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EUROMED JUSTICE III PROJECT

COMPONENT I:
Access to justice and legal aid

RESEARCH REPORT

“PROCEDURAL SIMPLIFICATION IN THE ENPI
SOUTH PARTNER COUNTRIES”

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Expert

Implemented by:



Lead Firm

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EUROMED JUSTICE III PROJECT

ENPI – 2011/-269-912

Procedural simplification in the ENPI South Partner Countries

Presented by
Bernard MENUT
Expert

Foreword

Since the Barcelona Declaration in 1995, justice has become a key element of Euro-Mediterranean cooperation, both at the regional and bilateral level. The EU and its Mediterranean partners have established an effective dialogue that has done much to stimulate cooperation on legal matters.

Building on the Barcelona *acquis*, successive Euromed Ministerial Conferences have stressed at the political level the importance of developing the Euro-Mediterranean partnership in the justice sector. The framework document adopted by the Ministers of Foreign Affairs in Valencia in 2002 formally endorsed the idea of a regional programme in the field of justice, freedom and security.

Following the success of the first two regional programmes launched in the justice sector, Euromed Justice I (2004-2007) and Euromed Justice II (2008-2011), Euromed Justice III continues to encourage and facilitate the dialogue between the Euro-Mediterranean partner countries on issues related to access to justice and legal aid, on the resolution of cross-border family conflicts and on criminal and penitentiary law. The EU is funding this project with a budget of € 5 million during the 2012-2014 period.

It is in the framework of the Euromed Justice III project that the present research report on the procedural simplification in the ENPI South countries has been prepared. It is based on a detailed survey providing comparative review of the national experiences of the South Mediterranean countries on procedural simplification.

Procedural simplification is a key requirement for establishing a modern, faster and more efficient justice system accessible to all the citizens. Ensuring a transparent and fair justice system, accessible, independent, impartial and open to everyone, is mandatory in order to establish a functioning democracy, fully respecting human rights and the rule of law.

I am therefore convinced that this research report and the Euromed Justice III Project, as a whole, do not only help improve the justice system in Europe's neighbourhood but through improving the framework of a fair judicial order also contribute towards the reinforcement and deepening of democracy.

Michael A. Köhler
Director Neighbourhood

Table of Contents

Foreword	3
Table of contents	4
List of tables	6
Abbreviations	6
Foreword and methodology	7
Acknowledgements	10
Introduction	11
Partner countries in the Study	12
Objectives of the study	12
Calendar of activities.....	15
1. General data per country	16
1.1. Demographic data	16
1.2. Economic data.....	17
1.3. Legal data.....	17
2. Data on organisation of the judiciary per country	20
2.1. Courts.....	20
2.2. Judges.....	28
2.3. Officers of the Court	29
2.4. Legal statistics.....	41
3. “Judicial time” management	43
3.1. Transparency and foreseeability	43
3.2. Optimum length	44
3.3. Flexibility.....	45
3.4. Collaboration from all parties	45
3.5. Material organisation	46
3.6. Procedures.....	47
3.7. Penalties for delays	55
3.8. Norms and objectives.....	56
3.9. Controls.....	56
3.10. Emergency measures.....	56
4. Civil and commercial proceedings.....	58
4.1. Contested claims	58
4.2. Small claims.....	64
4.3. Uncontested pecuniary claims	69
4.4. Labour disputes.....	74
4.5. Family and personal status disputes.....	79
5. Criminal procedures	87
5.1. Simplified procedures	87
5.2. Ordinary court procedure.....	88
5.3. Pronouncement of judicial decisions	89
5.4. Informing the convicted party.....	89
5.5. Financial enforcement of the judgment	90
6. Administrative procedures	92
6.1. Lodging the application	92
6.2. Representation.....	92
6.3. Fees and taxes	92
6.4. Proceedings.....	93

6.5.	Informing the defendant.....	93
6.6.	Appeals	93
7.	Alternative dispute resolution Mechanisms - ADRs.....	95
7.1.	Scope of application.....	96
7.2.	ADRs used	97
7.3.	Contributors	98
7.4.	Implementation	99
7.5.	Duration of the measures	100
7.6.	Cost of measures	100
8.	Appeals.....	102
8.1.	Different appeals.....	102
8.2.	Bringing an appeal	102
8.3.	Fees and taxes	103
8.4.	Limitation of appeals	104
8.5.	Trying appeals.....	104
8.6.	Appeals before the Court of cassation	105
9.	E-justice.....	106
9.1.	Legal information.....	106
9.2.	Paperless processes	108
10.	Executing the enforcement order	112
10.1.	Enforcement agent - status	112
10.2.	Enforceability of the decision	113
10.3.	Access to information on the debtor's assets	113
10.4.	Enforcement records	114
10.5.	Interim safeguard measures and enforcement.....	115
11.	Cross-border disputes.....	117
11.1.	Institution of the proceedings.....	118
11.2.	Informing the party.....	118
11.3.	Proceedings	119
11.4.	Judicial decision issued in one country and to be enforced abroad	120
11.5.	Judicial decision issued abroad (outside the EU) and to be enforced in a beneficiary country.....	120
11.6.	Judicial decision issued in an EU country and to be enforced in a beneficiary country	121
	Recommendations	122
	Annexes.....	127
	Documentation consulted	127
	Council of Europe – CEPEJ	129
	Websites.....	129
	Institutional Websites.....	129
	Project Websites.....	129
	Web Sites or Web pages – Partner countries	130
	Other Websites	131

List of tables

Table 01: Number of inhabitants	16
Table 02: Available codified legal data	18
Table 03: Courts per type of jurisdiction	21
Table 04: Number of judges per 100 000 inhabitants.....	28
Table 05: Number of non-judge staff per 100 000 inhabitants.....	30
Table 06: Number of lawyers per 100 000 inhabitants.....	32
Table 07: Number of enforcement agents per 100 000 inhabitants.....	34
Table 08: Number of notaries per 100 000 inhabitants.....	35
Table 09: Number of court interpreters per professional judge in court.....	36
Table 10: Number of experts per professional judge in court	38
Table 11: Number of mediators per 100 000 inhabitants	40

Abbreviations

CCP	Code of Civil Procedure
CEPEJ	European Commission for the Efficiency of Justice
CPCC	<i>Code de procédure civile et commerciale</i> (Tunisia - Code of Civil and Commercial Procedure)
ECHR	European Convention on Human Rights
EU	European Union
HCCH	The Hague Conference on Private International Law
Rec	Recommendation (of the expert)
TPI	<i>Tribunaux de première instance</i> (Tunisia – Courts of First Instance)

Foreword and methodology

As a result of the recommendations approved during the Working Group meetings on the component Access to Justice and Legal Aid in the framework of the EuroMed Justice III Project, the existence of problems of common concern was recognised that should be solved in order to improve the efficiency of justice in the Euro-Mediterranean area. Related to this issue simplifying procedures, reducing the workload and the length of the proceedings and developing a policy aimed at setting a foreseeable and optimum timeframe for judicial proceedings were identified as some priorities to be tackled/ in order to improve the efficiency of justice. Following these recommendations, the EC Directorate-General Development and Cooperation - EuropeAid included in the Terms of Reference of this project the drawing up a study on “Access to Justice and Legal Aid in the ENPI South partner countries”.

This Research Report, focused on the procedural simplification in the ENPI South Countries, contains a comparative review of national experiences of procedural simplification in the ENPI SPC.

Based on the information provided by the Beneficiary Countries to the Project Team and to the expert in charge of drawing up the Research Report, Mr Menut, the report contains an overview of the current situation in the ENPI South region in relation to the different topics and elements that, once compiled into the Report, are linked to the idea of simplification.

You will also find from the author a series of recommendations as a result of the analysis of the information obtained from and of the technical visits carried out in the ENPI South partner countries that contributed to the development of the Report.

The methodology followed for the elaboration of this Research report was the following:

- a) A first phase consisted in the preparation of a questionnaire drafted by the expert and the Project Team, that served as a basis to this Report and was validated by the experts of the participating countries after a first one-day plenary work meeting that three experts from each ENPI South partner country were invited to attend.
- b) A second phase consisted in the completion of this questionnaire by those Beneficiary Countries that replied to the questionnaire.
- c) A third phase consisted in a one-day technical visit of the expert to each participating Beneficiary country that accepted and jointly programmed the visit during the period foreseen to that end in order to follow-up on progress in replying to the questionnaire and provide clarification on any points raised to the questionnaire by the local experts; to seek clarification on replies received; to undertake self-study of legislation, procedures and/or institutions in the ENPI South partner country in question of relevance for the Research Report or to get a clear picture and a perfect understanding of the answers to and information delivered in each questionnaire, and, hence, of the specificities and peculiar features of each judicial and legal system;

- d) A fourth phase was the compilation, by the expert, and the analysis of the results of the questionnaires and other information obtained during the technical visits, for the preparation of the Research Report.
- e) A fifth phase consisted in the validation meeting with the experts from the participating Beneficiary countries in order to discuss and validate the content of the Report.
- f) The sixth phase consisted in the elaboration and work on the final Report. In this sense, we took into consideration the contributions and suggestions received during the validation meeting and afterwards during the deadline given in order to receive any written possible comments, suggestions, corrections or proposals from the participating experts who were involved in its elaboration. The main idea was to try to guarantee, whenever possible, the most faithful results obtained from the method applied, which was basically based on the participation of the experts from the different participating countries. After that, we finally proceeded to sending the Draft Report to the DG DEVCO-EuropeAid for prior approval so that it could be presented afterwards during the Second Regional Conference of the Project to all the stakeholders and Officials invited to the Conference in view of its wider dissemination.

We would like to stress one of the most remarkable aspects of this work: the opportunity to have summarised information with a high informative and comparative value that allows us, in addition, to have a regional picture of the situation and of the most important themes tackled in this Report.

These results are not mere abstract ideas. They correspond to the level of information received and obtained by means of the questionnaires and during the meetings and the debates held with the participating ENPI South delegations during each meeting.

They reflect what the delegations of the participating ENPI South delegations considered as appropriate and useful information that cannot be totally exhaustive, but allows for an analysis based on the possibility to compare the valuable information presented in order to get a quick picture of the current situation in the region.

Thus, the strengths and weaknesses of the subject tackled, and its regional situation are highlighted and, in some cases, they allow to see if the progress can be more complex and difficult or, on the contrary, light and swift. These information and analysis have to be adapted to the regional context in which they occur. Some countries have already implemented, partially or totally, some of the advices or indications contained and others are on their way to achieve them. Regarding the concrete topic under consideration, the Report allows us to observe some concrete achievements and to point to some needs and shortages in reference to what we can consider as a standard situation in the international framework between the EU and the Beneficiary countries of the Project.

We would like to thank the Directorate-General for Development and Co-operation-EuropeAid, and more specifically its Unit F-4 and the section on Migration, Justice and Police, Regional Programmes Neighbourhood, European Commission, as well as its Team, for their guidance, co-operation and trust put in this study.

Moreover, we would also like to express our gratitude for his expertise, cooperation, attitude, professionalism and valuable technical work to Mr Bernard Menut, Main short-term Expert, who drew up the basic questionnaire and carried out the on-the-spot technical visits as well as the analysis of the replies to the questionnaire which were the basis for this Research Report, with the assistance of the technical Team of the EuroMed Justice III Project and the valuable and key collaboration of the experts and representatives from the participating ENPI South countries that were implied in the elaboration of the Report, in coordination with their Ministries of Justice.

Finally, we would like to extend our warmest thanks to all the experts from the ENPI South Partner Countries who have collaborated in the different meetings and provided the requested information. It goes without saying that without their valuable support, deep commitment and endless efforts, this Research Report would not have been possible.

Andrés Salcedo Velasco,
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José María Fernández Villalobos,
Course Manager of the Euromed Justice III Project.

Dania Samoul,
Co-ordinator of the Euromed Justice III Project.

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As a practicing researcher I would like to thank the European Union and its Unit F4 Regional Programmes for Neighbourhood South, for giving me the opportunity to study the procedures in use in the neighbourhood countries to the South and to conduct this study.

The result of this research is not the work of an expert working alone, but that of one working as part of a multi-disciplinary, international team located at the heart of each country. I would like to thank those involved in this study who have dedicated their time, conducted research, responded to the long questionnaire, and welcomed me on field visits, to detail and explain certain procedures specific to their own countries.

I would like to acknowledge the work of the national contact points without which nothing would have been possible, and that have known how overcome all the obstacles that such a difficult project can present. I thank the national correspondents, brilliant jurists, passionate and devoted to their work, whose help was invaluable and who filled in the questionnaire with all the data that they first had to gather. Without this thankless work, without this information, the researcher would have been deprived of substance. My gratitude goes to all of them.

The willingness of everyone, Ministerial representatives, heads of court, attorney generals, magistrates and officers of justice, helped to make the mission more agreeable and to conduct it around the agenda constraints of all those involved. Everyone was aware of the stakes and I owe them a great deal. I extend my thanks to all of them.

Mediterranean hospitality is no empty expression and we all had a demonstration of it on our field visits. We were received as friends, as brothers by communities of jurists, and I was greatly touched by this.

I would also like to thank the project team for their availability, their advice and their constructive comments, as well as for their logistic support. I am grateful to them all.

And lastly, I would like to express my gratitude to the interpreters and translators, the guides in a Tower of Babel, who allowed us to communicate and exchange ideas. Their thankless, and often obscure, task certainly merits this glimmer of light.

Bernard MENUT
Scientific Expert

Introduction

Procedure is to justice what the backbone is to man. Without it the body cannot stand. Procedure, whether civil, criminal or administrative, determines the rules of the case by determining how it is conducted. Without procedure, the process would be anarchic. Repeated reproaches made against procedure concern its duration, sluggishness and lack of adaptation to the information and communication technologies. These reproaches are no doubt partially justified, but it is above all the use – the poor use – and the misuse of the procedure by certain legal professionals that lead to the delays observed.

Rather than do without procedure, the idea is to simplify it, without renouncing its role as protector of the right of the parties in the process. Simplifying also means adapting procedure to how litigation is evolving, and there is ever more of it. The appearance of mass litigation (small claims, repetitive claims, consumer credit, etc.) threaten to asphyxiate the courts that can only escape by using simpler procedures that consume fewer technical and human resources.

The means available to the legal system are often insufficient for needs and the growth curve of cases is on the rise, leaving no other choice to those in charge than to make the best use of means available, and in particular procedure.

The beneficiary countries in this study face the same challenges although their level of economic development differs. A study of their legal systems and their procedural practices has revealed the complexities and delays, as well as the good practices that look to simplifying procedures. The study has helped identify certain key points that could be the object of procedural adaptation to help deal better with certain litigation. Furthermore, the experience of several European countries and European legislation in resolving small claims or uncontested small claims, or even European enforcement order are certainly pertinent examples and sources of inspiration to help solve the crisis in the justice sector affecting all the countries in the neighbourhood South. This has led to **twenty-five recommendations** (25) made by the author, accompanied by comments. The impact of the « Arab spring » on the situation of the justice sector in the countries affected by these political changes could not be measured.

Lastly, international cooperation between the beneficiary countries themselves, and also with Europe, is dealt with from the judicial point of view. Globalisation has for some time affected the judiciary and cross border disputes have become frequent, sometimes giving rise to serious tension, particularly in cases of family litigation. There is a need to simplify cross border dispute procedures, and this certainly includes easier recognition, and even automatic recognition, of the judicial decision passed by another country. This is the approach adopted by Europe and that could serve as a model for reforms in the beneficiary countries.

Partner countries in the Study

The beneficiaries in the project are the citizens of the following countries

<ul style="list-style-type: none">• La République démocratique d'Algérie• La République arabe d'Egypte• Israel• Le Royaume Hachémite de Jordanie• Le Liban (République Libanaise)• La Lybie• Le Royaume du Maroc• La Palestine• La République Arabe de Syrie• La République de Tunisie	<ul style="list-style-type: none">• The democratic Republic of Algeria• The Arab Republic of Egypt,• Israel,• The Hashemite Kingdom of Jordan,• Lebanon (Lebanese Republic)• Libya,• The Kingdom of Morocco,• Palestine• The Syrian Arab Republic¹• The Republic of Tunisia.
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Due to the conflict in Syria and the political events affecting Libya, it was not possible to conduct the study in these countries. The expert also regrets that Palestine has not returned part of the questionnaire and despite the many demands made, the expert could only use incomplete information. Finally, in the light of the political environment, the expert could not travel to Egypt.

Objectives of the study

The **principal** objective of the study is to produce a report on the research, containing a comparative, detailed analysis of the national experiences in simplifying procedures in the beneficiary countries.

The **second** objective is to have a thorough understanding of the judicial systems in the beneficiary countries and to facilitate in depth discussions on the key elements of the study. Three points are underscored: enforcement orders for uncontested pecuniary claims, order to pay procedures and those concerning small claims.

The **third** objective is to identify reform trends and pilot schemes underway in the member states and beneficiary countries to simplify procedures and to propose possible approaches and measures to improve and accelerate progress in the beneficiary countries.

Methodology used for study

The field of research covers civil, commercial, criminal and administrative law as well as procedural aspects in each of these. The final questionnaire prepared by the scientific expert in the study, includes 242 questions centred around 11 topics:

- 1 General data (12)
- 2 Organisation of the judiciary (25)
- 3 “Judicial time” management (36)
- 4 Civil and commercial procedures (82)
- 5 Criminal procedures (16)

¹ According to the terms of reference of the mission “the Syrian Arab Republic: formally it is part of the project even if there is a partial and temporary suspension of the EuroMed Justice III project in terms of Syrian participation”.

- 6 Administrative procedures (10)
- 7 ADR (21)
- 8 Appeals (9)
- 9 E-justice or « electronic » justice (10)
- 10 Executing enforcement orders (13)
- 11 Cross-border litigation (8)

All of the questions asked aimed to identify applicable legislation, the existence of simplification measures, best practice, trends and prospects.

At the same time the questionnaire has helped identify the obstacles and sluggishness of the different systems in judicial procedures in use. It has revealed procedural tools that aim to simplify and to help the flow of judicial matters in the beneficiary countries.

The fact is that a more simple form of justice is easier, faster and less costly for litigants. It is then better understood by the public and therefore respected. It is the same for those who contribute to implementing justice.

Simplifying procedures means:

- Facilitating the public's access to justice
- Clarifying the circuits of the judiciary and the legibility of justice
- Making the work of those legal professionals flow more easily
- Easing the costs of justice
- Reinforcing the execution of judicial verdicts
- Raising the confidence of investors and the economic attractions of the country

Initially questions were shared with the project team of the Euromed Justice III Project, and then they were submitted at the preparatory meeting to the representatives of the countries that met in Paris. At the time of this meeting on 20 April 2012, participants made their comments and suggestions and after discussion the questionnaire was amended. A final version was submitted to the project team and then sent to the representatives of the countries in three languages².

To help make a comparative analysis and understand how the situation has evolved, certain general data, as well as data referring to the judiciary in the respective countries, have been compared to data provided by the study "Access to Justice and Legal Aid in the Mediterranean Partner Countries" produced in March 2011 within the framework of the EuroMed Justice II Project.³

A glossary of terms used has been added to the questionnaire to facilitate comprehension for the partners in the project working in a multi-lingual environment.

The questionnaires were collected from beneficiaries at the time of a field visit conducted by the expert. This was done on visiting the following countries (7 out of 10), making it possible to check and validate data gathered, as well as their consistency.

² English, Arabic, French.

³ <http://euromed-justiceii.eu/fr/home/>

- Algeria
- Israel
- Jordan
- Lebanon
- Morocco
- Palestine
- Tunisia

In view of the different national currencies involved, we have used for each one the conversion coefficient for the European Union⁴ into Euro to establish a base for comparison, even if living standards in the different countries are far from being the same.

Exchange rate: The amounts expressed in the national legislation of the beneficiary countries are of course in the currency of the respective country. To facilitate comparison, we have sometimes used the Euro (€) as a reference currency. We thought it would be useful to provide the rate of exchange applied and which is the rate published by the European Union.

Reference Month June 2012	Euros	Local Currency
Algeria	10,00	1003,91 DZD
Egypt	10,00	76,4815 EGP
Israel	10,00	48,268 ILS
Jordan	10,00	8,81854 JOD
Lebanon	10,00	18750,3 LBP
Libya	10,00	16,005 LYD
Morocco	10,00	110,48 MAD
Palestine	10,00	48,268 ILS
Syria	10,00	809,05 SYP
Tunisia	10,00	20,133 TND

Source: <http://ec.europa.eu/budget/inforeuro/>

The figures gathered have been systematically compared with the results of the study conducted by the CEPEJ⁵, helping position the beneficiary countries in comparison to the 47 member states of the Council of Europe, although there we still do not know the difference in level between States. Similar indicators have been used to facilitate the analysis.

The study shows national experience in simplifying procedures and in analysing results in terms of effectiveness compared to the results of research, and in terms of efficiency compared to the means employed when these are available. Recommendations are made with a view to simplifying and improving the effectiveness of procedures used compared to good practice and/or European rules and experiences.

⁴ Value August 2012 - Site <http://ec.europa.eu/budget/inforeuro/>

⁵ European Judiciary Systems, edition 2012 (data 2010)

The analysis of the data and their consistency led to preparing a draft-report that could be put to the beneficiaries for discussion. The final report was drafted taking on board discussion with beneficiaries.

Calendar of activities

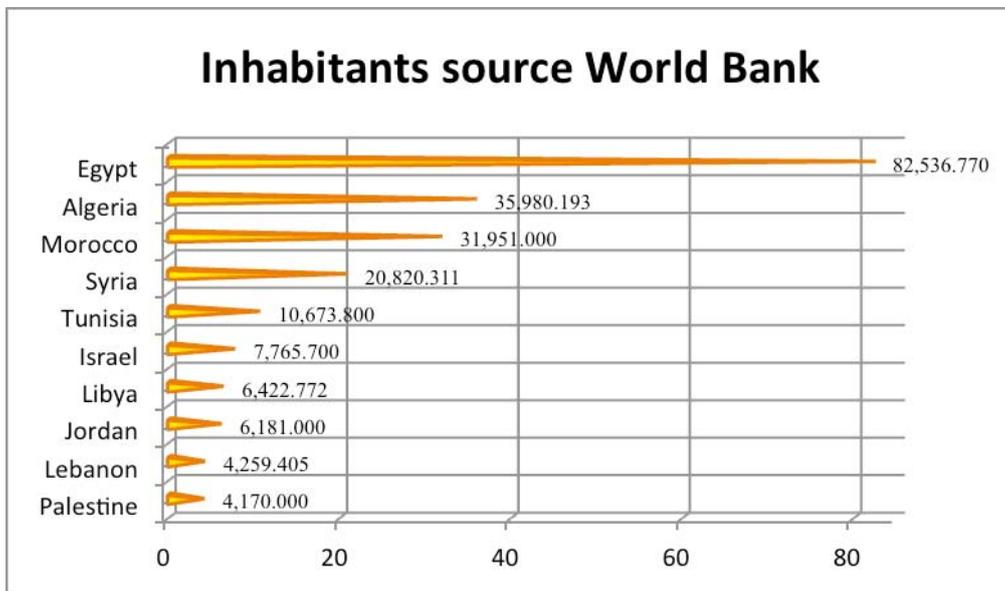
- Questionnaire drafted (from 23 March 2012)
- Discussion and validation of final questionnaire (Paris 20 April 2012)
- Final questionnaire sent to contact points – (from 30 April 2012)
- Data collected from contact points – expected completion date for questionnaires 15 June 2012)
- Technical visits to countries (from 10 June 2012)
- Data analysis (examination – drafting)
- Data validation
- Analysis of data consistency
- Draft report (Start of December 2012)
- Discussion of draft report (11 February 2013)
- Final report

1. General data per country

1.1. Demographic data

These data are essential for an objective comparison between the quantitative information provided by the representatives of the beneficiary countries. We were able to detect, on the one hand, that population census is not frequent⁶ in the area, and on the other that figures provided come from other available information. We decided, finally, to use the most recent figures provided by the **World Bank**⁷.

Table 01: Number of inhabitants



The situation of **Lebanon** should be clarified. Indeed, according to UNRWA (*United Nations Relief and Works Agency for Palestine Refugees in the Near East*), the number of Palestinian refugees living in Lebanon is estimated at 465,798 refugees on 1st January 2012. As a result of their presence on the Lebanese territory, Palestinian refugees depend on the Lebanese judicial system. It is therefore a global population of more than 4.7 millions inhabitants that should be accounted for.

⁶ With the exception of Algeria, Egypt and Jordan, that conducted a census in 2011, 2012 and 2012 respectively, other census measures clearly date from much earlier.

⁷ World Bank source – 2011 data

<http://web.worldbank.org/WBSITE/EXTERNAL/ACCUEILEXTN/PAYSEXTN/0,,menuPK:508624~pagePK:180619~piPK:3001889~theSitePK:411402,00.html#e>

With the exception of Palestine, where we used the figure provided by the beneficiary.

1.2. Economic data

We wanted to look at the quantitative data on the justice sector from the viewpoint of the global budget in the beneficiary countries to observe the budgetary amount allocated in these countries to this key sector for the sovereign power of each state. Within this global budget for justice, we have removed that part of the budget allocated only to the courts so as to identify the real amount allocated to where justice is meted out daily.

Not all data were available for the year 2012 so we worked with data available for 2011⁸ reflected in euros, in relation to the population of the country. Without any real surprise, results show that the States⁹ dedicate very little from the budget to justice, and the courts only benefit from a lesser share of this budget. Moreover, these figures compared with European data¹⁰ show a certain gap compared to the European average, which is around 37 euros per inhabitant.

1.3. Legal data

Codifying the rules of law helps improve an understanding of these rules and also their transparency. This is why the **codification level** of the principal rules of law, as well as rules of procedure, is a pertinent indicator in measuring the capacity to disseminate the rules of law. The codification level is high in Jordan, Lebanon and Tunisia. However, the situation in Palestine is worrying because it shows a considerable delay. In Israel codification is weak and, with the exception of civil law, no project is planned but the specific nature of law in this country explains its low codification.

⁸ Data from the Palestine and Egypt have not been provided.

⁹ Israel and Tunisia allocate respectively 9.07 euros and 12.80 euros per inhabitant to the budget of Justice, while Lebanon allocates 2.80 euros, Algeria 1.83 euros, Jordan 1.19 euros and Morocco 0.80 euros.

¹⁰ CEPEJ Report on European Judicial Systems – Edition 2012 – page 30 Graph 2.6.

Table 02: Available codified legal data

At the time of drafting this report, the expert had no data concerning Libya and Syria.

Countries/Data	Civil Code	Criminal Code	Administrative Code	Family Code and personal status	Mediation code	Military justice code	Religious affairs code	Commercial Code	Other	Civil procedural code	Criminal procedural code	Administrative procedural code	Procedural code in military courts	Procedural code in religious courts	Other
Algeria	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>
Egypt	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Israel									<input checked="" type="checkbox"/>	Currently there is no intention to do so					
Jordan	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Lebanon	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>									
Libya															
Morocco		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
Palestine	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	
Syria															
Tunisia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>

Egypt: There is no religious code but there are laws organizing the religious institutions and some texts have religious origins.

Tunisia: Consultation of the website of the official Printing Office of the Republic of Tunisia allowed the author to identify the codes highlighted in yellow in the table. **Site available at <http://www.iort.gov.tn>**

Further work is required to be able, on the one hand, to codify all rules applicable in a country, at least the principal codes listed in the table, and, on the other, to facilitate accessibility.

In fact these codified rules are not easily accessible for a person who does not command the native language of the country. But few countries have a translation of these codes in French and/or English, and the work done in Algeria, Morocco and Tunisia to give access in Arabic and French merits mention. Lebanon is characterized by a long tradition of publishing legal documents in French (three of the principal codes – including the Code of Obligations and contracts – were published in French). Legal professionals communicate easily in French and there is an abundant legal doctrine in French. Other countries content themselves with only their national language, and this is regrettable.

Making legal sources available on-line, accessible via the Internet, should raise the level of the indicator, although certain constraints exist, in that widespread Internet access is required in the beneficiary country and this access should be free of charge. The norm should be to have free access to these codified sources. Only Palestine uses paid access for certain categories of users at the risk of limiting access to basic legal understanding.

Rec 01 Make all legislation and codification accessible via the Internet in the language, or languages, of the countries, and at least in one foreign language.

Comment: The work of codification should be done by most of the beneficiary countries so as to make legislation more transparent. Putting laws on-line should ensure wider accessibility for litigants to this source of law, particularly if access is free of charge, which is preferable. Publication in a foreign language is required in view the internationalization of affairs and the consequences for litigation.

2. Data on organisation of the judiciary per country

2.1. Courts

We have noted a certain similarity in the organisational structure of the judiciary in the beneficiary countries¹¹. At the head is the Supreme Court as well the Council of State for the administrative courts when a country has these¹². These supreme courts are above the appeal courts, which in their turn cover the courts of first instance, among which we sometimes find the specialised courts, depending on the jurisdictions allocated to them.

The number of courts per type of jurisdiction depends on the one hand on national coverage, and on the other on population, and lastly on whether litigation comes under specialisation or not. In fact certain specific litigation (such as labour disputes) is not always dealt with in specialised courts.

¹¹ However, certain countries have not been able to provide us with a map of the judiciary to explain how it is organised.

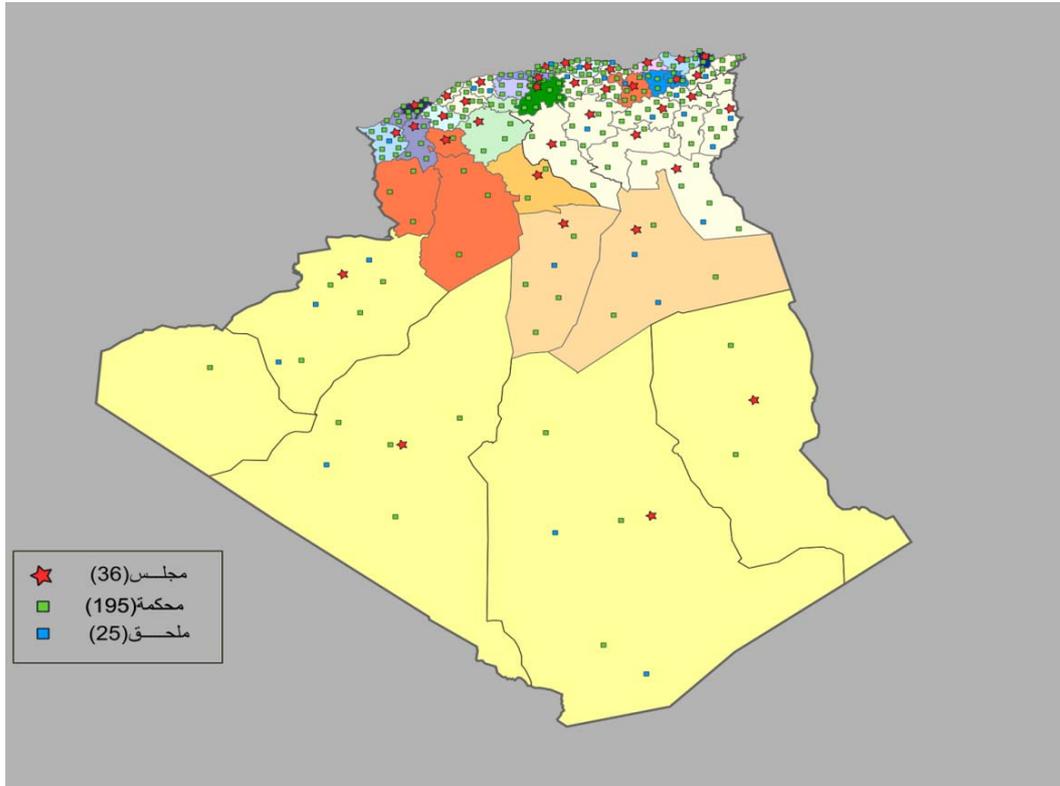
¹² As is the case with Algeria.

Table 03: Courts per type of jurisdiction

At the time of drafting this report, the expert had no data on Libya and Syria.

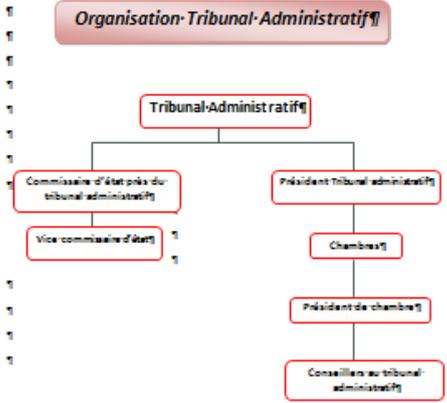
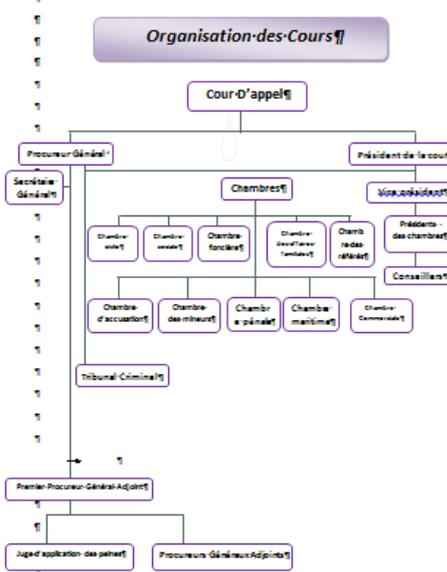
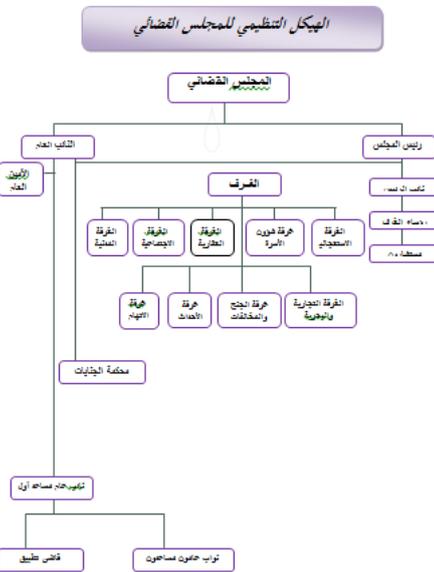
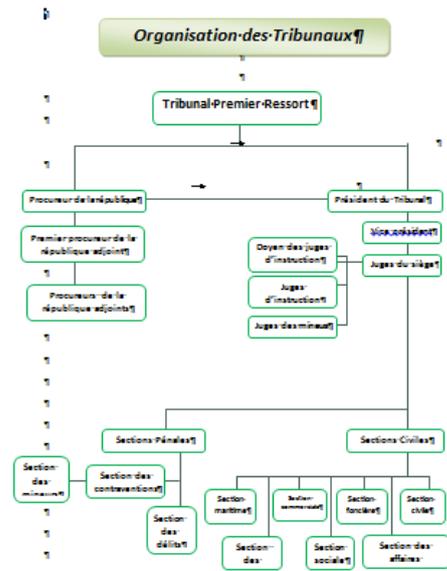
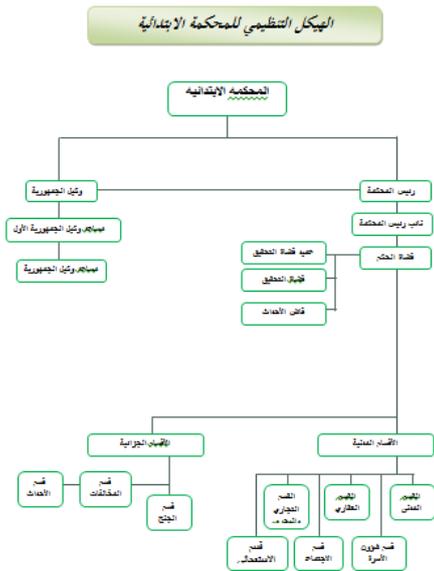
	Common law courts	Specialised courts	Administrative courts	Military of similar courts	Religious courts	Court of Appeal	Supreme Court	Labour court	Taxes and duties court	Anti-corruption court	Traffic courts	Juvenile courts
Algeria	194	4	38	6		37	1					
Egypt	26 District courts	8				8	1					
	441 District courts											
Israel	35	14			25 run by the State 18 recognized by the State	6	1	6			5	6
Jordan	70		1	2	57 Islamic tribunals	3			4			
				1 Court of Appeal	4 Islamic courts of appeal 6 Ecclesiastical courts							
Lebanon	6 (22 chambers and 126 single judges)	1	1 Council of State	7	1 per community	6	1	6	6	1	6	12
					145 single judges	1 Court of appeal per community for religious affairs	1 Military supreme court					
Libya												
Morocco	70	11	9	1		21	1					
Palestine		4	1	1 per governorate	8	2	1					
Syria												
Tunisia	123	1 Property court and 15 auxiliary seats	1	3		10 Civil courts of appeal	1					
						1 Military court of appeal						

2.1.1. Algeria¹³



Source: Ministry of Justice – Feb. 2013
Formatting: by the author

¹³ We are copying here the map of the judiciary, without the administrative courts.

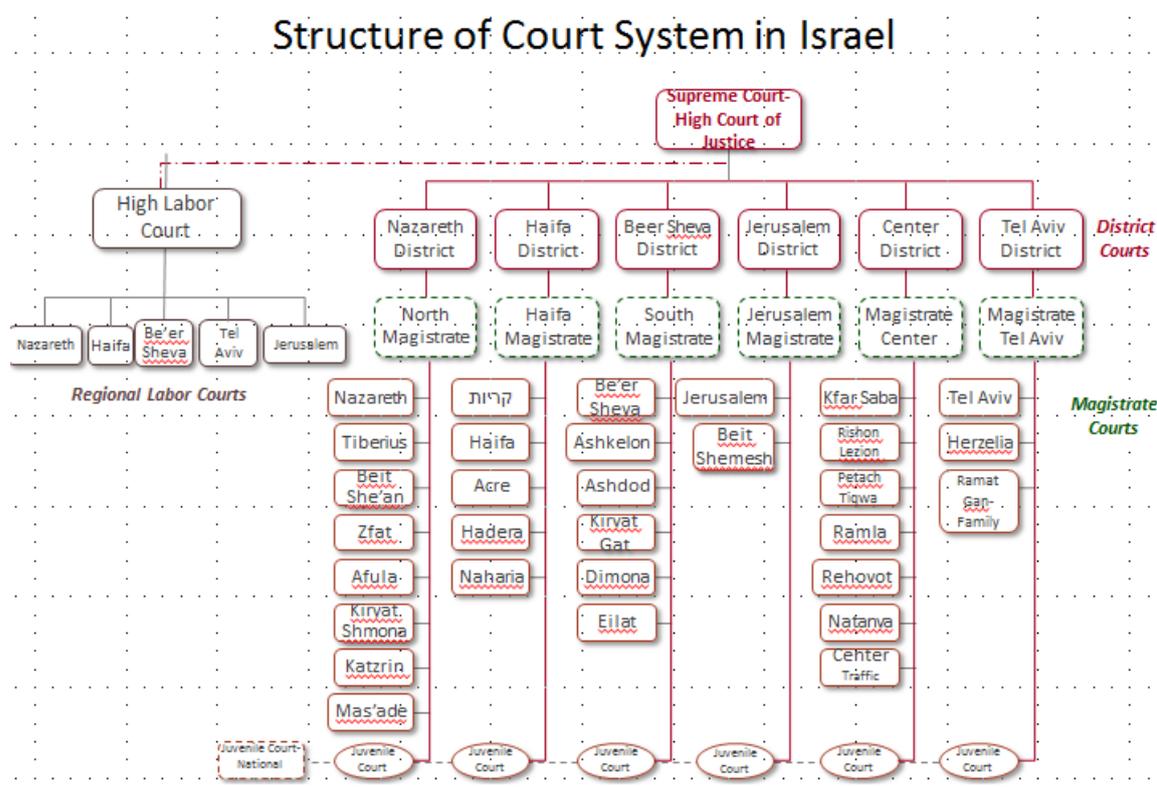


Source: Ministry of Justice – Feb. 2013
 Formatting by the author

2.1.2. Egypt

Egypt was not in a position to provide us with a diagram of its organisation of the judiciary, and it could not provide a map of its courts and tribunals either. Despite the research done by the author via the Internet, such information did not seem to be available, not even from the official site of the country's Ministry of justice at <http://www.moj.gov.eg>

2.1.3. Israel

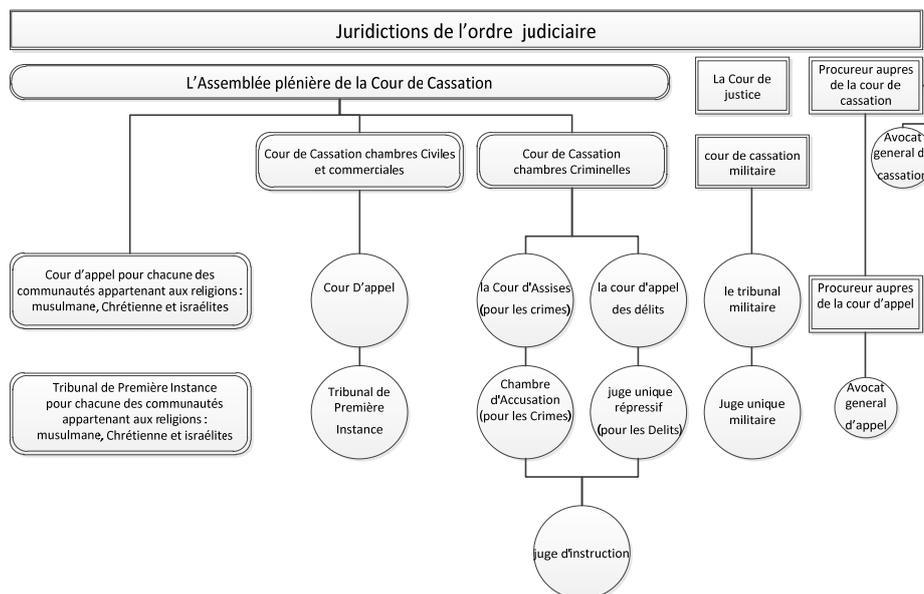


Source: Ministry of Justice – Feb. 2012
 Formatting by the author

2.1.4. Jordan

Jordan was not in a position to provide us with a diagram of its organisation of the judiciary, and it could not provide a map of its courts and tribunals either. Despite the research done by the author via the Internet, such information did not seem to be available, not even from the official site of the country's Ministry of justice www.moj.gov.jo

2.1.5. Lebanon



Source: Ministry of Justice – September 2012

2.1.6. Morocco

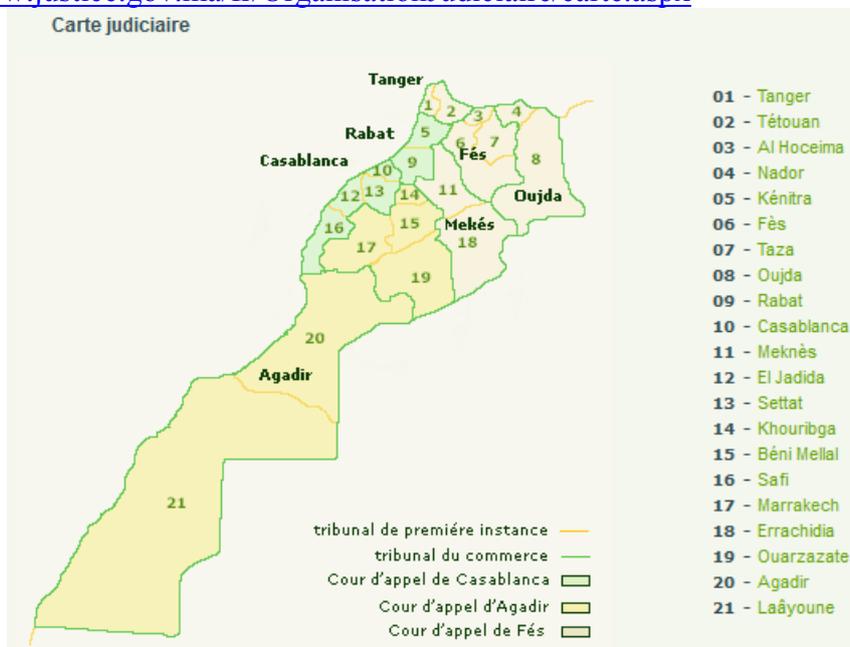
Judicial

map

—

source :

<http://www.justice.gov.ma/fr/OrganisationJudiciaire/carte.aspx>



2.1.7. Palestine

Map of country and courts (AR)

Source: http://www.courts.gov.ps/details_ar.aspx?id=5SpzxJa3807012a5SpzxJ



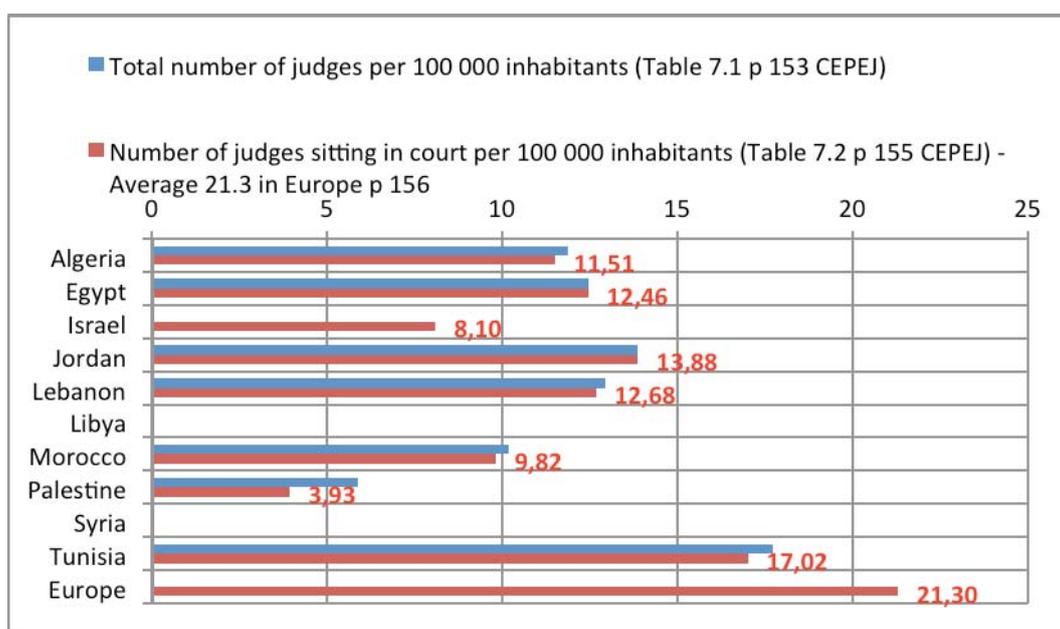
2.2. Judges

The judiciary cannot function correctly without judges in sufficient number for the needs of the country, and these judges must be well trained, competent and integrated. To be able to compare with European data¹⁴, we have considered the judge to be working full time on 1st January 2012.

We found that some judges were not allocated to court duties. Some are “detached” from the other institutions of the country¹⁵, sometimes without a direct link with the profession of judge. There are many magistrates who are not immediately operational to provide justice in the courts. We retained the idea of “court magistrates” which lets us compare with European data¹⁶. The situation is particularly worrying in Palestine where 33.06% of judges are allocated “outside the court”, which together with a small number of judges (see table below) has a direct impact on the way cases are dealt with.

Table 04: Number of judges per 100 000 inhabitants

At the time of drafting the report, the expert had no data concerning Egypt, Libya or Syria.



Globally results show the number of judges to be lower than the European average, with significant differences for Palestine and Israel, which are far from European standards. Of course this has a negative effect on the rate at which court cases are dealt with and it delays procedures.

¹⁴ European judiciary systems, edition 2012, 2010 CEPEJ data, table 7.1 p 153.

¹⁵ The number usually remains low, 2% for Lebanon, 3.11% for Algeria, 3.42% for Morocco and 3.96% for Tunisia.

¹⁶ European judiciary systems, edition 2012, 2010 CEPEJ data, table 7.2 p 155.

The use of “non-professional judges”, that is non-remunerated or who simply receive expenses, is not widespread. Certain countries¹⁷ use this for the specialised courts (labour, commercial or denominational courts) or as a “back-up force”.

2.3. Officers of the Court

Although the law is the role of the judge, to play the role he must be accompanied, upstream by those whose job it is to file the claim, but also to represent and defend the parties, or by those whose job it is to draft contracts or receive commitments. During the proceedings, the judge is assisted by staff attached to the registry of the court who manage all the elements in the file, but who also help conduct the different stages of proceedings. During this stage in the process, the judge may call upon experts pour des points techniques for technical points that he is not expected to command, as well as interpreters and translators if the parties do not command the language of the country where the case is heard. Lastly, downstream of the judicial decision passed by the court, the judge can benefit from the help of agents one of whose jobs it is to enforce the judicial decision.

2.3.1. Non-judge court staff

The judiciary is supported mainly by these professionals, whether those assisting the judge directly, or those with administrative tasks or the technical staff of the court. We quickly realised that it was technically impossible to distinguish between these different staff categories and so we considered these staff members as a whole. The judge should have a support staff in sufficient number to allow him to fulfil his mission in the best possible conditions, and the litigants should be able to have the judicial decision on their case quickly.

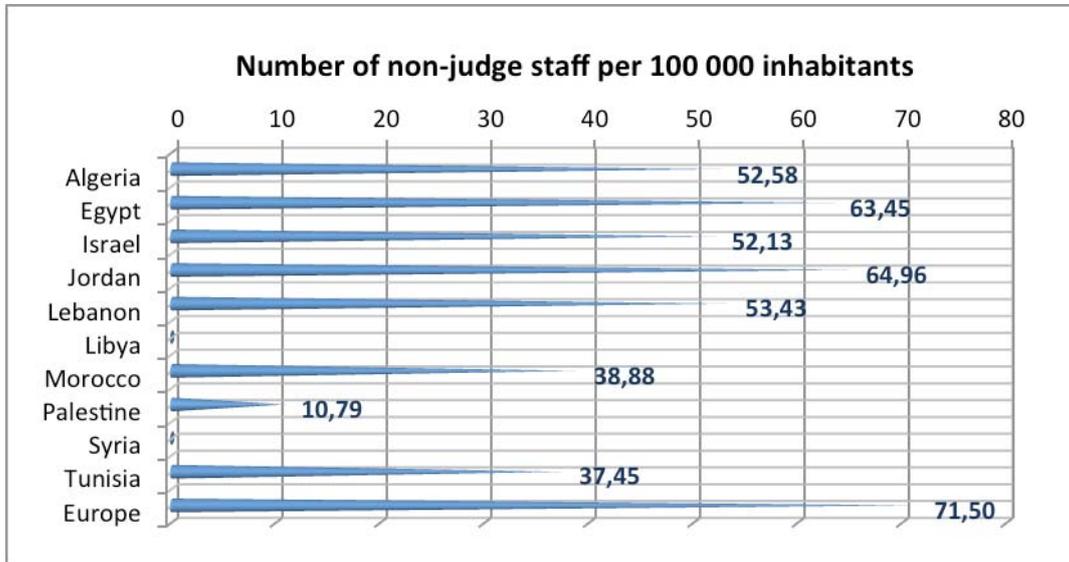
To be able to compare with European data we considered non-judge staff¹⁸ in full-time equivalent on 1st. January 2012.

¹⁷ Algeria in the form of assessors to the judges, Lebanon within the labour courts and denominational courts. In military tribunals, judge-officers are not remunerated as judges, but as military officers.

¹⁸ European judiciary systems, edition 2012, CEPEJ/2010 data, Graph 8.5 p 174.

Table 05: Number of non-judge staff per 100 000 inhabitants

At the time of drafting the report, the expert had no data concerning Libya and Syria.



The European average is 71.50 per 100 000 inhabitants and none of the beneficiary countries achieves this figure although Egypt and Jordan are very close. However, we do note the good results obtained by Algeria, Israel, Lebanon and Tunisia, all of which are over 50/1000. Palestine admits to being clearly behind this level.

The insufficient number of these staff members, is not compensated by having an effective information system in the courts, which is essential (Palestine). This partially explains the delays in dealing with cases, during proceedings and after the judicial decision has been passed by the court.

2.3.2. Lawyers

In the beneficiary countries the role of the lawyer is both to represent the parties before the courts, and to bring legal counsel. However, it has been impossible to distinguish between the lawyers involved in these two activities. The lawyer will therefore be defined according to the criteria of the Council of Europe¹⁹. One consistent element is that of the liberal nature of the lawyer in exercising the legal profession. The data available in Europe²⁰ indicate an average rate of 127.10 lawyers per 100 000 inhabitants. The first observation is that there is a considerable disparity between the beneficiary countries. Compared to the European average, lawyers are

¹⁹ "A person qualified and authorised according to the national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters". CEPEJ Rec (2000) 21 on the freedom of exercise of the profession of lawyer

<https://wcd.coe.int/ViewDoc.jsp?Ref=Rec%282000%2921&Sector=secCM&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6>

²⁰ "European Judicial Systems", 2012 edition, data 2010-CEPEJ, table 12.2 p 324. It should be noted that the previous 2010 study based on the data provided in 2008 gave the larger figure of 149.5 lawyers per 100 000 inhabitants.

low in number in Algeria, Tunisia and even lower in Morocco, while in Egypt, the Lebanon, and particularly Israel, numbers seem higher. But the range and volume of work in the profession in these three latter countries may explain the large number of lawyers. Due to a lack of time we could not conduct a study on the relationship that might exist between the number of professionals and the volume and duration of court cases, but it would have been interesting to check to see whether a larger number of professionals did not generate “artificial” litigation in the courts.

Conversely, the lawyers we questioned during our missions all agreed that the duration of the process is too long, even in Lebanon where the number of lawyers is sharply above the European average.

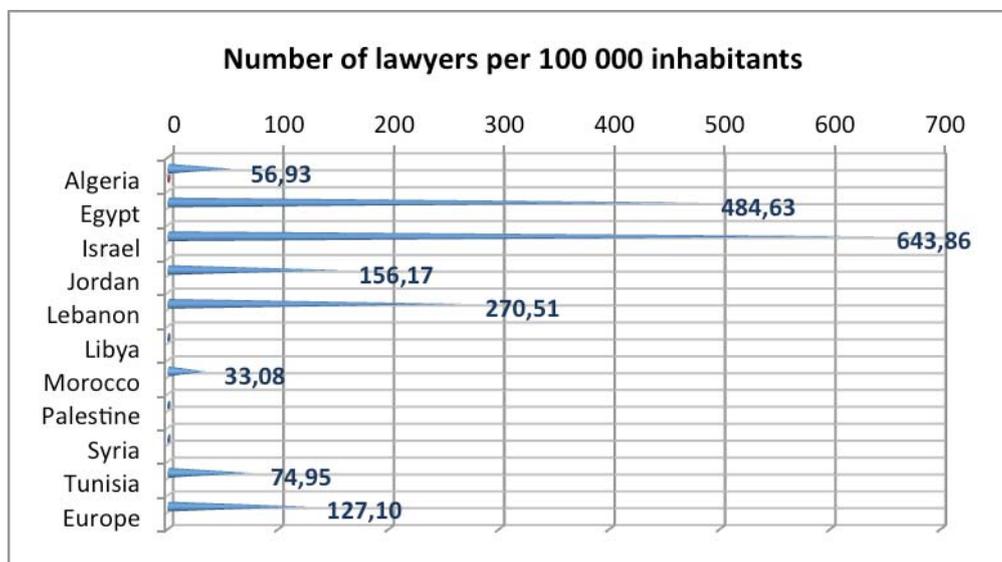
At the same time, the lawyers are one in criticising, and in all the countries visited, the lack of magistrates to deal with the cases for which they are responsible²¹. However, the arguments over the number of magistrates does have a certain pertinence in that the average number of judges in court is clearly low in all the countries compared to Europe²². If that is not the case, a solution must be sought in better productivity within the courts.

²¹ By way of example on the Lebanon: M. Sleiman Louis LEBBOS an lawyer in Beirut said that it would be a good idea to “double” the number of magistrates because of the high volume of cases to be heard (80 cases/hearings), with referrals of 6 months. This suggestion seems to be a « personal » opinion of its author and it is not shared by the representatives of the Ministry of justice that we met.

²² 21.3 per 100 000 inhabitants. Source “European Judicial Systems”, 2012 edition, CEPEJ/2010 data, p 156.

Table 06: Number of lawyers per 100 000 inhabitants

At the time of drafting the report, the expert had no data concerning Libya and Syria. Palestine provided no information.



The lawyer must belong to a professional organisation, organised nationally and/or regionally²³. The absence of national representation will certainly be prejudicial to the effectiveness of the profession as well as on the quality of the relationship with the public authority. This relationship is also important for technical discussions and for implementing reforms of interest to national representation. In fact, too many spokespersons can harm the quality of communication between the public authorities and the professionals.

2.3.3. Bailiffs and enforcement agents

Mainly in charge of enforcing the decisions of the court and other orders that are enforceable by law, the enforcement agents divide into two models that co-exist in the beneficiary countries. One is the “budgetary” model in which enforcement agents are the employees of the State²⁴, or the “independent” model, in which agents have their own location outside of the court and are liberal professionals²⁵. The budgetary model is the larger in the beneficiary countries but no doubt in time we will find the European trend in which countries look more to the “independent” model²⁶.

²³ **National:** Algeria, Egypt, Israel, Jordan, Tunisia // **Regional:** Algeria, Lebanon.

²⁴ On these two concepts, see Vladimir YARKOV head of the department of civil procedure of the judiciary academy in the State of Ural.
<http://www.uihj.com/l-uihj-a-la-conference-internationale-de-saint-petersbourg-6-8-juillet-2010-1018610.html>

²⁵ On the situation in the member state of the Counsel of Europe regarding these two models, see CEPEJ
European Judiciary Systems, 2012 Edition, 2010 data - Efficacy and quality of justice page 346.

²⁶ **Budgetary model:** Egypt, Israel, Jordan, Lebanon, Palestine. // **Independent model:** Algeria, Tunisia, Morocco.

Executing court verdicts within a reasonable timeframe²⁷ is from now on a factor in a fair trial. To achieve this, countries should have a well-trained, active body of professionals, as well as a corpus of judicial rules that facilitates easy access to sources of information on the assets of debtors²⁸ and rapid action in freezing such assets and accessing them.

In Europe, we found that on average there are twice as many public enforcement agents as there are private agents²⁹. We might then conclude that private office, when it exists, seems more effective than the public services. This is a criterion for improving the enforcement of court decisions.

This study shows a disparity in the number of enforcement agents and differences compared to the European norm. Algeria, Egypt and Lebanon are different in having a number of enforcement agents far below the norm, which has an impact on the level of enforcement of court verdicts. Tunisia, however, is close to the European norms while Israel is above these norms.

The geographic proximity of enforcement agents to litigants with obligations to pay also contributes to a better understanding of the legal world and therefore to improving the quality of enforcement.

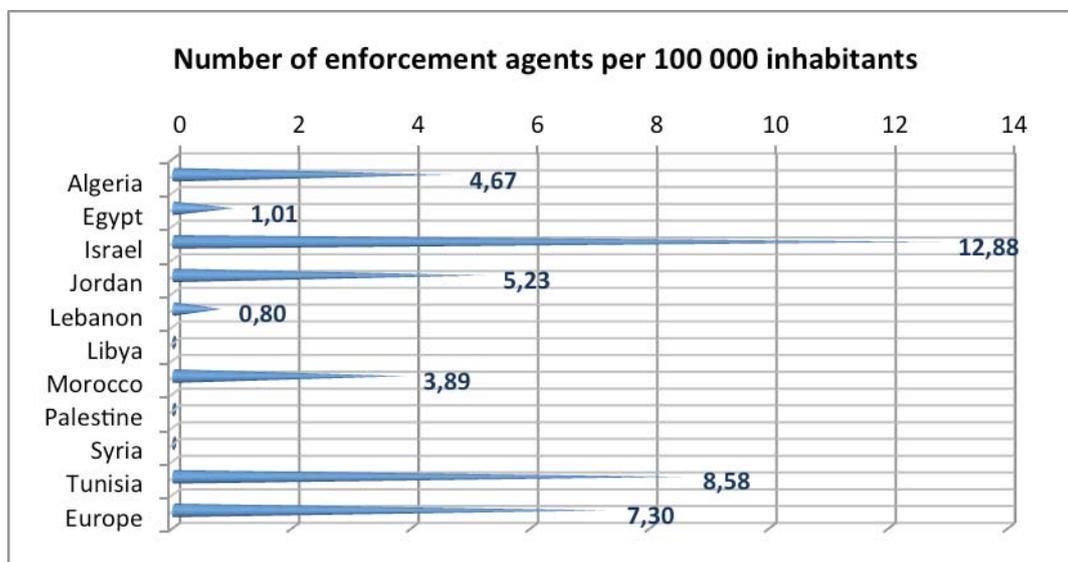
²⁷ Reasonable timeframe for enforcement – see study « enforcement of court verdicts in Europe» ordered by the CEPEJ. The enforcement of court decisions is a factor in a fair trial CEDH, *Hornsby v. Greece*, judicial decision of 19 March 1997; case *Di Pede v. Italy* and *Zapia v. Italy*, judicial decision of 26 September 1996.

²⁸ On this point, see paragraph 10.3 Access to information regarding debtor's assets.

²⁹ Respectively 8.7 against 3.9 per 100 000 inhabitants - CEPEJ - European judiciary systems 2012 Edition, 2010 data -Efficacy and quality of justice page 350 graph 13.6 ».

Table 07: Number of enforcement agents per 100 000 inhabitants

At the time of drafting the report, the expert had no data concerning Libya and Syria. Palestine provided no information.



Enforcement agents have no national or regional professional organisation, unless they are private agents. Then they must join³⁰. As with lawyers, such an obligation is profitable for both the public authorities and the profession. Since enforcement agents are civil servants, they may regroup within one or several trade unions, but sometimes, oddly, they are banned from doing this³¹.

2.3.4. Notaries

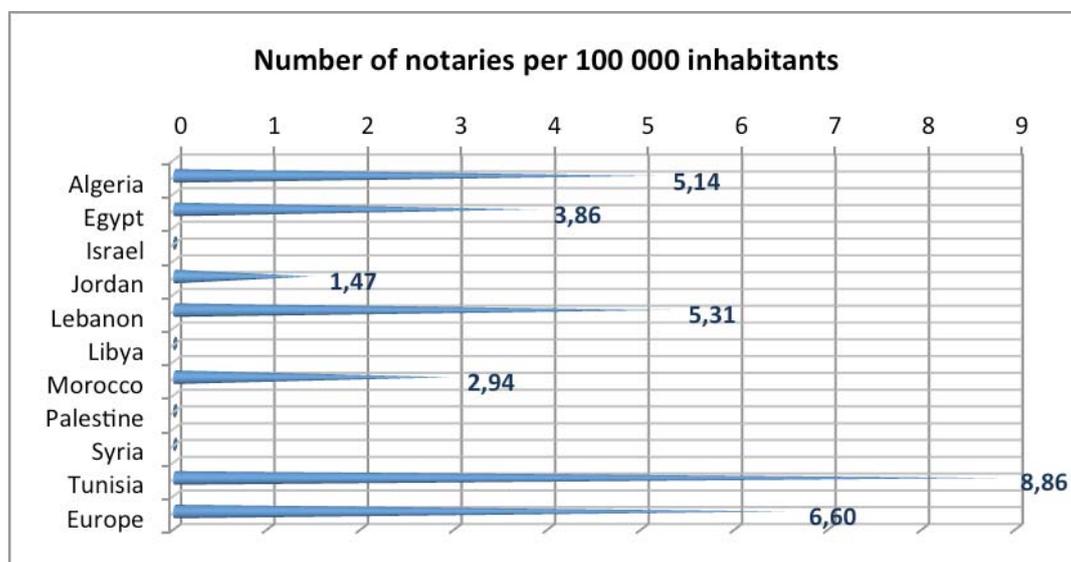
Although their work sometimes includes certifying signatures, administering evidence or verifying the legality of documents, the mission of the notary is mainly to ensure the freedom of consent of parties, giving the legal deed an “authentic” character and in this way securing contractual relations and limiting disputes.

³⁰ Algeria, Morocco, Tunisia.

³¹ Lebanon prohibits its civil servants from setting up trade unions or from joining professional organisations (Decree-Law n° 112 of 1959). The Israel case is interesting because although creating a trade union is recognised, joining such a trade union is prohibited to the 60 registrars.

Table 08: Number of notaries per 100 000 inhabitants

At the time of drafting the report, the expert had no data concerning Libya and Syria. Israel and Palestine provided no information.



The number of notaries is directly linked to the range and volume of their different activities. The number of professional notaries in Algeria and Lebanon is close to the European average³² while Jordan and Morocco are far removed from that average. Only Tunisia is above the European average.

The status of notaries in the beneficiary countries swings between that of a civil servant and a private agent controlled by the Ministry of justice³³. They are charged by the public authority to receive certain deeds and to give them a specific probative force.

Only when these professionals have private status, whether regionally or nationally, do they have organised representation. When they are civil servants, they may be limited in joining professional organisations or trade unions³⁴ and surprisingly in Israel they are organised by the bar association.

³² Israel was not able to provide the number of notaries it has.

³³ Civil servant: Egypt, Palestine // Private agent: Algeria, Lebanon, Morocco, Tunisia. For the status of notaries within the Counsel of Europe, see CEPEJ – European Judicial Systems, 2012 Edition, 2010 data – Effectiveness and quality of justice, Table 14.1 page 369.

According to an audit report done in 2007 as part of a finance project conducted by the European Union, (PAO/SR/MOJ/SPP/SERV/01/2007 Reinforcement of the capabilities of the Ministry of justice – Support for professionalization), Lebanon had 180 notaries in 2007, 130 of them men and 50 women, but there were also 226 potential jobs (so that 46 positions are not filled).

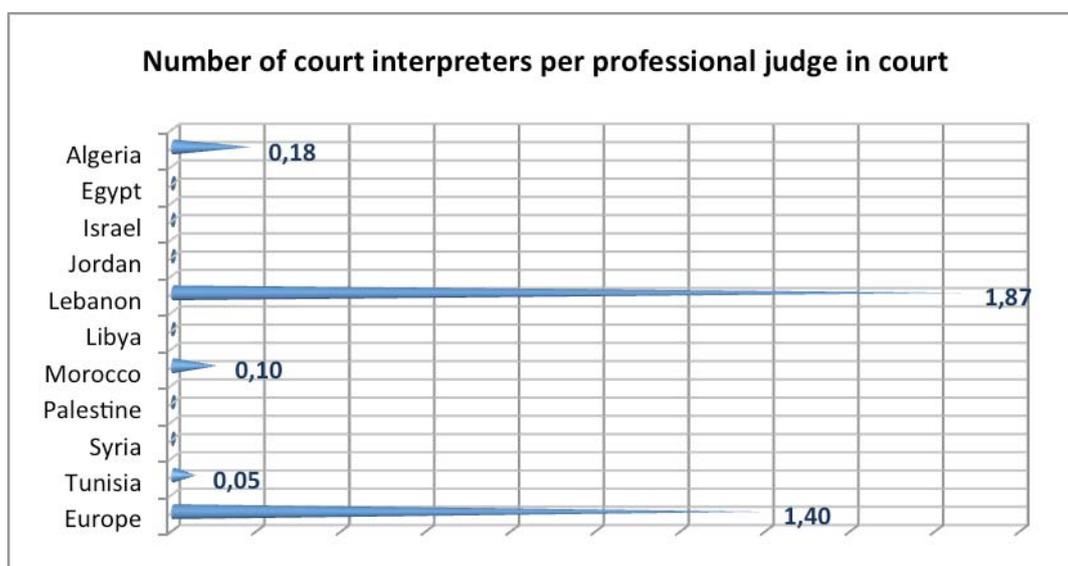
³⁴ See Note 31 concerning Lebanon.

2.3.5. Court translators and interpreters

Actively working to provide an understanding of the proceedings for the parties to the case, who do not understand the language in which it is being conducted, legal translators and interpreters are an indispensable link to a fair trial. Moreover, their role is reinforced in the beneficiary countries in that in many of them several languages are spoken regularly.

Table 09: Number of court interpreters per professional judge in court

At the time of drafting the report, the expert had no data concerning Libya and Syria. Egypt, Israel, Jordan, and Palestine provided no information



Their number is compared in relation to the professional judge in court because it is during the trial that they intervene most. This also makes it possible to compare with European data³⁵. Situations vary greatly in the beneficiary countries because certain languages are used a great deal in some (Arabic-English-French) and less so in others. Unfortunately certain countries³⁶ were unable to give any information on this profession, not because it does not exist, but no doubt because it is badly organised. A comparison with the European average does not really add much as the need for court translators and interpreters depends essentially on the “cosmopolitan” nature of the society in question.

The profession of court translator and interpreter is characterised by its poor internal organisation³⁷, and its diversity. Initial and on-going training suffers from this lack of organisation.

On the whole, courts and/or the Ministry of justice do not seem to have the instruments to assess the quality of the work done by these professionals, something

³⁵ CEPEJ - European Judicial Systems, 2012 Edition, 2010 data, Effectiveness and quality of justice, page 387 graph 16.2.

³⁶ Egypt, Israel, Jordan.

³⁷ Only Lebanon has a Central Union of Sworn Translators, and Algeria a national chamber and a regional chamber for the East and West of the country. www.sworntranslator.org.

that we feel is regrettable, all the more since having (quality) interpreters available is one of the indicators (No 45) of the performance of a judicial system according to the UN: “The United Nations Rule of Law indicators” at <http://www.un.org/en/ruleoflaw/>.

2.3.6. Experts

Experts are hired by the parties and/or by the courts according to their technical skills (assessed and/or assumed). It is unfortunate that certain countries³⁸ cannot give us the number of experts, either because they do not have statistics on these professions, or because they only identify some of them.

Specialists in the health care and construction sectors seem to be well covered but this is not the case with less common specialisations. A lack of experts recognised for certain subjects is a factor that slows down the court process, and it is also a source of uncertainty for the judge who does not have the necessary technical knowledge on such subjects. Comparing with the European situation, as we can see in the graph below, Lebanon is above the norm with a number of experts four times greater than the average³⁹.

³⁸ Israel, Jordan. Palestine only carries out a census on forensic experts

³⁹ CEPEJ - European Judicial Systems, 2012 Edition, 2010 data, Effectiveness and quality of justice, page 382 graph 15.4. By way of information, Turkey has 17.3 experts per judge.

Table 10: Number of experts per professional judge in court

At the time of drafting the report, the expert had no data concerning Libya and Syria. Israel, Jordan, and Palestine provided no information.



As several spokespersons in the beneficiary countries pointed out to us, expertise is a key factor in the management of court time. It is the same case in Europe where expertise is often a factor that holds up a case and adds to the cost of proceedings. In the beneficiary countries we found that the profession of expert is characterised by its diversity, the variety of its missions and also by its individualism and lack of representative structures.

It seems indispensable to implement a protocol for hiring experts in each beneficiary country, provide obligatory on-going training, over a stipulated, approved period, provide decent compensation and lastly assess the quality of the service provided.

The diversity of the profession of expert partly explains the lack of a structured professional organisation that would act as spokesman with the Ministry of justice and regroup all experts. Groups of experts, when they exist, seem marginal and they operate on a voluntary basis at specialisation level, as is the case in Lebanon and in Tunisia⁴⁰.

⁴⁰ In Lebanon chartered accountants, translators, property evaluators and experts on traffic are grouped in a union <http://www.synexperts.com>
<http://www.sworntranslator.org/faq.php>
<http://www.lacpa.org.lb>

Tunisia: The profession of expert is regulated by Law 61 of 23 June 1993 and Law 33 of 21 June 2010. Experts have a national organisation: the association of Tunisian experts.

2.3.7. Conciliators

The beneficiary countries were unable to provide quantitative data on conciliators. We wanted to see from this factor the absence of, or poor use of, this alternative in resolving disputes⁴¹ and also the fact that this service, when it exists, is sometimes provided by the judge⁴². In this, the beneficiary countries differ little from the member states of the Council of Europe⁴³.

2.3.8. Mediators

The mediator can be an individual or a company, which is the solution chosen by Algeria⁴⁴ or Israel. The number of mediators in the beneficiary countries shows that as in Europe⁴⁵ mediation is more active in concentrating, not surprisingly on family disputes.

Jordan, and even more Egypt have a relatively small number of mediators⁴⁶ while Algeria claims the large number of 2, 212. For its part, Morocco institutionalised conventional mediation in its Code of civil procedure (Articles 327-55 to 327-69).

It seems from our enquiry that the possible fields for mediation could be enlarged and/or taken further and that new public and private mediators could be hired to meet needs and lighten the workload of the courts. Unfortunately, the profession is for the time being not organised in the countries that have mediators.

⁴¹ In this sense, see under ADR's, conciliation, paragraph 7.2 Alternative methods used.

⁴² Algeria, Morocco, Tunisia.

⁴³ 34 countries out of 47 use conciliation. Source CEPEJ - European Judicial Systems, 2012 Edition, 2010 data, Effectiveness and quality of justice, page 150 paragraph 6.3.

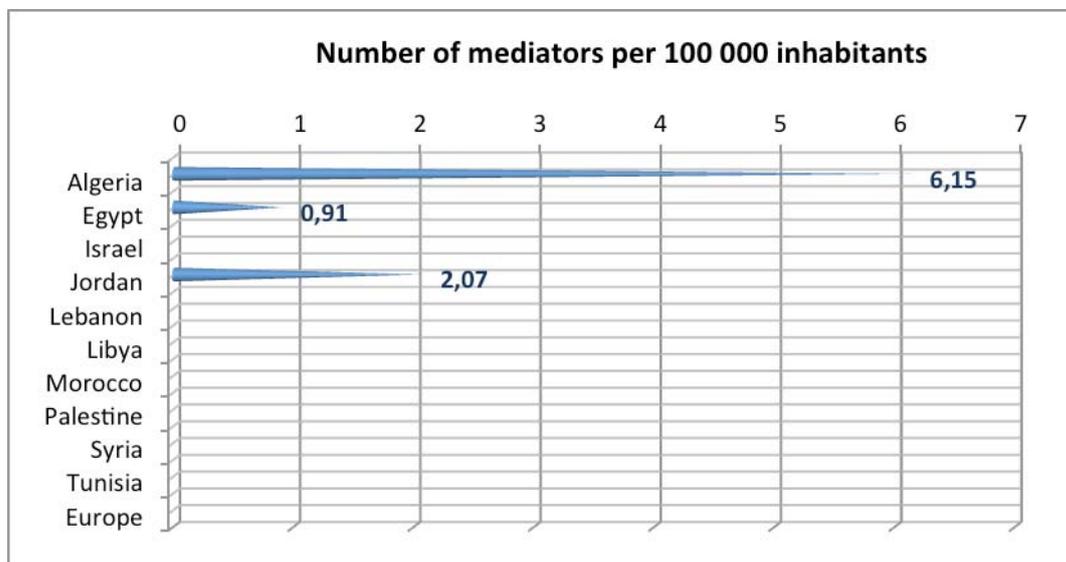
⁴⁴ Code of Civil and Administrative Procedure – Art 994 and following.

⁴⁵ CEPEJ - European Judicial Systems, 2012 Edition, 2010 data, Effectiveness and quality of justice, pages 139 and following. Israel, Palestine and Tunisia have not provided figures but recognise the existence of these professionals

⁴⁶ Egypt: 750 judges mediators assisted by 82 employees - Jordan: 25 court mediators and 103 private mediators.

Table 11: Number of mediators per 100 000 inhabitants

At the time of drafting the report, the expert had no data concerning Libya and Syria. Israel, Jordan and Palestine provided no information, while no data was available for Tunisia.



2.3.9. Arbitrators

With the exception of Egypt (544 arbitrators) and Lebanon (47 arbitrators), the beneficiary countries have not been able to provide the number of arbitrators in their countries. This makes a quantitative comparison with Europe difficult⁴⁷. Consulting the web sites of “arbitration centres/chambers” in the countries that have these⁴⁸ does not provide data that can actually be used either. Although arbitration seems to be developing in the beneficiary countries, to judge by the creation of dedicated structures, it still has only a marginal effect in dealing with disputes. There is still room for further development of arbitration in the beneficiary countries even if by its nature this alternative dispute resolution measure seems dedicated to well targeted litigants ready to pay the price of arbitration.

⁴⁷ 40 countries out of 47 use arbitration according to the CEPEJ Study - European Judicial Systems, 2012 Edition, 2010 data, Effectiveness and quality of justice, page 140 Table 6.2. (N.B In paragraph 6.3 of the CEPEJ study, page 150, it does refer to 39 States. The difference is a minor one.)

⁴⁸ Egypt, Jordan, Palestine, Lebanon, Tunisia.

2.4. Legal statistics

Existence of a statistics service: The Ministries of justice in the beneficiary countries should be able to have the backing of reliable quantitative data, which are detailed and up-to-date. We found that with the exception of Palestine, countries have a service, whether integrated or not in the Ministry of justice, that collects, processes, arranges and publishes court statistics. The importance attached to these services can be measured by their place in the ministry's organisational chart, the extent of its activities or even by the human resources that it has. Therefore in Tunisia, the "Office of studies, planning and programming" (*Bureau des Etudes de la Planification et de la Programmation - BEPP*) is a structure attached to the office of the Minister and the Lebanese service has 4 programmes and 23 employees.

Data collection: It is still too often done manually on paper and from records that have also been compiled manually, collected generally on a monthly basis⁴⁹. Automated collection is only a reality in Egypt, Jordan and Palestine, which is certainly a good practice to adopt. We suggest that automated collection become a **priority** so that the court authorities can have error-free data available in real time. However, it should also be said that this automation is interdependent on the information system used in the courts⁵⁰.

Accessibility of results: After the coding and processing phase, data are available for use in the preparation of results. The tendency in the beneficiary countries is to allow the public free, non-paid access to statistics or to certain statistics. However, Lebanon is different in limiting access to court statistics⁵¹. Results are usually published in a report with varying frequency (monthly in Egypt, six-monthly in Israel and more generally annual) – initially produced on paper but which tends to be available electronically⁵²

Harmonisation required: The Ministries of justice in the beneficiary countries should be able to collect, at least, data similar to that of the CEPEJ⁵³, process them and compare the results with the European reference study. The comparative study using a format modelled on that of the CEPEJ, becomes a strong stimulant to improving the effectiveness and quality of justice as we have observed it for the past ten or so years in Europe.

⁴⁹ Egypt, Algeria, Jordan, Lebanon, Morocco, Tunisia.

⁵⁰ We will see later on – paragraph 3.6.2 Current means and those planned for capacity building "**Communication and information system**" – that effective information systems are often missing.

⁵¹ Lebanon: the Ministry of justice, the supreme council of the magistrates and court inspection.

⁵² Algeria, Egypt, Israel, Jordan, Palestine. In Israel it can be consulted on the site www.court.gov.il and in Jordan on the site www.ic.jo.

⁵³ CEPEJ - European Judicial Systems, 2012 Edition, 2010 data, Effectiveness and quality of justice.

Rec 02 Implement an evaluation process in the Ministry of justice to determine the effectiveness and quality of justice.

Comment: Comparing with the performance of other judiciary systems turns out to be indispensable in that it helps to standardise the judiciary of a country. An evaluation or assessment system that is authoritative – that used by the CEPEJ – would be highly profitable for the beneficiary countries, and implementing such a system would help assess the effectiveness and quality of justice inspired by the work done by the CEPEJ. As this has been the case with the work done by the CEPEJ on this topic, it would be a powerful spur in improving the performance of justice.

3. “Judicial time” management

The right to a fair trial that is asserted both in the International Covenant on Civil and Political Rights (art 14) and in article 6 of the European Convention on Human Rights is also the right to a reasonable timeframe as underscored many times in the case-law of the Court of Strasbourg. Judicial time includes the time for proceedings and the trial, as well as time for enforcing the judicial decision reached. However, in this study, we are focussing on the time for the proceedings and the trial. The “judicial time” and its control in the beneficiary countries should make a comparison possible between their situations and European guidelines and, notably, the recommendations made by the SATURN Centre⁵⁴ set up by the CEPEJ⁵⁵. To this end the questionnaire sent to the beneficiary countries used the indicators⁵⁶ identified by the SATURN Centre and the checklist established by it⁵⁷.

The UN considers that “undue” delays are an indicator of the rule of law, in particular regarding effectiveness and efficiency (No52) of a judicial system: “The United Nations Rule of Law indicators” at <http://www.un.org/en/ruleoflaw/>.

3.1. Transparency and foreseeability

Foreseeability: The timeframe of proceedings should, to the extent possible, be determined in advance, allowing the litigant to assess the time required for the process. The beneficiary countries have almost unanimously replied that this is not the case. Only Algeria considers that the litigant can forecast the time his case will take by referring to the statistics on the timeframe required to deal with other similar cases. We do not think that a litigant will necessarily adopt this approach. It is more likely, from the statistics published⁵⁸, that the litigant will struggle to find information that he can really use to determine the duration of the proceedings he intends to bring, or to which he is summoned. There again his choice is no doubt none too clear because he cannot know the foreseeable duration of the case. The facts must be faced; the litigant therefore takes a leap into the unknown and unforeseeable.

On the other hand, fast procedures are globally identifiable to litigants and their counsel. Also, more than an exact duration, it is the speed that seems to be the determining factor in the choice of procedure, when the case can be included in the field of application of these accelerated procedures. We also find that the latter appear on the whole to be simple to implement, a criterion that is also a determining factor in the choice.

⁵⁴ The SATURN Centre is responsible for collecting the information needed to understand the time required for court proceedings in the member states sufficiently well to allow them to implement policies to prevent the violation of the right to a fair trial within a reasonable time protected by Article 6 of the European Convention on Human Rights.

⁵⁵ http://www.coe.int/t/dghl/cooperation/cepej/Delais/default_en.asp

⁵⁶ On these indicators, see “time management indicators” – CEPEJ – Council of Europe – SATURN GROUP *Judicial time management - Annex I*

⁵⁷ Time management indicators Check-list - Source Council of Europe - CEPEJ – SATURN Group
<https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ%282005%2912&Sector=secDGHL&Language=lanEnglish&Ver=rev&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6>

⁵⁸ See paragraph 2.4.

Information: During the course of proceedings, information to the parties does not come systematically as events evolve, and this can have an effect on the duration of proceedings. When it exists, information comes either from a hearing or from a remote follow-up in the case via a dedicated website. The solution used sometimes requires a personal notification⁵⁹.

Apart from the means used, the beneficiary countries should ensure that such information exists, that it is quality information and that it is brought to the case sufficiently in time so that the person concerned can adequately ensure his defence.

3.2. Optimum length

Reasonable time: Article 6-1 of the ECHR underscores the “reasonable time” that should be attached to all proceedings, a concept that applies from the examination stage to the trial itself and also to the enforcement of the judicial decision. The “reasonable time” is not formally quantified even if the case law of the European court outlines it. Although proceedings should not take too long, they should also not be too fast, if this restricts the rights of litigants. The total duration of the proceedings should be adequate for the complexity of the case from its institution until the judicial decision is passed.

Optimum length: The concept of “optimum length” found in the guidelines of the SATURN Centre on “judicial time management”⁶⁰ tends in particular to say that *“Particular attention should be given to the appropriateness of the total length of proceedings, from the institution of proceedings to the final satisfaction of the aims that the users wanted to obtain through judicial process”*. According to the guidelines of the SATURN Centre, optimum and foreseeable length of proceedings⁶¹ should be *within the responsibility of all institutions and persons who participate in the design, regulation, planning and conduct of judicial proceedings, in particular by taking into account ethical rules.*

We found during interviews in the beneficiary countries that **the concept is not taken into account** for the time being. When it is, it should help plan an optimum length of time for judicial proceedings according to the type of case or proceedings, and according to the nature of the court, not including exceptional behaviour on the part of litigants. This reference will be highly useful for magistrates, litigants and their counsel, by allowing each one to identify excessive disparities in the length of time taken to deal with similar cases.

⁵⁹ Communication at the hearing in Algeria, in Morocco and in Lebanon – By letter: Egypt, Morocco – Rapid courier service: Jordan and for an example, see www.aramex.com. - Website: Algeria – Personal service delivery by an officer of the court – Art 501 to 507 of the Code of Civil Procedure in Lebanon

⁶⁰ Guidelines adopted by the CEPEJ at its 12th. Plenary meeting on 10 and 11 December 2008 - www.coe.int/cepej

⁶¹ See the Framework Programme: "A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe" (CEPEJ (2004) 19Rev2) and "CEPEJ Studies No3: 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" (F. Calvez – The Council of Europe Publishing), available at www.coe.int/cepej.

Poor follow-up and evaluation instruments: Israel, Lebanon and Tunisia⁶² have implemented a follow-up on the length of time taken for court proceedings. This is a positive approach, and these experiences are worth following to ensure the coordination, surveillance and assessment of measures taken to improve the management of “judicial time”. On the whole, currently in these beneficiary countries it is impossible to identify trends, anticipate change and prevent problems relating to the length of “judicial time” and proceedings. **The need for a quality data collection system**⁶³ is once again emphasised in order to quickly provide detailed statistics on the length of time proceedings take at a general level and to identify individual cases that give rise to excessive or unreasonable delays.

3.3. Flexibility

Flexibility is an essential factor in managing “judicial time”, and it should be adapted to litigant needs. It is not a question of making “made-to-measure” justice but “flexible” justice able to respond to the specific needs of the parties involved – among other factors, urgency, vulnerability or the complexity of the case. The beneficiary countries say they have measures to provide such flexibility in managing “judicial time”. These measures adopted by the judge⁶⁴, most often at the initiative of the parties, seem to earn consensus and ensure the necessary flexibility.

However we suggest that countries ensure **assessment of compliance with, and the pertinence of, the length of time** for proceedings as laid down by law. In fact, the judge regularly extending the length of time, even if at the initiative of the parties, is a sign that rules and practical needs are not well adapted.

3.4. Collaboration from all parties

Shortcomings: All parties, whether the litigants or their representatives, but also the judges, registrars and experts, should collaborate in “good faith” in managing “judicial time”.

En from proceedings in the tribunals and courts, essentially it is the judges and court administration that takes part in determining, estimating, planning and organising time management for cases (e.g. case schedule, division of tasks). On the other hand, during proceedings, the parties and their representatives are invited to take a more active in the management of “judicial time”.

Lack of communication: The exchange of paperless data between professionals and with the courts is only mentioned by Israel and Morocco⁶⁵.

⁶² Israel with Court Administration, and Israeli Courts Research Division of the Supreme Court; Lebanon: Since September 2012 Lebanon deploys a data collection system that allows assessing the average time needed per type of cases. Tunisia: President of the court in coordination with the General Inspectorate of the Ministry of justice.

⁶³ See Paragraph 2.4 Legal statistics / “data collection”.

⁶⁴ Examples: Egypt - Algeria where the judge can resort to urgent proceedings, such as the summary procedure - Lebanon with articles 278, 309, 455 and 582 of the Code of civil Procedure that allows the judge to reduce the length of time of proceedings. The judge hearing the case can rule on applications for urgent interim measures, such as the summary procedure – art 589 of the Code of Civil Procedure.

⁶⁵ Control and evaluation of measures are guaranteed.

« **Proceeding schedules** » - help determine dates or estimate a schedule of the stages in the proceedings to follow – do not seem to be prepared and/or implemented in the courts. Lawyers and courts do have a common interest in such exchanges and in controlling “judicial time”. Everyone will find in it a certain **effectiveness and efficiency** that will lead to the judicial system functioning better. But also, **effective information systems**, both for the courts and their professional users, are a prior condition to such progress.

3.5. Material organisation

We found, without any real surprise, that legislative production was important in the beneficiary countries. New legislation is plentiful and sometimes suffers from a certain lack of preparation, pointed out by some of our contributors.

Deadlines for change: Implementing legislative and enforcement measures once adopted should be preceded by sufficient time to allow them to be integrated by legal professionals before they are applied.

In the beneficiary countries, looking only into legislative and/or regulatory changes addressing judicial organisation or applicable procedure, we found that the situation varied greatly. Professionals said there was not enough time to prepare themselves for reforms, because it is the law that fixes the time for entry into force, which most often is immediate, following publication in the Official Bulletin⁶⁶. In Tunisia, for example, the new provision comes into force 5 days after publication in the official journal. In our opinion, that is not sufficient time in which to prepare for change. In Egypt, the date for entry into force is set on 1st October of the year which could mean, depending on the circumstances, a sufficient deadline or a very short one, according to the date of adoption of the text. Given the variable deadlines it generates, such a practice could not be promoted as a « good practice ». In this context, we noted with interest, the initiative of Israel where, in the case of a regulation, entry into force comes after 30 days, a period in which adaptation to the change can be more effective.

3.5.1. Impact of legislative and regulatory changes

The tendency in many European countries when new legislation is adopted is to have recourse to an impact study on the measures planned. In relation to the justice sector, such a study should measure both the advantages and disadvantages of the impact of new legislation on the volume of new cases or of those already being tried in the courts, and also on the risks that can arise from delays in dealing with cases.

Impact assessments are only done in Algeria, Egypt, Tunisia and Israel. In Israel the assessment is more thorough, with a prelude to changing legislation, a comparative study, an analysis of statistics and consultation with the professionals concerned.

Of course, prior to making legislative or regulatory changes, consultations are planned (e.g.: the Supreme Judiciary Council in Palestine) or organised frequently, but this does not refer exactly to an impact assessment.

⁶⁶ Lebanon, Morocco. It must be noted that laws come into force one day after their publication in Algeria.

Rec 03 Perform an impact assessment prior to any legislative or regulatory change

Comment: An impact assessment on legislation or a new regulation should make it possible to measure the positive or negative effect on the judicial and social environment in society. Such an assessment should intervene very much upstream of a vote or implementation of a law so that the legislator can be clear on the consequences of the legislation planned.

3.5.2. Court organisation

The SATURN Group suggests that the judicial courts should be organised in such a way as to encourage effective time management. *“Responsibility for the time management or judicial processes has to be clearly determined. There should be a unit that permanently analyses the length of proceedings with a view to identify trends, anticipate changes and prevent problems related to the length of proceedings”.*

In the beneficiary countries and during proceedings, responsibility for “judicial time” management during proceedings lies with the judge⁶⁷ and by association with the parties and their representatives⁶⁸ or even with the registrar⁶⁹. However, if there are no **incentive measures** to encourage better “judicial time” management, the judges and/or the parties have only a minor interest in improving the time taken for the proceedings. We feel that the use of incentive measures⁷⁰, is promising in helping improve the “judicial time” variable.

3.6. Procedures

Each legal professional has found that in his country certain rules and/or judicial procedures do extend the length of time required to deal with cases and therefore prevent an “optimum time length” being achieved.

The Council of Europe likes to recommend to its member states various judicial measures⁷¹ in order to control the time required. This study has only managed to

⁶⁷ Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Tunisia.

⁶⁸ Egypt, Israel, Jordan, Tunisia.

⁶⁹ Israel.

⁷⁰ In this sense the study of the SATURN Group. For practical application, to the benefit of the judge – see Israel, Palestine or Tunisia – to the benefit of the parties see Algeria – to the benefit of court administration see Algeria, Morocco.

⁷¹ R(81)7 on measures facilitating access to justice,

R(84)5 on the principles of civil procedure designed to improve the functioning of justice,

R(86)12 concerning measures to prevent and reduce the excessive workload in the courts,

R(87)18 concerning the simplification of criminal justice,

R(95)5 concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases,

R(95)12 on the management of criminal justice,

R(2001)3 on the delivery of court and other legal services to the citizen through the use of new technologies.

reveal **the most frequent difficulties** in the beneficiary countries⁷² as well as their impact. In the framework of a possible aid project to some beneficiary country, we suggest that **a more detailed analysis be done first per country** to identify them in greater detail.

The appeal itself is a source of delay, but it is also a right. However, its use is sometimes for the sole objective of allowing one of the parties to gain more time. Limiting the possibilities of appeal and/or authorisation to form an appeal seems an interesting approach to reducing unfounded appeals and hence delays. In this way clearly unfounded appeals can quickly be declared inadmissible or rejected. This would mean that the judicial decision could be more quickly enforced. Similarly restricting appeal to the Supreme Court is an approach that should be explored by the beneficiary countries, notably in regard to an interest in the case, only allowing appeal for cases that merit special attention. However, this last criterion should be explained in the legislation of each country.

Transferring judges within the framework of career promotion, presents a difficulty in the smooth handling of cases, and one that gives rise to delays. Therefore it would be pertinent to know how the beneficiary countries handle this difficulty and what measures are implemented in such cases to ensure proceedings already underway are dealt with.

3.6.1. Proceedings giving rise to delays

Among the measures and/or procedures that most frequently hold back the progress of a case or a judicial decision, answers to the questionnaire and those we met during our missions emphasised

- Hearing the parties and witnesses (Jordan, Lebanon, Palestine). Restrictions to moving certain witnesses in Palestine⁷³ or difficulties in identifying the latter, bringing proceedings underway to a halt. Moreover, it seems that certain parties and their representatives use these difficulties to “block” proceedings,
- Notifying parties and witnesses of judicial documents and sometimes, also, difficulties of identification and localisation (Lebanon).
- The execution of some letters rogatory (Algeria)
- Need for expert assessment measures sometimes with difficulties in identifying experts and hiring them, and above all the slow process of returning reports. There again, the demand for expertise is often used as a “procedural weapon” to hold back, or even to block proceedings (Algeria, Egypt, Lebanon, Morocco, Tunisia)
- Statements in response from lawyers and parties, which are the result of both professional negligence and the perverse tactic used to hold back proceedings (Egypt, Tunisia).

In order to identify difficulties better and, of course, to find a solution to them, we highlight the initiative of Israel, which had a private company do an assessment of the

⁷² See paragraph 3.6.1.

⁷³ Three zones (A, B, C)

administrative work of the courts. This study reveals that the “stock” of cases delayed is the result of three main factors.

- *First of all bad management over several years,*
- *Then old procedures ill-adapted to current day situations,*
- *Lastly a lack of managerial skills on the part of judges.*

In view of delays to handling cases in court, something that exists in all the beneficiary countries, three guidelines have been accepted by these States.

- *Capacity-building*
- *Acceleration of procedures*
- *Simplification of procedures*

Drawing on the Israeli initiative, should there be an aid project in any of the beneficiary countries, **we suggest an in-depth analysis of the causes of the “judicial backlog”** and proposals to resolve this within an acceptable time and in appropriate conditions.

3.6.2. Current means and those planned for capacity-building

Judicial map: Changing the judicial map is a pertinent structural reform to help make the best possible use of available means, by regrouping and moving courts. Such a reform can be accompanied by increasing the number of courts where they prove to be necessary. However, such adaptations are cumbersome to implement and rarely get the consensus of legal professionals. An increase in the number of courts or divisions able to handle cases is an investment that demands a considerable financial demand. This has been the approach of Egypt, Jordan and Morocco that have also reinforced their district courts, Tunisia doing the same and also reinforcing its courts of appeal along the lines of Algeria⁷⁴ and Palestine⁷⁵. Finally, Algeria created 37 Administrative Courts⁷⁶, which is a spectacular effort in reinforcing capacities. Israel in turn has improved the situation of some sites by transferring some tribunals to new and better-adapted sites. Contrary to this, Lebanon has only one project in preparation, but not yet approved.

These measures to reinforce capacities are to be encouraged but they are costly because they need high and immediate investment, which is not easily mobilised.

Increase in staff: Creating additional positions of judges is a demand made among those we spoke to⁷⁷. It is often the first reaction to facing difficulties in handling cases. But we did not learn of any analysis of needs done by the Ministries of justice

⁷⁴ Algeria: El Oued court of appeal and three other courts are nearing completion to end up with 40 courts of appeal (*Tipaza, Ain Temouchent, Ain Defla*).

⁷⁵ Jordan: creation of new courts at Al Hessa Bseira and Al Wasatiah. – Tunisia: creation of district courts and magistrate’s courts, courts of criminal appeal and civil and commercial criminal courts - Palestine: creation of district courts, religious and appeal courts – Lebanon: creation of a district court at Hammana on Mount Lebanon and two appeal courts, for Hermel and another for Akkar.

⁷⁶ Algeria: Administrative Courts for Adrar, Chlef, Laghouat, Oum Bouaghi, Batna, Bejaïa, Biskra, Béchar, Blida, Bouira, Tamanrasset, Tébessa, Tlemcen, Tiaret, Tizi Ouzou, Alger, Djelfa, Jijel, Sétif, Saida, Skikda, Sidi Bel Abbés, Annaba, Guelma, Constantine, Médéa, Mostaganem, M’Sila, Mascara, Ouargla, Oran, Illizi, Bordj Bou Arreridj, Boumerdés, El Oued, Ghardaïa et Relizane.

⁷⁷ Among the most striking, are Palestine and Lebanon. For the latter, see note 21 and the reservations it contains.

in the beneficiary countries. This, of course, is the first step to take to understand both the use of current resources and their adequacy for needs effectively identified. Increasing staff numbers is a measure that is difficult to assess, even if the volume of work decreases afterwards. We found that magistrates positions were created and in certain cases with particularly sustained efforts⁷⁸. Reinforcing human capabilities was extended to non-judge staff and to enforcement agents⁷⁹.

Communication and information systems: We found during our missions that **the information system is often the weakest link in the judiciary system**. With the exception of Algeria and Israel that have just acquired a tool that can probably be considered a substantial improvement⁸⁰, the situation is not as satisfactory when it comes to available materials – even with the endowments found in Egypt, Jordan, Palestine and Tunisia, or in terms of available software⁸¹. However, there are encouraging signs in that there is Internet access for judges and non-judge staff and also the installation of video-conferencing.

Reinforcing the courts by means of communication, information systems and the implementation of a network of judges, court staff and officers of the court, should be **one of the priorities** to improve the way in which cases are dealt with and to implement and follow-up procedures.

Rec 04 Endow or reinforce the courts with means of communication, an information system and the implementation of a network of judges, non-judge staff and officers of the court.

Comment: The information system is the Achilles heel of most judicial systems in the beneficiary countries. The justice sector suffers from being behind technologically in many countries, which contributes in part to the accumulation of delays in handling cases and also to the breakdown in sharing information among the various stakeholders.

Reception: The quality of the reception litigants get in the tribunals and courts, is often underscored by the latter as a weak point. Implementing and/or improving the reception given to litigants who could be guided by trained staff, would promote a better image of justice and the courts. Welcome desks in the courts have been installed in five countries⁸² but we could not get an assessment of this installation.

⁷⁸ Algeria, Israel, Jordan, Morocco and Tunisia. Algeria: 5-year plan 2010-2014 expects to hire 470 magistrates/year – Egypt: recruitment of judges, assistant judges, court clerks as well as enforcement agents - Jordan creation of 213 judges and 117 assistant judges - Palestine 50 magistrates since 2008 – Palestine’s case is atypical in that since 2008 it has hired 10 judges per year and 50 judges up to 2012. The particular situation of the Palestinian territory partly explains the need and the number hired in Palestine – Morocco: creation of 1195 positions for judges between 2007 and 2011.

⁷⁹ **Non-judge staff:** Israel, Jordan 1579 positions, Morocco 700 new positions per year since 2009 –

Enforcement agents: Israel + 15% and Jordan + 8 position, Morocco + 520 positions created in 2011.

⁸⁰ The “Net Hamishpat” system.

⁸¹ The situation is even grotesque in Lebanon where studies on the development of a software have been going on for almost 10 years.

⁸² Algeria: An Internet site for each court, welcome desks and information screens – Egypt: welcome desks - Lebanon: Help desk installed in the Beirut Place of Justice– Morocco: desks and information screens - Tunisia: welcome desks in many courts with support of a project funded by the EU.

Israel has profited by setting up its “Net Hamishpat” system to reinforce telephone reception for litigants.

Internet site: Considerable effort has been made by the beneficiary countries to provide Internet sites or to reinforce existing ones, and in this regard the general use of an Internet site per court achieved by Algeria is an initiative to follow. Our consultations have shown us sites more informative than interactive. We suggest that the beneficiary countries put up more forms on their sites, information on procedures, and a link with the information system used, giving **direct access to the litigant’s file**⁸³ with the required security.

Interactive screens: Installing interactive screens accessible to all users in the courts gives rapid access to information on court cases, hearings, the state of proceedings, and access to a particular specialised division of the court. Such an experiment is available in the Supreme Court of Israel and in the Algerian courts⁸⁴. Interactive screens do not exactly replace live welcome desks and they are not widely used, no doubt because of their cost, but also because of the lack of the human link so important in Mediterranean culture. Moreover, they restrain the litigant from going to the court. We feel they are a useful solution in providing information but only for complementary and not exclusive use.

Centre for legal information and documentation: For some years now Tunisia has such a centre⁸⁵, and Israel and Morocco have created their centres, which seem to be a positive initiative in adding to legal knowledge. This type of centre should be encouraged but we do not feel it is a priority compared to other more immediate litigant needs in a number of countries.

3.6.3. Current means and those planned to accelerate proceedings

On-going training: Reinforcing the skills of staff is a factor in accelerating the handling of cases while at the same time adding to the quality of the way in which they are dealt with. This concerns not only the judges but also non-judge staff. The tendency is to reinforce on-going training in particular, as the figures show. Important efforts have been made in Egypt and in Palestine⁸⁶. Algeria has a high rate of training for judges and it has had this for several years, as well as training for clerks of court⁸⁷, similar to Morocco⁸⁸. Jordan is engaged in an ambitious programme, as is

⁸³ In addition to the information screens in some countries and certain courts, and that give the litigant and the litigant’s counsel access to the litigant’s file.

⁸⁴ Algeria: 3 courts are equipped – Israel has benefitted from USAID funding.

⁸⁵ Tunisia has a Centre for legal and judicial studies.

⁸⁶ Egypt: an average of 50% of judges attended on-going training each year between 2008 and 2011. - Palestine: 70% of judges are attending on-going training each year and the rate amounts to 100% when referring to court personnel.

⁸⁷ Algeria: 38.66% of **judges** attended short-term on-going training in 2011, either at home or abroad. This figure does not include long term specialist training for judges. For clerks of court (not including administrative support staff), the rate of on-going training is over **96% per year since 2008**, proof of a considerable effort to reinforce staff skills. (On-going training rate for registrars 2008-96.35%; 2009-96.31%; 2010-99.59% - 2011-96.99 %).

⁸⁸ **Central on-going training for judges from 2007 to 2011:**

Lebanon, which has benefitted from some solid support for its *Institut des Études Judiciaires* as part of a framework project funded by the European Union. We feel the best objective is to let each professional in the sector participate annually in on-going training⁸⁹.

For technical purposes, one-to-one training is preferred. Algeria began a programme for distance training⁹⁰, which is, however, isolated and no “e-learning” programme has really been implemented. Such a programme will only be suitable in the beneficiary countries once data processing and information means have been truly reinforced. For the time being, it seems that one-to-one training will remain the norm.

Complementary human means: In order to deal with peaks of activity or to ensure a reduction of cases in court, one solution is to appeal to human means on demand in the form of “volunteer teams” of judges or non-judge staff, assistant judges either in retirement or trainee judges. Although such solutions help improve peak situations, they cannot be considered lasting solutions. Algeria, Israel, Jordan and Palestine have used these complementary human means. Israel has authorised registrars to do more court work, which is one way of relieving the pressure on the court system. In Jordan, it is the Grand criminal court that moved to the north and south of the country to deal with cases under its jurisdiction.

There again these are peak solutions that cannot of course become the norm, even more so in that the beneficiary countries have not submitted an assessment of results obtained, which means that the pertinence of such solutions cannot be verified.

Jurisdictional means: Creating “specialized chambers” dedicated to dealing with specific disputes is a solution to keep this type of case moving and to relieve the courts. To respond to specific needs linked to the revolution of 14 January 2011, Tunisia created a “**financial hub**” to deal with cases of corruption. Creating “specialised chambers” is a solution used in Egypt, Israel and Morocco who adopt the “single desk” developed in Algeria to help accelerate proceedings.

We found another particularly interesting solution developed in Israel. In the Tel-Aviv court “**the second watch**” has been set up. This consists of using courtrooms at a time when they are not normally used⁹¹. By using rooms that are available it has been possible to make the best possible use of resources.

- Year 2007: 567 judges out of a total of 832 judges (68.14%) /

- year 2008: 459 judges out of a total of 640 judges (75.20%) /

- year 2009: 364 judges out of a total of 569 judges (63.97%) /

- year 2010: 494 judges out of a total of 680 judges (72.64%) /

- year 2011: 393 judges out of a total of 655 judges (60%).

Regional on-going training for judges from 2007 to 2011:

The general rate is 69.18% for 220 judges out of a total of 318 judges.

On-going training for non-judge staff:

- Year 2007: 1783 Registry staff a total of 2475 (72%) / - year 2008: 2044 Registry staff a total of 2675

(76%) / - year 2009: 1545 Registry staff a total of 2038 (76%)

- Year 2010: 1369 Registry staff a total of 2036 (67%) / - year 2011: 1864 Registry staff a total of 2793 (67%).

⁸⁹ In certain European countries the number of hours may be 40 per year.

⁹⁰ On-going training programme for around 60 magistrates.

⁹¹ Afternoons and evenings.

Procedural means: In 2005 already, the UN invited States to implement “...procedures, laws or court rules that provide for cases to be expedited ...” in paragraph 30 point C of **The UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime**, adopted by the Economic and Social Council in its resolution 2005/20 of 22 July 2005. This principle should be of general scope and not be limited only to cases involving children.

We found that the *sine-die* adjournment of certain cases is not a management tool used to make cases more flexible and to unblock the courts. We may regret the absence of a solution particularly for cases that drag on due to the “**ill will**” of the parties or their counsel.

However, Israel says it carries out a **regular control of cases** to revive or close, cases frozen or delayed. We feel that such an initiative is useful and wise and it could be extended to other countries.

3.6.4. Current and planned means to simplify proceedings

On-line forms: The use of on-line forms to obtain documents is a determining factor in simplifying procedures. Such a method easily brings a gain in productivity. Unfortunately, the state of information systems in the justice sector, with the exception of Algeria and Israel, does not allow us for now to gain access to court payments, the commercial registry, injunction procedures to pay (uncontested claims) or to deal with small claims⁹².

On-line payment: Payment of fines, court costs or the cost of issuing court documents is often a random recovery process. Besides the lack of earnings for the Justice budget and the State, non-payment, of fines, for example, creates the idea that payment can be avoided and that weakens the judiciary. Furthermore, paying fines and other justice payments to a desk mobilises considerable human resources that could be better employed, without mentioning waiting times for those patiently waiting to pay at these desks. This is why **on-line payment** of this type of claim greatly simplifies the process both for litigants and for justice itself. Only Egypt and Israel have developed such on-line payments.

Such a measure could be firmly installed in the beneficiary countries that do not have it and this would help them recover claims more quickly and effectively.

Rec 05 Set up on-line payment of fines and legal costs.

Comment: Installing on-line payment ensures confidentiality for users and accelerates payment. Reduced handling compared to other forms of payment is an important factor in reducing the handling charge on each payment and also adds efficiency.

Filtering claims: By filtering the grounds for claims filed with the courts, with the eventual rejection of those without grounds or that are not receivable, the judiciary could avoid some of the blockage affecting the courts. This approach has only been

⁹² Israel uses on-line forms for dealing with small claims.

used by Israel, but we have received no assessment of this mechanism, although it was set up before 2008. As a matter of principle, such filtering does, however, pose basic difficulties in gaining access to justice. A wise balance needs to be found between easy access to justice and the dismissal of “unfounded” cases.

Filtering appeals: This is a question of identifying appeals that are a delaying tactic or have no legal grounds and are not receivable. The aim is clear because it is to avoid blocking the courts handling appeals. Israel and Jordan⁹³ have adopted this approach, while other countries have not taken the step, we feel due to an excess of caution. Bearing in mind the growing number of appeals and the overloading of the courts⁹⁴, it would seem preferable for the beneficiary countries to adopt **appeal filtering**.

⁹³ The technical office of the Court of Appeal in Jordan assesses the appeal and dismisses those that are inappropriate.

⁹⁴ Information collected during interviews.

Rec 06 Set up an appeal filter.

Comment: The right to appeal is often manipulated by quibbling litigants to draw out the case, or to hold back the outcome of proceedings by “using” the adversary. Always recognising the right of all litigants to appeal, implementing an appeal filtering policy can be used to combat this annoying practice. An appeal for purely delaying tactics should be isolated by a filtering mechanism, helping to relieve the courts dealing with appeals.

Restriction in the number of witnesses: Hearing witnesses is a particularly time-consuming court job and sometimes it proves to be random⁹⁵. Restricting the number of witnesses is part of the solution to simplify procedures and then reduce delays in handling cases. However, this measure must be handled with caution so as not to prejudice the right to a fair trial or the right to access for the most vulnerable. In this regard all the beneficiary countries signed and have to apply article 13 of the UN Convention on the rights of persons with disabilities of 13 December 2006 and “... facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages”.

Israel and Jordan have moved towards restricting the number of witnesses although the other countries have not yet opted to do this.

3.7. Penalties for delays

Nature of delay: In order to discourage voluntary, conscious attempts or measures to delay proceedings, sanctions could be used against those who are the perpetrators. This would involve the parties to the case and/or their representatives and it is the judge who is responsible for deciding on the sanction, either entirely at his initiative, or at the demand of another party, but they can be contested if necessary.

Financial penalties: The sanction may sometimes take the form of parties being ordered to pay damages⁹⁶, but only *a posteriori*.

Procedural Sanctions: We feel these are more effective than cash sanctions because they can put an end to the proceedings. The case can then be struck off if blame falls on the claimant proved to be negligent in holding back the proceedings⁹⁷.

Disciplinary sanctions: They can involve the judge through his hierarchy, as is the case in Algeria and Lebanon. Disciplinary sanctions do not seem to have been sufficiently explored or used in the beneficiary countries⁹⁸.

⁹⁵ Palestine in this regard reported major difficulties in hearing witnesses. Our contacts have emphasised the “technique of multiplying the number of witnesses” to be heard, sometimes used in Palestine by the parties to hold back the process, if not to prevent it altogether.

⁹⁶ Egypt, Israel, Lebanon and Jordan charge in these countries a minimum of from 250 JOD to 1000 JOD for a case before the district court.

⁹⁷ Algeria, Egypt, Jordan, Lebanon, Palestine.

⁹⁸ During our interviews it seemed that responsibilities were not clearly identified.

3.8. Norms and objectives

Prescriptive process: Judicial time management is not covered by a prescriptive process in the beneficiary countries, except in Israel. This process has not appeared as a priority⁹⁹ – so there are almost no norms defined by the Ministry of justice. When norms do exist – Israel, Tunisia – they are either defined by the courts but they are no more than indications, which in itself reduces their scope (Israel) or they are established at the level of the general inspectorate of the Ministry of justice (Tunisia).

Application of norms and objectives: Essentially, the application of norms and objectives should be the responsibility of the authorities responsible for administering justice. Results obtained should be assessed and they are one of the criteria for the performance of courts. If need be, corrections can be made to these norms and objectives and to their implementation. These norms and objectives can be supported by a policy of “bonuses” and financial incentives in order to promote best performances¹⁰⁰.

3.9. Controls

Length of time of proceedings: Statistics should cover the length of time taken for court proceedings according to court, type of case and the different stages to the proceedings. As we noted – see paragraph 24 – the level of statistics varies greatly and only Egypt, Israel and Tunisia say they have this level of detail in the statistics provided. If court statistics provided a very detailed analysis of the situation, this would provide governments with the real capacity to publish a more interventionist policy in terms of procedural delays.

Adaptation of norms and objectives: Results obtained and observed from statistics should be compared with the norms and objectives applicable to the different types of case and courts concerned. Differences should be noted and corrective measures identified and implemented. We suggest that **control should be done in agreement with the European guidelines** on the length of judicial proceedings¹⁰¹.

Difference in terms of agreed timeframes: When there is a timeframe planned or agreed with the parties to the case, control of the latter lies with the judge in all of the countries. So it is the magistrate in charge of the case who has the authority to control delays, an authority that he sometimes abandons when showing more flexibility¹⁰².

3.10. Emergency measures

To correct differences in norms and objectives relative to the duration of proceedings, several contingency measures are possible. Their implementation remains varied.

⁹⁹ Observed during our interviews.

¹⁰⁰ As is the case in Israel.

¹⁰¹ [https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2008\)8Rev&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2008)8Rev&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

¹⁰² Findings during our interviews.

Hiring additional judges: This is a leading measure used in all countries. It responds to a lack of magistrates that judicial statistics – see paragraph 2.2 – reveal in our study. It is a solution that affects more the medium and long term than the short term, because magistrates must be trained and for this reason they are not immediately operational.

Assistance from trainee judges or assistant judges: This measure has a short-term effect and is used in Israel and Jordan. These new resources immediately come to reinforce teams in place. However, this measure cannot be used for the medium and long term, because these are judges who themselves are in training, and, therefore, only available for part of the year.

Assistance from retired judges: This is a back-up measure because it assumes the people concerned have given up working and are not looking for full time work. The measure – used by Israel – is of great interest in benefitting from highly qualified professionals, who may include younger professionals, such as trainee judges and assistant judges.

Reallocation of judges and cases: This is an administrative measure of justice that consists of reallocating resources (judges or non-judge staff) and/or cases, to other judges who are less busy, so as to optimise human resources. It is a welcome flexible measure¹⁰³, whether within the same court, or among several courts.

¹⁰³ Implemented in Algeria, Egypt, Israel, Palestine and Jordan.

4. Civil and commercial proceedings

We have intentionally removed from the study procedures involving fiscal disputes because of their specific nature, and administrative disputes are given special treatment. This part of the study deals with procedures involving only civil and commercial cases, whether claims for sums of money – contested or not, small claims or large financial claims. Labour disputes that most often include pecuniary claims are also dealt with in this part of the study, as well as family disputes.

4.1. Contested claims

For this type of claim we have tried to identify for each stage in the proceedings, from the claim entering the court to possibly going to appeal, the points that are likely to hold back proceedings or complicate them.

4.1.1. Lodging the application

Forms to initiate proceedings: Paper remains the support for lodging the application with the court, with the exception of Israel where an electronic form is available. In the current state of court information systems in the beneficiary countries, promoting an electronic form is uncertain. However, use of standard forms (Israel and Jordan and, to a lesser extent, Tunisia) could spread to the other beneficiary countries. Use of forms will then facilitate the work of professionals in reading documents and identifying applications. This is a powerful factor in simplifying procedures.

Rec 07 Make paper and/or electronic forms available for initiating proceedings.

Comment: Lodging the application is one of the crucial steps in the process in which simplification will make for greater efficiency. Standardising applications by using forms, either on paper or electronically, is an effective means of optimising this stage of the procedure, by better identifying the parties and their applications, and facilitating in one step the work of the judges and non-judge staff. Implementing this should be accompanied in the courts by support provided to litigants and their representatives in implementing this standardisation.

Help in wording and/or drafting the application lodged: Efforts are required in the countries that provide no assistance to the public in bringing a claim to justice. Before the complexity of the law, the litigant requires assistance. Israel and Tunisia provide this assistance by providing information brochures, or downloadable printouts. Two initiatives in these countries merit attention, and these are Israeli “**volunteers**” and Tunisian “**referring judges**” (*juges aiguilleurs*). The latter are magistrates who spend their work time assisting and guiding litigants. Although an interesting measure in itself, it does consume human resources that could certainly be deployed to court

work. Therefore it is unlikely that this practice will spread easily. As to the solution of using volunteers, much depends on their qualifications that will have to be assessed.

4.1.2. Content of the application

There is considerable similarity in the content of the application for justice.

Information: The objective is to inform the applicant about his adversary and the intentions of the same, as well as about the court in which the litigation will be received. The application also contains the **identification and address of the parties and their representatives**, when these are required, **the court to which the case is referred**¹⁰⁴, **the application and the facts**¹⁰⁵.

Evidence: Evidence on the alleged facts and documentary evidence can be large in volume. Most countries¹⁰⁶ require this evidence to be provided with the initial document lodged. But this obligation might be queried if simplified procedures are the aim. This is why the obligation to provide these documents at the latest on the day of the hearing, as is already the case in some countries¹⁰⁷ seems to be a suitable measure in helping simplification.

4.1.3. Cost of lodging the application

The cost of lodging the application covers all the costs paid by the applicant to open the case, with the exception of sums paid to his or their counsels and/or representatives¹⁰⁸. Of course, these costs must be laid down by law, and the amount of the same must be made known to litigants¹⁰⁹. Charges, in the form of a price list, should be posted up in the courts and on the web sites of the Ministry of justice and the courts, providing information for litigants and their counsel and in this way providing the foreseeability of costs¹¹⁰. Possible fiscal or parafiscal charges collected on lodging the application with the court should be dealt with in the same way so that they are widely known.

Free of charge or not: Tunisia seems to be alone in applying no charge for justice for all, apart from Lawyers' fees. Some other countries do not charge for justice but only

¹⁰⁴ The date of the hearing is not always required – Lebanon, Morocco.

¹⁰⁵ Legal qualification not being required in Israel and Morocco

¹⁰⁶ Algeria, Israel, Jordan, Lebanon, Morocco and Tunisia.

¹⁰⁷ In Algeria, for faster procedures, evidence should be provided with the document instituting the proceedings, which makes sense. This is also the case in Israel and in Jordan. Egypt requires documentary evidence no later than 8 days before the hearing.

¹⁰⁸ On the cost of counsel and its transparency and foreseeability, see Access to Justice in the Partner Countries - EUROMED JUSTICE II - 2011 data base 2008 - EUROMED JUSTICE II Project - Author Julien LHUILLIER – Paragraph 7.1 pages 53 and following.

¹⁰⁹ They should be able to refer to applicable texts that justify the amounts collected.

¹¹⁰ On the foreseeability of these costs, see Access to Justice in the Partner Countries - EUROMED JUSTICE II - 2011 data base 2008 - EUROMED JUSTICE II Project -Author Julien LHUILLIER – Paragraph 7.2 Pages 55 and following.

in the case of certain vulnerable groups or certain types of cases¹¹¹. As a pertinent example, it should be noted that access to justice and equal protection before the law is especially underlined as regards women in the “Protocol to the African Charter on human and people’s rights of women in Africa” in its article 8 a) of 11 July 2003. (See <http://www.achpr.org/en/instruments/women-protocol/#8>).

For other countries, the charge for justice seems to be reasonable in amount¹¹². The principle of a percentage on the amount of the case seems to be good justice, while that of a **minimum and a maximum** is a factor that should be promoted. Justice is a right, but this right represents a cost that we feel should be paid by the parties in the litigation, if they have the financial means, and not only by tax payers. The cost of involving justice is something that should be taken into account in simplifying procedures because it would help remove far-fetched or delaying tactic applications.

Nature and amount of charges: We found, without any real surprise, that the cost of justice is also an **occasion to collect taxes and duties**, without any direct relationship to the cost of the case. This is the case with recording rights associated with the cost of justice¹¹³.

Ways of paying charges and centralisation: The diverse nature of payment methods for the charges made for justice that we found – cash, bank transfer, stamp duty – is a complicating factor that mobilises large numbers of staff. There are too many potential payment locations, whether the court registry - Algeria, Israel, Lebanon, Morocco - or the court’s administrative office, tax offices – Egypt, Palestine – or the post office in Israel.

Obviously, streamlining and simplification measures are needed, both in payment method and in places of payment, to speed up the process and make it more efficient. Israel already introduced online payments.

The use of cash payments is a source of error and proves to be time consuming. The use of “fiscal stamps” presents the same disadvantages. This is why the beneficiary countries should move towards bank transfers, facilitating traceability and speed. However, change could take time since cash payments are still very popular in the beneficiary countries.

¹¹¹ Algeria, Israel, Jordan, Morocco.

¹¹² Egypt: in proportion of the disputed amount but not exceeding the equivalent of 150 euros; Israel from 1% to 2.5% of the amount of the case; Lebanon from 2.5% or a flat rate of 25 000 LL for unspecified applications; Palestine 1% of the case with a maximum of 500 JOD.

¹¹³ Algeria, Lebanon.

Rec 08 Encourage payments via banking circuits in paying for lodging the application with the court.

Comment: The current prevalence of payment in cash is time and energy consuming because of the different checks this form of payment requires. Handling bank notes means a variety of risks for staff responsible for this. To ensure better traceability of payments as well as faster handling, while at the same time reducing the risks associated with the handling of cash, the beneficiary countries should encourage payment exclusively via banking circuits – bank transfers. In the medium term cash payments to pay legal charges should disappear.

4.1.4. Informing the defendant

Information messenger: Information on a case is before the court is sent to the respondent by three possible sources. Firstly by the clerk of court – Morocco, Palestine, Tunisia - or by a court bailiff or someone empowered to do so – Egypt, Jordan, Lebanon, Morocco, Tunisia - or lastly by private courier - Jordan. The multiplicity of these methods for sending information often has more to do with legal and court history and the possible presence of a body of professionals who can act as messengers¹¹⁴.

Means of notification: It must be recognized that the personal delivery of the document to the litigants is most used. Within the framework of a streamlining and simplification policy, three factors should be taken into account to justify how notification takes place.

- Firstly, having a body of specialised professionals ensuring this service.
- Secondly, cost is a parameter in the choice between postal or private courier notification (simple or registered letter) and notification in person.
- Lastly, the « quality » of the content of the information for the litigant is seen in Europe as a decisive in preferring personal notification.

Before planning a complete change in the beneficiary countries, we recommend a qualitative and quantitative **assessment of information methods** in use. Such a mission was materially impossible and outside the scope of our study.

4.1.5. Representation

Mandatory or not: The question of whether the litigant has mandatory representation before the court is not only a legal issue but also an economic one. In fact, the technicalities of the law most often call for the mandatory presence of a specialist who well understands the legal matters concerned but also the technique of the proceedings. On the other hand, greater access to the law suggests that representation should not be mandatory.

¹¹⁴ Role generally played by the court bailiffs. These professionals are called “messengers at arms”, retaining the origin of their role.

Arguments for and against mandatory representation are many and we will not go into them here. During our interviews, we noted that the mandatory presence of a representative for the parties is sometimes felt to prolong proceedings, making them more complex, while the representative benefits from the legal rules to make the case last longer for economic rather than legal reasons.

However, the very principle of the right to be represented in the defence of one's rights should not be questioned. It is one of the ingredients of a fair trial, as recalled by the [African Commission on Human and People's Rights](#) in its "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa" in its article 2 f (<http://www.achpr.org/en/instruments/fair-trial/>)

However, some beneficiary countries are trying timidly to release themselves from being forced to have mandatory representation¹¹⁵, limiting its use to only those cases that are financially important¹¹⁶, or to certain non-criminal cases¹¹⁷. Representation by non-lawyer third parties¹¹⁸ certainly opens the way to competition and no doubt to a fall in costs, but it does not always guarantee an adequate level of quality to the service provided.

Power of the authorised representative: In most of the beneficiary countries¹¹⁹, proof of power of attorney to represent a client is mandatory. The scope of power of attorney granted to the representative does not seem to be examined.

With a view to a desirable simplification, the relevance of such an obligation should be queried, which might be interpreted as "suspicion" of the representative. Algeria and Israel have adopted the stand of not asking the representative for any document and in our interviews this does not seem to have caused any difficulties.

4.1.6. Conduct of the trial

Proceedings: Proceedings are both written – arguments and evidence from parties – and spoken, in all the beneficiary countries. A number of our spokespersons mentioned the delay parties and their representatives took to produce written papers. It even seems that this is used as a technique to hold back progress in the proceedings.

Deadlines: These are the dates within which to hear the parties or receive their written pleadings. To avoid hearings taking too long due to the inertia of one or more parties, legislation has established deadlines in which to complete the formalities of the proceedings. Although established by law, we found considerable flexibility in their application, and it is the judge who has legal authority to rule on this. The reasons for exceeding deadlines are many, from an overload of work to the chaotic management

¹¹⁵ Algeria, Palestine, Tunisia (except before the district court, the Court of appeal and the Court of cassation). On this non-mandatory representation, see « Possibility of being represented by an association or a syndicate in the absence of a monopoly of lawyers » Access to Justice in the Partner Countries - EUROMED JUSTICE II - 2011 data base 2008 - EUROMED JUSTICE II Project -Author Julien LHUILLIER – Paragraph 11 Table 42 pages 69.

¹¹⁶ Lebanon when the case is over 1 million de LL (art 378 of CPC).

¹¹⁷ Israel.

¹¹⁸ Jordan before the Magistrate courts, art 9

¹¹⁹ With the exception of Algeria and Israel.

of an agenda, and including the late exchange of items from the adversary. Compliance with these deadlines seems to be a strong factor in simplifying cases and their smooth passage through the court. The time that proceedings last is immediately affected by the failure to respect these deadlines.

More worrying, in our opinion, is the “common interest” that seems to exist in practically all the countries between the professionals regarding missed deadlines that have such an effect on the “foreseeability” of the length of proceedings. We feel it would be a good idea to limit the use of “referrals”. This will no doubt mean that the judge will have to incite the parties and their representatives to respect deadlines and/or apply a financial or procedural penalty for the failure to respect them.

Delivery of the Court decision: We have identified a **priority need** for simplification that concerns the notification of the judicial decision by the court either to the claimant or to his representative. If in the rules, the principle is to deliver immediately¹²⁰ in practise it is different¹²¹. The workload in court registries, their lack of organisation, courts under-equipped in means of information systems, the additional formalities of registering the judicial decision, partly explain the delays¹²². An effort to simplify should be sought in passing the judicial decision. The solution to immediately put the judicial decision addressed to the parties on-line, as is done in Israel, is unfortunately not applied everywhere in view of the current state of information systems.

One approach might be to “outsource” the typing up of the judicial decision, but that does not seem to have been tried in the beneficiary countries.

Rec 09 Move towards the objective of immediately delivering judicial decisions, reinforcing the capacities of officers of the court and outsourcing when certain services are needed.

Comment: There is often an abnormally long delay in receiving the judicial decision after the court has passed it. To shorten these delays, and therefore simplify the delivery of the decision to parties, the classical solution would be to reinforce the capacity of the clerks of court. However, certain work, such as typing out the decision, could be outsourced, which would help to respond to ‘peaks’ of work or a lack of internal resources in courts. The cost of this outsourcing would be included in the legal costs.

4.1.7. Petition procedures

The procedure for a petition addressed to a judge by the claimant or his representative responds to the contingency needs of certain cases or the confidentiality required so that the effect of surprise sought by the planned measure is achieved. No doubt these are particulars that justify representation by a lawyer.

¹²⁰ Lebanon, Palestine. Israel provides for a maximum of 90 days after the last hearing but in the opinion of our spokespersons, the period is sometimes longer. In Morocco, the court clerk will not deliver a certified true copy unless requested to do so (art 53 of CPC.)

¹²¹ Egypt and Jordan recognise that this depends on the workload of the clerk.

¹²² These obstacles and delays were raised in the interviews as likely to encourage inadequate practices.

Representation: No clear trend comes to light regarding the assistance of a lawyer for petition procedures. It is either mandatory or optional¹²³. In our interviews it was said that magistrates appreciate in these circumstances having a jurist as an interlocutor rather than the interested party. Each seems to gain time from this, which we feel fully justifies maintaining the *status quo*.

Standardisation of petitions: As a result of mandatory representation, petitions are rarely standardised¹²⁴. No doubt the current situation can be improved and petition handling simplified, even if only by implementing “**templates**” to be able to find the required information all in the same place. Lawyers and magistrates seem to have a common interest here because this would help the flow in the chain of dealing with petitions.

It has not been possible to get statistics on the use of the petition procedure in the different fields where it is possible and therefore discover what the exact volume is. However, in the interviews it seemed to us that because of its simplicity, the petition procedure has the potential to grow.

4.2. Small claims

European context: The European Union established in 2007 a European small claims procedure¹²⁵, for claims not exceeding 2000 euros. This procedure is available to the public in parallel with procedures provided in the national legislation of Member States. It applies in civil and commercial cases only to cross-border litigation and has a simple process for submitting the case to the competent court by using a form. The judicial decision is passed within 30 days by encouraging the simplest and least restrictive means of obtaining evidence.

Specific procedure: Most of the beneficiary countries have a specific procedure for small claims¹²⁶ although we did not have access to statistics on their real importance in the courts. However, among those who do not yet have them, only Palestine thinks that introducing such a procedure is a real need. During the interviews it seemed to us that the “market” in these small claims is no doubt misunderstood and that such a specific procedure “would clash” with old habits.

Mandatory nature and rate of use: When they exist, procedures for settling small claims are in theory mandatory¹²⁷, which seems like a coherent solution, avoiding the scattering of this type of litigation among other disputes. Because of the obligatory

¹²³ **Mandatory:** Jordan (for district court cases), Lebanon, Palestine – **Optional:** Algeria, Egypt, Jordan, Morocco, Tunisia.

¹²⁴ With the exception of labour litigation, minor litigation in Israel. In Tunisia, printouts are available from the clerks of court and they are commonly used, even if not mandatory.

¹²⁵ Regulation (EC) No [861/2007](#) of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure

¹²⁶ Countries having such a procedure: Egypt (up to 40 000 EGP); Israel (up to 6000 euros); Lebanon after August 2011 (up to 10 700 euros); Morocco (up to 5000 Dh); Tunisia (simplified procedure before the district courts).

¹²⁷ Israel however leaves the choice up to the applicant. In Tunisia they are only indicative.

nature of these procedures, their rate of use is unanimously thought to be high by the representatives of the beneficiary countries, despite the absence of precise figures.

Non-recognised claim and exclusivity of procedure: If the claim made by the claimant is not recognised within the framework of this small claims specific procedure, the claimant can no longer use common law procedure in Egypt, Lebanon and Morocco, which is consistent with the mandatory nature of the procedure. On the contrary, in Tunisia where the use of this procedure is only indicative, the claimant can use common law at any time, which is also consistent.

4.2.1. Scope of application of small claims

Claims concerned: According to the beneficiary countries that have such a procedure, small claims are above all “pecuniary claims” and concern non-cross border litigation. Very legitimately, the amount of claims eligible is capped¹²⁸. Examining the caps applied shows a considerable variation and differences in living standards¹²⁹ do not entirely explain this. On choosing high caps, Israel and Lebanon channel much litigation into the range of application of the provision and alleviate even more “traditional circuits”. Settling disputes over small claims can have an influence on the global volume of litigation and, therefore, to a certain extent, on the accumulated delay in certain courts.

Harmonising the maximum caps would be welcome at a level that would cover in these procedures a significant number of small claims. In fact, a cap that is too low prevents the inclusion of too many cases, while a cap that is too high removes the whole idea of small claims. Let us remember that the cap in Europe, 2000 euros, has not channelled a significant number of claims towards this mechanism. To us, that suggests it is not high enough.

¹²⁸ Egypt (up to 40 000 EGP) - Israel up to the equivalent of 6000 euros; - Lebanon 10 700 euros - Morocco 5000 Dh.

¹²⁹ See paragraph 1.2

Rec 10 Install a simple, exclusive procedure for settling small civil and commercial claims with a capped value.

Comment: Small civil and commercial claims below a fixed amount in value to be established by the beneficiary countries, but which it would be preferable to harmonise, should be dealt with in the framework of a simple, standardised, rapid procedure, exclusive from all other procedures, and where representation by a lawyer will be optional. In this way, simplifying and standardising the way in which this type of litigation is dealt with, will help unclog the courts of common law and accelerate judicial decisions.

4.2.2. Making the claim

Forms: To increase the use of these procedures and to simplify their implementation, a **good practice** seems to be used by Israel and Tunisia that provide litigants with a wide range of forms, including those available via Internet, informative brochures and assistance in filling in the required claim to set the procedure in motion. Contrary to this, no form is made available to litigants in Egypt and in Lebanon, just as no assistance seems to be given to litigants, which is regrettable.

Support for litigants: Implementing a new procedure we feel should be accompanied by some form of “**promotion**” for these procedures, making the “tools” and necessary information available to litigants. The justice sector should adopt a “**marketing**” **approach** for the “**consumers of law**”, that is the litigants, particularly when dealing with a new measure.

Rec 11 Accompany all new procedures or adaptations of existing procedures with communication to litigants and professionals in the sector, and where needed, provide examples and forms as well as assistance adapted by all appropriate means.

Comment: If information on procedural reforms is recognised to be lacking for litigants and the stakeholders in the judiciary, then such changes will not always be understood. It is a good idea for any reform in procedure to be preceded by measures to accompany the changes before they come into force. Moreover information and awareness campaigns for litigants and professionals should be an opportunity to promote appropriate examples and forms, as well as information adapted for all professionals directly involved in the sector.

4.2.3. Representation

Representation: According to the beneficiary countries, three approaches have been noted.

- One makes representation by a lawyer mandatory – Egypt, Lebanon if the claim is for more than 1 million LL,
- The second where representation is optional – Palestine, Morocco and Tunisia –
- The third where representation is not permitted unless authorised by the court – Israel.

Given the nature of the cases – small claims – mandatory representation by a legal professional may mean a cost that is out of proportion to the importance of the litigation. Each litigant may prove the need to be counselled and represented, which seems to be the litigant’s right and he assumes the cost of his choice.

It seems to us that a simplification measure would be to **leave representation as optional**, which is a compromise between the protection of rights and the control of costs.

4.2.4. Fees and taxes

Even if dealing with small claims, the beneficiary countries have chosen to charge fees and taxes, albeit modest¹³⁰, only Morocco and Tunisia have opted for no charge at all. We note that the amount of the fee is linked to that of the claim even if there is sometimes a minimum charge. Such an approach seems consistent even if the amount of the sum charged, particularly the minimum charged in Israel, is more symbolic than the real cost for such a procedure for the State.

4.2.5. Handling the case

Procedure: To handle these small claims, the beneficiary countries have chosen both an spoken and written procedure. This approach certainly increases delays in handling cases but in the absence of statistics provided by the countries, it is impossible to draw conclusions on the effect of this approach.

Passing the judicial decision: According to the law in force in the countries who recognise this type of dispute, only a short time elapses before getting the court’s judicial decision, and in all cases the time is less than two weeks. Only Egypt and Palestine are different in imposing no delay at all unfortunately. Comparing with the maximum length of time in European legislation (30 days see paragraph 4.2. “European context”), these delays seem encouraging and should be welcomed. In the interviews, no specific technical means for dealing with this procedure was revealed. Also, because of a lack of statistics, we were unable to verify whether these deadlines were respected, and we have the same reservations as those expressed above – see paragraph 4.1.6 “Delivery of the Court decision”.

4.2.6. Informing the defendant

¹³⁰ Egypt amount in proportion to the financial value of the case; Israel 1% of the amount of the case with a minimum of 10 euros, Lebanon 2.5% of the amount of the case.

Origin of information: According to the beneficiary countries, information on whether a case exists is sent to the defendant using the methods very similar to those used for usual cases of litigation – see paragraph 4.1.4 “information messenger”. Countries have used available resources without any real innovation.

Means of information: The same comment on the lack of innovation can be made regarding means of information used, although the personal dispatch to the defendant is clearly the preference. No one can really complain because quality of information should prevail to allow the litigant, if required, to add merit to his dispute.

4.2.7. Appeals

Right of appeal: The right to appeal against the judicial decision passed can be exercised within a period of 15 to 40 days¹³¹ and before a court of appeal. These periods are compatible with the idea of ‘reasonable length of time’ and with the principle of appeal as an essential element in rule of law.

Limited right of appeal: In view of the fact that we are dealing with “small claims” and with a concern to restrict abusive and time delaying appeals, only Egypt and Israel¹³² have chosen to restrict an appeal by making it depend on the permission of the court. This option seems to us a **pertinent compromise** between appeals not being allowed at all – not acceptable with regard to the principles of fair trial – and the multiplicity of appeals that could prejudice the interest in such a procedure.

Rec 12 Institute appeal filtering against judicial decisions on small claims.

Comment: Small claims are the prototype of cases in which an appeal should be filtered beforehand because of the small value of this type of case, the need for rapid justice and the need to unclog the courts overloaded with appeals.

¹³¹ Egypt: 40 days - Lebanon: Law n° 154 The length of time is fifteen days counting from notification of the judgment (art. 500.8). The same procedural provisions of the court are applied before the court of appeal (art. 500.9) - Palestine: period of 30 days before the court of appeal.

¹³² The idea of « small claims » concerns litigation up to 40 000 EGP in Egypt and the equivalent of 6000 euros in Israel.

4.3. Uncontested pecuniary claims

European context: The European Union has created a European enforcement order for uncontested pecuniary claims¹³³ in civil and commercial cases¹³⁴, which allows for free movement in the European Union of judicial decisions, judicial transactions and authentic deeds concerning such claims.

The judicial decision on the uncontested small claim is certified as a **European enforcement order** by the member state that has passed the judicial decision, and this enforcement order can then be enforced like any other judicial decision of the member state of the place of enforcement.

4.3.1. Order for payment procedure

European context: The European order for payment procedure¹³⁵ aims to simplify, accelerate and reduce the costs of cross-border litigation in civil and commercial uncontested pecuniary claims. European order for payment is recognised and enforced as if it were a judicial decision passed in the member state where the payment order should be paid. Simple to implement thanks to multi-language forms, it allows the claimant to obtain, in theory within 30 days, an order for payment that becomes an enforcement order if it is not contested by the defendant who will be notified or to whom it will be served.

Situation in the beneficiary countries: A simplified procedure of the type “order for payment” is used in several countries¹³⁶ to deal with uncontested small claims. In Lebanon where it does not exist, this procedure is arousing interest. In the beneficiary countries that have an order for payment, it is the French model that is preferred to the German model¹³⁷. The order for payment procedure when it is installed simplifies the

¹³³ In the Regulation, a claim shall be regarded as uncontested if the debtor:

- has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or
- has never objected to it in the course of the court proceedings; or
- has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings; or
- has expressly agreed to it in an authentic instrument.

¹³⁴ Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. It was corrected (JO L 143 of 30.4.2004). Regulation (EC) No 1869/2005 of the Commission of 16 November 2005 came to replace the annexes of Regulation (EC) No 805/2004.

¹³⁵ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

¹³⁶ Algeria: CPCA art 306 and following ; Egypt ; Israel ; Morocco : Law No 53-95 art 22 for the trade courts and CPC art 155 and following of the Moroccan CPC for the civil courts; Tunisia.

¹³⁷ Germany: In statistics available in civil cases, the "Mahnverfahren" cannot seem to be individualized. By way of information in 2010 there were 1.6 million cases in Germany, including the « Mahnverfahren » - France 906 765 orders for payments in 2010 for civil claims alone – source Annual Statistical Index for Justice 2010 – Court Activity 2005-2010 <http://www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html> .

handling of uncontested claims, speeds up the procedure for dealing with such claims and allows for a significant reduction of the backlog of the courts.

4.3.2. Scope of application

Origin of the claims: Limitation according to the nature of claims is a distinctive sign of the order for payment that is not made to adapt to all claims, but only to those that are pecuniary in civil and commercial matters¹³⁸. The European order for payment applies the same concept, ruling out fiscal claims among others.

This restriction to the scope of application is perfectly conceived in that where the procedure is very simplified it cannot be applied to all cases if a certain efficiency is to be retained.

Quantitative exclusions: Applying the order for payment procedure may sometimes depend on the amount of the claim whether dealing with a minimum or a maximum¹³⁹. The existence of a minimum amount could be surprising, and one could conceive it only if there is a specific procedure for very “small claims”¹⁴⁰. Failing that, such a low limit cannot be justified. When there is a maximum amount¹⁴¹ this lends itself to criticism because the order for payment procedure concerns uncontested small claims, whatever their amount.

Optional procedure: Should the claim made by the claimant not be recognised within the framework of the order for payment procedure, the claimant should have the option of using the common law procedure¹⁴².

4.3.3. Jurisdiction

Substantive jurisdiction: Jurisdiction to resolve uncontested pecuniary small claims using the simplified order for payment procedure requires a first instance jurisdiction, whether in a civil or commercial court¹⁴³.

Territorial jurisdiction: The territorial jurisdiction of the court where the contract was signed an/or the domicile of the debtor is provided for in the legislation of the beneficiary countries. This latter solution seems the most pertinent in that in the case

¹³⁸ By way of example, see Egypt which limits them to commercial cases and excludes applications without written evidence, Morocco, CPC art 155 and following (civil small claims) and Law n° 53-95 chapter III art 22 (commercial small claims) as well as Tunisia that exclude fiscal claims.

¹³⁹ Minimum amount: example Morocco (in commercial matters the competence of the President of the commercial court for an amount exceeding 20 000 dirhams, or in civil matters a minimum amount of 1000 dirhams). Maximum amount: example Israel equivalent of 10 000 euros.

¹⁴⁰ In this sense, see 4.2 Small claims.

¹⁴¹ See the example of Israel, note 139.

¹⁴² By way of example, Egypt art 204 of the law of procedure, By way of example, Morocco art 158 of CPC, or Tunisia. Israel where this option has been limited to certain cases and certain amounts in Israel.

¹⁴³ By way of example, Egypt gives general jurisdiction to the “district court” judge of the defendant’s domicile, Morocco gives jurisdiction to the district court or to the President of the commercial court (art. 155 and following of CPC).

of ex-parte proceedings regarding the debtor in the obligation, it is better to limit the authority to decide on this to a jurisdiction located near the debtor.

4.3.4. Application

Form of application: It is made in writing, but from the logic of standardisation, Egypt, Israel and Tunisia use a **form made for simplification**. This choice is inspired by French and German examples, but also by the European order for payment. We feel that this could be carried further, introducing a German model and making the form available electronically, which seems more likely right now in Israel and Tunisia. A further step towards simplification of the procedure is required.

Currently the application must be lodged with the competent court¹⁴⁴ although it cannot be submitted electronically, which we feel is the next step to be taken rapidly. Information for litigants is ensured by providing informative brochures or assistance in wording the application, as well as the web site of the Ministries of justice of Algeria, Israel and Tunisia.

Content: The application, very simple, contains the minimum indispensable information, to identify the parties, a detailed assessment of the application, the cause of the claim, the evidence¹⁴⁵ adopting the French model. In the latter case, we note that the French and German models differ. The German model does not demand evidence to be submitted at the time of lodging the application, while the French model does demand this. This makes the German model simpler from this point of view than the French one, and could be the one to adopt in legislation in the beneficiary countries that do not yet have an order for payment procedure.

4.3.5. Representation

Optional representation: It is the principle of **Optional representation** has been adopted as the principle for the order for payment procedure by the countries that have this procedure. This choice is consistent and is to be recommended for those countries that want to institute an order for payment procedure. Furthermore it is the choice made by the French and German models, as well as that of the European order for payment procedure in promoting a formal, simplified, low-cost procedure.

4.3.6. Fees and taxes

Following the example of the small claims procedure – see paragraph 4.2.4 - a large majority of countries¹⁴⁶ have chosen to charge low fees and taxes¹⁴⁷. The concept merits attention for its simplicity of understanding, calculation and foreseeability.

¹⁴⁴ Algeria, Egypt, Israel, Tunisia.

¹⁴⁵ Egypt where the application must be accompanied by evidence, by the details of the debt and the right of the claimant to apply for recovery; Tunisia, with the production of the debt instrument; Morocco art 156 of CPC where the “well-founded order for small claim” should be attached to the application.

¹⁴⁶ With the exception of Tunisia where the procedure is free of charge.

Indeed in Egypt, payment of the fees is a pre-condition for admission of the creditor's application by the judge.

4.3.7. Handling the case

Written and/or spoken: In the French and German models the order for payment procedure is written. It only includes discussion if the judicial decision is challenged. This avoids the cost of a discussion in most cases¹⁴⁸ and therefore saves time. This is the choice made by Algeria, Egypt and Tunisia, limited to a written procedure, while Israel has opted for a procedure both written and spoken, which is no doubt not the simplest.

Competence: In Algeria, Egypt and Tunisia competence lies with a judge, whereas in Israel, it is the registrar who is competent to issue the decision in the case of an order for payment. We find here once again an evidence of the difference between the French and the German models.

Passing the judicial decision: The time taken to pass the judicial decision is an excellent **efficiency indicator** in such a procedure. In fact, it makes no sense to implement a simplified procedure when it takes a long time to pass the judicial decision. The time taken goes from 24 hours (Tunisia) to 3 days (Egypt), then to 5 days (Algeria).¹⁴⁹ Up to 30 days (Israel). This latter time of 30 days is similar to that of the European order for payment. We can only welcome this general readiness to pass the judicial decision quickly – at least according to law – however practical reality could not be assessed.

In the case of Israel, practice shows that the deadline is not always respected, in the opinion of our Israeli contacts. We are facing a breakdown in function, fairly surprising given the level of information systems in the courts in Israel, and we suggest an **assessment** to come up with appropriate solutions.

4.3.8. Informing the defendant

In Israel, the defendant is notified of the procedure opened against him, by someone with authorisation to do this or by postal delivery. Postal notification is similar to the German model where it is the clerk of court who notifies the defendant by letter. This method is simple, less cumbersome, but it allows the bearer of the envelope to provide complementary information on the content of the document dispatched.

Algeria and Tunisia, however, use service of documents by a judicial officer, delivering to the defendant in person, thus adopting the French model, which means there is no doubt that the defendant has received the notification and precisely when.

¹⁴⁷ Algeria: between 300 and 2500 dinars - Israel 1% of the amount of the case with a minimum of 10 euros.

¹⁴⁸ Also in France according to the statistics of the Ministry of justice, oppositions account for around 5.55% of order for payment lodged – source French documentation, Annual statistics on justice 2008.

¹⁴⁹ During our interviews in Algeria and Tunisia, our spokespersons assured us that these delays are generally complied with in practice.

The two notification methods used (notification by judicial officer or postal notification) do not seem to present problems and seem to satisfy litigants according to the statements made during our interviews. Egypt strengthens the protection of the defendant by enforcing the obligation to deliver information in person or at the domicile by a judicial officer or an authorized person, within three months of the date of passing the decision. Failing that, the order for payment would be considered null and void.

4.3.9. Appeals

Restriction: Although Algeria, Egypt and Tunisia allow an appeal against an order for payment within a brief period of time¹⁵⁰ and to the same court, Israel, on the other hand, has chosen to restrict the possibilities of appeal against the judicial decision, because an appeal can only proceed with the permission of the registrar. We should mention that in the French and German models the number of appeals is relatively small¹⁵¹ and even if there is no restriction to appeal.

This raises the question of the pertinence of limiting appeals as practised in Israel in matters of order for payment. With no statistics available on these appeals in Israel, it is difficult to give an opinion of how effective they are. But limiting access to appeal only makes sense if it is imposed to hold back the flow of appeals, which currently does not seem to be the case according to our talks with Israeli representatives.

Rec 13 Set up an order for payment procedure in countries that do not have one for handling uncontested small pecuniary claims

Comment: Unpaid and uncontested pecuniary claims should be handled using one of the two orders for payment models existing in Europe. Claimants – particularly of repetitive or consumer claims – should be able to use a very standardised – even mechanical – order for payment procedure that is simple, with a guaranteed payment deadline and low-cost, remembering legal representation is optional.

¹⁵⁰ Egypt: Opposition within 10 days counting from the notification (art 206 of the procedural law) – Algeria: within 15 days – Art 308 of CPCA.

¹⁵¹ See note 148.

4.4. Labour disputes

We have opted to take an interest in this type of dispute because of the special place it holds in the law, the sensitive nature of such disputes and the need for the simplicity, effectiveness and efficiency expected by litigants when dealing with their cases, especially in such matters.

4.4.1. Court with jurisdiction

Specialised court with exclusive jurisdiction or common law: There are two models in the beneficiary countries. The first model by obligation sends disputes resulting from the application of labour contracts to a specialised court, different to a common law court¹⁵². In this way, the dispute is easier to interpret and it is easier to identify any possible breakdowns.

The other model used uses a social division of the court of common law¹⁵³.

The solution used, either a division or a specialised court, we feel should be sustained because it does facilitate and simplify dispute handling in cases of labour law, from its very specialisation.

Early conciliation stage: The procedure has a mandatory early conciliations stage in most cases¹⁵⁴ during which the court tries to reach conciliation between the parties. This attempt, carried out in a short space of time, which is the case in Lebanon¹⁵⁵, has the best chance of success and we feel it is a good solution.

However, we could not get statistics to assess the success rate of this conciliation stage, which may justify querying such an approach, when it is mandatory, if results prove to be disappointing.

4.4.2. Lodging the application

Predominance of written form: The case enters the court using a written support, which may be in any form or may be a printed form. An oral statement is also possible¹⁵⁶. The many types of support for lodging the application are a **negative factor** that we feel complicates the procedure. In fact, we feel it would be preferable to **standardise claims – by using forms** – and that this would ensure a faster process.

¹⁵² Israel The Labour Court (5 district labour courts + 1 national labour appellate court); Lebanon: These disputes are sent by obligation to the labour arbitration council. There is a court per Mohafazat. (Art 77 Labour Code); Tunisia: Labour Tribunal.

¹⁵³ Algeria: Art 500 and notes in CPCA; Egypt: specialised chamber within the jurisdiction; Morocco: common law district court (70) art 18 20 of CPC.

¹⁵⁴ Mandatory: Algeria, Lebanon, Morocco (Art 277 CPC), Tunisia (Labour Code) – Optional: Israel; No conciliation : Egypt.

¹⁵⁵ Lebanon: The President of the arbitration labour council is bound to convene the parties to **conciliation within a period of 5 days** counting from the date on which the claim was lodged. (Art 50 of the Labour Code)

¹⁵⁶ **Free text:** Algeria, Egypt, Lebanon, Tunisia; **Use of form:** Israel, Morocco, Tunisia; **Oral statement:** Israel, Morocco, Tunisia.

Assistance with wording applications: From our interviews it is clear that support for litigants in terms of labour law is important. This is understandable because this law is often complex and the context in which it is applied is often charged with emotion. Israel and Tunisia have done a lot of work to help litigants by providing advice via the Internet, in brochures and also by providing assistants in the courts or “volunteers”. These measures are to be welcomed and demonstrate “good practice” that we feel other countries could follow¹⁵⁷.

4.4.3. Content of the application

Identification of parties and their representatives: The document initiating proceedings before the competent labour court identifies the parties and/or their representatives when the latter are known.

Court: Identification of the court to which the case is referred is required, but the date of the hearing and the address of the court are not mentioned in certain countries¹⁵⁸. This is a surprising omission and it could cause confusion for the defendant, which is prejudicial.

Application and grounds: The facts in theory appear in the claim but the legal qualification is not always required in the document initiating court proceedings¹⁵⁹. The absence of evidence is admissible in considering simplification¹⁶⁰ because these documents may be large in volume, but, apart from that, the initial court document should be as complete as possible. Any missing information – such as the date of the hearing or the address of the court, the legal qualification of facts – is prejudicial to litigants and has a negative effect on the duration of the process.

4.4.4. Cost of the application

Free of charge or not: The situation differs between countries that apply the no-charge principle and those that charge for justice¹⁶¹. In Israel¹⁶² we found that the

¹⁵⁷ Algeria: The litigant can also refer to an « ABC for the litigant » accessible on-line that helps in the workings of the court. – Egypt and Lebanon declare that they have no special support for filling in and drafting the introductory claim in matters of labour law. Tunisia uses the “referring judge” (*juge aiguilleur*) who informs litigants, but this system is time consuming for judges.

¹⁵⁸ Court to which case is referred: Egypt, Israel, Lebanon, Tunisia; Date of hearing and address of court not given in Algeria, Lebanon and in certain cases in Tunisia.

¹⁵⁹ **Report of facts:** Algeria, Egypt, Israel, Lebanon, Morocco; **Legal qualification** required only in Israel, Egypt and Morocco.

¹⁶⁰ Algeria: Evidence can be submitted up until the proceedings begin – Israel: evidence can be submitted during proceedings with the court’s authorisation; Egypt: evidence can be submitted until the time of the hearing; Lebanon: the judge retains the right to give the parties more time in which to submit evidence and that can be up to the close of hearings. (Art 80 labour law and 133 of CPC); Morocco: Evidence should be provided with the introductory document for proceedings. Tunisia: evidence can be submitted at the time of proceedings or during a hearing.

¹⁶¹ **Free of charge:** Lebanon, Morocco, Tunisia (Remembering that Lebanon applies a justice charge for small claims – see note 130); **Payment:** Algeria, Egypt (except for employees) Israel (except for litigation linked to labour accidents and individuals on low income)

¹⁶² 2.5% of the amount of the claim, with a minimum of 146 euros.

amount of legal costs is significantly higher than for small claims. The cost of justice is applied regardless of the status of the litigant, whether an employee who was recently made redundant or an employer taking out a case against his employee.

Payment supports: There again we have found a great variety of means of payment in the countries that charge for justice for this type of case. Cash payment remains the norm – which is regrettable – and payment methods rarely extend to bank transfers, postal or electronic transfer¹⁶³. Paperless payment used in Israel is real progress. We can only encourage countries to use electronic transfers and bank transfers, always reducing the number of options in the move towards simplification¹⁶⁴.

Place of payment: When legal costs are charged payment is made to the court administration¹⁶⁵.

4.4.5. Informing the defendant

Who informs: Information methods vary. Lebanon and Tunisia leave it to the court registry to inform the defendant that a case involves him. Israel leaves that to the applicant or to the representative of the same, or to a person authorised to do this, but in this latter case only with the permission of the court. Such permission is not required in Algeria, Egypt, Morocco or Tunisia¹⁶⁶ where a bailiff or a judicial officer serves the defendant.

Means of information: We find the same variety of information already encountered in other procedures. Postal notification¹⁶⁷ but also notification in person to the recipient by a justice official or a person authorised to do so.

4.4.6. Representation

The principle largely applied here is not to impose mandatory representation on the parties in the courts dealing with labour disputes¹⁶⁸ at least for first instance common law courts¹⁶⁹. This obviously reduces costs if the parties choose not to be represented. By way of a simplification measure, Algeria's initiative is interesting in that it demands no power of attorney when representing the client.

¹⁶³ Cash payment: Algeria, Egypt, Israel, Morocco. Payments other than in cash: Israel has electronic and postal transfer.

¹⁶⁴ See our comments on the payment of legal costs– paragraph 4.1.3.

¹⁶⁵ Egypt: Tax Administration; Israel: Court Administration – Algeria, Morocco: Court registry.

¹⁶⁶ For Tunisia two systems co-exist. If the summons is sent by registered letter with acknowledgement of receipt, it is registrar who is in charge, but if it is made by notification, this is delivered by a judicial officer.

¹⁶⁷ Israel and Morocco. On this concept see paragraph 4.1.4.

¹⁶⁸ Algeria, Israel; Morocco; Lebanon: Art 4 law of 2 October 1980, Tunisia (labour law). Only Egypt imposes the presence of a lawyer who will have to present a power of attorney from his client.

¹⁶⁹ Remember that in Algeria, litigation concerning labour law is referred to a specialised division of the court, and not to a dedicated court.

4.4.7. Proceedings

Debates: Not surprisingly, proceedings are conducted in writing and spoken form in the beneficiary countries. The specific nature of labour disputes makes the choice **pertinent**, in our opinion. Only Morocco differs in making the spoken approach a principle.

Deadlines: With the aim of controlling the pleadings, the law sometimes provides mandatory deadlines¹⁷⁰. For greater flexibility it is the judge that fixes them¹⁷¹. The principle of such deadlines should be approved for the **foreseeability**¹⁷² of the duration of the proceedings, but leaving it up to the judge to sometimes extend deadlines is a risk in controlling judicial time¹⁷³ when extensions become the norm or when they are repeated in the same case.

Passing the judicial decision: The ideal situation is to have the judicial decision passed there and then, but pragmatically the law provides for periods that may extend from 30 days to 3 months¹⁷⁴. We have already mentioned that a period of 30 days seems reasonable but it is not always respected according to our contacts, which makes its scope relative. With some periods lasting up to 3 months¹⁷⁵, the system is clearly “**not functioning correctly**”.

We underscore two “**outstanding practices**”

- The solution used by Israel that thanks to its « Net Hamishapt » system, puts the judicial decision on line immediately for the parties and their representatives. This simplifying initiative is to be recommended and adopted.
- The initiative of the Algiers Court of Appeal, where for cases of that nature, judicial decision passed in the morning, is available in the afternoon for the beneficiary party¹⁷⁶.

4.4.8. Immediate enforcement

Provisional enforcement: Enforcement of the judicial decision should be immediate¹⁷⁷ which seems to us a balanced solution bearing in mind the nature of the labour

¹⁷⁰ Algeria, Israel, Lebanon, Tunisia (In Tunisia, during conciliation hearings in divorce cases, for example).

¹⁷¹ Algeria, Egypt, Israel, Morocco, Tunisia.

¹⁷² The foreseeability of the time the proceedings will take is an important factor, particularly in labour law disputes because of the link with work-salary more specifically.

¹⁷³ Egypt: The judge fixes deadlines but can extend them upon request by the parties; Lebanon: The law determines the deadlines in which to receive written pleadings from the parties. These deadlines may, however, be extended by the judge (Art 80 labour law and 582 of CPC)

¹⁷⁴ Israel: up to 30 days; Lebanon: the judicial decision is passed within three months, but this length of time is not respected in practice (Art 50 of labour law).

¹⁷⁵ As mentioned by Lebanon, or no period provided by law as in Egypt.

¹⁷⁶ Interview at the Court of Appeal of Algiers with the President of the Court (High Council for the judiciary) and the Public prosecutor at the Court of Algiers (High Council for the judiciary).

¹⁷⁷ Israel; Morocco: Art 285 and 286 of the CPC - In cases of labour accidents and professional health hazards as well as social security, labour and apprenticeship contracts, provisional enforcement or by operation of the law, notwithstanding opposition or appeal; Lebanon : Art 6 of the Law of 2 October 1980; Tunisia, for debts recognised by the defendant, article 207 of the Labour Law

dispute, when more often questions of salary are at stake and they take on a “bread winner” nature. **Immediate enforcement is a measure that has the major effect of simplification** because it forces the defendant to enforce, even if he lodges an appeal against the judicial decision. It is an excellent way of dissuading delaying appeals.

Rec 14 Encourage the principle of provisional enforcement of the law attached to the judicial decision passed by the courts dealing with labour disputes

Comment: Bearing in mind the maintenance nature of the claim of the employee and the fact that he is most often at the origin of the case, it seems right to confer provisional enforceability by operation of the law to the judicial decision. However, the judge should have leeway and be able to decide otherwise. Thanks to such a simplifying measure, time delaying appeals should be considerably reduced and claimants – most often the employees – should recover the amount of the sentence more quickly.

4.4.9. Appeals

Possibility sometimes restricted: An appeal is always possible against the decisions of the courts in charge of disputes under labour law, but this differs according to country. Although open without restriction in Algeria, Egypt, Morocco, Lebanon and Tunisia¹⁷⁸ appeal is, however, restricted to authorisation from the registrar in Israel. Not having statistics for a more detailed analysis, we cannot say how relevant a restriction to appeal is in these matters.

allows the judge to order that they be paid immediately.

¹⁷⁸ Our contacts in these countries have emphasised the significant tendency to use appeals.

4.5. Family and personal status disputes

One of the emblematic questions in this type of dispute is that of maintenance obligations and how to recover them. Internationally, the New York Convention of 20 June 1956¹⁷⁹ tends to facilitate the recovery of this maintenance between the signatory countries. The Hague Conference on International Private Law prepared the convention of 23 November 2007 as well as the protocol of the same date on the international recovery of child support and other family maintenance¹⁸⁰ considerably modernising the issue. Then, more recently, the European Union¹⁸¹ developed a common legislation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

4.5.1. Competent courts

Family disputes – a patchwork of competent courts: Our study has revealed just how many courts handle family disputes. In first instance, the civil common law courts sometimes share disputes with the religious courts¹⁸². Our visits to the beneficiary countries let us see the complexity of these structures, as well as the sensitivity of the issues. In Israel, for certain disputes, religious courts the family courts have a parallel jurisdiction and sometimes there is “forum-shopping” to one court or the other allegedly more favourable to the litigant.

This patchwork of courts is rooted in the history of these countries. The force of tradition and religious heritage make it difficult to bring about simplification, which would consist of entrusting the settlement of such disputes to one court, no doubt a civil court. Simplification sometimes has insurmountable limitations.

A summary seems to have been achieved by entrusting these disputes with a family division of the common law courts, and to a specialised chamber of the court of appeal¹⁸³.

Patchwork of disputes: We found that the variety of matters dealt with as part of family disputes, includes marital relationships (engagement-marriage-divorce, use of name, residence), filiation, child custody, family assets, maintenance, guardianship, curatorship, relations between older and younger kin, successions, or even the more specific dispute of adoption under Islamic law “kafala”¹⁸⁴.

¹⁷⁹ UN Web site – Treaty Collection

http://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XX~1&chapter=20&Temp=mtdsg3&lang=en&clang=en 65 countries had joined the Treaty on 18 November 2012.

¹⁸⁰ 6 countries to date signed this convention, including the European Union for all its Members States http://www.hcch.net/index_en.php?act=conventions.text&cid=131

¹⁸¹ Council Regulation (EC) No 4/2009 of 18 December 2008.

¹⁸² Israel includes Druze, Muslim, Rabbinical and Christian religious courts; Lebanon: Besides the religious courts, the succession of non-Muslims falls to the common law courts.

¹⁸³ Algeria, Morocco, Tunisia with the family judge in the TPI, and in regard to the Court of Appeal, even if the dispute is referred to the civil chamber, in practice we find specialisation in this chamber.

¹⁸⁴ Adoption in Islamic law – For matters covered in Algeria, see art 423 and its notes in CPCA.

Personal status dispute – a multitude of competent courts: First of all we find that “personal status” does not exist everywhere, but when it does exist we find the religious courts play a prevalent role in handling this specific type of dispute, but at first instance and appeal level¹⁸⁵. Lebanon deals with the existence of different denominations by entrusting cases of succession for “non-Muslims” to the common law courts only¹⁸⁶.

We believe that in matters of “personal status”, the importance of religion, customs and habits make any idea of simplification somewhat random.

Conflict of jurisdictions: Should there be a conflict between courts with concurrent jurisdiction, the beneficiary countries have set up a legal mechanism to deal with this competence and bring a solution to the problem¹⁸⁷.

4.5.2. Lodging the application

Written form sometimes a printed form: We found one constant in all the countries included in the study that recognise such courts, which is that the case is lodged before the court using a written form, which at best is on a printed form¹⁸⁸. Use of the form appears to be a **measure leading to simplification** and should be developed, particularly when it is associated with assistance for filling in and/or drafting. This assistance is provided in many ways - on Internet sites, brochures, and assistance in the courts or in a specialised centre, or provided by “volunteers”. Provision of such assistance is generally high level and it also involves guides available on the Internet and brochures¹⁸⁹.

Such assistance efficiently contributes to comprehension and the simplification of the law and access to it. Such initiatives should be encouraged and developed in the countries that do not yet have it or in which the range on offer is limited.

Rec 15 Implement and/or develop forms for lodging the claim with the court in family dispute and personal status cases, as well as measures for assistance in filling out the form and/or drafting the claim.

¹⁸⁵ Exception: Egypt and Jordan. – Religious courts figure prominently in Israel and in Lebanon.

¹⁸⁶ Lebanon: Law of 23 June 1959.

¹⁸⁷ Algeria: In case of conflict of jurisdictions, the final decision rests with the joint higher court – the Court (High Council for the judiciary) or the Supreme Court. However, the Supreme Court has sole authority to rule if both parties in the conflict lack a joint higher court (CPCA Art 35, 398, 399 and 400). – Egypt: Court of the domicile of the defendant has an extended jurisdiction (Art 12 of the law on family courts); Lebanon: Plenary Assembly of the Court of Cassation designates the court with jurisdiction in the case of a positive or negative conflict of jurisdiction. (Art 95 of CPC) - Israel: the mechanism is implemented by the Supreme Court - Tunisia: the conflict is settled by the “Rules of judges” art 198 of CPCC.

¹⁸⁸ Israel does indeed use a form, so does Egypt. Although the written form is used in Morocco, this country recognises the spoken form in court as a means of lodging the application (Art 32 of CPC).

¹⁸⁹ Algeria (internet guides); Israel (Internet, brochures, assistants, specialised centre and volunteers); Morocco (brochures and assistants); Tunisia (Brochures, assistants in courts, specialised centre).

Comment: Family and personal status disputes have a large emotional component that should not hide the need for standardisation, particularly in first bringing the case to the court. To this end, introducing forms would help quickly and simply to establish a framework for claims (divorce, child custody, maintenance allowance, etc.) in this way facilitating the work of the judge. Assistance with filling in forms and/or wording the claim could also be proposed by the courts and by lawyers within the framework of free legal consultations.

4.5.3. Content of the application

In countries that are familiar with this type of litigation, we have noted that the claim identified the parties and their possible representatives, the court to which the case is referred as well as the date of the hearing¹⁹⁰ and even the nature of the claim, the facts and their legal qualification. As to evidence and supporting items included therein, these should be provided with the application.

4.5.4. Fees for lodging the application

Variety of costs: A variety of costs is a characteristic even within the same country and according to the court in question. Given this confusion, the litigant has difficulty in understanding why from one court to another, whether religious or not, costs differ¹⁹¹. This is an issue that certainly requires simplification, if only to harmonise costs on a comparable basis.

Variety of payment methods: Not surprisingly, when legal costs are charged, cash payment predominates, while bank transfer is rare in settling the cost of the proceedings, and payments are made to administration or to the accounts department of the court¹⁹². Here again, cash payments mobilise a great deal of resources, and require multiple operations. In the framework of an objective of simplification and efficiency, bank transfers should be promoted, or even electronic payments when this will become technically possible.

4.5.5. Informing the defendant

Source and means of information: The choices vary. Lebanon has the clerk of court deal with notifying the defendant that the case exists, while Israel has the applicant or the representative of the same to do it, and the Algeria, Egypt, Morocco and Tunisia group relies on a court bailiff or a judicial officer to personally notify the defendant.

¹⁹⁰ For the date of the hearing, with the exception of Algeria, Morocco and Lebanon.

¹⁹¹ Tunisia: free of charge; Morocco: free of charge for certain categories of person; Israel 1% of the amount of the case, with a minimum of 100 euros, for the Rabbinical courts around 50 euros, for the Druze courts, Muslim around 30 euros; Egypt: Cost exemption for maintenance cases; Lebanon 100 000 LL to 3 million LL according to the court to which the case is referred. Religious courts define their own charges.

¹⁹² Cash payment everywhere; Israel: bank transfer possible

On average a postal service is used, but more often it is the bailiff who notifies the defendant of the case. The latter mode of notification, which is more complete and less random than the postal service, is **to be preferred**

4.5.6. Representation

Since these are cases in which the personal role of the parties is essential, it is not surprising to find that representation by a third party – possibly a lawyer – is not mandatory¹⁹³. Representation by a lawyer is, however, a reality and here, Egypt and Morocco require representatives to give proof of power of attorney for their clients. By contrast, in Algeria, if the representative is not a lawyer, he will be subject to an authorisation to represent the party. Israel is different in letting the court decide on mandatory representation should the need arise.

4.5.7. Proceedings

Conciliation/mediation: The process often begins with conciliation/mediation – according to the country – which may be mandatory or optional¹⁹⁴. Since these are disputes in which passions run high, such a stage seems pertinent to try and resolve the disputes or at least try to alleviate them.

Single or multiple attempts: The attempt at conciliation/mediation intervenes in principle before the start of proceedings, but the parties can seek this attempt at any time¹⁹⁵. The number of attempts at conciliation/mediation varies considerably and shows the concern of the legislator to protect the family tie. From the facts, the results are not convincing¹⁹⁶.

The question is how effective are these multiple attempts compared to the result obtained. With no statistics to consult it is difficult to determine whether there is justification for using one method or the other. However, many attempts could have an effect on prolonging the case. This is why we feel it would be preferable to have only **one attempt at conciliation/mediation**, in the interests of **simplification**.

Written/oral pleadings: It is not surprising that pleadings are both written and oral because in these cases emotional and humane elements are greatly involved.

¹⁹³ Algeria: However, in order to appeal before the court (judicial council) or to form an appeal before the Supreme Court, representation becomes mandatory, even if it is not in first instance. Lebanon.

¹⁹⁴ Mandatory in Algeria: Magistrates who are specialists in these matters have stressed their particular attachment to this stage of mediation; Egypt; Lebanon; Morocco: art 81 to 83 of family law; Tunisia; Optional: Israel.

¹⁹⁵ Israel.

¹⁹⁶ **One attempt:** Lebanon, Israel (at least one attempt); **Multiple:** Algeria, Egypt, Morocco, Tunisia (for the last two countries, there is a minimum time between the hearings in order to facilitate conciliation). In our interviews our spokespersons stressed the poor results of these attempts that are now seen on as procedural steps that lead to little progress.

Streamlining pleadings: The pleadings are closed within certain deadlines fixed by law and by the judge¹⁹⁷ and the parties do not intervene in managing these deadlines¹⁹⁸.

We feel that **limiting written pleadings and exchanges** between parties is likely to help simplify the procedure and avoid delaying tactics.

Rec 16 Limit the number and time of written pleadings and exchanges between the parties and/or their representative.

Comment: The multiplication of conclusions and exchanges with the other party is sometimes used as a delaying tactic. Even without this tactic, it would be preferable to create a better framework for exchanges between the parties and their representatives. That should be done in number, but also in time, so that the parties and their representatives do not use the passage of time to hinder the future judicial decision.

¹⁹⁷ Algeria, Egypt, Israel, Lebanon, Morocco, Tunisia.

¹⁹⁸ **Mandatory:** Algeria, Israel, Tunisia – **Optional:** Lebanon, Morocco.

4.5.8. Provisional measures

Range of measures: To respond to an urgent need, the judge may take provisional measures in direct association with the dignity and vital needs of the family, and in particular the children. In all countries these aim to address:

- Child custody
- Accommodation for family and children
- Family possessions
- Maintenance

The Egyptian and Israeli judge may, however, adopt such measures at any time, while in Jordan the judge does not have such measures available.

4.5.9. Enforcing the judicial decision

Provisional enforcement: The situation varies according to beneficiary country. Some allow immediate enforcement of the judicial decision, while others only allow enforcement after the appeal period has elapsed, making it possible, however, for the judge to order provisional enforcement of the judicial decision he has passed¹⁹⁹.

To take account of the specific nature of these disputes and to avoid lengthy appeals, we feel it would be better for decisions to be accompanied by provisional enforcement, when this is not automatic. This is a balanced solution in the interest of families and the judiciary.

Rec 17 Confer automatic provisional enforcement to the judicial decisions on the vital needs of one of the parties or the children

Comment: Following a divorce finances are often unstable, and the judicial decision that grants maintenance to one of the spouses and to the children of the couple should benefit from an automatic provisional enforcement. In fact, it is essential that the maintenance needs of one of these parties and/or the children should be ensured immediately. Furthermore, exercising the right to appeal should not paralyse the payment of the maintenance allowance.

Cross-border dimension: When it is a case of family cross-border litigation, we have found that the difficulties are many. International child protection and international family and property relations have been the object of many international conventions within the framework of the Hague Conference on International private law²⁰⁰ an organisation to which not all the beneficiary countries belong yet.

International child protection

The figures between square brackets refer to the number of the convention concerned within the HCCH

¹⁹⁹ Immediate enforcement possible: Egypt (for maintenance and parental responsibility); Israel, Tunisia (for provisional measures, Art 41 Law 57-3 of 01/08/1957) – Once the time to appeal has expired: Algeria, Egypt, Lebanon, Morocco, Tunisia (in the other cases).

²⁰⁰ http://www.hcch.net/index_en.php?act=text.display&tid=10 [The figures in square brackets refer to the number of the relevant Convention] and are hypertext links to the said conventions.

Protection of children (1996) - [34]; Child abduction (1980) - [28]; Adoption – Co-operation (1993) - [33]; Recovery of Maintenance (2007) [38]; Protocol on Maintenance (2007) [39]; Maintenance obligations (enforcement) (1973) - [23]; Maintenance obligations (Applicable law) (1973) - [24]; Maintenance obligations - Children (Applicable law) (1956) - [08]; Maintenance obligations - Children (Enforcement) (1958) - [09]; Protection of Minors (1961) - [10]; Adoption (1965) - [13]

Relations between (former) spouses

Marriage (1978) - [26]; Divorce (1970) - [18]; Matrimonial Property Regimes (1978) - [25]; Recovery of Maintenance (2007) [38]; Protocol on Maintenance (2007) [39]; Maintenance obligations (Applicable law) (1973) - [24]; Maintenance obligations (Enforcement) (1973) - [23]

Status in relation to The Hague Conference on International Private Law HCCH.

	Member states of HCCH	Contracting States non-members of HCCH
Algeria		
Egypt	<input checked="" type="checkbox"/>	
Israel	<input checked="" type="checkbox"/>	
Jordan	<input checked="" type="checkbox"/>	
Lebanon		<input checked="" type="checkbox"/> ²⁰¹
Libya		
Morocco	<input checked="" type="checkbox"/>	
Palestine		
Syria		
Tunisia		

²⁰¹ Lebanon Convention of 1 March 1954 on civil procedure - entry into force on 7 January 1975 http://www.hcch.net/index_en.php?act=conventions.status&cid=33.

Rec 18 Invite the beneficiary countries to join the international community by signing and ratifying the Hague conventions on child protection and relations between spouses.

Comment: The increase in mixed marriages between nationals and non-nationals leads to a complex dispute. The specific instruments to provide protection, developed by the Hague Conference on Private International Law are used by many countries and are a reference. The situation in the beneficiary countries concerning child protection and relations between spouses is not satisfactory. The countries should become aware of the delay and to find suitable solutions, namely by joining the Hague Conference by signing and ratifying conventions on the protection of children and relations between spouses.

5. Criminal procedures

Criminal litigation is ever increasing because society is demanding more sanctions for behaviour considered an attack on common interests. In view of this increase the States have no other solution but to hire more judges if they have the means, and implement measures that are simpler and consume fewer resources.

5.1. Simplified procedures

Mass litigation: In criminal matters, simplification measures have been put in place to resolve a number of offences for minor crimes. The scope of application of these measures is fairly far-reaching²⁰² but it covers the same reality, that is, mass litigation made up of simple offences and representing large volumes.

Volume of procedures: The large volume of these offences was emphasised during the interviews and the extent of the problem is given by Israel where minor offences amount to 1.25 million²⁰³.

Simplified procedures and the nature of criminal sanctions: The beneficiary countries that put in place such procedures have a very similar attitude in that these simplified procedures are used only to deliver pecuniary sanctions, but never custodial sentences²⁰⁴.

Handling of the litigation: The basis for this litigation is similar in the different countries in that it rests in principle on faith in a document established by the police or the authority that has noted the facts breaking the law²⁰⁵. The mechanism of the sanction differs, however, from one country to another. In an initial approach, and on the basis of the findings established, the judge delivers the pecuniary sanction (Jordan, Lebanon). In a second approach, the finding in itself merits a pecuniary sanction that should be paid unless challenged before the judge (Israel).

This last mechanism is much simpler from the perspective of settling litigation en masse. We felt it should be **preferred for its simplicity of implementation**. The judge plays the role of an appeal for the offender but only in case of dispute. Such a mechanism saves precious human resources, because the number of challenges is smaller than that of offences, but without prejudicing the rights of the offender-litigant, who always has a way to challenge.

²⁰² Traffic offences (Israel, Jordan, Lebanon, Morocco), fiscal and customs violations, labour law and environmental violations (Israel), forestry offences (Morocco) offences against municipal ordinances and the rules of public hygiene (Lebanon), unfair competition, price increase, consumer protection, customs violations allow for transactions with the administration (Tunisia).

²⁰³ Israel 7.7 million inhabitants – see paragraph Table 01: Number of inhabitants.

²⁰⁴ Algeria: art 391 and 393 of CPP – Lebanon: Although art. 203 of CPP provides the principle of administrative or correctional sentence for certain offences that are the object of simplified procedures, the practice of judges reported to us is that no prison sentence is applied under a simplified procedure.; Israel, Lebanon, Morocco.

²⁰⁵ Algeria, Israel, Jordan, Lebanon.

Rec 19 For small criminal offences in mass litigation, encourage the mechanism in which the finding has the value of a pecuniary sanction, unless challenged before the competent judge.

Comment: Small criminal offences account for a large number of cases, based on facts the veracity of which is established by a person on oath by means of a police report or by video recording, and for which the sanction is low on the scale of sentences (fines). To simplify dealing with these repetitive cases, the report on the offence and the sanction itself should be associated in the most automatic way possible. The violation becomes sanction. The protection of the rights of the litigant is guaranteed in opening an eventual report quickly, before a judge, as soon as he becomes aware of the offence and the associated sanction.

5.2. Ordinary court procedure

Criminal case joinder: In such a situation we have found a dual approach. On the one hand, when several criminal cases investigate the same person, there is a possible joinder of cases wherever the offences were committed. However, this can only intervene in certain conditions²⁰⁶ and it can result in a combination of sentences²⁰⁷. On the other hand, there is no joinder in these cases and the result is that each case is dealt with individually²⁰⁸.

From the point of view of simplification, **the possible joinder of cases** means that a substantial economy of time and means can be made, and for this reason it should be encouraged in the legislation of the States.

Recording proceedings: Recording of proceedings in criminal cases is developing in some countries²⁰⁹ but it seems to run into the problem of equipment and investments on the one hand, and on support processing on the other hand. When proceedings can be recorded this is done in audio and/or video form. There is a strict legal framework for doing this in which the judge decision-making authority. These recordings are often limited to certain cases²¹⁰, no doubt for lack of means.

Remote testimony: In criminal proceedings, hearing either the plaintiff, the accused or possible witnesses using a video-conferencing system is only possible in Israel, Jordan and Tunisia, and it is not permitted in Egypt and in Lebanon. Although provided for by law in Algeria, it is sometimes used for judicial assistance, an encouraging sign of pragmatism.

This technique of **remote testimony is likely to simplify procedures**, to make them shorter. It is also a good solution for improving the results of hearing witnesses, the case in some countries²¹¹. However, this supposes on the one hand sometimes an

²⁰⁶ Same facts, events for Egypt and Israel.

²⁰⁷ Algeria, Jordan, Morocco.

²⁰⁸ Lebanon, Tunisia.

²⁰⁹ Israel, Jordan, Lebanon (Art 250 of the Code of civil procedure) and in the planning in Morocco. Tunisia restricts this to terrorism and money laundering cases. Egypt has not launched the process.

²¹⁰ Lebanon regarding pleadings in the criminal court; Tunisia see note 209. In Israel recording is often limited to audio, even if the law lays down no restriction to cases that might be recorded.

²¹¹ Palestine, Lebanon as underlined during the interviews.

evolution of the legislation and on the other hand a substantial investment in the required facilities and equipment.

Rec 20 Install the means for video-conferencing in all courts, giving priority to the criminal courts and places of detention.

Comment: Delays in court proceedings are often due to difficulties the court has in hearing litigants and/or witnesses. Distances separating some of them make travel costly. Transferring individuals in detention involves the risk of escape and mobilises considerable and costly resources. Technical solutions can overcome these obstacles in allowing the court to address litigants and witnesses remotely using both image and sound, but also written forms.

Absence of the accused: this should not bring proceedings to a halt, and the case should be able to continue even without the accused, if he refuses to appear or if he is expelled from the courtroom for causing trouble. The concept of judgement by default, which we find in the legislation of the beneficiary countries, means that whoever is absent may be judged without the court being paralysed and the case being referred.

5.3. Pronouncement of judicial decisions

Pronouncement of the judicial decision: The judicial decision should be passed in writing even when the proceedings have been audio or video-recorded, which we have seen is not yet the norm²¹². The decision of the court is read at the hearing in whole or in part²¹³ and in the presence of the full court²¹⁴. To simplify the procedure, without however prejudicing the rights of the defence, **the solution of reading only the essential elements seems a good approach, as is the presence of a smaller number, or only one judge, of this tribunal at the time of pronouncement.**

5.4. Informing the convicted party

Right to information: This right is fundamental to the convicted party so that he can practice his right of appeal if it is open. There are many solutions and they fall into three categories. The first category makes the convicted party aware of this judicial decision in all cases²¹⁵, while another category only notifies the convicted party if that party was absent from the hearing, and the last category notifies the convicted party only if he was not represented at the hearing²¹⁶.

²¹² See paragraph 5.2 Ordinary court procedure.

²¹³ Algeria: In criminal cases it is read in its entirety, whereas for tortious matters and small offences, the reading is limited to certain elements – Similar situation in Tunisia (Art 164 CPP); In Israel, in certain cases, the judicial decision may be read partially on the main points. In Egypt only the penalty is read.

²¹⁴ The principle is the court in its full composition. Algerian exception: exception in certain cases provided for by law, Art.285, 305, 309, 310, 379 of CPP.

²¹⁵ Algeria, Jordan, Morocco, Tunisia.

²¹⁶ Egypt, Lebanon.

The idea of avoiding redundant information could be seen as a measure of simplification, that is, that there would be no information if the party were present at the hearing. On the other hand, systematic information may appear as a measure that protects rights of defence in which the interest would be greater than that of simplification.

However, we do note that even the presence of the defendant at the hearing does not guarantee an understanding of the judicial decision. This is why we think that it would be preferable to notify the convicted party in all cases of the judicial decision.

Channel of information: The means used to notify the convicted party in all cases vary greatly. Notification by registered mail runs parallel to personal delivery by a bailiff, a judicial officer or a duly authorised person, or to notification posted up in the court if the party involved has no known fixed address, or even but to a lesser extent, notification sent by fax²¹⁷. All means seem to be appropriate providing they are a fair balance between effective information, cost reduction and respect for the rights of defence.

5.5. Financial enforcement of the judgment

Improvement of enforcement: Enforcing the judicial decision often comes too long after it has been pronounced, at a time when the convicted party has been able to contrive his insolvency and when his financial state may have evolved negatively.

Therefore, we think that a relevant simplifying measure and good practice with a good outcome is **to allow the convicted party to pay the conviction charge right away**. This is done in Egypt, Israel and Jordan, but Algeria, Lebanon, Morocco and Tunisia only allow the convicted party to pay after notification of the judicial decision, so running the risk of contrived insolvency.

²¹⁷ **Notification by mail:** Algeria, Israel, Morocco – **Personal delivery** to the interested party by a bailiff or an authorised person: Algeria, Egypt, Jordan, Lebanon – **Posted up in court** if the interested party has no known fixed address: Algeria, Lebanon – **Delivery by fax:** Israel.

Rec 21 Encourage immediate payment of the criminal conviction, if need be by reducing the amount owed on immediate payment.

Comment: Criminal convictions suffer payment delays because recovery often comes late – the convicted party having become insolvent or having disappeared. To correct this situation and improve the recovery rate, immediate payment should be encouraged at the time the judicial decision is passed. For the convicted party to show an interest in paying immediately there must be an incentive that could be a partial discount on the debt against direct payment. Such an incentive could be a reduction of 10 to 20% of the sum of the cash conviction.

Information on the payment: The convicted party should be thoroughly informed of the payment deadlines from which he benefits, as well as of the risks he runs if he does not pay within these deadlines. Similarly, identification of the party and the place of payment of the conviction should be clearly explained²¹⁸.

By way of simplification as well as efficiency in enforcing the judicial decision, we feel that all practical information should be contained in a document that will be sent to the convicted party. The best time for this would be at the time of the hearing, or at the notification of the judicial decision²¹⁹. Moreover, to encourage the convicted party to pay immediately, a financial incentive, a reduction in the amount of the conviction, seems to be the best measure, as mentioned in the previous paragraph.

²¹⁸ In this sense, see **Algeria**: Art 597, 600 and 604 of CPP, as well as Art 383 and 392 of CPP; **Lebanon**: The document details the payment deadline with mention of the risks and measures taken in the case on non-payment within deadline Art 54 of criminal law; **Morocco**: The document sent to the convicted party explains to whom the payment should be made and the payment deadline as well as the procedures that may be applied in the case of non-payment.

²¹⁹ See paragraph 5.4 Informing the convicted party – « right to information ».

6. Administrative procedures

Administrative litigation is growing at a steady pace, the public no longer hesitates to challenge decisions made by the public authorities whether individual or collective. This means an increase in this type of litigation, which countries must face. There again simplification of the administrative procedure should provide sustainable solutions for a better management of such litigation.

6.1. Lodging the application

Ways of lodging the application with the court: Lodging an administrative application with the court is done only in writing in all the countries²²⁰ using traditional methods. However, we find the same tendency in the European countries that is, the administrative procedure is in writing. The use of forms or electronic supports to lodge the application is not implemented in any of the countries.

6.2. Representation

Mandatory nature: Administrative law is a very technical law. So it is fairly logical that in almost all the beneficiary countries, representation by a legal professional is mandatory²²¹. Israel and Tunisia are different in that representation by a legal professional is optional, the litigant being able to opt for self-representation in the administrative courts.

Assistance to the litigant: We feel it may result in imbalance and breakdown of “equality of arms” if the other party is represented by a lawyer. Proof of this imbalance is further accentuated by the absence of formal assistance²²² in the administrative procedure, with the exception of Egypt or Morocco, the latter providing support in court and on-line. When the State does not ensure this mission, the NGOs provide assistance to litigants when they are not represented by a lawyer. This situation in itself is not satisfactory, because it is the role of legal aid to cover this type of need.

6.3. Fees and taxes

Relatively high fees: The trend found in the beneficiary countries is to charge a legal fee for administrative procedure – not covered by judicial aid – fixed by law. The amount is either fixed or variable, and in the latter case, in association with the

²²⁰ Algeria (art 815 of CPCA), Egypt, Israel, Jordan, Lebanon, Morocco (Art 31 of CPC), Tunisia.

²²¹ Algeria, Egypt, Jordan: Article 13 of the Code of the Supreme court and its amendments No12 of 1992.

²²² Information brochures, Support with drafting, Introduction of standard forms, etc.

amount of the case²²³. Only Tunisia differs in a positive way in making this legal access free of charge.

6.4. Proceedings

Written and spoken: Although the case is lodged with the court in writing, the proceedings are conducted mainly in written and spoken form²²⁴.

Duration of proceedings: The beneficiary countries fall into two groups - the first in which the duration of proceedings is provided by law, and the second in which the time is left to the appraisal of the court²²⁵. However, in the first group, the judge still has the authority to prolong times and deadlines, as is the case in Israel, therefore calling into question the beneficial effects of the law.

We have not observed deadlines ‘by agreement’ between the parties and the judge in proceedings before the administrative courts.

Passing the judicial decision: We did find a fair amount of confusion in this case and many different practices in place. Israel promotes an immediate judicial decision. Tunisia seems to be effective with a time lag that in practice does not exceed 48 hours, while Algeria wisely encourages its magistrates to pass the judicial decision within a “reasonable” time lapse. Jordan in turn, tries to impose a time lapse of 30 days, while Egypt and Lebanon, impose no time constraint at all. During the interviews held in the countries, the persons we talked to often stressed that it is not easy to give a judicial decision within a time lapse imposed by law when, in their opinion, the material conditions and tools available to courts and registries are insufficient.

6.5. Informing the defendant

Origin of information and support: No clear trend emerges on this²²⁶ since delivery by an authorised person or dispatch by mail are both modes of delivery of the summons. This is mainly the result of the use of available resources by the countries that use the information structures available.

6.6. Appeals

Appeal possible but sometimes filtered: The trend is to allow appeals made within a period of 10 days to 2 months, which we feel is sufficient. A special feature is found in Israel that demands authorisation to bring an appeal before the administrative court

²²³ Algeria: the amount of the charge is not linked to the value of the case – Egypt less than 100 EGP – Israel: the amount varies according to the court referred and the amount of the charge may be from 130 to 140 euros, which is “significant” - Lebanon 2.5% of the amount of the claim. Morocco.

²²⁴ Only Lebanon and Tunisia are different in imposing only written proceedings.

²²⁵ **Provided by law:** Israel, Jordan, Lebanon; **Appraisal by the court** Algeria, Egypt, Morocco, Tunisia.

²²⁶ **By the registry:** (Lebanon, Morocco, Tunisia); **By the claimant** (Israel); **By a court bailiff** an authorised person. (Algeria, Egypt, Jordan, Morocco).

when the appeal is made against a judicial decision passed by the administrative courts. Appeals are then filtered within 30 days, which can be seen as fast. Filtering proves to be a good technique for controlling the number of these latter appeals when it does not interfere with the rights of the parties to an appeal when it is well founded.

7. Alternative dispute resolution Mechanisms - ADRs

ADRs provide alternative solutions to judicial proceedings in which a third party intervenes to find a solution to the dispute, proposing a solution that is submitted to the parties for their agreement. Three forms are used²²⁷.

Arbitration: the parties chose an impartial third party – an arbitrator, whose final judicial decision is binding. The parties may submit evidence and witnesses before the arbitrators. Sometimes, there are several arbitrators appointed who work like a court. Arbitration is used most often for commercial litigation because it offers greater confidentiality.

Conciliation: the main objective of the conciliator is to conciliate, most of the time looking for concessions. The conciliator may make suggestions to the parties for settling the litigation. Compared to the mediator, the conciliator has more power and he is more pro-active.

Mediation: This is a voluntary non-binding process, to settle small private in which an impartial, independent third party helps the parties to facilitate discussion so as to settle their difficulties and come up with an agreement. It covers civil, administrative and criminal matters.

European context: The European Union wished to facilitate the use of **mediation** as a way of settling cross-border civil and commercial disputes²²⁸ by encouraging judges to suggest this solution to the parties, without, however, making it mandatory. Therefore agreements reached through mediation, and that fall within the scope of the directive, are mutually recognized and can be enforced in all the Member States, in the same conditions as those established for the recognition and enforcement of court judgments in civil and commercial matters, as well as in matrimonial matters and parental responsibility matters.

International context: UNCITRAL proposes model laws for harmonising legislation in the countries in order to improve exchanges and international trade.

With regards to **commercial conciliation**, UNCITRAL proposes (Article 6 point 2) as part of its law on international commercial conciliation (2002 - http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2002Model_conciliation.html) “*Failing agreement on the manner in which the conciliation is to be conducted, the conciliator may conduct the conciliation proceedings in such a manner as the conciliator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute*”.

In the field of arbitration, UNCITRAL established arbitration rules (version revised in 2010

http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2010Arbitration_rules.html) in order to achieve a speedy settlement of the dispute. The desired swiftness – and hence, efficiency – is manifested in particular by the appointment of arbitrators (Art

²²⁷ Selon la définition qu’en donne la CEPEJ dans Systèmes judiciaires européens, Edition 2012, données 2010-CEPEJ, page 138.

²²⁸ Directive [2008/52/EC](#) of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

8) the choice of the language (Art 19) as well as the possible appointment of experts (Art 29).

ENPI context: The beneficiary states are at different levels in the development of ADRs. This fact, previously underscored in an earlier report²²⁹ persists. ADRs are covered by specific legislations that aim to implant their use²³⁰.

7.1. Scope of application

Types of dispute: In the table below we have identified the types of dispute in which ADRs are used, although this does not reveal to what extent they are used because statistics were not available to us, except for Morocco²³¹.

At the time of writing the report, the expert had no data for Libya and Syria.

	Algeria	Egypt	Israel	Jordan	Lebanon	Libya	Morocco	Palestine	Syria	Tunisia
Family conflicts	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Consumer disputes	<input checked="" type="checkbox"/>									
Labour disputes	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Tenancy disputes	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					
Disputes with a legal professional	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Disputes with a health professional	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
Commercial law	<input checked="" type="checkbox"/>									
Administrative law	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>							
Fiscal law	<input checked="" type="checkbox"/>									

Most ADR concentrates on consumer, labour and tenancy disputes as well as commercial law. This is not surprising because these are matters of choice for ADRs. Fiscal law is relinquished to the exception of Algeria.

Encouraging the use of ADRs: Use of ADR is developing from contractual documents, because it is in the contract that the parties foresee the use of ADRs in case of dispute. In the beneficiary countries, respondents found that the contractual clauses of civil and commercial contracts usually refer to ADR, particularly to arbitration and mediation²³². However, there is room for progression and ADRs have a significant potential.

²²⁹ See J. LHUILLIER in « Access to justice and legal aid in the Mediterranean Partner Countries-EUROMED JUSTICE II-2011 » Paragraph 9 pages 58 and following.

²³⁰ Algeria: CPCA – Jordan: Conciliation in labour law, Mediation in civil litigation Law No12 of 2006, Arbitration Law No 31 de 2001 – Lebanon: Art 762 to 808 of the Code of civil procedure – Morocco: arbitration and conventional mediation are regulated by the Code of civil procedure (Articles 306 to 327-70). Conciliation in matters related to personal status is covered by article 180 of the Code of civil procedure and in social matters, by article 277.

²³¹ In Morocco, 16358 conciliation procedures in matters of ending the marital relationship have been successful.

²³² Lebanon: Almost all international commercial contracts and some civil and commercial contracts refer to ADRs and more precisely to arbitration.

Initiatives for the development of ADRs: In addition to actions undertaken to promote these measures²³³, some beneficiary countries have taken initiatives that we would like to emphasise.

MAHUT Programme – Israel (start – October 2008)

This programme obliges the parties in a civil dispute for a maximum amount of 50 000 shekels, to take part in an assessment interview, conducted by an outside mediator chosen from the list of mediators working on the MAHUT project. During the interview, the parties in dispute will determine, with the mediator, how the mediation process can settle their differences. The mediators on the list are chosen in a public tender called by the Israeli Court Authority. The basic criteria for selecting them include, among other things, their experience in the subject, university level education and recommendations. The assessment interview is carried out by the mediator without any charge. If, on its conclusion, the parties agree to try to resolve their differences through mediation, each party must pay the fees, at a maximum 300 shekels (around 50 euros) per hour of mediation.

The pilot scheme is accompanied by a programme to assess the procedure, which stresses the mediation interview and the ensuing mediation process. The aim of the assessment is to determine how effective the programme is, as well as to suggest improvements in real time, so as to introduce the programme in the courts.

Programme of assistance units in family courts - Israel

The family courts' assistance units provide a range of services for the family in dispute proceedings in the court. The aim of the unit is to help families to settle their differences through dialogue and understanding. The unit is structured around a team composed mainly of social workers and family counsellors, psychologists and mediators. The judges will often channel parties towards mediation and towards a mediator in the unit before the case really gets to the proceedings stage.

Programme for training in mediation – Jordan

A train-the-trainers programme has led to training « mediation judges », as well as introducing the concept of mediation to justices of the peace (2 sessions) and lawyers (2 sessions).

To ensure the deployment of a larger number of mediators, beyond the capital of Amman, training has been set up for mediators.

7.2. ADRs used

Conciliation: Algeria, Egypt, Israel, Jordan and Tunisia have this and the practitioners we met consider it is frequently used in Israel and in Algeria for family and social cases, as well as in Tunisia (see footnote 239). However, it is rarely used in Egypt and in Jordan.

Mediation: Algeria, Egypt, Israel, Jordan, Lebanon and Tunisia do provide mediation, and the practitioners we met consider it is frequently used in Algeria²³⁴, Israel²³⁵, Jordan and Tunisia, but it is rarely used in Egypt.

²³³ Algeria: seminars, study days and training sessions have been used to spread the use of ADR, and a practical guide for judicial mediators is being prepared. Egypt: conferences have been organized to promote alternative mechanisms.

²³⁴ For property, civil and commercial cases.

²³⁵ Israel has been able to provide statistics from the MAHUT Programme.

Arbitration: Algeria, Egypt, Israel, Jordan, Lebanon²³⁶ and Tunisia have arbitration procedures, and use is high in Israel, Jordan and Lebanon, but infrequent in Tunisia, and even rare in Egypt, according to the practitioners we have met.

7.3. Contributors

Role of the judge in implementing ADR: We find the role played by the judge to be a determining one in promoting ADR. Whether it is conciliation or mediation, it is the judge who, according to the case, proposes or charges the parties to use one or other of these alternative means. This is the case in Algeria²³⁷, Israel²³⁸, Lebanon and Jordan. Egypt and Tunisia are different in that conciliation and mediation are mandatory in several matters²³⁹.

ADR professionals: In Egypt, mediators are judges in economic cases. In general, ADR professionals – conciliators – mediators – arbitrators – are not entered on a public list, with the notable exception of Algeria that registers its mediators²⁴⁰ and Tunisia for the only arbiters in the Tunis arbitration centre. This may seem surprising in view of the role of these professionals in the judiciary. In fact, registration on a public list allows litigants to identify these professionals and to avoid interference by less scrupulous individuals. At the most, these professionals are sometimes grouped within associations, such as the mediators in Israel²⁴¹.

Creating specialised centres for each type of ADR should be encouraged when they do not exist at all (Jordan). However, arbitration and mediation centres are beginning to appear²⁴².

Since the start of the programme (October 2008) up to 31 March 2012, 15122 cases have been dealt with.

The number of mediations conducted after the assessment interview rises to 42.4 %, and 3809 cases (on the 15122 that is 25.18% have completed the mediation process at the end of which 53.7% (2045 cases) of cases have been settled by mediation. This represents a final 13,52% of the initial cases that are settled by mediation.

²³⁶ Lebanon: The scheme of interim arbitration by law n° 440 of the 1st. August 2002 gives the arbitrator, in an on-going arbitration process, the power to order that be taken, at his choice, all provisional or precautionary measures required by the nature of the case. The arbitrator can take provisional decisions, as much as he has the authority to decide on part of the application before issuing the decision that will settle the dispute. (Art 789 of the Code of civil procedure).

²³⁷ The judge must verify that the parties have tried to reach conciliation and he compels them to use this process, if necessary. In the case of mediation, the judge compels the parties to use mediation if they have not already done so.

²³⁸ See MAHUT programme, paragraph 7.1 Scope of application “Initiatives for the development of ADRs”.

²³⁹ Tunisia: Conciliation is mandatory in divorce proceedings - Art 32 of the personal status Code, in industrial relations disputes - Art 207 of the Labour Code and before the district court - Art 39 C.P.C.C.

²⁴⁰ CPCA, Art 998 and executive decree No 09-100 of 10 March 2009.

²⁴¹ Mediator’s association: www.megashrey-israel.org.il/

²⁴² Egypt: Regional arbitration centre - Lebanon: Lebanese arbitration centre whose mission it is to regulate mediation and arbitration procedures in civil and commercial litigation www.ccib.org.lb – Israel: Few arbitration centres, for an example www.borerut.com/ or mediation centres www.sulcha.co.il/Content/MedCenters.asp

Training of professionals: Training ADR professionals – apart from judges - is still at the embryonic stage, which is rather regrettable. In fact, in all the beneficiary states, training is not mandatory, whether initial training²⁴³ or on-going training. Such a situation is particularly regrettable for litigants who cannot count on a standard level of training or the updated knowledge of these professionals. In that regard, some initiatives should be highlighted and welcomed in certain mediation centres in Israel²⁴⁴, as well as the initiative of the Tripoli Bar association in Lebanon²⁴⁵ that provide training programmes.

Rec 22 Establish and impose initial and on-going mandatory training for ADR professionals

Comment: Professionals providing ADRs do not benefit from any initial training at a satisfactory level and they get no on-going training. In a judicial environment marked by instability due to ever increasing texts that are often amended, lack of training hinders the promotion of ADR among litigants. For ADR to present a credible alternative to the court, and to contribute in simplifying the process, professionals responsible for implementing ADR must benefit from a high level of initial training and regular and mandatory on-going training.

Ethics: It has to be noted that ADR professionals do **not always have a real code of ethics**, which is a shortcoming that we recommend be corrected. The professional work of these specialists requires a framework and it is up to professional organisations, when they exist, or to the Ministries of justice concerned, to supervise and promote a professional code of conduct²⁴⁶.

7.4. Implementation

Conciliation: May intervene between parties to the dispute before or during the proceedings and its use is either optional or mandatory²⁴⁷. The fact it can intervene very early in the dispute, that is, before the proceedings, acts as an accelerator in

²⁴³ Egypt only imposes initial training to its conciliators within the Centre for judicial studies, training that is given by judges and professional lawyers teachers. Algeria requires initial training prior to recruitment for conciliators and arbitrators, training that is provided by a university or specialised college.

²⁴⁴ www.sulcha.co.il/Content/StudyCenters.asp or the university www1.biu.ac.il/indexE.php?id=8275&pt=1&pid=6382&level=3&cPath=6382,8275 or the Judiciary Institute.

²⁴⁵ Arbitration and mediation centre www.nlbar.org.lb/

²⁴⁶ Algeria has a code of ethics for mediators. Egypt has rules of ethics in the form of a Decree of the Ministry of justice for mediators only. Jordan has a draft code of ethics for mediators. Israel has some texts purely for mediators and arbitrators, but no code of ethics.

²⁴⁷ In Algeria, conciliation is however mandatory in social cases before any litigation procedure, and during the course of the proceedings in family cases – Egypt, mandatory in a few cases before or during proceedings - Jordan: Art 120 of Labour law No 8 of 1996 – Lebanon: Art 461 of the Code of civil de Procedure – Tunisia: conciliation is mandatory in divorce cases, before the Industrial tribunal and before the district courts.

resolving disputes. This limits judicial proceedings, avoids overloading the courts and thus simplifies procedures.

Mediation: May intervene between parties to the dispute before (Egypt for economic cases, Lebanon in labour disputes and those involving consumers and Tunisia for the cases mentioned in footnote 247) or during the proceedings. Its use is optional (Algeria, Israel²⁴⁸, Jordan²⁴⁹) or mandatory in Egypt and in Tunisia in the cases mentioned above.

Scope of the solution found: Whether it is conciliation or mediation, the agreement reached between the parties rates the same as a judgment if the judge so decides to sanction the willingness of the parties²⁵⁰. This is an **excellent solution for unblocking the courts and simplifying procedures**. It is an **approach to be encouraged** in the countries that do not have a similar scheme in place.

7.5. Duration of the measures

Establishing number and time: The use of one form or other of ADR by the parties in litigation should not have the effect of prolonging the time taken to resolve the case. This is why the idea of a maximum duration or a limited number of attempts seems right, whether established by law, the judge or even by the parties.

In Lebanon the choice is to limit the number (2 hearings for mediation) while Jordan²⁵¹ has opted for a fixed time of 21 days for conciliation, three months for mediation and 12 months for arbitration.

On examination both approaches are good, but we feel that they should be **combined for greater effect**. Furthermore, the first limit achieved – whether the number, or the time - would fix the limit of the proceedings, limiting the risks of delays.

Sanction for time overruns: Exempt from sanctions²⁵², the limits fixed in the paragraph above by national legislation are limited in scope. In fact when the time limit is exceeded we are most often faced by failure. We feel that returning a case to common law is necessary and should be **automatic**, thus sanctioning the failure of the parties to find an agreement.

7.6. Cost of measures

Cost of implementing ADR: The situation varies because some countries charge and other do not, but also because of the nature of ADR within a single country.

The principle is a fee for implementing ADR, which is then paid by the parties in the dispute. Arbitration is a typical example²⁵³. The exception is no charge, which is

²⁴⁸ However, within the framework of the MAHUT project, this use has become obligatory in certain conditions – see paragraph 7.1 Scope of application – “Encouraging the use of ADRs”.

²⁴⁹ Jordan: Art 3 of the law on mediation in civil matters.

²⁵⁰ Algeria, Egypt, Israel, Jordan, Lebanon, Tunisia.

²⁵¹ Jordan: Conciliation Art 122 of labour law, Mediation Art 7 of the law on mediation in civil cases, Arbitration Art 37.

²⁵² No country instances sanctions.

²⁵³ Jordan: Art 41 /C of Arbitration law.

reduced to conciliation (Algeria, Tunisia) or to certain cases (Jordan: labour disputes - Lebanon – labour disputes and consumer protection). Only Egypt is different by promoting no charge for all ADRs in economic and family cases.

Fixing fees: When a fee is charged it is often laid down by law, agreement between the parties or at the rate applied by the centres applying ADR. These rates should be easily accessible (web sites) and easy to understand and reasonable in amount for the parties so that they do not dissuade them from using ADR.

Example of Lebanon: Fees for arbitration according to the value of the case

According to the Lebanese Centre for Arbitration, the fees are:	
Value of the case	Arbitration fee
Less than 50 000	500 USD
From 50001 to 100000	1%
From 100001 to 500000	0.5 %
From 500001 to 1000000	0.25%
From 1000001 to 2000000	0.10%
From 2000001 to 5000000	0.05%
From 5000001 to 10000000	0.025
More than 10000001	10000 USD

Payment of fees: Payment is made in principle as the ADR proceeds but the parties may decide otherwise within the framework of their agreement to use some form of ADRs²⁵⁴. Algeria is different in this in that fees are payable at the end of the ADR.

Should the party responsible for paying not pay the fees, the future of the ADR is linked to the original agreement of the parties on the form of ADR selected. The procedure may be suspended (Lebanon, Jordan, Tunisia, for private mediation or arbitration) but may also continue (Jordan for judicial mediation).

We think that the **simplest solution**, and the one to use, is to put an immediate end to the ADR and to return to common law when a party has failed to comply with his obligation to pay, a symptom of the predictable failure of the ADR applied.

²⁵⁴ Israel, Jordan, Lebanon, Tunisia.

8. Appeals

The litigant should have the right to lodge an appeal against a judicial decision that is not to his satisfaction.

Universal Declaration of Human Rights - <http://www.un.org/en/documents/udhr/>
“Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

In fact, the error of appraisal, or the error of law is a possibility on the part of the judge. But apart from the principle of appeal, its use may go astray, leaving the field open for time delaying tactics. The legislator must know how to steer between respect for the right to appeal and mechanisms aiming to limit the abuse of the appeal.

8.1. Different appeals

Range of appeals: The names given to appeals frequently differ from one country to another, and caution is required in applying the same word used by different countries because they do not always refer to the same type of appeal.

The general principle that emerges from the study is that against a judicial decision passed by a low court an appeal can be made to a high court and then to the Supreme Court. Therefore, two appeals can be envisaged against judicial decisions passed by the courts of lower level. However, depending on the nature of the case or its value, a single appeal may prove to be possible.

Time limit for lodging an appeal: The time taken to make an appeal varies in the beneficiary countries and it varies depending on the nature of the appeal envisaged. We found periods of 15 days to 2 months²⁵⁵, with a hard core around 30 days²⁵⁶. The longest times are associated with appeals to the supreme courts.

In theory, it would be feasible to harmonise these times so that from one country to another an appeal of the same level and the same nature can be made within a similar length of time. But in practice, such harmony would require many reforms for a relatively weak added value.

During the study we did not find abnormally long time limits for appeal in view of the objectives pursued. However the length of time taken to handle cases going to appeal is sometimes abnormally long.

8.2. Bringing an appeal

Modalities: To appeal against a judicial decision that does not please the litigant, the latter is sometimes forced to get a lawyer (Lebanon, Morocco). Such an obligation is not always a dissuasive element in the case of an appeal without real grounds.

²⁵⁵ Example Egypt: 40 days for an appeal, and 60 days for an appeal in cassation; Lebanon: 15 days for an opposition to 2 months for an appeal in cassation.

²⁵⁶ Appeal and review in Lebanon (Art 631, 679 and 692 of CPC) – Appeal and second appeal before the Supreme Court in Israel

Israel prefers to use a filter by requiring authorisation to make an appeal.

The apparent ease of the appeal that can be conferred from the use a simple form - available on-line – is associated with payment of a guarantee the amount of which is a fairly strong dissuasive, and payment of an appeal fee (Israel). The litigant may consult a lawyer.

Modalities in Egypt are extremely simple in that all it takes is to come before the court that issued the decision and to bring an appeal, while paying the legal costs of the appeal.

The need for a guarantee before making an appeal may dissuade certain appellants from proceeding, but not those who are well off. This cash restriction to the right of appeal raises difficulties regarding access to justice, particularly for those who do not have access to legal aid to pay the guarantee. Therefore we feel that this cash filter should not be encouraged.

8.3. Fees and taxes

Judicial policy instrument: Charging fees and taxes on an appeal against a judicial decision may be perceived as a dissuasive instrument and one controlling the number of appeals, at the same time as it comes as an economic instrument for the partial or total cover of costs raised by appeal. According to the amount of fees and taxes, the litigant may indeed be tempted to renounce the use of appeal, or on the contrary, low fees might not discourage litigants to bring an appeal. Costs can be fixed or fluctuating according to the nature of the court to which the case is referred ²⁵⁷

On the other hand, no charge for justice in exercising an appeal can be seen as an instrument facilitating access to justice, but also as an “incentive” to appeal, which is not desirable if we want to reduce the backlog of the courts.

It seems that a charge for justice is necessary for the balance of the judiciary but also as a pertinent instrument against unfounded and dilatory appeals. When charges are made at the time of the appeal, they should be simple to calculate and preferably linked to the amount of the case.

²⁵⁷ Algeria: costs are low from 500 DA for offences up to 1500 DA for criminal cases (art 415, 432, 434 and 506 of CPP) - Israel: Appeal against the judicial decision of a District court (equivalent of 280 euros) – Appeal in cassation (equivalent of 600 euros)

8.4. Limitation of appeals

Appeals and small claims: Small pecuniary claims account for a large number of cases. Making appeals easy involves a risk of asphyxiation for the judicial institution. Certain countries have fully understood this and practise a restrictive policy that goes from excluding appeals to limiting them.

In the case of small claims, Algeria, Egypt, Jordan and Lebanon practise a **policy of exclusion**²⁵⁸ of appeals, while Israel has chosen a **policy of filtration** founded on prior authorisation.

However the orientations chosen should not compromise the very principle of right to appeal as an essential element of the rule of law. The exclusion of the appeal on the grounds of the low value of the case is a simpler solution to implement than that of filtering by authorisation. This is no doubt why it is more widely used.

Appeal filtering mechanism: The filtering mechanisms used correspond to two levels. The first one is the declaration of inadmissibility of the appeal, and the second one is the dismissal of unfounded appeals²⁵⁹. The first mechanism dismisses from the outset all appeals that are legally inadmissible, and the second requires a minimal examination of the case to determine the unfounded nature. Furthermore Lebanon tries to deal more quickly with appeals in order to reduce the caseload.

Either one of these mechanisms seems pertinent and should be more widely installed in the beneficiary countries, even if the effectiveness of these filtering provisions could not be assessed during this study due to a lack of statistics from the beneficiary countries.

8.5. Trying appeals

Extent of the examination of the appeal: The situation is fairly homogeneous in terms of the court trying the appeal. In fact the Court of cassation will only examine offences against rules of law while the appeal courts will address both the facts and the law²⁶⁰. Such an approach should be approved to limit the use of judicial time.

We note as a **simplification measure to be reproduced**, the initiative adopted by Israel and its appeal courts that do not hear witnesses. We have previously observed how difficult or cumbersome this hearing process can be²⁶¹.

²⁵⁸ Algeria: Appeal is not admissible for claims that do not exceed 200 000 dinars (Art 33 of CPCA) – Egypt: No appeals for small claims that do not exceed 5000 EGP - Jordan: No appeal against cases below 250 JOD - Lebanon : Appeal is excluded for cases that do not exceed 3 millions LL and appeal in cassation is excluded for cases that do not exceed 6 millions LL – Art 640 and 709 of CPC.

²⁵⁹ Israel: The first hearing is usually dedicated to this question, the court may consider the appeal inadmissible or unfounded; Lebanon: The country knows the principle of inadmissibility of appeals and also that of dismissal of the same.

²⁶⁰ **Appeal in cassation:** Examination of the rules of law - Algeria, Israel, Jordan, Tunisia. However, in Lebanon, if the appeal in cassation is accepted, the Court re-examines and rules on the case and does not send it back to a court of appeal.

Appeal: Examination of facts and law – Algeria, Israel, Jordan, Lebanon, Tunisia.

²⁶¹ See paragraph 5.2 Ordinary court procedure “Remote testimony”.

8.6. Appeals before the Court of cassation

Appeals sometimes limited: Appeals before the Supreme Court are sometimes limited, which reduces the number of appeals submitted to the appeal court, whether

- By the nature of cases that allow such an appeal (Jordan Art 70 CPC)
- By the nature of courts that issued the challenged decision (Algeria, Israel, Tunisia)
- By the value of the case (Egypt)

Conditional appeal: When appeal is possible, it is sometime conditional on its relevance (Israel, Jordan) or on the value of the case (Egypt, Jordan, Lebanon) ²⁶² and incidentally on the payment of a financial guarantee (Egypt, Israel, Lebanon) whose amount varies greatly from country to country.

The aims pursued are to limit appeals before the Court of Cassation and additionally to reduce the backlog of this court by raising obstacles to the litigant. However, there seems to be no agreement that this functions at the level expected by the promoters of these restrictions, according to the interviews held with the practitioners in the countries concerned.

Combatting the commonplace use of appeals: The danger is that appealing before the Court of cassation might become commonplace. Too many appeals may lead to debasing justice. In either case, a reaction is necessary. If these large numbers of appeals are not linked to an equally large number of reversals it means that we are faced with dilatory appeals²⁶³. Countries should, therefore, adopt mechanisms able to limit appeals while maintaining the principles of rule of law. The question is to know whether the limitation of appeals before the Court of cassation should be taken further. No doubt thought can be given to this and among possible solutions we might suggest accumulating the obstacles mentioned above (relevance, value, guarantee) instead of using them as alternatives.

²⁶² Egypt: The amount of the case should exceed the equivalent of 1500 US dollars (subject to a few exceptions) - Lebanon: The amount of the case should exceed 6 million LL – Art 709 of CPC.

²⁶³ Algeria, Tunisia.

9. E-justice

By way of simplifying access to justice, and also procedures, “electronic justice”, or “e-justice” is one of the most promising methods because it is innovative. It is therefore not surprising that many countries in the world look at “electronic justice”. The potential is vast in the beneficiary countries²⁶⁴.

European context: Within the European Union, the strategy for e-justice was defined in a paper entitled “Towards a European e Justice Strategy”²⁶⁵ with a view to improving access to justice and collaboration among the parties concerned, while reinforcing the interoperability of information systems.

E-justice makes for substantial economies of scale while technically offering better access to judicial information and to judicial procedures as well as to practical information for professionals and litigants²⁶⁶. Thanks to better guidance for users through the Internet sites of the judicial institutions and through professional networks, entirely electronic judicial procedures can be implemented²⁶⁷.

The use of videoconferencing²⁶⁸ will make hearings possible for the parties, limiting travel and therefore costs. Access to case law and legal information, but also teamwork between magistrates and court officers is an added value brought by e-justice.

Enforcing judicial decisions may also intervene by using the concepts of e-justice (electronic notifications and summons²⁶⁹).

9.1. Legal information

Accessible elements: Legal information – codes and texts - is widely available in all beneficiary countries, but the case law of certain courts is sometimes missing for the district courts, and the courts of appeal²⁷⁰.

Records and databases: We have been able to show that the litigants or their representatives cannot consult on-line, free of charge or against payment, many sources that would be useful in building up and managing their cases, with the exception of the Hebrew State. In fact, only Israel provides access to a wide range of

²⁶⁴ On the situation en 2011, see Access to Justice in the Partner Countries - EUROMED JUSTICE II - 2011 data base 2008 - EUROMED JUSTICE II Project - Author Julien LHUILLIER – Paragraph 10.1 pages 62 and following

²⁶⁵ Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee of 30 May 2008 – [[COM\(2008\) 329](#) final

²⁶⁶ Via a direct, protected and secure access to the case file in order to follow developments of the case and the stages in the proceedings.

²⁶⁷ On the potential of e-justice, see CEPEJ Newsletter No. 8 April 2011 « Dematerialization of judicial processes » report by Alain LACABARATS.

http://www.coe.int/t/dghl/cooperation/cepej/Newsletter/2011/8_newsletter_Avr11_en.asp

²⁶⁸ On the use of videoconferencing, see paragraph 5.2 Ordinary court procedure.

²⁶⁹ Bank accounts, Registered vehicles, Registered property.

²⁷⁰ **At first instance:** Egypt, Israel, Morocco – **In appeal:** Israel, Lebanon, Morocco – **In cassation:** Algeria, Israel, Lebanon, Morocco, Tunisia.

records²⁷¹. As part of simplifying procedures, allowing litigants access to information concerning their opponent, to be able to assess their solvency and therefore the interest in taking action against him, is decisive.

Cost of access: Public sites, when they are available, provide information that is usually free of charge but it in no way responds to all needs because private sites are developed and prosper on charging for their services²⁷². The cost of access depends then on the economic model adopted by the operators of these sites, and although free access is desirable, there is no certainty that it can be economically viable.

Recommended guidelines: Judicial information allows citizens and professionals to get a better understanding of the law and court practices through case law. A better understanding helps improve the quality of justice and optimise procedures. States should install and develop the tools that will facilitate the publication of the case law of all courts. The new information technologies allow us to envisage a vast paperless access to all data, both for professionals and the greater public.

²⁷¹ Population register www.piba.gov.il/SUBJECT/Pages/default.aspx - Land register
<http://ecom.gov.il/Counter/alternative/tabuNesach/Homepage.aspx?counter=10&catalog=1&category=tabuNesach&language=he> – Liquidations database
<http://apot.justice.gov.il/poshtim/General/Main/Main.aspx> – Pledge register
<https://nesach.justice.gov.il/mashkonot/forms/fMashIndex1.aspx> - Inheritance database
<http://147.237.72.63/RashamYerusha/General/wfrmMain.aspx> – Trademarks database
www.trademarks.justice.gov.il/TradeMarksWebSiteUI/TrademarksSearch/TrademarksSearch.aspx - Patents database www.ilpatsearch.justice.gov.il/UI/MainPage.aspx

²⁷² Israel: Legislation and case law database www.nevo.co.il/.

9.2. Paperless processes

Process: Making judicial processes paperless assumes that countries have a solid information system tool that is widespread and open to the wider public so that the different stakeholders (magistrates, registrars, officers of the court) as well as the parties and their representatives have paperless access²⁷³.



A paperless approach is in itself a means of adding to the effectiveness of justice and it simplifies and accelerates procedures. It helps handle large volumes of very important documents better and increasingly larger numbers of cases²⁷⁴.

This being the case, paperless **procedures should be encouraged** by the beneficiary states in order to improve workflows and minimise

the impact of flow growth on the judiciary.

Source: Photo from the author

Paperless communication between the litigant and the court: Findings are disappointing in that a document in electronic format can only be obtained in Israel via an on-line form²⁷⁵. However Tunisia is about to implement such a service for commercial records, knowing that in the court of cassation there is a software application that allows lawyers to follow proceedings.

Israeli litigants can refer to the court or a judge for a new case thanks to the information system recently implemented «Net Hamishpar » but also documents can be exchanged electronically with the court, and they can even follow the history and development of their case by using the same information system and at the close get an electronic copy of the judicial decision that concerns them. The system also facilitates electronic exchanges with officers of the court and particularly between the court and lawyers.

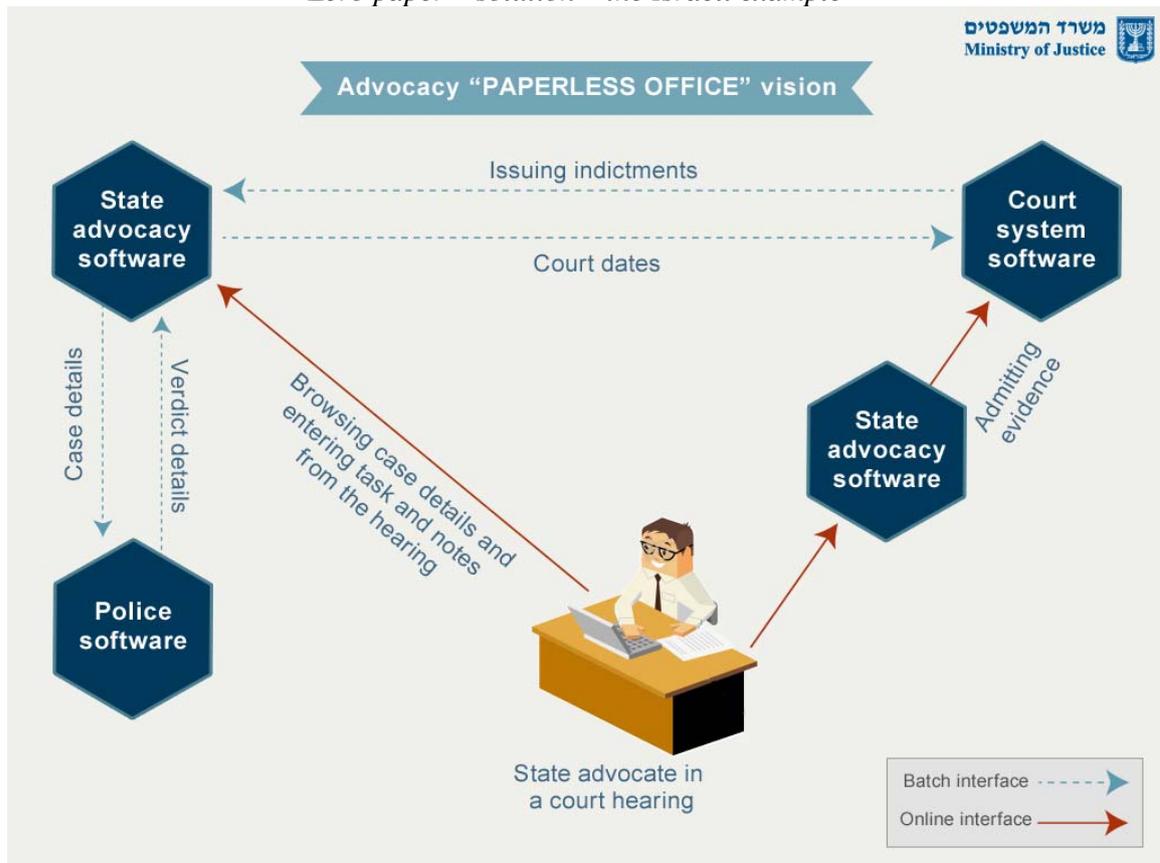
The Israeli system seems attractive in its capacities and seems to prove practical in moving towards a “zero paper” solution.

²⁷³ In Israel virtual access to courts has been launched with the NGCS project – Next Generation Court System (NGCS.net).

²⁷⁴ In Israel for example (data provided by the Ministry of justice), allows 600 judges and 52000 Lawyers to deal with 1 million new cases each year for a population of 7 million inhabitants, and it handles 68 million new pages each year.

²⁷⁵ Israel: Any document pertaining to a case is accessible via the information system « Net Hamishpat ». Lawyers have a « smart card » that gives them access to the system and to all documents concerning their case immediately.

« Zero paper » solution – the Israeli example



Source: Ministry of Justice - Israel

Algeria only allows the electronic application for judicial payments and nationality, which is very little, but surprisingly, demands that the applicant be present in person to pick up the document²⁷⁶. Even if the Algerian litigant can consult his own case via the Internet²⁷⁷, he cannot interact in the pleadings or talk to the court. For the Lawyers, although they have direct access to the electronic desk, they may only consult their case but they cannot interact with it.

Egypt gives access to information on case files as well as judicial decisions. Visual display units are also available in the courts. However the situation could evolve positively thanks to an on-going project that aims at allowing the litigant to submit files directly to the judge using electronic means. Lastly, electronic exchanges between the court and the lawyer are possible for documents relating to open cases.

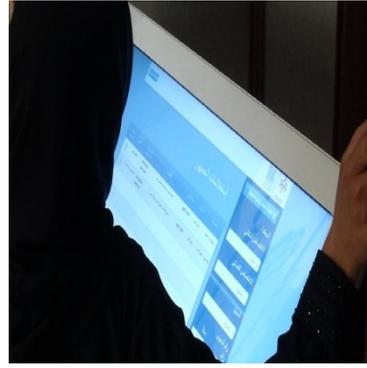
Tunisia benefited from a programme to support the reform of justice (2007-2010) funded by the European Union. Access via the e-justice site is open to the public as well as to lawyers <http://www.e-justice.tn/index.php?id=58> providing secure access to cases the number of which is encouraging. One application stands out in the court of cassation in that it allows lawyers to follow the course of proceedings before the court of cassation.

²⁷⁶ Observed in the court of Algiers.

²⁷⁷ Algeria: www.mjustice.dz. Heading "Browse your case"

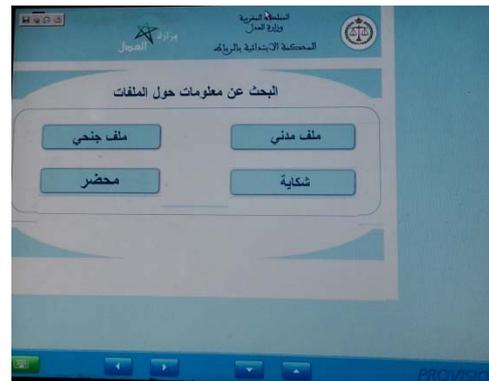
Jordan in turn provides the litigant with access to consultation of the history of the case and the proceedings, either from home or by browsing an information screen in the court²⁷⁸.
 But on-line exchanges between the court and the lawyer do not yet seem to be possible, which is regrettable.

Source: Photo from the author



Lebanon is limited to the exchange of e-mails and electronic documents between a pilot court and officers of the court, essentially lawyers. This experience²⁷⁹ deserves encouragement and once assessed with positive results should be extended to other courts in the country in order to implement a practical information system for the judiciary²⁸⁰.

Morocco has automatic screens showing progress made in cases. Lawyers use these screens, as we were able to observe in the court in Rabat.
Source: Photo from the author



On the whole, countries are indeed lagging behind in adopting paperless communication between litigants and the courts. This is however a priority work area subject of course to the implementation in the “justice” sector of a practical, compatible information system in the countries that are lagging behind.

Video-conference: Hearing a litigant or a witness using video recording to avoid having them travel to the court, has not really entered the courts of the beneficiary countries, either due to the weakness of the legislative framework for this, or to the limited implementation of such resources, or finally because of the reluctance of practitioners.

Tunisia limits this option to letters rogatory (Art 57 CPP), but in practice it does not seem to be very developed.

²⁷⁸ We have also seen information screens in operation that were installed with the support of a project funded by USAID in a Amman court.

²⁷⁹ Court of Bcharre (North Lebanon) <http://bcharrecourt.blogspot.com/>

²⁸⁰ During our visit to Lebanon we were surprised that studies into the description of an information system have not yet really achieved anything, although they were begun almost 10 years ago with the help of internationally sponsored funds.

Israel provides this possibility, but only if the two parties agree to it. If they disagree, the judge decides whether or not to use video recording without the consent of the parties. In practice, video-conferencing does not seem to be widely used, no doubt because this type of system thoroughly upsets habits and practices²⁸¹.

However, this technical device remains a **solution for the future to be developed and used to advantage**.

²⁸¹ The situation has not significantly developed since the Euromed Justice II project that examined this question. Access to justice in the partner states - EUROMED JUSTICE II-2011 Project, 2008 date base - Project EUROMED JUSTICE II Project - Author Julien LHUILLIER

10. Executing the enforcement order

CEPEJ in its guidelines concerning the enforcement of judicial decisions²⁸² considers that the « National legislative framework should contain a clear definition of what is considered an enforceable title and the conditions of its enforceability ». The execution of the enforceable title²⁸³ is considered by the European Court of Human Rights as one factor in a fair trial²⁸⁴. In fact, without real and effective enforcement against the debtor and his assets, the judicial decision is only of moral – and insufficient – interest for the winning party to be able to recover what is due. Simplifying the enforcement of court decisions should also be an objective for the beneficiary countries.

10.1. Enforcement agent - status

Varied status: The beneficiary countries have enforcement agents based on the “budgetary” model in which the staff member is a public servant, and the “independent” model in which agents are private under the control of the State. Morocco is different in having a “mixed” status in which agents are both public and private²⁸⁵.

By way of comparison among the member states of the Council of Europe, 11 States have a private status system (25%), 22 States a public status system (50%) and 11 States have a mixed status system of both public and private agents (25%)²⁸⁶.

Enforcement mandate: The mandate to enforce the judicial decision and the decision itself are sent to the enforcement agent by the claimant or by the head of the enforcement office²⁸⁷.

Israel: 15% of ECA cases come from a judicial decision. The remaining **85%** still come from fast and simplified procedures for amounts due of up to the equivalent of 10 000 euros. In this case, the claimant can go directly to the ECA to ask for enforcement of the debt. **If the debtor contests**, the case is transferred to the Magistrate’s court. If there is no objection, the recovery process continues with the ECA.

²⁸² CEPEJ (2009): Guidelines for a better implementation of the existing Council of Europe’s recommendation on enforcement – Dec 2009.

²⁸³ These orders vary and depend on the legislation of the country. By way of example, in France, a list of enforcement orders is provided by the civil procedural code on enforcement, article L111-3 – France.

²⁸⁴ ECHR judgment of 19 March 1997, case 10771/1995/613/701; *Hornsby v/ Greece* « *Enforcing a judgment or decision passed by any court, must be considered an integral part of the trial in the meaning of article 6, §1 of the European Convention on Human Rights* ».

²⁸⁵ Budgetary model – public agents (Israel, Egypt, Jordan, Lebanon); Independent model (Algeria, Tunisia); Mixed model: Morocco with civil servants in registries (art 429 CPC) and court bailiffs.

²⁸⁶ CEPEJ – European judicial systems Edition 2010 Efficiency and quality of justice, page 276 graph 13.3. 44 States out of 47 took part in the study.

²⁸⁷ **Delivery by the creditor:** Israel the creditor takes the judicial decision to the enforcement and recovery agency – ECA - and the registrar takes charge of the case; Egypt; Jordan; Tunisia // Delivery by the head of the enforcement office: Lebanon

10.2. Enforceability of the decision

Enforceable nature of the decision: According to the beneficiary countries, the civil court decision becomes enforceable with the appending of an “enforcement form” or an “enforcement order” by the court or the judge²⁸⁸. The objective is that the enforcement agent has no doubt as to the enforcement nature of the document entrusted to him, and it is through the enforcement form or the enforcement order that he acquires this certainty.

Provisional enforcement: Exercising legal remedies automatically holds back enforcement if it is an appeal with stay of execution. The debtor may also take advantage of this to contrive his insolvency. This means that a procedure is required that will allow for immediate – conditional - enforcement of the judicial decision.

Provisional enforcement is a measure to protect the rights of the claimant that should be implemented but with two conditions - urgent need for payment to the claimant and the **risk of disappearance** of the assets or capacity to pay of the debtor. There is a consensus on provisional execution in the recovery of maintenance claims, thereby allowing the creditor to act very rapidly even if remedies are not exhausted. This is the objective of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance - 23 November 2007 – in its article 1 or even in its article 32.

Provisional enforcement is, however, insufficiently used in the beneficiary countries²⁸⁹ although it is a powerful factor in speeding up enforcement.

Rec 23 Permit on certain conditions the provisional enforcement of the judicial decision.

Comment: Provisional enforcement of the judicial decision is an instrument of judicial policy that serves in combatting insolvency on the one hand, and abusive and dilatory appeals on the other hand. The principle of provisional enforcement should be defined by law and applied by the judge, who may grant it or not if he thinks, for example, there are risks the debtor will become insolvent or disappear.

10.3. Access to information on the debtor’s assets

Limited access to information: Enforcing judicial decisions can only be suitably ensured if the enforcement agent has reliable and sufficient information on the debtor’s assets. Without that information he is “blind” in accomplishing his mission. This information may be provided to him by the claimant/creditor himself when submitting the dossier. But if this is not the case, or if it proves to be incomplete, the enforcement agent should have access to records and databases that record the assets

²⁸⁸ **Attachment of enforcement form:** Algeria, Jordan, Lebanon, Morocco, Tunisia; **Enforcement order from a court or judge:** Egypt, Jordan.

²⁸⁹ Egypt: In certain cases the constitution of a guarantee will be required from the applicant; Lebanon: enforcement notwithstanding appeal; Morocco: Provisional enforcement despite opposition or appeal should be ordered without a guarantee if there is a legal enforcement order, or a recognised promise or previous conviction without appeal Art 147 CPC; Tunisia : The court may order provisional enforcement of judgments – art 123 of CPCC.

and properties of the citizens²⁹⁰. The beneficiary countries have in the great majority understood this urgent need²⁹¹, and this access should be made widely available.

Banking secrecy: Lebanon practises a policy of banking secrecy which allows the banks, and there are many in Lebanon,²⁹² – to invoke secrecy before the enforcement agent charged with carrying out an enforcement measure, even if he is enforcing a judicial decision. We are faced with an **unmistakable obstacle** to the proper enforcement of court decisions. In fact, professional secrecy, including banking secrecy, should be removed in the case of a court decision. Without this, the enforcement cannot be correctly conducted, and this is a breach of the fundamental right of a party to the case.

We think it is essential to ensure enforcement of the judicial decision, and that there should be total access to all the debtor's asset information, without any restriction, even that of professional secrecy. In fact, the request for information is based on the enforcement of a judicial decision. The credibility of justice and the enforcement of judgments passed by the courts are at stake and, therefore, rule of law in the country concerned.

10.4. Enforcement records

The enforcement record: The beneficiary countries say they do not have a record of civil and commercial enforcements in which all debtors who have had their assets seized would be registered, whether these assets are movable or immovable, providing this confiscation is still valid. When such a provision exists, as is the case in certain European countries²⁹³ it helps considerably to simplify enforcements because it is not necessary to confiscate several times what has already been confiscated from the same person. Unless new assets are found and they can be confiscated, claimants can, through the enforcement agents, join the previous enforcement, and they share the assets confiscated once they are sold.

Rec 24 Set up a civil and commercial enforcement record.

²⁹⁰ Land register, registered vehicles register, bank account register, etc.

On the principle of access to asset information, see CEPEJ Guidelines 2009 paragraph 40 and following.

²⁹¹ **Access to information:** Algeria: The court bailiff who holds an enforcement order has prerogatives in terms of investigating the debtor's assets so as to ensure enforcement; Jordan (free access and free of charge); Egypt: it is up to the creditor to provide information on the debtor's assets; Lebanon (paid access): Israel: Either the debtor signs authorisation to allow access to his asset information, or, if he does not cooperate, the registrar has the authority to obtain this information even without the debtor's agreement. The registrar will decide what information to send to the claimant. Tunisia: the enforcement agent has access to the debtor's asset information.

No access to information: Morocco where the enforcement agent has no right to access.

²⁹² 71 banks are members of the association of banks in Lebanon en 2012 – source <http://www.abl.org.lb/fr/allmembers.aspx?pageid=674>

According to the World Bank, for 2009, the count is 29.7 commercial bank branches / 100 000 adults – source <http://data.worldbank.org/indicator/FB.CBK.BRCH.P5>

²⁹³ For a pertinent example in Europe, see Belgium.

Comment: When there is no such record, a debtor can be the object of several procedures for civil and commercial enforcement on account of several claimants. The multiplication of these measures gives rise to costs that increase the amount owed by the debtor without doing anything to serve the interests of his creditor. A record of enforcements would ensure more streamlined pursuit, better recovery of the debtor's payment and a fairer balance between claimants. Such a record could also have a preventative effect in being able to control the debtor's solvency, particularly in granting bank loans.

10.5. Interim safeguard measures and enforcement

Protective procedures: the beneficiary countries are unanimous in having the enforcement agent implement “protective” measures before the judicial decision becomes final²⁹⁴. These procedures can be applied in principle to all the debtor's assets²⁹⁵ sometimes under certain conditions²⁹⁶.

Among the measures applicable, certain of them are not directly linked to an asset, but concern the person of the debtor himself. It is the case for restrictions to movement and travel²⁹⁷ which are considered an “accessory” measure to enforcement, but for which we do not have sufficient information to assess the true scope.

Enforcement procedures: The autonomy enjoyed by the enforcement agent in Jordan allows him to act according to his understanding of the solvency of the debtor while in Israel and Lebanon, the enforcement agent must follow instructions that he receives respectively from the registrar (Israel) and from the head of the enforcement office (Lebanon).

The fact that the enforcement agent must follow a precise order for procedures to operate, as in Algeria and Morocco²⁹⁸ is cumbersome and prejudices the effectiveness of the enforcement. However, leaving flexibility and initiative to the enforcement agent in his pursuits is an effective guarantee in enforcing judicial decisions.

The lack of sufficient room for initiative on the part of the enforcement agent, suitably

²⁹⁴ Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia (Palestine did not answer that part of the questionnaire).

²⁹⁵ Lebanon: except for tangible and intangible assets of a business - Art 860 al 20 of CPC; Tunisia: Protective seizure, attachment, seizure of salary (movable and immovable assets).

²⁹⁶ Israel: The applicant asks the registrar who has the authority to decide on these measures. The measures can be revoked and they are implemented if the registrar is convinced that the debtor may leave the country or hide his assets.

Egypt: This concerns the assets of the debtor, and the measure can be implemented only upon authorisation by a judge who will have to subsequently validate it.

Jordan: this concerns movable and immovable assets Art 141 of CPC with a guarantee deposit sometimes made or a bank guarantee.

Lebanon: on request of the claimant for a failed, non-conditional debt, the Head of the Enforcement Office may order a provisional seizure to confiscate the debtor's assets.

Morocco: The request for protective order is given on the application by the president of the court of first instance – Art 452/453/454/455 CPC.

Tunisia: the measure may be implemented on the basis of a judgment, of an order delivered by the court - art 287 and following, 322 and following, 353 and following, 330 and following of CPCC.

²⁹⁷ Israel: One example of restriction of movement/travel.

²⁹⁸ Algeria: CPCA art 646 and following; Tunisia: referral is open.

trained for the job, in conducting enforcement operations²⁹⁹ is a useless hindrance to enforcement and an obstacle that should be removed.

A **measure of simplification** consists, therefore, in letting the enforcement agent, qualified judicially and regularly trained, have **the flexibility required to choose the enforcement measures** right for the debtor's situation and the latter's environment, within the framework of the eventual mandate given him by law or a judge.

Difficulties and/or prevention of enforcement: Enforcing a judicial decision may be halted by a prevention technique, such as the debtor's refusal to allow the agent to enter, and the enforcement agent may request the assistance of the police. The participation of the "public force" symbolised by the police force, must be agreed each time that this proves necessary³⁰⁰.

Contesting measures: Contesting the measures used against the debtor may lead the latter, but not exclusively, to addressing a court or judge who should look into the regularity of the procedure and measures applied. A measure to suspend or cancel the enforcement procedure may then be applied. Whatever the case, the judge responsible for the judicial problems related enforcement, must look into them as quickly as possible³⁰¹. Appealing to a judge should not be used as a delaying tactic, which would affect the "res judicata"³⁰². To dissuade those who do this, the judge should sanction the excesses, if he has the power to do this. The example of Morocco (art 436 CPC) demonstrates good practice.

²⁹⁹ Lebanon: when the enforcement agent is faced by a difficulty he will refer it to the head of the enforcement office and await instructions – that may take time.

³⁰⁰ Algeria: the claim goes through the Public prosecutor of the Republic. Egypt: To enter by force on the debtor's property, or in case of an obstacle to enforcement, the enforcement agent must request the authorisation of a judge, which makes enforcement cumbersome; Jordan: the enforcement agent holds a written order signed by the president of the court that authorises him to contact the police for help - Art 5/a and Art 5/f. of implementation code

³⁰¹ Algeria Art 604 and 646 and following of CPCA; Morocco Art 436 CPC.

³⁰² On this principle, see Council of Europe, Recommendation 2003/17 point III / 1 / f "*There should be no postponement of the enforcement process unless there are reasons prescribed by law. Postponement may be subject to review by the court.*" and point III / 2 / e "*Provide for measures to deter or prevent procedural abuses*".

11. Cross-border disputes

Ever increasing human and economic movement leads to an increase in cross-border disputes. Among the beneficiary countries in the study some share a common language and culture, while others share geographic proximity. All of this encourages the development of the union of persons as well as trade and investments. To secure all of this movement, it makes sense to move towards mutual recognition and enforcement of the court's judicial decision.

We feel that the beneficiary countries should draw benefit from the elements that bring them together, to follow the example of the European Union³⁰³, and create the instruments for the recognition and enforcement of court judgements of the other beneficiary countries³⁰⁴.

In order to facilitate a fair trial as defined by the European Court of Human Rights³⁰⁵, the defending party should be sufficiently informed in advance that there is a case against him and claims raised by his adversary, allowing him to prepare his defence. From 1965, the Hague Conference on international private law prepared a convention³⁰⁶ that guarantees the notification abroad in civil and commercial matters. The European Union adopted the same concepts³⁰⁷ and allows the notification of court and out-of-court deeds in very practical – use of multi-lingual forms – and secure conditions – using multi-lingual forms. The time taken to be summoned or to submit appeals is considerably reduced, even if there is still progress to be made³⁰⁸.

³⁰³ Brussels I Regulation – Council Regulation (EC) n°44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Brussels II Regulation – Council Regulation (EC) n°2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

³⁰⁴ This can only take place in a calm political context, as is the case in the European Union.

³⁰⁵ <http://www.echr.coe.int/echr/>

³⁰⁶ Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters http://www.hcch.net/index_en.php?act=conventions.text&cid=17

³⁰⁷ Regulation (EC) No 1348/2000 came into force in 2001 and was repealed by Regulation (EC) No 1393/2007 of the European Parliament and of the Council.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R1393:EN:NOT>

³⁰⁸ Report written by MAINSTRAT at the time of the 10th meeting of the European Judiciary Network on civil and commercial matters in Brussels on 9 and 10 February 2012. Cross-border service of judicial documents by mail has been highly criticised.

11.1. Institution of the proceedings

Extension of summons deadline: When litigation involves a party who is not domiciled in the country of the court to which the case is referred, and because all the beneficiary countries have not signed the Hague Convention of 15 November 1965³⁰⁹, it is sometimes difficult for this foreign litigant to be informed in time. This is why the deadline to a summons is sometimes extended by law or by the judge³¹⁰.

We think it is right to provide for an extension to the usual deadline in which to summon a party resident abroad, but this can be regulated only by law. Leaving this up to the judge - as is the case in Israel - can only create unjustified disparities for situations that would otherwise be similar.

Means of summons: With the exception of the countries that have signed the Hague Convention³¹¹ and where it is applicable, the diplomatic channel is used to summon the person not domiciled in the country of the court. This approach is often long but it is also the only one possible where there is no bilateral convention or when the country is not party to the specific convention on the civil matters of the Hague Conference³¹².

11.2. Informing the party

Among the States included in this study, only Egypt, Israel and Morocco have signed and ratified the Convention of The Hague of 15 November 1965³¹³. The result of the whole group is therefore disappointing in terms of this convention, which is such a help to rule of law in the beneficiary countries. So it is via diplomatic channels³¹⁴ that the summons to the court of the country is made to the person resident abroad, an approach that we find in practice often takes much more time.

Signing The Hague Convention of 15 November 1965 would be an opportune completion of Riyadh Agreement for Judicial Cooperation³¹⁵ signed on 6 April 1983 to which countries in the region are parties.

³⁰⁹ See point 11.2.

³¹⁰ Algeria: Deadline extended to 3 months – Egypt: Deadline brought to 90 days; Lebanon: Extension of 30 days for those resident in Cyprus or in Arab countries, and 60 days for those resident in any other country. - Israel: In the absence of legislation the judge usually grants longer deadlines; Tunisia: 60 days in civil cases (art 70 of CPPC).

³¹¹ Israel. Morocco uses the diplomatic channels for summons in general, or the provisions resulting from bilateral conventions, such as the one concluded between Morocco and France, which authorises the direct court summons between countries. The expert could not travel to Egypt before drafting of this report.

³¹² See point 11.2.

³¹³ Status of signatory countries http://www.hcch.net/index_en.php?act=conventions.status&cid=17

³¹⁴ By way of example, Algeria, Jordan Art 13 of CPC.

³¹⁵ Riyadh Arab Agreement for Judicial Cooperation endorsed by the council of Arab Ministers of justice, 6 April 1983 – Art 6 with regards to judicial and non-judicial documents www.unhcr.org/refworld/docid/3ae6b38d8.html

Rec 25 Invite the countries that have not signed and ratified the Hague Convention of 15 November 1965 to do so.

Comment: When the party to a case is domiciled or resident abroad, information to this part becomes more complex, sometimes even random, and most often takes a long time. The use of a widely used international instrument that has already been put to the test, is required immediately so that means of transferring information can be simplified and made secure.

Translation: A document sent abroad may have to be translated into the language of the recipient's country³¹⁶ according to the terms of the bilateral agreement signed by the two parties³¹⁷. The cost of translation adds significantly to costs and may be a hindrance in gaining access to justice and also to the simplification process.

In order to simplify and streamline questions associated with translation, we suggest **using translation only when the person does not understand the language of the country in which the court is located.**

11.3. Proceedings

Assistance provided to the foreigner: In theory, the beneficiary countries provide the assistance of an interpreter to the foreigner who comes before their courts³¹⁸. In the absence of an interpreter, the rights of the party are not fully guaranteed. This is reaffirmed in particular by the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (45/158) of 18 December 1990 in its article 18 3) f, which recognises the right for these people “*To have the free assistance of an interpreter if they cannot understand or speak the language used in court*”. In the same way, reference can be made to article 2 g of the “Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa” published by the African Commission on Human and Peoples' Rights (<http://www.achpr.org/en/instruments/fair-trial/>).

With regard to the assistance of a lawyer, this is most often taken care of by legal aid³¹⁹.

³¹⁶ **No translation:** (Lebanon) / **Translation according to the terms of the convention** concluded with the receiving country (Israel) / **Translation if the person concerned does not understand the language of the country in which the court is located:** Only if the party concerned does not live in an Arab country, Art 722 CPP and 132 of the constitution (Algeria); Tunisia / **Translation in all cases** (Egypt, Jordan).

³¹⁷ Therefore in the agreement on mutual assistance in criminal matters between France and Jordan, Art 24, the document must be translated in the language of the person summoned.

³¹⁸ **Assistance of an interpreter:** Algeria, Jordan Art 227 of the criminal procedural code; Lebanon; Morocco Art 318 CPC, Tunisia; **No assistance of an interpreter:** Israel does not provide such an interpreter.

³¹⁹ Algeria, Egypt (for criminal cases), Israel, Jordan, Morocco, Tunisia. Lebanon does not provide this lawyer by way of legal aid.

11.4. Judicial decision issued in one country and to be enforced abroad

Formalities: When the judicial decision passed in one of the beneficiary countries is final and it must be enforced in a foreign country, enforcement is pursued on the one hand according to the laws of the country in which it must be enforced, and on the other bearing in mind any international or bilateral agreements in place and to which the States are parties. In many cases the *exequatur* issued by the courts of the destination countries will be necessary³²⁰.

The *exequatur* brings with it delays and adds a risk to enforcement. This is why in the interests of simplification, **it would be better if the beneficiary states eliminated the *exequatur*** and moved towards the mutual recognition of court decisions, as this exists in the European Community.

11.5. Judicial decision issued abroad (outside the EU) and to be enforced in a beneficiary country

Authorisation to enforce: When the final judicial decision has been passed in a country other than that of an EU country, the beneficiary countries apply a judicial protection that allows them to submit the foreign judicial decision to examination and several conditions prior to enforcement³²¹. Such a solution, justified by reasons of sovereignty, remains a **major hindrance to enforcement** and the application of judicial decisions beyond state borders.

Measures for simplification should be found, particularly in countries with a shared language or judicial culture. **These simplifying solutions could find practical inspiration in the principles and models of the European enforcement order**³²².

³²⁰ Algeria, Lebanon, Tunisia.

³²¹ So Israel submits the decision to six conditions according to the law for enforcing foreign decisions, within which we find an application in the five years of the judicial decision, non-violation of the sovereignty of the Hebrew State, as well as the reciprocity and final nature of the judgment. - Jordan has a legislation. The conditions in which the court of first instance can reject the application for enforcement are listed in Article 7 of the Code for the enforcement of foreign judgments of 1958, which also lays down conditions, in particular regarding the fact that the document instituting proceedings has reached the right person or that the judgment is final. Egypt requires respect of the internal public policy as well as representation of the parties during the proceedings. Lebanon requires authorisation to enforce a foreign decision Art 1013 of CPC. Morocco requires *exequatur* by the court of first instance of the domicile or residence of the defendant or, failing that, of the place where enforcement will take place Art 430-431-432 of CPC. Tunisia requires *exequatur* and applies the rule of reciprocity.

³²² Regulation (EC) No 805/2004 of 21 April 2004.

11.6. Judicial decision issued in an EU country and to be enforced in a beneficiary country

No derogation regime for the EU: The beneficiary countries apply no derogation regime to benefit judicial decisions passed in the countries of the European Union. The beneficiary countries can use two approaches. A first group of countries³²³ makes no distinction and the principle of prior authorisation for enforcement is applied as explained in *paragraph 11.5*.

Israel, for its part, adopts the second approach and took the initiative of signing bilateral agreements with certain member states of the European Union (Germany, Austria, Spain, the United Kingdom) that then govern the conditions of enforcement. Given that a global agreement with the European Union is impossible in a matter in which state sovereignty is very strong, the solution of bilateral agreements seems pertinent. However, it takes a long time to implement.

³²³ Algeria, Lebanon, Morocco, Tunisia.

Recommendations

The recommendations formulated in this report are listed below.

- Rec 01 Make all legislation and codification accessible via the Internet in the language, or languages, of the countries, and at least in one foreign language.....19
- Comment: The work of codification should be done by most of the beneficiary countries so as to make legislation more transparent. Putting laws on-line should ensure wider accessibility for litigants to this source of law, particularly if access is free of charge, which is preferable. Publication in a foreign language is required in view the internationalization of affairs and the consequences for litigation.....19
- Rec 02 Implement an evaluation process in the Ministry of justice to determine the effectiveness and quality of justice.....42
- Comment: Comparing with the performance of other judiciary systems turns out to be indispensable in that it helps to standardise the judiciary of a country. An evaluation or assessment system that is authoritative – that used by the CEPEJ – would be highly profitable for the beneficiary countries, and implementing such a system would help assess the effectiveness and quality of justice inspired by the work done by the CEPEJ. As this has been the case with the work done by the CEPEJ on this topic, it would be a powerful spur in improving the performance of justice.42
- Rec 03 Perform an impact assessment prior to any legislative or regulatory change.....47
- Comment: An impact assessment on legislation or a new regulation should make it possible to measure the positive or negative effect on the judicial and social environment in society. Such an assessment should intervene very much upstream of a vote or implementation of a law so that the legislator can be clear on the consequences of the legislation planned.47
- Rec 04 Endow or reinforce the courts with means of communication, an information system and the implementation of a network of judges, non-judge staff and officers of the court.50
- Comment: The information system is the Achilles heel of most judicial systems in the beneficiary countries. The justice sector suffers from being behind technologically in many countries, which contributes in part to the accumulation of delays in handling cases and also to the breakdown in sharing information among the various stakeholders.50
- Rec 05 Set up on-line payment of fines and legal costs.53
- Comment: Installing on-line payment ensures confidentiality for users and accelerates payment. Reduced handling compared to other forms of payment is an important factor in reducing the handling charge on each payment and also adds efficiency.....53
- Rec 06 Set up an appeal filter.55
- Comment: The right to appeal is often manipulated by quibbling litigants to draw out the case, or to hold back the outcome of proceedings by “using” the adversary. Always recognising the right of all litigants to appeal, implementing an appeal

filtering policy can be used to combat this annoying practice. An appeal for purely delaying tactics should be isolated by a filtering mechanism, helping to relieve the courts dealing with appeals.	55
Rec 07 Make paper and/or electronic forms available for initiating proceedings.	58
Comment: Lodging the application is one of the crucial steps in the process in which simplification will make for greater efficiency. Standardising applications by using forms, either on paper or electronically, is an effective means of optimising this stage of the procedure, by better identifying the parties and their applications, and facilitating in one step the work of the judges and non-judge staff. Implementing this should be accompanied in the courts by support provided to litigants and their representatives in implementing this standardisation.....	58
Rec 08 Encourage payments via banking circuits in paying for lodging the application with the court.	61
Comment: The current prevalence of payment in cash is time and energy consuming because of the different checks this form of payment requires. Handling bank notes means a variety of risks for staff responsible for this. To ensure better traceability of payments as well as faster handling, while at the same time reducing the risks associated with the handling of cash, the beneficiary countries should encourage payment exclusively via banking circuits – bank transfers. In the medium term cash payments to pay legal charges should disappear.	61
Rec 09 Move towards the objective of immediately delivering judicial decisions, reinforcing the capacities of officers of the court and outsourcing when certain services are needed.	63
Comment: There is often an abnormally long delay in receiving the judicial decision after the court has passed it. To shorten these delays, and therefore simplify the delivery of the decision to parties, the classical solution would be to reinforce the capacity of the clerks of court. However, certain work, such as typing out the decision, could be outsourced, which would help to respond to ‘peaks’ of work or a lack of internal resources in courts. The cost of this outsourcing would be included in the legal costs.	63
Rec 10 Install a simple, exclusive procedure for settling small civil and commercial claims with a capped value.	66
Comment: Small civil and commercial claims below a fixed amount in value to be established by the beneficiary countries, but which it would be preferable to harmonise, should be dealt with in the framework of a simple, standardised, rapid procedure, exclusive from all other procedures, and where representation by a lawyer will be optional. In this way, simplifying and standardising the way in which this type of litigation is dealt with, will help unclog the courts of common law and accelerate judicial decisions.	66
Rec 11 Accompany all new procedures or adaptations of existing procedures with communication to litigants and professionals in the sector, and where needed, provide examples and forms as well as assistance adapted by all appropriate means.	66
Comment : If information on procedural reforms is recognised to be lacking for litigants and the stakeholders in the judiciary, then such changes will not always be understood. It is a good idea for any reform in procedure to be preceded by measures to accompany the changes before they come into force. Moreover	

information and awareness campaigns for litigants and professionals should be an opportunity to promote appropriate examples and forms, as well as information adapted for all professionals directly involved in the sector.....	66
Rec 12 Institute appeal filtering against judicial decisions on small claims.....	68
Comment: Small claims are the prototype of cases in which an appeal should be filtered beforehand because of the small value of this type of case, the need for rapid justice and the need to unclog the courts overloaded with appeals.	68
Rec 13 Set up an order for payment procedure in countries that do not have one for handling uncontested small pecuniary claims.....	73
Comment: Unpaid and uncontested pecuniary claims should be handled using one of the two orders for payment models existing in Europe. Claimants – particularly of repetitive or consumer claims – should be able to use a very standardised – even mechanical – order for payment procedure that is simple, with a guaranteed payment deadline and low-cost, remembering legal representation is optional.	73
Rec 14 Encourage the principle of provisional enforcement of the law attached to the judicial decision passed by the courts dealing with labour disputes.....	78
Comment: Bearing in mind the maintenance nature of the claim of the employee and the fact that he is most often at the origin of the case, it seems right to confer provisional enforceability by operation of the law to the judicial decision. However, the judge should have leeway and be able to decide otherwise. Thanks to such a simplifying measure, time delaying appeals should be considerably reduced and claimants – most often the employees – should recover the amount of the sentence more quickly.....	78
Rec 15 Implement and/or develop forms for lodging the claim with the court in family dispute and personal status cases, as well as measures for assistance in filling out the form and/or drafting the claim.	80
Comment: Family and personal status disputes have a large emotional component that should not hide the need for standardisation, particularly in first bringing the case to the court. To this end, introducing forms would help quickly and simply to establish a framework for claims (divorce, child custody, maintenance allowance, etc.) in this way facilitating the work of the judge. Assistance with filling in forms and/or wording the claim could also be proposed by the courts and by lawyers within the framework of free legal consultations.....	81
Rec 16 Limit the number and time of written pleadings and exchanges between the parties and/or their representative.....	83
Comment: The multiplication of conclusions and exchanges with the other party is sometimes used as a delaying tactic. Even without this tactic, it would be preferable to create a better framework for exchanges between the parties and their representatives. That should be done in number, but also in time, so that the parties and their representatives do not use the passage of time to hinder the future judicial decision.....	83
Rec 17 Confer automatic provisional enforcement to the judicial decisions on the vital needs of one of the parties or the children	84
Comment: Following a divorce finances are often unstable, and the judicial decision that grants maintenance to one of the spouses and to the children of the	

couple should benefit from an automatic provisional enforcement. In fact, it is essential that the maintenance needs of one of these parties and/or the children should be ensured immediately. Furthermore, exercising the right to appeal should not paralyse the payment of the maintenance allowance.	84
Rec 18 Invite the beneficiary countries to join the international community by signing and ratifying the Hague conventions on child protection and relations between spouses.	86
Comment: The increase in mixed marriages between nationals and non-nationals leads to a complex dispute. The specific instruments to provide protection, developed by the Hague Conference on Private International Law are used by many countries and are a reference. The situation in the beneficiary countries concerning child protection and relations between spouses is not satisfactory. The countries should become aware of the delay and to find suitable solutions, namely by joining the Hague Conference by signing and ratifying conventions on the protection of children and relations between spouses.	86
Rec 19 For small criminal offences in mass litigation, encourage the mechanism in which the finding has the value of a pecuniary sanction, unless challenged before the competent judge.	88
Comment: Small criminal offences account for a large number of cases, based on facts the veracity of which is established by a person on oath by means of a police report or by video recording, and for which the sanction is low on the scale of sentences (fines). To simplify dealing with these repetitive cases, the report on the offence and the sanction itself should be associated in the most automatic way possible. The violation becomes sanction. The protection of the rights of the litigant is guaranteed in opening an eventual report quickly, before a judge, as soon as he becomes aware of the offence and the associated sanction.	88
Rec 20 Install the means for video-conferencing in all courts, giving priority to the criminal courts and places of detention.	89
Comment: Delays in court proceedings are often due to difficulties the court has in hearing litigants and/or witnesses. Distances separating some of them make travel costly. Transferring individuals in detention involves the risk of escape and mobilises considerable and costly resources. Technical solutions can overcome these obstacles in allowing the court to address litigants and witnesses remotely using both image and sound, but also written forms.	89
Rec 21 Encourage immediate payment of the criminal conviction, if need be by reducing the amount owed on immediate payment.	91
Comment: Criminal convictions suffer payment delays because recovery often comes late – the convicted party having become insolvent or having disappeared. To correct this situation and improve the recovery rate, immediate payment should be encouraged at the time the judicial decision is passed. For the convicted party to show an interest in paying immediately there must be an incentive that could be a partial discount on the debt against direct payment. Such an incentive could be a reduction of 10 to 20% of the sum of the cash conviction.	91
Rec 22 Establish and impose initial and on-going mandatory training for ADR professionals.	99

Comment: Professionals providing ADRs do not benefit from any initial training at a satisfactory level and they get no on-going training. In a judicial environment marked by instability due to ever increasing texts that are often amended, lack of training hinders the promotion of ADR among litigants. For ADR to present a credible alternative to the court, and to contribute in simplifying the process, professionals responsible for implementing ADR must benefit from a high level of initial training and regular and mandatory on-going training.99

Rec 23 Permit on certain conditions the provisional enforcement of the judicial decision.113

Comment: Provisional enforcement of the judicial decision is an instrument of judicial policy that serves in combatting insolvency on the one hand, and abusive and dilatory appeals on the other hand. The principle of provisional enforcement should be defined by law and applied by the judge, who may grant it or not if he thinks, for example, there are risks the debtor will become insolvent or disappear.113

Rec 24 Set up a civil and commercial enforcement record.114

Comment: When there is no such record, a debtor can be the object of several procedures for civil and commercial enforcement on account of several claimants. The multiplication of these measures gives rise to costs that increase the amount owed by the debtor without doing anything to serve the interests of his creditor. A record of enforcements would ensure more streamlined pursuit, better recovery of the debtor’s payment and a fairer balance between claimants. Such a record could also have a preventative effect in being able to control the debtor’s solvency, particularly in granting bank loans.115

Rec 25 Invite the countries that have not signed and ratified the Hague Convention of 15 November 1965 to do so.119

Comment: When the party to a case is domiciled or resident abroad, information to this part becomes more complex, sometimes even random, and most often takes a long time. The use of a widely used international instrument that has already been put to the test, is required immediately so that means of transferring information can be simplified and made secure.119

Annexes

Documentation consulted

The expert consulted a considerable amount of documentation – detailed below – closely linked to the study.

Document	Source	Lien internet
EUROMED JUSTICE II Project « <i>Study on Access to Justice and Legal aid in the Mediterranean partner countries</i> »	EUROMED JUSTICE II	http://www.euromed-justiceii.eu/en/home/
EUROMED JUSTICE III Project –EuroMed Justice III Opening Conference on 29 February 2012 Opening Conference presentation: Activities Calendar Opening Conference presentation: Component I: Access to Justice and Legal Aid Opening Conference presentation: Component II: Resolution of Cross-Border Family Conflicts Opening Conference presentation: Component III: Criminal and Penitentiary Law Opening Conference presentation: General Presentation of the Project Opening Conference presentation: Organisation and Methodology	EUROMED JUSTICE III	http://www.euromed-justice.eu/fr/node/20
European Judicial systems Edition 2012 (data 2010) : Efficiency and quality of justice	Council of Europe - CEPEJ	http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp
Checklist for time management (Checklist of indicators for the analysis of lengths of proceedings in the justice system) adopted by the CEPEJ at its 6 th plenary meeting (7–9 December 2005)	Council of Europe - CEPEJ	https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ%282005%2912&Sector=secDGH&Language=lanEnglish&Ver=rev&BackColorIntranet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6
Recommendation n° R (87) 18 of the Committee of Ministers to Member states concerning the simplification of criminal justice (Adopted by the Committee of Ministers on 17 September 1987 at the 410th meeting of the Ministers' Deputies)	Council of Europe	https://wcd.coe.int/ViewDoc.jsp?Ref=Rec%2887%2918&Sector=secCM&Language=lanEnglish&Ver=original&BackColorIntranet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6
Recommendation n° R (84) 5 of the Committee of Ministers to Member states on the principles of civil procedures designed to improve the functioning of justice' (Adopted by the Committee of Ministers on 28 February 1984 at the 367th meeting of the Ministers' Deputies)	Council of Europe	https://wcd.coe.int/ViewDoc.jsp?Ref=Rec%2884%2905&Sector=secCM&Language=lanEnglish&Ver=original&BackColorIntranet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6
Recommendation n° R (95) 5 of the Committee of Ministers to Member states concerning the introduction and improvement of appeal systems and procedures in civil and commercial cases (Adopted by the Committee of Ministers on 7 February 1995 at the 528th meeting of the Ministers' Deputies)	Council of Europe	https://wcd.coe.int/ViewDoc.jsp?Ref=Rec%2895%2905&Sector=secCM&Language=lanEnglish&Ver=original&BackColorIntranet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6

Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure	EUR-LEX	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1896:EN:NOT
Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure	EUR-LEX	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R0861:EN:NOT
Commission Recommendation of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes C (2001) 1016	EUR-LEX	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001IH0310:EN:NOT
Green Paper on alternative dispute resolution in civil and commercial law COM (2002) 196 final	EUROPA	http://europa.eu/legislation_summaries/other/l33189_en.htm
European Judicial Network in civil and commercial matters	European Judicial Network	http://ec.europa.eu/civiljustice/glossary/glossary_en.htm
Guidelines for a better implementation of the existing recommendation concerning family mediation and mediation in civil matters – CEPEJ(2007)14	Council of Europe - CEPEJ	https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2007)14&Language=lanEnglish&Ver=original&Site=DGHL&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679
Universal Declaration of Human Rights – UN	UN	http://www.un.org/en/documents/udhr/
Convention on the Rights of Persons with Disabilities (13/12/2006)	UN	http://www2.ohchr.org/english/law/disabilities-convention.htm
Guidelines in Justice in matters involving child victims and witnesses of crime 2005/20 6 22/07/2005	UN	
UN Indicators of the Rule of Law – 1 st Ed	UN	http://www.un.org/en/ruleoflaw/
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted by General Assembly resolution 45/158 of 18 December 1990	UN	http://www2.ohchr.org/english/bodies/cmw/cmw.htm
International Covenant on Civil and Political Rights (16 December 1966)	UNHCR	http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx
UNCITRAL Model Law on International Commercial Conciliation 2002	UNCITRAL	http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2002Model_conciliation.html
Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance	HCCCH	http://www.hcch.net/index_en.php?act=conventions.text&cid=131
Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (adopted on 24 October 2011)	ACHPR	http://www.achpr.org/en/instruments/fair-trial/
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted on 11 July 2003)	ACHPR	http://www.achpr.org/en/instruments/women-protocol/-8

Council of Europe – CEPEJ

Recommendations

- ▶ [Recommendation \(2005\) 12](#) containing an application form for legal aid abroad for use under the European Agreement on the transmission of applications for legal aid (CETS No. 092) and its Additional Protocol (CETS No. 179)
- ▶ [Recommendation \(81\) 7](#) on measures facilitating access to justice
- ▶ [Recommendation \(84\) 5](#) on the principle of civil procedure designed to improve the functioning of justice
- ▶ [Recommendation \(86\) 12](#) concerning measures to prevent and reduce the excessive workload in the courts
- ▶ [Recommendation \(87\) 18](#) concerning the simplification of criminal justice
- ▶ [Recommendation \(93\) 1](#) on effective access to the law and to justice for the very poor
- ▶ [Recommendation \(95\) 5](#) concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases
- ▶ [Recommendation \(95\) 12](#) on the management of criminal justice
- ▶ [Recommendation \(98\) 1](#) on family mediation
- ▶ [Recommendation \(99\) 19](#) concerning mediation in penal matters
- ▶ [Recommendation \(2000\) 19](#) on the role of public prosecution in the criminal justice system
- ▶ [Recommendation \(2000\) 21](#) on the freedom of exercise of the profession of lawyer
- ▶ [Recommendation \(2001\) 2](#) concerning the design and re-design of court systems and legal information systems in a cost-effective manner
- ▶ [Recommendation \(2001\) 3](#) on the delivery of court and other legal services to the citizen through the use of new technologies
- ▶ [Recommendation \(2001\) 9](#) on alternatives to litigation between administrative authorities and private parties
- ▶ [Recommendation \(2002\) 10](#) on mediation in civil matters
- ▶ [Recommendation \(2003\) 14](#) on the interoperability of information systems in the justice sector
- ▶ [Recommendation \(2003\) 15](#) on archiving of electronic documents in the legal sector
- ▶ [Recommendation \(2003\) 16](#) on the execution of administrative and judicial decisions in the field of administrative law
- ▶ [Recommendation \(2003\) 17](#) on enforcement
- ▶ [Recommendation \(2005\) 12](#) containing an application form for legal aid abroad for use under the European Agreement on the transmission of applications for legal aid (CETS No. 092) and its Additional Protocol (CETS No. 179)
- ▶ [Recommendation \(2010\)12](#) on judges: independence, efficiency and responsibilities

Websites

Institutional Websites

Council of Europe <http://www.coe.int/web/coe-portal>
European Commission for the efficiency of justice - CEPEJ

http://www.coe.int/t/dghl/cooperation/cepej/default_en.asp
EUR-LEX <http://eur-lex.europa.eu/en/index.htm>
EUROPA
http://europa.eu/legislation_summaries/justice_freedom_security/index_en.htm

Project Websites

EuroMed Justice II <http://www.euromed-justiceii.eu/en/home/>
EuroMed Justice III <http://www.euromed-justice.eu/en/home>

Web Sites or Web pages – Partner countries

Algeria		
	Ministry of Justice	www.mjustice.dz
Egypt		
	Government	www.cc.gov.eg
	Ministry of Justice (only in Arabic)	www.moj.gov.eg
	Statistics	www.capmas.gov.eg
Israel		
	Supreme Court– Judicial Authority	www.court.gov.il
	Lawyers	www.israelbar.org.il
	Central Enforcement Authority	www.eca.gov.il
	Legal Database Population register Land register Liquidations Pledge register Inheritance	www.nevo.co.il/ www.piba.gov.il http://ecom.gov.il/Counter/alternative/tabuNesach/Homepage.aspx?counter=10&catalog=1&category=tabuNesach&language=he - gratuit http://apot.justice.gov.il/poshtim/General/Main/Main.aspx https://nesach.justice.gov.il/mashkonot/forms/fMashIndex1.aspx http://147.237.72.63/RashamYerusha/General/wfrmMain.aspx
	Trademarks and patents	Base de données des marques déposées : http://www.trademarks.justice.gov.il/TradeMarksWebSiteUI/TrademarksSearch/TrademarksSearch.aspx Base de données des brevets: http://www.ilpatsearch.justice.gov.il/UI/MainPage.aspx
	Arbitration	www.borerut.com/
	Mediation Centres	(en Hébreu): www.sulcha.co.il/Content/MedCenters.asp
	Mediations Training Centres	(en Hébreu): www.sulcha.co.il/Content/StudyCenters.asp
	Mediators	www.megashrey-israel.org.il/
	Training center for arbitrators and mediators	University: http://www1.biu.ac.il/indexE.php?id=8275&pt=1&pid=6382&level=3&cPath=6382,8275 Mediation training center: http://www.sulcha.co.il/Content/CoursesProfileEn.asp?id=11
Jordan		
	Government Ministry of Justice High Judicial Council	www.dos.gov.jo www.gbd.gov.jo www.moj.gov.jo www.jc.jo

	Lawyers	www.jba.org.jo
	Legal	www.lob.gov.jo
	Notification service (private)	www.aramex.com
Lebanon		
	Statistics	www.cas.gov.lb www.unrwa.org
	Lawyers	www.bba.org.lb www.nlbar.org.lb
	Arbitrators	www.ccib.org.lb
	Translators	www.sworntranslator.org
	Experts	www.synexperts.com
	Certified Public Accountants	www.lacpa.org.lb
	Legal	www.legallaw.ul.edu.lb
	Blog Tcharre Court	http://bcharrecourt.blogspot.com/
Libya		
Morocco		
	Ministry of Justice	www.justice.gov.ma
	Ministry of Justice (texts)	www.justice.gov.ma/FR/Legislation/TextesJuridiques.aspx
	Legal	http://adala.justice.gov.ma/FR/Home.aspx
Palestine		
	Justice	www.courts.gov.ps
Syria		
Tunisia		
	Government Ministry of Justice Ministry of Defense (military justice)	www.iort.gov.tn www.e-justice.tn http://www.defense.tn/fr/index.php?option=com_content&task=view&id=64
	Statistics	www.ins.tn
	Arbitrators	www.ccat.org.tn
	Legal	www.iort.gov.tn www.jurisitetunisie.com www.cnudst.rnrt.tn

Other Websites

European Network of Councils for the Judiciary (ENCJ)

<http://www.encj.eu/>

World Bank

<http://www.worldbank.org/>

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