
COMPARATIVE OVERVIEW ON THE EFFICIENCY OF EUROPEAN JUDICIAL SYSTEMS

This section is dedicated to provide relevant highlights on the results of the last study produced by CEPEJ (The European Commission for the Efficiency of Justice; www.coe.int/CEPEJ).

Considering the number of subjects and states addressed in this report, adopted by the CEPEJ in September 2010 and based on 2008 data, it constitutes a remarkable and unique global indicator for the efficiency of justice in Europe.

The methodology used, alongside the important contribution and support of the member states of the Council of Europe, makes it possible to present a review, which is increasingly detailed from one edition to another, of the judicial systems of 45 European states.

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

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

The purpose of this chapter is not to provide a synthesis of a voluminous [report](#), but only to highlight, in an easily readable format, some of its elements and incite the readers “to go further”. In this overview, only brief comments follow the graphs and tables extracted from the report, but they refer to the full report which enables a deeper approach with all the necessary methodological elements for rigorous analysis and comparisons.

All the data given by the member states are available on the CEPEJ website. The national answers also contain descriptions of the judicial systems and explanations which contribute to a large extent to the understanding of the given data. Thus, a genuine database of the judicial systems of the Council of Europe’s member states is easily accessible to citizens, policy makers, legal practitioners, academics and researchers.

1. PUBLIC EXPENDITURES ALLOCATED TO COURTS, PROSECUTION SYSTEM AND LEGAL AID

According to the states, there are common or distinct modalities for funding courts, public prosecution systems and legal aid. These three elements have been divided as much as possible so as to allow comparisons, both of the means allocated to prosecution or judgement activities (despite the differences between the organisation of the systems) and of the amounts allocated to access to justice. This information thus gives an overall view of the budgets concerning most of the member states of the Council of Europe.

The data of the wealthiest states or entities must here be related to the level of prosperity of the state; otherwise it might be wrongly interpreted that they allocate a small amount of budget to their judicial system, because of their high GDP. This is namely the case for Norway, Luxembourg, Finland, and to a certain extent for France. This fact must be taken into account if relevant comparisons, which can only be done between comparable states, are to be drawn (cf. group of states with an equivalent GDP level per inhabitant, figure 2.27 of the report).

The development of the judicial system remains a priority for governments in Europe, even though large differences are noted among the member states or entities. The budgets of the judicial systems have increased in most of the European states until 2008 – only 4 member states have experienced decreasing budgets. The states that have more recently turned to a democratic system, and implemented major structural reforms of their judicial systems, are often those that provide a consistent budgetary effort and dedicate for the operation of the systems an important public budget according to the state's level of wealth. However, it will be interesting to follow up the evolution of these budgetary efforts devoted to the courts, the prosecution system and legal aid in Europe, in order to assess the effects of the financial and economic crisis of 2009 – 2010. Looking at the first trend indicators, one can fear that, at the European level, the growth rate of justice budgets, like all public budgets, will slow down significantly and perhaps, the curve will invert as well.

For a majority of European states, the court fees constitute significant financial resources, allowing some to cover a major part of the court operating costs, or even, for some of them, to generate a net profit which comes mainly from the resources attached to the handling of the business and land registries. Such a system, if accompanied by an effective legal aid system for enabling access to court to litigants who would not have proper means, is part of the current trend of public management aimed at partly balancing the costs of public services between the users and the tax payers.

Figure 1. Total annual public budget allocated to all courts, public prosecution and legal aid per inhabitant in 2008, in €

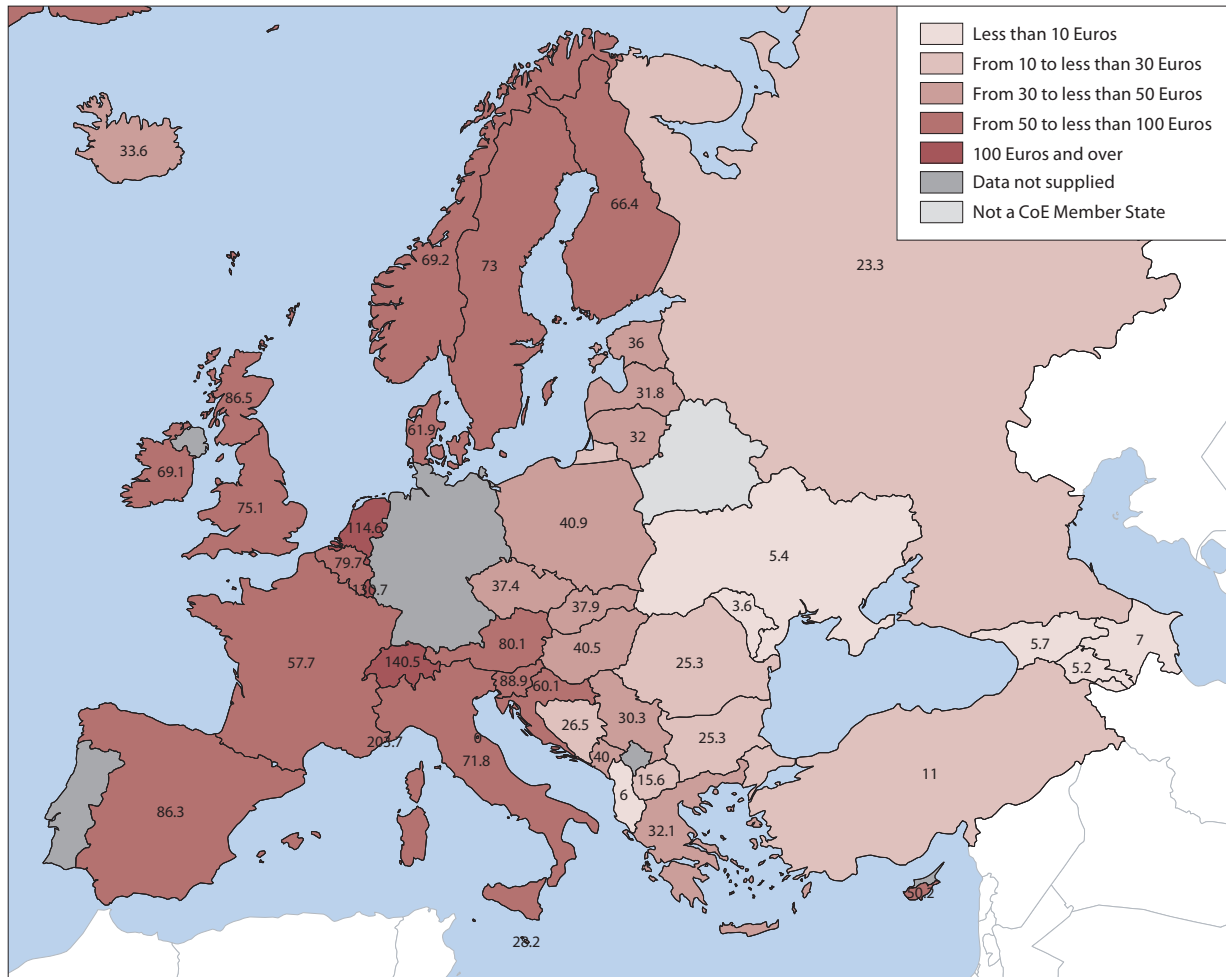


Figure 2. Total annual public budget allocated to all courts, prosecution and legal aid as part (in%) of the GDP per capita, in 2008

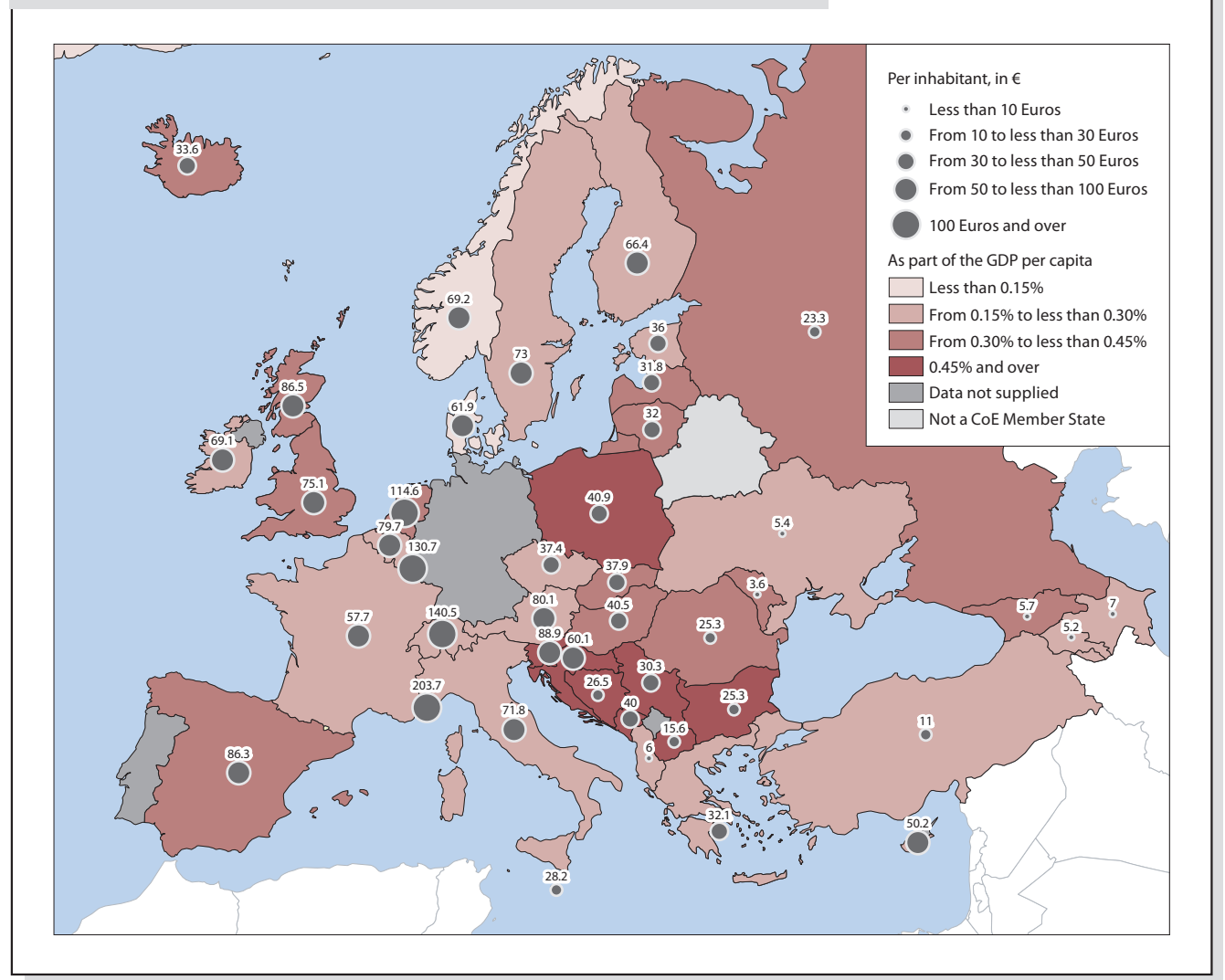
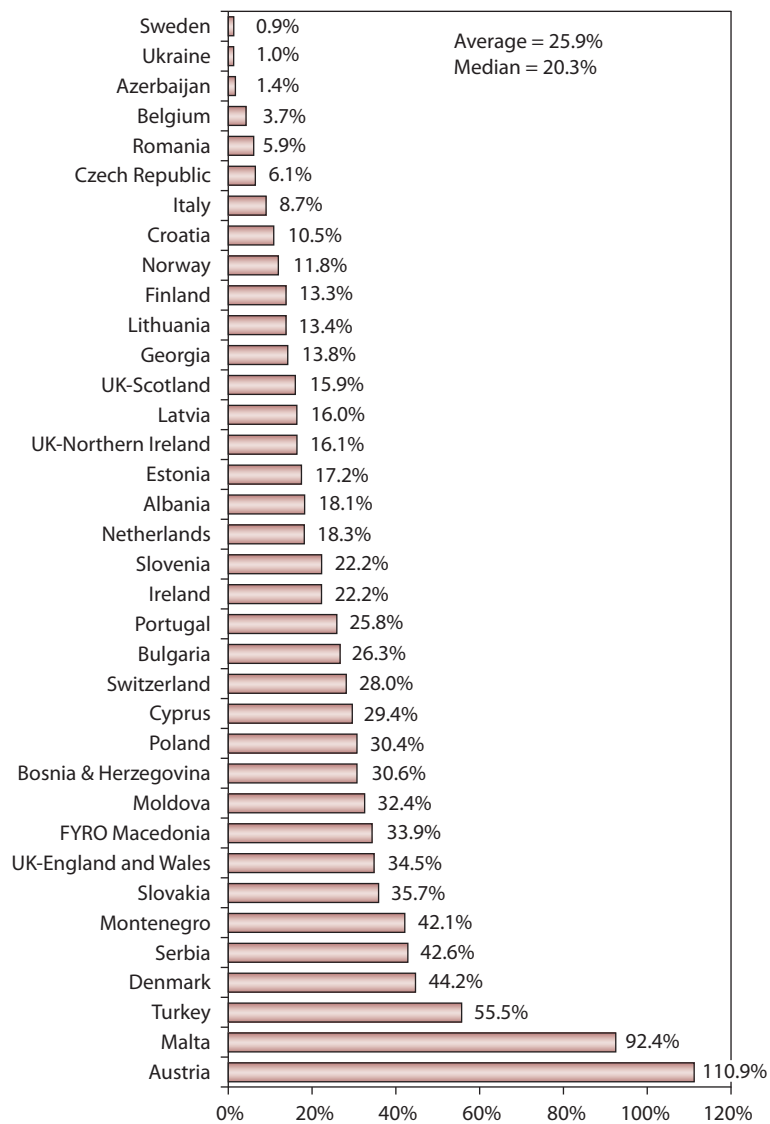


Figure 3. Share of court fees (or taxes) in the court budget (as receipts) in 2008, in %



Except the 5 states which apply the principle of free access to courts, (France, Iceland, Luxembourg, Monaco and Spain), a part of the budget revenue of the judicial system in all the other states and entities comes from court fees and taxes, mainly collected thanks to land and business registers, in varying proportions. Austria can even generate net profit from this system.

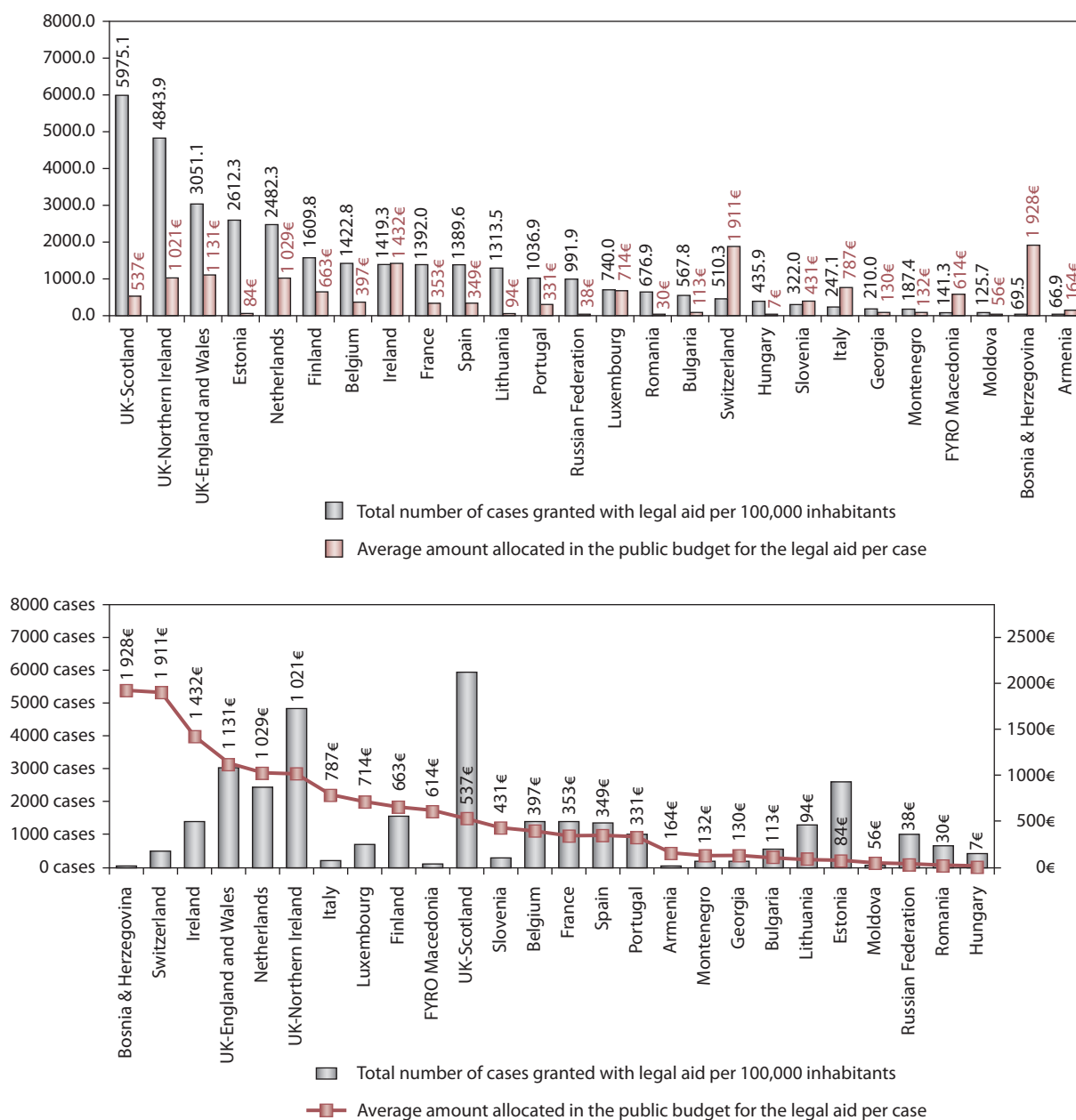
Although it is not for the CEPEJ at this stage to define the proper level of financial resources to be allocated to the justice system, a correlation can be noted between the lack of performances and efficiency of some judicial systems and the weakness of their financial resources. However, the opposite is not always true: high financial resources do not always guarantee good performance and efficiency of judicial systems. Other elements must be considered here (efficient organisation of judicial system, relevance of the procedures, management of the human and financial resources, responsabilisation of the players in the judicial system, training, etc).

More than half of the member states or entities spend more resources in other areas of justice than the judicial system (e.g. prison system, protection of minors, etc.), while others direct public budgetary efforts mainly to court operation.

Within the framework of the budget allocated to the judicial system, the highest budgetary amounts are allocated to the salaries (70% of the budget at the European level), apart from the states which rely in particular on non-professional judicial staff and hire a smaller number of judges, usually very experienced (they are generally common law states or entities, with the exception of Ireland). A larger budget is devoted to the prosecution system in states or entities where prosecutors have traditionally occupied a prominent position in the functioning of justice (namely the countries of Eastern Europe). A significant part of the budget (around 15%) is allocated to premises. The part of the budget allocated in Europe to ICT in courts and e-justice (3%) has not increased in volume since 2006, which can be explained by a decrease in the cost of materials and the writing off of the cost of infrastructures: ICT remains a priority field in which member states must be encouraged to invest in the coming years. The part of the budget allocated to judicial training (0.8%) still appears too weak, although the specific efforts made by the member states which have invested more recently in this field can be highlighted.

2. ACCESS TO JUSTICE

Figure 4. Number of cases granted with legal aid per 100,000 inhabitants and average amount allocated in the public budget for the legal aid per case in 2008



In all member states or entities, systems of legal aid are made available, at least in criminal matters, in the form of legal representation or legal advice. The European trend, which is being confirmed, is to go beyond this requirement and offer legal aid for non-criminal cases too. Budgets for legal aid in Europe are generally increasing (+23% between 2004 and 2008). However, the amount granted by the state per case varies

significantly in Europe according to the states, as well as the number of cases which can be granted with legal aid. Some states have chosen to allocate high amounts of money to a limited number of cases, whereas other states have made the opposite choice. A number of states or entities (Finland, Netherlands, UK-England and Wales, UK-Northern Ireland and UK-Scotland) are generous both as regards the amounts allocated per case and the volume of cases concerned. Several states of Central and Eastern Europe which did not have legal aid systems a few years ago are strongly involved in developing such systems, which is an encouraging trend since the last evaluation exercise.

Alternative Dispute Resolution

Access to justice may also be facilitated thanks to the promotion of Alternative Dispute Resolution (ADR). They contribute to limiting the need to bring issues before a court and to involving professionals other than judges.

Table 1. Judicial mediation in civil and commercial cases in 2008

Austria	Austria			
Belgium	Belgium			
Bosnia and Herzegovina	Bosnia and Herzegovina			
Bulgaria	Bulgaria			
Croatia	Croatia			
Denmark	Czech Republic			
Finland	Finland			
Hungary	France			
Ireland	Greece			
Italy	Hungary			
Lithuania	Ireland			
Malta	Italy			
Monaco	Latvia			
Montenegro	Lithuania			
Netherlands	Luxembourg			
Russian Federation	Montenegro			
Slovenia	Netherlands			
Sweden	Norway	Croatia		
Switzerland	Poland	Finland		
Turkey	Romania	France		
UK-England and Wales	Slovakia	Hungary		
UK-Northern Ireland	Slovenia	Malta		
UK-Scotland	Sweden	Monaco		
	FYRO Macedonia	Portugal		
	UK-England and Wales	Russian Federation		
	UK-Northern Ireland	Slovenia		
	UK-Scotland	Spain		
			Croatia	
			Denmark	
			Finland	
			Iceland	
			Lithuania	
			Norway	
			Russian Federation	
			Sweden	
				Croatia
				Russian Federation
Private mediation proposed by judge or court annexed mediation (23 countries) 50%	Private mediator (27 countries) 59%	Public authority (other than court) (10 countries) 22%	Judge (8 countries) 17%	Prosecutor (2 countries) 4%

Mediation (recommended, carried out or approved by justice) is a growing field in Europe: more and more states or entities are introducing mediation and the number of accredited mediators is growing. Mediation is successfully applied in many states or entities especially in the field of family law (divorce cases), commercial disputes and criminal law (compensation procedures for victims). An increasing number of states or entities grant legal aid for initiating a mediation procedure. However, it must be noted that other kinds of ADR, such as arbitration and conciliation, are widely used in some member states or entities.

Court activity and fair trial

With the information available, the CEPEJ is now able to draw preliminary conclusions from the analysis of the two main indicators. The **clearance rate** is obtained when the number of resolved cases is divided by the number of incoming cases and the result is multiplied by 100:

$$\text{Clearance Rate (\%)} = \frac{\text{resolved cases}}{\text{incoming cases}} \times 100$$

A clearance rate close to 100% indicates the ability of the court or of a judicial system to resolve more or less 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 received, thus reducing any potential backlog. Essentially, a clearance rate shows how the court or judicial system is coping with the in-flow of cases.

The **disposition time** indicator provides further insight into how a judicial system manages its flow of cases. The disposition time compares the number of resolved cases during the observed period and the number of unresolved cases at the end of the observed period. The ratios measure how quickly the judicial system (or a court) turns over received cases – that is, how long it takes for a type of case to be resolved.

$$\text{Disposition time} = \frac{365}{\text{Case Turnover Ratio}}$$

The analysis of the data currently available indicates that first instance courts in Europe are generally better able to cope with the flows of criminal cases than civil cases.

Figure 5. Clearance rate of civil litigious and non-litigious cases in 2008, in %

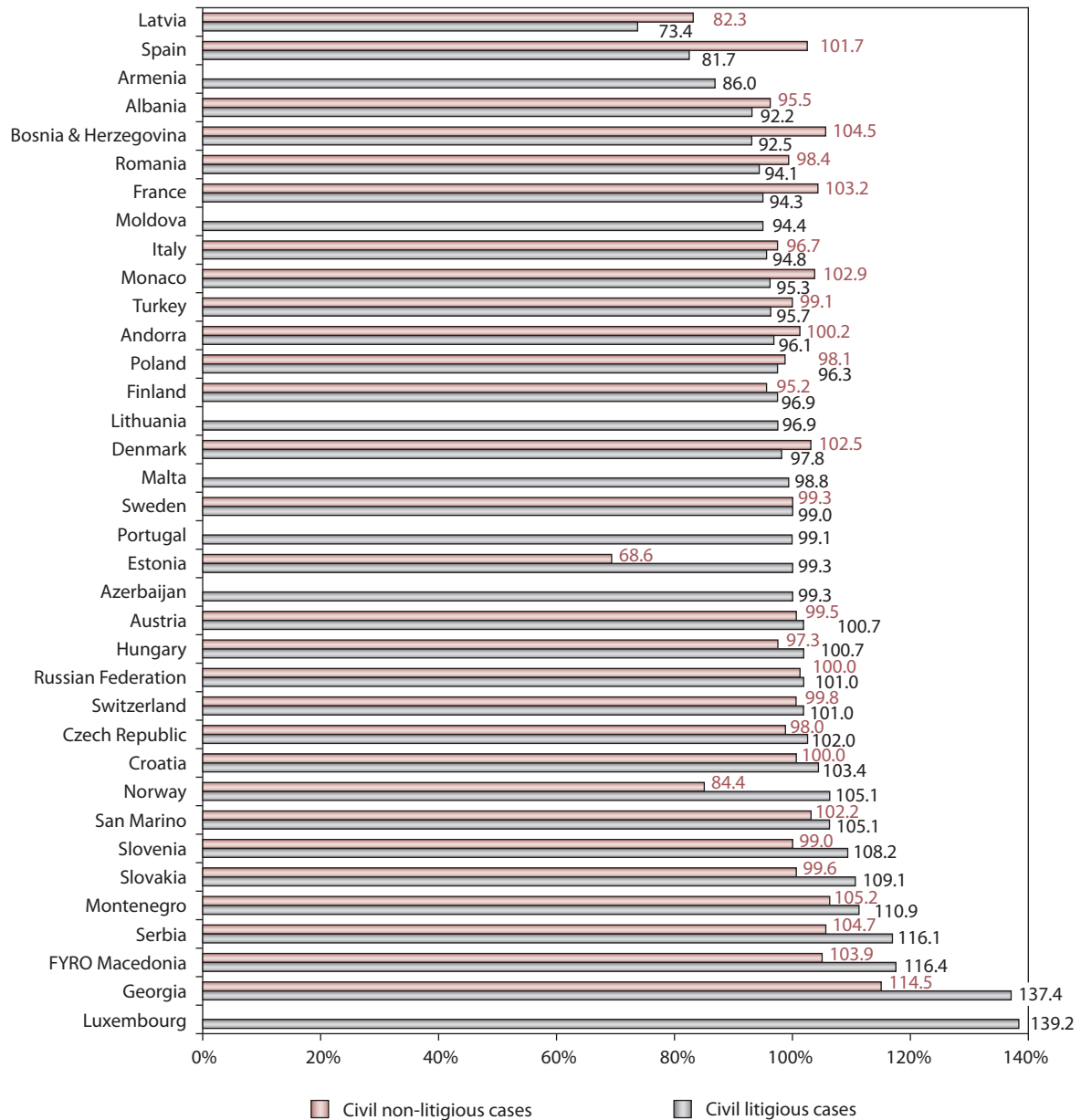
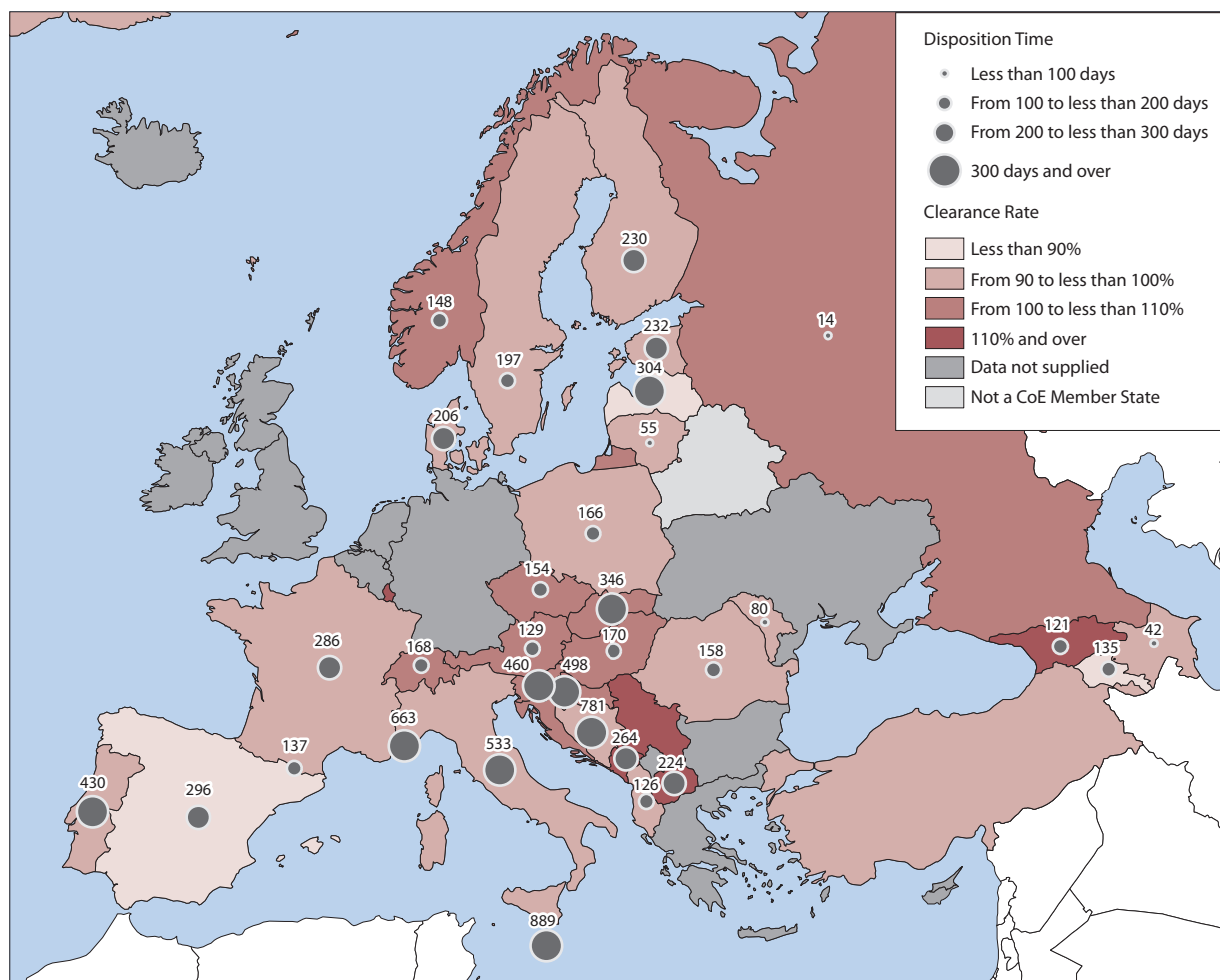


Figure 6. Disposition time and clearance rate of litigious civil (and commercial) cases at 1st instance courts in 2008



When reading the results presented in this map, the most productive civil (and commercial) first instance court systems, which do not generate backlogs (clearance rate equal to or higher than 100%) and can quickly resolve a filed case, can be found in the Russian Federation and Georgia. The indicators show that Azerbaijan, Austria, Norway, Czech Republic, Switzerland, Hungary and Sweden have relatively productive first instance civil (commercial) courts. On the contrary, the first instance courts have more difficulties in resolving the incoming cases in Latvia and Spain. Regarding Spain, although the rates for 2008 increased by 6,4% and 6,9% respectively for civil and commercial cases when compared to 2007, such positive evolution was not sufficient to cover the effects of a prolonged strike of court staff that took place in 2008 in an environment of significant increase in incoming civil (19,5%) and commercial cases (26,7%) running parallel with the beginning of the economic crisis, which required additional measures.

Of the 9 states which have the highest disposition rates, only 3 (Slovakia, Slovenia and Croatia) have clearance rates equal to or higher than 100%. 6 other states (Latvia, Portugal, Italy, Monaco, Bosnia and Herzegovina and Malta) have not reached a 100% clearance rate for civil litigious cases.

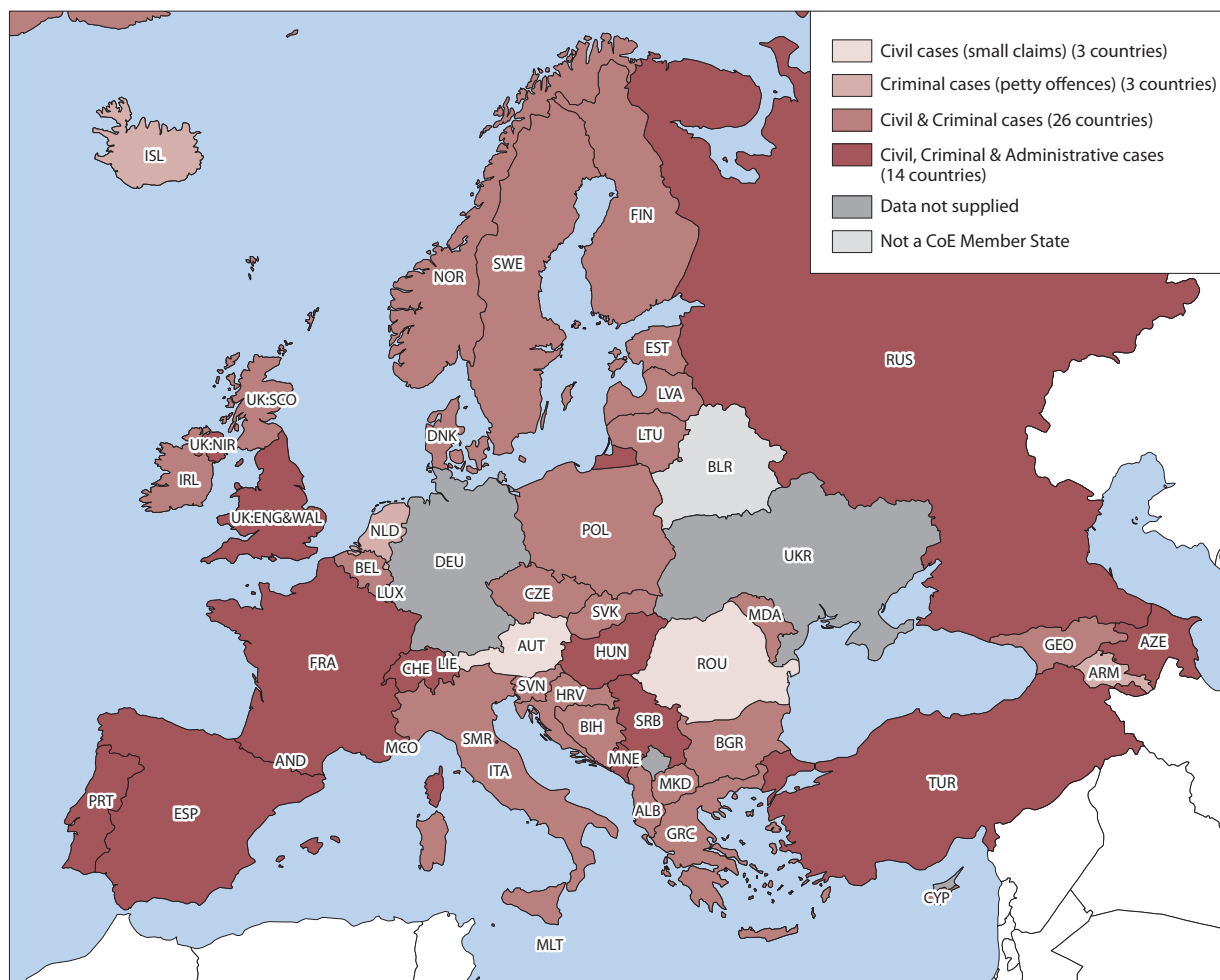
Subject to a more thorough analysis, the citizens seem to be more prone to initiate proceedings before a court in the Central and Eastern European states, in South-Eastern European states and in Southern European states than in Northern European states and in the states of the Caucasus. The court activity varies between the states depending on whether or not they have to address non-contentious civil cases (this is normally associated with the holding or not by the courts of land and commercial registers). The volume of such cases might also vary. Yet, in general, non-contentious matters, which can increase the workload of courts, are rarely the cause of lack of effectiveness of jurisdictions.

The situations in the management of cases differ significantly between member states or entities. Having to handle a high volume of cases is not in itself an obstacle to the smooth functioning of the courts. Some states or entities manage to handle relatively quickly significant volumes of cases. Some states or entities are able to absorb the flow of incoming cases and/or reduce the backlog, while others see backlogs of pending cases increasing. Between these two categories, it is worth underlining those states where the efficiency in addressing cases tends to decrease, although, at this stage, they are still able to cope with the flows of incoming cases.

They should follow closely the evolution of the indicators that are currently flashing orange (a cause for continued observation). A special mention should be made for the improvement of the performance of the courts of several states in transition (including Georgia, Russian Federation) where current reforms and investment in the judiciary seem to lead to encouraging results.

Out of the 46 responding states or entities, 43 use simplified procedures for civil cases (small claims) and 43 apply such procedures to criminal cases (petty offences). 14 states or entities have provisions on simplified procedures for administrative cases.

Figure 7. Cases for which simplified procedures are applied



Execution of court decisions

It is difficult to assess the smooth execution of court decisions in civil or commercial matters on the basis of relevant statistics, as execution is not automatic: it belongs to the parties who have won the case to decide, where appropriate, whether to request or not the execution of the court decision. Therefore, this report does not focus on the rate of execution of court decisions, but mainly on the organisation of the execution and the role of enforcement agents.

Table 2. Timeframe for notification of a court decision on debt recovery to a person living in the city where the court is sitting

Armenia	Albania		
Austria	Cyprus		
Azerbaijan	Finland	Bulgaria	
Bosnia and Herzegovina	France	Croatia	
Estonia	Georgia	Ireland	
Iceland	Hungary	Netherlands	
Luxembourg	Latvia	Norway	
Malta	Lithuania	Poland	
Russian Federation	Moldova	Slovakia	
Switzerland	Montenegro	Spain	
Turkey	San Marino	Sweden	Czech Republic
	Serbia	FYRO Macedonia	Greece
Between 1 and 5 days	Between 6 and 10 days	Between 11 and 30 days	More than 30 days

The timeframe for notification, which depends also on its procedural form, may be reduced in practice either thanks to the acts of an enforcement agent or thanks to the simplified form of a mail with acknowledgment of receipt. So, the timeframe depends either on the diligence of the enforcement agent or on the more or less proper operation of the postal service. Each state or entity, in a similar situation, evaluates an average timeframe as an indicator of efficiency.

More than half of the states or entities (23) stated to be able to notify the person in a timeframe between 1 and 10 days. Only two states (Czech Republic and Greece) need more than 30 days to provide the decision to the person concerned. Compared to previous years (2004 and 2006 data), one can notice that several states reduced these timeframes: Azerbaijan, Hungary, Malta and Moldova. Other states stated that their timeframes increased: France, Georgia, Lithuania, Montenegro, Serbia and Spain.

3. USERS OF THE COURTS (RIGHTS AND PUBLIC CONFIDENCE)

More and more citizens and legal professionals can retrieve information about legal data, court activity and legal proceedings easily and free of charge via the Internet. Only a limited number of states or entities have specific arrangements to inform the (potential) users of the courts on the foreseeability of judicial procedures.

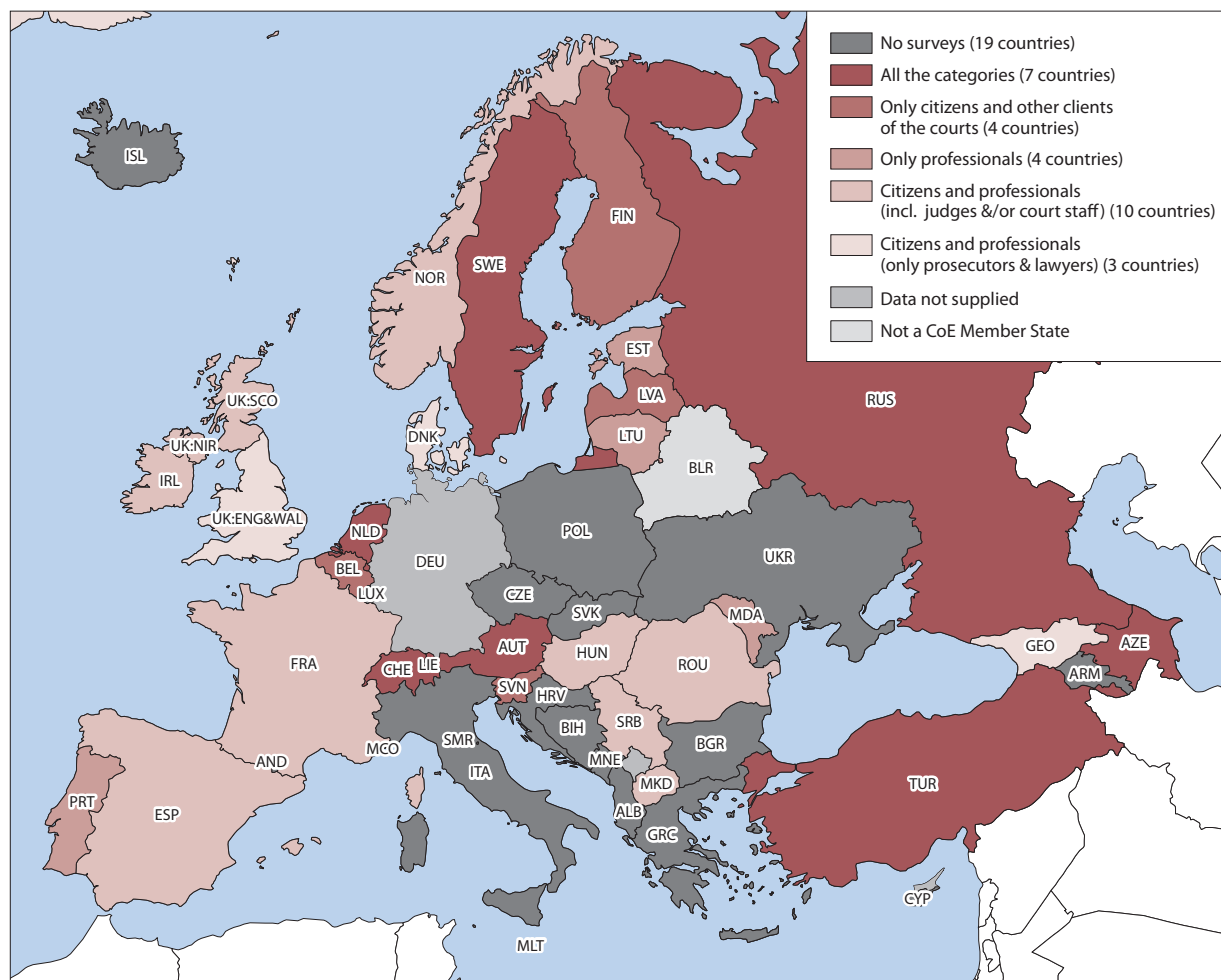
With respect to vulnerable persons, victims of rape, children, and juvenile offenders are the categories which are the best protected in judicial proceedings. This is done mostly by providing these categories with special information arrangements and procedural rights adapted to their needs. A majority of states or entities also have a compensation procedure for victims of crime.

As a part of the protection of the court users against dysfunctions of the courts, judicial systems may have implemented compensation procedures. In 26 states or entities, there is a compensation mechanism for excessively long proceedings and, in 20 states or entities, for non-execution of a court decision. Almost all the states have provision for compensating a person in cases of wrongful arrest or wrongful conviction.

More attention is being paid in Europe to the needs and expectations of the court users. In a large majority of states or entities, courts produce annual reports and have monitoring systems to measure and manage case flows and the timeframes of proceedings. It has been noticed that techniques and methods inspired by new public management are increasingly implemented and imply the definition of quantified objectives and the evaluation of performances and, sometimes, of the way means are allocated to jurisdictions according to results. Performance and quality indicators are increasingly used. A very limited number of European states or entities carry out complete quality systems. This trend should further develop in the upcoming years.

The model survey and the methodological guide provided by the CEPEJ should facilitate future implementation of the surveys conducted among court users to improve the quality of the public service of justice.

Figure 8. Surveys conducted among users or legal professionals to measure public confidence and/or satisfaction

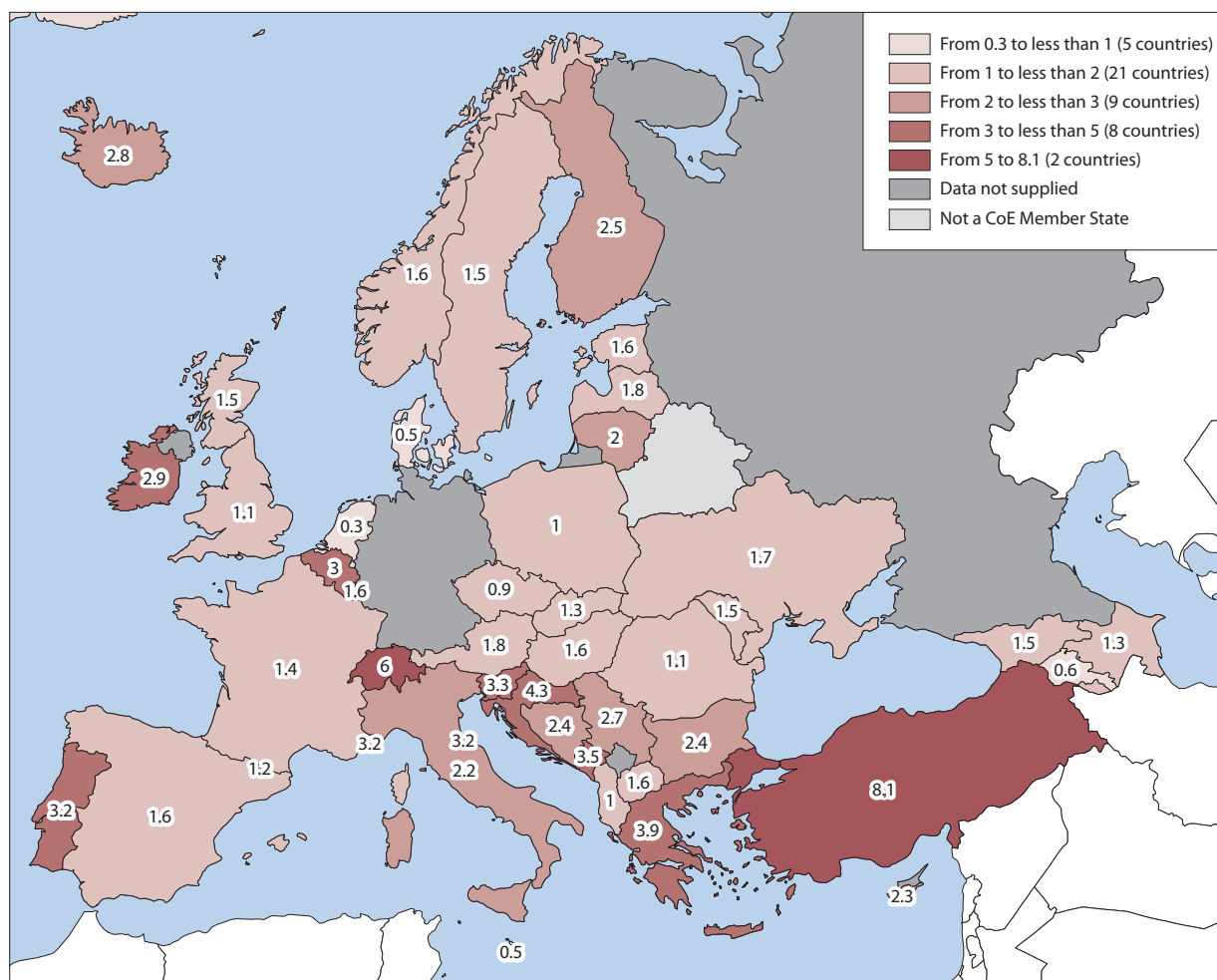


Andorra, Malta, Monaco and San Marino: no surveys

4. THE COURTS

Number of Courts

Figure 9. Number of all courts (geographic locations) per 100.000 inhabitants in 2008



Considering the evolution of the number of first instance courts in Europe, it is difficult to draw a strong trend as regards the organisation of the judicial map. While a majority of states have not modified their court organisation between 2004 and 2008, some of them (13) have decreased the number of courts and others (9) have increased this number. Among those states which are modifying their judicial maps, the main trend for court organisation in Western and Northern European states or entities would be rather in favour of limiting the number of courts, both for budgetary reasons, but also for seeking more efficiency through specialisation. On the contrary, the main trend in the Eastern European states, which have embarked on major judicial reforms, goes towards an

increase in the number of courts: access to the court for the citizens is then promoted.

Information and communication technology (ICT) in the courts (e-justice and e-courts)

Table 4 is based on a point system and presents the use of different computer facilities for the mentioned three areas. Questions about the implementation of video conferencing and sound recording in judicial proceedings or detailed information about other electronic communication facilities have not been submitted to the member states. Though, it is important to mention that **Ireland** and **Slovenia** are pioneers in this matter.

Table 3. Reading keys for the Table 4

100% (4 points)
>50% (3 points)
<50% (2 points)
<10% (1 point)

The total number of points is provided only for information. It was calculated when the data were available for the totality of the categories, but also when only one category was missing per country. The questionnaire allows only a very general categorisation (100%, >50%, <50%, >10%), therefore only a general overview can be applied. From a methodological point of view, no rigorous interpretation should be based on the analysis of national features.

Albania: in January 2010, the implementation of the IT system for court administration and case management was finalised. The introduction of the “Integrated Case Management Information System” (CCMIS/ICMIS) was financed by the European Community. The CCMIS/ICMIS project started in 2007. This new system includes case registration, lottery assignment of cases to judges, statistics, webpage etc. CCMIS/ICMIS will replace the existing Ark IT system, which is active in some courts for the moment and also facilitates the day to day work for all courts and court users. Additionally, for the period 2010 – 2012 a new electronic archive system for all court cases will be implemented with the support of the Ministry of Justice and USAID. Both systems will be compatible for management and archive of court cases.

Table 4. Computer facilities used within the courts for three areas of use (Continuation)

Country	Direct assistance to judges and court clerks					Administration and management			Communication between courts and the parties			Total number of points
	Word processing	Electronic database of jurisprudence	Electronic files	E-mail	Internet connection	Case registration system	Court management information system	Financial information system	Electronic web forms	Special website	Other electronic communication facilities	
Monaco												34
Montenegro												28
Netherlands												33
Norway												41
Poland												35
Portugal												41
Romania												38
Russian Federation												44
San Marino												
Serbia												29
Slovakia												41
Slovenia												39
Spain												39
Sweden												32
Switzerland												40
FYRO Macedonia												37
Turkey												43
Ukraine												
UK-England and Wales												39
UK-Northern Ireland												40
UK-Scotland												44

Bosnia and Herzegovina: ICT implementation in the judiciary has been ongoing for a number of years and covers all aspects of a massive and systematic introduction of ICT in courts and prosecutors' offices. The most important results achieved in the area of E-justice in the past two years are the implementation of the *Case Management System* (CMS) in Bosnian courts connected into a single wide area network (WAN) as well

as the development and implementation of the Registry of Fines and Content Management System for the centralised Judicial Portal. All of the said ICT activities, which were successfully carried out, have fundamentally changed the way courts and prosecutors' offices in Bosnia and Herzegovina conduct business, have streamlined burdensome procedures within the courts and increased transparency of their work. However, these achievements can be considered as a first phase of development of the judicial information system. In the next phase, it will be necessary to respond to the needs of Bosnian citizens, the business sector and legal professional community by offering them different kinds of services such as access to legal information, registers, databases and other services.

Luxembourg: since 01.12.2009, a new management software in criminal cases has been put in place. A new system for civil cases will also be developed in 2010. These tools include statistical modules. The Internet portal common to ordinary courts and administrative courts was established in spring 2010; the temporary site has been online since summer 2008. This contains some online forms.

Spain: 29.275.510 € have been allocated to courts for new technologies in 2008. Regarding main reforms the Modernisation Plan for the Justice System was approved in September 2009.

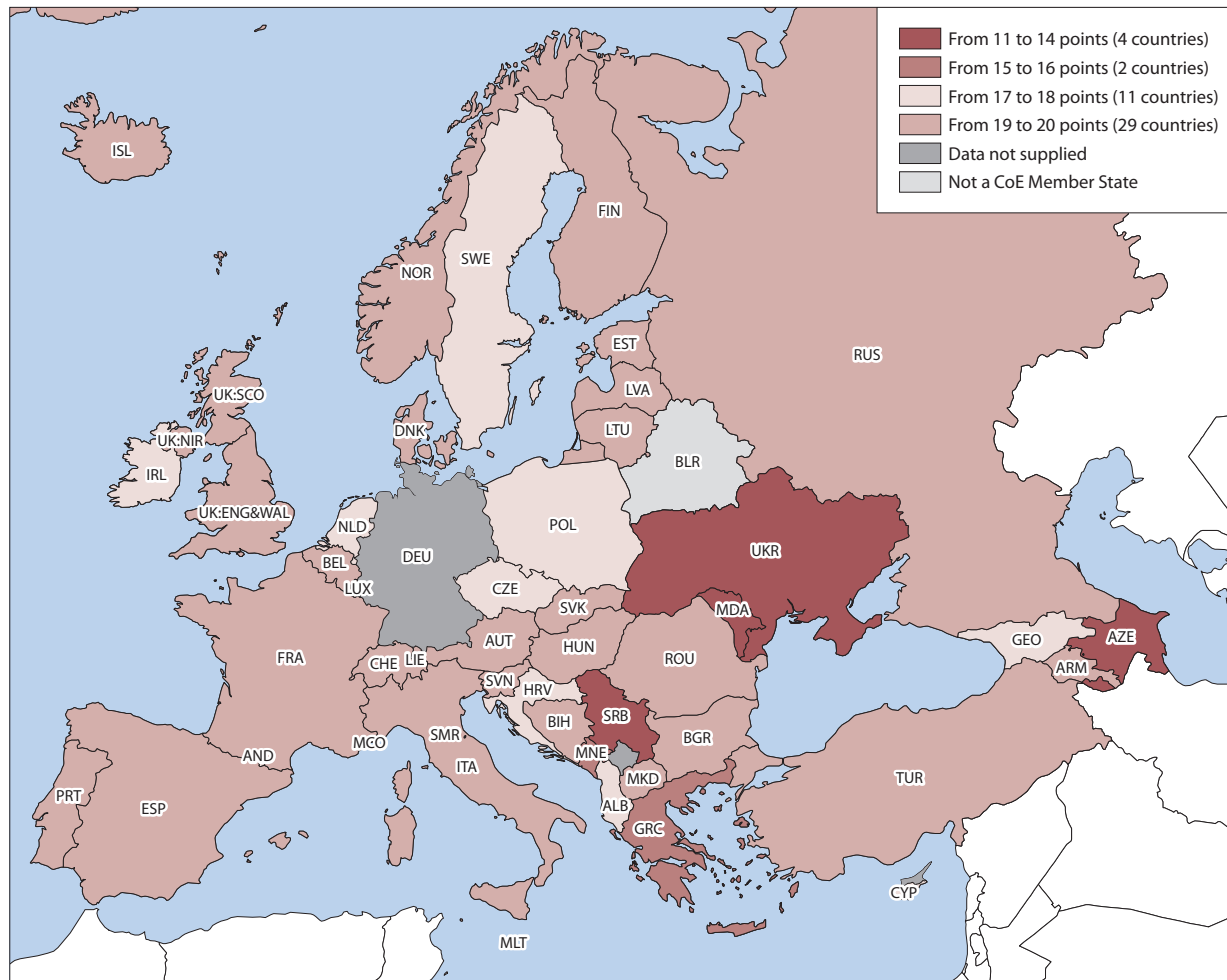
“The former Yugoslav Republic of Macedonia”: strategy for ICT in the Judiciary 2007-2010 is being implemented.

There are 7 states or entities which have a 100% implantation of computer facilities in all the sectors listed in the questionnaire: **Austria, Denmark, Finland, Malta, Russian Federation, Turkey** and **UK-Scotland**.

2 states (**Moldova and Georgia**) reported a relatively low level of computerisation compared to other states or entities.

Generally speaking, the use of ICT in courts is constantly increasing in Europe. Many states or entities reported recent or ongoing reforms (**Albania, Bosnia and Herzegovina, Luxembourg, Spain, Switzerland** and **“the former Yugoslav Republic of Macedonia”**). The matter that remains the least developed in Europe is communication between courts and the parties.

Figure 10. Level of implementation of computer equipment for the direct assistance of judges and/or court clerks



Andorra: 17 points, Malta: 20 points, Monaco: 20 points, San Marino: 12 points.

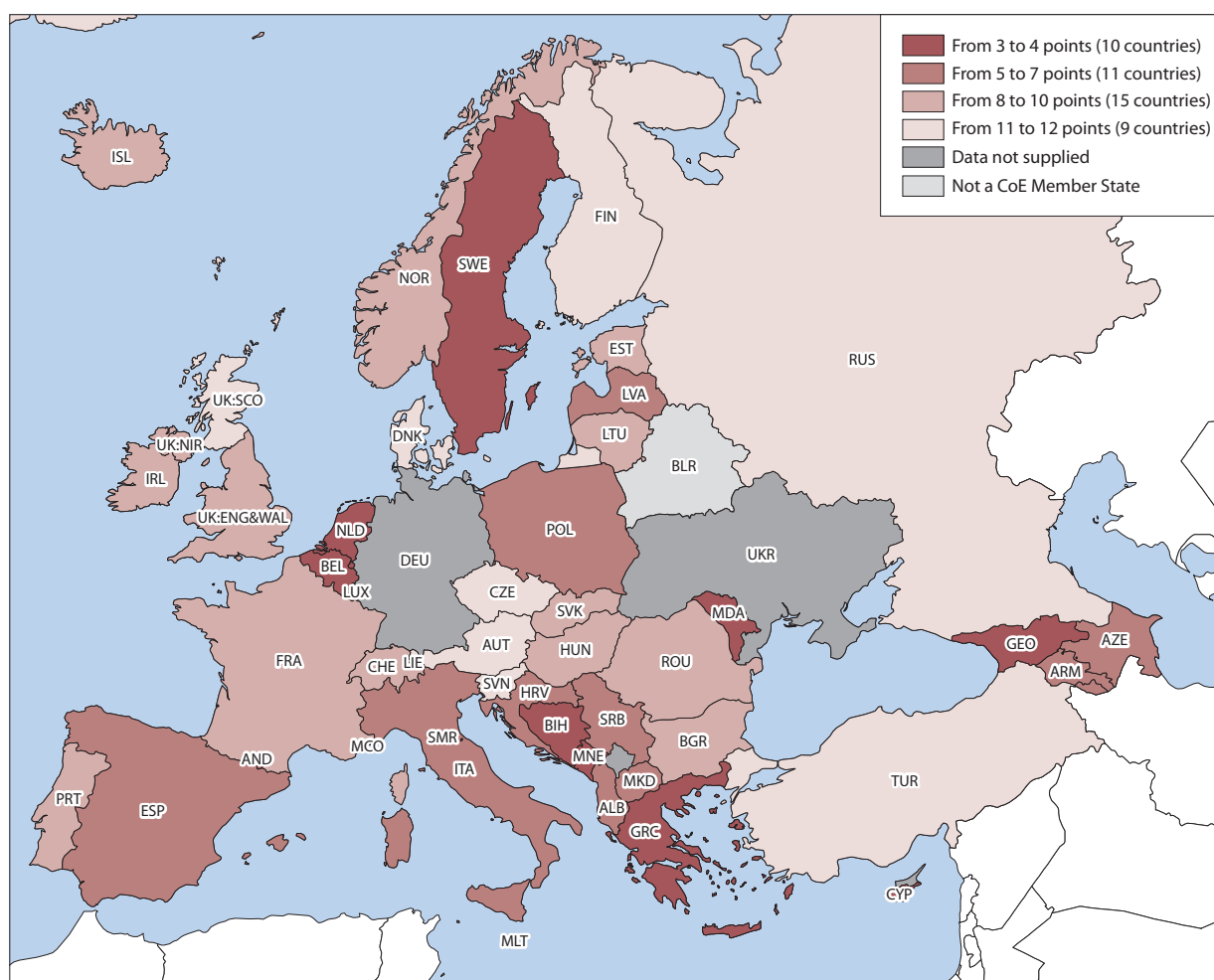
The level of installation of IT equipment for the direct assistance of judges and court clerks is rather high. The majority of member states or entities (29) scores high (19 to 20 points) in the computer equipment for the direct assistance of judges and court clerks. 11 countries scored 17 to 19 points. **Greece** and **Montenegro** can still further develop their system (15 to 16 points). **Azerbaijan, Moldova, Serbia** and **Ukraine** seem to experience financial difficulties and struggle to find financiers for such IT facilities. The situation for **San Marino** (12 points) must be interpreted with care as it has not replied to all questions.

A great part of the states or entities (apart from those who have 100% of equipment = 20 points) stated that the main problem is the lack (or insufficiency) of electronic files at the disposal of judges and court clerks.

While comparing the results with the 2006 data, it can be highlighted that several states in transition have recently and significantly invested in

ICT: Albania, Bosnia and Herzegovina, “the former Yugoslav Republic of Macedonia” and Russian Federation.

Figure 11. Availability of computer equipment for the communication between the court and the parties



Andorra: 3 points, **Malta:** 12 points, **Monaco:** 5 points, **San Marino** has not supplied data.

Member states or entities have made fewer efforts in providing computer equipment for facilitating the communication between the parties and the courts. Nevertheless, the trend is encouraging. **Austria, Czech Republic, Denmark, Finland, Malta, Russian Federation, Slovenia, Turkey** and **UK-Scotland** have particularly high scores. A good level of computer facilities for communication can also be found in one third of the states or entities concerned. However, it must be kept in mind that this indicator does not assess the performance of such systems.

In comparison to the 2008 Edition of the report, significant progress in this area can be noted in **Poland**, the **Russian Federation** and **Turkey**. In **Poland**, e-courts for simplified proceedings in civil matters are opera-

tional since 2009. **Switzerland** indicated that electronic communication will be introduced in all instances from 1 January 2011.

Table 5. Level of computerisation of courts for the three areas of application

	Albania Bosnia and Herzegovina Belgium Latvia Sweden Netherlands Croatia Italy Monaco Poland Hungary Luxembourg FYRO Macedonia Ireland Romania Armenia Slovenia Spain UK-England and Wales	Bulgaria Czech Republic Lithuania Switzerland UK-Northern Ireland France Norway Portugal Slovakia Estonia Turkey Austria Denmark Finland Malta Russian Federation UK-Scotland
Moldova Azerbaijan Georgia Cyprus Greece Montenegro Andorra Serbia		
<30 points (8 countries) 18%	30 to < 40 points (19 countries) 43%	40 points and over (17 countries) 39%

As observed before, most of the states or entities have achieved high or acceptable results and can provide the court users with a range of developed facilities. Insufficient funding might explain the delays of other states in developing e-justice devices.

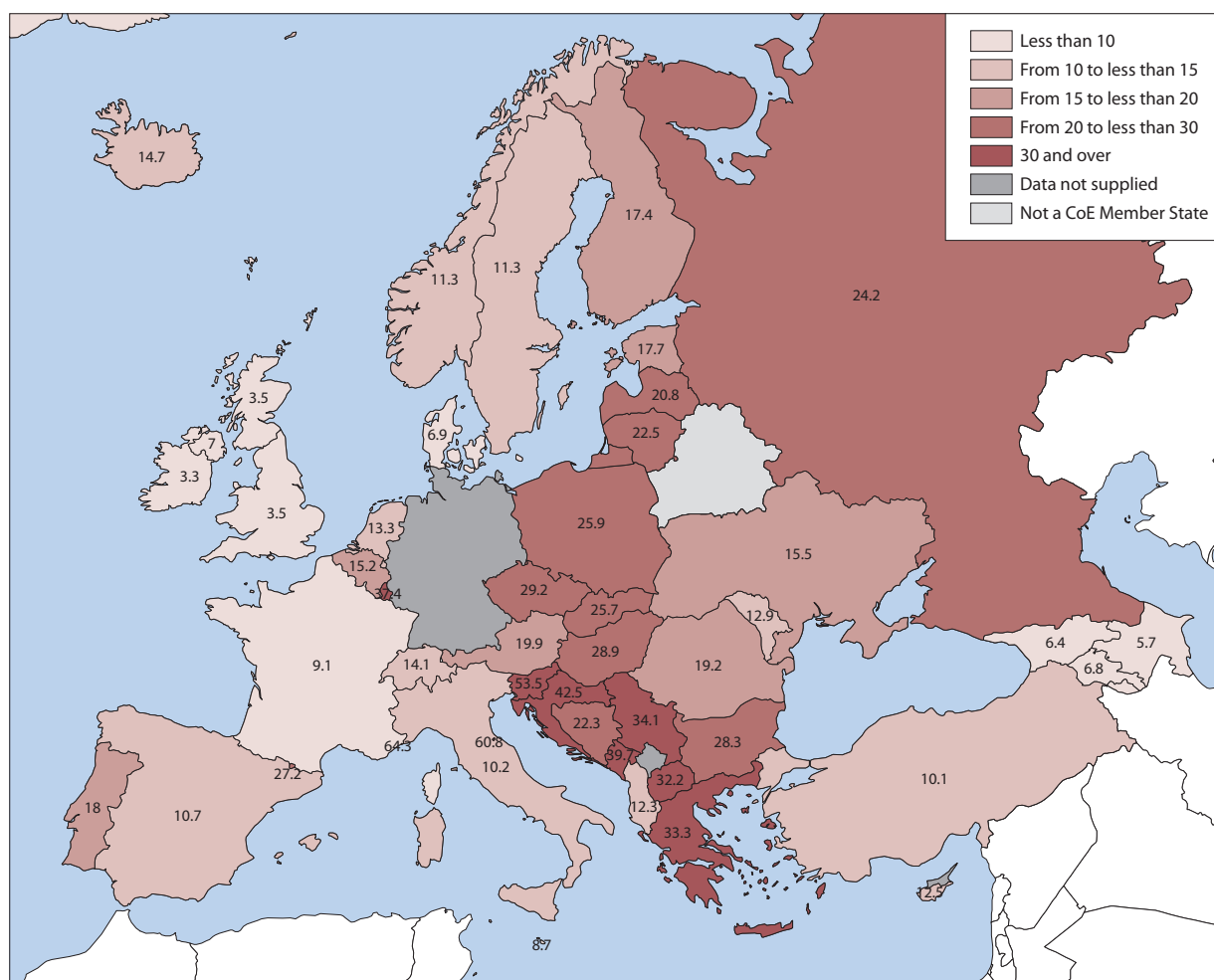
The development of e-justice and e-courts is a strong trend, and states that were late in the previous surveys have recently invested in Information and Communication Technologies (ICT). Recent and ongoing reforms can be noted in many states or entities in fields such as electronic registers, databases for judicial decisions, electronic court files and electronic signature or case management systems. ICT will keep being used in the judicial systems in order to increase effectiveness and quality. Thus there will be further development in video-conferencing, the possibility of making use of electronic (registration) forms and electronic exchange of documents between litigants, lawyers and courts, or the recovery procedure for uncontested claims through the Internet. As long as the judicial debate can always take place and that the rights of defence are safeguarded, the development of e-justice may have a positive effect on access to justice; it should contribute to reduce backlogs and to shorten court proceedings – or at least to improve their foreseeability.

5. NUMBER OF JUDICIAL STAFF

a. Judges

To better take into account the diversity in the status and functions which can be linked with the word “judge”, three types of judges have been defined in the CEPEJ’s scheme. *Professional judges* are described in the explanatory note of the evaluation scheme as “those who have been trained and who are paid as such”. *Professional judges* are also those “who sit in a court on an occasional basis” and are remunerated. *Non-professional judges* (volunteers who are compensated for their expenses) give binding decisions in courts. This takes into account the posts effectively occupied and in full time equivalent (FTE) for professional judges, practicing full time or on an occasional basis.

Figure 12. Number of professional judges sitting in courts (FTE) for 100.000 inhabitants, in 2008



In general, the judicial systems of the member states of Central and Eastern Europe operate with a ratio of judges per inhabitant higher than in the states of Western Europe. A majority of European states or entities tend to have a stable number of judicial staff in the period 2004 – 2008, although structural or organisational reforms tend to reduce the proportion of permanent professional judges in some states or entities (Sweden, Switzerland, UK-Scotland), some of them having occasional judges. On the contrary, some member states in transition continue their reforms by increasing human resources devoted to the judicial function (Azerbaijan, Bosnia and Herzegovina, Armenia, Russian Federation, “the former Yugoslav Republic of Macedonia”). The influence of recent membership or application to the European Union may be an explanation for this trend of increasing numbers of judges (Bulgaria, Slovenia, Latvia, Turkey, Slovakia, Lithuania).

The composition of the judiciary between professional judges, occasional judges and lay judges feature strongly different types of judicial systems. Some systems are fully professionalised, or rarely use lay judges, while other systems (Northern Europe) rely heavily on lay judges. For states experiencing the coexistence of professional and lay judges, the evolution tends mainly towards an increasingly professional judiciary. Europe is divided on the use of juries, and a fairly clear division can be noted between Western Europe (in addition to Azerbaijan and the Russian Federation), supporting such a system for specific types of cases (mainly the most serious criminal offences), and Central and Eastern Europe, whose states do not provide such a system.

b. Non-judge staff

A distinction is made between four types of non-judge staff. A specific category of non-judge staff are the “Rechtspfleger”, inspired by the German system. Non-judge staff has the task to assist judges directly. The third category concerns staff responsible for different administrative matters, as well as court management. The last category relates to technical staff in the courts.

Note France and Greece could not separate categories. It is the number of professional judges or prosecutors vs. number of non-judge and non-prosecutor staff.

Data on non-judge staff in courts are stable between 2004 and 2008. In most of the European states or entities, a majority of non-judge staff working in courts is entrusted with the direct assistance of judges. Major disparities between the states can be highlighted regarding the non-judge staff in courts. In 14 member states, non-judge staff, similar to *Rechtspfleger*, is entrusted with quasi-judicial powers, which might influence the organisation of the judiciary.

Figure 13. Distribution of non-judge staff in courts per 100.000 inhabitants in 2008

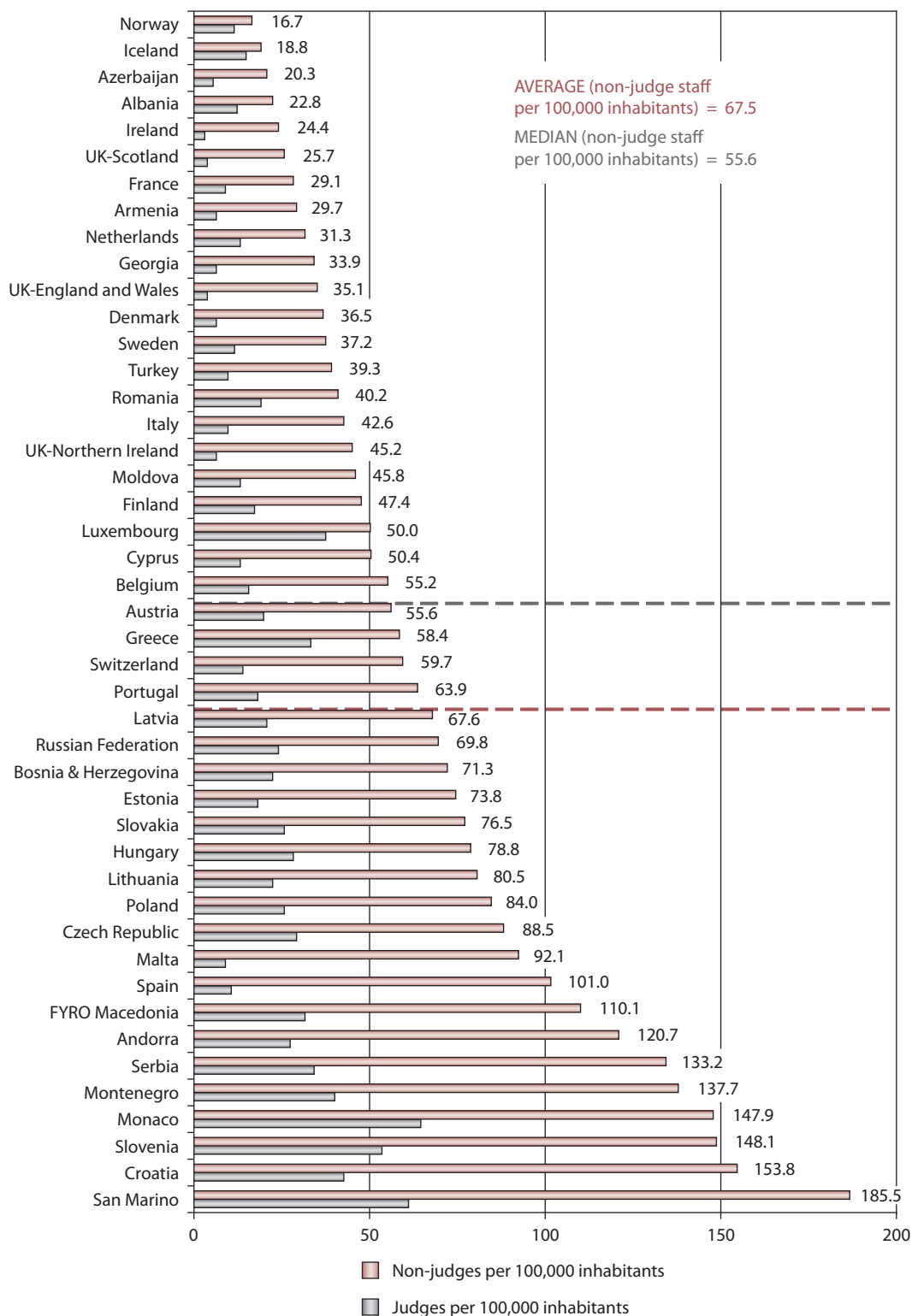
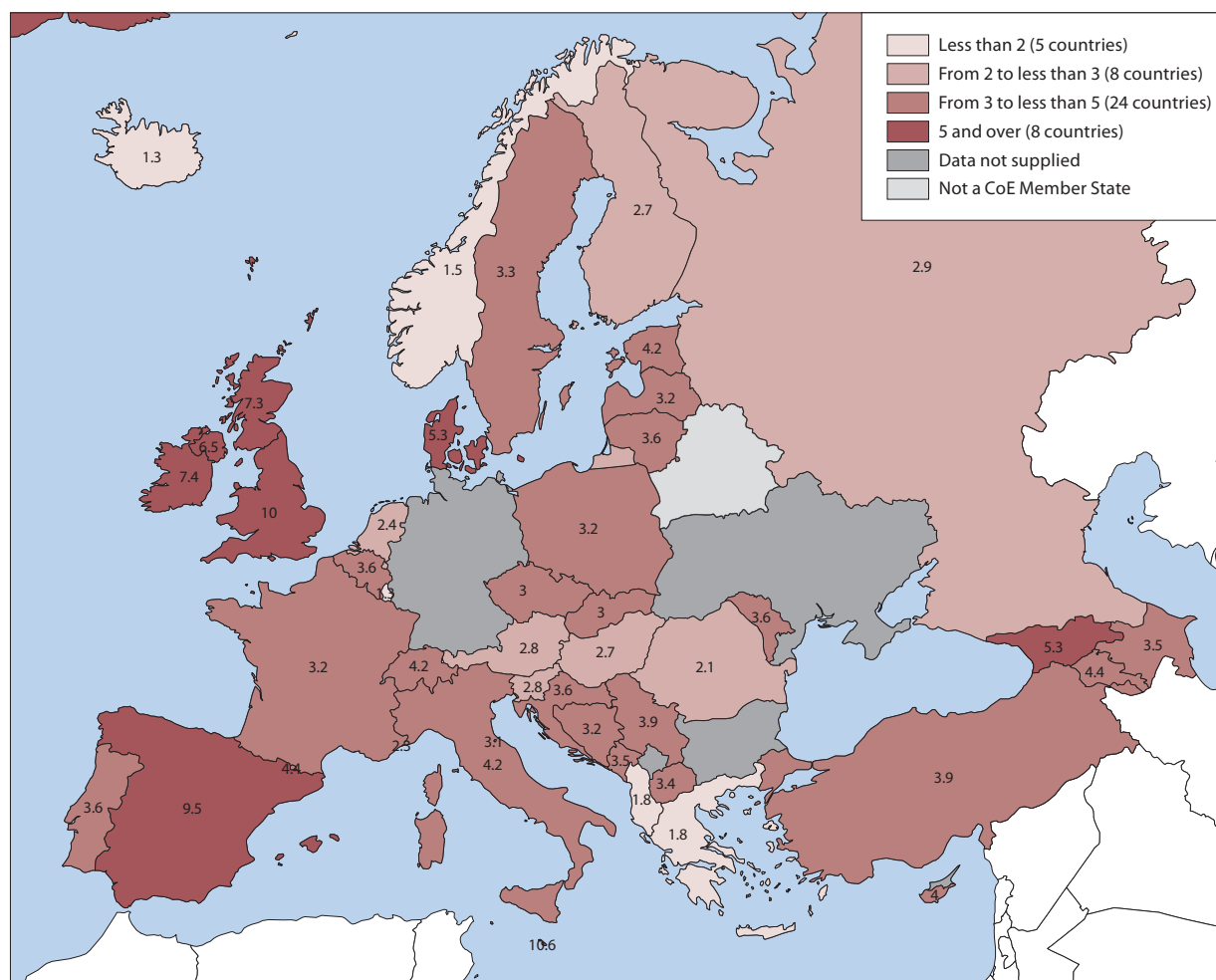


Figure 14. Number of non-judge staff per one professional judge



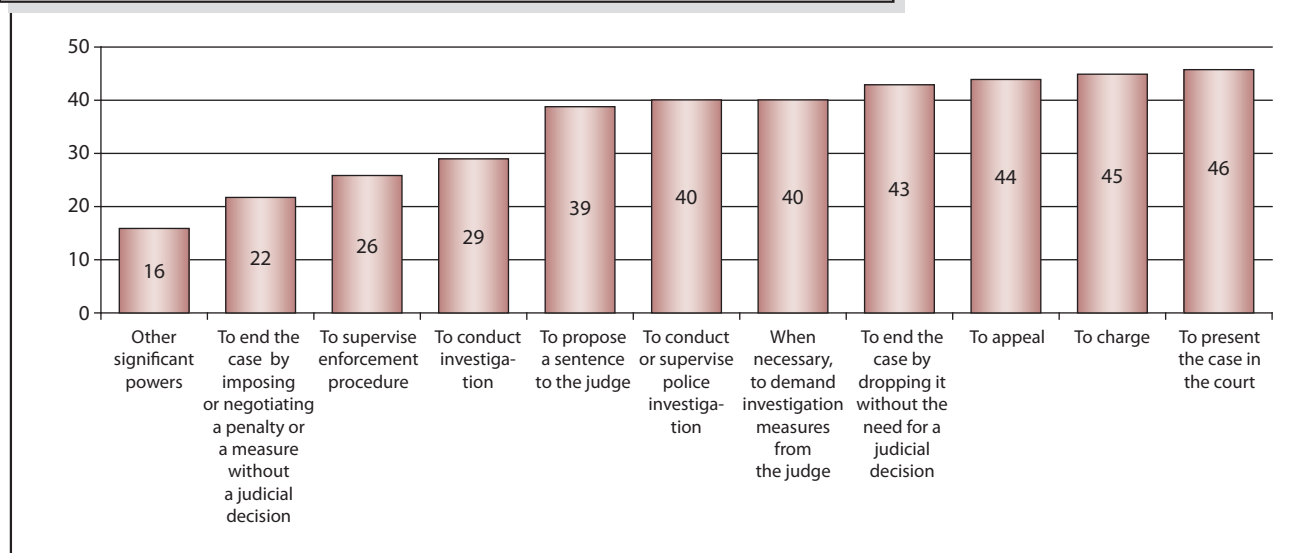
France and Greece: number of non-judge and non-prosecutor staff per judge or prosecutor

c. Prosecutors

Every state or entity has, sometimes under a different name, a public authority entrusted with qualifying and carrying out prosecutions. In all the European states or entities, they play an important role in the prosecution of criminal cases. In most of the member states or entities, they also have responsibility in the civil and even administrative law area. Another important aspect that needs to be taken into account concerns the different levels of autonomy of a prosecutor. In some states or entities, they benefit of a protection of their independence, equal to judges, whilst in other states or entities, the criminal policies are directed by the Ministry of Justice and the level of independence is limited. Such a dichotomy must be kept in mind in order to understand the differences in the statutes and functions of public prosecutors.

and the Parliamentary Ombudsman may also prosecute. In Ireland, much of the work of the Director of Public Prosecutions is carried out by lawyers in private practice rather than by lawyers employed by the state.

Figure 16. Role and attributions of public prosecutors in criminal procedures (number of states or entities)



The role of the prosecutor is pre-eminent in the initial and intermediate stages of the criminal procedures, while relatively limited in the final ones.

All the states or entities (46) stated that prosecutors are authorised to present the case in court. In 45 states or entities, the prosecutor has the power to charge the defendant. The only exception is found in UK-Scotland. There are 44 states or entities where the prosecutor plays a role in appeal proceedings.

In 40 states or entities, prosecutors can conduct or supervise police investigations. Member states or entities which do not entrust this task to prosecutors are: Cyprus, Finland, Ireland, Malta, Slovenia and UK-England and Wales. There are also 29 states or entities which stated that one of the powers of the prosecutor consists in conducting investigations. In 40 states or entities, the prosecutor may request the judge to order specific investigation measures. This is not possible for prosecutors in: Armenia, Azerbaijan, Cyprus, Ireland, Ukraine and UK-England and Wales.

Prosecutors from 39 states or entities can suggest a sentence to the judge. Such ability is not provided in the following states or entities: Austria, Cyprus, Russian Federation, San Marino, "the former Yugoslav Republic of Macedonia", Ukraine and UK-England and Wales. 43 states or entities informed that prosecutors can end cases by dropping them without the need of a judicial decision. This is not possible in Andorra, Cyprus, Italy, Poland and Spain. Only about half of the states allow

prosecutors to end the case by imposing or negotiating a penalty or a measure without a judicial decision.

In 16 member states, the prosecutors may have other significant powers. For example, the prosecutor has the ability to negotiate a guilt agreement (Bosnia and Herzegovina and Poland) which can lead to a simplified procedure (Georgia). In France, prosecutors may play a role in local policies for security and prevention or, for example, against domestic violence. In Greece, he/she supervises and controls the correctional facilities and in Latvia he/she protects the interest of underage or disabled prisoners. Slovenia informed that prosecutors can apply extraordinary legal remedies against final judicial decisions. In Croatia, France, Slovenia and the Russian Federation prosecutors can perform mediation duties.

d. Lawyers

The word “lawyer” is used according to Recommendation Rec(2000)21 of the Council of Europe namely: “... 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”.

The number of lawyers has increased in Europe between 2004 and 2008 in all the member states or entities, but it varies between the various parts of the continent, according also to functions which are more or less wide, namely beyond the legal representation before courts. The states of Southern Europe have the highest ratio of lawyers per inhabitant; the level of *judicialisation* of the society in such states is usually higher than in the states of Northern Europe. It cannot be established at this stage that there is a direct link between the number of lawyers and the volume and lengths of proceedings, further analyses will have to be made to see whether the number of lawyers and their role vis-à-vis the development of judicial proceedings, compared to the role of the judges, have or not a relevant impact on the court workload and the length of proceedings.

The number of lawyers per professional judge varies considerably across the member states or entities. When legal advisors are excluded, one can observe that there are states or entities which have less than 2 lawyers per professional judge (Slovenia, Monaco, Bosnia and Herzegovina, UK-Scotland, Azerbaijan and Russian Federation). The highest numbers (more than 20 lawyers per one professional judge) can be found in Spain, Malta and Italy. However, in these states, lawyers have wide powers that go beyond activities directly related to courts.

Figure 17. Number of lawyers (with and without legal advisors) per 100,000 inhabitants in 2008

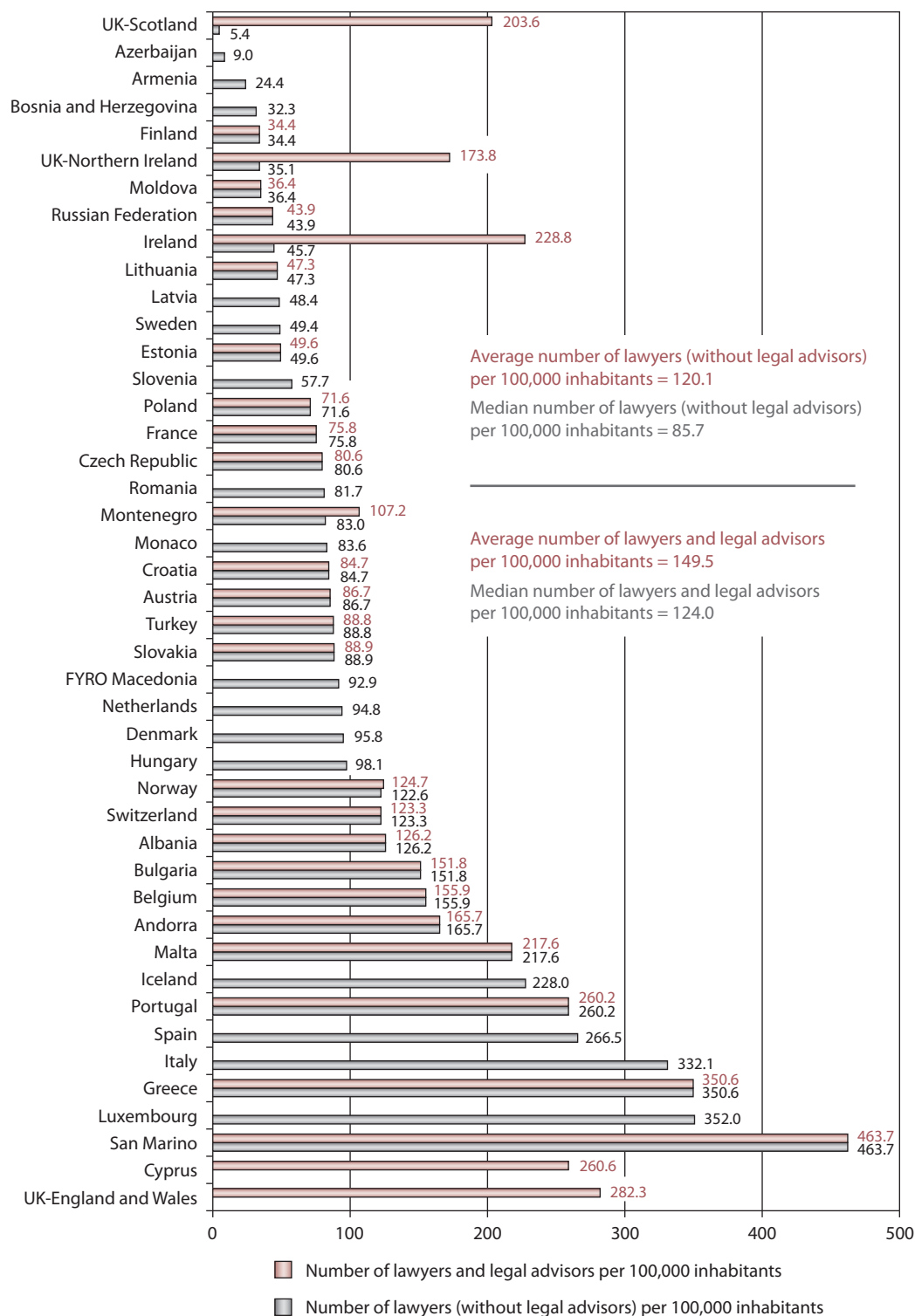


Figure 18. Number of lawyers per professional judge (with and without legal advisors) in 2008

