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for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Independence and Accountability of the Judiciary and of the Prosecution

Performance Indicators 2015

ENCJ Report 2014-2015



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In 2013/2014 the ENCJ developed a framework and vision of independence and accountability of the Judiciary and a set of indicators to assess the actual state of independence and accountability of EU judicial systems. The ENCJ started with the Judiciary in a narrow sense, not including the Prosecution. At its General Assembly 2014 the ENCJ decided to pursue these activities in several directions. This report presents on the one hand the outcomes of the actual application of the indicators to the judiciaries of the members and observers of the ENCJ that wished to participate, and several extensions (section 1). On the other hand it presents the extension of the conceptual framework to the Prosecution (section 2).

Section 1: Independence and Accountability of the Judiciary

Performance Indicators

Almost all members and observers applied the indicators to their judicial systems. During the process the indicators were improved upon.

The report presents the outcomes for each member and observer that participated individually. The outcomes are to be used primarily by each Judiciary to reflect on its strengths and weaknesses and to address the latter. The data must be used with care, because it remains difficult to capture very diverse legal systems in indicators.

For the whole group of participants some statistics per indicator are given. From these statistics it was concluded that (1) there is much room for improvement with respect to independence as well as accountability, judging from the difference between the actual scores and what are deemed good arrangements. (2) Generally, countries score higher on objective independence (formal characteristics of legal systems) than on subjective independence (perceptions of independence). (3) With regard to objective independence funding of the judiciary and court management score lowest. The funding of the judiciary is generally not well arranged, and judiciaries are dependent on discretionary decisions by governments. Court management is still often in the hands - directly or indirectly - of ministries of Justice. (4) With respect to accountability external review of the judiciary and (disclosure of) external functions of judges get low scores. External review is a complicated issue, because, if it is not commissioned by the judiciary itself, it opens the door for outside interference with the judiciary and thus detracts from independence.

Survey among professional judges about their perceptions of their actual independence

At the General Assembly 2014 it was noted that judges have never been systematically asked how they perceive their own independence, and that this leads to a blank spot in the indicators about subjective independence. It was decided to undertake a survey among European judges. 22 judicial organizations were willing and at such short notice able to organise the survey in their countries. In total 5.878 judges participated.

The outcomes are presented for all participating countries. In general it can be concluded that (1) although there are differences among countries, the vast majority of judges have not been under inappropriate pressure to take a decision in a case in a specific way in the last two years. Consistent with this, the average score of the judges of each country when asked to assess

their independence on a scale between 0 and 10 (10 is totally independent) is an 8 or higher. When asked about the independence of the judges of their country in general, the average score was a 7 or higher (with one exception of 6). Where inappropriate pressure occurs, it comes from different sides, external and internal.

(2) Taking bribes is another form of giving up independence. With regard to the beliefs among judges whether bribes are accepted, a clear dichotomy exists in Europe. Whilst hardly anybody believes that judges regularly take bribes, in roughly half of the countries judges do not believe that bribes are taken at all, while in the other half a sizeable percentage of the judges believe that bribes are occasionally or on a rare exception taken. (3) According to the judges, internal matters such as the allocation of cases and disciplinary measures are not a big issue when it comes to influencing the outcome of cases. Also, the management of the court hardly ever exerts pressure on judges to decide cases in a specific way. However, many judges experience pressure to decide cases within a particular time. This also occurs in countries that otherwise score very high on independence. Judges were not asked whether they perceive this as a threat to their independence, and it is open for debate whether such a pressure is a good or a bad phenomenon. The same is the case with respect to decision making in accordance with guidelines developed by judges of the same rank.

(4) The influence of the (traditional) media on decisions of judges is an important issue. In many countries, judges believe decisions are affected by the media. This direct influence does not (yet?) occur with respect to the social media.

(5) Judges were also asked about changes in their working conditions and the impact thereof on their independence. Pay, caseload and resources were seen as factors that affect independence.

(6) An important issue is the appointment and promotion of judges. Many judges in nearly all countries believe that judges are appointed and promoted other than on the basis of ability and experience.

(7) Finally, do judges believe that their independence is respected by others? Respect goes further than the absence of the exertion of pressure on judges to decide cases in a specific way. It is the actual acknowledgement of the importance of judicial independence. A large percentage of judges in most countries do not feel their independence is respected by government, parliament and the (social) media. With few exceptions, they feel they get this respect from bodies internal to the Judiciary: court management, Councils for the judiciary, Supreme courts, Constitutional courts and Associations of judges. While the latter outcome may not come as a surprise, the former is worrisome.

Pilot survey among lay judges about their perceptions of their actual independence

Many of the legal systems of Europe make not only use of professional judges, but also of lay judges. They are an integral part of these Judiciaries. However, since lay judges usually spend only a small fraction of their time within the Judiciary, it was not obvious whether a meaningful survey can be conducted among them. Therefore a pilot survey amongst lay judges in Norway, Sweden and Denmark was conducted. The outcomes are presented per country. The main outcomes of the pilot are the following. (1) Lay judges have very similar opinions as professional judges. Lay judges do not feel less independent than professional judges. While they may be expected to feel the influence of professional judges, especially when they sit together, this does not show in the outcomes. Inappropriate pressure within the judiciary is not

reported. (2) Lay judges are in general more uncertain about their answers than professional judges, showing from a higher frequency of the use of 'not sure' as answer, although this is not the case for each and every question. (3) In the three countries examined, lay judges hold quite diverse views of the respect the judiciary gets from government, parliament and (social) media. Apparently, this is an area about which lay judges tend to have opinions that are more outspoken than those of professional judges. While the pilot has been conducted for three Scandinavian judiciaries only and can therefore not be generalized to all judicial systems in which use is made of lay judges, these outcomes are promising. There does not seem to be a gap between professional and lay judges from the perspective of independence, which means that independence as core value is upheld by all judges. From a methodological point of view the outcomes are promising as well. It may not be necessary to extend the survey among judges to lay judges to get a reliable overview of the opinions of judges. However, these are first results, and before more final conclusions can be reached the survey needs to be repeated for other (and diverse) judicial systems in which broad use is made of lay judges.

Pilot dialogue group

The whole purpose of indicators for independence and accountability is to have an informed discussion about these matters within and among Councils and other governing bodies, and to address weaknesses in legal systems in this respect. For the discussion among Councils and other bodies, the format of a dialogue group was developed. As described in the Report Independence and Accountability of the Judiciary 2013-2014, the purpose of the dialogue groups is to discuss the results of the application of the indicators and identifying the real problems facing the independence and accountability of the Judiciary in each country, and identifying remedies. It was also decided that the dialogue groups would report to the executive board and annually to the ENCJ General Assembly. To test whether a meaningful dialogue could be held about independence and accountability on the basis of the indicators a pilot meeting was held in March 2015. The pilot dialogue group consisted of participants from Italy, Slovenia, Lithuania and Norway. While the meeting could not meet all expectations, it was deemed a success, as it gives an opportunity for a real in-depth dialogue.

Section 2: Independence and Accountability of the Prosecutors

This section of the report has been prepared by a sub-group comprising the representatives of five of those members of the ENCJ, which have a Council for both judges and prosecutors (Belgium, Bulgaria, France, Romania, and Italy), together with some interested observers. The views and recommendations contained in this section are, therefore, the views and recommendation of these 5 Councils and not of the entire ENCJ.

The work of the sub-group was to consider which of the indicators determined by the ENCJ to be applicable to the independence and accountability of judges were also applicable to the independence and accountability of prosecutors. The sub-group concluded that the large majority of the indicators were capable of being read across from judges to prosecutors with minor changes of emphasis in some cases. The subgroup tried to identify all relevant international and European documents that encompass generally applicable standards in relation to the independence and accountability of the prosecutors and transposed them in an analysis of the members and observers of the ENCJ. This analysis resulted in the framework of accountability and independence of prosecutors.

It was ultimately decided that the indicators for the independence and accountability of prosecutors developed by the sub-group in this section would not be applied at this stage even to the 5 participating Councils. This was mainly because it was thought better first to obtain the reactions of other ENCJ members and observers, whose Councils did not include prosecutors. Moreover, bearing in mind the constitutional similarities between the positions of judges and prosecutors in the sub-group countries, it may be expected that the results of the application of the indicators for prosecutors would closely track those for judges.

Recommendations to the Judiciary and the Prosecutors

1. In 2015/2016 the dialogue groups should be extended to all interested members and observers. The outcomes should be integrated and conclusions presented to the General Assembly in Warsaw about the state of independence and accountability in the EU and candidate countries and about steps to be taken to address challenges whether at a national or supranational level.
2. The methodology of the performance indicators for the independence and accountability of the Judiciary and the scoring rules should be refined. Sensitivity analyses could be undertaken to assess the impact of different scoring rules on the scores. Also, outcomes of the dialogue groups may lead to alterations of the indicators. The revised indicators (version 1) should be implemented in 2016/2017.
3. The logical follow-up to the establishment of indicators relating to judicial independence and accountability is 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 the citizens. Accordingly, it is recommended that work should be done on the creation of a methodology to produce indicators for the quality of justice as an extension to the current project. This will be a difficult but worthwhile exercise.

4. The survey among judges should be improved (version 1) and enough time should be given to members and observers to prepare for the next survey. This survey should be held in 2016/2017. As independence and accountability are interrelated, the possibilities should be examined to incorporate accountability in the survey.
5. The follow-up of the work on the independence and accountability of prosecutors in systems that have Councils that include both judges and prosecutors will be for consideration by the Executive Board and at the General Assembly.
6. It would be desirable that the Eurobarometer Justice in the EU is repeated with respect to the perceptions of the populations about (at least) independence. A discussion with the EC should be started to achieve this.

General Introduction

In an attempt to move beyond debating independence and accountability of the Judiciary at a theoretical level, in 2013/2014 the ENCJ has developed a framework and vision of independence and accountability and a set of indicators to assess the actual state of independence and accountability of EU judicial systems. The ENCJ started by focusing on the Judiciary in a narrow sense, as this was already a daunting task: independence and accountability of the prosecution was postponed to the next phase. It is worth repeating here the framework and vision as it was summarized in the report:

“The independence of the Judiciary as a whole and that of individual judges lie at the heart of the rule of law. Without it the Judiciary cannot fulfil its functions. But independence does not stand on its own. It must be recognized that independence is directly linked to accountability. A Judiciary that claims independence but which refuses to be accountable to society will not enjoy the trust of society and will not achieve the independence for which it strives.

It is the vision of the ENCJ that independence must be earned. It is, by no means, automatic. The Judiciary achieves legitimacy and the respect of its citizens by excellent performance, resulting in impartial, well-reasoned, decisions. The best safeguard of independence is excellent and transparent performance. In that way, the Judiciary fulfils its mandate and demonstrates that it does so. Whilst mistakes will always occur and draw criticism, an independent and accountable Judiciary is open to justified criticism and learns from its mistakes. This mechanism provides a powerful link between independence and accountability.

Excellent performance cannot replace formal safeguards. Therefore, both objective and subjective independence of the Judiciary are important. Objective independence reflects the necessary formal safeguards, whilst subjective independence relates to the perceptions in society, including those of the judges themselves. Councils for the Judiciary should not focus solely on formal safeguards, but should work towards improving performance and informing the public about the functions and the functioning of the Judiciary. Each judge has a role to play in this respect.

As to the set of indicators a pilot was done in four countries. At its General Assembly the ENCJ concluded that this empirical method has delivered useful results and that it could be applied by all members and, if they wish, the observers of the ENCJ. It was also concluded that the scope of the project could be broadened to the Prosecution. A new project group was established to undertake these tasks. The current report presents the outcomes of the activities. It has two sections. Section 1 deals with the Judiciary. Section 2 is about the Prosecution. While the section about the Judiciary presents the actual outcomes of the indicators for all participating countries and the results of related activities, the section about the Prosecution is still conceptual. It applies the framework and set of indicators developed for the Judiciary to the Prosecution and implements necessary adaptations. It need to be stressed that while all Councils that participate in the ENCJ have authority over the Judiciary, only some of them have responsibility for prosecutors. As a consequence, only a few member Councils have participated in the identification of a framework and indicators for the independence and accountability of prosecutors in systems that have Councils that include both judges and prosecutors. It is for consideration whether it would be appropriate now to consult supra-national prosecutorial bodies.

Section 1 Independence and Accountability of the Judiciary

1. Introduction

As mentioned in the general introduction, the ENCJ has developed in 2013/2014 a set of indicators for the independence and accountability of EU judicial systems. It tested the indicators in a pilot for four countries. At its General Assembly the ENCJ concluded that this empirical method has delivered useful results and that it could be applied by all members and, if they wish, the observers of the ENCJ. It was also decided that the application of the indicators by the members and observers would be supported and the results evaluated by an expert group comprising 4 members, 3 from the ENCJ and an external expert. The expert group would ensure consistency and accuracy of the answers to the questionnaire used to gather the data for the indicators. At the General Assembly a project group was established to undertake these activities. This is its report. The report provides a refinement of the indicators, and it presents outcomes for all the countries that participated, in total 23. The envisaged expert group was established, and performed a crucial role in improving the indicators and the consistency of the scoring.

At the General Assembly it was also noted that judges have never been asked how they perceive their own independence. These perceptions were seen as essential information, in addition to the views in society and of court users. Therefore, it was decided to conduct a survey among the professional judges in Europe. The project group has developed the survey and organized its implementation. The outcomes are reported here. The outcomes provide the measurement of one of the indicators so far missing. The survey is, however, more than that. It gives a rare insight into the perceptions of judges than can be captured by this one indicator and the outcomes are, therefore, discussed in more detail in this report. Twenty-two countries participated. Due to the short time available not all judicial organisations could organize their participation. Many of the legal systems of Europe make not only use of professional judges, but also of lay judges. The perceptions of lay judges are very important as well, but a survey among them raises specific issues. The pilot survey was conducted in two courts in Sweden, two courts in Denmark and three courts in Norway. The results are presented here.

The development and measurement of indicators are not a goal in itself. The indicators are meant to provide the factual basis to examine the strengths and weaknesses of legal systems and to open a dialogue among the Judiciaries in Europe. The intention of the General Assembly was to consider the most advantageous methods of implementation of dialogue groups. It was agreed upon to establish a number of dialogue groups comprising 4 members of the ENCJ from different parts of Europe (and possibly observer countries if they wish to participate) aimed at discussing the results of the application of the indicators and at identifying the real problems facing the independence and accountability of the Judiciary in each country, and identifying remedies. The project group has set up a pilot dialogue group. The experience with this dialogue group is evaluated here.

It was intended that the dialogue groups would continue to operate over a period of years. Moreover, the application of the indicators, including the survey among judges, would be repeated every 2 years so as to ascertain improvements or deteriorations in independence and accountability over time. The framework to do this has now been established. Further improvements are possible and should be undertaken in the coming years. It is a growth process to gradually improve our knowledge about independence and accountability of the judiciary

and gradually improve independence and accountability themselves. The report offers proposals for the follow-up.

It was concluded finally at the Assembly that in addition to the current set of indicators that applied to the Judiciary, indicators should be developed for the independence and accountability of prosecutors in systems that have Councils that include both judges and prosecutors. Independence and accountability are also crucial for prosecutors to fulfil their role in the legal system. This has also been undertaken. The results are presented in section 2 of this report.

The members of the project group comprised representatives of 19 member Councils of the Judiciary and 7 observers. The project group was coordinated by Mr. Frits Bakker and Mr. Frans van Dijk of the Netherlands Council for the Judiciary. The Secretary was initially Ms. Merel Berling, also of the Netherlands Council. She was succeeded by Ms. Ymkje Lugten.

The project group was divided into two sub-groups as follows:

1. All activities with regard to the Judiciary, coordinated by the Netherlands Council of the Judiciary;
2. All activities with regard to Prosecutors, coordinated by Mr. Horatius Dumbrava and Mr. Flavian Poppa of the Romanian High Council.

The expert group was chaired by Sonia Naidenova (VSS Bulgaria). The other members were: Nuria Diaz (CGPJ Spain), Colin Tyre (Judicial Council Scotland), Sven Johannisson (Domstolsverket Sweden), and Monique van der Goes (ENCJ Office) acted as the Secretary. Three of the members represented Councils and one the observers, as external expert. The expert group met on 6 October 2014 in The Hague and 26 January 2015 in Brussels.

The project group met on the following occasions:

18-19 September in Madrid, Spain

1-2 December 2014 in Brussels, Belgium

12-13 February 2015 in Bucharest, Romania

9-10 April 2015 in Lisbon, Portugal

This section about the Judiciary is organized as follows. Paragraph 2 summarizes the methodology on which the performance indicators and their measurement are based, while paragraph 3 provides an overview of the indicators and their constituent parts. Paragraph 4 gives the outcomes of the indicators for all countries together and for each country separately. Paragraph 5 discusses the survey among professional judges about their perceptions of their actual independence and the outcomes of the survey, while paragraph 6 describes the pilot survey among lay judges. Paragraph 7 reports on the use of the indicators to discuss the strengths and weaknesses of individual judiciaries and to develop remedies that has been tried out in a dialogue group. Finally, proposals for a follow-up are made.

2. Methodology of indicators

The 2013-2014 ENCJ report Independence and Accountability of the Judiciary sets out the conceptual framework of independence and accountability that underlies the indicators and it describes the indicators in detail. The essential aspects are recapitulated here briefly. 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 summarized by five basic notions.

1. Independence and accountability go together: accountability is a prerequisite for independence. Independence is granted by society. A Judiciary that does not want to be accountable to society and has no eye for the needs in society, 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 behaviour and shows in his decisions, and this is reflected in independence as perceived in 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 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.

The performance indicators consist of objective and subjective indicators. Consistent with the definitions, 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 categorization is done by the Councils or, in the absence of a council, other governance bodies, using a standardized 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. Subjective indicators about accountability are not yet available. The ENCJ intends to look at perceptions of accountability at a later stage. 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. No data are available about the perceptions of judges, and the project group has undertaken to fill this gap.

To get a proper idea of the independence of the Judiciary objective and subjective indicators need to be assessed together. In the next section the indicators are listed, and the changes that proved necessary in the indicators as defined in the 2013/2014 report are described.

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, if they so desire. 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. Whilst the expert group was dependent on the individual Council for the answers it gave, it sought to guard against this (theoretical) possibility by critically evaluating the answers given to the questionnaires. The disclosure of the replies to the questionnaire and scores is up to the relevant national institutions.

3. Performance indicators and sub indicators Independence and Accountability 2015 (version 0 of the indicators)

As explained in chapter 2, the set of indicators consists of objective and subjective indicators, in as far as these are available. The objective indicators are divided into indicators about the Judiciary as a whole and about the individual judge.

3.1 Areas covered by the indicators

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

The performance indicators have been described in detail in the 2013/2014 report. While the indicators were tested in a pilot for four countries, still changes in the indicators and in the scoring rules had to be made when the indicators were applied to all countries, in particular due to differences in interpretation. Also, some inconsistencies went unnoticed earlier, and were corrected.

The resulting set of indicators for 2015 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. Non-transferability of judges, with the following sub-indicators:

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

7. 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

8. Independence as perceived by citizens in general;

- Eurobarometer 2013, average across areas of law (Q5.2. Q6.2 and Q7.2);
- Global competitiveness report 2013-2014 (item 1.06);
- World Justice Rule of Law Index 2014 (item 1.2).

9. Trust in Judiciary, relative to trust in other state powers by citizens in general;

- National surveys.

10. Judicial corruption as perceived by citizens in general;

- Eurobarometer Special Surveys: EB79.1 Corruption: http://ec.europa.eu/public_opinion/archives/eb_special_399_380_en.htm

11. Independence as perceived by courts users at all levels;

- National surveys.

12. Independence as perceived by judges themselves;

- ENCJ survey.

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.

1. 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;
- Scope of the annual reports;
- 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.

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;
- Availability of a (public) register of external functions of judges;
- Availability of a (public) register of financial interests of judges.

9. Understandable procedures, with the following sub-indicators:

- Duty of judges to make proceedings intelligible to the parties;
- Training of judges.

The important changes vis a vis the indicators 2013/2014 are the following:

- The earlier set contained an indicator about procedures in case of threat to independence. On this aspect the questionnaire led to such a variety of answers, due to the diverse nature of possible threats that a consistent interpretation was not possible. The indicator was deleted.
- The indicator 'Organisational autonomy of the Judiciary' has as one of the sub indicators whether or not the Council is part of the Judiciary. This question could not be answered clearly for many countries. As the subsequent sub indicators address the position and role of Councils in detail, the sub indicator was deleted.
- With respect to the indicator 'funding of the Judiciary' the sub indicator about the frequency of conflicts about budgets received many replies that there were no conflicts, not because there were no conflicts, but merely because Councils were not involved in financial discussions. The sub indicator was dropped as meaningless.
- The indicator 'irremovability' (renamed 'non-transferability' to avoid confusing the issue with dismissal) received inconsistent replies. It was decided not to change the indicator and sub indicators, but to clarify that the first sub indicator about whether or not a judge can be transferred with his/her consent requires a strict interpretation. If in specific situations transfer without consent is possible, the answer must unequivocally be that a judge can be transferred without consent. Only then the subsequent questions can be answered. These sub indicators allow for a nuanced view of non-transferability.

- The indicator about the important matter of internal independence raised discussion about the issue of (binding) guidelines by higher judges and judges at the same level to ensure the uniformity or consistency of judicial decisions. The relevant sub indicators have been simplified to avoid definition problems. It was unequivocally concluded that from the perspective of independence no guidelines are the preferred situation, while non-binding guidelines are preferred to binding guidelines. This is reflected in the scoring rules.

Concerning accountability, two changes were made:

- With respect to external review, definition problems arose about the methods of external review, while the distinctions were not seen as particularly relevant. Therefore, the sub indicator was deleted.
- The indicator about the admissibility of accessory functions and disclosure of interests was systematized and simplified to make it easier to classify legal systems. In the scoring rules it was made explicit that both arrangements (1. accessory functions are not allowed; 2. accessory functions are allowed and made transparent) are equally acceptable, from the perspective of accountability. From this perspective, the distinction between specific public/political and private functions was not considered relevant.

These changes were incorporated in a new version of the questionnaire that was used to gather the country data for the indicators. The questionnaire is enclosed as Appendix 1.

4. State of independence and accountability in Europe

The outcomes are summarized in the figures below for all countries together. The score for each country in combination with the minimum and maximum score achieved by any of the participating countries is presented for each indicator. Indicator 12 about independence as perceived by judges is not included in the figures, but it is discussed in detail in the next section as a specific survey was conducted to gather data about these perceptions.

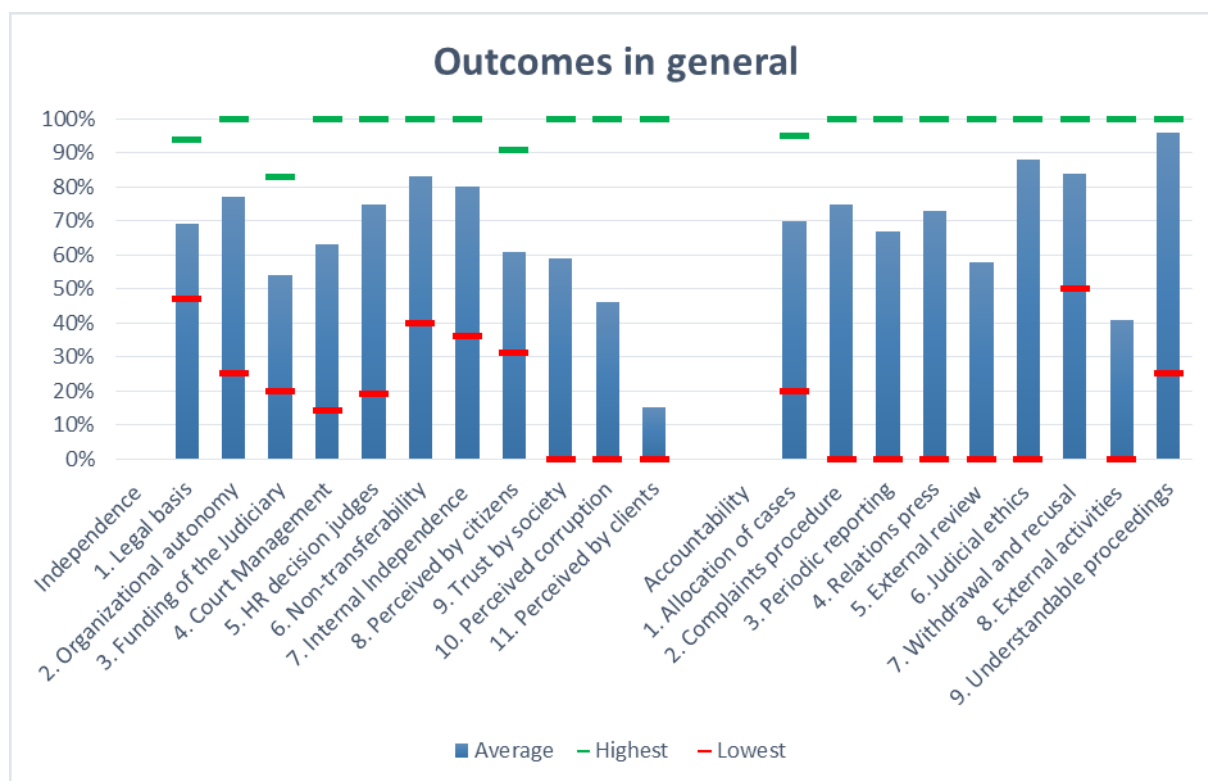
4.1 Method of presentation

The objective indicators explicitly set a standard about how formal arrangements should look. They specify what is good, and what is less so. Ideally, this standard should be met for all (sub) indicators. The project group has not attempted to define what for each indicator would constitute a (just) acceptable arrangement. Apart from practical matters, this is essentially undesirable. In the 2013/2014 report colour codes were applied mechanically to scores on a scale from 0 to 10, where 5 was denoted as neutral. This presentation of the scores may give the wrong impression that a technically neutral score is good enough. To avoid this impression the outcomes for each indicator are presented here as percentage of a standardized maximum score that indicates the best arrangements.¹ As a consequence, 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.

4.2 State of independence and accountability in Europe: outcomes in general

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. For all indicators a high score is good and a low score bad. Obviously, the average scores give only a very rough indication of the outcomes.

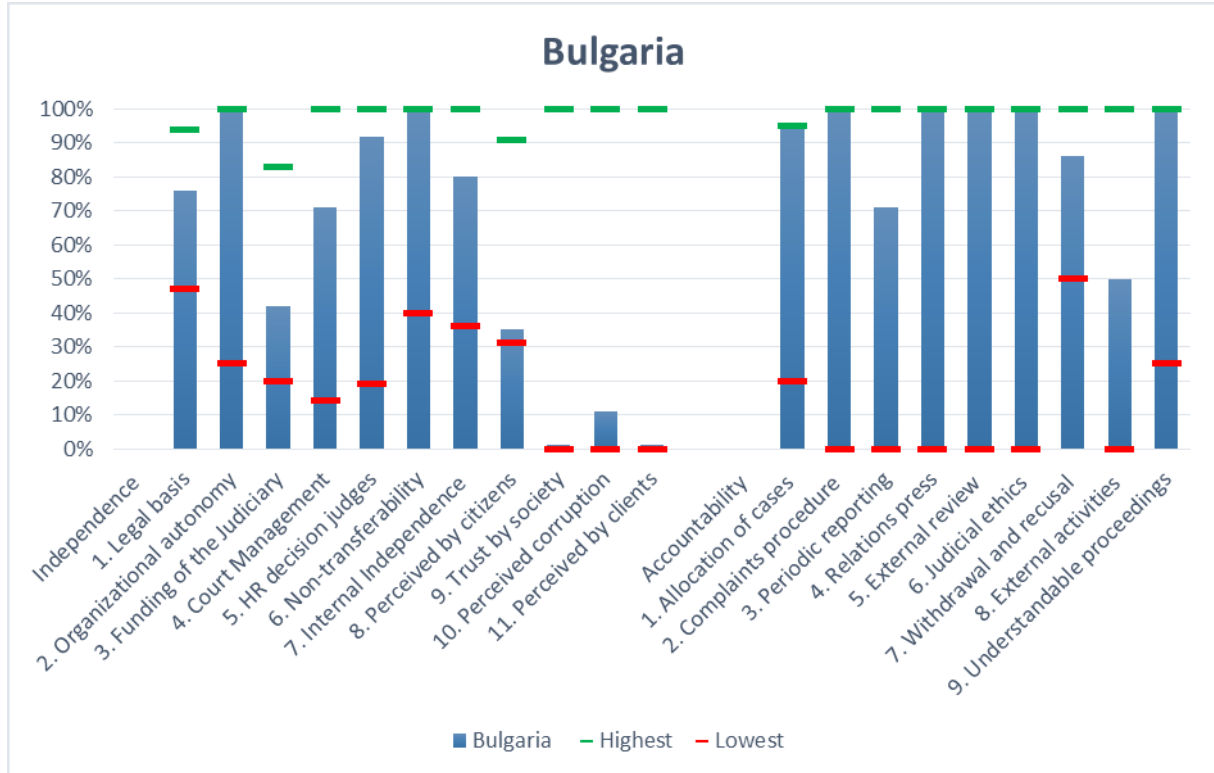
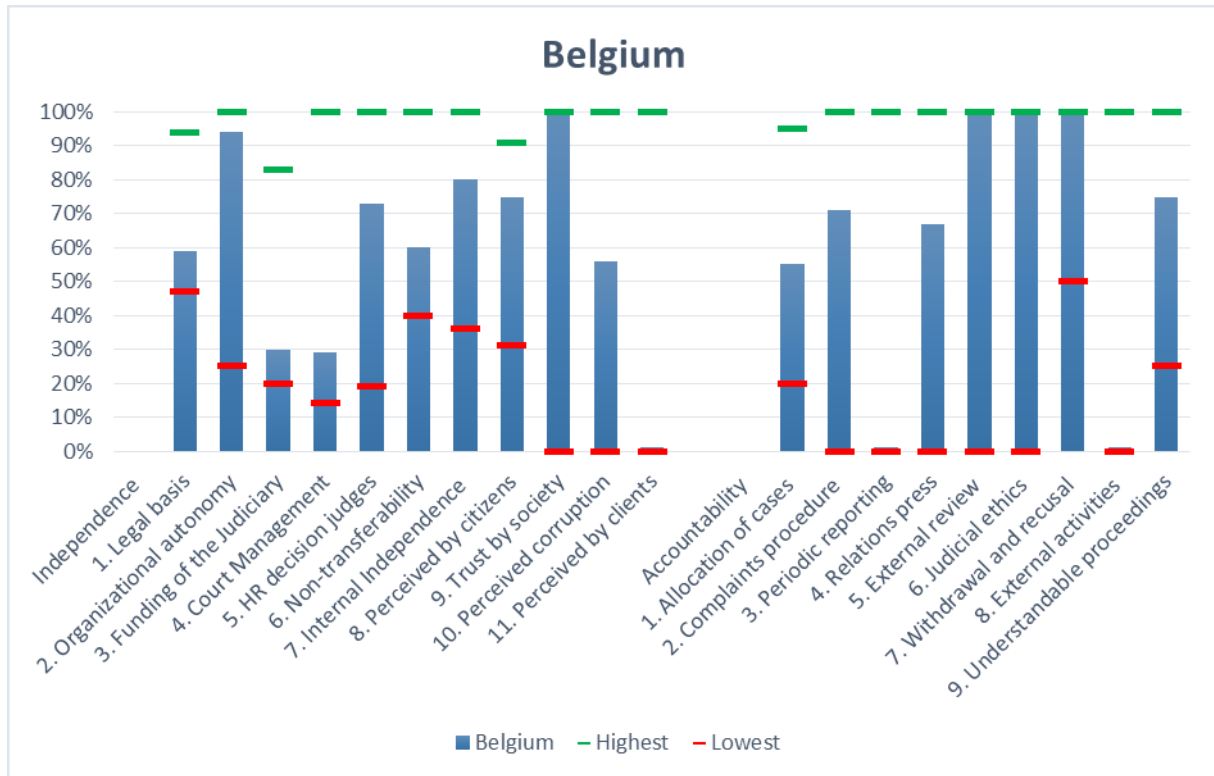
¹ As interval scales are used (per sub indicator points can be earned on a scale with equal intervals: the distance between 1 and 2 is the same as between 2 and 3), taking percentages is allowed.

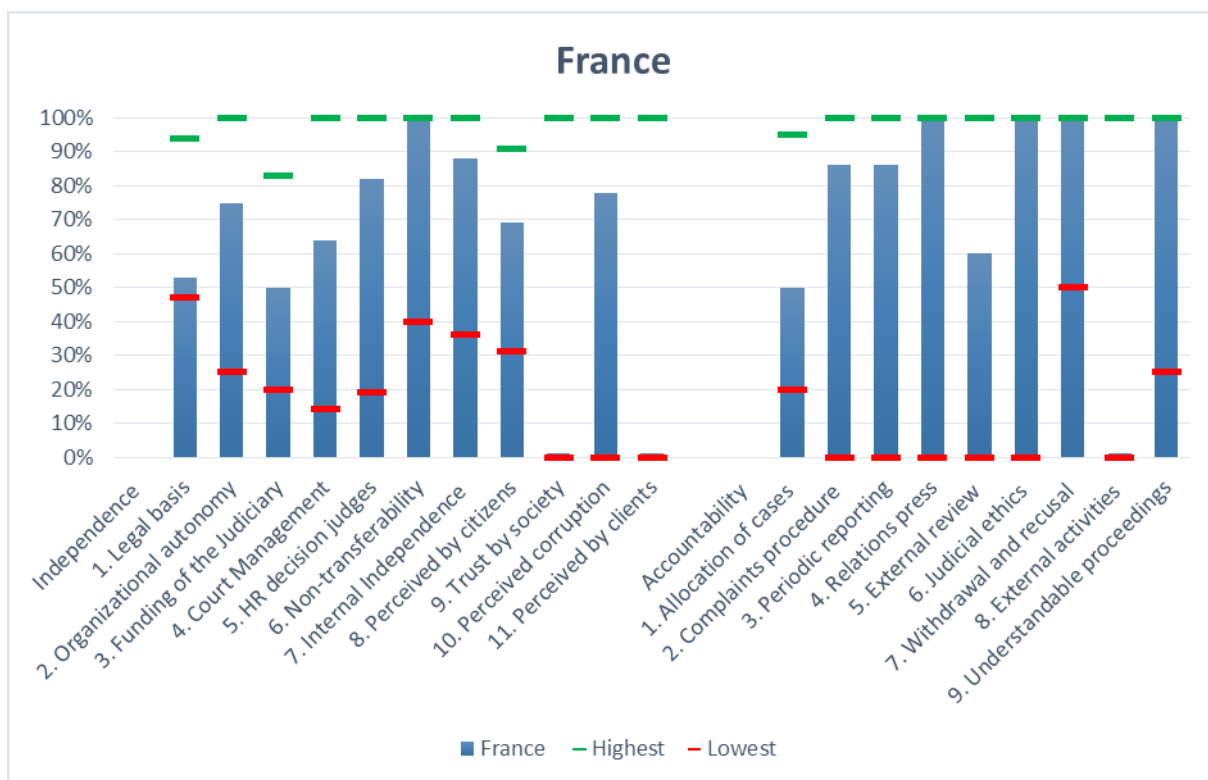
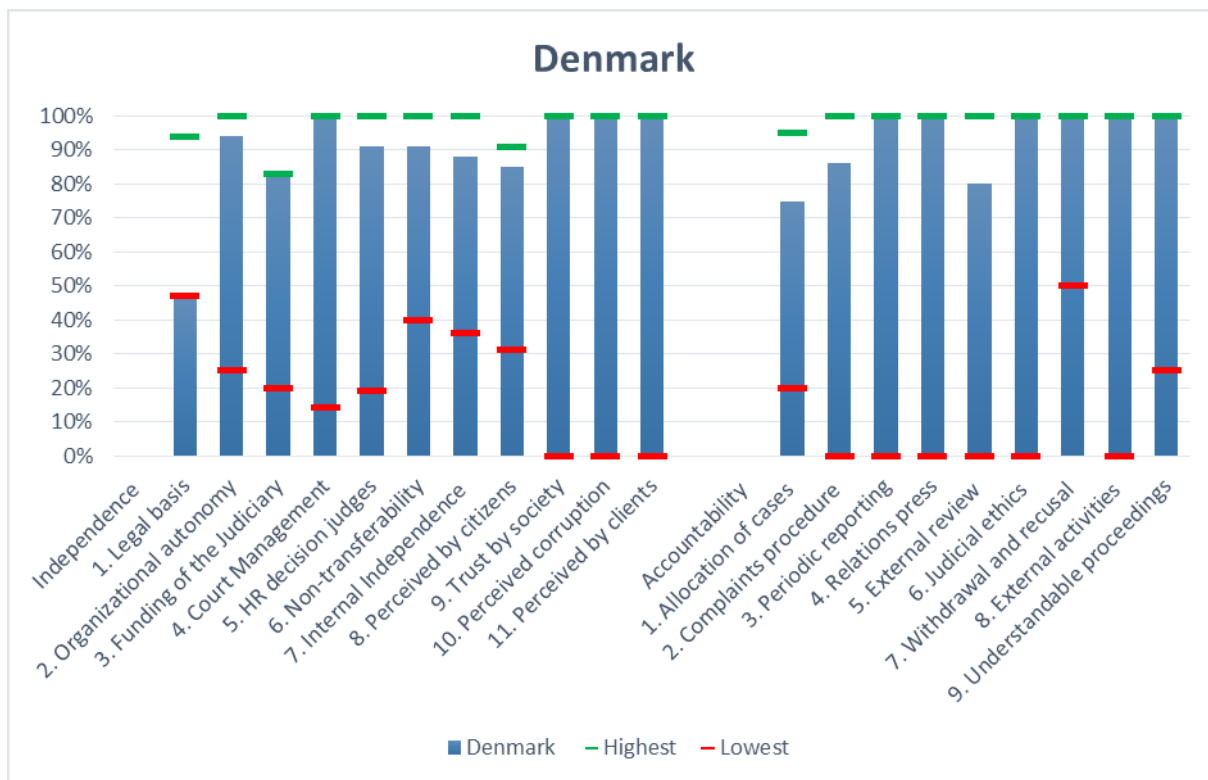


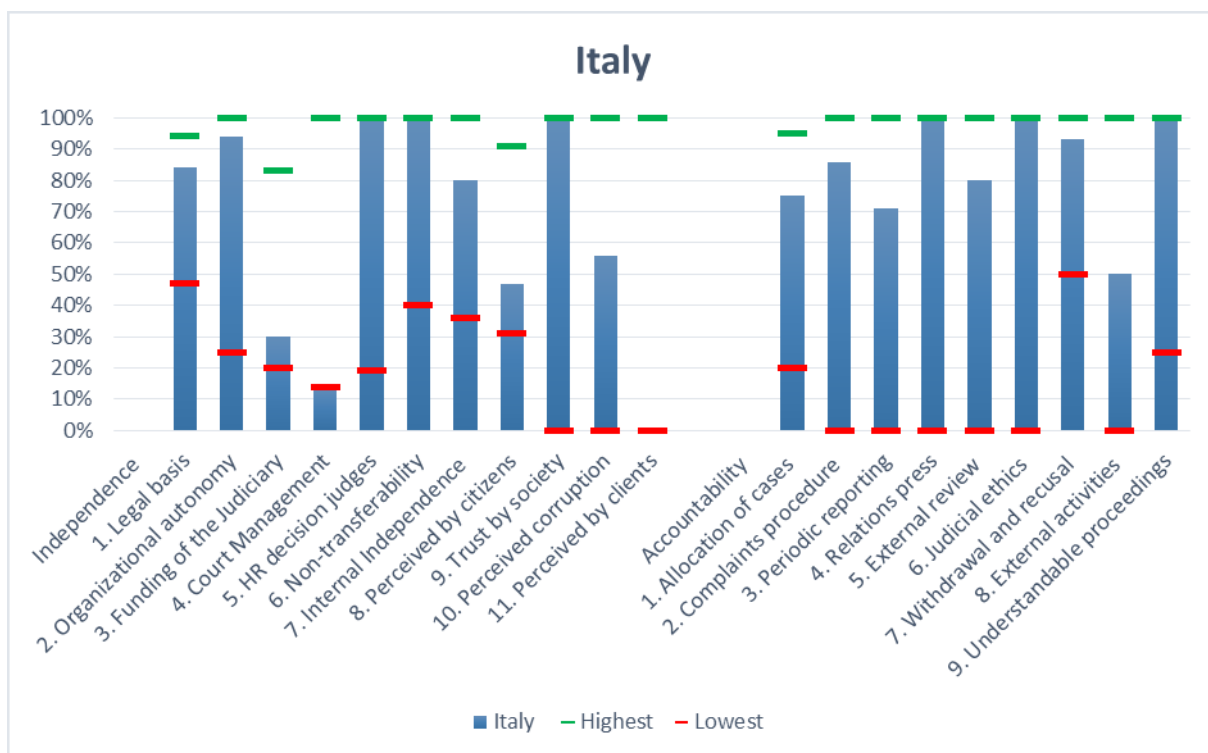
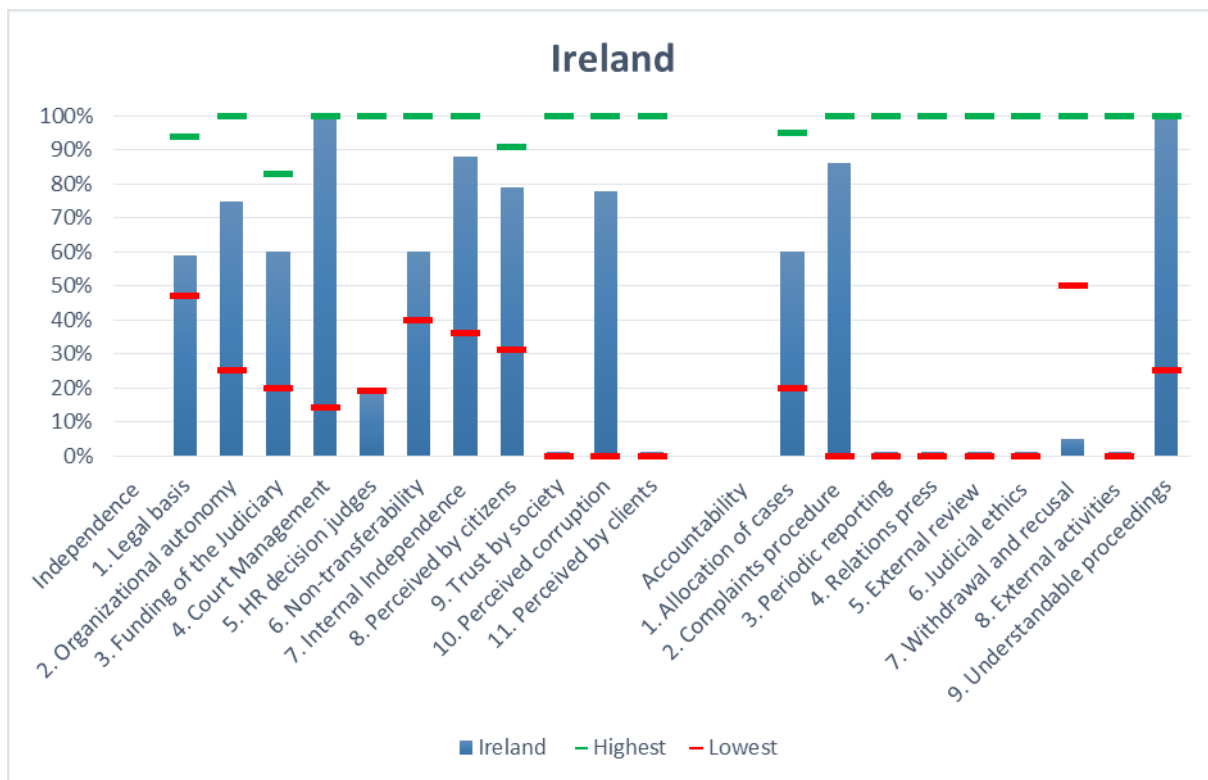
Nevertheless, some general conclusions can be drawn from the averages in combination with a global inspection of the country outcomes.

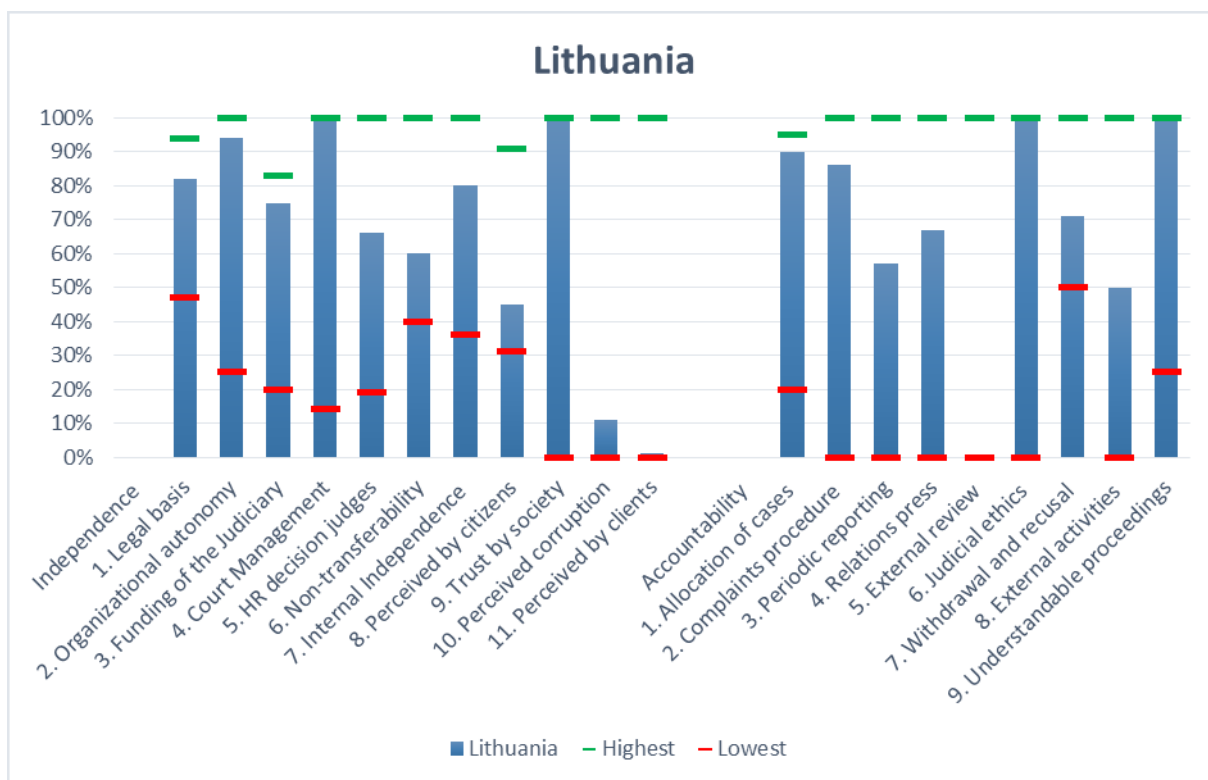
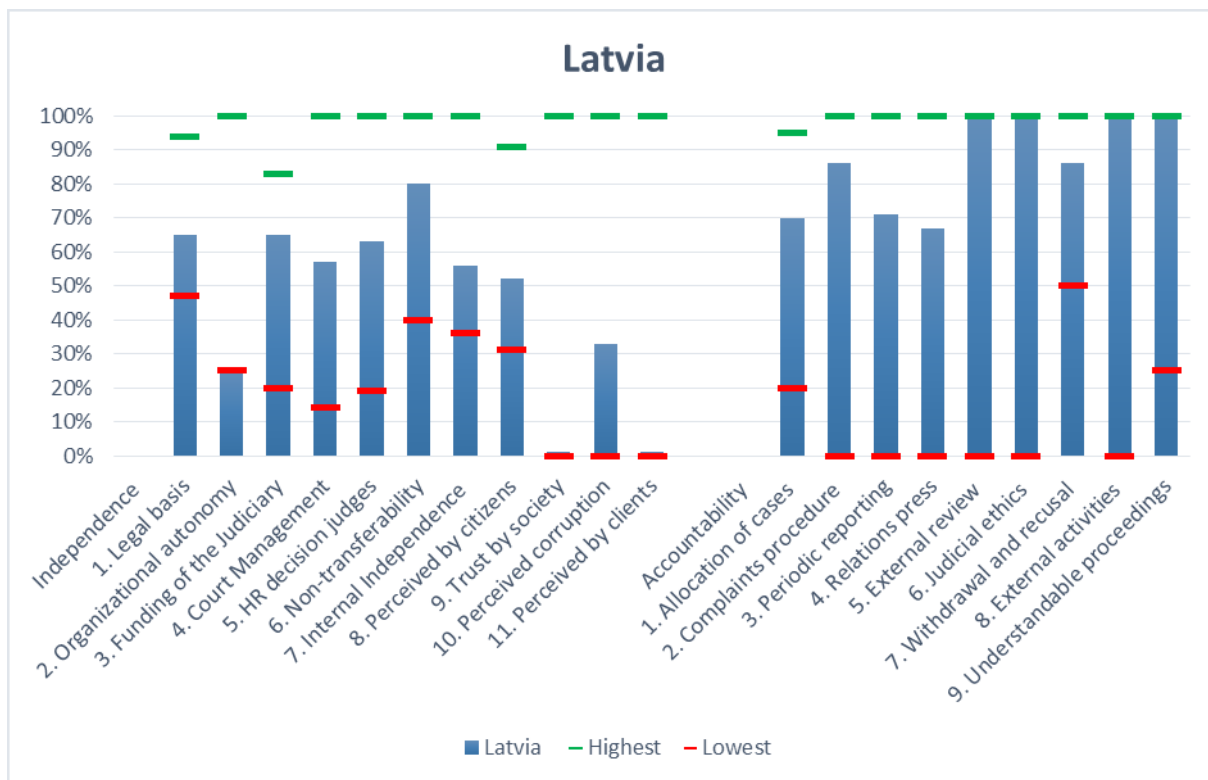
1. There is much room for improvement with respect of independence as well as accountability, judging from the difference between the actual scores and what are deemed good arrangements (100%).
2. Generally, countries score higher on objective independence (indicators 1-7) than on subjective independence (indicators 8-11). This is caused to a large extent by lack of data with respect to indicators 9 and 11. It is particularly striking that for many countries no information is available about the perceptions of the clients about the courts. These experiences warrant much more attention. The other reason is that perceptions are negative for many judiciaries.
3. With regard to objective independence (1-7) funding of the judiciary and court management score lowest. The funding of the judiciary is generally not well arranged, and judiciaries are dependent on discretionary decisions by the government. Court management is still often in the hands – directly or indirectly - of ministries of Justice. It has proven to be difficult to change arrangements in both instances.
4. With respect of accountability external review and (disclosure of) external functions of judges get low scores in particular. External review is a complicated issue, because, if it is not commissioned by the judiciary itself, it opens the door for outside interference with the judiciary and thus detracts from independence.

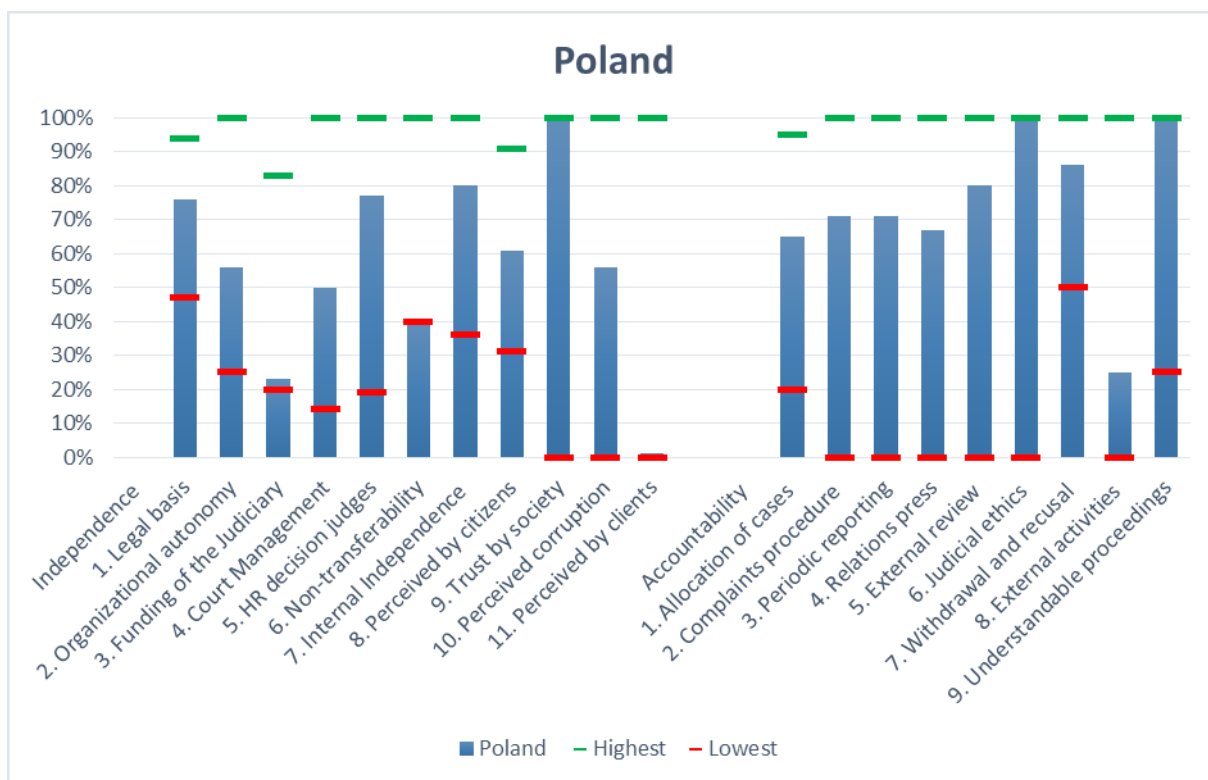
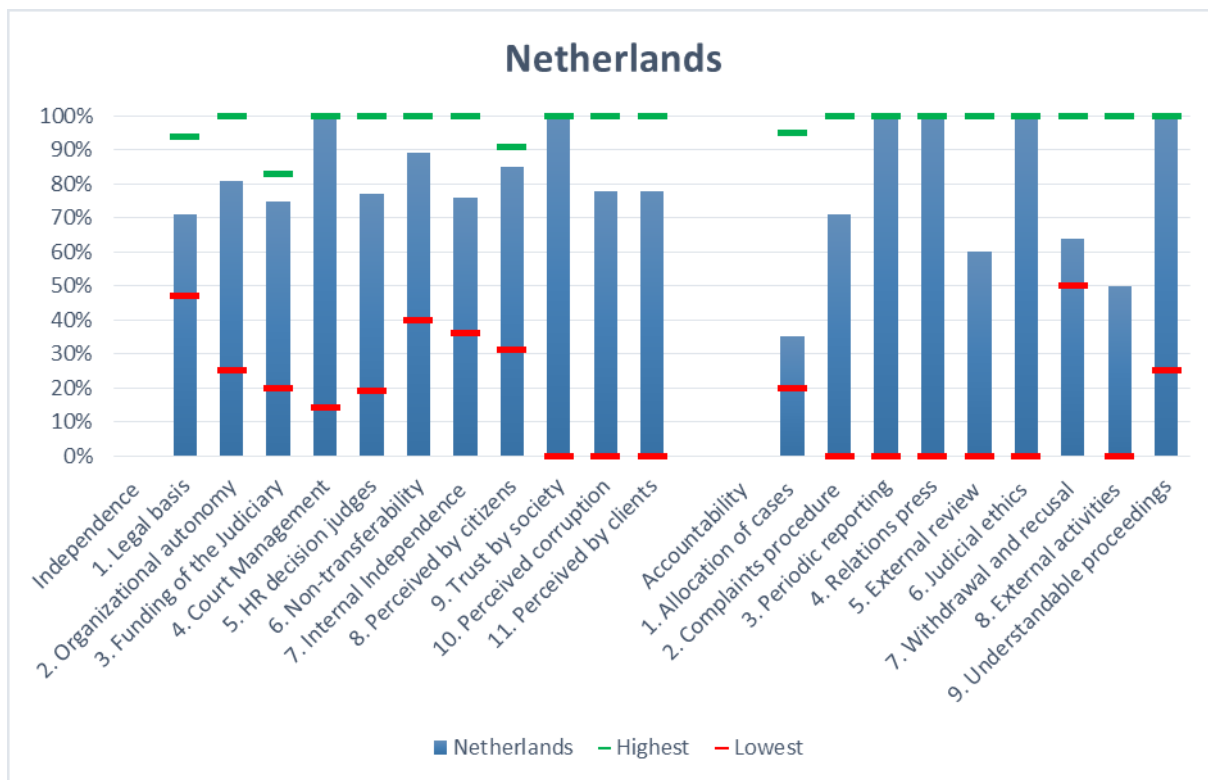
4.3 State of independence and accountability: outcomes for members of ENCJ

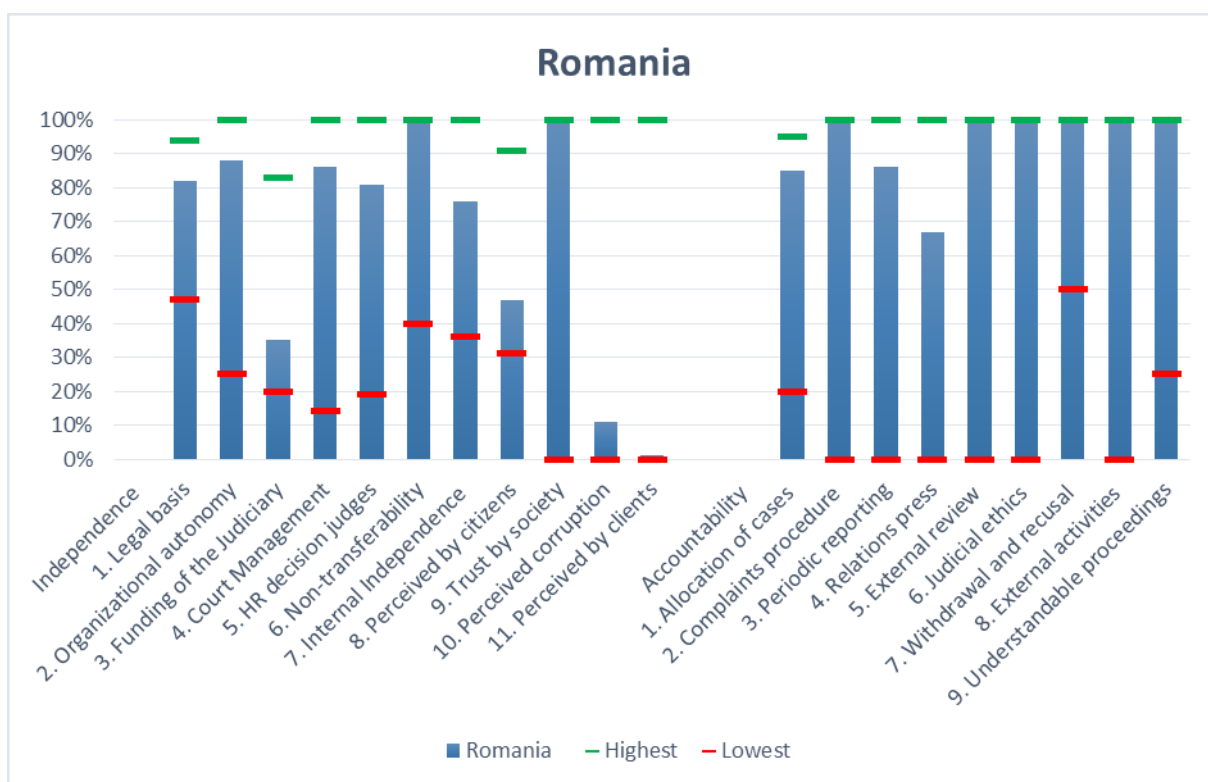
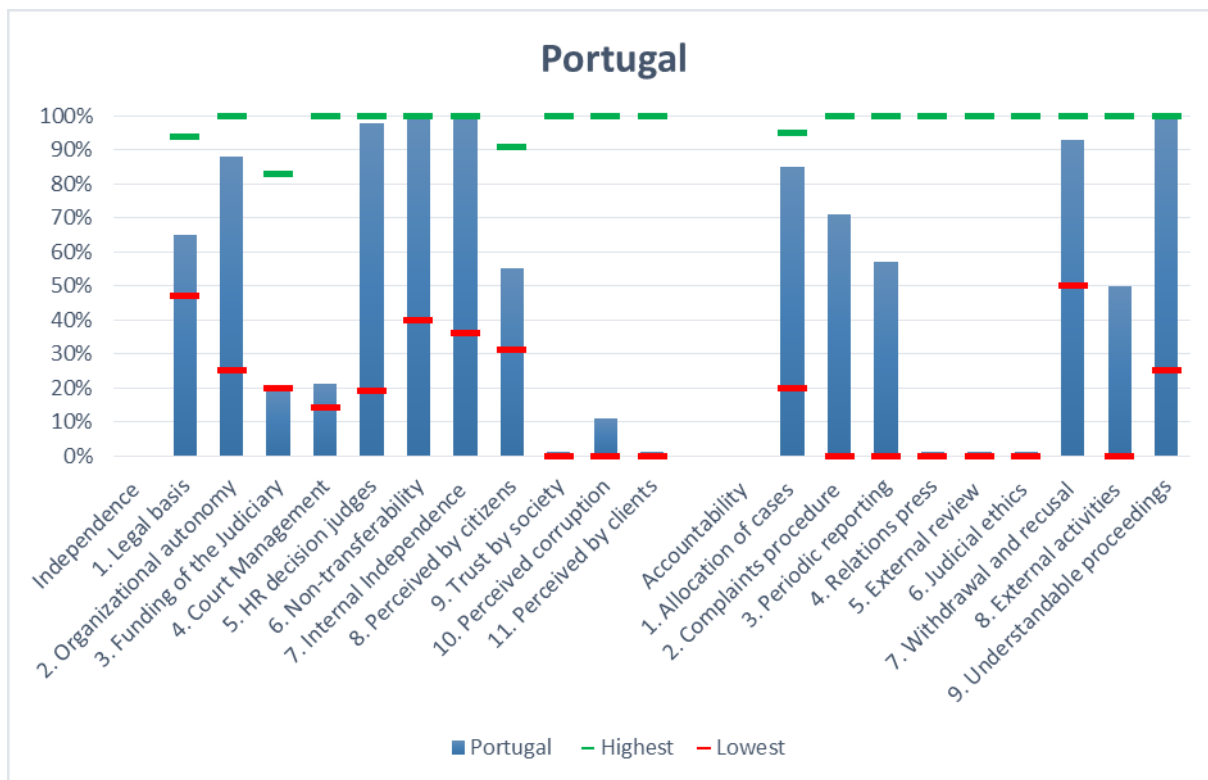


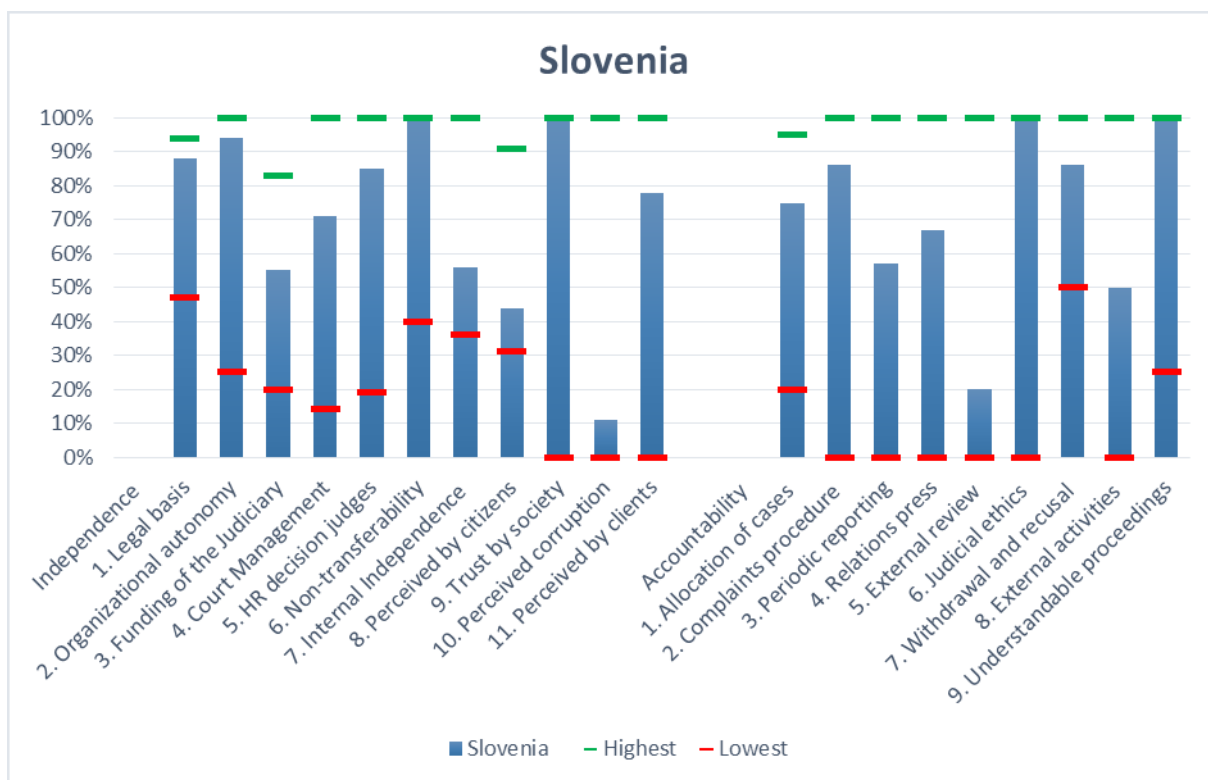
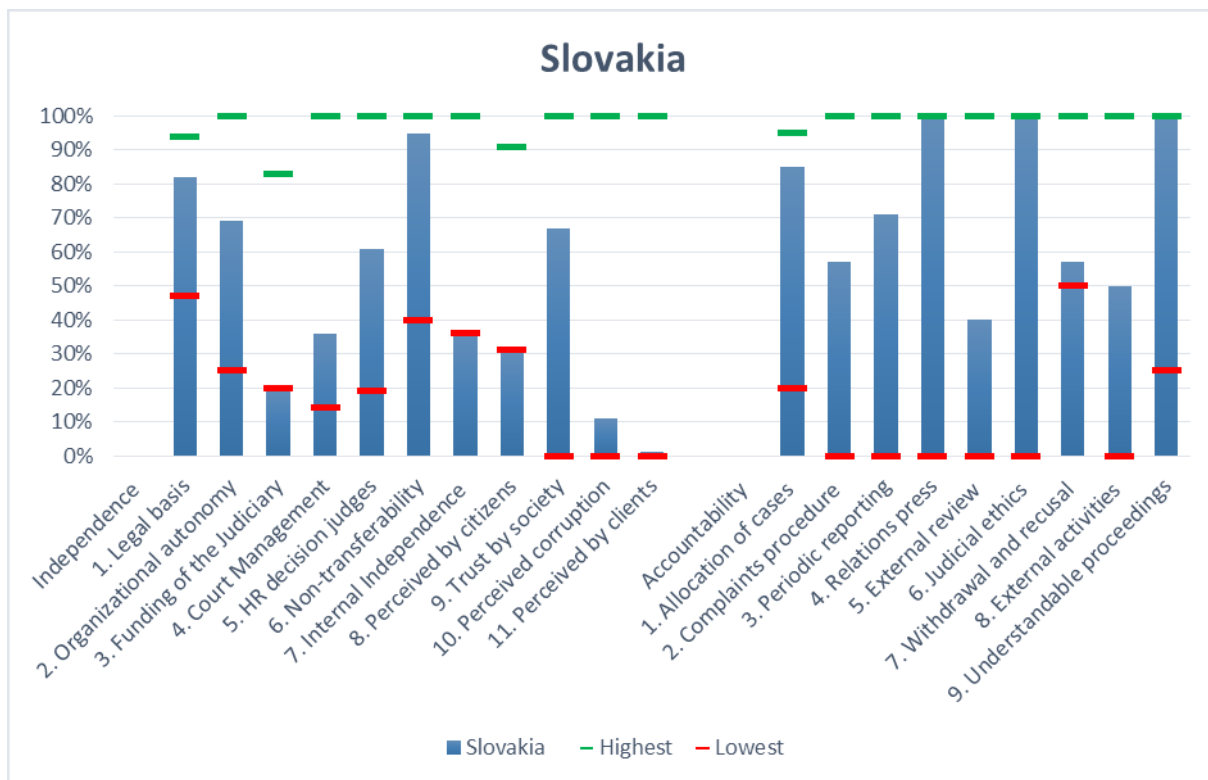


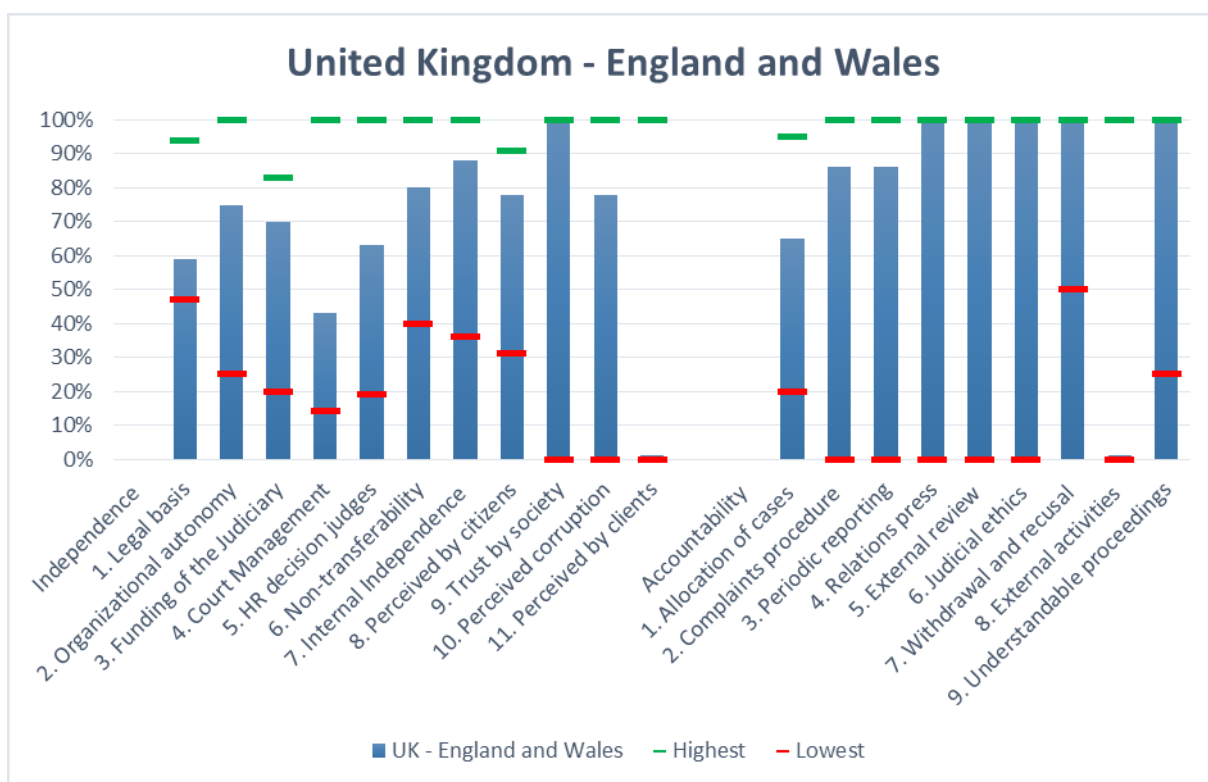
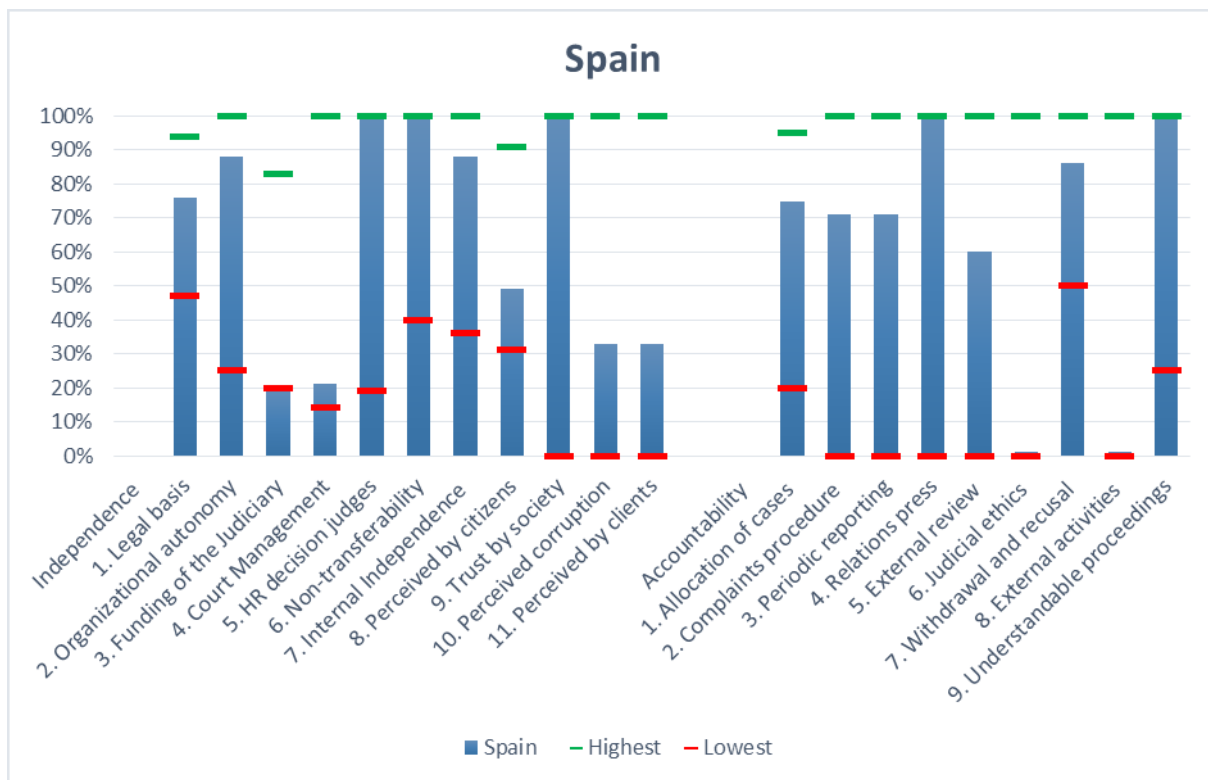


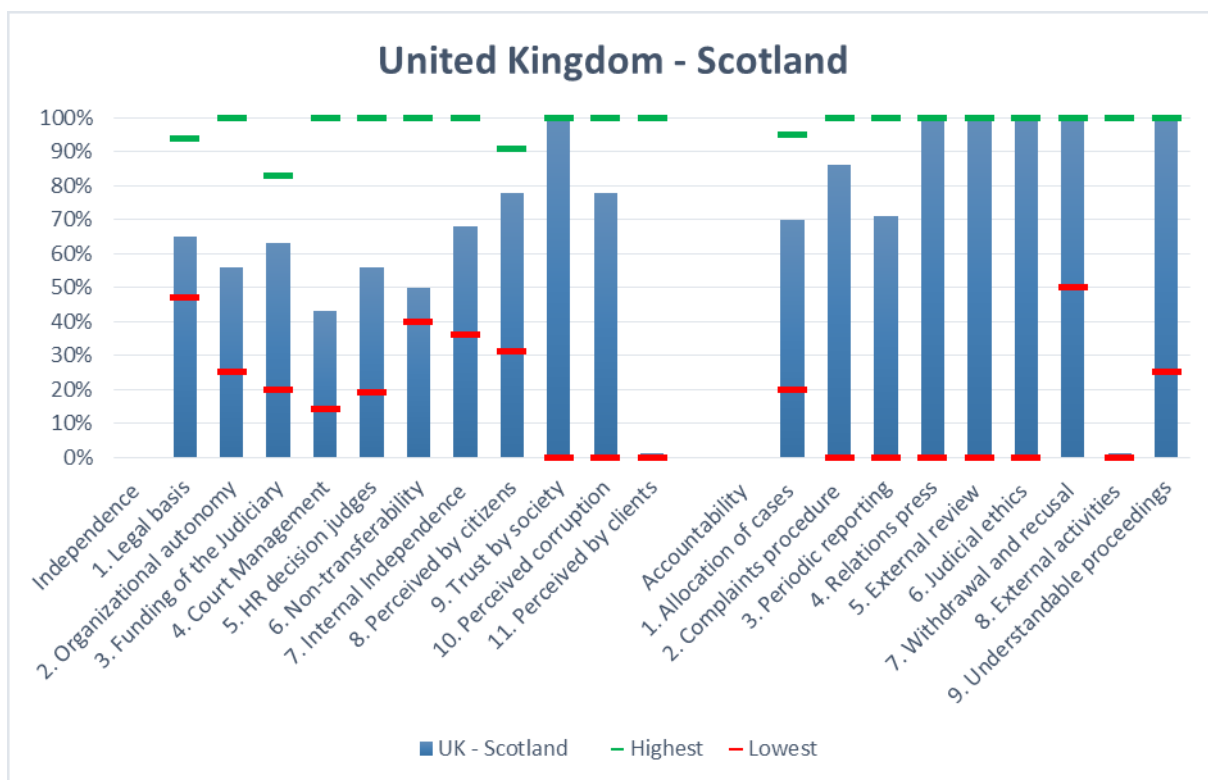
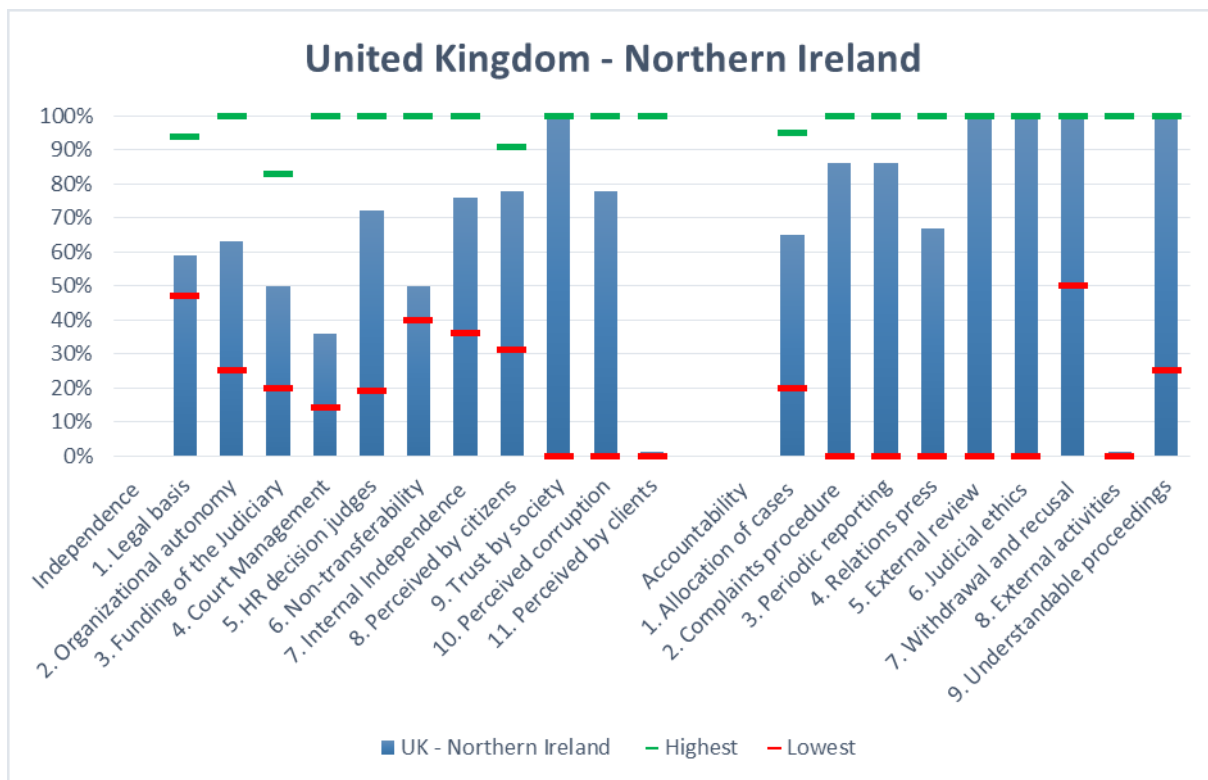






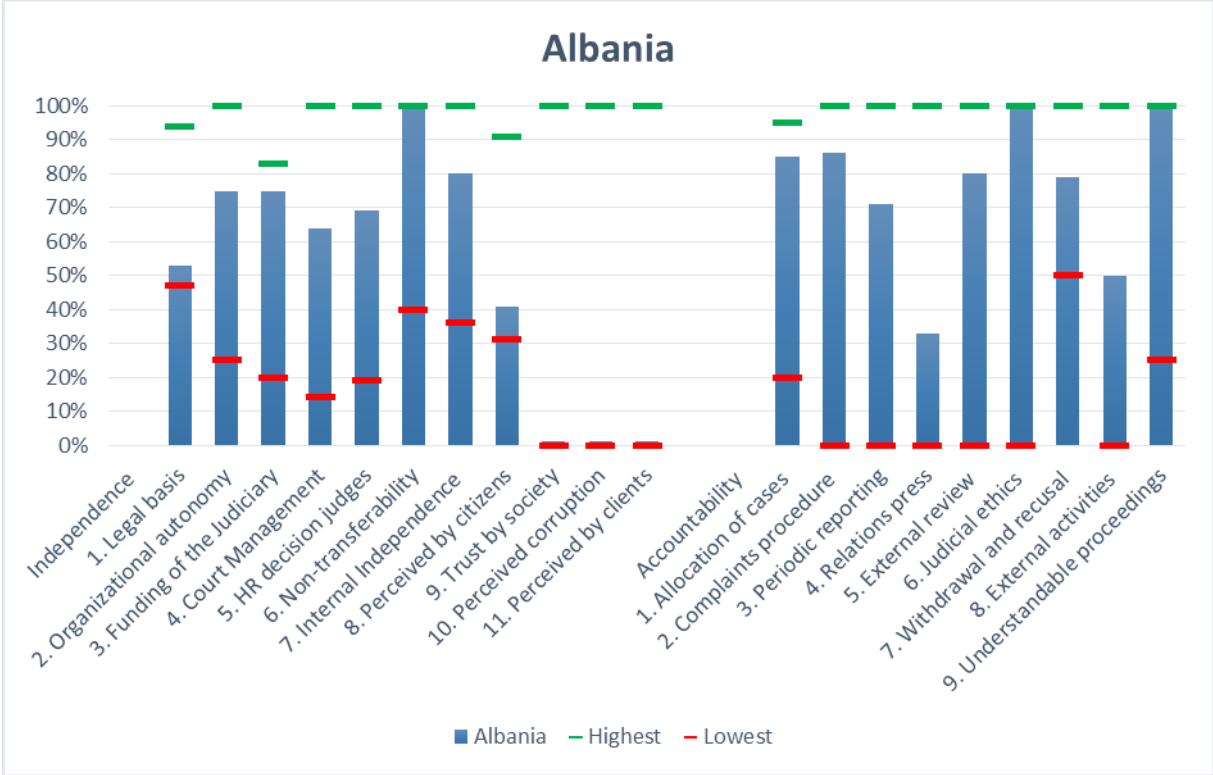


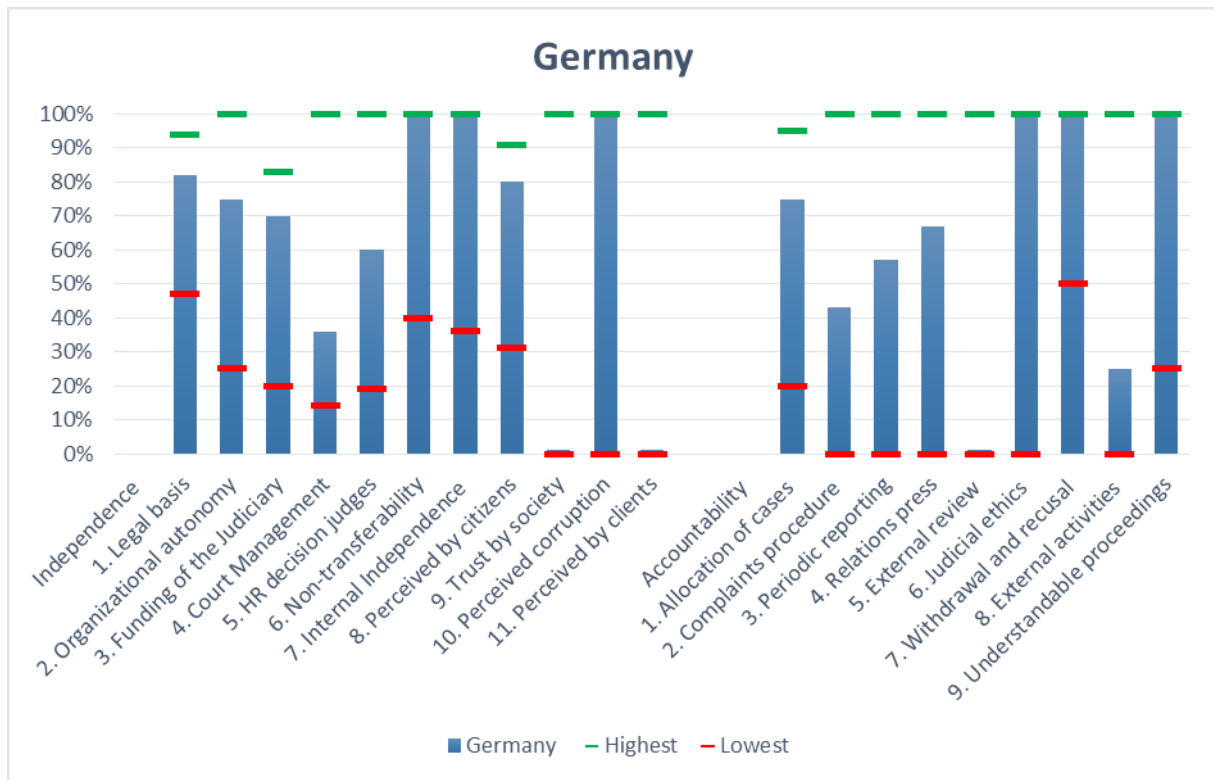




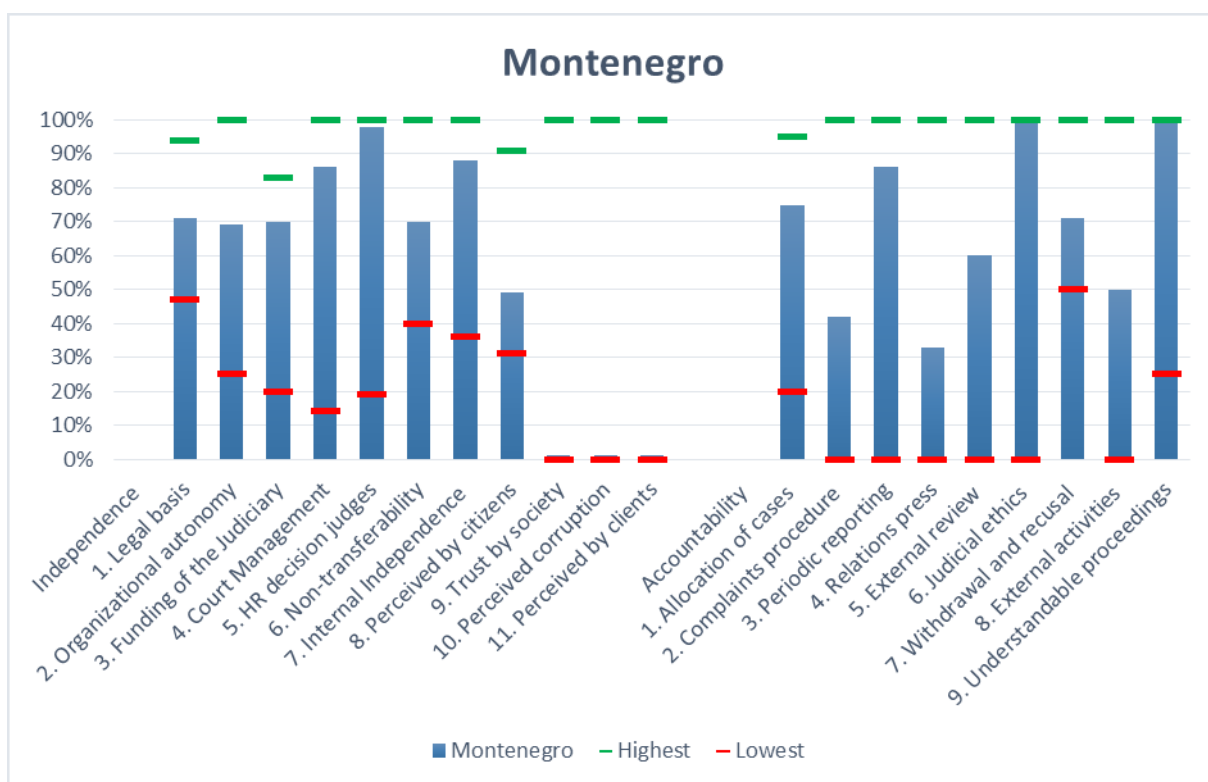
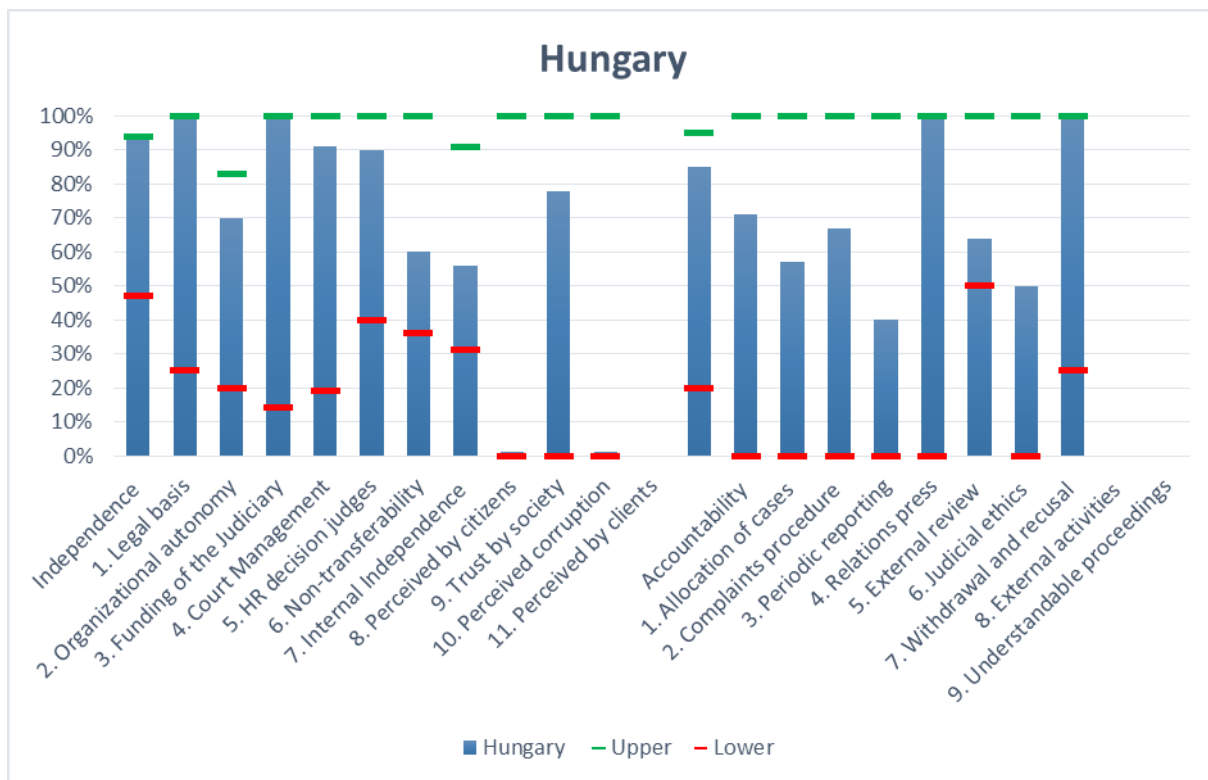
4.4 State of independence and accountability: outcomes for observers of ENCJ

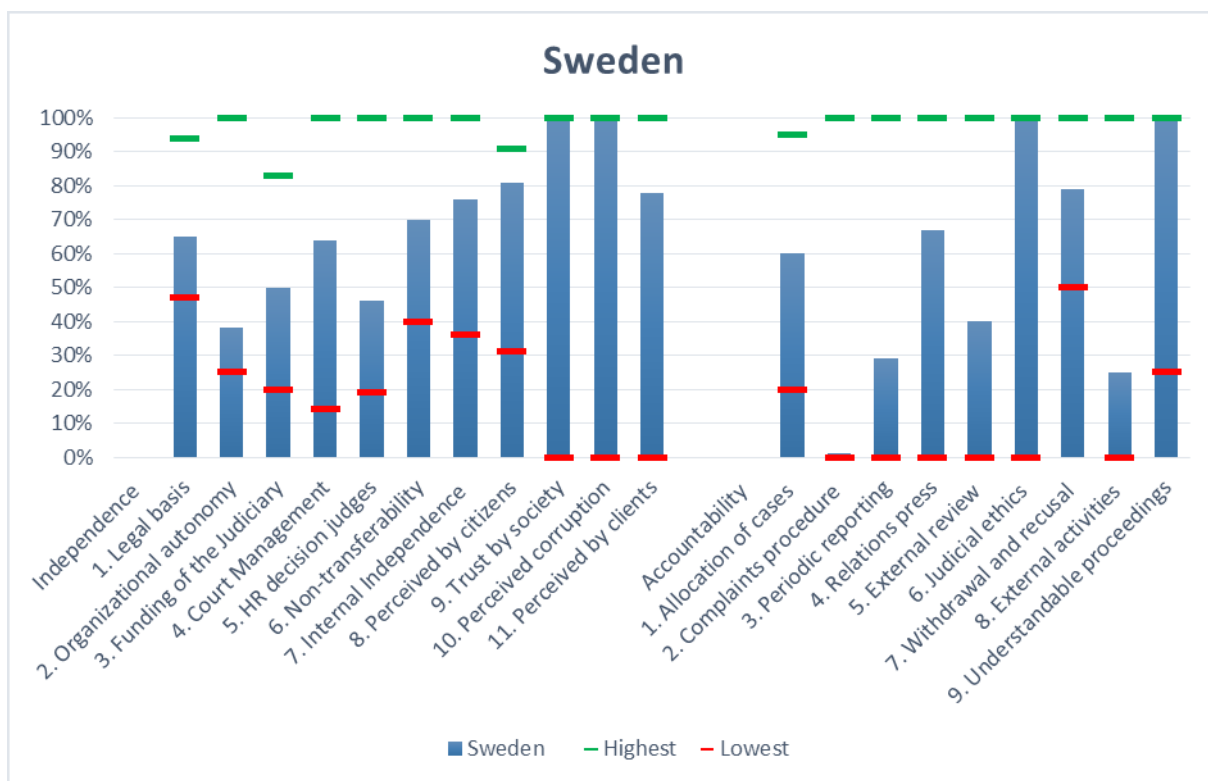
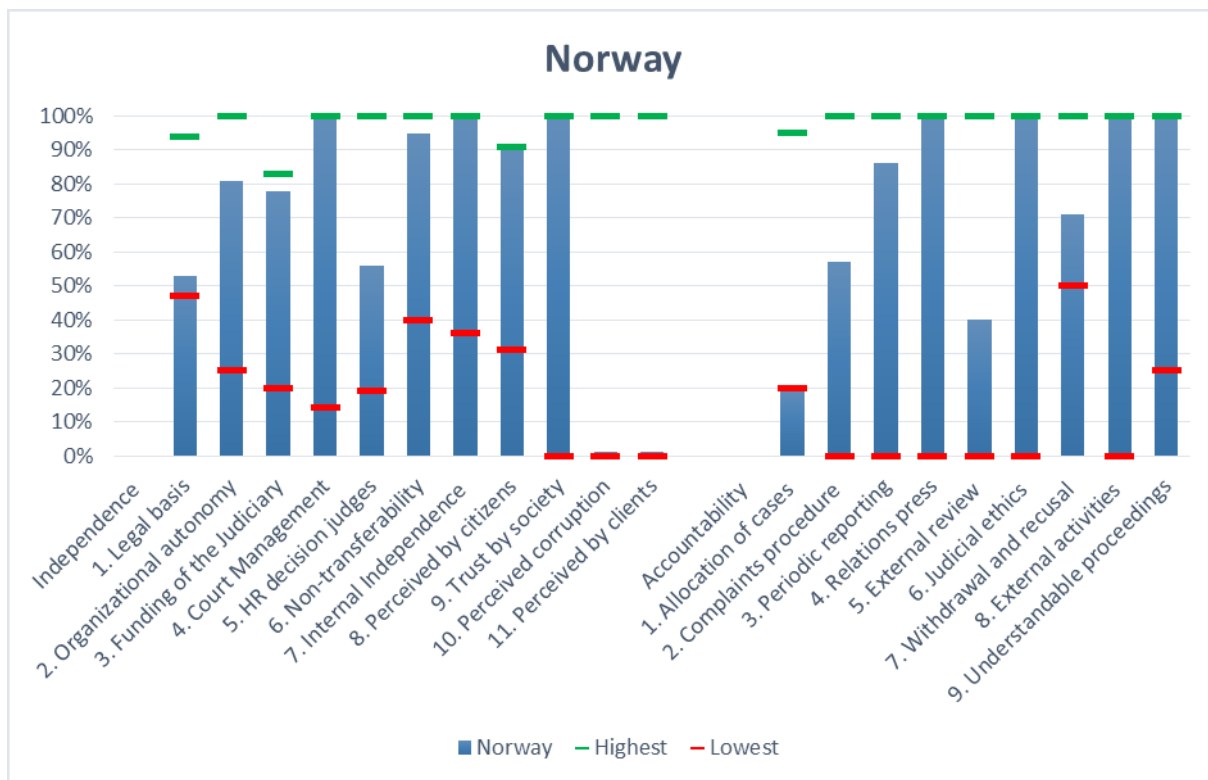
It should be noted that some of the observers of the ENCJ are not part of the EU. As a result these countries have not participated in population surveys that have been commissioned by the EC, and therefore have a zero score on one of the subindicators of indicator 8 (independence as perceived by citizens) and on indicator 10 (corruption as perceived by citizens).

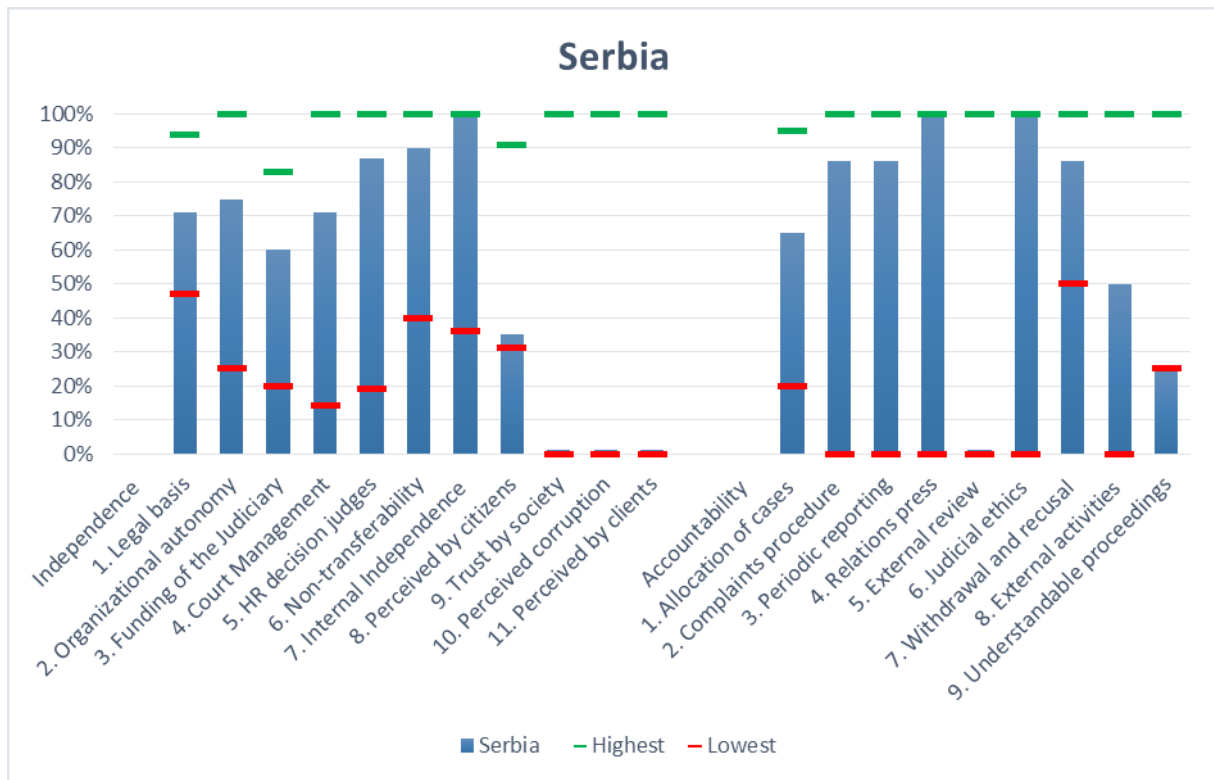




Explanatory note: As a federal state, the Federal Republic of Germany is characterised by de-centralised structures. In addition, due to historical developments, the Federal Republic of Germany does not have a self-regulatory organisational system with councils for judicial administration. But the German justice system does include numerous self-regulatory mechanisms with far-reaching authority.







5. Survey among professional judges

One of the indicators with respect to subjective independence concerns the perceptions of judges of their independence (independence indicator 12). In the present context it is very relevant to know to what degree judges themselves believe they are independent. However, these perceptions have not been object of a systematic survey in Europe. To fill this gap a survey was developed and conducted by means of the internet.

5.1 Methodology

The survey was sent to all the ENCJ members and observers. All the members and observers that were willing to participate and able to do so within the brief time span available, distributed a letter of introduction and recommendation of the president of the ENCJ to the judges within their jurisdictions. The letter contained a link to the internet site of the ENCJ 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. The Councils had to decide for themselves whether or not to translate the letter of introduction and the survey. Judges could fill in the survey in any language into which the survey had been translated.

Most Councils were able to distribute the letter of introduction directly to the judges, other councils had to send the letter to the court president who in his/her turn distributed the letter among the judges of his/her court. Some Councils secured the endorsement of the judges association of their country. The survey was addressed only to professional judges. In the next section the issue of the perceptions of lay judges is discussed.

5.2 Design of the survey

The survey was designed in such a way that it asked judges to give a general assessment of their independence (as they perceive it), but also explored different aspects of independence. To do this, the survey questions were linked with the indicators of objective independence, the other indicators of subjective independence and some of the indicators of objective accountability. The table below gives an overview of these connections.

The survey consisted of the following substantive statements and questions.

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

1b. If you agree or strongly agree with 1a, by whom? Possibilities offered: Parties and their lawyers, Government, Parliament, other Judges (including an association of judges), Court Management (including a Court President), Council for the Judiciary, Supreme court, Constitutional court, Media, Social Media.

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

2b. If you agree or strongly agree with 2a, did this occur on a rare exception, occasionally or regularly.

3a. During the last two years I have been affected by a threat of, or actual, disciplinary or other action because of how I have decided a case.

3b. During the last two years my decisions or actions have been directly affected by a claim, or a threat of a claim, for personal liability.

4. I believe during the last two years cases have been allocated to judges other than in accordance with established rules or procedures in order to influence the outcome of the particular case.

5a. I believe judges in my country have been appointed other than on the basis of capacity and experience during the last two years.

5b. I believe judges in my country have been promoted other than on the basis of capacity and experience during the last two years.

6. I believe that in my country decisions or actions of individual judges have, during the last two years, been directly affected by the actual, or anticipated, actions of the media (i. e. press, television or radio).

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

8. During the last two years I believe that my independence as a judge has been respected by the following actors (list as above 1b).

9a. During the last two years changes occurred in my working conditions in relation to (multiple answers possible) with respect to: Pay, Pensions, Retirement age, Caseload, Court resources. Also, the following options were presented: I was moved to another function, section or court and I have to take decisions in accordance with the jurisprudence of the court.

9b. I believe that changes which occurred in my working conditions in relation to the domains listed in 9a directly affected my independence (multiple answers possible).

10. On a scale of 0 - 10 (where 0 means "not independent at all" and 10 means "the highest possible degree of independence), the professional judges in my country are not independent at all or completely independent.

11. On a scale of 0 - 10 (where 0 means "not independent at all" and 10 means "the highest possible degree of independence), as a judge I do not feel independent at all or feel completely independent.

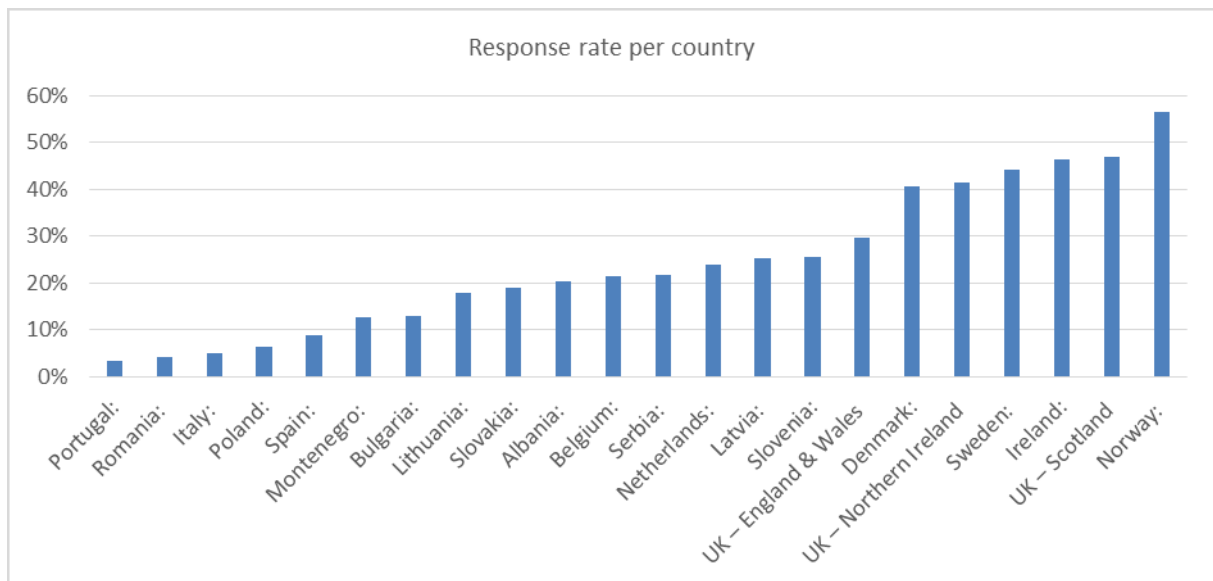
General questions are 1a, 10 and 11. Independence indicator 12 could be measured by these three survey questions, individually or in combination. This requires of course an analysis of the consistency of the answers to the survey.

Relevant connections between the survey questions and the indicators are the following:

Indicator	Survey
Independence indicator 1: legal basis of independence	Survey 1a: inappropriate pressure by government, parliament, (social) media Survey 8: respect of independence by government, parliament and (social) media
Independence indicator 1 (sub-indicator salaries)	Survey 9a and 9b: pay, pensions, retirement age
Independence indicator 3: funding of the Judiciary	Survey 9a and 9b: caseload, court resources
Independence indicator 5: human resource decisions	Survey 3a: impact of disciplinary action Survey 5 and 5b: appointment and promotion of judges not by merit
Independence indicator 6: non-transferability	Survey 9a and 9b: I was moved to another function, section or court
Independence indicator 7: internal independence	Survey 1a and 1b: inappropriate pressure by other judges, court management, Council, Supreme Court, Constitutional Court Survey 8: respect of independence by Court management, Council, Supreme Court, Constitutional Court, Association of judges Survey 9a and 9b: caseload Survey 10: guidelines Survey 11 and 12: pressure by court management
Independence indicator 8 judicial corruption as perceived by citizens	Survey 2a and 2 b: acceptance of bribes
Accountability indicator 1: allocation of cases	Survey 4: deviations from the allocation rules
Accountability indicator 4: relations with the press	Survey 6 and 7: influence of (social) media

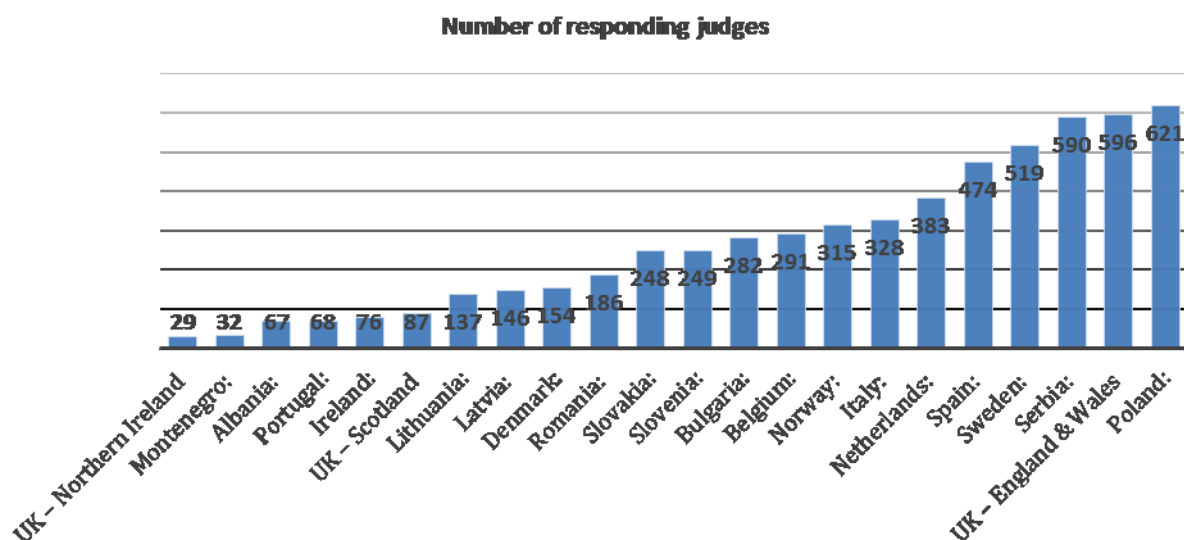
5.3 Response rate per country and representativeness

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



The response rate varies from 3 per cent in Portugal to 57 per cent in Norway. Because a number of countries with a relatively large number of judges that received the survey had a low response rate (Romania, Italy, Poland, Spain) the total response over all participating countries was 13 per cent, which is rather low.

However, for the representativeness of the results of the survey the absolute number of responses per country is more 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 meaningful. The only caveat is that the response is not selective, i.e. responding judges do not differ clearly 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.



The number of responding judges varies from 29 in Northern Ireland to 621 in Poland. The confidence interval around the results for the countries with a small number of respondents (especially Northern Ireland and Montenegro) will be relatively large. For most countries the numbers are high enough to distinguish meaningful differences which can be readily checked by using the data as given in Appendix D.²

5.4 Outcomes

In this paragraph the outcomes of the survey are presented in tables per survey question for all participating countries. In this manner the raw data are made available concisely. Also, the opinions of 5.878 European judges are available at a glance. As discussed above, the response for some countries was rather small, and it is therefore more meaningful to examine the outcomes for all countries in conjunction than to focus on the scores of specific countries, although the country by country approach is also statistically justified, as discussed above.

Before turning to the tables, the outcomes are summarized.

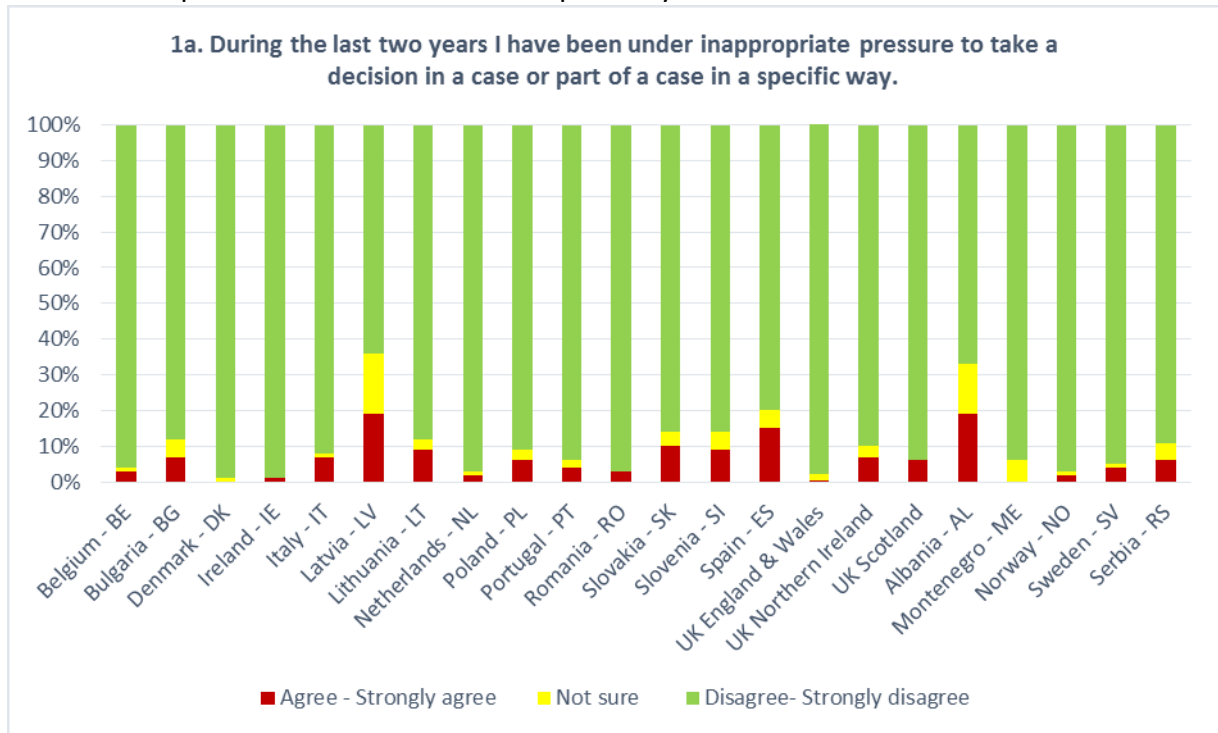
1. Although there are differences among countries, the vast majority of judges have not been under inappropriate pressure to take a decision in a case in a specific way in the last two years (Q1.a). Note that being under inappropriate pressure does not mean that judges have succumbed to that pressure. Consistent with this, the average score

² For each question it can be established which percentage scores differ, for instance, significantly negatively from the mean score for all participating countries. When the answers are put into percentage scores, it is possible to calculate whether a country score is (e.g., at 5% level) significantly higher than the average score of all countries. The estimated standard deviation is based on that of a binomial probability distribution using the total percentage score over the countries and the number of responding judges of a country. When the answers are described by a mean score (questions 13 and 14), it is possible to calculate whether this score of a country is significantly lower than the total mean score over all countries by a t-test. The estimated standard deviation is based on the individual data for all countries and the number of responding judges of a country. To avoid technical analysis these calculations are not presented here.

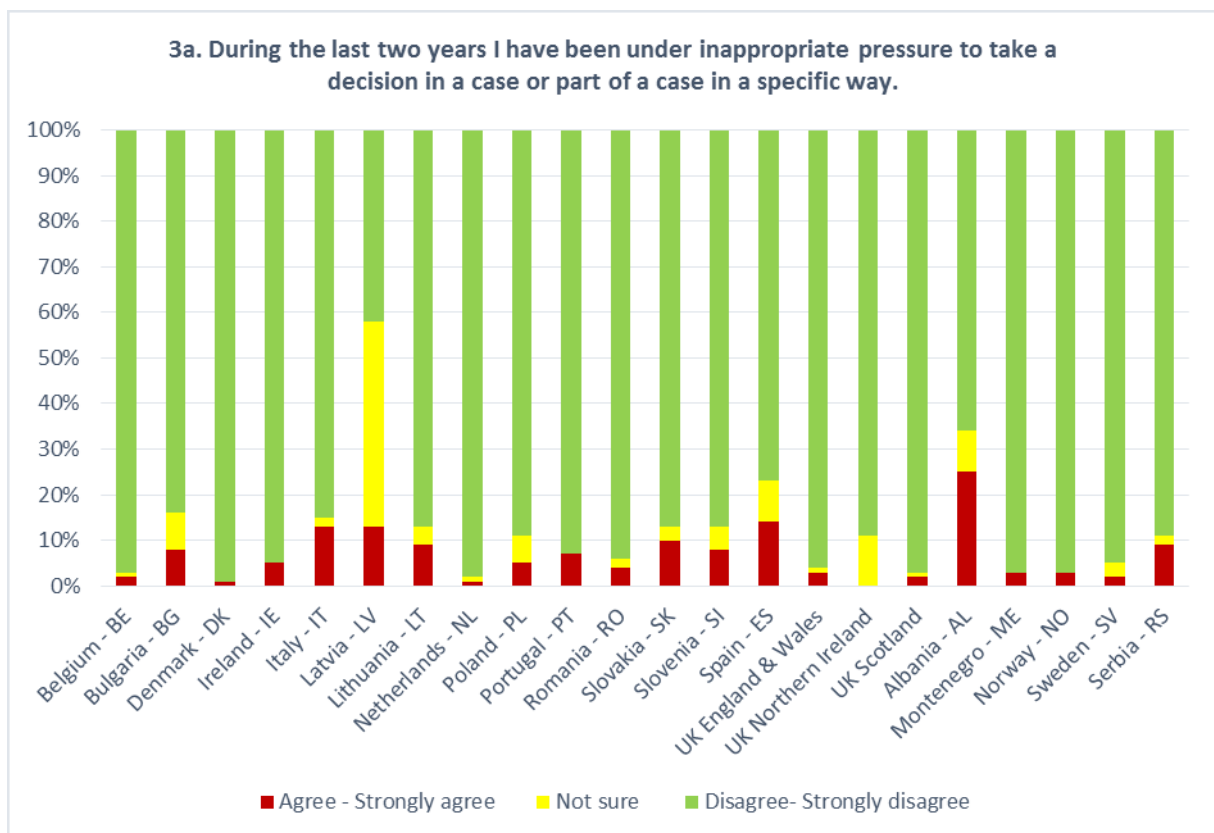
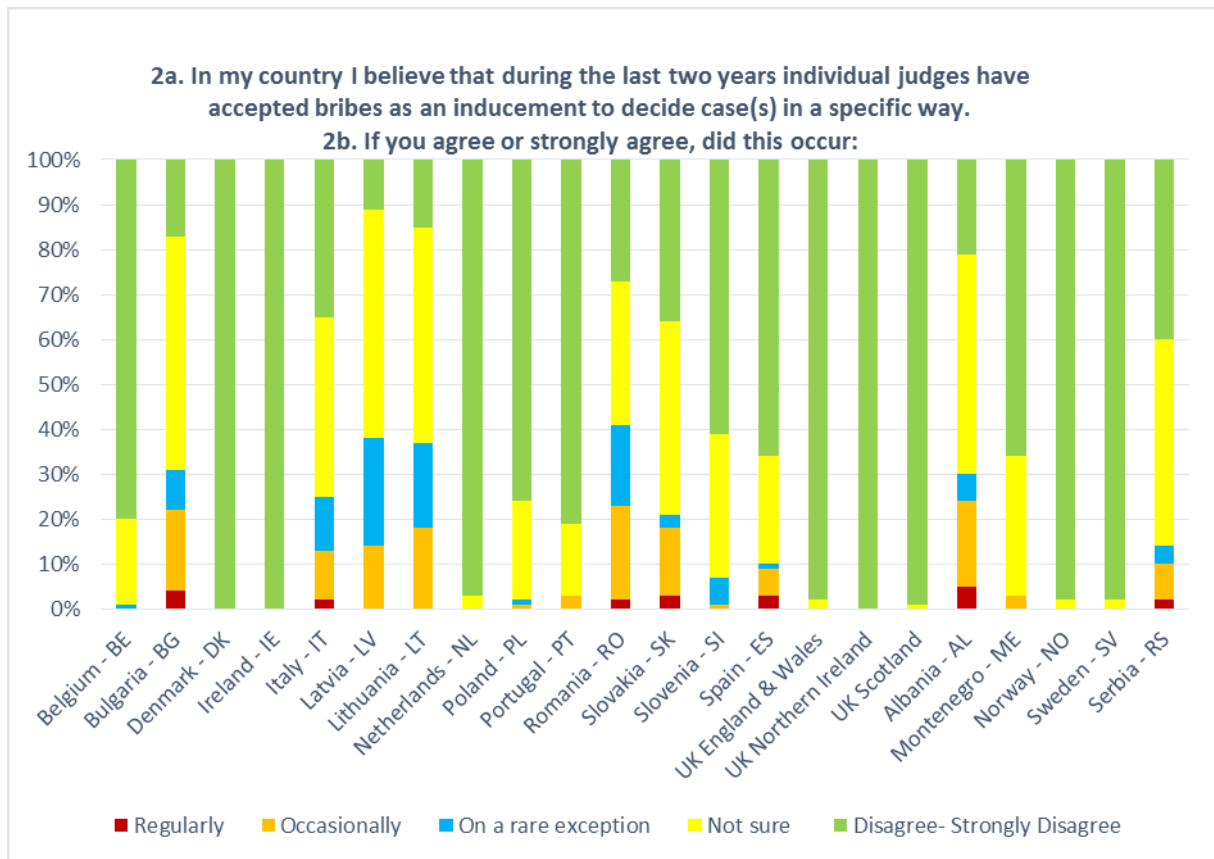
of the judges of each country when asked to assess their independence on a scale between 0 and 10 (10 is totally independent) is an 8 or higher (Q13). When asked about the independence of the judges of their country in general, the average score was a 7 or higher (with one exception of 6) (Q14).

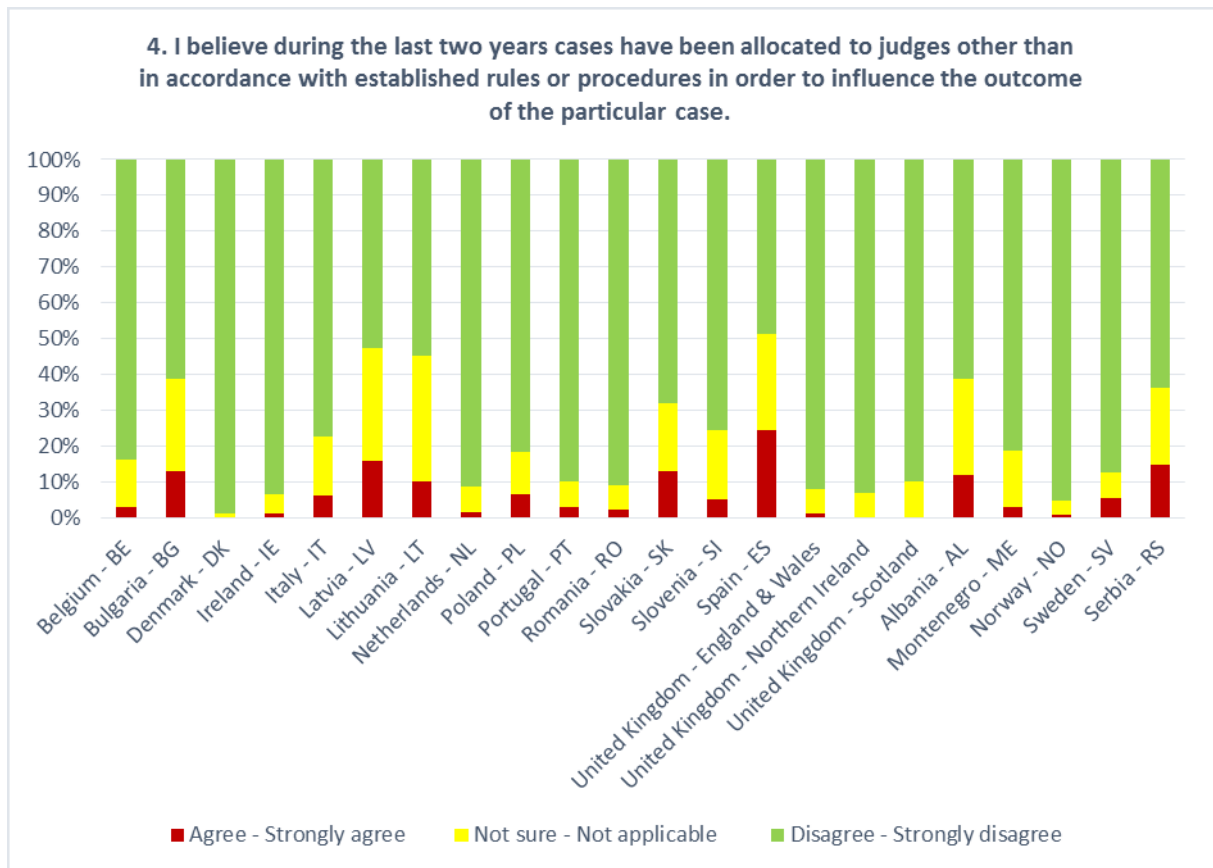
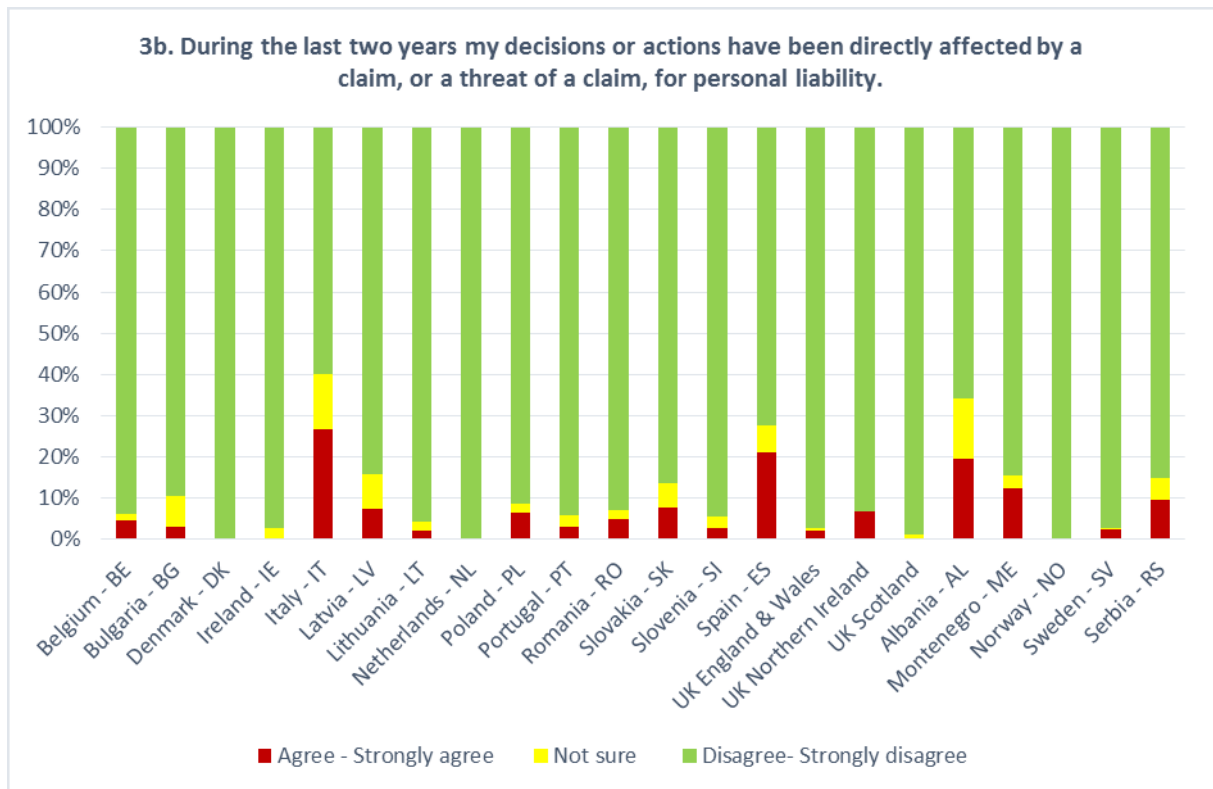
2. Where inappropriate pressure occurs, it comes from different sides, external and internal (Q1.b).
3. Taking bribes is another form of giving up independence. With regard to the beliefs among judges whether bribes are accepted, a clear dichotomy exists in Europe. Whilst hardly anyone believes that judges regularly take bribes, in roughly half of the countries judges do not believe that bribes are taken at all, while in the other half a sizeable percentage of the judges believe that bribes are occasionally or on a rare exception taken. In addition, it should be noted that in many countries, in particular in the latter category, a substantial percentage of judges is not sure about the occurrence of taking bribes. This in itself is a negative answer with respect to the incorruptibility of legal systems (Q2).
4. According to the judges, internal matters such as the allocation of cases and disciplinary measures are not a big issue when it comes to influencing the outcome of cases (Q3.a and Q4). Also, the management of the court hardly ever exerts pressure on judges to decide cases in a specific way (Q11). However, many judges experience pressure to decide cases within a particular time (Q12). This also occurs in countries that otherwise score very high on independence. Judges were not asked whether they feel this as a threat to their independence, and it is open for debate whether such a pressure is a good or a bad phenomenon. The same is the case with respect to decision making in accordance with guidelines developed by judges of the same rank (Q10). This also occurs often, and again it can be argued that this is a good situation, not from the perspective of independence, but from the perspective of the uniform application of the law.
5. The influence of the (traditional) media on decisions of judges is an important issue. In many countries, judges believe decisions are affected by the media (Q6). This direct influence does not (yet?) occur with respect to the social media (Q7).
6. Judges were also asked about changes in their working conditions and the impact thereof on their independence. Pay, caseload and resources were seen as factors that affect independence (Q9).
7. An important issue is the appointment and promotion of judges. Many judges in nearly all countries believe that judges are appointed and promoted other than on the basis of ability and experience (Q5).
8. Finally, do judges believe that their independence is respected by others? Respect is a broader concept than the absence of the exertion of pressure on judges to decide cases in a specific way. It includes the actual acknowledgement (in practice) of the importance of judicial independence. A large percentage of judges in most countries do not feel their independence is respected by government, parliament and the (social) media. With few exceptions, they feel they get this respect from bodies internal to the Judiciary: court management, Councils for the judiciary, Supreme courts, Constitutional courts and Associations of judges (Q8). While the latter outcome may not come as a surprise, the former is worrisome. It should be noted that the word 'respect'

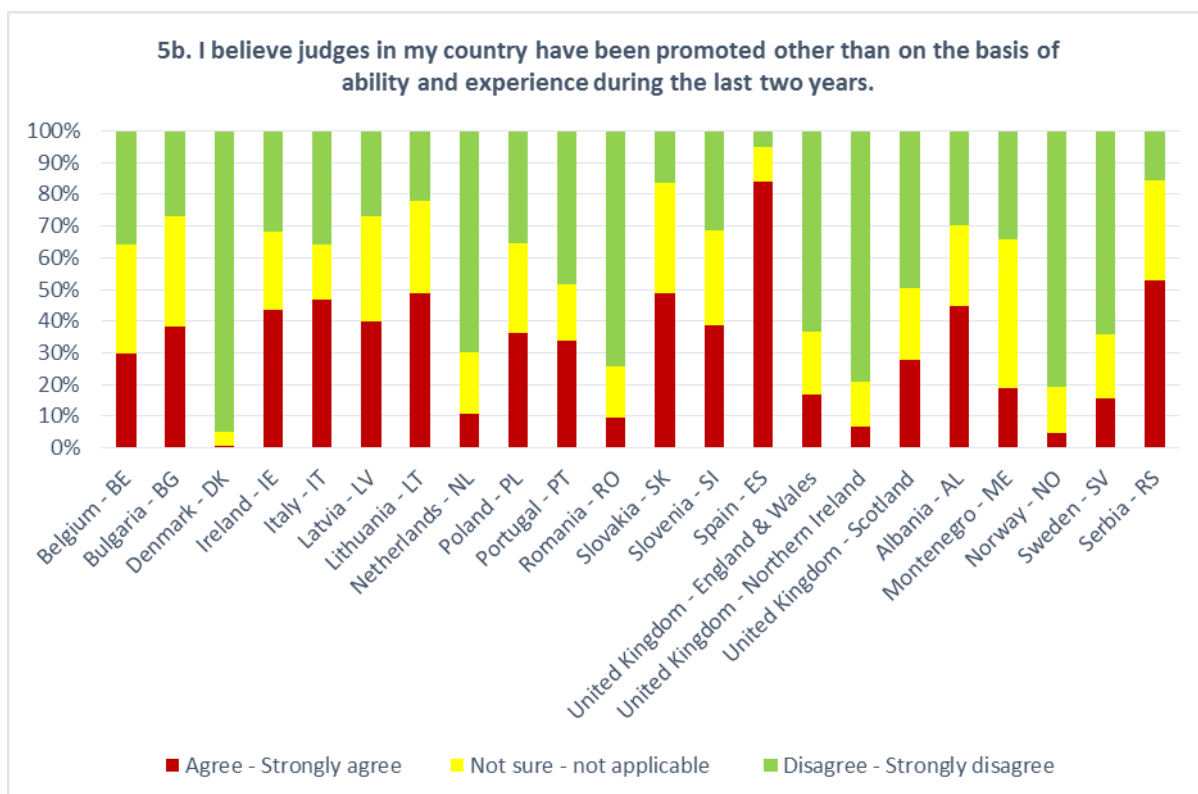
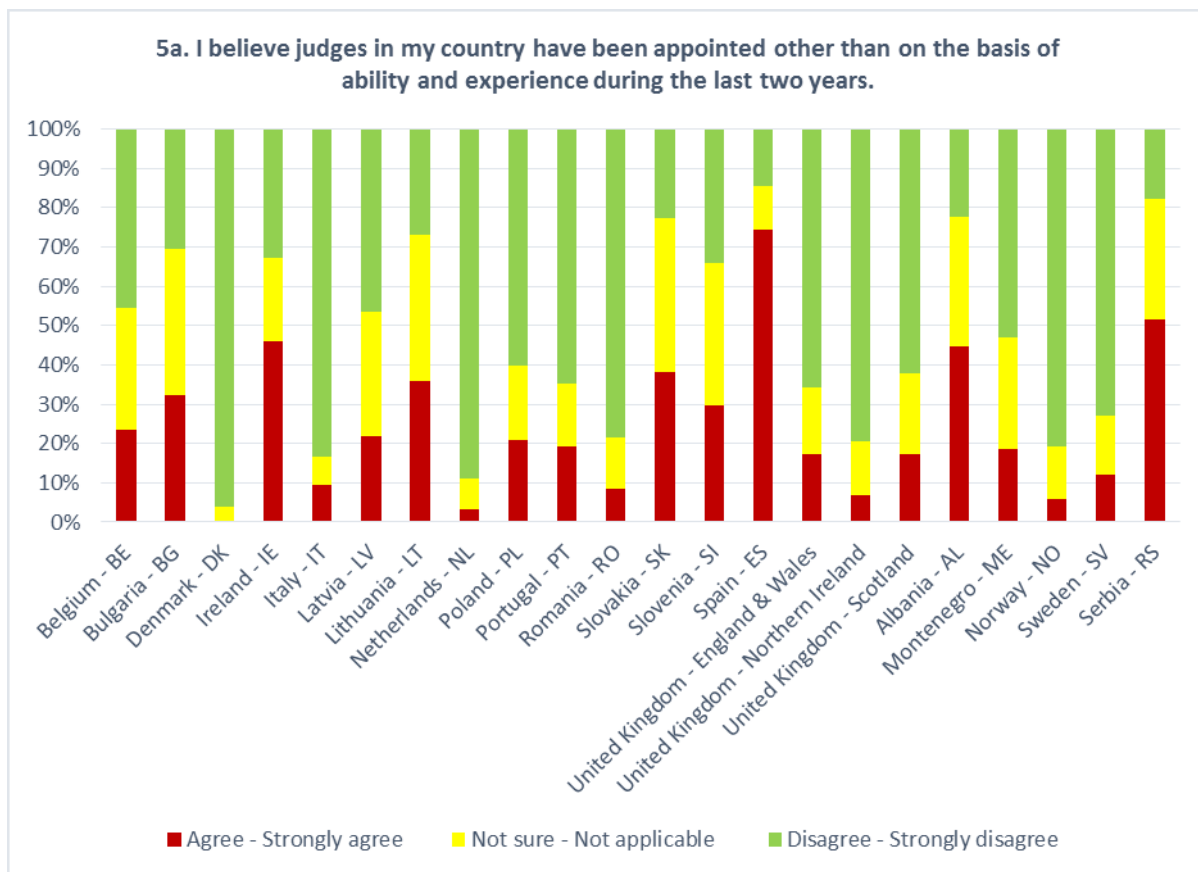
may not have been interpreted uniformly by the respondents. In a future survey this concept needs to be defined more precisely.



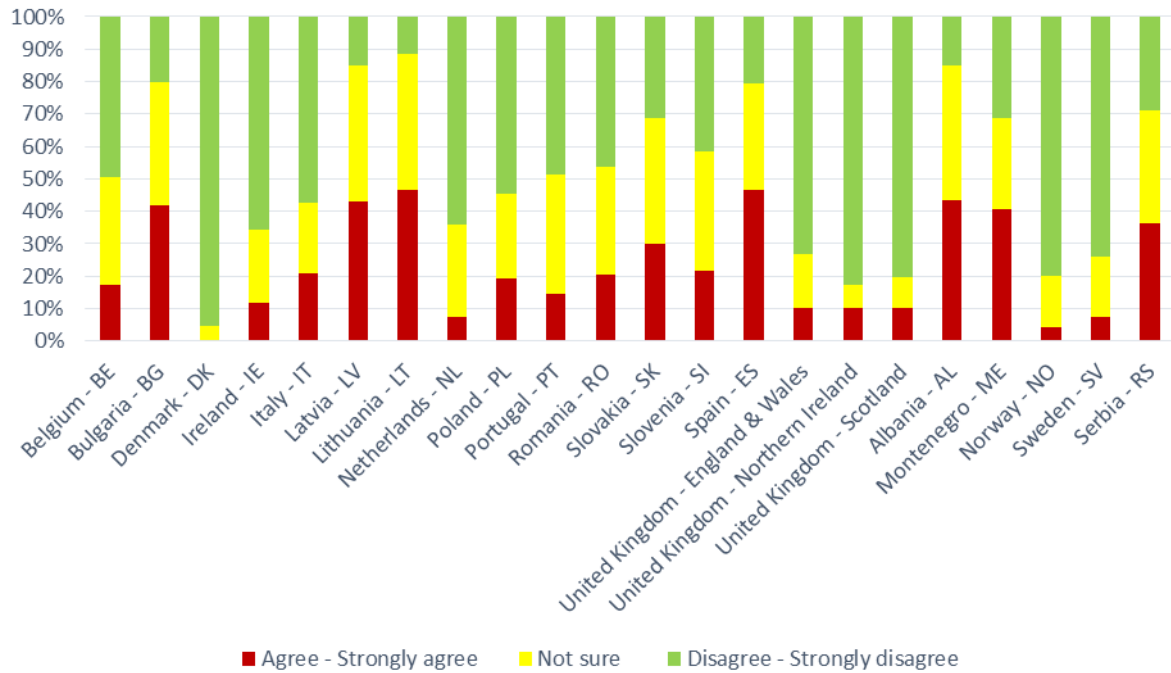
Respondents who agreed or strongly agreed with question 1a were asked in question 1b by whom they felt pressured. They could give multiple answers, choosing from: court management (including a court president), parties and their lawyers, other judges (including an association of judges), media, government, Council for the Judiciary, Supreme Court, Parliament, social media and constitutional court. Judges who experienced pressure felt this came from ‘the Court Management (including a Court President)’ the most: 17% of respondents who agreed with question 1a. The second most chosen option was a combination of both ‘the Court Management (including the President)’ and the option ‘Other Judges (including an association of judges)’: 3% of respondents who agreed with question 1a.



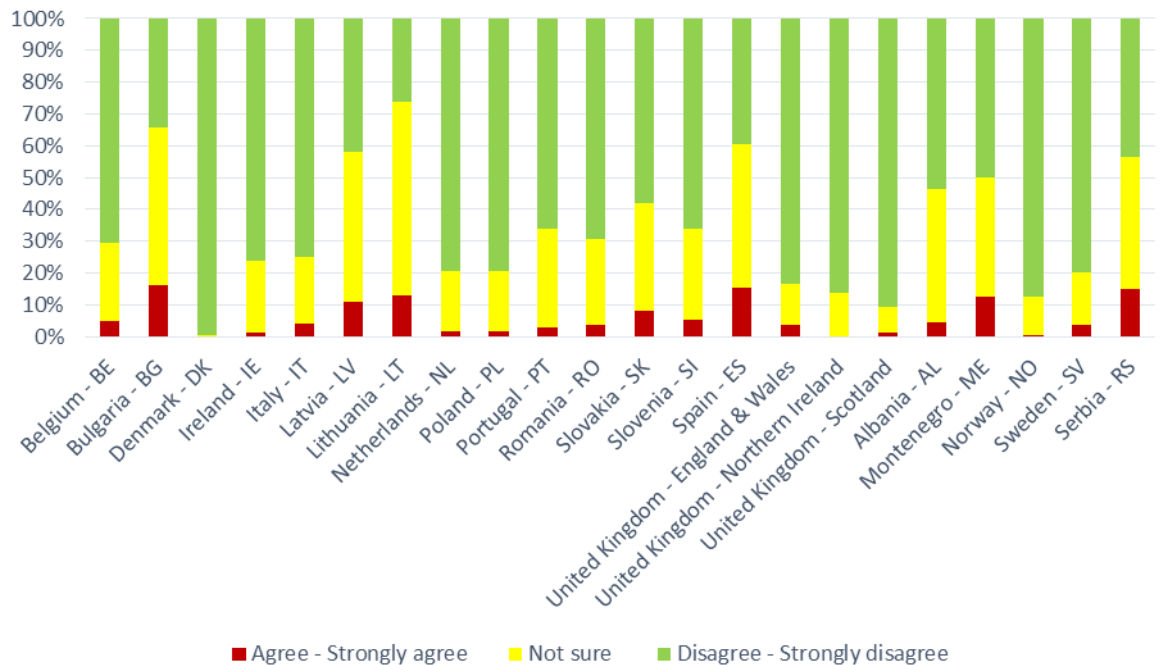


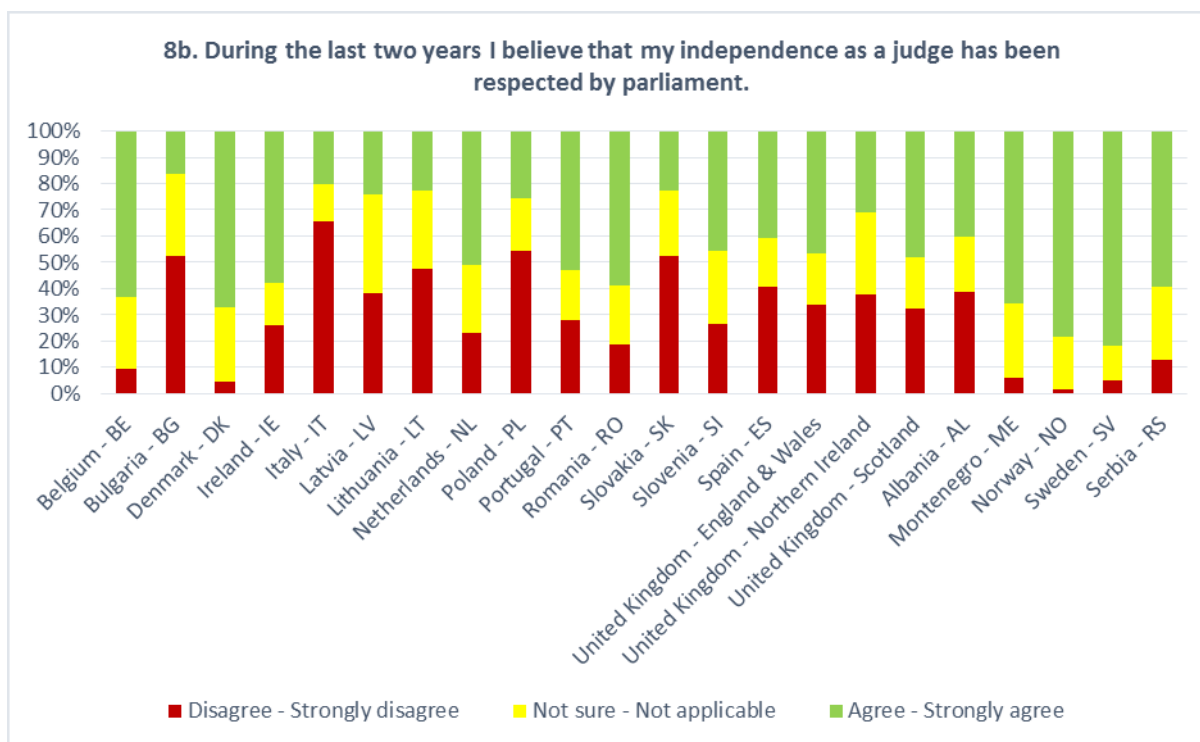
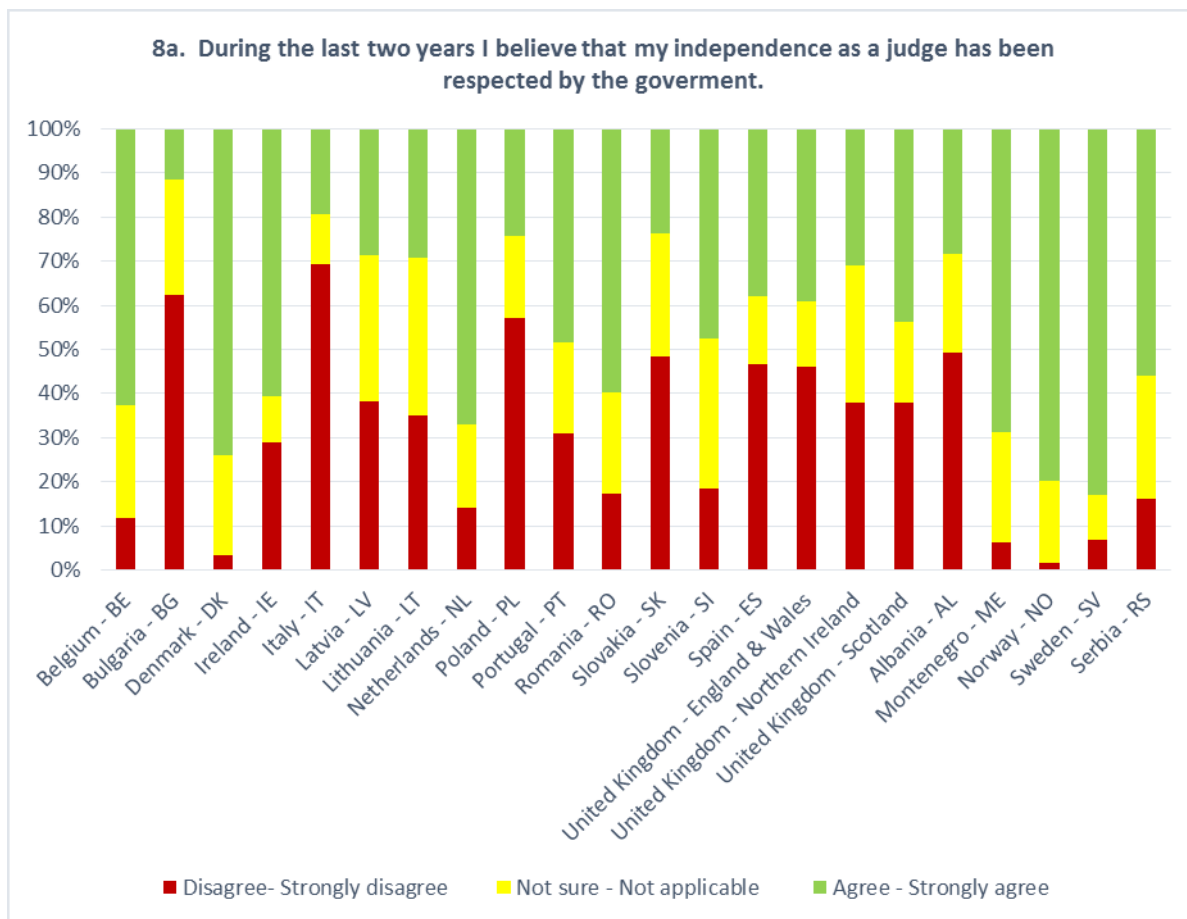


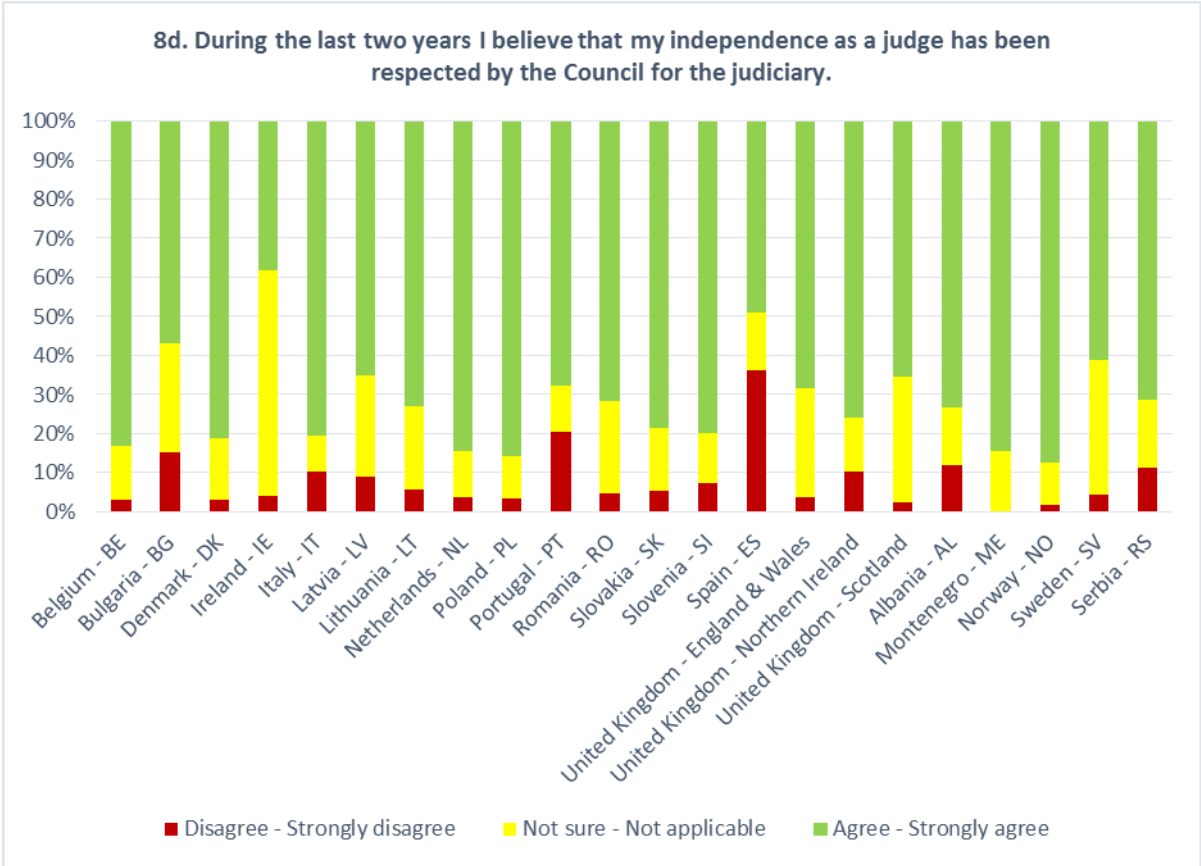
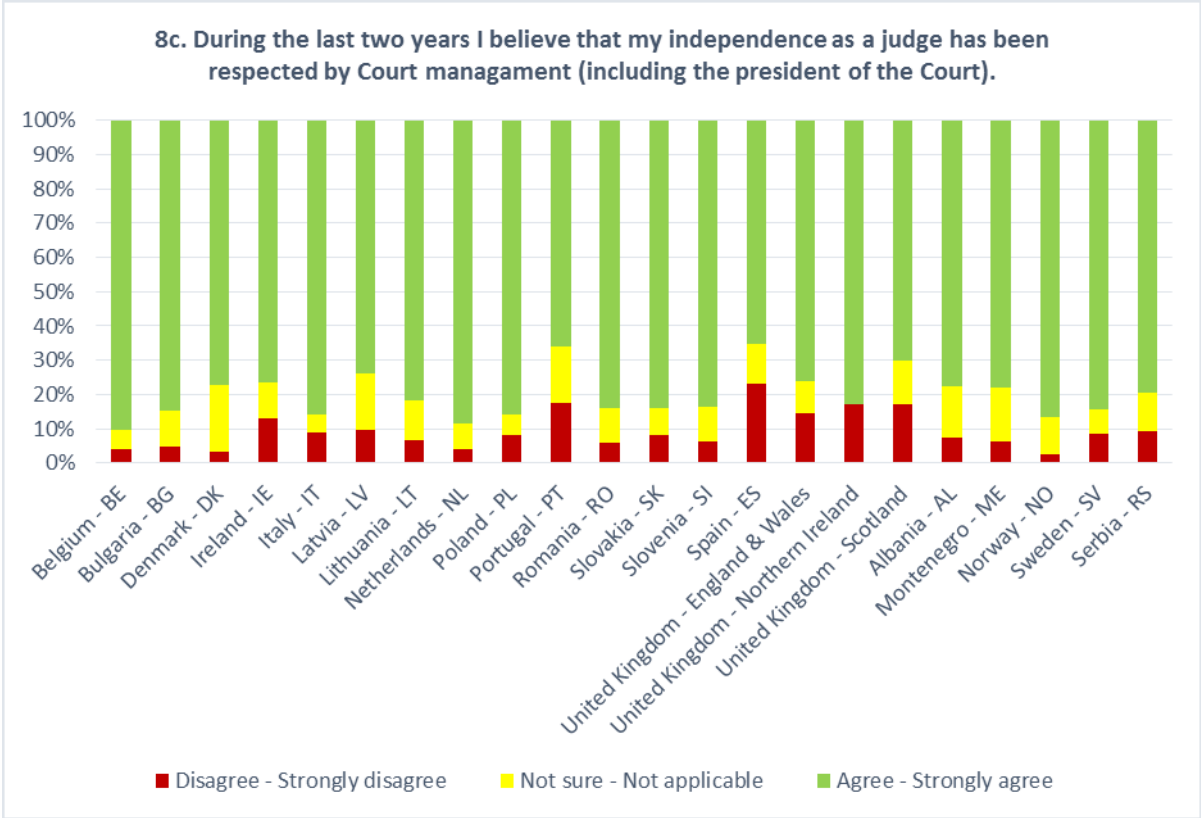
6. I believe that in my country decisions or actions of individual judges have, during the last two years, been directly affected by the actual, or anticipated, actions of the media (i.e. press, television or radio).

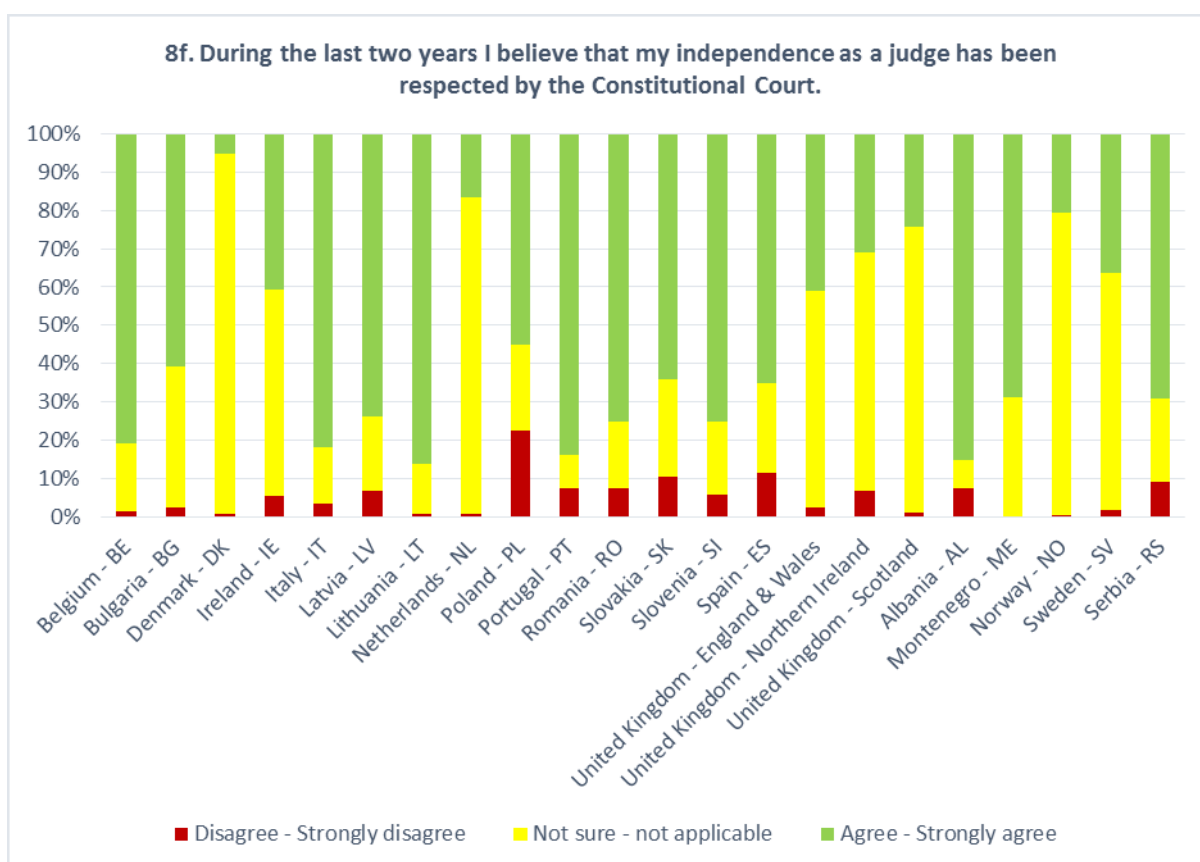
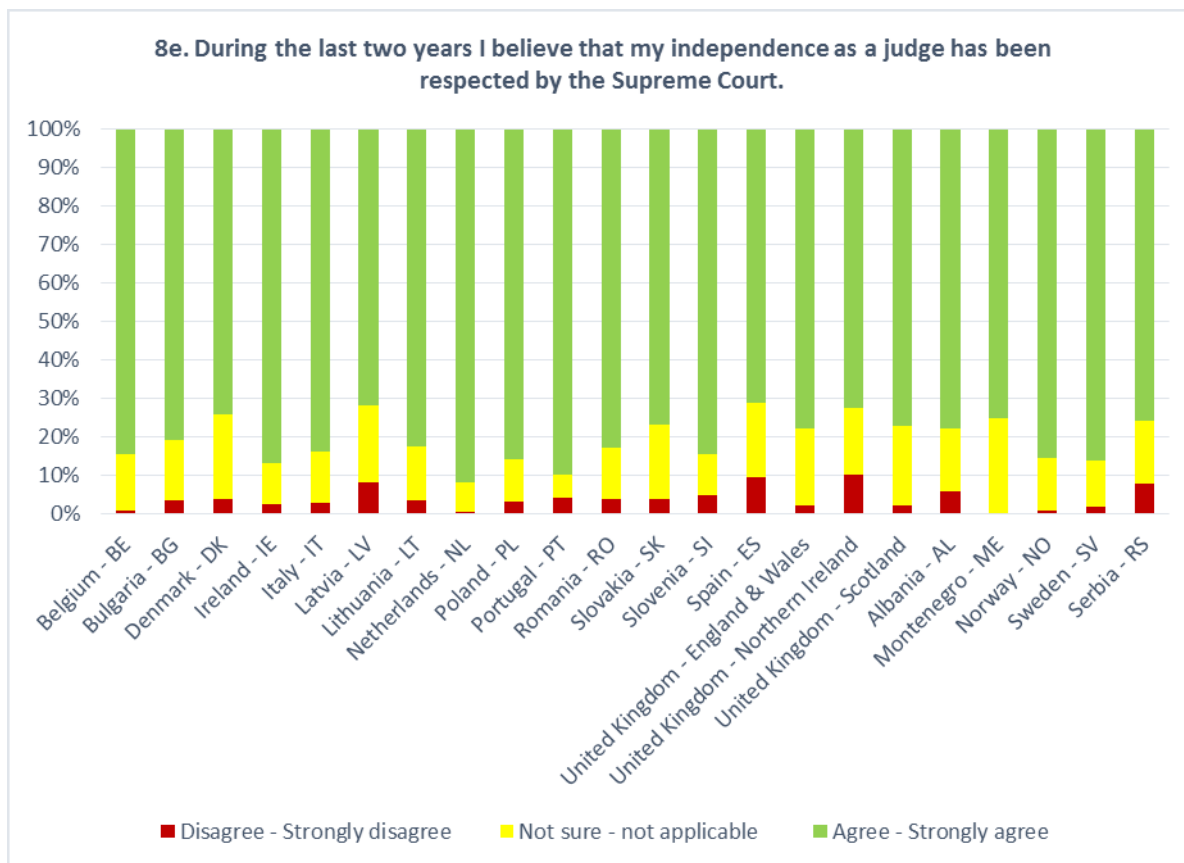


7. I believe that in my country decisions or actions of individual judges have, during the last two years, been directly affected by the actual, or anticipated, actions using social media (for example, Facebook, Twitter or LinkedIn).

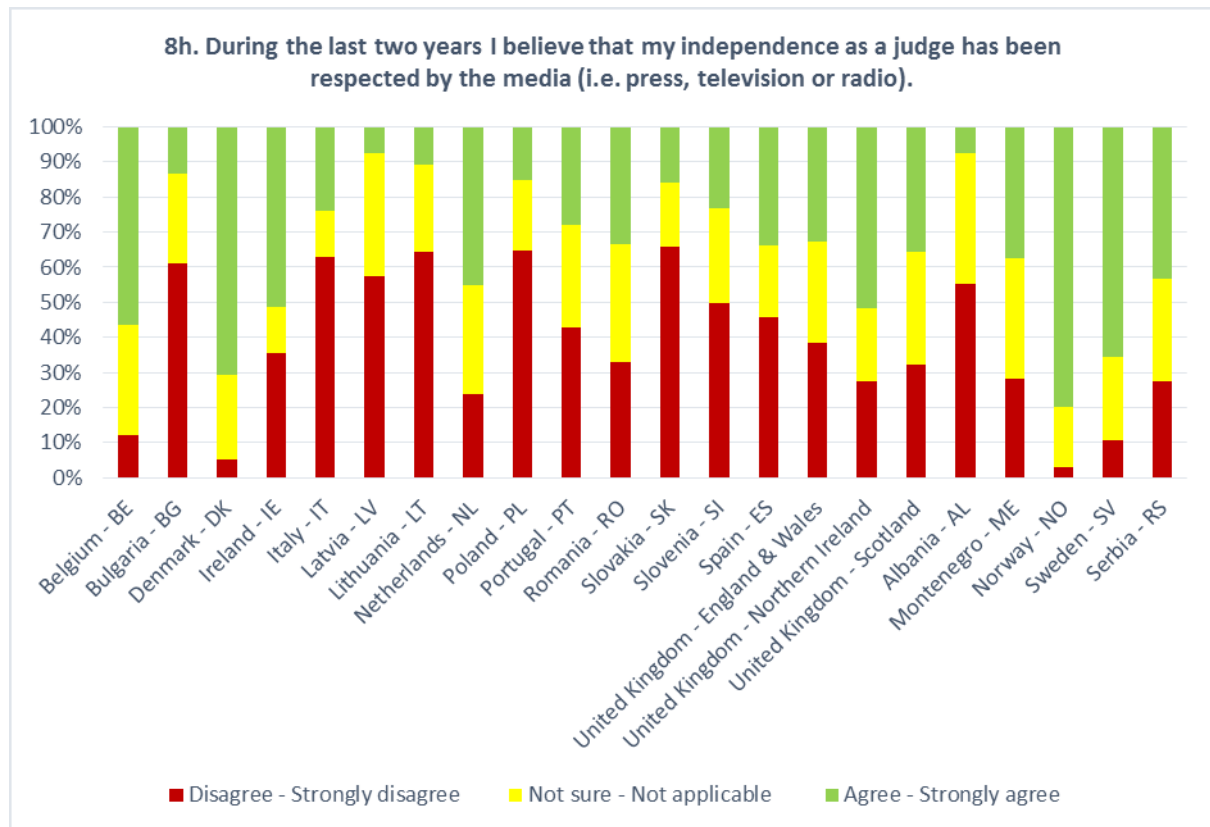
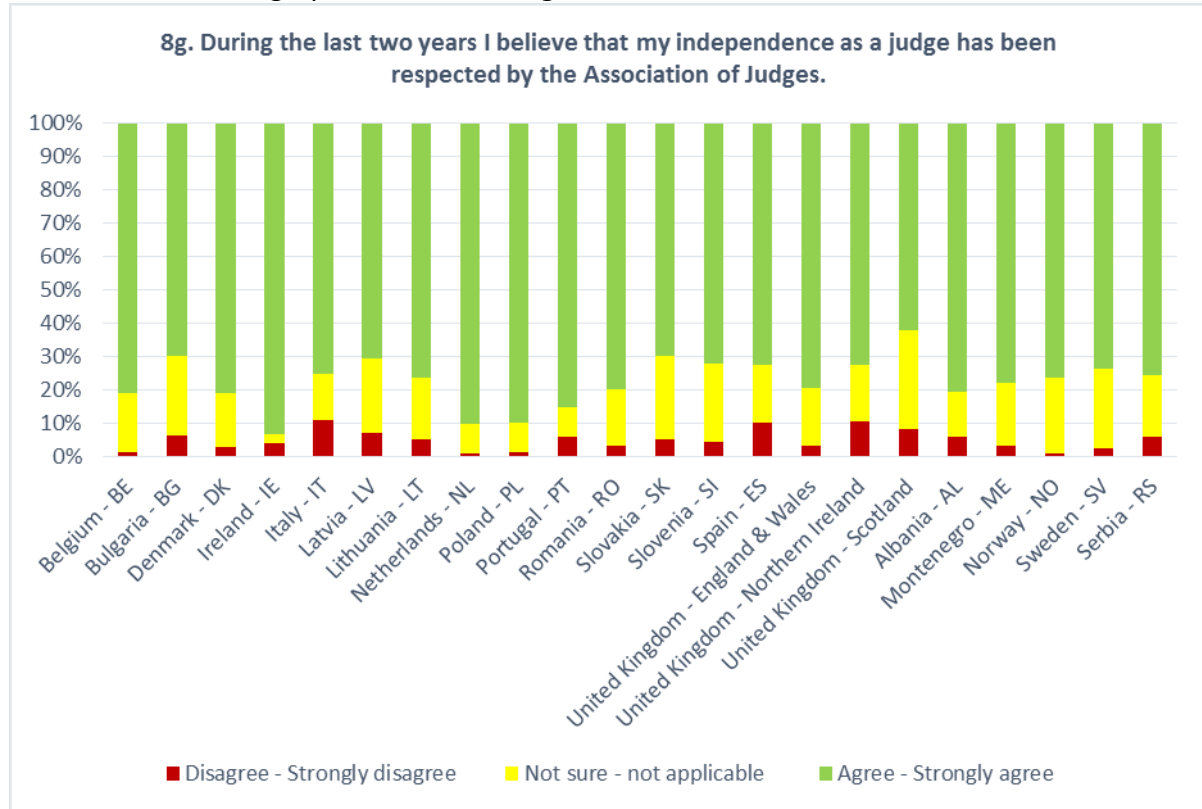








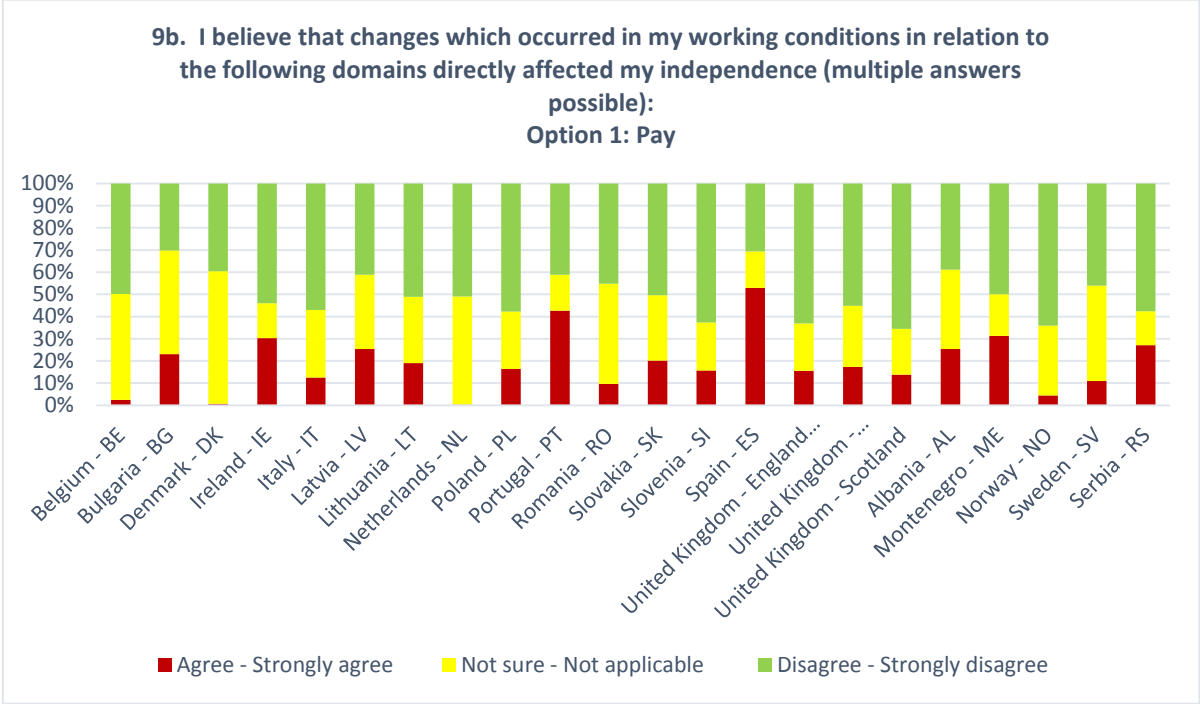
Note: the results of graph 8f. are meaningless for countries without a Constitutional Court.

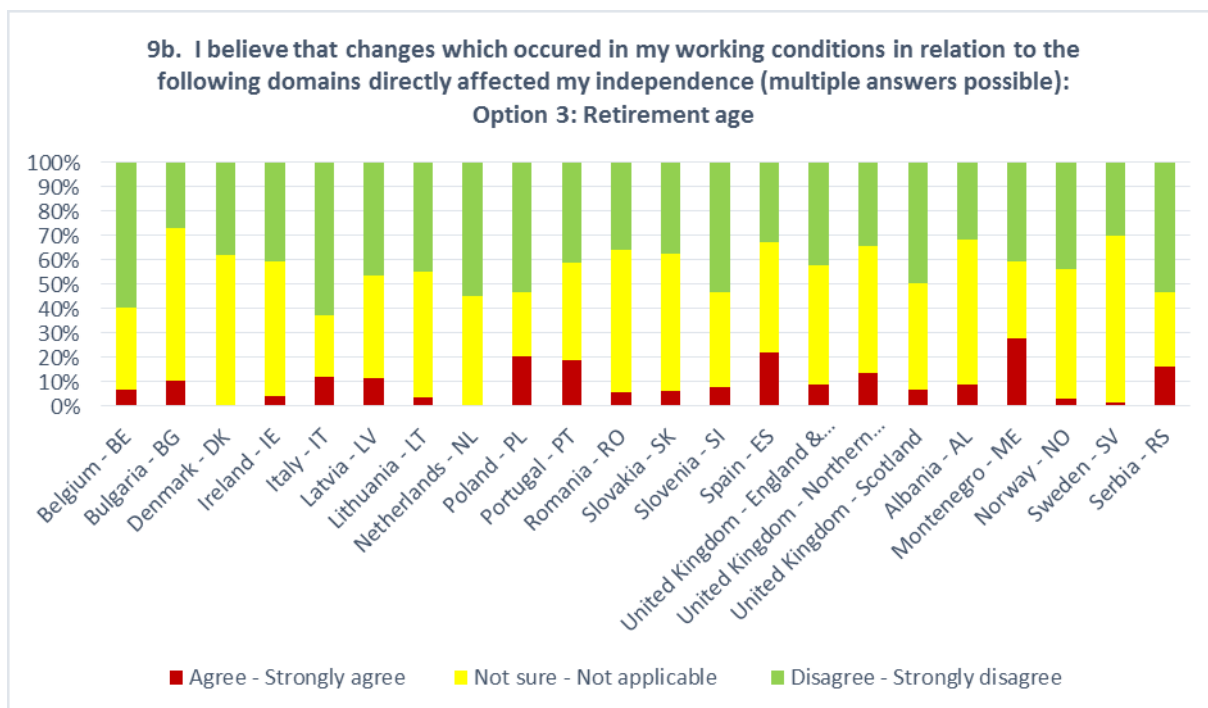
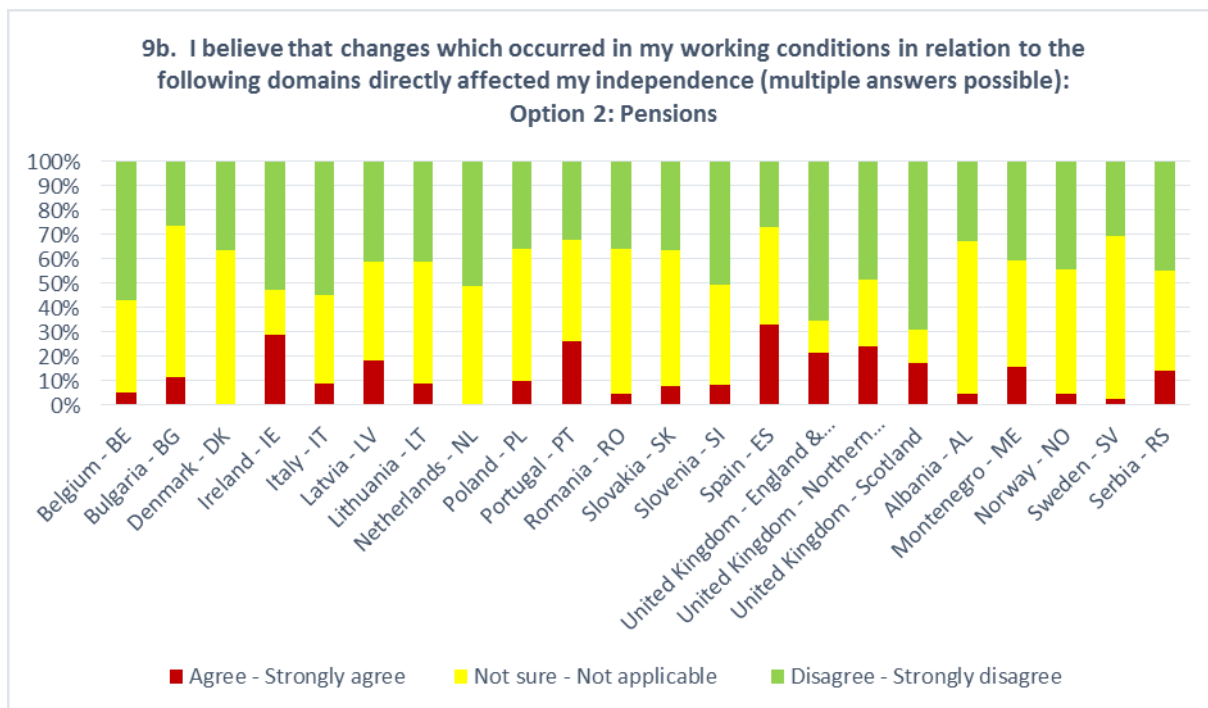


Question 9a asked respondents the following question: ‘During the last two years changes occurred in my working conditions in relation to (multiple answers possible)’. The given options were: ‘caseload’, ‘court resources’, ‘pay’, ‘retirement age’, ‘pensions’ and ‘I was moved to another function, section or court’.

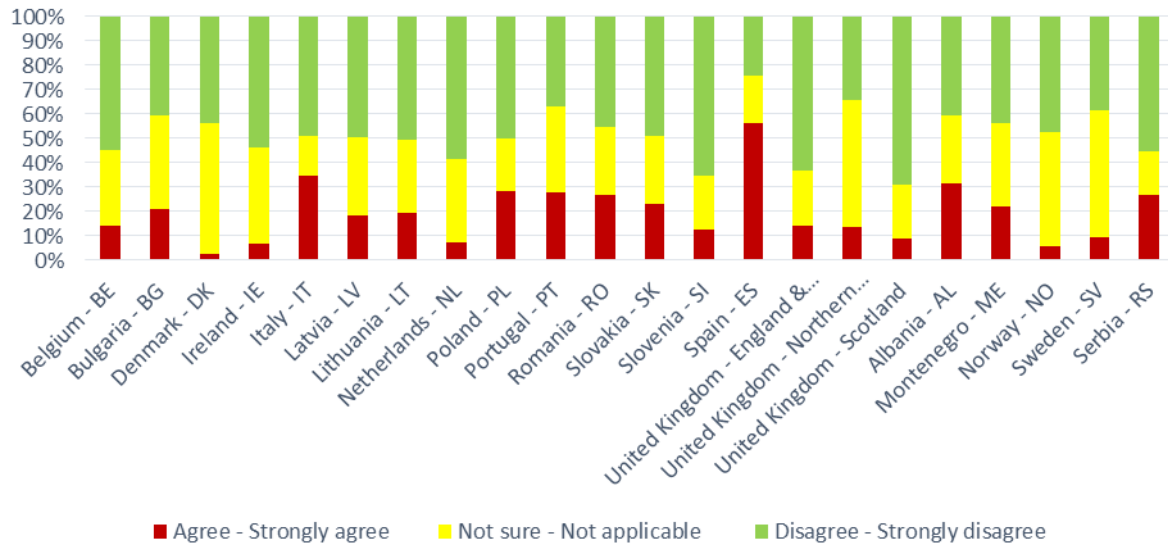
The most occurring combinations were:

1. Pay, caseload, court resources (16% of respondents)
2. Caseload, court resources (14% of respondents)
3. Pay, pensions, retirement age, caseload, court resources (12% of respondents)

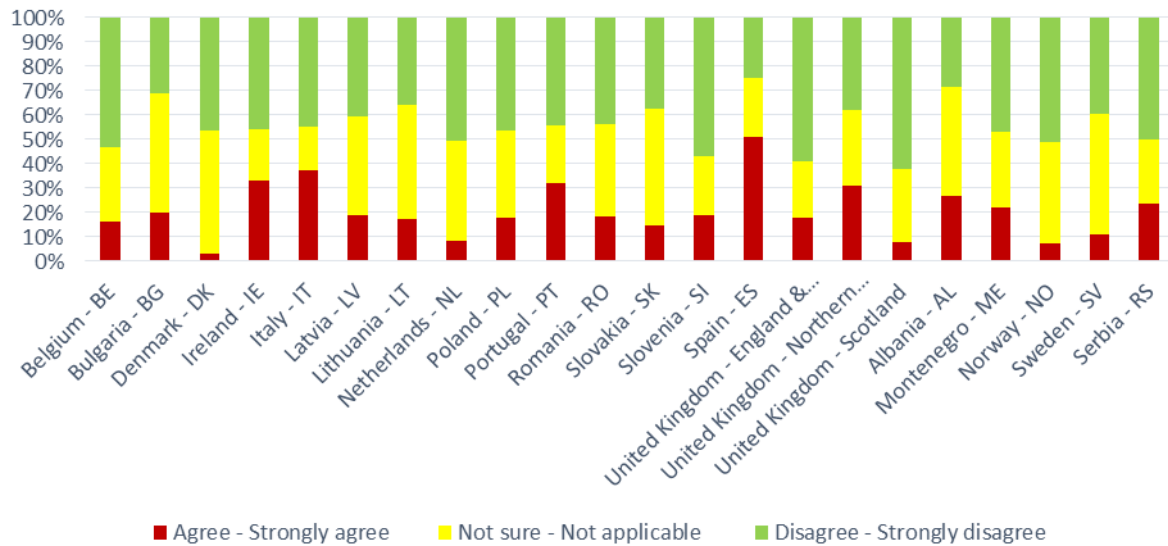




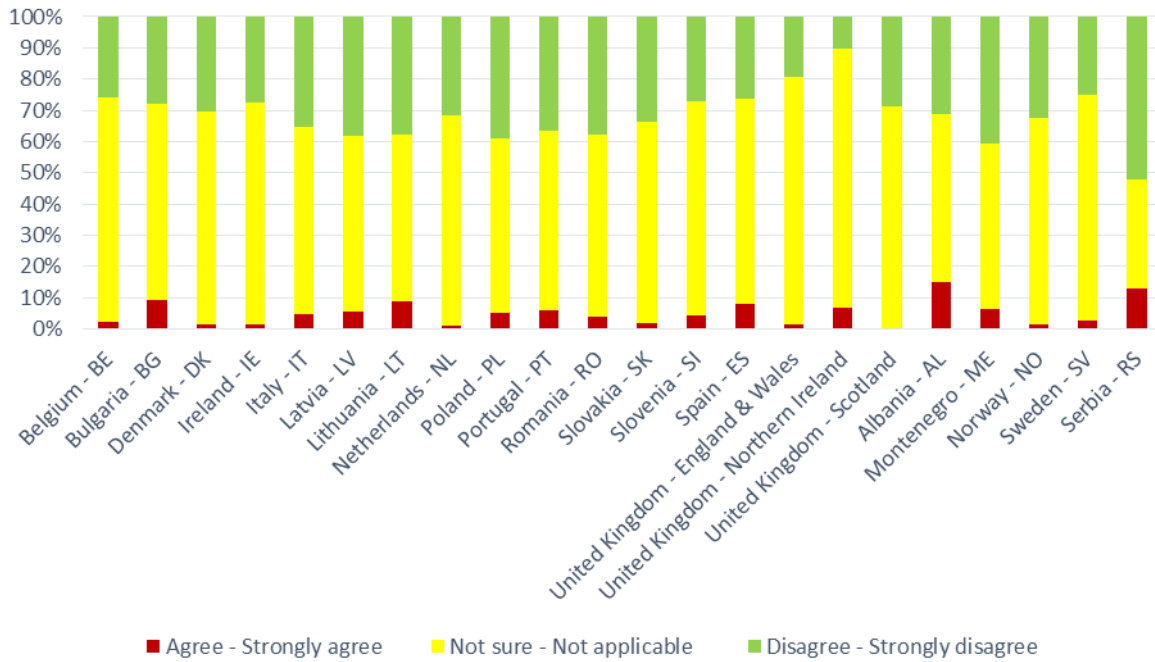
9b. I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):
Option 4: Caseload



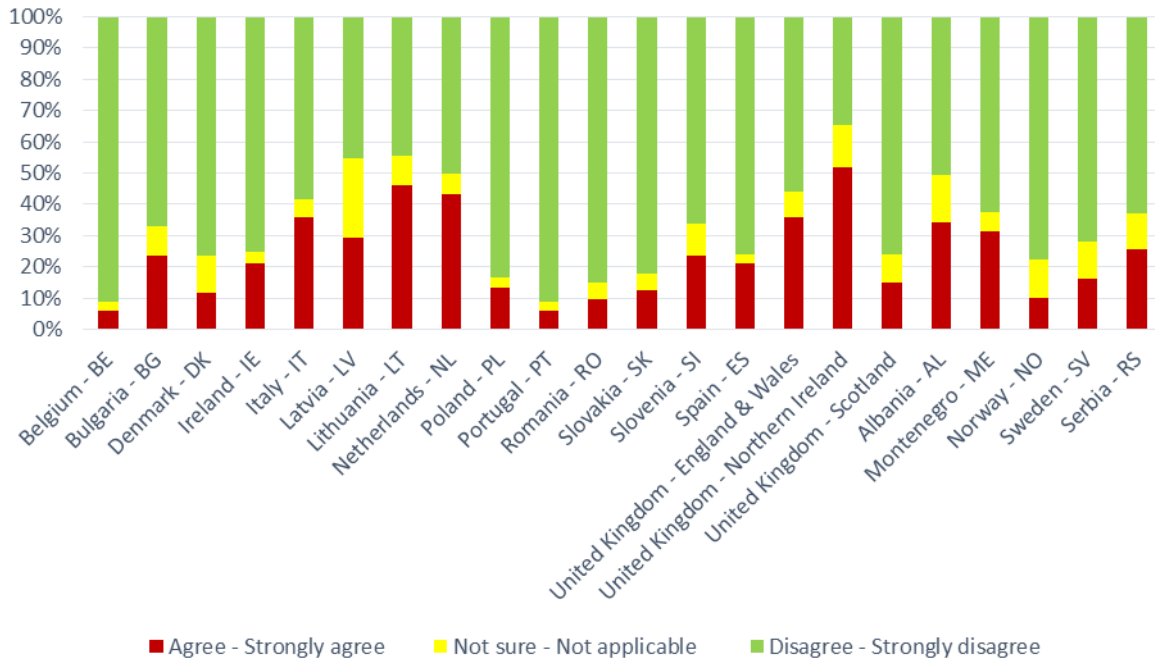
9b. I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):
Option 5: Court Resources

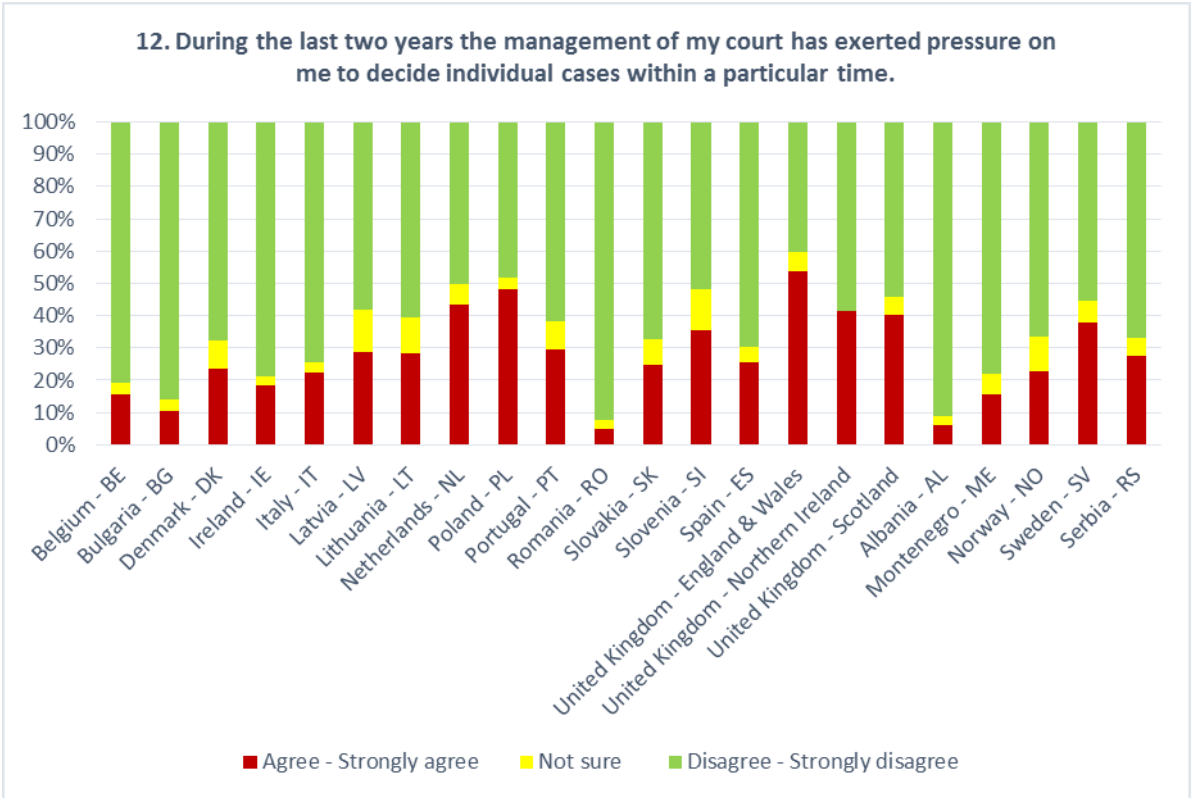
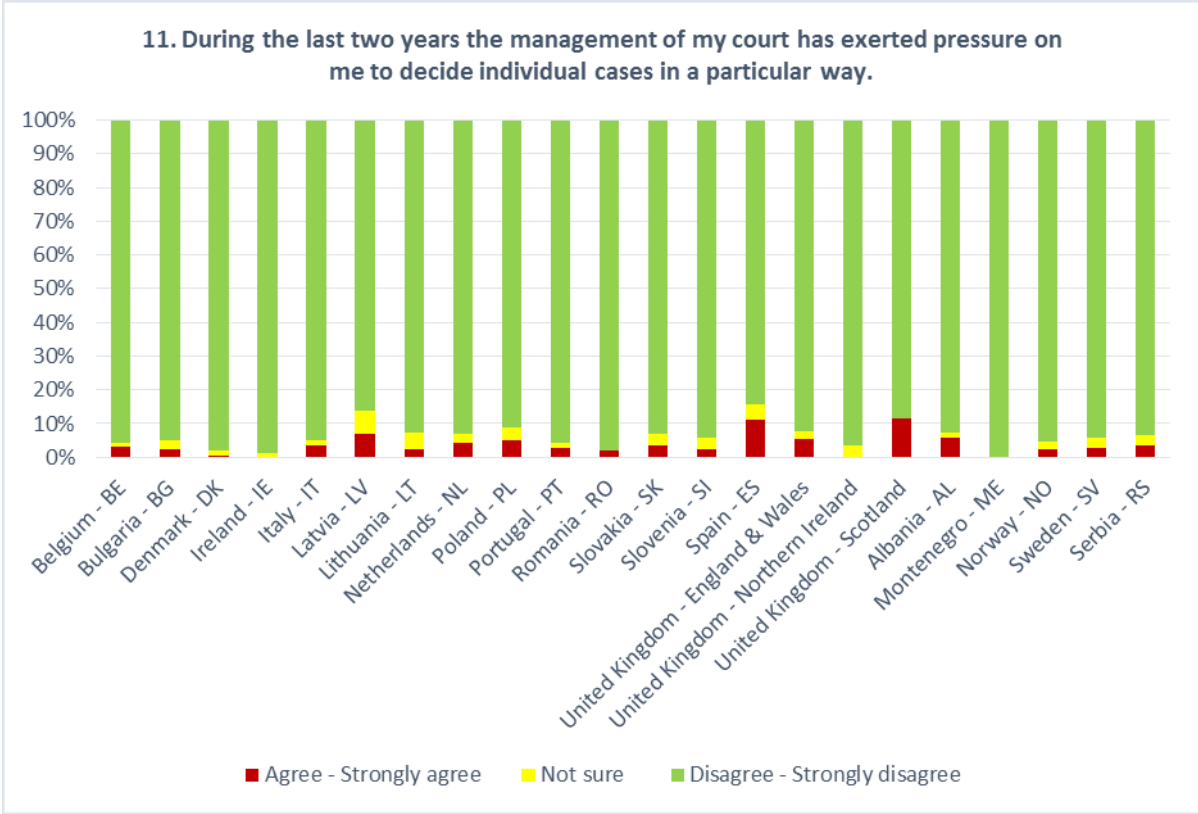


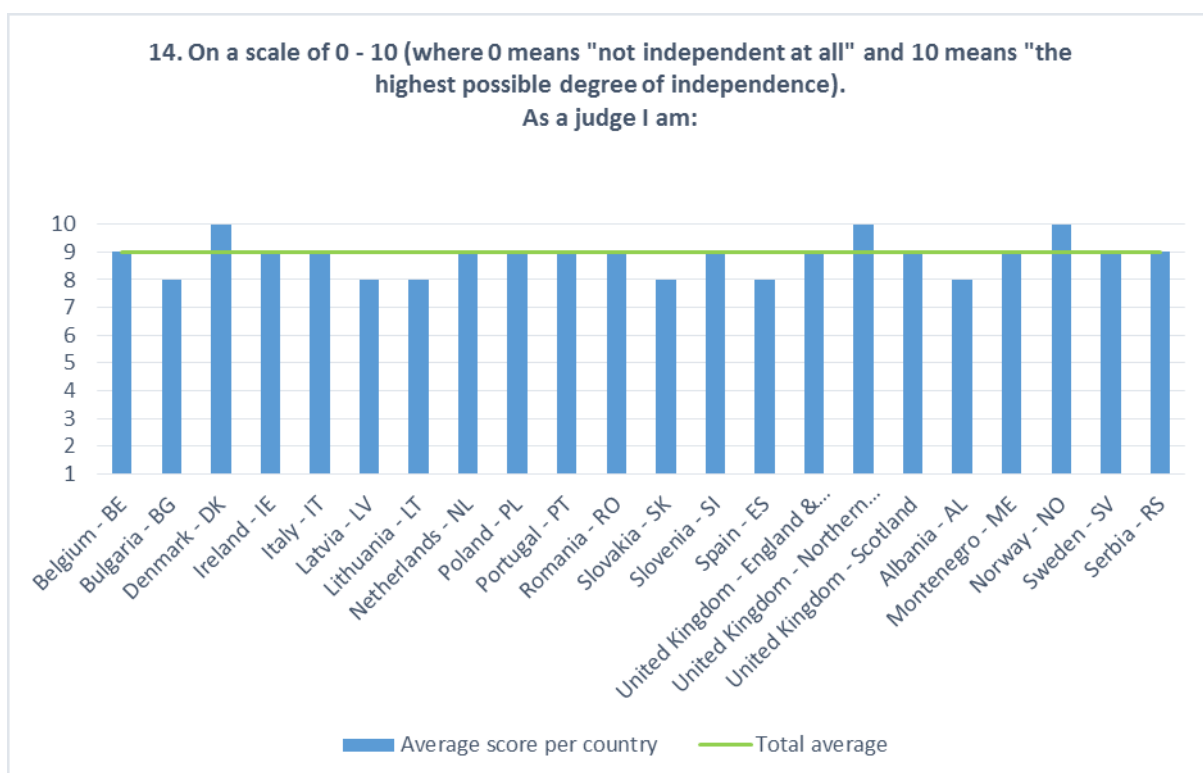
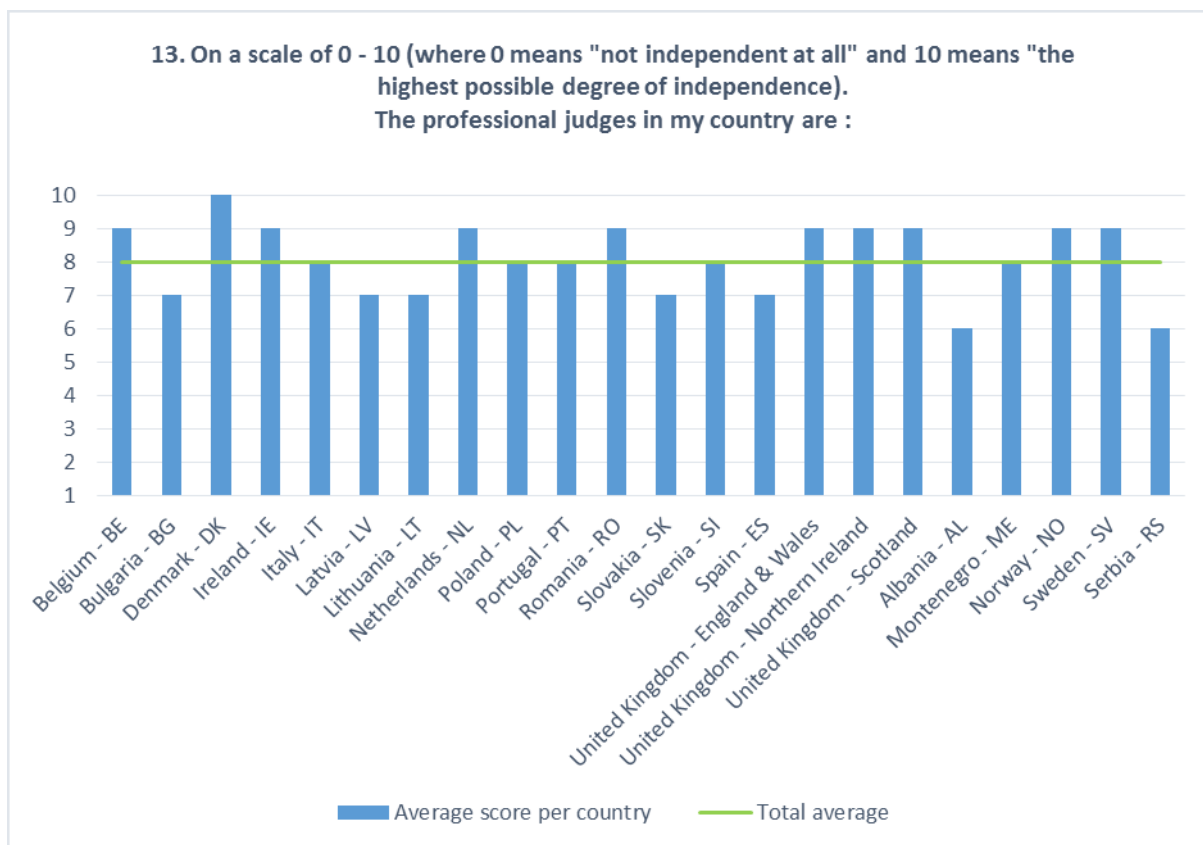
**9b. I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):
Option 6: 'I was moved to another function, section or court'**



10. During the last two years I have had to take decisions in accordance with guidelines developed by judges of my rank.







The individual results to question 13 and 14 of all countries can be found in appendix D.

5.5 Reporting and feedback to the judges

A letter from the ENCJ by Geoffrey Vos has been sent to the judges (through the Councils) thanking them for their valuable responses. Another letter with a link to the results will be sent to the judges as well.

5.6 Lessons learned

The survey was developed and implemented in a very short period of time. This short period made it impossible for some judiciaries to participate, as more time was needed to discuss the survey within the judiciary and to get approval. It also caused that not all participants were able to discuss with and get the endorsement of the judges associations of their countries. It seems that, where this endorsement was achieved, the response was higher. Finally, the short period in which the survey could be filled in coincided in some countries with official holidays. While for the current purposes the response rates are sufficiently high, it is important for the next time the survey is undertaken to allow for more time and to get the endorsement of all relevant judicial organisations and in particular the judges associations.

Furthermore, the survey needs to be further systematized to allow for a more concise presentation of the outcomes.

It is also noted that a single focus on the beliefs of judges is not adequate. The beliefs of judges must be combined with the perceptions of the clients of the court to avoid a purely internal approach to independence. It should also be examined whether the survey among judges can be extended to accountability.

6. Pilot survey among lay judges about their perceptions of their actual independence

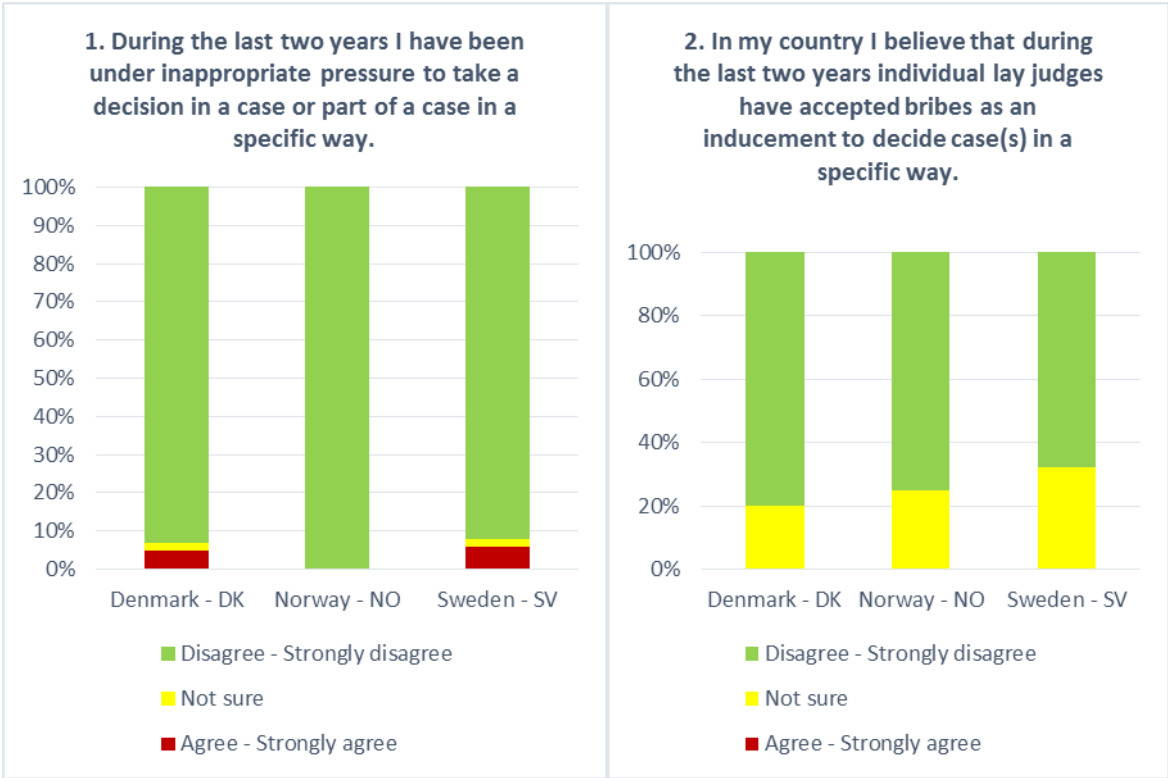
Many of the legal systems of Europe make not only use of professional judges, but also of lay judges. They are an integral part of these Judiciaries. In order to get a full picture of the opinions of judges, it is necessary to extend the survey to lay judges. However, since lay judges usually spent only a small fraction of their time on duty in the courts, it was not obvious whether a survey could be conducted among them in a meaningful manner. Therefore a pilot survey amongst lay judges in Norway, Sweden and Denmark was conducted. The survey was sent to a sample of lay judges. In Denmark the sample was composed of 100 lay judges from a district court and 100 lay judges from a court of appeal. In Denmark 111 replies were received. In Norway the sample was composed of 150 lay judges from district courts and of 150 lay judges from courts of appeal. In Norway the number of lay judges is much higher than in the other Nordic countries: approximately 50 000 compared to approximately 10 000. In Norway 166 replies were received. In Sweden the sample was composed of 50 lay judges in the District court of Stockholm and 50 lay judges in Svea Court of Appeal. In Sweden altogether 52 answers were received. The survey consisted of the questions of the survey for professional judges that were deemed relevant for lay judges.

The main outcomes of the pilot can be summarized as follows.

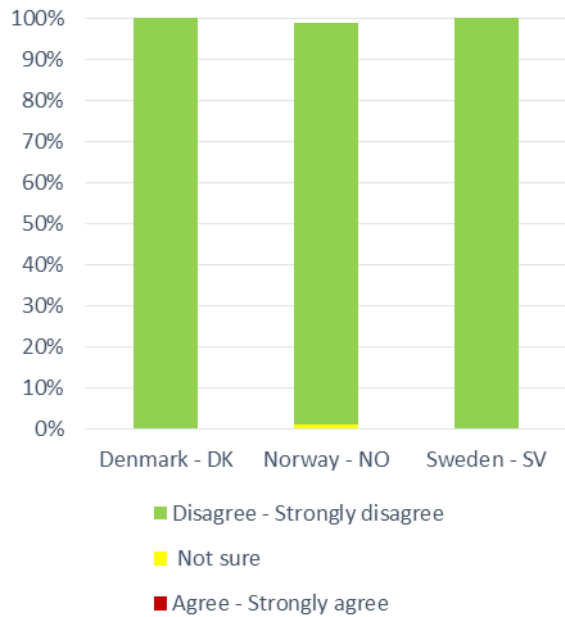
1. Lay judges have very similar opinions as professional judges. Lay judges do not feel less independent than professional judges. While they may be expected to feel the influence of professional judges, especially when they sit together, this does not show in the outcomes. Inappropriate pressure within the judiciary is not reported.
2. Lay judges are in general more uncertain about their answers than professional judges, showing from a higher frequency of the use of 'not sure' as answer, although this is not the case for each and every question.
3. In the three countries examined, lay judges hold quite diverse views of the respect the judiciary gets from government, parliament and (social) media. Apparently, this is an area about which many lay judges have opinions that are even more outspoken than those of professional judges.

While the pilot has been conducted for three Scandinavian judiciaries only and can therefore not be generalized to all judicial systems in which use is made of lay judges, these outcomes are promising. There does not seem to be a gap between professional and lay judges from the perspective of independence, which means that independence as core value is upheld by all judges. From a methodological point of view the outcomes are promising as well. It may not be necessary to extend the survey among judges to lay judges to get a reliable overview of the opinions of judges. However, these are first results, and before more final conclusions can be

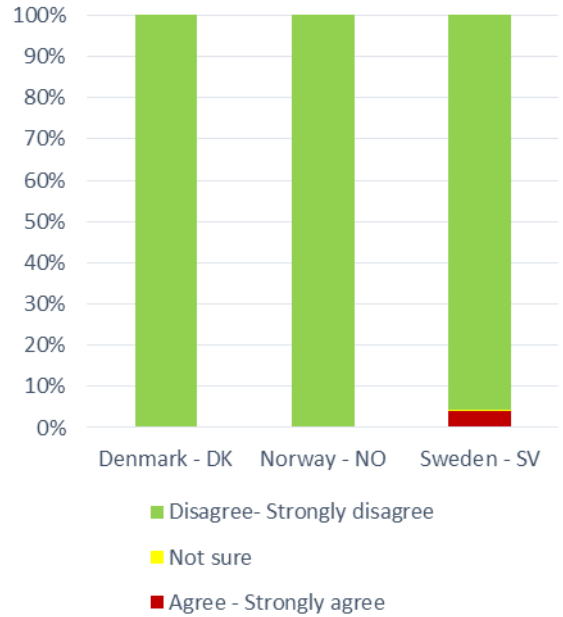
reached the survey needs to be repeated for other (and diverse) judicial systems in which broad use is made of lay judges.



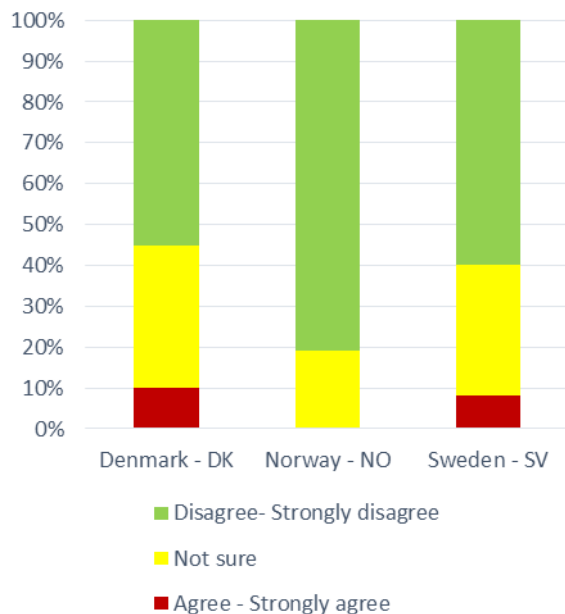
3.1 During the last two years I have been affected by a threat of, or actual, disciplinary or other action because of how I have decided a case.



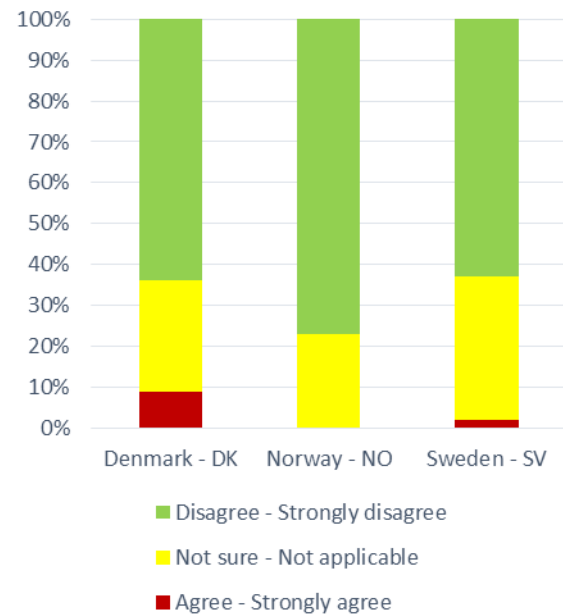
3.2 During the last two years my decisions or actions have been directly affected by a claim, or a threat of a claim, for personal liability.

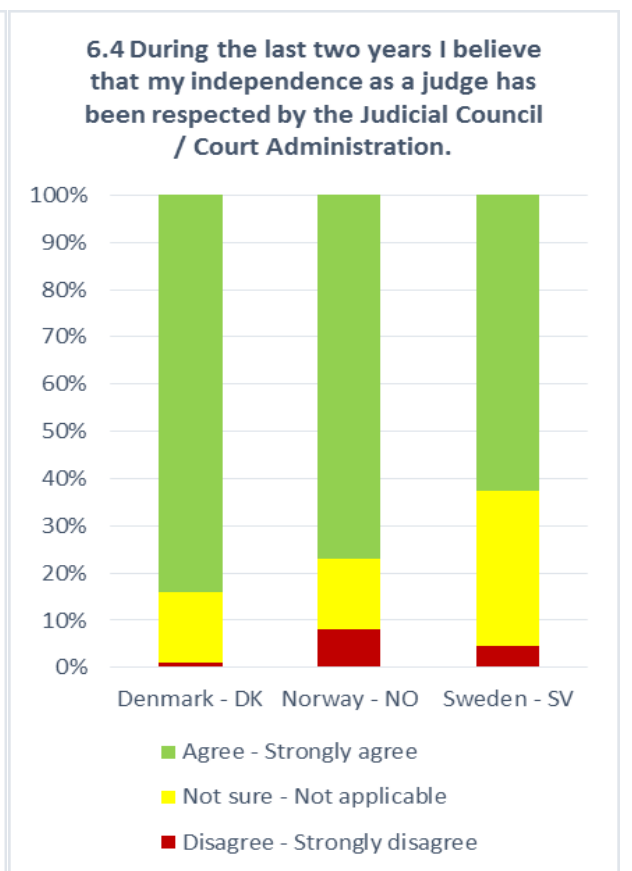
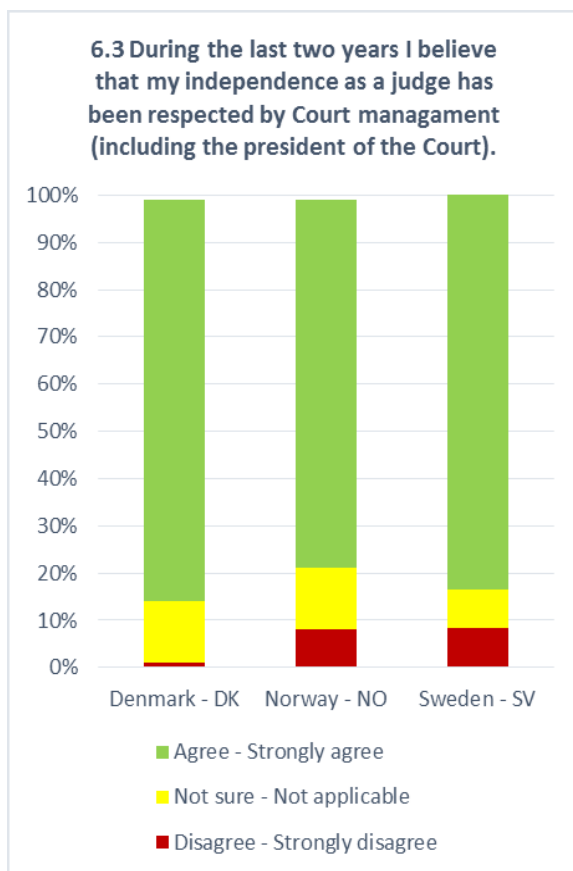
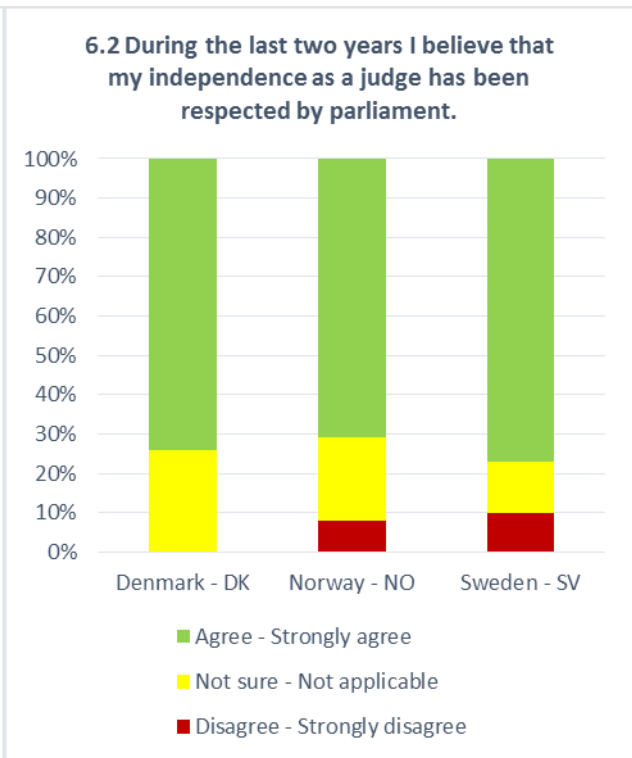
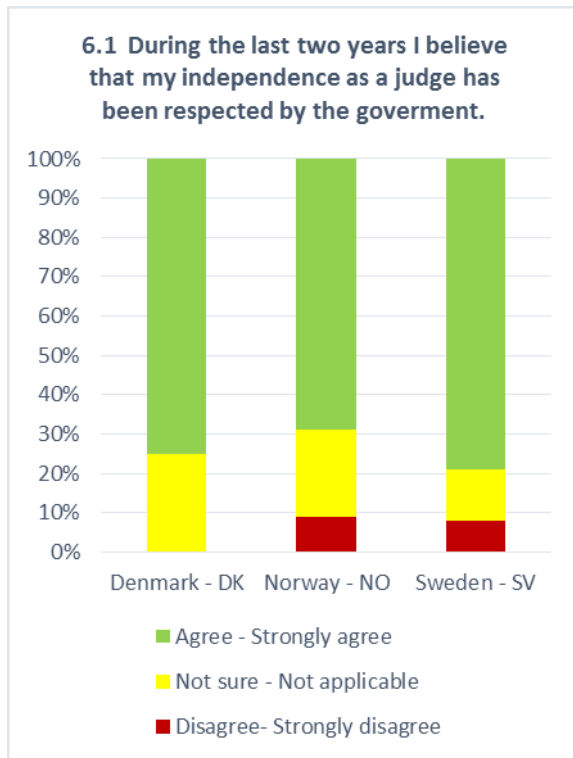


4. I believe that in my country decisions or actions of individual judges have, during the last two years, been directly affected by the actual or anticipated, actions of the media (i.e. press, television or radio).

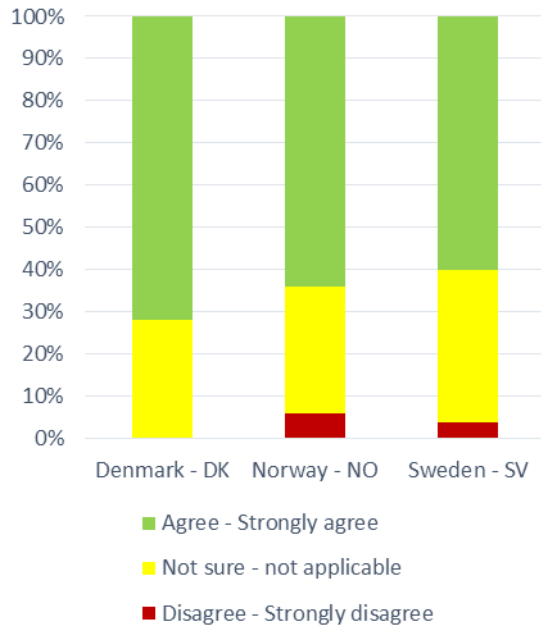


5. I believe that in my country decisions or actions of individual judges have, during the last two years, been directly affected by the actual, or anticipated, actions using social media (for example Facebook, Twitter or LinkedIn).

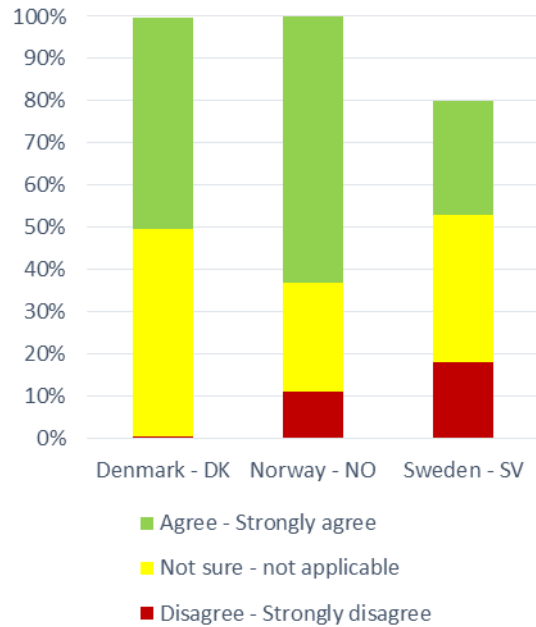




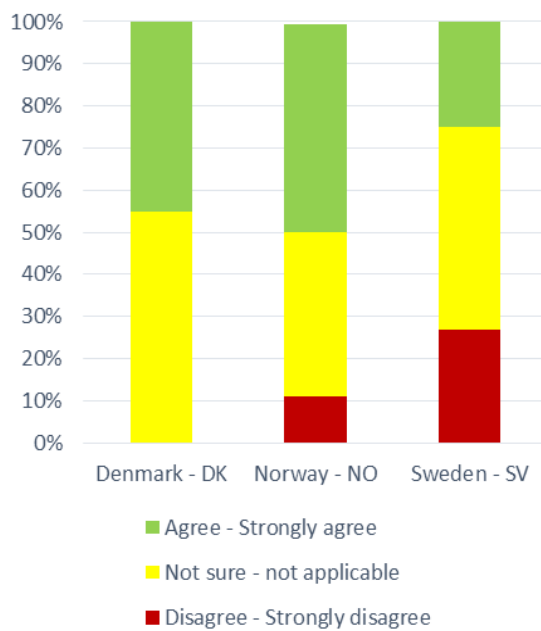
6.5 During the last two years I believe that my independence as a judge has been respected by the Supreme Court.

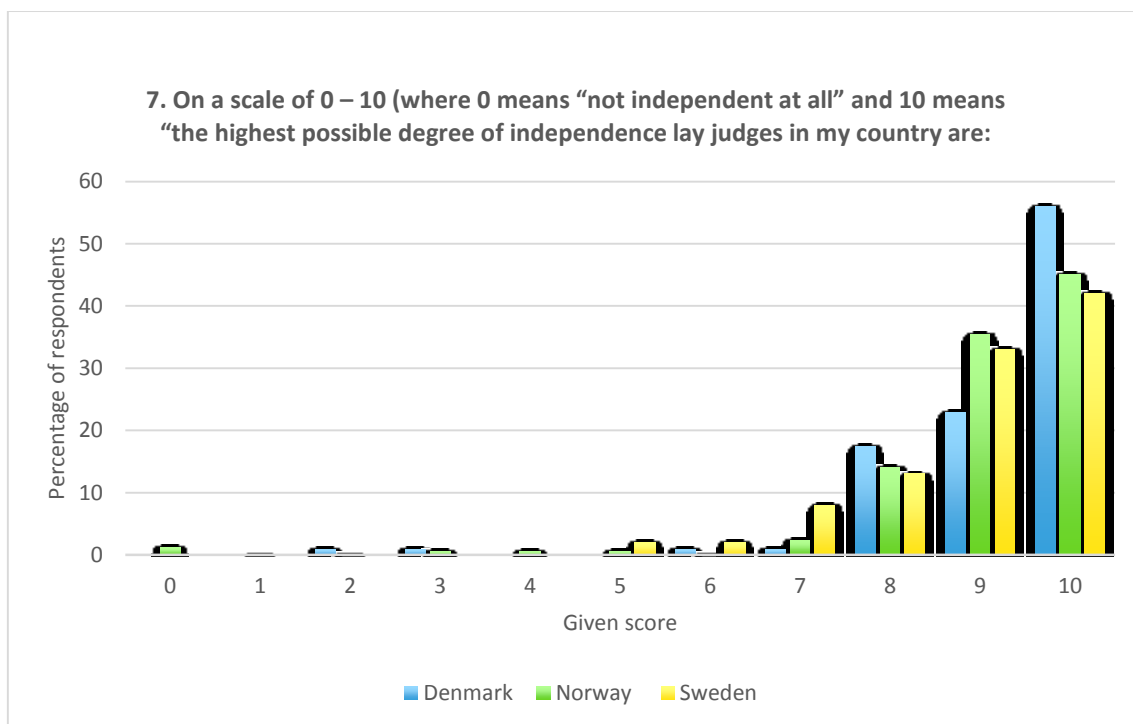


6.6 During the last two years I believe that my independence as a judge has been respected by the Media

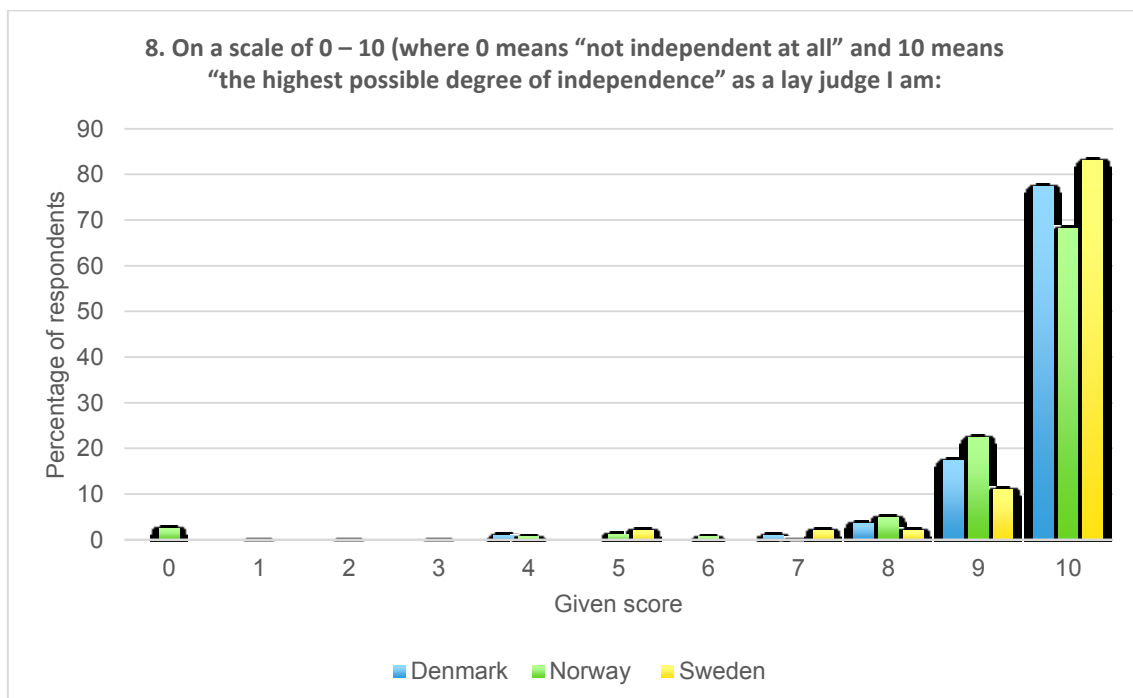


6.7 During the last two years I believe that my independence as a judge has been respected by Social Media.





The average score for question 7 was: 9.1 (Denmark 9.2, Norway 9,1, Sweden 9)



The average score for question 8 was: 9.6 (Denmark 9.7, Norway 9.4, Sweden 9.7)

7. Pilot dialogue group

As described in the Report Independence and Accountability of the Judiciary 2013-2014, the purpose of the dialogue groups is to discuss the results of the application of the indicators and identifying the real problems facing the independence and accountability of the Judiciary in each country, and identifying remedies. It was also decided that the dialogue groups would report to the executive board and annually to the ENCJ General Assembly. To test whether a meaningful dialogue can be held about independence and accountability on the basis of the indicators a pilot meeting was held in March 2015. The pilot dialogue group consisted of participants from Italy, Slovenia, Lithuania and Norway. It was the intention that participation would be confined to one or two person(s) from the Council for the Judiciary or, in the case of the observers, the actual governing organisation and one or two person(s) from the national Judges Association. This was to make sure opinions on matters from different angles would be heard, while costs were kept at a minimum. In the pilot this mix of backgrounds was essentially achieved. The dialogue was moderated by Mr. Frans van Dijk on behalf of the coordinator of the project team, the Netherlands Council of the Judiciary.

The outcomes of the questionnaire for the four countries concerned was the basis for the discussion, as these highlight the strengths and weaknesses of judicial systems.

The dialogue consisted of two phases. The *first* phase was problem analysis: each of the four participating countries presented the three most serious problems or challenges its judicial system faces with respect to independence and/or accountability. The challenges that were put forward concerned the performance indicators on which the countries had low scores. There was a frank discussion of these issues. The participants critically questioned each other about these issues and about other issues they felt merited attention. The intention was to arrive at a shared view of the three most serious problems the Judiciary in each individual country faced, and thereby of the priorities for each Judiciary. This result was achieved. The second *phase* was the search for remedies. The intention was to choose two solutions that looked most promising out of the spectrum of possible solutions. Remedies would not be confined to legal protections or other changes of law, but, if relevant, would also address other approaches such as engaging in a dialogue with the other state powers or society. One of these two promising solutions would ideally have an impact in the short run; the other could work in the longer run. It proved easier to identify problems and dilemma's than to find solutions. Obviously, the problems that were identified were complicated and persistent, and much had already been tried to resolve them.

A report of the meeting was made that highlighted the problems countries face, a problem analysis and potential solutions. The report is enclosed as Appendix 1.

The discussions in the dialogue group were confidential, except for the report as such. All other information about the discussions regarding a country could only be made public by the participants of that country.

At the end of the meeting the participants evaluated process and results. It was concluded that the dialogue group had provided the platform for an in depth discussion that otherwise would not have been possible. It has augmented mutual understanding of the challenges countries face and has led to the recognition that many issues are not confined to one single country, but are often shared by (nearly) all nations. The participants of one country had hoped to get concrete advice on how to resolve their problems. This proved too ambitious. Still, the participants went home with specific ideas about how issues were addressed in the other countries and this provided suggestions for possible solutions.

As to the substance of the discussions that took place, it is important to note that there are some common problems. One of these common problems concerns the funding of the Judiciary. The dialogue group concluded that this would be a topic the ENCJ should address. Another issue shared by two of participants is the complicated relationship between perceptions of corruption and the media. It was felt that these perceptions were augmented by unfair reporting by the media. This requires an active media strategy which was currently lacking in both countries.

7.1 Future of dialogue groups

The ENCJ discussed the above, and concluded that a continuation and expansion of the dialogue groups would be very useful. As to the composition of the dialogue groups, it is suggested that different formats should be experimented with. The pilot consisted of four judiciaries all from different legal systems. This composition had the benefit of the clash of very different legal systems with many opportunities for learning, but required much effort to understand the diverse systems. Another possibility would be to take countries with one legal system. A middle ground of four countries from two legal backgrounds might be most productive. These possibilities should be explored.

To have a fruitful discussion, it is necessary to have, as in the pilot, a trusted moderator from a member council with considerable experience of the issues. A more thorough preparation of the meeting than at the pilot was done is needed. Notes on challenges and issues should be circulated in advance. Part of the preparation is also that participants are appropriately authorized. It may prove necessary to have a longer meeting than one day and/or to have the dialogue groups meet more than once.

8. Conclusions and follow-up

The project is ongoing work. It is recommended that the following activities are undertaken in the next project cycle (2015/2016):

1. In 2015/2016 the dialogue groups should be extended to all interested members and observers. The outcomes should be integrated and conclusions presented to the General Assembly in Warsaw about the state of independence and accountability in the EU and candidate countries and about steps to be taken to address challenges whether at a national or supranational level.
2. The methodology of the performance indicators for the independence and accountability of the Judiciary and the scoring rules should be refined. Sensitivity analyses could be undertaken to assess the impact of different scoring rules on the scores. Also, outcomes of the dialogue groups may lead to alterations of the indicators. The revised indicators (version 1) should be implemented in 2016/2017.
3. The logical follow-up to the establishment of indicators relating to judicial independence and accountability is 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 the citizens. Accordingly, it is recommended that work should be done on the creation of a methodology to produce indicators for the quality of justice as an extension to the current project. This will be a difficult but worthwhile exercise.
4. The survey among judges should be improved (version 1) and enough time should be given to members and observers to prepare for the next survey. This survey should be held in 2016/2017. As independence and accountability are interrelated, the possibilities should be examined to incorporate accountability in the survey.
5. The follow-up of the work on the independence and accountability of prosecutors in systems that have Councils that include both judges and prosecutors will be for consideration by the Executive Board and at the General Assembly.
6. It would be desirable that the Eurobarometer Justice in the EU is repeated with respect to the perceptions of the populations about (at least) independence. A discussion with the EC should be started to achieve this.

Section 2 Independence and Accountability of the Prosecutors

1. Introduction

This section of the report has been prepared by a sub-group comprising the representatives of five of those members of the ENCJ, which have a Council for both judges and prosecutors (Belgium, Bulgaria, France, Romania, and Italy), together with some interested observers. The views and recommendations contained in this section are, therefore, the views and recommendation of these 5 Councils and not of the entire ENCJ.

When addressing the independence and accountability of prosecutors, it is important first to understand the function of the prosecutors in the country under consideration. These functions vary in significant ways in different systems. For example, in countries where the Council comprises both judges and prosecutors, prosecutors are generally treated in the same way as judges in many areas including, for example, in their appointment, evaluation and promotion, and in the allocation of cases.

The work of the sub-group was to consider which of the indicators determined by the ENCJ to be applicable to the independence and accountability of judges were also applicable to the independence and accountability of prosecutors. The sub-group concluded that the large majority of the indicators were capable of being read across from judges to prosecutors with minor changes of emphasis in some cases.

It was ultimately decided that the indicators for the independence and accountability of prosecutors developed by the sub-group in this section would not be applied at this stage even to the 5 participating Councils. This was mainly because it was thought better first to obtain the reactions of other ENCJ members and observers, whose Councils did not include prosecutors. Moreover, bearing in mind the constitutional similarities between the positions of judges and prosecutors in the sub-group countries, it may be expected that the results of the application of the indicators for prosecutors would closely track those for judges.

The sub-groups suggestions for further actions are contained in the “recommendations for future actions” sub-section below. Both the sub-group and the entire project group are, however, keen to emphasise that nothing in this section of the report should be taken as directly applicable to prosecutors in countries with Councils that do not include prosecutors.

2. Overview

In 2013/2014, the ENCJ undertook a major project on independence and accountability. In 2013 the ENCJ instituted a project group on the independence and accountability of the Judiciary. Two main objectives were:

- 1) to develop and evaluate indicators for the independence and accountability of EU judicial systems, EU judiciaries, and Councils for the Judiciary, and
- 2) to present an ENCJ vision of the independence and accountability of the Judiciary.

At that moment³, it was acknowledged that the Judiciary in its broader meaning does not relate only to judges; when it comes to the independence of the Judiciary, the independence of prosecutors should be taken into consideration⁴. Both are prerequisites of fair trial and the absence of any of them might endanger the process of delivering a rightful judicial decision. However, it was admitted that the independence of prosecutors is not of the same nature as the independence of judges. The authority that starts the application of the law in criminal justice, on behalf of the society and the public interest, should also enjoy a certain type of independence.

Accordingly, in the first year the project focused on the Courts (Judiciary in its narrow sense). The report was presented to the General Assembly in Rome in June 2014⁵ and the Assembly proposed to build on the 2014 report by establishing a sub-group to consider the application of indicators to the evaluation of the independence and accountability of prosecutors in member states where the Councils for the Judiciary are responsible for prosecutors as well as judges.

On the same occasion, the General Assembly adopted the ENCJ Strategic Action Plan 2014-2018⁶, where, within the broader objective of promoting independent and accountable justice systems in EU and wider Europe, it proposed to revise the indicators in the light of the results of the complete independence and accountability survey in 2014/2015 and in the light of the outcome of the sub-group on the independence and accountability of prosecutors.

The first objective of the subgroup on prosecutors was to draw up a framework for the independence and accountability of prosecutors. The subgroup tried to identify all relevant international and European documents that encompass generally applicable standards in relation to the independence and accountability of the prosecutors and transposed them in an analysis of the members and observers of the ENCJ. This analysis resulted in the framework of accountability and independence of prosecutors.

The main findings within the **framework** were that the prosecutors should enjoy the necessary degree of independence in carrying out their duties, should be free from any external influence and should be autonomous in their decision-making.

³ "Independence and accountability are also crucial for prosecutors to fulfil their role in the legal system." ENCJ Rome report on the Independence and accountability of the Judiciary, 2013/2014, page 6.

⁴ Also see the Opinion no 9 (2014) of the Consultative Council of European Prosecutors (*Rome Charter*), par. IV, "The independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary."

⁵ http://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_report_independence_accountability_adopted_version_sept_2014.pdf

⁶ http://www.encj.eu/images/stories/pdf/other/encj_4_year_plan.pdf

Therefore, the analysis of the independence of prosecutors followed the same standards as in the case of the independence of judges. Nevertheless, the role and functions of prosecutors differ from those of judges and, for that reason, the concepts of independence and accountability are somewhat different as between prosecutors and judges. Prosecution services may in some measure be determined by the state to prioritise the criminal policy of the state. That's why it may prove to be difficult to provide common standards for the independence of both judges and prosecutors. But there is a species of independence where prosecutors in all jurisdictions have much in common with judges, in relation to their decisions as to whether or not to prosecute any particular case. The independence of prosecutors should, in this sense, be guaranteed by legal provisions at a constitutional level or by laws.

The independence of the Judiciary as a whole and the independence of judges and prosecutors play a critical role in strengthening the *Rule of Law*. A legal system based on respect for the Rule of Law needs – besides the guarantees awarded to judges – strong, independent and impartial prosecutors willing to open an investigation and to prosecute suspected crimes and suspects, regardless of the status or the influence in society of the suspects. In several Judiciaries, a strong and independent prosecution service has proven to be the appropriate measure for the fight against corruption and for strengthening the Rule of Law.

In many of the European countries, the prosecutor is a part of the Judiciary *sensu lato* and in each of the five countries⁷ represented in the subgroup, prosecutors are magistrates and enjoy a similar status to judges. In other countries, prosecutors may be a part of the executive or may have the same status as lawyers. Nevertheless, in each and every system, the act of prosecution should be independent and based only on the law. Any influence that may affect the independence of prosecution is likely to affect the entire trial, especially in the systems where the judge has a more passive role and the measures taken *ex officio* are limited. In these cases, the independence of the prosecutor is a guarantee to the independence of prosecution act and to a fair trial.

International documents underline that in every system the prosecutor is expected to act in a judicial manner and the qualities required of a prosecutor are similar to those of a judge.⁸ Prosecutors also share with judges the need for public accountability. Their independence is not a right that can exist without such accountability. The independence and integrity of public prosecutors are of legitimate interest to the general public and public scrutiny is justified.

Starting from the framework of the independence of judges and prosecutors, the subgroup has drafted a set of **indicators** that are applicable in the Judiciaries where the prosecutors are represented within the Council for the Judiciary.

Having in mind the specific organisation of the prosecution offices, within the objective independence, there was established the distinction between *external* and *internal* independence. **In relation to the external independence of prosecution offices**, the following indicators were developed: (1) legal basis of independence, (2) organisational autonomy of prosecution services, (3) funding of prosecution services (4) management of the prosecution services. **The**

⁷ Belgium, Bulgaria, France, Italy and Romania.

⁸ Venice Commission CDL-AD(2010)040.

external independence of individual prosecutors concern: (1) appointment in top positions and human resource decisions, (2) stability in office, (3) procedures that are in place in the event of a threat to individual prosecutors. **Internal independence** concerns (1) the organisation of the prosecution hierarchical structure; (2) the decision on the merits of a case; (3) general instructions on investigation; (4) freedom of decision to uphold or withdraw the accusation.

The indicators of the **subjective independence of prosecution services and the individual prosecutors** fall into the following categories: (1) independence as perceived by citizens in general; (2) trust in prosecution services; (3) prosecutors' corruption as perceived by citizens in general; (4) independence as perceived by prosecutors themselves.

The indicators of the **accountability of prosecution services** fall in the following categories: (1) allocation of cases, (2) complaints against prosecutors and prosecution services in general, (3) periodic reporting by prosecution services, (4) relations between the press and prosecution services, and (5) external review of prosecution services. The indicators of the **objective accountability of individual prosecutors** are: (1) applicable codes of judicial ethics, (2) the processes relating to the withdrawal and recusal of an individual prosecutor, (3) whether prosecutors are allowed to undertake external activities, and the disclosure of such activities and interests, and (4) the degree to which legal proceedings are readily accessible and understandable. Subjective accountability is not pursued in this report due to lack of data.

The main task of the subgroup in relation to the indicators was to follow the consistency of the indicators for judges in relation to prosecutors and to develop new indicators where needed.

Having established these indicators for the independence and accountability of prosecutors, the subgroup considered it to be feasible and desirable to address to its five members – councils for judges and prosecutors – a request to apply these indicators and to perform a pilot in order to measure the results.

The subgroup notes that there are judicial systems where the individual prosecutor does not enjoy complete independence. The subgroup has only considered systems where prosecutors were represented within the ENCJ members. It considers that at a later stage it will be useful to establish contacts with other councils for prosecutors of EU members (e.g. Spain, Portugal, Lithuania, Croatia) and to consider the involvement of the Consultative Council of European Prosecutors (CCPE), International Association of Prosecutors (IAP), Network of General Prosecutors.

The follow-up of the work on the independence and accountability of prosecutors in systems that have Councils that include both judges and prosecutors will be for consideration by the Executive Board and at the General Assembly.

3. Introduction: Methodology and Goal of the Project

The objectives of the subgroup on the independence and accountability of the prosecutors, as recommended in the 2013/2014 Report and adopted by the General Assembly in Rome were:

First, to develop, within the project on “Evaluation of the Independence and Accountability of the Judiciary” and in addition to the indicators that apply for judges, specific indicators for the independence and accountability of the prosecutors.

Second, the project aimed at presenting an ENCJ vision about independence and accountability of the prosecutors in relation to the Councils for the Judiciary, members of the ENCJ that represent both judges and the prosecutors.

The project subgroup was chaired by Judge Mr. Horatius Dumbrava, of the Romanian High Council and the secretariat was provided by prosecutor Mr Flavian Popa. The subgroup was composed of representatives of the five Councils for the Judiciary where the prosecutors are also represented (Belgium, Bulgaria, France, Italy and Romania) and benefited from the participation of the representatives of members or observers from England and Wales, Germany and Spain. Several debates were held within the plenary meetings of the working group on the Independence and Accountability of the Judiciary.

The subgroup met on the following occasions:

- 18-19 September 2014: Project Group meeting Madrid, Spain
- 1-2 December 2014: Project Group meeting Brussels, Belgium
- 12-13 February 2015: Project Group meeting Bucharest, Romania
- 9-10 April 2015: Project Group meeting Lisbon, Portugal.

4. European and International Standards on the Independence and Accountability of Prosecutors

Following the same pattern as for the judges, the sub group has attempted to identify all relevant documentation in the field of independence and accountability of the prosecutors. Appendix F contains a summary of the existing material in this matter. The documents are mentioned in their chronological order.

The existing materials have formed the basis of the Framework that is contained in Chapter 5.

5. Framework of the Independence and Accountability of the Prosecutors

5.1 Introduction

In simple language, a prosecutor is someone who, representing the society, initiates legal proceedings against a person. A prosecutor may also undertake some form of judicial activity, depending on the specific attributes of individual legal systems.

The statutory background to the prosecution service and the functions, powers and methods of organisation of prosecutors differ considerably across Europe. In many civil law jurisdictions, prosecutors are civil servants who have special powers in the application of the law on behalf of the state. In some jurisdictions, prosecutors belong to the same body of civil servants as the judges or magistrates. In common law jurisdictions, prosecutors are entirely separate from the judiciary, and they operate much as any other represented party would operate before the courts. For this reason, it is difficult to achieve an entirely accurate general definition of a 'prosecutor' that is applicable to every national system.

It is generally accepted, however, that prosecutors are public authorities whose object is to protect the public interest, to ensure the application of the law where its violation attracts a criminal sanction⁹. Prosecutors must also take into account respect for human rights and procedural guarantees. It is also generally accepted that prosecutors should defend the general interests of the society even against members of the executive or the legislature (for example, if they are involved in organised crime or other criminal actions). Prosecutors thereby play a critical role in strengthening the Rule of Law.

The role and functions of prosecutors differ from those of the judges. For that reason, the concepts of independence and accountability may be considered somewhat different as between prosecutors and judges.

The central difference, in terms of independence, is that the judges' decision can in no sense be controlled by the state, because they must decide cases impartially as between the state and its citizens. Prosecution offices, on the other hand, can in some measure be required by the state in order to put in practice public policies: for example, an elected democratic legislature or even the executive can legitimately ask the prosecution service to prioritize the prosecution of one type of criminal activity over another.

It is because of this difference that it may appear difficult to provide common standards for the independence of both judges and prosecutors. But there is another species of independence where prosecutors in all jurisdictions have much in common with judges. That is the

⁹ The Strasbourg Court held that "prosecutors are civil servants whose task it is to contribute to the proper administration of justice. In this respect they form part of the judicial machinery in the broader sense of this term". (ECHR, *Lešník v. Slovakia*, § 54, 11 March 2003, 35640/97, ECHR, *Błaja News sp. Z o.o. v. Poland*, § 60, 23 November 2013, ECHR *Chernysheva v. Russia*, 10 June 2004).

independence of prosecutors where they are to decide whether or not prosecute any particular case. The independence of prosecutors should, in this sense, be guaranteed by legal provisions at a constitutional level or by laws which can be adopted or modified by a qualified majority of the Parliament.

Prosecutors also share with the judges the need for public accountability. Their independence is not a right that can exist without such accountability.

In several EU countries, the careers and responsibilities of prosecutors are governed by Councils for Prosecutors or Councils for Judiciary. In these cases, the Councils guarantee their independence and form the barrier between politicians on the one side and judges and prosecutors on the other.

5.2 Key components of the independence of prosecution services and of individual prosecutors

The separations of the state's powers and the right to a fair trial are inconceivable without the independence of judges. This is less visible in the case of prosecutors, especially considering the variety of legal systems, from total separation to full integration in the executive power.

In order to achieve the independence of prosecutors, states require measures to allow prosecutors to carry out their main activity – namely to prosecute – protected from interference by the legislature, executive power or any other influence.

5.3 Objective independence

5.3.1 External independence of prosecution offices

For external independence we may identify several categories, depending on relations with other bodies: independence from politicians or other powers in state (legislative and executive); independence from judges; independence from investigative bodies;

The independence of prosecution can be safeguarded by the establishment of a **Council** for Prosecutors or a Council for Judiciary so as to allow prosecutors to be represented to and protected from other state's powers.¹⁰ Such councils must be representative of the professional body of prosecutors and must include members of civil society. The decisions on the career of prosecutors must always be taken by a majority of prosecutors, with Belgium as the only exception.¹¹

¹⁰ *Declaration of principles on prosecutors* – MEDEL, Naples, 2 March, 1996.

¹¹ Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies). CCJE Opinion No.10 (2007) on the desirable functioning of judicial councils.

In some states, there are Councils for Judges and Prosecutors. Some of these councils are split into two sections or chambers for judges and prosecutors respectively. The prosecutors elected in such councils should not have the right to decide on the career of judges and vice versa. Consequently, having a common council for judges and for prosecutors should not affect the independence of either, contrary it has the capacity to strengthen the independence of both judges and prosecutors.

The appointment or election of the head of the prosecution service (Prosecutor General) should be based on objective criteria¹² of professional competence, leadership, integrity and experience. There should be no political interference, whether formal or informal.

The independence of prosecutors must be supported by the state. This entails the provision of the finance necessary to initiate and to carry out investigations, to prosecute offences in the courts and to properly carry out their other duties. This may also involve access to information, investigative tools, and support staff.

The management of the prosecution services is strictly related to its hierarchical structure. Any external influence from the executive may pose a risk for the independence.

5.3.2 External independence of prosecutors

The independence of the public prosecutors' career (recruitment, appointment, promotion, assessment, suspension, dismissal, civil and penal liability, disciplinary procedures, sanctions, rights, duties, interdictions, wages, pensions etc.) must be stipulated by law. These cannot be left to the discretion of the other state powers. In this respect, any other solution would generate (even if only subconsciously) a situation of (at least moral) dependence or indebtedness to authorities outside the judicial system.

Clear, transparent and objective rules should also be in force for the appointment of prosecutors but also for the regular leading prosecutors apart from the Prosecutor General. If any prosecutor is appointed because of their loyalty to the power of state, their decisions will obviously favour the state, regardless of the law or the evidence.

The careers of prosecutors have to be governed by the same rules applicable to judges and be based on competence, merits, integrity and experience.

The independence of prosecutors must also be protected by compliant recruitment procedures, the incompatibility of appointment with other public or private functions,¹³ adequate

¹² *The Judges' Charter in Europe* (1997) from the European Association of Judges.

¹³ The Universal Charter of the Judge (1999) approved by the International Association of Judges - "Art.7. *Outside activity - The judge must not carry out any other function, whether public or private, paid or unpaid, that is not fully compatible with the duties and status of a judge*".

and protected levels of remuneration, and protections in relation to removability and promotion, discipline and dismissal.¹⁴

In relation to recruitment, prosecutors must fulfil equivalent requirements for professional skills and training to the judges. The quality of personnel in prosecution services should ensure professional prosecution, able to assess the evidence in accordance with the law and to protect the defendant's rights and the rights of the victim and to enforce the Rule of Law.

The criteria for the recruitment of prosecutors should be established, transparent and open to public scrutiny. These criteria should favour the appointment of skilled, impartial and objective staff.

The independence and integrity of public prosecutors are of legitimate interest to the general public. They should be protected from attacks which are likely to prevent them carrying out their duties independently or which damage public confidence in them and in the office they hold.

Prosecutors act on behalf of society. Prosecutors must be able to initiate and conduct investigations not only against the citizens, but also against public authorities, members of Government and of governmental organisations. The right of prosecutors to prosecute these persons and especially in relation to corruption, abuse of power, embezzlement, violation of human rights¹⁵ and other serious offences must be guaranteed.

It is necessary to distinguish between the interests of society and the interests of the state. Conducting an independent prosecution is in the interests of society; it is not for the benefit of the executive or of other state organisations. Therefore, the independence of prosecutors must be seen also as a guarantee of the interests of citizens, though it manifests itself in a different way from the independence of judges.

Where specially authorised police officers have prerogatives during the investigation phase before trial, or even the right to conduct the prosecution, clear legal provisions should be in place so as to avoid interference with the authority of the prosecutors. In cases where the prosecutors coordinate or run an investigation carried out by the police, they will have the power to control its course. No police superior may take any step that will affect the investigation directly or indirectly without the prosecutor's authority.¹⁶

Prosecutors must be independent also from the media. Communication with the media should balance the need to ensure independent, impartial and transparent justice on the one hand, and the need to guarantee other fundamental rights, such as freedom of expression and freedom of the press on the other hand. Since many attacks on the independence of prosecutors are made in the media, legal remedies should be available in national law.

¹⁴ Guidelines on the role of the public prosecutor adopted at the VIIIth congress of United Nations for prevention of the criminality and the treatment of perpetrators, Havana, Cuba 27 August – 7 September 1990.

¹⁵ *The Universal Declaration of Human Rights* (1948) as adopted by the UN General Assembly.

¹⁶ *Declaration of principles on prosecutors* – MEDEL, Naples, 2 March 1996.

Prosecutors should also preserve their own independence from judges. But where judges and prosecutors have the same status in a particular state, it is recommended¹⁷ for the same person to perform successively the functions of public prosecutor and judge or vice versa under a clear and transparent procedure.

5.3.3 Internal independence

Generally, prosecutors operate within a hierarchical structure. Internal independence is dependent on the particular organisation of this structure in the state's prosecution service.

Within the hierarchical structure, the prosecutors attached to a particular case should be allowed to decide on the merits of the case, whether to proceed with charges, and the way in which the prosecution will be undertaken before the court.

Specific and general instructions on organisational matters issued by senior prosecutors to their juniors should be grounded in law and should be given in writing, wherever possible. A prosecutor who is given a controversial instruction should have the right (prescribed by the law) to appeal or should have access to an internal procedure to challenge the legality of the instruction.

Prosecutors should enjoy certain stability in their office similar to the irremovability of judges¹⁸. Being appointed for limited periods of time, with the discretion of an external body to renew the mandate may affect their independence. Therefore, tenure in office must be guaranteed until the retirement age.

A prosecutor should only be moved or transferred to a different office or region or may be seconded to another body only with their consent.¹⁹ Switching into another function without consent should be possible only under clear and transparent rules.

The state must also ensure that prosecutors are able to perform their duties without intimidation, harassment and unjustified exposure to civil, penal or other forms of liability.²⁰

Prosecution services should be organised in such a way as to ensure procedural guarantees and decision-making based on the evidence and the law and on no other criteria. Prosecutors should, therefore, be able to withdraw any charges that turn out on the law and the evidence to be groundless, without any interference from their superiors. Furthermore, prosecutors

¹⁷ Opinion no 9, Consultative Council of European Prosecutors, Rome Charter.

¹⁸ Several international documents may be applicable as an analogy, such as *UN Basic Principles on the Independence of the Judiciary*, adopted in 1985, *Recommendation No. R (94) 12* of the Committee of Ministers of the Council of Europe to Member States on the *independence, efficiency and role of judges*, and the *European Charter on the Statute for Judges (1998)*, *Opinion No 1 (2001) of the Consultative Council of European judges (CCJE)* for the attention of the Committee of Ministers of the Council of Europe on *Standards concerning the Independence of the Judiciary and the Irremovability of Judges* (adopted in Strasbourg, on 23 November 2001).

¹⁹ See also Opinion no 9, Consultative Council of European Prosecutors, Rome Charter, par 68-71.

²⁰ *Standards of professional responsibility and statement of the essential duties and rights of prosecutors*, adopted by the International Association of Prosecutors, 23 April 1999.

should have the freedom to uphold in the courts any conclusion they may reach according to the law and to the facts.

In short, prosecution services must be autonomous to achieve their complete independence. The decision to start or to drop an investigation should be independent and based on the law and on the evidence. Likewise, the decision to prioritise resources on important cases should also be taken by prosecutors. But as we have said, the priorities in terms of types of offences can properly be influenced by legislation.

Public prosecutors must carry out their duties impartially and on the basis of law. These aspects are similar to the basis on which a judge acts within a trial. Prosecutors must not pursue a conviction whatever the circumstances and at all costs.

As already explained, it is legitimate for the executive to require a prosecution service to implement government policies contained in legislation or decided upon by the executive, but such influence must not bear upon any individual prosecuting decision. All such decisions must be made independently by the prosecutors themselves. Prosecutors must be free to give their own views to the court on the evidence and the law as they affect a particular case, without regard to the opinions of their superiors or of the Government.²¹

5.4 Subjective independence of prosecutors

Prosecutors should not perform any other public or private functions which could affect the good faith performance of their duties.²² The remuneration of prosecutors must also be protected,²³ in order to protect them from the risk of corruption.

5.5 Rationale of accountability

5.5.1 Accountability of prosecution services

Transparent rules of allocation of cases should be in force in order to ensure the impartiality and professionalism in the activity of prosecutors and to avoid any suspicions in allocation or reallocation of cases.

²¹ *Standards of professional responsibility and statement of the essential duties and rights of prosecutors*, adopted by the International Association of Prosecutors, 23 April 1999., Rome Charter, CCPE Opinion no 9, 2014, par. 5, 15, 17.

²² The Universal Charter of the Judge (1999) approved by the International Association of Judges - “Art.7. *Outside activity - The judge must not carry out any other function, whether public or private, paid or unpaid, that is not fully compatible with the duties and status of a judge*”.

²³ Guidelines on the role of the public prosecutor adopted at the VIIIth congress of United Nations for prevention of the criminality and the treatment of perpetrators, Havana, Cuba 27 August – 7 September 1990.

A complaint procedure against the decisions of the prosecutors should be available in front of the judge. However, the prosecutors should be able to perform their duties without intimidation, harassment and unjustified exposure to civil, penal or other forms of liability.

Public scrutiny of the administration of prosecution offices is crucial to society. Aspects such as efficiency, budgeting, volume of work and sufficient funding should be reflected in annual reports.

A Council of Prosecutors offers one further means of accountability, particularly if the Council includes members of civil society.²⁴

The relation with the press is important in a democratic society. Explanation of high profile prosecution decisions to the media may meet the need of the society to feel that justice has been served.

5.5.2 Accountability of prosecutors

1. Prosecutors act on behalf of the society, and must be responsible to it.
2. Public interest and public attention has recently turned to prosecution services in many states. Their activities must be transparent, although legislation may properly restrict the publication of their investigations and the materials they create.²⁵
3. The rules on accountability of prosecutors and their procedures should be public and established by law.
4. A code of ethics can strengthen public confidence and promote a better understanding of the role of the prosecutor in society.
5. Assessment of prosecutors can be undertaken individually, by reference to a particular case, or in relation to overall performance in a certain period of time.
6. The decision not to prosecute may be submitted to a judicial review.
7. Even where prosecutors are fiercely independent, measures to ensure their accountability must be in place. Public perception of their performance and the responsibility of prosecutors is very important, so as to provide the public with insight into their work.

²⁴ *Declaration of principles on prosecutors* – MEDEL, Naples, 2 March 1996.

²⁵ Conclusions of the Conferences of Prosecutors General of Europe (available on the website of Council of Europe - CCPE), para. 95.

6. Indicators of the independence and accountability of prosecutors

A: Indicators of the independence of the prosecutors

The **external indicators of the objective independence of the prosecution services** fall into the following categories:

- 1) Legal basis of independence;
- 2) Organisational autonomy of the prosecution services in relation to external bodies;
- 3) Funding of the prosecution services;
- 4) Management of the prosecution services.

The **external indicators of the independence of individual prosecutors** concern:

- 1) Appointment in top positions and human resource decisions,
- 2) Procedures that are in place in the event of a threat to the independence of the individual prosecutors.

The **internal independence** concerns:

- 1) The organisation of the prosecution hierarchical structure;
- 2) Stability in office;
- 3) The decisions on the merits of the case;
- 4) General instructions on the investigation;
- 5) Freedom of decision to uphold or to withdraw the accusation;

The indicators of the **subjective independence of the prosecution services and the individual prosecutors** fall into the following categories:

- 1) Independence as perceived by citizens in general;
- 2) Trust in prosecution services;
- 3) Prosecutors' corruption as perceived by citizens in general;
- 4) Independence as perceived by prosecutors themselves.

The indicators of the **accountability of the prosecution services** fall in the following categories:

- 1) Allocation of cases,
- 2) Complaints against prosecutors and prosecution services in general,
- 3) Periodic reporting by prosecution services,
- 4) Relations between the press and prosecution services,
- 5) External review of prosecution services.

The indicators of the **objective accountability of the individual prosecutors** are:

- 1) Applicable codes of judicial ethics,
- 2) The processes relating to the withdrawal and recusal of an individual prosecutor,
- 3) Whether prosecutors are allowed to undertake external activities, and the disclosure of such activities and interests, and
- 4) The degree to which legal proceedings are readily accessible and understandable.

As in the situation of the 2013/2014 Report on the independence and accountability of judges, subjective accountability of prosecutors is not pursued in this report due to lack of data.

6.1 The legal basis for independence

The legal basis for independence comprises a number of sub-indicators concerning the formal protections for independence that are in place as follows:

- Formal guarantees of the independence of the prosecutors;
- Formal assurances that prosecutors are bound only by the law;
- Formal methods for the determination of prosecutors' salaries;
- Formal involvement of prosecutors in the development of legal and judicial reform and in criminal policy of the state.

6.1.1. Formal guarantees of independence

This is a common sub-indicator for judges and prosecutors and it measures the degree to which the independence of prosecutors is formally safeguarded. The independence of prosecutors – which is essential for the rule of law – must be guaranteed by law, at the highest possible level, in a manner similar to that of judges and it should not be easily affected by the decisions of the executive or by a simple act of the legislature. Therefore, a guarantee in the constitution or in the state's equivalent provisions reflects the strongest protection.

6.1.2. Formal assurances that prosecutors are bound only by the law

The indicator is similar to the indicator applicable to the judges, having however its own specificities. Accordingly, the prosecutors should be autonomous in their decision-making and should perform their duties free from external pressure or interference. This indicator measures whether prosecutors are explicitly bound only by the law and thereby prevented from responding to political, media and other external pressures, considering also the variety of legal systems, where prosecutors are either totally separated or fully integrated with executive power. Again, the strongest protection is a constitutional safeguard.

6.1.3. Formal methods for the determination and adjusting the prosecutors' salaries

The same principles should be applied to prosecutors as to judges in relation to salaries. The independence of prosecutors can be undermined if the executive is not bound by formal controls relating to fixing these salaries and if it may use punitive salary cuts.

Arbitrary executive control of salaries may pose the same risks as for the judges and exposes prosecutors to the risk of inappropriate pressures and corruption. Formal protection for prosecutors' salaries is, therefore, of great importance.

A formal mechanism to adjust salaries for both judges and prosecutors may be in force in some Judiciaries, whilst in other, different systems may function. In both situations, it should be kept the pace with the average development of salaries in the country and/or with inflation and should not be arbitrarily determined, making formal protections ineffective.

6.1.4. Formal involvement of prosecutors in the development of legal and judicial reform and in criminal policy of the state

This indicator measures whether prosecutors have the same possibility as judges to be heard in the law making process in relation to their powers and to propose law reforms. Any reform of the law that may weaken the status of prosecutor may represent a threat to independence. A specific requirement would be the need to advise upon the developments in relation to the criminal policy of the state. The executive imposing certain general measure without the consultation of the prosecution services may also be a threat.

The strongest protection is a formal guarantee that prosecutors are entitled to be involved in the law reforms in relation to their activity or the criminal justice system and in drafting the criminal policy of the state.

6.2 Organisational autonomy of prosecution services

The organisational autonomy of prosecution services may be different from that of the judges, because in many cases, as a tradition, the hierarchical structure of this body may be under a certain authority of the executive. In many countries such authority may be only in theory, without being used under any form by the executive.

In any case, some decisions should be transparent and without any external influences and should be taken by the Prosecutor General or by an independent self-governing body that operates autonomously. In this matter, ENCJ has concluded that for the judges, the Council for the Judiciary is the preferred way to govern its own affairs in a transparent matter. The same may be applicable for prosecutors. Nevertheless, if such a Council exists, some of the powers may be divided between the Council and the Prosecutor General.

As for the five participating countries, there have been established Councils for Judiciary that represent both judges and prosecutors. In some other countries, in a more or less similar pattern, there were established councils only for prosecutors. Their composition and powers may differ. From this perspective, ENCJ may be interested in establishing a dialog with them on the independence of the prosecution services.

A third situation may exist and this may relate to countries where there are no councils with any powers over the prosecutors. In this case, the Prosecutor General should enjoy certain autonomy in relation to other state powers.

The indicator looks into the assessing the external organisational of prosecutor offices, be it protected by a Council for Judges and Prosecutors, a Council for Prosecutors or the Prosecutor General.

Either of these organisational forms with powers over the career of prosecutors will be considered as adequate if they offer some guarantees of independence.

Where there is established a Council for Prosecutors / for Judges and Prosecutors, following criteria will be considered:

- Formal position of the Council;
- Responsibilities of the Council.

Formal position of the Council for Prosecutors / for Judges and Prosecutors

Where there is a Council with powers over the career of prosecutors, the formal position of the Council must be considered. In case of the Councils for Judiciary, the criteria were detailed in the 2013/2014 Report. Its position can be described in the constitution or by an ordinary law. In case of the Councils for Prosecutors similar criteria may be followed.

Nevertheless, having a common Council for judges and for prosecutors may be considered as an advantage to the independence of both of categories.

Responsibilities in relation to the prosecutors

In the same manner as for the judges, this indicator captures the scope of the responsibilities of the Councils in relation to the prosecutors. The following key responsibilities are recommended as part of the functions of the Council:

- a) The appointment and promotion of prosecutors;
- b) The training of prosecutors;
- c) Prosecutors' discipline;
- d) Prosecutors' ethics;
- e) Complaints against prosecutors;
- f) Defending the independence and good reputation of the prosecutors.

Some of the following functions are acceptable to be shared with the Prosecutor General or chief prosecutors at a regional level, such as:

- g) The performance management of prosecutors' offices;
- h) The administration of prosecutors' offices;
- i) The financing of prosecutors' offices;
- j) Proposing giving opinions on the legislation concerning prosecutors' offices, criminal justice or criminal policy.

Within the Councils, it is recommended that the decisions on the prosecutors should be taken by a majority of prosecutors or at least by a majority of judges and prosecutors, with Belgium being the only exception. The categories of decisions which are in the competence of the Councils and respectively in the competence of the Prosecutor General should be clearly distinguished.

6.3 Funding of prosecution services

In many countries, the budget for the prosecution services is included in the overall budget of Judiciary (courts and prosecution offices)²⁶. In others, the budget of the prosecution services may be established and managed separately than that of the courts, or it may even be analysed together with other state authorities.

In any case, the funding of prosecutors' offices may face the same vulnerabilities as for the courts in terms of ensuring their independence. Accordingly, the following sub-indicators are applicable to both courts and prosecution offices:

²⁶ E.g. Austria, Belgium, France, Greece or Luxembourg.

- *The degree to which the budgets are sufficient* for prosecutors` offices to fulfil their responsibilities,
- *Budgetary arrangements* – the degree to which the prosecutors are involved in the determination of budgets, the way budgets are constructed and the degree of freedom in allocation of funds,
- *Funding system* – the transparency and the criteria used in order to establish the budget.

Sufficiency of actual budgets

Actual budgets of the prosecution offices need to be sufficient. The indicator deals with the sufficiency of budgets by distinguishing key activities that must receive adequate funding. These are similar to those in case of the courts:

- a) handling of caseload;
- b) engaging experts, translators, legal aid etc. where necessary and when fees are paid by prosecution office;
- c) keeping the knowledge and skills of prosecutors and staff up to date;
- d) providing the technical infrastructure needed for investigation;
- e) facilitating prosecutors and other personnel in matters of IT systems, buildings etc.

Budgetary arrangements

The involvement of prosecution services in the budget process is determined by their role in the subsequent phases of this process. These phases are:

- a) preparation of the budget to be allocated to prosecutors` offices;
- b) method of proposal on the budget to be allocated to prosecutors` offices;
- c) adoption of the budget allocated to prosecutors` offices;
- d) management of the budget allocated to prosecutors` offices;
- e) evaluation/audit of the budget allocated to prosecutors` offices.

Funding system

The indicator describes similarly to the courts whether or not the funding of prosecution services is based upon transparent, objective criteria. Possibilities are among others: actual costs (e.g. number of prosecutors and support staff), the workload of prosecution offices and a fixed percentage of government expenditure or GDP.

The budgets should match the workload of prosecution offices and the actual costs must be covered. A system that is fixed by law offers more safeguards than a common practice.

The budgets must be transparent and respond to the needs of prosecutors` offices. Prosecutors should be enabled to estimate their needs, negotiate their budgets and decide how to use the allocated funds in a transparent manner, in order to achieve the objectives of speedy and quality justice.

6.4 The management prosecutor services

The responsibility for prosecution services` management differs between countries. As a tradition prosecution services are organised in a hierarchical structure, but responsibilities in relation to the management of the prosecution office may differ widely. That`s why this indicator may be considered at most similar to the corresponding indicator for the courts.

In several countries the management of the prosecution services' lays with the Minister of Justice. In others, the Minister of Justice may have only a general role of coordination and the management is carried out by the Prosecutor General, whilst less important decisions may be taken by the heads of prosecution offices. These former practices may pose a risk for the independence and the latter may represent a guarantee of independence. The more decisions taken by prosecution services themselves, the higher is the degree of independence.

The indicator that describes whether or not prosecution services are in charge of the following tasks:

- a) General management of prosecution offices;
- b) Appointment of prosecution staff (other than prosecutors);
- c) Other human resource management decisions in relation to their own staff;
- d) Decisions regarding the implementation and use of IT;
- e) Decisions regarding prosecution services buildings;
- f) Decisions regarding prosecution services security;
- g) Access to specific investigation tools such as information needed for investigation ;

6.4.1 Objective independence of prosecutors: human resource decisions about prosecutors

As for the judges, human resource decisions concerning selection and appointment, disciplinary processes and removal of prosecutors are an area of vulnerability for their independence. In these areas, prosecutors are exposed to potentially improper interference by other state powers, including, for example, political appointments or dismissals of prosecutors.

The appointment and termination of service of prosecutors should be regulated by clear and understood processes and procedures. Similar provisions to those for the judges are to be recommended. Considering that the proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, namely regarding recruitment, training, career development, salaries, discipline and transfer, it is necessary to secure proper tenure and appropriate arrangements for promotion, discipline and dismissal.²⁷

Human resource decisions about prosecutors comprise a number of sub-indicators as follows:

- Selection, appointment and dismissal of the Prosecutor General;
- Selection, appointment and dismissal of prosecutors and ordinary leading positions in prosecution services;
- Evaluation, promotion, disciplinary measures and training of prosecutors.

Selection, appointment and dismissal of head of the prosecution service (Prosecutor General)

The decision on the appointment of the head of the prosecution service is of particular interest and may prove to be more sensitive than in case of the judges. The hierarchical structure of the prosecution service may be exposed to a greater threat in relation to the influences in appointing the Prosecutor General, as from this position a certain authority may be exerted within all the prosecutors' body.

²⁷ Rome Charter, par. 51, op no 12 / 2009, 4/ 2009, Bordeaux Declaration (CCJE and CCPE), par. 6.

In a similar manner as for the judges (Chief Justice), if governments have some control over the appointment of Prosecutor General, it is important that the method of selection is such as to gain the confidence and respect of the public as well as of the members of the judicial or prosecutorial system and legal profession and avoid political backgrounds.

Selection, appointment and dismissal of prosecutors and ordinary leading positions in prosecution services

The sub-indicator measures the degree to which the appointments of prosecutors or ordinary leading positions in prosecution offices are decided without any external interference, under the responsibility of the Prosecutor General or other independent body. The following criteria are taken into account in relation to the responsible authority:

- a) Proposal of candidates for the appointment of prosecutors and ordinary leading positions;
- b) Decision on the appointment of a prosecutors and ordinary leading positions;
- c) Proposal for the dismissal of a prosecutors and ordinary leading positions;
- d) Decision on the dismissal of a prosecutors and ordinary leading positions;
- e) It has to be noted that the guidelines developed by ENCJ for the appointment of the members of the Judiciary are also applicable to the prosecutors²⁸.

The indicator establishes the degree to which these guidelines are adhered to in relation to prosecutors, in particular:

- a) The appointment process should be open to public scrutiny and fully and properly documented;
- b) The appointment process should be undertaken according to published criteria;
- c) The appointment should be based solely on merit;
- d) The appointment process should promote diversity, whilst avoiding discrimination;
- e) The appointment process should provide for an independent complaint procedure.

Evaluation, promotion, disciplinary measures and training of prosecutors

In a similar manner as for judges, this indicator measures the degree to which the prosecution services, the Prosecutor General or an independent body are responsible for the evaluation, promotion, disciplinary measures and training of prosecutors by evaluating separately the following decisions:

- a) Decision on the evaluation of a prosecutor;
- b) Evaluation of the performance management of prosecution services;
- c) Decision on the promotion of a prosecutor;
- d) Adoption of ethical standards;
- e) Application of ethical standards;
- f) Proposal for the appointment of a member of the disciplinary body for prosecutors;

²⁸ Within this project, the members of the Project Team agreed to describe the main goal of the Project as “to identify indicators that can help evaluate the compliance of the respective judiciary systems with the standards already defined” and it was agreed that “mutual confidence in the judiciary of the various European countries will be increased by knowledge of the minimum standards applied by each country as regards (...) selection or appointment of judges and/or prosecutors (admission into the judiciary), judicial training (initial and continuing) and judicial ethics” and that “both the development of minimum standards and their evaluation will contribute to strengthen mutual confidence among European judiciaries”. (page 6 of the Report)

- g) Decision on the appointment of a member of the disciplinary body for prosecutors;
- h) Proposal for a disciplinary decision regarding a prosecutor;
- i) Disciplinary decision regarding a prosecutor;
- j) Decision on the follow-up to a complaint against the prosecution services/ prosecutor;
- k) Decision on the program/content of training for prosecutors.

According to the ENCJ Guidelines²⁹, which may also be applicable to the prosecutors, where relevant, Member States should take measures to ensure that:

- a) Any system for the recruitment, selection and appointment of prosecutors should be independent of political influence, fair in its selection procedures, open to all suitably candidates and transparent in terms of public scrutiny;
- b) And any method of evaluating professional performance on basis of the quality of decisions should not interfere with the independence of the judiciary either as a whole or on an individual basis and should not check the legitimacy and validity of separate procedural decisions;
- c) the procedures for the evaluation of professional performance of prosecutors, ought to be placed in the hands of a body or bodies independent of government in which a relevant number of members of the judiciary are directly involved. The Ministry of Justice as a body of the executive branch of power should not directly deal with the evaluation of professional performance of individual prosecutors as a unique body of evaluation, since it could pose a threat to judicial independence.
- d) the careers of prosecutors, their professional evaluation, their promotions and their mobility are governed by transparent and objective criteria, such as competence and experience; recruitment bodies should be selected on the basis of competence and skills and should discharge their functions impartially and based on objective criteria;

The indicator is the same with the one used for the judges and establishes the degree to which these guidelines are adhered to. In particular:

- a) The promotion process should be open to public scrutiny and fully and properly documented;
- b) The promotion process should be undertaken according to published criteria;
- c) The promotion of prosecutors must be based solely on merit;
- d) The promotion process should promote diversity, whilst avoiding discrimination;
- e) The promotion process should provide for an independent complaint procedure.

6.4.2 Stability in office

A major guarantee of the independence of individual prosecutors is their stability. A means of improperly influencing a prosecutor might be his/her transfer or secondment to another prosecutor's office or other body without consent. It should not be possible to transfer prosecutors without their consent, except for disciplinary reasons in pre-established circumstances. Secondment without consent should be forbidden in any situation. Furthermore, switching of function should follow clear and transparent criteria.

Stability in office is an indicator which is applicable similarly to the indicator of irremovability (non-transferability) of judges. Accordingly, several similar sub-indicators are being considered.

²⁹ Report Development of Minimum Judicial Standards II - Minimum Standards regarding recruitment, selection, appointment and promotion of members of the judiciary, 2012/2012 and the Report Development of Minimal Judicial Standards III - Minimum Standards regarding evaluation of professional performance and irremovability of members of the judiciary 2012/2013.

Formal guarantees of stability of prosecutors

The formal protection of stability of prosecutors may vary from a jurisdiction to another. Introducing transfer, secondment or the possibility to switch functions against the will of a prosecutor represents a potential risk and should be balanced by safeguards provided by law. Therefore, this possibility should be governed by law and limited to exceptional circumstances, that may be similar to those applicable to judges, such as the strong need of the service (equalizing workloads, etc.).

As transfer or suspension from office as disciplinary measures are generally accepted in cases of particular gravity and are solutions that serve the general interest under the form of accountability of prosecutors, this situations are excluded from the analysis.

The indicator captures whether or not stability is formally guaranteed and how easily these guarantees can be changed by the other state powers. The strongest protection is a guarantee in the Constitution or in an entrenched law. A guarantee in law that can be changed by simple majority offers weaker protection, whilst customary protection is even weaker.

Arrangements for the transfer of prosecutors without their consent

The indicator addresses the situation in which stability is not fully guaranteed. The indicator addresses the following questions:

- a) Are the decisions in relation to transfer/secondment/switch of offices taken within the prosecution service/the Council?
- b) Are they for short or long periods of time?
- c) What are their reasons?
- d) Are these reasons prescribed by law?
- e) If a prosecutor is transferred/seconded/switched, are equivalent conditions guaranteed (in terms of position, salary, etc.)?
- f) Can the prosecutor appeal?

6.5 Objective independence of prosecutors: internal independence

Given the specific type of organisation of the prosecution offices, this indicator is considerably different from the indicator applied to the judges. The indicator has the following specific sub-indicators:

Organisation of the hierarchical structure

Within the prosecution services, as a rule, the organisation follows a model of hierarchical structure. This kind of organisation is considered a necessity in order to ensure the consistency and the effectiveness.

However, the relationships between the different layers of the hierarchy must be governed by clear unambiguous rules that establish the limits of the powers and responsibilities of each. Such rules should be published.

Decisions on the merits of the case

Independence does not only mean independence from outside forces, but also internal independence. The prosecutor should be able to decide upon an accusation *independently on the basis of the law and the evidence and the merits of the case*.

Prosecutors should enjoy guarantees of non-interference from their hierarchical superiors. However, in some judicial systems, the superior may, according to the law, give some instructions in a case. In these situations, on one hand, all public prosecutors have the right to request that those instructions should be put in writing, so that the hierarchy assumes direct responsibility. Writing these instructions should be the exception in cases where there are divergent points of view and such a request should not affect the career of the prosecutor. On the other hand, the respective prosecutor should have the possibility, at his own request, to be replaced in order to allow the disputed instruction to be carried out³⁰.

General instructions on the investigation; use of guidelines

The prosecution service can develop non-binding guidelines for matters such as uniformity, consistency, timeliness and efficiency. Furthermore, general principles and criteria to be used by way of references may also be issued.

Similarly to the judges, such instructions should not be binding, but it can reasonably be demanded from prosecutors that they explain why they did not comply with a guideline. The influence of executive power on the acts of prosecutors should be limited to general indications concerning penal policy of the state. Giving orders or indications by the executive/legislative power to prosecutors for a specific result in a certain case is not acceptable.

From these perspectives, we can distinguish between several types of interventions, in particular:

- a) A guideline (advisory opinion of general application for all prosecution services/prosecutors);
- b) General binding orientations (e.g. in relation with the enforcement of the criminal policy);
- c) An advisory opinion of concrete application in a specific prosecutorial decision;
- d) An obligatory decision of concrete application to a specific prosecutorial decision;

The indicator focuses on the use of guidelines within the prosecution services. To evaluate these practices, the following issues are relevant:

- a) Do guidelines have broad coverage?
- b) Have the guidelines been developed by prosecutors?
- c) Are the guidelines binding?

The instructions issued by the superiors should be grounded in law and should be given in writing.

Freedom of decision to uphold / withdraw charges

The prosecutors are free to bring in front of the judge their own views of the evidence and not the opinion of their superiors or of the Government. At the same time, the prosecutors should be independent from the legislative/executive powers and preserve their independence from judges, in relation to their function of accusation.

The indicator comprises a number of sub-categories:

- a) The possibility to decide whether to prosecute or not;
- b) The possibility to withdraw an accusation;
- c) The possibility to plead freely in front of the judge;

³⁰ Explanatory Recommendation no R(2000)19 on the role of the Public Prosecutor in Criminal Justice System, par. 10.

- d) the possibility that a prosecutor's decision can be overruled by a superior;
- e) the ground on which a decision can be overruled by a superior;
- f) The possibility to appeal the overruling decision.

6.6 Subjective independence

Subjective independence reflects the perception of the independence of prosecutors within the society. The same sub-indicators are considered to be relevant as for the judges. Three relevant groups are distinguished: citizens in general, prosecution offices' users and prosecutors.

In addition, two other concepts are considered: trust that citizens place in prosecutors relative to their trust in the other state powers and perceived corruption within the prosecutors' offices.

The sub-indicators fall into the following categories:

1. Independence as perceived by citizens in general;
2. Trust in prosecutors relative to trust in other state powers by citizens in general;
3. Prosecutors' corruption as perceived by citizens in general;
4. Independence as perceived by prosecution offices' users at all levels;
5. Independence as perceived by prosecutors themselves.

6.6.1 Independence as perceived by citizens in general

Independence of prosecutors as perceived by citizens is not measured at the level of the European Union. A recommendation may be sent to the European Commission in order to include this benchmark in the next Flash Eurobarometer *Justice in Europe*. The interest may be related to citizen perception in relation to the independence of prosecutors when opening or closing an investigation.

Prosecutors should inform the public, through the media, about their activities and the results thereof in high profile cases. Such communication may respond to the need of the public to be informed where a general interest resides, but also it may demonstrate transparency and lack of any external hidden interest in the investigation. A possible result may be the increase of public trust.

6.6.2 Trust in Prosecution offices relative to trust in other state powers by citizens in general

In most European countries surveys about the trust of citizens in their institutions are held on a regular basis. If such surveys usually include the judiciary, the prosecution service may be omitted.

The goal of such a survey would be to measure trust in prosecutors comparing with other public institutions, including the courts.

The sub-indicator encompasses a broader view than the previous sub-indicator.

6.6.3 Prosecutors' corruption as perceived by citizens in general

This indicator measures the perceived corruption in prosecution services. Comparing the results with those of trust in courts may be relevant. The indicator uses results of the recent European Commission reports with respect to corruption.

In relation to corruption, another indicator may be suggested – the perception of the efforts of prosecution services in tackling corruption.

We note from the latest special Eurobarometer for EU Corruption Report³¹ that European citizens think that corruption is widespread in the public prosecutor service (19%). Around a quarter of Europeans (26%) consider that there are enough successful prosecutions in their countries to deter people from corrupt practices.

6.6.4 Subjective independence: independence as perceived by the users of prosecution services

Independence as perceived by users of prosecution services may be reflected in the surveys carried out among the participants in the investigations – victims, defendants, lawyers or those that come in contact with the prosecution during their activity – investigation bodies, courts etc. By now, no such surveys have been carried out.

6.6.5 Subjective independence: independence as perceived by prosecutors

Independence as perceived by prosecutors comprises of two sub-indicators:

- Availability of surveys among prosecutors and
- Perceived independence by the prosecutors.

Availability of surveys among prosecutors

The indicator describes whether a survey among the prosecutors has recently been conducted (three years or less).

Judicial independence as perceived by prosecutors

The indicator is the percentage of prosecutors who feel themselves to be independent.

³¹ Special Eurobarometer for EU Corruption Report published in February 2014.

B: Indicators of the accountability of the prosecutors

The indicators of the objective accountability of the prosecution services fall into the following categories:

- 1) Allocation of cases;
- 2) Complaints procedure against prosecutors and the prosecution services in general;
- 3) Periodic reporting by the prosecution services;
- 4) Relations between the prosecution services and the press;
- 5) External review of the prosecution services.

The indicators of the objective accountability of the individual prosecutor fall into the following categories:

- 1) Applicable codes of ethics;
- 2) The procedures relating to the withdrawal and recusal of an individual prosecutor;
- 3) Whether prosecutors are allowed to undertake external activities, and the disclosure of such activities and interests;
- 4) The degree to which criminal procedures are readily accessible and understandable to the persons involved in the investigation.

The following indicators have been developed. These indicators consist again of several sub-indicators, as will be discussed below.

6.7 Objective accountability of the prosecution services

6.7.1 Allocation of cases

The indicator is similar to that of the courts. The mechanism for the allocation and reallocation of cases should guarantee the independent and impartial as well as expert treatment of every case. There should be in force transparent rules for allocation of cases.

The same two sub-indicators are applicable. Allocation of cases comprises two sub-indicators as follows:

a. Existence of a transparent mechanism for the allocation of cases

The indicator describes whether or not a transparent mechanism has been established by the prosecution offices, and if it is transparent.

b. Content of the mechanism for the allocation of cases

The indicator is based on:

- 1) The method of allocating cases;
- 2) The official charged with allocating cases;
- 3) The supervision of the mechanism
- 4) If a prosecutor can be taken off a case without his consent.

6.8 Complaints procedure

Complaints against the decision not to prosecute a case are to be raised in front of a judge. However, accountability requires also the opportunity to raise founded complaints about other matters such as the treatment of a case by a prosecutor and the behaviour of prosecution services staff.

Nevertheless, the state shall ensure that prosecutors are able to perform their duties without intimidation, harassment and unjustified exposure to civil, penal or other forms of liability. The complaints procedure comprises of a number of sub-indicators as follows:

- 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;
- Personal civil and criminal accountability of the prosecutor.

Availability of a complaint procedure

The indicator describes whether or not there is established a complaint procedure.

External participation in the complaints procedure

The indicators measures whether the procedure is carried out by the prosecution office or by an external body, independent from the prosecution office.

Scope of the complaints procedure

The indicator describes the scope of the procedure by enumerating the admissible grounds for complaints, such as the behaviour of the prosecutor, timeliness and administrative mistakes.

Appeal against a decision on a complaint

The indicator describes whether or not a decision on a complaint can be appealed and brought in front of the courts.

Number of complaints

The indicator is the number of complaints against the prosecution services. This is currently used as background variable.

Personal civil and criminal accountability of the prosecutor

A system of personal civil or criminal accountability of a prosecutor may not be accepted if it is not clearly established by the law and applicable only in situations of bad faith or gross negligence.

6.9 Periodic reporting

To allow external scrutiny the prosecution services should provide periodical reports to the general public or before a representative body. The same as for the courts, the prosecution service should be submitted to public benchmarking with respect to their performance, for instance in the area of fighting certain crimes provided in the criminal policy of the state, spending of resources etc.

Periodic reporting about the prosecution services comprises three sub-indicators:

- Availability of annual reports about the functioning of the prosecution services;
- Scope of the annual reports;
- Benchmarking of the prosecution services.

Availability of annual reports about the functioning of the prosecution services

The indicator is whether or not the prosecution services publish annual reports on their activity.

Scope of the periodic reports

The indicator captures whether or not the report includes data about:

- The indicators of performance of the activity of prosecution offices
- *in how manner prosecution offices implement the results of these reports*
- Disciplinary measures, (successful) complaints.

Benchmarking of the prosecution services

The indicator is whether or not the prosecution services are periodically and publicly benchmarked with respect to their performance.

6.10 Information to the press and public ³²

In order to be open and transparent, the prosecution services should maintain an open dialogue with the media, explain their practices as well as their high profile decisions in individual cases, without adversely affecting victims' rights. The prosecution services should also have an educational role in explaining to the population the importance of prosecution services in society.

³² Consultative Council of European Prosecutors, Opinion no 8, par. 30-46.

Obligation to present the decisions of the prosecution, if required to the court, to any member of the public subject to a court deciding that it is not in the public interest for that to happen.

The relation with the press comprises two sub-indicators:

- Explanation of high profile prosecution decisions to the media and the parties;
- Availability of press guidelines;

Explanation of high profile prosecution decisions to the media

As a rule, the criminal investigation is not open to the public. The strategy decided in a case, the name of the suspects, the administration of evidence and the decisions taken are not subject to public scrutiny.

However, in high profile cases, the interest of the society may require some information. In these situations, prosecution services officials (for example, communications officers or press prosecutors) should offer to the public certain information in order to guarantee a proper balance between the need to ensure an independent, impartial and transparent justice and the personal rights of the persons involved in the proceedings.

In order not to undermine the effectiveness of the investigation, the prosecution body should cooperate with the police (when they are involved in the investigation) in order to coordinate the information released to the press.

The indicator measures whether or not prosecutors` decisions are explained in appropriate cases to the media.

Availability of press guidelines

The indicator measures whether the prosecution services have established guidelines that regulate what the press is allowed to report and by which medium. ³³

6.11 External review

External review can take different forms, but in this case, only similar reviews as those applicable for the courts, such as external audit and inspection, are accepted.

External review can measure different aspects of performance, such as quality and efficiency, but also specific topics such as knowledge management. An external review for these purposes is one that is undertaken by persons outside the prosecution services. External reviews undertaken or commissioned by other state powers may compromise independence and are undesirable.

Summoning individual prosecutors to give explanations on how the investigation is carried out, especially where dealing with cases of corruption within other powers, is not acceptable.

External review comprises three sub-indicators:

- Use of external review;
- Types of external review;

³³ Consultative Council of European Prosecutors, Opinion no 8.

- Responsibility for external review.

Use of external review

This indicator measures whether or not external review is used to evaluate the performance of the prosecution services on a regular basis.

Responsibility for external review

The indicator relates to the identity of those commissioning an external review of the prosecution services:

- The prosecution services itself;
- The Executive;
- The Legislature.

The preferred option is for the prosecution services itself to commission external reviews, as the other options may conflict with independence. In any case, the conclusions should be published.

6.12 Objective accountability of the prosecutor

6.12.1 Code of ethics

In many countries the standards of conduct of prosecutors are similar to those of the judges. In others they may differ. However, the society can expect from its prosecutors to follow a set of ethical principles. A code of ethics can strengthen public confidence and promote a better understanding of the role of the prosecutor in society.

The existence of a code of ethics is one indicator.

Availability of a code of ethics

The indicator measures the existence of a code of ethics. The code should be available to the public.

6.12.2 Withdrawal and recusal

The prosecutor is required to instrument a case entrusted to him independently and impartially. If this is not possible, he should voluntarily withdraw from the case. Also, there should be a transparent procedure for recusal in case parties doubt the impartiality of a prosecutor. Withdrawal and recusal comprise a number of sub-indicators:

- Voluntary withdrawal;
- Breach of an obligation to withdraw;
- Request for recusal;
- The authority determining the question of recusal;
- Appeal against a decision for recusal.

Voluntary withdrawal

This indicator measures whether or not a prosecutor is obliged to withdraw from solving a case if he/she himself/herself believes that his impartiality is in question or compromised or that there is a reasonable perception of bias.

Breach of an obligation to withdraw

This indicator addresses whether a prosecutor who fails to respect the obligation to withdraw from solving a case, can be subject to a sanction, and, if so, the severity of the sanction.

Request for recusal

This indicator measures whether or not a procedure exists to decide on a request for recusal by a party who considers that a prosecutor is partial or biased.

Deciding authority

The issue here is which authority takes the decision on a request for recusal, in particular, the prosecution services, the Judiciary or the Executive. The latter option is, of course, problematic from the perspective of judicial independence.

Appeal against a decision on a request for recusal

This indicator measures whether or not an appeal lies from a decision to refuse to recuse.

6.12.3 Are prosecutors allowed to undertake external activities, and do they disclose such activities and interests?³⁴

In most of the countries, these policies are similar to those applicable to the judges. They may differ among the nations of Europe on whether judges are allowed to combine being a prosecutor with other paid and unpaid functions and offices. Whilst paid and unpaid functions may endanger independence, they may also allow prosecutors to become more in touch with society. The best approach is, therefore, unclear. From the perspective of accountability it is important that, when prosecutors are allowed to hold other offices or perform other functions, they do so transparently. This is also necessary for the effective use of the right to request recusal. It is noted that in some countries the privacy of judges is a reason not to disclose information.

The question of whether prosecutors are allowed to undertake external activities and the disclosure of such activities and interests comprise a number of indicators as follows:

- Policy on paid offices and functions;
- Policy on unpaid functions;
- If paid or unpaid activities are allowed, the type of activities allowed;
- Availability of a public register of external activities and functions of prosecutors;

³⁴ See GRECO's 4th round of evaluation.

- Policy relating to disclosure of financial interests.

Policy on paid offices and functions

This indicator measures whether or not prosecutors are allowed to undertake other paid functions or offices.

Unpaid offices and functions

This indicator measures whether or not prosecutors are allowed to undertake unpaid offices and functions.

Permitted offices and functions

If offices and functions outside the prosecution services are allowed, the follow-up indicator seeks information about the nature of activities that are permitted. Categories are the following:

- Political functions;
- Functions in (the governance of) companies;
- Functions in (the governance of) public institutions such as schools and sports clubs;
- Arbitration;
- Lawyer;
- Teaching at universities or schools.

Public register of external offices and functions

This indicator seeks information as to existence of a public register of the external offices and functions undertaken by prosecutors.

Disclosure of financial interests

Another matter is whether prosecutors should disclose - in a register - their financial interests, above a certain amount. Opinions differ about this issue. The indicator measures the existence of such a financial disclosure obligation.

6.12.4 Understandable procedures

The prosecutor plays a key role in keeping procedures as transparent as possible and in explaining them to the parties. Understandable proceedings comprises of two sub-indicators:

- Explanation of procedures;
- Training of prosecutors.

Duty of prosecutors to make procedures intelligible to the parties

This indicator measures whether or not judges are obliged to make sure that parties understand the proceedings. The prosecution has to explain to the parties their procedural rights.³⁵

Training of prosecutors

The indicator captures whether prosecutors get training in how to:

- Conduct a criminal investigation appropriately;
- Explain the procedures in an understandable manner to the parties;
- Explain the decisions in an understandable manner to the parties.

³⁵ art. 11, [Directive 2012/29/EU](#) of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime; [Directive 2012/13/EU](#) of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

Appendix A – Report Pilot Dialogue Group

Date: 23 March 2015

Venue: CPGA Italy - Rome

Participants

Italy CPGA:	Ermanno de Francisco Sylvia Coppani Giuseppina Adamo
Italy CSM:	Mariarosaria Guglielmi Giulio Adelardi
Lithuania TT:	Vigintas Visinskis Gintaras Kryzevicius
Slovenie Sodni Svet:	Mateja Koncinqa-Peternel
Norway Domstol:	Bård Tønder Wiggo Storhaug Larsen
Netherlands Rvdr:	Frans van Dijk (moderator)
ENCJ Office:	Monique van der Goes (report)

Frans van Dijk explained the idea and objective of the meeting. The objective was to have frank and open discussions to enable to identify the 3 main challenges per country in the area of independence and accountability and possible remedies.

As stated in the note on the methodology of the meeting all details concerning today's discussions will be confidential, except for the report as such. All other information about the discussions regarding a country can only be made public by the participants of that country.

Before the meeting all participants received the scorecard of all countries represented and the filled-in questionnaires.

The dialogue group started with each country setting out its main challenges based on the scorecard.

Norway – Domstoladministrasjonen

The main areas of concern are:

Lack of legal guarantees / lack of funding

There are not enough formal structures in place. The question is whether the court administration and its governing body can actually be seen as a council. There were difficulties with filling in the questionnaire, and interpretations were needed to reply. The current council does not have a majority of judges, and these judges are not elected by their peers. There is no autonomy or self-governance.

Also the council does not have real influence on the budget of the judiciary. It is entirely dependent on the government and that government has other priorities. The Judiciary and how it is organized is not a main issue for the Minister. Meanwhile the perception of justice is good. As a result, the judiciary has a very weak negotiating position. As a result there is a lack of funds, for instance for adequate security measures at the courts. The same applies to the IT infrastructure.

A 'real', fully compliant council should be set up, but politicians are not in favour of a system in which a majority of (professional) judges would govern the judiciary. Democratic participation is deemed very important in Norway in general. This is also reflected in a large involvement of lay judges in the judiciary. They form the majority in most criminal cases. Many lay judges are ex politicians and are appointed by local municipalities. Even though many are recruited from politics, the general view in Norway is that lay judges act independently in their capacity of judge. The trust in the judiciary is very high in Norway. It is likely that their participation contributes to this high level of trust.

Informal allocation of cases

In the Supreme Court allocation is randomized, in the lower courts it is based on practical considerations such as available resources, who can travel etc. The latter system is very intransparent, and likely not to be sustainable.

Lack of complaints procedure

There is no complaint procedure in place in Norway, except for a generally applicable procedure of the national ombudsman.

HR decisions about judges

Not so much a challenge, but as a problem in filling in the questionnaire, it is generally accepted in Norway that there is no judge career. That means that promotion does not exist. If a judge wants to go to another court, (s)he needs to apply and compete with other candidates from within and outside the judiciary. Nominations are entirely based on merit. The selection and appointment are done by an appointments board composed of judges and government representatives. During the discussion opinions diverged on whether this approach is fundamentally different from promotion.

The main challenges are:

Perceived judicial corruption

On the one hand, public opinion is convinced there is much judicial corruption (not only taking a bribe, but any abuse of entrusted power for private gain). On the other hand, judges in general believe there is not much corruption, though it is difficult to know the truth. There are hardly any cases of corruption. Last year a judge was convicted for corruption. The negative public perception might be connected with corruption in public administration. According to a study the perception of corruption is furthermore strongly connected with the media, but not so much with (efficiency in) the courts. An ex-prime minister and prominent business men with strong connections with the media were convicted for corruption. They mobilized the media, and judges were attacked in the media including personal attacks involving their families. The challenge is how to get a more realistic public opinion about the judiciary. Currently, there is no media strategy. The Supreme Court has a media department with lawyers (judicial staff/non judges). A defensive approach is chosen, where a pro-active media strategy is actually needed.

Role of the Supreme Courts / Internal Independence

In Slovenia the Supreme Court gets the funds for the judiciary and is in charge of allocating budgets to the lower courts. It is also responsible for IT. This means the governance of the judiciary is divided over the Supreme Court and the Council. This weakens the position of the judiciary as a whole. As new reforms are discussed, it is important to address this issue.

The position of the Supreme Court impacts on internal independence. Due to the frequent amendment of the laws there is a problem with uniformity and legal certainty. In the view of the Council, the Supreme Court should focus on giving guidelines to improve quality and the uniform application of the law, but at the same time judges should not be told how to decide cases. In general quality of the decisions should be improved. A lot of emphasis has been put on solving the backlog, but quality was neglected.

From the Slovenian perspective, it is difficult to understand why a low score on internal independence is given when there is a possibility to draft non-binding guidelines to guarantee uniformity and legal certainty. Also, In Slovenia it is fully accepted that the president of the court can put pressure on a judge to be efficient and to avoid unnecessary time delays. Both issues are not seen as a challenge in

Slovenia. It is explained that the indicators are about independence and it was conceded that there can be a tension between independence and efficiency.

External review

A law was passed that allows for an inspection instrument to be put in place at the Ministry of Justice: the inspection would focus on the management of the courts. The Council opposed the law. It is difficult to understand why points are earned for external review by an inspectorate of the Ministry. It is a clear risk for the independence. It was noted that the thinking behind the indicator is that an inspectorate at the Ministry is better than no external review, but that the best option is external review commissioned by the Council itself.

Lithuania - Teisėjų Taryba

The main challenges lie in the following areas:

Perceived judicial corruption

The situation in Lithuania is much like that in Slovenia. This is a difficult topic. There are very few, but very bad cases of judicial corruption. Still, public opinion is very negative about the Judiciary. Like in Slovenia, the media play a key role, as they are the main source of information for the public. The trust in the judiciary is gradually increasing since 2008, but still low. It is very positive to see that persons that were actually involved in a court procedure were much more positive than the persons that were never involved in a court procedure (60% vs 26%). Also, the trust in other state powers is low, but the trust in the judiciary is highest of the 3. Courts have been working with press judges.

Funding for the Judiciary

The court budget in Lithuania comes from the Parliament. Each court receives its budget directly from Parliament. In this system each court individually needs to address parliament for its budget. The Council has no real powers in this area. When the workload increased as a result of the financial crisis (more bankruptcy cases, etc), the council had no possibility to react and send more money or people. The Netherlands has a good system in place in this area. This could serve as an example, but the other state powers are not interested to change the system.

Judges promotion

There is not a good system in place. In Lithuania the decision for promotion can only come from the president of the republic. An evaluation committee that is a self-governing body is in charge, but the president decides. Decisions are known to be arbitrary and not impartial. Slovenia has an interesting system in place in this area.

External review

The same arguments are given as for Slovenia. The government should not have any influence. Currently, a financial audit can be commissioned by the government.

Italy- Consiglio Superiore della Magistratura and Consiglio di Presidenza della Giustizia Amministrativa

The main challenges are in the following areas:

Funding of the Judiciary

The judiciary in Italy has no budgetary autonomy. Most expenses are fixed like the expenses for staff and IT. Additional resources are necessary to be able to resolve the growing number of cases, but the judiciary has no influence on its budget.

Court Management

The judiciary has no influence on management decisions such as which staff is selected. According to public opinion the judges are to blame for all deficiencies in the judiciary, but judges have influence on the management of the courts. There is no self-governance. A reform of the law is needed to address the court management issues. This is a difficult issue to resolve as the Minister of Justice does not want to lose these competences. Another difficulty is that this reform calls for a constitutional reform as well. It should be noted that these problems besiege the regular courts and not the administrative courts that have a much higher degree of self-governance.

Perceived by clients

No client satisfaction surveys have been done. There is a fundamental difference between the judiciary as a state power and as a public service. The judiciary as state power is still the dominant view in Italy. It is noted that in Italy there is little doubt about the independence of the judiciary, as cases involving politicians and other influential people have been conducted impartially.

Internal independence

In the current indicator on internal independence there is no question about evaluation of judges and their promotion. In Italy it is believed that seniority is still the best guarantee for independence. Merit is an arbitrary concept, and opens the possibility for undue interference.

Remedies and ways forward

Funding of the judiciary

It was noted that in all four countries funding is an issue, and it is very difficult to make progress in this area. Governments are not willing to give more influence to the judiciary on its budget, and in some countries on how to spend the budget. The real issue now is how to get the Judiciary into a negotiating position. No immediate solutions presented themselves, although several references were made to the funding system of the Netherlands judiciary. It was emphasized that such a system can only be put in place with the full co-operation of the government and that that is exactly the problem. It was concluded that innovative approaches to funding are urgently needed. A joint approach at the EU level could be called for. **ENCJ and other organizations** should provide strong reports that can be used in discussions with the other powers. The ENCJ could work further on the issue of financial autonomy. The Vilnius Declaration was mentioned in this regard.

Perceptions of corruption

While uncertainty exists about the real extend of judicial corruption, it was felt that the media are often not reporting realistically about this issue. A defensive attitude towards the media is not the answer and a positive media strategy is needed. In Slovenia and Lithuania such a strategy is still lacking. In Norway the court administration has had good results with a broad strategy that for instance teaches judges how to deal with the press.

In **Slovenia** a client satisfaction survey was done for the first time. The main question was to what extent impartiality was experienced. The survey was done by a university.

Promotion of judges

In **Norway** one of the questions is whether a judge can be 100% independent if he needs to seek promotion, even if this is fully based on merit. However in **Italy** it is felt that independence is guaranteed by the fact that the Council that is in charge of promotion is composed of lay members and magistrates, but in which magistrates have the majority. The relationship between promotion and independence is still open for debate.

External review

In **Italy** there is as system of external review in place. There is an inspectorate at the Ministry of Justice. For the review of the judges the inspectors are magistrates (judges and in particular prosecutors) appointed by the Minister. Another service is reviewing the administration of the courts: this is not done by judges. As a result of the review by the Inspectorate a disciplinary procedures can and are be initiated by the CSM. The CSM feels that the system works adequately.

In the administrative courts it is the Council (CPGA) that is in charge of the inspection of judges.

In **Norway, Lithuanian and Slovenia** external review, especially when commissioned by the other state powers, is not seen as a positive instrument. The issue of inspectorates under the authority of the government requires further consideration.

Conclusion of pilot dialogue group

- The participants concluded that it had been a useful exercise, even though they felt that specific, directly applicable advice did not come out of the discussion to take home.
However, the dialogue provided food for thought for further discussions on the national level.
- Issues like the legal structures in place have cultural elements, that cannot be solved by colleagues from a different culture. Still, one can learn from other cultural environments.
- Discussion in a small group such as this dialogue group provides a good forum for gaining deeper insight in other systems. It leads to very active participation and intense interaction, much more than is possible in a project group.
- The method for the dialogue groups should be refined. This concerns the preparation and structure of the dialogue, the (much needed) role for a moderator and the format of the outcome.
- The fact that the countries present came from different geographical areas and cultures enriched the discussions. Therefore, cultural diversity in the group was seen as an added value that should be retained.

Appendix B – Questionnaire

Questionnaire indicators independence and accountability of the Judiciary Version February 2015

Please fill in your country of origin:

INDEPENDENCE INDICATORS

Objective Indicators

Objective independence of the Judiciary as a whole

1. Legal basis of the independence of the Judiciary as a whole

1a. Is the independence of the Judiciary or the judge formally guaranteed³⁶?

- Yes
- No

1b. If the answer to 1a. is yes, is this done in/by:

- The Constitution or equivalent documents³⁷
- Law³⁸
- Constitutional court

1c. Are judges formally bound only by law?

- Yes
- No

³⁶ See question 1b.

³⁷ Equivalence means here specifically that the position of the Judiciary cannot be changed by simple majority.

³⁸ That can be changed by simple majority.

1d. If the answer to 1c. is yes, is this guaranteed in/by:

- The Constitution or equivalent texts
- Law
- Jurisprudence

1e. Is the salary of judges determined by law?

- Yes
- No

1f. If the answer to 1e is yes, is this guaranteed in:

- The Constitution or equivalent texts
- Law

1g. Is there a formal mechanism to adjust the salaries of judges to keep pace with the average development of salaries in the country and/or with inflation?

- Yes
- No

1h. Is the involvement of the Judiciary in law and judicial reform³⁹ formally guaranteed?

- Yes
- No

1i. If the answer to 1h. is yes, is this done in:

- The Constitution or equivalent documents
- Law
- Constitutional court

1j. If the answer to 1h. is yes, does the Judiciary have:

- The right to put forward a formal proposal to change a law
- The right to advise on legislative proposals

1k. Is the Judiciary involved in the formation and the implementation of judicial reform?

- Yes
- No

³⁹ The objective of a judicial reform process should be to improve the quality of justice and the efficacy of the judiciary, while strengthening and protecting the independence of the judiciary, accompanied by measures to make more effective its responsibility and accountability. See the ENCJ Report on Judicial Reform 2011-2012.

11. Has the Judiciary initiated judicial reform?

- Yes
 No

2. Organisational autonomy of the Judiciary

2a. Does your country have a Council for the Judiciary⁴⁰?

- Yes
 No

2b. Is the position of the Council for the Judiciary formally guaranteed?

- In the Constitution or equivalent documents
 Law
 No

2c. Is the Council organized in accordance with ENCJ Guidelines concerning:

- At least 50% of the members of the Council are judges⁴¹ Yes No

- At least 50% of the members of the Council are judges
who are chosen by peers Yes No

- Minister of Justice is not a member of the Council Yes No

- The Council controls its own finances independently of
both the legislative and executive branches Yes No

-The Council controls its own activities independently of
both the legislative and executive branches Yes No

2d. Is the Council responsible⁴² for the following:

-The appointment and promotion of magistrates Yes No

-The training of magistrates Yes No

-Judicial discipline and judicial ethics Yes No

⁴⁰ See article 6 ENCJ Statutes. National institute which is independent of the executive and legislature, or which is autonomous and which ensures the final responsibility for the support of the Judiciary in the independent delivery of justice.

⁴¹ Only in case of a Council representing judges and prosecutors, please read magistrates.

⁴² Responsible implies that the Council executes these tasks. But it can also mean that the Council has delegated these tasks to a separate body.

- Complaints against the Judiciary Yes No
- The performance management of the Judiciary Yes No
- The administration of courts Yes No
- The financing of the courts Yes No
- Proposing legislation concerning the courts and the Judiciary⁴³ Yes No

2e. If the answer to question 2a. is no or if the Council is not responsible in the following areas do judges have decisive influence on decisions in the following areas?

- The appointment and promotion of magistrates Yes No
- The training of magistrates Yes No
- Judicial discipline and judicial ethics Yes No
- Complaints against the Judiciary Yes No
- The performance management of the Judiciary Yes No
- The administration of courts Yes No
- The financing of the courts Yes No
- Proposing legislation concerning the courts and the Judiciary⁴⁴ Yes No

3. Funding of the Judiciary

3a. Is the funding of the Judiciary sufficient as to allow the courts:

[several answers possible]

- To handle their caseload
- To engage experts/translators/etc. in cases when necessary if fees paid by court
- To keep the knowledge and skills of judges and staff up to date
- To facilitate judges and other personnel in matters of IT-systems, buildings etc.

3b. Who makes the decisions?

⁴³ To the parliament or the Ministry of Justice.

⁴⁴ See footnote 5.

[Please insert an "x" into the box that corresponds to the situation in your country.]

- a) Involvement in the preparation of the "budget allocated to courts"
- b) Formal proposal on the budget allocated to courts
- c) Adoption of the budget allocated to courts
- d) Control of the budget allocated to courts
- e) Evaluation/audit of the budget allocated to courts

	a)	b)	c)	d)	e)
The Judiciary					
The executive⁴⁵					
The legislature					

3c. Is the funding of the Judiciary based upon transparent and objective criteria?

- Yes
- No

3d. If the answer to 3c is yes, is the funding based on:

[Please insert only one answer.]

- Actual costs⁴⁶ (e.g. number of judges and court staff)
- Workload of courts
- Fixed percentage of government expenditure or GDP
- Other (specify): ...

3e. Where have these criteria been defined?

- In well-established practice
- In law

⁴⁵ Such as the Minister of Justice

⁴⁶ Figure based upon historic or realized costs.

Other (specify)

3f. In case the government does not allocate sufficient funds, may the Judiciary address the parliament?

Yes

No

4. Court management

4a. Which authorities can take the following decisions?

[Please insert an “x” into the box that corresponds to the situation in your country.]

- a) General management of a court
- b) Appointment of court staff (other than judges)
- c) Other human resource management decisions on court staff
- d) Decisions regarding the implementation and use of Information and Communication Technology in courts
- e) Decisions regarding court buildings
- f) Decisions regarding court security
- g) Decisions regarding outreach activities⁴⁷

	a)	b)	c)	d)	e)	f)	g)
The Judiciary							
The executive							
The legislature							

⁴⁷ This includes all communication and promotional activities aimed to inform society about the Judiciary.

Objective independence of the judge

5. Human resource decisions about judges

5a. Selection, appointment and dismissal of judges and court presidents

Which authorities or bodies have the power to deliver the following decisions in the judiciary?

[Please insert an “x” into the box that corresponds to the situation in your country.]

- a) Proposal of candidates⁴⁸ for the appointment as judges (not supreme court judges)
- b) Decision on the appointment of a judge
- c) Proposal for the dismissal of a judge
- d) Decision on the dismissal of a judge
- e) Proposal of candidates for the appointment as court presidents
- f) Decision on the appointment of a court president
- g) Proposal for the dismissal of a court president
- h) Decision on the dismissal of a court president

	a)	b)	c)	d)	e)	f)	g)	h)
The Judiciary								
The executive								
The legislature								

5b. Selection, appointment and dismissal of Supreme Court judges and the President of the Supreme Court

[Please insert an “x” into the box that corresponds to the situation in your country.]

- a) Proposal of candidates⁶ for the appointment as Supreme Court judges
- b) Decision on the appointment of a Supreme Court judge
- c) Proposal for the dismissal of a Supreme Court judge
- d) Decision on the dismissal of a Supreme Court judge
- e) Proposal of the candidate(s) for the appointment of the President of the Supreme Court

⁴⁸ The final proposal of candidate(s) which is transmitted to the body that appoints/elects them.

- f) Decision on the appointment of the President of the Supreme Court
- g) Proposal for the dismissal of the President of the Supreme Court
- h) Decision on the dismissal of the President of the Supreme Court

	a)	b)	c)	d)	e)	f)	g)	h)
The Judiciary								
The executive								
The legislature								

5c. Is the appointment of judges in compliance with the ENCJ guidelines?

- Is the appointment process open to public scrutiny and fully and properly documented Yes No
- Is the appointment process undertaken according to published criteria Yes No
- Is the appointment of judges is solely based on merit Yes No
- Is there in place a written policy designed to encourage diversity in the range of persons available for appointment Yes No
- Does the appointment process provide for an independent complaint procedure Yes No

5d. Evaluation, promotion, disciplinary measures⁴⁹ and training of judges

[Please insert an “x” into the box that corresponds to the situation in your country.]

- a) Decision on the evaluation of a judge
- b) Evaluation of the performance management of courts
- c) Decision on the promotion of a judge
- d) Adoption of ethical standards
- e) Application of ethical standards

⁴⁹ Written, step-by-step process in which the Judiciary commits itself to follow in every case where a judge has to be warned, reprimanded, or dismissed.

- f) Proposal for the appointment of a member of the disciplinary body for judges
- g) Decision on the appointment of a member of the disciplinary body for judges
- h) Proposal for a disciplinary decision regarding a judge
- i) Disciplinary decision regarding a judge
- j) Decision on the follow-up to a complaint against the judiciary/a judge
- k) Decision on the program/content of training for judges

	a)	b)	c)	d)	e)	f)	g)	h)	i)	j)	k)
The Judiciary											
The executive											
The legislature											

5e. Is the promotion of judges in compliance with the ENCJ standards?

- Is the promotion process open to public scrutiny and fully and properly documented Yes No
- Is the promotion process undertaken according to published criteria Yes No
- Is the promotion of judges is solely based on merit Yes No
- Is there in place a written policy designed to encourage diversity in the range of persons available for promotion Yes No
- Does the promotion process provide for an independent complaint procedure Yes No

6. Non-transferability of judges⁵⁰

6a. Can a judge be transferred (temporarily or permanently) to another judicial office (to other judicial duties, court or location) without his/her consent?

- Yes (If you have answered yes, continue at question 6c)
- No

⁵⁰ Not including a measure following disciplinary proceedings.

6b. If no, is the non-transferability guaranteed in:

- The Constitution or equivalent text
- Law
- Jurisprudence

6c. If yes, which authority or body decides on a (temporary or permanent) transfer of a judge without his/her consent?

- The Judiciary
- The executive
- The legislature

6d. For what reasons can a judge be transferred without his/her consent? [several answers possible]

- For organisational reasons (specify; e.g. closure of a court): ...
- For other reasons (specify): ...

6e. At what level are these reasons prescribed?

- In law
- Other (specify): ...

6f. In case a judge is transferred without his/her consent is he/she guaranteed an equivalent post (in terms of a position, salary...)?

- Yes
- No

6g. Can a judge be taken off a case without his/her consent?

- Yes
- No

6h. Can a judge appeal if he/she is transferred without his/her consent?

- Yes
- No

6i. If yes, which authority or body decides on such an appeal?

- The Judiciary
- The executive

- The legislature
- Other (specify): ...

7. 7. Internal independence

7a. In your system, can higher ranked judges change a verdict of a lower ranked judge (outside of an appeal system, the precedent doctrine or a preliminary ruling system)?

- Yes
- No

7b. What kind of decisions can higher ranked judges deliver on their own initiative to ensure the uniformity or consistency of judicial decisions (outside of an appeal system or the precedent doctrine)?

- None
- Non-binding guidelines
- Binding guidelines

7c. Can judges at the same level develop guidelines to ensure uniformity or consistency of judicial decisions?

- None
- Non-binding guidelines
- Binding guidelines

7d. Can the management of the court exert pressure in individual cases on the way judges handle their cases with respect to the uniformity/consistency?

- Yes
- No

7e. Can the management of the court exert pressure in individual cases on the way judges handle their cases with respect to the timeliness/efficiency of judicial decisions?

- Yes
- No

Subjective independence

8. Independence as perceived by society

Please don't answer these questions. The data will be filled in by the secretary of the project group for each member and observer.

8a. Perceived independence according to [Flash Eurobarometer 385, Justice in the EU](#), average across areas of law (Q5.2, Q6.2 and Q7.2). Percentage of respondents that rate very good or fairly good.....

8b. Perceived independence according to the [World Economic Forum Competitiveness Report 2013-2014](#), item 1.06. Score on 7-point scale.....

8c. Perceived independence according to the [World Justice Rule of Law Index 2014](#), item 1.2. Percentage of respondents.....

9. Trust in Judiciary

9a. Are opinion surveys available of the past three years in which the trust in the Judiciary is compared with the executive (national government) and legislature (national parliament)?

- Yes
- No

9b. If yes, is the Judiciary:

- Ranked higher than the executive and legislature⁵¹;
- Ranked approximately equal to the executive and legislature?
- Ranked below the executive and legislature?

10. Perceived Judicial corruption

Please don't answer this question. The data will be filled in by the secretary of the project group for each member and observer.

10a. Perceived Judicial corruption according to [EU Anti-Corruption report 2014](#) is. Percentage of respondents that believe corruption is widespread.

11. Independence as perceived by the clients of the courts

11a. Are client satisfaction surveys available of the past three years which contain a question with respect to the perceived independence of the Judiciary?

⁵¹ The other two branches of government are Parliament and Executive.

- Yes
- No

11b. If yes, please state the percentage of respondents that rate the perceived independence very good or fairly good.....

12. Independence as perceived by judges

12a. Are surveys available of the past three years which contain questions with respect to external and internal pressures judges experience during their daily work?

- Yes
- No

12b. If yes, please state the percentage of respondents that rate the perceived independence very good or fairly good.....

ACCOUNTABILITY INDICATORS

Objective accountability of the Judiciary as a whole

1. Allocation of cases

1a. Is there a well-defined mechanism for the allocation of cases?

- Yes
- No

1b. If yes, what criteria is the mechanism based upon:

[one answer possible]

- The method of allocating cases
- The official charged with allocating cases
- The supervision mechanism

1c. If yes, where have these criteria been defined?

[one answer possible]

- In well-established practice of the court
- In an act adopted by the court
- In implementing regulations

In law

Other (specify):

1e. What are the criteria for the allocation of cases?

[several answers possible]

Random-based

Specialization

Experience

Workload

Other (specify):

1d. Who assigns the cases to judges at the courts?

[one answer possible]

President of the court assigns cases

A member of the court staff assigns cases (e.g. listing officer)

A special chamber of the court assigns cases

The cases are assigned randomly (e.g. through a computerized system)

Other (specify): ...

1f. Is the allocation of cases subject to supervision within the Judiciary?

Yes

No

1g. Is the method of allocation of cases publicly accessible?

Yes

No

1h. Are the parties entitled to be informed about the allocation of the case prior to the start of the hearing of the case?

Yes

No

1i. Is the mechanism of allocation being applied uniformly within the country?

- Yes
- No

1j. Is the motivation for any derogation recorded?

- Yes
- No

2. Complaints procedure

2a. Does the Judiciary or do the individual courts have a complaint procedure ?

- Yes
- No

2b. If the answer on 2a. is yes, does this procedure provide for external participation in the complaint procedure:

- Yes
- No

2c. Is it admissible to complain about:

[several answers possible]

- Behaviour of the judge
- Timeliness
- Administrative mistakes
- Other (specify):...

2d. Is an appeal against a decision on a complaint possible?

- Yes
- No

3. Periodic reporting on the Judiciary

3a. Is an annual report provided on how the Judiciary has discharged its functions?

- Yes
- No

3b. If the answer on 3a. is yes, does this report include data on:

[several answers possible]

- The output of cases?
- Duration of cases?
- Disciplinary measures
- (Successful) complaints
- (Successful) requests for recusal

3c. Are the courts periodically and publicly benchmarked with respect to their performance, e.g. timeliness?

- Yes
- No

4. Relations with the press

4a. Do officials (communication officers or press judges) of the courts explain judicial decisions to the media?

- Yes
- No

4b. Has the Judiciary established press guidelines?

- Yes
- No

4c. Does the Judiciary give authorization to broadcast court cases that draw particular public interest on television?

- Yes
- No

5. External review

5a. Is the performance of the courts regularly reviewed or evaluated by external bodies?

- Yes
- No

5b. Who can commission an external review of the Judiciary?

[several answers possible]

- The Judiciary
- The executive
- The legislature

Objective accountability of the judge

6. Code or guidelines of judicial ethics

6a. Does the Judiciary have a code or guidelines of judicial ethics?

- Yes
- No

6b. If the answer to 6a. is yes, is it available to the public?

- Yes
- No

7. Withdrawal and recusal

7a. Is a judge obliged to withdraw from adjudicating a case if the judge believes that impartiality is in question or compromised or that there is a reasonable perception of bias?

- Yes
- No

7b. If yes, what is the source of the obligation to withdraw from adjudicating a case?

[one answer possible]

- A well-established practice of judges
- Set in an act adopted by a court
- Set in an act adopted by the Council for the Judiciary
- Set in an act adopted by the Minister of justice
- Set in law
- Other (specify):

7c. If a judge disrespects the obligation to withdraw from adjudicating a case, which sanctions could the judge be subjected to?

[several answers possible]

- Oral warning
- Written warning
- Suspension
- Disciplinary dismissal
- None

7d. Which authority or body takes the first decision on a request for recusal by a party who considers that a judge is partial / biased? [several answers possible]

- The Judiciary
- The executive
- Other (specify): ...

7e. Is an appeal against a decision on a request for recusal possible?

- Yes
- No

7f. If yes, which authority or body decides on such an appeal?

- The Judiciary
- The executive
- Other (specify): ...

8. Admissibility of accessory functions and disclosure of interests

8a. Are judges allowed to have other functions?

- Yes
- No (If you have answered no, continue at question 8d)

8b. If 8a is yes, is there a register of the other jobs and/or functions judges have?

- Yes
- No

8c. If the answer to 8b is yes is this register public?

- Yes
- No

8d. Is there a register which discloses financial interests judges may have?

- Yes, please specify the minimum amount which needs to be disclosed:...
- No

8e. If the answer to 8d is yes, is this register public?

- Yes
- No

9. Understandable proceedings

9a. Are judges legally obliged to make parties understand the proceedings?

- Yes
- No

9b. Do judges get training in how to:

[several answers possible]

- Conduct hearings in an understandable manner to parties?
 - Explain the proceedings in an understandable manner to parties?
 - Explain the decisions in an understandable manner to parties?
-

Accountability Indicators

1. Allocation of cases	1a, 1b	1c	1d	1e	1f	1g	1h	1i	1j	20	score/20(10)10	
	Method=3 Official=2 Supervision=1 No=0	Law=3 Act=2 Prac/Reg/Other=1	Random=4 Special Chamber=3 Staff=2 Other=1 President=0	Max=5 Yes=1 No=0	Yes=1 No=0	Yes=1 No=0	Yes=1 No=0	Yes=1 No=0	Yes=1 No=0	Yes=1 No=0		
	2a-2d									7	score/7x10	
	Yes=1 No=0 Max=7											
2. Complaints procedure	3a-3c									7	score/7x10	
	Yes=1 No=0 Max=7											
3. Periodic reporting	4a-4c									7	score/7x10	
	Yes=1 No=0 Max=3											
4. Relation with press	5a	5c								3	score/3x10	
	Yes=1 No=0 Max=3	Judiciary=2 Legislature=1 Executive=1 Max=4										
5. External review	6a-6b									5	score/5x10	
	Yes=1 No=0 Max=2											
6. Code of judicial ethics	7a	7b	7c	7d	7e-7f					14	score/14x10	
	Yes=1 No=0 Max=2	Law=4 Council Act=3 Court Act=2 Practice/Moj Act/Oh=1 Disc dismissal=1 No=0	Max=4 Oral W=1 Written W=1 Suspension=1 Disc dismissal=1 No=0	Judiciary=2 Other=1 Executive=0	Judiciary=3 Other=2 Executive=1 No=0							
7. Withdrawal and recusal	8a	8b	8c	8d	8e					20	score/20x10	
	Yes=1 No=0 Max=2	Yes=5 No=0	Yes=5 No=0	Yes=5 No=0	Yes=5 No=0							
8. Accessory functions/disclosure	9a-9b									4	score/4x10	
	Yes=1 No=0 Max=2											
9. Understandable proceedings										4	score/4x10	
	Yes=1 No=0 Max=2											

Appendix D – Data Survey among judges

The results of all the questions that asked for an answer ‘strongly agree’, ‘agree’, ‘not sure’, ‘not applicable’, ‘disagree’ and ‘strongly disagree’ are listed here:

1.a During the last two years I have been under inappropriate pressure to take a decision in a case or part of a case in a specific way.

Question 1a	Response	Agree - Strongly agree	Not sure	Disagree - Strongly disagree
Belgium - BE	291	3%	1%	96%
Bulgaria - BG	282	7%	5%	88%
Denmark - DK	154	0%	1%	99%
Ireland - IE	76	1%	0%	99%
Italy - IT	328	7%	1%	92%
Latvia - LV	146	19%	17%	64%
Lithuania - LT	137	9%	3%	88%
Netherlands - NL	383	2%	1%	97%
Poland - PL	621	6%	3%	91%
Portugal - PT	68	4%	2%	94%
Romania - RO	186	3%	0%	97%
Slovakia - SK	248	10%	4%	86%
Slovenia - SI	249	9%	5%	86%
Spain - ES	474	15%	5%	80%
UK England & Wales	596	0%	2%	98%
UK Northern Ireland	29	7%	3%	90%
UK Scotland	87	6%	0%	94%
Albania - AL	67	19%	14%	67%
Montenegro - ME	32	0%	6%	94%
Norway - NO	315	2%	1%	97%
Sweden - SV	519	4%	1%	95%
Serbia - RS	590	6%	5%	89%

3a. During the last two years I have been affected by a threat of, or actual, disciplinary or other action because of how I have decided a case.

Question 3a	Res- ponse	Agree - Strongly agree	Not sure	Disagree - Strongly dis- agree
Belgium - BE	291	2%	1%	97%
Bulgaria - BG	282	8%	8%	84%
Denmark - DK	154	1%	0%	99%
Ireland - IE	76	5%	0%	95%
Italy - IT	328	13%	2%	85%
Latvia - LV	146	13%	45%	42%
Lithuania - LT	137	9%	4%	87%
Netherlands - NL	383	1%	1%	98%
Poland - PL	621	5%	6%	89%
Portugal - PT	68	7%	0%	93%
Romania - RO	186	4%	2%	94%
Slovakia - SK	248	10%	3%	87%
Slovenia - SI	249	8%	5%	87%
Spain - ES	474	14%	9%	77%
United Kingdom - England & Wales	596	3%	1%	96%
United Kingdom - Northern Ireland	29	0%	11%	89%
United Kingdom - Scotland	87	2%	1%	97%
Albania - AL	67	25%	9%	66%
Montenegro - ME	32	3%	0%	97%
Norway - NO	315	3%	0%	97%
Sweden - SV	519	2%	3%	95%
Serbia - RS	590	9%	2%	89%

3b. During the last two years my decisions or actions have been directly affected by a claim, or a threat of a claim, for personal liability.

Question 3b	Response	Agree - Strongly agree	Not sure	Disagree- Strongly disagree
Belgium - BE	291	4%	2%	94%
Bulgaria - BG	282	3%	7%	89%
Denmark - DK	154	0%	0%	100%
Ireland - IE	76	0%	3%	97%
Italy - IT	328	27%	13%	60%
Latvia - LV	146	8%	8%	84%
Lithuania - LT	137	2%	2%	96%
Netherlands - NL	383	0%	0%	100%
Poland - PL	621	6%	2%	91%
Portugal - PT	68	3%	3%	94%
Romania - RO	186	5%	2%	93%
Slovakia - SK	248	8%	6%	86%
Slovenia - SI	249	3%	3%	94%
Spain - ES	474	21%	7%	72%
UK England & Wales	596	2%	1%	97%
UK Northern Ireland	29	7%	0%	93%
UK Scotland	87	0%	1%	99%
Albania - AL	67	19%	15%	66%
Montenegro - ME	32	13%	3%	84%
Norway - NO	315	0%	0%	100%
Sweden - SV	519	3%	0%	97%
Serbia - RS	590	9%	5%	85%

4. I believe during the last two years cases have been allocated to judges other than in accordance with established rules or procedures in order to influence the outcome of the particular case.

Question 4	Res- ponse	Agree - Strongly agree	Not sure - Not appli- cable	Disagree - Strongly disagree
Belgium - BE	291	3%	13%	84%
Bulgaria - BG	282	13%	26%	61%
Denmark - DK	154	0%	1%	99%
Ireland - IE	76	1%	5%	93%
Italy - IT	328	6%	16%	77%
Latvia - LV	146	16%	32%	53%
Lithuania - LT	137	10%	35%	55%
Netherlands - NL	383	2%	7%	91%
Poland - PL	621	7%	12%	81%
Portugal - PT	68	3%	7%	90%
Romania - RO	186	2%	7%	91%
Slovakia - SK	248	13%	19%	68%
Slovenia - SI	249	5%	19%	76%
Spain - ES	474	24%	27%	49%
United Kingdom - England & Wales	596	1%	7%	92%
United Kingdom - Northern Ireland	29	0%	7%	93%
United Kingdom - Scotland	87	0%	10%	90%
Albania - AL	67	12%	27%	61%
Montenegro - ME	32	3%	16%	81%
Norway - NO	315	1%	4%	95%
Sweden - SV	519	5%	7%	87%
Serbia - RS	590	15%	22%	64%

5a. I believe judges in my country have been appointed other than on the basis of ability and experience during the last two years.

Question 5a	Res- ponse	Agree - Strongly agree	Not sure - Not applica- ble	Disagree - Strongly dis- agree
Belgium - BE	291	23%	31%	45%
Bulgaria - BG	282	32%	37%	30%
Denmark - DK	154	0%	4%	96%
Ireland - IE	76	46%	21%	33%
Italy - IT	328	9%	7%	83%
Latvia - LV	146	22%	32%	47%
Lithuania - LT	137	36%	37%	27%
Netherlands - NL	383	3%	8%	89%
Poland - PL	621	21%	19%	60%
Portugal - PT	68	19%	16%	65%
Romania - RO	186	9%	13%	78%
Slovakia - SK	248	38%	39%	23%
Slovenia - SI	249	30%	36%	34%
Spain - ES	474	74%	11%	15%
United Kingdom - England & Wales	596	17%	17%	66%
United Kingdom - Northern Ireland	29	7%	14%	79%
United Kingdom - Scotland	87	17%	21%	62%
Albania - AL	67	45%	33%	22%
Montenegro - ME	32	19%	28%	53%
Norway - NO	315	6%	14%	81%
Sweden - SV	519	12%	15%	73%
Serbia - RS	590	52%	31%	18%

5b. I believe judges in my country have been promoted other than on the basis of ability and experience during the last two years.

Question 5b	Response	Agree - Strongly agree	Not sure - not applicable	Disagree - Strongly disagree
Belgium - BE	291	30%	34%	36%
Bulgaria - BG	282	38%	35%	27%
Denmark - DK	154	1%	5%	95%
Ireland - IE	76	43%	25%	32%
Italy - IT	328	47%	17%	36%
Latvia - LV	146	40%	34%	27%
Lithuania - LT	137	49%	29%	22%
Netherlands - NL	383	11%	19%	70%
Poland - PL	621	36%	28%	35%
Portugal - PT	68	34%	18%	49%
Romania - RO	186	10%	16%	74%
Slovakia - SK	248	49%	35%	17%
Slovenia - SI	249	39%	30%	31%
Spain - ES	474	84%	11%	5%
United Kingdom - England & Wales	596	17%	20%	63%
United Kingdom - Northern Ireland	29	7%	14%	79%
United Kingdom - Scotland	87	28%	23%	49%
Albania - AL	67	45%	25%	30%
Montenegro - ME	32	19%	47%	34%
Norway - NO	315	5%	15%	81%
Sweden - SV	519	16%	20%	64%
Serbia - RS	590	53%	32%	16%

6. I believe that in my country decisions or actions of individual judges have, during the last two years, been directly affected by the actual, or anticipated, actions of the media (i.e. press, television or radio).

Question 6	Response	Agree - Strongly agree	Not sure	Disagree - Strongly disagree
Belgium - BE	291	17%	33%	49%
Bulgaria - BG	282	42%	38%	20%
Denmark - DK	154	0%	5%	95%
Ireland - IE	76	12%	22%	66%
Italy - IT	328	21%	22%	57%
Latvia - LV	146	43%	42%	15%
Lithuania - LT	137	47%	42%	12%
Netherlands - NL	383	8%	28%	64%
Poland - PL	621	19%	26%	55%
Portugal - PT	68	15%	37%	49%
Romania - RO	186	20%	33%	46%
Slovakia - SK	248	30%	39%	31%
Slovenia - SI	249	22%	37%	41%
Spain - ES	474	47%	33%	21%
United Kingdom - England & Wales	596	10%	16%	73%
United Kingdom - Northern Ireland	29	10%	7%	83%
United Kingdom - Scotland	87	10%	9%	80%
Albania - AL	67	43%	42%	15%
Montenegro - ME	32	41%	28%	31%
Norway - NO	315	4%	16%	80%
Sweden - SV	519	7%	19%	74%
Serbia - RS	590	36%	35%	29%

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

Question 7	Res- ponse	Agree - Strongly agree	Not sure	Disagree - Strongly dis- agree
Belgium - BE	291	5%	25%	70%
Bulgaria - BG	282	16%	49%	34%
Denmark - DK	154	0%	1%	99%
Ireland - IE	76	1%	22%	76%
Italy - IT	328	4%	21%	75%
Latvia - LV	146	11%	47%	42%
Lithuania - LT	137	13%	61%	26%
Netherlands - NL	383	2%	19%	79%
Poland - PL	621	2%	19%	80%
Portugal - PT	68	3%	31%	66%
Romania - RO	186	4%	27%	69%
Slovakia - SK	248	8%	34%	58%
Slovenia - SI	249	5%	29%	66%
Spain - ES	474	15%	45%	40%
United Kingdom - England & Wales	596	4%	13%	84%
United Kingdom - Northern Ireland	29	0%	14%	86%
United Kingdom - Scotland	87	1%	8%	91%
Albania - AL	67	4%	42%	54%
Montenegro - ME	32	13%	38%	50%
Norway - NO	315	1%	12%	88%
Sweden - SV	519	4%	17%	80%
Serbia - RS	590	15%	41%	44%

8.1 During the last two years I believe that my independence as a judge has been respected by the government.

Question 8.1	Res- ponse	Disagree- Strongly disagree	Not sure - Not ap- plicable	Agree - Strongly agree
Belgium - BE	291	12%	26%	63%
Bulgaria - BG	282	62%	26%	11%
Denmark - DK	154	3%	23%	74%
Ireland - IE	76	29%	11%	61%
Italy - IT	328	69%	12%	19%
Latvia - LV	146	38%	33%	29%
Lithuania - LT	137	35%	36%	29%
Netherlands - NL	383	14%	19%	67%
Poland - PL	621	57%	19%	24%
Portugal - PT	68	31%	21%	49%
Romania - RO	186	17%	23%	60%
Slovakia - SK	248	48%	28%	24%
Slovenia - SI	249	18%	34%	47%
Spain - ES	474	47%	15%	38%
United Kingdom - England & Wales	596	46%	15%	39%
United Kingdom - Northern Ireland	29	38%	31%	31%
United Kingdom - Scotland	87	38%	18%	44%
Albania - AL	67	49%	22%	28%
Montenegro - ME	32	6%	25%	69%
Norway - NO	315	2%	19%	80%
Sweden - SV	519	7%	10%	83%
Serbia - RS	590	16%	28%	56%

8.2 During the last two years I believe that my independence as a judge has been respected by parliament.

Question 8.2	Res- ponse	Disagree - Strongly disagree	Not sure - Not ap- plicable	Agree - Strongly agree
Belgium - BE	291	10%	27%	63%
Bulgaria - BG	282	52%	31%	16%
Denmark - DK	154	5%	29%	67%
Ireland - IE	76	26%	16%	58%
Italy - IT	328	66%	14%	20%
Latvia - LV	146	38%	38%	24%
Lithuania - LT	137	47%	30%	23%
Netherlands - NL	383	23%	26%	51%
Poland - PL	621	55%	20%	25%
Portugal - PT	68	28%	19%	53%
Romania - RO	186	19%	23%	59%
Slovakia - SK	248	52%	25%	23%
Slovenia - SI	249	27%	28%	45%
Spain - ES	474	41%	19%	41%
United Kingdom - England & Wa- les	596	34%	19%	47%
United Kingdom - Northern Ire- land	29	38%	31%	31%
United Kingdom - Scotland	87	32%	20%	48%
Albania - AL	67	39%	21%	40%
Montenegro - ME	32	6%	28%	66%
Norway - NO	315	2%	20%	78%
Sweden - SV	519	5%	13%	82%
Serbia - RS	590	13%	28%	59%

8.3 During the last two years I believe that my independence as a judge has been respected by Court management (including the president of the Court).

Question 8.3	Response	Disagree - Strongly disagree	Not sure - Not applicable	Agree - Strongly agree
Belgium - BE	291	4%	5%	90%
Bulgaria - BG	282	5%	10%	85%
Denmark - DK	154	3%	19%	77%
Ireland - IE	76	13%	11%	76%
Italy - IT	328	9%	5%	86%
Latvia - LV	146	10%	16%	74%
Lithuania - LT	137	7%	12%	82%
Netherlands - NL	383	4%	7%	89%
Poland - PL	621	8%	6%	86%
Portugal - PT	68	18%	16%	66%
Romania - RO	186	6%	10%	84%
Slovakia - SK	248	8%	8%	84%
Slovenia - SI	249	6%	10%	84%
Spain - ES	474	23%	12%	65%
United Kingdom - England & Wales	596	14%	10%	76%
United Kingdom - Northern Ireland	29	17%	0%	83%
United Kingdom - Scotland	87	17%	13%	70%
Albania - AL	67	7%	15%	78%
Montenegro - ME	32	6%	16%	78%
Norway - NO	315	3%	11%	87%
Sweden - SV	519	8%	7%	84%
Serbia - RS	590	9%	11%	79%

8.4 During the last two years I believe that my independence as a judge has been respected by the Council for the judiciary.

Question 8.4	Res- ponse	Dis- agree - Strongly dis- agree	Not sure - Not ap- plicable	Agree - Strongly agree
Belgium - BE	291	3%	14%	83%
Bulgaria - BG	282	15%	28%	57%
Denmark - DK	154	3%	16%	81%
Ireland - IE	76	4%	58%	38%
Italy - IT	328	10%	9%	80%
Latvia - LV	146	9%	26%	65%
Lithuania - LT	137	6%	21%	73%
Netherlands - NL	383	4%	12%	85%
Poland - PL	621	3%	11%	86%
Portugal - PT	68	21%	12%	68%
Romania - RO	186	5%	24%	72%
Slovakia - SK	248	5%	16%	79%
Slovenia - SI	249	7%	13%	80%
Spain - ES	474	36%	15%	49%
United Kingdom - England & Wales	596	4%	28%	68%
United Kingdom - Northern Ireland	29	10%	14%	76%
United Kingdom - Scotland	87	2%	32%	66%
Albania - AL	67	12%	15%	73%
Montenegro - ME	32	0%	16%	84%
Norway - NO	315	2%	11%	87%
Sweden - SV	519	4%	34%	61%
Serbia - RS	590	11%	17%	71%

8.5 During the last two years I believe that my independence as a judge has been respected by the Supreme Court.

Question 8.5	Response	Dis- agree - Strongly dis- agree	Not sure - not ap- plicable	Agree - Strongly agree
Belgium - BE	291	1%	14%	85%
Bulgaria - BG	282	4%	16%	81%
Denmark - DK	154	4%	22%	74%
Ireland - IE	76	3%	11%	87%
Italy - IT	328	3%	13%	84%
Latvia - LV	146	8%	20%	72%
Lithuania - LT	137	4%	14%	82%
Netherlands - NL	383	1%	8%	92%
Poland - PL	621	3%	11%	86%
Portugal - PT	68	4%	6%	90%
Romania - RO	186	4%	13%	83%
Slovakia - SK	248	4%	19%	77%
Slovenia - SI	249	5%	11%	84%
Spain - ES	474	9%	19%	71%
United Kingdom - England & Wales	596	2%	20%	78%
United Kingdom - Northern Ireland	29	10%	17%	72%
United Kingdom - Scotland	87	2%	21%	77%
Albania - AL	67	6%	16%	78%
Montenegro - ME	32	0%	25%	75%
Norway - NO	315	1%	14%	85%
Sweden - SV	519	2%	12%	86%
Serbia - RS	590	8%	16%	76%

8.6 During the last two years I believe that my independence as a judge has been respected by the Constitutional Court.

Question 8.6	Response	Dis-agree - Strongly dis-agree	Not sure - not applicable	Agree - Strongly agree
Belgium - BE	291	1%	18%	81%
Bulgaria - BG	282	2%	37%	61%
Denmark - DK	154	1%	94%	5%
Ireland - IE	76	5%	54%	41%
Italy - IT	328	3%	15%	82%
Latvia - LV	146	7%	19%	74%
Lithuania - LT	137	1%	13%	86%
Netherlands - NL	383	1%	83%	16%
Poland - PL	621	22%	23%	55%
Portugal - PT	68	7%	9%	84%
Romania - RO	186	8%	17%	75%
Slovakia - SK	248	10%	25%	64%
Slovenia - SI	249	6%	19%	75%
Spain - ES	474	11%	24%	65%
United Kingdom - England & Wales	596	3%	57%	41%
United Kingdom - Northern Ireland	29	7%	62%	31%
United Kingdom - Scotland	87	1%	75%	24%
Albania - AL	67	7%	7%	85%
Montenegro - ME	32	0%	31%	69%
Norway - NO	315	0%	79%	21%
Sweden - SV	519	2%	62%	36%
Serbia - RS	590	9%	22%	69%

8.7 During the last two years I believe that my independence as a judge has been respected by the Association of Judges.

Question 8.7	Res- ponse	Dis- agree - Strongly dis- agree	Not sure - not ap- plicable	Agree - Strongly agree
Belgium - BE	291	1%	18%	81%
Bulgaria - BG	282	6%	24%	70%
Denmark - DK	154	3%	16%	81%
Ireland - IE	76	4%	3%	93%
Italy - IT	328	11%	14%	75%
Latvia - LV	146	7%	23%	71%
Lithuania - LT	137	5%	18%	77%
Netherlands - NL	383	1%	9%	90%
Poland - PL	621	1%	9%	90%
Portugal - PT	68	6%	9%	85%
Romania - RO	186	3%	17%	80%
Slovakia - SK	248	5%	25%	70%
Slovenia - SI	249	4%	23%	72%
Spain - ES	474	10%	18%	73%
United Kingdom - England & Wales	596	3%	17%	79%
United Kingdom - Northern Ireland	29	10%	17%	72%
United Kingdom - Scotland	87	8%	30%	62%
Albania - AL	67	6%	13%	81%
Montenegro - ME	32	3%	19%	78%
Norway - NO	315	1%	23%	77%
Sweden - SV	519	2%	24%	74%
Serbia - RS	590	6%	18%	76%

8.8 During the last two years I believe that my independence as a judge has been respected by the media (i.e. press, television or radio).

Question 8.8	Res- ponse	Disagree - Strongly disagree	Not sure - Not ap- plicable	Agree - Strongly agree
Belgium - BE	291	12%	32%	56%
Bulgaria - BG	282	61%	26%	13%
Denmark - DK	154	5%	24%	71%
Ireland - IE	76	36%	13%	51%
Italy - IT	328	63%	13%	24%
Latvia - LV	146	58%	35%	8%
Lithuania - LT	137	64%	25%	11%
Netherlands - NL	383	24%	31%	45%
Poland - PL	621	65%	20%	15%
Portugal - PT	68	43%	29%	28%
Romania - RO	186	33%	34%	33%
Slovakia - SK	248	66%	19%	16%
Slovenia - SI	249	50%	27%	23%
Spain - ES	474	46%	20%	34%
United Kingdom - England & Wa- les	596	38%	29%	33%
United Kingdom - Northern Ire- land	29	28%	21%	52%
United Kingdom - Scotland	87	32%	32%	36%
Albania - AL	67	55%	37%	7%
Montenegro - ME	32	28%	34%	38%
Norway - NO	315	3%	17%	80%
Sweden - SV	519	11%	24%	66%
Serbia - RS	590	28%	29%	43%

8.9 During the last two years I believe that my independence as a judge has been respected by social media (i.e. Facebook, Twitter or LinkedIn)

Question 8.9	Re- sponse	Disagree - Strongly disagree	Not sure - Not ap- plicable	Agree - Strongly agree
Belgium - BE	291	9%	36%	55%
Bulgaria - BG	282	50%	40%	11%
Denmark - DK	154	5%	54%	41%
Ireland - IE	76	39%	33%	28%
Italy - IT	328	45%	37%	18%
Latvia - LV	146	42%	51%	8%
Lithuania - LT	137	39%	55%	7%
Netherlands - NL	383	28%	40%	32%
Poland - PL	621	46%	41%	13%
Portugal - PT	68	32%	40%	28%
Romania - RO	186	22%	42%	37%
Slovakia - SK	248	42%	48%	10%
Slovenia - SI	249	37%	41%	22%
Spain - ES	474	30%	35%	34%
United Kingdom - England & Wales	596	30%	54%	16%
United Kingdom - Northern Ireland	29	31%	48%	21%
United Kingdom - Scotland	87	22%	60%	18%
Albania - AL	67	37%	43%	19%
Montenegro - ME	32	19%	56%	25%
Norway - NO	315	2%	42%	56%
Sweden - SV	519	14%	40%	46%
Serbia - RS	590	23%	38%	39%

9b. I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):

Option 1: Pay

Question 9b Option 1: Pay	Response	Agree - Strongly agree	Not sure - Not ap- plicable	Dis- agree - Strongly dis- agree
Belgium - BE	291	2%	48%	50%
Bulgaria - BG	282	23%	47%	30%
Denmark - DK	154	1%	60%	40%
Ireland - IE	76	30%	16%	54%
Italy - IT	328	13%	30%	57%
Latvia - LV	146	25%	34%	41%
Lithuania - LT	137	19%	30%	51%
Netherlands - NL	383	0%	49%	51%
Poland - PL	621	16%	26%	58%
Portugal - PT	68	43%	16%	41%
Romania - RO	186	10%	45%	45%
Slovakia - SK	248	20%	29%	50%
Slovenia - SI	249	16%	22%	63%
Spain - ES	474	53%	16%	31%
United Kingdom - England & Wales	596	16%	21%	63%
United Kingdom - Northern Ireland	29	17%	28%	55%
United Kingdom - Scotland	87	14%	21%	66%
Albania - AL	67	25%	36%	39%
Montenegro - ME	32	31%	19%	50%
Norway - NO	315	4%	31%	64%
Sweden - SV	519	11%	43%	46%
Serbia - RS	590	27%	15%	58%

9b I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):

Option 2: Pensions

Question 9b Option 2: Pensions	Res- ponse	Agree - Strongly agree	Not sure - Not ap- plicable	Dis- agree - Strongly dis- agree
Belgium - BE	291	5%	38%	57%
Bulgaria - BG	282	12%	62%	26%
Denmark - DK	154	1%	63%	36%
Ireland - IE	76	29%	18%	53%
Italy - IT	328	9%	36%	55%
Latvia - LV	146	18%	40%	41%
Lithuania - LT	137	9%	50%	41%
Netherlands - NL	383	0%	49%	51%
Poland - PL	621	10%	54%	36%
Portugal - PT	68	26%	41%	32%
Romania - RO	186	5%	59%	36%
Slovakia - SK	248	8%	56%	36%
Slovenia - SI	249	8%	41%	51%
Spain - ES	474	33%	40%	27%
United Kingdom - England & Wales	596	21%	13%	65%
United Kingdom - Northern Ireland	29	24%	28%	48%
United Kingdom - Scotland	87	17%	14%	69%
Albania - AL	67	4%	63%	33%
Montenegro - ME	32	16%	44%	41%
Norway - NO	315	5%	51%	44%
Sweden - SV	519	3%	67%	30%
Serbia - RS	590	14%	41%	45%

9b I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):

Option 3: Retirement age

Question 9b. Option: Retirement Age	Res- ponse	Agree - Strongly agree	Not sure - Not ap- plicable	Disagree - Strongly dis- agree
Belgium - BE	291	7%	34%	59%
Bulgaria - BG	282	10%	63%	27%
Denmark - DK	154	1%	62%	38%
Ireland - IE	76	4%	55%	41%
Italy - IT	328	12%	25%	63%
Latvia - LV	146	12%	42%	47%
Lithuania - LT	137	4%	52%	45%
Netherlands - NL	383	1%	45%	55%
Poland - PL	621	20%	27%	53%
Portugal - PT	68	19%	40%	41%
Romania - RO	186	6%	58%	36%
Slovakia - SK	248	6%	56%	38%
Slovenia - SI	249	8%	39%	53%
Spain - ES	474	22%	45%	33%
United Kingdom - England & Wales	596	9%	49%	42%
United Kingdom - Northern Ireland	29	14%	52%	34%
United Kingdom - Scotland	87	7%	44%	49%
Albania - AL	67	9%	60%	31%
Montenegro - ME	32	28%	31%	41%
Norway - NO	315	3%	53%	44%
Sweden - SV	519	2%	68%	30%
Serbia - RS	590	16%	31%	53%

9b I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):

Option 4: Caseload

Question 9b Option 4: Caseload	Res- ponse	Agree - Strongly agree	Not sure - Not ap- plicable	Dis- agree - Strongly dis- agree
Belgium - BE	291	14%	31%	55%
Bulgaria - BG	282	21%	39%	40%
Denmark - DK	154	3%	54%	44%
Ireland - IE	76	7%	39%	54%
Italy - IT	328	35%	16%	49%
Latvia - LV	146	18%	32%	49%
Lithuania - LT	137	20%	30%	50%
Netherlands - NL	383	7%	34%	58%
Poland - PL	621	28%	22%	50%
Portugal - PT	68	28%	35%	37%
Romania - RO	186	27%	28%	45%
Slovakia - SK	248	23%	28%	49%
Slovenia - SI	249	12%	22%	65%
Spain - ES	474	56%	19%	24%
United Kingdom - England & Wales	596	14%	23%	63%
United Kingdom - Northern Ireland	29	14%	52%	34%
United Kingdom - Scotland	87	9%	22%	69%
Albania - AL	67	31%	28%	40%
Montenegro - ME	32	22%	34%	44%
Norway - NO	315	6%	47%	48%
Sweden - SV	519	10%	52%	39%
Serbia - RS	590	27%	18%	55%

9b I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):

Option 5: Court Resources

Question 9b Option 5: Court Resources	Response	Agree - Strongly agree	Not sure - Not ap- plicable	Dis- agree - Strongly dis- agree
Belgium - BE	291	16%	31%	53%
Bulgaria - BG	282	20%	49%	31%
Denmark - DK	154	3%	51%	46%
Ireland - IE	76	33%	21%	46%
Italy - IT	328	37%	18%	45%
Latvia - LV	146	19%	40%	40%
Lithuania - LT	137	18%	47%	36%
Netherlands - NL	383	8%	41%	50%
Poland - PL	621	18%	36%	47%
Portugal - PT	68	32%	24%	44%
Romania - RO	186	18%	38%	44%
Slovakia - SK	248	15%	48%	38%
Slovenia - SI	249	19%	24%	57%
Spain - ES	474	51%	24%	25%
United Kingdom - England & Wales	596	18%	23%	59%
United Kingdom - Northern Ireland	29	31%	31%	38%
United Kingdom - Scotland	87	8%	30%	62%
Albania - AL	67	27%	45%	28%
Montenegro - ME	32	22%	31%	47%
Norway - NO	315	7%	42%	51%
Sweden - SV	519	11%	49%	40%
Serbia - RS	590	24%	26%	50%

9b I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):

Option 6: 'I was moved to another function, section or court'

Question 9b Option 6	Res- ponse	Agree - Strongly agree	Not sure - Not ap- plicable	Dis- agree - Strongly dis- agree
Belgium - BE	291	2%	72%	26%
Bulgaria - BG	282	9%	63%	28%
Denmark - DK	154	1%	68%	31%
Ireland - IE	76	1%	71%	28%
Italy - IT	328	5%	60%	35%
Latvia - LV	146	5%	56%	38%
Lithuania - LT	137	9%	53%	38%
Netherlands - NL	383	1%	67%	32%
Poland - PL	621	5%	56%	39%
Portugal - PT	68	6%	57%	37%
Romania - RO	186	4%	59%	38%
Slovakia - SK	248	2%	64%	34%
Slovenia - SI	249	4%	68%	27%
Spain - ES	474	8%	66%	26%
United Kingdom - England & Wales	596	2%	79%	19%
United Kingdom - Northern Ireland	29	7%	83%	10%
United Kingdom - Scotland	87	0%	71%	29%
Albania - AL	67	15%	54%	31%
Montenegro - ME	32	6%	53%	41%
Norway - NO	315	2%	66%	32%
Sweden - SV	519	3%	72%	25%
Serbia - RS	590	13%	35%	52%

10. During the last two years I have had to take decisions in accordance with guidelines developed by judges of my rank.

Question 10	Response	Agree - Strongly agree	Not sure - Not applicable	Disagree - Strongly disagree
Belgium - BE	291	6%	3%	91%
Bulgaria - BG	282	24%	9%	67%
Denmark - DK	154	12%	12%	77%
Ireland - IE	76	21%	4%	75%
Italy - IT	328	36%	6%	59%
Latvia - LV	146	29%	25%	45%
Lithuania - LT	137	46%	9%	45%
Netherlands - NL	383	43%	7%	50%
Poland - PL	621	13%	4%	83%
Portugal - PT	68	6%	3%	91%
Romania - RO	186	10%	5%	85%
Slovakia - SK	248	13%	5%	82%
Slovenia - SI	249	24%	10%	66%
Spain - ES	474	21%	3%	76%
United Kingdom - England & Wales	596	36%	8%	56%
United Kingdom - Northern Ireland	29	52%	14%	34%
United Kingdom - Scotland	87	15%	9%	76%
Albania - AL	67	34%	15%	51%
Montenegro - ME	32	31%	6%	63%
Norway - NO	315	10%	13%	77%
Sweden - SV	519	16%	12%	72%
Serbia - RS	590	26%	11%	63%

11. During the last two years the management of my court has exerted pressure on me to decide individual cases in a particular way.

Question 11	Response	Agree - Strongly agree	Not sure	Dis-agree - Strongly dis-agree
Belgium - BE	291	3%	1%	96%
Bulgaria - BG	282	2%	2%	95%
Denmark - DK	154	1%	1%	98%
Ireland - IE	76	0%	1%	99%
Italy - IT	328	4%	2%	95%
Latvia - LV	146	7%	7%	86%
Lithuania - LT	137	2%	5%	93%
Netherlands - NL	383	4%	3%	93%
Poland - PL	621	5%	4%	91%
Portugal - PT	68	3%	1%	96%
Romania - RO	186	2%	0%	98%
Slovakia - SK	248	4%	3%	93%
Slovenia - SI	249	2%	3%	94%
Spain - ES	474	11%	4%	84%
United Kingdom - England & Wales	596	5%	3%	92%
United Kingdom - Northern Ireland	29	0%	3%	97%
United Kingdom - Scotland	87	11%	0%	89%
Albania - AL	67	6%	1%	93%
Montenegro - ME	32	0%	0%	100%
Norway - NO	315	2%	3%	95%
Sweden - SV	519	3%	3%	94%
Serbia - RS	590	3%	3%	94%

12. During the last two years the management of my court has exerted pressure on me to decide individual cases within a particular time.

Question 12	Response	Agree - Strongly agree	Not sure	Dis-agree - Strongly dis-agree
Belgium - BE	291	16%	3%	81%
Bulgaria - BG	282	11%	3%	86%
Denmark - DK	154	23%	9%	68%
Ireland - IE	76	18%	3%	79%
Italy - IT	328	23%	3%	74%
Latvia - LV	146	29%	13%	58%
Lithuania - LT	137	28%	11%	61%
Netherlands - NL	383	44%	6%	50%
Poland - PL	621	48%	4%	48%
Portugal - PT	68	29%	9%	62%
Romania - RO	186	5%	3%	92%
Slovakia - SK	248	25%	8%	67%
Slovenia - SI	249	35%	13%	52%
Spain - ES	474	26%	5%	70%
United Kingdom - England & Wales	596	54%	6%	40%
United Kingdom - Northern Ireland	29	41%	0%	59%
United Kingdom - Scotland	87	40%	6%	54%
Albania - AL	67	6%	3%	91%
Montenegro - ME	32	16%	6%	78%
Norway - NO	315	23%	10%	67%
Sweden - SV	519	38%	7%	55%
Serbia - RS	590	28%	6%	67%

13. On a scale of 0 - 10 (where 0 means "not independent at all" and 10 means "the highest possible degree of independence). The professional judges in my country are :

Question 13	Res- ponse	Av	1	2	3	4	5	6	7	8	9	10
Belgium - BE	291	8,7	0%	0%	0%	1%	0%	1%	7%	28%	40%	24%
Bulgaria - BG	282	6,8	1%	2%	2%	5%	19%	10%	18%	18%	13%	10%
Denmark - DK	154	9,8	0%	0%	0%	0%	0%	0%	1%	2%	11%	86%
Ireland - IE	76	9,2	0%	0%	0%	0%	0%	0%	11%	17%	18%	54%
Italy - IT	328	8,1	0%	0%	0%	1%	2%	4%	14%	39%	30%	9%
Latvia - LV	146	6,5	0%	3%	6%	3%	17%	13%	23%	22%	10%	2%
Lithuania - LT	137	7,4	1%	3%	2%	1%	5%	2%	20%	40%	18%	6%
Netherlands - NL	383	9,1	0%	0%	0%	0%	1%	1%	4%	13%	51%	32%
Poland - PL	621	7,7	0%	1%	2%	2%	6%	7%	16%	26%	25%	13%
Portugal - PT	68	8,1	0%	0%	3%	0%	4%	6%	9%	32%	29%	16%
Romania - RO	186	8,7	0%	0%	1%	0%	1%	3%	8%	25%	39%	24%
Slovakia - SK	248	6,7	1%	2%	4%	4%	17%	8%	17%	25%	15%	5%
Slovenia - SI	249	7,9	0%	1%	2%	3%	4%	3%	14%	30%	30%	12%
Spain - ES	474	6,6	2%	3%	6%	5%	12%	8%	17%	22%	17%	6%
UK England & Wales	596	9,0	0%	0%	0%	0%	2%	1%	5%	16%	31%	45%
UK Northern Ireland	29	9,3	0%	0%	0%	0%	3%	0%	0%	3%	41%	52%
UK Scotland	87	9,1	0%	0%	0%	0%	0%	2%	8%	9%	43%	38%
Albania - AL	67	6,2	0%	7%	1%	7%	16%	16%	24%	21%	3%	3%
Montenegro - ME	32	8,1	0%	0%	3%	0%	0%	13%	13%	16%	16%	38%
Norway - NO	315	9,3	0%	0%	0%	0%	0%	1%	1%	10%	36%	51%

Sweden - SV	519	8,6	0%	1%	0%	1%	2%	2%	8%	21%	35%	30%
Serbia - RS	590	6,2	3%	4%	5%	6%	18%	12%	15%	17%	7%	11%
Total	5878	7,9	1%	1%	2%	2%	7%	5%	11%	21%	26%	23%

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

Question 14	Response	Av	0	1	2	3	4	5	6	7	8	9	10
Belgium - BE	291	9,3	0%	0%	0%	0%	0%	1%	1%	2%	10%	30%	55%
Bulgaria - BG	282	8,0	0%	1%	2%	1%	3%	9%	6%	10%	11%	24%	32%
Denmark - DK	154	9,9	0%	0%	0%	0%	0%	0%	0%	1%	1%	9%	89%
Ireland - IE	76	9,2	0%	0%	0%	0%	0%	1%	3%	8%	9%	12%	67%
Italy - IT	328	9,2	0%	0%	0%	0%	1%	1%	2%	3%	14%	25%	55%
Latvia - LV	146	7,5	0%	0%	1%	4%	5%	7%	8%	13%	23%	28%	10%
Lithuania - LT	137	8,3	0%	1%	2%	2%	1%	1%	1%	9%	25%	34%	24%
Netherlands - NL	383	9,3	0%	0%	0%	0%	0%	0%	1%	2%	13%	38%	47%
Poland - PL	621	8,5	0%	0%	1%	1%	1%	6%	3%	9%	16%	21%	41%
Portugal - PT	68	9,1	0%	0%	0%	0%	1%	1%	0%	7%	12%	29%	49%
Romania - RO	186	9,4	1%	0%	0%	1%	0%	1%	1%	1%	7%	26%	64%
Slovakia - SK	248	8,0	1%	0%	2%	2%	2%	10%	3%	9%	15%	26%	30%
Slovenia - SI	249	8,7	0%	1%	1%	1%	0%	4%	1%	4%	16%	31%	41%
Spain - ES	474	8,0	2%	1%	1%	3%	3%	5%	5%	8%	13%	22%	37%
UK England & Wales	596	9,0	0%	0%	0%	0%	1%	2%	1%	6%	13%	26%	50%
UK Northern Ireland	29	9,6	0%	0%	0%	0%	0%	0%	0%	3%	0%	28%	69%
UK Scotland	87	9,2	0%	0%	0%	0%	0%	0%	0%	9%	7%	34%	49%
Albania - AL	67	7,7	0%	1%	4%	0%	1%	6%	6%	16%	24%	18%	22%
Montenegro - ME	32	9,3	0%	0%	0%	0%	0%	3%	0%	0%	16%	19%	63%
Norway - NO	315	9,5	0%	0%	0%	0%	0%	0%	0%	1%	7%	27%	65%
Sweden - SV	519	8,9	1%	1%	0%	1%	0%	1%	2%	5%	14%	31%	43%
Serbia - RS	590	8,58	2%	0%	1%	2%	1%	7%	3%	5%	12%	17%	51%
Total	5878	8,8	0%	0%	1%	1%	1%	3%	2%	6%	13%	25%	46%

Appendix E – Survey among professional judges about their independence

Survey among professional judges about their independence

PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY

- I. THE REFERENCE PERIOD FOR ANSWERING ALL QUESTIONS IS THE LAST TWO YEARS (i.e. since January 2013)
- II. UNLESS STATED OTHERWISE, QUESTIONS ARE TO BE ANSWERED:
Strongly disagree
Disagree
Not sure
Agree
Strongly agree
- III. Your individual answers will be anonymous but please let us know the name of the country in which you sit as a judge. The survey data will be published on a country-by-country basis.
- IV. Please note that the questionnaire is addressed to and is about the full-time and part-time professional judges in your country. All questions should therefore be answered only with the professional judges in mind.

PLEASE ANSWER ALL OF THE FOLLOWING QUESTIONS:

The country in which I sit as a judge is

1a. During the last two years I have been under inappropriate pressure to take a decision in a case or part of a case in a specific way.

Strongly disagree

Disagree

Not sure

Agree

Strongly agree

1b. If you agree or strongly agree with 1a , by whom? (Multiple answers are possible)

- Parties and their lawyers
- Government
- Parliament
- Other Judges (including an association of judges)
- Court Management (including a Court President)
- Council for the Judiciary
- Supreme court
- Constitutional court
- Media
- Social Media

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

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

- On a rare exception
- Occasionally
- Regularly

3a. During the last two years I have been affected by a threat of, or actual, disciplinary or other action because of how I have decided a case.

3b. During the last two years my decisions or actions have been directly affected by a claim, or a threat of a claim, for personal liability.

4. I believe during the last two years cases have been allocated to judges other than in accordance with established rules or procedures in order to influence the outcome of the particular case.

5a. I believe judges in my country have been appointed other than on the basis of ability and experience during the last two years.

5b. I believe judges in my country have been promoted other than on the basis of ability and experience during the last two years.

6. I believe that in my country decisions or actions of individual judges have, during the last two years, been directly affected by the actual, or anticipated, actions of the media (i. e. press, television or radio).

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

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

	Strongly Agree	Agree	Not sure	Disagree	Strongly disagree
Government					
Parliament					

Court Management⁵²					
Council for the Judiciary					
Supreme Court					
Constitutional Court					
Association of Judges					
Media (i.e. press, television or radio)					
Social Media (for example Facebook, Twitter or LinkedIn)					

9a. During the last two years changes occurred in my working conditions in relation to (multiple answers possible):

- Pay
- Pensions
- Retirement age
- Caseload
- Court resources
- I was moved to another function, section or court

9b. I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):

- Pay

Strongly disagree

Disagree

Not sure

Agree

Strongly agree

- Pensions

⁵² Including the president of the court

Strongly disagree

Disagree

Not sure

Agree

Strongly agree

Retirement age

Strongly disagree

Disagree

Not sure

Agree

Strongly agree

Caseload

Strongly disagree

Disagree

Not sure

Agree

Strongly agree

Court resources

Strongly disagree

Disagree

Not sure

Agree

Strongly agree

I was moved to another function, section or court

Strongly disagree

Disagree

Not sure

Agree

Strongly agree

10. During the last two years I have had to take decisions in accordance with guidelines developed by judges of my rank.

11. During the last two years the management of my court has exerted pressure on me to decide individual cases in a particular way.

12. During the last two years the management of my court has exerted pressure on me to decide individual cases within a particular time.

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

The professional judges in my country are :

0 1 2 3 4 5 6 7 8 9 10

not independent at all

completely independent

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

As a judge I

0 1 2 3 4 5 6 7 8 9 10

do not feel independent at all

feel completely independent

THANK YOU FOR PARTICIPATING IN OUR SURVEY

Appendix F – Sources Section 2

1. ***The Universal Declaration of Human Rights (1948)*** as adopted by the UN General Assembly and the ***UN's International Covenant on Civil and Political Rights (1966)***,
2. ***The UN Basic Principles on the Independence of the Judiciary (1985)***.
3. ***Guidelines on the role of the public prosecutor adopted*** at the VIIIth congress of United Nations for prevention of the criminality and the treatment of perpetrators, Havana, Cuba 27 august – 7 September 1990
4. ***Declaration of principles on prosecutors*** – MEDEL, Naples, 2 march 1996.
5. ***The Judges' Charter in Europe (1997) from the European Association of Judges***.
6. ***The European Charter on the Statute for Judges*** (1998).
7. ***The Universal Charter of the Judge (1999) approved by the International Association of Judges***.
8. ***Standards of professional responsibility and statement of the essential duties and rights of prosecutors***, adopted by the International Association of Prosecutors, 23 April 1999
9. ***Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials*** (11 May 2000);
10. ***Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system*** (Adopted by the

Committee of Ministers of the Council of Europe on 6 October 2000 at the 1151st meeting of the Ministers' Deputies).

11. **CCJE Opinion No.1 (2001) concerning the independence of the judiciary and the irremovability of judges.**
12. **CCJE Opinion No.3 (2002) relates to judicial ethics.**
13. **The Bangalore Principles of Judicial Conduct (2002) and resolution 2006/23 of the UN Social and Economic Council.**
14. **The Venice Commission's Report on Judicial Appointments** (Opinion No. 403/2003).
15. **Recommendation of the PACE on the role of the public prosecutor's office in a democratic society governed by the rule of law** (Rec 1604/ 27 May 2003)
16. **European Guidelines on Ethics and Conduct for Public Prosecutors** (the "Budapest Guidelines") adopted by the Conference on Prosecutors General of Europe on 31 May 2005.
17. **CCJE Opinion No.10 (2007) on the desirable functioning of judicial councils.**
18. **The Venice Commission's Report on the Independence of the Judicial System** (Opinion No. 494/2008).
19. **UN Resolution 17/2 - Strengthening the rule of law through improved integrity and capacity of prosecution services (2008);**
20. **Opinion no 12(2009) of the CCJE and opinion no 4 (2009) of the CCPE on the Relations between judges and prosecutors in a democratic Society**, Strasbourg, 8 December 2009 and the **Bordeaux declaration – judges and prosecutors in a democratic society**, drafted by CCJE and CCPE in Bordeaux and officially adopted by the CCJE and CCPE in Brdo, Slovenia, 18 November 2009
21. **Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities** (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).
22. **The Venice Commission Report on European Standards as regards the independence of the judicial system: Part II – the Prosecution Service**: Adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010).
23. **CCJE's Magna Carta of Judges (2010)** is a consolidated version of the principles contained in CCJE's Opinions.
24. **The Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia** (2010) produced by the OSCE's Office for Democratic Institutions and Human Rights.
25. **The Venice Commission Opinion on Legal Certainty and the Independence of the Judiciary** in BiH (Opinion No. 648/2011).
26. **Recommendation CM/Rec(2012)11 of the Committee of Ministers to Member States on the role of public prosecutors outside the criminal justice system** (Adopted by the

Committee of Ministers on 19 September 2012 at the 1151st meeting of the Ministers' Deputies).

27. **Opinion (2012) No. 7 of the Consultative Council of European Prosecutors on the Management of the Means of Prosecution Services.**
28. **Giacomo Oberto on Judicial Independence in its Various Aspects: International Basic Principles and the Italian Experience -Turin** (2013).
29. **Opinion (2013) No. 8 of the Consultative Council of European Prosecutors on the Relations between prosecutors and the media.**
30. **Recommendation Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings** (10 July 2003)
31. **The Universal Declaration on the Independence of Justice (The Singhvi Declaration)** drafted at the request of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities.
32. Edmondo Bruti Liberati on **Le rôle du Conseil Supérieur de la Magistrature comme garant de l'indépendance de la magistrature et dans l'organisation des juridictions.**
33. Conclusions of the Conferences of Prosecutors General of Europe (available on the website of Council of Europe - CCPE)

Opinion No. 9 : European norms and principles concerning prosecutors ("Rome Charter")

ECHR case-law, CJEU case-law

