Strasbourg, 4 October 2018

EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

Cycle 2016-2018 for evaluating judicial systems

Presentation Note

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

The CEPEJ was set up by the Committee of Ministers of the Council of Europe in September 2002, and is entrusted primarily with proposing concrete solutions suitable for use by Council of Europe member states to:

- promote the effective implementation of Council of Europe instruments used for the organisation of justice;
- ensure that public policies concerning courts take into account the needs of the justice system users;
- offer states effective solutions prior to the point at which an application would be submitted to the European Court of Human Rights and preventing violations of Article 6 of the European Convention on Human Rights, thereby contributing to reducing congestion in the Court.

The CEPEJ is today a unique body for all European states, made up of experts from the 47 Council of Europe member States, to assess the efficiency of judicial systems and propose practical tools and measures for working towards an increasingly efficient service for the public.

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

In order to fulfil these tasks, the CEPEJ has undertaken since 2004 a regular process for evaluating every two years the judicial systems of the Council of Europe member States.

2. THE CEPEJ PROCESS FOR EVALUATING JUDICIAL SYSTEMS

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

The new reports are based on data from 2016.

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

The CEPEJ instructed its Working Group, under the chairmanship of Mr Jean-Paul JEAN (France), with the preparation of the report[1], coordinated by the Secretariat of the CEPEJ.

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

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

The CEPEJ has sought to approach the analytical topics while bearing in mind the priorities and fundamental principles of the Council of Europe. Beyond the statistics, the interest of the CEPEJ report consists in highlighting the main trends, evolutions and common issues of the European States.

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

The comparison of quantitative data from different countries with various geographical, economic and legal situations is a delicate task. It should be approached with great caution by the experts writing the report and by the readers consulting it, interpreting it, and analysing the information it contains.

In order to compare the various states and their systems, the particularities of the systems, which might explain differences in data from one country to another, must be borne in mind (different judicial structures, the way of the courts organisation, use of statistical tools to evaluate the systems, etc.). Special efforts were made to define the used terms and to ensure that the concepts are addressed according to a common understanding. However, the particularities of some systems might prevent to reach shared concepts. In this case, specific comments join the data. Therefore only an active reading of this report can allow analyses to be made and conclusions to be drawn. Moreover, figures cannot be passively taken one after the other but must be interpreted by the light of the subsequent comments.

The report aims to give an overview of the situation of the European judicial systems, and not to rank the best judicial systems in Europe, which would be scientifically inaccurate and would not be a useful tool for the public policies of justice. Indeed, **comparing does not mean ranking**. However, the report gives the reader tools for an in-depth study which would then have to be carried out by choosing relevant clusters of countries: according to the characteristics of the judicial systems (for instance civil law and common law countries; countries with relatively new or newly reformed judicial systems or countries with older judicial

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France (President of the CEPEJ-GT-EVAL),
Ms Simone KREβ, Judge, Vice-President of the Regional court of Köln, Germany,
Mr Georg STAWA, President of the CEPEJ, Head of Department for Projects, Strategy and Innovation, Federal Ministry of Justice, Austria,
Mr Jaša VRABEC, Head of the Office of Judicial Administration Development, Supreme Court of the Republic of Slovenia,
Ms Martina VRDOLJAK, Head of Department of Statistics, Analysis and Strategic Development of the Judiciary, Directorate of Judiciary Organisation, Ministry of Justice, Croatia.
The group also benefited from the active support of scientific experts:
Ms Julinda BEQIRAJ, Associate Senior Research Fellow in the Rule of Law, Bingham Centre for the Rule of Law, London, United Kingdom
Ms Caroline EXPERT-FOULQUIER, Associate Professor of Public Law, University of Limoges, Deputy Director of the "*Institut de préparation à l'administration générale*" (IPAG) of Limoges, France
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traditions), geographical criteria (size, population) or economic criteria (for instance size of GDP; within or outside the Euro zone, etc.).

Monetary values are reported in Euros. The exchange rates vary considerably from year to year and this caused some difficulties as regards states outside the Euro zone. It is therefore, necessary to pay attention to this issue while comparing monetary figures of the 2016 and 2018 editions. As far as possible, this was taken into account while commenting on the tables and figures showing budgetary variations.

The inflation rate was considered in the respective part of the report when interpreting the variations of different judicial budget elements

3. PRESENTATION OF THE 2018 RESULTS : DYNAMIC DATA BASE

The CEPEJ presents the results of its evaluation cycle through two elements:

1. The report " European judicial systems – Efficiency and quality of justice – 2018 Edition" which presents key facts and figures making it possible to evaluate the state of the judicial systems and their evolution ; it is completed by a document providing an overview; the report contains a focus on the gender issues within the judiciary and on the treatment of court users.

2. The provision to policy-makers (ministries of Justice, Parliaments, etc.), professionals of justice and researchers of an interactive and dynamic database (CEPEJ-STAT), accessible on the internet. The database makes it possible to select specific data for specific countries (to compare one country to other comparable countries), to cross reference data, and to generate tables, figures and maps instantly.

see: www.coe.int/cepej

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

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

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

1. Budget of judicial systems

In most of the States and entities, the **evolution of the budget allocated to the judicial system** follows the evolution of public expenditure. Overall, the European trend remains a gradual, moderate and continuous increase (smoothed over a decade) in the budgets of judicial systems.

The evaluation of the budgets allocated to judicial systems reveals strongly contrasted situations in Europe. There are States and entities where the budget of the judicial system increases regardless of the compression of public expenditure and, on the contrary, where the decrease in the budget of the judicial system is higher than the reduction in public expenditure. Several States that had experienced decreases in the budgets of the judicial systems because of the economic and financial crisis from 2008 now seem to have gone out of this logic; some of them are gradually moving towards the levels they had known before the crisis.

The European average concerning the budgets of judicial systems is 64 € per inhabitant in 2016. This increase is in a big extend result of the availability of data in this cycle from Andorra, Germany, Iceland and Monaco who are among wealthier countries that invest in their judicial system amounts higher than European average. Moreover, in 5 States the expenditure per inhabitant is lower than 10 €, while in 7 States or entities the expenditure is higher than 100 €. The differences in the level of wealth, measured by GDP, obviously explain these differences in absolute terms. But it should be noted that the richest States are not necessarily the ones with the largest budget efforts in their judicial systems. Nevertheless, at least in respect of Luxembourg and Norway, the budgets allocated to the judicial system are very significant in their volume.

Generally speaking, the court budget represents the largest part of the budget allocated to the judicial system: 66 % on average. Although there are big differences between the States and entities, the remuneration of staff (judges and non-judges) is the most important item of the court budgets. Compared to the European average, a higher part of the judicial budget (around 30 %) is allocated to the public prosecution services in the Eastern European countries, whereas northern European countries tend to invest more in legal aid (more than 30 % of the budget of the judicial system).

The recent development of a **trend to outsource certain services** can be noted, in order to optimize budgetary resources for court management, but also, sometimes, to reinforce specialization and expertise in certain areas.

All of the States or entities have implemented a **legal aid** system in criminal and non-criminal matters in compliance with the requirements of the European Convention on Human Rights. Almost all States or entities have established a system of legal aid in non-criminal cases. As a general rule, this system encompasses the representation by a lawyer before the court, but also legal advice. With regard to the evolution of the budgets allocated to legal aid, it is possible to distinguish two trends: those endowed with the most generous systems tend to restrict the budget allocated to legal aid and those where the amounts allocated to legal aid are the lowest tend to increase the legal aid budget.

Payment of **court fees** is a key characteristic of the justice system in Europe: the tax payer is not the only one to finance the system, as the court user is requested to contribute too. Only France, Luxembourg and now Spain foresee access to court free of fees. The revenues generated by court fees vary from less than 1 % to over 50 % of the court budget and even, in some States, correspond to more than half of the budget of the judicial system. For the majority of States, in particular those where the courts get the revenues of the registers (of the companies and commercial affairs or the real estate transfers, for example), accounts for a significant resource covering a major part of their court operating costs and in the case of Austria, generating amounts that far exceed the operating cost of the whole judicial system.

2. Judicial staff and lawyers

In general, when it comes to **the recruitment of judges**, European standards seem to be well anchored in national constitutional and legislative norms. Guarantees of independence relating to the recruitment authorities, the procedure followed, the role of the Council of Justice or a similar body and the conditions to which access to the function of judge is subject, are indeed present and this, whatever the method of appointment chosen and the conception in domestic law of the principle of separation of powers are. However, it will be necessary to follow further developments in this area, taking into account the reforms initiated since 2016 in some States.

Continuous training is developing. Judges/prosecutors are encouraged to strengthen their skills and knowledge, often in a multi-disciplinary way. While continuous training remains rather optional, its compulsory nature is reinforced when it comes to accede to specialised positions or functions (juvenile judge or head of court for example).

One of the trends to be observed is the **growing importance given to the experience of candidate judges** in the selection process. Originally characteristic of the common law countries, this parameter is more prominent in almost all States.

The number of professional judges remains stable overall, while numerous States and entities have launched policies of grouping courts. However in some States, reforms have led to a significant increase in the number of professional judges, sometimes to make up for a delay from previous years. The establishment of new procedures (creation of courts of appeal) or new jurisdictions (administrative) has resulted in an increase in the number of judges.

The difference, observed in previous analyses, between Eastern and Western European countries is confirmed as regards **the use of lay judges**. The judicial systems of the States from Eastern Europe continue to operate with a ratio of judges per capita higher than that of the States from Western Europe. The use of lay judges remains an essential feature of common law countries and those of Northern Europe. At the European level, the professionalisation of judges is increasing, with a downward trend in the number of States using lay judges. There is still the same distrust in Eastern European countries towards non-professional judges and most or almost all disputes are entrusted to professional judges. It seems that the tasks entrusted to non-professional judges, when they are used, tend to evolve. While the system of *échevinage* is commonly used for the resolution of certain disputes, some States have abandoned it.

Common law countries traditionally resort to **professional judges sitting on an occasional basis**. The involvement of such judges is also justified in small States such as Andorra and Monaco. In addition, in some States and entities, judges eligible for retirement may be designated to perform as substitute judges (Denmark, Belgium, Montenegro, Norway, Israel). This practice helps to cope with difficulties related to vacancies due to absences or to the backlog affecting the efficiency of the courts. In this regard, the Councils of Justice are often empowered to decide the temporary transfer of judges from one court to another. In Spain and Bosnia and Herzegovina reserve judges may be called upon to sit to ensure replacements or enhance the capacity of courts to eliminate backlogs.

Europe is divided on the use of **juries**, which exist in a little less than half of the States. This system remains an essential feature of Western Europe, while the majority of the countries of Central and Eastern Europe do not have it - or have abandoned it symbolically during the democratic transition.

The composition of the judiciary, more or less professionalised, has a strong impact on the budgetary aspects, notably on the part devoted to **salaries**, very high in the States and entities having recourse only to the professional judges and relatively weak in the countries appealing to non-professional judges.

The feminisation of functions of professional judge is a confirmed European trend, although it is less obvious in the common law countries. The **glass ceiling** is still a reality when it comes to accede to functions of responsibility of head of court. Some States and entities have become aware of this discrepancy and have started to put in place mechanisms to encourage, in case of equal competences, the recruitment of women to senior positions.

The strengthening of continuous training aimed at management functions could be a tool to encourage women to take an early interest in accessing positions of responsibility.

In most States and entities, **judges are recruited for an unlimited period** until they reach retirement age. This age shows an increase which seems to be in line with the increase in life expectancy and the budgetary constraints. This retirement age sometimes varies with the level of responsibility entrusted to the judge. It is important that the retirement age and its evolution, cannot be a diverted way to question the irremovability of judges.

Several States impose a time limit on judges in the exercise of certain functions: for example, the latter can only be carried out for a determined period within the same court. This may be helpful in avoiding the appropriation of a post, but this mobility must be surrounded by safeguards to prevent this mechanism from being used to get rid of a judge.

The principle of **transfer without the consent of the judge** "for organisational reasons" is accepted in many States and seems to be a developing trend. it is important to provide sufficient safeguards for these procedures so that the search for efficiency of the systems does not take precedence over the fundamental principles of the judge's independence.

The average **number of prosecutors** per 100 000 inhabitants is slightly higher in average, while the number of cases received per 100 inhabitants is constant compared to 2014. This may reflect a slight improvement in the situation of prosecutors in terms of workload. But the number of roles is particularly important, the number of prosecutors is relatively low and the number of cases still high.

The increase in **feminisation among prosecutors** confirms the trend observed in 2014. The glass ceiling for women's access to the positions of heads of public prosecutors also remains a reality despite a slight tendency to be absorbed by the number of women which progresses slowly in hierarchical levels.
The trend observed in recent years reveals the **rapprochement between judges' and prosecutors' salaries** as well at the beginning of the carrier, as at the end of the career. The remaining discrepancies stem either from the peculiarity of the recruitment procedure of judges (when the legal experience constitutes the core criterion of selection), or from the specificities of the public prosecution services (when prosecution functions are carried out simultaneously by prosecutors and other specific bodies such as the police, or, on the contrary, when for historical reasons, prosecutors are granted a status of particular importance).

The number of States having established a **Rechtspfleger** or equivalent staff is stable. There is no substantive trend that would bring such a reform in a large number of countries. The diversity of the tasks entrusted to the Rechtspfleger is increasing and several States entrust them with very general missions, in very varied fields; this is essentially the case in Germany and Spain, but also in Iceland and Slovakia and to some extent, in Andorra.

The number of **lawyers** is still increasing in Europe, with significant differences between the States and entities. The increase in the number of lawyers in several States of Central and Eastern Europe reflects the development of the rule of law. The widespread development of legal aid, although uneven across States and entities, may also account for some of the increase in the number of lawyers. There is still a large number of lawyers in southern European countries, where the societies are more judiciarized.

The **monopoly of lawyers** is not a marked trend, especially in the first instance. It tends to increase at the level of the highest instance.

3. Gender issues within the judiciary

While judges and prosecutors are more and more women, lawyers, notaries and enforcement agents are mostly men. Recruitment conditions, as well as working conditions, in these different professions can explain certain situations.

There are in fact few States and entities in **which specific provisions in favour of gender parity** in recruitment in the justice sector have been enacted and implemented. In most cases, general provisions or mechanisms apply aimed at avoiding gender discrimination. Only Germany seems to have developed a global policy in favour of parity, for the recruitment of judges and lawyers, notaries and enforcement agents.

Some States and entities appear to be particularly concerned about ensuring parity in promotion mechanisms, for judges and prosecutors and also more broadly in the majority of legal professions. Germany, Norway and Sweden seem to take this requirement into account in the provisions put in place.

Despite the fairly general phenomenon of feminisation of most legal professions, the organisation of work within the judicial system has not evolved greatly changed. The implementation of telework is far from being generalised, the replacement of persons on maternity leave does not seem systematic. It seems that the organisation of work deserves particular attention at the level of the courts of first instance, where women are significantly more numerous.

Generally speaking, even if there are few actions taken to adjust the gender balance within the justice sector professions, the data suggests that the problem is being taken into account in a large majority of States and entities.

An effort is made as regards the composition of the collegial courts to ensure that they sit on a parity basis; only 7 States and entities have in place an obligation of parity between females and males in this composition of the collegial courts. But there does not seem to be a comprehensive approach to how users can perceive parity within the justice system.

Statistics are often collected on the gender of the accused and convicted persons, sometimes on victims but less commonly.

4. Court organisation

Generally speaking, the European trend goes towards a **decrease in the number of courts and a consequent increase in the size of the courts**, clustering more judges and civil servants, as well as a stronger specialisation of the jurisdictions. These reforms, all aimed at reducing the cost of functioning, particularly in terms of buildings, by pooling and rationalising expenditure, oblige court users, court staff and all legal professionals to make an effort to adapt to this new structure of judicial organisation. They can also benefit from real "places of justice" which are easier to use, the development of IT tools amplifying and accompanying these transformations.

Judicial map reforms are under way in almost ¾ of the States and entities. These reforms are sometimes accompanied by steps to develop alternative dispute resolution methods, allowing people to avoid going to court to settle their disputes.

The grouping of jurisdictions is generally concomitant with the development of **the use of information and communication methods via the Internet**, the dematerialisation of documents, sometimes accompanying major changes in terms of work organisation.

Court users should be the focal point of the activities of judicial systems in order to enhance their quality and strengthen the perceived legitimacy of those services.

By using the advantages of information technology, States can inform users better, adapt the availability of information and create sustainable two-way communication with the users, enabling thereby to address issues raised by the users. The analyses and use of data, gathered through quantitative and qualitative research of the satisfaction of court users, strengthens the legitimacy of judicial systems and helps court leaders and court administrations to provide a better and more efficient service of justice. The use of information systems to support such activities is crucial. However, it is procedural justice - the human contact, the treatment of all those involved in judicial proceedings with dignity and respect that substantially helps to provide fair decisions and consequently build trust in justice. Each system is composed of individuals and the CEPEJ invites States and entities to train, support and invest in every person within their judicial system in order to improve the overall quality of justice.

5. Performance of judicial systems

States and entities continue their efforts towards a deeper understanding and an improvement of the activity of their courts, concerning the monitoring of compliance with the fundamental requirements enshrined in the ECHR as regards case-flow management and length of proceedings.

The 2016-2018 evaluation of courts' efficiency in the **civil justice sector** (mainly civil and commercial litigious cases) shows that:

- At first instance, the inflow of cases has remained rather stable between 2010 and 2016, while the number of resolved cases has decreased. The data collected displays a positive average performance (i.e. Clearance Rate) of first instance courts in this sector. The average Disposition Time for this category of cases has slowly but continuously improved over time (from 267 days in 2010, to 235 days in 2016).

- At second instance, the average number of incoming civil and commercial litigious cases has decreased in the long period. An overall positive performance can be noted in 2016 (Clearance Rate: 101 %), but the average number of resolved cases in courts has decreased between the last two cycles. The Disposition Time has improved.

- At the highest instance, despite fluctuations, the average number of both incoming and resolved civil and commercial litigious cases has decreased between 2010 and 2016. Despite a reduced number of incoming cases, supreme courts in a number of States and entities faced difficulties in coping with the inflow of cases. The Disposition Time has improved.

The data for the 2016-2018 evaluation cycle of courts' efficiency in the **administrative justice sector** confirm that:

- At first instance, the average Clearance Rate of administrative cases improved. This is reflected in the general decrease in the number of pending administrative law cases and in the analogous evolution of the Disposition Time. The average Disposition Time of administrative cases in 2016 (357 days) is also significantly higher than that of civil and commercial litigious cases (235 days).

- At second instance, in 2016, European courts handling administrative cases had difficulties in coping with the inflow of cases. The 2016 average Clearance Rate was 95 % with a number of States displaying a particularly low Clearance Rate. Data show a worsening of the situation since the last evaluation. The average Disposition Time in 2016 was 315 days, which is lower than the respective figure at first instance. The Disposition Time at second instance has improved during the long period.

- At the highest instance, the average Clearance Rate of administrative cases shows an improvement between 2010 and 2012, a slight decrease in 2014 and again a slight increase in 2016. The average Disposition Time decreased steadily between 2010 and 2014, but saw a sharp increase in 2016.

- Asylum applications have a significant impact on the number of incoming cases in 2016 in 9 countries: Austria, Belgium, Finland, France, Germany, Italy, Spain, Sweden and Switzerland.

2016 data concerning courts' efficiency in the **criminal justice sector** shows that:

- In 2016, public prosecutors received on average 3,14 cases per 100 inhabitants. Approximately 42 % of these were discontinued by the public prosecutor and in 28 % of these cases were charged by the public prosecutor before the courts. Another 27 % of cases resulted in a penalty or measure imposed or negotiated by the public

prosecutor. The average rate of cases solved by the public prosecutor (discontinued by the public prosecutor, concluded by a penalty or a measure imposed or negotiated by the public prosecutor or charged by the public prosecutor before the courts) against cases received is 96 %.

- At first instance, courts received on average 2,3 criminal cases per 100 inhabitants and managed to resolve the same amount of cases. The Clearance Rate of criminal law cases has remained positive between 2010 and 2016. The average Disposition Time improved between 2010 and 2014 but increased slightly in 2016 (138 days). Despite fluctuations, the number of pending cases decreases.

- At second instance, data show a steady improvement in the Clearance Rate for criminal cases over the long period, from negative into positive values. This is in part similar to the first instance trend, which however remained positive over all four evaluation cycles. The average Disposition Time shows a very slight increase between 2010 and 2016.

- At the highest instance, the Clearance Rate of criminal cases has decreased since the last measurement (albeit remaining above the efficiency limit), but an improvement can be noted in the long period. The average Disposition Time has on the whole worsened

Data for specific categories of cases offer a deeper insight into the length of proceedings in certain key areas across the sectors of justice (family, employment, commercial activities, immigration or crime) and reflect better the functioning of justice systems in concrete contexts. The figures show that:

- The average Clearance Rate of **litigious divorce cases** in 2016 was positive and marked an improvement since the previous evaluation. By contrast, both the Disposition Time and the average length of proceedings increased in the last evaluation. Just less than half of the States or entities for which data was available registered a positive Clearance Rate in 2016 (20 out of 40) and in 15 other States the Clearance Rate is between 95 % and 99 %.

- The average Clearance Rate of **employment dismissal cases** has improved in the long period, shifting from negative to positive values.

- The average Clearance Rate of **insolvency cases** has improved in the long period, but the performance of courts in this sector still remains below the efficiency threshold. European States experience the most significant difficulties in managing the caseload in respect of insolvency proceedings. The 2016 data show and improvement of the DT since the last cycle but the reported average length of proceedings has expanded since the previous evaluation.

- Data on cases relating to **asylum seekers and the right to entry and stay for aliens** show that it emerges that the impact of these two migration-related disputes appears significant on court litigation in 9 Western European countries. In a number of cases the increased volume of migration related cases has led to the establishment of specialised courts or tribunals in this area.

- The average Clearance Rate for **intentional homicide** cases has decreased in the long period, but the latest evaluation marks an improvement compared to 2014. A positive trend can be noted in respect of the evolution in the average Disposition Time and average length of proceedings between 2010 and 2016.

- Between 2010 and 2016, the average Clearance Rate of **robbery** cases has developed positively from 99 % to 106 %. By contrast the average Disposition Time has deteriorated. The average length of proceedings has instead improved. Both the Disposition Time and the reported average length for robbery cases are higher than the average for the total of criminal cases.