



European Network of Councils
for the Judiciary (ENCJ)

Reseau européen des Conseils
de la Justice (RECJ)

Indicators Independence, Accountability and Quality of the Judiciary

Reenforcing judicial protection

ENCJ Report 2022-2023



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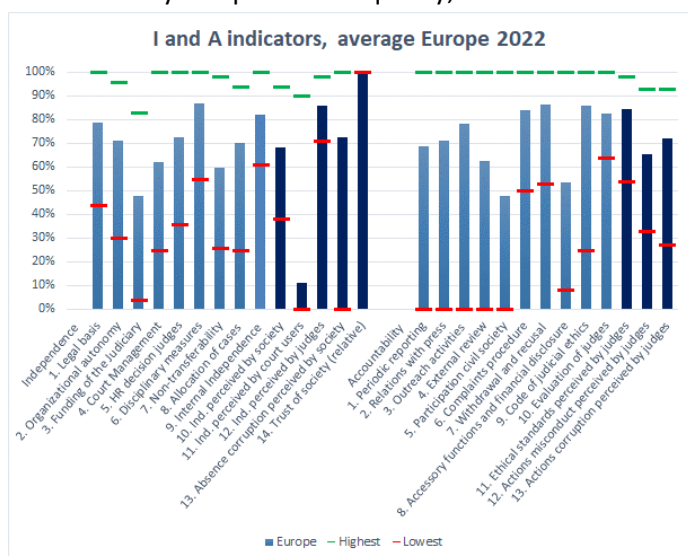
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Executive Summary and Recommendations

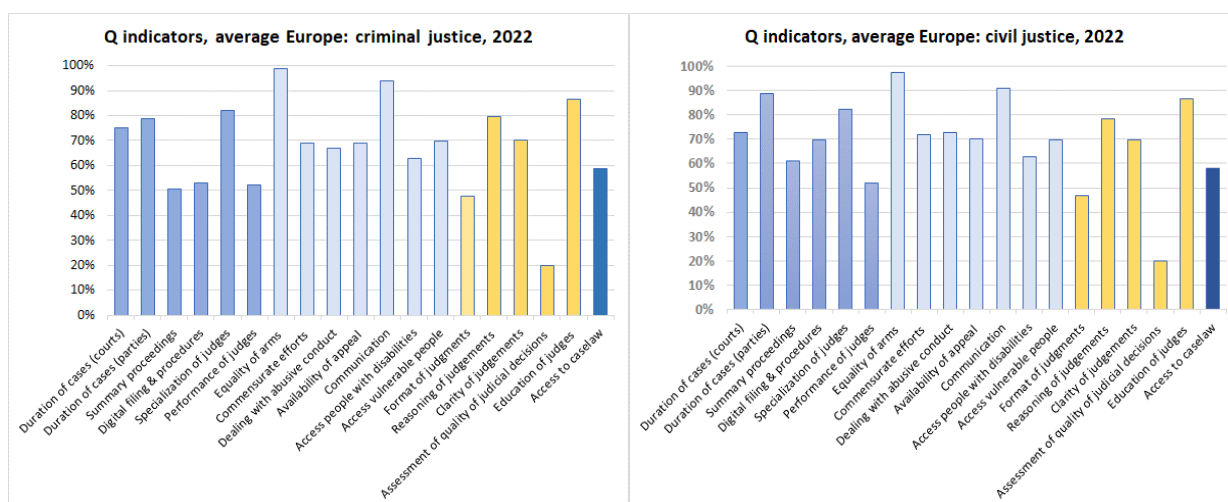
As essential part of the improvement cycle of the judiciary that the ENCJ has initiated, the indicators on independence and accountability and those on quality of justice have been measured anew. The indicators on independence and accountability concern, on the one hand, formal arrangements and safeguards and, on the other hand, perceptions of independence in society. The data has been gathered by means of a questionnaire among Councils for the Judiciary and other governing bodies (formal arrangements) and diverse surveys, including the ENCJ survey among judges (perceptions). The answers to the questionnaires have been externally validated. Conceptually, the indicator system is evolving, but the main aspects of independence are kept constant. The indicators on quality of justice focus on the practical arrangements that affect key components of quality, and are also measured by means of a questionnaire among Councils



for the Judiciary and other governing bodies. The set of indicators has reached a sufficient level of maturity that, like the set on independence and accountability, it is informative and gives insight into the possibilities for improvement for the participating judiciaries.

The indicators for each judiciary in the formats presented here for all judiciaries together are the core of this report. Like in previous years, there is much room for improvement of independence as well as accountability, judging from the difference between the average scores and best

arrangements. With regard to formal independence (1-9), the funding of the Judiciary scores lowest by far. Since 2019/2020 the score has declined further. The funding of the Judiciary is generally not well arranged, and judiciaries are often dependent on discretionary decisions by the government. Perceptions of independence and accountability show mixed outcomes. Most judiciaries have not conducted court user surveys. Consequently, the average score on this indicator is very low. As before, citizens' perception of judicial independence is less favourable than that of judges. The mean score on the citizens' perception of judicial corruption is rather favourable, but, as the country profiles show, the difference among judiciaries are very large and corruption remains a major challenge in a number of judiciaries. Indicator 14 warrants specific attention, because it provides a within-country comparison. It concerns trust of citizens in the judiciary relative to trust in the other state powers. For the first time, in all participating countries the trust in the Judiciary is higher than the trust in the other branches of the state. As to accountability, there are low average scores for the involvement of civil society in the governance of the judiciary and for the combined indicator on accessory functions and financial disclosure. As to the further development of the indicators, a new indicator on review has been adopted to replace the indicator on external review (A4) and a position has been agreed on formal responsibilities of government for appointing judges (I5).



With regard to the indicators on quality of justice, a distinction is made between criminal justice and civil justice. On average the differences between both are small. Four areas of quality are addressed: timeliness and efficiency of procedures (blue), due process from the perspective of accessibility (light blue), quality of judicial decisions (yellow) and public access to the law to guide society (dark blue). Only with respect to timeliness and efficiency of procedures do substantial differences emerge. Civil procedure makes more use of summary proceedings as well as digital filing and digital procedures. The on-average lowest scores are found for several aspects of the quality of judicial decisions. In particular, the assessment of judicial decisions is rarely used and apparently controversial. Also the formatting of judgments to improve, where possible, uniformity and to reduce the risk of making mistakes is not applied systematically.

Comparing the outcomes of all judiciaries, several topics are worth noting. (1) The approach towards specialisation is very similar with nearly all judiciaries choosing a high degree of specialisation. (2) In contrast, digitalization differs among the judiciaries. This might be an issue of timing with some judiciaries being (nearly) fully digital earlier than others, but it seems also to be a matter of legal principle. (3) With regard to appeal procedures, the differences among judiciaries are relatively large. These differences concern the use of filtering mechanism to prevent cases that have no merit to proceed to a full hearing.

Next steps

The indicators and their measurement are part of the improvement cycle that the members of the ENCJ adopted. Accordingly,

1. The outcomes of the indicators on independence and accountability as well as quality of justice will be discussed in small dialogue groups of members and observers in the period from September 2023 until March 2024 to analyse the outcomes together, to suggest priorities and to generate ideas for improvement.
2. Improvement plans on independence and accountability will be developed to address weaknesses and/or to build on strengths in the period from January until June 2024.
3. On quality of justice, Councils for the Judiciary are invited to apply the quality framework that has been agreed, develop their vision on quality and translate this into concrete activities to improve the quality of justice in 2023/2024.
4. The next edition of the survey among judges will be held in the first quarter of 2025 and will be prepared in 2023/2024. In addition, the possibilities for a new survey among lawyers will be explored.

As the system of standards and indicators is not static, several issues will be examined in the next period.

5. Political affiliation of judges and independence.
6. Position of Constitutional Courts in the framework of independence and accountability. Given the impact of Constitutional Courts on independence, an exploratory discussion is needed on the position of the ENCJ on these courts, in particular in relation to judicial independence.
7. Selection of judges: the current indicator is based on the ENCJ guidelines. The guidelines state that judges are selected only on merit. This limits diversity policies to only candidates of equal capability. The question may be posed whether or not this is too restrictive.
8. Selected areas of quality that have proved to be complicated or controversial will be further explored to find common ground and to raise awareness of the possibilities for improvement in these areas. A non-exhaustive list of such areas includes digital case filing and digital procedures as well as the availability of appeal.
9. Survey among court users: the model survey will be extended to key aspects of quality of justice and the possibilities for an EU-wide survey will be further explored.
10. As to the quality indicators, the outcomes will be analysed against existing, external data about quality of justice for their use in the indicator system.
11. The schematic overview of quality related activities of Councils for the Judiciary will be kept up to date.

Introduction¹

“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. Everyone has a right to an effective remedy and a fair trial. Central to the mission of the European Network of Councils for the Judiciary (ENCJ) is the reinforcement of independent, yet accountable judiciaries in the European Union to guarantee access to fair, independent and impartial courts. One of the ways in which the ENCJ strives to protect and promote these rights 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 developed standards for the areas of responsibility of Councils for the Judiciary that are important to the independence and accountability of the judiciary. 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, all to guarantee the independence of the judge within an independent judiciary. Setting standards is relevant for judiciaries to be able to benchmark and improve their practices. Many of the standards are applicable to other governance structures as well as Councils for the Judiciary.

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. 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. Generally, independence, accountability and quality reinforce each other. In some instances, tensions may occur between these aspects and these will need to be reconciled. For this reason, the setting of standards on quality of justice is particularly relevant.

While Councils for the Judiciary have wide-ranging responsibilities for the independence and accountability of the judiciary, these Councils have varying responsibilities for setting standards governing the quality of justice. While some Councils have broad responsibilities regarding quality of justice, others may be constrained in this area by lack of core competence. Still, all have a role to play. In all their tasks, Councils for the Judiciary need to take into account the perspective of the person seeking justice and from that perspective they need to focus on quality of justice. It might be the case that some quality standards cannot be applied by all Councils for the Judiciary, but these standards are nevertheless necessary, irrespective of who is responsible.

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 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.

¹ This report was composed, with the input of the project team, by Mrs Milda Treige, Mrs Aleksandra Switalska and Mr. Frans van Dijk. They also processed and analysed the answers provided by the project team members to the questionnaires. The part on Court User Surveys was written by Mrs Maria Gkana. The members of the project team are listed in Annex 1. Meetings of the project team took place on 29-30 September 2022, 15-16 December 2022, 23-24 March 2023 and 2 May 2023.

To assess the extent to which standards and guidelines are realised a set of indicators on independence and accountability has been developed and implemented. The indicators require regular updating to take changes in national judicial systems into account. The last time this happened, was in 2019/2020, and an update of the indicators is presented in this report. The outcomes provide Councils and other governing bodies with insights that they can use to improve their judicial systems and to enable judges to fulfil their essential function in society better, and, where necessary, engage with the other state powers on matters of independence. The indicators concern, on the one hand, the formal safeguards and mechanisms that protect judicial independence and provide for accountability and, on the other hand, the perceptions of independence in society. In the European Union, the perceptions of citizens and companies about judicial independence are annually surveyed by the Eurobarometer, commissioned by the European Commission. The data from this survey and related surveys such as those for the Rule of Law Index are included in the indicators on perceived independence and accountability. The perceptions of judges on independence are not part of these Eurobarometer surveys, and the ENCJ has taken upon itself to conduct a survey among judges on a regular basis. In the first quarter of 2022, this survey was conducted for the fourth time.² Part 1 of this report presents the set of indicators on independence and accountability.

A complementary set of indicators on quality of justice has been developed in several iterations. The development of these indicators proved more complicated than that of the indicators on independence and accountability, due to the large impact of differences between legal/judicial systems. In its current iteration, the indicators are in the view of the ENCJ informative on quality of justice and can help councils to assess their performance. Part 2 of the report presents the indicators on quality of justice and their actual measurement.

It should be stressed that both sets of indicators are not only relevant for councils but also for other governance structures. Some countries in the EU such as Austria, Germany and Sweden do not have a council, but, while there a Ministry of Justice at federal and/or state level is responsible for the judiciary, judges are involved and have influence for instance on the appointment of judges. The indicators take such arrangements into account.

This report draws heavily on the previous reports on independence, accountability and quality of the Judiciary that the ENCJ has produced annually. Year on year, the indicator system has gradually evolved, encompassing more aspects in a, hopefully, better way. This year, for instance, an indicator on evaluation of judges was added to the indicators on independence and accountability. Also, some further improvements are discussed in this report, but have not been applied yet. As both the indicators on independence and accountability and on quality seem now to be of interest to a broader audience, the report brings together the thinking of the ENCJ in earlier reports to facilitate understanding without the need to refer to these previous reports.³

² ENCJ (2022). ENCJ Survey on the Independence of Judges. www.encj.eu.

³ As will be indicated, extensive quotes from earlier reports are included with respect to quality of justice.

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Part 1. Independence and Accountability

1 Introduction

In the next section, the principles underlying the indicators on independence and accountability and the design of the system are briefly outlined. Section 3 lists the current set of indicators. Switching to actual measurement, Section 4 presents the state of independence and accountability in Europe in 2020, first by giving the average outcomes for all participating judiciaries and highlighting some main findings, second by presenting the outcomes for each judiciary. It should be stressed that the outcomes per judiciary are of prime interest, as the aim of the indicators is to provide each judiciary with insight in its strengths and weaknesses. Section 5 concerns the further development of the indicators, and contains some improvements of the indicators that during this project year (from September 2022 till June 2023) have been discussed in parallel with the measurement process and these have not been implemented yet. In the final section, the plans for the next project year are discussed.

2. Principles of independence and accountability

Before turning to the indicators and their measurement, the principles underlying the system of indicators are recapitulated and the system itself is presented.

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).
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 private actors, 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 mentioned in the general introduction, 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 safeguards	Judiciary as a whole	Individual judge	Judiciary as a whole	Individual judge
Perceptions	Perceptions of a range of groups in society		Only perceptions of judges	

The indicators build upon the standards that the ENCJ has developed over the years, making extensive use of the work that was done by international governmental and judicial networks and organizations, such as the Consultative Council of European Judges (CCJE) of the Council of Europe. The ENCJ standards are summarized in a report of some years ago⁴, while Van Dijk and Vos give the (initial) reasoning and sources behind the indicators.⁵

3. Indicators on independence and accountability

The current set of indicators consists of the following indicators.

INDICATORS OF THE FORMAL INDEPENDENCE OF THE JUDICIARY AS A WHOLE	
11. Legal basis of independence , with the following sub-indicators: <ul style="list-style-type: none"> - 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. 	

⁴ ENCJ (2016/2017). Distillation of ENCJ Principles, Recommendations and Guidelines 2004-2027. www.encj.eu.

⁵ F. van Dijk and G. Vos (2018). A Method for Assessment of the Independence and Accountability of the Judiciary. *International Journal for Court Administration* 9/3, 1-21.
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12. Organisational autonomy of the judiciary, with the following sub-indicators where there is a Council for the Judiciary or equivalent independent body:

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

Sub-indicator when there is no Council for the Judiciary or an equivalent body or the responsibilities of these bodies are limited:

- Influence of judges on a range of decisions.

13. Financial independence, with the following sub-indicators:

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

14. Management of the court system.

- Scope of the management responsibility of the courts.

INDICATORS OF THE FORMAL INDEPENDENCE OF THE INDIVIDUAL JUDGE

15. 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 and training of judges
- Probationary periods after appointment
- Compliance with ENCJ guidelines about the promotion of judges

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

- Compliance with ENCJ standards about procedures re disciplinary measures against judges
- Competent body to make decisions about disciplinary measures against judges
- Formal guarantee that disciplinary measures can not be initiated against a judge (except in cases where there has been malice or gross negligence) for the following reasons: a) interpretation of the law, b) assessment of facts and c) weighing of evidence in determining a case
- Formal guarantee that disciplinary measures can not be initiated against a judge for speaking out when democracy and fundamental freedoms are in peril

17. 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, when allowed

- Formal guarantee that a judge cannot be taken off a case.

18. 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

19. Internal independence, with the following sub-indicators:

- Possibilities for higher ranked judges to influence judicial decisions of judges
- Existence and status of guidelines by judges at the same level
- Possibilities of the management of the courts to influence judicial decisions

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

I10. Independence as perceived by society. Average of:

- Flash Eurobarometer 503 (2022) 'Perceived independence of the national justice systems in the EU among the general public', Q1 and Flash Eurobarometer 504 (2022) 'Perceived independence of the national justice systems in the EU among companies', Q1. Average.
- WJP, Rule of Law Index 2022, Q1.2, Q7.4 and Q8.6. Average

I11. Independence as perceived by courts users

- National surveys

I11.1 Independence as perceived by lawyers

- CCBE survey: **no recent survey available**

I12. Independence as perceived by judges

- ENCJ survey 2022, Table 1 of Annex 3

I13. Judicial corruption (absence of) as perceived by citizens. Average of:

- Special Eurobarometer 523 (2022) 'Corruption', QA7 Courts
- WJP, Rule of Law Index 2022, Q2.2

I14. Trust in justice/legal system, relative to trust in other state powers by citizens

- Standard Eurobarometer 97 (2022) 'Public Opinion in the European Union', Table QA6a.3 vs average of QA6a.9 and QA6a.10

INDICATORS OF THE FORMAL ACCOUNTABILITY OF THE JUDICIARY AS A WHOLE

Transparency about the functioning of the judiciary

A1. Periodic reporting on the judiciary, with the following sub-indicators:

- Availability of annual reports
- Responsibility for publishing of annual reports
- Scope of annual reports
- Periodic and public benchmarking of the courts

A2. Relations with the press and outreach activities, with the following sub-indicators:

- Explanation of judicial decisions to the media
- Availability of press guidelines
- Authorisation to broadcast court cases

A3. Outreach activities aimed at civil society

- Open-door days of the courts
- Educational programmes conducted at schools
- Development of television/radio/social media programme formats to give insight in the work of the judge

A4. External review, with the following sub-indicators:

- Use of external review
- Authority to commission 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

A5. Participation of civil society in governance bodies of the judiciary charged with:

- 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 evaluate performance and to promote and maintain ethical standards of the judiciary

A6. Complaints procedure, with the following sub-indicators:

- Availability of a complaints procedure
- Scope of the complaints procedure

- Appeal against a decision on a complaint

A7. Withdrawal and recusal, with the following sub-indicators:

- Obligation of voluntary withdrawal
- Sanctions in case of breach of an obligation to withdraw
- Authority to decide on a request for recusal
- Possibility of appeal against a decision on a request for recusal
- Authority that decides on appeal

A8. Admissibility of accessory functions and disclosure of interests, with the following sub-indicators:

- Policy on admissibility of external functions
- Requirement of authorisation for the exercise of accessory functions (if allowed);
- Authority that decides on 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

A9. Code or guidelines 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

A10. Evaluation of judges

- Existence of performance evaluation
- Formalisation of the purpose of evaluation
- Protection of independence per type of evaluation

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

A11. Adherence to ethical standards, as perceived by judges

ENCJ survey 2022, Table 23 of Annex 3

A12. Effectiveness of actions by judicial authorities to address judicial misconduct, as perceived by judges

ENCJ survey 2022, Table 24 of Annex 3

A13. Effectiveness of actions by judicial authorities to address judicial corruption, as perceived by judges

ENCJ survey 2022, Table 25 of Annex 3

The indicators and their constituent parts are described in detail in the questionnaire that has been forwarded to the Councils of the Judiciary and, where these do not exist, other governing bodies. The format of the questionnaire, including the scoring of the answers (see next section), is published separately on the website of the ENCJ. The questionnaires with the answers for each judiciary are also available on the website of the ENCJ. The answers give a detailed insight in the formal arrangements in each country. This is the fourth time the indicators have been measured. Previous editions were 2015, 2017 and 2019. The indicators have largely remained the same, but some aspects were added. This year an indicator was added on performance evaluation.⁶ The indicators regarding the perceptions of lawyers had to be dropped, as no survey could be held in recent years (see below).

4. Normative evaluation of outcomes

The indicator system consists of the set of indicators just presented and of a methodology to uniformly quantify the results. This requires a normative evaluation of what is good and what is bad practice for each (sub)indicator. This is done by means of a points system using scoring rules, based on the following principles:

1. With respect to all formal safeguards, the key issue is the ease with which such safeguards can be removed or altered. A safeguard embedded in the 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. This may be in the form of a Council for the Judiciary or of other governance arrangements than give judges a decisive voice in (specific) decisions. 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. Decisions about the judiciary based upon transparent rules are to be preferred to *ad hoc* reactions to particular situations.
4. Judicial decisions and procedures, including complaints procedures, should all be formalised, public and transparent.
5. Transparency requires active dissemination of information and efforts to make the public familiar with the judiciary, rather than simply making information available in documents on a website.

These principles are also reflected in the ENCJ standards on key aspects of judicial independence. 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. The actual scores and the way the scores are aggregated to calculate the indicators are given in detail in the format of the questionnaire, available on the ENCJ website.

⁶ See ENCJ (2021/2022).

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5. Method of measurement and external validation

As to the assessment of the formal aspects by means of the questionnaire, the categorisation is done by the participating Councils for the Judiciary or, in the absence of a Council, other governance bodies. This is a form of self-evaluation that, however, can be checked by anybody who is knowledgeable about the legal system concerned, as it concerns the description of formal arrangements. At the General Assembly 2019 of the ENCJ it was decided to introduce external validation of the answers to the questionnaire in view of the reliability and credibility of the indicators.

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 validation committees and their composition, as used in this round. Some Members and Observers did not establish an external validation committee. This is in particular justified if the judicial system has not undergone changes since the previous round.

The indicators of perceived independence consist of the perceptions on independence in society (citizens in general), the users of the courts and the judges themselves, and on related topics such as perceptions on corruption and trust. External surveys are available about perceptions in society. The main source are Eurobarometer reports, but also the Rule of Law index of the World Justice Project is used, since the Eurobarometer does not contain countries outside the EU (Norway, UK). Unfortunately, insight in the experience of court users is still rare. Few judiciaries have conducted satisfaction surveys among court users, and, if they did, questions about independence were rarely included. The Eurobarometer on independence does differentiate between citizens with and without experience with the courts but its sample size is rather small. Also, some surveys by judiciaries that have a tradition of court user research such as Denmark and the Netherlands, are not recent enough to be meaningful for this edition.

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 past.⁷ In the first quarter of 2022 the survey among the professional judges was held. The survey among judges includes some questions about accountability that have been incorporated in the indicators. Still, in the coming years perceived accountability needs to be further developed, conceptually and practically.

In previous years (most recently in 2019), a survey was held among lawyers in cooperation with the CCBE (Council of Bars and Law Societies of Europe).⁸ A survey did not prove possible in 2022. This causes a serious gap in the data on perceptions, as lawyers are particularly knowledgeable about the functioning of the judiciary and their response reflects a more detached observation of court user experience than the views of the courts users themselves.

⁷ ENCJ (2022). Survey among judges on judicial independence, ENCJ (2017/2018). Data ENCJ Survey on the Independence of Lay Judges.

⁸ ENCJ/CCBE (2018/2019). Independence and Accountability of the Judiciary; ENCJ/CCBE Survey among lawyers on the independence of judges.

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Table 2. Size and composition of the external validation committees

		Composition			
		Only academics	Only judges	Combination	None
Number of members	0				7
	1	3	1		
	2	7		1	
	3			3	
	4			1	

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

1. The Council for the Judiciary (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 Section 6) are all based on the answers of the Councils and other governing bodies, and remaining differences of opinion or noteworthy issues are listed under the graphs.
5. The scoring was done by the ENCJ Office that also collected and scored the data on perceptions. The outcomes were made available to the Councils and other governing bodies for checking.

6. State of Independence and Accountability in Europe 2022

The outcomes of the indicators are presented in the figures below for each judiciary separately. In total 23 judiciaries⁹ participated, including those of England and Wales, Northern Ireland and Scotland. 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 analyse and discuss the strengths and weaknesses of judicial systems in the context of an improvement cycle (see Section 8). They have not been developed to create a ranking of judicial systems. Consequently, the outcomes are presented per indicator, and no overall indicators of independence and accountability are calculated. It should be stressed that a weakness in one independence indicator cannot be compensated by the particular strength of another. This implies that the calculation of an average across all indicators has little meaning. Readers are advised to treat the comparison of data for different countries with various geographical, economic and legal backgrounds with caution.

Annex 2 gives the indicators for each participating judiciary in table format for 2022 and for two previous years, 2016 and 2019, for which the indicators were also measured. The table shows that most but not all judiciaries participated in these three editions. The table also makes explicit that the indicators have undergone some changes. Some new indicators were introduced, foremost to improve upon existing indicators.

The table shows substantial differences in the outcomes over time. These differences are caused by actual changes in the formal arrangements and in perceptions but it cannot be ruled out that some arrangements are evaluated differently over time. While the indicators are descriptive, some may leave room for interpretation. The validation by external experts reduces subjectivity but not fully. In many countries, the external validation, in particular the first time that it took place (2020), led to discussions about the correct answers to the questionnaire, and in some instances this has resulted in changes in the answers, compared to the previous edition. Consequently, caution is also required when comparing outcomes over time.

6.1 Method of presentation

The indicators on formal independence explicitly contain a standard about what formal arrangements should look like. The higher the score on an indicator, the more it is in line with the principles discussed in Section 4 and detailed in the ENCJ standards. The outcomes for each indicator are presented as a percentage of the maximum score that reflects the best arrangements.¹⁰ Statistics such as average and standard deviation can be calculated for each (sub) indicator across judiciaries.

In the graphs that follow the score per indicator for a judiciary is presented in combination with the minimum and maximum score achieved by any of the participating judiciaries. 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

⁹ Not counting double representation of jurisdictions in Greece (civil courts and administrative law tribunals).

¹⁰ 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.

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accountability consist of indicators 1 – 10 on formal accountability (light blue) and indicators 11 – 13 on perceived accountability (dark blue).

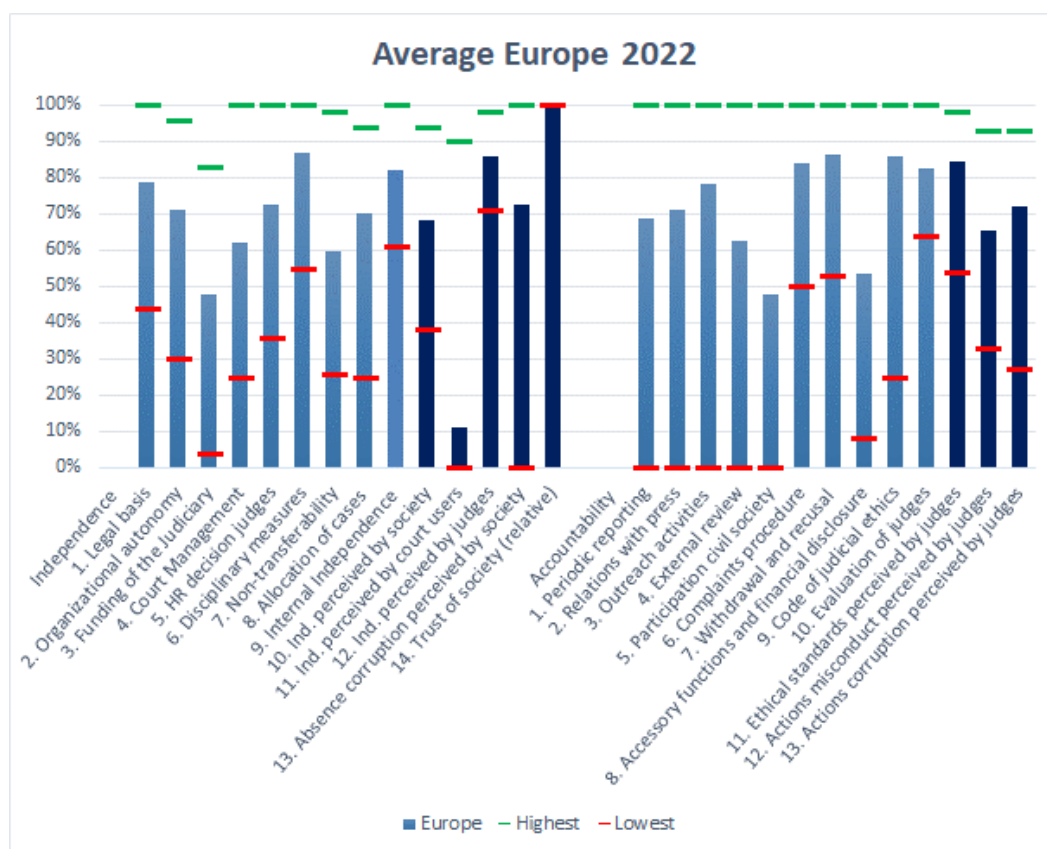
Before turning to the indicators for each judiciary, the mean results are given for all judiciaries together.

6.2 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. As noted, surveys among court users that survey perceptions of independence are rarely performed on the national level. As a result, most countries have a minimum score of 0 (no survey) on this indicator. Given the importance of court user feedback, there is no reason to drop the indicator due to lack of interest.

Figure 1 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 judiciary and the green dash the highest score. Given the differences between the judiciaries, the average scores only give a rough indication of common issues in Europe. In particular, the formal accountability indicators show a wide variation. Nevertheless, some general conclusions can be drawn from the averages in combination with a global inspection of the outcomes for each judiciary.

Figure 1 Indicators on Judicial Independence and Accountability, average of all judiciaries



Independence and accountability in Europe

Like in previous years, there is still much room for improvement of independence as well as accountability, judging from the difference between the average scores and what are considered to be best arrangements (100%). For most indicators at least one Judiciary reaches a 100% score (green dash), showing that these best arrangements are achievable. On the other hand, very low 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 (with one exception, see below). Even so considerable progress can be gained. It should be stressed that formal arrangements about 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. In the following, a number of topics that are of particular interest are highlighted.

Perceived independence

Perceptions of independence and accountability show mixed outcomes. 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 generally within the mandate of judiciaries to conduct court user surveys, and therefore judiciaries can influence their score.

Citizens' perception of judicial independence is less favourable than that of judges. The previous edition of the indicators used the results of a survey among lawyers. Their perception of judicial independence was midway between that of citizens and judges. Unfortunately, the survey that was organized by the CCBE and ENCJ among lawyers did not take place in 2022. The mean score on the citizens' perception of judicial corruption is rather favourable, but, as the country profiles show, the difference among judiciaries are very large and corruption remains a major challenge in a number of judiciaries.

Indicator 15 warrants specific attention, because it provides a within-country comparison. It concerns trust of citizens in the judiciary relative to trust in the other state powers. For the first time, in all participating countries the trust in the Judiciary is higher than the trust in the other branches of the state (in 2019/2020, this was the case in 16 of the 21 countries for which data were available). While the three state powers fulfil very different functions, it is remarkable that everywhere judges are trusted more than directly elected officials. It should be noted that this does not imply that trust in the judiciary is high in all judiciaries.

Low scores for funding

With regard to formal independence (1-9), the funding of the Judiciary scores lowest by far. Since 2019/2020 the score has declined further. 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, government and parliament, including the possibility for the judiciary to involve parliament in case of a conflict with government, and the objectivity of the criteria of funding. On both aspects scores are low.

Table 3 provides data on the perception of Councils for the Judiciary and other governing bodies about the adequacy of the budget of the judiciary. Eight out of 23 judiciaries state that the budget is not only small, but actually insufficient to meet the needs in important areas of the work of the courts.

The outcomes in this area underline the relevance of the ENCJ report on funding of the judiciary.¹¹ The main recommendations of that report are:

1. 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;
2. 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;
3. 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.

Table 3. Sufficiency of the funding of the Judiciary, as perceived by Councils and other governing bodies

Sufficiency of the funding of the Judiciary					
	To handle the case load	To engage experts/translators /etc in relevant cases if fees are paid by court	To keep the knowledge and skills of judges up to date	To keep the knowledge and skills of court staff up to date	To facilitate judges and other personnel in matters of IT-systems, buildings etc.
Austria	x	x	x	x	x
Belgium					
Bulgaria	x	x	x	x	no
Denmark	x	x	x	x	x
Finland	x	x	x	x	x
France					
Germany	x	x	x	x	x
Greece					
Hungary	x	x	x	x	x
Ireland	x	x	x	x	x
Italy	no	x	x	no	no
Latvia	x	x	x	x	x
Lithuania	no	x	no	no	x
Netherlands	x	x	x	x	x
Norway	x	x	x	x	x
Portugal	no	x	x	x	no
Romania	x	x	x	x	x
Slovakia	x	no	no	no	no
Sweden	x	x	x	x	x
Spain	no	no	x	x	no
England&Wales	x	no	x	no	no
Scotland	x	x	x	x	x
Northern Ireland	x	x	x	no	x

Source: ENCJ Questionnaire on Independence and Accountability 2022/2023, Question 3a. x is sufficient.

¹¹ See ENCJ (2015-2016). Funding of the Judiciary. See www.encj.eu.

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Ambivalent outcomes about appointment and promotion of judges

In the previous report on the measurement of the indicators, it was noted with regard to human resource decisions (appointment and promotion of judges) that 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.¹² Full compliance with the standards does not guarantee a high opinion of the judges about the outcome of the appointment and promotion 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 the arrangements for human resource decisions about judges, and the vertical axis the outcomes of the judges' survey. If indicator and survey answers were consistent, outcomes would be on the diagonal. In this edition, again a large cluster of countries lies below the diagonal, and also many countries lie above. Thus, many judiciaries perform substantially worse than their formal arrangements would indicate and also many substantially better.

Figure 2 Indicator HR decisions vs agreement in judges survey on promotion of judges only on merit (survey 2022)



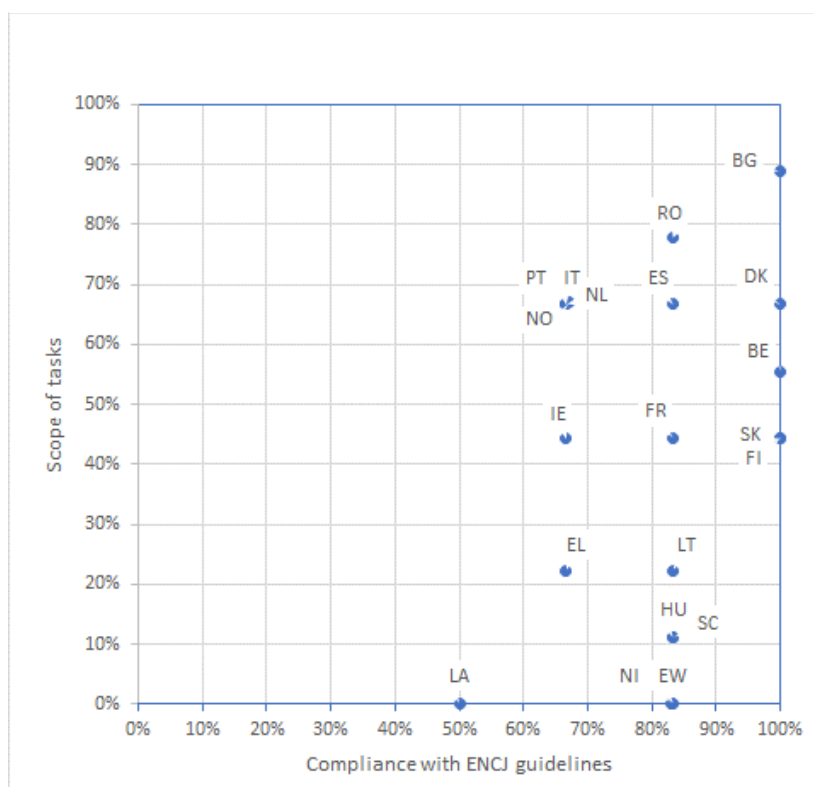
Position of Councils for the Judiciary

Indicator 2 of independence concerns the organizational autonomy of the judiciary. This indicator allows for (the combination of) various governance institutions. Focusing on Councils for the Judiciary themselves, two aspects can be distinguished. The first aspect is the degree of compliance of a Council with the - jointly agreed - ENCJ guidelines and the second the scope of its tasks. *Figure 3* gives the quantitative scoring of both aspects (percentages of guidelines met and of categories of tasks fulfilled). In

¹² See ENCJ 2019.

particular, the variety of tasks is very large. There are Councils that do not perform any of the listed tasks. In essence, these are advisory bodies (e.g. in the UK). Also, there are Councils with a broad range of tasks. In addition, the usual distinction is found between Councils that focus on appointment and dismissal of judges and Councils with a focus on the governance of the judiciary and its funding. A striking difference

Figure 3 Compliance with ENCJ guidelines and scope of tasks of Councils for the Judiciary, 2022



Note: six guidelines and nine task areas (see questionnaire 2022/2023, Q 2).

is that some Councils are directly tasked and, as a result, heavily preoccupied with the selection of judges, and others, such as the Netherlands Council, are indirectly responsible by means of the appointment (and replacement) of the members of a selection commission, as a part of a broad range of tasks. It follows that the governance of the judiciary differs very much, and is still fragmented in many countries. This stands in the way of the integral governance of the judiciary.

Diverse outcomes about formal accountability

With respect to accountability, it was noted already 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.

Involvement of civil society and accessory functions/financial disclosure

Low average scores are, in particular, found for the involvement of civil society in the governance of the judiciary and for the combined indicator on accessory functions and financial disclosure. The indicator on the involvement of civil society concerns the participation of representatives of civil society in the appointment and selection of judges, disciplinary procedures against judges and complaints against them. Such participation may enhance the trust of citizens in these procedures, but is rare. The low score on the indicator on accessory functions and financial disclosure is primarily caused by the absence of financial disclosure in half of the participating judiciaries. The pattern is rather erratic with similar countries making different choices with, for instance, Portugal implementing and Spain not implementing disclosure, France implementing and Belgium not and Norway implementing and Denmark not. Financial disclosure can be found more systematically in Central Europe, although not in Hungary. In the Anglo Saxon countries financial disclosure is not applied.

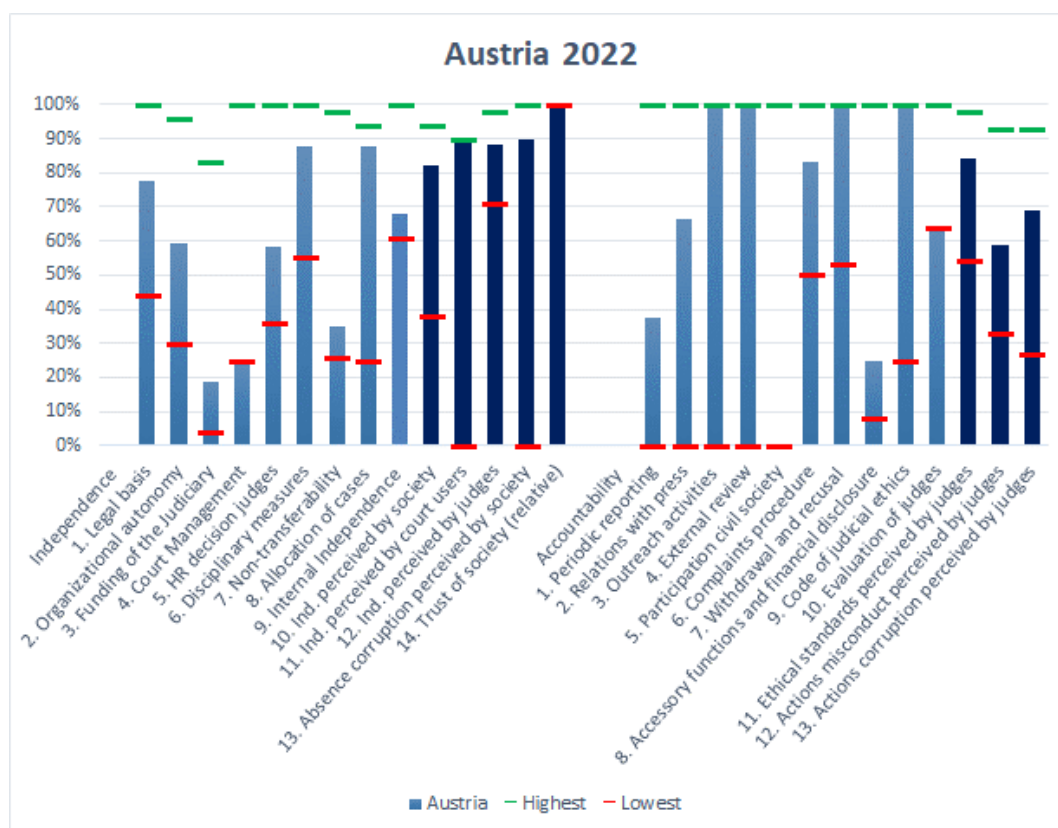
Perceived accountability

In its current edition, the perception indicators are confined to the perceptions of judges. As noted the comparison with the perceptions of lawyers could not be realized in 2022. The current indicators concern adherence to ethical standards and the adequacy of actions by judicial authorities to address judicial misconduct and corruption. More than 80% of the responding judges are content with the adherence of judges to the ethical standards. Between 60% and 70% expressed the opinion that misconduct and corruption are effectively addressed by the judicial authorities. It should be noted that the perceptions of judges and lawyers differed very much in the previous edition, and this should still be cause for concern.

6.3 State of independence and accountability per judiciary

The country profiles are presented in alphabetical order for all participating judiciaries, members of the ENCJ as well as observers. An asterisk denotes the observers.

Figure 4 Indicators on Judicial Independence and Accountability, Austria*



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.

Figure 5 Indicators on Judicial Independence and Accountability, Belgium

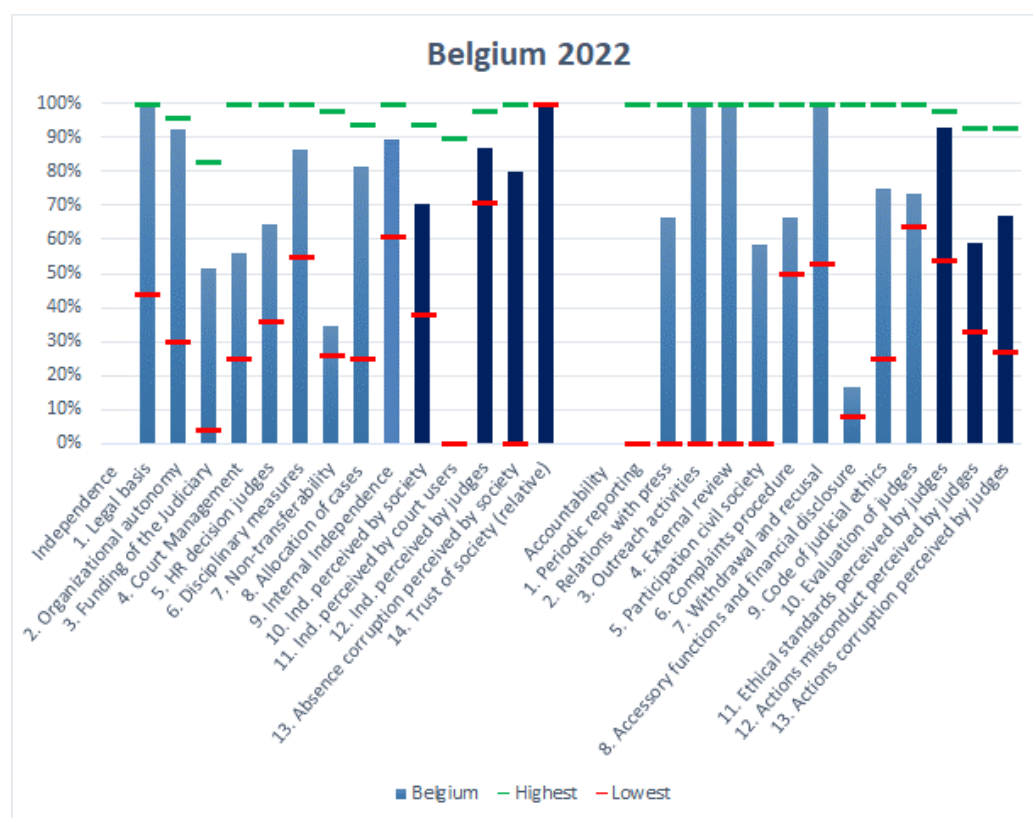


Figure 6 Indicators on Judicial Independence and Accountability, Bulgaria

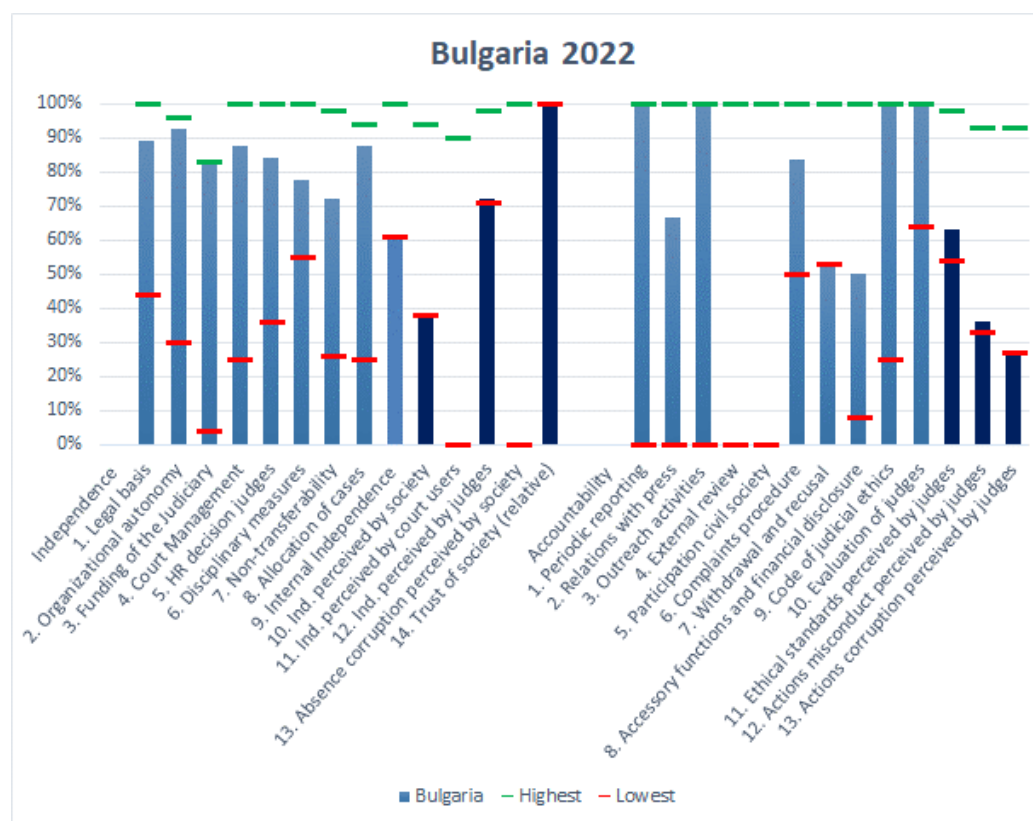


Figure 7 Indicators on Judicial Independence and Accountability, Denmark

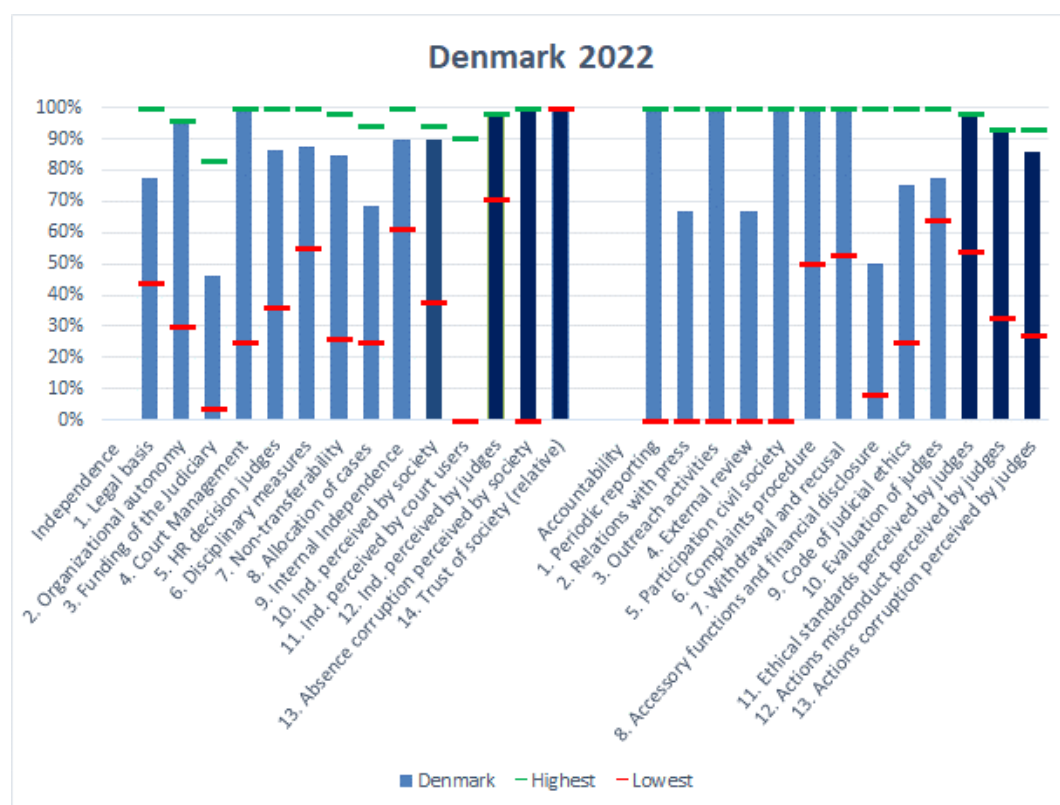


Figure 8 Indicators on Judicial Independence and Accountability, Finland

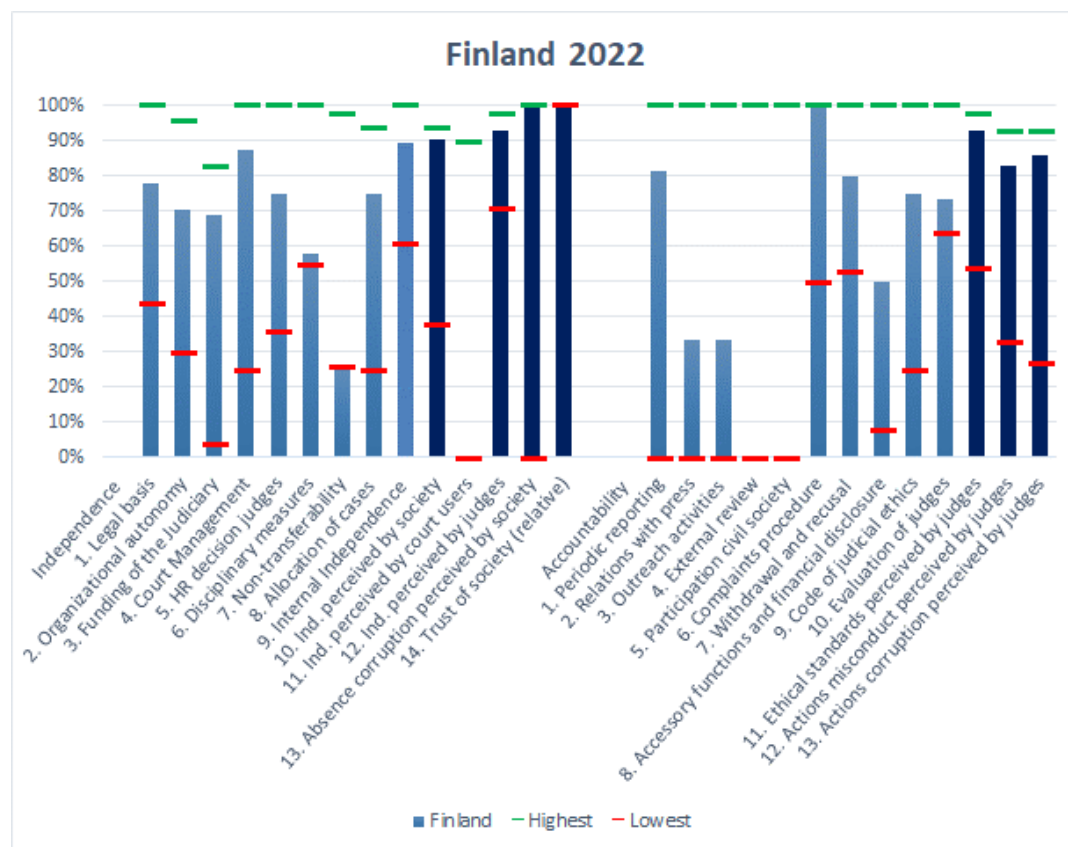


Figure 9 Indicators on Judicial Independence and Accountability, France

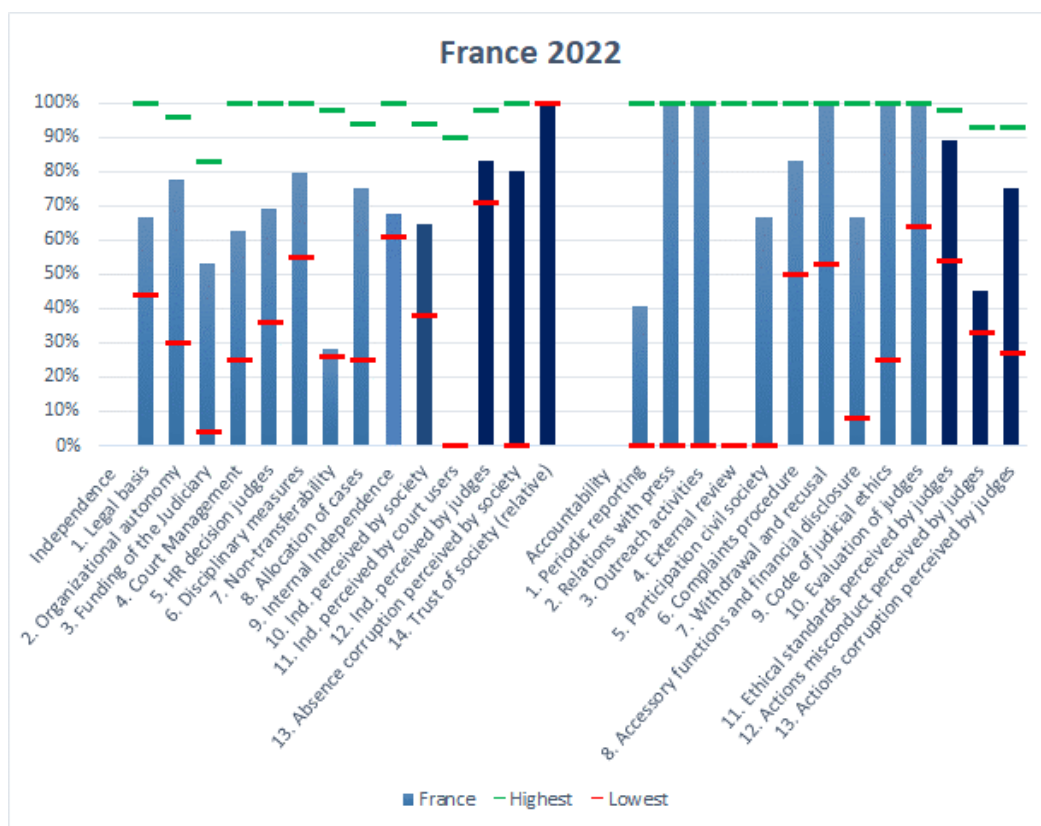
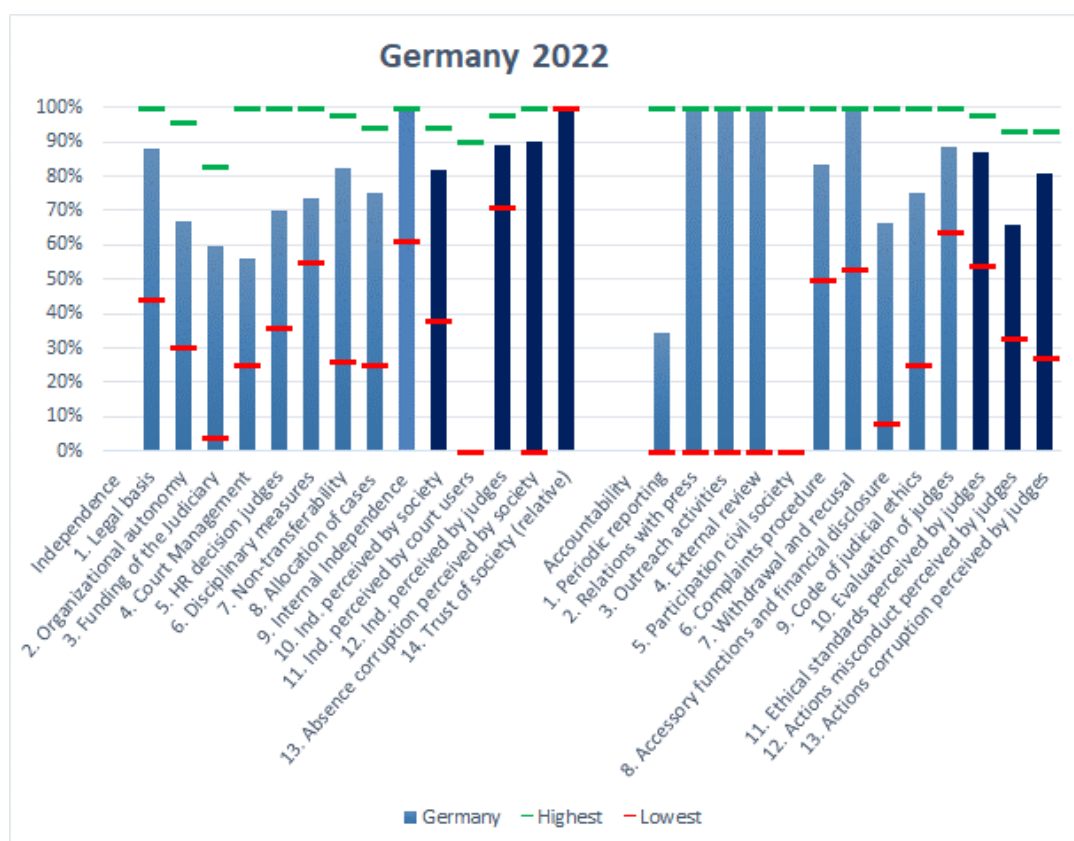


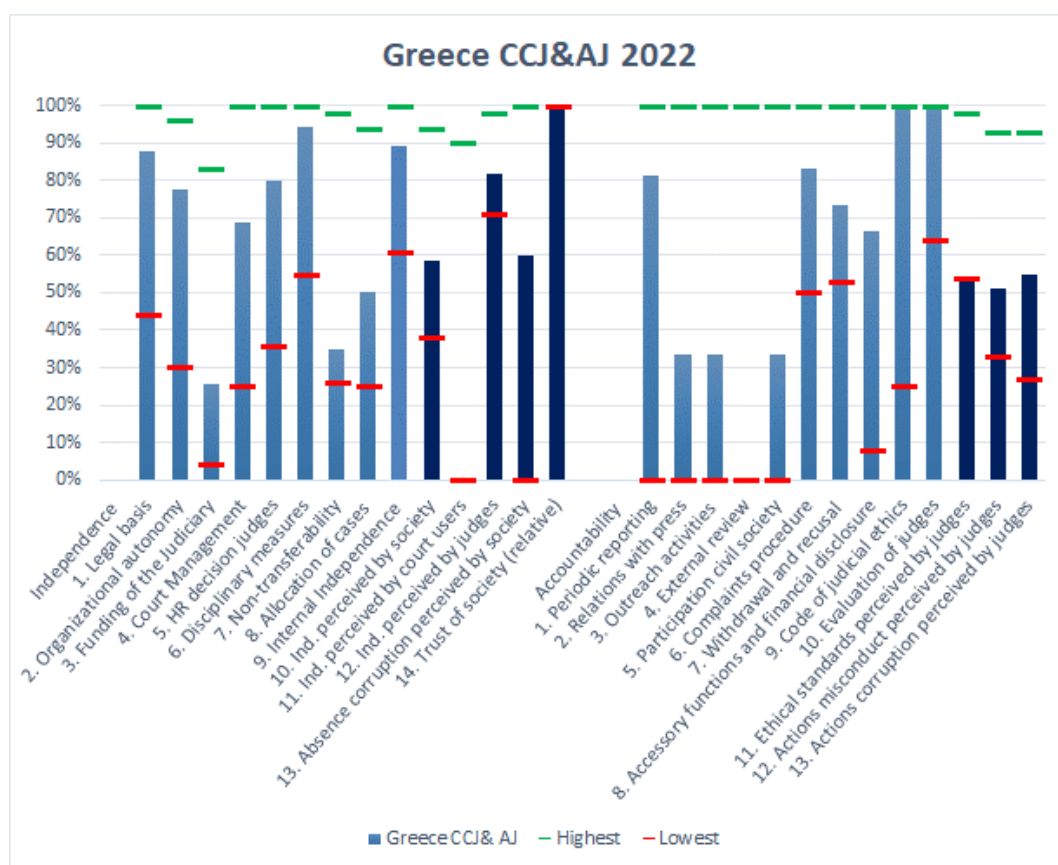
Figure 10 Indicators on Judicial Independence and Accountability, Germany*



Note: While judges work on and decide their cases independently, 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. While German court administration is therefore handled by judges in close contact with their peers, the executive, not the judiciary is responsible for court administration.

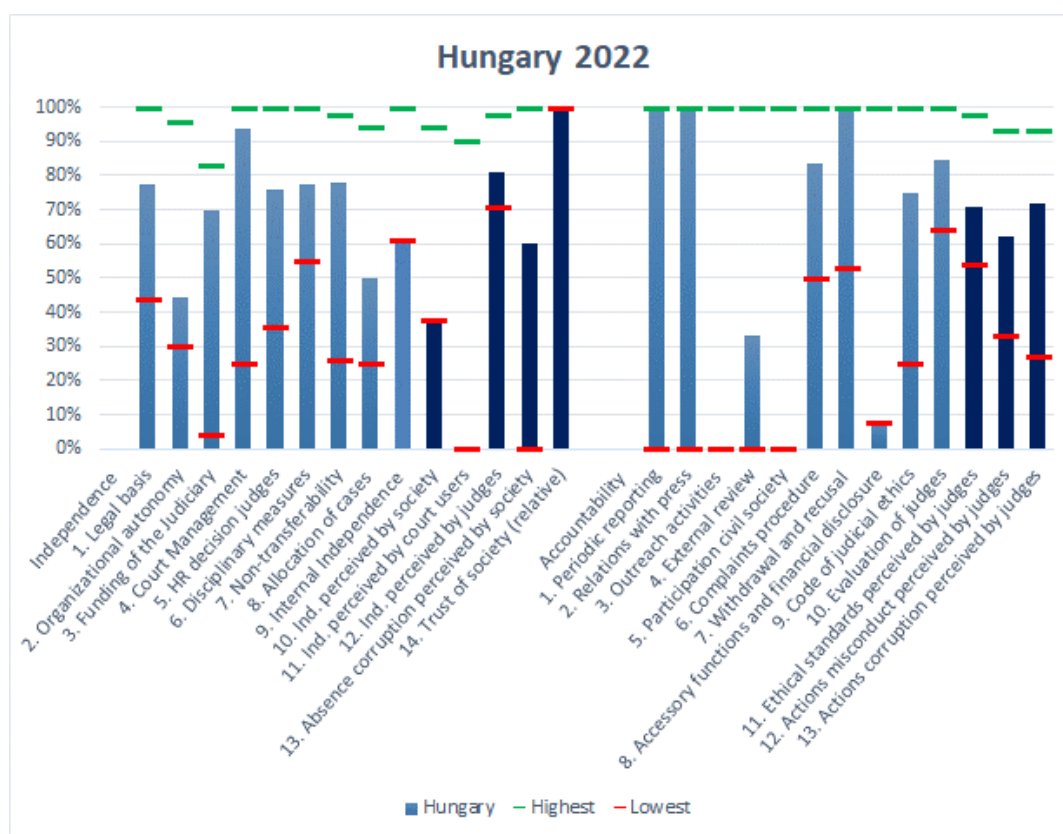
Judges both at federal level and at the level of the Länder are appointed by the competent minister, usually the Minister of Justice. However, at the federal level and in roughly half of the Länder, the respective parliament participates in the selection. Though judges do not participate directly in the selection and promotion of judges, they have considerable indirect influence.

Figure 11 Indicators on Judicial Independence and Accountability, Greece



Note: the low score on non-transferability is mainly caused by the possibility to take a judge off a case without his/her consent. This can only occur if (s)he fails to render a judgment within 8 months after deliberation without good reason.

Figure 12 Indicators on Judicial Independence and Accountability, Hungary



Note: the external experts that validated the answers, add the following: “According to the I&A Questionnaire there are only three options in administrative issues: Judiciary, Executive, Parliament. The Hungarian case simply does not fit into this logic, since the National Office of the Judiciary is out of the boxes, no one can say as part of the judiciary [or] as an autonomous body of the judiciary. A clear picture could be given by taking this distinction into consideration. Furthermore, the questionnaire focuses only on formal parameters of judicial independence and accountability, thus it is not able to detect the informal political influence on courts through court leaders appointed in a partisan manner or through hostile and threatening governmental communication toward certain judges.”

Figure 13 Indicators on Judicial Independence and Accountability, Ireland

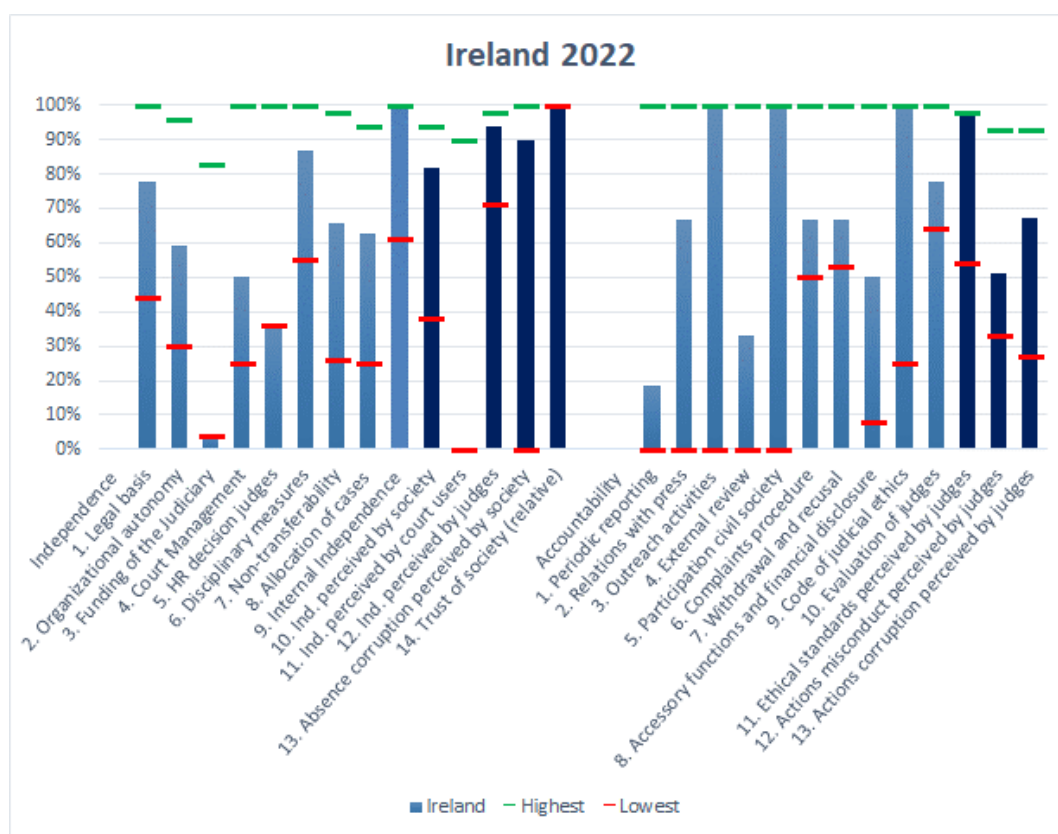


Figure 14 Indicators on Judicial Independence and Accountability, Italy



Figure 15 Indicators on Judicial Independence and Accountability, Latvia

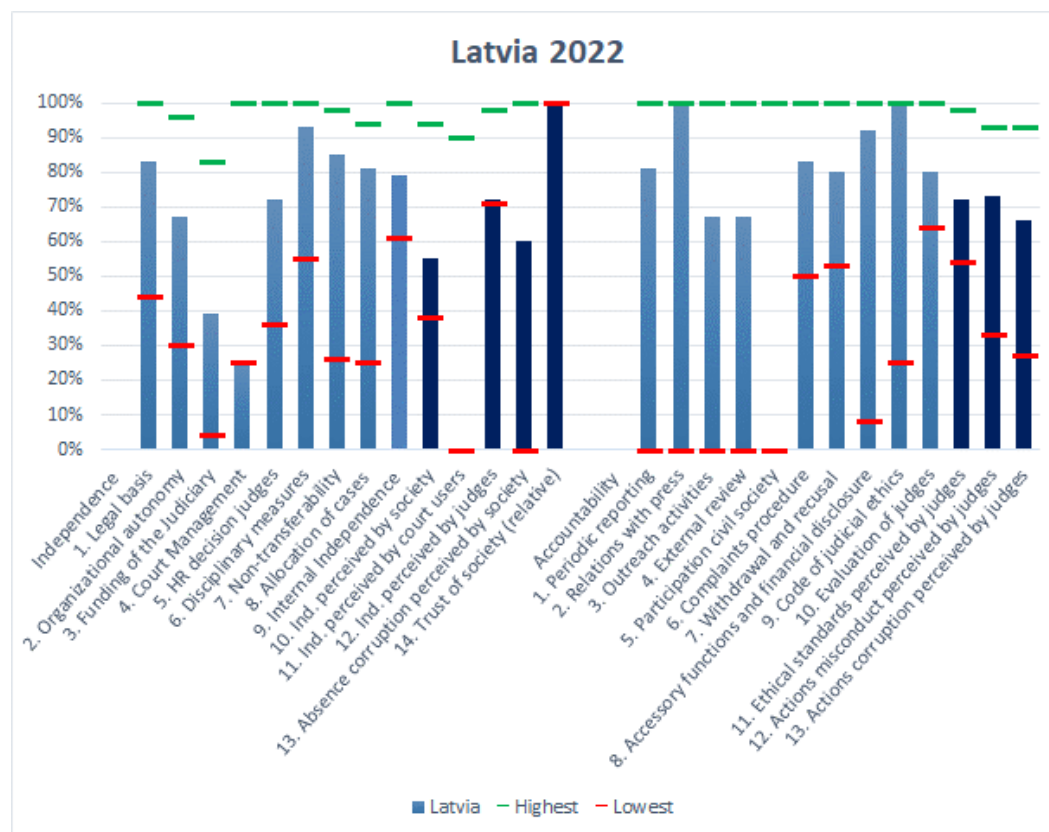


Figure 16 Indicators on Judicial Independence and Accountability, Lithuania

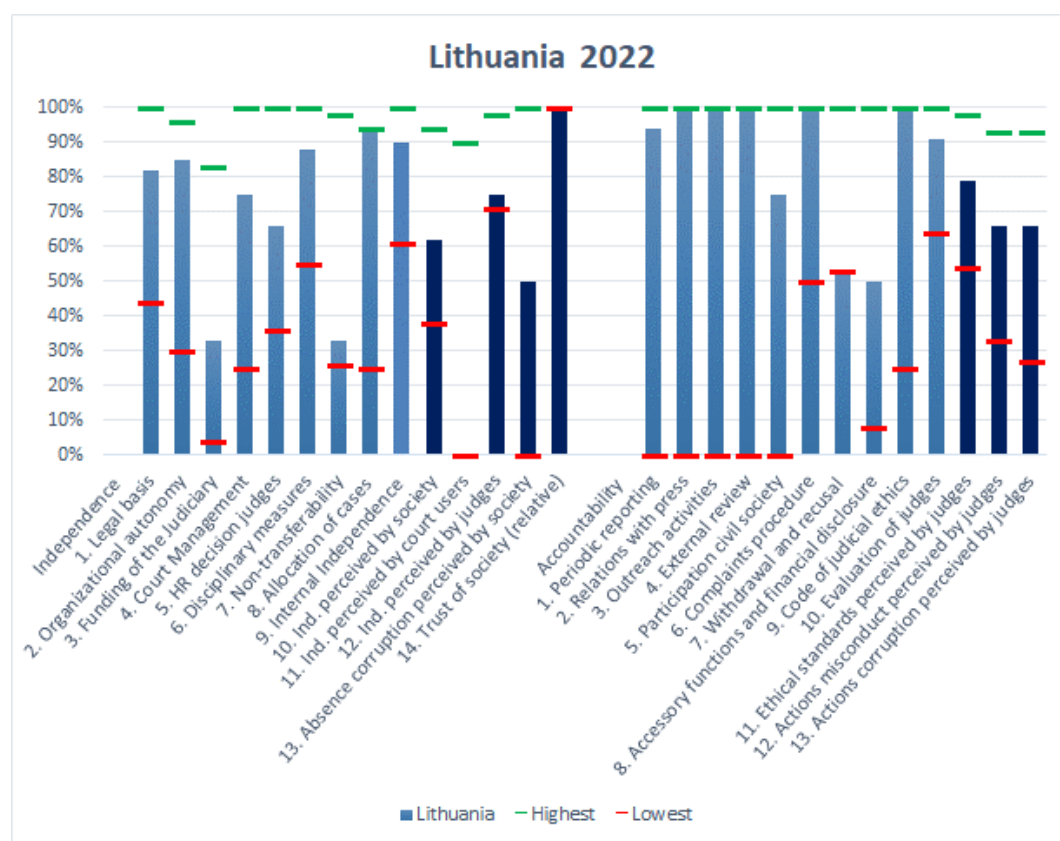


Figure 17 Indicators on Judicial Independence and Accountability, the Netherlands

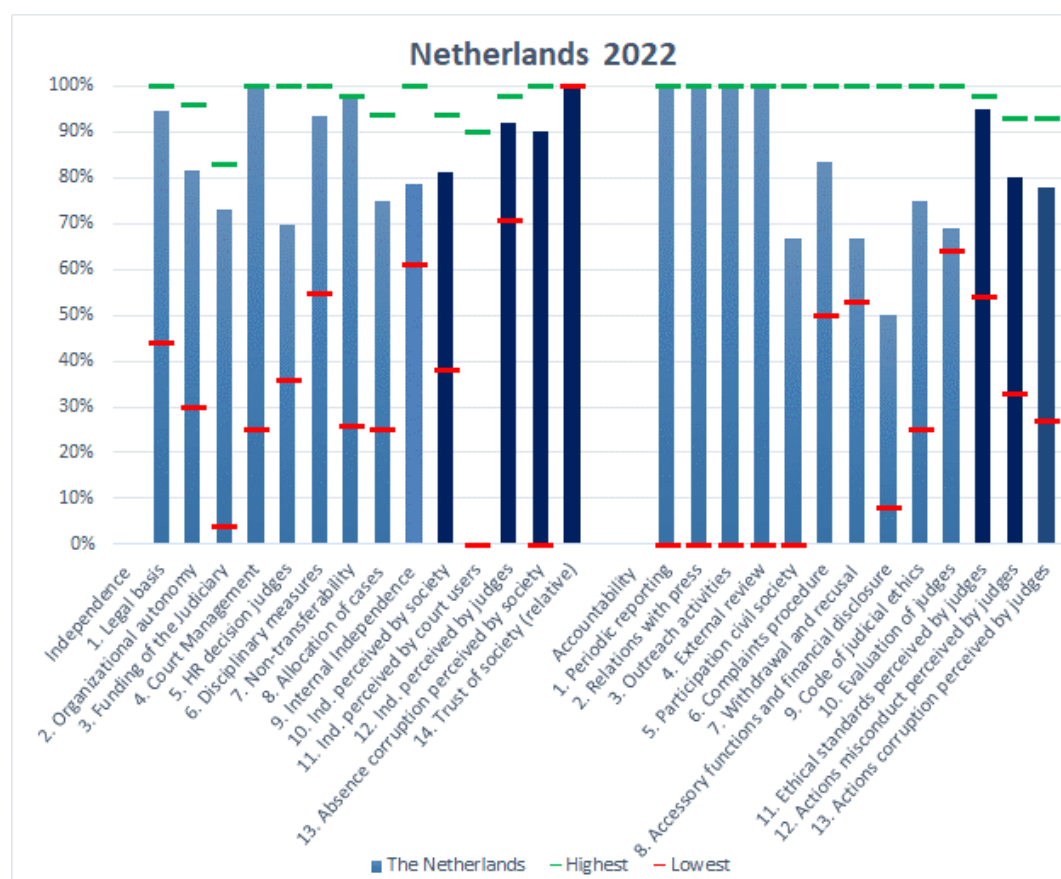
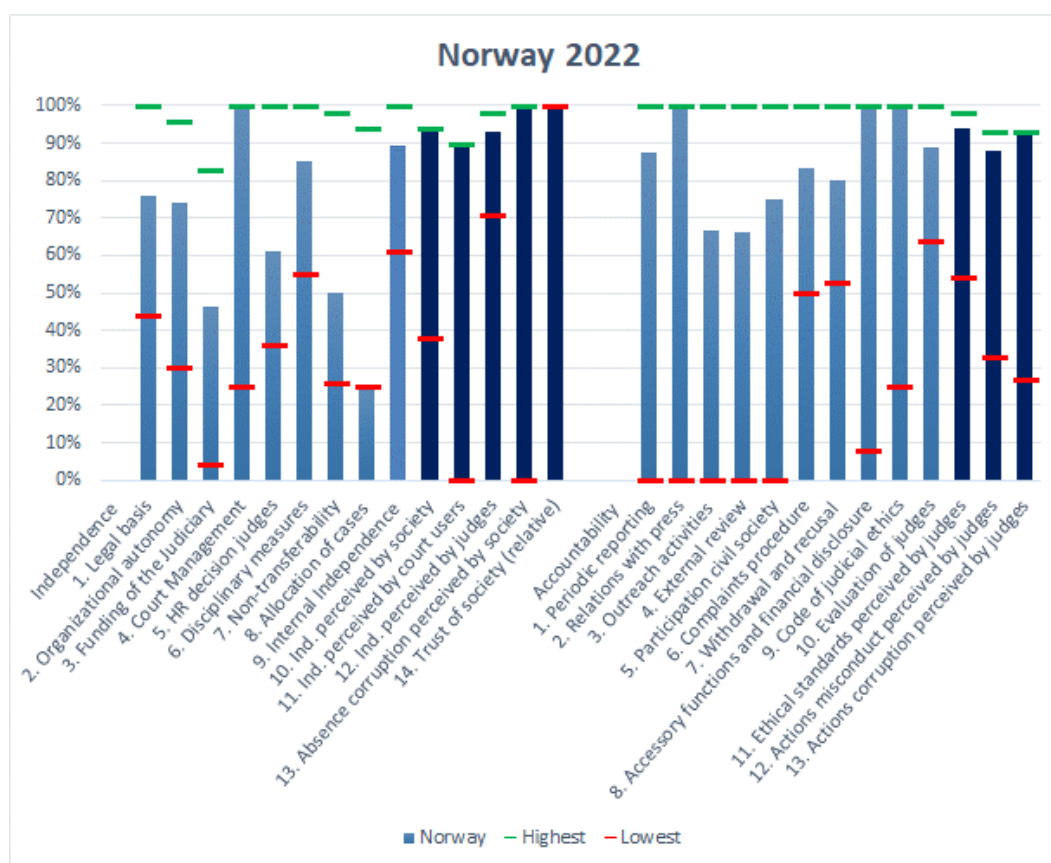


Figure 18 Indicators on Judicial Independence and Accountability, Norway*



Note: the experts point out that in the budget proposal for 2023, the government has reduced the autonomy of the Norwegian Court Administration (NCA) by separating parts of the budget for the Court Administration from the budget of the general courts.

Figure 19 Indicators on Judicial Independence and Accountability, Portugal

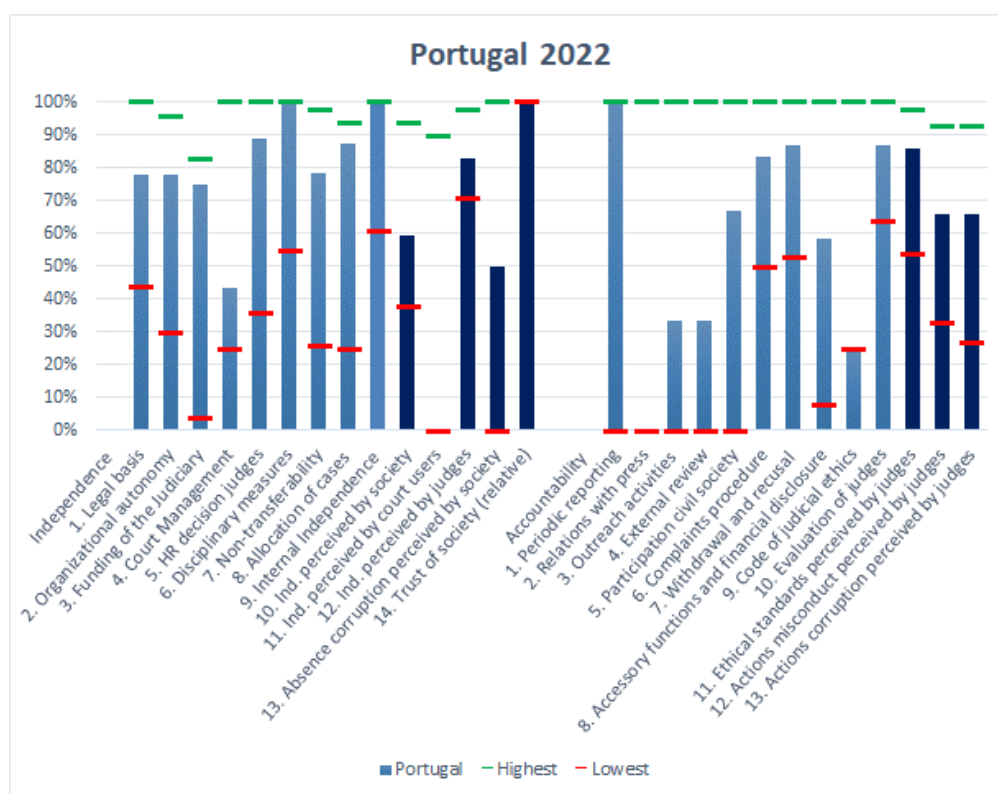
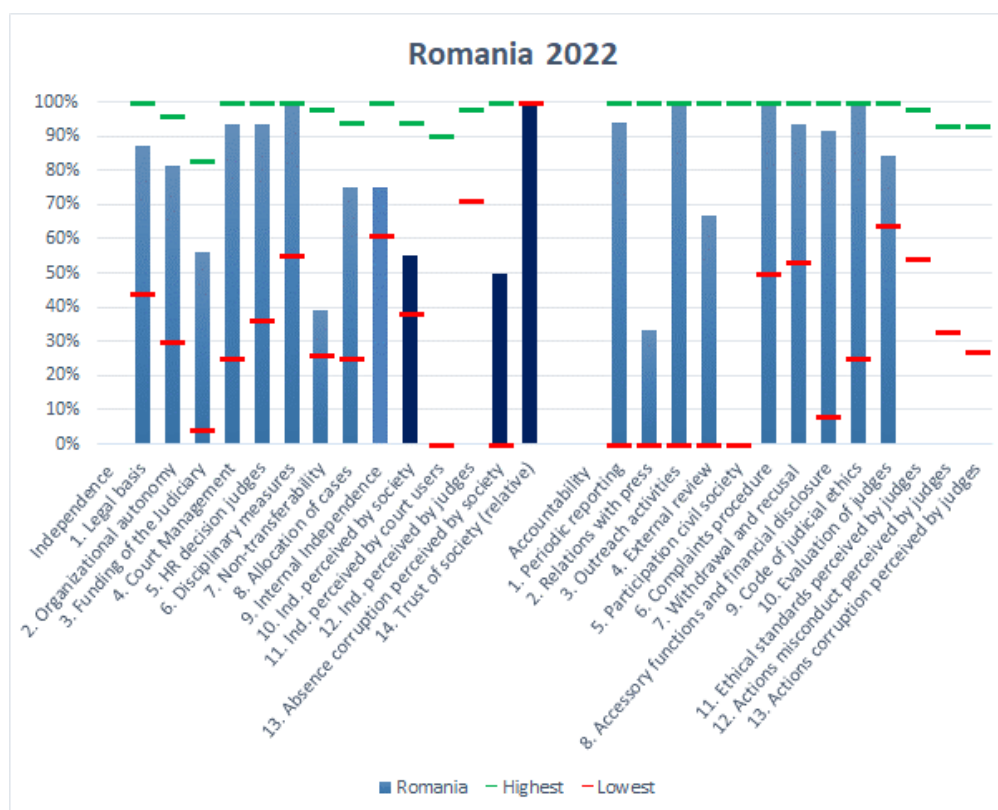


Figure 20 Indicators on Judicial Independence and Accountability, Romania



Note: Romania did not participate in the 2022 ENCJ survey among judges.

Figure 21 Indicators on Judicial Independence and Accountability, Slovakia

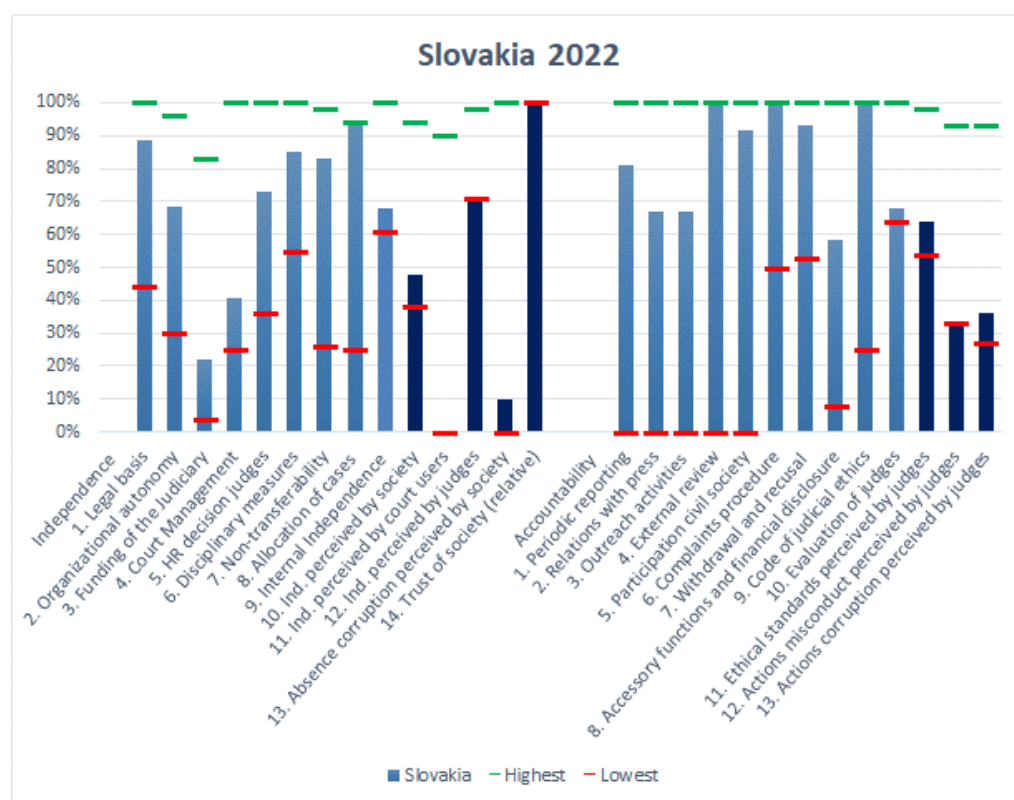
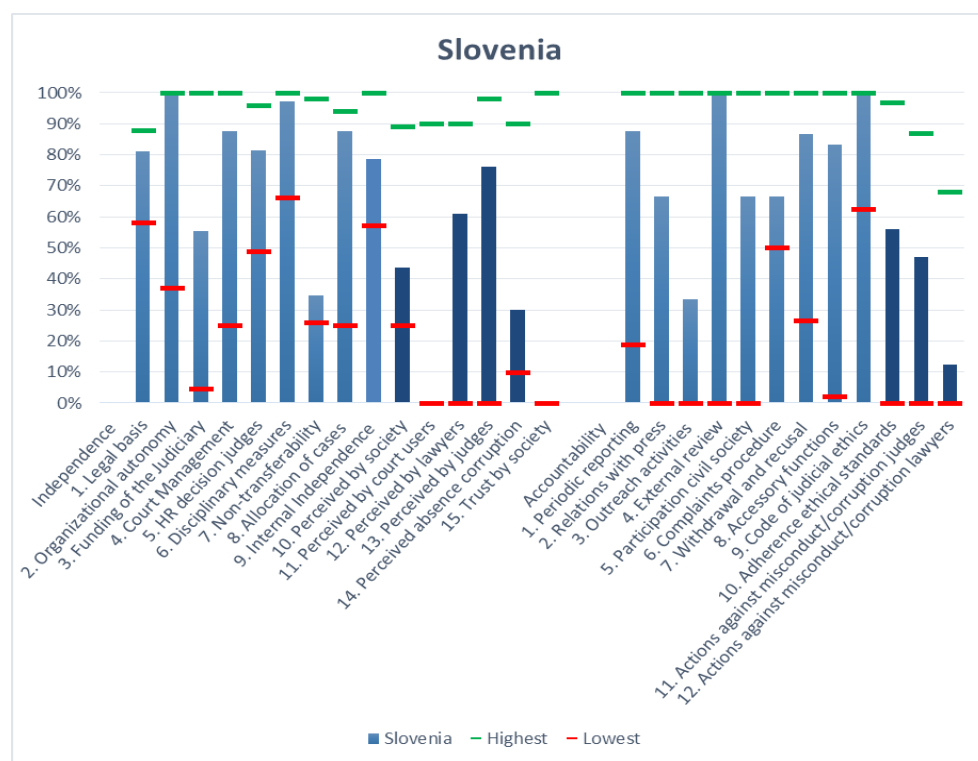


Figure 22 Indicators on Judicial Independence and Accountability, Slovakia 2019



Note: Slovenia did not participate in the updating of the indicators in 2022/2023.

Figure 23 Indicators on Judicial Independence and Accountability, Spain

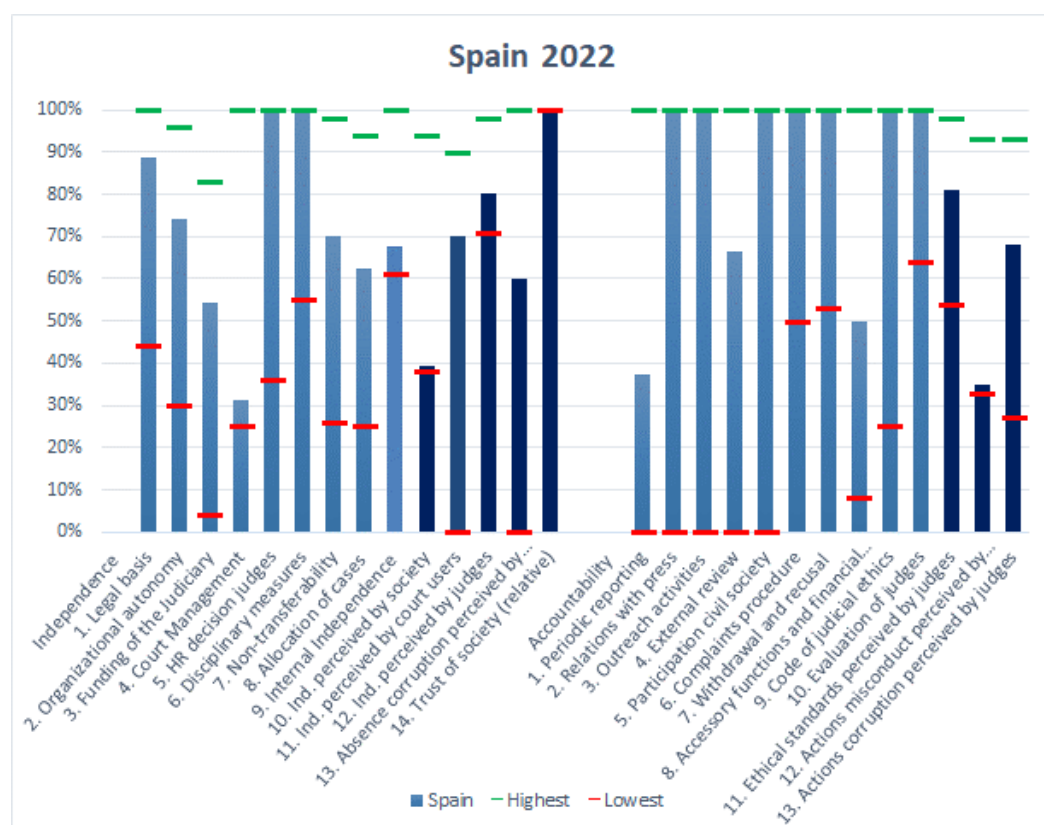


Figure 24 Indicators on Judicial Independence and Accountability, Sweden*

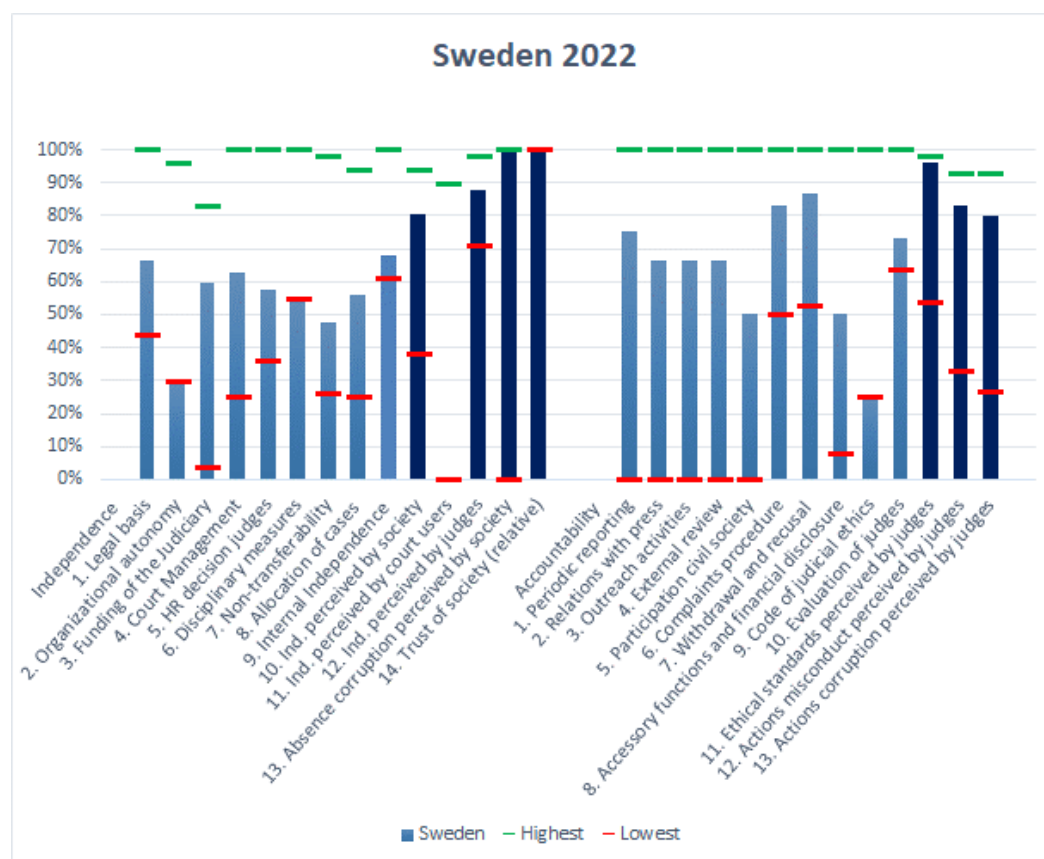


Figure 25 Indicators on Judicial Independence and Accountability, England and Wales*

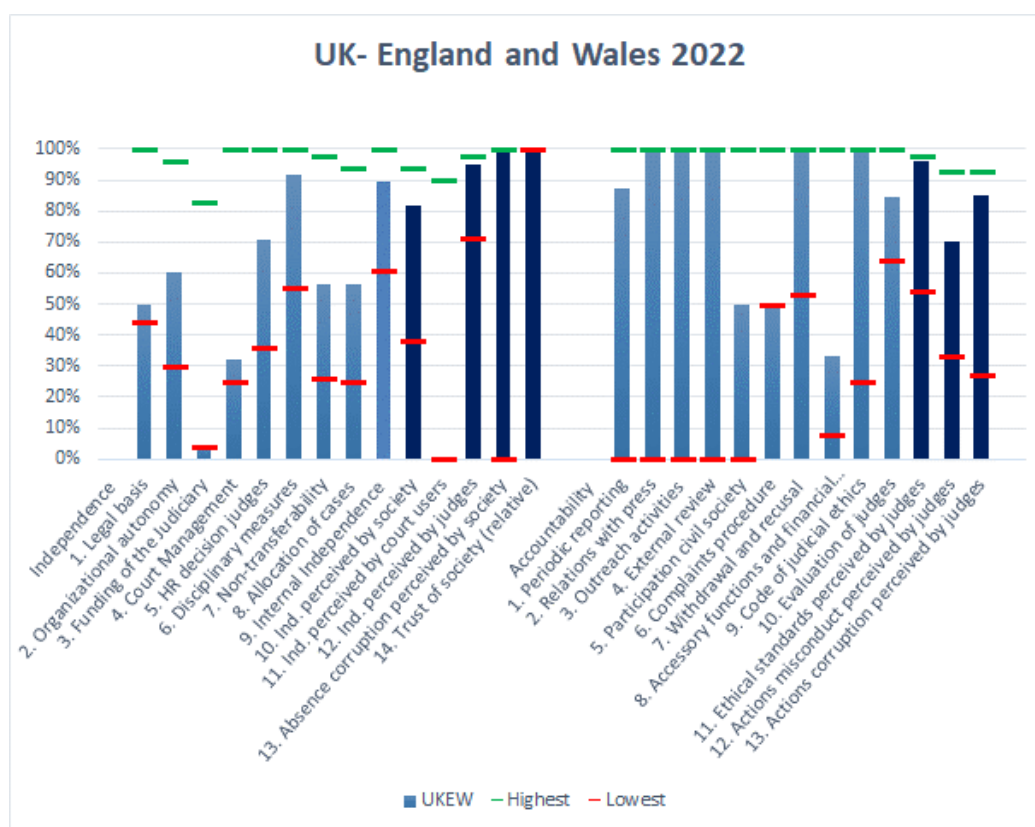


Figure 26 Indicators on Judicial Independence and Accountability, Northern Ireland*

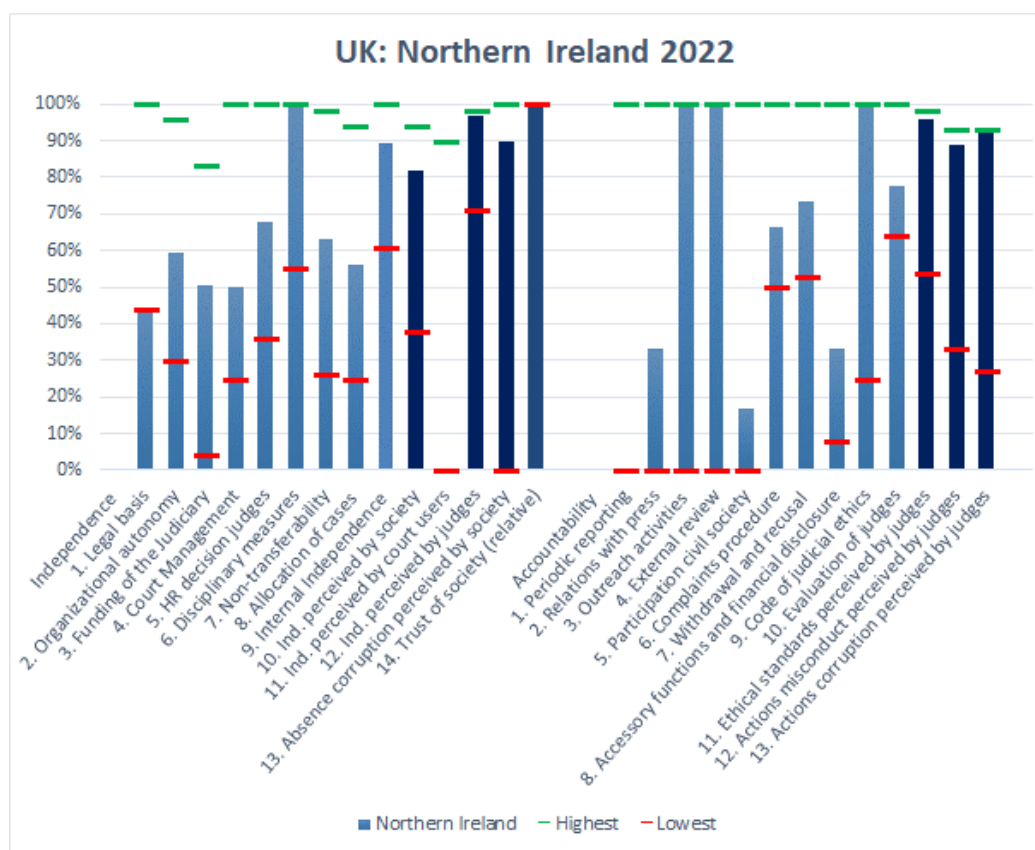
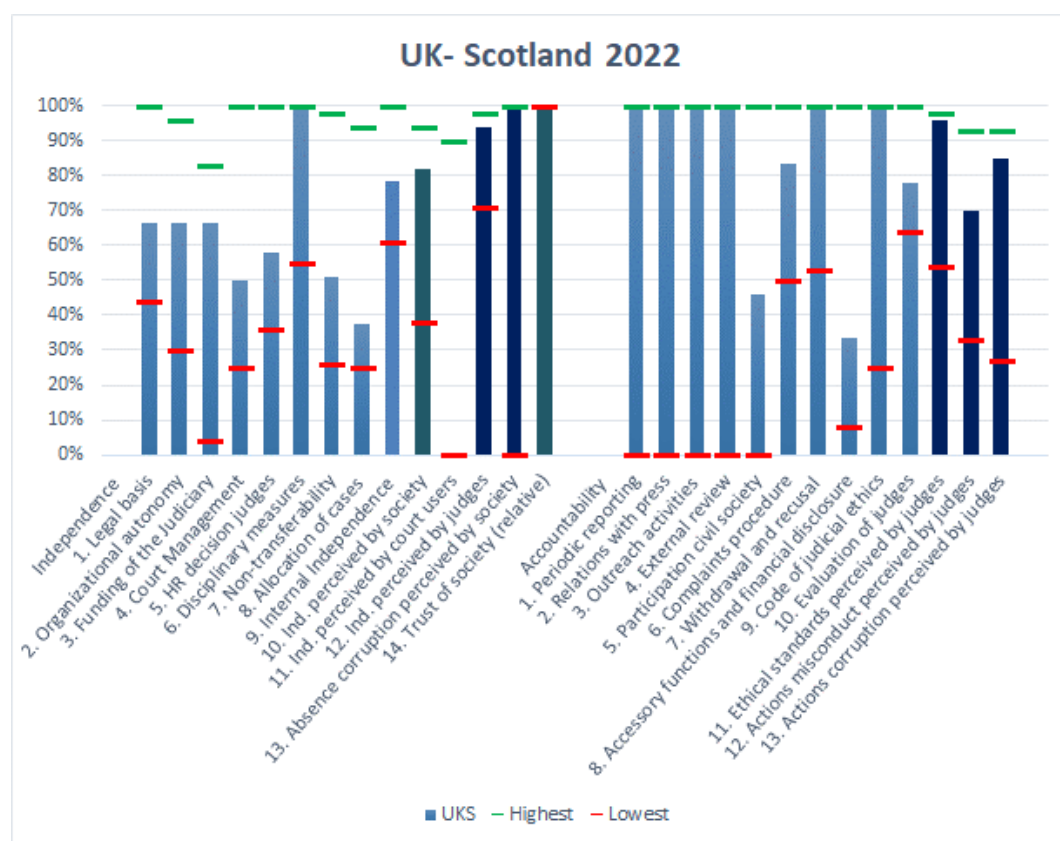


Figure 27 Indicators on Judicial Independence and Accountability, Scotland*



7. Development of the indicators: External review and formal authority

Parallel to applying and measuring the indicators, work has been done to improve the indicators. During this project year, the indicator on external review and the issue of the formal authority of the government with respect to decisions about the judiciary have been reviewed. These two topics are discussed in the next sections.

7.1 External review

One of the indicators on accountability (A4) deals with external review of the judiciary. The idea is that, in addition to standard instruments such as annual reporting on the performance of the judiciary and financial auditing, the systematic review of the functioning and, in particular, the quality of the judiciary by external experts and/or representatives of civil society opens up the judiciary in a profound manner. In practise, external review is still rarely used, while other forms of review, internal review and review by the other state powers, may play a positive role but may endanger judicial independence. Also, the role of inspection services that operate under a Council for the Judiciary or a Ministry of Justice is linked to this topic. The same is the case with independent public auditors.

Inspection services exist in a variety of countries, especially in Southern Europe. There is a European network of Justice Inspection Services (www.i-justitia.eu) that covers (also) Judiciaries. It has eight members. In other judiciaries the oversight functions that inspection services perform are likely performed as well but in different ways. To some extent oversight functions are already covered by the indicators, in particular, independence sub indicators 2d and 2e on the organizational autonomy of the judiciary (performance management) and 3d on funding of the judiciary (evaluation/audit of the budget of the courts). Also, some of the accountability indicators may touch upon the work of inspection services, such as 1d on performance benchmarking of the courts. Where inspectorates examine the performance of individual judges, the indicator on evaluation of judges is directly relevant (A10). Consequently, it seems not necessary to have a separate indicator on inspection services in relation to independence and accountability. However, inspectorates may play a role in review as discussed here.

The present indicator on external review reads as follows (scores in brackets).

A4. 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)

To cover all types of review, but retain external review as major contributor to accountability, the indicator will be replaced by the following (again scores in brackets). Definitions are given in notes.

A4. Review of the judiciary	
4a. Is the performance of the courts regularly reviewed or evaluated in a comprehensive manner? If yes go to 4b; if no, go to 5.	<input type="checkbox"/> Yes (go to 4b) <input type="checkbox"/> No (0)
4b. Who carries out the review? [several answers possible]	<input type="checkbox"/> An independent external body, not being part of the Judiciary, the government or Parliament (external review) (8) <input type="checkbox"/> A body that is part of the judiciary (internal review) (4) <input type="checkbox"/> A body that is part of or under the direct influence of the government or parliament (other review) (2)

Answer only for the type(s) of review in your country:

	External review	Internal review	Any other review
4c. Is the report of the review made public?	<input type="checkbox"/> Yes (0) <input type="checkbox"/> No (overall score 0)	<input type="checkbox"/> Yes (1) <input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (0) <input type="checkbox"/> No (overall score 0)
4d. What is the status of the outcome of the review?	<input type="checkbox"/> Advice to judiciary (0) <input type="checkbox"/> Mandatory advice to judiciary (overall score 0)	<input type="checkbox"/> Advice to judiciary (0) <input type="checkbox"/> Mandatory advice to judiciary (overall score 0)	<input type="checkbox"/> Advice to judiciary (0) <input type="checkbox"/> Mandatory advice to judiciary (overall score 0)
4e. Frequency of the review	<input type="checkbox"/> At least every 5 years (2) <input type="checkbox"/> Less frequent (0)	<input type="checkbox"/> At least every 5 years (2) <input type="checkbox"/> Less frequent (0)	<input type="checkbox"/> At least every 5 years (2) <input type="checkbox"/> Less frequent (0)

Notes (to be included in the questionnaire):

1. A review is defined here as an overall analysis of the functioning of the judiciary. It may include but is not confined to finance. Regular auditing is, therefore, not regarded as review. Also, the examination of specific events in a court or court cases does not count as review here. In 4a, *regularly* means at least every ten years.
2. 4b: an external body can be an independent public auditor/ombudsman or an ad hoc committee of independent experts from academia and/or civil society. In this context, *independent* means independent from judiciary, government, parliament and political parties. In addition, an external body should not be dominated by (other) specific interests. The external body may include members of the judiciary, in as far as such members constitute a minority.
3. All Councils for the Judiciary are seen as part of the Judiciary, irrespective of their constitutional framing. Therefore, a review by a Council, including inspection services that are part of the Council, is by definition an internal review.
4. Review by government, including inspectorate services falling under a ministry, or by parliament is not external review, as meant here. If there is no Council of the Judiciary, the government is directly in control, and an inspectorate that is part of the government cannot be considered as external. Even if a Council for the judiciary exists, government has still influence over the judiciary (f.i., by legislation and finance), and cannot be considered as an external party.

5. In a country several types of review may take place, for instance, *internal* review and *external* review. Therefore, 4c, 4d and for 4e have to be scored for every type of review that occurs in your country.

Scoring of indicator

From the perspective of the accountability of the judiciary, review is positive. Scrutiny of the judiciary by outsiders is (much) more useful for this purpose than internal review which is likely to be seen as less impartial and less critical. Review by government, including inspection services, or parliament may be useful as well for accountability, but it is problematic from the perspective of independence, as direct political interference is always a threat (even if the government or parliamentary agency in question currently has a good track record). This means that external review contributes more to accountability, taking the impact on independence into account, than internal review, and internal review more than review by government or parliament.

However, conditions have to be met for review to be scored positively.

(1) Any form of review should honour the independence of the judiciary. This implies that the outcome of a review should be advice, if any, to the relevant authorities of the judiciary (Council for the judiciary, court presidents, judges) which then decide what to do with the advice. If it is mandatory to implement the advice given by the review, the review conflicts with independence of the judiciary and the overall score is zero.

(2) Review must contribute to accountability. This is generally only the case, if the report of the review is made public. Withholding a report from the public for no valid reason such as privacy, will undermine the perception of accountability. Following this argument, if the report is not made public, the overall score of the review is zero. This reasoning is overly stringent for internal review, where organizations have more leeway. The mere fact that an internal review takes place may contribute to accountability, even if the outcome is not published.

If these conditions are met, the score of external review is 8 or 10 (depending on frequency), of published internal review 5 or 7 and of other review 2 or 4. As noted before, types of review may be combined.

7.2 Threat of interference through formal responsibilities of government

The previous time that indicators on formal independence were updated, 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.¹³ Such roles occur in particular with regard to the appointment of judges when the formal appointment is done by the executive (whether or not this is ultimately done by the Crown). Denmark and Finland had this in common, but differed in the sense that in Denmark the Minister of Justice can only refuse the proposed candidate, but he cannot choose another candidate. 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, it is possible for the Minister of Justice to propose a different

¹³ See ENCJ (2019/2020).

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candidate than the one proposed to the Minister, a situation which has occurred once. For these two countries this led to different answers to the questionnaire and different scoring. The underlying issue is whether or not formal and ceremonial roles that have never or hardly ever 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 about the possible threat to independence posed by informal rules is not only relevant for the Nordic countries, but also for the Netherlands and possibly other countries.

Considerations

In the countries mentioned above all public decisions are prepared by the government and formally taken by the formal head of state. This holds for the appointment of judges as well. Traditionally, this is the way decisions are taken. When the government expressly states that it does not interfere with the selection of judges and shows this to be so by its behaviour, it seems reasonable, as we have assumed so far, that the score with respect to the appointment of judges should be higher than in countries where government has the same authority and uses it. It was taken that such informal arrangements offer some protection. Behaviour in the past and intentions for the future are a good predictor of future behaviour, but offer, however, no guarantee. As democracies are volatile, different opinions, possibly by different political parties in government, may come up about the selection of judges, and the informal arrangements may not be honoured anymore. However, the same can happen to safeguards in legislation that can be rescinded more or less easily (dependent on whether it is in the law or constitution). Thus, an informal rule, based on current practice and a promise for the future, may not be much weaker than a law. It should be noted that countries may differ in this respect (high trust versus low trust societies). It would be desirable to agree a scoring rule for these situations.

In the present questionnaire, the questions allow three answers as to which of the powers of the state takes the relevant decision (score in brackets): judiciary (2), executive (0) and legislature (1). The preferred situation is that the judiciary takes the formal decision to appoint a judge and the government (minister of justice) is not involved at all. This earns the full 2 points. The full 2 points will also be allocated, if the decision to appoint a judge rests with the executive but the executive is explicitly bound by law to follow the proposal of the judiciary. If the decision to appoint a judge rests with the executive and the executive is **not** explicitly bound by law to follow the proposal of the judiciary, but in all appointments in the last ten years it has followed the proposal of the judiciary, the average of judiciary only (2 points) and executive (0 points) will be given (1 point).

7.3 Appointments to the Supreme Court and the Constitutional Court

Question 5b deals with appointments to and dismissals from the Supreme Courts. Such decisions are likely to draw more political attention than those of regular first and second instance judges. In many countries, the influence of government or parliament on appointments to the Supreme Court seems to be greater than on appointments of first and second instance judges. The surveys among judges show that many judges doubt whether the appointment of supreme court judges is based on merit. Also, against this background, there seems to be no reason to apply different standards to the appointment of Supreme Court judges than to other judges. The same would, in principle, apply to Councils of State.

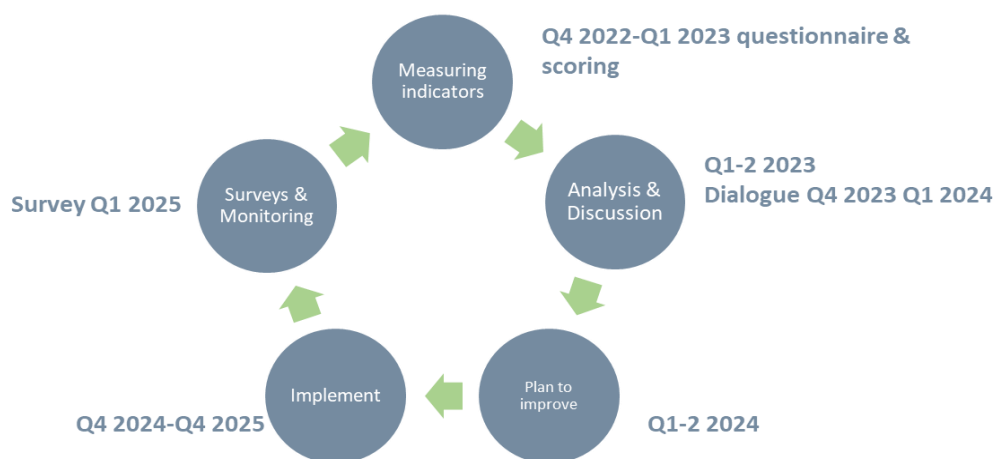
So far, the ENCJ has not addressed Constitutional Courts, in the context of the independence of the judiciary or otherwise. In the political science literature, the independence of the Constitutional Courts is generally seen as crucial for the independence of the whole judiciary and for the whole judicial system. It seems that appointments to these courts, where these exist, are even more politicized than those to Supreme Courts. An issue is that Constitutional Courts do not exist in all countries. Where they do not exist, often the Supreme Court or the Council of State undertakes constitutional review. It would be

conceivable to add a question 5c dealing with appointments and dismissals regarding the Constitutional Courts. Before doing this, a discussion is needed about the relationship between Constitutional Courts and the regular courts (see the next section).

8. Next Steps on Independence and Accountability

The indicators and their measurement are part of the improvement cycle that the members of the ENCJ agreed to. The current improvement cycle started in September 2022, and is as follows.

Figure 28 Improvement cycle Independence and Accountability



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

1. The outcomes of the indicators will be discussed in small dialogue groups of members and observers in the period from September 2023 until March 2024 with the purpose to analyse the outcomes together, to set priorities for improvement plans and to generate ideas for improvement.
2. Improvement plans will be developed to address weaknesses and/or to build on strengths in the period from January until June 2024.
3. The next edition of the survey among judges will be held in the first quarter of 2025 and will be prepared in 2023/2024. In addition, the possibilities for a new survey among lawyers will be explored.

As the system of standards and indicators is not static, several issues will be examined in the next period. These issues raise fundamental questions about practices that are common. Consideration of these issues could lead to new standards.

4. Political affiliation and independence. This should cover a range of issues. Can judges who become members of parliament return to the judiciary after their term of office? What if they have expressed extreme views? Can judges actively participate in work of political parties? A related issue is the independence of committees such as selection committees for judges that are appointed by government ENCJ Report on Independence, Accountability and Quality of the Judiciary 2022-2023 – adopted at the General Assembly, Ljubljana 9 June 2023 www.encj.eu

or Parliament. How should committees whose members are appointed by a political process, but which are subsequently fully independent, be considered?

6. Position of Constitutional Courts in the framework of independence and accountability. The indicator system incorporates Supreme Courts, but so far not Constitutional Courts. Given the impact of Constitutional Courts on independence, an exploratory discussion is needed on the position of the ENCJ on these courts in particular in relation to judicial independence.

7. Selection of judges: the current indicator is based on the ENCJ guidelines. The guidelines include that that judges are selected only on merit. This limits diversity policies to only candidates of equal capability. The question may be posed whether or not this is too restrictive.

8. Survey among court users: the model survey will be extended to key aspects of quality of justice and the possibilities for an EU-wide survey will be further explored.

Part 2. Quality of Justice

1. Introduction

The objective of an independent and accountable judiciary is to produce quality justice for society. As noted earlier, Article 6 as well as Article 47 of the Charter of Fundamental Rights of the European Union state that everyone has a right to an effective remedy and 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, including its timeliness, despite widely varying mandates of Councils with respect to quality. Therefore, the logical follow-up to the establishment of indicators on judicial independence and accountability is the extension of the indicators to quality of justice. This part of the report is structured as follows. Section 10 discusses the role of Councils for the judiciary with respect to quality of justice. Section 11 gives an overview of the principles that the ENCJ has developed in this area and that need to be reflected in standards and indicators. While Section 12 briefly highlights methods to measure quality of justice, Section 13 lists the areas of quality that can be distinguished and sets priorities. In Section 14 the prioritized areas are explored. This results in section 15 in the set of indicators with the scoring of these indicators discussed in Section 16. Section 17 is the core of this part of the report and presents the outcomes of the indicators, for Europe as a whole and for each judiciary. Section 18 discusses next steps. This part of the report quotes extensively from earlier reports of the ENCJ to bring together all information that is needed to clarify the choice of the indicators.

2. Role of Councils for the Judiciary¹⁴

At its General Assembly in 2017, the ENCJ agreed that Councils for the Judiciary should make their responsibility explicit for standard setting on the quality of justice for the sake of quality, but also because of the links, and sometimes trade-off, between quality, independence and accountability. The mandates of Councils vary from integral responsibility for the quality of the Judiciary and its contribution to quality of justice to implicit responsibility derived from operational tasks. Quality depends on many matters for which Councils for the Judiciary and equivalent governing bodies can be responsible. 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.¹⁵ Councils should be in a position to secure appropriate funding of the courts to allow the courts to implement these standards, again whether or not this is the statutory task of Councils. Standards that cannot be implemented in practice create expectations with courts users that cannot be fulfilled.

¹⁴ This Section quotes from ENCJ (2020). Independence, Accountability and Quality of the Judiciary: Measuring for Improvement, ENCJ Report 2019-2020.

¹⁵ 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).

Quality standards can be part of approaches such as:

Integral quality 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 measures.

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.

Depending on its formal responsibilities, each Council should adopt an approach that fits within its mandate, but, in the view of the ENCJ, all should develop quality standards and quality indicators to measure performance against the standards. Councils should make sure that any interference with judges' and judiciary's independence by mechanisms to evaluate quality of justice is avoided. It should be emphasized that quality justice is not only created by judges, but also 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.

Although this is obviously a difficult task, Councils for the Judiciary should take responsibility for developing standards and indicators for the quality of justice, delivered by the courts, as does the ENCJ on the international level. In parallel with the measurement of indicators, the Project Team has been working on a framework for judiciaries to develop their own strategy on quality, and it has made an inventory on instruments actually used to promote quality of justice.

3. Principles for quality standards and indicators

In previous reports the ENCJ has given its vision on quality of justice.¹⁶ This vision concerns the content of standards and indicators, but also the process to arrive at standards and indicators. Unlike independence and accountability, quality is less amenable to absolute standards. Often, there is a trade-off between aspects of quality. As a result, several standards reflect the search for an equilibrium, and are therefore not absolute. For some indicators the consequence is that the scoring scale is non-linear. For instance, the right of appeal is an important protection and a wider scope leads to a higher score. However, appeal can become a hindrance when applied excessively in cases that have no merit. The score should then be lower. This complicates the indicators and their scoring, but it also affects the process of deriving agreed standards and indicators. Much discussion is needed at national and international level. The previous reports can be summarized in the following principles.

1. There is a tension between independence and some important 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 similar situation arises with respect to

¹⁶ E.g. ENCJ (2018). Independence, Accountability and Quality of the Judiciary; Validation of methodology, exploring quality of justice and promoting judicial change, ENCJ Report 2017-2018. ENCJ (2020).

timeliness: while a judge is autonomous in her or his handling of specific cases, court users are entitled to know which 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.

2. Quality standards (including on timeliness) that relate to aspects for which judges are responsible, 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.

3. To guarantee the acceptance of 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.

4. The choice of standards and 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.

5. 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").

6. In many countries, appeal rates are used as a proxy of the quality of judgments. 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.¹⁷

7. The timeliness and efficiency of procedures are important dimensions of quality of justice. Excellent judicial decisions often lose much of their relevance if they take a long time to arrive at, relative to the societal processes the decisions are about. 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 largely determined by waiting times and generally only marginally by the time the judge works on the case.

8. 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. 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, which eventually foots the bill.

¹⁷ 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.

4. Measurement of Quality¹⁸

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 and arrangements 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. This is less dependent on normative considerations, as data can be compared across jurisdictions. Still, a normative framework is required: shorter is often, but not always, better.
3. Quantitative survey data about opinions and experiences of judges, parties, their lawyers and the population in general. As above, a normative framework is needed.

The present approach is primarily based on the first method.

5. Areas of Quality to be covered by the Indicators¹⁹

The previous reports of the ENCJ link quality 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 services provided to the public. The following areas that were initially distinguished are still relevant. Essential 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 the 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

¹⁸ This section quotes from ENCJ (2020). Independence, Accountability and Quality of the Judiciary: Measuring for Improvement, ENCJ Report 2019-2020.

¹⁹ Sections 13 and 14 replicate Part 2, Sections 3 and 4 of ENCJ (2020). Independence, Accountability and Quality of the Judiciary: Measuring for Improvement, ENCJ Report 2019-2020.

private mechanisms for conflict resolution.²⁰ 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 the extent to which the courts can provide for a fair trial (Art. 6 ECHR, Art. 47 of the Charter of Fundamental Rights of the EU and Art. 13 of the UN Convention on Fundamental Rights of Disabled People), and, together with the actual decision, constitutes the legal core of the work of the courts. Accessibility is a major concern, as citizens cannot avail of even an excellent court if access to that court is not assured. Accessibility can only partly be guaranteed by the courts themselves, as, for instance, court fees and the judicial map are generally determined by government and parliament and not the judiciary. Still, other aspects are under the remit of the judiciary.

Adjudicating cases in a timely and effective manner

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

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

Delivering judicial decisions

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

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

Providing services to the court users

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

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

Enforcement of judicial decisions

Key aspects: enforceable judgments.

Explanation: obviously for litigants it is vital to assess whether judgments can, in practice, be enforced. It does not make much sense to go to court if a favourable judgment has no practical effect. However,

²⁰ See: John Thomas (2015). The Centrality of Justice: its contribution to society, and its delivery. The Lord Williams of Mostyn Memorial Lecture.

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 aims 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. The other areas of quality can be addressed at a later stage. The next table sets the scene.

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

	Description of formal characteristics	Subjective assessment of performance
Maintaining the Rule of Law	Mainly covered by the I&A indicators	Mainly covered by the I&A indicators
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/actual arrangements and the subjective assessment of performance, perceived 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.

6. Substantive exploration of the selected areas of Quality

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

Adjudicating cases in a timely and effective manner

Both timeliness and case management are topics that have been discussed extensively within the ENCJ. The balance between timeliness and other quality aspects is an important issue, as indicated in the first recommendation of the 2010-2011 Timeliness Report: “‘Justice delayed is justice denied’ is a true statement that underlines the importance of delivering justice without undue delay. However, in striving for timeliness it must be remembered that the drive for expedition should be balanced with other quality aspects, of which the quality of the decision should have the highest priority. The demands of society require processing without undue delay, but drive for efficiency must not lead to inferior quality decisions.”

After the publication of that 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.

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 take time and resources, and without some prospect of success merely delay justice and drive 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 cases²¹ 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.

²¹ Whether a case is meritorious or not.

- To limit the number of appeal judges²² is not recommended, as more effective measures are available to reduce the burden of appeal and court time.
- Decisions on meritorious cases should normally and primarily be taken through a paper exercise rather than any court hearing.
- The appeal procedure could be simplified by setting limits to the length of written and oral presentations of parties.

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

Delivering high-quality judicial decisions

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

Reasoning of judicial decisions

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

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

A further issue is whether the reasons should be written or 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 (III, c, 3) states 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 of giving the reasons for 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.

²² For instance, by hearing cases by a single judge instead of a panel of judges.

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 judiciaries 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 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 ENCJ, 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. 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.

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.

The work on quality of justice 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.

7. Indicators of quality of justice

The current indicators are the following.

A. INDICATORS OF TIMELINESS AND EFFICIENCY OF PROCEDURES

A1. Standards for judges about the duration of cases:

- Existence of time standards in first instance and in appeal courts
- Scope of the standards (is the total procedure covered?)
- Realisation of standards in practice at first instance and appeal courts
- Public access to information on the realisation of standards

A2. 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

A3. Summary procedures:

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

A4. Digital case filing and digital procedures:

- Possibility of commencing a case digitally
- Possibility of digital procedures, in the sense that all communications are digital except for the hearing
- Possibility of hearings being conducted remotely
- Possibility for litigants to inform themselves digitally about the progress of their cases
- Availability and development of online dispute resolution mechanisms

A5. Specialisation of judges:

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

A6. Performance evaluation of judges:

- Are the competences of a judge evaluated on a regular basis in a manner that respects the independence of judges
- Is the individual performance of a judge evaluated with respect to: number of cases, duration, professional quality of decisions, conduct at hearings and judicial ethics in a manner that respects the independence of judges
- Is the conduct of a judge part of a court user satisfaction, if any

B. INDICATORS OF DUE PROCESS FROM THE PERSPECTIVE OF ACCESSIBILITY

B7. Equality of arms (funding and costs):

- Existence of a system under which public funding is provided to litigants without means to fight litigation themselves
- Whether the system provides for adequate representation for such litigants at public expense;
- Is there adequate public funding
- Existence of a system to shift the costs of litigation of the successful litigant to the unsuccessful litigant

B8. Commensurate effort of judges:

- Existence of powers to direct the amount of time set aside for hearing a case, depending on its complexity, in first instance and appeal courts
- Existence of powers to reduce complexity before the hearing at first instance and appeal

B9. 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 Speed up the proceedings
 - o Make adverse costs orders
 - o Impose fines
 - o Report to a disciplinary body

B10. 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 first instance court decision

B11. Communication:

- Existence of procedures in all official languages of the country
- Existence of facilities at the court to provide translation (interpretation) when necessary
- Existence of system to ensure standard of translation (interpretation) is adequate

B12. Access for people with disabilities:

- Existence of special procedural and physical arrangements for people with disabilities in first instance and appellate courts

B13. Arrangements for vulnerable people:

- Existence of special procedural and physical arrangements for vulnerable people in first instance and appellate courts

C. INDICATORS OF QUALITY OF JUDICIAL DECISIONS

C14. Format of judgments:

- Existence of non-binding templates for judgments in standardised types of cases

C15. Reasoning of judicial decisions:

- 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

C16. Clarity of judicial decisions:

- Primary recipients for whom judicial decisions are to be understood by:
 - o The parties
 - o Public in general
 - o Other judges (such as appeal courts or Supreme Court)
 - o Academia
- Existence of an obligation to use language which is clearly understandable
- Existence of system (outside appeal) for ensuring judicial decisions are clearly understandable

C17. Assessment of Quality of judicial decisions:

- Existence of an instrument to assess the quality of judicial decisions on a regular basis outside the appeal process

C18. Education of judges:

- Existence of initial training of judges on writing judicial decisions
- Availability of high standard training courses designed to assist judges in carrying out their duties effectively
- Existence of the requirement for judges to participate in training courses regularly

D. INDICATORS OF PUBLIC ACCESS TO THE LAW TO GUIDE SOCIETY

D19. 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 to point out decisions that have high impact to the public
- Efforts court to make statistical information available about the outcome of cases
- Degree to which the information provided is free of charge

The indicators and their constituent parts are described in the format of the questionnaire that has been filled in by the councils and other governing bodies. The questionnaire, including the scoring of all possible answers, is published on the website of the ENCJ.

8. Normative evaluation of outcomes

The indicator system consists of the set of indicators just presented and of a methodology to uniformly quantify the results. This requires a normative evaluation of what is good and what is poor practice for each (sub)indicator. The evaluation takes the form of a points system using scoring rules. The scoring rules follow the reasoning of Section 14.

9. Quality of Justice in Europe

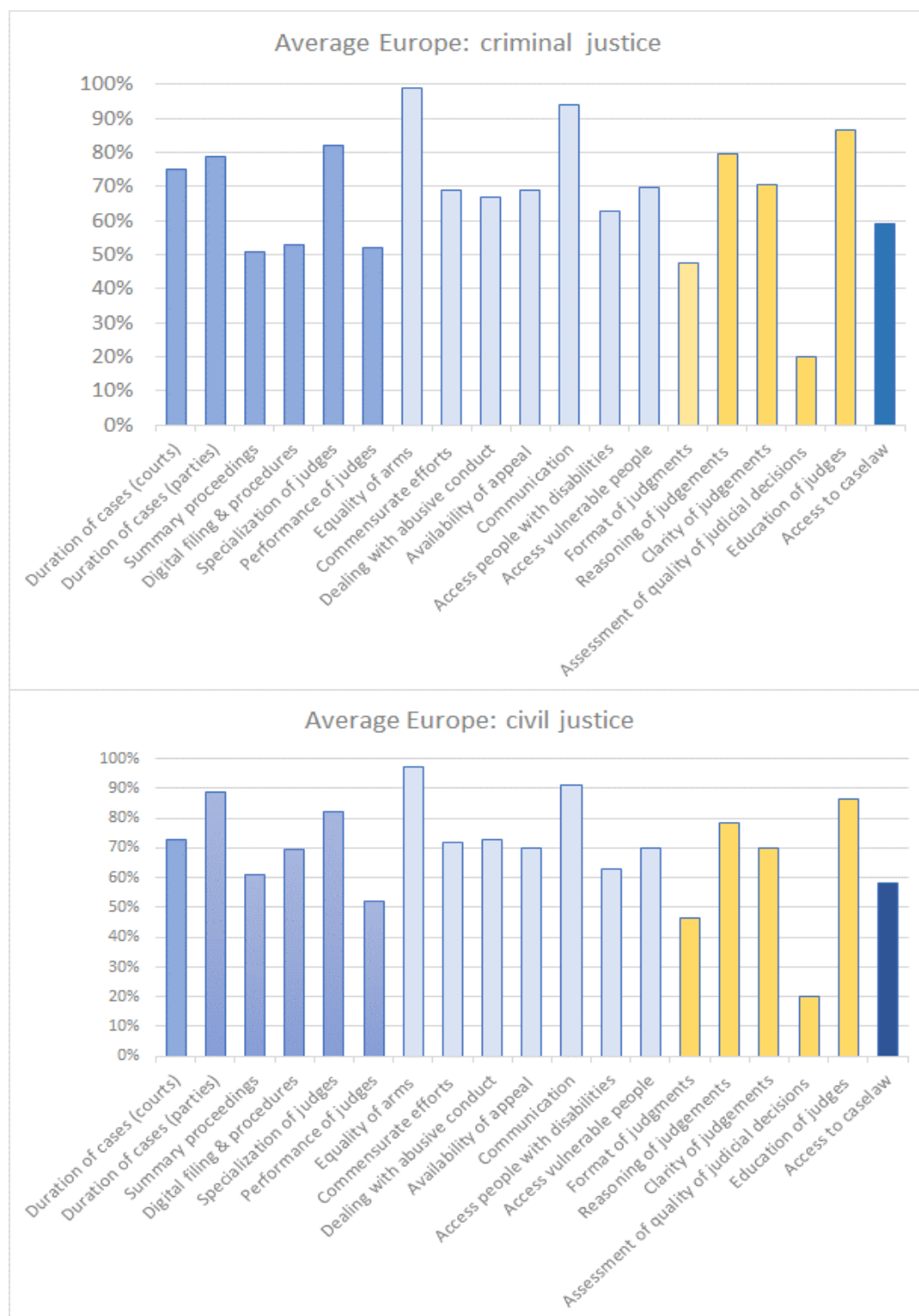
17.1 Quality of Justice in Europa in general

Figure 29 give the average scores on the quality indicators across all judiciaries that participated. In the next section results are presented for each judiciary individually. At that level, the outcomes are most informative. The averages give only a rough indication of overall tendencies. As discussed earlier, the objective is learning and not to develop an index of judicial quality with which to compare countries. As to learning, the ENCJ is very conscious that this remains a work in progress. The results reveal for each judiciary areas where there is scope for improvement. Some of these are likely to be difficult to achieve from the position of a Council for the judiciary but some are more realisable. For instance, the publication of case law is extremely important, and it is an area where positive improvements can be achieved.

Figure 29 distinguishes between criminal justice and civil justice. In the averages the differences between both are small. Only with respect to timeliness and efficiency of procedures substantial differences emerge. Civil procedure makes more use of summary proceedings as well as digital filing and digital procedures, compared to criminal procedure. The on-average lowest scores are found for some aspects of the quality of judicial decisions. In particular, the assessment of judicial decisions, even from the perspective of craftsmanship, is rarely used and apparently controversial. Also the formatting of judgments

to improve, where possible, uniformity and to reduce the risk of making mistakes is not applied systematically.

Figure 29 Indicators on quality of criminal and civil justice, averages for 22 participating judiciaries, 2022/2023



Note: the indicators concern timeliness and efficiency of procedures (blue), due process from the perspective of accessibility (light blue), quality of judicial decisions (yellow) and public access to the law to guide society (dark blue) in this *Figure* and in *Figures 32-53*.

This is not the place to analyse the results in detail. However, comparing the outcomes of all judiciaries, several topics are worth noting.

Specialisation

The use of specialisation across judiciaries is rather uniform. The indicator on this topic covers the presence of specialised judges, courts, departments or chambers in specific areas.²³ Both in first and second instance most of these specialisations occur in all countries, except for Denmark and Norway and, in second instance, Scotland. See the tables in Annex 3. Apparently, nearly all judiciaries apply specialisation in any form as a strategy to provide quality efficiently.

Digital case filing and digital procedures

In contrast, digitalization differs among the judiciaries (see Figure 30). This might be an issue of timing with some judiciaries being (nearly) fully digital earlier than others, but it seems also to be a matter of legal principle. Also, standards with regard to digitalization and its security may differ, for instance, with regard to the use of email. This may also explain why civil procedures are generally more digitalized than criminal procedures. It seems useful to explore these issues further (see Section 18).

Figure 30 Digital case filing and procedures in the participating judiciaries (2022)

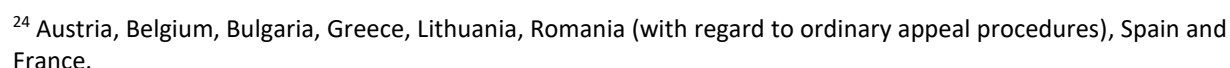


Appeal procedures

With regard to appeal procedures, the differences among judiciaries are relatively large (Figure 31). It should be noted that the indicator consists of three elements, (1) possibility to bring an appeal, (2) existence of a filtering mechanism to prevent cases that have no merit to proceed to a full hearing and (3) stay of execution of the first instance judgment in case of an appeal. There is near uniformity on the broad possibility of appeal, in particular in criminal cases but also in civil cases, as well as on the stay of execution. That implies that a relative low score on this indicator does not mean that the right to appeal is restricted. On the contrary, in the absence of a filtering mechanism appeal is allowed, in principle in all cases, to the disadvantage - in cost and time - of the parties that won in first instance. Seven judiciaries have no filtering

²³ Family and juvenile law, Intellectual property law, commercial law, insolvency, certain types of crime, labour law and other.

Figure 31 Availability of appeal in the participating judiciaries (2022)



17.2 Quality of justice per judiciary

In the following the indicators are presented for each judiciary.

Figure 32 Indicators on quality of criminal and civil justice Austria, 2022

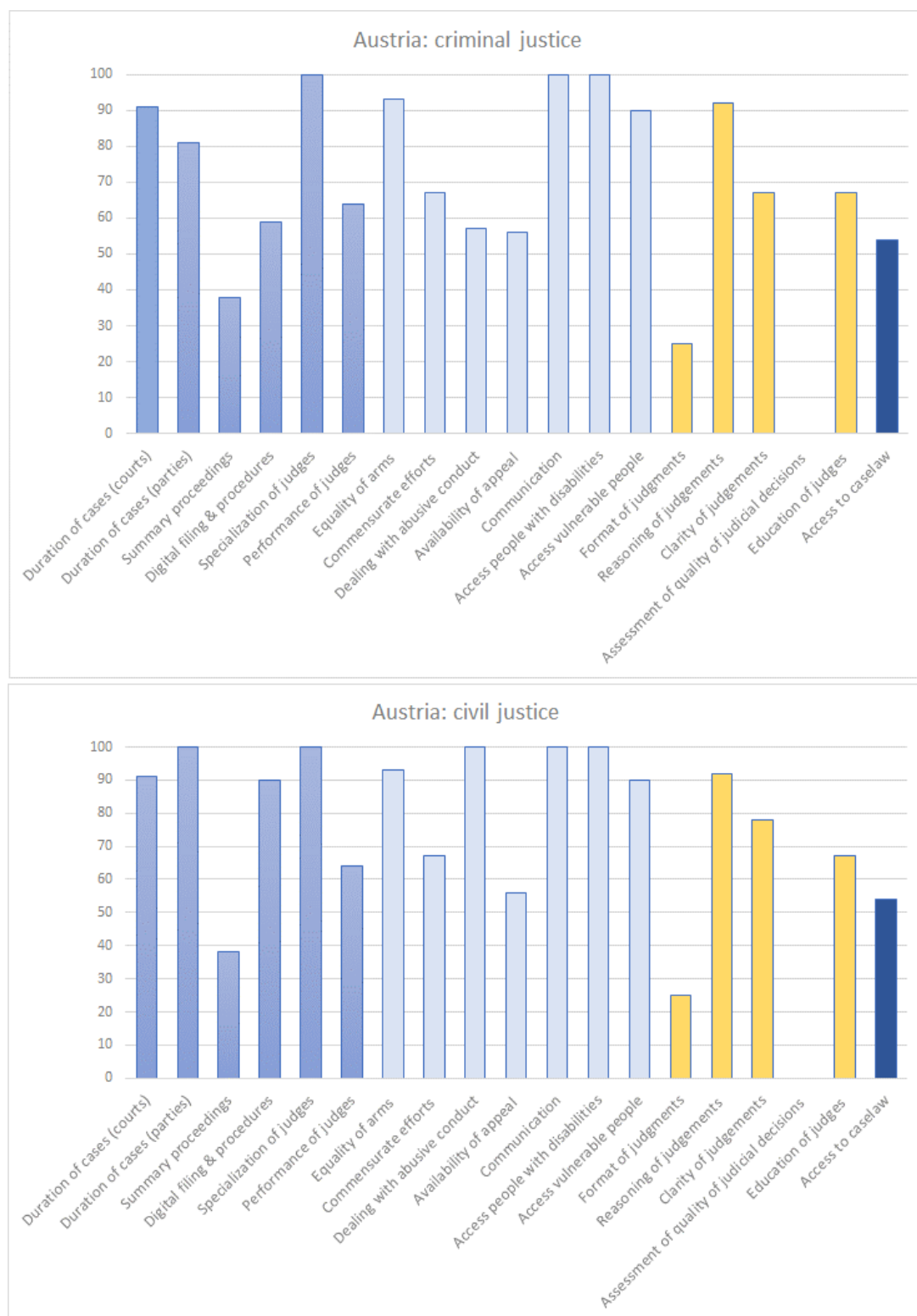


Figure 33 Indicators on quality of criminal and civil justice Belgium, 2022

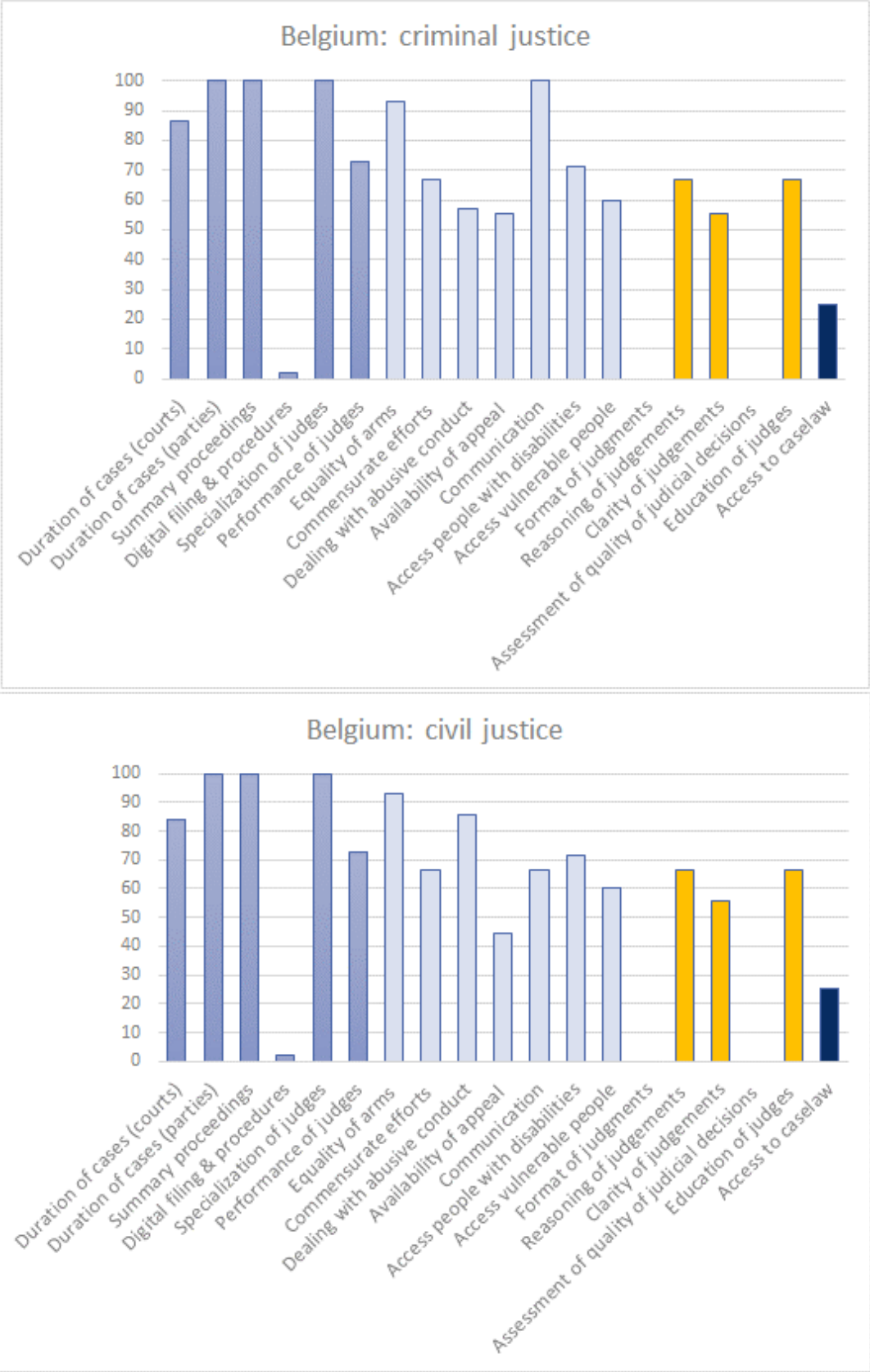


Figure 34 Indicators on quality of criminal and civil justice Bulgaria, 2022

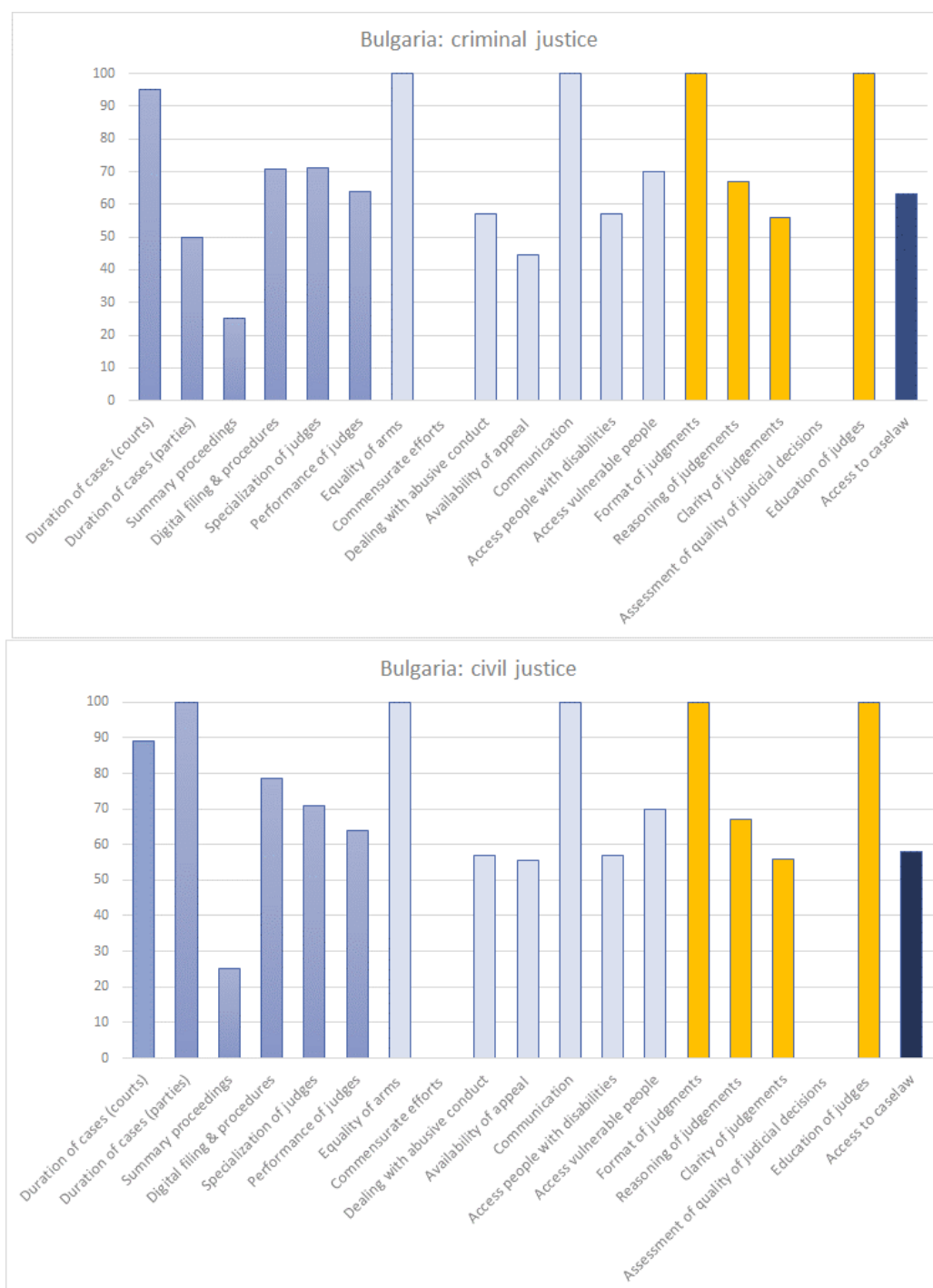


Figure 35 Indicators on quality of criminal and civil justice Denmark, 2022

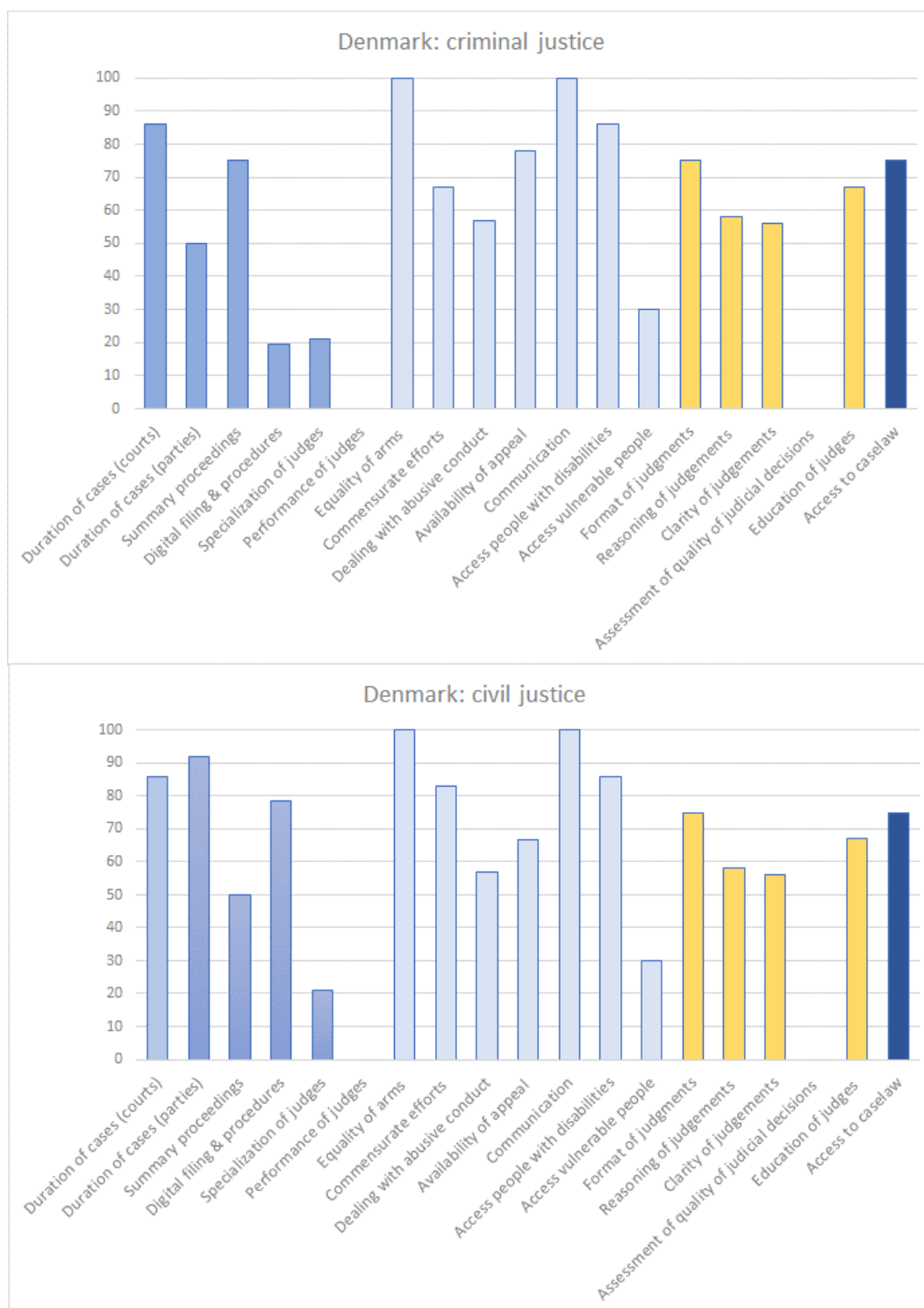


Figure 36 Indicators on quality of criminal and civil justice Finland, 2022

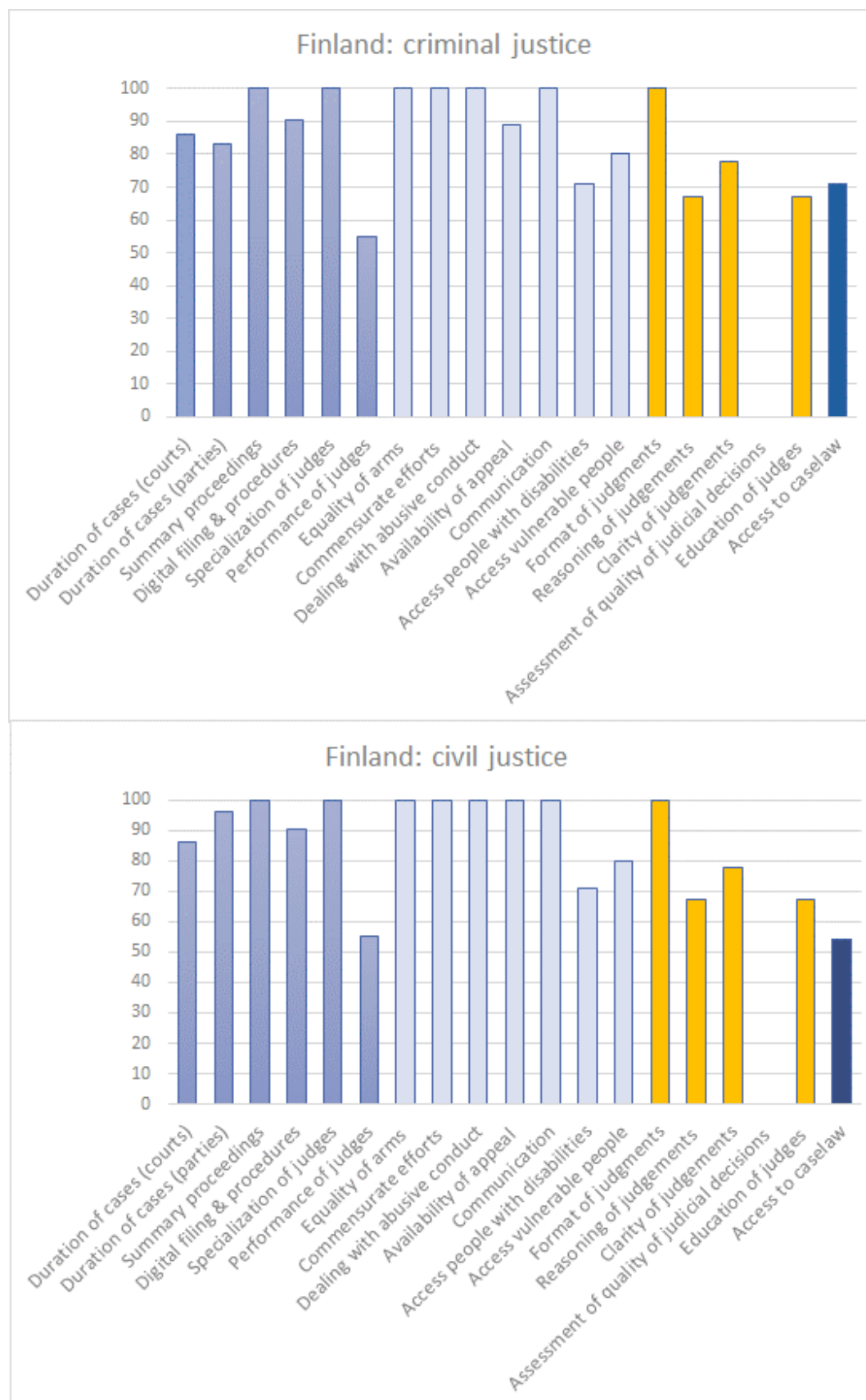


Figure 37 Indicators on quality of criminal and civil justice France, 2022

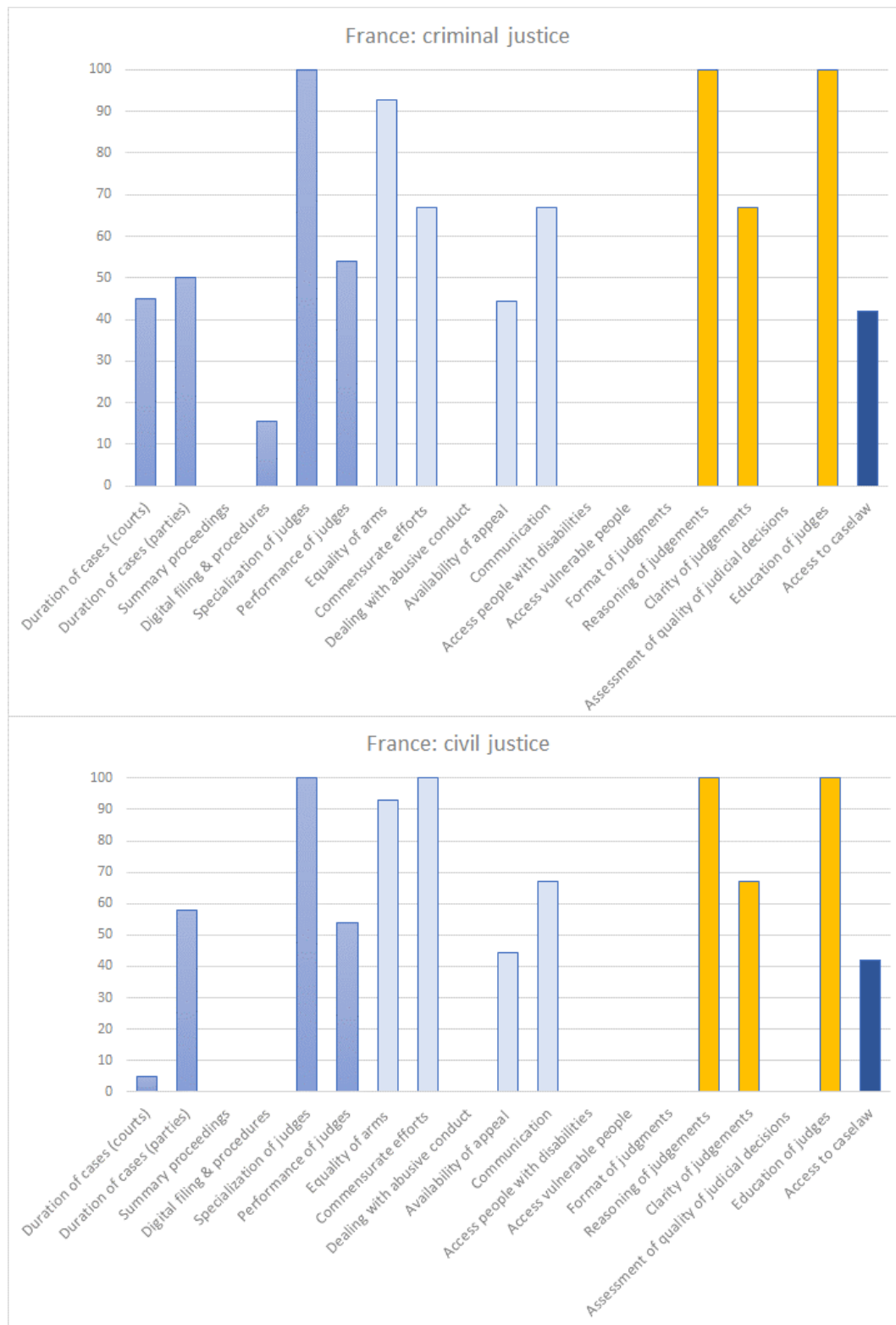


Figure 38 Indicators on quality of criminal and civil justice Germany, 2022

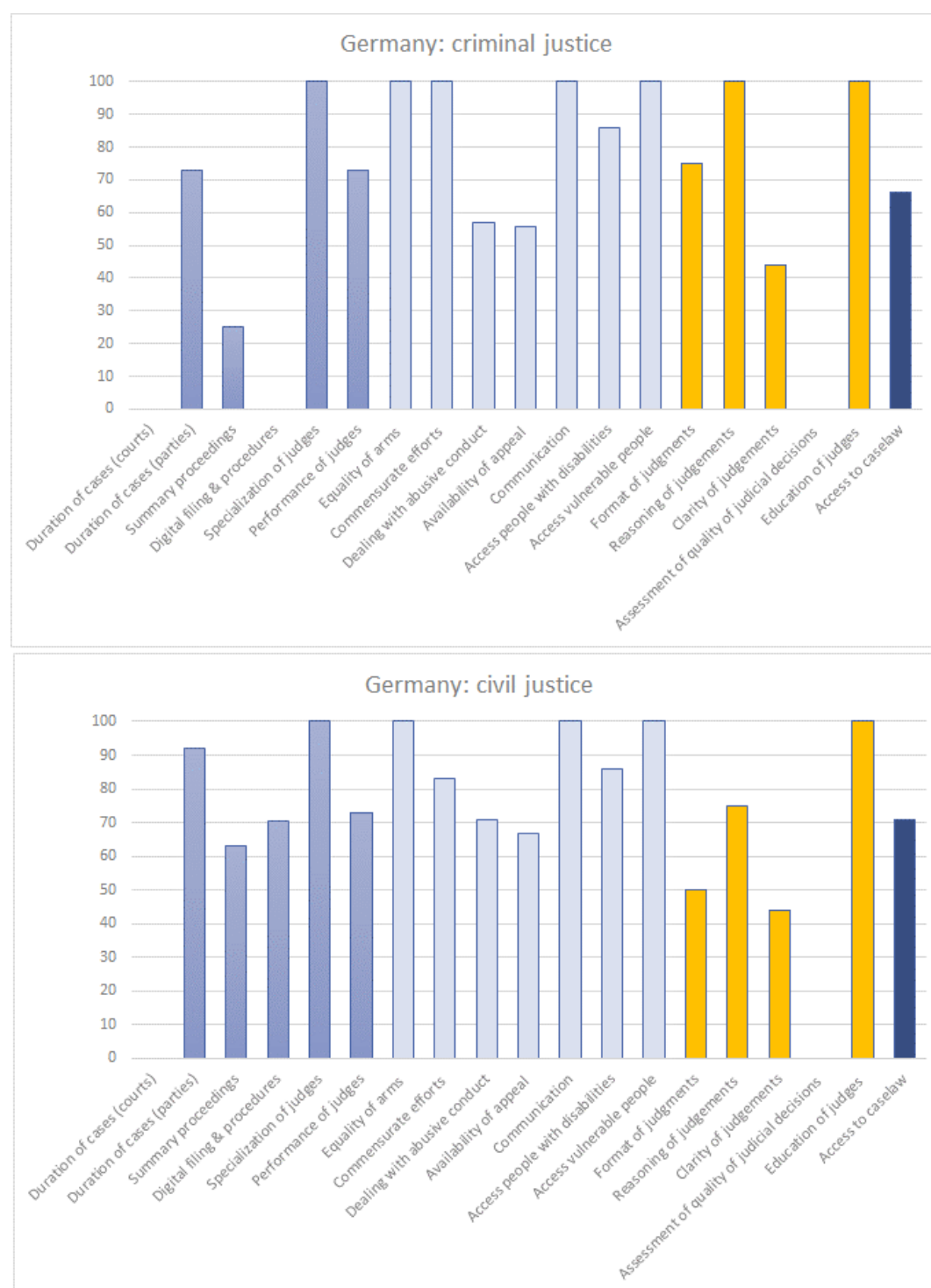


Figure 39 Indicators on quality of criminal and civil justice Greece, 2022

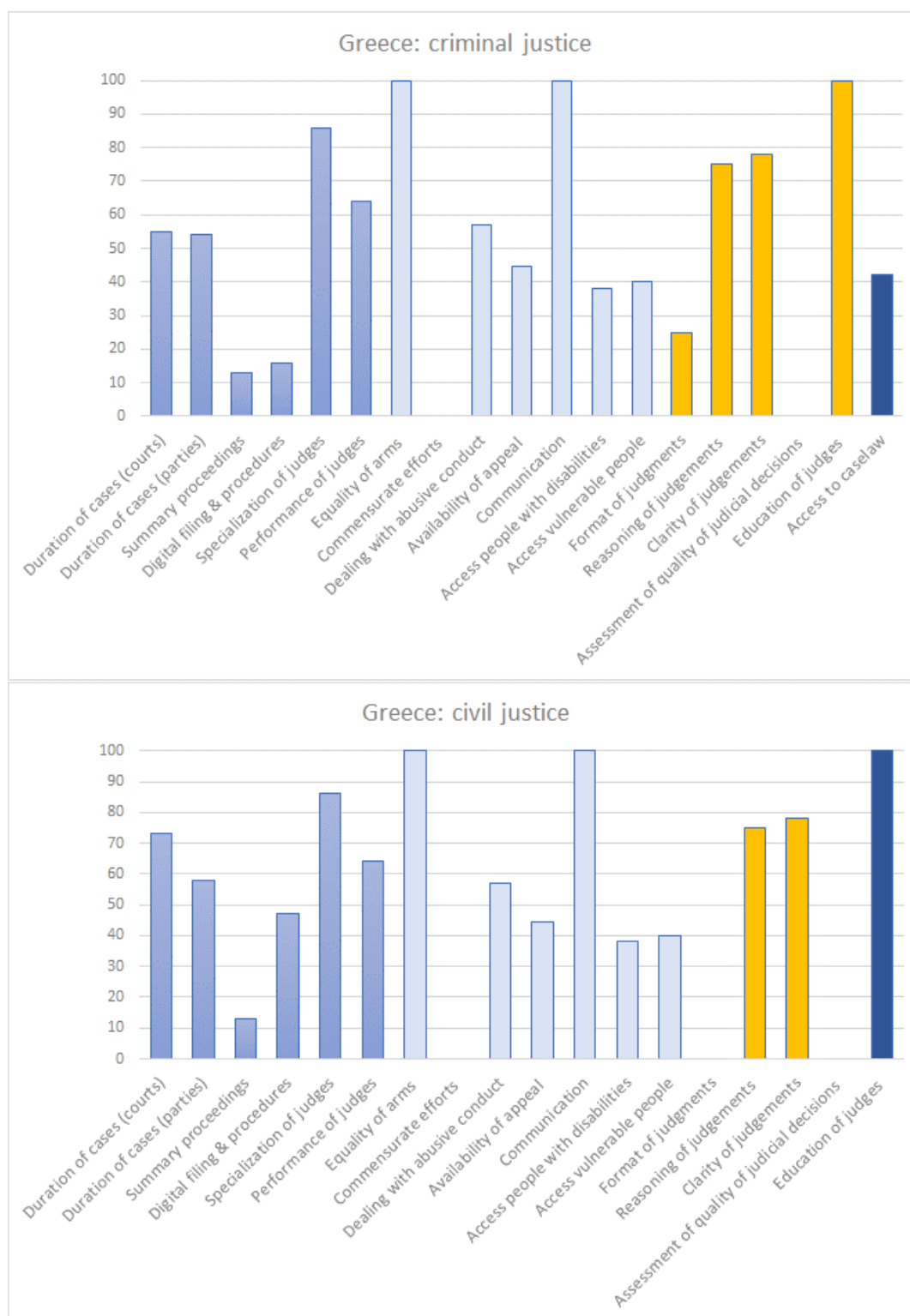


Figure 40 Indicators on quality of criminal and civil justice Hungary, 2022

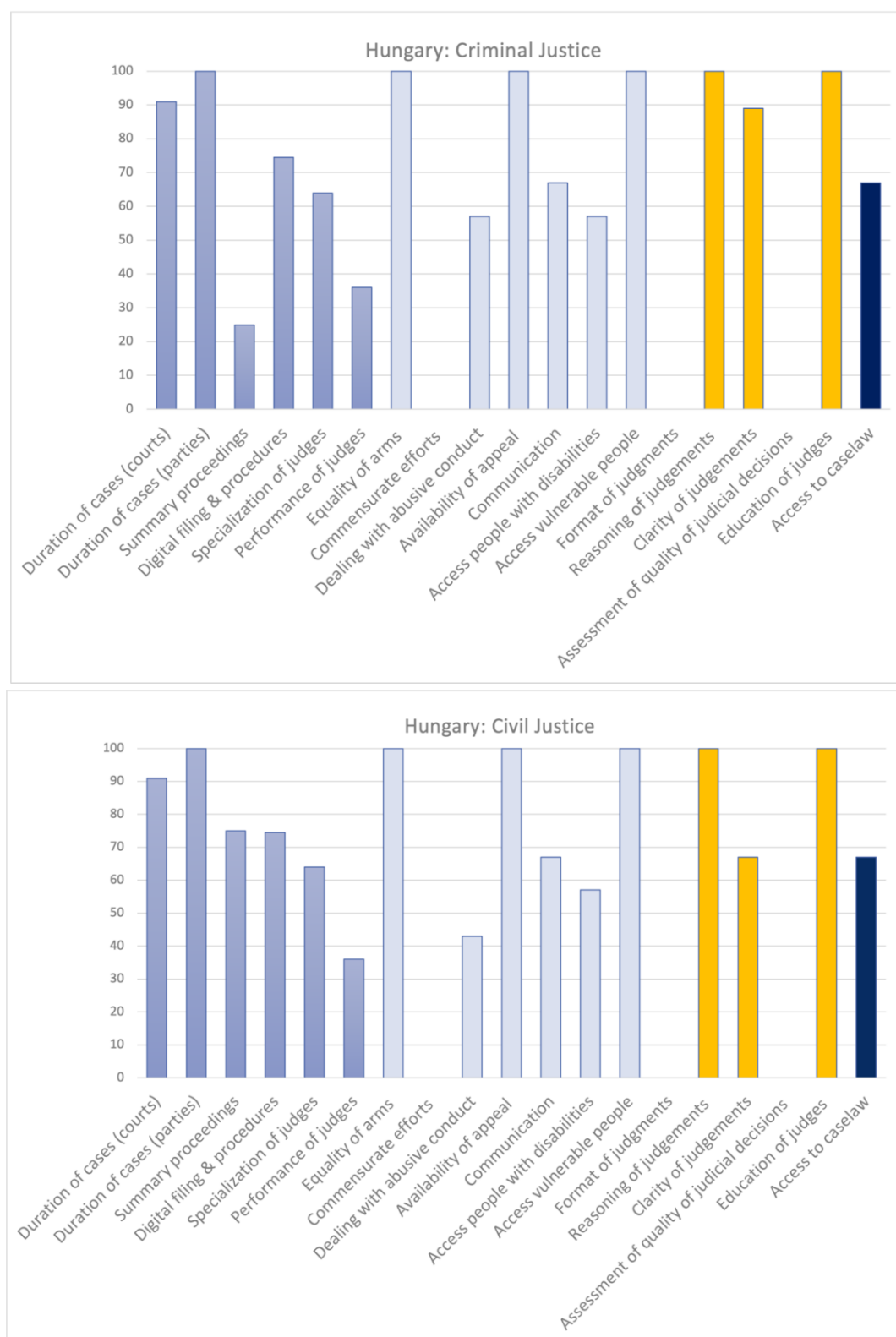


Figure 41 Indicators on quality of criminal and civil justice Ireland, 2022

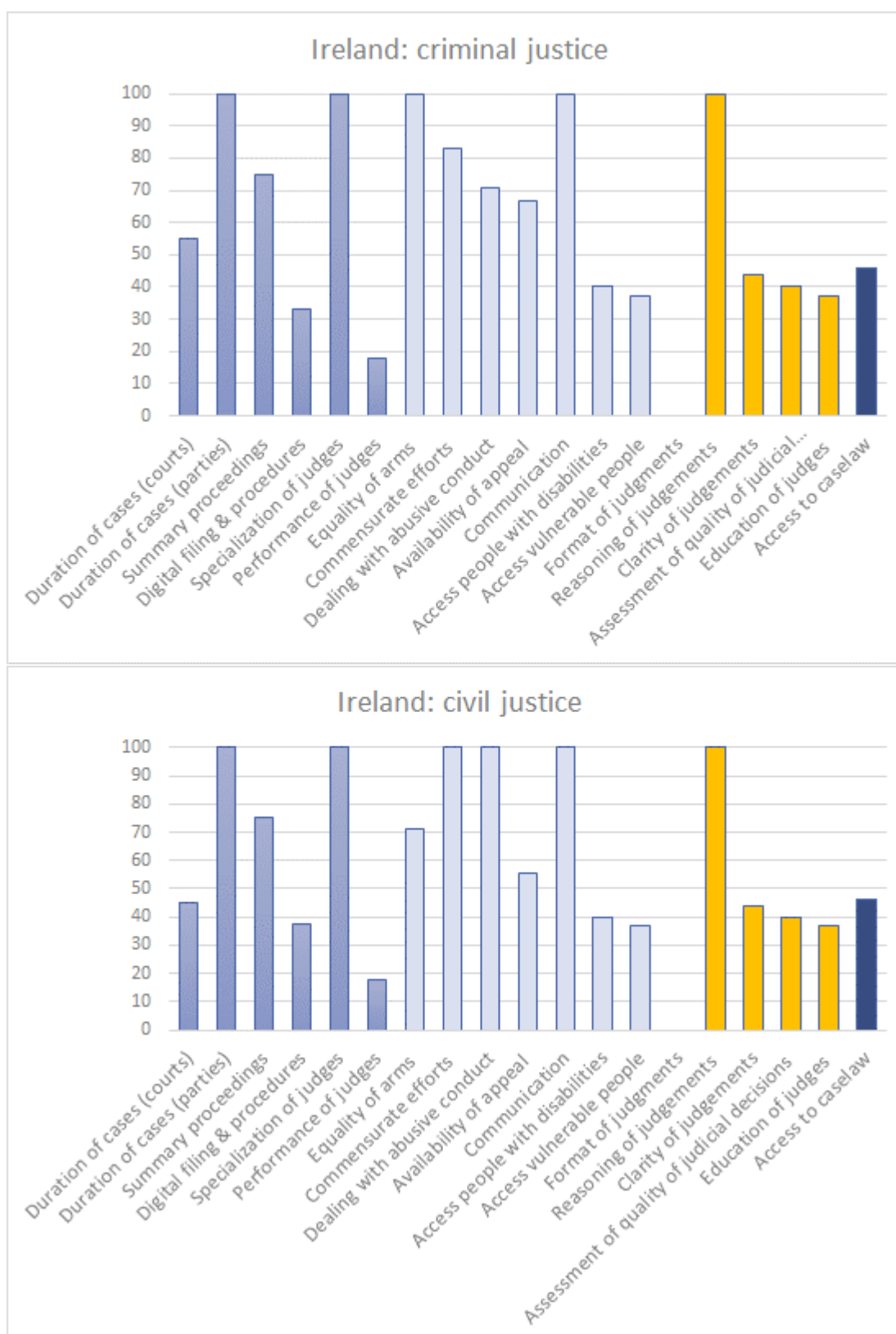


Figure 42 Indicators on quality of criminal and civil justice Italy, 2022

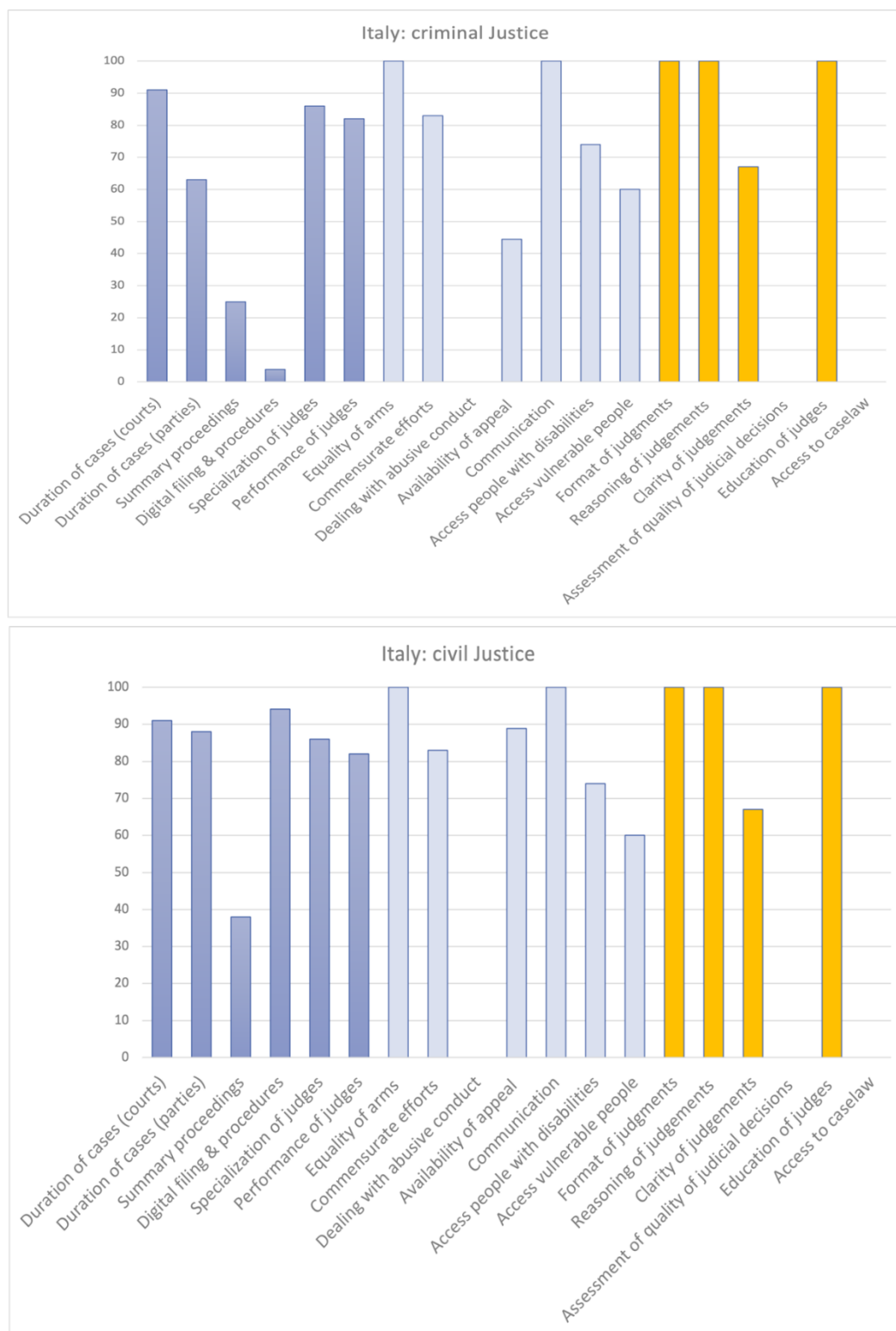


Figure 43 Indicators on quality of criminal and civil justice Latvia, 2022

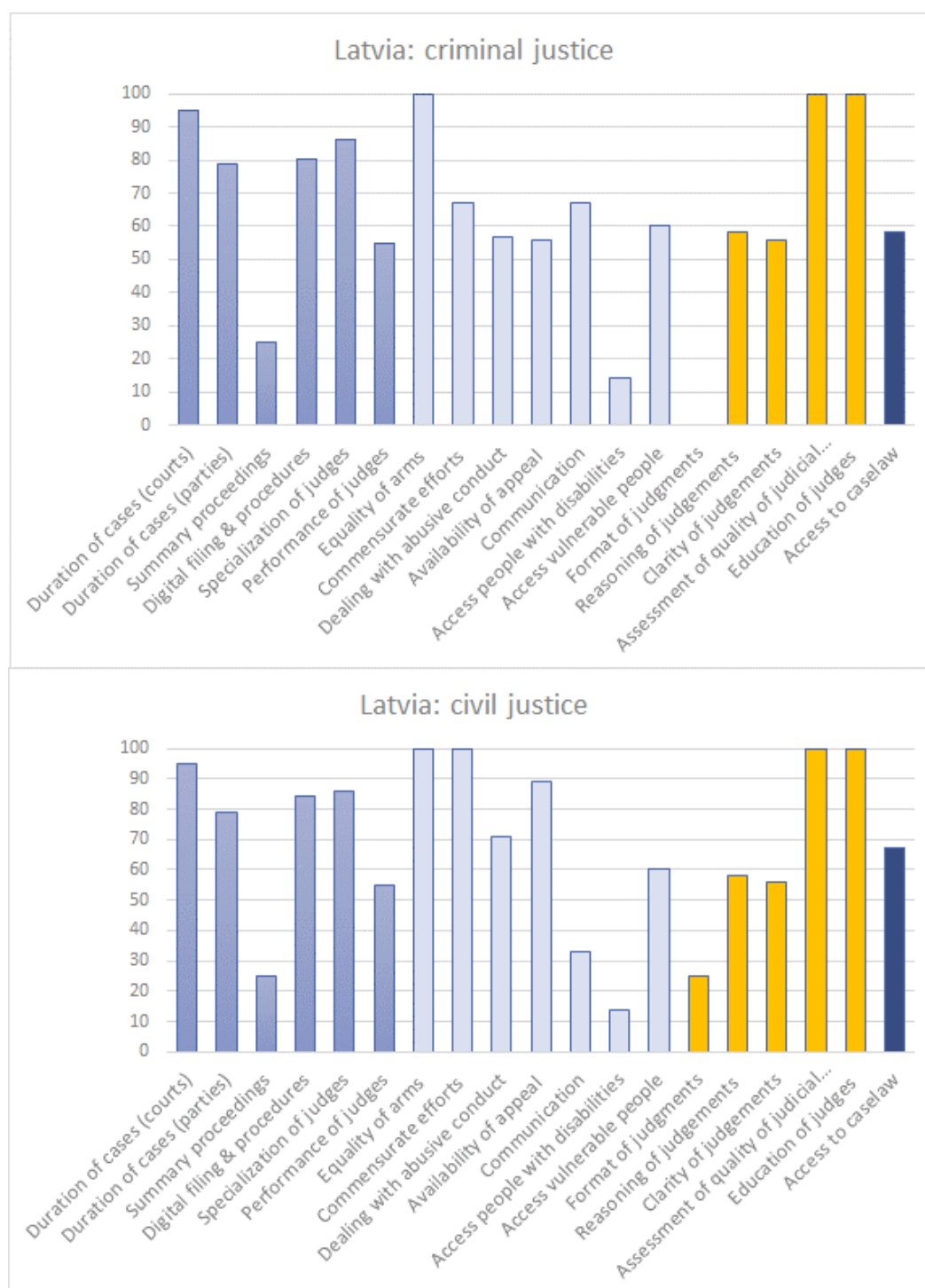


Figure 44 Indicators on quality of criminal and civil justice Lithuania, 2022

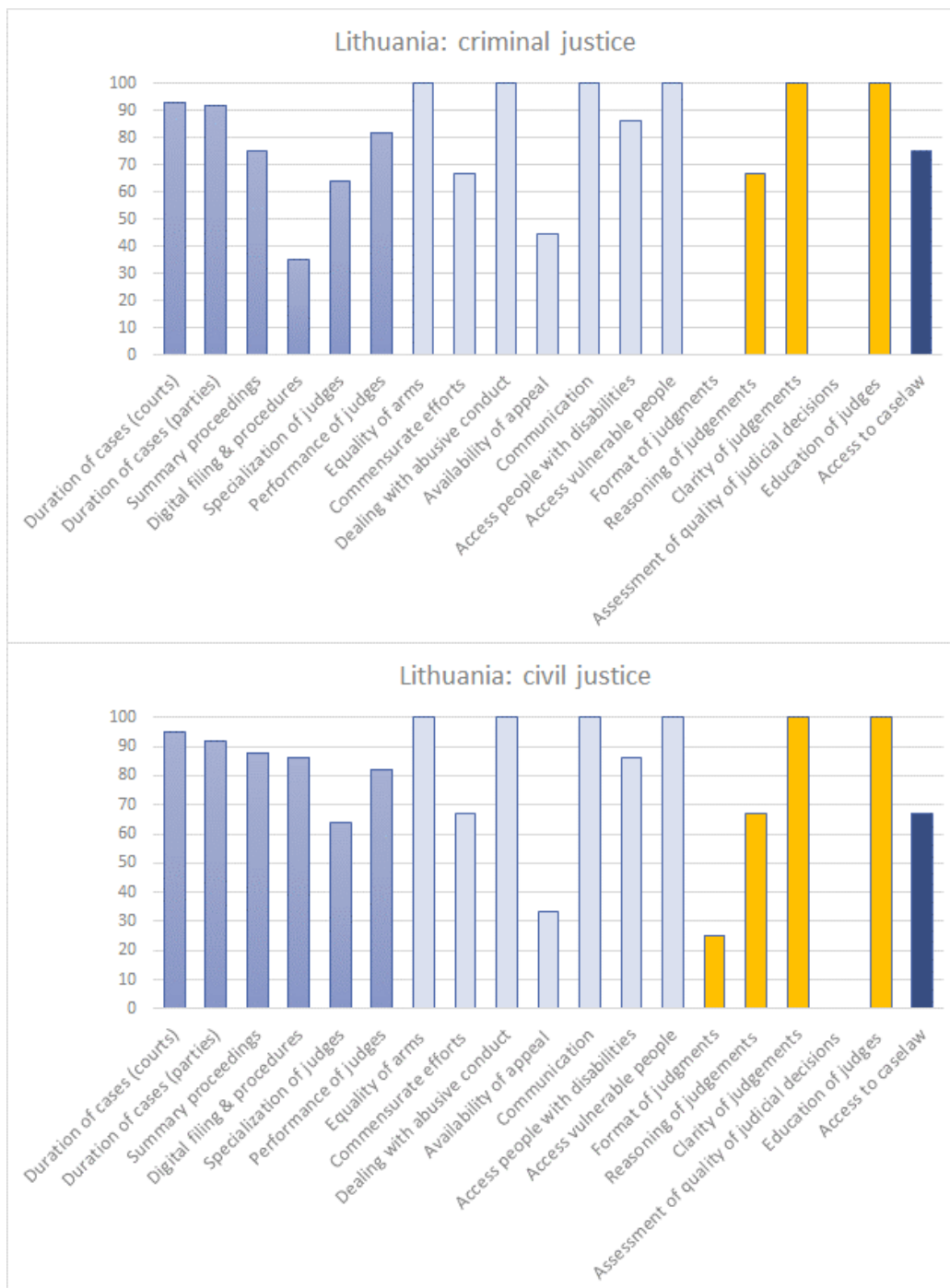


Figure 45 Indicators on quality of criminal and civil justice the Netherlands, 2022

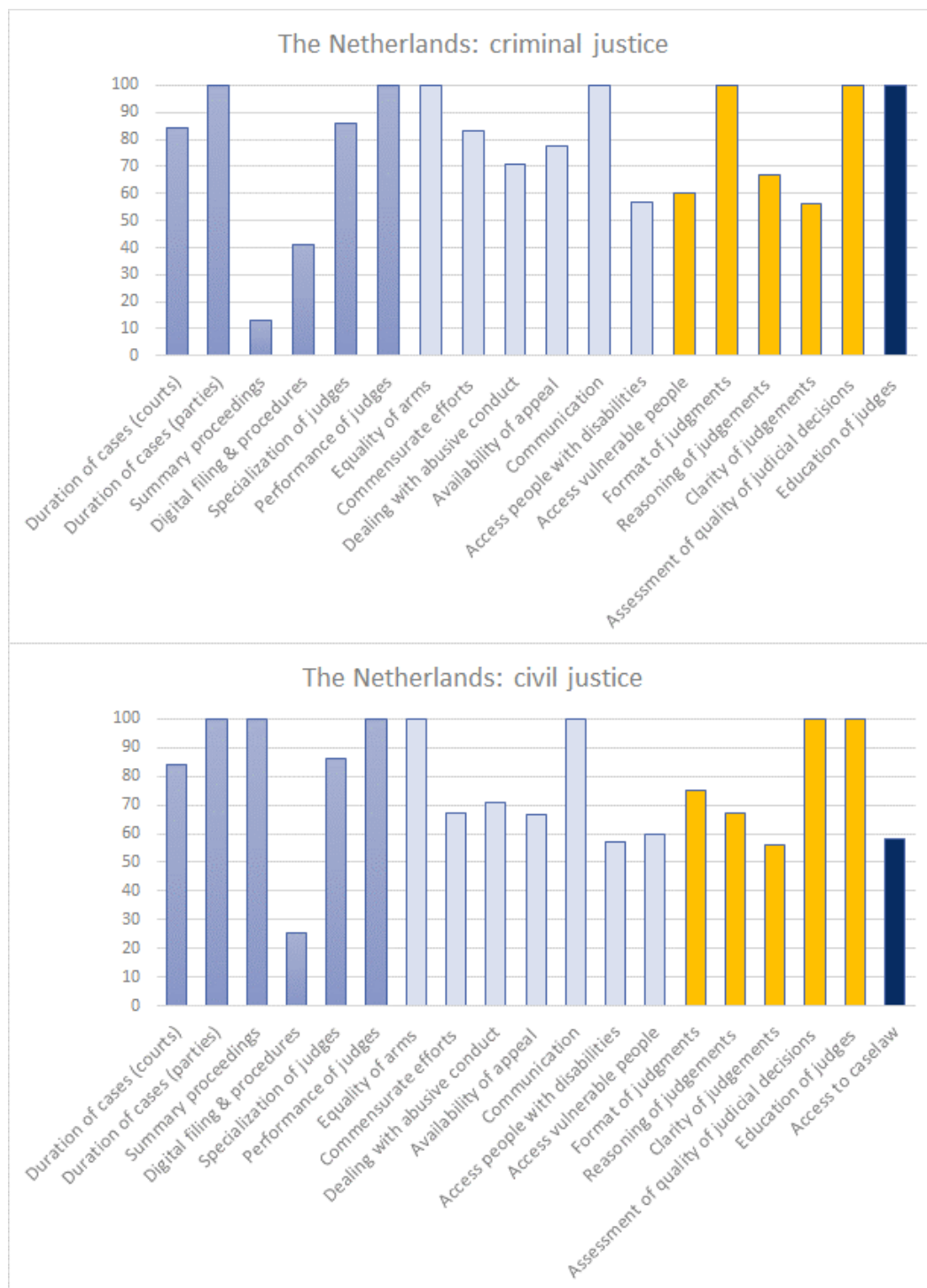


Figure 46 Indicators on quality of criminal and civil justice the Norway, 2022

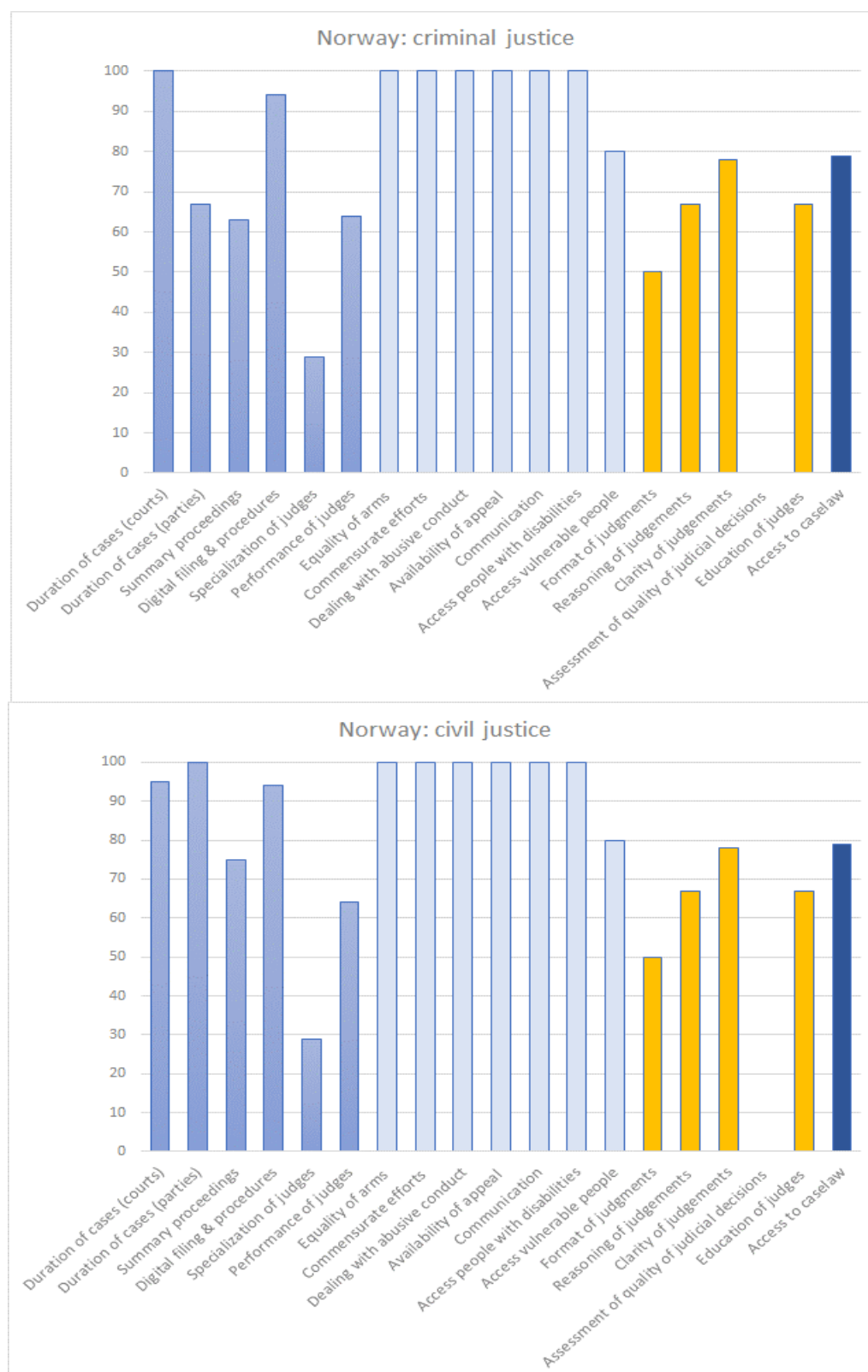


Figure 47 Indicators on quality of criminal and civil justice Portugal, 2022

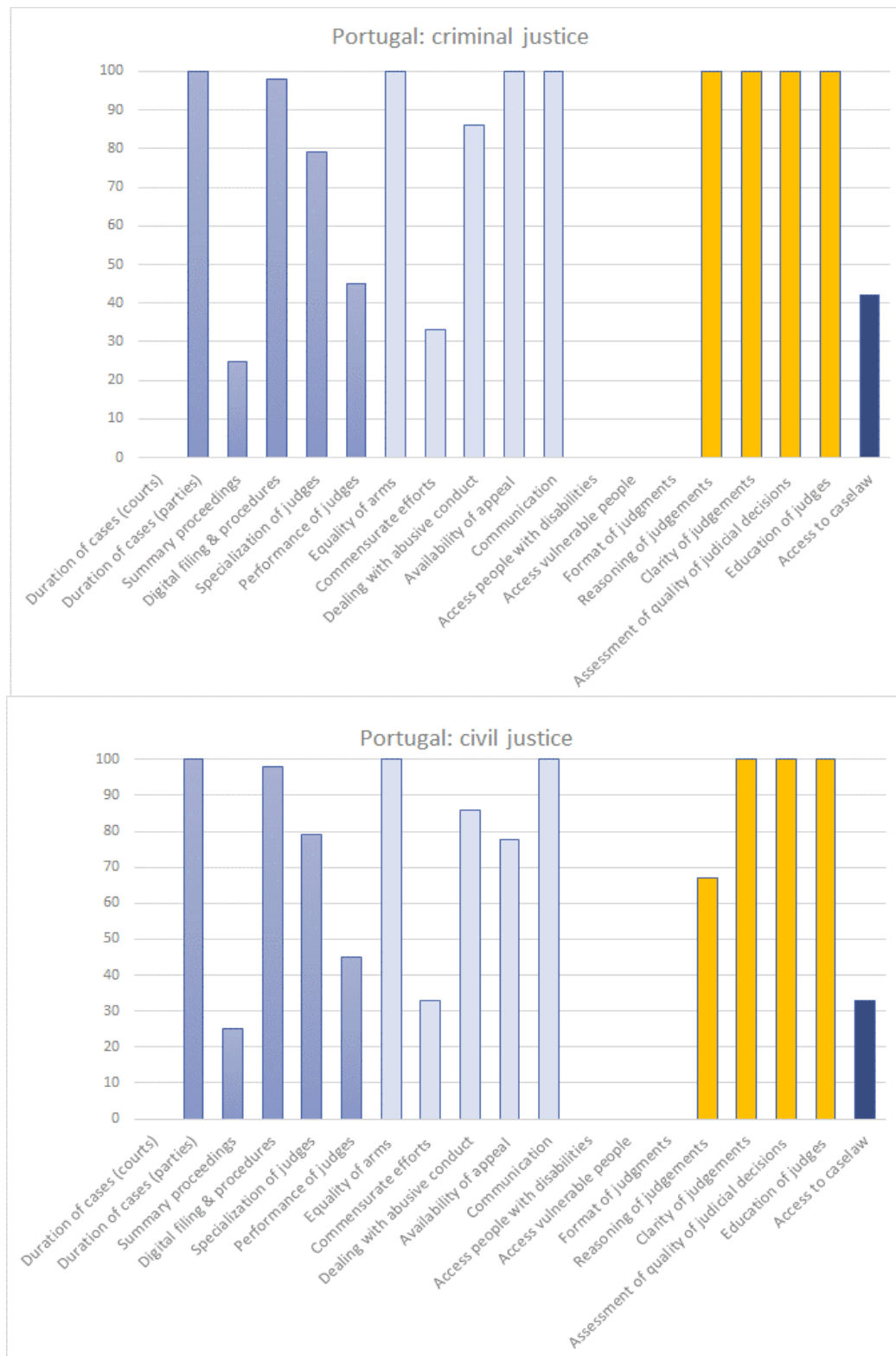


Figure 48 Indicators on quality of criminal and civil justice Romania, 2022

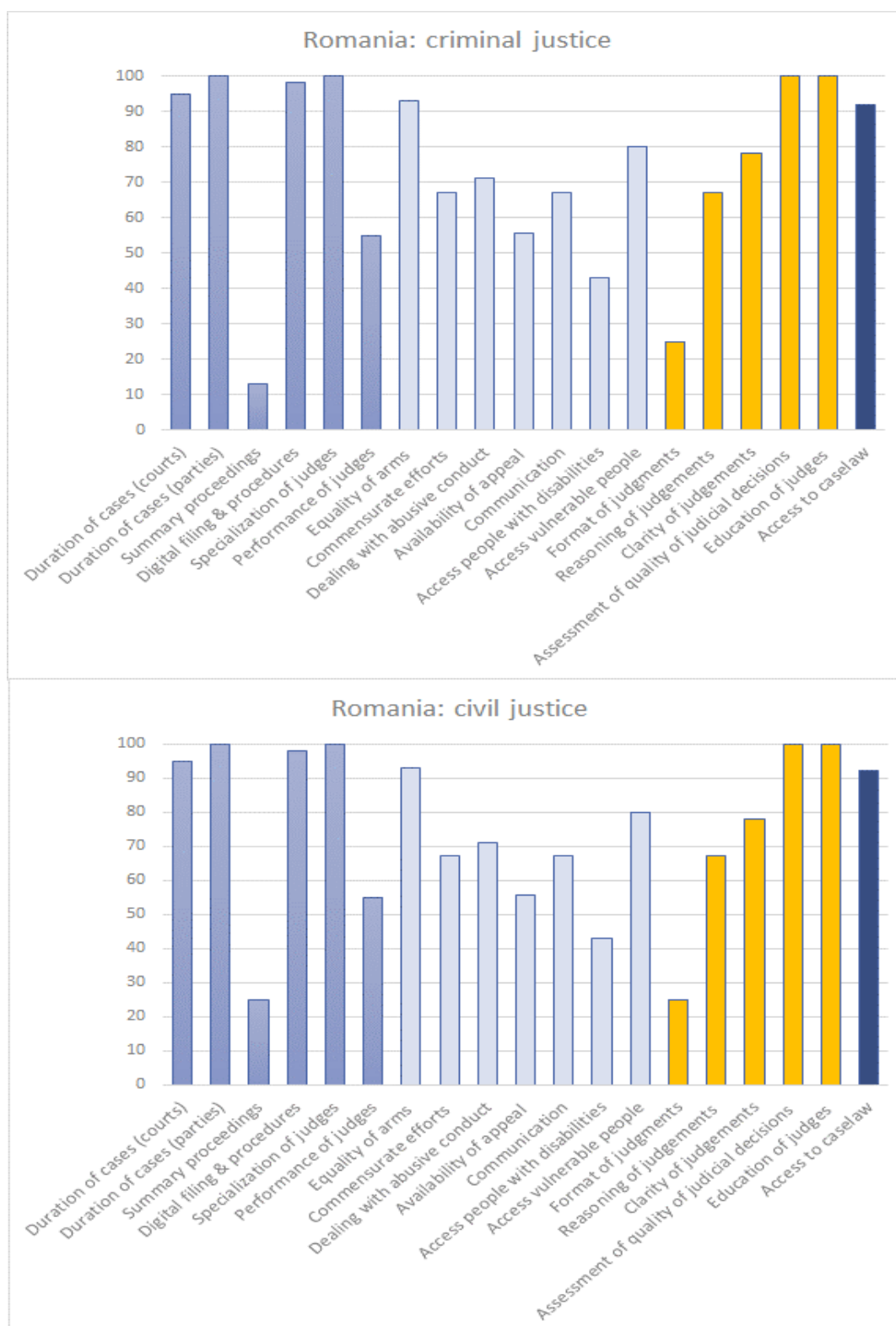


Figure 49 Indicators on quality of criminal and civil justice Spain, 2022

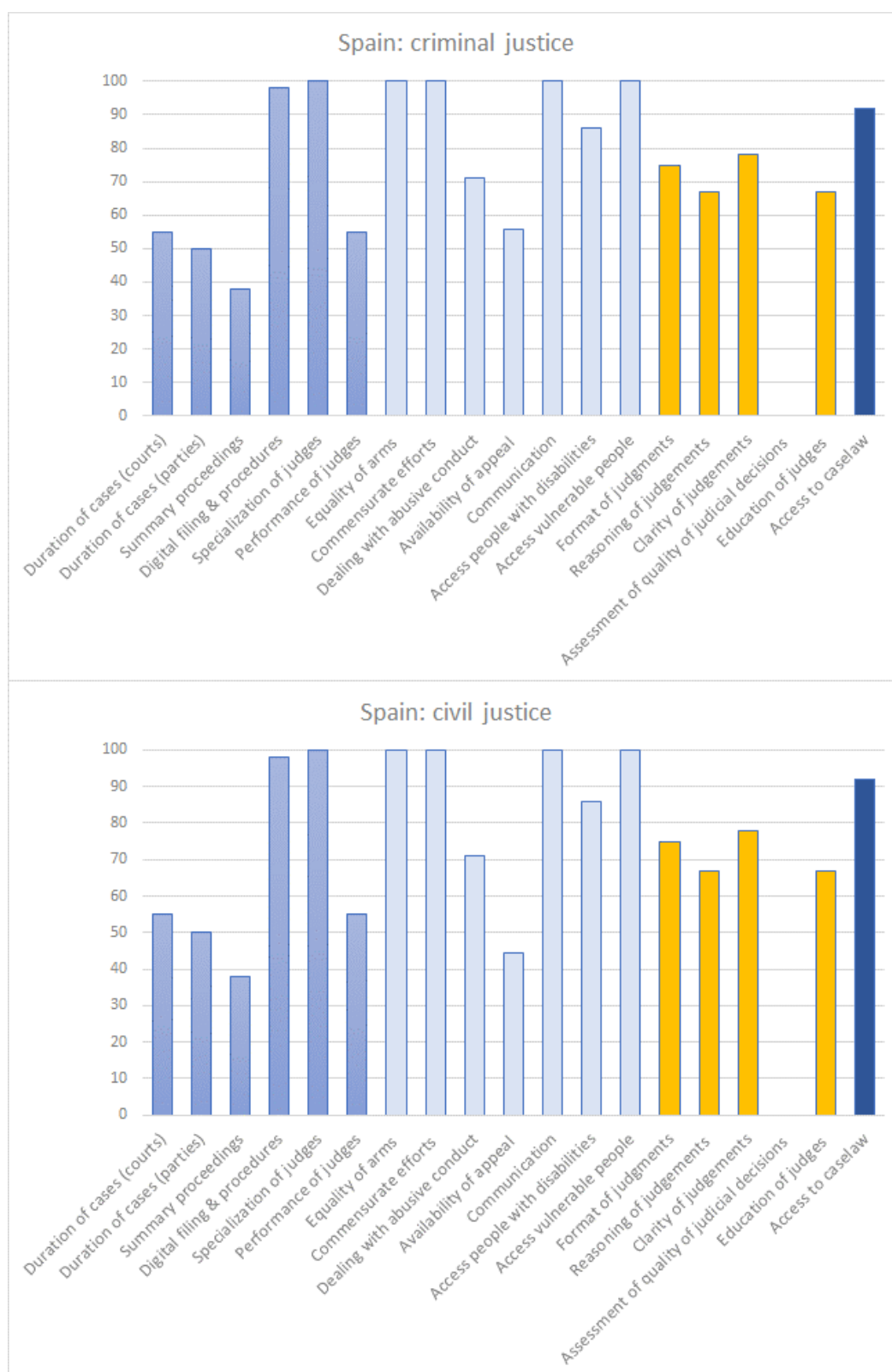


Figure 50 Indicators on quality of criminal and civil justice Sweden, 2022

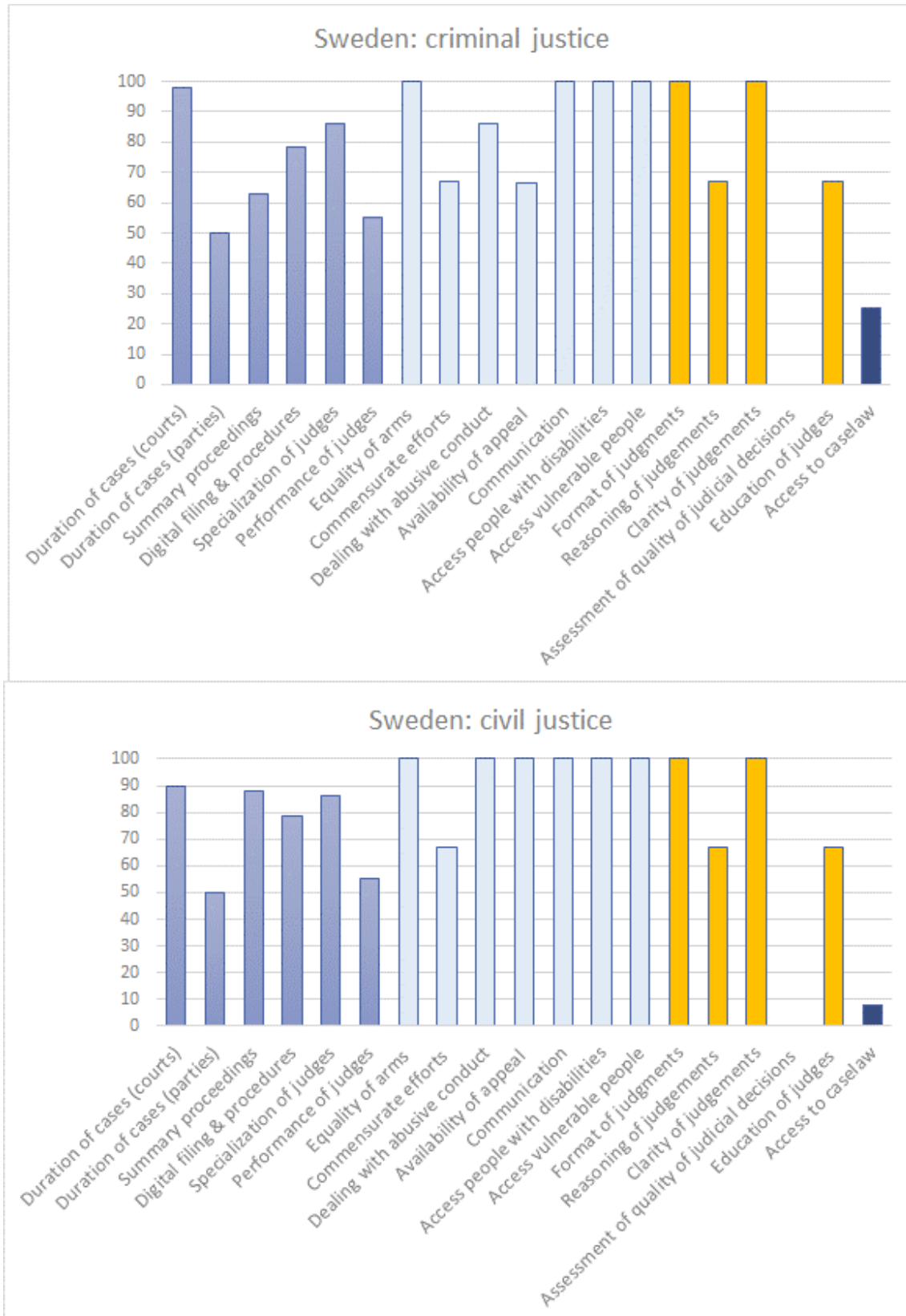


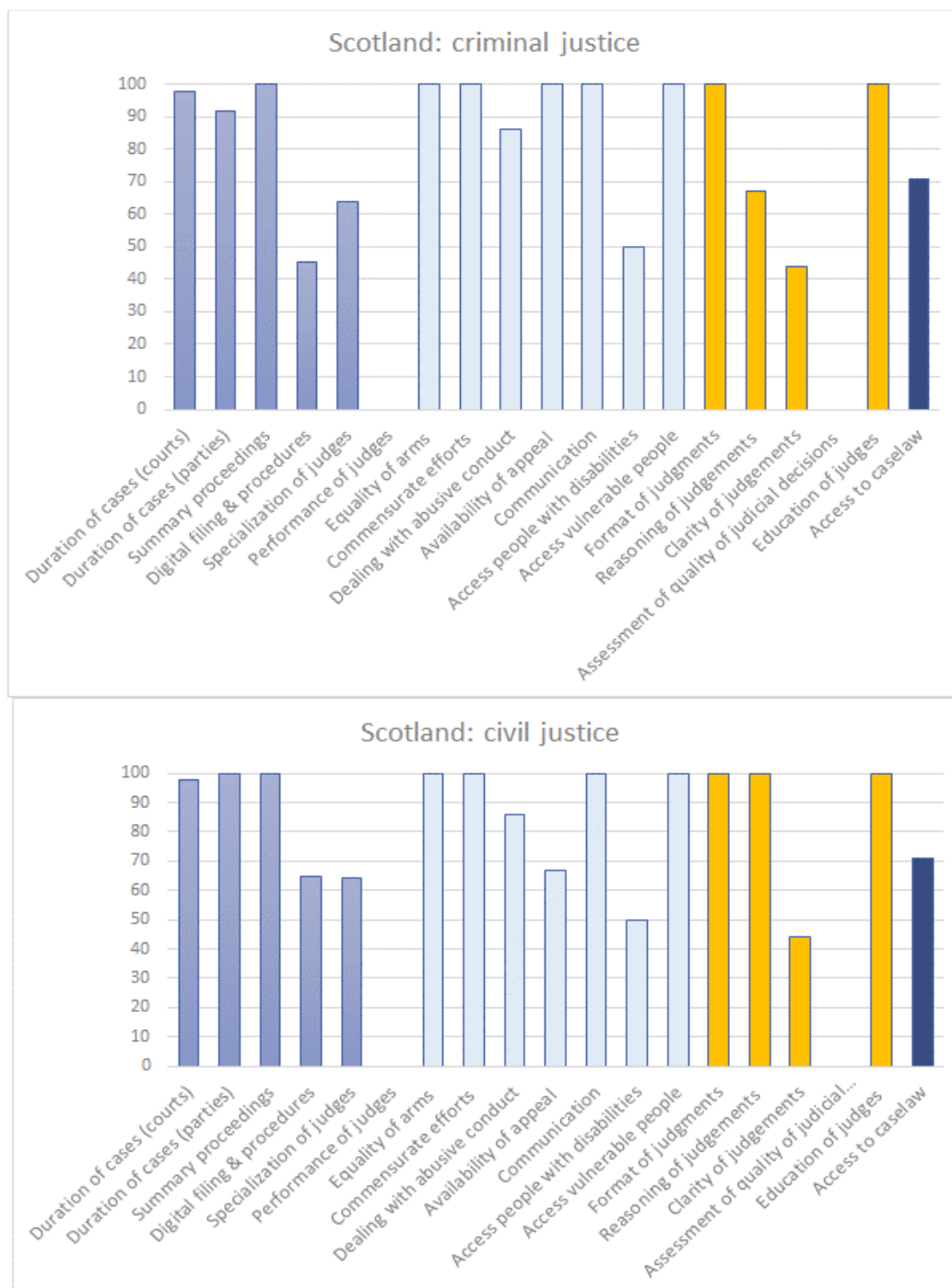
Figure 51 Indicators on quality of criminal and civil justice UK, England and Wales, 2022



Figure 52 Indicators on quality of criminal and civil justice UK, Northern Ireland, 2022



Figure 53 Indicators on quality of criminal and civil justice UK, Scotland, 2022



10. Next steps on Quality of Justice

In view of the quality indicators, it will be up to individual councils and other governing bodies to identify the areas in which there is potential to improve quality of justice in their jurisdictions and to take appropriate steps to achieve such improvement. This requires that, where this has not been done yet, the roles and competences of each of the Councils in guaranteeing and promoting quality of justice are made explicit. The quality framework that has been developed separately can be used for this purpose. Councils can then adopt plans, having regard to their roles and their quality profiles, to improve the quality of justice in their jurisdiction. The schematic overview of quality related activities of Councils for the Judiciary that has been prepared in the context of the quality framework can provide inspiration.

In the next project year (2023/2024) the activities on quality of justice of the Project Team will be aligned with those on independence and accountability.

1. The dialogue groups of members and observers on independence and accountability will be extended to quality of justice, using both sets of indicators as starting point. This will be done in the period from September 2023 until March 2024 with the purpose to analyse the outcomes together, to set priorities for improvement plans and to generate ideas for improvement.
2. Councils for the Judiciary are invited to apply the quality framework, develop their vision on quality and translate this into concrete activities to improve the quality of justice. Councils are invited to share their ideas with the Project Team.
3. Selected areas of quality that have proved to be complicated or controversial will be further explored to find common ground and to raise awareness of the possibilities for improvement in these areas. These areas are digital case filing and digital procedures (Indicator A4) and the availability of appeal (B10).
4. As to the quality indicators, the outcomes will be analysed against existing, external data about quality of justice for their use in the indicator system.
5. The schematic overview of quality related activities of Councils for the Judiciary will be kept up to date.

Part 3: Court User Surveys

Background

Since 2018, ENCJ has been working on a format for a court user survey that could be used across the judiciaries of Europe on the perception of the court users on independence. This work, after a lot of discussing and testing, resulted in a **consolidated questionnaire** (I&A Report 2020-2021). Then the idea emerged that conducting a **uniform court user survey on independence at the same time in all member and observer countries** would provide a very valuable insight into the state of court users' experience of perceived judicial independence, useful for further work to strengthen independence and accountability. Consequently, last year's priority was to explore this possibility.

However, mainly due to significant differences in judicial systems across Europe and practical obstacles (such as reluctancy of judiciaries and lack of funding), the group considered the project as too ambitious at that point and decided to **partially shift focus**, namely to work towards encouraging members to conduct national court user surveys and, at a later stage, re-examine the prospect of conducting an EU-wide court user survey.

2021-2022 report

Based on the above national experiences, last year a **Practical Guide** to court user surveys (recommendations) was drafted, with the view to provide inspiration on methodology and implementation to national councils and court administrations in organizing surveys. At the same time, it has been considered useful to include the national experiences as such, for those members which find that their systems match another member's system in such a way that applying the method used by this member would serve the purpose of the survey best (IA&Q report 2021-2022).

Given that many ENCJ member and observer countries are still reluctant to perform court user surveys, the proposition to this year's project team was to follow an **individual approach** and look deeper into the councils which have not performed surveys and have no plans to do so in the near future, with a view to **identify the reasons** for each country, try to address them to the extent of the ENCJ competences and to **encourage and actively support** councils in their efforts. In that regard, it was proposed to establish a mentorship programme within the network (by bringing together a judge from a country with relevant experience, willing to offer advice, to a council wishing to conduct a survey and asking for guidance).

The work this year

Following up on last year's proposal, in October 2022 a questionnaire was circulated among members and observers with the aim, on one hand, to identify the reasons for not conducting court user surveys and, on the other, to see whether there would be interest in establishing a mentoring programme.

Based on the results, the following conclusions can be drawn:

-Reasons for not conducting surveys

According to the answers, 13 out of 22 (59%) members/observers have not conducted a survey in 2022 and 12 out of 22 (54%) do not plan to conduct one in 2023, the reasons being financial (in 2 cases), logistic/administrative constraints (in 9 cases), opposition of the Council or court administration (in 2 cases) and other reasons (mainly no interest) in 4 cases.

-Interest in being a mentor or using a mentor

According to the answers, 3 members/observers expressed interest in using a mentor to help them navigate the task and 3 expressed interest in being mentors. Also, 3 members/observers think a country visit would be beneficial to that end.

Furthermore, although a pan-European survey was put to hold for this year, the European Commission expressed vivid interest in conducting one and approached the ENCJ for cooperation. The issue arises as to which institution (from each judiciary) would have to give their consent in order for a pan-European survey to be conducted in the courts. Therefore, earlier this year, a questionnaire was circulated among members and observers (EU member states). Due to the low response rate (14 out of 28), no reliable results can be drawn.

Recommendation on the work forward

Taking into account the progress on the above topics, the project group would suggest, as priorities for next year, to:

1. Draw-up a comprehensive map on the institution competent to give consent for a pan-European court user survey and cooperate with the European Commission on such project.
2. Monitor the development of the mentorship programme between Norway (mentor) and France.
3. Explore the possibility of extending the model survey to key aspects of quality of justice.

Annex 1 Members of the Project Team

First name	Family name	Institution / Representing org.
Petra	Peer	Ministry of Justice, Austria
Gerhard	Reissner	Ministry of Justice, Austria
Lucia	Dreser	High Council for Justice of Belgium
Atanaska	Disheva	Supreme Judicial Council Bulgaria
Olga	Kerelska	Supreme Judicial Council Bulgaria
Eva Louise	Paduan	Danish Court Administration
Judith	Gleeson	Judges' Council England and Wales
Andrew	Henshaw	Judges' Council England and Wales
Simon	Picken	Judges' Council England and Wales
Noora	Aarnio	National Courts Administration Finland
Kaisa	Puro	National Courts Administration Finland
Marie	Dubuisson	CSM France
Madeleine	Mathieu	CSM France
Martina	von Storch	Ministry of Justice, Germany
Roland	Kempfle	Ministry of Justice, Germany
Maria	Simitsi	SJC CCJ Greece
Maria	Gkana	SJC AJ Greece
Tamás	Matusik	National Judicial Council Hungary
Zoltan	Rochlitz	National Judicial Council Hungary
Caroline	Costello	Courts Service /Judicial Council of Ireland
Brian	O'Moore	Courts Service/Judicial Council of Ireland
Michele	Papa	CSM Italy
Dace	Sulmane	Judicial Council of Latvia
Marius	Bartninkas	Teisėjų taryba/Judicial Council of Lithuania
Areane	Dorsman	Raad voor de rechtspraak Netherlands
Robert	van der Laan	Raad voor de rechtspraak Netherlands
Ken	Duncan	Judges' Council for Northern Ireland
Wiggo Storhaug	Larssen	Norwegian Courts Administration
José Manuel	Correia	Conselho Superior da Magistratura Portugal
Ruxandra Oana	Ghinescu	Superior Council of Magistracy of Romania
Roxana	Chiuariu	Superior Council of Magistracy of Romania
Ján	Mazák	Judicial Council of the Slovak Republic
Nuria	Diaz Abad	Spanish General Council for the Judiciary
Francisco Javier	Forcada Miranda	Spanish General Council for the Judiciary
Carin	Westerlund	Swedish National Courts Administration
Tony	Kelly	Judicial Council of Scotland
Dalia	Vasariene	ENCJ President
Frans	van Dijk	ENCJ Office
Milda	Treige	ENCJ Office
Aleksandra	Switalska	ENCJ Office

Annex 2 Data I&A 2017, 2020 and 2023 Independence and Accountability

	Albania			Austria			Belgium			Bulgaria		
Independence	2016	2019	2022	2016	2019	2022	2016	2019	2022	2016	2019	2022
1. Legal basis		76%		75%	76%	78%	71%		100%	79%	85%	89%
2. Organizational autonomy		93%		78%	59%	59%	94%		93%	100%	100%	93%
3. Funding of the Judiciary		89%		57%	36%	19%	43%		52%	61%	100%	83%
4. Court Management		81%		31%	25%	25%	38%		56%	88%	100%	88%
5. HR decisions judges		93%		53%	57%	58%	74%		64%	92%	95%	84%
6. Disciplinary measures		100%		80%	88%	88%	90%		87%	100%	93%	78%
7. Non-transferability		35%		90%	35%	35%	70%		35%	90%	92%	72%
8. Allocation of cases		88%		88%	88%	88%	47%		81%	94%	75%	88%
9. Internal Independence		82%		100%	68%	68%	89%		89%	82%	79%	61%
10. Ind perceived by public/society		25%		78%	82%	82%	73%		71%	34%	42%	38%
11. Ind perceived by court users		0%		0%	0%	90%	0%		0%	0%	0%	0%
12. Ind perceived by lawyers											0%	
13. Ind perceived by judges				89%	89%	88%	82%		87%	66%	68%	72%
14. Perceived absence of corruption		10%		70%	90%	90%	50%		80%	10%	10%	0%
15. Trust by society (relative)		0%		100%	100%	100%	100%		100%	0%	50%	100%
Accountability												
1. Periodic reporting		88%		0%	38%	38%	44%		0%	89%	100%	100%
2. Relations with press		33%		67%	67%	67%	67%		67%	100%	100%	67%
3. Outreach activities		67%			100%	100%			100%		100%	100%
4. External review		67%		100%	67%	100%	100%		100%	100%	67%	0%
5. Participation civil society		100%			100%	0%			58%		0%	0%
6. Complaints procedure		83%		57%	83%	83%	71%		67%	86%	83%	83%
7. Withdrawal and recusal		86%		100%	100%	100%	100%		100%	87%	53%	53%
8. Accessory functions		100%		0%	2%	25%	10%		17%	50%	50%	50%
9. Judicial ethics		100%		75%	100%	100%	100%		75%	100%	100%	100%
10. Evaluation of judges						64%			73%			100%
11. Adherence ethical standards, acc judges					85%	84%			93%		62%	63%
12. Actions misconduct and corr, acc judges					75%						40%	
12.a Actions misconduct, acc judges						59%			59%			36%
12b. Actions corruption, acc judges						69%			67%			27%
13. Actions misconduct and corr, acc lawyers												
	Croatia			Denmark			Finland			France		
Independence	2016	2019	2022	2016	2019	2022	2016	2019	2022	2016	2019	2022
1. Legal basis	73%			54%	66%	78%	54%	78%	78%	60%	58%	67%
2. Organizational autonomy	94%			94%	96%	96%	94%	74%	70%	76%	37%	78%
3. Funding of the Judiciary	51%			90%	85%	46%	90%	69%	69%	75%	11%	53%
4. Court Management	50%			100%	100%	100%	100%	88%	88%	81%	56%	63%
5. HR decisions judges	88%			82%	84%	87%	82%	78%	75%	78%	57%	69%
6. Disciplinary measures	100%			72%	81%	88%	72%	80%	58%	92%	72%	79%
7. Non-transferability	90%			100%	60%	85%	100%	26%	26%	100%	35%	28%
8. Allocation of cases	82%			65%	44%	69%	65%	81%	75%	71%	44%	75%
9. Internal Independence	36%			89%	89%	89%	89%	89%	89%	89%	68%	68%
10. Ind perceived by public/society	40%			90%	92%	90%	90%	89%	91%	67%	64%	65%
11. Ind perceived by court users	0%			100%	0%	0%	100%	0%	0%	0%	0%	0%
12. Ind perceived by lawyers											59%	
13. Ind perceived by judges	70%			98%	98%	98%	98%	92%	93%	76%	85%	83%
14. Perceived absence of corruption	10%			90%	90%	100%	90%	90%	100%	70%	70%	80%
15. Trust by society (relative)	67%			100%	100%	100%	100%	100%	100%		100%	100%
Accountability												
1. Periodic reporting	22%			100%	100%	100%	100%	81%	81%	94%	41%	41%
2. Relations with press	100%			100%	100%	67%	100%	67%	33%	100%	0%	100%
3. Outreach activities					100%	100%		33%	33%		100%	100%
4. External review	40%			40%	67%	67%	40%	0%	0%	40%	67%	0,0%
5. Participation civil society					100%	100%		0%	0%		67%	67%
6. Complaints procedure	43%			86%	100%	100%	86%	100%	100%	71%	67%	83%
7. Withdrawal and recusal	73%			100%	100%	100%	100%	80%	80%	100%	83%	100%
8. Accessory functions	100%			50%	50%	50%	50%	75%	50%	65%	67%	67%
9. Judicial ethics	75%			75%	75%	75%	75%	75%	75%	100%	100%	100%
10. Evaluation of judges						78%			73%			100%
11. Adherence ethical standards, acc judges					92%	98%		87%	93%			89%
12. Actions misconduct and corr, acc judges					87%			77%				
12a. Actions misconduct, acc judges						93%			83%			45%
12b. Actions corruption, acc judges						86%			86%			75%
13. Actions misconduct and corr, acc lawyers											29%	

	Germany			Greece CCJ			Greece AJ			Hungary		
Independence	2016	2019	2022	2016	2019	2022	2016	2019	2022	2016	2019	2022
1. Legal basis	84%	89%	88%		67%	88%		82%	88%	89%	80%	78%
2. Organizational autonomy	100%	59%	67%		41%	78%		78%	78%	100%	44%	44%
3. Funding of the Judiciary	82%	64%	60%		46%	26%		34%	26%	82%	65%	70%
4. Court Management	56%	56%	56%		38%	69%		69%	69%	100%	94%	94%
5. HR decisions judges	75%	75%	70%		70%	80%		81%	80%	87%	68%	76%
6. Disciplinary measures	57%	71%	74%		97%	94%		94%	94%	90%	78%	78%
7. Non-transferability	100%	83%	83%		85%	35%		35%	35%	90%	78%	78%
8. Allocation of cases	88%	94%	75%		56%	50%		38%	50%	82%	50%	50%
9. Internal Independence	100%	100%	100%		36%	89%		79%	89%	71%	61%	61%
10. Ind perceived by public/society	79%	76%	82%		53%	59%		53%	59%	43%	34%	38%
11. Ind perceived by court users	78%	0%	0%		0%	0%		0%	0%	0%	0%	0%
12. Ind perceived by lawyers		70%			53%			53%			52%	
13. Ind perceived by judges	85%	86%	89%		80%	82%		60%	82%		73%	81%
14. Perceived absence of corruption	90%	90%	90%		30%	60%		30%	60%	70%	10%	60%
15. Trust by society (relative)		100%	100%		100%	100%		100%	100%	100%	50%	100%
Accountability												
1. Periodic reporting	31%	84%	34%		69%	81%		81%	81%	39%	100%	100%
2. Relations with press	67%	67%	100%		0%	33%		38%	33%	67%	100%	100%
3. Outreach activities		100%	100%		0%	33%		0%	33%		67%	0%
4. External review	0%	100%	100%		0%	0%		0%	0%	60%	33%	33%
5. Participation civil society		0%	0%		0%	33%		38%	33%	-	0%	0%
6. Complaints procedure	86%	83%	83%		83%	83%		88%	83%	71%	67%	83%
7. Withdrawal and recusal	100%	100%	100%		87%	73%		73%	73%	67%	100%	100%
8. Accessory functions	65%	58%	67%		42%	67%		67%	67%	55%	8%	8%
9. Judicial ethics	75%	75%	75%		100%	100%		25%	100%	100%	75%	75%
10. Evaluation of judges			89%			100%			100%			84%
11. Adherence ethical standards, acc judges		84%	87%		62%	54%		62%	54%		69%	71%
12. Actions misconduct and corr, acc judges		73%			50%			50%			60%	
12.a Actions misconduct, acc judges			66%			51%			51%			62%
12b. Actions corruption, acc judges			81%			55%			55%			72%
13. Actions misconduct and corr, acc lawyers		41%			9%			9%			16%	
	Ireland			Italy CPGA			Italy CSM			Latvia		
Independence	2016	2019	2022	2016	2019	2022	2016	2019	2022	2016	2019	2022
1. Legal basis	56%	67%	78%		74%		79%	81%	89%	63%	73%	83%
2. Organizational autonomy	41%	59%	59%		74%		94%	85%	70%	35%	52%	67%
3. Funding of the Judiciary	47%	18%	5%		70%		43%	36%	33%	70%	39%	39%
4. Court Management	44%	50%	50%		44%		25%	69%	38%	38%	38%	25%
5. HR decisions judges	83%	49%	36%		70%		100%	93%	91%	57%	77%	72%
6. Disciplinary measures	0%	68%	87%		100%		92%	100%	97%	96%	84%	93%
7. Non-transferability	84%	57%	66%		66%		100%	72%	72%	70%	85%	85%
8. Allocation of cases	35%	63%	63%		63%		70%	88%	94%	71%	88%	81%
9. Internal Independence	71%	100%	100%		100%		89%	79%	100%	79%	79%	79%
10. Ind perceived by public/society	84%	79%	82%		54%		49%	54%	56%	48%	46%	55%
11. Ind perceived by court users	0%	0%	0%		0%		0%	0%	0%	0%	0%	0%
12. Ind perceived by lawyers		52%			68%			66%			62%	
13. Ind perceived by judges	91%	94%	94%		84%		81%	84%	82%	67%	65%	72%
14. Perceived absence of corruption	70%	70%	90%		50%		50%	50%	60%	30%	10%	60%
15. Trust by society (relative)		100%	100%		100%		100%	100%	100%	100%	100%	100%
Accountability												
1. Periodic reporting	22%	19%	19%		94%		89%	50%	50%	36%	75%	81%
2. Relations with press	33%	0%	67%		67%		67%	67%	33%	100%	67%	100%
3. Outreach activities		67%	100%		67%			100%	33%		67%	67%
4. External review	0%	67%	33%		0%		80%	67%	33%	100%	67%	67%
5. Participation civil society		75%	100%		100%			100%	100%		0%	0%
6. Complaints procedure	43%	100%	67%		50%		86%	50%	83%	86%	83%	83%
7. Withdrawal and recusal	53%	73%	67%		100%		93%	100%	93%	87%	53%	80%
8. Accessory functions	50%	50%	50%		75%		40%	75%	75%	80%	92%	92%
9. Judicial ethics	0%	75%	100%		100%		75%	25%	75%	100%	100%	100%
10. Evaluation of judges			78%						78%			80%
11. Adherence ethical standards, acc judges		93%	97%		78%			78%	72%		61%	72%
12. Actions misconduct and corr, acc judges		61%			84%			84%			62%	
12.a Actions misconduct, acc judges			51%						77%			73%
12b. Actions corruption, acc judges			67%						79%			66%
13. Actions misconduct and corr, acc lawyers		25%			31%			31%			36%	

	Lithuania			Netherlands			Norway			Poland		
Independence	2016	2019	2022	2016	2019	2022	2016	2019	2022	2016	2019	2022
1. Legal basis	54%	85%	82%	74%	80%	94%	54%	74%	76%	75%		
2. Organizational autonomy	100%	96%	85%	82%	81%	81%	82%	89%	74%	65%		
3. Funding of the Judiciary	62%	89%	33%	85%	77%	73%	82%	30%	46%	25%		
4. Court Management	81%	63%	75%	100%	100%	100%	88%	100%	100%	44%		
5. HR decisions judges	57%	68%	66%	69%	62%	70%	44%	80%	61%	85%		
6. Disciplinary measures	100%	82%	88%	90%	93%	93%	72%	85%	85%	96%		
7. Non-transferability	26%	72%	33%	89%	98%	98%	95%	50%	50%	95%		
8. Allocation of cases	76%	88%	94%	41%	63%	75%	29%	25%	25%	65%		
9. Internal Independence	100%	89%	90%	79%	79%	79%	89%	89%	89%	89%		
10. Ind perceived by public/society	54%	54%	62%	85%	82%	81%	93%	89%	94%	52%		
11. Ind perceived by court users	0%	0%	0%	78%	90%	0%	0%	0%	90%	0%		
12. Ind perceived by lawyers		59%			77%			82%		-		
13. Ind perceived by judges	73%	77%	75%	91%	90%	92%	92%	92%	93%	77%		
14. Perceived absence of corruption	10%	10%	50%	70%	90%	90%		90%	100%	50%		
15. Trust by society (relative)	100%	100%	100%	100%	100%	100%	100%		100%	100%		
Accountability												
1. Periodic reporting	33%	94%	94%	100%	100%	100%	92%	100%	88%	33%		
2. Relations with press	67%	100%	100%	100%	100%	100%	100%	100%	100%	100%		
3. Outreach activities		100%	100%		100%	100%		67%	67%	-		
4. External review	40%	100%	100%	60%	100%	100%	0%	33%	66%	80%		
5. Participation civil society		100%	75%		67%	67%		75%	75%	-		
6. Complaints procedure	71%	100%	100%	71%	50%	83%	57%	83%	83%	86%		
7. Withdrawal and recusal	73%	67%	53%	67%	67%	67%	80%	80%	80%	87%		
8. Accessory functions	30%	50%	50%	50%	50%	50%	95%	100%	100%	80%		
9. Judicial ethics	100%	100%	100%	100%	75%	75%	100%	100%	100%	100%		
10. Evaluation of judges			91%			69%			89%			
11. Adherence ethical standards, acc judges		84%	79%		77%	95%		93%	94%			
12. Actions misconduct and corr, acc judges		70%			78%			85%				
12.a Actions misconduct, acc judges			66%			80%			88%			
12b. Actions corruption, acc judges			66%			78%			93%			
13. Actions misconduct and corr, acc lawyers		35%			60%			68%				
	Portugal			Romania			Slovakia			Slovenia		
Independence	2016	2019	2022	2016	2019	2022	2016	2019	2022	2016	2019	2022
1. Legal basis	52%	76%	78%	73%	76%	87%	84%	60%	89%	79%	81%	
2. Organizational autonomy	65%	81%	78%	88%	89%	81%	82%	78%	69%	100%	100%	
3. Funding of the Judiciary	26%	42%	75%	42%	61%	56%	47%	17%	22%	51%	55%	
4. Court Management	19%	38%	44%	56%	100%	94%	50%	41%	41%	75%	88%	
5. HR decisions judges	84%	80%	89%	86%	89%	93%	71%	70%	73%	79%	81%	
6. Disciplinary measures	100%	93%	100%	96%	93%	100%	92%	82%	85%	96%	97%	
7. Non-transferability	100%	85%	79%	100%	70%	39%	95%	83%	83%	100%	35%	
8. Allocation of cases	82%	81%	88%	82%	75%	75%	82%	94%	94%	71%	88%	
9. Internal Independence	100%	89%	100%	79%	71%	75%	79%	68%	68%	68%	79%	
10. Ind perceived by public/society	59%	58%	59%	60%	55%	55%	27%	27%	48%	45%	44%	
11. Ind perceived by court users	0%	0%	0%	0%	30%	0%	0%	0%	0%	0%	0%	
12. Ind perceived by lawyers		61%			62%			54%			61%	
13. Ind perceived by judges	79%	75%	83%		79%		77%	81%	71%	74%	76%	
14. Perceived absence of corruption	10%	50%	50%	10%	30%	50%	10%	10%	10%	10%	30%	
15. Trust by society (relative)	33%	50%	100%	100%	100%	100%	0%	50%	100%	100%	0%	
Accountability												
1. Periodic reporting	0%	94%	100%	100%	94%	94%	83%	78%	81%	89%	88%	
2. Relations with press	0%	33%	0%	67%	33%	33%	33%	67%	67%	33%	67%	
3. Outreach activities			33%		67%	100%		67%	67%		33%	
4. External review	40%	67%	33%	60%	67%	67%	80%	83%	100%		100%	
5. Participation civil society		75%	67%		0%	0%		92%	92%		67%	
6. Complaints procedure	86%	100%	83%	100%	100%	100%	71%	67%	100%	86%	67%	
7. Withdrawal and recusal	73%	27%	87%	100%	93%	93%	67%	73%	93%	87%	87%	
8. Accessory functions	50%	92%	58%	50%	92%	92%	70%	50%	58%	55%	83%	
9. Judicial ethics	25%	100%	25%	100%	100%	100%	100%	100%	100%	100%	100%	
10. Evaluation of judges			87%			84%			68%			
11. Adherence ethical standards, acc judges		77%	86%		81%			57%	64%		56%	
12. Actions misconduct and corr, acc judges		47%			47%			42%			47%	
12.a Actions misconduct, acc judges			66%						33%			
12b. Actions corruption, acc judges			66%						36%			
13. Actions misconduct and corr, acc lawyers		16%			20%			11%			12%	

	Spain			Sweden			UK, England and Wales			UK, Northern Ireland		
Independence	2016	2019	2022	2016	2019	2022	2016	2019	2022	2016	2019	2022
1. Legal basis	73%	81%	89%	57%		67%	56%	59%	50%			44%
2. Organizational autonomy	88%	74%	74%	44%		30%	65%	59%	60%			59%
3. Funding of the Judiciary	41%	53%	55%	67%		60%	79%	5%	4%			51%
4. Court Management	31%	31%	31%	56%		63%	38%	31%	32%			50%
5. HR decisions judges	100%	96%	100%	52%		58%	73%	76%	71%			68%
6. Disciplinary measures	100%	100%	100%	34%		55%	100%	92%	92%			100%
7. Non-transferability	100%	88%	70%	80%		48%	80%	57%	57%			63%
8. Allocation of cases	82%	88%	63%	71%		56%	59%	56%	56%			56%
9. Internal Independence	89%	68%	68%	68%		68%	89%	89%	89%			89%
10. Ind perceived by public/society	51%	51%	40%	82%		81%	82%	73%	82%			82%
11. Ind perceived by court users	0%	0%	70%	0%		0%	0%	0%	0%			0%
12. Ind perceived by lawyers		62%						90%				
13. Ind perceived by judges	75%	78%	80%	86%		88%	93%	94%	95%			97%
14. Perceived absence of corruption	30%	50%	60%	90%		100%	70%	90%	100%			90%
15. Trust by society (relative)	100%	100%	100%	100%		100%	100%	100%	100%			100%
Accountability												
1. Periodic reporting	94%	38%	38%	22%		75%	97%	88%	88%			0%
2. Relations with press	100%	100%	100%	67%		67%	100%	100%	100%			33%
3. Outreach activities		67%	100%			67%		100%	100%			100%
4. External review	60%	67%	67%	40%		67%	80%	67%	100%			100%
5. Participation civil society		100%	100%			50%		75%	50%			17%
6. Complaints procedure	71%	100%	100%	0%		83%	86%	50%	50%			67%
7. Withdrawal and recusal	87%	93%	100%	80%		87%	100%	73%	100%			73%
8. Accessory functions	50%	50%	50%	35%		50%	30%	33%	33%			33%
9. Judicial ethics	100%	100%	100%	75%		25%	100%	100%	100%			100%
10. Evaluation of judges		-	100%			73%		-	84%			78%
11. Adherence ethical standards, acc judges		63%	81%			96%		90%	96%			96%
12. Actions misconduct and corr, acc judges		45%						87%				
12.a Actions misconduct, acc judges			35%			83%			70%			89%
12b. Actions corruption, acc judges			68%			80%			85%			93%
13. Actions misconduct and corr, acc lawyers		27%						67%				
	UK, Scotland											
Independence	2016	2019	2022									
1. Legal basis	56%	71%	67%									
2. Organizational autonomy	59%	67%	67%									
3. Funding of the Judiciary	75%	62%	67%									
4. Court Management	44%	44%	50%									
5. HR decisions judges	67%	64%	58%									
6. Disciplinary measures	100%	100%	100%									
7. Non-transferability	55%	51%	51%									
8. Allocation of cases	65%	69%	38%									
9. Internal Independence	79%	79%	79%									
10. Ind perceived by public/society	82%	73%	82%									
11. Ind perceived by court users	0%	0%	0%									
12. Ind perceived by lawyers		90%										
13. Ind perceived by judges	93%	95%	94%									
14. Perceived absence of corruption	70%	90%	100%									
15. Trust by society (relative)	100%	100%	100%									
Accountability												
1. Periodic reporting	92%	91%	100%									
2. Relations with press	100%	100%	100%									
3. Outreach activities		100%	100%									
4. External review	100%	100%	100%									
5. Participation civil society		17%	46%									
6. Complaints procedure	86%	83%	83%									
7. Withdrawal and recusal	100%	100%	100%									
8. Accessory functions	30%	33%	33%									
9. Judicial ethics	100%	100%	100%									
10. Evaluation of judges	100%		78%									
11. Adherence ethical standards, acc judges		97%	96%									
12. Actions misconduct and corr, acc judges		86%										
12.a Actions misconduct, acc judges			70%									
12b. Actions corruption, acc judges			85%									
13. Actions misconduct and corr, acc lawyers		67%										

Annex 3 Questionnaire Quality of Justice: Specialisation

Specialisation at first instance courts							
	Family and juvenile law	Intellectual property law	Commercial law	Insolvency law	Types of criminal law	Labour law	Other
Austria	x	x	x	x	x	x	x
Belgium	x	x	x	x	x	x	x
Bulgaria	x	x	x	x		x	
Denmark	x			x			
Finland	x	x	x	x	x	x	x
France	x	x	x		x	x	
Germany	x	x	x	x	x		x
Greece	x	x	x		x	x	x
Hungary	x		x	x	x	x	x
Ireland	x	x	x	x	x	x	x
Italy	x	x	x	x	x	x	
Latvia	x	x	x	x	x	x	
Lithuania	x	x				x	x
Netherlands	x	x	x	x	x	x	
Norway	x	x					x
Portugal	x	x	x	x		x	
Romania	x	x	x	x	x	x	x
Sweden	x	x	x	x	x	x	x
Spain	x	x	x	x	x	x	x
UK England&Wales	x	x	x	x	x	x	x
UK Scotland	x	x	x	x	x		x
UK Northern Ireland	x	x	x	x	x	x	x
Specialisation at second instance courts							
	Family and juvenile law	Intellectual property law	Commercial law	Insolvency law	Types of criminal law	Labour law	Other
Austria	x	x	x	x	x	x	x
Belgium	x	x	x	x	x	x	x
Bulgaria	x	x	x	x		x	
Denmark							
Finland	x	x	x	x	x	x	x
France	x	x	x		x	x	
Germany	x	x	x	x	x	x	x
Greece	x	x	x		x	x	x
Hungary	x				x		x
Ireland	x	x	x	x	x	x	x
Italy	x	x	x	x	x	x	
Latvia	x	x	x	x	x	x	
Lithuania	x	x		x		x	x
Netherlands	x	x	x	x	x	x	
Norway							x
Portugal		x	x	x		x	x
Romania	x	x	x	x	x	x	x
Sweden	x	x	x	x	x	x	x
Spain	x	x	x	x	x	x	x
UK England&Wales	x	x	x	x	x	x	x
UK Scotland						x	x
UK Northern Ireland	x	x	x	x	x	x	x
Note: x means existence of a specialization							

Annex 4 Questionnaire indicators Independence and Accountability

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Annex 5 Questionnaire indicators Quality of Justice

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