PRATIQUE / PRACTICE

ANALYSE COMPARATIVE / COMPARATIVE PERSPECTIVES

Efficiency of European Justice Systems The strength and weaknesses of the CEPEJ evaluations

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Abstract

The collection of empirical data on the functioning of national judicial systems is becoming ever more important for comparative civil procedure scholarship. Sources of information on the structural components of European judiciaries were rather limited until the establishment of the CEPEJ (European Commission for the Efficiency of Justice). In this paper, the author seeks to draw conclusions from the four evaluation rounds conducted on a biennial basis during 2004 to 2010. The paper focuses on the 'inputs' and 'outputs' in the national justice systems, in order to find out whether there is a direct relationship between investment in judiciaries (in terms of court budgets, number of judges and their salaries) and the resulting operation of the justice system. Among the results, data collected on the number of processed cases and the length of proceedings in different European countries is analysed. The author, due to the nature of the results found, limits the comparative analysis of justice systems to preliminary findings only. Relying, inter alia on European Court of Human Rights' jurisprudence regarding excessive length of proceedings, the results show that 'outputs' do not always match 'inputs'. In fact, the CEPEJ data indicates that those judicial systems with the largest number of judges and lawyers per capita are at the same time those with the gravest systemic problems, e.g., those systems which experience the most severe difficulties in safeguarding the provision of a fair trial within a reasonable time. In conclusion, further interdisciplinary in-depth research is encouraged. While it acknowledges the CEPEJ's contribution to comparative research of European judicial system, the paper highlights a number of challenges and difficulties which may affect its work in the future.

Keywords: CEPEJ; efficiency; European justice systems; evaluation

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"Obviously, the highest type of efficiency is that which can utilize existing material to the best advantage"
Jawaharlal Nehru

1. CIVIL PROCEDURE IN THE ERA OF JUDICIAL CRISIS: GEDANKEN OHNE INHALT SIND LEER

In recent decades, the civil justice systems of many countries have experienced a crisis, both globally and at the European level. The problems with access to justice, length of proceedings and slow and ineffective enforcement of judicial decisions have been to the fore since the end of the 1990s.[2] Admittedly, throughout history, the parties to the proceedings and outside observers have complained about judicial delays.[3] However, it seems that modern demands are putting a new focus on the need for effectiveness of legal protection – a focus that is different, and requires methods of dealing with the systemic problems of judicial civil proceedings to be redefined.

Lack of efficiency in civil proceedings was in the past perceived as primarily a local phenomenon. Occasionally it was viewed as a national phenomenon. The extent of judicial delays were a matter of anecdote, and were based on individual experience and the subjective opinions of participants in the judicial process.

When such subjective experience accumulated beyond certain limits, so that it became politically prominent, reforms would be announced, and acceleration packages containing new rules of civil procedure would be enacted. The basis for the reform was, however, most often the reformists' personal impressions and feelings, underpinned by the opinions expressed by various social actors, and supported (or not) by certain theories or body of scholarship. On rather exceptional occasions, such reforms did achieve admirable results – see *e.g.* the Franz Klein's reform of civil procedure in Austria at the end of the 19th century. Much more often though, such rule-of-thumb reforms effect limited improvements at best, and no improvement at worst. In fact, today it is very difficult to give an objective assessment of the consequences

2 See *e.g.* A.A.S. ZUCKERMAN (ed.), CIVIL JUSTICE IN CRISIS. COMPARATIVE PERSPECTIVES OF CIVIL PROCEDURE (Oxford: Oxford University Press, 1999).

3 For a very good survey of historic experiences with undue delays in civil procedure of many European countries see C. H. VAN RHEE (ed.), THE LAW'S DELAY. Essays on Undue Delay in Civil Litigation (Antwerpen-Oxford-New York: Intersentia, 2004).

of many past reforms, not least because there is little reliable evidence of the state of affairs before and after the changes (or of the nature of any causal nexus between the reforms and the changes).

Today, we live in an era of globalisation and internationalisation. Equally, the functioning of national justice systems is less and less a pure national problem. Judicial delays have become a relevant consideration from a supranational perspective for a number of reasons: first, regionally, there are tendencies towards the harmonization and approximation of laws; secondly, greater conformity amongst national judicial institutions is being driven by, for instance, the European Union; and, finally but not least, the proper functioning of justice and effective access to legal protection within a reasonable time are guaranteed by the international standards of human rights protection, which may also be directly enforceable before international judicial institutions, such as the European Court of Human Rights.

What do these developments imply for civil procedural scholarship? The challenges are significant. Two aspects are of particular importance. First, as national civil procedures cease to be self-contained, closed systems – even when focused only on the institutions of local (national) civil justice – research in the field of civil procedure has to take into account a broader context, and consider developments in other jurisdictions. Thus, even a 'pure' national civil procedure is faced with the prospect of becoming *comparative civil procedure* (which is gradually going to become a standard form of research and teaching of the subject).

The second aspect may require even more significant changes to be made to the customary approach. The discipline of civil procedure, at least within the Civil Law tradition, was throughout the centuries firmly anchored in the area of normative 'legal sciences' (*Rechtswissenschaften*). This implied a focus on the study of the content of legal norms and their systematic interrelations. Contact with the factual, 'empirical' element of civil procedure, happened mainly at the micro-level, through the study of real or hypothetical cases and their outcomes. Those cases were taken as exemplifying how any procedural rules or practices actually operated.

At the macro-level however, this approach shows its insufficiencies. In particular, it is not appropriate as the (main) method of comparison of judicial systems in their practical, day-to-day work. While it is possible to compare procedural laws and regulations, and analyze underpinning procedural theories and principles, in times of judicial crisis, it is an inadequate means of explaining different level of public (dis) satisfaction with the way in which one, or other, civil justice system functions. Public opinion matters, but is it in exact correlation with the reality? Is greater dissatisfaction conclusive proof that a certain justice system suffers from greater problems, or is this equation effected by the influence of other factors, e.g. the overall level of confidence in state and social institutions? It may be even harder to explain why similar systems of procedural rules and doctrines may result in procedural practices and styles that are dramatically different, both in results and in the reputation enjoyed by society.

To explain, comparatively, differences among the national systems of civil justice, to reveal their structural differences and assess their results, normative analysis will not suffice. Legal ideals and normative frameworks are important, but without concrete empirical knowledge about procedural realities, at both micro- and macro-levels, they are devoid of real meaning. Paraphrasing the well-known saying: concepts without percepts are empty, percepts without concepts are blind (*Gedanken ohne Inhalt sind leer; Anschauungen ohne Begriffe sind blind*).[4] The percepts needed are systematically collected empirical data about the functioning of the national civil justice systems.

Until recently, there was very little systematic data regarding how national civil justice systems functioned. Valuable research was conducted occasionally, either at the national level, or internationally, within the framework of cooperation of various institutions, universities and research centres.[5] Some comparative data and valuable studies were also assembled for the congresses and conferences of the International Association for Procedural Law (IAPL), as support for general reports on selected topics.[6] None of these activities were however conducted on a regular, or wide-ranging, basis. They were limited to a small number of countries, which were selected either regionally, or as a sample of certain jurisdictions with common characteristics. The strength and cogency of the results of these studies depended largely on the willingness of the state and its judicial bodies to cooperate. Even in a cooperative environment, it was difficult to assemble data according to uniform methodology, as the providers could only give access to available sources.

This situation started to change only when some international organisations showed an interest in comparative research of judicial systems. Notwithstanding its lack of authority to intervene in national civil procedures, the formation of the European Judicial Network in Civil and Commercial Matters (EJN) has, for instance, facilitated some systematic comparative collection of data regarding some judicial themes to be carried out. Its assistance has however been limited so far to the provision of information concerning basic and normative topics, with little ambition

4 I. KANT, KRITIK DER REINEN VERNUNFT (Berlin: Aus. Messer, 1928), p. 74.

5 One of the pioneer attempts was the formation of the European Research Network on Judicial Systems, which was a collaboration of several research institutions from Bologna, Utrecht, Amsterdam, Paris, Birmingham and Madrid. For the products this research see EUROPEAN DATABASE OF JUDICIAL SYSTEMS (Bologna: IRSIG-CNR, 2000). See also M. FABRI & P.M. LANGBROEK (eds.), THE CHALLENGE OF CHANGE FOR JUDICIAL SYSTEMS. DEVELOPING A PUBLIC ADMINISTRATION PERSPECTIVE (Amsterdam etc.: IOS Press, 2000).

6 The efficiency of justice was one of the main topic of the IAPL since the start of its work, also the main topic of the Würzburg 1983 Congress. Compare W.J. HABSCHEID (ed.), EFFECTIVENESS OF JUDICIAL PROTECTION AND CONSTITUTIONAL ORDER (Bielefeld: Gieseking, 1985). It was reappearing in other events, eg. as one of the main themes of the millennial congress in Vienna, see W. RECHBERGER & T. KLICKA (eds.), PROCEDURAL LAW ON THE THRESHOLD OF A NEW MILLENNIUM (Vienna: CLC, 2002). Similar focus can be found in the activities of the German Association for International Procedural Law (*Wissenschaftliche Vereinigung für Internationales Verfahrensrecht*), which discussed these topics in Warsaw – see P. GOTTWALD, (ed.) EFFEKTIVITÄT DES RECHTSSCHUTZES VOR STAATLICHEN UND PRIVATEN GERICHTEN, (Bielefeld: Gieseking, 2006), pp. 41–72.

to compare and evaluate.[7] Another organisation, which has a more ambitious goal and empirically oriented set of projects in the justice area, is the World Bank. Since it developed an understanding that well-functioning justice systems are a key component of the rule of law, and that fair and efficient courts are vitally important for sustainable development and the reduction of poverty, the World Bank has developed a wide-ranging programme of work in this field. It has, for example, become involved in a number of justice reform projects, engaged in case studies, seminars, learning events, justice reform research and the collection and analysis of data about aspects of law and justice reform in developing and transition countries.

Its involvement in justice reforms has led the WB to engage in measuring and evaluating the performance of various elements of the justice sector. This has resulted in the creation of instructions for evaluation, the creation of indicators for justice reform projects, the collection of court statistics, benchmarks and comparative data on national judiciaries, and to significant research regarding court performance.[8] This is unsurprising as the WB was one of the first, relevant, international institutions, which advocated the need for empirical research to be carried out before justice reforms were initiated. It should also be credited for transplanting, more or less successfully, advanced methods and techniques of court performance analysis developed in the US to the other parts of the world.

The WB's efforts have, however, been focused on reforms in developing and transitional countries. Due to its status and mandate, the WB was also not in the best position to influence systematic data-collection about justice systems in the larger groups of more developed countries. Even in developing countries, its engagement was occasionally taken reluctantly, as an undesired but inevitable aspect of financial and technical assistance.

The topic of this paper is therefore the work of another organisation, which in many aspects may mark a new beginning insofar as the collection of comparative data concerning the functioning of national (civil) justice systems is concerned: the European Commission for the Efficiency of Justice (CEPEJ). In the main body of this article some of its main achievements and results are highlighted, as are the main challenges to, and limitations of, its work.

7 The initial manifesto of the EJN states that 'from one Member State to another, the concept of civil law and the powers of the various courts can vary significantly'. See the home page of the EJN http://ec.europa.eu/civiljustice/org_justice/org_justice_gen_en.htm (January 2011).

8 Compare http://go.worldbank.org/LRFA0Q06E1 (January 2011).

2. EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE: HISTORY, MANDATE AND AMBITIONS

CEPEJ was established at the end of 2002, as the result of the political decision of the Council of Europe to promote the efficiency of justice.[9] In particular, the Conference of the European Ministers of Justice held in London in June 2000 noted the efforts of many states to increase the efficiency of justice and recognized 'the need to make continuous efforts to bring justice closer to citizens and improve the efficiency and the functioning of judicial proceedings'. It consequently decided to instruct the Council of Europe to prepare 'an appropriate legal instrument or instruments aimed at promoting efficiency of justice throughout Europe'.[10] One of the three tasks given was to elaborate a mechanism which would enable Council of Europe member states, which is to say practically all the countries in continental Europe,[11] to examine the results achieved by the different legal systems by using, amongst other things, common statistical criteria and means of evaluation.[12]

In the course of its work, which started in 2003, collecting statistical data on European judicial systems was among the most important activities carried out by CEPEJ. It was in fact the 'cornerstone of its work'.[13] A specific working group, concerned with the evaluation of justice systems, was established, and a pilot questionnaire for the member countries was developed. The first evaluation report was issued in October 2004, and since then new evaluation reports have been published every two years. These have, so far, resulted in four reports, based on the data for: 2002, 2004, 2006 and 2008.[14]

Several circumstances make this initiative of particular significance, regarding the collection of solid, empirical evidence regarding the actual functioning of national justice systems. Because CEPEJ is a body of the oldest international organization working towards European integration, and which is, amongst other things, responsible for setting standards in the field of human rights and the rule

9 See Council of Europe Resolution Res(2002)12 of 18 September 2002 establishing the CEPEJ.

10 See Resolution no 1 'Delivering justice in the 21st century' of the 23rd Conference of European Ministers of Justice, 8–9 June 2000, London.

11 Including the Eurasian states, such as Turkey and Russia, as well as other post-Soviet states such as Georgia, Armenia and Azerbaijan. Currently, the only remaining European non-member of the Council of Europe is Belarus.

12 Resolution no 1 (cit. *supra*) at 3. The other two tasks related to implementation of international legal instruments concerning efficiency and fairness of justice, and providing specific, country-related assistance in identifying 'concrete ways to improve the functioning of their judicial systems.'

13 So the first president, Eberhard Desch, in his foreword to the 2006 report. See CEPEJ, EUROPEAN JUDICIAL SYSTEMS. EDITION 2006 (2004 DATA) (Strasbourg: Council of Europe, 2006), p. 5.

14 As the data regarding national systems had to be broadly available, it was decided that each cycle of evaluation, considering the time-lag in collection of data in certain jurisdictions, relate to the situation two years before the publication (i.e. the report published in 2010 related to data for 2008 etc.).

of law, it is able to officially address, and request engagement from, all CoE member states. Furthermore, because it is a permanent body, unlike some other, temporary CoE working bodies, it is able to provide the continuity necessary for such research initiatives. Its composition, which consists of national experts who are regularly close to the bodies responsible for the administration of justice (ministries of justice, courts, judicial research institutes) are ideally placed to secure, free of major impediments, the regular transmission of information and appropriate collaboration.

CEPEJ's ability to collect information regarding national justice systems has as a consequence been remarkable.

What impresses the most may be the ratio of replies: since the very beginning of the evaluation exercises, the overwhelming majority of CoE countries have actively participated and provided the requisite data, The 2004 survey comprised 40 countries[15]; subsequently the information was provided by 45 countries in the 2004–2006[16]; 2006–2008[17] and 2008–2010[18] cycles. This level of completeness and comprehensiveness is unprecedented to date and has enabled, for the first time, a full comparative analysis to be carried out. It has also enabled data concerning certain longitudinal trends to be examined for the first time; a feature of these studies which will inevitably and beneficially develop over time as the accumulation of relevant data continues.

CEPEJ's ambition is to assist a broad range of national policy-makers (politicians, judges, administrators, legal professionals, academics) in their efforts to develop effective and efficient justice systems. It aims to do so, according to the terms of its Statute, by 'examining the results achieved by the different judicial systems... by using, amongst other things, common statistical criteria and means of evaluation'.[19] By putting those aims into practice, it has, as it puts it, developed 'a worldwide reputation for evaluating judicial systems'; its evaluation reports becoming 'documents that no Ministry of Justice policy official or legal academic can do without'.[20]

Its task is certainly not without ambiguity though. What does 'examining' or 'analysing the results of the judicial systems' mean? Apparently, this implies making comparisons and rankings. Yet, the words 'comparing' and 'comparative' rarely occur in CEPJ's normative acts. Its Statute, for instance, contains several partly conflicting provisions. On one hand, 'analysis of results' should lead to the identification of 'areas for possible improvements', which would then lead to proposals for 'concrete ways to improve... measuring and functioning' of national judicial systems, and thereafter very targeted assistance to individual member States. On the other hand,

15 Albania, Bosnia and Herzegovina, Cyprus, Luxembourg and San Marino missing.

16 Switzerland and Macedonia (FYROM) missing.

17 Lichtenstein and San Marino missing, Albania providing very few answers.

18 Germany and Liechtenstein missing, Ukraine providing very few answers.

19 Statute of the CEPEJ, Appendix 1 to Resolution Res(2002)12, art. 2(1.a).

20 Cf. the inaugural address of John Stacey, the third president of the CEPEJ, elected in 2010, at www.coe.int/cepej.

the Statute also provides that CEPEJ is neither a supervisory nor monitoring body[21]; its evaluation frequently stating that data collected should not be interpreted as either ranking jurisdictions or singling them out as either 'good' or 'bad' ones. This fragile distinction between comparing and ranking was described in the first, pilot report in the following words:

> ...the [evaluation] scheme has been developed along a number of topics, and has not been based on an analytical framework regarding the efficiency or quality of justice. The work cannot be considered 'value-free' (since it reflects the values shared within the Council of Europe) but it can be seen as 'theory-free'. The data collected can be used within various analytical frameworks [...]. It gathers information on how the various systems actually work (law in practice) and not on how things ought to be (law in books).[22]

The 'neutrality' of the reports published in the past four evaluation reports leaves, however, enough space for a 'secondary' analysis by interested readers. In particular, empirical information collected in the reports may be relevant for comparative civil proceduralists. Because efficiency of civil justice is always an intriguing topic, not only for academics, but also for legal practitioners, the possibility always remains that such empirical evidence can be used to try to support or refute of the customary perceptions of efficient or inefficient judicial systems, or the corresponding civil procedures. In the next section, I provide some examples of the findings contained in CEPEJ's reports, and outline, in the context of relation between the efficiency and quality of the national civil justice systems, a theoretical framework for their interpretation.

3. CIVIL JUSTICE: EFFICIENCY OF CIVIL PROCEDURE IN THE LIGHT OF EMPIRICAL EVIDENCE

CEPEJ's evaluation schemes contain a variety of information regarding national judicial systems. The scope of collected information has steadily grown, from an initial six chapters in 2004 to, the present, seventeen chapters in the 2010 report. In the same period, the questionnaire for national correspondents, used as the basis for evaluation, has grown from 108 relatively simple questions to 182 questions, which are often combined with several sub-forms and sub-questions. The scheme has, however, not lost its initial focus, i.e., on the judiciary, courts and judges, and on civil and administrative law. This was a practical choice, which arose on the basis of the study prepared on past comparative research and data sources.[23] As stated in the first

21 Art. 2(2).

22 CEPEJ, European Judicial Systems. Facts and Figures (Strasbourg: Council of Europe, 2005), p. 10–11.

23 P. Albers, 'Evaluating Judicial Systems – A balance between the variety and generalisation', document CEPEJ(2003)12.

report, 'the work would have to start at some point, and it would not be wise to try to cover every inch of the judicial systems at once.'[24] The courts were understood to be the most logical place to start; and indeed the information about the courts and judges even now seems to be the most complete and informative. In addition to this, the, initially modest, chapter on legal professionals has grown over time as the reports have started to cover more and more ground; consequently it has been divided in separate chapters on lawyers, bailiffs (enforcement), mediators, notaries and court interpreters. Summarizing the evaluation reports' contents, which have tripled in size and now amount to almost 400 pages, the following groups of topics can be discerned:

- information on public expenditure on justice systems, court budgets, the prosecution system and legal aid;
- information on various professions engaged in the administration of justice e.g., judges, prosecutors, non-judicial staff such as *Rechtspfleger*, lawyers, bailiffs, notaries, mediators, and court interpreters;
- information on various preconditions for access to justice e.g., legal aid, court fees, taxes and reimbursement;
- information on the types and numbers of court cases, and their length;
- information on alternative dispute resolution and the execution of court decisions; and
- various miscellaneous issues, such as information on judicial reforms in various jurisdictions, and, in the last two reports, a summary of findings and trends.

Selecting a representative sample of findings for any of the above groups is difficult, due to the huge range and variety of collected data. Instead, a brief selection of some quantitative data which is of interest in respect of the debate regarding quality and efficiency in the context of civil procedure is set out.[25]

The methodological assumption is that efficiency of justice may, in general, be defined as the relation between the societal input in the justice system, i.e., money invested and people engaged in the administration of justice, and the results, the output, produced by the justice system in terms of the level of fulfilment of tasks entrusted to the justice system's institutions.[26] Can such an *input-output* analysis of justice systems, which is apparently simple, be conducted on the basis of CEPEJ's data? As stated above, enabling national justice systems to evaluate 'the results of their judicial systems' was among its main statutory tasks. Public investment in the

[24] EJS (2005), cit. *supra* note 21, p. 10.

[25] I consider the issue of measuring efficiency in justice systems in another paper, viz., A. Uzelac, Kann die Effizienz der Justiz gemessen werden? – Versuch eines Vergleichs der europäischen Justizsysteme, in: P. Gottwald, (ed.) Effektivität des Rechtsschutzes vor staatlichen und privaten Gerichten, cit. *supra* note 5, pp. 41–72.

[26] Compare *ibid.* p. 52.

judiciary (courts and legal aid) and data regarding the number of people working in the courts has also been collected by CEPEJ since its inception. I, therefore, try to summarize and assess the following information on European justice systems contained in CEPEJ's reports in the period 2004–2010:

- Input into justice system:
  1. Court and legal aid budgets (public expenditure and public revenues invested in the justice system)
  2. Number of judges (comparative scaled results) and their salaries
  3. Number of lawyers (comparative scaled results)

- Output (results of the judicial systems)
  1. Number of cases processed
  2. Length of judicial proceedings

After presenting some findings, I analyse them and highlight some limitations and possible criticisms of the presented scheme.

3.1. BUDGET OF JUSTICE

All CEPEJ evaluation rounds include research on the financial means that are related to the functioning of justice system. Budgetary data is divided into three parts: the court budget; the budget allocated to public prosecution, and the legal aid budget, which is an indicator of the effort made by a country to ensure its legal system is accessible).

In order to underline the main findings, whilst using the most comprehensive data collected using the same methodology, a summary of the data for the year 2004 and the year 2008 is set out in Table 1, below.[27] Because several countries, for instance Germany, France, Belgium, Greece, Austria and Turkey, were unable to dissociate, or measure the courts' budget and that provided for public prosecutors separately, the aggregate annual budget for all courts, including prosecution, but excluding legal aid, is used as the basis for comparison. Such data, scaled according to the country's population, is presented in Table 1 and 2, grouped in ranges (for full data see table in Annex I).

[27] This is the first and the last regular evaluation round. The data provided for 2002 was partly unreliable due to non-specified definitions of court budgets.

Table 1. Annual budget of all Courts (including prosecution, without legal aid) – Data 2004[28]

In Euro, per inhabitant									
€ 1–10	€ 10–20	€ 20–30	€ 30–40	€ 40–50	€ 50–60	€ 60–70	€ 70–80	€ 80–100	> € 100
Armenia	Serbia	B&H	Ireland	Croatia	Portugal	Sweden	(none)	Germany	Luxembourg
Azerbaijan	Moldova[29]	Slovakia	Norway	Iceland	Spain	Austria			Switzerland
Georgia	Montenegro	England & Wales	Hungary	Scotland		Andorra			Monaco
Ukraine	Latvia	Malta		Finland		Belgium			
Turkey	Russian F.	Poland		France		Slovenia			
Albania	Estonia	Greece				Italy			
Bulgaria	Lithuania	Cyprus				Nether-			
Romania		Czech R.				lands			
		Denmark							

Table 2. Annual budget of all Courts (including prosecution, without legal aid) – Data 2008[30]

In Euro, per inhabitant									
€ 1–10	€ 10–20	€ 20–30	€ 30–40	€ 40–50	€ 50–60	€ 60–70	€ 70–80	€ 80–100	> € 100
Moldova	Turkey	Russian F.	Serbia	Poland	Cyprus	Croatia	Belgium	Spain	Luxembourg
Armenia	Macedonia	Iceland	Lithuania	Hungary	France	Italy	Austria	Slovenia	Switzerland
Ukraine		Bulgaria	Latvia	England	Scotland			Netherlands	Monaco
Georgia		Romania	Greece	& Wales	Finland				
Albania		B&H	Estonia	Ireland	Sweden				
Azerbaijan		Malta	Denmark						
			Czech R.						
			Norway						
			Slovakia						
			Montenegro						

The summary presented in the tables reveals several features of the European justice systems' budgets.

At first sight, it is clear that the money available for the administration of justice is vastly different in different jurisdictions. In 2004, the investment in courts per capita ranged from 1 Euro[31] to over 100 Euro, which implies that some European justice systems have over one hundred times more money available to them than the others. The median value was between € 25 and € 30 (for 2004) and between € 35 and € 40 (for 2008).[32]

28 Source: data processed on the basis of EJS 2006, cit. *supra* note 12, p. 32 (Table 5) and p. 12 (Table 1.1.).

29 Most likely, the supplied info for Moldova is incorrect, and should be radically diminished (ten times?) as the data in all other evaluation rounds specifies Moldova in 1–10 Euro range (or less).

30 Source: data processed on the basis of 2010 report. CEPEJ, EUROPEAN JUDICIAL SYSTEMS. EDITION 2010 (2008 DATA) (Strasbourg: Council of Europe, 2008), p. 16 (Table 2.1) and p. 14 (Table 1.).

31 In 2002, there were three countries that had less than € 1 per capita (Azerbaijan, Moldova and Georgia). Armenia was only slightly above € 1 (1.03).

32 According to the 2010 report the average budget allocated to courts and prosecution services was in 2008 € 47.1 per capita, while the median level was € 37.3. See EJS 2010, cit. *supra* note 29, p. 35.

It is also clear that the budgets of those countries belonging to the same region or tradition are often very similar. The division between East and West obviously still exists. The eastern, and southern, European countries regularly have significantly lower budgets. Some countries from the former USSR, such as the Caucasus region states, e.g., Ukraine and Moldova, belong to the groups with the lowest budgetary figures. Bulgaria and Romania, and Russia, are in the next category. The Baltic States of Lithuania, Latvia and Estonia are, however, in a somewhat higher category, but remain neatly grouped. The Czech Republic, Slovakia, Poland and Hungary are close to the mid-range, but still at maximums around the median values. The countries of the south, such as Turkey and Greece, although technically not belonging to the circle of transition countries, have low or sub-average figures (2008: € 10 – Turkey; € 32 – Greece). The most diversely divided among the columns are the successor states of the former Yugoslavia: Macedonia is at the bottom (about € 15), followed by Bosnia and Herzegovina (€ 25) and Serbia (€ 30), while Croatia is in the higher range (€ 60), and Slovenia (€ 88) is among the very highest investors in their justice system.

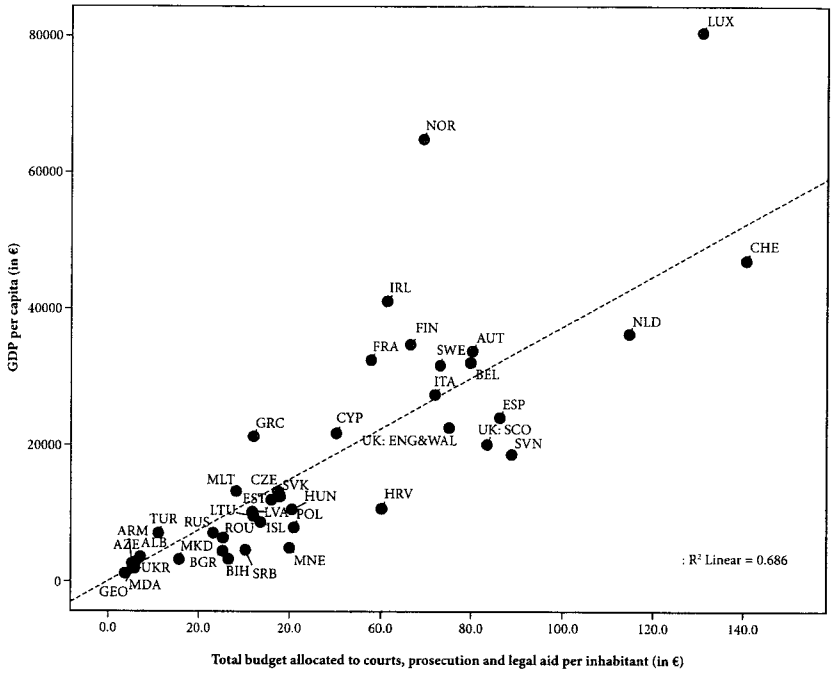
In the group of Northern and Western countries, the richest, and smallest, countries, such as Switzerland, Monaco, Luxembourg and Liechtenstein had the very highest scores: over € 100 per capita. Among the larger European countries, the highest expenditure on the judiciary could be found in Germany and Austria, whilst the Romance countries, Spain, Portugal and Italy were not far behind. France is a bit closer to the median values, while Belgium and the Netherlands (€ 74 and € 89 in 2008) were closer to the top of the table.

It is interesting to note the relatively low figures for the Scandinavian countries, where Denmark and Norway are below the median values (€ 34 and € 38 in 2008), followed by Finland and Sweden with somewhat higher figures (€ 56 and € 58 in 2008). Relatively modest figures are also reported for the United Kingdom (England and Wales) and Ireland (about € 30 in 2004 and € 40 in 2008). But, on the other hand, both the Scandinavian countries and the British Isles spend significantly more on legal aid than the rest of the Europe, which partly explains their lower average scores.

The differences in funding for the justice systems are, of course, related to the different economic power of the particular states. The relationship between the per capita GDP and the full budget of the judiciary (including legal aid), based on the figures for 2008, is shown in Figure 1[33]:

33 Reproduced from EJS 2010, cit. *supra* note 29, p. 46.

Figure 1. Relationship between the GDP and the budget of the justice system



It is clear that economic wealth has a bearing on the court budgets. This, however, is not the sole influencing factor. While some countries, e.g. Norway, Denmark and Ireland, spend proportionately less on their judicial systems, others spend more. On the list of countries which, compared to their GPD, spend the largest share on the judicial system, the top positions (0.81 to 0.38% of GDP per capita) in 2008 were Montenegro, Bosnia and Herzegovina, Bulgaria, Poland, Slovenia, Macedonia, Romania and Hungary.[34] The latter fact may, partly, be explained by the significant engagement of European and international funds in judicial reforms in these countries, all of which belong to the circle of Central and Eastern European countries.

Some trends and developments over time can be traced as well. The comparison between the situation in 2004 and the 2008 shows that the gap between the 'rich' and the 'poor' judiciaries has started to diminish. The large majority of the countries that have significantly increased their per capita investment in their national judiciaries in that period belong to the group of transition countries. The first twelve, according

[34] See EJS 2010, cit. *supra* note 29, p. 37. Serbia and Croatia have not been able to distinguish the court budget from the legal aid budget, but according to the data that include (relatively insignificant) legal aid budget, they should belong to the same group.

to the increase in that four-year period, are Armenia (407%), Azerbaijan (249%), Montenegro (205%), Romania (179%), Serbia (175%), Bulgaria (173%), Turkey (157%), Latvia (123%), Slovakia (88%), Estonia (87%), Georgia (80%) and Ukraine (78%). While the gap between the 'poorest' and the 'richest' was over a hundred times wide in 2002, in 2008 it was *only* about forty times.[35]

Expenditure from state budgets, to ensure justice systems function, is partly compensated by revenue received from the payment of court fees or court taxes. The duty to participate in some costs of the proceedings exists in most European justice systems.[36] The level of financial participation however differs markedly, as does the amount of money recovered from the state budget. This amount became a matter of interest in later CEPEJ evaluation rounds. Data from 2008 shows that the share of court fees in the overall national court budgets varies from 0.9%, in Sweden, to 110.9%, in Austria. However, in about half of all European states, this share is between 15 to 35%; the average ranges between 20 to 25% (see Table 3).

Table 3. Share of court fees in the budgets of national judiciaries – Data 2008[37]

Less than 15%	From 15 to 35%	Over 35%
Sweden (0.9), Ukraine (1), Azerbaijan (1.4), Belgium (3.7), Romania (5.9), Czech R. (6.1), Italy (8.7), Croatia (10.5), Norway (11.8), Finland (13.3), Lithuania (13.4), Georgia (13.8)	UK-Scotland (15.9), Latvia (16), UK-N. Ireland (16.1), Estonia (17.2), Albania (18.1), Netherlands (18.3), Slovenia (22.2), Ireland (22.2), Portugal (25.8), Bulgaria (26.3), Switzerland (28), Cyprus (29.4), Poland (30.4), Bosnia & Herzegovina (30.6), Moldova (32.4), Macedonia (33.9), UK-England & Wales (34.5), Slovakia (35.7)	Montenegro (42.1), Serbia (42.6), Denmark (44.2), Turkey (55.5), Malta (92,.), Austria (110.9)

These figures show interesting discrepancies in the national approaches to charging users for the services offered by the national justice system. Similar legal systems sometimes have rather different shares.[38] However, only in Austria does the judicial system apparently not spend money, but rather creates a 'revenue' for the state budget. It should be noted, however, in all cases the justice system is funded by citizens: either indirectly, as tax payers, or directly, as parties to judicial proceedings. Where engagement in the judicial process incurs significant costs for litigants, access to justice issues, and the need for appropriate legal aid system, are raised. Unfortunately, the

[35] This is the ratio of the lowest figure for the Caucasian states and the figure for Switzerland. The data for smallest ('dwarf') countries such as Liechtenstein or Monaco are disregarded to avoid statistical mistakes.

[36] So far only France, Iceland, Luxembourg, Monaco and Spain have stated that no money is collected on the account of court fees 'as they apply the principle of free access to court' (EJS 2010, cit. *supra* note 29, p. 63.).

[37] Source: data from EJS 2010, cit. *supra* note 29, p. 63 (Figure 3.12).

[38] E.g. 0.9% in Sweden vs. 44.2% in Denmark; 6.1% in Czech Republic vs. 35.7% in Slovakia; 10.5% in Croatia vs. 42.6% in Serbia; nothing in Spain vs. 25.8% in Portugal.

information currently available does not seem to be a sufficient basis for far-reaching conclusions.[39]

3.2. NUMBER OF JUDGES AND THEIR SALARIES

Among the 'common tools of evaluation of the judicial system', the number of judges has been one of the starting, 'simple', indicators since the inception CEPEJ's activities.[40] Of course, it noted that the meaning of what a *judge* is varies between countries. Different groups of judges, such as professional judges, substitute judges and the lay judges, were therefore identified.

Data concerning the number of professional judges in each country[41] have provided the most complete, comparable, results and have become the most cited indicators within CEPEJ's scheme. It is, furthermore, compatible with other organisations' research results, e.g. data on judges held in the Worldbank judicial database.[42]

Each of CEPJ's evaluation rounds has recorded the number of professional judges per 100,000 inhabitants of each country surveyed. Each cycle has revealed very significant differences between the national judiciaries. In each of the cycles the relation between maxima and minima was over 10 to 1; ranging from about 3–5 in the United Kingdom to 30–50 in south eastern Europe. These differences are illustrated in Figure 2, below, and are reproduced from CEPJ's the 2010 report.

A detailed presentation of the development of the number of professional judges in European countries, based on the all four evaluation rounds, can be found in the Annex II.

The data map in Figure 2 clearly shows that several groups of countries, often regionally and traditionally close, can be distinguished. Great Britain and the Republic of Ireland have the lowest number of professional judges, followed by the Caucasian republics of Azerbaijan, Georgia and Armenia. Denmark and France have slightly more judges, albeit still less than 10 per 100,000. Italy, Spain and Turkey have slightly more than 10 judges per 100,000, whereas some Scandinavian countries, such

39 As indicated in the 2010 report, the high level of 'revenues of justice' may, in some countries, be associated with the fact that in those countries the courts are responsible for land or business registers which might generate considerable profits. EJS 2010, cit. *supra* note 29, p. 55. Significant profit can also be generated by automated payment order processes (e.g. Austrian *Mahnverfahren*). Therefore, a more detailed research into the sources of judicial revenues (in particular: singling out the revenues stemming from court fees for litigious and other 'proper' court cases) might be needed.

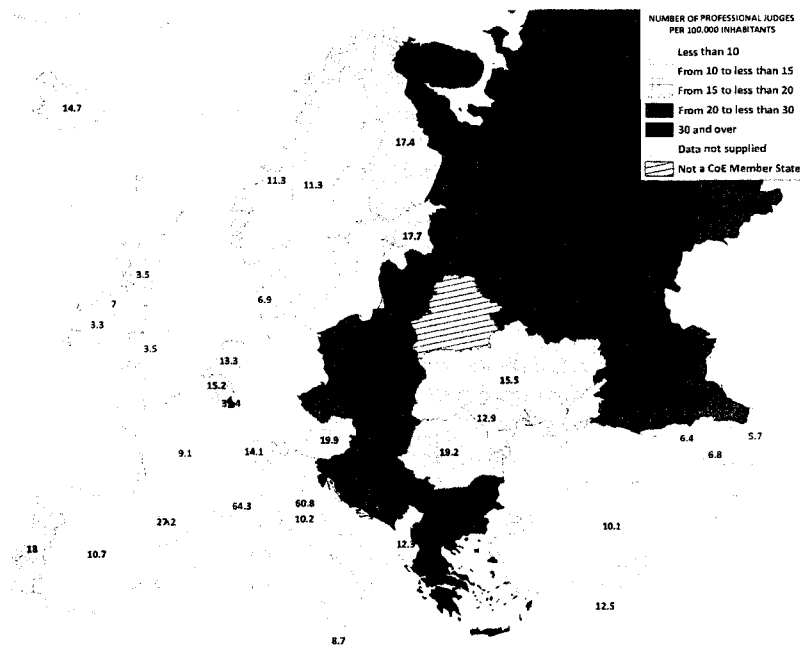
40 P. Albers, 'Evaluating Judicial Systems – A balance between the variety and generalisation', cit. *supra* note 22, p. 2.

41 In the explanatory notes to EJS reports, it is clarified that 'professional judges are those trained and paid as such'. Non-professional judges are all other judges who are competent for giving binding decisions in a public forum (ie. both the lay judges and the honorary judges).

42 Ibid., p. 20. Compare also www.worldbank.org/legal/database/justice.

as Norway, Finland and Iceland, as well as the Netherlands, Belgium and Switzerland, have between 10 and 15 judges per 100,000.

Figure 2. Number of professional judges sitting in courts (FTE) per 100.000 inhabitants, in 2008[43]



In contrast to those figures, almost all the central and eastern European countries[44], and Austria and Germany have around 20 and more judges per 100,000. Those countries from south eastern Europe, in particular the former Yugoslavia's successor states and Greece demonstrate the largest number of judges. They have, in general, more than 30 or more judges per 100,000 inhabitants. If statistically problematic cases, i.e., small countries such as San Marino, Monaco and Lichtenstein, are disregarded, the countries with the most judges per capita are: Slovenia, with 53.5; Croatia, with 42.5; Montenegro, with 39.7; and Serbia, with 34.1.

43 EJS 2010, cit. *supra* note 29, Figure 7.2., p. 119.

44 The only exceptions being Moldova and Ukraine.

Developments since the first, pilot evaluation round reveal a tendency towards growth over time of the number of professional judges.[45] In 2002, estimates showed that there was a total of around 115,000 judges in the Council of Europe member states. By 2008 estimates show that this had grown to 138,000 i.e., 20 percent growth in just six years. The most dynamic growth took place in the Russian judiciary, which more than doubled in number during this period. Significant growth, from 15 – 45%, was also reported in Bulgaria, Azerbaijan, Slovenia, Turkey, Poland, Armenia, Latvia, Portugal and the Netherlands. Some countries have, however, witnessed a reduction in judicial numbers. The most significant reductions being: Sweden, with a 40% reduction; Norway, with a 21% reduction; England and Wales, with a 17% reduction; and France, with a 12% reduction.

It is not only in terms of judicial numbers that differences can be seen between European countries. They also differ in respect of judicial salaries. The pilot evaluation round established that the salaries of first instance judges at the beginning of their careers range from 1,500 Euro in Moldova to almost 220,000 Euro in Scotland.[46] In a number of eastern European countries annual salaries were below 10,000 Euro.[47] Central European judicial salaries ranged in general from 10 to 30,000 Euro, while in western Europe they, generally, ranged from 30 to 50,000.[48] In northern Europe, i.e., Finland, Sweden, Iceland, Denmark and Norway, and in the Netherlands, salaries were between 50 and 100,000 Euro, while salaries over 100,000 were to be found in Switzerland, Ireland and the United Kingdom.

Six years later, the landscape had only partly changed. In 2008, huge differences remain, although, in, at least, some of the transition countries that had previously demonstrated the lowest judicial salaries, there had been significant improvements. In some transition countries salaries had more than doubled.[49] A general trend of increasing salaries, during the period 2002 – 2008, was also evident in some western

45 On the basis of 2004–2008 comparison, the EJS Report 2010 estimates the growth of the number of judges in Europe to be in average 2.5 to 3% per year (EJS 2010, cit. *supra* note 29, p. 120).

46 This information relates to the annual gross salary, ie the salary calculated before any social expenses (such as pension schemes) and taxes. In the later stages, the CEPEJ has also collected data on net salaries. The differences between gross and net salaries may be significant, although they do not change the picture dramatically. The highest difference between the gross and the net salary is reported from Belgium (about 90% expenses paid on the net salaries of the first instance judges). High expenses (60 to 80%) are also paid in the Netherlands, United Kingdom, Croatia, Serbia, Hungary, Slovenia and Bosnia and Herzegovina. The lowest expenses paid from gross salaries are reported from France (17%), Switzerland (20%), and Russian Federation (22%).

47 Moldova (1.5), Ukraine (2), Georgia (2.7), Bulgaria (3.2), Azerbaijan (4), Armenia (4.1), Latvia (6.3), Romania (8.4) and Serbia (9.1). See EJS 2004 (Pilot scheme).

48 Portugal (32.2), Italy (33.3), Germany (35.5), Spain (42.9).

49 Over 100% increase in gross judicial salaries happened in Georgia (322%), Hungary (229%), Latvia (181%), Slovak Republic (144%), Bulgaria (126%), Moldova (112%) and Azerbaijan (106%). Significant increases also happened in Serbia, Romania, Estonia, Czech Republic and Armenia.

European countries e.g., Austria (62% increase), France (53% increase), Ireland (37% increase) and Italy (35% increase).

In addition to judicial salaries at the beginning of judicial careers, CEPEJ's European Judicial Systems (EJS) reports also contain information about the salaries of Supreme Court judges or judges at the highest appellate courts. CEPEJ's position was that 'a comparison between... salaries at the beginning and at the end of [a judicial] career [provides a] measure [of] a judge's possible progression within a state and [facilitates an evaluation of] the consideration attributed to her/his social position.'[50]

Data from the 2010 report shows that about half of all European countries provide salary increases during the course of judicial career of more than 100 percent. The largest difference between an initial judicial salary and that paid to judges in a country's highest tribunal exist in Russian Federation (244%) and Bulgaria (222%). Very significant differences between initial and final salary (about 1 ½ times and more) exist in France, Italy, Poland, Spain, Austria and Portugal. On the other end of the spectrum, countries that apply a more egalitarian salary policy are the Scandinavian countries, the Netherlands, the United Kingdom and the Republic of Ireland, where the salary differential over the course of a judicial career ranges from about 40 to 80%.

Differences in judicial salaries, as with judicial budgets, are also, to a large degree, conditioned by different economic situations which exist in different European countries. This is only logical, because judicial salaries generally form the largest part of the courts' budget. On average they form about 70% of the justice budget.[51] Still, the economic strength of a nation is not the only factor leading to differences. An interesting indicator of the social and professional status of judges is the relationship between judicial salaries and the average salaries in each country respectively. The highest differences between average salaries and those of newly appointed judges (4 to 5 times the average) are found in the United Kingdom and the Republic of Ireland; those differences are also the highest in respect of maximum judicial salaries (7 to 8 times the average). Initial gross judicial salaries are over three times average gross salaries in Serbia, Bosnia and Herzegovina, Estonia and Macedonia. The highest difference between judicial salary and average salary exists, however, in Russia, where Supreme Court judges are paid nine times more than the average citizen.

At the other end of the spectrum, wages of the beginner judges show the least difference from average gross salaries in France (1.1), Austria (1.1), Albania (1.4), the Netherlands (1.4), Finland (1.5), Belgium (1.6), Slovenia (1.6) and Denmark (1.6).

50 EJS 2010, cit. *supra* note 29, p. 205 (at 11.3).

51 See EJS 2010, cit. *supra* note 29, p. 26. In some countries, e.g. Greece, salaries are 96% of the total court budget. All other items in the court budget are far behind, with the lowest part of the budget allocated to training (averaging only about 1% of the court budget at European level).

For a full comparison of gross and net judicial salaries, their mutual ratio and the difference in regard to average salaries, see Annex III.

3.3. NUMBER OF LAWYERS

A full comparison of the societal input into national justice systems, in terms of human resources, would demand an analysis of a number of other services and professions that participate in the administration of justice. The CEPEJ reports contain valuable information on the number of prosecutors, non-judicial court staff (e.g. *Rechtspfleger*), enforcement officers, mediators, arbitrators, notaries and court interpreters; all of which deserve to be studied more carefully. In order to keep this survey short however, I only present findings in respect of the number of lawyers in various European jurisdictions. Information on the availability of lawyers is the most important indicator in the context of civil litigation, which is of core importance for the assessment of quality and efficiency of civil justice.

It is striking that CEPEJ's surveys of the number of European lawyers per 100 thousand inhabitants show even greater discrepancies among European countries than those recorded, and already noted here, regarding judicial numbers. While the range in the number of judges is about one to ten, in relation to lawyers it is one to fifty; from about 6 lawyers per 100,000 inhabitants in Azerbaijan to 342 lawyers per 100,000 inhabitants in Greece (2006 data) (see Figure 3 for a graphic presentation).[52]

As stated in its last report, the differences in the number of lawyers corresponds to the geographical division between north and south Europe: 'it can be noted that several Eastern and Northern European states have a low number of lawyers per 100,000 inhabitants (less than 50), whereas Southern states tend to have larger bar associations', ie more than 250 lawyers per 100,000 inhabitants.[53] In fact, the highest figures regarding the number of lawyers are found in Portugal (260), Spain (266), Italy (332) and Greece (350).[54] The lowest figures are found in Russian Federation and some other post-Soviet republics (Armenia, Azerbaijan), and in the United Kingdom and the Republic Ireland, where this is the result of the different structures of the legal profession.[55]

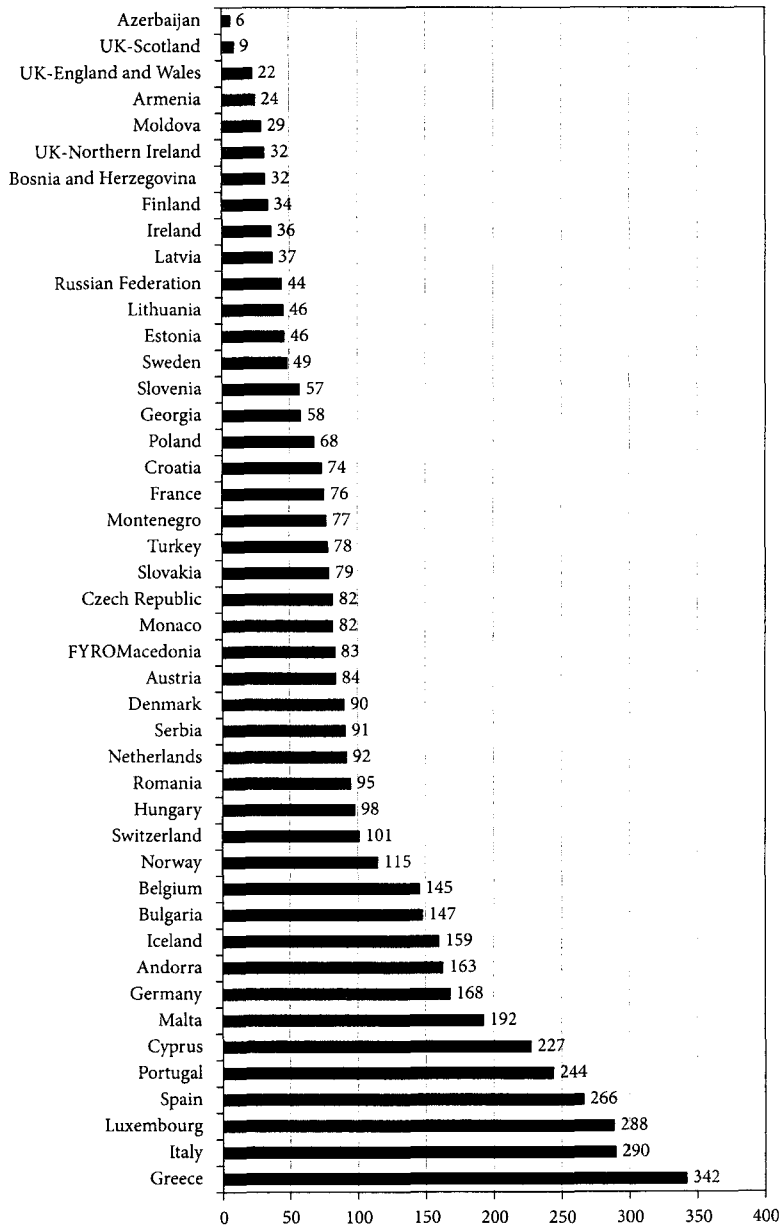
[52] Reproduced from CEPEJ, EUROPEAN JUDICIAL SYSTEMS. EDITION 2008 (DATA 2006). EFFICIENCY AND QUALITY OF JUSTICE (Strasbourg: CoE Publishing, 2008), p. 214 (Figure 70).

[53] EJS 2010, cit. *supra* note 29, p. 239. There are, however, some exceptions - while Finland and Sweden fall into this description, Denmark with 96, and Norway with over 120 lawyers per 100,000 inhabitants have significantly more registered lawyers.

[54] All figures relate to the last report (2008 data) and include legal advisors.

[55] In common law countries, the number of lawyers authorised to represent parties in a court of law (such as barristers) is rather small compared to the numbers of legal advisors (such as solicitors). For 2008, the United Kingdom reported that *e.g.* in Scotland the number of lawyers is 5.4, but that the number of legal advisors is 203.6 per 100,000 inhabitants. *Cf. ibid.*

Figure 3. Number of lawyers per 100,000 inhabitants in 2006



From the last four evaluation rounds, it is clear that the number of lawyers in Europe is steadily increasing. The median increase in their numbers was in all Council of Europe countries about 7.5% annually.[56] The highest growth of the number of lawyers is reported from developing countries, *e.g.* Armenia or Azerbaijan, where increases of up to 30% annually are recorded. Significant increases, of about 15% or more annually, were also found in a number of developed jurisdictions, such as Switzerland or Italy.

3.4. NUMBER OF CASES PROCESSED IN THE COURTS

So far, I have focussed on indicators of various inputs into national judiciaries, both in terms of financial and human resources. These inputs should now be compared with outputs: the results of the work carried out by courts and judges.

In this area, further methodological and practical difficulties arise. What are the representative indicators of the 'results' produced by (civil) justice systems? Measuring the quantity and the quality of judicial and court work is not simple. Nevertheless, the information collected by the CEPEJ when assessing activities of national courts of the European countries, in particular in the chapter on fair trial is examined.[57]

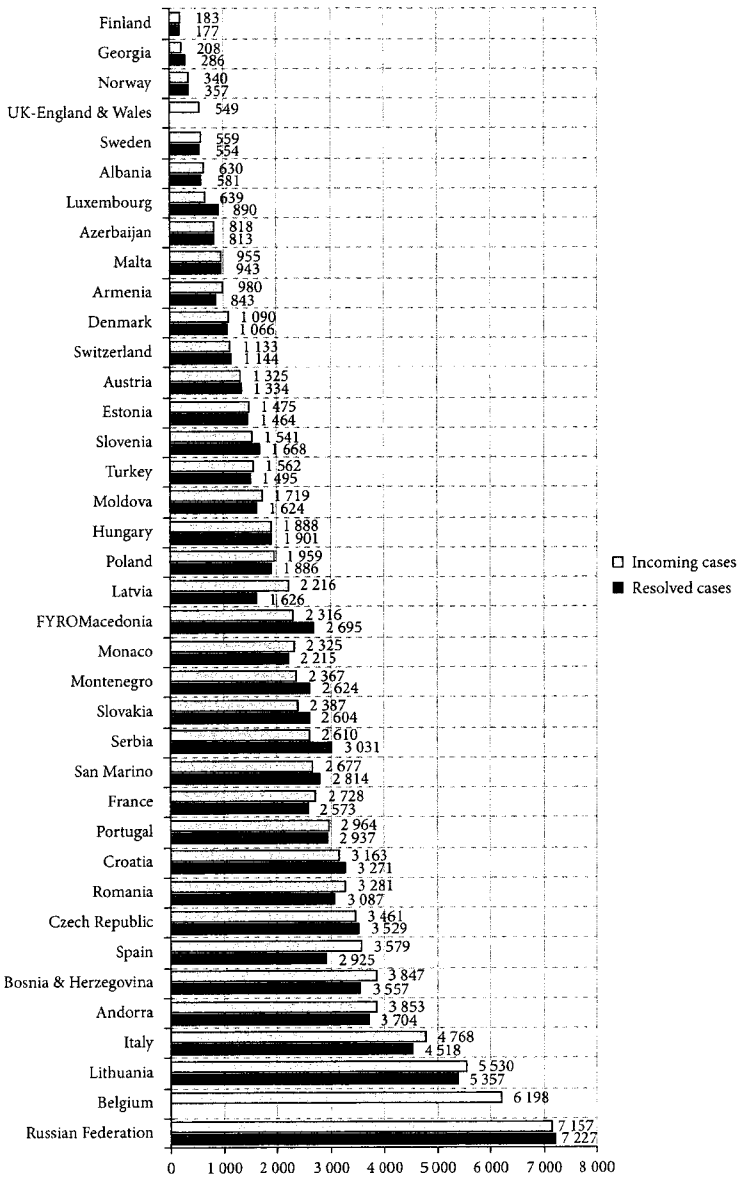
The first issue when efficiency of court work is considered relates to quantitative indicators in respect of the courts' caseload. The most simple research method is to study the number of cases received and processed, and to analyse the difference, which may be defined as the court backlog. If the courts process a large number of cases and are able to keep up with the inflow of new cases, they can be defined as efficient. Of course, in order to compare the results of different justice systems, data must be collected from, generally, comparable types of cases, which may be a great challenge. But, the ability of the courts to handle their tasks may be important as an indication of systemic problems.

Collection of information about the caseload of European justice systems has so far produced a relatively limited and superficial insight into the work of the courts. The general approach in CEPEJ's questionnaires has however produced some results. It obtained information on the number of pending, incoming and resolved cases according to the level of court (first instance, appellate and highest instance). The data should then be further broken down according to the type of case: criminal, civil and commercial, administrative law, enforcement, business register and other cases. Among civil and commercial cases, a further distinction was made: between litigious and non-litigious cases.

56 Average annual variation between 2004 and 2008, see EJS 2010, cit. *supra* note 29, p. 241 (figure 12.4).

57 Chapter 9 (pp. 135–180).

Figure 4. Number of incoming and resolved litigious court cases per 100,000 inhabitants in 2008



Source: EJS 2010, cit. *supra* note 29, p. 143 (Figure 9.5).

Focusing on the core of fair trial rights in the civil and commercial sphere, one of the most important indicators is the number of incoming and resolved litigious court cases. It can be assumed in this respect that the least variations should be expected; as the resolution of disputes regarding civil rights and obligations is considered, inevitably, to be a court's core and standard task, whereas some other areas of involvement, e.g., holding business registers or enforcement only appear in some jurisdictions, whereas they are assigned to non-judicial authorities in other jurisdictions. A comparison of numbers of litigious cases has, however, also produced a picture of rather big differences regarding the volume of litigation in different European countries, as shown in Figure 4.

In fact, differences in the number of annually received litigious civil and commercial cases per 100,000 inhabitants are stunning. In 2008, they ranged from 183 in Finland to 7,157 in Russian Federation (i.e., 40 times more). Again, some regional and cultural groups of countries are recognizable: countries that reported low numbers of received litigious cases were the Scandinavian countries (Finland, Norway, Sweden and Denmark); the United Kingdom (England and Wales), and some of the least developed transition countries (Georgia, Albania, Azerbaijan, Armenia).[58] Those countries that had an above average input of litigation cases (from 2,000 to 7,000 cases per 100,000 inhabitants) were mainly the Romance countries, such as Belgium, Italy, Spain, Portugal and France, but also some Central and Southern European post-Socialist countries, such as Czech and Slovak Republic, Bosnia and Herzegovina, Croatia, Serbia, Montenegro and Macedonia.

Some trends in the development of court caseloads are also evident. The 2010 report stated that some states 'started to suffer a significant comparative increase in the number of first instance incoming civil and commercial cases (respectively 19.5% and 26.7% for Spain) as a result of the first effects of the financial and economic crisis'. On the other side, the systemic ability to cope with the volume of incoming cases and average national levels of backlogs were difficult to follow on a comparative level, as an analysis requires more in-depth analysis and comparison of a longer period. Some statements in the last CEPEJ report in this respect are therefore reduced to individual indications of current trends.[59] The rather extensive analysis and comparisons of notions such as 'clearance rates' and the 'disposition time' suffer from the same weaknesses. This is explained in more detail at 4, below.

[58] It is interesting to note the contrast the low figures for some post-Soviet countries like Georgia and Armenia to the very high figures in Russia and Lithuania.

[59] E.g. the finding that in some states (Latvia, Spain, Armenia) the backlog has an increasing trend, while in some others (eg Montenegro, Serbia, Macedonia and Georgia) the trend is decreasing. EJS 2010, cit. *supra* note 29, p. 143.

3.5. LENGTH OF PROCEEDINGS

From the perspective of citizens as the users of national civil justice systems, general statistical indicators of the number of cases, as an indicator of the length of proceedings, is less relevant than another indicator. Excessive length and delays are the most notorious problems of many national justice systems. The length of proceedings is not only the indicator of efficiency of judicial proceedings; it is also relevant for the assessment of respect for the human right to a trial within a reasonable time. Moreover, in the spirit of the *bis dat qui cito dat* (he gives twice, who gives promptly) principle, the appropriate length of proceedings may also be taken as one of the indicators of the quality of judicial system and its ability to provide effective protection of rights to its users.

The comparative collection of data on the length of judicial proceedings has however proved to be one of the most challenging of CEPEJ's activities. This is also the only area where data collection is not partly based on a system of self-reporting, but rather on external information, such European Court of Human Right (ECtHR) statistics on cases where human rights violations caused by the excessive length of proceedings were at stake. On the other hand, CEPEJ itself has also tried to compile information about the length of proceedings, but with results that are so far of relatively modest value and relevance (see further below).

If the ECtHR's case law is examined it shows that the length of proceedings remains among the most frequently cited causes of complaints for human rights violations in a number of countries. The data for 2008 reveals that about a quarter of Council of Europe members had a significant number of complaints regarding violations of art. 6(1), which arose from excessive length of civil proceedings e.g., Slovenia, Czech Republic, Italy, Greece, Hungary, Macedonia, Romania, Slovakia, Ukraine, Poland and Croatia. These cases were resolved in a number of different ways.

Slovenia, which had the highest number of decided applications concluded most of its cases (103) by way of friendly settlements, thereby voluntarily admitting violations. Italy had the highest number of ECtHR judgments against it establishing violations (53), followed by Greece (41). The Czech Republic, by way of contrast, had the largest number of applications declared inadmissible (100), which was due to the introduction of new remedies for the excessive length of proceedings at the national level. Taken together these figures show that in all of these countries there was a significant sense of dissatisfaction among the users of the justice system, who complained about the functioning of the judicial system.[60]

[60] Cf. EJS 2010, cit. *supra* note 29, p. 139–141. The statement that the level of complaints 'does not reveal as such effective dysfunctions within the judicial system' (*ibid* p. 141) because a high number of cases was in some countries declared inadmissible by the Strasbourg Court cannot be accepted without reservations, as the declaration of inadmissibility was done of the basis of introduction of national remedies which still need to prove their effectiveness in practice and largely tend to mitigate the effects, and not the systemic causes of excessive length.

Another indicator of systemic weaknesses which can be extracted from the jurisprudence related to art. 6(1) ECHR are cases of non-enforcement of judicial decisions. In a group of eastern European countries, such as Ukraine, Romania, Moldova, Serbia and the Russian Federation, the problem of ineffectiveness, in the context of civil justice, reappears at the enforcement stage, where non-execution of final and binding court decisions and other enforceable documents drove the ECtHR to establish that legal protection without proper enforcement was 'illusory'.

Statistics about excessive procedural length and non-enforcement of judgments as violations of human rights are certainly relevant for any assessment of the efficiency of a justice system. They are, however, only the tip of the iceberg, compared to the thousands and millions of cases regularly processed by the courts. Therefore, only a separate analysis of the length of proceedings at the average and day-to-day level may provide a clearer picture of the general efficiency of court case handling. Attempts to move European justice systems away from (only) 'reasonable time' and bring them closer to 'appropriate' and 'ideal' timeframes for judicial proceedings was a part of initial rationale for establishing CEPEJ, and formed part of its initial programme.[61] The products of this commendable approach have, however, consistently fallen below expectations.

Since the first pilot round in 2002, CEPEJ has attempted to gain an insight into the average duration of judicial proceedings in different European countries. Noting that 'the processing time of cases brought to court has become one of the key issues regarding the efficiency of justice'[62] the Commission has selected a few categories of cases regarded as being common to all Council of Europe members. In spite of the relatively limited target, which only included the assessment of three types of cases (robbery, divorce and employment dismissal cases)[63], where only one element was researched (how long it takes until the parties involved received a judicial decision at first instance and on appeal), only a few countries were able to provide information concerning the length of such proceedings.[64] Six years later, in the 2010 evaluation round, the results were again unsatisfactory. It was noted that 'less than half of the 47 states or entities provided data, and in particular data on length of proceedings'. Ever optimistic, the report's authors still noted that there had been 'constant progress vis-à-vis previous cycles', while at the same time inviting readers to interpret the collected data with care because of the limited number of state responses.[65]

CEPEJ has since it began its work, in fact, paid, special attention to research regarding the length of proceedings. A special working group for this purpose was established at the same time as the group for evaluation of justice systems was established. This group

61 Framework Programme – 'A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe', document CEPEJ(2004)19 Rev.

62 EJS 2005, cit. *supra* note 21, p. 52.

63 Later, the fourth type of cases was added (intentional homicide).

64 Ibid. p. 54.

65 EJS 2010, cit. *supra* note 29, p. 167.

has been renamed on a number of occasions, and thereby 'upgraded'. It was initially called TF-DEL (Task force for the timeframes of judicial proceedings). It was then renamed the Steering Group of the SATURN (Study and Analysis of Judicial Time Use Research Network), which is now, finally, on the way to becoming the Observatory of Judicial Timeframes in Europe. The group was rather active, and produced several time management studies[66], a set of tools for judicial time management[67], and several sets of guidelines. With the assistance of the CEPEJ Pilot court network, statistical information on judicial timeframes was independently collected among the courts of various countries. Among other documents, in particular the Time management checklist, and the Guidelines on Judicial Statistics (GOJUST) which contained a part on judicial time management[68], intended to stimulate the systematic monitoring and collection of data regarding the length of judicial proceedings. All these efforts apparently needed a stronger political will and commitment than had previously been evidenced. In order to address this issue, the 2010 conference of the European Ministers of Justice, *inter alia*, 'invited the Committee of Ministers to build on the work of the SATURN centre within CEPEJ, further developing its capacity to acquire better knowledge of the time required for judicial proceedings in the member States, with a view to developing tools to enable the member States to better meet their obligations under Article 6 of the ECHR regarding the right to a fair trial within a reasonable time'.[69]

Recommendations contained in various documents relating to judicial time management suggested that at all levels national judiciaries need to collect detailed information on the length of proceedings. Such detailed collection would include:

- the division of all cases into common case categories;
- monitoring the total length of proceedings, from commencement to the end of proceedings, including enforcement;
- calculation of minimum, average (median) and maximum timeframes;
- collecting information on percentages of cases processed within certain timeframes (e.g., 20% of cases lasting between one and three months);
- information on the length of decision-making on legal remedies and the percentage of appeals;
- monitoring intermediate steps of proceedings (i.e., the time needed for service of process, convening the first hearing, the conclusion of the trial, judgment writing, appeal etc.);
- special monitoring of cases with exceptionally long duration.

66 J. Johnsen, Time management of justice systems: a Northern Europe study; F. Calvez, Length of court proceedings in the member states of the CoE based on the case-law of the ECtHR.

67 Time management checklist; Best practices for judicial time management.

68 So-called EUGMONT – European Guidelines on Monitoring Judicial Timeframes.

69 Resolution No 1 on a modern, transparent and efficient justice, adopted by the Ministers of Justice of the Council of Europe's member States during their meeting in Istanbul at the occasion of their 30th Conference (24–26 November 2010), MJU-30 (2010) RESOL. 1 E at 23.

In testing these recommendations, and within the evaluation rounds, it was established that a minority of states have some time management mechanisms in place, although practically no courts or national justice systems had all of them in place cumulatively. Therefore, CEPEJ's reports so far contain only fragmentary information regarding actual judicial time use, as shown in the following figures, which are based on the CEPEJ 2010 report in respect to work dismissal cases.[70]

Figure 5. Work dismissal cases – length

Country	Length of proceedings at 1st instance courts (in days)
Monaco	750
France	476
Estonia	387
Bosnia and Herzegovina	313
Montenegro	306
Finland	249
Slovenia	236
Macedonia	176
Latvia	174
Austria	171
Albania	153
Poland	143
Spain	84
Netherlands	21

Figure 6. Work dismissals – appeals

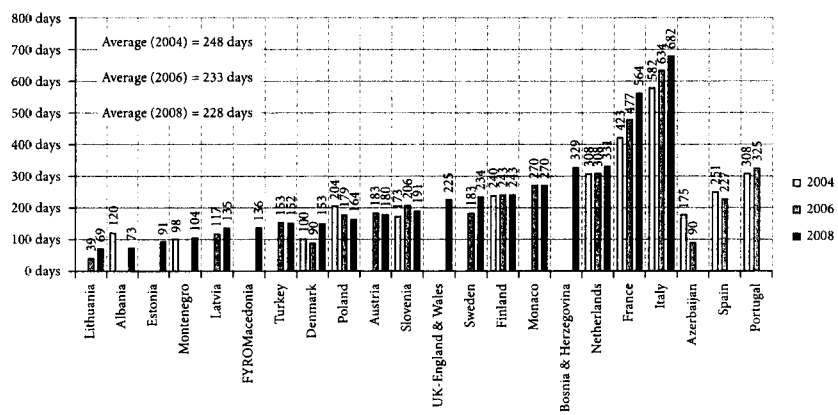
Country	% of decisions subject to appeal
France	61
Moldova	59
Bulgaria	58
Finland	54
Romania	53
Latvia	53
Albania	51
Macedonia	36
Slovakia	34
Estonia	24
Poland	14
Switzerland	14
Bosnia and Herzegovina	12
Slovenia	9
Montenegro	1

70 See EJS 2010, cit. *supra* note 29, p. 172–173.

Although fragmented, this information has an indicative value. It may, for example, be interesting to note the significant differences in time needed to obtain a first instance decision in a work dismissal case in France (476 days average) and the Netherlands (21 days). The same goes for the appeal rate, which is reported to be the highest in France (61%), and four to five times lower in Poland, Switzerland or Slovenia.

The EJS 2010 report has also tried to compare the data for 2008 to the past two evaluation cycles. Again, many pieces of information are missing. Notwithstanding that, figures for the comparison of the average length of proceedings in first instance litigious divorce cases reveal some interesting trends and comparisons. For instance, it is patently clear that the divorce process lasts several times less in Estonia, Latvia, Poland, Denmark, Sweden or Slovenia than it does in France or Italy. Furthermore, it can also be seen that the gap is growing; the average time needed to obtain a divorce in the former countries is shortening (from 248 days in 2004 to 228 days in 2008), while during the same time in the latter group of countries the average length of time is growing (in Italy, for instance, by 100 days during the 2004–2008 period).[71]

Figure 7. Average length of proceedings for litigious divorce cases at first instance courts between 2004 and 2008, in days



4. WHAT CAN, AND CANNOT, BE CONCLUDED FROM THE COLLECTED STATISTICAL INFORMATION ON EUROPEAN JUDICIAL SYSTEMS AND THEIR EFFICIENCY?

In the previous chapter, only a very small section of the information contained in CEPEJ's evaluation reports was presented. The purpose of the selected data was to

71 See Figure 7 (reproduced from EJS 2010, cit. *supra* note 29, p. 171, Figure 9.31).

inquire into the issues of efficiency of the European justice systems by comparing human and financial resources available, and the results – the volume of adjudicated cases and their duration. A full analysis would require adding further information, such as, figures regarding other court personnel, like the *Rechtspfleger*, and information on a variety of other types of cases and activities conducted and supervised by the judiciary. A very detailed analysis is not, however, the aim of this paper, which seeks to discuss the methodological issues and focus on the relevance of comparisons for the field of civil procedure. For that purpose, the present sample is sufficient to draw some general conclusions, and also to point to the issues where generalisations should be avoided.

The first, very obvious conclusion is that the European justice systems are, apparently, even more different than one would expect. Let us start with the 'input'. The economic power of European judiciaries differs greatly: budgets available to justice systems in the Caucasus region is about one hundred times smaller than those of the courts in Switzerland, Germany or the Netherlands. In spite of some significant increases in the court budgets of the poorest countries, this gap will certainly remain great for a long time. The level of investment in a justice system is not caused only by the level of economic wealth, since there are also significant variations in the percentage of spending on the judicial system in different countries (see above). Of course, the budgetary investment into the justice system can be affected by the 'revenues' generated by its work (collection of court taxes, different other sources of income), but the very different share of these 'contributions' to their own budget also reveals different perceptions about the function of the (civil) justice. Understanding the justice system as a free public service available to all users at no cost is certainly different to understanding justice as another branch of the service industry which is provided by the state on (quasi) commercial terms to its users (or consumers).

The numbers of professional judges per capita in Europe also has a span of over one to ten: in the United Kingdom it is about three to five per 100,000 inhabitants, whereas in southeastern Europe it is about 30 to 50. If we disregard *common law* countries, which have a tradition of intensive use of non-professional judges, on the European continent differences are also considerable, so that even two otherwise comparable countries like France and Germany differ over 100%.[72] It may also be interesting to note that the gap in the number of judges per capita seems to be widening: while countries with relatively small shares of professional judges have further reduced their number (Sweden, Norway, UK, Italy, France), those countries with the highest figures (Croatia, Slovenia) are witnessing further increases.[73]

The concrete figures confirm that the role and social status of judges in Europe are quite different. One can draw conclusions as to judges' different economic status,

[72] While France has less than ten professional judges per 100 thousand inhabitants (9,1 in 2008), Germany has over twenty (24,5 in 2006).

[73] See also EJS 2010, cit. *supra* note 29, p. 292.

social position and respect in society both from absolute figures in respect of judicial salaries and from their relation to average salaries. Again, the mere fact that the income of some judges in eastern Europe is over one hundred times smaller than the income of those in western Europe is telling; but so is the fact that the salary of a judge at the beginning of their judicial career is in some countries equal to average salaries, and in the others five times higher. The relation between the salaries of lower court judges, and those in the highest posts in the judicial hierarchy may be a good financial indicator of the coordinate or hierarchical structures within national judiciaries: relatively modest increases in salaries in the UK and northern European countries (up to 75% over the course of a whole career) can be contrasted with the high differences in Poland, Italy, France, Bulgaria and Russian Federation (about 200% or more).

All these differences are relevant in order to properly understand how a civil procedure functions in the respective judicial systems. The multiplicity of structural differences makes comparison more difficult. It would indeed be wrong to select only one indicator and make a 'top-list' of the best European judiciaries. It is equally wrong to deduct from the average or median figures, in isolation from all other factors, what would be the 'ideal' or 'optimum' level of required resources for efficient work (e.g., what is an adequate number of judges or their 'proper' salaries). But, the very idea of comparison based on an input-output analysis is not defeated by the fact that the inputs (and outputs) are dramatically different. On the contrary, such an analysis may produce relevant and novel results. By introducing a comparison between some inputs and outputs, I suggest, for example, a number of possible conclusions which may run contrary to the usual perceptions about the efficiency of justice systems.

Let us first start with the perception that the main dysfunctions in the functioning of the justice system (delays, backlogs) are, in general, mainly caused by lack of resources. Of course, one cannot get something from nothing, so that extremely small expenditure on the justice system, regularly, fails to produce spectacular results. Among legal professionals and judicial administrators there is a tendency to argue that most of the problems in the judicial system may be resolved by adding further resources, e.g., by increasing court budgets, increasing the number of judges, lawyers or court personnel, or by increasing their salaries.

Considering the figures about the inputs into the European justice systems, and comparing them to the results, this conclusion cannot be supported. On the contrary, some of the collected data could be taken to suggest an almost opposite conclusion: that an excessive input of resources may produce adverse effects. This can be demonstrated on a number of levels, both regarding court budgets, court personnel and lawyers, and their salaries.

In respect of court budgets, it is difficult to prove that there is any relation between investment and the justice system's performance. The relationship between GDP per capita and investments in judicial systems (see Figure 1 above) show that some of the countries that invest a relatively smaller share of their national wealth into their justice systems are also among the most efficient ones, such as Norway, Finland or

Ireland. On the other hand, a relatively small share of GDP is assigned to the judiciary in Greece and Turkey, which are not among the best performers. Those who invest a significant part of their national budget include the Netherlands, which does not have major problems with judicial dysfunctions; however so are countries such as Hungary, Poland, Slovenia or Croatia, which are high on the list of countries with established violations of the right to a trial within a reasonable time. Of course, it can be argued that acute problems require additional financial means; the EJS reports also note that in some countries, that high levels of investment are, in some cases, partly due to the use of financial means from international resources and various foreign donors. However, there is, so far, no definite proof that high resource use has over time effectively produced significant changes.[74] CEPEJ's report has also cautiously noted the disjunction between financial investment and the effective functioning of judicial systems:

> 'Although it is not for the CEPEJ at this stage to define the proper level of financial resources to be allocated to the justice system, a correlation can be noted between the lack of performances and efficiency of some judicial systems and the weakness of their financial resources. However, the opposite is not always true: high financial resources do not always guarantee good performance and efficiency of judicial systems.'[75]

Comparative analysis of data regarding the numbers of judges and lawyers in different European countries may stimulate us to make further inferences of the same kind. A widespread perception amongst the judiciary is that backlogs and delays may be resolved by employing more judges. This perception also plays a part in the political debates, and obviously produces some results – the fact that the number of European judges has increased by one-fifth (20%) in six years is the best proof of that.[76] Yet, when we inquire into the list of countries that have the highest numbers of judges, we find the same south eastern European countries that are also on the list of those countries with the highest number of established cases of excessive length of judicial proceedings.[77] On the other hand, those countries in which there are no or very few proven problems with the length of proceedings regularly have a small number of professional judges per capita (UK, Scandinavia, the Netherlands).

74 On the contrary, some experiences from the south eastern Europe may lead to conclusion that the inefficiency was always a good excuse for demanding more (domestic and international resources). Insofar, the policy which could be described as 'the squeaking wheel gets the grease' motivates inefficient and not efficient use of additional resources.

75 EJS 2010, cit. *supra* note 29, p. 291.

76 Compare *supra*, at 3.2.

77 Almost anecdotally, the country with the highest number of judges per capita (Slovenia) was the one with the highest number of established violations of fair trial rights due to excessive length of proceedings. The statistics of the ECtHR for 2008 show that the number of allocated applications was for Slovenia 6,68 on 10 thousand inhabitants, while the European average was 0,62. See Analysis of statistics of the ECtHR 2010, January 2011, www.echr.coe.int, p. 12.

Taking a look at the number of lawyers, the picture is not much different. Virtually all relevant documents emphasise the 'fundamental role that lawyers and their professional associations... play in ensuring the protection of human rights and fundamental freedoms'.[78] Availability of lawyers may seem to be among the guarantees of fair and efficient justice. Yet, contrary to the perception that a large number of lawyers in any given society would result in improved access to justice, faster trials and better quality of legal protection, CEPEJ's reports show that the highest concentration of lawyers exist in two countries that were, at least among western European nations, among those that had the most problems with securing effective and efficient legal protection to its citizens, namely Italy and Greece.[79] Conversely, the lowest figures regarding lawyers on the European continent are recorded in Finland and Sweden, where problems regarding the efficient functioning of the justice system exist at a much smaller scale, if at all.

These are only a few more-or-less surprising inferences from the rich collection of data compiled by CEPEJ in the past years. These conclusions are not absolute, and should be taken with care, only as the starting point of further research. The fact that an abundance of judges or lawyers seems not to be the solution, but part of the problem, indicates deeper structural and systemic problems which should be analysed much more deeply. Here, both knowledge about history and tradition, and the conventional legal analysis of procedural laws and practices may be indispensable. But, further collection of data, as well as the introduction of new variables and indicators should again help to check and verify general statements and hypotheses. If large variations in figures indicate that the social and political functions of the national justice systems differ greatly, then further information should help clarify the differences.

For example, variations in the number of incoming litigious court cases among the European countries can be explained less as an indication of different level of eagerness to go to court in different nations, and more as differences in the concept of a 'dispute' or 'litigation' in different legal systems. Large number of 'litigious' cases in Russia, Belgium or Italy, just as the large number of lawyers or judges in these or other countries, may support the general division of justice systems in ideal types or into 'faces of justice' in the sense made famous by Damaska's models.[80] Russian or Italian 'richness' in court cases may be the product of a system in which bureaucratic and hierarchical structures prevail over substantial justice; it can also be a product of understanding a 'proper court case' to be a matter which is not essentially different from administrative matters, and a concept of judicial activities that is *mutatis*

78 Council of Europe Recommendation No. R(2000)21 on the freedom of exercise of the profession of lawyer (preamble).

79 In the statistics of human rights violations of the ECtHR for 1959–2009 period, among all the EU members, the Italy (1095) and Greece (320) had the highest numbers of violations regarding the length of proceedings. Cf. Table of violations 1959–2009, www.echr.coe.int (Statistical information, January 2011).

80 See M. Damaška, The Faces of Justice and State Authority (Yale: Yale UP, 1986).

mutandis no different from the concept of how the executive branch of government operates.

In any case, the empirical information provided by CEPEJ's evaluation rounds will be indispensable for all future comparative civil procedure research, as it provides a connection between the *law in books* and reality. If we seek to find out why some legal transplants do not function well, structural comparisons of different institutional environments could provide an answer. The empirical data from CEPEJ's research is compatible with, and complements, social science research methods and legal theories that seek to discover the causes of differential functioning of, and differing results from, different judicial systems.

So far, it may be premature to draw final conclusions about the efficiency levels of particular judicial systems (and particular procedural subsystems), but, as shown above, some indicative and provisional findings are already possible. When more information is available, in particular regarding the timeframes of judicial proceedings, more reliable comparisons will be possible. Further harmonisation of the typology of judicial proceedings, first on the regional and then on the European level, accompanied by a uniform statistical approach to judicial statistics, which can be assisted by the application of the EUGMONT scheme, may even lead to the formation of indicators that will ultimately enable precise comparisons of efficiency and quality of national judicial systems. But, it is still a long way before that will happen, and challenges should not be underestimated. I, therefore, dedicate the final section of this paper to those challenges, and in particular to those that have become manifest in the past seven years of work carried out by the European Commission for the Efficiency of Justice.

5. THE CHALLENGES AND LIMITATIONS OF CEPEJ'S EVALU*ATIONS: ANSCHAUUNGEN OHNE BEGRIFFE SIND BLIND*

CEPEJ has so far accomplished formidable results in its efforts to gather relevant information about the functioning of national judicial systems. But, as shown in the previous section, for lasting success and the proper use of collected data, continuous monitoring and an extended scope of research is needed. The first step has already been taken – after the initial period of pilot work, CEPEJ has become one of the permanent bodies of the Council of Europe.

The institutionalisation and global fame of CEPEJ's evaluation is accompanied by several challenges. Some of them have already started to play a role in its work, which has also brought to light several serious limitations that may affect the reliability and usefulness of the future work of this body. I set out and briefly describe four of those challenges, each of which are partly related:

- target and scope of work in the field of evaluation;
- accuracy and completeness of data;
- political and professional implications of the work of the organisation;
- composition and capacity of the working bodies.

Before the start of the first evaluation round, a programmatic document on the evaluation of judicial systems had the title 'A balance between variety and generalisation'.[81] The study proposed a system of evaluation based on the principle of a clear 'system boundary' (with a focus on judiciary and legal professions) and the principle of 'practical use'. The latter meant that the degree of details in the evaluation scheme and the total number of indicators to be measured should be minimised. This was based on two arguments: to avoid imposing too great a burden on the agencies responsible for data collection, and – more importantly – to avoid methodological problems, since 'by introducing more and new international indicators, the problems with defining and interpreting international statistics will increase'.[82] Based on this philosophy, CEPEJ started with an evaluation which was limited to about one hundred questions.

Over the course of the next evaluation rounds, the number of questions constantly grew, as did the evaluation reports. The balance shifted in favour of ever greater detail, but the larger variety of information came with a price. The first report published in 2002 was relatively short, clear, focused on basic indicators of functioning and efficiency of national judicial systems, while every subsequent report was larger, more difficult to read and use, and less targeted to specific numerical indicators. With each subsequent round, the number of imprecisely defined and open-ended questions increased; the increasing number of questions produced an increasing number of nil returns i.e., questions left unanswered.

While the scope of received responses is still satisfactory, there are some worrying signs that in the future it might be put in question. In 2010, one of the leading European states, Germany, pointed out that 'given the workload multiplied by the federal-based organisation of the country... it could not register in the process established on a biennial time-limit'.[83] If Germany, which also provided the president to the CEPEJ in the period when this model of evaluation was established, is followed by some other federal states (Russia, UK, Switzerland), or other states which might find the evaluation to be too demanding, the territorial completeness of data collection – one of the CEPEJ's central advantages – could be seriously jeopardised.

Irrespective of future success in gathering information from the European states, the ability of CEPEJ to process and interpret a large quantity of data is rather limited. As part of the Council of Europe, CEPEJ is also under a considerable budget strain.

81 P. ALBERS, cit. *supra* note 22.

82 Ibid. p. 9–10.

83 EJS 2010, cit. *supra* note 29, p. 7.

CEPEJ's funding is many times smaller than any of the comparable projects of the 'big brother', the EU. CEPEJ as such operates as a group of experts nominated by the CoE states, which meets only twice a year for a two day plenary session; the working groups, including the one on evaluation, meet with the same frequency. The thrust of its work is completed by the Secretariat, the national correspondents and an *ad hoc* appointed scientific expert entrusted with the task of analysing the national figures submitted by member states, verifying them and preparing the preliminary draft report. In such circumstances, contacting 46 countries and registering replies on several hundred questions for each of them obviously does not allow much time for anything but mechanical statistical processing.

However, with a growing international reputation, the demands on CEPEJ are ever increasing. Its work has become politically relevant. This is another challenge, which may affect, and has started to affect, both the accuracy of data, and the contents of the evaluation reports. Already the first round of evaluation has generated different political reactions on the basis of superficial comparisons. In France, for example, the information about the justice budget provoked a loud protest by the French Union of Judges, which argued that CEPEJ's report 'shows the state of poverty of the French legal institutions'.[84] The reply of the Minister of Justice was to deny the relevance and accuracy of the presented data.[85] In the first subsequent evaluation round however, the official reporting about the judicial budget has already become tainted by attempts to present higher figures by including various external elements into the court budget.[86] When statistics become politically relevant, they tend to become less reliable, and in a self-reporting system, by public authorities that are basically under political control and influence, this should be a reason for particular concern.

A further by-product of CEPEJ becoming famous at local, regional and European level is a certain shift in its composition, approach and philosophy. In the beginning, CEPEJ was very strongly user-oriented. It emphasised the need to improve the functioning of the various justice systems by facilitating access to justice for their users. Innovative judicial practices were promoted, with a touch of pan-European judicial idealism, as programmatic documents and core events sought to address issues such as 'optimum timeframes' and the 'ideal trial'. Comparing national justice systems was thought to be a project equally relevant for all Council of Europe countries, irrespective of their size, history and economic strength. It seems that the current development has somewhat departed from these premises.

CEPEJ's work has become a point of interest for court administrators, legal professionals and their professional organisations, which are represented as observers. Its questionnaires have included a number of items which are addressed to 'insiders',

84 USM, majority, 6.10.2006., at 11:34 (AFP).

85 Pascal Clement, in *Le Monde*, 7.10.2006.

86 See EJS 2006, cit. *supra* note 12, p. 19, where it is stated that, for France, 'the high increase between 2002 and 2004 stems ... for the main part, from the inclusion of [other] budgetary lines'.

and reports now emphasise new, artificial indicators which are internally relevant for court and case administration, such as 'clearance rates', 'case turnover ratios', 'disposition time', 'CPJ (case per judge) indicators', 'ER (efficiency rate) indicators' etc. The target of improving justice systems by creating user-friendly justice that effectively protects the rights of the citizens is not completely lost however, but other elements – the elements of bureaucratic efficiency – have gained in importance.

One can ask whether initial statements about evaluation that is not 'value-free', but is 'theory-free' are truly reflected any more. The latest political resolutions see CEPEJ's work in the context of developing tools which should enable those countries that have difficulties in securing fair trials within reasonable time to better meet their international obligations. This is, of course, a valuable objective, but different from the initial intention of aiming to improve the functioning of justice systems in all European countries. Some recent attempts to create 'clusters of comparable countries'[87] suggest that comparisons among all jurisdictions are neither possible nor desirable. Furthermore, the separation of focus between the 'rich' (traditional) and 'poor' (transitional) justice systems may lead to different evaluative standards and aims: in the first case, the comparison of justice systems would be 'theory free', i.e., limited to the exchange of information and the eventual harmonisation of judicial statistics; in the second case, the purpose of evaluation would be based on the theory that judicial development should be monitored, through the 'observatories' and 'peer pressure', and that concrete reform steps should be introduced. In fact, it may be true that many European justice systems need to carry out significant reforms, just as it is true that this need is not equally intense in all systems. However, the merger of three different functions in the same body – of the allegedly neutral collection of empirical data on justice systems, of attempts to study and interpret that data (intensified in the last report)[88], and of concrete recommendations and suggestions for certain systems – may compromise the soundness and solidity of the results.

What is a proper reply to all these challenges? How can we best use the great potential of collected empirical information about the European justice systems? For a proper analysis of the findings of CEPEJ's evaluation efforts, one needs independent, systematic and well-considered comparative research, undertaken in an interdisciplinary manner and in an environment free from political pressures. While planning to embark on the ambitious journey of comparative evaluation of European judicial systems, CEPEJ has profited from the services of several outstanding scientists, such as Marco Fabri, Hazel Genn, Pim Albers, Roland Eshuis, Beata Gruszczyzynska and Jon Johnsen (to name just a part of the dedicated group of experts who were active in the evaluation project's inception phase). The link to strategic thinking and

87 From the presentation of the Chairman of the Working Group on Evaluation of the CEPEJ, Jean-Paul Jean, at the press conference held on 8.10.2008. (www.coe.int/cepej).

88 The last reports (EJS 2008 and 2010) have introduced an 'interpretative' section, aimed at highlighting 'some quantitative indications and main trends' (Section 17 of the 2010 Report, cit. *supra* note 29, p. 12).

systemic interpretation of collected data has somewhat weakened in the last few years, while experts linked to national governments and the more technical elements of the statistical methods employed have come to the fore. At the same time, the main thread of the whole exercise – improving the efficiency of justice systems for the benefit of their users – has become a bit blurred. In any case, the new evaluation rounds may profit from methodological re-evaluation of the concept and additional verification of the sources and individual replies. But, it is not too late. What is needed is simple. In the same way as we have arrived at the conclusion that the empirical collection of data is indispensable for comparative civil procedure, CEPEJ should become aware that comparative civil procedure is indispensible for the empirical collection of data about judicial systems. Needless to say, Kant was again right: *Anschauungen ohne Begriffe sind blind – Intuitions without concepts are blind.*

ANNEX I: THE BUDGET OF EUROPEAN JUDICIARIES

Court budget per capita in Euro (including prosecution services, without legal aid)						
Country	2004	2006	2008	(04–06 diff)	(06–08 diff)	(04–08 diff)
Albania	6,00 €		5,93 €			-1,20%
Andorra	63,00 €	73,15 €	83,70 €	16,11%	14,42%	32,85%
Armenia	1,00 €	2,60 €	5,07 €	160,12%	95,03%	407,31%
Austria	62,00 €	66,93 €	77,91 €	7,95%	16,41%	25,67%
Azerbaijan	2,00 €	3,06 €	6,99 €	53,24%	128,01%	249,40%
Belgium	63,00 €	78,35 €	74,06 €	24,37%	-5,48%	17,55%
Bosnia and Herzegovina	20,00 €	21,19 €	25,18 €	5,96%	18,83%	25,92%
Bulgaria	9,00 €	12,29 €	24,66 €	36,57%	100,59%	173,95%
Croatia	43,00 €		60,13 €			39,84%
Cyprus	29,00 €		50,16 €			72,96%
Czech Republic	29,00 €	28,49 €	34,92 €	-1,75%	22,55%	20,40%
Denmark	29,00 €		34,03 €			17,34%
Estonia	18,00 €	23,95 €	33,76 €	33,07%	40,96%	87,58%
Finland	47,00 €	48,20 €	55,69 €	2,54%	15,55%	18,49%
France	47,00 €	48,22 €	52,83 €	2,59%	9,57%	12,40%
FYROMacedonia		12,23 €	14,76 €		20,68%	
Georgia	3,00 €	4,50 €	5,42 €	49,88%	20,52%	80,64%
Germany	96,00 €	99,26 €		3,39%		
Greece	28,00 €	29,92 €	31,88 €	6,86%	6,55%	13,85%
Hungary	38,00 €	39,10 €	40,43 €	2,89%	3,42%	6,41%
Iceland	43,00 €	55,02 €	23,63 €	27,95%	-57,06%	-45,05%
Ireland	31,00 €	19,27 €	40,87 €	-37,85%	112,11%	31,83%
Italy	67,00 €	68,11 €	69,89 €	1,66%	2,61%	4,31%
Latvia	14,00 €	21,59 €	31,34 €	54,18%	45,18%	123,85%
Lithuania	18,00 €	25,21 €	30,81 €	40,04%	22,24%	71,19%
Luxembourg	101,00 €	115,05 €	125,41 €	13,91%	9,00%	24,16%
Malta	24,00 €	27,62 €	28,15 €	15,09%	1,90%	17,28%
Moldova	13,00 €	1,99 €	3,58 €	-84,71%	79,88%	-72,49%
Monaco	127,00 €	161,54 €	196,67 €	27,20%	21,75%	54,86%
Montenegro	13,00 €		39,71 €			205,44%
Netherlands	67,00 €	77,67 €	89,00 €	15,93%	14,59%	32,84%
Norway	36,00 €	40,03 €	36,84 €	11,20%	-7,97%	2,34%
Poland	27,00 €	38,98 €	40,32 €	44,35%	3,45%	49,34%
Portugal	50,00 €					
Romania	9,00 €	17,44 €	25,14 €	93,76%	44,19%	179,38%
Russian Federation	17,00 €	24,38 €	22,90 €	43,42%	-6,06%	34,72%
Serbia	11,00 €	22,93 €	30,30 €	108,47%	32,13%	175,45%
Slovakia	20,00 €	27,47 €	37,72 €	37,34%	37,31%	88,58%
Slovenia	64,00 €	74,81 €	87,50 €	16,89%	16,97%	36,73%
Spain	56,00 €		81,41 €			45,37%
Sweden	61,00 €	64,36 €	57,51 €	5,51%	-10,64%	-5,72%
Switzerland	102,66 €	107,46 €	132,55 €	4,67%	23,35%	29,12%
Turkey	4,00 €		10,30 €			157,61%
UK-England & Wales	23,00 €	43,24 €	40,57 €	87,99%	-6,17%	76,38%
Ukraine	3,00 €	8,51 €	5,36 €	183,76%	-37,00%	78,77%
UK-Scotland	44,00 €	52,45 €	54,41 €	19,20%	3,75%	23,67%

ANNEX II: THE NUMBER OF PROFESSIONAL JUDGES IN EUROPE (ABSOLUTE AND PER 100,000 INH.)

Country	2002		2004		2006		2008	
	total #	scaled	total #	scaled	total #	scaled	total #	scaled
Albania			383	12,5			391	12,3
Andorra	24	35,7	22	28,6	22	27,1	23	27,2
Armenia	171	5,33	179	5,6	179	5,6	216	6,8
Austria	1732	21,47	1696,5	20,7	1674	20,2	1658	19,9
Azerbaijan	333	4,1	338	4	494	5,8	494	5,7
Belgium			2500	23,9	1567	14,9	1626	15,2
Bosnia and Herzegovina			690	18	846	22	857	22,3
Bulgaria	1550	19,7			1821	23,7	2166	28,3
Croatia	1819	41	1907	42,9	1924	43,3	1883	42,5
Cyprus			96	13,9	98	12,7	100	12,5
Czech Republic	2716	26,6	2878	28,2	2995	29,1	3044	29,2
Denmark	368	6,8	368	6,8	359	6,6	380	6,9
Estonia	237	17,5	245	18,1	239	17,8	238	17,7
Finland	875	16,9	875	16,7	901	17,1	921	17,4
France	6240	10,4	6278	10,1	7532	11,9	5819	9,1
FYROMacedonia	642	31,7			624	30,6	659	32,2
Georgia	306	7	406	9	272	6,2	282	6,4
Germany	20901	25,3	20395	24,7	20138	24,5		
Greece	3571		2200	19,9	3163	28,4	3739	33,3
Hungary	2757	27,1	2757	27,3	2838	28,2	2903	28,9
Iceland	47	16,3	47	16	47	15,7	47	14,7
Ireland	119	3	130	3,2	132	3,1	145	3,3
Italy	6720	11,7	6105	10,4	6450	11	6109	10,2
Latvia	396	17,1	384	16,6	510	22,2	473	20,8
Lichtenstein	28	82,7						
Lithuania	672	19,4	693	20,2	732	21,5	755	22,5
Luxembourg			162	35,6	174	36,8	184	37,4
Malta	35	9,1	35	8,7	34	8,3	36	8,7
Moldova	465	12,9	415	12,3	431	12	460	12,9
Monaco			18	60	18	54,5	20	64,3
Montenegro			242	39	231	37,2	246	39,7
Netherlands	1809	11,3	2004	12,3	2072	12,7	2176	13,3
Norway	652	14,4	501	10,9	512	10,9	537	11,3
Poland	7771	20,3	9766	25,6	9853	25,8	9890	25,9
Portugal	1551	14,9	1754	16,7	1840	17,4	1906	18
Romania	3694	17	4030	18,6	4482	20,7	4142	19,2
Russian Federation	17144	11,8	29685	20,7	30539	21,5	34390	24,2
San Marino			16	53,9			19	60,8
Serbia	2500	33,3	2418	32,2	2506	33,8	2506	34,1
Slovakia	1232	22,9	1208	22,4	1337	24,8	1388	25,7
Slovenia	774	39,4	780	39	1002	50	1083	53,5
Spain	4109	9,8	4201	9,8	4437	10,1	4836	10,7
Sweden	1693	18,9	1618	17,9	1270	13,9	1039	11,3
Switzerland	948	12,9			1229	16,5	1089	14,1
Turkey	5255	7,5	5304	7,5	6593	9	7198	10,1
Ukraine	7420	15,5	6999	14,8	6893	14,8	7205	15,5
UK-England and Wales	2195	4,2	1305	2,5	3774	7	1902	3,5
UK-Northern Ireland*	62	3,7	62	3,6	371	21,3	123	7
UK-Scotland	227	4,5	227	4,5	227	4,4	181	3,5

ANNEX III: SALARIES OF JUDGES AT THE BEGINNING AND AT THE END OF THEIR CAREERS

Country	Salary min	Ratio average (min)	Salary max	Ratio average (max)	Ratio min to max
Albania	7.250,00	1,4	14.486,00	2,8	100%
Andorra	72.443,00	3,1	39.050,00	1,7	-46%
Armenia	6.069,00	2,5	9.103,00	3,8	50%
Austria	45.612,00	1,1	110.633,00	2,6	143%
Azerbaijan	8.256,00	2,9	13.728,00	4,8	66%
Belgium	59.934,00	1,6	129.673,00	3,5	116%
Bosnia and Herzegovina	24.015,00	3,5	41.481,00	6,1	73%
Bulgaria	7.227,00	2,2	23.266,00	7	222%
Croatia	25.765,00	2,1	58.490,00	4,7	127%
Cyprus	71.668,00	2,9	127.387,00	5,1	78%
Czech Republic	22.374,00	2,1	50.378,00	4,8	125%
Denmark	78.348,00	1,6	109.212,00	2,3	39%
Estonia	34.776,00	3,5	47.817,00	4,8	38%
Finland	53.000,00	1,5	114.500,00	3,3	116%
France	36.352,00	1,1	107.011,00	3,4	194%
FYROMacedonia	16.807,00	3,3	20.912,00	4,1	24%
Georgia	11.500,00		22.800,00		98%
Germany					
Greece	51.323,00	2,1	105.770,00	4,3	106%
Hungary	19.176,00	2	37.480,00	4	95%
Iceland	57.234,00	2,1	73.463,00	2,7	28%
Ireland	147.961,00	4,5	257.872,00	7,8	74%
Italy	45.188,00	2	131.302,00	5,8	191%
Latvia	18.901,00	2,3	46.764,00	5,7	147%
Lithuania	16.525,00	2,2	29.862,00	4	81%
Luxembourg	76.607,00	1,8	140.201,00	3,3	83%
Malta	32.584,00	2,5	32.584,00	2,5	0%
Moldova	3.300,00	1,7	5.100,00	2,6	55%
Monaco	42.285,00				
Montenegro	19.756,00	2,7	25.035,00	3,4	27%
Netherlands	70.000,00	1,4	115.000,00	2,3	64%
Norway	83.239,00	2	136.978,00	3,2	65%
Poland	15.189,00	1,8	43.826,00	5,2	189%
Portugal	34.693,00	1,7	83.401,00	4,2	140%
Romania	15.667,00	2,7	36.802,00	6,4	135%
Russian Federation	13.067,00	2,6	45.011,00	9	244%
San Marino	70.760,00	4,1	84.756,00	3,4	20%
Serbia	17.480,00	4,3	33.371,00	8,2	91%
Slovak Republic	25.303,00	2,9	36.550,00	4,2	44%
Slovenia	26.949,00	1,6	55.509,00	3,3	106%
Spain	49.303,00	1,7	137.810,00	4,7	180%
Sweden	56.104,00	1,9	96.634,00	3,2	72%
Switzerland	107.940,00	2,3	227.446,00	4,9	111%
Turkey	18.251,00		37.146,00		104%

Country	Salary min	Ratio average (min)	Salary max	Ratio average (max)	Ratio min to max
UK-England and Wales	105.526,00	4	212.093,00	8,1	101%
UK-Northern Ireland	105.515,00	4,6	176.899,00	7,7	68%
UK-Scotland	128.296,00	5,1	214.165,00	8,5	67%

Salary min = Gross annual salary of a 1st instance professional judge
Ratio average (min) = Gross salary of a judge in regard to national average gross annual salary
Salary max = Gross annual salary of a judge of the Supreme Court or the Highest Appellate Court
Ratio average (max) = Gross salary of a judge in regard to national average gross annual salary
Ratio min to max = Percentage increase between 1st instance judicial salaries and those of the highest judges

GRANDES DÉCISIONS / LEADING CASES

A report of recent leading procedural law cases

Michele Angelo Lupoi

FRANCE[1]

An important decision was given by the French *Conseil d'État* on 22 octobre 2010 [2], concerning the application of Art. 2, 3 and 5 of Directive No. 78 of 2000 (regarding employers' duties towards handicapped workers) to the position of handicapped lawyers. The Conseil d'Etat preliminary decided that even though the State is not the employer of lawyers, nonetheless it has obligations deriving from the Directive, since lawyers are qualified as auxiliaries of justice (art. 3 of law No. 71–1130 of 31 December 1971) and they give a regular and indispensible contribution to the public judicial service, while performing an important part of their professional activities inside buildings dedicated to that public service. Therefore, the State was found to be bound to take appropriate measures to create such working conditions (e.g. facilitated access to the premises, even those not open to the general public but to which lawyers must have access in order to perform their activities) as to enable handicapped lawyers to perform their profession, unless such measures impose a disproportionate burden.

The *Conseil* went on to say that the provision of décret No. 2006–555 of 17 May 2006, according to which the relevant buildings have to be made accessible to handicapped persons by 1st January 2015, is not a violation of the directive in the light of the practical difficulties and duties related to that deadline: the French State, therefore, is not liable from this point of view. Having said that, the *Conseil* also found that, waiting for the deadline to elapse, the State is nonetheless under a no fault liability for not enabling handicapped lawyers to have adequate access to judicial buildings, so that indemnisation for moral damages is due (in the given case, € 20.000,00€ were awarded to the applicant lawyer who claimed that the conditions of the court buildings she practised in damaged her in the exercise of her professional activities).

1 Thank you, prof. Loic Cadiet.

2 N° 301572, Revue française de droit administratif 2011, 141, conclusions Roger-Lacan; Dalloz 2011, 1299, observations Boujeka.