

## JUDICIAL SYSTEMS IN EUROPE COMPARED

### 1. Introduction

A couple of years ago, legal scientists (see for example Zuckerman)<sup>1</sup> identified, especially in the civil law area, a 'crisis' in the courts of Europe. In many countries there should be a problem in the area of length of proceedings. There was the impression that much civil proceedings exceeded the norms and standards of reasonable time as laid down in Article 6 of the European Convention on Human Rights. At the European level this problem was recognised and discussed in various *fora*. For example at the 23<sup>rd</sup> Ministerial Conference of Justice Ministers of the Council of Europe (London 2000).

What is interesting to notice is that the debates were launched without any detailed figures on the length of proceedings. Only an indication of the magnitude of the problem in judicial systems could be derived from the number of cases received by the European Court of Human Rights in Strasbourg.

Concrete facts and figures on the length of court proceedings are in most countries hard to find. This, combined with the need to gain more knowledge on the differences and similarities between the judicial systems was one of the reasons to address the European Commission for the Efficiency of Justice (CEPEJ) with the task

'to examine the results achieved by the different judicial systems in the light of the principles [access to justice and efficient court proceedings, the status and role of legal professionals, administration of justice and management of courts, use of information and communication technologies, PA] referred to in the preamble to this Resolution by using, amongst other things, common statistical criteria and means of evaluation'.<sup>2</sup>

\* Special Advisor of the CEPEJ Council of Europe

<sup>1</sup> Zuckerman 1999.

<sup>2</sup> Art. 2, Resolution 2002(12) Establishing the European Commission for the Efficiency of Justice (CEPEJ), Strasbourg: Council of Europe.

This task should be – according to the Resolution 2002 (12) – accomplished by the identification and development of indicators, collection and analysis of quantitative and qualitative data and the definition of measures and means of evaluation.<sup>3</sup>

Where to start and what approach to follow were two difficult questions the CEPEJ was facing at the beginning of their ‘terms of office’. How the methodology for ‘evaluating’ judicial systems at a European level was developed will be described in this chapter. The limitations of the methodology will be mentioned too, as well as future developments, including the report on European judicial systems as a source of inspiration for other regions in the World to start a similar international justice benchmarking.

## 2. The Early Phase: 2003 – May 2005

The first meeting of a working group of the CEPEJ (CEPEJ-GT1), composed of 6 experts from France, Portugal, Italy, the Netherlands, Poland, United Kingdom, a scientific expert from the Dutch Scientific Research and Documentation Centre of the Ministry of Justice (WODC) and an observer from the World Bank, took place in June 2003. Starting point for discussion was a paper prepared by the author of this chapter entitled *Evaluating judicial systems: a balance between variety and generalization*.<sup>4</sup> The subtitle of this paper was chosen, because one of the challenges to be faced by the working group was to create an evaluation methodology which reflects the variation and complexity of the judicial systems of the 47 Member States of the Council of Europe at the one hand and at the other hand the need to create a practical and workable instrument to collect relevant quantitative and qualitative information.

The CEPEJ (2003)12 Article described a list of possible problems to be solved, lessons to be learned from other comparative studies and a concrete proposal for the development of an evaluation scheme.

One of the most difficult problems to be solved in the process of developing the evaluation scheme concerns the differences in definitions and the lack of court data in the various Member States. The CEPEJ 2003 Article (CEPEJ (2003) 12) provides examples of variation in the definitions of lawyers, judges, courts and public prosecutors. What is defined in the United Kingdom as a ‘lawyer’ (including the use of other names such as barristers and solicitors) is totally different, due to another legal status and competences, from lawyers operating in France for example. The same difficulties arise with the definition of a ‘court’. What is a court? Is it a building, a panel of judges in a court session or the jurisdiction? Differences in definition have a negative impact on the figures received from countries and the level of comparability.

In addition to problems to be solved in the area of legal definitions, there is the issue of lack of data. As already discussed in the introduction, not many countries

<sup>3</sup> Resolution 2002(12), Art. 3.

<sup>4</sup> CEPEJ (2003)12: Albers, P, *Evaluating judicial systems: a balance between variety and generalization*, Strasbourg: **Council of Europe**

are able to present information on the length of court proceedings or other court performance related information.

The development of a comparative evaluation scheme for judicial systems is a 'unique' exercise and can only – for a limited part – be based on past experiences derived from other comparative studies (for example conducted or initiated by the European Commission, OECD, the World Bank, universities). An example of a comparative study is the '*justice sector at a glance*'<sup>5</sup> exercise of the World Bank (2003). One of the problems with the statistics presented is that it is limited to certain selective areas of the justice sector. It does not include all the items that are necessary to compare one judicial system with another. A second limitation of the World Bank statistics on the justice sector is that information of many European countries is lacking. New and additional information is necessary. Another example is derived from a research report from the European Research Network on Judicial Systems (IRSIG CNR (2000) Bologna). This research report illustrates what kind of statistical information is available on judicial systems in eight European Countries. As is the case with the World Bank study, the report is limited to only a few countries. Despite these limitations, both the World Bank study and the IRSIG CNR Report were a valuable source of inspiration for the working group of the CEPEJ.

In the article *Evaluating judicial systems* (CEPEJ (2003(12)) recommendations are given for the topics to be covered in the evaluation scheme as well as instruments to be used to collect data. The article stated that the evaluation must focus on the following items: the judicial organisation (courts, judges, and court staff), court performance (incoming cases, length of proceedings and judicial decisions), legal professionals (lawyers, mediators and enforcement agents), public prosecution and society (for example with respect to the public trust in the Judiciary and the level of satisfaction of the court users).

One of the additional possibilities suggested in the CEPEJ 2003(12) Article is the use of an 'electronic questionnaire'. This should have the advantage that 'the collection and registration of data is relatively easy (compared to 'traditional' ways of registration through the use of written forms)'.<sup>6</sup>

During the first meeting of the expert group in June 2003 it was decided that the evaluation scheme should include questions related to: the resources allocated to the judicial system (budget, human and technical resources), the work of this system, provisions ensuring compliance with the principles of the European Convention on Human Rights, arrangements for guaranteeing the quality of judicial work and the resources used to ascertain the perception of the quality by the users of the courts and the general public.<sup>7</sup> Another decision that has been taken was that each member state should nominate a department or a person (*national correspondent*) to be responsible for the content of the data supplied. This person could also facilitate the communication with the experts of the CEPEJ, who are responsible for the drafting of the evaluation report.

<sup>5</sup> <<http://www.worldbank.org/legal/database/justice>>.

<sup>6</sup> CEPEJ 2003(12), p. 18.

<sup>7</sup> CEPEJ 2003(16), Meeting Report working party No. 1 (26-27 June 2003), **Strasbourg: Council of Europe**, p. 3.

Already at the end of the first (3 days) meeting the experts finalised a preliminary draft evaluation scheme for judicial systems composed of 110 questions. To test the feasibility of the questionnaire all six experts were invited to collect the information required by the scheme. Using this 'test round' could identify problems in the area of definitions, too complicated formulated questions and a lack of certain types of court performance information at a national level.

As a result of the 'test phase' in the second meeting of the expert group (October 2003) the experts spent more time on the redrafting of the scheme (deleting, modifying or inserting questions) and the definition of the terms used (to avoid and reduce interpretation problems). To facilitate the national correspondents it was decided that an explanatory note would be attached to the scheme, to explain the background of the individual questions and to present common definitions of all relevant legal terms.

After the adoption of the scheme by the members of the CEPEJ at a plenary meeting in December 2003 the questionnaire was disseminated to the national correspondents at the end of February 2004. Due to the fact that the preparation time for the questionnaire was relatively short it was not possible to follow the recommendation of the author of the CEPEJ (2003)<sup>12</sup> Article to develop an electronic questionnaire. The scheme was a 'simple' paper printed document.

The methodology for the collection of data is based on a 'self-reporting' principle, which means in practice that the national correspondents are responsible for the quality of the data delivered. Modifications in the data provided by the experts were only allowed when it was agreed by the correspondents. The deadline for sending the replies to the Secretariat of the CEPEJ was May 2004. However, due to a lack of experience with the CEPEJ evaluation scheme, interpretation problems and problems in the process of data collection, this deadline was extended to the end of July. By August 2004, 36 Member States had sent their replies to the Secretariat of the CEPEJ. In the period between sending the Scheme to the national correspondents and receiving the replies intensive contact took place with the correspondents (via email and telephone), mainly to verify the data and to solve interpretation problems.

The first 'pilot report on European judicial systems' was finalised and adopted by the members of the CEPEJ at a plenary meeting in December 2004. At an international conference held in The Hague (May 2005) the report was presented to the public. In an interview with the former president of the CEPEJ the pilot report was described as followed:

'(...) this report is a first in Europe. There has never been such an array of data on forty European countries quite simply because for a long time it was considered impossible to collect comparable data when our countries' judicial systems are all so different. Judges have the same tasks more or less everywhere, but procedure, judges' training and the way they are appointed differ widely from one country to another. By way of example, the role of a British judge is completely different from that of a French judge'.

With data received from 43 Member States out of 46<sup>8</sup> the pilot exercise was very successful. It showed the importance and interest of the governments of the Member States for the need of comparative information on judicial systems as a basis for improvement or reform in the area of the administration of justice.

### **3. Content, Political Impact and Lessons Learned from the First Evaluation Round**

The report *European judicial systems: facts and figures 2002*<sup>9</sup> contains a first description at a European level of the composition and functioning of judicial systems in 43 Member States of the Council of Europe. An overview is given on the public expenditure on courts and legal aid, the composition of courts in terms of numbers of courts, judges and court staff, court performance, the functioning of public prosecution agencies and (private) legal professionals (lawyers, enforcement agents and mediators).

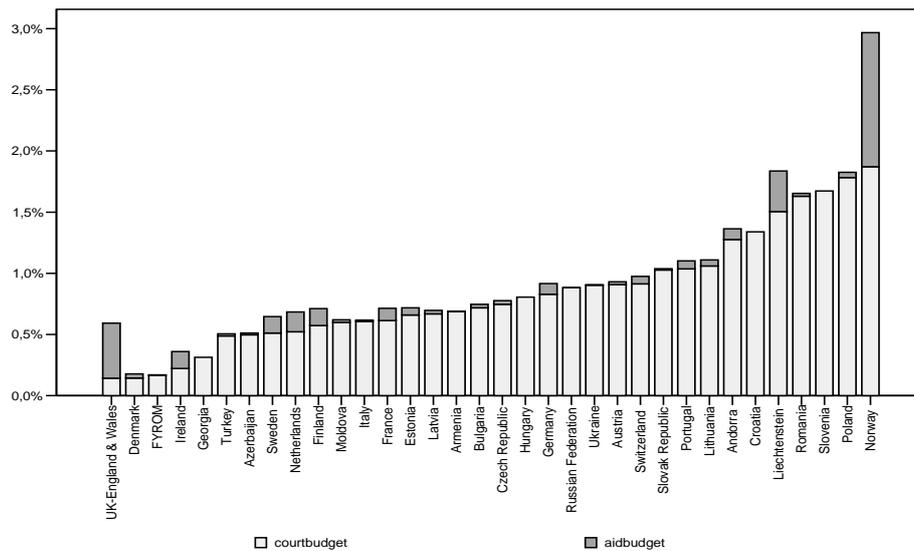
After the publication of the report, especially the parts concerning financing of courts, the number of courts and professional judges received much media attention. The results of the report also stimulated debates in the various countries between the legal professionals and the government on the need to change judicial systems, to improve court performance and quality of services delivered by the courts.

In graph 1 the public expenditure on courts and legal aid (data year 2002) as a percentage of the national budget is described.

<sup>8</sup> Currently 47 Member States.

<sup>9</sup> CEPEJ (2002), *European judicial systems: facts and figures*, Strasbourg: **Council of Europe Publishing**

## Judicial Systems in Europe Compared



Graph 1. Public expenditure on courts and legal aid as a percentage of the national budget (CEPEJ 2006, p. 22)

The graph is an illustration of the variety in financial means that are allocated to the courts, as well as the expenditure on legal aid in the different countries. It is evident that in Norway and in England and Wales a relative high amount is spent on legal aid.

The presentation of the graph in the evaluation report 2002 resulted in certain countries in 'heated' debates between the Minister of Justice, the Judiciary and the Ministry of Finance.

The chapter on financing the courts and legal aid showed also the limitations of the pilot evaluation exercise. This is mainly caused by the fact that the budgetary structure of courts (and public prosecution agencies) can differ largely from one country to another. There was at that time no information available on the specific budgetary items that were included or excluded in the replies of the Member States.

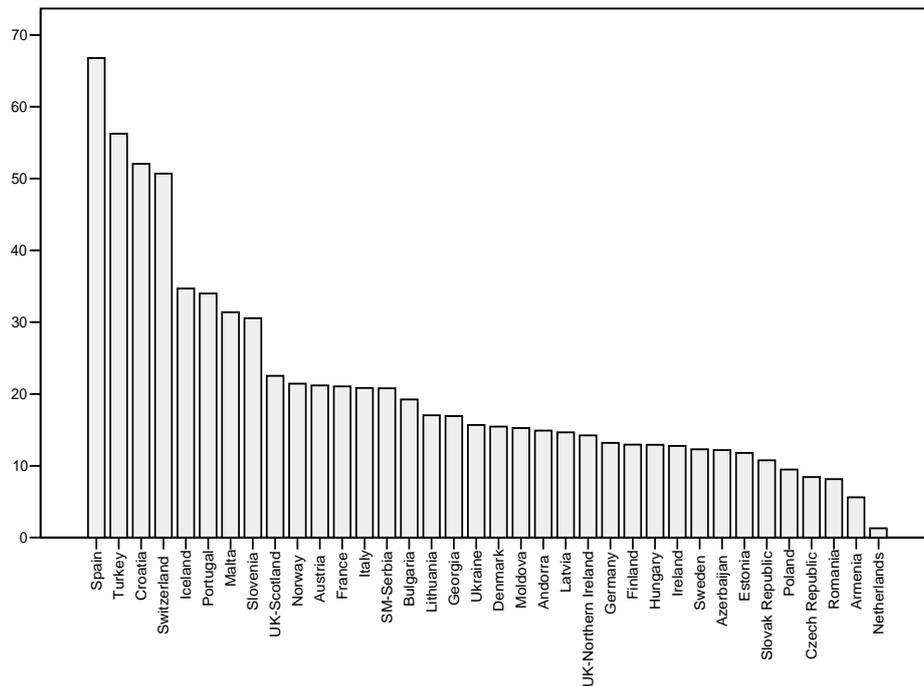
For example, in certain countries the public prosecution is an integral part of the budget of the courts. If countries have included the budget of the public prosecution in the court figures, the figures are not comparable with countries where there is a clear separation between the budget of the courts and the public prosecution. The same example can be given on the figures on legal aid. In some countries it is counted as a part of the court budget, whilst in other countries legal aid is a separate budget item.

Taking this into account, the first presentation of the public expenditure is a raw and limited 'snap-shot' of the situation in 2002 and does not reflect the complexity and differences between countries concerning the budgetary structure and processes.

Another example of the limited comparability of the figures in the 2002 Report without any additional qualitative information concerns the number of first instance courts of general jurisdiction. In Portugal, the information on the number of courts

of first instance led to discussions regarding the need of maintaining a high number of small first instance courts and the necessity to integrate small courts into larger courts for efficiency reasons.<sup>10</sup> In graph 2 the number of first instance courts per 100.000 inhabitants (data year 2002) is presented.

<sup>10</sup> For example at a meeting organised by the Permanent Observatory of Justice (November 2005) in Coïmbra on the restructuring of the judicial map of Portugal.



Graph 2. Number of first instance courts of general jurisdiction per 100,000 inhabitants (Source: CEPEJ Report 2002: p. 32).

This graph shows – similar with the graph on the expenditure on courts and legal aid – the limitations of the data collected. The graph for example does not take into account the population density of a country or definition problems with respect to what is meant by a court. In Spain judges in a court session are defined as a court, whilst in other countries the number of courts counted can be a reflection of the number of court buildings, i.e. court locations or the number of courts that are formally described in the laws on the organisation of courts (where for example only the main seats of courts are mentioned and not sub-locations of courts). In that respect a more detailed view on courts and court locations in future evaluation studies is necessary.

Other problems identified in the pilot-exercise concerned court performance information, especially the (lack) of data on the length of court proceedings. Despite the fact that many countries are facing difficulties in reducing the length of proceedings to a ‘reasonable time’ only a few of them are able to provide information on the number of days spent on cases from filing to the final judicial decision.

#### 4. The Second Evaluation Round: 2005-2006

After the finalisation of the pilot evaluation report at the end of 2004, an expert group (mainly composed of the same experts as in the previous evaluation, supported by a French scientific expert) was formed to revise the Scheme on the basis of the lessons learned from the previous exercise. As a result of the experiences during the pilot evaluation, many questions were redrafted. Especially questions regarding the financing of courts (and other justice institutions related to the work of courts), courts and court performance has been modified. On the one hand the modifications were necessary to reduce interpretation problems in the new evaluation round and on the other hand to increase the integrity and the reliability of the data received.

In addition to the necessity to modify questions the expert group decided to add new questions as well to the Scheme, especially those who have a high (political) priority, according to the decisions of the Committee of Ministers.<sup>11</sup> Topics of priority are: the enforcement of judicial decisions, the protection and special arrangement for vulnerable persons or groups of persons, duration of court proceedings and lawyers.<sup>12</sup>

Next to the introduction of new questions and the redrafting of old ones, the layout of the revised scheme was drastically improved. Several questions were regrouped with the aim to enhance the logical order of the various questions and to facilitate the national correspondent to make it possible to delegate part of the data collection process to specialised departments, courts and/or other justice institutions, i.e. judicial organisations.

Despite the wish to replace the paper version of the revised scheme by an electronic one (a paper version of the questionnaire continued to be used in the second evaluation round).

Further improvements concerned the 'Explanatory note' of the Scheme. This document was extended with more precise descriptions of the aims and the background of questions. Better definitions of the common legal terminology in the questionnaire were added as well.

During a period of six months the questionnaire was revised and adopted at a plenary meeting of the CEPEJ (June 2005) and a meeting of the Committee of Ministers (September 2005). The national correspondents were invited to start the process of data collection from September 2005 onwards until mid January 2006. The analysis of the replies received and the drafting of the evaluation report started in March and lasted until August 2006. Notwithstanding the fact that the questionnaire was significantly improved, there were still interpretation problems and problems in the area of wrong replies to certain questions. As was the case in the first evaluation round an intensive exchange of information between the national correspondents, the scientific expert and the author of this chapter was

<sup>11</sup> This is the decision making body of the Council of Europe composed of (delegates) of the Ministers of Foreign Affairs of the 47 Member States.

<sup>12</sup> CEPEJ (2006)1, CEPEJ-GT-EVAL meeting report, Strasbourg: Council of Europe.

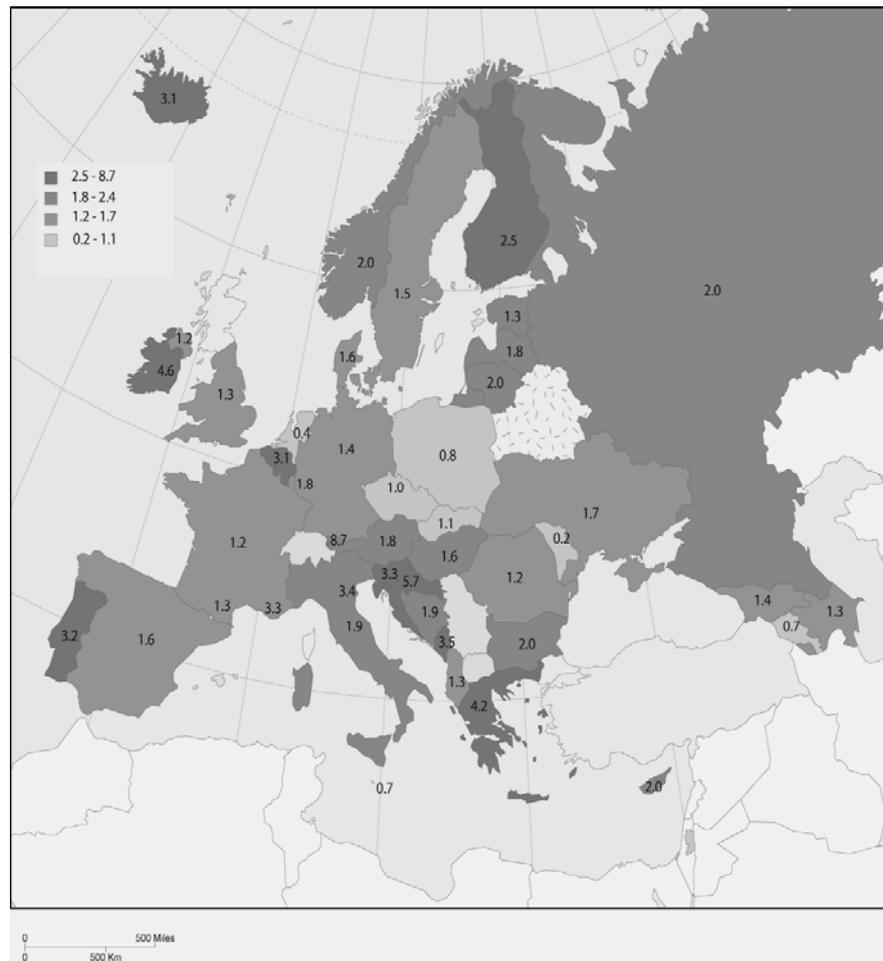
necessary. In contrast with the pilot evaluation round, a meeting with national correspondents was organised before the finalisation of the report. At this meeting the correspondents had the opportunity to comment on the first drafts of the (tables) of the report, to amend (parts) of their replies and to make suggestions for improvement of the report. The drafting of the report was finished in the summer period of 2006, resulting in a publication of the report in the fall of the same year.

## 5. The 2006 Report

Compared to the first evaluation report, the second report contained more detailed, richer and more reliable data on the various systems in Europe. In contrast to the pilot exercise in this report an extensive presentation was given on public expenditure on courts, public prosecution services and legal aid. In addition to the first report, separate tables and charts were presented to reflect the variety in budgetary systems. Systems where the budgets of the courts are separated from the public prosecution, systems where the budget of the public prosecution is integrated in the budget of the courts, systems where legal aid is part of the budget of the courts, etc. As a result of this, a more precise description of the financial situation of courts at a national level can be given as well as a better comparison between the different countries.<sup>13</sup>

A second improvement of the 2006 Report is the fact that more qualitative information, in terms of descriptions and explanations of the data provided, is placed in the various chapters of the report. For the reader it is better understandable why figures from one country differ from another and what the specific similarities and differences between the judicial systems are. As part of the 'learning process' a more reliable picture could be provided on the (number of) courts, the (non-) professional judges and court staff. Instead of only looking at 'courts' the report describes the variety in 'geographical court locations' too. As stated, there can be a large difference between the number of 'courts' and 'geographical court locations'. To give an example how the information is presented the following graph (3) on court locations per 100.000 inhabitants in 2004 is inserted in this paragraph. It is a geographical map where the locations are presented in different shades of grey colour. The darker the colour, the more geographical court locations per 100.000 inhabitants there are in a country.

<sup>13</sup> CEPEJ (2006), CEPEJ Studies No. 1, *European Judicial Systems*, edition 2006 (2004 data), Strasbourg: **Council of Europe**.



Graph 3. The number of geographic court locations per 100.000 inhabitants (source: CEPEJ Report 2006, p. 63).

The graph shows that Portugal, Belgium, Ireland, Finland, Greece and the majority of the Balkan Countries have many court locations per 100.000 inhabitants. For a proper interpretation of the figures, it is still necessary to take the differences of the tasks and competences of the various courts in Europe into account. Especially in the Balkan Countries (but for example in countries with a German-Austrian court model), courts have, in addition to the adjudication of cases, a major task in the area of land registry, business registers, insolvency registers, etc.

What is also interesting in the 2006 evaluation report is the diversity in (gross annual) salaries of judges and prosecutors. Especially countries with low gross annual salaries – compared with the average annual income – may face the risk of corruption of judges and prosecutors. Another threat for countries with low salaries for judges and prosecutors is the chance that experienced judges or prosecutors will

leave the courts (or the public prosecution agencies) for more financially attractive (legal) posts in the market sector. In the long run this can lead to a shortage of experienced judges and prosecutors in courts and public prosecution agencies. On the other extreme there are countries, like the United Kingdom and Ireland where judges are earning a relatively high salary. However these figures cannot be correctly understood, if one does not take the specific situation of the recruitment and nomination of judges in the United Kingdom and probably Ireland too, into account. For instance in the United Kingdom, there are relatively few professional judges and in order to become a professional judge one needs to have extensive working experience as a lawyer or a barrister.

What is still problematic with the data presented in the 2006 Report are the figures on court performance. Data received on the number of incoming civil cases and the length of court proceedings remained difficult to compare. This is mainly caused by the variety in definition of 'civil cases' used by the various countries. In certain countries administrative law cases are included in the figures, as well as the enforcement of judicial decisions, commercial cases, activities concerning land and business registers and even certain categories of criminal cases, whilst in other countries this is not the case.

Only for four pre-defined categories of cases (divorce cases, employment dismissal cases, robbery and intentional homicide cases) it was possible to generate - limited - comparable case and performance information. As was the case with the 2002 Report, many countries were not able to provide information on one of the most important performance indicators of courts; the length of the proceedings.

## 6. Media Attention for the Report and (Political) Impact

The 2006 Report was launched at a press conference in Strasbourg in October 2006. It received a widespread coverage in the press, in particular in the French media (*Le Monde*, *Dernières Nouvelles D'Alsace*, *L'Express*, *L'Alsace*, *L'Indépendant*, *Reuters*, *La Tribune*, *Capital*, etc) and in Italy (*Il Sole 24 re*, *Il Resto Del Carlino*, *La Nazione*, *Il Giorno*, *Diritto & Giustizia*). The French newspaper *Le Monde* had several articles published on the report; one with an interview with the chair of the evaluation expert group and a comment of the French minister of Justice.

Some reactions on the content of the 2006 Report: 'It clearly shows the state of poverty of the French judicial system' (reaction of the French Trade Union for Judges (*l'Union Syndicale des Magistrats*) presented by the French news agency Agence France Presse (6 October 2006).

The former French minister of Justice, Pascal Clément, was sceptical about the outcomes of the report. He found the report: 'an old photograph relating to things which are not comparable' (Pascal Clément in *Le Monde* 7 October 2006)

In the Italian newspapers special attention has been given to one of the largest problems in the Italian courts: the length of proceedings.

'The year [2004] taken into consideration by the CEPEJ in its document, rendered public on the 5<sup>th</sup> of October 2006, testifies the inability of Italy of giving a serious answer to a big problem - the slowness of court proceedings - that represents a serious

obstacle to the competitiveness of the Italian system in Europe and offends the fundamental rights of the citizens'. (Donatella Stasio in *Il Sole 24 Ore*, 9 October 2006).

In other countries attention has been given to the (low) number of judges (Ireland) or the (high) number of lawyers (Spain): 'Ireland has the second-lowest proportion of judges in Europe' (*Sunday Business Post*, United Kingdom, 8 October 2006).

'Spain is the third European country with a high number of lawyers, behind Italy and Germany, according to the 'Report on the European judicial systems' that today the Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe has made public' (*published by the Spanish news agency EFE (www.efe.com)*, Spain, 5 October 2006).

In the majority of countries the report was well received and accepted as a major and important source of reference, although some government representatives/ministers contested the methodology or the figures, in particular as regards budgetary issues. The report is useful to compare their own system with others, to modify current judicial systems or to start a reform on the administration of justice. At the European Union level, the CEPEJ evaluation report is accepted by the Vice-President of the European Commission, Franco Frattini, as *the* most important source of data in the area of the Judiciary. It will be used for evaluation and policy purposes by the European Commission.<sup>14</sup>

## 7. From Description to a Real Evaluation

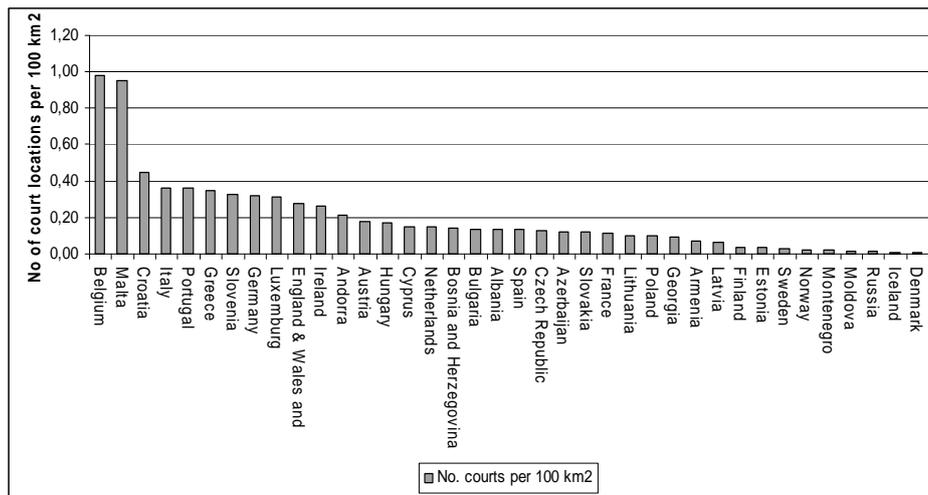
One of the biggest limitations of the two CEPEJ Reports is the fact that they do not represent a 'real evaluation' in terms of an assessment against a standard norm or value or a 'judgment as to whether something is good or bad in some respects'. Both reports give only a description – a 'photographic snapshot' – of the current state of affairs of the various judicial systems, without any value-judgment. The next step towards a real evaluation study needs to be taken. We know now for example in which European countries the level of implementation of information and communication technology is the highest. However, what we do not know is the answer to the question if the use of computer technology in the courts will contribute to the improvement of court performance. What is also unclear is the relation between the characters of judicial systems (for example in terms of financing of courts, court organisation, court resources, etc.), the environment of judicial systems (external partners, the society, and the economic situation) and the influence on court performance. Are there 'better' judicial systems in terms of efficiency, effectiveness and quality? If yes, what are the main characteristics of these systems?

To answer these questions, additional information on the various systems is necessary. After two evaluation rounds it is too early to start with such an analysis

<sup>14</sup> CEPEJ (2006)7, Report 7<sup>th</sup> Plenary meeting of the CEPEJ, Strasbourg: Council of Europe.

of information. What can be done at this moment is to exploit the available data and to start certain 'in-depth' studies.

In the 2006 evaluation report much information on judicial systems was presented. On the other side, there is still 'raw' data available for further analysis. What can be done for instance is to generate new ratio's from the current data or to combine the CEPEJ data with other international sources of data (for example from EUROSTAT, OECD, World Bank, United Nations, etc). An example is related to the number of geographic court locations. In the first evaluation round (2002) no distinction was made between courts and geographic court locations. In the 2006 Report these two items were presented separately. The number of geographical court locations can be an indication for access to justice. The higher the number of geographical court locations, the more (physical) access to justice can be realized since court users need less time to reach a court building. Is this actually true or do we need to take into account the size of a country (or the population density) in terms of square kilometres as well? To illustrate the need for additional information on the size of a country in relation to the number of geographical court locations, one may refer to the case of the Netherlands. In the 2002 Report as well as in the 2006 Report the Netherlands was presented as a country with one of the lowest numbers of courts and court locations. However it is also a small country (in size) with a high population density (in 2004 16 million inhabitants). When one looks at the charts in both reports one might get the impression that physical access to justice in the Netherlands is low.

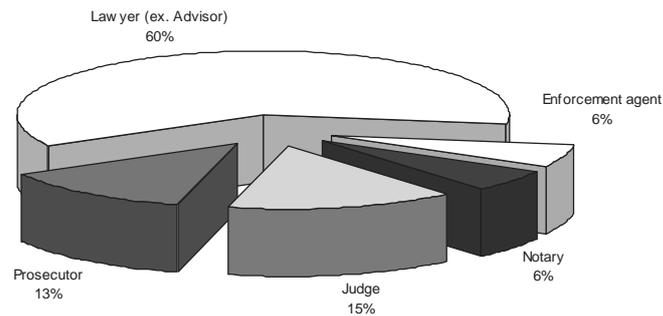


Graph 4 The number of court locations per 100 km² in 2004.

A totally different conclusion can be reached when the information of the CEPEJ on geographic court locations is combined with information on the surface size of the country. In graph 4 the CEPEJ data is combined with geographical information. What one can see is that the Netherlands, with respect to the number of geographic court locations per 100 km², is positioned somewhere in the middle. In other words,

the physical access to justice (access to court buildings) might be not as low as expected, compared with the data on the number of geographical court locations per 100.000 inhabitants presented in the 2006 Report.

The second example concerns the data on the (private) legal professions compared with the number of professional judges and prosecutors. In most comparisons (as is the case in the two CEPEJ evaluation reports) it is common only to compare one group of legal professionals between countries and then for example to conclude 'we have too few judges or prosecutors in country X compared to the countries YZ'. However, what should be thought about the distribution of all legal professionals in countries and the implications of an un-equal distribution of legal professions for the workload of courts? One might raise the hypothesis that a high number of lawyers in a country will positively contribute to the number of cases received by the courts. In the next graph the countries were selected where data was available on the following legal professionals: professional judges, prosecutors, lawyers (excluding legal advisors), enforcement agents and notaries. For each category the average score for the countries concerned was calculated and the relative distribution between the professions was presented in percentages. It appears clearly that the large majority of the legal professions are lawyers; judges and prosecutors form only a limited number of the total group of selected legal professionals (graph 5)



*Graph 5. The legal professions in 2004 compared (based on the data of the CEPEJ 2006 evaluation report).*

### **7.1. Ratios**

Many ratios have been left for future research. One might think of the ratio between professional judges and staff directly assisting a judge. Information on this ratio can

give insight in the level of delegation of work between judges and staff and efficiency (if more work is delegated to staff, the costs per case will be reduced).<sup>15</sup> Other interesting examples are the relative distribution of incoming cases between civil law and criminal law, the clearance rates of courts (sum of incoming cases (new cases, re-opened cases and re-activated cases) divided by the sum of outgoing cases (decisions and pending cases)), the average costs' per case, etc.<sup>16</sup>

## 7.2. *Common Case Categories*

One part of the problems in the area of quantitative information concerns the definition of case categories and the length of proceedings. This problem is currently the working field of the recently created Centre of the CEPEJ, called SATURN (Study and Analysis of Judicial Time Use Research Network).<sup>17</sup> This Centre will work on common case categories and definitions used by the courts to measure the length of proceedings. The outcome of the work of the Centre will be used to improve and to modify future questionnaires on judicial systems in Europe.

## 7.3. *Qualitative Information*

Exploring the quantitative data is one part of the 'journey' towards a real evaluation of judicial systems. The other part is related to the qualitative information. What is lacking in both reports is more detailed insight in the various elements of the legal systems. For instance what are the similarities and differences between the systems concerning legal aid? How is legal aid organised? What criteria are used for granting or refusing legal aid? Etc. More background information is necessary on the use of information and communication technology in the courts, nomination and recruitment policies concerning judges and prosecutors, etc. too. This is one of the reasons why in the beginning of 2007 the CEPEJ launched a call for projects to explore the CEPEJ data. As a result of this call for projects several universities and research institutes in Europe are conducting studies on the following issues: access to justice, the enforcement of judicial decisions, delays and length of proceedings, monitoring and evaluation of courts, the use of information and communication technology, training and education of judges and prosecutors, justice and cultural diversity in Europe, administration and management of courts.

The outcome of the studies will contribute to a better understanding of the CEPEJ data. However, due to the limited character of the studies, more future (scientific) research is necessary.

<sup>15</sup> Of course this can have negative repercussions on the quality of the work of the courts.

<sup>16</sup> For examples see: US National Center for State Courts (<<http://www.ncsconline.org>>).

<sup>17</sup> CEPEJ(2007)1, Terms of reference of the *Groupe de pilotage* of the SATURN Centre for judicial time management, Strasbourg: Council of Europe.

#### 7.4. *The Need for a Scientific Research Programme*

The evaluation of judicial systems in Europe conducted and initiated by the CEPEJ is unique. With growing attention for the work of the CEPEJ, the need for additional information is also increasing. This justifies the creation of a scientific research programme at a European level, aiming at a better understanding of how the different legal systems are operating. Another recommendation concerns the need for an introduction of a 'research and education department' at universities in Europe with the task of promoting research (and education) in the area of 'efficiency of justice'.<sup>18</sup>

Returning from the need to draw attention to more scientific research, there are other points left to discuss in this chapter, namely the regular cycle of evaluation of judicial system, the use of an electronic questionnaire and the future prospects of the CEPEJ evaluation method on judicial systems.

### 8. **Evaluation Cycle, Electronic Questionnaire, Side-Effects and Future Ambition**

In September 2007 a third evaluation round on judicial systems was launched. At the moment the evaluations are conducted in a two-year cycle. This has the advantage that with the implementation of regular evaluation cycles longitudinal information will become available on the composition and functioning of courts. This information can be used to draft reports on the most important *trends* in Europe concerning the composition and functioning of legal systems, for example in the area of the increase or decrease of budgets for the courts, the number of incoming cases, etc. The drawback of a two-year cycle is however that countries are faced with a high workload to collect the necessary information.

To make the life of the national correspondents easier an electronic questionnaire is used in the third evaluation round. Correspondents will be able – through a secured website – to provide the necessary information via a standard questionnaire, which can be forwarded to other persons or departments as well. For the experts responsible for the analysis and monitoring of the progress of the replies by the participating countries, the workload will be reduced. Experts and the secretariat of the CEPEJ have, via the electronic questionnaire, an instrument which makes it possible to follow the progress of receiving replies from the individual countries during the phase of data-collection. It improves the communication process between the national correspondents and the experts in case there are interpretation problems or mistakes in the replies (all the replies will be validated by the experts and the Secretariat of the CEPEJ. In case of wrong answers, the reply to a certain question will be rejected and the country concerned will be invited to send the correct information to the Secretariat of the CEPEJ). The last advantage of

<sup>18</sup> For example by creating a special research chair 'professor in European efficiency of justice studies' at a university in Europe.

the electronic questionnaire is the fact that data can directly be exported to statistical packages. This will lead to a reduction in the time needed for the analysis of data.

What seems to be remaining are the problems of federal States regarding data collection (Germany and Switzerland for example). For these States the advantage of an electronic questionnaire is limited, because in the current software application information at the level of the individual States (*Länder* or *Cantons*) still needs to be collected through traditional research methods, namely the use of a paper based version of the questionnaire. This is one of the reasons why the Swiss representative of the CEPEJ has taken the initiative to modify the software application in such a manner, that it will be possible to forward an electronic questionnaire to the *Cantons* (Switzerland) or the *Länder* (Germany). The replies to the questionnaire received from the *Länder* or the *Cantons* will be aggregated at the national level in order to supply information that is requested by the CEPEJ. This has the advantage that the process of data collection at the national level is simplified and – as a side-effect – the federal States will have insight in the differences and similarities of the judicial systems operating in their own countries at the federal level.

In addition to the two-year cycle there is a debate within the CEPEJ on the need of an annual evaluation cycle to collect information on key-items. In practice this will mean that in addition to the long version of the questionnaire, which will be sent to the national correspondents on a two years basis, a short questionnaire will be drafted with mainly quantitative questions on court organisation, court performance, budget and legal professionals. With this approach it will be easy to generate information on trends in Europe.

#### *Future ambitions?*

After four years of experience with the evaluation of judicial systems the CEPEJ has positioned itself as one of the centres of knowledge in this field. This is not only recognized in Europe, but also outside Europe. For instance, an interest has already been expressed in the Arab countries. The author has been involved in the preparation of a project for the development of justice benchmarks in the Middle East and North Africa (MENA countries). As part of this project, initiated by the American Bar Association and the Arab Council for Judicial and Legal Studies (ACJLS), two expert meetings have been organised with twenty-three (23) high level judicial and legal sector professionals from 11 Arab countries.<sup>19</sup> As a result of these two meetings a benchmark with indicators clustered around four areas has been developed (independence of the judiciary, access to justice and fair process, well managed judicial systems and a good use of resources, a competent and qualified judicial system). In the near future a pilot project will be started in two MENA-countries to improve the benchmark methodology and to test its implementation. After this phase, the benchmark will be enrolled throughout the Middle East and Northern African region. Hopefully, if this benchmark will use similar indicators as

<sup>19</sup> Arab Council for Judicial and Legal Studies (June 2007), *Justice sector Monitoring Benchmark Initiative Report*.

drafted in the CEPEJ evaluation scheme, not only comparable data will be available for European countries but also for the Middle East and North Africa.

In the long run the methodology developed by the CEPEJ might not be limited to these two 'regions' of the World, but will be extended to other regions or continents. Similar to the 'United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems',<sup>20</sup> this can lead to the development of a 'global evaluation scheme on judicial systems', which makes it possible to compare judicial systems with a common historical, legal or cultural background with each other. Data derived from such a scheme can be used to improve the knowledge in the area of the composition and functioning of judicial systems and to stimulate reform on judicial systems aiming at improvement of performance and the quality of services delivered by the courts.

<sup>20</sup> See website UNODC: <<http://www.unodc.org>>.

## Bibliography

Agence France Presse (6 October 2006), *Rapport sur les justices européennes: 'pauperisation' française, selon l'USM*, France : AFP.

Arab Council for Judicial and Legal Studies (June 2007), *Justice sector Monitoring Benchmark Initiative Report*, Washington: American Bar Association.

CEPEJ (2002), *European judicial systems: facts and figures*, Strasbourg: Council of Europe.

CEPEJ (2003) 12: P. Albers, *Evaluating judicial systems: a balance between variety and generalization*, Strasbourg: Council of Europe.

CEPEJ 2003(16), *Meeting Report working party No. 1 (26-27 June 2003)*, Strasbourg: Council of Europe.

CEPEJ (2006)1, CEPEJ-GT-EVAL meeting report, Strasbourg: Council of Europe.

CEPEJ (2006), CEPEJ Studies No. 1, *European Judicial Systems; edition 2006 (2004 data)*, Strasbourg: Council of Europe.

CEPEJ (2006) 6 Rev., *Abridged Report 7<sup>th</sup> Plenary meeting of the CEPEJ*, Strasbourg: Council of Europe.

CEPEJ (2007)1, Terms of reference of the *Groupe de pilotage* of the SATURN Centre for judicial time management, Strasbourg: Council of Europe.

EFE (5 October 2006), *España es el tercer país europeo con más abogados, según informe*, Spain : EFE.

Le Monde (7 October 2006), *Efficacité de la justice: M. Clément critique les experts européens*, France: Le Monde.

Resolution 2002(12) Establishing the European Commission for the Efficiency of Justice (CEPEJ), Strasbourg: Council of Europe..

Sole 24 Ore (9 October 2006), *L'Italia resta maglia nera nella classifica europea sui tempi dei processi civili*, Italy.

Sunday Business Post (8 October 2006), *Ireland has the second-lowest proportion of judges in Europe*, United Kingdom.

### Zuckerman 1999

Zuckerman A. (ed.), *Civil justice in crisis. Comparative perspectives of civil procedure*, New York, **Oxford University Press**, 1999.