Chapter 15. Judicial experts

This chapter concerns *judicial experts*, which means experts certified or accredited by a court or another authority to provide their expertise to the judicial administration.

Given the importance of judicial experts in many cases, the CEPEJ has decided to present this topic in a separate chapter. The role of experts contributes to improving judicial efficiency by providing judges with clear and substantiated replies on specific and complex issues they are called upon to assess. The method of implementation and the monitoring of expertise in adversarial also conditions the quality and the delay of decisions.

There is neither consensus, nor European standards on what a judicial expert is. It is true that, in 1959, the European Convention on mutual assistance in criminal matters dealt with such matters as letters rogatory for the examination of experts, summoning of experts, but this part of the document is short and limited to criminal matters. As part of the CEPEJ working group on the quality of justice (CEPEJ-GT-QUAL), this issue is being addressed. The study defined judicial expertise as an "investigative measure assigned to a technician by, or with the approval of, a court or a prosecuting or adjudicatory authority, in order to contribute to the judicial settlement of present or future litigation by adducing technical or factual evidence. A court expert is a technician (doctor, plumber, architect, medical laboratory, etc.) appointed by the judge to carry out this investigative measure." (Taken from paragraph 1 of recommendations from Proceedings of the Symposium on Judicial Expertise, recommendations." Brussels, 16 March 2012)

15.1 Different kinds of judicial experts

Different kinds of judicial experts, whose missions are of a wide variety, exist in the member states of the Council of Europe, and in particular:

- *Technical experts*: who put their scientific and technical knowledge on issues of fact at the court's disposal.
- *Expert-witnesses*: who are requested by the parties to bring their expertise to support their arguments, primarily in common-law systems.
- *Law experts:* who might be consulted by the judge on specific legal issues or requested to support the judge in preparing the judicial work (they do not take part in the decision).

Table 15.1 Mission of the experts in judicial procedures (Q202)

States/entities	"Expert witnesses", who are requested by the parties to bring their expertise to support their argumentation	"Technical experts" who put their scientific and technical knowledge on issues of fact at the court's disposal	"Law experts" who might be consulted by the judge on specific legal issues or requested to support the judge in preparing the judicial work (but do not take part in the decision).
Albania	Yes	Yes	No
Andorra	Yes	Yes	No
Armenia	Yes	Yes	No
Austria	Yes	Yes	No
Azerbaijan	Yes	Yes	No
Belgium	Yes	Yes	No
Bosnia and Herzegovina	No	Yes	No
Bulgaria	No	Yes	No
Croatia	No	Yes	No
Cyprus	NAP	NAP	NAP
Czech Republic	Yes	Yes	No
Denmark	Yes	Yes	No
Estonia	Yes	Yes	Yes
Finland	Yes	Yes	No
France	No	Yes	No
Georgia	Yes	Yes	No
Germany	Yes	Yes	Yes
Greece	Yes	Yes	Yes
Hungary	Yes	Yes	No
Iceland	Yes	Yes	No
Ireland	Yes	Yes	Yes
Italy	Yes	Yes	No
Latvia	Yes	Yes	No
Lithuania	Yes	Yes	No
Luxembourg	No	Yes	No
Malta	Yes	Yes	Yes
Republic of Moldova	Yes	Yes	No
Monaco	No	Yes	No
Montenegro	No	Yes	No
Netherlands	Yes	Yes	Yes
Norway	Yes	Yes	Yes
Poland	Yes	Yes	Yes
Portugal	No	Yes	No
Romania	Yes	Yes	No
Russian Federation	Yes	Yes	Yes
Serbia	Yes	Yes	No
Slovakia	Yes	Yes	No
Slovenia	No	Yes	No
Spain	No	Yes	No
Sweden	Yes	Yes	No
Switzerland	No	Yes	No
The FYROMacedonia	Yes	Yes	No
Turkey	No	Yes	Yes
Ukraine	No	Yes	No
UK-England and Wales	Yes	Yes	No
UK-Northern Ireland	Yes	No	No
UK-Scotland			
Number of countries	32	44	10
Israel	Yes	Yes	No

Yes	
No	
NAP	

Comment:

UK-Scotland: the term 'judicial expert' is not used in Scotland.

In a majority of states or entities there are at least 2 types of judicial experts: *technical experts* and *expert-witnesses.* **UK-Northern Ireland** knows only *expert-witnesses*.

Technical expertise is the form of expertise which is used by the highest number of European states or entities (44 states or entities). Only 2 states or entities do not use this kind of expertise: **UK-Northern**

Ireland and **UK-Scotland**. *Expert-witnesses* (32 states or entities) provide a kind of expertise which looks to be more developed in the common Law systems and in Northern Europe. *Law expertise* (10 states) is used in **Estonia**, **Germany**, **Greece, Ireland**, **Malta**, **Netherlands**, **Norway**, **Poland**, **Russian Federation**, **Turkey**.

In **Ireland**, the parties to a case employ expert and technical witnesses. The Courts Service provides legal researchers and judicial assistants (”Judicial Fellows”) to assist the judge in researching the law which (s)he may require to apply in coming to a decision.

In **Romania**, concerning the judicial technical expertise approved by the court, experts chosen by the parties and approved by the court may attend with quality advisers of the parties (expert witnesses), unless the law provides otherwise. In this case, these experts can formulate questions and comments and, if appropriate, prepare a separate report on the issue subject to expertise. Provisions relating to the participation of the expert chosen by the parties (expert witnesses) to conduct the judicial technical expertise existed in the former civil procedural regulation (applicable in 2012).

The **Slovak** legal order uses the term “expert” without any adjective relating to a court. The Ministry of Justice of the Slovak Republic discloses the list of experts on its website. The court or any other public authority can select the expert from the list and ask them to provide a technical report. Any natural or legal person can also ask the expert to provide the expertise.

In **UK-England and Wales**, “expert witnesses” are those requested by the parties to bring their expertise to support their argumentation. “Technical experts” are those who put their scientific and technical knowledge on issues of fact at the court's disposal. Courts may in certain circumstances be assisted by an advocate to the court (previously known as an *amicus curiae*), who presents arguments in relation to the nature and content of the legal background to, and issues in, a particular case.

15.2 Selection of judicial experts

Table 15.2 Selection of the judicial experts by the courts (Q 207)

States/entities	Recruitment and/or appointment for a specific term of office	Recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings	Selection not made by the Court
Albania	Yes	Yes	No
Andorra	No	Yes	No
Armenia	Yes	No	No
Austria	Yes	Yes	No
Azerbaijan	No	No	Yes
Belgium	No	Yes	No
Bosnia and Herzegovina	No	Yes	No
Bulgaria	No	Yes	No
Croatia	Yes	Yes	No
Cyprus	No	No	Yes
Czech Republic	No	Yes	No
Denmark	No	No	Yes
Estonia	No	Yes	No
Finland	No	Yes	No
France	Yes	Yes	No
Georgia	No	No	Yes
Germany	No	Yes	No
Greece	Yes	Yes	No
Hungary	No	No	Yes
Iceland	No	Yes	No
Ireland	No	No	Yes
Italy	No	Yes	No
Latvia	No	Yes	No
Lithuania	No	Yes	No
Luxembourg	Yes	Yes	No
Malta	No	Yes	No
Republic of Moldova	No	Yes	No
Monaco	No	Yes	No
Montenegro	No	Yes	No
Netherlands	No	No	Yes
Norway	Yes	Yes	No
Poland	Yes	Yes	No
Portugal	No	Yes	No
Romania	No	No	Yes
Russian Federation	No	Yes	No
Serbia	No	No	Yes
Slovakia	No	Yes	No
Slovenia	No	No	Yes
Spain	No	Yes	No
Sweden	No	Yes	No
Switzerland	No	Yes	No
The FYROMacedonia	No	No	Yes
Turkey	No	Yes	No
Ukraine	No	No	Yes
UK-England and Wales	No	No	Yes
UK-Northern Ireland	No	Yes	No
UK-Scotland	No	No	Yes
Number of countries	9	32	14
Israel	No	Yes	No

Yes	Yes
No	No

Judicial experts can be recruited and/or appointed by a court. 14 states or entities do not consider that the courts must be responsible for selecting judicial experts.

When experts are not recruited and/or appointed by the court, their selection is ensured most of the time by the Ministry of Justice directly or through one of its components (**Azerbaijan**, **Hungary**, **Romania**, **Serbia**, **Slovakia**, **Slovenia**).

Experts can also be selected directly by the parties (**Cyprus**, **Denmark**, **Ireland**, **UK-England and Wales**) or even in other ways, by the head of the State Forensic Agency (**Russian Federation**). As an example, in **Romania**, the quality of judicial technical expert is acquired based on an exam/interview, organised by the Ministry of Justice. The person acquiring this capacity is registered in a nominal table, drawn up according to specialities and counties, by the Central Office for Judicial Technical Expertise within the Ministry of Justice. The local offices for judicial technical and accounting expertise within law courts communicate to the courts, to the criminal prosecution bodies and to other bodies with jurisdiction attributions the list of the experts and specialists who may perform judicial expertise.

Judicial experts are recruited and/or appointed by a court in 33 states or entities. The recruitment and/or nomination can be either for a specific term of office (9) – for instance, they can be registered on a list from which the judge can choose the experts for a given proceeding – or on an ad hoc basis, according to the specific needs of the proceeding, as it is the case in most states or entities (32).

There are only a few states or entities where experts are selected exclusively for a specific term of office. In the **Netherlands,** no courts are responsible for appointment. Recruitment and selection is done by the prosecutor and professional associations of the judicial experts.

In **Finland**, the appellate authority may obtain an opinion from an individual expert on a matter requiring special expertise. If a party calls an expert not appointed by the appellate authority, the provisions on the hearing of witnesses shall apply.

Experts are mainly selected on an *ad hoc* basis, according to the specific needs of the given procedures. Then, courts select them from an official list provided by the Ministry of Justice (**Bosnia and Herzegovina**, **Luxembourg**, **Slovakia**, **Sweden**) or from a list of persons recognised for their competence (**Portugal**), sometimes with the agreement of the parties (**Luxembourg**, **Portugal**).

It could also happen that the decision of the judge only identifies an expertise institution, and it is the director of that institution who decides which employee is available and the most qualified to be the expert assigned to the case (**Republic of Moldova**). Sometimes, the court is supposed to preferably choose from the list provided by the Ministry but can also select and appoint an *ad hoc* expert if there is no expert on the list for the desired field of activity or the registered expert is not able to act (**Slovakia**).

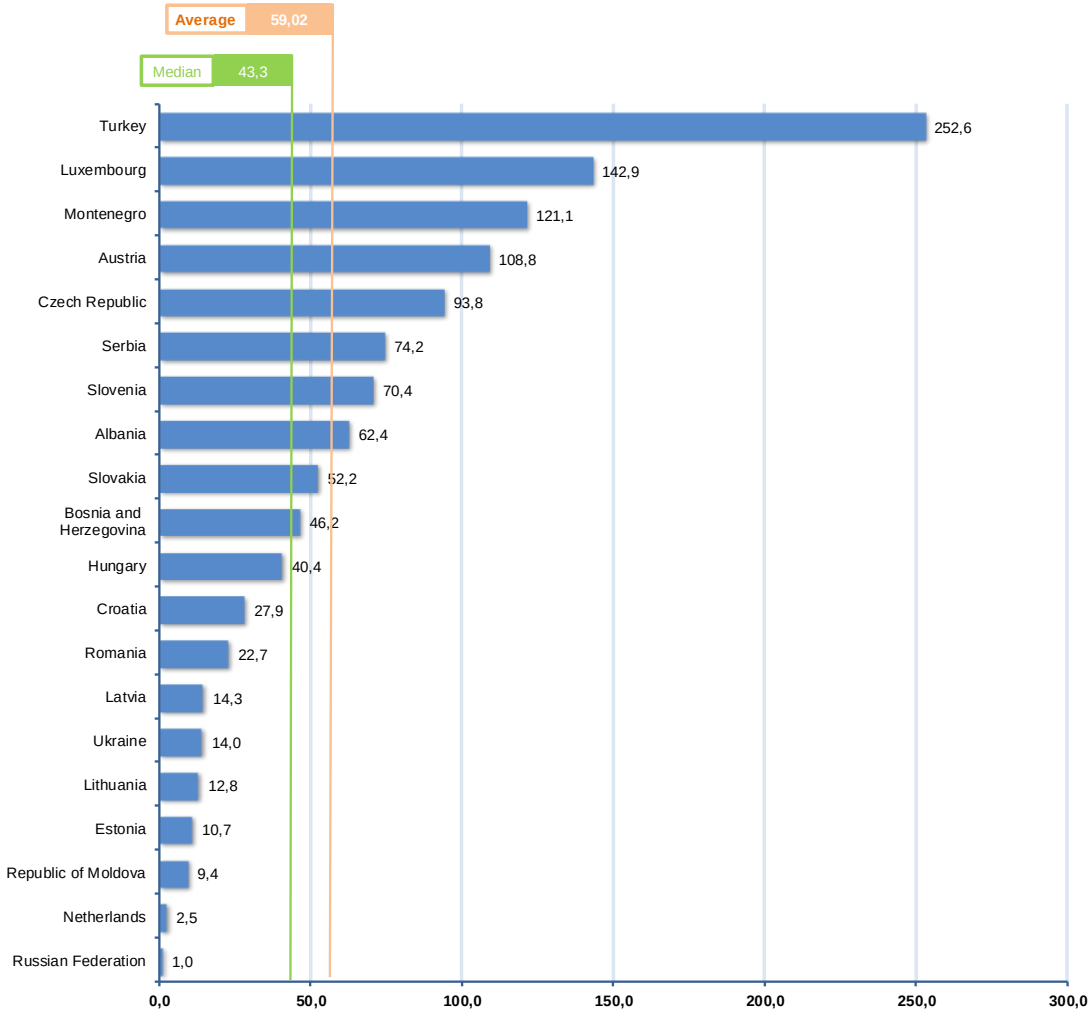
As an example, in **Finland**, the court shall obtain a statement on this question from an agency, a public official or another person in the field who is known to be honest and competent. Before an expert witness is appointed, the parties shall be heard on this. In **Montenegro**, the party proposing the expert evaluation shall indicate the subject and scope of the evaluation in the proposal and shall also propose the person from the list of certified expert witnesses who shall provide expert evaluation. The opposing party shall make a statement on the proposed expert witness. If the parties fail to reach an agreement on the person to be appointed as the expert witness and on the subject and scope of the expert evaluation, the court shall make a decision thereon. Regardless of the agreement between the parties, the court may designate another expert if it considers the examination a complex one.

Expert witnesses shall predominantly be appointed from among certified court experts for a specific type of expert evaluation. A more complex expert evaluation may also be entrusted to professional institutions (hospital, chemical laboratory, university, etc.).

15.3 Number of judicial experts (technical experts)

This chapter concerns *technical experts* only. In this type of expertise, the expert is putting his/her scientific and technical knowledge on issues of fact at the court's disposal.

Figure 15.3 Number of accredited or registered technical judicial experts per 100.000 inhabitants in 2012 (Q205)



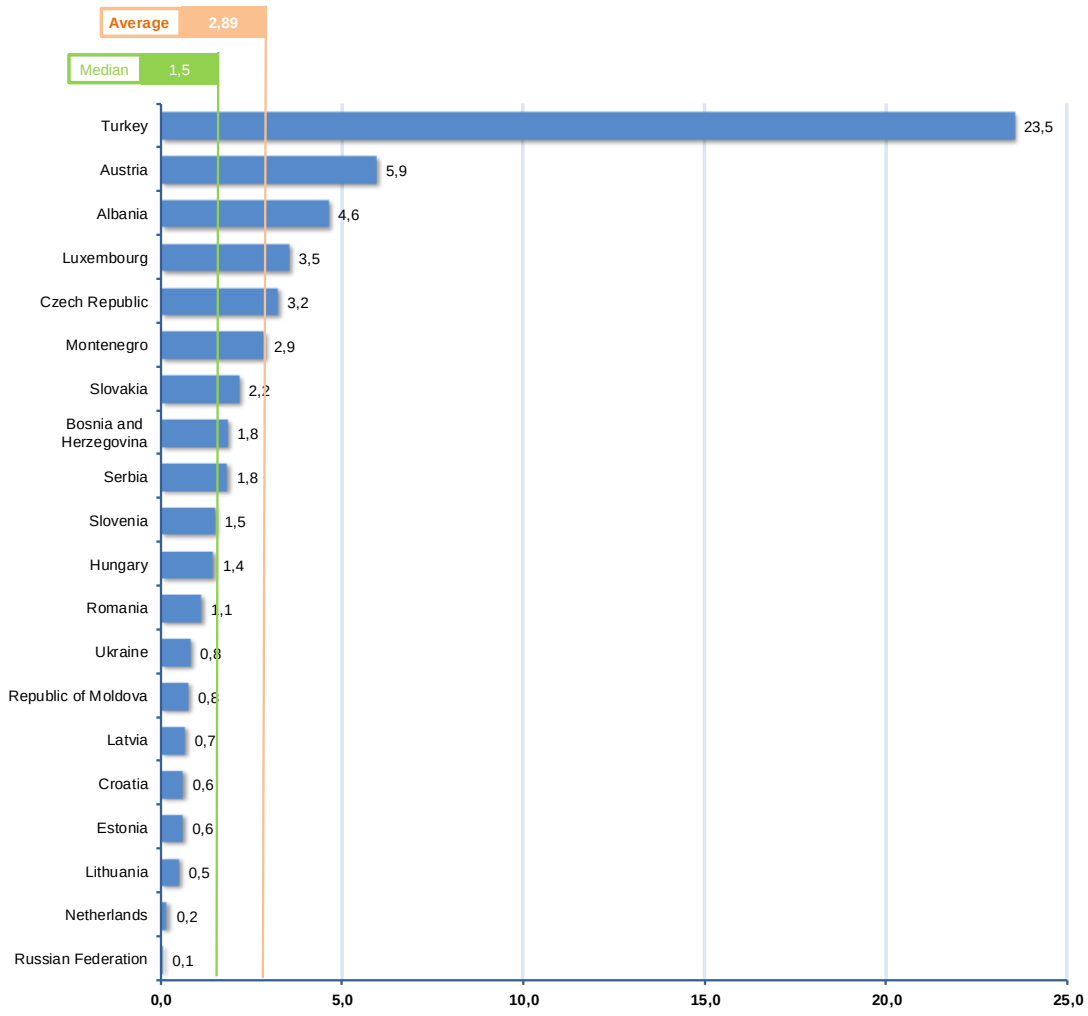
Comments:

Croatia: in 2010, the courts did not regularly enter all appointed judicial experts (technical experts) in the electronic data base; In 2012, the courts had updated the list of appointed judicial experts (technical experts) in the electronic database and thus the number seems higher although in reality there is no difference.
Czech Republic: data as of 30 September 2013.
Estonia: the number of accredited or registered judicial experts given for question nr 205 includes the number of forensic (judicial) experts and officially certified experts.
Luxembourg: the number of experts - physical persons - is inferior to the total number of experts as they are counted several times if they have double specialties. There was no decrease in number, but the number 750 may have contained experts and interpreters that are named in the same way and governed by the same law.
Netherlands: in 2010 the Netherlands Register of Court Experts started its activities. Its register started from scratch with 0 experts. Every court expert wanting to subscribe is tested individually. This takes time. Also regularly new expert domains are standardized, and therefore experts on these new domains will also be tested and subscribed in the register. Therefore in the coming years an increase in the number of court experts may be expected.
Russian Federation: the data concerns only state judicial experts and is provided by the Russian Federal Center for Forensic attached to the Ministry of Justice of the Russian Federation.
Spain: in 2012, the number of judicial experts contracted by the Ministry of Justice was 67, but no data is available for the external professionals.
Turkey: the number of experts increased due to the implementation of certified judicial experts, as their number was very limited during the reporting period for 2010.

44 states or entities stated that they use technical experts, but only 20 of them have been able to provide the number of accredited technical judicial experts in 2012.

The absence of data for some other countries may be explained in different ways: in **"the Former Yugoslav Republic of Macedonia"**, for example, there is no data for registered judicial experts due to the fact that the register for experts has still not been established.

Figure 15.4 Number of judicial experts (technical experts) per judge in 2012 (Q46, Q205)

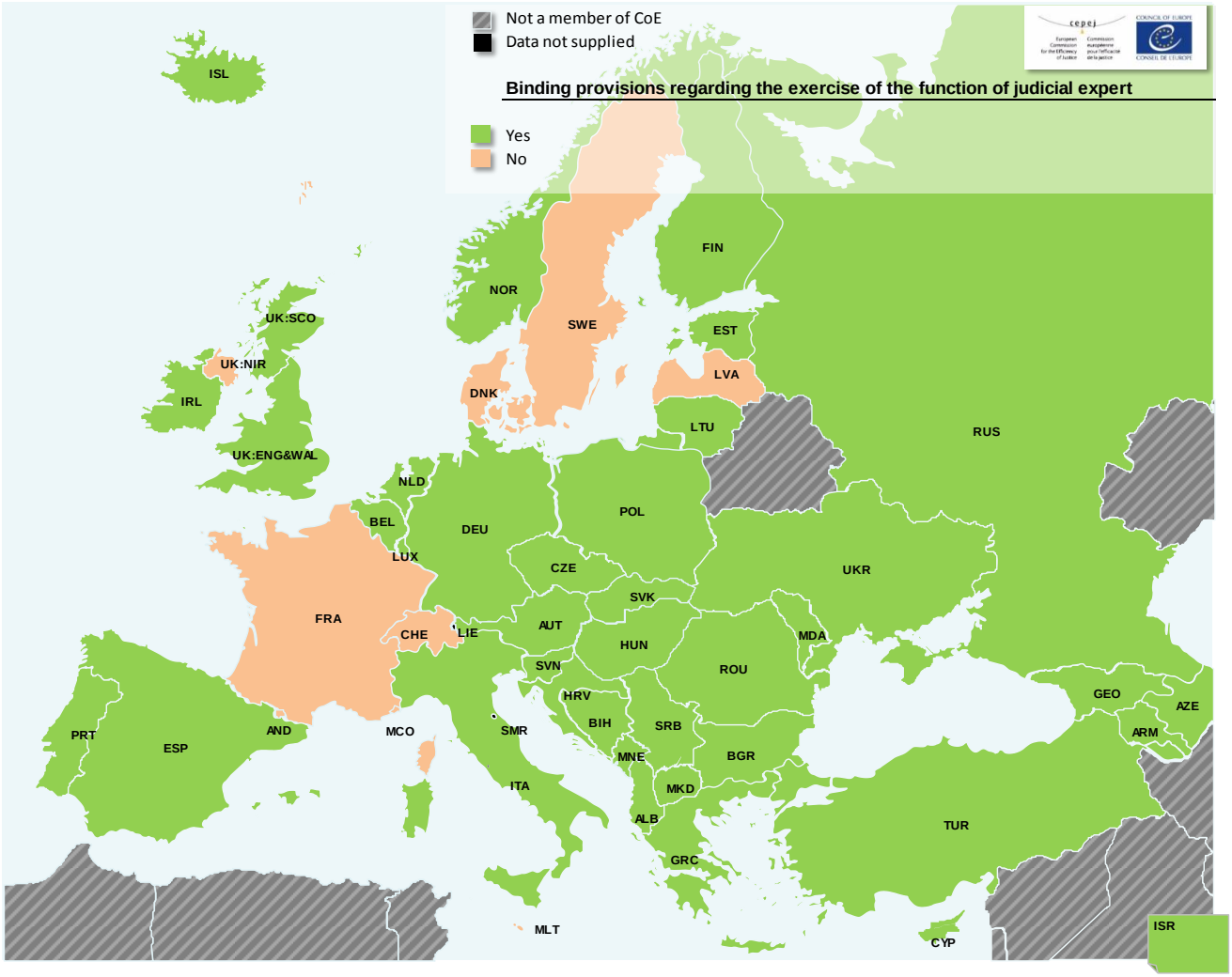


15.4 Quality of judicial experts and protection of the title and the function of judicial expert

The comparative study has taken into consideration not only binding provisions regarding to the exercise of the function of judicial experts but also the protection of the title and the function of judicial expert.

15.4.1 Procedural provisions governing the exercise of the function of judicial expert

Figure 15.5 Procedural provisions governing the exercise of the function of judicial expert in 2012 (Q206)



39 states or entities indicated having procedural provisions governing the quality of judicial experts during proceedings. Often, these requirements are provided for by the law (**Albania**, **Georgia**, **Germany**, **Iceland**, **Lithuania**, **Montenegro**, **Netherlands**, **Norway**, **Portugal**, **Romania**, **Spain**, **"the former Yugoslav Republic of Macedonia"**, **Turkey**).

In most cases, binding provisions specify time limits to carry out their mission and submit their report (**Albania**, **Austria**, **Bosnia and Herzegovina**, **Bulgaria**, **Finland**, **Greece**, **Hungary**, **Iceland**, **Ireland**, **Italy**, **Luxembourg, Monaco, Montenegro**, **Netherlands**, **Norway**, **Portugal**, **Serbia**, **Slovenia**, **Spain**, **"the former Yugoslav Republic of Macedonia"**, **Turkey**, **UK-England and Wales**).

However, this is not the case in all countries: in **Slovakia**, the law does not stipulate a limited period of time for providing the expertise. The judge assigns to the expert the proper time limit in his/her ruling; in the **Russian Federation**, the time limits for expert examinations are set by the judges and there are no binding provisions in the law in this regard; in **Ukraine**, there are no binding provisions on this issue either.

Concerning the time limits, more or less flexibility can be attached to the exercise of the function of judicial expert. There are three main options:

- the time limit can be imposed by the law with a maximum threshold: in **Albania**, if there is a large number of facts and the expert cannot answer immediately, the proceeding authority gives him a period of time not exceeding sixteen days. In case he/she needs to carry out some very complex verification, this term may be extended more than once for periods of not more than thirty days, but in any case without exceeding a maximum of six months; in **Italy**, the maximum is 60 days; in **Portugal**, 30 days, in **"the former Yugoslav Republic of Macedonia"** between 45 and 60 days, in **Turkey** between 3 and 6 months;
- the maximum delay can be fixed by the judge as I t is the case for example in **Russian Federation**, **Serbia**, **Slovakia**, **UK-England and Wales**;
- the time limit can result from an agreement allowed by law, as it is the case in the **Netherlands** where the commissioner and the expert agree upon the timeframe.

Non-respect of a time limit can have financial consequences for the expert: in **Montenegro**, if the expert does not submit his/her findings and opinion within a given time limit, he/she may be punished by a fine of up to 500 Euros; in **Slovenia**, there are sanctions for the judicial expert who does not provide his/her technical report within the time limit set by the Court: his/her remuneration is reduced by one per cent for each day of delay, up to a maximum of 50 per cent, unless the judicial expert proves that the delay was due to legitimate and justifiable reasons.

Binding provisions may also specify situations in which an agreement is needed (in **Belgium**, concerning DNA expertise), deontology (**UK-Northern Ireland**) or conditions necessary in order to be registered as an expert (**Slovakia**).

15.4.2 Protection of the title and function of judicial expert

Table 15.6 Title, function and number of judicial experts in 2012 (Q203, Q204, Q205)

States/entities	Is the title of judicial experts protected?	Is the function of judicial experts regulated by legal norms?	Number of accredited or registered judicial experts (technical experts)
Albania			1 757
Andorra			NA
Armenia			NA
Austria			9 193
Azerbaijan			NA
Belgium			NA
Bosnia and Herzegovina			1 772
Bulgaria			NA
Croatia			1 191
Cyprus			NAP
Czech Republic			9 857
Denmark			NA
Estonia			138
Finland			NAP
France			NAP
Georgia			NA
Germany			NA
Greece			NA
Hungary			4 000
Iceland			NAP
Ireland			NA
Italy			NA
Latvia			293
Lithuania			385
Luxembourg			750
Malta			NAP
Republic of Moldova			335
Monaco			
Montenegro			751
Netherlands			412
Norway			NAP
Poland			NA
Portugal			NA
Romania			4 836
Russian Federation			1 501
Serbia			5 342
Slovakia			2 825
Slovenia			1 450
Spain			NA
Sweden			NAP
Switzerland			NA
The FYROMacedonia			NA
Turkey			191 013
Ukraine			6 350
UK-England and Wales			NA
UK-Northern Ireland			NAP
UK-Scotland			NA
Number of countries	29	36	
Israel			

	Yes
	No

In 29 states or entities, the judicial expert is granted a protected title; pre-conditions exist in order to be appointed as a judicial expert (often related to skills and moral behaviour) and the expert's work is followed by the authorities (often judicial authorities). In some member states, there are expert associations (boards) which might be placed under the authority of the courts. Experts are guided by standards in 36 member states (see above).

15.5 Trends and conclusions

This is the second time that the CEPEJ has introduced a chapter on judicial experts in its Evaluation Report. When observing the missions of judicial experts, it can be noticed that technical experts are used in almost all member states and that expert-witnesses are often requested. Only 10 states appeal to law experts. Experts play an important role in the quality of the legal debate, but the implementation of expertise in a poorly organised framework can also have a negative impact on the length of proceedings.

Three quarter of the member states consider that the courts must be in charge of the selection process. When experts are not recruited and/or appointed by the court, their selection is most often ensured by the Ministry of Justice or by the parties. When experts are recruited and/or appointed by a court, they are mainly selected according to the specific needs of the given procedures. In several states or entities, not only natural persons but also legal persons can be registered as experts.

A procedural framework exists in a large proportion of states or entities when it comes to organising the missions of judicial experts. These provisions can be provided for by law (a majority of states or entities), or decided by the judges depending on cases.

In many cases, the procedural provisions specify time limits, with more or less flexibility for the expert. In certain States, the non-respect of a time limit can have financial consequences for the expert.

Chapter 16. Court interpreters

Court interpreters play a major role in guaranteeing access to justice for court users. The European Convention on Human Rights guarantees the right for everyone who is arrested to "*be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him"* (Article 5 § 2), and specifies the right of persons charged with a criminal offence to "*have the free assistance of an interpreter if he cannot understand or speak the language used in court*" (Article 6 § 3). The fair trial and equality of arms principles of the ECHR include the right to understand and actively participate in the proceedings, as well as the right to be informed of the evidence presented and thus, to reply with any necessary observations and to organise one's defense. This is even more important in such a linguistically rich environment as the one of the member states of the Council of Europe.

However, the comparison of court interpreters between countries should be handled with care, because there is no consensus between the member states on what the requirements applied to court interpreters and translators should be. Only EU members have set up common European standards for judicial interpretation and translation, through a directive[36] that entered into force on November 2010, but it is limited to criminal proceedings. EU member states had a 3-year period for the transposition of this directive (until 27 October 2013).

[36] Directive on the right to interpretation and translation in criminal proceedings.

16.1 Number of court interpreters

All states indicated having court interpreters. However, only 22 states were able to indicate the total number of accredited or registered court interpreters. In some states, it is difficult to distinguish which of all the interpreters-translators are dedicated to justice, in particular in **Albania**, **Sweden**, **UK-England and Wales**. Moreover, **Switzerland** based its numbers on data obtained from 4 cantons only (out of 26).

For all these reasons, one must be very careful when making comparisons between the states.

Figure 16.1 Number of accredited or registered court interpreters in 2012 (Q199)

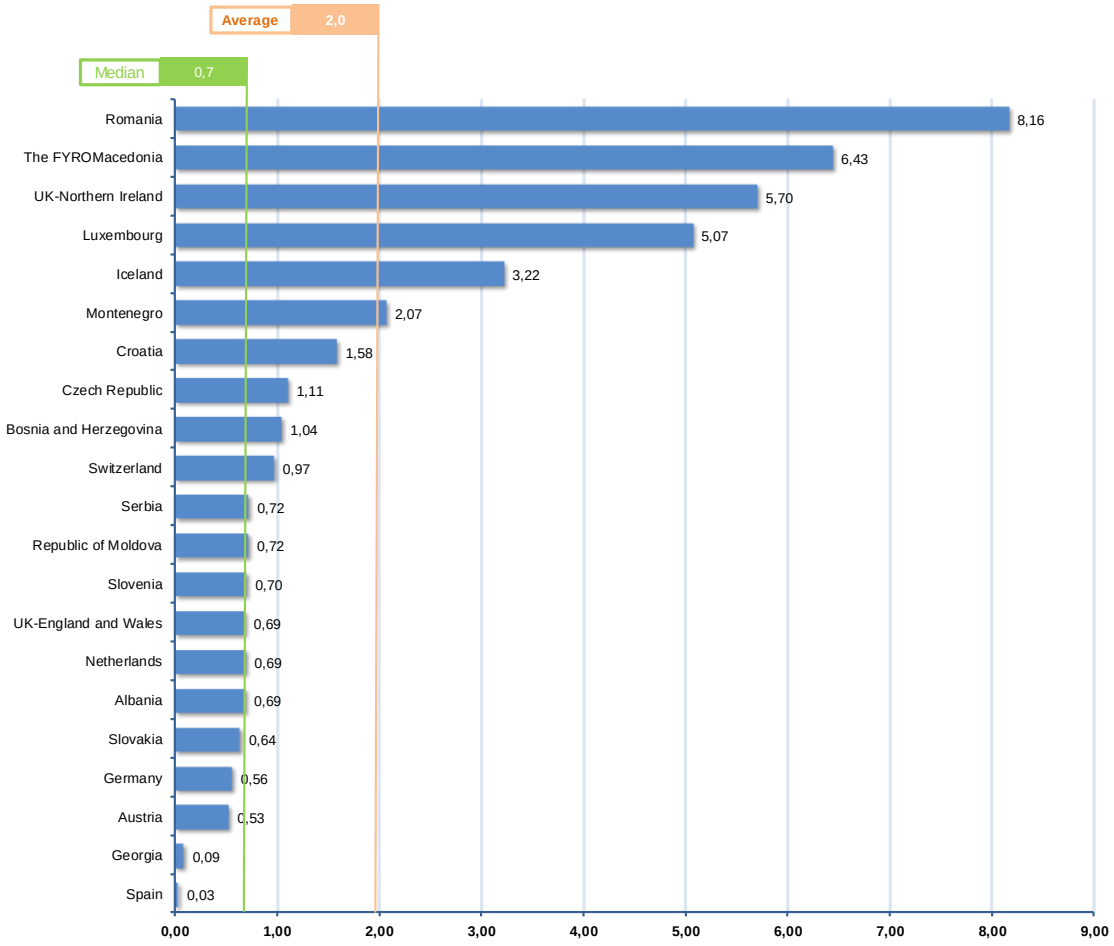
States/entities	Number of court interpreters
Albania	262
Andorra	NA
Armenia	NA
Austria	812
Azerbaijan	NA
Belgium	NA
Bosnia and Herzegovina	1 005
Bulgaria	NAP
Croatia	3 062
Cyprus	NA
Czech Republic	3 377
Denmark	NA
Estonia	NAP
Finland	NAP
France	NAP
Georgia	21
Germany	11 084
Greece	NA
Hungary	NA
Iceland	177
Ireland	NA
Italy	NA
Latvia	NAP
Lithuania	NA
Luxembourg	1 074
Malta	NAP
Republic of Moldova	317
Monaco	NA
Montenegro	544
Netherlands	1 668
Norway	NAP
Poland	NA
Portugal	NA
Romania	35 166
Russian Federation	NAP
Serbia	2 100
Slovakia	835
Slovenia	680
Spain	177
Sweden	NAP
Switzerland	1 232
The FYROMacedonia	4 298
Turkey	NAP
Ukraine	NA
UK-England and Wales	1 382
UK-Northern Ireland	400
UK-Scotland	NA
Average	3 318
Median	1 005
Minimum	21
Maximum	35 166
Israel	NA

Comments:

Albania: 262 is the total number of interpreters in courts and related bodies.
Czech Republic: data as of 30 September 2013.
Luxembourg: 1074 is the total number of translators-interpreters in all languages. Since some professionals are carrying out the translation in several languages, they are recorded as many times as the number of languages that they translate. Moreover, the total number of legal persons translators-interpreters (490) merges with that of judicial experts.
Romania: the high number of court interpreters is due to the flexible procedure of access to the profession.
Russian Federation: the profession of court interpreter does not exist; it is only a *de facto* qualification.
Slovakia: a distinction is to be made between translators and interpreters. The number above is the number of translators (835). The number of interpreters is 247.
Switzerland: only 4 cantons have provided the number of accredited court interpreters.
"the former Yugoslav Republic of Macedonia": a new interpreters' selection system has been introduced in 2008. Among the 4298 interpreters identified, 1137 are court interpreters appointed after having passed the exam established by the new procedure and the 3161 remaining interpreters depend on the old procedure (data from the end of 2012).
UK-England and Wales: 1382 interpreters are classified as tier 1 or 2 in "Capita TI's books" which means that they are able to work in courts.

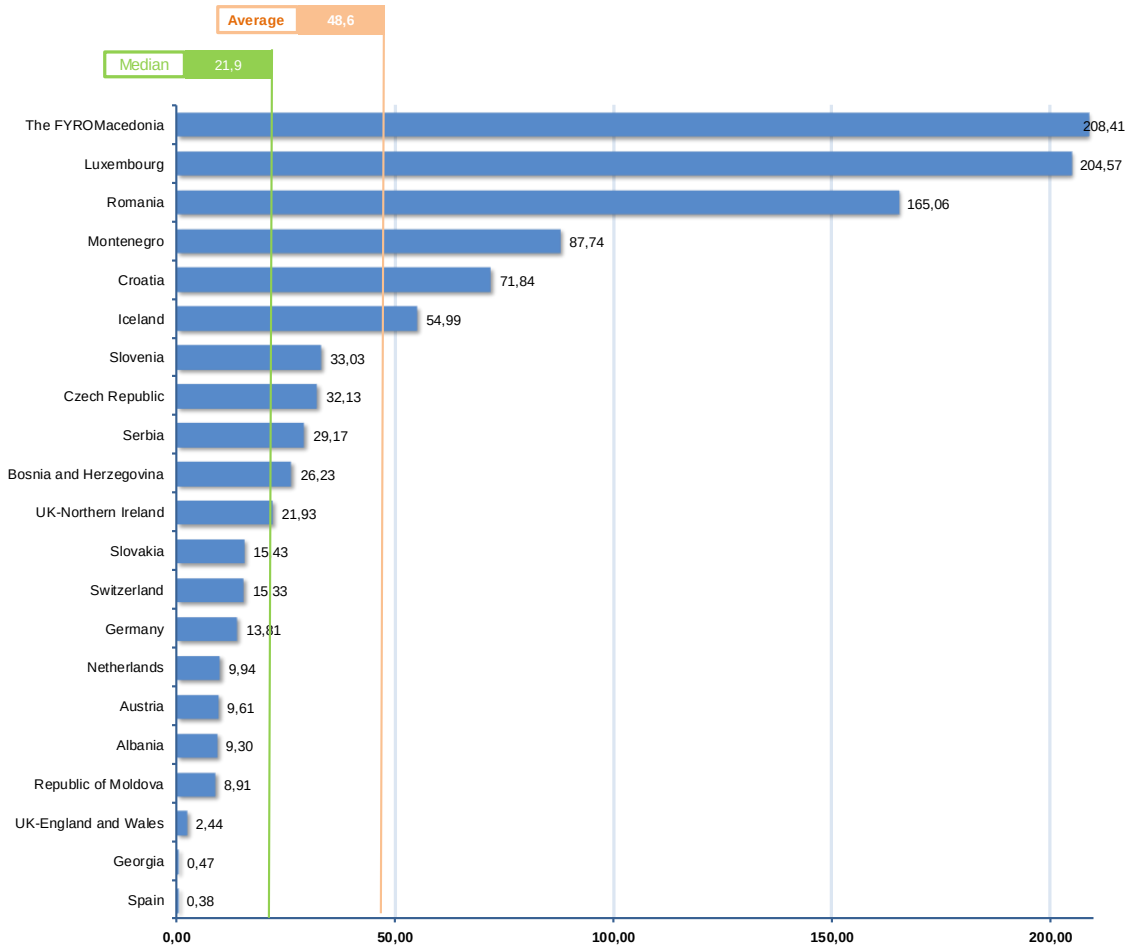
The evolution between 2010 and 2012 is particularly variable from one state or entity to another. The number of certified court interpreters remains stable (- 10 % to + 10 %) in several countries (**Switzerland**, **Slovenia**, **Slovakia**, **Serbia**, **Germany**, **Czech Republic**, **Austria**). In **Albania**, **Bosnia and Herzegovina**, **Republic of Moldova**, and the **Netherlands**, the number of interpreters increased by more than half (50 % to 100 %). In **Luxembourg**, the strong evolution (more than 100 %) results only from the method of calculation used for 2012 because interpreters have been recorded as many times as the number of languages that they translate. In **Croatia**, the evolution can be explained by the fact that in 2010, the list of court interpreters had not been updated in the electronic data base. In reality, the 2010 data should have been similar to the 2012 data. As far as the **Netherlands** is concerned, the evolution reflects the entry into force of a law concerning interpreters and translators which mandates the latter to subscribe to the register in order to be able to practice their profession for the police or in the justice field.

Figure 16.2 Number of accredited or registered court interpreters per professional judge in 2012 (Q46, Q199)



"The former Yugoslav Republic of Macedonia" and **Romania** report a very high number of court interpreters (in absolute numbers and per professional judge). In **Romania**, as noted since the 2008 exercise, the situation can be explained by the entry into force in 2007 of a law promoting access to the profession of court interpreter. As regards **"the former Yugoslav Republic of Macedonia"**, before the introduction in 2008 of an exam allowing access to the profession of interpreter, everyone fulfilling the conditions (citizenship and any proof of knowledge of the foreign language) was able to be appointed interpreter. Thus, the high number of interpreters can be explained by the fact that it includes the ones that have passed the exam and the ones appointed before the introduction of the new system.

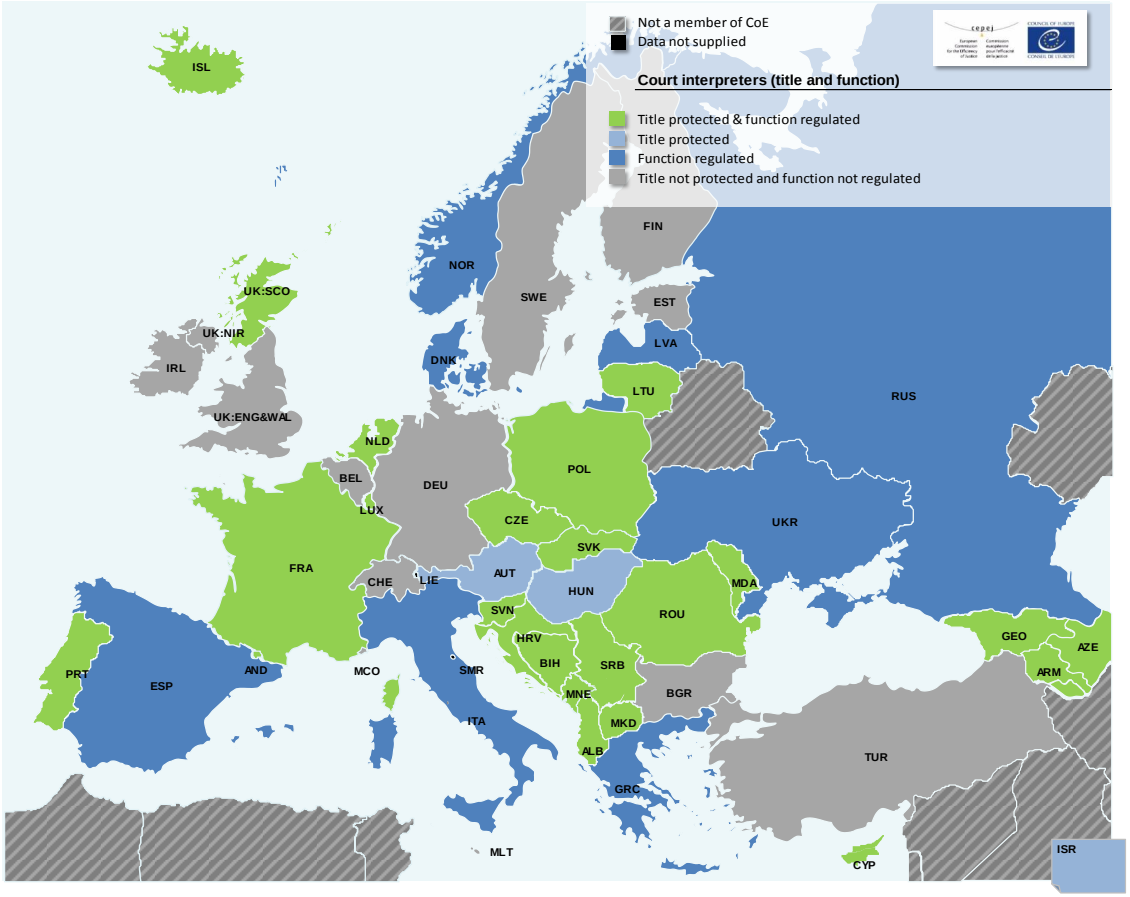
Figure 16.3 Number of accredited or registered court interpreters per 100.000 inhabitants in 2012 (Q199)



As stated previously, the comparison of court interpreters between countries should be handled with care. However, the number of court interpreters is an aspect of access to justice and a fair trial. The need for interpreters also varies according to the presence or not of a strong immigration, diversified in its origins, as well as linguistic communities that can exist in each state. **Luxembourg**, **"the former Yugoslav Republic of Macedonia"** and **Romania** have more than 150 interpreters per 100.000 inhabitants.

16.2 Title and function of court interpreters

Figure 16.4 Title and function of court interpreters (Q197, Q198)



Andorra: the court interpreter title is protected and the function is regulated.
Malta and **Monaco**: the court interpreter title is not protected and the function is not regulated.

Most states or entities regulate the function of court interpreters through legal norms (32). However, the title is protected in only 26 states. 13 other states or entities neither protect the title nor regulate the function.

Table 16.5 Title and function of court interpreters (Q197, Q198)

States/entities	Is the title of court interpreters protected?	Is the function of court interpreters regulated by legal norms?	The title of court interpreters protected and the function of court interpreters regulated by legal norms
Albania	Yes	Yes	No
Andorra	Yes	Yes	No
Armenia	Yes	Yes	No
Austria	Yes	No	No
Azerbaijan	Yes	Yes	No
Belgium	No	No	Yes
Bosnia and Herzegovina	Yes	Yes	No
Bulgaria	No	No	Yes
Croatia	Yes	Yes	No
Cyprus	Yes	Yes	No
Czech Republic	Yes	Yes	No
Denmark	No	Yes	No
Estonia	No	No	Yes
Finland	No	No	Yes
France	Yes	Yes	No
Georgia	Yes	Yes	No
Germany	No	No	Yes
Greece	No	Yes	No
Hungary	Yes	No	No
Iceland	Yes	Yes	No
Ireland	No	No	Yes
Italy	No	Yes	No
Latvia	No	Yes	No
Lithuania	Yes	Yes	No
Luxembourg	Yes	Yes	No
Malta	No	No	Yes
Republic of Moldova	Yes	Yes	No
Monaco	No	No	Yes
Montenegro	Yes	Yes	No
Netherlands	Yes	Yes	No
Norway	No	Yes	No
Poland	Yes	Yes	No
Portugal	Yes	Yes	No
Romania	Yes	Yes	No
Russian Federation	No	Yes	No
Serbia	Yes	Yes	No
Slovakia	Yes	Yes	No
Slovenia	Yes	Yes	No
Spain	No	Yes	No
Sweden	No	No	Yes
Switzerland	No	No	Yes
The FYROMacedonia	Yes	Yes	No
Turkey	No	No	Yes
Ukraine	No	Yes	No
UK-England and Wales	No	No	Yes
UK-Northern Ireland	No	No	Yes
UK-Scotland	Yes	Yes	No
Nb of countries	26	32	13
Israel	Yes	No	No

Yes	Yes
No	No

Comments:

Estonia: the profession of court interpreter is not regulated by legal norms. In 2012, there were 47 interpreters working in the courts of first and second instances. As far as the translating profession is concerned, it is regulated and those practicing it can propose interpretation services as an additional activity.
Sweden: the interpreting profession as used in the court is regulated only in the sense that the law provides that the court can use an interpreter if needed, under the condition that the interpreter has no particular ties with the parties.

Table 16.6 Binding provisions regarding the quality of court interpretation in judicial proceedings (Q200)

States/entities	Are there binding provisions regarding the quality of court interpretation within judicial proceedings?	
Albania		
Andorra		
Armenia		
Austria		
Azerbaijan		
Belgium		
Bosnia and Herzegovina		
Bulgaria		
Croatia		
Cyprus		
Czech Republic		
Denmark		
Estonia		
Finland		
France		
Georgia		
Germany		
Greece		
Hungary		
Iceland		
Ireland		
Italy		
Latvia		
Lithuania		
Luxembourg		
Malta		
Republic of Moldova		
Monaco		
Montenegro		
Netherlands		
Norway		
Poland		
Portugal		
Romania		
Russian Federation		
Serbia		
Slovakia		
Slovenia		
Spain		
Sweden		
Switzerland		
The FYROMacedonia		
Turkey		
Ukraine		
UK-England and Wales		
UK-Northern Ireland		
UK-Scotland		
Nb of countries	24	23
Israel		

	Yes
	No

Comment:

Sweden: in 2012, there were no provisions regarding the quality of court interpretation within judicial proceedings. On 1 October 2013, new rules concerning interpretation entered into force. One of them is the obligation for courts, if possible, to use interpreters approved by the government.

24 states or entities have binding provisions regarding the quality of court interpreters. Often, these requirements are provided by the law, especially in **Finland**, **Georgia**, **Latvia**, **Lithuania**, **Malta**, **Netherlands**, **Portugal**, the **Russian Federation**, **Slovenia**, **Spain**, **"the former Yugoslav Republic of Macedonia"**, **Ukraine**. In **UK-Northern Ireland**, the Code of Conduct of the National Register of Public Service Interpreters applies to interpreters of the Crown court, and the other interpreters are bound by their agency's code of practice and by the terms of reference agreed between the Northern Ireland Court and Tribunals Service and the interpreting agency.

Several states or entities require the interpreters to pass an exam in order to evaluate their skills (**Albania**, **Bosnia and Herzegovina**, **Croatia**, **Czech Republic**, **Montenegro**, **Poland**, **Serbia**, **Slovakia**, **Slovenia**, **Russian Federation**, and **"the former Yugoslav Republic of Macedonia"**). In other countries, having at least a diploma is required (**Azerbaijan**, **Luxembourg**, **Romania**, **Croatia**, **UK-England and Wales**). In a few countries, knowledge of the language (**Monaco**, **Ireland**) or a curriculum vitae certifying knowledge of the language (**Belgium**) is sufficient. In **Ireland**, one of the languages must mandatorily be the native language of the interpreter or translator. Often a certain level of experience is necessary (**Austria**, **Belgium**, **Czech Republic**, **Russian Federation**, **Serbia**, **Slovakia**, **UK-England and Wales** and **UK-Northern Ireland**) and the accreditation is limited in duration (**Iceland**). It is also common to require a high level of confidentiality and very accurate interpretation (**Albania**).

These criteria are sometimes combined in order to achieve a higher quality of interpretation.

16.3 Selection of court interpreters by the courts

Courts are often responsible (35 states or entities) for the selection of court interpreters. The nature of the participation of the court may vary. In some countries, the court is competent for the recruitment and/or appointment of court interpreters for a specific term of office, and in other states, the court is competent to select a court interpreter on an *ad hoc* basis in a given proceeding.

Table 16.7 Selection of court interpreters by the courts (Q201)

States/entities	Courts are responsible for recruitment and/or appointment for a specific term of offices of court interpreters	Courts are responsible for recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings of court interpreters	Courts are not responsible for selecting court interpreters
Albania			
Andorra			
Armenia			
Austria			
Azerbaijan			
Belgium			
Bosnia and Herzegovina			
Bulgaria			
Croatia			
Cyprus			
Czech Republic			
Denmark			
Estonia			
Finland			
France			
Georgia			
Germany			
Greece			
Hungary			
Iceland			
Ireland			
Italy			
Latvia			
Lithuania			
Luxembourg			
Malta			
Republic of Moldova			
Monaco			
Montenegro			
Netherlands			
Norway			
Poland			
Portugal			
Romania			
Russian Federation			
Serbia			
Slovakia			
Slovenia			
Spain			
Sweden			
Switzerland			
The FYROMacedonia			
Turkey			
Ukraine			
UK-England and Wales			
UK-Northern Ireland			
UK-Scotland			
Nb of countries	13	30	12
Israel			

Yes
No

Comment:

Netherlands: courts can only select interpreters and translators from the National register.

The 12 states or entities that do not charge the courts with the responsibility of selecting court interpreters are: **Cyprus**, **Finland**, **Hungary**, **Iceland**, **Monaco**, **Serbia**, **Slovenia**, **"the former Yugoslav Republic of**

Macedonia", **Ukraine, UK-England and Wales**, **UK-Northern Ireland**, **UK-Scotland**). In most of these countries, the Ministry of Justice is responsible for the selection of court interpreters. In **Iceland**, the Minister of the Interior appoints a Test committee of three persons for 4 years (the Minister appoints such a Test committee for each language). In **UK-Northern Ireland** and **UK-England and Wales**, interpreters are recruited by a private company and bound by a contract with the court.

Frequently, certified court interpreters are appointed from an official list (**Albania**, **Austria**, **Bosnia and Herzegovina**, **Denmark**, **Iceland**, **Netherlands**, **Montenegro**, **Poland**, **Slovakia**, **Slovenia**, and **Sweden**). This list is often made public. In several countries, in particular in **Slovakia** and **Spain**, when the official list does not have a qualified interpreter for a specific language, it is then possible to refer to an external professional.

In **Cyprus**, in criminal cases, interpreters are selected from a list, whereas for civil cases, the parties choose their own interpreter. In **Finland**, every jurisdiction (civil, criminal, and administrative) has its own rule. In **Montenegro**, interpreters are chosen by the parties, but if they cannot reach an agreement, the court takes the final decision. In case of complex translations, the court can choose to appoint the interpreters. In **Denmark**, courts must first select an interpreter-translator recognized by the state, but if this appears impossible, the courts can decide to use an interpreter who has not been recognized. In **Latvia**, courts are responsible for selecting interpreters; the Court administration is responsible for recruiting them, whereas the Supreme Court takes care of both the selection and the recruitment. In **Israel**, the courts conclude contracts for private interpreting services through tenders.

16.4 Trends and conclusions

Even more today in a global society where the movement of people accelerates, the organisation of an efficient court interpretation system is part of a fair trial and a high quality court system. The promotion of efficient access to translation and interpretation and the quality of these services are a European priority. In criminal matters, the right to a quality of translation is an integral part of the rights of the defence.

The comparison between member states and entities is difficult because of the absence of a consensus on what the requirements for being an interpreter should be and the terms for the accreditation and appointment system.

There are only a few European countries where, in order to be selected as an interpreter, an exam is mandatory and a quality check has been established. The title and the function of court interpreters are not protected in all European countries and it is also not a European standard to give to courts the responsibility to select their own interpreters; thus the Ministry of Justice usually plays an important role in the process of selection of interpreters.