



European Network of Councils  
for the Judiciary (ENCJ)

Reseau européen des Conseils  
de la Justice (RECJ)

# Independence, Accountability and Quality of the Judiciary

Validation of methodology, exploring quality of justice  
and promoting judicial change

## ENCJ Report 2017-2018



Co-funded by the Justice Programme of the European Union

## Contents

<b>Contents .....</b>	<b>2</b>
<b>Executive Summary and Recommendations .....</b>	<b>4</b>
<b>Independence and Accountability of the Judiciary.....</b>	<b>4</b>
<b>Quality of Justice .....</b>	<b>5</b>
<b>Introduction .....</b>	<b>7</b>
<b>Part 1. Independence and Accountability .....</b>	<b>10</b>
1. Introduction .....	10
2. Methodology and content indicators Independence & Accountability .....	10
3. Measurement of the indicators 2016/2017 .....	15
4. Use of the indicators 2016/2017 .....	17
5. Validation of methodology and indicators .....	20
6. Survey of lay judges about their independence .....	23
7. Proposals for next steps on independence and accountability .....	45
<b>Part 2. Quality of justice .....</b>	<b>46</b>
1. Introduction .....	46
2. Vision on quality .....	47
3. Areas of quality to be covered by the indicators .....	52
4. Substantive exploration of the selected areas of quality.....	54
5. Implementation of the Quality indicators .....	65
6. Next steps on quality of justice .....	72
<b>Annex 1 Survey among lay judges .....</b>	<b>74</b>
<b>Annex 2 Questionnaire Quality of justice 2017-2018 .....</b>	<b>80</b>
<b>Annex 3 Scoring Rules Questionnaire Quality 2017- 2018 .....</b>	<b>107</b>

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## Executive Summary and Recommendations

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In recent years the ENCJ has developed a framework and vision of independence and accountability of the judiciary and a set of indicators to assess the state of independence and accountability of EU judicial systems. In 2014 it was agreed the scope of the project would be extended to quality of justice. Independence is a prerequisite for quality of justice and that is the ultimate goal. To expand on the work previously undertaken, the project of 2017/2018 consisted of several activities in both the area of Independence and Accountability on the one hand and Quality of Justice on the other hand. This report presents the outcomes of the project and recommendations to the ENCJ.

### Independence and Accountability of the Judiciary

#### Use of indicators 2016/2017

Although there is still room for improvement, the ENCJ methodology provides clear insights in what areas judicial systems are lagging and where they are at the forefront. This year, therefore the goal was set for the individual councils to use these insights to develop concrete action plans to improve the judicial systems on a national level. To discuss the issues per country, five dialogue group meetings were organised in which 4 Members/Observers participated each time. The most important topics of discussions were the relationship with the other state powers and with the general public, the appointment and promotion procedures and the influence of the media. Furthermore the indicators bring to light that most judiciaries lack insight in the perceptions about the independence of the courts by people that have first-hand experience with the courts.

#### Validation of Indicators 2016/2017

The indicators of Independence and Accountability have been in development since 2013. This year the indicators were considered to be ready to be shared with external audiences. To that end, in the spring of 2018 two meetings were held with external audiences to discuss and validate the methodology and content of the indicators. In March a workshop with European institutions was organised and in April a scientific conference. The main conclusion of both seminars is that the work of the ENCJ is interesting and meaningful. The project is about the institutional design of the judiciaries of Europe in their complicated interaction with the other powers of the state and with the judges and courts. There was broad support for indicators that can be acted upon, as part of an improvement cycle, while the indicators may also contribute to broader purposes such as the scientific discussion about formal and actual independence, the interaction of the two, and the impact on society and economy. Apart from practical suggestions to improve the indicators, it was suggested to externally validate the answers to the questionnaire, as self-evaluation is vulnerable. Also, the extension to perceptions of court users was seen as necessary. At a conceptual level it was argued that the ENCJ should think about extending the system to measures of 'real' independence beyond perceptions of independence. The desirability of cooperation of the ENCJ with the scientific field and European institutions was widely suggested.

## Survey among lay judges

Lay judges play an important role in many of the European justice systems. In addition to the survey among professional judges that has taken place in 2014/2015 and in 2016/2017, this year, a survey among lay judges about their independence was conducted. In total 20,605 lay judges from 10 judiciaries participated. The survey highlights the various ways lay judges are involved in the judiciary. The main conclusion about independence is that lay judges in Europe generally do not experience inappropriate pressure to decide cases in a certain way. It should be noted that they are much less outspoken in their views and more uncertain about answers than professional judges. Although lay judges are much less critical, the overall rankings of their independence of lay judges and of professional judges is very similar, and largely coincides with the perceptions of the professional judges.

## Proposals for next steps Independence and Accountability in 2018/2019

1. Implementation by Members and Observers of the national plans to improve independence and accountability.
2. Repetition of the survey of professional judges. Some predominantly technical improvements need to be considered in preparation.
3. Review of the indicators I&A to reflect practical suggestions of the validation seminars and development of a system of external validation per country (external experts per country), followed by implementation of the adjusted indicator system by all Members and Observers.
4. Continued cooperation with the CCBE to conduct a survey among the lawyers of Europe about the independence of the judiciary, aiming at a higher participation of countries and lawyers within countries.
5. Develop a uniform format for a court user survey that focuses on the experiences of the parties in court cases, and a method how to conduct the survey.
6. Develop an opinion about the incorporation of hard data about outcomes in the system to measure real (de facto) independence, and to incorporate in the system.

## Quality of Justice

### Vision

To guide ENCJ's work on quality, a vision on quality was developed. It addresses on the one hand the responsibilities of Councils and other governing bodies for quality of justice and on the other hand it discusses quality in relation to independence and accountability and in relation to timeliness and efficiency. Finally, it addresses the assessment of quality.

As to the responsibilities of Councils, even if these responsibilities in the area of quality have not been made explicit in the law, Councils affect the quality of justice in many ways and therefore need to define and maintain quality standards, together with and respecting the

professional role of the judges and in consultation with the users of the courts. Such standards should be part of a quality framework. It is recommended that Councils should, if not done so, develop a quality framework that at least includes:

1. Standards for courts defining quality of justice
2. Indicators to measure performance on these standards
3. Good practice guides for the courts how to implement the standards
4. Periodic reporting about the quality of justice
5. Creating conditions to avoid any interference with judges and the judiciary's independence.

## Indicators

The set of quality indicators was applied by 23 Members and Observers. The Court of Justice of the European Union (CJEU) also filled in the questionnaire. The questionnaire proved more difficult to complete than the questionnaire on Independence and Accountability. As noted by the participants and the expert group, some indicators and their scoring need further discussion. As a result it was considered too early to publish country profiles on quality of justice at this stage. The average outcomes of the indicators have, however, been included in the report.

In as far as Members and Councils are able to ascertain the validity of the preliminary outcomes of the indicators, these can already be used to design practical improvements regarding quality of justice. In doing so, the councils are recommended to take into account the topics that on the basis of the preliminary findings are particularly effective and/or under-utilized:

- Timeliness: time standards for judges, possibility for summary procedures in appropriate cases and specialisation.
- Due process: proper legal representation and effectiveness of appeal procedures
- Quality of decisions: Reasoning and clarity of judicial decisions
- Public access to the law: access to case law and court communications

## Proposals for next steps Quality of Justice in 2018/2019

1. All councils should adopt a framework that defines their involvement in guaranteeing and promoting quality of justice and their approach to it, and to improve quality of justice by examining their country profiles, taking the general recommendations into account.
2. Improvement of the quality indicators by a thorough analysis and reflection on the outcomes so far and the issues encountered.
3. Incorporation of quality in the development of the format for a court user survey.
4. Analysis of existing, external data about quality of justice for their use in the indicator system.

# Introduction<sup>1</sup>

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Access to fair, independent and impartial courts as the key institutions of an independent judiciary is a fundamental right, as also laid down in article 47 of the EU Charter of Fundamental Rights. ENCJ aims to protect this right by providing support for the independence, accountability and quality of judiciaries in Europe and promoting understanding of and respect for judicial independence. To that end in 2013 ENCJ started its first Independence and Accountability project, which has been a key step in achieving its aim.

Despite the fact that much had been written about judicial independence, little had been done to make a systematic assessment of the level of independence achieved in practice by national judicial systems in European Union Member States. To assess the need for judicial reform and to design reforms insight is needed in the actual performance of judicial systems, in particular regarding independence. This insight is also necessary to inform the daily administration and management of the courts. It facilitates the frequent dialogues about these matters within the judiciary and between the judiciary and the other branches of government. Therefore, the ENCJ set out to make judicial independence in combination with accountability - which in the view of the ENCJ is the essential counterpart of independence - measurable.

When the project started in 2013, the aim was to develop performance indicators to be able to measure how independent and accountable the judicial systems of the EU really are. The performance indicators were afterwards applied bi-annually within the ENCJ membership by means of a questionnaire. In the alternate years, the indicators were reviewed and revised. Furthermore, a separate survey was held among judges in 2014/2015 about their independence to fill in an essential gap in the indicators. The survey was reviewed and revised the year after and was applied again in the project year 2016/2017. Over time, the indicators have developed into a trusted mechanism to assess the judicial systems of Europe. However, there is still room for improvement.

Quality of justice is what ultimately counts. As independence and accountability are essential contributors to quality, it was also necessary to start developing a set of indicators for quality of justice. The development of these indicators started in 2015/2016. In 2016/2017 the indicators were further developed and piloted by three judiciaries.

Both the outcomes of last year's questionnaire on independence and accountability and the piloted quality indicators showed that there was more work to be done. To that end, the project 2017/2018 continued by addressing four main topics:

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<sup>1</sup> This report was composed, drafted and edited, with the input of the project team, by the Netherlands Council for the Judiciary; Mr. Frans van Dijk and Ms. Sarah Koolen. Technical support for the lay judges survey was provided by the High Council of Justice of Belgium; Mr. Kevin Verhoeyen and by the Netherlands Council for the Judiciary Mr. Bart Diephuis,. The ENCJ Office, Ms. Monique van der Goes provided supported checking the quality indicators.

- (1) The outcomes of the applied independence & accountability indicators 2016/2017 have been discussed in dialogue group meetings. During the meetings the main problem areas per judiciary were addressed and ideas for improvement have been shared. Taking into account the discussions, the participating Members and Observers will seek to develop action plans for improvement on a national level.
- (2) As the Independence indicators after some years of development had reached a certain level of maturity this year it was decided to share the work with external audiences. To that end two external validation meetings were organised, one with relevant European Institutions and one with the scientific community.
- (3) In addition to the survey among judges, this year a survey among lay judges was held. This was deemed desirable due to the fact that lay judges play a substantial role in many of the European judicial systems.
- (4) The quality indicators have been developed conceptually, resulting in a vision on quality and improved indicators. The indicators were measured by means of a questionnaire to Councils and other governing bodies.

The members of the project team comprised representatives of 24 entities, 18 Member Councils of the Judiciary and 6 Observers. The project team was co-chaired by Alain Lacabarats, and Guillaume Tusseau members of the French Superior Council of the Magistracy and by Kees Sterk, Vice-chair of the Dutch Council for the Judiciary and Frans van Dijk, Director of the Dutch Council for the Judiciary. The Secretaries of the project team were Sarah Koolen from the Netherlands Council for the Judiciary and Lisa Gamgani from the French Superior Council for the Magistracy.

An expert group was formed of some members of the project team to evaluate the filled-in questionnaires for the quality indicators and to check the consistency and reliability of the answers. The members of the expert group were: Colin Tyre (Judicial Council for Scotland), Ana Coelho (CSM Portugal), Dace Šulmane (Council for the Judiciary Latvia), with Monique van der Goes (ENCJ Office) acting as the Secretary.

The coordinators of the survey among lay judges were Wiggo Storhaug Larssen and Iwar Arnstad of the Norwegian Courts Administration (Domstoladministrasjonen).

The project group met on the following occasions:

5-6 October 2017 in Vilnius, Lithuania

17 November 2017 in Paris, France (coordinators meeting)

15 December 2017 in Brussels, Belgium

19-20 April 2018 in Rome, Italy

The report is organised as follows. Part 1 is about independence and accountability. It first recapitulates the methodology and content of the indicators. Also, the outcomes of the application of the indicators in 2016/2017 are summarised for the aggregate level of Europe. It then reports on the activities that have been undertaken to make plans to remedy the weaknesses that the outcomes of the indicators have made tangible. The report then discusses the findings of the validation meetings that have taken place and conclusions that



can be drawn for the further development of the indicators. Finally, the outcomes of the survey among lay judges about their independence are presented.

Part 2 of the report extends the indicators to quality. First, it describes the quality vision, then recapitulates the methodology and afterwards presents the set of indicators, as it has evolved from the first edition. The outcomes are presented at the European level, as the results per judiciary are not yet reliable enough. Finally, the further development of the quality indicators is discussed in view of the average outcomes of the application of the indicators and in view of the validation that has taken place about independence and accountability. Both parts of the report conclude with proposals.

# Part 1. Independence and Accountability

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## 1. Introduction

The previous ENCJ reports on Independence and Accountability of the judiciary set out the conceptual framework of independence and accountability that underlies the indicators and the indicators themselves. The essential aspects are recapitulated here, including the most recent measurement of the indicators to make this report understandable on its own. We then turn to the use of the indicators, the validation of the indicators and the survey among lay judges. Proposals for the continuation of the project conclude this part of the report.

## 2. Methodology and content indicators Independence & Accountability

Independence and accountability are interrelated and multi-dimensional concepts. To come to grips with this complexity a general framework is required. This framework can be summarised by five basic notions:

1. Independence and accountability go together: accountability is a prerequisite for independence. A judiciary that does not want to be accountable to society and has no eye for societal needs will not gain the trust of society and will endanger its independence in the short or long run. Accountability without independence reduces the judiciary to a government agency.
2. The existence of formal, legal safeguards of independence (objective independence) are not sufficient for a judge to be independent. Actual independence depends on his or her behaviour and shows in his or her decisions, and this is reflected in independence as perceived by society and its constituent groups as well as by the judges themselves (subjective independence). It should be noted that perceptions frequently differ between societal groups.
3. For the judiciary to be independent, the judiciary as a whole must be independent and the individual judge must be independent. A distinction needs to be made between the independence of the judiciary as a whole and the independence of the judge. While the independence of the judiciary as a whole is a necessary condition for the independence of the judge, it is not a sufficient condition. Individual independence can be affected by the external influence of state organisations and others, and by internal influences within the judiciary.
4. To be accountable, not only the formal requirements about accountability must be met, but also the population must perceive the judiciary to be accountable. Even if there are formal objective procedures in place to ensure judicial accountability, the subjective perception of citizens as to judicial accountability is of equal importance.

For example, judges and the judicial system may be seen as a ‘closed shop’, operating for their own benefit rather than for the benefit of society.

5. Accountability, like independence, relates to the judiciary as whole and to the individual judge. At the level of the judiciary as a whole, accountability means to be transparent about performance, while accountability of the individual judge relates in particular to the transparency of his judicial decisions.

As the framework distinguishes between objective and subjective independence and accountability, definitions are needed. Objective independence relates to the way in which judicial structures are in practice arranged, whilst subjective independence relates to the perception of the judiciary amongst different interest groups including citizens in general, court users and judges. Objective indicators are about the legal and other objectively observable aspects of the legal system that are essential for independence and accountability. As to the measurement of these objective aspects, the scoring or categorisation is done by the Councils or, in the absence of a Council, other governance bodies, using a standardised questionnaire. It is a self-evaluation, but of aspects that can be checked by anybody who is knowledgeable about the legal systems concerned.

Subjective indicators relate to the perceptions of independence and related topics among the population, the users of the courts and the judges themselves. With respect to independence and related subjects external surveys are available about perceptions in society. Also, some judiciaries have conducted satisfaction surveys among court users, but such data are not available for most countries. In this report it is proposed to develop a uniform format for court user surveys (see sections 5 and 7). As to the perceptions of judges, the ENCJ conducts bi-annually a survey among the judges of Europe about their independence, and has for the first time conducted a survey among lay judges (see section 6).

Subjective indicators about accountability are not yet available. In as far as the court users are concerned this can be addressed by the just mentioned format for a court user survey. The ENCJ intends to look at perceptions of accountability of other groups at a later stage.

Having defined appropriate indicators for objective and subjective judicial independence and objective accountability, the next step is to identify an appropriate methodology to score the results. This requires a normative assessment of what is good and bad practice. To simplify matters, a points system, using scoring rules, is employed, and the following underlying principles are applied:

1. With respect to all formal safeguards, the key issue concerns the ease with which such safeguards can be removed or altered. A safeguard embedded in a constitution offers more protection than one contained in normal legislation. Legislative safeguards are more effective than those contained in subordinate legislation, general jurisprudence or tradition.
2. Judicial self-government, balanced by accountability, is desirable. Where other state powers have the authority to make decisions about the judiciary, decisions based on objective criteria are to be preferred to discretionary decisions.

3. Responses based upon transparent rules are to be preferred to *ad hoc* reactions to particular situations.
4. Judicial decisions and procedures, including complaints processes should all preferably be formalised, public and transparent.
5. Transparency requires active dissemination of information, rather than simply making information theoretically available.

Most indicators consist of several aspects, captured by sub indicators. With each sub indicator, points can be earned, and a total score for an indicator is reached by adding up the scores per sub indicator.

It is unavoidable that in scoring the (sub)indicators by means of the questionnaire in some cases different interpretations are possible and that this creates the opportunity for countries, knowing the scoring rules, to sketch a picture as positive (or negative) as possible, should they desire to do so. This would go against the intentions behind the indicators: to establish strengths and weaknesses of a legal system and thereby to find possibilities for improvement. To guard against this (theoretical) possibility the expert group has critically evaluated the answers to the questionnaires as far as possible (see section 5).

As mentioned before, the set of indicators consists of objective and subjective indicators. The objective indicators are divided into indicators about the judiciary as a whole and about the individual judge.

Figure 1. types of indicators

	independence		accountability	
objective	Judiciary as a whole	Individual judge	Judiciary as a whole	Individual judge
subjective	General perceptions		Not available	

The current set of indicators is listed below.

#### INDICATORS OF THE OBJECTIVE INDEPENDENCE OF THE JUDICIARY AS A WHOLE

**1. Legal basis of independence, with the following sub-indicators:**

- Formal guarantees of the independence of the judiciary;
- Formal assurances that judges are bound only by the law;
- Formal methods for the determination of judges' salaries;
- Formal mechanisms for the adjustment of judges' salaries;
- Formal guarantees for involvement of judges in the development of legal and judicial reform.

**2. Organisational autonomy of the judiciary, with the following sub-indicators where there is a Council for the Judiciary or equivalent independent body:**

- Formal position of the Council for the Judiciary;
- Compliance with ENCJ guidelines;
- Responsibilities of the Council.

**Sub-indicator when there is no Council for the Judiciary or an equivalent body:**

- Influence of judges on decisions.

**3. Funding of the judiciary, with the following sub-indicators:**

- Budgetary arrangements;
- Funding system;
- Resolution of conflicts about budgets;
- Sufficiency of actual budgets.

**4. Management of the court system.**

- Management responsibility of the courts.

## INDICATORS OF THE OBJECTIVE INDEPENDENCE OF THE INDIVIDUAL JUDGE

**5. Human resource decisions about judges, with the following sub-indicators:**

- Selection, appointment and dismissal of judges and court presidents;
  - Selection, appointment and dismissal of Supreme Courts judges and the President of the Supreme Court;
- Compliance with ENCJ guidelines about the appointment of judges;
- Evaluation, promotion, disciplinary measures and training of judges;
- Compliance with ENCJ guidelines about the promotion of judges.

**6. Disciplinary measures, with the following sub-indicators:**

- Compliance with ENCJ standards about disciplinary measures against judges
- Competent body to make decisions about disciplinary measures against judges

**7. Non-transferability of judges, with the following sub-indicators:**

- Formal guarantee of non-transferability of judges;
- Arrangements for the transfer of judges without their consent.

**8. Internal independence, with the following sub-indicators:**

- Influence by higher ranked judges;
- Use and status of guidelines;
- Influence by the management of the courts.

## INDICATORS OF THE SUBJECTIVE INDEPENDENCE OF THE JUDICIARY AND THE INDIVIDUAL JUDGE

### 9. Independence as perceived by society;

- Flash Eurobarometer 435 'Perceived independence of the national justice systems in the EU among the general public and Flash Eurobarometer 436 'Perceived independence of the national justice systems in the EU among companies'.
- Global competitiveness report 2016-2017
- World Justice Rule of Law Index 2016

### 10. Trust in judiciary, relative to trust in other state powers by citizens in general;

- National surveys.

### 11. Judicial corruption as perceived by citizens in general;

- EU Anti-Corruption Report 2014
- 

### 12. Independence as perceived by courts users at all levels;

- National surveys.
- 

### 13. Independence as perceived by judges;

- ENCJ survey, question 13

## INDICATORS OF THE OBJECTIVE ACCOUNTABILITY OF THE JUDICIARY AS A WHOLE

### 1. Allocation of cases, with the following sub-indicators:

- Existence of a transparent mechanism for the allocation of cases;
- Content of the mechanism for the allocation of cases.

### 2. Complaints procedure, with the following sub-indicators:

- Availability of a complaints procedure;
- External participation in the complaints procedure;
- Scope of the complaints procedure;
- Appeal against a decision on a complaint;
- Number of complaints.

### 3. Periodic reporting by the judiciary, with the following sub-indicators:

- Availability of annual reports;
- Publishing of the annual report;
- Scope of the annual reports;
- Periodic and public benchmarking of the courts.

### 4. Relations with the press, with the following sub-indicators:

- Explanation of judicial decisions to the media;
- Availability of press guidelines;
- Broadcasting of court cases.

**5. External review, with the following sub-indicators:**

- Use of external review;
- Responsibility for external review.

**INDICATORS OF THE OBJECTIVE ACCOUNTABILITY OF THE INDIVIDUAL JUDGE**

**6. Code of judicial ethics, with the following sub-indicators:**

- Availability of a code of judicial ethics.
- Availability of training on judicial ethics;
- Responsible body to provide judges with guidance or advice on ethical issues

**7. Withdrawal and recusal, with the following sub-indicators:**

- Voluntary withdrawal;
- Breach of an obligation to withdraw;
- Request for recusal;
- Deciding authority;
- Appeal against a decision on a request for recusal.

**8. Admissibility of external functions and disclosure of external functions and financial interests, with the following sub-indicators:**

- Policy on admissibility of external functions;
- Authorisation for the exercise of accessory functions;
- Availability of a (public) register of external functions of judges;
- Availability of a (public) register of financial interests of judges.

**9. Understandable proceedings, with the following sub-indicators:**

- Duty of judges to make proceedings intelligible to the parties;
- Duty of judges to make proceedings intelligible to categories of court users such as children, youth, disabled people (physically/mentally), victims, those for whom the national language is not their mother tongue; self-represented litigants.
- Training of judges.

### 3. Measurement of the indicators 2016/2017

The objective indicators explicitly set a standard about what formal arrangements should look like. These specify what is good, and what is less so. For all indicators a high score is positive and a low score is negative. Ideally, this standard should be met for all (sub) indicators. The outcomes for each indicator are presented as percentage of a standardised maximum score that reflects the best arrangements.<sup>2</sup> Statistics such as average and standard deviation can be calculated for each sub indicator as well as indicator over all countries. It is not possible to do this across the indicators.

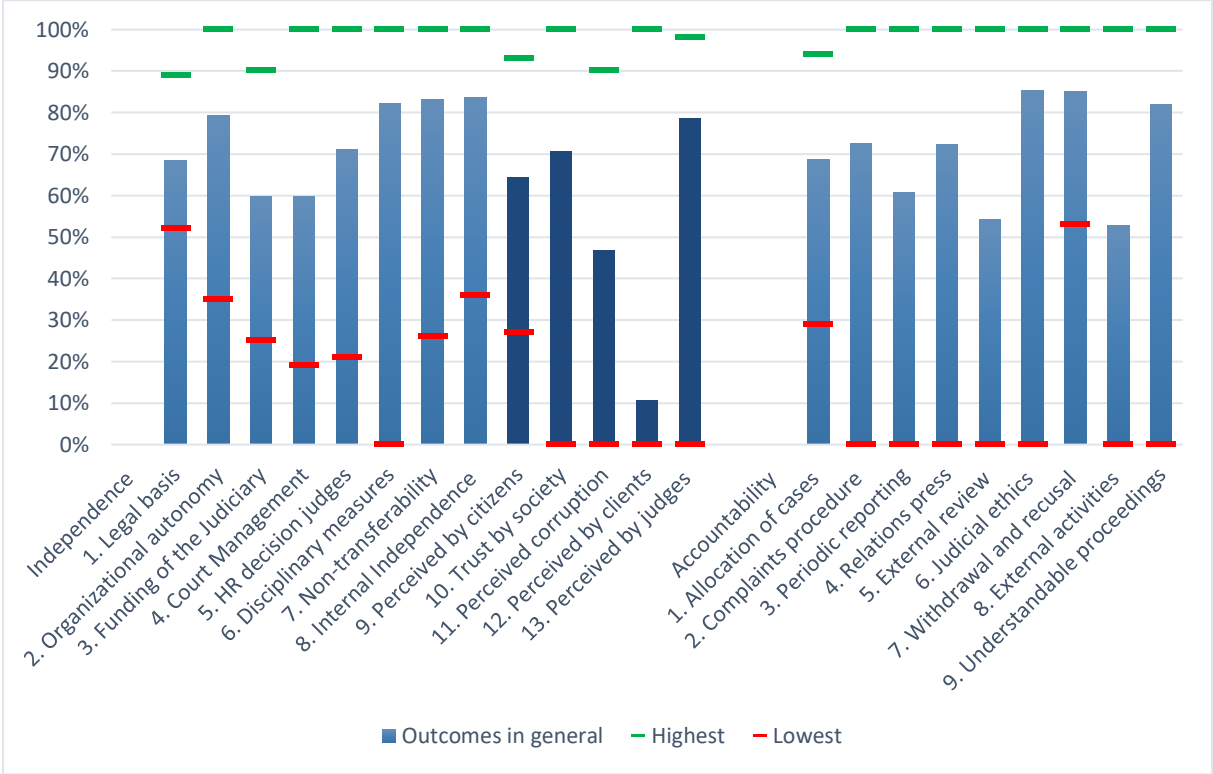
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<sup>2</sup> As interval scales are used (per sub indicator points can be earned on a scale with equal intervals: the distance between 1 and 2 is the same as between 2 and 3), taking percentages is allowed.

As to the availability of data, in 2016/2017 all indicators could be measured for nearly all countries, except for the independence of the judiciary as perceived by court users. Surveys among court users are still quite rare. As a result, most countries have a minimum score on this indicator.

The table below gives the average score per indicator over all participating Members and Observers of the ENCJ. The red dash gives the lowest score of any country and the green dash the highest score. Given the differences between the countries, the average scores give only a very rough indication of the outcomes.

Figure 2. Outcomes in general





## 4. Use of the indicators 2016/2017

Whilst there is always room for improvement (about which shortly), the results can be used now more fruitfully than before to think about the need for change and to set priorities. This is primarily a matter for the individual Councils. This year therefore the goal was set to elaborate on the outcomes and for the participating Members/Observers and to develop concrete long term and/or short term action plans to improve the judicial systems on a national level. This was facilitated by the organisation of several dialogue group meetings in the autumn of 2017 and the beginning of 2018.

The set of indicators and the survey among judges<sup>3</sup> bring substantial challenges to light. Issues for many judiciaries are: (1) lack of confidence of judges in appointment and promotion procedures, (2) relationship between the political system and the media on the one hand and the Judiciary on the other hand that is characterized by lack of respect and (3) lack of insight in the experiences of the court users. Apart from inspiring individual councils, this may lead to new ENCJ initiatives.

### Format dialogue group meetings

In total 20 ENCJ Members and Observers participated in the dialogue group meetings in which were discussed the principal issues and main areas of concern in each judicial system as identified by the indicators. The choice was made to hold meetings in groups of four Members/Observers of which each was to send the (vice) president, or a similar functionary with a high level of influence, and the ENCJ liaison of the Council for the Judiciary. Effectively, in total 8 participants sat at the table. The meetings were led by a moderator and recorded by a secretary. The small number of people at the table was to ensure a fruitful and thorough discussion. Prior to the dialogue meetings the participants were asked to study last year's results and to prepare a note for the group on the most serious issues in their justice systems. The outcomes of the questionnaires (scorecards), the survey among judges and the overall report presented at the GA 2017 served as the basis for the discussions.

The following dialogue group meetings took place:

Dialogue group 1:

4 December 2017, The Hague

Participants: Lithuania, Portugal, Poland, The Netherlands

Dialogue group 2:

12 January 2018, Paris

Participants: Italy, Greece, Belgium, France

Dialogue group 3

19 January 2018, Bratislava

Participants: Austria, Spain, Slovenia, Slovakia

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<sup>3</sup> For a comprehensive report about the survey see  
[https://www.encj.eu/images/stories/pdf/workinggroups/independence/encj\\_survey\\_2016\\_2017.pdf](https://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_survey_2016_2017.pdf)

Dialogue group 4:

29 January 2018, Bucharest

Participants: Bulgaria, England and Wales, Finland, Romania

Dialogue group 5:

23 February 2018, Riga

Participants: Hungary, Norway, Ireland, Latvia

The reports of the meetings were sent to the dialogue groups for amendments and were finalised afterwards. A variety of topics has been discussed of which the most important ones - in line with the outcomes of the indicators questionnaire discussed previously - included the relationship with the other state powers and the relationship with the general public (lack of trust), the influence of the media and the (changing of) appointment and promotion procedure of judges/the Council. Other topics of discussion were the recruitment process of judges, external review and the lack of insight in the subjective independence (for example national opinion surveys and court user satisfaction surveys), initiatives to set up Councils for the judiciary, the position of lay judges and judicial ethics. During the meetings the participants commented on the issues raised and suggested alternative views and/or ideas for solutions. The current task for the individual councils is to accordingly formulate plans of improvement of which several will be presented at the General Assembly in May 2018.

Because of the format of the dialogue group meetings, discussions were open and informal. It generated valuable insights in different justice systems in Europe for participants at the table. Overall the meetings contributed well to the ENCJ objectives to promote understanding of judicial independence and creating mutual trust.

A general procedural observation about the dialogues groups is that most of the time was spent on explaining and exploring the problems each Member or Observer is facing. As a result, little time was available for solutions. The reason for this might have been the need to thoroughly explain a problem within the context of the judiciary in question. Given this observation it might be an idea to increase the length of the dialogue group meetings. Instead of one day, an extension to one and a half or two days might be a solution. Another option would be to structure the meeting differently, so that more opportunity is created to discuss remedies. In addition to this, participants should strive, besides studying the outcomes of the indicators questionnaire and survey, to obtain more knowledge and context on the participants at the table beforehand.

### **Recommendations**

Taking into account the topics that have been discussed, and the ENCJ strategic objectives 2018-2021, including the aim of the network to provide support for independence, accountability and quality of the judiciaries in Europe and to promote understanding of and respect for judicial independence, it is advised in the coming years to develop new initiatives or methods, in addition to the existing tools such as the indicators and the survey among judges, for the improvement of the state of independence and accountability in the countries of the ENCJ Members and Observers and to give guidance for improvement.

As one of the main topics of discussion in the dialogue group meetings was the delicate relationship judiciaries experience with government and parliament, a strengthening of the relationship to achieve mutual respect would benefit the position of the judiciary. In several EU Member States the relationship as well as the balance among state powers is under pressure - a phenomenon that cannot be seen separately from the changing world of today. Society is changing and states are more and more subjected to globalising systems in which the commercial/ private sector becomes more powerful. These changes could be an issue for the existing (judicial) structures that underpin the rule of law. In order to prevent the marginalisation of the judiciary it is important to keep up and have the ability to adapt to the perspectives of today's society. To strengthen the position of the judiciary in a changing world necessitates addressing the position of both the judiciary and the other state powers, and the balance maintained between them. This could be done by initiating a dialogue with the other state powers on a national level. Along these lines ENCJ should work on developing guidelines and promoting best practices.

Secondly, as became apparent after the application of the indicators in 2016/2017, most of the Members and Observers could not provide data on the perception of court users about judicial independence, meaning results on subjective independence were lacking for this group with on hand experience of the courts, whereas the results regarding objective independence were complete. The existence of formal, legal safeguards of independence (objective independence) are not sufficient for a judge to be independent. Actual independence depends on his or her behaviour and shows in his or her decisions, which are observed by the users of the courts. It is therefore important to include the perceptions of court users in assessing the state of independence of a judicial system. This could be done by means of a so called 'court user satisfaction survey'. During the discussions in the dialogue group meetings the court user satisfaction surveys performed in some of the Member countries were discussed. In order to gain more insight in the subjective independence it is desirable that the perspective of court users should be more widely sought. To that end ENCJ should develop guidelines for a court user satisfaction survey including a model methodology which individual member states can apply among the court users in their judiciaries. This way the ENCJ contributes to the uniformity of the surveys held by Members and Observers on a national level which would increase the validity of the outcomes used in the overall independence and accountability indicators.

A third main topic addressed in the dialogue group meetings was the relationship with the media and society in general. As this topic has been of importance for most of the ENCJ Members and Observers for some time, a separate two-year ENCJ project 'Public Confidence and the Image of Justice', is devoted to this issue. Regarding the recommendations of the project of Independence and Accountability it is advised ENCJ and its Members and Observers take the recommendations of this project into account.

To sum up, future initiatives for the ENCJ should include:

1. In line with the objectives stated in the ENCJ strategic plan, to initiate a dialogue between the state powers on the national and European level.
2. Development and implementation of a format for a uniform court user satisfaction survey for Members and Observers.
3. Implementation of the recommendations of the Project Public Confidence and the Image of Justice.

## 5. Validation of methodology and indicators

In March and April 2018 two seminars were held to discuss and validate the methodology and content of the indicators on independence and accountability as well as the possibilities for co-operation. The basis for discussion were the ENCJ report 2017 and the background paper by Van Dijk and Vos<sup>4</sup>. The first seminar was aimed at organisations and networks at the European level, and was attended by European Commission, Council of Europe, World Bank, Consultative Council of European Judges, European Network of Presidents of Supreme Courts and the Council of Bars and Law societies of Europe. The second seminar was organised together with the University of Utrecht. This two day seminar was attended by scientists of diverse disciplines (law, social sciences, economics) who specialise in this field. The main conclusion of both seminars is that the work of the ENCJ is interesting and meaningful. The project is about the institutional design of the judiciaries of Europe in their complicated interaction with the other powers of the state and with the judges and courts. There was broad support for indicators that can be acted upon, as part of an improvement cycle, while the indicators may also contribute to broader purposes such as the scientific discussion about formal and actual independence, the interaction of the two, and the impact on society and economy.

There is potential for improvement, partly dependent on the scope of the objectives of the ENCJ.

### Suggestions for practical improvements of the system of indicators

1. Clearer definition of concepts, in particular independence in relation to impartiality and accountability in relation to transparency and legitimacy. Also: to whom is the judiciary to be accountable? Some rewording is necessary about 'earning independence'.
2. Reconsider some categorisations: case allocation might be more a matter of independence than of accountability.
3. Simplification of indicators, where possible. Opinions differed about this matter, as indicators should also be 'actionable' and thus sufficiently detailed. No suggestions were made to delete specific indicators. Subindicators should not be just a restatement of the indicators.
4. The questionnaire focuses on whether formal requirements are met; it includes, however, also some aspects about the actual working of the system (e.g., sufficiency of funding). In that sense, also some aspects are ambivalent (e.g., application of a standard that judges should only be promoted on the basis of merit: does the indicator concern only the existence of a formal requirement or also the situation in practice?). The latter questions are more subjective than the questions about formal aspects. This needs to be revisited.
5. Legal culture is important in the interpretation of questionnaire and survey. It should be checked whether terminology is understood in the same way across countries. How to do this, represents something of a challenge.

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<sup>4</sup> F. van Dijk and G. Vos (2018). "A Method for Assessment of the Independence and Accountability of the Judiciary, Paper for validation seminar of Utrecht University and ENCJ 12 and 13 April 2018." ENCJ.

6. Check balance in scoring: the scoring system might be too positive for Councils compared to other governing structures that allow for (decisive) influence of judges.
7. Improve scoring: the logic of the scoring system is not always self-evident. Given its normative character, discussions are unavoidable, but should be minimized.
8. The role of inspection services seems to miss from the indicators. This needs to be looked into.
9. Several issues were raised about corruption: conceptually (how does it fit in the framework), practically (the definition in the survey (bribes) is narrow) and data sources.

**Validation of the answers to the questionnaire: the method of self-evaluation was seen as vulnerable. In a filled-in questionnaire answers were found that were seen as doubtful (these answers concerned ambiguous questions; see also point 4).**

10. Local, external validation of the answers to the questionnaire by outside experts, not as supervision but as method to signal points of discussion (red flags), especially as relates to actual independence and accountability (in a given country). This should lead to a learning cycle, and could help to stabilize the outcomes. Different scores should come from changes in regulations, and not from different persons answering the questionnaire.

**Extension to perceptions of court users: the absence of insight in the views of court users was generally seen as an important omission. More in general, views from outside the judiciary should be solicited.**

11. Organize a uniform court user satisfaction survey in Europe that covers a range of subjects (not only independence).
12. Consider soliciting the views of other stakeholders (e.g., politicians).

**Extension to ‘de facto’ independence: it was noted that perceptions are very important by themselves, but are an approximation of ‘de facto’ independence. Real independence should show in the impartiality of decisions, but also in intermediate outcomes such as sufficiency of budgets, number of transferred judges against their will, number of disciplined judges and number of dismissed judges. The courts at the highest levels merit specific attention in this respect.**

13. Do a brainstorm about impartiality of decisions. Rely on perceptions of lawyers and/or clients? Do other options exist? Can ‘big data’ be of use here (as well as in other areas) and in what timeframe?
14. The ENCJ already gathers some ‘hard’ data about intermediate outcomes for use in the EC Justice Score board, but these are not yet used in this context. It should be reviewed whether these data can be used in a meaningful way. One of the issues is to determine what are good and what are bad outcomes. Can a suitable normative framework be conceived?

## Other issues

15. The independence and accountability of the prosecution is an important issue also in relation to the independence of the judiciary that requires more attention.

## Cooperation with the scientific field and networks

16. Sharing information, asking for comments about ENCJ plans, coordination and support of each other's efforts are first steps. An advisory board might be considered.
17. Working towards common indicators with EC, CCJE and CCBE, in particular, is desirable.

## Conclusions

Many suggestions were made, and the question is which of these suggestions are to be implemented. This question was also recognized at the scientific seminar, and relates very much to the objectives of the ENCJ. If the focus is solely on institutional design from the perspective of harmonizing structures and procedures the ambitions are lower than if the ENCJ also wants to take positions about judicial independence and accountability in their meaning for society. This requires looking at foundations and contributing to the knowledge about these matters.

The outcomes were discussed in the project team, and it was concluded that follow-up is needed for the following. In the *first* place, a relatively small revision of the indicators should take place to incorporate suggestions that were made for practical improvements. In the *second* place, external validation of country replies to the indicator questionnaire is needed to put the indicators on a firmer footing. The best way to do this needs to be worked out. A single-expert validation approach was seen as vulnerable, and suggestions were made to increase the number to three, each from different universities, and also to have a mixed team including judges and court users. In the *third* place, the development of a court user survey must be taken up. While a uniform format can be developed by the ENCJ, taking into account the surveys that already exist in some countries and the work of others in this area such as CEPEJ, the implementation needs to take place at national level. An important reason is that such a survey cannot be easily implemented by the internet. Also, circumstances may vary among judiciaries. The scope of court users needs to be defined (who is a court user for the purpose of the survey? There is agreement that the parties should be the focus). In the *fourth* place, the ENCJ has to consider what to do with "real" independence: apart from perceptions, should the 'hard' data that the ENCJ gathers for the EU Justice Score Board be used and even expanded?

It was envisaged in the ENCJ strategic plan, that the indicators were to be updated and measured next year. It depends on the implications of the above, whether measurement of the indicators is practically feasible next year.

## 6. Survey of lay judges about their independence

### Introduction

One of the indicators with respect to subjective independence concerns the perceptions of judges of their independence (independence indicator 13). To gather these data, in 2016/2017 for the second time a survey among the judges of Europe was conducted. In total 11,712 judges from 26 countries participated. The survey was conducted among, what may be called, the professional, salaried judges. In many countries of Europe there are also lay judges active. CEPEJ documented their presence:

“An important number of States and entities resort to non-professional judges. This is the case in **Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Luxembourg, Monaco, Norway, Slovakia, Slovenia, Spain, Sweden, Switzerland** (13 cantons out of 26 have such nonprofessional judges), “**the former Yugoslav Republic of Macedonia**” or even **UK-England and Wales** and **UK-Scotland**. It may be “lay judges”, judges without legal training who sit alone or collegially but without the support of a professional judge (common law countries) or judges who sit as assessors to a professional judge (which is the case for example in **Austria, Belgium, Croatia, Czech Republic, France, Hungary, Germany, Luxembourg, Monaco, Norway, Slovakia, Slovenia, Sweden** or **Israel**). It can also be justices of the peace competent to settle small civil disputes or to adjudicate in respect of minor criminal offences (**Spain, UK-England and Wales, UK-Scotland**).”<sup>5</sup>

CEPEJ provides also figures about the number of lay judges.

Table 1. Number of lay judges in Europe

Lay judges			Lay judges		
Judiciary	Absolute number	Per 100,000 inhabitants	Judiciary	Absolute number	Per 100,000 inhabitants
Albania	-	-	Lithuania	-	-
Austria	-	-	Netherlands	-	-
<b>Belgium</b>	4,026	36	<b>Norway</b>	43,000	832
Bulgaria	-	-	Poland	13,933	36
Croatia	-	-	Portugal	-	-
<b>Denmark</b>	12,000	212	Romania	-	-
France	24,921	38	Serbia	2,564	36
Finland	1,738	32	<b>Slovenia</b>	3,445	167
Germany	97,306	120	Slovakia	-	-
<b>Greece</b>	7,000	65	Spain	7,687	17
Hungary	4,500	46	<b>Sweden</b>	8,318	85
Ireland	-	-	<b>UK, England and Wales</b>	19,253	34
<b>Italy</b>	3,068	5	<b>UK, Scotland</b>	389	7
Latvia	-	-	Total	253,148	

Note: in bold judiciaries that participated in the survey.

Source: CEPEJ (2016). European judicial systems: Efficiency and quality, CEPEJ studies no 23, Table 3.11 (p95). Data for Greece provided by the Supreme Judicial Council for Civil and Criminal Justice of Greece.

<sup>5</sup> CEPEJ (2016). European judicial systems: Efficiency and quality, CEPEJ studies no 23, blz.89.

In 60% of the judiciaries lay judges play a role. The number of citizens that are involved as lay judges in the judiciary is substantial. It should be stressed that the figures in table 1 are absolute numbers. In full time equivalents the number of judges would only be a small fraction of these figures, as will be discussed further below.

As lay judges are entrusted with important tasks, their perceptions about their independence are needed to get a full representation of independence as perceived by judges. To gather this data this year a survey among lay-judges was conducted. In total 20,605 lay judges from 10 different countries participated.

## **Methodology**

The survey was sent to all the ENCJ Members and Observers. The Members and Observers that have lay judges and that were able to participate, distributed a letter of introduction and recommendation of the president of the ENCJ to the lay judges within their jurisdictions. This generally required the co-operation of court presidents in the absence of a database at national level. The letter contained a link to the website that hosted the survey. The respondents could fill in the survey on line anonymously. They were asked to specify the country in which they were working as a judge. Judges could fill in the survey in any language into which the survey had been translated.

The survey was, like the survey among professional judges, not stratified. This means that some parts of the court system or category of judges may be over- or underrepresented. Data were lacking to do this.

## **Design of the survey**

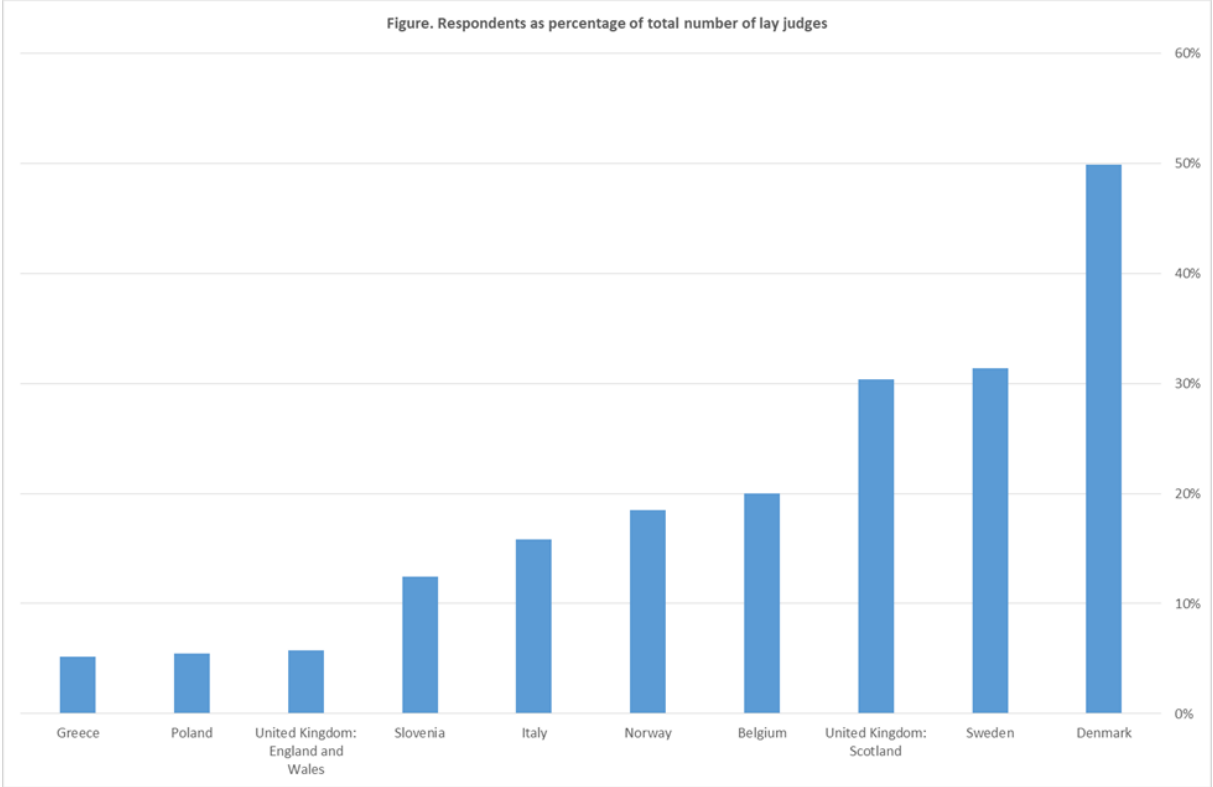
The survey was adapted from the survey of professional judges. It asked the lay judges to give a general assessment of their independence as well as that of the professional judges in their country, but also explored different aspects of independence. In addition, they were asked about some personal characteristics (gender and age) and about their activities as lay judges. The survey is to be found in appendix 1.



**Response rate per country and representativeness**

The figure below gives an overview of the response among the lay judges who received the survey in the participating countries. The countries are ranked from low to high response rates.

Figure 3. Respondents as percentage of total number of lay judges

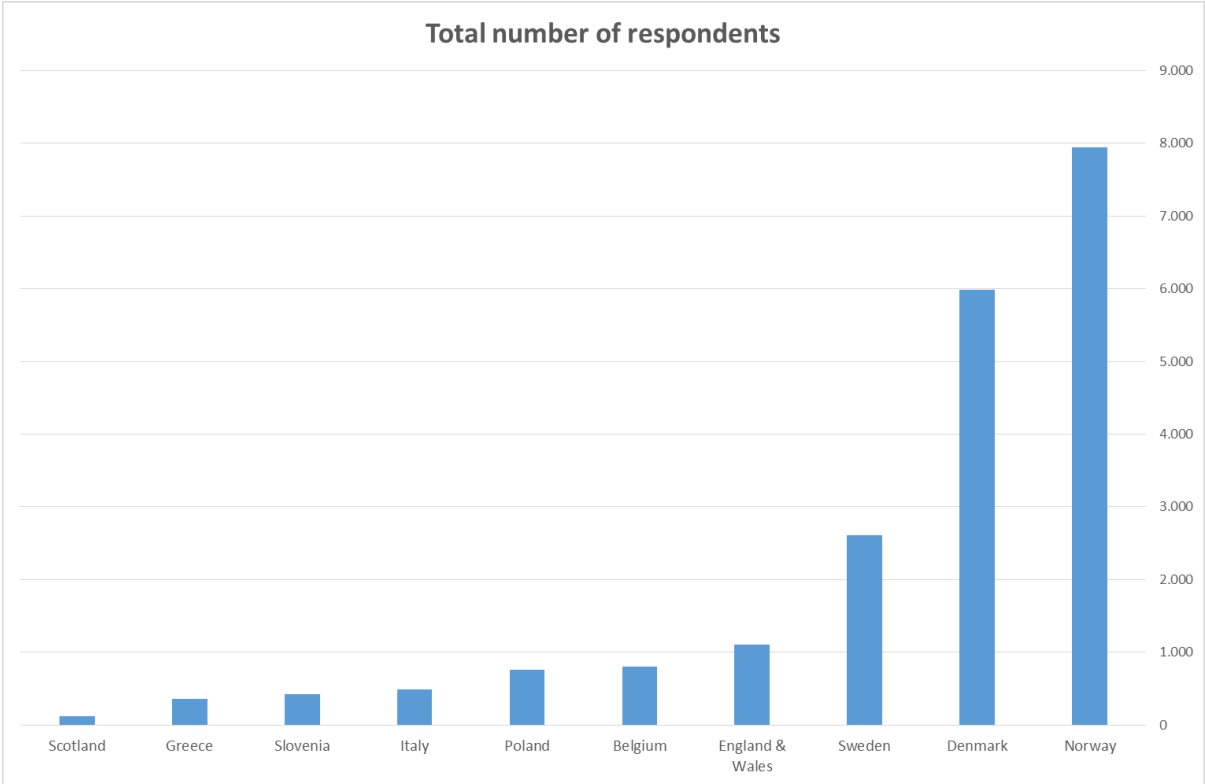


\*Number of judges based on CEPEJ data of total lay judges 2014, except for Greece (see Table 1).

The response rate varies from 5 per cent in Greece to 49,9 per cent in Denmark.

For the representativeness of the results of the survey the absolute number of responses per country is important. Even if the response rate in a country is low, the results can be meaningful. In comparison, population surveys cover usually only a very small portion of the population, but are nevertheless statistically meaningful. The only caveat is that the response is not selective, in the sense that responding lay judges do not differ substantially from the not responding ones in aspects that are relevant to the results of the survey. This is relevant with each response rate which is not close to 100 per cent. The graph shows the number of responding judges per country, ranked by number.

Figure 4. Total number of respondents



The number of responding judges varies from as few as 118 in Scotland to as many as 7,942 in Norway. The ‘confidence interval’ around the results for the countries with a small number of respondents will be relatively large. The numbers are high enough to distinguish meaningful differences which can be statistically checked by using the data that can be provided upon request by sending an email to [office@encj.eu](mailto:office@encj.eu) .

**Characteristics of the respondents and their duties**

The survey asked the respondents about their gender, age and experience. The following figures give the data.

Figure 5. Gender of lay judges

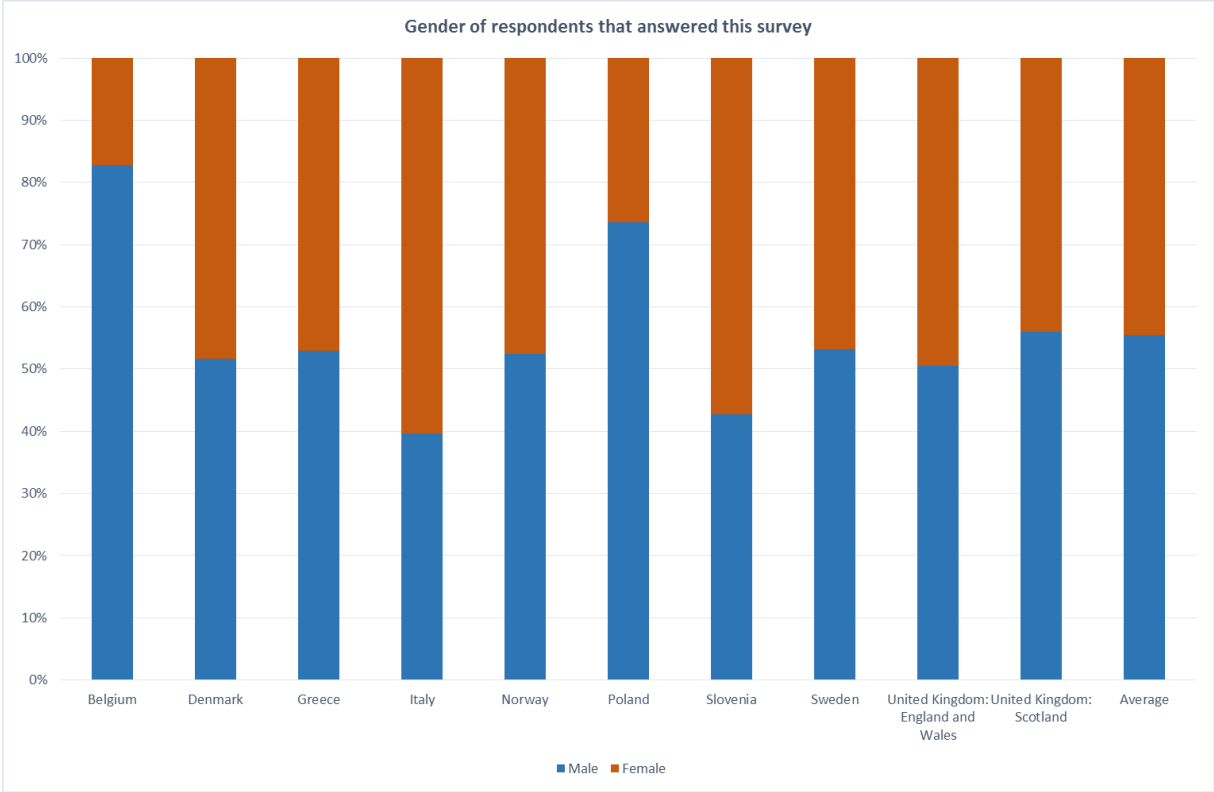
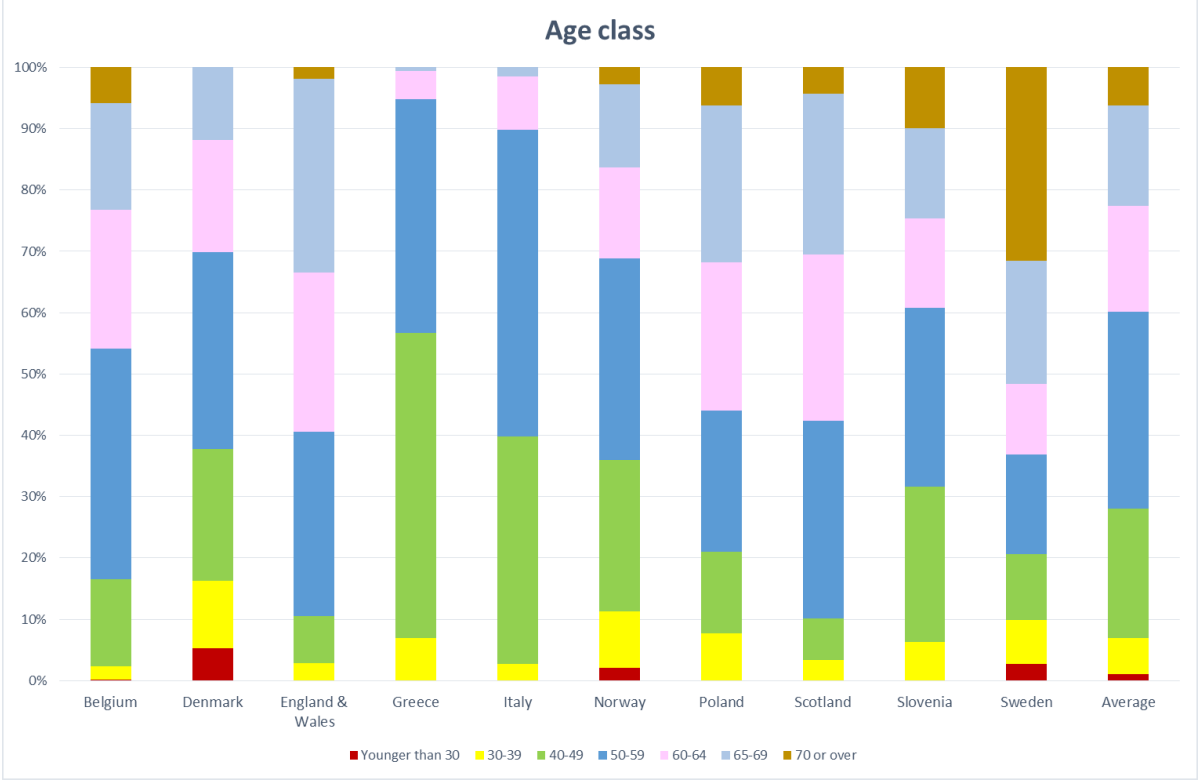


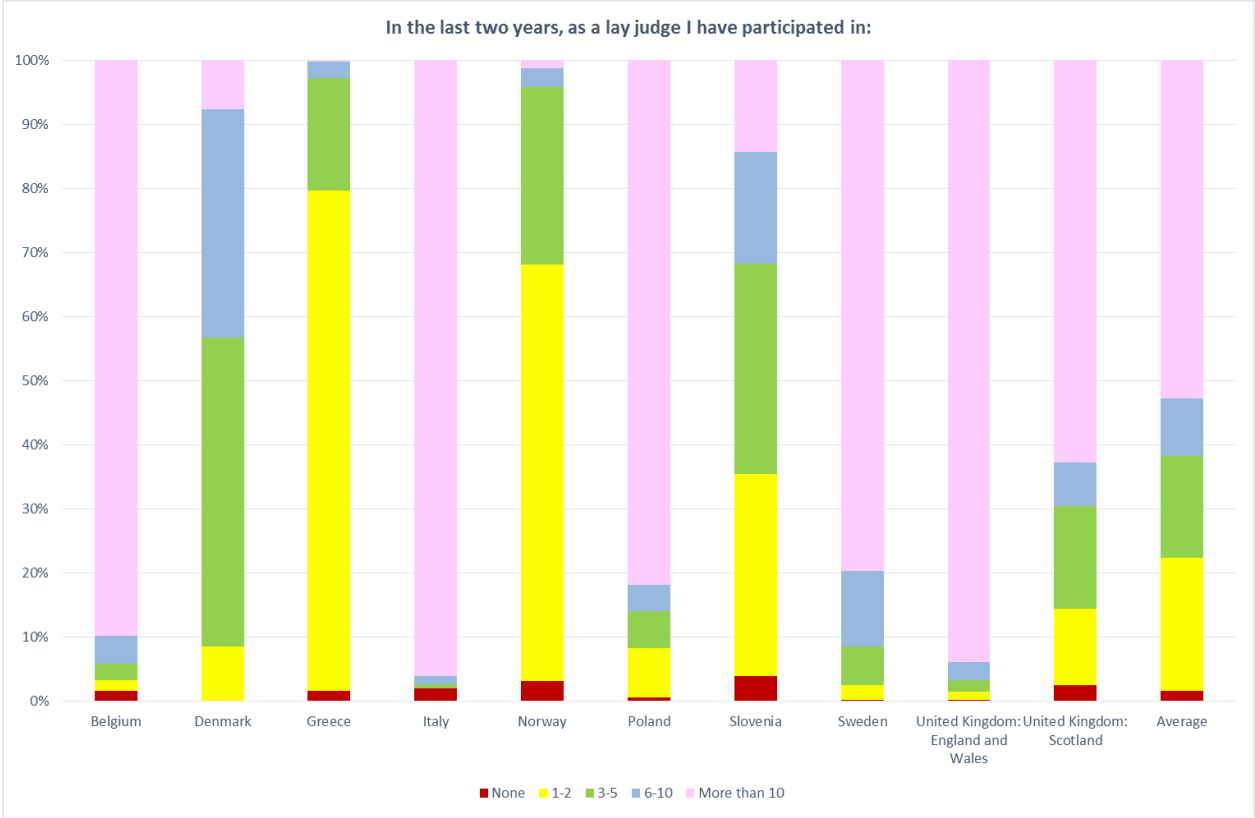
Figure 6. Age class of lay judges



The gender distribution is overall roughly equal. Only in Belgium (83%) and Poland (74%) men dominate in numbers, while in Italy and Slovenia the percentage of women is close to 60%.

Calculated as average across countries, 40% of the lay judges is 60 years or older. The age distribution differs very much across countries. In Sweden 64% is 60 years or older with 32% 70 years or older. In the UK (England and Wales and Scotland) and in Poland 60% is 60 or older, roughly equally divided between age categories 60-64 and 65-69. In contrast, in Greece and Italy 95% and 90% is below 60 years, and in Norway and Denmark 70%.

Figure 7. Participation of lay judges in cases in the last two years



As to the participation of lay judges in adjudicating cases, large differences exist in the frequency. In Belgium, England and Wales, Italy, Poland, Scotland and Sweden lay judges do a large number of cases (often much more than the 10 cases used as lower boundary of the highest category), while in particular in Greece and Norway and, to a lesser extent, in Denmark and Slovenia lay judges are involved in few cases. Lay judges do not form a homogeneous group. One may wonder what the consequences are of doing only 1 or 2 cases over a period of two years in terms of familiarity with and commitment for core values such as independence and impartiality, apart from knowledge and experience. Such low participation rates may not be effective, but this ultimately depends on the objectives of each judiciary in this regard.

Table 2. Area of law lay judges participated in: number of answers given

	Total	Criminal cases	Administrative law cases	Commercial cases	Family cases	Labour cases	Other civil cases	Other	None
Belgium	898	5	19	344	4	427	14	72	13
Denmark	8.976	5.911	227	289	682	134	848	879	6
Greece	383	349	0	2	7	0	9	12	4
Italy	1.150	288	55	73	78	31	296	319	10
Norway	9.927	7.448	53	62	1.013	53	512	530	256
Poland	954	168	2	2	357	132	139	149	5
Slovenia	570	267	5	31	58	88	32	72	17
Sweden	5.858	2.019	789	278	1.547	124	454	646	1
United Kingdom: England and Wales	2.057	822	146	48	267	66	263	443	2
United Kingdom: Scotland	149	57	12	2	2	31	13	29	3
<b>Total</b>	<b>30.922</b>	<b>17.334</b>	<b>1.308</b>	<b>1.131</b>	<b>4.015</b>	<b>1.086</b>	<b>2.580</b>	<b>3.151</b>	<b>317</b>

Note:

Lay judges are predominantly active in criminal law. Family law takes second place. Many of them work in several areas of law, as in total 20,605 lay judges participated in the survey and the number of answers is 30,922.

Table 3. Setting in which lay judges adjudicate cases: number of answers given

	Total	Alone	Together with other lay judges only	Together with professional judges only	Together with both professional judges and lay judges
Belgium	918	116	18	45	739
Denmark	6.206	6	328	136	5.736
Greece	366	5	52	5	304
Italy	549	376	8	87	78
Norway	8.256	49	844	289	7.074
Poland	770	9	11	27	723
Slovenia	431	6	20	12	393
Sweden	2.733	8	74	72	2.579
United Kingdom: England and Wales	1.415	153	673	64	525
United Kingdom: Scotland	122	59	4	8	51
<b>Total</b>	<b>21.766</b>	<b>787</b>	<b>2.032</b>	<b>745</b>	<b>18.202</b>

Sitting together with professional and lay judges is the dominant form. Only in Italy and the UK most lay judges either sit alone or with other lay judges. Participation in more than one setting is rare.

### Outcomes of the survey: independence of lay judges

As in the survey of professional judges, two questions were asked. The first concerns the perception about the independence of lay judges in the country in general. The second asks about the personal independence of the respondent. On a scale between 0 and 10, the

independence of lay judges in general is rated between 7.5 in Italy to 9.3 in Scotland, with an across country average of 8.5 (Figure 8). As recorded for professional judges before, personal independence is rated higher and varies from 8.6 in Poland to 9.4 in Scotland, with a country average of 9.0 (Figure 9).

Figure 8. Personal independence lay judges

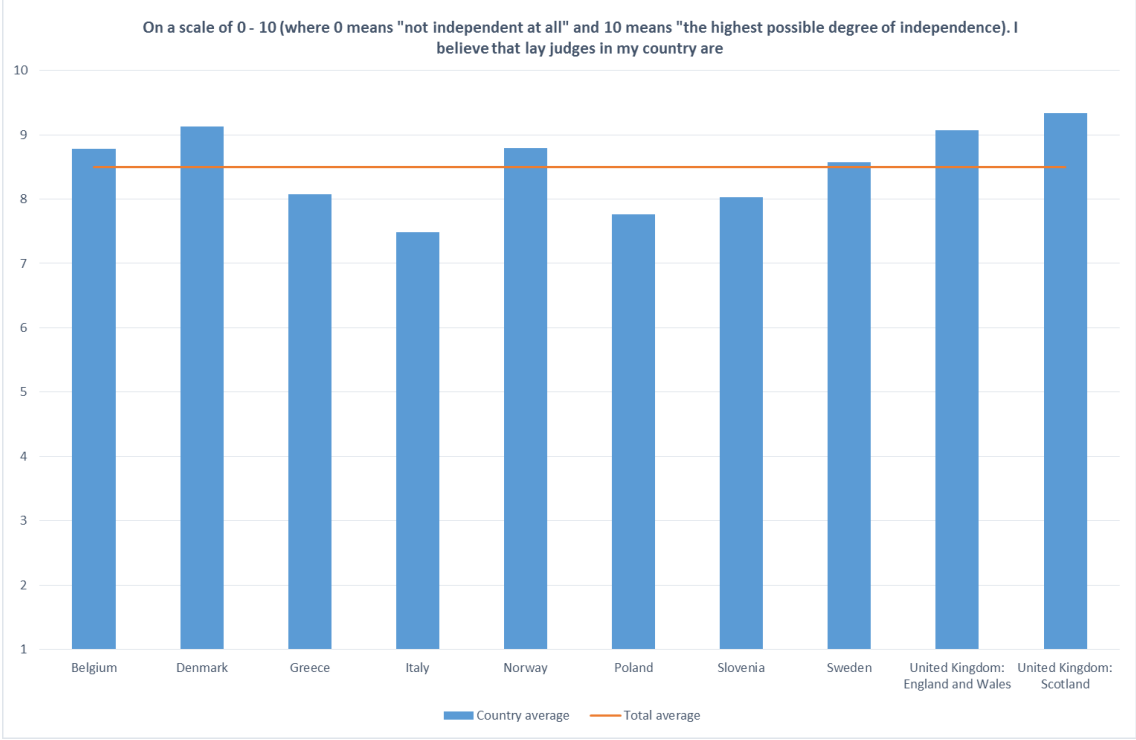
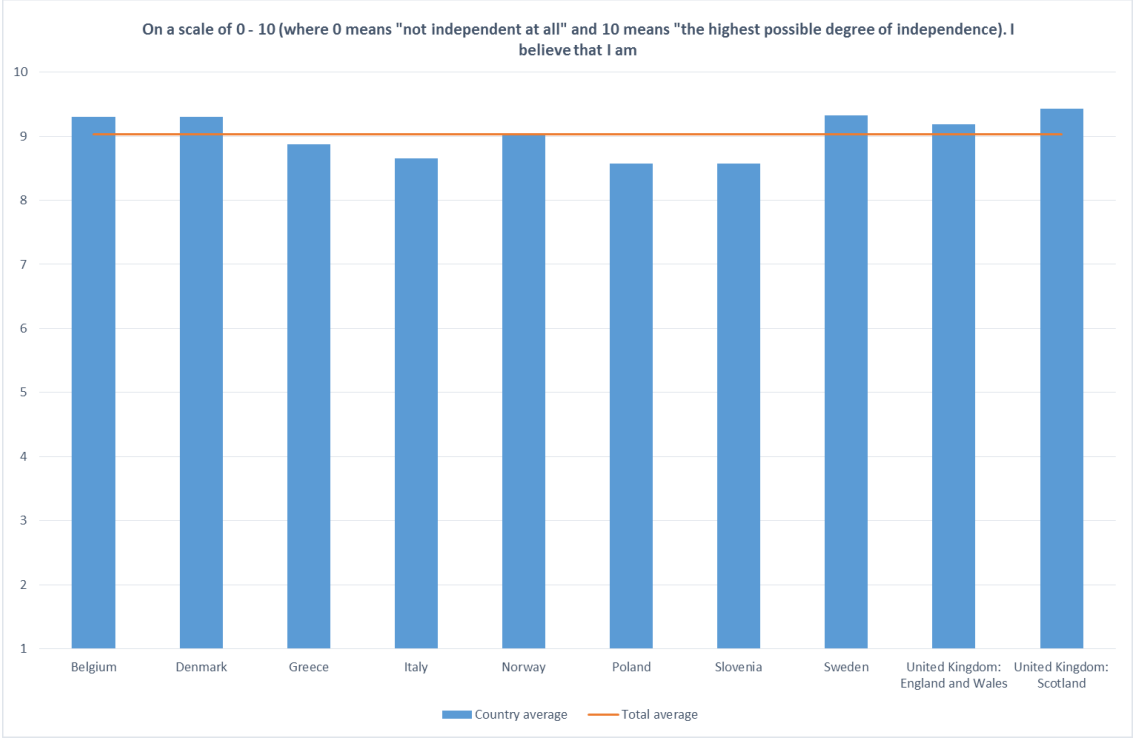


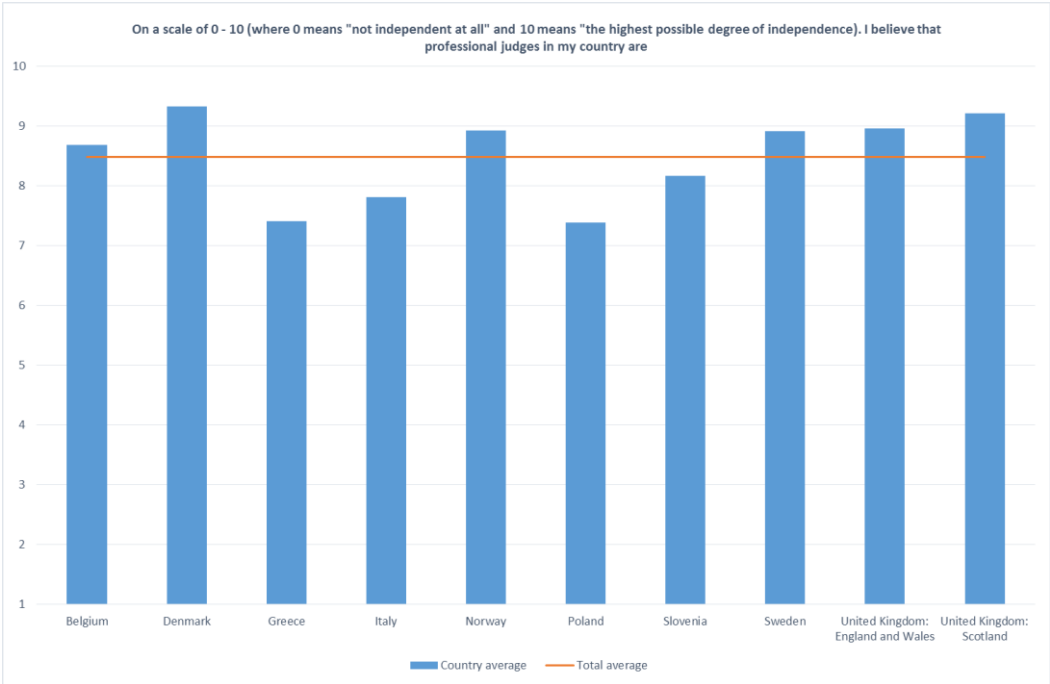
Figure 9. Personal independence professional judges



### Outcomes of the survey: perception of independence of professional judges

The lay judges were also asked to rate the independence of the professional judges in their countries. The perceptions range from 7.4 in Greece to 9.3 in Denmark, with a country average of 8.5.

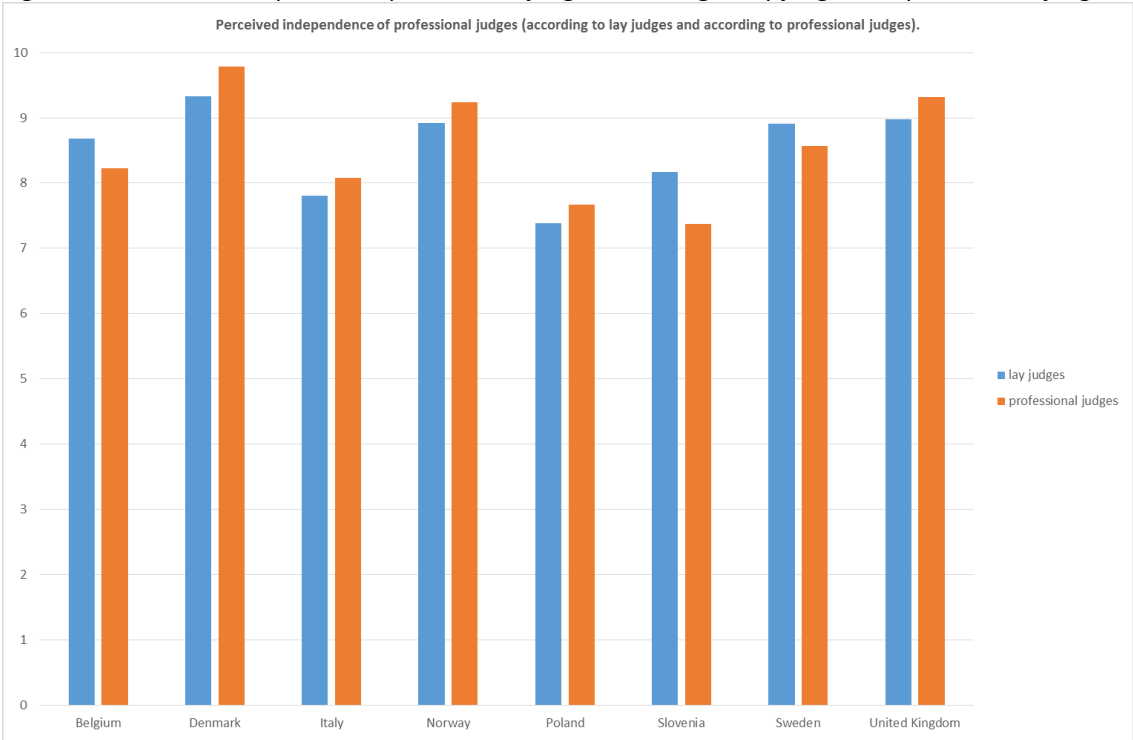
Figure 10. Independence of professional judges according to lay judges



The lay judges rate their independence generally at the same level as the independence of the professional judges. Only in Greece and Poland they rate the independence of lay judges higher than that of the professional judges (8.1 vs 7.4 in Greece and 7.8 vs 7.4 in Poland). In Italy and Sweden it is the other way round (7.5 vs 7.8 in Italy and 8.6 vs 8.9 in Sweden).

These outcomes can be compared with the perceptions of the professional judges themselves about their independence. For the judiciaries that have participated in both surveys the average rating is the same (8.5), with sizeable differences within judiciaries. Lay judges in Belgium, Slovenia and Sweden have a more positive view of the independence of professional judges than the professional judges themselves; in Denmark, UK, Italy, Norway and Poland professional judges are more positive about their independence that the lay judges are about the independence of professional judges.

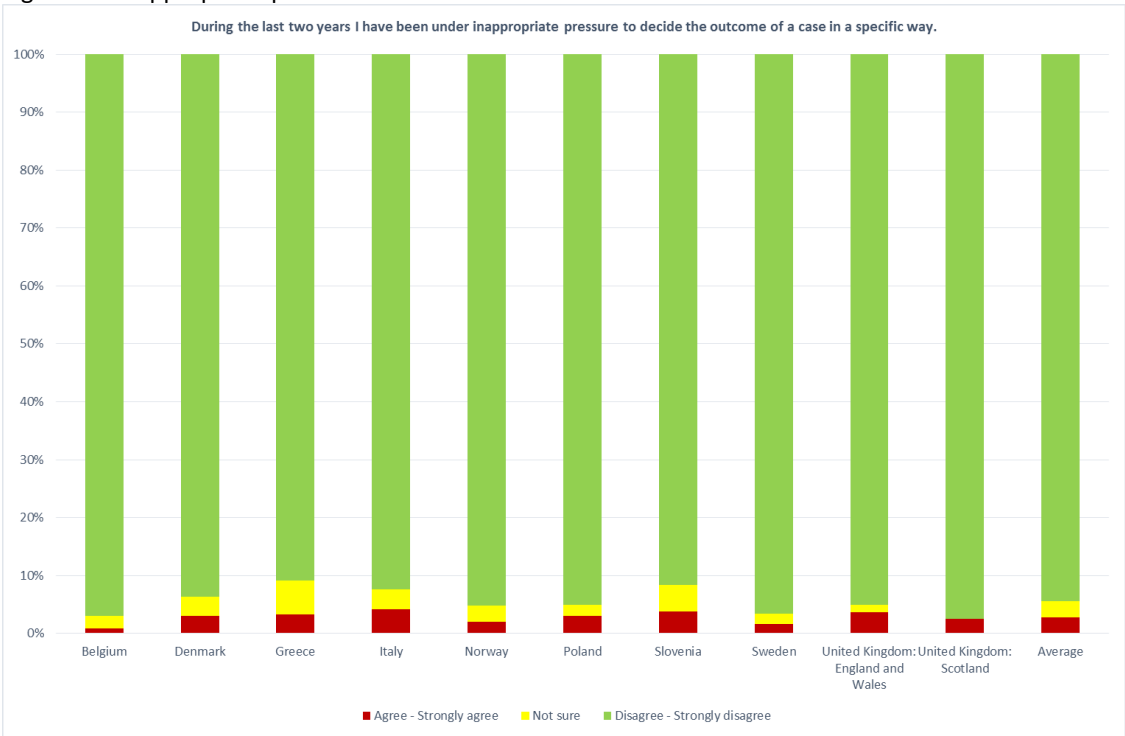
Figure 11. Perceived independence professional judges according to lay judges and professional judges



Outcomes of the survey: aspects of independence of lay judges

In the following tables the outcomes are presented by question.

Figure 12. Inappropriate pressure



The percentage of lay judges that experience inappropriate pressure does not exceed 4% (Italy, England and Wales, Slovenia).



Figure 13. Corruption (bribery)

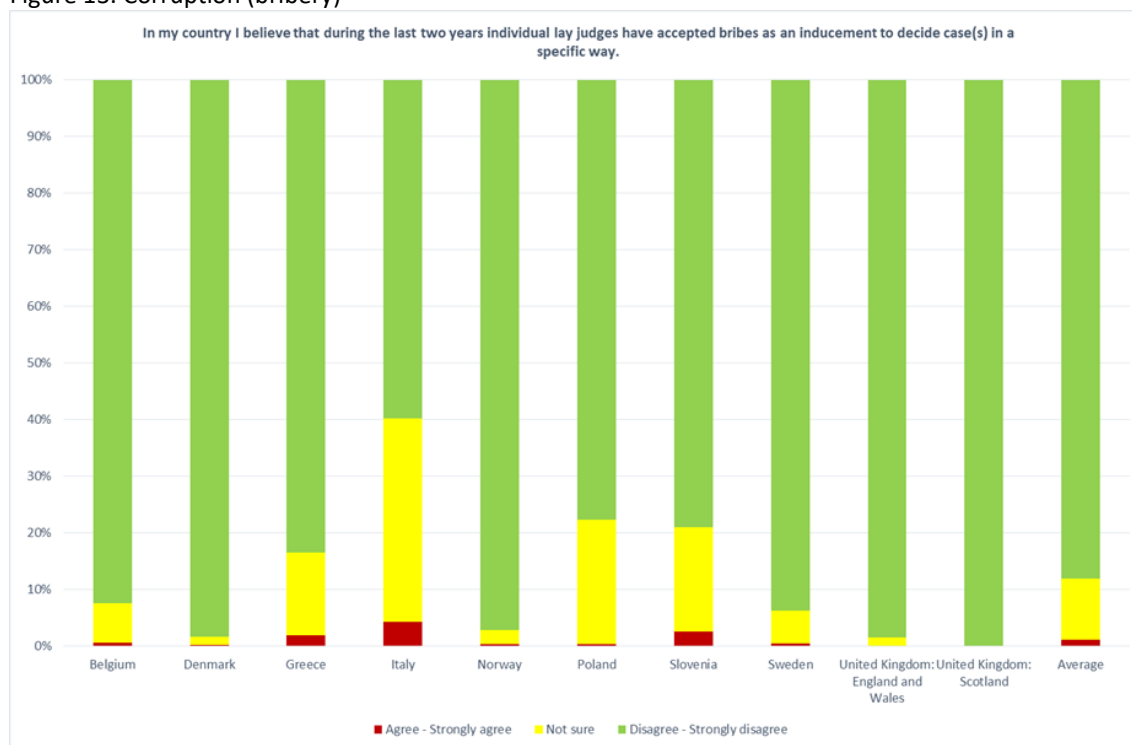
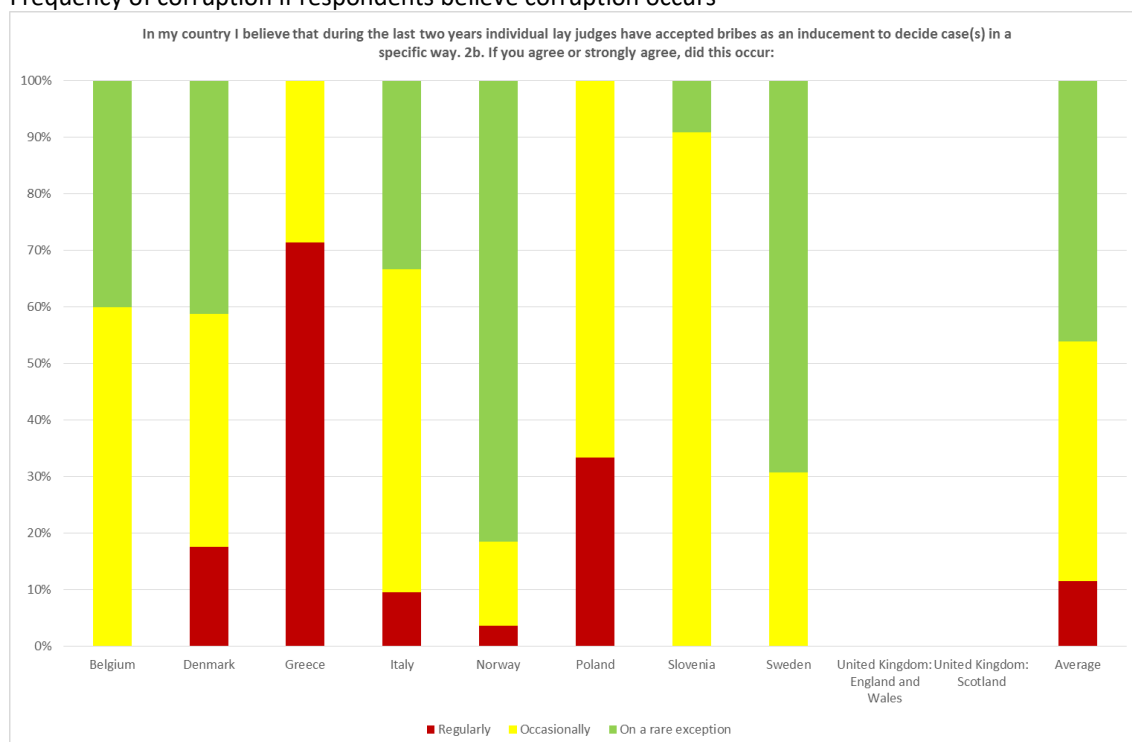
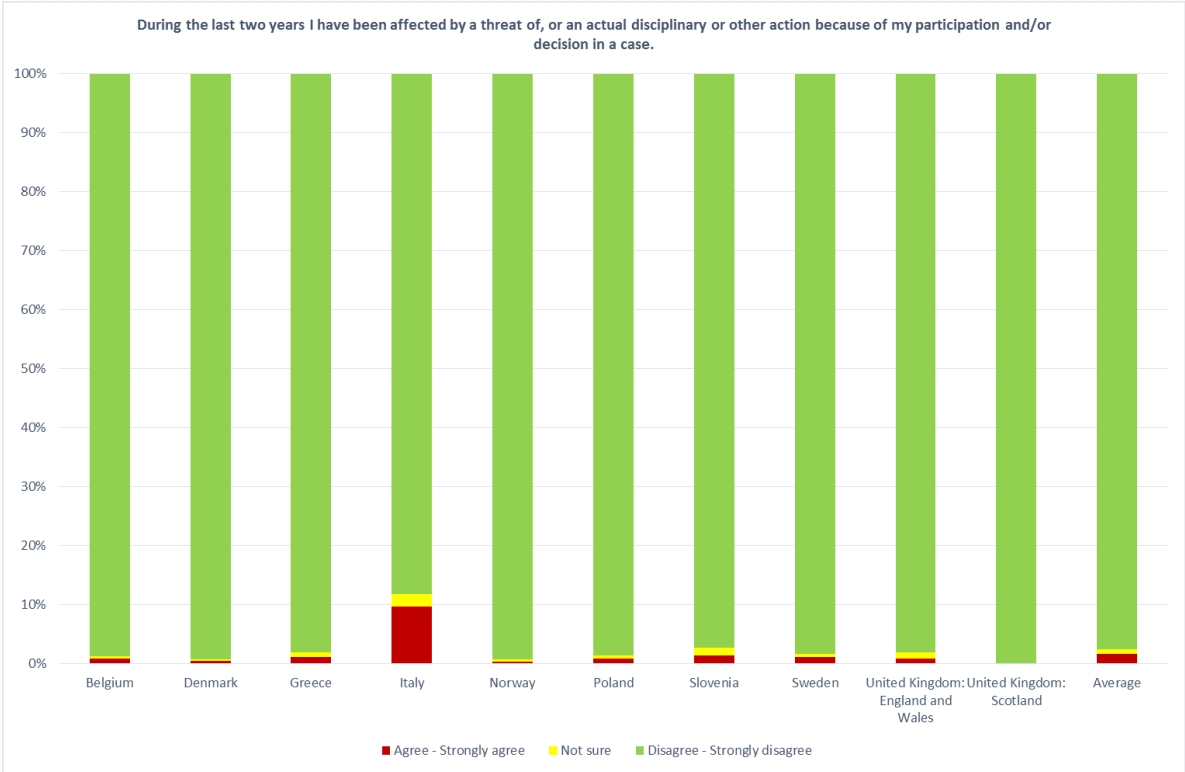


Figure 14. Detailed view of the agree/strongly agree (red) replies of figure 13. Frequency of corruption if respondents believe corruption occurs



Corruption is confined here to its most direct form, taking bribes. Few lay judges believe this happens. Many more are uncertain about lay judges taking bribes. In some countries (Greece, Poland, Denmark, Italy) many of the respondents that answer that bribes are taken, believe this occurs regularly.

Figure 15. Disciplinary actions or threats because of a decision in a case



The impact of (the threat of) disciplinary action because of participation or decisions in cases is limited to Italy, where 10% of the respondents report such impact.

Figure 16. Influence of the media on judicial decisions

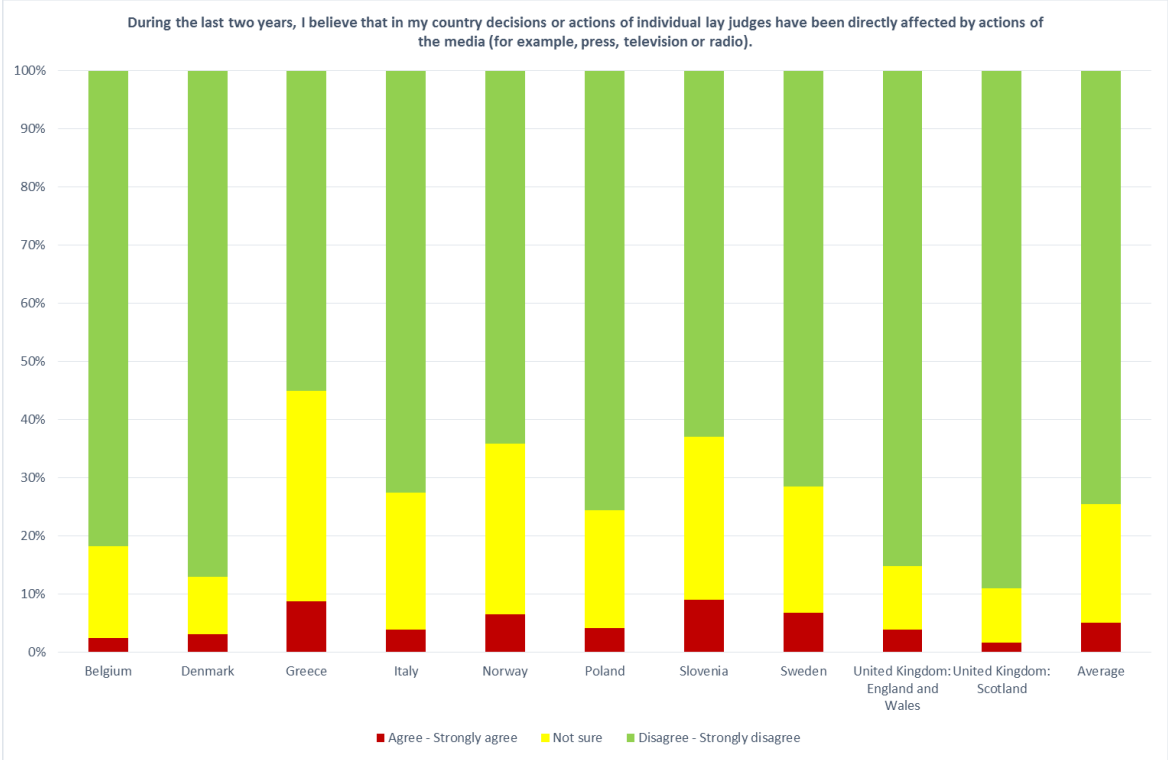
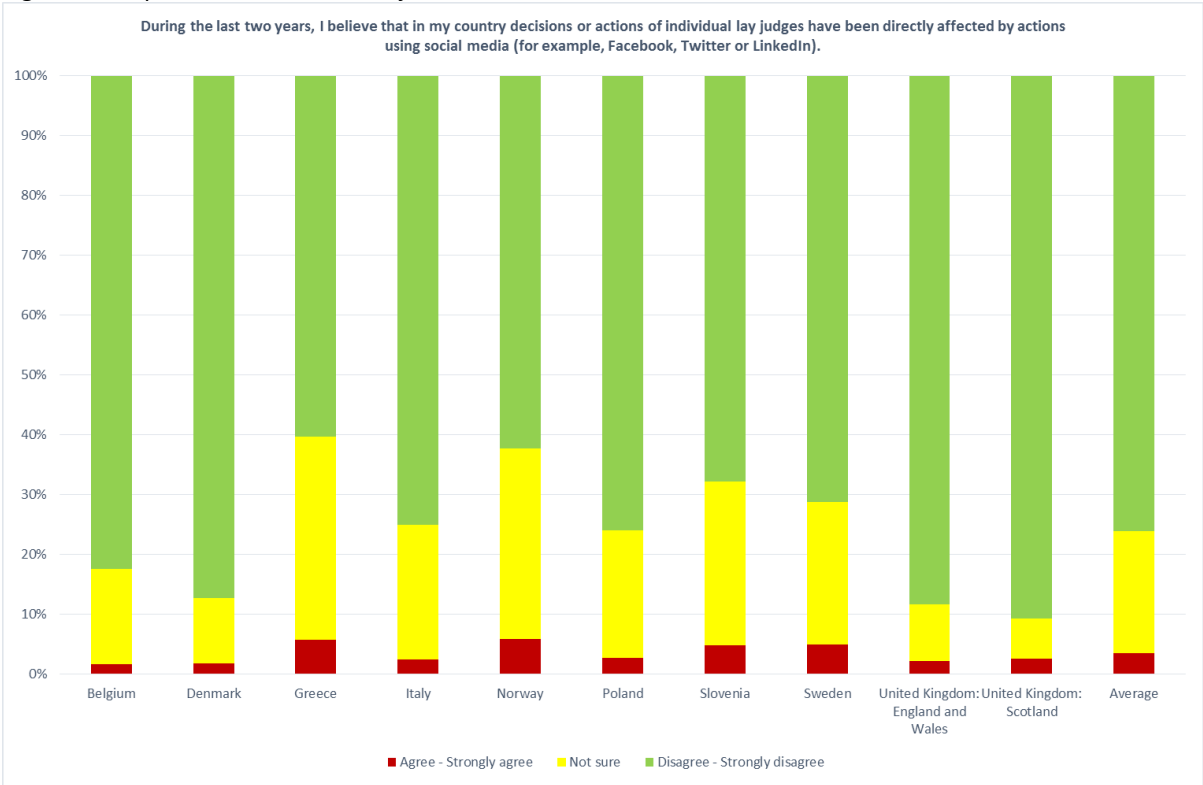


Figure 17. Impact of social media on judicial decisions



The impact of the (social) media on the decisions of lay judges is relatively small. Less than 10% report this pressure.

Figure 18. Respect for independence of lay judges by professional judges

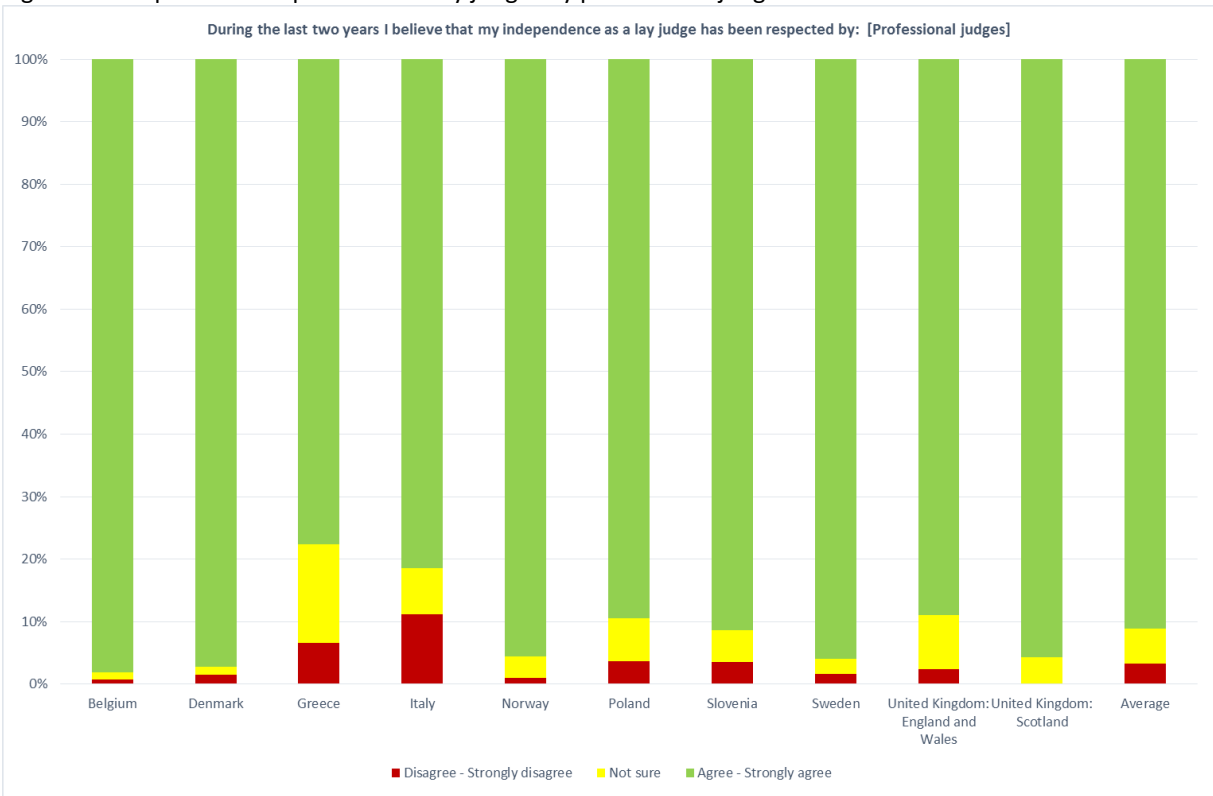


Figure 19. Respect for independence of ay judges by other lay judges

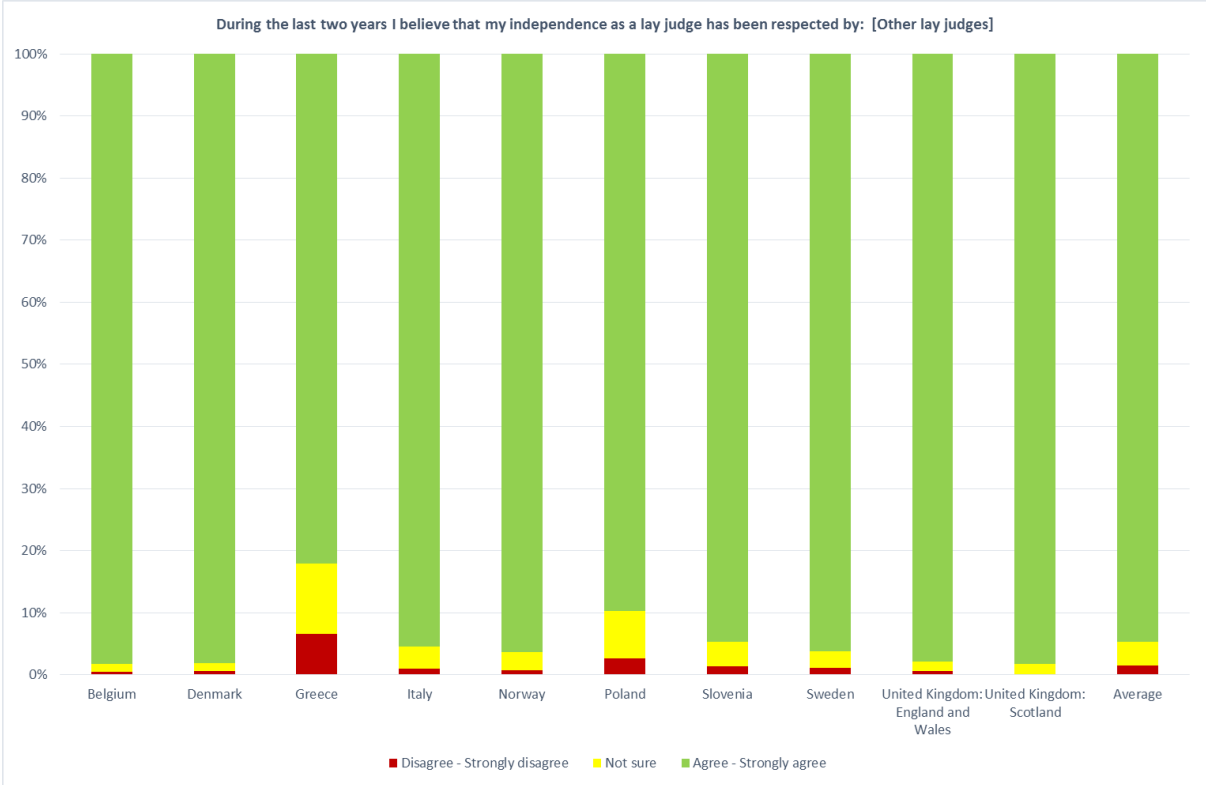


Figure 20. Respect for independence of lay judges by parties

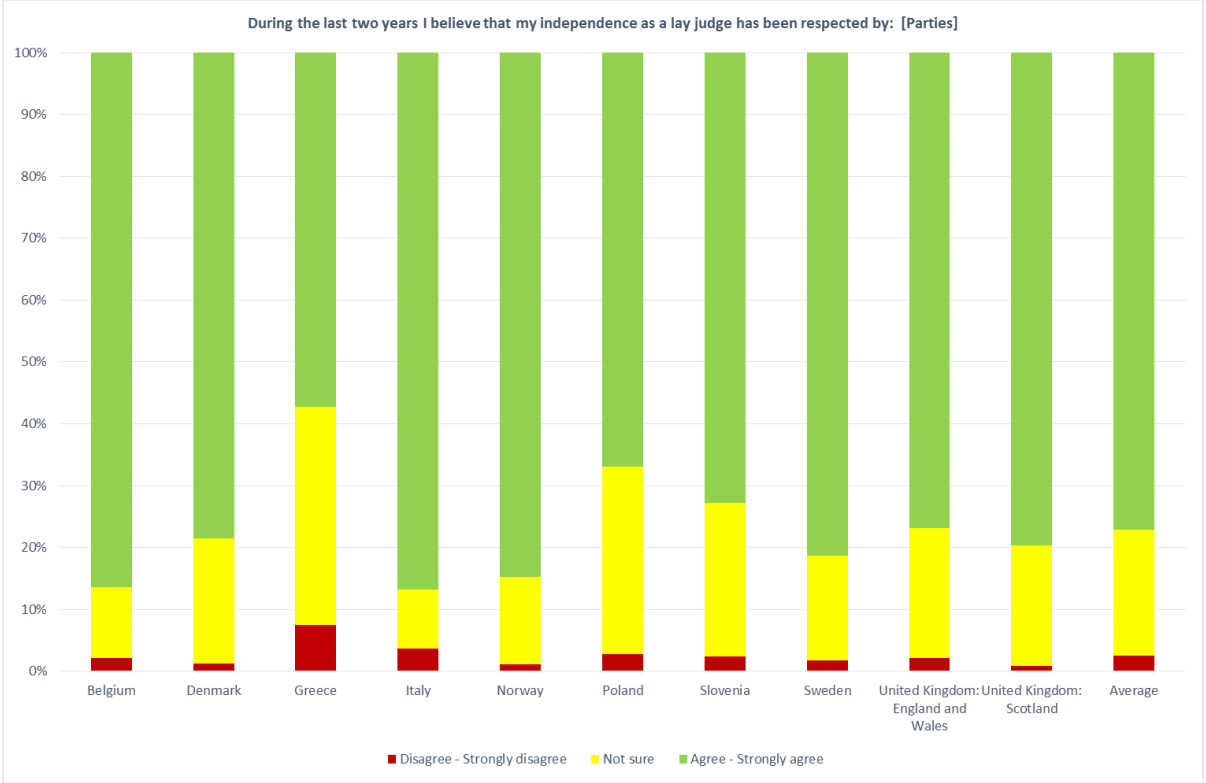


Figure 21. Respect for independence of lay judges by lawyers

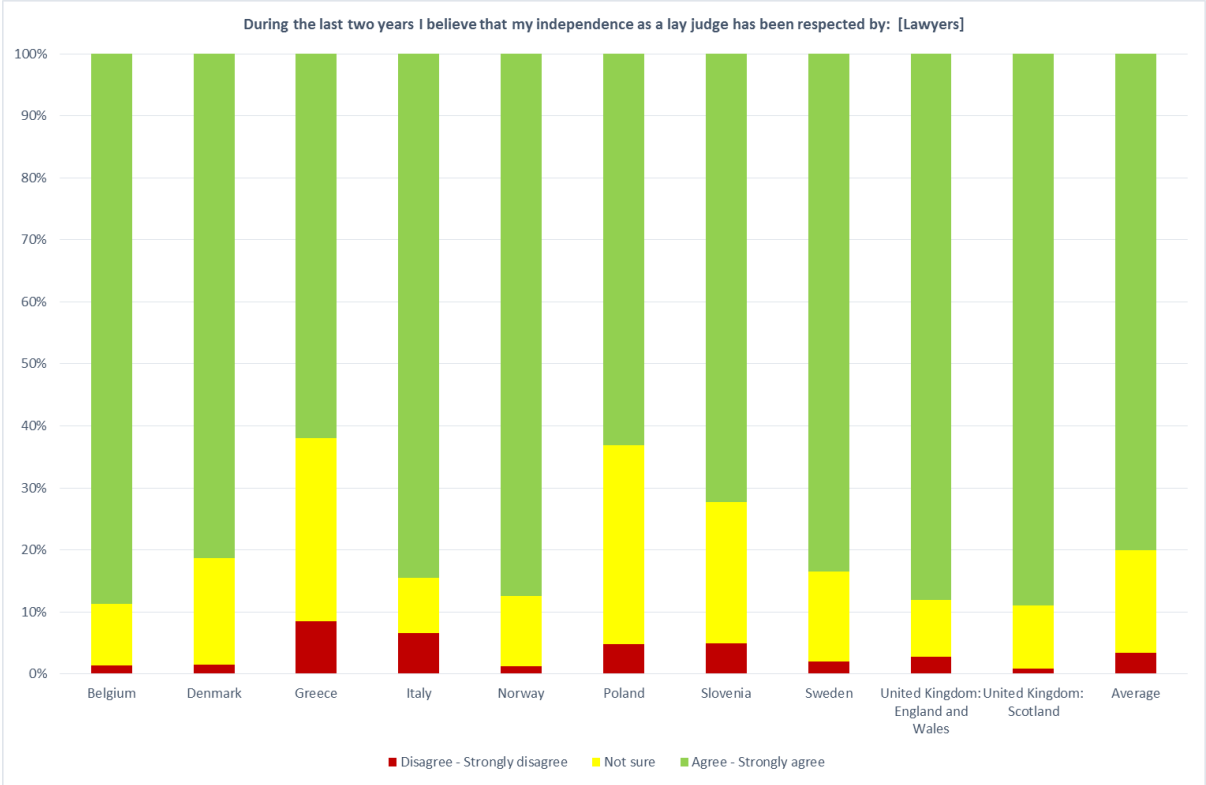


Figure 22. Respect for independence of lay judges by the media

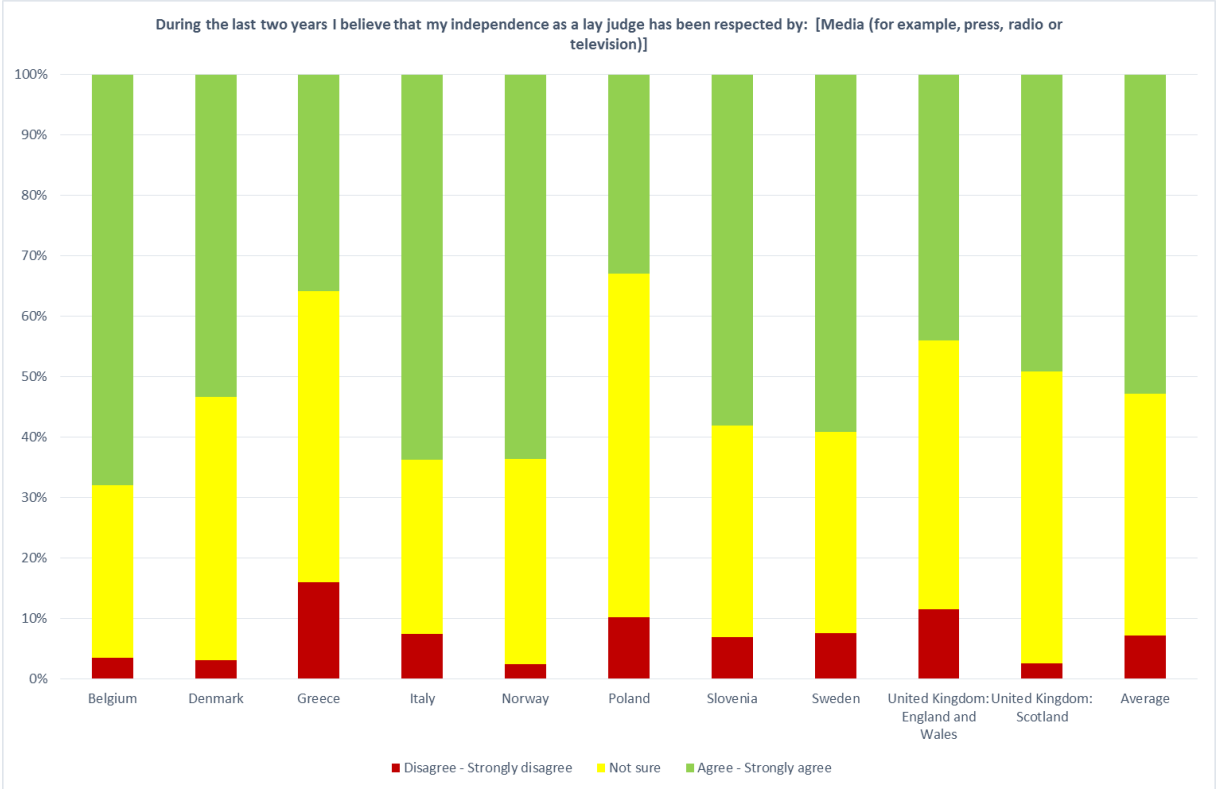


Figure 23. Respect for independence of lay judges by social media

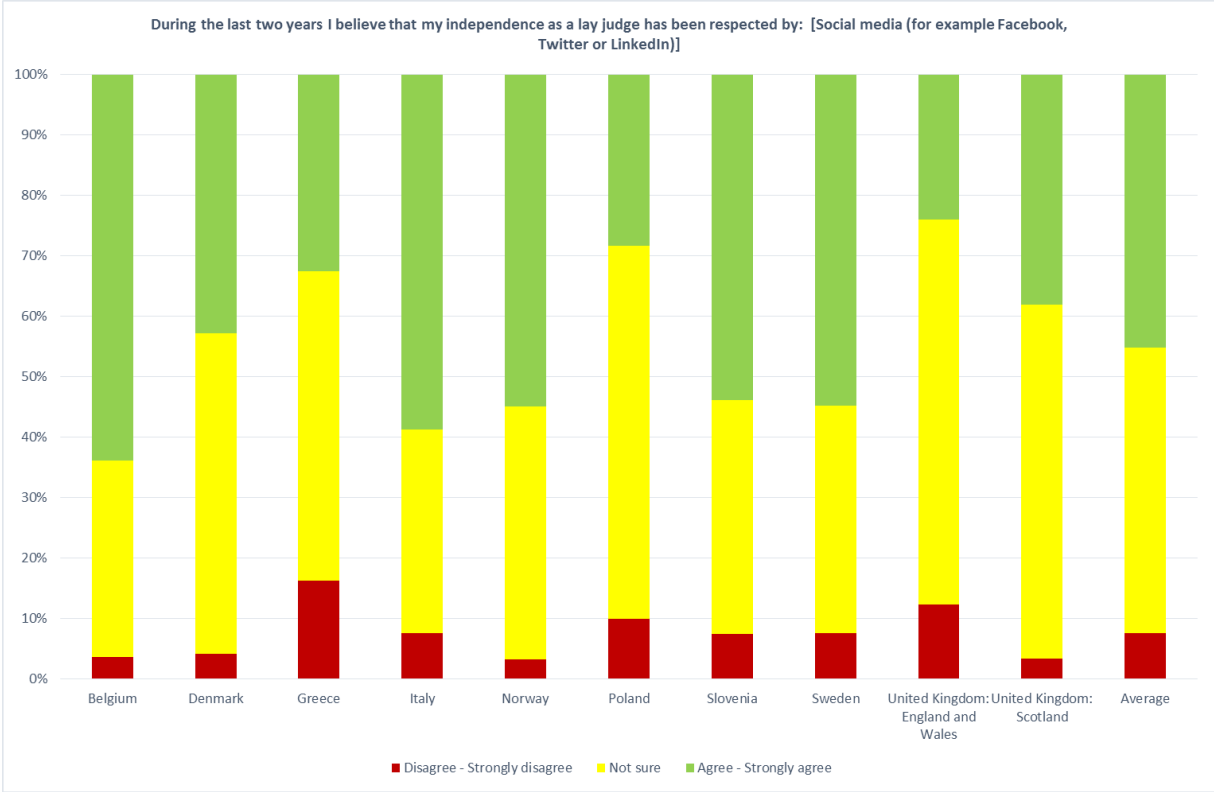


Figure 24. Respect for independence of lay judges by governmental organisations

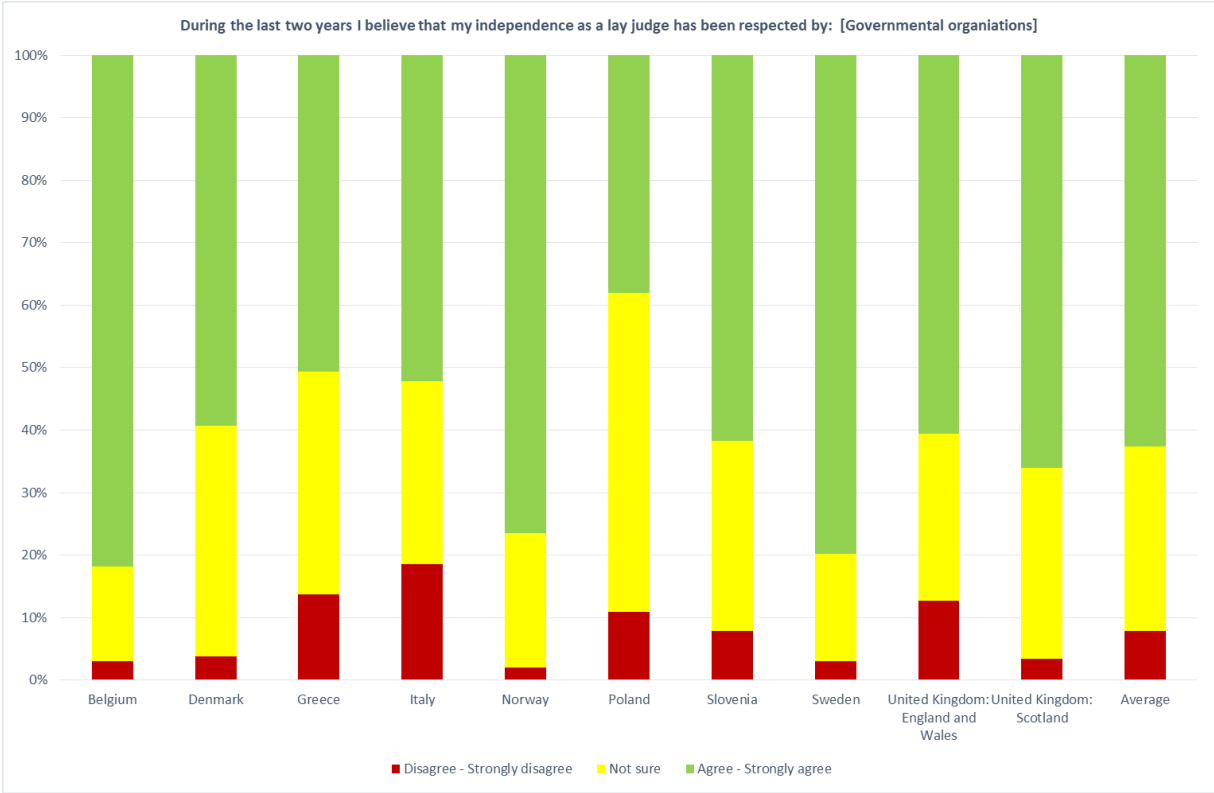


Figure 25. Respect for independence of lay judges by professional organisations

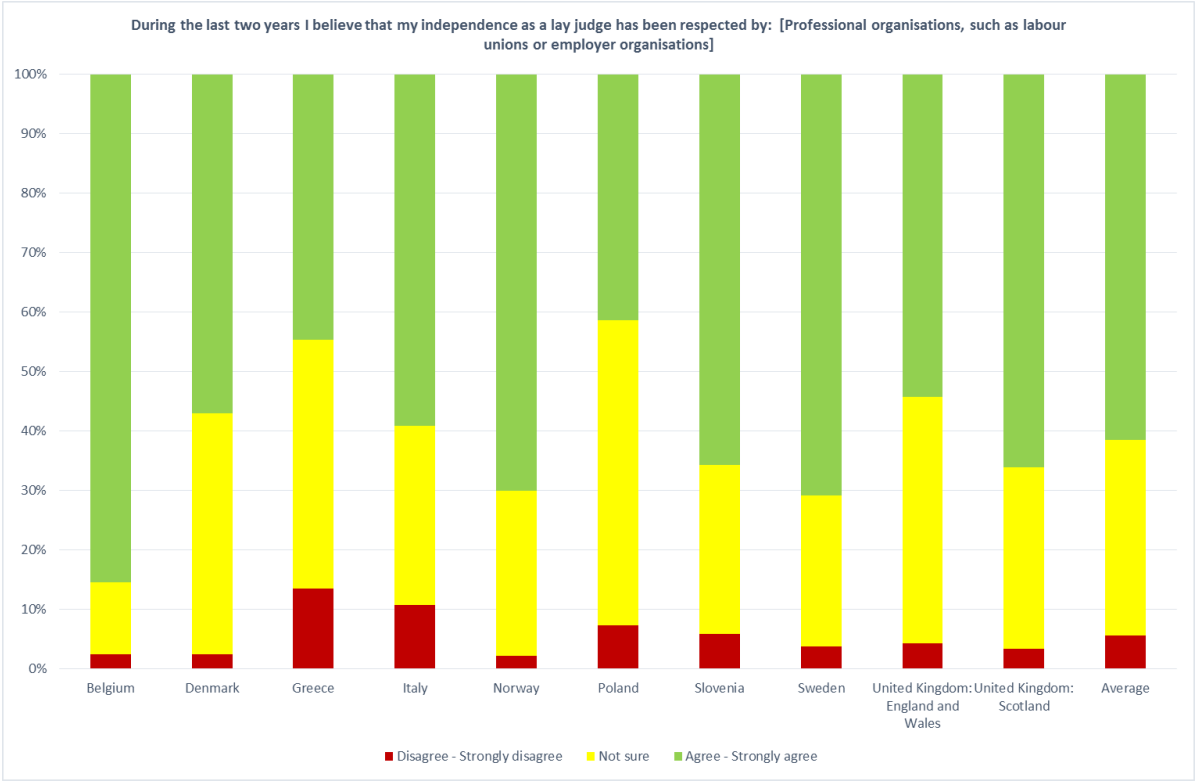


Figure 26. Respect for independence of lay judges by the local community

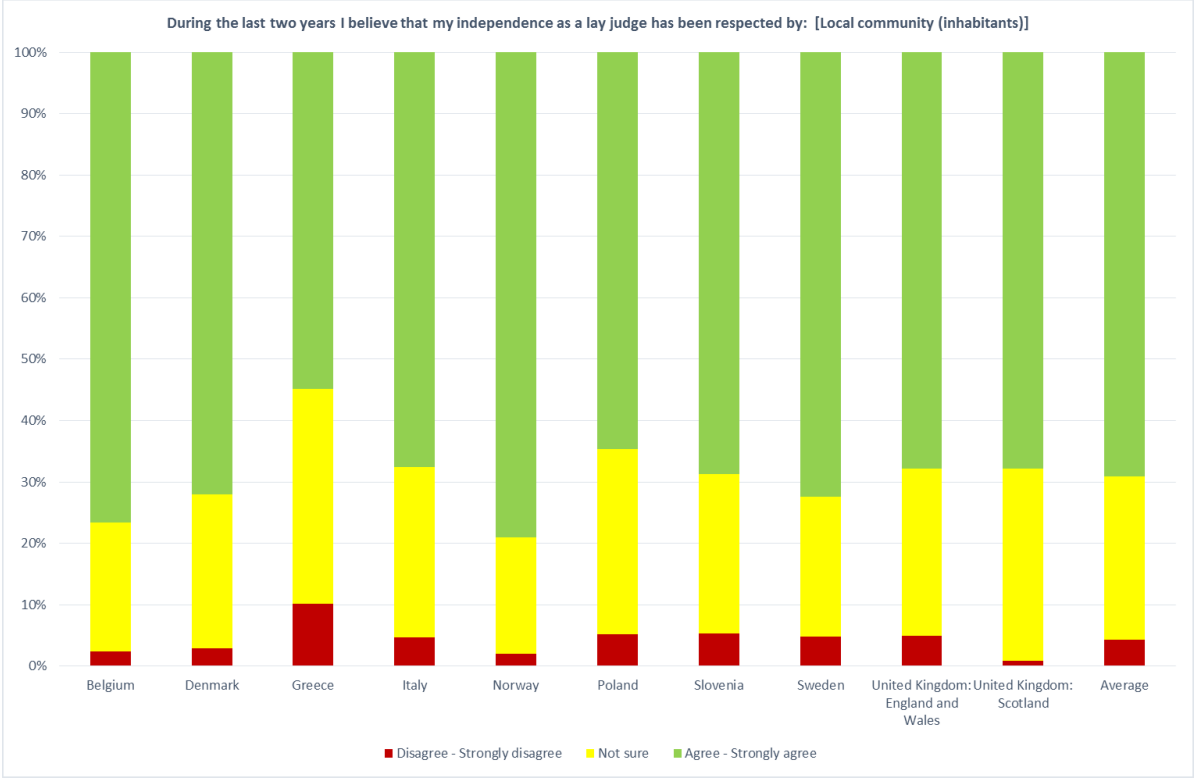
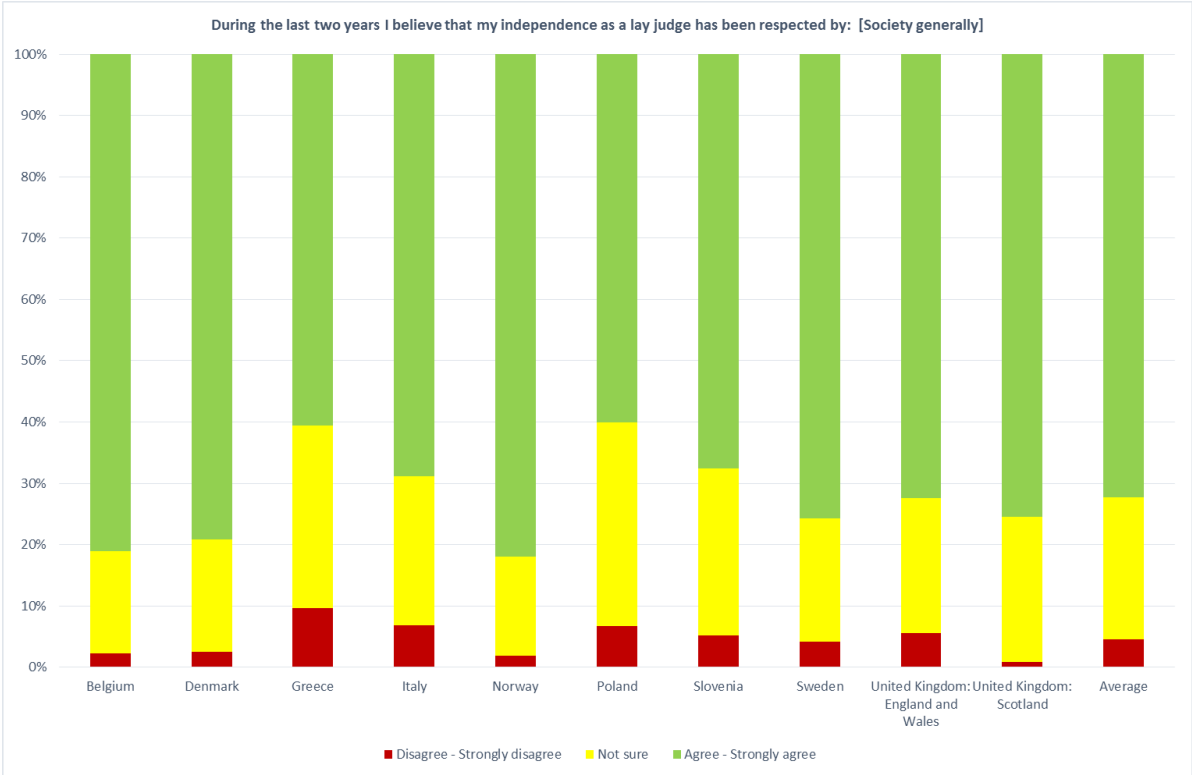


Figure 27. Respect for independence of lay judges by society generally



Small percentages of lay judges report lack of respect by the groups that were distinguished, Lay judges report lack of respect most often by government organizations and the (social) media. This feeling is shared among most of the participating judiciaries. Professional judges are also mentioned, though less frequently. We return to this issue below.

**Comparison of lay and professional judges on common aspects**

The survey among lay judges differs from that among the professional judges, as lay judges are generally not as involved in the governance of the judiciary as judges are. Still, some questions are the same. In general, lay judges are much less critical about practices and attitudes, and are more uncertain about their answers. The differences among countries are largely in the same direction as the differences among countries in the survey of professional judges, but much smaller.

These effects are very strong in the answers about the respect given to judges. See below on the respect by the media and by government. An explanation could be that the cases lay judges are involved in are less controversial than the cases professional judges do without lay judges. Another explanation is that lay judges are less frequently active in the judiciary than professional judges, have less information and are less emotionally involved.



Figure 28. Respect for independence by media - lay judges vs. professional judges

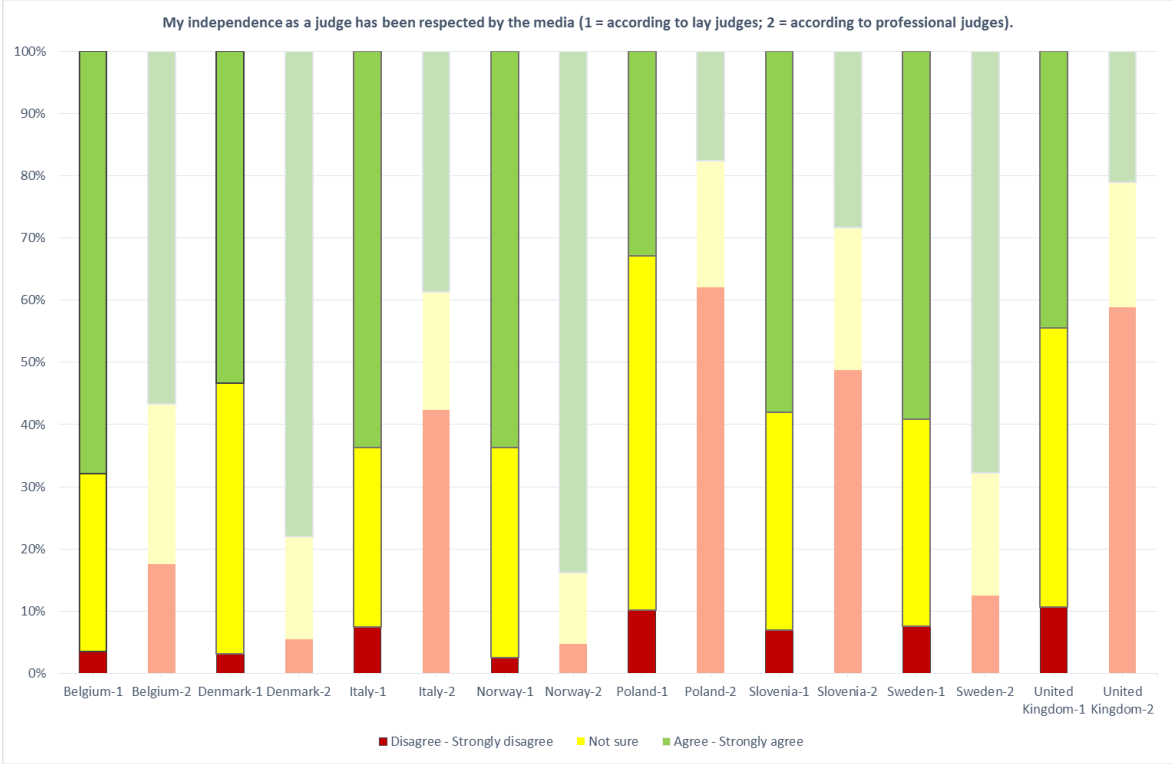
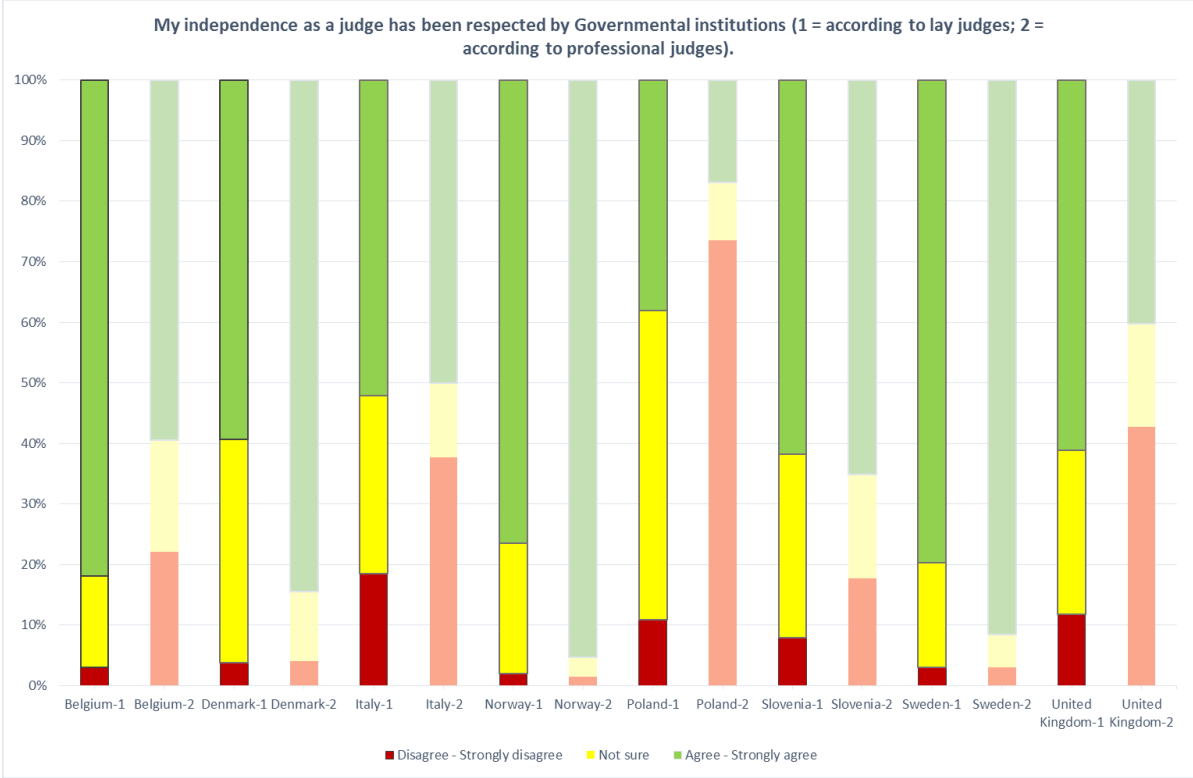
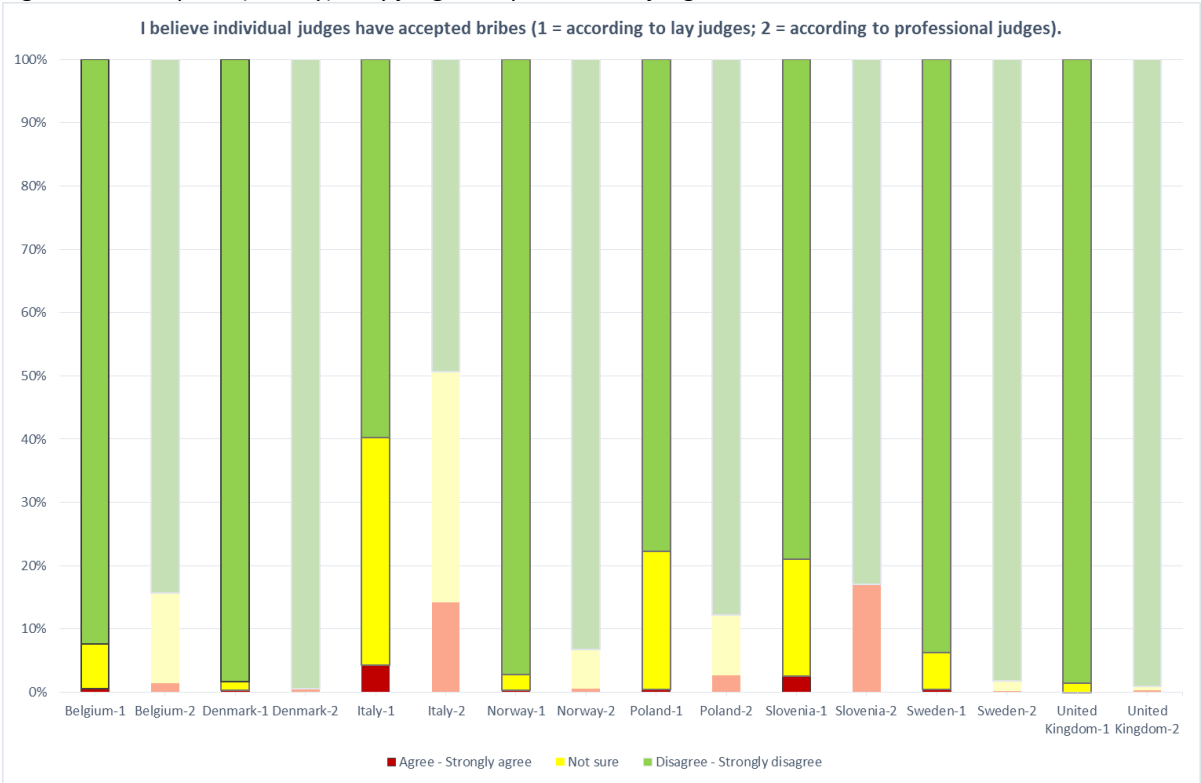


Figure 29. Respect for independence by governmental institutions - lay judges vs. professional judges



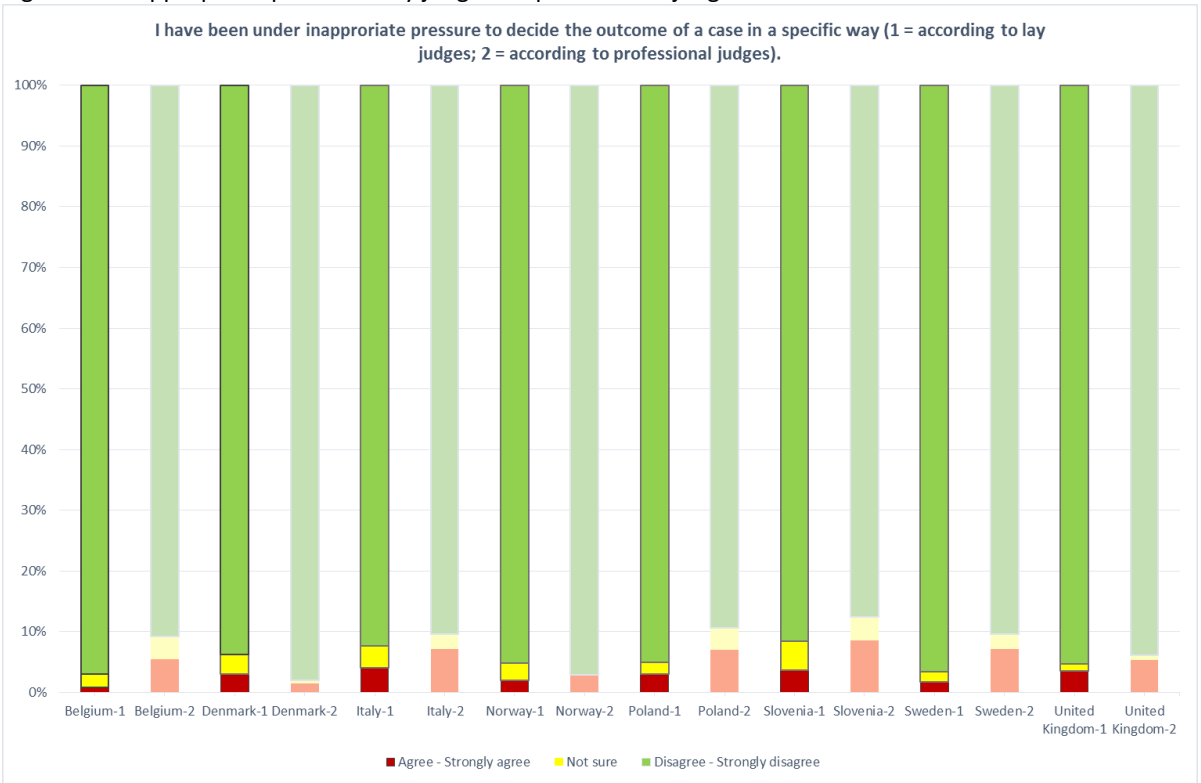
The perceptions about the acceptance of bribes follow the same pattern, but on a much lower scale and less consistently.

Figure 30. Corruption (bribery) - lay judges vs. professional judges



Finally, the results are more ambivalent for the crucial question whether judges have been under inappropriate pressure to decide cases. Lay judges generally feel somewhat less pressure, but they are not more uncertain about this than the professional judges.

Figure 31. Inappropriate pressure - lay judges vs. professional judges



## Outcomes of the survey: interaction of professional and lay judges

An issue specific to lay judges is their relationship with professional judges as they quite often sit together in a panel (see table 3). The outcomes to the questions relating to this, are stated below.

Figure 32. inappropriate influence on lay judges in a panel

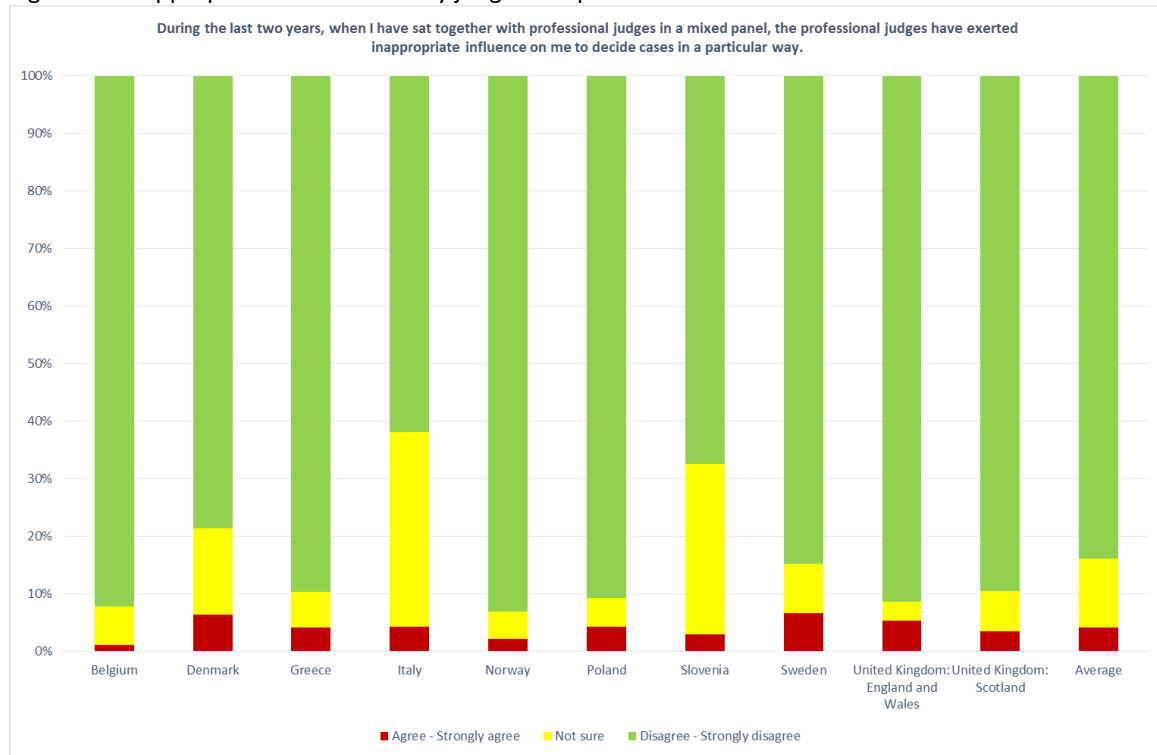


Figure 33. Acceptance of contribution of lay judges by professional judges

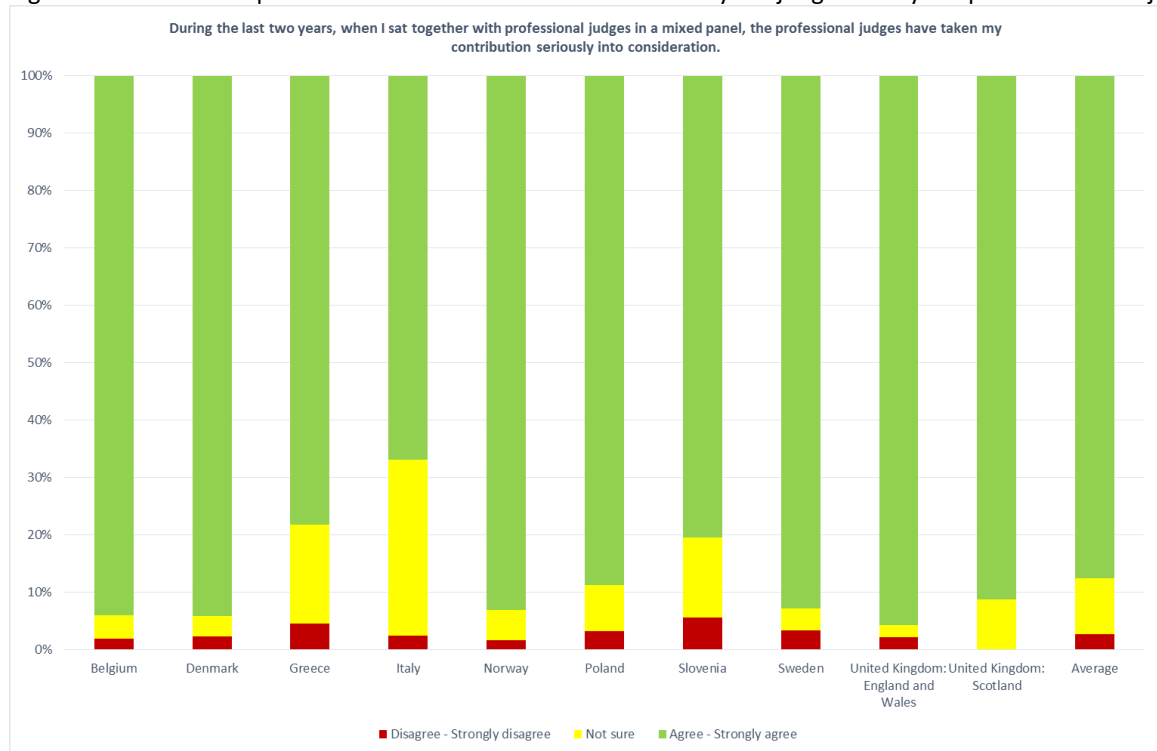
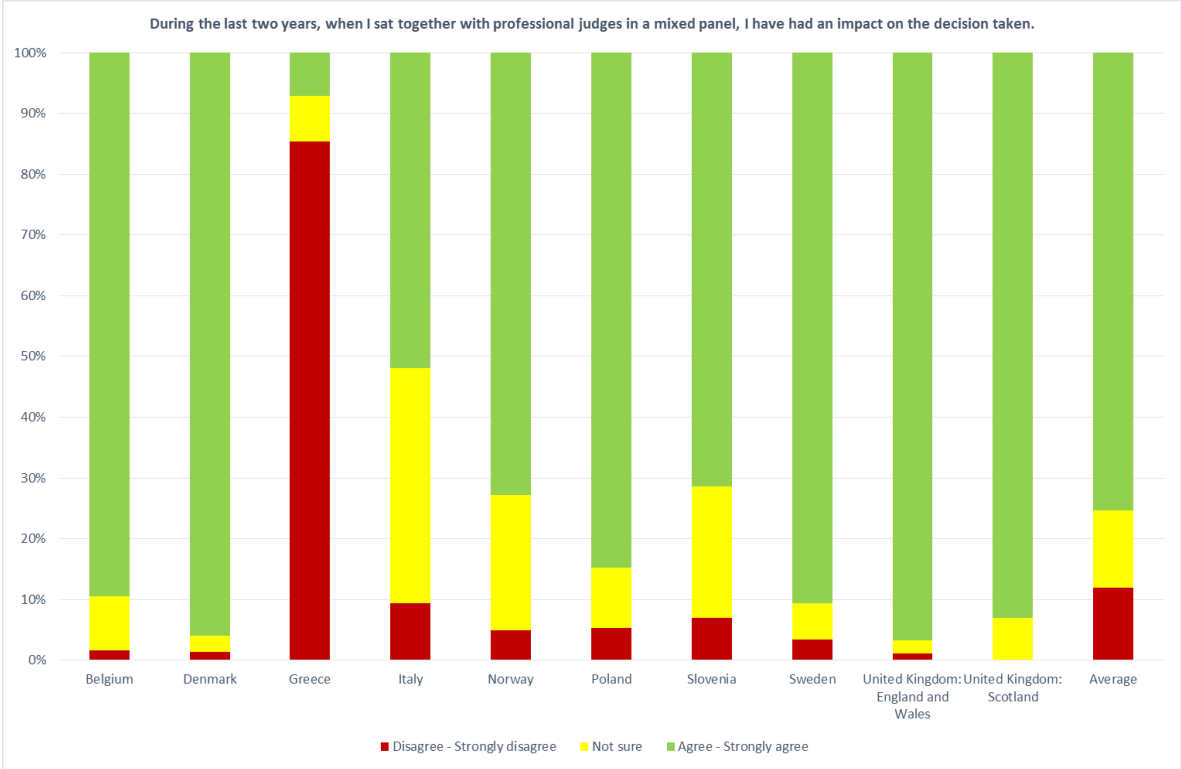


Figure 34. Impact of contribution of lay judges



It seems that the relationship between lay judges and professional judges is relatively unproblematic. Only in Greece, a vast majority of the respondents report that they did not have an impact on the judicial decisions taken. In the other judiciaries the percentages are well below 10%. In the other two questions the percentages are lower.

**Conclusions**

The outcome of the survey indicate that lay judges do not feel much pressure. Relatively small percentages report infringements of their independence or lack of respect. They experience less pressure than the professional judges in their judiciaries. The issues are, however, the same. The working relationship between lay judges and professional judges is generally unproblematic. Still the percentages of lay judges reporting problems are such that attention is warranted.

It should be noted that not all Members and Observers that make use of lay judges have participated in the survey. This means that the outcomes reported here cannot be used to draw conclusions for the whole of Europe.

At a later stage it has to be discussed whether the survey will be repeated, and, if so, in which frequency. On the one hand, the outcomes are relatively moderate which may warrant the expectation that a next time the outcomes will be much the same, on the other hand there is no guarantee for this and, more principled, lay judges are part of the judicial system as are professional judges and, as such need to be heard.

## 7. Proposals for next steps on independence and accountability

The ENCJ Strategic Plan 2018-2021 sets out a two year cycle for independence and accountability. For 2018/2019 this entails repetition of the survey among the professional judges, the update of implementation and scoring of the indicators I&A, and continued co-operation with CCBE about the survey among lawyers. The validation seminars add valuable suggestions that warrant to be taken into account. It is proposed for 2018/2019:

7. Implementation of the national plans to improve independence and accountability.
8. Repetition of the survey of professional judges. Some predominantly technical improvements need to be considered in preparation.
9. Review of the indicators I&A to reflect practical suggestions of the validation seminars and development of a system of external validation per country (external experts per country), followed by implementation of the adjusted indicator system by all Members and Observers and scoring of the answers.
10. Continued cooperation with the CCBE to conduct a survey among the lawyers of Europe about the independence of the judiciary, aiming at a higher participation of countries and lawyers within countries.
11. Develop a uniform format for a court user survey that focuses on the experiences of the parties in court cases, and a method how to conduct the survey: to cover I&A, but also quality. Ready for implementation in 2019/2020.
12. Develop an opinion about the incorporation of hard data about outcomes in the system to measure real (de facto) independence, and to incorporate in the system.

The organisation of these activities warrant attention. While activity 1 is up to the individual Members and Observers, the other activities can either be undertaken by a project team or by the secretariat of the ENCJ. Especially, activities 2 (survey) and 4 (co-operation with the CCBE) are becoming routine and could better be handled by the secretariat than by a project team. The remaining activities could appropriately be undertaken by a project team. It is recommended that after the GA the board considers these matters.

## Part 2. Quality of justice

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### 1. Introduction

The extension of the indicators to quality of justice started at the General Assembly in 2015. The logical follow-up to the establishment of indicators relating to judicial independence and accountability would be to consider the establishment of indicators for the quality of justice, since the objective of an independent and accountable judiciary is to produce quality justice for society. Accordingly, it was decided that work should be done on the creation of a methodology to produce indicators for the quality of justice. In 2016/2017 a set of indicators was developed and applied in a pilot for three judiciaries.<sup>6</sup> The pilot indicated that that set of indicators would provide a good basis for a system for all Members and Observers, and it was agreed at the General Assembly in 2017 that, after refinement of the indicators, the indicators would be applied by all Members and, where possible, Observers. The refinement of the indicators would be based on a critical review of the indicators and the way that these are measured and scored. Also, this was to lead to more precise concepts, definitions and explanations to improve the uniformity of the interpretation of the indicators. In addition, it had to be discussed how the questionnaire should best be answered, allowing for input from the judges. This would all take place in the second half of 2017. Once this had been done, the questionnaire based on the indicators would be answered by all Members and Observers. This would take place in the first half of 2018. Future steps would include taking up the areas of quality that have not yet been addressed. Also, it could be considered then to extend the survey among judges to quality.

To provide the basis for this work, the GA agreed that Councils for the Judiciary should indicate their responsibility for standards of quality of justice - their definition and evaluation - for the sake of quality but also because of the links and sometimes trade-off between quality, independence and accountability. This responsibility could only be put into practice in close co-operation with the judges.

All activities have been carried out, but some complications were encountered during the implementation of the indicator system. The results and dilemmas are presented in a comprehensive manner in this part of the report, which builds on last year's concepts and results and also recapitulates these, for ease of exposition. In last year's report and in the discussions in the project team some issues of a more principled nature were identified and these are addressed in the next section on the ENCJ's vision about quality. Sections 8 and 9 deal with conceptual matters: which areas of quality are to be addressed by the indicators and for each area what are the essential elements that should be focused on? In section 10 the current set of indicators is presented. The outcomes are presented in Chapter 11. Section 12 summarizes the comments received during the pilot and provides clarifications. The last section looks at next steps.

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<sup>6</sup> ENCJ Report on Independence, Accountability and Quality of the Judiciary – performance indicators 2017 adopted by the General Assembly, Paris, 9 June 2017 [www.encj.eu](http://www.encj.eu)

It needs to be emphasized that the indicators essentially provide a starting point for the development of standards about the quality of justice and the categorization of practices in good and less good practices. It is essential that standards of quality are defined and evaluated by the Councils for the Judiciary themselves, where they exist, and not by the other powers of state, because it is the duty of the Councils to reconcile quality with the principle of independence of judiciary and judges.

## 2. Vision on quality

### Principles

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law” (art 6 ECHR). Article 6, as well as Article 47 of the Charter of Fundamental rights of the European Union stipulate the centrality of the person in judicial procedures and that everyone has a right to an effective remedy and to a fair trial. Councils for the Judiciary need to take into account the perspective of the person seeking justice in all their tasks and from that perspective they need to focus on quality of justice. At its General Assembly in 2017 the ENCJ agreed that Councils for the Judiciary should indicate their responsibility for standards setting on the quality of justice - their definition and evaluation - for the sake of quality but also because of the links and sometimes trade-off between quality, independence and accountability.<sup>7</sup> While some Councils have clear responsibilities regarding quality of justice, others still have to assert these responsibilities. Section 2 elaborates the responsibilities of Councils.

The ENCJ has over the years emphasized the paramount importance of judicial independence in combination with accountability. Independence is a pre-condition of quality of justice and at the same time the key component of quality. Other quality aspects lose their meaning if independence is compromised. Independence is necessary but obviously not sufficient for quality of justice. The ultimate goal of the judiciary is to dispense quality justice within a timeframe consistent with the demands of society by judges that are and are seen to be independent and impartial in a fully transparent manner. Generally, independence, accountability and quality reinforce each other. In some instances tensions may occur between these aspects and these will need to be reconciled. This is a responsibility of Councils of the Judiciary. Section 2.3 addresses the potential tension between independence and quality. Also, within an aspect tensions may occur. Section 2.4 discusses the potential tension between timeliness and efficient/affordable procedures on the one hand and other aspects of quality on the other.

The choice of methodology of the ENCJ in the field of quality has been to extend the indicators about independence and accountability to quality of justice. As was explained in the report already quoted, this step is important for a number of reasons. In the first place, because independence, accountability and quality are linked and need to be considered together. In

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<sup>7</sup> ENCJ (2017). Independence, Accountability and Quality of the Judiciary: Performance Indicators 2017, ENCJ Report 2016-2017.

the second place, whilst independence and accountability are not goals in themselves, quality of justice is. Section 2.5 discusses the methodology.

For the judiciary to play its role in society, quality and its evolution in relation to the changing demands of society require permanent attention. It is essential for the ENCJ to address these matters, building on the earlier reports it has made before such as those on judicial reform. This project is well worth the effort, if the Members and Observers use the outcomes, in particular the country profiles, to improve their judicial systems.

### **Role of Councils for the Judiciary in delivering quality justice**

Councils for the Judiciary and other governing bodies need to maintain, explain and, when needed, defend the independence of the judge and the judiciary as a whole vis a vis the other branches of government and private actors. The best defence of independence is a judiciary that provides quality justice. Quality depends on many matters for which Councils for the Judiciary and equivalent governing bodies are responsible. Depending on the scope of their responsibilities, selecting and promoting judges and support staff, securing budgets and innovating/digitalizing the courts are examples. Consequently, even if their responsibilities in the area of quality have not been made explicit in the law, Councils affect the quality of justice in many ways and therefore need to define and maintain quality standards, together with and respecting the professional role of the judges and in consultation with the users of the courts.<sup>8</sup> It is the duty of Councils to secure appropriate funding of the courts to allow the courts to implement the standards, again whether or not this is statutory task of councils. Standards that cannot be implemented in practice create expectations with courts users that cannot be fulfilled. The funding of the judiciary is, in practice, a major bottle-neck.<sup>9</sup> Councils need to be involved in budgetary and financial processes.

Quality standards can be part of approaches such as:

Integral systems:

- Quality systems that incorporate quality standards, processes (PDCA cycles) and measuring instruments.
- Funding systems that incorporate aspects of quality and associated reporting systems, such as annual reports of the judiciary, that include quality indicators.

Standards for judges:

- Selection, promotion and evaluation of judges: all these actions require criteria. These criteria should be based on a quality framework including quality standards.
- Principles of ethics: these principles, whether in the form of codes of ethics or ethical guidelines, incorporate many quality aspects related to the proper functioning of

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<sup>8</sup> See also CCJE: « *it is very important that, in each Member State, the Council for the Judiciary holds a vital role in the determination of the criteria and standards of quality of the judicial service on the one hand, and in the implementation and monitoring of the qualitative data provided by the different jurisdictions on the other.* » (CCJE Opinion 10, paragraph 53).

<sup>9</sup> See ENCJ (2017). Independence, Accountability and Quality of Justice, p20 and ENCJ (2016). Funding of the judiciary.



judges. Again, an implicit or explicit quality framework underpins these codes. It is advisable to make this framework explicit.

Depending on its formal responsibilities, each council should adopt an approach that fits within its mandate, but all should develop quality standards. In the view of the ENCJ all Councils for the Judiciary, if they have not done so yet, need to strive to define a quality framework for the judiciary that at least incorporates:

1. Standards for the courts that define quality of justice.
2. Indicators to measure performance against the standards.
3. Good practice guides for the courts on how to implement the standards, to be developed with the assistance of relevant institutions such as the judges' training institution.
4. Periodic reporting about the quality of justice by means of the indicators to increase public confidence in the judiciary.
5. Creating conditions to avoid any interference with judges' and judiciary's independence by mechanisms to evaluate quality of justice.

It should be emphasized that quality justice is not only created by judges, but by the contributions of all employees of the courts. For instance, the way parties are received, assisted and, if necessary, protected is very important for their experience.

## **Quality in relation to independence and accountability**

### ***Quality standards***

Independence has a major external dimension, but also an internal dimension. Judges must judge their cases independently from their colleague judges and from court management, apart from the appeal system. This leads to a tension between independence and some aspects of quality, in particular the uniform application of the law and consequently the consistency and predictability of judicial decisions that benefit from a common approach by judges. A related issue is timeliness: while a judge is autonomous in her or his handling of specific cases, court users are entitled to know what procedure the courts normally follow in categories of cases and how long this will take. In this respect internal independence is not absolute, and a balance needs to be achieved between judicial autonomy and predictable procedures. The articulation of this balance in general is a governance issue and thus councils for the judiciary are in the lead, while the judges are autonomous in their cases.

In the view of the ENCJ, quality standards (including timeliness) that relate to aspects for which judges are responsible and that may affect their independence, cannot be binding. These standards provide aspiration levels. Judges should, however, be expected to explain their reasons to the parties when they diverge from the standards.

To guarantee the acceptance of such standards by the judges, the standards need to be developed in a process involving the judges of a jurisdiction and taking into account the needs of society. Broad support by the judges is essential for standards to be effective.

### ***Assessment of the quality of judicial decisions***

A complex area is the quality of judicial decisions. Judicial decisions are at the heart of what independence is about. At the same time the quality of decisions is the most important aspect of the quality of justice and the judiciary. Promoting and guarding the quality of decisions foremost by the judges themselves but also by others involved is, therefore, essential. Training, especially, of new judges, but also permanent education to keep knowledge and skills state of the art, is an important tool, and should be used by judges to learn from each other. The methodical assessment of the quality of actual judicial decisions, outside appeal, can be useful, if done properly. The assessment should never be about the merits of the judgments (whether judgments are ‘correct’), as this would fundamentally interfere with judicial independence. It should be confined to their professional quality (sometimes called “craftsmanship”). Assessment of the quality of judgments may take the form of peer review, confined to the discourse among professionals. In this approach outcomes are not used in individual performance reviews. This approach creates least tension with independence, but is used rarely in a systematic manner.

Assessment of the quality of judgments may also be part of performance review or evaluation of individual judges, as is often the case in Eastern and Southern Europe, on a regular basis or for the purpose of career decisions. A sample of judgments is taken and evaluated by those responsible, often judges themselves. When performance reviews take place, Councils for the Judiciary should be in the lead, and not Ministries of Justice or other organizations such as inspections that are part of other state powers than the judiciary.<sup>10</sup> Also, performance reviews may focus either on rewarding/punishing performance or on developing skills. The latter approach can be reconciled more easily with judicial independence than the former. In career decisions it is impossible to ignore the history of judgments<sup>11</sup>, but also in these decisions it is crucial to focus on professional quality and not on the alleged ‘correctness’ of decisions.

The CCJE argues in Opinion 17 that ‘some form of evaluation’ is needed to deliver justice of the highest quality and for the judiciary to be accountable. Evaluation can be formal or informal, and the CCJE urges its member states to consider what is needed.<sup>12</sup> In this context the ENCJ endorses the assessment of judgments but only under the conditions mentioned above.

In many countries appeal rates are used as a proxy of the quality of judgments. Many international bodies such as CEPEJ do the same. The ENCJ is critical about using appeal rates for this purpose, as reversals are often based on other aspects than quality such as new evidence.<sup>13</sup>

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<sup>10</sup> This demand is incorporated in indicator 5, item 5d (evaluation, promotion and training of judges) of the ENCJ indicators on independence and accountability.

<sup>11</sup> This also follows from the indicators on independence and accountability: appointment and promotion should only be based on merit (knowledge and experience). See CCJE, opinion 17, section 27 for the original argument.

<sup>12</sup> CCJE (2014). Opinion 17, section 23.

<sup>13</sup> In its opinion number 17 (2014) upon the evaluation of judges’ work the CCJE states that it is “problematic to base evaluation results on the number or percentage of decisions reversed on appeal, unless the number and manner of the reversals demonstrates clearly that the judge lacks the necessary knowledge of law and procedure” (paragraph 35). If appeal rates are used, the percentage of judgments left standing is probably the most relevant criterion. This combines appeal rate and reversal rate. In its opinion number 17 (2014) upon the evaluation of judges’ work the CCJE states that it is “problematic to base evaluation results on the number or

### Quality in relation to timeliness and efficiency of procedures

The timeliness and efficiency of procedures are also important dimensions of quality of justice. Excellent judicial decisions often lose much of their relevance if they take a long time, relative to the societal processes the decisions are about, to arrive at. In many instances there is not a real contradiction between timeliness/efficiency and other aspects of quality such as the quality of the decision, as the duration of cases is generally determined by waiting times and hardly by the time the judge works on the case.

Final resolution of disputes is delayed when cases are appealed, in particular if these are subsequently referred back to the first instance court. The finality of judicial decisions is a major issue, and appeal courts need to decide cases swiftly and finally, whenever possible. While appeal is a fundamental right applying to legal as well as factual matters, it should be used in appropriate cases and not to delay or frustrate procedures or to vent anger. This implies that selection mechanisms for appeal are acceptable and even necessary. These mechanisms should take into account the interests of all parties and that of society that eventually foots the bill.

### Measurement of quality: quality indicators

In section 2.2. the need to establish quality indicators was expressed. While some believe that the quantitative measurement of quality contradicts the essence of quality, many aspects of quality are observable, if not in objective data then by the professionals and others involved. In this field, indicators can take the following forms:

1. Quantitative scoring of the formal characteristics of judicial systems. This requires a normative framework of what is good and what is bad practice.
2. Quantitative data on quality delivered, such as the length of procedures. Again, this requires a normative framework on good and bad practices: shorter is often, but not always better.
3. Quantitative survey data about opinions and experiences of judges, parties, their lawyers, the population in general, etc. As above, a normative framework is needed.

The choice of indicators needs to be based on shared concepts among Councils and other governing bodies, reflecting the views of the judges of Europe. These shared concepts can only be developed by intense debate. It needs to be accepted that quality indicators remain open for debate, as legal cultures differ and conditions may change over time. Given the subjective nature of the concepts, the process by which indicators are developed is important. Quoting the CCJE:

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percentage of decisions reversed on appeal, unless the number and manner of the reversals demonstrates clearly that the judge lacks the necessary knowledge of law and procedure”(“paraph 35).

« As it is impossible at the moment to rely upon widely accepted criteria, quality indicators should at least be chosen by wide consensus among legal professionals, it being advisable that the independent body for the self-governing of the judiciary play a central role in the choice and the collection of "quality" data, in the design of the data collection procedure, in the evaluation of results, in its dissemination as feed-back to the individual actors on a confidential basis, as well as to the general public; such involvement may reconcile the need for a quality evaluation to be carried out with the need for indicators and evaluators to be respectful of judicial independence.» (Opinion 6, paragraph 43)

Although this is obviously a difficult task, Councils for the Judiciary should take responsibility for developing indicators for the quality of justice, delivered by the courts, as does the ENCJ on the international level.

### 3. Areas of quality to be covered by the indicators

Starting from a broad perspective on quality, quality is linked with the essential tasks the judiciary is deemed to fulfil under the rule of law. These tasks range from maintaining fundamental rights to practical matters such as the service provided to the public. The following areas are distinguished. Key aspects of these areas are briefly enumerated and explained. Obviously, each aspect of an area would require an extensive discussion to do it justice. This is, however, not the place to do that, as our focus is on developing indicators.

#### ***Maintaining the rule of law***

**Key aspects:** constraints by judiciary on government, upholding human rights, upholding the constitution and the division of power

**Explanation:** the judiciary is one of the three state powers, and needs to play its role in upholding the constitution, international covenants and national laws in individual cases in which the interests of the other state powers or other major interests are at stake.

#### ***Providing public access to the law to guide society***

**Key aspects:** precedence, shadow of law (impact of a judgment beyond the case on behaviour), knowledge of law, access to legal and court information, also in minority languages

**Explanation:** the judiciary is not just concerned with conflict resolution in individual cases. It provides guidance to society how to apply the law, thereby clarifying the rules for economic and social interaction. The better it succeeds in this function, the less reason for conflict. At the same time the law must be re-interpreted to allow for changes in society. This and the previous function set the judiciary aside from private mechanisms for conflict resolution.<sup>14</sup> The provision of information is increasingly important due to the rise of "big data", while the provision of information about court procedures in general and for groups in society remain important.

#### ***Guaranteeing due process from the perspective of accessibility***

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<sup>14</sup> See: John Thomas (2015). The Centrality of Justice: its contribution to society, and its delivery. The Lord Williams of Mostyn Memorial Lecture.

**Key aspects:** hearing parties, giving voice, justice for vulnerable groups, equality of arms, proportionality, effective and efficient appeal process

**Explanation:** this aspect covers to what extent the courts can provide for a fair trial (art. 6 ECHR, art. 47 of the Charter of Fundamental Rights of the EU and art. 13 of the UN Convention on Fundamental Rights of Disabled People), and together with the actual decision constitutes the legal core of the work of the courts. Accessibility is a major concern, as citizens cannot avail of even an excellent court if access to that court is not assured. Accessibility can only partly be guaranteed by the courts themselves, as, for instance, court fees and the judicial map are generally determined by government and parliament and not the judiciary. Still, other aspects are under the remit of the judiciary.

#### ***Adjudicating cases in a timely and effective manner***

**Key aspects:** no unnecessary delay, length of procedures proportionate to the importance/complexity of the case, active monitoring and control of process, pre-trial conferences, policy re delay tactics, size limits to presentations from lawyers/parties.

**Explanation:** “Justice delayed, is justice denied.” The ENCJ leaves the measurement of the duration of cases to CEPEJ, in particular. It focuses on the methods to control the duration of procedures. For that purpose case management can be distinguished from due process. The crucial issue is whether or not the judge leads the trial and by what means.

#### ***Delivering judicial decisions***

**Key aspects:** fairness, knowledge, uniformity, predictability, well-reasoned, resolves conflict, judgments reflect views in society, appropriate sentences

**Explanation:** the decision is central to any court case. The way in which a decision is delivered is crucial: reasoning, clarity, length and enforceability are all important topics in this regard.

#### ***Providing services to the court users***

**Key aspects:** court rooms, administrative procedures, waiting rooms, waiting times

**Explanation:** the experience of people going to court is also determined by practical aspects such as the way they are received on entering the court, the time they have to wait and the adequacy of waiting rooms (have victims and defendants to wait in the same room?)

#### ***Enforcement of judicial decisions***

**Key aspects:** enforceable judgments

**Explanation:** obviously for litigants it is vital to assess whether judgments can in practice be enforced. It does not make much sense to go to court if a favourable judgment has no practical effect. However, enforcement is generally not within the power of the judiciary, and the judiciary is dependent on other parties to enforce. Courts do play a role by providing clear, enforceable decisions.

The ENCJ intends to develop indicators for all these areas. For some areas this is easier than for others, as areas differ in conceptual complexity and also in the work that has been done already. The choice has been made to focus on four of these areas in this version of the indicators. These areas were seen as the most pressing ones, either because they come first (for instance, without high quality decisions the other areas lose much of their meaning) or because performance falls evidently short. Most participants in the project team still see

timeliness as the most vulnerable aspect of the performance of their judiciaries. The other areas of quality can be addressed at a later stage. The next table sets the scene.

Table 4 . Areas of quality and planning of the design of indicators

	<b>Description of objective characteristics</b>	<b>Subjective assessment of performance</b>
<b>Maintaining the rule of law</b>	Next phase	Next phase
<b>Providing public access to the law to guide society</b>	Included	Next phase
<b>Guaranteeing due process from the perspective of accessibility</b>	Included	Some aspects
<b>Adjudicating cases in a timely and effective manner</b>	Included	Some aspects
<b>Delivering high-quality judicial decisions</b>	Included	Some aspects
<b>Enforcement of decisions</b>	Next phase	Next phase
<b>Providing services</b>	Next phase	Next phase

In this table a distinction is made between the description of objective characteristics and the subjective assessment of performance. Quality is in part determined directly by the arrangements stipulated by law. In addition some aspects of quality such as the duration of cases are objectively measurable. However, there are also many aspects that can only be assessed subjectively, at least at this stage. Subjective assessments can be given by the councils/courts/judges and by court users/lawyers/observers. Currently, little is known about the perceptions of court users, as was also noted in the context of independence and accountability. Subjective assessment is therefore limited to the views from within.

## 4. Substantive exploration of the selected areas of quality

In this section the areas of quality that were selected are elaborated upon. Special attention is given to the quality of judicial decisions.

### Adjudicating cases in a timely and effective manner

Both timeliness and case management are topics that have been discussed extensively within the ENCJ. The balance between timeliness and other quality aspects is an important issue, as

indicated in the first recommendation of the 2010-2011 Timeliness Report: *‘Justice delayed is justice denied’ is a true statement that underlines the importance of delivering justice without undue delay. However, in striving for timeliness it must be remembered that the drive for expedition should be balanced with other quality aspects, of which the quality of the decision should have the highest priority. The demands of society require processing without undue delay, but drive for efficiency must not lead to inferior quality decisions.’*

After the publication of the report, regional timeliness seminars were organised to increase awareness of the issue of timeliness, to deepen the understanding of causes and remedies, and to discuss the recommendations and the cooperation between stakeholders, and thus to further the implementation of the recommendations. The seminars have been organised with participants from countries within a region with comparable culture and legal traditions.

The ENCJ has developed case management guidelines, as presented in the 2012-2013 report ‘Judicial Reform in Europe – Part II’. The guidelines are:

- Every judiciary should set up a structure on how to establish methodologies for case management, including the associated standards for the (average) duration of cases, for specific categories of cases/jurisdictions. These structures should be guided by the judges and should allow for discussion with stake holders such as lawyers.
- The methodologies for case management need to establish a balance between the importance of a case and the attention the case is given in terms of procedural steps allowed.
- In the methodologies an important place should be given to pre-trial conferences to establish the proper method to resolve the case and to sort out differences of opinion about procedure.
- The case load of judges and support staff should allow for sufficient time for proper case management. It should be carefully considered whether judges can delegate some administrative aspects of case management to support staff.
- Case management requires a change of attitude and culture of many judges, which needs to be promoted by training and/or other tools to disseminate knowledge.

These guidelines provide a normative framework to evaluate good practices in this area. We distinguish between what the courts do and expect the judges to do on the one hand and what the courts expect the parties to do on the other hand to conduct procedures in a timely fashion.

Timely adjudication is effected not only by case management, but also by legal and organizational matters, such as the availability and use of summary procedures, digitalization of procedures and specialisation of judges. These issues are taken up here, despite the fact that these phenomena have wider implications.

## Guaranteeing due process from the perspective of accessibility

The extent to which the courts can provide for a fair trial as stipulated by article 6 ECHR and article 47 of the EU Charter of Fundamental Rights in practice depends on a range of factors. Here the focus is on factors that are related to access to justice in a broad sense. At the most basic level, due process and accessibility require that parties can understand what is said and written. This implies that procedures are available in the official languages of a country and that for other languages translation facilities are available. People with disabilities require specific attention. Apart from physical arrangements, their full participation may require specific procedural arrangements. Also, information about the courts and justice system must be made available for people with disabilities (i.e. for visually impaired).

Assuming these basic conditions are met, matters arise from the adversarial nature of judicial procedures. From this perspective a key issue is equality of arms. When there is a big gap between parties in knowledge of the law and of procedure and experience in litigating, one of the parties is potentially seriously disadvantaged unless the disadvantage is compensated in one way or the other. The issue will then be whether parties get adequate legal representation. If they cannot afford adequate legal representation and public funding is insufficient, or if they do not want legal representation, can judges order or offer legal representation? If that possibility does not exist or does not have the desired result, have judges the duty to compensate for the difference in knowledge and experience when hearing the case? And, more practically, do they have the time to do so? A related matter is abusive conduct. If parties or their lawyers misuse proceedings to delay the conclusion of cases or to otherwise drive up the costs for the other parties, a fair trial may become illusory if judges do not have the authority or do not use it to prevent such behaviour.

Another issue is whether judges can and do spend sufficient time on all cases. As cases differ in the effort they demand from judges or panels of judges, judges must be able to muster the time that is needed for each individual case, irrespective of the parties or the matter at stake.

The availability of appeal is an important aspect of access to justice. Parties should be allowed to appeal not only on the law, but also on the facts. At the same time appeals takes time and resources, and without some prospect of success merely delays justice and drives up costs for the parties and for the judiciary. The implication is that an adequate balance must be found between access to appeal and its limitation. A similar situation arises with respect to the impact of an appeal on the execution of the order appealed against.

The ENCI has developed guidelines on appealing in the report about judicial reform mentioned above ('Judicial Reform in Europe – Part II'). The guidelines are:

- The law should state that the decision on meritorious cases<sup>15</sup> is a judicial decision based solely on the merits of the case.

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<sup>15</sup> Whether a case is meritorious or not.



- Filters should be defined to reduce the unnecessary use of court time on unmeritorious cases so allowing more timely access to justice for those who have a meritorious appeal.
- Filters should be defined to provide criteria by which the judiciary can evaluate the merits of the appeal in each case and exercise judicial discretion in the final decision.
- Procedures should be in place to avoid repetition and a re-hearing of the first instance trial and to require applications for appeal to focus on the outstanding issues.
- To limit the number of appeal judges<sup>16</sup> is not recommended, as more effective measures are available to reduce the burden of appeal and court time.
- Decisions on meritorious cases should normally and primarily be taken through a paper exercise rather than any court hearing.
- The appeal procedure could be simplified by setting limits to the length of written and oral presentations of parties.

In this area of quality the identification of good practices is more ambiguous than in the other areas, as guidelines are lacking or, where these do exist, not very specific. The work is ongoing, and the indicators presented below preliminary.

### **Delivering high-quality judicial decisions**

As argued in opinion n°11 of the CCJE “To be of high quality, a judicial decision must be perceived by the parties and by society in general as being the result of a correct application of legal rules, of a fair proceeding and a proper factual evaluation, as well as being effectively enforceable”. To achieve these aims, a number of requirements must be met.

### ***Reasoning of judicial decisions***

Judicial decisions must in principle be reasoned. According to the ECHR case law, courts should give sufficient reasons for their judgments, both for civil and criminal decisions. This raises the question whether all decisions rendered by courts should be reasoned. This depends on the provisions of each domestic law but, as a general guideline, it may be considered that, unless otherwise stated, decisions involving the management of the case (for example: a decision adjourning the hearing) do not need a specific reason. In principle, the obligation to state reasons should be reserved to the final decision of the trial.

Jury decisions give rise to specific considerations. According to Recommendation n° R (95)5 of the Committee of Ministers of the Council of Europe to Member States concerning the appeal process (civil and commercial cases), "in principle, reasons need not to be given... for decisions made by juries". This leads to issues such as the kind of civil or commercial cases that can be judged by a jury and what means can be used to make the reasons or the verdict understood by the litigants and, if necessary, by the court of appeal.

A further issue is whether the reasons should be written or a judge can render his decision orally. Recommendation n° R(87)18 of the Committee of Ministers to Member States concerning the simplification of criminal justice states ( III, c, 3 ) that in less serious cases, or if

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<sup>16</sup> For instance, by hearing cases by a single judge instead of a panel of judges.

the parties agree, the tribunal should be allowed not to make a written decision, but an oral decision "which should be limited to a mention in the record".

If a recommendation is to be made, it seems necessary to put the parties in a position to know, by whatever means, the reasons for a judgment pronounced by a judge, even if delivered orally.

An issue is also whether the practice consisting of giving the reasons of the judgment only if a party appeals against this judgment is acceptable. This practice has been condemned by the European Court of Human Rights because the litigants must be able to understand, as soon as the decision is rendered, the reasons why they won or lost their case. However, this practice still exists.

Reasoning takes a different form if it is done by a single judge or a panel. This choice depends on the culture and the system of each country. Whatever the system is, even in countries of which traditionally favour judgment by a single judge, informal discussions among judges dealing with similar cases should be encouraged in order to ensure predictability of decisions and legal certainty.

The ENCJ recommends that whenever it is possible, judges should provide this reasoning at least orally.

### ***Clarity of decisions***

The judicial decision should, not only be reasoned, but also be intelligible, drafted in clear and simple language. This issue depends on the audience of the decision. Is the decision aimed at the litigants, the lawyers, the professors of law, the media or the public in general?

The judicial authorities of each country should set up a guide of good practices in order to facilitate the drafting of decisions (See opinion n° 11 of the CCJE).

### ***Length of decisions***

It is desirable that a judicial decision is as concise as possible. For a decision to be read, understood and have impact it has to be sharp and focused and to refrain from unnecessary detail and academic excursions.

### ***Enforceable decisions***

A judicial decision needs to be written in clear and unambiguous language to be readily capable of being given effect. The decision should be effectively enforceable for the benefit of the successful party, which is a component of the right to a fair trial. As argued by the European Court, the Convention and the Charter does not establish theoretical protection of Human Rights, but aims to assure that the protection they provide is given practical effect.

### ***Assessment of the quality of judgments***

Given the difficulty of ascertaining the quality of judicial decisions, a complementary approach which is followed here is to map what judiciaries are doing to guarantee and/or improve the quality of judgments. Education is part of this, but also the assessment of the

quality of judgments. This complicated area was discussed in section 7.2. Following from that discussion, the major aspects to be covered include the existence of a mechanism to sample judgments and evaluate these judgements, the context (peer review or performance evaluation) the scope of the assessment and who is responsible. As to the scope of the assessment, a major distinction is whether the assessment is about the professional quality of the decision or about the merit of the judgment. In view of the independence of the judge, it is inappropriate to assess the merit (“correctness”) of the judgment, and, in the view of the ENCJ, it causes the mechanism itself to be inappropriate. This is the case if a party outside the judiciary is responsible for the mechanism, which is anyway undesirable, but also if the responsibility lies within the judiciary.

As to the responsibility for the mechanism, according to the law, some Councils have no competence in the field of quality of justice. However, because it is a duty of the Councils to ensure that the principle of independence of judges is preserved, the CCJE expressed in its opinion number 11 that the “Council should be entrusted with the evaluation of the quality of decisions”. The CCJE added that “where there is no Council for the Judiciary, the evaluation of the quality of decisions should be undertaken by a specific body having the same guarantees for the independence of judges as those possessed by a Council for the Judiciary”. The ENCJ shares this view.

To conclude, the ENCJ believes that the assessment of the quality of judicial decisions, which likely is the most critical aspect of the quality of justice, is important, if one takes the improvement of quality seriously. However, any assessment system must respect the independence of judges. Necessary conditions are that the assessment is not about the merit of cases and the judiciary itself is responsible for the system.

### ***Education of judges***

Another method to improve the quality of judicial decisions is education, in particular initial training of newly appointed judges, but also ‘education permanente’ may help to maintain and improve their skills .

### **Providing public access to the law to guide society**

Judicial decisions give - to some degree - guidance to behaviour of the members of society (“shadow of the law”). A prerequisite is that judicial decisions of the courts are published. In addition to passive publication, the reach of decisions can be enlarged by efforts of the courts to draw the attention of the public to decisions that have high impact and/or set precedent. This can be done directly by means of the judiciary’s websites and use of social media and indirectly by the official media. Also, given the worldwide development of ‘big data’ it may become increasingly important or even necessary for the courts to make statistical information available about the outcome of cases.

At a more general level the moral authority of the courts - and thereby the impact of judicial decisions - could be promoted by providing information to the public about core judicial values such as independence, impartiality and application of the law. This could be further helped by inviting the public to visit the courts and see judges at work.

Finally, new technologies to improve access to justice, such as on-line dispute resolution mechanisms, are important to retain or broaden the reach of the judiciary, but also to keep in touch with a society that experiences rapid technological change. This has been recognized by the ENCJ before. The already mentioned report on judicial reform contains the recommendation:

- Judiciaries should learn from on-line dispute resolution mechanisms and applications that are currently available on the internet.

The work on this area of quality is still in its first phase. The indicators presented below are therefore preliminary.

### Set of indicators on quality of justice

In this section the indicators for the four areas are listed. Indicators about objective characteristics are in black and indicators regarding the subjective assessment of performance are in blue.

#### INDICATORS OF TIMELINESS AND EFFICIENCY OF PROCEDURES

##### 1. Standards for judges about the duration of cases:

- Existence of time standards in first instance and in appeal courts;
- Scope of the standards (total procedure or particular phases of the procedure);
- Degree to which standards are binding;
- Degree of ambition in the standards at first instance and appeal courts;
- Realisation of standards in practice at first instance and appeal courts;
- Sufficiency of court resources to meet the standards.
- Public access to information on the realisation of standards

##### 2. Standards for parties about the duration of cases

- Existence of time standards for parties in first instance and in appeal courts, e.g. to present documents;
- Extent to which parties comply with the standards;
- Authority of judges to determine the procedure in a case (to fit the procedure to the case) in first instance and appeal courts;
- Authority of judges to enforce the determined procedure if a party does not conform;
- Extent to which the authority to determine the procedure is used in practice.

##### 3. Finality of judicial decisions

- Existence of possibilities for appeal courts to refer cases back to first instance courts
- Extent to which cases are referred from appeal courts to first instance courts.

##### 4. Summary procedures:

- Existence of summary procedures in first instance and appeal courts;
- Limitations to summary procedures;
- Degree to which summary procedures are used in practice

## 5. Digital case filing and digital procedures

- Possibility of digital case filing
- Possibility of digital procedures, in the sense that all communications are digital, except for the hearing
- Possibility for litigants to inform themselves digitally about the progression of their cases.

## 6. Specialisation of courts and judges

- Existence of specialised courts in first instance and appeal courts
- Existence of specialised chambers in first instance and appeal courts
- Existence of specialised judges outside specialised courts and chambers in first instance and appeal courts
- Existence of specialised rules of procedures for cases handled by specialised courts/chambers/judges at first instance and appeal level

### Impact of arrangements 1-6 on:

- Duration of cases
- Access to justice
- Quality of decisions
- Efficiency

## INDICATORS OF DUE PROCESS FROM THE PERSPECTIVE OF ACCESSIBILITY

### 7. Equality of arms (legal representation):

- Possibility of litigants not to be represented by a lawyer
- [Frequency of litigants not being represented by a lawyer](#)
- Existence of mechanisms in case one of the parties is not represented, such as ordering or offering legal representation
- Existence of a duty of the judge to compensate for the difference in knowledge and experience of parties and/or their legal representatives when hearing the case
- [Frequency of litigants that are in need of compensation](#)

### 8. Equality of arms (funding and costs):

- Existence of a system under which public funding is provided to litigants without means to fund litigation themselves
- Existence of a system to shift the costs of litigation of the successful litigant to the unsuccessful litigant

### 9. Commensurate effort of judges:

- Existence of rules or regulations to determine whether a case is decided by a single judge or a panel of judges in first instance and appeal courts
- [Sufficiency of time for the judge to hear and decide cases adequately in regular and in complex cases in first instance and appeal courts.](#)

### 10. Dealing with abusive conduct

- Authority of the judge to take action to prevent abuse by parties and/or their lawyers
- Instruments available to the judge to intervene
  - o Stop or stay the proceedings
  - o Order expedition of the proceedings
  - o Impose fines

- Initiate disciplinary measures
- Shifting of litigation costs

-

#### **11. Availability of appeal**

- Existence for an unsuccessful litigant to bring an appeal
- Requirement for permission to appeal
- Possibility of appeal on the facts (and not only on the law)
- Impact of appeal on the execution of the order appealed against

#### **12. Communication**

- Existence of procedures in all official languages of the country
- Existence of facilities at the court to provide translation regarding languages not spoken in court

#### **13. Access for people with disabilities**

- Existence of special procedural arrangements for people with disabilities
- Existence of physical arrangements for people with disabilities
- Availability of information about the courts and justice system for people with disabilities (i.a. website for visually impaired).
- Existence of guidelines for access for people with disabilities
- Availability of training for judges on dealing with people with disabilities

#### **Impact of arrangements 7-13 on:**

- Due process from the perspective of accessibility
- Efficiency of procedures
- Quality of judicial decisions
- Public access to the law

## **INDICATORS OF QUALITY OF JUDICIAL DECISIONS**

### **Quality of judicial decisions**

#### **14. Format of judgments**

- Existence of templates for each type of litigation
- If yes, the extent to which templates are developed by judges.
- Extent to which templates are applied

#### **15. Reasoning of judgments**

- Existence of the requirement to reason judgments dealing with substantive issues in civil cases and verdicts in criminal cases
- [If yes, the extent to which this requirement applies to cases](#)
- Legal basis of the requirement of reasoning in civil cases and in criminal cases
- Existence of restrictions on the reasoning of judgments in civil cases and verdicts in criminal cases
- [If yes, the extent to which this requirement applies to cases](#)
- Legal basis of the restrictions on reasoning
- Requirement of transcription of oral judgments in civil cases and oral verdicts in criminal case

#### **16. Clarity of judgments**

- Existence of a requirement to use clear and simple language
- If yes, the extent to which the requirement is put in practice
- Primary recipients for whom reasons are written:
  - o Litigants
  - o Public in general
  - o Other judges (such as appeal courts or Supreme Court)
  - o Evaluation authorities
- Existence of guidelines on the clarity of judgments
- If yes, the extent to which guidelines are developed independently from the executive/legislative power
- The obligation to apply the guidelines
- The extent to which the guidelines are put into practice.
- Information available on the clarity of judgments as perceived by parties

### 17. Concise judgments

- Existence of formal requirements that lead to long judicial decisions (i.e. requirement to address all arguments and/or factual disputes) in civil and in criminal cases at first instance and appeal courts
- Existence of formal requirements that allow short judicial decisions in civil and in criminal cases at first instance and appeal courts
- Motivation of judges that in practice lead to long judicial decisions
  - o Custom: everybody does it
  - o Enhancement of career
  - o Concern for criticism from appeal
  - o Lack of experience as a judge
  - o Overly Academic approach
  - o 'Copy paste' from other decisions
- Estimation of the average length of a judgment in a civil case about breach of contract regarding the delivery of goods in which the lawyers raise many issues about evidence
- Estimation of the average length of a verdict in a criminal case about a murder in which the lawyer raises many factual and procedural issues.

#### Impact of aspect 14-19 on:

- Quality of judicial decisions
- Timeliness
- Efficiency of procedures
- Public access to the law

### Improvement of the quality of judicial decisions

#### 18. Assessment of the quality of judicial decisions

- Existence of a mechanism to address the quality of judicial decisions by examining a sample of judgments in first instance and appeal courts
- Framework within which this mechanism is applied:
  - o Evaluation of performance of judges
  - o Peer review among judges, the outcomes (at the individual level) of which are not available to management or inspection
- The responsible authority for the mechanism
- Scope of the assessment:
  - o Craftsmanship of the judge and/or

- Merits of the judicial decisions
- Alternative mechanisms to assess the quality of judicial decisions:
  - Use of appeal rates to assess the quality of judicial decisions
  - Inclusion in customer satisfaction reports
  - In-depth studies about specific aspects of judicial decisions such as readability

#### **19. Education of judges**

- Existence of initial training of judges on writing judicial decisions
- Existence of the requirement for judges to participate in training courses annually
- [Extent to which this requirement is honoured by the judges](#)

#### **Impact of arrangements 20-21 on**

- Quality of judicial decisions

### **INDICATORS OF PUBLIC ACCESS TO THE LAW TO GUIDE SOCIETY**

#### **20. Access to case law**

- Degree to which judicial decisions in civil, criminal and family law are published at first instance and appeal courts
- Efforts of the courts to point out decisions that have high impact and/or set precedent to the public
- Efforts of the courts to make statistical information available about the outcome of cases

#### **21. Opening up to the public**

- Degree to which the courts provide information to the public through official sources (e.g., publications, websites) about core judicial values such as independence, impartiality and application of the law
- Degree to which the public gets the opportunity to visit the courts and see judges at work.

#### **22. New technologies of the courts to improve access to the law:**

- Availability or development at the courts of on-line dispute resolution mechanisms
- [Availability or development of track and trace systems for parties to follow the progress of their cases](#)
- [Availability or development of digital tools at the courts that assist parties to bring suit or to defend](#)
- [Availability or development of digital tools at the courts that predict the likely outcome of cases](#)

#### **Impact of arrangements 22-24 on:**

- [Public access to the law](#)
- [Access to justice](#)
- [Efficiency of procedures](#)
- [Quality of decisions](#)

In Appendix 3 the indicators are presented in detail in the form of the questionnaire that was filled in by Councils and other governing bodies to measure the indicators. In this Appendix it is also indicated for each indicator what is good and bad practice. This is done in the form of scoring rules, as was done before for the indicators on independence and accountability. Differences in legal culture and different approaches to what is important in judicial procedures lead to different valuations. Determining what is (less) good and what is (less) bad required intense discussion within the project team. It proved possible to reach a consensus.



## 5. Implementation of the Quality indicators

In total 23 Members and Observers applied the indicators by means of the questionnaire.<sup>17</sup> The Court of Justice of the European Union (CJEU) also filled in the questionnaire. The questionnaire proved much more difficult to fill in than the questionnaire about independence and accountability. These difficulties stemmed in particular from:

- 1) Inherent subjectivity of some questions at this stage. While quantitative data could resolve some of the ambiguities, these data are generally not yet available.
- 2) Non-linearities occur: for instance, access to appeal is important, but very many baseless appeals are harmful.
- 3) Some questions allow only binary answers, while the answers are often more nuanced.
- 4) Interpretation of questions in different legal/judicial systems: what is clear in one system, may be ambiguous in another.
- 5) Differences between courts and areas of law. The generally applied distinction between first instance and appeal courts and between civil and criminal law is helpful, but does not resolve all differences.
- 6) Where differences in legal systems exist within a country and this is not reflected in the ENCJ participation, these problems become apparent, for instance in Germany.

In its report to the project team, the expert group highlights some ambiguities with regard to the scoring of the answers. The scoring rules reflect what is good and what is bad practice, and in some instances differences of opinion still exist. Nonetheless, nearly all Members and Observers were able to fill in the questionnaire with the desired involvement of judges, leaving few blanks. Only one judiciary (Germany) had to leave so many answers open that a meaningful country profile could not be constructed. However, resulting from the difficulties mentioned earlier, various Members and Observers felt the results did not accurately reflect the reality of their national system and suggested the indicators should first go through another stage of development before (provisional) results could be published per judiciary. When comparing the country profiles (which is not the main purpose of the indicators), differences come to light that are difficult to explain. Some of the Members and Observers thought they were doing quite well as to the quality of justice, but came out negatively. It may be that the subjectivity of some questions allows for more or less critical evaluations. Still, such unexpected outcomes should not be disregarded without a thorough analysis.

In view of these observations, it is not appropriate at this stage to publish the country profiles. As the exercise was seen as informative and useful, it was generally agreed that the project should continue and develop the indicators further. As a first step, it was agreed that each participant is to examine its profile, report back on the problems/ambiguities it has encountered before summer, and at the same time establish for itself issues about the quality of justice that need to be addressed.

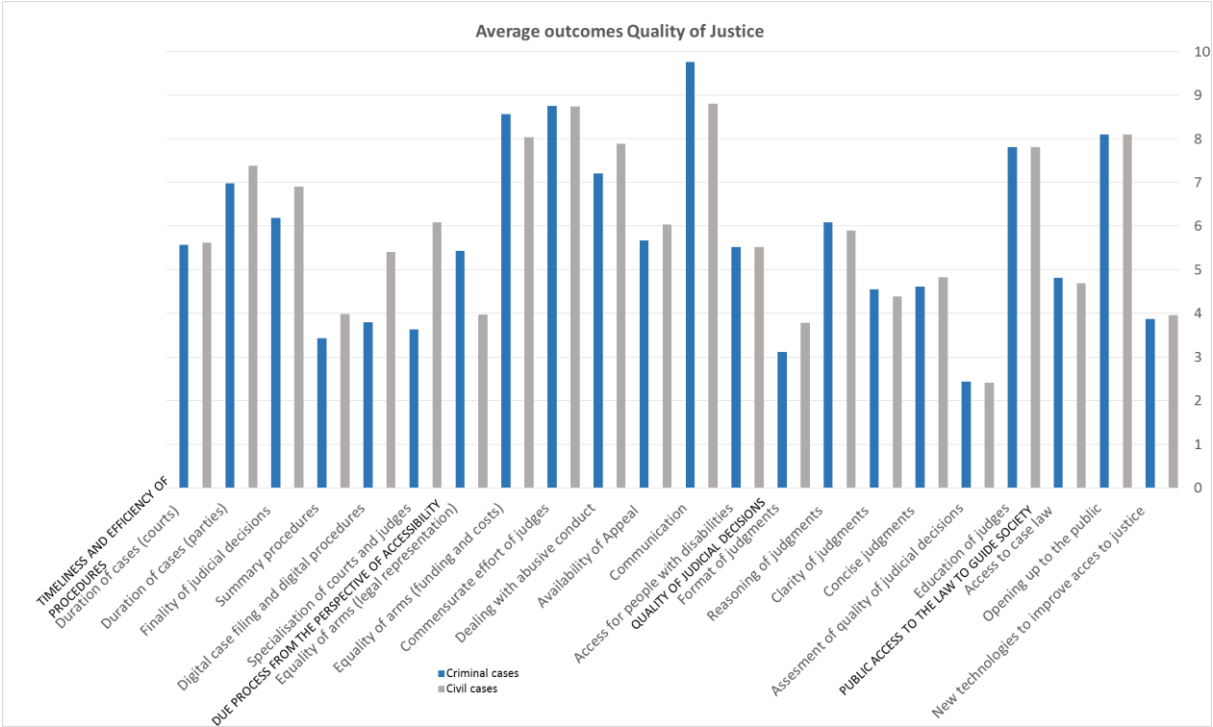
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<sup>17</sup> The Councils of Denmark, Hungary, Malta, Northern Ireland and Poland did not fill in the questionnaire.

Finally, we would like to note that, while the quality indicators were not part of the scientific validation, some remarks were made at the seminar. The number of indicators together with those about independence and accountability was thought to be (too) large by some participants to steer on all of them, while the distinction between objective and subjective aspects was seen as much more fluid than was the case for independence and accountability. As to content, procedural justice was missed. These observations can be addressed in the next cycle.

The following figure shows the average outcomes per indicator of all Members and Observers.

Figure 36. Quality indicators for four areas of quality, average over all judiciaries



Examining the outcomes, the average scores are relatively low. An indication of the extent to which room for improvement exists can be derived from the variation of the scores of the participating judiciaries. The scores per area of quality are discussed below. Attention is also paid to the indicators that were difficult to implement, as highlighted by the expert group.

In addition to the indicators themselves, the questionnaire asked to what degree the aspects that were covered by the indicators contributed to the areas of quality they are primarily aimed at and to other areas that were likely to be affected. Members and Observers were also asked how procedures impacted efficiency in their judiciary. In the following tables the overall perceptions of the impact of the indicators across participating countries are presented. These perceptions show considerable variation across countries. These assessments were often difficult to make, for instance because specific measures have not been taken in a country. Overall, one would expect the ‘wisdom of the crowd’ to work. While negative perceptions existed in some instances at country level, these did not generally survive aggregation of the perceptions. Apparently, there are no measures that have counterproductive effects on other objectives, with the exception of the impact of reasoning of decisions on timeliness (see below). There is much synergy.

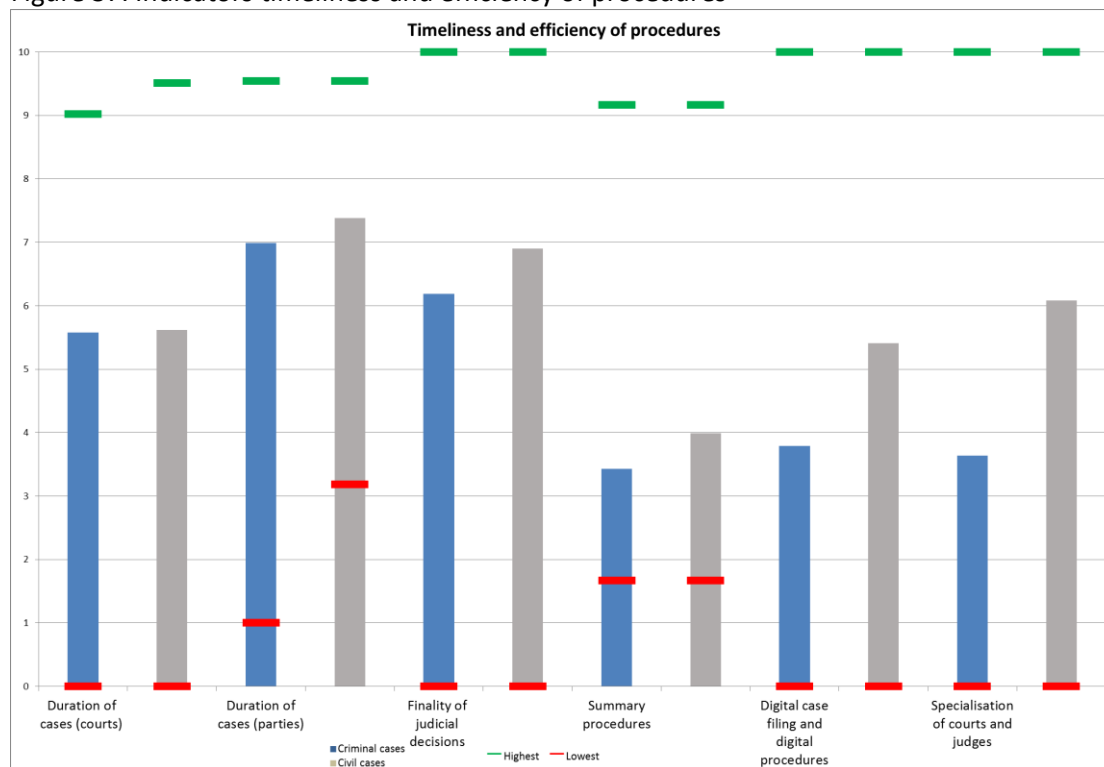
## Timeliness and efficiency of procedures

Table 5. Perception of contribution of instruments to timeliness and other affected areas of quality

	Timeliness	Efficiency	Access to justice	Quality of decisions	T
Time standards for judges	+	+	+	0	3+
Time standards for parties	+	+	+	0	3+
Finality of decisions	+	+	+	0	3+
Summary procedures	++	++	+	0	5+
Digital filing and procedures	+	+	+	0	3+
Specialisation	+	++	+	++	6+

Note: score is rounded average (++=2, +=1, 0=0, --=-1, ---=-2).

Figure 37. Indicators timeliness and efficiency of procedures



What is good for timeliness, is without fail also good for access to justice and efficiency of procedures. Specialisation is generally seen as promoting all aspects of quality, including the quality of decisions. Summary procedures are also generally seen to have a big impact, and even not to be detrimental to the quality of decisions. The expert group draws also attention to summary procedures. The questionnaire asks about the availability of summary procedures, and the highest score is reached when these procedures are available in all types of cases. In the view of the expert groups it is debatable if it should be the goal for the future to develop simplified procedures for all types of cases. There could be more risks than potential benefits.

Figure 37 gives the indicators for timeliness and efficiency of procedures. It also gives the score of the judiciary that scored highest and the score of the judiciary that scored lowest on each indicator. Although always at least one country is able to reach a very high score and thus (nearly) reaches the aspiration level, it seems that there is generally much room for

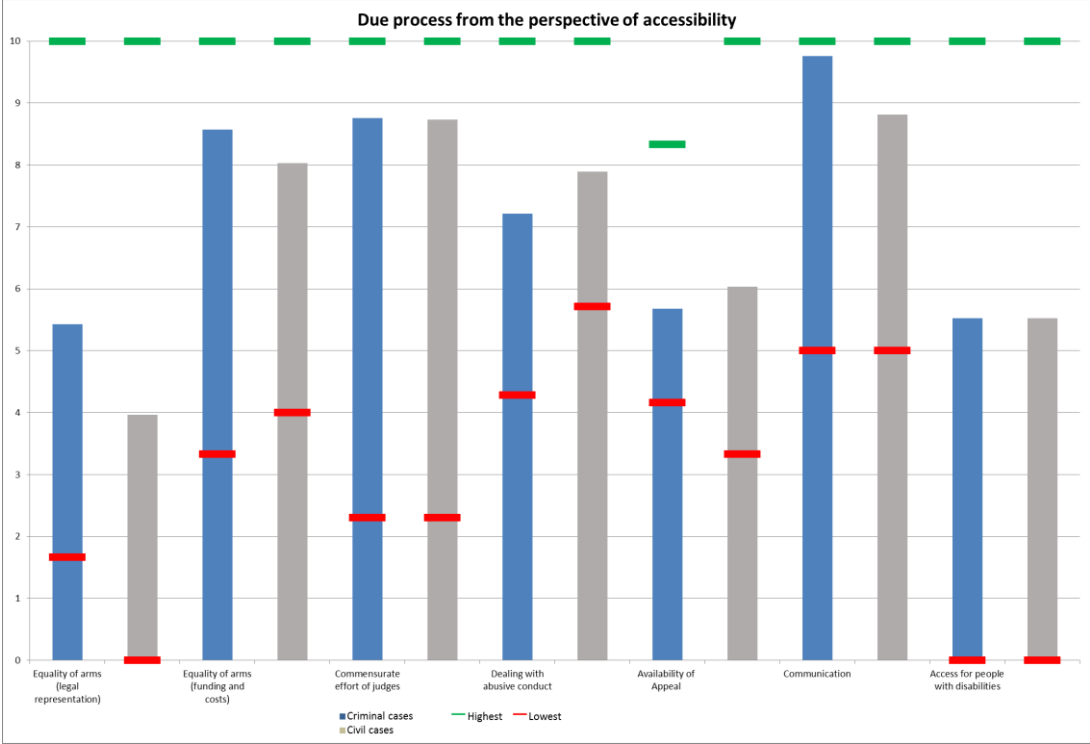
improvement. Again, one has to be careful about using the results. The expert group, for instance, notes that small countries may be disadvantaged by the scoring system, as it accords points to specialised courts. Such courts may not be feasible in a small country.

**Due process from the perspective of accessibility**

Table 6. Perception of contribution of instruments to due process from the perspective of accessibility and other affected areas of quality

	Access to justice	Public access to law	Quality of decisions	Efficiency	T
Legal representation	+	+	+	+	4+
Funding of legal representation	+	+	0	+	3+
Commensurate effort	+	+	+	+	4+
Dealing with abusive behaviour	+	0	0	+	2+
Availability of appeal	++	+	+	+	5+
Translation	++	+	+	+	5+
Access for disabled	+	+	0	+	3+

Figure 38. Indicators due process from the perspective of accessibility



In the area of due process from the perspective of accessibility, the most common situation is again that measures strengthen more than one objective and at worst do not contribute to other objectives. There is again much synergy between the measures. Subjects are, however, disparate and, therefore, difficult to compare. A proper appeal procedure is obviously very important. As to the measurement of the indicators higher values are found than for the area of timeliness, but this is not uniform. Still, some indicators are on average close to the maximum. Legal representation gets a low score. This is a major issue, but largely outside the domain of the judiciary. Judiciaries can only call on government and parliament to guarantee

access to justice. As pointed out by the expert group, the very idea of the obligation to be represented by a lawyer is still disputed in Europe. It collides with the accessibility of the court. Another issue is the definition of a lawyer. Is a lawyer a sworn advocate, any lawyer who has graduated from law school or a person who has not necessarily graduated from university but knows the law and is trusted by the party? Another issue is that the questionnaire does not allow differentiation between types of cases and between instances here.

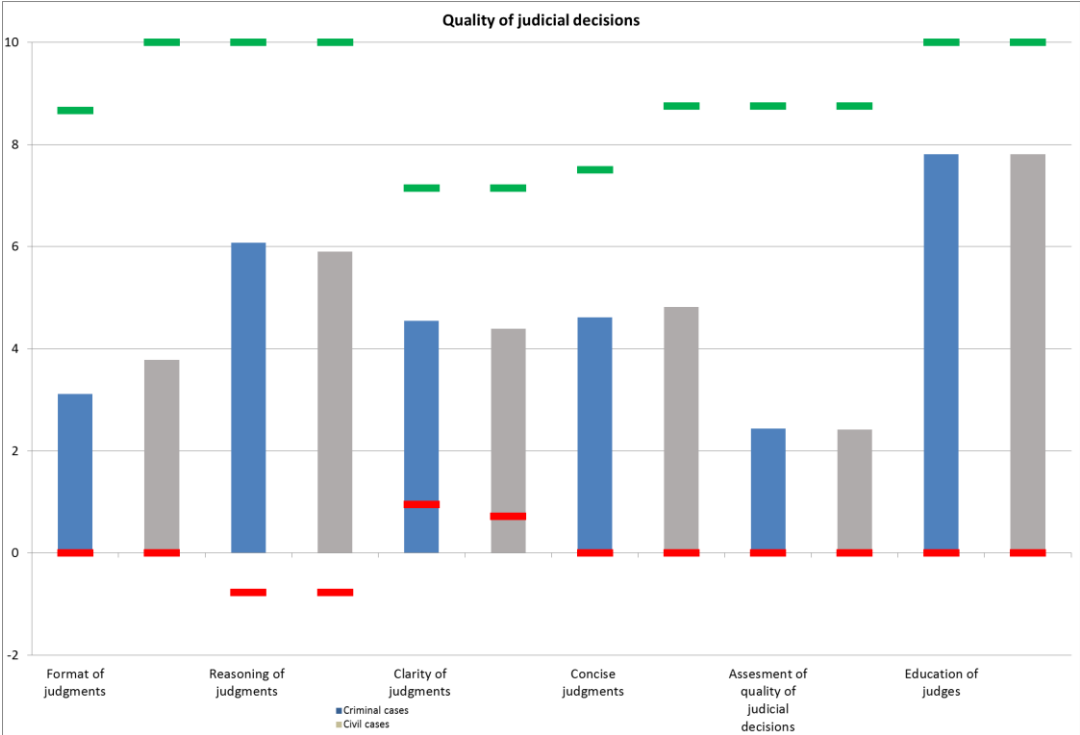
Appeal procedures are also not scored very positively. However, with regard to appeal the measurement is complicated. The expert group draws attention to the (intended) tension between the desirability of appeal on the one hand, and the desirability of permission for appeal to counter pointless appeals on the other hand. While logical, it complicates the scoring, and the result may not properly reflect the situation in judiciaries. A separate issue is access for people with a disability. Given the wide range of disabilities the situation is hard to measure, but certainly requires attention.

**Quality of judicial decisions**

Table 7. Perception of contribution of measures to quality of decisions and other affected objectives

	Quality of decisions	Public access to law	Timeliness	Efficiency	T
Standard format	+	+	0	+	3+
Reasoning of decisions	++	++	0 (-)	+	5+
Clarity of decisions	++	++	0	+	5+
Concise decisions	+	+	+	+	4+

Figure 39. Indicators quality of judicial decisions



A relatively weak area is the quality of judicial decisions. The objective of the quality of

decisions goes invariably together with the objective of public access to the law. The relationship with timeliness is seen to be problematic. In particular, the reasoning of decisions has logically a large impact on the quality of decisions, but many judiciaries see a negative impact on timeliness. This is actually the only impact variable with a negative score, albeit by rounding to integers the score becomes zero. The scores are generally low, even for one judiciary negative. With regard to the clarity as well as the conciseness of decisions no judiciaries score high.

Table 8. Perception of contribution of measures to quality of decisions

	Quality of decisions
Assessment of decisions	+
Training of judges	++

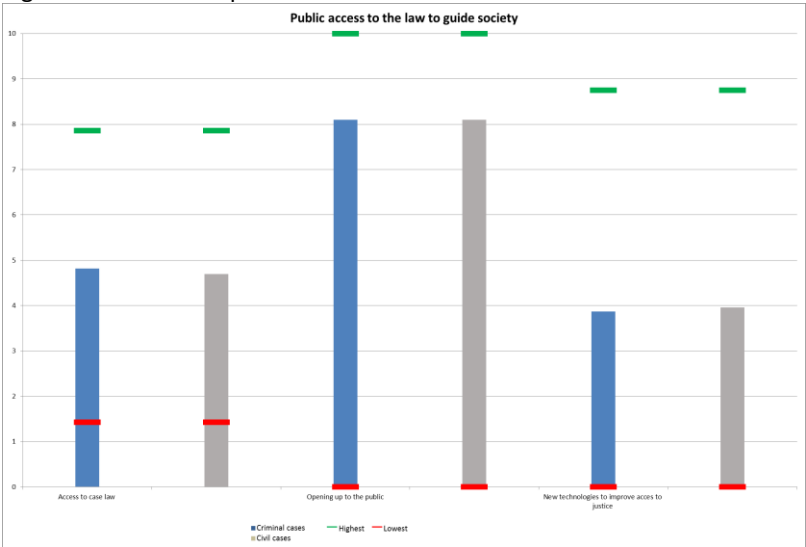
As to the methods to improve the quality of decisions, assessment of the quality of decisions and education are looked into. Most is expected from education. Scores on this indicator are also high (see figure 39): education is generally well developed. A well designed assessment mechanism that also protects judicial independence is another possibility. The low score of the current assessment mechanisms points to a problematic instrument.

**Public access to the law to guide society**

Table 9. Perception of contribution of measures to public access to the law and other affected objectives

	Public access to law	Access to justice	Quality of decisions	Efficiency	T
Publication of case law	++	++	+	+	6+
Opening up to public	+	+	0	+	3+
New technology to improve access	+	+	+	+	4+

Figure 40. Indicators public access to the law



In the area of public access to the law the publication of case law has most impact on the objectives. This is a no regret area. In practice much is still to be desired here. In addition,

technology for new methods of conflict resolution is developing slowly.

### Conclusions

To conclude, the perceptions about the impact of aspects (measures) on objectives indicate that the aspects that are distinguished for each of the four areas of quality are indeed all deemed to be relevant. While these aspects are generally not thought to affect other areas of quality negatively, the synergy differs substantially. Some aspects such as specialisation and publication of case law jump out as effective in many respects. These perceptions give an indication on which indicators are particularly important. If a reduction of the number of indicators would be considered desirable, an option would be to reduce the number of indicators by using only indicators with an impact of, for instance, 4+ or more. Another selection criterion could be the area most in need of improvement and within the reach of the judiciaries itself.

As to the indicators, as they are measured, the averages over all participating countries fall generally short of the aspiration level (maximum scores). The differences between the highest and lowest scores of judiciaries are large with the highest scores often close to the maximum, except, in particular, several indicators about the quality of decisions. The variation may reflect true differences between judiciaries, but also differences of interpretation of the indicators. The judiciaries concerned are in the best position to determine if real problems are behind low scores and action needs to be taken. In addition, the above discussion shows that, while the indicators were discussed intensively in the project team and were piloted last year, the scrutiny by the expert group and the experience of all judiciaries with the questionnaire brought issues to light that need further exploration. These issues are generally about normative aspects (what are good and what are bad arrangements) and reflect differences between legal/judicial systems and legal/judicial culture.

## 6. Next steps on quality of justice

Two urgent directions for further development follow from the analysis

### Focus of Councils on quality

Now the ENCJ has developed a vision on quality and has delivered preliminary indicators as building blocks, it is up to the individual councils, in as far as they have not done this yet, to define their involvement in guaranteeing and promoting quality of justice and their approach to it. Irrespective of the mandate of Councils, the necessity of involvement exists, not only for the reasons mentioned in the vision on quality but also because the indicators show that the potential to improve quality is large. The determination of quality standards, the implementation of such standards and their evaluation are major aspects that need to be addressed vis a vis the judges and courts but also the other state powers. The indicators show that the judiciary cannot guarantee quality of justice alone, and needs the cooperation of the other state powers to maintain, for instance, access to justice.

When designing practical quality improvements, Councils are recommended to focus on the topics that jump out in the preliminary findings:

**Timeliness and efficiency of procedures:** time standards for the courts (judges), but also the possibilities for summary procedures in appropriate cases and specialization.

**Due process from the perspective of access to justice:** proper legal representation and the effectiveness of appeal procedures. As these issues are not (fully) in the remit of the judiciary, co-operation with the other state powers is necessary.

**Quality of judicial decisions:** while different approaches to judicial decisions (oral/in writing, long/concise) are possible, reasoning and clarity of judicial decisions stand out as crucial. Efforts to improve timeliness should not be to the detriment of the reasoning of decisions. Education of judges on writing judicial decisions should be promoted, not only for professional judges but also for lay judges. Assessment of the quality of the decisions of individual judges may also be useful, but it should only examine the methodology the judge applies in his/her work, and not on the legal merits of his/her decisions. Individual assessment should not be based on reversal rates in appeal.

**Public access to the law to guide society:** better public access to case law and court communication to support this are an effective way to improve the impact of judicial decisions, and are relatively simple to achieve.

### Further development of the indicators

The development of indicators for quality is complicated, but it is interesting and useful. Indicators for quality are more complicated than those for independence and accountability, because international/European standards are less frequent and precise, and the differences between legal systems and cultures play a large role. Still, there is much in common and the outcomes give much to consider. The outcomes give impetus and priorities for change. For 2018/2019 the Strategic Plan 2018-2021 envisages the gradual expansion of the work on



quality by discussing results and covering more areas of quality. At this stage an extension to other areas of quality is not urgent. A thorough analysis of the indicators is first priority with the aim of addressing the issues discussed in the previous section to reduce ambiguity and subjectivity. As external perspectives, in particular of court users, are necessary to complement and balance internal perspective but are currently lacking, a second priority is to examine the available external data about quality of justice for their utility for the system of indicators, and to incorporate quality in the format for a uniform court user survey that was already suggested for independence and accountability.

To conclude, the following activities for 2018/2019 are suggested:

1. All councils should adopt a framework that defines their involvement in guaranteeing and promoting quality of justice and their approach to it, and to improve quality of justice by examining their country profiles, taking the general recommendations into account.
2. Improvement of the quality indicators by a thorough analysis and reflection on the outcomes so far and the issues encountered.
3. Incorporation of quality in the development of the format for a court user survey.
4. Analysis of existing, external data about quality of justice for their use in the indicator system.

## Annex 1 Survey among lay judges



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

### Survey among lay judges in Europe

#### Personal facts

The country in which I sit as a lay judge is: .....

Male/Female

Age:

#### My experience

How many cases have you participated in in the last two years as a lay judge?

- None
- 1-2
- 3-5
- 5-10
- More than 10

In the last two years, as a lay judge I have participated in:

- Criminal cases
- Administrative law cases
- Family cases
- Labour cases

- Commercial cases
- Other civil cases
- Other:.....(please specify)

.....

In the last two years, as a lay judge, I have resolved cases

- Alone
- Together with other lay judges only
- Together with professional judges only
- Together with both professional judges and lay judges

### Questionnaire

1a. During the last two years I have been under inappropriate pressure to decide the outcome of a case in a specific way.

- Strongly agree
- Agree
- Not sure
- Disagree
- Strongly disagree

1b. If you agree or strongly agree with 1a, who exerted inappropriate pressure? (Multiple answers are possible)

- Parties or their lawyers
- Governmental institutions
- Professional judges
- Other Lay Judges
- Court management or its representatives (including a Court President)
- Media (for example, press, television, radio)
- Social Media (for example, Facebook, Twitter or LinkedIn)

2a. In my country I believe that during the last two years individual lay judges have accepted bribes as an inducement to decide case(s) in a specific way

- Strongly disagree
- Disagree
- Not sure

- Agree
- Strongly agree

2b. If you agree or strongly agree with 2a, did this occur:

- On a rare exception
- Occasionally
- Regularly

3. During the last two years I have been affected by a threat of, or an actual disciplinary or other action because of my participation and/or decision in a case.

- Strongly disagree
- Disagree
- Not sure
- Agree
- Strongly agree

4. During the last two years, I believe that in my country decisions or actions of individual lay judges have been directly affected by actions of the media (for example, press, television or radio).

- Strongly disagree
- Disagree
- Not sure
- Agree
- Strongly agree

5. During the last two years, I believe that in my country decisions or actions of individual lay judges have been directly affected by actions using social media (for example, Facebook, Twitter or LinkedIn).

- Strongly disagree
- Disagree
- Not sure
- Agree

Strongly agree

6. a) During the last two years I believe that my independence as a lay judge has been respected by:

	Strongly agree	Agree	Not sure	Disagree	Strongly disagree
Professional judges					
Other lay judges					
Parties					
Lawyers					
Media (for example, press, radio or television)					
Social media (for example Facebook, Twitter or LinkedIn)					
Governmental organisations					
Professional organisations, such as labour unions or employer organisations					
Local community (inhabitants)					
Society generally					

6b During the last two years, when I have sat together with professional judges in a mixed panel, the professional judges have exerted inappropriate influence on me to decide cases in a particular way.

Strongly disagree

Disagree

Not sure/ N/A

Agree

Strongly agree

6c During the last two years, when I sat together with professional judges in a mixed panel, the professional judges have taken my contribution seriously into consideration.

- Strongly disagree
- Disagree
- Not sure
- Agree
- Strongly agree

6d During the last two years, when I sat together with professional judges in a mixed panel, I have had an impact on the decision taken.

- Strongly disagree
- Disagree
- Not sure
- Agree
- Strongly agree

7 Does an ethical code or do ethical guidelines for lay judges exist?

- Yes
- No
- Not sure

8. On a scale of 0 - 10 (where 0 means "not independent at all" and 10 means "the highest possible degree of independence).

I believe that lay judges in my country are :

0 1 2 3 4 5 6 7 8 9 10

Not independent at all

Completely independent

9. On a scale of 0 - 10 (where 0 means "not independent at all" and 10 means "the highest possible degree of independence).

As a lay judge I

0 1 2 3 4 5 6 7 8 9 10

do not feel independent at all

feel completely independent

**10.** On a scale of 0 - 10 (where 0 means "not independent at all" and 10 means "the highest possible degree of independence").

I believe that professional judges in my country are :

0 1 2 3 4 5 6 7 8 9 10

Not independent at all

Completely independent

THANK YOU FOR PARTICIPATING IN OUR SURVEY

## Annex 2 Questionnaire Quality of justice 2017-2018



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

### Questionnaire on Quality of Justice

Please fill in your country of origin:

**General remark: The advice of the project team is to have the questionnaire filled in by a working group consisting of about 3 judges with relevant knowledge on the topic of quality, and (some members of) the Council for the Judiciary/equivalent body.**

#### Instructions before filling in the questionnaire:

The questions can be answered digitally by ticking the boxes in this document.

*All/most/half/some/no cases or courts:* In several questions an indication is requested about how many cases the answer applies to. To give you some guidance in answering these questions, the following definitions are suggested:

All cases: 95% or more

Most cases: 60% - 95%

Half of the cases: 40%-60%

Some cases: 5% - 40%

No: 0-5%

*Differences among courts:* in your country arrangements may differ among the courts. Where relevant, first instance courts and appeal courts are distinguished. Among first instance courts and among appeal courts differences may occur as well. Unless the question specifically asks you to indicate differences (see 1.1), please answer the question, keeping in mind the normal situation of the courts in your country.



## A. Timeliness and efficiency of procedures

### Indicator A1: standards for courts about the duration of cases

1.1 Are standards<sup>18</sup> - either formal or informal - in place for the duration of cases at first instance courts?

#### Criminal cases

	All courts <sup>19</sup>	Most courts	Half of the courts	Some courts
All types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
Most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
Half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
Some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

#### Civil cases

	All courts	Most courts	Half of the courts	Some courts
All types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
Most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
Half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
Some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

1.2 If standards are in place, do these standards apply to the overall procedure (from beginning to end), to specific phases of procedures such as the time between hearing and decision, or to both?

	Criminal cases	Civil Cases
The overall procedure <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>
Specific phases of procedures <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
Both <b>3</b>	<input type="checkbox"/>	<input type="checkbox"/>

1.3 Are standards<sup>1</sup> - either formal or informal - in place for the duration of cases at appeal courts?

#### Criminal cases

	All courts	Most courts	Half of the courts	Some courts
All types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4

<sup>18</sup> Standard is used here in the sense of norm. A standard can be implemented in diverse ways, ranging from law to custom.

<sup>19</sup> See the introductory remarks for percentages.

Most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
Half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
Some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

### Civil cases

	All courts	Most courts	Half of the courts	Some courts
All types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
Most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
Half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
Some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

1.4 If standards are in place, do these standards generally apply to the overall procedure (from beginning to end), to specific phases of procedures such as for the time between hearing and decision, or both?

	Criminal cases	Civil Cases
The overall procedure 2	<input type="checkbox"/>	<input type="checkbox"/>
Specific phases of procedures 1	<input type="checkbox"/>	<input type="checkbox"/>
Both 3	<input type="checkbox"/>	<input type="checkbox"/>

1.5 What is the status of the standards in general?

	Criminal cases	Civil Cases
Binding 0	<input type="checkbox"/>	<input type="checkbox"/>
Non-binding 4	<input type="checkbox"/>	<input type="checkbox"/>

1.6 Are standards generally ambitious at the first instance courts?

	Criminal cases	Civil Cases
Can be easily achieved 1	<input type="checkbox"/>	<input type="checkbox"/>
Require some effort 2	<input type="checkbox"/>	<input type="checkbox"/>
Require real effort 3	<input type="checkbox"/>	<input type="checkbox"/>

1.7 Are standards generally ambitious at the appeal courts?

	Criminal cases	Civil Cases
can be easily achieved 1	<input type="checkbox"/>	<input type="checkbox"/>
require some effort 2	<input type="checkbox"/>	<input type="checkbox"/>
require real effort 3	<input type="checkbox"/>	<input type="checkbox"/>

1.8 Are standards realised in practice in the cases to which they apply, in first instance courts?

	Criminal cases	Civil Cases
In all cases <b>4</b>	<input type="checkbox"/>	<input type="checkbox"/>
In most cases <b>3</b>	<input type="checkbox"/>	<input type="checkbox"/>
In half of the cases <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>
In some cases <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

1.9 If the standards are not fully realised, is this caused by a lack of sufficient budget or the inability to find qualified staff?

	Criminal cases	Civil Cases
Lack of budget <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>
Lack of qualified staff <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>
Both <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

1.10 Are standards realised in practice in the cases to which they apply, in appeal courts?

	Criminal cases	Civil Cases
In all cases <b>4</b>	<input type="checkbox"/>	<input type="checkbox"/>
In most cases <b>3</b>	<input type="checkbox"/>	<input type="checkbox"/>
In half of the cases <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>
In some cases <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

1.11 If the standards are not fully realised, is this caused by a lack of qualified staff or budget constraints?

	Criminal cases	Civil Cases
Lack of budget <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>
Lack of qualified staff <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>
Both <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

1.12 Is information about the realisation of timeliness standards accessible to the public?

	Criminal cases	Civil Cases
Available on website <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>
Available upon request <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

## Indicator A2: Standards for parties about the duration of cases

2.1 Are there time standards for parties in first instance courts, e.g. to present documents?

### Criminal cases

	All courts	Most courts	Half of the courts	Some courts
In all types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
In most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
In half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
In some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

### Civil cases

	All courts	Most courts	Half of the courts	Some courts
All types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
Most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
Half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
Some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

2.2 Do parties comply with the time standards in the cases to which the standards apply, in first instance courts?

	Criminal cases	Civil Cases
In all cases 4	<input type="checkbox"/>	<input type="checkbox"/>
In most cases 3	<input type="checkbox"/>	<input type="checkbox"/>
In half of the cases 2	<input type="checkbox"/>	<input type="checkbox"/>
In some cases 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

2.3 Are there time standards for parties in appeal courts, e.g. to present documents?

### Criminal cases

	All courts	Most courts	Half of the courts	Some courts
In all types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
In most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
In half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
In some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

### Civil cases

	All courts	Most courts	Half of the courts	Some courts
All types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
Most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
Half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
Some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

2.4 Do parties comply with the time standards in the cases to which they apply, in appeal courts?

	Criminal cases	Civil Cases
In all cases 4	<input type="checkbox"/>	<input type="checkbox"/>
In most cases 3	<input type="checkbox"/>	<input type="checkbox"/>
In half of the cases 2	<input type="checkbox"/>	<input type="checkbox"/>
In some cases 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

2.5 Do judges at first instance courts have the authority to determine the procedure<sup>20</sup> in a case (to fit the procedure to the case), whether or not after hearing parties?

	Criminal cases	Civil Cases
In all cases 4	<input type="checkbox"/>	<input type="checkbox"/>
In most cases 3	<input type="checkbox"/>	<input type="checkbox"/>
In half of the cases 2	<input type="checkbox"/>	<input type="checkbox"/>
In some cases 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

2.6 Is this authority actually used in first instance courts?

	Criminal cases	Civil Cases
In all cases 4	<input type="checkbox"/>	<input type="checkbox"/>
In most cases 3	<input type="checkbox"/>	<input type="checkbox"/>
In half of the cases 2	<input type="checkbox"/>	<input type="checkbox"/>
In some cases 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

2.7 Do judges at first instance courts have the authority to enforce the determined procedure if a party does not conform?

	Criminal cases	Civil Cases
Yes 2	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

<sup>20</sup> For example how many witnesses and/or experts are present at the hearing/ and or choice for type of expert

2.8 Do judges at appeal courts have the authority to determine the procedure in a case (to fit the procedure to the case), whether or not after hearing parties?

	Criminal cases	Civil Cases
In all types of cases 4	<input type="checkbox"/>	<input type="checkbox"/>
In most types of cases 3	<input type="checkbox"/>	<input type="checkbox"/>
In half of the types of cases 2	<input type="checkbox"/>	<input type="checkbox"/>
In some types of cases 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

2.9 Is this authority actually used in appeal courts?

	Criminal cases	Civil Cases
In all cases 4	<input type="checkbox"/>	<input type="checkbox"/>
In most cases 3	<input type="checkbox"/>	<input type="checkbox"/>
In half of the cases 2	<input type="checkbox"/>	<input type="checkbox"/>
In some of the cases 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

2.10 Do judges at the appeal courts have the authority to enforce the determined procedure if a party does not conform?

	Criminal cases	Civil Cases
Yes 2	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

### Indicator A3: Finality of judicial decisions

3.1 Can the appeal courts refer cases back to first instance courts?

	Criminal cases	Civil Cases
Yes 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

3.2. To what extent do the appeal courts actually refer cases back to the first instance courts?<sup>21</sup>

	Criminal cases	Civil Cases
Most cases 0	<input type="checkbox"/>	<input type="checkbox"/>
Half of the cases 1	<input type="checkbox"/>	<input type="checkbox"/>
Some cases 2	<input type="checkbox"/>	<input type="checkbox"/>
Few cases (1%-5%) 3	<input type="checkbox"/>	<input type="checkbox"/>
Rare exception (< 1%) 2	<input type="checkbox"/>	<input type="checkbox"/>
Never 0	<input type="checkbox"/>	<input type="checkbox"/>

Note: referral should be possible, but it should be used sparingly.

---

## Indicator A4: summary / simplified procedures<sup>22</sup>

### 4.1 Are summary or simplified procedures available in first instance courts?

	Criminal cases	Civil Cases
In all types of cases 4	<input type="checkbox"/>	<input type="checkbox"/>
In most types of cases 3	<input type="checkbox"/>	<input type="checkbox"/>
In half of the types of cases 2	<input type="checkbox"/>	<input type="checkbox"/>
In some types of cases 1	<input type="checkbox"/>	<input type="checkbox"/>
None 0	<input type="checkbox"/>	<input type="checkbox"/>

### 4.2 If yes, do limitations apply to these procedures in first instance courts?

- time pressure required

	Criminal cases	Civil Cases
Yes 0	<input type="checkbox"/>	<input type="checkbox"/>
No 2	<input type="checkbox"/>	<input type="checkbox"/>

- Petty crime or low value of the case required

	Criminal cases	Civil Cases
Yes 0	<input type="checkbox"/>	<input type="checkbox"/>
No 2	<input type="checkbox"/>	<input type="checkbox"/>

- exclusion of specific cases

	Criminal cases	Civil Cases
Yes 0	<input type="checkbox"/>	<input type="checkbox"/>
No 2	<input type="checkbox"/>	<input type="checkbox"/>

### 4.3 Are summary procedures used in practice in first instance courts?

	Criminal cases	Civil Cases
Regularly 3	<input type="checkbox"/>	<input type="checkbox"/>
Occasionally 2	<input type="checkbox"/>	<input type="checkbox"/>
On a rare exception 1	<input type="checkbox"/>	<input type="checkbox"/>
Never 0	<input type="checkbox"/>	<input type="checkbox"/>

### 4.4 Are summary procedures available in appeal courts?

	Criminal cases	Civil Cases
All types of cases 3	<input type="checkbox"/>	<input type="checkbox"/>
Most types of cases 2	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases 1	<input type="checkbox"/>	<input type="checkbox"/>
None 0	<input type="checkbox"/>	<input type="checkbox"/>

### 4.5 If yes, then do limitations apply to these procedures in appeal courts?

<sup>22</sup> As indicated by Opinion no 6 of the CCJE, there are major differences in terminology in this area. Not all states understand the concept of summary, simplified and accelerated procedures in the same sense. Please answer this question according to your system, with a short-cut or fast-track procedure in mind.

- time pressure required

	Criminal cases	Civil Cases
Yes <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>

- petty crime or low value of the case

	Criminal cases	Civil Cases
Yes <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>

- exclusion of specific cases

	Criminal cases	Civil Cases
Yes <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>

#### 4.6 Are summary procedures used in practice in appeal courts?

	Criminal cases	Civil Cases
Regularly <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>
Occasionally <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
(Almost) never <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

### Indicator A5 digital case filing and digital procedures

#### 5.1 Can cases be digitally filed<sup>23</sup> in first instance courts?

##### Criminal cases

	All courts	Most courts	Half of the courts	Some courts
In all types of cases	<input type="checkbox"/> <b>7</b>	<input type="checkbox"/> <b>6</b>	<input type="checkbox"/> <b>5</b>	<input type="checkbox"/> <b>4</b>
In most types of cases	<input type="checkbox"/> <b>6</b>	<input type="checkbox"/> <b>5</b>	<input type="checkbox"/> <b>4</b>	<input type="checkbox"/> <b>3</b>
In half of the types of cases	<input type="checkbox"/> <b>5</b>	<input type="checkbox"/> <b>4</b>	<input type="checkbox"/> <b>3</b>	<input type="checkbox"/> <b>2</b>
In some types of cases	<input type="checkbox"/> <b>4</b>	<input type="checkbox"/> <b>3</b>	<input type="checkbox"/> <b>2</b>	<input type="checkbox"/> <b>1</b>
No	<input type="checkbox"/> <b>0</b>			

##### Civil cases

	All courts	Most courts	Half of the courts	Some courts
All types of cases	<input type="checkbox"/> <b>7</b>	<input type="checkbox"/> <b>6</b>	<input type="checkbox"/> <b>5</b>	<input type="checkbox"/> <b>4</b>
Most types of cases	<input type="checkbox"/> <b>6</b>	<input type="checkbox"/> <b>5</b>	<input type="checkbox"/> <b>4</b>	<input type="checkbox"/> <b>3</b>
Half of the types of cases	<input type="checkbox"/> <b>5</b>	<input type="checkbox"/> <b>4</b>	<input type="checkbox"/> <b>3</b>	<input type="checkbox"/> <b>2</b>
Some types of cases	<input type="checkbox"/> <b>4</b>	<input type="checkbox"/> <b>3</b>	<input type="checkbox"/> <b>2</b>	<input type="checkbox"/> <b>1</b>
No	<input type="checkbox"/> <b>0</b>			

#### 5.2 Can cases be digitally filed in appeal courts?

<sup>23</sup> Digital filing includes filing a claim by email, but also more advanced systems.



**Criminal cases**

	All courts	Most courts	Half of the courts	Some courts
In all types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
In most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
In half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
In some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

**Civil cases**

	All courts	Most courts	Half of the courts	Some courts
All types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
Most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
Half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
Some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

5.3 Can procedures be conducted digitally in the sense that all communications are digital, except for the hearing?

**Criminal cases**

	All courts	Most courts	Half of the courts	Some courts
In all types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
In most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
In half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
In some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

**Civil cases**

	All courts	Most courts	Half of the courts	Some courts
All types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
Most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
Half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
Some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

#### 5.4 Can litigants inform themselves digitally about the progression of their cases?

##### Criminal cases

	All courts	Most courts	Half of the courts	Some courts
In all types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
In most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
In half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
In some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

##### Civil cases

	All courts	Most courts	Half of the courts	Some courts
All types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
Most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
Half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
Some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

#### Indicator A6: Specialisation of courts and judges

##### 6.1 Do specialised courts exist at first instance level?

	Criminal cases	Civil Cases
Yes 4	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

##### 6.2 Do specialised chambers exist within first instance courts?

	Criminal cases	Civil Cases
All courts 4	<input type="checkbox"/>	<input type="checkbox"/>
Most courts 3	<input type="checkbox"/>	<input type="checkbox"/>
Half of the courts 2	<input type="checkbox"/>	<input type="checkbox"/>
Some courts 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

##### 6.3 Do specialised rules of procedure exist for cases handled by specialised first instance courts/chambers?

	Criminal cases	Civil Cases

Yes 4	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

6.4 Do specialised courts exist at appeal level?

	Criminal cases	Civil Cases
Yes 4	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

6.5 Do specialised chambers exist within appeal courts?

	Criminal cases	Civil Cases
All courts 4	<input type="checkbox"/>	<input type="checkbox"/>
Most courts 3	<input type="checkbox"/>	<input type="checkbox"/>
Half of the courts 2	<input type="checkbox"/>	<input type="checkbox"/>
Some courts 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

6.6 Do specialised rules of procedure exist for cases handled by specialised appeal courts/chambers?

	Criminal cases	Civil Cases
Yes 2	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

### Assessment of impact

What is in your view the overall<sup>24</sup> impact of the indicators of timeliness and efficiency of procedures (horizontal) in practice on the following aspects (vertical), in criminal and civil cases in first instance and appeal courts?

Please indicate your score in the drop down menu's, -2 representing the most negative impact, 0 representing neutral impact and 2 representing the most positive impact.

	Standards for courts	Standards for parties	Finality of judicial decisions	Summary procedures	Digital case filing and digital procedures	Specialisation of courts and judges
Duration of cases	Select an item	Select an item	Select an item	Select an item	Select an item	Select an item
Access to justice	Select an item	Select an item	Select an item	Select an item	Select an item	Select an item

<sup>24</sup> To simplify no distinction is made between first instance and appeal courts in this question.

Quality of decisions	Select an item	Select an item	Select an item	Select an item	Select an item	Select an item
Efficiency	Select an item	Select an item	Select an item	Select an item	Select an item	Select an item

## B. Due process from the perspective of accessibility

### Indicator B7: Equality of arms (Legal representation)

7.1 In civil and criminal cases, are parties obliged to be represented by a lawyer?

	Criminal cases	Civil Cases
Yes <b>4</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

7.2 If not, are parties not represented in practice?

	Criminal cases	Civil Cases
Often <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>
Not often <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>

7.3 When a disadvantage between parties is observed in a situation where legal representation is not obliged, can the court order legal representation?

	Criminal cases	Civil Cases
Yes <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

7.4 When a disadvantage between parties is observed in a situation where legal representation is not obliged, can the court offer legal representation?

	Criminal cases	Civil Cases
Yes <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

7.5 In civil and criminal cases, how common is it that the judge steps in to avoid that parties are being disadvantaged?

	Criminal cases	Civil Cases
Very common <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>
Happens Occasionally <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
Never happens <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

### Indicator B8: Equality of arms (funding and costs)

8.1 Is there a system for providing public funding to litigants without means to pay for litigation themselves?

	Criminal cases	Civil Cases
Yes <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

8.2 If the answer to question 2.1 is yes, is the public funding sufficient for:

	Criminal cases	Civil Cases
All litigants who have a legal right <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>
Most litigants who have a legal right <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
Some litigants who have a legal right <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

8.3 Does an unsuccessful litigant in a civil case generally have to pay the costs of the successful party?

- In full **2**  
 Partly **1**  
 No **0**

#### Indicator B9 Commensurate effort of judges (do complex cases get appropriate attention?)

9.1 Are rules or regulations in place to decide whether a case is decided by a single judge or a panel of judges in first instance courts?

	Criminal cases	Civil Cases
Yes <b>5</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

9.2 Is the judge able to spend the time that he thinks is necessary on a case in first instance courts?

<b>Criminal cases</b>	Yes	No
Regular case	<input type="checkbox"/> <b>5</b>	<input type="checkbox"/> <b>0</b>
Complex case	<input type="checkbox"/> <b>5</b>	<input type="checkbox"/> <b>0</b>
<b>Civil cases</b>	Yes	No
Regular case	<input type="checkbox"/> <b>5</b>	<input type="checkbox"/> <b>0</b>
Complex case	<input type="checkbox"/> <b>5</b>	<input type="checkbox"/> <b>0</b>

9.3 Are rules or regulations in place to decide whether a case is decided by a single judge or a panel of judges in appeal courts?

	Criminal cases	Civil Cases
Yes <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

9.4 Is the judge able to spend the time that he thinks is necessary on a case in appeal courts?

<b>Criminal cases</b>	Yes	No
Regular case	<input type="checkbox"/> 5	<input type="checkbox"/> 0
Complex case	<input type="checkbox"/> 5	<input type="checkbox"/> 0
<b>Civil cases</b>	Yes	No
Regular case	<input type="checkbox"/> 5	<input type="checkbox"/> 0
Complex case	<input type="checkbox"/> 5	<input type="checkbox"/> 0

### Indicator B10: Dealing with abusive conduct

10.1 Is the judge able to take action to prevent abusive conduct by parties and/or their lawyers<sup>25</sup>?

	Criminal cases	Civil Cases
Yes 2	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

10.2 If the answer to 10.1 is yes, can the judge do any of the following (please indicate) as many as are applicable):

	Criminal cases	Civil Cases
Stop or stay the proceedings 1	<input type="checkbox"/>	<input type="checkbox"/>
Speed up the proceedings 1	<input type="checkbox"/>	<input type="checkbox"/>
Make adverse costs orders 1	<input type="checkbox"/>	<input type="checkbox"/>
Impose fines 1	<input type="checkbox"/>	<input type="checkbox"/>
Report to a disciplinary body 1	<input type="checkbox"/>	<input type="checkbox"/>

### Indicator B11: Availability of appeal

11.1 Can an unsuccessful litigant bring an appeal?

	Criminal cases	Civil Cases
All types of cases 4	<input type="checkbox"/>	<input type="checkbox"/>
Most types of cases 3	<input type="checkbox"/>	<input type="checkbox"/>
Half of the type of the cases 2	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases 1	<input type="checkbox"/>	<input type="checkbox"/>
None 0	<input type="checkbox"/>	<input type="checkbox"/>

11.2 Is there a requirement for permission to appeal?

	Criminal cases	Civil Cases
All types of cases 4	<input type="checkbox"/>	<input type="checkbox"/>
Most types of cases 3	<input type="checkbox"/>	<input type="checkbox"/>
Half of the type of the cases 2	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases 1	<input type="checkbox"/>	<input type="checkbox"/>
None 0	<input type="checkbox"/>	<input type="checkbox"/>

<sup>25</sup> For instance, aimed at unnecessarily delaying the procedure or causing unnecessary costs for the other party.

11.3 Is it possible to appeal on the facts (and so not only on the law)?

	Criminal cases	Civil Cases
Yes <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

11.4 If an appeal is brought, what happens to the decision of a first instance court? (set in law/or decided by the court)

	Criminal cases	Civil Cases
Automatically suspended/stayed <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>
Automatically enforceable <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>
Appeal court can decide to suspend or make the decision of the first instance court enforceable, depending on the facts of the case <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>

#### Indicator B12: Communication

12.1 Are procedures available in all official languages?

	Criminal cases	Civil Cases
Yes <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

12.2 Does the court provide translation facilities when necessary?

	Criminal cases	Civil Cases
Yes <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

#### Indicator B13: Access for people with disabilities

13.3.1 Are special procedural arrangements available for people with disabilities?

	Criminal cases	Civil Cases
Yes <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

13.2 Are special physical arrangements available for people with disabilities?

- Yes **1**  
 No **0**

13.3 Is information about the courts and justice system available for people with disabilities? (i.e. website for vision impaired)

- Yes **1**

No 0

13.4 Are judges trained in dealing with people with disabilities?

Yes 1

No 0

13.5 Are there guidelines available to enable judgments to be accessible by disabled people?

	Criminal cases	Civil Cases
Yes 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

### Assessment of impact

What is in your view the impact of the above indicators on the following aspects?<sup>26</sup>

Please indicate your score in the drop down menu's, -2 representing the most negative impact, 0 a neutral impact and 2 representing the most positive impact.

	Legal representation	Funding and costs	Commensurate effort of judges	Dealing with abusive conduct	Availability of appeal	Communication	Access for people with disabilities
Due process from the perspective of accessibility	Select an item	Select an item	Select an item	Select an item	Select an item	Select an item	Select an item
Efficiency of procedure	Select an item	Select an item	Select an item	Select an item	Select an item	Select an item	Select an item
Quality of decisions	Select an item	Select an item	Select an item	Select an item	Select an item	Select an item	Select an item
Public access to the law	Select an item	Select an item	Select an item	Select an item	Select an item	Select an item	Select an item

<sup>26</sup> For the sake of simplicity the distinction civil/criminal and first instance/appeal is taken out



## C. Quality of judicial decisions and its improvement

### C14. Format of judgments

14.1 Are templates<sup>27</sup> for judgments and other judicial decisions available for types of litigation?

#### Criminal cases

	All courts	Most courts	Half of the courts	Some courts
All types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
Most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
Half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
Some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

#### Civil cases

	All courts	Most courts	Half of the courts	Some courts
All types of cases	<input type="checkbox"/> 7	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4
Most types of cases	<input type="checkbox"/> 6	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3
Half of the types of cases	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2
Some types of cases	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1
No	<input type="checkbox"/> 0			

14.2 If templates are available, who establishes these templates? Several answers are possible

	Criminal cases	Civil Cases
Judges together 4	<input type="checkbox"/>	<input type="checkbox"/>
Courts together 3	<input type="checkbox"/>	<input type="checkbox"/>
Supreme Court 2	<input type="checkbox"/>	<input type="checkbox"/>
Council for the Judiciary 1	<input type="checkbox"/>	<input type="checkbox"/>
Ministry of justice 0	<input type="checkbox"/>	<input type="checkbox"/>

14.3 If templates are available, are judges obliged to apply them?

	Criminal cases	Civil Cases
All types of cases -4	<input type="checkbox"/>	<input type="checkbox"/>
Most types of cases -3	<input type="checkbox"/>	<input type="checkbox"/>
In half types of cases -2	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases -1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

<sup>27</sup> A template provides the topics and their sequence for a judicial decision.

#### 14.4 Do judges apply templates in practice?

	Criminal cases	Civil Cases
All types of cases <b>4</b>	<input type="checkbox"/>	<input type="checkbox"/>
Most types of cases <b>3</b>	<input type="checkbox"/>	<input type="checkbox"/>
In half types of cases <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

#### Indicator C15: Reasoning of judgments and verdicts

15.1 In civil and criminal cases, must judgments and verdicts dealing with substantive issues be reasoned either orally or in written form?

	Criminal cases	Civil Cases
All types of cases <b>4</b>	<input type="checkbox"/>	<input type="checkbox"/>
Most types of cases <b>3</b>	<input type="checkbox"/>	<input type="checkbox"/>
Half of the cases <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

15.2 If so, is this requirement based on (material) law, court regulations, practice? Several answers possible:

	Criminal cases	Civil Cases
Law <b>5</b>	<input type="checkbox"/>	<input type="checkbox"/>
Appeal court rulings (material law) <b>4</b>	<input type="checkbox"/>	<input type="checkbox"/>
Regulations of the judiciary as a whole <b>3</b>	<input type="checkbox"/>	<input type="checkbox"/>
Court regulation <b>2</b>	<input type="checkbox"/>	<input type="checkbox"/>
Practice <b>1</b>	<input type="checkbox"/>	<input type="checkbox"/>

15.3 In civil and criminal cases, is reasoning restricted, for instance to speed up procedures?

	Criminal cases	Civil Cases
All types of cases <b>-4</b>	<input type="checkbox"/>	<input type="checkbox"/>
Most types of cases <b>-3</b>	<input type="checkbox"/>	<input type="checkbox"/>
Half of the cases <b>-2</b>	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases <b>-1</b>	<input type="checkbox"/>	<input type="checkbox"/>
No <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>

15.4 If so, is this requirement based on (material) law, court regulations, practice?

	Criminal cases	Civil Cases
Law <b>-5</b>	<input type="checkbox"/>	<input type="checkbox"/>
Appeal court rulings (material law) <b>-4</b>	<input type="checkbox"/>	<input type="checkbox"/>

Regulations of the judiciary as a whole -3	<input type="checkbox"/>	<input type="checkbox"/>
Court regulation -2	<input type="checkbox"/>	<input type="checkbox"/>
Practice -1	<input type="checkbox"/>	<input type="checkbox"/>

15.5 Are judgments or verdicts in civil and criminal cases that are given orally (i.e. not in writing) recorded and made available to the parties?

	Criminal cases	Civil Cases
Yes 4	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

### Indicator C16: Clarity of verdicts and judgments

16.1 Is clear and simple language required by law, regulations or practice?

	Criminal cases	Civil Cases
Law 4	<input type="checkbox"/>	<input type="checkbox"/>
Regulations of the judiciary as a whole 3	<input type="checkbox"/>	<input type="checkbox"/>
Court regulations 2	<input type="checkbox"/>	<input type="checkbox"/>
Professional practice 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

16.2 If so, is this put into practice?

	Criminal cases	Civil Cases
All cases 3	<input type="checkbox"/>	<input type="checkbox"/>
Most cases 2	<input type="checkbox"/>	<input type="checkbox"/>
Some cases 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

16.3 For whom are reasons primarily written?

	Criminal cases	Civil Cases
Litigants 3	<input type="checkbox"/>	<input type="checkbox"/>
Public in general 2	<input type="checkbox"/>	<input type="checkbox"/>
Other judges (such as appeal courts, Supreme Court) 1	<input type="checkbox"/>	<input type="checkbox"/>
Evaluation authorities 0	<input type="checkbox"/>	<input type="checkbox"/>

16.4 Are guidelines available on the clarity of judgments?

	Criminal cases	Civil Cases
Yes 2	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

16.5 If yes, who established the guidelines?

	Criminal cases	Civil Cases

Ministry of Justice 0	<input type="checkbox"/>	<input type="checkbox"/>
Council for the Judiciary 1	<input type="checkbox"/>	<input type="checkbox"/>
Supreme Court 1	<input type="checkbox"/>	<input type="checkbox"/>
Other judges 1	<input type="checkbox"/>	<input type="checkbox"/>

16.6 If guidelines are available, are judges obliged to apply them?

	Criminal cases	Civil Cases
All types of cases -4	<input type="checkbox"/>	<input type="checkbox"/>
Most types of cases -3	<input type="checkbox"/>	<input type="checkbox"/>
In half types of cases -2	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases -1	<input type="checkbox"/>	<input type="checkbox"/>
No -0	<input type="checkbox"/>	<input type="checkbox"/>

16.7 Do judges apply the guidelines in practice?

	Criminal cases	Civil Cases
All types of cases 4	<input type="checkbox"/>	<input type="checkbox"/>
Most types of cases 3	<input type="checkbox"/>	<input type="checkbox"/>
In half types of cases 2	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

16.8 Has research among parties been conducted in the last 5 years on the perceived clarity of judgments?

Yes 1	<input type="checkbox"/>
No 0	<input type="checkbox"/>

16.9 If yes, what percentage has rated the received judgement as clear?

	Criminal cases	Civil Cases
≥ 80% 3	<input type="checkbox"/>	<input type="checkbox"/>
60%-79% 2	<input type="checkbox"/>	<input type="checkbox"/>
40%-59% 1	<input type="checkbox"/>	<input type="checkbox"/>
≤ 40% 0	<input type="checkbox"/>	<input type="checkbox"/>

### Indicator C17: Concise judgments

17.1 [Please insert an "x" into the box if the answer is YES.]

a) Do formal requirements exist that lead to long judicial decisions? (e.g. requirement to address all arguments) Yes = 0, No/no ticking = 2

b) Do formal requirements exist that lead to short judicial decisions? **Yes = 2, No/no ticking = 0**

	a	b
First instance, civil law	<input type="checkbox"/>	<input type="checkbox"/>
First instance, criminal law	<input type="checkbox"/>	<input type="checkbox"/>
Appeal, civil law	<input type="checkbox"/>	<input type="checkbox"/>
Appeal, criminal law	<input type="checkbox"/>	<input type="checkbox"/>

17.2 Besides the requirements such as they are, do any of the following in practice lead to long judicial decisions?

- Custom **0**
- Enhancement of career **0**
- Concern for criticism from appeal **0**
- Lack of experience as a judge **0**
- Academic approach **0**
- 'Copy paste' from previous or other decisions **0**

17.3 Estimate the average length of a judgment and verdict in both civil and criminal cases. [Please tick the box that corresponds with the estimated average size in the table below]

Civil case: about breach of contract regarding the delivery of goods in which the lawyers raise many issues about evidence.

Criminal case: about a murder in which the lawyer raises many factual and procedural issues.

	0-20 pages <b>4</b>	20-40 pages <b>3</b>	40-60 pages <b>2</b>	60-80 pages <b>1</b>	80+ pages <b>0</b>
First instance, civil law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
First instance, criminal law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appeal, civil law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appeal, criminal law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Note: one

page equals 350 words.

### Assessment of impact

What is the overall impact of the indicators of quality of judicial decisions on the following?

Please indicate your score in the drop down menu's, -2 representing the most negative impact, 0 representing a neutral impact, 2 representing the most positive impact.

	Format of judgments	Reasoning of judgments	Clarity of judgments	Concise judgments
Quality of Judicial decisions	Select an item	Select an item	Select an item	Select an item
Timeliness	Select an item	Select an item	Select an item	Select an item
Efficiency of procedures	Select an item	Select an item	Select an item	Select an item
Public Access to the law	Select an item	Select an item	Select an item	Select an item

### Indicator C18: Assessment of quality of judicial decisions

18.1 Are on a regular basis samples of judgments taken to assess the quality of judicial decisions (outside the appeal process)?

- Yes **2**  
 No **0**

18.2 If the answer to 20.1 is yes, does this happen at first instance and appeal courts?

- First instance **1**  
 Appeal **1**

18.3 Are these samples taken as part of..?

- Peer review by judges among themselves, of which the individual results are not available to court management or others **4**  
 Performance evaluation of judges **2**

18.4 If samples of decisions are part of performance evaluation of judges, who is responsible for the performance evaluation?

	Criminal cases	Civil Cases
Court management, including the president of the court <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>
Council for the judiciary <b>0</b>	<input type="checkbox"/>	<input type="checkbox"/>
Ministry of Justice <b>-6</b>	<input type="checkbox"/>	<input type="checkbox"/>
Inspection or other body, not being part of the Council for the Judiciary <b>-6</b>	<input type="checkbox"/>	<input type="checkbox"/>

18.5 What is the assessment of judicial decisions about?

- Professional quality (craftsmanship) of decisions **0**  
 Merit of judgments<sup>28</sup> **lose all points but not below zero**

18.6 Are appeal rates used as proxy for quality of judicial decisions?

- Yes **0**

<sup>28</sup> Was the decision "correct" or "wrong"? This impedes directly the independence of the judge.

No 1

18.7 Is the quality of judicial decisions part of customer satisfaction surveys of the courts, if any?

Yes 1

No 0

18.8 Is the quality of judicial decisions evaluated by other methods, such as studies about specific aspects of judgments such as readability?

Yes 1

No 0

### Indicator C19: Education of judges

19.1 Is writing of judicial decisions part of the initial training of judges?

Yes 5

No 0

19.2 Are judges required to participate in training courses annually?

Yes 2

No 0

19.3 Is this requirement honoured by the judges?

	<input type="checkbox"/>
All 3	<input type="checkbox"/>
Most 2	<input type="checkbox"/>
Few 1	<input type="checkbox"/>
None 0	<input type="checkbox"/>

### Assessment of impact

What is in your view the overall impact of the indicators of improvement of the quality of judicial decisions on the following aspects?

Please indicate your score in the drop down menu's, -2 representing the most negative impact, 0 representing a neutral impact and 2 representing the most positive impact.

	Assessment of the quality of judicial decisions	Education of judges
Quality of judicial decisions	Select an item	Select an item

## D. Providing public access to the law to guide society

## Indicator D20: Access to case law

20.1 In first instance courts, are judicial decisions published on an external website?

	Criminal cases	Civil Cases
All cases 4	<input type="checkbox"/>	<input type="checkbox"/>
Most cases 3	<input type="checkbox"/>	<input type="checkbox"/>
Half of the cases 2	<input type="checkbox"/>	<input type="checkbox"/>
Some cases 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

20.2 If judicial decisions are published, are these accessible for free, or do you have to pay to get access?

	Criminal cases	Civil Cases
Free 2	<input type="checkbox"/>	<input type="checkbox"/>
Paid 0	<input type="checkbox"/>	<input type="checkbox"/>

20.3 Are summaries of judicial decisions published?

	Criminal cases	Civil Cases
All cases 4	<input type="checkbox"/>	<input type="checkbox"/>
Most cases 3	<input type="checkbox"/>	<input type="checkbox"/>
Half of the cases 2	<input type="checkbox"/>	<input type="checkbox"/>
Some cases 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

20.4 Are important decisions highlighted: are decisions that have high impact/ set precedent pointed out to the public?

	Criminal cases	Civil Cases
Yes 2	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

20.5 Is statistical information about the outcomes of cases made available by the courts for the public?

	Criminal cases	Civil Cases
Yes 2	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

20.6 In appeal courts, are judicial decisions published on an external website?

	Criminal cases	Civil Cases
All cases 4	<input type="checkbox"/>	<input type="checkbox"/>
Most cases 3	<input type="checkbox"/>	<input type="checkbox"/>
Half of the cases 2	<input type="checkbox"/>	<input type="checkbox"/>
Some cases 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

20.7 If (some of these) judicial decisions are published, are these accessible for free, or do you have to pay to get access?

	Criminal cases	Civil Cases
Free 2	<input type="checkbox"/>	<input type="checkbox"/>



Paid 0	<input type="checkbox"/>	<input type="checkbox"/>

#### 20.8 Are summaries of judicial decisions of appeal courts published?

	Criminal cases	Civil Cases
All cases 4	<input type="checkbox"/>	<input type="checkbox"/>
Most cases 3	<input type="checkbox"/>	<input type="checkbox"/>
Half of the cases 2	<input type="checkbox"/>	<input type="checkbox"/>
Some cases 1	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

#### 20.9 Are important decisions highlighted: are decisions that have high impact/ set precedent pointed out to the public?

	Criminal cases	Civil Cases
Yes 2	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

#### 20.10 Is statistical information about the outcomes of cases made available by the courts for the public?

	Criminal cases	Civil Cases
Yes 2	<input type="checkbox"/>	<input type="checkbox"/>
No 0	<input type="checkbox"/>	<input type="checkbox"/>

#### Indicator D21: Opening up to the public

21.1 Is the public informed through official sources (e.g. publications, websites, etc) about core judicial values such as independence, impartiality, application of the law?

- Yes 1  
 No 0

21.2 Is the public actively encouraged to visit the courts and see judges at work?

- Yes 1  
 No 0

#### Indicator D22: new technologies to improve access to justice

22.1 Are on-line dispute resolution mechanisms<sup>29</sup> available or being developed at the courts?

- Available 2  
 Being developed 1  
 No 0

22.2 Are track and trace systems for parties to follow the progress of their cases available or being developed at the courts?

- Available 2  
 Being developed 1  
 No 0

<sup>29</sup> E.g. procedures that are conducted entirely digital (no hearing in person), using digital communication techniques such as chatting.

22.3 Are digital tools that assist parties to bring suit or to defend available or being developed at the courts?

- Available **2**
- Being developed **1**
- No **0**

22.4 Are digital tools that provide parties with an orientation as to the likely outcome of cases and/or the factors that play a role, available or being developed at the courts ?

- Available **2**
- Being developed **1**
- No **0**

**Assessment of impact**

What is in your view the overall impact of the indicators of public access to the law on the following aspects?

Please indicate your score in the drop down menu's, -2 representing the most negative impact, 0 neutral and 2 representing the most positive impact.

	Access to case law	Opening up to the public	New technologies to improve access to justice
Public access to the law	Select an item	Select an item	Select an item
Access to justice	Select an item	Select an item	Select an item
Efficiency of procedures	Select an item	Select an item	Select an item
Quality of judicial decisions	Select an item	Select an item	Select an item

Thank you for filling in the questionnaire.

---END---





Formal of judgments	14.1	14.2	14.3	14.4																													
	Alle-7 months=5 half-half=3 some=some=1 no=0	judges=4 Supreme court=2 Council=1 Ministry=0 practice=0	Alle=4 months=3 half=2 some=1 none=0	Alle=3 months=3 half=2 some=1 none=0	Alle=4 months=3 half=2 some=1 none=0																												
	15.1	15.2	15.3	15.4	15.5																												
	Alle=4 most=3 half=2 some=1 none=0	law=5 appeal=4 judiciary=3 court=2 practice=1	Alle=4 most=3 half=2 some=1 none=0	law=5 appeal=4 judiciary=3 court=2 practice=1	law=4 years=4 no=0																												
	16.1	16.2	16.3	16.4	16.5	16.6	16.7	16.8	16.9																								
	judiciary=3 courts=2 practice=1 no=0	Alle=3 Month=2 Some=1 evaluation=0	Alle=3 public=2 other judges=1 evaluation=0	years=2 no=0	years=0 Supreme Ct=1 Other judges=1 no=0	Alle=4 months=3 half=2 some=1 none=0	Alle=4 months=3 half=2 some=1 none=0	years=1 no=0	score=3 60-79=2 40-59=1 <40=0																								
	17.1	17.2	17.3	17.4	17.5	17.6	17.7	17.8	17.9																								
	average=0 a no=2 b yes=2 b no=0	per category 0	0-20=4 20-40=3 40-60=2 60-80=1 80-100=0	no=0	lowest counts=0	Alle=4 months=3 half=2 some=1 none=0	Alle=4 months=3 half=2 some=1 none=0	years=1 no=0	score=3																								
	18.1	18.2	18.3	18.4	18.5	18.6	18.7	18.8	18.9																								
	positive=1 neutral=1 negative=-1 very negative=-2 no=1	Quality of decisions Efficiency procedures Public access	format	reasoning	clarity	concrete																											
	18.10	18.11	18.12	18.13	18.14	18.15	18.16	18.17	18.18	18.19	18.20																						
	no=0	appeals=1	performance=2 council=0 inspectors=6	minister=6 inspector=6	minister=6 inspector=6	minister=6 inspector=6	minister=6 inspector=6	minister=6 inspector=6	minister=6 inspector=6	minister=6 inspector=6	minister=6 inspector=6																						
	19.1	19.2	19.3	19.4	19.5	19.6	19.7	19.8	19.9																								
	years=5 no=0	years=2 no=0	alle=3 more=2 few=1 none=0	years=5 no=0	alle=3 more=2 few=1 none=0	years=5 no=0	alle=3 more=2 few=1 none=0	years=5 no=0	alle=3 more=2 few=1 none=0	years=5 no=0	alle=3 more=2 few=1 none=0																						
20.1	20.2	20.3	20.4	20.5	20.6	20.7	20.8	20.9																									
positive=2 neutral=0 negative=-1 even negative=-2 no=1	Quality of decisions	Assessment	Education																														
Impact of arrangements																																	
Impact of arrangements																																	
Assessment of quality of judicial decisions																																	
Education of judges																																	
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