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**ACIPS**

*Association Alumni of the Centre for  
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**Organization and Role of Court Clerk Offices in the European Judicial Systems**

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## INTRODUCTION

Over the past fifty years, court systems in the European Union countries have undergone a process of significant change. At the beginning of the twentieth century, courts were largely dependent upon the executive branch of government for administrative support and were for the most part externally dominated, disorganized, and poorly managed. By the end of the century, they had undergone a process of administrative innovation and improvement that changed the way they were managed.

Over the past few decades, judicial reform has become an integral part of the process of economic, political, and administrative development.<sup>1</sup> In the European Union and throughout the world, there is a growing recognition that economic and social progress cannot be achieved on a sustainable basis without respect for the rule of law.<sup>2</sup>

Historical events create opportunities for governmental, including judicial, reform. The collapse of the Soviet Union resulted in a collection of independent states, each newly responsible for its own government. Judges and court administrators in these socialist systems, previously unfamiliar with even the most basic concepts of the functioning of a judiciary in a democracy, were suddenly faced with the responsibility of creating new institutions.<sup>3</sup>

In many countries, the transition of legal systems from written procedures based on civil code traditions to oral legal proceedings has required large-scale judicial changes.<sup>4</sup> Unification of formerly partitioned countries, such as Germany, also provides for opportunities for restructuring government institutions.

While historical events unfold in individual countries, regional and global justice issues are becoming more prominent.

In the world of business and investment, pressure on governments to reform comes from both local and foreign interests. At the national level, privatization of state enterprises raises issues concerning contracts, labor, and competition that many judiciaries are ill-equipped to handle. At the international level, economic integration with other regions compels countries to change their laws and legal processes. When countries join international or regional organizations such as the World Trade Organization or the European Union, they must comply with certain legal prerequisites.<sup>5</sup> Finally, as nations try to become more attractive to international investors, they find that inefficient or corrupt judiciaries may repel investment.<sup>6</sup>

As the significance of national boundaries becomes attenuated and old barriers (political,

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<sup>1</sup> Carl Baar, "The Development and Reform of Court Organization and Administration." 19 *Public Administration and Development*, 1999. 339 – 351.

<sup>2</sup> Maria Dakolias, *Court Performance Around the World: A Comparative Perspective*. World Bank Technical Paper No. 430, 1999. 1.

<sup>3</sup> James G. Apple, "Starting Down the Long Trail of Judicial Independence: The Experience in Russia, the Newly Independent States, and Central and Eastern Europe." *Yearbook of the Centre for the Independence of Judges and Lawyers*, 2000. pp. 171 – 187.

<sup>4</sup> See, for example, Linn Hammergren, *Judicial Training and Justice Reform*. Working paper #PN-ACD-021. Center for Democracy and Governance; Bureau for Global Programs, Field Support, and Research; U. S. Agency for International Development, 1998. 32.

<sup>5</sup> See Philip P. Pan, "Top Judicial Officials Say China's Corruption is Deep." *Washington Post* March 11, 2001: A18: "China's top two judicial officials said today the government remains hobbled by graft, bribery and collusion with organized crime, acknowledging the Communist Party's crackdown on corruption has not fully succeeded. In speeches to China's parliament at its annual session, the officials also highlighted major problems with the country's legal system, including corrupt prosecutors, incompetent judges and lack of enforcement of verdicts. .Hu Angang, a prominent Chinese researcher, estimates that official malfeasance has cost China about \$150 billion over the past decade. Pressure to solve the problem is increasing as China attempts to overhaul its legal system in anticipation of joining the World Trade Organization. Nearly 1,300 judges and 500 prosecutors were punished for breaking party or administrative rules last year, the judicial reports said."

<sup>6</sup> Edgardo Buscaglia and Maria Dakolias, *An Analysis of the Causes of Corruption in the Judiciary*. Legal and Judicial Reform Unit, The World Bank, 1999. 1.

geographic, cultural and economic) fade, opportunities for regional and international study, comparisons, and information-sharing increase. Identifying common interests and themes among judiciaries of different countries is the order of the day. Public trust and confidence in judicial systems is now compared internationally.<sup>7</sup> Judicial education programs are conducted regionally as well as nationally.<sup>8</sup> The impact of specific administrative reforms on systemic problems such as judicial corruption is now compared between the courts of different countries.<sup>9</sup> Judicial efficiency is assessed internationally.<sup>10</sup>

It is evident that the local society is affected increasingly by social, economic, cultural, and demographic processes that cross national boundaries and merge domestic and international concerns. Although local practices and beliefs mediate such global forces, globalization reshapes local cultural and institutional boundaries, and intensifies interactions worldwide.

How organisation of courts impact judicial system in general? And what is the role or to be more precise is it possible that non-judicial staff improve functioning of the judicial system?

The hypothesis of the research is that the institution of Rechtspfleger/Graffier or other non-judge staff with a similar job description (an independent judicial body, defined by the tasks that are attributed to it by law that carries out various tasks in civil litigations, non-litigations or enforcement procedures, and including land/commercial or other registries) significantly improves performance of the court procedure.

Traditionally, judicial decision making renders decisions only after pouring over legal tomes in a sage like attempt to discover the law. However, under the burden of a perceived crisis caused by overwhelming caseload pressure and rapidly increasing organisational complexity and growth, this traditional role of the judges faces a terrible challenge. How can a system constructed to favour individual, solitary, and sage like decision making continue to increase its productivity to accommodate more cases in less time?<sup>11</sup>

How court have answered that challenge has become one of the most significant and persistent questions regarding the administration of justice, specially access to a court issue, in Europe?

The purpose of the study is to identify trends and conclusions from the Report and the CEPEJ's data base, so as to analyze the roles and functions of various categories of non-judge staff (Rechtspfleger/Graffier, judicial advisors or registrars, administrative units, and technical staff) within the courts and the relationship between judges and non judge staff and the impact of the organization of the court clerk offices on the efficiency and quality of justice in the Council of Europe's member states. The study should analyze in depth the subject matter from the data and information of the CEPEJ report, having full understanding of methodology adopted and used by the CEPEJ while drafting its report; and include conclusions as regards the functioning of judicial systems from a comparative perspective, and targeting mainly policy makers and judicial practitioners.

## **I EFFICIENCY OF ACCESS TO JUSTICE**

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<sup>7</sup> Each year, the World Competitiveness Yearbook (International Institute for Management Development, Lausanne, Switzerland) analyzes and ranks the competitiveness of 47 world economies in the following categories: domestic economy, internationalization, government, finance, infrastructure, management, science and technology, and people. The level of citizens' confidence in their judicial systems is included in the government rankings.

<sup>8</sup> For example, in October 1998, the Conference on Judicial Education in the Americas was held in San Juan, Puerto Rico. Representatives of judiciaries from all countries in Latin America, the Caribbean, the United States, and Canada attended.

<sup>9</sup> Buscaglia and Dakolias, *An Analysis of the Causes of Corruption in the Judiciary*.

<sup>10</sup> Edgardo Buscaglia and Maria Dakolias, *Comparative International Study of Court Performance Indicators: A Descriptive and Analytical Account*. Legal and Judicial Reform Unit, The World Bank, 1999.

<sup>11</sup> Jonathan Matthew Cohen, *The impact of Court Organization on Judicial Decision Making in the United States Courts of Appeals*, The University of Michigan Press, 2002.

When one thinks of the judiciary in a democratic country, instantly the constitutional principles that will spring to lawyers' and legal academic minds will be judicial independence. Judicial independence is the central theme in constitutional law, in international treaties relating to human rights and a fair trial, and is also a focus of international organizations in developing judiciaries in member countries. It is a key concern for all parties and lawyers coming before the bench to argue their case: will this judge decide my case without bias? In constitutional courses at university relating to the separation of powers, judicial independence is also a central issue.

And until the late 1980s, European democracies had not given much thought as to how access to justice was organized because it was taken for granted that if judicial independence were guaranteed, then access to justice would also be guaranteed. When the Woolf Report came out in England and Wales in 1996 it highlighted organizational barriers to justice and the inequalities faced by many parties who had no recourse to justice because of the costs of lengthy and inefficient litigation. Looking at the Leemhuis Committee report in the Netherlands, the issue of organizational barriers through failures of the judicial organization to limit backlogs growing in the courts and inefficient organization was highlighted. Next to these reports was also the growing caseload of the European Court of Human Rights dealing with cases against member states for unreasonable delays in the courts based on Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms.

## **Legal aid**

Legal aid is an essential to guaranteeing equal access to justice for all, as provided for by Article 6.3 of the European Convention of Human Rights, which relates to criminal law cases. In particular, for citizens who do not have sufficient financial means, it increases the possibility of initiating for free (or for limited expenses) court proceedings with the help of legal professionals or to provide legal assistance in criminal cases.

Beyond the European Convention of Human Rights and Fundamental Freedoms and the case law of the Court of Strasbourg, the Council of Europe encourages its member states to develop legal aid systems and has adopted several Recommendations and Resolutions in this field: Resolution 76 (5) on legal aid in civil, commercial and administrative matters; Resolution 78 (8) on legal aid and advice; Recommendation 93 (1) on effective access to the law and justice for the very poor and Recommendation 2005 (12) containing an application form for legal aid abroad for use under the European Agreement on the transmission of applications for legal aid and its additional protocol<sup>12</sup>.

Legal aid is defined in the explanatory note to the Evaluation Scheme as: aid given by the State to persons who do not have sufficient financial means to defend themselves before a court (or to initiate a court proceeding). In this definition, legal aid mainly concerns legal representation before the court. However, legal aid consists also in legal advice. In fact, not all citizens who are faced with judicial problems initiate judicial proceedings before the court. In some cases legal advice can be sufficient to solve a legal issue.

The judicial system is entrusted with a mission of public service for the sake of the citizens. Therefore, the rights of court users must be safeguarded. These rights can be protected and improved in various ways.

Dysfunctions may occur within the courts. Therefore the court users must be able to be granted means of redress (for instance the possibility to make a request or file a complaint and/or to initiate a compensation procedure). Furthermore, courts may have already introduced a quality control system in their organisation. As a part of this system, court user satisfaction surveys can be

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<sup>12</sup> This Recommendation enables to use common forms to the European Union and the Council of Europe which are in line with Directive 2003/8/CE of 27 January 2003 on legal aid.

conducted.

One of the means of doing so is to provide court users with (practical) information about relevant legal texts, the case law of higher courts, electronic forms and court websites but question arises who can be competent within courts to provide those information and where to address needed questions.

This aim requires a proper organisation of the judicial system which must provide adequate information data (developed functional Case Management System within courts) and well educated non-judicial staff that can transmit this information. This task can be performed in following manners:

- by developing single desk, managed by court clerks, at the entrance of each court (so that the court users can have replies to all their questions at a single location), or
- by providing transparent work of the courts using “user friendly” ICT system.

### **Monitoring of backlog and ICT**

It is evident that in circumstances in which a large number of cases is increasingly coming before courts, monitoring of court procedure and taking appropriate measure to reduce number of backlog is of crucial importance. In order to adequately monitor backlog of cases, proper IT system must be developed. Today is impossible to monitor huge amount of cases before the court without using IT technology.

According to data collected in the CEPEJ Report, it is evident that there is lack of measuring of backlog of cases but even more lack of measuring waiting time during the court proceedings which is at the same time closely connected with the obligation from Article 6. of the European Convention on Human Rights and Fundamental Freedoms to provide “fair and public hearing within a reasonable time“.

This principle must be fully taken into account when managing the workload of a court, the duration of the proceedings and specific measures to reduce their length and improve their efficiency and effectiveness. The Council of Europe and its European Court of Human Rights pay specific attention to the "reasonable time" of judicial proceedings and the effective execution of judicial decisions.

Looking at the figures for civil cases, a significant number of violations of Article 6 because of excessive length of proceedings can be noted in the following countries: Croatia (14), Cyprus (14), Czech Republic (22), France (21), Greece (21), Hungary (25), Italy (10), Poland (42), Slovak Republic (25), Slovenia (177), Turkey (38) and Ukraine (46). Such data must be interpreted considering the number of inhabitants in the countries. It must also be noted that Iceland, Latvia, Norway, Serbia, UK-England and Wales were not able to give data A significant number of civil cases concerning length of proceedings were concluded by a friendly settlement in Croatia, Czech Republic and Poland.

Looking at relevant data it is possible to monitor which countries have use “performance indicators” at European level which include two elements – “clearance rate” and “calculated disposition time”. Countries that have no system measuring the backlogs of the case, according to CEPEJ Report are: Czech Republic, Ireland, Portugal, Ukraine, UK-Scotland. In 5 counties system to measure only civil and criminal cases does exist and in 36 countries system which measure backlogs in civil, criminal and administrative cases does exist.

Waiting time is calculated in a systematic way by 21 countries, while 25 countries do not have any system calculating length of proceedings. This figure is matter of serious concern in respect to fulfilling obligations arising from Article 6 of the European Convention on Human Rights and Fundamental Freedoms.

The first indicator, the calculated Clearance Rate, obtained when the number of resolved cases is

divided by the number of incoming cases, is one of the most commonly used indicators to monitor the case flow. Essentially, this indicator is used to assess the ability of a judicial system to handle inflow of judicial cases. The inability of courts or judiciary to produce the data needed to calculate the Clearance Rate could clearly indicate that the tools described in the CEPEJ's Time Management Checklist<sup>13</sup>, are insufficiently developed. More specifically, the inability to produce Clearance Rate indicates the inability of a judicial system (or a court) to assess the overall length of proceedings, and also that there is a lack of a standardized typology of cases, no ability to monitor the course of proceedings and there are no means to promptly detect delays and mitigate their consequences.

The second indicator, the calculated Disposition Time, provides further insight into the way the judicial system manages the flow of cases. Generally, case turnover ratio and Disposition Time compare the number of resolved cases during a reporting period with the number of unresolved cases at the end of that period. The ratios measure how frequently a judicial system turns over the cases received – that is, how long it takes to resolve a case type. Indirectly, this indicator gives the answer to one of the questions most raised within a judicial system – what is the overall length of proceedings.

The application of the two indicators allows us to come up with instructive questions and leads to a better understanding of how a judicial system operates and what challenges and obstacles it faces. What applied for a longer period of time, the indicators can be used to identify conspicuous trends and compare judicial performance in key areas between various judicial systems.<sup>14</sup>

### **Court transparency**

Transparency will provide an array of benefits. They include exposing and reducing corruption and impropriety, enhancing legislative control over the courts, apprising the public of the real rules by which they are governed, enabling lawyers and parties to predict the outcomes of their cases, providing a substantial new source of general knowledge, reducing legal malpractice, and increasing court system efficiency.

But an even more important function of law is to apprise citizens of the rules by which they are governed. As every first year law student learns, the law in its current form – cases and statutes – does a poor job of that. The “rules” are not rules at all, but merely vague, generalized standards. Those standards usually take on concrete meaning only when the courts implement them in large numbers of cases.

By revealing the patterns in those cases to the public, court system transparency would for the first time actually apprise citizens of the rules by which they are governed. Regression analysis on the body of cases challenging click wrap agreements, for example, would indicate the likelihood that the courts would actually enforce any particular contract term in any particular situation. Members of the public could use that information to decide whether or in what circumstances to enter into such agreements.

A transparent court system would not offer an answer to every legal question. Cases and issues are often settled before resolution, and in most circumstances, the parties are not required to reveal the terms of settlements.

A transparent court system would, however, provide far more answers than the current system provides because it would report a far higher number of decisions and provide more relevant information about those decisions.

The independence of the judiciary should go hand in hand with the principle of accountability.

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<sup>13</sup> Time Management Checklist, adopted by the CEPEJ at its 6<sup>th</sup> plenary meeting (7–9 December 2005), CEPEJ (2005) 12 REV.

<sup>14</sup> Adis Hodžić, “What’s measured, that’s what really matters: the calculated Clearance Rate and Disposition Time”, available at [http://www.coe.int/t/dgh/cooperation/cepej/newsletter/2008/HodzicDec2008\\_en.asp](http://www.coe.int/t/dgh/cooperation/cepej/newsletter/2008/HodzicDec2008_en.asp)

Information on courts' activities and on the quality of the services they deliver should be easily accessible. Most of the European countries produce annual reports on the judicial system. This information gives insight in the current state of affairs in the functioning of the court system.

In case of dysfunctions of courts there should be compensation mechanisms. In 10 European countries such mechanism is not yet available. 27 countries have one to compensate excessive length of proceedings and/or non-execution of judicial decisions. In almost all the countries there is a compensation mechanism for a wrongful arrest or condemnation.

Surveys to measure the public trust and the level of satisfaction of courts' users are introduced, but in a way which is too unpredictable. In 8 countries court user surveys are regularly held; at a national level 10 countries apply a survey (on a periodic basis) to measure the trust or satisfaction of the court users.

A very limited number of European countries carry out integral quality systems. Such models measure the satisfaction of the users, but take also into account other elements such as the management of courts, of (personnel, financial and material) resources, the access to law and justice, the processes used in the courts, etc. Quality systems will play an important and growing role in the day to day functioning of courts.

The information gathered in the CEPEJ Report in the field of access to justice clearly shows the importance of the application of certain rules and the means employed to give effect to them but main goal of this paper is to analyze and compare this data in relation to the role of non-judicial staff in different legal system and provide answer to the question: is it possible to improve efficiency of access to justice imperative by giving stronger role to the non-judicial staff.

## **II ROLE OF NON-JUDICIAL STAFF IN A COURT ORGANISATION**

Improving the efficiency and quality of justice in the European member states depends on the number of factors or areas of interest including the promotion and protection of access to justice, efficient and effective court organization, adequate judicial proceedings adapted to the needs and expectations of the society, the stimulation of alternative dispute resolution mechanisms, the protection of the independence of judges and the statute and role of legal professionals as well as the safeguard of the principles of a fair trial within a reasonable time<sup>15</sup>.

There are a number of elements which must be taken into account to answer the question of efficient access to a court issue such as:

1. Territorial distribution of judicial services,
2. Quality of proceedings (information about proceedings, nature of proceedings and decision of the higher court, alternative means of dispute settlement, foreseeable length of proceedings, foreseeable cost of proceedings, risk in the event of abuse of legal proceedings),
3. Simplification of proceedings (simplified and standardized documents, simplified proceedings, adaptation of proceedings),
4. Effective user participation in proceedings,
5. Supervision of proceedings.

Some of these elements require substantive analyses which were subject of the CEPEJ Report but all of these elements together relate to the efficiency of justice principle.

There are a number of elements that influence final conclusion. Assumed indicators for the measurement of effectiveness of the legal system of each country is the relationship between the four categories of the non-judge staff, their respective number, the power i.e. legal basis for activities and the proper organization and the status of non-judicial staff.

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<sup>15</sup> CEPEJ Report of 2008, page 248, para 16.1

The number of (professional) judges and of court staff differs from country to country. Especially certain Southern European countries have a relative high number of professional judges. In other countries some judicial tasks may also be performed by lay-judges. Beyond common law countries where non professional judges traditionally sit, there are other countries where the proportion of professional judges is reduced and judges are assisted by various types of non-judge staff or by staff entrusted with quasi-judicial tasks (Rechtspfleger).

In any case, the major part of court budgets is related to the cost of judicial and non judicial staff in all the European states, with the exception of the common law countries, where the major part of judges are non professional judges.

The existence, alongside judges, of competent staff with defined roles and a recognised status is an essential condition for the efficient functioning of the judicial system.

In the CEPEJ Report of 2008 an overall view is given of non-judge staff who works in courts. This Report shows the difference between members of staff who are involved in judicial proceedings and those who have a purely administrative role. A distinction is made between four types of non-judge staff. Each of these categories deserves a special attention to provide relevant data on the basis of analysis provided in the Report as well as some other indicators in relation to efficiency of each categories.

Role of non-judicial staff is also very different from country to country. Generally, non-judicial staff can be divided into four groups.

**Rechtspfleger** as an independent judicial body, defined by the tasks that are attributed to it by law. As a judicial body, the Rechtspfleger is anchored in the constitution of the countries. Some indicators from the CEPEJ Report may show that this role of the Rechtspfleger should be increased as a model of efficient organisation of non-judicial staff combined with other indicators from other three categories. Question 56 of the CEPEJ scheme aims to specify the various functions of non-judge judicial, administrative staff and technical staff working in courts. The Rechtspfleger is included in the list of staff only for those states which experience this quasi judicial function.

The Rechtspfleger is included in the list of staff only for those states which experience this quasi judicial function. The Rechtspfleger must be defined as an independent organ of jurisdiction according to the tasks that were delegated to him/her by law. Such tasks can be connected to: family and guardianship law, law of succession, law on land register, commercial registers, decisions about granting a nationality, penal cases, execution of penal cases, order to execute prison sentences as replacement or replacement of this punishment by doing community service, prosecution at district courts, decisions concerning legal aid, etc.

**Judicial advisors or registrars** are staff whose task it is to assist judges directly and to provide assistance in the drafting of judgments or they research case law and legal counselling - for example court registrars, but excluding Rechtspfleger.

While judges assume ultimate responsibility for legal work, they often delegate many of their tasks to judicial or legal advisors. In fact, judicial advisors—also called legal assistants, registrars—are continuing to assume a growing range of tasks in courts.

One of judicial advisors' most important tasks is helping judges prepare for closings, hearings and trials. Judicial advisors might investigate the facts of cases and ensure that all relevant information is considered. They also identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. After they analyze and organize the information, judicial advisors may prepare written reports that judges use in determining how cases should be handled. They also may prepare the legal arguments, draft pleadings and motions to be filed with the court. Judicial advisors also organize and track files of all important case documents and make them available and easily accessible to judges or other lawyers such as the Rechtspfleger or Registrars.

In addition to this preparatory work, judicial advisors in cooperation with other non-judicial staff perform a number of other functions such as the financial court records, computer software packages and the usage of Internet in order to search legal literature stored in computer databases as well as monitor of relevant court data (number of pending cases, number of resolved cases and

different statistics helping judges to monitor courts proceedings). In proceedings involving many supporting documents, judicial advisors and other non-judicial staff usually use computer databases to retrieve, organize, and index various materials. Imaging software allows non-judicial staff to scan documents directly into a database.

The tasks of non-judicial staff differ widely according to the type of organization of the court. In general, judicial advisors analyze legal material for internal use, maintain reference files, conduct research for judges, and collect and analyze evidence for court hearings in order to assist judges in their work.

**Administrative units** provides administrative management - registration of cases or the filing of cases etc. Role of administrative staff is important for each court but proper measurements between needs of the judicial staff and the administrative support given by this category is one of crucial element for the efficiency of the judicial system. Administrative staff is not directly involved in the judicial assistance of a judge, but is responsible for various administrative tasks which help judges to perform their duties (such as the registration of cases in a computer system, the supervision of the payment of court fees, administrative preparation of case files, archiving) and/or the management of the court (for example a head of the court secretary, head of the computer department of the court, financial director of a court, HRM manager, etc.).

**Technical staff** responsible for the IT-equipment, security and other technical support of judicial system. Some examples shows that proper IT support includes one IT engieneres for 100 court employees and one IT technician for 35 court employees. This means that effeciency of the technical staff must be taken in combination to some other indicators – number of employees, IT equipment used, development of Case Management System, Data Base used, level of IT education of judicial and non-judicial staff etc. Proper usage of ability of technical staff may help judges to properly monitor all relevant data that relates to the court efficiency and provide wide possibility for extention of transparency of the court.

There are many different ways to organise and use abilities of non-judicial staff in a any legal sistem but main goal of every democratic society is directed to improve efficiency of access to justice which include transparency of courts work but also system of monitoring of judicial process.

### III POSITION OF NON-JUDICIAL STAFF IN EUROPE

According to the mentioned distinction between four types of non-judge staff it can be concluded that the non-judicial staff is differently organised in European countries (including countires out of European Union). A distinction is made between non-judge staff who are involved in the judicial process itself (Rechtspfleger, Graffier or Registrar) and those who are not (administrative and technical staff).

In table 1, an overall view is given of non-judge a staff who works in courts. The table shows the difference between members of staff who are involved in judicial proceedings and those who have a purely administrative role. A distinction is made between four types of non-judge staff.

In the table, are included the details of total number and the break-down of non-judge staff as well as the percentage of the total number of non-judge staff represented by each category.

In each mentioned country, staffs are civil servants or people who work for governmental bodies.

**Table 1 - The distribution of non-judge staff in courts**<sup>16</sup>

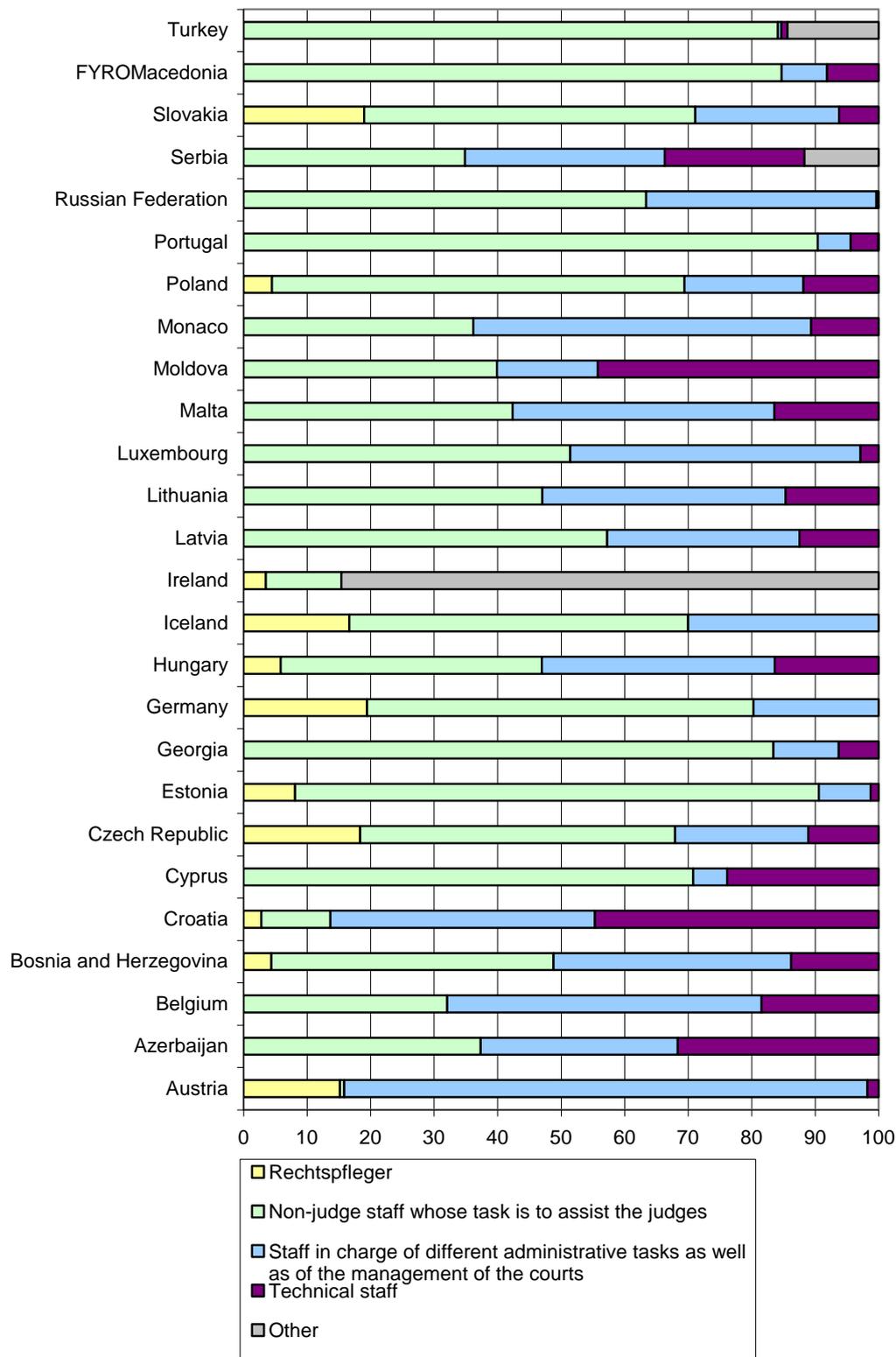
Country	Number of non-judge staff working in courts (fte)	Non-judge staff (Rechtspfleger)	Non-judge staff whose task is to assist the judges such as registrars	Staff in charge of different administrative tasks as well as of the management of the courts	Technical staff

<sup>16</sup> Table 54 in the CEPEJ Report of 2008

		Number	%	Number	%	Number	%	Number	%
Andorra				79		22			
Armenia	965								
<b>Austria</b>	<b>4 735</b>	<b>718</b>	<b>15,2%</b>	<b>33</b>	<b>0,7%</b>	<b>3 901</b>	<b>82,4%</b>	<b>83</b>	<b>1,7%</b>
Azerbaijan	1 723			646	37,5%	536	31,0%	547	31,6%
Belgium	5 835			1 872	32,1%	2 888	49,5%	1 075	18,4%
<b>Bosnia and Herzegovina</b>	<b>2 563</b>	<b>113</b>	<b>4,4%</b>	<b>1 138</b>	<b>44,4%</b>	<b>959</b>	<b>37,4%</b>	<b>353</b>	<b>13,8%</b>
Bulgaria	4 271								
<b>Croatia</b>	<b>7 168</b>	<b>202</b>	<b>2,8%</b>	<b>779</b>	<b>10,9%</b>	<b>2 985</b>	<b>41,6%</b>	<b>3 202</b>	<b>44,7%</b>
Cyprus	440			318	72,3%	24	5,5%	107	24,3%
Czech Republic	8 911	1 637	18,4%	4 420	49,6%	1 867	21,0%	987	11,1%
Denmark	1 424								
Estonia	1 021	83	8,1%	842	82,5%	83	8,1%	13	1,3%
Finland	2 554								
France	15 199			1 864	12,3%				
Georgia	718			599	83,4%	74	10,3%	45	6,3%
<b>Germany</b>	<b>57 530</b>	<b>11 821</b>	<b>20,5%</b>	<b>37 035</b>	<b>64,4%</b>	<b>11 977</b>	<b>20,8%</b>		
Greece	6 500								
Hungary	7 937	464	5,8%	3 264	41,1%	2 912	36,7%	1 297	16,3%
Iceland	60	10	16,7%	32	53,3%	18	30,0%		
Ireland	1 080	38	3,1%	128	2,7%				
Italy	27 067								
Latvia	1 444			827	57,3%	437	30,3%	180	12,5%
Lithuania	2 613			1 230	47,1%	1 001	38,3%	382	14,6%
Luxembourg	245			126	51,4%	112	45,7%	7	2,9%
Malta	354			150	42,4%	146	41,2%	58	16,4%
Moldova	1 636			653	39,9%	260	15,9%	723	44,2%
Monaco	47			17	36,2%	25	53,2%	5	10,6%
Montenegro	868								
Netherlands	5 160								
Norway	891								
<b>Poland</b>	<b>31 623</b>	<b>1 417</b>	<b>4,5%</b>	<b>20 543</b>	<b>65,0%</b>	<b>5 915</b>	<b>18,7%</b>	<b>3 748</b>	<b>11,9%</b>
Portugal	7 187			6 500	90,4%	372	5,2%	312	4,3%
Romania	9 359								
Russian Federation	62 075			39 369	63,4%	22 506	36,3%	200	0,3%
Serbia	10 696			3 730	34,9%	3 364	31,5%	2 353	22,0%
<b>Slovakia</b>	<b>4 282</b>	<b>813</b>	<b>19,0%</b>	<b>2 233</b>	<b>52,1%</b>	<b>970</b>	<b>22,7%</b>	<b>266</b>	<b>6,2%</b>
Slovenia	2 705								
Spain	40 513	3 020	7,5%						
Sweden	3 251								
Switzerland	4 127	64*							
FYROMacedonia	2 061			1 746	84,7%	148	7,2%	167	8,1%
Turkey	23 832			20 050	84,1%	138	0,6%	229	1,0%
UK-Scotland	1 231								
UK-England and Wales	26 000								

From this table it can be noted two different types of organization of non-judicial staff in relation to the role of Rechtspflegers, Graffier or Registrars. First group of countries relates to those with the stronger role of Rechtspflegers, Graffier or Registrars and the second group of countries who have minor role of Rechtspflegers, Graffier or Registrar. We will compare this data with some other indicators in respect of main goal of judicial system – to provide effective access to a justice.

**Table 2 - The proportional distribution of court staff<sup>17</sup>**



### Rechtspfleger/Graffier/Registrar

The Rechtspfleger may, in different judicial system, perform various tasks. The following is stated in the model statute for a European Rechtspfleger:

#### A) Administrative Tasks

<sup>17</sup> Figure 33 in the CEPEJ Report of 2008

The Rechtspfleger performs administrative tasks as Court Manager:

He/she is responsible for the smooth functioning of the office services in the whole court and is fit up with an extensive authorization of the president of the court. He/she is responsible for the employment of personnel and the assignment of personnel as well as of work equipment, for example EDP. He/she is supervisor of all executive officers of the court administration, all staff members of the registry in the judiciary, the transcript service, records management (archive), the central entry, the post room, the telephone exchange, the typists, the constables, the doormen and the other services.

Executive Officer and Official in Charge:

He/she is responsible for the work on personnel matters, the prompt payment of the salaries, the budget and fundraising matters, the administration and security of the court building, the electronic data processing, etc.; he supports the court manager.

Local Auditor:

He/she is the representative of the state treasury, authorized examiner for the calculation of the legal charges as well as head of division for cost and cash desk questions.

Head of court cashier  
Supervisor of the registries

## **B) Jurisdictional Tasks**

The courts are assigned to protect the legal interest of the individual as well as to settle disputes or to decide on it.

The Rechtspfleger performs the functions assigned to him by law, particularly at the local courts, i.e. the front line of legal life. According to the code of procedure he/she performs these tasks of jurisdiction under the responsibility of the court without any commitment to instructions of his/her supervisor with objective independence. Furthermore, the Rechtspfleger assumes almost all tasks of the execution of a sentence in place of the prosecutor.<sup>18</sup>

### **1. Court of First Instance (Local Court)**

- a) Association matters
  - Emergency appointment of the executive committee
  - Authorization of members to call a meeting
  - Decisions about registrations and handling the register
- b) Taking of statutory declarations in the cases of
  - reporting
  - Composition proceedings
  - Examination and custody of matters as well as sell of pledges
- c) Lease loan matters according to the lease loan law
- d) Register matters of matrimonial property law
  - Decisions about registrations and handling the register
- e) Certifications including receipt of the declaration
- f) Matters of disappearance
- g) Matters of land register
  - Decisions about applications for registration for
  - Acquisition of real property by purchase, donation or case of succession

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<sup>18</sup> Green Paper for a European Rechtspfleger, available at [http://www.coe.int/t/dghl/cooperation/cepej/Partners/Gr%C3%BCn\\_buchenglisch.pdf](http://www.coe.int/t/dghl/cooperation/cepej/Partners/Gr%C3%BCn_buchenglisch.pdf)

- Ordering rights of abode, rights of way and other easements
- Entries of mortgages and mortgage loans for safeguarding of loans in business life as well as for building loans
- Creation of real estate property of condominiums and heritable building rights
- Changing of rights, f. ex. assignment of mortgage loans, cessation of mortgages and mortgage loans after reimbursement of the loan, changing of order of priority
- h) Maritime register and ship construction register matters
- i) Matters of register for liens related to aircrafts
- j) Judicial sale and forced administration matters
- k) Appropriation procedures to be performed apart from the judicial execution
- l) Appropriation procedures to be performed apart from the judicial sale
- m) Other legal appropriation procedures
- n) Tutelage, family and supervision matters as well as law of civil status
  - Decisions within the scope of property management for matrimonial children
  - Divestment of the property management in case of danger
  - Decisions about questions concerning the parental care and legal representation in case of disturbances of the parental right
  - Divestment of the legal representation in case of clash of interests
  - Appointing supplement guardians
  - Appointing tutelage for underage orphans
  - Selecting a (legal) guardian
  - Appointing a (legal) guardian
  - Committing the (legal) guardian
  - Supervising the (legal) guardian
  - Receipt of the statements of accounts and accountings
  - Discharge of the (legal) guardian in case of irregularities
  - Decisions about approvals of the guardianship court
  - Analogous tasks for needy adults
  - Acknowledgement of paternity
  - Acknowledgement of alimony
  - Marriage ceremonies
  - Decision about divorces by mutual consent
  - Certification regarding the change of the joint custody
  - Proprietary agreements
  - Waiver of publishing the marriage
  - Authorization of the spouse to act for the other
  - Replacing the agreement of the spouse being prevented from approval
  - Change of the family or Christian name
  - Approval for adoption
- o) Probate law matters
  - Certification of testaments
  - Formal hearing of the will of testaments and contracts of inheritance
  - Decision about the legal order of succession and issuing the certificate of inheritance at legal succession and testate
    - Instruction for tutelage of the legal estate or administration of the legal estate in case of insolvency of an estate or if there are no heirs
    - Selection, appointment and supervision of the curator or executor of the estate
    - Legal approvals for legal transactions of the curator or executor of the estate
    - Mediation among several heirs in case of disputes and divestiture of the legal estate in a special procedure
- p) Commercial and register matters
  - Decisions about registration for
    - Individual merchants
    - General partnerships
    - Limited partnerships
    - Companies with limited liability
    - Public limited companies

- Surveillance of commercial books
  - Grant of a license to practice a trade
- Civil status and civil status register matters
- Award of citizenship
  - Certification of change of name for persons under age
  - Granting of a mandate for election
- r) Performance of insolvency procedures
- s) Civil litigations
- National orders for payment procedure
  - European orders for payment procedure
  - European measures of enforcement
  - Cancellation proceedings
  - Procedures regarding legal aid
  - Procedures regarding counseling services
  - Procedures regarding the assessment of alimony for illegitimate children
  - Procedures regarding the simplified assessment of alimony for matrimonial children
  - Issue of enforceable original copies under special legal conditions (Bequest, successor of a company, provision of a return service or a bail)
  - Garnishment of claims
  - Escrow matters
  - Decisions in enforcement procedures
  - Assessment of lawyer and legal costs
  - Encashment of taxes and tollages
- t) Exertion of the function of a notary
- u) Appointment of arbitrators for cases provided by law
- v) Legal decisions for electoral matters

There is no doubt that a good legal system, which guarantees legal security and protection to the citizen, is of the greatest importance for the good working of a democratic state. It is also needed for the development of the economy. But for the working of justice it is of eminent importance that the competencies of the different professional groups are clearly defined that there is a reasonable division of competencies and it is important that all the groups are well instructed and educated to cope with their important duties.

In those countries where the *Rechtspfleger* was introduced, there were serious discussions about the status and role of the *Rechtspfleger*. Generally, the *Rechtspfleger* might be defined as an official of the upper civil service.

Twelve European countries indicated in the CEPEJ Report of 2008 that they have a *Rechtspfleger* system (or a post with a similar job description).

**Table 3 - Number of *Rechtspfleger* in Europe<sup>19</sup>**

<i>Country</i>	<i>Number of <i>Rechtspfleger</i> (gross figure)</i>	<i>Number of professional judges (fte)</i>
Austria	718	1 674
Bosnia and Herzegovina	113	846
Croatia	202	1 924
Czech Republic	1 637	2 995
Estonia	83	239
Germany	11 821	20 138
Hungary	464	2 838
Iceland	10	47
Poland	1 417	9 853
Slovakia	813	1 337
Spain	3 020	4 437
Switzerland	64	1 229

<sup>19</sup> Table 55 in the CEPEJ Report of 2008

## Judicial system and ICT

Reducing delay, improving economy, efficiency and effectiveness and the more general objective of promoting confidence in the justice system through the use of new technologies 'are laudable aims and are unlikely to generate much dissension.'<sup>20</sup> However, given the nature and importance of the judiciary as the third pillar of the State authority, and compared to other public services, due process, impartiality and independence should also be carefully taken into account. This is especially so when structural and procedural changes, such as the ones driven by the introduction of the new technologies, take place.

The use of information and communication technology (ICT) is considered one of the key elements to significantly improve the administration of justice.<sup>21</sup> The rapid development of technology opens up new opportunities that were unthinkable only a few years ago. Around the world, several statutory reforms have been introduced to allow the use and the exchange of electronic data and documents within national judicial systems, but also between them and with supranational courts. The availability of web services, the possibility of consulting on-line legislation and case law, the use of electronic filing, the electronic exchange of legal documents, are only some examples that are spurring the judicial administrations around the world to rethink their current functions and activities. ICT can be used to enhance efficiency, access, timeliness, transparency and accountability, helping the judiciaries to provide adequate services. New possibilities are emerging for the integration and automation of court procedures and practices.

In addition, the use of the internet, can offer the chance to open the judiciary to the public, providing both general and specific information on its activities, thereby also increasing legitimacy.

Justice is the product of the combined effort of a plurality of actors. Some of these actors, such as administrative personnel and judges, operate within the court organization, while others, such as lawyers, litigants and witnesses, but also the community and public institutions, constitute the environment within which the court traditionally operates. Such technologies can be divided in three groups based on their technological, but also organizational, complexity. The first group consists of basic technologies such as desktop computers, word processing, spreadsheets and both internal and external e-mail for both judges and administrative personnel. The second group consists of applications used to support the administrative personnel of the court, which include automated registers and case management systems (CMS). Finally, the third group consists of technologies used to support the activities of the judges and non-judicial staff, such as law and case law electronic libraries, and sentencing support systems.

### Technologies for the administrative component

The role of the administrative component of the court is to perform a number of tasks that range from case-tracking and keeping official records of all court matters to official court notifications.<sup>15</sup> Furthermore, court personnel carry out an important role as an interface, and at the same time a buffer between the judge and the other actors that participate in the judicial process. As lawyers very well know, the judicial proceeding starts long before a case reaches the courtroom.<sup>22</sup> The administrative personnel of the courts file and keep registers and documents in compliance with codes of procedure, laws and regulations. A series of actions are linked to such procedures, such as the collection and formal control of the filed documents by the clerk, the documentation at the time of collection, the registration on a court register of the event and the issuance of a receipt. All these actions require time and resources. In supporting the clerks' activities, technology can play

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<sup>20</sup> B. Loveday, 'Address to EGPA Conference, Cape Sounion, Greece', in M. Fabri *et al.* (eds.), *The Challenge of Change for Judicial Systems*, 2000 p. 23.

<sup>21</sup> Confronted with the inability of managing the constantly increasing caseload, Ministries of Justice have typically adopted three main strategies: (1) the increase of administrative personnel and judges, (2) a change of norms and procedures and (3) the investment in information and communication technologies. M. Fabri, 'Gli affanni dell'amministrazione della giustizia italiana', 1998 *Politica e Organizzazione* 1, pp. 47-60. <http://www.utrechtlawreview.org/> Volume 3, Issue 1 (June) 2007

<sup>22</sup> A. Wallace, 'Australia', in A. Oskamp *et al.* (eds.), *IT Support of the Judiciary*, 2004, p. 40.

an important role in saving much needed resources at the earliest stage of the trial.

Traditional court docket books and other court registers are one of the pillars of the court activities. They are generally huge books that need to be kept not only to formally comply with procedural rules, but also for the functions that such tools perform. The case history recorded in the registers, for example, provides a quick reference on the status of the case and the documents that have been received by the court. It is double-checked against the case file to determine its completeness.<sup>23</sup> It is a guarantee that the formal procedure has been respected, e.g. for computing any period of time prescribed or allowed by regulation. Furthermore, it allows a quick review of the status of a case without having to physically access and read the case file. On the other hand, paper docket and other register books are cumbersome tools and present many limitations. 'The docket is placed in the clerk's offices ... and just one office worker at a time can work with it'.<sup>24</sup>

In courts across Europe, a number of applications have been developed that use automated register data. Some of these applications have a more strategic focus. For example, the provision of management information and statistical reporting can play an important role in the organization and administration of court offices. For this purpose court management systems, or at least statistic packages, that use the data of the automated registers and of the case management systems, have been developed in most of the countries considered. Furthermore, the operation of courts generates a significant volume of financial transactions including fines, bail, fees, etc. Courts acquire goods and services and in some cases also hire personnel; in several countries software applications have been developed or are under development to help process and account for such transactions.<sup>25</sup> In other cases, applications have been developed to solve more limited problems. In several courts, various systems have been developed to keep track of the physical location of the case folder. In some cases, Excel spreadsheets have replaced informal registers used by the clerks to record the passage of the documents. In other cases more sophisticated approaches have been used.<sup>26</sup> Several court offices have introduced procedures in order to scan both the documents filed to the court and the sentences. This allows the creation of an electronic docket in the first case and archives of digital sentences in the second. A limit to this technique is the limited reusability of the data contained in the documents. Although these procedures often generate a burden to the court, they may produce efficiencies in cases where frequent photocopying is required or when a scanned document can be stored in place of a paper one. Some applications have been developed only in countries that have specific institutional settings. Traditionally, in countries that use juries, the selection and management of jurors has been a time consuming manual process in the hands of the court clerk. Applications to automate such activities have been implemented.

Today automated registers and related applications are often taken for granted and well integrated in the court practices but in many cases their introduction has been all but easy and plain. The development of these applications was often carried out locally, in many cases to meet specific and urgent business needs within specific offices, or within ad interim pilot projects (e.g. Italy,<sup>27</sup> Ireland,<sup>28</sup> Belgium<sup>29</sup>).

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<sup>23</sup> J.E. McMillan, *Case Management Systems: The Four Bubbles*, 1995, p. 5, available at: [http://www.ncsconline.org/WC/Publications/KIS\\_CasSysCTB1995McMillanPub.pdf](http://www.ncsconline.org/WC/Publications/KIS_CasSysCTB1995McMillanPub.pdf)

<sup>24</sup> F. Contini, 'Reinventing the Docket, Discovering the Database. The Divergent Adoption of Information Technology in the Italian Judicial Offices', in M. Fabri *et al.* (eds.), *The Challenge of Change for Judicial Systems*, 2000, pp. 253-267.

<sup>25</sup> In Ireland for example, the Courts Accounting System (CAS) has been piloted in a small number of District Court offices, and is now being extended to all the 44 District Courts. Irish Courts Service, *ICT Strategy 2006-2010 for the Courts Service*, 2006, p. 31. available at: [http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/75704E3E1D4B1E048025716800557865/\\$FILE/ICT%20Strategy%202006-2010.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/75704E3E1D4B1E048025716800557865/$FILE/ICT%20Strategy%202006-2010.pdf)

<sup>26</sup> In Milan, a pilot project that uses a radio-frequency identification (RFID) has been implemented to avoid the loss of documents. An RFID tag is attached to the folder, allowing its identification and tracking using radio waves.

<sup>27</sup> D. Carnevali *et al.* (eds.), *Tecnologie per la giustizia. I successi e le false promesse dell'e-justice*, 2006, pp. 99-113.

<sup>28</sup> This seems to be the cases for the interim Civil Case Management systems developed and implemented in the Dublin Circuit Civil Court office, the Wards of Court office and Dundalk Circuit Civil Court office (Irish Courts Service, *The Irish Court Service Annual Report*, 2000, p. 77).

#### IV IMPACT OF NON-JUDICIAL STAFF ON COURT QUALITY AND ACCESS TO JUSTICE PRINCIPLE

As indicated, a number of factors have been assessed and a number of indicators have been analyzed in relation to the functioning of courts to come to the following trends and conclusions:

- Legal aid in the form of legal representation or advice and including the waiver of court taxes/fees is increasingly available in both criminal and non-criminal cases;
- While there is a trend in reducing the number of court locations (especially small size courts) there is a simultaneous trend in increased use of e-justice and court websites with useful legal information;
- Alternative dispute resolution mechanisms has been introduced and increasingly used in a number of countries; etc.

On the other hand, a number of deficiencies were noted in the measurement of the efficient and effective court proceedings in civil and criminal law i.e. waiting time (only half member states have measuring mechanisms in place) and the quality of the service delivered (integral quality systems have only been introduced in a small number of states).

Nevertheless, CEPEJ Report concludes that the efficiency of judicial proceedings can be improved by introducing changes in the procedural steps (simplified procedures in criminal matters), other working methods (dispensation with oral hearing in administrative law procedures) or the promotion of alternative dispute resolution, including the development of the role of the enforcement agents.

The Report also notes a correlation between the lack of performances and efficiency of some judicial systems and the weakness of their financial resources (although the opposite is not always true: high financial resources are not always the guarantee for good performance and efficiency of judicial systems).

The conclusion is that other factors such as relevance of the procedure, management of the financial and employment resources, role of the actors, training and other considerations such as the distribution of the budget play a major role. While on average 65% of the court budgets are allocated to remuneration to judges and court staff, only 3% is allocated to IT. With the increased use of ICT in courts, costs on investments and maintenance will necessarily likewise increase.

Finally, the comparison of the number of professional judges and of court staff differs from country to country so is the definitions and the methods used to measure the length of proceedings, making it impossible to compare the performance of the justice system from one country to another.

All this said, this analysis aimed to use performance indicators i.e. the clearance rate (how is the court keeping up with the number of incoming cases without increasing the backlog) and the calculated disposition time (the time needed to bring a similar kind of case to an end – relevant for the overall functioning of the courts in a country) to follow, by using comparable data i.e. the number of judges and non-judge staff, the functioning of judicial systems in dealing with case flows.

The hypothesis of the research is that the institution of *Rechtspfleger/Graffier* or other non-judge staff with a similar job description (an independent judicial body, defined by the tasks that are attributed to it by law that carries out various tasks in civil litigations, non-litigations or enforcement procedures, and including land/commercial or other registries) significantly improves performance of the court procedure.

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<sup>29</sup> J. Dumortier, 'Judicial Electronic Data Interchange in Belgium', in M. Fabri *et al.* (eds), *Judicial Electronic Data Interchange in Europe: Applications, Policies and Trends*, 2003, p. 126.

## **CEPEJ Methodology**

Methodologically, the collection of figures in the CEPEJ Report is based on reports by member states, which were invited to appoint national correspondents, entrusted with the coordination of the replies to the Scheme (a questionnaire prepared by CEPEJ-GT-EVAL and adopted by the CEPEJ at its 9th plenary meeting, June 2007) in their respective countries.

Having in mind the objectives of the CEPEJ, the instruction on the quality of data,<sup>30</sup> cautions on the control of the coherence of data,<sup>31</sup> on the chronological comparisons of figures, on the evaluation of judicial systems of the presentation of data, and in particular warning on the (in)comparability of figures and concepts for different judicial systems, it seems impossible to draw any conclusions on the effectiveness of the individual judicial systems, and specifically, the role played by court clerks or non-judicial staff. As recommended by CEPEJ report (p. 12) the report provides a tool for a study of relevant clusters of countries be it according to the characteristics of the judicial systems, geographical or economic criteria.

Question 56 of the CEPEJ scheme aims to specify the various functions of non-judge judicial, administrative staff and technical staff working in courts. The Rechtspfleger is included in the list of staff only for those states which experience this quasi judicial function.

### **The role of Rechtspfleger/Graffier/Registrar in improving performance**

The research tested the hypothesis that the institution of Rechtspfleger/Graffier or other non-judge staff with a similar job description (having in mind the Green Paper for European Rechtspfleger concerning the present competences of the Rechtspfleger/Greffier and similar professions in Belgium, Denmark, Germany, Estonia, France, Italy, Luxemburg, Netherlands, Norway, Austria, Poland, Spain and Rumania) significantly improves performance of the court procedure, thereby contributing to the efficiency and quality of the European judicial systems, the research compared the number of Rechtspfleger with the number of judges in the respective European countries (Austria, BiH, Croatia, Czech Republic, Estonia, Germany, Hungary, Iceland, Poland, Slovakia, Spain, Switzerland) in 2006 with the performance indicators i.e. the clearance rate in the first instance non-litigious cases, enforcement cases, land registry and business registry cases per 100.000 inhabitants in 2006, and the calculated disposition rate regarding the a/m cases.

It must be born in mind that the actual data on the different competences granted to the Rechtspfleger or similar professions in countries that reported this function under Q56 in CEPEJ Report (Austria, BiH, Croatia, Czech Republic, Estonia, Germany, Hungary, Iceland, Poland, Slovakia, Spain, and Switzerland) were unavailable unless defined in the Green Paper for a European Rechtspfleger (for the countries Austria, Estonia, Germany, Poland, Spain).

The Green paper also gives an overview of competences of Rechtspfleger in Belgium, Denmark, France, Italy, Netherlands, Norway, and Rumania although these countries did not indicated that they have a „Rechtspfleger system“ or a post with a similar job description in CEPEJ Report. This makes it tremendously difficult to evaluate any data and compare results to come to trends or conclusions. Nevertheless, the analysis revealed following:

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<sup>30</sup> The quality of the figures in this report depends very much on the type of questions asked in the data collection instrument, the definitions used by the countries, the system of registration in the countries, on the efforts made by national correspondents, the national figures available to them and on the way the figures have been processed and analyzed. In spite of the improvements resulting from previous experience, it is reasonable to assume that some variations occurred when national respondents interpreted the questions for their country and tried to match the questions to the information available to them. The reader should bear this in mind and always interpret the statistical figures given in the light of their attached narrative comments. The CEPEJ has chosen to process and present only the figures which presented a high level of quality and credibility. It decided to disregard the figures which were either too varied from one country to another or which did not present sufficient guarantees of reliability.

<sup>31</sup> Variations in answers can be ascribed to economic growth, or changes in the method for calculating or collecting data at national level, structural or organizational reforms, political decisions or the implementation of new mechanisms, procedures or measures etc.

- With respect to non-litigious civil cases, in the countries where the courts perform tasks related to registers the courts are faced with a large number of incoming and resolved non-litigious civil cases per 100.000 inhabitants<sup>32</sup> – Germany, Austria, Croatia, Serbia, Hungary, etc. *The clearance rate* for non-litigious civil cases differs from low figures given by Italy, Estonia and Monaco (the courts are not able to cope with the pace of incoming cases) to high figures given by Sweden, Slovakia and Moldova (since UK-England and Wales have a different system these data are disregarded)<sup>33</sup>.
- With respect to the number of incoming and resolved land registry cases per 100.000 inhabitants in 2006<sup>34</sup>, large numbers are handled by Denmark, Croatia, Slovenia, Finland and Austria and to a lesser extent Poland and Germany. The *clearance rate* however is very high in BiH, Slovenia and Croatia (Denmark, Macedonia, Austria, Finland, Poland are just around 100%).
- With respect to the number of incoming and resolved business register cases per 100.000 inhabitants in 2006<sup>35</sup> Montenegro and Hungary have a very high number. As regards the *clearance rate*, FYRO Macedonia and Ireland are far ahead. CEPEJ Report notes increased use of e-justice for the business and land registers in a certain number of particularly Eastern European states that significantly contribute to automatization.
- Finally, the number of incoming and resolved enforcement cases per 100.000 inhabitants in 2006<sup>36</sup>, high rate is reported by Austria, Croatia, Slovenia, FYRO Macedonia. The *clearance rate* of enforcement cases in 2006 is very high for the Slovak Republic, Croatia, Monaco, Montenegro, followed by Andorra, Norway, Serbia, Italy, Czech Republic, Austria, Hungary, Denmark and Turkey are just above 100%, while very low figures are given by BiH, Spain, FYRO Macedonia, Finland, Portugal, France and Slovenia.

Given the great discrepancy between the clearance rate of different countries, many of whom did not indicate the RF system, it was impossible to make any meaningful correlation between the clearance rate and the RF function. Similarly, a comparison of the distribution of non-judge staff in courts<sup>37</sup> and distribution of judge and non-judge staff per 100.000 inhabitants<sup>38</sup> with the clearance rate does not show any criteria.

For example, as regards the clearance rates in enforcement cases, low figures are presented by BIH, Spain, FYRO Macedonia, Finland, Portugal, France and Slovenia while Montenegro, Monaco and Croatia experienced high clearance rates. Applying the number of judge and non-judge staff to these parameters the following figure appears:

**Table 4**

Country	Clearance rate (%)	Judge staff	Rechtspfleger	Non-judicial staff
BiH	43	22	2.9	66.7
Spain	85	10.1	6.9	92.6
FRYOM	86	40.6	0	101.1
Finland	92	17.1	0	48
Portugal	95	17.4	0	68
France	95	10.6	0	24
Slovenia	96	50	0	135
Montenegro	112	37.2	0	140
Monaco	115	54.5	0	124.2
Croatia	229	43.3	4.5	161.3

As per the Green Paper, only Denmark, Germany, Estonia, France, Austria, Poland and Spain

<sup>32</sup> Figure 36 of the CEPEJ Report

<sup>33</sup> Figure 38 of the CEPEJ Report

<sup>34</sup> Figure 39 of the CEPEJ Report

<sup>35</sup> Figure 41 of the CEPEJ Report

<sup>36</sup> Figure 45 of the CEPEJ Report

<sup>37</sup> Q55, Q56; Table 54 of the CEPEJ Report

<sup>38</sup> Table 121 of the CEPEJ Report

have entrusted the enforcement to RF/Greffier. Yet, most of these countries had reported average performance (between 101-106%) and Spain performed rather poorly (85%).

Somewhat clearer picture emerges from an analysis of the disposition time of non-litigious civil cases, enforcement, land registry and business registry cases in 2006<sup>39</sup> as compared to the competences recognized in respective countries.

Thus, as regards the non-litigious civil law cases, short disposition times was reported by Russia (22 days), Moldova (26 days), Latvia (39 days), Hungary (33 days) and France (36 days), while it takes a very long time to finalize the case in BIH (360 days), Slovenia (226 days) and Slovak Republic (229 days). As already indicated, the general term non-litigious civil law cases may refer to a number of non-contentious jurisdiction/competences given or not to Rechtspfleger (family and guardianship law, probate law, safeguarding of property, authentication law, award of citizenship, etc.) and is too broad to be analyzed when the essential data on the actual competences is missing.

However, looking at the Table 67, Disposition time of enforcement, land registry and business register cases in 2006, shows that France, Denmark and Austria (and presumably Germany) who were granted Rechtspfleger with the enforcement competences, have a very short enforcement proceedings; unfortunately, data on Estonia and Germany is missing. On the other hand, Spain (990 days) and Poland (434 days) reported a very long disposition time in enforcement cases, even though this competence is granted to the Rechtspfleger.

In addition, disposition time on the land registry cases in Denmark, Germany, France and Estonia is not available even though these countries have entrusted Rechtspfleger with this function. Austria on the other hand has a very high disposition time for land registry cases (8 days). Similarly, disposition time on the business registry cases for Germany, Estonia, France and Denmark, Austria, and Spain was unavailable.

Again, no correlation or criteria became apparent by comparing the enforcement cases disposition time (the most frequent competence granted to Rechtspfleger).

**Table 5**

Country (known to grant RF)	Disposition enforcement	Judge staff	RF	Non-judge staff
Austria	93	20.2	8.7	57.2
Denmark	55	6.6	0	26.2
France	53	10.6	0	24.1
Poland	434	25.8	3.7	82.9
Spain	990	10.1	6.9	92.6

Since no reliable data is available, and having in mind all other delineators, no conclusions or trends can be drawn from the comparison of the performance indicators and the numbers of judge and non-judge staff in the courts in non-litigations civil law cases, enforcement, land and business registry cases.

## CONCLUSION

In many legal studies the quality of the judiciary is related to decisions made by judges and the possibility to appeal these decisions. Also the existence of a Higher Court, Supreme Court and/or Constitutional Court must be seen in the light of judicial quality. These high level courts form a guarantee for a high quality judicial decision making process, where there exist the possibility to correct legal errors made by judges and to protect the unity of law i.e. the fact that similar cases are decided in a similar manner. However, judicial quality is not only limited to the quality of the decisions or the existences of appeal and higher courts. It is also brought in relation to the notion of independence of the judiciary. Guarantees for independence are connected with the recruitment

<sup>39</sup> Table 67 of the CEPEJ Report

and nomination of judges, their terms of office, the remuneration and the freedom to decide in the courtroom without direct influence from the executive or legislative power.

For a long time quality was only seen in the light of judicial quality. It did not take into account other aspects that may influence the quality of the administration of justice. As was the case with the development of quality models and quality systems in the past for companies the perspective on quality was limited to the final quality of the product or services or in judicial terms: the quality of the decision rendered by the judge. A client perspective or other notions that can be related to the quality of courts were for many years not taken into account when it comes to the determination or improvement of the quality in the judicial field. Nowadays, there seems to be a trend that in certain parts of the world a wider notion on quality is appearing as a result of a growing number of countries which are developing integral quality systems for courts. This trend started in the United States in a few areas:

- Access to justice: courts should be open and accessible.
- Expedition and timeliness: decisions made by the courts should be delivered in a timely manner without any undue delay.
- Equality, fairness and integrity: courts should provide due process and equal protection of the law. Concerning integrity the decisions and actions of a court should adhere to the duties and obligations imposed on the court by relevant law as well as administrative rules, policies, and ethical and professional standards.
- Independence and accountability: trial courts must establish their legal and organizational boundaries, monitor and control their operations, and account publicly for their performance.
- Public trust and confidence: courts should work in an accessible, fair and accountable way where there is a high level of public trust.

How to achieve these goals? There is no single answer but one is for sure – without highly educated professionals in courts' organization these goals would be impossible to achieve.

To guarantee for fulfilment of mentioned aims, the role of judicial advisors and ICT developments are essential. With a more and more tasks assigned to courts and with inevitable increase in a number of cases pending before the courts, continuing process of adjusting courts organization is taking place.

Over the past decade, technology has transformed the courts. Courts moved from paper to electronic filing, resolved daunting privacy problems, and made their files available in virtual world - thereby becoming transparent court system. Now they have already embarked on what may be a second, equally important transformation - the use of relational forms from which court data can be extracted automatically.

Even CEPEJ Report of 2008 pays very little attention to this aspect of development of judicial system this aspect of court efficiency and transparency is one of the most important factors for successful future development. This development will require educated technical staff but also legally and technically educated judicial advisor as a "creator" and as a user of that ICT.

In these circumstances, judicial advisors or court clerk may, by using ICT, provide users with legal information such as general information about court activities, specific information and case law. General legal information concerns general rules, procedures, practices, examples of forms or pleadings for the guidance of litigants, the explanation of terms and documents used in court process etc, which can be applied to each and every court. This can be organized at the entrance of each court so that the court users can have replies to all their questions at a single location.

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