

DRAFT

Independence and Accountability of the
Judiciary and of the Prosecution

Performance indicators 2015

ENCJ Report2014-2015

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General Introduction

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

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

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

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

As to the set of indicators a pilot was done in four countries. At its general assembly the ENCJ concluded that this empirical method has delivered useful results and that it could be applied by all members and, if they wish, the observers of the ENCJ. It was also concluded that the scope of the project could be broadened to the Prosecution. A new project group was established to undertake these tasks. The current report presents the outcomes of the activities. It has two sections. Section 1 deals with the Judiciary. Section 2 is about the Prosecution. While the section about the Judiciary presents the actual outcomes of the indicators for all participating countries and the results of related activities, the section about the Prosecution is still conceptual. It applies the framework and set of indicators developed for the Judiciary to the Prosecution and implements necessary adaptations. It need to be stressed that while all Councils that participate in the ENCJ have authority over the Judiciary, only part of them have responsibilities with respect to the Prosecution. As a consequence framework and indicators for the Prosecution have less support than those for the Judiciary. An essential next step is to involve other governing bodies of the Prosecution.

Section 1 Independence and Accountability of the Judiciary

1. Introduction

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

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

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

It was intended that the dialogue groups would continue to operate over a period of years. Moreover, the application of the indicators, including the survey among judges, would be repeated every 2 years so as to ascertain improvements or deteriorations in independence and accountability over time. The framework to do this has now been established. Further

improvements are possible and should be undertaken in the coming years. It is a growth process to gradually improve our knowledge about independence and accountability of the judiciary and gradually improve independence and accountability themselves. The report offers proposals for the follow-up.

It was concluded finally at the Assembly that in addition to the current set of indicators that applied to the Judiciary, indicators should be developed for prosecutors. Independence and accountability are also crucial for prosecutors to fulfil their role in the legal system. This has also been undertaken. The results are presented in a separate report.

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

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

- 1) All activities with regard to the Judiciary, chaired by Mr Frits Bakker;
- 2) All activities with regard to Prosecutors, chaired by Mr. Horatius Dumbrava, of the Romanian High Council.

The expert group was chaired by Sonia Naidenova. The other members were: Nuria Diaz, Colin Tyre, Sven Johannisson, and Monique van der Goes. Three of them represented Councils and one the observers, as external expert.

The project group met on the following occasions:

11 April 2014: Coordinator meeting The Hague, The Netherlands

1-2 December 2014: Project Group meeting Brussels, Belgium

12-13 February 2015: Project Group meeting Bucharest, Romania

9-10 April 2015: Project Group meeting Lisbon, Portugal

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

2. Methodology

The 2013-2014 ENCJ report Independence and Accountability of the Judiciary sets out the conceptual framework of independence and accountability that underlies the indicators and it describes the indicators in detail. The essential aspects are recapitulated here briefly. Independence and accountability are interrelated and multi-dimensional concepts. To come to grips with this complexity a general framework is required. This framework can be summarized by five basic notions.

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

transparent about performance, while accountability of the individual judge relates in particular the transparency of his judicial decisions.

As the framework distinguishes between objective and subjective independence and accountability, definitions are needed. Objective independence relates to the way in which judicial structures are in practice arranged, whilst subjective independence relates to the perception of the Judiciary amongst different interest groups including citizens in general, court users and judges.

The performance indicators consist of objective and subjective indicators. Consistent with the definitions, objective indicators are about the legal and other objectively observable aspects of the legal system that are essential for independence and accountability. As to the measurement of these objective aspects, the scoring or categorization is done by the Councils or, in the absence of a council, other governance bodies, using a standardized questionnaire. It is a self-evaluation, but of aspects that can be checked by anybody who is knowledgeable about the legal systems concerned.

Subjective indicators are about the perceptions about independence and related topics among the population, the users of the courts and the judges themselves. Subjective indicators about accountability are not yet available. The ENCJ intends to look at perceptions of accountability at a later stage. With respect to independence and related subjects external surveys are available about perceptions in society. Also, some judiciaries have conducted satisfaction surveys among court users. No data are available about the perceptions of judges, and the project group has undertaken to fill this gap.

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

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

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

4. Judicial decisions and procedures, including complaints processes should all preferably be formalised, public and transparent.
5. Transparency requires active dissemination of information, rather than simply making information theoretically available.

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

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

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

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

Areas covered by the indicators

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

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

The resulting set of indicators for 2015 is listed below.

Indicators of the objective independence of the Judiciary as a whole:

- 1) Legal basis of independence;
- 2) Organizational autonomy of the Judiciary;
- 3) Funding of the Judiciary;
- 4) Management of the court system.

Indicators of the objective independence of the individual judge:

- 5) Human resource decisions about judges;
- 6) Non-transferability of judges;
- 7) Internal independence of the Judiciary.

Indicators of the subjective independence of the Judiciary and the individual judge:

- 8) Independence as perceived by citizens in general;
- 9) Trust in Judiciary, relative to trust in other state powers by citizens in general;
- 10) Judicial corruption as perceived by citizens in general;
- 11) Independence as perceived by court users at all levels;

12) Independence as perceived by judges themselves.

Indicators of the objective accountability of the Judiciary:

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

Indicators of the objective accountability of the individual judge:

- 6) Applicable codes of judicial ethics;
- 7) The procedures relating to the withdrawal and recusal of an individual judge;
- 8) Whether judges are allowed to undertake external activities, and the disclosure of such activities and interests;
- 9) The degree to which legal proceedings are readily accessible and understandable to citizens generally.

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

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

indicators have been simplified to avoid definition problems. It was unequivocally concluded that from the perspective of independence no guidelines are the preferred situation, while non-binding guidelines are preferred to binding guidelines. This is reflected in the scoring rules.

Concerning accountability, two changes were made:

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

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

4. Outcomes in general and per country

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

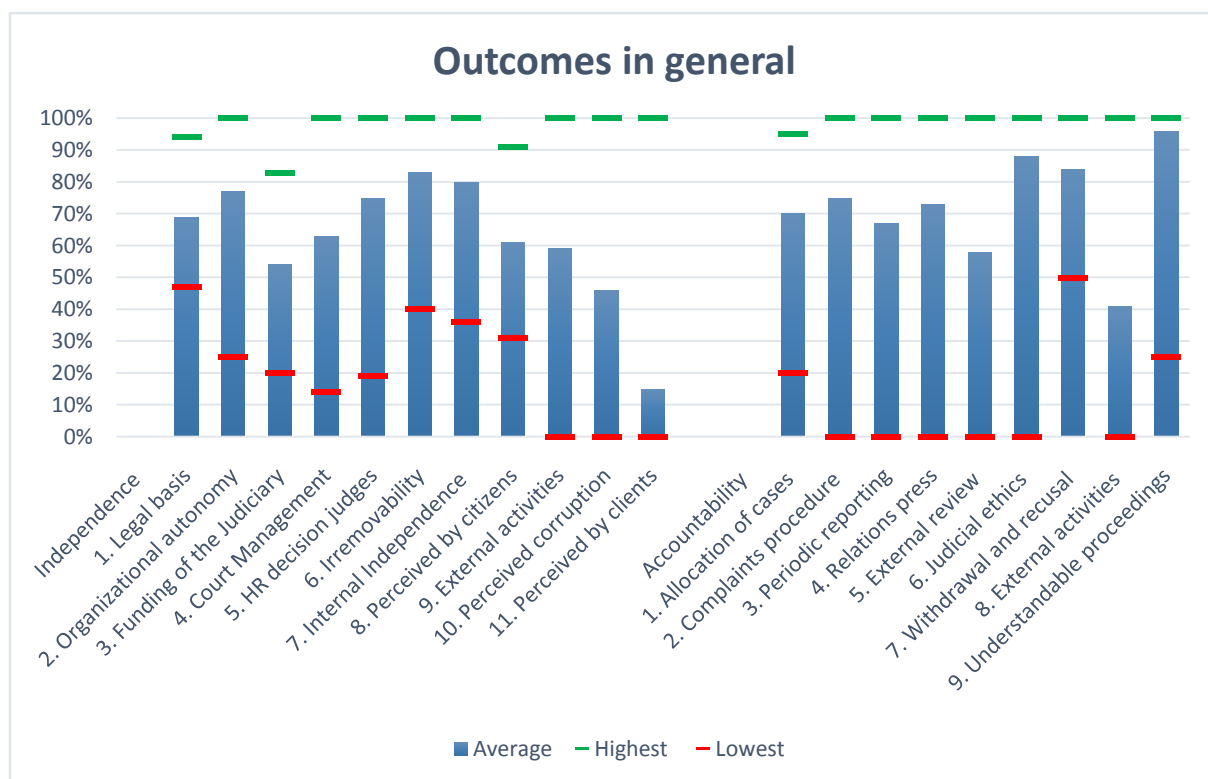
Method of presentation

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

4.1 Outcomes in general

The table below gives the average score per indicator over all participating members and observers of the ENCJ. The red dash gives the lowest score of any country and the green dash the highest score. For all indicators a high score is good and a low score bad. Obviously, the average scores give only a very rough indication of the outcomes.

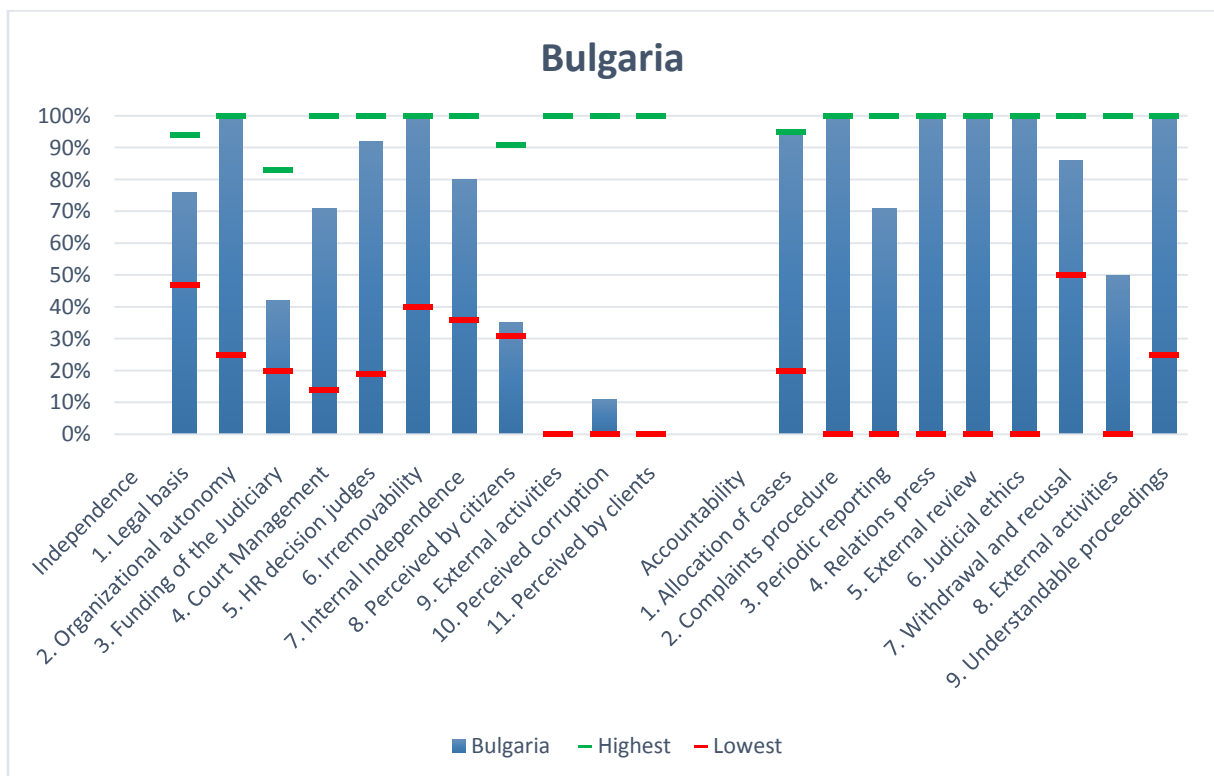
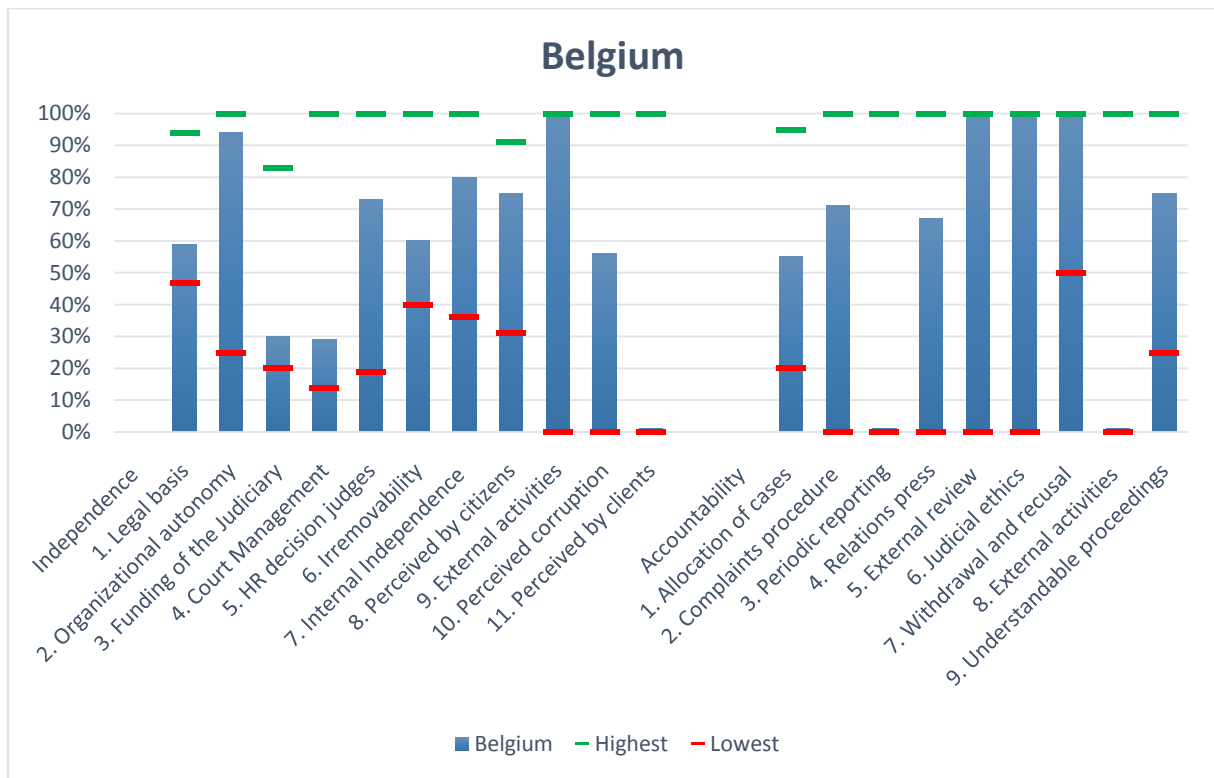
¹As interval scales are used (per sub indicator points can be earned on a scale with equal intervals: the distance between 1 and 2 is the same as between 2 and 3), taking percentages is allowed.

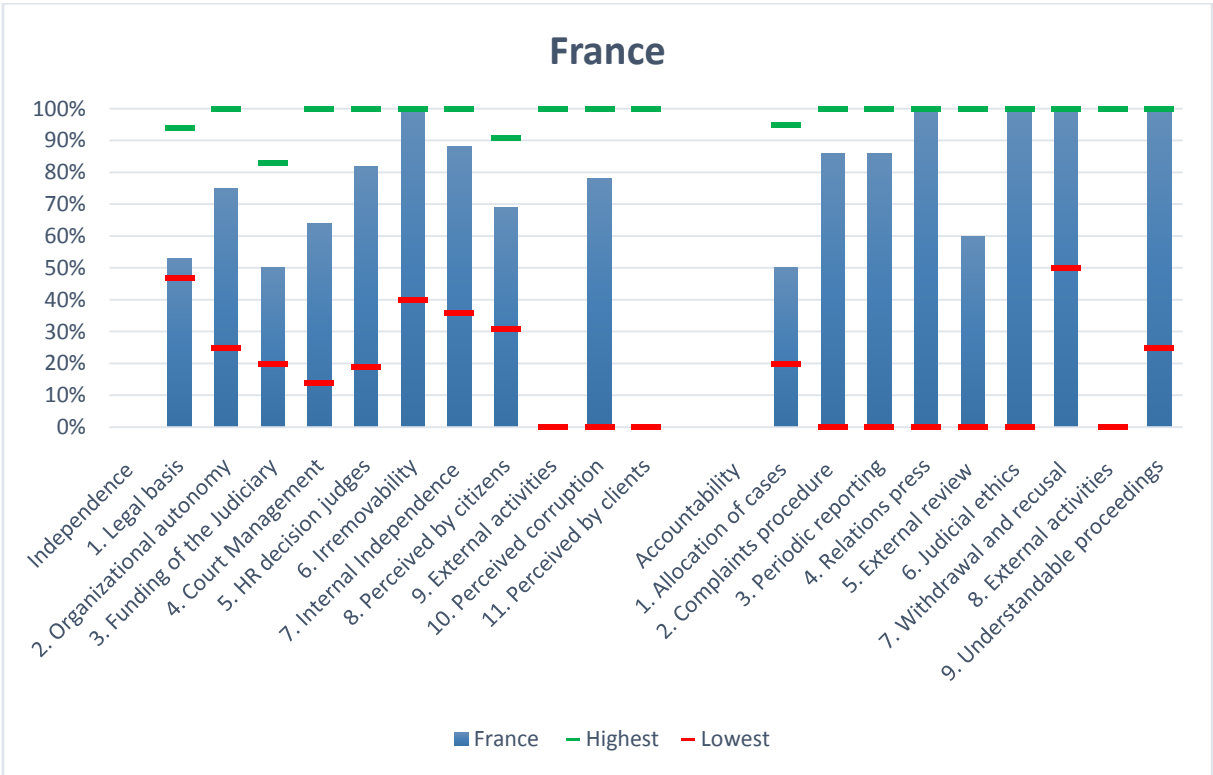
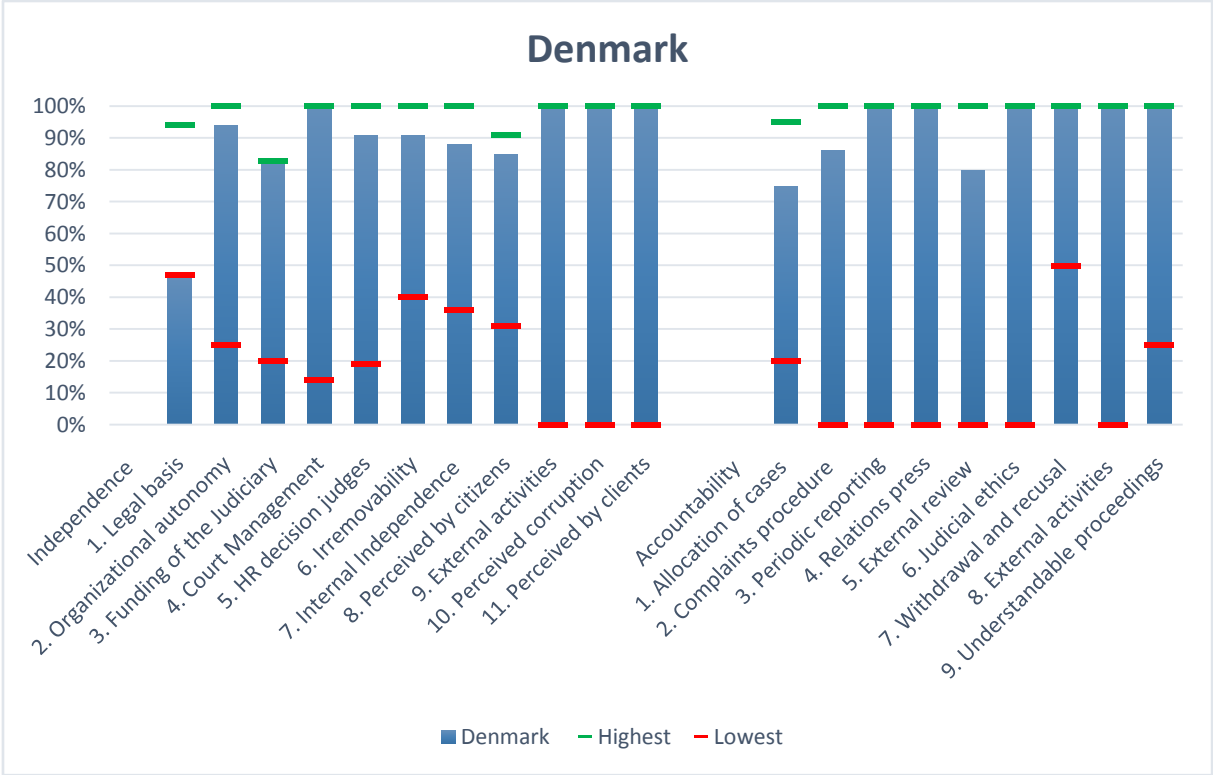


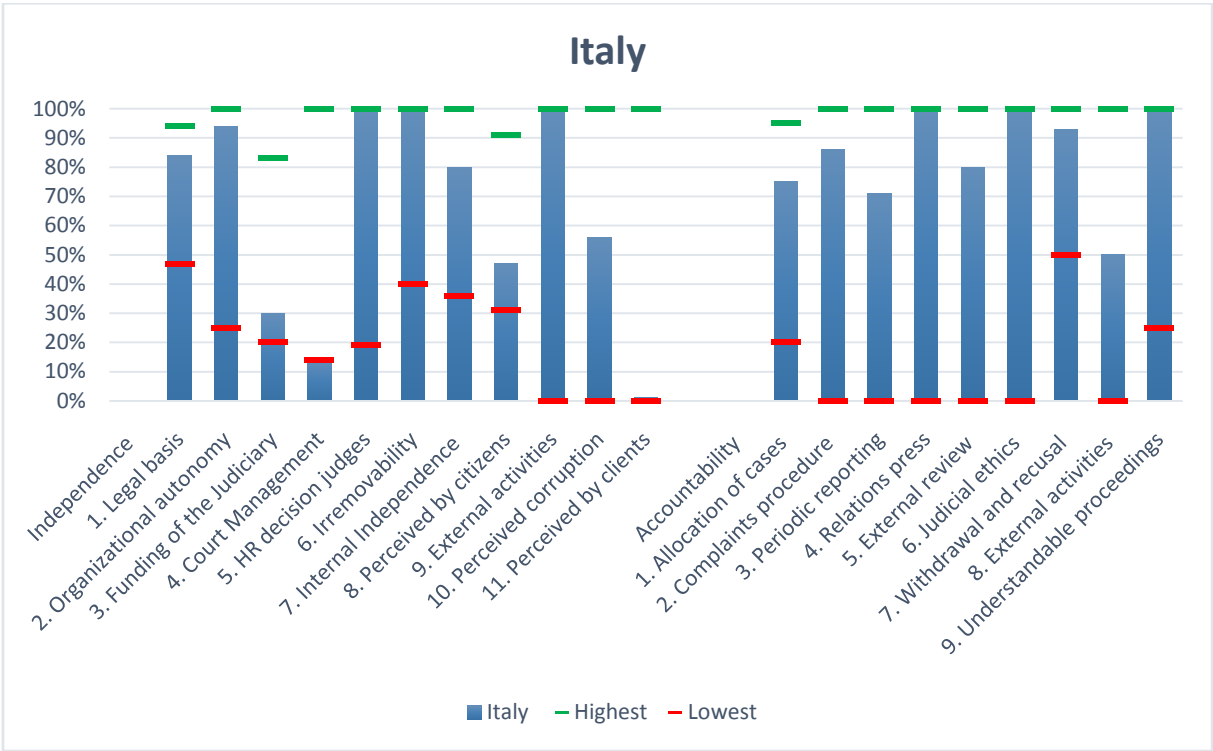
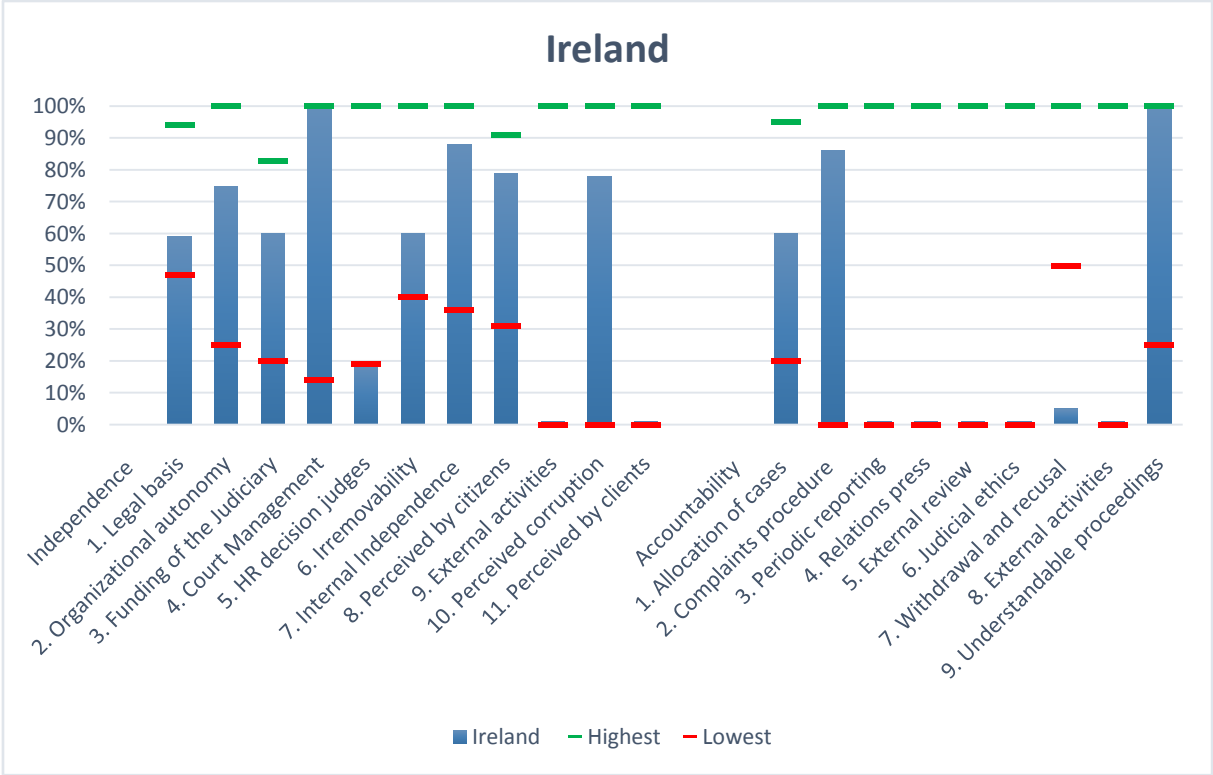
Nevertheless, some general conclusions can be drawn from the averages in combination with a global inspection of the country outcomes.

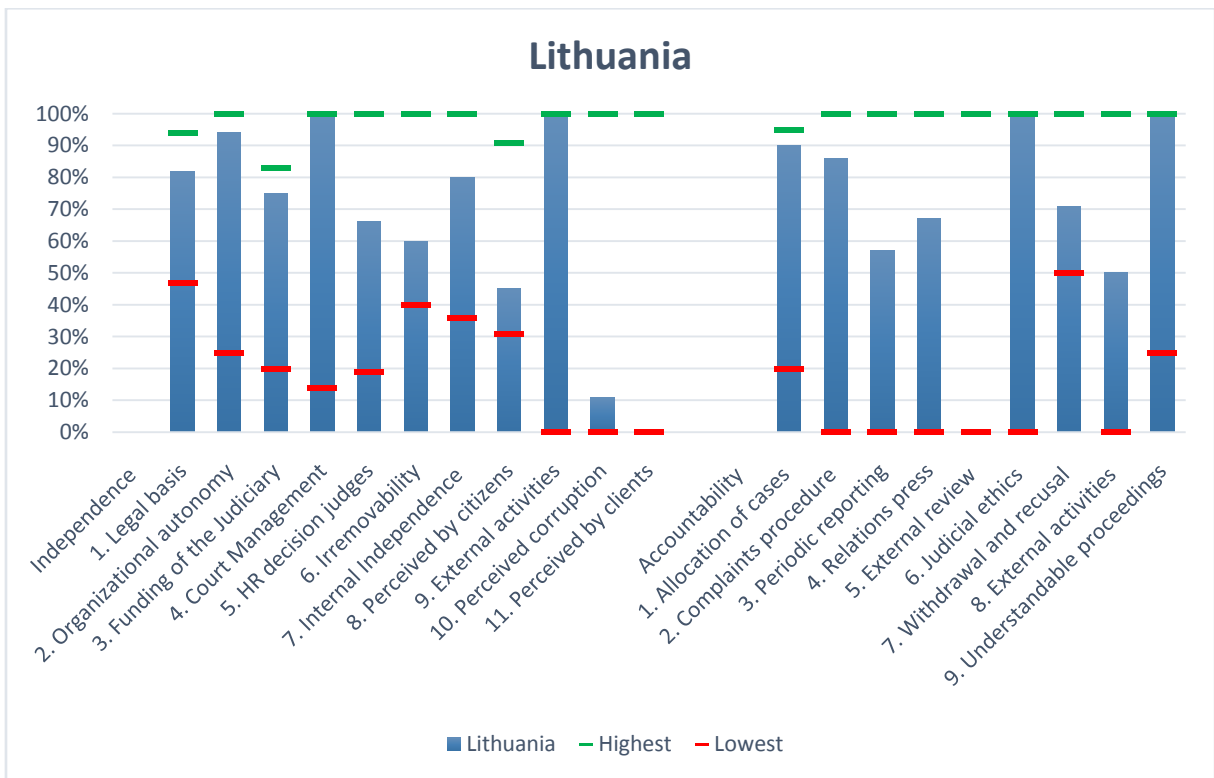
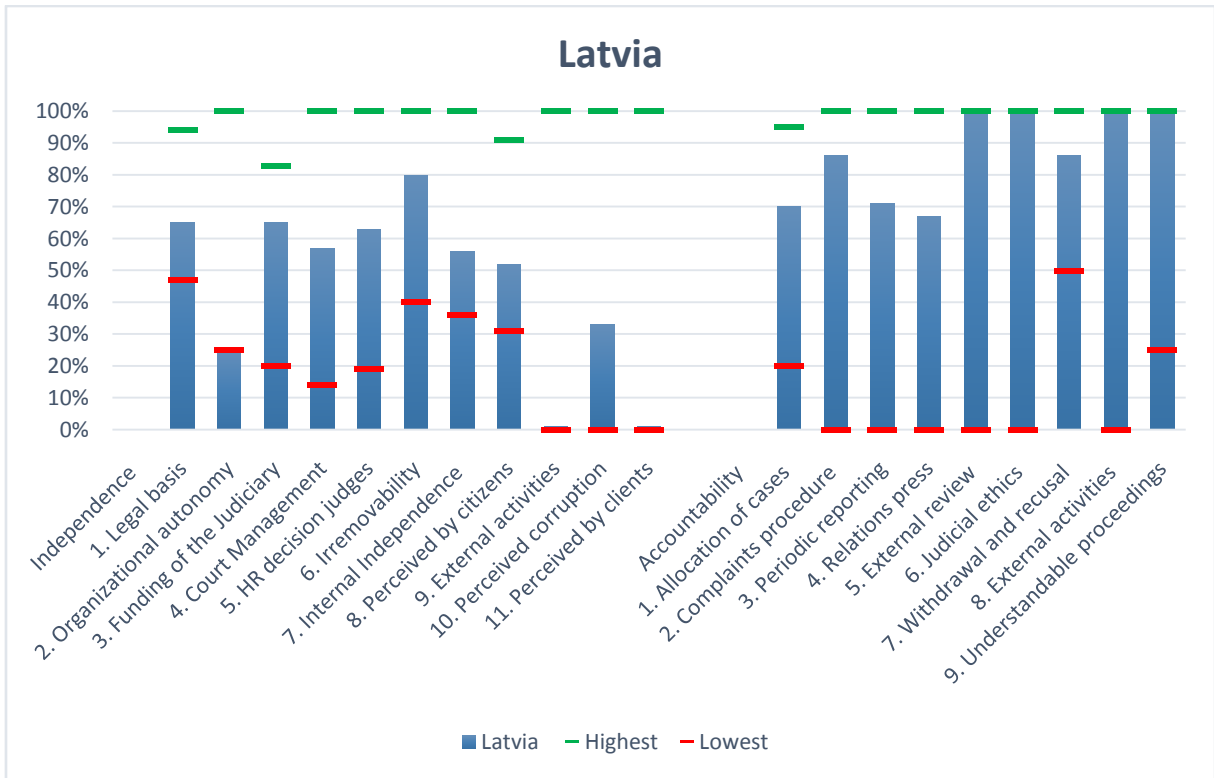
1. There is much room for improvement with respect of independence as well as accountability, judging from the difference between the actual scores and what are deemed good arrangements (100%).
2. Generally, countries score higher on objective independence (indicators 1-7) than on subjective independence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

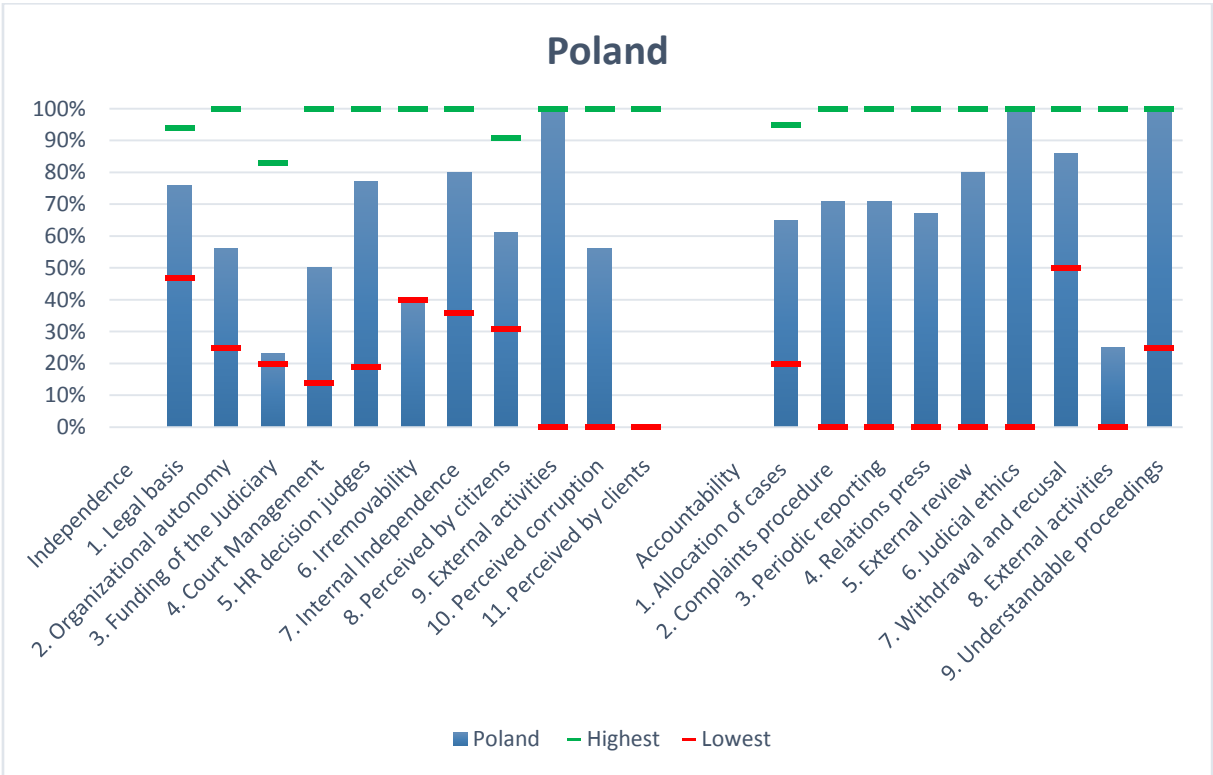
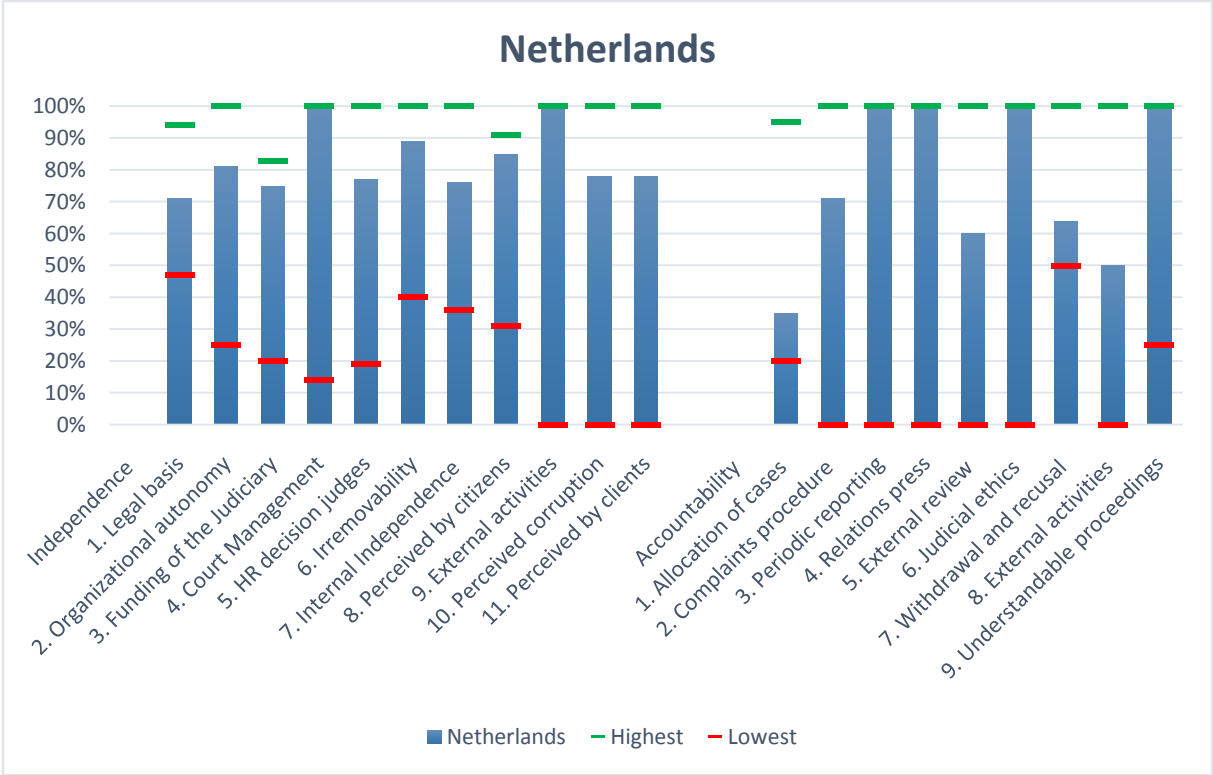
4.2.1 Outcomes members

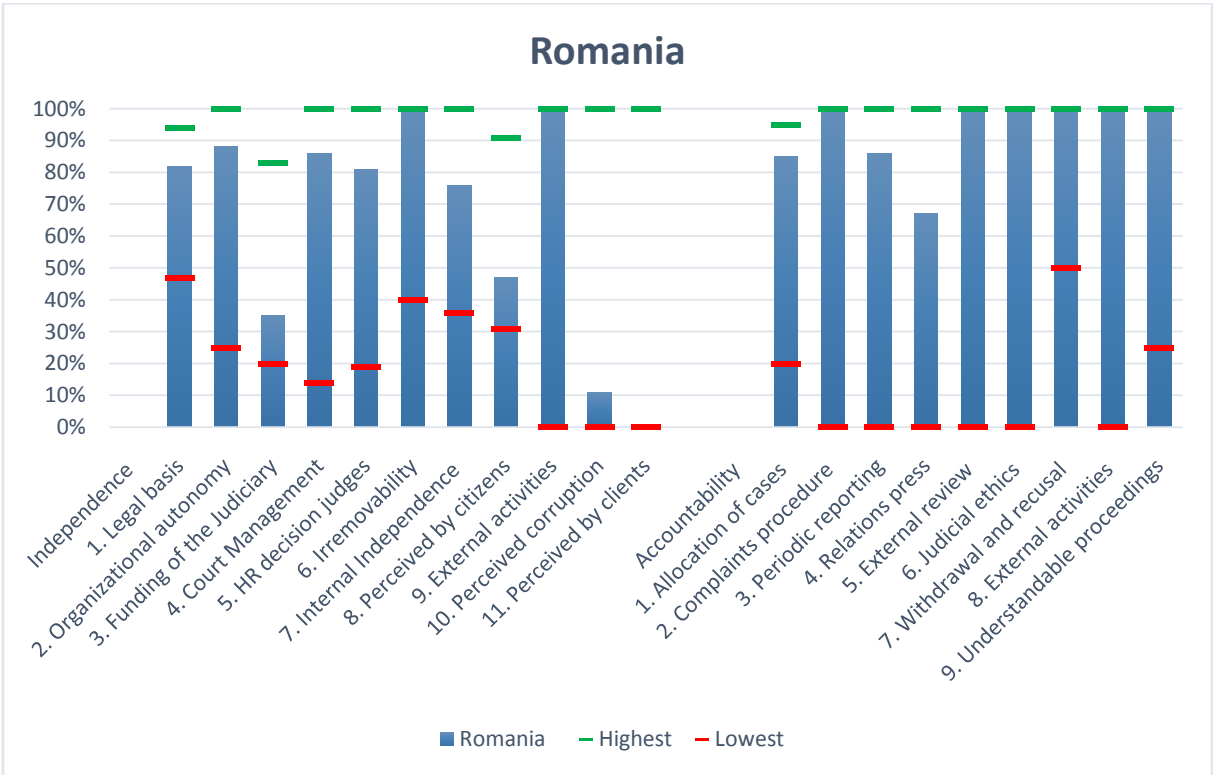
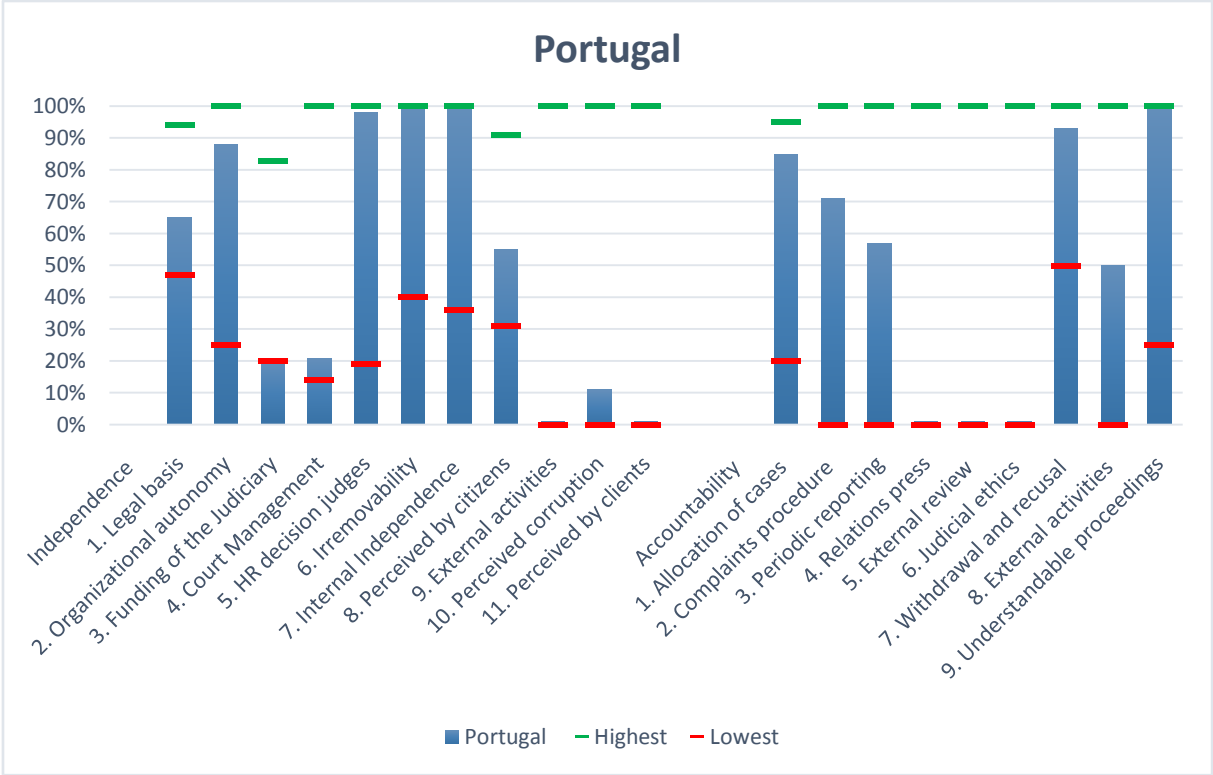


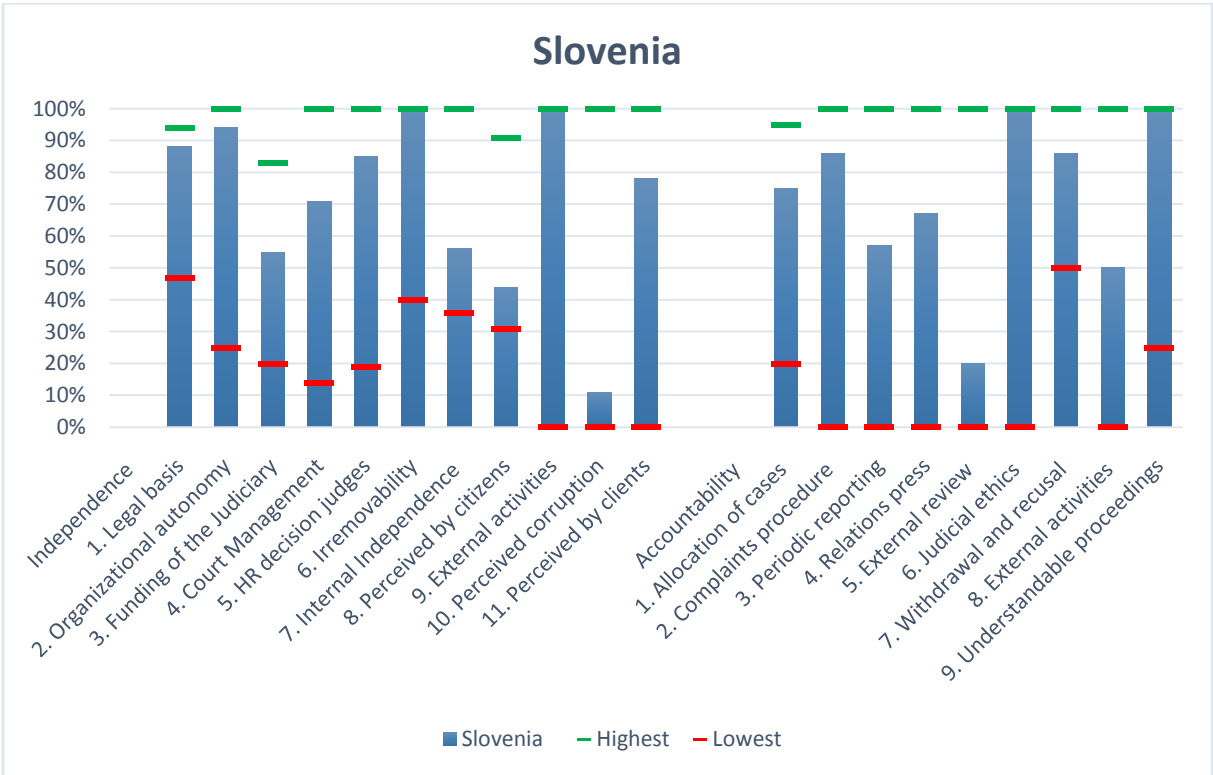
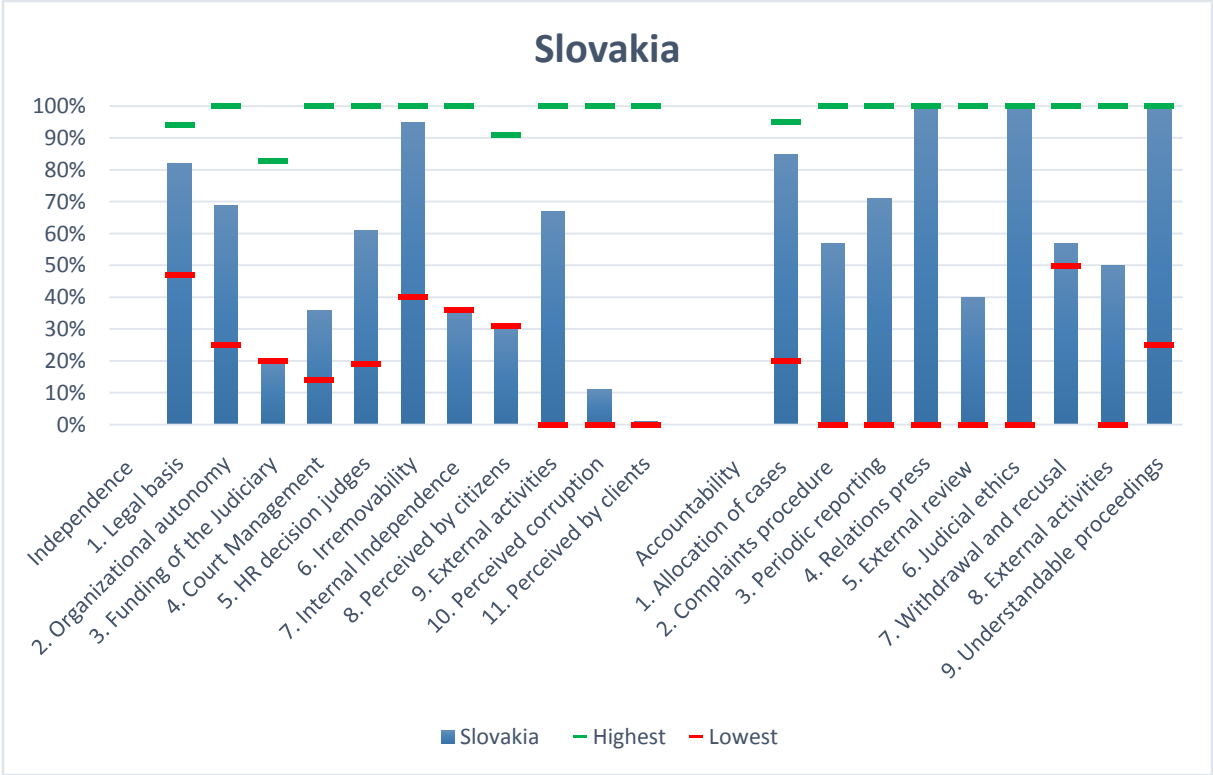


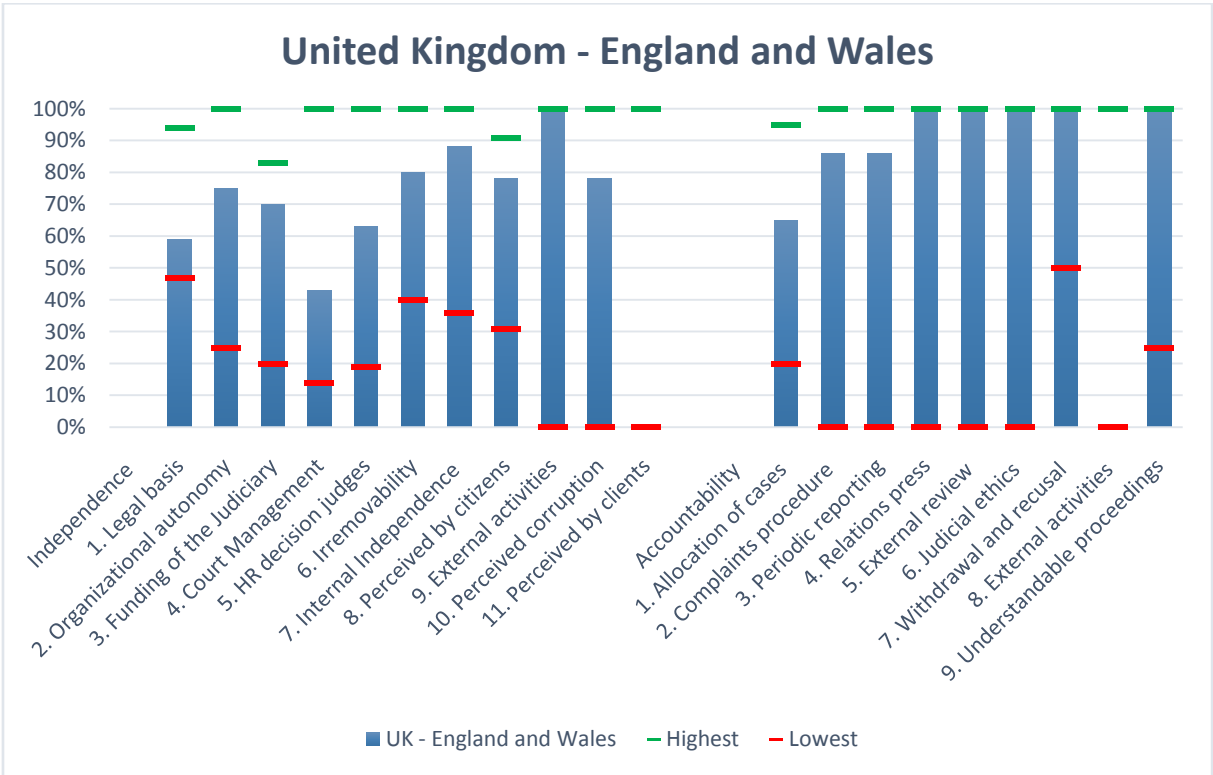
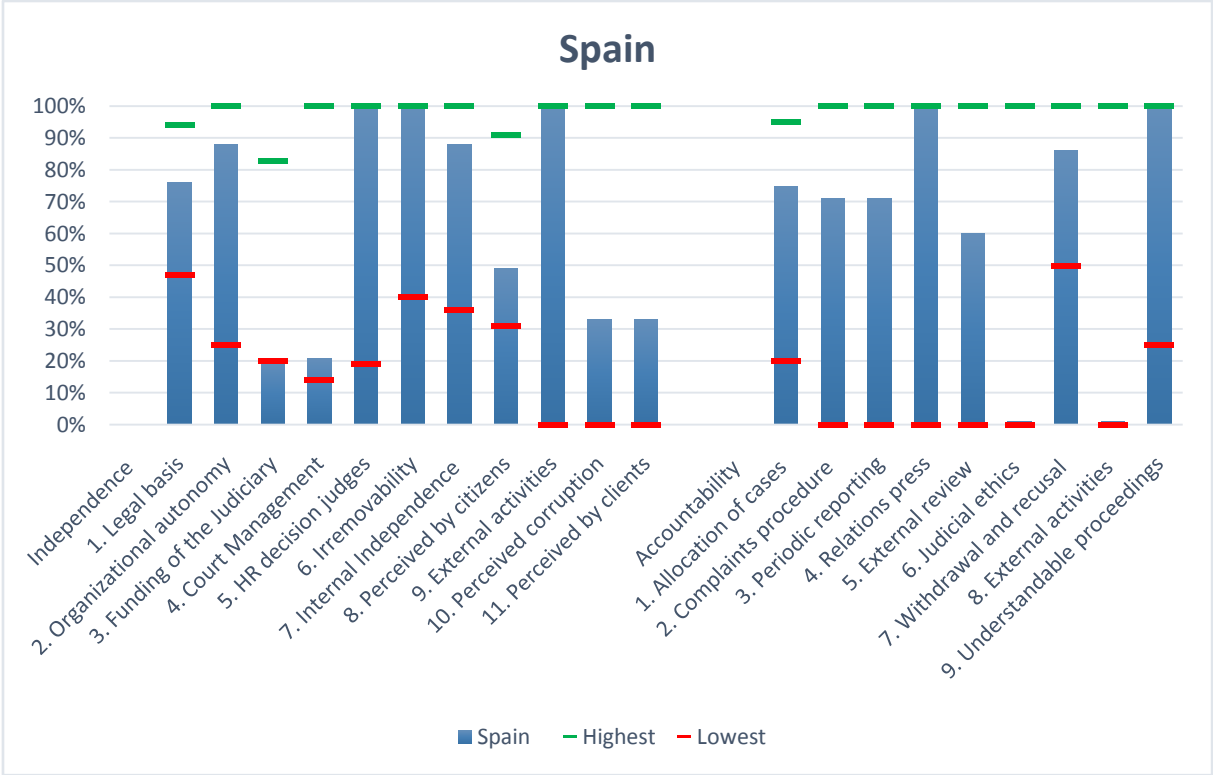


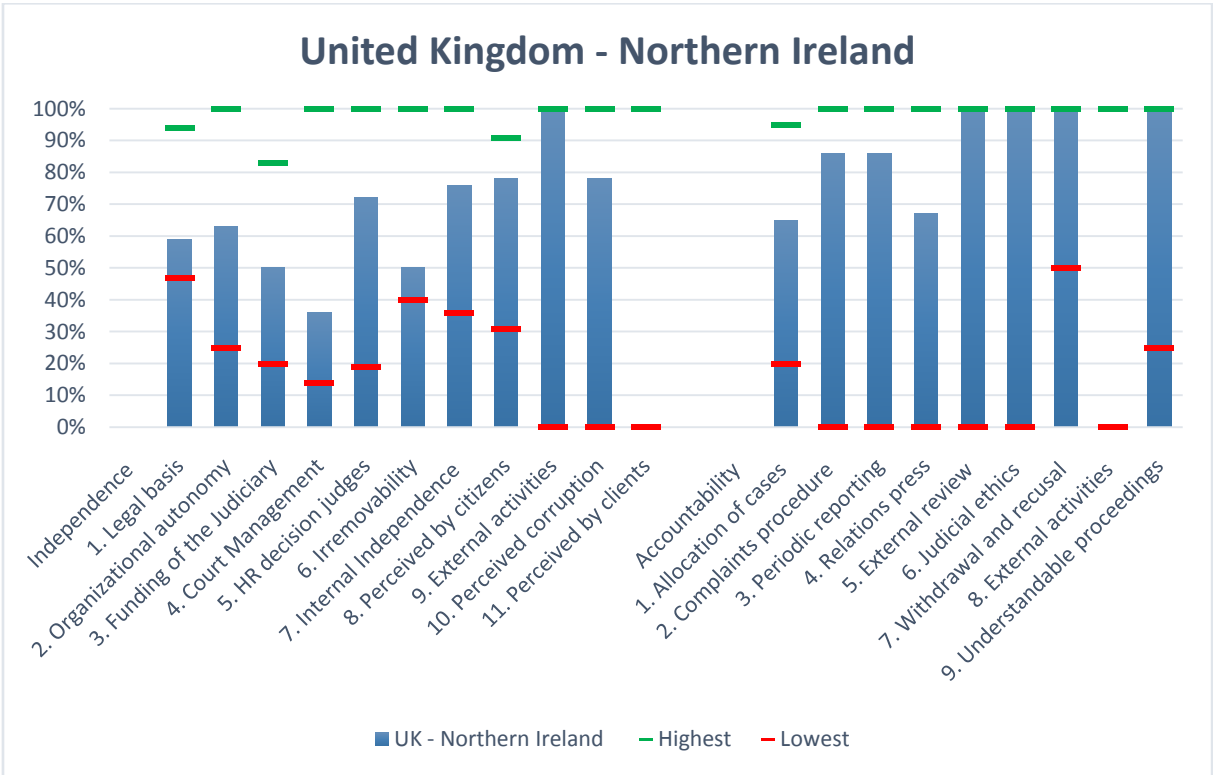
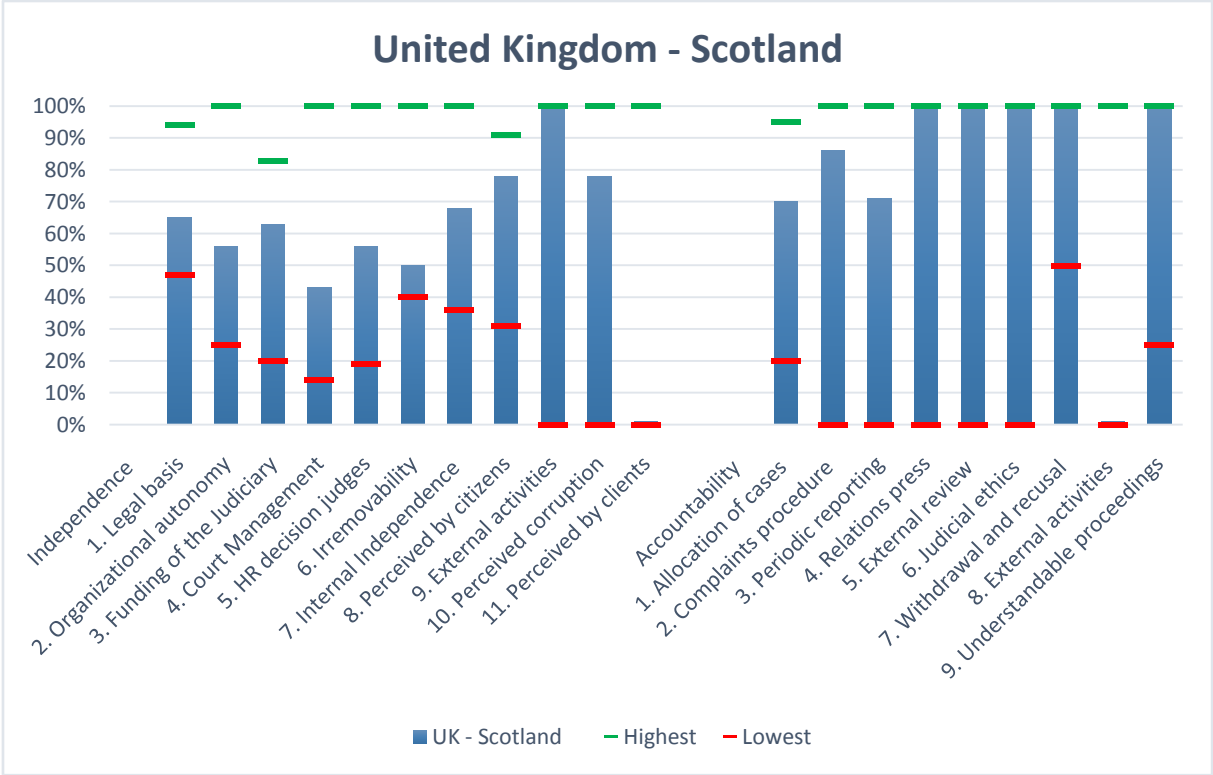






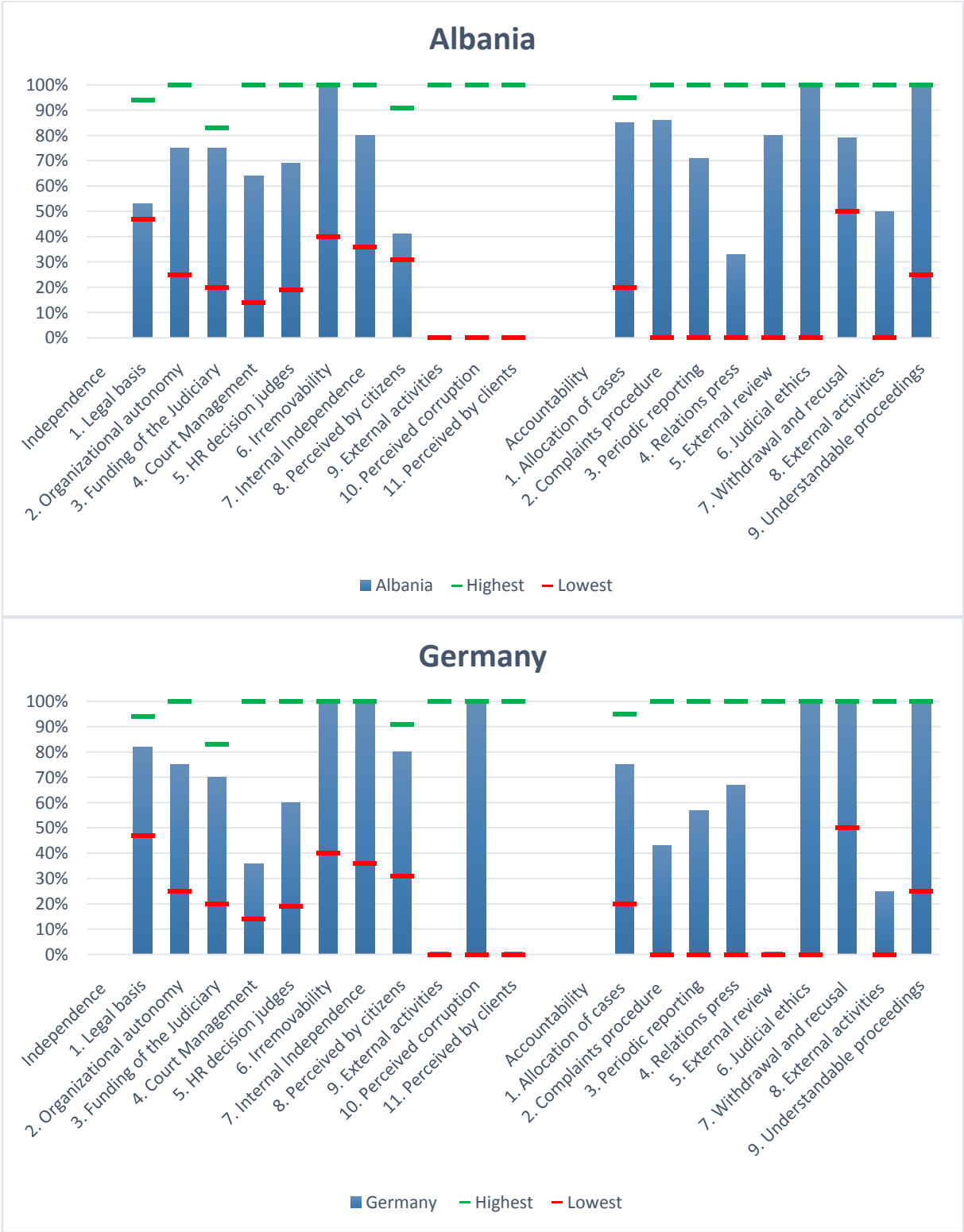


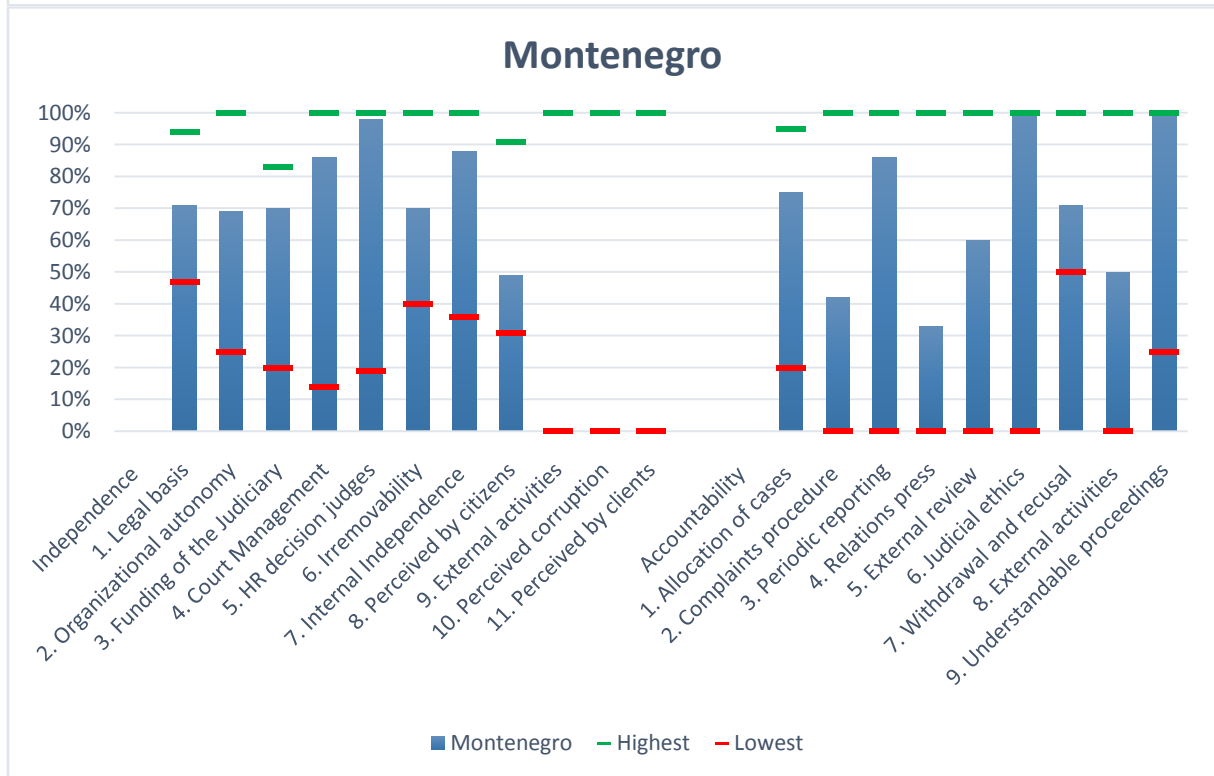
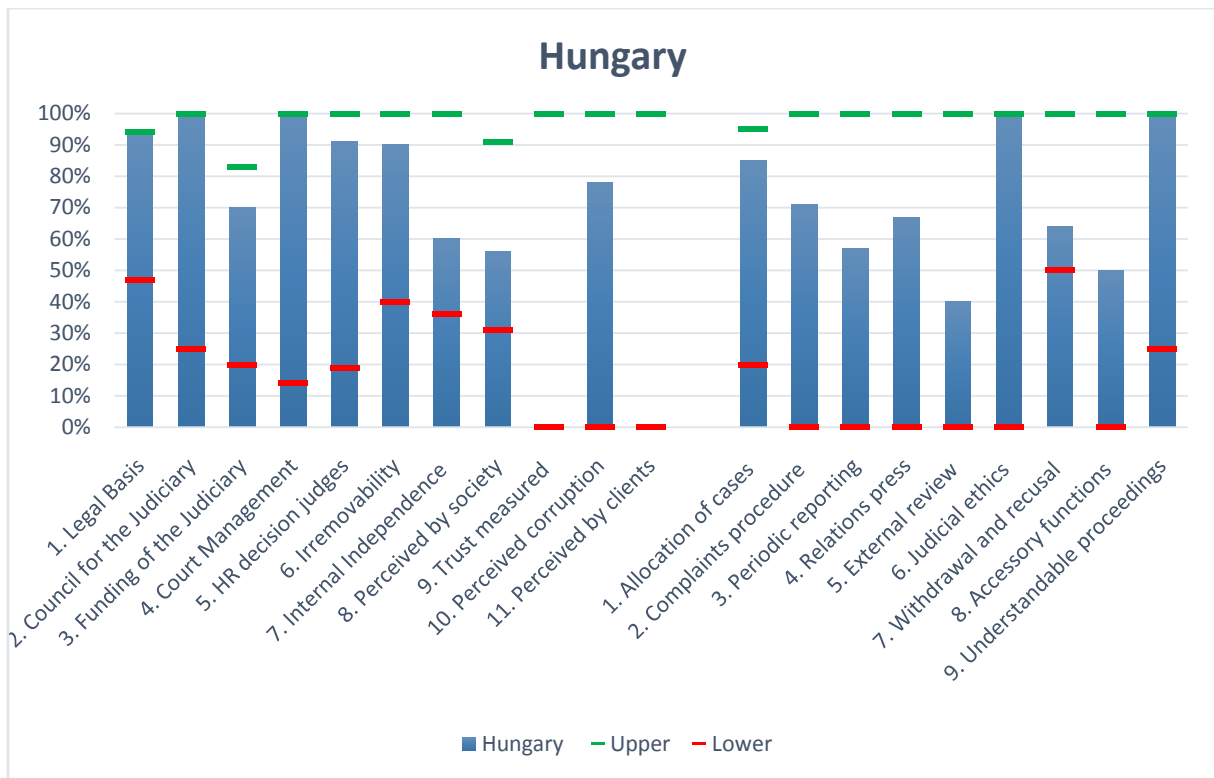


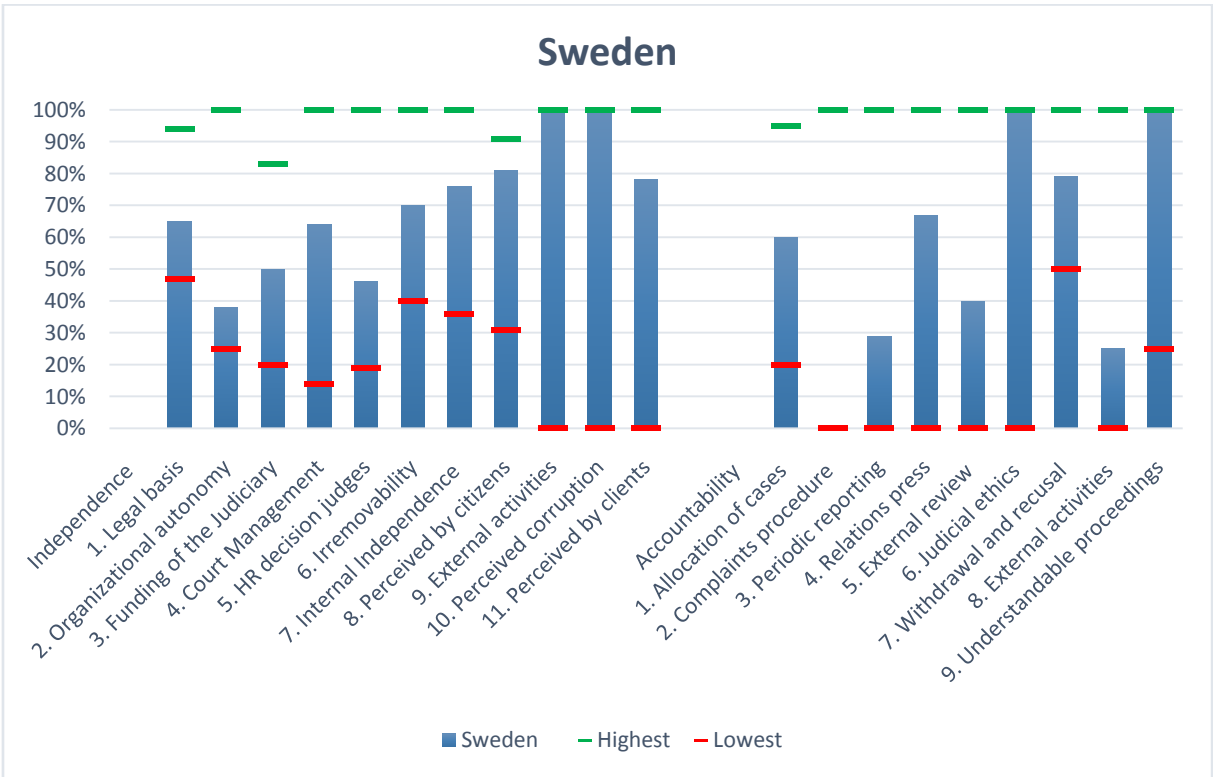
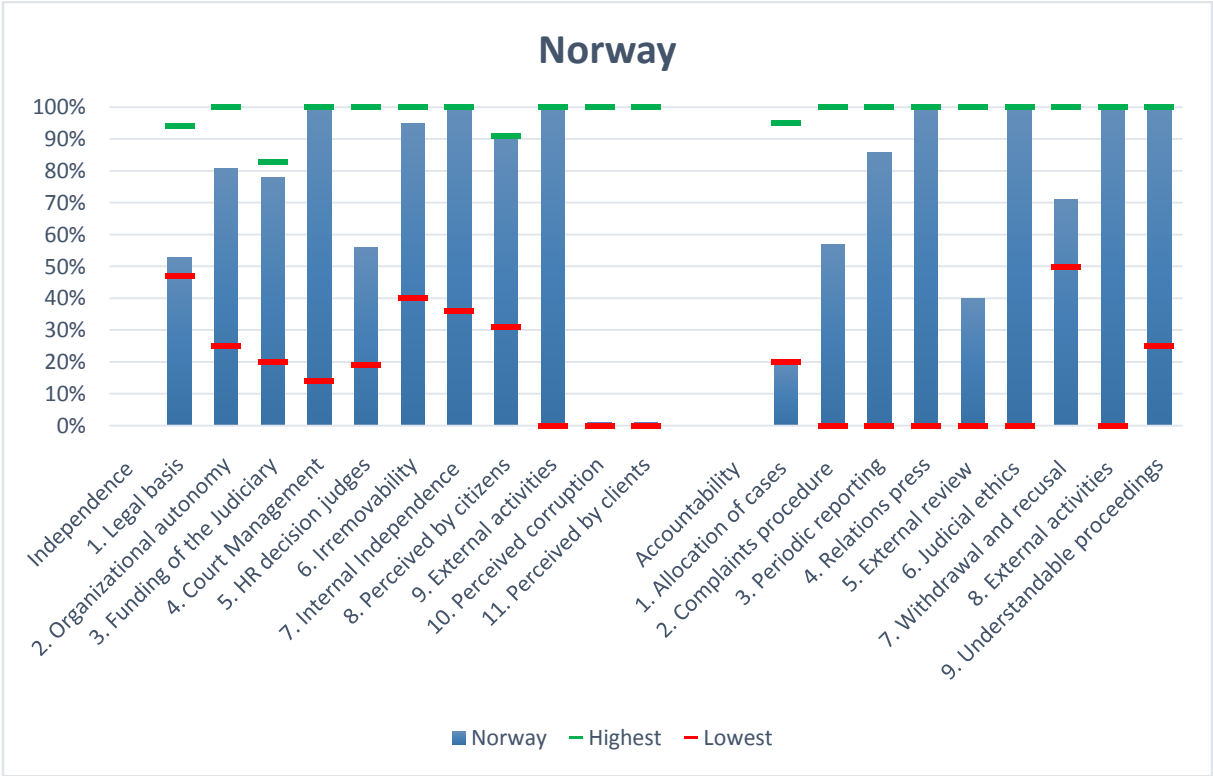


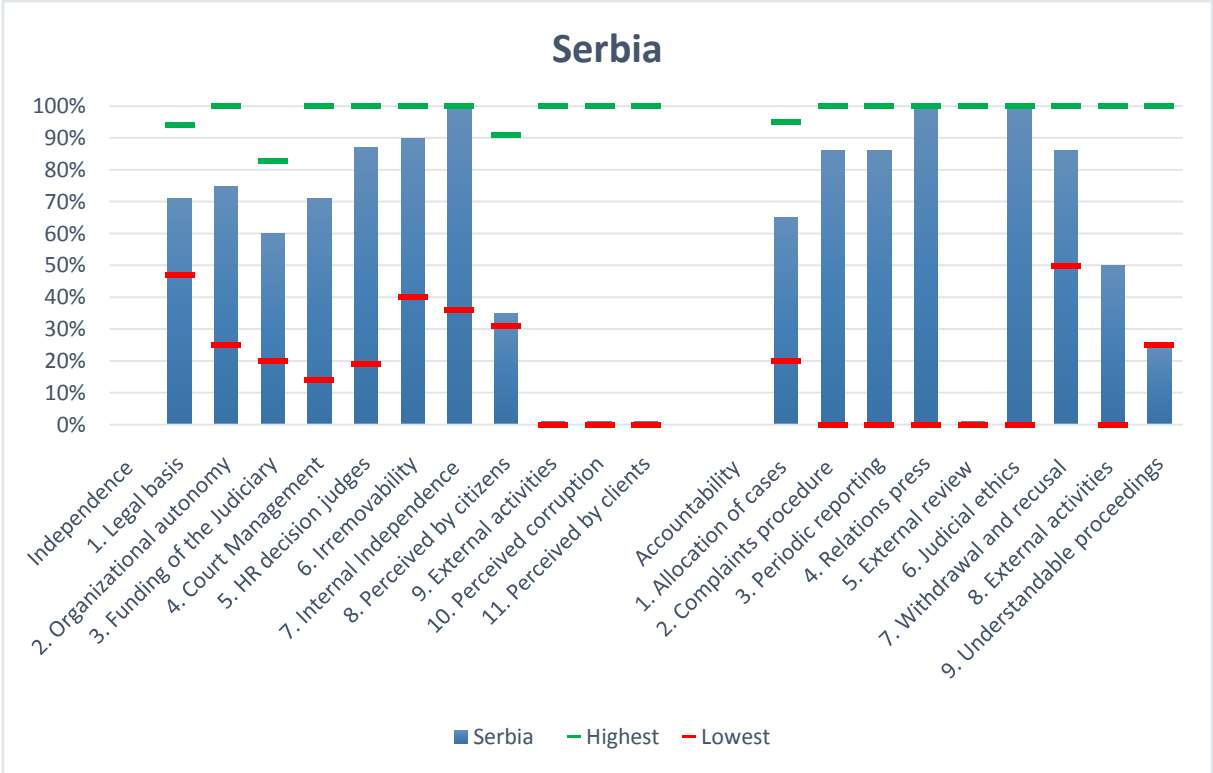
4.3.1 Outcomes observers

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









5. Survey among professional judges

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

5.1 Methodology

The survey was sent to all the ENCJ members and observers. All the members and observers that were willing to participate and able to do so within the brief time span available, distributed a letter of introduction and recommendation of the president of the ENCJ to the judges within their jurisdictions. The letter contained a link to the internet site of the ENCJ/Belgium Council that hosted the survey. The respondents could fill in the survey on line anonymously. They were asked to specify the country in which they were working as a judge. The Councils had to decide for themselves whether or not to translate the letter of introduction and the survey. Judges could fill in the survey in any language that the survey was translated in. Most Councils were able to distribute the letter of introduction directly to the judges, other councils had to send the letter to the court president who in his/her term distributed the letter among the judges of his/her court. Some Councils secured the endorsement of the judges association of their country. The survey was addressed only to professional judges. In the next section the issue of the perceptions of lay judges is discussed.

5.2 Design of the survey

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

The survey consisted of the following substantive statements and questions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

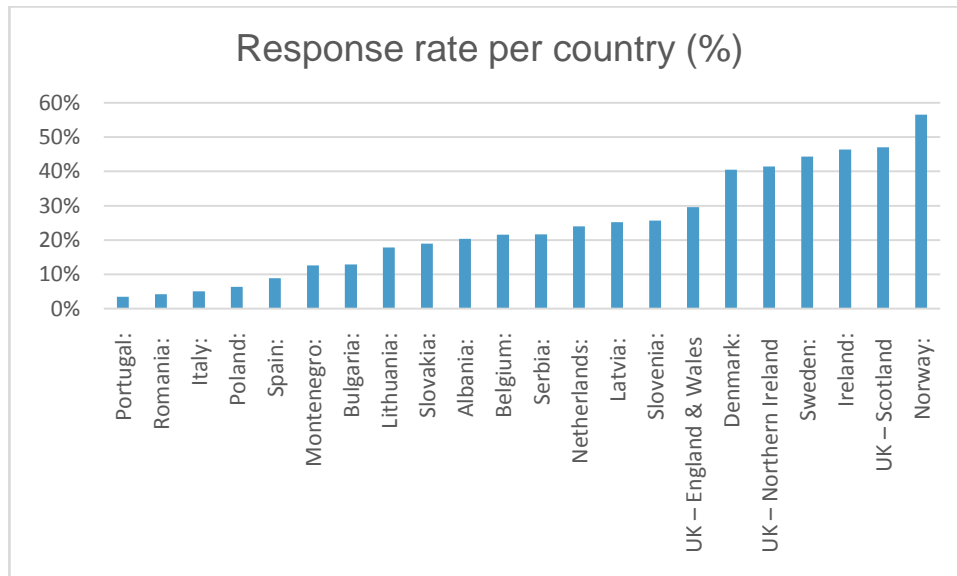
General questions are 1a, 10 and 11. Independence indicator 12 could be measured by these three survey questions, individually or in combination. This requires of course an analysis of the consistency of the answers to the survey.

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

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

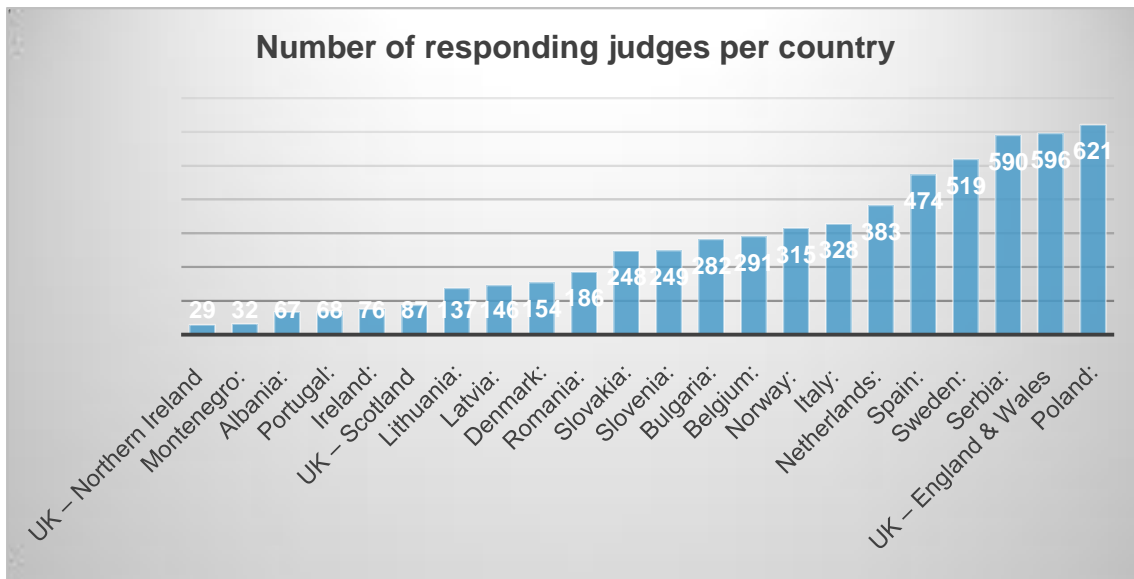
5.3 Response rate per country and representativeness

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



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

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



The number of responding judges varies from 29 in Northern Ireland to 621 in Poland. The confidence interval around the results for the countries with a small number of respondents (especially Northern Ireland and Montenegro) will be relatively large. For most countries the numbers are high enough to distinguish meaningful differences.

In the next paragraph the outcomes for all countries are given. In the subsequent paragraph (5.6) for the main questions of the survey it will be indicated which percentage scores differ significantly negatively from the mean score over all participating countries. These results take the number of responding judges per country into account explicitly.

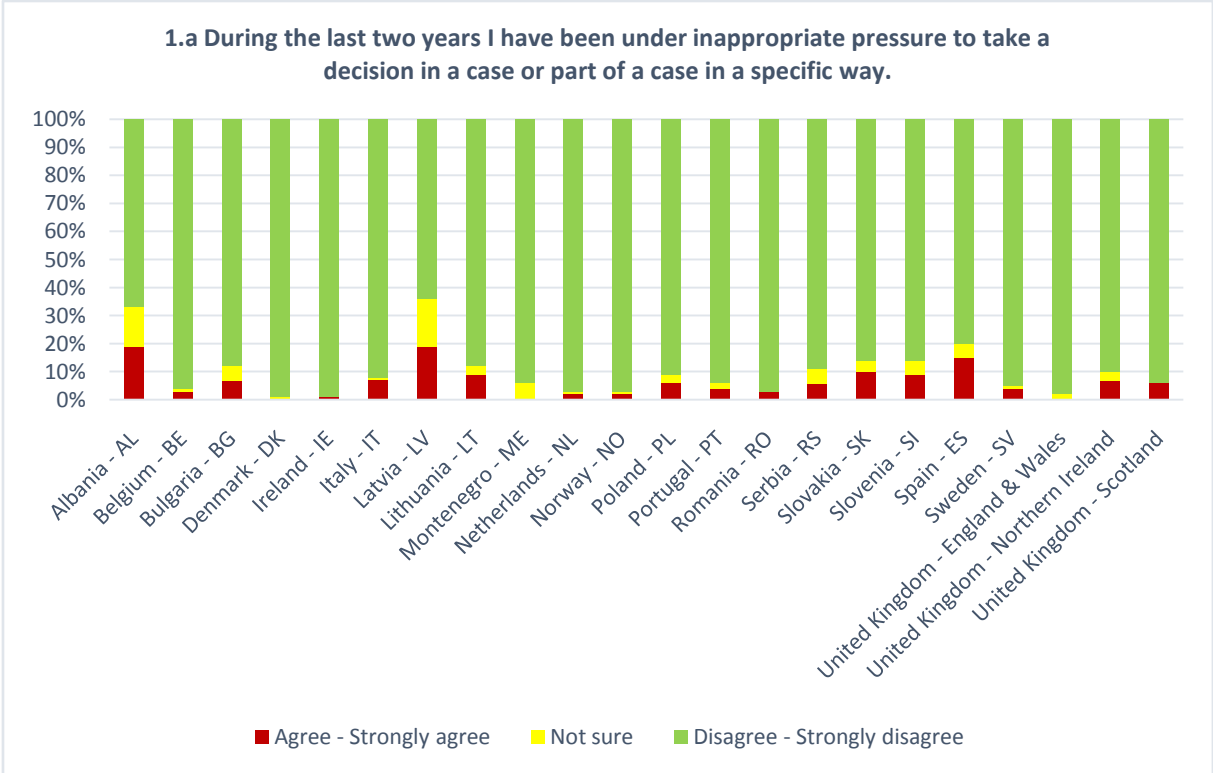
5.4 Outcomes

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

Before turning to the tables, the outcomes are summarized.

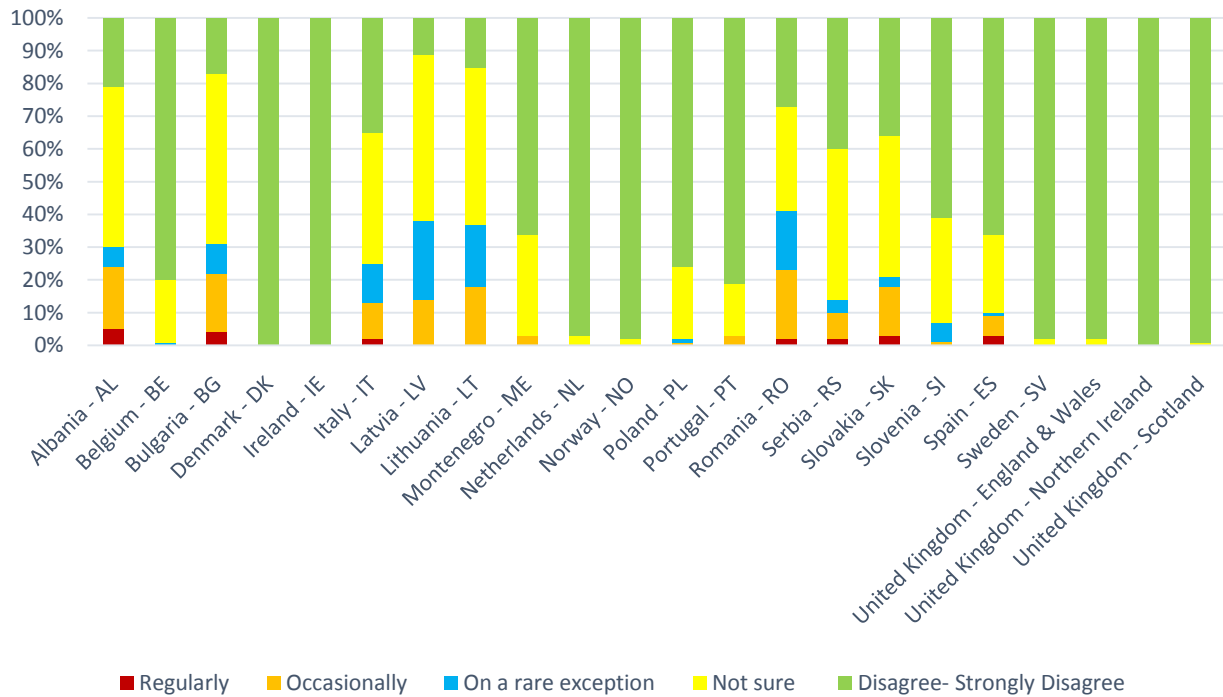
1. Although there are differences among countries, the vast majority of judges have not been under inappropriate pressure to take a decision in a case in a specific way in the last two years (Q1.a). Note that being under inappropriate pressure does not mean that judges have succumbed to that pressure. Consistent with this, the average score of the judges of each country when asked to assess their independence on a scale between 0 and 10 (10 is totally independent) is an 8 or higher (Q13). When asked about the independence of the judges of their country in general, the average score was a 7 or higher (with one exception of 6) (Q14).
2. Where inappropriate pressure occurs, it comes from different sides, external and internal (Q1.b).

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

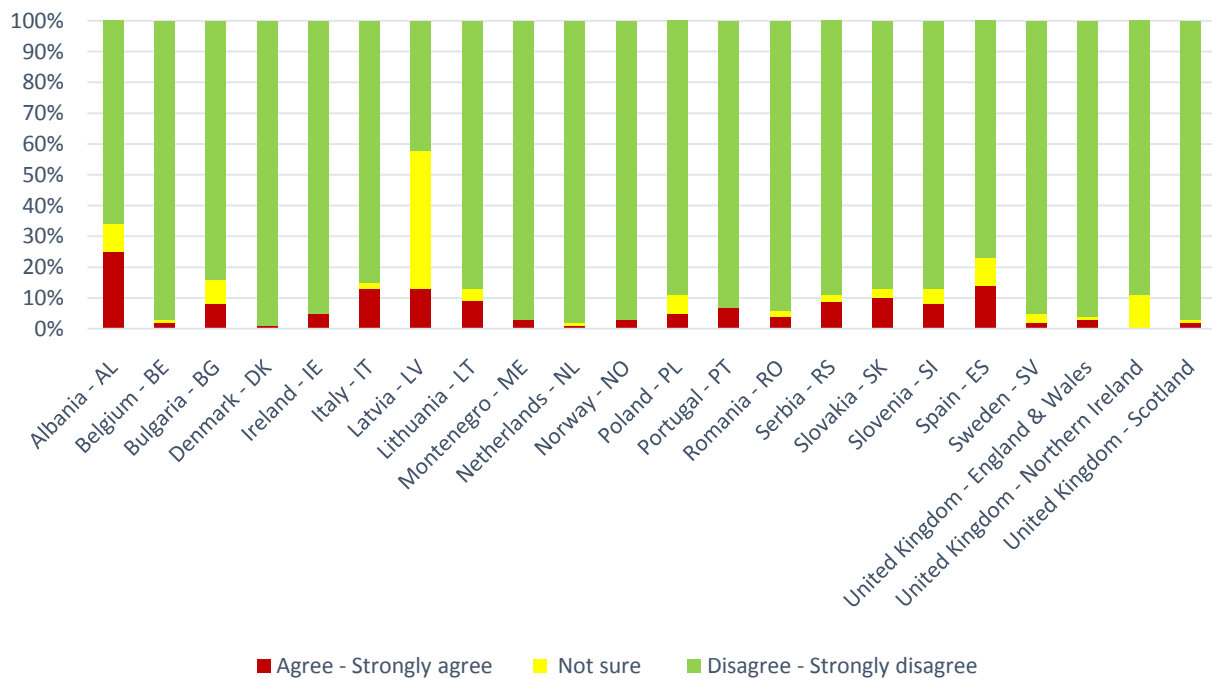


Respondents who agreed or strongly agreed with question 1a were asked in question 1b by whom they felt pressured. They could give multiple answers, choosing from: court management (including a court president), parties and their lawyers, other judges (including an association of judges), media, government,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

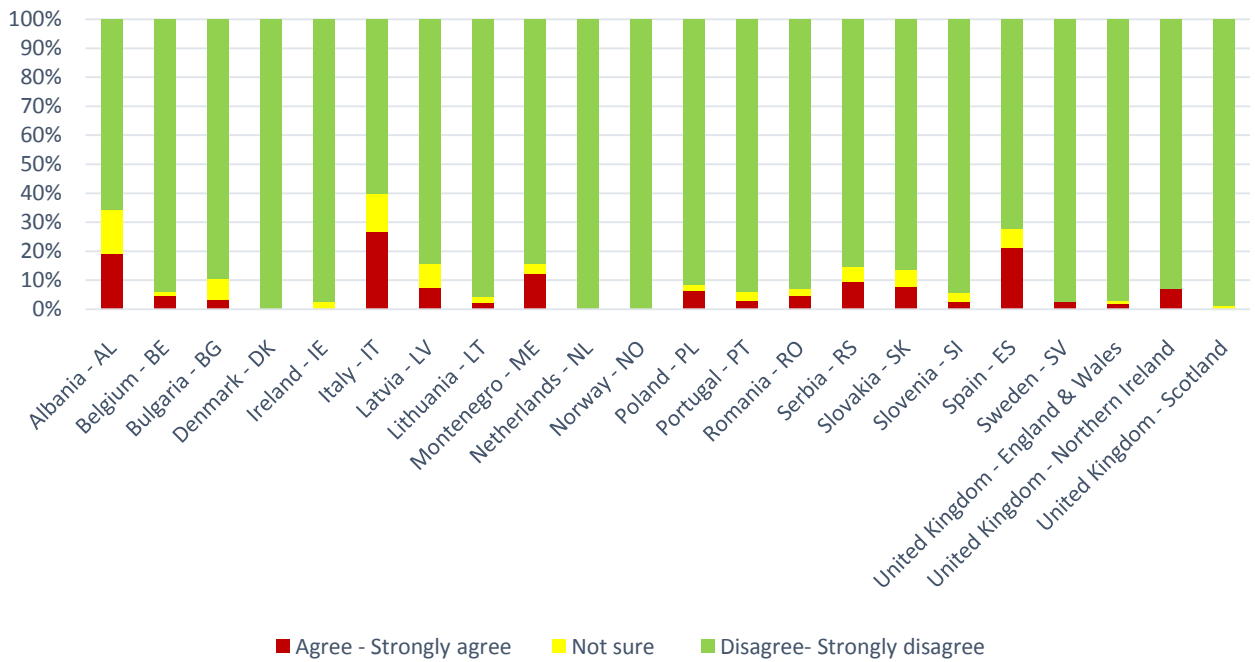
**2a. In my country I believe that during the last two years individual judges have accepted bribes as an inducement to decide case(s) in a specific way.
2b. If you agree or strongly agree, did this occur:**



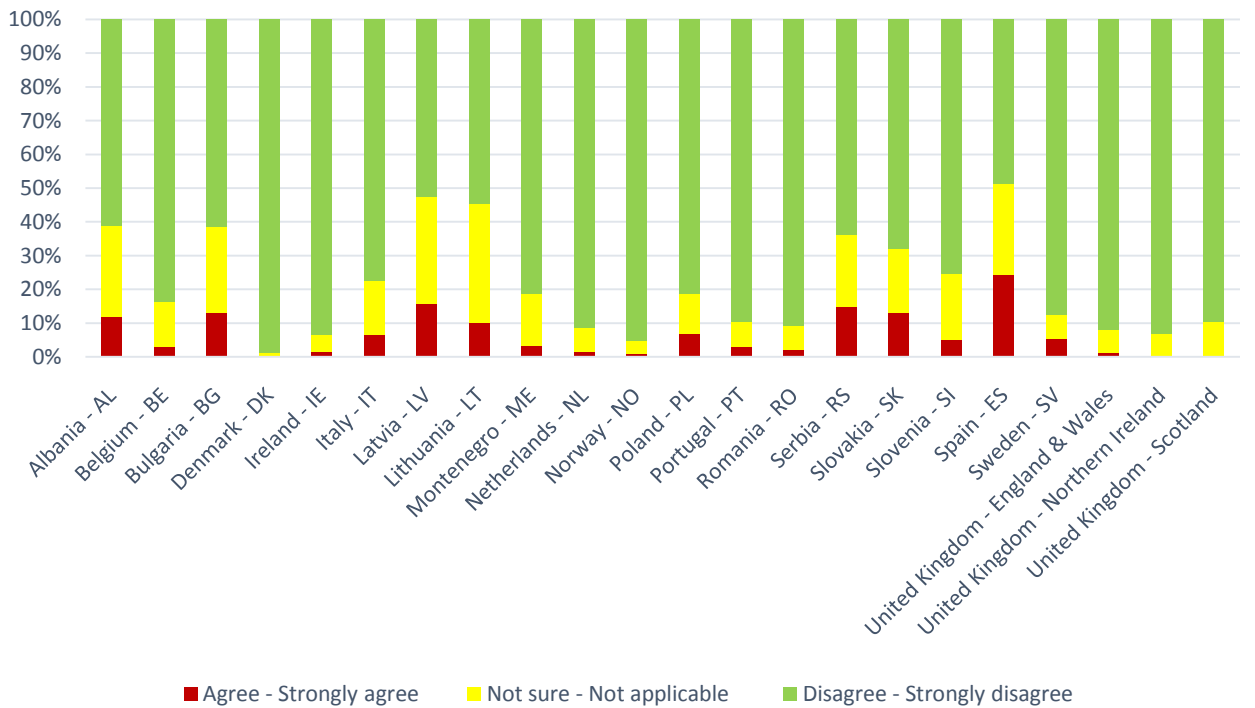
3a. During the last two years I have been affected by a threat of, or actual, disciplinary or other action because of how I have decided a case.



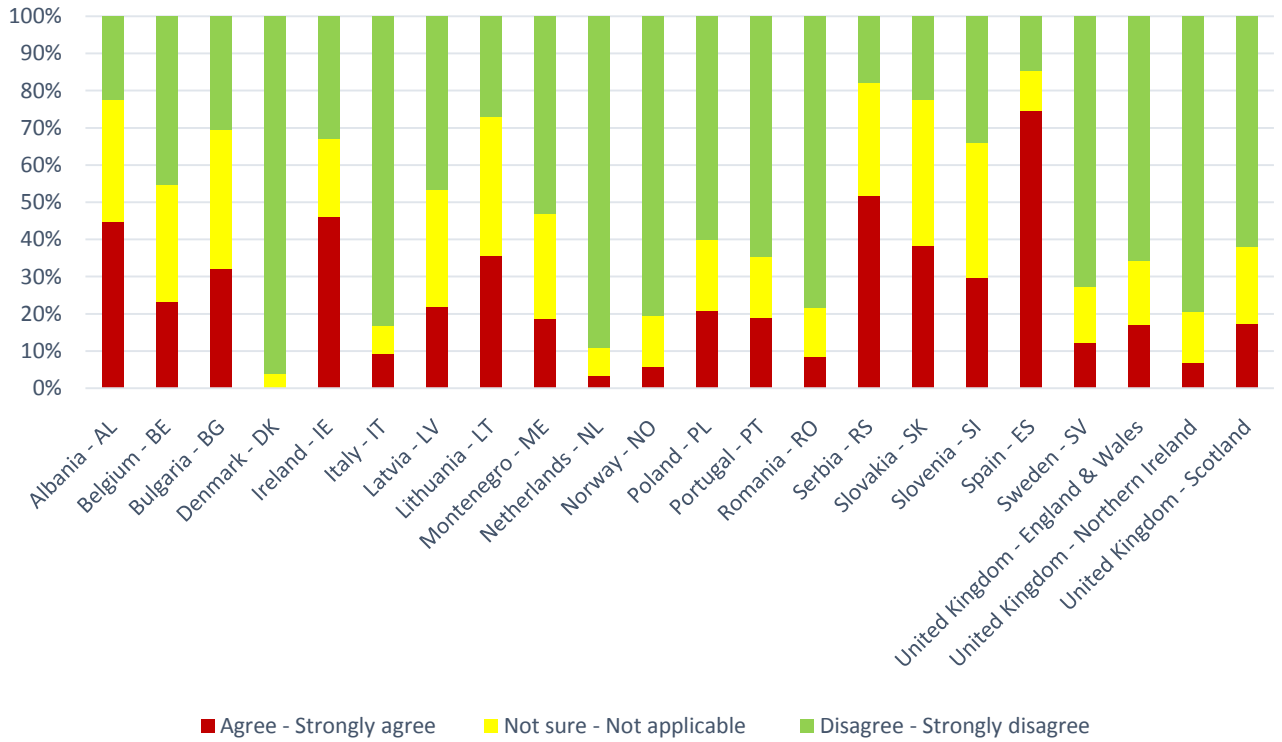
3b. During the last two years my decisions or actions have been directly affected by a claim, or a threat of a claim, for personal liability.



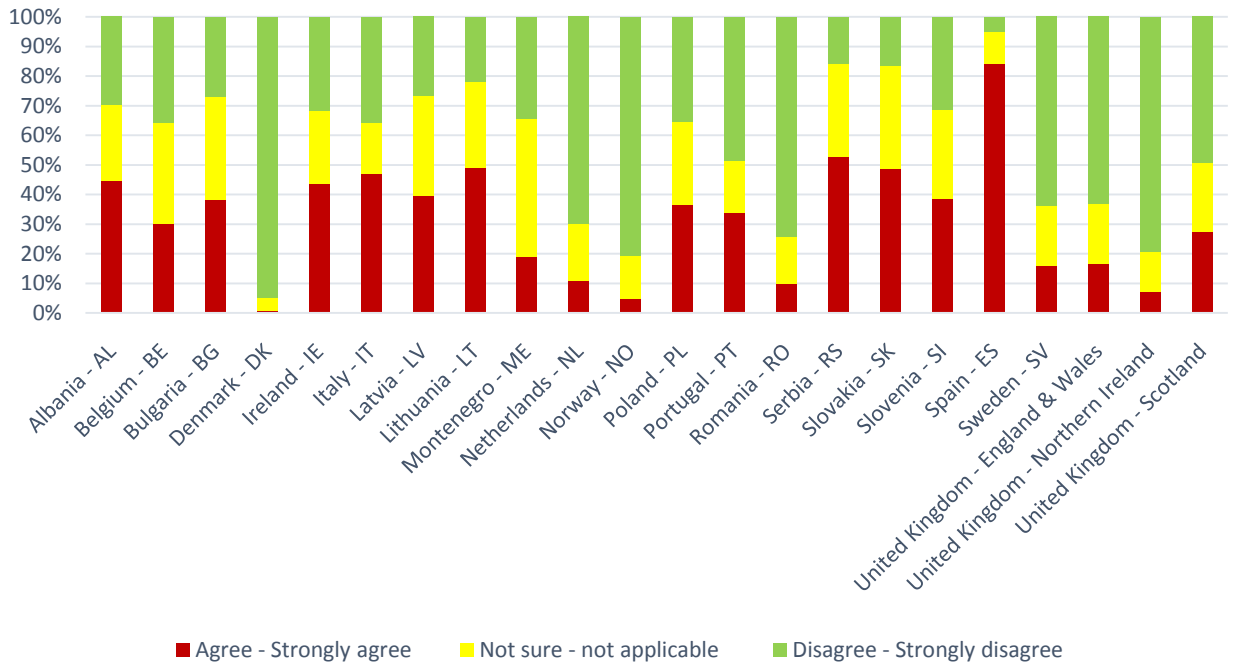
4. I believe during the last two years cases have been allocated to judges other than in accordance with established rules or procedures in order to influence the outcome of the particular case.



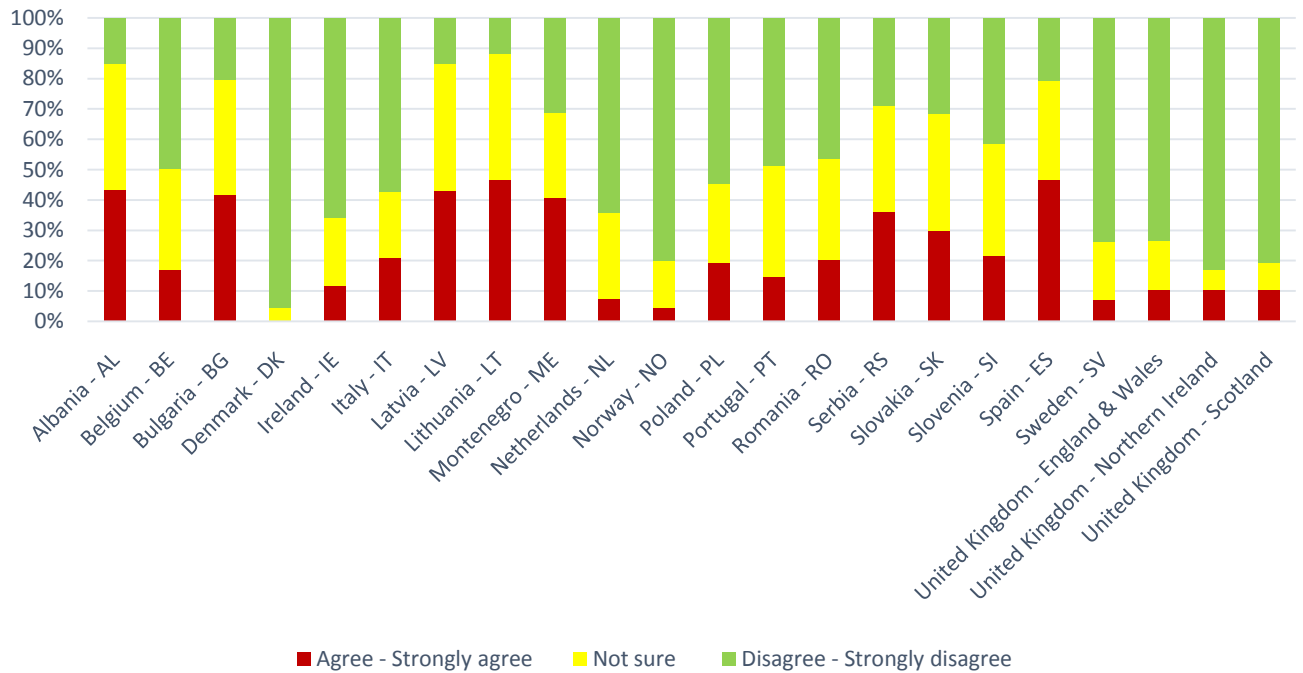
5a. I believe judges in my country have been appointed other than on the basis of ability and experience during the last two years.



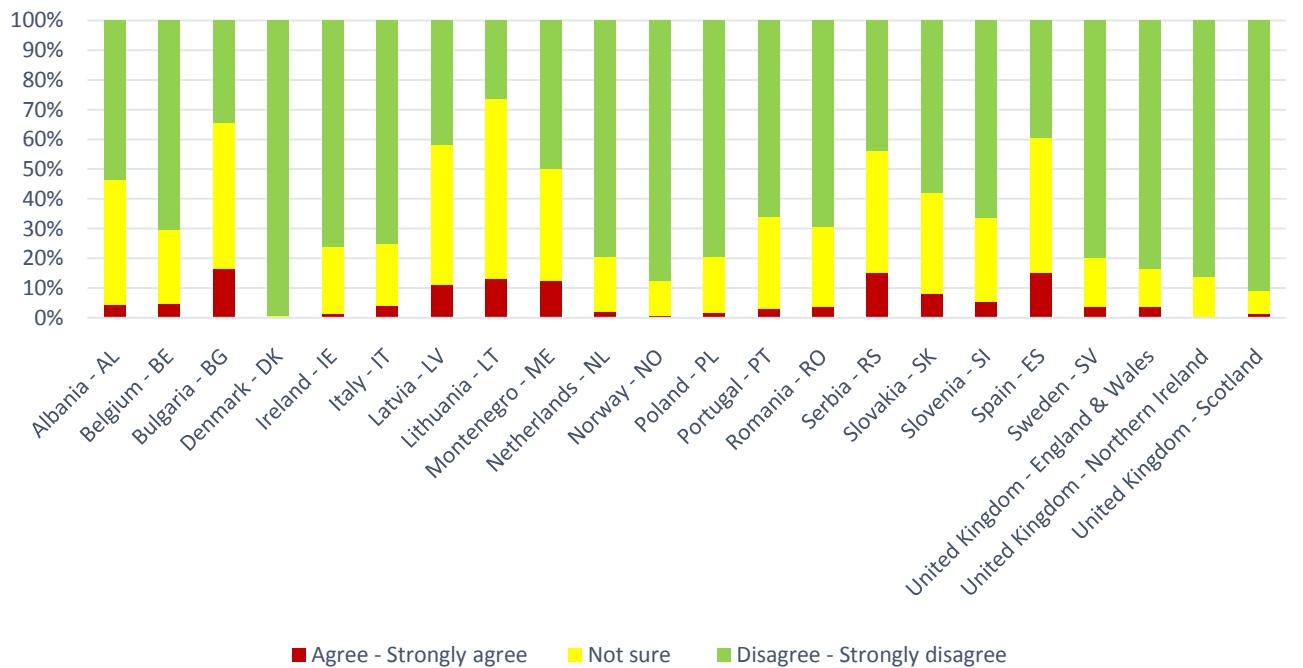
5b. I believe judges in my country have been promoted other than on the basis of ability and experience during the last two years.



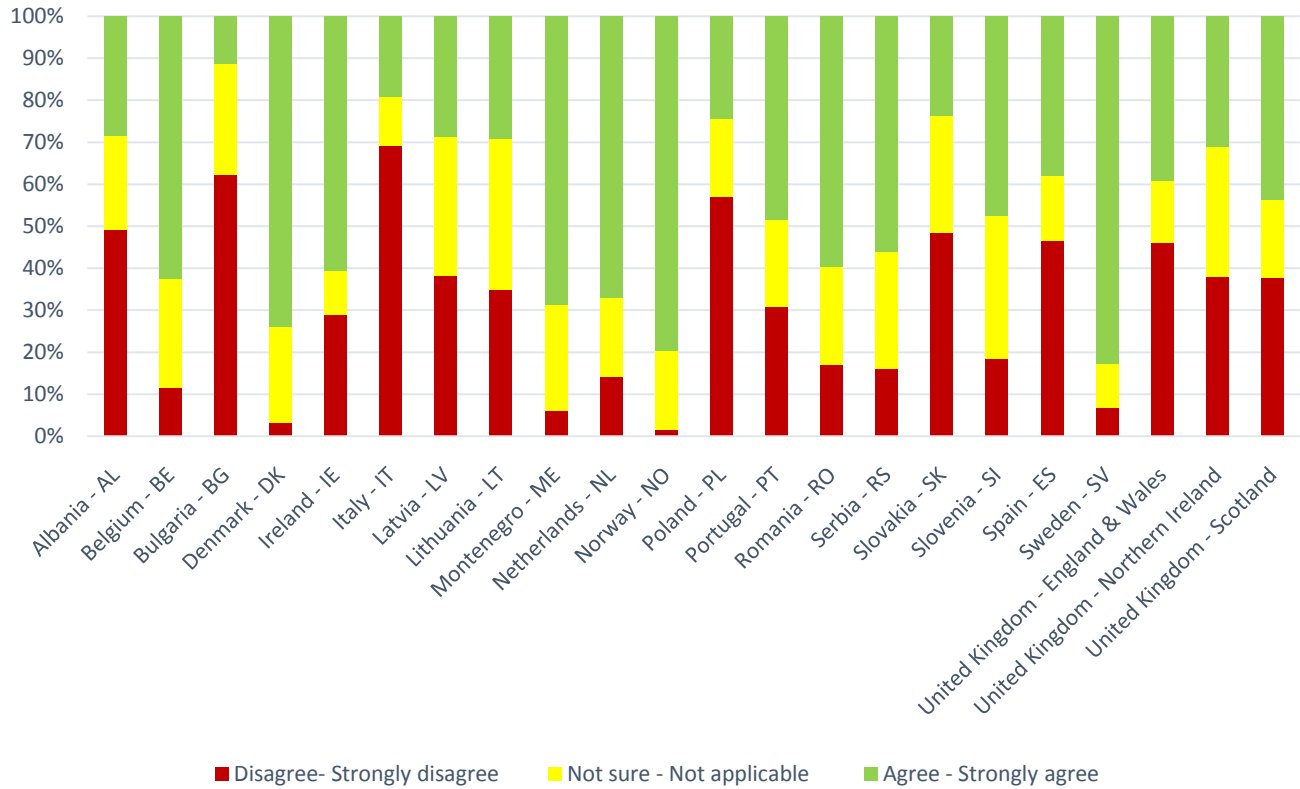
6. I believe that in my country decisions or actions of individual judges have, during the last two years, been directly affected by the actual, or anticipated, actions of the media (i.e. press, television or radio).



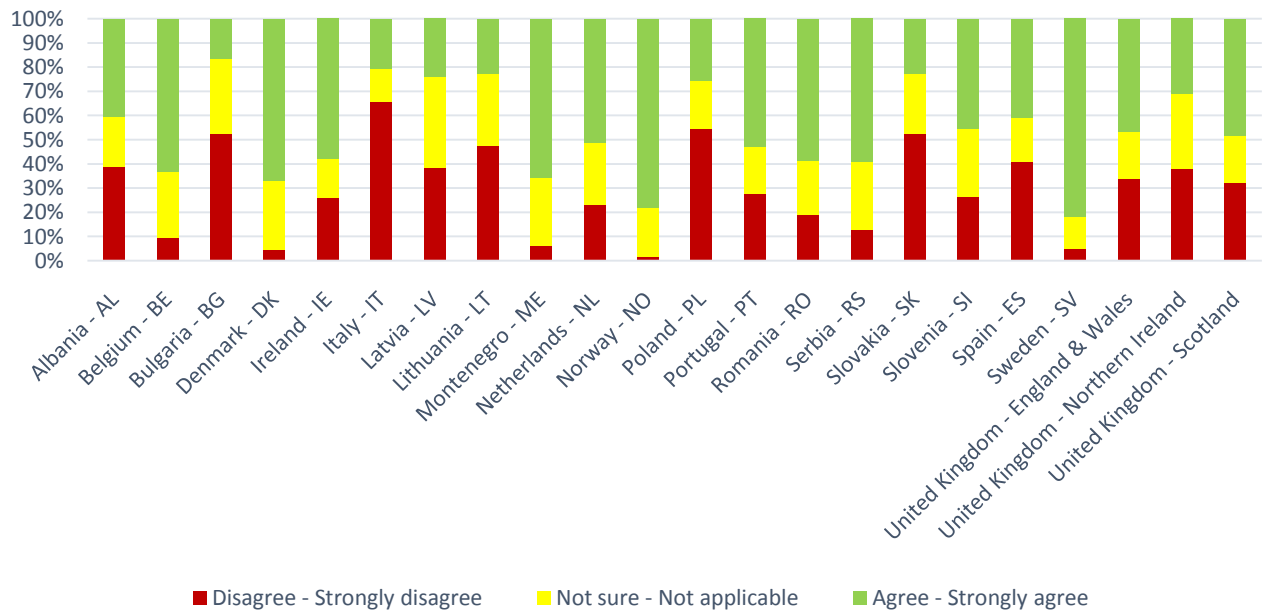
7. I believe that in my country decisions or actions of individual judges have, during the last two years, been directly affected by the actual, or anticipated, actions using social media (for example, Facebook, Twitter or LinkedIn).



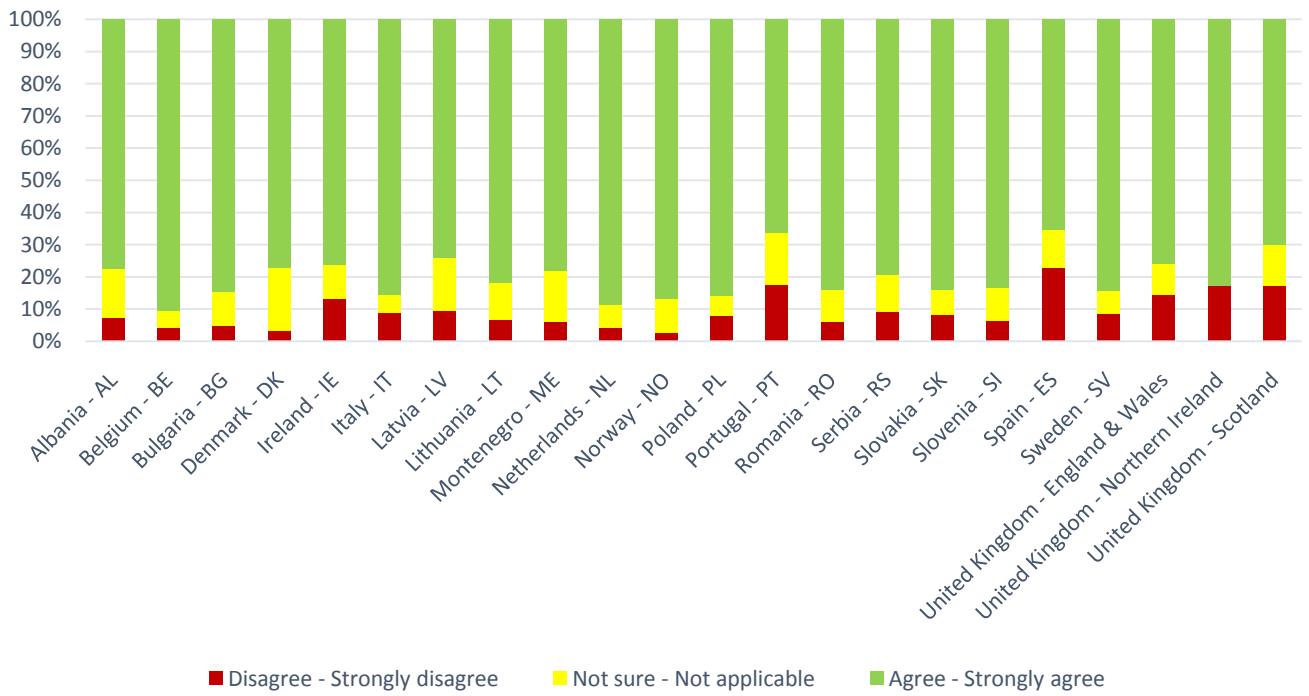
8.1 During the last two years I believe that my independence as a judge has been respected by the government.



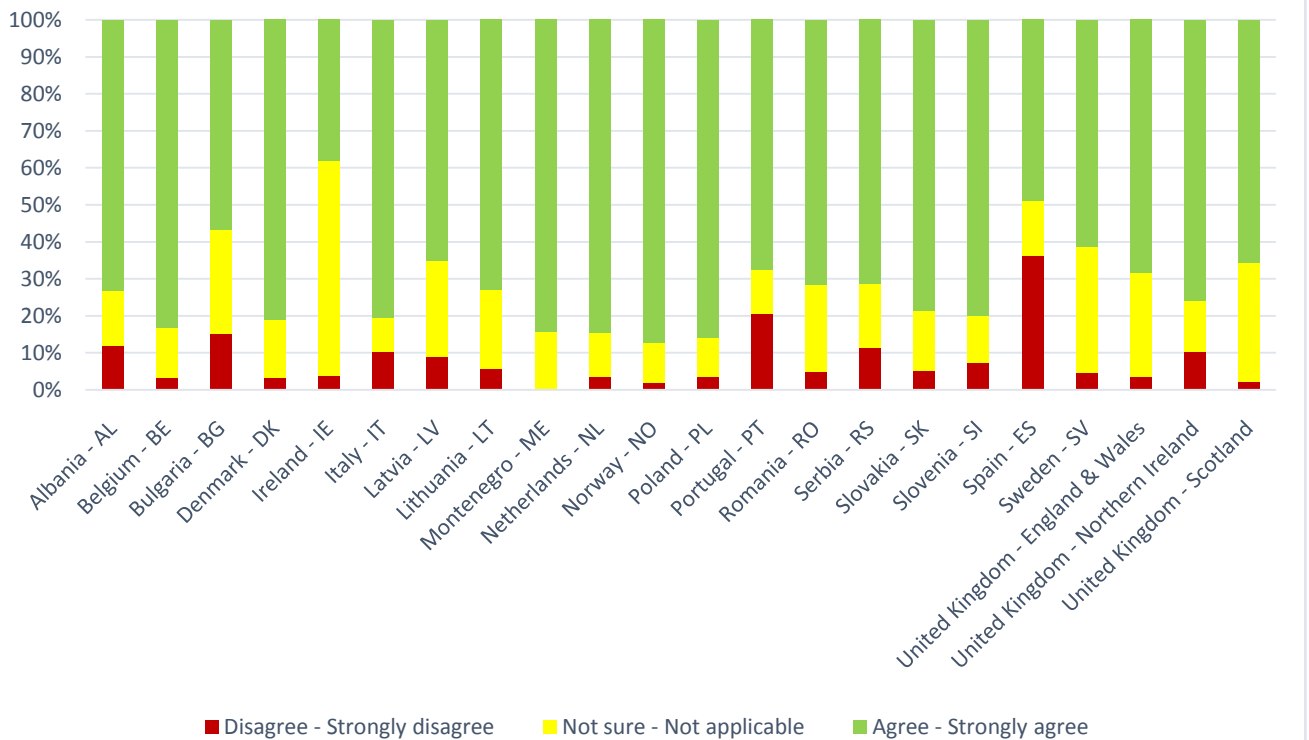
8.2 During the last two years I believe that my independence as a judge has been respected by parliament.



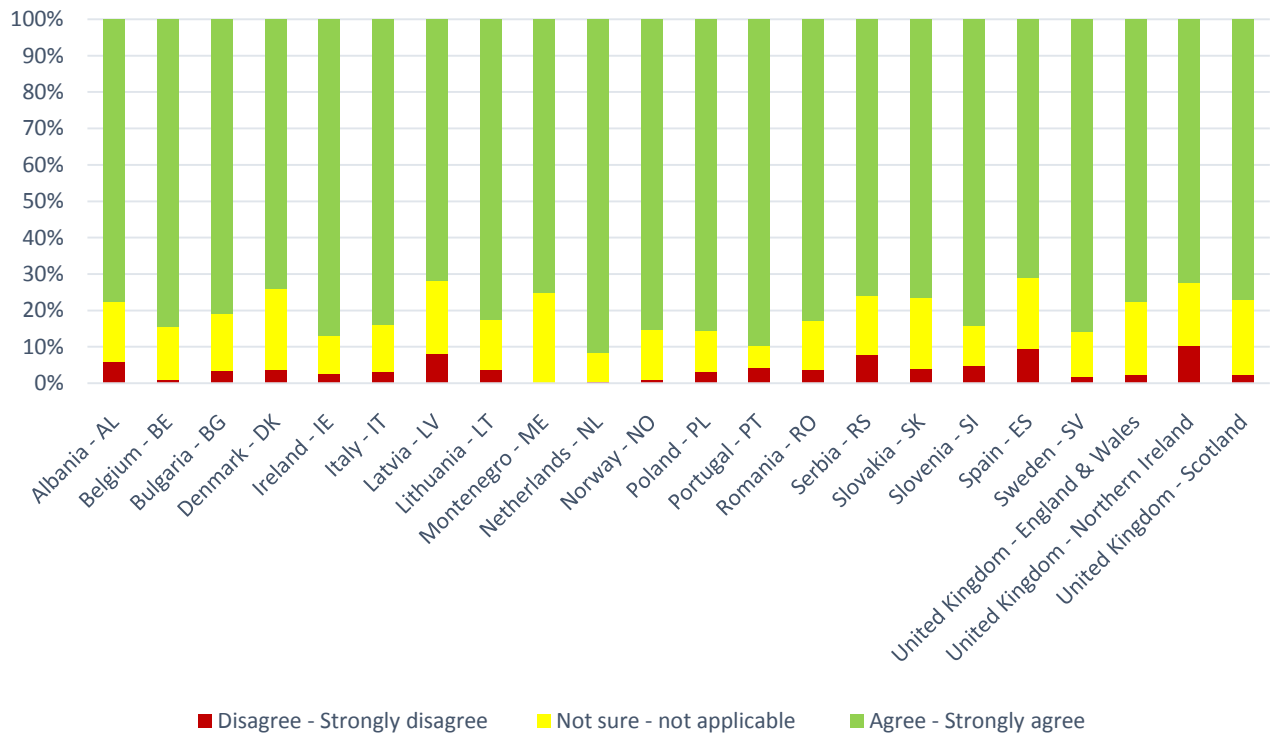
8.3 During the last two years I believe that my independence as a judge has been respected by Court management (including the president of the Court).



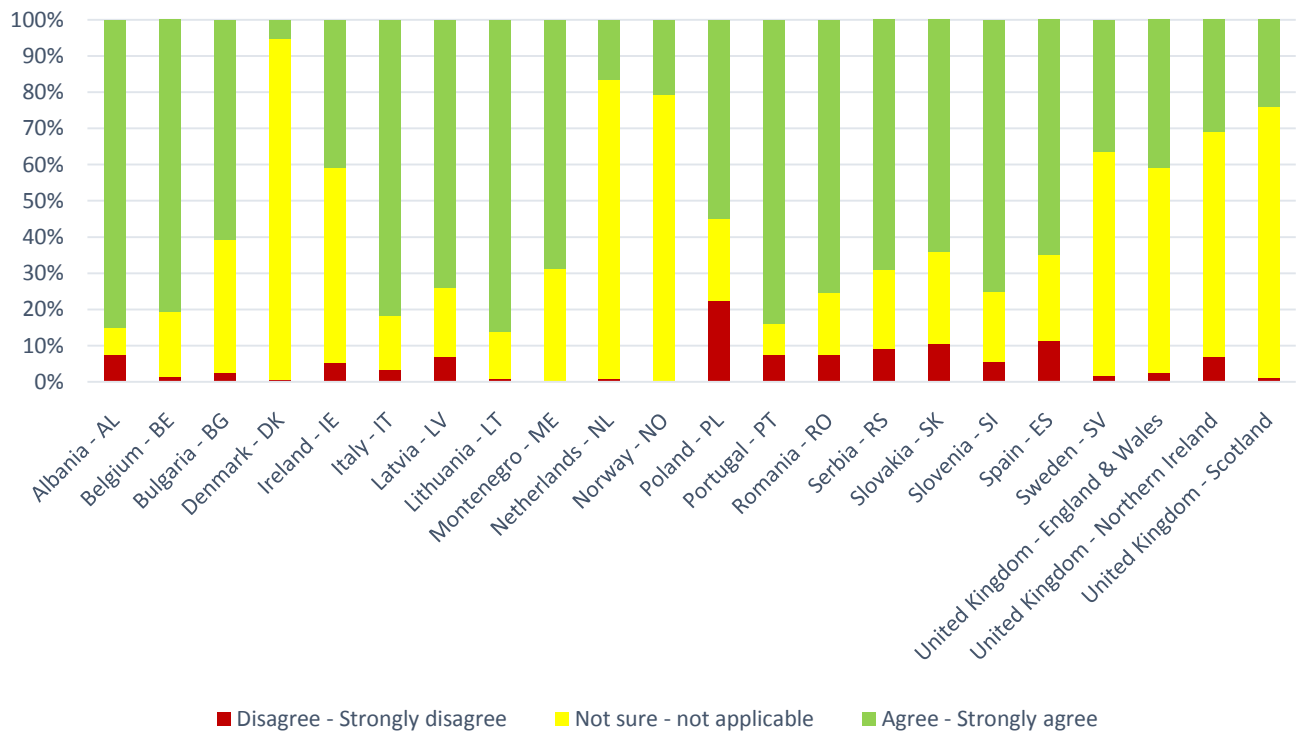
8.4 During the last two years I believe that my independence as a judge has been respected by the Council for the judiciary.



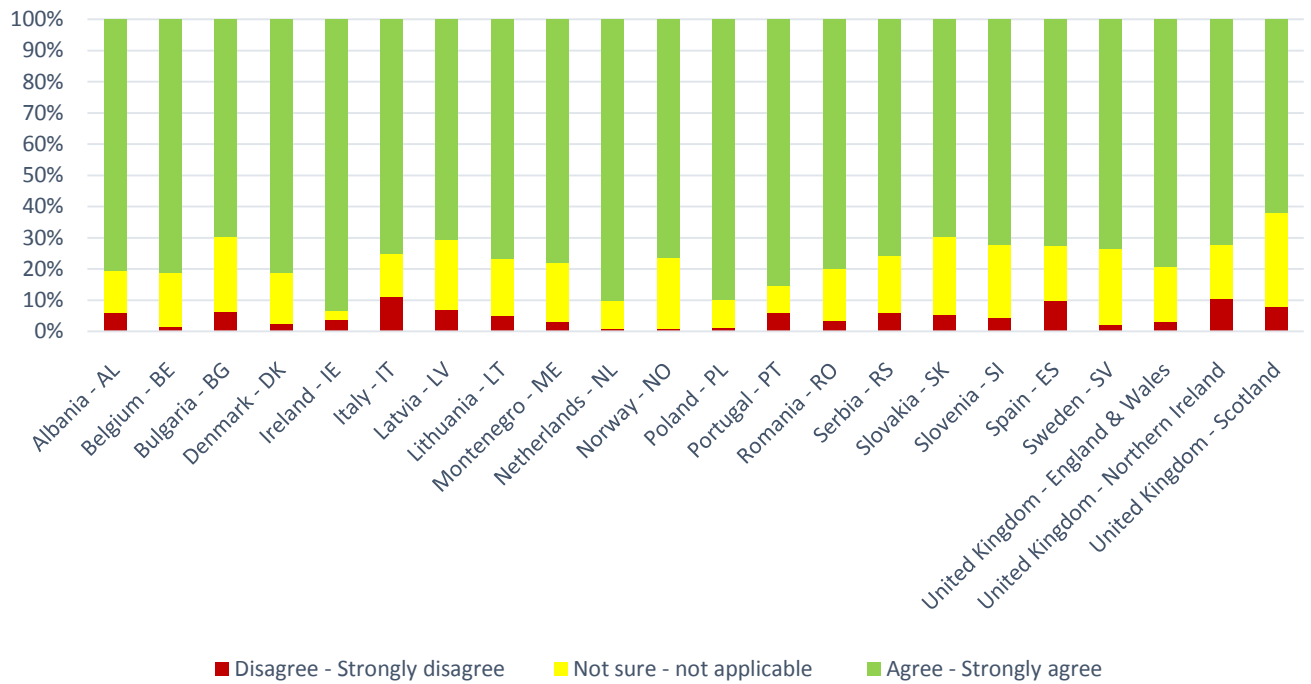
8.5 During the last two years I believe that my independence as a judge has been respected by the Supreme Court.



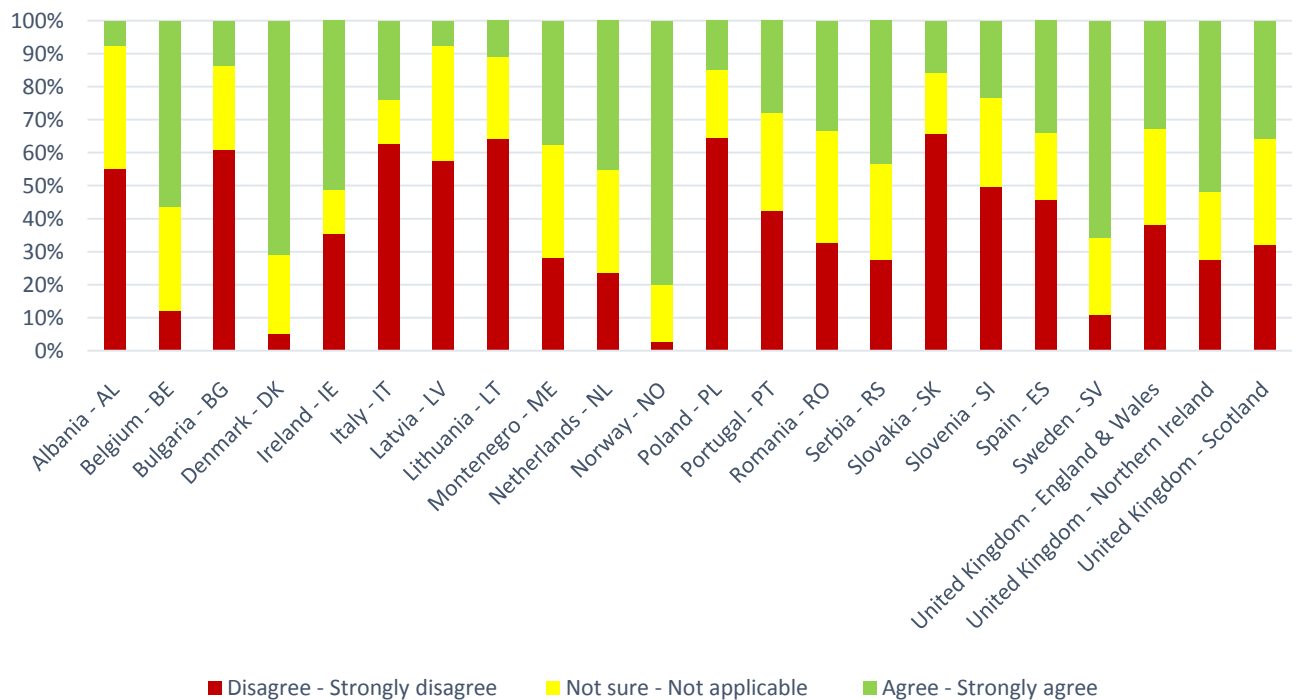
8.6 During the last two years I believe that my independence as a judge has been respected by the Constitutional Court.

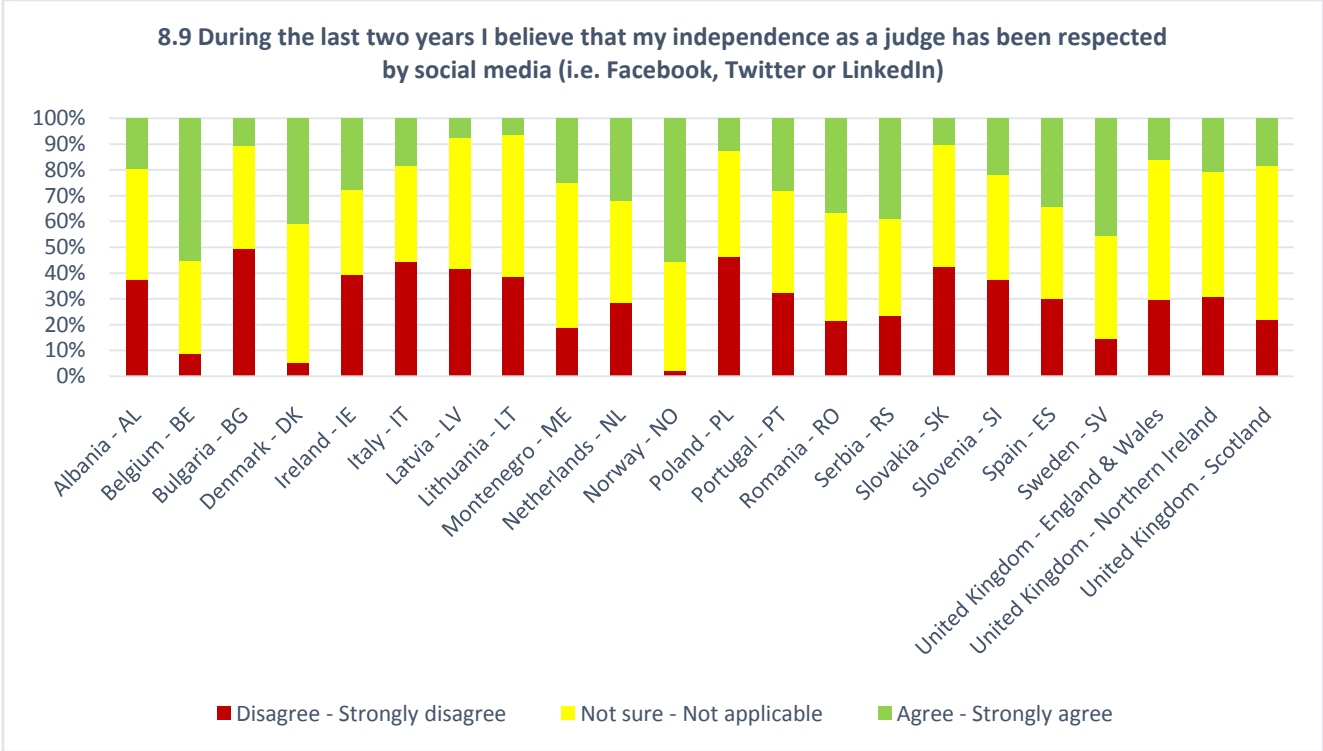


8.7 During the last two years I believe that my independence as a judge has been respected by the Association of Judges.



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



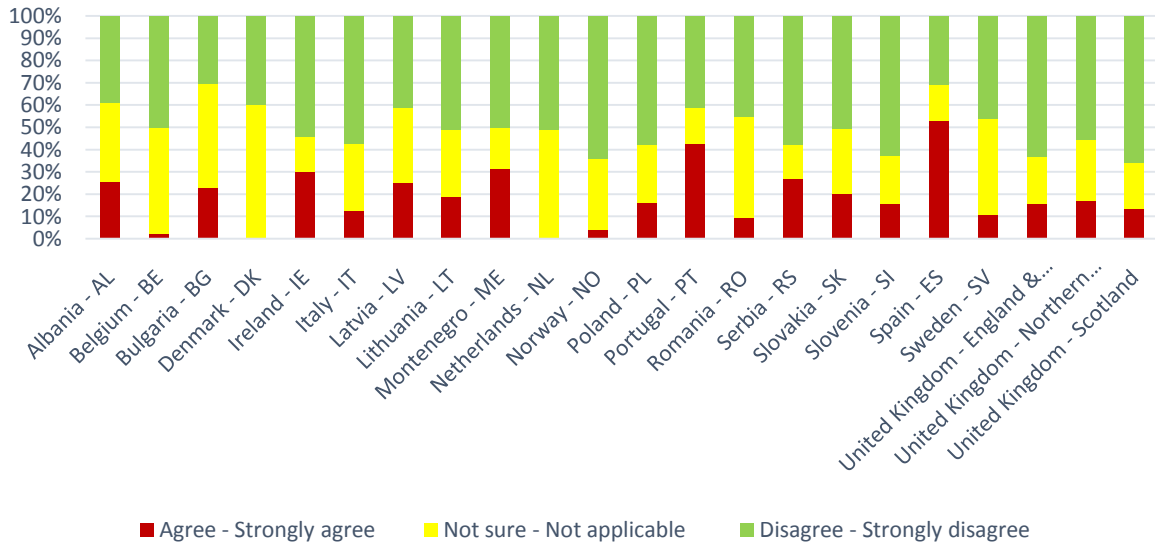


Question 9a asked respondents the following question: ‘During the last two years changes occurred in my working conditions in relation to (multiple answers possible)’. The given options were: ‘caseload’, ‘court resources’, ‘pay’, ‘retirement age’, ‘pensions’ and ‘I was moved to another function, section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

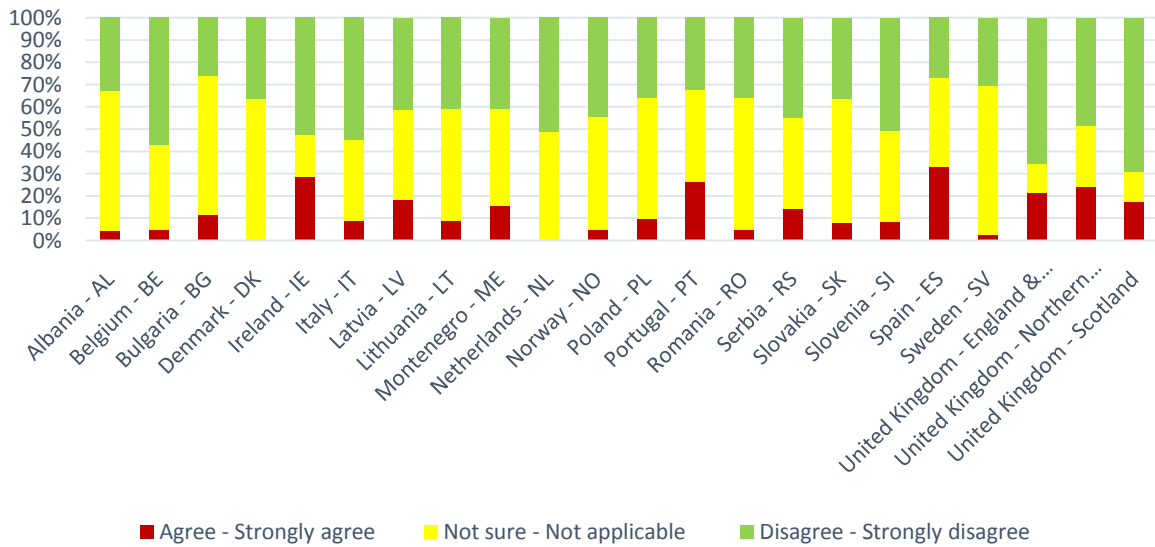
The most occurring combinations were:

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

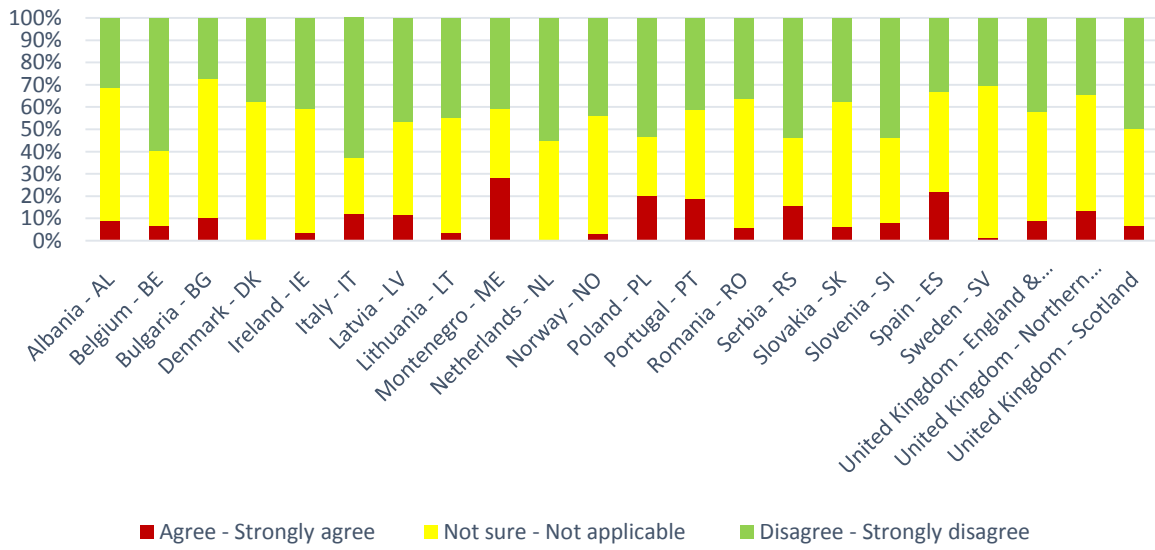
9b I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):
Pay



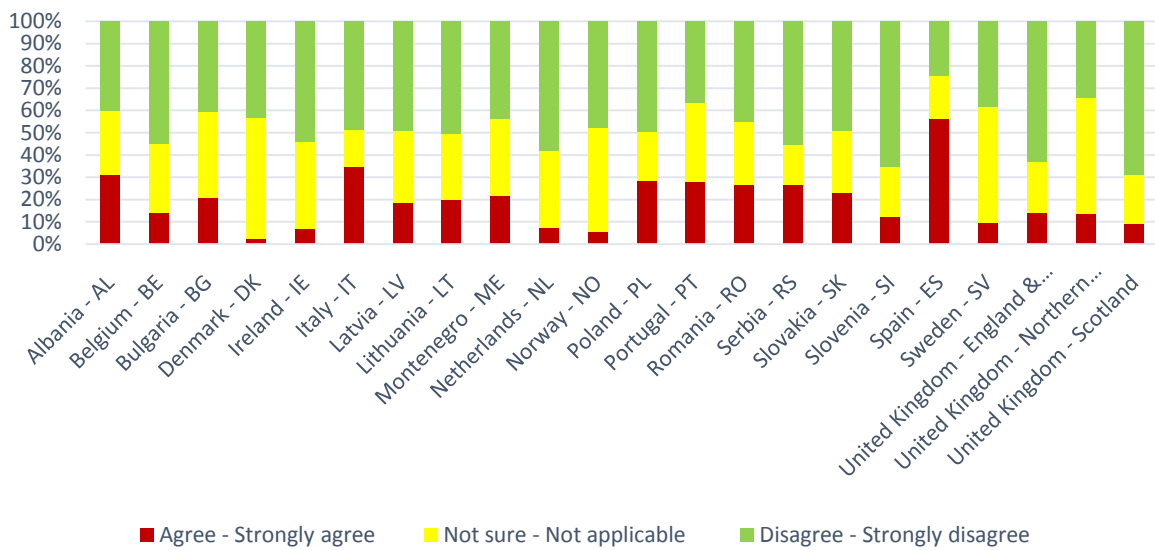
9b I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):
Pensions



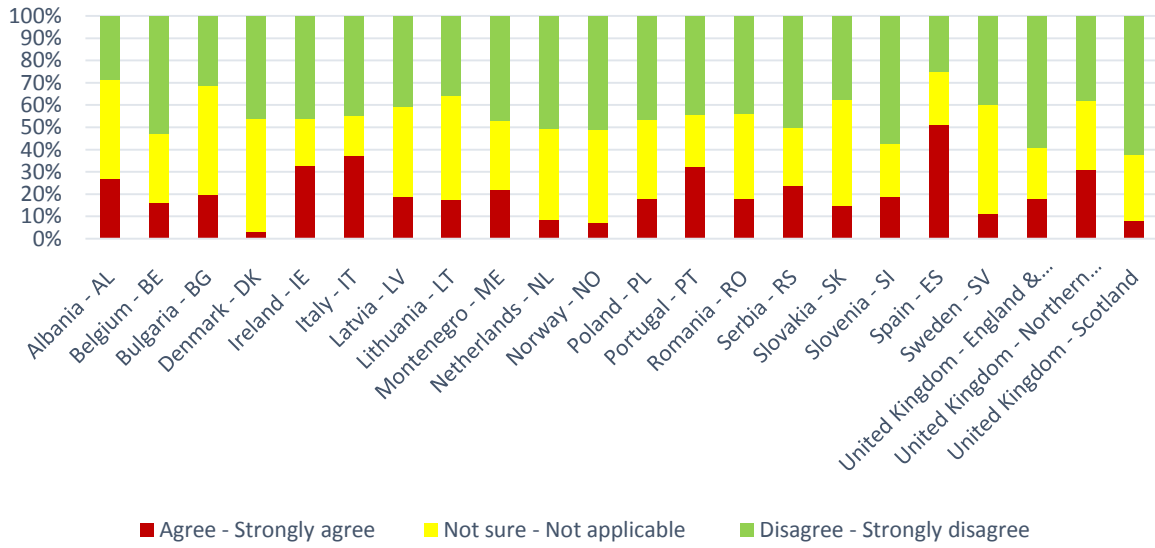
9b I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible): Retirement age



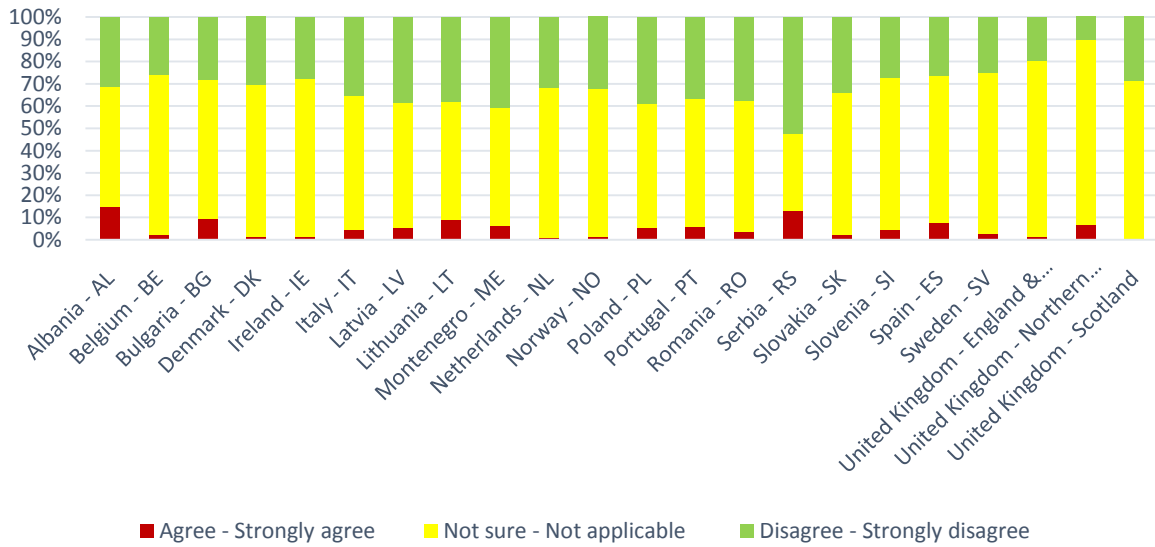
9b I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible): Caseload



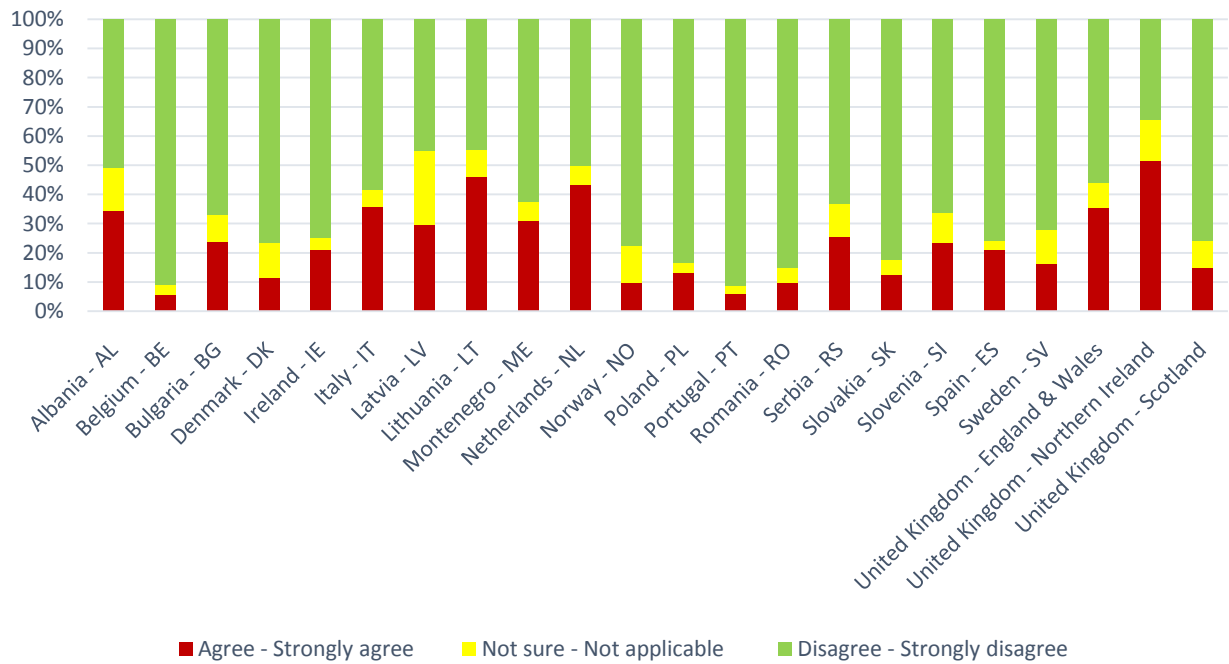
**9b I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):
Court Resources**



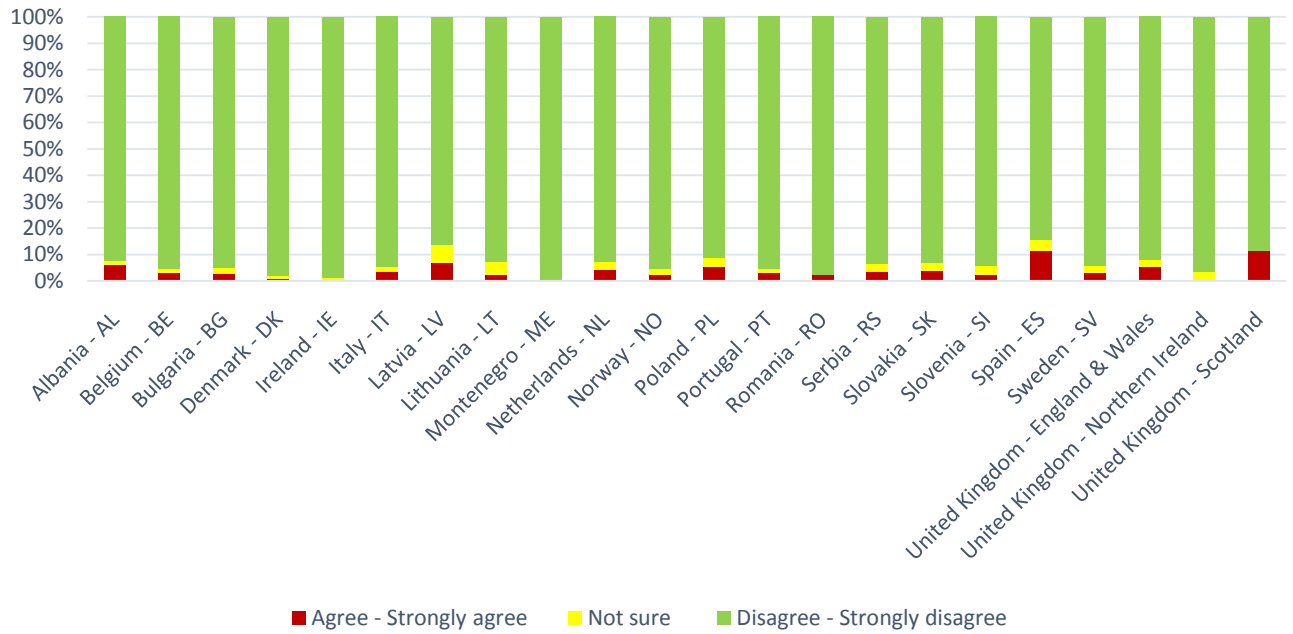
**9b I believe that changes which occurred in my working conditions in relation to the following domains directly affected my independence (multiple answers possible):
'I was moved to another function, section or court'**



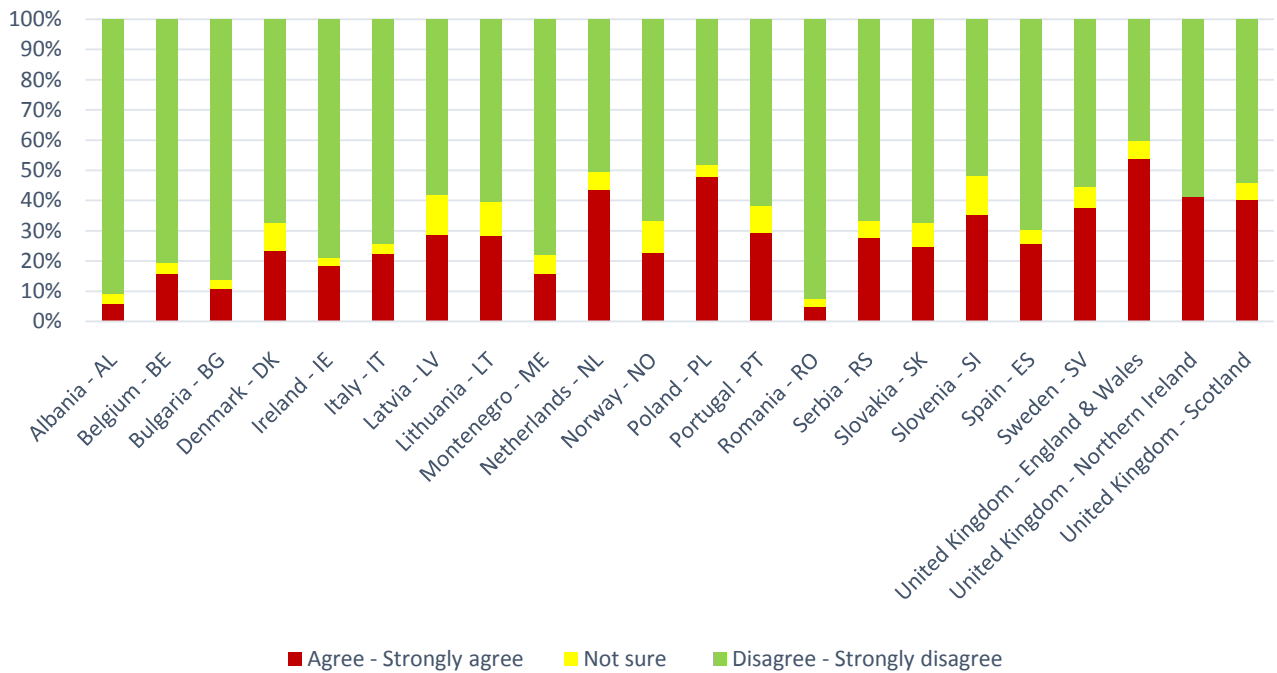
10. During the last two years I have had to take decisions in accordance with guidelines developed by judges of my rank.



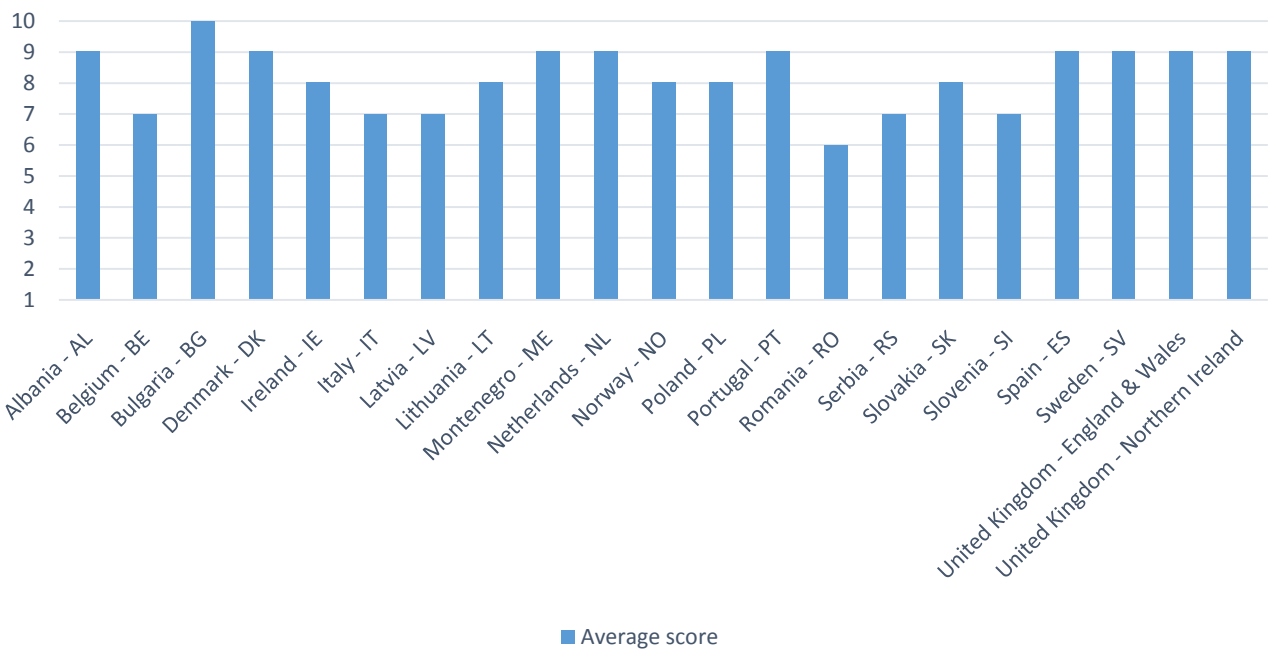
11. During the last two years the management of my court has exerted pressure on me to decide individual cases in a particular way.

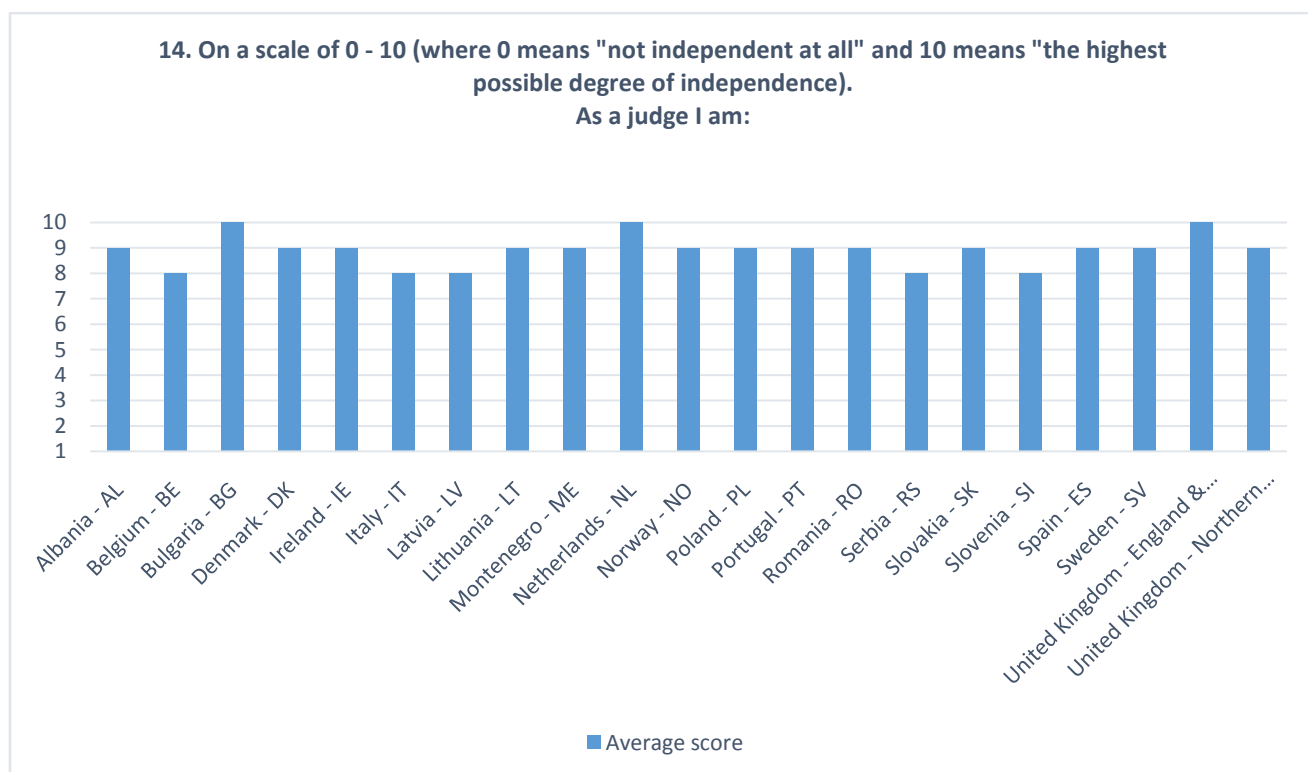


12. During the last two years the management of my court has exerted pressure on me to decide individual cases within a particular time.



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





5.5 Significant differences between countries

When the answers were put into percentage scores (results of questions 1 to 3), the test shows whether a country score is (at 5% level) significantly higher than the average score of all countries. The estimated standard deviation is based on that of a binomial probability distribution using the total percentage score over the countries and the number of responding judges of a country.

When the answers are described by a mean score (questions 13 and 14), the test shows whether this score of a country is (at 5% level) significantly lower than the total mean score over all countries by a t-test. The estimated standard deviation is based on the individual data for all countries and the number of responding judge of a country.

Question 1a	Response	Agree - Strongly agree	Disagree- Strongly disagree	Not sure	Significantly worse score than average?
Denmark - DK	154	0%	99%	1%	
Montenegro - ME	32	0%	94%	6%	
Ireland - IE	76	1%	99%	0%	
Netherlands - NL	383	2%	97%	1%	
Norway - NO	315	2%	97%	0%	
Romania - RO	186	3%	97%	1%	
United Kingdom - England & Wales	596	3%	95%	2%	

Belgium - BE	291	3%	96%	1%	
Sweden - SV	519	4%	95%	2%	
Portugal - PT	68	4%	94%	1%	
Serbia - RS	590	6%	89%	6%	
United Kingdom - Scotland	87	6%	94%	0%	
Poland - PL	621	6%	91%	2%	
Lithuania - LT	137	7%	88%	6%	
Bulgaria - BG	282	7%	88%	5%	
United Kingdom - Northern Ireland	29	7%	90%	3%	
Italy - IT	328	7%	92%	1%	
Slovenia - SI	249	8,84%	86%	5%	
Slovakia - SK	248	10%	86%	3%	x
Spain - ES	474	15%	80%	5%	x
Latvia - LV	146	19%	64%	17%	x
Albania - AL	67	19%	67%	13%	x
Total	5878	6,34%	90%		

Question 2a	Response	Agree - Strongly agree	Disagree- Strongly disagree	Not sure	Significantly worse score than average?
Denmark - DK	154	0%	100%	0%	
Ireland - IE	76	0%	100%	0%	
Netherlands - NL	383	0%	97%	3%	
Norway - NO	315	0%	98%	2%	
Sweden - SV	519	0%	98%	2%	
United Kingdom - Northern Ireland	29	0%	100%	0%	
United Kingdom - Scotland	87	0%	99%	1%	
United Kingdom - England & Wales	596	0%	98%	1%	
Belgium - BE	291	1%	80%	19%	
Portugal - PT	68	3%	81%	16%	
Poland - PL	621	3%	76%	21%	
Montenegro - ME	32	3%	66%	31%	
Slovenia - SI	249	8%	61%	31%	
Spain - ES	474	10%	66%	24%	
Serbia - RS	590	14%	39%	47%	
Slovakia - SK	248	22%	36%	42%	x
Italy - IT	328	26%	34%	40%	x
Albania - AL	67	30%	21%	49%	x

Bulgaria - BG	282	30%	17%	53%	x
Lithuania - LT	137	36%	15%	48%	x
Latvia - LV	146	38%	11%	51%	x
Romania - RO	186	40%	27%	32%	x
Total	5878	12,01%	65%		

Question 3a	Response	Agree - Strongly agree	Disagree- Strongly disagree	Not sure	Significantly worse score than average?
Netherlands - NL	383	1%	98%	1%	
Denmark - DK	154	1%	99%	0%	
United Kingdom - Scotland	87	2%	97%	1%	
Sweden - SV	519	2%	95%	2%	
Belgium - BE	291	2%	97%	0%	
Norway - NO	315	3%	97%	1%	
Montenegro - ME	32	3%	97%	0%	
United Kingdom - England & Wales	596	3%	96%	1%	
United Kingdom - Northern Ireland	29	3%	90%	7%	
Romania - RO	186	4%	94%	2%	
Ireland - IE	76	5%	95%	0%	
Portugal - PT	68	7%	93%	0%	
Slovenia - SI	249	8%	87%	5%	
Bulgaria - BG	282	8%	84%	8%	
Serbia - RS	590	8%	89%	3%	
Lithuania - LT	137	9%	87%	4%	
Poland - PL	621	9,179%	89%	2%	
Slovakia - SK	248	10,5%	87%	2%	x
Latvia - LV	146	13%	71%	16%	x
Italy - IT	328	13%	85%	2%	x
Spain - ES	474	14%	77%	8%	x
Albania - AL	67	25%	66%	9%	x
Total	5878	7,14%	89%		

Question 13	Response	Total of given scores from 0-10	Average score	Significantly worse score than average?

Denmark - DK	154	1514	9,831169	
United Kingdom - Northern Ireland	29	271	9,344828	
Norway - NO	315	2929	9,298413	
Ireland - IE	76	696	9,157895	
Netherlands - NL	383	3477	9,078329	
United Kingdom - Scotland	87	788	9,057471	
United Kingdom - England & Wales	596	5388	9,040268	
Belgium - BE	291	2540	8,728522	
Romania - RO	186	1612	8,666667	
Sweden - SV	519	4468	8,608863	
Portugal - PT	68	553	8,132353	
Montenegro - ME	32	260	8,125	
Italy - IT	328	2655	8,094512	
Slovenia - SI	249	1967	7,899598	
Poland - PL	621	4799	7,727858	x
Lithuania - LT	137	1020	7,445255	x
Bulgaria - BG	282	1926	6,829787	x
Slovakia - SK	248	1650	6,653226	x
Spain - ES	474	3124	6,590717	x
Latvia - LV	146	946	6,479452	x
Serbia - RS	590	3671	6,222034	x
Albania - AL	67	416	6,208955	x
Total	5878	46670	7,939775	

Question 14	Response	Total of given scores from 0-10	Average score	Significantly worse score than average?
Denmark - DK	154	1519	9,863636	
United Kingdom - Northern Ireland	29	279	9,62069	
Norway - NO	315	3008	9,549206	
Romania - RO	186	1754	9,430108	
Montenegro - ME	32	299	9,34375	
Belgium - BE	291	2707	9,302405	
Ireland - IE	76	706	9,289474	
Netherlands - NL	383	3554	9,279373	

United Kingdom - Scotland	87	804	9,241379	
Italy - IT	328	3025	9,222561	
Portugal - PT	68	618	9,088235	
United Kingdom - England & Wales	596	5385	9,035235	
Sweden - SV	519	4595	8,853565	
Slovenia - SI	249	2170	8,714859	
Serbia - RS	590	5039	8,540678	x
Poland - PL	621	5293	8,523349	x
Lithuania - LT	137	1137	8,29927	x
Spain - ES	474	3808	8,033755	x
Slovakia - SK	248	1989	8,020161	x
Bulgaria - BG	282	2249	7,975177	x
Albania - AL	67	518	7,731343	x
Latvia - LV	146	1098	7,520548	x
Total	5878	51554	8,77067	

5.6 Reporting and feedback to the judges

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

5.7 Lessons learned

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

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

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

6. Pilot survey among lay judges

7. Pilot dialogue group

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

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

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

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

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

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

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

Future of dialogue groups

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

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

8. Conclusions and follow-up

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

1. In 2015/2016 the dialogue groups will be extended to all interested members and observers. The outcomes will be integrated and conclusions will be presented to the General Assembly in Warsaw about the state of independence and accountability in the EU and candidate countries and about steps to be taken to address challenges whether at a national or supranational level.
2. The methodology of the performance indicators for the independence and accountability of the Judiciary and the scoring rules will be refined. Sensitivity analyses will be undertaken to assess the impact of different scoring rules on the scores. Also, outcomes of the dialogue groups may lead to alterations of the indicators. The revised indicators (version 1) will be implemented in 2016/2017.
3. The methodology of performance indicators will be extended to quality of Justice. This is a large project that needs careful elaboration.
4. The survey among judges will be improved (version 1) and enough time will be given to members and observers to prepare. The survey will be held in 2016/2017.
5. The work on the indicators for the independence and accountability of the Prosecution will be continued
6. It would be desirable that the Eurobarometer Justice in the EU is repeated with respect to the perceptions of the populations about (at least) independence. A discussion with the EC will be started to achieve this.

Section 2 Indicators Prosecutors and Accountability

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3. Framework for Independence and Accountability
4. Indicators objective / subjective independence
5. Accountability