

In other than criminal matters, litigants are required to pay a court tax or fee to start a proceeding at a court of general jurisdiction in all states, except for **France** and **Luxembourg**. In criminal matters, in states such as **Croatia, Cyprus, Greece, Montenegro, Portugal, Serbia, and Switzerland**, parties in the proceedings have to pay court fees which are covered by legal aid when granted.

In **France**, a court fee of 225 € is required from litigants in other than criminal matters only in respect of the appeal procedure (excluding administrative cases) and when legal representation is mandatory.

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 tenets 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, court fees have to be paid at the end of proceedings.

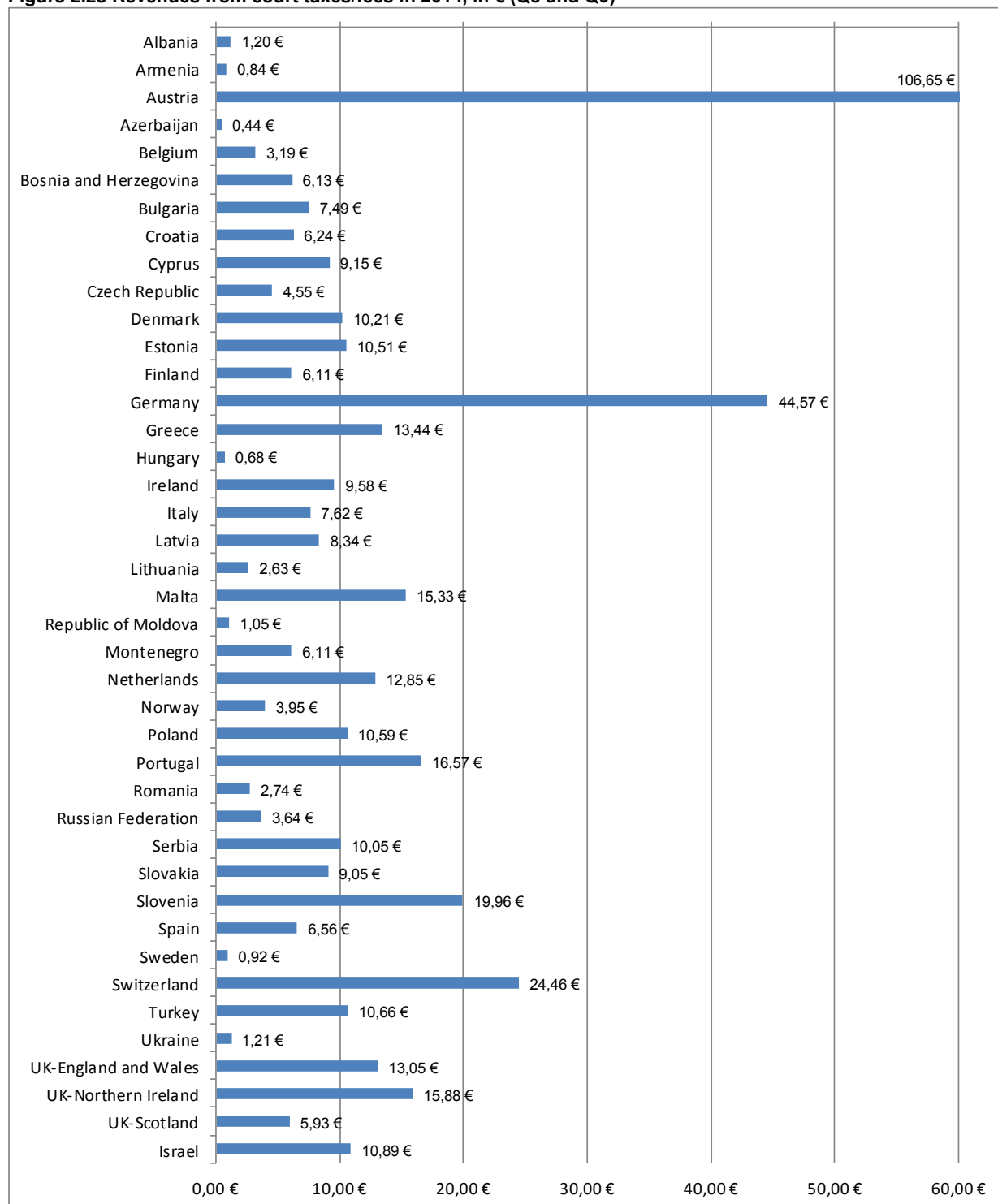
2.5.2 Revenues from court taxes or fees

The level of revenue generated by a state 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 can 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 2014

Figure 2.28 Revenues from court taxes/fees in 2014, in € (Q8 and Q9)



Revenues from court fees correspond to more or less significant amounts, depending on the states.

They are particularly high in **Austria** (106,65 € per capita), which is more than the public budget allocated to the judicial system (96 € per capita). These revenues represent 20 € per capita or more in **Slovenia** (20 €), **Switzerland** (24,46 €) and **Germany** (44,57 €). To a large extent, the high level of court fees can be explained by the fact that courts are responsible for the registers, in particular land registers. Fees are charged for consulting these registers or recording information. In **Austria** and **Germany**, revenues are also generated through business registers.

In 11 States or entities, the amount of court fees received per capita in 2014 is between 10 and 20 €: **Serbia** (10,05 €), **Denmark** (10,21 €), **Estonia** (10,51 €), **Poland** (10,59 €), **Turkey** (10,66 €), **Israel** (10,89 €), **Netherlands** (12,85 €), **UK-England and Wales** (13,05 €), **Greece** (13,44 €), **Malta** (15,33 €), **UK-Northern Ireland** (15,88 €), **Portugal** (16,57 €).

The revenues generated by court fees are between 5 and 10 € per capita in 12 States and entities: **UK-Scotland** (5,93 €), **Montenegro** (6,11 €), **Finland** (6,11 €), **Bosnia and Herzegovina** (6,13 €), **Croatia** (6,24 €), **Spain** (6,56 €), **Bulgaria** (7,49 €), **Italy** (7,62 €), **Latvia** (8,34 €), **Slovakia** (9,05 €), **Cyprus** (9,15 €) and **Ireland** (9,58 €).

In the **Republic of Moldova** (1,05 €), **Albania** (1,20 €), **Ukraine** (1,21), **Lithuania** (2,63 €), **Romania** (2,74 €), **Belgium** (3,19 €), **Russian Federation** (3,64 €) and **Czech Republic** (4,55 €) the revenues from court fees are between 1 and 5 €.

In 4 states, the court fees revenues represent less than 1 € per capita: **Sweden** (0,92 €), **Armenia** (0,84 €), **Hungary** (0,68 €), **Azerbaijan** (0,44 €).

The significant differences between States and entities in matters of court fee revenues must be taken into account within the comparative analyses of the legal aid budget. In fact, in some states such as **Switzerland**, generally, court users have to pay a certain fee for most of the judicial services, but the existing legal aid system is relatively favourable with regard to individuals with limited financial resources.

2.5.2.2 Evolution of the revenues from court taxes and fees between 2010 and 2014

Table 2.29 Evolution of the revenues from court taxes and fees between 2010 and 2014 (Q9)

States/entities	Annual income of court taxes			
	2010	2012	2014	Trend
Albania	2 201 657 €	4 335 000 €	3 458 066 €	
Andorra				
Armenia		2 871 855 €	2 528 252 €	
Austria	779 840 000 €	834 870 000 €	915 619 924 €	
Azerbaijan	779 988 €	1 208 144 €	4 178 305 €	
Belgium	34 408 250 €	34 917 000 €	35 781 147 €	
Bosnia and Herzegovina	26 576 744 €	26 179 300 €	23 467 267 €	
Bulgaria	58 354 136 €	61 595 758 €	53 967 580 €	
Croatia	25 168 311 €	28 759 251 €	26 359 795 €	
Cyprus	9 802 960 €	11 377 030 €	7 851 964 €	
Czech Republic	37 452 793 €	59 014 432 €	47 868 874 €	
Denmark	95 933 236 €	98 520 187 €	57 764 476 €	
Estonia	12 909 414 €	7 219 348 €	13 801 463 €	
Finland	31 284 003 €	33 833 367 €	33 455 279 €	
France				
Georgia				
Germany	3 515 706 357 €	3 567 436 506 €	3 600 787 657 €	
Greece	88 340 000 €	99 050 000 €	145 783 667 €	
Hungary	17 274 015 €	6 159 824 €	6 691 245 €	
Ireland	47 325 000 €	43 720 000 €	44 302 000 €	
Italy	326 163 179 €	465 147 222 €	463 052 628 €	
Latvia	17 650 016 €	16 573 777 €	16 697 327 €	
Lithuania	6 950 880 €	7 600 585 €	7 695 204 €	
Luxembourg				
Malta	6 702 000 €	6 399 974 €	6 583 082 €	
Republic of Moldova		2 341 804 €	3 718 774 €	
Monaco				
Montenegro	6 239 721 €	3 918 273 €	3 785 421 €	
Netherlands	190 743 000 €	237 570 000 €	217 194 000 €	
Norway	21 736 632 €	22 100 683 €	20 420 354 €	
Poland	530 161 000 €	408 787 000 €	407 715 000 €	
Portugal	217 961 874 €	207 899 840 €	171 890 423 €	
Romania	46 177 039 €	54 301 587 €	60 935 285 €	
Russian Federation	426511157	452 826 397 €	533 051 921 €	
Serbia	85 137 114 €	107 047 455 €	71 517 912 €	
Slovakia	57 661 794 €	53 448 064 €	49 053 890 €	
Slovenia	50 858 000 €	40 461 043 €	41 131 998 €	
Spain	173 486 000 €	172 950 000 €	304 416 000 €	
Sweden	4 469 274 €	5 134 908 €	9 011 588 €	
Switzerland	276 870 194 €	239 397 840 €	201 496 138 €	
The FYROMacedonia	10 100 403 €	10 113 139 €		
Turkey	525 138 372 €	637 583 272 €	827 914 488 €	
Ukraine	9 174 192 €	9 174 192 €	52 105 263 €	
UK-England and Wales	545 878 204 €	586 777 526 €	749 451 721 €	
UK-Northern Ireland	34 556 372 €	38 492 000 €	29 232 526 €	
UK-Scotland	26 681 850 €	26 862 101 €	31 733 000 €	
Israel		80 071 536 €	90 378 021 €	
Average	209 311 947 €	213 023 797 €	232 586 773 €	
Median	36 004 583 €	38 492 000 €	42 716 999 €	
Minimum	779 988 €	1 208 144 €	2 528 252 €	
Maximum	3 515 706 357 €	3 567 436 506 €	3 600 787 657 €	

The evolution of the revenues generated by court taxes and fees since 2010 can be measured in respect of 37 States or entities.

In 16 States and entities, the court taxes or fees decreased over the period 2010-2014. For 7 of them, the decrease is considerable, being at, or exceeding, the threshold of 20 %: **Cyprus** (- 20 %), **Portugal** (- 21 %), **Poland** (- 23 %), **Switzerland** (- 27 %), **Montenegro** (- 39 %), **Denmark** (- 40 %) and **Hungary** (- 61 %).

A significant decrease (higher than 10%) can also to be noted in **Bosnia and Herzegovina** (- 12 %), **Slovakia** and **UK-Northern Ireland** (- 15 %), **Serbia** (- 16 %) and **Slovenia** (- 19 %).

The decrease is relatively lower in **Bulgaria** (- 8 %), **Ireland** (- 6 %), **Norway** (- 6 %), **Latvia** (- 5 %) and **Malta** (- 2 %).

Conversely, in respect of 21 States or entities, the trend for the period 2010-2014 is an increase in the revenues generated by court taxes/fees. The revenue from taxes is higher in 2014 compared with 2010 by +400 % for **Ukraine** (+ 468 %) and **Azerbaijan** (+ 436 %). The reason behind the high increase in **Ukraine** lays in the Law on the "Court Fee" that came into effect from November 2011. Similar effect had a Law on "State Duty" adopted in December 2012 in **Azerbaijan** after which the amount of all court fees increased. During the period under consideration, **Sweden** doubled its revenues from court fees (+ 102 %). An increase exceeding the threshold of 20 % is also to be noticed in **Spain** (+ 75 %), **Greece** (+ 65 %), **Turkey** (+ 58 %), **Albania** (+ 57 %), **Italy** (+ 42 %), **UK-England and Wales** (+ 37 %), **Romania** (+ 32 %), **Czech Republic** (+ 28 %) and **Russian Federation** (+25%).

The other States or entities where the revenues from court taxes/fees increased between 2010 and 2014 are **UK-Scotland** (+ 19 %), **Austria** (+ 17 %), **Netherlands** (+ 14 %), **Lithuania** (+ 11 %), **Finland** (+ 7 %), **Estonia** (+ 7 %), **Croatia** (+ 5 %), **Belgium** (+ 4 %) and **Germany** (+ 2 %).

It is noteworthy that the overall variations presented within table 2.29 are expressed in Euros (without the neutralisation of the variations in the exchange rates in respect of states outside the Euro area and the variations of prices). Accordingly, it is necessary to keep in mind that some of the variations observed can be underestimated or overestimated as a result of both these parameters.

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

Figure 2.30 Part of the taxes and court fees in the budget of the judicial system budget (Q6, Q9, Q12 and Q13)

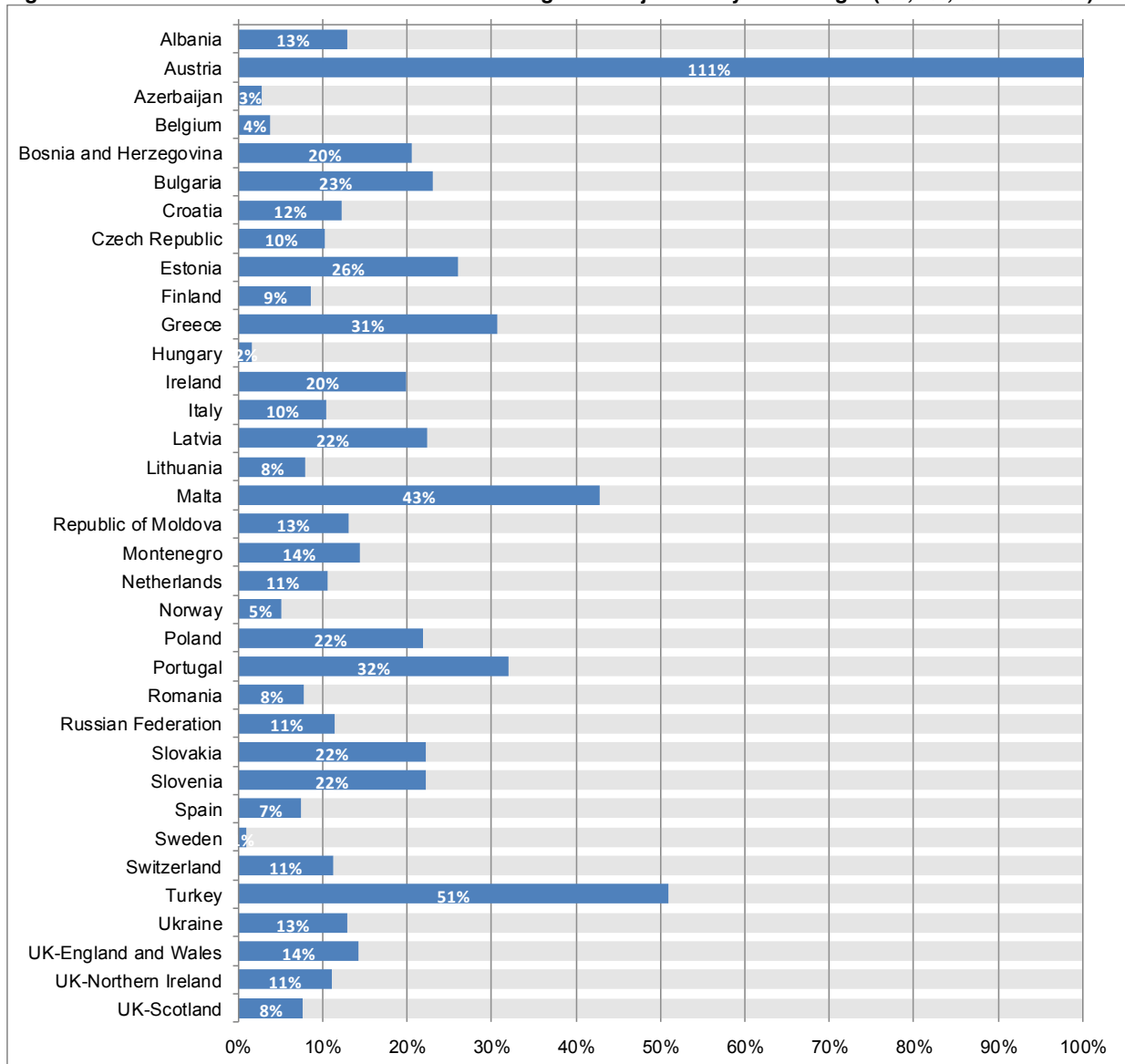
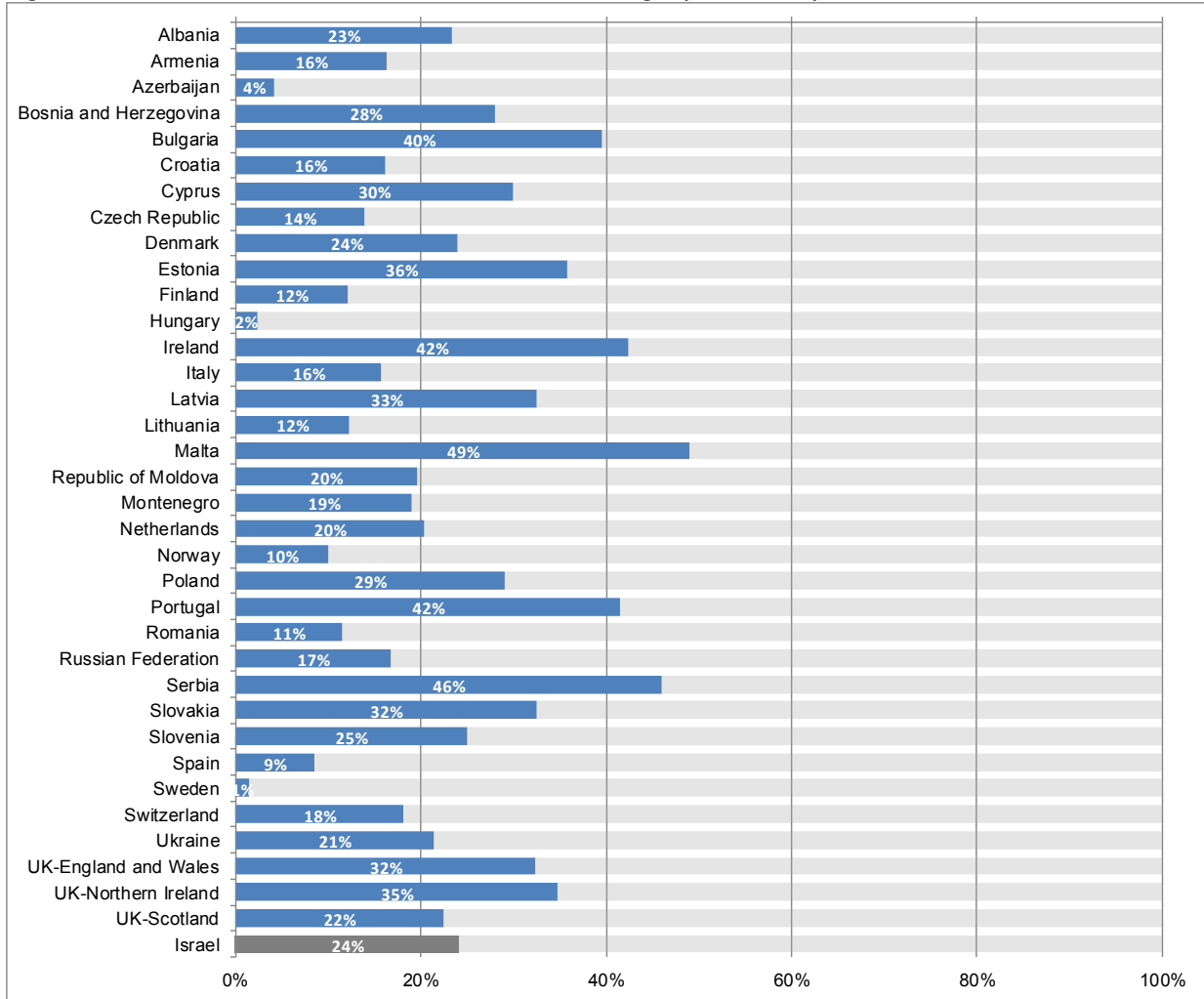


Figure 2.31 Part of the taxes and court fees in the court budget (Q6 and Q13)



It is confirmed that payment of court fees is now a key characteristic of the justice system in many states 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** and **Luxembourg** 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. They exceed 20% of the budget of the judicial system in more than a quarter of the States or entities, or even 50% of this budget in **Turkey**.

To a large extent, the high level of court fees can be explained by the fact that courts are responsible for the registers (mainly land and business registers). Fees are charged for retrieving information from these registers or for recording modifications.

2.6 Annual 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.

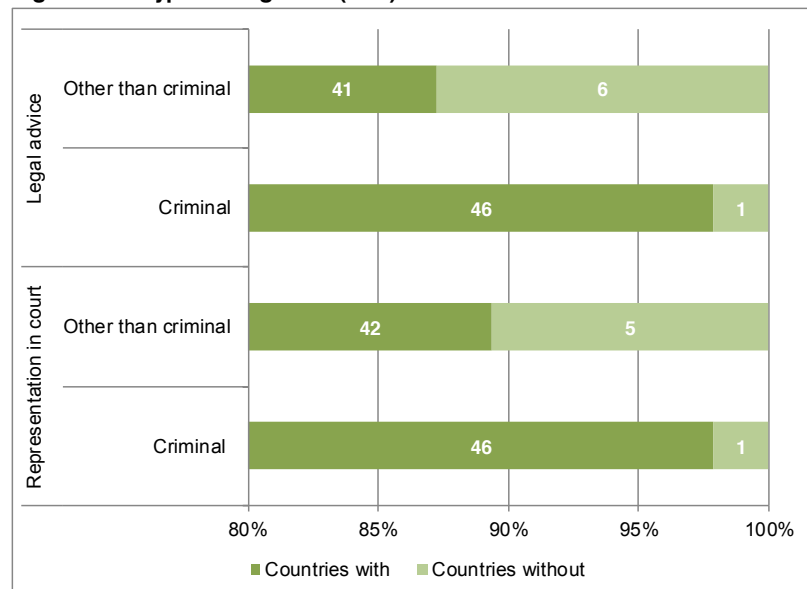
Akin to the previous evaluation cycle, the CEPEJ has strived to collect data on legal aid granted by the States or entities outside the courts, to prevent litigation or to offer access to legal advice or information (access to law). This approach makes it possible to identify and separate both public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

Accordingly, the concept of legal aid has been given in this part a broad interpretation, covering the jurisdictional aid (allowing litigants to finance fully or partially their court fees when acting before tribunals) and access to information and to legal advice.

2.6.1 Scope of legal aid

2.6.1.1 Various types of legal aid

Figure 2.32 Types of legal aid (Q16)

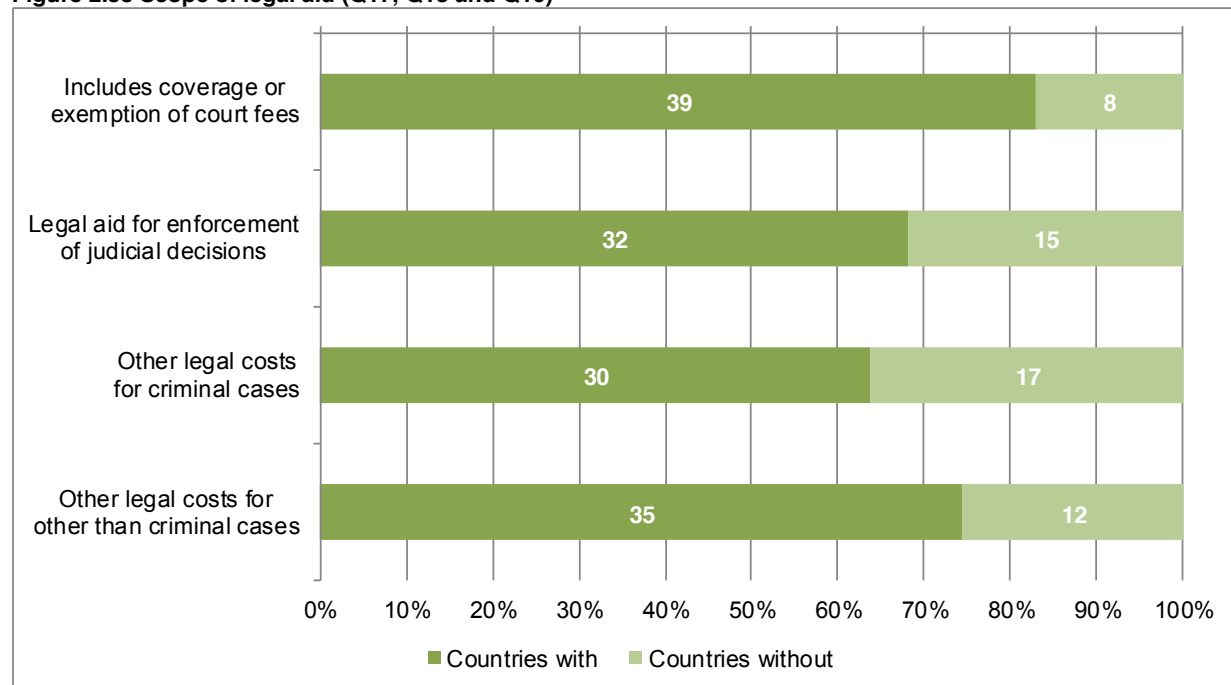


Almost all States and entities provide legal aid in criminal proceedings which is commendable in light of the case law of the European Convention of Human Rights. Most often, the aid provided covers legal representation before courts.

It can be noted that **Azerbaijan, Germany, Iceland, Italy, Malta, Monaco, Poland and Switzerland** offer now an aid through legal advice in criminal matters. However, these states, except for **Germany and Switzerland**, have abandoned their system of mandatory legal representation before courts for other than criminal matters. **Ukraine** does not have such a system either, while

Germany and Switzerland introduced free legal advice for other than criminal cases between 2012 and 2014.

Figure 2.33 Scope of legal aid (Q17, Q18 and Q19)

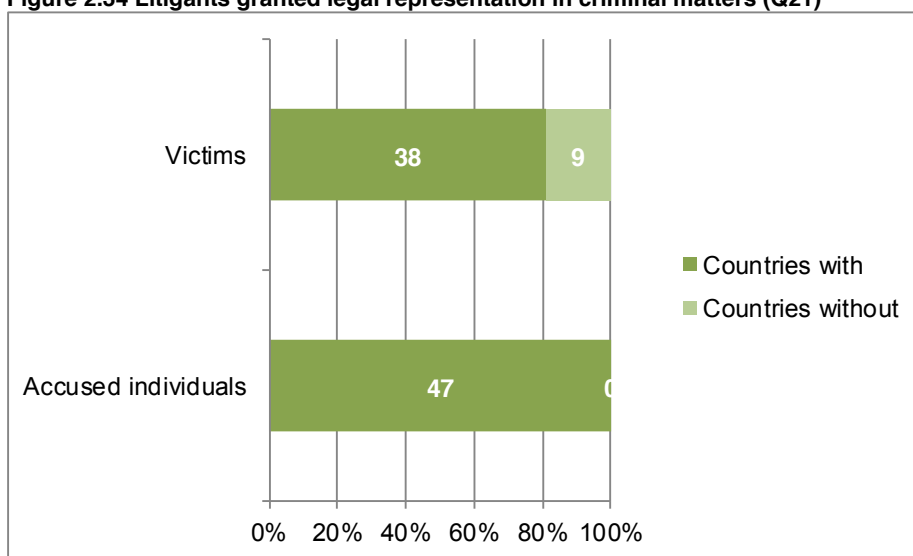


In the majority of states (39 States or entities), the regime of legal aid includes coverage of or exemption from paying court fees, as described in the previous part. There are exceptions to this general trend, namely: **Armenia, Azerbaijan, Bulgaria, Georgia, Latvia, Republic of Moldova, Russian Federation, Slovenia and Ukraine**.

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 **Armenia, Azerbaijan, Bulgaria, Croatia, Cyprus, Georgia, Ireland, Latvia, Republic of Moldova, Russian Federation, Slovakia, Switzerland, “the former Yugoslav Republic of Macedonia”, Ukraine and UK-England and Wales.**

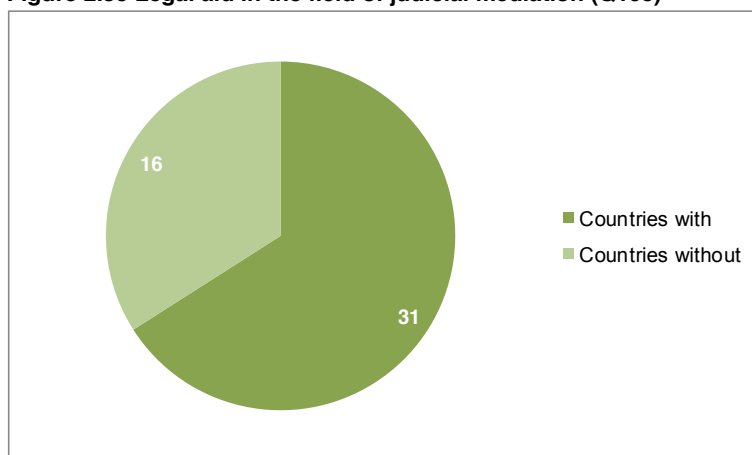
Legal aid can also be granted for other costs in criminal and other than criminal matters: fees of technical advisors or experts in the framework of judicial expertise (**Austria, Belgium, Bosnia and Herzegovina, Croatia, France, Germany, Greece, Ireland, Italy, Monaco, Poland, Romania, Russian Federation, Serbia, UK-Northern Ireland, 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-Northern Ireland, UK-Scotland, Israel,**), travel costs (**Albania, Austria, Ireland, Latvia, Lithuania, Netherlands, Poland, Russian Federation, Spain, 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 2.34 Litigants granted legal representation in criminal matters (Q21)



Pursuant to 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, Poland, Russian Federation, Slovakia, Ukraine, UK-England and Wales and UK-Northern Ireland**).

Figure 2.35 Legal aid in the field of judicial mediation (Q165)



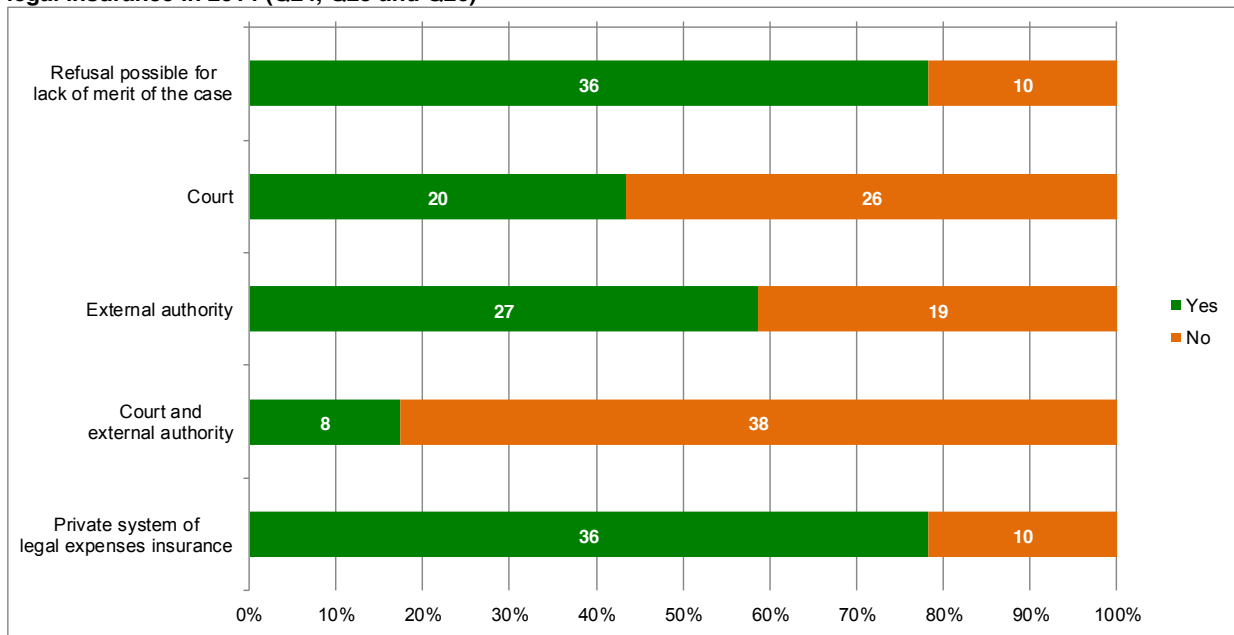
As a matter of fact, 31 States or entities indicated that they apply the regime of legal aid to mediation procedures (exceptions are **Albania, Andorra, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Germany, Latvia, Poland, Russian Federation, Serbia, Switzerland, Turkey, Ukraine and UK-Northern Ireland**).

2.6.1.2 Criteria to grant legal aid

Table 2.36 Authorities responsible for granting Legal Aid and existence of private system for legal insurance in 2014 (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					
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-Northern Ireland					
UK-Scotland					
Israel					
Nb of Yes	36	20	27	8	36
Nb of No	10	26	19	38	10
Total	46	46	46	46	46

Figure 2.37 Overview of the authorities responsible for granting Legal Aid and existence of private system for legal insurance in 2014 (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 of case test, the test used to decide whether a case should be granted legal aid, takes into account the likeliness of the case to succeed, 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. In 10 states, **Andorra, Armenia, Azerbaijan, Cyprus, Georgia, Greece, Republic of Moldova, Portugal, “the former Yugoslav Republic of Macedonia” and Ukraine**, it is not possible to refuse legal aid on the basis of the merit of the case.

The decision to grant or refuse legal aid on the basis of the merit of the case is usually taken by the court (20 States or entities) or by an external authority (27 States or entities), or by a court and an external authority (8 States or entities) . The Bar association may be entrusted with such decisions (**Spain**).

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 is difficult due to the wide variation in the eligibility rules and financial thresholds.

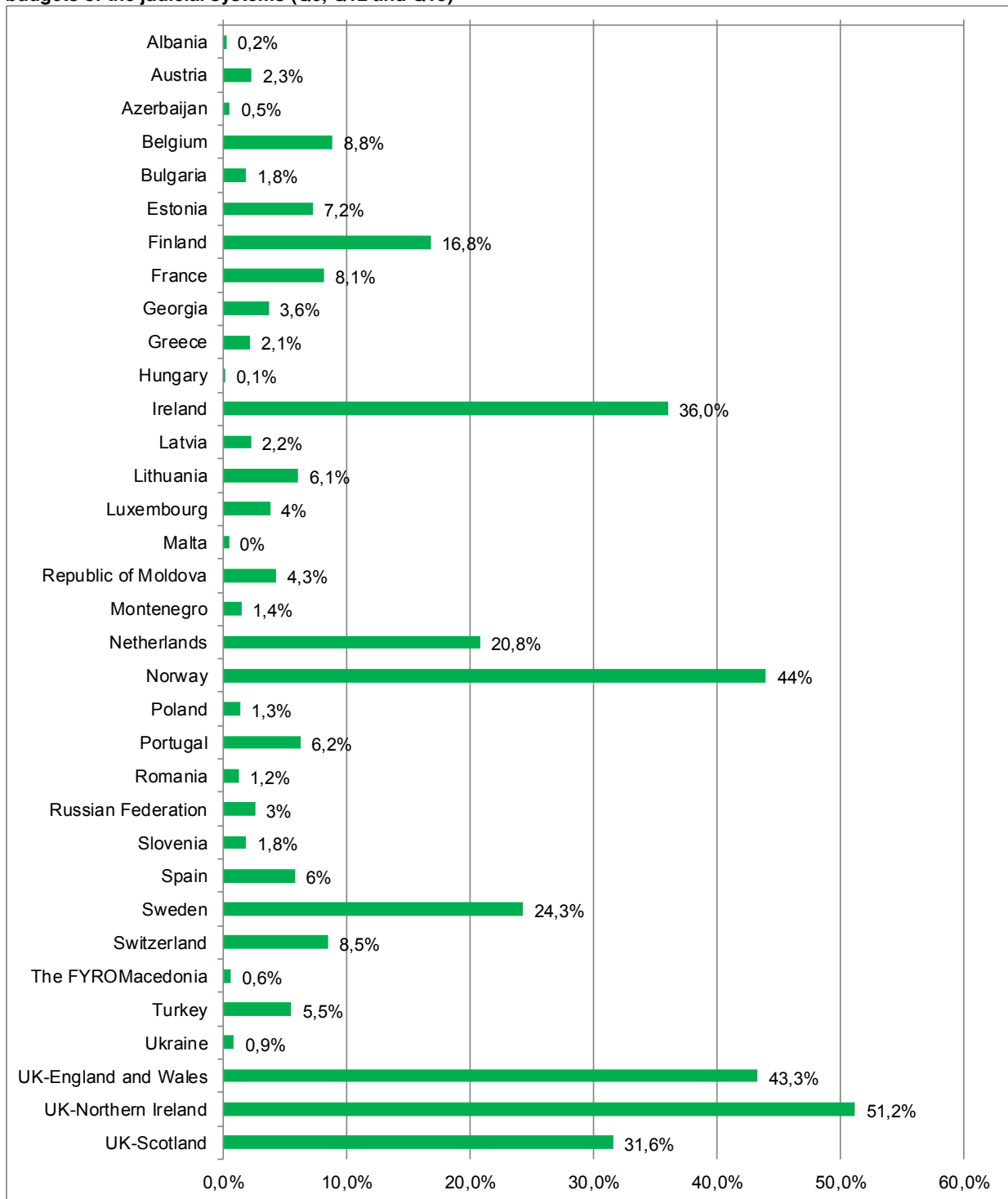
The law can also determine the level of legal aid to be granted, to fully or partly cover the total legal costs (**Austria, Belgium, France**) or define a specific method of assessing the amount of legal aid to award (**Finland, Republic of Moldova**) which can, for instance, depend on the minimum living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

A 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 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 their United Database of Socially Vulnerable Families, can be granted legal aid). In **Greece**, legal aid is restricted to European Union citizens or citizens of third countries provided that the

users are residents of a European Union member state (with some exceptions for certain administrative cases).

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

Figure 2.38 Part of the approved annual public budget allocated to legal aid within the total annual public budgets of the judicial systems (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 51 % of the total budget allocated to the judicial system in **UK-Northern Ireland**, 32 % in **UK-Scotland** and 43 % in **UK-**

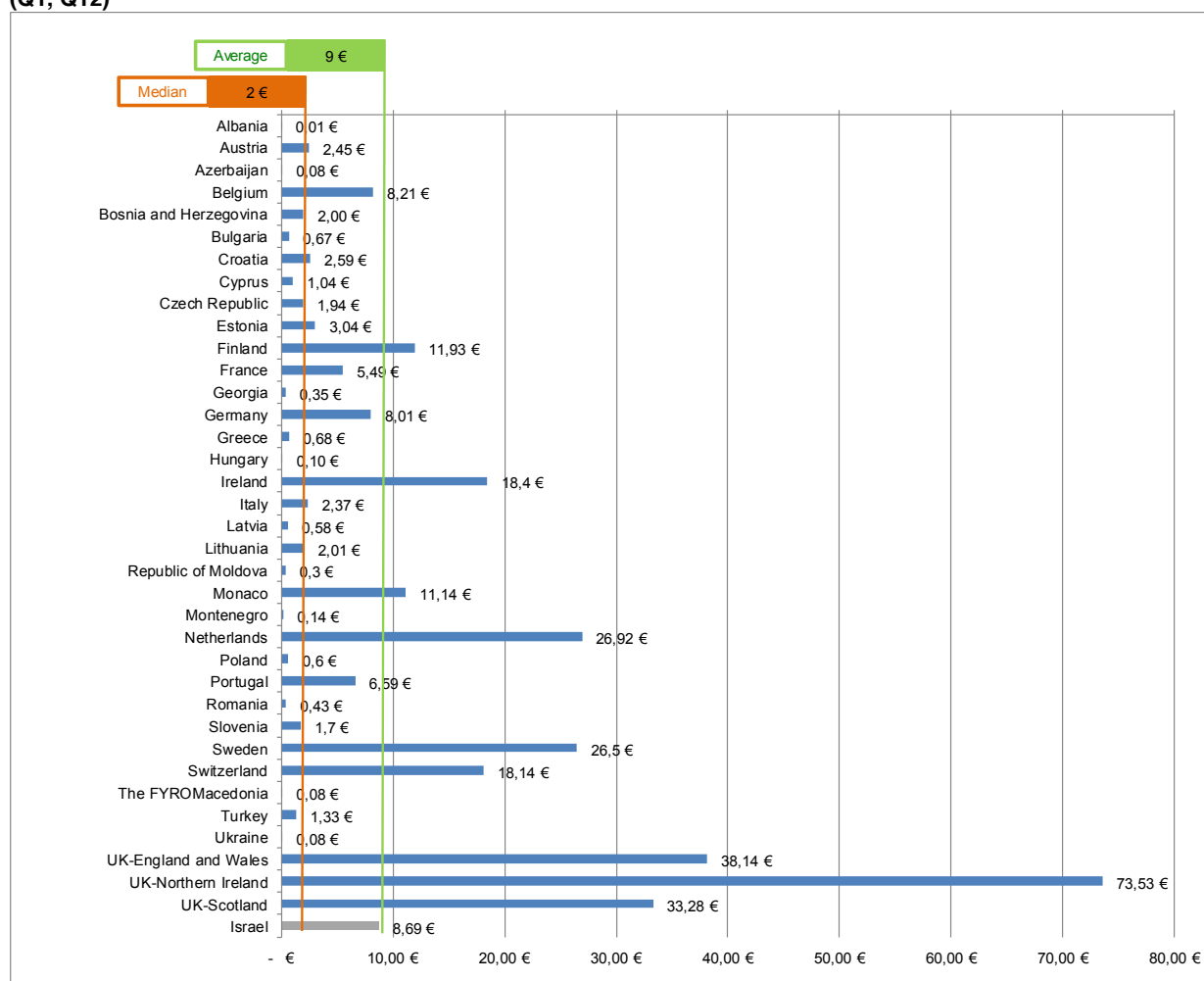
England and Wales. Northern European states also have a strong tradition of generous legal aid systems with a significant budgetary share within the total budget of the judicial system: **Norway** (44 %), **Ireland** (36 %), **Sweden** (24 %), **Netherlands** (21 %) and **Finland** (17 %). In some states, 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 **Ukraine.**

2.6.3 Implemented annual public budget allocated to legal aid in 2014

37 States or entities were able to communicate the amount of implemented annual public budget allocated to legal aid in 2014.

2.6.3.1 Implemented annual public budget of legal aid per capita in 2014

Figure 2.39 Implemented annual public budget allocated to legal aid in 2014 per capita and in € (Q1, Q12)



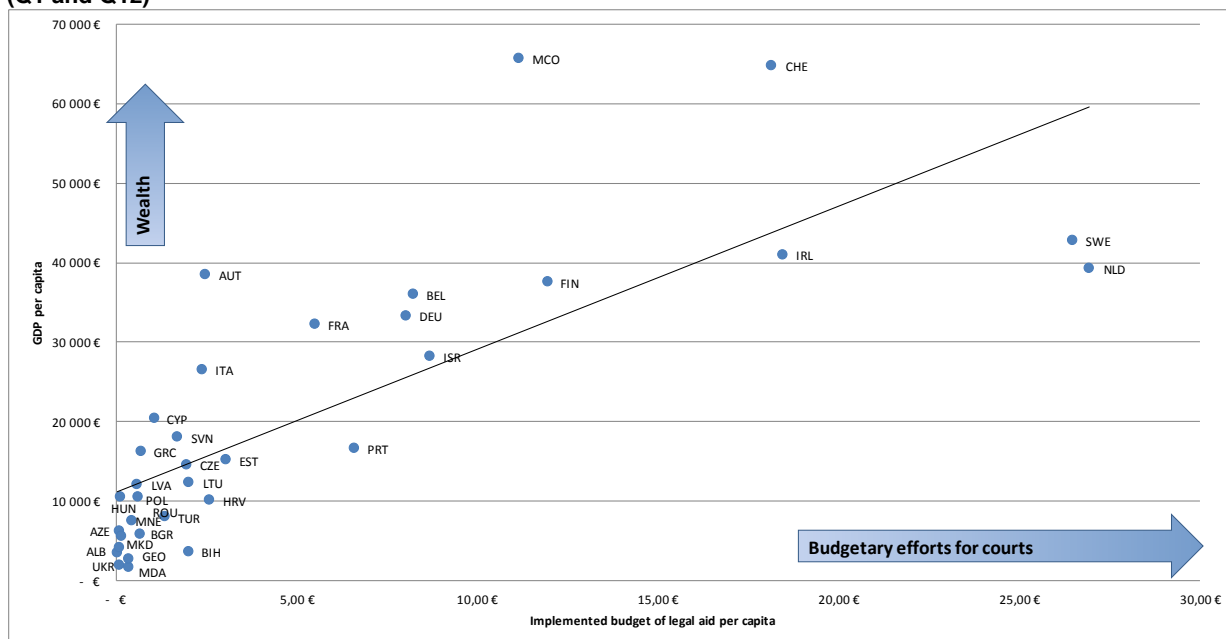
Around 9 € per capita are spent on average by the European states on legal aid. It is noteworthy that behind this average there are significant variations depending on the states. The median is 2 € per capita which implies that half of the responding States or entities spent less than 2 € per capita on legal aid in 2014. Moreover, 13 states are situated under the threshold of 1 € (**Albania, Azerbaijan, Bulgaria, Georgia, Greece, Hungary, Latvia, Republic of Moldova, Montenegro, Poland, Romania, “the former Yugoslav Republic of Macedonia”** and **Ukraine**).

UK-Northern Ireland committed the most substantial amount of legal aid per capita in 2014: 73,50 €. The amount per capita allocated by **UK-England and Wales**, the second entity in terms of budgetary efforts in the field of legal aid, is almost two times lower than that of **UK-Northern Ireland** (38 €). Generally speaking,

the Common Law countries and Northern European states commit the largest budgets per capita to legal aid (33,30 € in **UK-Scotland**, 26,90 € in the **Netherlands**, 26,50 € in **Sweden**, 18,40 € in **Ireland**, 11,90 € in **Finland**). A relatively high amount of the budget can also be noted in **Switzerland** (18,10 € per capita) and **Monaco** (11,10 € per capita).

2.6.3.2 Implemented budget of legal aid per capita compared with the wealth of the States or entities in 2014

Figure 2.40 Implemented budget of legal aid linked with the GDP in 2014, per capita and in € (Q1 and Q12)



Note: the values for **UK-England and Wales**, **UK-Scotland** and **UK-Northern Ireland** do not appear in the figure because they are much higher than for the other states.

The figure above, linking the approved budget of legal aid with the GDP per capita, makes it possible to measure the budgetary effort of the states aimed at enabling litigants who do not have the financial resources required to have access to justice. It does not include the three entities of the **United Kingdom** whose per capita implemented budget for legal aid in 2014 far exceeds that of the other states.

This figure highlights the significant efforts made by **Bosnia and Herzegovina** and **Portugal** to facilitate access to justice through legal aid. These two states stand out very clearly from their respective groups of states with similar levels of wealth.

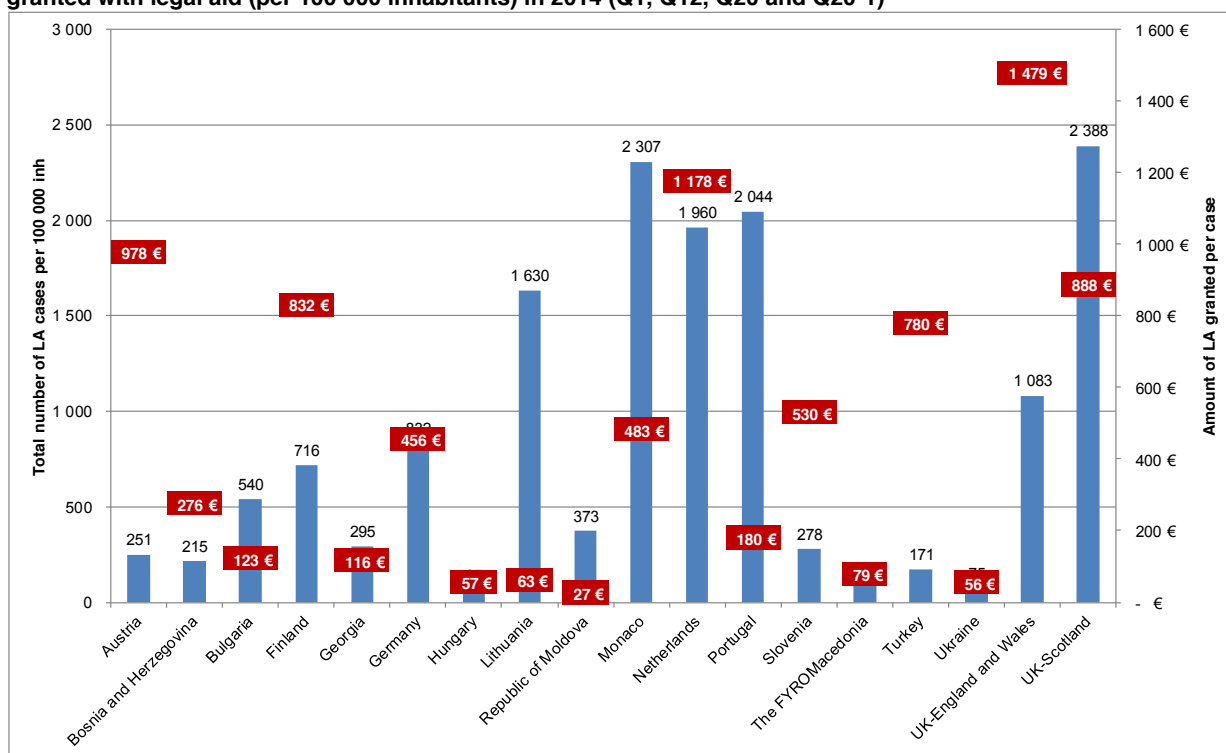
In a category of states with much higher levels of wealth, one can notice the budgetary efforts of the **Netherlands** and **Sweden**, compared to **Austria**, **Finland** and **Ireland** for example.

A note of caution is necessary, as the analysis of legal aid expenditures in the states cannot be complete without taking into consideration the demand (the number of individuals and cases requiring legal aid), the granting criteria (criteria of scope and eligibility used by the state), 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 cases (litigious or not) for which legal aid is granted and amount allocated to legal aid per case

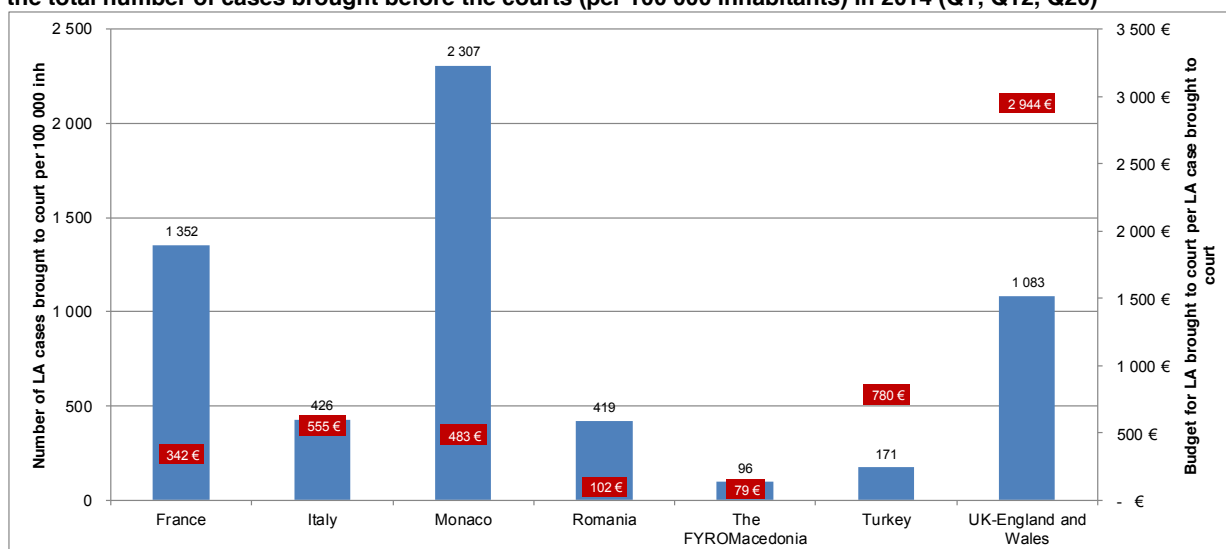
In order to fine-tune the analysis of policies related to securing access to law and justice through legal aid, the CEPEJ's aim has been to link the demand (the number of cases granted legal aid for 100 000 inhabitants, for litigious and non-litigious matters) with the amounts granted by case. The information is available for 18 States and entities.

Figure 2.41 Amount of the implemented budget allocated to legal aid per case (in €) and total number of cases granted with legal aid (per 100 000 inhabitants) in 2014 (Q1, Q12, Q20 and Q20-1)



It is regrettable that, as in the previous cycle, more states have not been able to provide such details. Focusing on litigious cases and the corresponding budget, it is possible to draw conclusions for a few more States and entities.

Figure 2.42 Amount of the implemented budget allocated to legal aid per case brought before the court (in €) and the total number of cases brought before the courts (per 100 000 inhabitants) in 2014 (Q1, Q12, Q20)



Various public policy choices are made by the states on legal aid, considering the number of eligible cases and the amount allocated per eligible case.

In 2014, the most generous legal aid policies are to be found in the **Netherlands**, **UK-Scotland** and **UK-England and Wales**, with a relative significant number of eligible cases and amount of legal aid per case. **Finland**, **France**, **Germany** and **Monaco** remain generous in terms of the amounts allocated but for a smaller number of eligible cases.

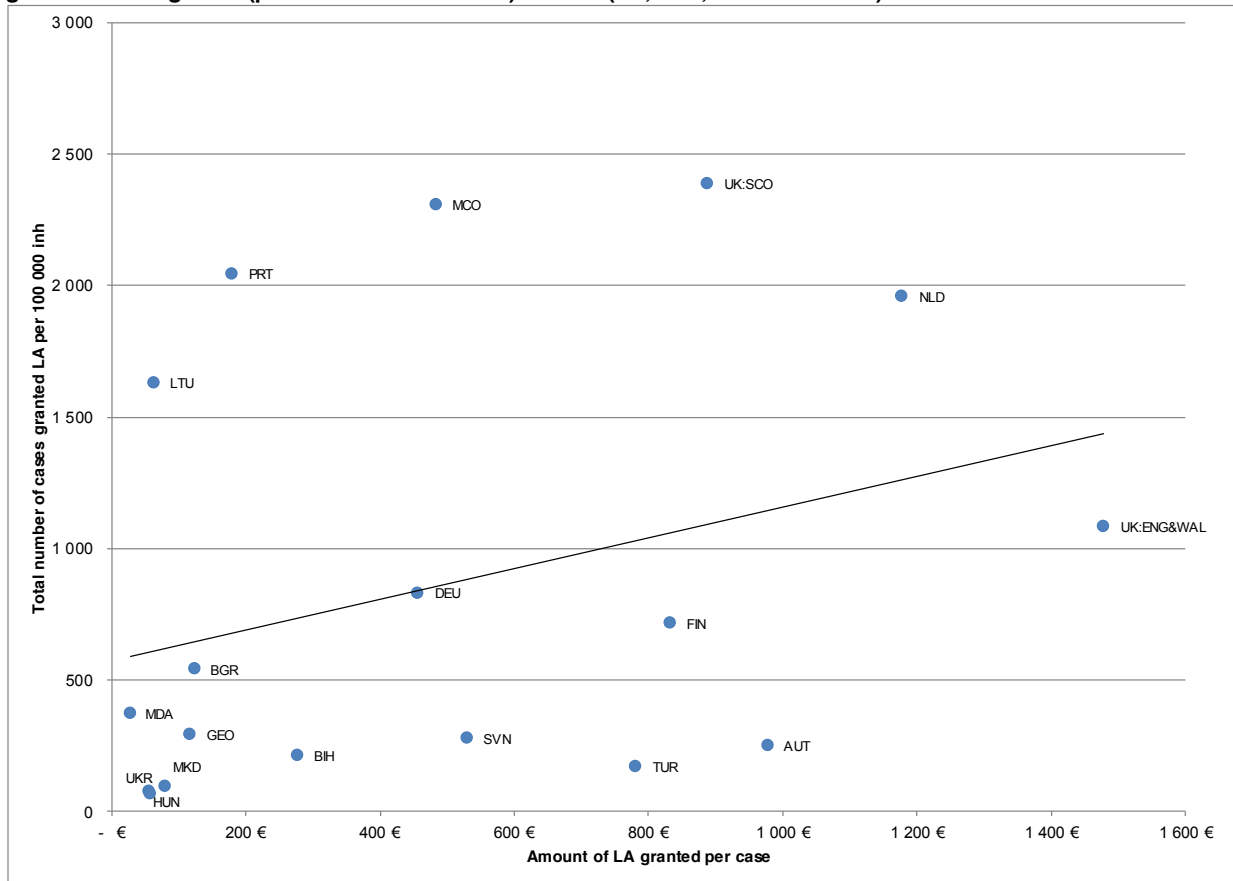
Austria, Bosnia and Herzegovina, Italy, Slovenia and Turkey have made the choice to allocate significant amounts per case while limiting the number of eligible cases.

On the contrary, **Lithuania, Portugal** and to a lesser extent **Bulgaria, Republic of Moldova** and **Romania** extend the eligibility to a relatively large number of cases but limit the amounts allocated.

Finally, **Georgia, Hungary, Malta, “the former Yugoslav Republic of Macedonia”** and **Ukraine** limit both eligibility and the amount spent per case.

These various policies appear clearly in the figure below.

Figure 2.43 Amount of the implemented budget allocated to legal aid per case (in €) and total number of cases granted with legal aid (per 100 000 inhabitants) in 2014 (Q1, Q12, Q20 and Q20-1)



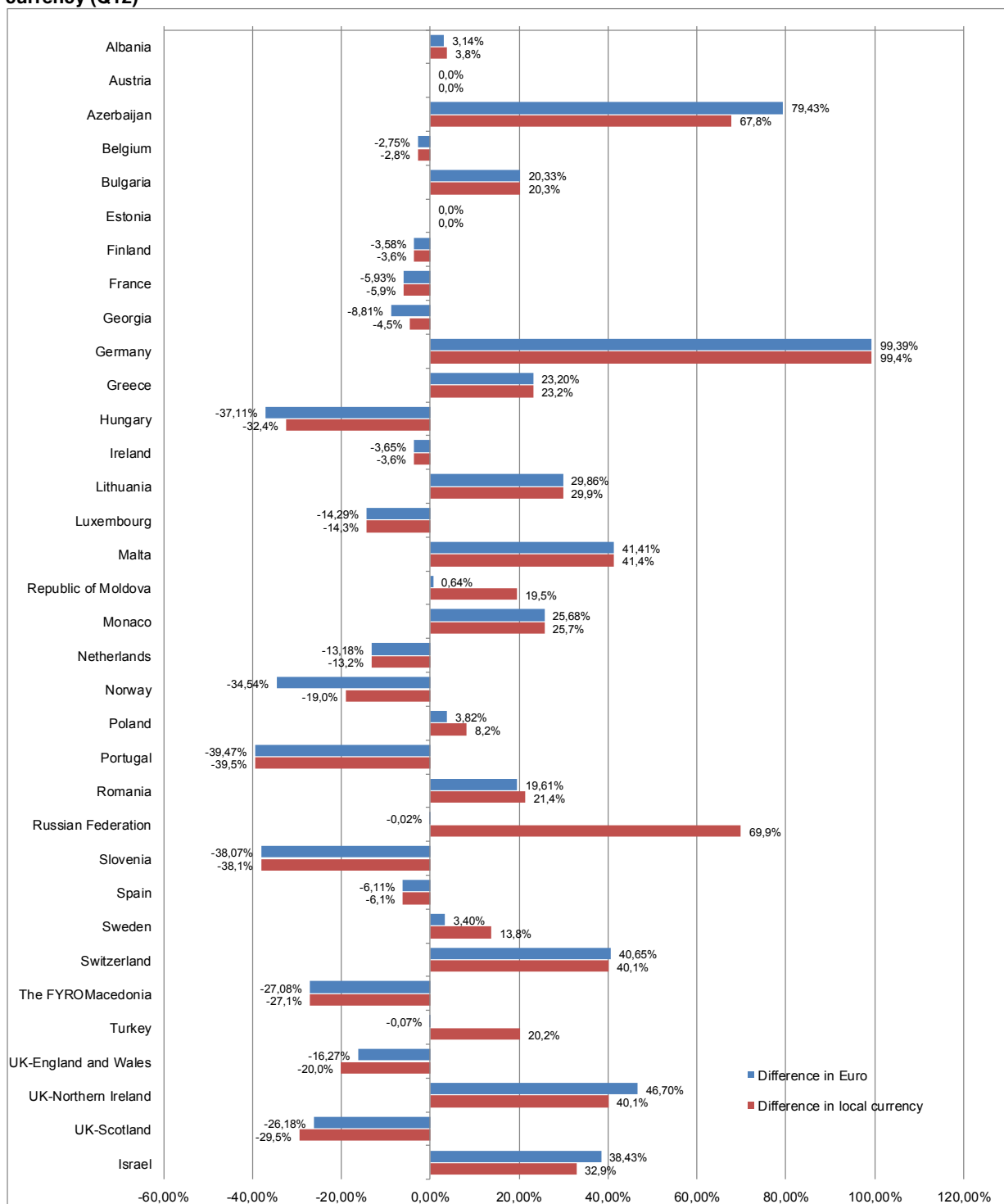
It is important to note that some of the States or entities noted in section 2.6.3 for their relatively generous legal aid system (either in terms of their budget per capita compared to their wealth, the amount of legal aid allocated per case or the number of eligible cases) – for instance **Netherlands, Portugal, Switzerland, Slovenia, UK-England and Wales** and **UK-Northern Ireland** - are also States or entities in which revenues from per capita justice fees or taxes are among the highest. High amounts of justice fees/taxes might lead one to suggest that equal access to justice is not guaranteed. But access to law and justice is actually preserved through the legal aid mechanisms developed for individuals whose financial means are insufficient to defend themselves in court or to initiate a legal action.

2.6.4 Evolution of the annual public budget allocated to legal aid

Note: this part of the analysis is based on the approved budgets allocated to legal aid, given that the latter are the only ones that have been provided for the previous evaluation cycles.

2.6.4.1 Evolution of the annual public budget allocated to legal aid between 2012 and 2014

Figure 2.44 Variation in the annual public budget allocated to legal aid between 2012 and 2014, in € and in local currency (Q12)



The variation for the period 2012-2014 in the legal aid budget can be assessed in respect of 31 States or entities.

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 0 %, meaning that half of the responding states have restricted their budget allocated to legal aid between 2012 and 2014.

According to the variations when considered in Euro and without taking into account the inflation parameter, 15 States or entities reduced the legal aid budget during the period under analysis, while 17 States or entities increased it. In **Estonia**, the budget remained the same in 2012 and 2014.

Azerbaijan (+ 79 %) and **Latvia** (+ 71,50 %) made the most significant investments in the field of legal aid between 2012 and 2014. Nevertheless, the increase observed in **Azerbaijan** must be qualified in the light of the evolution of the exchange rate during the period considered. **Latvia** is not presented in this variation due to the change of currency to Euro, however there is an increase in the annual public budget allocated to legal aid is due to the gradual implementation of a new regulation of December 2009 aimed at developing and improving the legal aid system. The high variation of the level of legal aid which can be noted for **Germany** is only the result of the fact that the 2010 and 2012 data are incomplete and not comparable with the 2014 data.

Among the States or entities that have significantly increased their legal aid budgets for the period considered, reference should be made to **UK-Northern Ireland** (+ 47 %), **Malta** (+ 41 %), **Switzerland** (+ 41 %), **Lithuania** (+ 30 %), **Bulgaria** (+ 20 %) and **Romania** (+ 20 %). In fact, the increase is less significant in **UK-Northern Ireland** if considered against the background of the increase in the exchange rate, in combination with the inflation factor. Moreover, this entity indicated that the 2012 data are based on the original budget at the start of the year, while for 2014 the final outturn is used as reference. Bearing in mind the pressure from the numerous requests addressed during the budgetary year, the amounts observed at the end of the year are always higher than those anticipated at the beginning of the year. In **Malta**, the budgetary variation is difficult to analyse because – in the absence of a specific legal aid budget prior to 2015 – the data communicated reflect the approximate expenditure from the budget of the Office of the Attorney General allocated to legal aid.

In **Switzerland**, following the entry into force of new codes of procedure that have unified cantonal procedures in civil matters on the one hand, and in criminal matters on the other hand, legal aid costs increased strongly. In this respect, analyses have been initiated to determine the reasons for this phenomenon. One possible explanation could be the introduction of the right to legal assistance from the first hour. The increase of more than 38 % in **Israel** (which should, however, be qualified in the light of the increase in the exchange rate and the inflation parameter) can be attributed to a change made by the Ministry of Finance in the allocation of budgets to criminal and civil legal aid. In fact, in previous years, the difference between the approved and implemented budgets for these institutions was extremely significant because they receive their yearly budget in direct correspondence with their yearly activities. In 2014, there was an a-priori decision to decrease the difference between the approved and implemented budgets, thus increasing the approved budget.

Among the States or entities that have significantly reduced their legal aid budgets between 2012 and 2014 are: **Portugal** (- 39,47 %), **Slovenia** (- 38,07 %), **Hungary** (- 37,11 %), **Norway** (- 34,54 %), “**the former Yugoslav Republic of Macedonia**” (- 27,08 %), **UK-Scotland** (- 26,18 %), **UK-England and Wales** (- 16,27 %) and **Netherlands** (- 13,18 %). The decrease in **Norway** is in fact very limited given the variation in the exchange rate for the period considered. **Portugal** explains the observed increase by the current economic and financial situation that led to budgetary limitations. However, it should be underlined that in the past years, the approved legal aid budget has been revised and increased in the course of the year. Legal aid expenses have in fact not decreased, quite the opposite, if one examines the implemented budget. In **Slovenia**, the decreased legal aid budget is a result of amendments to the insolvency legislation in 2013 which abolished the right for legal persons to apply for legal aid for financing the advances of the costs of the bankruptcy proceedings (legal persons are now exempt from paying the advance in bankruptcy proceedings in all cases, without having to apply for legal aid).

In conclusion, two opposing trends coexist in Europe:

- the States and entities endowed with the most generous legal aid systems (**Portugal**, having regard to its wealth, **Slovenia**, having regard to the ratio amount of legal aid granted/number of cases, **Netherlands**, **Norway**, **UK-Scotland**) tend to restrict the budget allocated to legal aid;
- on the contrary, the states where the amounts allocated to legal aid are the lowest (**Albania**, **Azerbaijan**, **Bulgaria**, **Latvia**, **Malta**, **Poland**, **Romania**) tend to increase the legal aid budget in order to comply with the requirements of the European Convention on Human Rights.

2.6.4.2 Evolution of the annual public budget allocated to legal aid between 2010 and 2014

Table 2.45 Evolution of the approved public budget allocated to legal aid between 2010 and 2014, in absolute values (Q12)

States/entities	Approved budget for legal aid			Evolution
	2010	2012	2014	
Albania	21 429 €	60 253 €	62 143 €	
Andorra		387 485 €		
Armenia	294 140 €			
Austria	18 400 000 €	19 000 000 €	19 000 000 €	
Azerbaijan	345 054 €	457 000 €	820 000 €	
Belgium	75 326 000 €	87 024 000 €	84 628 000 €	
Bosnia and Herzegovina	5 906 637 €	7 128 234 €		
Bulgaria	3 867 730 €	3 579 030 €	4 306 647 €	
Croatia	229 550 €	166 631 €		
Cyprus		1 526 738 €		
Czech Republic	28 361 213 €	24 142 835 €		
Denmark	87 896 311 €	83 643 048 €		
Estonia	2 982 213 €	3 835 000 €	3 835 000 €	
Finland	58 100 000 €	67 697 000 €	65 276 000 €	
France	361 197 138 €	367 180 000 €	345 406 000 €	
Georgia	1 080 548 €	1 428 885 €	1 302 966 €	
Germany	382 382 576 €	344 535 431 €	686 978 779 €	
Greece	2 500 000 €	8 300 000 €	10 225 994 €	
Hungary	304 823 €	907 974 €	570 980 €	
Ireland	87 435 000 €	83 159 000 €	80 126 000 €	
Italy	127 055 510 €	153 454 322 €		
Latvia	842 985 €	962 294 €		
Lithuania	3 906 105 €	4 543 826 €	5 900 767 €	
Luxembourg	3 000 000 €	3 500 000 €	3 000 000 €	
Malta	85 000 €	49 500 €	70 000 €	
Republic of Moldova	314 034 €	1 211 570 €	1 219 308 €	
Monaco	224 400 €	294 400 €	370 000 €	
Montenegro	169 921 €	NA	375 943 €	
Netherlands	481 655 000 €	495 300 000 €	430 000 000 €	
Norway	213 990 000 €	270 501 300 €	177 083 000 €	
Poland	23 244 000 €	24 107 000 €	25 029 000 €	
Portugal	51 641 260 €	55 184 100 €	33 403 315 €	
Romania	7 915 238 €	7 958 050 €	9 518 975 €	
Russian Federation	105 836 124 €	120 873 284 €	120 844 668 €	
Serbia				
Slovakia	1 357 776 €	1 771 287 €		
Slovenia	5 834 338 €	5 514 089 €	3 414 646 €	
Spain	35 477 067 €	253 034 641 €	237 581 907 €	
Sweden	195 683 782 €	236 399 146 €	244 442 713 €	
Switzerland	100 061 055 €	108 609 657 €	152 756 877 €	
The FYROMacedonia	NA	304 741 €	222 213 €	
Turkey	79 338 098 €	89 840 624 €	89 776 024 €	
Ukraine			3 472 684 €	
UK-England and Wales	2 521 000 000 €	2 717 785 054 €	2 275 552 132 €	
UK-Northern Ireland	96 280 000 €	92 250 000 €	135 334 000 €	
UK-Scotland		179 000 000 €	132 130 000 €	
Israel		39 771 572 €	55 055 454 €	
Average	129 288 551 €	141 109 701 €	153 829 619 €	
Median	13 157 619 €	13 650 000 €	19 000 000 €	
Minimum	21 429 €	49 500 €	62 143 €	
Maximum	2 521 000 000 €	2 717 785 054 €	2 275 552 132 €	

Over the period 2010-2014, it is worth underlining the sustained efforts of **Albania, Azerbaijan, Greece, Lithuania, Monaco, Republic of Moldova, Poland, Romania, Sweden and Switzerland**. As indicated before, **Germany's** variation is a result of the fact that the 2010 and 2012 data are incomplete and not comparable with the 2014 data.

Austria, Ireland, Slovenia and Turkey have budgets for legal aid that are in steady decline since 2010.

Some states which had made significant efforts with regard to legal aid between 2010 and 2012 have restricted their budget between 2012 and 2014. These are **Belgium, Finland, France, Georgia, Hungary, Luxembourg, Netherlands, Norway, Portugal and Spain**.

By contrast, other States or entities have increased the budget allocated to legal aid between 2012 and 2014, having decreased it between 2010 and 2012: **Bulgaria, Malta, and UK-Northern Ireland**.

Cross-checking these data with the data on the evolution of the court fee revenues during the period under consideration (2010-2014) makes it possible to highlight different dynamics as regards access to justice in states:

- **Azerbaijan, Albania and Romania**, where amounts allocated to legal aid are currently relatively low, have invested continuously since 2010 to develop their system of access to justice, in line with Council of Europe recommendations; meanwhile, the increase in court fees or taxes generates additional revenues which make it possible to cover part of the court operating costs; **Sweden**, whose legal aid system is among the most generous in Europe, also increased both the budget allocated to legal aid and the revenues from taxes/court fees during the period 2010-2014;
- some Common-Law and Northern European countries, such as **Finland, Netherlands and UK-Scotland**, whose legal aid systems are very developed, tend, for several years now, to decrease the amounts allocated to legal aid; at the same time, their revenues from court fees or taxes tend to increase;
- **Switzerland and UK-Northern Ireland**, whose legal aid systems are very generous, confirm their trend of continuous increase in the legal aid budget and decrease in the revenues generated by court taxes/fees.

2.7 Trends and conclusions

The evaluation of the budgets allocated to judicial systems reveals strongly contrasted situations in Europe. 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. Moreover, 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 €. It is noteworthy that, even if the correlation between the budget allocated to the judicial system and the GDP is positive, the wealthier states are not necessarily those who proportionally make the most considerable budgetary efforts with regard to the judicial system. Attention should also be drawn to the fact that some states carrying out important investments in relation to their wealth benefited from financial support by the international or European community to implement certain projects of modernisation of their judiciaries.

The courts budget represents the largest part of the budget allocated to the judicial system: 66 % on average. The public prosecution services budget represents approximately 24 % and the part allocated to legal aid 10 %. Northern European states and the Common Law entities have a different approach to the distribution of the budget allocated to the judicial system among the different components. In fact, the part dedicated to courts is significantly lower (less than 50 %) while priority is given to legal aid. The latter represents very often around, or more than, 20 % of the budget allocated to the judicial system. In South-Eastern and Eastern European states, the public prosecution office enjoys traditionally a strong position within the judicial system (with around, or more than, 30 % of the budget).

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 (25 states out of 37). The economic and financial crisis of the end of 2000s resulted in some states in important budgetary cutbacks. In 2014, the states concerned states 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.

Commitment of considerable funds to improve the functioning of different components of the judicial system characterises **Azerbaijan, Latvia, Lithuania, Malta, Republic of Moldova, Romania** and **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 tribunals 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.

The budget allocated to initial and continuous training of judges and prosecutors still represents a very small part of the courts budget (less than 1 %), which can be regretted. Despite the CEPEJ recommendations in this respect, few states increased their budget dedicated to this specific component between 2012 and 2014. It is even possible to notice a decrease in the field in 16 states.

The increase in the revenues from court taxes/fees in some States or entities can be explained by changes of a legislative (**Romania**) or organisational (**UK-Scotland**) nature, or as a result of an increase in the number of cases (**Estonia**). 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**.

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.*). This practice of outsourcing the support functions of judicial activity resulted in some states in a cut in non-judge staff and/or technical court staff.

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. As a general rule, this system encompasses legal representation before courts and 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. More and more it 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 a generous legal aid system.

Chapter 3. Judicial staff and lawyers

Among the many data related to staff involved in judicial activity, it has appeared to the CEPEJ appropriate, in the light of current developments within the judiciary in the states, to examine the status of judges, prosecutors, non-judges and non-prosecutors (the *Rechtspfleger*, the clerk and the assistant), and that of lawyers.

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:

- professional judges are described in the explanatory note of the evaluation scheme (Q46) as "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 on their status;
- professional judges who practice on an occasional basis and are paid as such (Q48);
- non-professional judges who are volunteers, are compensated for their expenses, and give binding decisions in courts (Q49 and 49.1).

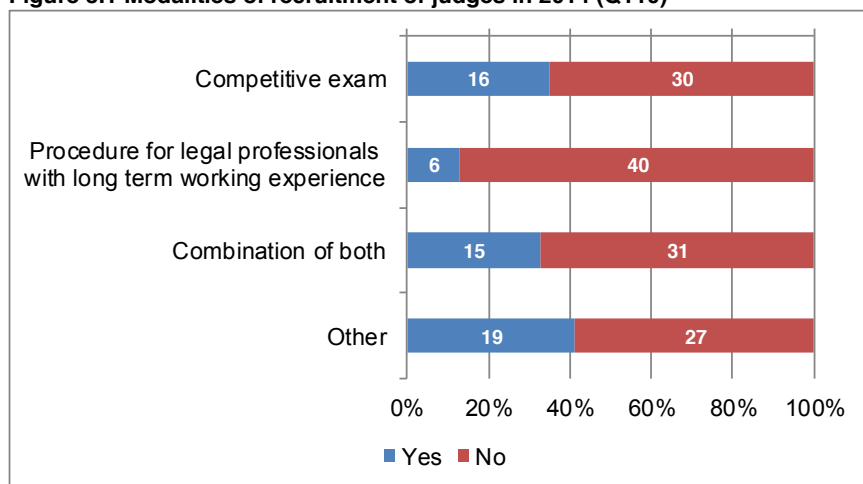
For these three categories, in order to better assess their actual activity, states have been requested to specify in full time equivalents (FTE) the number of professional judges' positions effectively occupied, whether they are practicing full time or on an occasional basis.

The quality and efficiency of justice depend very much on the conditions of recruitment and training of judges, their number, the status that guarantees their independence, and the number of staff working in courts or directly with them as assistants or in the exercise of jurisdictional activity.

It is therefore important to clarify the conditions of recruitment and training of judges, to measure the total number of judges in each State or entity, and to research the security of tenure of their functions and the number of staff who assist them, either directly or indirectly.

3.1.1 The recruitment of professional judges

Figure 3.1 Modalities of recruitment of judges in 2014 (Q110)



16 States and entities have chosen a competitive exam as the ordinary process for recruitment of judges, 6 use a procedure that hires legal professionals with long term experience, 15 apply combination of both while 19 use other procedure.

This recruitment process may be complemented in the same state or entity by alternative methods of recruitment, mainly based on the specific experience of the candidate. Two preliminary comments

deserve attention in this regard. On the one hand, 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.). 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**).

In **Albania**, persons with prior professional experience as judges are exempted from training and from the examination at the Judicial Academy. 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 **Bosnia and Herzegovina**, candidates who are serving judges are evaluated based on the results of their work and access directly to the interview stage (without taking the written examination). 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**, 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 addition, 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*). In "**the former Yugoslav Republic of Macedonia**", until 2013, 50 % of the judges and prosecutors were from other legal professions. However, under new legislation, the initial training provided by the Academy for Judges and Prosecutors is compulsory for all candidates.

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.

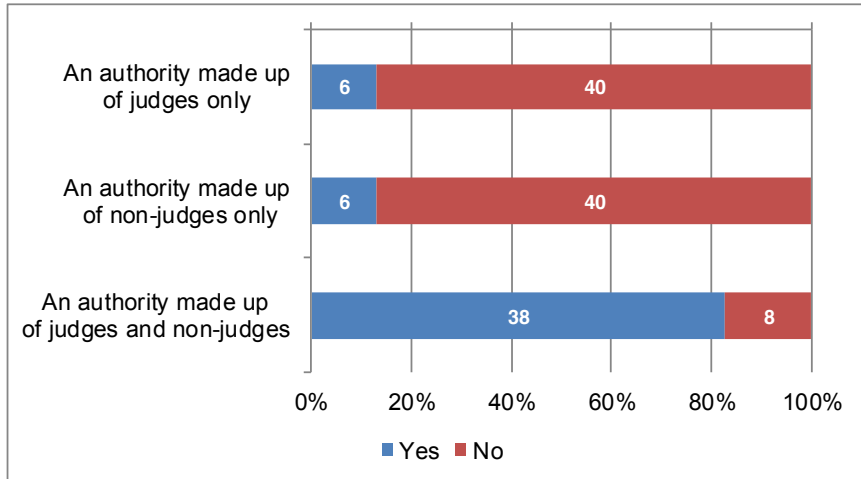
In some States or entities there might not be a specific entrance examination for the judiciary and the initial appointment of judges is subject to the dual requirement of prior legal experience and success in the bar exam (**Montenegro**, **Serbia** (before the legal reform of December 2015), **Slovenia**). Likewise, in **Turkey**, the access to the judicial career is subject to both professional experience and competitive examination. In **Monaco** for example, after succeeding in the entrance examination for the judiciary and before the final appointment, candidate judges must gain experience as judges acting as *referendaries*.

Some States or entities, particularly in common law systems recruit legal professionals mainly with proven experience. 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. In **Denmark**, the university law exam results are the core parameter of selection and the interview is accessible only with very strong exam results. 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. 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.

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 judgements and greater efficiency as regards the justice delivered.

Figure 3.2 Authority in charge of initial recruitment and appointment in 2014 (Q111)



Irrespective of the recruitment procedures, an essential guarantee of the objectivity and efficiency of the procedure lies in the sufficient independence of the recruitment authorities. In the vast majority of states, the recruitment is carried out by mixed bodies (judges and non-judges). In a few States and entities, it falls within the competence of a body composed of non-judges (**Andorra, Czech Republic, Malta and UK-Northern Ireland**) or only judges

(**Cyprus, Hungary, Latvia and Lithuania**). In **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."¹³ In several States or 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-Northern Ireland, 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**).

In many States or 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

¹³ 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.

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** and **UK-Northern Ireland** 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 or 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 functions¹⁴.

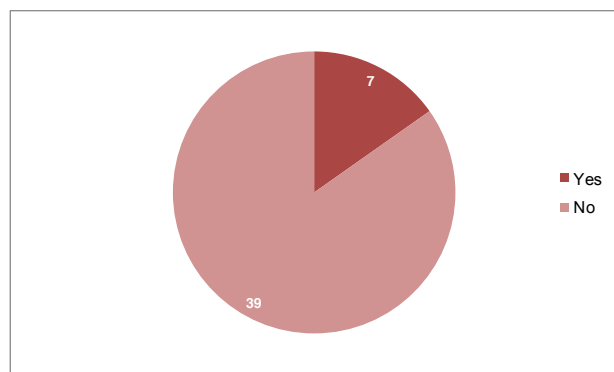
In **Malta**, the recruitment process is managed exclusively by the executive. Judges are appointed by the Head of State on the proposal of the Minister of Justice. This is also the case in the **Czech Republic**, where there is no High Judicial Council, but every court has an advisory body expressing 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 don't get any salary for that job, they only get compensations.

Figure 3.3 Measures to ensure parity between men and women in the recruitment of professional judges in 2014 (Q110-1)



To date, few States or entities have implemented specific measures to promote gender equality within the judiciary through recruitment. Only **Armenia, Bosnia and Herzegovina, Denmark, Germany, Montenegro, Norway and UK-England and Wales** 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

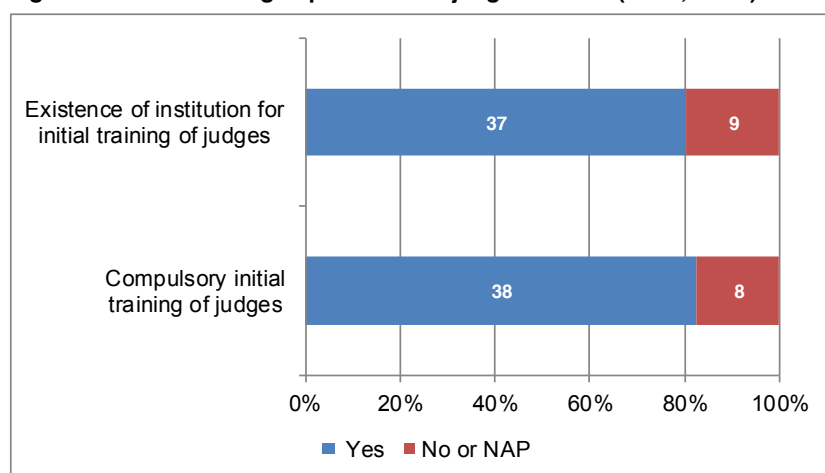
¹⁴ ECtHR, *Flux v. Moldova* (No. 2), Appl. No. 31001/03, 3/10/2007, § 27.

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.

However, it must be emphasized that the majority of the States or entities have general legislation pursuing the objective of parity between men and women in the public sector which also affects the organisation of their judicial system (**Germany** (at the level of Länder), **Austria, Denmark, Norway** and **Israel** have explicitly indicated the use of these general laws in relation to judicial appointments). In some States or entities, specific action plans were developed from existing rules and general principles to make the judicial profession more accessible to women (some Länder in **Germany, UK-Northern Ireland, UK-Scotland**).

3.1.2 The training of professional judges

Figure 3.4 Initial training of professional judges in 2014 (Q127, Q131)



Before taking up their duties, judges undergo specific training in a large majority of States or entities. This training is mandatory in most of those States or entities (38).

It should be noted that the definition of the concept of initial training still varies from one State or 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**). In **Estonia**, for example, since 2014, judges on probation, that is to say, appointed for less than three years, must obtain a compulsory initial qualification focused on specific skills and qualities determined by the Council responsible for the training. A notable feature of judicial education in Ireland is that a mentor judge is assigned to a newly appointed judge to guide him or her for the first 3 months and to give him advice for a year. In **Lithuania**, an initial qualification of at least one month is required after the formal appointment and before actually taking office. Similarly, in **Slovenia**, the initial qualification that takes place after the election of the judge of first instance includes seminars, workshops organised by senior judges, trial simulations etc. Moreover, in **Bulgaria, Estonia** and **Slovenia** the system provides for compulsory training before and after the formal appointment of judges.

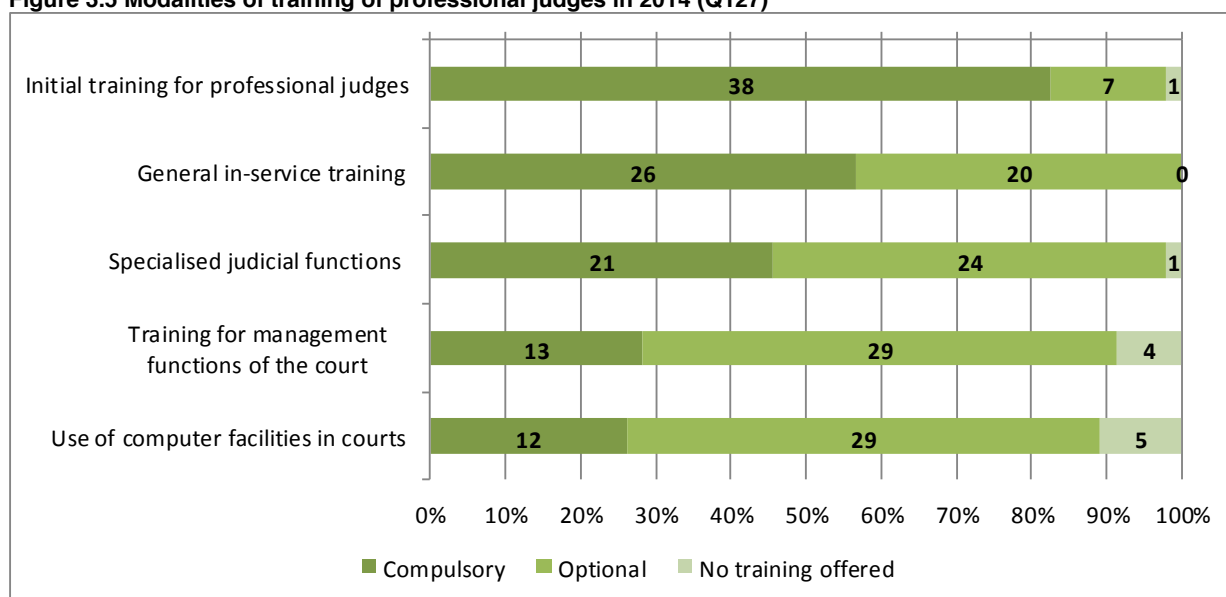
States have differing understandings as to the content of the initial training. It seems logical that in countries where judges are recruited among legal practitioners with long professional experience, the initial training is reduced to simple organisational and administrative formalities. However, 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 or 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, 37 States or entities having such institutions (as compared to 33 in the previous evaluation). 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 only takes a few days (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 7 States or entities (**Cyprus, Finland, Montenegro, Serbia, Sweden, Switzerland** and in **UK-Northern Ireland**, 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. Similarly, a legislative reform is under preparation in **Finland**, aimed at introducing a competent training centre in relation to *referendaries*. It should also be noted that in 2014, the Constitutional Court of **Serbia** declared unconstitutional provisions of the *Law on the Judicial Academy* according to which the High Judicial Council (HJC) was obliged to nominate a Judicial Academy graduate if one exists, for the first election to a judicial office. With new amendments of the *Serbian Law on Judges* from December 2015 an entrance exam has been introduced for judges who are elected for the first time, organised by the HJC. 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.

Figure 3.5 Modalities of training of professional judges in 2014 (Q127)



In addition to initial training, all of the States or entities offer the possibility for their judges to be trained during their careers (in-service training); this training is mandatory in most of them (26). 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.

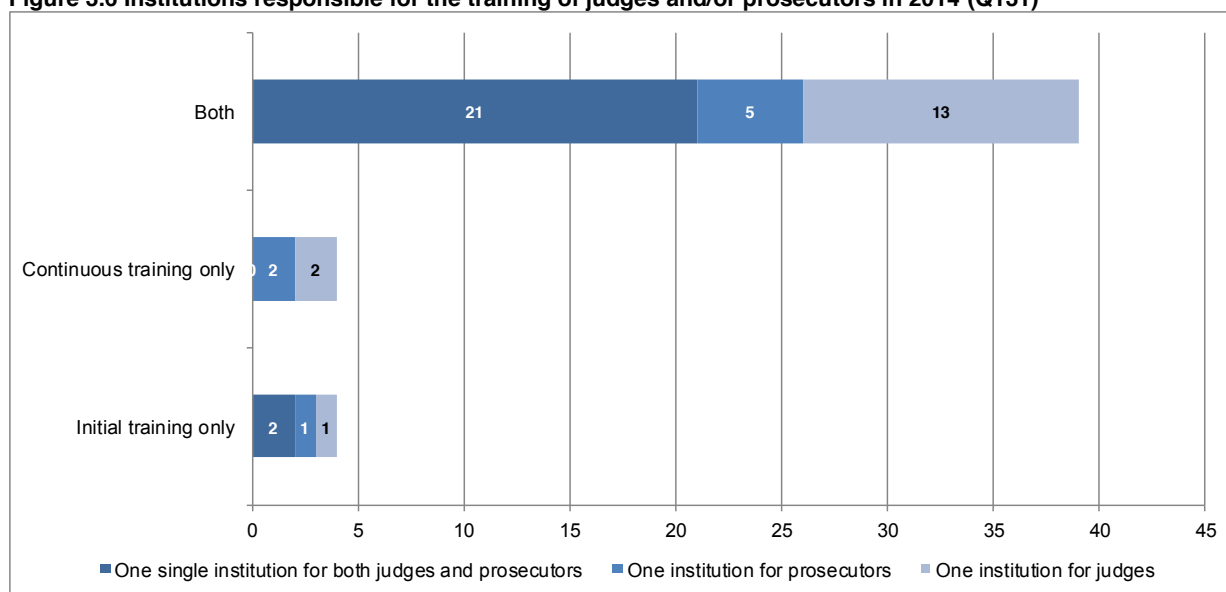
This in-service training is either occasional (in 7 States or entities such as **Malta** where judges organise amongst themselves occasional activities through the Judicial Studies Committee), or regular throughout the career (in 38 States or entities). Sometimes, national legislations provide an interval of time during which each judge has a duty to undergo in-service training: 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 or 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 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 results 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 are also organised to fill specialised judicial functions (45 States or 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 (42 States or entities), essentially concerning the positions of presidents and court administrators or for optimising the use of information technology in courts (41 States or entities). 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. 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 3.6 Institutions responsible for the training of judges and/or prosecutors in 2014 (Q131)



The majority of the training institutions (21 States or entities) cover both judges and prosecutors. In 5 States or entities (**Georgia, Hungary, Russian Federation, Spain, UK-England and Wales**), prosecutors are trained in a specific institution. In 13 States or entities, the training applies only to judges.

Denmark, Estonia, Ireland, Latvia, Lithuania, Malta, Sweden, UK-Northern Ireland and **UK-Scotland** have specialised institutions for the training of judges but not for prosecutors. In **Denmark**, they receive an initial training of three years and internal and external in-service training programmes for the prosecution services. In **Estonia** where a specific department of the Supreme Court is responsible for the training of judges, the training of prosecutors is provided by the Office of the Public Prosecutor. In **Latvia**, the cooperation between the Judicial Training Centre and prosecution services is carried out on a continuous basis. In **Lithuania**, prosecutors are encouraged to follow courses for judges. In **Sweden**, the training of prosecutors takes place in the framework of the prosecution services themselves.

In **Spain**, the *Escuela Judicial* provides initial and in-service training of judges while the *Centro de Estudios Juridicos* is responsible for initial and in-service training of other justice officials, including prosecutors. In **Ukraine**, the judges receive initial and in-service training at the National School of Judges, while prosecutors receive in-service training as part of the National Academy of prosecution services. Similarly, in **Georgia**, the High School of Justice provides initial and in-service training of judges, while the training of prosecutors is the responsibility of the Centre of professional development and career management attached to prosecution services. In **Finland**, in-service training programmes for judges are prepared by the Ministry of Justice.

These institutes or centres can be attached to the Ministry of Justice (**Finland, France, Slovakia, Slovenia, Turkey**, for example), the High Judicial Council (**Romania, Spain**), the Supreme Court (**Estonia, Montenegro**) or more generally to the administration of courts (**Norway, Sweden, UK-Scotland**) or operate on an independent or autonomous basis (**Belgium, Croatia Ireland, Italy**, for example). In **Bulgaria**, the National Institute of Justice has functional relationships with both the Ministry of Justice and the High Judicial Council. In **Cyprus**, there is no independent institution for specific training. The judicial training of judges is under the jurisdiction of the Supreme Court, while the training of prosecutors is provided by the Academy of Public Administration. In **Austria**, various authorities are involved in the training of judges and prosecutors through programmes offered to judges: the presidents of the appeal courts, prosecutors' offices, the

Trends and conclusions

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 authorities, 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 present. 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 increasingly important place given to the experience of the judge candidates during the selection process. While at the outset this criterion has been characterizing common law countries, currently it is granted a specific significance in almost all the States and entities. Besides, it is more and more taken into account within the frame of the initial and continuous training of judges by means of extending the programmes at geographic level (mainly at European level) and fostering a multidisciplinary approach within the legal field and beyond the latter.

3.1.3 Number of judges

This section assesses the total number of judges in each member State or entity by breaking it down between professional judges working full-time, professional judges sitting on an occasional basis and non-professional judges, with an indication for this third category of the nature of the duties performed.

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 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-Northern Ireland, 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 **France**, local judges (*juges de proximité*) do not intervene before administrative courts. Finally, 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**, since December 2014, 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*"¹⁵).

¹⁵ ECtHR, *Ibrahim Gürkan v. Turkey*, app. N°10987/10, 3/ A07/2012, § 18.

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**).

Table 3.7 Categories and number of judges in 2014 (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 inhab.	Absolute number	Per 100 000 inhab.	Absolute number	Per 100 000 inhab.	
Albania	363	13	NAP	NAP	NAP	NAP	
Andorra	24	31	2	3	NAP	NAP	
Armenia	226	8	NAP	NAP	NAP	NAP	
Austria	1620	19	NAP	NAP	NA	NA	
Azerbaijan	600	6	NAP	NAP	NAP	NAP	
Belgium	1602	14	61	1	4026	36	
Bosnia and Herzegovina	993	26	101	3	254	7	
Bulgaria	2220	31	NAP	NAP	NAP	NAP	
Croatia	1734	41	NAP	NAP	NA	NA	
Cyprus	97	11	NAP	NAP	NAP	NAP	
Czech Republic	3028	29	NAP	NAP	5669	54	
Denmark	341	6	5	0	12000	212	
Estonia	231	18	NAP	NAP	802	61	
Finland	988	18	NAP	NAP	1738	32	
France	6935	10	510	1	24921	38	
Georgia	254	7	NAP	NAP	NAP	NAP	
Germany	19323	24	NA	NA	97306	120	
Greece	2231	21	NAP	NAP	NAP	NAP	
Hungary	2813	29	NAP	NAP	4500	46	
Ireland	160	3	NAP	NAP	NAP	NAP	
Italy	6939	11	NAP	NAP	3068	5	
Latvia	488	24	NAP	NAP	NAP	NAP	
Lithuania	754	26	NAP	NAP	NAP	NAP	
Luxembourg	227	40	NAP	NAP	NA	NA	
Malta	41	10	15	3	NAP	NAP	
Republic of Moldova	384	11	NAP	NAP	NAP	NAP	
Monaco	36	95	16	42	139	368	
Montenegro	254	41	13	2	NAP	NAP	
Netherlands	2359	14	1185	7	NAP	NAP	
Norway	559	11	47	1	43000	832	
Poland	10096	26	NAP	NAP	13933	36	
Portugal	1990	19	NAP	NAP	NAP	NAP	
Romania	4577	21	NAP	NAP	NAP	NAP	
Russian Federation	NA	NA	NAP	NAP	NAP	NAP	
Serbia	2700	38	NAP	NAP	2564	36	
Slovakia	1322	24	NAP	NAP	NA	NA	
Slovenia	924	45	NAP	NAP	3445	167	
Spain	5353	12	1193	3	7687	17	
Sweden	1150	12	266	3	8318	85	
Switzerland	1290	16	1900	23	1635	20	
The FYROMacedonia	629	30	NAP	NAP	1376	67	
Turkey	8835	11	NAP	NAP	NAP	NAP	
Ukraine	8089	19	NAP	NAP	NAP	NAP	
UK-England and Wales	1893	3	7000	12	19253	34	
UK-Northern Ireland	69	4	589	32	NAP	NAP	
UK-Scotland	177	3	96	2	389	7	
Israel	686	8	52	1	437	5	
Average	2376	21	812	9	12192	109	
Median	993	18	99	3	4026	38	
Minimum	24	3	2	0	139	5	
Maximum	19323	95	7000	42	97306	832	
Nb of Yes							20
Nb of No							26

This table shows the number of judges making up the three groups (professional judges working full-time, judges working on an occasional basis, and non-professional judges). It also includes the possible presence of a jury in the court system. The table shows significant disparities, including between countries of similar size and income level.

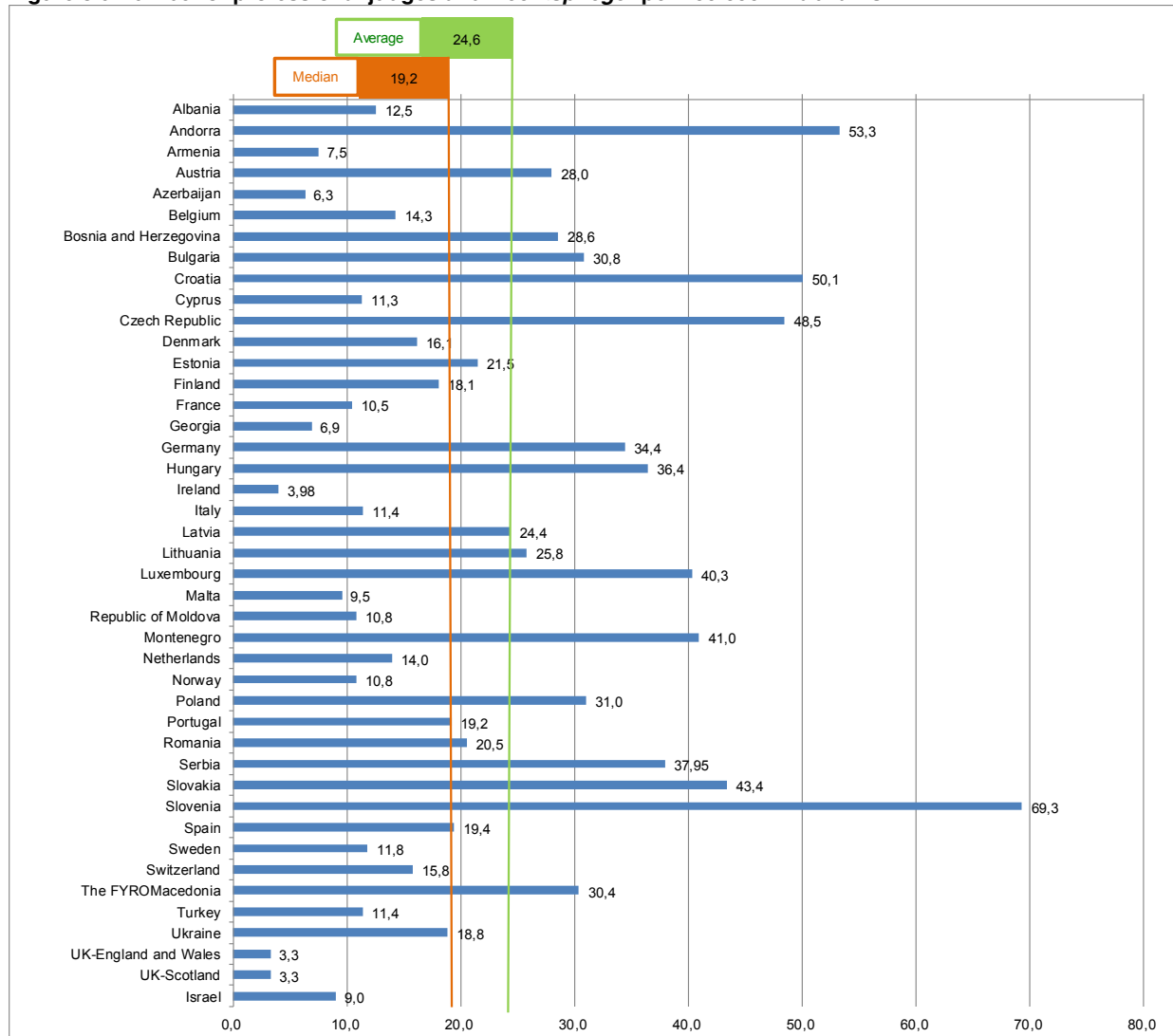
This situation is partly explained by the diversity of judicial organisations. Indeed, from one State to another,

That is the situation in **Bulgaria, Germany, Greece and Portugal** which have responded positively as regards the existence of a jury. However, **Serbia and Slovenia**, which have a similar system provided a negative response. Moreover, in **Denmark** jurors and assessor judges are appointed from the same pre-selected pool of individuals.

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 21 judges per 100 000 inhabitants (data relatively stable over the four exercises) 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.

Figure 3.9 Number of professional judges and *Rechtspfleger* per 100 000 inhabitants



Note: Monaco, with 95.2 judges per 100 000 inhabitants does not appear in this figure. Indeed, this outlier data results from the small number of inhabitants.

The situation of the very small states and of the states in which a substantial volume of the litigation is settled before the judge's intervention need to be considered with prudence, as do the common law States or entities (for example **UK-England and Wales** and **Malta**).

With all of these reservations, it appears that between countries of the same economic level, having equivalent judicial organisations, the number of professional judges per 100 000 inhabitants may be very

different, and this is likely to reflect the level of resources allocated to justice, as well as the scope of the judges' missions.

Table 3.10 Evolution of the number of professional judges between 2010 and 2014 (Q46)

States/Entities	Professional judges per 100 000 inhabitants			
	2010	2012	2014	Variation 2014 - 2010
Albania	11,7	13,5	12,5	7%
Andorra	28,2	31,5	31,2	10%
Armenia	6,7	7,2	7,5	11%
Austria	17,8	18,3	18,9	6%
Azerbaijan	6,7	6,5	6,3	-5%
Belgium	14,8	14,3	14,3	-4%
Bosnia and Herzegovina	24,4	25,1	25,9	6%
Bulgaria	30,0	30,7	30,8	3%
Croatia	42,8	45,3	41,0	-4%
Cyprus	12,9	11,9	11,3	-13%
Czech Republic	29,1	29,1	28,8	-1%
Denmark	6,7	6,6	6,0	-10%
Estonia	16,7	17,7	17,6	5%
Finland	18,0	18,1	18,1	0%
France	10,7	10,7	10,5	-2%
Georgia	5,2	5,4	6,8	30%
Germany	24,3	24,7	23,9	-1%
Greece	29,3	23,3	20,6	-30%
Hungary	29,0	27,9	28,5	-1%
Ireland	3,2	3,1	3,5	8%
Italy	11,0	10,6	11,4	4%
Latvia	21,2	21,5	24,4	15%
Lithuania	23,9	25,6	25,8	8%
Luxembourg	36,7	40,4	40,3	10%
Malta	9,3	9,5	9,5	2%
Republic of Moldova	12,4	12,4	10,8	-13%
Monaco	100,3	102,4	95,2	-5%
Montenegro	41,9	42,4	41,0	-2%
Netherlands	15,2	14,4	14,0	-8%
Norway	11,2	11,0	10,8	-3%
Poland	27,8	26,2	26,2	-6%
Portugal	18,4	19,2	19,2	4%
Romania	19,0	20,2	20,5	8%
Russian Federation	22,6	23,2	NA	NA
Serbia	33,7	40,5	38,0	13%
Slovakia	24,9	24,2	24,4	-2%
Slovenia	49,9	47,1	44,8	-10%
Spain	10,2	11,2	11,5	13%
Sweden	11,5	11,8	11,8	3%
Switzerland	14,5	15,8	15,7	8%
The FYROMacedonia	32,3	32,4	30,4	-6%
Turkey	10,6	10,7	11,4	7%
Ukraine	16,9	17,1	18,8	12%
UK-England and Wales	3,6	3,6	3,3	-8%
UK-Northern Ireland	NA	3,8	3,7	NA
UK-Scotland	3,5	3,5	3,3	-7%
Israel		8,2	8,3	
Average	21,1	21,1	20,7	
Median	17,8	17,9	18,1	
Minimum	3,2	3,1	3,3	
Maximum	100,3	102,4	95,2	

Comments as regards professional judges

Albania: by presidential decree adopted in November 2012, the number of judges in Albania was reviewed, including the number of judges in appellate courts which has been increased. In addition, since 2013, the Appellate Administrative Court is operational.

Austria: in 2014, some competent judges who intervene in different areas of law were counted twice which shows an increase in the number of second instance judges.

Bosnia and Herzegovina: in 2014, after consultation with the heads of courts concerned and the respective Ministers of Justice, the High Council of Judges and Prosecutors decided to increase the number of judges in some courts for efficiency purposes. This initiative is intended to accelerate the resolution of backlogs and to contribute to reducing the length of proceedings. A similar measure was already adopted in 2009 and 2010. The number of non-judge staff was also revised upward.

Denmark: unlike 2010, the 2012 and 2014 data refer only to professional judges sitting permanently, excluding legal assessors and deputy judges.

Hungary: in 2014, 26 judges were made available to the National Office of Justice and 7 at the Ministry of Justice. During this period, the judges do not sit in the courts.

Iceland: on 1 March 2011, the number of judges was temporarily increased by law because of the workload of the courts.

Norway: deputy Judges exercise judicial functions in the first instance courts. However, since they are appointed by the head of courts for a maximum period of 3 years and not on a permanent basis, their number is not counted in the total number provided. For example, in 2010 there were 160 deputy judges, while in 2014 they represented 30 % of judges of first instance courts.

Switzerland: the 2014 data are extrapolated from the responses of 25 cantons out of 26. It was indicated that the increased powers of cantonal supreme courts at appeals level and the increased judicial protection conferred on court users were the source of the increase in the number of second instance judges in 2012.

This table shows the evolution in the number of professional judges in each State and entity between 2010 and 2014.

For the vast majority of the States and entities, this number has not changed significantly between 2010 and 2014. The average remains about 21 judges per 100 000 inhabitants.

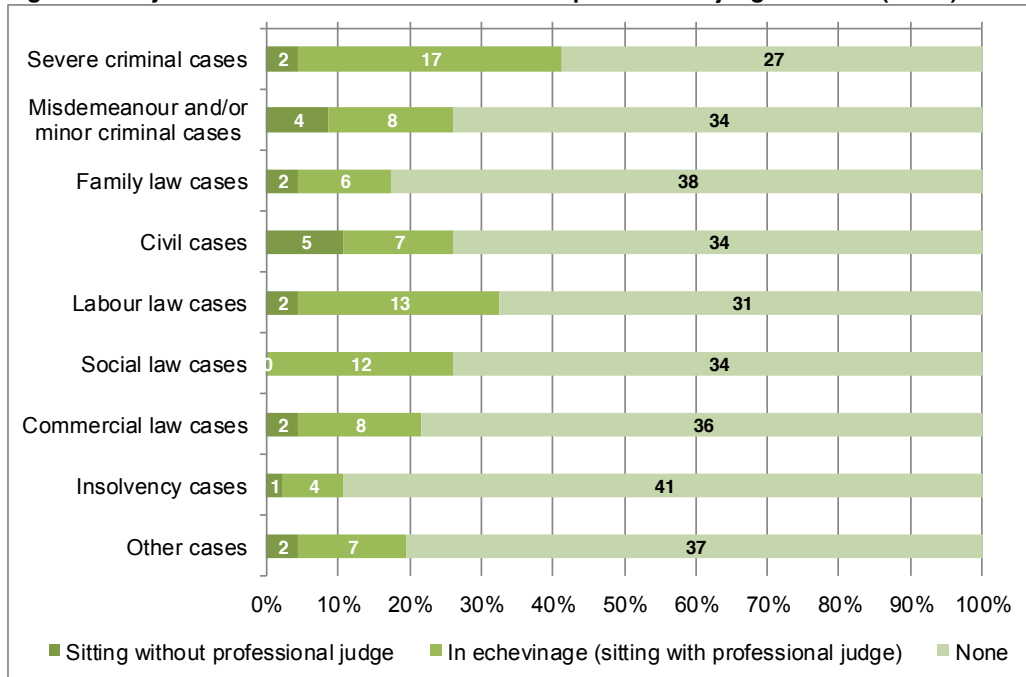
However for some countries such as **Armenia, Georgia, Latvia, Serbia, Spain** and **Ukraine**, the judge staff has seen a significant increase, while for others such as **Cyprus, Greece** and **Republic of Moldova**, this number has decreased quite significantly. As regards **Georgia, Latvia, Armenia, Cyprus** and **Ukraine**, the evolutions observed are largely explained by the variations more or less important within the population. The data in absolute numbers remain relatively stable. As for **Greece**, unlike the previous evaluation cycles, the number of administrative judges has not been considered for 2014. For the **Republic of Moldova**, the decrease noticed is partly due to judges reaching the mandatory retirement age. In 2010, the Spanish government approved the strategic plan of modernisation of the judicial system to create 134 courts, 16 new judicial positions at the National Supreme Court and the Regional Supreme Courts and 50 positions of territorial judges. This reform has naturally affected the number of judges in **Spain**. Finally, **Serbia** is a special case. Indeed, the variation for the period 2010-2014 stems from the increase in the number of professional judges in 2012 following a decision of the Constitutional Court. Namely, in 2009, the Serbian authorities introduced a reappointment procedure for all existing judges (and public prosecutors) in the country. The decisions that dismissed many of the judges (and prosecutors) were appealable to the Constitutional Court, and the judgements rendered by the Court in 2012 pointed to the shortcomings in the procedure, which led to the need to reinstate all judges (and prosecutors) that had been laid off. In the meantime, new judges (and prosecutors) had been appointed and took office in January 2013, along with those who were reinstated. In addition, a reorganisation of the judicial map in 2014 resulted in the increase in the number of first instance courts which has a direct impact on the number of judges. The factor of population decline does not appear decisive.

Table 3.11 Number (in absolute value) of non-professional judges and tasks entrusted to them in 2014 (Q49 and 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	NA										5
Azerbaijan	NAP										NAP
Belgium	4026										8
Bosnia and Herzegovina	254										2
Bulgaria	NAP										NAP
Croatia	NA										NAP
Cyprus	NAP										NAP
Czech Republic	5669										4
Denmark	12000										9
Estonia	802										1
Finland	1738										1
France	24921										6
Georgia	NAP										NAP
Germany	97306										7
Greece	NAP										NAP
Hungary	4500										2
Ireland	NAP										NAP
Italy	3068										2
Latvia	NAP										NAP
Lithuania	NAP										NAP
Luxembourg	NA										2
Malta	NAP										NAP
Republic of Moldova	NAP										NAP
Monaco	139										5
Montenegro	NAP										NAP
Netherlands	NAP										NAP
Norway	43000										9
Poland	13933										4
Portugal	NAP										NAP
Romania	NAP										NAP
Russian Federation	NAP										NAP
Serbia	2564										5
Slovakia	NA										2
Slovenia	3445										3
Spain	7687										3
Sweden	8318										4
Switzerland	1635										7
The FYROMacedonia	1376										7
Turkey	NAP										NAP
Ukraine	NAP										NAP
UK-England and Wales	19253										3
UK-Northern Ireland	NAP										NAP
UK-Scotland	389										1
Israel	437										1
Sitting without professional judge		2	4	2	5	2	0	2	1	2	
In echevinage (sitting with professional judge)		17	8	6	7	13	12	8	4	7	
None		27	34	38	34	31	34	36	41	37	

This table shows the number of non-professional judges of each State and entity the litigation entrusted to them.

Figure 3.12 Synthesis of the tasks entrusted to non-professional judges in 2014 (Q49.1)



The number of these judges varies widely: it ranges from a few hundreds in **Bosnia and Herzegovina, Estonia, Monaco, or UK-Scotland**, to more than 10 000 in **Denmark, France, Germany, Norway, Poland, and UK-England and Wales**.

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.

These non-professional judges often rule in criminal cases but also in labour disputes or in commercial or civil disputes. In **Croatia, Estonia, Slovakia and UK-Scotland**, they are involved only in the criminal courts. The new criminal legislation of **Bosnia and Herzegovina** no longer provides for the intervention of non-professional judges but courts continue to use it as a mean of decreasing the backlog for cases prior to the entry into force of the reform. **Latvia** has also abandoned the system of non-professional judges in 2009. In **Luxembourg**, non-professional intervene in labour and social matters, in **Israel**, they sit only in labour courts.

In general, non-professional judges sit in panels with one or more professional judges and they are the majority. However, in **Belgium, Italy, Serbia, UK-England and Wales**, they may decide alone. In **UK-Scotland**, they are assisted by advisers with a legal qualification. Likewise, in **Spain**, the 7687 'Peace Judges' who are placed in each village where there are neither professional courts nor professional judges, are competent to know of civil matters under 90 euros, and they are in charge of birth and death registrations in the Civil Register. In **France**, before the labour courts, a judge intervenes if the non-professional judges, in even number, have failed to resolve the dispute, while the majority of commercial and insolvency cases are judged in the commercial courts, fully composed of non-professional judges (experts in the matter).

Croatia, Estonia, Finland, Hungary, Slovakia, UK-England and Wales have explicitly stated that non-professional judges only intervene at first instance. However, it is not excluded that such judges hear appeals, which is the case in **Norway and Sweden**. Often national laws define the competence of non-professional judges through specific categories of disputes, offences or sentences.

The system of selection and appointment of non-professional judges differs considerably from one State to another. For example, in the **Czech Republic, Estonia and Slovakia** non-professional judges are elected by local government authorities. Likewise, in **Spain**, peace judges are elected by the Municipal Councils and appointed by the Higher Courts of Justice. In **Denmark**, the individuals designated to participate in the administration of justice may be called upon to perform either the functions of non-professional judges or those of a juror. Therefore, the exact number of non-professional judges cannot be identified. The two assessor judges of the Court for children in **France** are chosen from candidates for their interest and knowledge of youth. In **Norway**, non-professional judges are randomly selected from electronic lists. As for

the eligibility conditions set by domestic law, they are general and relate to the age, the legal capacity, the citizenship or residence of the person, mastery of the official language, etc. Most often no legal qualifications are required, but those selected can be made to follow some training before taking office.

As to the number of non-professional judges in **Estonia**, the number is established for each jurisdiction by regulation of the Minister of Justice. In **Slovakia**, it is determined by the president of each district court. In **Slovenia**, special laws set the number at the level of the district courts and labour courts. Only this figure is available and not the number of judges who actually served in 2014.

Estonia, Hungary, Slovakia and Spain have stated that the mandate of non-professional judges is 4 years. In the **Czech Republic**, they perform their function about 20 days per year, while in **Norway** they can only sit in one or two procedures per year. In principle, non-professional judges are not remunerated but may receive compensation.

Finally, some states have referred to more specific areas involving non-professional judges: tenancy cases in **France**; in matters of agriculture, administrative law, finance law, litigation regarding notaries and lawyers in **Germany**; the Arbitration Commission on Commercial Leases or the Commission of the independent pensions fund in **Monaco**; the litigation before the courts for the application of sentences in **Belgium**.

Trends and conclusions

In general, 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 shaped by the specificities of national judicial systems and the cultural, historical and socio-political context that defines them. Thus, 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 northern Europe.

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 **France**, these are proximity judges intervening only in the ordinary and not the administrative courts. In addition, in some States and entities, judges eligible for retirement may be designated to perform as substitute judges (**Belgium, Denmark, 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 **Bosnia and Herzegovina** and **Spain** 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, including the share going to wages. The latter is very high in states resorting to professional judges and relatively low in countries using lay judges.

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

Recognizing that equality between women and men is crucial for the protection of human rights, the functioning of democracy, respect for the rule of law, economic growth and competitiveness, the Committee of Ministers adopted the Council of Europe's Strategy for equality between women and men (2014 to 2017). This transversal programme aims to increase the impact and visibility of equality standards by supporting their application in the states through concrete actions and initiatives in a number of priority areas. In this broader framework, the CEPEJ requests specific data from the states on the male / female distribution among judges.

It is worth recalling that the majority of states, entities or observers have general legislation in place which

pursues the objective of parity between men and women in the public sector and also affects the organisation of their judicial systems (**Austria, Denmark, Germany** at the level of their Länder, **Norway** and **Israel** have explicitly indicated the use of these general laws on judicial appointments). In some countries or entities, specific action plans were developed from existing rules and general principles to make the judicial profession more accessible to women (some Lander in **Germany, UK-Northern Ireland, UK-Scotland**).

Only **Armenia, Bosnia and Herzegovina, Denmark, Germany, Montenegro, Norway** and **UK-England and Wales** specified having in place specific rules designed to foster gender parity as early as at the stage of recruitment to the profession of judge (*supra*).

Table 3.13 Distribution in % of professional judges per instance en 2014 (Q46)

States/entities	Total of professional judges (FTE)	1st instance professional judges	2nd instance professional judges	Supreme court professional judges
Albania	363	72%	24%	5%
Andorra	24	54%	50%	NAP
Armenia	226	75%	17%	8%
Austria	1620	76%	20%	4%
Azerbaijan	600	NA	NA	NA
Belgium	1602	79%	19%	2%
Bosnia and Herzegovina	993	67%	22%	11%
Bulgaria	2220	79%	12%	9%
Croatia	1734	70%	27%	2%
Cyprus	97	87%	13%	NAP
Czech Republic	3028	61%	36%	3%
Denmark	341	66%	28%	6%
Estonia	231	73%	19%	8%
Finland	988	77%	19%	4%
France	6935	70%	25%	5%
Georgia	254	73%	22%	6%
Germany	19323	77%	21%	2%
Greece	2231	69%	21%	10%
Hungary	2813	60%	37%	3%
Ireland	160	88%	6%	6%
Italy	6939	78%	17%	5%
Latvia	488	63%	27%	10%
Lithuania	754	89%	6%	5%
Luxembourg	227	82%	NA	18%
Malta	41	80%	20%	NAP
Republic of Moldova	384	73%	20%	8%
Monaco	36	42%	14%	44%
Montenegro	254	72%	21%	7%
Netherlands	2359	78%	22%	NA
Norway	559	66%	30%	4%
Poland	10096	94%	5%	1%
Portugal	1990	74%	22%	4%
Romania	4577	46%	52%	3%
Russian Federation	NA	NA	NA	NA
Serbia	2700	86%	12%	1%
Slovakia	1322	66%	28%	6%
Slovenia	924	81%	15%	3%
Spain	5353	72%	26%	2%
Sweden	1150	67%	30%	3%
Switzerland	1290	68%	29%	3%
The FYROMacedonia	629	79%	18%	3%
Turkey	8835	92%	NAP	8%
Ukraine	8089	73%	26%	1%
UK-England and Wales	1893	NA	NA	NA
UK-Northern Ireland	69	83%	4%	13%
UK-Scotland	177	90%	10%	NA
Israel	686	70%	28%	2%
Average	2376	74%	22%	6%
Median	993	73%	21%	5%
Minimum	24	42%	4%	1%
Maximum	19323	94%	52%	44%

This table shows the distribution of professional judges between the three levels of jurisdiction. It should be noted that in **Andorra**, **Cyprus** and **Malta** the judicial system is organised in two levels, the appeal court constituting the supreme instance.

In **Turkey** the appellate courts were still not operational in 2015. **Poland** and the **Czech Republic** reported on the peculiarity of their judicial systems where four levels are grouped in three instances.

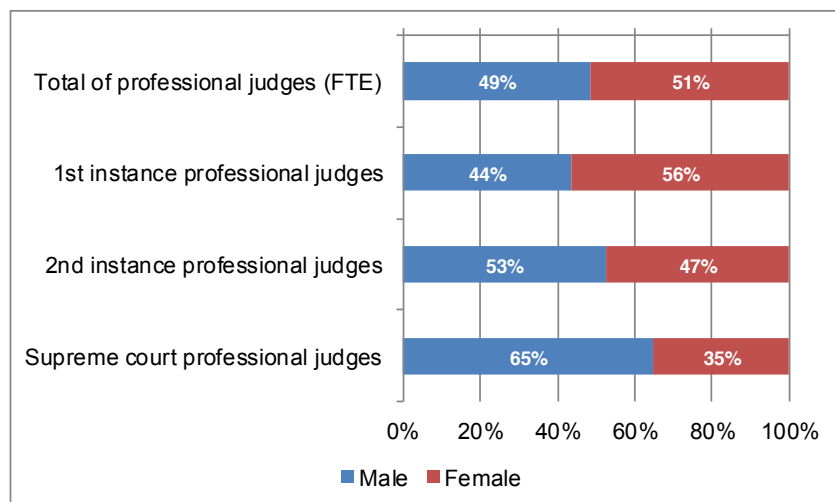
The average distribution of judges between the three levels of jurisdiction is 74 % for first instance courts, 22 % for second instance courts and 6 % for the Supreme Court.

This distribution is primarily due to the fact that only part of the first instance decisions is subject to appeal to a higher court, and possibly to the Supreme Court. But the composition of each jurisdiction should also be taken into account. Often the first instance courts are composed of a single judge, while in the second instance a full bench is often the rule. This collegiality is generally more pronounced in the Supreme Court. In these most common situations, the distribution of judges between the various levels of courts is not only proportional to the volume of litigation handled, but also to the composition of the courts of each level of jurisdiction.

Table 3.14 Distribution in % of professional judges per instance and by gender in 2014 (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	56%	44%	53%	47%	60%	40%	76%	24%
Andorra	42%	58%	31%	69%	75%	25%	NAP	NAP
Armenia	77%	23%	78%	22%	69%	31%	82%	18%
Austria	49%	51%	45%	55%	58%	42%	65%	35%
Azerbaijan	90%	11%	NA	NA	NA	NA	NA	NA
Belgium	48%	52%	47%	53%	53%	47%	79%	21%
Bosnia and Herzegovina	37%	63%	36%	64%	35%	65%	42%	58%
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	30%	70%	27%	73%	35%	65%	60%	40%
Cyprus	55%	45%	52%	48%	69%	31%	NAP	NAP
Czech Republic	39%	61%	34%	66%	45%	55%	73%	27%
Denmark	49%	51%	42%	58%	60%	40%	74%	26%
Estonia	37%	63%	30%	70%	45%	55%	83%	17%
Finland	48%	52%	47%	53%	48%	52%	64%	36%
France	38%	62%	35%	65%	42%	58%	56%	44%
Georgia	51%	49%	50%	50%	49%	51%	79%	21%
Germany	NA	NA	NA	NA	NA	NA	76%	24%
Greece	28%	72%	24%	76%	29%	71%	50%	50%
Hungary	31%	69%	30%	70%	32%	68%	50%	50%
Ireland	68%	33%	66%	34%	80%	20%	70%	30%
Italy	48%	52%	45%	55%	52%	48%	75%	25%
Latvia	23%	77%	20%	80%	23%	77%	38%	62%
Lithuania	39%	61%	37%	63%	55%	45%	71%	29%
Luxembourg	28%	72%	25%	75%	NA	NA	41%	59%
Malta	61%	39%	55%	45%	88%	13%	NAP	NAP
Republic of Moldova	55%	45%	57%	43%	48%	52%	53%	47%
Monaco	58%	42%	40%	60%	40%	60%	81%	19%
Montenegro	43%	57%	44%	56%	41%	59%	44%	56%
Netherlands	44%	56%	40%	60%	55%	45%	NA	NA
Norway	60%	40%	58%	42%	64%	36%	65%	35%
Poland	NA	NA	36%	64%	46%	54%	NA	NA
Portugal	42%	58%	33%	67%	62%	38%	82%	18%
Romania	26%	74%	27%	73%	26%	74%	16%	84%
Russian Federation	NA	NA	41%	59%	NA	NA	NA	NA
Serbia	NA	NA	NA	NA	NA	NA	NA	NA
Slovakia	38%	62%	36%	64%	40%	60%	42%	58%
Slovenia	22%	78%	19%	81%	29%	71%	62%	38%
Spain	48%	52%	41%	59%	65%	35%	87%	13%
Sweden	51%	49%	53%	47%	44%	56%	61%	39%
Switzerland	60%	40%	58%	42%	65%	35%	71%	29%
The FYROMacedonia	41%	59%	40%	60%	44%	56%	55%	45%
Turkey	66%	34%	64%	36%	NAP	NAP	84%	16%
Ukraine	NA	NA	NA	NA	NA	NA	NA	NA
UK-England and Wales	70%	30%	NA	NA	NA	NA	NA	NA
UK-Northern Ireland	77%	23%	72%	28%	100%	0%	100%	0%
UK-Scotland	77%	23%	78%	22%	72%	28%	NA	NA
Israel	49%	51%	46%	54%	53%	47%	80%	20%
Average	49%	51%	44%	56%	53%	47%	65%	35%
Median	48%	52%	41%	59%	49%	51%	68%	32%
Minimum	22%	11%	19%	22%	23%	0%	16%	0%
Maximum	90%	78%	78%	81%	100%	77%	100%	84%

Figure 3.15 Synthesis of the distribution in % of professional judges per instance and by gender in 2014 (Q46)



This figure refines the data from the previous table 3.14 by distributing groups of professional judges by gender.

In all jurisdictions, despite large disparities between States and entities, the average gender distribution among judges is now balanced between women and men. However, the analysis by level of court highlights a majority of women in first instance courts (56 %), a situation close to gender balance at second instance, and a majority of men (65 %) in the

Supreme Court. Thus, there is a decrease in the percentage of women judges compared to male judges as one moves up through the judicial hierarchy. In some states, the difference is explained by the relatively recent feminisation of the judiciary, whose effects are currently more noticeable at first instance than at second instance and in the Supreme Court. In **Montenegro**, women judges are a majority at all levels (respectively 56 %, 59 % and 56 %) as in **Bosnia and Herzegovina** (64 %, 65 % and 58 %). In **Romania**, the percentage of women increases with each instance (73 %, 74 % and 84 %).

However, in some States or entities such as **Armenia, Azerbaijan, Ireland, Turkey** and the entities of the **United-Kingdom**, judges are for the majority part men in all instances, while in other states such as **Croatia, Greece, Hungary, Latvia, Luxembourg, Romania** and **Slovenia**, the situation is noticeably reversed especially at first and second instance.

Figure 3.16 Synthesis of the distribution in % of presidents of courts between the instances (first instance, second instance and Supreme Court) in 2014 (Q47)

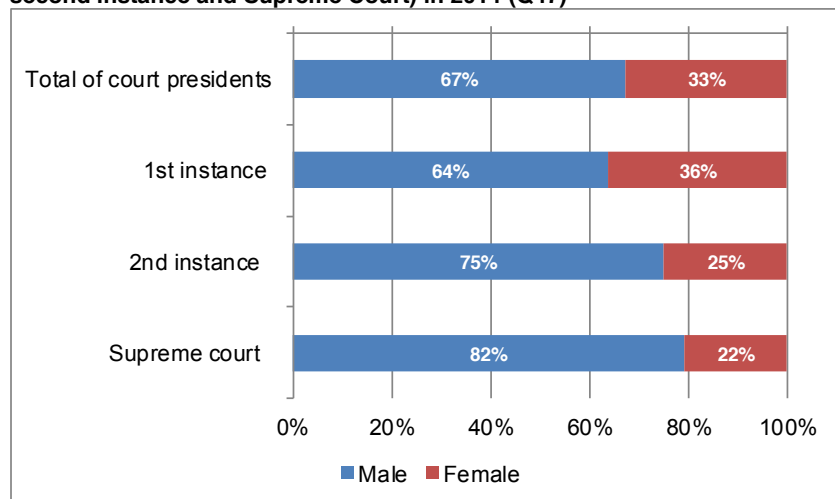


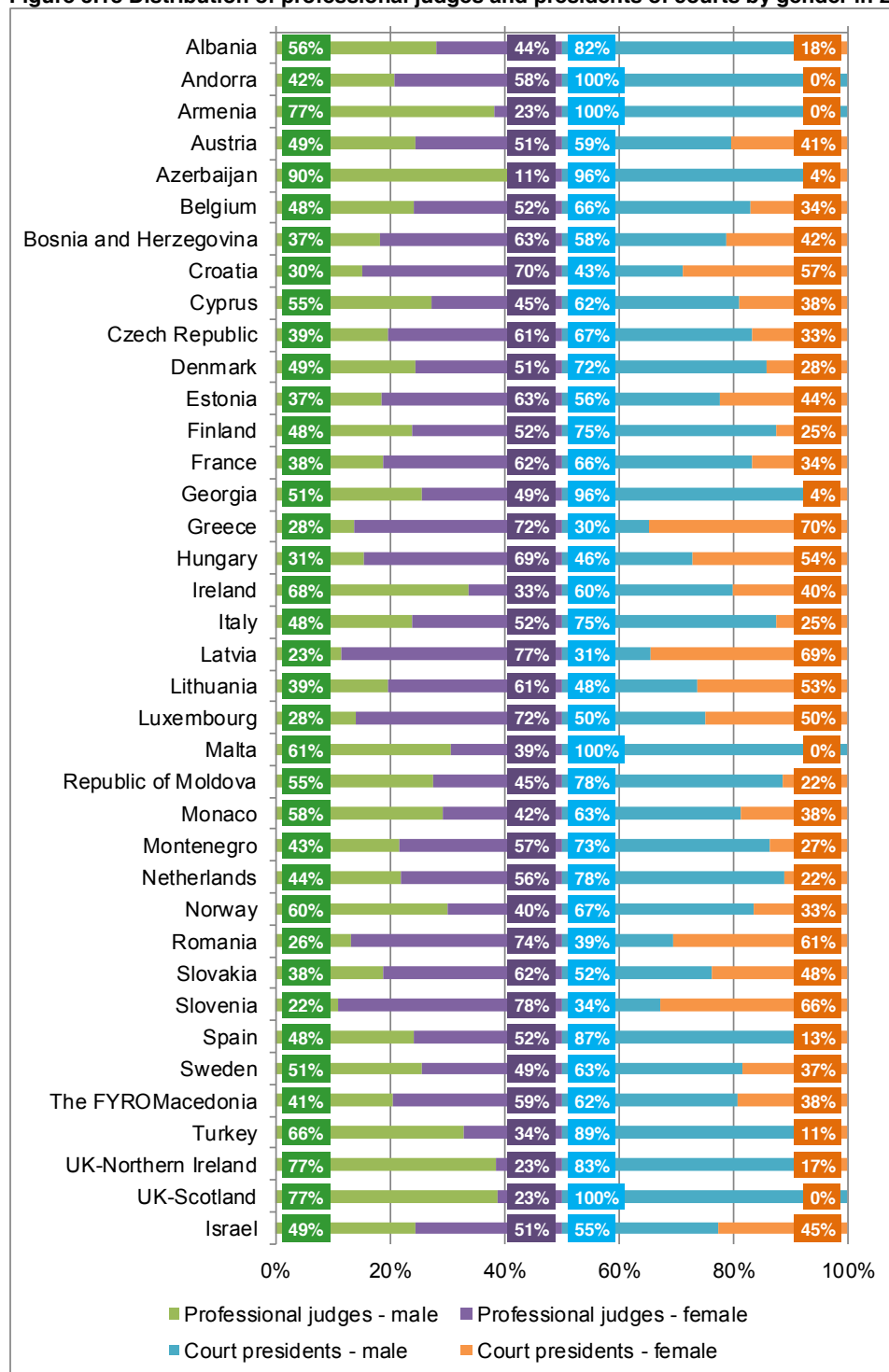
Table 3.17 Distribution in % of presidents of courts per instance (first instance, second instance and Supreme Court) and by gender in 2014 (Q47)

States	Total of court presidents		1st instance		2nd instance		Supreme court	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	82%	18%	83%	17%	75%	25%	100%	0%
Andorra	100%	0%	100%	0%	100%	0%	NAP	NAP
Armenia	100%	0%	100%	0%	100%	0%	100%	0%
Austria	59%	41%	58%	42%	59%	41%	100%	0%
Azerbaijan	96%	4%	97%	3%	83%	17%	100%	0%
Belgium	66%	34%	67%	33%	60%	40%	100%	0%
Bosnia and Herzegovina	58%	42%	58%	42%	53%	47%	67%	33%
Bulgaria	NA	NA	NA	NA	NA	NA	NA	NA
Croatia	43%	57%	37%	63%	76%	24%	100%	0%
Cyprus	62%	38%	60%	40%	100%	0%	NAP	NAP
Czech Republic	67%	33%	65%	35%	80%	20%	50%	50%
Denmark	72%	28%	67%	33%	100%	0%	100%	0%
Estonia	56%	44%	50%	50%	50%	50%	100%	0%
Finland	75%	25%	76%	24%	80%	20%	50%	50%
France	66%	34%	66%	34%	68%	32%	100%	0%
Georgia	96%	4%	95%	5%	100%	0%	100%	0%
Germany	NA	NA	NA	NA	NA	NA	NA	NA
Greece	30%	70%	25%	75%	41%	59%	100%	0%
Hungary	46%	54%	45%	55%	48%	52%	100%	0%
Ireland	60%	40%	67%	33%	100%	0%	0%	100%
Italy	75%	25%	73%	27%	91%	9%	100%	0%
Latvia	31%	69%	29%	71%	33%	67%	100%	..
Lithuania	48%	53%	43%	57%	100%	0%	100%	0%
Luxembourg	50%	50%	33%	67%	100%	0%
Malta	100%	0%	100%	0%	100%	0%	NAP	NAP
Republic of Moldova	78%	22%	75%	25%	100%	0%	100%	0%
Monaco	63%	38%	60%	40%	0%	100%	100%	0%
Montenegro	73%	27%	72%	28%	100%	0%	0%	100%
Netherlands	78%	22%	64%	36%	100%	0%	100%	0%
Norway	67%	33%	65%	35%	83%	17%	100%	0%
Poland	53%	47%	49%	51%	72%	28%	60%	40%
Portugal	NA	NA	NA	NA	NA	NA	NA	NA
Romania	39%	61%	37%	63%	42%	58%	..	100%
Russian Federation	66%	34%	66%	34%	NAP	NAP	100%	0%
Serbia	NA	NA	NA	NA	NA	NA	100%	..
Slovakia	52%	48%	52%	48%	63%	38%	0%	100%
Slovenia	34%	66%	31%	69%	60%	40%	100%	0%
Spain	87%	13%	NAP	NAP	87%	13%	100%	0%
Sweden	63%	37%	61%	39%	80%	20%	50%	50%
Switzerland	NA	NA	61%	39%	NA	NA	100%	0%
The FYROMacedonia	62%	38%	68%	32%	40%	60%	0%	100%
Turkey	89%	11%	89%	11%	NAP	NAP	67%	33%
Ukraine	NA	NA	NA	NA	NA	NA	NA	NA
UK-England and Wales	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP
UK-Northern Ireland	83%	17%	75%	25%	100%	0%	100%	0%
UK-Scotland	100%	0%	NAP	NAP	NAP	NAP	NAP	NAP
Israel	55%	45%	33%	67%	86%	14%	100%	0%
Average	67%	33%	64%	36%	75%	25%	82%	22%
Median	66%	34%	65%	35%	80%	20%	100%	0%
Minimum	30%	0%	25%	0%	0%	0%	0%	0%
Maximum	100%	70%	100%	75%	100%	100%	100%	100%

These tables set out the distribution of presidents of courts between women and men by level of responsibility. The presidents' offices are occupied by men in 67 % of jurisdictions, including 64 % of first instance courts, 75 % of second instance courts and 82 % of Supreme Courts. The situation of each State reveals either a strengthening of this trend in countries where between 90 % and 100 % of the presidents' offices are occupied by men (**Andorra, Armenia, Azerbaijan, Georgia, Malta and UK-Scotland**), or countries, where more than half of the presidents' offices are entrusted to women (**Croatia, Greece, Hungary, Latvia, Lithuania, Luxembourg, Romania and Slovenia**).

Generally, the gender parity in terms of the number of judges that characterises more and more the European judicial systems is still difficult to achieve as far as the presidents of courts are concerned.

Figure 3.18 Distribution of professional judges and presidents of courts by gender in 2014 (Q46 and Q47)



This table reflects the difference in the number of positions of professional judges held by women (51 %) and the number of court president positions assigned to them (33 %).

The approximation of data on the distribution of women and men in first instance courts, second instance courts and Supreme Courts, both as judges and presidents, clearly emphasizes that while women occupy 56 % of the positions at first instance, they preside these courts only in 36 % of cases. The same trend can be observed at second instance where they occupy 47 % of the positions of judge, but only 25 % of the positions of president. This should be taken as evidence of the existence of a "glass ceiling" which women judges face and which would block their access to higher responsibilities, despite their skills and number.

These elements complement the observation made earlier by the CEPEJ, of the increasing feminisation of the group of professional judges. This trend, already noted in the previous reports, continued over the years 2012 to 2014 with a further strengthening by 2 % of the female judges. Over a longer period, from 2010 to 2014, this number has increased by 5 %. Women and men are now very nearly equally numerous among the professional judges. Against this background, one would expect this strong and persisting trend to continue with concomitant changes at second instance courts and at Supreme Courts.

Trends and conclusions

The courts, formerly mainly composed of men who also ensured 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 majority such as in **Armenia, Azerbaijan, Turkey, Ireland** and the entities of the **United Kingdom**, and other states which are broadly feminised, such as **Croatia, Greece, Hungary, Latvia, Luxembourg, Romania** and **Slovenia**. Within this overall trend, the situation as regards court presidents stands out, since men still largely predominate in this role. This fact reinforces the idea that, despite their number and their professional qualities, women face more difficulties than men in acceding to positions of higher responsibility.

3.1.5 Term of office of judges

One can but conclude, like the CCJE in its opinion n°1 on *Standards Concerning the Independence of the Judiciary and the Irremovability of Judges*, that "European practice is generally to make full-time appointments until the legal retirement age", which "is the approach least problematic from the viewpoint of independence"¹⁷. However, where tenure is provisional or limited, the body responsible for the objectivity and the transparency of the method of appointment or re-appointment as a full-time judge is of special importance¹⁸.

The irremovability of judges is an essential guarantee of their independence, it may be enshrined in the texts or it may exist only in practice¹⁹.

On this subject, four questions were asked to the states, entities and observers. First, whether the mandate of judges is indefinite, and, if not, what was the duration of this mandate. The states then had to indicate whether, prior to this appointment, a probation period was imposed on the judge.

The statutory guarantees should be concretely assessed to evaluate their real scope; states were asked about the possibility of transferring a judge without his or her consent from one jurisdiction to another.

¹⁷ CCJE, Opinion No.1 (2001) on *Standards Concerning the Independence of the Judiciary and the Irremovability of Judges*, 23 November 2001, § 48.

¹⁸ *Idem*, §§ 53 and 60.

¹⁹ ECtHR, *Kress v. France*, Appl. No. 39594/98, 7 June 2001, §§ 34 ff.

Table 3.19 Mandate of judges in 2014 (Q121, Q122 and Q125)

States/entities	Mandate of judges		
	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			
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-Northern Ireland			
UK-Scotland			
Israel			
Total	32	46	46
Nb of Yes	18	44	4
Nb of No or NAP	14	2	42
Nb of NA	0	0	0

This table shows on the one hand states imposing a probation period on judges, those in which judges exercise their activity until retirement, and finally those that appoint judges for a renewable period.

With the exception of **Andorra** and **Switzerland**, where judges are appointed for a fixed and renewable term, the judges of the States or entities hold office until the age of retirement. The latter varies between 63 and 70 years, and some states provide for the possibility of postponing this age (**Estonia, France, Italy, Poland, Romania**) for a few years. In **Estonia**, the Supreme Court, with the agreement of the Board of the courts and the judge concerned and upon the proposal of the head of jurisdiction, may raise the retirement age (68 years) by two years when a crucial public interest for the efficient functioning of court warrants it. In **France**, exceptions to retirement at the age of 67 years old are: an extension granted to a judge in order to complete his/her career or when his/her family situation justifies it; maintaining a higher number of judges in a court for the purpose of efficiency (68 years). In **Italy**, the age of retirement (70 years) can be extended by 5 years upon request. In **Hungary**, a reform aimed at gradually reducing the retirement age of judges and prosecutors by aligning it to the general age of retirement (65 years) is still ongoing. In **Slovakia**, there is no mandatory age of retirement for judges. When a judge reaches the age of 65, the Council of Justice shall notify to the President of the Republic who decides to maintain him/her or not in function. In several states, the retirement age is higher for judges of the Supreme Court and other superior courts than for judges of lower courts (**Belgium, Cyprus, France**).

Some states reported other *modus operandi*. The mandate of judges with a high hierarchical position is limited in time in **Belgium, Bulgaria** and **France**. In addition, in **Belgium**, specific mandates such as for investigating judge are temporary. It is the same in **France**, where the following judges are appointed for non-renewable fixed terms: judges on a temporary basis (7 years); counsellors in extraordinary services (8 years); Advocates General on extraordinary service (8 years); proximity judges (7 years). Judicial secondees (senior officials, appointed on record, judges and prosecutors of the judiciary) are appointed for a renewable term of 5 years, as part of their professional duty of mobility. For French judges seconded to **Monaco**, the detachment is secured by a bilateral agreement for a term of three years, renewable once. Finally, some States or entities employ professional judges on a temporary basis (*supra*: professional judges on an occasional basis). Before being appointed, judges from 18 states are subject to a mandatory probationary period, which is usually a period of training or traineeship (**France** – 2 years and 7 months; **Italy** – 18 months; **Portugal** – 2 years). In **Luxembourg**, until 2015, the judicial servants ("*attachés de justice*") were recruited for a term of 18 months renewable once (12 months since the reform). In **Monaco**, the *referendary* judges are assigned to any function as judges or prosecutors, until a maximum of 12 months in each function. They may also, at their request, be assigned to the Directorate for Judicial Services for a period of 6 months. The total assignment period is 2 years. Following a legislative reform in 2015, the entire period of assignment can be enjoyed by the judges or prosecutors. However, for some states, the appointment to definitive duties is preceded by a trial period limited in time: 3 months for judges of the Supreme Court in **Denmark**; 3 years in **Hungary** and **Latvia**, and 5 years in the **Republic of Moldova**, followed by an evaluation possibly giving access to a permanent position. Moreover, in **Latvia**, the 3-year period can be extended for another two years.

All national legislation provides exceptions to the principle of irremovability and list the reasons for the dismissal or removal of judges. In **Estonia**, a judge cannot be removed during the first three years following the appointment.

If judges appointed until the age of retirement unquestionably benefit from a special status to ensure their independence, it is important to know concretely whether, during their career, they may be transferred without their consent.

The principle that a judge should not be transferred to another court without his/her consent follows from the fundamental principle of irremovability from office. However, in certain circumstances and provided certain legal guarantees are in place, this principle must be reconciled with the need for an effective and efficient system of justice and with modern management practices designed to meet this need (for example, the mobility policies implemented). Therefore the Consultative Council of European Judges (CCJE) recommends the involvement of an authority independent of the executive and legislative powers, in particular a judicial council, at all stages of judges' careers²⁰.

Under the European Charter on the Statute for Judges²¹, a judge serving within a given court must in principle not be assigned to another court or have his/her duties changed, even entailing a promotion,

²⁰ CCJE, *Opinion on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges*, 23 November 2001, CCJE (2001) OP n° 1, § 38.

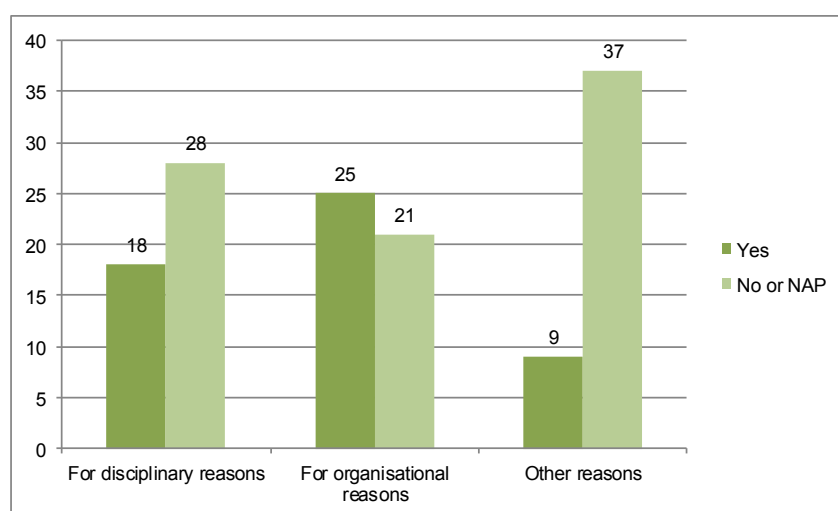
²¹ *European Charter on the Statute for Judges*, DAJ/DOC (98) 23, 8-10 July 1998.

without his/her free consent. This applies except where transfer is a disciplinary measure, results from a lawful reorganisation of the court system or takes place on a temporary basis with the purpose of assisting a neighbouring court, in which case the duration of the temporary transfer must be strictly limited (point 3.4). The same core principle is enshrined in the Council of Europe Committee of Ministers' recommendation on independence, efficiency and responsibilities of judges²².

Most states have implemented procedures that, upon reading, appear to be effective.

In **Andorra, Ireland, Luxembourg, Republic of Moldova, Monaco, Netherlands, Norway, Russian Federation, Switzerland** and **Ukraine**, the principle of non-removability is regarded as absolute and no transfer is possible without the consent of the judge concerned. In the **Republic of Moldova** a transfer can be decided for organisational reasons by the High Council of the Judiciary at the request of the head of the jurisdiction concerned but the consent of the judge must be given in writing. In **Denmark**, only deputy judges can be transferred to another court without their consent for organisational, training or health reasons. In **Monaco**, judges cannot be assigned to new duties without their consent, even when it concerns a promotion.

Figure 3.20 Transfer of judges without their consent in 2014 (Q121.1)



In most States or entities, the transfer may be decided without the judge's consent, for organisational reasons. In this case a transfer safeguard may be provided by law (for example in **Austria, Croatia, Slovenia**), or even in the Constitution (**Croatia, Finland**) and/or by the involvement of a judicial council (for example **Croatia, Latvia, Lithuania**), or again by the possibility of appealing to a competent court (**Estonia, Hungary**). A transfer may take place following a disciplinary action. In this case,

the safeguard lies in the involvement of the disciplinary authority, more often than not the judicial council and/or the right to an appeal. Other reasons related to the system of incompatibilities and disabilities (**Austria**), to impeachment proceedings (**Germany**), or to courts' efficiency in resolving the flow of cases (**Slovenia**) may justify a transfer without the consent of the judge. Sometimes a more general formulation can be the basis of a transfer decision, including the "interest of justice" (**Germany**) or "the normal exercise of judicial power" (**Slovenia**).

Trends and conclusions

The certainty that a judge will hold office until the age of retirement, except in case of disciplinary incident or health problems constitutes for him/her an actual guarantee of independence in line with European standards. Almost all the states provide statutory provisions in that direction. However, it should be ensured that these provisions are effectively implemented and that a judge cannot be transferred without his/her consent in a discretionary manner.

3.1.6 Salary of judges

Judges should be offered a level of remuneration corresponding to their status and their social role, taking into account the constraints of the exercise of this function and so as to facilitate resistance to any pressure aimed at impairing their independence or impartiality. The remuneration generally consists of a main tranche, to which can be added bonuses and other material or financial benefits.

²² Council of Europe Committee of Ministers, *Judges : independence, efficiency and responsibilities*, Recommendation CM/Rec(2010)12, 17 November 2010, § 52.

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"²³. 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 CEPEJ retains two indicators that allow comparisons between states. First, the salary of a judge at the beginning of his/her career, with the need to distinguish between countries that recruit judges following their graduation from the national school of magistracy or equivalent, and those who recruit from the ranks of legal professionals with long professional experience, mostly as lawyers. The second indicator is the salary of judges of the Supreme Court/last instance. The comparison between these two sets of data allows one to appreciate the reality of the judges' career. Finally, the ratio between the salary of a judge and the national average salary makes it possible to better gauge his/her social status and what this salary represents at the level of the Member State or entity.

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 for the reader: 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.

²³ Council of Europe Committee of Ministers, *Judges : independence, efficiency and responsibilities*, Recommendation CM/Rec(2010)12,, *op. cit.*, §§ 53 and 54.

Table 3.21 Average gross salaries of judges, in absolute value and in relation to the national average gross salaries in 2014 (Q4, Q132)

States/Entities	Gross salary of judges		In relation to the average gross salary	
	At the beginning of career	At Supreme Court	At the beginning of career	At Supreme Court
Albania	8 976 €	14 964 €	2,0	3,3
Andorra	73 877 €	39 823 €	3,0	1,6
Armenia	NQ	NQ	NQ	NQ
Austria	50 403 €	121 651 €	1,6	4,0
Azerbaijan	25 318 €	32 551 €	4,5	5,8
Belgium	66 182 €	121 013 €	1,6	2,9
Bosnia and Herzegovina	23 884 €	41 369 €	3,0	5,2
Bulgaria	15 317 €	29 217 €	3,0	5,8
Croatia	22 740 €	50 073 €	1,8	4,0
Cyprus	76 939 €	136 756 €	3,4	6,0
Czech Republic	27 915 €	56 005 €	2,5	5,1
Estonia	40 560 €	53 040 €	3,4	4,4
Finland	62 423 €	131 538 €	1,6	3,3
France	41 552 €	116 751 €	1,2	3,4
Georgia	20 978 €	26 223 €	NA	NA
Germany	45 294 €	110 011 €	1,0	2,4
Greece	30 159 €	84 540 €	1,9	5,2
Hungary	16 411 €	35 060 €	1,7	3,6
Latvia	19 764 €	39 076 €	2,2	4,3
Lithuania	23 976 €	35 676 €	2,9	4,4
Luxembourg	75 316 €	124 051 €	1,6	2,7
Malta	67 047 €	74 155 €	4,2	4,6
Republic of Moldova	6 758 €	10 884 €	2,6	4,1
Monaco	46 226 €	94 408 €	1,1	2,3
Montenegro	20 310 €	25 298 €	2,4	2,9
Netherlands	74 000 €	NA	1,3	NA
Portugal	35 699 €	85 820 €	1,8	4,2
Romania	23 676 €	43 174 €	3,8	7,0
Russian Federation	18 600 €	NA	2,4	NA
Serbia	16 757 €	39 154 €	2,7	6,2
Slovakia	29 710 €	42 916 €	2,9	4,2
Slovenia	31 887 €	60 942 €	1,7	3,3
Spain	47 494 €	106 992 €	2,1	4,7
Sweden	69 473 €	125 937 €	1,7	3,2
Turkey	21 108 €	42 828 €	1,8	3,7
Ukraine	7 693 €	18 169 €	3,6	8,5
Israel	93 603 €	136 070 €	3,9	5,7
Average	36 698 €	65 760 €	2,4	4,3
Median	29 710 €	50 073 €	2,1	4,2
Minimum	6 758 €	10 884 €	1,0	1,6
Maximum	76 939 €	136 756 €	4,5	8,5

Comments related to salaries of professional judges

Andorra: a draft law on salaries of judicial officials is currently presented to the Parliament. This draft provides for different levels of remunerations based on the number of degrees obtained by each judge or prosecutor, his/her seniority, the training conducted and the evaluation results.

Austria: it should be noticed that for 2014, the numerical values in the table are rounded. The gross annual salary of a professional judge at the beginning of his/her career is 50 402,80 € while the gross salary of a judge of the Supreme Court is 121 651,25 €.

Bosnia and Herzegovina: the following presumptions are used for calculating these amounts: first instance professional judge at the beginning of his/her career – 3 years of work experience; judge of the Supreme Court – 20 years of work experience.

Bulgaria: as for the 2012 data, 2014 data indicated amounts do not include the insurance contributions.

France: a professional judge of first instance at the beginning of his / her career is a judge at the first step of the second grade (non-specialised judge in a court of first instance – *Tribunal de grande instance*). The judge of the Supreme Court or the last appeal instance is the advisor to the Court of Cassation - step D3 / E.

Georgia: salaries for judges of ordinary courts are determined by a special law.

Germany: the national average was calculated from the sum of the annual salaries of judges of all the Länder divided by the number of Länder, regardless of the number of judges by Land. Salaries of judges calculated for 2014 were based on the following assumptions: outset of the career – remuneration pursuant to R1, salary bracket 1, single, no children; at the level of the Supreme Court – the basic salary R6 without any allowance for working at one of the highest federal courts and without family allowance.

Ireland: data reflects that of a judge of the District Court and a judge of the Supreme Court at December 2014. It is noteworthy that following a constitutional amendment in 2011, legislation was passed (*the Financial Emergency Measures in the Public Interest (Amendment) Act 2011*) to allow for the reductions in the remuneration of judges.

Republic of Moldova: the new Act on the remuneration of judges came into effect on 1 January 2014. It introduces a unitary pay system for judges based on the average salary for the year preceding the year in question as a reference unit. The salary of the judge is based on the level of the court, the activity of the judge and the seniority of work. This law led to a considerable increase in the salaries of all judges.

Monaco: judges of the Supreme Court - *Tribunal Suprême* and *Cour de révision* - have no fixed salaries to the extent that their jurisdiction is not sitting permanently but in sessions. Judges are paid in allowances and vacations. According to the Statute of the Judiciary, the hierarchy of the judiciary has three grades: 3rd - referendary judges, judges and substitutes to the Attorney General; 2nd – justices of the peace, first judges and first substitutes of the Attorney General; 1st – the vice president of the first instance court, the counselor at the Court of Appeal and the Deputy Attorney General. The following are placed outside the hierarchy: members of the Court of revision, the first president of the Court of Appeal, the Attorney General, the president of the court of first instance, the vice president of the Appeal Court. Pay scales for magistrates are fixed by Order 2010-4 of 25 January 2010. Thus, the reference salary for the "judge of the final court of appeal" (excluding the salary of the First President of the Court of Appeal) is that of a counsellor at the Court of Appeal in the mid-scale.

Norway: due to differences in currency rate, the salary of judges reported for 2014 is artificially low.

Russian Federation: the average annual salary after tax deduction is determined for each taxpayer (the income tax amount to 13 % of the personal income of each taxpayer).

Sweden: the monthly gross salary for a professional judge at first instance at the beginning of his / her career and sitting on a permanent basis is about 54 500 SEK (€5 789). The figure given for the previous years are probably for an associate judge sitting on an occasional basis. For 2014, the gross annual salary for an associate judge would be about €53 000 (480 000 SEK). The 2012 gross annual salary for a permanent judge would be about 620 000 SEK.

Switzerland: judges' salaries vary significantly depending on the cantons. Accordingly, the presented data refer to the weighted average salaries by the number of judges of the cantons which provided information.

Turkey: there is no difference between the judges' salaries and that of the prosecutors.

UK-Northern Ireland: in accordance with the recommendations to the Senior Salary Review Body, the salaries of all judges have been increased by 1% in 2012, 2013 and 2014.

UK-Scotland: according to the 2014 data, the salaries are: Lord President – £218,470.00 = €280,537; Lord Justice Clerk – £211,015.00= €270,964; Inner House Judge – £200,661.00 = €257,669; Outer House Judge – £176,226.00=€226,292; Sheriff Principal – £141,332.00= €181484; Sheriff – £130,875.00= €168,057.

This table presents the gross salaries of early-career judges and judges at the Supreme Court/last instance level, compared for each of them to the average salary of the State or entity.

Note: it has appeared appropriate to calculate also the average salary of a judge at the beginning of his/her career, excluding the 7 States or entities that recruit judges among experienced legal experts, that is to say among older professionals (**Denmark, Ireland, Norway, Switzerland, UK-England and Wales, UK-Northern Ireland, UK-Scotland**). The average gross salary is then 36 698 € for the European judges at the beginning of their career (2,4 times the average annual salary) and 65 760 € for judges at the level of the Supreme Court (4,3 times the average annual salary).

Judges at the beginning of their career are better paid than the average national gross salary (on average 2,4 times more). The situation in **Germany** (1), **Monaco** (1,1) and, to a lesser extent, in **France** (1,2) and the **Netherlands** (1,3) appears to be in contrast with this trend. However, in these countries, the average national gross salary is high compared to other European States and entities, which explains the slight

difference compared to judges' salaries. The same applies to **Austria, Belgium, Finland and Luxembourg** (1,6). The difference in favour of judges is the most meaningful in **Azerbaijan** (4,5), **Malta** (4,2), **Israel** (3,9), **Romania** (3,8) and **Ukraine** (3,6). Four countries have explicitly indicated that salaries of judges were increased in 2014: **Azerbaijan** and **Republic of Moldova** following a legislative reform, **Bosnia and Herzegovina** due to the pay harmonisation with the growth in average salaries as provided by law, and **UK-Northern Ireland** in accordance with the recommendations to the Senior Salary Review Body. Conversely, in **Slovakia**, the salaries of judges for 2014 were maintained at the same level as in 2012. In fact, the adjustments of salaries for all State officials were stopped in the years 2013 and 2014 due to State expenditures restrictions.

With regard to the national average gross salary, judges' remuneration at the end of career is the most significant in **Ukraine** (8,5), **Romania** (7), **Italy** (6,4), **Cyprus** (6), **Bulgaria** and **Azerbaijan** (5,8). The particularly low figure characterising **Andorra** is due to the peculiarity of its Supreme Court where judges do not sit permanently. The high level of the average national gross salary in **Belgium, Germany and Monaco** results in a less noticeable contrast between the latter and the judges' remuneration at the end of the career.

The difference between salaries at the beginning and salaries at the end of the career is the less significant in **Malta, Montenegro** and "**the former Yugoslav Republic of Macedonia**". In fact, in **Malta**, the salary of a judge at the beginning of his/her career corresponds to the salary of a *magistrate* (competent for hearing all civil cases up to a value of 11 650 € and criminal cases up till a period of imprisonment of 10 years), while the salary of a judge of the Supreme Court reflects the salary of a *judge* who has competence for hearing all the other cases. The difference is the most noticeable in **Ukraine, Italy, Greece and Romania**. It is noteworthy that in **Italy**, the salaries of judges do not depend on the position held but rather on the experience (i.e. years of service). Accordingly, the remuneration of judges working in the lowest courts can be the same as this of judges working in the Highest Appellate Court. Generally, the gap between salaries at the beginning and salaries at the end of the career is greater in States or entities that recruit young judges after completing their law studies, in particular through competitive exams and training in a school for magistracy or (and) after a period as assistant judge or trainee.

Trends and conclusions

The evolution of judges' salaries during their career has remained substantially unchanged since 2010. If one takes into account the average salary for all States and entities so as to maintain the same indicator as in the previous reports, the level of judges' salary at the beginning of their career compared to the average salary of the State increased slightly between 2010 and 2014 from a ratio of 2,2 to 1, to a ration 2,5 to 1. The salary level with regard to judges of the Supreme Court also increased from 4,2 to 4,5 to 1.

3.2 Prosecutors

In Recommendation Rec(2000)19 on the *Role of Public Prosecution in the Criminal Justice System*, adopted by the Committee of Ministers of the Council of Europe on 6 October 2000, 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*"²⁴.

The Consultative Council of European Prosecutors (CCPE) has also reflected on the situation of prosecutors in its opinions on for example "*The role of prosecution services outside the Criminal Law Field*"²⁵, "*European norms and principles concerning prosecutors*"²⁶, "*The role of prosecutors in criminal investigations*"²⁷ and other specific issues with a bearing on public prosecution services. This work tends to identify general rules or European standards in an area where the State differences remain sensitive. The present chapter is fully in line with the logic of harmonization based on current trends regarding the prosecution services – such as for example the expansion of prosecutors' field of intervention outside the criminal area, or the extension of their competences in the field of criminal law – and on the principles that have become fundamental, including the functional independence of prosecutors as an indispensable corollary to the independence of the judiciary²⁸.

²⁴ Committee of Ministers of the Council of Europe, *the Role of Public Prosecution in the Criminal Justice System*, Rec(2000)19, 6 October 2000.

²⁵ CCPE, *The Role of Prosecution Services outside the Criminal Law Field*, Opinion No. 3 (2008), 21 October 2008.

²⁶ CCPE, *European norms and principles concerning prosecutors*, Opinion No. 9 (2014), 17 December 2014.

²⁷ CCPE, *The role of prosecutors in criminal investigations*, Opinion No. 10 (2015), 20 November 2015.

²⁸ CCPE, *European norms and principles concerning prosecutors*, Opinion No. 9 (2014), *op. cit.*, Principle IV of the Rome Charter, Opinion No. 9 (2014) of the CCPE.

The results of a comparative approach as regards the status and functions of prosecutors determine the analysis of the functioning of States or entities' prosecution services.

All States or entities have, sometimes under different titles, a public authority entrusted with qualifying and carrying out prosecutions. It can be noted that, while the role of the judge seems to be relatively homogeneous in the States or entities, that of the prosecutor is much less so. In all European States or entities, prosecutors play an important role in the prosecution of criminal cases. In most of the States or entities, they also have a responsibility in the civil and even administrative law area. Another important aspect to be taken into account relates to the different levels of autonomy of public prosecutors. In some States or entities, they benefit from protection of their independence on an equal level with judges, while in other States or entities, the criminal policies are directed from the Ministry of Justice and the level of independence is limited. In some States or entities (for example, **Denmark, Greece, Malta, Poland, UK-England and Wales, Israel**), specially authorised police officers have prerogatives during the preparatory phase before trial, or even in conducting the prosecution, held exclusively by public prosecutors in other states. A further contrast stems from the opposition between two main principles – legally mandatory prosecution and discretionary power to initiate or not prosecution. The possibility of initiating private prosecutions is another parameter of difference, as is the status of victims.

Throughout this chapter all these elements should be borne in mind when analysing the data relating to the numbers, the functions and status of members of the public prosecution services for each Member State or entity.

3.2.1 Status of prosecutors

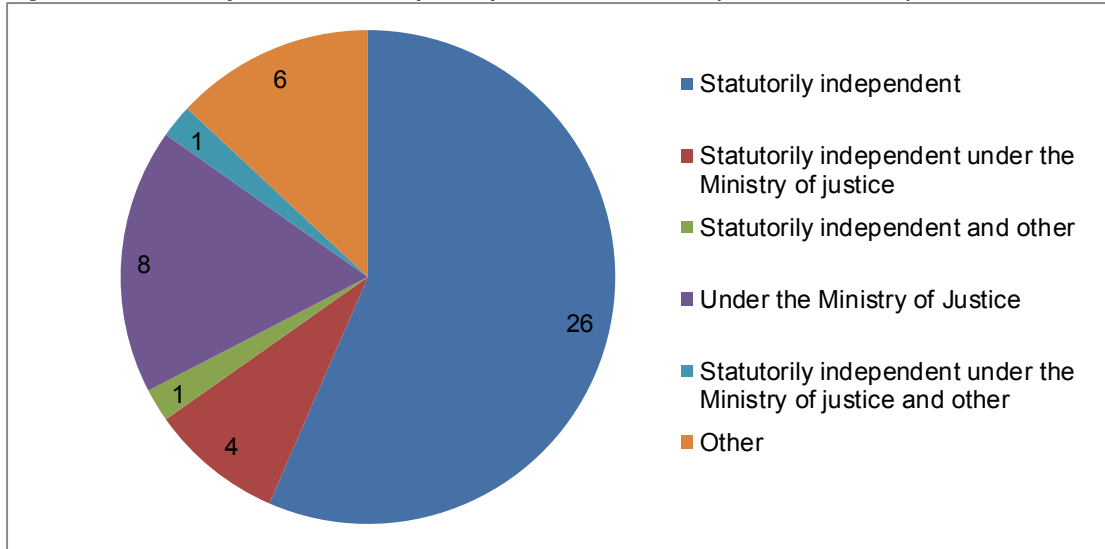
In a state governed by the rule of law, judges are independent from the executive and legislative power. The situation is more complex regarding public prosecutors, whose status differs significantly across states. However this statement must also be qualified because in some states, the independence of the public prosecution from the political power may be confirmed at the statutory level, but does not correspond to reality in the light of the historical tradition of public prosecutors' dependency. In other states, on the contrary, independence is not recognised in legal acts, but the tradition and daily practice demonstrate a real *de facto* independence.

To understand the reality of the independence of the prosecution, each member State was asked to indicate whether the prosecution service is statutorily independent, or if it is under the authority of the Minister of Justice or another central authority, and finally if it is in another situation. Another question asked was whether a law or regulation prevents specific instructions from being addressed to a public prosecutor to prosecute or not. Beyond the legal acts, the situation of the prosecution services is clearly sometimes linked to the tradition, culture or history of the state or entity.

Table 3.22 Status of public prosecutors in 2014 (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				
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-Northern Ireland				
UK-Scotland				
Israel				
Total	46	46	46	46
Yes	32	13	8	25
No or NAP	14	33	38	21
NA	0	0	0	0

Figure 3.23 Summary of the status of public prosecutors in 2014 (Q115 and Q115.1)



Comments related to the normative rules prohibiting specific instructions to prosecutors

Andorra: the prosecution service may receive general instructions from the government to exercise public action. However, it retains a significant functional autonomy.

Belgium: according to the Constitution, the prosecution service is independent in the exercise of individual investigations and prosecutions, without prejudice to the right of the competent Minister to order prosecution and to address binding directives on criminal policy, including in matters of policy research and criminal prosecution.

Georgia: according to the Constitution, prosecution services are formally under the authority of the Minister of Justice. However, the legislation guarantees their full independence and autonomy, including prohibiting the Minister of Justice from intervening in matters of investigation and prosecution. The Minister of Justice and the Chief of the Prosecution Services may issue general guidelines on the exercise of discretionary powers of prosecutors.

Germany: the Minister of Justice is responsible for the administrative supervision of the prosecution services. However, according to an established practice, he/she does not address any individual instruction on the activity of prosecutors.

Malta: the Office of the Attorney General is independent from the Government. The Minister of Justice may issue directives to the Office in writing. These directives are mandatory except in cases provided by the Constitution or the law where the Attorney General can decide according to his/her own judgement.

Monaco: prosecutors are under the direction and control of the Attorney General, which is under the authority of the Director of Judicial Services. The latter gives, when necessary, instructions (in writing and registered within the proceedings file) to public prosecutors who have to comply with when devising acts of written information. Notwithstanding, prosecutors remain independent when pleading orally.

Norway: although the prosecution is under the authority of the Government, the Minister of Justice refrains from providing instructions in individual cases. Prosecutors can receive instructions from the minister only in case of dramatic political changes.

Sweden: the Government may issue general instructions to the prosecution services, but according to the Constitution it is not empowered to give instructions regarding the daily activity of prosecutors.

32 States or entities indicate that the independence of the prosecution is statutorily guaranteed, usually by the Constitution. 13 states indicate that their prosecution service is under the authority of the Minister of Justice or another central authority. Finally, 8 states, some of which have already responded positively to the first questions, specified being in a different situation. The comments provided by the states tend to qualify the responses.

Under the principle of statutory independence, the prosecution services can be considered part of the judiciary, or at least as an autonomous body attached to the judiciary (**Azerbaijan, Italy, Latvia, Luxembourg, Republic of Moldova, Spain, Turkey**) or as an independent state authority (**Bosnia and Herzegovina, Malta, Montenegro, Poland, Russian Federation, Serbia, Slovakia, Slovenia**, some cantons in **Switzerland** (12), “**the former Yugoslav Republic of Macedonia**”, **UK-England and Wales**).

Among the States or entities where prosecution services are under the authority of the Ministry of Justice or another State authority (the High Council of the Judiciary in **Italy**, the Director of Judicial Services in **Monaco**, the Cantonal Supreme Court or a specific supervisory body in some cantons in **Switzerland**, the police in **Israel**), only 4 have exclusively chosen this option (**Denmark, Monaco, Netherlands and Israel**). The other countries have completed their replies either by the option "statutory independence" or by the option "other" or by the option "prohibition of specific instructions" focusing on the functional independence of prosecutors. In **Finland, Georgia and Sweden**, prosecution services are administratively under the control

of the Minister of Justice, but the national legislation guarantees their complete independence in exercising their jurisdiction. In other countries such as **France**, the independence of prosecutors is ensured through the legal prohibition of specific instructions in concrete cases and any other interference in judicial proceedings. The **Netherlands** also stressed that prosecutors are *formally* under the authority of the Ministry of Justice. Similarly, in **Israel**, prosecutors are under the authority of the Department of Justice or Police while being *professionally* independent. In **Estonia**, the status of the prosecution services of government agency is also reconciled with its independence in the implementation of its responsibilities.

Conversely, some states having described their prosecution services as independent, also have chosen the option "under the authority of the Ministry of Justice" (**Belgium, Germany, Greece, Romania**) and / or "other" (**Azerbaijan**) which once again led to a functional definition of the concept of independence. For example, in **Belgium**, the prosecution service is independent in the performance of individual investigations and prosecutions, without prejudice to the right of the competent Minister to order prosecutions and to prescribe binding directives on criminal policy. In **Germany** and **Norway**, while prosecutors are under the administrative supervision of the Minister of Justice, the practice reflects a total functional independence. In **Greece**, the prosecution service is under the authority of the Minister of Justice only with regard to the budget and the recruitment of prosecutors.

All states having responded by the sole option "other" (**Andorra, Malta, Serbia, "the former Yugoslav Republic of Macedonia", Turkey and UK-Scotland**) refer to the functional independence of prosecutors bound only by general instructions or directives of criminal policy or administrative management. In **Malta**, the role of the Office of the Attorney General of counsellor of the Government does not interfere with its independence vis-à-vis the executive in the exercise of its functions. In **Turkey**, prosecutors are subordinate to the Minister of Justice only as regards their administrative duties. In **Serbia**, prosecution services have both statutory and constitutional independence. Namely, they are independent outwards and autonomous inwards, in the sense that prosecutors and deputies are independent in their work towards everyone outside of the prosecution, but they can depend on prosecution hierarchy within offices.

The peculiarity of the situation in **Switzerland** is the result of the federal structure. In 2014, 12 cantons described their prosecution service as independent, 5 cantons responded that it is under the authority of the Cantonal Minister of Justice and 9 cantons and the Confederation chose the option "other", the prosecution service being under the authority of the Cantonal Supreme Court or of a specific monitoring body. In **Hungary**, the Attorney General is responsible to the Parliament through a system of annual reports.

One of the essential parameters for assessing the functional independence of the prosecution service is the distinction between general instructions and specific instructions addressed to its members by the executive. The general instructions fall under the responsibility of the Minister of Justice to define the general guidelines of criminal policy, while the prohibition of specific instructions constitutes the guarantee of prosecutors' independence. While only 25 states explicitly refer to constitutional texts (**Greece, Italy, Sweden**), legislative texts (**Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Finland, France, Georgia, Ireland, Latvia, Luxembourg, Monaco, Montenegro, Portugal, Slovenia, Spain, Ukraine**) or regulations prohibiting that instructions to prosecute or not to prosecute are given to a prosecutor, almost all States or entities explain in their comments that this distinction between general instructions and specific instructions is effective in their judicial systems. It arises either from the statutory independence of the prosecution service of which it is an inherent corollary (**Azerbaijan, Hungary, Lithuania, Luxembourg, Republic of Moldova, Poland, Russian Federation, Serbia, UK-England and Wales**) or functional independence enshrined in the Constitution (**Belgium, Hungary**) or in the law (**Luxembourg, Malta, Serbia, Turkey, Ukraine**) and / or an established practice (**Andorra, Germany, Netherlands, Norway, UK-Scotland**). In **Serbia**, the guarantee of the prosecutors' independence enshrined in the *Law on Public Prosecution* is extended to the prohibition of any kind of instruction to the Public Prosecution, being general or specific.

Finally, it should be noted that almost all of the States or entities described their prosecution service as a highly centralised and hierarchical system. In this regard, the CCPE had the opportunity to point out that "*In a State governed by the rule of law, when the structure of the prosecution service is hierarchical, effectiveness of prosecution is, regarding public prosecutors, strongly linked with transparent lines of authority, accountability and responsibility*"²⁹. On that point, 9 States or entities have explicitly invoked the power of the chief prosecution services and in general that of the hierarchical supervisor to address mandatory instructions to subordinated prosecutors (**Bosnia and Herzegovina, Croatia, Finland, Latvia, Luxembourg, Serbia, Slovenia and Spain**). Most often, the hierarchical supervisor is responsible for formulating mandatory general instructions, but also to take over a case or transmit it to another prosecutor, to request prosecution or to review a decision not to prosecute, to supervise the activity of prosecution, to

²⁹ CCPE, *European norms and principles concerning prosecutors*, Opinion No. 9 (2014), *op. cit.*, § 41.

ask to be informed of the results etc. However, an essential guarantee of independence is implemented by national legislation: a prosecutor cannot be forced to act against his/her conviction; in the exercise of his/her activities, he/she is bound only by the rules of law and remains independent in the decision making. The general principle in this matter seems to have been summarized by the CCPE in the Rome Charter "*In a hierarchical system, the superior prosecutor must be able to exercise appropriate control over the decisions of the office, subject to proper safeguards for the rights of individual prosecutors*"³⁰,

In **Luxembourg**, only positive injunctions are allowed (instructions to prosecute). The system in **Ireland** is characterised by a unique feature: the possibility for the court to order (at the request of the accused) not to prosecute when it appears that the circumstances are not appropriate for initiating prosecutions. The reasons for such a decision are diverse, but often it is because of the impossibility for the defendant of having a fair trial.

Trends and conclusions

The institutional context of the prosecution service and particularly its relations with the executive vary according to the State or entity. However, the principle of functional independence of prosecutors is emerging as an essential guarantee which has become a true European standard. This independence is assessed vis-à-vis the executive, the legislative, but also all other external authorities or factors of the prosecution services system (*external independence*), as well as in terms of the organisation model of the public prosecution service (*internal independence*). The harmonisation of national laws is an increasingly clear trend in respect of these two aspects.

3.2.2 Term of office of prosecutors

The declaration by many States and entities that their prosecution services are autonomous in performing their duties, or that they are totally independent should be translated into a career path offering real guarantees on this issue.

In this regard, the duration of a contract of a prosecutor is an important component.

³⁰ Idem, § 42.

Table 3.24 Mandates of prosecutors in 2014 (Q123, Q124 and Q126)

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			
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-Northern Ireland			
UK-Scotland			
Israel			
Total	46	46	46
Yes	25	40	5
No or NAP	21	5	41
NA	0	1	0

To better understand the reality of the different situations, three questions were asked of the States and entities, similarly to those in respect of the mandate of judges. It is indeed important to know the duration of a contract of public prosecutors, since the length of the performance of their duties is a guarantee of continuity, security which is important precondition for independence. States were also asked whether public prosecutors were subject to a probationary period before being appointed and, in case that their mandate was not indefinite, the duration .

Except for 5 States or entities (**Andorra, Russian Federation, Switzerland, Ukraine** and **UK-Scotland**), public prosecutors exercise their functions until the retirement age which, akin to the situation of judges, varies from 63 to 70 years. The possibility of extending the mandate beyond the retirement age has been explicitly specified by some States or entities. In **Albania**, this decision belongs to the Prosecutor General and the consent of the concerned prosecutor is required. Likewise, in **Azerbaijan** the retirement may be postponed from the age of 60 to 65 years. In **France**, the same exceptions to the retirement at the age of 67 years old concern judges and prosecutors: an extension granted to a prosecutor in order to complete his/her career or when his/her family situation justifies such extension; an internal administrative decision of maintaining a higher number of judges in a court for the purpose of efficiency (68 years); the status of the head of the prosecution service of the Supreme court (*Procureur général de la Cour de cassation*). In **Norway**, the retirement age may be extended from 67 to 70 years, in **Italy** from 70 to 75, while in the **Russian Federation** where the retirement age is of 65 years, only one extension is possible and it cannot exceed the period of one year. In **Serbia**, a two-year extension may be granted (from 65 to 67) provided that the concerned prosecutor agreed on this measure and only in respect of the already initiated cases. Finally, in “**the former Yugoslav Republic of Macedonia**”, the retirement age for male prosecutors is of 64 years, while for female prosecutors it is of 62 years with the possibility of being protracted till the age of 64 years. The retirement age is different for male and female prosecutors also in **Albania** and **Georgia** (respectively 65 and 60).

In **Andorra**, prosecutors are appointed for a renewable period of 6 years. In the **Russian Federation**, the Prosecutor General, prosecutors of the constituent entities of the Federation, prosecutors of cities, districts and prosecutors equalled thereto are appointed for a 5 year term. The Prosecutor General may, based on the results of the regular evaluation, recommend to the Head of State to renew the mandate of a prosecutor of a federated entity, municipality or district. As regards **Switzerland**, 9 cantons reported that prosecutors are appointed for an undetermined period (most often, judges’ and prosecutors’ mandate is of 4 years, sometimes it is of 6 years and rarely of 10 years). Finally, in **Denmark** and **UK-Scotland**, there is no compulsory retirement age for prosecutors. This is also the case in **UK-England and Wales** with regard to all Civil Service employees. However, judges and prosecutors may choose to retire at any point once they have reached their retirement age (70) under the terms of their pension scheme. Likewise, in **Georgia**, the threshold of 65/60 years for male and female prosecutors is not binding, and makes them “eligible” for retirement.

As do judges, prosecutors with a high hierarchical position are often appointed for a fixed term. This is the case in **Belgium** in respect of heads of offices, in **Bulgaria, Estonia** and **Lithuania** with regard to managerial positions (5 years), in **Croatia** and **Serbia** for prosecutors (elected by the Parliament for a renewable term of respectively 4 and 6 years) as opposed to deputy prosecutors (appointed for an indeterminate duration).

The status of the Prosecutor General should be granted special attention. As highlighted by the Consultative Council of European Prosecutors, it is important that the method of selection is such as to gain the confidence and respect of the public as well as of the members of the judicial and prosecutorial system and legal profession³¹. Namely, the Prosecutor General should be appointed either for an adequately long period or permanently to ensure stability of his/her mandate and make him/her independent of political changes. For example, the Prosecutor General has a temporary mandate in **Belgium** (*Procureur du roi*), **Croatia** (elected by the Parliament for a renewable four year term), **Estonia** (appointed by the Government for 5 years), **France** (*Procureur de la République* and *Procureur général* are appointed for a term of 7 years), **Georgia** (a non-renewable 6 year term), and “**the former Yugoslav Republic of Macedonia**” (6 year term). In **UK-England and Wales**, the only senior management position which is time-bound is the Director of Public Prosecutions (a renewable 5 year contract). In **Cyprus** and **Malta**, the Prosecutor General enjoys the same guarantees as the other judges and performs his/her functions until the retirement age (respectively 68 and 65).

In some States or entities, there are also specific mandates of an undetermined period of time such as first substitutes in **Belgium**, judicial secondees in France (a renewable 5 year term), or officers of the Police

³¹ CCPE, *European norms and principles concerning prosecutors*, Opinion No. 9 (2014), *op. cit.*, § 56.