

# **Theme: Evaluation Of Courts And Judicial Systems**

## **Improvements of Judicial Systems: European Experiences**

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### **IMPROVEMENTS OF JUDICIAL SYSTEMS: EUROPEAN EXPERIENCES**

#### **1 Introduction**

A proper function of courts is to positively influence the economic development of societies. Companies or enterprises are best served when courts function in a fast, fair and affordable manner.<sup>1</sup> However, courts exist not only for the sake of companies, but to bring justice to citizens in accordance with the rule of law. I will focus little attention on the difficulties associated with defining the concept of rule of law.<sup>2</sup> However, it is important to emphasize that developed societies must respect the rule of law. They do so by ensuring an independent judiciary, an impartial court system, a degree of separation of powers between the executive, legislative and the judicial powers of government, and the right to a fair trial. In the greater European community, these essential conditions are set forth-in article 6 of the European Convention on Human Rights which states that: “(...) everyone is entitled to a fair and public hearing within reasonable time by an independent and impartial tribunal established by law (...).”<sup>3</sup>

Before I discuss the Council of Europe’s efforts to promote ‘efficiency of justice’ and improvement of quality in member countries, it is necessary to analyze the Framework for Court Excellence<sup>4</sup> a global initiative to stimulate judicial improvement and modernization. As part of this Framework, a Consortium for Court Excellence was created in 2007 at the initiative of the Subordinate Courts of Singapore. Partners in this Consortium include the National Center for State Courts and the Federal Judicial Center – both based in the US; the Singapore Subordinate Courts; and the Inter-Australasian Institute of Justice. The Consortium is assisted by the special advisor of the CEPEJ (the European Commission for the Efficiency of Justice)<sup>5</sup> and experts from the legal vice presidency of the World Bank.

The function of the Consortium for Court Excellence is to improve the quality of courts based on ‘standard’ quality models established by the Malcolm Baldrige Quality Award, the European Foundation on Quality Management, the Singapore Quality Awards, and other quality systems such as the RechtspraakQ system in the Netherlands and the Rovaniemi courts in Finland. In 2008, work on the Framework for Court Excellence will include a ‘self assessment tool’ for the courts. Both the Framework and the tool can be used to identify areas for needed improvements.<sup>6</sup>

#### **2 The European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe**

The Council of Europe, founded in 1949, is one of the oldest intergovernmental organizations in the world. Its main aim is to protect and to promote human rights, the rule of law, and pluralist democracy in the 47 European Member States.<sup>7</sup> For promoting the rule of law the Council uses two mechanisms: (1) intergovernmental activities and (2) legal co-operation. The intergovernmental activities are primary based on the drafting of conventions (binding agreements between the Council of Europe and the ratifying member states) and recommendations (non-binding legal instruments for example on the independence of judges and prosecutors, the enforcement of legal decision and the use of mediation). Legal co-operation programs are developed to help beneficiary countries with institutional, legislative and administrative reforms. Mostly experts of the Council of Europe and staff members work together with governmental authorities to prepare and to introduce new or modify current legislation as well as to create an operational framework which can be used to implement legislative or organizational reforms. Examples of co-operation activities are: the training of members of schools for magistrates and the organization of workshops and seminars on specific topics (e.g., councils for the judiciary, judicial ethics, and court statistics), etc.

<sup>1</sup> World Bank, *Doing Business 2007: how to reform*, Washington.

<sup>2</sup> See for example: Hill (2007), *Rule of law inventory report: academic part*, The Hague.

<sup>3</sup> See: Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No 005), 4 November 1950 Strasbourg.

<sup>4</sup> International Consortium for Court Excellence (2007). *Court Excellence Framework (draft version June 2007)*, Singapore.

<sup>5</sup> The author of this article is one of the leading experts and advisors in drafting the framework for Court Excellence.

<sup>6</sup> Information regarding the Framework of court excellence, a users guide and a court self-assessment tool will be in the near future available on a special website of the organization.

<sup>7</sup> *Building Europe together on the Rule of Law* (Council of Europe, Strasbourg, 2006).

The European Commission for the Efficiency of Justice (CEPEJ) is one of the intergovernmental activities of the Council of Europe. The creation of the Commission was the outcome of the 23<sup>rd</sup> Ministerial Conference of Justice Ministers in London in 2000. Main topics of this conference were the problems in the length of (civil) court proceedings in Europe and improvements that could be made in the organization of the functioning of the judiciary. The central aim and tasks of the CEPEJ are described in Resolution 2002(12). The CEPEJ is established to improve the efficiency and functioning of the justice systems of member states 'with a view to ensure that everyone within their jurisdiction can enforce their legal rights effectively'.<sup>8</sup> It examines the results achieved by the different judicial systems in the light of the principles (access to justice, efficient court proceedings, status and role of legal professionals, administration of justice and management of courts, the use of information and communication technology) laid down in the Statute of the CEPEJ by using common statistical criteria and means of evaluation. Other tasks of the CEPEJ are to identify concrete ways to improve the measuring and functioning of judicial systems, assistance to member states, and, at the request of relevant steering committees of the Council of Europe, drafting recommendations for new -- or modifying existing -- legal instruments.

This article examines the CEPEJ's approach, through the work of experts in the field, for evaluating and improving the measurement and functioning of those systems. The latter task is illustrated by CEPEJ reports on the reduction of delays in court proceedings. The article concludes by describing CEPEJ's working group on quality.

### **3 Evaluation of judicial systems: past and present**

When the CEPEJ was created in January, 2002, one of its first tasks was to develop a methodology for comparatively evaluating the composition and functioning of European judicial systems. The CEPEJ accomplished this task through a small expert group composed of six experts from CEPEJ representative countries and a scientific expert. Based on a discussion and an expert paper<sup>9</sup> on the experiences and lessons to be learned from international studies evaluating judicial systems, the group developed a pilot questionnaire on judicial systems.

One of the group's first problems was how to overcome differences in legal terminology. In different countries, basic concepts like 'courts', 'lawyers', 'judges' and 'cases' can have different meanings, and the development of uniform definitions is an essential component of an effective judicial improvement scheme. A second problem was a lack of data. At a European level, there is a critical need for quantitative data on court performance (especially on the length of proceedings), and many member countries currently are unable to provide the required data. The final problem involved the requirement under European law the questionnaire be drafted in the two official languages of the Council of Europe (English and French). Experts in the governmental ministries in some countries are not conversant in either language. They were compelled to first translate the questionnaire to their own national language, then to translate the completed questionnaire into English or French for submission to the Secretariat of the CEPEJ. Such successive conversions can lead to interpretation problems.

Notwithstanding the difficulties, the experts were able to draft a pilot questionnaire in six months. The questionnaire was composed of 123 questions designed to provide an overview of the judicial structure and operation in the individual countries. The questionnaire sought both general information and specific details regarding the country's court system:

- Access to justice and to courts
- The functioning of the nation's court system and its relative efficiency
- Use of information technology in the court system
- Whether the judicial system provides litigants with a fair trial
- Information regarding judges, public prosecutors, and lawyers
- Information regarding the system's enforcement agents and the execution of court decisions

To facilitate the process of data collection, the experts decided that each country should nominate a 'national correspondent'. This official – usually a representative of a ministry of justice – should be responsible for co-ordinating the data-collection process in his or her own country. He or she is also the main contact person for the experts of the evaluation working group. The experts assessed the questionnaire to determine which questions should be modified and which questions should be removed. After the test round and the nomination of 'national correspondents', the questionnaire was disseminated at the end of February 2004.

<sup>8</sup> Resolution 2002(12) *Establishing the European Commission for the Efficiency of Justice (CEPEJ)*, Strasbourg.

<sup>9</sup> CEPEJ (2003)12, P. Albers *Evaluating judicial systems: a balance between variety and generalization*, Strasbourg.

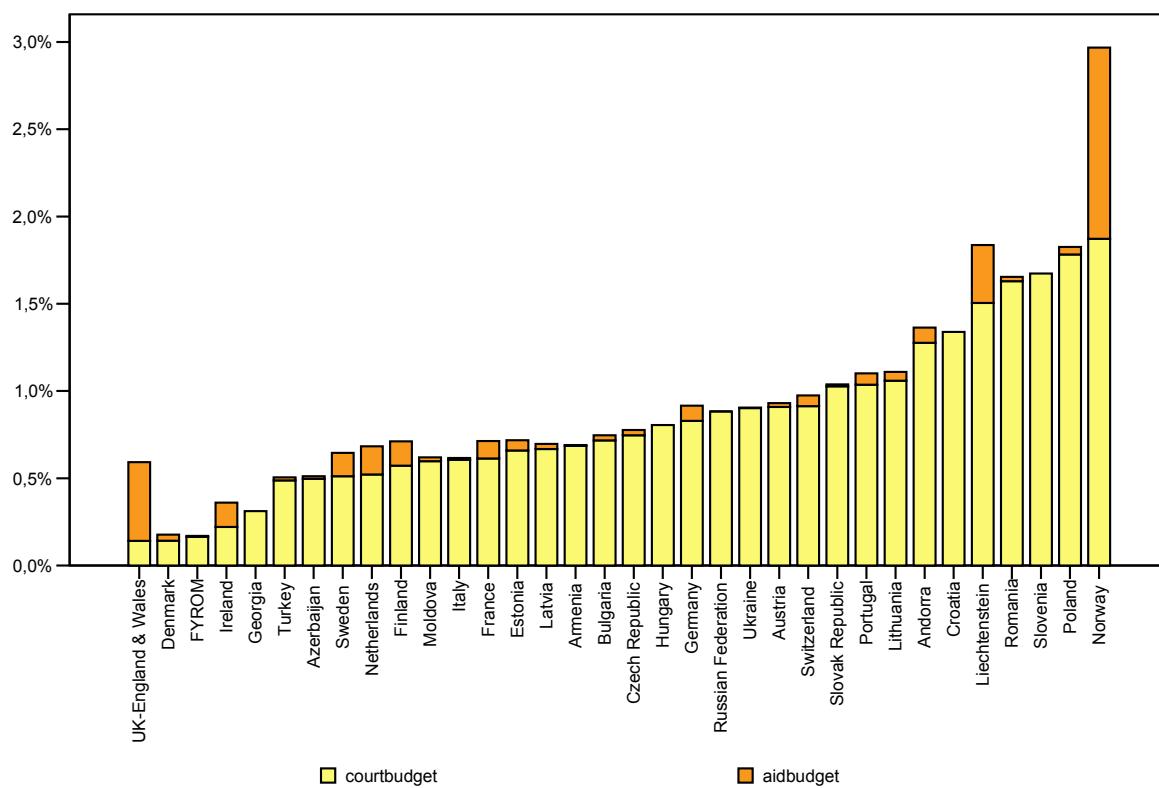
The initial report on European judicial systems was finalized and adopted by the CEPEJ at a plenary meeting in late 2004. The report was then adopted by the Committee of Ministers in early 2005. Finally, the report was presented at an international conference on judicial systems in The Hague in May 2005, where it was received by government officials, scientists, politicians and the media. Most commentators expressed the opinion that the CEPEJ had produced a unique document that provided the first broad overview of the composition and functioning of European judicial systems based on empirical data collected by the member states.

Governmental officials, the media and the judiciary were especially interested in the report because it addressed issues relating to the financing of courts, the salaries of judges and prosecutors, and the number of courts. As a rule, these issues are hotly debated in annual policy debates leading up to preparation of the annual budget for courts.

As a part of the evaluation exercise, comparative data was collected on national court budgets, on the number of courts of general jurisdiction, and the (gross annual) salaries paid to judges and prosecutors at the various tenure levels. In certain countries the report led to 'heated' debates between the minister of justice and the union of judges regarding the need to increase court budgets and the salaries of judges. The report also led to discussions regarding the need to reduce the number of court locations.

Details of the report are set forth below. Figure 1 presents expenditures on courts and legal aid as a percentage of the national budget. This figure clearly shows the disparities between nations regarding the allocation of financial resources for courts. As the reader might expect, especially for countries with the lowest expenditures, this information can be used in negotiations between the judiciary and the authority responsible for the financing of courts as a basis for seeking budgetary increases. The data on salaries and court locations can be used similarly. The figure allows comparisons that reveal whether a country has judges or prosecutors that earn a relatively low salary compared to their 'neighbours' or has too many small-sized courts.

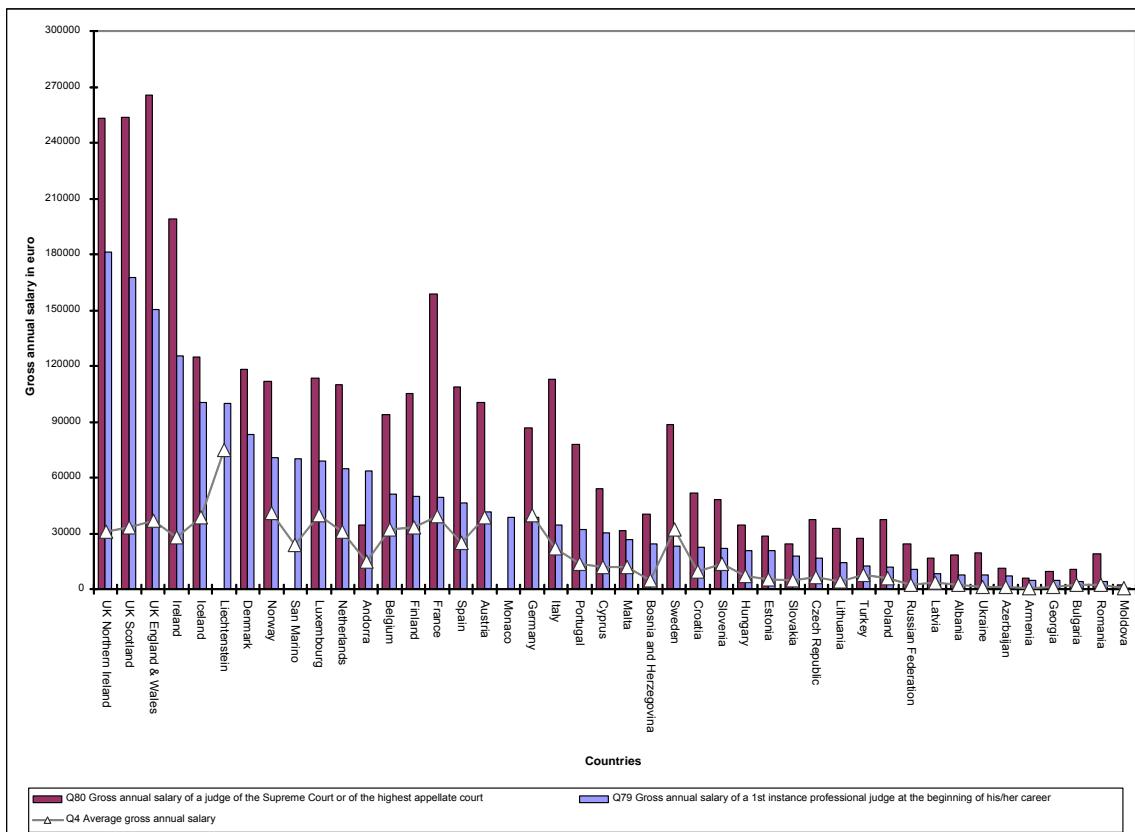
**Figure 1** Public expenditure on courts and legal aid as a percentage of the national budget (Source CEPEJ report 2005: 22)



The United Kingdom, Ireland and Iceland pay their judges best whereas poorer countries such as Moldova, Romania, Bulgaria and Georgia pay their judges a relatively low salary. Of course, to make a proper comparison between the countries, other factors need to be taken into account. For example, in the United Kingdom, there are a very small number of professional judges, and judges are typically recruited from a pool of experienced lawyers and solicitors. This is not the case for most of the other countries, where judges are recruited directly after finishing law school. In addition, there are differing standards of living between the various countries that necessitate differences in salary levels. For this reason,

comparative data need to be scrutinized cautiously. Nevertheless for countries that have similar standards of living, the salary data can be used by judges to seek salary increases appropriate to their responsibilities and professional status.

**Figure 2** Gross annual salaries of judges (CEPEJ data 2004 used)<sup>10</sup>



#### *Content and limitations of the first evaluation report*

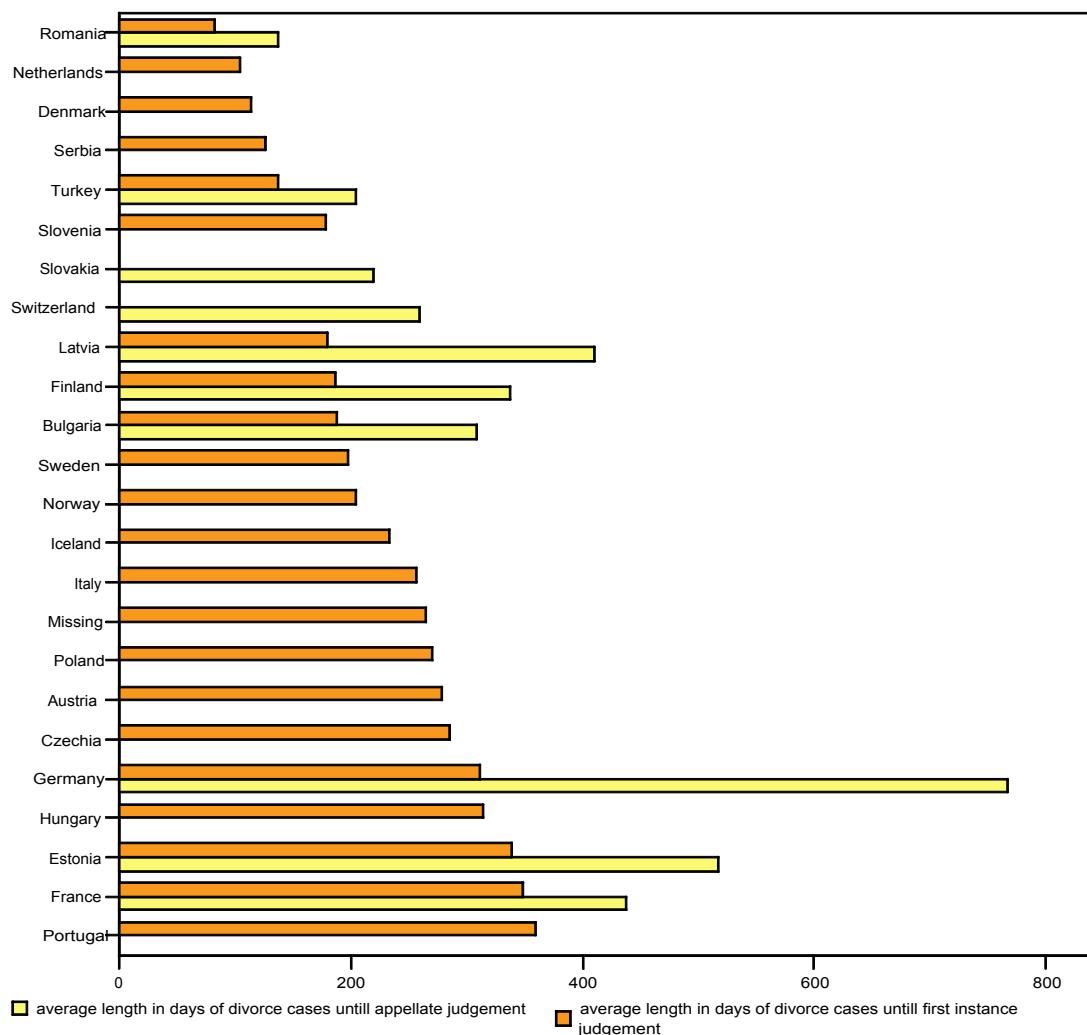
In addition to the topics mentioned, the report 'European judicial systems: facts and figures 2002'<sup>11</sup> contained a qualitative and quantitative description of the state of affairs on legal aid, the number of judges and court staff, the court performance of the courts in Europe, the functioning of public prosecution agencies and (private) legal professionals (lawyers, enforcement agents and mediators).

The comprehensiveness of the first report on judicial systems was limited because a majority of the countries did not in 2002 provide information on the average length of court proceedings -- the number of days required to move a case from filing to final judicial decision. Only a few countries could provide data regarding the number of days required for four standard-categories of cases: divorce; employment dismissal; intentional homicide; and robbery. Figure 3 presents information regarding the average length of court proceedings in-divorce cases.

<sup>10</sup> Similar information is presented in the first evaluation report on judicial systems with the 2002 data used.

<sup>11</sup> CEPEJ (2005), *European Judicial systems: facts and figures*, Strasbourg.

**Figure 3** The average length of divorce cases, from their deposit (Source: CEPEJ report (2005: 53)



#### *Preparation of the second evaluation round*

Immediately after the publication of the pilot report, the experts of the evaluation working group began preparing for the next round of evaluations. The first task was to revise the questionnaire based on lessons learned from the first evaluation round. Many questions were revised, some were removed, and new questions were introduced. For example, the experts tried to insert clearer definitions of the word "cases," to improve the design of questions relating to court performance, and to reduce interpretation problems by providing more complete explanations or by adding detailed descriptions of common legal terminology. Most new questions were based on topics suggested by the Committee of Ministers or the member states, for example, questions dealing with enforcement of judicial decisions, the arrangement and procedures for the protection of vulnerable persons, lawyers, and the notary.

The national correspondents were invited to begin the second round of data collection in September 2005, and the process was expected to last approximately one year. In October 2006, a new report was published that included data for the year 2004.<sup>12</sup> Compared with the first report, the second one contained more detailed and richer information relating to the financing of courts, public prosecution agencies and legal aid, as well as regarding the variety of judicial and extra-

<sup>12</sup> CEPEJ studies No. 1, *European judicial systems* (edition 2006: data 2004), Strasbourg. The full report can be downloaded from the website of the CEPEJ: [www.coe.int/cepej](http://www.coe.int/cepej).

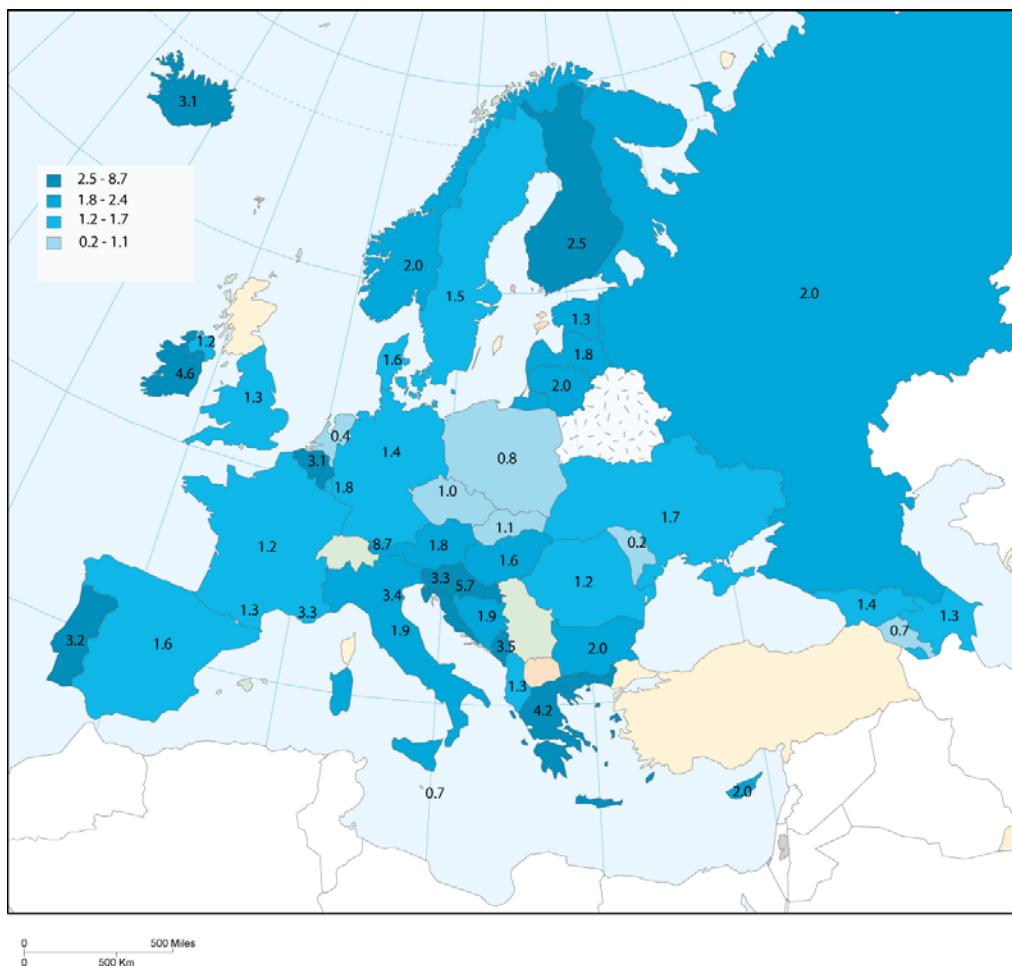
judicial tasks performed by courts. In certain European countries, courts are expected to perform tasks related to business registers, land registers and insolvency registers. Courts that perform these additional tasks may have significantly higher workloads. The second report also provided more detailed information regarding geographical access to justice because it differentiated between courts of first instance based on *geographical* court locations. This focus on geographical location allowed the report to eliminate confusion relating to the definition of the term "courts." For example, in some countries, a court might be defined as administrative entity or jurisdiction. In other countries, a court might be broadly defined to include a few judges or a panel of judges. By introducing the concept of geographical court locations, the report presented a more precise picture of geographical access to justice by reference to the number of court buildings. Figure 4 is a geographical map that shows the number of court locations per 100,000 inhabitants in Europe. The darker the colour grey, the more court locations can be found in the given countries.

When you take a close look at the map, you can see that a relatively high number of court locations can be found in certain countries. This is especially true in a certain number of Balkan countries, as well as in Portugal, Belgium, Greece, Ireland and Finland. The high numbers in such countries may be attributable to courts that perform extra-judicial tasks in the field of land and business registers.

#### *Impact of the report*

As has been said before, the report was launched at a press conference in Strasbourg in October 2006. Many articles were presented in newspapers describing the main important headlines of the report. Especially in France, much attention was given to the work of the CEPEJ. Most of the media reviewed the report positively. This was also the case with respect to the majority of policy makers and legal professionals. However, some politicians, i.e. ministers of justice, were 'sceptical' about the outcome of the report, indicated that the results described were 'outdated', and concluded that the comparison was based on 'things' that are not comparable at all.

**Figure 4** The Number of geographic court locations per 100,-000 inhabitants (Source: CEPEJ report 2006: 63)



## **4 Limitations of the CEPEJ methodology and suggestions for improvement**

Although the CEPEJ report provides an overview of the current state of judicial systems in Europe, the report suffers from certain deficiencies. First, the report does not provide real ‘evaluation’ of the functioning and composition of judicial systems in the Member States of the Council of Europe, but rather only a ‘photographic’ snapshot. In the future, it will be necessary to conduct more detailed and evaluative studies. Second, the report focused on the ‘supply’ side of judicial systems (i.e., the courts, judges, prosecutors and private legal professionals), and includes factual data (i.e., data regarding the number of courts, professional judges, the budget of courts and prosecution agencies, the court performance), but omits information related to the efficiency of justice -- information regarding the perceived level of satisfaction with respect to the services delivered by the courts, legal professionals, and other legal institutions. The report focuses only on how judicial institutions are organized and functioning. This in contrast with, for example, the ‘Governance Matters’ reports of the World Bank where information on the *perceived* rule of law is presented, based on perception surveys of the users of the system.<sup>13</sup> Third, the report suffers from concerns regarding the quality of data. The experts obtained quantitative and qualitative information from only one source per country -- the national correspondent responsible for data collection in his or her country. Because the national correspondents provided differing levels of detail regarding court statistics and justice indicators, and because they exercised varying levels of quality control regarding of the data used, the quality of the data from the different countries may vary. Some countries exercised a high level of quality control; others did not. Finally, the report suffered from the use of paper-based questionnaires. The first two questionnaires were simple – not professionally designed - Microsoft® Word documents. From the viewpoint of readability, major improvements could have been made in terms of the layout of the questionnaire. Because the questionnaires were drafted as Microsoft® Word documents, all data had to be manually registered in databases. Compared with an electronic questionnaire, the process was time-consuming and prone to registration errors.

To address the limitations described, several improvements are currently being implemented. First, in the beginning of 2007, the experts issued a call for research projects designed as launched to examine the CEPEJ data further and to identify possibilities for evaluation. As a result, several universities and research institutes in Europe developed study projects relating to access to justice, the enforcement of judicial decisions, delays and length of proceedings, monitoring and evaluation of courts, the use of information and communication technology, training and education of judges and prosecutors, justice and cultural diversity in Europe, and administration and management of courts. By the end of 2007, a number of reports with additional information on European judicial systems will be available.

A second suggestion for improving the quality of data is to ask the member states to review and evaluate the quality of the CEPEJ data. One specific member state has proposed that, on a voluntary basis, during the next evaluation round, a small group of countries be evaluated by a team of experts from other countries. The aim of the evaluation is to review the quality of the justice statistics at a national level which could lead to the improvement of the consistency and quality of the data. At the moment, this proposal is being discussed between representatives of the CEPEJ.

Another suggestion relates to the ‘paper-based’ questionnaire. During the third evaluation round, scheduled for the fall of 2007 and the winter 2008, a web-based internet questionnaire will be used. As a result, national correspondents will be able to fill in the required data using web-based tools. Parts of the questionnaire can be forwarded electronically to different justice institutions as well. Even for the federal countries, the data collection workload will be reduced by electronically transmitting the questionnaire to regions and aggregating the data at the national level once they are received from the individual regions.<sup>14</sup> In addition to these improvements, further modifications have been made in the questionnaire and the explanatory note in an effort to reduce interpretation problems and to increase the uniformity of the data received.

## **5 Reducing delays and the management of judicial time**

Another important task of the CEPEJ lies in the area of reducing court delays and managing judicial time. In 2003, a working group on ‘delays’ invited experts to draft a report on criteria that can be used to determine ‘reasonable’ length of proceedings and on factors which may influence the length positively or negatively. The researchers Langbroek and Fabri

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<sup>13</sup> On the other side, the World Bank study is limited to the demand side of the Rule of Law. No factual data is used on the ‘supply’ side. See for example: D. Kaufman, A. Kraay, M. Mastruzzi (2007) WPS4280 study, *Governance Matters VI: aggregate and individual governance indicators 1996 – 2006*, Washington.

<sup>14</sup> Switzerland and Germany have developed a ‘modified’ version of the electronic questionnaire in cooperation with the IT-department of the Council of Europe. With this version (in the German language) it will be possible to collect information at the level of the individual ‘Länder’ or ‘Cantons’.

(2003), relying on research by Mahoney (1988) and Steelman (2000), identified the following factors which have a positive effect on the length of court proceedings:

- Judicial commitment, leadership and accountability mechanisms (e.g., a court president who promotes activities designed to reduce the length of proceedings);
- Involvement of court staff and lawyers efforts to reduce the length of proceedings;
- Systematic supervision of case progress by court personnel;
- Court efforts to define goals and standards that demonstrate best practices, and that allow for performance comparisons between courts;
- Monitoring of cases by an information system (this should include the progress of cases, the inactivity of cases, the workload of the courts, etc);
- A case management approach which permits active management by the court of a case as it progresses from filing to disposition;
- A policy that prohibits unjustifiable continuances, encourages firm trial dates, and utilizes a backup judge' system for trials;
- An individual judge assignment system;
- Judicial and staff education and training.<sup>15</sup>

In 2004, this list of factors, combined with the researchers' recommendations to stimulate future research on the features of court proceedings, the management of courts and the governance setting of courts, was used by the CEPEJ to create in 2004 a Framework program on 'the optimum and foreseeable timeframes'.<sup>16</sup> The Framework document starts with the idea that court cases should 'be processed in optimum and foreseeable timeframes,' and that it is the responsibility of national jurisdictions to take adequate measures to reduce the length of proceedings. The Framework suggests that excessively long proceedings may lead to corruption in the judiciary. For example, parties have paid money to judges or court clerks to speed up proceedings (i.e. to give this case a higher priority) or even to slow down a court proceeding.

A lack of financial resources is not always a sufficient justification for court delays. Sometimes, changes in the internal working processes of courts can significantly reduce the length of court proceedings even without an investment of additional financial resources.

The Framework program is designed to guide in drafting measures for reducing court delays. However, when it comes to these measures three points should be taken into account:

1. Each Member State must find a balance between the resources which can be allocated to justice, the good management of these resources, and the objectives set for justice.
2. There should be efficient measuring and analysis tools for measuring timeframes available, and these tools should be defined by the stakeholders through consensus.
3. A careful balance should be struck between procedural safeguards, which necessarily entail the existence of lengths that cannot be reduced, and a concern for prompt justice<sup>17</sup>.

Bearing in mind these three principles, 18 lines of action were formulated, which may be helpful for countries in the fight against delays. Certain actions require more financial resources and an improvement of the quality of legislation, while others aim at improvements of legal proceedings and the introduction of specific measures to change the internal organization of courts. The 18 principles listed in the Framework program include:

1. Obtaining sufficient resources;
2. Improving the quality of legislation;
3. Improving timeframes;
4. Defining and monitoring optimum timeframe standards for each type of case;
5. Improving statistical tools and developing information and communication strategies;
6. Identifying pilot courts to test new approaches for the reduction of length of proceedings;

<sup>15</sup> Rev Marco Fabri and Philip Langbroek, *Delays in judicial proceedings: a preliminary inquiry into the relation between the demands of the reasonable time requirements of article 6.1 European Convention on Human Rights*, CEPEJ 20 (Strasbourg 2003).

<sup>16</sup> *A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe*, CEPEJ, 19 Rev 2, (Strasbourg 2004).

<sup>17</sup> CEPEJ (2004) 19 Rev 2, p. 7.

7. Allowing adjustment of timeframes;
8. Acting on the number of cases dealt with by the court by ensuring an appropriate use of appeals and other applications;
9. Improving the quality of proceedings;
10. Defining priorities in case management;
11. Better organizing trials to reduce waiting time, while paying special attention to victims and witnesses;
12. Establishing a procedure for re-activating pending cases;
13. Creating more flexible rules governing the territorial jurisdiction of first instance courts;
14. Involving the relevant authorities in the administration of the courts;
15. Developing programs for the training of judges and prosecutors and the professions generally;
16. Organizing the relationships between the courts and lawyers;
17. Improving the monitoring of, and compliance with, time-limits established by judicial experts; and,
18. Defining the modalities for having bailiffs, clerks/Rechtspfleger, notaries and all other professions involved in justice administration.

## **6 The network of pilot courts**

One of the first outcomes of the Framework program was the introduction of a network of pilot courts in April 2006, the first meeting of which was held in Bucharest. The network was based on the assumption that each country would nominate one of its own courts as an example of a court where best practices are used to reduce the length of court proceedings. Representatives of this network, mostly judges or court staff, exchange information during annual meetings. They also discuss other issues through an electronic discussion board maintained on the CEPEJ's website. Network members can post their questions on this electronic board and receive comments or reactions from other members.

The network is not only the central forum for exchanging best practices; it also is a 'sounding board' for draft proposals created by the CEPEJ's working groups. For example the members of the network have given their opinions on studies on ADR and documents concerning the 'quality' of courts and judges. The last two issues are reviewed at the end of the article.

## **7 The taskforce on Delays (TF-DEL)**

Between 2005 – 2006, a Special Taskforce on Delays composed of six expert members of the CEPEJ was asked to examine the causes for delay and to suggest solutions for reducing the length of court proceedings. Pursuant to its mandate, the Task Force produced a 'Time Management checklist' in 2005<sup>18</sup> that provided a practical guide for courts to analyze whether improvements could be made in the timeliness of proceedings of their proceedings. The check list encouraged courts to consider the following five indicators:

1. An assessment of the overall length of proceedings. The Task Force recognized that proper time management should focus not just on-the duration of the individual stages of a proceeding, but also on the total duration of a proceeding from start to finish, including enforcement-if applicable;
2. For the purpose of assessment, as well as for planning and transparency, standards and targets for the optimum duration of proceedings should be determined and made available to the users of the system.
3. In order to articulate standard for the realistic and appropriate planning of standards, a court must-cluster case categories with respect to complexity and average length.
4. The most important and typical stages of judicial proceedings should be recorded, monitored and analyzed.
5. The courts or the judicial system as a whole should establish a mechanism for the prompt identification of cases with an excessive duration, and establish a system to remedy the situation and to prevent further dysfunctions.

The Compendium of best practices provides an overview of solutions that countries and courts can use to reduce delays and shorten judicial proceedings. Some of the suggested best practices involve the setting of realistic and measurable timeframes. For example, the Finish court in the city of Rovaniemi has agreed that all cases should be resolved within one year. The Compendium also recommends the creation of small claims, fast track and multi-track procedures in the courts, and suggests that an additional recommendation that can be found in the compendium is that time frames be established and enforced. For example, in some courts, the chief judge or a court of appeal is expected to intervene when timeframes regarding the duration of court proceedings are not met. The Compendium also includes examples of

<sup>18</sup> CEPEJ (2005), *Time management checklist*, Strasbourg.

procedural case management policies, including case processing rules, limitations of the number of hearings, a policy for reducing adjournments, the use of standard templates for 'bulk cases', and video and audio conferencing techniques. The last issue discussed in the compendium concerns caseload and workload policies which may include monitoring of court workloads, the stimulation of ADR (outside the courts), the limitation of extra-judicial activities of the judge, and the increased use of a single judge in court sessions instead of a panels of judges.

The second TF-DEL report, written by French Judge Calvez is more analytical. It analyzes the main causes for delays in proceedings of the European Court of Human Rights in terms of 'reasonable time' frames for various alleged violations of article 6 of the European Convention on Human Rights, and suggests general norms and standards for the duration of judicial proceedings in the European Court on Human Rights.<sup>20</sup>

The report suggests that the *main* causes for delays involve the following factors: the territorial distribution of court jurisdiction, transfers of judges, insufficient numbers of judges, the systematic use of multi-member tribunals (benches), backlogs of cases, complete inactivity by judicial authorities, systematic shortcomings in procedural rules, failure to summon parties or witnesses, unlawful summons, late entry into force of legislation, disputes about the jurisdiction between administrative and judicial authorities, late transmission of the case file to the appeal court, delays imputable to barristers, solicitors, local and other authorities, judicial inertia in conduct of cases, involvement of expert witnesses, frequent adjournment of hearings, excessive intervals between hearings, and excessive delays before the hearing.

More specific for *civil proceedings*, the Report suggests that delays are related to a failure to use the courts' discretionary power and the absence or inadequacy of rules of civil procedure.

The Report suggests that criminal court cases may be delayed due to: structural problems in the organization of prosecution service, decisions to join or not join criminal cases, a failure of witnesses to attend hearings, and the dependence of civil proceedings on the outcome of criminal proceedings.

On the basis of her analysis of decisions of the European Court, and taking into account of the main causes for delays, Judge Calvez drafted the following criteria for assessing the 'reasonableness' of the duration of court proceedings in Europe:

- § A total duration of no more than two years for normal (non-complex) cases was defined as reasonable. If proceedings last more than two years, the Court should examine the case closely to determine whether the national authorities have shown due diligence in the process;
- § In priority cases, the court may depart from the general approach, and find violation even if the case lasts for fewer than two years;
- § In complex cases, the Court may allow longer time, but should pay special attention to periods of inactivity that are clearly excessive. Even if a longer duration is justified, it will rarely be the case that more than five years are justifiable, and will almost never that eight years of total duration is considered reasonable;
- § The Court did not find that proceedings were of excessive duration, despite manifestly excessive duration, only when the applicant's behavior contributed to the delay.

The third report of TF-DEL was a research report conducted by Smolej and Johnsen on projects implemented in Denmark, Sweden, Norway and Finland in the area of reducing the length of proceedings.<sup>21</sup> The report contained two parts. The first part involved a review of proposals and policies for reducing the length of proceedings in Northern European courts. It describes the use and determination of timeframes, with special attention to the creation of specific procedures for priority cases. The report also contains a typology of deadlines as well as time management strategies' (e.g., court leadership, promotion of mediation, the need for a preparatory meeting and the setting of a date and time for the main hearing at an early stage, etc.).

The second part of the report contained a description of a Norwegian project designed to produce swifter criminal justice. The study distinguished between *action time* and *standstill time*. Action time is the time spent working on a case. Standstill time is the time when nothing happens. The researcher Johnsen reported that the average *action time*, beginning with the report of the crime and continuing through the prosecutorial decision, varied between two and five days between police

<sup>20</sup> CEPEJ studies No. 3 (2006) F. Calvez, *Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights*, Strasbourg.

<sup>21</sup> CEPEJ studies No. 2 M. Smolej and J.T. Johnsen (2006), *Time management of justice systems: a Northern Europe study*, Strasbourg. In this report various definitions on the length of proceedings are applied (mostly it is meant as the time in days spend from deposit of a case until the final judicial decision). Sometimes the authors are also using the terminology of timeframes and processing time without clear definitions.

districts and crime areas. By contrast, the *standstill* time varied between 43 and 309 days. In other words, Johnson that action time only constituted a minor part of the total processing time, and that standstill time counted for more than 90 percent of the total processing time! The-report suggested measures for reducing case processing time, especially by focusing on measures for reducing standstill time.

## 8 SATURN (Centre for judicial time management)

In the beginning of 2007, the SATURN Center (Study and Analysis of judicial Time Use Research Network) was 'launched'. This center will work on the following issues:

- a. Analysis of existing timeframes in the member States (timeframes per types of cases, waiting times in the proceedings, etc.);
- b. Providing member States with knowledge and analytical tools of judicial timeframes for proceedings;
- c. Providing guidelines with a view to reforming judicial timeframes (see: CEPEJ (2007)1\_en).

At the first meeting of the working group of SATURN, the general working principles were chosen. One of the first activities that will be carried out by SATURN is drafting a questionnaire on common case categories, the availability of information on length of proceedings and timeframes, and definitions that are used in the various courts to measure length of proceedings. Currently, the draft-questionnaire is being tested among a small group of pilot courts. During 2007 and after the second meeting of SATURN, the final version of the questionnaire will be sent to all the members of the network of the pilot courts. The outcome of this exercise will contribute to a better understanding of the categorization of cases that are used in the various courts in Europe, the problems, solutions and definitions applied to measure the length of court proceedings. A second outcome of the evaluation carried out by SATURN is connected with the evaluation scheme on judicial systems. In particular, the part on court performance might be improved in such a manner that, in the long run, comparable information will be available at a European level on the court performance (including key indicators on the length of proceedings).

## 9 Quality and Mediation

The CEPEJ's latest activities are focused on the topics of quality and mediation. For example, the CEPEJ has suggested that European countries use alternative dispute resolution and mediation to reduce the workload of the courts and offer parties alternatives to litigation. Due to the importance of these suggestions, CEPEJ appointed a special working group to study these issues.

In 2007, the working group submitted a report on the impact of three Recommendations of the Council of Europe regarding mediation in the member states.<sup>22</sup> With respect to Quality, the working group (GT-QUAL) considered a draft list of items that must be taken into account by nations seeking to improve the quality of their courts at its February 2007 meeting.<sup>23</sup> The draft list included proposals relating to the efficiency of court hearings, enforcement of decisions, quality of services, and case management. In addition to this document, I drafted a discussion paper on court quality<sup>24</sup> which offers an analytical model to measure the quality of the judiciary from three perspectives: the national perspective, the perspective of the individual courts, and the perspective of the judges.

## 10 Assistance Projects

As noted in the introduction to this article, the CEPEJ did not limit itself to the tasks of information collection and exchange between countries regarding the composition and functioning of judicial systems. During the last five years, the CEPEJ also assisted many countries in improving their judicial systems. For example, a seminar on mediation was held in Malta, and three experts were asked to draft a report on their mediation experiences by Switzerland.<sup>25</sup> The Netherlands organized a special event in the year 2000 that resulted in a report on the territorial competence of courts.<sup>26</sup> Likewise, the

<sup>22</sup> CEPEJ (2007)12, *Analysis on assessment of the impact of Council of Europe recommendations concerning mediation*, Strasbourg.

<sup>23</sup> CEPEJ GT-QUAL(2007)4Prov3, *Draft scheme for promoting the quality of justice [guidelines]*, Strasbourg.

<sup>24</sup> CEPEJ GT-QUAL (2007)6, *Reflections on quality*, Strasbourg.

<sup>25</sup> CEPEJ 2003(23)25D2E *Mediation*, Strasbourg. CEPEJ (2004) 14, *Advancing legal and judicial approaches to mediation in civil, family and commercial matters on Malta*. Strasbourg.

<sup>26</sup> CEPEJ (2003)18 D3, *Territorial jurisdiction*, Strasbourg.

Russian federation studied issues relating to the non-execution of judicial decisions against the state.<sup>27</sup> Not only did the specialized working groups and SATURN focus on court delays and the duration of judicial proceedings, but these subjects were also addressed at two meetings that held in Croatia and Slovenia.<sup>28</sup>

## 11 Conclusion

Five years after the CEPEJ was created, much has been accomplished at the European level. The CEPEJ has produced considerable comparative information on the composition and functioning of judicial systems at a national level as well as at the level of individual courts. In addition, the CEPEJ stimulated debate between courts regarding quality of justice issues, and also resulted in the creation of a network of pilot courts designed to test out ideas for improving the efficiency and quality of justice.

The success of the CEPEJ would not have been possible absent the active participation and co-operation of the member states of the Council of Europe and the involvement of many observers at (plenary) meetings of the CEPEJ. These observers include the International Union of Judicial Officers, European associations of judges and court clerks, the American Bar Association as well as other international organizations such as the European Commission and the World Bank.

Thus far, the CEPEJ has accomplished nearly five years of successful work. Hopefully, this success will continue into the future. The CEPEJ provides a vehicle for disseminating knowledge on the subject of administration justice for the 800 million inhabitants of Europe, and has helped achieve the goal of delivering justice within a reasonable period of time by an independent tribunal.

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<sup>27</sup> CEPEJ (2005) 8, *Examination of problems related to the execution of decisions by national civil courts against the state and its entities in the Russian Federation*, Strasbourg. CEPEJ (2006) 11, *Non-enforcement of court decisions against the state and its entities in the Russian Federation: remaining problems and solutions required*, Strasbourg.

<sup>28</sup> As an expert I have drafted together with other experts a paper on court delays and the experiences of the Netherlands in reducing the length of proceedings. See: CEPEJ (2005)7, *Practical ways of combating delays in the justice system, excessive workloads of judges and case backlogs*, Strasbourg.

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## **Biography**

Mr. Albers is a special advisor to the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe (secondment). He is responsible for evaluating judicial systems, and assisting countries to reduce court delays. As a former expert, chair of the evaluation working group, and member of the Bureau of the CEPEJ, he helped develop the methodology for evaluating judicial systems in Europe based on empirical data. His work resulted in two reports on judicial systems (2005 and 2006). Also, outside Europe, he has participated in comparative judicial assistance projects. For example, in 2006, he participated in a project of the American Bar Association (CEELI) and the Arab Council of Judicial and Legal Studies (ACJLS) designed to create justice sector benchmarks for the Middle East and North African countries. At the moment, he is serving as an expert/advisor to a project working to develop a global 'framework for Court Excellence' (a model to assess the quality of courts). This framework is supported by a 'Consortium for Court Excellence' (composed of representatives of: the Singapore Subordinate Courts, the National Center for State Courts, the Federal Judicial Center, and the Australasian Institute of Judicial Administration).

As a part of his function as special advisor, he represents the CEPEJ in many forums and conferences. In addition, he gives lectures at training courses for judges, court staff and representatives of ministries of justice working in Eastern European and MEDA (Middle East and Northern Africa region) countries. In addition to these tasks he is responsible for the subject of 'e-justice' in the CEPEJ and co-operation activities with the European Union in this field.

