



European Network of Councils
for the Judiciary (ENCJ)

Reseau européen des Conseils
de la Justice (RECJ)

Independence, Accountability and Quality of the Judiciary

Measuring for improvement

ENCJ Report 2019-2020



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Executive Summary and Recommendations

In 2019-2020 the work of the project consisted of several activities in the area of Independence and Accountability and Quality of Justice. The activities followed the cycle of improvement introduced in the previous period of the project. The question of judicial independence and quality requires constant attention, especially following recent developments within several member states of the European Union where adherence to the principles of the Rule of Law give rise to concern. This report presents the outcomes of the work streams identified at the beginning of a new period of the project and recommendations to the ENCJ.

Central to the mission of the ENCJ is the reinforcement of independent, yet accountable judiciaries in the European Union to guarantee access to fair, independent and impartial courts. To this end the ENCJ is working systematically to develop standards and guidelines for the governance of the judiciary and the conduct of essential functions such as the appointment of judges. To assess the extent to which standards and guidelines are realized a set of indicators on independence and accountability has been developed and implemented. These indicators focus, on the one hand, on the formal safeguards and mechanisms that are essential for judicial independence and accountability and, on the other hand, on the perceptions of independence by stakeholders. Work on assessment of quality of justice has been broadened and includes specific focus on the perception and experience of court users of the independence of the judiciary.

Independence and Accountability of the Judiciary

Application (measurement) of the improved indicators

Last year, the methodology and the indicators themselves have been improved, drawing in particular on the reports on the external validation conferences held with European organisations and the scientific community. Also, the concept of accountability that the ENCJ uses has been clarified to consist of transparency about the functioning of the judiciary, involvement of civil society in judicial governance and existence of mechanisms to promote and maintain the ethical standards of the judiciary.

This year the measurement of the improved indicators has taken place using a standardised questionnaire. The questionnaire was completed by the Councils, or in the absence of a Council, by other governance bodies. In order to increase the reliability and credibility of the indicators the answers to the questionnaire were validated by national expert groups with members mostly from outside the Judiciary. The validation contributed to the quality of the measurement of the indicators. In many countries discussions have taken place about the institutional arrangements and their (potential) impact on independence. In several countries these discussions have led to changes in the answers, compared to the last time the indicators were measured which was in 2017. Also, a few common issues came up that need further consideration.

The indicators provide a current insight in the independence and accountability of most of the judiciaries of Europe, as far as it can be gleaned from the formal safeguards and perceptions of independence. The outcomes are presented in the form of country profiles, as the purpose of the indicators is to stimulate the improvement of judicial systems and not to make rankings of judiciaries.

The main findings are:

- In most judiciaries there is still much room for improvement with respect of independence as well as accountability, judging from the difference between the actual scores and what are considered to be good arrangements (100%). For most indicators at least one Judiciary reaches a 100% score, showing that good arrangements are achievable. A consistent finding is that formal arrangements about the safeguards of independence are often less in line with the ENCJ standards in North-Western Europe than in Central Europe, while the scores on perceived independence are generally higher. State of the art formal arrangements are not sufficient to guarantee independence in practice, and much effort is needed to achieve improvement that is visible to the population.
- Compared with the previous measurement of the indicators in 2017, there are gains and losses with respect to independence, while the scores on accountability have improved nearly across the board. As to independence, the mean scores on organisational autonomy and finance have declined, while the scores on court management and human resource decisions have improved. The perception indicators on independence have not changed much. With regard to accountability, periodic reporting, external review and complaint procedures get markedly higher scores on average. The relations with the press, however, deteriorated.
- As to the formal arrangements, the worst scores in most countries concern the funding of the Judiciary. Judiciaries are often not involved in budgetary processes and dependent on discretionary decisions by the government.
- With regard to human resource decisions (appointment and promotion of judges), full compliance with the standards does not guarantee a high opinion of the judges about the outcome of the human resources procedures. Also, some judiciaries that are valued positively by judges in this respect are not fully in compliance with the standards.
- With regards to perceptions, most countries have very low scores on the indicators about the independence of the Judiciary as perceived by court users and as perceived by lawyers. The cause is that most judiciaries still do not conduct court user surveys, and not low satisfaction about independence.
- The scores on perceived corruption show that corruption remains a major challenge in a number of countries. The perceptions about adherence to ethical standards and the adequacy of actions by judicial authorities to address judicial misconduct and corruption differ much between judges and lawyers, and this should be cause for concern.
- The relatively low scores on formal safeguards in North West Europe have much to do with the separation of powers that is not based on strict formal arrangements but on custom and mutual trust. An issue that needs further discussion is whether or not formal and even ceremonial roles of the other state powers with regard to the judiciary that have never been abused, are innocent from the perspective of the independence of the Judiciary.

Proposals for next steps on Independence and Accountability in 2020-2021

The next steps in the improvement cycle that was agreed at the previous General Assembly are:

1. The discussion on the outcomes of indicators in dialogue groups of members and observers in the period from September until December 2020 with a view to analysing the outcomes together and to set priorities for improvement plans.

2. Formulation of an ENCJ opinion with regard to formal and ceremonial roles of government that in principle can reduce the independence of the judiciary.
3. Development of improvement plans to address weaknesses and/or to build on strengths in the period from January until June 2021.
4. Preparation of the next edition of the surveys among judges and among lawyers in 2020-2021. The surveys are to be held in the first quarter of 2022.
5. Follow-up with regard to the court user surveys (see below).

Quality of Justice

In 2018/2019 the project continued the development of a set of quality indicators that were tested in the pilot. The revised questionnaire based on the refined indicators was sent to all Members and Observers to be completed by the end of 2019. The results of the questionnaire on quality were discussed at the sub-group virtual meetings on 28 and 30 April and shared with the other Members of the project group. The report reproduces the sections on Visions of Quality, Areas of Quality to be covered by the Indicators and, Substantive Exploration of the Selected Areas of Quality from the report of 2019 to assist in understanding this report in the context of the work previously undertaken by the group and adopted at the General Assembly in Bratislava.

The work on a framework of the Councils that defines their involvement in guaranteeing and promoting quality of justice and their approach to it, and to improve quality of justice by examining their country profiles, taking the general recommendations into account was not possible due to the impacted by the Covid-19 pandemic. It was considered that face-to-face meetings were essential to progress the work in this area and thus, this element of the programme was postponed by agreement of the Board.

Proposals for next steps Quality in 2020-2021

1. The Questionnaire results should be analysed against existing, external data about Quality of Justice for their use in the indicator system.
2. The indicators and scoring should be subjected to further review by the Project Group in light of the results of the Questionnaire and further observations from Members and Observers.
3. The roles and competences of each of the Councils in guaranteeing and promoting Quality of Justice must be identified and Councils should adopt definite plans, having regard to their county profiles and general recommendations, to improve the Quality of Justice in their jurisdiction.
4. The ENCJ continues to make progress towards developing a vision of Quality of Justice. In light of the outcome of the Questionnaire, it will be up to individual councils to identify the areas in which there is potential to improve quality and to take appropriate steps to achieve such improvement.

Format of court user surveys

Perceptions about judicial independence are of particular importance in the indicator system. The perception of court users - paying attention to the court users' perception and experience of the independence during their visit in the court - are usually lacking from the available data. Therefore, in the period 2018/2019 the project has been working on a format for a court user survey that could be used across the judiciaries of Europe to help fill in this gap. Before the ENCJ could suggest to Members and Observers to incorporate this format in a national court user survey, the questions needed to be refined and tested in a pilot. This year the questions have been reviewed and refined in discussions during project team meetings, which led to a more complete survey. When designing the questionnaire, it was decided that the survey should be short and focus only on major issues and could be initially intended for both professional and non-professional users. The questionnaire was submitted for testing in four pilot countries.

From the above activities the next steps proposed are:

1. Reexamination of the questions and possibly their further refinement.
2. Consideration whether the questionnaire should be divided into professional and non-professional users.
3. Consideration of a closer in depth analysis of the pilot.
4. Extension of the pilot study to more countries and more respondents including several courts and areas within each country.

Introduction¹

Central to the mission of the ENCJ is the reinforcement of independent, yet accountable judiciaries in the European Union to guarantee access to fair, independent and impartial courts. This fundamental right is laid down in the article 47 of the EU Charter of Fundamental Rights. The ENCJ works systematically to develop standards and guidelines for the governance of the judiciary and the conduct of essential functions such as the appointment, promotion and dismissal of judges. It is the view of the ENCJ that it is not sufficient to set standards and guidelines: the extent to which these are realized in practice needs to be systematically assessed. This is particularly important, when all the European Institutions are challenged to find the more effective ways to better protect and promote the Rule of Law. The ENCJ and the other judicial networks are best placed to help understand the situation on the ground and provide a judicial perspective on relevant developments.

A set of indicators on independence, accountability and quality has been developed, improved and implemented. These indicators focus on the one hand on the formal safeguards and mechanisms that are essential for judicial independence and on the other hand on the perceptions of independence by stakeholders. The outcomes provide Councils and other governing bodies with insights that they can use to improve their judicial systems to enable judges to fulfil their essential function in society better, and, where necessary, engage with the other state powers on matters of independence.

Constant review of the systems of standards and indicators is necessary due to the continuing challenges. Therefore, refinement of some aspects of the indicators and their measurement means accordingly (e.g. adaption of the questions and the scoring in the questionnaire) have also to be reviewed. The public and stakeholders emphasize the need to strengthen the quality of justice. And its complex content requires more in depth analysis of the measurement.

In this period the following activities were undertaken:

Independence & Accountability

- (1) Application of the improved indicators was implemented by sending the questionnaire to all Members and Observers to complete. The answers were validated by national external expert groups. The outcomes were discussed at the meetings of the project team.
- (2) The Councils analysed the results and communicated the lessons learned on a national level.

Quality

- (3) The revised questionnaire based on the refined indicators was sent to all Members and Observers to be completed. The outcomes were discussed at the meetings of the project group.

Court User Survey

- (4) The questions have been reviewed and refined in discussions during project team meetings. The questionnaire was submitted for testing in four pilot countries. The outcomes were discussed at the meetings of the project team.

¹ This report was composed and edited, with the input of the project team, by Mr. Frans van Dijk, Ms. Caroline Costello, Ms. Susanne Skotte Wied and Ms. S. Koolen, Ms. E. Mathews. Technical support was provided by the Courts Service in Ireland and by the Netherlands Council for the judiciary. The ENCJ office, Ms Monique van der Goes provided general support.

Three project meetings were held in 2019-2020 (instead of four planned):

- Sofia, 19-20 September 2019
- Brussels, 12-13 December 2019
- virtual meetings, 28 and 30 April 2020; for two groups of the project team (instead of meetings which had been scheduled to occur on 5 and 6 March 2020 in Paris and 23 and 24 of April 2020 in Athens)

Part 1 of the report presents the outcomes of the questionnaire on independence and accountability (including some inferences from the judges' and lawyers' surveys conducted by parties other than the ENCJ in the period 2018-2019).

Part 2 of the report covers the outcomes of the questionnaire on quality of justice. The vision on quality and the areas of quality that were developed in that report are restated and the results of the questionnaire are presented.

In Part 3 of the report the refined template of the court user survey and the results of the pilot are presented. Also, further steps are proposed.

Part 1. Independence and Accountability

1. Background

Access to fair, independent and impartial courts is a fundamental right, as laid down in article 47 of the EU Charter of Fundamental rights. One of the ways in which ENCJ strives to protect this right is by providing support for the independence and accountability of judiciaries in Europe and by promoting understanding and respect for judicial independence. As a network of Councils for the Judiciary, the ENCJ has therefore developed standards for the areas of responsibilities of Councils for the Judiciary that are important to the independence and accountability of the judiciary. The standards range from the appointment of judges, to disciplinary proceedings and the funding of the judiciary. Many of them are applicable as well by other governance structures than Councils. Setting standards is relevant for judiciaries to be able to compare and improve their practices.

Deriving from the standards, the ENCJ has developed a set of indicators to measure the state of independence and accountability of the judiciaries of the European Union including candidate members and EEA. The indicators concern the formal arrangements with respect to all major aspects of independence and accountability of the judiciary on the one hand, and the actual realisation of Independence and accountability as perceived by society on the other hand. The indicators and their measurement are part of the improvement cycle that the General Assembly of the ENCJ decided upon in 2019. The current improvement cycle started in September 2019, and is as follows.



The first phase of the cycle is the measurement of the indicators, which has taken place this year.

To be more precise, at the 2019 General Assembly the following steps were agreed on for 2019-2020.

1. Application (measurement) of the improved indicators by all members and observers, as the start of the next cycle of improvement, beginning in September 2019. The national expert groups will be used to validate the outcomes.
2. Further development of a court user survey that covers aspects of independence and accountability as well as quality.

3. Analysis by all judiciaries of the outcomes of the judges and lawyers surveys for their countries and communication with the judges of outcomes and lessons to be drawn.
4. The perceived increase of lack of respect for judicial independence by the other State Powers makes the Strategic Plan in which the ENCJ has taken it upon itself to initiate a dialogue with these State Powers on the EU level more urgent. The Executive Board is in charge of this action.

Step 1 concerns the first phase of the improvement cycle, as discussed above. Step 2 is meant to fill in an important gap in the indicators conceptually, as few judiciaries regularly hold opinion surveys among the court users on independence related topics. In this part of the report the results of step 1 and 2 will be presented. Step 3 is a matter for each judiciary individually, and the outcomes will serve as input for the next phase of the improvement cycle, Analyse and Discuss. This phase will include dialogue meetings of small groups of judiciaries. Step 4 is being addressed by the Executive Board and is not included in this report.

In the next section, the indicators on independence and accountability including the underlying concepts and the measurement of the indicators, are discussed. Section 3 presents the state of independence and accountability in Europe in 2020. Section 4 proposed next steps.

2. Indicators on Independence and Accountability

2.1 System of indicators on independence and accountability

Before presenting the indicators and their measurement, the principles underlying the system of indicators and the system itself is recapitulated. The vision of the ENCJ can be summarised by five basic notions.

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

As to the assessment of the formal aspects, the categorisation is done by the Councils or, in the absence of a Council, other governance bodies, using a standardised questionnaire. The last time that the assessment was made was in 2017. The indicators were revised last year², and this year the assessment was conducted again. It is a self-evaluation that can be checked by anybody who is knowledgeable about the legal systems concerned. At the General Assembly 2019 it was decided to introduce external validation of the answers to the questionnaire in view of the reliability and credibility of the indicators.

The indicators of perceived independence consist of the perceptions of society, the users of the courts and the judges themselves. External surveys are available about perceptions in society such as the World Economic Forum Competitiveness Report, World Justice Rule of Law index and several Eurobarometer reports.

² See [ENCJ Independence, Accountability and Quality of the Judiciary, Indicators and Surveys: Leading a process of positive change \(2018-2019\)](#)

Unfortunately, few judiciaries have conducted satisfaction surveys among court users. And if they did, questions about independence were not included. To that end the Project Team has worked this year on the development of a format for a court user survey from the perspective of judicial independence. The format is included in section 3 (Part 3) of this report.

As to the perceptions of judges, the ENCJ regularly conducts a survey among the professional judges of Europe about their independence, and it has also conducted a survey among lay judges. In the first quarter of 2019 the survey among the professional judges was held. At the same time, in cooperation with the CCBE (Council of Bars and Law Societies of Europe) a survey was held among lawyers. The surveys among judges and lawyers also include some questions about accountability that have been incorporated in the indicators. Still, in the coming years perceived accountability needs to be further developed. The outcomes of both surveys are included in the country profiles presented in section 3.4 (Part 1) of this report.

The indicator system consists of a set of indicators (see below) and of a methodology to uniformly quantify the results. This requires a normative evaluation of what is good and bad practice. Therefore, a points system using scoring rules is used 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 combining the scores per sub-indicator. Some sub-indicators weigh heavier than others.

As mentioned before, the set of indicators consists of indicators about formal aspects of independence and indicators about perceived independence. The indicators on formal aspects are divided into indicators for the judiciary as a whole and for the individual judge, see Table 1.

Table 1 Types of indicators

	independence		accountability	
formal	Judiciary as a whole	Individual judge	Judiciary as a whole	Individual judge
perceived	Perceptions of a range of groups in society		Only perceptions of judges and lawyers	

2.2 Overview of the indicators

The current set of indicators is listed below.

INDICATORS OF THE FORMAL 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 guarantees that judges are appointed permanently until retirement
 - 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; See below for proposed change of sub-indicators
- Responsibilities of the Council.

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

- Influence of judges on decisions.

3 Financial independence, with the following sub-indicators:

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

4 Management of the court system.

- Management responsibility of the courts.

INDICATORS OF THE FORMAL 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 Court judges and the President of the Supreme Court;
- Compliance with ENCJ guidelines about the appointment of judges;
- Evaluation, promotion, disciplinary measures and training of judges;
- Compliance with ENCJ guidelines about the promotion of judges.

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

- Disciplinary measures can **never** be initiated against a judge (except in cases where there has been malice or gross negligence) for the following reasons:
 1. interpretation of the law,
 2. assessment of facts
 3. weighing of evidence in determining a case
- Disciplinary measures can **never** be initiated against a judge for speaking out when democracy and fundamental freedoms are in peril.
- Compliance with ENCJ standards about procedure re disciplinary measures against judges
- Competent body to make decisions about disciplinary measures against judges

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

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

8. 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.

9. 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 PERCEIVED INDEPENDENCE OF THE JUDICIARY AND THE INDIVIDUAL JUDGE

10. Independence as perceived by society

- Flash Eurobarometer 474 (2019) 'Perceived independence of the national justice systems in the EU among the general public', Q1 and Flash Eurobarometer 475 (2019) 'Perceived independence of the national justice systems in the EU among companies', Q1.
- WEF, Global Competitiveness Report 2019, 1.07.
- WJP, Rule of Law Index 2020,

11. Independence as perceived by courts users

- National surveys.

12. Independence as perceived by lawyers

- CCBE survey, question 10

13. Independence as perceived by judges

- ENCJ survey, question 16

14. Judicial corruption as perceived by citizens in general

- Special Eurobarometer 470 (2017) 'Corruption', QB7
- World Justice Rule of Law Index 2020

15. Trust in justice/legal system, relative to trust in other state powers by citizens

- Standard Eurobarometer 91 Public Opinion in the European Union, table QA6a

INDICATORS OF THE FORMAL ACCOUNTABILITY OF THE JUDICIARY AS A WHOLE

Transparency about the functioning of the judiciary

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

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

2. Relations with the press and outreach activities, with the following sub-indicators:

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

3. Outreach activities aimed at civil society

- Open door days;
- Educational programmes conducted at schools
- Development of television/radio/social media programme formats to give insight

in the work of the judge.

4. External review, with the following sub-indicators:

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

INDICATORS OF THE FORMAL ACCOUNTABILITY OF THE JUDICIARY AS A WHOLE

Transparency about the functioning of the judiciary: involvement of civil society in judicial governance

5. Participation of civil society in governance bodies of the judiciary:

- Selection and appointment of judges;
- Disciplinary measures against judges;
- Complaints against judges and the court(s) in general.

INDICATORS OF THE FORMAL ACCOUNTABILITY OF THE INDIVIDUAL JUDGE AND STAFF:

Mechanisms to promote and maintain ethical standards of the judiciary

6. Complaints procedure, with the following sub-indicators:

- Availability of a complaints procedure;
- Scope of the complaints procedure;
- Appeal against a decision on a complaint;

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

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

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

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

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

- Availability of a code of judicial ethics.

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

INDICATORS OF THE PERCEIVED ACCOUNTABILITY OF THE JUDICIARY AND THE INDIVIDUAL JUDGE

- 10. Adherence to ethical standards, as perceived by judges**
 - ENCJ survey, Q19.
- 11. Adequacy of actions by judicial authorities to address judicial misconduct and corruption, as perceived by judges**
 - ENCJ survey, Q19 and 20.
- 12. Adequacy of actions by judicial authorities to address judicial misconduct and corruption, as perceived by lawyers**
 - CCBE survey, Q11 and 12.

Changes to the indicators compared to 2017

Since the last edition in 2017, several aspects have been adapted in the set of indicators. The changes are explained in detail in the report of last year³.

The indicators are described in full detail, including the scores given to the answers, in Annex 1 in the format of the questionnaire that has been filled in by the councils and other governing bodies. The scoring rules and the way the scores are aggregated to calculate the indicators are presented in Annex 2.

2.3 External validation of answers to the Independence and Accountability questionnaire

The introduction of external validation of the answers to the questionnaire about formal independence and accountability has meant that all judiciaries (with a few exceptions) have established small validation committees that generally consist of two or three members. Most members have a scientific background, but also knowledgeable judges have been involved. Table 2 gives an overview of the committees and their composition.

Table 2. Size and composition of the external validation committees

		Composition			
		Only academics	Only judges	Combination	None
Number of members	0				3
	1	2			
	2	7	2	5	
	3	1		1	

³ [ENCJ Independence, Accountability and Quality of the Judiciary, Indicators and Surveys: Leading a process of positive change \(2018-2019\)](#)

	4			1	
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Some Members and Observers did not establish an external validation committee. These were the councils from Greece, Italy and Latvia. In the case of Italy, the validation was undertaken by members of the CSM from the academic field.

The procedure followed by the judiciaries that instituted an external validation committee was as follows:

1. The Council (or other governing body) prepared draft answers to the questions of the questionnaire
2. On the national level, an external validation committee was formed by the Council or other governing body. The committee checked the answers and raised differences of opinion with the Council.
3. The Council and validation committee discussed any differences of opinion and attempted to resolve the issues. If they did not succeed, the answers of the Council together with the differences of opinion were put to the project coordinators.
4. In this report the I&A scores in the country profiles (see the graphs below) are all based on the answers of the Councils (and other governing bodies), and remaining fundamental differences of opinion or noteworthy issues are presented under the graphs.

3. State of Independence and Accountability in Europe 2020

The outcomes of the indicators are presented in the figures below for each country separately. It must be stressed that the indicators should be seen in the light of the normative vision on the independence and accountability of the Judiciary and the analytical framework identifying the essential constituents of the independence and accountability of the Judiciary. The indicators have been developed to discuss the strengths and weaknesses of judicial systems in the context of an improvement cycle. The indicators have not been developed to create rankings of judicial systems. Readers of the report are advised to treat the comparison of data from different countries with various geographical, economic and legal backgrounds with great caution.

3.1 Method of presentation

The indicators on formal independence explicitly set a standard about what formal arrangements should look like. The higher the score on an indicator, the more it is in line with ENCJ standards. The outcomes for each indicator are presented as a percentage of a standardised maximum score that reflects the best arrangements.⁴ Statistics such as average and standard deviation can be calculated for each (sub) indicator across countries.

The score per indicator is presented in combination with the minimum and maximum score achieved by any of the participating countries.

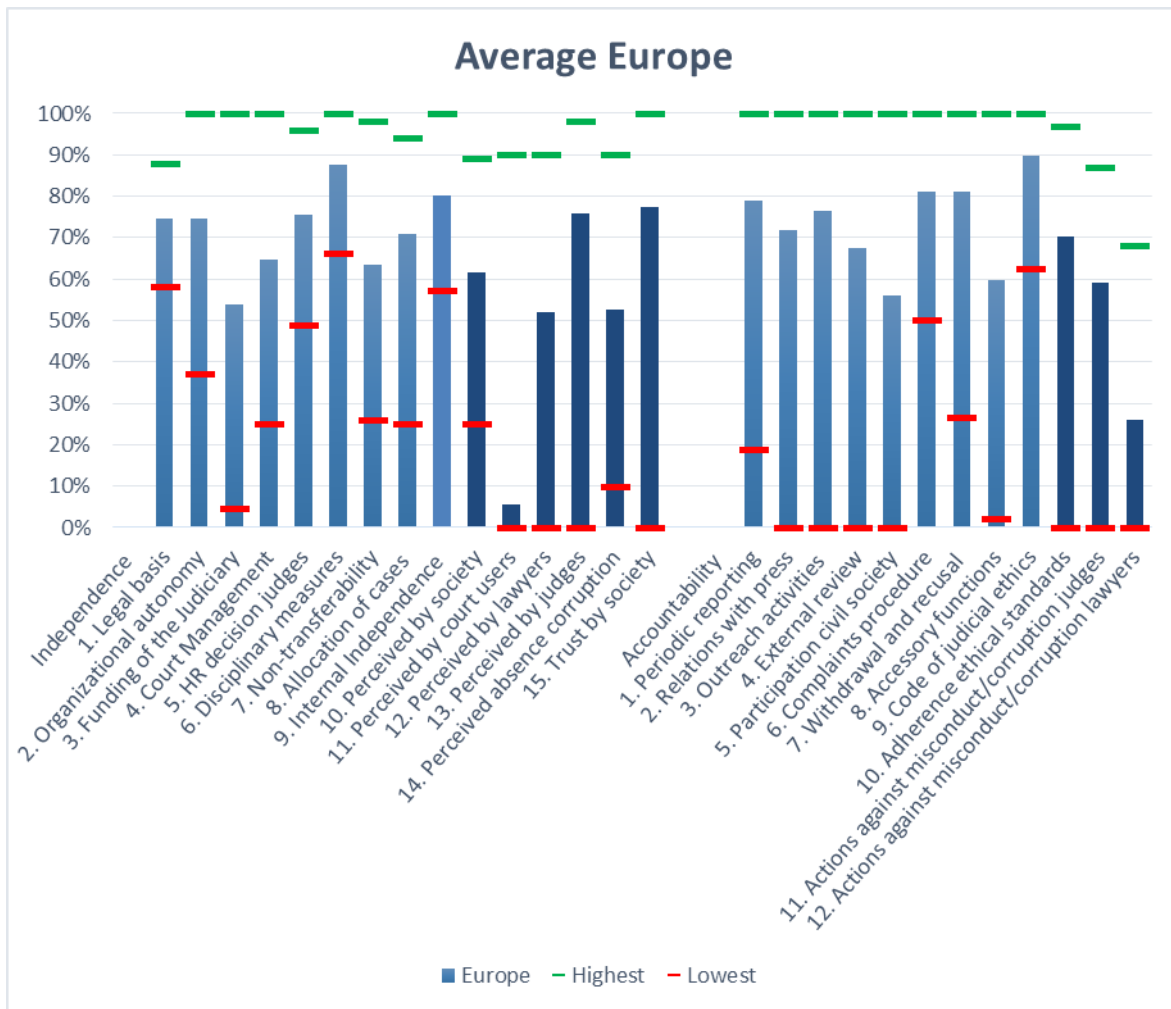
The indicators are depicted horizontally. The Indicators on independence consist of indicators 1 – 9 about formal independence (light blue) and indicators 10 – 15 on perceived independence (dark blue). Likewise, the indicators on accountability consist of indicators 1 – 9 on formal accountability (light blue) and indicators 10 – 12 on perceived accountability (dark blue).

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

As to the availability of data, most indicators could be measured for all countries, except for the independence of the Judiciary as perceived by court users and as perceived by lawyers. In particular, surveys among court users that pay attention to independence are rarely performed on the national level. As a result, most countries have a minimum score on this indicator. Given the importance of court user feedback, the indicator was retained. For several countries, data on the perception of lawyers is not available, either because the country concerned did not participate in the survey conducted by the ENCJ together with the CCBE in 2019 or because the number of respondents was too low to be meaningful.

The table below gives the average score per indicator over all members and observers of the ENCJ that answered the questionnaire. The red dash gives the lowest score of any country and the green dash the highest score. Given the differences between the countries, the average scores only give a rough indication of common issues in Europe. Nevertheless, some general conclusions can be drawn from the averages in combination with a global inspection of the country outcomes.

⁴ 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.



Note: the indicator trust by society measures whether the trust in the judiciary is higher than in the other branches of the state within a country. As this is the case in most countries, the score on average and for most countries are very high, and for many judiciaries much higher than the scores on the other perception indicators.

Independence and accountability in general

There is still much room for improvement with respect of independence as well as accountability, judging from the difference between the actual scores and what are considered to be good arrangements (100%). For most indicators at least one Judiciary reaches a 100% score (green dash), showing that these good arrangements are achievable. On the other hand, minimum scores also occur (red dash), especially in the area of accountability. With regard to most of the perception indicators a 100% score is not realistically achievable. Still, also here much can be gained. It should be noted that formal arrangements as to the safeguards of independence are often less well arranged in North-Western Europe than in Central Europe, while the scores on perceived independence are generally higher. State of the art formal arrangements do not guarantee independence in practice, and much effort is needed to achieve improvement that is visible to the population.

Comparison with the previous measurement in 2017

Compared with the previous measurement of the indicators and as far as the indicators have remained the same⁵, there are gains and losses with respect to independence, while the scores on accountability have improved nearly across the board. As to independence, the mean scores on organisational autonomy and finance have declined, while the scores on court management and human resource decisions have improved. The perception indicators on independence have not changed much.

With regard to accountability, periodic reporting, external review and complaint procedures get markedly higher scores on average. The relations with the press, however, deteriorated.

Perceived independence

The lowest mean scores concern perceptions of independence and accountability. As mentioned already, most judiciaries do not conduct court user surveys. Consequently, the average score on indicator 11 is very low. This is the result of not conducting surveys, and not the result of low satisfaction about independence. It is within the mandate of judiciaries to conduct court user surveys, and therefore judiciaries can influence their score. Indicator 12 concerns independence, as perceived by lawyers. The mean score on this indicator is also low. This is caused by relatively low ratings, but foremost by the unfortunate circumstance that not in all countries lawyers have participated and, where they did participate, the response rates in some of these countries were too low. The score on corruption shows that this remains a major challenge in a number of countries. The scores on the other perception indicators are at similar levels as the indicators about formal independence. Indicator 10 warrants specific attention, because it provides a within country perspective. It concerns trust of citizens in the Judiciary relative to trust in the other state powers. In most countries the trust in the Judiciary is higher than the trust in the other branches of the state (16 of the 21 countries for which data exist).

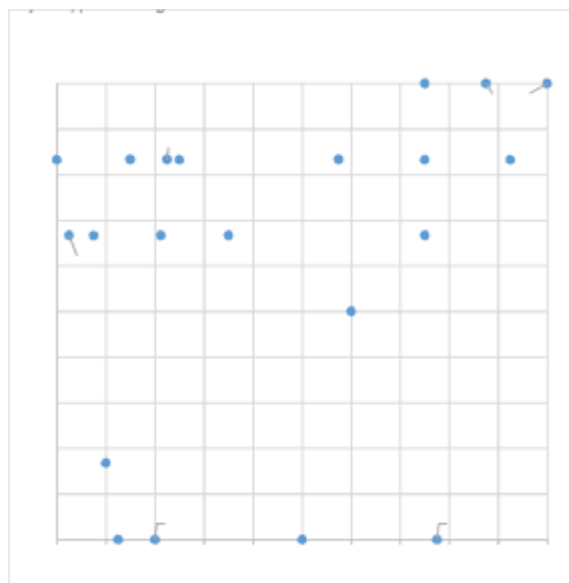
Low scores for funding

With regard to formal independence (1-9), funding of the Judiciary scores lowest by far. The funding of the Judiciary is generally not well arranged, and Judiciaries are often dependent on discretionary decisions by the government. The indicator consists of two elements: the division of decision making authority between judiciary and government, including the possibility for the judiciary to involve parliament in case of a conflict with government, and the objectivity of the criteria of funding. Figure 1 shows the outcomes for all judiciaries on both elements in combination. The horizontal axis depicts the authority of the judiciary to decide on budgetary matters. The sub-indicator distinguishes five tasks, ranging from budget preparation to (organising) auditing of the accounts. The vertical axis captures the degree of objectivity of the funding method of the Judiciary. The figure shows that the degree of objectivity is less of a problem than the division of authority (mean 6.3 vs 4.6). Still, a number of countries scores very low on objective criteria, and some of these countries on both elements. The outcomes in this area underline the relevance of the ENCJ report on funding of the judiciary.⁶

⁵ It should be noted that the country composition has changed to some extent (see section 4.3).

⁶ See ENCJ (2015-2016). Funding of the Judiciary. See www.encj.eu.

Figure 1 Sub-indicators funding of judiciary



Note: authority of judiciary is the average of sub-indicators 3b and 3c.

The main recommendations of that report are:

5. The creation of the budget should be systemically and practically free from inappropriate political interference, so that courts are financed on the basis of objective and transparent criteria;
6. The Council for the Judiciary or equivalent body should be closely involved at all stages in the budgetary process, and courts must be resourced to a level which provides an effective and efficient justice system;
7. Budgetary priorities must be defined in collaboration with the relevant judiciary according to transparent criteria, and must not themselves dictate the court procedures to be followed.

These recommendations are still very relevant.

Threat of interference through formal responsibilities of government

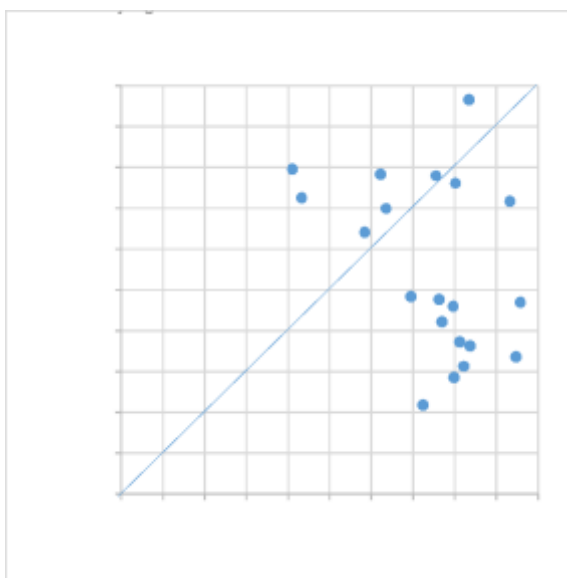
The scoring of the indicators gave rise to discussion about the (potential) impact of formal or even ceremonial roles of government in several countries of Northern Europe. Such roles occur in particular with regard to the appointment of judges when the formal appointment is done by the executive. Denmark and Finland had this in common, but differed in the sense that in Denmark the Minister can only decline the proposed candidate, but he cannot choose another candidate and if a candidate is not appointed by the Minister, the parliamentary judicial committee has to be informed, a situation that has never occurred. In Finland a Judicial Appointments Board proposes a candidate to the government (Minister of Justice) who then makes the final proposal of a judge for appointment by the President of the Republic. In this process, the Minister of Justice has the possibility to propose a different candidate than the proposed one, and this situation has occurred once. For the two countries this led to different answers to the ENCJ Report on Independence, Accountability and Quality of the Judiciary 2019-2020 – draft for GA 10 June 2020 www.encj.eu

questionnaire and different scoring. With regard to the formal position of the Council a similar discussion arose in Norway. The issue that needs further discussion is whether or not formal and ceremonial roles that have never been abused, are innocent from the perspective of the independence of the Judiciary. If not, Councils should attempt to have the relevant laws changed. This discussion is not only relevant for the Nordic countries, but also for other countries such as the Netherlands.

Ambivalent outcomes about appointment and promotion of judges

With regard to human resource decisions (appointment and promotion of judges), a high score on the indicator does not generally coincide with a high score on the questions in the judges' survey about whether judges are appointed and promoted solely on the basis of merit and experience.⁷ Full compliance with the standards does not guarantee a high opinion of the judges about the outcome of the HR procedures. Also, some judiciaries that are valued positively by judges in this respect are not fully in compliance with the standards. Figure 2 illustrates both effects. The horizontal axis gives the scores on the indicator that captures human resource decisions about judges, and the vertical axis the outcomes of the judges' survey. If both indicator and survey were balanced, outcomes would be on the diagonal. Now, a large cluster of countries lies below the diagonal, and a few countries above.

Figure 2. Indicator HR decisions and agreement in judges survey on promotion of judges only on merit



Note: survey 2019

Independence as perceived by citizens and by judges

The ENCJ set of indicators contains an indicator about judicial independence as perceived by citizens. The correlation between this indicator and the perceived independence by judges is high⁸, showing that the

⁷ See ENCJ 2019.

⁸ Pearson correlation: 0.73 (N=21).

perceptions of judges of their actual independence are fairly in agreement with those of citizens across countries.

Diverse outcomes about formal accountability

The scores of external review and, to a lesser degree, accessory functions are relatively low. External review is important but it is also 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. Also, participation of civil society which was introduced this year as indicator gets a low score.

With respect to accountability it should be noted that outcomes vary considerably among judiciaries. For instance, about half of the judiciaries score very low on relations with the press, whilst the others score very high.

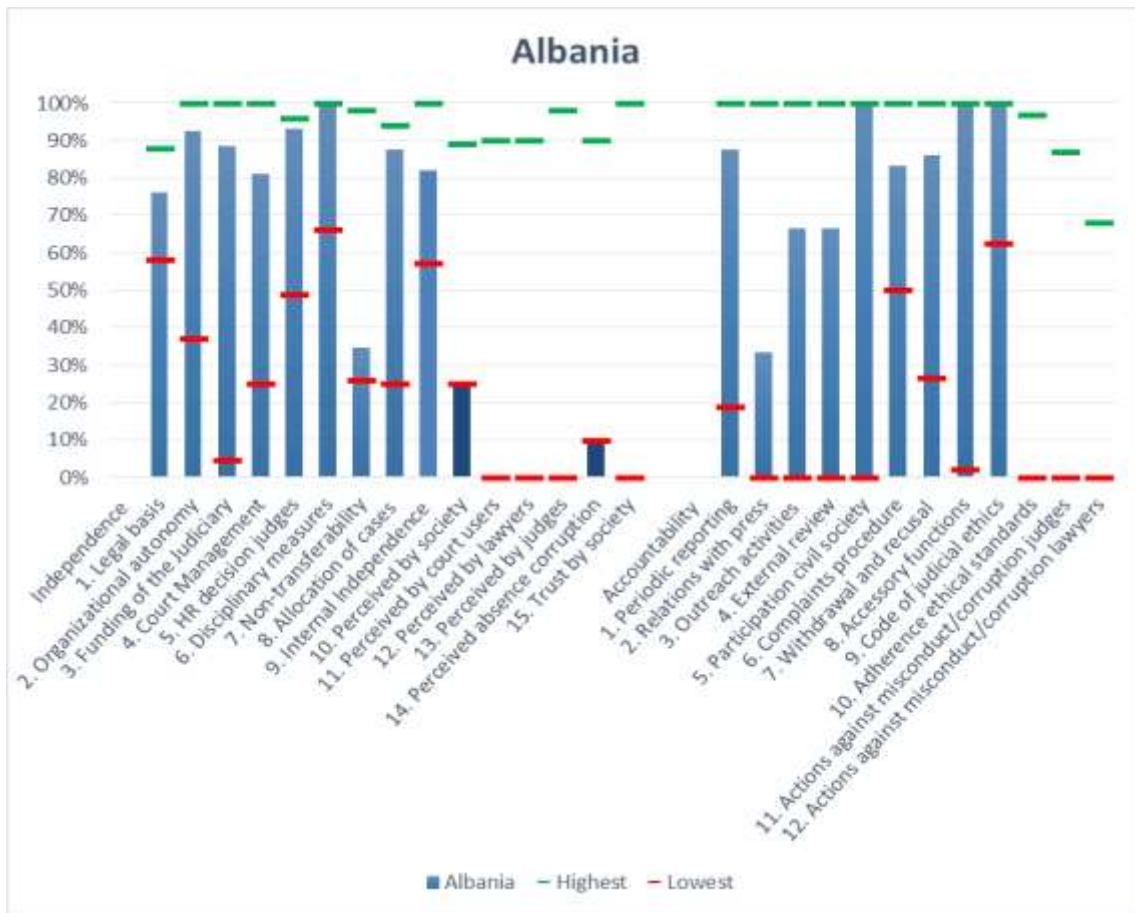
Perceived accountability

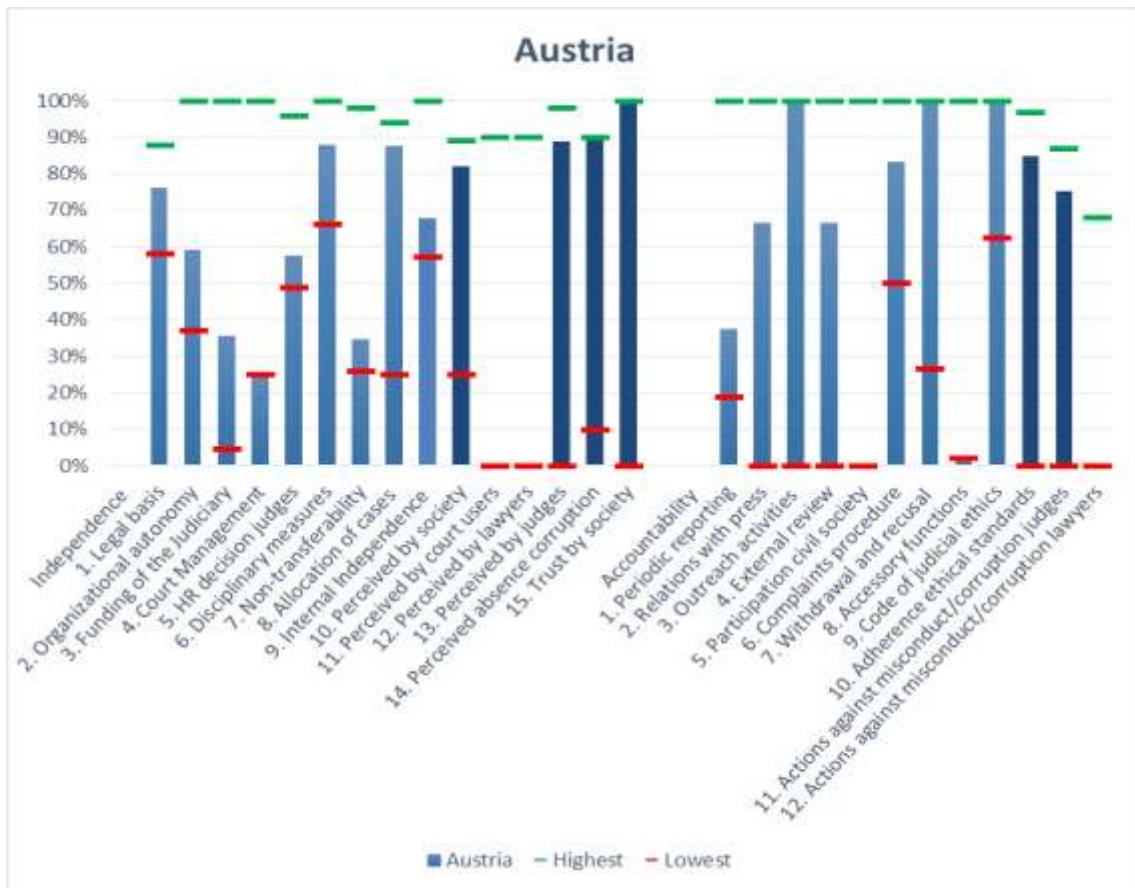
New indicators were introduced with regard to adherence to ethical standards and the adequacy of actions by judicial authorities to address judicial misconduct and corruption. Two of the three indicators concern the perception of judges. The third gives the perception of lawyers about the adequacy of actions by judicial authorities. The score of this third indicator is very low. This is partly due to the aforementioned problem of the lack of participation in the survey among lawyers, but it also stems from low scores by the lawyers. The perceptions of judges and lawyers differ much in this area, and this should be cause for concern.

3.4 State of independence and accountability per judiciary

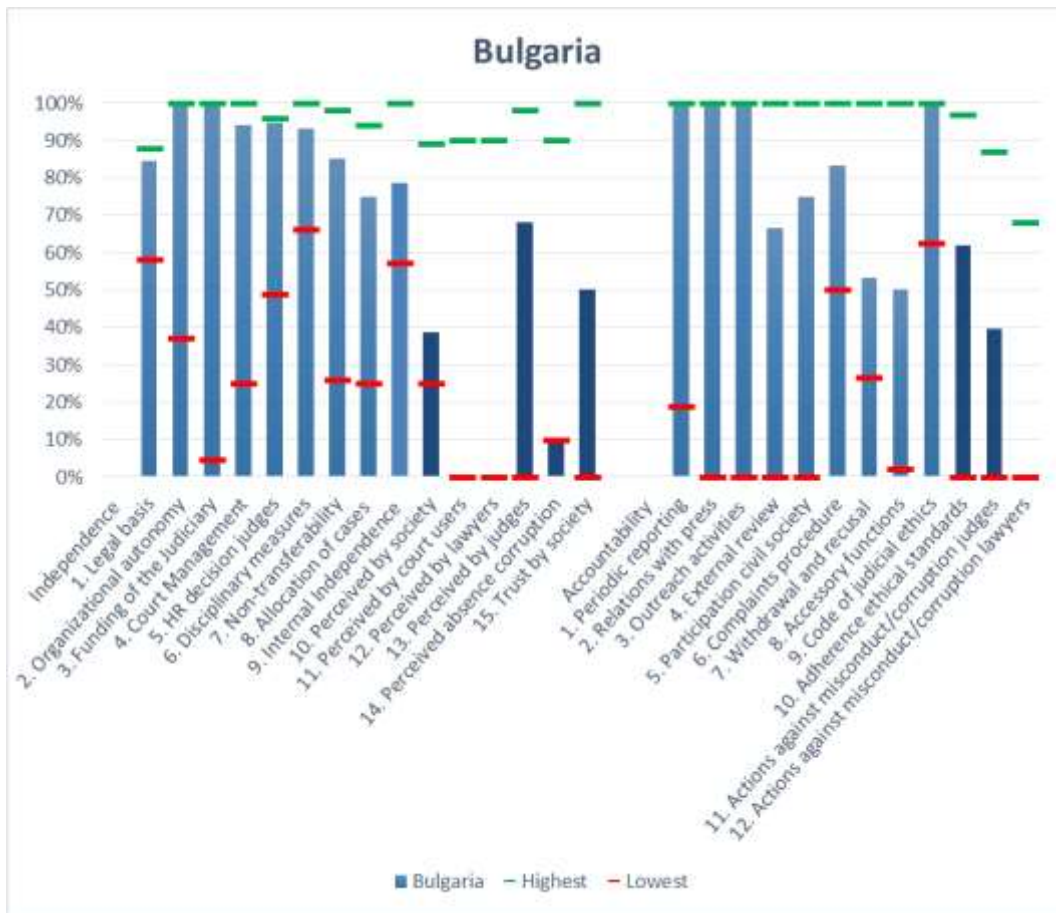
The outcomes are given in alphabetical order for all participants, members of the ENCJ as well as observers. In total 22 judiciaries⁹ participated, including those of England and Wales and Scotland. An asterisk denotes the observers. In 2017, the previous time the indicators were measured 24 judiciaries participated. Countries that did not participate this time are Belgium, Croatia, Poland (suspended as member of ENCJ) and Sweden. Greece and Albania did not participate the previous time. In Annex 3 the scores are presented in a table. The table also gives the outcomes of the previous edition of the indicators. The table shows that several indicators were added to and one indicator deleted from the set of indicators. Due to changes in the definition of several indicators, the results of the indicators that are included in both editions cannot always be compared. It should also be noted that as a result of the external validation in many countries discussions have taken place about the correct answers to the questionnaire, and in some instances this has led to changes in the answers, compared to the previous edition.

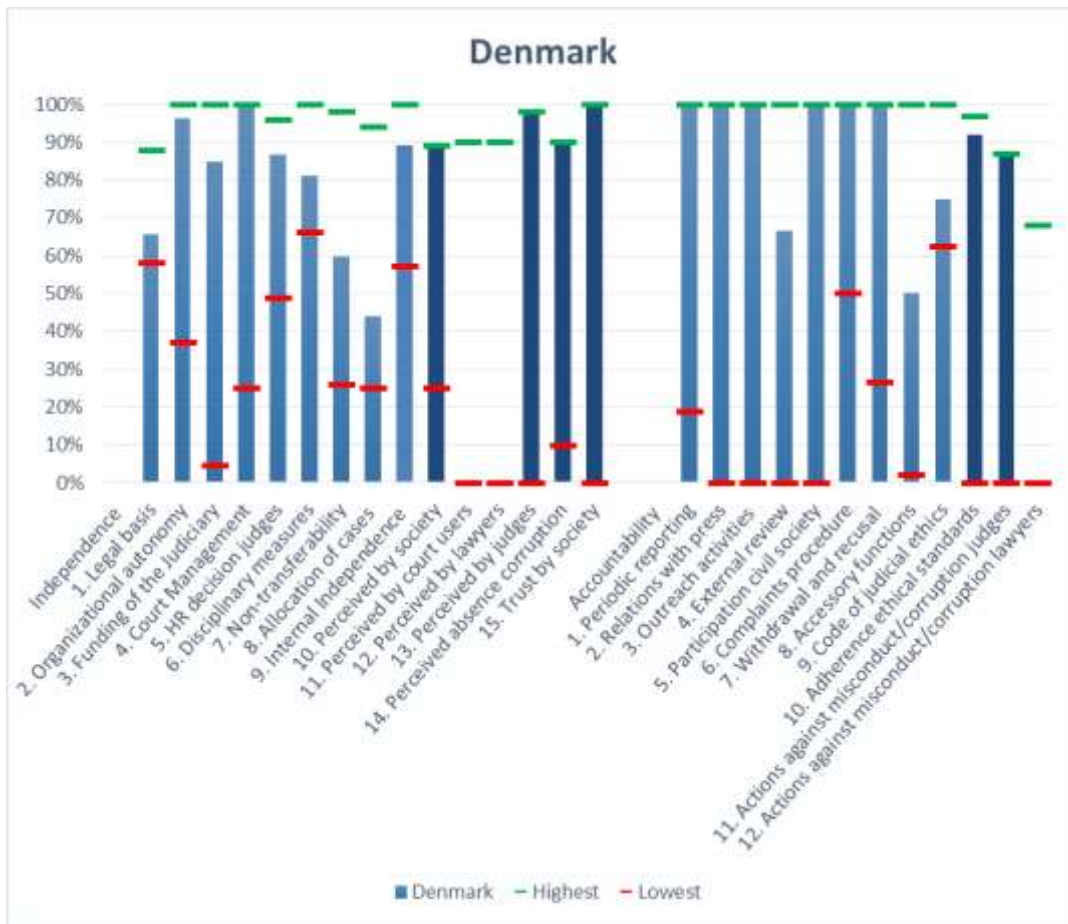
⁹ Not counting double representation of jurisdictions in Italy and Greece (regular judiciary and administrative law tribunals).



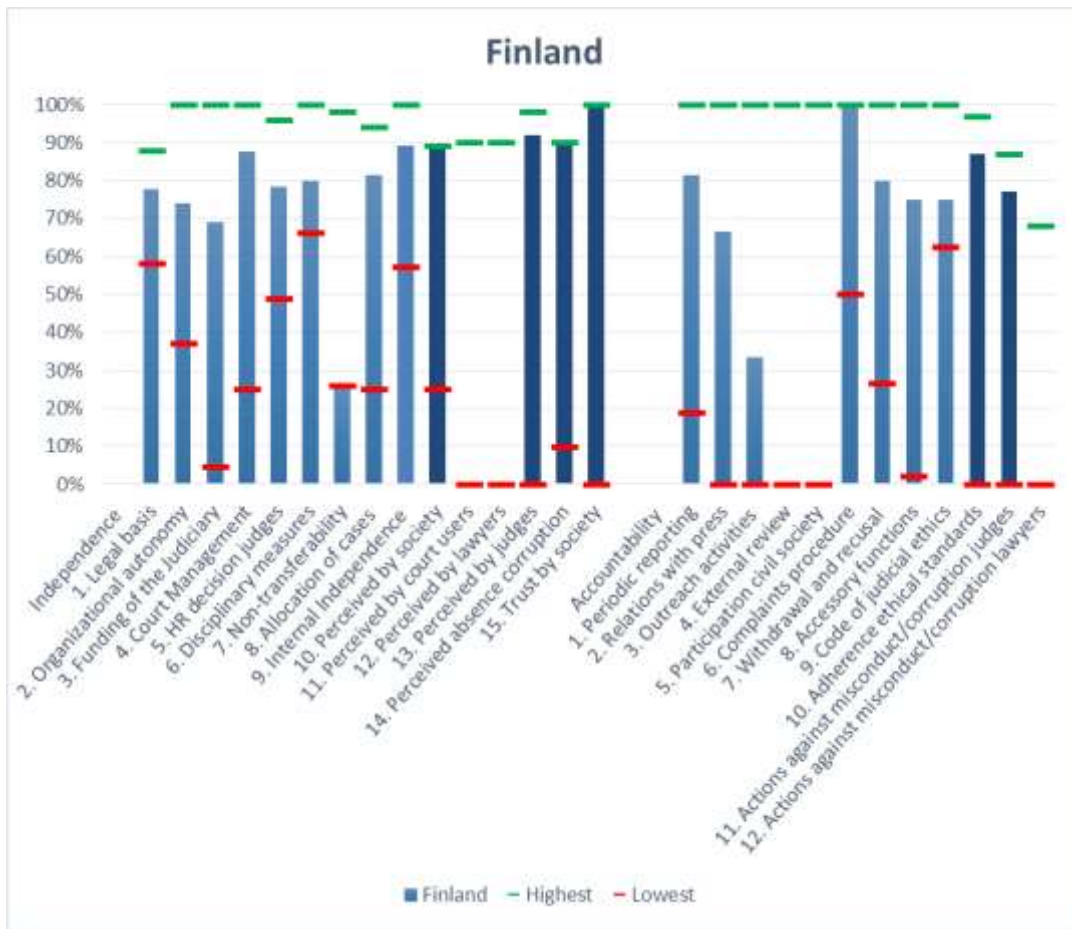


*Note: In Austria the administration of courts falls under the responsibility of the executive i.e. of the competent minister, that is the Minister of Justice. Court administration is handled at each court by the court president. The court president is a judge and is supported by his/her vice-presidents, being judges as well. When performing their administrative duties (but only then), judges who work in court administration do not enjoy judicial independence but act within the hierarchy of the executive.

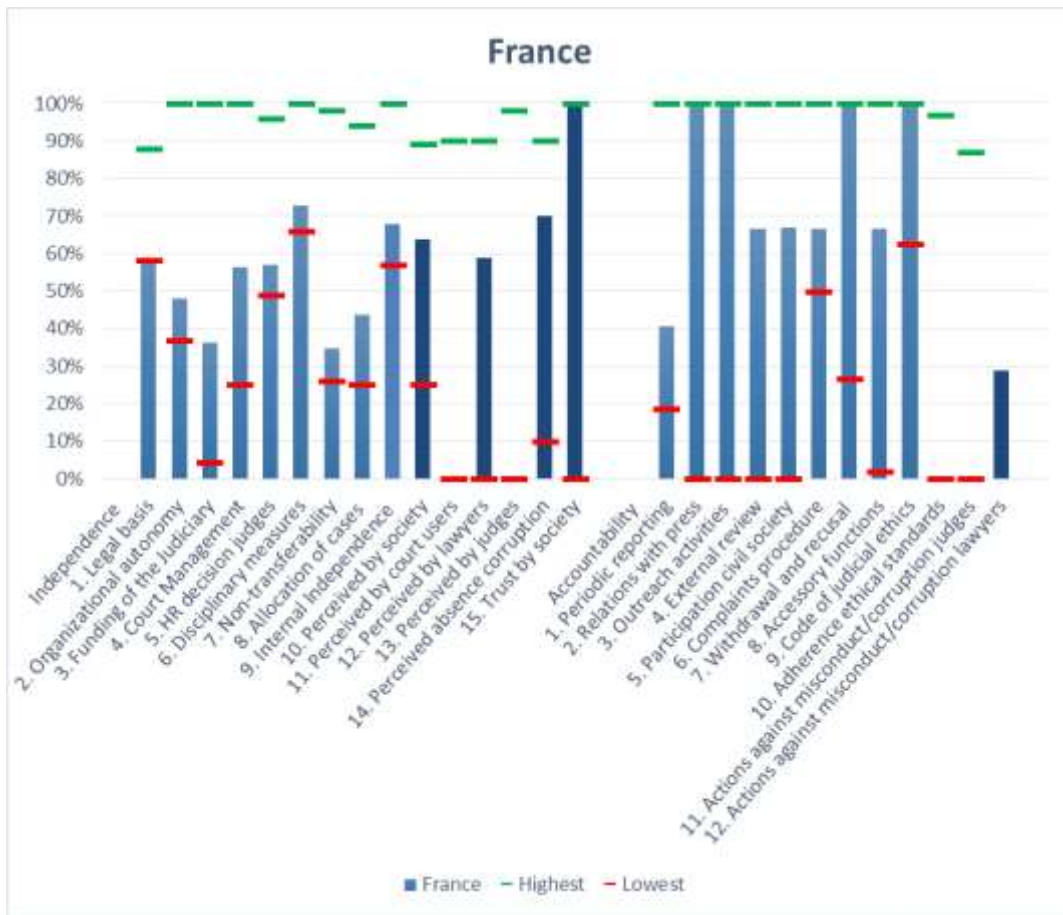


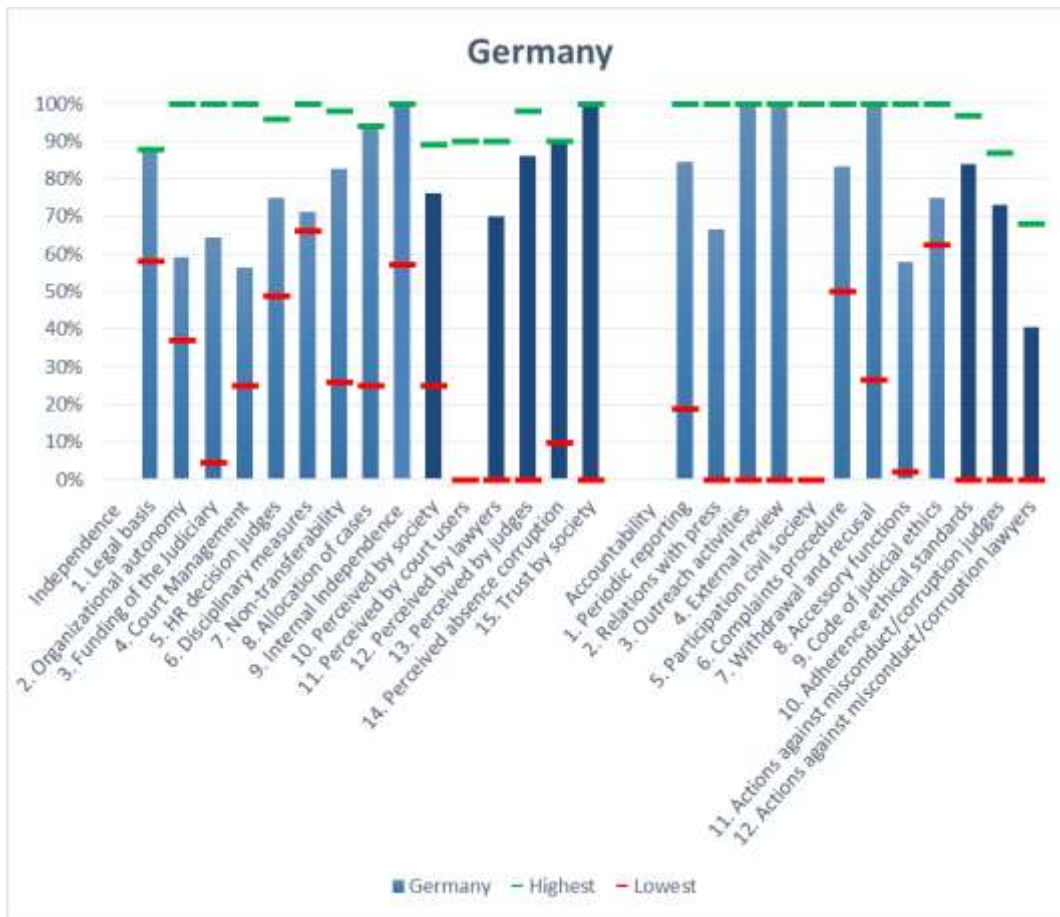


*Note: In Denmark a discussion took place with the expert group about the appointment of judges. The selection is done by the independent Judicial Appointment Council, but the Minister of Justice formally appoints the candidates. The minister does in theory have the opportunity to object, but he/she has no choice of candidates, and the Minister has always (without exception) followed the nomination from JAC. The role of the Minister can therefore de facto only be regarded as ceremonial and/or a formality.



*Note: Finland has from the beginning of the year 2020 an independent National Courts Administration which is led by a board of eight members of whom the majority consists of judges. In view of this Finland can be considered to have a Council for the Judiciary in the sense that is referred to in the questionnaire and the 2010 – 2011 ENCJ report on Councils for the Judiciary.

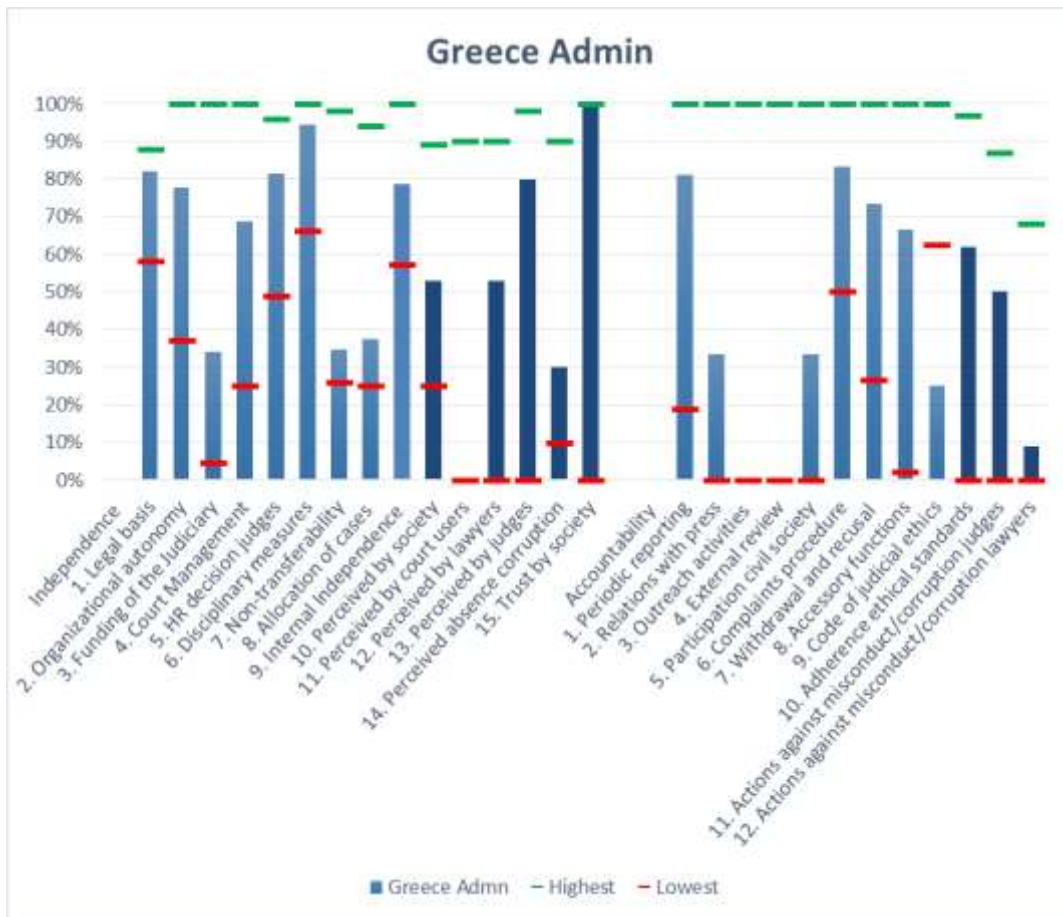


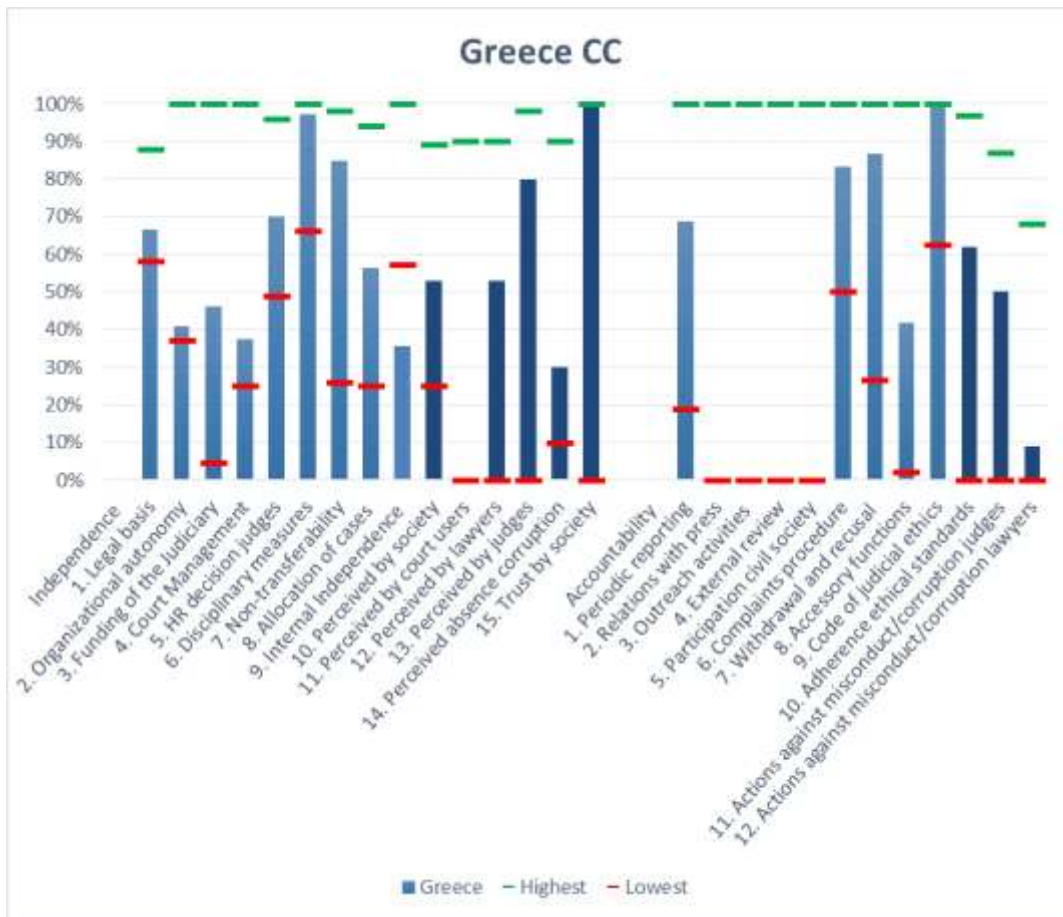


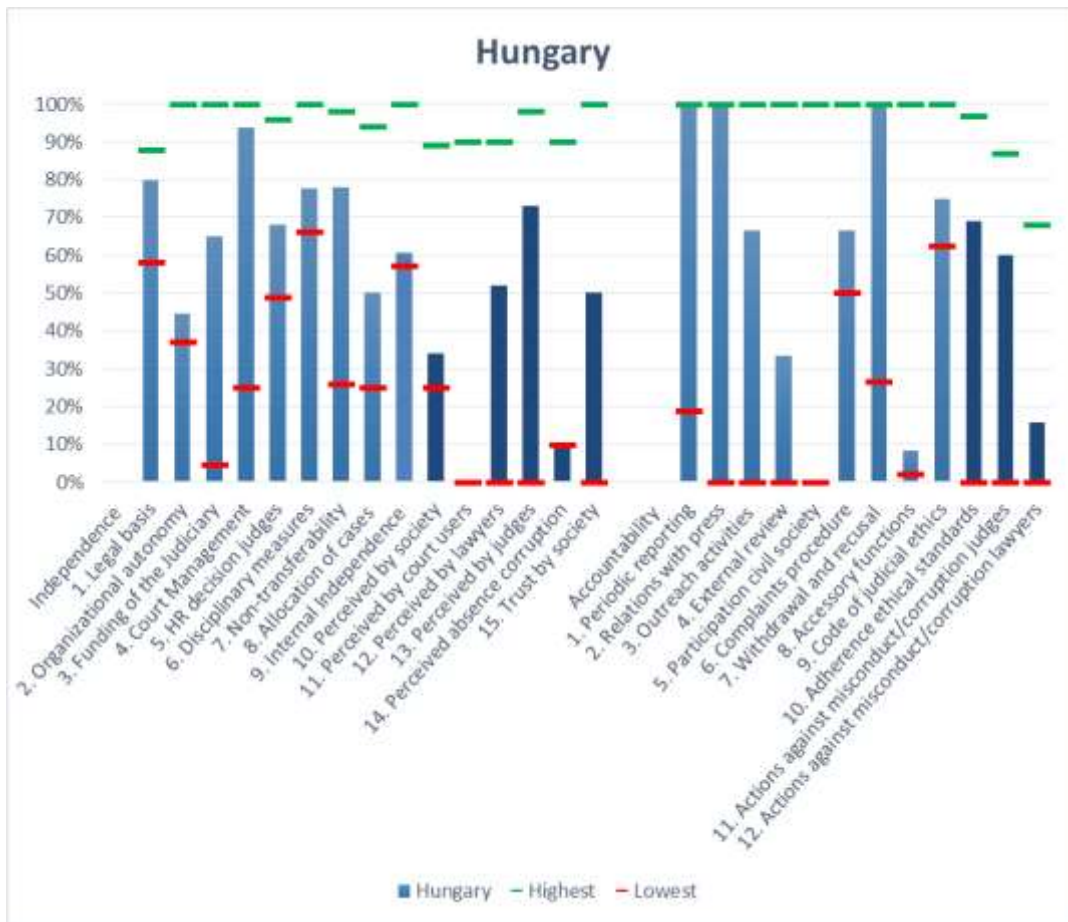
*Note: As a federal state, the Federal Republic of Germany is characterised by decentralised structures. The provided answers are not representative for every Land respectively every court - and the situation can differ from Land to Land or from court to court. In addition, due to historical developments, 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. The experts make remarks on these issues.

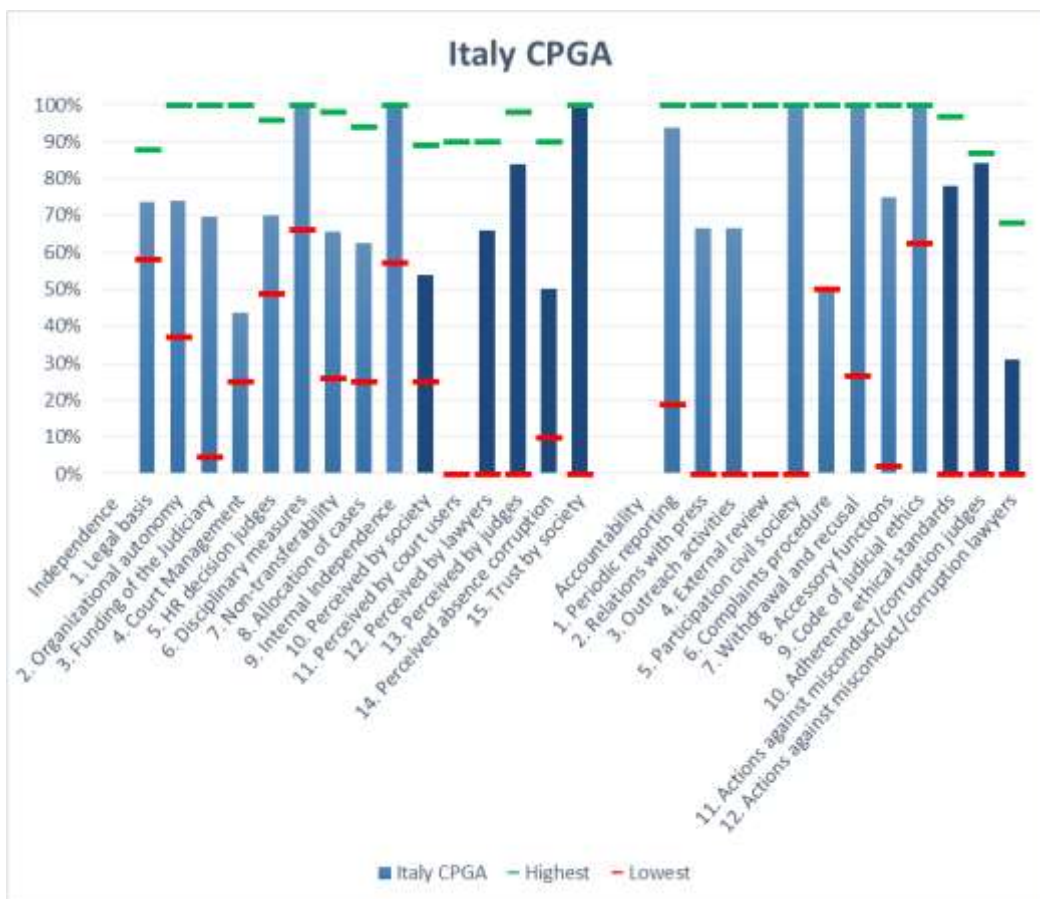
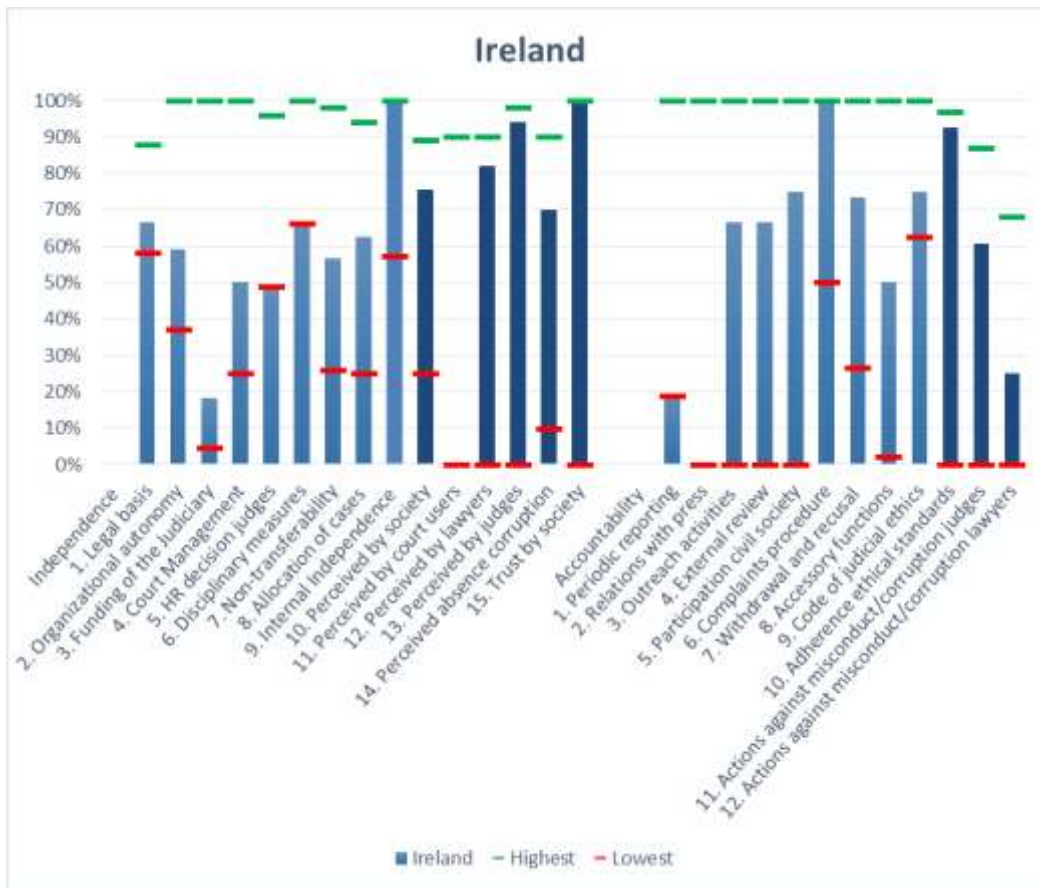
The experts point out that judges both at federal level and at the level of the Länder are appointed by the competent Minister, usually the Minister of Justice. However, at the federal level and in roughly half of the Länder, the respective parliament participates in the selection. The German Judiciary Act also provides that the judiciary must be involved in the process of the selection of Federal Judges via Councils for Judicial Appointments (Präsidentialräte). They consist of the Court President and judges elected by their peers. Councils for Judicial Appointments must be established at the federal level and in the Länder.

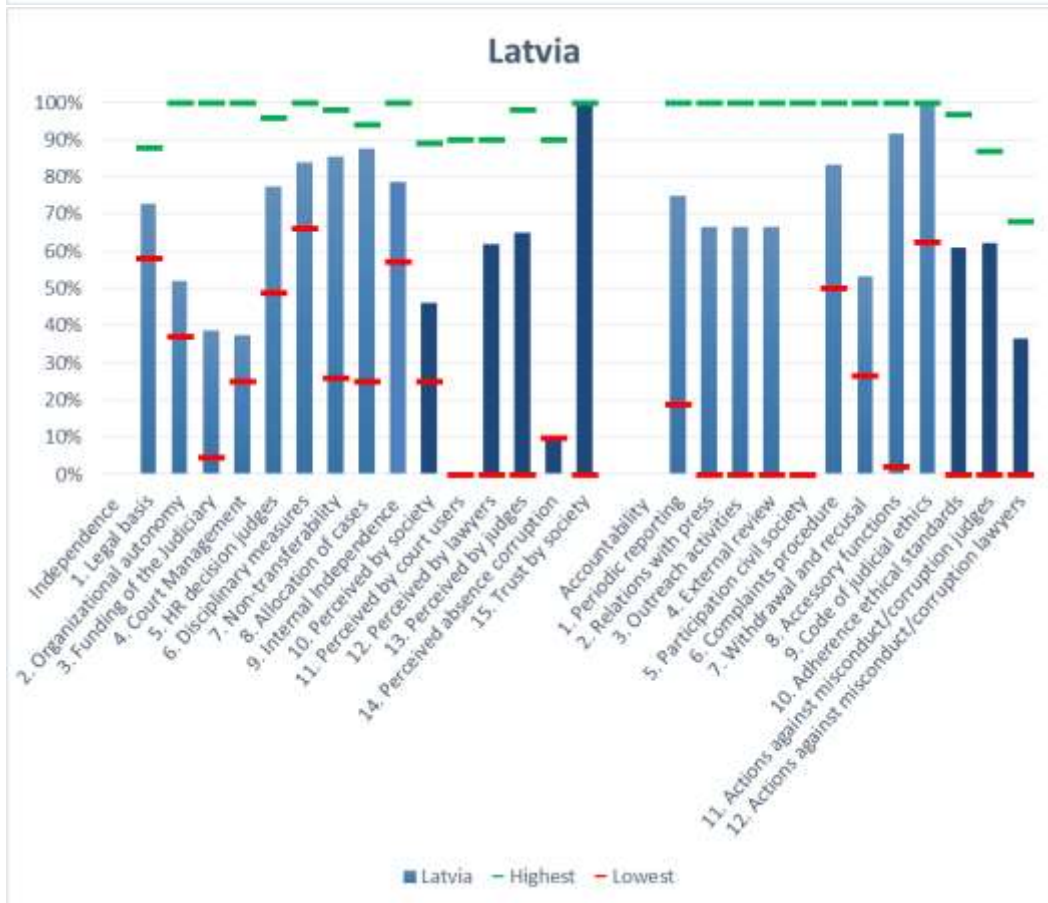
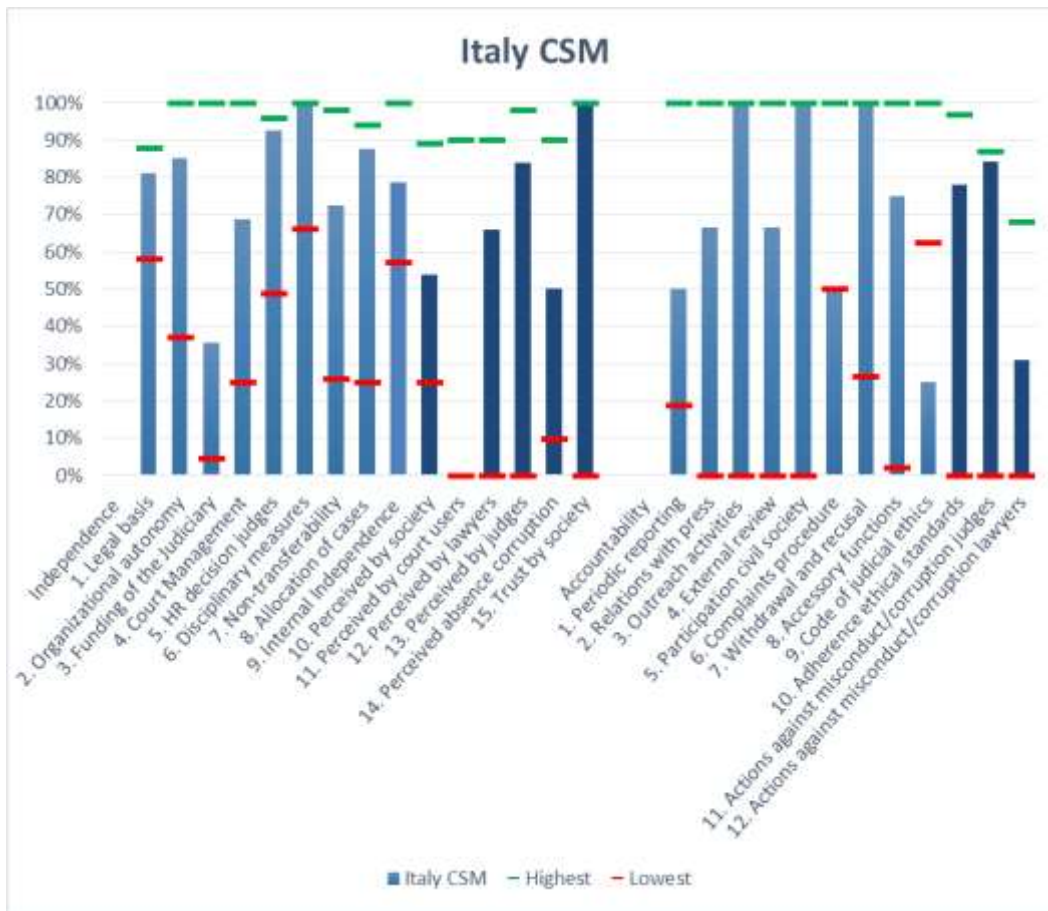
The experts also note that the administration of courts in Germany falls under the responsibility of the executive i.e. of the competent minister, usually the Minister of Justice of the respective Land or the Federation. Court administration is handled at each court by the court president. The court president is a judge and is supported by other judges in his or her administrative duties. When performing their administrative duties (but only then), judges who work in court administration do not enjoy judicial independence but act within the hierarchy of the executive.

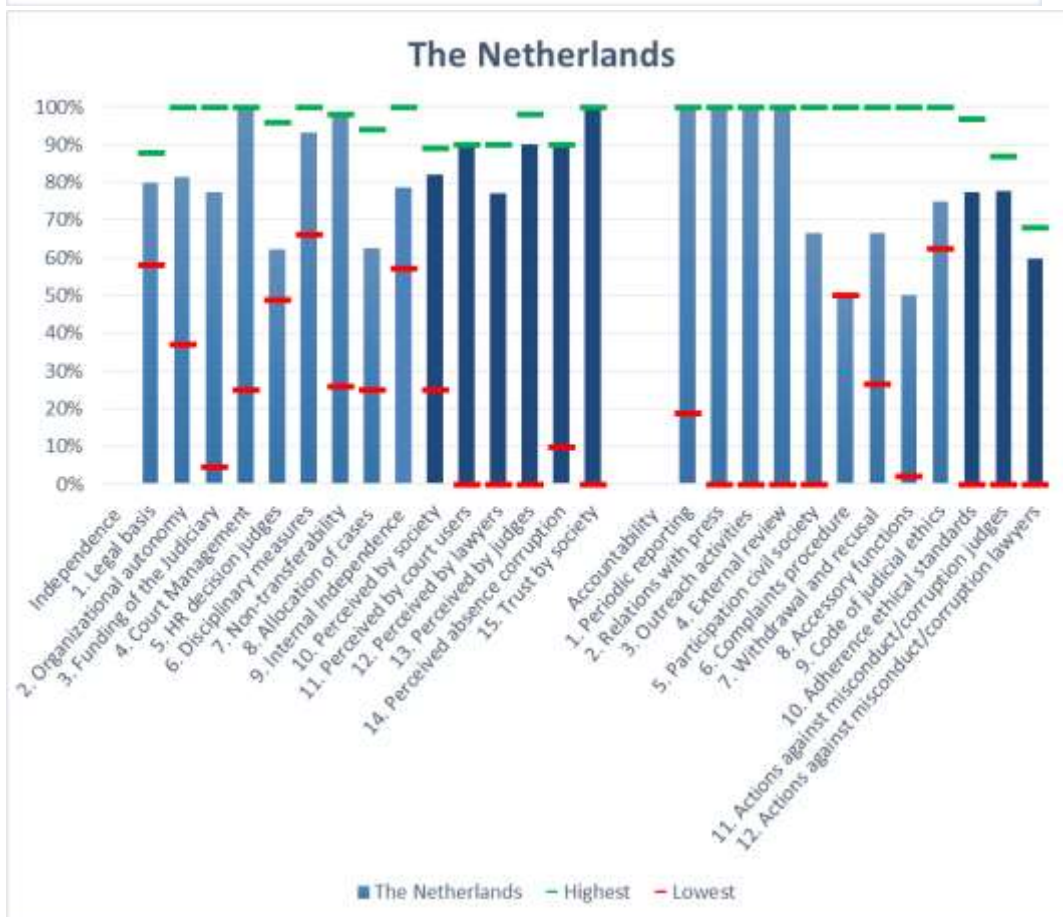
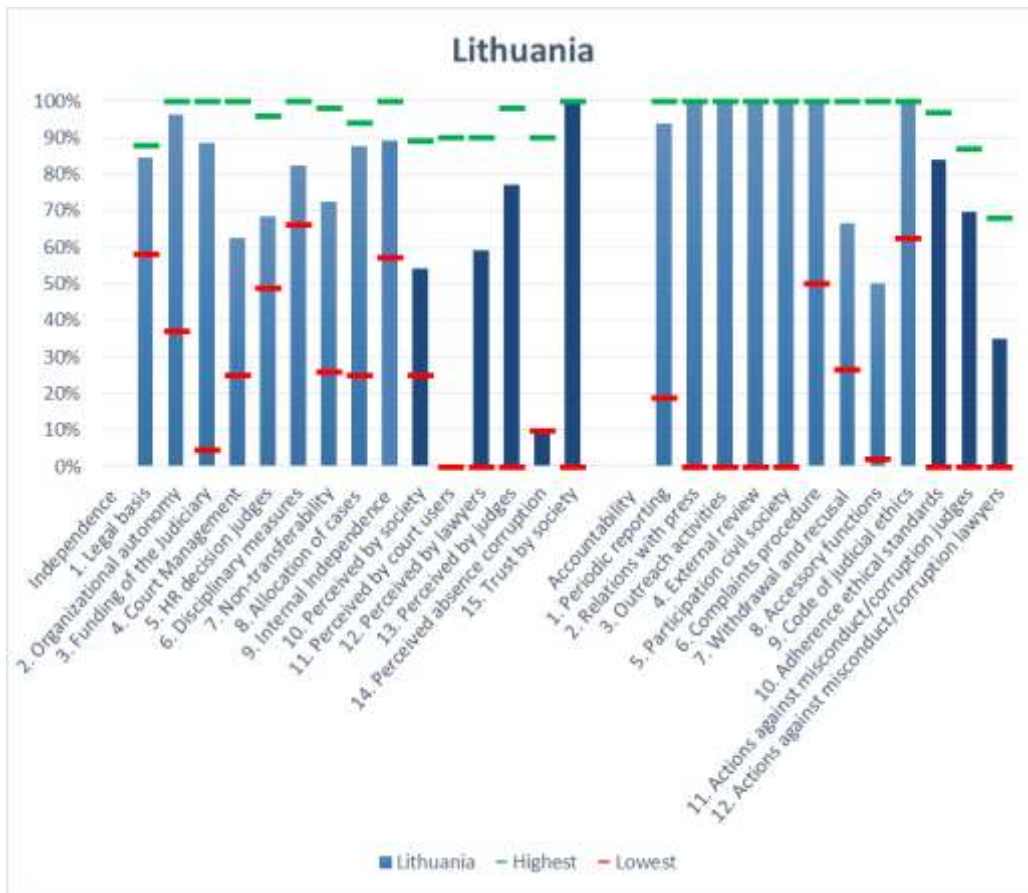


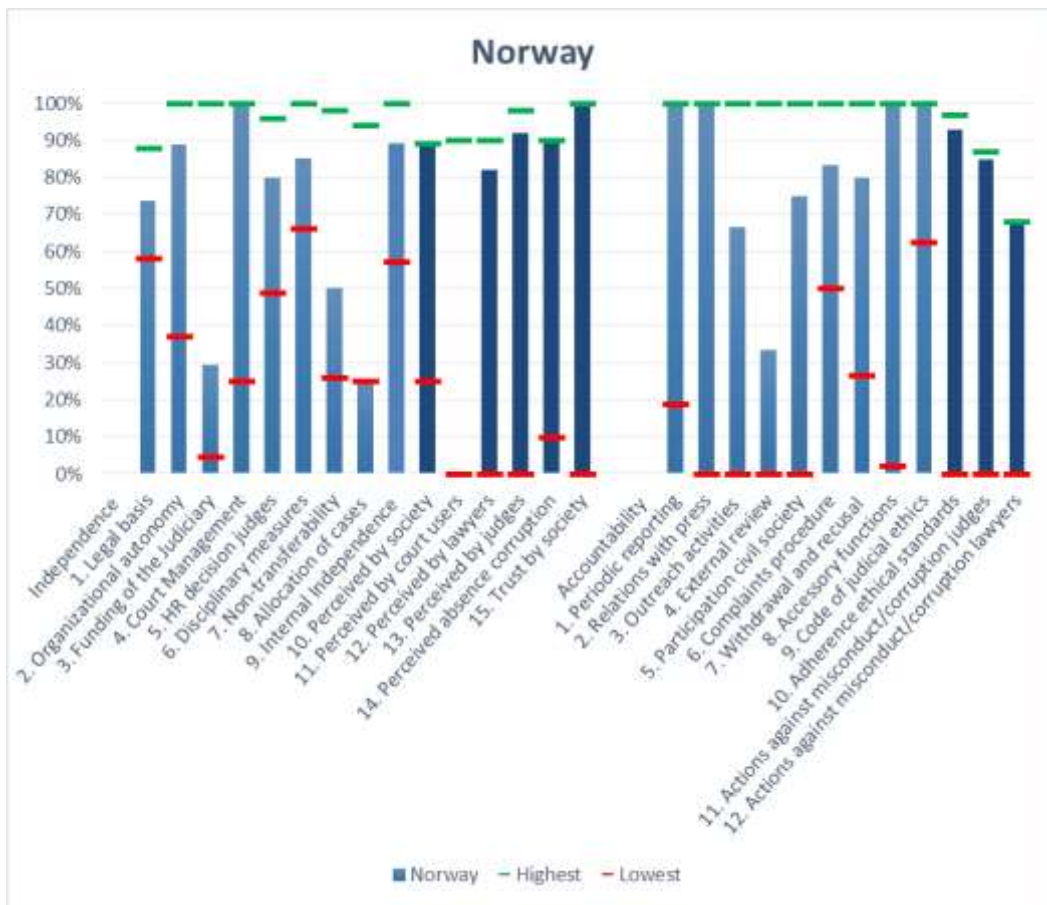








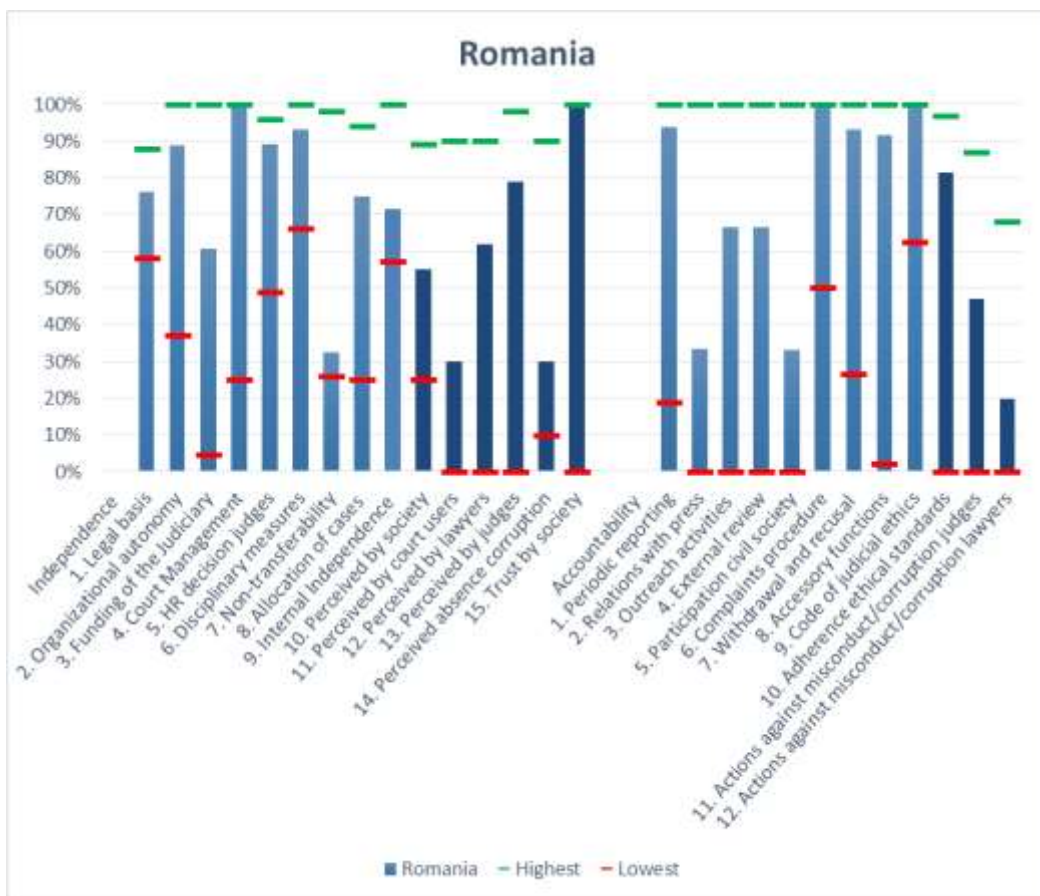
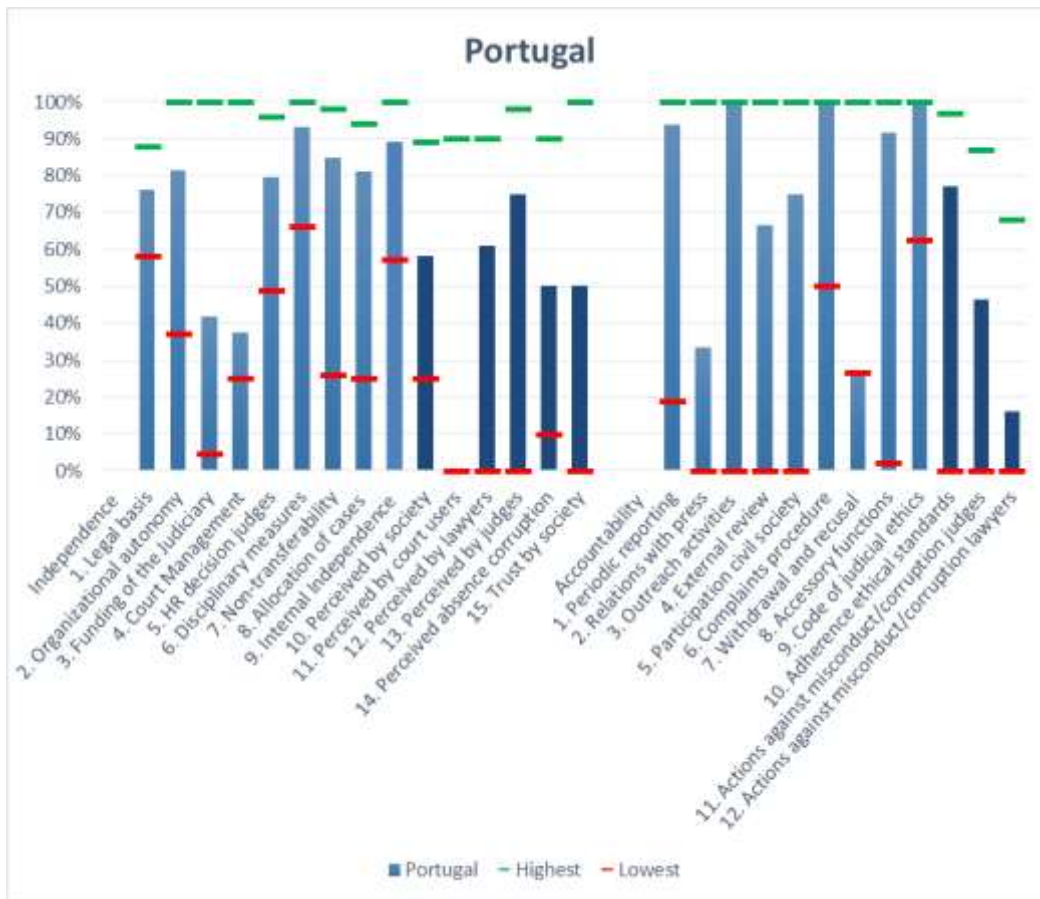


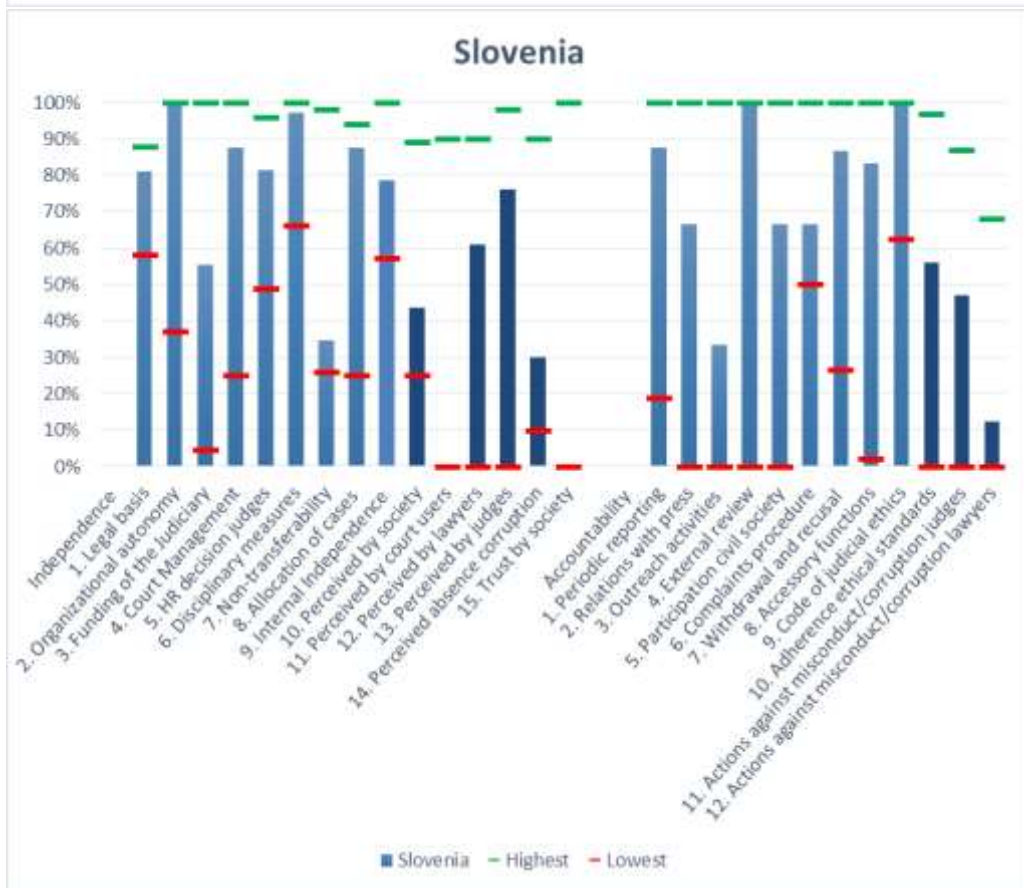
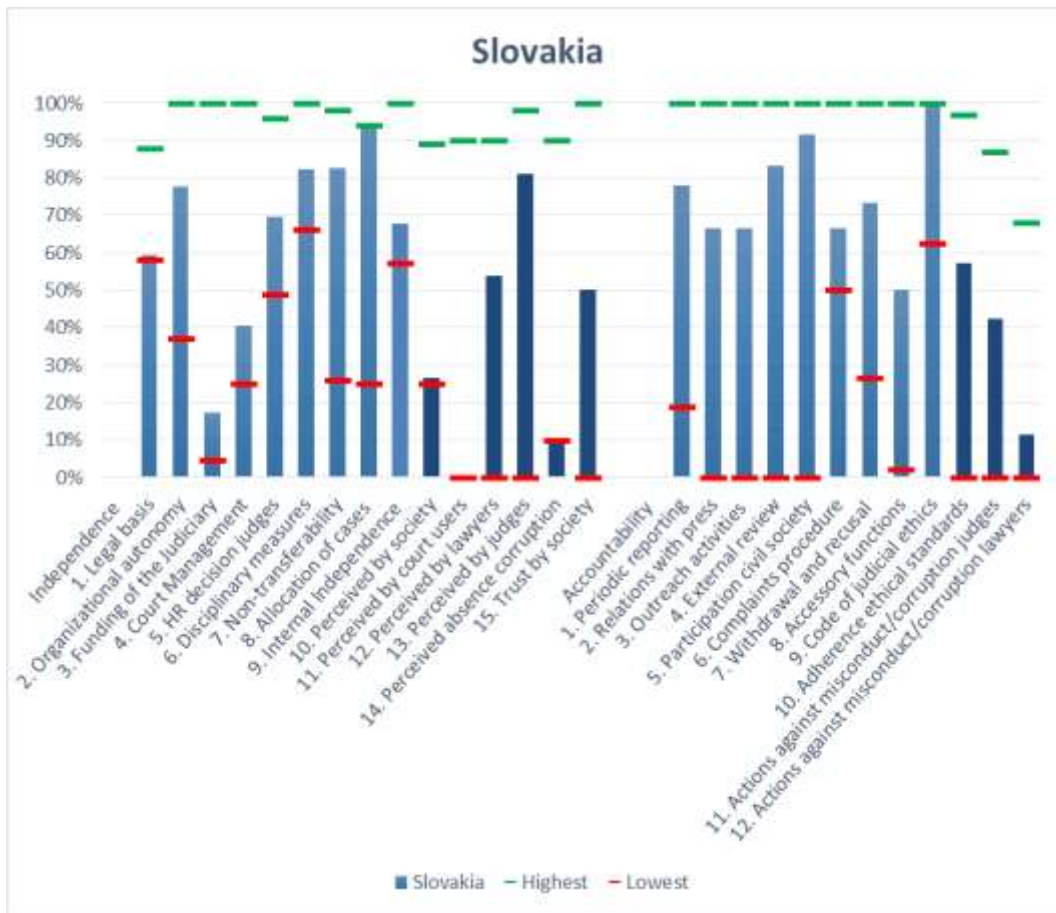


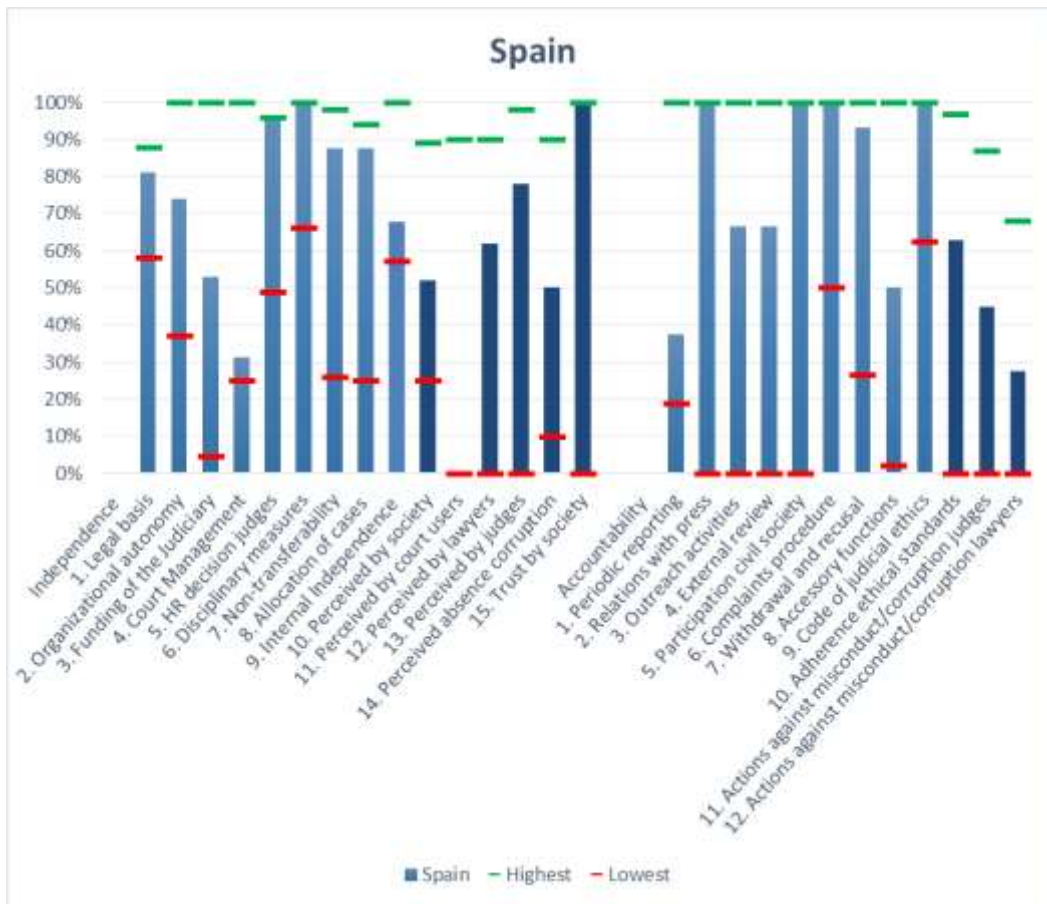
*Note: The experts classify the Norwegian Court Administration as a part of the Executive branch rather than the Judiciary, while recognising that this is a contentious matter. According to the Court Act of 1915 (Domstolsloven) § 33, the Government can instruct the Court Administration in all kinds of administrative matters concerning the courts and the Court Administration itself. According to § 33a, the Government can also change the composition of the board of the Court Administration if their instructions are not obeyed. Similarly, due to the fact that neither the Appointment Board for Judges and the Supervisory Committee for Judges have a majority of judges, these bodies should also be classified as executive bodies.

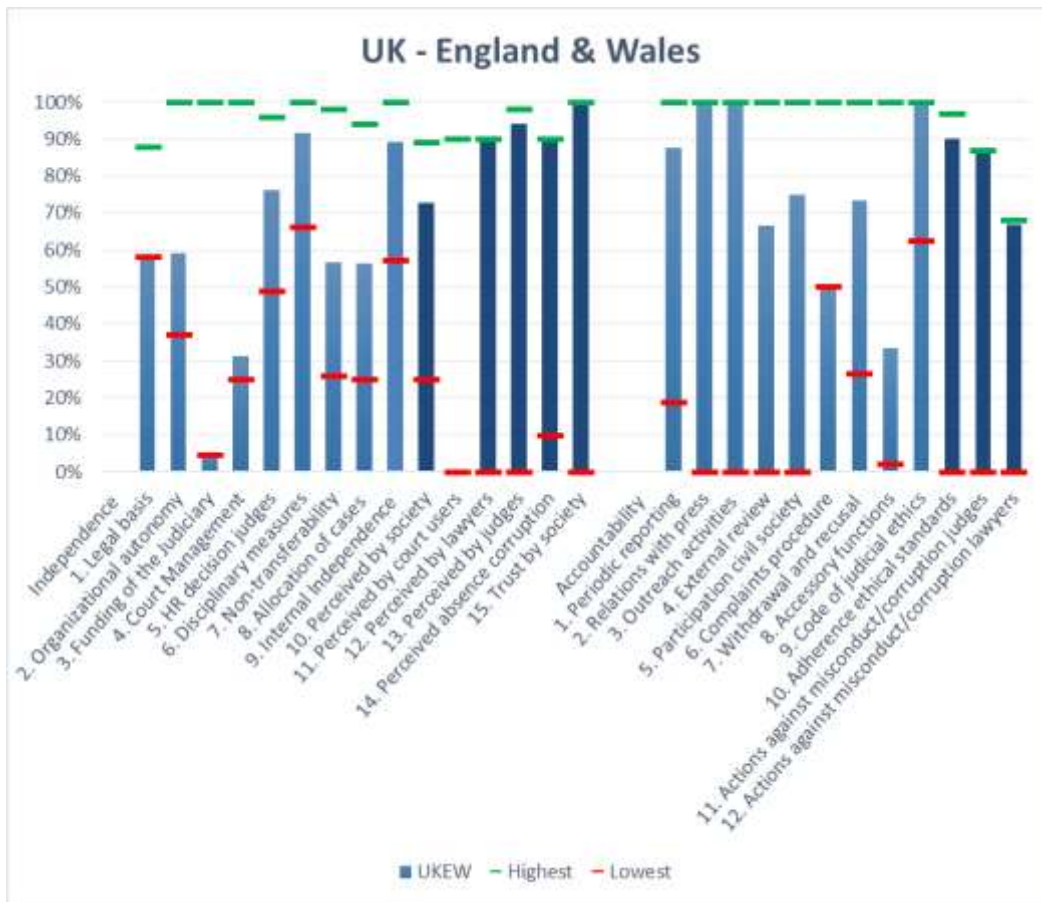
The Council does not agree with the experts. While formally correct, since the institutions started in 2002, instructions have never been given to the council, and it's a political consensus that the independence of the Norwegian Courts Administration should be respected. When it comes to The Appointment Board for Judges and The Supervisory Committee for Judges there is no possibility for government to change their decisions.

As Norway is not in the Eurobarometer reports, to measure trust by society in Norway a Norwegian study was used.

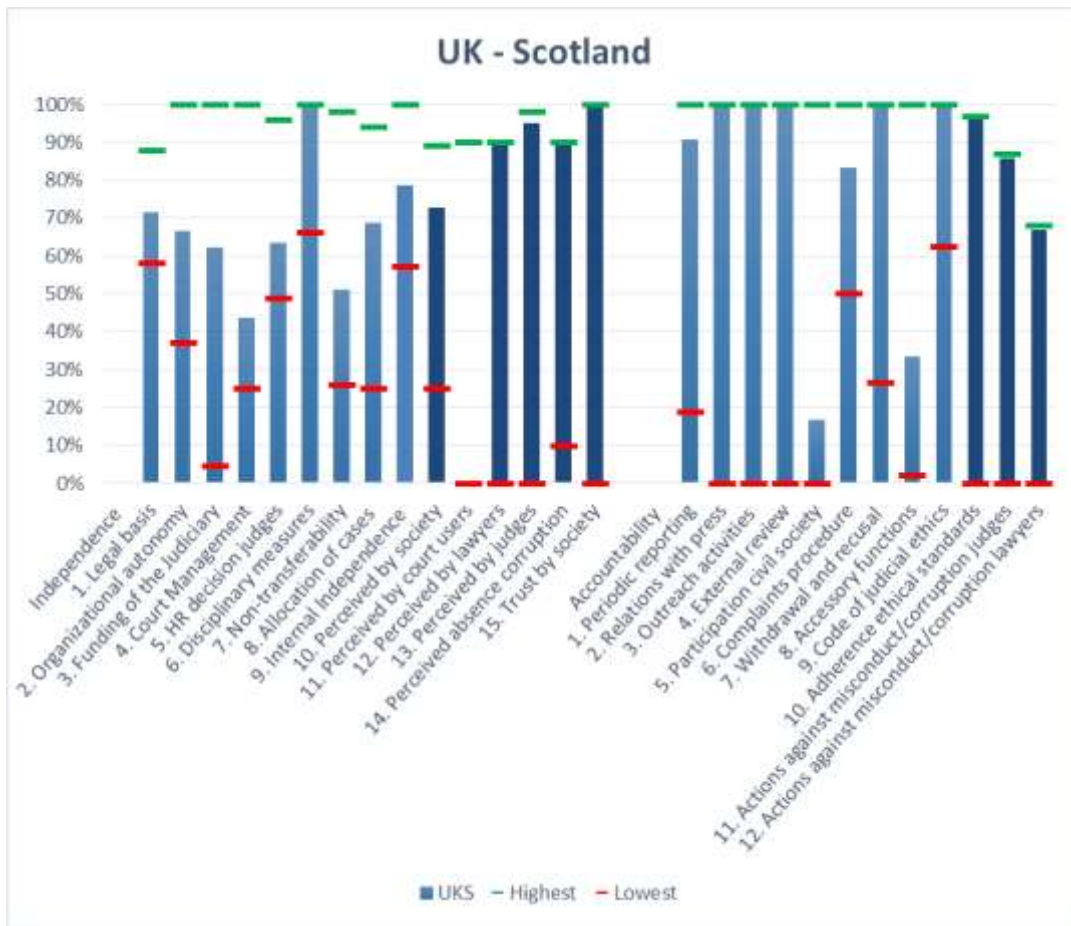








*Note: The experts note that the term ‘Council for the Judiciary’ has a specific meaning in the continental European context – with formalised responsibilities and substantial secretariats. The Judges’ Council for E&W is not the same. Accordingly, while it is possible to answer these questions in terms of the Judges’ Council for E&W, it needs to be recognised that the Judges’ Council for E&W is a different type of body compared with European Councils for the Judiciary.



*Note: The expert notes that Scotland has a different type Council than other judiciaries in Europe. It is a non-executive Judicial Council and all its members are judges.

With regard to the human resource decisions about judges, the expert highlights that the higher up the court structure, the greater the decisive influence of judges is regarding promotion and appointment as the Chief Justice or to the UK Supreme Court.

4. Next Steps on Independence and Accountability

The next steps follow from the improvement cycle that was agreed at the previous General Assembly (see the introduction to this part of the report). In particular:

1. The outcomes of indicators will be discussed in dialogue groups of members and observers in the period from September until December 2020 with the purpose to analyse the outcomes together and to set priorities for improvement plans.
2. A ENCJ opinion will be formulated with regard to formal and ceremonial roles of government that in principle can be used to reduce the independence of the judiciary.
3. Improvement plans will be developed to address weaknesses and/or to build on strengths in the period from January until June 2021.
4. The next edition of the surveys among judges and among lawyers that will be held in the first quarter of 2022 will be prepared in 2020/2021.
5. Follow-up with regard to the court user surveys

Part 2. Quality of Justice

1. Background

The extension of the indicators to quality of justice started at the General Assembly in 2015. The logical follow-up to the establishment of indicators relating to judicial independence and accountability would be to consider the establishment of indicators for the quality of justice, as the objective of an independent and accountable judiciary is to produce quality justice for society. Accordingly, it was decided that work should be done on the creation of a methodology to produce indicators for the quality of justice.

As set out in previous reports, a set of indicators were developed and applied on a pilot basis for three judiciaries. The indicators were refined and the questionnaire, based on the refined indicators, was circulated to all Members and Observers to be completed. As stated in the report for 2018, some complications were encountered. Accordingly, it was decided at the General Assembly in Lisbon, in June 2018, that the following activities should be undertaken by the group:

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

It quickly became apparent that the priority was the work described at number (2). The group dealing with quality focused upon revising and refining the questionnaire and producing a draft of the report. The report on Independence, Accountability and Quality of the Judiciary 2018/2019 was adopted by the General Assembly at Bratislava, on 7 June 2019.

It was decided at the General Assembly in Bratislava to send the revised questionnaire based on the refined indicators to all Members and Observers to be completed by the end of 2019. It was also decided to pursue the activities described at point number (1). The activities described in point number (3) were carried out by a different sub-group chaired by The Judicial Council of Denmark .

The work of the sub-group on quality was radically impacted by the Covid-19 pandemic. It became apparent that it would not be possible to progress the work in relation to point number (1) and that insufficient concrete progress had been achieved by the Councils to allow the sub-group to prepare a report on this aspect of the work intended to be completed in the cycle 2019/2020. It was considered that face-to-face meetings were essential to progress the work in this area and thus, this element of the programme was postponed by agreement of the Board.

The sub-group was of the opinion that it would be possible to produce a report based upon the completed questionnaires from the Members and Observers who participated in the revised quality questionnaire. In lieu of the meetings which had been scheduled to occur on 5 and 6 March 2020 in Paris and 23 and 24 of April 2020 in Athens, it was decided that a draft report would be prepared and furnished to the Members of the project group for their observations and comments at two virtual meetings to be held on 28 and 30 April 2020. It was also considered that the sub-group dealing with the court user survey would be in a position to produce a report based on the information collected to date.

The results of the questionnaire on quality were discussed at the sub-group virtual meetings on 28 and 30 April and shared with the other Members of the project group. A draft of this report (including the questionnaire) was discussed at the virtual meeting. A revised report was circulated thereafter to all participants and agreed. The report reproduces the sections on Visions of Quality, Areas of Quality to be covered by the Indicators and, Substantive Exploration of the Selected Areas of Quality from the report of 2019 to assist in understanding this report in the context of the work previously undertaken by the group and adopted at the General Assembly in Bratislava.

2. Visions of Quality

Principles

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law” (Art 6 ECHR). Article 6, as well as Article 47 of the Charter of Fundamental Rights of the European Union, stipulate the centrality of the person in judicial procedures and that everyone has a right to an effective remedy and to a fair trial. Councils for the Judiciary need to take into account the perspective of the person seeking justice in all their tasks and from that perspective they need to focus on quality of justice. At its General Assembly in 2017, the ENCJ agreed that Councils for the Judiciary should indicate their responsibility for standard setting on the quality of justice - their definition and evaluation - for the sake of quality, but also because of the links, and sometimes trade-off, between quality, independence and accountability.¹⁰ While some Councils have clear responsibilities regarding quality of justice, others still have to assert these responsibilities. Section 2.2 elaborates the responsibilities of Councils.

The ENCJ has, over the years, emphasized the paramount importance of judicial independence in combination with accountability. Independence is a pre-condition of quality of justice and, at the same time, the key component of quality. Other quality aspects lose their meaning if independence is compromised. Independence is necessary but obviously not sufficient for quality of justice. The ultimate goal of the judiciary is to dispense quality justice within a timeframe consistent with the demands of society by judges that are, and are seen to be, independent and impartial in a fully transparent manner. Generally, independence, accountability and quality reinforce each other. In some instances, tensions may occur between these aspects and these will need to be reconciled.

The choice of methodology of the ENCJ in the field of quality has been to extend the indicators about independence and accountability to quality of justice. As was explained in the report already quoted, this step is important for two central reasons:

- First, because independence, accountability and quality are linked and need to be considered together.
- Secondly, whilst independence and accountability are not goals in themselves, quality of justice is.

For the judiciary to play its role in society, quality in relation to the changing demands of society requires permanent attention.

¹⁰ ENCJ (2017). Independence, Accountability and Quality of the Judiciary: Performance Indicators 2017, ENCJ Report 2016-2017.

It is essential for the ENCJ to address these matters, building on the earlier reports it has made before, such as those on judicial reform.

2.2 Roles of Councils for the Judiciary in delivering quality justice

Councils for the Judiciary and other governing bodies need to maintain, explain and, when needed, defend the independence of the judge and the judiciary as a whole vis-à-vis the other branches of government and private actors. The best defence of independence is a judiciary that provides quality justice. Quality depends on many matters for which Councils for the Judiciary and equivalent governing bodies are responsible. Depending on the scope of their responsibilities, selecting and promoting judges and support staff, securing budgets and innovating/digitalizing the courts, are examples. Consequently, even if their responsibilities in the area of quality have not been made explicit in the law, Councils affect the quality of justice in many ways and, therefore, need to define and maintain quality standards, together with and respecting the professional role of the judges and in consultation with the users of the courts.¹¹ It is the duty of Councils to secure appropriate funding of the courts to allow the courts to implement these standards, again whether or not this is statutory task of Councils. Standards that cannot be implemented in practice create expectations with courts users that cannot be fulfilled. The funding of the judiciary is, in practice, a major bottle-neck.¹² Councils need to be involved in budgetary and financial processes.

Quality standards can be part of approaches such as:

Integral systems:

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

Standards for judges:

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

¹¹ See also CCJE: « *it is very important that, in each Member State, the Council for the Judiciary holds a vital role in the determination of the criteria and standards of Quality of the judicial service on the one hand, and in the implementation and monitoring of the qualitative data provided by the different jurisdictions on the other.* » (CCJE Opinion 10, paragraph 53).

¹² See ENCJ (2017). Independence, Accountability and Quality of Justice, p20 and ENCJ (2016). Funding of the judiciary.

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

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

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

2.3 Quality in relation to independence and accountability

Quality standards

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

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

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

Assessment of the Quality of judicial decisions

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

Assessment of the quality of judgments may also be part of performance review or evaluation of individual judges, as is often the case in Eastern and Southern Europe, on a regular basis or for the purpose of career decisions. A sample of judgments is taken and evaluated by those responsible, often judges themselves. When performance reviews take place, Councils for the Judiciary should be in the lead, and not Ministries of Justice or other organisations, such as inspections that are part of other state powers other than the judiciary.¹³ Also, performance reviews may focus either on rewarding/punishing performance or on developing skills. The latter approach can be reconciled more easily with judicial independence than the former. In career decisions, it is impossible to ignore the history of judgments,¹⁴ but also in these decisions it is crucial to focus on professional quality and not on the alleged ‘correctness’ of decisions.

The CCJE argues in Opinion 17 that ‘some form of evaluation’ is needed to deliver justice of the highest quality and for the judiciary to be accountable. Evaluation can be formal or informal, and the CCJE urges its Member States to consider what is needed.¹⁵ In this context, the ENCJ endorses the assessment of judgments but only under the conditions mentioned above.

In many countries, appeal rates are used as a proxy of the quality of judgments. Many international bodies such as CEPEJ do the same. The ENCJ is critical about using appeal rates for this purpose, as reversals are often based on aspects other than quality, such as new evidence.¹⁶

¹³ This demand is incorporated in indicator 5, item 5d (evaluation, promotion and training of judges) of the ENCJ Indicators on independence and accountability.

¹⁴ This also follows from the Indicators on independence and accountability: appointment and promotion should only be based on merit (knowledge and experience). See CCJE, opinion 17, section 27 for the original argument.

¹⁵ CCJE (2014). Opinion 17, section 23.

¹⁶ In its opinion number 17 (2014) upon the evaluation of judges’ work the CCJE states that it is “problematic to base evaluation results on the number or percentage of decisions reversed on appeal, unless the number and manner of the reversals demonstrates clearly that the judge lacks the necessary knowledge of law and procedure” (paragraph 35). If appeal rates are used, the percentage of judgments left standing is probably the most relevant criterion. This combines appeal rate and reversal rate.

2.4 Quality in relation to timeliness and efficiency of procedures

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

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

2.5 Measurement of Quality: Quality Indicators

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

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

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

Quoting the CCJE:

“As it is impossible at the moment to rely upon widely accepted criteria, quality indicators should at least be chosen by wide consensus among legal professionals, it being advisable that the independent body for the self-governing of the judiciary play a central role in the choice and the collection of "quality" data, in the design of the data collection procedure, in the evaluation of results, in its dissemination as feed-back to the individual actors on a confidential basis, as well as to the general public; such involvement may

reconcile the need for a quality evaluation to be carried out with the need for indicators and evaluators to be respectful of judicial independence.”¹⁷

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

3. Areas of Quality to be covered by the Indicators

As also explained in last year’s report, starting from a broad perspective on quality, quality is linked with the essential tasks the judiciary is deemed to fulfil under the Rule of Law.

These tasks range from maintaining fundamental rights to practical matters, such as the service provided to the public. The following areas are distinguished; key aspects of these areas are briefly enumerated and explained. Obviously, each aspect of an area would require an extensive discussion to do it justice. This is, however, not the place to do that, as our focus is on developing indicators.

Maintaining the Rule of Law

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

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

Providing public access to the law to guide society

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

Explanation: the judiciary is not just concerned with conflict resolution in individual cases. It provides guidance to society how to apply the law, thereby clarifying the rules for economic and social interaction. The better it succeeds in this function, the less reason for conflict. At the same time the law must be re-interpreted to allow for changes in society. This, and the previous function, set the judiciary aside from private mechanisms for conflict resolution.¹⁸ The provision of information is increasingly important due to the rise of “big data”, while the provision of information about court procedures in general, and for groups in society, remains important.

Guaranteeing due process from the perspective of accessibility

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

Explanation: this aspect covers to what extent the courts can provide for a fair trial (Art. 6 ECHR, Art. 47 of the Charter of Fundamental Rights of the EU and Art. 13 of the UN Convention on Fundamental Rights

¹⁷ Opinion 6, paragraph 43.

¹⁸ See: John Thomas (2015). The Centrality of Justice: its contribution to society, and its delivery. The Lord Williams of Mostyn Memorial Lecture.

of Disabled People), and, together with the actual decision, constitutes the legal core of the work of the courts. Accessibility is a major concern, as citizens cannot avail of even an excellent court if access to that court is not assured. Accessibility can only partly be guaranteed by the courts themselves, as, for instance, court fees and the judicial map are generally determined by government and parliament and not the judiciary. Still, other aspects are under the remit of the judiciary.

Adjudicating cases in a timely and effective manner

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

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

Delivering judicial decisions

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

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

Providing services to the court users

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

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

Enforcement of judicial decisions

Key aspects: enforceable judgments.

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

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

Table 3. Areas of quality and planning of the design of indicators

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

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

4. Substantive exploration of the selected areas of Quality

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

4.1 Adjudicating cases in a timely and effective manner

Both timeliness and case management are topics that have been discussed extensively within the ENCJ. The balance between timeliness and other quality aspects is an important issue, as indicated in the first recommendation of the 2010-2011 Timeliness Report: ‘Justice delayed is justice denied’ is a true statement that underlines the importance of delivering justice without undue delay. However, in striving for timeliness it must be remembered that the drive for expedition should be balanced with other quality

aspects, of which the quality of the decision should have the highest priority. The demands of society require processing without undue delay, but drive for efficiency must not lead to inferior quality decisions.'

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

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

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

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

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

4.2 Guaranteeing due process from the perspective of accessibility

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

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

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

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

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

- The law should state that the decision on meritorious cases¹⁹ is a judicial decision based solely on the merits of the case.
- Filters should be defined to reduce the unnecessary use of court time on unmeritorious cases, so allowing more timely access to justice for those who have a meritorious appeal.
- Filters should be defined to provide criteria by which the judiciary can evaluate the merits of the appeal in each case and exercise judicial discretion in the final decision.
- Procedures should be in place to avoid repetition and a re-hearing of the first instance trial and to require applications for appeal to focus on the outstanding issues.
- To limit the number of appeal judges²⁰ is not recommended, as more effective measures are available to reduce the burden of appeal and court time.
- Decisions on meritorious cases should normally and primarily be taken through a paper exercise rather than any court hearing.

¹⁹ Whether a case is meritorious or not.

²⁰ For instance, by hearing cases by a single judge instead of a panel of judges.

- The appeal procedure could be simplified by setting limits to the length of written and oral presentations of parties.

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

4.3 Delivering high-quality judicial decisions

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

Reasoning of judicial decisions

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

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

A further issue is whether the reasons should be written or whether a judge can render his decision orally. Recommendation n° R(87)18 of the Committee of Ministers to Member States concerning the simplification of criminal justice states (III, c, 3) that in less serious cases, or if the parties agree, the tribunal should be allowed not to make a written decision, but an oral decision “which should be limited to a mention in the record.”

If a recommendation is to be made, it seems necessary to put the parties in a position to know, by whatever means, the reasons for a judgment pronounced by a judge, even if delivered orally. An issue is also whether the practice consisting of giving the reasons of the judgment only if a party appeals against this judgment is acceptable. This practice has been condemned by the European Court of Human Rights because the litigants must be able to understand, as soon as the decision is rendered, the reasons why they won or lost their case. However, this practice still exists.

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

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

Clarity of decisions

The judicial decision should, not only be reasoned, but also be intelligible, drafted in clear and simple language. This issue depends on the audience of the decision. Is the decision aimed at the litigants, the lawyers, the professors of law, the media or the public in general? In the view of the sub-group, the optimum position is where a judicial decision is expressed in language which is accessible not only to one audience, but to every audience.

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

Length of decisions

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

Enforceable decisions

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

Assessment of the quality of judgments

Given the difficulty of ascertaining the quality of judicial decisions, a complementary approach, which is followed here, is to map what judiciaries are doing to guarantee and/or improve the quality of judgments. Education is part of this, but also the assessment of the quality of judgments. Following from that discussion, the major aspects to be covered include the existence of a mechanism to sample judgments and evaluate these judgments, the context (peer review or performance evaluation), the scope of the assessment and who is responsible. As to the scope of the assessment, a major distinction is whether the assessment is about the professional quality of the decision or about the merit of the judgment. In view of the independence of the judge, it is inappropriate to assess the merit ("correctness") of the judgment, and, in the view of the ENCJ, it causes the mechanism itself to be inappropriate. This is the case if a party outside the judiciary is responsible for the mechanism, which is anyway undesirable, but also if the responsibility lies within the judiciary.

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

To conclude, the ENCJ believes that the assessment of the quality of judicial decisions, which likely is the most critical aspect of the quality of Justice, is important, if one takes the improvement of quality seriously.

However, any assessment system must respect the independence of judges. Necessary conditions are that the assessment is not about the merit of cases and the judiciary itself is responsible for the system.

Education of judges

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

4.4 Providing public access to the law to guide society

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

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

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

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

The work on this area of quality is evolving. The results of the questionnaire presented below should therefore be regarded as preliminary and subject to refinement. This report represents work in progress and the conclusions reached must be treated with the caution this necessarily entails.

5. Revised Questionnaire with revised quality indicators

5.1 Indicators

At the meetings which took place during 2019-2020, the sub-group organised and managed the completion of the revised questionnaire by Members and Observers and processed the outcomes. Sufficient progress was made before the impact of the Covid 19 pandemic across Europe to allow the sub-group to produce a report based upon the work produced before the planned meeting in Paris in March 2020 was cancelled. It was not possible to analyse the results against existing, external data about quality of justice for their future use in the indicator system. The project group was unable to complete the work on the adoption of frameworks by councils that defines their involvement in guaranteeing and promoting quality of justice. Annex 4 to this report contains the questionnaire. In Annex 5 the applicable scoring rules

referable to the questionnaire are set out. In Annex 6 the results of each Member and Observer is presented and in Annex 7 the results for each indicator in respect of all Members and Observers are set out.

The revised list of Quality Indicators

The questionnaire comprised of revised questions on the indicators which were established when the first version of the questionnaire was drafted. They are set out below.

INDICATORS OF TIMELINESS AND EFFICIENCY OF PROCEDURES

1. Standards for judges about the duration of cases:

- Existence of time standards in first instance and in appeal courts;
- Scope of the standards (total procedure or particular phases of the procedure);
- Realisation of standards in practice at first instance and appeal courts;

Public access to information on the realisation of standards.

2. Standards for parties about the duration of cases:

- Existence of time standards for parties in first instance and in appeal courts, e.g. to present documents;
- Power of the court to impose sanctions on parties who fail to comply with time standards
- Authority of judges to issue case management directions (to fit the procedure to the case) in first instance and appeal courts;
- Authority of judges to enforce the determined procedure if a party does not conform.

3. Summary procedures:

- Existence of summary procedures in appropriate cases in first instance and appeal courts.

4. Digital case filing and digital procedures:

- Possibility of digital case filing;
- Possibility of digital procedures, in the sense that all communications are digital except for the hearing;
- Possibility for litigants to inform themselves digitally about the progress of their cases;
- Availability and development of online dispute resolution mechanisms;
- Availability of track and trace systems for parties using online dispute resolution mechanisms.

5. Specialisation of judges:

- Existence of specialised judges in first instance and appeal courts.

INDICATORS OF DUE PROCESS FROM THE PERSPECTIVE OF ACCESSIBILITY

6. Equality of arms (funding and costs):

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

7. Commensurate effort of judges:

- Existence of rules or regulations to determine whether a case is decided by a single judge or a panel of judges in first instance and appeal courts.

8. Dealing with abusive conduct:

- Authority of the judge to take action to prevent abuse by parties and/or their lawyers
- Instruments available to the judge to intervene:
 - o Stop or stay the proceedings
 - o Order expedition of the proceedings
 - o Impose fines
 - o Shifting of litigation costs
 - o Report to a disciplinary body.

9. Availability of appeal:

- Existence of right of appeal for an unsuccessful litigant;
- Existence of filtering system to prevent appeals which are without merit from proceeding to a full hearing;
- Impact of appeal on the execution of the order appealed against.

10. Communication:

- Existence of procedures in all official languages of the country;
- Existence of facilities at the court to provide translation when necessary.

11. Access for people with disabilities:

- Existence of special procedural and physical arrangements for people with disabilities.

12. Arrangements for vulnerable people:

- Existence of special procedural and physical arrangements for vulnerable people.

INDICATORS OF QUALITY OF JUDICIAL DECISIONS

13. Format of judgments:

- Existence of templates for judgments in standardised types of case.

14. Reasoning of judgments:

- Existence of the requirement to reason judgments dealing with substantive issues in civil cases and verdicts in criminal cases;
- Possibility for judges to give only summary reasons where appropriate (e.g. to speed up procedures);
- Requirement for oral judgments (if permitted) to be recorded and made available to parties;
- Requirement of transcription of oral judgments in civil cases and oral verdicts in criminal cases.

15. Clarity of judgments:

- Existence of an obligation to use clear and simple language
- Primary recipients for whom reasons are written:
 - o Litigants
 - o Public in general
 - o Other judges (such as appeal courts or Supreme Court)
 - o Evaluation authorities.

16. Assessment of Quality of judicial decisions:

- Existence of an instrument to assess the quality of judicial decisions on a regular basis
- Body in charge of the assessment
- Link with Court User Satisfaction Survey.

17. Education of judges:

- Existence of initial training of judges on writing judicial decisions
- Existence of the requirement for judges to participate in training courses annually.

INDICATORS OF PUBLIC ACCESS TO THE LAW TO GUIDE SOCIETY

18. Access to case law:

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

19. Opening up to the public:

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

5.2 Methodology: issues arising and the reliability of the outcomes

The results from the revised questionnaire revealed some difficulties and weaknesses with the methodology adopted in the revised questionnaire. One of the principal problems in the original questionnaire was the subjective nature of many of the questions. This made it difficult for participants to complete the questionnaire and the outcomes were not robust, as they were based on the subjective views of the person(s) completing the questionnaire and were not capable of being verified to any meaningful degree. The revised questionnaire removed all the questions which called for subjective answers and confined the questions to those issues which could be answered objectively to a high degree. It appears from the results that this approach may have produced equally skewed data, but in a different way. This is likely to be due to the nature of the redrafted indicators and not any difficulty with completing the questionnaire. There were virtually no issues communicated to the sub-group of this kind, in marked contrast to the position with the first questionnaire on quality.

The ENCJ has decided to publish the data notwithstanding the fact that some – not all – results are potentially uninformative. This is due to either the questions asked in relation to a particular indicator or to the scoring applied to the answers. For example, the outcomes in respect of some indicators appear to be suspiciously uniform and positive and, in fact, are unlikely to reflect the actual situation in each Member or Observer. Delays in conducting and concluding litigation are recurrent difficulties experienced by many Members and Observers, to a greater or lesser extent, for a variety of reasons, yet this does not emerge from the data. The outcomes of the timeliness indicators do not appear to reflect this reality adequately, and the results appear to be unduly positive. This may be due to a low qualifying threshold in some indicators so that they reflect current practices, rather than assess excellence. This leads to indicators which result, too easily, in high or perfect scoring.

Other indicators yielded uninformative results. For instance, participants may score full marks simply by the fact that there are some specialist judges in civil and criminal cases and on appeal, but the indicator does not address the issue whether there are sufficient specialists for the areas where specialism is required or desirable. Thus, the added quality resulting from the fact that there are specialist judges may differ greatly between participants. It emerged that the indicator could be improved by specifying the precise meaning of specialist judges in the questions comprised in the indicator. Thus, while the results suggest that litigants have widespread and comprehensive access to trials by specialist judges, this has not in fact been measured by the relevant indicator. The results of the indicator assessing the workload of individual judges seems to be particularly uninformative.

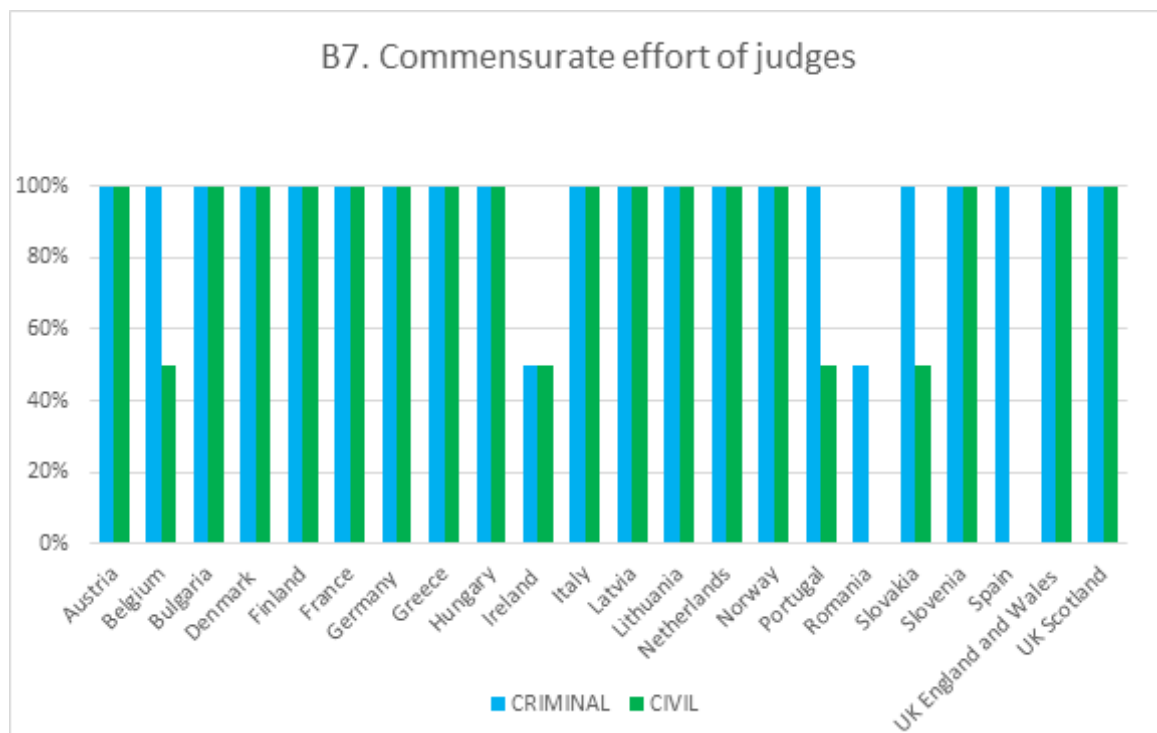
Some results suggest that there may be issues with the scoring rather than with the indicator. For example, Indicator 1, on the duration of cases, awards more marks in total for the existence of rules governing the timeliness of cases, but less in total for the enforcement of the rules. It would seem inappropriate to award more scores for the existence of rules than for the enforcement of them.

Also, there were some surprising outcomes which suggests that it may be necessary to check the consistency of the outcomes of each indicator for individual participants. For example, one Member who had no data for Indicator 1 (duration of cases (courts)) scored 100%, for both criminal and civil cases, in the indicators assessing the duration of cases from the perspective of rules requiring the parties to adhere to time limits (Indicator 2) and the availability of appeal (Indicator 9). The outcomes for these two indicators suggest this Member has the highest quality in these areas. However, this conclusion does not seem to be correct as there are very considerable delays in that Member in the completion of cases arising, inter alia, from delays on appeal. While the indicators address different factors, which impact on the duration of cases, they have a cumulative impact on the overall duration of cases and the absence of time limits is likely to result, overall, in longer cases.

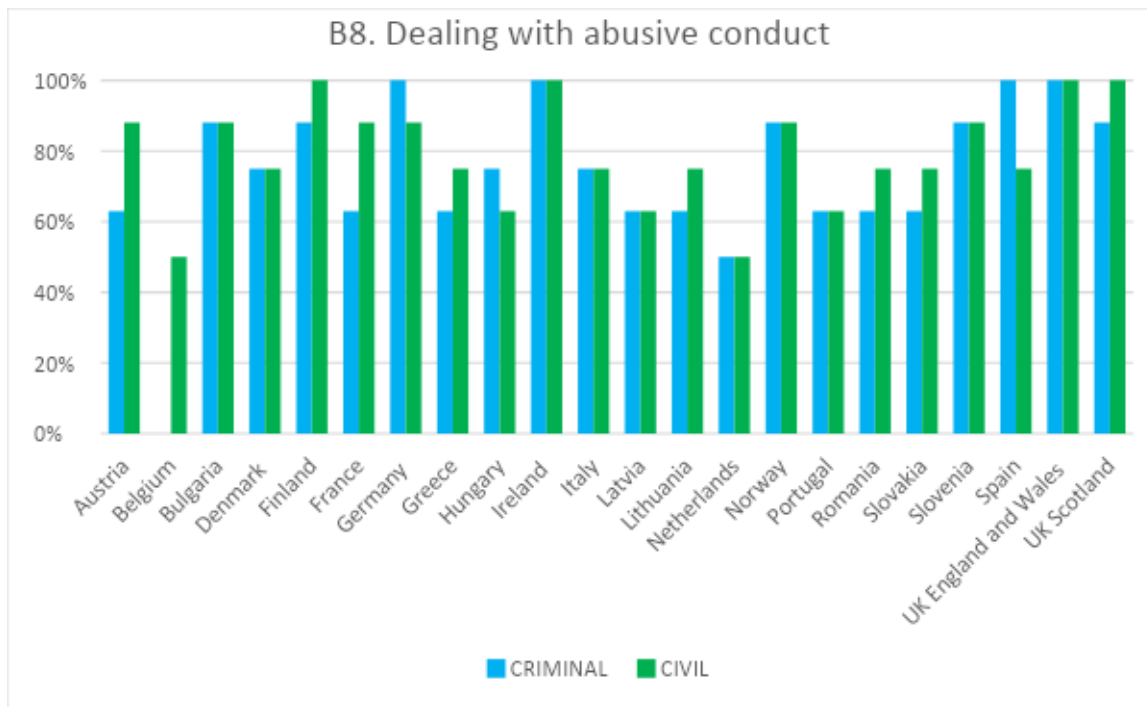
Accordingly, the results must be treated as provisional, or qualified, due to the inherent limitations of the questionnaire. This report represents the results of work in progress. Further analysis of the questionnaire is required and some of the indicators and scoring needs to be refined to reduce, if not eliminate, anomalies or uninformative outcomes, and to produce more nuanced and representative data.

5.3 Results

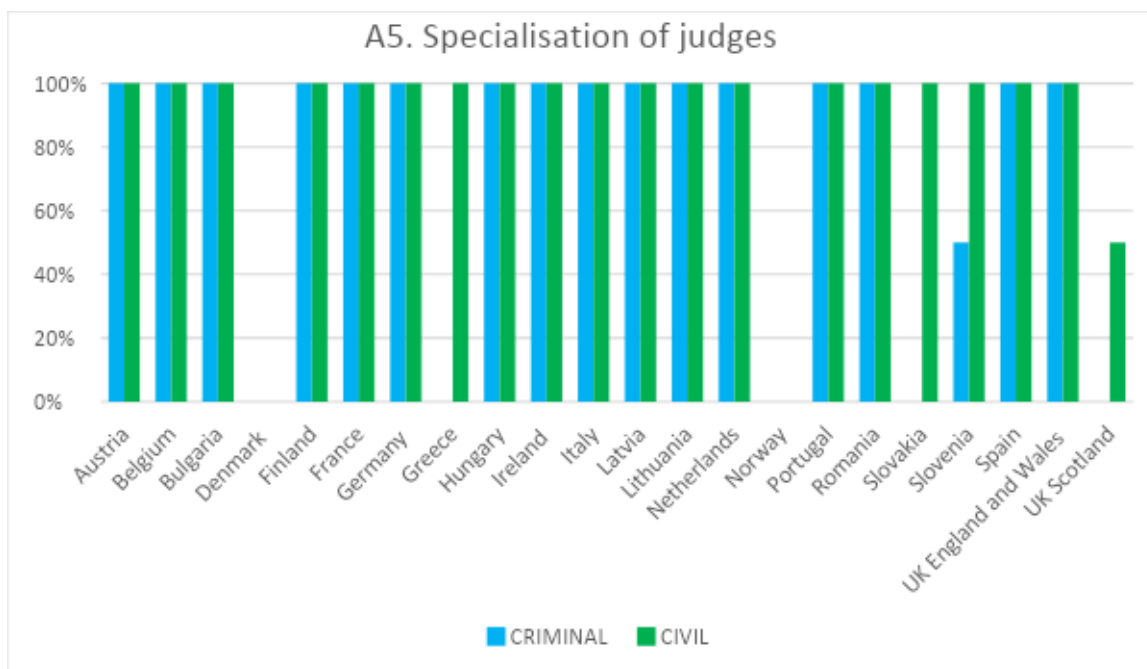
Despite these caveats the picture emerging from the data, the questionnaire has produced some interesting and informative data. In this section, highlights are presented. For the full results, see the annexes. The data reveals strengths and weaknesses across all participants. Some outcomes are encouraging. For example, it appears that most participants have a procedure at first instance and on appeal to determine whether a case should be heard by a single judge or a panel of judges. This is a binary question so the answers are robust, but the indicator would yield more informative results if it also measured how such procedures operate in practice in order to understand the improvement in the quality of justice actually achieved by the existence of these provisions. This may require reconsidering the vexed issue of measuring answers which are, to a greater or lesser extent, subjective and thereby potentially undermining the consistency of the replies to the questionnaire.



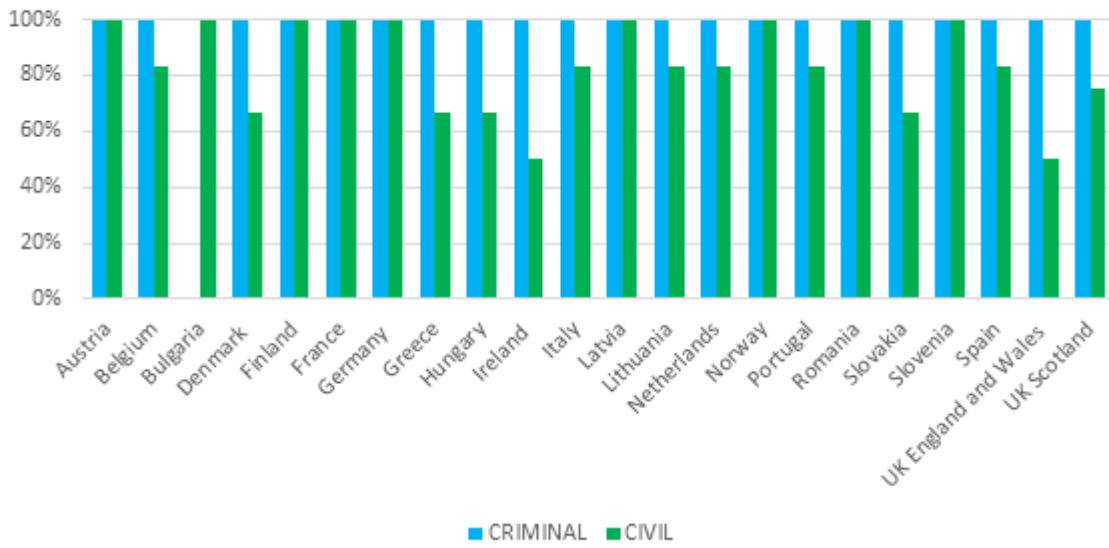
Equally encouraging are the positive results of Indicator 8, concerning the power of the courts to deal with parties, and their representatives, who do not comply with, or abide by, court directions and rules of procedure. This suggests that the courts in most of the Members and Observers are well placed to control and therefore reduce, if not eliminate, abusive behaviour by the parties to the litigation.



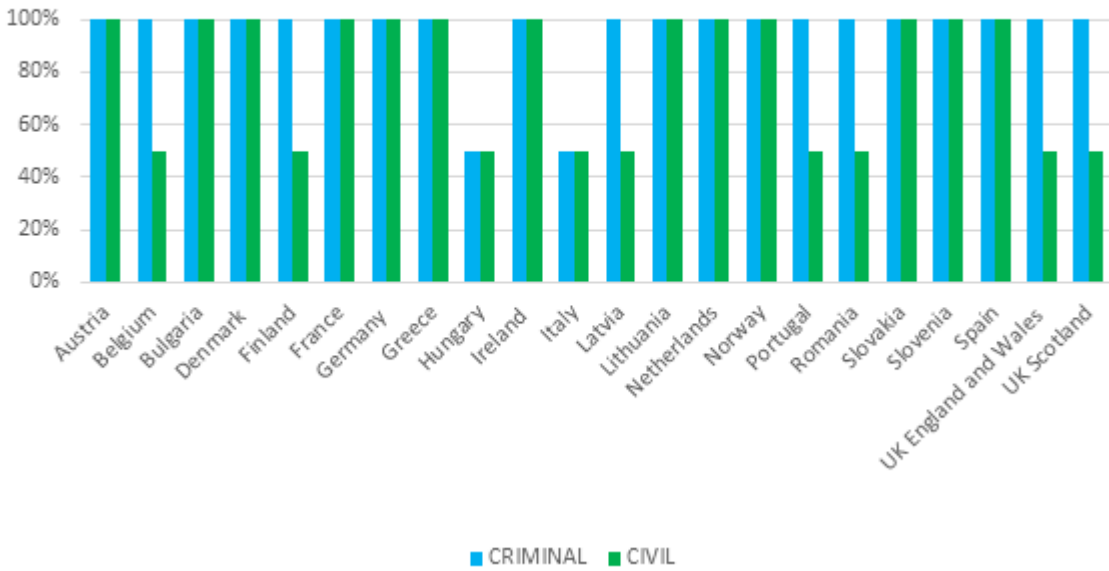
It is probable that those indicators where many Members and Observers scored 100% can be refined to obtain more nuanced and representative information, so, while the absolute outcomes should be treated with some caution, nonetheless the overall positive picture emerging in respect of these areas may broadly reflect the actual situation for these indicators. See for example Indicators 5, 6 and 10 (specialisation of judges, equality of arms and communication in national languages and translation).



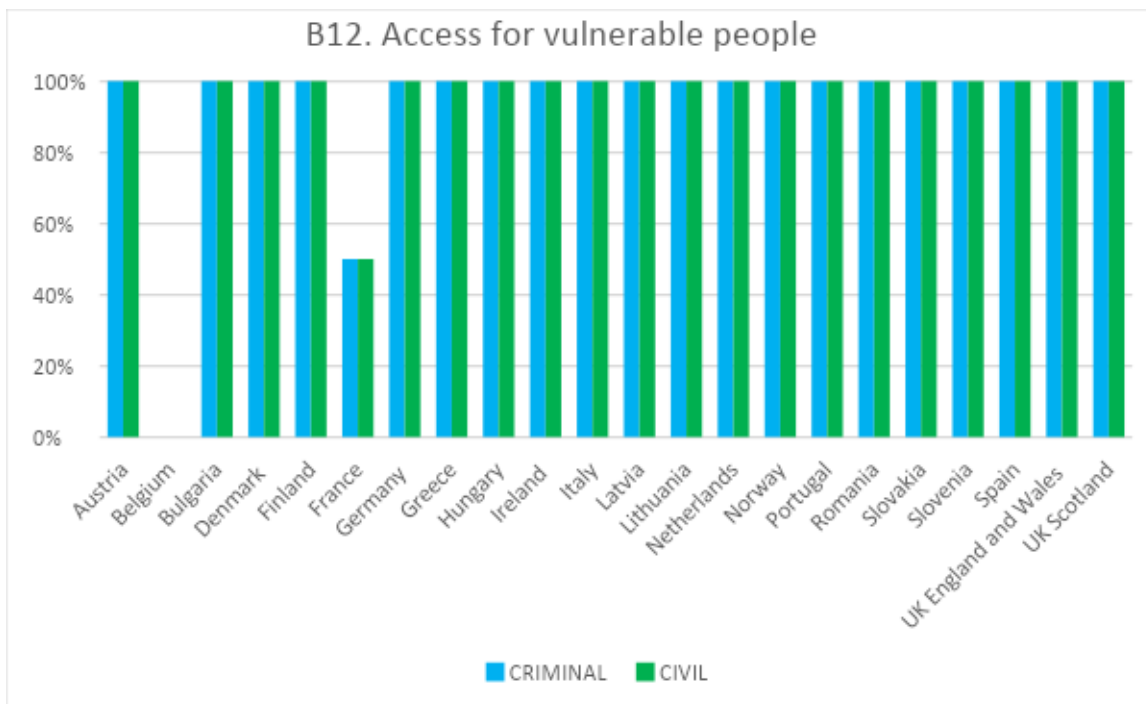
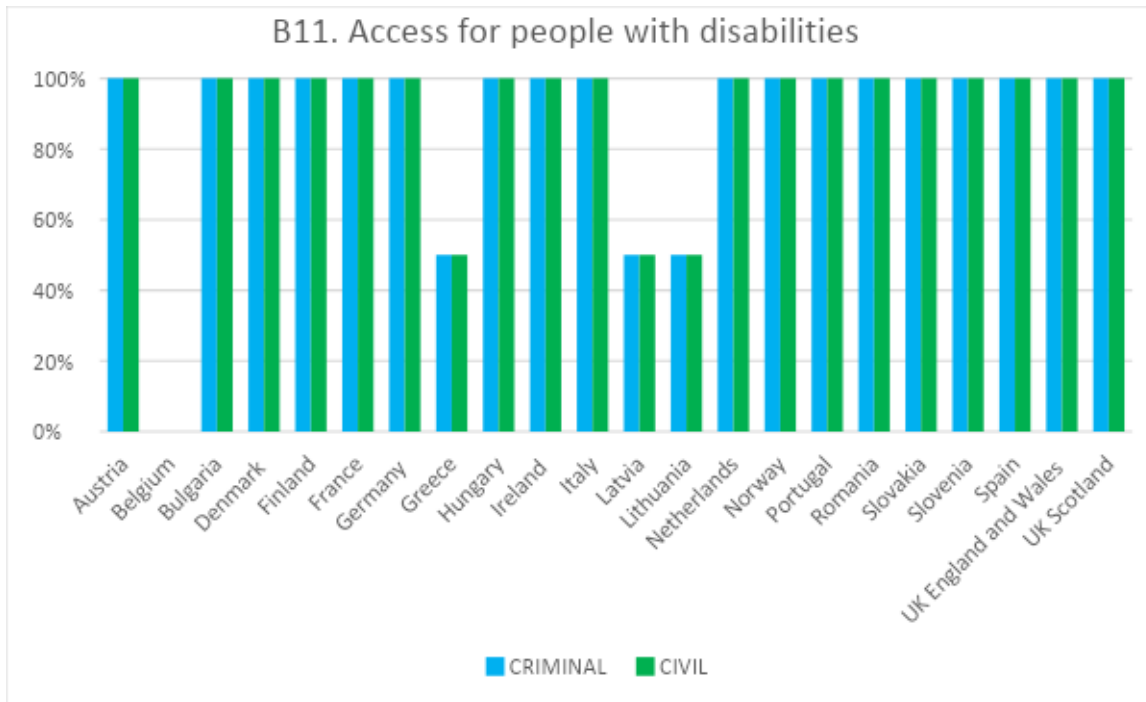
B6. Equality of arms (funding and costs)



B10. Communication

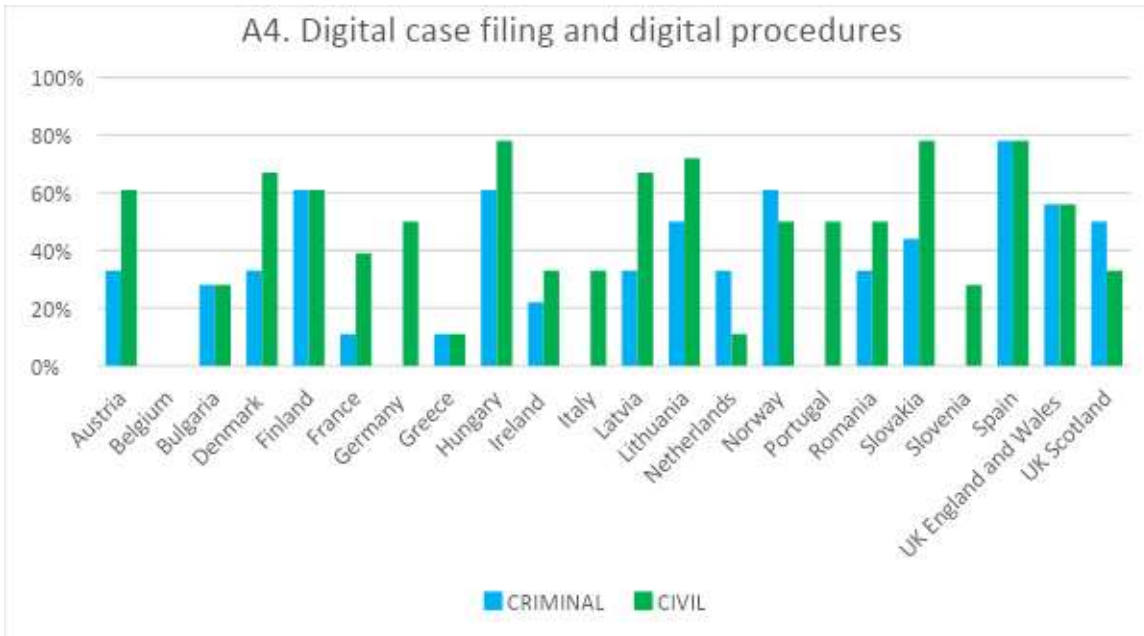


In relation to Indicators 11 and 12 (access for people with disabilities and access for vulnerable people), the results are unlikely to reflect the true extent to which people of all differing kinds of disability or vulnerability have access to all court procedures.

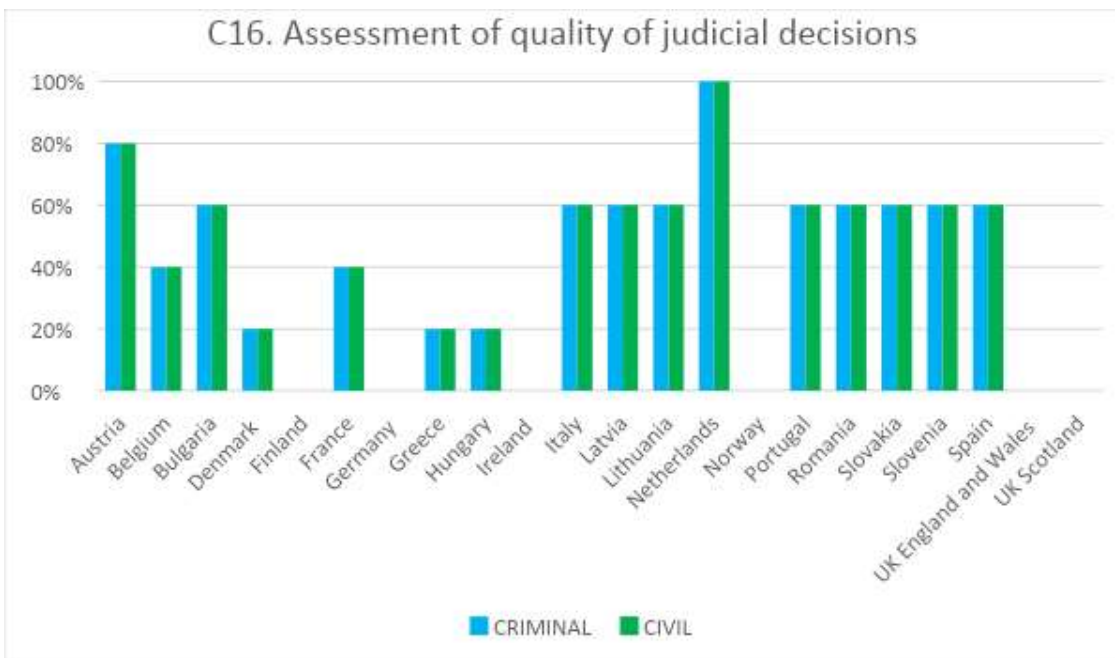


A refinement of the indicators would reveal whether differences exist depending on the nature of the disability or vulnerability of the person concerned. It would also be useful to ascertain if the adequacy of procedures and physical arrangements could be assessed.

Certain indicators highlight weaknesses common to many Members and Observers to a greater or lesser extent. There is clear scope for improvement in digital case filing and digital procedures across all participants, though there are some encouraging results (Indicator 4). There is greater use of digital filing and procedures for civil cases compared to criminal cases.

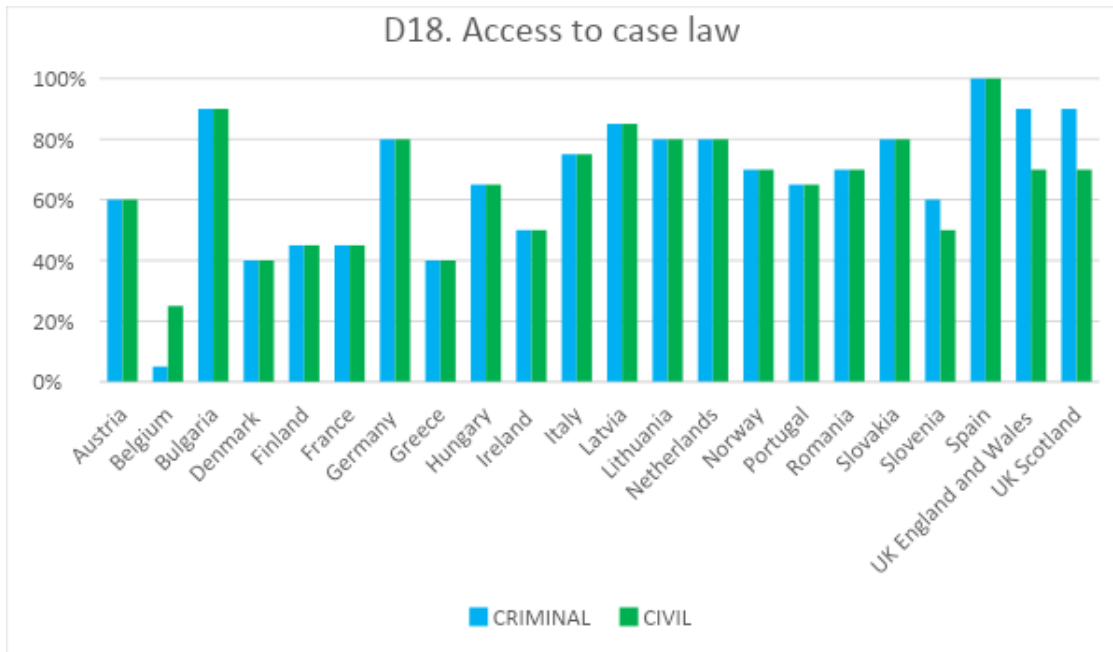


The results from Indicator 16 (assessment of the quality of judicial decisions) give rise to concern. The reason for the overall low scores requires further analysis and investigation.



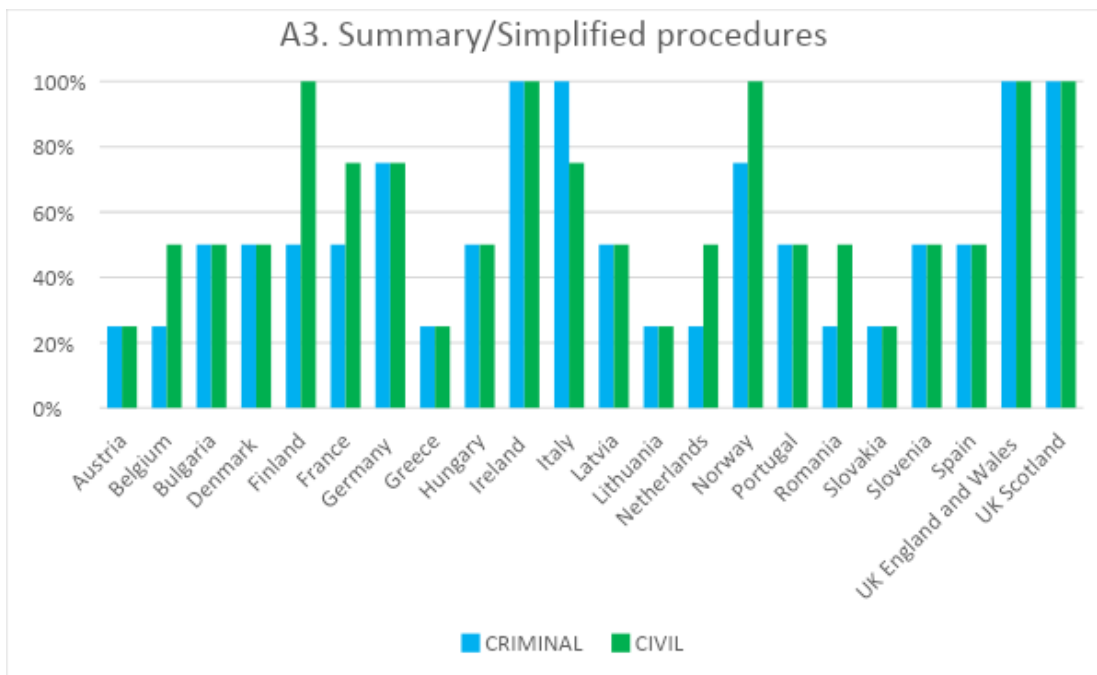
It is important to note that there is no assessment of the quality of judicial decisions in the six participants for whom no score is entered so the results should not be interpreted as zero scores for this Indicator of these participants.

The results show that there is scope for improvement generally in the area of access to case law (Indicator 18).



This is an area where most councils may be able to make improvements.

There was widespread low scoring on Indicator 3 (summary/simplified procedures).



This also appears to be a possible area for reform, though the outcomes must always be assessed in the context of the individual Member's or Observer's legal tradition and procedures.

There was a significant disparity in the outcomes on the formatting of judgments (Indicator 13), but there were consistently high outcomes on the reasoning of judgments and verdicts (Indicator 14) and the clarity of judgments and verdicts (Indicator 15), with only a few outliers. Likewise, there were encouraging results to Indicators 1 and 2 (duration of cases (court) and duration of cases (parties)), though the results for criminal cases were slightly lower on average and again there were a few outliers. See, however, the remarks earlier about these indicators.

While the ENCJ is very conscious that this remains a work in progress, the results reveal certain areas where there is definite scope for improvement. Some of these are likely to be difficult to achieve but some are perhaps more realisable. For instance, the publication of case law is extremely important, and is likely to be an area where positive improvements can be achieved. The areas for further work are discussed below.

6. Next steps on Quality of Justice

We recommend that in the next year (2020/2021) the Project Group should undertake the following steps:

8. The Questionnaire results should be analysed against existing, external data about Quality of Justice for their use in the indicator system.
9. The indicators and scoring should be subjected to further review by the Project Group in light of the results of the Questionnaire and further observations from Members and Observers.
10. The roles and competences of each of the Councils in guaranteeing and promoting Quality of Justice must be identified and Councils should adopt definite plans, having regard to their county profiles and general recommendations, to improve the Quality of Justice in their jurisdiction.
11. The ENCJ continues to make progress towards developing a vision of Quality of Justice. In light of the outcome of the Questionnaire, it will be up to individual councils to identify the areas in which there is potential to improve quality and to take appropriate steps to achieve such improvement.

Part 3. Court User Survey

1. Background

Perceptions about judicial independence are of particular importance in the indicator system. The indicator system contains available data about perceptions of citizens in general, businesses, lawyers and judges. However, the perception of court users - based on actual experience with concrete court cases - are usually lacking from the available data.

The EU Justice Scoreboard and the ENCJ quality project show, that surveys among court users are far from common in the ENCJ Member and Observer countries, and that surveys when conducted cover a variety of subjects, but do not necessarily pay attention to the court users perception and experience of the independence that he/she may/may not experience during their visit in the court. Moreover, the available surveys often concern specific courts, and hence do not give a representative overview of the opinion of the court users in general in a country.

Therefore, during the last year, ENCJ has been working on a format for a court user survey that could be used across the judiciaries of Europe (report 2018/2019 p 68) to help fill in this gap in relation to information on the perception of the court users. The ultimate goal would be for ENCJ Members and Observers to incorporate these questions into their own court user surveys, but before the ENCJ could suggest Members and Observers to incorporate these questions in a court user survey, the questions needed to be refined and tested in a pilot.

2. Development and pilot of court user survey

Last year the ENCJ working group drew up some preliminary questions to grasp the essence of judicial independence while still being relevant to court users' experiences and priorities. This year the preliminary questions have been reviewed and refined further in discussions during two project team meetings, which led to a more complete survey, as reproduced below.

During meetings in the project group it was also discussed in what ways the questionnaire could most conveniently be distributed to court users. In the pilot project it was in this preliminary phase left to the four participating countries to decide which approach was the most suitable and practicable for them.

3. Format for court user surveys

In last year's report, the format of a questionnaire survey was considered and two challenges were identified in this area.

- (1) The systematic implementation of court user and lawyer surveys about their actual experience in all judiciaries is necessary to provide essential feed-back on the quality of the judiciary and

- (2) Such surveys should include the key issue of the independence of judges which is a rather abstract notion and to be practical needs to be made concrete, especially for parties that do not have a legal background.

As to the first challenge, Councils for the Judiciaries can, dependent on their mandate, play a prominent role in organizing such surveys. In order for the ENCJ to be able to promote this, the ENCJ does however have to consider the content of such surveys not only from the perspective of independence but also from the broader perspective of quality of justice. It has been included in the work this year when developing and refining the questionnaire that it should also include questions which are related to the quality indicators developed.

Regarding the second challenge, attention was given to formulate questions that could help to make independence less abstract, while still retaining the connection with the indicators. The questions in the survey are therefore designed to inquire the experience at a court hearing. While not all questions relate to independence in the same direct way, the questions together provide a fairly complete picture of the efforts of the judge to treat all parties impartially and the degree of success of the judge in doing that.

Some inspiration on the topic was found in the CEPEJ handbook for conducting satisfaction surveys (CEPEJ (2016) aimed at court users in Council of Europe Member States. This is in many respects an excellent handbook, that provide good information and guidance, but the survey included does not focus on aspects of independence.

When designing the questionnaire, it was specifically intended that it should be of a scope so that it could be answered quickly and that the questions were formulated in a simple way in order for it to be possible for all types of court users to understand and answer. It was decided that the survey should be short and focus only on major issues. The questionnaire is intended for both professional and non-professional users. Whether this is appropriate or whether two types of questionnaires should be designed instead could be considered in the further process in the light of the experience gained through the pilot.

The questionnaire now also contains some initial questions about the court user. These are intended to be used in interpreting and analyzing the results. For the same purpose, users are also asked for the outcome of their case. The survey consists of 12 questions as well as a question about the user.

Upon completion of the questionnaire, it was submitted for testing in four pilot countries.

4. Court user survey 2020

The survey

Dear Sir/Madam

This questionnaire is a part of an assessment of the quality of the justice system focusing on the quality, independence and impartiality of the judiciary. The questionnaire is part of a European effort to secure and enhance the independence and quality of judiciaries.

Your opinion and suggestions are important to us and we would be grateful if you would take a little time to reply to the questions below. The questionnaire is anonymous and we guarantee that your replies will be dealt with in the strictest confidence.

About you. Please tick the relevant box(es):

A. In what capacity are you at the court today?

- As a party
- Witness
- Victim in a criminal case
- Lawyer/ representative for a party
- Other

B. Gender?

- Male
- Female
- I identify otherwise
- Prefer not to answer

C. Age?

- Under 18
- 18 – 30
- 31 – 50
- 51 – 65
- 65 and over
- Prefer not to answer

1. About your experience in court today? Please tick the relevant box(es):

A. If you are a party to a case - what was the outcome of your case?

- Successful
- Partly successful
- Unsuccessful
- Adjourned
- Not yet known

B. The hearing started on time

- Yes
- No
- Not applicable

C. The hearing was postponed until another day:

- Yes
- No
- Not applicable

D. All relevant documents were available before the hearing:

- Yes
- No
- Not applicable

2. I understood clearly:

A. The issues in the case

- Yes
- No
- Not applicable

B. The procedure

- Yes
- No
- Not applicable

C. My duty to the Court

- Yes
- No
- Not applicable

D. My rights during the hearing

- Yes
- No
- Not applicable

3. The judge listened carefully to my side of the case:

- Yes
- No
- Not applicable

4. The judge treated all parties and their representatives respectfully and fairly:

- Yes
- No
- Not applicable

5. The judge gave no inappropriate preference to any party or their representatives

- Yes
- No
- Not applicable

6. The judge(s) in my case was independent in the conduct of the case. (On a scale of 0 - 10 where 0 means "not independent at all" and 10 means "the highest possible degree of independence") Please tick the relevant box.

- | | | | |
|----------------------------|----------------------------|----------------------------|-----------------------------|
| <input type="checkbox"/> 0 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 9 |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 7 | <input type="checkbox"/> 10 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 8 | |

7. I am confident that the case has been (or will be) resolved fairly:

- Yes

- No
- Not applicable

8. If you are not confident that the case will be (or has been) resolved fairly, why not? (more than one box may be ticked):

- The judge did not prepare adequately for the hearing
- The judge was not competent or professional
- The judge lacked communication skills
- The proceedings were not open and transparent
- The judge did not explain his/her reasoning
- A party or their representative may have had an inappropriate impact on the decision
- Other (please say why here):

9. Overall, I am satisfied with the hearing by the judge(s) (On a scale of 0 - 10 (where 0 means "not satisfied at all" and 10 means "the highest possible degree of satisfaction) Please tick the relevant box:

- | | | | |
|----------------------------|----------------------------|----------------------------|-----------------------------|
| <input type="checkbox"/> 0 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 9 |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 7 | <input type="checkbox"/> 10 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 8 | |

10. Before coming to Court today, did you trust the judicial system? (On a scale of 0 - 10 (where 0 means "no trust at all" and 10 means "the highest possible degree of trust) Please tick the relevant box:

- | | | | |
|----------------------------|----------------------------|----------------------------|-----------------------------|
| <input type="checkbox"/> 0 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 9 |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 7 | <input type="checkbox"/> 10 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 8 | |

11. Before coming to Court today, did you expect to be treated fairly? (On a scale of 0 - 10 (where 0 means "no expectations at all" and 10 means "the highest possible expectations) Please tick the relevant box:

- | | | | |
|----------------------------|----------------------------|----------------------------|-----------------------------|
| <input type="checkbox"/> 0 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 9 |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 7 | <input type="checkbox"/> 10 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 8 | |

12. Since coming to court today, has your trust in the judicial system increased or decreased?

- Increased (your experience was better than expected)
- Decreased (you were disappointed)
- Remain unchanged

Do you have any suggestions or comments?

5. Pilot 2020

5.1 Description of the pilot process in the pilot countries

Four member states of the ENCJ took part in the pilot: France, Romania, Lithuania and Bulgaria.

The participating countries received the survey, an introduction and a template. A minimum of 50 answers was required for each country and it was optional whether the countries wanted to use one court or more for the pilot. Each country had the opportunity to translate the survey in their language. The respondents could fill in the survey on paper or digital in any language into which the survey had been translated. Most Councils distributed the survey directly to the court users, other Councils send the letter to the court president for distributing the letter among the court users. The survey was addressed to all types of court users, both professional and non-professional court users.

Bulgaria

The total number of answered questionnaires was 129, and the pilot was conducted in the Court of appeal Plovdiv, Court of appeal Varna, District court Haskovo, District court Varna, District court Burgas, Regional court Pernik and Regional court Sofia.

The pilot was conducted in the way that the questionnaire was circulated to the courts in a Bulgarian translation. The presidents of the courts were asked to arrange the process of its completion by the court users within their court by 5th February 2020. After the expiration of the deadline, the filled-in questionnaires were sent to the Directorate for International Affairs and Protocol at the Supreme Judicial Council, where they were summarized.

France

In total 60 questionnaires were answered, and the pilot was conducted in the first instance court of Nanterre (west of Paris).

The pilot was conducted by four employees of the CSM, who went to Nanterre on Monday the 10th and Thursday the 18th of February. They handed out the questionnaire to people who were entering the court (civil and penal hearings) with a few words of explanation.

Lithuania

The total number of answered questionnaires was 134, and the pilot was conducted in Kaunas Regional Court, Kaunas District Court, Alytus District Court and Marijampolė District Court.

The court visitors were asked by court servants to answer the questionnaire. The questionnaire was also available to fill in on the website of Kaunas Regional Court.

Romania

In total 56 questionnaires were answered, and the pilot was conducted in Timișoara Court of Appeal.

The respondents were given the questionnaires and filled them in within the court premises after they had left the hearing or the activity they had come for in the court.

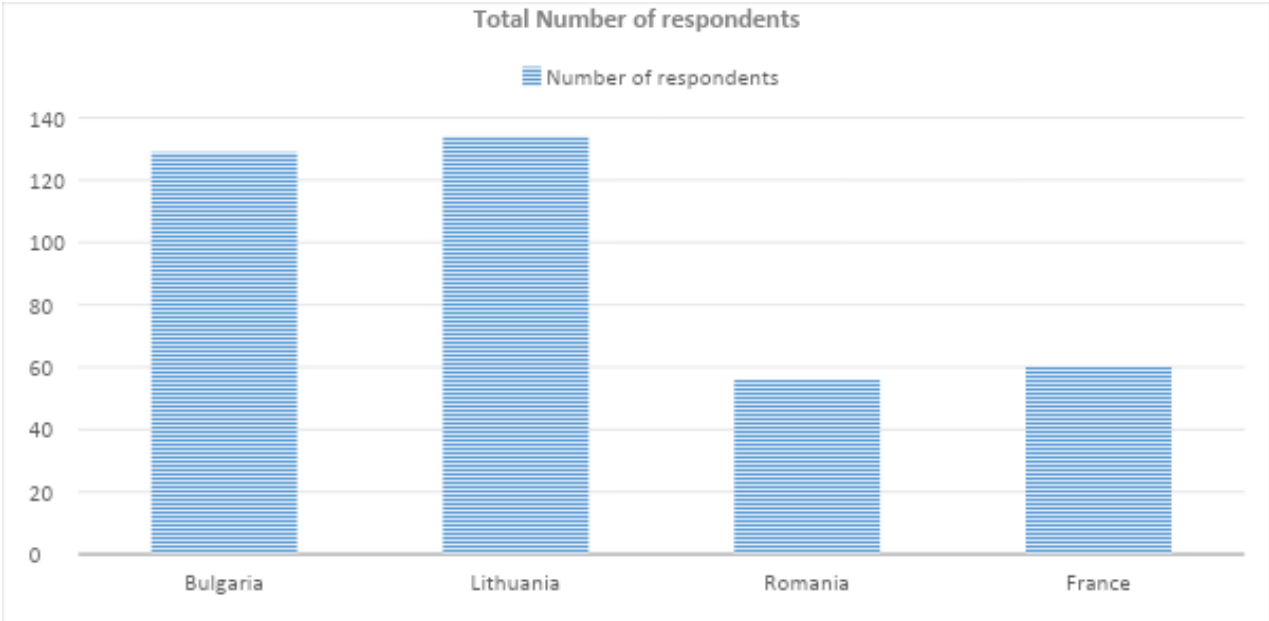
Processing the results

At the end of the pilot period, the project team received a filled in template with a collection of the answers given from each of the four pilot countries as well as a scanned version of all responses. The results for each country are shown in the figures below.

It should be noted and taken into consideration when reading the results that this is at a very initial stage and the pilot contains a very limited number of answers. For simplicity, the answers from all four countries are depicted in the same figures. However, at this stage the results do not provide a basis for comparison between countries, but they give a first impression of the usefulness of the questions in the further work of designing a common court user survey.

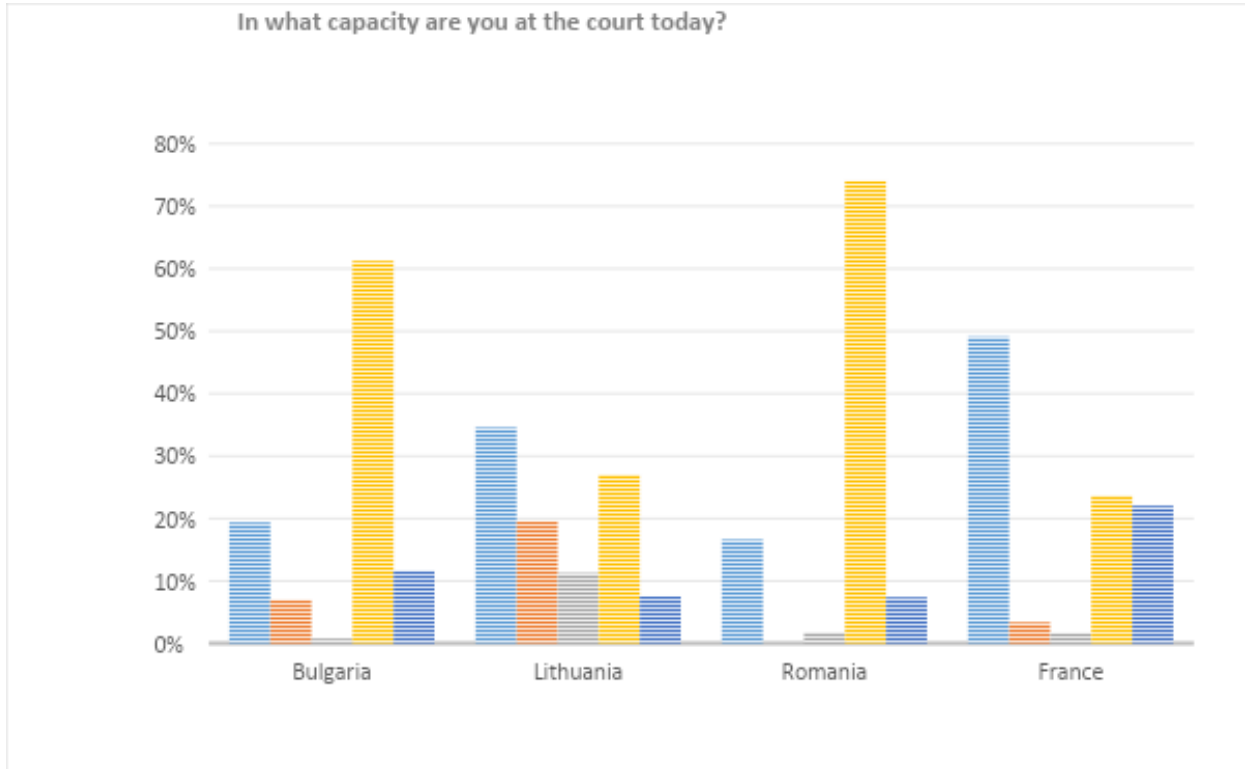
5.2 The results of the pilot

Figure 1. Total number of respondents



About the respondents

Figure 2.



The results for Bulgaria and Romania show that a very high proportion of the responses come from lawyers or representatives of the parties (61% and 74%), whereas the responses from France and Lithuania contain a more varied distribution between professional users and non-professional users.

In France, close to half of the questionnaires was answered by the parties, while in Lithuania approx. one-third were lawyers or representatives, approx. one-third witnesses or victims in a criminal case and one-third were parties in a case. These differences in the composition of the respondents is likely to influence the outcome of the survey. This could be clarified by a more in-depth examination of the answers, where the different groups of respondents and their answers are studied more closely in order to determine whether there is a difference in for example the perception of independence of parties and lawyers. This has not been possible in the context of this initial pilot.

Figure 3.

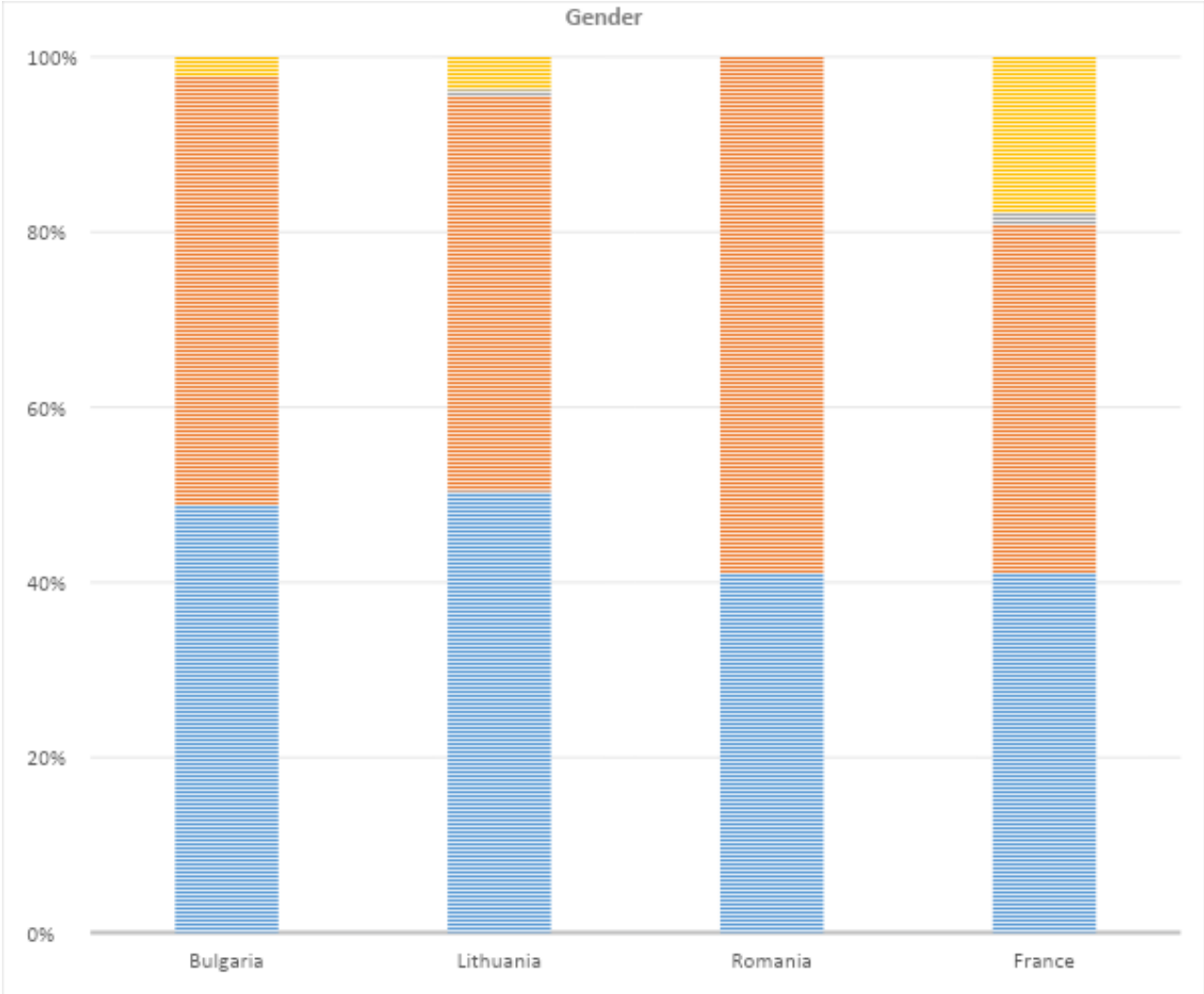
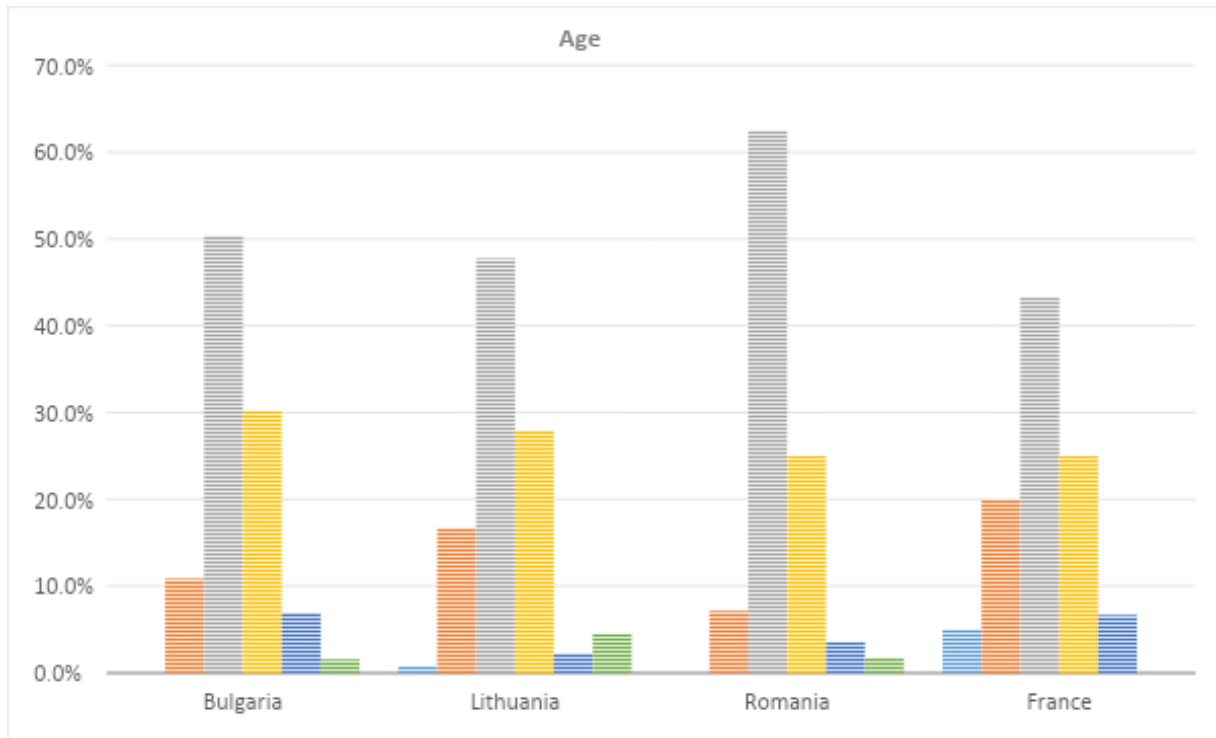


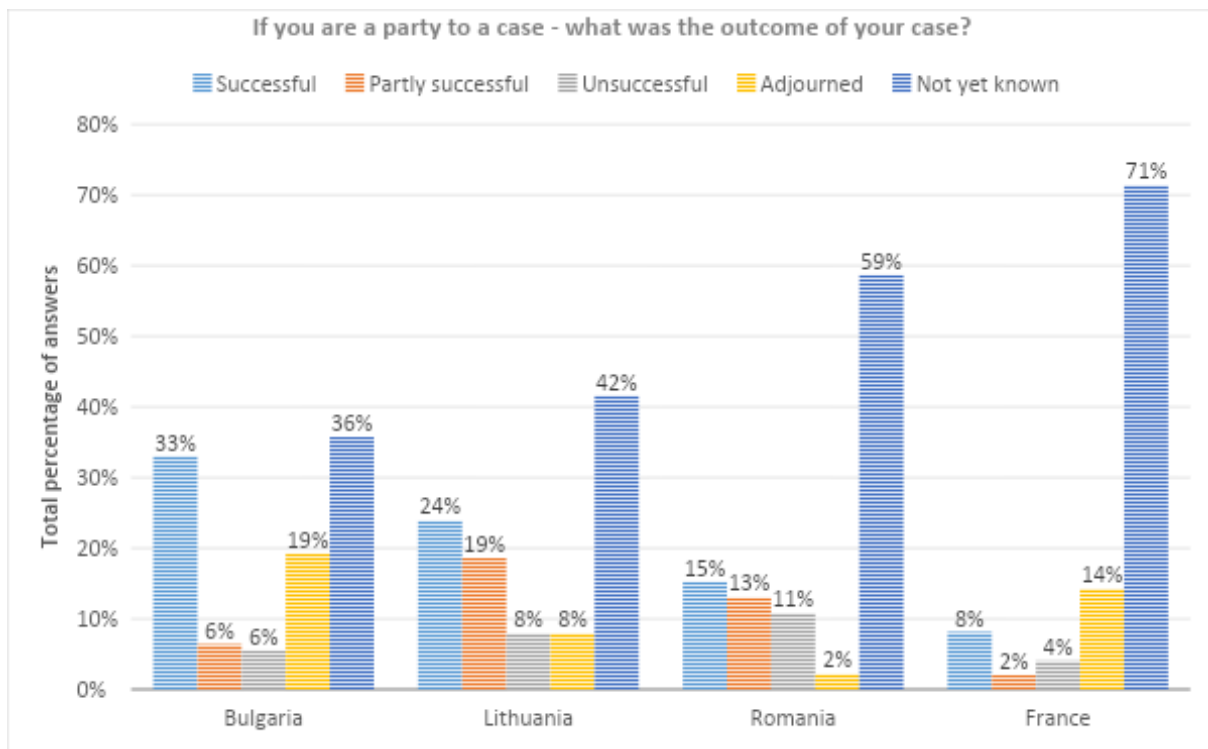
Figure 4.



The results show for all four countries that the majority of court users who answered the questionnaire were in the age group 31-50 years. The second largest group was in all four countries the age group from 51-65.

About the experience of the court user

Figure 1.A.



It appears that between 36 % and 71 % of respondents do not know the outcome of their case when answering the questionnaire. This means, that on the one hand, their response is not affected by a positive or negative outcome of their case, while on the other hand, it raises the question whether users should be asked at the court or whether it would be more relevant to them to complete the questionnaire at a later date when they have received the decision.

Figure 1.B.

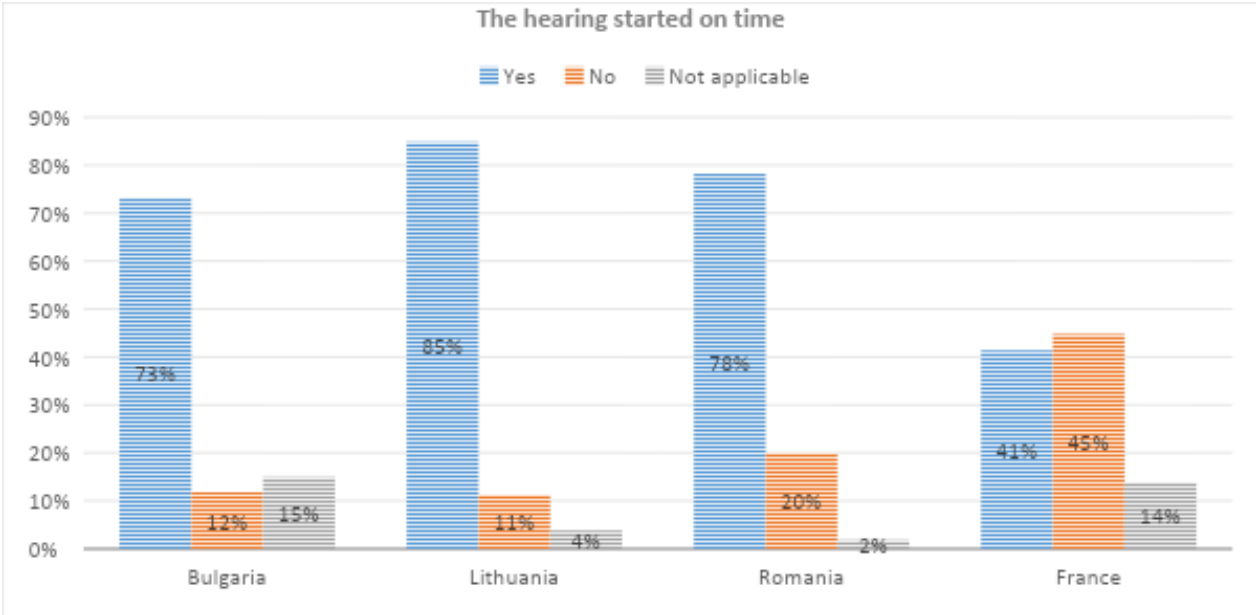


Figure 1.C.

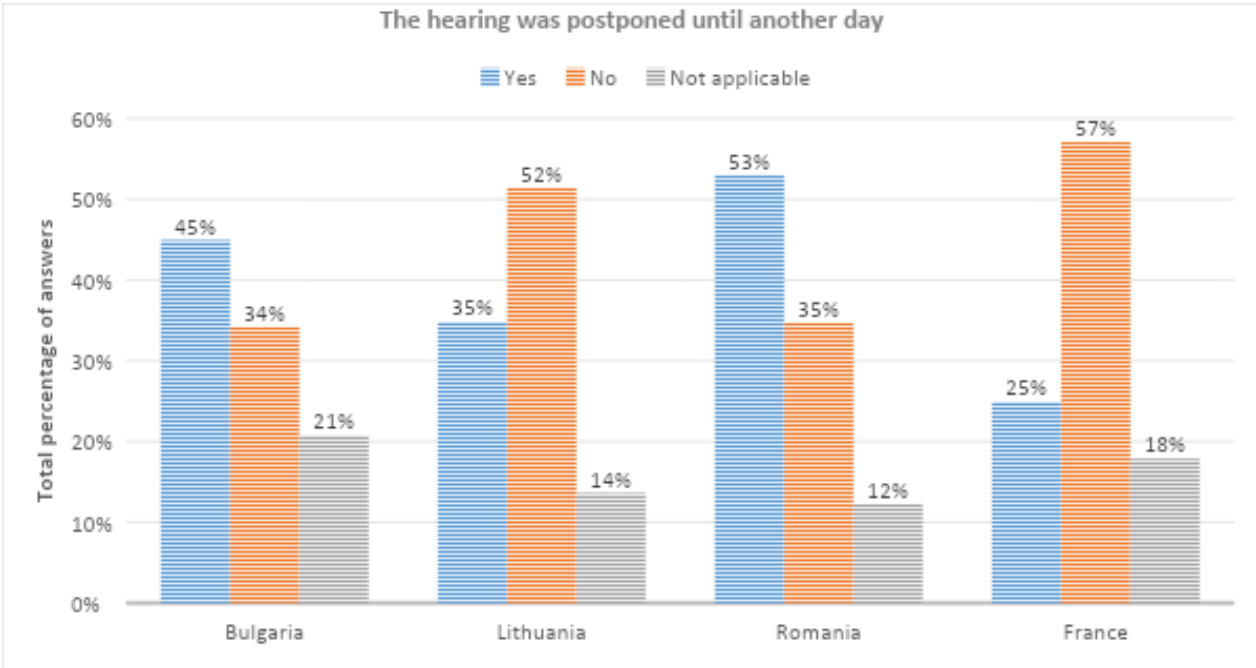
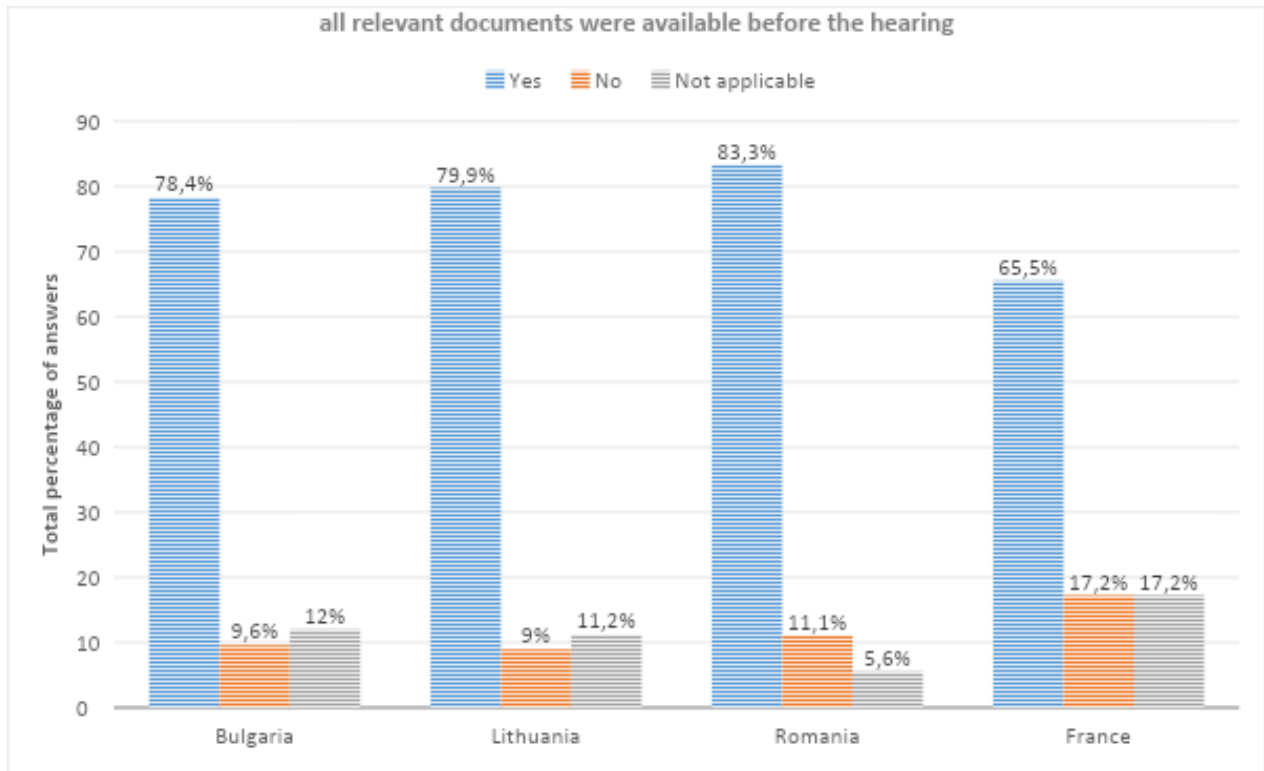


Figure 1.D.



The answers to question 1B show that between 11 % (Lithuania) and 45 % (France) of the respondents experienced that the hearing did not start on time, and the answers to question 1C show that in all four countries at least 25% of all cases were postponed to another day. In Romania the cases postponed account for over half of the cases, or 53 %. In order to analyze this figure more in detail, more in-depth information about the legal system of the individual countries and the reasons for the cases being postponed is required.

It can be seen from the answers in question 1D that most of the respondents, for all four countries more than 65 %, indicate that all relevant documents were available before the hearing. The figures range from 65,5 % in France to 83,3 % in Romania.

The court user understood clearly

Figure 2.A.

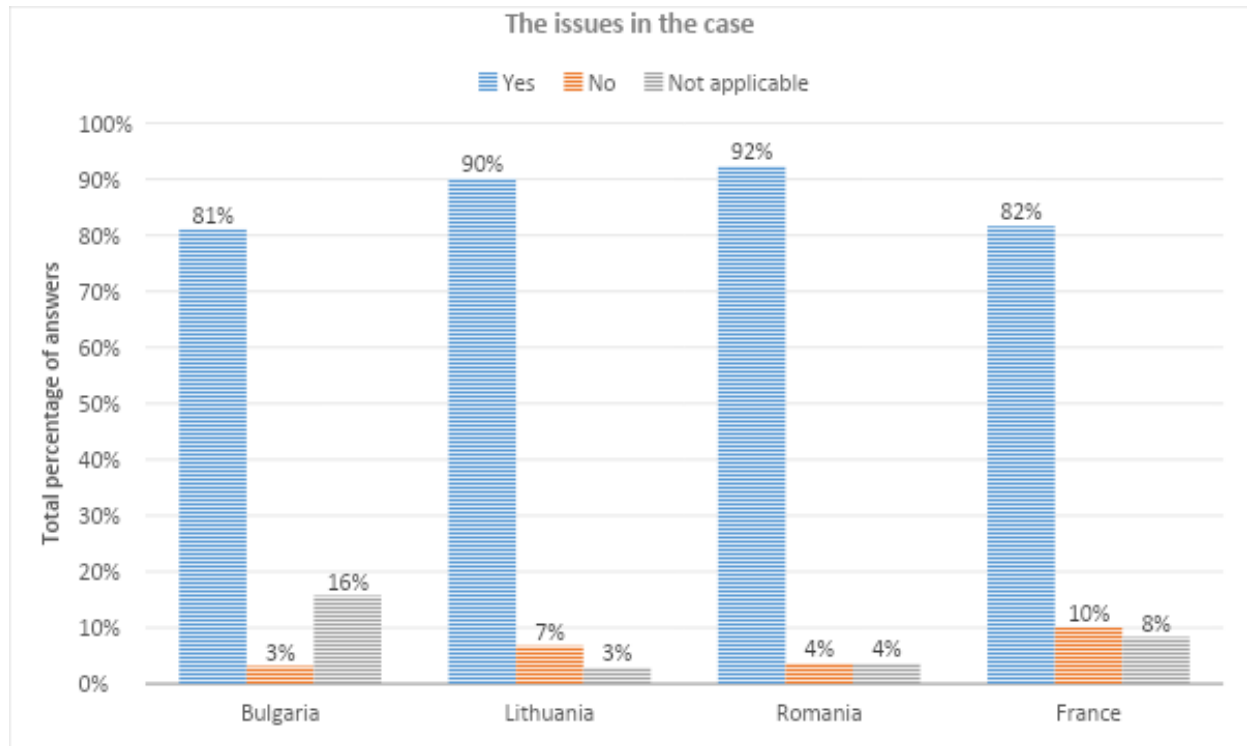


Figure 2.B.

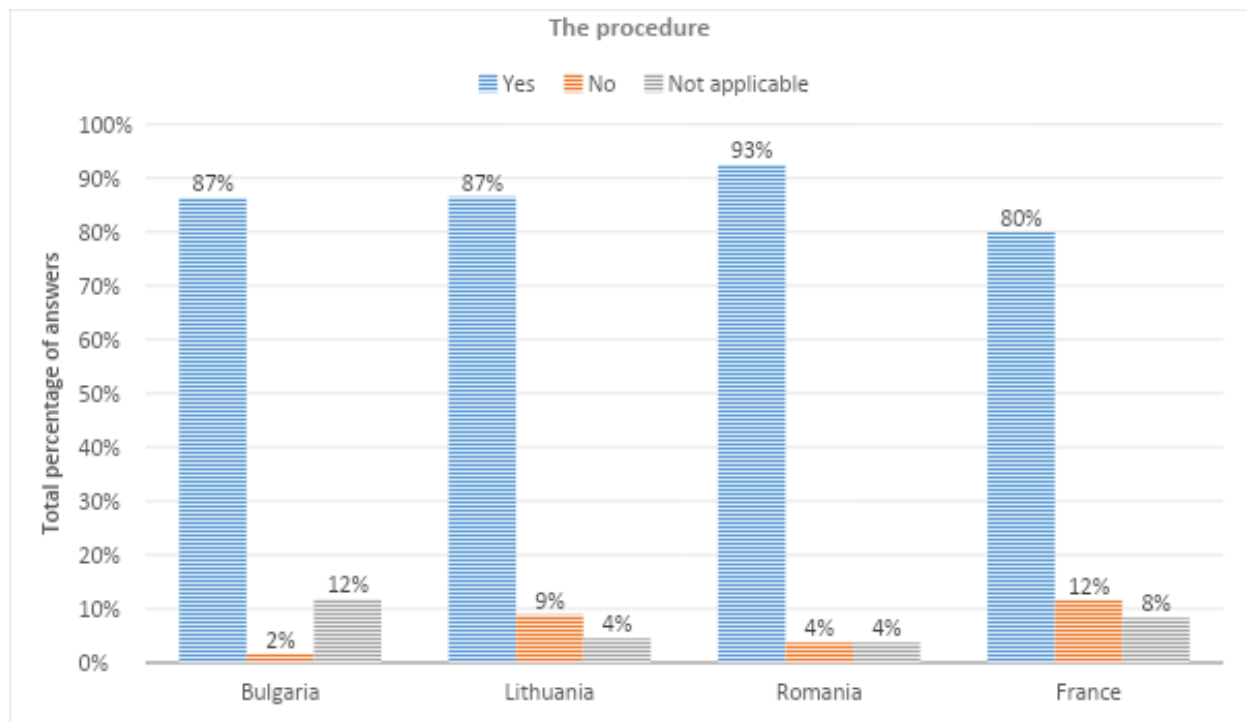


Figure 2.C

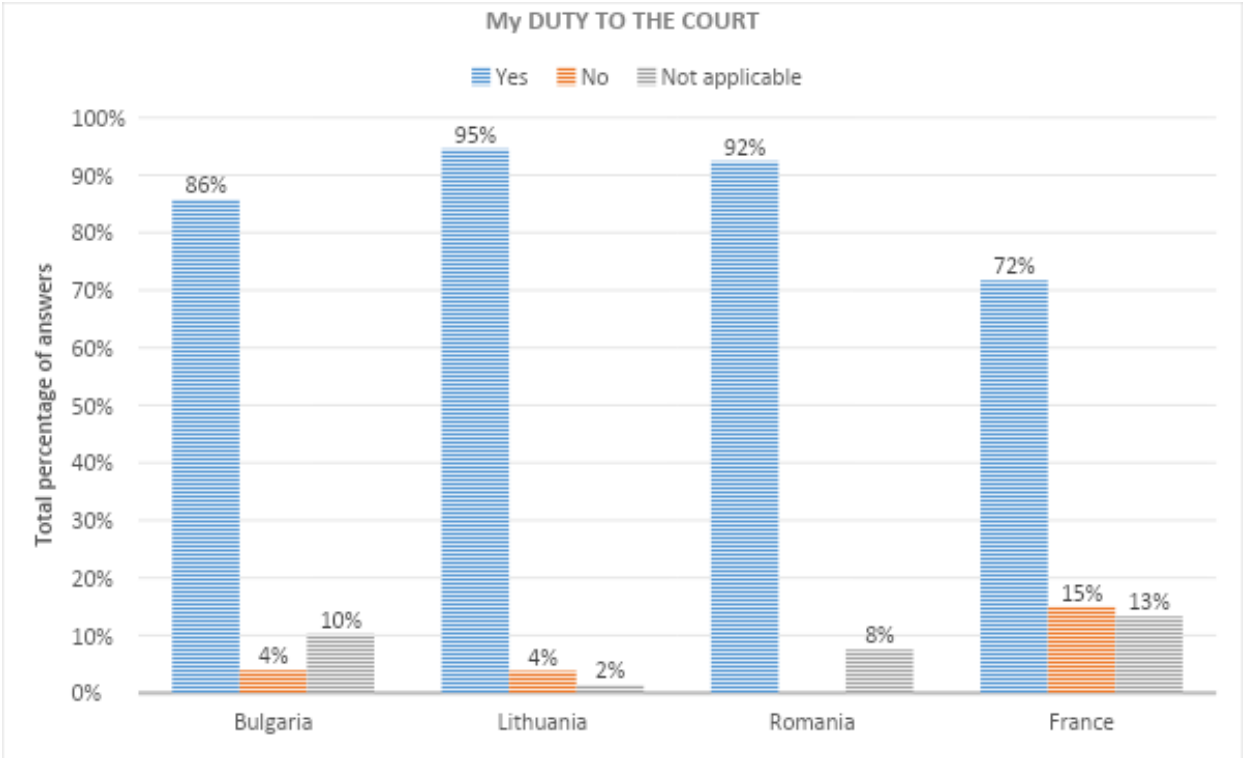
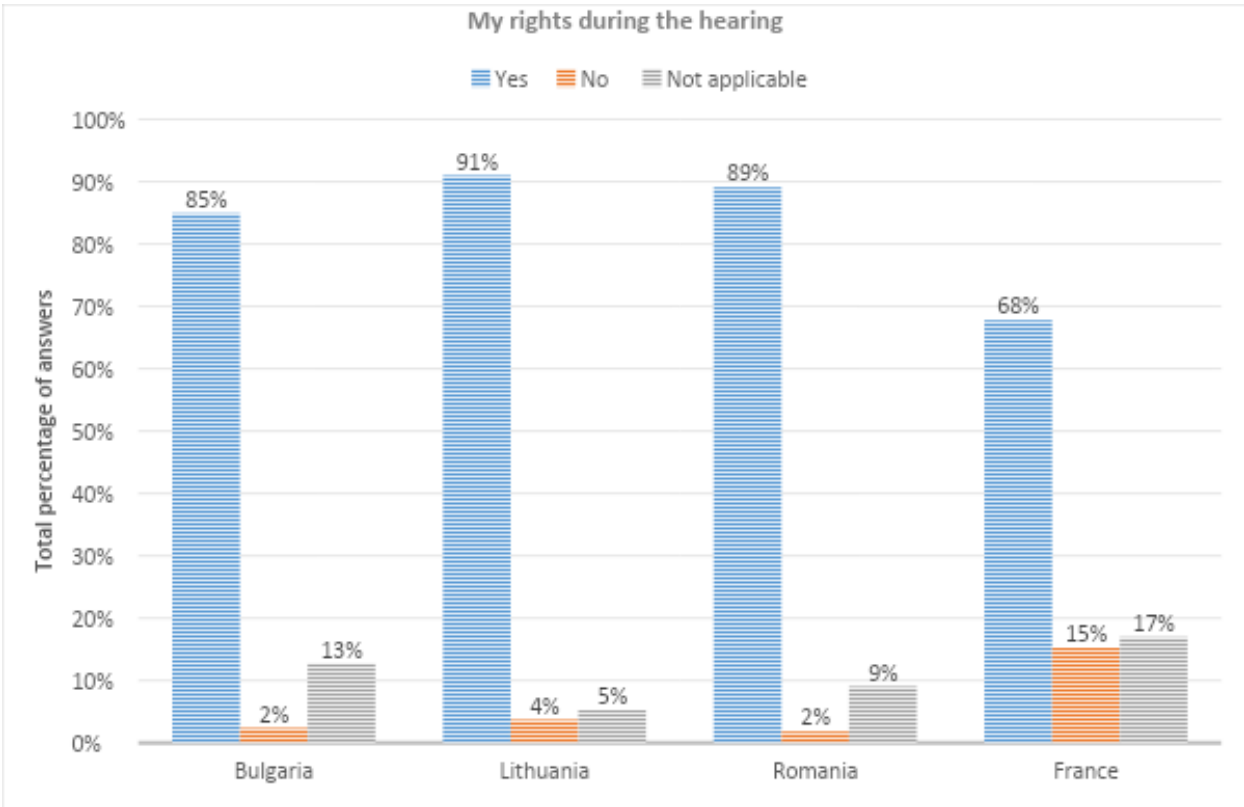
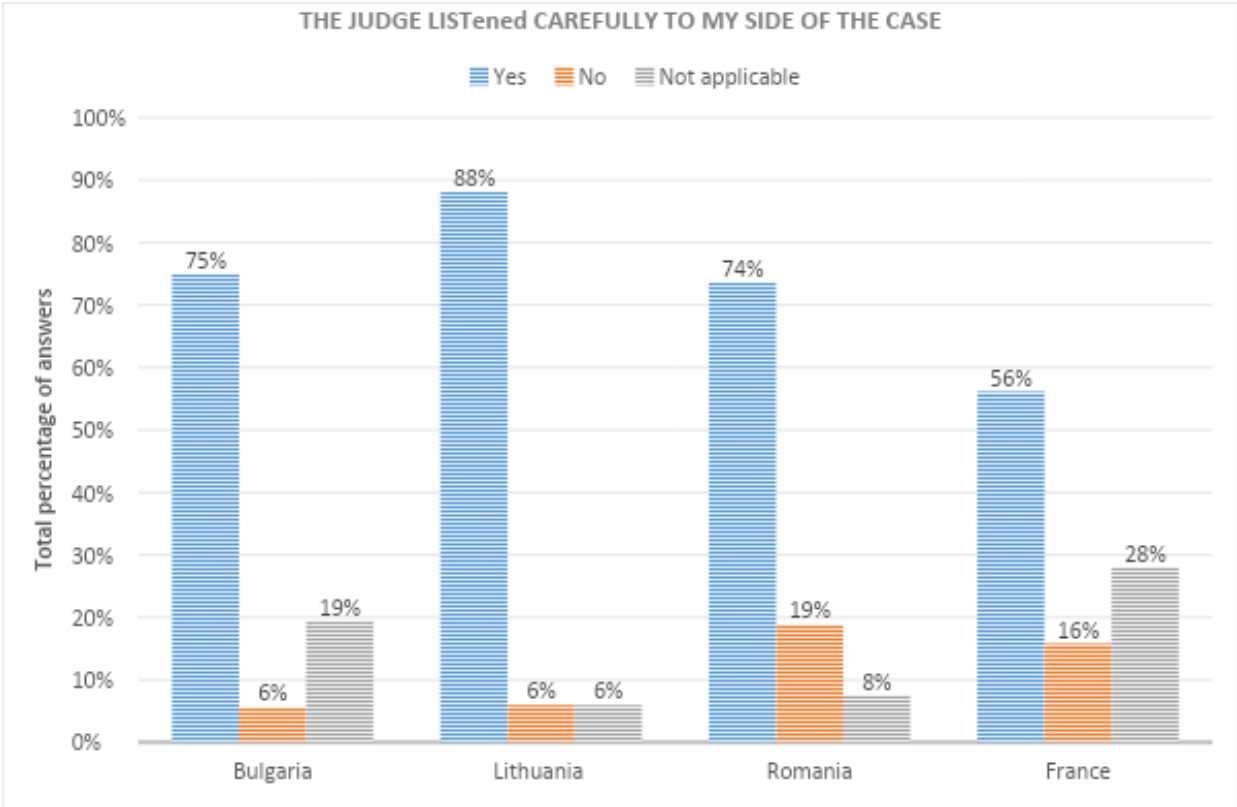


Figure 2.D



The answers to questions 2A-2D show that users generally have a high level of knowledge about the process in court and about their rights. When reading these figures, it should be kept in mind that in three out of four countries, professional users, lawyers and other representatives who are expected to have knowledge of these issues constitute a substantial proportion of the responses. This explains the lower level of knowledge in France.

Figure 3.



In three of the pilot countries, 74% or more answer, that the judge listened carefully to their side of the case, which is a very positive result. In France, where there is a greater proportion of responses from non-professional users than in the other three countries, the figures are more diverse, mainly because a high percentage of 28% respond with not applicable. In Lithuania, users are very satisfied, and this also applies when answering question 4 about respectful and fair treatment.

In general, a large proportion of respondents, 58 % in France and 80 % or more in the rest of the countries, respond that the judge treated the participants respectfully and fairly.

Figure 4.

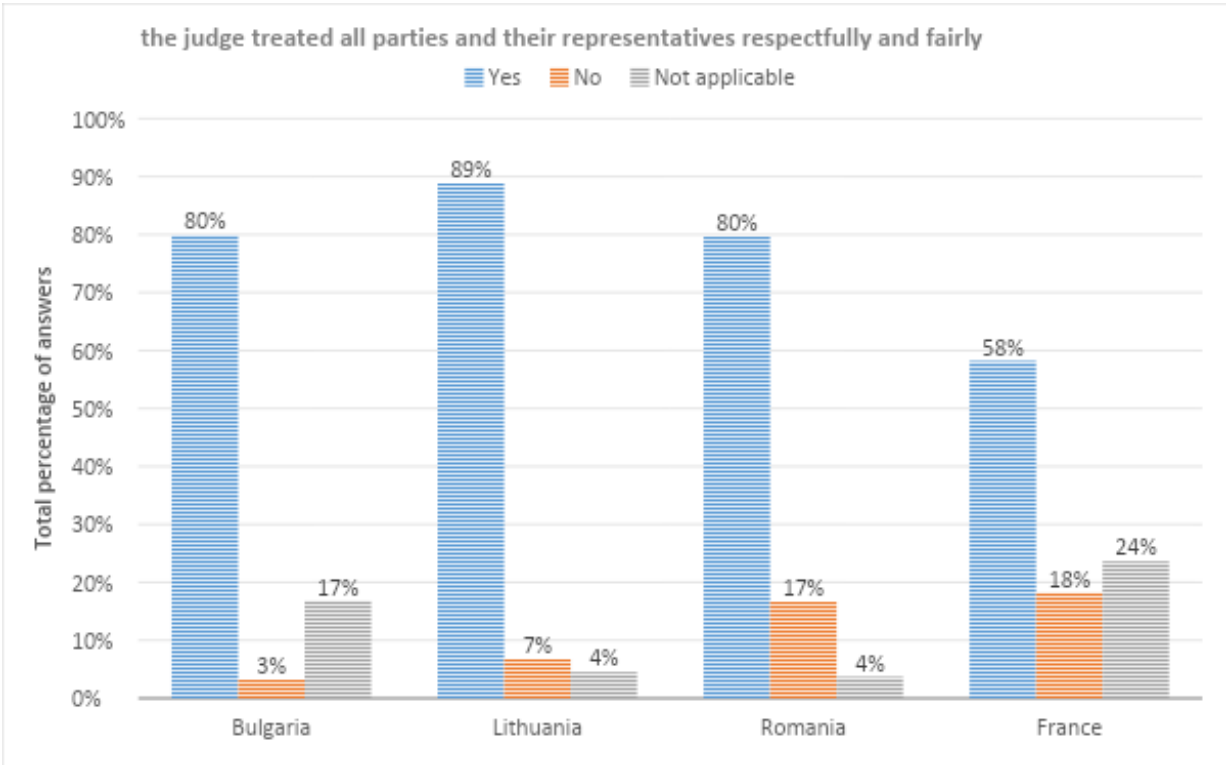
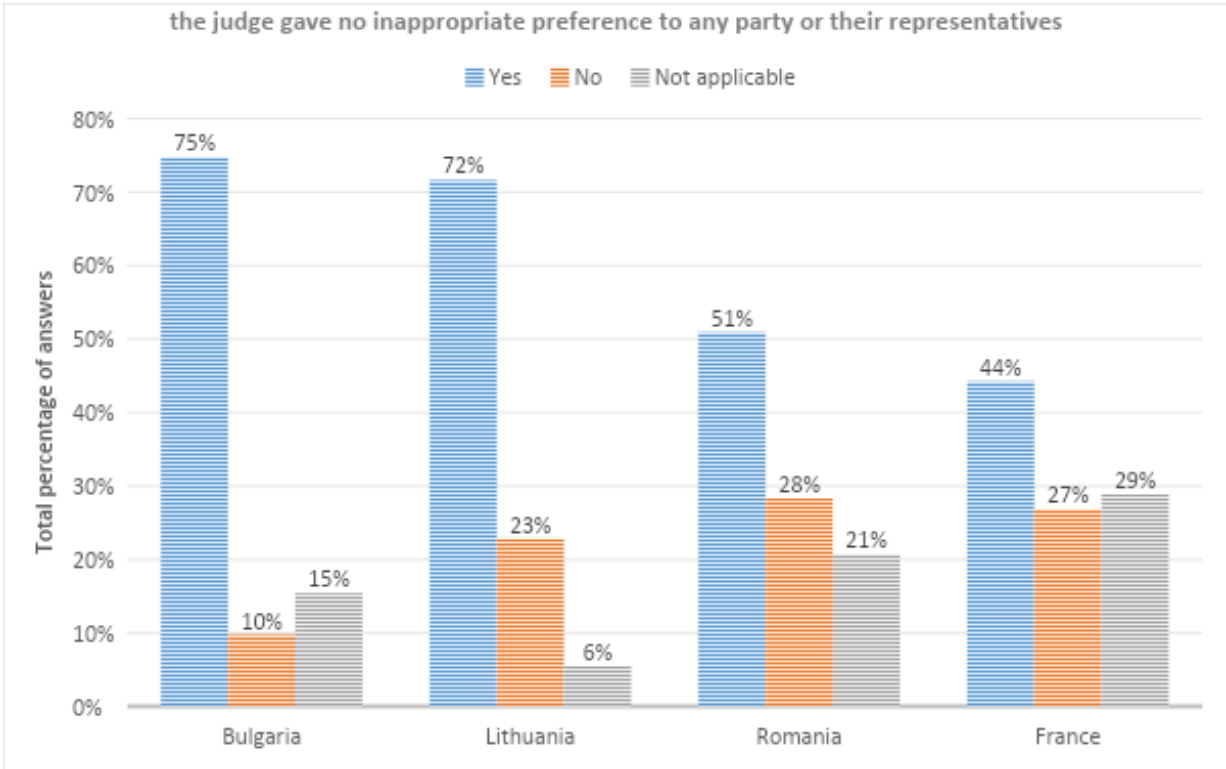


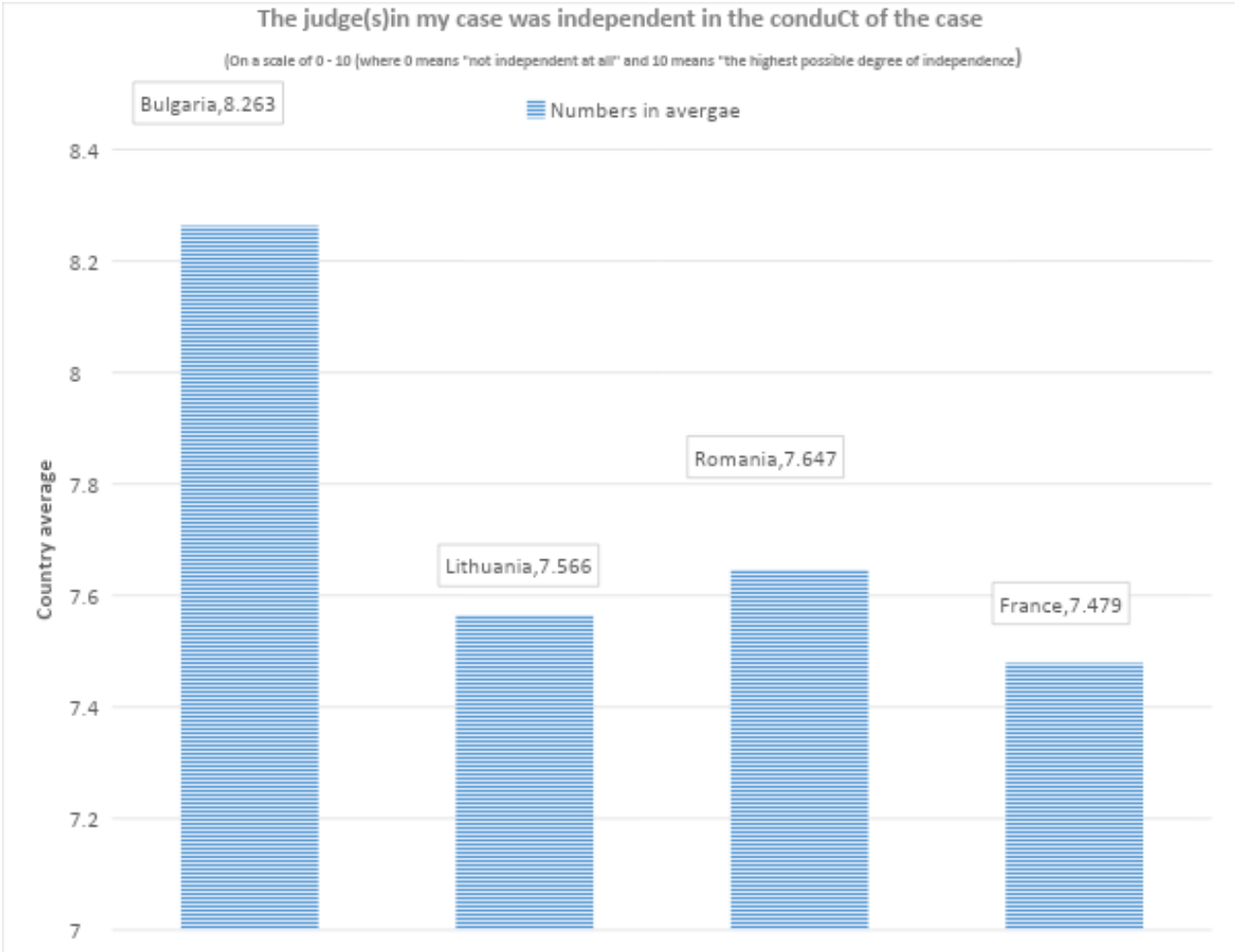
Figure 5.



When asked whether the judge showed preferences to a party, many users respond that this did not happen. However, the proportion of yes answers is lower than in question 4 about the judges' respectfulness and fairness. The difference is greatest in Romania, where 80 % answers yes to question 4 and 51 % answers yes to question 5. The difference is least in Bulgaria with 80 % and 75 %. In France, 29 % and 24 % respectively answer that the question is not applicable, which explains partly that there is a lower proportion of yes answers here.

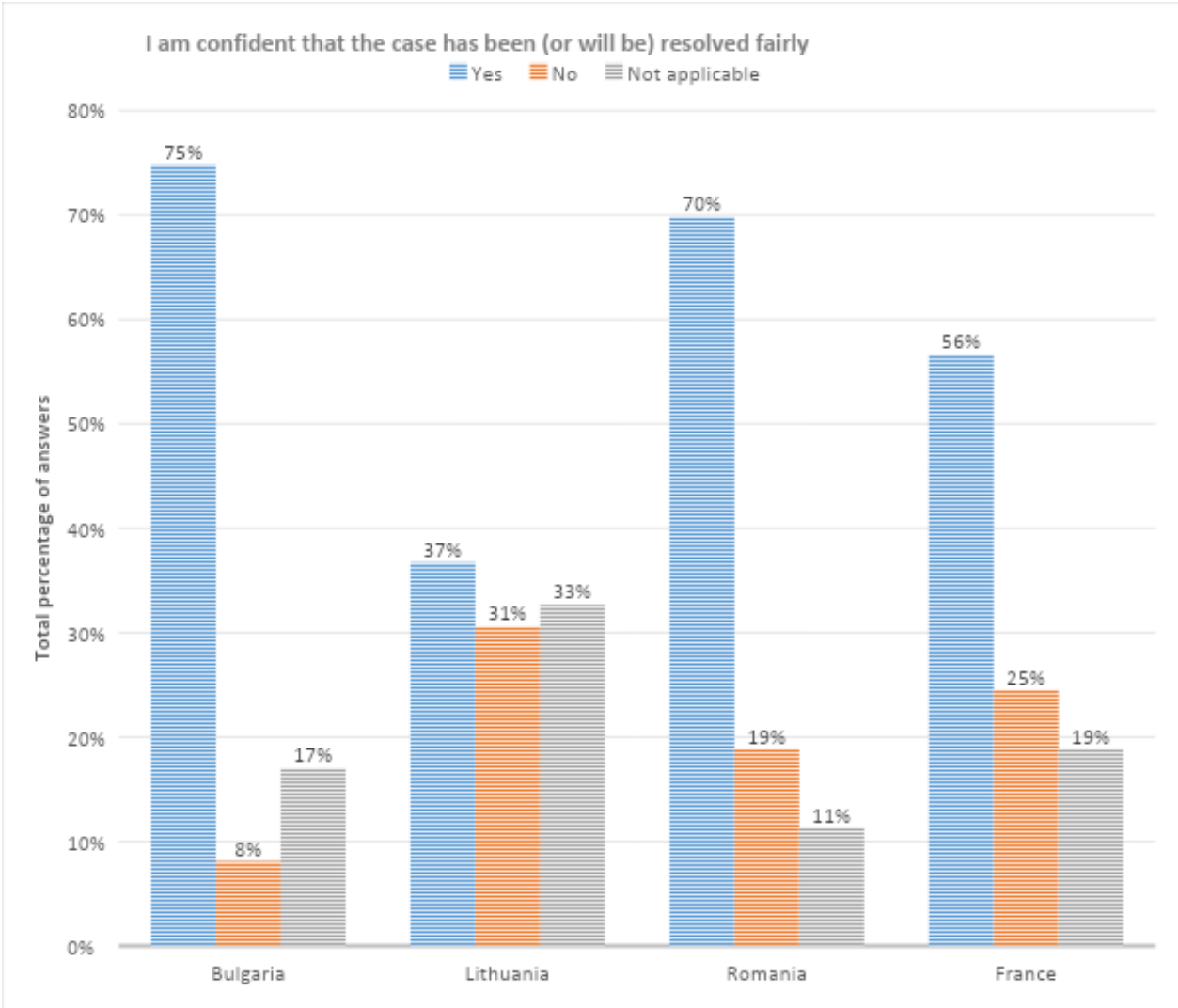
One of the pilot countries noted that question 5 seemed to have caused some problems for the respondents, which may be because they had difficulty understanding the question, due to the double negation.

Figure 6.



The court users were asked the same question regarding independence, as is regularly put to lawyers and judges in different surveys. On a scale of 0-10, users put the score of independence between 7.5 and 8.3. Below in Figure 13 is a comparison of average independence scores for different groups.

Figure 7.

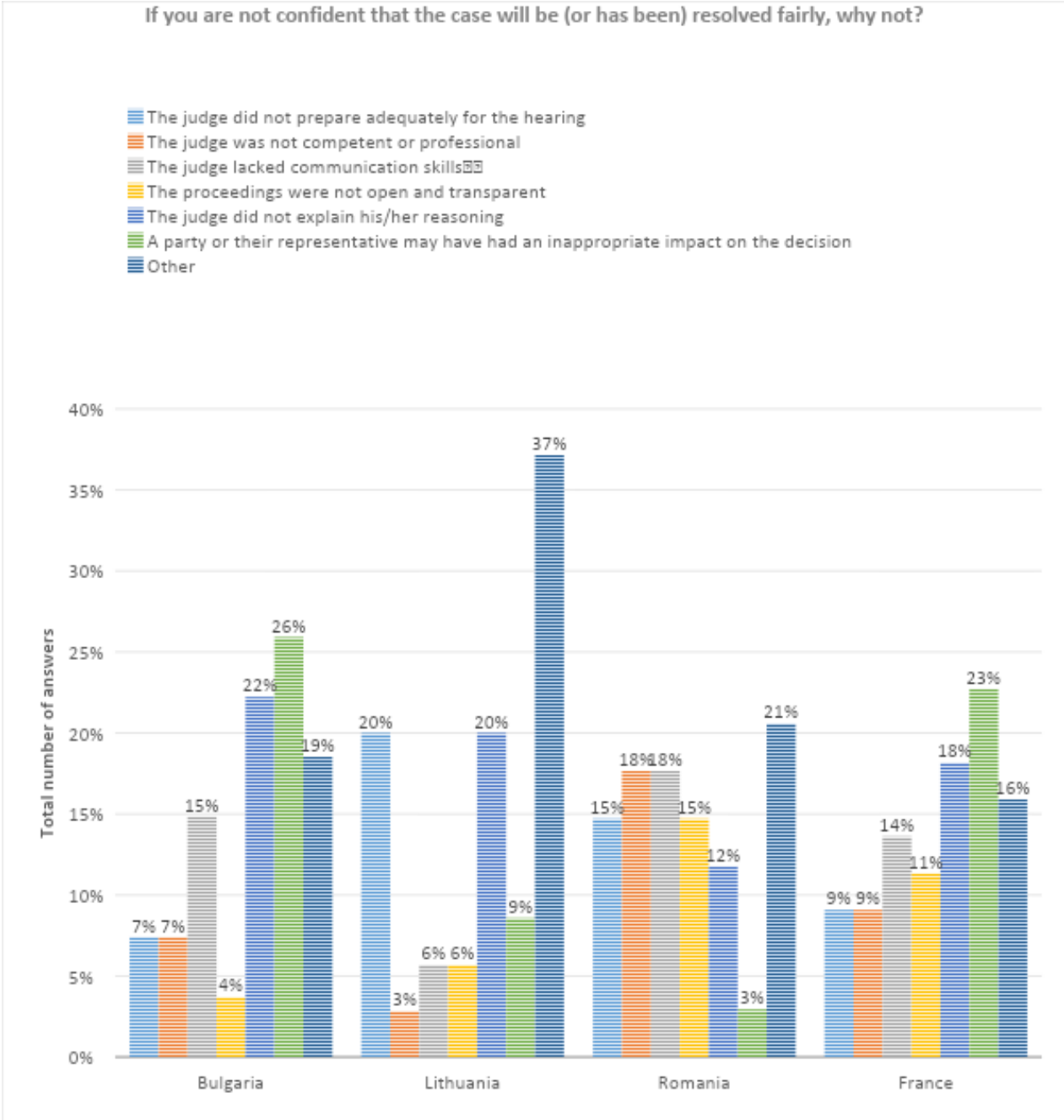


Trust in the justice system is of vital importance. The results of this question may be used to see if there is a general high level of trust in the fairness of the judiciary among the court users.

In Bulgaria and Romania, where the majority of responses come from lawyers and other professional users, 70 % and 75 % of users are of this opinion.

In Lithuania and France, the figures are 37 % and 56 % respectively, but it should be borne in mind that the proportion of users who respond “not applicable” is high with 33 % and 19 % respectively.

Figure 8.



The users who state that they did not have confidence in the case being resolved fairly were asked about the reasons why they respond in this way. There are very different reasons for this, but one of the reasons most commonly cited by users is that they find that a party or representative has an inappropriate influence on the decision. Of course, this is a subjective experience of the individual user, and this experience may be influenced by the outcome of the case. It is important to keep in mind that the pilot has small numbers of respondents. Therefore, nothing definitive can be deduced from the figures.

The court users who chose the category “other” had the opportunity to go into details about why they selected that category. For this report about the pilot, it was decided not to include their individual answers.

Figure 9.

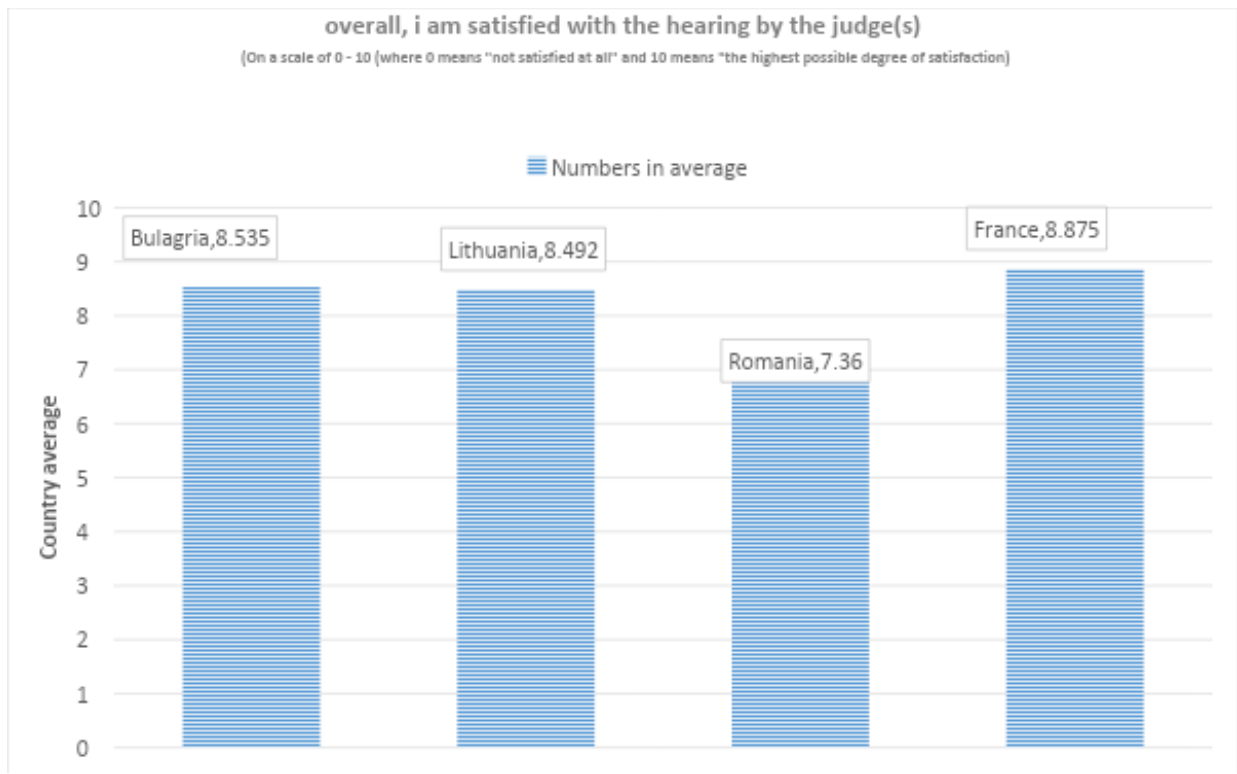


Figure 10.

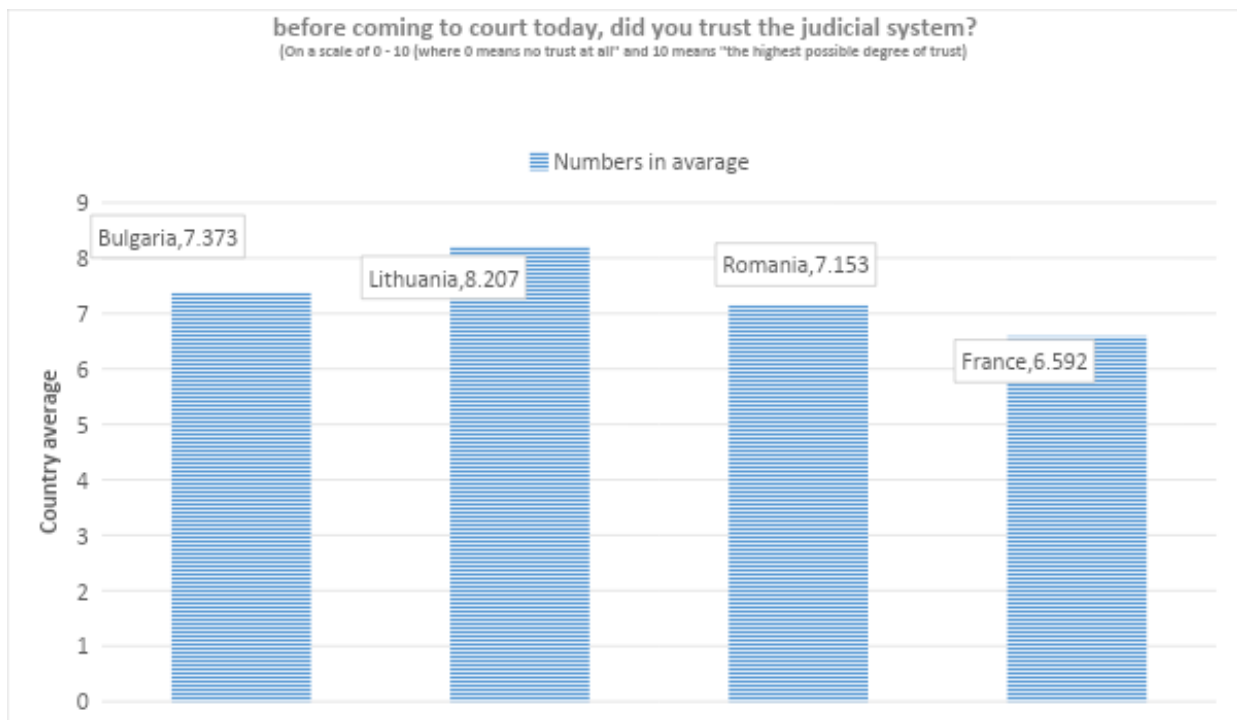


Figure 11.

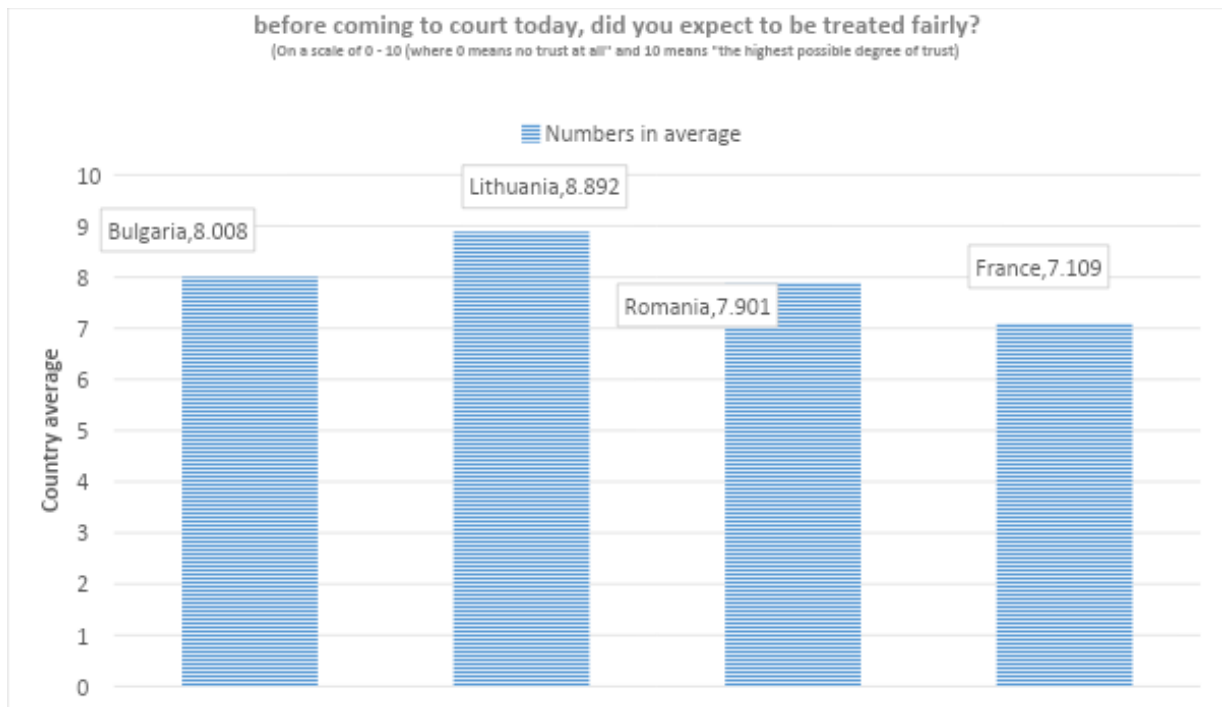
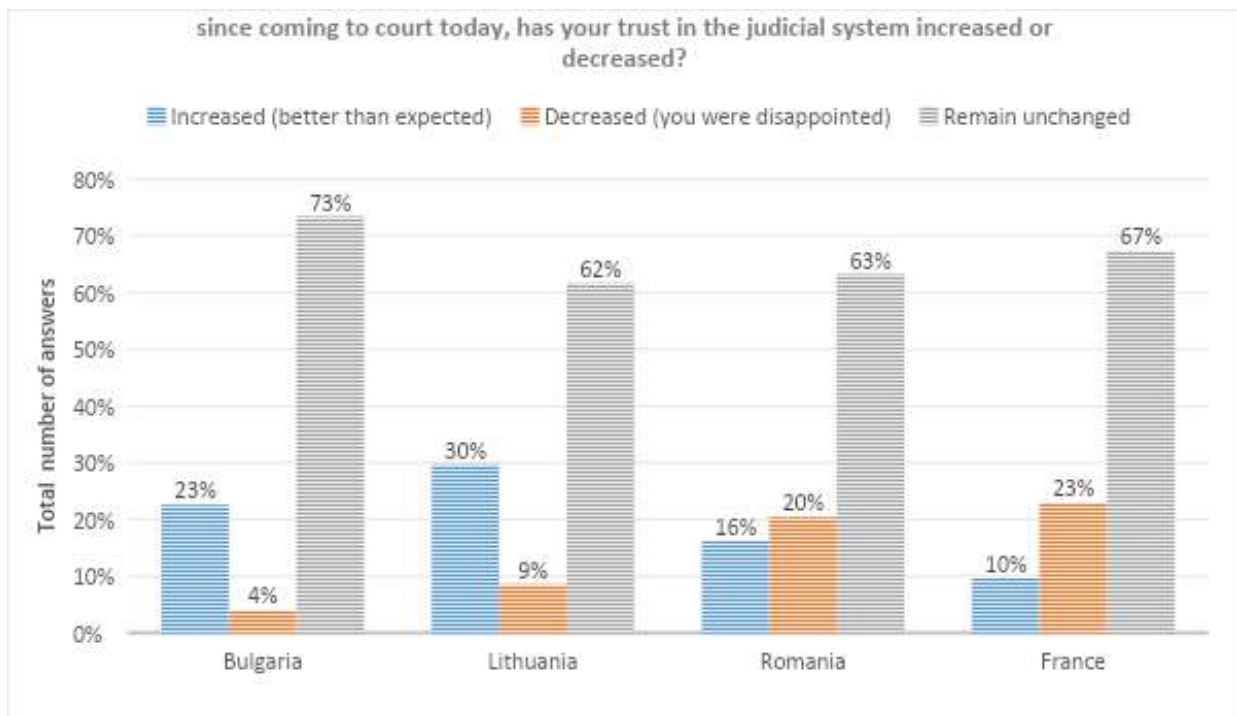


Figure 12.



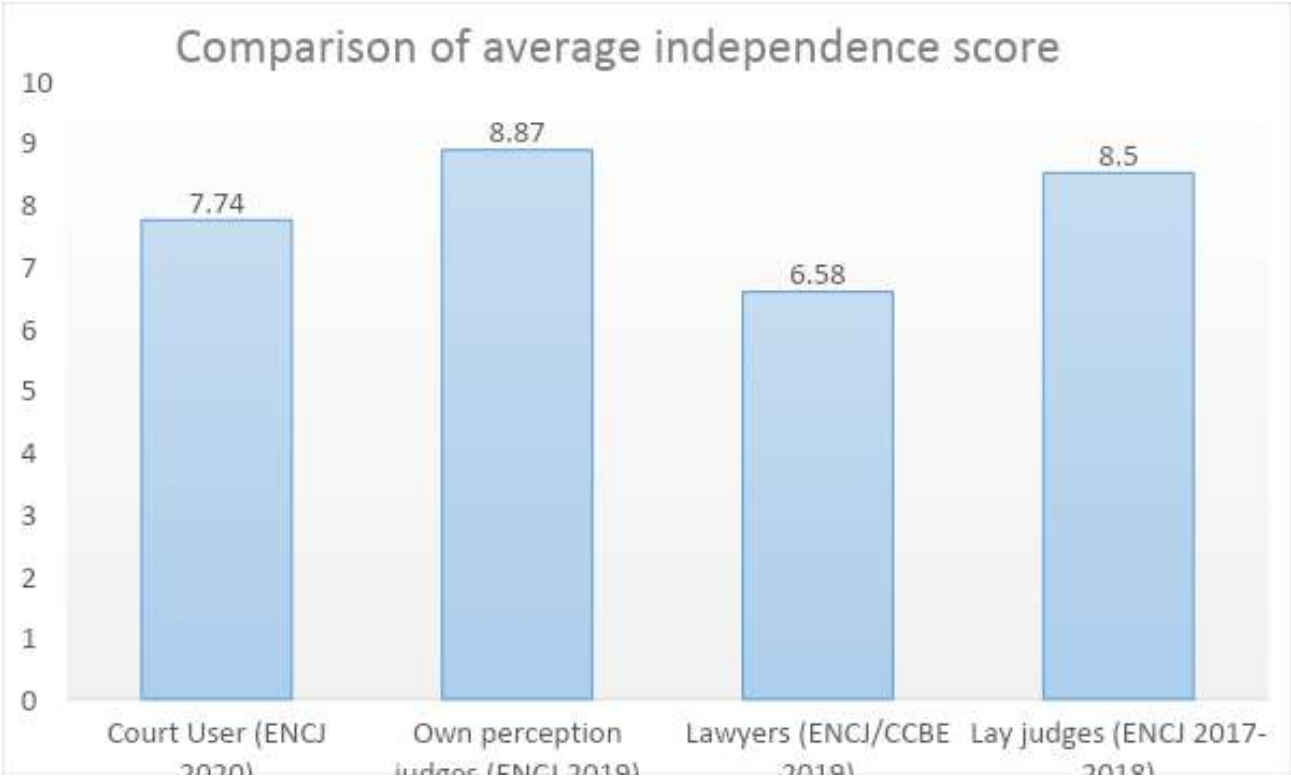
When asked whether the court user expected fair treatment in court, the score for all countries was higher on this issue than on the previous one about trust. There was generally a high satisfaction with the hearing, with a range of 7.4 to 8.9.

Questions 10 – 12 focus on the court users trust in the judicial system. In Question 10, users were first asked if they – before coming to court - had trust in the judicial system. In Question 12, they were asked whether their trust had increased or decreased after they appeared in court. The results show that in all four countries the court users express that they have a medium to high degree of trust in the courts,

expressed on a scale of 0-10 from 8.2 in Lithuania to 6.6 in France. In Lithuania, 30 % say their trust in the courts has increased, while 9 % have been disappointed. In France and Romania, there are slightly more people who say they have been disappointed, than the part that indicates that their trust has increased. In all four countries, between 77 % to 96 % state that their level of trust has increased or is unchanged after being in court. Note that lawyers are repeat players and that it is likely that their expectations are in line with their experiences.

5.3 Comparison of the independence score

In this pilot study, court users in four countries were for the first time asked about their perception of independence based on actual experience. It is interesting to compare the results regarding independence with the results of the surveys among lawyers, lay judges and on judges own perception. As no data is available to enable a result to be compiled individually for the four countries that participated in the pilot, instead the overall results for the court users in this pilot are compared with the overall results in the surveys that the project team has previously conducted among judges, lay judges and lawyers.



The results show that the court users experience of independence which derives from the treatment of specific cases is higher than that of the lawyers in the survey conducted in 2018/19, but not as high as the lay judges perception of the judges independence or the judges own perception. These results are only indicative as the means of outcomes of the court user survey for four countries are compared with the means for the countries that participated in the other surveys.

5.4 Conclusion

As stated in the introduction to this section, there is a need for knowledge about the court users perception of judicial independence based on the court users specific experiences in court. It has been stated that it would be difficult to get the common court users to answer questions about such an abstract question, or that users would have a reluctance or difficulty in answering questions related to trust and independence.

It is not possible to draw solid conclusions based on this pilot as only a small number of respondents participated as was planned, but the pilot does indicate that the level of trust in the judicial system and the perception of independence among court users can be meaningfully surveyed in this way. The outcomes are consistent with those of the other surveys discussed above.

This pilot shows that it is possible to conduct a court user survey on the perception of independence, and that the survey prepared by the project team is suitable for this purpose. The preliminary results are positive and interesting. On this basis the project group suggests that this important work should be continued.

It may be relevant to review the responses to conduct more in-depth investigations and compilation of the information. Among other things, it may be relevant to investigate whether there is a difference between the answers of the professional and non-professional users, or whether the answers are influenced by whether the user experienced a successful outcome or not. However, it has not been possible within the scope of this initial pilot study to conduct such further studies. Also, the low number of respondents limits the possibilities for further analysis.

In future work on this topic, it would be particularly relevant to look at the respondents group again and to decide whether the questionnaire should be differentiated, so that a questionnaire is designed specifically for professional users and another for non-professional users.

It also needs to be examined whether there are questions that users may have misunderstood or which they have had difficulties answering, in order to use this knowledge to further refine the questions. And then the pilot must be expanded to more countries – Members and Observers of the ENCJ, and the number of respondent in each country must be increased. Ideally a higher number of courts from different parts of each country and from different instances should participate in order to give a representative overview of the courts in a country. The ultimate goal would be for ENCJ Members and Observers to incorporate these questions into their own court user surveys. As not many of them conduct such surveys yet, this will take considerable time to achieve. In the meantime a Europe-wide survey should be considered.

6. Next steps in 2020/2021

The project group, based on the results of this year's work, proposes to continue the work to develop and test the questionnaire for court users. Basically, the questionnaire can be used in its current form, but based on the experience gained during this year's pilot, it will be relevant to reexamine the questions and possibly refine them further linguistically, in particular question 5.

It is also necessary to consider whether the target groups should be divided into professional and non-professional users and whether the questions should be adapted to the target groups.

It may in this connection also be considered to review the answers in this pilot for a closer in depth analysis.

Furthermore, it is proposed to extend the pilot study with more countries and more respondents including per country several courts and instances to give a representative overview of the courts in a country.

In the longer term, consideration should also be given to how the study can be further expanded so that it can be included in the improvement circle.

Next steps summarized:

12. Reexamine the questions and possibly refine them further.
13. Consider if the questionnaire should be divided into professional and non-professional users.
14. Considered a closer in depth analysis of the pilot.
15. Extend the pilot study with more countries and more respondents including per country several courts and instances.

Annex 1: Independence and Accountability questionnaire



European Network of Councils
for the Judiciary (ENCJ)

Reseau européen des Conseils
de la Justice (RECJ)

**Questionnaire indicators independence and accountability of the Judiciary
2019-2020**

Country:

Methodology used for filling out questionnaire ²¹	
Who filled out the questionnaire?	
Was a national expert group set up to validate the reply?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Who were the members of the national expert group? (names and positions)	

²¹ See paragraph 3.3 page 24 of the IA&Q report 2018-2019

INDEPENDENCE INDICATORS

Formal 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 guaranteed²²?	<input type="checkbox"/> Yes <input type="checkbox"/> No 0
1b. If the answer to 1a. is yes, is this done in/by:	<input type="checkbox"/> Constitution/equivalent text ²³ 3 <input type="checkbox"/> Law ²⁴ 2 <input type="checkbox"/> Constitutional court 1
1c. Are judges formally bound only by law?	<input type="checkbox"/> Yes <input type="checkbox"/> No 0
1d. If the answer to 1c. is yes, is this done in/by:	<input type="checkbox"/> Constitution/equivalent text 3 <input type="checkbox"/> Law 2 <input type="checkbox"/> Constitutional court 1
1e. Are judges appointed permanently until retirement?	<input type="checkbox"/> Yes <input type="checkbox"/> No 0
1f. If the answer to 1e. is yes, is this guaranteed in/by:	<input type="checkbox"/> Constitution /equivalent text 3 <input type="checkbox"/> Law 2 <input type="checkbox"/> Constitutional court 1
1g. Is the mechanism to fix the salary of judges determined by law?	<input type="checkbox"/> Yes <input type="checkbox"/> No 0
1h. If the answer to 1g is yes, is this guaranteed in:	<input type="checkbox"/> Constitution/ equivalent text 2 <input type="checkbox"/> Law 1
1i. 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?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No
1j. Is the involvement of the Judiciary in law and judicial reform²⁵ formally guaranteed?	<input type="checkbox"/> Yes <input type="checkbox"/> No 0
1k. If the answer to 1j. is yes, is this done in:	<input type="checkbox"/> Constitution /equivalent text 3 <input type="checkbox"/> Law 2 <input type="checkbox"/> Constitutional court 1

²² See question 1b.

²³ Equivalence means here specifically that the position of the Judiciary cannot be changed by simple majority.

²⁴ That can be changed by simple majority.

²⁵ 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.

1l. If the answer to 1j. is yes, does the Judiciary have:	<input type="checkbox"/> The right to put forward a formal proposal to change a law 2 <input type="checkbox"/> The right to advise on legislative proposals 1
1m. Is the Judiciary involved in the formation and the implementation of judicial reform?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
1n. Has the Judiciary initiated judicial reform?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0

2. Organizational autonomy of the Judiciary	
2a. Does your country have a Council for the Judiciary²⁶?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
2b. Is the position of the Council for the Judiciary formally guaranteed, and if so where?	<input type="checkbox"/> Constitution/equivalent text 2 <input type="checkbox"/> In the Law 1 <input type="checkbox"/> No 0
2c. Is the Council organized in accordance with ENCJ Guidelines concerning: 6 x 1 for yes	
At least 50% of the members of the Council are judges who are (with the exception of ex-officio members) chosen by their peers ²⁷	<input type="checkbox"/> Yes <input type="checkbox"/> No
The judicial members represent the whole judiciary (all tiers of the Judiciary are represented in the Council)	<input type="checkbox"/> Yes <input type="checkbox"/> No
(Former) Members of government are not a member of the Council ²⁸	<input type="checkbox"/> Yes <input type="checkbox"/> No
(Former) Members of parliament are not a member of the Council ²⁹	<input type="checkbox"/> Yes <input type="checkbox"/> No
The Council controls its own finances (including the administrative and human resources) independently of both the legislative and executive branches ³⁰	<input type="checkbox"/> Yes <input type="checkbox"/> No
The Council controls its own activities independently of both the legislative and executive branches	<input type="checkbox"/> Yes <input type="checkbox"/> No

²⁶ 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.

²⁷ Only in case of a Council representing judges and prosecutors, please read magistrates.

²⁸ ENCJ Standards report on non-judicial members in judicial self-governance 2016

²⁹ Idem

³⁰ The finances of the Council for the Judiciary refer to the budget of the Council itself and not to the budget of the Judiciary as a whole.

2d. Is the Council responsible³¹ for the following: 9x2 for yes		
The appointment and promotion of magistrates	<input type="checkbox"/> Yes	<input type="checkbox"/> No
The training of magistrates	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Judicial discipline	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Judicial ethics	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Complaints against the Judiciary	<input type="checkbox"/> Yes	<input type="checkbox"/> No
The performance management of the Judiciary	<input type="checkbox"/> Yes	<input type="checkbox"/> No
The administration of courts	<input type="checkbox"/> Yes	<input type="checkbox"/> No
The financing of the courts	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Proposing legislation concerning the courts and the Judiciary ³²	<input type="checkbox"/> Yes	<input type="checkbox"/> 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	<input type="checkbox"/> Yes	<input type="checkbox"/> No
The training of magistrates	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Judicial discipline	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Judicial ethics	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Complaints against the Judiciary	<input type="checkbox"/> Yes	<input type="checkbox"/> No
The performance management of the Judiciary	<input type="checkbox"/> Yes	<input type="checkbox"/> No
The administration of courts	<input type="checkbox"/> Yes	<input type="checkbox"/> No
The financing of the courts	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Proposing legislation concerning the courts and the Judiciary ³³	<input type="checkbox"/> Yes	<input type="checkbox"/> No

3. Funding of the Judiciary	
	<p>[several answers possible]</p> <input type="checkbox"/> To handle their caseload

³¹ Responsible implies that the Council executes these tasks. But it can also mean that the Council has delegated these tasks to a separate body.

³² To the Parliament or the Ministry of Justice.

³³ To the Parliament or the Ministry of Justice.

3a. Is the funding of the Judiciary sufficient as to allow the courts: (not part of the formal indicators)	<input type="checkbox"/> To engage experts/translators/etc. in cases when necessary if fees paid by court		
	<input type="checkbox"/> To keep the knowledge and skills of judges up to date		
	<input type="checkbox"/> To keep the knowledge and skills of court staff up to date		
	<input type="checkbox"/> To facilitate judges and other personnel in matters of IT-systems, buildings etc.		
3b. Who makes the decisions? Please insert an "x" into the box that corresponds to the situation in your country.	Judiciary 2	Executive³⁴ 0	Legislature 1
a) Involvement in the preparation of the "budget allocated to courts"	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Formal proposal on the budget allocated to courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Adoption of the budget allocated to courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Control of the budget allocated to courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Evaluation/audit of the budget allocated to courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3c. In case the government does not allocate sufficient funds, may the Judiciary address the parliament?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0		
3d. Is the funding of the Judiciary based upon transparent and objective criteria?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0		
3e. If the answer to 3d is yes, is the funding based on:	[several answers possible] <input type="checkbox"/> Actual costs ³⁵ (e.g. number of judges and court staff) 1 <input type="checkbox"/> Workload of courts 2 <input type="checkbox"/> Fixed percentage of government expenditure or GDP 3 <input type="checkbox"/> Other (specify): ...		
3f. Where have these criteria been defined	<input type="checkbox"/> In well-established practice 1 <input type="checkbox"/> In law 2 <input type="checkbox"/> Other (specify)		

³⁴ Such as the Minister of Justice

³⁵ Figure based upon historic or realised costs.

4. Court management³⁶			
Which authorities can take the following decisions? Please cross the box that corresponds to the situation in your country.	Judiciary	Executive	Legislature
	2	0	1
General management of a court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appointment of court staff (other than judges)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Redeployment of judges to address temporary workload issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other human resource management decisions on court staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decisions regarding the implementation and use of Information and Communication Technology in courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decisions regarding court buildings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decisions regarding court security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decisions regarding outreach activities ³⁷	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Formal independence of the judge

5. Human resource decisions about judges			
5a. Selection, appointment and dismissal of judges and court presidents Which authorities can take the following decisions? Please cross the box that corresponds to the situation in your country.	Judiciary	Executive	Legislature
Proposal of candidates ³⁸ for the appointment as judges (not supreme court judges)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decision ³⁹ on the appointment of a judge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Proposal for the dismissal of a judge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decision on the dismissal of a judge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Proposal of candidates for the appointment as court presidents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decision on the appointment of a court president	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

³⁶ Court management also refers to non-budgetary decisions with impact on the functioning of the courts.

³⁷ This includes all communication and promotional activities aimed to inform society about the Judiciary.

³⁸ The final proposal of candidate(s) which is transmitted to the body that appoints/elects them.

³⁹ In the context of this question a decision includes a binding proposal addressed to the body which formally makes the relevant decision.

Proposal for the dismissal of a court president	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decision on the dismissal of a court president	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5b. Selection, appointment and dismissal of Supreme Court judges and the President of the Supreme Court Which authorities can take the following decisions?	Judiciary	Executive	Legislature
Proposal of candidates for the appointment as Supreme Court judges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decision ⁴⁰ on the appointment of a Supreme Court judge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Proposal for the dismissal of a Supreme Court judge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decision on the dismissal of a Supreme Court judge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Proposal of the candidate(s) for the appointment of the President of the Supreme Court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decision on the appointment of the President of the Supreme Court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Proposal for the dismissal of the President of the Supreme Court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decision on the dismissal of the President of the Supreme Court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5c. Is the appointment of judges in compliance with the ENCJ guidelines? Yes=1 No=0			
Is the appointment process open to public scrutiny and fully and properly documented?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the appointment process undertaken according to published criteria?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the appointment of judges solely based on merit?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is there in place a written policy designed to encourage diversity in the range of persons available for appointment?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Does the appointment process provide for an independent complaint procedure?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
5d. Evaluation, promotion⁴¹ and training of judges. Which authorities can take the following decisions?	Judiciary	Executive	Legislature
	2	0	0
Decision ⁴² on the evaluation of a judge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Evaluation of the performance management of courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

⁴⁰ In the context of this question a decision includes a binding proposal addressed to the body which formally makes the relevant decision.

⁴¹ Promotion of judges in the sense of this sub-question and sub-question 5e also covers applications by judges to a new judicial position within the judicial system.

⁴² In the context of this question 5d) a decision includes a binding proposal addressed to the body which formally makes the relevant decision.

Decision on the promotion of a judge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adoption of ethical standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Application of ethical standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decision on the program/content of training for judges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5e. Probationary periods after first appointment⁴³			
Before permanent appointment do judges serve a probationary period?	<input type="checkbox"/> Yes 0	<input type="checkbox"/> No 4	
If yes, is the refusal to confirm the judge in office made according to objective criteria and with the same procedural safeguards as apply when a judge is to be removed from office?	<input type="checkbox"/> Yes 1	<input type="checkbox"/> No 0	
Does the body that decides include a majority of Judges?	<input type="checkbox"/> Yes 1	<input type="checkbox"/> No 0	
Is this body independent from the executive and legislature?	<input type="checkbox"/> Yes 1	<input type="checkbox"/> No 0	
5f. Is the promotion⁴⁴ of judges in compliance with the ENCJ standards?		Yes=1 No=0	
Is the promotion process open to public scrutiny and fully and properly documented?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the promotion process undertaken according to published criteria?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the promotion of judges solely based on merit?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is there in place a written policy designed to encourage diversity in the range of persons available for promotion?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Does the promotion process provide for an independent complaint procedure?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

6. Disciplinary measures			
6a. Are disciplinary measures against judges in accordance with ENCJ standards, namely Yes=1 No=0			
Is there a list of types of judicial conducts/ethics the breach of which would be unacceptable?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is there a time limit for the conducting of the investigation, the making of a decision and the imposition of any sanction?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the name of the judge withheld prior to any sanction being imposed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Does a judge have the right to be legally represented or assisted by a person of her/his choosing?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is there is a right of appeal by way of judicial review or	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

⁴³ Venice Commission 2010 report on the Independence of Judges

⁴⁴ Promotion of judges in the sense of this sub-question and sub-question 5d also covers applications by judges to new judicial position within the judicial system.

cassation appeal?			
6b. Which is the competent body to make the following decisions in the context of disciplinary procedures against judges:	Judiciary	Executive	Legislature
	2	0	1
Proposal for the appointment of a member of the disciplinary body for judges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decision on the appointment of a member of the disciplinary body for judges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Investigation of a complaint against a judge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Proposal for a disciplinary decision regarding a judge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Disciplinary decision regarding a judge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decision on the follow-up to a complaint against the Judiciary/a judge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6c. Can disciplinary measures be initiated against a judge (except in cases where there has been malice or gross negligence) for the following reasons:			
His/her interpretation of the law	<input type="checkbox"/> Yes 0	<input type="checkbox"/> No 1	
His/her assessment of facts	<input type="checkbox"/> Yes 0	<input type="checkbox"/> No 1	
His/her weighing of evidence in determining a case	<input type="checkbox"/> Yes 0	<input type="checkbox"/> No 1	
For exercising his/her freedom of expression in order to address threats to the independence of the judiciary, threats to judicial integrity, fundamental aspects of the administration of justice ⁴⁵ and when fundamental rights and the Rule of Law are in peril ⁴⁶	<input type="checkbox"/> Yes 0	<input type="checkbox"/> No 3	

7. Non-transferability of judges	
7a. Choose one of the following three options:	<input type="checkbox"/> Judges cannot be transferred to another court or location without their consent [go to Q7b]20 <input type="checkbox"/> Judges cannot be transferred to another court or location without their consent except for: - a disciplinary sanction, - the lawful alteration of the court system and - a temporary assignment to reinforce a neighbouring court, the maximum duration of such assignment being strictly limited by the statute [go to Q7c]10

⁴⁵ ICJ - <https://www.icj.org/judgesexpression2019/>

⁴⁶ ENCJ report on Judicial Ethics 2010

	<input type="checkbox"/> Judges can be transferred to another court or location without their consent also for other reasons [go to Q7c] 0
7b. If transfer without consent is prohibited, is the prohibition guaranteed in: [go to Q7g]	<input type="checkbox"/> Constitution or equivalent text 3 <input type="checkbox"/> Law 2 <input type="checkbox"/> Jurisprudence 1
7c. Which authority or body decides on a (temporary or permanent) transfer of a judge without his/her consent?⁴⁷	<input type="checkbox"/> The Judiciary 2 <input type="checkbox"/> The executive 0 <input type="checkbox"/> The legislature 0
7d. In case a judge is transferred (temporarily or permanently) without his/her consent is he/she guaranteed an equivalent post (in terms of a position, salary...)?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
7e. Can a judge appeal if he/she is transferred (temporarily or permanently) without his/her consent?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
7f. If yes, which authority or body decides on such an appeal?	<input type="checkbox"/> The Judiciary 2 <input type="checkbox"/> The executive 1 <input type="checkbox"/> The legislature 0
7g. Can a judge be taken off a case without his/her consent?	<input type="checkbox"/> Yes 0 <input type="checkbox"/> No 1
7h. If no, is the prohibition guaranteed in:	<input type="checkbox"/> The Constitution/equivalent text 3 <input type="checkbox"/> Law 2 <input type="checkbox"/> Custom 1

8. Allocation of cases	
8a. Is there a well-defined mechanism for the allocation of cases?	<input type="checkbox"/> Yes <input type="checkbox"/> No 0
8b. If yes, where have these criteria been defined?	<input type="checkbox"/> In well-established practice of the court 1 <input type="checkbox"/> In an act adopted by the court 2 <input type="checkbox"/> In implementing regulations 1 <input type="checkbox"/> In law 3 <input type="checkbox"/> Other 1
8c. What are the criteria for the allocation of cases?	Several replies possible <input type="checkbox"/> Random-based 1 <input type="checkbox"/> Specialization 1 <input type="checkbox"/> Experience 1 <input type="checkbox"/> Workload 1

⁴⁷ This relates to the allowed exceptions under 7a and to any other reasons.

	<input type="checkbox"/> Other (specify): Click or tap here to enter text.
8d. Who assigns the cases to judges at the courts?	<input type="checkbox"/> President of the court assigns cases 0
	<input type="checkbox"/> A member of the court staff assigns cases (e.g. listing officer) 2
	<input type="checkbox"/> A special chamber of the court assigns cases 3
	<input type="checkbox"/> The cases are assigned randomly (e.g. through a computerized system) 4
	<input type="checkbox"/> Other
8e. Is the allocation of cases subject to supervision within the Judiciary?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
8f. Is the method of allocation of cases publicly accessible?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
8g. Are the parties entitled to be informed about the allocation of the case prior to the start of the hearing of the case?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
8h. Is the mechanism of allocation being applied uniformly within the country?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
8i. Is the motivation for any derogation recorded?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0

9. Internal independence	
9a. 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)?	<input type="checkbox"/> Yes 0 <input type="checkbox"/> No 10
9b. 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)?	<input type="checkbox"/> None 5 <input type="checkbox"/> Non-binding guidelines 2 <input type="checkbox"/> Binding guidelines 0
9c. Can judges at the same level develop guidelines to ensure uniformity or consistency of judicial decisions?	<input type="checkbox"/> None 5 <input type="checkbox"/> Non-binding guidelines 2 <input type="checkbox"/> Binding guidelines 0
9d. Can the management of the court exert pressure in individual cases on the way judges handle their cases with respect to the uniformity/consistency?	<input type="checkbox"/> Yes 0 <input type="checkbox"/> No 5

<p>9e. 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?</p>	<input type="checkbox"/> Yes 0 <input type="checkbox"/> No 3
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Perceived independence

10. 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.

<p>10a. Perceived independence according to <u>Flash Eurobarometer 461 (2018)</u> 'Perceived independence of the national justice systems in the EU among the general public' and</p> <p><u>Flash Eurobarometer 462 (2018)</u> 'Perceived independence of the national justice systems in the EU among companies'.</p> <p>Percentage of respondents that rate very good or fairly good.</p>	<p>Score 461:: Click or tap here to enter text.</p> <p>Score 462: Click or tap here to enter text.</p> <p>Total Score: Click or tap here to enter text.</p>
<p>10b. Perceived independence according to the <u>World Economic Forum Competitiveness Report 2018</u>, item 1.07. Score on 7-point scale.</p>	<p>Score1.07: Click or tap here to enter text.</p>
<p>10c. Perceived independence according to the <u>World Justice Rule of Law Index 2017/2018</u>, average of Q1.2, Q7.4 and Q8.6.</p>	<p>Q1.2 Score: Click or tap here to enter text.</p> <p>Q7.4 Score: Click or tap here to enter text.</p> <p>Q8.6 Score: Click or tap here to enter text.</p> <p>Total: Click or tap here to enter text.</p>

11. Independence as perceived by the clients of the courts

<p>Are national client satisfaction surveys available of the past three years which contain a question with respect to the perceived independence (impartiality) of the Judiciary?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>11b. If yes, please state the percentage of respondents that rate the perceived independence (impartiality) very good or fairly good.</p>	<p>Percentage: Click or tap here to enter text.</p>

12. Independence as perceived by lawyers

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

Perceived independence according to the CCBE survey, question 10 (figure 48 I,A&Q report 2019-2020)

Score: Click or tap here to enter text.

13. Independence as perceived by judges

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

Perceived independence according to the ENCJ survey, question 16

Score: Click or tap here to enter text.

14. 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.

Perceived Judicial corruption according to Special Eurobarometer 470 (2017) 'Corruption', QB7.
Percentage of respondents that believe corruption is widespread.

Score: Click or tap here to enter text.

14b. Perceived Judicial corruption according to WJP, Q2.2.

Score: Click or tap here to enter text.

15. Trust in Judiciary

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

Trust in judiciary, relative to trust in other state powers by citizens, according to EC Public Opinion, eu.europa.eu
Percentage that trusts the justice system vs percentages that trust national parliament and national government.

Score: Click or tap here to enter text.

ACCOUNTABILITY INDICATORS

<p><i>Formal accountability of the Judiciary as a whole</i> Transparency about the functioning of the Judiciary</p>
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1. Periodic reporting on the Judiciary	
1a. Is an annual report published on how the Judiciary has discharged its functions?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
1b. If the answer to 1a is yes, who publishes the report?	<input type="checkbox"/> Judiciary 2 <input type="checkbox"/> Executive 1
1c. If the answer on 1a is yes, does this report include data on:	[several answers possible] <input type="checkbox"/> The number of completed cases? 1 <input type="checkbox"/> Duration of cases? 1 <input type="checkbox"/> Disciplinary measures 1 <input type="checkbox"/> (Successful) complaints 1 <input type="checkbox"/> (Successful) requests for recusal 1
1d. Are the courts periodically and publicly benchmarked with respect to their performance, e.g. timeliness?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
2. Relations with the press	
2a. Do officials (communication officers or press judges) of the courts explain judicial decisions to the media?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
2b. Has the Judiciary established press guidelines?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
2c. Does the Judiciary give authorization to broadcast court cases that draw particular public interest on television?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
3. Outreach activities aimed at civil society	
3a. Do Open Door days take place in the Courts	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
3b. Are educational programmes conducted at schools	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
3c. Have television/radio/social media programme formats been developed with the relevant broadcast companies to provide insight in the work of the judge?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0

4. External review	
4a. Is the performance of the courts regularly reviewed or evaluated by external bodies?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
4b. Who can commission an external review of the Judiciary?	[several answers possible] <input type="checkbox"/> The Judiciary 2 <input type="checkbox"/> The executive 1 <input type="checkbox"/> The legislature 1

Formal accountability of the Judiciary as a whole
Involvement of civil society in judicial governance

5. Participation of civil society in governance bodies of the judiciary			
<i>Please fill in the table</i>			
Governing body which is responsible for:	Are persons with a non-judicial background members? ⁴⁸	How many non-judicial persons are member of the governing body?	Are the non-judicial members appointed through a transparent procedure, based on merit?
Selection & Appointment of judges	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0	<input type="checkbox"/> less than half 2 <input type="checkbox"/> half 1 <input type="checkbox"/> more than half 0	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
Disciplinary measures against judges	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0	<input type="checkbox"/> less than half 2 <input type="checkbox"/> half 1 <input type="checkbox"/> more than half 0	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
Complaints about judges and the court(s) in general	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0	<input type="checkbox"/> less than half 2 <input type="checkbox"/> half 1 <input type="checkbox"/> more than half 0	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0

Formal accountability of the judge and staff
Mechanisms to promote and maintain ethical standards of the judiciary

6. Complaints procedure	
6a. Does the Judiciary or do the individual courts have a complaint procedure?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
6b. Is it admissible to complain about:	[several answers possible] <input type="checkbox"/> Behaviour of judges 1 <input type="checkbox"/> Timeliness 1 <input type="checkbox"/> Administrative mistakes 1 <input type="checkbox"/> Other 1
6c. Is an appeal against a decision on a complaint possible?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0

⁴⁸ Not being ex officio members, Minister of Justice or members of parliament.

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?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
7b. If yes, what is the source of the obligation to withdraw from adjudicating a case?	[one answer only] <input type="checkbox"/> Well-established practice of judges 2 <input type="checkbox"/> Set in an act adopted by a court 3 <input type="checkbox"/> Set in an act adopted by the Council for the Judiciary 4 <input type="checkbox"/> Set in an act adopted by the Minister of justice 1 <input type="checkbox"/> Set in law 5 <input type="checkbox"/> 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] <input type="checkbox"/> Oral warning 1 <input type="checkbox"/> Written warning 1 <input type="checkbox"/> Suspension 1 <input type="checkbox"/> Disciplinary dismissal 1 <input type="checkbox"/> None 0
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?	<input type="checkbox"/> The Judiciary 2 <input type="checkbox"/> The executive 0 <input type="checkbox"/> Other (specify):
7e. Is an appeal against a decision on a request for recusal possible?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7f. If yes, which authority or body decides on such an appeal?	<input type="checkbox"/> The Judiciary 3 <input type="checkbox"/> The executive 1 <input type="checkbox"/> Other (specify):

8. Admissibility of accessory functions and disclosure of interests	
8a. Are judges allowed to have other functions?	<input type="checkbox"/> Yes 0 <input type="checkbox"/> No 10 [if no go directly to Q8f]
8b. Is an authorisation for the exercise of accessory functions by judges necessary?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
8c. If the answer to 8b. is yes, who gives authorisation?	<input type="checkbox"/> The Judiciary 3 <input type="checkbox"/> The Executive 1 <input type="checkbox"/> The Legislature 2

8d. If 8a is yes, is there a register of the other jobs and/or functions judges have?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
8e. If the answer to 8d is yes is this register public?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
8f. Is there a register which discloses financial interests judges may have?	<input type="checkbox"/> Yes, please specify the minimum amount which needs to be disclosed:Click or tap here to enter text. 1 <input type="checkbox"/> No 0
8g. If the answer to 8f is yes, is this register public?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0

9. Code or guidelines of judicial ethics	
9a. Does the Judiciary have a code or guidelines of judicial ethics?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
9b. If the answer to 9a. is yes, is it available to the public?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
9c. Is judicial training on judicial ethics available?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0
9d. Is there a body with responsibility to provide judges with guidance or advice on ethical issues?	<input type="checkbox"/> Yes 1 <input type="checkbox"/> No 0

Perceived accountability of the Judiciary and individual judge

10. Adherence of judges to ethical standards, as perceived by judges <i>* Please don't answer this question. The data will be filled in by the secretary of the project group for each member and observer.</i>	
ENCJ survey, Q19	Score: Click or tap here to enter text.

11. Adequacy of actions by judicial authorities to address judicial misconduct and corruption, as perceived by judges
** Please don't answer these questions. The data will be filled in by the secretary of the project group for each member and observer.*

ENCJ survey, average of Q20 and Q21.

Score: Click or tap here to enter text.

12. Adequacy of actions by judicial authorities to address judicial misconduct and corruption, as perceived by lawyers

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

CCBE survey, average of Q11 and Q12.

Score: Click or tap here to enter text.

Annex 3: Data compared to 2017

Independence	Albania		Austria		Belgium		Bulgaria		Croatia		Denmark		Finland	
	2017	2020	2017	2020	2017	2020	2017	2020	2017	2020	2017	2020	2017	2020
1. Legal basis		78%	75%	75%	71%		79%	85%	73%		54%	66%	54%	78%
2. Organizational autonomy		93%	78%	59%	94%		100%	100%	94%		94%	96%	94%	74%
3. Funding of the Judiciary		89%	57%	36%	43%		62%	100%	51%		90%	85%	90%	69%
4. Court Management		81%	31%	25%	38%		88%	94%	50%		100%	100%	100%	88%
5. HR decisions/judges		93%	53%	57%	74%		92%	95%	88%		82%	87%	82%	78,3%
6. Disciplinary measures		100%	80%	88%	90%		100%	93%	100%		72%	81%	72%	80,0%
7. Non-transferability		35%	90%	35%	70%		90%	85%	90%		100%	60%	100%	26,1%
8. Allocation of cases		88%	88%	88%	47%		94%	75%	82%		65%	44%	65%	81,3%
9. Internal Independence		82%	100%	68%	89%		82%	79%	36%		89%	89%	89%	89,3%
10. Ind perceived by society		23%	78%	82%	73%		34%	39%	40%		90%	89%	90%	89,0%
11. Ind perceived by court users		0,0%	0%	n/a	0%		0%	n/a	0%		100%	n/a	100%	0,0%
12. Ind perceived by lawyers		0,0%	-	n/a	-		-	0%	-		-	n/a	-	0,0%
13. Ind perceived by judges		0%	89%	89%	82%		68%	68%	70%		98%	98%	98%	92%
14. Perceived absence of corruption		10,0%	70%	90%	50%		10%	10%	10%		90%	90%	90%	90,0%
15. Trust by society		0,0%	100%	100%	100%		0%	90%	67%		100%	100%	100%	100,0%
Accountability														
1. Periodic reporting		88%	0%	39%	44%		89%	100%	22%		100%	100%	100%	81%
2. Relations with press		33%	67%	67%	67%		100%	100%	100%		100%	100%	100%	66,7%
3. Outreach activities		67%	-	100%	-		-	100%	-		-	100%	-	33,3%
4. External review		67%	100%	67%	100%		100%	67%	40%		40%	67%	40%	0,0%
5. Participation civil society		100%	-	0%	-		-	75%	-		-	100%	-	0,0%
6. Complaints procedure		83%	57%	83%	71%		88%	83%	43%		86%	100%	86%	100,0%
7. Withdrawal and recusal		88%	100%	100%	100%		87%	53%	73%		100%	100%	100%	80,0%
8. Accessory functions		100%	0%	2%	10%		50%	90%	100%		50%	50%	50%	75,0%
9. Judicial ethics		100%	75%	100%	100%		100%	100%	75%		75%	75%	75%	75,0%
9a. Understandable proceedings		-	100%	-	61%		82%	-	89%		100%	-	100%	-
10. Adherence ethical standards		0%	-	85%	-		-	62%	-		-	92%	-	87%
11. Actions against misconduct/corruption judges		0%	-	75%	-		-	40%	-		-	87%	-	77%
12. Actions against misconduct/corruption lawyers		0%	-	0%	-		-	na	-		-	0%	-	n/a

Independence	France		Germany		Greece adm		Greece cc		Hungary		Ireland		Italy CPGA	
	2017	2020	2017	2020	2017	2020	2017	2020	2017	2020	2017	2020	2017	2020
1. Legal basis	60,32%	58%	84%	88%		82%		67%	88,89%	80%	56%	67%		74%
2. Organizational autonomy	76,47%	37%	100%	58%		78%		43%	100,00%	44%	41%	58%		74%
3. Funding of the Judiciary	74,75%	11%	82%	64%		34%		46%	82,83%	65%	47%	18%		70%
4. Court Management	81,25%	56%	56%	56%		68%		38%	100,00%	94%	44%	50%		44%
5. HR decisions/judges	77,83%	57,1%	75%	75%		81%		70%	87,00%	68%	83%	49%		70%
6. Disciplinary measures	91,67%	72,0%	57%	71%		94%		97%	90,00%	78%	0%	68%		100%
7. Non-transferability	100,00%	34,7%	100%	83%		35%		85%	90,00%	78%	84%	57%		66%
8. Allocation of cases	70,59%	43,8%	88%	94%		38%		56%	82,35%	50%	35%	63%		63%
9. Internal Independence	89,29%	67,9%	100%	100%		79%		38%	71,43%	61%	71%	100%		100%
10. Ind perceived by society	67,40%	63,8%	79%	78%		58%		53%	42,77%	34,0%	84%	78%		54%
11. Ind perceived by court users	0,00%	0,0%	78%	0,00%		0%		0%	0,00%	0%	0%	0%		0%
12. Ind perceived by lawyers	-	59,0%	-	70,00%		52%		53%	-	52%	-	82%		66%
13. Ind perceived by judges	76,00%	0%	85%	86,00%		80%		80%	0,00%	73%	91%	94%		84%
14. Perceived absence of corruption	70,00%	70,0%	90%	90,00%		30%		30%	70,00%	30%	70%	70%		50%
15. Trust by society	0,00%	100,0%	0%	100,00%		100%		100%	100,00%	50,0%	0%	100%		100%
Accountability														
1. Periodic reporting	94,44%	41%	31%	84,38%		81%		69%	38,89%	100%	22%	13%		94%
2. Relations with press	100,00%	0,0%	67%	66,7%		33%		0%	66,67%	100%	33%	0%		67%
3. Outreach activities	-	100,0%	-	100,0%		0%		0%	-	67%	-	67%		67%
4. External review	40,00%	66,7%	0%	100,0%		0%		0%	60,00%	33%	0%	67%		0%
5. Participation civil society	-	67,0%	-	0,0%		32%		0%	-	0%	-	75%		100%
6. Complaints procedure	71,43%	66,7%	86%	83,3%		88%		83%	71,43%	67%	42%	100%		50%
7. Withdrawal and recusal	100,00%	83,3%	100%	100,0%		73%		87%	66,67%	100%	53%	73%		100%
8. Accessory functions	65,00%	66,7%	65%	58,0%		67%		42%	55,00%	8%	50%	50%		75%
9. Judicial ethics	100,00%	100,0%	75%	75,0%		25%		100%	100,00%	75%	0%	75%		100%
9a. Understandable proceedings	100,00%	-	100%	-		-		-	100,00%	-	66%	-		-
10. Adherence ethical standards	-	0%	-	84%		62%		62%	-	69%	-	93%		78%
11. Actions against misconduct/corruption judges	-	0%	-	73%		50%		50%	-	60%	-	63%		84%
12. Actions against misconduct/corruption lawyers	-	29%	-	41%		9%		9%	-	35%	-	25%		31%

	Italy CSM		Latvia		Lithuania		the Netherlands		Norway		Poland		Portugal	
Independence	2017	2020	2017	2020	2017	2020	2017	2020	2017	2020	2017	2020	2017	2020
1. Legal basis	79.37%	82%	68%	73%	54%	85%	73.6%	80%	54%	74%	75%		52%	76%
2. Organizational autonomy	94.12%	85%	35%	52%	100%	96%	82.4%	81%	82%	89%	65%		65%	81%
3. Funding of the Judiciary	43.33%	38%	70%	39%	62%	89%	84.8%	77%	82%	30%	25%		25%	42%
4. Court Management	25.00%	6%	38%	3%	81%	63%	100.0%	100%	88%	100%	44%		19%	38%
5. HR decisions/judges	100.00%	93%	57%	77%	57%	68%	68.8%	62%	44%	80%	85%		84%	80%
6. Disciplinary measures	91.67%	100%	96%	84%	100%	82%	90.0%	93%	72%	85%	96%		100%	93%
7. Non-transferability	100.00%	72%	70%	85%	26%	72%	89.5%	96%	96%	50%	56%		100%	85%
8. Allocation of cases	70.58%	88%	71%	88%	76%	88%	41.2%	63%	29%	25%	69%		82%	81%
9. Internal Independence	89.29%	79%	79%	79%	100%	89%	78.6%	79%	89%	89%	89%		100%	89%
10. Ind perceived by society	49.27%	54%	48%	46%	54%	54%	85.3%	82%	98%	89%	52%		58%	58%
11. Ind perceived by court users	0.00%	0%	0%	0%	0%	0%	77.8%	90%	0%	0%	0%		0%	0%
12. Ind perceived by lawyers	-	66%	-	62%	-	59%	-	77%	-	82%	-		-	61%
13. Ind perceived by judges	81.00%	84%	67%	65%	73%	77%	91.0%	90%	92%	92%	77%		79%	75%
14. Perceived absence of corruption	50.00%	50%	30%	10%	10%	10%	70.0%	90%	na	90%	70%		10%	50%
15. Trust by society	100.00%	100%	100%	100%	100%	100%	100.0%	100%	100%	0%	100%		33%	50%
TO OMA														
Accountability														
1. Periodic reporting	89.89%	50%	36%	75%	33%	94%	100.0%	100%	92%	100%	33%		0%	94%
2. Relations with press	66.67%	67%	100%	67%	67%	100%	100.0%	100%	100%	100%	100%		0%	33%
3. Outreach activities	-	100%	-	67%	-	100%	-	100%	-	67%	-		-	100%
4. External review	80.00%	67%	100%	67%	40%	100%	60.0%	100%	0%	33%	80%		40%	67%
5. Participation civil society	-	100%	-	0%	-	100%	-	67%	-	75%	-		-	75%
6. Complaints procedure	85.71%	50%	86%	83%	71%	100%	71.4%	50%	57%	83%	86%		86%	100%
7. Withdrawal and recusal	93.33%	100%	87%	53%	73%	67%	66.7%	67%	80%	80%	87%		73%	27%
8. Accessory functions	40.00%	73%	80%	92%	30%	50%	50.0%	50%	99%	100%	80%		50%	92%
9. Judicial ethics	75.00%	25%	100%	100%	100%	100%	100.0%	75%	100%	100%	100%		25%	100%
9a. Understandable proceedings	88.89%	-	53%	-	100%	-	100.0%	-	94%	-	100%		0%	-
10. Adherence ethical standards	-	78%	-	61%	-	84%	-	77%	-	98%	-		-	77%
11. Actions against misconduct/corruption judges	-	84%	-	62%	-	70%	-	78%	-	85%	-		-	47%
12. Actions against misconduct/corruption lawyers	-	32%	-	36%	-	35%	-	60%	-	68%	-		-	16%

	Romania		Slovakia		Slovenia		Spain		Sweden		UK England&Wales		UK Scotland	
Independence	2017	2020	2017	2020	2017	2020	2017	2020	2017	2020	2017	2020	2017	2020
1. Legal basis	73%	76%	84%	60%	79%	81%	73%	81%	57%		56%	59%	58%	71%
2. Organizational autonomy	88%	89%	82%	78%	100%	100%	88%	74%	44%		65%	59%	58%	67%
3. Funding of the Judiciary	42%	61%	47%	17%	51%	59%	41%	53%	67%		79%	9%	75%	62%
4. Court Management	56%	100%	50%	41%	75%	88%	31%	31%	56%		38%	32%	44%	44%
5. HR decisions/judges	86%	89%	71%	70%	79%	81%	100%	96%	52%		75%	76%	67%	64%
6. Disciplinary measures	96%	98%	92%	82%	96%	97%	100%	100%	94%		100%	92%	100%	100%
7. Non-transferability	100%	70%	95%	83%	100%	38%	100%	88%	80%		80%	57%	58%	51%
8. Allocation of cases	82%	75%	82%	94%	71%	88%	82%	63%	71%		59%	58%	65%	68%
9. Internal Independence	79%	71%	79%	68%	68%	79%	88%	68%	68%		89%	89%	79%	79%
10. Ind perceived by society	60%	58%	27%	27%	45%	44%	51%	78%	82%		82%	73%	82%	73%
11. Ind perceived by court users	0%	30%	0%	0%	0%	0%	0%	0%	0%		0%	0%	0%	0%
12. Ind perceived by lawyers	-	62%	-	54%	-	61%	-	62%	-		-	90%	-	90%
13. Ind perceived by judges	81%	79%	77%	81%	74%	76%	75%	79%	86%		90%	94%	98%	99%
14. Perceived absence of corruption	10%	30%	10%	10%	10%	30%	30%	50%	90%		70%	90%	70%	90%
15. Trust by society	100%	100%	0%	50%	100%	0%	100%	100%	100%		100%	100%	100%	100%
TO OMA														
Accountability														
1. Periodic reporting	100%	94%	83%	78%	89%	88%	94%	38%	22%		97%	88%	92%	91%
2. Relations with press	67%	33%	33%	67%	33%	67%	100%	100%	67%		100%	100%	100%	100%
3. Outreach activities	-	67%	-	67%	-	38%	-	67%	-		-	100%	-	100%
4. External review	60%	67%	80%	83%	0%	100%	60%	67%	40%		80%	67%	100%	100%
5. Participation civil society	-	0%	-	92%	-	67%	-	100%	-		-	75%	-	17%
6. Complaints procedure	100%	100%	71%	67%	86%	67%	71%	100%	0%		86%	50%	88%	83%
7. Withdrawal and recusal	100%	88%	67%	73%	87%	87%	87%	93%	80%		100%	73%	100%	100%
8. Accessory functions	50%	92%	70%	50%	55%	83%	50%	50%	35%		30%	33%	30%	33%
9. Judicial ethics	100%	100%	100%	100%	100%	100%	100%	100%	75%		100%	100%	100%	100%
9a. Understandable proceedings	100%	-	94%	-	72%	-	92%	-	33%		100%	-	100%	-
10. Adherence ethical standards	-	81%	-	57%	-	58%	-	63%	-		-	90%	-	97%
11. Actions against misconduct/corruption judges	-	47%	-	42%	-	47%	-	48%	-		-	87%	-	88%
12. Actions against misconduct/corruption lawyers	-	20%	-	11%	-	12%	-	27%	-		-	67%	-	67%

Annex 4: Questionnaire on Quality of justice



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Questionnaire on Quality of Justice

Please fill in your country of origin:

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

Instructions before filling in the questionnaire:

The questions can be answered digitally by ticking the boxes in this document. Unless specifically made clear, please give only one answer for Criminal and Civil each.

Differences among courts:

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

What is meant by “standards”:

In this questionnaire, please treat “standards” as meaning targets or guidelines intended to achieve timeliness and efficiency, and against which actual timescales achieved can be assessed which can be implemented in diverse ways ranging from law to custom.

What is meant by “summary/simplified procedures”:

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

A. Timeliness and efficiency of procedures

Indicator A1: standards for courts about the duration of cases

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

Criminal cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

Civil cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

1.2 If standards are in place, do these standards apply to the overall procedure (from beginning to end), to specific phases of procedures such as the time between hearing and decision? (More than one option may be selected).

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

1.3 Are standards - either formal or informal - in place for the duration of cases at appeal courts?

Criminal cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

Civil cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

1.4 If standards are in place, do these standards generally apply to the overall procedure (from beginning to end), to specific phases of procedures such as for the time between hearing and decision? (More than one option may be selected).

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

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

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

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

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

1.7 Is information about the realisation of these standards accessible to the public?

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

Indicator A2: Standards for parties about the duration of cases

2.1 Are there rules (whether laws, codes/rules of civil procedure or otherwise) specifying time limits for parties in first instance courts, e.g. to present documents?

Criminal cases (applicable either to the prosecution or the defendant or both)

	All courts	Some courts

Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

Civil cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

2.2 Can the first instance court impose sanctions on parties who fail to comply with the applicable time limits referred to in 2.1 above?

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

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

Criminal cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

Civil cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

2.4 Can the appeal court impose sanctions on parties who fail to comply with the applicable time limits referred to in 2.3 above?

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

2.5 Do judges at first instance courts have power to issue directions regarding case management in a case?

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

2.6 Do judges at first instance courts have power to enforce such case management directions if a party does not conform?

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

2.7 Do judges at appeal courts have power to issue directions regarding case management in an appeal?

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

2.8 Do judges at the appeal courts have power to enforce such case management directions if a party does not conform?

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

Indicator A3: summary / simplified procedures

3.1 Are summary or simplified procedures available in appropriate cases in first instance courts?

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

3.2 Are summary or simplified procedures available in appropriate cases in appeal courts?

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

Indicator A4: Digital case filing and digital procedures

4.1 Can cases be commenced digitally in first instance courts?

Criminal cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

Civil cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

4.2 Can cases be commenced digitally in appeal courts?

Criminal cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

Civil cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

4.3 Can procedures (whether at first instance or on appeal) be conducted digitally in the sense that all communications are digital, except for the hearing?

Criminal cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

Civil cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

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

Criminal cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

Civil cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

4.5 Are on-line dispute resolution mechanisms available or being developed at the courts? (To be clear, this question is directed at the handling and determination of disputes including hearings - not the commencement of proceedings or the more limited matters which are covered by 4.1 to 4.4 above).

- Fully available
- Partially available
- Being developed
- No

4.6 Are track and trace systems for parties using such on-line dispute resolution mechanisms to follow the progress of their cases available or being developed at the courts?

- Fully available
- Partially available
- Being developed
- No

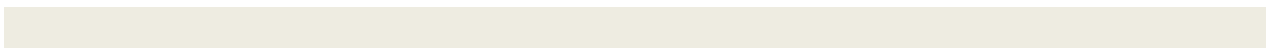
Indicator A5: Specialisation of judges

5.1 Are there specialised judges at first instance level?

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

5.2 Are there specialised judges at appeal level?

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



B. Due process from the perspective of accessibility

Indicator B6: Equality of arms (funding and costs)

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

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

6.2 If the answer to question 6.1 is yes, is there sufficient public funding for such litigants who qualify under the system:

	Criminal cases	Civil Cases
All litigants	<input type="checkbox"/>	<input type="checkbox"/>
Some litigants	<input type="checkbox"/>	<input type="checkbox"/>

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

- In full
- Partly
- No

Indicator B7: Commensurate effort of judges (do complex cases get appropriate attention?)

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

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

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

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

Indicator B8: Dealing with abusive conduct

8.1 Is the judge able to take action to prevent abusive conduct by parties and/or their lawyers?

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

8.2 If the answer to 8.1 is yes, can the judge do any of the following (please indicate as many as are applicable):

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

Indicator B9: Availability of appeal

9.1 Can an unsuccessful litigant bring an appeal?

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

9.2 Is there a filtering system to prevent appeals which are without merit from proceeding to a full hearing?

	Criminal cases	Civil Cases
All types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

9.3 If an appeal is brought, can the court suspend/order a stay of the first instance decision?

Yes

No

Indicator B10: Communication

10.1 Are procedures available in all official languages?

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

10.2 Does the court provide translation facilities when necessary?

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

Indicator B11: Access for people with disabilities

11.1 Are special procedural arrangements available for people with disabilities?

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

11.2 Are special physical arrangements available for people with disabilities?

Yes

No

Indicator B12: Access for vulnerable people

12.1 Are special procedural arrangements available for vulnerable people?

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

12.2 Are special physical arrangements available for vulnerable people?

Yes

No

C. Quality of judicial decisions and its improvement

C13. Format of judgments

13. Are non-binding templates for judgments and other judicial decisions available for standardised types of cases?

Criminal cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

Civil cases

	All courts	Some courts
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

Indicator C14: Reasoning of judgments and verdicts

14.1 Must judgments and verdicts dealing with substantive issues be reasoned either orally or in written form?

	Criminal cases	Civil Cases
All types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No	<input type="checkbox"/>	<input type="checkbox"/>

14.2 Is it open to a judge to give only summary reasons either orally or in writing where appropriate (e.g. to speed up procedures)?

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

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

	Criminal cases	Civil Cases
Yes	<input type="checkbox"/>	<input type="checkbox"/>
No	<input type="checkbox"/>	<input type="checkbox"/>
Not applicable (because oral reasons are not permitted)	<input type="checkbox"/>	<input type="checkbox"/>

Indicator C15: Clarity of judgments and verdicts

15.1 Is there an express obligation (e.g. by law, regulations or practice) to use clear and simple language in judgments and verdicts?

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

15.2 For whom are reasons provided? (More than one answer is possible).

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

Indicator C16: Assessment of quality of judicial decisions

16.1 Are samples of judgments looked at in order to assess the quality of judicial decisions on a regular basis (outside the appeal process)?

Yes

No

16.2 Who is responsible for the performance evaluation?

Peer review by judges.

More senior judges with responsibility for the judge concerned (e.g. the president of the relevant court)

Council for the judiciary.

Other body of judges not part of the council for the judiciary.

Inspection authorities.

16.3 Is the quality of judicial decisions part of court user satisfaction surveys, if any?

Yes

No

Indicator C17: Education of judges

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

Yes

No

17.2 Are judges required to participate in training courses annually (not limited to writing of judicial decisions)?

Yes

No

D. Providing public access to the law to guide society

Indicator D18: Access to case law

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

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

18.2 If judicial decisions are published, are these accessible for free or for a nominal fee or do you have to pay to get access?

	Criminal cases	Civil Cases
Free	<input type="checkbox"/>	<input type="checkbox"/>
Nominal fee	<input type="checkbox"/>	<input type="checkbox"/>
Paid	<input type="checkbox"/>	<input type="checkbox"/>

18.3 Are summaries of judicial decisions published?

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

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

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

18.5 Is statistical information about the outcomes of cases made available for the public?

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

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

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

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

	Criminal cases	Civil Cases
Free	<input type="checkbox"/>	<input type="checkbox"/>
Nominal fee	<input type="checkbox"/>	<input type="checkbox"/>
Paid	<input type="checkbox"/>	<input type="checkbox"/>

18.8 Are summaries of judicial decisions of appeal courts published?

	Criminal cases	Civil Cases
Most types of cases	<input type="checkbox"/>	<input type="checkbox"/>
Some types of cases	<input type="checkbox"/>	<input type="checkbox"/>
No types of cases	<input type="checkbox"/>	<input type="checkbox"/>

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

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

18.10 Is statistical information about the outcomes of cases made available for the public?

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

Indicator D19: Opening up to the public

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

Yes

No

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

Yes

No

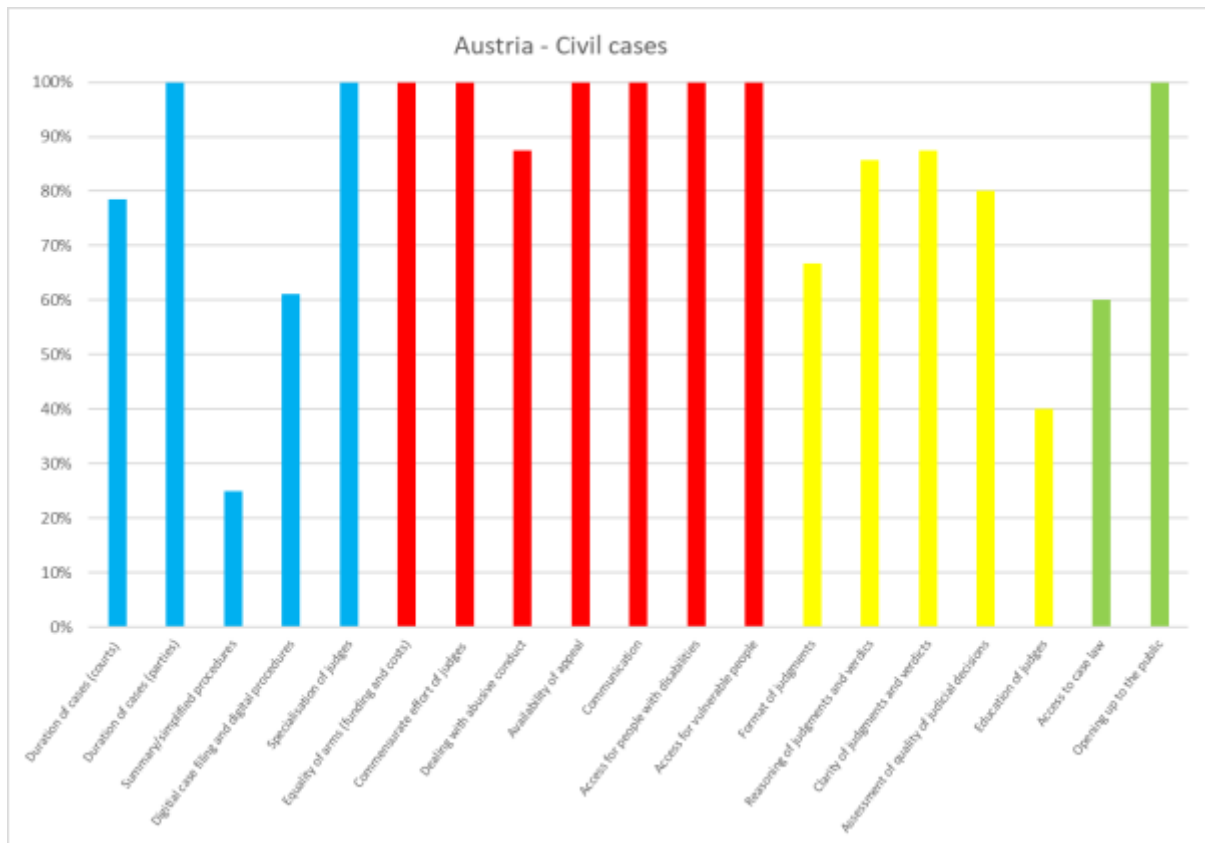
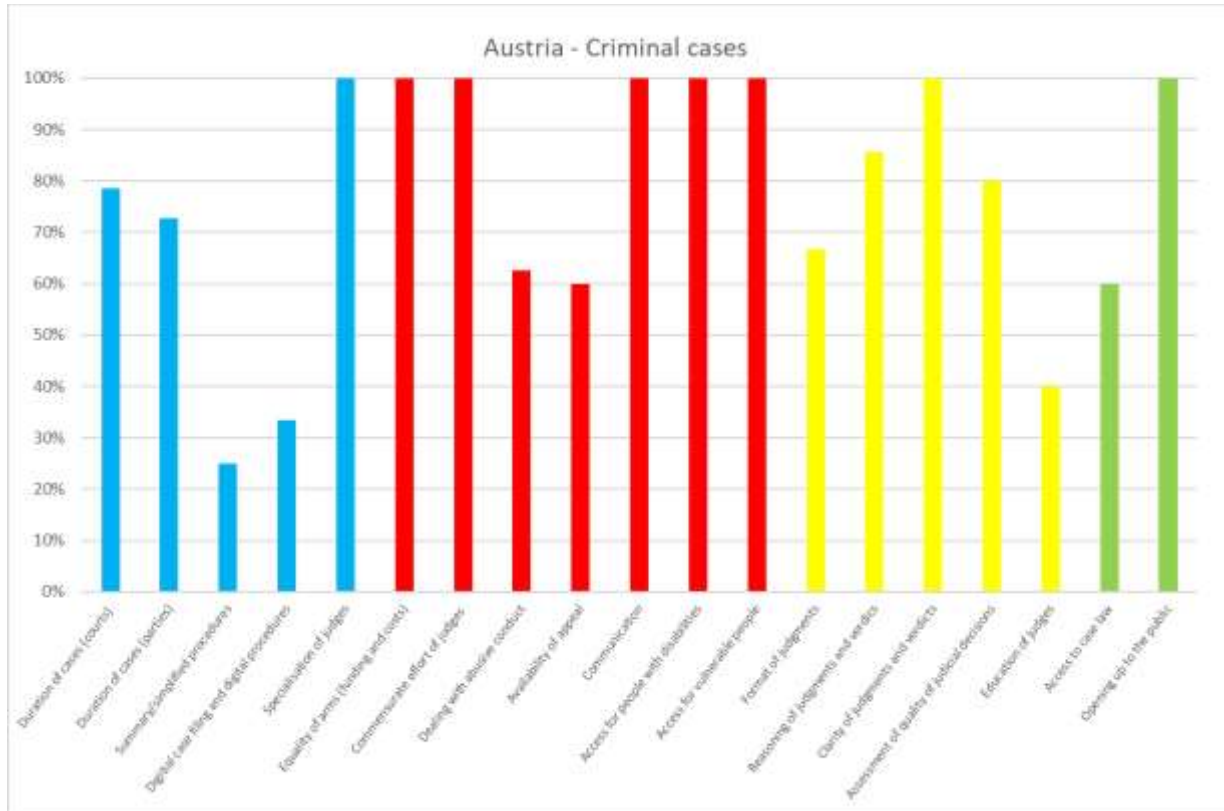
Thank you for filling in the questionnaire.

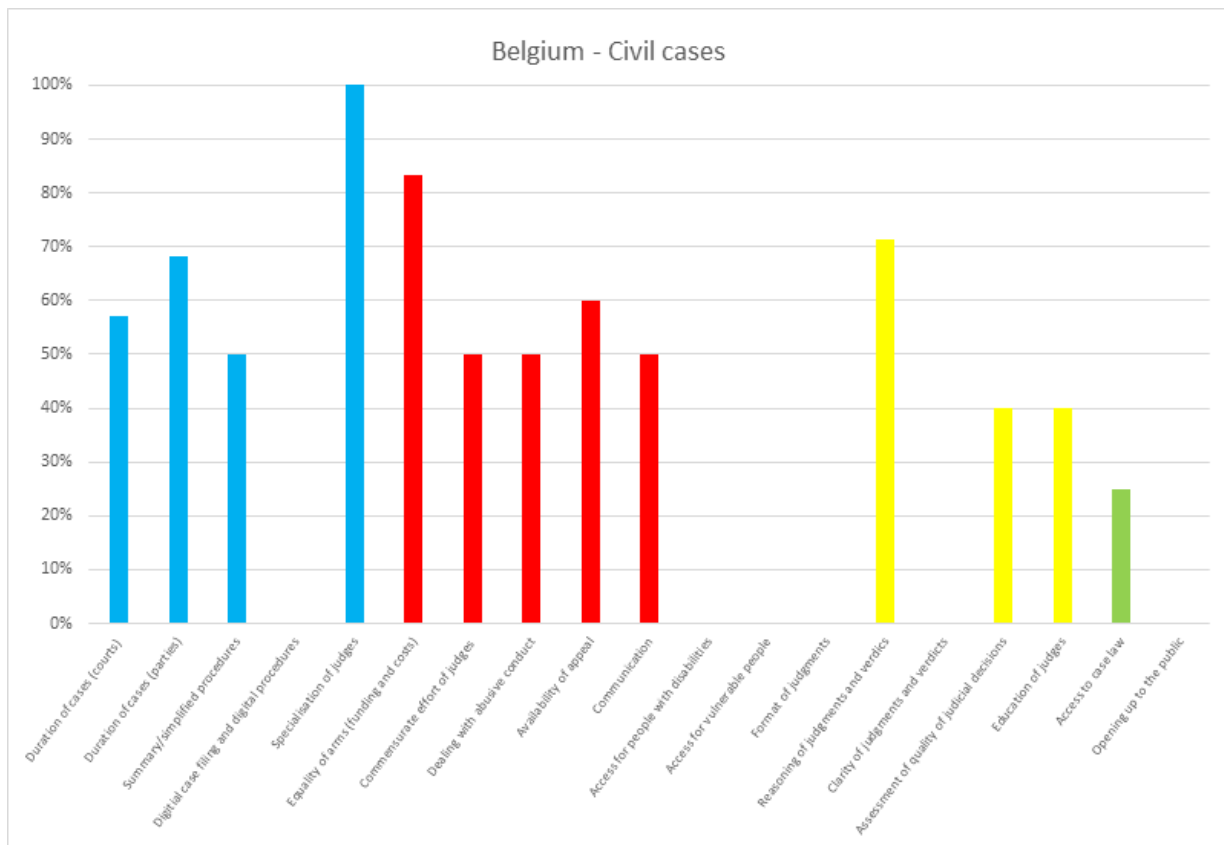
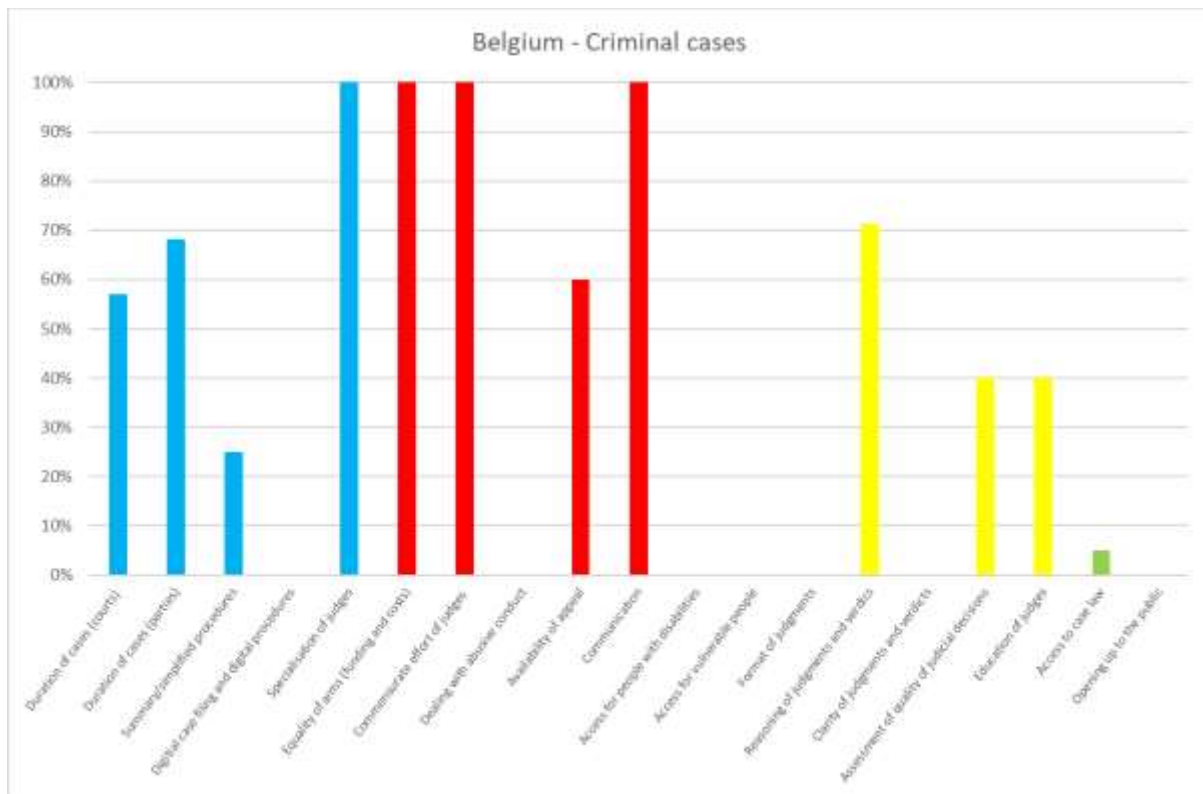
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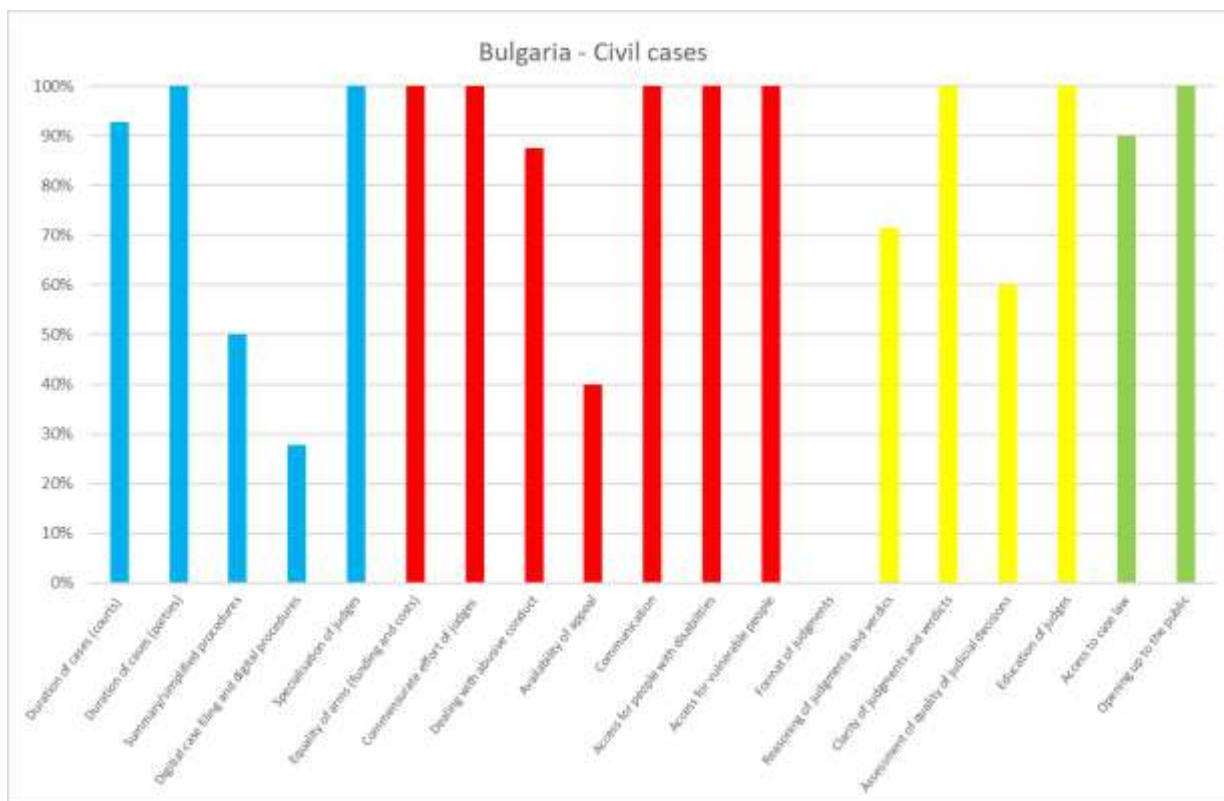
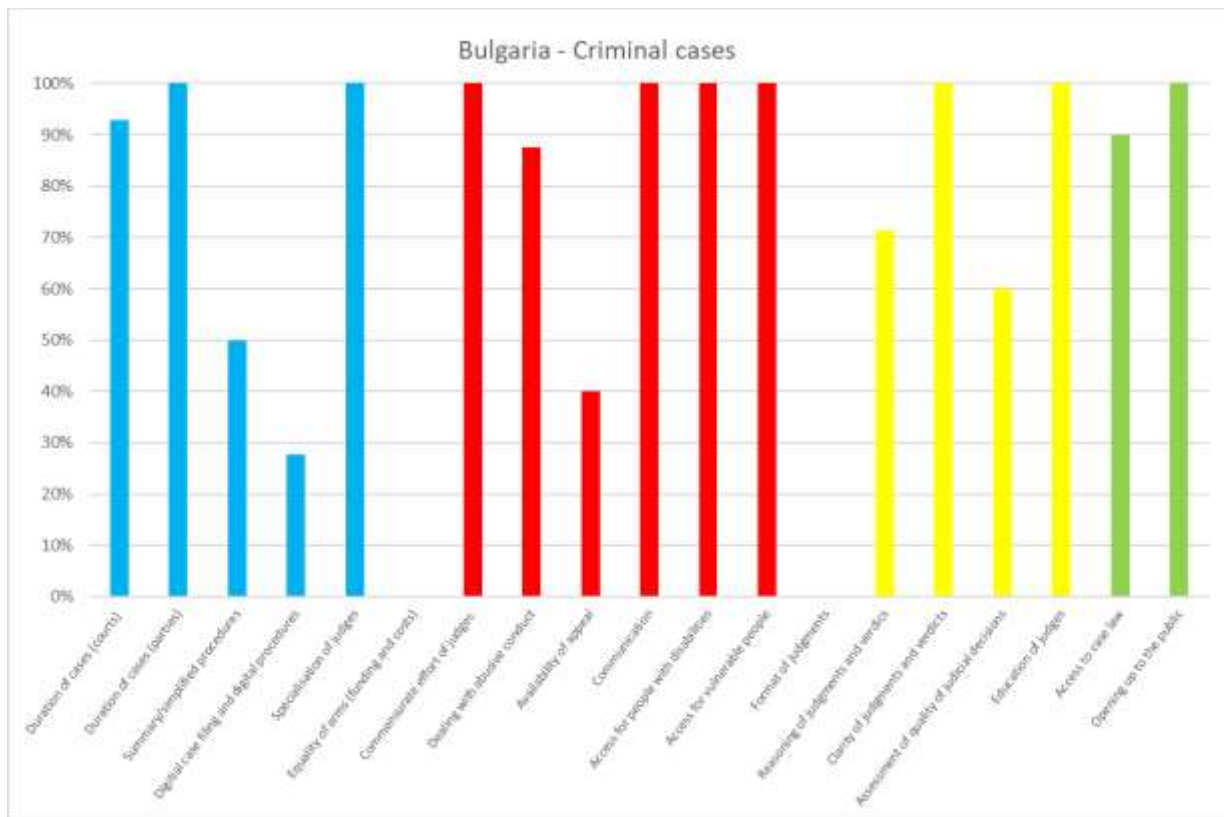
Annex 5: Score scheme (Quality Indicators)

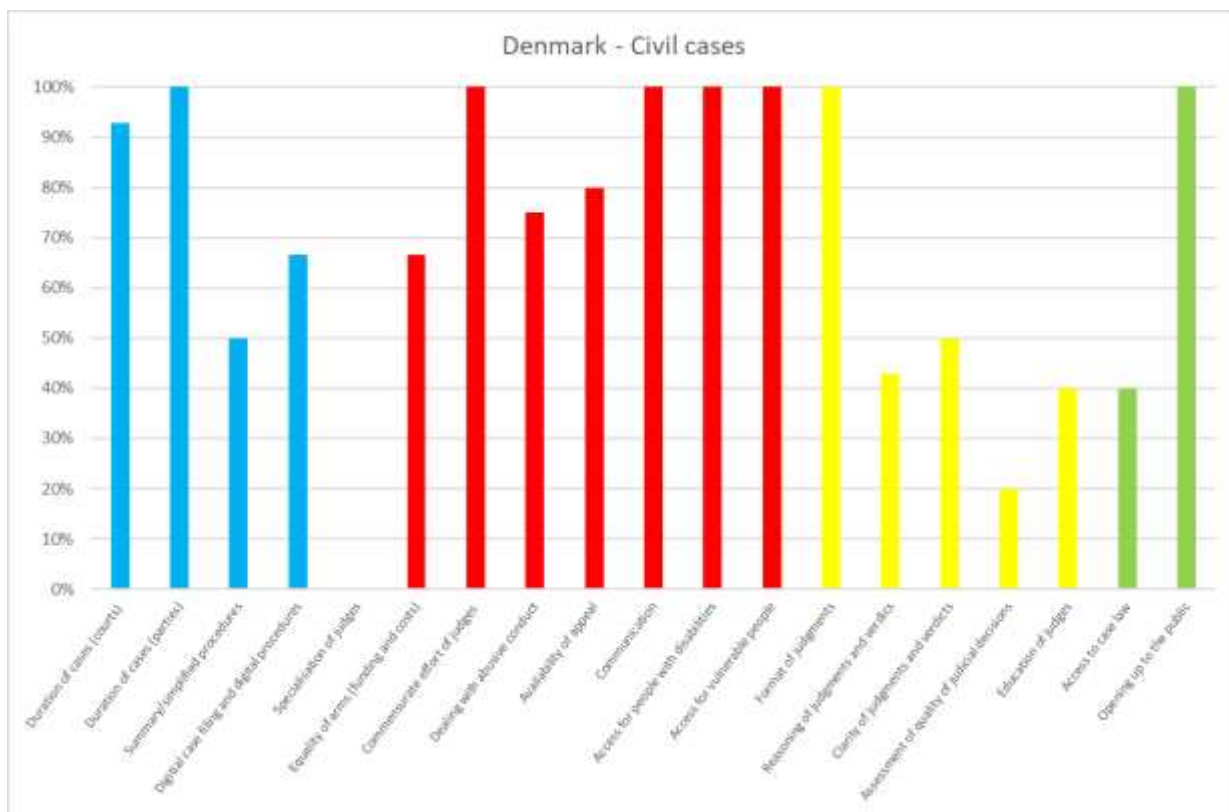
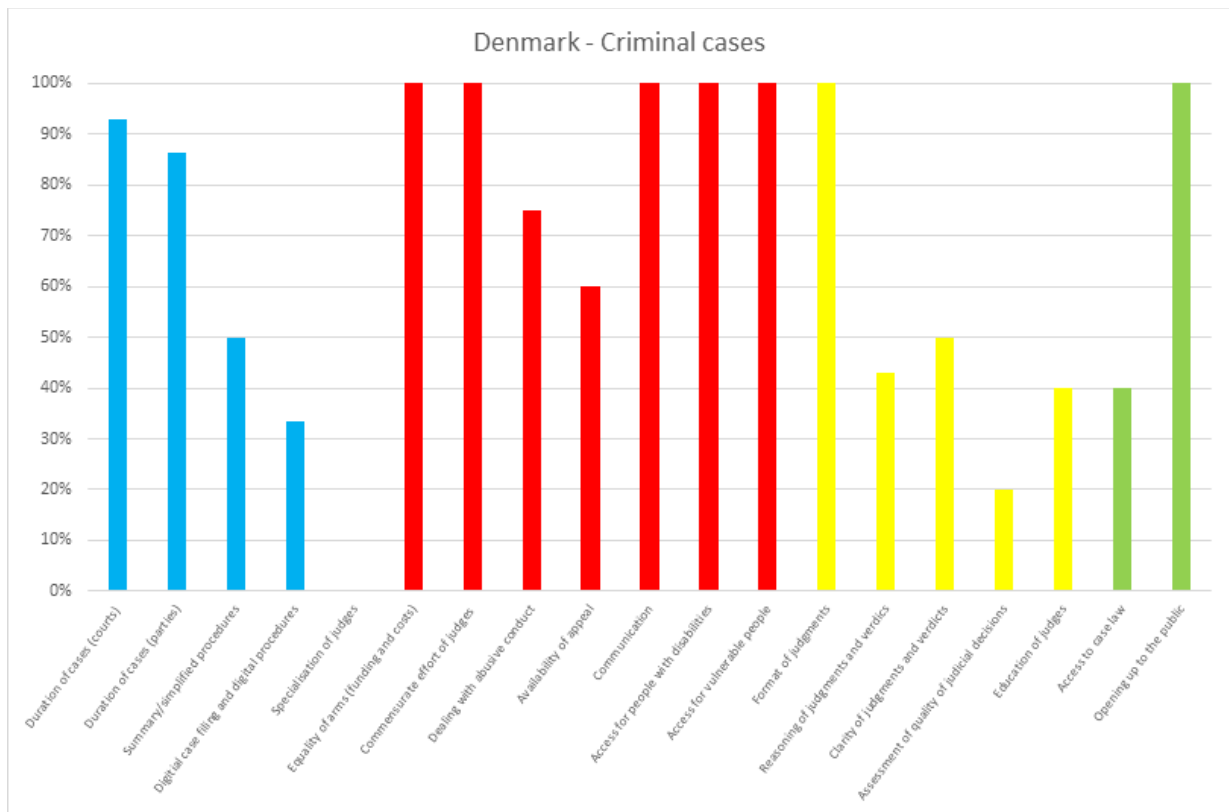
Score scheme ENCI QUALITY INDICATORS Criminal cases/Civil cases								max	Formula	
Timeliness and Efficiency of Procedures										
Duration of cases (courts)	1.1	1.2	1.3	1.4	1.5	1.6	1.7			
	all-most = 3 all-some = 2 some-most = 2 some-some = 1 no = 0	overall = 1 specific phases = 1	all-most = 3 all-some = 2 some-most = 2 some-some = 1 no = 0	overall = 1 phases = 1	most = 2 some = 1 no = 0	most = 2 some = 1 no = 0	available = 2 upon request = 1 no = 0			
	max=3	max=1	max=3	max=1	max=2	max=2	max=2		sum[1.1,1.2,1.3,1.4,1.5,1.6,1.7]/14	
Duration of cases (parties)	2.1	2.2	2.3	2.4	2.5	2.6	2.7	2.8		
	all-most = 3 all-some = 2 some-most = 2 some-some = 1 no = 0	most = 3 some = 2 no = 0	all-most = 3 all-some = 2 some-most = 2 some-some = 1 no = 0	most = 3 some = 2 no = 0	most = 2 some = 1 no = 0	most = 3 some = 2 no = 0	most = 2 some = 1 no = 0	most = 3 some = 1 no = 0		
	max=3	max=1	max=3	max=1	max=2	max=3	max=2	max=3	22	
Summary/simplified procedures	3.1	3.2								
	most = 2 some = 1 no = 0	most = 2 some = 1 no = 0								
	max=2	max=2							4	
Digital case filing and digital procedures	4.1	4.2	4.3	4.4	4.5	4.6				
	all-most = 3 all-some = 2 some-most = 2 some-some = 1 no = 0	all-most = 3 all-some = 2 some-most = 2 some-some = 1 no = 0	all-most = 3 all-some = 2 some-most = 2 some-some = 1 no = 0	all-most = 3 all-some = 2 some-all = 2 being = 1 no = 0	fully = 3 partially = 2 being = 1 no = 0	fully = 3 partially = 2 being = 1 no = 0				
	max=3	max=3	max=3	max=2	max=3	max=3			18	
Specialisation of judges	5.1	5.2								
	yes = 2 no = 0	yes = 2 no = 0								
	max=2	max=2							4	
Due process from the perspective of accessibility										
Equality of arms (funding and costs)	6.1	6.2	6.3 Civil only							
	yes=2 no=0	all = 2 some = 0	full = 2 partly = 1 no = 0							
	max=2	max=1	max=2						Criminal = 4 Civil = 6	
Commensurate effort of judges	7.1	7.2								
	yes = 2 no = 0	yes = 2 no = 0								
	max=2	max=2							4	
Dealing with abusive conduct	8.1	8.2								
	yes = 3 no = 0	stop or stay = 3 speed up = 1 make adverse costs = 1 impose fines = 1 report = 1								
	max=3	max=5							8	
Availability of Appeal	9.1	9.2	9.3							
	most = 2 some = 1 no = 0	most = 2 some = 1 no = 0	yes = 1 no = 0							
	max=2	max=2	max=1						5	
Communication	10.1	10.2								
	yes=2 no=0	yes = 2 no = 0								
	max=2	max=1							4	
Access for people with disabilities	11.1	11.2								
	yes = 2 no = 0	yes = 2 no = 0								
	max=2	max=1							4	
Access for vulnerable people	12.1	12.2								
	yes = 2 no = 0	yes = 2 no = 0								
	max=2	max=2							4	
Quality of judicial decisions										
Format of judgments	13									
	all-most = 3 all-some = 2 some-most = 2 some-some = 1 no = 0									
	max=3								3	
Reasoning of judgments and verdicts	14.1	14.2	14.3							
	all = 3 some = 1 no = 0	most = 2 some = 1 no = 0	yes = 2 no = 0 n/a = 2							
	max=3	max=2	max=2						7	
Clarity of judgments and verdicts	15.1	15.2								
	yes = 4 no = 0	litigants = 2 public = 1 other judges = 1 authorities = 0								

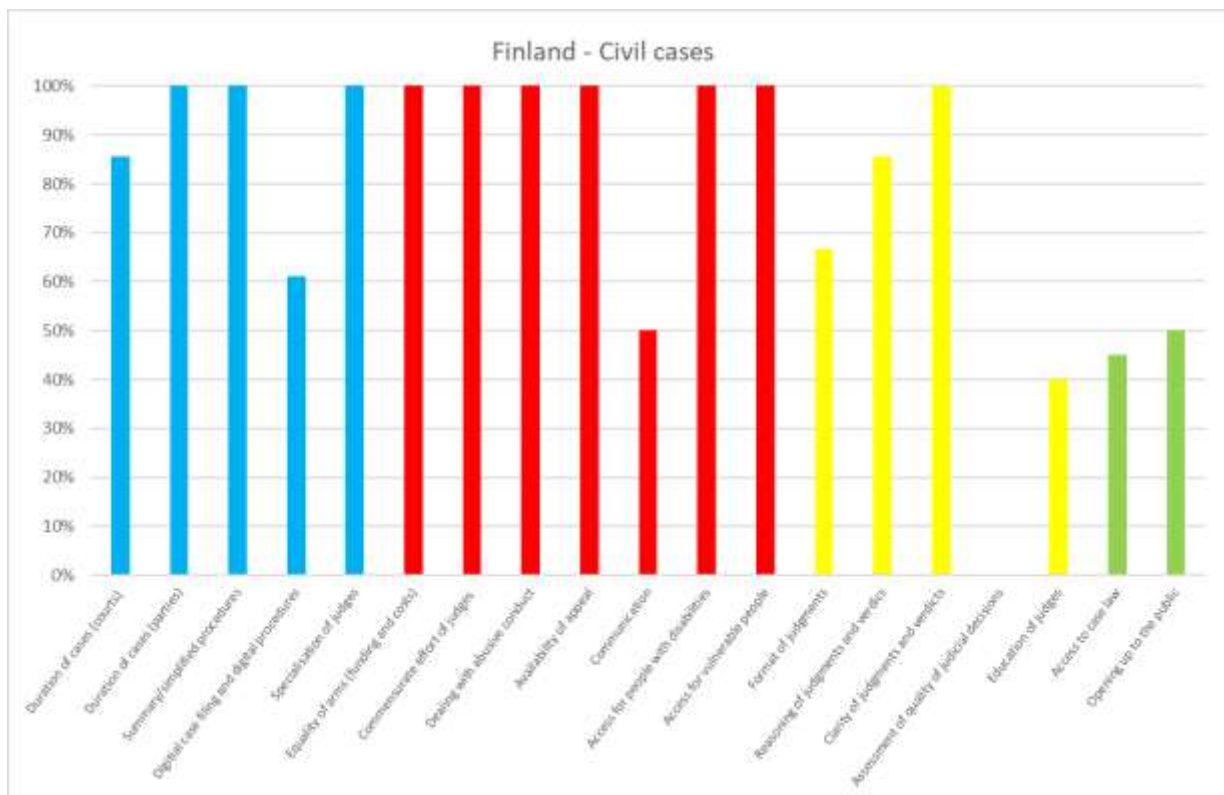
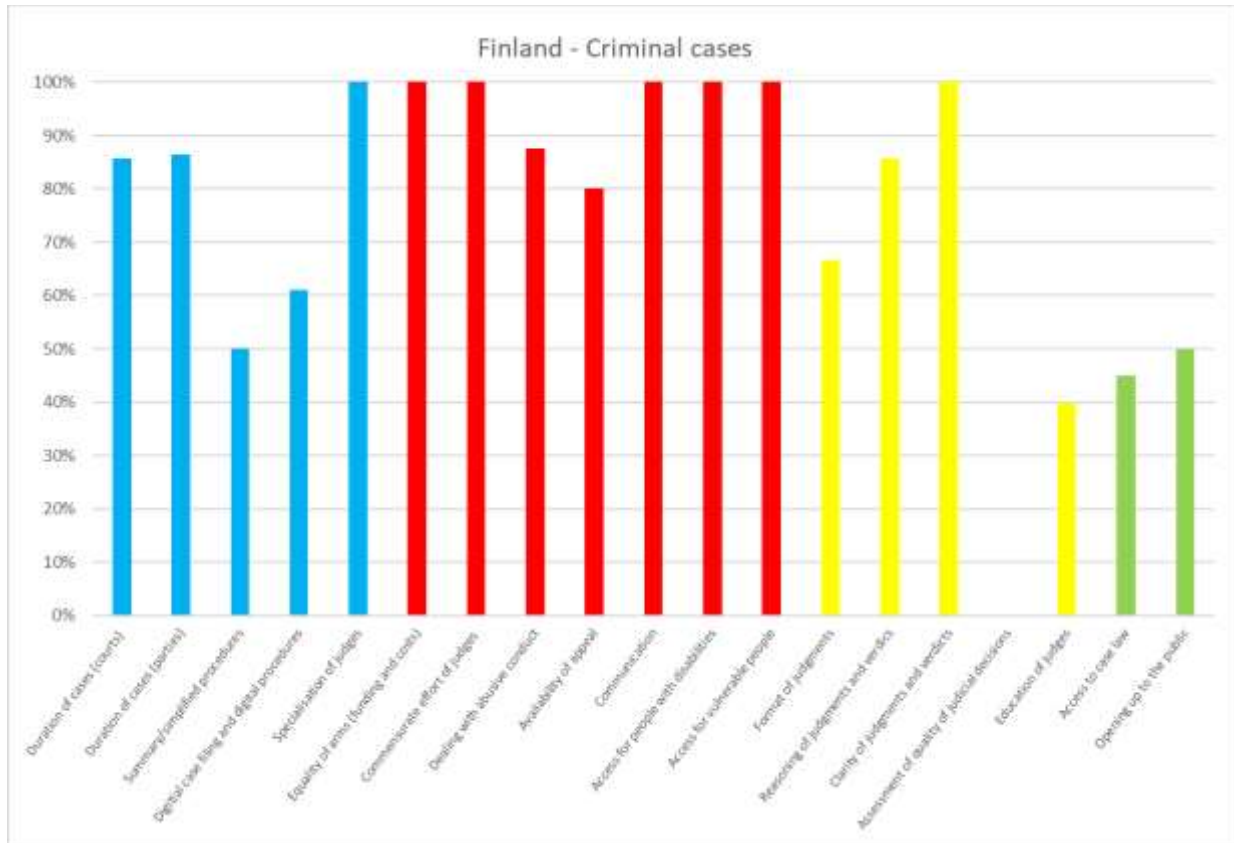
Annex 6: Quality Questionnaire Results

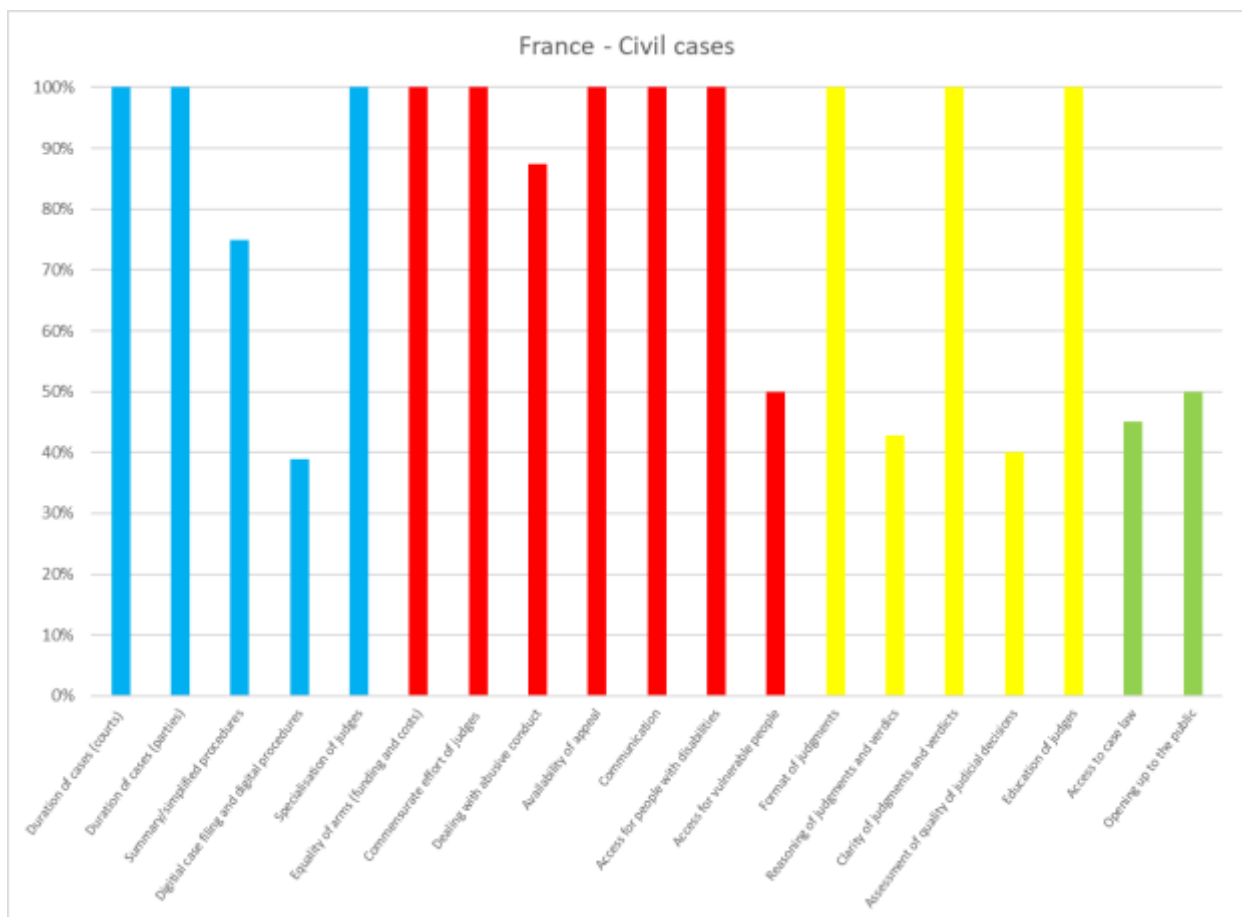
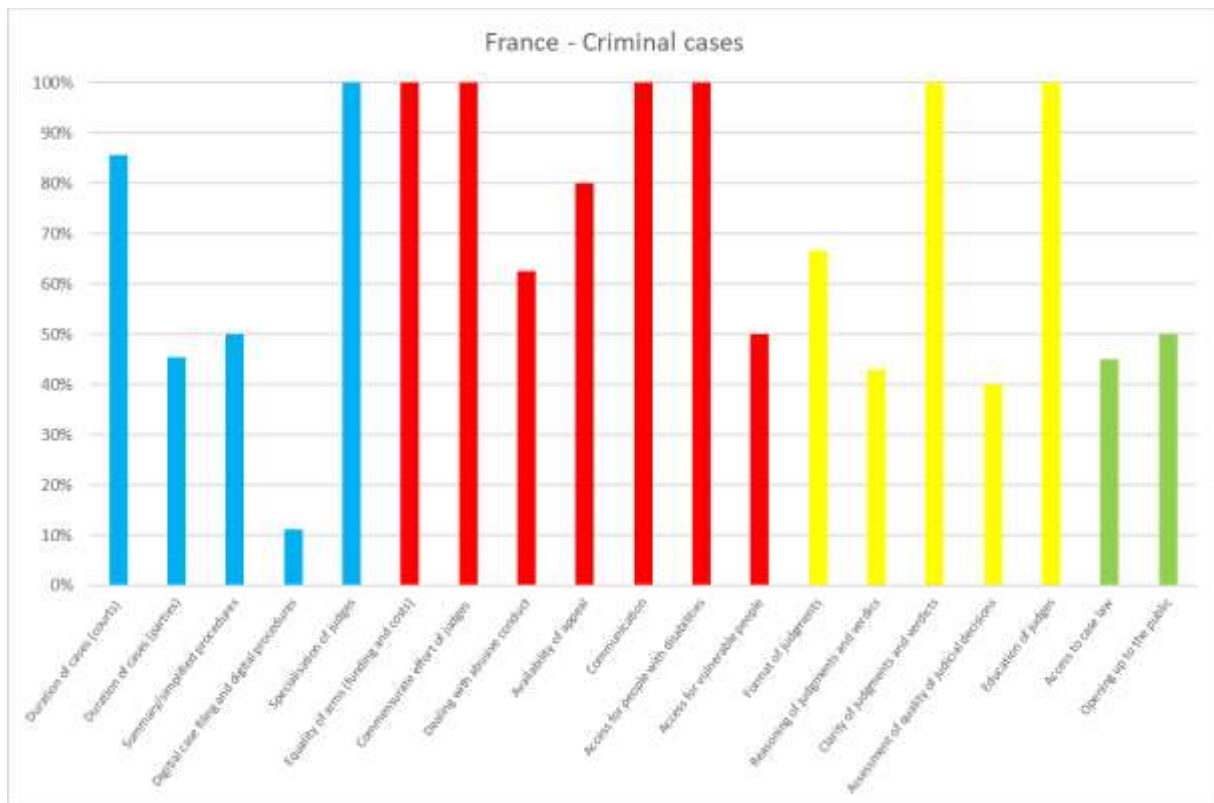


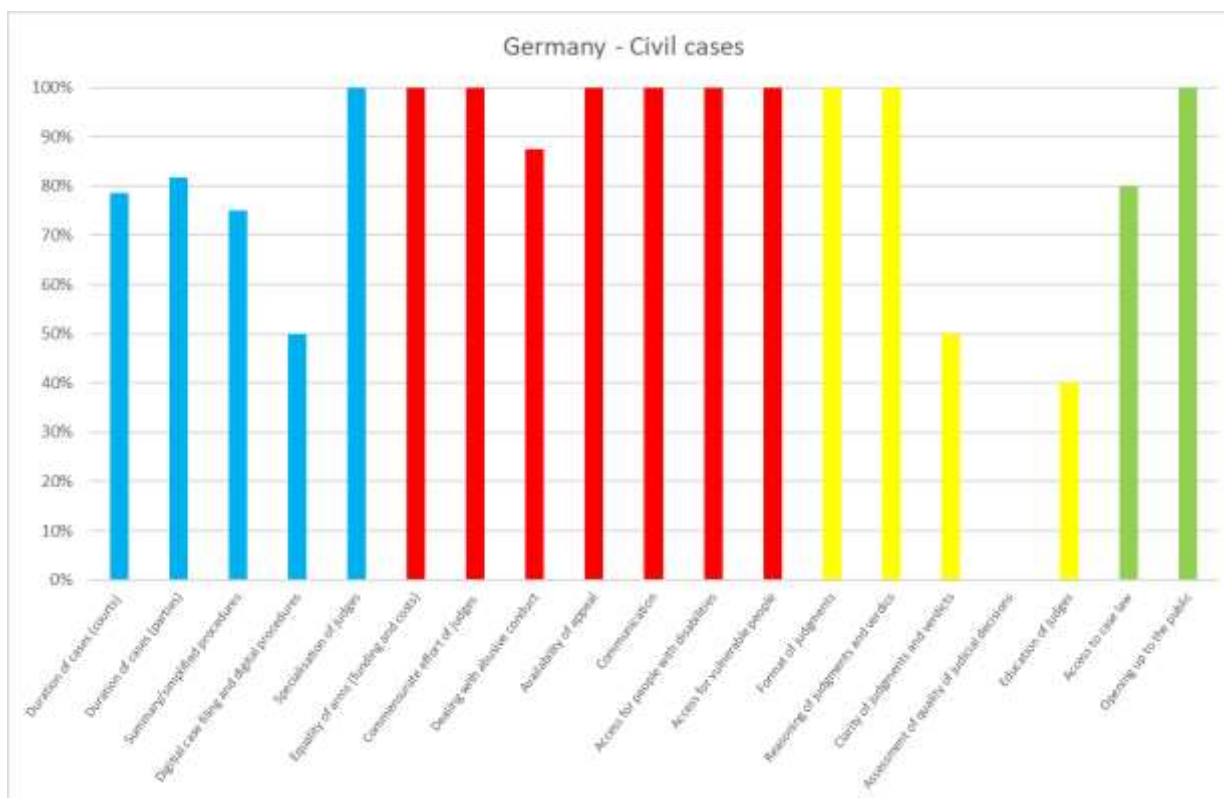
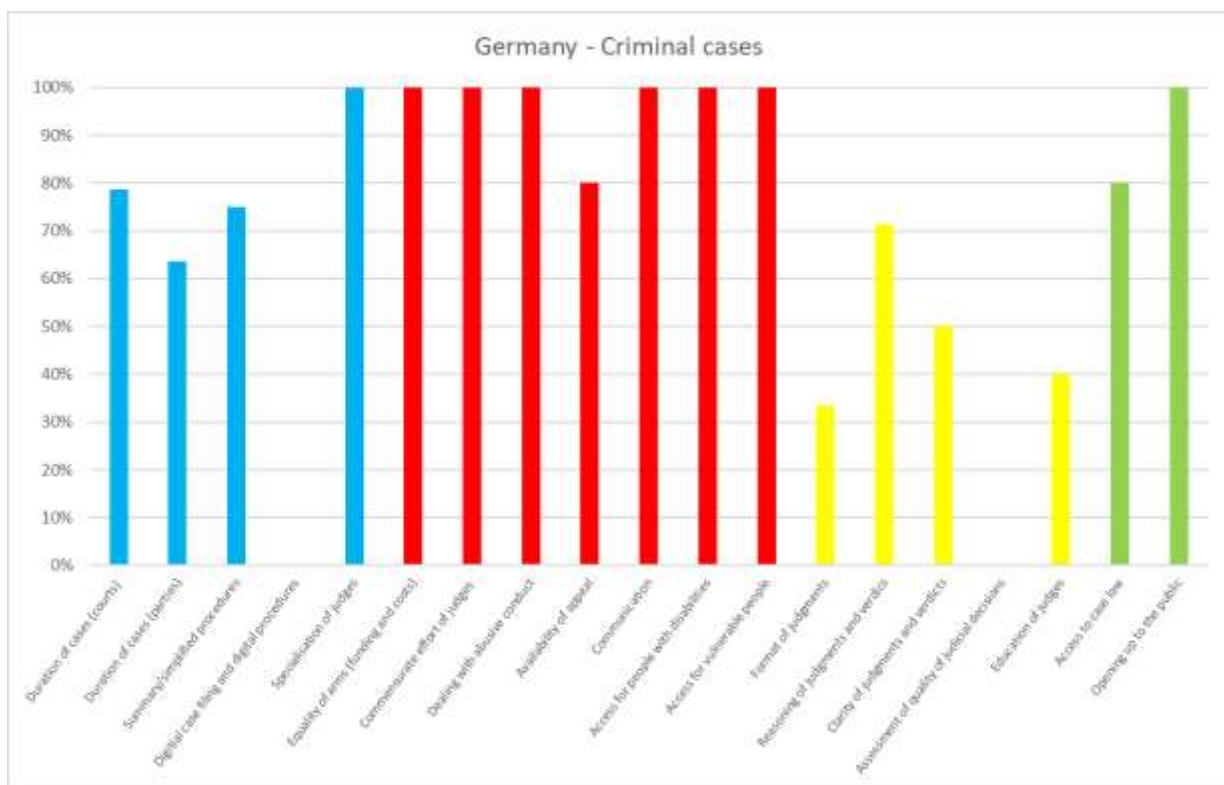


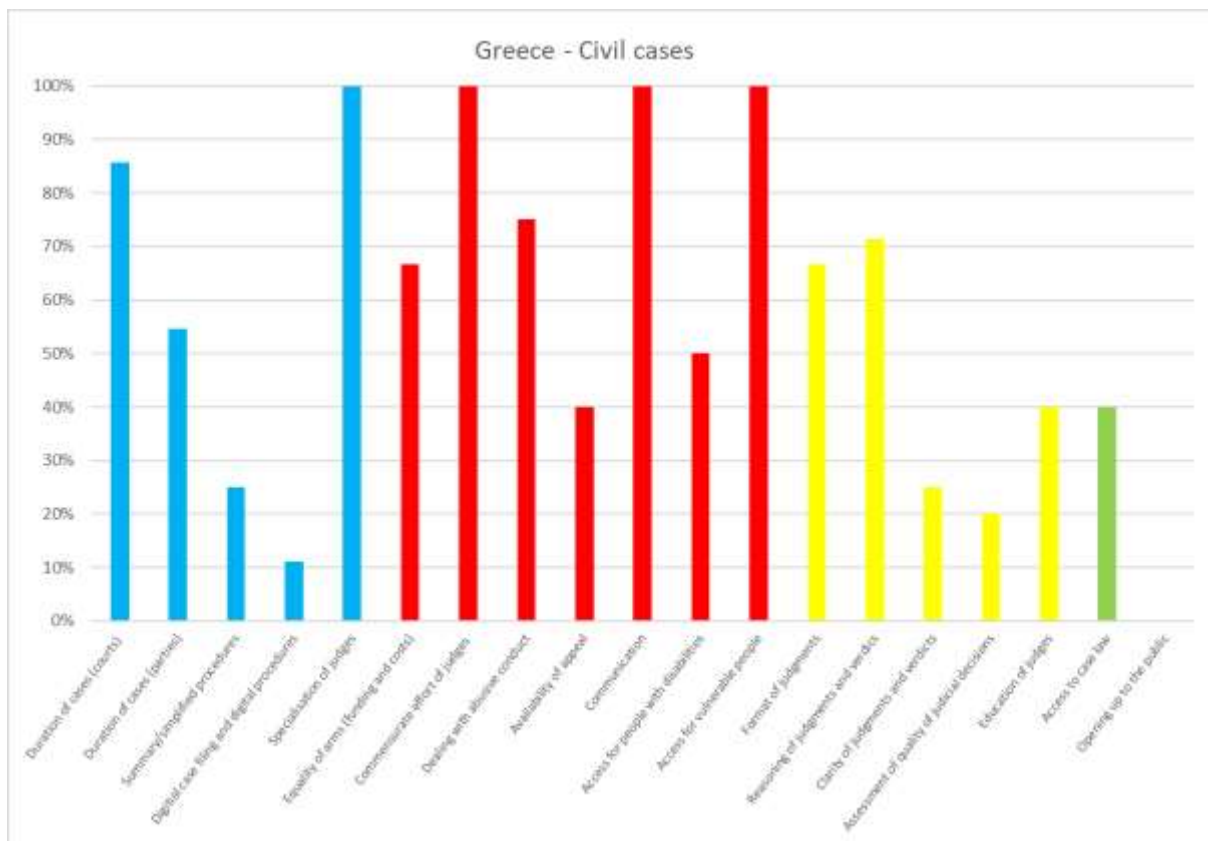
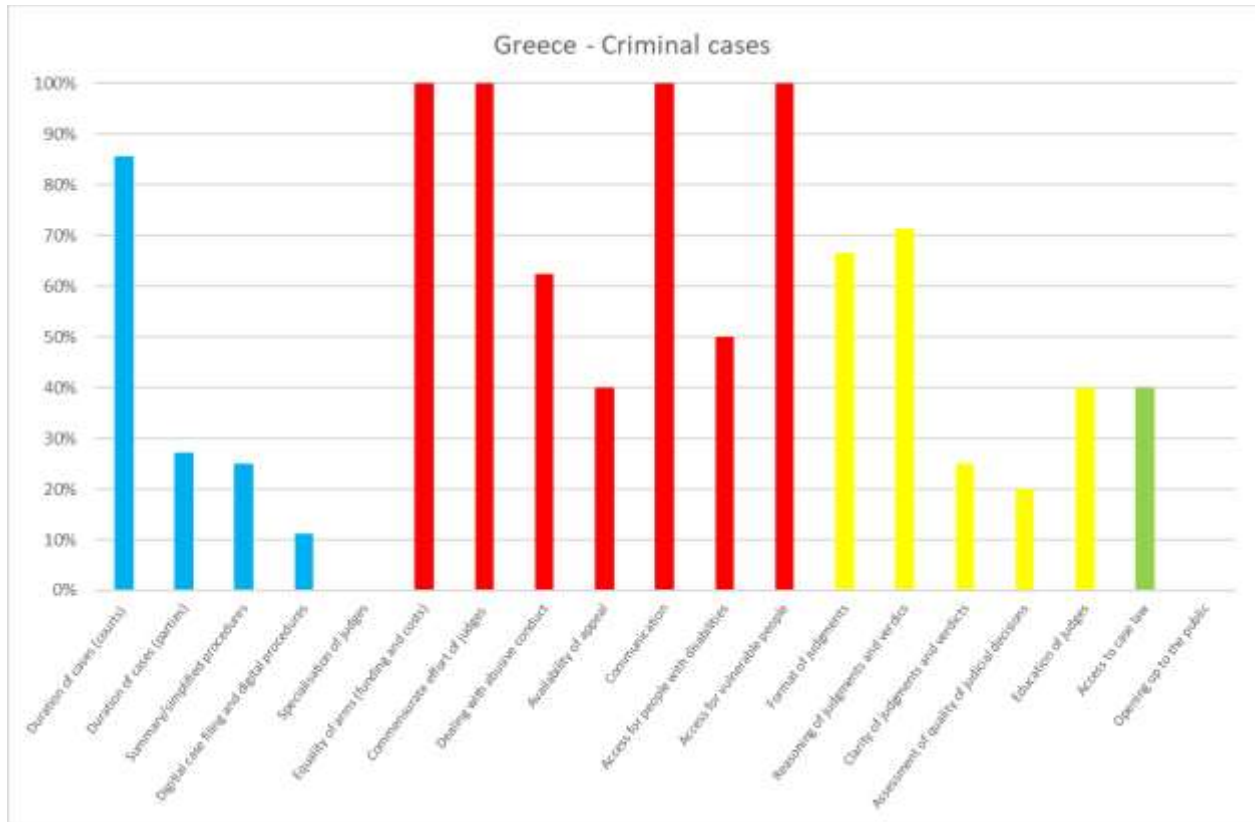


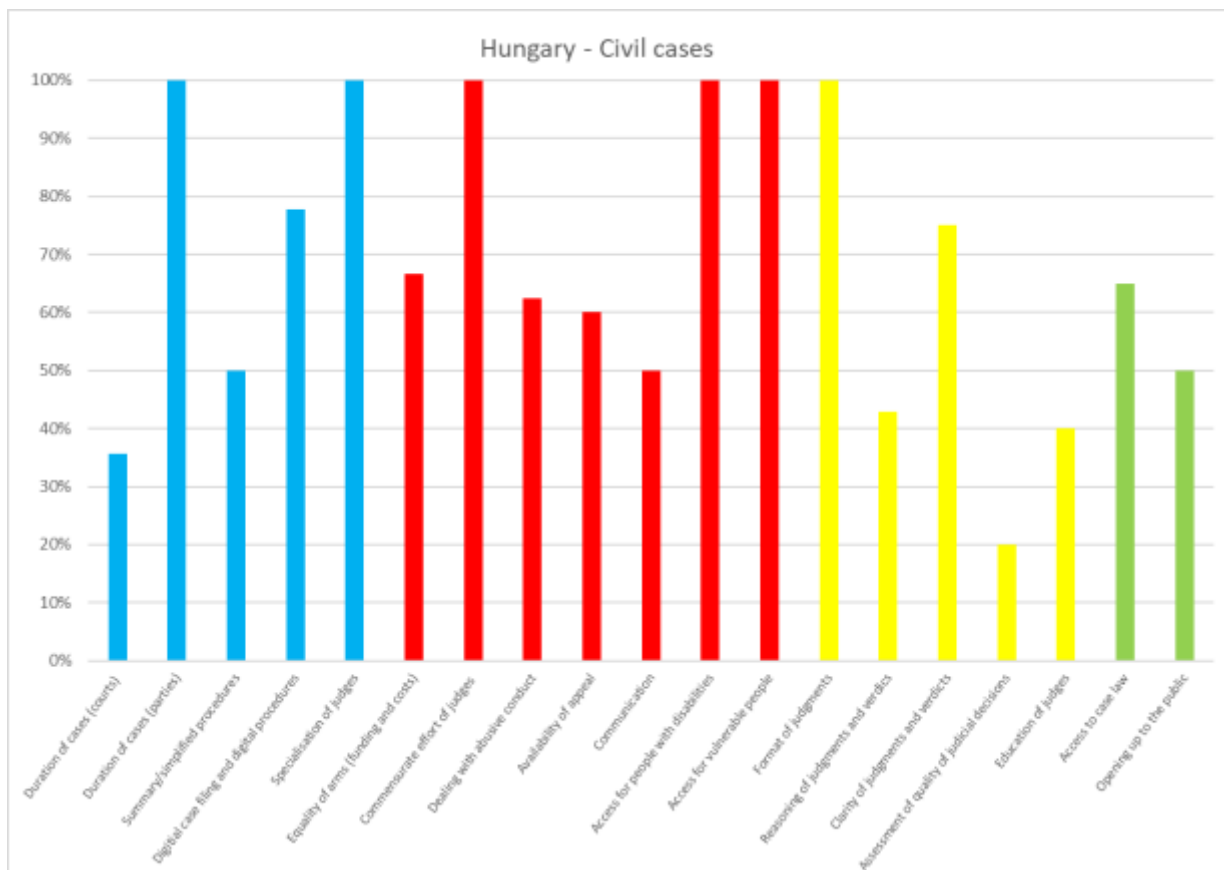
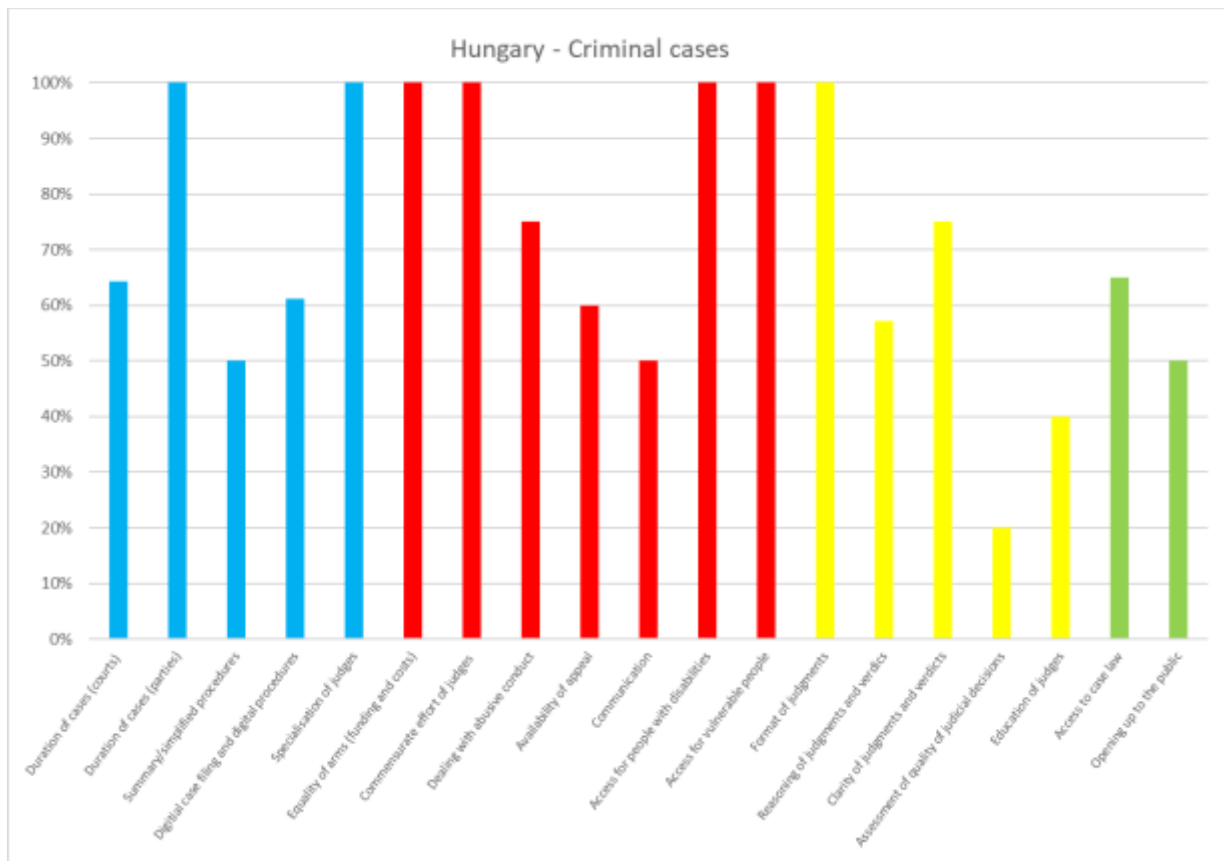


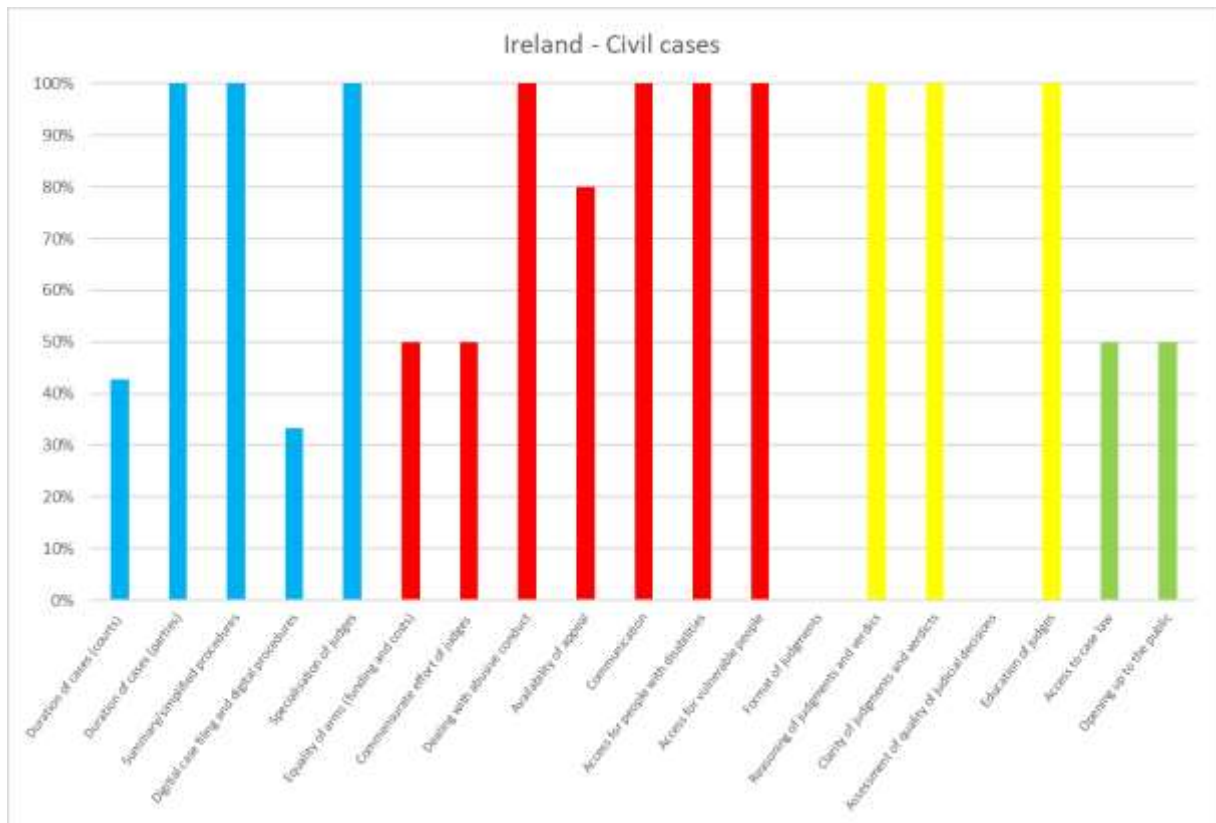
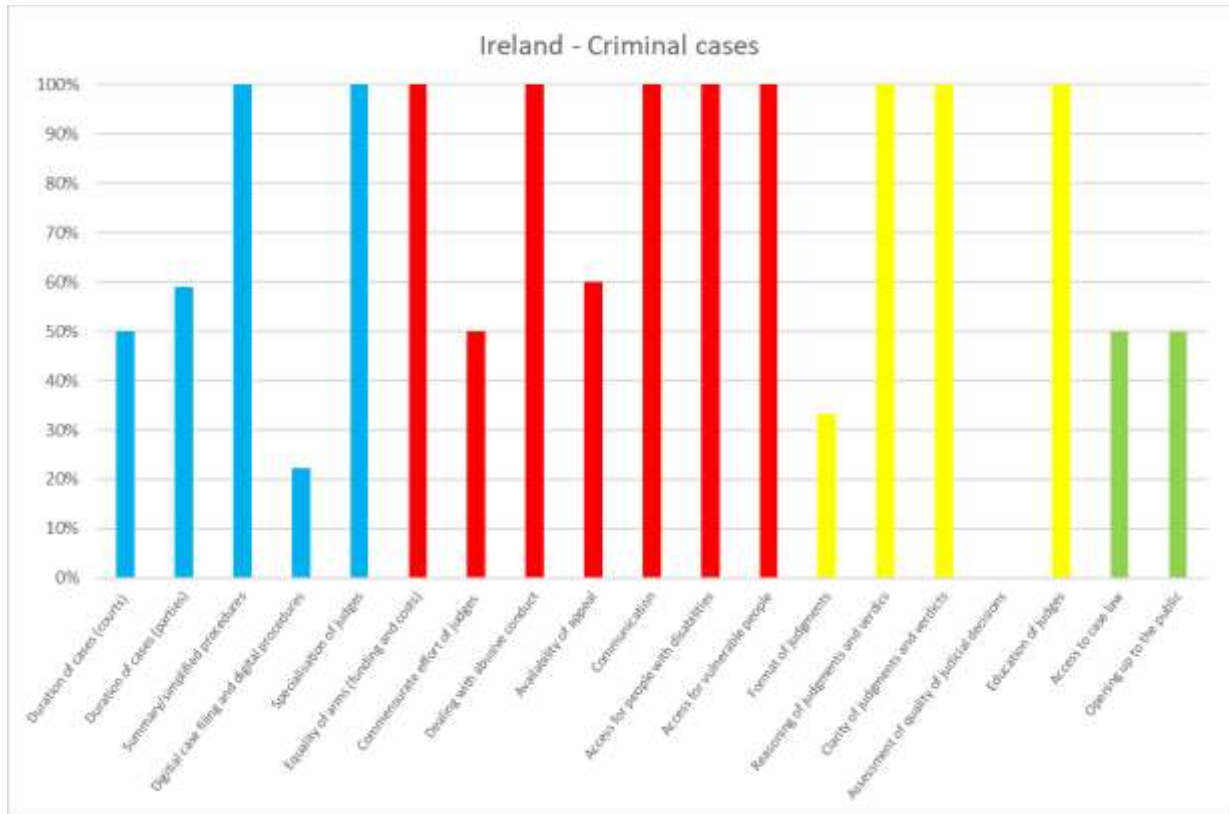


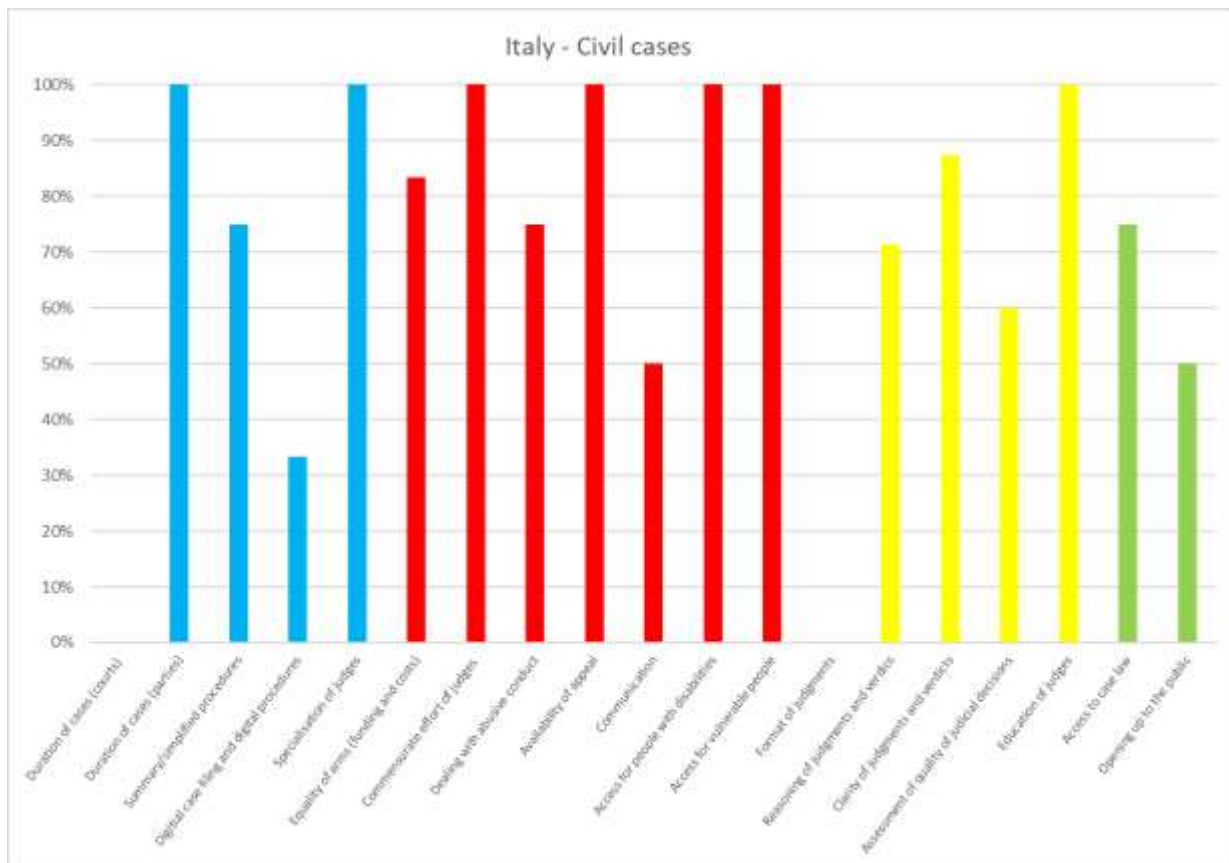
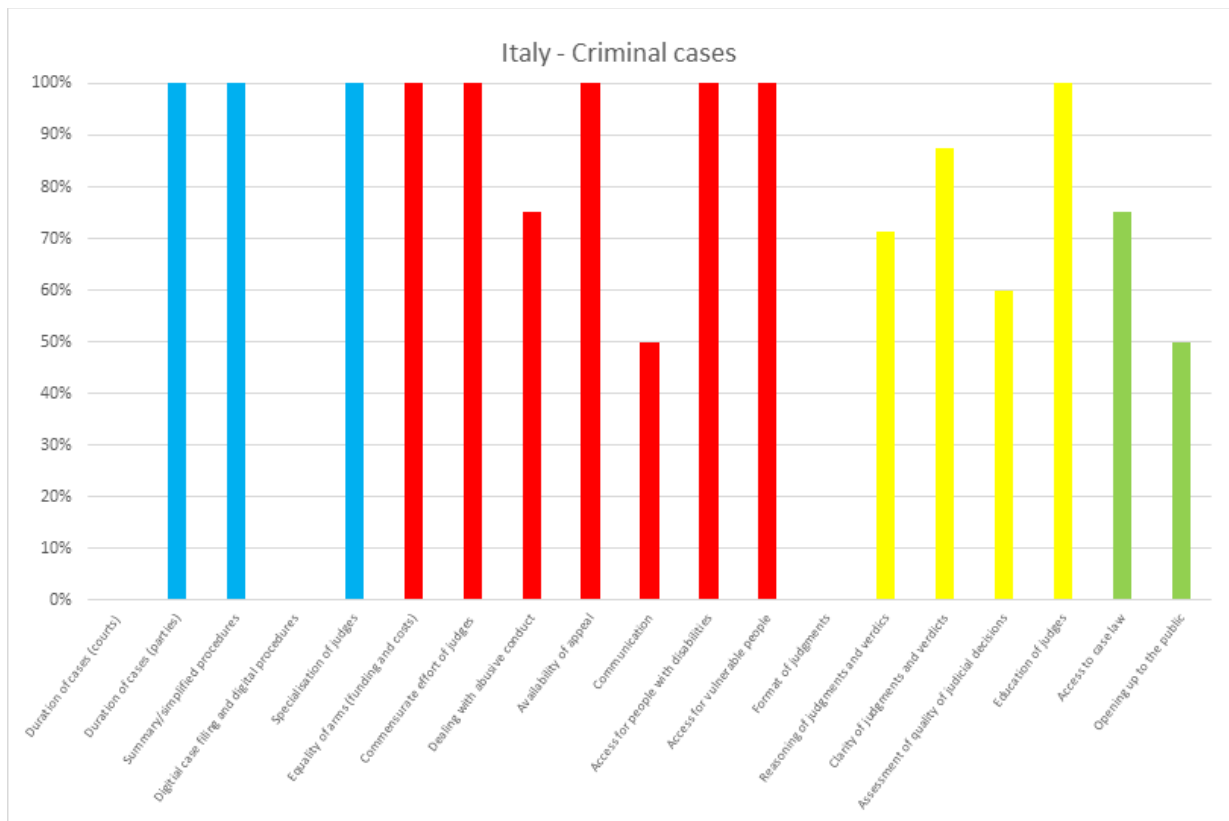


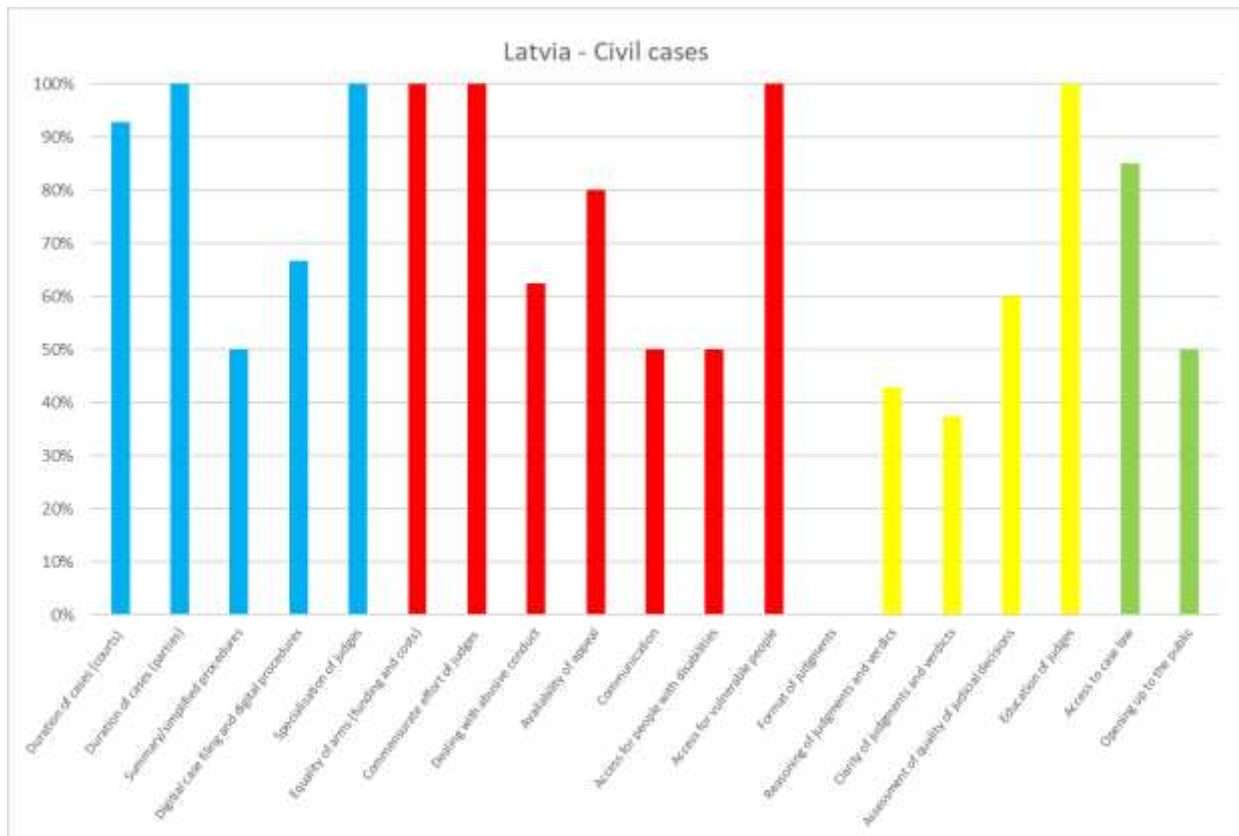
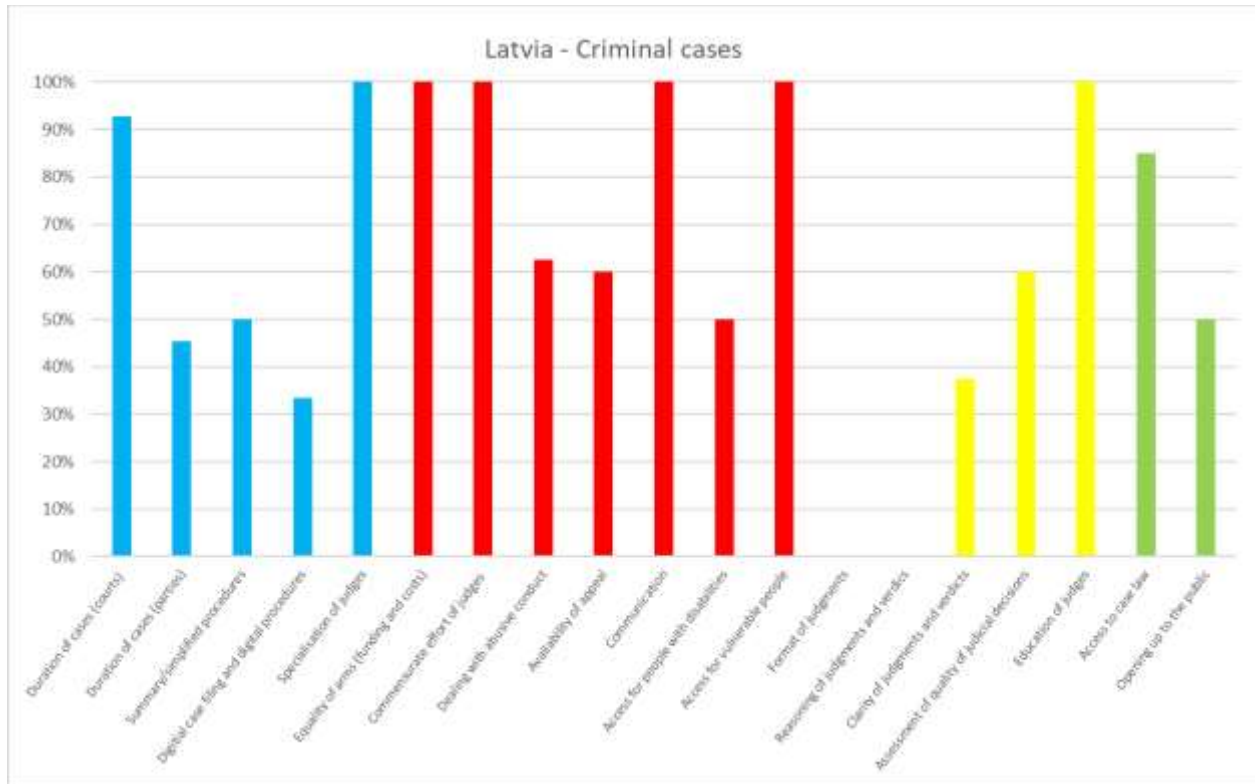


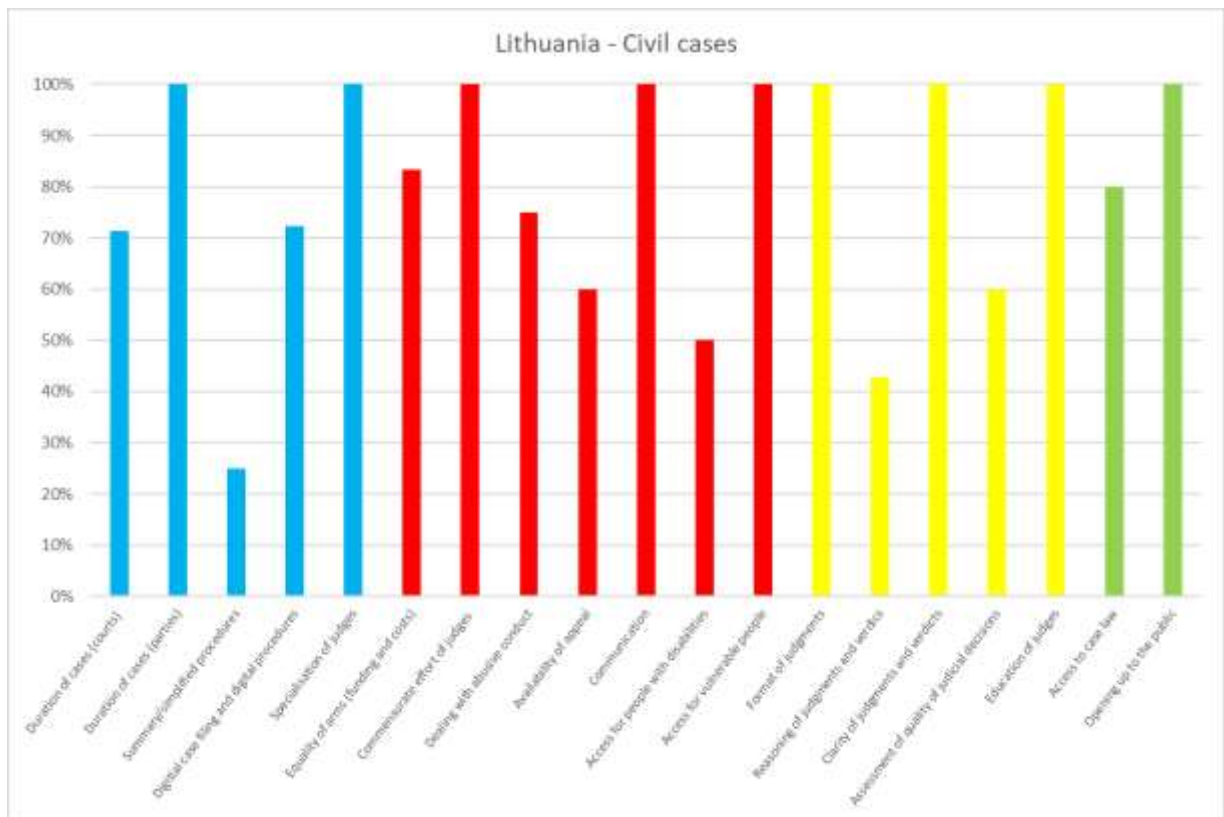
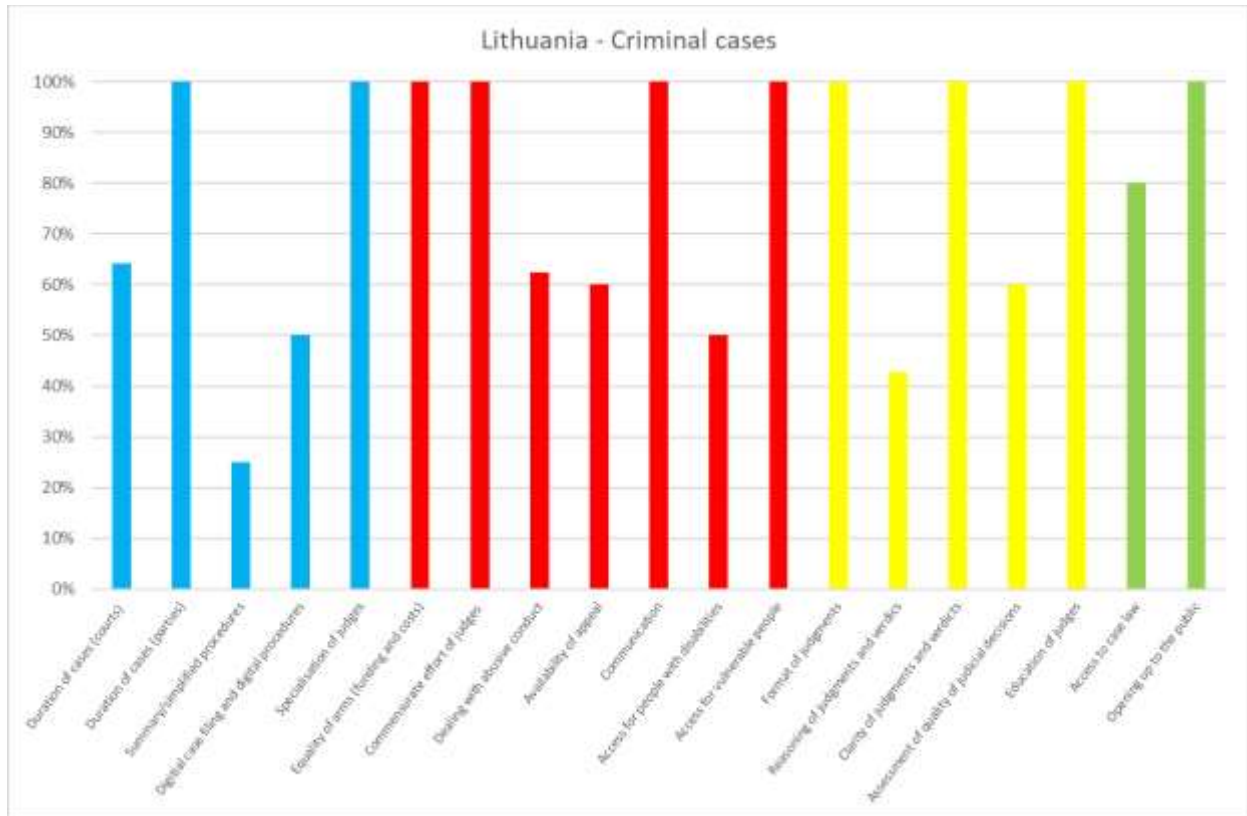


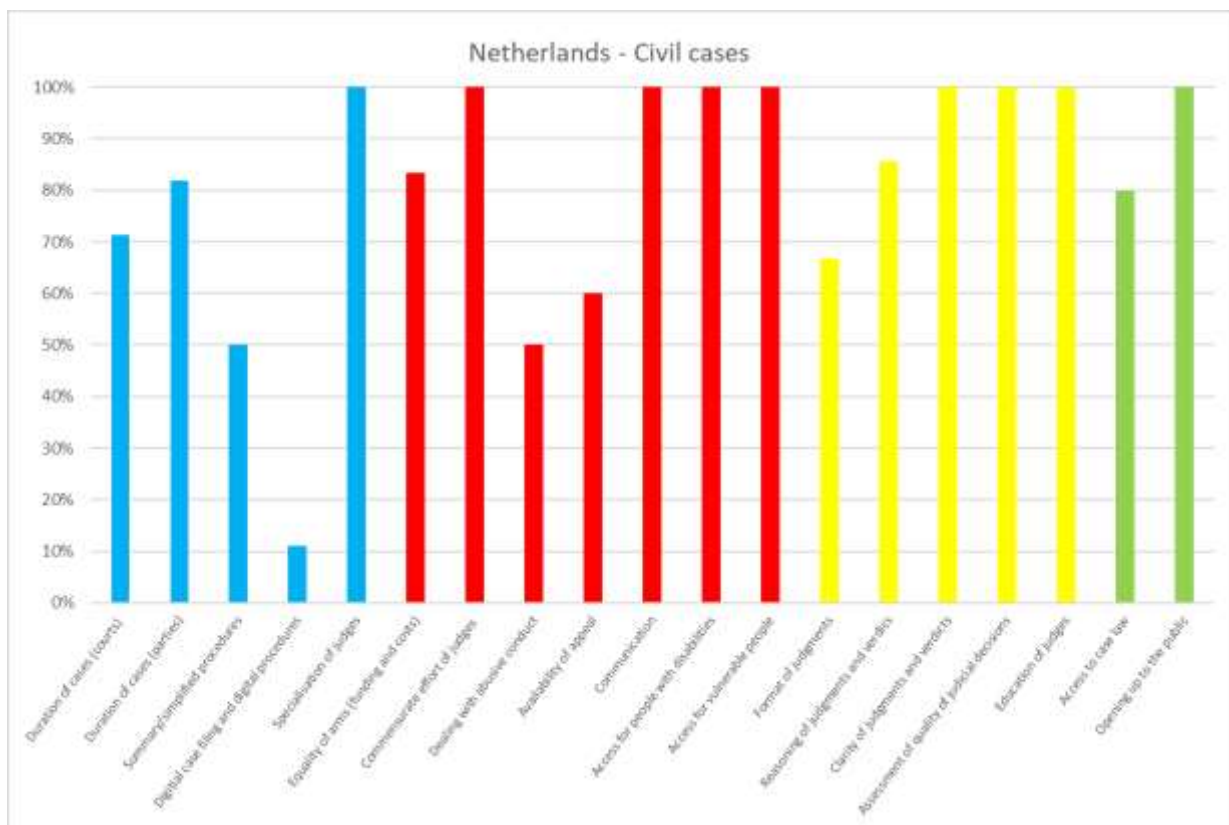
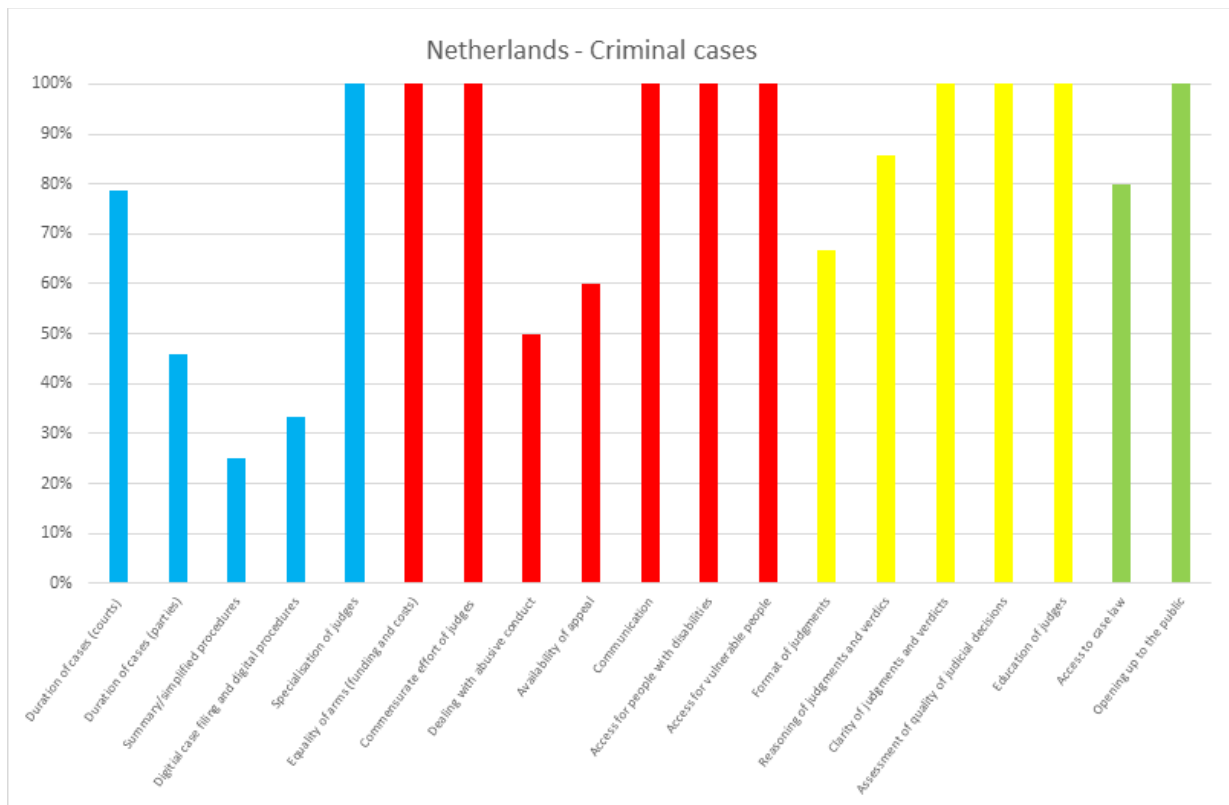


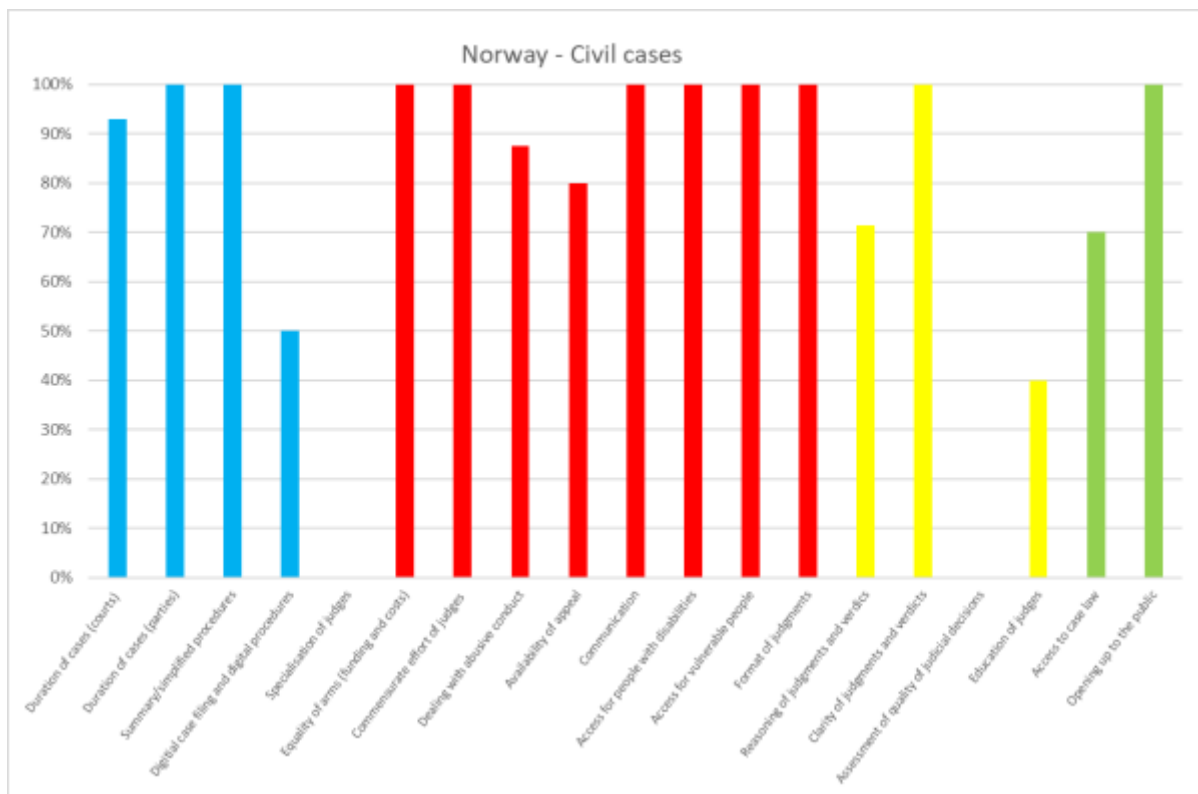
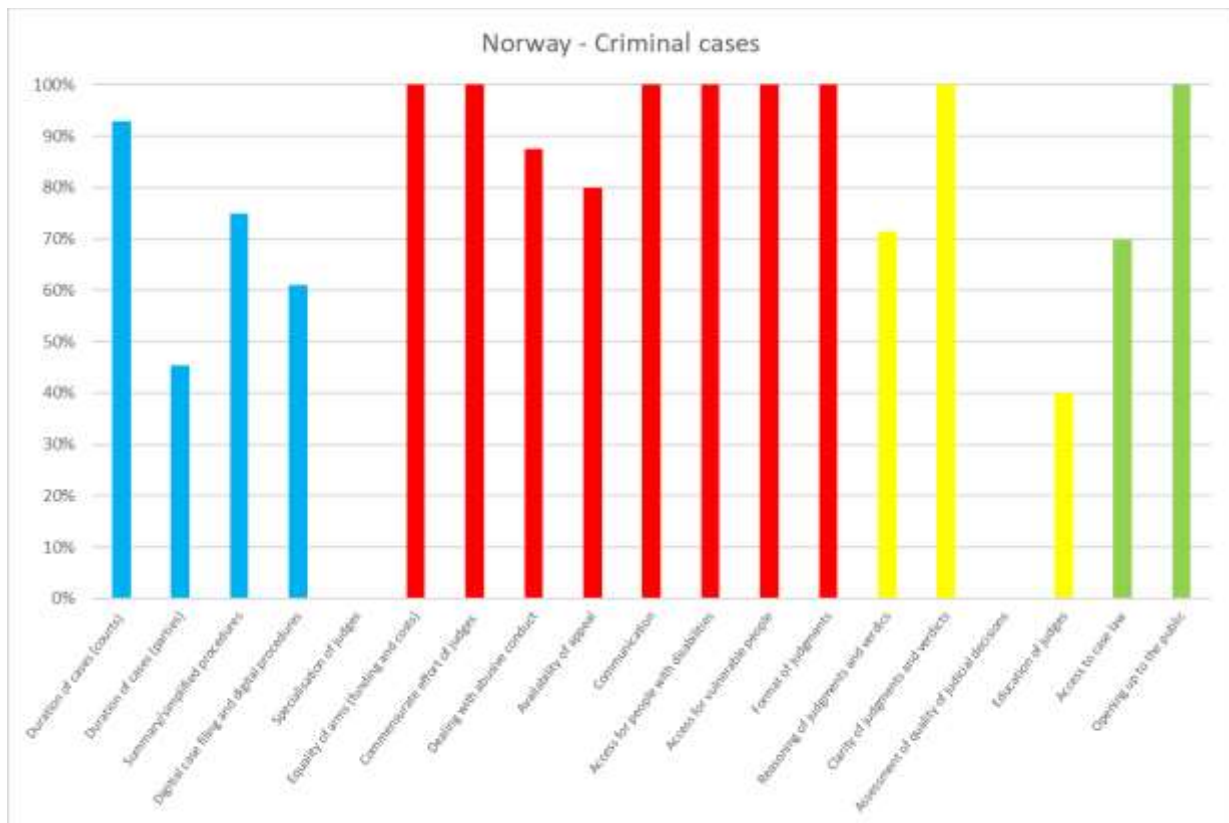


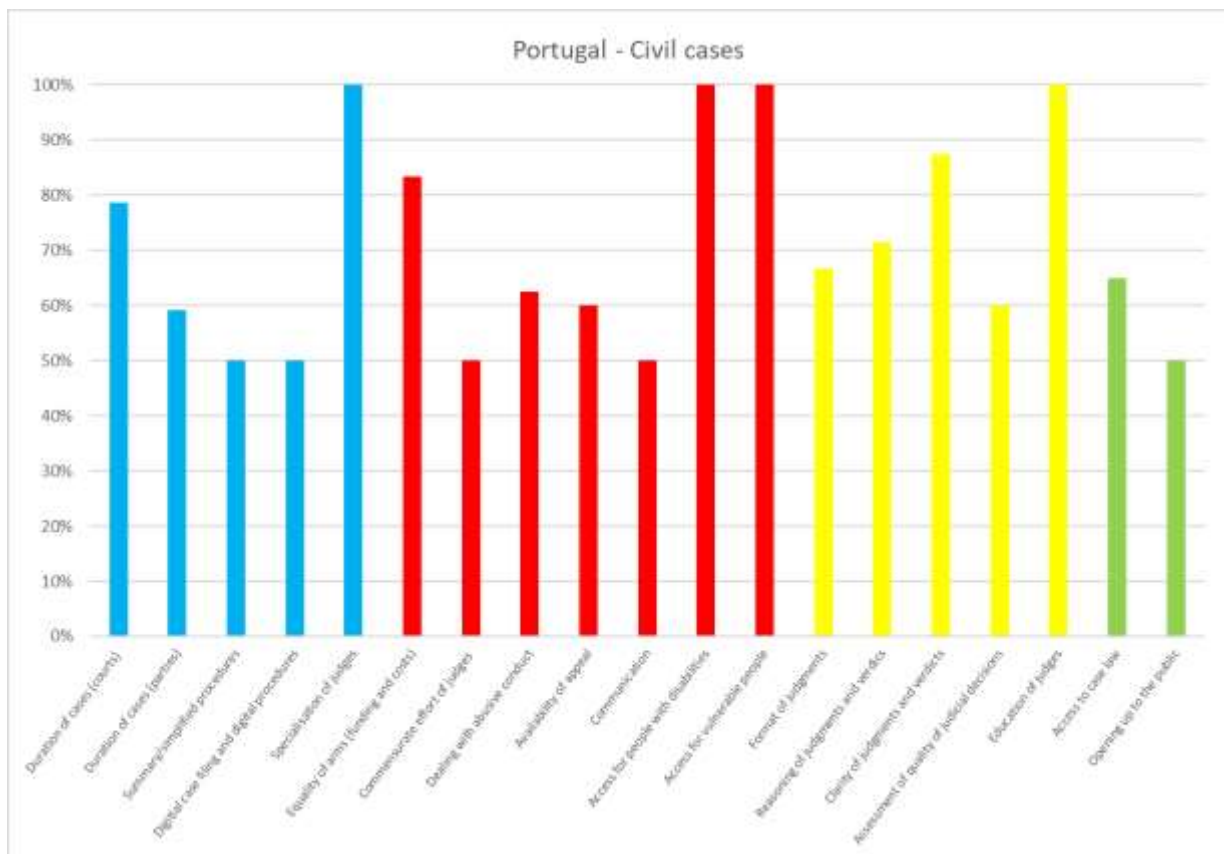
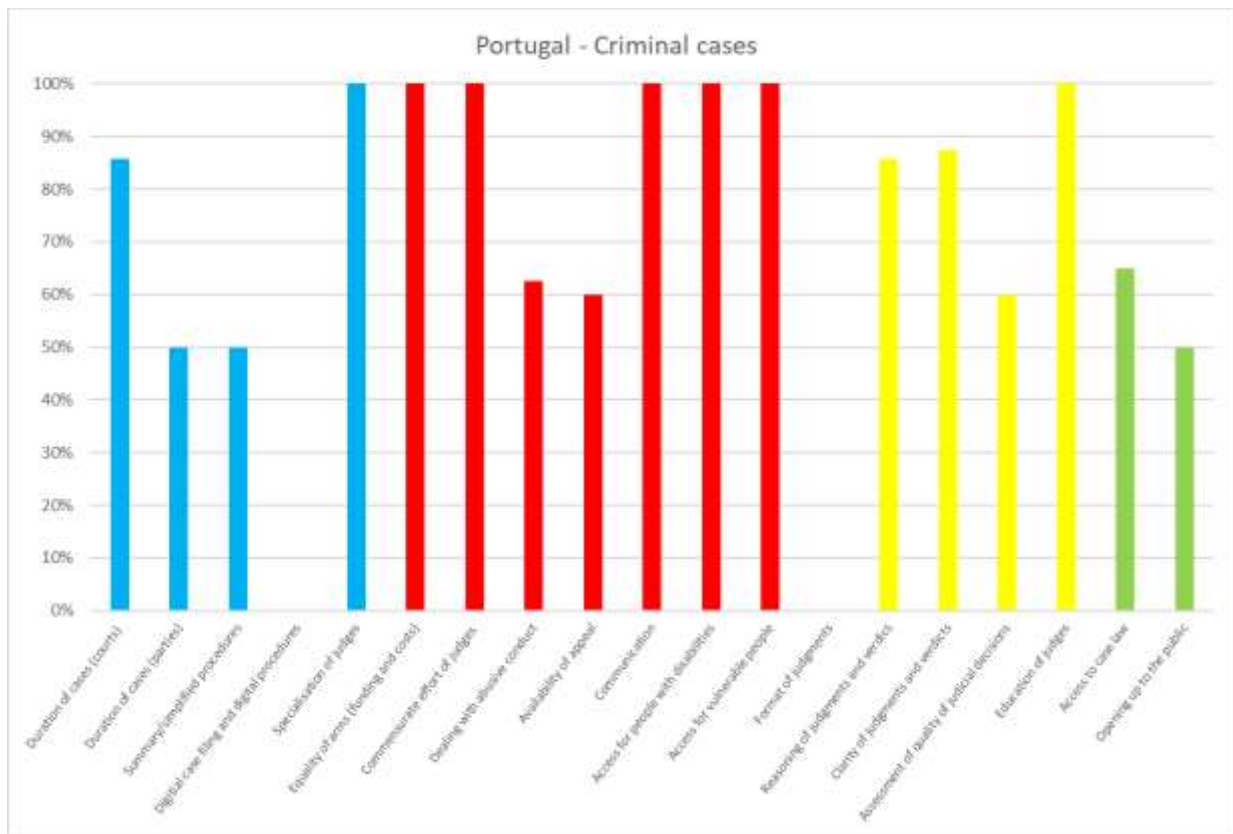


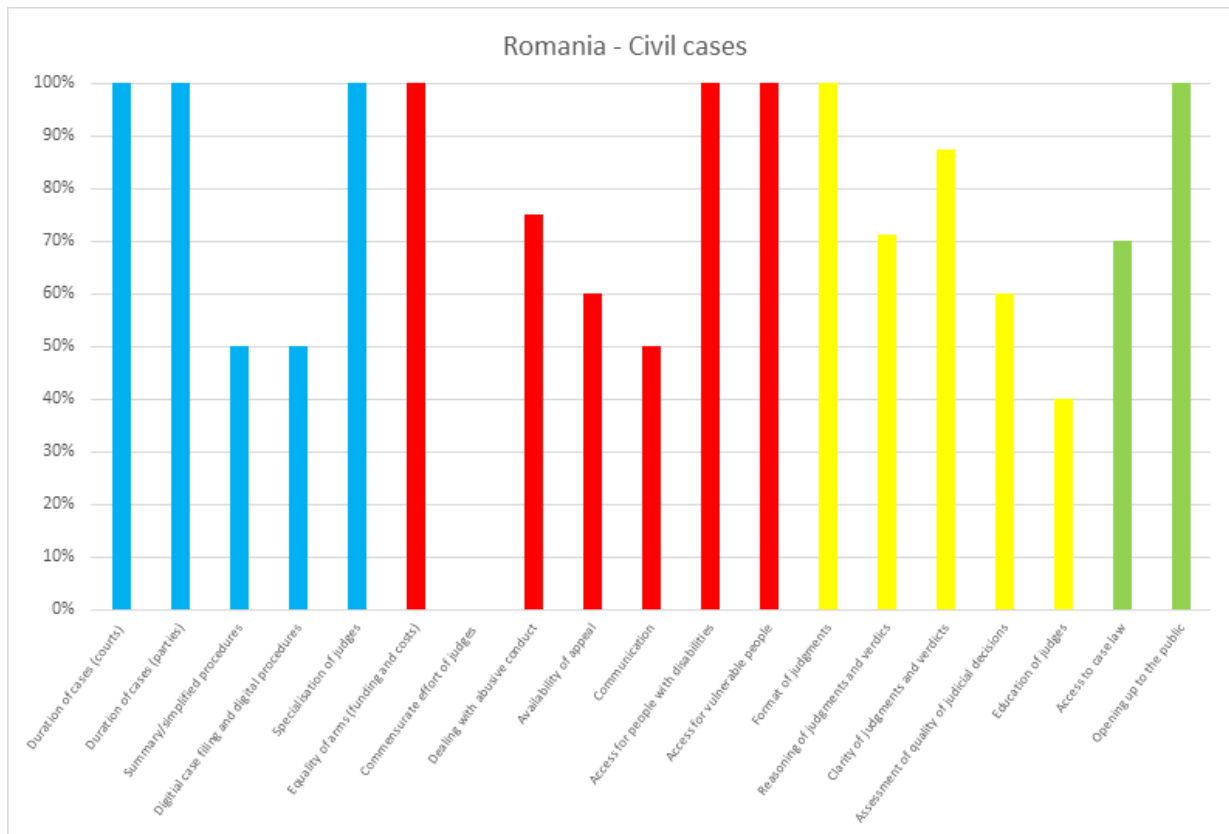
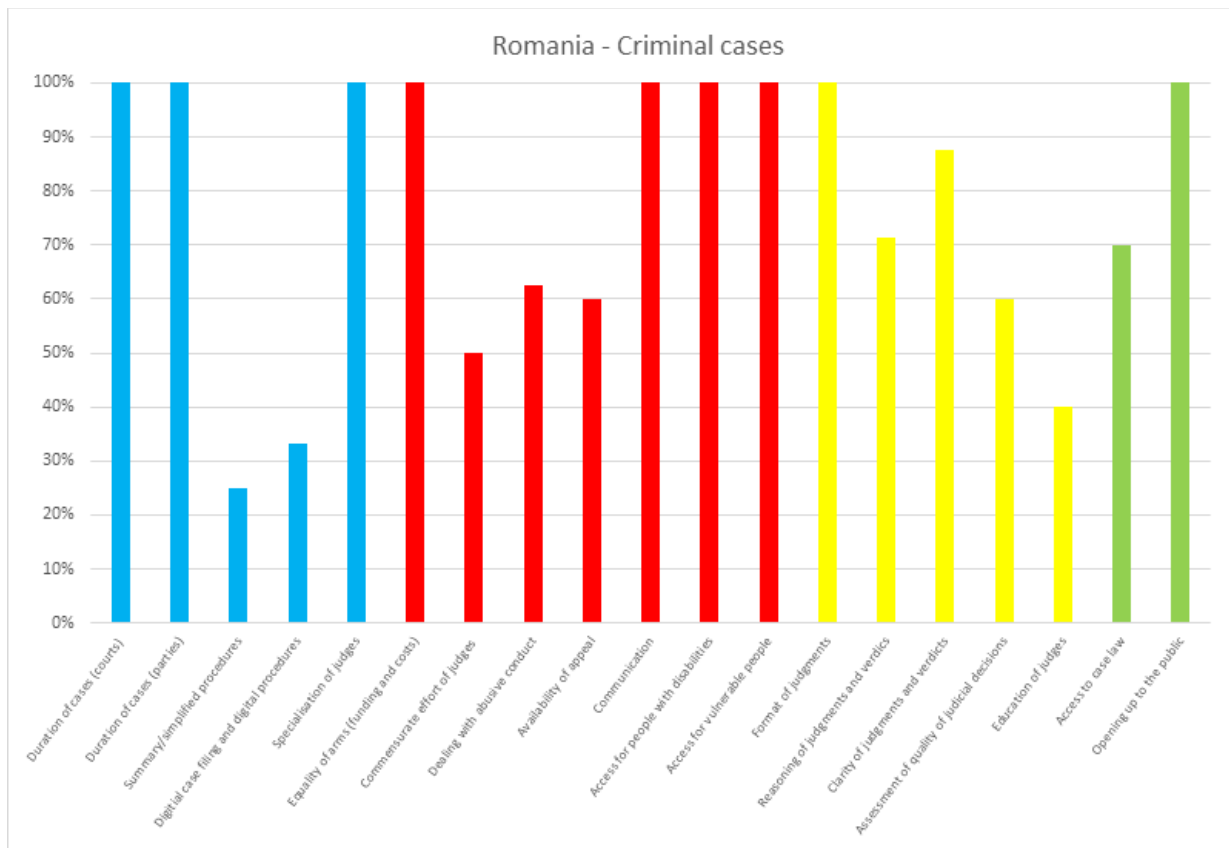


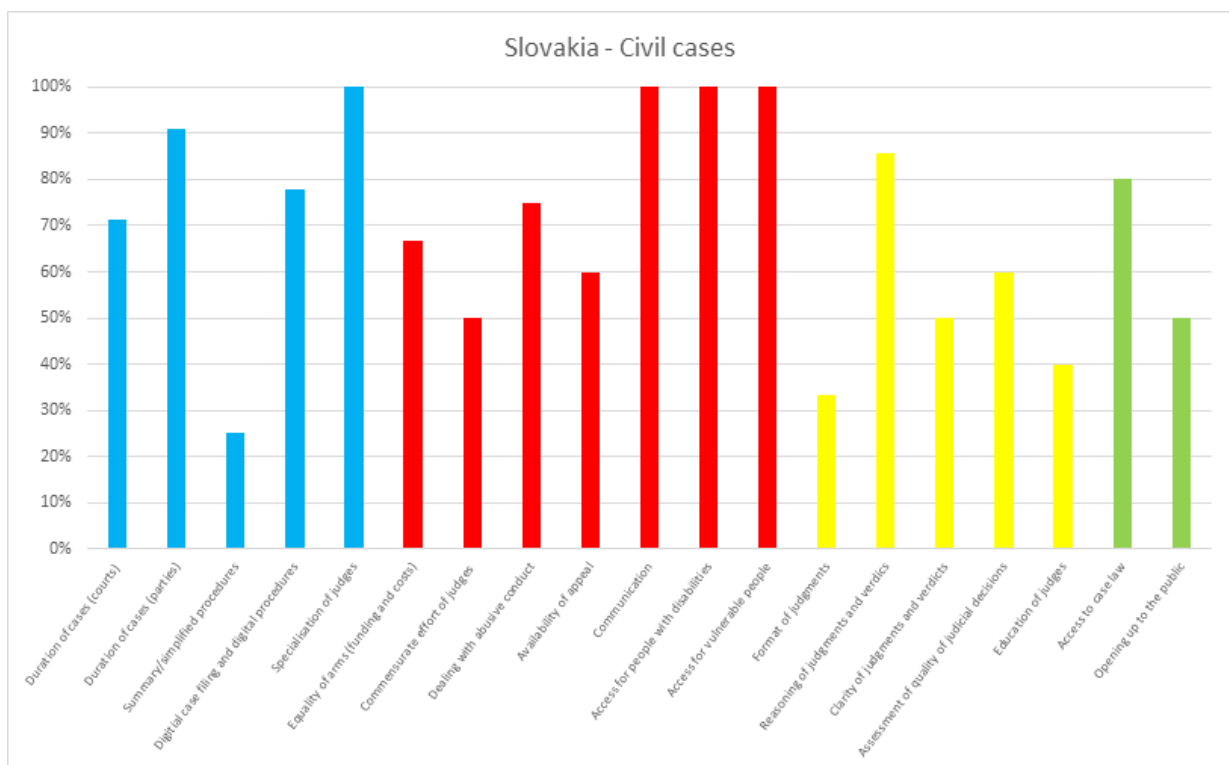
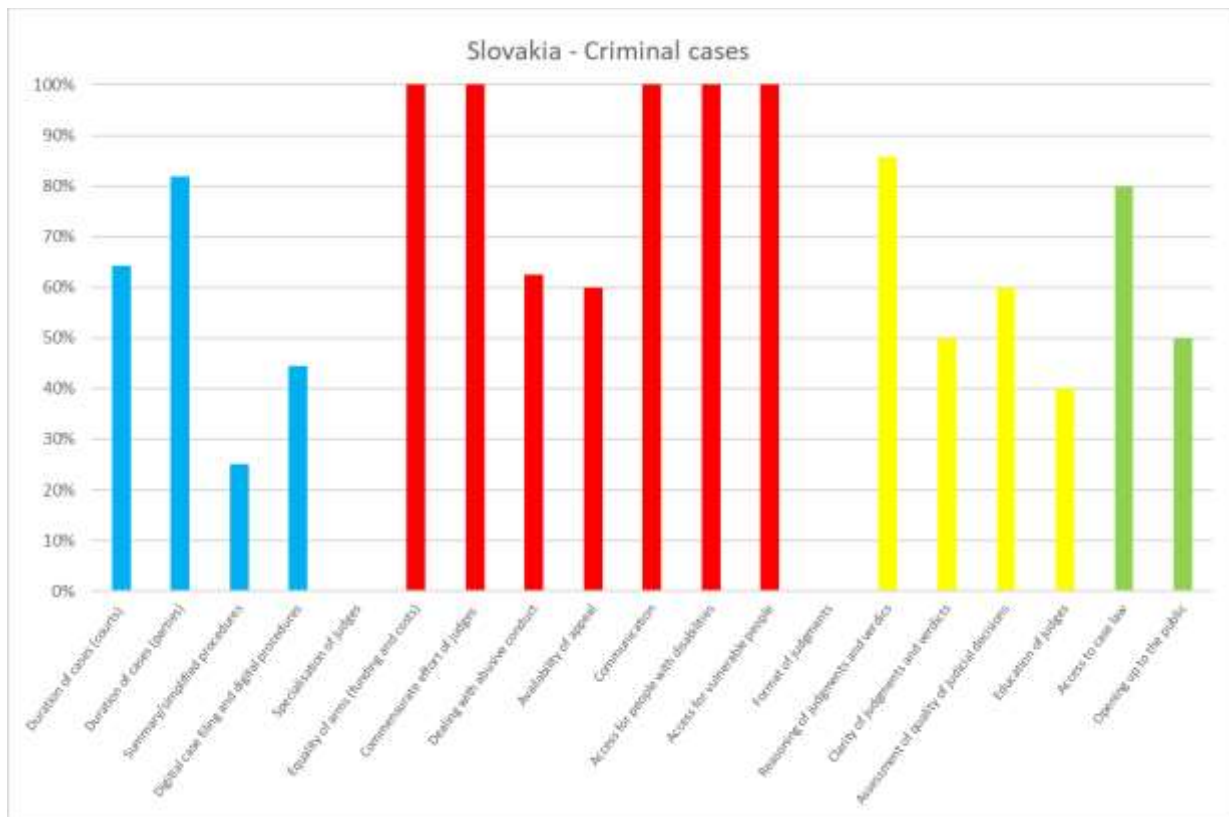


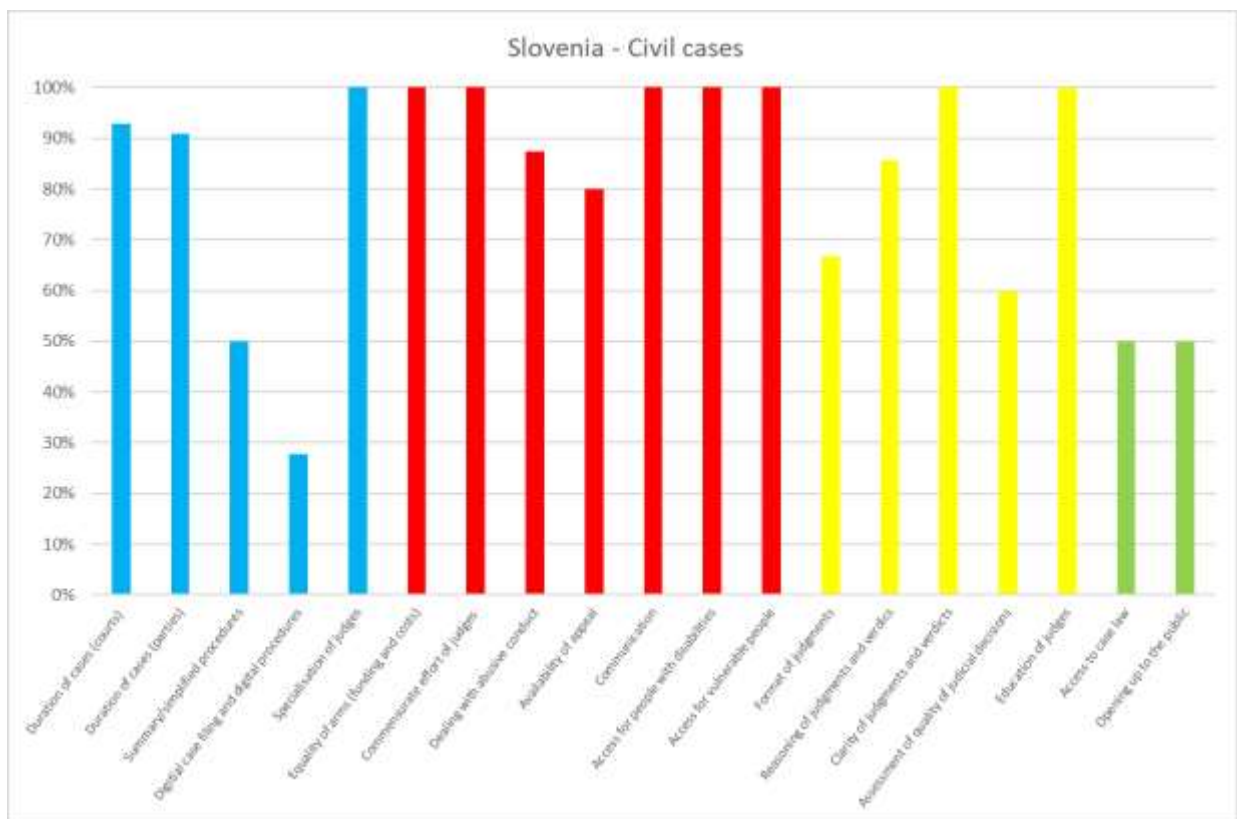
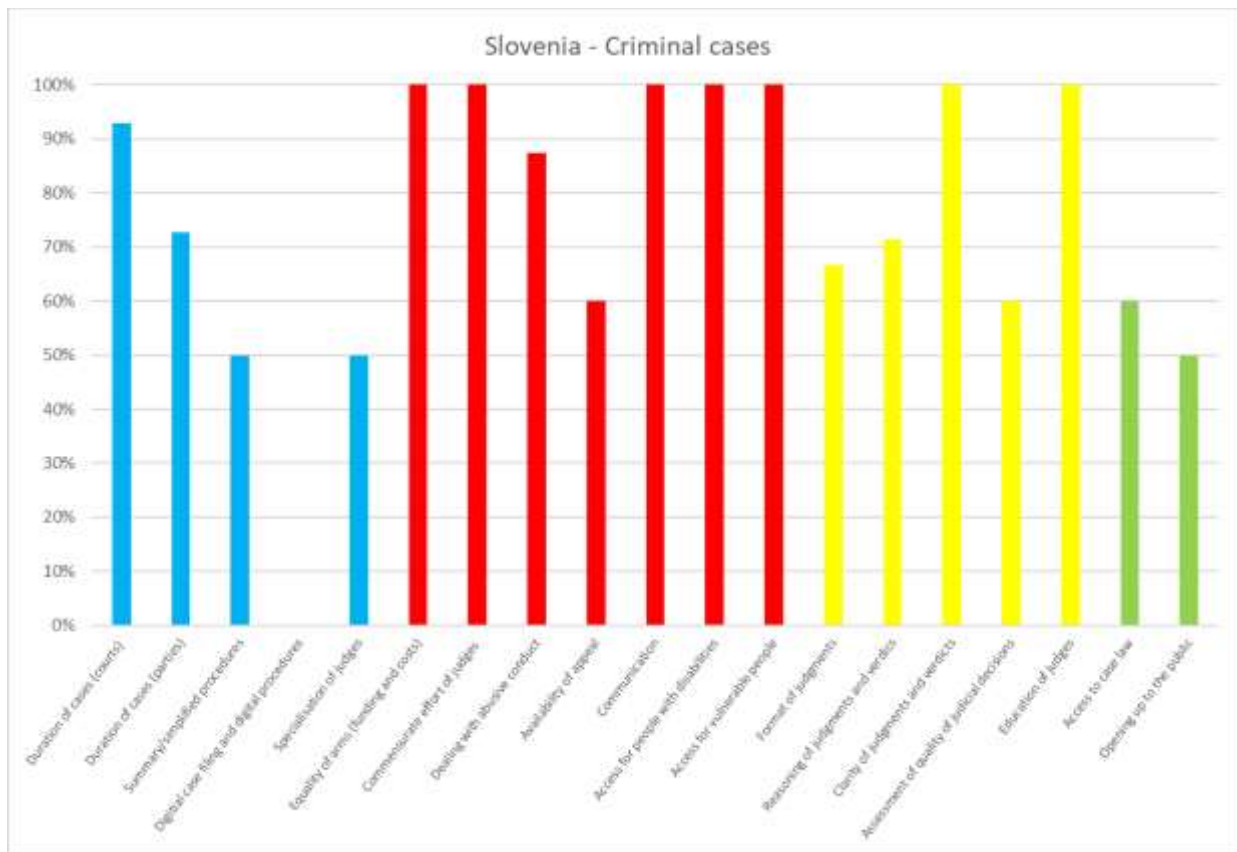


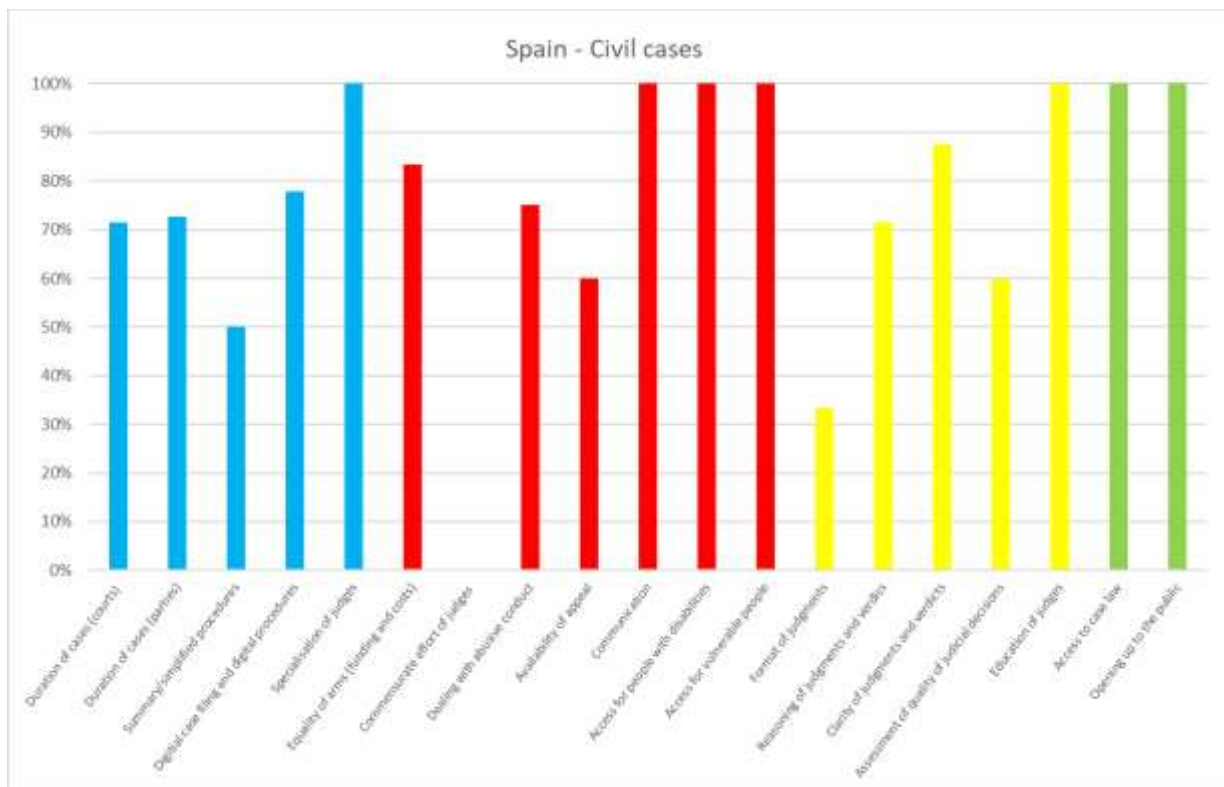
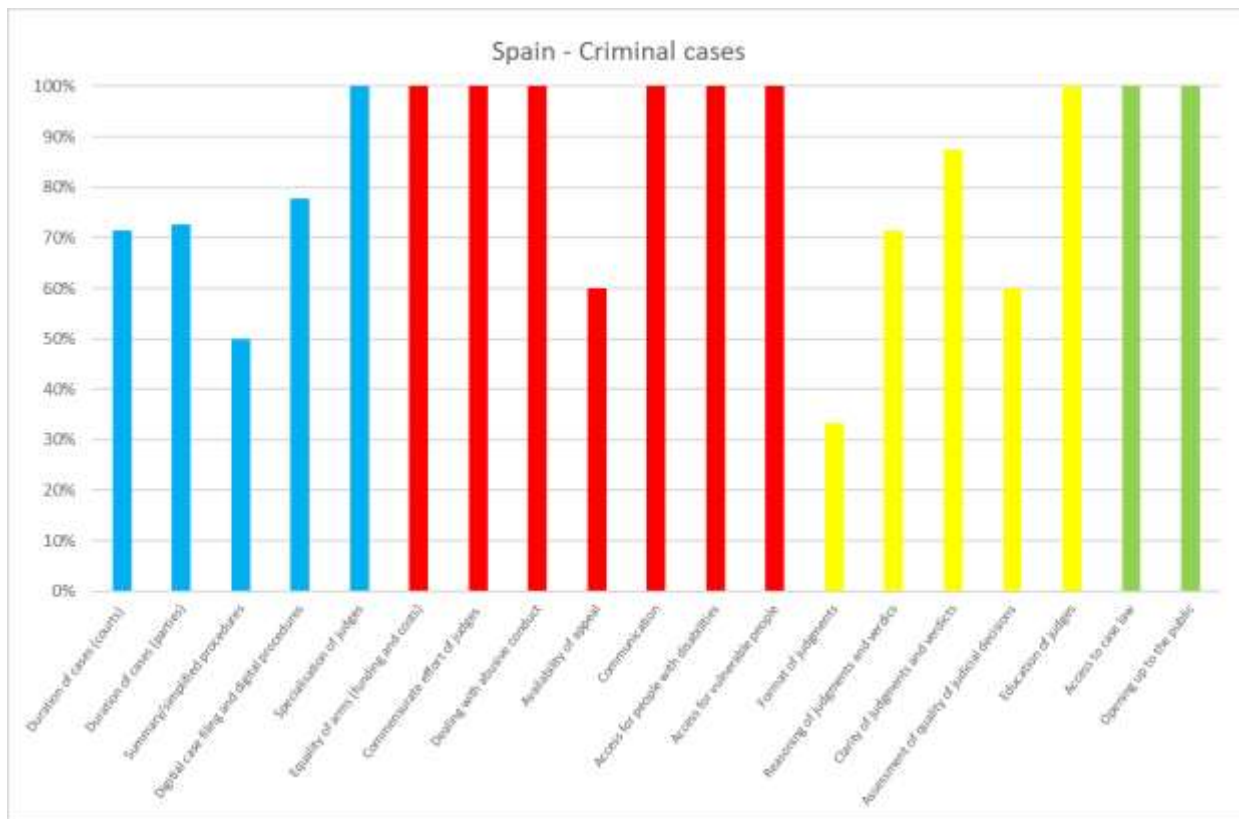


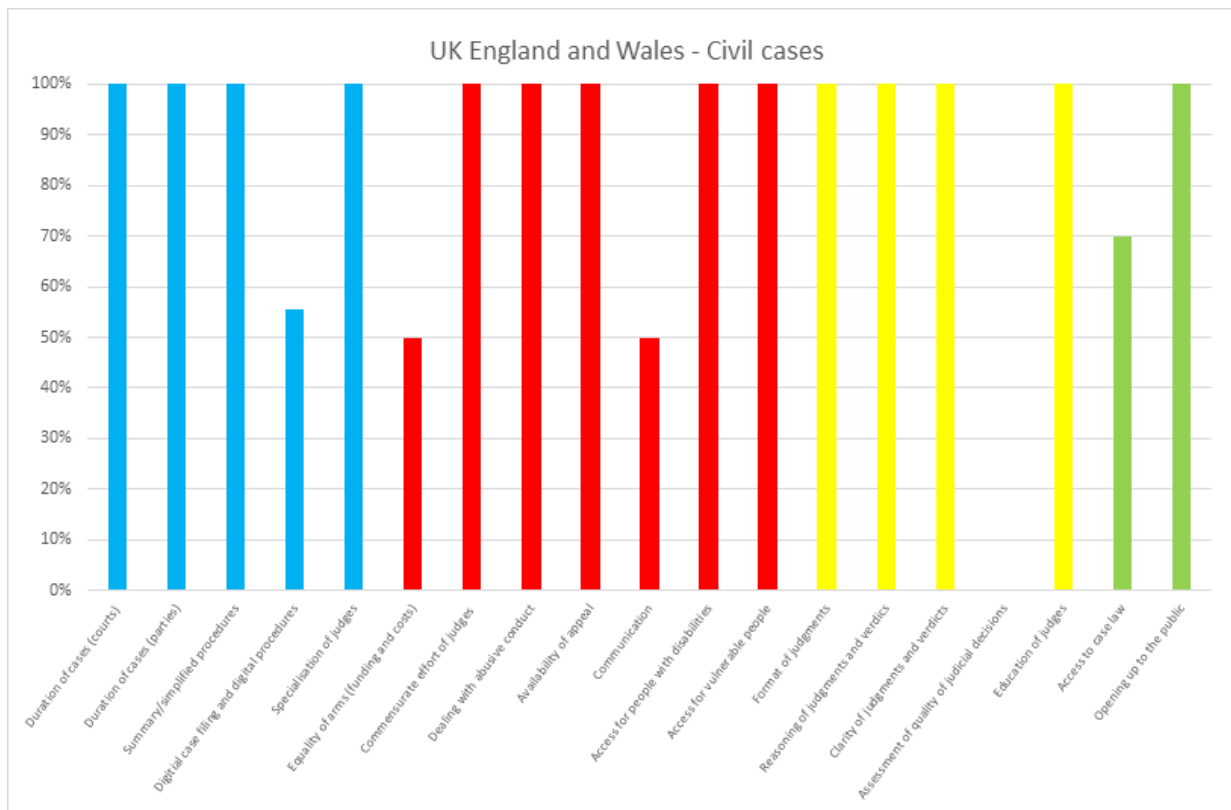
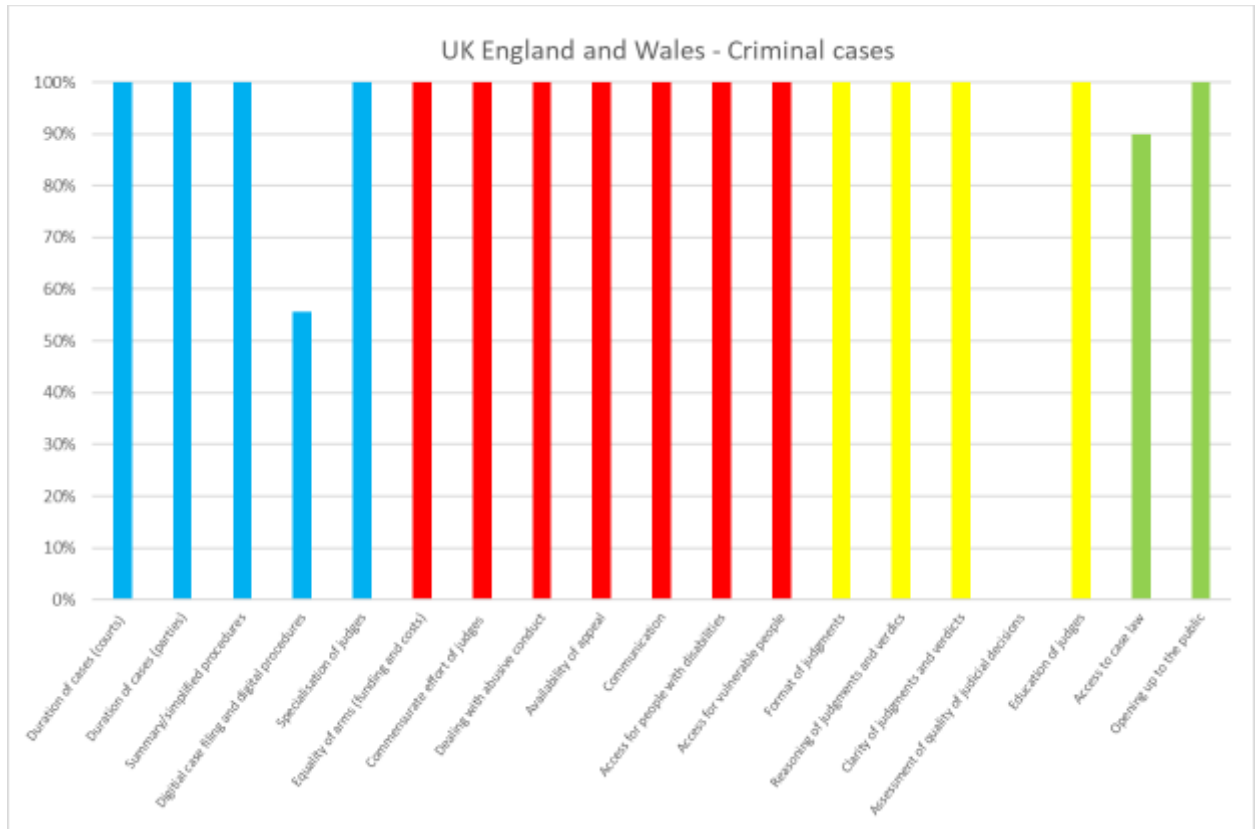


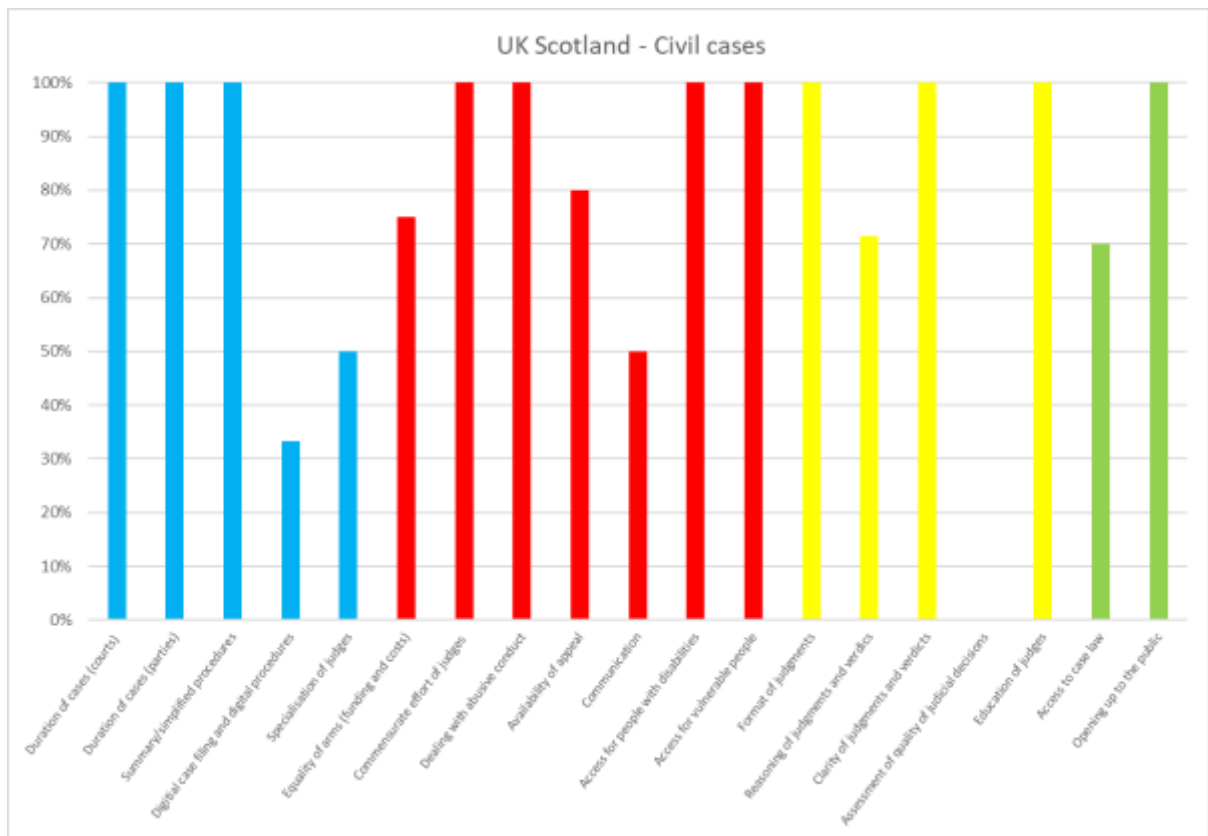
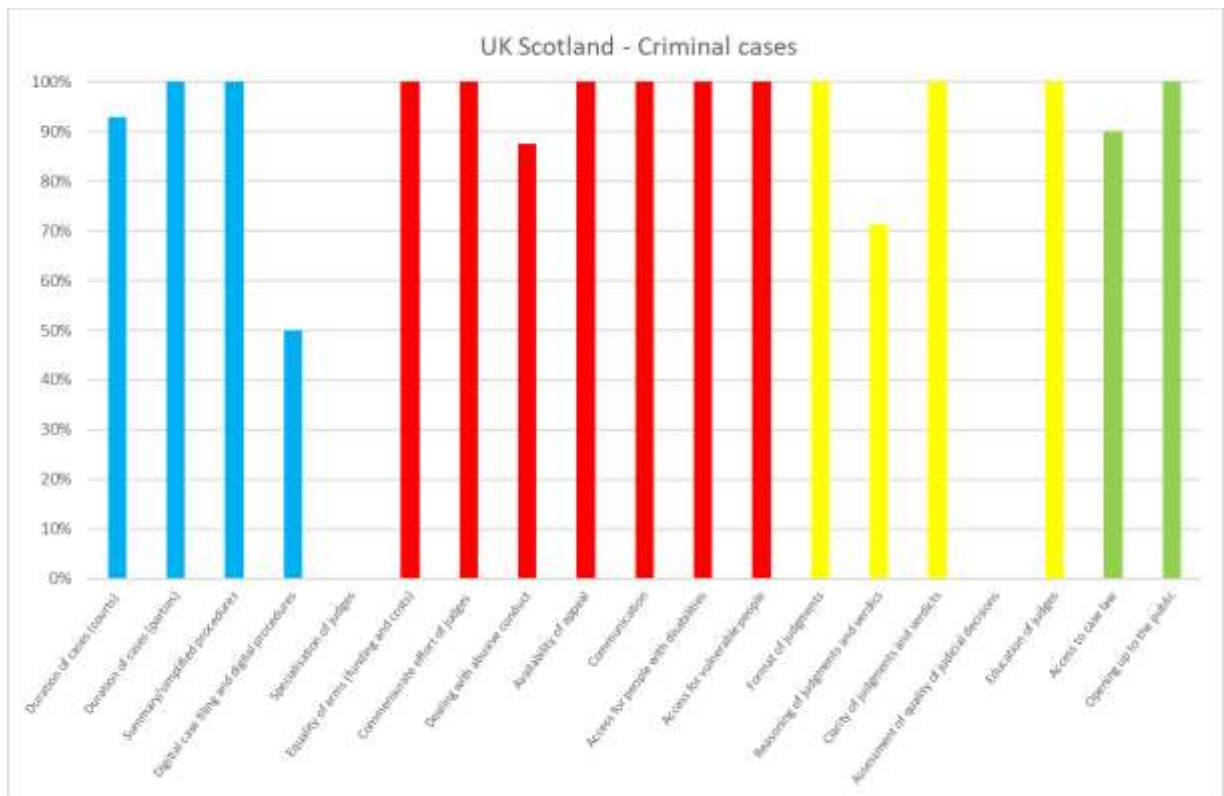
















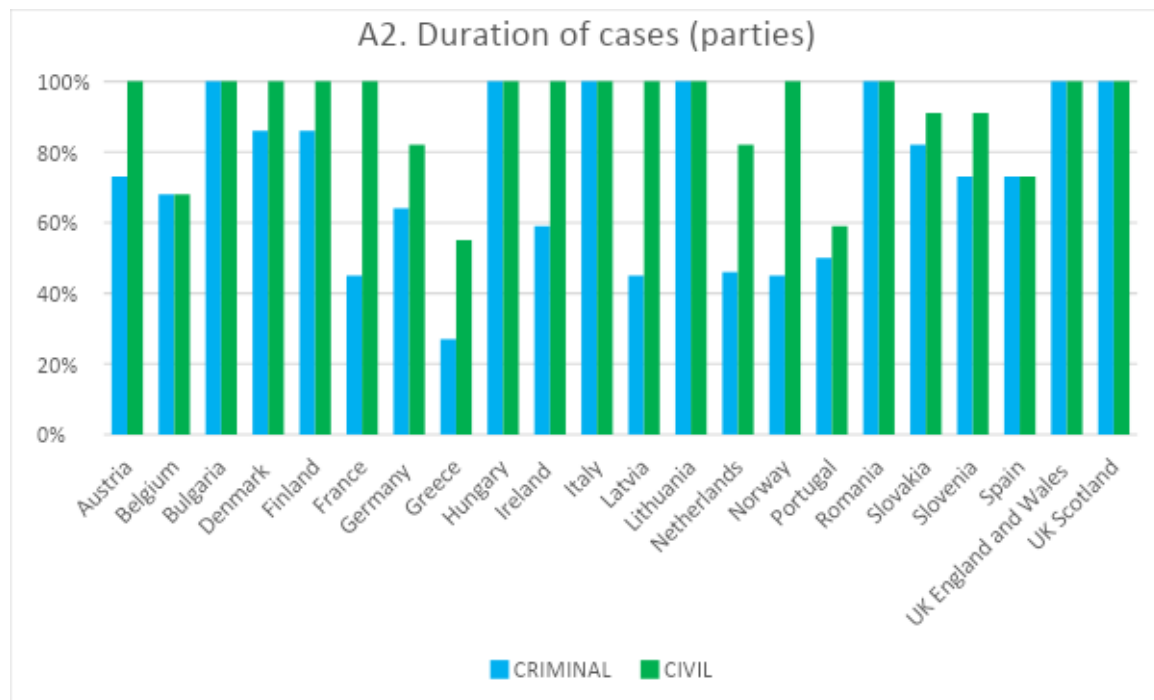
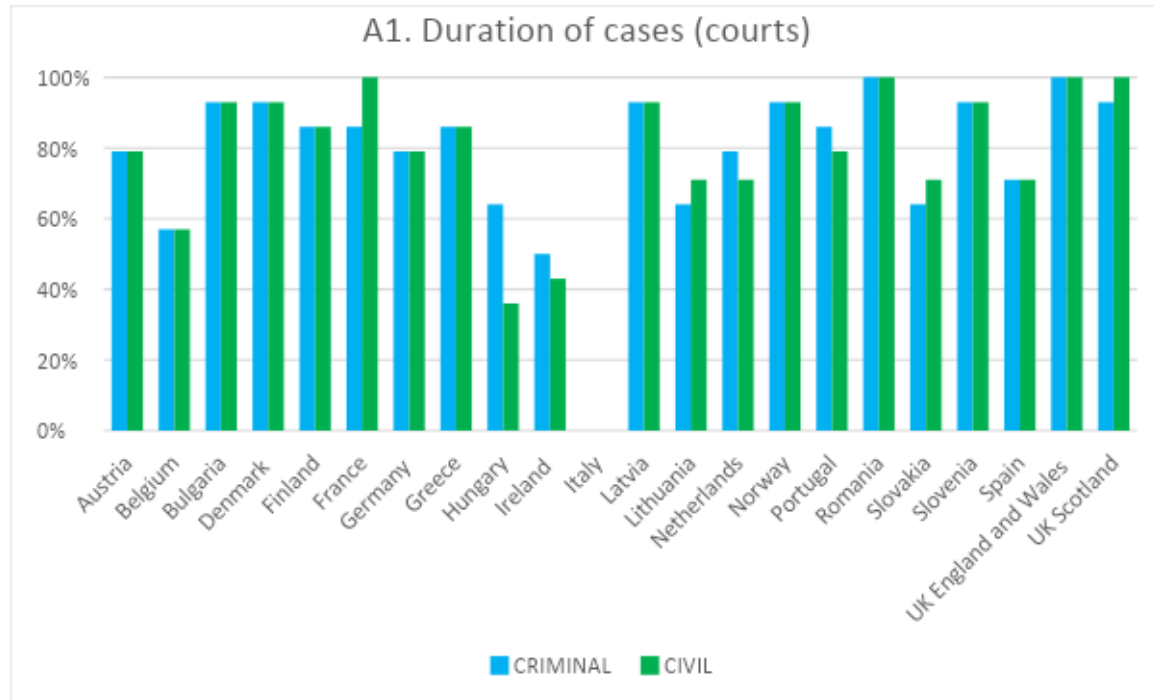
 Timeliness and efficiency of procedures

 Due process from the perspective of accessibility

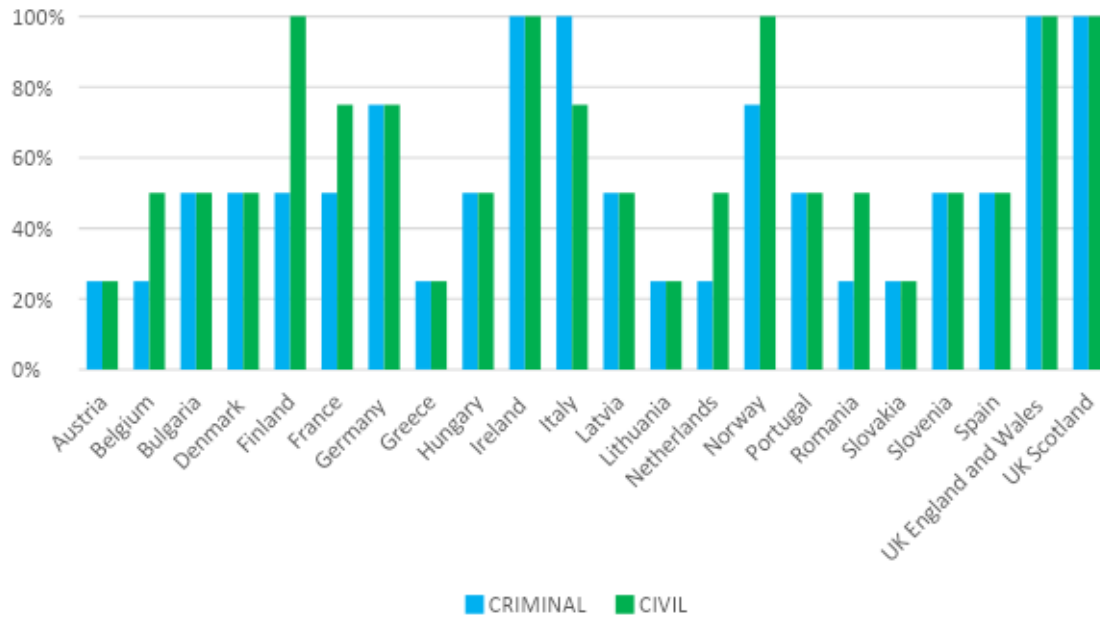
 Quality of judicial decisions and its improvement

 Providing public access to the law to guide society

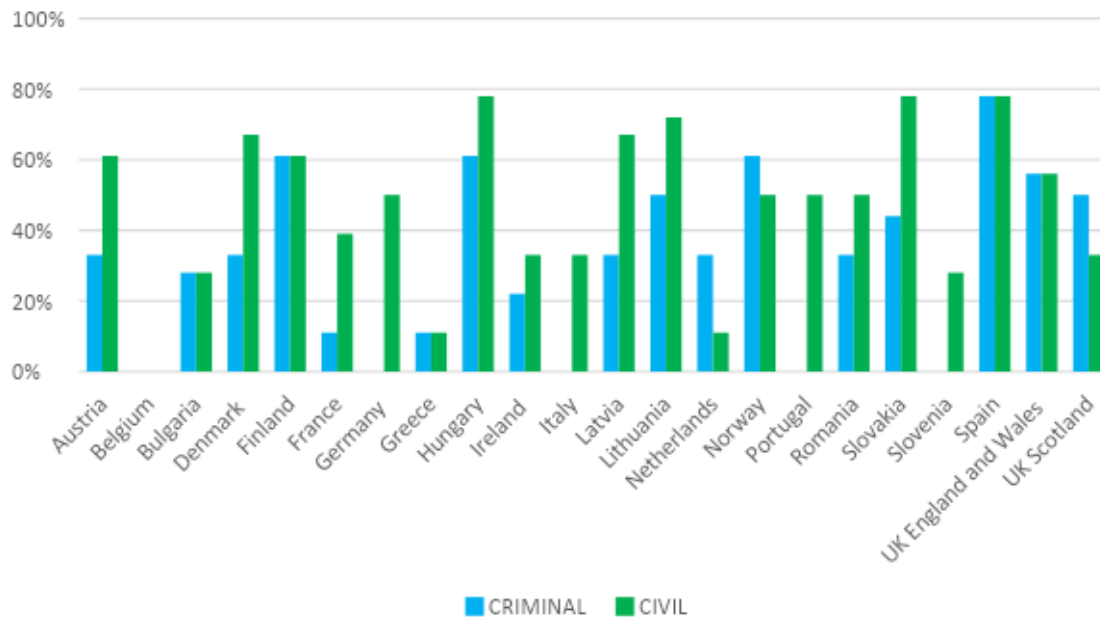
A. Timeliness and Efficiency of Procedures

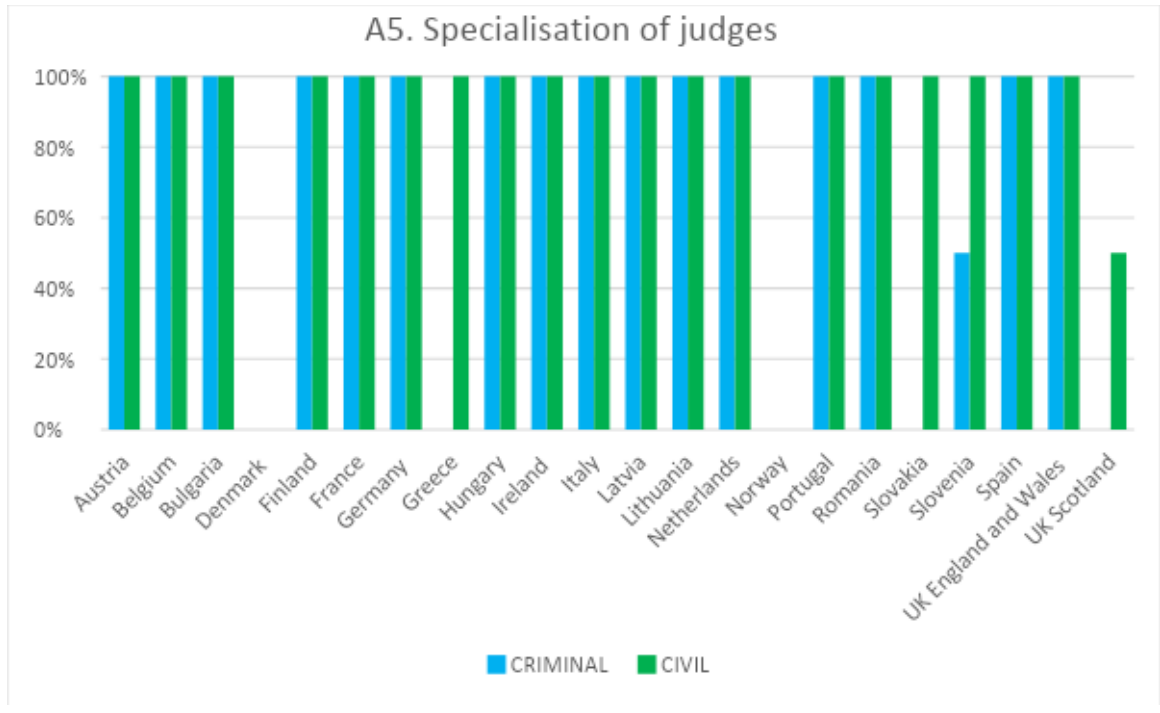


A3. Summary/Simplified procedures

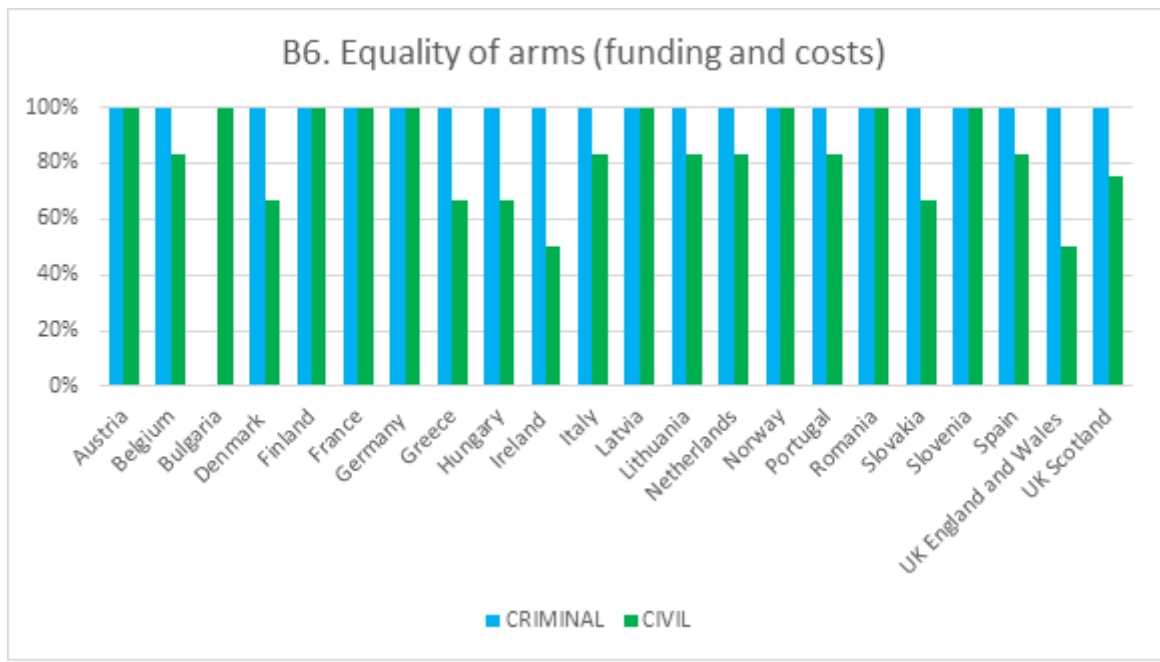


A4. Digital case filing and digital procedures

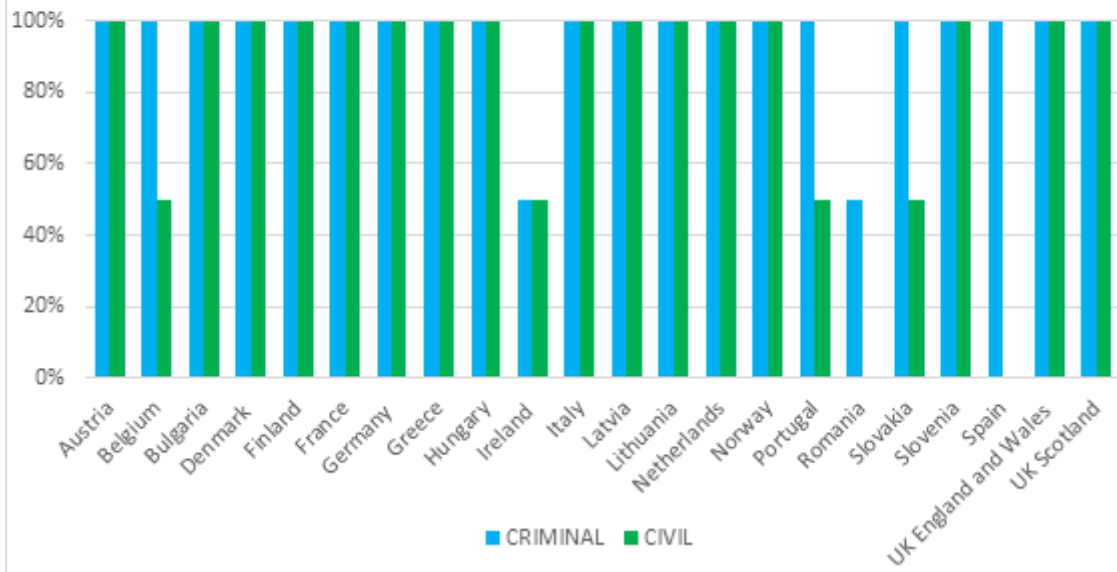




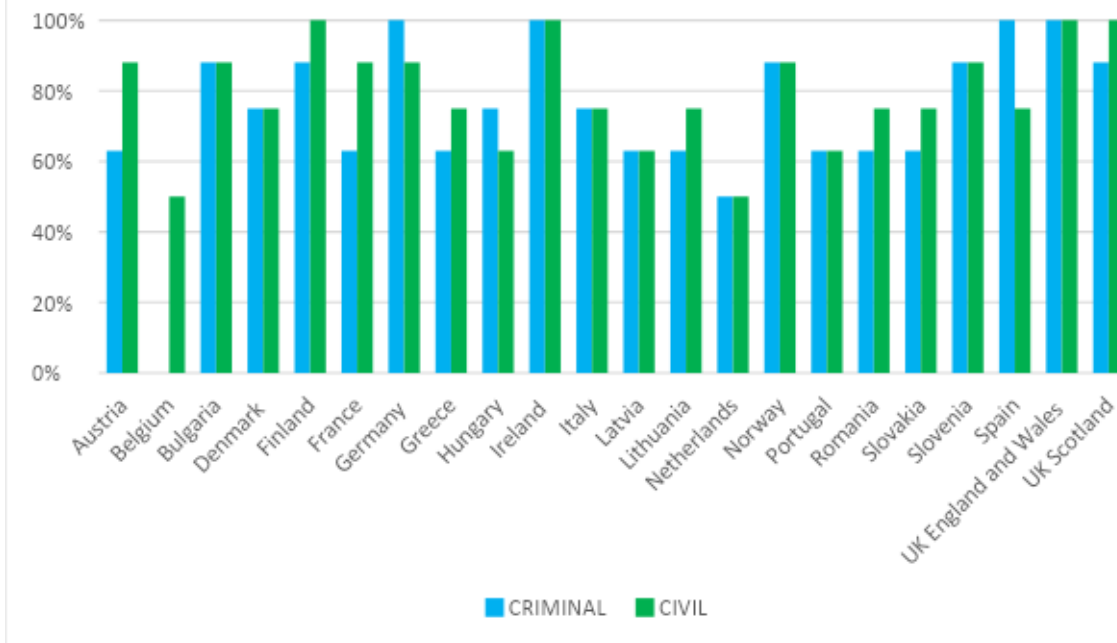
B. Due Process from Perspective of Accessibility

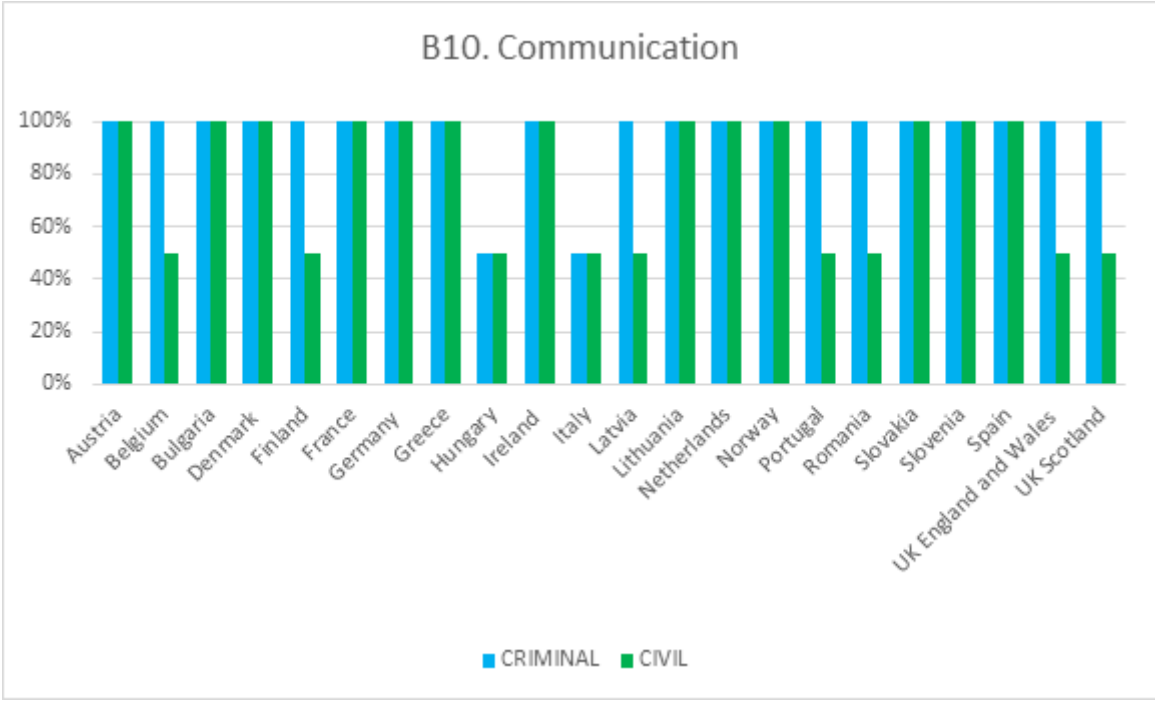
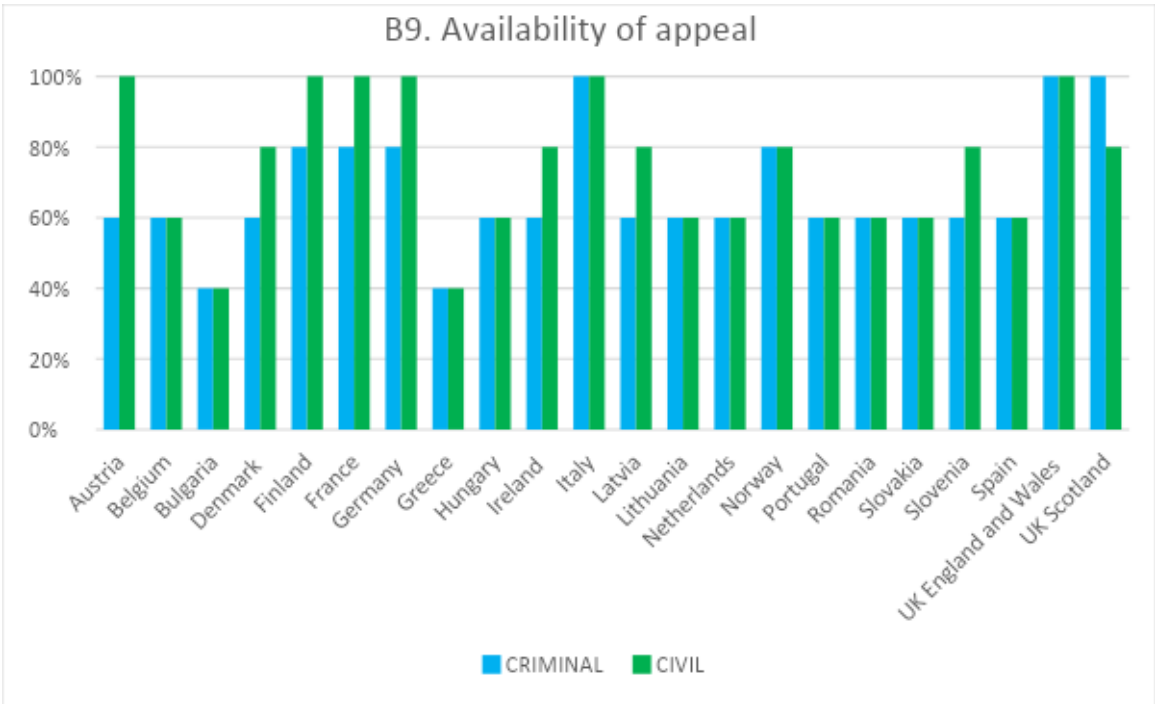


B7. Commensurate effort of judges

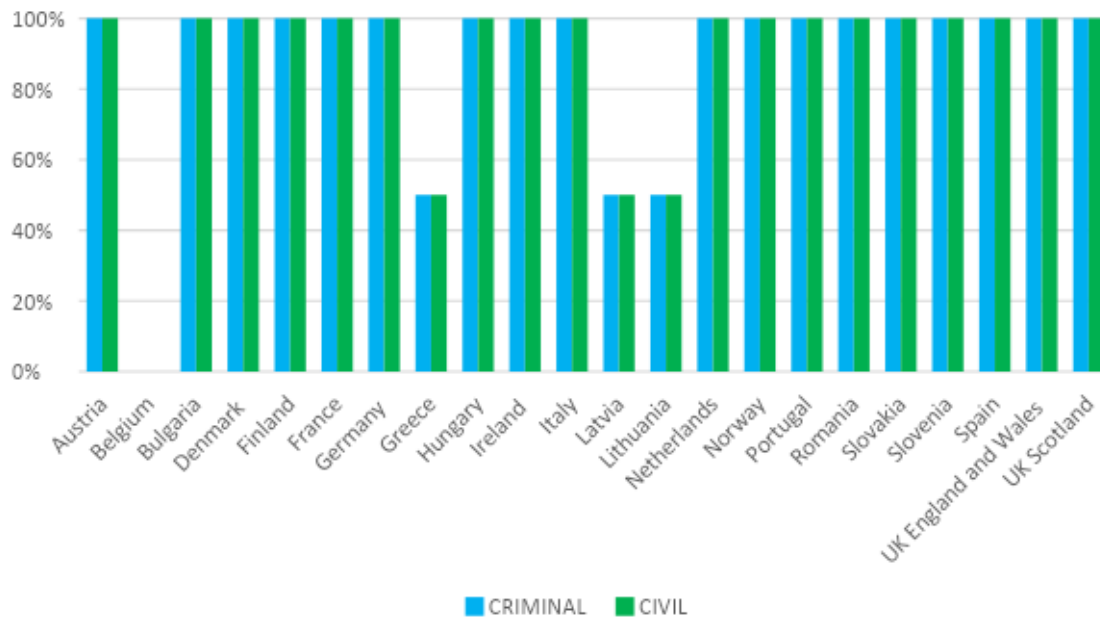


B8. Dealing with abusive conduct

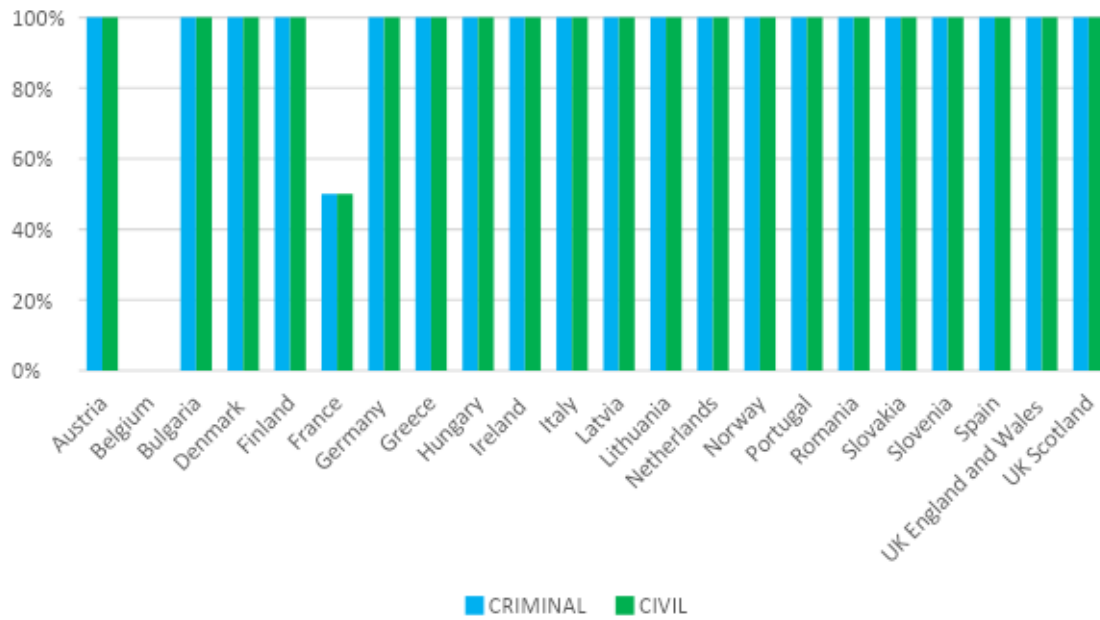




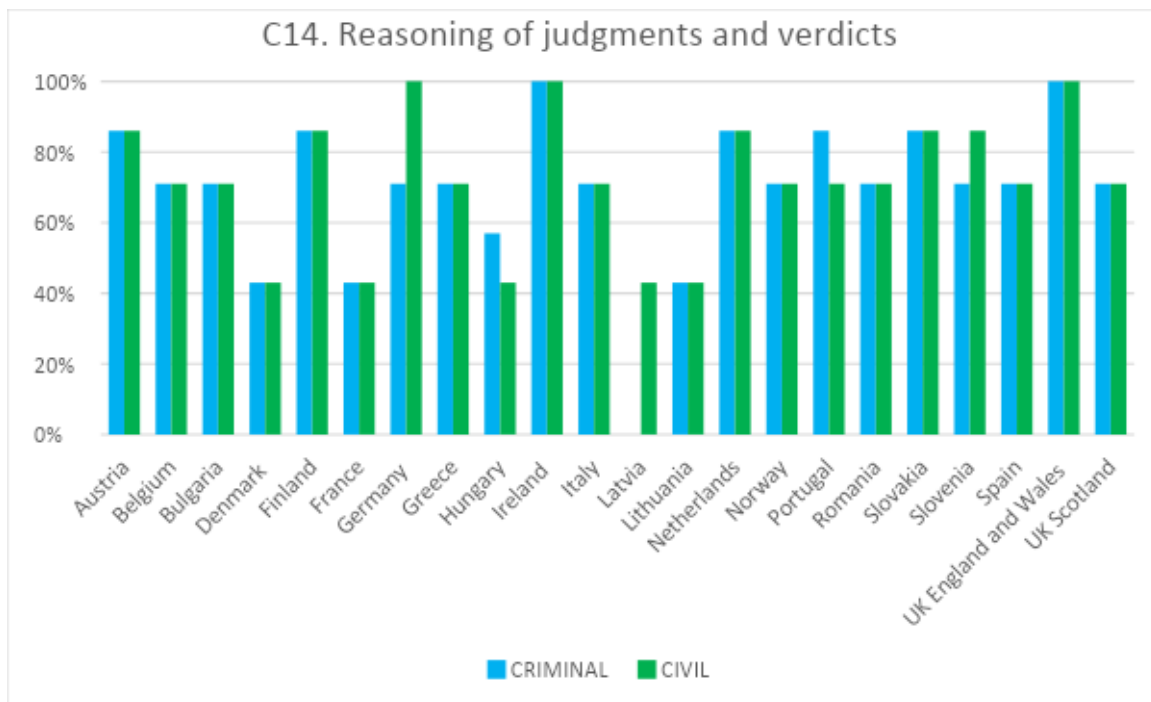
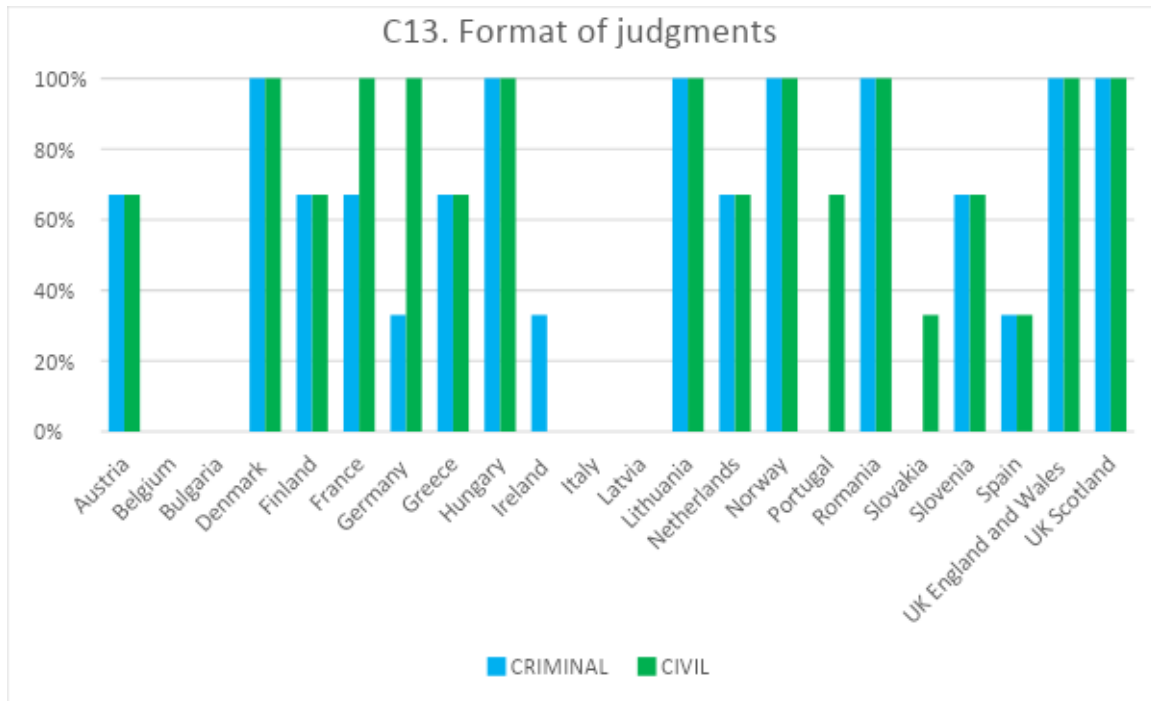
B11. Access for people with disabilities



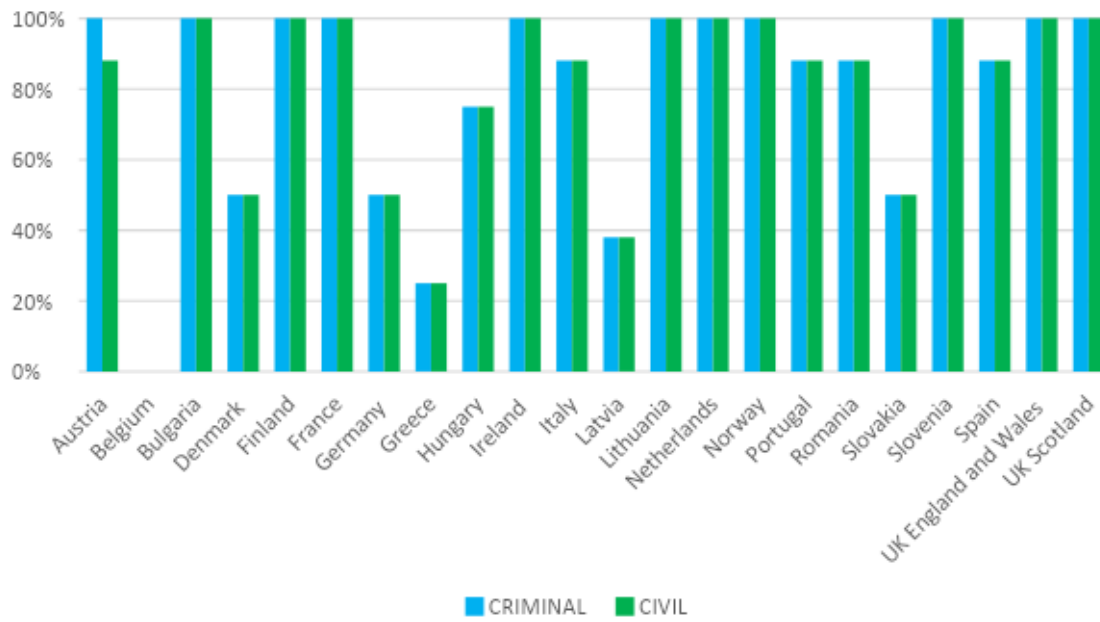
B12. Access for vulnerable people



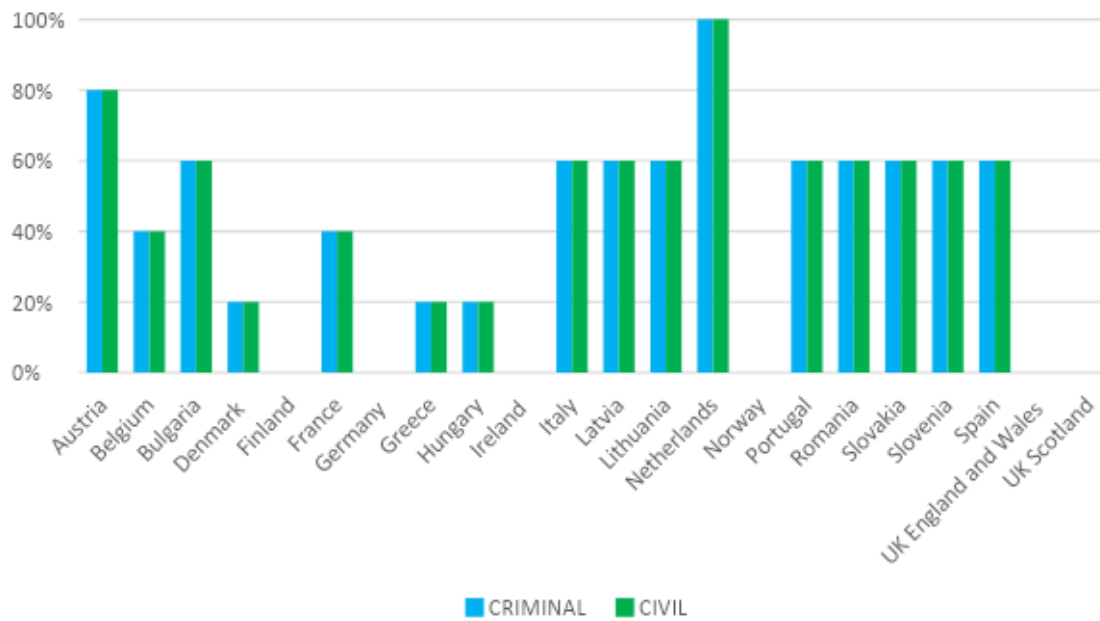
C. Quality of Judicial Decisions and its Improvement

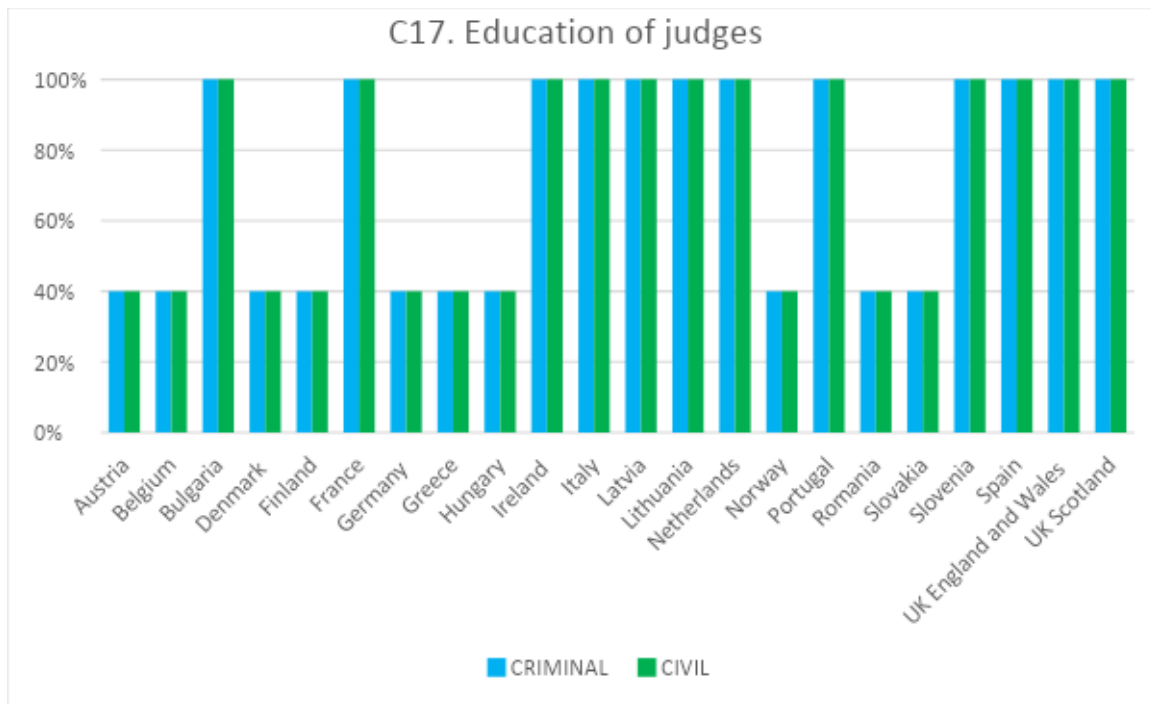


C15. Clarity of judgments and verdicts



C16. Assessment of quality of judicial decisions





D. Public Access to the Law to Guide Society

