

European judicial systems CEPEJ Evaluation Report



Part 1
Tables, graphs
and analyses

2022 Evaluation cycle
(2020 data)

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French edition:
Systèmes judiciaires européens
Rapport d'évaluation de la CEPEJ
Cycle d'évaluation 2022
Tableaux, graphiques et analyses (Partie 1)

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The CEPEJ Report on the evaluation of European judicial systems is composed of three parts :

- ▶ Tables, graphs and analyses (Part 1)
- ▶ Country Profiles (Part 2)
- ▶ The CEPEJ-STAT dynamic database (<https://www.coe.int/en/web/cepej/dynamic-database-of-european-judicial-systems>)

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LEGAL AID

Legal aid is the assistance provided to specific categories of persons in State-funded legal advice and/or representation. An adequate budget allocated to legal aid can guarantee access to justice for everyone, as envisaged by Article 6, paragraphs 1 and 3 of the European Convention on Human Rights. The CEPEJ distinguishes between legal aid granted in criminal matters and in other than criminal matters. There is also a difference between legal aid for cases brought to court and legal aid for cases not brought to court, preventing litigation or offering access to legal advice or information.

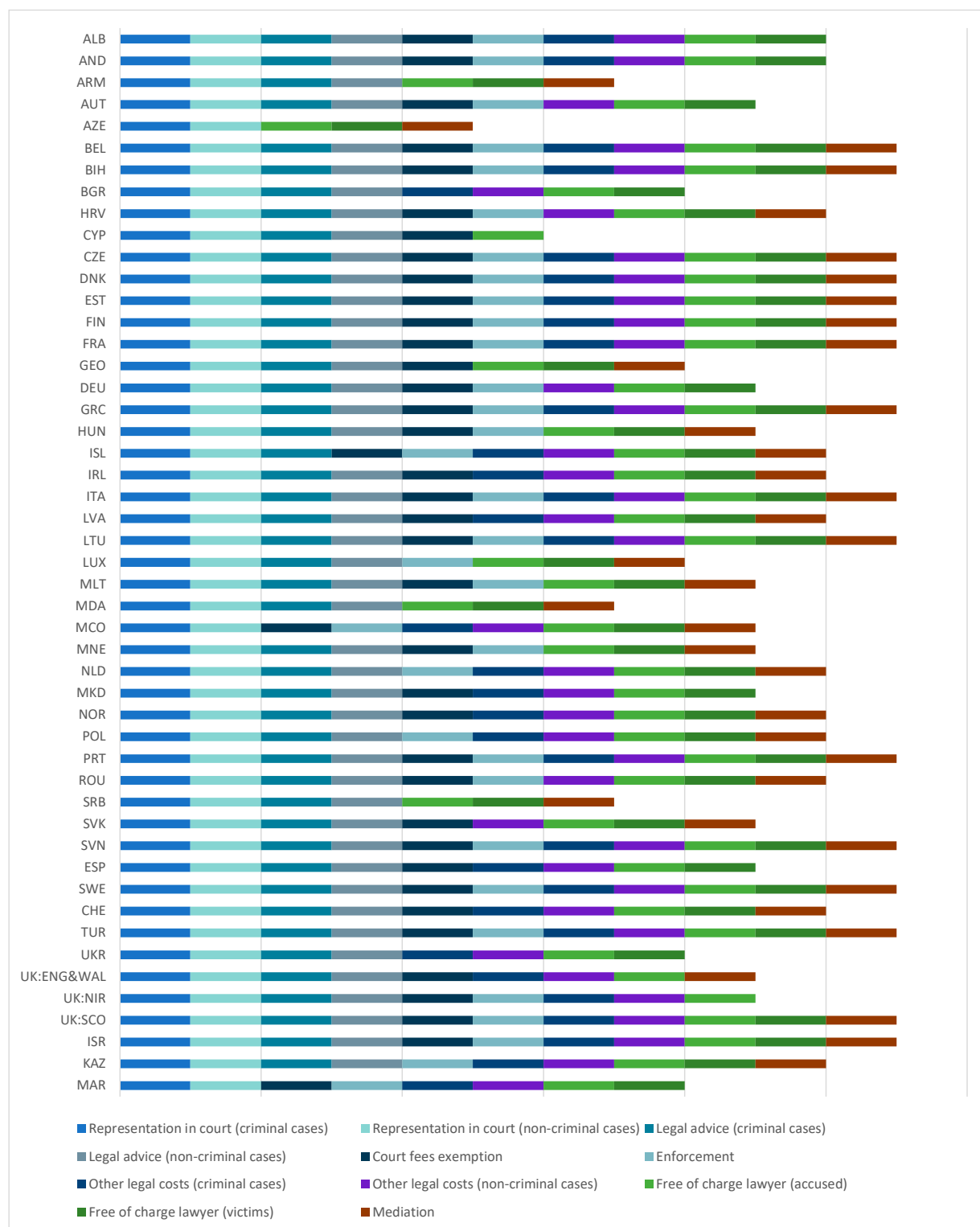
To the concept of legal aid has thus been given a broad interpretation, covering jurisdictional aid allowing litigants to finance fully or partially their court fees when they bring an action and appear before courts (access to justice), on the one hand, and access to information and legal advice to know one's rights and assert them, but not necessarily through judicial review (access to law), on the other hand.

” Is legal aid provided for all types of cases in Europe?

Almost all states and entities provide legal aid in criminal and other than criminal proceedings, complying with the European Court of Human Rights case law. Most often, the aid provided covers legal representation in courts. As shown in Figure 2.25, in most states or entities, the legal aid regime includes, but is not limited to, coverage of or exemption from paying court fees. For example, in 31 states or entities, legal aid covers expenses related to the enforcement of judicial decisions. Legal aid, in criminal and other than criminal matters, can also be granted for additional costs: fees of technical advisors or experts in the framework of judicial expertise, expenses related to the interpretation and/or translation, travel costs, costs associated with the preparation of documents and files necessary for the initiation of court proceedings, or coverage (full or partial) of fees concerning other professionals such as notaries, enforcement agents or even private detectives.

States and entities belonging to groups B, C, and D seem to have the broadest range of legal aid, while group A countries report fewer types of legal aid. Generally speaking, legal aid covers representation in court, a free of charge lawyer for the accused person and legal advice. In a smaller number of States and entities, legal aid includes fees related to enforcement of judicial decisions, mediation and other legal costs.

Figure 2. 25 **Types of legal aid in 2020 (Q16, Q17, Q18, Q19, Q21, Q65)**



How is legal aid organized in the different States/entities?

Legal aid in the member States is organized in different ways. A comparison of national legal aid schemes shows fundamental differences in the member States' philosophy, organization, and administration of legal aid systems. In terms of systems philosophy, the general goal in some countries seems to be to make legal services and justice generally more accessible. In contrast, legal aid may only be available to the poorest in others. It seems that the second philosophy prevails in Europe, since the majority of the countries have income and assets evaluation as a prerequisite for granting legal aid.

Legal aid is generally provided according to the individual's financial means. This may include an assessment of the individual's income and assets. In **Denmark**, legal aid is only provided to individuals who do not have a legal aid insurance or other insurance covering the costs of the proceedings. Nevertheless, comparing eligibility for legal aid across states and entities is difficult due to the wide diversity in admissibility rules and personal or family income thresholds. It may be the case that the law determines the amount of legal aid to be provided, which fully or partially covers the cost of legal services (**Belgium, France**) or defines the specific method for assessing the amount of legal aid to be granted (**Finland, Republic of Moldova**). This amount could, for example, depend on the amount of the minimum subsistence level (**Austria, Republic of Moldova**). In 37 countries, it is possible to refuse legal aid for lack of merit of the case (for example for frivolous action or no chance of success).

Armenia, Azerbaijan, Cyprus, the Czech Republic, Romania, Morocco, and Kazakhstan do not evaluate assets and income when granting legal aid. Further to that, legal aid can as well be granted without prior examination of the means of the individuals, to socially vulnerable persons (for example in **Bosnia and Herzegovina, Croatia, Georgia, Latvia, Monaco, Montenegro, Spain, Türkiye, and Israel**). In **Hungary, Lithuania, Switzerland, UK - England and Wales**

and **UK - Scotland**, the decision to grant legal aid is based on more comprehensive eligibility frameworks, which combine income thresholds and categories of beneficiaries in detail. In **Türkiye**, court users can be granted legal aid upon presenting a social certificate.

The decision to grant legal aid can be within the sole competence of the courts (12), given by other authorities external to the court (12) or by both types of authorities (19). In some states, an authority external to the court intervenes exclusively, as for instance the Centre for Granting of Secondary Legal Aid in **Ukraine**, the Legal Aid Board in the **Netherlands**, or the Bar Association in **Spain**. Most of the time, both courts and external bodies are endowed with this competence.

Once the legal aid has been granted, the legal service can be provided by the same public body (**Ireland, Malta, UK-Scotland, UK - Northern Ireland**) or by a lawyer appointed by the entity that approves the legal aid request (**Latvia, Israel**). Lawyers can be public, private, or there can be a mixed model where the person can choose a public or a private lawyer (**Finland**). Other professionals and institutions can provide some forms of legal aid ("primary legal aid", which consists of providing legal information, legal advice, and drafting of preliminary documents). Examples are notaries, mediators and law faculties (**Serbia**), NGOs (**Hungary**), or they can be organized by municipalities (**Lithuania**).

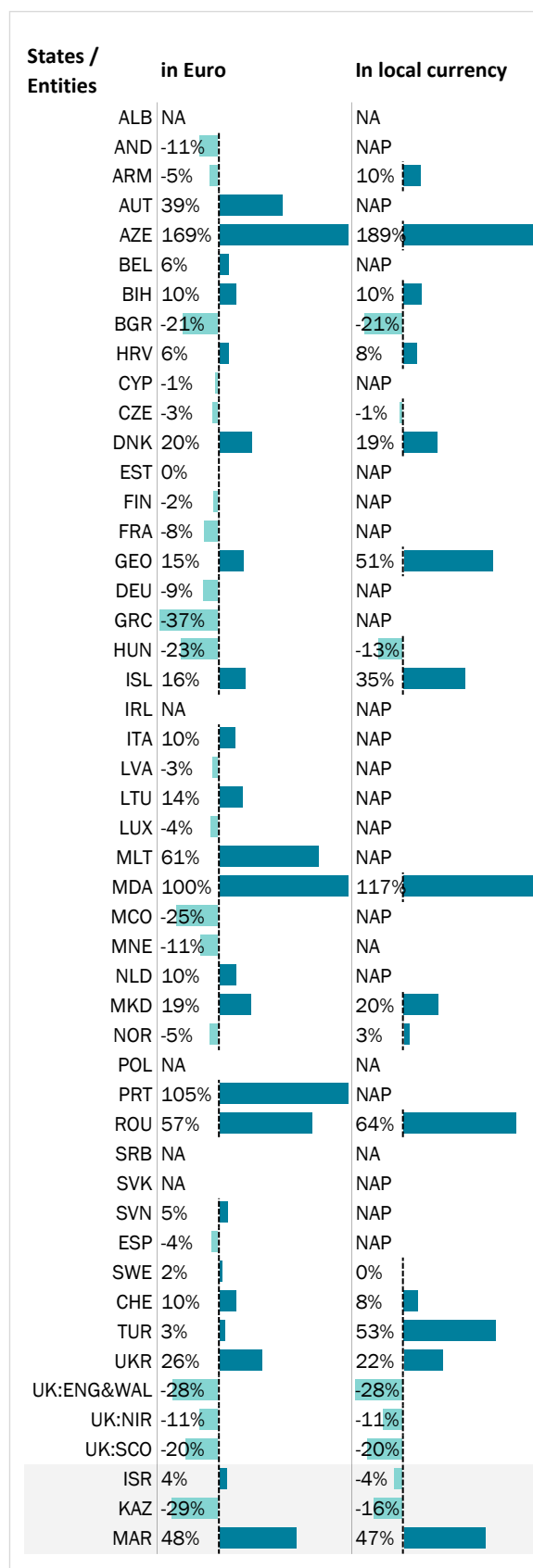
How have the budgets of legal aid evolved in Europe?

From 2018 to 2020, the average expense for legal aid dropped from 146 to 133 million €. Generally, the implemented budget of legal aid tends to fluctuate as it depends on the number of cases for which it is granted. In general, the COVID-19 Pandemic caused in many countries a drop in the number of cases granted with legal aid and, consequently, a decrease in the legal aid budget.

The implemented budget for legal aid has been increased between 2018 and 2020 in 22 states and entities and one observer state, while 20 countries and one observer have decreased it. A significant increase is registered in **Azerbaijan, Malta, the Republic of Moldova, Portugal, and Romania**, while a more important decrease is observed in **Greece, Monaco and UK-England and Wales**. Considering that this significant decrease is identified in countries that historically dedicate an important budget to legal aid, this affects the overall decreasing tendency.

The increase in the amount of the public budget implemented for legal aid in **Azerbaijan and Romania** is explained by the rise in the lawyers' fees. Since 2019, the public budget allocated to legal aid in **Portugal** includes the expenses of advances on procedural costs. The upward trend in the **Republic of Moldova** stems from the expansion of the legal aid system which implied diversified services and beneficiaries of legal aid and the promotion of the system. The decrease in **Monaco and Greece** is explained by the pandemic COVID-19, namely the closure of courts during the lockdown (**Monaco**) and the delay in the liquidation and repayment of liabilities (**Greece**).

Figure 2.26 Variation in implemented legal aid budget, 2018 - 2020, in % (Q5, Q12)



Is there a link between the level of wealth and the legal aid budget?

Generally, countries with a GDP per capita above 20 000 € have the highest budget allocated to legal aid concerning the GDP per capita and the most significant amounts per inhabitant. This fact shows that wealthier countries spend more on legal aid by any parameter examined, which differs from the trends in budgetary spending on courts and prosecution services. With **Iceland** moving from Group C to Group B, there has been a significant increase in the budget allocated to legal aid concerning the GDP per capita in group B (from 2 € to 6,82 €).

Table 2.28 Average implemented budget for legal aid by different groups of GDP per capita in 2020 (Q1, Q3, Q12-1)

Group	Per inhabitant	As % of GDP
A: < 10.000 €	0,60 €	0,01%
B: 10.000 - 20.000 €	6,68 €	0,04%
C: 20.000 - 40.000 €	9,96 €	0,03%
D: > 40.000 €	17,19 €	0,03%
Average	8,61 €	0,03%
E: (Observer states)	3,07 €	0,01%

Devised on the basis of the *Habeas Corpus* guarantees, judicial systems of the **United Kingdom** entities have always granted a special attention to legal aid. Accordingly, the legal aid budget represents 38% of the total budget allocated to the judicial system in the **UK – Northern Ireland**, and 24% in the **UK – Scotland**. The Northern European States also have a strong tradition of generous legal aid with a significant budgetary share within the total budget of the judicial system: **Norway** (31%), and **Sweden** (28%). Except for **Iceland**, the same countries spend more than 24 € per inhabitant per year.

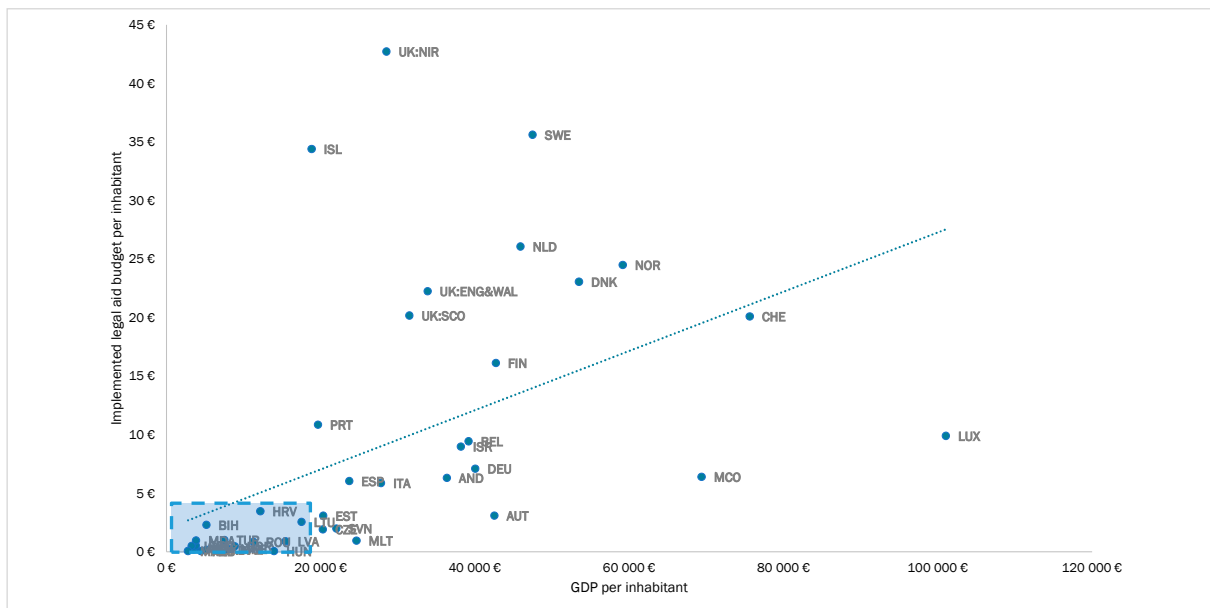
Figure 2.27 Implemented legal aid budget per inhabitant and as % of GDP in 2020 (Q1, Q3, Q12-1)

Group	States / Entities	per inhabitant	as % of GDP	as % of judicial system budget
A: < 10.000 €	ALB	0,05 €	0,001%	0,3%
	ARM	0,22 €	0,006%	2,1%
	AZE	0,19 €	0,005%	2,0%
	BGR	0,47 €	0,005%	0,9%
	BIH	2,30 €	0,044%	5,1%
	GEO	0,52 €	0,014%	6,0%
	MDA	0,96 €	0,025%	5,1%
	MKD	0,16 €	0,003%	0,8%
	MNE	0,24 €	0,003%	0,4%
	SRB	NA	NA	NA
	TUR	1,00 €	0,013%	6,2%
	UKR	0,50 €	0,015%	NA
B: 10.000 € - 20.000 €	GRC	0,42 €	0,003%	0,9%
	HRV	3,47 €	0,028%	5,4%
	HUN	0,05 €	0,000%	0,1%
	ISL	34,40 €	0,183%	29,6%
	LTU	2,54 €	0,015%	5,4%
	LVA	0,88 €	0,006%	1,6%
	POL	NA	NA	NA
	PRT	10,86 €	0,055%	NA
	ROU	0,85 €	0,008%	1,7%
	SVK	NA	NA	NA
C: 20.000 - 40.000 €	AND	6,31 €	0,017%	4,0%
	BEL	9,43 €	0,024%	10,8%
	CYP	1,89 €	0,008%	3,0%
	CZE	1,91 €	0,009%	3,0%
	ESP	6,03 €	0,025%	6,9%
	EST	3,08 €	0,015%	5,7%
	FRA	6,91 €	0,020%	9,5%
	ITA	5,88 €	0,021%	7,2%
	MLT	0,95 €	0,004%	1,5%
	SVN	1,99 €	0,009%	2,0%
	UK:ENG&WAL	22,25 €	0,066%	NA
	UK:NIR	42,71 €	0,150%	38,2%
	UK:SCO	20,18 €	0,064%	23,7%
	AUT	3,09 €	0,007%	2,2%
D: > 40.000 €	CHE	20,09 €	0,027%	9,2%
	DEU	7,10 €	0,018%	5,0%
	DNK	23,06 €	0,043%	25,0%
	FIN	16,12 €	0,038%	20,4%
	IRL	NA	NA	NA
	LUX	9,90 €	0,010%	5,6%
	MCO	6,40 €	0,009%	3,2%
	NLD	26,06 €	0,057%	20,8%
	NOR	24,49 €	0,041%	31,1%
	SWE	35,61 €	0,075%	27,9%
E: Observer states	MAR	0,06 €	0,002%	0,4%
	ISR	8,98 €	0,024%	11,5%
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Average		8,61 €	0,028%	8,8%
Median		3,08 €	0,015%	5,4%

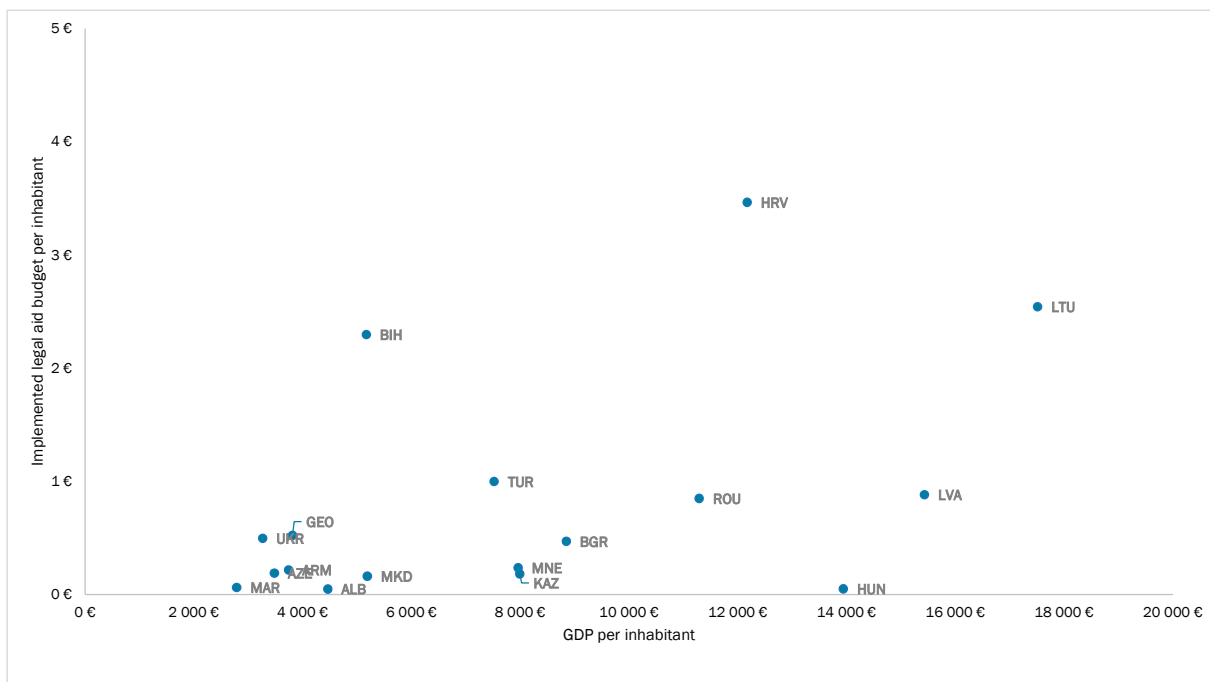
Which States and entities grant the most significant amount of legal aid compared with their GDP?

The figure 2.27 relates the legal aid budget per inhabitant to the GDP per capita. Given how the countries are scattered in this figure, a real correlation is not possible to determine. However, it reveals the significant effort of the Northern countries to enable litigants who do not have the necessary financial resources to have access to justice. Moreover, within the same group of wealthy countries, is noted the effort of **Iceland, Denmark, the Netherlands, Norway, Sweden, and UK – Northern Ireland** compared to **Austria, Belgium, and Germany**. **Bosnia and Herzegovina, Iceland, and Portugal** stand out for the higher budget allocated to legal aid within the first group with a lower GDP (less than 20 000 €). By contrast, **Greece, Hungary, Latvia, Montenegro and Romania** (in PART B) issued lower funding for legal aid than countries with a similar GDP per capita.

Figure 2.29 **Implemented Legal aid budget per inhabitant and GDP per capita in 2020 (Q1, Q3, Q12-1)**
PART A. **Emphasis on more than 20 000 € GDP per capita**



PART B. Countries with less than 20 000 € GDP per capita



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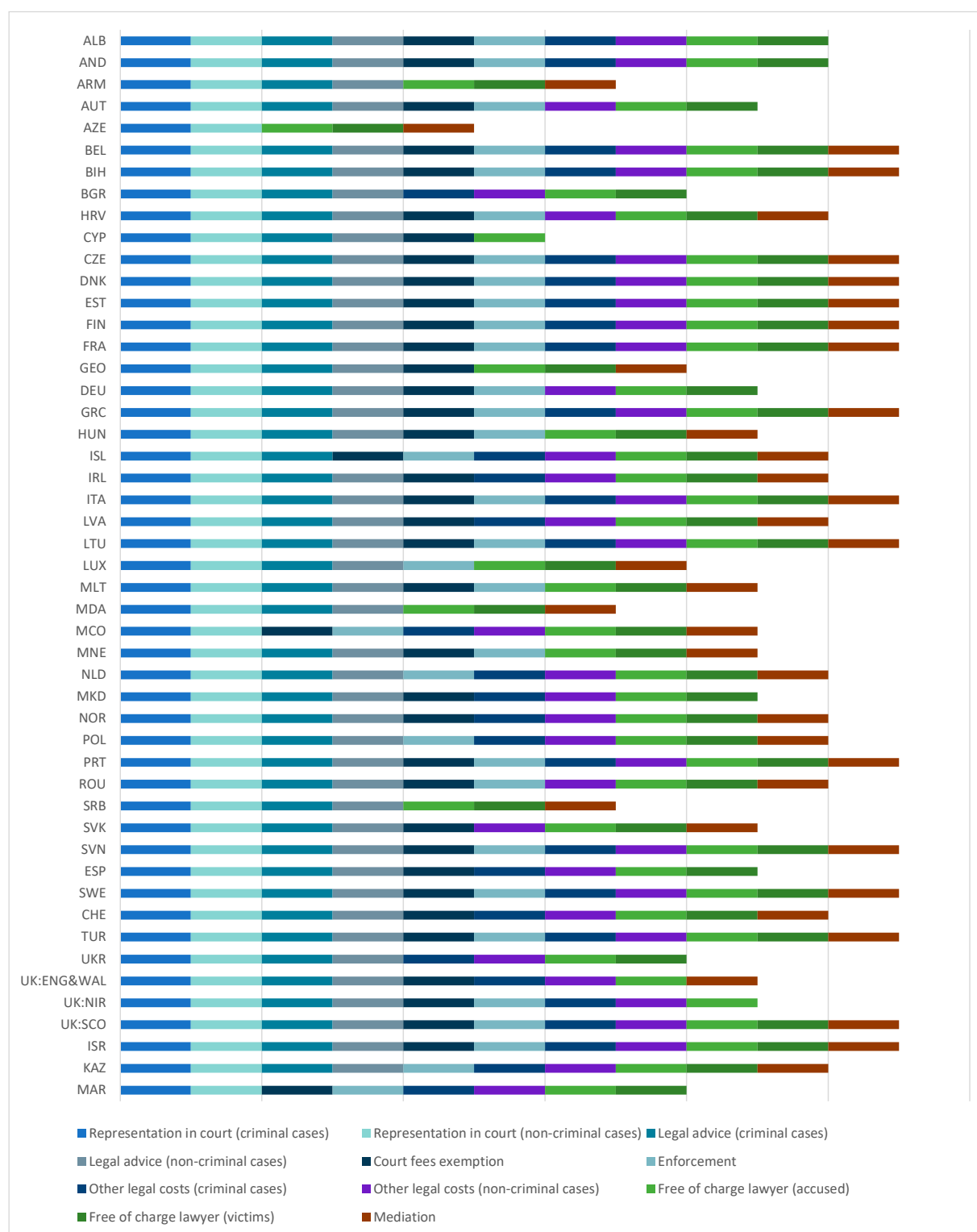
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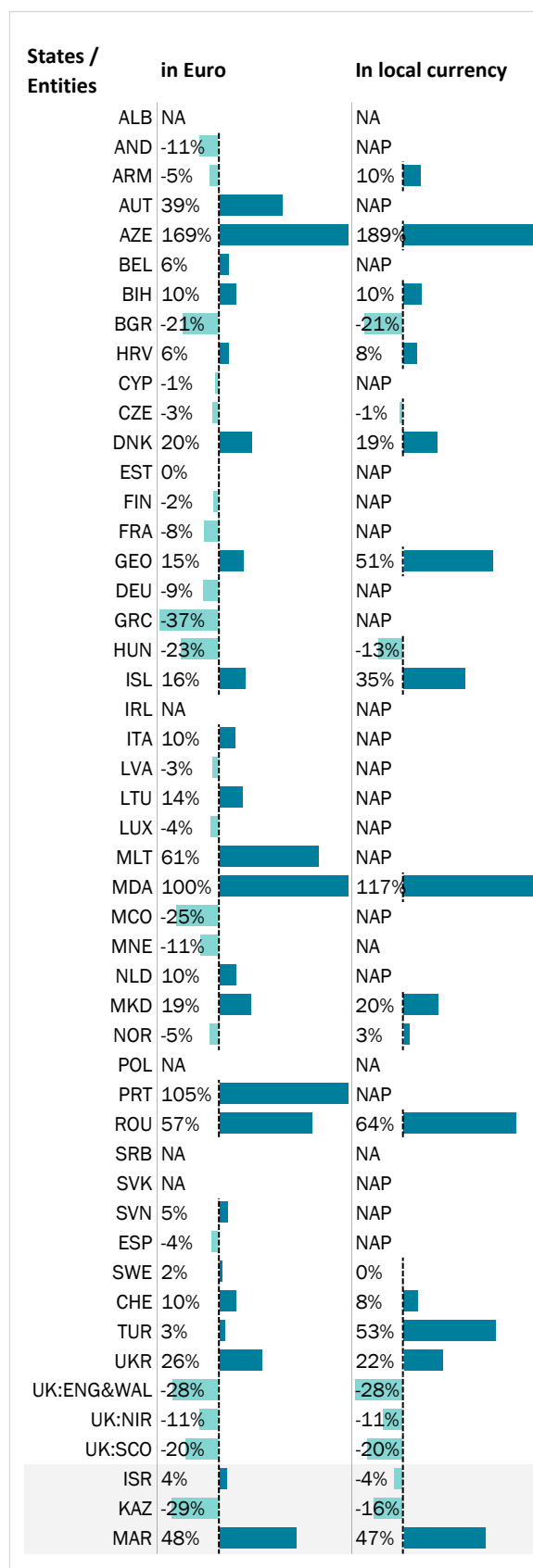
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Figure 2.26 Variation in implemented legal aid budget, 2018 - 2020, in % (Q5, Q12)



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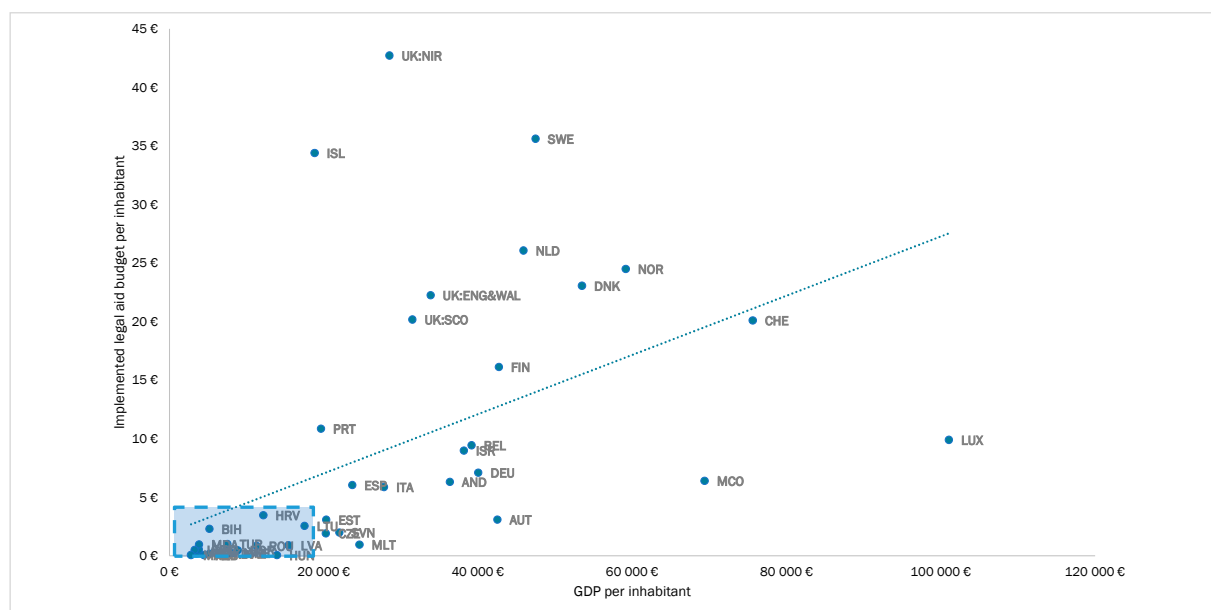
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	BGR	0,47 €	0,005%	0,9%
	BIH	2,30 €	0,04%	5,1%
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	POL	NA	NA	NA
	PRT	10,86 €	0,055%	NA
	ROU	0,85 €	0,008%	1,7%
	SVK	NA	NA	NA
C: 20,000 - 40,000 €	AND	6,31 €	0,017%	4,0%
	BEL	9,43 €	0,024%	10,8%
	CYP	1,89 €	0,008%	3,0%
	CZE	1,91 €	0,009%	3,0%
	ESP	6,03 €	0,025%	6,9%
	EST	3,08 €	0,015%	5,7%
	FRA	6,91 €	0,020%	9,5%
	ITA	5,88 €	0,021%	7,2%
	MLT	0,95 €	0,004%	1,5%
	SVN	1,99 €	0,009%	2,0%
	UK:ENG&WAL	22,25 €	0,066%	NA
	UK:NIR	42,71 €	0,150%	38,2%
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	AUT	3,09 €	0,007%	2,2%
D: > 40,000 €	CHE	20,09 €	0,027%	9,2%
	DEU	7,10 €	0,018%	5,0%
	DNK	23,06 €	0,043%	25,0%
	FIN	16,12 €	0,038%	20,4%
	IRL	NA	NA	NA
	LUX	9,90 €	0,010%	5,6%
	MCO	6,40 €	0,009%	3,2%
	NLD	26,06 €	0,057%	20,8%
	NOR	24,49 €	0,041%	31,1%
	SWE	35,61 €	0,075%	27,9%
E: Observer states	MAR	0,06 €	0,002%	0,4%
	ISR	8,98 €	0,024%	11,5%
	KAZ	0,18 €	0,002%	1,8%
Average		8,61 €	0,028%	8,8%
Median		3,08 €	0,015%	5,4%

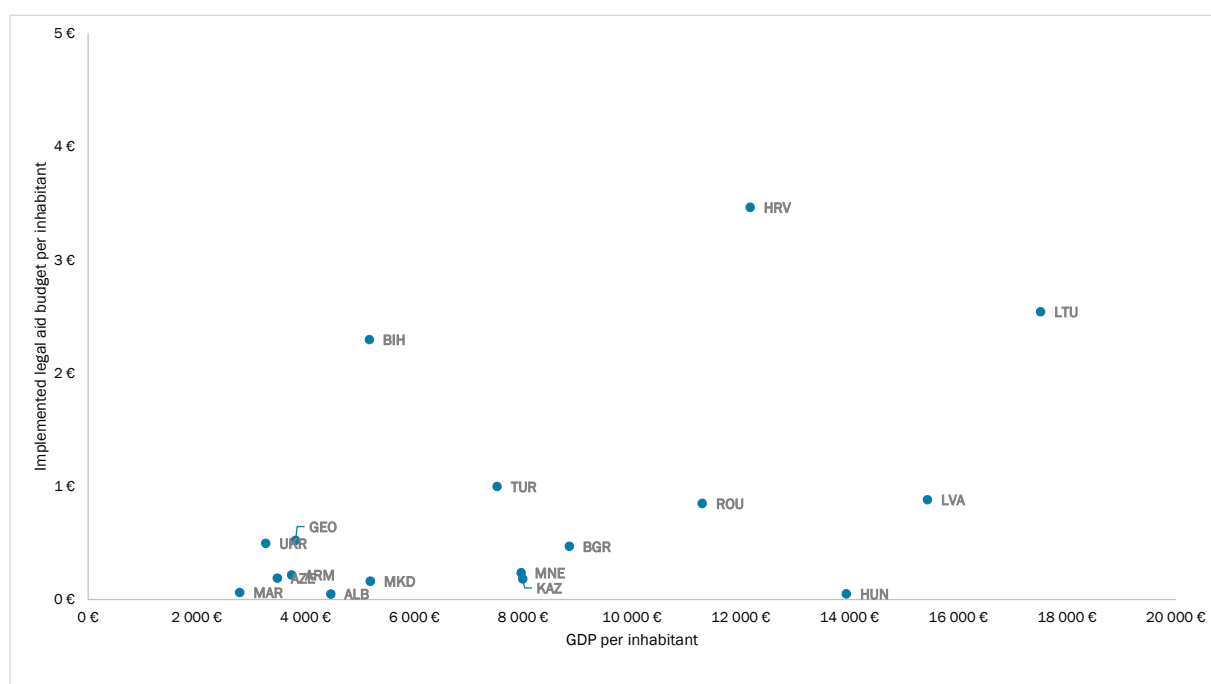
Which States and entities grant the most significant amount of legal aid compared with their GDP?

The figure 2.27 relates the legal aid budget per inhabitant to the GDP per capita. Given how the countries are scattered in this figure, a real correlation is not possible to determine. However, it reveals the significant effort of the Northern countries to enable litigants who do not have the necessary financial resources to have access to justice. Moreover, within the same group of wealthy countries, is noted the effort of **Iceland, Denmark, the Netherlands, Norway, Sweden, and UK – Northern Ireland** compared to **Austria, Belgium, and Germany**. **Bosnia and Herzegovina, Iceland, and Portugal** stand out for the higher budget allocated to legal aid within the first group with a lower GDP (less than 20 000 €). By contrast, **Greece, Hungary, Latvia, Montenegro and Romania** (in PART B) issued lower funding for legal aid than countries with a similar GDP per capita.

Figure 2.29 Implemented Legal aid budget per inhabitant and GDP per capita in 2020 (Q1, Q3, Q12-1)
PART A. Emphasis on more than 20 000 € GDP per capita

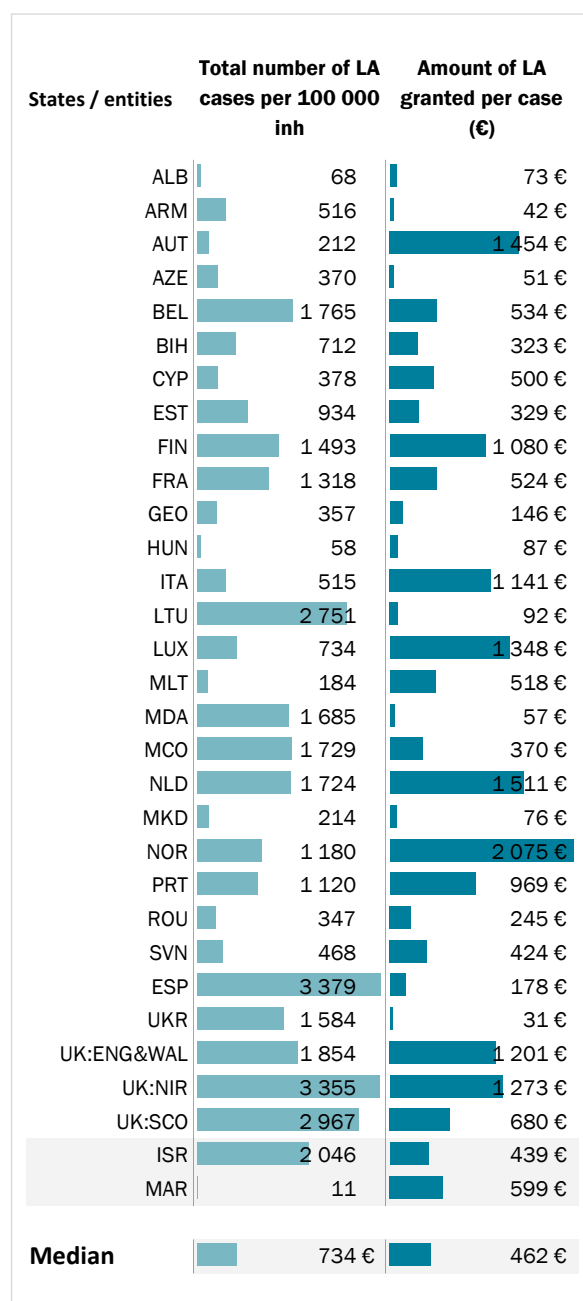


PART B. Countries with less than 20 000 € GDP per capita



Which States and entities grant legal aid for the largest number of cases?

Figure 2.30 Amount of implemented legal aid per case (in €) and total number of cases per 100 000 inhabitants in 2020 (Q12-1, Q20)



CEPEJ tries to refine the analysis of policies related to access to justice through legal aid. To this end, CEPEJ has linked the demand (the number of litigious and non-litigious cases granted with legal aid for 100 000 inhabitants) with the amounts allocated by case. The information is available for 33 states and entities.

Generally speaking, some states and entities grant a low cost per legal aid case for a high number of cases benefiting from legal aid, while other states allocate a higher amount per case for a smaller number of cases.

Denmark, Norway, the Netherlands and Austria provide the highest amount per case. **Denmark** is not presented in the Figure 2.30 because it is an outlier with much higher amount awarded per case compared to other countries. **Norway** and the **Netherlands** also offer legal aid for many cases. On the other hand, some countries such as **Lithuania, the Republic of Moldova and Spain** have many legal aid cases, but less amount allocated per case. **Hungary and Albania** are not generous both in the number of eligible cases and in the amount spent per case.

Trends and conclusions

As stated by the Venice Commission in its Report on the Independence of the Judicial System, Part 1 on the Independence of Judges, (2010, CDL-AD (2010)004-e.) *“It is the duty of the state to provide adequate financial resources for the judicial system. Even in times of crisis, the proper functioning and the independence of the judiciary must not be endangered”*. Adequate funding is necessary to *“enable the courts and judges to live up to the standards laid down in Article 6 of the European Convention on Human Rights and national constitutions and perform their duties with the integrity and efficiency which are essential to the fostering of public confidence in justice and the rule of law”*. At the same time, as resources are by definition limited, they must be used efficiently.

Between 2010 and 2020, the budget of the judicial system grew steadily but unevenly. The smallest increase is between 2012 and 2014 and the largest between 2016 and 2018.

European countries spent on average almost 1,1 billion Euros on their judicial systems, equal to 79 € per inhabitant (7 € more than in 2018) and 0,35% of GDP. Countries with a higher GDP per capita invest more per inhabitant in judicial systems. In contrast, less wealthy countries allocate more budget as a percentage of GDP, showing a more significant budgetary effort for their judicial systems.

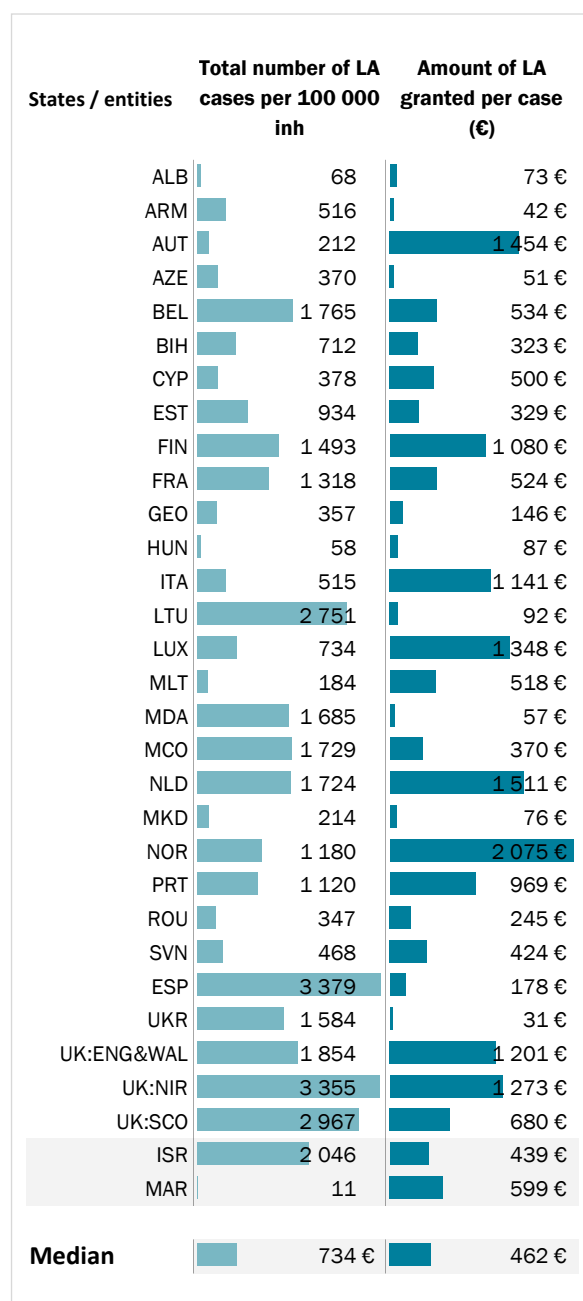
On average, member States and entities spend almost 2/3 of their judicial system budget on courts, around 25% on public prosecution services and the remaining on legal aid. From 2018 to 2020, nearly all member States and entities have increased the budget allocated to courts, prosecution services and legal aid. The most significant percentage increase, equal to 12% on average, has been recorded for the public prosecution budget. The budget allocated to courts seems to be related to the country's wealth but also to the number of courts.

Traditionally, East European countries spend proportionally more on prosecution services, while Northern European and Common Law countries invest relatively more in legal aid. Adequate legal aid coverage is essential to guarantee access to justice for all. Generally speaking, all the countries have implemented a legal aid system in criminal and other than criminal matters, complying with the European Convention on Human Rights requirements.

The COVID-19 Pandemic has not led to big variations in terms of overall budget. However, some variations can be noticed in specific budget lines such as: court buildings maintenance (decrease), justice expenses (decrease), training (decrease) and IT (increase). The legal aid budget was also affected by the Pandemic: due to the lower number of cases, the implemented budget dropped in many countries.

Which States and entities grant legal aid for the largest number of cases?

Figure 2.30 Amount of implemented legal aid per case (in €) and total number of cases per 100 000 inhabitants in 2020 (Q12-1, Q20)



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