The European Commission For The Efficiency Of Justice (CEPEJ) Reforming European Justice Systems – "Mission Impossible?"

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1. Introduction

My paper concerns the Council of Europe's (*CoE*) work to improve justice in Europe. It explains and exemplifies a type of policy that the Council applies in its strive for implementing the demands of the European Human Rights Convention (*ECHR*) on the judicial systems in Europe.

The Convention obliges all member states to put up efficient systems for remedying violations within their own national legal systems. If such systems are missing or do not provide sufficient redress, member states now accept that everyone is free to bring their case before the European Court of Human Rights (*ECtHR*). Over the years the Court has produced extensive case law on violations of the provisions that protect people's access to justice that develops and concretizes the general wordings used in the text of the ECHR.

However, international complaint mechanisms are only one type of instrument for disseminating human rights. In addition to judicial instruments like the ECtHR, CoE also uses policy vehicles for implementation of human rights like the one I will focus upon; namely the *European Commission for the Efficiency of Justice* – usually abbreviated "*CEPEJ*" – from the French version of its name. As one of several committees of CoE, it focuses on the development of the judicial systems of the member states.[2]

I start my paper by (1) pointing out two main factors that explain the establishment of CEPEJ, namely the provisions on access to justice in the ECHR and the large volume of complaints forwarded to ECtHR. I then outline CEPEJ's organization and working methods. (2) The next three parts contain deeper analyses of the two most prioritized tasks of CEPEJ at present; first the development of judicial statistics for Europe (3) and second its combat against delay (4). The third main part discusses one of CEPEJ shortcomings so far, namely the lack of attention to legal aid (5). The last part contains viewpoints on the powers and vehicles that CEPEJ possesses to fulfil its tasks (6) and how effective they are.

2. CEPEJ and Why It Was Established

2.1 Human Rights Background

CoE established CEPEJ in 2002, making it operational from 2003, as a means for improving the judicial protection granted by ECHR, especially in:

- article 6: Right to a fair trial;
- article 5: Right to liberty and security;
- article 13: Right to an effective remedy.

The human rights doctrine on access to justice is essential to the work of CEPEJ. Human rights bodies have repeatedly said that human rights should be effective and work for everyone, including the poor. Several major principles for the organization and functioning of judicial systems in the member states can be read from the wording of ECHR art 6. As framework of this paper I will emphasize that

- the courts' competence and the organization of the court system should be established by law;
- case handling should be timely;
- everyone should have access to court when needed;
- everyone is entitled to representation before courts on an equal footing, ("equality of arms") and to legal aid when necessary for proper representation.

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[2] Abbreviations used in the text:
Council - Council of Europe; also abbreviated *CoE*
CEPEJ - European Commission for the Efficiency of Justice
(European) Convention - The European Convention on Human Rights (1950); also abbreviated *ECHR*
(European) Court - The European Court on Human Rights; also abbreviated *ECtHR*
All CEPEJ documents referred to are downloadable from: http://www.coe.int/t/dg1/legalcooperation/cepej/default_EN.asp? unless otherwise stated.

2.2 Timeliness at the European Court of Human Rights

We might assume that how well article 6 was implemented in the national justice systems of the founding member states varied significantly in 1953 when ECHR became operational. Although justice improvement has been a significant part of the human rights policies of the Council of Europe since the start, the triggering event for establishing CEPEJ in 2002 was the increasing problems that ECtHR experienced with timeliness. The Court had for long received complaints in tens of thousands each year; resulting in a steadily increasing backlog despite an extensive screening.

Some figures might provide an impression of the problems that triggered the establishment of CEPEJ. According to its president, the Court had 44 000 incoming cases in 2005, and a caseload of 82 000, of which 72 000 qualified as backlog. Compared to three years before, the increase of incoming complaints was more than 7 000.[3]

Analyses showed that the bulk of the complaints related to alleged violations of Article 6 on fair trial, with by far the largest category being violations of the entitlement to trial 'within reasonable time'. It appeared as a detrimental paradox that the Court – designed to be the prime protector of swift trials – was itself unable to comply with the requirement.

Most complaints came from jurisdictions in Southern Europe, and in Eastern Europe that had joined CoE after the dissolution of the Soviet Union.[4] One theory is that a Mediterranean legal culture exists that for several reasons has become insensitive to the evils of delay.

2.3 Organization, Tasks and Working Methods of CEPEJ

The steering bodies of CoE wanted to remedy the problem both by making national remedies against human rights violations more effective, and by removing the causes for the complaints by improving the quality and speed of the member states' judicial systems. Resolution *(2002)12* on establishment[5] outlines five major tasks for CEPEJ:

1. examine results achieved by the different judicial systems by using common statistical and evaluation methods;
2. define problems and areas for improvements and exchange views on how the European judicial systems work;
3. develop better tools for analyzing judicial systems and models for improving them that are well adapted to the existing problems in the member states;
4. assisting individual member states on their request in how better to comply with the human rights requirements;
5. suggest, if necessary, that the relevant steering committees of the Council of Europe draft new legal instruments or amendments to existing ones.[6]

The bodies of CEPEJ are**:**

- a plenary with representatives from all member states that meets twice a year;
- a bureau with four members elected from the representatives that function as the board of CEPEJ;
- One to three (or more) working parties or working groups with a maximum of six expert members. They are responsible for developing tools and instruments necessary for doing the tasks of CEPEJ and propose them to the plenary for adoption;
- a secretariat provided by the Secretary General of CoE.[7]

Pursuant to the resolution, CEPEJ should develop indicators, collect and analyze data and define measures and means of evaluation. It might also issue reports containing statistics, best practice surveys, guidelines, action plans, opinions and general comments. The Commission might establish collaboration with research groups and invite qualified persons, specialists and NGOs for exchanges, arrange hearings and create networks of professionals working in the justice area.[8]

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[3] Cited from oral information by the president of the Court, L. Wildhaber, presented at the CEPEJ Plenary on 7-9 December 2005, recorded by the author. No definition of "backlog" was offered. According to the Court's Annual Report 2005 the number of applications lodged in 2002 was 34 509 and 41 510 in 2005. (European Court of Human Rights "Annual Report 2005" Registry of the European Court of Human Rights Strasbourg 2006 p 121.) The Annual Report 2005 does not give figures on caseload or backlog.

[4] The forty-seven countries of CoE cover a wider area than the traditional geographic concept of "Europe". Turkey is for instance member.

[5] COUNCIL OF EUROPE COMMITTEE OF MINISTERS Resolution Res(2002)12 establishing the European Commission for the efficiency of justice (CEPEJ). Adopted by the Committee of Ministers on 18 September 2002 at the 808th meeting of the Ministers' Deputies.

[6] Res(2002)12 Appendix 1 article 1.

[7] Res(2002)12 Appendix 1 article 7.

[8] Res(2002)12 Appendix 1 article 3.

The resolution did not suppose CEPEJ to function as a supervisory or monitoring body,[9] which means that independent *control* of the member states' fulfillment of their human rights obligations on efficient justice is outside its scope of work. Improvements presuppose voluntary acceptance and collaboration from the states. Still data gathered by CEPEJ – for example on unrepresented poor parties in trials – might indicate that human rights obligations are not fulfilled see part 5.

When handling complaints on violations of ECHR article 6, the Court has repeatedly stated that article 6 (1) of the Convention imposes on the Contracting States the duty "to organize their judicial systems so that they can meet its requirements."[10] Member states are free to choose differing strategies for fulfilling their obligations, but their national systems must work in practice.

CEPEJ should provide them with sufficient tools and encourage them to use them. Ambitions appeared far reaching. Although ECHR only provides *minimum* rights that governments must not violate, states are free to establish better systems. CoE often encourages such developments. Through CEPEJ it launched an ambitious policy strategy for improving the efficiency of European judicial systems on the assumption of voluntarily acceptance by the member states. Its goals concerned improvements well above the minimum level suggested by the case law of ECtHR in both the quality and the speed of courts.

CEPEJ is now in its tenth year. Its main general fields of work so far have been:

- statistical evaluation of the judicial systems of the member states;
- identifying and developing measures to reduce delays and improve time management;
- bettering the quality of the overall management of judicial work;
- improving the enforcement systems;
- extending the use of mediation as a means to reduce court use.

In the present activity program for 2012-2013, CEPEJ focuses upon the three first fields. The main activity aims at all member states. However, targeted bilateral cooperation at the request of one or more states on selected issues, like improving their enforcement or appeal systems, is also part of the program. Promoting the implementation of tools already developed by CEPEJ has priority over developing new ones.[11]

My main question is how well CEPEJ has fulfilled the main goals of its mandate. As the title of my presentation suggests, CEPEJ is not purely a success story. Firstly, the mandate is extensive and the challenges are huge. Secondly, resources are limited. Thirdly, willingness and capacity to reform their justice systems vary significantly among the member states. Obviously the present activities do not cover all parts of the mandate. Expressively and tacitly priorities have been made. Limitations in CEPEJ's approach can easily be pointed out:

> Emphasis on legal aid, which is paramount to access to judicial systems for the lower classes, has been limited. Alternative channels for handling legal problems, like informal problem solution, administrative procedures, ombudsmen, consumer complaint systems, business arbitration, etc. have not been in focus, but mediation has received some attention. Neither has the supply of legal advice as a means for a rational use of the courts drawn much interest. Nor has criminal justice received much attention. CEPEJ has focused more on the judicial systems in Southern and Eastern Europe than on the Western and Northern systems since they are supposed to have significantly larger deficits. The latter are mainly used as models and standards of improvements for the less efficient ones.

2.4 Further Analysis

In the rest of the paper I limit my analysis to three issues. I think that a more in depth analysis of selected tasks will give you a better picture than attempting at an overview of all CEPEJ activities.

I start with the two tasks that CEPEJ has put most of its efforts into, and discuss what has been achieved. The first one concerns the collection and issuing of reliable statistics on the main characteristics of the European justice systems. The second is about developing strategies for better timeliness without reducing judicial quality. My point is to show what CEPEJ has and might achieve in its two most prioritized areas. My third issue concerns legal aid. I also want to exemplify an important challenge not prioritized in practice by CEPEJ during its first decade of work.

I will end with some reflections over the powers of CEPEJ and whether they are sufficient for its mandate.

[9] Res(2002)12 Appendix 1 article 2.
[10] See as an example Hadjidjanis v Greece (Judgment of 28 April 2005).
[11] See CEPEJ(2011)6 2012-2013 Activity Programme of the CEPEJ pa. 8.

3. European Judicial Survey

3.1 Method and Challenges

A coherent reform policy presupposes a precise understanding of how the different judicial systems in Europe work and tools that can be used to locate problems. As recommended in its mandate, one of CEPEJ working group[12] has gathered statistical data for measuring and evaluating the performance of the judicial systems in Europe. Starting in 2004, it has become a comprehensive exercise.

An extensive questionnaire is sent to all member states every second year. The last European survey of judicial systems was published in 2012 from 2010-data, gathered from 46 of the 47 member states.[13] Only Lichtenstein is missing.[14] Together the 46 jurisdictions comprise more than 800 million people.[15] The result is an extensive report of more than 400 pages, packed with information, available at the website of CEPEJ.[16] It boasts of some 2,5 million data entries,[17] and contains statistics on:

- public expenditures on judicial systems (courts, prosecution, legal aid);
- access to justice and the users of the courts;
- fair trial, workload and court efficiency (organization, caseloads, backlogs, enforcement);
- ADR (alternatives to court handling);
- professional actors (judges and staff, prosecutors, lawyers, notaries, interpreters);
- major trends in the development of European judicial systems.[18]

A comparative study of 46 jurisdictions is a demanding task with vast methodology problems.[19] From a scientific point of view, there are certain peculiarities connected with studies carried out under the auspices of an international organization of states:

> All data in the survey has to be collected through official channels. The ministries and court administrations in the member states appoint national correspondents that provide the information and answer the questionnaire. If research or other sources show differing data, the study has to stick to the official version.

However, significant efforts have been made to make the received information as reliable as possible.[20] CEPEJ might question the received information in private and the correspondent might agree to changes. Obvious unreliable information might be left out, but as an international body of governments, CEPEJ cannot substitute information it has received from its member states with information from other sources.[21]

European judicial systems differ significantly, if not drastically, both in structure and in the conceptualization of its elements and functions. National statistics differ similarly. Such huge variations also mean that the correspondents perceive many of the questions differently, and that answers and statistical information on the same question might well relate to features in the different judicial systems that are not fully comparable.

Using a functional approach by defining certain essential functions of judicial systems independent of the national conceptualizations causes other problems. When CEPEJ defines for instance “a notary” as “… a legal official who has been entrusted, by public authority, with the safeguard of the freedom of consent and the protection of rightful interests of individuals”,[22] the result might well be ‘blank’ answers since national statistics might use national, self-evident names that are not further defined or the state lacks entities that corresponded to the functional description.[23]

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[12] CEPEJ-GT-EVAL.
[13] European judicial systems Edition 2012(2010 data) CEPEJ Studies No 18 Council of Europe Publishing p. 7-8. (*EJS 2012*).
[14] Germany is missing in the previous reports, due to its federal structure that makes the collection of national judicial statistics complicated.
[15] EJS 2012 p. 12.
[16] http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp
[17] EJS 2012 p. 8.
[18] EJS 2012 p 3-5.
[19] See also EJS 2012 pp. 6-12 and 393-443 for details.
[20] EJS 2012 p. 8-10.
[21] EJS 2012 p. 7.
[22] EJS 2012 p. 353.
[23] See EJS 2012 p. 353-359 for a variety of examples.

The concept of courts, for example, varies significantly in the judicial statistics of the member states.[24] CEPEJ therefore uses a wide definition to cover the variety, labeling a court as a "body established by law and appointed to adjudicate on specific type(s) of judicial disputes within a specified administrative structure where one or several judge(s) is/are sitting, on a temporary or permanent basis". As a consequence comparability suffers and the survey warns that:

> "(c)ourts perform different tasks according to the competences that are described in the law. In the majority of cases, courts are responsible for dealing with civil and criminal law cases, and possibly administrative matters. In addition, courts may have a responsibility for the maintenance of registers (land, business and civil registers) and have special departments for enforcement cases. Therefore, a comparison of the court systems between the member states or entities needs to be addressed with care, considering the actual jurisdictions."[25]

Some states might also substitute the information asked for with statistical information on entities that partly perform judicatory tasks according to the CEPEJ definition and partly other tasks without being able to separate the judicatory part, as indicated in the last citation from the European survey. Others might provide statistics only from institutions that purely perform judicatory tasks according to the definition, and leave out statistics from other institutions that mix judicatory functions with other tasks.[26]

CEPEJ holds regular meetings with the national correspondents to remedy the problems and issues lengthy instructions on how to fill in the questionnaire.[27] The questionnaire also underwent major revisions up to the collection of data in 2008. From then it has been similar to the version used for the 2006 data. Data are now thought reliable enough for comparisons over time.[28]

Although 46 states now participate, it does not mean that they have delivered information on all questions in the questionnaire. The heterogeneity both of the judicial systems and the national statistics means that many questions are difficult or impossible to answer. The response rate therefore varies significantly from table to table. Some might have data from less than half of the 46 states.[29]

However, missing answers from a state also might signify a lack of attention to and control of the feature in question. To CEPEJ such findings still are of value, because they might indicate a need for improvement. When, for instance, questions on time management result in limited response from jurisdictions with the largest shares of complaints to ECtHR, the answers missing indicate that statistical tools for controlling time use are insufficient.

CEPEJ has been reluctant to present data in a way that might be conceived as *rankings* of the states. The last report explicitly says: "Indeed, comparing does not mean ranking".[30] Therefore, reports mostly have presented statistics alphabetically according to the names of the states, although some data also have been ordered according to numeric value. Comments have been sparse, mainly limited to what can be read directly from the tables and figures.

CEPEJ also has been reluctant to analyze the immense variations in the figures. The main justification is fear that such analysis might easily amount to criticism of several states. The differing quality of the data also might lead to severe misjudgements of the findings.[31]

3.2 Mission Impossible?

From a scientific point of view such presentations might appear unsatisfactory, and the alphabetic ordering makes it difficult to read essential information from many of the tables and figures. However, the 2010 and 2012 reports contain more analyses and rankings than the previous versions, and CEPEJ encourages everyone interested to make their own analysis of the findings. The data sets used in the last reports are published on the website of CEPEJ for downloading.[32]

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[24] EJS 2012 p. 98-100.
[25] EJS 2012 p. 100 that also points to huge differences in the use of specialized courts.
[26] In Norway, prosecution in criminal cases is carried out both by prosecutors that have prosecution as their main task and a much larger number of prosecutors that mix prosecution with police work of different kind. Until 2010 statistics from Norway only contained the judicatory work of the full-time prosecutors (The Higher Prosecutorial Authority). In the last editions also the police prosecutors are counted, but not their staff, see EJS 2012 table 10.1 p. 233 . The chapter on criminal prosecution provides several illustrations of the variations and challenges connected to the development of common judicial statistics for Europe, see EJS 2012 p. 232-247.
[27] In 2008 a «peer review process» also was set up to improve data quality. EJS 2012 p. 9-10.
[28] EJS 2012 p. 6.
[29] See for instance EJS 2012 fig 3.1 p. 64 and table 9.1 and 9.2 p. 171.
[30] EJS 2012 p.10.
[31] Supra.
[32] EJS 2012 p. 8. See footnote 16. (The 2010 data set was not yet available per December 2,.2012)

Due to the vast methodology problems described, one might ask whether the European survey project is too ambitious. It is well known that international academic studies of judicial systems that use statistical methods for comparisons, have been vulnerable to the criticism of whether they actually compare the same phenomenon.

However, some advantages also connect to the methodology compared to ordinary research. Since the governments of the jurisdictions studied have decided to set up CEPEJ themselves and also confirmed the design of the survey, we might suppose that their commitment to providing the data asked for is far greater than in a study conducted by a university or an independent research institute. They also provide data usually available only for internal use. Several states have developed new national statistics to better contribute to the survey that they hardly had produced without the commitment to CEPEJ. Such efforts also mean improvements in the national statistics as a tool for the member states' administration of justice, which is another objective of CEPEJ.

The European survey is a huge enterprise and produces data on judicial systems in Europe on a scale not seen before. It includes many jurisdictions that have been absent in law and society research. More than 100 people are involved in the data collection. Despite several serious objections about the methodology and the current incomplete reporting, I find the European survey interesting and capable to produce data of value. We might point to legal aid as an example:

> Although the present collection is limited in scope, it has brought forward new data that, due to the large scale of the survey, produces a better overall picture of legal aid schemes in Europe than before, see part 5. Data are now available to the international research community in English and French. To my knowledge no previous academic study has collected similar data on legal aid. Even the most extensive and well known comparative study on legal aid by Cappelletti, Gordley and Johnson from the 1970ies, only had empirical data from a few European countries.[33]

I know from my own research experiences on legal aid in Finland and Norway that some of the data in the survey had not been produced before and therefore was genuinely new.[34] Additionally, although known to the ministries and court administrations, other data in the survey have not been published nationally and therefore not known to the public or to the national academia**.**

I assume these observations hold true not only for legal aid in other jurisdictions than Norway and Finland, but also for the other types of data collected on courts, enforcement, prosecutors, lawyers, etc. The European survey therefore opens wide and new opportunities for research previously unavailable in practice.

Undoubtedly CEPEJ has contributed to increased public and attention and debate on the current conditions and deficits of European judicial systems. The leading French newspaper "Le Monde" spent a full page on the 2008 report when it was published. Also the 2010 and 2012 reports have received significant media attention in several member states, see the press reviews at the CEPEJ website.[35] Hopefully the academic community increasingly will become aware of this extensive data source.

4. Delay

4.1 The Extent of the Problem

I will now turn to CEPEJ's work on its other main priority, namely combating delay in European judicial systems. Timeliness is one of the major principles embodied in ECHR art 6. Cases should be finalized within "reasonable time." As evidenced in the case law of the ECtHR, severe problems concerning timeliness prevail in several states. I will try both to exemplify how the European judicial survey can be used to identify and explicate the challenges that CEPEJ faces, and to present an overview and some examples of the methods that CEPEJ develops and applies in its combat against delay.
The European survey contains much data that is useful for a variety of analyses on time use. Time use differ with type of cases and the European survey distinguishes between litigious and non-litigious civil cases, land registry cases, business registry, administrative law, enforcement cases, severe criminal cases, misdemeanor cases, and other types of cases.[36]

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[33] Cappelletti, Gordley, Johnson Towards Equal Justice A comparative Study of Legal Aid in Modern Societies. Milan, New York 1975.
[34] Norway, for example, did not produce a separate budget or costs accounts on legal aid expenses in criminal until they became requested by CEPEJ for the European survey. See Jon T. Johnsen: "Hva kan vi lære av finsk rettshjelp" Særskilt vedlegg til St. meld. Nr.26 (2008-2009) Justis- og politidepartementet p. 70. Also available at http://www.regjeringen.no/nb/dep/jd/dok/regpubl/stmeld/2008-2009/stmeld-nr-26-2008-2009-.html?id=554306 . Norway produced the figures for the surveys on 2006 and 2010 data, but they are missing again in the 2010 data. See EJS 2012 table 2.1 p 20.
[35] See footnote 16 (press review).
[36] See EJS 2012 p. 176-227.

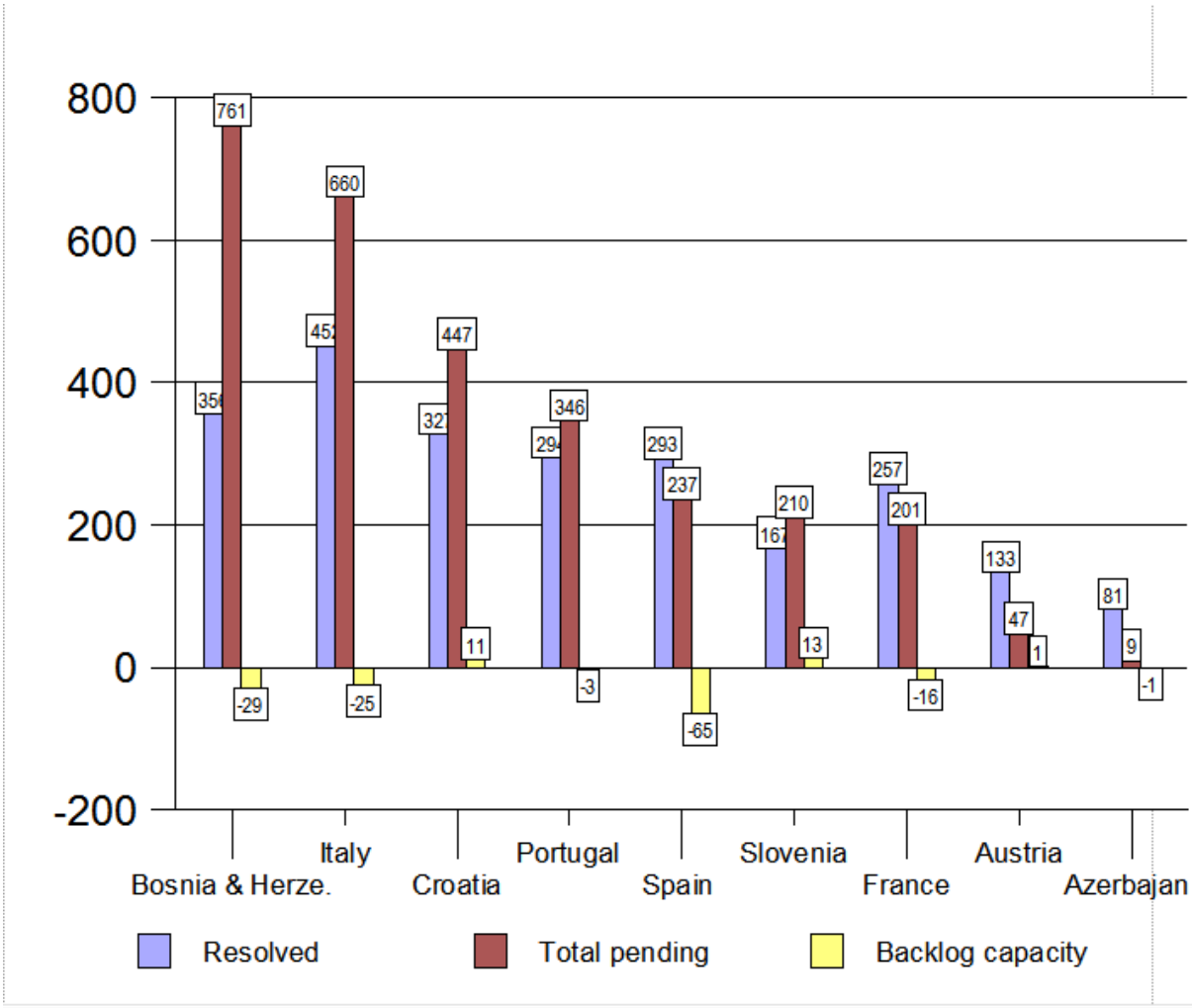
Such tables mainly list states alphabetically along with the relevant statistical information, and thus should be looked upon as raw data in need of further refinement.

4.1.1 Delay in Civil Litigation

To give an idea about both the extent of delay in Europe and the potential for further analysis of data from the European survey, I have selected seven of the states with the largest backlogs of civil litigious cases in the survey and compared them to the two states with the smallest backlogs. It should give an idea about the challenge and the usefulness of CEPEJ statistics. Since data in the last surveys are collected the same way, they also allow for comparisons over time and I therefore will show data from both the 2008 and 2010. However my intention is limited to indicating the potential of the data. I do not intend any analysis in depth.

Graph 1 shows the 2008 data.

Graph 1: *Civil litigious cases per 10 000 inhabitant. 2008. First instance courts.*[37]



Resolved cases are the number of cases solved during the calendar year. Total pending cases are the total number of unfinished cases at the end of the year independent of their incoming year. Backlog capacity is the number of resolved cases during the calendar year minus the number of incoming cases during the calendar year. [38]

All three criteria are only rough indicators on timeliness. Resolved cases per year tell about the capacity of the judicial system. Since courts usually handle different types of cases, their capacity for handling a certain type of cases as civil

[37] Source: European judicial systems Edition 2010 (2008 data) Appendices, table 6 p. 302 **CEPEJ** Studies No 12 Council of Europe Publishing *(EJS 2010)*. 39 states gave data.

[38] To avoid overloading the graphs, I have left out the numbers for incoming cases, since they are not strictly necessary to my interpretations. They are available in *EJS 2010* Appendices, table 6 p. 302.

litigious cases might be manipulated both by changing internal priorities and external resource allocation. Total number of pending cases tells about the work load of the system. It is also an indicator on backlogs, but since all cases need some handling time also when handling is timely, it is not a precise indicator because just a share of the pending cases will count as backlog in the sense of not being handled timely. A positive backlog capacity means that the system will reduce the number of pending cases, a negative that it will grow. None of these indicators tell the real handling time of individual cases.

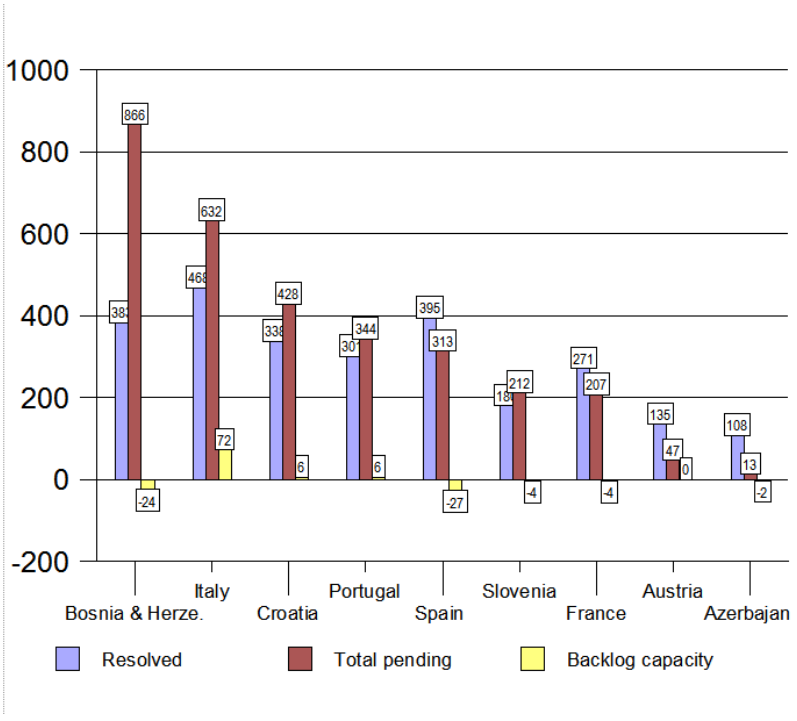
We observe that Bosnia and Herzegovina, Italy, Croatia, Portugal, Spain, Slovenia and France had the largest number of pending cases per 10 000 inhabitant in 2008. Bosnia and Herzegovina had a number of pending cases of more than twice the number of resolved cases. Backlog capacity is negative and means that the courts received more cases than they solved and that the number of pending cases increased during 2008 and will continue to do so unless the number of incoming cases decreases or capacity increases. The situation was quite similar, although not just as serious, in Italy and Croatia and perhaps in Portugal; although the slightly positive backlog capacity in Croatia means some decrease in the number of pending cases during the year.

Spain gave reason for concern due to the large negative backlog capacity that was far greater than for any other country in Europe. If this trend continued for three years, the number of pending cases would almost surpass Croatia.

If we look at Austria and Azerbaijan with the lowest number of pending cases per 10 000 inhabitant in 2008, the picture was very different. Although the number of solved cases in Austria was only one third of the number in Italy and only one fifth in Azerbaijan, the number of pending cases appeared insignificant compared to the countries with the largest backlogs. People's use of the courts counted from the number of cases was far lower in these two countries than in the countries with the most clogged courts. No serious backlog problem seemed to exist, which made the backlog capacity less important.

Graph 2 shows the 2010 data for the same countries.

Graph 2: *Civil litigious cases per 10 000 inhabitant. 2010. First instance courts.*[39]



Changes in the overall picture from 2008 to 2010 are limited. The number of pending cases in Bosnia and Herzegovina has increased as predicted. Backlog capacity is still negative, which means that the number of pending cases will

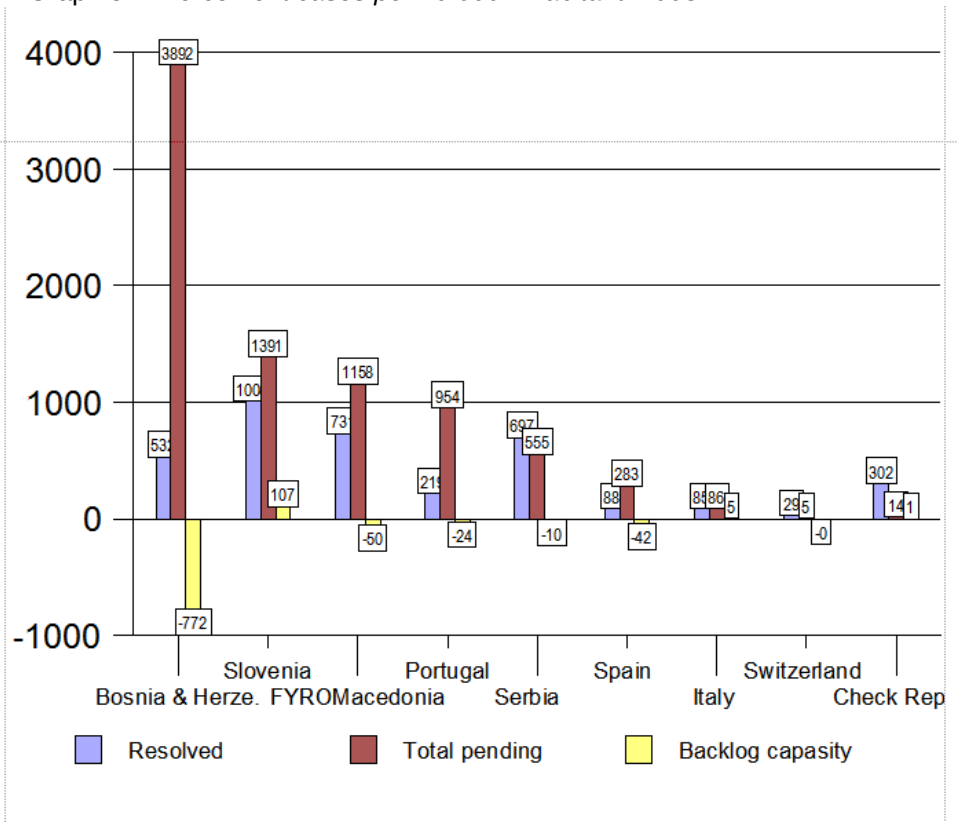
[39] EJS 2012 p. 391 referring to http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp "Appendix: additional tables: Table 4 (Chapter 9) number of civil (and commercial) litigious cases at 1st instance courts in 2010 (Q91). 42 states gave data. The table also contains numbers on incoming cases for 2010.

continue to increase. Some changes can be found in resolved and pending cases in the other countries too, but none seems significant so far. Italy has turned a negative backlog capacity in a positive one, which is promising for further reduction of the pending cases over a larger time span. Also Spain has significantly reduced its negative backlog capacity, although it still is negative, which indicates a slower growth in the number of pending cases.

4.1.2 Delay in Enforcement

The value of victory in court, however, might diminish if enforcement is slow. "Justice delayed is justice denied" is an old saying in several countries. A complete picture of the efficiency of civil litigious proceedings ought to include enforcement. As with graph 1 and 2 I will show data on time use on enforcement from the seven countries with the largest backlogs in the European surveys and compare them to the two countries with the smallest backlogs both for 2008 and 2010. Graph 3 shows the figures for enforcement in 2008.

Graph 3: *Enforcement cases per 10 000 inhabitant. 2008.* [40]

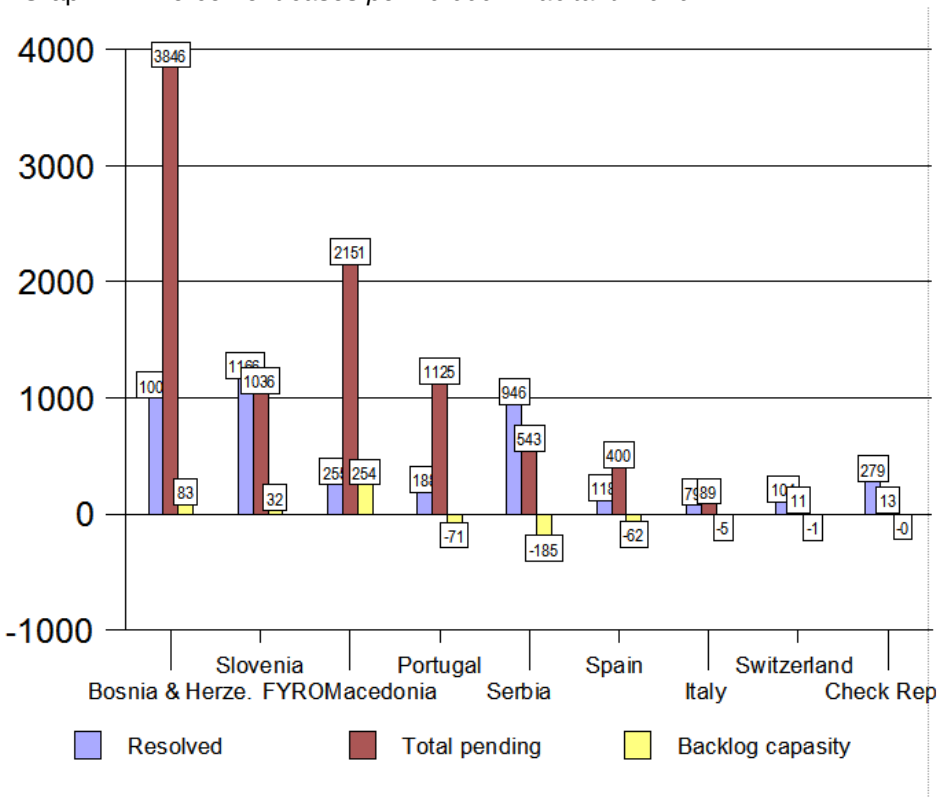


We note that most of the countries with the highest number of pending civil litigious cases, per 10 000 inhabitant, namely Bosnia and Herzegovina, Slovenia, Portugal, Spain and Italy, also were among the states with the highest ratio of enforcement cases. Croatia and France, however, were not among them, and Italy's number of pending enforcement cases was only just above one tenth of the number of civil litigious cases. It means that slowness in one part of the judicial systems often go together with excessive time use in other parts, but not necessarily. Clogging at the litigation stage might mean less need for capacity at the enforcement stage. However, if capacity at the litigation stage becomes significantly increased to get rid of excessive backlogs, capacity at the enforcement stage might become a challenge.

Figures for Bosnia and Herzegovina are frightening. They mean that enforcement is highly ineffective. On average the figure meant one pending enforcement case for every third inhabitant. The large negative backlog capacity also indicated that the situation was rapidly worsening. Also Slovenia, Former Republic of Yugoslavia (FYROM), Portugal and Serbia had significantly more enforcement cases pending than litigious civil cases. FYROM and Spain also showed a significant negative backlog capacity. In the two countries with the smallest backlogs, Switzerland and the Czech Republic, the number of pending enforcement cases was just a small fraction of the numbers in the countries with most pending cases. Graph 4 shows the 2010 data for the same countries:

[40] EJS 2010 table 11 p 305. 27 states gave data. The table also contains numbers on incoming cases for 2008.

Graph 4: *Enforcement cases per 10 000 inhabitant. 2010.*[41]



More changes have taken place in enforcement caseloads since 2008 than in civil litigious caseloads. Bosnia and Herzegovina resolved almost twice as many cases in 2010 as in 2008. Although the number of pending cases remains almost the same, a large negative backlog capacity has turned into a positive one and indicates that the number of pending cases will decrease in the future. A significant decrease in pending cases has taken place in Slovenia, while FYROM and Spain show steep increases. It seems difficult to make sense of the FYROM data. The most probable explanation seems to be inaccurate reporting.[42] Portugal and Serbia show steep raises in negative backlog capacity although Serbia also has a significant increase in resolved cases from 2008 until 2010.

Hopefully this brief analysis has provided some ideas about both the potential for analyses and the challenges that CEPEJ faces. Although there are many limitations in the conclusions that can be drawn from the statistics of the European Survey, they must mean that the "reasonable time" criterion does not work satisfactorily in several jurisdictions. However, CEPEJ has not come far yet in explaining *why* it is so. More research is sorely needed.

4.2 Work of CEPEJ- SATURN

As mentioned, CEPEJ established a separate working group on time management from the start. It is now (2012) named the "SATURN centre for judicial time management" after the Roman god of time. CEPEJ also has established a network of "pilot courts" with members from most member states that are used for providing information about the challenges in the member states, best practice ideas and also to test out remedies developed by SATURN.

SATURN has issued several reports and guidelines for clearing out cases within the limit of “reasonable time” set by article 6. I will give an overview of the most significant ones. They are available at the CEPEJ website.[43]

Framework Programme.[44] At the start in 2003 a working group developed a basis document titled "A new objective for judicial systems: the processing of each case within an optimum and foreseeable time frame." The document was named

[41]EJS 2012 p. 391 referring to http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp “Appendix: additional tables” Table 9 (Chapter 9) number of enforcement cases at 1st instance courts in 2010 (Q91). 25 states gave data. The table also contains numbers on incoming cases for 2010.

[42] EJS 2010 p. 305 reports problems with interpreting the numbers provided by the national correspondent. In EJS 2012 only 249 incoming cases are reported in contrast to the uncertain number of 159 700 in 2008.

[43] See footnote 2.

'Framework Programme' and contains a wide range of general strategies – named "action lines" – for increasing the speed of European judicial systems. Most of them concern time-management systems for courts and court administrations and have guided the later work of SATURN. Among them are:

- agreed time schedules between the court and the parties;
- increased use of ADR;
- better measures against delaying tactics;
- complaint systems against delay;
- measures that reduce the need for appeal;
- more use of multi tracking of cases instead of joining all in one queue;
- increased attention to vulnerable parties;
- involvement of the organizations of the actors in time management;
- increased use of ICT tools.

From the word "optimum" we read that the ambition was not only to make the minimum standards of ECHR art 6 expressed in "reasonable time" effective, but to promote a time use that satisfies all well founded expectations of speedy courts.

Guidelines.[45] The "SATURN Guidelines for judicial time management" adopted in 2008 contains measures both for the courts and for policy makers and administrative authorities. They concern issues as

- transparency and foreseeability;
- optimum duration;
- planning;
- flexibility;
- collaboration among the stakeholders of the proceedings;
- resources;
- law and procedures impacting on time management;
- monitoring and intervention:
- establishment of targets;
- active case management and crisis preparedness;
- suppression of procedural abuses.

The Guidelines include an essential appendix on time management statistics for the courts – European uniform guidelines for monitoring of judicial timeframes (EUGMONT), which is used in the European judicial survey.

Implementation project.[46] It does not help to issue sensible guidelines if they are not used. SATURN therefore launched an implementation program on selected guidelines, meant both to stimulate courts to identify weaknesses in their time management systems and to remedy them as far as possible. Special focus is put upon warning systems against possible violations of the "reasonable time" criterion. After a test program in seven pilot courts, an implementation guide was adopted in 2011.

Check list[47]. The "Time Management Checklist", adopted in 2005, is a tool for internal use by the courts and national judicial administrations. One purpose is to improve the collection of appropriate information and the analysis of the duration of judicial proceedings. Another is to help in reducing undue delays, ensure effectiveness of the proceedings and provide necessary transparency and foreseeability to the users of the justice systems**.**

Best Practice Compendium[48] is a compilation of time management practices collected especially from the pilot courts, but also from other available sources.

Northern Europe study.[49] The study: "Time management of justice systems: a Northern Europe study" contains a broad collection of time management strategies described in governmental reports from Northern Europe states. Most

44 CEPEJ (2004)19 Rev 2. "A new objective for judicial systems: the processing of each case within an optimum and foreseeable time frame". A new, updated strategy has now been approved by CEPEJ, see CEPEJ-SATURN(2011)5 Rev 2.
45 CEPEJ(2008)8Rev.
46 CEPEJ-SATURN(2011)2, CEPEJ-SATURN(2011)9.
47 CEPEJ(2005)12Rev.
48 CEPEJ(2006)13.

tools address policy makers and administrators of justice systems, but several also address the courts. Part II contains tools developed for time management in criminal cases at the police and prosecution, but many of them might be adoptable by the courts.

"Reasonable time" in the case law of ECtHR.[50] The report "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" analyzes the major considerations behind the "reasonable time" standard (Article 6 ECHR article) and spells out the general deadlines that can be extracted from the judgments of the European Courts of Human Rights.

The report was updated in 2011 and analyzes the recent practices of ECtHR in determining whether the duration of proceedings is reasonable. In a brief introductory overview the findings are summarized:

"Major factors impacting on the Court's evaluation of reasonable time are:
- The applicant's conduct (this is the only criterion that led the Court to conclude that Art. 6 was not violated even if the length of proceedings was manifestly excessive)
- The conduct of the competent authorities (if the authorities have taken prompt and appropriate remedial action to manage the temporary unpredictable overload of the courts, the longer processing time of some cases may be justified)

- What is at stake for the applicant (some cases require particular speed; mainly "priority cases":
- labour disputes involving dismissals, recovery of wages and the restraint of trade;
- compensation for victims of accidents;
- cases in which applicant is serving prison sentence;
- police violence cases;
- cases where applicant's health is critical;
- cases of applicants of advanced age;
- cases related to family life and relations of children and parents;
- cases with applicants of limited physical state and capacity.

In addition to individual criteria, the Court also makes an overall assessment of the circumstances of the case. It may establish that 'reasonable time' is exceeded, if in such a global assessment, the Court finds that total time is excessive, or if it finds long periods of inactivity by competent authorities:

Violation of the reasonable time (Art. 6) – summary

Type of case	***Issues***	***Length***
Criminal cases	Diverse	More than 5 years.
Civil cases	Priority cases	More than 2 years (minimum 1 year 10 months)
Civil cases	Complex cases	More than 8 years.
Administrative	Priority	More than 2 years.
Administrative	Regular, complex	More than 5 years.

Non-violation of the reasonable time (Art. 6) - examples

Type of case	***Issues***	***Length***
Criminal cases	Normal cases	3 years 6 months (total in 3 instances); 4 years 3 months (total in 3 levels plus investigation)
Criminal cases	Complex	8 years 5 months (investigation and 3 levels)
Civil cases	Simple cases	1 year 10 months in first instance; 1 year 8 months on appeal; 1 year 9 months Court of Cassation
Civil cases	Priority cases (labour)	1 year 7 months in first instance (labour); 1 year 9 months on appeal; 1 year 9 months Court of Cassation

[49] CEPEJ Studies No. 2, 2006.
[50] 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 (31 July 2011) 2nd Edition by Ms Françoise Calvez, Judge (France) Updated by Mr Nicolas Régis Judge (France). (Final citation to be added after adoption by the CEPEJ plenary 06-07 December 2012.)

…„[51]
Most courts only measure their own time use, while the ECtHR looks at the combined time use including appeals and enforcement. In criminal cases measurement starts when a suspect is "substantially affected" by the investigation, which in many jurisdictions happens long before the case arrives in court, while in civil cases counting starts when the case arrives at the court. Time use in administrative cases begins when the case is first presented to the administrative agency in question, for example the tax authorities, which also might take place long before the case arrives in court.

- *Statistical data on combined time use*. We might question how well suited the existing data collection of the European judicial survey is in detailing the time use in the member states and to reveal precisely how well their current practices conform to the case law of the ECtHR. At present, only some rough, approximate conclusions seem substantiated. As said in the report *"Reasonable time" in the case law of ECtHR*, and mentioned above, the Court looks at the combined time use at all stages involved, which means that statistics only on handling time from the first instance courts will be incomplete as an indicator for violations of ECHR article 6 for a significant amount of cases. What is gathered in the European survey is data on pending, incoming and resolved cases during the year. However, in the published text, mainly data for first instance courts are presented.[52] Several member states have not developed court management systems that can provide data on the real handling time of the individual cases and produce statistics from them.

Neither has CEPEJ yet tried to gather precise information on their total caseloads from states that do produce it. The extensive survey therefore still lacks information on for example average, median and mean real handling time in European jurisdictions. Only some specialized studies on litigious divorces, employment dismissals, robbery and intentional homicide, provide some data comprehending both the first instance and the appellate stages. Less than half of the states have so far provided such limited data.[53]

The European survey attempts to diminish the measurement problem by estimating real time use from calculations of theoretical indicators as "clearance rates", "case turn over ratio" and "disposition time".[54]

CEPEJ-SATURN tries to remedy the problem through several of the tools summarized above. The *guidelines*, for instance advices that sufficient management systems must be established:

> "The length of judicial proceedings should be monitored through an integral and well-defined system of collection of information. Such a system should be able to promptly provide both the detailed statistical data on the length of proceedings at the general level, and identify individual instances at the origin of excessive and unreasonable length."[55]

The principle expressed is detailed in several guidelines on monitoring.

The report "Study in Council of Europe Member States Appeal and Supreme Courts' Lengths of Proceedings" from 2011[56] contains statistical analysis of the combined time use in general at the first instance level and the appellate levels, which is missing in the European survey. The report uses 2008 data not presented in EJS 2010. Clearance rate and disposition time are the man indicators. Graph 5 contains an example copied from the report:

[51] Supra.
[52] EJS 2012 p. 176-227.
[53] EJS 2012 p. 210-227.
[54] See EJS 2012 p. 169-70 for definitions.
[55] Guideline IC3 and IIIB 1-4. CEPEJ (2008)8Rev.
[56] CEPEJ-SATURN "Study in Council of Europe Member States Appeal and Supreme Courts' Lengths of Proceedings" Report prepared by Marco Velicogna IRSIG-CNR. CEPEJ Studies No 17 Council of Europe 2011.

Graph 5: *CEPEJ Studies No 17. Figure 60 on total time use in criminal cases.*[57]

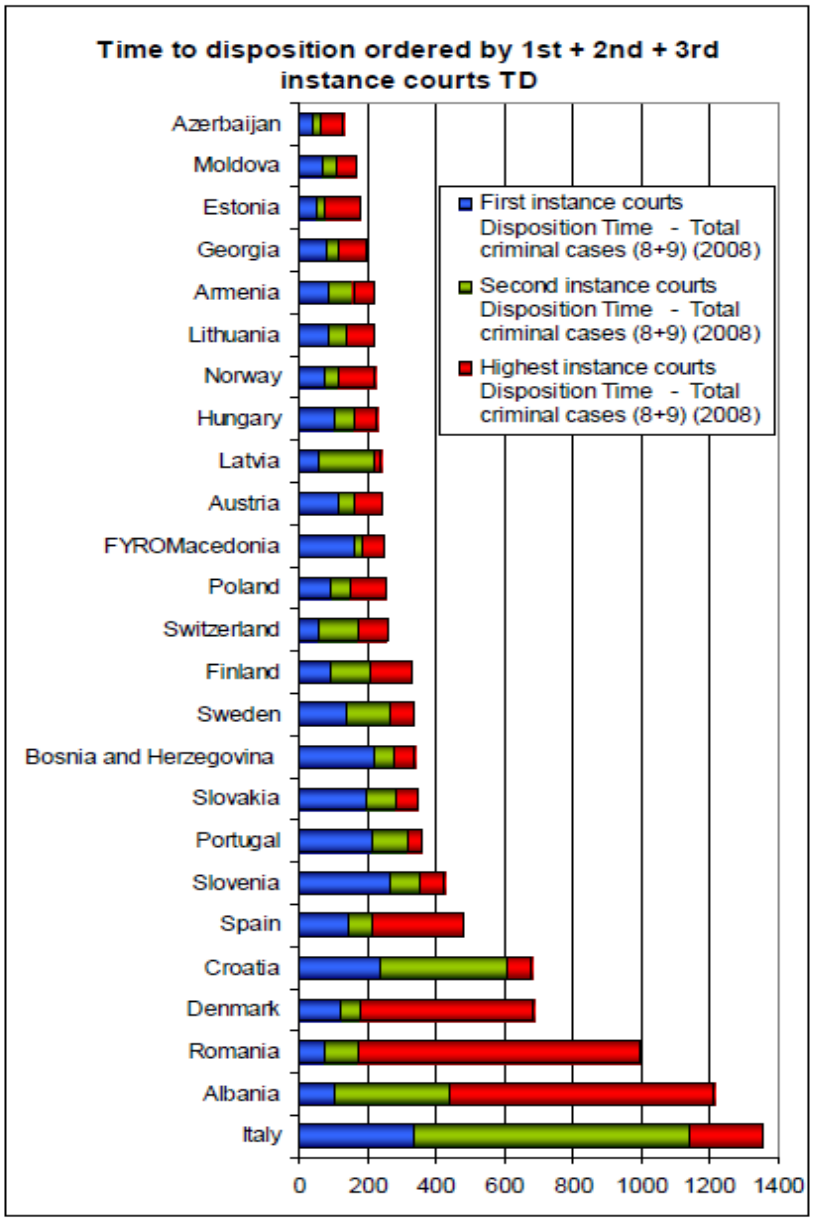


Figure 60 - First, second and highest instance courts total criminal cases (2008) Disposition time (in 25 states) ordered by 1s+2nd+3rd instance courts

Disposition time in criminal cases varies enormously among the member states. Average time was 414 days and the median 255 days.[58] Some are slow at the first instance, others at the appellate stages and some on all of them. Italy comes out at the bottom both at the first instance (more than a year) and especially at the second instance that is predicted to last for more than two years on average. However, third instance handling seems slower in several other

[57] Supra p. 83.
[58] Supra.

countries – among them Denmark, Romania and Albania. Disposition time is long in several of the countries with large volume of pending cases, but not without exceptions.

It should be kept in mind; however, that disposition time is a theoretical figure that only expresses a prognosis on future time use:

"The Disposition time (DT): "compares the number of resolved cases during the observed period and the number of unresolved cases at the end of the observed period". It is calculated by dividing the 365 days of a year by the case turnover ratio. It estimates the number of days necessary for a pending case to be solved in court…" [59]

Disposition time also is a rough indicator since it only tells about predicted future time use. Real handling time might be different both in the previous and coming years. Therefore, real future handling time will differ from disposition time if backlog capacity changes.

Disposition time is just an average. In jurisdictions with large backlogs of old cases, stipulations from disposition time to real handling time for the backlog might easily be too optimistic, especially when backlog capacity is improving.
Also in this report CEPEJ problems with gathering reliable data on real handling time are clearly visible.

Strategic plan for the Saturn Centre.[60] The document was adopted in 2011. In line with resolution (2002) 12 on establishment,[61] the plan defines the overall objective of CEPEJ-SATURN as preventing violations of article 6 of ECHR on reasonable time, and limiting the number of such complaints to the ECtHR. Four major tasks are pointed out, namely to:

- "obtain a global view of the situation in the area of procedure lengths within the member states;
- identify the real reason of the excessive lengths of proceedings;
- propose methodologies and tools to optimize the lengths of proceedings;
- help member states to implement the methodologies and tools to optimize the lengths of proceedings."[62]

The four main objectives are then developed into seven strategic goals. Each of them is translated into several operational goals and projects that constitute a working plan for the Centre.

CEPEJ main focus in the combat against delay during its first decennium has been on developing tools for efficient time management and offering them to the member states. Recent projects show, however, that adequate instruments are not sufficient.[63] States must also make use of them. It differs how willing the judicial authorities and courts in the member states are to prioritize the introduction and use of such instruments. While the development of new and better instruments for voluntary adoption has broad support among the members, putting pressure on them to improve their justice systems, might be more controversial. Still the CEPEJ-SATURN strategy for the coming years puts more emphasis on implementation. How influential the strategy will become depends on the powers of CEPEJ, an issue that I will address in part 6.1.

5 Legal Aid – A Non Prioritized Task

Legal aid schemes are essential for access to court for the poorer part of the population both in civil and criminal cases. ECHR article 6 (3) guarantees legal aid in criminal cases "… when the interests of justice so require". *Airy v. Ireland*[64] from 1979 establishes the right to legal aid according to discretionary criteria for all cases with access to court according to ECHR article 6 (1), which means that also cases on civil rights and obligations are included. The main criteria are:

- the importance of the case to the individual (applicant);
- the complexity of the case;
- the individual's capacity to represent himself;
- costs and the individual's capacity to carry them.

[59] Supra p. 12.
[60] CEPEJ-SATURN(2011)5rev2.
[61] See part 2.3.
[62] CEPEJ-SATURN(2011)5rev2 p 3.
[63] See the "Implementation project" mentioned above.
[64] ECtHR Application No. 6289/73.

Over the years, the Council of Europe has issued several resolutions and recommendations on legal aid improvements.[65] CEPEJ is well aware of the importance of legal aid schemes and its mandate also opens for a separate working group on such schemes.[66]

According to the "Medium-Term Activity Programme" of CEPEJ from 2005, access to court is an essential issue when dealing with the efficiency of justice and the application of Article 6 of the Convention. A new working group was proposed with the objective:

> 'to facilitate the access to court to all citizens, without hampering the efficiency of the functioning of the justice system and enabling the smooth application of the instruments and standards of the Council of Europe as regards legal aid.'

CEPEJ Plenary expected the working group to analyze legal aid and the existing solutions in the member states, giving priority to a comparative analysis in order to recommend specific measures to the member states.[67]

From the numerous resolutions issued on legal aid by CoE,[68] such a priority seemed well justified. Presumably due to lack of means, CEPEJ did not establish the expert group as agreed, although data already collected provided several indications of the importance of sufficient legal aid schemes for fulfilling the obligations of a fair justice system in article 6.[69] Legal aid has not been a priority in later activity programs of CEPEJ.

The questions on legal aid in the European Judicial Survey have not been many, mainly mapping some basic information about the schemes.[70] In my opinion the answers still tell that European judicial systems face major challenges:
All 46 members that participated in the survey responded that they provide legal representation in court cases in criminal matters and civil matters. Still, the types of matters covered within these two broad categories, varied widely.[71] Variations also are huge when it comes to volume. All together Croatia provided 7 grants per 10 000 inhabitant, and Hungary 8, while the Netherlands reported 307, Monaco 196 and Finland 156. The average was 83 and the median 51. Only 21 states gave data on volume.[72]

Legal aid expenditures varied enormously among the states that could provide figures from 2010. While Albania used 0, 01 euro per inhabitant and Hungary 0, 03, Northern Ireland spent 54 and England and Wales 46. The European average was 6,1 euro per inhabitant and the median 2,1 euro. 40 states gave data.[73] States also prioritize very differently between civil and criminal legal aid.[74]

The data gathered are rough and basic. I still believe they give an impression of an immense variation in the access to legal aid in Europe. Although the sources of error are vast, one cannot escape the impression that the enormous variation in legal aid funding among European countries also mean that the legal aid offered to the poorer part of the population differs significantly both in volume and quality. A proposition that one will find widespread violations of the entitlement to legal aid embodied in Article 6 in the countries with the poorest funding seems close at hand.

States prioritize very differently between courts and legal aid. A listing of the total 2010 public expenditure on courts and legal aid shows huge variations. Switzerland reports 129 euro per inhabitant and Monaco 112, while Moldova used 2,5 euro and Albania 3 euro. The European average was 41 euro and the median 32 euro. 33 countries gave data.[75]

The differences mean that the legal aid budget only made up a very small share of the court budget in several countries,[76] while the UK jurisdictions spent significantly more on legal aid than on courts. An analysis I did two years ago indicates

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[65] See CEPEJ "Relevant Council of Europe Resolutions and Recommendations in the field of efficiency and fairness of justice." CEPEJ(2003)7rev. 6 of 21 resolutions and recommendations included concern legal aid.
[66] See Res(2002)12 on establishment of CEPEJ, Article 1 (a) and article 7 2 b. CEPEJ/GENERAL(2003))1 p. 5 and 7.
[67] CEPEJ 2005 (10) Medium –Term Activity Programme p. 9.
[68] See Jon T. Johnsen "Human Rights in the Development on Legal Aid in Europe" p 138-140 in *A.*
Uzelac and C.H. van Rhee (eds.) Public and Private Justice. Dispute Resolution in Moderns Societies.
Intersentia 2007 p. 131-151 for discussion of the framework on legal aid.
[69] See Johnsen, supra p. 144-146.
[70] See EJS 2012 chapter 2 and 3.
[71] EJS 2012 p 63-67.
[72] EJS 2012 table 3.4 p. 68
[73] EJS 2012 fig. 2.22 p. 46.
[74] EJS 2012 p 63.
[75] EJS 2012 Fig. 2.28 p 52.

that in Southern and South Eastern jurisdictions with the seemingly largest problems with speed and backlogs, spending per inhabitant on courts is not very far from the Northern and Western European jurisdictions, but in comparably they use very little on legal aid.[77]

We therefore might question the low priority of legal aid in the work of CEPEJ. Legal representation is a precondition for proper use of the courts in most cases, but usually too expensive for poor people. Since ECHR article 6 guarantees access to court for everyone independent of their economy, efficient legal aid schemes therefore are essential. It does not help the less affluent part of the population that courts are fair and efficient if they cannot afford to use them.

The European survey also indirectly expresses some concern about the development of legal aid by noting that there seems to be a tendency "… to help less frequently but to help better in some way". Additionally the survey asks for "… accurate information regarding the number of cases concerned by legal aid and the amount of budget allocated to such legal aid" and notes that the "number of states or entities that were able to provide such data has decreased compared to the previous study".[78]

On the other hand, if courts already are clogged and inefficient, access for new groups does not help much, and more cases due to better legal aid might even increase clogging and delay. CEPEJ obviously faces a dilemma.

Still I do not think its present prioritization defendable. Also poor people should have the possibility to compete with people of means for the capacity that the court system actually has. If significant parts of the population are kept from channeling substantiated cases into the judicial system due to lack of means, the present picture of people's access to court appearing from the European survey also is far too bright. Not being able in ten years to address this serious and pressing human rights issue in the efficiency of justice to poor people in Europe, is in my opinion a serious shortcoming of CEPEJ.

6. Conclusions

6.1 Powers of CEPEJ[79]

When CEPEJ puts more emphasis on implementation of reforms in addition to analyses of judicial systems and development of tools for remedying deficits, the issue of enforcement becomes more pressing. What are the powers that CEPEJ has at its disposal of for fulfilling its mandate? What sort of tools can it use to influence judicial development in Europe?

According to its mandate CEPEJ is supposed to provide technical assistance upon request to any member of the Council of Europe in developing their judicial systems. It might also function as a catalyst for exchanges between different jurisdictions, and promote ideas of improving justice at seminars, conferences and other suitable events and use its website as a 'clearing-house' for studies and reform ideas. The main undertaking is to produce viable reform ideas, convey them to governments, interest groups and the public on the assumption of voluntary adoption by the states. 'Gentle persuasion' clearly constitutes CEPEJ's main instrument for stimulating the member states to carry out judicial reforms – obviously not a very powerful instrument, especially not in times of economic decline. However, other mechanisms might add to its influence.

The Council of Europe is an international body that uses legally binding instruments, 'soft law', and other policy strategies to influence their member states. Its main bodies consist of representatives of the member states, which mean that major decisions usually build on a broad consensus. While CEPEJ itself is excluded from monitoring the member states, issue recommendations or use other instruments of international law, it might draft proposals when needed and forward them to the bodies of the Council that possess legislative power according to international law.

Still, ideology and appeal to the self-interests of the member states remains the main tools. As a human rights-based organization, CoE has a powerful image as the main promoter of human rights in Europe. All member states have obliged themselves to loyal implementation of the Convention and the case law of the Court. Although member states are free to

[76] Hungary 0,1%, Azrbajan and Croatia 0,2%, Romania 2,4%, Northern Ireland 53,7%, England and Wales 68%. Calculated from EJS 2012 fig 2.22 p. 46 and fig 2.28 p 52, see footnote 73 and 75 above.
[77] Jon T. Johnsen "Access to justice and the development of legal aid in Europe" Seminar presentation "Human rights, access to justice and judicial development in Europe and developing countries" August 31, 2010. The assumption draws on European judicial systems Edition 2008 (data 2006) CEPEJ Studies No. 11, figure 9 p. 3, figure 13 p. 40 and table 6 p.50-51.
[78] EJS 2012 p. 83.
[79] Johnsen supra p.149-151.

fulfill their obligations with other means than suggested by CEPEJ, there is reason to believe that countries with deficits in their judicial systems will be receptive to reform models developed by CEPEJ. Since the other member states and the CoE back them, implementing these models will minimize the risk for being found in violation of ECHR.

ECtHR has referred to CEPEJ tools on time management in a number of decisions on alleged violations of the "reasonable time standard." One example is *Scordino* v *Italy*, see § 73 and 74.[80] ECtHR cited the "Framework Programme", and said that establishing a compensation system for violations of Article 6, is not sufficient. Remedies must effectively prevent delay. Obviously such references significantly increase impacts if governments neglect relevant CEPEJ tools. They pressure member states to consciously consider whether to adopt CEPEJ tools or comparable ones, or run the risk of being found in violation of ECHR. SATURN thinks that such references ought to be made far more frequently than to day and work on a better dialogue with the ECtHR.

The Convention and the case law of the Court might also be used in national courts. ECHR article 13 obliges all states to provide an effective legal remedy in national law for securing everyone their rights under the Convention. Lawyers might allege violations of its provisions on access to court, both before national courts[81] and – if not successful – before ECtHR. New judgments will develop the case law of the Court and bear upon all 47 member states.

Governments dislike the Court finding against them. Since ECHR allows individuals to sue, the risk of being found in violation is significantly higher than for most other human rights instruments that do not provide for an individual complaint procedure. Several states prefer to operate with safety margins and change dubious rules or practices as a precaution instead of risk being found in violation of the Convention. These features add weight to the policy recommendations of the CoE. Many states – often the small and rich ones – emphasize the development of human rights as an important part of their foreign policy. They are then vulnerable to criticism of not fulfilling them at home.

Human rights activists might also use the human rights' framework in national debates as arguments for judicial reform. Such activism might help the national implementation. Amnesty International might provide a model. As an NGO, they *inter alia* focus on violations of the prohibition against cruel or unusual punishment, the death penalty, persecution and imprisonment without a fair trial, censorship and intimidation of political opponents to the regime in power, etc. They invoke public opinion, pressure groups and governments in other countries to put pressure on the government responsible for the alleged violation. Similarly, pressures to fulfil human rights commitments on access to court might be brought to bear upon governments by activist organizations on judicial improvements.

Another important enforcement vehicle comes from the accession process for countries wishing to join the European Union. They are all required to meet a set of conditions – the Copenhagen criteria – before they can become members. They must guarantee democracy, the rule of law, human rights and the protection of minorities. The standards applied on the judicial systems are derived from the provisions in the Convention, especially from Article 6. When monitoring reports show that their judicial systems and legal aid schemes of the applicant countries have deficits, they must sufficiently remedy them before they can join. Knowing the strong drive of several states to become part of the Union, the accession process also facilitates the adoption of reform proposals from CEPEJ.

The accession of EU to the ECHR means that the case law of ECtHR will increase in importance to all EU members. There are signs that the human rights policies of the Council of Europe will receive increased attention from the EU. Since most of the states with malfunctioning justice systems either are members or aspire to become members, I think some hope exist that the EU accession to CoE will impact on their willingness to reform.

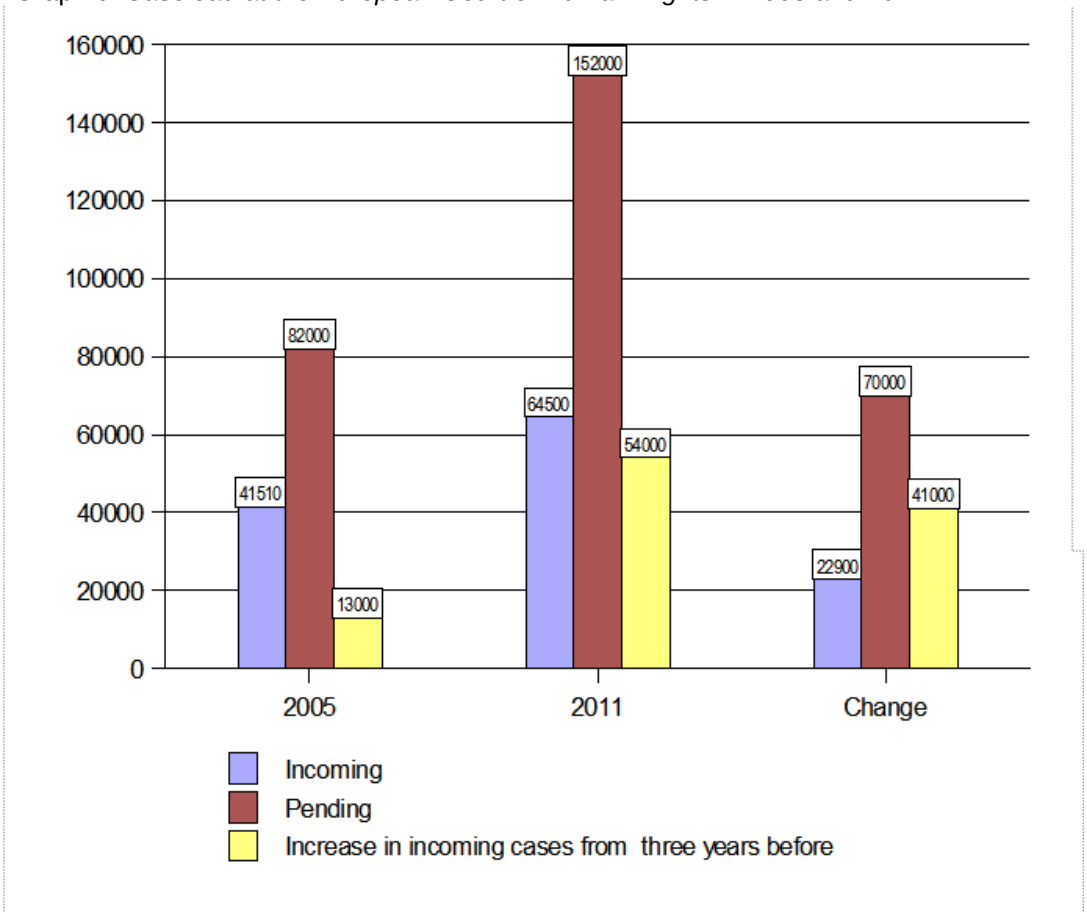
6.2 Impacts

In section 2.2 I forwarded some reflections on the implementation of article 6 in a historical perspective, and on the increasing number of complaints to the ECtHR on alleged violations of ECHR that triggered the establishment of CEPEJ a decade ago. We might ask if the number of complaints to ECtHR, and also the number of violations, might be used to measure whether European justice is improving and what the impacts of CEPEJ's work are. Graph 6 compare the data in section 2.2 on the backlogs just after CEPEJ became established, to some present numbers.

[80] Case of Scordino v. Italy (No. 1) Application no. 36813/97

[81] … or other bodies with the competence to function as a national remedy against violations of the ECHR.

Graph 6: *Caseload at the European Court of Human Rights in 2005 and 2011.*[82]



Incoming cases have increased with more than half and pending cases have almost doubled. The increase of incoming cases from three years before has tripled. The graph does not leave any impression that CEPEJ has been a success so far, although we do not know what the figures would have been without the impact of CEPEJ. Although the specific impacts of CEPEJ are impossible to pinpoint from such data, they tell that the challenges that triggered the establishment of CEPEJ still exist.

As discussed in this paper, CEPEJ has helped in improving the understanding of the existing problems in Europe's judicial systems and has also developed a bundle of tools that might be used to remedy some of them. Implementation of reforms has not come far yet, but hopefully will receive more attention from CEPEJ in coming years.

Coordination between CEPEJ and ECtHR in the work of bettering judicial efficiency and quality also should be improved. CEPEJ might adapt its statistics and remedies more to the case law of ECtHR and help sensitizing national legal systems to its principles, for example on reasonable time use. The Court also might include more references to the findings and tools of CEPEJ in its judgments on complaints about violations of ECHR article 6. Important challenges exist in developing systemic reforms from the highly individualized decisions in its case law.

Independent of the possible impacts on European judicial systems, CEPEJ's existence and activity obviously has increased public attention to its deficits. Hopefully are the increased backlogs at ECtHR a sign of improved consciousness in Europe about the right to fair trial and the possibility to complain about violations, not of growth in the actual number of violations.

[82] Sources: European Court of Human Rights Annual Report, 2002 p.100, 2005 p. 121, 2008 p. 127, 2011 p. 151 and president Wildhaber see footnote 3.

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