

**Table 4.14 Implementation of surveys to measure the trust in justice and the satisfaction with the services delivered by the judicial system (Q39)**

States/entities	Satisfaction surveys aimed at																																							
	Judges				court staff				public prosecutors				lawyers				the parties				other court users				victims				Other not mentioned											
	Annual	Other regular	Ad hoc	National level	Annual	Other regular	Ad hoc	National level	Annual	Other regular	Ad hoc	National level	Annual	Other regular	Ad hoc	National level	Annual	Other regular	Ad hoc	National level	Annual	Other regular	Ad hoc	National level	Annual	Other regular	Ad hoc	National level	Annual	Other regular	Ad hoc	National level	Court level							
Albania																																								
Andorra																																								
Armenia																																								
Austria																																								
Azerbaijan																																								
Belgium																																								
Bosnia and Herzegovina																																								
Bulgaria																																								
Croatia																																								
Cyprus																																								
Czech Republic																																								
Denmark																																								
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France																																								
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Lithuania																																								
Luxembourg																																								
Malta																																								
Republic of Moldova																																								
Monaco																																								
Montenegro																																								
Netherlands																																								
Norway																																								
Poland																																								
Portugal																																								
Romania																																								
Russian Federation																																								
Serbia																																								
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Spain																																								
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Switzerland																																								
The FYROMacedonia																																								
Turkey																																								
Ukraine																																								
UK-England and Wales																																								
UK-Northern Ireland																																								
UK-Scotland																																								
Israel																																								
<b>NB of Yes</b>	<b>6</b>	<b>11</b>	<b>11</b>	<b>18</b>	<b>8</b>	<b>7</b>	<b>12</b>	<b>13</b>	<b>18</b>	<b>12</b>	<b>4</b>	<b>8</b>	<b>9</b>	<b>14</b>	<b>7</b>	<b>3</b>	<b>9</b>	<b>14</b>	<b>14</b>	<b>11</b>	<b>2</b>	<b>13</b>	<b>12</b>	<b>21</b>	<b>10</b>	<b>3</b>	<b>11</b>	<b>6</b>	<b>15</b>	<b>8</b>	<b>1</b>	<b>10</b>	<b>8</b>	<b>14</b>	<b>5</b>	<b>2</b>	<b>5</b>	<b>3</b>	<b>7</b>	<b>1</b>
<b>No of No</b>	<b>41</b>	<b>36</b>	<b>36</b>	<b>29</b>	<b>39</b>	<b>40</b>	<b>35</b>	<b>34</b>	<b>29</b>	<b>35</b>	<b>43</b>	<b>39</b>	<b>38</b>	<b>33</b>	<b>40</b>	<b>44</b>	<b>38</b>	<b>33</b>	<b>33</b>	<b>36</b>	<b>45</b>	<b>36</b>	<b>35</b>	<b>26</b>	<b>37</b>	<b>44</b>	<b>36</b>	<b>41</b>	<b>32</b>	<b>39</b>	<b>46</b>	<b>37</b>	<b>39</b>	<b>33</b>	<b>42</b>	<b>45</b>	<b>42</b>	<b>44</b>	<b>40</b>	<b>46</b>
<b>Total</b>	<b>0</b>	<b>11</b>	<b>11</b>	<b>18</b>	<b>8</b>	<b>7</b>	<b>12</b>	<b>13</b>	<b>18</b>	<b>12</b>	<b>4</b>	<b>8</b>	<b>9</b>	<b>14</b>	<b>7</b>	<b>3</b>	<b>9</b>	<b>14</b>	<b>14</b>	<b>11</b>	<b>2</b>	<b>13</b>	<b>12</b>	<b>21</b>	<b>10</b>	<b>3</b>	<b>11</b>	<b>6</b>	<b>15</b>	<b>8</b>	<b>1</b>	<b>10</b>	<b>8</b>	<b>14</b>	<b>5</b>	<b>2</b>	<b>5</b>	<b>3</b>	<b>7</b>	<b>1</b>

32 States or entities have set up mechanisms to assess the perception of the court users of the service delivered by the public service of justice. In one quarter of the States and entities concerned, these systems are aimed at all the actors of the chain of justice: justice professionals, parties, victims.

In other states, they are focused on the parties (logically the most concerned by the surveys) and their representatives (lawyers) and possibly the victims (although this last category remains the least covered by such surveys). Other existing surveys are mainly aimed at court professionals.

Nonetheless, these results need to be put into perspective in light of the frequency of the surveys and their authority (surveys conducted at court or state level). Indeed, a state having completed only one occasional survey may for example be represented in the table in the same category as other states which have conducted frequent surveys, there making it possible to measure the evolution of opinions and to improve the judicial institutions' answers.

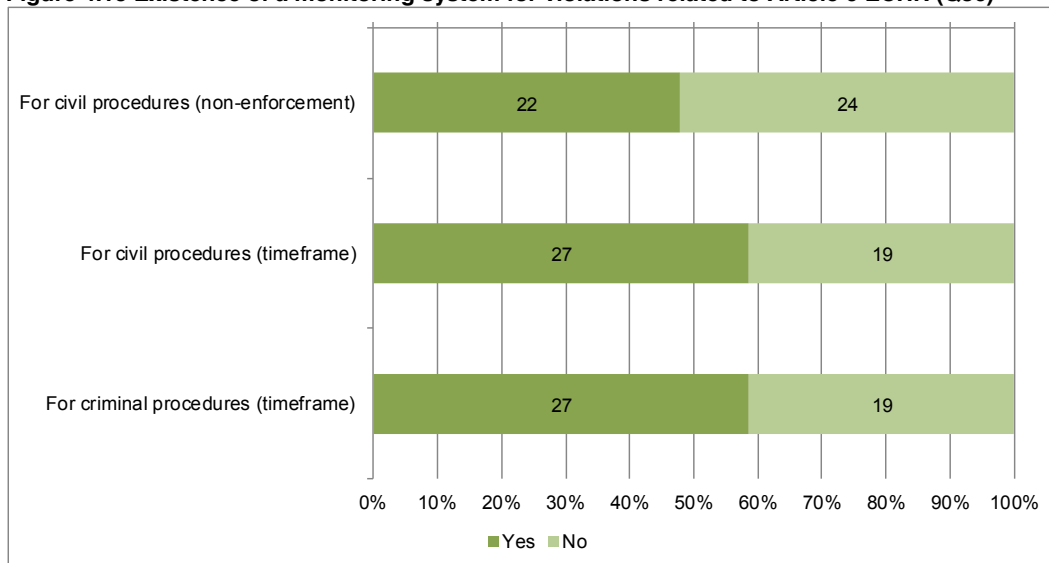
### 4.3 Monitoring of the violations of ECHR Article 6

One of the essential elements for a smooth functioning of courts is the safeguarding of the fundamental right to a fair trial within a reasonable time (ECHR Article 6). This principle must be fully taken into account when managing the workload of a court, the duration of proceedings and specific measures to reduce their length and improve their efficiency and effectiveness. The Council of Europe and its European Court of Human Rights pay specific attention to the "reasonable time" of judicial proceedings and the effective execution of judicial decisions.

On several occasions the European Court of Human Rights considered that one of the ways of guaranteeing the effectiveness and credibility of judicial systems is to ensure that a case is dealt with in a reasonable time (*H. v. France*, No. 10073/82, of 24 October 1989). More recently, the Court said that "significant and recurring delays in the administration of justice were a matter of particular concern and likely to undermine public confidence in the effectiveness of the judicial system", and that in exceptional cases, "the unjustified absence of a decision by the courts for a particularly prolonged period could in practice be regarded as a denial of justice" (*Glykantzis v. Greece*, No. 40150/09, of 30 October 2012). With regard to the right to the implementation of justice, the Court asserted that guaranteeing the "right to a court" would be "illusory if a Contracting State's domestic legal system allowed a final binding judicial decision to remain inoperative to the detriment of one party". Accordingly, the execution of a judgement given by any court "must be regarded as an integral part of the "trial" for the purposes of Article 6 [of the Convention]" (*Hornsby v. Greece*, 19 March 1997).

As part of the survey, States and entities were asked to provide information concerning cases brought before the European Court of Human Rights under Article 6, cases brought before national courts, and measures designed to promote effective court proceedings.

**Figure 4.15 Existence of a monitoring system for violations related to Article 6 ECHR (Q86)**



## Comments

**Belgium:** there is no general structural system of monitoring, but the judgements of the ECtHR are followed if Belgium is condemned because of a violation of Article 6, namely the adoption of individual measures and general measures that can stop the violation and prevent further.

**Bulgaria:** in case of violations and compensation, the responsible institutions are the Ministry of Justice and the Inspectorate to the Supreme Judicial Council (SJC). The Chief Inspector send data quarterly to the SJC concerning the violations found and to the Minister of Justice concerning the benefits paid. The SJC performs each semester an analysis of the causes of the violations and takes measures for their removal. Information on infringements established and benefits paid shall be published in the section of the competent committee to the SJC – the Committee on detection and prevention of conflict of interests and interaction with the Inspectorate by the SJC on the SJC website.

**Croatia:** the Expert Council for the execution of judgements and decisions of the ECtHR is the inter-institutional body responsible for the identification of the concrete measures of execution of such judgements and for monitoring their implementation. It is composed of representatives from all ministries, the Constitutional Court, the Supreme Court, the State Attorneys' Office, the Ombudsman Office, and other government bodies. It is chaired by the Croatian representative before the ECtHR. The main responsibilities of the Expert Council are to define the causes of the violation of the ECHR; to define the bodies responsible for taking measures aimed at fulfilling the obligation of Croatia to enforce judgements of the ECtHR; to define individual measures in order to ensure that the violation has ended and that the injured party is restored, as far as possible, to his/her situation prior to the violation of the Convention, and general measures in order to prevent further violations; to define the terms for the enforcement of judgements; to monitor the implementation of the defined measures and inform the Office of the Representative of the Republic of Croatia before the ECtHR on progress regarding the process of implementation; to review the draft action plans or reports to the Committee of Ministers prepared by the Office of the Representative according to the information on the implementation of measures received from the Expert Council.

**Denmark:** research and analysis are a core part of the Danish Institute for Human Rights' (DIHR) mandate, and a central prerequisite to effect change and promote human rights both in Denmark and abroad. The Research Department aims to ensure that DIHR remains a world-leading knowledge centre renowned for innovative and multidisciplinary research and analysis. It is one of the largest human rights research centres in Europe, serving as a hub at the intersection between human rights scholarship and practice. The research intends to provide innovative, relevant and impactful perspectives on current human rights issues, while simultaneously meeting the highest academic standards. The department also hosts the secretariat of the Association of Human Rights Institutes, the largest international network of human rights research institutions.

**Finland:** the Unit for Human Rights Courts and Conventions of the Ministry for Foreign Affairs is responsible for the development of human rights, including periodic reports and monitoring relating to the implementation of human rights conventions, the supervision of execution measures concerning human rights complaints, the provision of expertise, advice and opinions on human rights law. In addition to the taking of general measures (e.g. changes of legislation) and payment of monetary compensation dealt with by the Ministry for Foreign Affairs, a complaint can be filed under the conditions pinpointed in the Code of Judicial Procedure to the proper Court of Appeal or, if it pertains to a judgement of a Court of Appeal or the Supreme Court, to the Supreme Court.

**France:** in France, regarding the length of civil or criminal proceedings and non-execution of court decisions, it does not exist a specific monitoring system that would follow the finding of a violation of Article 6 of the ECHR apart, if appropriate, of the notification by the services of the Ministry of Justice to the jurisdiction concerned of a European judgement. However, it should be noted that each year, pursuant to an organic law, the Government submit to the Parliament a report detailing, for the previous calendar year, liability actions against the State because of an improper administration of justice, final decisions of the ECHR condemning the state as such and the payment of allowances. Similarly, under an organic law, the special rapporteurs of the finance committees of the Senate and laws of the National Assembly, responsible in a permanent way of the control of the budget execution in their area of activity, send each year questionnaires to ministers, with a view to preparing their reports on the draft budget law. On this occasion, special rapporteurs question each year the Minister of Justice on the state of the ECtHR case law concerning reasonable time and cost of the state budget of the convictions by the Court in Strasbourg. All sentences of France, broken down by item, shall be transmitter to the Finance Committee.

**Greece:** Greece has engaged in a long-term cooperation with the Committee of Ministers of the Council of Europe, leading to a more effective judicial protection scheme as it concerns a domestic compensatory remedy within the field of civil and criminal proceedings.

**Italy:** under the umbrella of the Council of Ministers a specific office is in charge of the relations with the European Court of Human Rights. In particular, this office is competent for drafting an annual report (aimed at the Italian Parliament) regarding the execution of judgements of the ECtHR. Besides, a parliamentary committee performs a cognitive investigation into the protection mechanisms of human rights in Italy.

**Malta:** though not necessarily a monitoring system implementing internal systems and remedial action when violations relating to Article 6 take place, the Civil Court as a Court of Constitutional Jurisdiction as well as the Constitutional Court consider all applications made by aggrieved persons based on violations relating to the ECHR, including Article 6, and the Court does provide some sort of monitoring by ensuring uniformity in interpretation and enforcement, when possible.

**Portugal:** in general, information related to violations of ECHR Article 6 is sent to the concerned court (where the case is or was pending) and to the corresponding High Judicial Council (HJC). In addition, if the case is still pending, information is periodically requested from the court or the HJC. In specific cases that concern the implementation of internal systems intended to prevent other violations and measure the evolution of the established violations, according to the rules established under the Interlaken Process, Portugal has put in place action plans in order to supervise the progress of those cases. Moreover, within the Public Prosecutor Office, a specialized unit is responsible for monitoring these cases together with the Ministry in charge, depending on the subject matter.

**Slovakia:** the Office of the Agent of the Slovak republic before the ECtHR submits to the government an annual report. Besides the statistical data, the report includes the list of judgements and decisions related to Slovakia. The agent

analyses the pending cases as well as the resolved cases monitored by the Committee of Ministers. The Office of the Agent translates the texts of judgements and decisions which are published in a journal issued by the Ministry of Justice.

**Slovenia:** there is no formal monitoring system in place as regards violations related to ECHR Article 6, but the data on legal proceedings can be obtained at the courts level and national level. In the Annual Report on Efficiency and Effectiveness of Courts for 2014, the Supreme Court analysed the situation from the point of view of legal remedies, as well as from other aspects, for the 2012 to 2014 period.

**Spain:** there are several monitoring mechanisms that target those areas, apart from the procedural avenues provided for in Spanish legislation for the applicants to complain in these cases. The General Council of the Judiciary keeps detailed and updated online records of the main parameters that pertain to the functioning of every judicial body, including the timeframe and the enforcement. This activity empowers the Council to adopt more efficient decisions when allocating resources, when dealing with problems related to an unexpected increase of work in certain bodies and/or an unusual decrease in others. From these data, the General Council of the Judiciary performs regularly random and planned inspections of judicial bodies, as reflected in its annual reports, which focus mainly on these potential problems. The Bars play also an active role in analysing and providing evidence of any malfunctioning of judicial bodies. All these measures result in a very small number of applications pending before the ECtHR based on violations of ECHR Article 6. Nevertheless, the Ministry of Justice maintains a webpage devoted to translating into Spanish the judgements issued by the ECtHR when Spain is the respondent State, for general knowledge of the judiciary and the public in general.

**“the former Yugoslav Republic of Macedonia”:** the law on enforcement of ECHR decisions and Law for legal representation of the country before ECHR were adopted in order to establish efficient system for enforcement of the ECHR decisions. For that purpose, the Government has created an inter-ministerial Commission for execution of the ECtHR’s judgements. The main competence of this body is to follow the execution of the judgements. This commission is directed by the Minister of justice. The Commission has the following competences: analyse the judgements of the ECHR in order to identify the main reasons for the violation; give recommendations with individual and general measures to the competent bodies for elimination of the violation identified, as well as elimination of the consequences from it; give recommendation for improving the legal framework for human rights; monitor the execution of the ECHR judgements; provide and exchange information and data in the area of the execution of the decisions of the ECHR; monitor the existing system for executions of the decisions and propose recommendations for improvement.

Only 27 states have established a monitoring system for violations related to Article 6 ECHR as regards judicial timeframes (both in criminal and civil judicial proceedings). Only 22 states have done so as regards the follow-up of the decisions of the European Court of Human Rights regarding the non-enforcement of court decisions.

**The CEPEJ invites the Member states to work further on this issue. It is essential that Member states are able to provide data on the cases related to ECHR Article 6 before the Court in Strasbourg. Such developments in the statistical systems are an essential tool for remedying the dysfunctions highlighted by the Court and preventing further violations of the Convention.**

## Chapter 5. Efficiency and quality of the activity of courts and public prosecutors

Court efficiency plays a crucial role for upholding the rule of law, by ensuring that all persons, institutions and entities, both public and private, including the state, are accountable, and by guaranteeing timely, just and fair remedies. It supports good governance and helps combatting corruption and building confidence in the institutions. An efficient court system is an essential ingredient of an environment that allows individuals to pursue their human development through the effective enjoyment of economic and social rights, and which also promotes investment and encourages business.

This chapter provides basic facts and figures on the performance of courts in 47 States or entities.

Most of the data analysed in this chapter relates primarily to courts of first instance. Information related to the other instances (courts of appeal and supreme courts) is only considered on a few occasions for the purpose of highlighting possible trends. Court performance is assessed in the context of specific sectors of justice, i.e. criminal, civil (mainly with regard to civil and commercial litigious cases), and administrative cases, as well as in relation to particular categories of cases, i.e. litigious divorces, employment dismissals, insolvency, robbery and intentional homicide.

Information has been collected regarding two general categories: “other than criminal cases” and criminal cases”, and a number of sub-categories within each of these groups.

The category of ‘other than criminal’ cases comprises: civil (and commercial) litigious cases; non-litigious cases (including general civil and commercial non-litigious cases and registry cases); administrative law cases; and other cases. There are relevant measurement difficulties related to differences between countries in the definition and categorisation of specific groups of cases. The distinctions employed in the CEPEJ evaluation make it possible to separate categories and facilitate categorisation within each system. Similarly, for the group of ‘criminal cases’, considering the different legal classifications of offences employed in each state or entity, data collection distinguishes between severe criminal cases and minor criminal offences. In this regard, the CEPEJ has chosen to rely on the “European Sourcebook of the Council of Europe”, as a common reference guide regarding the categories of criminal cases in a majority of jurisdictions. Nevertheless, the information gathered from States and entities highlights significant differences in the way specific groups of cases are computed within the categories of the CEPEJ questionnaire; there are also reported differences within one national system over time. As a consequence, the comparability of data across States and entities, and the interpretation of variations over a period of time is scrutinised in close connection with the comments provided by the States and entities on the specifics of each jurisdiction valid for both the civil and criminal sectors.

The chapter treats all analysed jurisdictions equally and does not intend to promote any particular type of justice system. Its approach, however, is inspired by the acknowledgement of the fact that the safeguarding of the fundamental principle of a fair trial within a reasonable time (ECHR Article 6) is a crucial element of the smooth functioning of courts. Accordingly, it builds on the premise that whatever the model of the national justice system or the legal tradition in which it is based, the length of proceedings, the number of pending cases, and the capacity of courts to deal with the caseload - though not exhaustive - are essential parameters of an efficient justice system.

### CEPEJ performance indicators on court efficiency

The Council of Europe and its European Court of Human Rights pay specific attention to the “reasonable time” of judicial proceedings (*H. v. France*, No. 10073/82, of 24 October 1989). The Court, in particular, has established *criteria* for assessing the reasonableness of the length of proceedings and *rules* for calculating the length of proceedings.<sup>36</sup> The first include the complexity of the case; the applicant’s conduct; the conduct of the competent authorities; the type of case, which may involve issues that are of particular concern for the applicant (e.g. labour disputes involving dismissals, or family cases concerning relations between children and parents). The second include an indication of the methods to calculate the length of proceedings. For instance, the starting point of the calculation for civil cases (generally the date on which the case was referred to the court) is different from criminal cases (the starting date may be the date on which the suspect was arrested or charged, or the date on which the preliminary investigation began). Similarly, the end period

<sup>36</sup> These issues are discussed in detail in F. Calvez and N. Regis, CEPEJ, Length of court proceedings in the member States of the Council of Europe based on the case law of the European Court of Human Rights, Strasbourg, 7 December 2012 (CEPEJ Study N°3, updated).

might refer to the date on which the final judgement is given and/or may take into consideration, in some cases, the length of the enforcement procedure (*Hornsby v. Greece*, 19 March 1997). These elements offer a useful benchmark against which State performance in relation to court efficiency (in particular length of proceedings) can be assessed.

In addition to and as a specification of these, the CEPEJ has developed two performance indicators to assess court efficiency at the European level<sup>37</sup>. The first indicator is the *Clearance Rate*, which measures how effectively courts within a State or entity are keeping up with the incoming caseload. The second indicator is the calculated *Disposition Time*, which measures the estimated number of days that are needed to bring a case to an end. The two indicators can be studied together to achieve an initial general picture of the efficiency of courts in a certain country; analysis of their evolution over time allows a better understanding of the efforts of the judiciary to maintain or improve efficiency.

### **Clearance Rate (CR)**

The Clearance Rate is a simple ratio, obtained by dividing the number of resolved cases with the number of incoming cases, expressed as a percentage:

$$\text{Clearance Rate (\%)} = \frac{\text{Resolved cases in a period}}{\text{Incoming cases in a period}} \times 100$$

A Clearance Rate close to 100 % indicates the ability of the court or of a judicial system to resolve approximately as many cases as the number of incoming cases within the given time period. A Clearance Rate above 100 % indicates the ability of the system to resolve more cases than those received, thus reducing any existing backlog (pending cases). Finally, a Clearance Rate below 100 % appears when the number of incoming cases is higher than the number of resolved cases. In this case the total number of pending cases (backlog) will increase.

Essentially, the Clearance Rate shows how the court or judicial system is coping with the in-flow of cases. It allows comparisons even when the parameters of the cases concerned in different countries are not identical in every respect.

### **Disposition Time (DT)**

Alongside the Clearance Rate, the calculated Disposition Time provides further insight into how long it takes for a type of case in a specific jurisdiction to be solved. The indicator compares the total number of pending cases at the end of the observed period with the number of resolved cases during the same period and converts this ratio into a number of days. This indicator measures the theoretical time necessary for a pending case to be solved in court in the light of the current pace of work of the courts in that country.

Disposition Time is obtained by dividing the number of pending cases at the end of the observed period by the number of resolved cases within the same period multiplied by 365 (days in a year):

$$\text{Calculated Disposition Time} = \frac{\text{Number of pending cases at the end of a period}}{\text{Number of resolved cases in a period}} \times 365$$

The conversion into days simplifies the understanding of the relation between pending and resolved cases within a period. The calculated DT would show, for example, that the time necessary for solving a pending case has increased from 120 days to 150 days. This allows comparisons within the same jurisdiction over time and, with some prudence, between judicial systems in different countries. It is also relevant for assessing court efficiency in this regard in the light of established standards for the length of proceedings.

However, it needs to be mentioned that this indicator is not an estimate of the average time needed to process a case but a theoretical average of the duration of a case within a specific system. For example, if the ratio indicates that two cases will be processed within 90 days, one case might be solved on the 10<sup>th</sup> day and the second on the 90<sup>th</sup> day. The indicator fails to show the mix, concentration, or merit of the cases. Case level data of actual duration of cases from functional ICT systems is needed in order to review these details and make a full analysis. In the meantime, this formula may offer valuable information on the estimated maximum length of proceedings.

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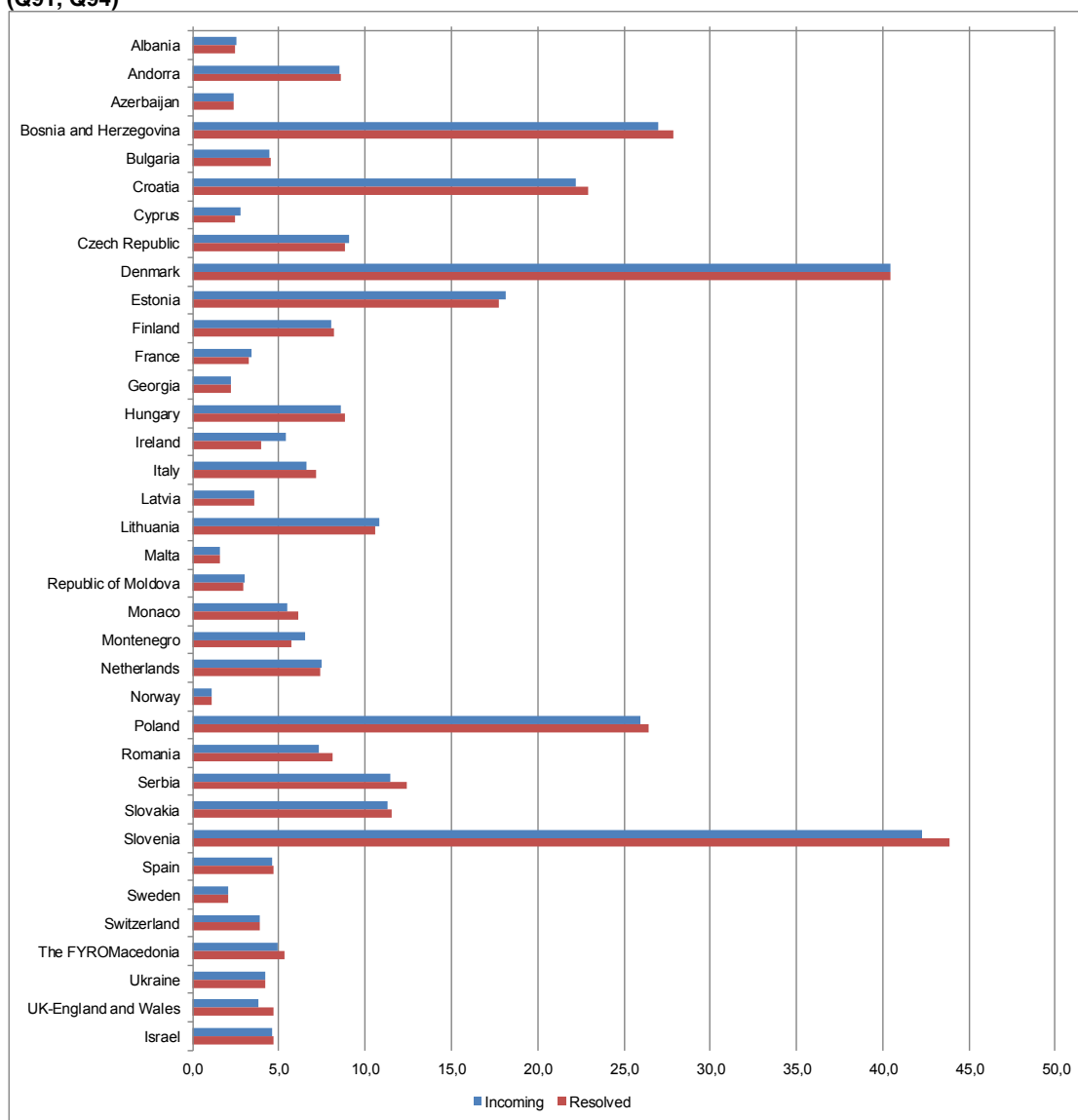
<sup>37</sup> The GOJUST Guidelines invite the CoE member States to organise their data collection system so as to be able to provide the relevant information for calculating such indicators. CEPEJ(2008)11.

## 5.1 General overview of court workload

In the 2014 evaluation, 47 States or entities provided information on criminal cases (distributed by severe criminal offences and misdemeanour offences) and other than criminal cases (distributed by civil and commercial litigious, non-litigious, administrative and other cases). For each of these categories, the number of pending cases at the beginning of the year (1<sup>st</sup> January 2014), the number of incoming cases, the number of resolved cases and the number of pending cases at the end of the year (31<sup>st</sup> December 2014) was recorded. This makes it possible to assess State performance in the light of the CEPEJ indicators on court efficiency (Clearance Rate and Disposition Time).

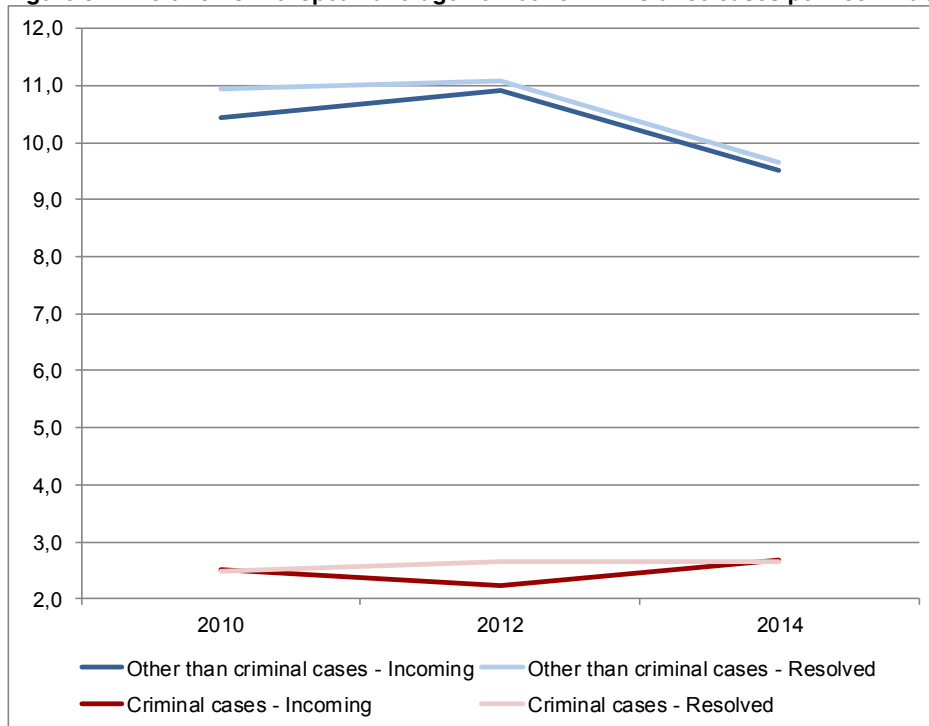
The figure below shows the difference between incoming and resolved first instance cases within the category of 'other than criminal' in 2014. Data from 11 States or entities (**Armenia, Austria, Belgium, Germany, Greece, Luxembourg, Portugal, the Russian Federation, Turkey, UK-Northern Ireland, and UK-Scotland**) was not available. On average, first instance courts received and were able to resolve 9,5 cases per 100 inhabitants. However, figures regarding court workload in specific countries vary considerably and range from more than 40 cases in **Denmark** and **Slovenia** to less than 2 cases in **Norway** and **Malta**. Further significant differences can be noted when analysing the data on specific sub-categories of 'other than criminal cases', such as civil and commercial litigious cases and administrative law cases. These are assessed and discussed in detail in the following sections.

**Figure 5.1** Number of 1st instance incoming and resolved 'other than criminal cases' per 100 inhabitants in 2014 (Q91, Q94)



The figure below depicts the overall evolution of the average number of first instance incoming and resolved cases between 2010 and 2014, distinguishing between criminal cases and 'other than criminal' cases.

**Figure 5.2 Evolution of European average number of 1<sup>st</sup> instance cases per 100 inhabitants (Q91, Q94)**



When considering comprehensively all the cases handled, it may be noted that in 2014, first instance courts were generally able to resolve a slightly higher number of cases than those received. On average, courts received 9,5 'other than criminal' cases and 2,7 criminal cases per 100 inhabitants. In 2014, criminal cases represented on average 26 % of the total volume of incoming cases, civil and commercial litigious cases 32 %, administrative cases 5 % and non-litigious 36 % and other cases 11%.

The figure shows an overall positive trend of the ability of European courts to cope with incoming cases in the long term. In relation to 'other than criminal cases' this has been a continuous development since the 2010 measurement, while with regard to criminal cases, a positive trend can only be observed since 2012. These trends are particularly significant when considering that there has been a relevant general increase of incoming cases, compared to the previous report (2012 data), in particular, in the criminal sector (42 %), in relation to litigious civil and commercial cases (7 %) and in the administrative sector (12 %). However, the number of non-litigious cases and of cases in the 'other' category has decreased and this explains the decline by 2 % of the total volume of incoming 'other than criminal cases'.

Figures on the number of incoming and resolved cases per 100 inhabitants offer a clear picture of the workload and productivity of the different European judicial systems in general. However, the ability of courts to cope with the caseload is closely related to the number of judges operating in the court system. Additional insight into the functioning of the different judicial systems over Europe could be obtained by calculating and comparing the number of incoming and resolved cases per judge of first instance. Yet, this ratio may not be always representative of how a specific judicial system works in practice, by reason of very relevant differences between countries with regard to the staff exercising judicial and quasi-judicial functions – i.e. professional judges, non-professional judges and *Rechtspfleger*. In many systems, occasional professional judges (e.g. deputy judges in the first instance courts in **Norway**) and non-professional judges (i.e. lay judges such as the **(French) juges consulaires**) sit in courts alongside professional judges; additionally, the so called *Rechtspfleger*<sup>38</sup> perform important judicial and quasi-judicial tasks related to land and commercial registers or mediation (e.g. **Austria, Slovenia, Switzerland**). In **Spain**, '*letrados de la administración de justicia*' perform judicial and quasi-jurisdictional tasks in all the judicial proceedings dealt with by the courts,

<sup>38</sup> The *Rechtspfleger* is defined as an independent judicial authority according to the tasks that were delegated to him/her by law. Such tasks can be connected to: family and guardianship law, law of succession, law on land register, commercial registers, decisions about granting a nationality, criminal law cases, enforcement of sentences, reduced sentencing by way of community service, prosecution in district courts, decisions concerning legal aid, etc. The *Rechtspfleger* has a quasi-judicial function. See Chapter 3.



including mediation. Indeed, taking into consideration the work of professional judges alone – in relation to which sufficient data has been collected through the CEPEJ questionnaire – would show a partial picture of the performance of the court system in some States or entities and would distort the analysis for comparative purposes. The CEPEJ questionnaire takes into account such differences, but the quality of the information obtained with regard to the number of non-professional judges and *Rechtspfleger* is not sufficient for drawing comparisons between States or entities. Moreover, there may be differences in the way the authorities define ‘professional judges’ or in the methodology of presentation of data in the course of the different evaluation cycles, and consequently in the reported figures. In **Denmark**, for instance, both ‘legal assessors’ and ‘deputy judges’ perform judicial functions but they have been computed in different categories during the last three evaluation cycles. While Danish ‘deputy judges’ are subsumed in the category of *Rechtspfleger*, in **Norway** deputy judges in the first instance courts are judges by definition, temporarily appointed for a period of maximum 3 years, but nevertheless are not included in the reported number of professional judges. In **Italy**, the administrative courts are not taken into consideration in computing the number of professional judges, and in **Albania**, the total number of judges reported in 2012 encompassed trainee judges.

These are relevant differences and are considered more in depth in the chapter dedicated to judicial staff. As already noted, for the purposes of this part of the report, concerning court efficiency, a simple analysis that does not take into account the peculiarities of the different systems might lead to unjustified conclusions. However, in the future, this phenomenon could be analysed through specialised reports on efficiency, addressing in detail, separately for each State or entity, the data on all personnel performing judicial tasks. This would allow a deeper analysis of the factors having an impact on court efficiency and would enable those jurisdictions where the courts have difficulties to manage case-flows to make informed decisions when reviewing the organisation of the judiciary with a view to balancing the judicial management of the various case categories. Several factors could be involved, including the reallocation of financial and human resources among different legal areas and among the courts to balance the case-flow management according to the volume and the categories of cases, or the diversification of judicial procedures (ADR, simplified or negotiated procedures).

## **5.2 Civil and commercial justice (litigious cases)**

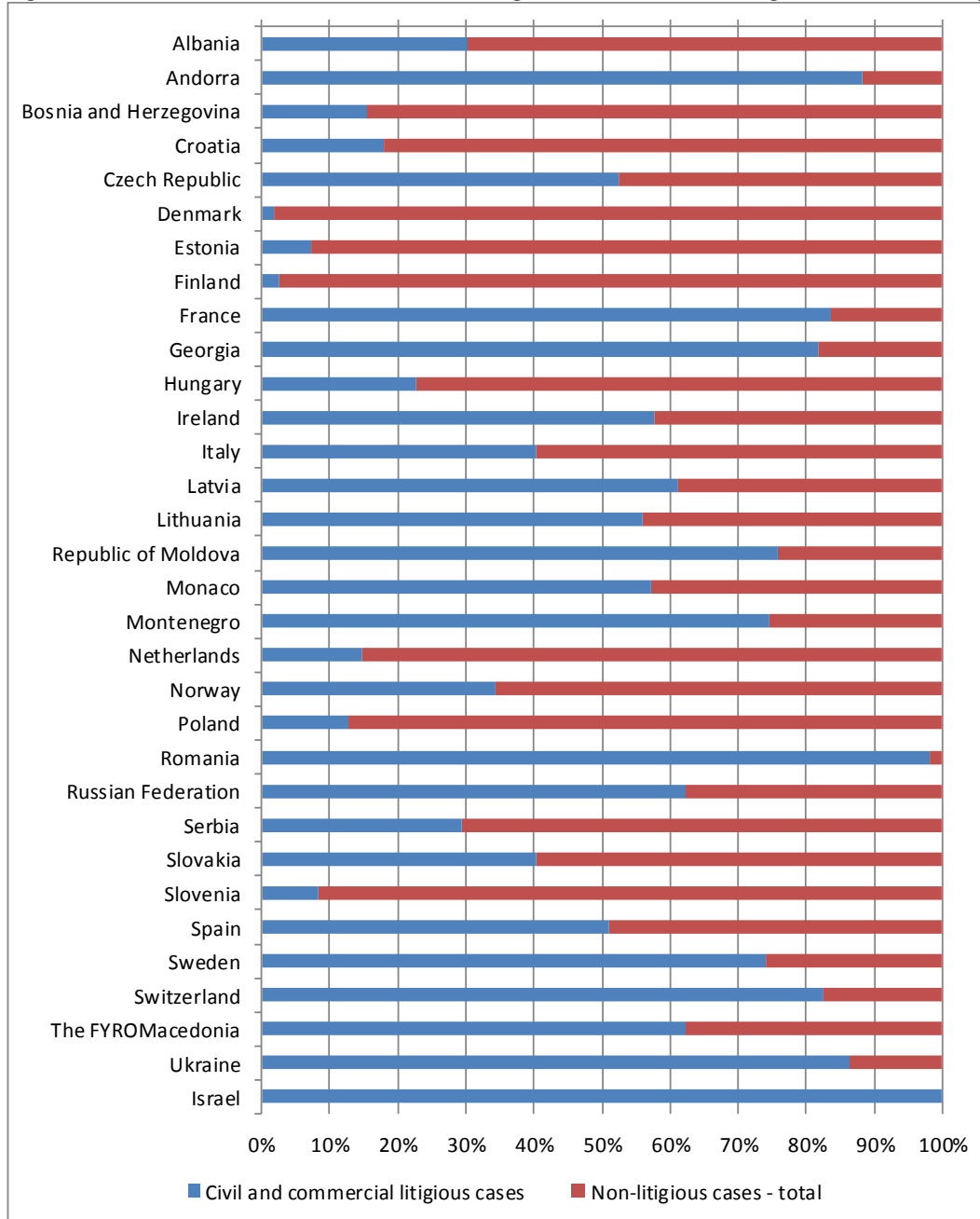
This section analyses predominantly data regarding civil and commercial litigious cases. Although this category of cases represents on average less than one third of the total of ‘other than criminal’ cases, there are two main reasons for a more detailed examination of court workload and efficiency regarding these cases. First, the complementary category of non-litigious cases presents considerable differences among the states. In some jurisdictions, land register cases and business register cases (which involve mainly a formal verification, within a short timeframe, before a registration and the delivery of an attestation), constitute a major part of the measured court activity regarding non-litigious cases, while in others, these tasks are dealt with by other authorities and therefore are not included in the measurement. This affects the scientific significance of the conclusions that can be drawn from the evaluation of the data collected and the extent to which they can be compared. It is therefore preferable to focus the analysis on civil and commercial litigious cases. Secondly, the workload which is directly assigned to judges solving litigious cases is much higher and therefore reflects more closely the actual workload of courts, both quantitative and qualitative.

### **5.2.1 Civil and commercial justice (litigious cases) – 2014 data**

#### ***Court caseload in the civil sector (mainly civil and commercial litigious cases)***

The figure below provides information on 31 States or entities for which data on civil and commercial litigious cases and non-litigious cases (comprising general civil and commercial non-litigious cases, registry cases and other non-litigious cases) was available. It allows a better understanding of the structure of the court activity per state or entity.

**Figure 5.3 Ratio between civil and commercial litigious and total of non-litigious cases in 2014 (Q91)**

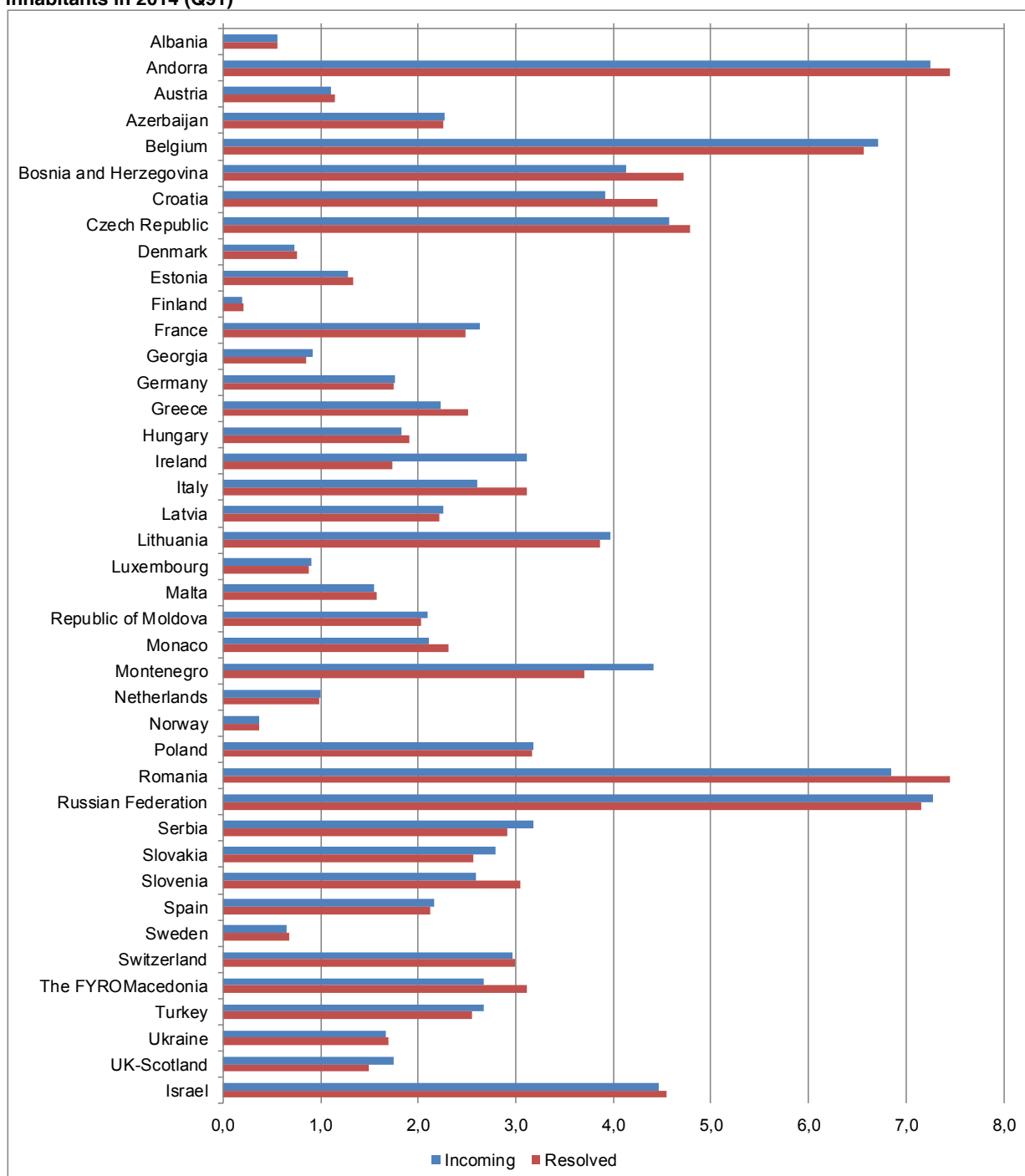


The comparison between the volume of first instance incoming civil and commercial litigious cases and the total of non-litigious cases across States or entities shows that court workload is heavily affected by non-litigious cases in some States or entities, whilst in other States or entities litigious cases constitute the main activity of the courts of first instance. Of the States and entities (31) that provided data distinguishing between civil and commercial litigious cases and non-litigious cases in 2014, a majority (65 %) received more litigious than non-litigious cases. In particular, courts in **Andorra, France, Georgia, Romania, Switzerland** and **Ukraine** received four to seven times more civil and commercial litigious cases than non-litigious cases.

As regards the number of incoming non-litigious cases per 100 inhabitants, there are significant differences between States or entities (from 0,1 case per 100 inhabitants in **Romania** to 37,4 cases in **Denmark**). These can be explained by differences in the respective statistics systems and/or legal categorisations. Examples include the absence of an overall distinction in statistics between litigious and non-litigious proceedings (e.g. **Bulgaria, Cyprus**); the presence or absence within courts of land and business registers (e.g. **Croatia, Denmark, Finland, Estonia**); the impossibility to make a distinction between litigious and non-litigious cases

for incoming or pending cases but only for the resolved cases (e.g. **Netherlands**); or the different allocation of specific groups of cases between the two main categories (e.g. **Poland**).

**Figure 5.4 Number of 1st instance incoming and resolved, civil and commercial litigious cases per 100 inhabitants in 2014 (Q91)**



According to the figure above, in the systems assessed in 2014, the courts of first instance received on average 2,7 civil litigious cases per 100 inhabitants and managed to resolve the same amount of cases during the year. Nevertheless, at the state or entity level, key differences can be highlighted. Courts in 4 states (**Andorra, Belgium, Romania and Russian Federation**) handled more than five civil and commercial litigious cases per 100 inhabitants, while in 7 other states (**Albania, Denmark, Finland, Georgia, Luxembourg, Norway, Sweden**) courts received and solved less than one case per 100 inhabitants. These figures mostly confirm the data from the previous evaluation, showing that individuals in the countries of Northern Europe, and also **Albania and Georgia**, make a less frequent use of the court system to solve disputes. While this is not a sociological analysis of the different justice systems, such information might

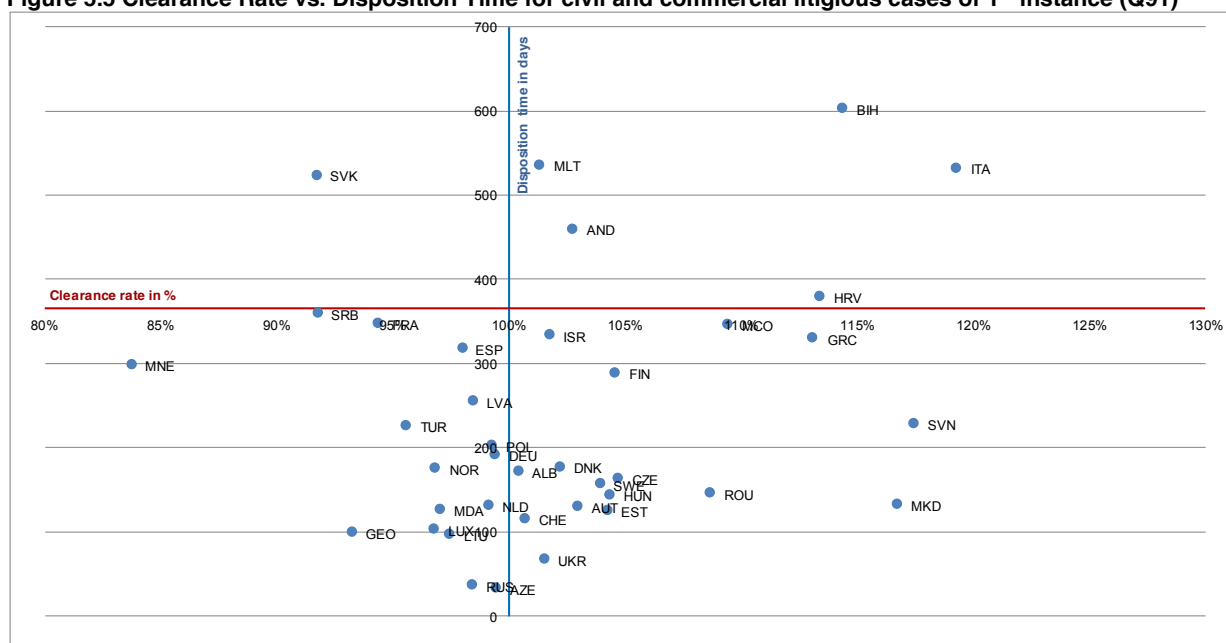
provide a useful hypothesis for in-depth research of the reasons behind these figures. Some of the comments set out in the country reports already highlight possible explanations, including: the availability of alternative mechanisms for dispute resolution which have a filter effect on the number of cases handled by courts (e.g. **Norway**); a system of computing cases that allows courts to modify and update data at any time (e.g. **Estonia, Sweden**); multiple reference numbers for the same case during the process (e.g. **Greece**); reduced access to legal aid (e.g. **Slovenia**); implementation of court fees or changes in the administration of cases by courts (e.g. **UK England and Wales**).

It would also be useful to carry out comparative research on the typology and classification of civil and commercial cases among these states, in order to identify common subcategories. This would lead to a better understanding of the judicial systems, would provide additional insight into the results of the evaluation and would improve comparisons between the states.

### **Performance indicators regarding civil and commercial litigious cases**

The Clearance Rate and the Disposition Time can be studied together to address simultaneously the possible evolution of the backlogs and the time necessary to process pending cases. For 6 States or entities (**Armenia, Bulgaria, Cyprus, Portugal, UK-England and Wales and UK-Northern Ireland**) it has not been possible to calculate both the Clearance Rate and the Disposition Time for civil and commercial litigious cases. For three other States or entities (**Belgium, Ireland and UK-Scotland**), it has only been possible to measure the Clearance Rate but not the Disposition Time. While the Clearance Rate is somewhat below 100% in all three cases, figures regarding **UK-Scotland** (85 %) and **Ireland** (56 %) are particularly low. The explanation for the low Clearance Rate in **Ireland** lies in the procedural requirements relating to civil proceedings. Unless a case has been listed in the court's calendar for the purposes of trial or the fixing of a trial date, parties to civil proceedings in **Ireland** are not generally required to notify either that a case has been settled or that a case is not being pursued further. Consequently, the Clearance Rate emerging from the data provided understates significantly the actual case Clearance Rate because a substantial number of completed cases are not recorded as such.

**Figure 5.5 Clearance Rate vs. Disposition Time for civil and commercial litigious cases of 1<sup>st</sup> instance (Q91)**



In the lower right quadrant of the figure above, court productivity can be considered as satisfactory in 12 States or entities. Indeed, both the Clearance Rate and the Disposition Time (below the average of 237 days) are positive for civil and commercial litigious cases in **Albania, Austria, Czech Republic, Denmark, Estonia, Hungary, Romania, Slovenia, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia” and Ukraine**. The majority of these States confirm the positive results of the last evaluation, including **Albania** where the Clearance Rate has constantly increased since the 2010 measurement and has reached 100 % from 2014.

In 20 other States or entities the situation seems manageable. In **Finland, Greece, Monaco, and Israel** the Disposition Time is above the average (237 days, yet below 365 days) but this is balanced by a positive Clearance Rate (above 100 %). Instead, in **Azerbaijan, Georgia, Germany, Lithuania, Luxembourg,**

**Republic of Moldova, Netherlands, Norway, Poland, Russian Federation** and **Turkey**, the Clearance Rate is slightly lower than 100 % but the Disposition Time can be considered satisfactory. However, further analysis may be necessary to understand the reasons behind some particularly low figures of the Disposition Time (e.g. slightly more than one month in **Azerbaijan** and in the **Russian Federation**) and their impact on the quality of court services in practice. The situation should be more seriously monitored in **France, Latvia, Montenegro, Serbia** and **Spain** where the Clearance Rate is close to 100 % (slightly higher or lower) but the Disposition Time is higher than the average.

The situation is much more critical in those States or entities which have a particularly low Clearance Rate or a very high Disposition Time, or both: they have difficulties in coping with the volume of incoming cases. Backlogs and lengths of proceedings are likely to get worse in the future if no specific measures are taken. This is notably the case of **Andorra** (Disposition Time: 460 days), **Bosnia and Herzegovina** (Disposition Time: 603 days), **Italy** (Disposition Time: 532 days), **Malta** (Disposition Time: 536 days), **Slovakia** (Disposition Time: 524 days; Clearance Rate: 92 %) and less so of **Croatia** (Disposition Time: 380 days; Clearance Rate: 113 %). Measures for strengthening the courts' productivity are already in place in some of these cases.

### **5.2.2 Civil and commercial litigious cases – 2010 / 2014 evolution**

#### ***Evolution of the performance indicators for litigious civil and commercial litigious cases***

The table below presents the evolution of the Clearance Rate for civil and commercial litigious cases between 2010 and 2014. The results of the analysis must be considered cautiously, as the consistency of some data might change within the period observed, which can influence the variations over time.

**Table 5.6 Evolution of the Clearance Rate of civil and commercial litigious cases between 2010 and 2014 (Q91)**

States/entities	Clearance Rate of 1st instance civil and commercial litigious cases			
	2010	2012	2014	Trend
Albania	93%	97%	100%	
Andorra	99%	95%	103%	
Armenia	101%	103%	NQ	
Austria	100%	101%	103%	
Azerbaijan	98%	100%	99%	
Belgium	NA	NA	98%	
Bosnia and Herzegovina	94%	116%	114%	
Bulgaria	NA	NA	NA	
Croatia	102%	95%	113%	
Cyprus	84%	NA	NA	
Czech Republic	103%	99%	105%	
Denmark	102%	109%	102%	
Estonia	98%	112%	104%	
Finland	93%	103%	105%	
France	98%	99%	94%	
Georgia	96%	102%	93%	
Germany	102%	100%	99%	
Greece	79%	58%	113%	
Hungary	102%	105%	104%	
Ireland	NA	NA	56%	
Italy	118%	131%	119%	
Latvia	86%	118%	98%	
Lithuania	102%	101%	97%	
Luxembourg	139%	173%	97%	
Malta	89%	114%	101%	
Republic of Moldova	95%	100%	97%	
Monaco	76%	117%	109%	
Montenegro	92%	102%	84%	
Netherlands	NA	NA	99%	
Norway	101%	100%	97%	
Poland	95%	89%	99%	
Portugal	102%	98%	NA	
Romania	90%	99%	109%	
Russian Federation	100%	99%	98%	
Serbia	92%	116%	92%	
Slovakia	98%	82%	92%	
Slovenia	99%	101%	117%	
Spain	94%	100%	98%	
Sweden	98%	99%	104%	
Switzerland	100%	100%	101%	
The FYROMacedonia	95%	131%	117%	
Turkey	NA	115%	96%	
Ukraine	104%	106%	102%	
UK-England and Wales	NA	NA	NA	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	85%	85%	
Israel		101%	102%	
<b>Average</b>	98%	104%	100%	
<b>Median</b>	98%	101%	100%	
<b>Minimum</b>	76%	58%	56%	
<b>Maximum</b>	139%	173%	119%	

Data collected for the last three evaluations, 2010, 2012 and 2014, shows a discontinued trend in the improvement of the Clearance Rate of civil and commercial litigious cases at first instance. On average, there has been a first a general improvement of the indicator and then an inversion of the trend. The average Clearance Rate has decreased from 104 % to 100 % between 2012 and 2014. However, important differences can be highlighted between the States or entities assessed.

7 states (**Albania, Austria, Finland, Romania, Slovenia, Sweden and Switzerland**) have experienced a regular improvement of the Clearance Rate with regard to civil and commercial litigious cases at first instance. On the contrary, a constant decrease of the Clearance Rate can be noted in **Germany, Lithuania, Norway** and the **Russian Federation**, but in all four cases the Clearance Rate has remained close to 100 %. In the case of **Lithuania** the negative trend should be interpreted in the light of the 2013 judicial reform that involved the closing of eight district courts, while as regards **Norway**, possible inconsistencies in the data have been reported on the basis that according to the procedural law in this country, cases might be divided or united after being registered with the court.

In the period between the last two evaluations (2012-2014) **Montenegro** and **Turkey** recorded a particularly sharp decrease of the Clearance Rate of civil and commercial litigious cases. The trend must be followed with attention, as the performance of the relevant judicial bodies could be at risk in the future, should this development be confirmed. The situation in **Ireland** and **UK-Scotland** should also be monitored closely to understand the actual reasons behind low Clearance Rate levels or behind the negative trends over the long term. Indeed, low Clearance Rate figures may not be directly related to the efficiency of the court system as such, but may rather be the result of other factors, such as the absence of procedural rules requiring the parties to notify the court when a case has been settled or is not being pursued further (e.g. **Ireland**) or the inconsistency of data due to the introduction of new categories of statistics during the different monitoring cycles (e.g. **Montenegro**).

Major improvements in the Clearance Rate can be observed in particular in **Italy, Greece, Monaco** and “**the former Yugoslav Republic of Macedonia**”. In the case of **Italy**, these can be explained by a number of factors that go beyond court efficiency, including a different methodology of classification of civil cases introduced in 2012, the introduction of court taxes that litigants are required to pay to initiate particular types of proceedings, the reduction of incoming civil and commercial cases in general and the filter effect on the litigious incoming files produced by the constantly increasing number of cases resolved through the use of alternative dispute resolution (“ADR”). The positive developments recorded in the period 2010-2014 are therefore partly the result of a decrease in the number of incoming cases rather than exclusively related to an increased number of solved cases. The situation should continue to be monitored in the future, following the major geographic reorganisation of the **Italian** judicial system in the second half of 2013 and the beginning of 2014 which resulted in the closing of almost 1000 courts. As regards “**the former Yugoslav Republic of Macedonia**”, the new methodology of presentation of data and the use of new software in the 2014 evaluation might have resulted in considerable variations in the numbers of cases compared to previous assessments.

**Table 5.7 Evolution of the Disposition Time of civil and commercial litigious cases between 2010 and 2014 (Q91)**

States/entities	Disposition time of 1st instance civil and commercial litigious cases			
	2010	2012	2014	Trend
Albania	173	192	171	
Andorra	189	264	460	
Armenia	163	168	NQ	
Austria	129	135	130	
Azerbaijan	43	52	33	
Belgium	NA	NA	NA	
Bosnia and Herzegovina	826	656	603	
Bulgaria	NA	NA	NA	
Croatia	462	457	380	
Cyprus	513	NA	NA	
Czech Republic	128	174	163	
Denmark	182	165	177	
Estonia	215	167	125	
Finland	259	325	289	
France	279	311	348	
Georgia	94	62	100	
Germany	184	183	192	
Greece	190	469	330	
Hungary	160	97	144	
Ireland	NA	NA	NA	
Italy	493	590	532	
Latvia	315	241	255	
Lithuania	55	88	97	
Luxembourg	200	73	103	
Malta	849	685	536	
Republic of Moldova	110	106	127	
Monaco	743	433	347	
Montenegro	271	254	298	
Netherlands	NA	NA	132	
Norway	158	160	176	
Poland	180	195	203	
Portugal	417	369	NA	
Romania	217	193	146	
Russian Federation	13	40	37	
Serbia	316	242	359	
Slovakia	364	437	524	
Slovenia	315	318	228	
Spain	289	264	318	
Sweden	187	179	157	
Switzerland	132	127	116	
The FYROMacedonia	259	175	132	
Turkey	NA	134	227	
Ukraine	52	70	68	
UK-England and Wales	NA	NA	NA	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel	..	340	334	
<b>Average</b>	266	243	237	
<b>Median</b>	195	188	177	
<b>Minimum</b>	13	40	33	
<b>Maximum</b>	849	685	603	



The average Disposition Time of civil and commercial litigious cases has slowly declined over time.

A steady improvement of the Disposition Time has been recorded in **Bosnia and Herzegovina, Croatia, Estonia, Malta, Monaco, Romania, Sweden, Switzerland** and “**the former Yugoslav Republic of Macedonia**”. Of particular note, among these, the Disposition Time has sharply decreased in those jurisdictions, such as **Bosnia and Herzegovina, Croatia, Malta and Monaco**, that had - and still have - a particularly high Disposition Time (more than one year). The regular reduction of the Disposition Time of civil and commercial litigious cases in **Bosnia and Herzegovina** (from 826 days in 2010, to 656 days in 2012, to 603 days in 2014) is related to the implementation of domestic measures aimed at improving court efficiency. A backlog reduction initiative has been operating since 2009, which is aimed at addressing the sharp rise of the number of pending cases related to a particularly low Clearance Rate in 2008. Similarly, in **Croatia** the reorganisation of the distribution of workload between judges and court advisors resulted in an increase in the number of resolved cases. This has had a positive impact on the calculated Disposition Time, notwithstanding the increase in the number of incoming civil and commercial litigious cases between 2010 and 2014 mostly due to the difficult economic situation in Croatia. Instead, in the case of **Monaco**, the improvement of the Disposition Time in the period between the last two evaluation cycles (2012 and 2014) can be partly explained by the closure of a significant number of long-standing but rather simple commercial cases.

In 7 States or entities, however, a continuous worsening of the calculated Disposition Time over the three evaluation cycles can be observed. The situation in **Germany, Lithuania, Norway and Poland** can be considered acceptable because the Disposition Time has remained below 200 days. **Andorra, Slovakia** and (slightly less so) **France** show a worrying trend, as they have a very high Disposition Time for civil and commercial litigious cases. With regard to **Slovakia**, the increase of the number of incoming cases and the methodology for collecting statistical data by the Ministry of Justice could partly explain the (negative) effect on the calculated Disposition Time. Instead, no explanation has been provided in the case of **Andorra**. Differences in the number of incoming cases cannot fully explain the situation but the figures might not be indicative considering the low (absolute) number of cases concerned. Between 2010 and 2012 incoming civil and commercial litigious cases in **Andorra** decreased by 3 % and pending cases increased by 30 %, while between 2012 and 2014 incoming cases increased by 27 % and pending cases by 140 %, despite a positive Clearance Rate.

The situation should be closely monitored in 4 other states: **Greece, Italy, Serbia and Turkey**. The first two States have recorded a strong increase in the Disposition Time of civil and commercial litigious cases of first instance between 2010 and 2012 and a reduction thereof between 2012 and 2014. As already noted, both states have enacted reforms to improve performance and to enhance the quality of the statistical information. By contrast, **Turkey and Serbia** have recorded a deterioration of the Disposition Time between 2012 and 2014, following a noticeable improvement in the previous period (no data was provided for **Turkey** for 2010). With regard to **Serbia** the trend inversion should be considered in the light of a legislative reform that changed the way of presenting solved and unsolved cases in statistical reports and resulted in the decrease of the number of solved cases.

The variation of the figures on the Disposition Time reported above should also be considered (and can partly be explained) in the light of the changing volume of pending cases in the course of the last three evaluations. The Table below presents the evolution of the volume of 1st instance civil and commercial litigious cases pending on 31 December between 2010 and 2014. On a methodological note, it should be highlighted that a relevant number of States have reported discrepancies and some horizontal incoherence in the data provided, due to several factors, including procedural rules that allow cases to be joined and disjoined during the proceedings (e.g. **Estonia and Norway**) or to re-open cases without counting these as such (e.g. **Denmark**); the different moments in time in which information about incoming, resolved and pending cases is retrieved (e.g. **Netherlands**); or omissions in statistical information generated by courts as well as structural changes within the court system (e.g. **Poland**).

**Table 5.8 Evolution of first instance litigious civil and commercial pending cases between 2010 and 2014 (Q91)**

States/entities	Number of 1st instance civil and commercial litigious pending cases 31 Dec			Trend
	2010	2012	2014	
Albania	8219	9741	7520	
Andorra	2323	3015	7222	
Armenia	12114	11644	NQ	
Austria	39762	38918	35068	
Azerbaijan	11465	15038	19225	
Belgium	NA	NA	NA	
Bosnia and Herzegovina	332800	299466	298704	
Bulgaria	NA	NA	NA	
Croatia	189055	217582	195718	
Cyprus	31244	NA	NA	
Czech Republic	165991	171113	225579	
Denmark	32292	22804	20705	
Estonia	12425	8393	5991	
Finland	7164	9496	8834	
France	1347826	1428811	1571438	
Georgia	4764	4181	8750	
Germany	798702	792594	744510	
Greece	187360	478241	246839	
Hungary	89626	120187	74290	
Ireland	NA	NA	NA	
Italy	3828612	3308692	2758091	
Latvia	38271	34227	31084	
Lithuania	31056	26005	30149	
Luxembourg	1595	1635	1382	
Malta	10295	8882	9885	
Republic of Moldova	20809	23865	25143	
Monaco	1605	934	827	
Montenegro	13760	14503	18750	
Netherlands	NA	NA	60160	
Norway	7846	7937	9049	
Poland	385035	505040	676875	
Portugal	366135	364305	NA	
Romania	571950	578043	661619	
Russian Federation	472649	712285	1063531	
Serbia	189859	178229	204297	
Slovakia	122916	157862	199203	
Slovenia	56863	55486	39220	
Spain	1438719	1270383	857047	
Sweden	31872	31684	28516	
Switzerland	61475	79405	78315	
The FYROMacedonia	37755	21646	23388	
Turkey	NA	681156	1231397	
Ukraine	248391	168899	134478	
UK-England and Wales	NA	NA	NA	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel		337154	344349	
<b>Average</b>	295016	312167	313859	
<b>Median</b>	39017	47202	39220	
<b>Minimum</b>	1595	934	827	
<b>Maximum</b>	3828612	3308692	2758091	

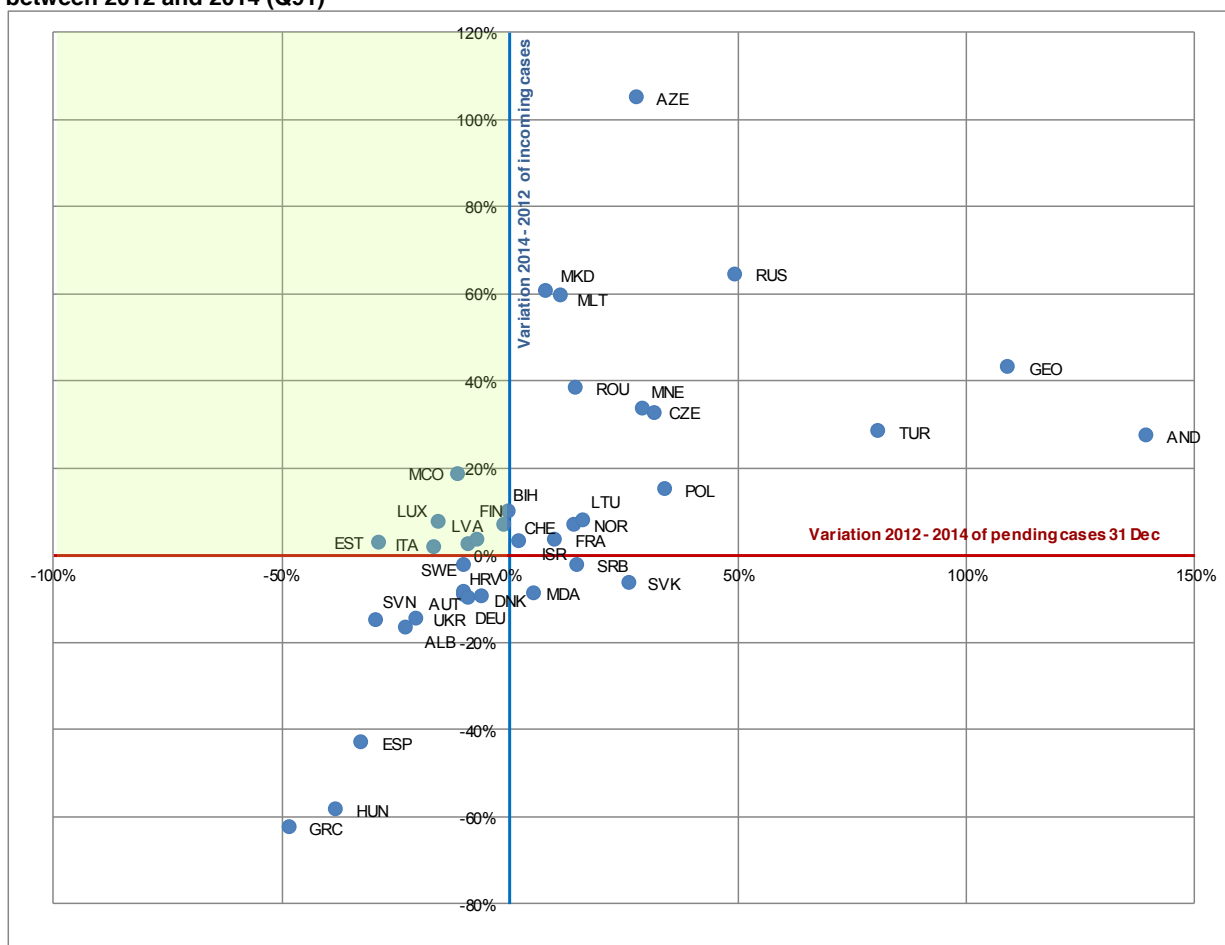
Data collected from the 2010, 2012 and 2014 evaluations shows, on average, an increase in the number of pending cases, by 6 % in 2010-2012 and by 8 % in 2012-2014. Data on 7 States or entities was not available - **Belgium, Bulgaria, Ireland, UK-England and Wales, UK-Scotland, and UK-Northern Ireland**. The data available for **Armenia, Cyprus, Netherlands, Portugal, Turkey and Israel** only cover one or two evaluation cycles. In the last evaluation, almost half of the States or entities (18) for which data was provided reduced the volume of pending cases while the rest (19) registered an increase compared to the 2012 data. There are, however, important differences between jurisdictions and relevant variations within the same jurisdiction throughout the three monitoring cycles.

A particularly positive performance can be noted in the case of **Albania, Croatia Finland, Greece, Hungary, Luxembourg and Switzerland**, which have been able to positively invert the trend and reduce the number of pending cases. In contrast with the figures regarding the period 2010-2012, which showed an increase in the backlog, the 2012-2014 evaluation in these States recorded a decrease of the number of pending cases. A positive trend can also be noted in other jurisdictions where the stock of pending cases has progressively decreased between 2010 and 2014 (**Austria, Germany, Italy, Slovenia, Spain and Sweden**) or where a positive trend in processing backlog has been maintained, albeit at a lower reduction rate for the period 2012-2014 compared to 2010-2012 (**Bosnia and Herzegovina, Denmark, Estonia, Latvia, Monaco and Ukraine**).

These figures, however, need to be interpreted with care. An increase or decrease in the backlog cannot always be related to the level of court efficiency. In 2012-2014, for instance, **Greece** reported a decrease in pending cases of almost 50 %. This development, however, should be considered in the light of a number of contrasting factors, including: an important increase in the backlog in 2010-2012 (155 %) due the referencing methodology of cases (more than one reference per case can be applied throughout the process); a relevant decrease (63 %) in the number of incoming cases in 2012-2014 due to a strike by Greek lawyers; legal reforms that have altered the jurisdiction of courts; and a long period of restraint of lawyers in 2013 and 2014. By contrast, the decrease in the backlog in **Croatia** – despite the increase in the number of incoming civil and commercial litigious cases since 2010 due to the difficult economic situation – can be interpreted in the light of additional efforts on the part of judges and legislative reforms broadening of the scope of powers of court advisers.

A better understanding of the evolution of pending cases over time and therefore of overall court performance can be achieved by considering the figures on the amount of pending cases at the end of the year against the volume of incoming cases. Such analysis enables an in-context interpretation of the data on court efficiency. It complements the picture that emerges from the analysis of the Clearance Rate by showing a dynamic picture of the capacity of courts to clear the workload and reduce the backlog, despite increases in the volume of incoming cases from one evaluation to the other. The figure below depicts the relation between pending cases and incoming cases and the evolution of the backlog between 2012 and 2014.

**Figure 5.9 Variation of 1st instance litigious civil and commercial pending cases 31 Dec v. incoming cases, between 2012 and 2014 (Q91)**



The figure highlights the positive performance of a group of States or entities that were able to reduce the backlog despite an increasing number of incoming cases. The green quadrant above marks the states that, despite an increase in number of incoming cases, are still able to decrease the volume of pending cases (backlog).

While none of the states concerned has maintained a regular trend in this regard across the three evaluations, positive examples include **Georgia** and **Sweden** for the period 2010-2012, and **Estonia**, **Finland**, **Italy**, **Latvia**, **Luxembourg**, **Monaco** and **Switzerland** for the period 2012-2014. The Table also shows that the positive developments in the reduction of pending cases registered in some States between 2012 and 2014 (e.g. **Albania**, **Croatia**, **Hungary**, **Greece**, **Spain** and **Slovenia**) were partly related to a decrease in the number of incoming cases rather than to a more efficient court performance solely.

By contrast, the situation in those States where the number of pending cases has either increased despite a decrease in incoming cases (e.g. **Republic of Moldova**, **Serbia**, **Slovakia**), or increased considerably more than the increase in the number of incoming cases (e.g. **Andorra**, **Georgia**, **Turkey**) should be monitored carefully. Indeed, with the exception of **Andorra** and **Slovakia** the rest of these States experienced a decrease in their Clearance Rate of civil and commercial litigious cases, which fell below 100 % in 2014.

***Evolution of performance and the average duration of procedure indicators for specific categories of civil cases***

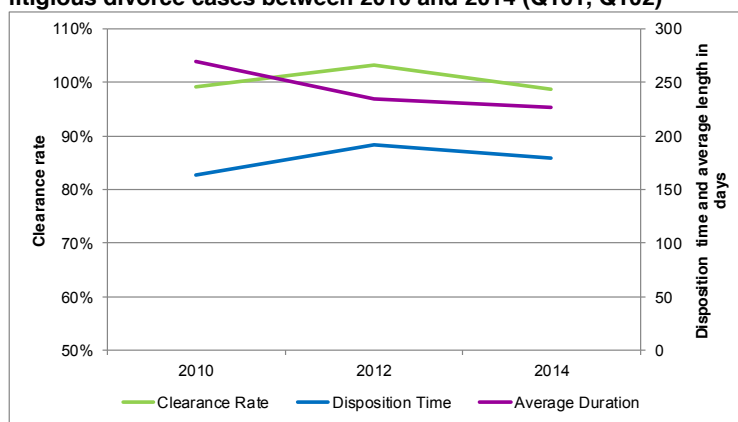
Data regarding three specific categories of civil cases, i.e. litigious divorces, employment dismissals and insolvency cases, allows a better understanding of the workload of the courts in Europe, as well as a more reliable comparison of the figures. These categories were selected for additional analysis in the Evaluation Scheme on the assumption that they are dealt with in quite a similar way across European courts.

The three categories of ‘other than criminal’ cases, which concern justice on a daily basis, are defined in the explanatory note to the CEPEJ Evaluation questionnaire as follows:

1. *Litigious divorce cases*: the dissolution of a marriage contract between two persons, by the judgement of a competent court. The data should not include: divorce ruled by an agreement between the parties concerning the separation of the spouses and all its consequences (procedures by mutual consent, even if they are processed by the court) or ruled on through an administrative procedure.
2. *Employment dismissal cases*: cases concerning the termination of (an) employment (contract) at the initiative of the employer (working in the private sector). These do not include dismissals of public officials, following a disciplinary procedure for instance.
3. *Insolvency cases*: cases concerning all the procedures for monitoring the financial situation of an economic actor (company, etc.) and possibly terminating its activity when it is not in a financial position to pursue it, in particular due to the impossibility to pay its debts (including in particular bankruptcy procedures).

### 5.2.2.1 Litigious divorce cases

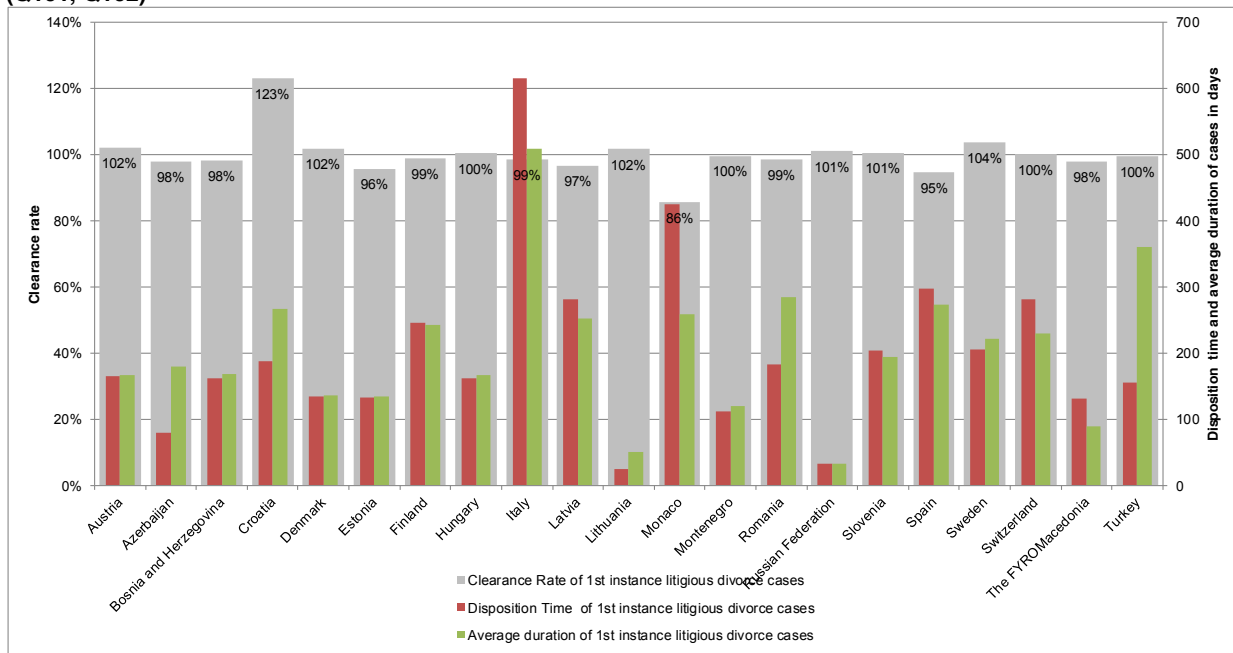
**Figure 5.10 Evolution of the European average Clearance Rate, Disposition Time and length of 1st instance litigious divorce cases between 2010 and 2014 (Q101, Q102)**



The figure above summarizes the average evolution of litigious divorce cases. Between 2010 and 2014 the average Clearance Rate of this category of cases has decreased and is now slightly below 100 %, despite a positive increase in 2012. A negative trend between 2010 and 2014 can also be noted with regard to the evolution of the average Disposition Time, but the situation has improved compared to the 2012 evaluation. By contrast, the average length of the proceedings for this type of cases has regularly improved.

A general observation should be made with regard to the average length as indicator of performance. It should be noted that the indicator does not provide a robust and scientifically reliable measure for comparisons between countries because States have in place very different methodologies for calculating the average length of proceedings. Methodologies may include a calculation of the duration of proceedings in days, in months (e.g. **Latvia**) or in intervals of time (e.g. **Romania**). Additionally, States may consider as a final date for the purpose of measuring the average length either the day when the judicial decision is given (e.g. **Finland**) or the day when the court decision becomes final (e.g. **Slovakia**), which would also include the duration of the appeal instance proceedings. In **France**, instead, the calculation of the average length of litigious divorce cases includes the “reflection break” (*temps de réflexion*) accorded to the parties between the unsuccessful termination of the conciliation procedure and the beginning of the divorce case; this would extend the average length of these cases by approximately 22 %. It follows that the Disposition Time can be considered as a better indicator for making comparisons between countries with regard to the ability of courts to cope with specific case categories. The average length, nevertheless, allows a valuable insight into developments in the case management within the same country over a certain period.

**Figure 5.11 Clearance Rate, Disposition Time, average length of 1<sup>st</sup> instance litigious divorce cases in 2014 (Q101, Q102)**



The figure shows that most of the States or entities for which data was provided registered a positive Clearance Rate of litigious divorce cases in 2014 and in 6 other States the Clearance Rate is very close to 100 % (**Azerbaijan, Bosnia and Herzegovina, Finland, Italy Romania and “the former Yugoslav Republic of Macedonia”**). A particularly positive performance can be noted with regard to **Croatia**. This can be explained on the one hand by the change in the methodology of categorisation between different types of cases, which allows more accurate and detailed information and on the other hand by additional efforts of judges to increase the number of resolved cases. Moreover, it should be noted that in June 2014 a mandatory counselling and family mediation procedure for spouses with under-age children was introduced in **Croatia**; the impact of this reform should be assessed in the next evaluation cycle.

The situation has improved or has remained more or less stable over the years in many States and entities, for example, in **Georgia, Lithuania** (especially between 2012 and 2014), **Montenegro, Russian Federation, Slovakia, Slovenia, Sweden and Ukraine**. The courts are struggling to cope with the number of litigious divorce cases in **Ireland and Monaco** and to a lesser extent, in **Estonia, Spain or UK-England and Wales**. The particular circumstances concerning the calculation of closed cases in **Ireland** and the consequences for calculation of clearance rates, have already been highlighted. The situation in **Estonia** has evolved positively over the years, mainly as a result of the fact that courts are working more efficiently and have accelerated the proceedings.

The variations in the number of incoming litigious divorce cases in a number of States can be explained by changes in the external environment, i.e. societal and economic, rather than the internal one, i.e. the court system. The decrease in the number of incoming cases in **Latvia and Portugal** between 2012 and 2010, for instance, has been related to factors such as the economic crisis, the decline in the number of marriages or depopulation.

In **Romania**, the Clearance Rate of litigious divorce cases is low and has decreased compared to the 2012 figures. Equally, the Disposition Time has doubled since the last evaluation despite the decrease in the number of cases in 2012 and 2013, which can be explained by social causes and the introduction of alternative instruments to litigious divorces (e.g. procedures before notaries). However, a lower number of incoming cases does not necessarily imply an improvement of the Clearance Rate and of the Disposition Time, because the cases reaching the courts might be more complex.

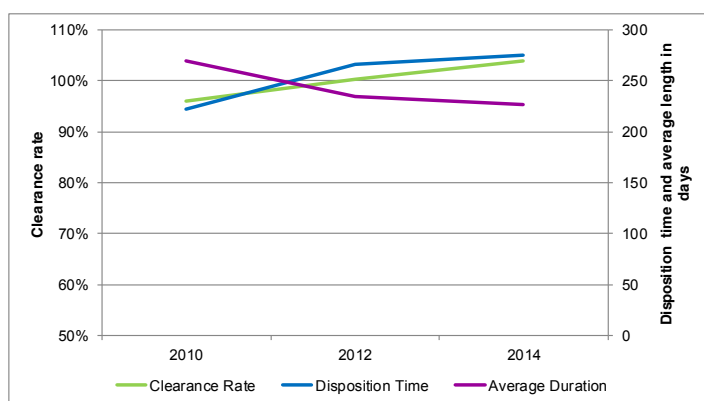
It is interesting to point out that the Disposition Time and the average length of procedures calculated by the States or entities using the real duration of the cases for litigious divorce coincide to a great extent for 15 (out of 21) states for which data is available. Only for 6 States or entities is there a significant difference between these indicators.

Both the average length of proceedings and the calculated Disposition Time vary considerably between the different States and entities, depending on the family law procedures that apply in each system, the method of calculation of the average length and the volume of cases handled by the courts. Rapid procedures (Disposition Time is less than 100 days) can be noted in **Albania, Azerbaijan, Georgia, Lithuania, Republic of Moldova, Russian Federation and Ukraine** and longer procedures (Disposition Time is more than 500 days) in **France** (reported average length of 666 days), **Italy** and **Monaco**. The reported average length of proceedings has been decreasing over the past six years, in particular in **Bosnia and Herzegovina, Denmark, Estonia, Netherlands, “the former Yugoslav Republic of Macedonia”** and **UK-England and Wales** and has remained more or less stable in more than twenty countries, including for example **Azerbaijan, Germany and Montenegro**. On the contrary, it has been increasing in **France, Latvia and Turkey**. In **Latvia**, for instance, the number of incoming divorce cases has been decreasing but the Clearance Rate, the calculated Disposition Time and the reported average length of proceedings has deteriorated between 2012 and 2014. In other states, a lower number of incoming cases has allowed courts to reduce the backlog and the Disposition Time. However, to measure the real situation of court efficiency in these regards, the average length of proceedings should be considered in the light of the number of cases addressed by the courts.

Comparisons between jurisdictions should be made with some caution and should necessarily take into account the specific features of divorce proceedings in different States; these can significantly influence the result of the analysis. **France** is a noteworthy case in this regard: the litigious divorce procedure in this country consists of two stages, a conciliation phase and the real divorce procedure when the divorce is pronounced by a judge. However, as earlier noted, the average length of proceedings includes the period between the two stages, which is left to the discretion of the parties and can last up to 30 months. Moreover, a legal reform enacted in 2004 generated an increase of divorces by mutual consent, which means that the litigious divorce cases that are brought to court are the most complicated cases which require a long time to be completed, given the level of disagreement between the parties.

### 5.2.2.2 Employment dismissal cases

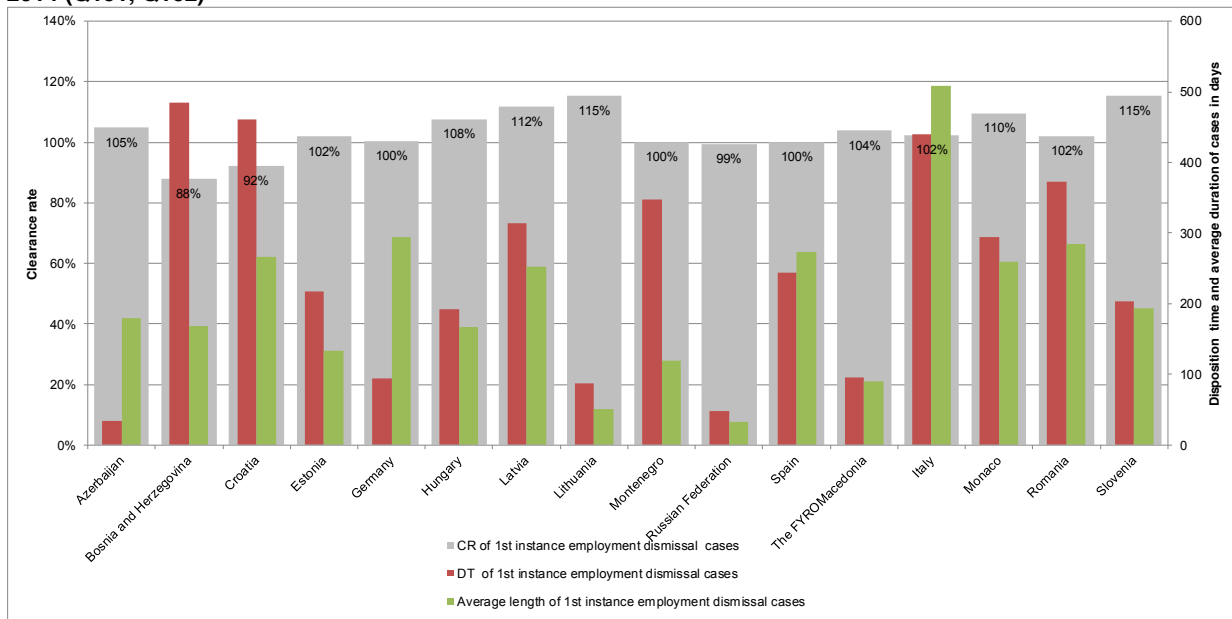
**Figure 5.12 Evolution of European average Clearance Rate, Disposition Time and average length of 1st instance employment dismissal cases between 2010 and 2014 (Q101, Q102)**



Employment dismissal cases represent the only category, among three specific categories of civil cases analysed in this report, which registered a positive Clearance Rate in 2014. Between 2010 and 2014 the average Clearance Rate of employment dismissal cases constantly increased from 96 % in 2010 to 104 % in 2014. Instead, a contrasting trend can be noted with regard to the duration of these cases: the calculated Disposition Time shows a negative trend while the reported average length has regularly improved. As earlier noted, because of important

differences between States regarding the method of calculation of the average length, the Disposition Time serves better the purpose of comparing the length of proceedings between States; instead, the average length helps explain developments within the same State over the years.

**Figure 5.13 Clearance Rate, Disposition Time and average length of 1<sup>st</sup> instance employment dismissal cases in 2014 (Q101, Q102)**



The Clearance Rate of employment dismissals in the great majority of States is higher than 100 %. The ability of courts to reduce the backlog is particularly high in **Ireland, Latvia, Lithuania, Poland, Slovenia** and **UK-England and Wales** (Clearance Rate above 110 %). In **Lithuania**, this has had a positive impact in the reduction of the Disposition Time and of the reported average length for this type of cases. A more irregular trend can be observed in the other States or entities. In **UK-England and Wales**, despite the sharp increase in the Clearance Rate from 90 % in 2012 to 150 % in 2014, the reported average length remained more or less constant. This can be explained by the fact that the increase in the Clearance Rate was largely due to the reduction in the number of incoming cases following the introduction of fees for employment tribunals.

Few states, such as **Bosnia and Herzegovina, Croatia, Cyprus, France** or **Slovakia** have a low Clearance Rate and a very high Disposition Time and/or average length of proceedings (above one year). The courts in these States are struggling to cope with the volume of cases, which has led to delays and backlogs. However, in the case of **Bosnia Herzegovina** and **Croatia** the figures for the Disposition Time are much higher (approx. between 1.5 and 3 times) than those of the reported average length of proceedings. No explanation has been provided for such an important difference between the two evaluations. Other States, such as **Andorra, Belgium** and **Italy**, have difficulties in coping with the volume of cases because despite the positive Clearance Rate, the Disposition Time is very high (more than one year).

Of the 26 States or entities that were able to calculate the length of proceedings in first instance, **Lithuania**, the **Russian Federation** and **“the former Yugoslav Republic of Macedonia”** have very short timeframes (less than 100 days) while the average length for this category of cases is more than 300 days in **France, Italy** and **Turkey**.

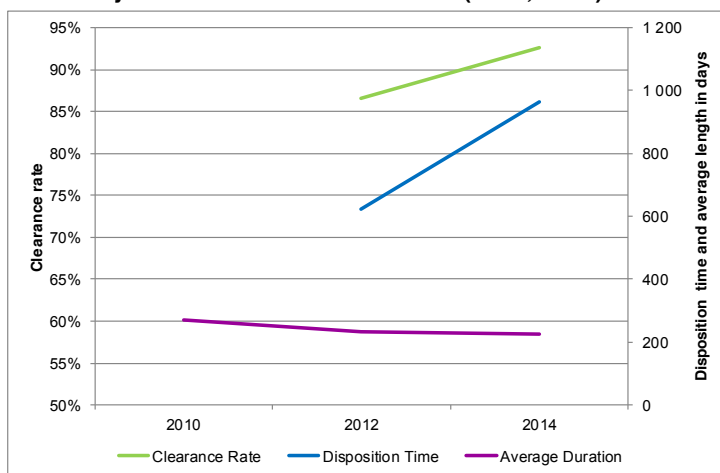
The variations of the performance indicators regarding employment dismissal cases have been justified in several instances (e.g. **Cyprus, Latvia** or **Spain**) on the basis of external factors, notably the economic crisis, which has resulted in a general increase in the number of cases, especially of complicated cases and in delays and longer proceedings. In other states, a reduction of the backlog and of the duration of proceedings has been attributed to the increased efficiency of the justice system. In **Estonia**, the decrease in the numbers of pending and resolved employment dismissal cases in 2012, accompanied by a reduction in the average length, has been linked to the fact that more cases are effectively resolved by the labour dispute committees and therefore fewer cases arrive before the courts. In **Hungary**, the decrease in the number of pending employment dismissal cases over the period 2012-2014 and the reduction in the Disposition Time are also a consequence of the establishment of new labour courts and labour divisions in 2013, which has increased the overall effectiveness of the system. In **Slovenia**, the number of pending employment dismissal cases has decreased because labour courts give priority to these cases, within the general category labour disputes and pay particular attention to resolving them promptly.



On a more general note, with regard to employment dismissal cases, it should be underlined that the length of court proceedings can also be explained by the fact that some states, through their legal proceedings, have established procedural guarantees and negotiation procedures to strike a balance between the functioning of the economic system and the individual protection of employees. Court efficiency cannot be the only issue at stake in such procedures. States may wish to establish, through their judicial procedures, a proper balance between the functioning of the economic system and the individual protection of employees. In any case, the average length of proceedings must be considered together with the variations in the volume of cases concerned in order to draw in-depth conclusions.

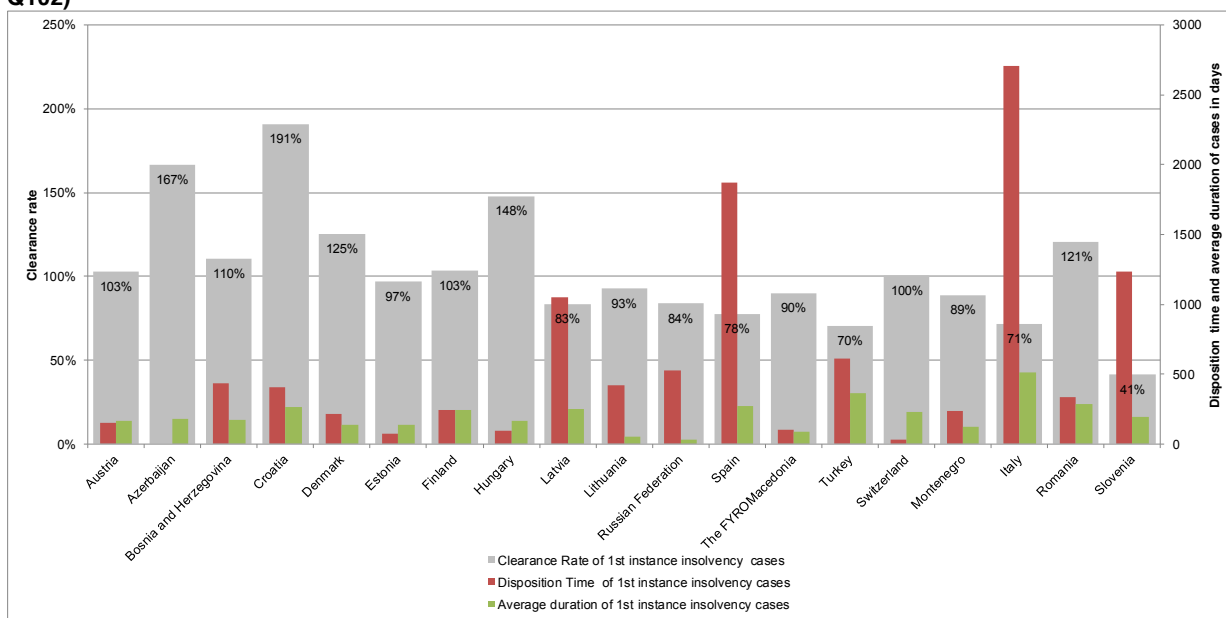
### 5.2.2.3 Insolvency cases

**Figure 5.14 Evolution of European average Clearance Rate, Disposition Time and length of 1st instance insolvency cases between 2010 and 2014 (Q101, Q102)**



The data for 2014 confirms the results from the last evaluation, namely that it is in respect of insolvency proceedings that States or entities experience the greatest difficulties in managing the caseload. Despite an increase since 2012, the average Clearance Rate remains low (93 %). In particular, 60 % of the States for which it was possible to calculate the Clearance Rate in 2014 were able to solve fewer cases than those received. The development with regard to the average Disposition Time of insolvency cases is also of a serious concern because these cases would require more than two and a half years to be solved.

**Figure 5.15 Clearance Rate, Disposition Time, average length of 1<sup>st</sup> instance insolvency cases in 2014 (Q101, Q102)**



While the overall performance of States in dealing with incoming insolvency cases is not a very positive one, Clearance Rate figures in several States are particularly worrying. **Andorra**, for instance, has an extremely low rate (19 %); in the **Czech Republic** and in **Slovenia** the rate ranges around 45 % and in 6 other States (i.e. **Armenia**, **Belgium**, **Ireland**, **Republic of Moldova**, **Turkey** and **Israel**) the Clearance Rate varies between 60 % and 70 %. As already highlighted in the case of **Andorra** (and in general with regard to small States or entities), figures might not be indicative of the real situation considering the very low absolute number of cases concerned.

The reported average length of proceedings, which can be studied for 26 States or entities, can be considered as a complement to the Disposition Time indicator. The reported duration of case proceedings in 2014 was particularly long in **France, Italy and Turkey**.

The length of proceedings, however, must be studied together with the volume of cases and the complexity of the procedures considered in order to allow in-depth conclusions on court efficiency. In **Ireland**, for instance, the significant increase in the number of incoming and resolved insolvency cases between 2013 and 2014 reflects the introduction of a new range of statutory personal insolvency remedies since the previous evaluation. In **Slovenia**, the high number of incoming insolvency cases and the difficulties of courts in keeping up with the caseload can be attributed to a number of factors. First, the financial crisis has resulted in a higher number of insolvent companies as well as in a higher number of proceedings of bankruptcy of physical persons. Secondly, the amendment of insolvency legislation in 2013 abolished the right of legal persons to apply for legal aid for financing the advances of the costs of the bankruptcy proceedings, but they are now exempt from paying the advance in bankruptcy proceedings. Thirdly, the number of pending cases has increased and will probably increase even further, due to the rules governing when the case is deemed resolved. For insolvency cases, this can occur when the assets are liquidated and the creditors are paid (or in case of personal bankruptcy, if the dismissal of debts was requested, until such a decision is taken). In cases of big companies as debtors, the sale of all assets can take various years; and in cases of physical persons the “probation” period, which lasts a minimum of 2 years and maximum of 5 years, must elapse before the court can decide on the dismissal of debts. In **Israel**, the continuous increase of insolvency cases in the past years can also be explained with reference to: economic factors, i.e. the global recession and financial crisis; the legislative setting related to the high probability for debtors to be granted a discharge under the current legislation and the rising awareness of the possibility of receiving a discharge; and social factors, such as a possible reduction in the social stigma associated with bankruptcy.

The impact of the economic situation on the number of incoming cases and the amount of backlog can also explain the deterioration of the situation in the **Czech Republic, Latvia and Spain** and the positive trend registered in **Denmark**, in the context of the 2014 evaluation, due to an improved business situation.

Some general observation can be made based on an overall analysis of state performance with regard to insolvency cases. The economic crisis is certainly one of the main reasons for the increased volume of incoming cases and the extended duration of insolvency cases. Another factor is the level of complexity of judicial procedures in the different national systems, which is often necessary to ensure that insolvency procedures take duly into account both the possibilities for economic restoration of firms and the protection of the individual rights of their employees. For instance, the specificity of the bankruptcy legislation and procedures which make it possible for companies in financial difficulty to remain provisionally under court monitoring, may explain some of the extended durations. However, the balance between market flexibility and social protection might differ between the states.

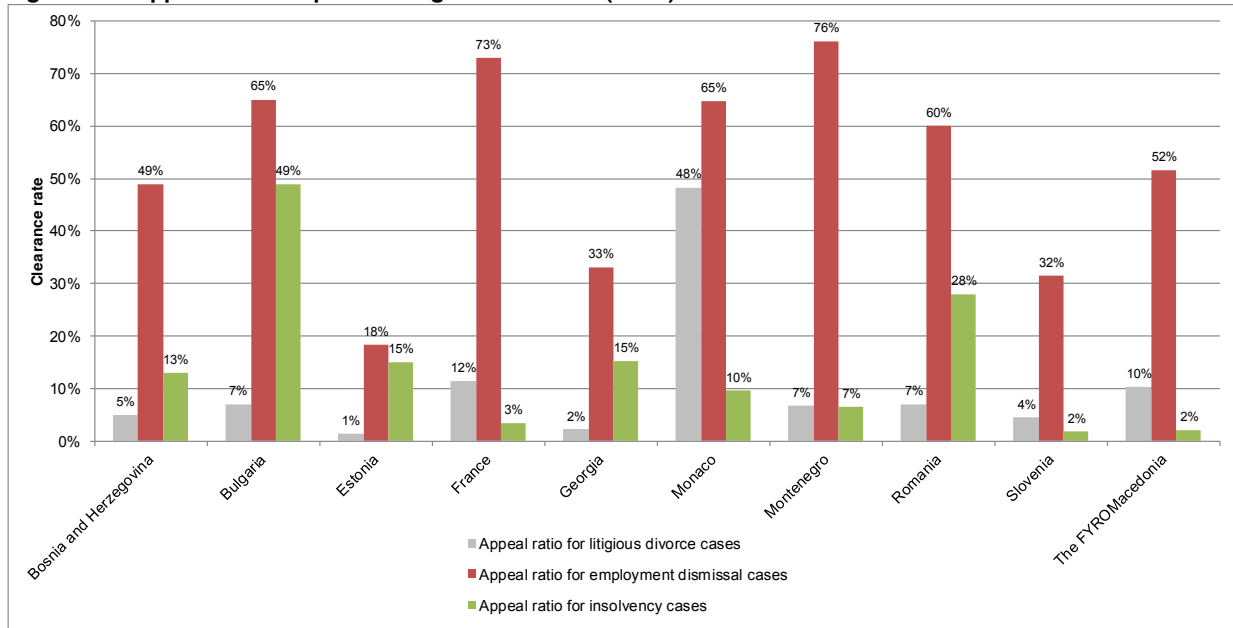
### 5.2.3 Ratio of first /second instance cases

The frequency with which first instance decisions on specific categories of civil cases are challenged in second instance can provide an insight into the functioning of judicial systems in different respects. In addition to providing a clearer picture of the workload of courts it may also suggest an understanding of the level of overall efficiency of the court system in a specific country. However, additional research is required to assess whether lower appeal ratios are the result of a high level of trust and confidence in the judiciary or rather the result of obstacles to an effective access to justice, such as for instance high costs of justice (both court fees and legal assistance and representation).

Despite the increasing figures in the course of the last three evaluations, the number of States able to provide information on the appeal rate of decisions regarding litigious divorces, employment dismissals and insolvency cases is still very low. It ranges between 24 % of the states providing information on insolvency cases and less than 36 % providing figures on divorce cases and employment dismissals.

On average, at the European level, decisions on employment dismissal cases show the highest rate of appeal among the three categories. There has nevertheless been a receding trend over time and in 2014 the first/second instance rate was 39 %. By contrast, the rate of appeal of decisions in litigious divorces and insolvency cases has increased slightly and in 2014 it was set, respectively, at 8 % and 14 %.

**Figure 5.16 Appeal ratio of special categories of cases (Q102)**



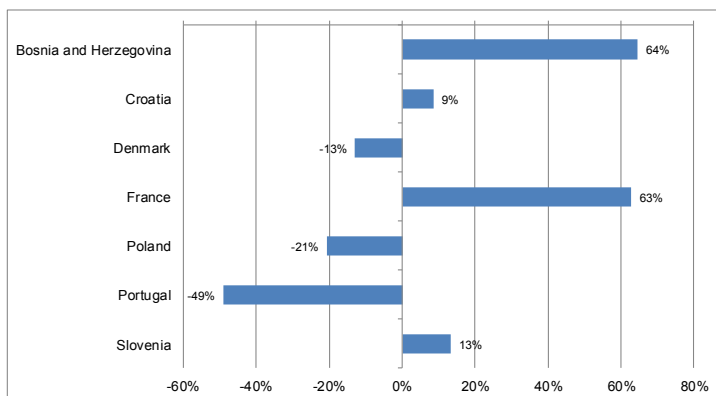
The activity of courts at second instance is particularly high in some States. **Romania** and **Bulgaria**, especially, show a high rate of appeal in second instance of employment and insolvency cases. Decisions on divorce and employment cases are challenged at a very high frequency in **Monaco** (48%) and in **Bosnia and Herzegovina** (49%). **France** and **Montenegro** also show a very high rate of appeal of litigious divorce decisions. These figures should be qualified in the light of the absolute numbers of court cases, because where numbers are relatively small, the observed ratios will be rather high. Other States show a very low appeal rate of the decisions on litigious divorces (less than 1 % in **Azerbaijan**, **Italy** and the **Russian Federation**), employment dismissals (less than 3 % in **Azerbaijan**, **Italy** and **Germany**) and insolvency cases (around 2 % in **Slovenia** and “the former Yugoslav Republic of Macedonia”).

Almost no information is available regarding the reasons for higher or lower appeal rates between first instance and second instance and length of proceedings; such data would make it possible to analyse more in depth the situation in each State. Improving this information should be a clear objective for the next evaluation scheme with a view to understanding the factors behind case flow management and proposing specific tools to strengthen court efficiency accordingly.

#### 5.2.4 Variation of mediation procedures

In different instances, the comments received in State reports highlight that conciliation and mediation procedures have a filter effect on the number of incoming and resolved civil and commercial cases. The figure below summarizes information on 8 States or entities for which it was possible to gather information on the volume of these procedures and their variation over time. 2 other states, **Montenegro** and “the former Yugoslav Republic of Macedonia”, provided data but its variation is unusually high due to very low absolute figures in the previous evaluation cycle. That is logical considering that mediation is recently initiated in these states. For this reasons they have not been included in the figure below.

**Figure 5.17 Variation of civil mediation procedures between 2012 and 2014 (Q167)**



Mediation and conciliation procedures in civil law are also employed in other states in relation to family and employment disputes, including in **Bulgaria**, **Hungary**, **Italy**, **Lithuania** and **Republic of Moldova**, but no specific data was provided for these states. The data shows an increasing trend in the use of these procedures in some states, however, it should be once again highlighted that very few states were able to provide information

in this regard. The data should be analysed with care, not only because of the scarcity of the information available, but also for the reason that the reported data regarding the use of mediation procedures in the civil law area contains big differences due to the role and/or function of these procedures in the specific jurisdictions concerned (e.g. as part of court procedures or as an alternative thereto). Therefore, the expected filtering effect is not always immediately detectable.

### **5.3 Administrative justice**

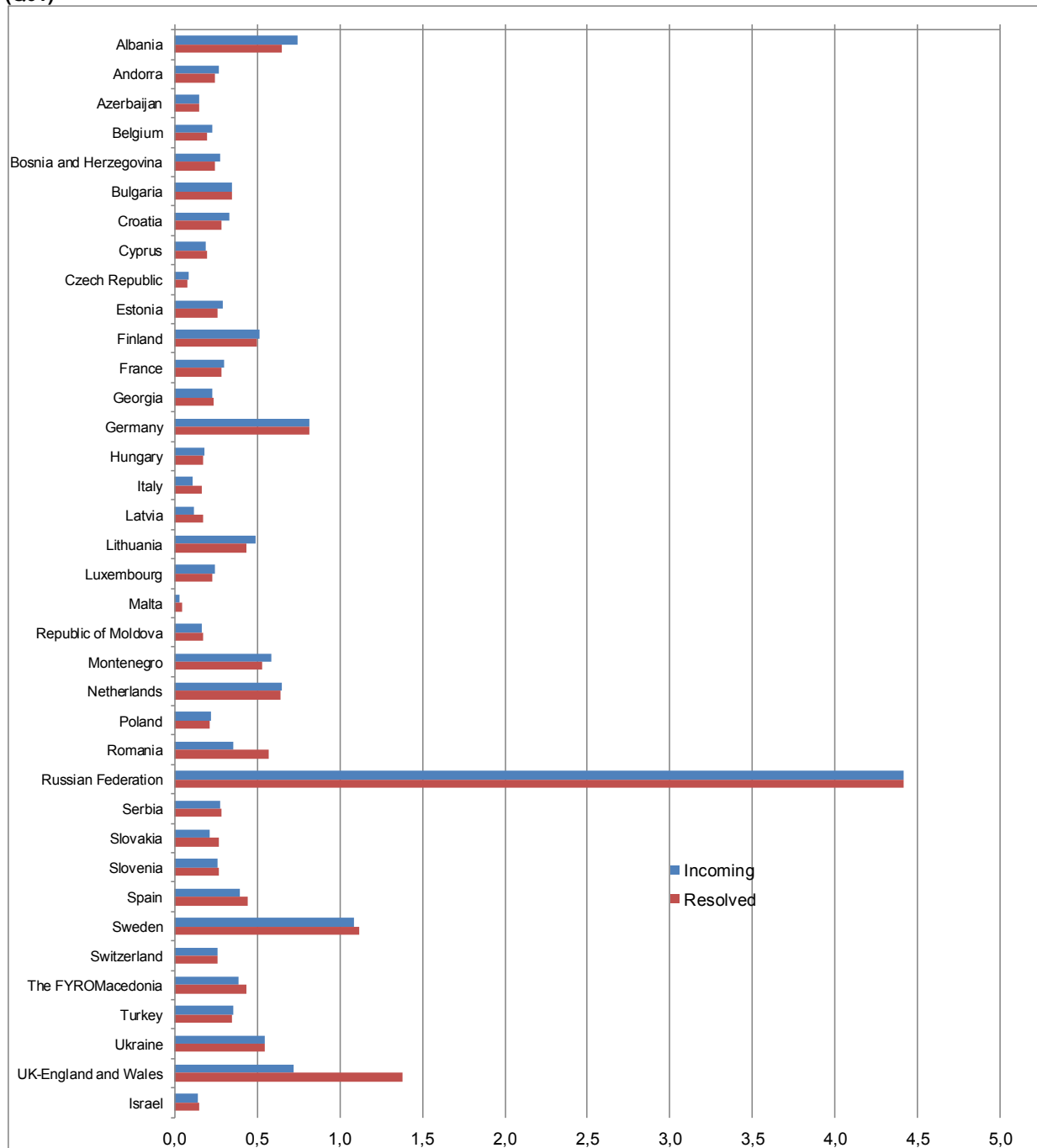
This section addresses separately court workload and performance in relation to cases where one of the parties of the dispute is a public authority. Examples include the rejection of an asylum application or the refusal of an authorization to construct. While disputes between citizens and public authorities can be settled as civil law proceedings, in a number of states, administrative law is a separate area of law. In these cases, the settlement of administrative disputes can fall within the competence of specialised administrative law tribunals or units within a court of general jurisdiction, or may be subject to separate administrative law procedures.

#### **5.3.1 Administrative justice – 2014 data**

##### ***Court caseload in the administrative sector***

The figure below provides information on 37 States or entities for which data on administrative law cases was made available. With the exception of the **Russian Federation** and **Sweden** (respectively 4,4 and 1.1 cases per 100 inhabitants), first instance courts in the remaining States or entities received less than 1 administrative case per 100 inhabitants. The outstanding high figure in the case of the **Russian Federation** can be related to the broad definition of administrative offences under the federal Administrative Offences Code. The overall average figure of the workload related to first instance administrative law cases in the assessed states in 2014 is 0,5 (incoming and resolved) case per 100 inhabitants. As earlier highlighted, however, administrative law cases constituted only 5 % of the total volume of incoming cases (both criminal and 'other than criminal') in 2014.

**Figure 5.18 Number of 1st instance incoming and resolved, administrative law cases per 100 inhabitants in 2014 (Q91)**



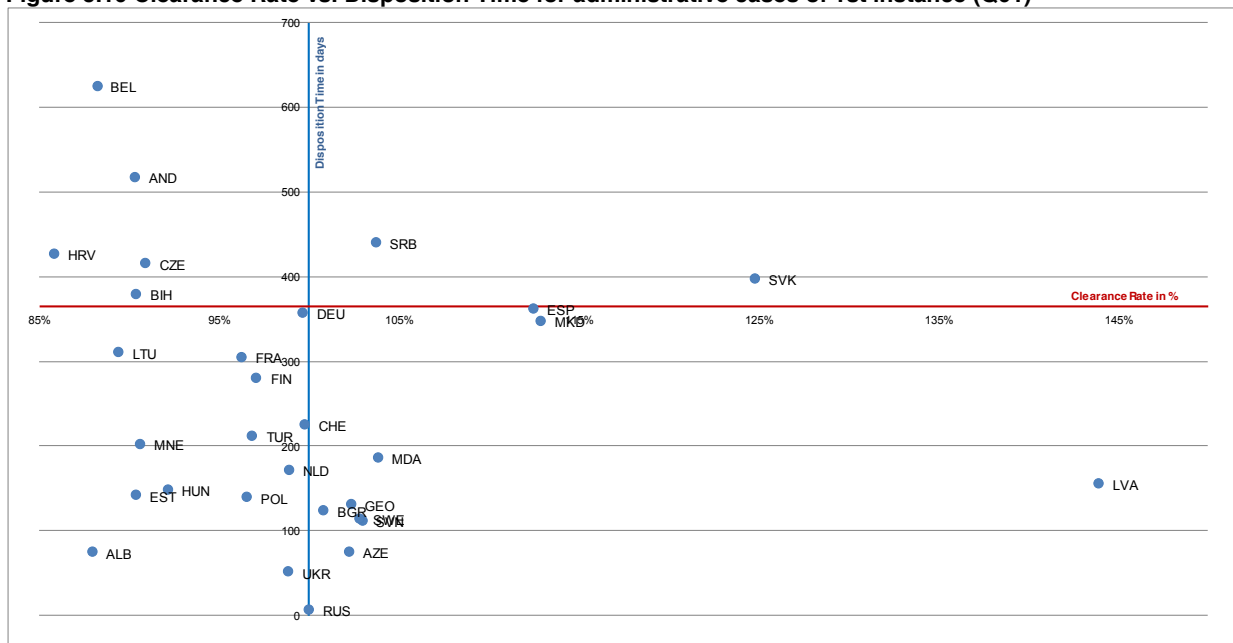
**Performance indicators regarding administrative law cases**

On average, the 2014 performance indicators regarding administrative law cases handled at first instance can be considered as positive. Courts, in average for Europe, managed to resolve the same amount of cases as those received. The average European Clearance Rate of 107 % is even over 100 % and the average Disposition Time calculated from the Disposition Time of all States or entities was slightly lower than a year (341 days). This figure is higher than the corresponding one for civil and commercial litigious cases (237 days).

37 States and entities provided relevant figures on the basis of which it was possible to calculate the Clearance Rate and Disposition Time (except for **Luxembourg**). The figure below illustrates the situation of different States or entities with regard to the Clearance Rate and Disposition Time for administrative law cases in 2014. It offers an insight into the possible evolution of the backlogs and the time necessary to

process pending cases in specific countries. To facilitate the visual representation of the states in the figure, 5 states (**Cyprus, Malta, Italy, Romania and UK-England and Wales**) were not included. However, the figures regarding their performance will be analysed and commented below.

**Figure 5.19 Clearance Rate vs. Disposition Time for administrative cases of 1st instance (Q91)**



For better visibility of the figure the data for **Cyprus, Latvia, Malta and UK-England and Wales** is not shown due to high values for Disposition time or Clearance Rate for administrative cases. The Disposition Time for **Cyprus, Latvia, Malta** is 984, 1 408 and 1775 days respectively and Clearance Rate for **UK-England and Wales** is 192 %.

A majority of states in 2014 were able to cope satisfactorily with the volume of incoming administrative cases at first instance. 16 States or entities in the lower right quadrant of the Chart (**Azerbaijan, Bosnia and Herzegovina, Bulgaria, Georgia, Germany, Latvia, Republic of Moldova, Romania, Russian Federation, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”, UK-England and Wales and Israel**) have a positive Clearance Rate (100% or above) and the Disposition Time remains below 365 days. The Clearance Rate was particularly high in **Romania** (161 %) and in **UK-England and Wales** (192 %) and their Disposition Time was below six months. As noted in relation to civil and commercial litigious cases, the Disposition Time in some countries (e.g. **Azerbaijan, Russian Federation, Ukraine**) is particularly low. Additional analysis may be necessary to understand the reasons behind these figures and the resulting impact on the quality of court services.

The situation in 7 other states positioned adjacent to the lower part of the Disposition Time axis seems manageable and can also be considered as satisfactory. In **Finland, Netherlands, Poland, Turkey and Ukraine** the Clearance Rate is slightly below 100 % but this should not negatively affect the evolution of the backlogs, considering the positive Disposition Time (approx. between 2 and 9 months). Similarly, in **Serbia and Slovakia** (in the upper right quadrant) the positive Clearance Rate should offset the longer Disposition Time (over one year) for administrative cases in terms of possible negative impact on court efficiency.

The situation is more difficult and should be monitored in a few States or entities which have a low Clearance Rate or a very high Disposition Time, or both: they experience difficulties in coping with the volume of incoming cases. Backlogs and lengths of proceedings are likely to deteriorate in the future if no specific measures are taken. This is the case of **Andorra** (Disposition Time: 517 days; Clearance Rate: 90 %),<sup>39</sup> **Belgium** (Disposition Time: 625 days; Clearance Rate: 88 %), **Croatia** (Disposition Time: 426 days; Clearance Rate: 86 %), **Czech Republic** (Disposition Time: 415 days; Clearance Rate: 91 %), **France** (Disposition Time: 305 days; Clearance Rate: 96 %), **Lithuania** (Disposition Time: 310 days; Clearance Rate: 89 %) and less so of **Albania** (Disposition Time: 74 days; Clearance Rate: 88 %), **Estonia** (Disposition Time: 141 days; Clearance Rate: 90 %), **Hungary** (Disposition Time: 148 days; Clearance Rate: 92 %) and **Montenegro** (Disposition Time: 202 days; Clearance Rate: 91 %). The situation should be also monitored in

<sup>39</sup> However, data might not be indicative considering the very low absolute number of cases concerned.

**Cyprus, Italy and Malta** where the Clearance Rate is higher or significantly higher than 100 % but the Disposition Time is very long and ranges between 2,7 and 3,8 years. Measures for strengthening the courts' productivity are already in place in some of these cases.

### **5.3.2 Administrative law cases – 2010 / 2014 evolutions**

#### ***Evolution of the performance indicators for administrative law cases***

The Table below presents the evolution of the Clearance Rate for first instance administrative cases between 2010 and 2014. The reported data and the conclusions that can be drawn therefrom should be considered cautiously, as the consistency of some of the figures might vary within the period observed, which can eventually influence performance trends over time.

Table 5.20 Clearance Rate of 1st instance administrative cases 2010 – 2014 (Q91)

States/Entities	Clearance Rate of 1st instance administrative cases			
	2010	2012	2014	Trend
Albania	83%	91%	88%	
Andorra	131%	93%	90%	
Armenia	89%	94%	NQ	
Austria	NA	NAP	NA	
Azerbaijan	NAP	96%	102%	
Belgium	NA	NA	88%	
Bosnia and Herzegovina	83%	105%	90%	
Bulgaria	98%	92%	101%	
Croatia	108%	41%	86%	
Cyprus	74%	74%	103%	
Czech Republic	NA	NAP	91%	
Denmark	NA	NAP	NAP	
Estonia	91%	106%	90%	
Finland	99%	101%	97%	
France	107%	107%	96%	
Georgia	108%	113%	102%	
Germany	96%	102%	100%	
Greece	80%	143%	NA	
Hungary	96%	108%	92%	
Ireland	NAP	NAP	NAP	
Italy	316%	280%	156%	
Latvia	103%	130%	144%	
Lithuania	83%	98%	89%	
Luxembourg	93%	70%	94%	
Malta	29%	40%	149%	
Republic of Moldova	92%	105%	104%	
Monaco	NA	NA	NAP	
Montenegro	99%	87%	91%	
Netherlands	107%	98%	99%	
Norway	NAP	NAP	NAP	
Poland	95%	100%	97%	
Portugal	NA	NA	NA	
Romania	71%	78%	161%	
Russian Federation	NA	100%	100%	
Serbia	86%	81%	104%	
Slovakia	102%	47%	125%	
Slovenia	114%	110%	103%	
Spain	102%	124%	113%	
Sweden	88%	105%	103%	
Switzerland	105%	107%	100%	
The FYROMacedonia	65%	112%	113%	
Turkey	91%	127%	97%	
Ukraine	96%	130%	99%	
UK-England and Wales	85%	85%	192%	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel	..	100%	101%	
Average	99%	102%	107%	
Median	95%	101%	100%	
Minimum	29%	40%	86%	
Maximum	316%	280%	192%	



In the last three evaluations, 2010, 2012 and 2014, the Clearance Rate of administrative law cases at first instance has constantly improved. On average this indicator has increased from 99 % in 2010 to 107 % in 2014. However, important differences can be highlighted between the States and entities assessed. Indeed, the general average improvement is affected by the high increase of the CR in a few specific states (e.g. **Romania** and **Slovakia**), while in a relevant number of States or entities the situation has deteriorated in the last six years or at least since the last measurement.

5 states (**Cyprus, Latvia, Malta, Romania** and **UK-England and Wales**) show a regular trend of improvement of their Clearance Rate with regard to administrative cases at first instance. The strong increase of the Clearance Rate of administrative cases in **Malta**, from 29 % in 2010 to 149 % in 2014, should however be interpreted in the light of two factors. On the one hand, the set-up of the Administrative Court in late 2010 meant that the first reliable set of data for the CEPEJ evaluation was provided in 2012; on the other, the variations between the last two measurements are related to an increase of the judicial personnel at the Administrative Review Tribunal.

By contrast, a continuous decrease of the Clearance Rate can be noted in the course of the last three measurements in **Andorra, France** and **Italy**. In the first two cases the Clearance Rate has dropped from positive values to negative ones (i.e. below 100 %), while in the case of **Italy**, the Clearance Rate figure has remained positive. The decrease from 316 % in 2010 to 165 % in 2014, however, might have a detrimental impact on the reduction of the backlog of administrative cases in **Italy** over time.

The remaining States or entities show a discontinued trend in the evolution of their Clearance Rate. In particular, in the period between 2012 and 2014, 16 other States or entities have experienced a decline of the Clearance Rate regarding administrative law cases at first instance. In **Georgia, Germany, Republic of Moldova, Slovenia, Spain, Sweden** and **Switzerland** the Clearance Rate has remained positive, despite the decreasing trend, while in **Albania, Bosnia and Herzegovina, Estonia, Finland, Hungary, Lithuania, Poland, Turkey** and **Ukraine** the indicator has developed towards negative values. The latter group of cases must be followed with attention, as the performance of the relevant judicial bodies could be at risk in the future, if this trend persists. However, as earlier noted, the data reported and their evolution over time should be addressed with care and the specific conditions in each country need to be taken into consideration. In some cases low Clearance Rate figures may not be directly related to the efficiency of the court system as such, but may rather be the result of other factors, including the organization of the court system in specific States or changes in the reporting methodology during the different monitoring cycles. In the case of **Bosnia and Herzegovina**, for instance, the decrease of the Clearance Rate between 2012 and 2014 (from 105 % to 90 %) is related to the higher number of reported cases (both first and second instance) computed in the 2014 figure, which is due to the way in which administrative law cases are dealt with by the court system in this country.

Major improvements of the Clearance Rate can be observed in **Croatia, Luxembourg, Serbia** and **Slovakia**. In the first two states, the Clearance Rate has increased but still remains below the 100 % threshold, while in the last two states negative figures have been converted to positive. In **Croatia**, the improvement can be explained by the reorganization of the court system, which resulted in the introduction of a two-instance administrative adjudication in 2012 and the establishment of four regional administrative courts handling first instance cases. In the case of **Slovakia**, it has been reported that the higher number of resolved administrative cases in the year 2014 was achieved as a result of the intensive effort of judges and courts to reduce the existing backlogs of administrative cases.

**Table 5.21 Disposition Time of 1st instance administrative cases 2010 - 2014 (Q91)**

States/entities	Disposition time of 1st instance administrative cases			
	2010	2012	2014	Trend
Albania	264	287	74	
Andorra	222	429	517	
Armenia	223	294	NQ	
Austria	NA	NAP	NA	
Azerbaijan	NAP	103	75	
Belgium	NA	NA	625	
Bosnia and Herzegovina	380	326	379	
Bulgaria	113	150	124	
Croatia	825	523	426	
Cyprus	1340	1270	1775	
Czech Republic	NA	NAP	415	
Denmark	NA	NAP	NAP	
Estonia	146	108	141	
Finland	238	248	280	
France	338	302	305	
Georgia	36	213	130	
Germany	373	354	357	
Greece	2003	1520	NA	
Hungary	202	147	148	
Ireland	NAP	NAP	NAP	
Italy	1037	886	984	
Latvia	439	300	155	
Lithuania	160	144	310	
Luxembourg	172	NA	NA	
Malta	2758	1457	1408	
Republic of Moldova	165	126	186	
Monaco	NA	NA	NAP	
Montenegro	119	210	202	
Netherlands	159	163	171	
Norway	NAP	NAP	NAP	
Poland	121	112	139	
Portugal	NA	NA	NA	
Romania	269	272	179	
Russian Federation	NA	11	7	
Serbia	535	497	440	
Slovakia	66	733	397	
Slovenia	139	130	112	
Spain	433	427	361	
Sweden	190	126	114	
Switzerland	229	217	225	
The FYROMacedonia	797	317	347	
Turkey	187	132	212	
Ukraine	65	33	51	
UK-England and Wales	384	446	169	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel	..	117	99	
<b>Average</b>	445	372	341	
<b>Median</b>	226	272	212	
<b>Minimum</b>	36	11	7	
<b>Maximum</b>	2758	1520	1775	

As regards the evolution of the Disposition Time of administrative cases, the Table above shows that, on average, court performance in relation to this indicator has improved over time. This confirms the trend highlighted in relation to civil and commercial litigious cases. The average Disposition Time, however, is higher for administrative law cases compared to civil and commercial litigious cases. In **Croatia, Latvia, Malta, Serbia, Slovenia, Spain** and **Sweden**, there has been a constant improvement of the Disposition Time of administrative cases at first instance. Of particular note, in the first three countries, the Disposition Time has almost halved between 2010 and 2014; nevertheless, the figure concerning **Malta** remains particularly high (almost 3,9 years). In other 10 States or entities (**Albania, Azerbaijan, Bulgaria, Georgia, Montenegro, Romania, the Russian Federation, Slovakia, UK-England and Wales** and **Israel**) the situation has improved in the course of the last two measurements. With the exception of **Slovakia** (13,2 months) the Disposition Time of administrative law cases in these countries is below 7 months.

By contrast, a constant deterioration of the calculated Disposition Time over the three evaluation cycles can be observed in **Finland**, the **Netherlands** and (more seriously) **Andorra**. Between 2012 and 2014 the Disposition Time of administrative cases has expanded in 14 other countries (**Bosnia and Herzegovina, Cyprus, Estonia, France, Germany, Hungary, Italy, Lithuania, Republic of Moldova, Poland, Switzerland, “the former Yugoslav Republic of Macedonia”, Turkey** and **Ukraine**). However, in these cases - except for **Andorra** (Disposition Time 517 days), **Cyprus** (Disposition Time 1175 days) and **Italy** (Disposition Time 984 days) – the situation can still be considered as acceptable because the maximum Disposition Time is approximately one year.

The evolutions of the Disposition Time of administrative cases discussed here should be considered together with the changing volume of pending cases in the course of the different measurements. The Table below illustrates the evolution of the volume of first instance administrative cases on 31 December between 2010 and 2014. As already noted, a number of States or entities have reported some horizontal incoherence in the data provided, due to several factors, including the organization of the court system between first instance and second instance (e.g. **Bosnia and Herzegovina**) or the change of methodology of presentation of data (e.g. **Greece**).

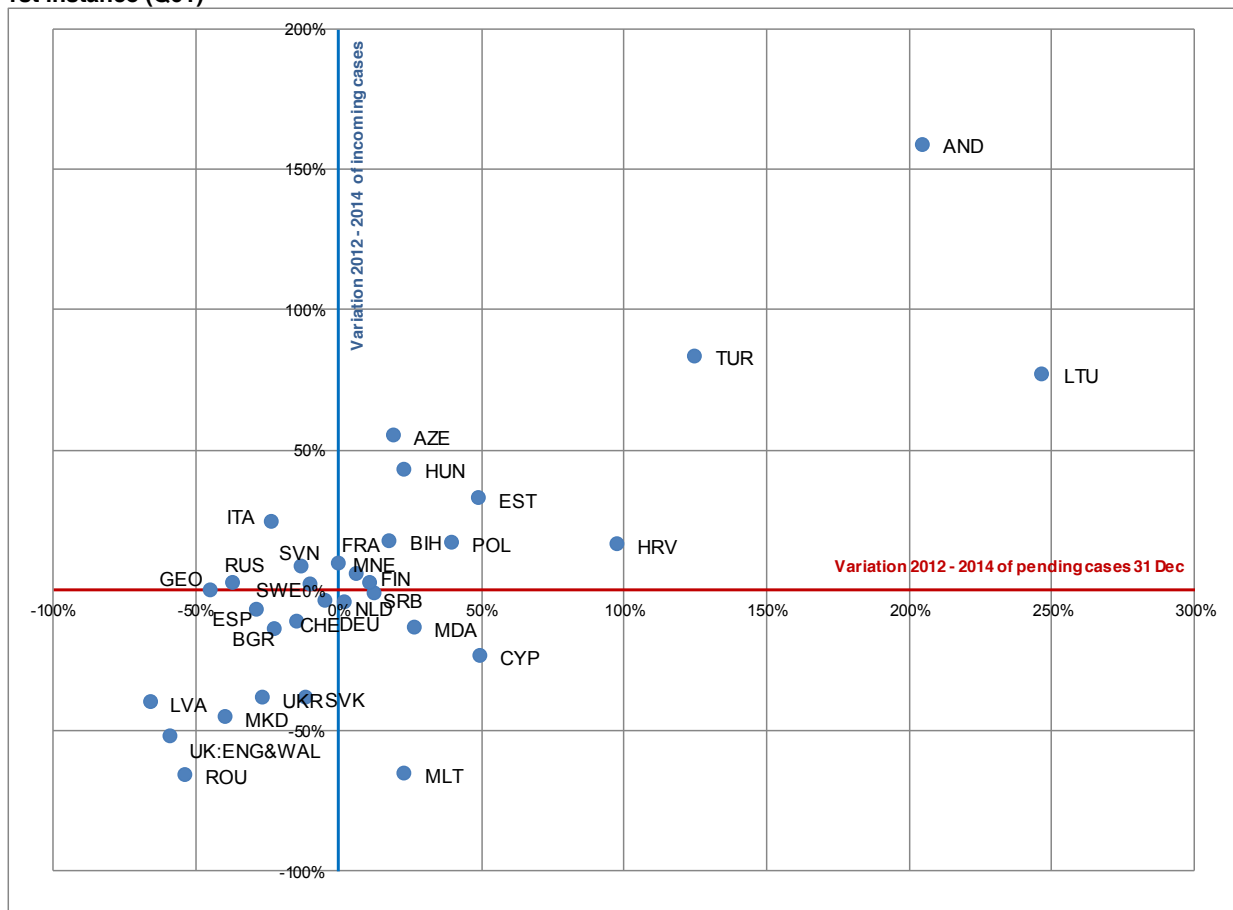
**Table 5.22 Number of 1st instance administrative pending cases 31 Dec 2010 - 2014 (Q91)**

States/entities	Number of 1st instance administrative pending cases 31 Dec			
	2010	2012	2014	Trend
Albania	2700	3811	3841	
Andorra	145	87	265	
Armenia	4065	8912	NQ	
Austria	NA	NAP	NA	
Azerbaijan	NAP	2471	2946	
Belgium	NA	NA	37880	
Bosnia and Herzegovina	7837	8323	9814	
Bulgaria	8261	10886	8444	
Croatia	35303	7075	13976	
Cyprus	5288	5395	8074	
Czech Republic	NA	NAP	9365	
Denmark	NA	NAP	NAP	
Estonia	1301	890	1326	
Finland	20217	18930	21058	
France	173246	157470	157262	
Georgia	1229	5693	3149	
Germany	683432	677447	645014	
Greece	421946	383402	NA	
Hungary	7584	5479	6734	
Ireland	NAP	NAP	NAP	
Italy	509246	348896	267247	
Latvia	5423	4280	1461	
Lithuania	2806	3128	10845	
Luxembourg	129	NA	NA	
Malta	136	555	683	
Republic of Moldova	2333	2460	3112	
Monaco	NA	NA	NAP	
Montenegro	1179	1701	1810	
Netherlands	53410	50010	51020	
Norway	NAP	NAP	NAP	
Poland	21267	22132	30991	
Portugal	NA	NA	NA	
Romania	52374	133484	61838	
Russian Federation	NA	185166	116210	
Serbia	20296	21509	24262	
Slovakia	7838	17815	15772	
Slovenia	2320	1936	1682	
Spain	513236	285005	203406	
Sweden	49538	37675	33986	
Switzerland	13267	15190	13016	
The FYROMacedonia	13810	14228	8577	
Turkey	198349	69700	156595	
Ukraine	289486	44360	32490	
UK-England and Wales	749178	894364	366403	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel		3483	3276	
<b>Average</b>	114064	98568	66587	
<b>Median</b>	10764	14228	13016	
<b>Minimum</b>	129	87	265	
<b>Maximum</b>	749178	894364	645014	

In line with the overall improvement trend of the two performance indicators (Clearance Rate and Disposition Time) in the administrative justice sector, data collected from the last three evaluations shows, a general decrease of the number of pending administrative law cases (by 13,6 % in 2010-2012 and by 32,4 % in 2012-2014). Between 2012 and 2014 half of the States or entities (17) for which information was provided reduced the volume of pending cases while the other half registered an increase compared to the 2012 data. Court performance related to the ability to reduce the backlog of administrative law cases has been particularly positive in **Bulgaria, Georgia, Romania, Slovakia, Switzerland, “the former Yugoslav Republic of Macedonia”** and **UK-England and Wales**. These States or entities have been able to invert the increasing trend of the backlog recorded in 2012 and eventually reduce the number of pending cases in the last measurement. A positive trend can also be noted in 8 other states, where the stock of pending cases has progressively decreased between 2010 and 2014 (**France, Germany, Italy, Latvia, Slovenia, Spain, Sweden** and **Ukraine**).

These figures, however, need to be interpreted in context. An increase or decrease of the backlog may be related to the level of court efficiency but can also be influenced by other factors, including the number of incoming cases. The figure below, therefore, illustrates the possible relationship between the evolution of the backlog over time and the volume of incoming administrative cases in specific States or entities. However, it should be acknowledged that variations of the amount of pending cases might also be influenced by other circumstances, such as the reporting methodology, alterations of the economic and social context and changes in administrative law or other legal reforms affecting the organization of court workload in a specific country.

**Figure 5.23 Variation of incoming cases vs. pending cases between 2012 and 2014 for administrative cases of 1st instance (Q91)**



The figure highlights the positive performance of a group of States or entities that were able to reduce the backlog despite an increase in the number of incoming cases. Examples in this regard include **Italy** (24 % increase of incoming cases and 23 % reduction of the backlog), the **Russian Federation** (3 % increase of incoming cases and 37 % reduction of the backlog), **France** (10 % increase of incoming cases and 0,1 % reduction of the backlog), **Israel** (9 % increase of incoming cases and almost 6 % reduction of the backlog), **Slovenia** (8 % increase of incoming cases and 13 % reduction of the backlog) and **Sweden** (2 % increase of incoming cases and almost 10 % reduction of the backlog). The significance of these figures should also

take into consideration the Disposition Time indicator, especially when it is particularly high (e.g. **Italy**, 984 days in 2014) or low (e.g. the **Russian Federation**, 7 days in 2014).

The figure also shows that the decreasing number of pending cases recorded in some States or entities between 2012 and 2014 (e.g. **Bulgaria, Germany, Latvia, Romania, Slovakia, Spain, Switzerland, “the former Yugoslav Republic of Macedonia”, Ukraine and UK-England and Wales**) was partly related to a lower number of incoming cases rather than to court efficiency solely. In **Spain**, the decrease in the number of incoming cases is related to a number of factors, including the introduction of court fees for natural persons and of a mandatory requirement to be assisted by a lawyer to file an administrative case complaint. Similarly, in the **UK-England and Wales** the lower volume of incoming administrative law cases, in 2014, is a result of changes of the rules in administrative proceedings, particularly with regard to the mandatory reconsideration for social security/child benefit cases (resulting in more cases being closed prior to going before a tribunal) and the implementation of fees for employment tribunals.

By contrast, the situation in those states where the number of pending cases has either increased despite a decrease in incoming cases (e.g. **Cyprus, Malta**), or increased considerably more than the increase in the number of incoming cases (e.g. **Estonia**) should be monitored more closely. In **Cyprus**, for instance, the increase in the number of pending cases during the last measurement is a result of the bail decision which prompted a high number of lengthy and complicated administrative cases. In **Estonia**, the increase of incoming cases in administrative courts is due to a rise of complaints from prisoners and the matter has been addressed through modifying the procedural law that makes it easier to return unfounded complaints.

## 5.4 Criminal justice

### 5.4.1 Criminal justice – 2014 data

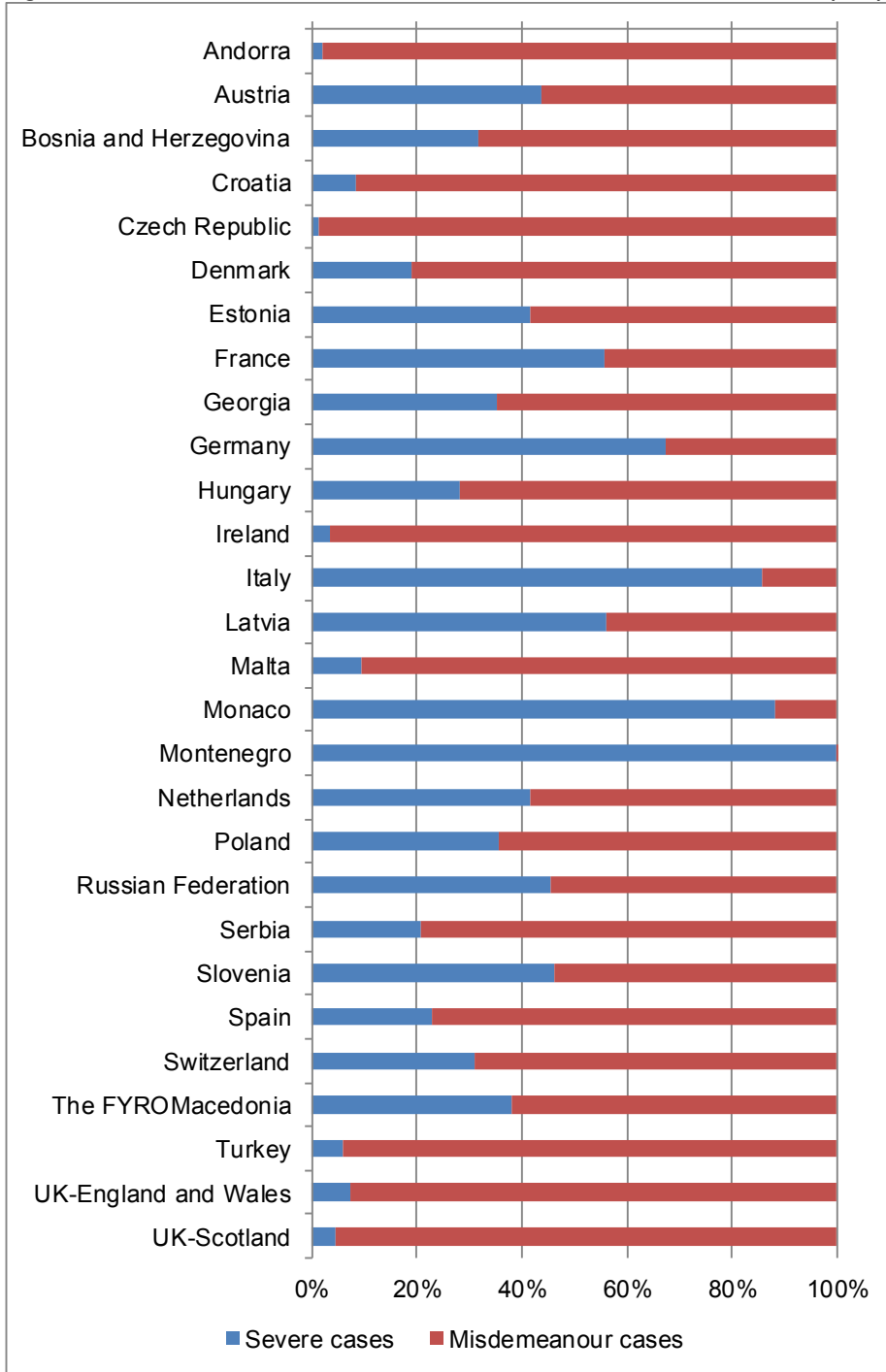
This section employs the terminology and the definitions used in the "European Sourcebook of Crimes and Criminal Justice". It deals with the management of criminal cases by courts, including by public prosecutors. The management of cases by public prosecutors is addressed especially with regard to the pre-trial phase and the actual trial.

Criminal offences comprise all offences defined as criminal by law, including traffic offences (mostly dangerous driving and driving under influence). They include acts which are normally prosecuted by a public prosecutor, whereas offences which are prosecuted directly by the police, such as minor traffic offences, and certain breaches of public order are not included.

To identify and better understand the main trends in Europe, a distinction needs to be made between minor criminal offences (misdemeanours) and severe criminal cases, because in relation to minor criminal offences, shorter court proceedings and/or other details of the handling of a case might apply (e.g. the imposition of an administrative fine, a sanction imposed by a public prosecutor without the intervention of a judge, police sanctions, etc.). Special tribunals, courts or judges can also be competent for minor criminal offences (e.g. misdemeanour courts, police courts or police judges, administrative courts). In addition, there may be a possibility to use mediation, conciliation or other forms of ADR for minor criminal offences.

To differentiate between 'minor offences' (misdemeanours) and 'serious offences' and to ensure as much as possible consistency and comparability of responses between different systems, the participating States and entities were asked to classify as 'minor' all offences for which it is not possible to pronounce a sentence of deprivation of liberty. Conversely, 'severe offences' are those punishable with a deprivation of liberty (arrest and detention, imprisonment). Examples of severe criminal cases include: murder, rape, organised crime, fraud, drug trafficking, trafficking of human beings, etc. Minor offences comprise shoplifting, certain categories of driving offences, disturbance of the public order, etc.

**Figure 5.24 Ratio between severe criminal cases and misdemeanours in 2014 (Q94)**



Data on the proportion between severe and misdemeanour incoming cases in 2014 was available for 28 States or entities. On the one hand, the composition of incoming cases (in terms of the share between minor and severe criminal cases) is expected to have an impact on the quality of the workload and, therefore, on the ability of courts to resolve incoming cases and to reduce backlogs, because severe criminal offences are supposedly more complicated and lengthy. On the other hand, the composition of incoming criminal cases might itself be affected by the way the criminal court system is organised and by the legislative framework or changes thereto. Accordingly, the data presented needs to be interpreted with care. Criminal law cases may be classified differently in the different jurisdictions because of distinctions between legal categories and statistical systems.

### ***Court and prosecutorial caseload in the criminal sector***

The expeditious procedure of criminal offences, consistent with the requirements of due process, is of particular importance for the safeguard of fundamental rights, as regards any case where the deprivation of liberty pending trial arises. Considering that the cluster of jurisdictions providing data on criminal court workload and on the number of cases handled by public prosecutors is different, the general observations made below need to be contextualised on a case by case basis or with regard to the same groups of States or entities.

The Table below provides information on the number of criminal cases treated by public prosecutors per 100 inhabitants. Total figures are indicated because for a number of states it has not been possible to calculate the number of incoming and resolved cases per 100 inhabitants. For **Cyprus, Greece, Malta, Portugal, Spain** this was not possible, either because the data was not available or because the categorisation into severe and minor criminal offences did not apply. Figures from 12 States or entities do not include traffic cases (**Andorra, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Denmark, Greece, Republic of Moldova, Slovakia, Turkey, Ukraine and Israel**).



**Table 5.25 Number of cases handled by public prosecutors per 100 inhabitants (Q107, Q107.1, Q108 and Q109)**

States/Entities	Number of cases per 100 inhabitants			
	Received by the public prosecutor	Discontinued by the public prosecutor	Concluded by a penalty or a measure imposed or negotiated by the public prosecutor	Charged by the public prosecutor before the courts
Albania	1,50	1,12	NAP	0,47
Andorra	6,21	NAP	NAP	1,21
Armenia	NQ	NA	NQ	NA
Austria	6,14	5,32	0,24	0,80
Azerbaijan	0,00	0,07	NAP	0,13
Belgium	5,90	3,99	0,09	0,25
Bosnia and Herzegovina	1,71	0,31	0,39	0,41
Bulgaria	1,93	1,05	NAP	0,49
Croatia	1,52	0,68	0,01	0,46
Cyprus	NA	NA	NA	NA
Czech Republic	3,77	1,73	NAP	0,81
Denmark	3,56	0,42	1,11	2,27
Estonia	2,44	1,78	0,21	0,53
Finland	1,54	0,19	0,01	1,00
France	7,44	4,81	0,87	0,90
Georgia	1,21	0,64	0,40	NA
Germany	5,66	3,18	0,23	1,25
Greece	NA	NA	NA	NA
Hungary	1,85	0,30	0,12	1,54
Ireland	0,30	0,10	NA	0,14
Italy	5,45	3,48	NA	1,01
Latvia	0,66	0,06	0,08	0,45
Lithuania	3,54	1,20	NAP	1,80
Luxembourg	10,79	4,84	0,12	1,85
Malta	NA	NA	NAP	NA
Republic of Moldova	1,87	0,36	0,21	0,39
Monaco	7,16	4,55	0,23	2,39
Montenegro	1,62	0,51	0,12	0,69
Netherlands	1,24	0,25	0,36	0,67
Norway	7,41	3,36	1,30	1,37
Poland	2,72	1,06	0,36	0,48
Portugal	NA	NA	NA	NA
Romania	3,54	2,86	0,39	0,16
Russian Federation	0,63	0,00	NAP	0,59
Serbia	2,77	0,79	0,53	0,58
Slovakia	1,85	0,12	0,04	0,62
Slovenia	4,20	0,84	0,08	0,62
Spain	NA	NAP	NA	NA
Sweden	5,38	1,70	0,71	1,93
Switzerland	6,64	0,99	4,63	0,15
The FYROMacedonia	1,90	1,57	0,01	0,77
Turkey	4,44	2,45	0,01	1,39
Ukraine	0,04	0,02	0,18	0,02
UK-England and Wales	1,13	0,13	NAP	1,16
UK-Northern Ireland	1,69	0,86	NAP	NAP
UK-Scotland	4,57	1,11	1,39	1,85
Israel	1,26	0,71	0,00	0,61
<b>Average</b>	3,35	1,51	0,50	0,88
<b>Median</b>	2,58	0,99	0,23	0,68
<b>Minimum</b>	0,00	0,00	0,01	0,02
<b>Maximum</b>	10,79	5,32	4,63	2,39

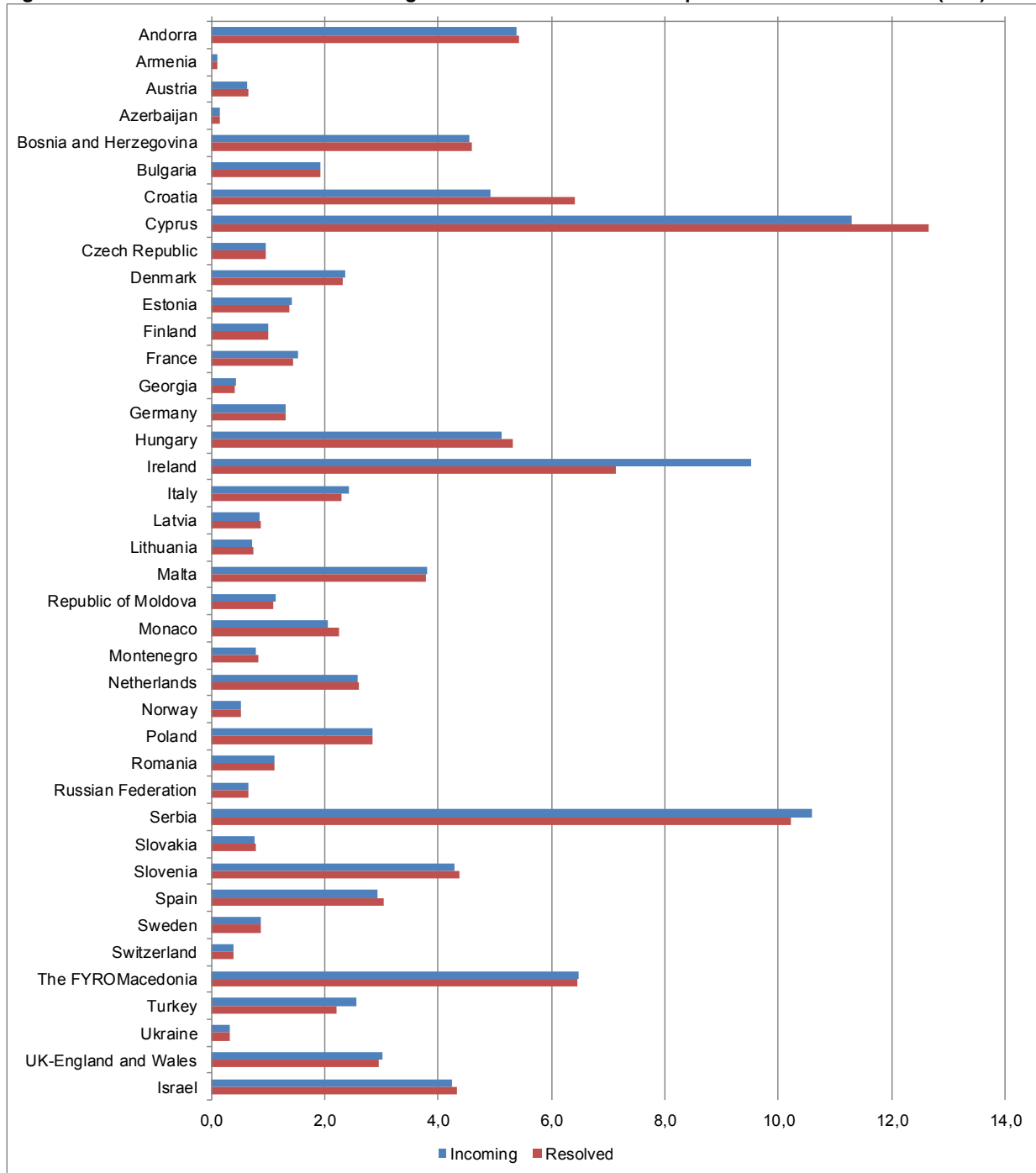
Data collected for the 2014 CEPEJ evaluation shows that public prosecutors receive on average 3,4 cases per 100 inhabitants. Approximately 45 % of these are generally discontinued by the public prosecutor and 25 % of cases charges are brought by the public prosecutor before the courts. The remaining 30 % are concluded by a penalty or a measure imposed or negotiated by the public prosecutor. There are, however, important differences between the states as regards both the share between cases that are discontinued, negotiated or charges brought before a court and variations over time.

In the figures reported by **Austria**, for instance, the 'cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor' are also included in the category 'discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation'. Moreover, cases may be computed more than once, depending on the number of persons concerned in the case at issue. In **Slovenia**, following the new centralised information system of the State Prosecutor's Office, which started functioning in 2013, the State Prosecutor's Office statistics is based on individuals (denounced, charged or sentenced), by contrast to court statistics, which is based on cases (that may include more than one individual) and police statistics which is based on criminal offences. In **Israel** as well, cases are counted differently by the Police Prosecution, the State Prosecution and the Courts' Management. The number of discontinued cases of the Police Prosecution and the State Prosecution, for example, also includes cases which were received during previous years, but which were discontinued during the reporting year, while the number of cases charged before the courts only encompasses some cases that were received during previous years. Moreover, it should be noted that the Police Prosecution handles about 90 % of criminal cases. Instead, in the **UK-England and Wales** the organisation and structure of the criminal justice system requires special attention when interpreting the data for comparison purposes. The figures regarding cases received, for instance, refer to cases received by the Crown Prosecution Service (CPS) after a charge has been made, while the category 'cases charged by the public prosecutor before the courts' refers to the number of defendants prosecuted by the CPS whose case was completed during the year. Also, Crown Prosecutors do not impose or negotiate penalties as these can only be imposed by the courts after a finding of guilt.

Other differences, especially those explaining variations in the course of the last three evaluations are discussed in detail below, in the section devoted to trends in the criminal sector.

The Table below presents information on court caseload regarding criminal cases, (both severe and minor offences). Total figures are presented because detailed data distinguishing between severe and minor criminal offences was not available in a number of States or entities (e.g. **Belgium, Greece, Luxembourg, Portugal, UK-Northern Ireland and UK-Scotland**).

**Figure 5.26 Number of 1st instance incoming and resolved criminal cases per 100 inhabitants in 2014 (Q94)**

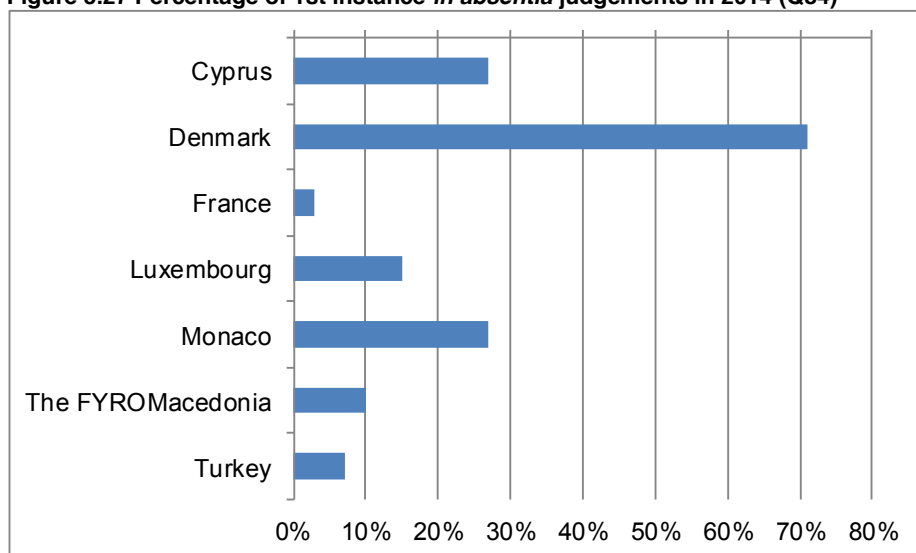


In the States or entities assessed, 19 court systems manage to resolve more and 21 systems less than the average number of 2,2 criminal cases per 100 inhabitants, per year. Minor offences represent bigger part of the workload, generally almost three times the number of severe offences. **Cyprus, Ireland, Serbia** and to a lesser extent “**the former Yugoslav Republic of Macedonia**” have reported a particularly high number in criminal cases per 100 inhabitants, compared to other jurisdictions. The figure regarding **Cyprus** can be explained by the upsurge of first instance criminal cases (an increase of 27 % between 2012 and 2014) resulting from the enforcement of the bail-in confiscation package in 2013. In **Ireland**, it is the practice to count each misdemeanour or summarily triable offence as a criminal “case”. Changes in the reporting methodology (counting cases by reference to the offence(s) charged rather than to the defendant) has resulted in a very significant increase in the number of criminal cases recorded as returned for trial on indictment. In **Serbia**, an important reform of the criminal justice sector consisting in the introduction of an adversarial system within public prosecution and criminal proceedings (instead of the inquisitorial one) prompted an increase in the number of incoming criminal cases. Furthermore, **Serbia** started to report

misdemeanour cases only in the last cycle. Previously, misdemeanour cases were not considered as criminal because under Serbian law they are prosecuted in *ad hoc* misdemeanour courts.

The data collected for the 2014 evaluation scheme allows for some limited analysis of the percentage of first instance *in absentia* judgements. Particularly high numbers of *in absentia* judgements in some cases can be explained by the fact that the court system might not require a hearing for minor cases, such as unpaid traffic fines (e.g. **Denmark**).

**Figure 5.27 Percentage of 1st instance *in absentia* judgements in 2014 (Q84)**

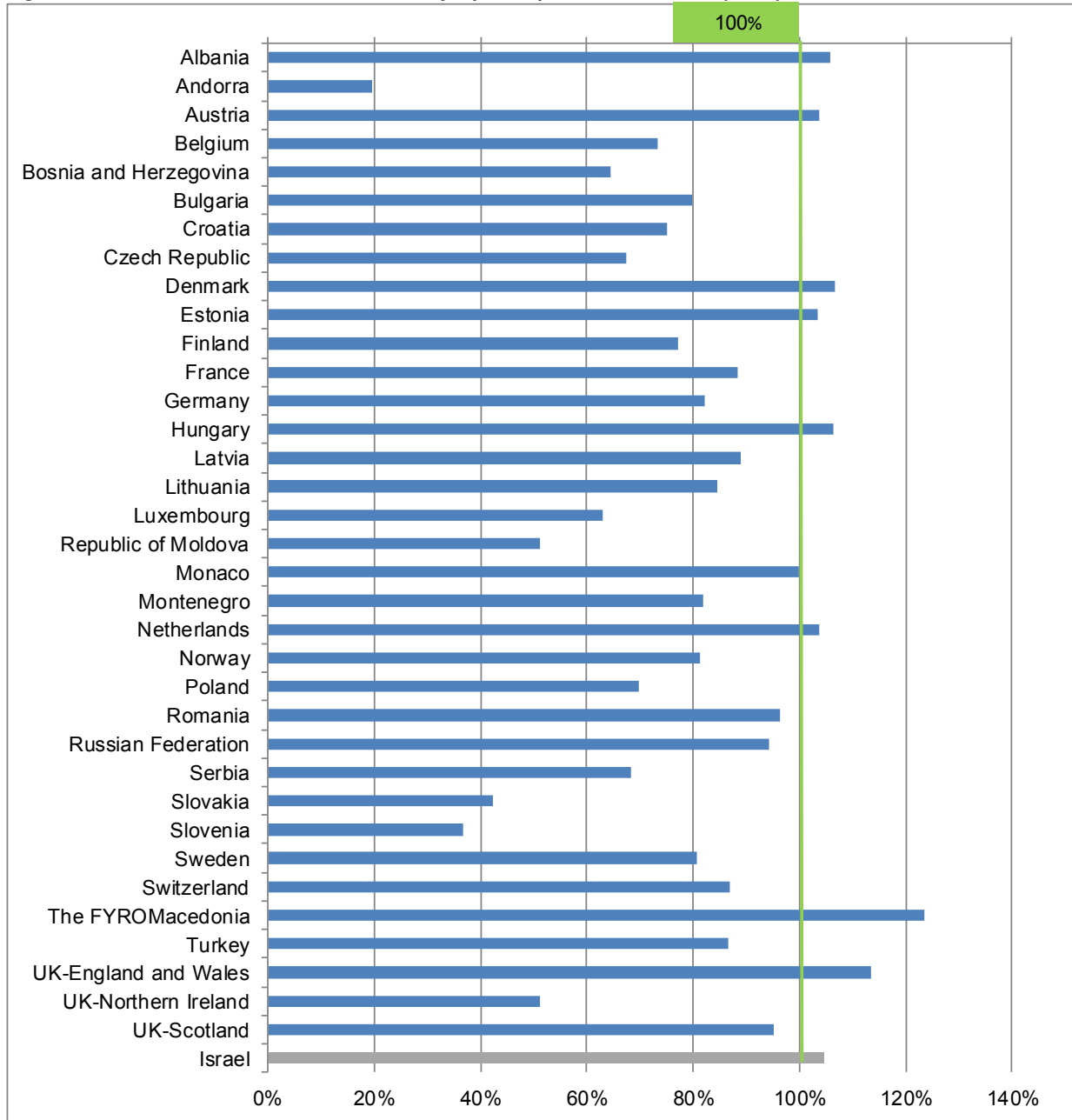


#### ***Performance indicators in the criminal sector***

A general overview of the situation of court management as regards criminal law cases can be obtained using the two CEPEJ indicators of court efficiency: the Clearance Rate and the Disposition Time.

The figure below shows the Clearance Rate of cases handled by prosecutors in 2014.

**Figure 5.28 Clearance rate of cases handled by a public prosecutor in 2014 (Q107)**

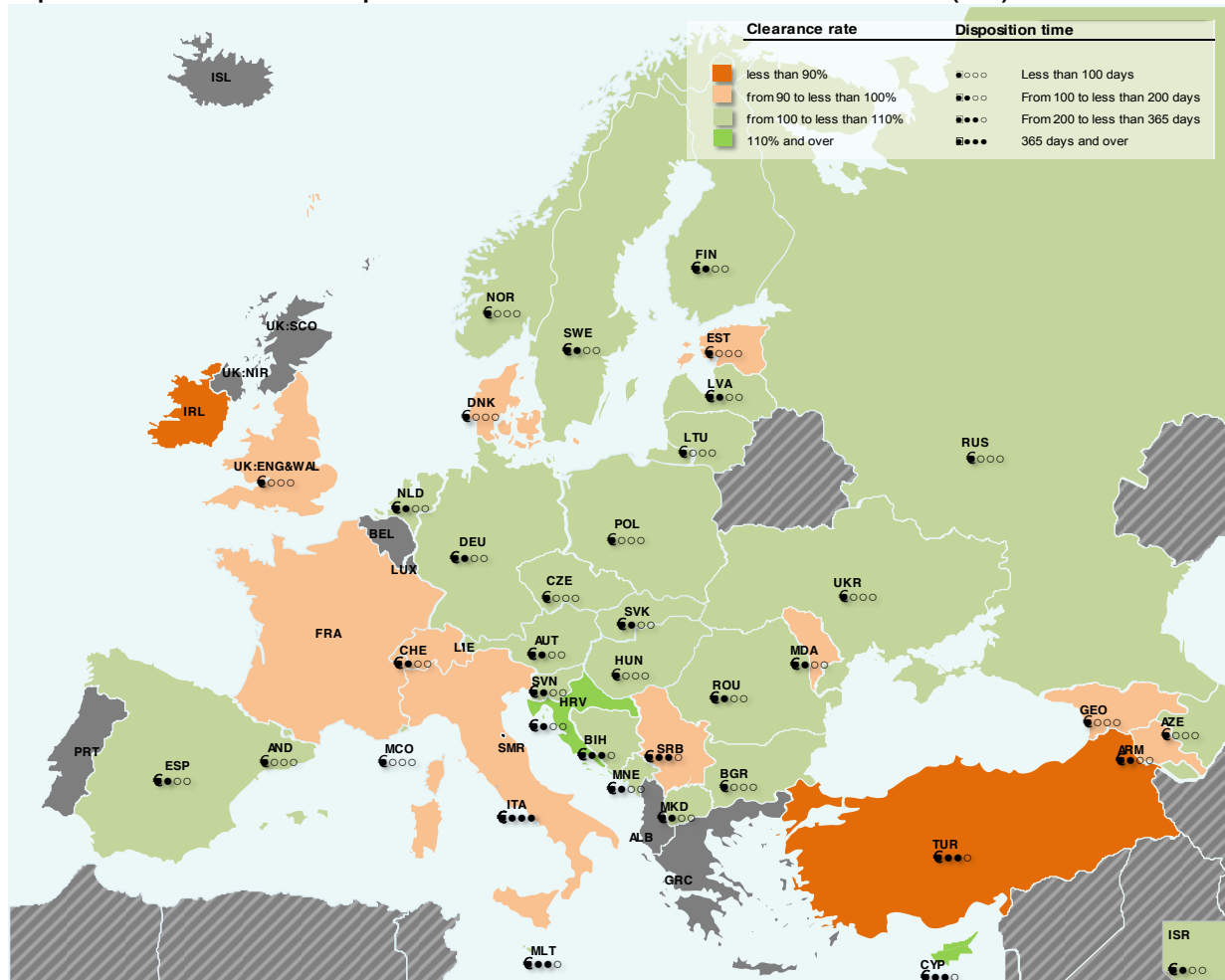


More than 70 % of the states for which data was available show a negative Clearance Rate; only in 10 States or entities the Clearance Rate is above 100 %. The data reported, however, should be interpreted with caution considering the different approach taken in this regard by the jurisdictions assessed. Public prosecutors are often involved in pre-trial proceedings and the moment when a case is reported as completed depends on whether the pre-trial phase is considered separately from the trial phase during which the case is brought before the court. Differences in this respect may have a considerable impact on the Clearance Rate.

As regards the Clearance Rate for criminal law cases solved by courts, the European average is approximately 100 %, which means that courts can resolve more or less a number of cases that equals the volume of incoming cases. A positive note is that the Clearance Rate is higher for the more complicated cases involving severe offenses (103 %) compared to cases concerning minor offenses (97 %). However, in the States or entities where minor offences represent an important share of criminal cases, there is a risk that the backlog might increase. This is however mitigated by the fact that the average Disposition Time for minor offences is 139 days compared to 195 days for severe crimes.

The map below has been produced on the basis of data from States or entities and shows the Clearance Rate and Disposition Time of first instance criminal cases where available.

**Map 5.29 Clearance Rate and Disposition Time for first instance criminal cases in 2014 (Q94)**



For 26 States or entities, court efficiency does not seem to be a major concern in the criminal law field, as both the Clearance Rate and the Disposition Time can be considered as positive, which means that the backlogs are decreasing and that, at the same time, the cases to be handled by the court can be resolved within an acceptable time: **Andorra, Austria, Azerbaijan, Belgium** (data on severe crimes only), **Bulgaria, Croatia, Czech Republic, Finland, Germany, Hungary, Latvia, Lithuania, Monaco, Montenegro, Netherlands, Norway, Poland, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden**, “the former Yugoslav Republic of Macedonia”, **Ukraine and Israel**.

For **Bosnia and Herzegovina and Cyprus**, a positive evolution of the case management timeframe could be envisaged as the Clearance Rate is higher than 100 % although the Disposition Time remains high at this stage.

In other states (**Armenia, Denmark, Estonia, France** (Disposition Time not available), **Georgia, Republic of Moldova, Switzerland and UK–England and Wales**, the situation should be monitored in the long-term. The courts in these States or entities have difficulties in coping with the volume of cases (CR below 100%); however their Disposition Time can still be considered as highly acceptable at this stage. In **Estonia**, for instance, an agreement has been concluded between the Ministry of Justice and the biggest Estonian court setting the target for eliminating backlogs.

The situation of court efficiency for criminal law cases must be considered with care in **Ireland** taking into account that the Clearance Rate is high (119 %) for severe criminal cases but quite low for minor offences (75 %); no data regarding the Disposition Time was available. It appears more worrying in **Italy, Malta** (particularly high DT for severe criminal cases, 755 days), **Serbia and Turkey** as both the Clearance Rate and the Disposition Time are unsatisfactory.

## 5.4.2 Criminal justice – 2010 / 2014 evolutions

### Evolution of prosecutorial performance

Table 5.30 Evolution of the number of cases handled by the public prosecutor per 100 inhabitants between 2010 and 2014 (Q107)

States/entities	Number of cases Received by the public prosecutor per 100 inhabitants			
	2010	2012	2014	Trend
Albania	0,63	0,99	1,50	
Andorra	5,96	NQ	6,21	
Armenia	0,37	NA	NQ	
Austria	6,61	6,31	6,14	
Azerbaijan	0,01	0,00	0,00	
Belgium	6,54	6,16	5,90	
Bosnia and Herzegovina	1,68	1,73	1,71	
Bulgaria	NA	1,99	1,93	
Croatia	1,96	1,94	1,52	
Cyprus	NA	NA	NA	
Czech Republic	4,03	3,88	3,77	
Denmark	3,05	3,23	3,56	
Estonia	NA	NA	2,44	
Finland	1,57	1,57	1,54	
France	7,64	8,00	7,44	
Georgia	NA	1,07	1,21	
Germany	5,65	5,72	5,66	
Greece	NA	NA	NA	
Hungary	2,23	2,24	1,85	
Ireland	0,35	0,33	0,30	
Italy	5,94	5,77	5,45	
Latvia	0,61	0,65	0,66	
Lithuania	0,51	3,38	3,54	
Luxembourg	11,48	10,86	10,79	
Malta	NA	NA	NA	
Republic of Moldova	1,47	1,65	1,87	
Monaco	7,83	7,73	7,16	
Montenegro	2,10	1,77	1,62	
Netherlands	1,26	1,34	1,24	
Norway	8,33	7,84	7,41	
Poland	3,04	2,99	2,72	
Portugal	5,22	5,26	NA	
Romania	3,68	3,19	3,54	
Russian Federation	NA	0,64	0,63	
Serbia	NA	3,15	2,77	
Slovakia	1,87	1,79	1,85	
Slovenia	4,46	4,66	4,20	
Spain	9,73	NA	NA	
Sweden	6,99	5,55	5,38	
Switzerland	2,91	6,21	6,64	
The FYROMacedonia	1,93	2,10	1,90	
Turkey	8,37	4,04	4,44	
Ukraine	NA	NA	0,04	
UK-England and Wales	1,93	1,64	1,13	
UK-Northern Ireland	NA	1,93	1,69	
UK-Scotland	5,09	5,29	4,57	
Israel	NA	1,23	1,26	
<b>Average</b>	<b>3,97</b>	<b>3,54</b>	<b>3,35</b>	
<b>Median</b>	<b>3,05</b>	<b>3,07</b>	<b>2,58</b>	
<b>Minimum</b>	<b>0,01</b>	<b>0,00</b>	<b>0,00</b>	
<b>Maximum</b>	<b>11,48</b>	<b>10,86</b>	<b>10,79</b>	

The analysis of the evolution of the caseload and the way in which it is managed by public prosecutors highlights two main common trends.

First, several States and entities have reported an increase in the number of discontinued cases by public prosecutors as a result of the non-identification of the offender. There are various explanations for this trend, including the impact of an increased number of incoming cases (e.g. an increase of 55,7 % of incoming cases in **Albania**, in the period 2012-2014); the fact that the majority of cases in this category consists of proceedings where the offender could not be identified and in relation to which status of limitation apply (e.g. **Croatia**); legislative reforms decriminalising certain categories of crimes (e.g. **Croatia**) and the enactment of amnesty laws (e.g. **Monaco**); or an increase in the number of prosecutorial staff (e.g. **Turkey**). **Monaco** represents a particular example because the amnesty laws produced a conspicuous surge of the number of cases in the specific category of discontinued cases by the public prosecutor due to the lack of an established offence or a specific legal situation (an increase of 679 % in 2014 compared to 2012).

Secondly, in another group of jurisdictions, an increase in the number of cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor can be noted. In **Montenegro**, the considerable increase in the number of this type of cases in 2014 is related to the new Criminal Procedure Code and the introduction of alternative methods for resolving criminal procedures that are within the competence of the public prosecutors. Although the new Code entered into force in 2011, a certain amount of time was required to build the necessary conditions, practice and experience for the efficient application of the new elements and the impact appears only in 2014. Analogously, variations may occur in the course of the next evaluation in "**the former Yugoslav Republic of Macedonia**", as a consequence of the adoption of a new Law on Criminal Procedure that conferred new competences to public prosecutors, namely the responsibility of conducting investigations. This evolution did not have an effect on the number of cases in 2014, but on the volume of the work of public prosecutors with regard to existing cases and it may have an impact on the backlog in the future. Changes in the legislation that extend the possibility for public prosecutors to impose sanctions directly, independently of the judiciary, also explain the increase of the number of cases concluded by a measure imposed or negotiated by the public prosecutor in the **Netherlands**. In **Lithuania**, a legislative reform that concerned substantive law rather than the powers of prosecutors resulted in a higher number of incoming cases. The entry into force of the Law on Domestic Violence in 2011 had a strong correlation with the increase in the number of criminal investigations, on the basis that according to this law criminal investigation is compulsory regarding every incident of domestic violence.

#### ***Evolution of the performance indicators in the criminal sector - trends***

The Table below presents the evolution of the Clearance Rate for criminal cases between 2010 and 2014. The quality of the data reported with regard to some jurisdictions might have differed within the period observed. While this can partly explain variations, analysis must be developed cautiously.



Table 5.31 Evolution of Clearance Rate of 1st instance criminal cases between 2010 and 2014 (Q94)

States/Entities	Clearance Rate of 1st instance criminal cases			
	2010	2012	2014	Trend
Albania	NQ	NQ	NQ	
Andorra	100%	93%	101%	
Armenia	97%	100%	91%	
Austria	100%	101%	103%	
Azerbaijan	99%	101%	100%	
Belgium	NA	NA	NA	
Bosnia and Herzegovina	105%	102%	101%	
Bulgaria	100%	99%	101%	
Croatia	106%	103%	130%	
Cyprus	90%	91%	112%	
Czech Republic	101%	NA	100%	
Denmark	106%	104%	98%	
Estonia	144%	94%	97%	
Finland	97%	98%	100%	
France	95%	102%	95%	
Georgia	147%	101%	96%	
Germany	101%	101%	100%	
Greece	NA	NA	NA	
Hungary	99%	91%	104%	
Ireland	NA	NA	75%	
Italy	95%	94%	94%	
Latvia	100%	95%	102%	
Lithuania	98%	99%	102%	
Luxembourg	80%	NAP	NAP	
Malta	96%	99%	99%	
Republic of Moldova	94%	91%	95%	
Monaco	NA	105%	110%	
Montenegro	110%	96%	105%	
Netherlands	98%	95%	101%	
Norway	97%	100%	101%	
Poland	91%	101%	100%	
Portugal	105%	105%	NA	
Romania	99%	99%	101%	
Russian Federation	NA	99%	100%	
Serbia	78%	105%	96%	
Slovakia	102%	101%	103%	
Slovenia	106%	114%	102%	
Spain	99%	103%	104%	
Sweden	98%	101%	100%	
Switzerland	106%	99%	99%	
The FYROMacedonia	119%	105%	100%	
Turkey	91%	108%	86%	
Ukraine	99%	103%	100%	
UK-England and Wales	NA	102%	98%	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel	..	107%	102%	
Average	101%	100%	100%	
Median	99%	101%	100%	
Minimum	78%	91%	75%	
Maximum	147%	114%	130%	

Differently from the trend observed with regard to litigious civil and commercial cases, data on criminal cases collected by the CEPEJ shows that no changes have occurred in the last six years in respect of the Clearance Rate, which has remained stable at 100 %. There are, however important differences between the jurisdictions evaluated.

A regular improvement of the Clearance Rate of first instance criminal cases can be noted in 10 States (**Austria, Cyprus, Finland, Lithuania, Malta, Monaco, Norway, Romania, Russian Federation and Spain**). On the contrary, 7 other States (**Bosnia and Herzegovina, Denmark, France, Italy, Switzerland, “the former Yugoslav Republic of Macedonia” and Israel**) have experienced a slight deterioration of the Clearance Rate, but in all cases the Clearance Rate has remained very close to 100 %. In **Denmark**, for the period 2010-2012-2014, courts have been able to resolve more civil and commercial cases than the number of incoming cases, mainly due to an overall fall in the number of received cases, but this trend cannot be observed in the criminal sector. The number of cases, especially minor offences, has been increasing, in particular since 2012 and this supposedly resulted in the decrease of the Clearance Rate from 106 % in 2010, to 98 % in 2014. These developments were brought about by a new procedure that allowed the police to send cases to court where individuals have failed to pay fines for traffic offences.

Between 2012 and 2014, **Armenia, Serbia, Turkey** and to a lesser extent **Slovenia** (because the Clearance Rate is still above 100 %) experienced a decrease in the Clearance Rate of criminal cases. Trends in these countries must be monitored closely to understand the actual reasons behind the low Clearance Rate levels or behind negative developments over the longer period. Indeed, negative figures do not always represent the real situation in a specific jurisdiction but may rather be related to the methodology of the presentation of data. **Turkey**, for instance has underlined that the methodology of presentation of data on severe criminal and misdemeanour cases in 2014 and 2012 is different than in 2010 due to more precise interpretation of CEPEJ definitions as well as due to small changes in legislation that lead to different categorisation of cases.

Major improvements in the Clearance Rate of criminal cases can be observed in particular in **Cyprus Hungary and Montenegro**. The Clearance Rate in these states has changed from negative to positive between 2012 and 2014. **Croatia** has also experienced a significant increase in the Clearance Rate - from 103 % in 2012 to 130 % in 2014 - but additional information is needed to understand the significance of this development. This is more generally the case when States experience significant variations in the performance indicators, but nevertheless stay within what is considered a positive area of performance. Accordingly, in order to obtain a better understanding of trends and the reasons behind them, data regarding variations of the Clearance Rate should be read alongside information on the number of incoming cases and the Disposition Time.

Table 5.32 Evolution of Disposition Time of 1st instance criminal cases between 2010 and 2014 (Q94)

States/entities	Disposition time of 1st instance criminal cases			
	2010	2012	2014	Trend
Albania	NQ	NQ	NQ	
Andorra	65	271	88	
Armenia	78	103	135	
Austria	116	115	102	
Azerbaijan	50	56	63	
Belgium	NA	NA	NA	
Bosnia and Herzegovina	345	328	326	
Bulgaria	49	62	74	
Croatia	221	201	144	
Cyprus	254	262	246	
Czech Republic	72	NA	64	
Denmark	99	37	47	
Estonia	60	51	49	
Finland	107	114	121	
France	NA	NA	NA	
Georgia	36	46	65	
Germany	104	104	111	
Greece	NA	NA	NA	
Hungary	104	120	62	
Ireland	NA	NA	NA	
Italy	329	370	386	
Latvia	77	133	133	
Lithuania	104	72	67	
Luxembourg	NA	NAP	NAP	
Malta	331	291	306	
Republic of Moldova	103	156	102	
Monaco	NA	78	81	
Montenegro	160	174	189	
Netherlands	89	99	117	
Norway	91	60	65	
Poland	96	88	99	
Portugal	302	276	NA	
Romania	85	72	111	
Russian Federation	NA	36	37	
Serbia	504	387	255	
Slovakia	168	145	136	
Slovenia	138	124	123	
Spain	162	136	125	
Sweden	135	123	128	
Switzerland	63	137	113	
The FYROMacedonia	212	203	155	
Turkey	314	226	330	
Ukraine	95	79	81	
UK-England and Wales	NA	73	82	
UK-Northern Ireland	NA	NA	NA	
UK-Scotland	NA	NA	NA	
Israel	..	142	115	
Average	152	146	133	
Median	104	120	111	
Minimum	36	36	37	
Maximum	504	387	386	

On average, the calculated Disposition Time of criminal cases in Europe has progressively decreased over the last years and is now set at less than 5 months. Clearly, the figure is largely affected by the impact of minor offences on the average time. However, depending on the share that minor offences represent within the general category of criminal cases, important differences can be observed.

State performance related to the Disposition Time shows some homogeneous developments within two big groups. 10 states have recorded a constant improvement of the Disposition Time for criminal cases (**Austria, Bosnia and Herzegovina, Croatia, Estonia, Lithuania, Slovakia, Serbia, Slovenia, Spain** and “**the former Yugoslav Republic of Macedonia**”). The majority among them had already relatively low Disposition Time figures. Of particular note, however, **Bosnia Herzegovina, Croatia, Serbia** and “**the former Yugoslav Republic of Macedonia**” which had high Disposition Time and have been able to lower them considerably in the course of the last three evaluations (except for **Bosnia and Herzegovina**). Such positive development may be partly related to the fact that minor offences represent the bigger share of criminal cases in those states and these can generally be concluded within a shorter time.

In 10 other states (**Armenia, Azerbaijan, Bulgaria, Finland, Georgia, Germany, Italy, Latvia, Montenegro** and **Netherlands**) a slow but continuous increase in the Disposition Time can be observed. This trend should be monitored but cannot be considered as worrying for the time being; in all these jurisdictions (with the sole exception of **Italy**) the Disposition Time can be considered as acceptable (approx. below six months). Even the situation of **Italy** should be reconsidered in light of the fact that severe criminal offences constitute more than 85 % of the total of criminal cases within this jurisdiction.

The situation of **Turkey** should be closely monitored. The country has experienced an important deterioration of the Disposition Time between 2012 and 2014 (from 226 to 330 days), following a relevant improvement during the previous period. Moreover, minor offences, i.e. the cases that are expected to be solved more rapidly, represent 96 % of the criminal offences in **Turkey**. The changes to the methodology of categorisation of data in **Turkey** have already been mentioned, but these could only partially explain the development. The variation of the figures on the Disposition Time should also be considered (and can partly be explained) in the light of the changing volume of incoming and pending cases in the course of the three evaluations. Indeed, the improvement of the Disposition Time in **Turkey** between 2010 and 2012 can be a to a lower number of incoming cases while the deterioration that occurred between 2012 and 2014 could be explained in the light of a 2 % increase in the number of cases received and a 19 % increase in the number of pending cases.

The table below presents the evolution of the volume of incoming and pending 1st criminal cases on 31 December between 2010 and 2014.

**Table 5.33 Variation of 1st instance incoming and pending criminal cases on 31 December between 2010 and 2014 (Q94)**

States/entities	Variation 2010 - 2012		Variation 2012 - 2014	
	Incoming cases	Pending cases 31 Dec	Incoming cases	Pending cases 31 Dec
Albania	NQ	NQ	NQ	NQ
Andorra	-76%	-8%	260%	26%
Armenia	-9%	24%	-6%	12%
Austria	-5%	-6%	-5%	-14%
Azerbaijan	-8%	4%	0%	11%
Belgium	NA	NA	NA	NA
Bosnia and Herzegovina	-7%	-14%	3%	2%
Bulgaria	33%	66%	-12%	8%
Croatia	-9%	-19%	-40%	-46%
Cyprus	1%	6%	-18%	-5%
Czech Republic	NA	NA	NA	NA
Denmark	33%	-51%	-13%	6%
Estonia	12%	-38%	16%	16%
Finland	-3%	5%	-9%	-3%
France	-4%	NA	0%	NA
Georgia	-22%	-31%	78%	138%
Germany	-1%	-2%	-9%	-4%
Greece	NA	NA	NA	NA
Hungary	24%	32%	51%	-11%
Ireland	NA	NA	NA	NA
Italy	-5%	6%	-4%	1%
Latvia	-26%	22%	-14%	-9%
Lithuania	62%	13%	-28%	-30%
Luxembourg	NAP	NA	NAP	NAP
Malta	-8%	-17%	-9%	-4%
Republic of Moldova	19%	72%	241%	134%
Monaco	NA	NA	7%	17%
Montenegro	-16%	-20%	-17%	-1%
Netherlands	-12%	-5%	12%	39%
Norway	75%	18%	-4%	5%
Poland	-10%	-8%	9%	21%
Portugal	-3%	-11%	NA	NA
Romania	12%	-6%	28%	102%
Russian Federation	NA	NA	-1%	4%
Serbia	-6%	-3%	1091%	619%
Slovakia	7%	-8%	-6%	-10%
Slovenia	-33%	-35%	-22%	-31%
Spain	2%	-11%	0%	-8%
Sweden	-3%	-9%	-7%	-3%
Switzerland	-71%	-40%	-45%	-54%
The FYROMacedonia	-9%	-23%	34%	-3%
Turkey	6%	-9%	2%	19%
Ukraine	-7%	-19%	-27%	-28%
UK-England and Wales	NA	NA	32%	42%
UK-Northern Ireland	NA	NA	NA	NA
UK-Scotland	-14%	NA	14%	NA
Israel	..	..	7%	-18%
<b>Average</b>	-2%	-4%	42%	27%
<b>Median</b>	-5%	-8%	-2%	1%
<b>Minimum</b>	-76%	-51%	-45%	-54%
<b>Maximum</b>	75%	72%	1091%	619%

The table highlights the positive performance of a group of states that were able to reduce the backlog despite an increasing number of incoming cases. None of the states concerned has maintained a regular trend in this regard across the three evaluations, however, positive examples include **Denmark, Estonia, Romania, Slovakia, Spain** and **Turkey**, for the period 2010-2012 and **Hungary, “the former Yugoslav Republic of Macedonia”** and **Israel** for the period 2012-2014. The table also provides an insight into the positive developments in the reduction of pending cases registered in some states between 2012 and 2014 (e.g. **Austria, Croatia, Lithuania, Switzerland** and **Ukraine**): these cannot be explained solely on the basis of increased efficiency of the courts but the decrease in the number of incoming cases needs to be taken into account as well.

In another group of States, between 2012 and 2014, the number of pending cases either increased notwithstanding a decrease of incoming cases (e.g. **Armenia, Bulgaria, Denmark, Italy, Norway** and **Russian Federation**), or decreased far more slowly than the number of incoming cases (e.g. **Cyprus** and **Montenegro**). In particular, the situation in **Armenia, Denmark** and **Italy** should be monitored carefully considering that the Clearance Rate in these countries is below 100 % and has been decreasing. Further analysis of the situation in **Cyprus, Montenegro** and **Norway** would help understand why these countries have increased their backlog of criminal cases despite a positive Clearance Rate.

On a general note, while differences due to the specificities of the legal, economic and social context in the different States and entities persist, there are a number of recurrent factors which operate alongside State efforts to improve court efficiency and which might explain the variations and developments in the criminal sector performance indicators over the last three evaluations. These include differences in the categorization of cases and in the reporting system across States and in the context of the different evaluations (e.g. **Estonia, Ireland, Poland, “the former Yugoslav Republic of Macedonia”** and **Turkey**); legislative reforms resulting in an increase or decrease in the incoming and resolved cases and of the backlog (e.g. **Denmark, Hungary, Lithuania, Republic of Moldova, Slovenia, Spain** and **UK England and Wales**); economic downturn and other negative social phenomena (e.g. **Lithuania**).

And finally, as earlier noted, the extreme increase for **Serbia** (excluded from bar line presentation in the table above) can be explained in the light of the fact that misdemeanour cases started being reported only during the last cycle. In the Serbian system misdemeanour cases are handled by dedicated misdemeanour courts and therefore these were not included in the number of criminal in the previous evaluations.

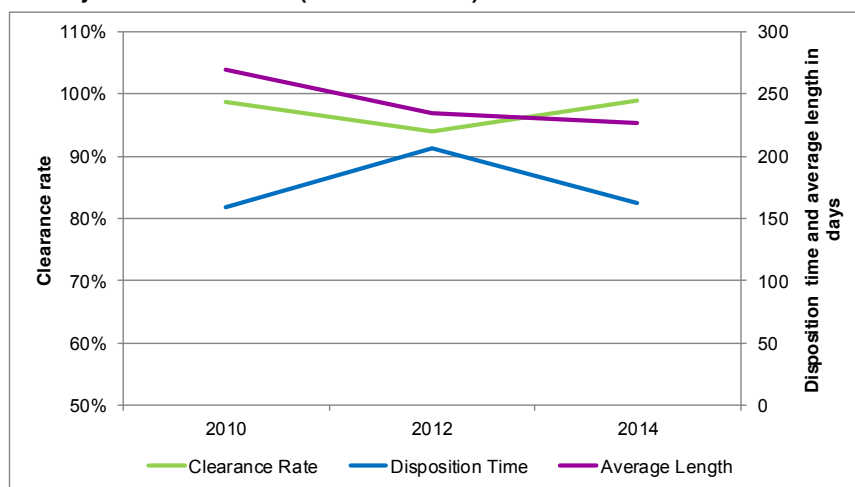
### ***Specific categories of criminal cases***

In the context of the analysis of court efficiency in the civil sector, the 2014 evaluation also collected specific information on two particularly relevant categories of criminal offences, robbery and intentional homicide. These are defined in the Evaluation Scheme as follows:

1. *Robbery* concerns stealing from a person with force or threat of force. If possible these figures should include: muggings (bag-snatching, armed theft, etc.) and *exclude* pick-pocketing, extortion and blackmail (according to the definition of the *European Sourcebook of Crime and Criminal Justice*). The data should not include attempts.
2. *Intentional homicide* is defined as the intentional killing of a person. Where possible the figures should include: assault leading to death, euthanasia (where this is forbidden by the law), infanticide and *exclude* suicide assistance (according to the definition of the *European Sourcebook of Crime and Criminal Justice*). The data should not include attempts.

### 5.4.2.1 Robbery cases

**Figure 5.34 Evolution of the European average of Clearance Rate, Disposition Time and length of 1st instance robbery cases 2010 - 2014 (Q101 and Q102)**

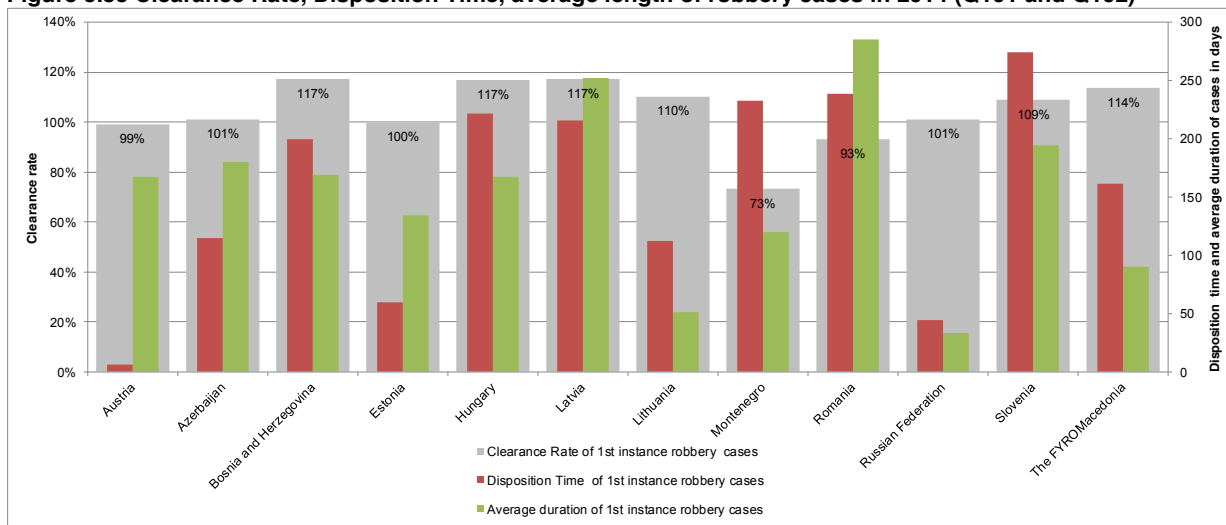


The figure above summarizes the average evolution of indicators regarding robbery cases. Between 2010 and 2014, the average Clearance Rate for this category of cases has remained the same, slightly below 100 %, despite a decrease to 94 % in 2012. A similar trend can be noted between 2010 and 2014 with regard to the evolution of the average Disposition Time, which rose slightly from 160 days in 2010 to 163 days in 2014, with an intermediate

relevant increase to 207 days in 2012. By contrast, the average length of the proceedings for this type of cases has improved regularly. Both the Disposition Time and the reported average length for this category of cases are higher than the average for the total of criminal cases.

As it was highlighted earlier in this chapter, Disposition Time can be considered as a better indicator to make comparisons between countries with regard to the ability of courts to cope with backlog, while the average length allows a valuable insight into developments in case management within the same country over the years.

**Figure 5.35 Clearance Rate, Disposition Time, average length of robbery cases in 2014 (Q101 and Q102)**



The figure shows that with the exception of **Montenegro** and **Romania**, all the states for which data was made available registered Clearance Rate of robbery cases close or over 100% in 2014. A particularly positive performance can be noted with regard to **Bosnia and Herzegovina**, **Hungary**, **Latvia** and “**the former Yugoslav Republic of Macedonia**”.

As regards developments over time it can be observed that the evolution of the Clearance Rate of this category of cases has been particularly positive in **Bosnia and Herzegovina**, **Bulgaria**, **Hungary**, **Latvia**, **Lithuania**, **Republic of Moldova**, **Slovenia** and “**the former Yugoslav Republic of Macedonia**”. The Clearance Rate has decreased over the years, particularly, in **Georgia**, **Montenegro** and **UK-England and Wales**. The extreme decrease of the Clearance Rate in **Montenegro** from 119 % in 2010 to 38 % in 2012 and the subsequent increase up to 73 % in 2014 can be explained on the basis of changes in the reporting methodology. In 2010, all cases with elements of robbery were counted, while in 2012 and 2014 only robbery

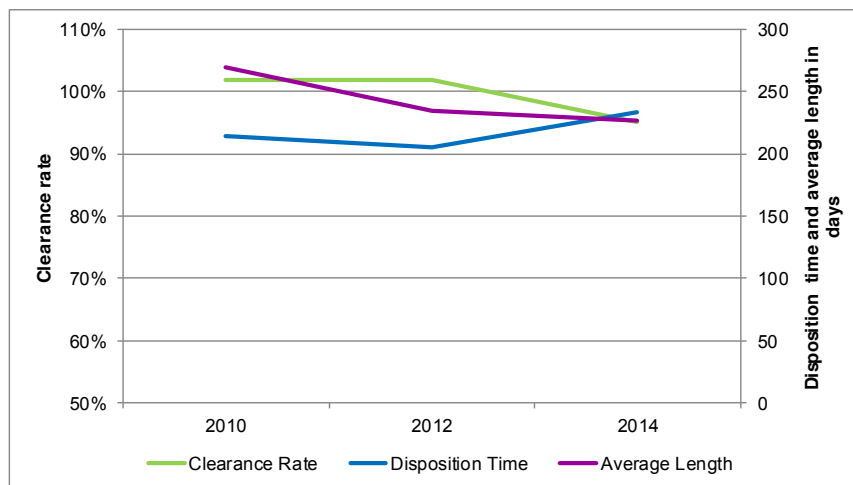
cases were taken into account. The figures produced were lower in the last two evaluations and therefore the number of pending cases had a bigger impact on the Clearance Rate. Similarly, **UK-England and Wales** reported that changes in the case management recording system meant that figures provided with regard to the number of incoming, resolved and pending cases are not comparable across the three evaluations. However, it also specified that the variations observed in 2014 are credible. **Finland** also had a particularly low Clearance Rate in 2010 and 2012 but it was not possible to calculate the figure for 2014.

The reported length of proceedings and the Disposition Time show important variations between the different States and entities, depending on the law procedures that apply in each system, the method of calculation of the average length and the volume of cases handled by the courts. Rapid procedures (Disposition Time is less than 100 days) can be noted in **Austria, Estonia, Russian Federation** and **Ukraine** and longer procedures (Disposition Time is more than 250 days) in **Armenia, Republic of Moldova** and **Slovenia**. The reported average length of criminal proceedings involving robbery cases has been decreasing over the past years, in particular in **Monaco** (from 565 days in 2012 to 259 days in 2014) and **Italy** (from 676 days in 2012 to 509 days in 2014) and has remained more or less stable in **Azerbaijan, Germany** and **Montenegro**. On the contrary, it has grown in **Turkey** (from 171 days in 2012 to 361 days in 2014) and **France** (from 636 days in 2012 to 666 days in 2014).

There are considerable differences between the calculated Disposition Time and the reported average length of proceedings in specific states. Very little information is available as regards the factors behind the observed variations of incoming, solved and pending robbery cases. Information in this regard from the national consultants involved in the reporting procedure should be consolidated with a view to gaining a deeper understanding of the factors behind the changes.

#### 5.4.2.2 Intentional homicide cases

**Figure 5.36 Evolution of European average of Clearance Rate, Disposition Time and length of 1st instance intentional homicide cases 2010 - 2014 (Q101 and Q102)**

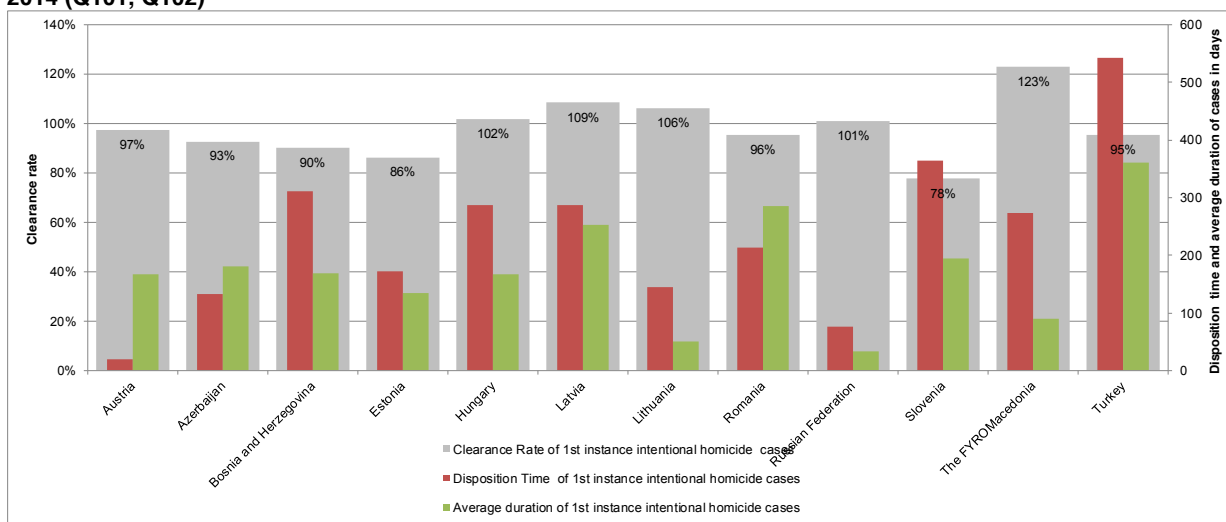


The figure above shows the average evolution of the two CEPEJ indicators and the Average length with regard to cases of intentional homicide. Between 2010 and 2014 the average Clearance Rate of this category of cases first remained stable (102 % in 2010 and 2012) and then experienced a significant decrease (to 95 % in 2014). The average Disposition Time has increased slightly over the years, despite a small reduction in 2012, and is now set at 234 days. By contrast,

the reported average length of first instance proceedings for intentional homicide cases has progressively improved. Even in this case, both the Disposition Time and the reported average length are higher than the average for the total category of criminal cases.



**Figure 5.37 Clearance Rate, Disposition Time and average length of 1st instance intentional homicide cases in 2014 (Q101, Q102)**



A particularly positive performance can be noted with regard to the **Lithuania, Russian Federation** and “**the former Yugoslav Republic of Macedonia**”. These states have very positive Clearance Rates and relatively low Disposition Times and average length of intentional homicide cases.

As regards developments over time, **Norway** and “**the former Yugoslav Republic of Macedonia**” have experienced a constant increase in their Clearance Rate over the years, while **Azerbaijan, Bulgaria, Estonia, Georgia** and **Turkey** show a negative trend. In particular, the situation in **Estonia** (Clearance Rate decreased from 120 % in 2010, to 113 % in 2012, to 86 % in 2014) and **Georgia** (Clearance Rate decreased from 155 % in 2010, to 88 % in 2012, to 77 % in 2014) should be monitored closely over the next evaluation. The Clearance Rate in **Ireland** has declined considerably since the last evaluation, and it is not clear to what extent this is related to the reported change in the unit of measurement for criminal cases, from a defendant related unit to an offence related unit. Despite positive variations over time (from 55 % in 2010 to 69 % in 2014) the figures regarding the situation in **UK-England and Wales** are also particularly low.

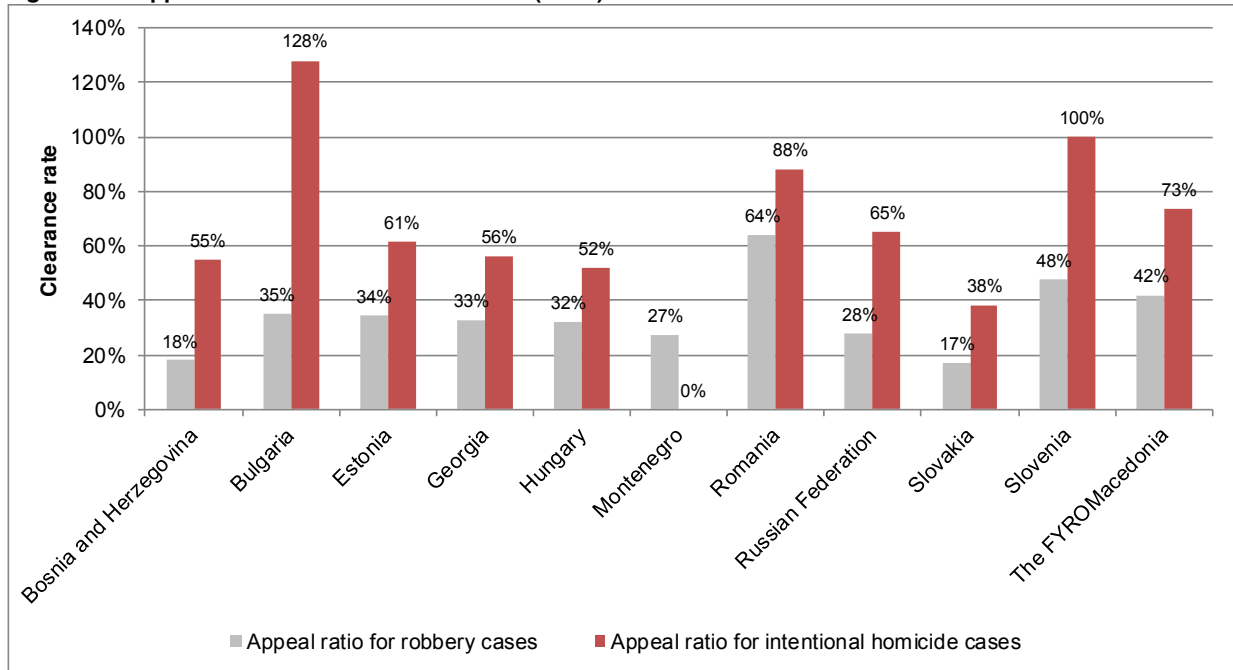
A better understanding of these data and the trends can be obtained by analysing them in conjunction with the volume of incoming cases and the length of the proceedings. Because of the gravity of the offence, the number of intentional homicide cases may be rather limited, compared to other categories of criminal offences. Moreover, homicide cases may be particularly long in some cases for a number of reasons, including the importance of the quality of the presented evidence. A combination of these factors is expected to have a negative effect on the Clearance Rate, which measures the ratio between the number of cases resolved and received within one year. This would explain the particularly low Clearance Rate figures in some cases, and accordingly suggest a reappraisal.

There are considerable differences between the calculated Disposition Time and the reported average length of proceedings in specific countries but too little information is provided to understand the underlying reasons and to draw robust (quantitative or qualitative) conclusions.

#### **Ratio of first/second instance for specific categories**

While the focus of this chapter is on first instance judgements the information collected allows assessing the ratio of appeal in the criminal sector. The figure below shows the percentage of robbery and intentional homicide cases that are challenged in second instance.

**Figure 5.38 Appeal rate for some criminal cases (Q102)**

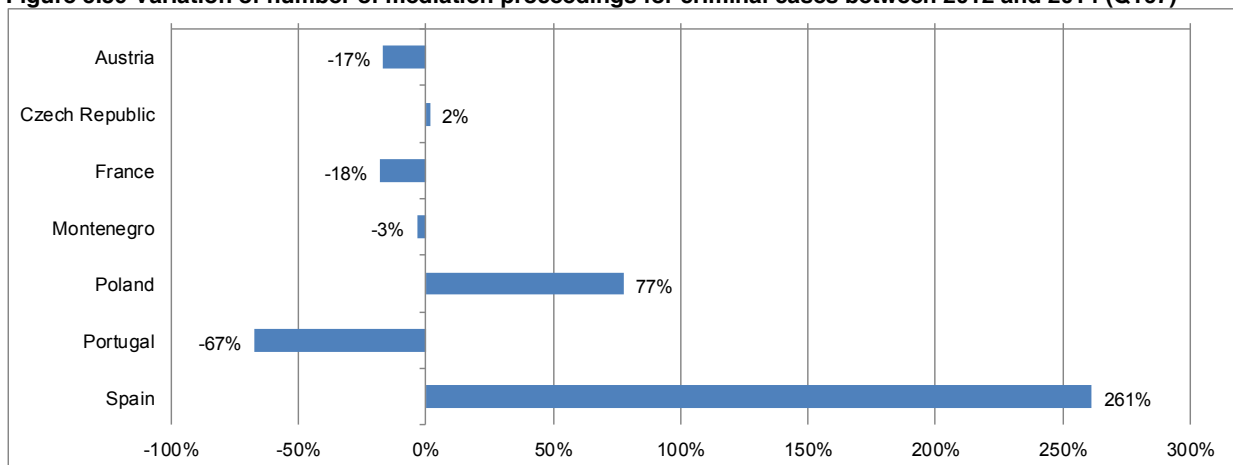


Only very little information is available as regards to percentage of the appeal procedures, and the information received is hardly comparable considering the specifics of the different judicial systems with regard to reporting case numbers, the distinction between first and second instance and the average length of proceedings at each stage. Improving such information will allow the CEPEJ and its Members to strengthen their knowledge of case-flow management in the criminal law field and (propose and) consider specific tools for improving court efficiency.

### 5.4.3 Variation of mediation procedures

As already discussed in the section devoted to civil sector justice, several kinds of policies and measures contribute to facilitate the smooth and efficient functioning of the court system, and improve the services provided to court users. ADR is one of these policies that is made available guaranteeing a timely justice, of quality, while taking into account the type of litigation at stake. It and is progressively being employed in the criminal sector, as well, especially as regards minor offences and in the context of juvenile justice. The table below summarizes information on 7 states for which it was possible to gather information on the volume of these procedures and their variation over time.

**Figure 5.39 Variation of number of mediation proceedings for criminal cases between 2012 and 2014 (Q167)**



In the context of the next evaluation, it would be useful to prompt specific comments on the areas of justice where these procedures are applied and on their impact on overall court workload and performance.

## 5.5 Trends and conclusions

States continue their efforts towards a more detailed understanding of the activity of their courts, as regards the monitoring of compliance with the fundamental principles as protected by the ECHR and in terms of case-flow management and length of proceedings.

The 2016 evaluation highlights a sharp increase in the number of incoming criminal cases, while the category of 'other than criminal cases' has slightly contracted (- 2 %). It also shows an overall positive trend for the ability of European courts to cope with incoming cases in the long term. This has been a constant trend in the civil and administrative justice sector since 2010, and since 2012, also in the criminal sector. These developments are particularly significant if considered in the light of a relevant general increase in the number of incoming cases, compared to the 2012 CEPEJ evaluation, in particular, in the criminal sector (by 42 %) and in relation to litigious civil and commercial cases (by 7 %).

Compared to the previous evaluations, data for the 2014 evaluation of courts' efficiency in the **civil justice sector** (mainly civil and commercial litigious cases) shows that:

- there has been a discontinued trend in the improvement of the Clearance Rate of civil and commercial litigious cases received and solved at first instance; the average value for the Clearance Rate of 100 % in 2014 regarding civil and commercial cases means that States were able to deal with incoming cases in these areas but could not generally make progress in the reduction of backlog;
- the Disposition Time of litigious civil and commercial cases (on average 237 days in 2014) has slightly improved since 2010;
- with regard to pending cases, there has been a low but continuous increase in the backlog of civil and commercial litigious cases since 2010; improvements however can be observed in a number of states.

The data for the 2014 evaluation of courts' efficiency in the **administrative justice sector** confirm that:

- the Clearance Rate of administrative law cases at first instance has constantly improved; the average value has been increasing from 99 % in 2010 to 107% in 2014;
- the Disposition Time of administrative cases (on average 341 days in 2014) has fairly improved since 2010;
- in line with the positive trends regarding the Clearance Rate and the Disposition Time, there has been a general decrease in the number of pending cases, by almost 42 %.

The data for the 2014 evaluation of courts' efficiency in the **criminal justice sector** shows that:

- in the vast majority of the states, public prosecutors were able to solve less cases than those received; by contrast, the average Clearance Rate of criminal cases resolved by courts is approximately 100 %, which means that courts can cope more or less satisfactorily with the incoming workload during the year; however, the Clearance Rate is higher for the more complicated cases involving severe offences (103 %) compared to cases concerning minor offences (97 %);
- unlike for civil and commercial litigious cases, data on criminal cases shows that no changes have occurred in the last six years in respect of the Clearance Rate, which has remained stable at 100 %;
- on average, the calculated Disposition Time for criminal cases in Europe has progressively improved over the last years; as expected, it is higher for severe crimes (195 days) compared to minor offences (133 days);
- the quantity of both incoming and pending cases diminished between 2010 and 2012 but increased substantially between 2012 and 2014.

Data for specific categories of cases offers a deeper insight into the length of proceedings in certain key areas across the sectors of justice (family, employment, commercial or criminal) and reflect better the functioning of justice systems in concrete contexts. However, it appears that the overall performance of states in these cases is less positive compared to the broader categories of civil and criminal law cases, but the limited availability of data means that conclusions must be drawn with some care. The figures show that:

- between 2010 and 2014 the average Clearance Rate of litigious divorce cases has decreased and is now slightly below 100 %, despite a positive increase in 2012. A negative trend between 2010 and 2014 can also be noted with regard to the evolution of the average Disposition Time for this category of cases, but the situation has improved compared to the 2012 evaluation;

- employment dismissal cases represent the only category, among three specific categories of civil cases analysed in this report, which registered a positive Clearance Rate in 2014; they also register the highest rate of appeal among the three specific categories of civil cases that were analysed;
- the 2014 evaluation confirms the results from the previous evaluation, namely that European states experience the most significant difficulties in managing the caseload in respect of insolvency proceedings; the development trend of the Disposition Time of insolvency cases is also of concern;
- States perform better with regard to robbery cases than homicide cases in terms of the ability to cope with incoming cases (i.e. Clearance Rate).

On a more general level the 2014-2016 evaluation cycle suggests namely the following pathways of development with regard to understanding and improving court efficiency:

1. Economic recession has certainly been one of the main reasons for the increased volume of incoming cases and the extended duration of proceedings in some instances. It has already affected the composition of the case-flow and has prompted important legislative reforms in a number of cases to adapt to the change. The impact of the changing economic situation should be closely followed in the future.
2. Economic recession has also had an impact on the resources of courts and on the availability of legal aid for court users. Variations in the number of incoming cases should also be considered in the light of this development.
3. The use of ADR methods (e.g. mediation, conciliation) is promoted and incentivised in Europe, both in civil and criminal matters. While the use of ADR methods is possible without prejudice to the fundamental right to have a remedy before a tribunal, closer attention should be paid to the impact of this trend on the general workload of courts and on the resources that finance these procedures.
4. To improve timeliness and efficiency, online procedures for the processing of certain categories of claims are increasingly being developed and applied in different European States. This is a trend that should be monitored carefully in the following years.
5. Availability of disaggregated data is crucial to a better understanding of the effectiveness of the courts and of the reasons behind variations over time. Important changes to the national statistical methodologies, aimed at bringing domestic systems in line with the CEPEJ methodology, are already in process. The CEPEJ welcomes and promotes these efforts as an invaluable tool in the collection of comparative data necessary to improve court performance.

The new Edition of the report of the European Commission for the Efficiency of Justice (CEPEJ), which evaluates the functioning of the judicial systems in 45 Council of Europe's Member states and an observer state to the CEPEJ, Israel, remains in line with the process carried out since 2002, focusing on the main indicators and present in addition, for the first time, CEPEJ dynamic statistical database on internet. Relying on a methodology which is already a reference for collecting and processing a wide number of quantitative and qualitative judicial data, this unique study has been conceived above all as a tool for public policy aimed at improving the efficiency and the quality of justice. To have the knowledge in order to be able to understand, analyse and reform, such is the objective of the CEPEJ which has prepared this report, intended for policy makers, legal practitioners, researchers as well as for those who are interested in the functioning of justice in Europe.



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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.



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