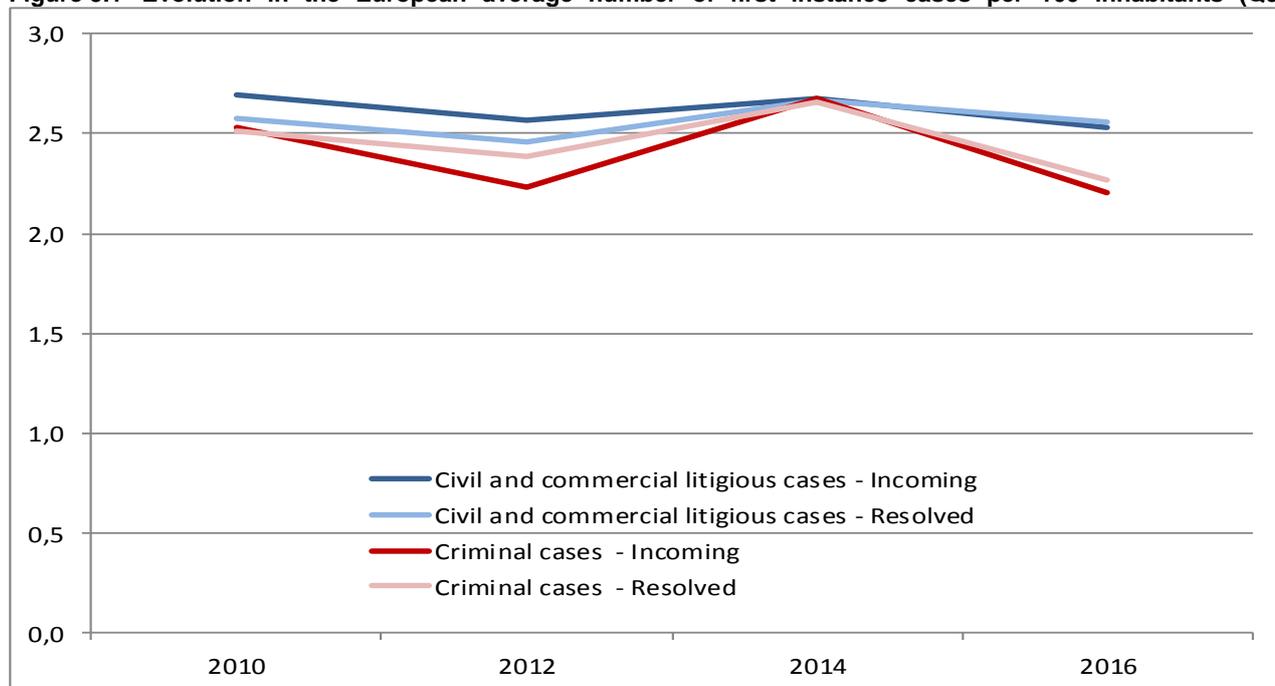
In the evaluation based on 2016 data, 48 States or entities provided information on criminal cases (distributed by severe criminal offences and misdemeanour offences) and on other than criminal cases (distributed by civil and commercial litigious, non-litigious, administrative and other cases). For each of these categories, States and entities reported the number of pending cases at the beginning of the year (1<sup>st</sup> January 2016), the number of incoming cases during the year, the number of resolved cases and the number of pending cases at the end of the year (31<sup>st</sup> December 2016). This makes it possible to assess performance in the light of the CEPEJ indicators on court efficiency (Clearance Rate, Disposition Time and number of pending cases).

The figures below offer a general overview of the evolution of the average caseload for criminal cases and civil and commercial litigious cases, at three instances - first instance, appeal and high court level - between 2010 and 2016. Criminal cases outlined in red and civil and commercial litigious cases marked in blue are shown separately. As it will be explained below, this chapter analyses predominantly data regarding civil and commercial litigious cases (within the category of “other than criminal cases”) as this offers a clearer picture for comparative purposes.

Depending on the year of the evaluation and the court instance, states or entities may have reported NA (non available) data in respect of incoming and/or resolved cases, therefore they are not included in the figures below.

**Note: It is possible that some of the evolutions observed are more related to technical reasons (data rectified or calculated differently by certain States and entities from one year to another) than to actual changes in the number of cases considered. It is therefore important to analyze these developments carefully.**

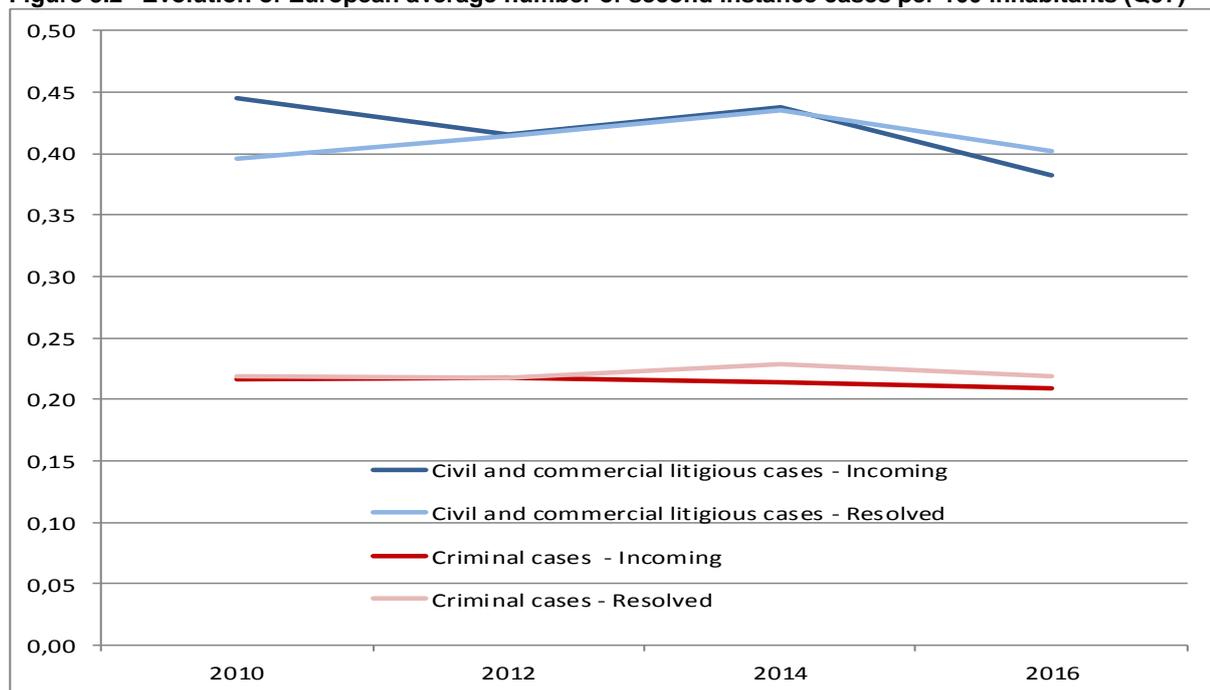
**Figure 5.1 Evolution in the European average number of first instance cases per 100 inhabitants (Q91)**



The average trend for civil and commercial litigious cases at first instance shows that the inflow of cases has remained stable between 2010 and 2016, while the number of resolved cases has slightly decreased, both in the longer period (2010-2016) and when compared to the last cycle (from 2.7 in 2014 to 2.6 in 2016).

In the criminal justice area, at first instance, the average number of both incoming and resolved cases has globally decreased between 2010 and 2016, in spite of an increase in 2014. In each evaluation cycle, **Cyprus** has reported a high rate of incoming cases, thereby affecting the average. In 2014 the average was also affected by a sudden significant increase in **Serbia's** reported data (from 0.9 in 2010 to 10.6 in 2014) and by **Ireland**, which started reporting data only in the last two cycles. The number of resolved cases has also followed this trend. Both median and average figures of resolved cases are equal to or higher than incoming cases, denoting a good performance of courts at each evaluation. However, the average number of resolved cases in 2016 (2.3 cases) is lower than in 2010 (2.5 cases) and in 2014 (2.7 cases), which indicates a reduced capacity of courts to manage cases, both in the long period and in the last two evaluations.

**Figure 5.2 Evolution of European average number of second instance cases per 100 inhabitants (Q97)**

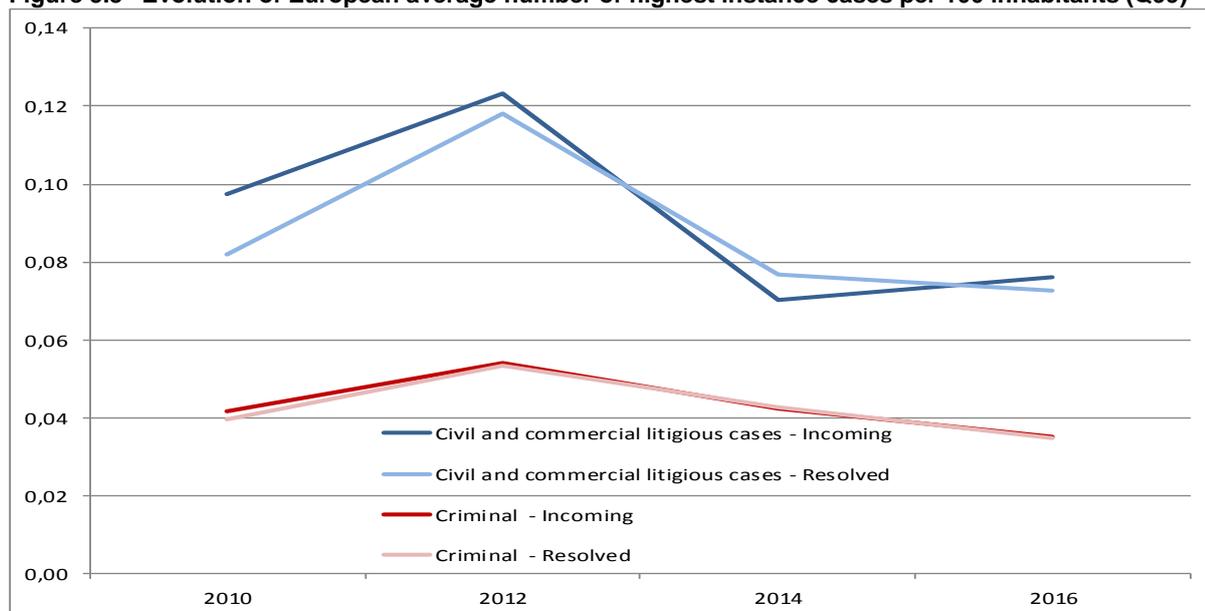


At second instance, the average number of incoming civil and commercial litigious cases has varied throughout the four evaluation cycles and has decreased in the long period (from 0.45 in 2010 to 0.38 in 2016). In 2010 and 2012 courts solved fewer cases than the incoming ones, but performance has improved in the last two cycles. Figure 5.2 shows an overall positive performance in 2016 (0.38 incoming cases; 0.40 resolved cases), but court capacity to solve cases has slightly decreased from 0.44 cases in 2014, to 0.40 cases in 2016. Median figures, which are less sensitive to significant variations within the spectrum of the data available, also confirm similar trends.

At second instance, in all four evaluations, courts were able to solve more criminal cases in total than the number of new incoming cases. Despite such positive performance, in 2016, courts solved on average slightly less cases than in the former cycle (0.23 cases in 2014 and 0.22 cases in 2016), while the number of incoming cases remained stable at 0.21 cases per 100 inhabitants.

It is possible that this is more the result of data rectifications than of a real trend.

**Figure 5.3 Evolution of European average number of highest instance cases per 100 inhabitants (Q99)**



At the highest instance, despite fluctuations, the average number of both incoming and resolved civil and commercial litigious cases has decreased between 2010 and 2016. Figure 5.3 shows, on average, a slight reduction of the capacity of courts to solve cases since the previous measurement (0.08 cases in 2014 and 0.07 cases in 2016).

At the highest instance, the average number of both incoming and resolved criminal cases has decreased since 2010, despite an increase in 2012. As noted in previous reports, figures on the number of incoming and resolved cases per 100 inhabitants offer a clear picture of the caseload and productivity of the different European judicial systems in general. However, the ability of courts to cope with the caseload is closely related to and needs to take into account, the number of judges operating in the court system.

Additional insight into the functioning of the different judicial systems across Europe could be obtained by calculating and comparing the number of incoming and resolved cases per judge at each instance, preferably by breaking down the number of judges by specialisation (i.e. criminal, civil, administrative). Yet, this ratio may not always be representative of how a specific judicial system works in practice, by reason of very relevant differences between countries with regard to the staff exercising judicial and quasi-judicial functions – i.e. professional judges, non-professional judges and *Rechtspfleger* (see Chapter 3 on judicial staff). The CEPEJ questionnaire takes into account such differences, but the quality of the information obtained with regard to the number of non-professional judges and *Rechtspfleger* is not sufficient for drawing comparisons between States or entities. Moreover, there may be differences in the way the reporting authorities define “professional judges” or in the methodology of presentation of data in the course of the different evaluation cycles and consequently in the reported figures.

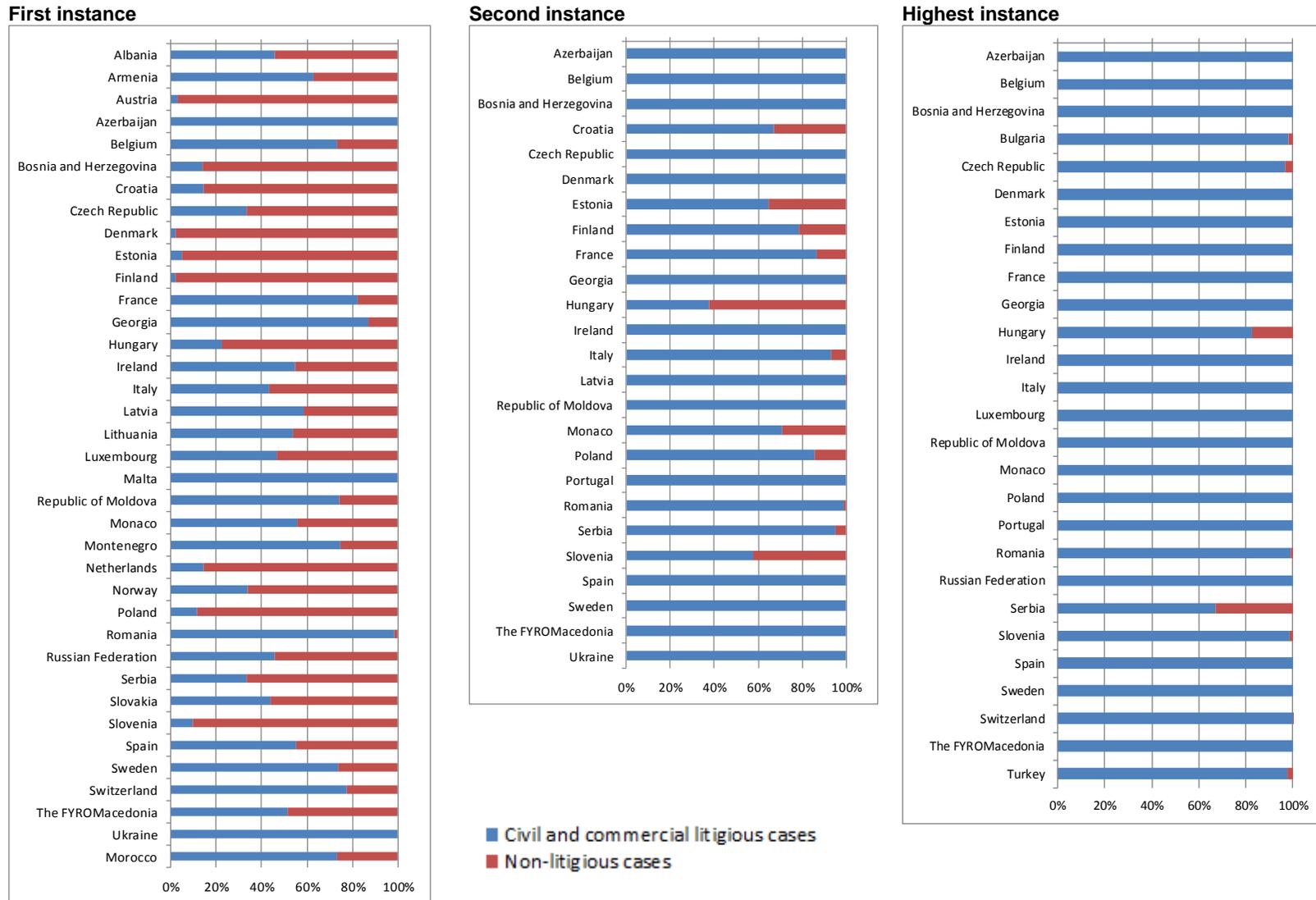
These are relevant differences and are considered more in depth in the chapter dedicated to judicial staff. For the purposes of this part of the report, concerning court efficiency, a simple analysis that does not take into account the peculiarities of the different systems might lead to unjustified conclusions. Further insight into the specific situation of a State or entity can be drawn from in-depth specialised reports on efficiency, addressing in detail, separately for a State or entity, the data on all personnel performing judicial tasks. This would allow a deeper and targeted analysis of the factors having an impact on court efficiency and would enable those jurisdictions where the courts have difficulties in managing case-flows to make informed decisions when reviewing the organisation of the judiciary with a view to balancing the judicial management of the various case categories. Several factors could be involved, including the reallocation of financial and human resources among different legal areas and among the courts to balance the case flow management according to the volume and the categories of cases, or the diversification of judicial procedures (ADR, simplified or negotiated procedures).

## 5.2 Civil and commercial justice (litigious cases): 2016 data and trends regarding performance indicators

As indicated above, this chapter analyses predominantly data regarding civil and commercial litigious cases. Examining court caseload and efficiency in respect of this sub-group of cases is important for two main reasons. First, the complementary category of non-litigious cases shows considerable differences between the States and entities surveyed. In some jurisdictions, land register and business register cases (which involve mainly a formal verification, within a short timeframe, before a registration and the delivery of an attestation) form a large part of non-litigious court activity, while in others, these tasks are dealt with by other authorities and are thus not included in the calculations. This affects the conclusions that can be drawn from the collected data. Focusing on civil and commercial litigious cases, therefore, offers a clearer picture for comparative analysis. Secondly, given their complexity, the workload that is directly assigned to judges solving litigious cases reflects more accurately the amount of work that courts would dedicate to solving cases, both from quantitative and qualitative perspectives.

There are, however, significant differences between jurisdictions and the charts below offer some insight into the structure of court activity in each jurisdiction. 33 States and entities provided data on the number of first instance civil and commercial litigious cases, on the one hand and non-litigious cases (comprising general civil and commercial non-litigious cases, registry cases and other non-litigious cases) on the other. **Azerbaijan, Malta, Ukraine and Israel** reported NAP (non applicable) figures for non-litigious civil and commercial cases. Data on incoming cases at second and at the highest instance was more limited.

Figure 5.4 Ratio between incoming civil and commercial litigious cases and total of incoming non-litigious cases at 3 instances in 2016 (Q91)



The three bar charts show an even mix between civil and commercial litigious cases and non-litigious cases at first instance in the different jurisdictions, while at second and third instances civil and commercial litigious cases constitute the majority of cases handled by courts.

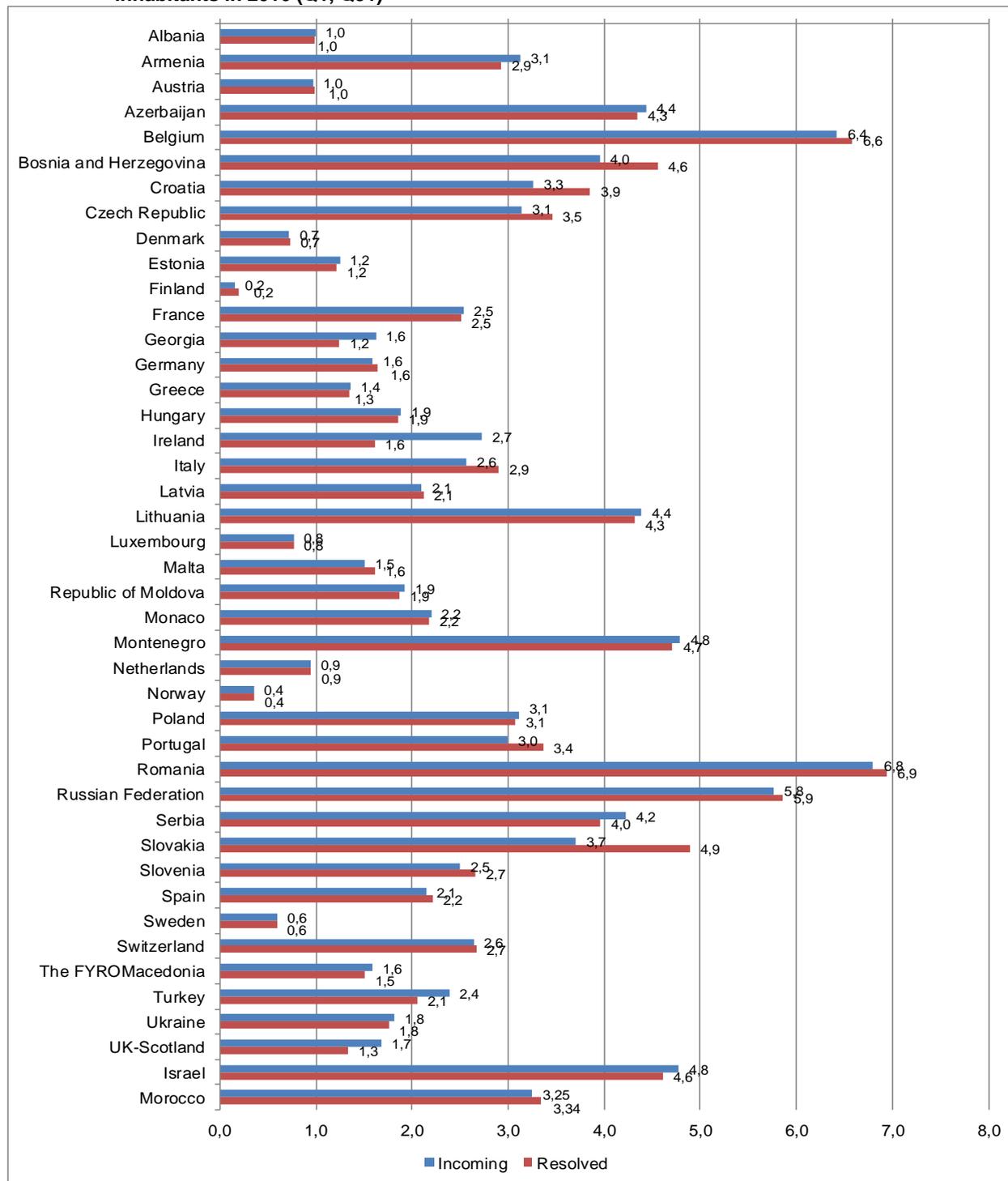
At first instance, of the 33 States and entities concerned, half received more civil and commercial litigious cases than non-litigious cases. In the other half of States and entities non-litigious cases represented the majority of the court caseload. In particular, in **Austria, Bosnia and Herzegovina, Croatia, Denmark, Estonia, Finland, Hungary, Netherlands, Poland** and **Slovenia**, over 70% of cases before first instance courts were non-litigious, inevitably affecting any results as to overall efficiency since this type of cases is expected to be resolved more quickly.

Also, the number of incoming non-litigious cases at first instance differs significantly between States or entities: from 0.1 cases per 100 inhabitants in **Romania**, to 35.8 cases in **Denmark**. These can be explained by differences in the respective statistics systems and/or legal categorisations: certain types of non-litigious cases only being dealt with at second and third instances (**Albania**); harmonisation of the non-judicial and court register of real estate rights (**Bosnia and Herzegovina**); impossibility of separating the number of litigious and non-litigious cases (**Cyprus**); non-litigious business register cases being handled by the Registry of the Commercial Court, whose activity does not fall within the scope of the Ministry of Justice (**France**); non-litigious enforcement, land registry and business registry cases not falling within the competence of first instance courts (**Latvia**); impossibility of determining whether incoming or pending cases will be litigious or non-litigious, which can only be done for resolved cases (**Netherlands**).

## 5.2.1 Civil and commercial litigious cases - First instance

Court caseload and performance indicators in 2016

Figure 5.5 Number of first instance, incoming and resolved, civil and commercial litigious cases per 100 inhabitants in 2016 (Q1, Q91)

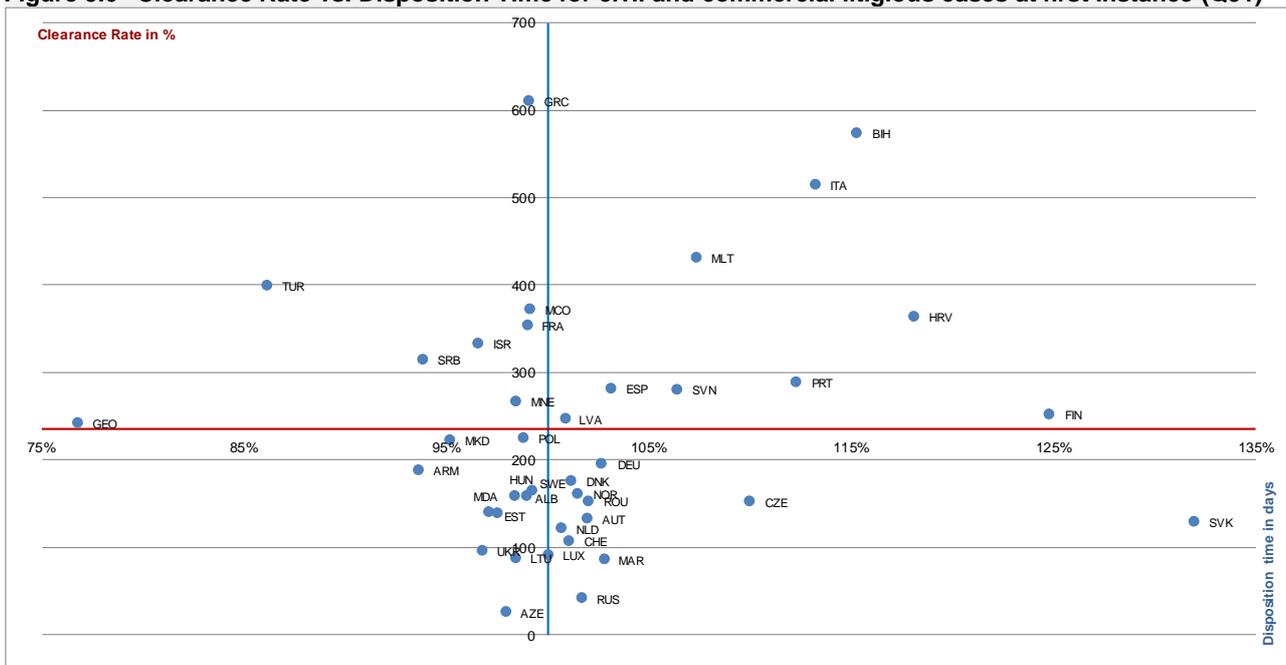


In 2016, the courts of first instance received on average 2,5 civil and commercial litigious cases per 100 inhabitants and managed to resolve the same amount of cases during the year, with the median number for both incoming and resolved cases being slightly lower (2.2).

Nevertheless, there are key differences between the States and entities assessed. The lowest figure of incoming cases (0.2), which was reported by **Finland**, should be read in the light of figure 5.5 above, which shows that only 2 % of incoming cases at first instance are litigious. Courts in 3 States (**Belgium, Romania and Russian Federation**) handled more than 5 civil and commercial litigious cases per 100 inhabitants, while in 6 States (**Denmark, Finland, Luxembourg, Netherlands, Norway and Sweden**) courts resolved less than one case per 100 inhabitants. In line with the analysis carried out in the last two evaluations, data from the 2018 cycle (2016 data) seem to confirm that individuals in the States and entities of Northern Europe make less frequent use of the court system to solve litigious cases. It should however be considered that in the case of **Luxembourg, Norway and Sweden** the percentage of civil and commercial litigious cases is much significant than in **Denmark, Finland and the Netherlands** (see Figure 5.5 above).

As regards the performance indicators, reviewing the Clearance Rate and Disposition Time makes it possible to discern patterns in the number of pending cases and the time necessary to process them. For 5 States and entities (**Andorra, Bulgaria, Cyprus, Iceland and UK-England and Wales**) it has not been possible to calculate the Clearance Rate and the Disposition Time for civil and commercial litigious cases. For 3 other States and entities (**Belgium, Ireland and UK-Scotland**), it has only been possible to measure the Clearance Rate but not the Disposition Time. Of these, the Clearance Rate is very low in **Ireland** (59 %) and **UK-Scotland** (79 %), but not in **Belgium** (102 %). The explanation for the low Clearance Rate in **Ireland** lies in the organisation of court proceedings – unless a case has been listed in the court's calendar for the purposes of trial or the fixing of a trial date, parties to civil proceedings are not generally required to notify the court either that a case has been settled or is not being pursued further. Consequently, the calculated Clearance Rate appears much lower than the actual Clearance Rate since a substantial number of completed cases are not recorded as such. In contrast, it is unclear why **UK-Scotland** displays a low Clearance Rate.

**Figure 5.6 Clearance Rate vs. Disposition Time for civil and commercial litigious cases at first instance (Q91)**



The lower right quadrant of Figure 5.6 shows States and entities that have a Clearance Rate at or above 100 % and a Disposition Time below the average of 233 days (the median is 192 days). Accordingly, 12 States have a satisfactory level of court productivity as regards civil and commercial litigious cases: **Austria, Czech Republic, Denmark, Germany, Luxembourg, Netherlands, Norway, Romania, Russian Federation, Slovakia, Switzerland and Morocco**. Some of these States confirm the positive results of the last evaluation, with the notable addition of **Slovakia**, which has made a strong leap in Clearance Rate to 132 %. Six of these States have, as **Slovakia**, improved their Clearance Rates since the last evaluation cycle: **Czech Republic** (110 %), **Germany** (103 %), **Luxembourg** (100 %), the **Netherlands** (101 %), **Norway** (102 %) and **Russian Federation** (102 %).

Moving further up, past the 233-day Disposition Time average, the situation seems manageable in 6 other States, which have a positive Clearance Rate (above 100 %) and a Disposition Time below one year (365 days): **Croatia, Finland, Latvia, Portugal, Slovenia and Spain**.

For another group of States, the Clearance Rate is slightly lower than 100% but the Disposition Time can be considered satisfactory (below the average of 233 days): namely, **Albania, Azerbaijan, Estonia, Hungary, Lithuania, Republic of Moldova, Poland, Sweden, “the former Yugoslav Republic of Macedonia” and Ukraine**. The lowest Disposition Time figures arise in respect of **Azerbaijan** (25 days) and the **Russian Federation** (42 days). Special attention may be given to **France, Monaco, Montenegro and Israel** where the Clearance Rate is just below 100 %, but the Disposition Time is higher than the average – 353 days in **France**, 372 days in **Monaco**, 267 days in **Montenegro** and 333 days in **Israel**.

The situation is more serious in those States and entities that have a particularly low Clearance Rate or a very high Disposition Time, or both, as this shows that courts are struggling to cope with the volume of incoming cases. Pending cases, including backlogs and lengths of proceedings are likely to worsen in the future if no specific measures are taken in respect of court efficiency in these States. It is the case in **Bosnia and Herzegovina** (Disposition Time: 574 days), **Georgia** (Clearance Rate: 77 %), **Greece** (Disposition Time: 610 days), **Italy** (Disposition Time: 514 days), **Malta** (Disposition Time: 432 days), **Turkey** (Clearance Rate: 86 %; Disposition Time: 399 days).

Measures for strengthening court productivity are already in place in some of these States, including the introduction of an electronic case management system and the implementation of other case management measures in **Georgia**. The low Clearance Rate is, moreover, explained by a general decrease in the number of judges following the expiration of their mandates between 2014 and 2016. This coincided with a change in government following the 2012 parliamentary elections; the new government launching numerous justice sector reforms. As a result, the number of pending cases in all instance courts increased significantly, especially as concerns civil and commercial litigious cases. On a positive note and supported by the explanation provided by the State, only 1,9 % of first instance pending civil and commercial litigious cases are older than 2 years.

The decrease in the performance in **Turkey** is observed after 2012. The number of first instance incoming civil and commercial litigious cases has not seen any significant increase since the last evaluation cycle, while both the Clearance Rate and Disposition Time have both worsened. In addition, the country is still dealing with a backlog of civil and commercial litigious cases, with 21,9 % of all pending cases dating back more than 2 years.

In **Bosnia and Herzegovina**, the fact that 45 % of pending cases are older than 2 years may go some way to explaining the high Disposition Time of 574 days. A similar consideration can be made with regard to **Monaco** (Disposition Time: 372 days; 22 % of cases older than 2 years).

In **Greece**, the high Disposition Time may be a result of the 2016 long-term strike by the lawyers, resulting in a reduction in the number of incoming and also resolved cases (especially civil and commercial litigious cases). The significant increase in the number of pending other than criminal cases between 2012 and 2014 was due to a lengthy strike by the lawyers in 2013 and 2014.

#### *Evolution of the performance indicators*

The table below presents the evolution of the Clearance Rate for civil and commercial litigious cases between 2010 and 2016. The results of the analysis must be considered with caution, as the consistency of some data might change within the period observed, which can influence the variations over time.

**Table 5.7 Clearance Rate of first instance civil and commercial litigious cases 2010-2016 (Q91)**

States / Entities	Clearance Rate of 1st instance civil and commercial litigious cases				
	2010	2012	2014	2016	Evolution
Albania	93%	97%	100%	99%	
Andorra	99%	95%	103%	NA	
Armenia	101%	103%	75%	94%	
Austria	100%	101%	103%	102%	
Azerbaijan	98%	100%	99%	98%	
Belgium	NA	NA	98%	102%	
Bosnia and Herzegovina	94%	116%	114%	115%	
Bulgaria	NA	NA	NA	NA	
Croatia	102%	95%	113%	118%	
Cyprus	84%	NA	NA	NA	
Czech Republic	103%	99%	105%	110%	
Denmark	102%	109%	102%	101%	
Estonia	98%	112%	104%	98%	
Finland	93%	103%	105%	125%	
France	98%	99%	94%	99%	
Georgia	96%	102%	93%	77%	
Germany	102%	100%	100%	103%	
Greece	79%	58%	113%	99%	
Hungary	102%	105%	104%	98%	
Iceland	NA	NA	NA	NA	
Ireland	NA	NA	56%	59%	
Italy	118%	131%	119%	113%	
Latvia	86%	118%	98%	101%	
Lithuania	102%	101%	97%	98%	
Luxembourg	139%	173%	97%	100%	
Malta	89%	114%	101%	107%	
Republic of Moldova	95%	100%	97%	97%	
Monaco	76%	117%	109%	99%	
Montenegro	92%	102%	84%	98%	
Netherlands	NA	NA	99%	101%	
Norway	101%	100%	97%	102%	
Poland	95%	89%	99%	99%	
Portugal	102%	98%	NA	112%	
Romania	90%	99%	109%	102%	
Russian Federation	100%	99%	98%	102%	
Serbia	92%	116%	92%	94%	
Slovakia	98%	82%	92%	132%	
Slovenia	99%	101%	109%	106%	
Spain	93%	100%	98%	103%	
Sweden	98%	99%	104%	99%	
Switzerland	100%	100%	101%	101%	
The FYROMacedonia	95%	131%	117%	95%	
Turkey	NA	115%	96%	86%	
Ukraine	104%	106%	102%	97%	
UK-England and Wales	NA	NA	NA	NA	
UK-Scotland	NA	85%	85%	79%	
Israel		101%	102%	97%	
Morocco				103%	
<b>Average</b>	98%	104%	100%	101%	
<b>Median</b>	98%	101%	100%	100%	
<b>Minimum</b>	76%	58%	56%	59%	
<b>Maximum</b>	139%	173%	119%	132%	

Data collected in the last four evaluations show a positive trend of improvement of the Clearance Rate over the long period (2010 to 2016) as well as an improvement compared to the last cycle, in respect of both the average and the median. The average Clearance Rate increased from 98 % in 2010 to 101 % in 2016 and the median from 98 % to 100 %. In 2014 both the average and median Clearance Rate was 100 %.

While most jurisdictions have experienced an improvement of the Clearance Rate between the first and the last evaluation, only two States, **Finland** and **Switzerland** have regularly improved and/or maintained stable their positive Clearance Rate over all four cycles.

After increases between 2010 and 2014, the Clearance Rate decreased in **Austria, Romania, Slovenia** and **Sweden** in 2016. Except from **Sweden** (Clearance Rate: 99 % in 2016) the decrease, however, took place within a range of positive values. Between 2010 and 2016, the Clearance Rate has decreased from positive into negative values in **Armenia, Hungary, Lithuania** and **Ukraine**. In **Georgia**, the Clearance Rate has remained within negative values and decreased significantly from 96 % in 2010 to 77 % in 2016. In **Luxembourg**, the Clearance Rate has also decreased over the long period but settled at the 100 % threshold level in 2016.

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

**Table 5.8 Disposition Time of first instance civil and commercial litigious cases, 2010-2016 (Q91)**

States / Entities	Disposition Time of 1st instance civil and commercial litigious cases				
	2010	2012	2014	2016	Evolution
Albania	173	192	171	159	
Andorra	189	264	460	NA	
Armenia	163	168	230	188	
Austria	129	135	130	133	
Azerbaijan	43	52	33	25	
Belgium	NA	NA	NA	NA	
Bosnia and Herzegovina	826	656	603	574	
Bulgaria	NA	NA	NA	NA	
Croatia	462	457	380	364	
Cyprus	513	NA	NA	NA	
Czech Republic	128	174	163	153	
Denmark	182	165	177	176	
Estonia	215	167	125	139	
Finland	259	325	289	252	
France	279	311	348	353	
Georgia	94	62	100	242	
Germany	184	183	198	196	
Greece	190	469	330	610	
Hungary	160	97	144	159	
Iceland	NA	NA	NA	NA	
Ireland	NA	NA	NA	NA	
Italy	493	590	532	514	
Latvia	315	241	255	247	
Lithuania	55	88	97	88	
Luxembourg	200	73	103	91	
Malta	849	685	536	432	
Republic of Moldova	110	106	127	140	
Monaco	743	433	347	372	
Montenegro	271	254	298	267	
Netherlands	NA	NA	132	121	
Norway	158	160	176	161	
Poland	180	195	203	225	
Portugal	417	369	NA	289	
Romania	217	193	146	153	
Russian Federation	13	40	37	42	
Serbia	316	242	359	315	
Slovakia	364	437	524	130	
Slovenia	315	318	270	280	
Spain	314	264	318	282	
Sweden	187	179	157	164	
Switzerland	132	127	116	107	
The FYROMacedonia	259	175	132	223	
Turkey	NA	134	227	399	
Ukraine	52	70	68	96	
UK-England and Wales	NA	NA	NA	NA	
UK-Scotland	NA	NA	NA	NA	
Israel		340	334	333	
Morocco				86	
<b>Average</b>	267	243	238	233	
<b>Median</b>	195	188	188	192	
<b>Minimum</b>	13	40	33	25	
<b>Maximum</b>	849	685	603	610	

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

**Bosnia and Herzegovina, Croatia, Malta, Portugal, Switzerland and Israel** have constantly improved their Disposition Time at each evaluation cycle. Some of these countries display a very high Disposition Time and have experienced major improvements of the Disposition Time over the long period (2010-2016). In particular, the Disposition Time in **Croatia** has dipped below one year, marking a significant improvement compared to the level recorded in 2010 (462 days). In **Malta** the Disposition Time decreased from 849 days in 2010, to 432 days in 2016; in **Bosnia and Herzegovina**, from 826 to 574 days. The regular reduction of the Disposition Time of civil and commercial litigious cases in **Bosnia and Herzegovina** (from 826 days in 2010, to 656 days in 2012, to 603 days in 2014 and to 574 days in 2016) is linked to the implementation of domestic measures aimed at improving court efficiency. A backlog reduction initiative has been operating since 2009, aimed at addressing the high number of pending cases.

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

An important evolution of the Disposition Time has taken place in **Slovakia**: over the first three evaluation cycles (from 2010 to 2014) the Disposition Time increased from 364 to 524 days, but during the last cycle there was a significant improvement and the Disposition Time decreased to 130 days. This could be partially explained by changes in the way that the Ministry of Justice structures the data. An opposite development has taken place in **Georgia**: except from an improvement between 2010 and 2012, the situation has deteriorated since then and during the last evaluation cycle the Disposition Time increased by 142 %.

The situation in 4 other States should be mentioned: **Greece, Italy, Monaco and Turkey**. In **Greece**, the Disposition Time has increased by 420 days between 2010 and 2016 and almost doubled between 2014 and 2016 (from 330 to 610 days). Between 2012 and 2016, **Turkey** also has seen a significant increase in the Disposition Time for civil and commercial litigious cases at first instance (NA data for 2010). In contrast, **Italy** has been slowly but constantly improving the Disposition Time in the last 3 cycles (from 590 days in 2012 to 514 days in 2016), following the implementation of reforms to improve performance and to enhance the quality of statistical information.

The variations in the Disposition Time figures reported above should also be considered (and can partly be explained) in the light of the changing volume of pending cases in the course of the last three evaluations. The table below presents the evolution of the volume of first instance civil and commercial litigious cases pending on 31 December between 2010 and 2016. It is worth noting that several States and entities have reported discrepancies and some horizontal inconsistency in the data provided, due to several factors, including procedural rules that allow cases to be joined and disjoined during proceedings (e.g. **Estonia and Norway**); systems allowing cases to re-open without counting these as such (e.g. **Denmark**); the different points in time at which information about incoming, resolved and pending cases is retrieved (e.g. **Netherlands**); or omissions in statistical information generated by courts and structural changes within the court system (e.g. **Poland**).

**Table 5.9 Number of first instance civil and commercial litigious pending cases on 31 December per 100 inhabitants (Q1, Q91)**

States / Entities	Number of 1st instance civil and commercial litigious pending cases 31 Dec per 100 inhabitants				
	2010	2012	2014	2016	Evolution
Albania	0,3	0,3	0,3	0,4	
Andorra	2,7	4,0	9,4	NA	
Armenia	0,4	0,4	1,1	1,5	
Austria	0,5	0,5	0,4	0,4	
Azerbaijan	0,1	0,2	0,2	0,3	
Belgium	NA	NA	NA	NA	
Bosnia and Herzegovina	8,7	7,8	7,8	7,2	
Bulgaria	NA	NA	NA	NA	
Croatia	4,3	5,1	4,6	3,8	
Cyprus	3,9	NA	NA	NA	
Czech Republic	1,6	1,6	2,1	1,4	
Denmark	0,6	0,4	0,4	0,4	
Estonia	0,9	0,7	0,5	0,5	
Finland	0,1	0,2	0,2	0,1	
France	2,1	2,2	2,4	2,4	
Georgia	0,1	0,1	0,2	0,8	
Germany	1,0	1,0	1,0	0,9	
Greece	1,7	4,3	2,3	2,3	
Hungary	0,9	1,2	0,8	0,8	
Iceland	NA	NA	NA	NA	
Ireland	NA	NA	NA	NA	
Italy	6,3	5,5	4,5	4,1	
Latvia	1,7	1,7	1,6	1,4	
Lithuania	1,0	0,9	1,0	1,0	
Luxembourg	0,3	0,3	0,2	0,2	
Malta	2,5	2,1	2,3	1,9	
Republic of Moldova	0,6	0,7	0,7	0,7	
Monaco	4,5	2,6	2,2	2,2	
Montenegro	2,2	2,3	3,0	3,4	
Netherlands	NA	NA	0,4	0,3	
Norway	0,2	0,2	0,2	0,2	
Poland	1,0	1,3	1,8	1,9	
Portugal	3,4	3,5	NA	2,7	
Romania	2,7	2,7	3,0	2,9	
Russian Federation	0,3	0,5	0,7	0,7	
Serbia	2,6	2,5	2,9	3,4	
Slovakia	2,3	2,9	3,7	1,7	
Slovenia	2,8	2,7	2,3	2,0	
Spain	1,8	2,8	1,8	1,7	
Sweden	0,3	0,3	0,3	0,3	
Switzerland	0,8	1,0	1,0	0,8	
The FYROMacedonia	1,8	1,0	1,1	0,9	
Turkey	NA	0,9	1,6	2,2	
Ukraine	0,5	0,4	0,3	0,5	
UK-England and Wales	NA	NA	NA	NA	
UK-Scotland	NA	NA	NA	NA	
Israel		4,2	4,2	4,2	
Morocco				0,79	
<b>Average</b>	1,8	1,8	1,8	1,6	
<b>Median</b>	1,3	1,1	1,1	1,2	
<b>Minimum</b>	0,1	0,1	0,2	0,1	
<b>Maximum</b>	8,7	7,8	9,4	7,2	

6 States and entities could not provide data for either of the four cycles - **Belgium, Bulgaria, Iceland, Ireland, UK-England and Wales** and **UK-Scotland**. 5 States - **Andorra, Cyprus, Netherlands, Portugal** and **Turkey** – provided data for some evaluation cycles but not for others. **Israel** joined the exercise in 2012 and **Morocco** in 2016.

A majority of the States and entities (23) for which data was collected reduced the volume of pending cases in the last cycle, while the rest (15) registered an increase compared to the 2014 data. The same trend shows also in the long period. However, both average and median trends indicate that the absolute number of pending cases has increased in the long period (2010 to 2016) as well as compared to the last cycle. This discrepancy can be explained in the light of the noticeable difference between the average and median figures (in 2016 the average is 313 403 cases while the median is 49 475 cases). Standardised values (both average and median) have gone from 1,8 cases on average per 100 inhabitants between 2010 and 2014 to 1,6 cases in 2016. Medians rose from 1,3 in 2010 to 1,2 cases per 100 inhabitants in 2016.

In 9 States - **Austria, Bosnia and Herzegovina, Denmark, Germany, Italy, Latvia, Portugal, Slovenia** and **Sweden** - the number of pending cases progressively decreased between 2010 and 2016. A particularly positive performance can be noted in the States where the number of cases per 100 inhabitants is particularly high, i.e. **Bosnia and Herzegovina** (from 8,7 to 7,2), **Italy** (from 6,3 to 4,1) and **Croatia** (from 4,3 to 3,8).

In contrast, **Poland** and **Serbia** and to a lesser extent **Georgia**, have witnessed particularly significant increases in the number of pending cases. In **Poland**, the number of pending cases has been progressively increasing since 2010. In the context of the 2018 exercise, this has been explained by problems encountered with the information system in use in electronic proceedings. In **Georgia**, the number of pending cases has increased from 0,1 to 0,8 cases per 100 inhabitants over the four evaluation cycles (an increase of more than 22 000 cases). For this country, a significant increase in the number of incoming cases has caused a further increase in the number of pending cases, despite the introduction of an electronic case management system and the implementation of other measures to ensure the timely handling of cases. **France** (from 2,1 to 2,4), **Greece** (from 1,7 to 2,3) and **Montenegro** (from 2,2 to 3,4) have also experienced an increase of the number of pending cases over the long period. **Andorra** was not able to provide data for the latest cycle, but in the previous evaluations the number of pending cases had increased from 2,7 to 9,4 cases per 100 inhabitants between 2010 and 2014 (about 5 000 cases).

A better understanding of the data on pending cases for the purpose of guaranteeing the “reasonable time standard” can be obtained from the analysis of the cases that are older than 2 years at each instance.<sup>95</sup> The 2018 evaluation exercise (2016 data) collects such data, for the first time.

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<sup>95</sup> See “*Length of court proceedings in the member States of the Council of Europe based on the case law of the European Court of Human Rights*”, *Françoise Calvez and Nicolas Régis*, 2012.

**Figure 5.10 Participation of first instance civil and commercial litigious cases pending more than 2 years to all pending cases on 31 December in 2016 (Q91)**

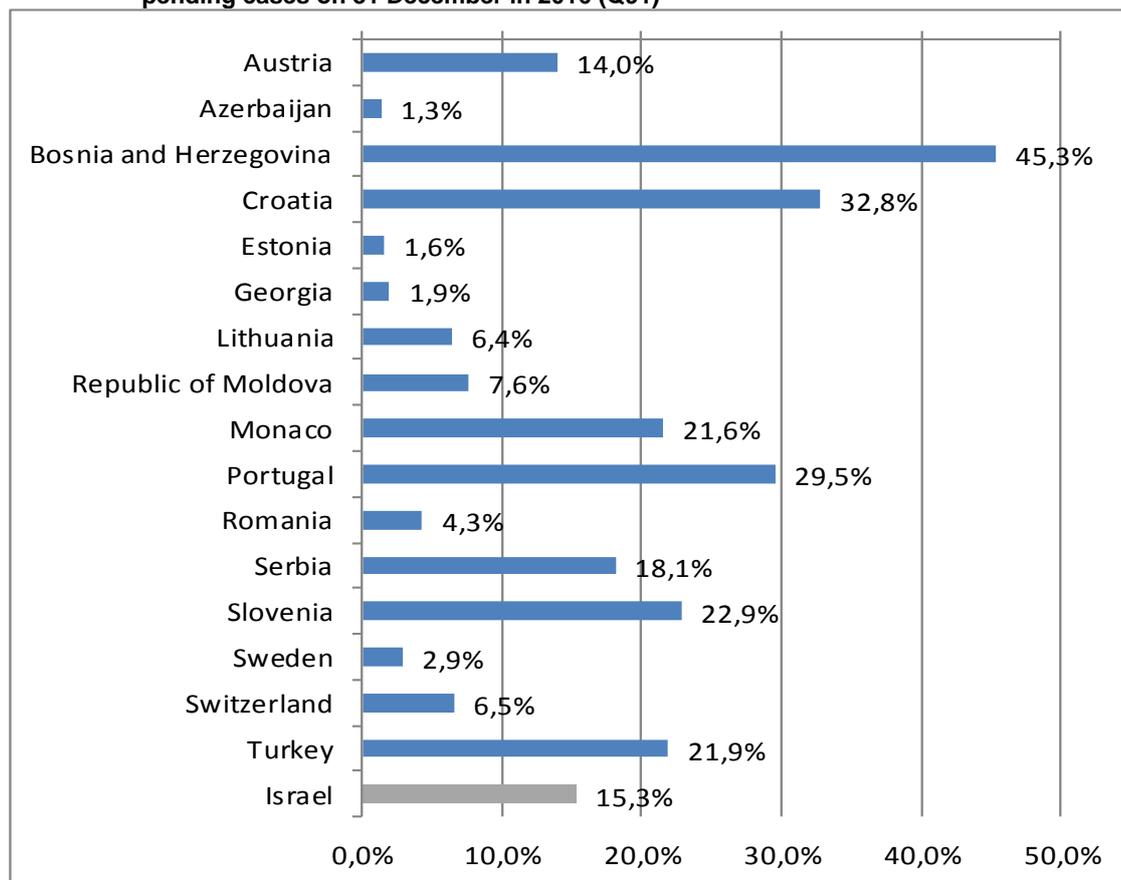
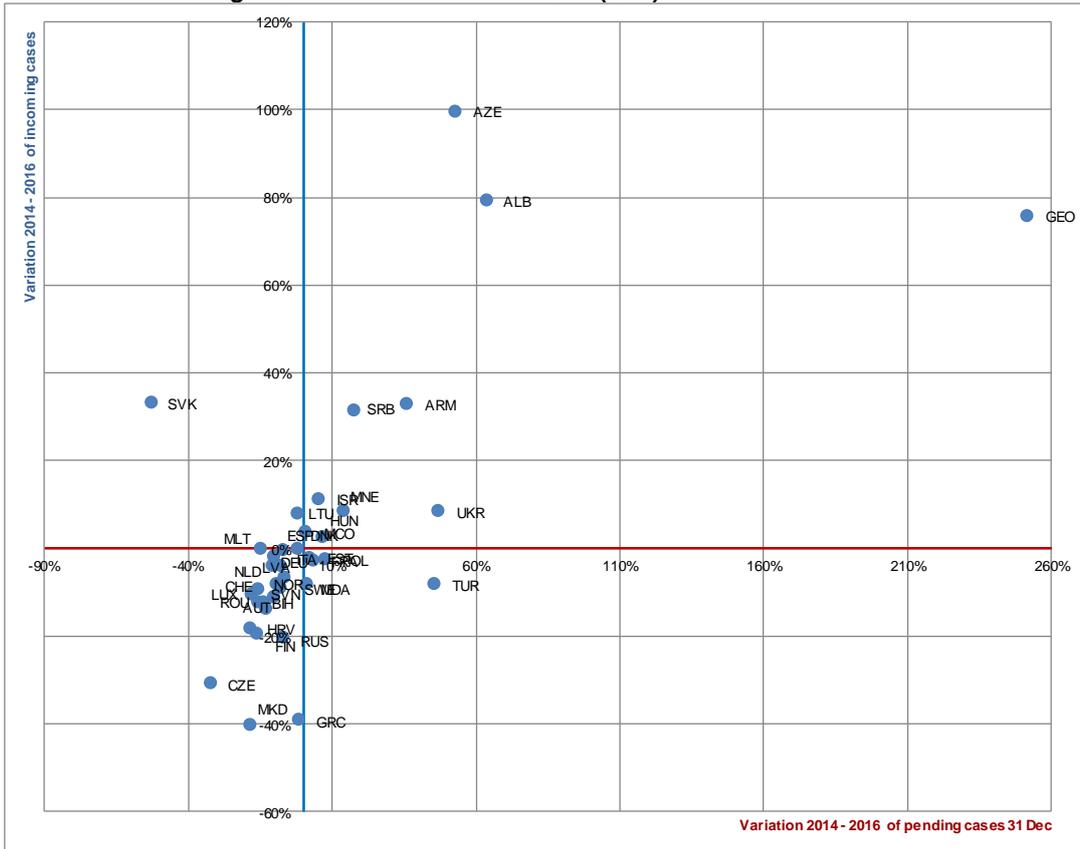


Figure 5.10 provides additional insight into the age of the pending cases. It is important to point out that 17 States and entities were in position to provide data on cases older than 2 years. Further, the positive performance of **Bosnia and Herzegovina** and **Croatia** highlighted before in this report should be read alongside the fact that a high percentage of all pending cases in these countries are older than two years.

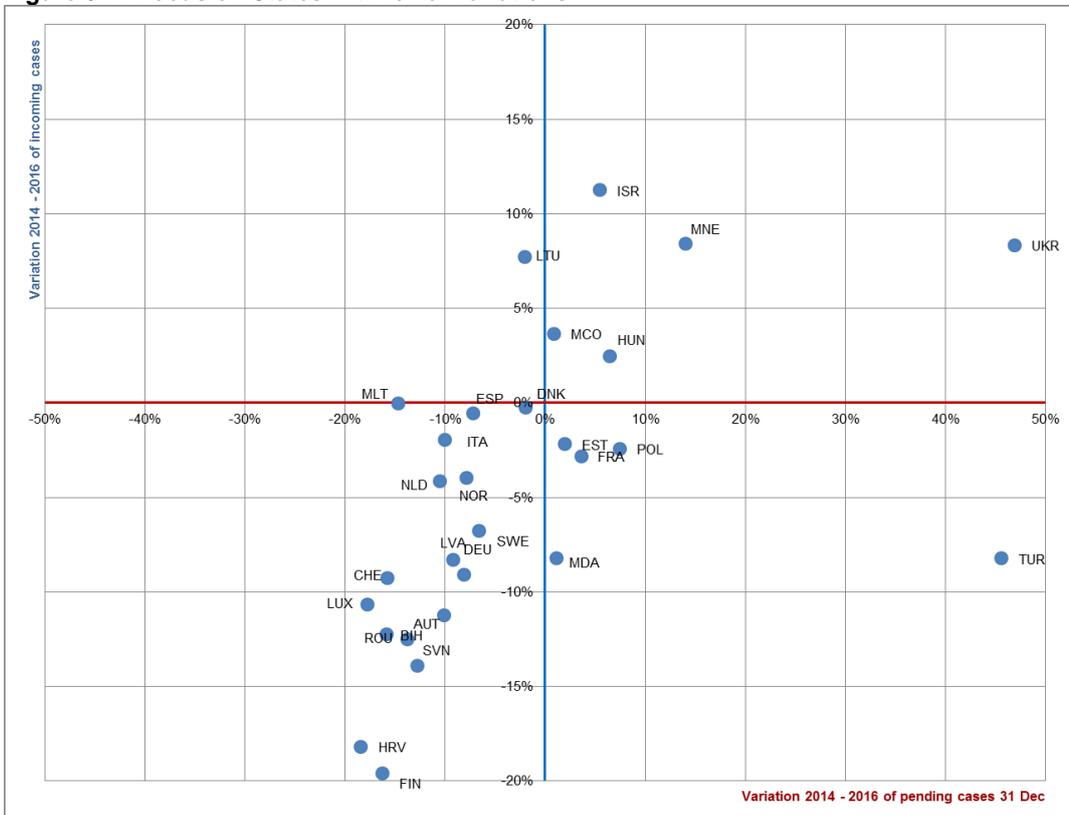
Finally, an improved understanding of the evolution of pending cases over time and of the reasons behind the efficiency (or lack thereof) of court performance can be obtained by analysing the variation of pending cases between the last two cycles against the amount of incoming cases. This observation complements the picture that emerges from the analysis of the Clearance Rate by showing a dynamic image of the capacity of courts to clear the caseload and reduce the backlog, despite increases in the volume of incoming cases from one evaluation to the other. The majority of States were able to reduce the number of pending cases, but this should be read in light of the simultaneously diminished volume of incoming cases.

**Figure 5.11 Variation in civil and commercial litigious cases of first instance pending at 31 December vs. incoming cases between 2014 and 2016 (Q91)**



For better visibility the second chart focuses on the States with lower variations.

**Figure 5.11 Focus on States with lower variations**



In Figure 5.11, the upper left quadrant shows a positive performance by **Lithuania** and, more noticeably, **Slovakia** in reducing the number of pending cases despite an increase in the number of incoming cases. In contrast, the lower right quadrant displays those States and entities where the number of pending cases has increased despite a decrease of incoming cases, such as **France, Estonia, Republic of Moldova, Poland** and **Turkey**. Particular attention may be paid to the situations in these States as well as in those where the number of pending cases increased considerably more than the increase in the number of incoming cases (**Georgia** and **Serbia** are not shown on the chart because of extreme variations).

Some States have reported statistics regarding the use of mediation and ADR procedures in the area of civil and commercial justice. The data is scarce and not sufficiently detailed to assess the causal impact of ADR on the specific category of civil and commercial litigious cases. Between 2014 and 2016, **Bosnia and Herzegovina** reported the highest increase in mediation procedures. In “**the Former Yugoslav Republic of Macedonia**” and in **Spain**, there was an increase in the use of mediation procedures. However these increases are high only because the absolute numbers are low and the instrument in these countries was recently introduced. The absolute number of cases increased from 0 to 1800 in **Bosnia and Herzegovina**; from 119 to 951 in **Spain** and from 36 to 137 in “**the former Yugoslav Republic of Macedonia**”.

### 5.2.2 Specific categories of civil and commercial litigious cases – first instance

Data regarding three specific categories of civil cases, i.e. litigious divorces, employment dismissals and insolvency cases, allows for a better understanding of the caseload of the courts in Europe, as well as for a more reliable comparison of the figures. These categories were selected for additional analysis in the evaluation exercise on the assumption that they are dealt with in a fairly similar way across European courts. The three categories are defined in the Explanatory Note to the Evaluation Scheme as follows:

*Litigious divorce cases:* the dissolution of a marriage contract between two persons, by the judgment of a competent court. The data should not include: divorce ruled by an agreement between the parties concerning the separation of the spouses and all its consequences (procedures by mutual consent, even if they are processed by the court) or ruled on through an administrative procedure.

*Employment dismissal cases:* cases concerning the termination of (an) employment (contract) at the initiative of the employer (working in the private sector). These do not include dismissals of public officials, following a disciplinary procedure for instance.

*Bankruptcy:* Legal status of a person or an organisation that cannot repay the debts owed to creditors. Data should encompass bankruptcy declaration by a court, as well as all procedures connected with bankruptcy (recovery of credits, liquidation of assets, payment of creditors, etc.).

In relation to specific categories of civil and commercial litigious cases, States and entities were invited to provide figures on the average length of proceedings, in addition to the Clearance Rate and the Disposition Time. This indicator corresponds to the average length of resolved cases at the relevant instance within the reference year and gives a real indication of the length of proceedings compared to the Disposition Time, which is an estimate figure. The average length, however, is highly dependent on the methodology used in each country to set the starting and end points for measuring the length of proceedings.

#### ***Litigious divorce cases***

Half of the States or entities for which data was available registered a positive Clearance Rate of litigious divorce cases in 2016 (20 out of 40) and in 15 other States the Clearance Rate is between 95 % and 99 %. Only **Ireland, Italy, Slovakia** and **Turkey** registered a negative Clearance Rate, below 90 %, with **Ireland** marking the lowest rate at 78 %. However, as mentioned before, the explanation for the low Clearance Rate in **Ireland** lies in the organisation of court proceedings – unless a case has been listed in the court's calendar for the purposes of trial or the fixing of a trial date, parties to civil proceedings are not generally required to notify the court either that a case has been settled or is not being pursued further. Consequently, the calculated Clearance Rate appears much lower than the actual Clearance Rate since a substantial number of completed cases are not recorded as such.

A particularly positive performance can be noted with regard to **Monaco** which has increased the Clearance Rate by 70 % since the last evaluation cycle, to set it at 156 %. Another example is **Croatia** which has continued to increase its already high Clearance Rate - from 123 % to 148 % between 2014 and 2016. This positive development can be explained on the one hand by the change in the methodology of categorisation between different types of cases, which allows more accurate and detailed information and on the other hand, by additional efforts of judges to increase the number of resolved cases. The previous report highlighted a mandatory counselling and family mediation procedure for spouses with under-age children introduced in June 2014, which lead to a reduced number of incoming cases and therefore the improvement of the Clearance Rate may be a related consequence.

Over the four evaluation cycles, the situation has improved or has remained more or less stable in many States and entities, such as **Estonia, Lithuania, Montenegro, Russian Federation, Slovenia** and **Sweden**. The courts are struggling to cope with the number of litigious divorce cases in **Ireland** and **Slovakia** and to a lesser extent, in **Italy** and **Turkey**. The peculiar system through which the number of resolved and pending cases is calculated in **Ireland** has already been highlighted.

**Figure 5.12 Clearance Rate, Disposition Time and average length of first instance litigious divorce cases in 2016 (Q101 and Q102)**

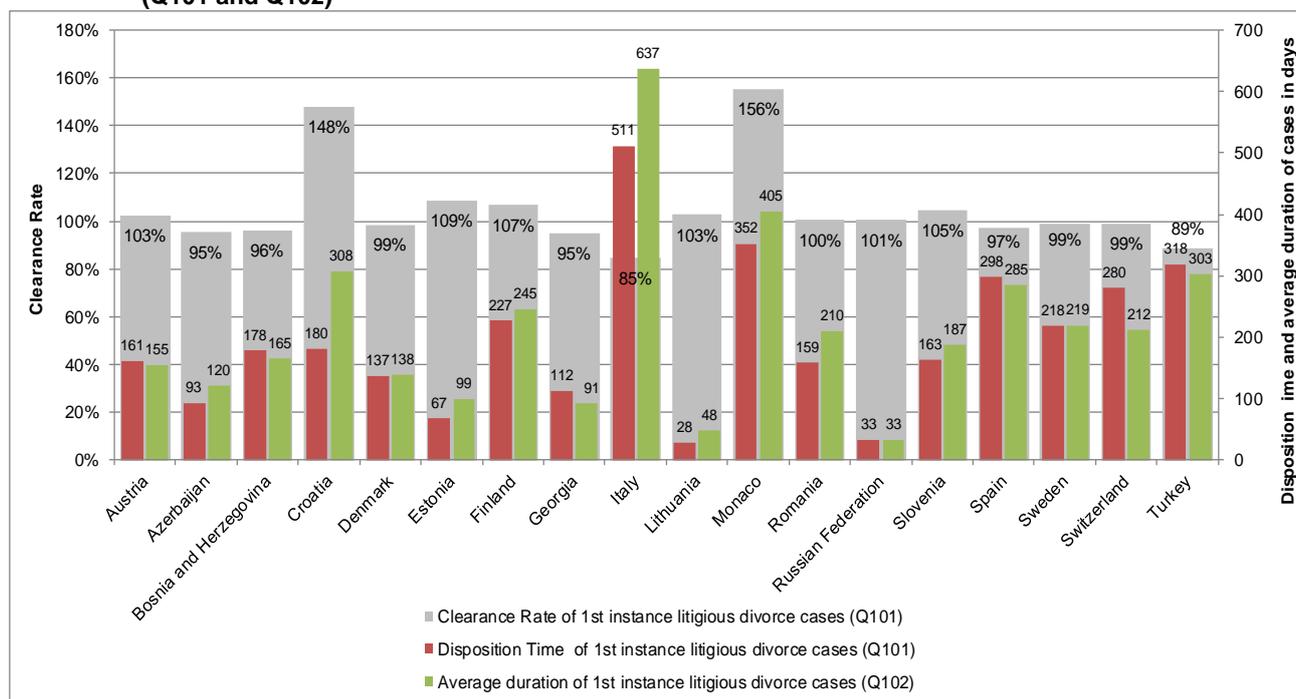


Figure 5.12 shows together the Clearance Rate, Disposition Time and average length of proceedings for a few States and entities that provided data on all three indicators.

Both the average length of proceedings and the calculated Disposition Time vary considerably among the different States and entities, depending on the family law procedures that apply in each system, the method of calculation of the average length and the volume of cases handled by the courts. Because of such significant differences between States or entities, the Disposition Time is more useful for comparisons of the possible duration of proceedings between States, while the average length helps to explain developments within the same State over the different evaluation cycles.

Rapid procedures (Disposition Time of less than 100 days) can be noted in **Albania, Azerbaijan, Estonia, Lithuania, Republic of Moldova, Montenegro, Russian Federation** (which has the shortest average length of proceedings: 33 days) and **Ukraine** and longer procedures in **Italy** (average length in 2016: 637 days). It is interesting to note that the Disposition Time and the average length of proceedings calculated by the States or entities using the real duration of the cases for litigious divorce coincide to a great extent for 13 States or entities (out of 18) for which data was available. Only for 5 States there is a significant difference (about 2 months or more) between these indicators (**Croatia, Italy, Monaco, Romania** and **Switzerland**).

### **Employment dismissal cases**

Of the 31 States and entities that provided data to calculate the Clearance Rate for employment dismissals, half (16) displayed a rate higher than 100 %. More broadly, between 2010 and 2016, the average Clearance Rate of employment dismissal cases increased from 96 % to 105 %. The median followed a similar trend and settled at 103 % in 2016.

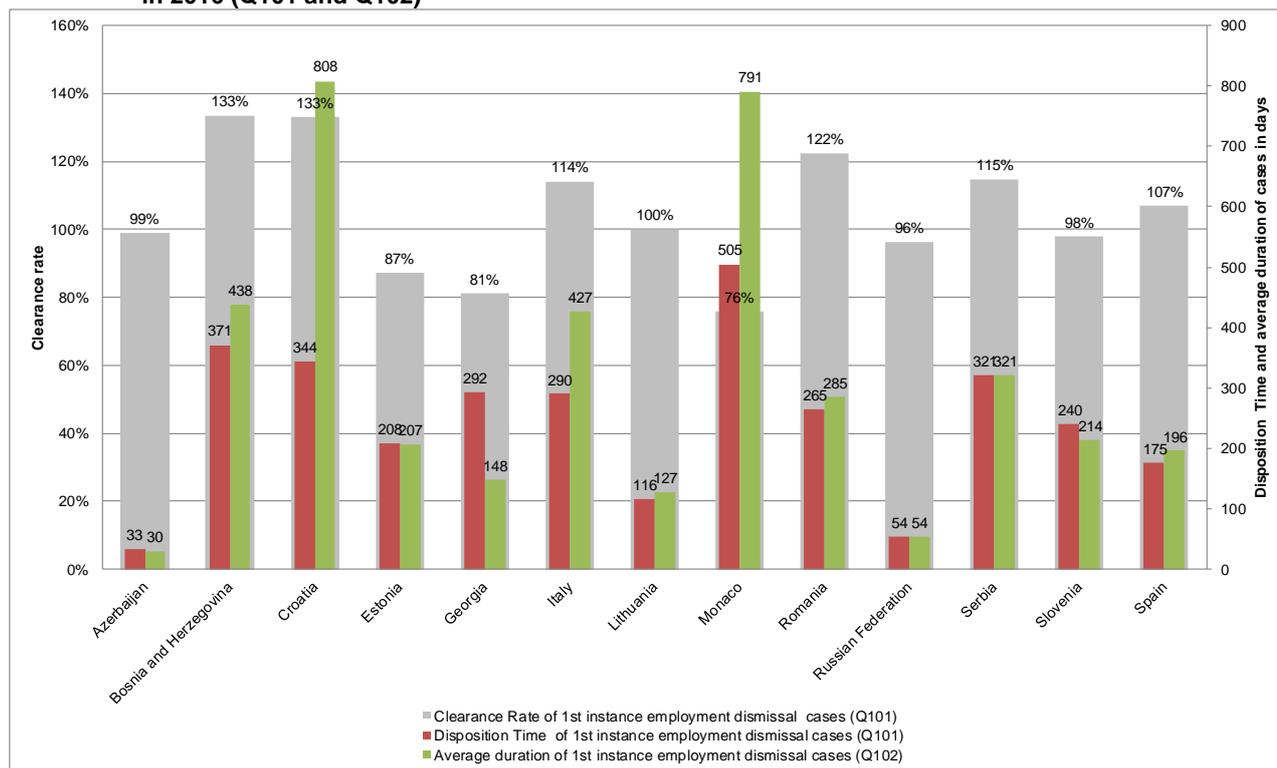
The ability of courts to reduce the backlog thanks to a positive Clearance Rate has been particularly high in **Bosnia and Herzegovina, Croatia, France, Hungary, Italy, Latvia, Luxembourg, Republic of Moldova, Montenegro, Portugal, Romania, Serbia, Slovakia** and **Morocco** (Clearance Rate above 110 %). In particular, between 2014 and 2016, **Bosnia and Herzegovina** (from 88 % to 133 %) and **Croatia** (from 92 % to 133 %) have seen significant improvements in their Clearance Rate. These are the highest figures among all States and entities and have contributed to the reduction of the Disposition Time, which remains high in these jurisdictions (371 days for **Bosnia and Herzegovina** and 344 days for **Croatia** in 2016). The average length of proceedings for this category of cases in **Croatia** (at 808 days) is alarming.

3 States, **Armenia, Cyprus** and **Monaco**, have a low Clearance Rate and a high Disposition Time and/or an average length of proceedings (above one year). In **Armenia**, the Disposition Time is 420 days while in **Cyprus** it is over 1 000. The courts in these countries are clearly struggling to cope with the volume of cases in this category, which has led to delays and backlogs. These States are at a higher risk of violation of the “reasonable length” standard (Art. 6 ECHR) considering that the ECtHR often categorizes employment dismissal cases as priority cases, to be resolved in less than two years. **Belgium** and **Bosnia and Herzegovina** also have difficulties in coping with the volume of cases because, despite a Clearance Rate close to or above 100 %, the Disposition Time is high (more than one year).

Of the 20 States and entities that were able to provide data on the average length at first instance, **Azerbaijan, Germany, Netherlands** and **Russian Federation** have reported very short periods (less than 100 days) while the average length for this category of cases is more than 300 days in **Bosnia and Herzegovina, Croatia, Czech Republic, Finland, France, Italy, Monaco** and **Serbia**. No specific reasons have been given to explain these figures. In a few States, there are significant differences between the calculated Disposition Time and the reported average length: **Bosnia and Herzegovina** (Disposition Time: 371, average length: 438), **Croatia** (Disposition Time: 344, average length: 808), **Georgia** (Disposition Time: 292, average length: 148), **Italy** (Disposition Time: 290, average length: 427) and **Monaco** (Disposition Time: 505, average length: 791).

Only 13 States and entities submitted figures on the Clearance Rate, the Disposition Time and the average length of proceedings related to employment dismissal cases, which are shown in the Figure 5.13.

**Figure 5.13 Clearance Rate, Disposition Time and average length of first instance employment dismissal cases in 2016 (Q101 and Q102)**



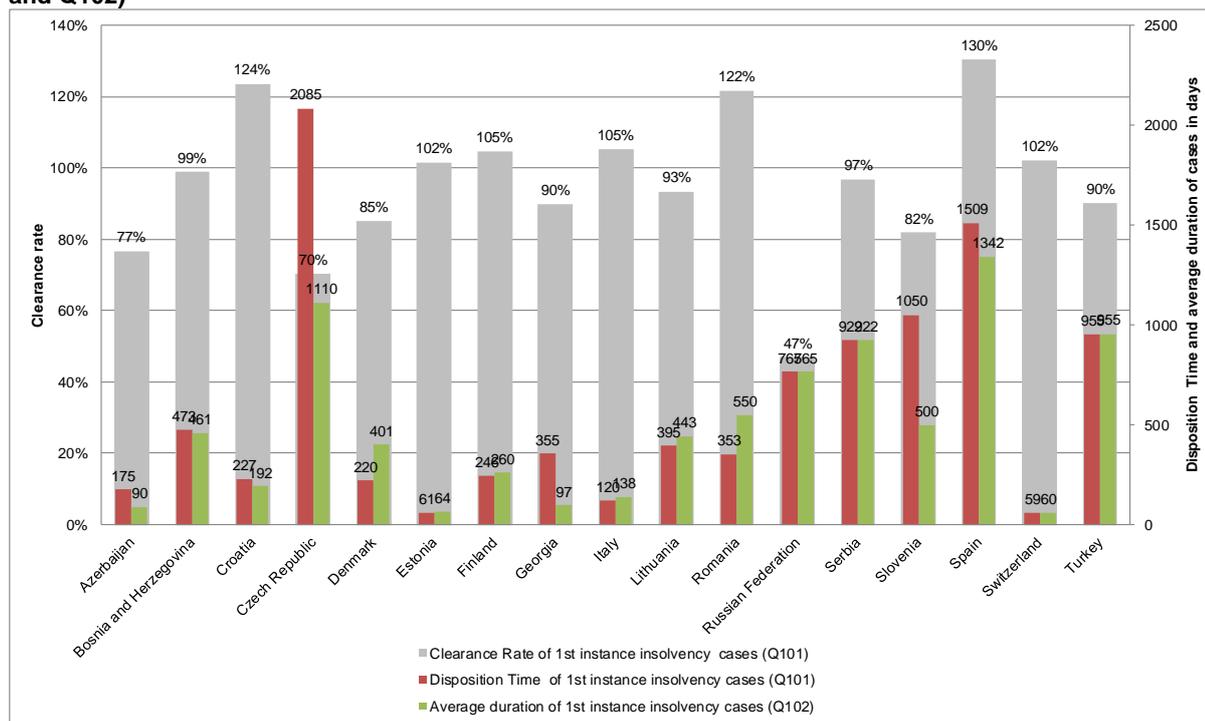
### Bankruptcy cases

Of the 36 States and entities for which the Clearance Rate was available in 2016, just less than half (17) display a figure of 100% or above thereby showing a positive performance. The performance of **Estonia**, **Portugal** and **Switzerland** is to be lauded, showing a positive Clearance Rate as well as a very short Disposition Time (below 100 days). The Clearance Rate is particularly high in **Croatia**, **Latvia**, **Monaco**, **Montenegro**, **Romania** and **Spain** (above 110 %). This is generally accompanied by a good Disposition Time, except for **Spain** (1 509 days) and **Latvia** (791 days) where the figures are very high. In **Spain**, the positive Clearance Rate can be explained, in part, by the decrease in the number of incoming insolvency cases, due to a less severe impact of the economic crisis. In contrast, certain States have a particularly weak Clearance Rate of 50% or below, which gives cause for concern: **Armenia**, **Russian Federation** and **Israel**. The Clearance Rate in **Czech Republic**, **Republic of Moldova** and **Slovenia** is also worrying. Some of these States have a very long Disposition Time for insolvency cases: **Republic of Moldova** (610 days), **Russian Federation** (765 days), **Slovenia** (1 050 days), **Israel** (1 521 days), **Armenia** (1 589 days) and the **Czech Republic** (2 085 days).

The average length of proceedings in 2016 was available for 21 States and entities. Out of these, only 9 had an average length of below one year, while all the other reported particularly lengthy durations: over one year in **Bosnia and Herzegovina**, **Denmark**, **Slovenia** and **Romania**, over two years in **France**, **Serbia**, **Netherlands** and **Turkey** and over three years in the **Czech Republic** (1 110 days) and **Spain** (1 342 days).

Figure 5.14 shows the 17 States and entities that submitted figures on all three indicators - the Clearance Rate, the Disposition Time and the average length of proceedings related to insolvency cases.

**Figure 5.14. Clearance Rate, Disposition Time, average length of first instance insolvency cases in 2016 (Q101 and Q102)**



### 5.2.3 Civil and commercial litigious cases - Second instance

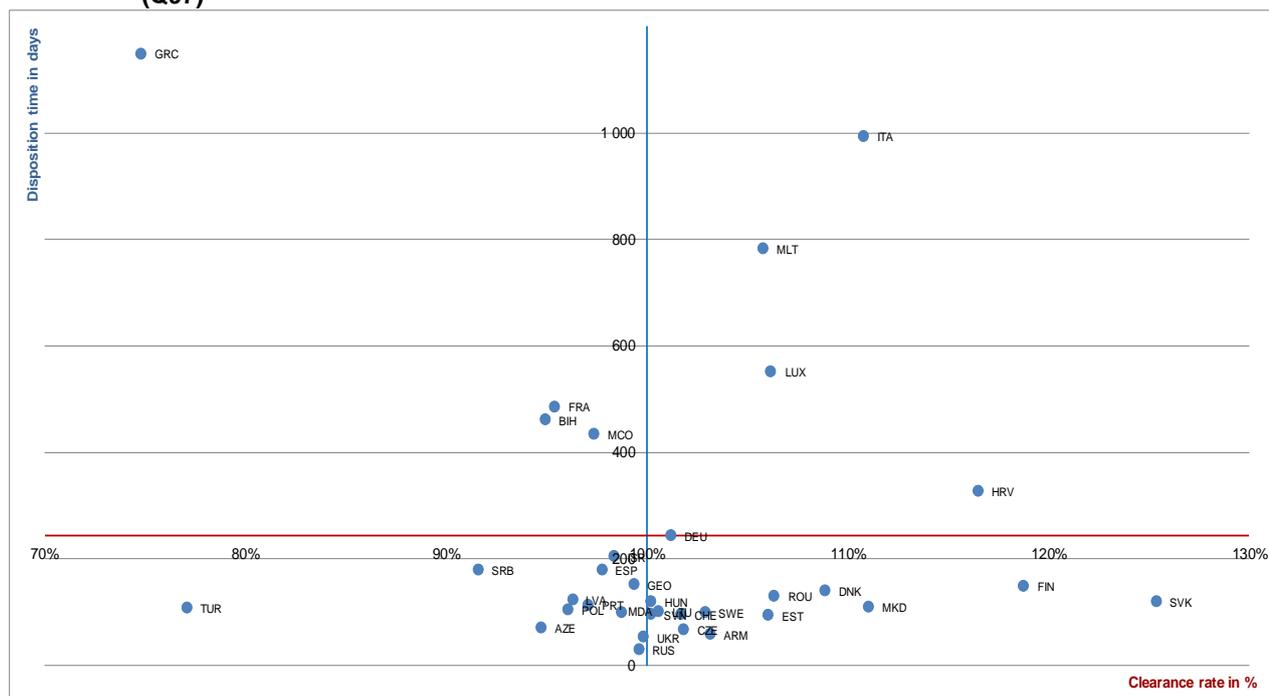
#### *Court caseload and performance indicators in 2016*

At second instance, in 2016, European courts received on average 0,38 civil and commercial litigious cases per 100 inhabitants, with courts in 4 countries (**Bosnia and Herzegovina, Croatia, Romania and Serbia**) managing more than 1 case per 100 inhabitants and courts in 6 States and entities (**Denmark, Finland, Ireland, Sweden, Turkey and UK-Scotland**) handling less than 0,1 cases per 100 inhabitants. The median figure of second instance incoming civil and commercial litigious cases in 2016 was 0,23 cases per 100 inhabitants.

An analysis of the rate at which cases are appealed would complement the analysis on efficiency at each instance and would help gain an overall understanding of the efficiency and quality of courts at the various instances. There are two potentially relevant aspects. First, the percentage of decisions subject to appeal can be a useful indicator in assessing whether the allocation of human resources at each instance is suitable for processing the caseload. This is related to chapter 3 on judicial and non-judicial staff. Where courts at second (or third) instance consistently struggle to manage the amount of incoming cases, despite the enactment of measures to promote efficiency, an analysis of the appeal rate over the years may provide a useful benchmark against which to assess and plan a different distribution of human resources. Second, a particularly high or low percentage of appealed decisions may be a signal for a need to carry out additional research into possible reasons for this, which include considerations about the quality of justice in the previous instance, or on legal, financial or other barriers to access to justice.

States and entities taking part in the evaluation are not required to provide such data, except in relation to the specific categories of cases addressed above. The quality and quantity of the data reported, however, is rather poor as very few States and entities reported data on the percentage of decisions subject to appeal (**Bosnia and Herzegovina, Denmark, Estonia, France, Georgia, Germany, Monaco, Romania, Russian Federation, Slovenia, Spain, Switzerland, “the former Yugoslav Republic of Macedonia”, Turkey and Morocco**). In most of these States which reported data disaggregated by category of cases, employment dismissal cases are most frequently appealed, at an average rate of 41 %. **Spain** is an exception: 68 % of insolvency cases are appealed by the parties.

**Figure 5.15 Clearance Rate vs. Disposition Time for civil and commercial litigious cases at second instance (Q97)**



Overall, the Clearance Rate at second instance is positive. Figure 5.15 shows the distribution of States and entities by court performance at second instance in 2016. In the lower right quadrant of the chart, States and entities have a Clearance Rate at or above 100 % and a Disposition Time below the European average of 244 days. 16 States have a satisfactory level of court productivity: **Armenia, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Lithuania, Romania, Russian Federation, Slovakia, Slovenia, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia” and Ukraine.**

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

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

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

Some States and entities display similarly poor data compared to the statistics at first instance, with the situation generally worsening at second instance. Significantly, the Disposition Time figures in **Greece** (not shown in the Figure), **Italy** and **Malta** almost double at second instance. In 2016, **Turkey's** Clearance Rate of 86% at first instance, is even lower (down to 77 %) at second instance, but the Disposition Time at second instance (109 days) is shorter, compared to first instance (399 days). **Georgia's** performance is significantly improved at second instance, with a Clearance Rate of 99%, compared to 77 % at first instance.

Evolution of the performance indicators

Table 5.16 Clearance Rate of second instance civil and commercial litigious cases between 2010 and 2016 (Q97)

States / Entities	Clearance Rate of 2nd instance civil and commercial litigious cases				Evolution
	2010	2012	2014	2016	
Albania	NA	NA	NA	NA	
Andorra	98%	89%	85%	NA	
Armenia	NA	96%	103%	103%	
Austria	NA	NA	NA	NA	
Azerbaijan	NA	88%	100%	95%	
Belgium	NA	NA	103%	110%	
Bosnia and Herzegovina	96%	92%	87%	95%	
Bulgaria	NA	NA	NA	NA	
Croatia	94%	89%	96%	116%	
Cyprus	72%	63%	NA	NAP	
Czech Republic	101%	98%	102%	102%	
Denmark	97%	94%	104%	109%	
Estonia	108%	100%	107%	106%	
Finland	103%	109%	NA	119%	
France	96%	99%	93%	95%	
Georgia	106%	100%	89%	99%	
Germany	NA	NA	100%	101%	
Greece	78%	78%	102%	75%	
Hungary	98%	101%	111%	100%	
Iceland	NAP	NAP	NA	NAP	
Ireland	NA	NA	75%	82%	
Italy	83%	104%	119%	111%	
Latvia	97%	110%	101%	96%	
Lithuania	84%	96%	102%	101%	
Luxembourg	95%	103%	87%	106%	
Malta	100%	55%	87%	106%	
Republic of Moldova	91%	105%	96%	99%	
Monaco	73%	87%	113%	97%	
Montenegro	NA	94%	95%	NA	
Netherlands	NA	NA	NA	NA	
Norway	NA	NA	NA	NA	
Poland	99%	94%	97%	96%	
Portugal	NA	NA	NA	97%	
Romania	92%	105%	67%	106%	
Russian Federation	NA	98%	97%	100%	
Serbia	NA	108%	102%	92%	
Slovakia	NA	NA	NA	125%	
Slovenia	97%	100%	106%	100%	
Spain	100%	97%	105%	98%	
Sweden	100%	100%	106%	103%	
Switzerland	99%	106%	100%	102%	
The FYROMacedonia	107%	105%	94%	111%	
Turkey	NAP	NAP	NAP	77%	
Ukraine	81%	210%	99%	100%	
UK-England and Wales	95%	96%	NA	NA	
UK-Scotland	74%	NA	NA	NA	
Israel		103%	98%	98%	
Morocco				NA	
<b>Average</b>	94%	99%	98%	101%	
<b>Median</b>	97%	98%	100%	100%	
<b>Minimum</b>	72%	55%	67%	75%	
<b>Maximum</b>	108%	210%	119%	125%	

In a majority of States and entities, the Clearance Rate of civil and commercial litigious cases at second instance has improved over the long period (2010 to 2016), similar to the trend registered at first instance. Among these, 12 States have brought the CR from negative to positive: **Armenia, Croatia, Denmark,**

**Hungary, Italy, Lithuania, Luxembourg, Romania, Russian Federation, Slovenia, Switzerland** and **Ukraine**. In particular, **Croatia, Italy, Romania** and **Ukraine** have made important improvements in this regard.

An improvement of the Clearance Rate in the long period, despite fluctuations, has taken place also in the **Czech Republic, Finland, Malta, Sweden** and “**the former Yugoslav Republic of Macedonia**” but these countries already had a positive Clearance Rate in 2010. **Azerbaijan, Ireland, Republic of Moldova** and **Monaco** have improved the Clearance Rate between 2010 and 2016, although second instance courts in these countries still struggle to cope with incoming cases.

In addition, **Greece** has maintained a negative Clearance Rate in the long period. Despite the positive performance in 2014 (Clearance Rate: 102 %) the Clearance Rate fell to 75 % in 2016, which is even lower than the level recorded in 2010 (78 %). Furthermore **Serbia** shows a constant decrease in the Clearance Rate – from 108 % in 2012, to 102 % in 2014, to 92 % in 2016.

**Table 5.17 Disposition Time of second instance civil and commercial litigious cases between 2010 and 2016 (Q97)**

States / Entities	Disposition Time of 2nd instance civil and commercial litigious cases				
	2010	2012	2014	2016	Evolution
Albania	NA	NA	NA	NA	
Andorra	146	169	245	NA	
Armenia	NA	65	57	60	
Austria	NA	NA	NA	NA	
Azerbaijan	NA	100	56	72	
Belgium	NA	NA	NA	NA	
Bosnia and Herzegovina	299	348	392	462	
Bulgaria	NA	NA	NA	NA	
Croatia	322	370	448	328	
Cyprus	1 194	340	NA	NAP	
Czech Republic	75	70	73	69	
Denmark	151	158	170	141	
Estonia	102	107	100	95	
Finland	223	204	NA	150	
France	359	405	477	487	
Georgia	54	53	125	153	
Germany	NA	NA	233	245	
Greece	298	834	509	1 149	
Hungary	114	125	114	121	
Iceland	NAP	NAP	NA	NAP	
Ireland	NA	NA	NA	NA	
Italy	1 268	1 161	959	993	
Latvia	237	133	160	124	
Lithuania	191	151	97	103	
Luxembourg	472	511	722	553	
Malta	470	1 065	1 010	783	
Republic of Moldova	125	82	92	100	
Monaco	798	557	315	435	
Montenegro	NA	108	105	NA	
Netherlands	NA	NA	NA	NA	
Norway	NA	NA	NA	NA	
Poland	45	71	89	105	
Portugal	NA	NA	NA	114	
Romania	221	218	299	131	
Russian Federation	NA	18	27	31	
Serbia	NA	164	158	180	
Slovakia	NA	NA	NA	121	
Slovenia	101	122	84	97	
Spain	189	211	178	181	
Sweden	111	122	106	100	
Switzerland	144	127	100	97	
The FYROMacedonia	102	79	98	111	
Turkey	NAP	NAP	NAP	109	
Ukraine	101	21	50	54	
UK-England and Wales	NA	NA	NA	NA	
UK-Scotland	NA	NA	NA	NA	
Israel		204	225	205	
Morocco				NA	
<b>Average</b>	293	258	247	244	
<b>Median</b>	189	142	125	121	
<b>Minimum</b>	45	18	27	31	
<b>Maximum</b>	1268	1161	1010	1149	

The average Disposition Time of civil and commercial litigious cases at second instance has slowly declined over time, as is the case at first instance. Of the 9 States that previously experienced a steady improvement in Disposition Time between 2010 and 2014, so far as data is available, only the **Czech Republic** and **Switzerland** have continued with these positive developments. In contrast, **Italy**, **Lithuania** and **Serbia** saw a slight increase in the Disposition Time between 2014 and 2016, with **Monaco** experiencing a more significant increase of 120 days.

3 States saw a continuous worsening of the calculated Disposition Time over the four evaluation cycles. The situation in **Poland** can be considered acceptable because the Disposition Time has gone only slightly beyond 100 days. In contrast, the Disposition Time in **Bosnia and Herzegovina** has now risen to 462 days and in **France** to 487 days.

The situation is more problematic in **Greece**, where the Disposition Time more than doubled between 2014 and 2016, as was also the case at first instance - this is related to the very low Clearance Rate as highlighted above. In contrast, **Denmark**, **Estonia**, **Latvia**, **Sweden** and **Israel** saw a slight reduction between the last two cycles, with more significant improvements in **Croatia**, **Luxembourg**, **Romania** and especially **Malta** (from 1 010 days in 2014 to 783 days in 2016).

**Figure 5.18 Variation in civil and commercial litigious cases of second instance pending at 31 December vs incoming cases between 2014 and 2016 (Q97)**

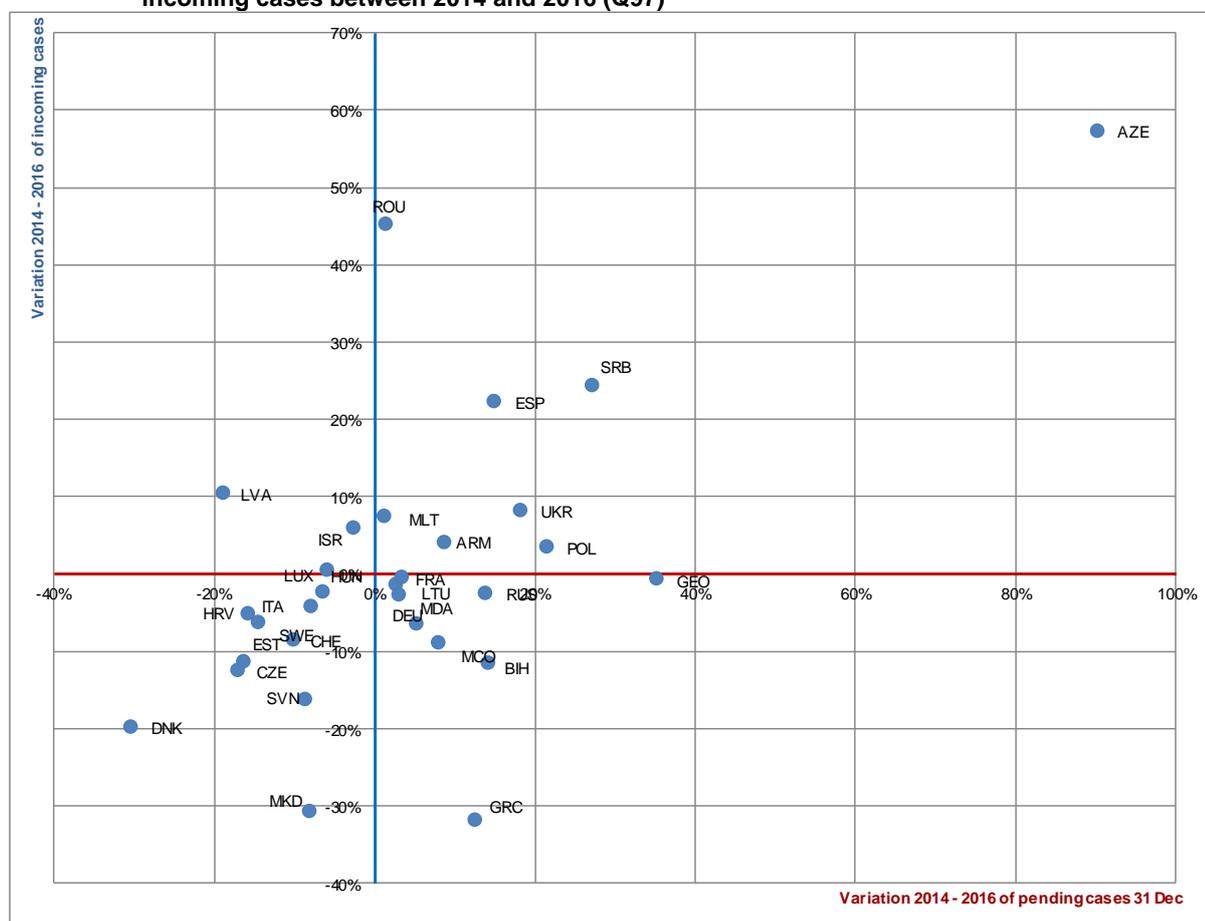


Figure 5.18 shows the variation of pending cases between 2014 and 2016 against the variation of incoming cases in the same period. The upper left quadrant of the chart shows a positive performance by **Latvia** and **Israel** in reducing the number of pending cases despite an increase in the number of incoming cases. The number of incoming cases in **Luxembourg** has remained the same, while the number of pending cases has been reduced (- 6 %), which is also significant. **Romania** also displays a positive performance: while the number of incoming cases arose by 45 % between 2014 and 2016, the number of pending cases increased only by 1 %. Similarly, although to a lesser extent, in **Malta** the number of pending cases has increased at a lower rate compared to the increase of incoming cases.

In contrast, the lower right quadrant shows those States or entities where the number of pending cases has increased despite a decrease in incoming cases (**Bosnia and Herzegovina, France, Germany, Greece, Lithuania, Republic of Moldova and Monaco**), or increased considerably more than the increase in the number of incoming cases (**Azerbaijan and, to a lesser extent, Ukraine**).

Upper right quadrant shows countries that have increase both in incoming and in pending cases. **Georgia** shows much higher increase for the pending cases compared with incoming cases.

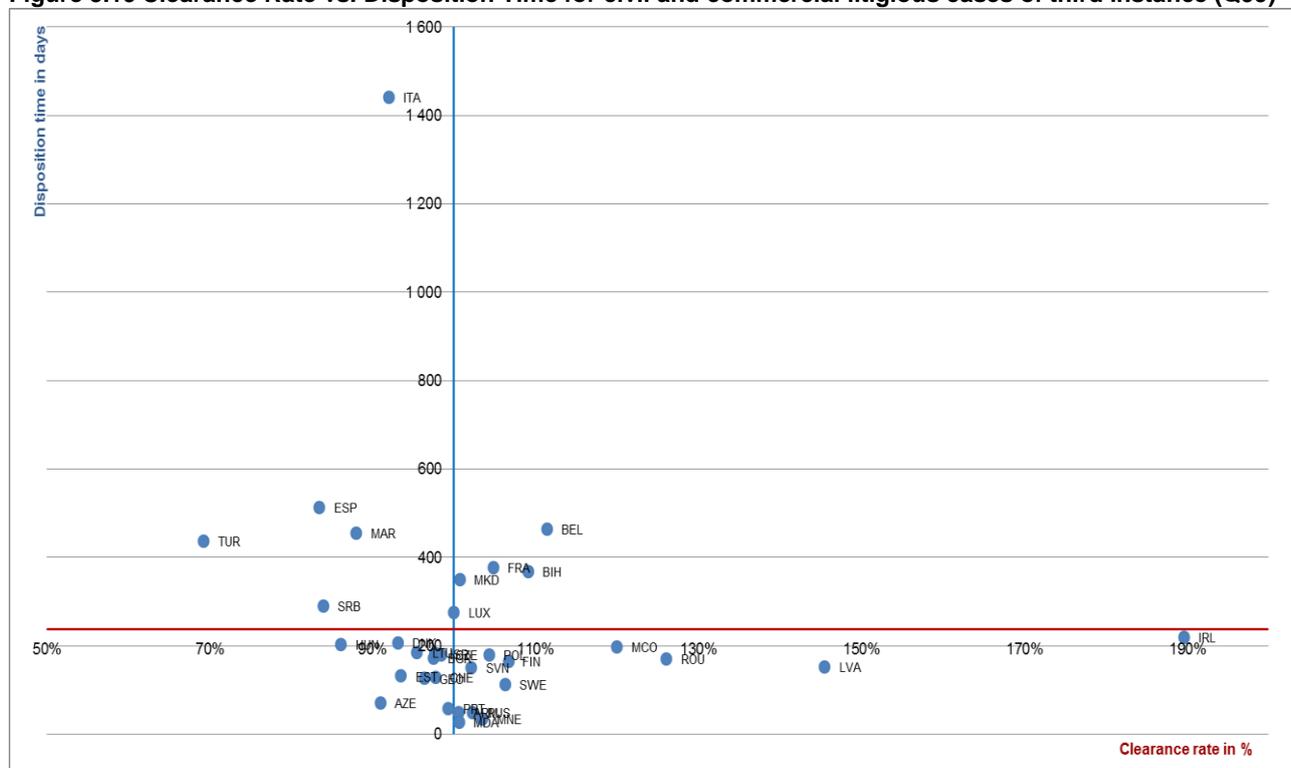
#### 5.2.4 Civil and commercial litigious cases – Supreme Court (highest Instance)

##### *Court caseload and performance indicators in 2016*

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

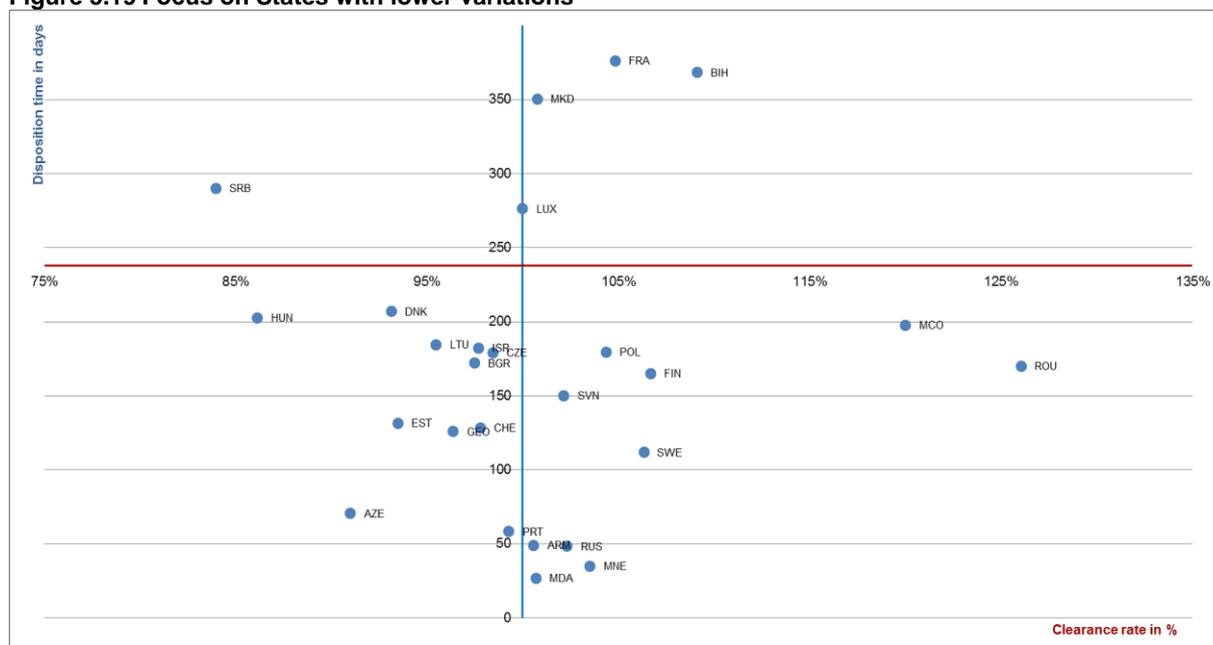
There are however important differences between the States and entities.

**Figure 5.19 Clearance Rate vs. Disposition Time for civil and commercial litigious cases of third instance (Q99)**



For better visibility the second chart focuses on the States with lower variations.

**Figure 5.19 Focus on States with lower variations**



The lower right quadrant of figure 5.19 shows States or entities that have a Clearance Rate at or above 100 % and a Disposition Time below the average of 238 days. 12 States and entities show a satisfactory level of court productivity as regards civil and commercial litigious cases at the level of the highest instance: **Armenia, Finland, Ireland, Latvia, Republic of Moldova, Monaco, Montenegro, Poland, Romania, Russian Federation, Slovenia and Sweden**. This is the same number of States and entities showing a satisfactory level of court productivity as regards civil and commercial litigious cases at first instance, with the number of States going up to 16 as regards last instance cases.

Past the 238-day Disposition Time average, the situation in **Luxembourg** and “**the former Yugoslav Republic of Macedonia**”, seems manageable, as both countries display a positive Clearance Rate combined with a Disposition Time below one year.

In 7 States, the Clearance Rate is slightly lower than 100 % but the Disposition Time can be considered satisfactory (below the average of 238 days): **Bulgaria, Czech Republic, Georgia, Lithuania, Portugal, Switzerland and Israel**.

The lowest Disposition Time figures arise in respect of the **Republic of Moldova** (27 days) **Montenegro** (35 days), **Russian Federation** (48 days) and **Armenia** (49 days). The pattern of low Disposition Time for civil and commercial litigious cases shows in all instances in the **Russian Federation** (42 days at first instance and 31 days at second instance).

The situation should be closely monitored in those States and entities that have a particularly low Clearance Rate (left quadrants) or a very high Disposition Time (upper quadrants), or both, as this shows that courts are struggling to cope with the volume of incoming cases. Backlogs and lengths of proceedings are likely to worsen in the future if no specific measures are taken in respect of court efficiency in these States. The situation in **Italy** (Clearance Rate: 92 %, Disposition Time: 1442 days, not shown on the Figure), **Spain** (Clearance Rate: 84%, Disposition Time: 513 days), **Turkey** (Clearance Rate: 69 %, Disposition Time: 437 days) and **Morocco** (Disposition Time: 455 days) deserve particular attention. States with a very high Disposition Time but a Clearance Rate above 100 %, **Belgium** (Clearance Rate: 111 %, Disposition Time: 464 days), **Bosnia and Herzegovina** (Clearance Rate: 109%, Disposition Time: 368 days), **France** (Clearance Rate: 105 %, Disposition Time: 376 days), must continue their efforts to reduce the stock.

Of these 7 States, 4 displayed similarly poor data at first and second instance, the situation in each case worsening further at the level of the highest instance. In particular, the Disposition Time figure for **Italy** increased by almost 450 days from second to highest instance, having almost doubled from first to second instance. Following an improvement in Disposition Time (but not Clearance Rate) from first to second instance, **Turkey** again at third instance shows a worsening of the Clearance Rate as well as Disposition Time (which presents a level that recorded for first instance). The Disposition Time in **France** increases by almost 100 days from second to last instance.

Evolution of the performance indicators

Table 5.20 Clearance Rate of the highest instance for civil and commercial litigious cases between 2010 and 2016 (Q99)

States / Entities	Clearance Rate of the highest instance for civil and commercial litigious cases				
	2010	2012	2014	2016	Evolution
Albania	NA	97%	NA	NA	
Andorra	NAP	NAP		NAP	
Armenia	NA	100%	96%	101%	
Austria	NA	NA	NA	NA	
Azerbaijan	NA	96%	99%	91%	
Belgium	NA	NA	107%	111%	
Bosnia and Herzegovina	116%	101%	83%	109%	
Bulgaria	NA	NA	NA	97%	
Croatia	76%	NA	NA	NA	
Cyprus	NAP	NAP	NAP	NA	
Czech Republic	108%	128%	96%	98%	
Denmark	135%	NA	132%	93%	
Estonia	85%	102%	98%	93%	
Finland	NA	88%	93%	107%	
France	98%	96%	92%	105%	
Georgia	95%	99%	82%	96%	
Germany	NA	NA	97%	NA	
Greece	NA	108%	NA	NA	
Hungary	98%	94%	102%	86%	
Iceland	NAP	NA	NA	NA	
Ireland	NA	42%	152%	190%	
Italy	95%	86%	93%	92%	
Latvia	NA	NA	85%	146%	
Lithuania	85%	88%	83%	95%	
Luxembourg	NA	NA	NA	100%	
Malta	NA	NAP	NAP	NAP	
Republic of Moldova	97%	97%	107%	101%	
Monaco	NA	102%	91%	120%	
Montenegro	103%	100%	98%	104%	
Netherlands	NA	NA	NA	NA	
Norway	NA	NA	NA	NA	
Poland	NA	NA	94%	104%	
Portugal	NA	NA	NA	99%	
Romania	92%	100%	166%	126%	
Russian Federation	NA	97%	NA	102%	
Serbia	119%	107%	82%	84%	
Slovakia	NA	NA	NA	NA	
Slovenia	118%	128%	111%	102%	
Spain	115%	103%	77%	84%	
Sweden	106%	101%	99%	106%	
Switzerland	99%	100%	96%	98%	
The FYROMacedonia	75%	111%	114%	101%	
Turkey	NA	NA	NA	69%	
Ukraine	64%	98%	NA	NA	
UK-England and Wales	78%	NA	NA	NA	
UK-Scotland	106%	NAP	NAP	NAP	
Israel		102%	109%	98%	
Morocco				88%	
<b>Average</b>	98%	99%	101%	104%	
<b>Median</b>	98%	100%	96%	101%	
<b>Minimum</b>	64%	42%	77%	69%	
<b>Maximum</b>	135%	128%	166%	190%	

Data collected for the last four evaluations shows a continuous improvement of the average Clearance Rate of civil and commercial litigious cases at the level of the highest instance, between 2010 and 2016. However, only **Finland** and **Ireland** have experienced a constant improvement of the Clearance Rate (in both cases data from one evaluation cycle was not available).

After increases between 2010 and 2014, the Clearance Rate decreased in the last cycle in **Denmark**, **Republic of Moldova**, **Romania**, **“the former Yugoslav Republic of Macedonia”** and **Israel**. The Clearance Rate in **Denmark** experienced a significant decrease from 132% to 93% between 2014 and 2016. In **Israel**, the Clearance Rate decreased from 102 % to 98 %, while in the **Republic of Moldova**, **Romania** and **“the former Yugoslav Republic of Macedonia”** the reduction in the Clearance Rate occurred within a positive range of values.

**Estonia** recorded a continuous decrease of the Clearance Rate in last three cycles, from positive (102 %) in 2012 to negative (93 %) in 2016. The evolution of the Clearance Rate in **Spain** should also be underlined: the country reported positive figures in the first two evaluation cycles, with the Clearance Rate decreasing to 77 % in 2014 and slightly improving to 84 % in 2016.

Table 5.21 Disposition Time of the highest instance for civil and commercial litigious cases between 2010 and 2016 (Q99)

States / Entities	Disposition Time of the highest instance for civil and commercial litigious cases				
	2010	2012	2014	2016	Evolution
Albania	NA	183	NA	NA	.
Andorra	NAP	NAP	..	NAP	
Armenia	NA	33	70	49	↘ ↗
Austria	NA	NA	NA	NA	
Azerbaijan	NA	65	49	70	↘ ↗
Belgium	NA	NA	480	464	↘ ↗
Bosnia and Herzegovina	223	239	359	368	↗ ↘
Bulgaria	NA	NA	NA	172	.
Croatia	420	NA	NA	NA	.
Cyprus	NAP	NAP	NAP	NA	
Czech Republic	287	221	201	179	↘ ↗
Denmark	NA	NA	187	207	↘ ↗
Estonia	133	70	114	132	↘ ↗
Finland	NA	210	224	165	↘ ↗
France	342	378	425	376	↗ ↘
Georgia	108	71	230	126	↘ ↗
Germany	NA	NA	358	NA	.
Greece	NA	346	NA	NA	.
Hungary	148	208	158	203	↗ ↘
Iceland	NAP	NA	NA	NA	
Ireland	NA	846	NA	219	.
Italy	1 231	1 470	1 316	1 442	↗ ↘
Latvia	NA	NA	559	153	↘ ↗
Lithuania	144	188	268	184	↗ ↘
Luxembourg	NA	NA	NA	276	.
Malta	NA	NAP	NAP	NAP	
Republic of Moldova	78	80	28	27	↘ ↗
Monaco	NA	163	313	198	↗ ↘
Montenegro	19	2	24	35	↘ ↗
Netherlands	NA	NA	NA	NA	
Norway	NA	NA	NA	NA	
Poland	NA	NA	187	180	↘ ↗
Portugal	NA	NA	NA	58	
Romania	138	188	143	170	↗ ↘
Russian Federation	NA	15	NA	48	.
Serbia	214	107	223	290	↘ ↗
Slovakia	NA	NA	NA	NA	
Slovenia	386	272	167	150	↘ ↗
Spain	273	320	496	513	↗ ↘
Sweden	166	179	159	112	↘ ↗
Switzerland	97	104	118	128	↗ ↘
The FYROMacedonia	375	449	233	350	↘ ↗
Turkey	NA	NA	NA	437	.
Ukraine	249	17	NA	125	↘ ↗
UK-England and Wales	NA	NA	NA	NA	
UK-Scotland	NA	NAP	NAP	NAP	
Israel		241	195	182	↘ ↗
Morocco				455	.
<b>Average</b>	265	247	273	238	
<b>Median</b>	214	186	212	176	
<b>Minimum</b>	19	2	24	27	
<b>Maximum</b>	1231	1470	1316	1442	

The average Disposition Time of civil and commercial litigious cases at the level of the highest instance improved between 2010 and 2012 then rose slightly from 2012 to 2014, improving again in 2016. This contrasts with the pattern of the Disposition Time at first and second instances, both of which recorded a continuous improvement. The **Czech Republic, Slovenia** and **Israel** have continuously improved their Disposition time in the last evaluation cycles.

3 other States saw a steady worsening of the calculated Disposition Time over the four evaluation exercises. The situation in **Switzerland** can be considered acceptable because the Disposition Time remains at 128 days, which is not unduly lengthy. The Disposition Time in **Spain** is 513 days and it is slightly above one year in **Bosnia and Herzegovina**. It is worth noting the situation in three other States. **Italy** has seen both positive and negative fluctuations between 2010 and 2016, but its Disposition Time remains at a very high level of 1 442 days. **Turkey** and **Morocco** did not provide data on the Disposition Time before 2016, but for the current cycle they recorded rather high levels (respectively 437 days and 455 days).

**Figure 5.22 Variation in civil and commercial litigious cases of the highest instance pending cases 31 December vs. incoming cases between 2014 and 2016 (Q99)**

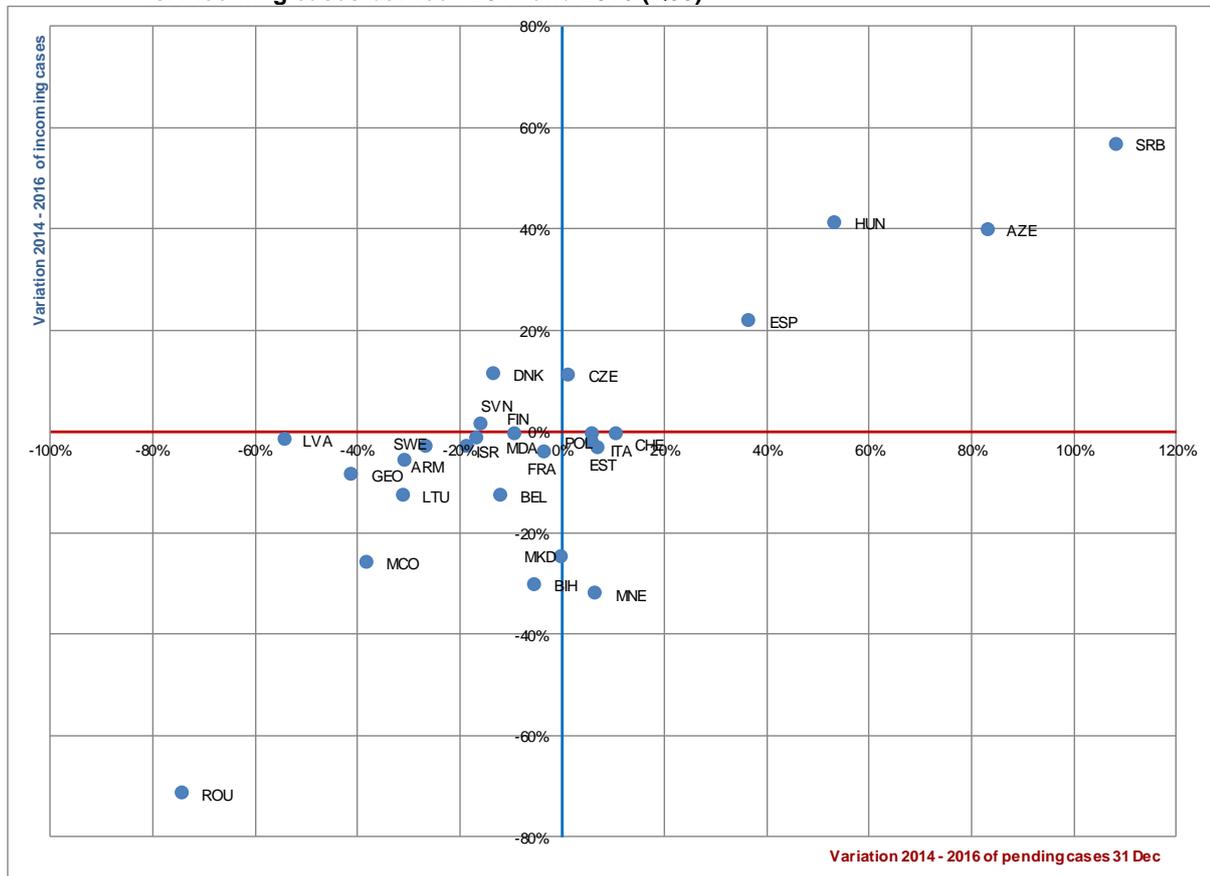


Figure 5.22 shows how the number of pending cases changed between 2014 and 2016 against the variation in the number of incoming cases in the same period.

The upper left quadrant of the chart shows a positive performance of **Denmark** and **Slovenia** in reducing the number of pending cases despite an increase in the number of incoming cases. The number of incoming cases in the **Republic of Moldova** has remained the same, while the number of pending cases has decreased, which also displays a positive performance. The **Czech Republic** has also performed positively, with the number of incoming cases increasing by 11 % in the last two cycles and the number of pending cases increasing by only 1%.

In contrast, the lower right quadrant displays those States and entities where the number of pending cases has increased despite a decrease in the volume of incoming cases (**Estonia, Italy, Poland, Switzerland** and especially **Montenegro** (incoming cases – 32 %, pending cases + 7 %) or increased considerably more than the increase in the number of incoming cases (**Serbia and Azerbaijan** and, to a lesser extent, **Hungary and Spain**).

### 5.3 Administrative justice: 2016 data and trends regarding performance indicators

This section addresses court caseload and performance in relation to cases where one of the parties to the dispute is a public authority. While disputes between citizens and public authorities can be handle through civil law proceedings, in a number of States, administrative law is a separate area of law. In these cases, the settlement of administrative disputes can fall within the competence of specialised administrative law tribunals or units within a court of general jurisdiction, or may be subject to separate administrative law procedures.

#### 5.3.1 Administrative cases - First Instance

*Court caseload and performance indicators in 2016*

**Figure 5.23 Number of first instance, incoming and resolved, administrative cases per 100 inhabitants in 2016 (Q91)**

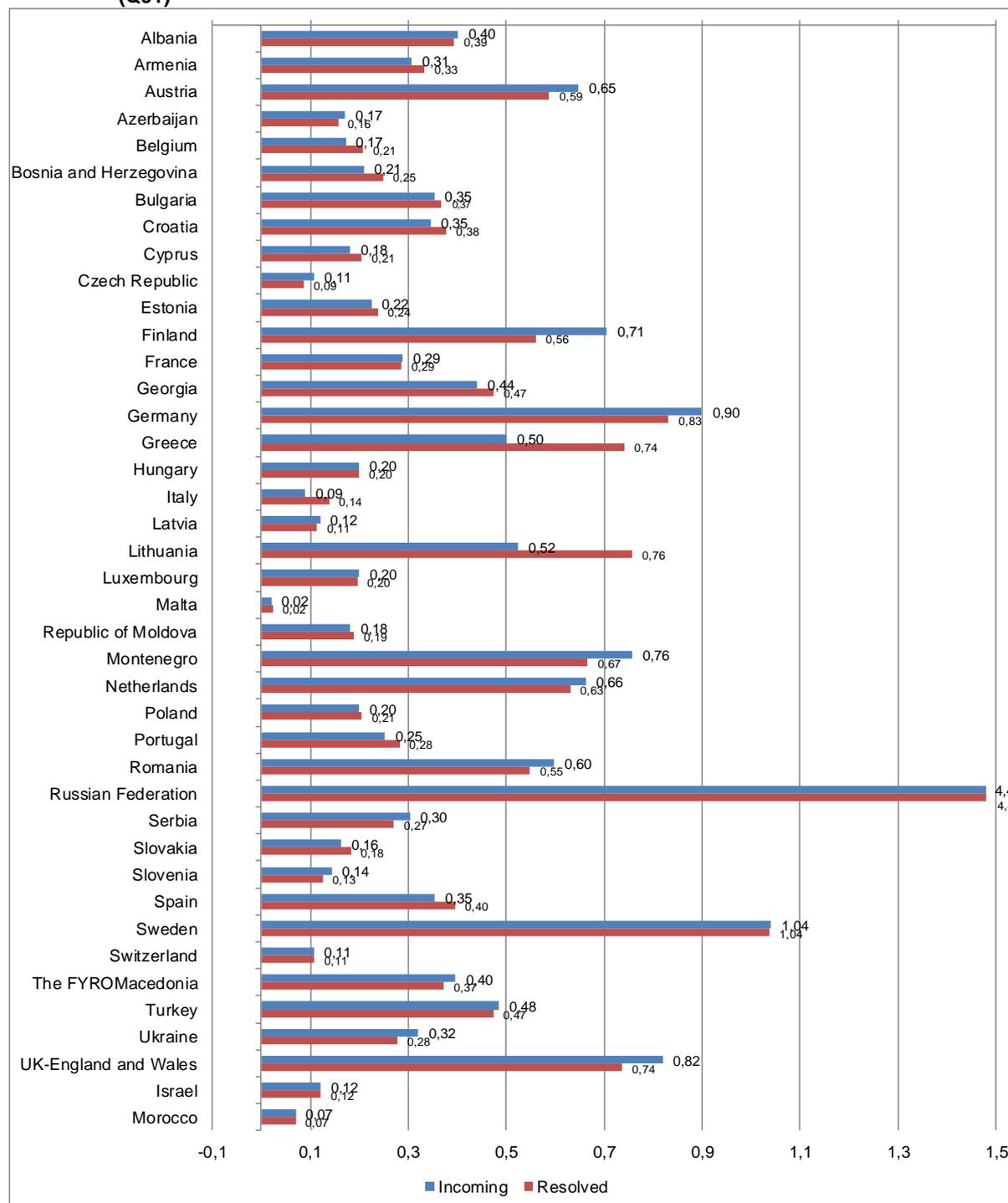
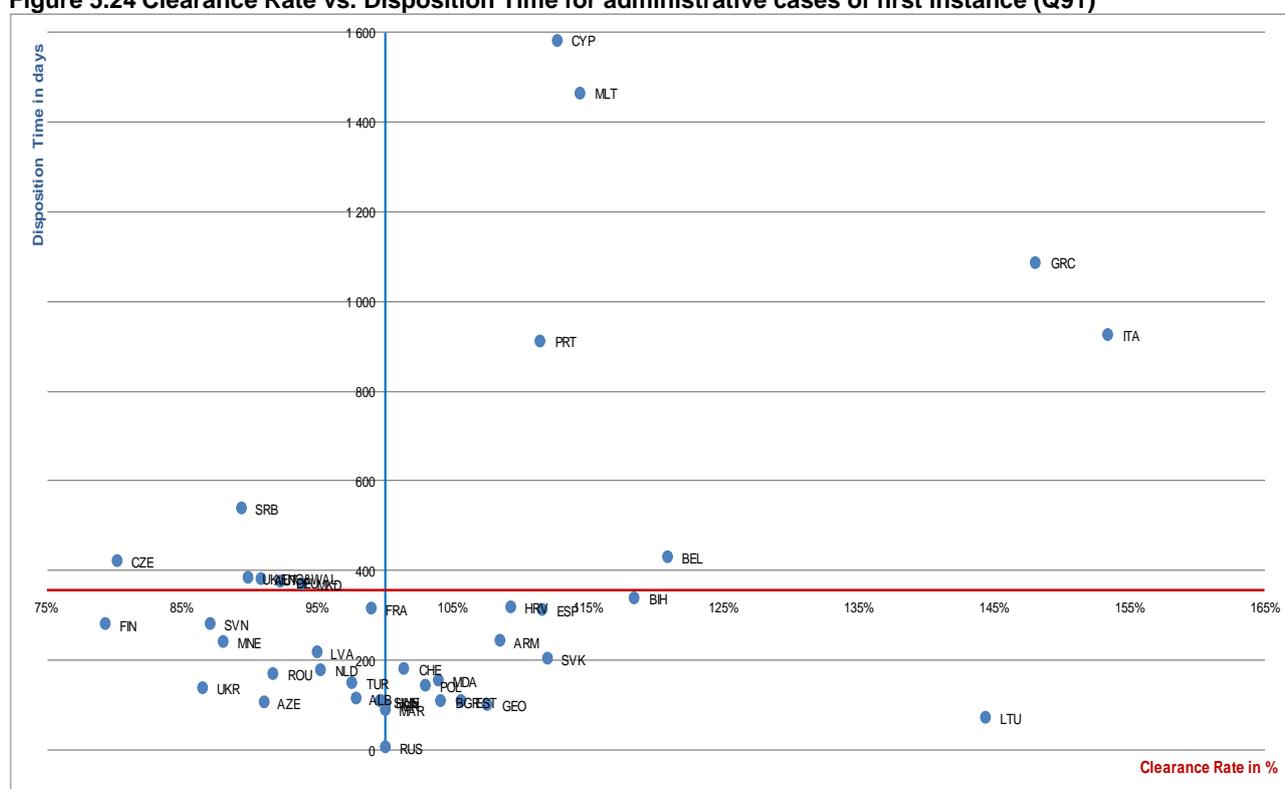


Figure 5.23 above provides information on 41 States and entities which provided data on administrative law cases (7 States and entities provided NA or NAP values). With the exception of the **Russian Federation** and **Sweden** (respectively 4,4 and 1,0 cases per 100 inhabitants), courts of first instance in all States and entities received less than 1 administrative case per 100 inhabitants. The outstanding high data in the case of the **Russian Federation** can be related to the broad definition of administrative offences under the federal Administrative Offences Code. The overall average of first instance administrative law cases in the States and entities assessed in 2016 is 0,5 (incoming and resolved) cases per 100 inhabitants (the median value is 0,3 cases).

### Performance indicators regarding administrative law cases

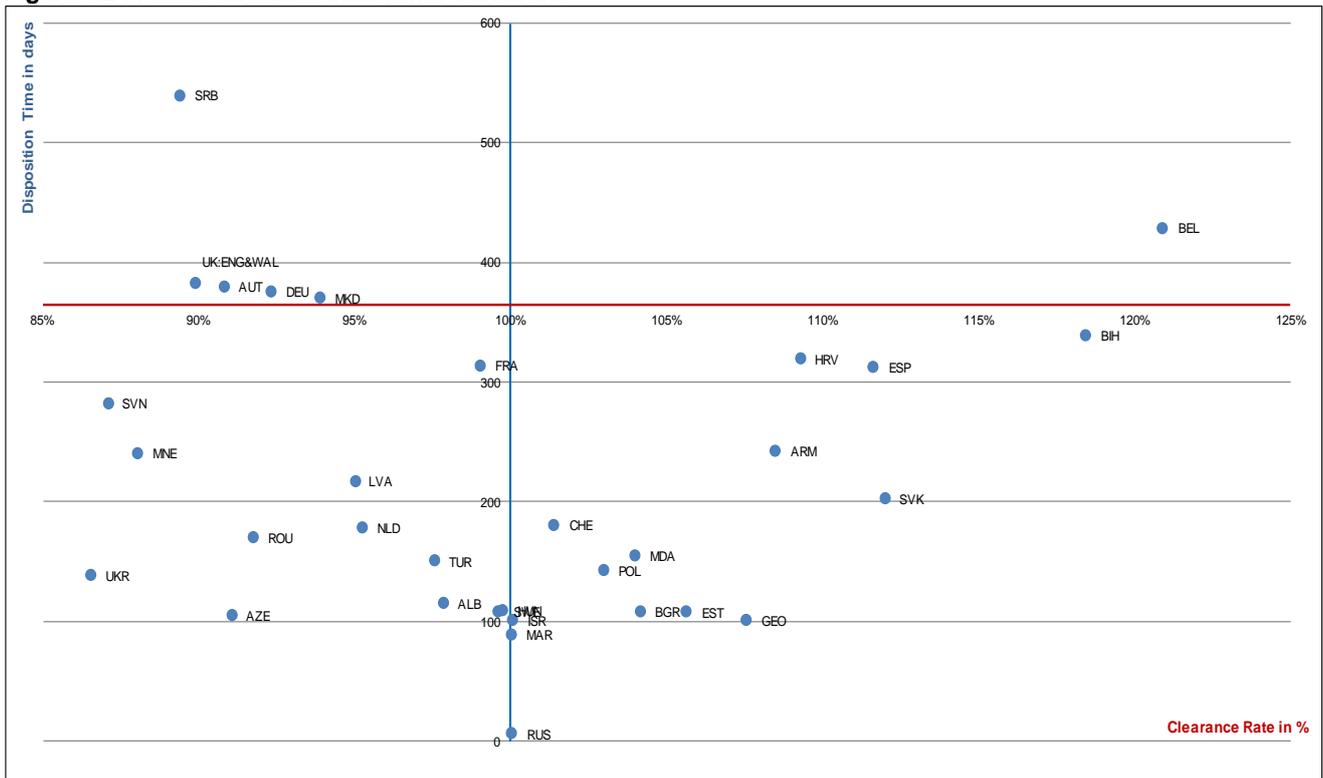
40 States and entities provided relevant data on the basis of which it was possible to calculate both the Clearance Rate and the Disposition Time for administrative law cases in 2016. Figure 5.24 below shows the Clearance Rate and Disposition Time together for each country assessed, with the aim of offering an insight into the possible evolution in the volume of pending cases and the time necessary to process these in specific countries. To facilitate the visual representation of the States and entities in the figure below, 4 countries (**Cyprus, Latvia, Malta** and **Portugal**) were not shown. Figures regarding their performance will nevertheless be analysed below.

Figure 5.24 Clearance Rate vs. Disposition Time for administrative cases of first instance (Q91)



For better visibility the second chart focuses on the States with lower variations.

Figure 5.24 Focus on States with lower variations



A majority of States and entities in 2016 were able to cope satisfactorily with the volume of incoming administrative cases at first instance. 17 States in the lower right quadrant of the chart (**Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Hungary, Lithuania, Republic of Moldova, Poland, Russian Federation, Slovakia, Spain, Sweden, Switzerland, Israel and Morocco,**) have a positive Clearance Rate (100 % or above) and the Disposition Time remains below the European average of 357 days. The Clearance Rate was particularly high in **Lithuania** (144 %) with a Disposition Time of only 72 days. As noted in relation to civil and commercial litigious cases, the Disposition Time in some countries, in particular in the **Russian Federation** which registers a Disposition Time of only 6 days, is particularly low. Further analysis is required to understand the reasons behind these figures.

The situation in 4 other States positioned adjacent to the lower part of the Disposition Time axis seems manageable and can also be considered satisfactory. In **Albania, Latvia, Netherlands** and **Turkey** the Clearance Rate is slightly below 100 % but this should not affect too much the evolution of the volume of pending cases, considering the positive Disposition Time (between 115 and 217 days) in these countries. In **Belgium** (in the upper right quadrant) the particularly favourable Clearance Rate (121 %) should offset the long Disposition Time (429 days) for administrative cases, if the trend is maintained.

The situation is more difficult and should be monitored in a few States and entities which have a low Clearance Rate or a particularly high Disposition Time, or both. These States and entities experience difficulties in coping with the volume of incoming cases, which should be monitored and addressed to avoid their likely deterioration in the future. This is the case for **Austria** (Clearance Rate: 91 %; Disposition Time: 380 days), the **Czech Republic** (Clearance Rate: 80 %; Disposition Time: 421 days), **Finland** (Clearance Rate: 79 %), **Germany** (Clearance Rate: 92 %, Disposition Time: 375 days), **Montenegro** (Clearance Rate: 88 %), **Serbia** (Clearance Rate: 89 %, Disposition Time: 539 days), **Slovenia** (Clearance Rate: 87 %), “**the former Yugoslav Republic of Macedonia**” (Clearance Rate: 94 %; Disposition Time: 370 days), **Ukraine** (Clearance Rate: 87 %) and **UK-England and Wales** (Clearance Rate: 90 %; Disposition Time: 383 days). The highest Disposition Time are observed in **Cyprus** (Disposition Time: 1 582 days), **Greece** (Disposition Time: 1 086 days), **Italy** (Disposition Time: 925 days), **Malta** (Disposition Time: 1 464 days) and **Portugal** (Disposition Time: 911 days), that are not included in the chart above. Measures for strengthening the courts’ productivity are already in place in some of these States and entities.

## Evolution of the performance indicators

The table below presents the evolution of the Clearance Rate for first instance administrative cases between 2010 and 2016. The reported data and the conclusions that can be drawn therefrom should be considered cautiously, as the consistency of some of the figures might vary within the period observed, which may influence performance trends over time.

**Table 5.25 Clearance Rate of first instance administrative cases between 2010 and 2016 (Q91)**

States / Entities	Clearance Rate of 1st instance administrative cases				Evolution
	2010	2012	2014	2016	
Albania	83%	91%	88%	98%	
Andorra	131%	93%	90%	NA	
Armenia	89%	94%	155%	109%	
Austria	NA	NAP	NA	91%	
Azerbaijan	NAP	96%	102%	91%	
Belgium	NA	NA	88%	121%	
Bosnia and Herzegovina	83%	105%	90%	118%	
Bulgaria	98%	92%	101%	104%	
Croatia	108%	41%	86%	109%	
Cyprus	74%	74%	103%	113%	
Czech Republic	NA	NAP	91%	80%	
Denmark	NA	NAP	NAP	NAP	
Estonia	91%	106%	90%	106%	
Finland	99%	101%	97%	79%	
France	107%	107%	96%	99%	
Georgia	108%	113%	102%	108%	
Germany	96%	102%	100%	92%	
Greece	80%	143%	NA	148%	
Hungary	96%	108%	92%	100%	
Iceland	NA	NA	NA	NA	
Ireland	NAP	NAP	NAP	NAP	
Italy	316%	280%	156%	153%	
Latvia	103%	130%	144%	95%	
Lithuania	83%	98%	89%	144%	
Luxembourg	93%	70%	94%	98%	
Malta	29%	40%	149%	114%	
Republic of Moldova	92%	105%	104%	104%	
Monaco	NA	NA	NAP	NA	
Montenegro	99%	87%	91%	88%	
Netherlands	107%	98%	99%	95%	
Norway	NAP	NAP	NAP	NA	
Poland	95%	100%	97%	103%	
Portugal	NA	NA	NA	112%	
Romania	71%	78%	161%	92%	
Russian Federation	NA	100%	100%	100%	
Serbia	86%	81%	104%	89%	
Slovakia	102%	47%	125%	112%	
Slovenia	114%	110%	103%	87%	
Spain	101%	124%	113%	112%	
Sweden	88%	105%	103%	100%	
Switzerland	105%	107%	100%	101%	
The FYROMacedonia	65%	112%	113%	94%	
Turkey	91%	127%	97%	98%	
Ukraine	96%	130%	99%	87%	
UK-England and Wales	85%	85%	192%	90%	
UK-Scotland	NA	NA	NA	NA	
Israel		100%	101%	100%	
Morocco				100%	
<b>Average</b>	99%	102%	108%	103%	
<b>Median</b>	95%	101%	100%	100%	
<b>Minimum</b>	29%	40%	86%	79%	
<b>Maximum</b>	316%	280%	192%	153%	

As table 5.25 shows, the Clearance Rate of administrative law cases at first instance improved continuously between 2010 and 2014 from negative (99 % in 2010) to positive values (108 % in 2014), decreasing slightly in 2016 (103 %). Significant decreases in the Clearance Rate in a few States and entities (e.g. **Armenia, Finland, Latvia, Malta, Romania, Slovenia, UK-England and Wales**) have affected the decrease of the average figures between 2014 and 2016. However, important differences can be highlighted between the States and entities presented.

Only **Cyprus and Greece** show a regular improvement in their court performance since 2010, while in **Italy** and **Slovenia** the Clearance Rate has decreased in the course of the four evaluation exercises. Statistics for **Andorra** are not available in 2016, so it is unclear whether the steady decrease has continued. The **Russian Federation** has maintained a positive Clearance Rate (100 %) in the last three cycles.

**Armenia, Latvia, Malta, Romania, “the former Yugoslav Republic of Macedonia” and UK-England and Wales** recorded an improvement in their court performance between 2010 and 2014, but inverted this trend in the last cycle. In **Latvia**, the Clearance Rate dropped from 144 % to 95 %, in **Romania** from 161 % to 92 % and notably in **UK-England and Wales** from 192 % to 90 %. In contrast, the 2016 Clearance Rate for **Armenia** and **Malta** remained positive, despite the decrease compared to the 2014 cycle.

In the period 2014-2016, 13 other countries saw a decrease in their Clearance Rate. In **Slovakia, Spain, Sweden** and **Israel** the Clearance Rate has remained positive, despite the decreasing trend, while in **Azerbaijan, the Czech Republic, Finland, Germany, Montenegro, Netherlands, Serbia, Slovenia** and **Ukraine**, the indicator has either entered into negative values in 2016 or remained within negative figures. This trend, namely in the latter group of countries (especially in the **Czech Republic, Finland, Montenegro, Netherlands** and **Ukraine**), could be at risk for the performance of the relevant judicial bodies if this trend persists. However, as noted earlier, the data reported and their evolution over time should be addressed with care and the specific conditions in each country need to be taken into consideration.

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

**Table 5.26 Disposition Time of first instance administrative cases between 2010 and 2016 (Q91)**

States / Entities	Disposition Time of 1st instance administrative cases				
	2010	2012	2014	2016	Evolution
Albania	264	287	74	115	
Andorra	222	429	517	NA	
Armenia	223	294	128	242	
Austria	NA	NAP	NA	380	
Azerbaijan	NAP	103	75	105	
Belgium	NA	NA	625	429	
Bosnia and Herzegovina	380	326	379	339	
Bulgaria	113	150	124	108	
Croatia	825	523	426	319	
Cyprus	1 340	1 270	1 775	1 582	
Czech Republic	NA	NAP	415	421	
Denmark	NA	NAP	NAP	NAP	
Estonia	146	108	141	108	
Finland	238	248	280	279	
France	338	302	305	314	
Georgia	36	213	130	101	
Germany	373	354	367	375	
Greece	2 003	1 520	NA	1 086	
Hungary	202	147	148	109	
Iceland	NA	NA	NA	NA	
Ireland	NAP	NAP	NAP	NAP	
Italy	1 037	886	984	925	
Latvia	439	300	155	217	
Lithuania	160	144	310	72	
Luxembourg	172	NA	NA	NA	
Malta	2 758	1 457	1 408	1 464	
Republic of Moldova	165	126	186	155	
Monaco	NA	NA	NAP	NA	
Montenegro	119	210	202	240	
Netherlands	159	163	171	178	
Norway	NAP	NAP	NAP	NA	
Poland	121	112	139	143	
Portugal	NA	NA	NA	911	
Romania	269	272	179	170	
Russian Federation	NA	11	7	6	
Serbia	535	497	440	539	
Slovakia	66	733	397	203	
Slovenia	139	130	112	282	
Spain	473	427	361	312	
Sweden	190	126	114	108	
Switzerland	229	217	225	180	
The FYROMacedonia	797	317	347	370	
Turkey	187	132	212	150	
Ukraine	65	33	51	138	
UK-England and Wales	384	446	169	383	
UK-Scotland	NA	NA	NA	NA	
Israel		117	99	101	
Morocco				89	
<b>Average</b>	446	372	336	357	
<b>Median</b>	226	272	207	241	
<b>Minimum</b>	36	11	7	6	
<b>Maximum</b>	2758	1520	1775	1582	

As regards the evolution of the Disposition Time of administrative cases at first instance, table 5.26 above shows that, on average, court performance in relation to this indicator improved steadily between 2010 and 2014, with a slight deterioration in 2016. This contrasts with the trend highlighted in relation to civil and commercial litigious cases, in respect of which the Disposition Time improved over all four evaluation cycles. The average Disposition Time of administrative cases in 2016 (357 days) is also significantly higher than that of civil and commercial litigious cases (234 days).

Only **Croatia, Spain** and **Sweden** have seen a constant improvement of the Disposition Time of administrative cases at first instance over all four evaluation cycles. **Croatia** has had a particularly positive performance, its Disposition Time having more than halved between 2010 and 2016. In **Latvia, Malta, Serbia** and **Slovenia**, the positive trend of continuous improvement between 2010 and 2014 was reversed in 2016, with **Serbia** and **Slovenia**, in particular, exceeding the Disposition Time figures initially recorded in 2010. The Disposition Time in **Malta** remains at the very high rate of 1 464 days.

In 19 States (**Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Estonia, Finland, Georgia, Hungary, Italy, Lithuania, Republic of Moldova, Romania, Russian Federation, Slovakia, Spain, Sweden, Switzerland** and **Turkey**) the situation has improved over the course of the last two evaluations. This marks an improvement on the performance in the last cycle, during which 10 of these States had improved their Disposition Time for administrative law cases below 7 months. As regards **Finland**, which saw a steady decline in efficiency between 2010 and 2014, in 2016 the figure improved but only by one day, so it remains to be seen whether the improvement will continue in the next evaluation cycle. The Disposition Time in **Cyprus** remains particularly high, at 1 582 days.

A constant deterioration of the calculated Disposition Time over the four evaluation cycles can be observed in the **Netherlands**. However, the situation should not be great cause for concern as the Disposition Time remains below 200 days. It is unclear whether the previously negative trend in **Andorra** has been continued in 2016, since statistics for the last evaluation cycle are not available.

Between 2014 and 2016 the Disposition Time of administrative cases increased in 16 other States and entities (**Albania, Armenia, Azerbaijan, Czech Republic, France, Germany, Latvia, Malta, Montenegro, Netherlands, Poland, Serbia, Slovenia, “the former Yugoslav Republic of Macedonia”, Ukraine, UK-England and Wales** and **Israel**). However, in these States and entities, with the exception of 6 States and entities - **Czech Republic** (Disposition Time: 421 days), **Germany** (Disposition Time: 375 days), **Malta** (1 464 days), **Serbia** (Disposition Time: 539 days), **“the former Yugoslav Republic of Macedonia”** (Disposition Time: 370 days) and **UK-England and Wales** (Disposition Time: 383 days) - the situation can still be considered acceptable because the maximum Disposition Time remains below one year.

The trends in the evolution of the Disposition Time of administrative cases discussed here should be considered together with the changing volume of pending cases in the course of the different measurements. The table below illustrates the evolution of the volume of first instance administrative cases on 31 December between 2010 and 2016.

Table 5.27 Number of first instance administrative pending cases at 31 December between 2010 and 2016 (Q91)

States / Entities	Number of 1st instance administrative pending cases 31 Dec				Evolution
	2010	2012	2014	2016	
Albania	2 700	3 811	3 841	3 561	
Andorra	145	87	265	NA	
Armenia	4 065	8 912	4 380	6 599	
Austria	NA	NAP	NA	53 485	
Azerbaijan	NAP	2 471	2 946	4 350	
Belgium	NA	NA	37 880	27 615	
Bosnia and Herzegovina	7 837	8 323	9 814	8 094	
Bulgaria	8 261	10 886	8 444	7 714	
Croatia	35 303	7 075	13 976	13 693	
Cyprus	5 288	5 395	8 074	7 540	
Czech Republic	NA	NAP	9 365	10 555	
Denmark	NA	NAP	NAP	NAP	
Estonia	1 301	890	1 326	921	
Finland	20 217	18 930	21 058	23 569	
France	173 246	157 470	157 262	164 691	
Georgia	1 229	5 693	3 149	4 861	
Germany	683 432	677 447	662 009	701 598	
Greece	421 946	383 402	NA	237 593	
Hungary	7 584	5 479	6 734	5 827	
Iceland	NA	NA	NA	NA	
Ireland	NAP	NAP	NAP	NAP	
Italy	509 246	348 896	267 247	212 095	
Latvia	5 423	4 280	1 461	1 335	
Lithuania	2 806	3 128	10 845	4 270	
Luxembourg	129	NA	NA	NA	
Malta	136	555	683	413	
Republic of Moldova	2 333	2 460	3 112	2 848	
Monaco	NA	NA	NAP	NA	
Montenegro	1 179	1 701	1 810	2 719	
Netherlands	53 410	50 010	51 020	52 649	
Norway	NAP	NAP	NAP	NA	
Poland	21 267	22 132	30 991	30 867	
Portugal	NA	NA	NA	72 516	
Romania	52 374	133 484	61 838	50 119	
Russian Federation	NA	185 166	116 210	110 189	
Serbia	20 296	21 509	24 262	28 161	
Slovakia	7 838	17 815	15 772	5 509	
Slovenia	2 320	1 936	1 682	2 000	
Spain	326 948	285 005	203 406	157 476	
Sweden	49 538	37 675	33 986	30 669	
Switzerland	13 267	15 190	13 016	4 521	
The FYROMacedonia	13 810	14 228	8 577	7 826	
Turkey	198 349	69 700	156 595	155 327	
Ukraine	289 486	44 360	32 490	44 796	
UK-England and Wales	749 178	894 364	366 403	450 710	
UK-Scotland	NA	NA	NA	NA	
Israel		3483	3276	2909	
Morocco				5922	
<b>Average</b>	108 585	98 568	65 331	71 297	
<b>Median</b>	10 764	14 228	11 931	12 124	
<b>Minimum</b>	129	87	265	413	
<b>Maximum</b>	749 178	894 364	662 009	701 598	

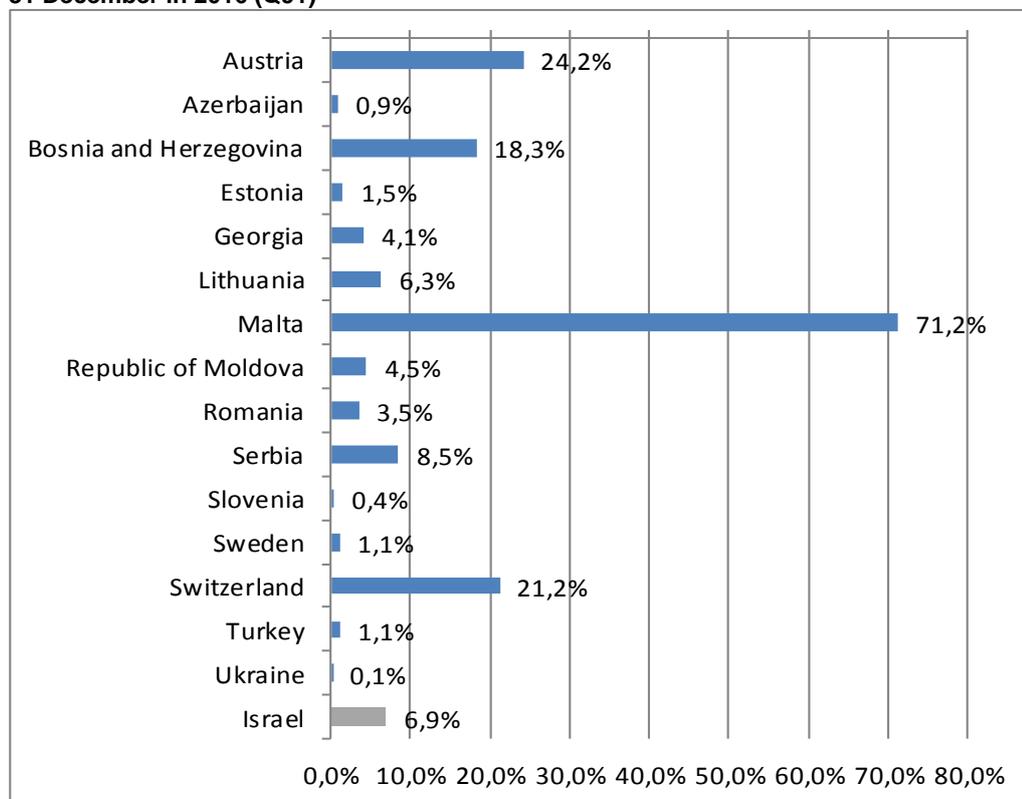
As shown in table 5.27 above, data collected from the last four evaluation cycles show a general decrease in the number of pending administrative law cases between 2010 and 2014, followed by an increase in 2016.

Between 2014 and 2016, 23 States and entities reduced the volume of pending cases, while 13 registered an increase compared to the 2014 figures. However, of those 13 States and entities, several registered a significant increase, which would have had a strong impact on the average figure of pending cases in the last evaluation cycle. Of the 13, only 2 experienced an increase of less than a thousand cases (**Montenegro** and **Slovenia**), while particularly strong increases were seen in **UK-England and Wales** (increase of about 85 000 cases), **Germany** (increase of almost 40 000 cases) and **Ukraine** (over 12 000 cases) and, to a lesser extent, **France** (increase of over 7 000 cases).

Court performance related to the ability to reduce the backlog of administrative cases has been particularly positive in **Albania, Bosnia and Herzegovina, Cyprus, Lithuania, Malta, Republic of Moldova** and **Poland**. These States have been able to invert the trend of increasing volume of pending cases recorded in 2014 and reduce the number of these cases in the latest evaluation. In **Lithuania**, the changes in the number of cases are mainly linked to the increased number of resolved administrative cases in first instance administrative courts in 2015 and 2016 (time during which courts were dealing with backlogs from previous years) and the renewed processes that were suspended in second instance courts due to applications before the Constitutional Court of the Republic of Lithuania (related to matters such as the salaries and pensions of civil servants). A positive trend can also be noted in 4 other States, where the stock of pending cases has progressively decreased between 2010 and 2016 (**Italy, Latvia, Spain** and **Sweden**). **Latvia** has highlighted that the level of pending administrative cases has decreased following a rise in the number of resolved cases in 2015. **Italy** and **Spain** have managed to reduce their stock of pending cases, however, the figures in respect of the two States remain well above the average.

A better understanding of the data on pending cases for the purpose of guaranteeing the “reasonable time standard” can be obtained from the analysis of the cases that are older than 2 years at each instance.<sup>96</sup> The 2018 evaluation exercise (2016 data) collects such data, for the first time.

**Figure 5.28. The participation of first instance administrative pending more than 2 years in all pending cases on 31 December in 2016 (Q91)**

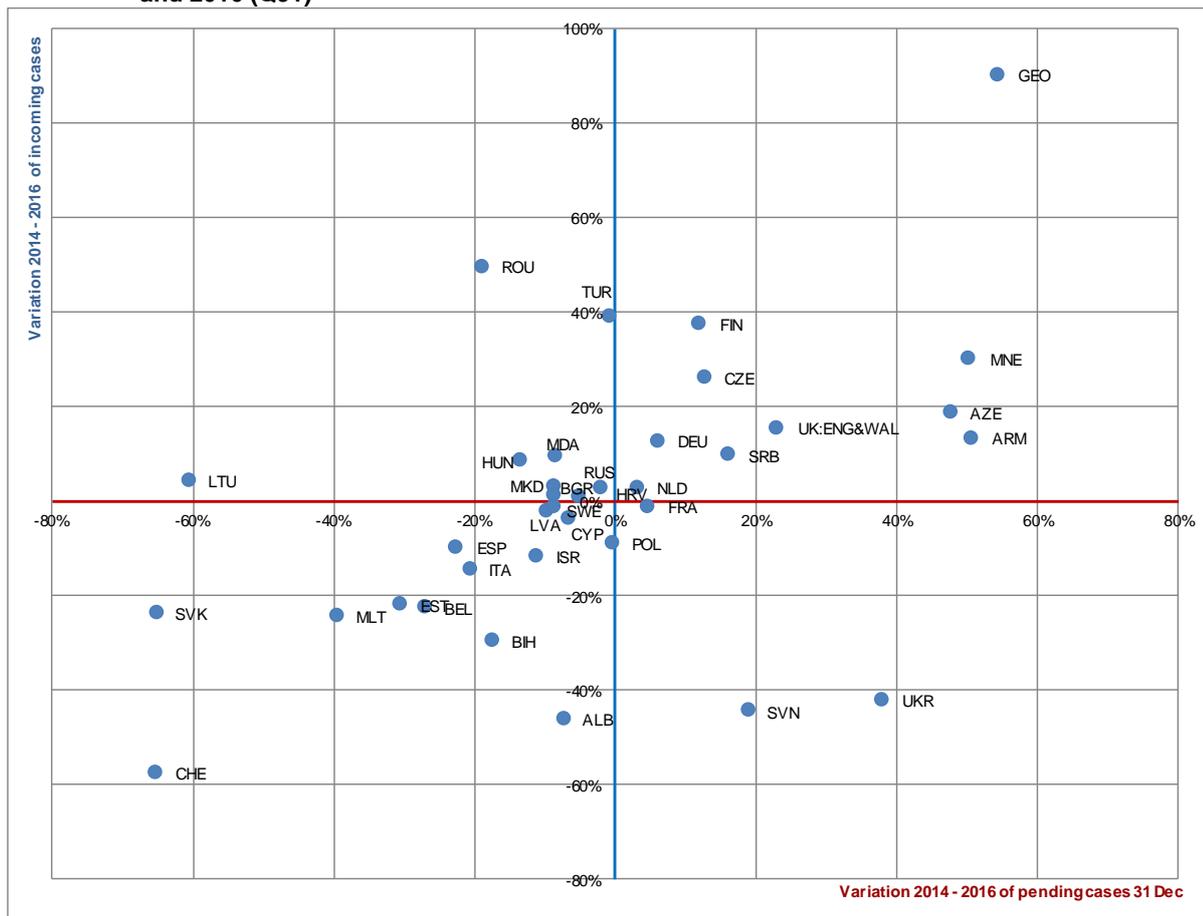


<sup>96</sup> See “Length of court proceedings in the member States of the Council of Europe based on the case law of the European Court of Human Rights”, Françoise Calvez and Nicolas Régis, 2012.

Figure 5.28 provides additional insight into the age of the pending cases. It is important to point out that 16 countries were in position to provide data on cases older than 2 years.

An increase or decrease in the volume of pending cases may be related to the level of court efficiency but can also be influenced by other factors, including the number of incoming cases. Figure 5.29 below illustrates the possible relationship between the evolution in the stock of pending cases over time and the volume of incoming administrative cases in specific States and entities. It is worth noting that variations in the amount of pending cases may also be caused by other circumstances, such as changes in the social and economic context and changes in administrative law or other legal reforms affecting the organisation of court caseload.

**Figure 5.29 Variation of administrative cases of first instance pending cases vs. incoming cases between 2014 and 2016 (Q91)**



The figure displays the positive performance of a group of States and entities that were able to reduce the volume of pending cases despite an increase in the number of incoming cases: **Bulgaria, Croatia, Hungary, Lithuania, Republic of Moldova, Romania, Russian Federation, “the Former Yugoslav Republic of Macedonia” and Turkey**. In respect of **Croatia**, during 2014 and 2015, administrative courts accumulated many unresolved cases and as a result a number of judges were transferred to administrative courts from other legal branches, which resulted in better results in 2016 with more resolved cases. The significance of these figures should also take into consideration the Disposition Time indicator, especially when it is particularly high (as in “**the Former Yugoslav Republic of Macedonia**”: 370 days) or low (as in the **Russian Federation**: 6 days).

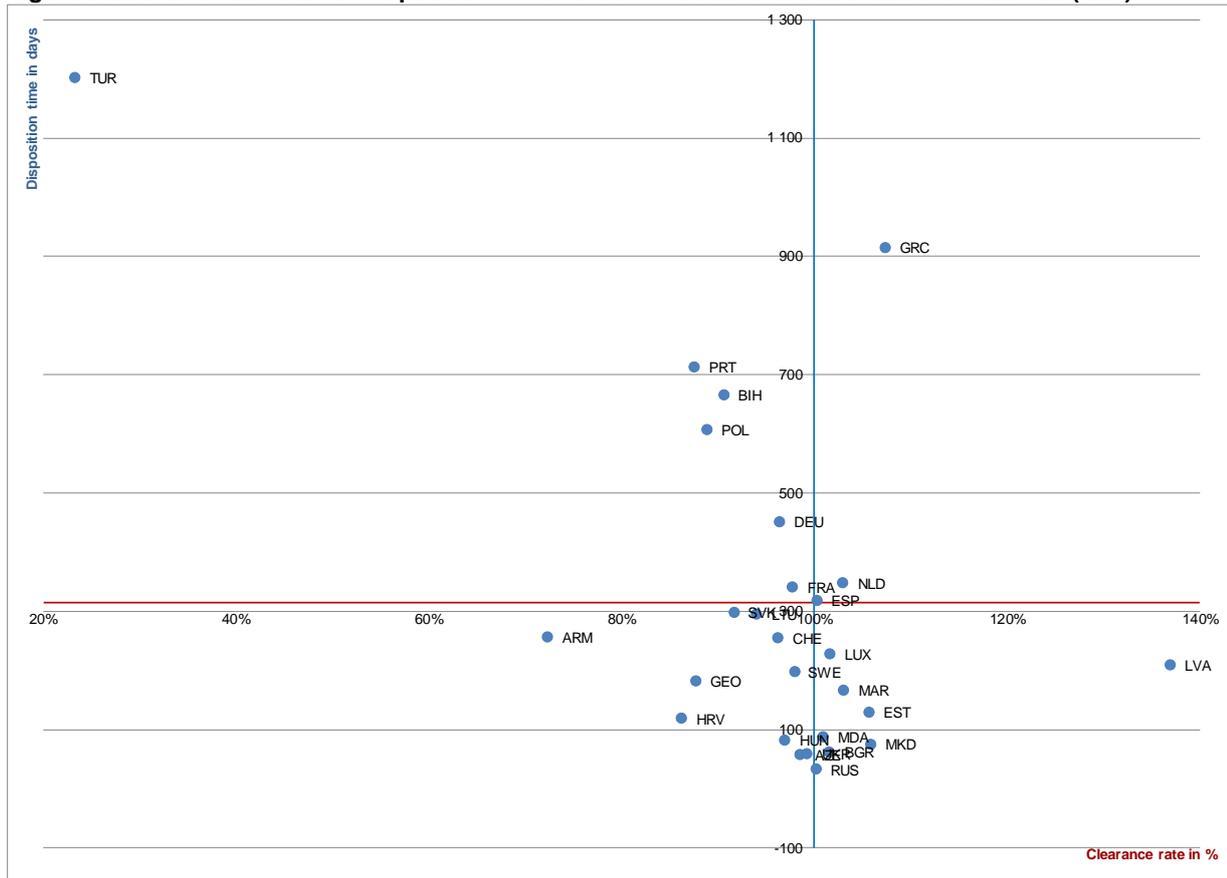
By contrast, in some States and entities the number of pending cases has either increased despite a decrease in incoming cases (**France, Slovenia and Ukraine**), or increased considerably more than the increase in the number of incoming cases (**Armenia, Azerbaijan, Montenegro, Serbia and UK-England and Wales**).

### 5.3.2 Administrative cases - Second Instance

#### Court caseload and performance indicators in 2016

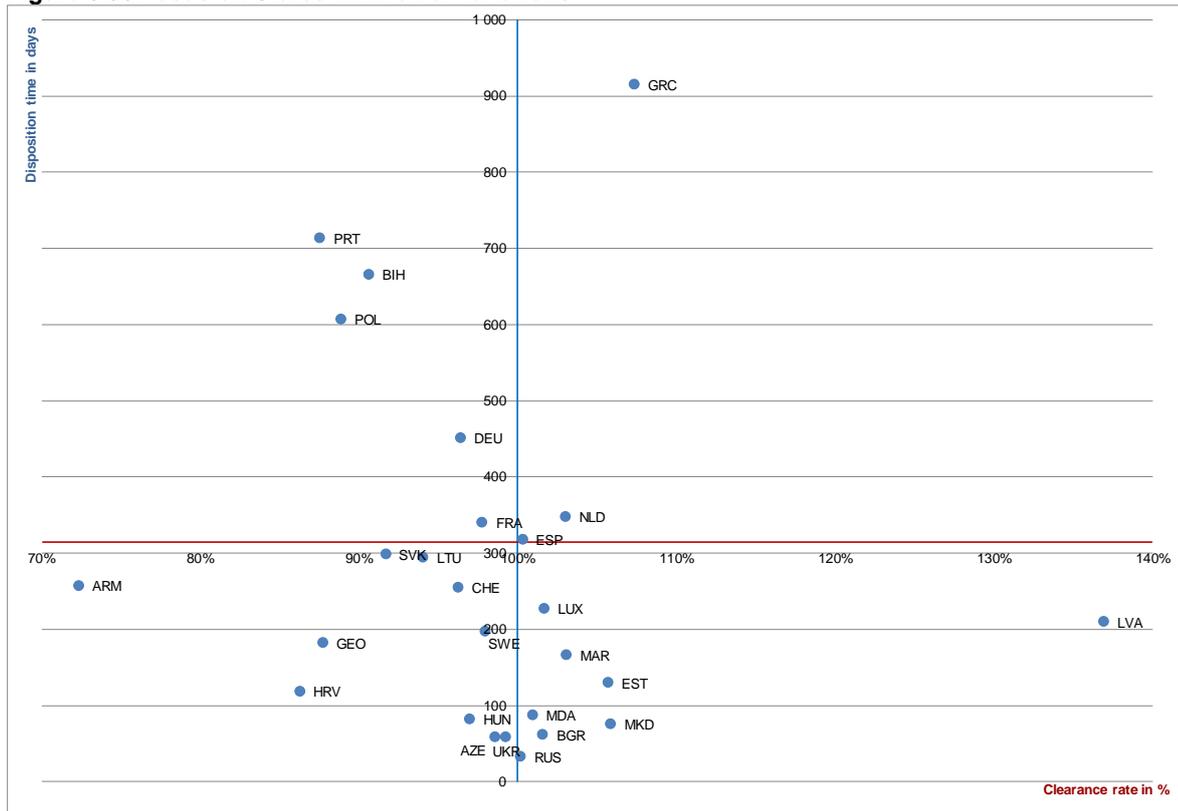
At second instance, in 2016, European courts handling administrative cases had difficulties in coping with the inflow of cases. The 2016 average Clearance Rate was 95% and the median figure 98 %, which suggests that the average figure was negatively influenced by the performance of a number of States and entities with a particularly low Clearance Rate. Data from some States and entities is not available since there is no second instance in administrative disputes (e.g. **Serbia**). The average Disposition Time for this category of cases was 315 days (median 241 days) which is lower than the respective figure at first instance (357 days).

**Figure 5.30 Clearance Rate vs. Disposition Time for administrative cases of second instance (Q97)**



For better visibility the second chart focuses on the States with lower variations.

**Figure 5.30 Focus on States with lower variations**



The lower right quadrant of figure 5.30 shows States and entities that have a Clearance Rate at, or above, 100 % and a Disposition Time below the average of 315 days. Accordingly, 8 States and entities display a good level of court performance as regards administrative cases at second instance: **Bulgaria, Estonia, Latvia, Luxembourg, Republic of Moldova, Russian Federation, “the former Yugoslav Republic of Macedonia” and Morocco.**

Past the 315-day average, in 2 other States, **Netherlands** and **Spain**, the situation seems satisfactory as the Disposition Time remains below 365 days and is balanced by a positive Clearance Rate. For 5 other States the situation is also manageable: **Azerbaijan, Hungary, Sweden, Switzerland** and **Ukraine**. In these countries, the Clearance Rate is slightly lower than 100 % but the Disposition Time is below the average.

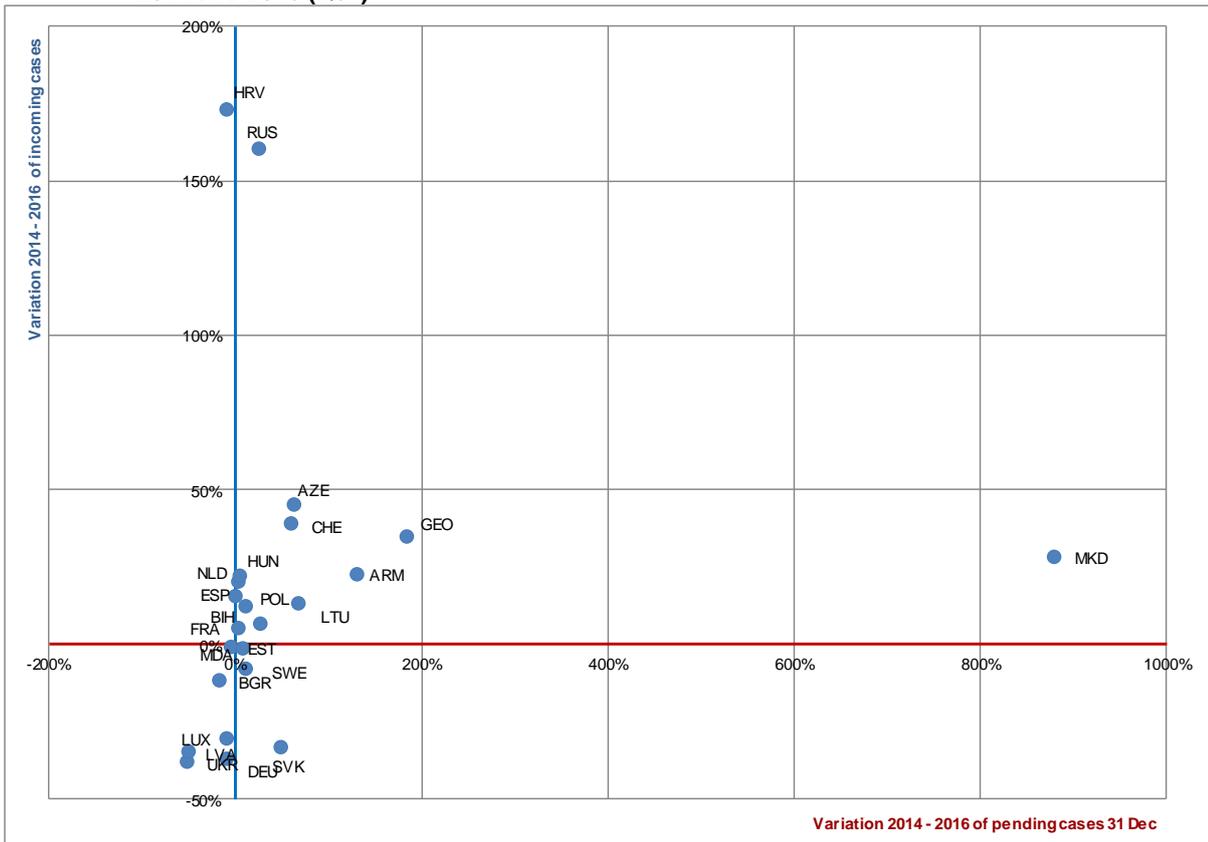
The lowest Disposition Time figures arise in respect of the **Russian Federation** (33 days) and **Azerbaijan** and **Ukraine** (both 59 days).

The situation of **France** and **Germany**, where the Clearance Rate is just below 100 %, but the Disposition Time is respectively 341 and 452 days, should be closely monitored.

The situation is much more critical in those States and entities that have a particularly low Clearance Rate (left quadrants) or a very high Disposition Time (upper quadrants), or both, as this shows that courts are struggling to cope with the volume of incoming cases. Of particular concern are the situations in **Armenia** (Clearance Rate: 72 %), **Bosnia and Herzegovina** (Disposition Time: 666 days; Clearance Rate: 91 %), **Greece** (Disposition Time: 915 days), **Poland** (Disposition Time: 607 days; Clearance Rate 89 %), **Portugal** (Disposition Time: 714 days; Clearance Rate: 88 %). However, the situation in **Turkey** (Disposition Time: 1 203 days; Clearance Rate: 23 %) has to be put into perspective as it has to be taken into account that courts of appeal (courts of second instance) only started functioning in civil, criminal and administrative courts from 20 July 2016.

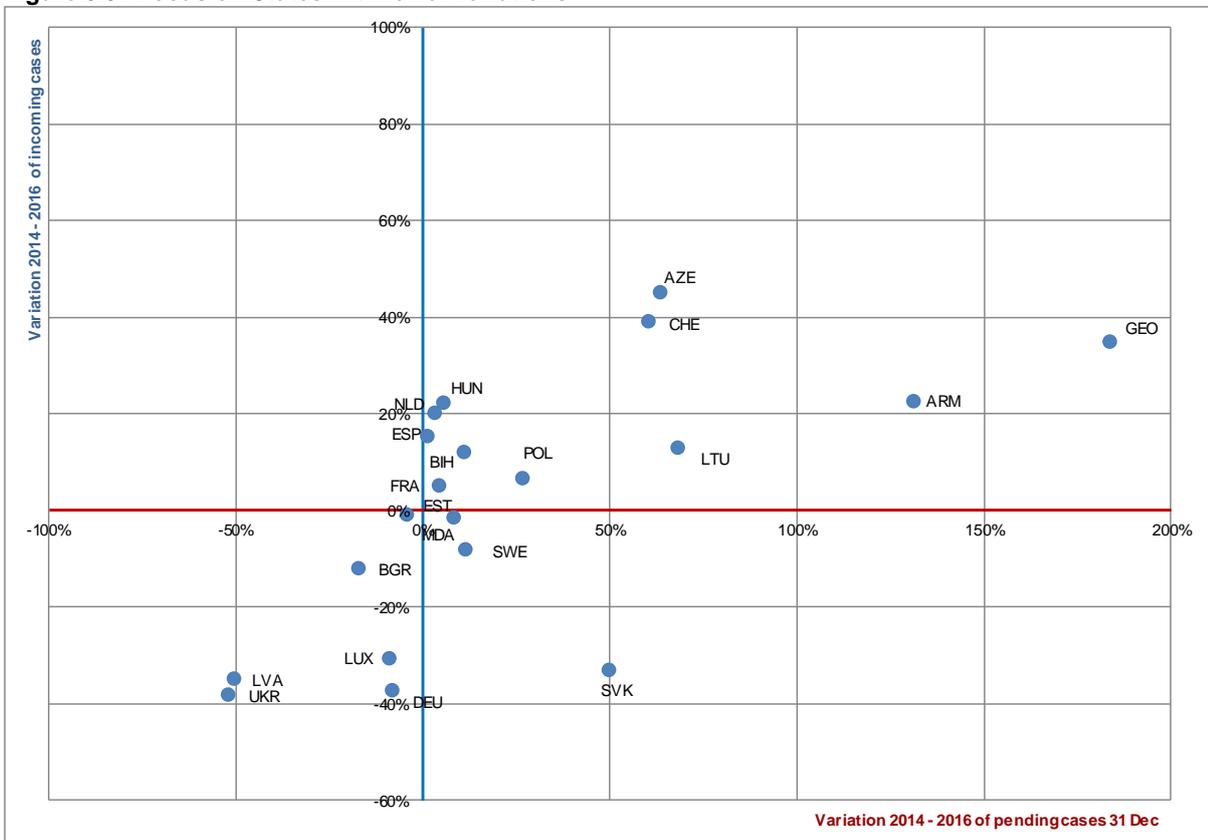
In the case of **Poland**, it should be noted that the number of second instance administrative cases coincides with the number of third instance administrative cases, as the Supreme Administrative Court is also the court of second instance and the Statistics Division is unable to divide its case statistics.

**Figure 5.31 Variation of administrative cases of second instance pending cases vs. incoming cases between 2014 and 2016 (Q97)**



For better visibility the second chart focuses on the States with lower variations.

**Figure 5.31 Focus on States with lower variations**



Looking at the variation of pending administrative cases against incoming cases at second instance between 2014 and 2016, figure 5.31 highlights the positive performance of only one State, **Croatia**, which was able to reduce the volume of pending cases despite an increase in the number of incoming cases. The performance is particularly exceptional considering that Croatia managed to reduce the backlog despite the strong increase in incoming cases (by 173 %). This replicates the first instance trend of a reduction of the backlog, in spite of an increase in incoming cases. It should, however, be noted that the Clearance Rate at second instance is very low (86 %), which suggests that the reduction in the volume of pending cases is related to factors other than court efficiency.

In another group of States, the number of pending cases has either increased despite a decrease in incoming cases (**Republic of Moldova, Slovakia and Sweden**), or increased considerably more than the increase in the number of incoming cases (**Armenia, Azerbaijan, Georgia, Lithuania, Poland, Switzerland and “the former Yugoslav Republic of Macedonia”**). Of these, the disparities in the two sets of figures are particularly significant in **“the former Yugoslav Republic of Macedonia”** (880 %) as a result of a significant increase of the lawyers’ fees as well as change of the procedural law where a case must be resolved at appellate court and not returned to a basic court in case it comes for a second time. To a lesser extent but still significant is the variation in **Georgia** (184 %) and **Armenia** (131 %). In the case of **Sweden**, the increase in the volume of pending cases should be considered in the light of the fact that 18,4 % of the pending cases reported in 2016 are older than 2 years. In the same grouping of countries, **Armenia** and **Azerbaijan** displayed this struggle with the volume of pending cases also at first instance.

Evolution of the performance indicators

Table 5.32 Clearance Rate of second instance administrative cases between 2010 and 2016 (Q97)

States / Entities	Clearance Rate of 2nd instance administrative cases				
	2010	2012	2014	2016	Evolution
Albania	NA	NA	NA	NAP	
Andorra	106%	130%	88%	NA	
Armenia	NA	94%	99%	72%	
Austria	NA	NAP	NA	NAP	
Azerbaijan	NA	78%	100%	99%	
Belgium	NA	NA	NAP	NAP	
Bosnia and Herzegovina	101%	65%	82%	91%	
Bulgaria	94%	100%	104%	102%	
Croatia	NA	450%	454%	86%	
Cyprus	75%	40%	61%	NAP	
Czech Republic	116%	98%	NAP	NAP	
Denmark	NAP	NAP	NAP	NAP	
Estonia	93%	93%	100%	106%	
Finland	NA	NAP	NAP	NAP	
France	101%	102%	100%	98%	
Georgia	104%	101%	93%	88%	
Germany	98%	97%	93%	96%	
Greece	66%	69%	NA	107%	
Hungary	97%	108%	99%	97%	
Iceland	NAP	NAP	NA	NAP	
Ireland	NAP	NAP	NAP	NAP	
Italy	NA	NAP	NAP	NAP	
Latvia	96%	90%	101%	137%	
Lithuania	64%	124%	91%	94%	
Luxembourg	96%	73%	101%	102%	
Malta	NA	NA	NAP	NA	
Republic of Moldova	104%	95%	92%	101%	
Monaco	NA	NA	NAP	NA	
Montenegro	NAP	87%	NAP	NA	
Netherlands	104%	99%	101%	103%	
Norway	NAP	NAP	NAP	NAP	
Poland	75%	82%	84%	89%	
Portugal	NA	NA	NA	88%	
Romania	NA	NAP	NAP	NAP	
Russian Federation	NA	88%	77%	100%	
Serbia	NA	NA	NAP	NAP	
Slovakia	109%	93%	111%	92%	
Slovenia	NAP	NAP	NAP	NAP	
Spain	119%	112%	110%	100%	
Sweden	111%	110%	90%	98%	
Switzerland	102%	101%	101%	96%	
The FYROMacedonia	NA	98%	100%	106%	
Turkey	NAP	NAP	NAP	23%	
Ukraine	186%	94%	242%	99%	
UK-England and Wales	86%	92%	NA	97%	
UK-Scotland	81%	NA	NA	NA	
Israel		NAP	NAP	NAP	
Morocco				103%	
<b>Average</b>	99%	106%	115%	95%	
<b>Median</b>	100%	95%	100%	98%	
<b>Minimum</b>	64%	40%	61%	23%	
<b>Maximum</b>	186%	450%	454%	137%	

Data collected for the last four evaluation cycles show a steady improvement of the Clearance Rate of administrative cases between 2010 and 2014, followed by a drop below the efficiency threshold in the last cycle. This reflects the 2010-2014 trend shown at first instance for this category of cases, but differently from the first instance, the second instance figure in 2016 is negative (95 %).

Of the 8 States and entities having experienced a continuous improvement in their Clearance Rate with regard to administrative cases at second instance from 2010 to 2014, 5 States and entities continued to see an improvement also in 2016: **Estonia, Greece, Poland, “the former Yugoslav Republic of Macedonia”** and **UK-England and Wales**. Instead, the Clearance Rate fell in 2016 in **Armenia** (the Clearance Rate dropped from 99 % to 72 %), **Bulgaria** (it remained within positive values, despite the decrease) and **Croatia** (the Clearance Rate dropped from 454 % to 86 %).

**Georgia, Spain** and **Switzerland** show a constant reduction of the Clearance Rate, with the indicator dropping below the efficiency level (below 100 %) in the case of **Georgia** and **Switzerland**.

The situation in 3 other States deserves mentioning. The Clearance Rate in **Bosnia and Herzegovina** dropped from 101 % in 2010 to 65 % in 2012, but has continuously improved since then, albeit remaining below the efficiency threshold in 2016 (91 %). The negative Clearance Rate in this country has important consequences for the efficiency of the judicial system as 23,8 % of the pending cases are older than 2 years (see also the high DT, 666 days). In the 2018 evaluation cycle (2016 data) **France** showed for the first time a negative Clearance Rate. **Ukraine**, instead, has shown significant variations in the Clearance Rate across the four cycles, with the indicator dropping from 242 % in 2014 to 99 % in 2016.

**Table 5.33 Disposition Time of second instance administrative cases between 2010 and 2016 (Q97)**

States / Entities	Disposition Time of 2nd instance administrative cases				
	2010	2012	2014	2016	Evolution
Albania	NA	NA	NA	NAP	
Andorra	156	63	122	NA	
Armenia	NA	79	100	257	
Austria	NA	NAP	NA	NAP	
Azerbaijan	NA	135	51	59	
Belgium	NA	NA	NAP	NAP	
Bosnia and Herzegovina	402	656	740	666	
Bulgaria	79	73	65	62	
Croatia	NA	379	68	119	
Cyprus	1 362	2 489	2 890	NAP	
Czech Republic	319	397	NAP	NAP	
Denmark	NAP	NAP	NAP	NAP	
Estonia	140	199	143	130	
Finland	NA	NAP	NAP	NAP	
France	379	346	334	341	
Georgia	43	34	82	183	
Germany	437	431	320	452	
Greece	1 048	1 130	NA	915	
Hungary	128	60	94	83	
Iceland	NAP	NAP	NA	NAP	
Ireland	NAP	NAP	NAP	NAP	
Italy	NA	NAP	NAP	NAP	
Latvia	233	364	371	210	
Lithuania	562	108	204	295	
Luxembourg	NA	290	175	228	
Malta	NA	NA	NAP	NA	
Republic of Moldova	60	63	88	88	
Monaco	NA	NA	NAP	NA	
Montenegro	NAP	210	NAP	NA	
Netherlands	423	440	411	348	
Norway	NAP	NAP	NAP	NAP	
Poland	445	475	537	607	
Portugal	NA	NA	NA	714	
Romania	NA	NAP	NAP	NAP	
Russian Federation	NA	77	89	33	
Serbia	NA	NA	NAP	NAP	
Slovakia	79	135	110	299	
Slovenia	NAP	NAP	NAP	NAP	
Spain	346	357	332	319	
Sweden	134	119	178	198	
Switzerland	233	232	210	255	
The FYROMacedonia	NA	9	10	76	
Turkey	NAP	NAP	NAP	1 203	
Ukraine	95	151	31	59	
UK-England and Wales	NA	NA	NA	NA	
UK-Scotland	NA	NA	NA	NA	
Israel		NAP	NAP	NAP	
Morocco				167	
<b>Average</b>	338	339	310	315	
<b>Median</b>	233	204	143	241	
<b>Minimum</b>	43	9	10	33	
<b>Maximum</b>	1362	2489	2890	1203	

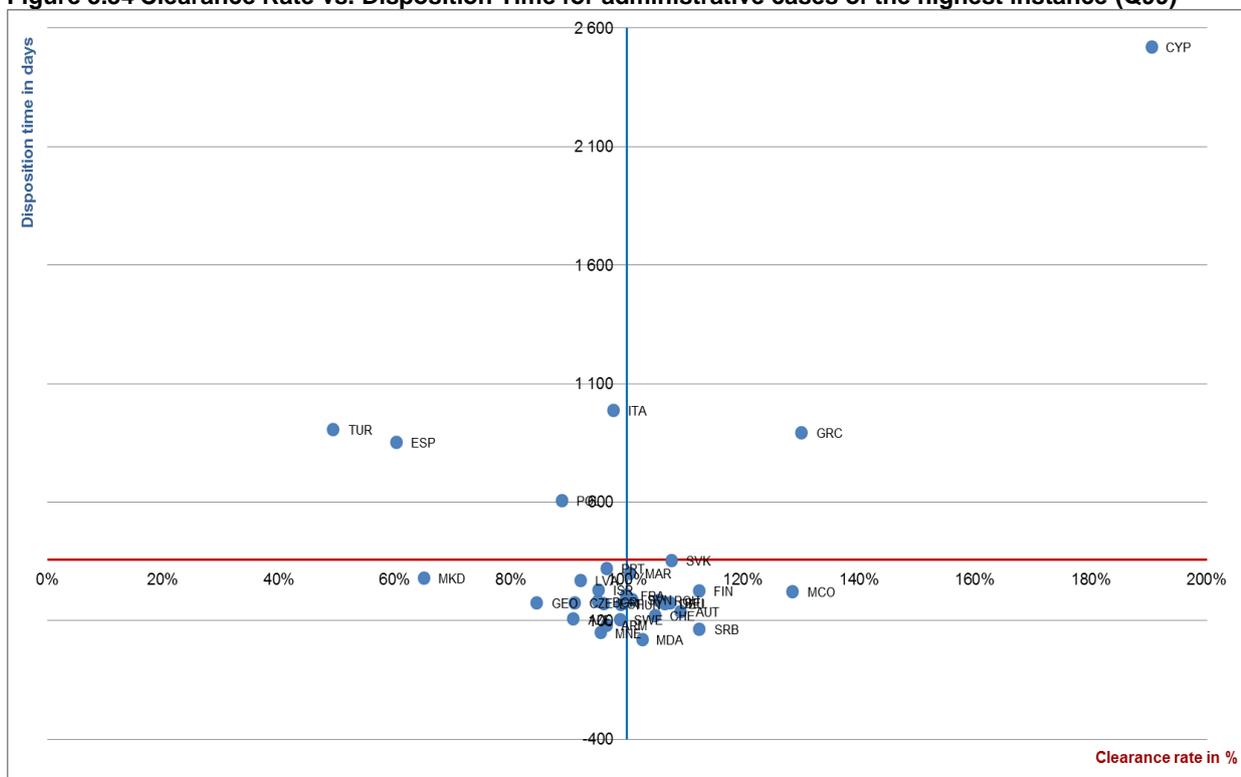
The average Disposition Time of second instance administrative cases rose slightly between 2010 and 2012, decreased in 2014 and rose again slightly in 2016. Of the 4 States that experienced a steady improvement in Disposition Time between 2010 and 2014, only **Bulgaria** has continued with these positive developments. In contrast, **France** and **Switzerland** saw a minor increase in Disposition Time between 2014 and 2016, with **Germany** experiencing a more significant increase of 132 days.

4 States saw a continuous increase of the calculated Disposition Time over the evaluation cycles. The situation in **Armenia**, the **Republic of Moldova** and “**the Former Yugoslav Republic of Macedonia**” can be considered acceptable because the Disposition Time remains below the average of the countries. The Disposition Time in **Poland** (607 days) has now risen to almost twice the average for this category of cases. The situation in 4 States should be mentioned as the Disposition Time more than doubled between 2014 and 2016, as well as in the long period: **Armenia**, **Georgia**, **Slovakia** and “**the former Yugoslav Republic of Macedonia**”. The increases in **Croatia**, **Germany**, **Lithuania** and **Luxembourg** are also significant; only **Germany** has exceeded the average.

### 5.3.3 Administrative cases – Supreme Court (highest Instance)

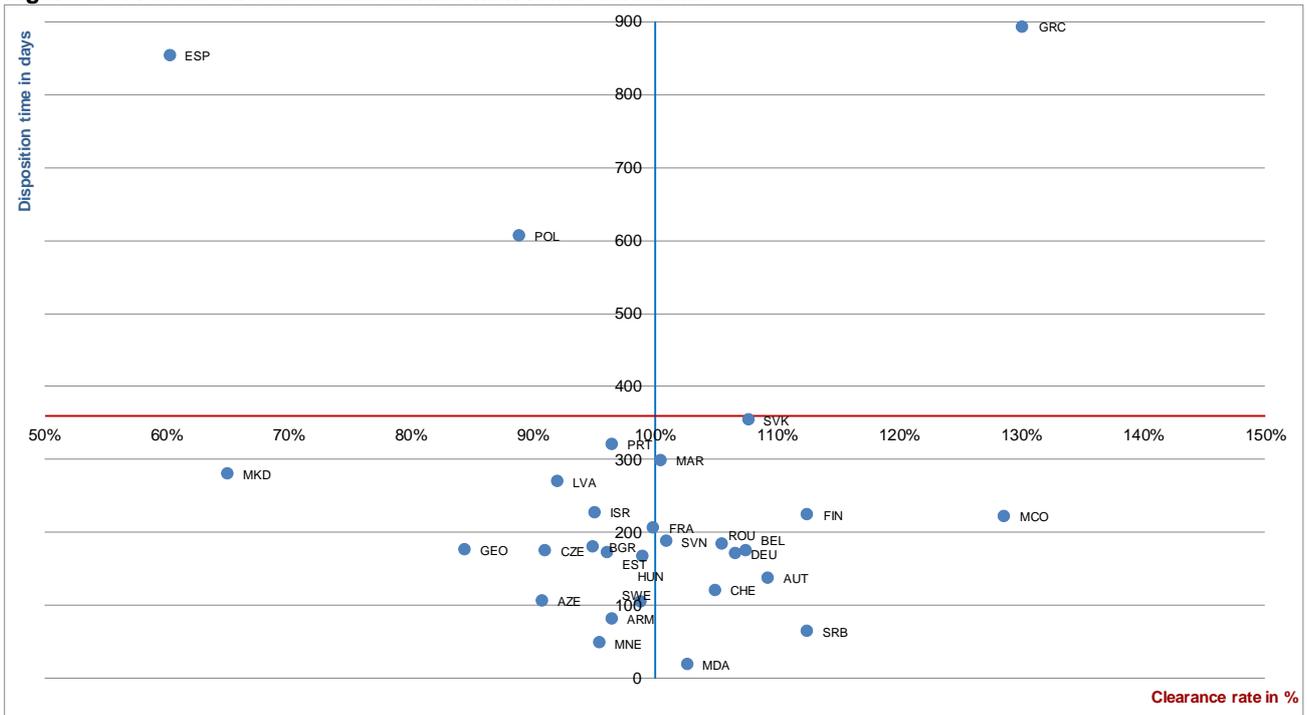
*Court caseload and performance indicators in 2016*

**Figure 5.34 Clearance Rate vs. Disposition Time for administrative cases of the highest instance (Q99)**



For better visibility the second chart focuses on the States with lower variations.

Figure 5.34 Focus on States and entities with lower variations



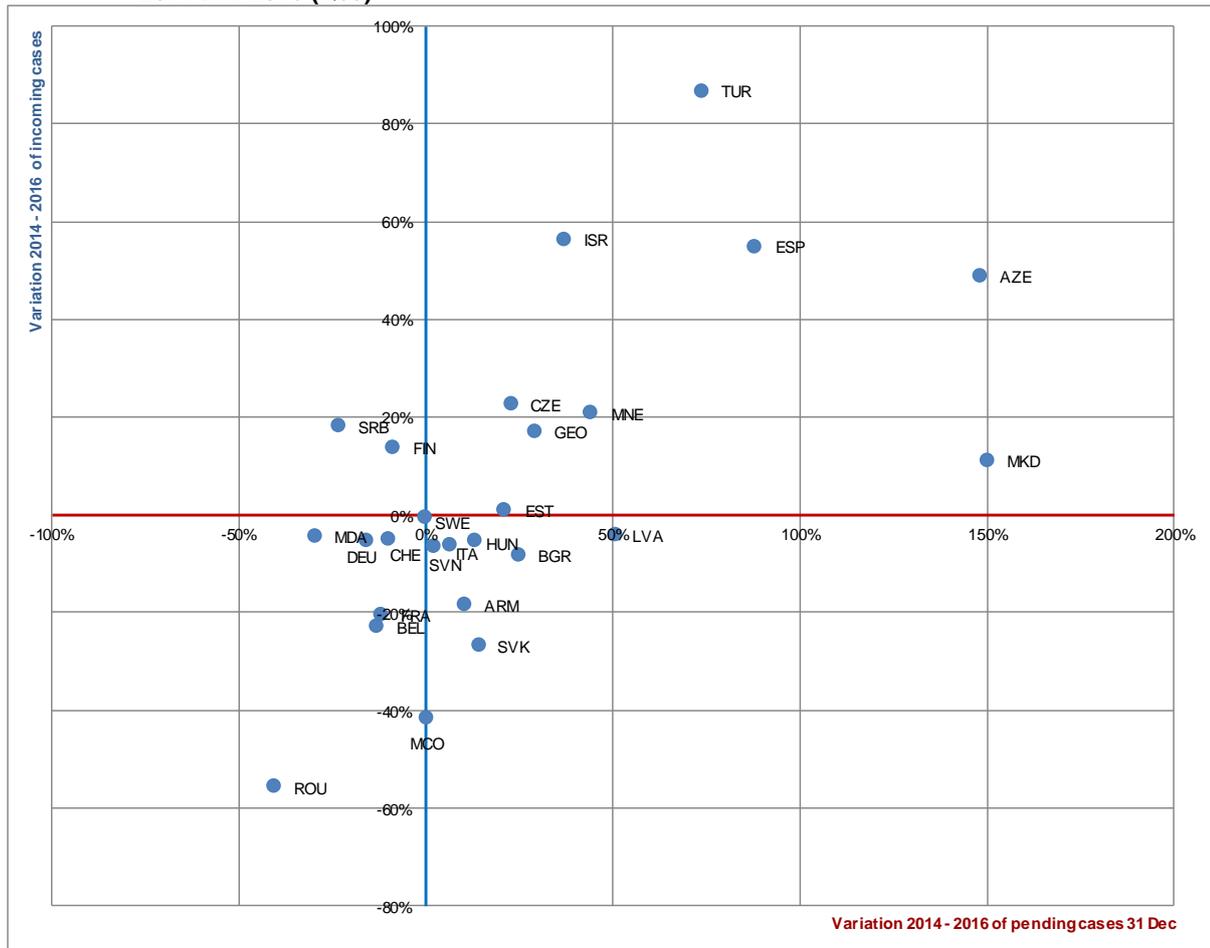
The lower right quadrant of figure 5.34 displays States and entities that have a Clearance Rate at or above 100 % and a Disposition Time below the average of 359 days. 13 States show a satisfactory level of court productivity as regards administrative cases at the level of the highest instance: **Austria, Belgium, Finland, France, Germany, Republic of Moldova, Monaco, Romania, Serbia, Slovenia, Slovakia, Switzerland** and **Morocco**. The average Disposition Time of 359 days at third instance is higher than the figure at first (357 days) and second instance (315 days). In contrast, the average Clearance Rate of 101 % at the highest instance is an improvement on 95 % at second instance, but slightly lower than the rate at first instance (103 %).

In 8 other States where the Clearance Rate is slightly lower than 100 % but the Disposition Time remains below the average of 359 days, the situation is still manageable: **Armenia, Bulgaria, Estonia, Hungary, Montenegro, Portugal, Sweden** and **Israel**.

The lowest Disposition Time figures arise in respect of the **Republic of Moldova** (20 days) and **Montenegro** (49 days).

A more serious monitoring is required in the case of **Italy**, where the Clearance Rate is just below 100 %, but the Disposition Time (986 days) is more than double the average. The situation is even more problematic in those States that have a particularly low Clearance Rate (left quadrants) or a very high Disposition Time (upper quadrants), or both, such as **Cyprus** (Disposition Time: 2 522 days), **“the Former Yugoslav Republic of Macedonia”** (Clearance Rate: 65 %), **Poland** (Clearance Rate: 89 %; Disposition Time: 607 days), **Spain** (Clearance Rate: 60 % ; Disposition Time: 854 days) and **Turkey** (Clearance Rate: 49 % ; Disposition Time: 907 days).

**Figure 5.35 Variation in administrative cases of the highest instance pending cases vs. incoming cases between 2014 and 2016 (Q99)**



When looking at the variation in incoming administrative cases at the highest instance between 2014 and 2016 and the variation in pending cases for the same period, figure 5.35 highlights the positive performance of **Finland** and **Serbia** that were able to reduce the number of pending cases despite an increase in the number of incoming cases. **Serbia** brought out a particularly strong decrease of 23 % of pending cases, despite the 18 % increase in the number of incoming cases.

Closer attention should be placed on the situation of those States where the number of pending cases has either increased despite a decrease in incoming cases (**Armenia, Bulgaria, Hungary, Italy, Latvia, Slovakia** and **Slovenia**) or increased considerably more than the increase in the number of incoming cases (**Azerbaijan, Estonia, Georgia, Montenegro, Spain** and “**the former Yugoslav Republic of Macedonia**”).

Of these, the disparities in the two sets of figures are particularly high in **Azerbaijan** and in “**the former Yugoslav Republic of Macedonia**”. **Azerbaijan, Georgia** and “**the former Yugoslav Republic of Macedonia**”, similarly struggled with reducing the volume of pending cases at second instance. In **Bulgaria** 6,9 % of the pending cases in 2016 are older than 2 years.

Evolution of the performance indicators

Table 5.36 Clearance Rate of highest instance administrative cases between 2010 and 2016 (Q99)

States / Entities	Clearance Rate of the highest instance for administrative cases				
	2010	2012	2014	2016	Evolution
Albania	NAP	90%	NA	NA	
Andorra	NAP	NAP		NAP	
Armenia	NA	102%	95%	96%	
Austria	NA	NA	NA	109%	
Azerbaijan	NA	80%	104%	91%	
Belgium	NA	NA	113%	107%	
Bosnia and Herzegovina	NAP	NAP	NAP	NAP	
Bulgaria	98%	104%	95%	95%	
Croatia	NA	NA	NA	NA	
Cyprus	NA	NAP	NAP	190%	
Czech Republic	103%	90%	102%	91%	
Denmark	NA	NA	NAP	NAP	
Estonia	92%	84%	110%	96%	
Finland	92%	100%	102%	112%	
France	106%	101%	101%	100%	
Georgia	87%	96%	91%	84%	
Germany	104%	100%	100%	107%	
Greece	NA	NA	NA	130%	
Hungary	95%	89%	108%	99%	
Iceland	NAP	NA	NA	NA	
Ireland	NA	NAP	NAP	NAP	
Italy	144%	124%	96%	98%	
Latvia	95%	NA	84%	92%	
Lithuania	NA	NA	NA	NA	
Luxembourg	NAP	NAP	NAP	NAP	
Malta	NA	NAP	NAP	NAP	
Republic of Moldova	NA	96%	101%	103%	
Monaco	NA	NA	96%	129%	
Montenegro	99%	96%	96%	95%	
Netherlands	96%	NA	98%	NA	
Norway	NAP	NAP	NAP	NAP	
Poland	75%	NA	NA	89%	
Portugal	NA	NA	NA	96%	
Romania	83%	69%	124%	105%	
Russian Federation	NA	96%	NA	NAP	
Serbia	138%	104%	89%	112%	
Slovakia	111%	88%	79%	108%	
Slovenia	145%	107%	79%	101%	
Spain	102%	168%	93%	60%	
Sweden	108%	94%	112%	99%	
Switzerland	102%	97%	98%	105%	
The FYROMacedonia	59%	144%	78%	65%	
Turkey	80%	98%	100%	49%	
Ukraine	95%	125%	143%	NA	
UK-England and Wales	NA	NA	NA	NA	
UK-Scotland	NA	NAP	NAP	NAP	
Israel		107%	96%	95%	
Morocco				100%	
<b>Average</b>	100%	102%	100%	101%	
<b>Median</b>	98%	97%	98%	99%	
<b>Minimum</b>	59%	69%	78%	49%	
<b>Maximum</b>	145%	168%	143%	190%	

The average Clearance Rate of administrative cases at the highest instance shows an improvement between 2010 and 2012, a slight decrease in 2014 and a return to positive values again in 2016.

Of the 3 States that experienced a steady improvement in their Clearance Rate with regard to administrative cases at the highest instance from 2010 to 2014, only **Turkey** reversed the positive trend (from 100 % in 2014, to 49 % in 2016). This is a significant evolution considering that 8,7 % of the pending cases in this country in 2016 were older than 2 years. 2 other countries are concerned even if the data have not been submitted for **Ukraine** in 2016 and for the **Republic of Moldova** in 2010. **Finland** increased the Clearance Rate of administrative cases at the highest instance in all four evaluation cycles bringing it from 92 % in 2010 to 112 % in 2016.

In **France** the Clearance rate has slowly decreased since 2010, from 106 % to 100 % in 2016. In **Montenegro** the decrease has taken place within a range of negative values and in **Israel** the Clearance Rate dropped from 107 % in 2012 to 95 % in 2016, which may have an impact on the evolution of the volume of pending cases. In **Israel**, 14,3 % of the pending administrative cases at the highest instance in 2016 are older than 2 years.

**Table 5.37 Disposition Time of the highest instance administrative cases between 2010 and 2016 (Q99)**

States / Entities	Disposition Time of the highest instance for administrative cases				
	2010	2012	2014	2016	Evolution
Albania	NAP	284	NA	NA	.
Andorra	NAP	NAP	..	NAP	
Armenia	NA	23	62	82	
Austria	NA	NA	NA	138	
Azerbaijan	NA	119	56	107	
Belgium	NA	NA	148	176	
Bosnia and Herzegovina	NAP	NAP	NAP	NAP	
Bulgaria	126	107	133	181	
Croatia	NA	NA	NA	NA	
Cyprus	NA	NAP	NAP	2 522	.
Czech Republic	107	147	156	176	
Denmark	NA	NA	NAP	NAP	
Estonia	115	154	126	173	
Finland	362	368	312	225	
France	267	271	185	207	
Georgia	135	151	149	176	
Germany	191	197	206	172	
Greece	NA	NA	NA	893	
Hungary	197	280	129	168	
Iceland	NAP	NA	NA	NA	
Ireland	NA	NAP	NAP	NAP	
Italy	640	778	886	986	
Latvia	121	NA	189	270	
Lithuania	NA	NA	NA	NA	
Luxembourg	NAP	NAP	NAP	NAP	
Malta	NA	NAP	NAP	NAP	
Republic of Moldova	NA	77	28	20	
Monaco	NA	NA	175	223	
Montenegro	4	27	41	49	
Netherlands	NA	NA	NA	NA	
Norway	NAP	NAP	NAP	NAP	
Poland	445	NA	NA	607	.
Portugal	NA	NA	NA	322	
Romania	137	411	117	185	
Russian Federation	NA	25	NA	NAP	.
Serbia	153	77	127	65	
Slovakia	123	202	311	354	
Slovenia	112	83	220	188	
Spain	566	298	458	854	
Sweden	107	149	92	105	
Switzerland	118	127	137	122	
The FYROMacedonia	287	42	104	281	
Turkey	682	543	481	907	
Ukraine	70	240	254	187	
UK-England and Wales	NA	NA	NA	NA	
UK-Scotland	NA	NAP	NAP	NAP	
Israel		247	258	228	
Morocco				299	
Average	230	207	203	359	
Median	136	151	149	185	
Minimum	4	23	28	20	
Maximum	682	778	886	2522	

The average Disposition Time of third instance administrative cases decreased steadily between 2010 and 2014, but in 2016, saw a sharp increase of 156 days on the 2014 figure.

Only the **Republic of Moldova** shows a continuous improvement of the Disposition Time. **Turkey**, experienced a steady improvement in Disposition Time between 2010 and 2014, but in 2016 the indicator increased significantly (from 481 days in 2014, to 907 days in 2016, which is more than double the average in this category of cases).

6 States saw a continuous worsening of the calculated Disposition Time over the four evaluation cycles. The situation in **Armenia, Czech Republic, Latvia, Montenegro** and **Slovakia** (Disposition Time : 354 days) can be considered acceptable because the Disposition Time remains below the average. **Italy** also followed this negative trend its Disposition Time (986 days) is more than twice the average.

The situation should be closely monitored also in **Azerbaijan** and **Spain**, where the Disposition Time increased by about 50 % in 2014 and 2016.

In 2016, 4 States inverted the negative trend shown between 2010 and 2014: **Germany, Switzerland, Ukraine** and **Israel**.

#### **5.3.4 Assessment of specific categories: cases relating to asylum seekers and the right to entry and stay for aliens**

For the 2016-2018 evaluation cycle, in view of the importance of migratory waves in Europe, the CEPEJ wanted to measure the specific impact on judicial systems of the disputes concerning asylum seekers and the rights of aliens (entry and residence). Therefore, the Evaluation Scheme included two new categories of cases precisely defined in the explanatory note, inviting States to provide explanations making it possible to understand the main lines of the applicable legislation and the impact of these disputes on the judicial activity in each State and entity at the level of the courts of first instance:

- Cases concerning asylum seekers (refugee status under the 1951 Geneva Convention). To measure the impact on judicial systems, only cases for which a judicial appeal has been lodged or a judgment rendered following the decision whether or not to grant refugee status to a person are counted. Decisions by a first-level administrative body that may directly grant this status are not included.
- Cases relating to the right of entry and residence of aliens. Here again, only cases for which a judicial appeal has been lodged or a judgment rendered following the decision to grant or refuse the right of entry or residence of a non-national are counted.

**Table 5.38 Absolute number, Clearance Rate and Disposition Time for cases related to asylum seekers and right to entry and stay for aliens in 2016 (Q101)**

States / Entities	Absolute number of incoming cases		Clearance Rate		Disposition Time	
	Cases relating to asylum seekers	Cases relating to the right of entry and stay for aliens	Cases relating to asylum seekers	Cases relating to the right of entry and stay for aliens	Cases relating to asylum seekers	Cases relating to the right of entry and stay for aliens
Albania	NA	NA	NA	NA	NA	NA
Andorra	NA	NA	NA	NA	NA	NA
Armenia	NA	NA	NA	NA	NA	NA
Austria	1 581	21 383	99%	66%	63	387
Azerbaijan	NAP	7	NAP	143%	NAP	37
Belgium	6 626	9 292	90%	148%	174	502
Bosnia and Herzegovina	8	57	75%	75%	122	119
Bulgaria	NA	NA	NA	NA	NA	NA
Croatia	NAP	NAP	NAP	NAP	NAP	NAP
Cyprus	NA	NA	NA	NA	NA	NA
Czech Republic	NA	NA	NA	NA	NA	NA
Denmark	NA	NA	NA	NA	NA	NA
Estonia	316	88	100%	84%	16	168
Finland	10 418	2 223	34%	120%	769	205
France	39 986	28 511	107%	99%	NA	NA
Georgia	163	347	63%	52%	394	NA
Germany	181 996	NA	59%	NA	374	NA
Greece	244	1 322	207%	508%	330	886
Hungary	949	854	105%	96%	40	120
Iceland	NA	NA	NA	NA	NA	NA
Ireland	NA	NA	NA	NA	NA	NA
Italy	53 462	NAP	27%	NAP	1 343	NAP
Latvia	NAP	NAP	NAP	NAP	NAP	NAP
Lithuania	NA	250	NA	101%	NA	88
Luxembourg	333	60	90%	155%	NA	NA
Malta	NAP	NAP	NAP	NAP	NAP	NAP
Republic of Moldova	6	242	167%	96%	1 424	80
Monaco	0	3		100%	..	365
Montenegro	NAP	NAP	NAP	NAP	NAP	NAP
Netherlands	NA	NA	NA	NA	NA	NA
Norway	NA	NA	NA	NA	NA	NA
Poland	NA	NA	NA	NA	NA	NA
Portugal	NA	NA	NA	NA	NA	NA
Romania	351	265	101%	99%	157	128
Russian Federation	NAP	NAP	NAP	NAP	NAP	NAP
Serbia	24	NA	38%	NA	730	NA
Slovakia	42	NA	105%	NA	58	NA
Slovenia	204	137	97%	110%	39	232
Spain	601	22 736	95%	111%	434	186
Sweden	13 488	12 065	62%	91%	280	84
Switzerland	5 204	NA	91%	NA	231	NA
The FYROMacedonia	65	NA	135%	NA	71	NA
Turkey	NA	NA	NA	NA	NA	NA
Ukraine	NA	NA	NA	NA	NA	NA
UK-England and Wales	NA	NA	NA	NA	NA	NA
UK-Scotland	NA	NA	NA	NA	NA	NA
Israel	NA	NA	NA	NA	NA	NA
Morocco	NAP	NAP	NAP	NAP	NAP	NAP
<b>Average</b>	14367	5547	93%	125%	371	239
<b>Median</b>	342	306	95%	100%	231	168
<b>Minimum</b>	0	3	27%	52%	16	37
<b>Maximum</b>	181996	28511	207%	508%	1424	886

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

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

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

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

### ***Efficiency in the handling of disputes relating to the right of asylum, entry and stay for aliens***

#### *Asylum seekers*

The analysis of the statistics on cases relating to asylum seekers reveals that 6 States have satisfactory processing times in their courts as regards these kind of cases, namely, those States with a Clearance Rate of 100 % or above and a Disposition Time below the average of 371 days: **Estonia, Greece, Hungary, Romania, Slovakia** and **“the former Yugoslav Republic of Macedonia”**.

However, 371 days is a period exceeding one year and, thus, does not disclose a great level of efficiency. The average figure should not be considered as it is likely to have been affected by the statistics of **Italy** and the **Republic of Moldova** which Disposition Times are 1 343 days and 1 424 days respectively. It is a worrying situation but different between the two countries with regard to the very large number of people concerned by these delays in **Italy** (more than 53 000) and due to the small number in the **Republic of Moldova** (less than 300 people).

The table shows 2 States where the Clearance Rate is slightly lower than 100 % but the Disposition Time can be considered satisfactory (below the average of 371 days): **Austria** and **Slovenia** (39 days).

Only **Spain** combines a Clearance Rate just below 100% with a Disposition Time higher than the average - 434 days.

The situation is critical in the States that have a particularly low Clearance Rate or a very high Disposition Time, or both, as this shows that courts are struggling to cope with the volume of new cases. Backlogs and lengths of proceedings are likely to worsen in the future if no specific measures are taken regarding the efficiency of justice in these States. Some States require particular attention: **Finland** (Disposition Time: 769 days; Clearance Rate: 34 %), **Germany** (Disposition Time: 374 days, Clearance Rate: 59 %), **Italy** (Disposition Time: 1 343 days; Clearance Rate: 27 %), **Serbia** (Disposition Time: 730 days; Clearance Rate: 38 %), **Sweden** (Clearance Rate: 62 %). In other countries, the analyses should be put into perspective due to the small amount of persons involved and the different particular situations: **Bosnia and Herzegovina** (Clearance Rate: 75 %), **Georgia** (Disposition Time: 394 days, Clearance Rate: 63 %) and **Republic of Moldova** (Disposition Time: 1 424 days).

#### *Cases related to the right of entry and stay for aliens*

5 States have satisfactory processing times in their courts regarding these kind of cases, namely, the States with a Clearance Rate of 100 % or above and a Disposition Time below the average of 239 days (below the average of 371 days for cases relating to asylum seekers): **Azerbaijan, Finland, Lithuania, Slovenia** and **Spain**. It is worth underline the very high average of the Clearance Rate of 125 % for cases relating to the right of entry and stay for aliens. This is likely to have been affected by the very high rate of 508 % recorded by **Greece**. Moreover, the small number of cases in **Azerbaijan, Lithuania** and **Slovenia** must be taken into account.

The table shows 3 States where the Clearance Rate is slightly lower than 100 % but the Disposition Time can be considered satisfactory (below the average of 239 days) – **Hungary, Republic of Moldova and Romania.**

The situation is critical in the States that have a particularly low Clearance Rate or a very high Disposition Time, or both, as this shows that courts are struggling to cope with the volume of new cases. Backlogs and lengths of proceedings are likely to worsen in the future if no specific measures are taken. Some States require particular attention: **Austria** (Disposition Time: 387 days; Clearance Rate: 66%), with more than 21 000 cases, **Belgium** (Disposition Time: 502 days), with more than 9 000 cases, **Greece** (Disposition Time: 886 days), with 1 322 cases. **Georgia** and **Bosnia and Herzegovina** have a very small amount of cases: **Georgia** (Clearance Rate: 52%) with 347 cases, **Bosnia and Herzegovina** (Clearance Rate: 75%) with 57 cases. **Monaco** has an insignificant number of cases (7 cases).

### ***The legal framework and the specificities of each State / entity***

Among the 24 states that have provide numerical data in question 101, the majority (21), have specified the references or sources of the data and/or a useful link. Others, that have answered NA or NAP have however provide explanations enabling to identify if the appeal instance was attached to the judicial institution and (or) chaired by a judge and, this way, being able to have a first compared and documented vision of the asylum seekers legal systems in the member States of the Council of Europe. All these comments and references are available on CEPEJ-STAT (<https://www.coe.int/fr/web/cepej/dynamic-database-of-european-judicial-systems>).

### **Trends and conclusions**

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

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

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

#### 5.4 Criminal justice: 2016 data and trends regarding performance indicators

This section uses the terminology of the "European Sourcebook of Crimes and Criminal Justice". It deals with the management of criminal cases by courts, including by public prosecutors.

Criminal offences comprise all offences defined as criminal by law, including traffic offences (mostly dangerous driving and driving under the influence). They include acts which are normally prosecuted by a public prosecutor, while offences which are prosecuted directly by the police, such as minor traffic offences and certain breaches of public order, are not included.

To identify and better understand the main trends in Europe, the CEPEJ scheme for evaluating judicial systems draws a distinction between minor and severe criminal cases, since for minor criminal offences, shorter court proceedings and/or other aspects related to case handling might apply (e.g. the imposition of an administrative fine, a sanction imposed by a public prosecutor without the intervention of a judge, police sanctions, etc.). Special tribunals, courts or judges may also be competent to deal with minor criminal offences (e.g. misdemeanour courts or police courts). There may also be the option of using mediation, conciliation or other forms of ADR for minor criminal offences.

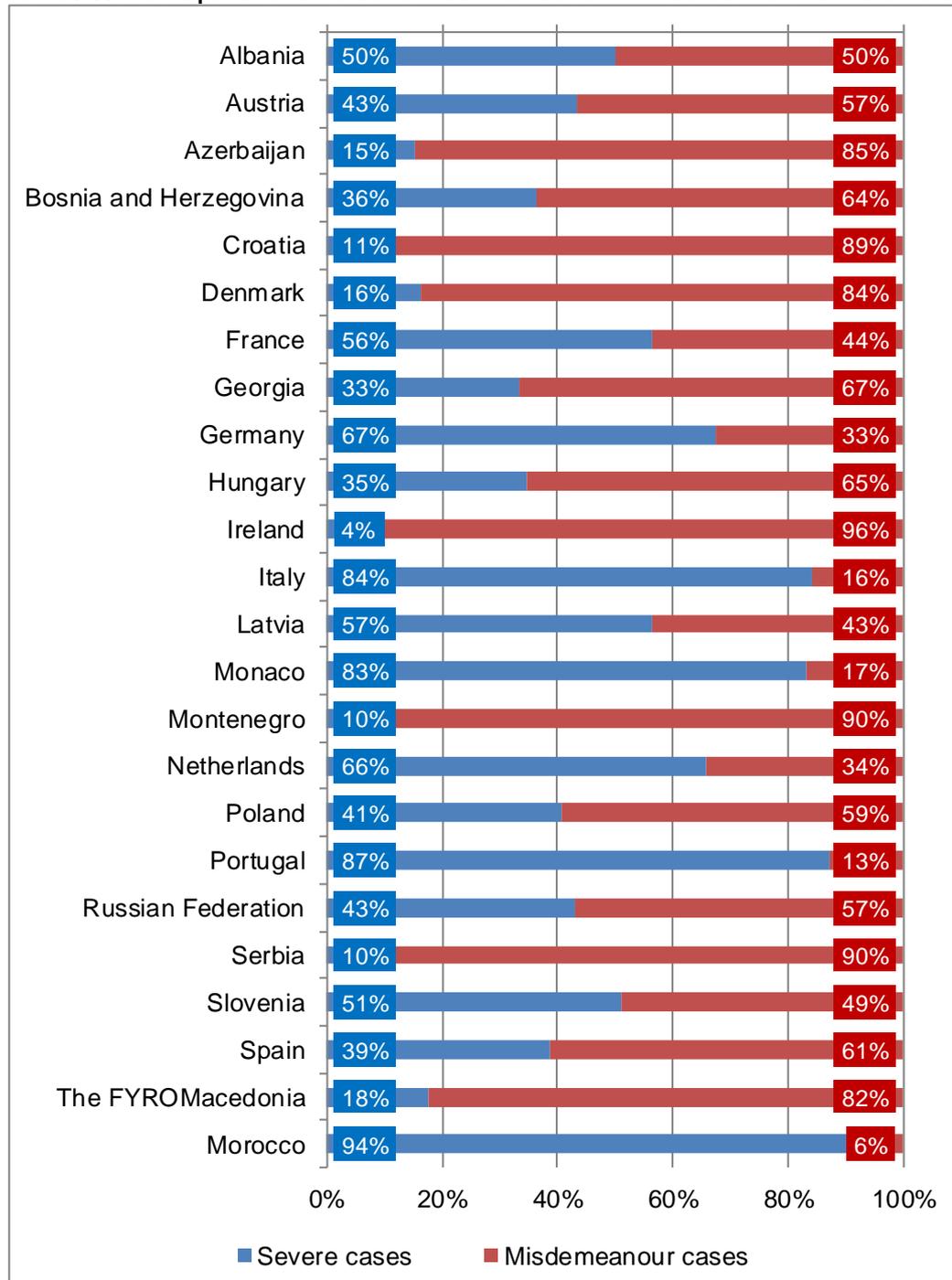
To differentiate between "minor offences" (misdemeanours) and "serious offences" (severe) and to ensure as much as possible the consistency and comparability of responses for the different legal systems surveyed, the participating States and entities were asked to classify as "minor" all offences for which it is not possible to hand down a sentence involving deprivation of liberty. Conversely, "severe offences" are those punishable by deprivation of liberty (arrest and detention, imprisonment). Examples of severe criminal cases include murder, rape, organised crime, fraud, drug trafficking, human trafficking, etc. Minor offences cover, for instance, certain categories of driving offences, public order offences, etc.

The analysis of court performance in this sector in different States and entities should take into consideration the share of severe criminal cases within the total number of incoming, resolved and pending criminal cases. Table 5.39 displays the share between severe and misdemeanour criminal cases at first instance in the 24 States that were able to make such a distinction.

### 5.4.1 Criminal cases - First instance

*Prosecutorial and court caseload and performance indicators in 2016*

**Table 5.39 Participation of severe and misdemeanour criminal cases in all first instance cases in 2016 (Q94)**



Due to its inherent increased complexity, the category of severe criminal cases reflects more closely the amount of work required to clear the caseload in this sector. By contrast, minor offence cases are generally simpler to solve and can be processed in a shorter period of time. Accordingly, where the share of minor offence cases is substantially higher than that of severe cases, the resulting efficiency indicators would show an enhanced positive picture of the situation in the country concerned. This may apply to the situation in **Azerbaijan, Croatia, Denmark, Ireland, Montenegro, Serbia** and “**the former Yugoslav Republic of Macedonia**” and to a certain extent, also in **Bosnia and Herzegovina, Georgia** and **Hungary**. Such a composition of the caseload of criminal cases, in terms of complexity, should be taken into account in the analysis that follows.

More generally, of the 24 States and entities that provided disaggregated data on criminal cases in 2016, 14 received more misdemeanour than severe cases. In the other 10 States and entities, severe cases represented the majority of the court caseload. In particular, in **Italy, Monaco, Portugal** and **Morocco**, over 70 % of cases before first instance courts were severe cases, inevitably affecting any conclusions as to overall efficiency since, as already noted, these cases will usually take longer to resolve.

The number of incoming severe cases also differs significantly between States and entities, ranging from 545 cases in **Monaco** to over one million (1 217 842) cases in **Italy**. As regards misdemeanour cases, the figures range from 111 cases in **Monaco** to over half a million (545 706) cases in **Poland**.

The expeditious handling of criminal cases, consistent with the requirements of due process, is of particular importance for the safeguarding of fundamental rights, in particular in those cases where measures imposing a deprivation of liberty at the pre-trial stage are in place. The table below provides information on the number of criminal cases handled by public prosecutors per 100 inhabitants.

**Table 5.40 Number of cases handled by the public prosecutor per 100 inhabitants in 2016 (Q107, Q107.1, Q108 and Q109)**

States/Entities	Number of cases per 100 inhabitants				Total number of cases solved by public prosecutor as a percent of cases received (1)+(2)+(3)	Data includes traffic offence cases
	Received by the public prosecutor	Discontinued by the public prosecutor (1)	Concluded by a penalty or a measure imposed or negotiated by the public prosecutor (2)	Charged by the public prosecutor before the courts (3)		
Albania	1,47	1,21	NAP	0,45	113%	
Andorra	6,51	NAP	NA	NA	NA	
Armenia	0,10	0,15	NAP	0,08	239%	
Austria	5,91	4,81	0,22	0,75	98%	
Azerbaijan	NA	0,08	NAP	0,12	NA	
Belgium	NA	NA	NA	NA	NA	
Bosnia and Herzegovina	1,93	0,32	0,41	0,39	58%	
Bulgaria	1,81	1,71	NAP	0,48	121%	
Croatia	1,67	0,74	0,00	0,43	71%	
Cyprus	NA	NA	NA	NA	NA	
Czech Republic	2,32	1,57	0,20	0,66	105%	
Denmark	3,01	0,44	0,86	2,47	125%	
Estonia	NA	1,02	0,15	0,52	NA	
Finland	1,46	0,46	0,01	0,93	97%	
France	7,45	4,93	0,87	0,89	90%	
Georgia	1,17	0,59	0,31	0,39	110%	
Germany	6,34	3,75	0,21	1,23	82%	
Greece	NA	NA	NA	NA	NA	
Hungary	1,93	0,26	0,11	1,66	106%	
Iceland	2,00	0,25	NA	1,66	NA	
Ireland	0,28	0,10	NA	0,14	NA	
Italy	5,17	3,64	0,02	0,90	88%	
Latvia	0,73	0,06	0,09	0,51	89%	
Lithuania	2,65	1,00	NAP	1,16	82%	
Luxembourg	9,69	3,61	NA	1,92	NA	
Malta	NA	NAP	NAP	3,61	NA	
Republic of Moldova	1,87	0,35	0,20	0,40	51%	
Monaco	6,16	3,61	0,37	1,26	85%	
Montenegro	1,47	0,52	0,12	0,56	81%	
Netherlands	1,11	0,25	0,24	0,61	99%	
Norway	6,53	2,86	1,39	1,43	87%	
Poland	2,35	0,80	0,38	0,74	82%	
Portugal	4,28	NA	NA	0,49	NA	
Romania	3,48	2,66	0,46	0,24	96%	
Russian Federation	0,64	0,00	NAP	0,60	94%	
Serbia	1,61	0,95	0,36	0,59	118%	
Slovakia	1,35	0,46	0,04	0,46	71%	
Slovenia	3,32	0,82	0,08	0,49	42%	
Spain	NA	NAP	NA	NA	NA	
Sweden	4,56	1,70	0,58	1,77	89%	
Switzerland	6,92	1,19	5,57	0,17	100%	
The FYROMacedonia	1,42	0,51	0,02	0,86	98%	
Turkey	4,20	1,36	NA	0,87	NA	
Ukraine	NA	NA	NAP	NA	NA	
UK-England and Wales	0,94	0,10	NAP	1,01	117%	
UK-Scotland	3,62	0,94	0,96	NA	NA	
Israel	4,00	1,38	0,00	1,87	81%	
Morocco	4,16	1,47	0,63	1,57	88%	
<b>Average</b>	3,14	1,31	0,53	0,87	96%	
<b>Median</b>	2,16	0,81	0,22	0,61	94%	
<b>Minimum</b>	0,10	0,00	0,00	0,08	42%	
<b>Maximum</b>	9,69	4,93	5,57	3,61	239%	

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

The median figures are lower in this respect, which is likely to be a result of the very low figures recorded in respect of certain States and entities – for instance, 0.10 cases per 100 inhabitants received by the public prosecutor's office in **Armenia**, 0,73 in **Latvia**, 0,64 in the **Russian Federation** and 0,94 in **UK-England and Wales**. As regards **UK-England and Wales**, the decrease from previous cycles partially reflects recent trends in recorded crime overall. In addition, some recent changes in the law mean that some minor cases are now dealt with directly by the police rather than passed on to prosecutors.

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

The highest number of cases received by public prosecutors appears in **Luxembourg** – a total of 9,69 cases per 100 inhabitants. High figures of incoming cases (above 6 cases per 100 inhabitants) are also recorded in **Andorra, France, Germany, Monaco, Norway** and **Switzerland**. In **France**, about two thirds of cases received by the public prosecutor are discontinued. According to the comments submitted by the State, this is mostly as a result of lack of clarification or insufficient characterisation of the cases. Similarly, in **Monaco**, roughly 59% of cases are discontinued – as per the State's comments, a significant number of these cases pertain to the issuance of cheques without funds (still a criminal offence in the country). **Norway** has reported errors in its statistical recording which may account for the high rate of incoming cases. **Switzerland** explains the increase in the number of discontinued cases by the general surge in the amount of criminal cases processed by the public prosecutor's office. In **Germany**, as concerns cases discontinued by the public prosecutor, the increase between 2014 and 2016 is mainly due to the method of computation of the number of cases in this country.

A deeper understanding of the caseload and efficiency of public prosecutors in the different systems surveyed can be obtained by looking at the number of cases involving guilty plea procedures, brought to court by the prosecutor. However, while guilty pleas constitute an important efficiency instrument in the criminal justice sector, an extended use may raise concerns about the quality of justice provided in a specific country for the accused. In particular, trial waiver systems may present incentives to plead guilty and avoid trial, as well as remove any potential human rights violations from scrutiny in an open courtroom. These considerations must thus be borne in mind when reviewing the available statistics.

**Table 5.41 Number of cases for guilty plea procedures per 100 inhabitants in 2016 (Q107, Q107.1, Q108 and Q109)**

States / Entities	Number of cases for guilty plea procedures brought to court by the prosecutor per 100 inhabitants		
	Total	Before the court procedure	During the court procedure
Albania	NA	NA	NA
Andorra	0,97	NA	NA
Armenia	NAP	NAP	NAP
Austria	NA	NA	NA
Azerbaijan	NAP	NAP	NAP
Belgium	NA	NA	NA
Bosnia and Herzegovina	0,03	0,01	0
Bulgaria	0,29	0,16	0
Croatia	0,01	NA	NA
Cyprus	NAP	NAP	NAP
Czech Republic	0,001	NA	NA
Denmark	NA	NA	NA
Estonia	NAP	NAP	NAP
Finland	0,00	NA	NA
France	0,11	NAP	0
Georgia	0,25	0,14	0
Germany	NAP	NAP	NAP
Greece	NA	NA	NA
Hungary	NAP	NAP	NAP
Iceland	NA	NA	NA
Ireland	NA	NA	NA
Italy	NAP	NAP	NAP
Latvia	0,07	0,04	0
Lithuania	0,53	0,53	NAP
Luxembourg	NA	NA	NA
Malta	NAP	NAP	NAP
Republic of Moldova	0,03	0,02	0
Monaco	NAP	NAP	NAP
Montenegro	0,02	NAP	NAP
Netherlands	NAP	NAP	NAP
Norway	0,50	0,50	NAP
Poland	0,38	0,33	0
Portugal	NA	NA	NA
Romania	0,01	0,01	NAP
Russian Federation	NA	NA	NA
Serbia	0,07	0,01	0
Slovakia	0,09	0,08	0
Slovenia	0,02	NA	NA
Spain	0,37	0,20	0
Sweden	NAP	NAP	NAP
Switzerland	5,57	5,57	NAP
The FYROMacedonia	0,02	0,02	NAP
Turkey	NAP	NAP	NAP
Ukraine	NA	0,00	NA
UK-England and Wales	NA	NA	NA
UK-Scotland	NA	NA	NA
Israel	0,27	NA	NA
Morocco	NAP	NAP	NAP
<b>Average</b>	0,44	0,51	0,07
<b>Median</b>	0,07	0,08	0,05
<b>Minimum</b>	0,001	0,00	0,00
<b>Maximum</b>	5,57	5,57	0,18

The Table above shows the number of guilty plea procedures brought to court by the prosecutor, distinguishing between guilty pleas before the court procedure and during the court procedure. Information in this regard was collected for the first time in the 2016-2018 evaluation cycle. Very few States and entities provided data on this. The CEPEJ hopes that a higher number of States and entities will be able to produce statistics in this regards in the next evaluation cycle.

Of the States in respect of which statistics were available, **Switzerland** has the highest figure of guilty plea procedures (5,57 cases per 100 inhabitants) brought to court, which is significantly higher than in any other State or entity. This high number of cases is explained by the fact that crime is generally low in **Switzerland** and only rarely leads to sentences of more than six months' imprisonment. The prosecutors have the competence to impose such sanctions, it being understood that each sentence or measure taken by a public prosecutor may be brought before a court for reconsideration of the sentence. This increase is also explained by the increase in the volume of cases processed by the prosecutor and the interest of the accused in having the criminal case completed quickly and in avoiding open court.

In **Croatia**, in 2016, 440 judgments were given under the agreement of the parties, following a guilty plea by the accused. In this country, there has been a decrease since the previous period of evaluation, during which one of the criminal cases concerning suppression of corruption and organised crime (over 300 defendants) and involved an agreement with a large number of defendants, was noted.

In the **Republic of Moldova**, the number of guilty plea procedures during the court case decreased in 2016 as compared to 2014 following the implementation of a simplified procedure based on evidence administered at the investigation stage (Art. 364/1 of the Criminal Procedure Code).

In **Romania**, the introduction of new provisions on guilty plea procedures resulted in an increase in the number of cases brought to court by the public prosecutor, compared to the 2014 statistics. There has also been an increased awareness of the practice.

Since the introduction of provisions on plea bargaining procedures in the Criminal Procedure Act 2012, **Slovenia** has also seen a steady increase in the number of agreements concluded between defendants and prosecutors. The proportion of these agreements when compared to filed indictments has grown equally (from 1,1 % in 2012, to 2 % in 2012, to 3,8 % in 2016). The general explanation given for this trend is that parties to criminal procedures have recognised this new instrument as beneficial in terms of speeding up the process of reaching a final decision as well as reducing the sanction that would be handed down if a full trial were to take place.

In addition, further comments help to shed light on the way in which guilty plea procedures are deployed in the States or entities surveyed, including the following: the guilty plea procedure often being used for less serious offences (**France**); the guilty plea not exempting the court from its duty to present other evidence as well (**Croatia**); and there being no guilty plea procedure as such, although if someone pleads guilty there are special procedures to speed up the proceedings (**Italy**).

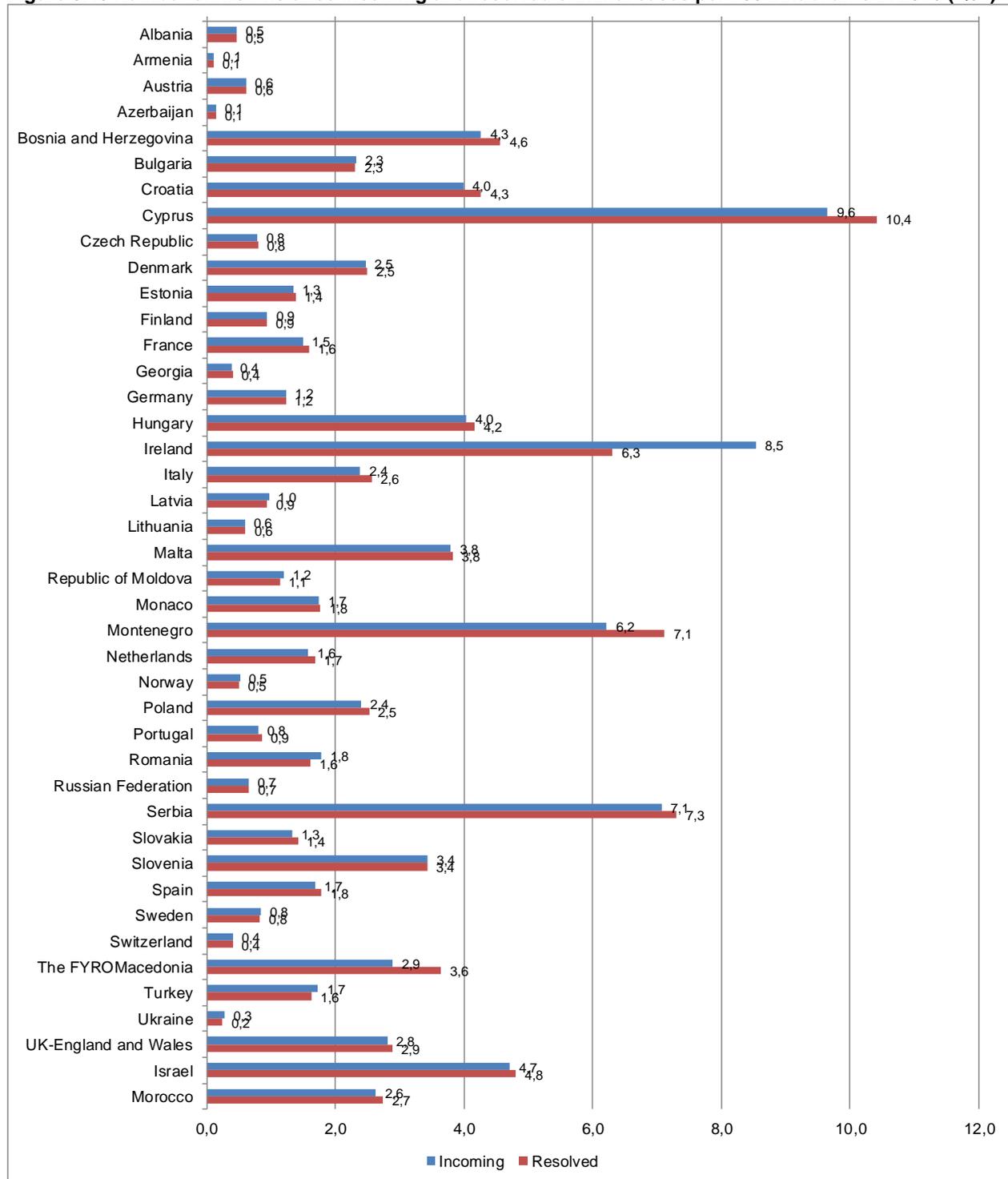
**Table 5.42 Ratio between cases brought to court by the public prosecutor and the number of cases received by the public prosecutor, between 2010 and 2016 (Q107)**

States/Entities	Ratio of cases brought to court and cases received				Evolution
	2010	2012	2014	2016	
Albania	35,82%	26,00%	31,21%	30,66%	
Andorra	6,16%	NA	19,54%	NA	
Armenia	NA	NA	NA	80,66%	
Austria	13,26%	13,30%	12,98%	12,71%	
Azerbaijan	1619,48%	2451,29%	NA	NA	
Belgium	2,98%	4,08%	4,16%	NA	
Bosnia and Herzegovina	25,54%	24,91%	23,73%	20,26%	
Bulgaria	NA	28,70%	25,25%	26,57%	
Croatia	32,43%	26,23%	29,95%	25,92%	
Cyprus	NA	NA	NA	NA	
Czech Republic	19,58%	20,36%	27,03%	28,60%	
Denmark	53,97%	49,84%	63,64%	81,99%	
Estonia	NA	NA	21,76%	NA	
Finland	72,48%	70,72%	64,50%	64,08%	
France	12,87%	11,98%	12,10%	11,93%	
Georgia	NA	19,09%	NA	33,05%	
Germany	23,43%	23,50%	22,09%	19,33%	
Greece	NA	NA	NA	NA	
Hungary	81,30%	68,06%	83,64%	86,32%	
Iceland	NA	79,06%	NA	82,93%	
Ireland	NA	46,59%	46,85%	50,51%	
Italy	20,36%	19,67%	18,54%	17,43%	
Latvia	69,29%	68,95%	68,60%	69,55%	
Lithuania	70,44%	29,82%	50,67%	43,81%	
Luxembourg	5,85%	24,21%	17,13%	19,78%	
Malta	NA	NA	NA	NA	
Republic of Moldova	20,15%	19,59%	20,73%	21,53%	
Monaco	55,07%	37,31%	33,35%	20,41%	
Montenegro	0,00%	50,73%	42,88%	38,31%	
Netherlands	56,15%	54,86%	54,02%	54,59%	
Norway	22,00%	20,92%	18,54%	21,87%	
Poland	32,36%	32,84%	17,71%	31,37%	
Portugal	13,51%	14,03%	NA	11,42%	
Romania	5,31%	6,24%	4,64%	6,97%	
Russian Federation	NA	93,64%	94,15%	94,01%	
Serbia	NA	24,04%	20,85%	36,71%	
Slovakia	30,68%	29,95%	33,70%	34,10%	
Slovenia	16,13%	13,88%	14,80%	14,84%	
Spain	NA	NA	NA	NA	
Sweden	32,80%	37,96%	35,84%	38,83%	
Switzerland	4,57%	2,06%	2,22%	2,46%	
The FYROMacedonia	31,99%	28,37%	40,34%	60,82%	
Turkey	47,42%	32,02%	31,23%	20,81%	
Ukraine	NA	NA	45,05%	NA	
UK-England and Wales	90,59%	90,34%	102,36%	106,77%	
UK-Scotland	41,72%	33,00%	40,40%	NA	
Israel		41,32%	48,25%	46,61%	
Morocco				37,75%	
<b>Average</b>	0,81	0,98	0,35	0,39	
<b>Median</b>	0,31	0,29	0,30	0,31	
<b>Minimum</b>	0,00	0,02	0,02	0,02	
<b>Maximum</b>	16,19	24,51	1,02	1,07	

Table 5.42 shows the evolution in the rate at which public prosecutors bring cases to court, in the different systems. As mentioned earlier, the remaining cases are either discontinued by the public prosecutor (because the offender could not be identified, because of the lack of an established offence, or for reasons of opportunity) or are concluded by a penalty or a measure imposed or negotiated by the public prosecutor.

The table shows that with few exceptions (**Lithuania, Monaco** and “**the former Yugoslav Republic of Macedonia**”) the rate at which cases received by public prosecutors end up in court in each country has remained relatively stable in the long period. However, the ratio differs significantly between the States and entities surveyed, but these differences should be understood in the light of the legal and institutional specificities of each system.

**Figure 5.43 Number of first instance incoming and resolved criminal cases per 100 inhabitants in 2016 (Q94)**



In 2016, courts of first instance received on average 2,3 criminal cases per 100 inhabitants and managed to resolve the same amount of cases during the year, with the median number for both incoming and resolved cases being lower (1,6 cases).

Analysing this data reveals key differences between the States and entities assessed. The lowest figure of incoming cases (0,1), was reported by **Armenia** and **Azerbaijan**. This should be read in the light of the analysis made above, which showed that in 2016 public prosecutors in **Armenia** also received the lowest number of cases out of all the States assessed (this figure was not available for **Azerbaijan**). **Cyprus**, on the other hand, reported the highest figures for both incoming (9,6) and resolved criminal cases (10,4) in 2016. First instance courts in 4 States (**Cyprus, Ireland, Montenegro** and **Serbia**) received and handled more than 6 criminal cases per 100 inhabitants. Courts in 14 others States (**Albania, Armenia, Austria, Azerbaijan, Czech Republic, Finland, Georgia, Lithuania, Norway, Portugal, Russian Federation, Sweden, Switzerland** and **Ukraine**) received less than one case per 100 inhabitants. This is likely to have affected the lower median figures.

Table 5.44 Percentage of first instance in absentia judgements in 2016 (Q84)

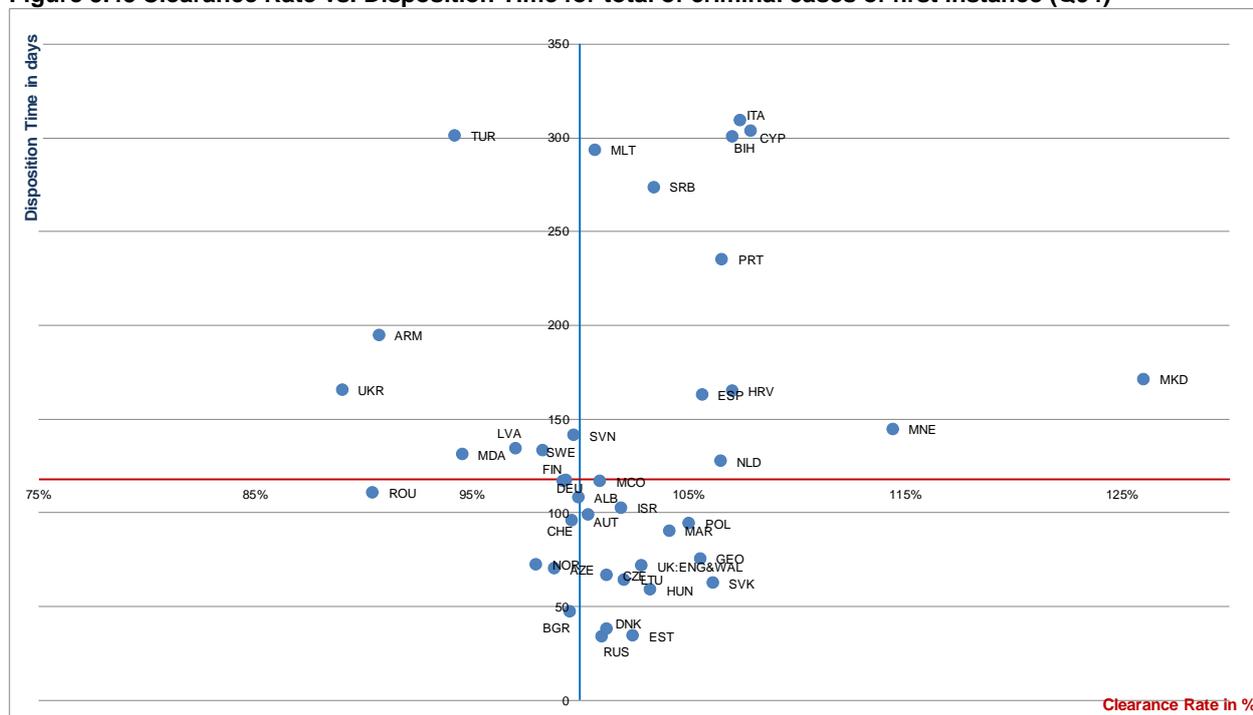
States / Entities	Percent of 1st instance absentia judgements			
	2010	2012	2014	2016
Albania	NAP	NAP	NAP	NAP
Andorra	NA	NA	NA	NAP
Armenia	NA	NA	NAP	NAP
Austria	NA	NA	NA	NA
Azerbaijan	NA	NA	NA	NA
Belgium	NA	NA	NA	NA
Bosnia and Herzegovina	NAP	NAP	NAP	NAP
Bulgaria	NA	NA	NA	NA
Croatia	NA	NA	NA	NA
Cyprus	NA	28%	27%	25%
Czech Republic	NA	NA	NA	NA
Denmark	38%	72%	71%	74%
Estonia	NA	NA	NA	NA
Finland	NA	NA	NA	NA
France	4%	NA	3%	3%
Georgia	NA	NA	NA	NA
Germany	NAP	NAP	NAP	NAP
Greece	NA	NA	NA	NA
Hungary	NA	NA	NAP	NAP
Iceland	NA	NA	NA	NA
Ireland	NA	NA	NA	NA
Italy	NAP	NAP	NAP	NAP
Latvia	NA	NA	NA	NA
Lithuania	NA	NA	NA	NA
Luxembourg	19%	15%	15%	16%
Malta	NAP	NAP	NAP	NAP
Republic of Moldova	NA	NA	NA	NA
Monaco	49%	29%	27%	26%
Montenegro	6%	NA	NA	NA
Netherlands	NA	NA	NA	NA
Norway	NA	NA	NA	NA
Poland	NA	NA	NA	NA
Portugal	NA	NA	NA	NA
Romania	NA	NA	NA	NA
Russian Federation	NA	NA	NA	NA
Serbia	NA	NA	NA	NA
Slovakia	NA	NA	NA	NA
Slovenia	NA	NA	NA	NA
Spain	NA	NA	NA	NA
Sweden	NA	NA	NA	NA
Switzerland	NA	0,02%	NA	NA
The FYROMacedonia	7%	9%	10%	8%
Turkey	11%	10%	7%	8%
Ukraine	NAP	NAP	NAP	NAP
UK-England and Wales	NA	NA	NA	NA
UK-Scotland	NA	NA	NA	NA
Israel		NA	NA	NA
Morocco				26%
<b>Average</b>		23%	23%	23%
<b>Median</b>		15%	15%	16%
<b>Minimum</b>		0%	3%	3%
<b>Maximum</b>		72%	71%	74%

As noted earlier in relation to trial waiver procedures, in the criminal sector, issues of efficiency are closely related to the quality and fairness of procedures. Table 5.44 provides an insight into the frequency of in absentia judgements in different jurisdictions. Data in this regard, however, is scarce as very few States and entities provided such information.

**Denmark** has the highest rate of in absentia judgments recorded at 74 %. As highlighted in the last report, this is likely because the court system does not require a hearing for minor cases, such as unpaid traffic fines. In absentia judgements represent about one fourth of the cases handled by courts in **Cyprus, Monaco** and **Morocco**.

In respect of the 2016 efficiency indicators, first instance courts handling criminal cases displayed on average a positive Clearance Rate (101%) and a Disposition Time of 138 days. As already noted, these indicators may change if severe and minor criminal cases, are considered separately.

**Figure 5.45 Clearance Rate vs. Disposition Time for total of criminal cases of first instance (Q94)**



The lower right quadrant of the figure 5.45 shows States or entities that have a Clearance Rate at or above 100 % and a Disposition Time below the average of 138 days (median 117 days). A majority of States and entities display a satisfactory level of court productivity as regards criminal cases: **Albania, Austria, Bulgaria, Czech Republic, Denmark, Estonia, Georgia, Hungary, Lithuania, Monaco, Netherlands, Poland, Russian Federation, Slovakia, Switzerland, UK-England and Wales, Israel and Morocco**. A majority of these States and entities have improved their Clearance Rates since the last evaluation cycle: **Czech Republic (101 %), Denmark (101 %), Estonia (102 %), Georgia (106 %), Netherlands (106 %), Poland (105 %), the Russian Federation (101 %), Slovakia (106 %), Switzerland (100 %)** and **UK-England and Wales (103 %)**.

Past the 138-day Disposition Time average, the situation seems manageable in 7 other States which have a positive Clearance Rate (above 100 %) and a rather low Disposition Time: **Croatia, Montenegro, Portugal, Serbia, Slovenia, Spain** and **“the former Yugoslav Republic of Macedonia”**.

For another group of States, the Clearance Rate is slightly lower than 100 % but the Disposition Time can be considered satisfactory (below the average of 138 days), namely, **Azerbaijan, Finland, Germany, Latvia, Norway** and **Sweden**. The lowest Disposition Time figures arise in respect of the **Russian Federation (34 days), Estonia (35 days)** and **Denmark (38 days)**. In a small number of States the Clearance Rate is rather low or the Disposition Time is high, or both: **Ireland (Clearance Rate: 74 %), Ukraine (Clearance Rate: 89 %), Turkey (Disposition Time: 310 days), Bosnia and Herzegovina (Disposition Time: 301 days), Italy (Disposition Time: 310 days), Cyprus (Disposition Time: 304 days)** and **Malta (Disposition Time : 294 days)**. However, most of these situations do not present serious cause for concern since none of the Disposition Times exceeds one year. None of these countries have provided data on the ratio of criminal cases pending more than 2 years which could have provided a more complete picture of the situation in these States.

Evolution of the performance indicators

Table 5.46 Clearance Rate of first instance criminal cases between 2010 and 2016 (Q94)

States / Entities	Clearance Rate of 1st instance criminal cases				Evolution
	2010	2012	2014	2016	
Albania	NA	NA	NA	100%	
Andorra	100%	93%	101%	NA	
Armenia	97%	100%	91%	91%	
Austria	100%	101%	103%	100%	
Azerbaijan	99%	101%	100%	99%	
Belgium	NA	NA	NA	NA	
Bosnia and Herzegovina	105%	102%	101%	107%	
Bulgaria	100%	99%	101%	100%	
Croatia	106%	103%	130%	107%	
Cyprus	90%	91%	112%	108%	
Czech Republic	101%	NA	100%	101%	
Denmark	106%	104%	98%	101%	
Estonia	144%	94%	97%	102%	
Finland	97%	98%	100%	99%	
France	95%	102%	95%	106%	
Georgia	147%	101%	96%	106%	
Germany	101%	101%	100%	99%	
Greece	NA	NA	NA	NA	
Hungary	99%	91%	104%	103%	
Iceland	NA	NA	NA	NA	
Ireland	NA	NA	75%	74%	
Italy	95%	94%	94%	107%	
Latvia	100%	95%	102%	97%	
Lithuania	98%	99%	102%	102%	
Luxembourg	80%	NA	NA	NA	
Malta	96%	99%	99%	101%	
Republic of Moldova	94%	91%	95%	95%	
Monaco	NA	105%	110%	101%	
Montenegro	110%	96%	105%	114%	
Netherlands	98%	95%	101%	106%	
Norway	97%	100%	101%	98%	
Poland	91%	101%	100%	105%	
Portugal	105%	105%	NA	107%	
Romania	99%	99%	101%	90%	
Russian Federation	NA	99%	100%	101%	
Serbia	78%	105%	96%	103%	
Slovakia	102%	101%	103%	106%	
Slovenia	106%	114%	102%	100%	
Spain	99%	103%	104%	106%	
Sweden	98%	101%	100%	98%	
Switzerland	106%	99%	99%	100%	
The FYROMacedonia	119%	105%	100%	126%	
Turkey	91%	108%	86%	94%	
Ukraine	99%	103%	100%	89%	
UK-England and Wales	NA	102%	98%	103%	
UK-Scotland	NA	NA	NA	NA	
Israel		107%	102%	102%	
Morocco				104%	
<b>Average</b>	101%	100%	100%	101%	
<b>Median</b>	99%	101%	100%	101%	
<b>Minimum</b>	78%	91%	75%	74%	
<b>Maximum</b>	147%	114%	130%	126%	

As Table 5.46 shows, the Clearance Rate of criminal law cases at first instance remained positive throughout the evaluation cycles between 2010 and 2016. Nonetheless, important differences can be highlighted between the States and entities evaluated.

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

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

**Germany** has registered a continuous decrease in the Clearance Rate and recorded, for the first time in 2016, a negative Clearance Rate (99 %). By contrast, in 2016 **Italy** displays for the first time a positive Clearance Rate of criminal cases at first instance. **Estonia** and **Switzerland** also display a positive performance in 2016 and were able to improve the negative trend recorded in 2012 and 2014. “**The former Yugoslav Republic of Macedonia**” has shown a positive Clearance Rate across all four evaluation cycles, but in the last evaluation it recorded the most significant improvement compared to its 2014 performance (from 100 % to 126 %).

Between 2014 and 2016, 16 States saw a decline in their Clearance Rate. Of those, **Austria, Bulgaria, Croatia, Cyprus, Hungary, Monaco and Slovenia** maintained a positive Clearance Rate, while **Azerbaijan, Finland, Germany, Latvia, Norway, Romania, Sweden and Ukraine** experienced a drop below 100 %. **Ireland's** Clearance Rate remains particularly low. In the group of States now showing negative indicators, the performance of the relevant judicial bodies could be at risk in the future if this trend persists. However, as has been pointed out previously, the statistics reported and their evolution over time need to be carefully addressed with regard to the specific conditions in each State.

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

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

Table 5.47 Disposition Time of first instance criminal cases between 2010 and 2016 (Q94)

States / Entities	Disposition time of 1st instance criminal cases				
	2010	2012	2014	2016	Evolution
Albania	NA	NA	NA	108	
Andorra	65	271	88	NA	
Armenia	78	103	135	195	
Austria	116	115	102	99	
Azerbaijan	50	56	63	70	
Belgium	NA	NA	NA	NA	
Bosnia and Herzegovina	345	328	326	301	
Bulgaria	49	62	74	48	
Croatia	221	201	144	165	
Cyprus	254	262	246	304	
Czech Republic	72	NA	64	67	
Denmark	99	37	47	38	
Estonia	60	51	49	35	
Finland	107	114	121	118	
France	NA	NA	NA	NA	
Georgia	36	46	65	76	
Germany	104	104	111	117	
Greece	NA	NA	NA	NA	
Hungary	104	120	62	59	
Iceland	NA	NA	NA	NA	
Ireland	NA	NA	NA	NA	
Italy	329	370	386	310	
Latvia	77	133	133	135	
Lithuania	104	72	67	65	
Luxembourg	NA	NA	NA	NA	
Malta	331	291	306	294	
Republic of Moldova	103	156	102	131	
Monaco	NA	78	81	117	
Montenegro	160	174	189	145	
Netherlands	89	99	117	128	
Norway	91	60	65	73	
Poland	96	88	99	95	
Portugal	302	276	NA	235	
Romania	85	72	111	111	
Russian Federation	NA	36	37	34	
Serbia	504	387	255	274	
Slovakia	168	145	136	63	
Slovenia	138	124	123	141	
Spain	162	136	125	163	
Sweden	135	123	128	133	
Switzerland	63	137	113	96	
The FYROMacedonia	212	203	155	171	
Turkey	314	226	330	302	
Ukraine	95	79	81	166	
UK-England and Wales	NA	73	82	72	
UK-Scotland	NA	NA	NA	NA	
Israel		142	115	103	
Morocco				91	
<b>Average</b>	152	146	133	138	
<b>Median</b>	104	120	111	117	
<b>Minimum</b>	36	36	37	34	
<b>Maximum</b>	504	387	386	310	

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

**Austria, Bosnia and Herzegovina, Estonia, Lithuania, Portugal, Slovakia and Israel** have improved their Disposition Time in each evaluation cycle. Some of these States record particularly significant improvements. The 2016 data recorded for **Estonia** (35 days) and **Lithuania** (65 days) are very low. Data in respect of **Bosnia and Herzegovina** and **Portugal** remain higher than the average. Although **Portugal** has experienced a strong improvement between 2010 and 2016 of 67 days, the 2016 figure of 235 days remains well above the average figure of 138 days. **Slovakia** has undergone the most significant improvement, from 168 days in 2010 to 63 days in 2016, well below the average, demonstrating a particularly positive performance between 2014 and 2016. This may partly relate, however, to the implementation of a new methodology in respect of the 2016 data. While first instance decisions were previously not considered resolved until the case was finalised at last instance, cases in relation to which a decision has been issued are now recorded in accordance with the CEPEJ methodology.

In **Azerbaijan, Georgia, Germany, Latvia, Monaco** and the **Netherlands** the Disposition Time has increased over time but remains below the average of 138 days. In contrast, in **Armenia**, the Disposition Time (195 days) has increased over time (the Disposition Time has more than doubled between 2010 and 2016) and in 2016 went beyond the average. In **Latvia** as well, the Disposition Time has almost doubled between 2010 and 2016, although it remains at rather low levels (135 days in 2016). In respect of **Georgia**, it is worth remarking that the significant increase in the case flow has been reflected in the State's Judiciary Strategy of 2017-2021 which includes a list of measures to be taken to manage cases effectively.

In 2016, **Bulgaria, Finland, Italy, Montenegro, Russian Federation** and **UK-England and Wales** were able to reverse the previous trend of increasing Disposition Times between 2010 and 2014. The most striking improvement of 76 days can be seen in **Italy**. Nevertheless, the Disposition Time remains at a high level of 310 days, significantly exceeding the average of 138 days.

In 2016, **Croatia, Serbia, Slovenia, Spain** and “**the former Yugoslav Republic of Macedonia**” saw an increase in the Disposition Time, following a decrease between 2010 and 2014. In all these countries the Disposition Time is above the average. Although the Disposition Time in **Serbia** remains high, overall over the four evaluation cycles it has improved from 504 days in 2010 to 274 days in 2016. As mentioned earlier, the figures in some States and entities may be affected by the high share of minor criminal cases in the total of criminal cases, in respect of which the performance indicators are measured. This is for instance the case of **Croatia**, where the Disposition Time of severe criminal cases (520 days) is significantly higher than the Disposition Time of the total of criminal cases (165 days).

The situation in **Ukraine**, where the Disposition Time has increased from 95 days in 2010 to 166 days in 2016 should also be mentioned. In particular, between 2014 and 2016, the figure more than doubled. This is related to a decrease in the number of resolved cases following an outflow of judges as a result of judicial reforms.

Variations in the Disposition Time figures should also be considered (and can partly be explained) with regard to the changing volume of pending cases over the course of the evaluation cycles. The table below presents the evolution of the volume of first instance criminal cases pending on 31 December of the relevant year for each evaluation cycle. It is worth noting that several States have reported discrepancies and some horizontal incoherence in the data provided, due to several factors, including lack of comprehensive usage of a recently introduced statistical system (**Andorra**); partial information provided by the requested authorities following an IT reform (**Belgium**); and the possibility of updating the data at any time (**Netherlands, Spain**).

**Table 5.48 Number of first instance criminal pending cases on 31 December per 100 inhabitants between 2010 and 2016 (Q94)**

States / Entities	Number of 1st instance criminal pending cases 31 Dec per 100 inhabitants				
	2010	2012	2014	2016	Evolution
Albania	NA	NA	NA	0,14	
Andorra	1,02	1,04	1,30	NA	
Armenia	0,02	0,03	0,04	0,05	
Austria	0,23	0,22	0,18	0,17	
Azerbaijan	0,02	0,02	0,02	0,03	
Belgium	NA	NA	NA	NA	
Bosnia and Herzegovina	4,69	4,02	4,09	3,76	
Bulgaria	0,21	0,36	0,39	0,30	
Croatia	5,56	4,65	2,53	1,93	
Cyprus	9,09	8,94	8,55	8,66	
Czech Republic	0,18	NA	0,17	0,15	
Denmark	0,59	0,29	0,30	0,26	
Estonia	0,25	0,16	0,19	0,13	
Finland	0,33	0,34	0,33	0,30	
France	NA	NA	NA	NA	
Georgia	0,04	0,03	0,07	0,08	
Germany	0,42	0,42	0,40	0,39	
Greece	NA	NA	NA	NA	
Hungary	0,76	1,01	0,90	0,67	
Iceland	NA	NA	NA	NA	
Ireland	NA	NA	NA	NA	
Italy	2,26	2,44	2,42	2,17	
Latvia	0,25	0,33	0,31	0,35	
Lithuania	0,15	0,19	0,14	0,11	
Luxembourg	NA	NA	NA	NA	
Malta	4,09	3,38	3,17	3,07	
Republic of Moldova	0,07	0,13	0,30	0,41	
Monaco	NA	0,45	0,50	0,56	
Montenegro	0,53	0,43	0,42	2,82	
Netherlands	0,63	0,60	0,83	0,59	
Norway	0,08	0,09	0,09	0,10	
Poland	0,70	0,63	0,77	0,65	
Portugal	0,95	0,85	NA	0,55	
Romania	0,19	0,18	0,34	0,49	
Russian Federation	NA	0,06	0,07	0,06	
Serbia	1,00	0,98	7,14	5,48	
Slovakia	0,36	0,33	0,29	0,24	
Slovenia	3,31	2,12	1,47	1,33	
Spain	1,28	1,14	1,04	0,79	
Sweden	0,36	0,32	0,30	0,30	
Switzerland	0,46	0,27	0,12	0,11	
The FYROMacedonia	3,69	2,83	2,74	1,71	
Turkey	1,97	1,72	1,99	1,35	
Ukraine	0,11	0,09	0,07	0,11	
UK-England and Wales	NA	0,47	0,66	0,57	
UK-Scotland	NA	NA	NA	NA	
Israel		1,73	1,37	1,35	
Morocco				0,68	
<b>Average</b>	1,31	1,12	1,21	1,08	
<b>Median</b>	0,46	0,42	0,39	0,40	
<b>Minimum</b>	0,02	0,02	0,02	0,03	
<b>Maximum</b>	9,09	8,94	8,55	8,66	

Table 5.48 shows a decrease in the number of pending first instance criminal cases between 2010 and 2012, followed by an increase between 2012 and 2014 and finally a decrease from 2014 to 2016, bringing the 2016 rate below that initially recorded in 2010.

Between 2014 and 2016, 25 States and entities for which information was provided reduced the volume of pending cases. Of those, 13 States - **Austria, Croatia, Czech Republic, Germany, Malta, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia” and Israel** - were continuing the pre-existing trend of decreasing the volume of pending cases. However, the level of pending cases per 100 inhabitants in 2016 remains above average in **Croatia, Malta, Slovenia, “the former Yugoslav Republic of Macedonia” and Israel**. In respect of **Croatia**, it has been highlighted that since 1 June 2013, when the Amendments to the Misdemeanours Act entered into force, the level of first instance misdemeanour cases has been continuously and significantly reduced. As a result, the number of unresolved cases has also decreased. However, in 2016, minor offences in this country constituted 89% of the total of criminal cases.

In **Slovenia**, the decreases can be explained by the decrease in the number of cases processed by the police and the public prosecution services. The decrease in the number of received cases between 2014 and 2016 is a result of the fact that, since 2013, the number of offences reported to, as well as processed by, the police has been decreasing. The reasons for this include austerity measures and a lengthy strike by police officers in 2016. In **Spain**, the Organic Law 1/2015 eliminated "faltas" (misdemeanours) from the Criminal Code, qualifying some of them as administrative infractions. Accordingly, the level of misdemeanour cases has fallen, affecting the overall total of criminal cases.

**Estonia**, which has lowered the backlog between 2010 and 2016, noted that the variations observed were most likely a result of the Ministry of Justice and Harju County Court (the biggest court in Estonia) concluding an agreement setting a target for eliminating backlogs. The **Netherlands** also reduced its backlog over the past evaluation cycle, following a strong decrease in the number of cases between 2014 and 2016. This was caused by the "Mulder Law" pertaining to a group of misdemeanours, especially traffic offences.

11 States experienced an increase in the number of pending cases during the last two cycles. Of those, **Armenia** has remarked that the number of pending cases has increased due to the relatively low Clearance Rate. In **Montenegro**, there was a significant surge in the number of pending cases, from 0,42 in 2014 to 2,82 cases per 100 inhabitants in 2016, but the reason remains unclear. The increase in the **Republic of Moldova** may be attributed to the numerous amendments to the Criminal Code which introduced new categories of offences, leading to a significant rise in the number of criminal cases.

Court performance related to the ability to reduce the volume of pending criminal cases has been particularly positive in **Bulgaria, the Russian Federation and UK-England and Wales**. These States and entities have been able to invert the trend and reduce the number of pending cases in the latest evaluation. Indicators for all 3 States and entities are below the average.

A better understanding of the data on pending cases for the purpose of guaranteeing the “reasonable time standard” can be obtained from the analysis of the cases that are older than 2 years at each instance.<sup>97</sup> The 2018 evaluation exercise (2016 data) collects such data, for the first time.

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<sup>97</sup> See “Length of court proceedings in the member States of the Council of Europe based on the case law of the European Court of Human Rights”, Françoise Calvez and Nicolas Régis, 2012.

**Figure 5.49 The participation of first instance criminal cases pending more than 2 years in all pending cases on 31 December in 2016 (Q94)**

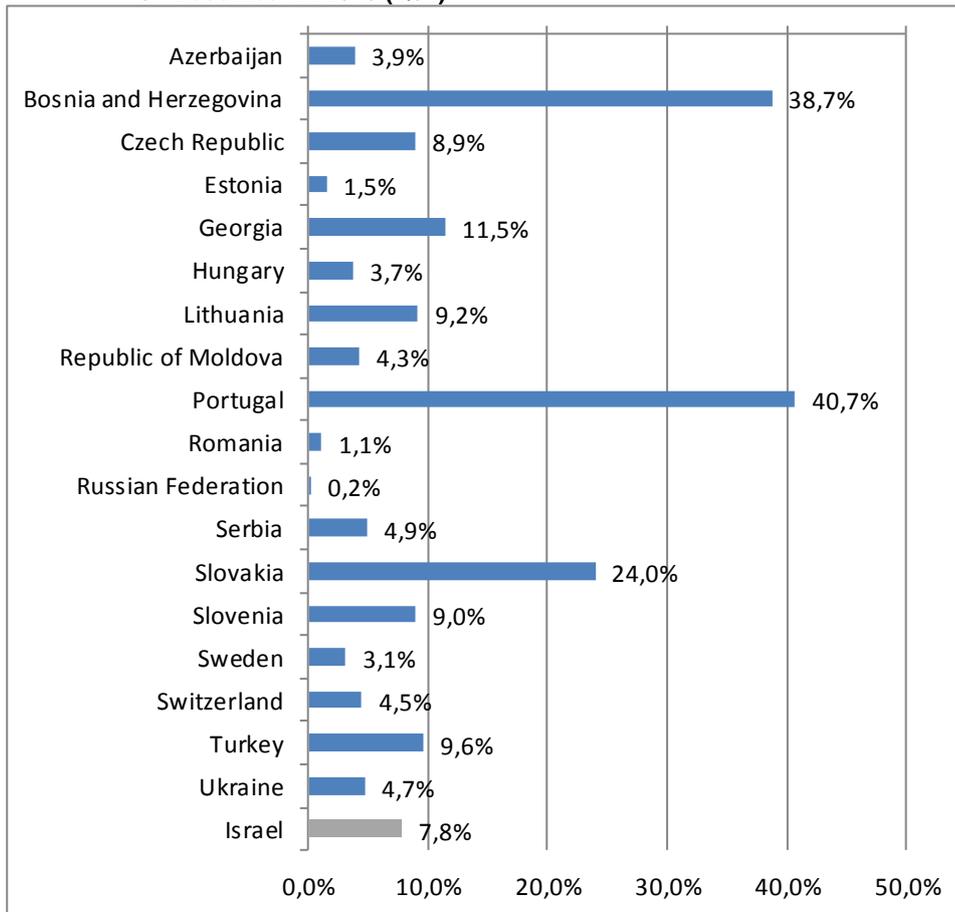


Figure 5.49 provides additional insight into the age of the pending cases. It is important to point out that 19 countries were in position to provide data on cases older than 2 years.

Finally, an improved understanding of the evolution of pending cases over time and of the reasons behind the efficiency (or lack thereof) of court performance can be obtained by analysing the variation of pending cases between the last two cycles against the amount of incoming cases. This observation complements the picture that emerges from the analysis of the Clearance Rate by showing a dynamic image of the capacity of courts to clear the caseload and reduce the backlog, despite increases in the volume of incoming cases from one evaluation to the other.

**Figure 5.50 Variation of criminal cases of first instance pending cases vs. incoming cases between 2014 and 2016 (Q94)**

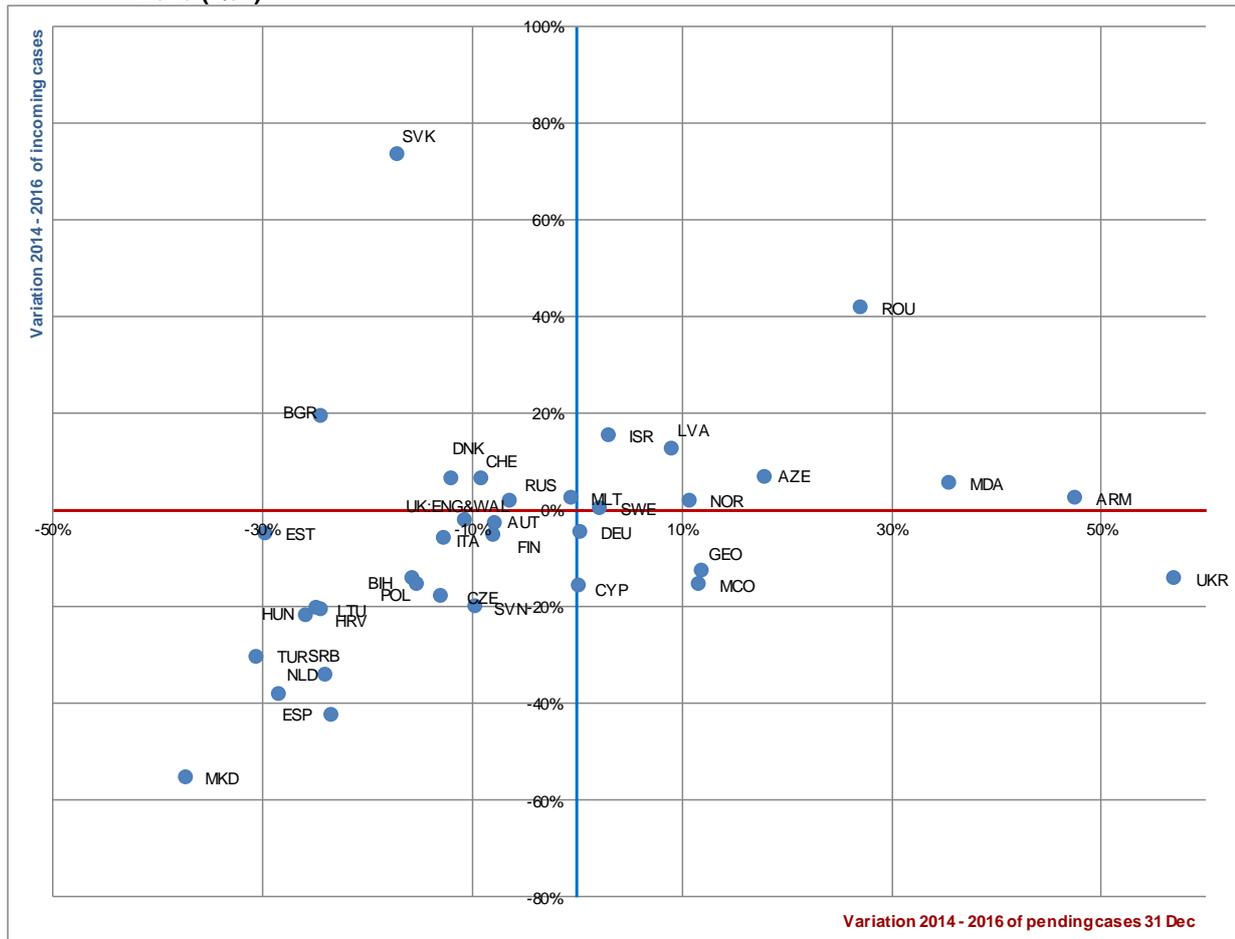


Figure 5.50 shows the variation in incoming and pending cases at the end of the year between the last two evaluation cycles. The average 11% increase in respect of both incoming and pending cases shows that States and entities have, on the whole, managed to cope effectively with the levels of incoming cases (medium figures – incoming: -5%, pending: -9%). **Montenegro** is not shown on this chart because the variation is extreme due to introduction of misdemeanour cases starting from this cycle.

In particular, the upper left quadrant of the scatter chart shows a positive performance by **Bulgaria, Denmark, Malta, the Russian Federation, Slovakia** and **Switzerland** in reducing the number of pending cases between 2014 and 2016, despite an increase in the number of incoming cases in the same period. **Slovakia** and **Bulgaria** have performed especially well in this respect: **Slovakia** reduced the level of pending cases by 17 % despite a 74 % increase in the number of incoming cases and **Bulgaria** decreased the number of pending cases by 24 % in the face of a 19 % increase of incoming cases.

The lower right quadrant displays those States or entities where the number of pending cases has increased despite a decrease in incoming cases, namely **Georgia, Monaco** and **Ukraine**. **Ukraine** in particular, experienced a very high increase of 57 % in the number of pending cases despite a reduction in incoming cases by 14 %. These States, together with those where the number of pending cases increased considerably more than the increase in the number of incoming cases (**Armenia, Azerbaijan, Republic of Moldova** and **Norway** in the upper right quadrant) should be monitored carefully. The situation in **Armenia** was highlighted in the last report, since the Clearance Rate was below 100 % - it remains at 91 % during this cycle and thus should continue to be monitored when the next evaluation is undertaken. The situation in **Norway** has improved, compared to the 2014 evaluation and it will be interesting to see if this trend is confirmed in the next evaluation cycle.

### 5.4.3 Specific categories of criminal cases

In the context of the analysis of court efficiency in the civil sector, the 2018 evaluation (2016 data) also collected specific information on two particularly relevant categories of criminal offences, intentional homicide and robbery. These are defined in the explanatory note as follows:

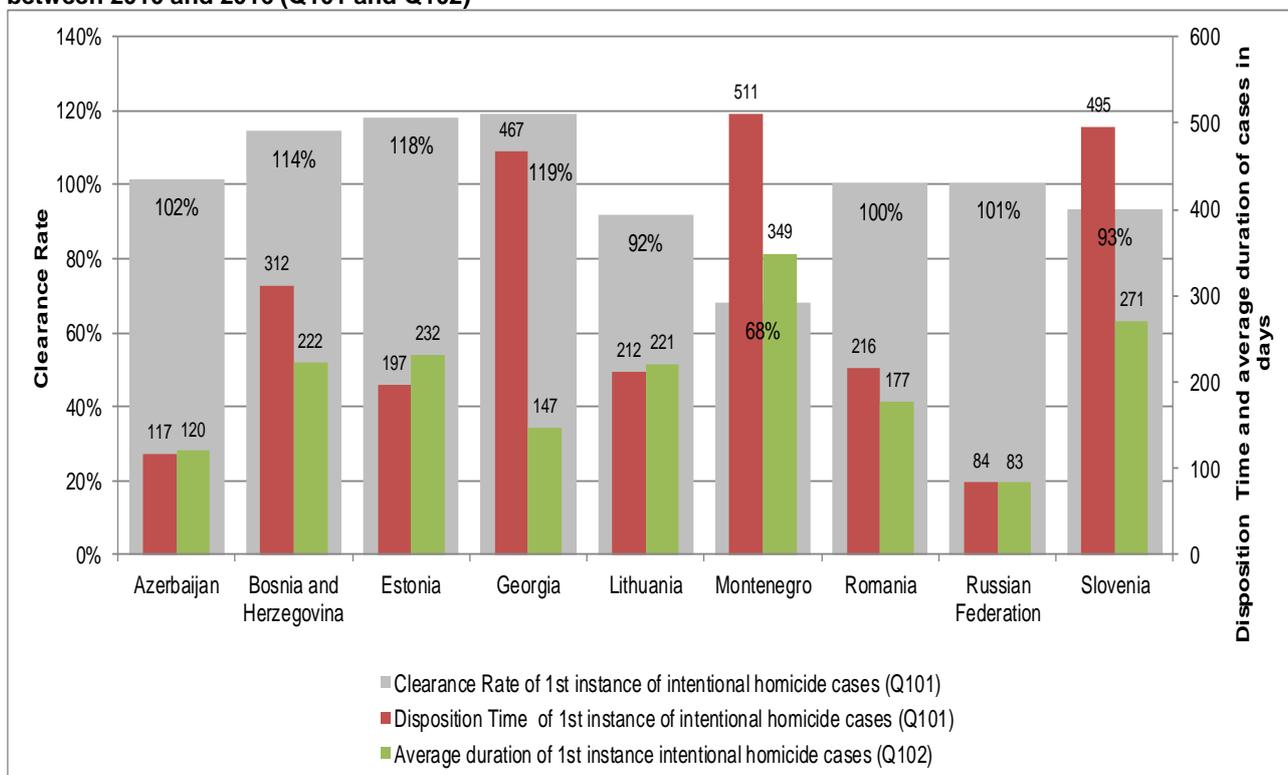
- *Intentional homicide* is defined as the intentional killing of a person. Where possible the figures should include: assault leading to death, euthanasia (where this is forbidden by the law), infanticide and *exclude* suicide assistance (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts.
- *Robbery* concerns stealing from a person with force or threat of force. If possible, these figures should include: muggings (bag-snatching, armed theft, etc.) and exclude pick-pocketing, extortion and blackmail (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts.

#### *Intentional homicide cases*

Between 2010 and 2016, the average Clearance Rate for intentional homicide cases has decreased in the long period (from 101 % in 2010 to 98 % in 2016) and the last evaluation marked an improvement compared to 2014. A similar trend can be noted in respect of the evolution of the average Disposition Time in the long period, which rose from 211 days in 2010 to 306 days in 2016. By contrast, in the last evaluation there was a worsening of the average Disposition Time (from 240 days in 2014 to 306 days in 2016). The average length of proceedings for this type of cases improved regularly between 2010 and 2014 but increased from 288 days in 2014 to 333 days in 2016. A positive trend can be noted, however, in the long period. Both the Disposition Time and the reported average length for this category of cases are higher than the average Disposition Time for the total of criminal cases (138 days in 2016). These figures should be interpreted carefully because of the limited quantity of data available, which necessarily affects average figures.

As it was highlighted earlier in this chapter, the Disposition Time can be considered as a better indicator for making comparisons between countries with regard to the ability of courts to cope with the volume of pending cases, while the average length allows a valuable insight into developments in case management within the same country or entity over the years.

**Figure 5.51. Clearance Rate, Disposition Time and average length for first instance intentional homicide cases between 2010 and 2016 (Q101 and Q102)**



11 out of the 21 States and entities for which data was made available registered a positive Clearance Rate for intentional homicide cases in 2016. A particularly positive performance can be noted with regard to **Bosnia and Herzegovina, Estonia, Georgia, Republic of Moldova, Norway, “the former Yugoslav Republic of Macedonia”** and **Morocco**. “The former Yugoslav Republic of Macedonia” showed a high Clearance Rate also in the last evaluation. The positive Clearance Rate in these countries, however, has not always resulted in a decrease in the Disposition Time, which suggests that the positive development is not directly related to improved court efficiency.

For instance, in **Bosnia and Herzegovina** the Clearance Rate increased from 90 % in 2014 to 114 % in 2016, but the country recorded an increase in the Disposition Time in the same period, albeit by just one day. This is partly explained by a change in the methodology for data processing for the 2016 reporting cycle. More significant changes can be noted in **Estonia** and **Georgia**. **Estonia** managed to invert the negative trend shown in the first three evaluation cycles and increased the Clearance Rate from 86 % in 2014, to 118 % in 2016; however, the Disposition Time also rose from 173 days to 197 days. No explanation has been provided in this regard, except for the fact that the statistics system is alive, as noted earlier. Similarly, **Georgia** (Clearance Rate decreased from 155 % in 2010, to 88 % in 2012, to 77 % in 2014) recorded an improvement compared to the last cycle and brought the Clearance Rate to 119 % in 2016, but this was accompanied by a deterioration in the Disposition Time, from 302 days in 2014 to 467 days in 2016. This can be explained on the one hand by a significant increase in pending cases in all categories, as a result of the decrease in the number of judges at the different instances and on the other hand by the recently launched reforms under ways in the justice sector.

**Albania, Armenia, Montenegro, Ukraine, UK-England and Wales** and to a certain extent **Bulgaria** and **Lithuania** record low levels of Clearance Rate. In **Armenia** and **Ukraine**, the deterioration of the Clearance Rate resulted in an important increase in the calculated Disposition Time. Less intuitively, in **Albania**, the decrease in the Clearance Rate from 106 % in 2010 to 84 % in 2016, was accompanied by an improvement in the Disposition Time, which fell from 307 days to 278 days. The reduction of the Disposition Time cannot thus be attributed to improved court efficiency but should be linked to other reasons which affect the number of pending cases (e.g. requalification of the offence, amnesty, changes in the collection of statistic).

Very few States and entities were able to provide figures concerning the average length of proceedings. Among these, **Ireland** reported an extended period for dealing with intentional homicide cases (865 days); the same applied in 2014 (648 days). For this country, the average length of proceedings is calculated from the date in which the case is sent forward to the court, to the date of the sentence, committal or acquittal. All intentional homicide cases in **Ireland** are processed by the Central Criminal Court, which has exclusive jurisdiction on murder, rape and serious sexual assault offences.

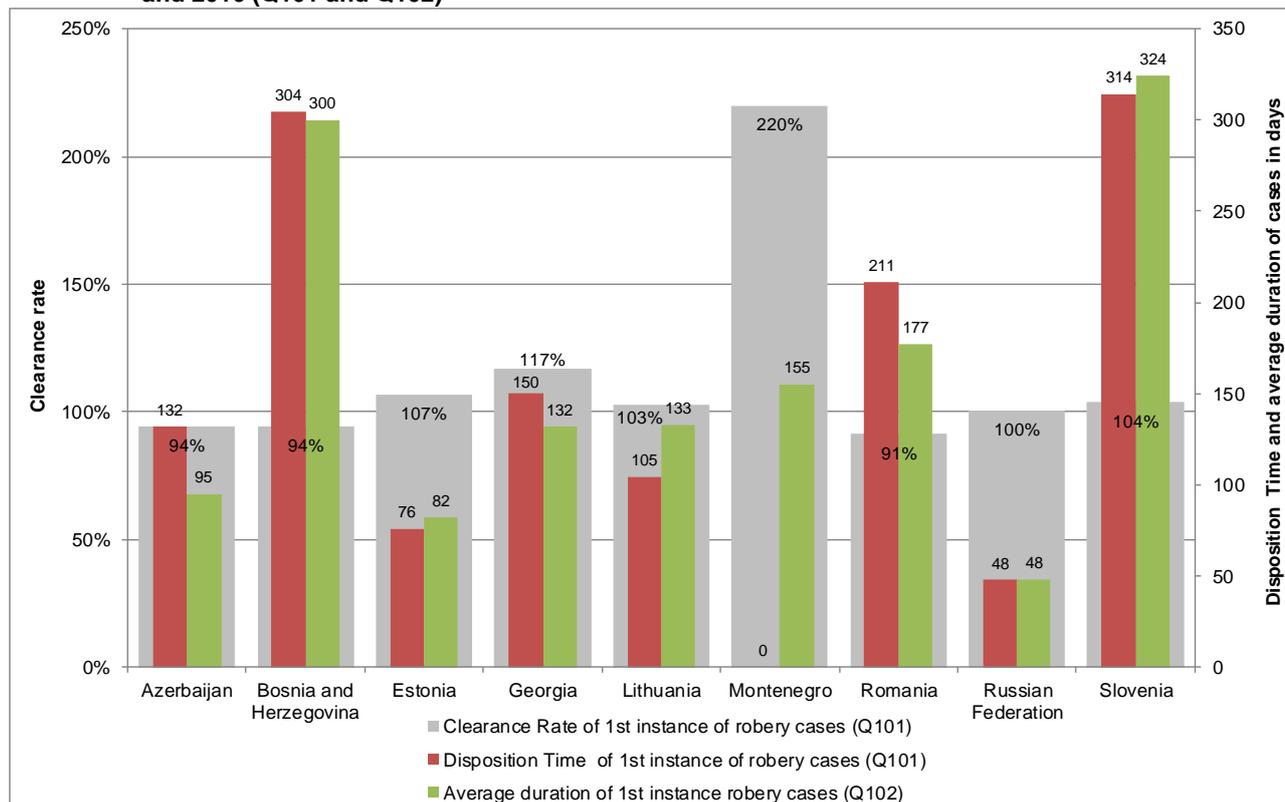
More generally, figure 5.51 above shows considerable differences between the calculated Disposition Time and the reported average length of proceedings in specific States, but too little information is provided to understand the underlying reasons and to draw robust (quantitative or qualitative) conclusions.

A better understanding of this data and the trends can be obtained by analysing them in conjunction with the volume of incoming cases and the length of the proceedings. Because of the gravity of the offence, the number of intentional homicide cases may be rather limited, compared to other categories of criminal offences. Moreover, homicide case proceedings may be particularly long in some cases for a number of reasons, including the importance of the quality of the evidence presented. A combination of these factors is expected to have a negative effect on the Clearance Rate, which measures the ratio between the number of cases resolved and received within one year and ultimately affects the Disposition Time. This would explain the particularly low Clearance Rate figures in some cases and accordingly suggest a reappraisal.

## Robbery cases

Between 2010 and 2016, the average Clearance Rate for robbery cases has developed positively from 99 % to 106 %, despite variations between the cycles. By contrast the average Disposition Time has deteriorated, both in the long period and compared to the last cycle (from 168 days in 2014 to 181 days in 2016). The average length of proceedings for robbery cases has instead improved regularly in the four evaluation cycles. Both the Disposition Time and the reported average length for this category of cases are higher than the average for the total of criminal cases (138 days in 2016). However these figures should be interpreted carefully because of the limited quantity of data available, which necessarily affects average values.

**Figure 5.52 Clearance Rate, Disposition Time and average length of first instance of robbery cases between 2010 and 2016 (Q101 and Q102)**



Of the 20 States and entities for which data was made available, 11 registered a positive Clearance Rate of robbery cases in 2016. A particularly positive performance can be noted in respect of **Bulgaria, Georgia, Montenegro, “the former Yugoslav Republic of Macedonia”** and **UK-England and Wales**. “**The former Yugoslav Republic of Macedonia**” showed a high Clearance Rate also in the last evaluation.

Between 2014 and 2016, the Clearance Rate increased in **Armenia, Austria, Bulgaria, Estonia, Georgia, Ireland, Montenegro** and **UK-England and Wales**. **Georgia** and **Montenegro**, in particular, witnessed an important improvement in the Clearance Rate, respectively, from 92 % to 117 % and from 73 % to 220 %. In the case of **Georgia**, as earlier noted, this can be related to the reforms under way in the justice sector, while no explanation has been provided for the development in **Montenegro**. In **Georgia**, however, the improvement in the Clearance Rate was not sufficient to impact positively on the volume of pending cases (and ultimately in the Disposition Time), which nevertheless increased because of a significant reduction in the number of judges (similar to what emerged in respect of homicide cases). Similarly, in **Armenia**, despite an improvement in the Clearance Rate, the Disposition Time suffered significant deterioration (from 265 days to 452 days). According to the provided explanation, these variations are due to low absolute numbers.

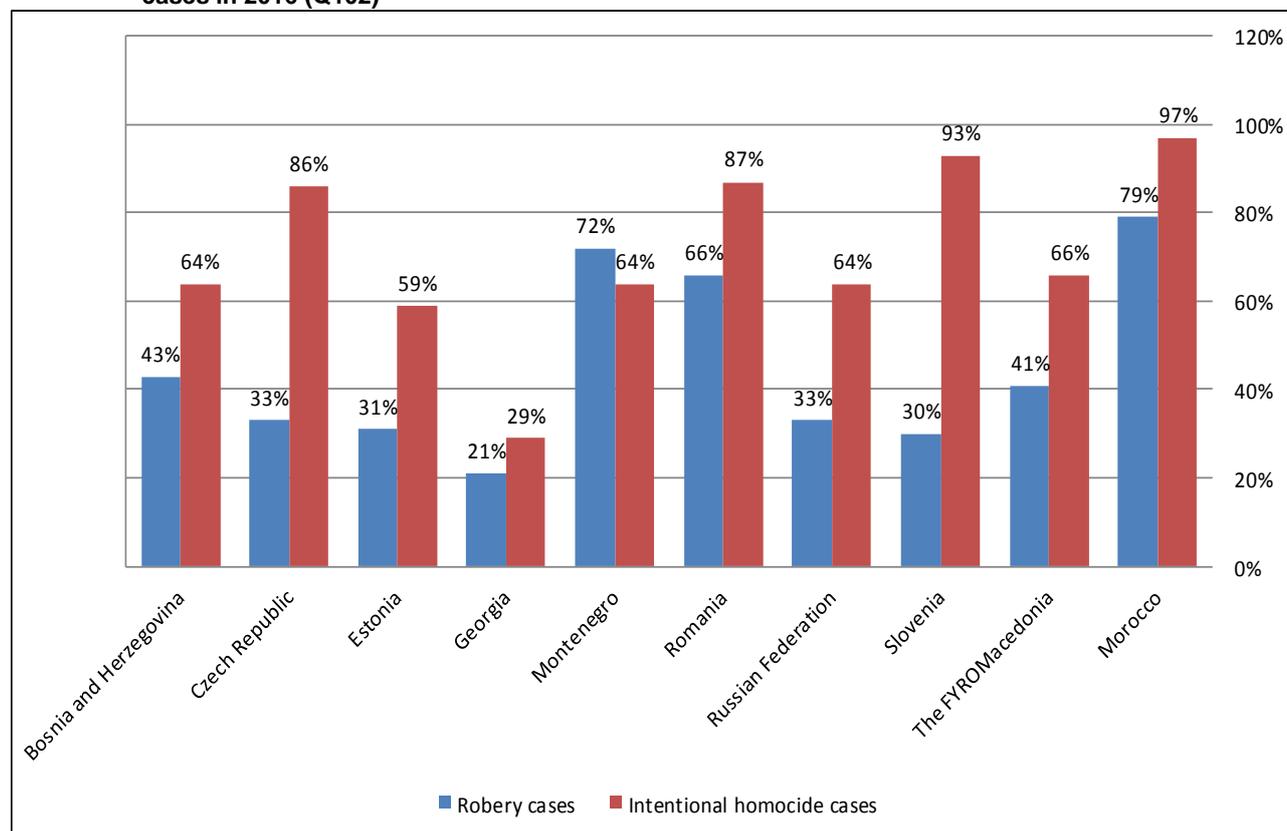
Between 2014 and 2016, the Clearance Rate decreased in **Azerbaijan, Bosnia and Herzegovina, Latvia, Lithuania, the Republic of Moldova, Romania, Russian Federation, Slovenia, “the former Yugoslav Republic of Macedonia”** and **Ukraine**. **Bosnia and Herzegovina**, especially, shows an important decrease in the Clearance Rate, from 117 % to 94 %, which resulted in a deterioration of the Disposition Time, from 200 days in 2014, to 304 days in 2016.

Also in the case of robbery cases, very few States (12) were able to provide data concerning the average length of proceedings. As figure 5.52 shows, for the States where both the Disposition Time and the average length of proceedings were made available, there are not big discrepancies between the respective figures. There are however major differences between States and entities surveyed in the law procedures that apply in each system and the methodology for calculating the average length of proceedings.

On a more general note, very little information is available as regards the factors behind the observed variations in incoming, solved and pending robbery cases. Information in this regard from the States should be consolidated with a view to gaining a deeper understanding of the factors behind the changes.

As already noted with regard to civil cases, an analysis of the rate at which cases are appealed would complement the analysis of efficiency at each instance and would help to gain an overall understanding of the efficiency and quality of courts across the various instances. The CEPEJ evaluation scheme, however, collects such information only in relation to the specific categories of cases addressed above. The quantity of the data reported, however, is not sufficient for a comparative analysis, because only few States and entities reported data on the percentage of decisions subject to appeal (**Bosnia and Herzegovina, Czech Republic, Estonia, Georgia, Montenegro, Romania, Russian Federation, Slovenia, “the former Yugoslav Republic of Macedonia” and Morocco**). In most of the States which reported data disaggregated by category of cases, intentional homicide cases are appealed at an average rate of 65% (more than 80% in the **Czech Republic, Romania, Slovenia and Morocco**) and robbery cases at a rate of 41% (more than 70% in **Montenegro and Morocco**).

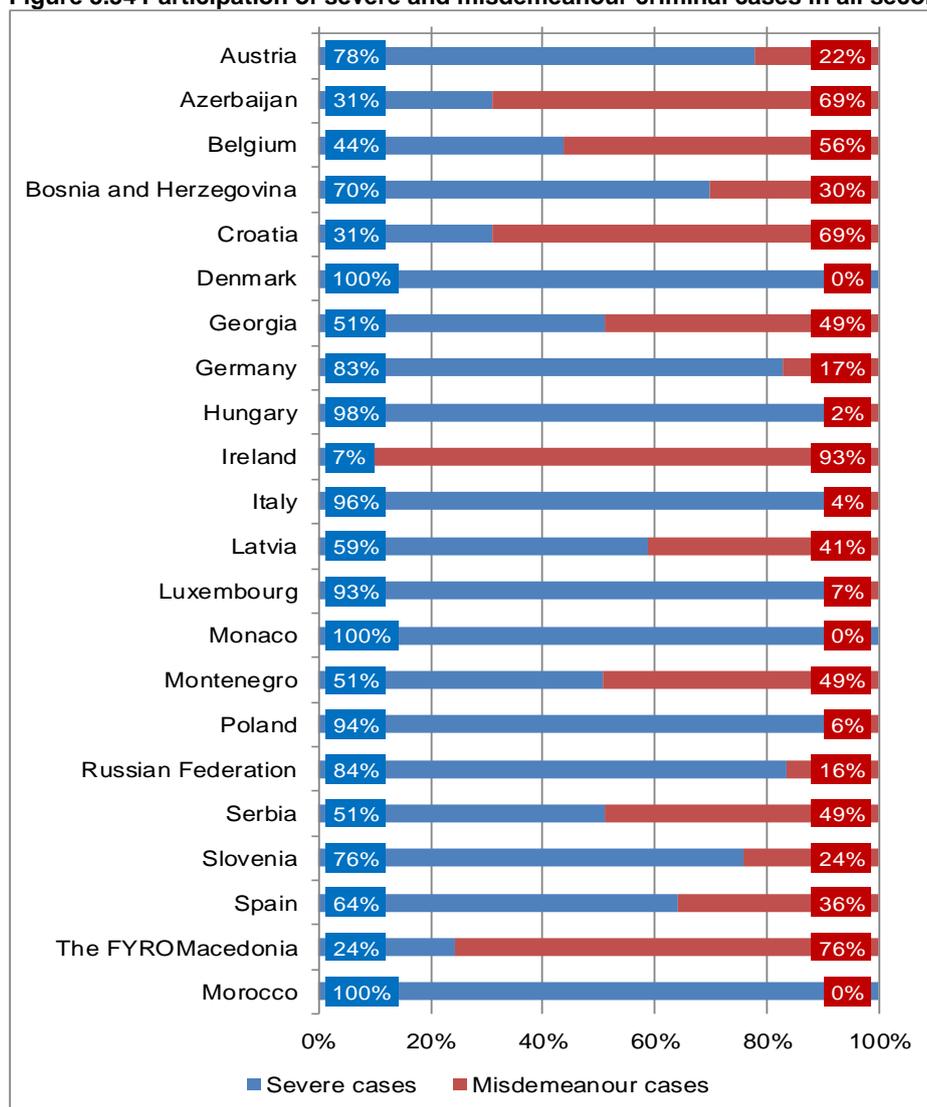
**Figure 5.53 Percentage of cases on first instance subject of appeal for robbery cases and intentional homicide cases in 2016 (Q102)**



## 5.4.2 Criminal cases - Second instance

Court caseload and performance indicators in 2016

Figure 5.54 Participation of severe and misdemeanour criminal cases in all second instance cases in 2016 (Q98)



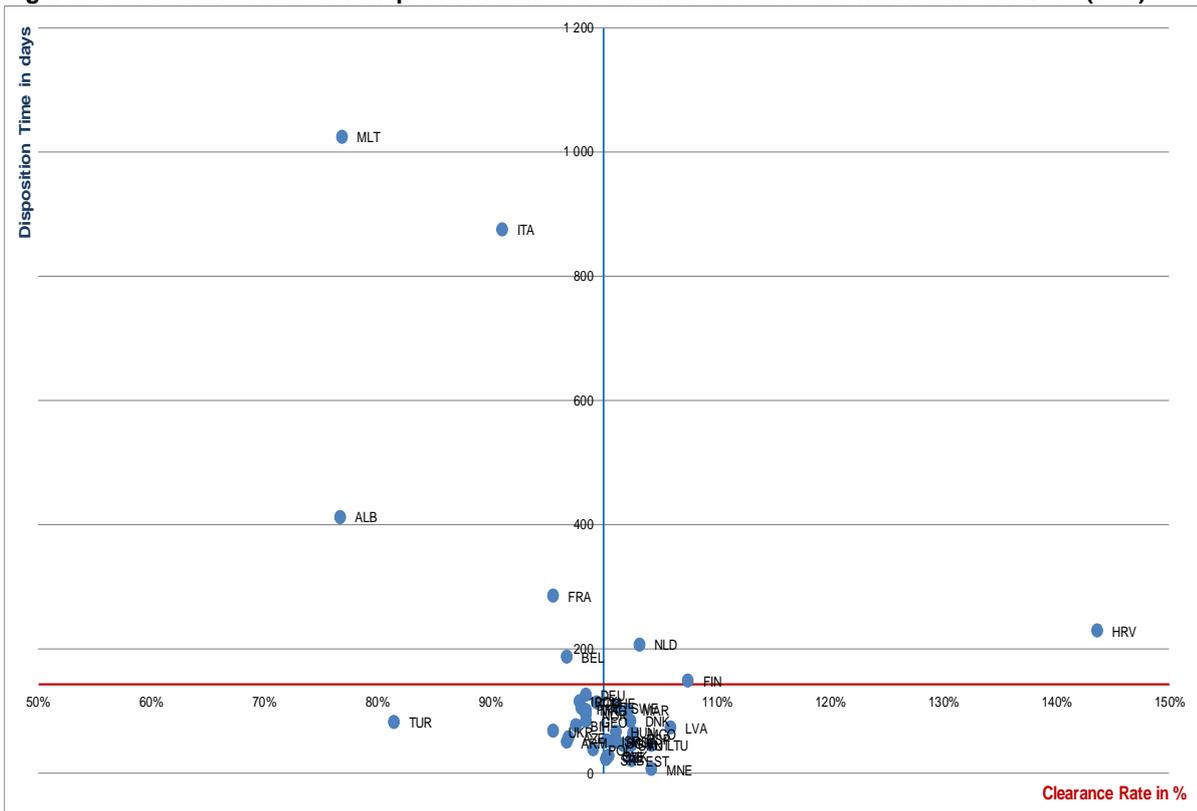
As shown in Figure 5.54, of the 21 States and entities that provided data in 2016, 15 received more severe than misdemeanour cases: **Austria, Bosnia and Herzegovina, Georgia, Germany, Hungary, Italy, Latvia, Luxembourg, Monaco, Montenegro, Poland, Russian Federation, Serbia, Slovenia** and **Spain**. Moreover, in **Denmark** and **Morocco**, all second instance criminal cases are considered severe. In **Italy**, in 2014-2015 a new case management system was introduced which affected statistics during that period.

Absolute numbers of incoming severe cases differ significantly between States and entities: from 153 cases in **Monaco** to 132 268 cases in **Poland**. As regards misdemeanour cases, data range from 0 case in **Monaco**, to 26 817 in **Serbia**. In **Monaco**, although appeals related to misdemeanour cases are possible; these are rarely lodged (as the 2016 statistics demonstrate).

These variations between the States and entities can be explained by differences in the respective statistics systems and/or legal categorisations. Examples include classification of severe and minor criminal offences that contrasts with the CEPEJ methodology (**Croatia**) and horizontal inconsistencies stemming from the possibility of rectifying errors at any time (**Spain**).

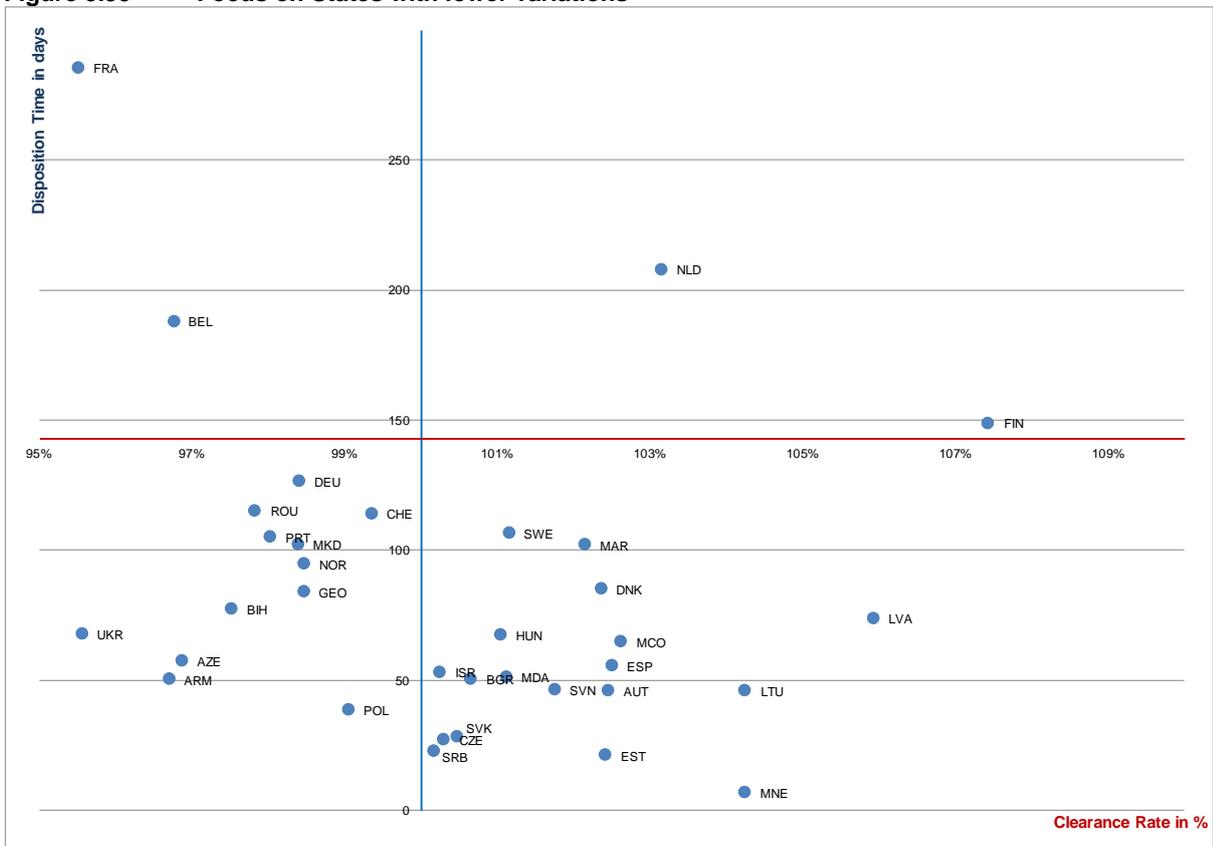
Such a composition of the caseload of criminal cases, in terms of complexity, should be taken into account in the analysis that follows.

Figure 5.55 Clearance Rate vs. Disposition Time for criminal cases of second instance in 2016 (Q98)



For better visibility the second chart focuses on the States with lower variations.

Figure 5.55 Focus on States with lower variations



The lower right quadrant of the above chart shows States and entities that have a Clearance Rate at or above 100 % and a Disposition Time below the average of 143 days (median: 77 days). 18 States and entities display a satisfactory level of court performance as regards second instance criminal cases: **Austria, Bulgaria, Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Republic of Moldova, Monaco, Montenegro, Serbia, Slovakia, Slovenia, Spain, Sweden, Israel and Morocco**. This constitutes almost half of the total number of States and entities (39) which were able to provide data for both their Clearance Rate and Disposition Time.

Past the 143-day Disposition Time average, the situation seems manageable in 3 other States which have a positive Clearance Rate (above 100 %) and a low Disposition Time (below one year): **Croatia, Finland and Netherlands**.

For another group of States, the Clearance Rate is slightly lower than 100 % but the Disposition Time can be considered satisfactory (below the average of 143 days): **Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Germany, Norway, Poland, Portugal, Romania, Switzerland, “the former Yugoslav Republic of Macedonia” and Ukraine**. In **Romania**, the jurisdiction of the courts on judging appeals and second appeals has changed and some of the cases that were under the jurisdiction of the High Court are now under the jurisdiction of the courts of appeal. The lowest Disposition Time figures arise in respect of **Montenegro** (7 days), followed by **Estonia, Serbia** and **Slovakia** (all between 20 and 30 days) and **Poland** (between 30 and 40 days). The reasons behind this and the subsequent effect on the quality of court services in practice, are unclear.

The situation is more serious in those States and entities that have a particularly low Clearance Rate or a very high Disposition Time, or both. Pending cases, including backlogs and lengths of proceedings are likely to worsen in the future if no specific measures are taken in respect of the efficiency of justice in these States. This is the case in **Albania** (Clearance Rate: 77 %; Disposition Time: 413 days), **Italy** (Clearance Rate 91 %; Disposition Time: 876 days), **Malta** (Clearance Rate: 77 %; Disposition Time: 1 025 days) and **Turkey** (Clearance Rate: 81 %).

In **Italy**, the fact that 48,2 % of second instance pending cases date back more than 2 years may go some way to explaining the very high Disposition Time of 876 days.

In **Malta**, during the 2016 evaluation cycle there was an increase in the caseload of the Court of Criminal Appeal, lower jurisdiction. This accounts for the low Clearance Rate (77 %) and excessively lengthy Disposition Time of almost 3 years (1 025 days).

In **Turkey**, second instance criminal courts only started to operate in July 2016, which may account for the somewhat low Clearance Rate (81 %).

**Figure 5.56 Variation in criminal cases of second instance pending cases vs. incoming cases between 2014 and 2016 (Q98)**

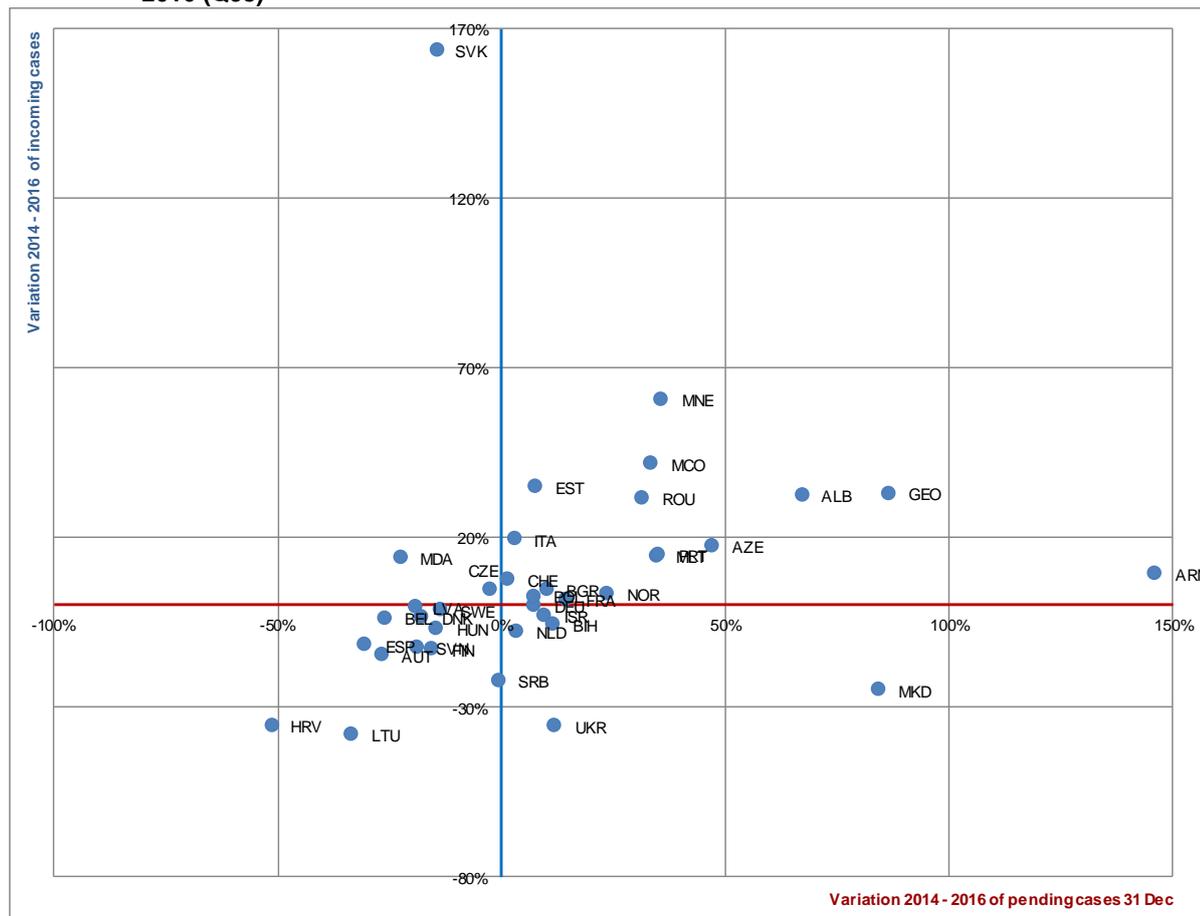


Figure 5.56 highlights the positive performance of a group of States and entities that were able to reduce the number of pending cases despite an increase in the number of incoming cases: **Czech Republic** and **Republic of Moldova**. The significance of this data should also take into consideration the Disposition Time indicator which is low in all of these countries - 27 days in the **Czech Republic** and slightly longer at 51 days in the **Republic of Moldova**.

The situation in those States where the number of pending cases has either increased despite a decrease in incoming cases (**Bosnia and Herzegovina**, **Netherlands**, **“the former Yugoslav Republic of Macedonia”**, **Ukraine** and **Israel**), or increased considerably more than the increase in the number of incoming cases (**Albania**, **Armenia**, **Azerbaijan**, **Bulgaria**, **France**, **Georgia**, **Malta**, **Norway**, **Poland** and **Portugal**) should be monitored more closely. In **Bosnia and Herzegovina**, the High Judicial Council increased the number of judges in the two largest second instance courts, at the end of 2017, with the aim of improving court efficiency at second instance. The effects of this measure should be monitored during the next evaluation cycle.

Evolution of the performance indicators

Table 5.57 Clearance Rate of second instance criminal cases between 2010 and 2016 (Q98)

States / Entities	Clearance Rate of 2nd instance criminal cases				
	2010	2012	2014	2016	Evolution
Albania	90%	106%	82%	77%	
Andorra	94%	111%	100%	NA	
Armenia	105%	100%	98%	97%	
Austria	99%	100%	99%	102%	
Azerbaijan	98%	97%	102%	97%	
Belgium	93%	96%	98%	97%	
Bosnia and Herzegovina	101%	99%	98%	98%	
Bulgaria	100%	100%	99%	101%	
Croatia	106%	79%	145%	144%	
Cyprus	91%	NAP	63%	NAP	
Czech Republic	100%	99%	99%	100%	
Denmark	96%	96%	103%	102%	
Estonia	97%	101%	101%	102%	
Finland	104%	104%	97%	107%	
France	107%	99%	98%	96%	
Georgia	108%	104%	94%	98%	
Germany	100%	100%	100%	98%	
Greece	NA	NA	NA	NA	
Hungary	98%	99%	100%	101%	
Iceland	NAP	NAP	NA	NAP	
Ireland	107%	117%	90%	113%	
Italy	80%	90%	101%	91%	
Latvia	82%	98%	97%	106%	
Lithuania	98%	100%	98%	104%	
Luxembourg	NA	NA	NA	115%	
Malta	65%	65%	81%	77%	
Republic of Moldova	100%	90%	91%	101%	
Monaco	NA	77%	107%	103%	
Montenegro	120%	101%	103%	104%	
Netherlands	98%	99%	102%	103%	
Norway	100%	100%	100%	98%	
Poland	98%	99%	100%	99%	
Portugal	100%	99%	102%	98%	
Romania	96%	103%	86%	98%	
Russian Federation	99%	95%	137%	93%	
Serbia	83%	102%	105%	100%	
Slovakia	100%	101%	98%	100%	
Slovenia	106%	105%	102%	102%	
Spain	100%	98%	103%	103%	
Sweden	101%	99%	104%	101%	
Switzerland	95%	98%	101%	99%	
The FYROMacedonia	99%	101%	93%	98%	
Turkey	NAP	NAP	NAP	81%	
Ukraine	98%	100%	99%	96%	
UK-England and Wales	NA	NA	NA	89%	
UK-Scotland	80%	NA	NA	NA	
Israel		101%	99%	100%	
Morocco				102%	
<b>Average</b>	97%	98%	99%	100%	
<b>Median</b>	99%	99%	99%	100%	
<b>Minimum</b>	65%	65%	63%	77%	
<b>Maximum</b>	120%	117%	145%	144%	

Data collected for the last four evaluations show a steady improvement of the Clearance Rate of criminal cases at second instance over the long period (2010 to 2016). This is in part similar to the first instance trend, which however remained positive over all four evaluation cycles, falling to 100 % between 2012 and 2014, but returning to 101 % in 2016.

Of the 13 States having experienced stability or a constant improvement in their Clearance Rate with regard to criminal cases at second instance from 2010 to 2014, only **Estonia, Hungary** and the **Netherlands** continued to see an improvement in 2016. After the increasing trend in the first three cycles, the Clearance Rate fell, in 2016, in **Belgium, Denmark, Germany, Italy, Malta, Monaco, Norway, Poland, Russian Federation, Serbia** and **Switzerland**. Of those, the Clearance Rate in respect of **Germany, Italy, Norway, Poland** and **Switzerland** fell below 100 %, while in **Belgium** and **Malta**, the Clearance Rate decreased further below the efficiency threshold. Among these States, **Italy** and the **Russian Federation** display important decreases in the Clearance Rate (respectively, from 101 % to 91 % and from 137 % to 93 %), which are explained in both cases by changes in statistical methodology.

**Slovenia** displays a decreasing trend in all four evaluations; however, it still recorded a positive Clearance Rate in 2016 (102 %).

In **Ireland**, the Clearance Rate improved significantly in 2016 (from 90 % in 2014 to 113 % in 2016), due to the establishment of the Court of Appeal.

**Table 5.58 Disposition Time of second instance criminal cases between 2010 and 2016 (Q99)**

States / Entities	Disposition Time of 2nd instance criminal cases				
	2010	2012	2014	2016	Evolution
Albania	288	231	306	413	
Andorra	64	65	60	NA	
Armenia	35	25	22	51	
Austria	53	51	55	46	
Azerbaijan	38	49	44	58	
Belgium	252	235	243	188	
Bosnia and Herzegovina	48	55	65	77	
Bulgaria	48	46	49	51	
Croatia	344	624	301	230	
Cyprus	500	NAP	795	NAP	
Czech Republic	23	32	30	27	
Denmark	75	95	100	85	
Estonia	51	28	27	21	
Finland	158	155	170	149	
France	212	219	246	286	
Georgia	28	43	63	84	
Germany	109	109	116	127	
Greece	NA	NA	NA	NA	
Hungary	60	69	75	68	
Iceland	NAP	NAP	NA	NAP	
Ireland	218	NA	NA	NA	
Italy	999	937	912	876	
Latvia	150	110	99	74	
Lithuania	44	40	46	46	
Luxembourg	NA	NA	NA	NA	
Malta	438	780	824	1 025	
Republic of Moldova	66	92	84	51	
Monaco	NA	NA	66	65	
Montenegro	21	13	8	7	
Netherlands	207	197	187	208	
Norway	46	85	78	95	
Poland	58	48	37	39	
Portugal	72	91	86	105	
Romania	101	250	131	115	
Russian Federation	16	36	NA	NA	
Serbia	107	81	17	23	
Slovakia	83	77	90	28	
Slovenia	59	49	50	46	
Spain	67	73	70	56	
Sweden	119	131	119	107	
Switzerland	148	130	120	114	
The FYROMacedonia	29	22	44	103	
Turkey	NAP	NAP	NAP	83	
Ukraine	40	41	38	68	
UK-England and Wales	NA	NA	NA	NA	
UK-Scotland	NA	NA	NA	NA	
Israel		47	48	53	
Morocco				102	
<b>Average</b>	140	146	155	143	
<b>Median</b>	67	77	76	77	
<b>Minimum</b>	16	13	8	7	
<b>Maximum</b>	999	937	912	1025	

The average Disposition Time of criminal cases at second instance increased slightly between 2010 and 2014, before decreasing to 143 days in 2016; there has been only a slight improvement over the long period. The average Disposition Time of criminal cases at second instance is only marginally longer than the average recorded at first instance (138 days). The median of this category of cases is significantly lower than the average (almost half) and has deteriorated in the long period.

Of the 9 States that experienced a steady improvement in Disposition Time between 2010 and 2014, **Estonia, Italy, Latvia, Montenegro** and **Switzerland**, have continued with these positive developments also in 2016. Nonetheless, the Disposition Time in **Italy** remains extremely high at 876 days. The Disposition Time for the 4 other States is below average and therefore does not present any issues. By contrast, **Armenia, Netherlands, Poland** and **Serbia** saw a slight increase in their Disposition Time between 2014 and 2016. Of those, only the **Netherlands** shows a Disposition Time above average (this has been the case at each evaluation).

7 States saw a continuous worsening of the calculated Disposition Time over the course of the 4 evaluation cycles. Of these 7 States, **Bosnia and Herzegovina, Georgia, Germany** and **Israel** do not present a major cause for concern, since they all report figures below the average. In contrast, **France** displays a longer Disposition Time (286 days), as well as **Malta**, where the excessive Disposition Time of 1 025 days is the highest reported in respect of any State or entity. Regarding **Cyprus**, the 2016 data was not available but the very high Disposition Time recorded in 2014 (795 days) suggests that close attention should be paid to the development in the next cycle.

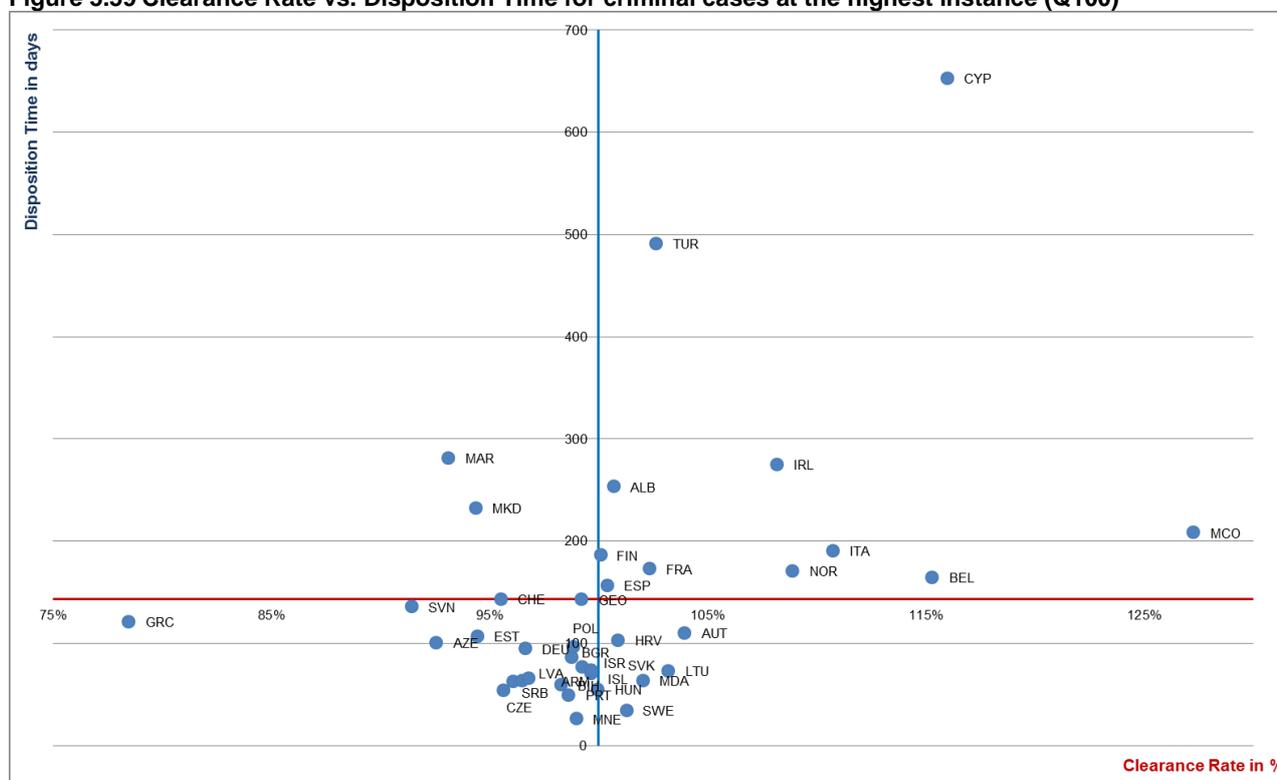
**Denmark** and **Hungary** were able in 2016 to reverse the previous trend of increasing Disposition Time between 2010 and 2014. The Disposition Time in respect of both States remains below the average.

It is also worth monitoring how the situation develops in future cycles in **Armenia** and “**the former Yugoslav Republic of Macedonia**” where the Disposition Time has increased significantly between 2014 and 2016, although the Disposition Time remains in these States below the average.

### 5.4.3 Criminal cases – Supreme Court (highest instance)

*Court caseload and performance indicators in 2016*

**Figure 5.59 Clearance Rate vs. Disposition Time for criminal cases at the highest instance (Q100)**



Due to extreme value **Romania** is not included in the average Clearance Rate and Disposition Time for 2016. In Romania, the jurisdiction of the courts on judging appeals and second appeals has changed and some of the cases that were under the jurisdiction of the High Court are now under the jurisdiction of the courts of appeal. For that reason the number of cases in Supreme court shows significant decrease in all categories and consequently the Clearance Rate is extremely high.

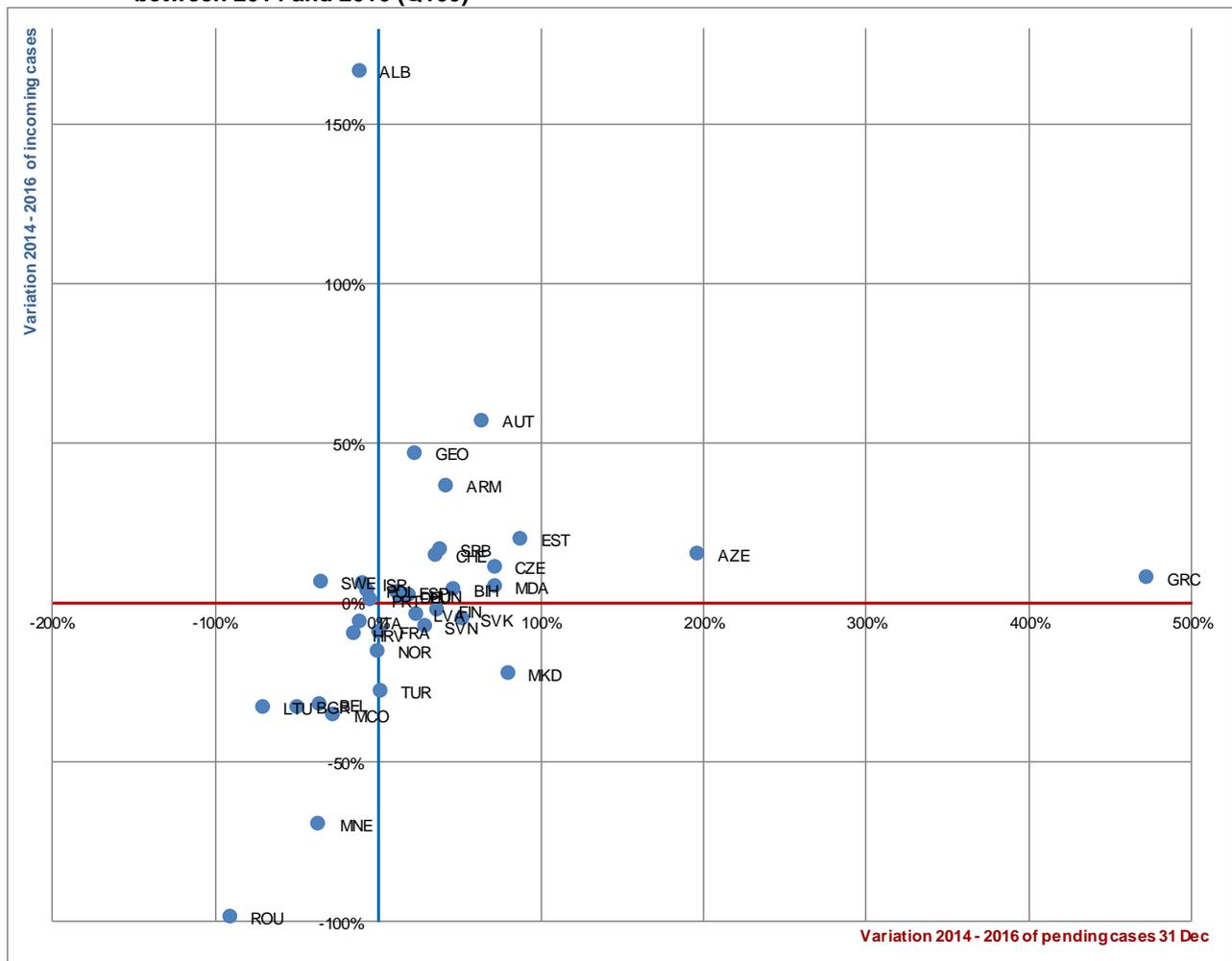
Figure 5.59 shows in the lower right quadrant 8 States or entities that have a Clearance Rate of criminal cases at the highest instance at or above 100 % and a Disposition Time below the average of 147 days (median: 109 days): **Austria, Croatia, Hungary, Iceland, Lithuania, Republic of Moldova, Slovakia and Sweden.**

The figure also shows 9 States with a positive Clearance Rate and a Disposition Time above the average but below one year: **Albania, Belgium, Finland, France, Ireland, Italy, Monaco, Norway and Spain.**

13 other States display a Clearance Rate which is slightly lower than 100 % but the Disposition Time can be considered satisfactory (below the average of 147 days): **Armenia, Bosnia and Herzegovina, Bulgaria, Czech Republic, Georgia, Germany, Latvia, Montenegro, Poland, Portugal, Serbia, Switzerland and Israel.** The lowest Disposition Time figures appear in respect of **Montenegro** (26 days) and **Sweden** (35 days).

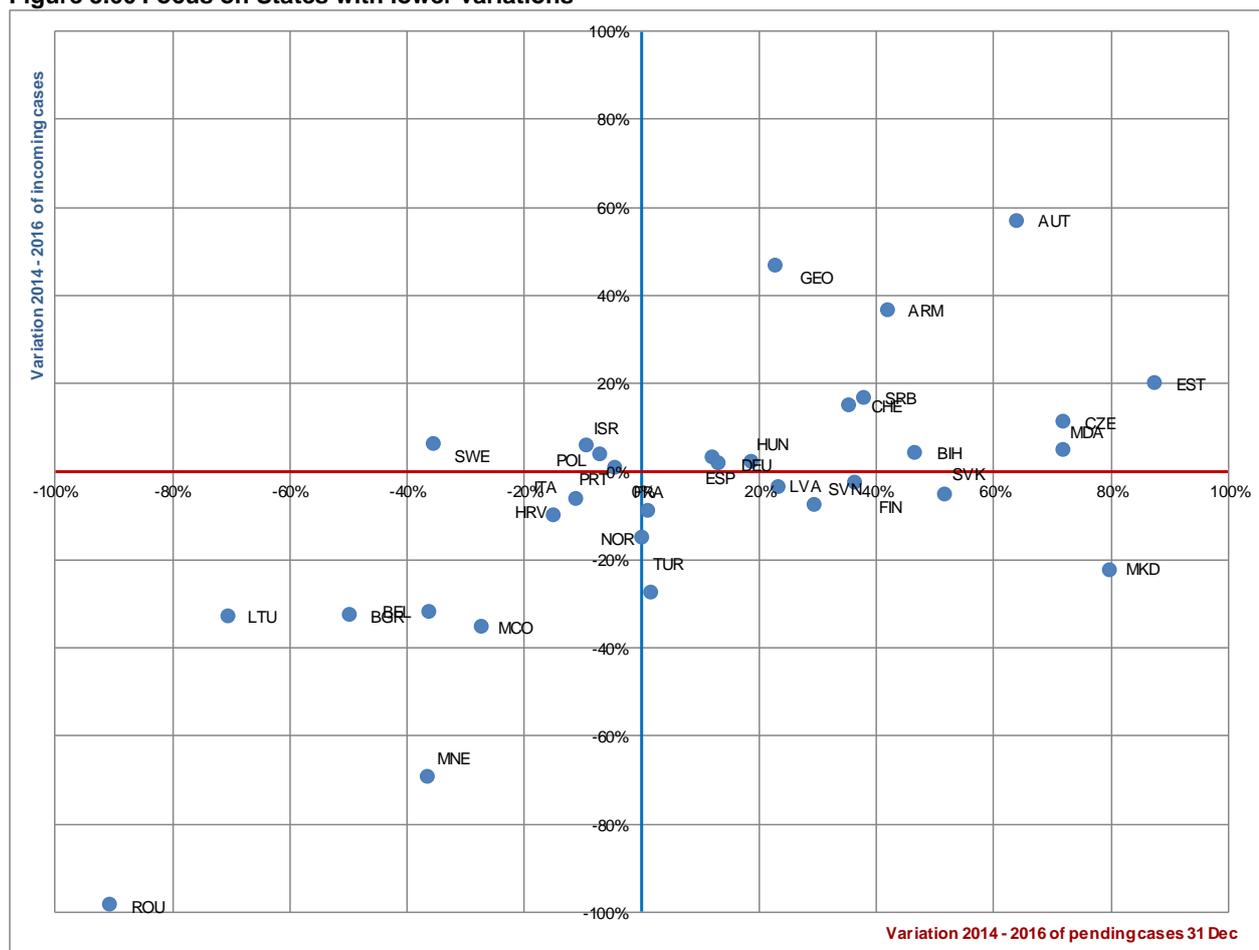
The situation is more serious in those States and entities that have a particularly low Clearance Rate or a very high Disposition Time, or both, as this shows that courts are struggling to cope with the volume of incoming cases. It is the case in **Luxembourg** (Clearance Rate: 73 %), **Greece** (Clearance Rate: 78 %), **“the former Yugoslav Republic of Macedonia”** (Disposition Time: 233 days), **Turkey** (Disposition Time: 491 days), **Cyprus** (Disposition Time: 653 days) and **Morocco** (Disposition Time: 282 days).

**Figure 5.60 Variation of pending criminal cases of the highest instance pending cases vs. incoming cases between 2014 and 2016 (Q100)**



For better visibility the second chart focuses on the States with lower variations.

**Figure 5.60 Focus on States with lower variations**



The figure above highlights the positive performance of a group of States and entities that were able to reduce the backlog despite an increase in the number of incoming cases: **Albania, Poland, Portugal, Sweden and Israel**. **Albania** (not appearing on the second Figure) has shown a particularly positive performance by reducing its backlog by 11 % in the wake of a 166 % increase in the number of pending cases; however the reasons behind this remain unclear.

By contrast, the situation in those States where the number of pending cases has either increased despite a decrease in incoming cases (**Finland, France, Latvia, Slovakia, Slovenia, “the former Yugoslav Republic of Macedonia” and Turkey**), or increased considerably more than the increase in the number of incoming cases (**Armenia, Austria, Azerbaijan (not show on the second Figure), Bosnia and Herzegovina, Czech Republic, Estonia, Germany, Greece (not show on the second Figure), Hungary, Republic of Moldova, Serbia, Spain and Switzerland**) should be mentioned. As stated earlier, the variations in **Armenia** are partly related to the low absolute number of cases. In **Bosnia and Herzegovina** new judges were appointed at the end of 2017, also in one of the highest courts and the effects of these appointments are expected to appear in the next evaluation cycle.

Comparing these findings with the table on second instance cases shows that courts of the highest instance overall face increasing challenges in coping with the caseload and the number of pending cases.

Evolution in the performance indicators

Table 5.61 Clearance Rate of the highest instance criminal cases between 2010 and 2016 (Q100)

States / Entities	Clearance Rate of highest instance criminal cases				
	2010	2012	2014	2016	Evolution
Albania	75%	105%	224%	101%	
Andorra	NAP	NAP	NAP	NAP	
Armenia	99%	100%	93%	97%	
Austria	99%	101%	90%	104%	
Azerbaijan	99%	94%	110%	93%	
Belgium	94%	99%	96%	115%	
Bosnia and Herzegovina	95%	101%	101%	98%	
Bulgaria	102%	101%	102%	99%	
Croatia	98%	104%	110%	101%	
Cyprus	NA	101%	NAP	116%	
Czech Republic	98%	103%	101%	96%	
Denmark	73%	142%	84%	97%	
Estonia	111%	83%	112%	94%	
Finland	NA	107%	108%	100%	
France	101%	104%	102%	102%	
Georgia	102%	115%	71%	99%	
Germany	101%	99%	96%	97%	
Greece	NA	94%	110%	78%	
Hungary	97%	99%	98%	100%	
Iceland	95%	91%	NA	100%	
Ireland	NA	NA	400%	108%	
Italy	93%	99%	96%	111%	
Latvia	98%	95%	106%	97%	
Lithuania	104%	100%	84%	103%	
Luxembourg	NA	NA	NA	73%	
Malta	NA	NAP	NAP	NAP	
Republic of Moldova	118%	101%	120%	102%	
Monaco	NA	93%	106%	127%	
Montenegro	100%	100%	98%	99%	
Netherlands	104%	95%	105%	NA	
Norway	90%	86%	89%	109%	
Poland	103%	96%	98%	99%	
Portugal	113%	99%	99%	99%	
Romania	98%	103%	377%	2963%	
Russian Federation	NA	95%	NAP	NAP	
Serbia	162%	92%	90%	96%	
Slovakia	101%	100%	100%	100%	
Slovenia	99%	96%	98%	91%	
Spain	104%	100%	107%	100%	
Sweden	102%	105%	106%	101%	
Switzerland	99%	98%	101%	96%	
The FYROMacedonia	105%	103%	89%	94%	
Turkey	78%	106%	92%	103%	
Ukraine	77%	NA	98%	NA	
UK-England and Wales	50%	NA	73%	100%	
UK-Scotland	85%	NAP	NAP	NAP	
Israel		103%	101%	99%	
Morocco				93%	
<b>Average</b>	98%	100%	110%	100%	
<b>Median</b>	99%	100%	100%	100%	
<b>Minimum</b>	50%	83%	71%	73%	
<b>Maximum</b>	162%	142%	400%	2963%	

The Clearance Rate of criminal cases at the highest instance has slightly improved in the long period (not considering the outlier Romania). Median data has remained stable at the efficiency threshold during the last three evaluations.

Of the 9 States and entities that experienced a continual improvement in their Clearance Rate with regard to criminal cases at third instance from 2010 to 2014 (this includes those States and entities for which data from one evaluation cycle was unavailable), only **Monaco** and **UK-England Wales** have maintained this positive trend in 2016. The performance by **UK-England and Wales** over the last evaluation is to be commended, since the Clearance Rate rose from 73 % to 100 % in the last evaluation. Instead, after increases between 2010 and 2014, the Clearance Rate fell in 2016 in **Albania, Bosnia and Herzegovina, Croatia, Finland** and **Sweden**.

Out of the 8 States previously showing a constant decrease in the Clearance Rate, such a pattern continues in **Israel**. The situation is not too concerning as the Clearance Rate is slightly below the efficiency level (at 99 %). In 2016, **Portugal** (99 %) and **Slovakia** (100 %) display a decrease in their Clearance Rate compared to 2010, but the respective figures have remained stable in the course of the last three evaluations. After a steady decrease between 2010 and 2014, the Clearance Rate improved in **Germany, Lithuania, Montenegro, "the former Yugoslav Republic of Macedonia"** and **Serbia**. Except for **Lithuania**, the Clearance Rate remains within a range of negative values for these States. In **Lithuania**, the improved Clearance Rate (from 84 % in 2014 to 103 % in 2016) is due to increased efforts to improve court productivity and ensure timeliness of proceedings.

Other States experienced a decline in their Clearance Rate between 2014 and 2016. **Azerbaijan, Bulgaria, Estonia, Greece, Latvia** and **Switzerland** experienced a drop below 100 %, while **Albania, Ireland, the Republic of Moldova** and **Spain** maintained a positive Clearance Rate. In **Ireland**, the decreased Clearance Rate is due to the increase in the incoming and resolved cases reflecting arrangements for the establishment of the Court of Appeal and the new appellate jurisdiction of the Supreme Court.

Major improvements in the Clearance Rate between 2014 and 2016 can further be observed in **Armenia, Denmark, Georgia, Poland** and **Slovenia** (but the Clearance Rate is below the efficiency threshold) and in **Belgium, Hungary** and **Italy**, which brought the Clearance Rate at or above the 100% mark in 2016.

**Table 5.62 Disposition Time of the highest instance criminal cases between 2010 and 2016 (Q100)**

States / Entities	Disposition Time of highest instance criminal cases				
	2010	2012	2014	2016	Evolution
Albania	494	600	341	253	
Andorra	NAP	NAP	NAP	NAP	
Armenia	16	101	64	64	
Austria	94	80	121	110	
Azerbaijan	38	53	33	101	
Belgium	121	145	211	165	
Bosnia and Herzegovina	81	48	41	60	
Bulgaria	54	40	113	86	
Croatia	119	125	100	103	
Cyprus	NA	446	NAP	653	
Czech Republic	48	35	33	55	
Denmark	259	63	NA	NA	
Estonia	32	144	58	107	
Finland	NA	132	124	186	
France	129	142	156	173	
Georgia	76	25	238	143	
Germany	51	56	86	95	
Greece	NA	24	16	121	
Hungary	56	56	49	55	
Iceland	51	60	NA	74	
Ireland	NA	NA	NA	275	
Italy	227	221	233	191	
Latvia	31	45	47	66	
Lithuania	94	97	205	73	
Luxembourg	NA	NA	NA	NA	
Malta	NA	NAP	NAP	NAP	
Republic of Moldova	49	51	33	64	
Monaco	NA	209	223	209	
Montenegro	0	0	13	26	
Netherlands	NA	NA	NA	NA	
Norway	92	166	179	171	
Poland	95	134	109	97	
Portugal	28	38	52	50	
Romania	37	78	84	66	
Russian Federation	NA	31	NAP	NAP	
Serbia	31	37	57	63	
Slovakia	48	35	44	71	
Slovenia	79	110	90	136	
Spain	166	191	136	157	
Sweden	54	64	55	35	
Switzerland	86	106	115	143	
The FYROMacedonia	44	55	107	233	
Turkey	636	291	391	491	
Ukraine	109	NA	30	142	
UK-England and Wales	NA	NA	NA	NA	
UK-Scotland	NA	NAP	NAP	NAP	
Israel		86	88	77	
Morocco				282	
<b>Average</b>	107	114	114	143	
<b>Median</b>	66	71	90	105	
<b>Minimum</b>	0	0	13	26	
<b>Maximum</b>	636	600	391	653	

The average Disposition Time of criminal cases at the highest instance has on the whole increased between 2010 and 2016. The median shows a similar trend. The 2016 average of 143 days is the same than the average calculated at second instance. The median data at the highest instance (105 days) is significantly longer than the 77-day median at second instance.

All 6 States that previously experienced a steady improvement in Disposition Time between 2010 and 2014 have also seen a rise in Disposition Time in 2016, namely, **Bosnia and Herzegovina, Czech Republic, Finland, Greece, Hungary and Ukraine**. In **Bosnia and Herzegovina, Czech Republic, Hungary and Ukraine**, the Disposition Time remains below average and does not therefore create any cause for concern. This is the case also in **Greece**, which experienced an increase in Disposition Time of over 100 days during the last evaluation. In **Finland**, however, the Disposition Time has remained above average at each evaluation cycle without an explanation being provided. It will be important to check how the pattern in respect of **Denmark** develops during the next evaluation, data for the past two evaluation cycles having been unavailable.

10 States saw a continuous worsening of the calculated Disposition Time over the course of the evaluation cycles (this includes States in respect of which one or more values were NA). Of those, **Germany, Iceland, Latvia, Montenegro, Serbia and Switzerland** nevertheless still display figures below the average and thus the situations in those countries is not worrying. Nevertheless, the situation in **Switzerland** should be monitored during the next evaluation cycle as the Disposition Time has been steadily increasing and is now very close to the average. The situation is more serious in those States where the Disposition Time is above average - in decreasing order, **Cyprus** (Disposition Time: 653 days) and "**the former Yugoslav Republic of Macedonia**" (Disposition Time: 233 days) and to a lesser extent **France** (Disposition Time: 173 days). Court performance in these countries should be checked closely during the next evaluation to determine whether the Disposition Time is continuing to increase. This applies particularly to **Cyprus**, where only two of four figures have been available over the four cycles, both of which have significantly exceeded the average, the 2016 figure in respect of this State being the highest recorded during that cycle.

In 2016, **Belgium, Lithuania, Monaco, Norway, Portugal and Israel** were able to reverse the previous trend of increasing Disposition Time between 2010 and 2014. However, the Disposition Time in **Belgium, Monaco and Norway** remains above the average, so the situation in those countries should also continue to be closely monitored.

It is moreover worth monitoring how the situation develops in future cycles in **Azerbaijan, Slovenia and Ukraine** where the Disposition Time suffered a significant increase between 2014 and 2016. The same situation appears in **Turkey**, where the continuous increase in Disposition Time should continue to be observed during the next evaluation.

## 5.5 Summary of trends and conclusions

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

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

- At first instance, the inflow of cases has remained rather stable between 2010 and 2016, while the number of resolved cases has decreased, both in the long period and compared to the last cycle. The data collected displays a positive average performance (i.e. Clearance Rate) of first instance courts in this sector in respect of all previous evaluation cycles (except for 2010) but it can be noted a reduced average number of resolved cases in courts in the whole period. The average Disposition Time for this category of cases has slowly but continuously improved over time (from 267 days in 2010, to 235 days in 2016).
- At second instance, the average number of incoming civil and commercial litigious cases has changed throughout the four evaluation cycles, decreasing in the long period. An overall positive performance can be noted in 2016 (Clearance Rate: 101 %), but the average number of resolved cases in courts has decreased between the last two cycles. The Disposition Time has improved both over the long period and (slightly) since the last evaluation.
- At the highest instance, despite fluctuations, the average number of both incoming and resolved civil and commercial litigious cases has decreased between 2010 and 2016. Despite a reduced number of incoming cases, supreme courts in a number of States and entities faced difficulties in coping with the inflow of cases. There has also been a reduction in the capacity of courts to resolve cases since the previous evaluation (0,08 case in 2014 and 0,07 case in 2016). The Disposition Time has improved both over the long period and since the last evaluation.

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

- At first instance, the average Clearance Rate of administrative cases improved constantly between 2010 and 2014 from negative (99% in 2010) to positive values (108 % in 2014), decreasing slightly in 2016 (103 %). This is reflected in the general decrease in the number of pending administrative law cases between 2010 and 2014, followed by an increase in 2016 and in the analogous evolution of the Disposition Time. In contrast with the trend of civil and commercial litigious cases (improvement over all 4 evaluations) the Disposition Time of administrative cases improved steadily between 2010 and 2014, slightly deteriorating in 2016. The average Disposition Time of administrative cases in 2016 (357 days) is also significantly higher than that of civil and commercial litigious cases (235 days).
- At second instance, in 2016, European courts handling administrative cases had difficulties in coping with the inflow of cases. The 2016 average Clearance Rate was 95 % with a number of States displaying a particularly low Clearance Rate. Data show a worsening of the situation since the last evaluation, as well as in the long period (since 2010). The average Disposition Time in 2016 was 315 days (median: 241 days), which is lower than the respective figure at first instance. While slightly increasing between 2014 and 2016, the Disposition Time at second instance has improved during the long period.
- At the highest instance, the average Clearance Rate of administrative cases shows an improvement between 2010 and 2012, a slight decrease in 2014 and again a slight increase in 2016. The average Disposition Time decreased steadily between 2010 and 2014, but saw a sharp increase in 2016.

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

- In 2016, public prosecutors received on average 3,14 cases per 100 inhabitants. Approximately 42 % of these were discontinued by the public prosecutor and in 28 % of these cases were charged by the public prosecutor before the courts. Another 27 % of cases in 2016 resulted in a penalty or measure imposed or negotiated by the public prosecutor. The average rate of cases solved by the public prosecutor (discontinued by the public prosecutor, concluded by a penalty or a measure imposed or negotiated by the public prosecutor or charged by the public prosecutor before the courts) against cases received is 96 %.
- At first instance, courts received on average 2,3 criminal cases per 100 inhabitants and managed to resolve the same amount of cases during 2016. The Clearance Rate of criminal law cases has remained positive between 2010 and 2016. The average Disposition Time improved between 2010 and 2014 but increased slightly in 2016 (138 days). Despite fluctuations, the number of pending cases shows a decrease both over the long period and since the last evaluation.
- At second instance, data show a steady improvement in the Clearance Rate for criminal cases over the long period, from negative into positive values. This is in part similar to the first instance trend, which however remained positive over all four evaluation cycles. The average Disposition Time shows a very slight increase between 2010 and 2016 and is only marginally longer than the Disposition Time recorded at first instance (138 days).
- At the highest instance, the Clearance Rate of criminal cases has decreased since the last measurement (albeit remaining above the efficiency limit), but an improvement can be noted in the long period. The average Disposition Time has on the whole worsened between 2010 and 2016. The 2016 Disposition Time figure is slightly longer than the average Disposition Time calculated at second instance.

Data for **specific categories of cases** offer a deeper insight into the length of proceedings in certain key areas across the sectors of justice (family, employment, commercial activities, immigration or crime) and reflect better the functioning of justice systems in concrete contexts. However, it appears that the overall performance of States and entities in these cases is less positive compared to the broader categories of civil, administrative and criminal law cases, although the limited availability of data means that the following conclusions must be drawn with care. The figures show that:

- The average Clearance Rate of **litigious divorce cases** in 2016 was positive and marked an improvement since the previous evaluation. By contrast, both the Disposition Time and the average length of proceedings increased in the last evaluation. Just less than half of the States or entities for which data was available registered a positive Clearance Rate in 2016 (20 out of 40) and in 15 other States the Clearance Rate is between 95 % and 99 %.
- The average Clearance Rate of **employment dismissal cases** has improved in the long period, shifting from negative to positive values. It increased from 96 % in 2010 to 104 % in 2014, then to 105 % in 2016. The median followed a similar trend and settled at 103 % in 2016.
- The average Clearance Rate of **insolvency cases** has improved in the long period, but the performance of courts in this sector still remains below the efficiency threshold. The 2016 evaluation confirms the results from the previous evaluations, namely that European States experience the most significant difficulties in managing the caseload in respect of insolvency proceedings. The 2016 data show an improvement of the DT since the last cycle but the reported average length of proceedings has expanded since the previous evaluation.
- Data on **cases relating to asylum seekers and the right to entry and stay for aliens** show that it emerges that the impact of these two migration-related disputes appears significant on court litigation in 9 Western European countries. The information collected among the States and entities also provide a legal and organisational overview of the litigations relating to asylum applications and the entry and residence of aliens. Comments submitted highlight that in a number of cases the increased volume of migration related cases has led to the establishment of specialised courts or tribunals in this area.
- The average Clearance Rate for **intentional homicide cases** has decreased in the long period (from 101 % in 2010 to 98 % in 2016), but the latest evaluation marks an improvement compared to 2014. A positive trend can be noted in respect of the evolution in the average Disposition Time and average length of proceedings between 2010 and 2016. Both the Disposition Time and the reported Average Length for this category of cases are higher than the average Disposition Time for the total of criminal cases.

- Between 2010 and 2016, the average Clearance Rate of **robbery cases** has developed positively from 99 % to 106 %, despite variations between the cycles. By contrast the average Disposition Time has deteriorated, both in the long period and compared to the last cycle. The average length of proceedings has instead improved regularly in the four evaluation cycles. Both the Disposition Time and the reported average length for robbery cases are higher than the average for the total of criminal cases.

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

1. A number of States and entities have continued to undergo reforms of the judicial sector, aimed at improving court efficiency. The results thereof are not always visible in the statistics for the 2018 evaluation (2016 data), but are expected to show in the next evaluation cycles and should be closely followed in the future.
2. An increasing number of States and entities has adapted the methodology of collecting and reporting statistics to be in line with the CEPEJ methodology. While this may create inconsistencies between the data reported in the different cycles and reduce the reliability of the analysis on evolution trends, it enables more accurate comparisons within the same cycle and improved statistics in future evaluations.
3. To improve timeliness and efficiency, online procedures for the processing of certain categories of claims are increasingly being developed and applied in different European States. This is a trend that should be monitored carefully in the coming years.
4. Availability of disaggregated data is crucial to a better understanding of the efficiency of the courts and of the reasons behind variations over time. Important changes to the national statistical methodologies, aimed at bringing domestic systems in line with the CEPEJ methodology, are already under way. The CEPEJ welcomes and promotes these efforts as an invaluable tool in the collection of comparative data necessary to improve court performance.

The latest edition of the report by the European Commission for the Efficiency of Justice (CEPEJ), which evaluates the functioning of judicial systems in 45 Council of Europe's Member states as well as in Israel and Morocco, observer states to the CEPEJ, continues the process carried out since 2002, focusing on main indicators. In addition, it contains, for the first time, informations containing gender equality and the use of information technologies in judicial systems. Relying on a methodology which is already a reference for collecting and processing large numbers of quantitative and qualitative judicial data, this unique study has been conceived above all as a tool for public policy aimed at improving the efficiency and quality of justice. The objective of the CEPEJ in preparing this report is to enable policy makers, justice practitioners, researchers as well as those who are interested in the functioning of justice in Europe and beyond, to have access to the information needed to be able to understand, analyse and reform.



The CEPEJ internet statistical database is available for everyone on : [www.coe.int/cepej](http://www.coe.int/cepej)

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