

Strasbourg, 1 October 2016

EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

Cycle 2014-2016 for evaluating judicial systems

Presentation Note

1. THE EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

The 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 to:

- promote the effective implementation of Council of Europe instruments used for the organisation of justice;
- ensure that public policies concerning courts take into account the needs of the justice system users;
- offer states effective solutions prior to the point 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 experts from the 47 Council of Europe member States, to assess the efficiency of judicial systems and propose practical tools and measures for working towards an increasingly efficient service for the public.

Particular emphasis is placed on the comparison of judicial systems and the exchange of knowledge on how they function. The scope of this comparison is broader than efficiency in the narrow sense: it also encompasses 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.

2. THE CEPEJ PROCESS FOR EVALUATING JUDICIAL SYSTEMS

Working with Scheme submitted regularly to the relevant state authorities and aimed at understanding and evaluating a judicial system, the CEPEJ regularly collects data on the functioning of judicial systems.

The new reports are based on data from 2014.

Methodologically, the collection of figures is based on reports by the states and entities, which were invited to appoint national correspondents entrusted with the coordination of the replies to the scheme for their respective state or entities.

The CEPEJ instructed its Working Group, under the chairmanship of Mr Jean-Paul JEAN (France), with the preparation of the report¹, coordinated by the Secretariat of the CEPEJ.

¹ The Working Group of the CEPEJ on the evaluation of judicial systems (CEPEJ-GT-EVAL) was composed of: Mr Ramin GURBANOV, Judge at the Baku City Yasamal District court, Azerbaijan,

Extensive work has been carried out to verify the quality of the data submitted by the States and to approve them according to a rigorous methodology. CEPEJ experts agreed that the figures would not be changed ex officio, unless the correspondents explicitly agreed to such changes. The CEPEJ has chosen to process and present only the figures which provided 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 cycle to another, or did not present sufficient guarantees of accuracy.

The CEPEJ has sought to approach the analytical topics while bearing in mind the priorities and 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.

Comparing data and concepts: pitfalls to be avoided when interpreting data

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 way of the courts organisation, use of statistical tools to evaluate the systems, etc.). Special efforts were made to define the used terms and to ensure that the concepts are addressed according to a common understanding. However, the particularities of some systems might prevent to reach shared concepts. In this case, specific comments join 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 best 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**. However, the report gives 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 older judicial traditions), geographical criteria (size, population) or economic criteria (for instance size of GDP; within or outside the Euro zone, etc.).

Monetary values are reported in Euros. The exchange rates vary considerably from year to year and this caused some difficulties as regards states outside the Euro zone. It is therefore, necessary to pay attention to this issue while comparing monetary figures of the 2014 and

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, Court of Appeal of Köln, Germany, Ms Mirna MINAUF, Senior Administrative Advisor, Sector for judicial administration and judicial inspection, Directorate for the Organisation of the Judiciary, Ministry of Justice of the Republic of Croatia

Mr Georg STAWA, President of the CEPEJ, Head of Department for Projects, Strategy and Innovation, Federal Ministry of Justice, Austria,

Mr Frans van der DOELEN, Programme Manager of the Department of the Justice System, Ministry of Justice, The Netherlands.

Mr Jaša VRABEC, Senior Judicial Adviser, President's Office, Supreme Court of the Republic of Slovenia, and supported by the scientific experts:

Ms Julinda BEQIRAJ, Associate Senior Research Fellow in the Rule of Law, Bingham Centre for the Rule of Law, London, United Kingdom

Mr Didier MARSHALL, Honorary Judge, Dean of the Department of Justice Administration at the French *Ecole Nationale de la Magistrature*, France

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2016 editions. As far as possible, this was taken into account while commenting on the tables and figures showing budgetary variations.

For the first time in this edition, the inflation rate was considered in the respective part of the report when interpreting the variations of different judicial budget elements

3. PRESENTATION OF THE 2016 RESULTS : A MAJOR INNOVATION THROUGH A NEW DYNAMIC DATA BASE

For the first time, relying on its 12 years of experience, the CEPEJ presents the results of its evaluation cycle through three elements:

1. The report “ European judicial systems – Efficiency and quality of justice – Edition 2016 ” which presents key facts and figures making it possible to evaluate the state of the judicial systems and their evolution; it is completed by a document providing an overview;

This is complemented by

2. a thematic report focused for this cycle on the use of IT in courts in Europe ;
3. a major innovation in the form of the provision to policy-makers (ministries of Justice, Parliaments, etc.), professionals of justice and researchers of an interactive and dynamic database (CEPEJ-STAT), accessible on the internet. The database makes it possible to select specific data for specific countries (to compare one country to other comparable countries), to cross reference data, and to generate tables, figures and maps instantly.

see: www.coe.int/cepej

Based on the CEPEJ's data base which is unique in the world as regards justice, the 2016 report presents a detailed overview of the functioning of judicial systems in 45 Council of Europe's member States, as well as Israel which has joined the exercise as an observer state, together with time-series statistics highlighting changes in the judicial systems in these countries.

The comparative tables and graphs and the comments help to understand the overall functioning of courts, illustrate the main trends in judicial systems and identify any problems, all with the objective of improving the quality and efficiency of the public service of justice. It is a sound tool for enhancing mutual knowledge of judicial systems and strengthening mutual confidence between justice professionals.

4. SOME MAIN CONCLUSIONS AND TRENDS DRAWN FROM THIS EVALUATION CYCLE

1. Budgets of judicial systems

The European average concerning the budgets of judicial systems is 60 € per capita in 2014, but half of the states spent less than 45 € per capita. The differences between the 6 states whose expenditure per capita is lower than 20 € are considerable, as are the differences between the 5 states or entities where the expenditure is higher than 100 €. **The wealthier states are not necessarily the ones that proportionally make the most considerable budgetary efforts with regard to the judicial system.**

The trend since the last evaluation report has been towards an **increase in the budget allocated to the judicial system in most of the states**. The economic and financial crisis of the end of the 2000s resulted in some states in significant budgetary cutbacks. In 2014, the states concerned were able to initiate or continue additional expenditures towards the promotion of their judicial systems (Latvia, Lithuania, Romania and Slovenia). On the

contrary, in Ireland, Portugal, Spain and particularly in Greece, the judicial system is still undergoing regular budgetary restrictions.

The commitment of considerable funds to improve the functioning of different components of the judicial system is a feature in Azerbaijan, Latvia, Lithuania, Malta, Republic of Moldova, Romania and the Russian Federation. Financial investments carried out in these states are often synchronised with the implementation of specific programmes related to construction/refurbishment of court buildings, equipment of courts with new technologies of information and communication technology or with increases in salaries. Likewise, the same category of states make significant endeavours in developing their legal aid systems in order to improve access to justice for the benefit of persons with limited or insufficient financial means. Put differently, the overall financial effort of these states in the field of the judicial system is commendable and deserves to be highlighted.

In general, **the users of the public service of justice are increasingly called upon to finance the judicial system**, through taxes and judicial fees. These revenues represent more than 20% of the public budget allocated to the judicial system in more than a quarter of the states and entities, and even more than 50% in Turkey. They remain higher than the budget allocated to the judicial system in Austria (the revenues also come from the business and land registers).

Generally speaking, the **trend** observed since 2010 has been towards **the delegation of certain services, which traditionally fall within the scope of court powers, to private providers** (IT services and maintenance, in-service training of staff, security, archives, cleaning etc.).

All states or entities have implemented a **legal aid** system in criminal matters in compliance with the requirements of the European Convention on Human Rights. With regard to the evolution of the budgets allocated to legal aid, it is possible to distinguish two trends: **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**. More and more legal aid is **extended to the enforcement of judicial decisions or judicial mediation**. In some states or entities where court users are subject to substantial court taxes/fees, access to justice of persons with limited financial means is, however, efficiently ensured through legal aid systems.

2. Judges and prosecutors

As regards **recruitment of judges, European standards appear in general to be well grounded in national constitutional and legislative regulations**. The guarantees of independence concerning the recruitment bodies, the proceedings, as well as the role of the High Judicial Council or a similar body, and the conditions determining access to the profession of magistrate, are in place. This is the case regardless of the form of appointment preferred and the interpretation of the principle of separation of powers in the national law. One of the trends to be observed concerns **the increasing weight attached during the selection process to the prior experience of the judge candidates**. While this criterion has been a feature of common law countries from the outset, it is currently granted specific significance in almost all the states.

The majority trend to be noted in Europe is the **stability of employment** over the last four years with an average of 21 judges per 100 000 inhabitants. However, this figure corresponds to very different realities : **the judicial apparatus of the states of Central and especially Eastern Europe continue to operate with a ratio of judges per capita substantially higher than that of the states of Western Europe**. Moreover, this same group of states have a fully professional system, or rarely use lay judges. The use of lay judges remains an essential feature of common law countries and those in northern Europe.

The courts, formerly mainly composed of men who also held the presidency, are characterised in recent years and increasingly among states, by a **feminisation of the professional judges**, mainly at first instance. Today the situation is one of parity between

women and men in the composition of the courts, even if large differences can still be observed between the states and entities where men remain widely in the majority such as in Armenia, Azerbaijan, Ireland, Turkey, and the entities of the United Kingdom, and other states which are broadly feminised, such as Croatia, Greece, Hungary, Latvia, Luxembourg, Romania and Slovenia. But the "glass ceiling" remains a reality for **women who access with more difficulties than men to positions of responsibility**. Thus men still largely predominate in the function of court presidents, despite the number and professional qualities of women judges.

The evolution of judges' salaries during their career has remained substantially unchanged since 2010.

The institutional context of the prosecution service and particularly its relations with the executive vary according to the state. **The principle of functional independence of prosecutors is emerging as an essential guarantee which has become a true European standard**. This formal statement in the text is however contradicted in some countries by the possibility of political power to intervene in the prosecution process.

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 a closing of the gap between judges' and prosecutors' salaries. The remaining discrepancies stem either from the peculiarity of the recruitment procedure of judges, or from the specificities of the public prosecution services

The prosecutors having the heaviest workload are to be found in France. Austria, Ireland and Italy also have a particularly heavy workload. Conversely, **most countries in Central and Eastern Europe have a significant number of prosecutors, for a relatively small number of proceedings received**, even if their jurisdiction is wide. This is particularly the case of Ukraine, the Russian Federation, Bulgaria, Hungary, Latvia, Lithuania, Republic of Moldova, Montenegro, Slovakia, Poland. This phenomenon is accentuated in some countries where other staff exercise functions similar to those of prosecutors.

3. Court organisation

Generally speaking the European trend goes towards a **decrease in the number of courts and a consequent increase in the size of the courts**, including more judges, as well as a stronger **specialisation of the judicial systems**.

Information technologies have, in some respects, made it possible to improve the efficiency and quality of judicial systems. However, **there seems to be no obvious link between the level of IT equipment and good results** as reflected in the efficiency indicators. **The States and entities with the most highly developed IT are not necessarily the most efficient.** Instead of being a simple mere tool for the courts, the integration of IT in an organisational process of performance, coupled with a policy of change management involving all stakeholders could be a success factor. IT is essential but is not the only key to improved performance.

4. Performance of judicial systems

The 2016 evaluation highlights a **sharp increase in the number of incoming criminal cases, while the category of 'other than criminal cases' has slightly contracted**

It also shows an overall positive **trend for the ability of European courts to cope with incoming cases in the long term**. This has been a constant trend in the civil and administrative justice sector since 2010, and since 2012, also in the criminal sector.

In the **civil justice sector, the systems have not improved globally** as regards the management of civil and commercial litigious cases received and solved at first instance ;

states are able to deal with incoming cases in these areas, but could not generally make progress in the reduction of backlog; with regard to pending cases, there has been a low but continuous increase in the backlog of civil and commercial litigious cases since 2010; improvements can however be observed in a number of states.

In the **administrative justice sector, judicial systems have constantly improved their capacity** to cope with the volume of cases at first instance. There has been a general decrease in the number of pending cases.

In the **criminal justice sector, in the vast majority of the states, public prosecutors are able to solve less cases than those received; by contrast, courts can cope more or less satisfactorily with the incoming workload during the year.** The situation is better as regards severe crimes compared to minor offences. The quantity of both incoming and pending cases diminished between 2010 and 2012 but increased substantially between 2012 and 2014.

On a more general level:

- **economic recession has certainly been one of the main reasons for the increased volume of some incoming cases and the extended duration of proceedings in these instances;** it has already affected the composition of the case-flow and has prompted important legislative reforms in a number of cases to adapt to the change;
- **economic recession has also had an impact on the resources of courts and on the availability of legal aid for court users;** variations in the number of incoming cases should also be considered in the light of this development;
- **the use of ADR methods (e.g. mediation, conciliation) is promoted and incentivised in Europe,** both in civil and criminal matters; closer attention should be paid to the impact of this trend on the general workload of courts and on the resources that finance these procedures;
- to improve timeliness and efficiency, **online procedures for the setting up of files and the processing of certain categories of claims are increasingly being developed and applied** in different European states.