



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Independence and Accountability of the Judiciary and of the Prosecution

Improving the Performance Indicators
and Quality of Justice

ENCJ Report 2015-2016



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Chapter 1

Introduction

The ENCJ is attempting to move beyond the debate about the independence and accountability of the Judiciary at a purely theoretical level.

The ENCJ successfully developed a normative vision of the independence and accountability of Judiciary, and an analytical framework identifying the essential constituents of (i) the independence, and (ii) the accountability of the Judiciary.

The ENCJ then (a) developed a set of quantifiable indicators that cover the essential constituents identified by the framework, (b) applied those indicators to the judiciaries in its member's and observer's countries, and (c) surveyed judges in 22 countries about their perceptions of the independence and accountability of their judiciaries.

This is the third year of the ENCJ project on independence and accountability. The main elements of the project this year were:-

- Evaluation of the elements that make up the Quality of Justice and the Quality of Judicial Decisions, as the first step towards developing indicators of the Quality of Justice.
- Recommending improvements and updates to (i) the Indicators of Independence and Accountability, (ii) the scoring rules for their application, (iii) the survey of judicial attitudes to their own independence and accountability, and (iv) the application of the indicators and the survey next year.
- Undertaking a series of four dialogue groups each made up of 4 members or observers to hold in-depth discussions about the challenges to the independence and accountability of the judiciary in those countries
- The application of the indicators for judges to the evaluation of the independence and accountability of prosecutors in member states where the Councils for the Judiciary are responsible for prosecutors as well as judges.
- Recommending the work programme for the continuation of the Independence and Accountability project in the coming year.

As part of our continuing work, it is useful to repeat here the vision as it was summarized in the report for 2013-14:

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

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

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

In 2014-2015, the project focused on the implementation of the indicators for the independence and accountability resulting in a score for each participating country and the development and implementation of a survey among judges on the perception of their own independence and accountability.

The 2015 General Assembly decided that the project should continue and focus on the improvement of the indicators and the survey. It should organise dialogue groups, and consider what makes up a Quality Justice System.

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

1. The quality of justice was coordinated by the French Council for the Judiciary, and the improvement to the indicators, scoring rules and the survey, and the dialogue groups were coordinated by the Spanish Council for the Judiciary.
2. All activities with regard to prosecutors were coordinated by the Romanian High Council, the result of which can be found in a separate report.

The project group met four times:
24th and 25th September in Paris

3rd and 4th December in Brussels
7th and 8th March in Brussels
11th and 12th April in Barcelona

The draft report was presented to the ENCJ General Assembly which met in Warsaw 1-3 June 2016. The report and the standards and recommendations that it entails were adopted by the General Assembly on June 3rd 2016.

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Chapter 2 of the report deals with the Quality of Justice and is the first stage of developing indicators for the Quality of Justice.

Chapters 3, 4 and 5 deal with the improvements to the Indicators, the scoring rules and the survey, all for implementation next year.

Chapter 6 contains an overview of reactions and actions by certain Members and Observers as a result of the outcomes of the implementation of the indicators and the survey as presented in the 2014-2015 report.

Chapter 7 contains an overview of the methodology and the main outcomes of the 4 dialogue groups undertaken in 2015-2016, in which the challenges to the independence and accountability in each of the countries represented were discussed.

Chapter 8 contains the conclusions and the recommendations for the continuation of the Independence and Accountability project.

Chapter 2

The Quality of Justice

In the last years, the ENCJ has successfully developed a normative vision of the independence and accountability of Judiciary, and an analytical framework identifying the essential constituents of the independence and accountability of the Judiciary.

In order to make use of the work undertaken in 2014 and 2015, the ENCJ has decided to consider how the indicators identified for the independence and accountability of the judiciary are reflected in the obvious objective of all justice systems, namely quality justice. The converse is also true. To have an independent and accountable justice system, quality must be evaluated and promoted.

It is, however, extremely difficult to define the quality of justice. The term “quality justice” has a multitude of meanings. It can include all aspects of judicial activity. It is important to point out that justice systems provide a service to citizens, and citizens can only have confidence in the judicial process if the State provides the human, material and financial resources necessary to the proper functioning of a high quality system.

The manner in which judges exercise their judicial functions is crucial to the protection of human rights and fundamental freedoms guaranteed by the European Convention on Human Rights.

Many Institutions have already worked on the topic of the quality of justice and carefully described and analysed the criteria required to measure the quality of justice. But the ENCJ approaches the issue from the perspective of the Council for the Judiciary and the judges themselves. CEPEJ has been very active in this area, but it has tended to use a statistical rather than an evaluative analysis. The CEPEJ website refers to numerous valuable studies, and the CCJE produced its 2008 opinion number 11 on the topic, focusing on the quality of judicial decisions. This report does not aim to reproduce any of this important work, but rather to pursue it from the perspective of the Councils for the Judiciary and the judges, as we have said.

Councils for the Judiciary and judges have a duty to determine the criteria that will contribute towards a quality justice system. The ENCJ will thereby seek to demonstrate that judiciaries can establish indicators and thereby guidelines and good practices that will improve the quality of justice systems and the quality of the justice provided in each of our Members’ and Observers’ countries for the citizens. This will provide goals for all Members and Observers, since there is no perfect high quality justice system. All systems have something to learn.

It is important to underline that this work is not aimed at providing judges with any privilege. The objective is to produce a fair trial and a high quality justice system for all citizens within Europe.

The questionnaire to Members and Observers

The French CSM has produced a summary of the responses to a questionnaire completed by the members and observers of the ENCJ. That summary can be found in Annex 1. The main questions were:-

- (1) Please explain the systems that your Council has for evaluating the “Quality of Justice” in your country?
- (2) Please explain the systems that any other body (and if so which) operates to evaluate “Quality of Justice” in your country?
- (3) What does your Council think are the main indicators of the “Quality of Justice”?

The main issues addressed

The Project Group took the view that two main issues should be considered first:-

- (1) The factors making up the quality of decision-making; and
- (2) The involvement of Councils for the Judiciary and other judicial governance bodies in the evaluation of the quality of decision-making.

These issues were chosen as the departure point for the ENCJ’s consideration of the quality of justice for two reasons. First, because decision-making is central to the judicial process from the judges’ perspective, and secondly, because the ENCJ is the appropriate network to consider what involvement Councils for the Judiciary ought to have in the evaluation and improvement of the quality of decision-making.

Section 1: The factors making up the quality of decision-making

As the quality of judicial decisions is a major component of the quality of justice, it is necessary to focus on the conditions which must be met in order to strengthen the public confidence in the result of the judicial process.

This section attempts to summarise the main headings for a framework of the factors making up the quality of decision-making from a judicial perspective.

There are certain preliminaries that were broadly agreed in the course of the first meeting of the Project Group in December 2015:-

- (1) The fact that a particular decision is reversed on appeal does not necessarily reflect on the quality of the original decision.

- (2) The speed of a particular decision does not necessarily reflect on its quality, though timely justice is obviously of central importance if public confidence is to be maintained.
- (3) The decision-making process is relevant to the quality of the decision itself.
- (4) It would be useful to develop indicators as to how the Council for the Judiciary or equivalent bodies ought to be involved in evaluating the decision-making process and the quality of a decision itself.

The objective of all justice systems is to provide a fair, transparent and accountable independent process of decision-making. The perception and confidence of the court users are, therefore, crucial.

The quality of decision-making depends at the same time on external and internal factors. The availability of an appeal process should also be taken into account.

A - External factors contributing to the quality of decision-making

(i) The status of judges

The quality of justice depends first on the status of judges. Their independence must be guaranteed. They must be accountable to the citizens they serve. They must be governed and guided by ethical principles that should form the basis of guidelines for all their activities and for the standards of conduct that they uphold.

Training of judges also affects their status. It is an important element if the quality of the judicial system is to be safeguarded.

To sum up, a good judicial system should guarantee:-

- (1) The existence of a high quality judiciary appointed on the basis of merit and capability alone.
- (2) The existence of a high quality training system available to all judges both on appointment and during office.
- (3) The availability of an effective system for the evaluation of judges.
- (4) The availability of an effective system for court-users to complain about the conduct of courts and judges.

(ii) The efficiency of the judicial process

The judicial decision is the result of a process that must meet certain conditions.

The following may be mentioned as examples:-

- (1) Access to Justice: there can be no quality of justice without equal access to justice and the provision of legal aid and assistance;
- (2) Courts and judges should have up-to-date and efficient IT systems available for use in the decision-making process;

- (3) Courts and judges should have adequate numbers of well-trained and efficient support staff to support the decision-making process;
- (4) Courts and judges should operate in well-maintained buildings with appropriate facilities to support the decision-making process;
- (5) Courts and judges should promote the use of appropriate processes of mediation and other consensual alternative dispute resolution methods; and
- (6) Hearings in all court cases should be held in public, and the process should be transparent.

In addition, there must be appropriate processes to guarantee the following outcomes within the decision-making process:-

- (1) The gathering and reception of reliable evidence;
- (2) The ability of the parties to make submissions to the judge about their case, whether adversarially or inquisitorially;
- (3) The judge's positive influence and involvement in preliminary proceedings and case management hearings;
- (4) That the time taken for the conclusion of cases through the court system is reasonable and never excessive.

B – Internal factors contributing to the quality of decision-making

(i) The decision itself

Courts and judges must produce judicial decisions of the highest possible quality.

There are three minimum standards which are integral to any judgment. The first is that it is a judgment which is (subject to limited and appropriate exceptions) public; the second is that it is a decision which is reasoned; and the third is that the decision is expressed in language which is intelligible. These minimum standards are reflected in the following factors which are essential elements of that internal quality:-

- (1) All court and judicial decisions should be easy to understand and properly explained.
- (2) All court and judicial decisions should be written in intelligible language.
- (3) All factual court and judicial decisions should be based on a proper fact-gathering or evidential process.
- (4) All court and judicial decisions should be adequately identified and referenced so that the parties, the date, the nature of the claim (or the charge in a criminal case) and the result or outcome can be clearly understood.
- (5) All court and judicial decisions should be sufficiently reasoned (except for a formal administrative decision), and should explain the reasons why the arguments of the losing party have been rejected.
- (6) Judicial decisions should state or make a clear reference to any applicable statute and case law or procedural rule that is relied upon in making the decision.
- (7) Courts and judges should adhere to transparent and publicly available time limits for the delivery of the decision after the case is filed and/or after the hearing.

(8) All judgments should generally be available to the public in an appropriate medium (even if, in appropriate cases, anonymised).

(ii) The availability of an appeal process

A properly regulated appeals process should be available in respect of each and every first instance judicial or court decision.

The appeal decision-making process and the appeal decision should comply with all the indicators applicable above.

Appeal courts and judges should adhere to transparent and publicly available time limits for the delivery of the appeal decision after the appeal is filed and/or after the appeal hearing. More than one appeal should only be permitted on an important question of law or practice.

It is also useful to consider the role of the appeal process as an indicator of the quality of the decision. As a rule, it is wrong to base an evaluation of the quality of justice on the percentage of decisions reversed on appeal. In some cases, however, some weight can be attached to this factor. It will depend on the overall success of the justice system, but this factor is always debatable.

Section 2: The involvement of the Councils for the Judiciary and other judicial governance bodies in the evaluation of the quality of decision-making

An independent judicial system is an essential part of a democratic State. A quality justice system requires many different characteristics to be brought together. Accordingly, the ENCJ would warn against isolating individual criteria. The quality of justice should be evaluated as a whole with an appropriate and accurate knowledge of the judicial and economic context.

No evaluation of the quality of justice can be achieved without an assessment of the means available to achieve the objectives. The means available include both financial and human resources. Such evaluation must take into account the need to ensure that judges are not burdened with an excessive or unattainable judicial workload.

European citizens legitimately expect their judiciaries to deliver a justice of high quality. It is noteworthy, however, that, since the 2008 financial crisis, funding problems for judiciaries across the EU and beyond have produced a significant increase in judicial workload, and consequent pressure on the quality of decision-making. As the ENCJ project group 2016 on funding the judiciary has commented: “judges have a natural tendency to handle all incoming cases and to reduce the number of cases pending. ... Without additional funding, workload rises and, along with it, the risk of a loss of quality”.

The executive and the legislature in each State needs to understand, even in economically challenging times, that Recommendation CM/Rec (2010)12 (No. 33) of the Committee of

Ministers to Member States on “judges: independence, efficiency and responsibilities” must still be adhered to: “Each State should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently”.

In order to preserve the independence of the judiciary and the confidence of citizens in the judicial system, Councils for the Judiciary or equivalent independent governance bodies should always be involved in defining the criteria for the evaluation of the quality of justice, including the quality of judicial decisions. Moreover, standards for the quality of justice, and especially for judicial decisions, should not be determined or evaluated by the other pillars of the state: the executive or the legislature, but by the Council for the Judiciary and judges as the third pillar of the state.

It is, however, essential to underline that a system of defining the indicators and evaluating the quality of justice should not interfere with the independence of judges and judicial decision-making. Councils for the Judiciary are set up in order to ensure the independence of judges in each country, and they must take steps to ensure that each individual judge and each individual decision is taken freely and independently without any improper influence. The correctness of individual decisions must only be determined by the appeal process.

It is, therefore, the duty of a Council for the Judiciary to ensure that the remedy for judicial errors lies within an appropriate system of appeal and that judges should not be exposed, in the exercise of their judicial functions, to any personal liability.

Without depreciating from these basic principles, the Council for the Judiciary or equivalent governance body should be involved in the process of evaluating quality of justice. It should define the main indicators of quality, evaluate those quality indicators and ensure that allegations of poor quality are not themselves used by the state or other actors to undermine the independence of the judicial system and of the judges within it.

In these circumstances, the Project Group recommends that individual Councils for the Judiciary should:-

- (1) define a quality framework which sets out quality indicators including criteria for the assessment and evaluation of the quality of justice;
- (2) define methods by which the quality of the judicial decision-making process can be evaluated, maintained and improved;
- (3) identify and implement good practices which increase the confidence of citizens in the judicial system; and
- (4) ensure that these systems do not interfere with the independence of the judiciary, individually or collectively, or the judicial system.

The ENCJ can assist Councils for the Judiciary and equivalent judicial governance bodies by defining these standards and good practices, so as to enable them to be transposed as appropriate in each judicial system.

As part of this process, the ENCJ might put forward (or further promulgate existing) standards for discussion amongst its Members and Observers, requiring Councils for the Judiciary or equivalent judicial governance bodies to:-

- (1) develop exchanges with courts, judges and lawyers in order to identify and promote best practices to improve the efficiency and the quality of the judicial decision-making process;
- (2) carry out, commission or promote court-user satisfaction surveys to receive feedback from court-users on the quality of the justice system and the judicial process;
- (3) establish and publish guidelines on the general criteria ensuring the quality of judicial decisions, based on this report and on the opinion No 11 adopted by the CCJE in 2008.

Recommendations on the Quality of Justice

It is, therefore, proposed, that the Project Group should next year:-

- (1) establish indicators based on, but not necessarily limited to, the minimum standards and factors identified above;
- (2) establish standards, guidelines or best practices based on these indicators and designed to achieve their implementation;
- (3) consider how Councils for the Judiciary and equivalent bodies might evaluate the quality of decision-making.

In undertaking this process, particular regard should be paid to the need to weigh in the balance the following competing factors that will often apply to the evaluation of the quality of decision-making and of justice in different jurisdictions:-

- (1) the need for any court or judicial decision to be 'effective' in the sense that the dispute which comes before the court or judge is resolved, and can be enforced;
- (2) the need for any such resolution to be timely and not unduly delayed;
- (3) the appreciation that different types of dispute do not all require the same level of consideration or the same depth of reasoning, whether factual or legal;
- (4) the appreciation that in relation to some types of dispute there is less need for a speedy decision than in other cases (e.g. a criminal case where the defendant is in custody versus a complex commercial dispute where the parties are solvent);
- (5) the local or cultural expectations of the legal system in the state in which the decision is reached;
- (6) the fact that the internet age expects speedier outcomes than has previously been the case;
- (7) the requirement for justice to be seen to be done; and
- (8) the need for predictability of outcome in advance of decisions being made, without interfering with judicial independence.
- (9) the availability of informal or Alternative Dispute Resolution.
- (10) the rights of others and in particular victims and other court users.

- (11) the quality and independence of the prosecution.
- (12) the availability and quality of legal assistance for the parties.

It will be necessary to consider a formula by which the above factors can be considered.

Chapter 3

Improving the indicators and the questionnaire on independence and accountability of the Judiciary

In the last years, the ENCJ has developed a framework and vision of independence and accountability of the Judiciary and a set of indicators to assess the actual state of independence and accountability of EU judicial systems. In 2014/2015 this work was extended to prosecutors.

3.1 Methodology of Indicators¹

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

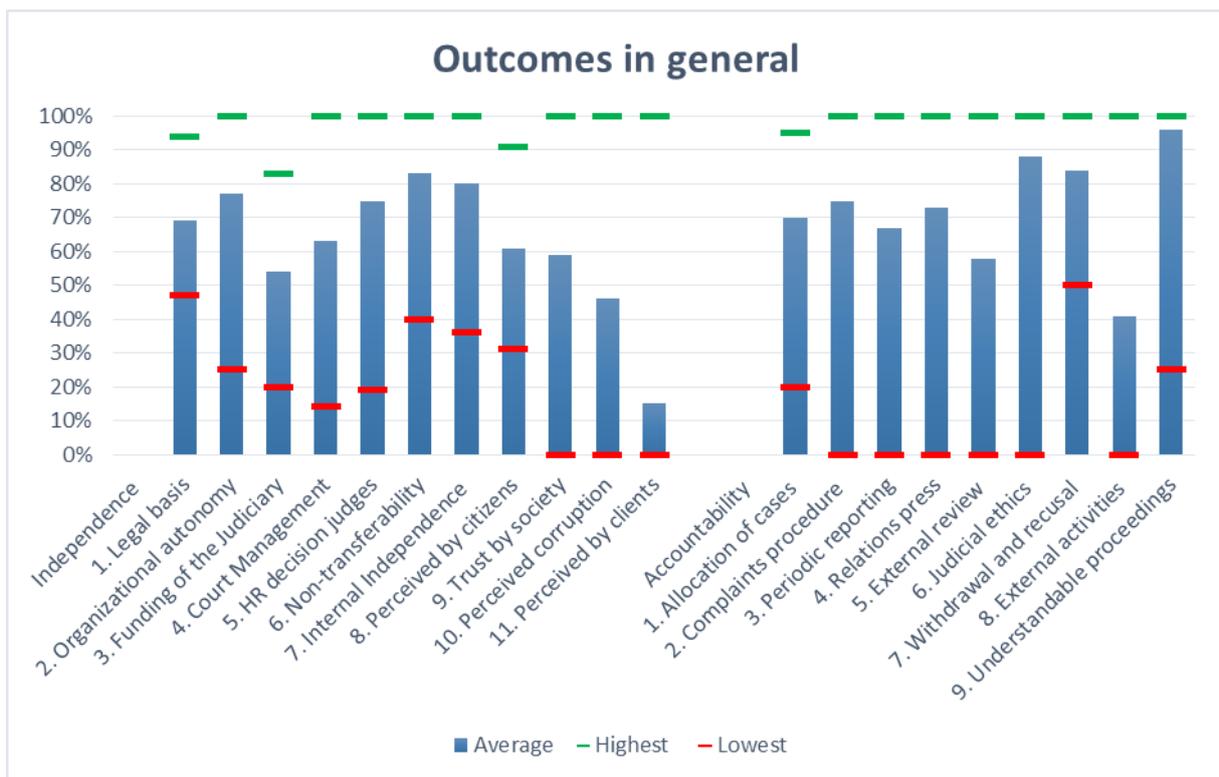
1. Independence and accountability go together: accountability is a prerequisite for independence. Independence is granted by society. A Judiciary that does not want to be accountable to society and has no eye for the needs in society, will not gain the trust of society and will endanger its independence in the short or long run. Accountability without independence reduces the Judiciary to a government agency.
2. The existence of formal, legal safeguards of independence (objective independence) are not sufficient for a judge to be independent. Actual independence depends on his behaviour and shows in his decisions, and this is reflected in independence as perceived in society and its constituent groups as well as by the judges themselves (subjective independence). It should be noted that perceptions frequently differ between societal groups.
3. For the Judiciary to be independent, the Judiciary as a whole must be independent and the individual judge must be independent. A distinction needs to be made between the independence of the Judiciary as a whole and the independence of the judge. While the independence of the Judiciary as a whole is a necessary condition for the independence of the judge, it is not a sufficient condition. Individual

¹ This paragraph comes from the 2014-2015 report chapter 2

independence can be affected by the external influence of state organisations and others, and by internal influences within the Judiciary.

4. To be accountable, not only the formal requirements about accountability must be met, but the population must perceive the Judiciary to be accountable. Even if there are formal objective procedures in place to ensure judicial accountability, the subjective perception of citizens as to judicial accountability is of equal importance. For example, judges and the judicial system may be seen as a ‘closed shop’, operating for their own benefit rather than for the benefit of society.
5. Accountability, like independence, relates to the Judiciary as whole and to the individual judge. At the level of the Judiciary as a whole accountability means to be transparent about performance, while accountability of the individual judge relates in particular to the transparency of his judicial decisions.

The indicators were implemented for the first time last year. The overall results were as follows:



3.2 Improving the indicators

Last year’s project recommended that the methodology of the performance indicators for the independence and accountability of the Judiciary and the scoring rules should be refined.

Sensitivity analyses could be undertaken to assess the impact of different scoring rules on the scores. Also, outcomes of the dialogue groups may lead to alterations of the indicators. The revised indicators (version 1) could then be implemented in 2016/2017.

During the meeting of this working group on 3rd and 4th December 2015 the indicators and questionnaire were discussed. Based on the experienced with last year's implementation of the indicators, the project team suggested improvements to the indicators.

Most changes to the questionnaire were introduced to clarify the questions. To that intent in some cases a footnote was introduced, some additional questions were introduced and one new indicator relating to disciplinary proceedings has been added.

The main changes to the indicators of the objective independence of the Judiciary as a whole are:

Indicators of the objective independence of the judiciary as a whole

Indicator 4 (Court management)

An additional alternative in sub-question 4a, as a new letter, concerning appointment of temporary additional judges to reinforce a court. The wording of the additional alternative reads as follows: "c) redeployment of judges to address temporary workload issues."

Indicators of the objective independence of the individual judge

Indicator 5 (Human resource decisions about judges)

Indicator 5 deals with human resources decisions about judges. Given the relevance of the issue of disciplinary liability of judges and the fact that the ENCJ had a report on minimum standards of disciplinary proceedings approved at the last General Assembly held at The Hague in June 2015, it was agreed to have a separate question (question 6) dealing exclusively with judicial discipline. Accordingly, it was decided to remove all the alternatives related to judicial discipline in sub-question 5d.

New Indicator 6 (Judicial discipline)

The issue of disciplinary measures is important, but was not yet addressed in the indicators. It is also not consistent that the compliance with ENCJ standards about appointment and about promotion of judges is incorporated but not the compliance with ENCJ standards

about disciplinary measures. This was decided to be done by structuring the new indicator in two sub-indicators, 6a dealing with disciplinary measures against judges and their compliance with ENCJ standards and 6b, which refers to the responsible body to make decisions in the context of disciplinary proceedings against judges. The members of the project group adopted the following wording of the sub-questions:

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

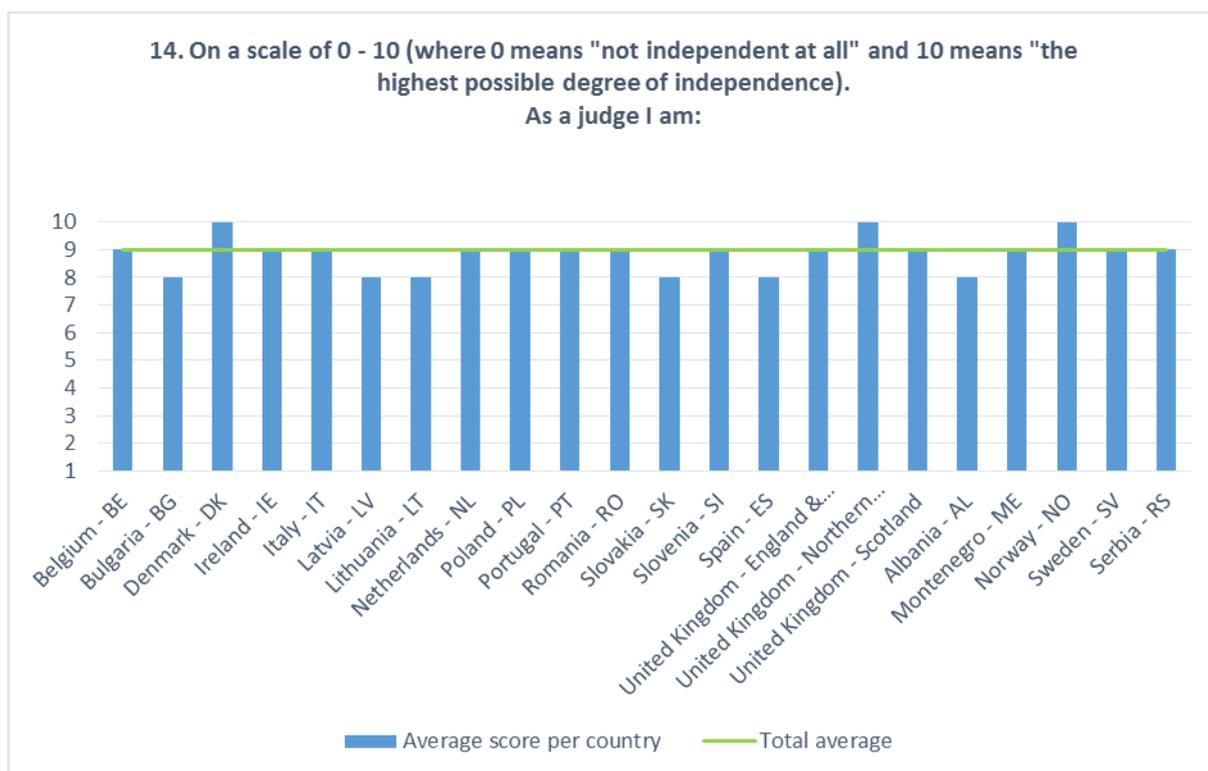
6b) Which is the competent body to make the following decisions in the context of disciplinary procedures against judges? (Judiciary/Executive/Legislature)

- (a) Proposal for the appointment of a member of the disciplinary body for judges
- (b) Decision on the appointment of a member of the disciplinary body for judges
- (c) Investigation of a complaint against a judge
- (d) Proposal for a disciplinary decision regarding a judge
- (e) Disciplinary decision regarding a judge
- (f) Decision on the follow-up to a complaint against the judiciary/a judge

Indicators of the subjective independence of the judiciary and the individual judge

Indicator (former 12)(Independence as perceived by judges)

- a) It was agreed to have the information on independence as perceived by judges taken from the ENCJ survey among judges included in the final report of the 2014-2015 ENCJ project group on independence and accountability and, if the member/observer did not participate in the survey, then the information should be taken from national surveys. The score to calculate is the average national score taken from question 14 of the survey "As a judge I am independent ...".



Indicators of the objective accountability of the judiciary as a whole

Indicator 1 (Allocation of cases)

The discussion concerning question 3 focused on the body or authority responsible for the publication of the annual report of the activity of the judiciary, since this report is published by the Ministry of Justice in some ENCJ members and observers. It was therefore decided to have an additional sub-question (new sub-question 3b) with the following wording: "If the answer on 3a is yes, who publishes the report? a) The Judiciary; b) The Executive".

Indicators of the objective accountability of the individual judge

Indicator 6 (Code or guidelines of judicial ethics)

It was agreed to introduce two additional sub-questions in question 6, related to judicial ethics. The wording of those additional sub-questions is as follows: 6c) "Is judicial training on the code or guidelines of judicial ethics available?" 6d) "Is there a body with responsibility to provide judges with guidance or advice on ethical issues?"

Indicator 8 (Admissibility of accessory functions and disclosure of interests)

It was agreed to have an additional sub-question (new sub-question 8b) on whether there is a need for authorization. The wording of such sub-question is as follows: “8b. Is an authorization for the exercise of accessory functions by judges necessary? Yes/No

In connection with this sub-question, it was also decided to introduce an additional sub-question (8c) concerning the body or authority responsible to authorize the exercise of accessory functions by judges, in case this authorization is necessary. The wording of the new sub-question adopted by the project group is the following: “8c. If the answer to 8b is yes, who is in charge? Judiciary/Executive/Legislature

Indicator 9 (Understandable proceedings)

In order to clarify the wording of sub-question 9a a new wording of this sub-question was agreed upon is as follows: “Are judges legally obliged to assist parties and court users in understanding the proceedings?”

It was agreed to have a specific sub-question dealing with understandable court proceedings in connection with vulnerable persons appearing before the courts of justice. There was some discussion as to the categories of vulnerable persons to be included in the sub-question. The wording of sub-question 9b is the following: “9b. In providing the assistance referred to in question 9a, are judges required to have particular regard for any of the following categories of court users?:

- Children
- Youth
- Disabled people (physically/mentally)
- Victims
- Those for whom the national language is not their mother tongue
- Self-represented litigants

Consistently with the change adopted in sub-question 9b, it was decided to have an additional alternative among the answers to sub-question 9c, dealing with some aspects of judicial training. The new alternative agreed upon is as follows: “Conduct hearings/explain the proceedings/explain the decisions in an understandable manner, in particular in relation to the categories identified in question 9b)?”

The questionnaire including the scoring rules is attached as Appendix 1 to this report.

The project group recommends that the indicators as contained in appendix 2 to this report are applied next year to each of the members and observers of the ENCJ.

Chapter 4

The scoring rules

Another issue that was addressed by the project group were the scoring rules. The scoring rules that were used last year contain some illogical elements. These elements are related to the weightings attached to sub-indicators within the indicators. The former rules attached weightings to the possible replies within a sub-indicator. The outcome is rather haphazard. It was argued that the relative weights attached to sub-indicators should be based on an analysis of the importance of each sub-indicator within the indicator.

The project group discussed the scoring rules based on a proposal prepared by the Netherlands Council for the Judiciary which is based on attaching equal weighting to all sub-indicators as far as possible.

The project group is aware that due to the new scoring rules benchmarking between the results of the implementation of the indicators in 2014-2015 and future implementation will be impossible. However, this issue has already been foreseen last year which is why the version of the indicators of 2014-2015 was called version 0.

Some further amendments to the scoring rules, taking into account additional questions and corrections were done. The new scoring rules are in Appendix 3 to this report.

The project group recommends that next year an expert group should be set up to take charge of the scoring of the indicators in line with the scoring rules in Appendix 3 to this report.

Chapter 5

Changes to the survey among judges

a) Considerations on the survey

It was decided to include two additional details related to the respondents to the survey: gender and years of service, expressed in five years stretches (i.e. 0-5, 5-10, 10-15, 15-20, 20-25, 25-30). In regard to gender it was agreed that the answer to that additional question should include three possible options: “Male”, “Female”, and “I do not wish to answer this question”.

It is important to increase the level of participation. Therefore the help and assistance of judicial associations in the dissemination of the survey is of vital importance: the judicial associations can also provide useful guidelines as to how to proceed in each jurisdiction. The time of the year in which the survey has to be disseminated is also important: October 2016 could be a good time to repeat the survey.

In the future edition of the survey among judges a more user-friendly and accessible platform should be used.

The current survey consists only of questions about independence. It has been argued by some of the members of the project team that in the next version also questions about accountability should be included, given the linkages between independence and accountability that the ENCJ has emphasized in its reports. It would be conceivable (but difficult) to develop a question for each indicator of accountability. This would, however, lead to a very long survey.

Also, some indicators do not make much sense from the perspective of the individual judge. Therefore, the Netherlands Council for the Judiciary proposed to limit the survey in that respect to two of the three following questions:

- (a) In a range of 0 – 10 how would you rate the openness of the judges of your country to criticism from society?
- (b) In a range of 0 – 10 how would you rate the efforts of the judges in your country to explain their decisions to the parties in court?
- (c) In a range of 0 – 10 how would you rate the transparency of the judiciary for citizens?

a) Changes in the questions

It was also agreed to introduce an additional sub-question (1b) regarding the frequency of the inappropriate pressure suffered by the respondent judges, with three possible answers: very rarely, occasionally, and regularly or very often.

It was also decided to maintain the question on the source of the inappropriate pressure ("by whom"), as sub-question 1c.

Since the sense of the words "directly affected" is not clear enough as to the impact of the media and social media on the decisions of individual judges, it was decided to change the wording of questions 6 and 7 of the survey and to replace "directly affected" by "inappropriately influenced".

It was agreed to have a new sub-question 8b dealing with the availability of appropriate mechanisms and procedures to defend judicial independence effectively, given the relevance of the issue. It was furthermore agreed to focus the question on the perception of the respondents. Accordingly the following sub-question 8b was introduced in the survey: "8b. I believe that in my country the Council for the Judiciary has the appropriate mechanisms and procedures in order to defend judicial independence effectively. "

It was agreed to introduce a minor change in the wording of question 9a and 9b in order to introduce the adjective "negative" in sub-question 9a (... "negative changes occurred in my working conditions" ...) and the adverb "negatively" in sub-question 9b (... "directly affected my independence negatively" ...).

In line with the wording of question 1a it was decided to introduce a minor change in the wording of question 12, so that it should read: ... "the management of my court has exerted inappropriate pressure on me to decide individual cases within a particular time".

It was agreed to introduce an additional question (question 15) dealing with the necessary measures to improve judicial independence in the different European jurisdictions. The suggested wording of the additional question is as follows: 15. What would, in your view, contribute most to the improvement of the independence of the judges in your country (tick three boxes)?

- A reduction of judicial corruption
- Less use of (the threat of) disciplinary action by judicial authorities
- Less use of (the threat of) claims for personal liability by parties
- A more objective allocation of cases to judges
- Appointment and promotion of judges strictly on the basis of ability and experience

- Less pressure from the media
- Less pressure from social media
- Less guidelines by judges of my own rank
- Less pressure from court management to decide cases in a particular way
- Less pressure from court management to decide cases within a particular time
- Better working conditions regarding pay including pensions and retirement age
- Better working conditions regarding case load
- Better working condition regarding court resources

The new wording of the questions of the survey is attached as Appendix 2.

The project group recommends that the survey as contained in Appendix 2 to this report should next year be launched for all judges in the countries of ENCJ members and observers.

Chapter 6

Follow-up to the implementation of the indicators undertaken last year

Besides the dialogue group meetings that were organized, that focus in particular on identifying challenges and search for remedies, each of the participating ENCJ members and observers were also asked to provide information of what was done nationally with the results of last year's work, both the implementation of the indicators and the outcome of the survey among judges.

The following contributions were received:

ENCJ Members Judiciaries

a) Belgium

In general, the results on the "Independence and accountability" questionnaire are positive. However, the scores concerning the indicators funding of the judiciary, court management, user perception, periodic reporting and disclosure of external activities are lower than 50 percent.

Scores on funding of the judiciary and court management will improve following the introduction of autonomous management, a reform that started in 2014 by adopting a law in this regard. Additional changes in the law in order to allow for its implementation are underway.

User perception studies were only organized in the courts of the jurisdiction of the court of appeal of Antwerp. Nonetheless, population surveys are done by means of a representative sample and on a regular basis. In the 2014 population survey 59 % of the Belgian citizens evaluated judicial decision making as independent and 61 % trusted the justice system. Compared to the press (48%), religious institutions (38%), the parliament (61%), the police (81%) and the education system (91 %), only the last two show a better trust score.

Periodic reporting is currently being revised. Until now each court drafted an annual report to the attention of the Parliament and the High Council. The intention of the Council and the newly established College of the courts and the courts of appeal is to define a new type of report with rubrics based on essential performance indicators. This approach should also result in a global public report of the judiciary and make benchmarking possible.

Because accessory functions are not permitted by law, with the exception of activities that are directly related to the main judicial function, such as law professor or president of a disciplinary board in public services, making this information public was not considered in the past. Whether a disclosure should be envisaged in the context of the introduction of autonomous management, has not been discussed so far.

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The perception of independence by Belgian judges is quite good. The high (red) scores on questions 5a and 5b are an exception and require investigation to clarify the reasons behind the answers.

A political weekly, in October 2015, under the title “How independent are our judges?” focused on the 5a and 5b scores and reported “that 30 percent of the Belgian judges find that the promotions in the judiciary are not done objectively”.

Without any examination of the reasons behind this result it was immediately concluded by a few people who had their say in the article that the High Council of Justice, and in particular its appointment committee, is guided in its decisions by political motives. Their claims and allegations were not documented with relevant information.

The chair of the appointment committee was asked to comment on the results of the study and pointed out that political appointments are not structurally possible for the following reasons:

Access to the magistracy is linked to serious exams. The written part of the exam is anonymously corrected by a large number of jury members. The oral part also consists of psychological testing to ensure that magistrates are not just good lawyers but that they also possess skills such as empathy, sociability, decisiveness, appropriately dealing with power and the like.

In case of vacancies all candidates are heard by a committee of 14 people that must nominate the most suitable of them for the job. The 14 members of the committee are not "merely the result of political appointments". 7 of them are magistrates appointed by the judiciary. 7 members are expert, lawyer or professor designated (by a two-thirds majority) by the Senate but often on the recommendation of the bars and universities.

The appointment committee may only nominate a candidate if 10 of the 14 members evaluate the same candidate as the most suitable. This high threshold prevents necessarily that an individual member of the committee for purely political reasons could let nominate a weak, non-suitable candidate. Moreover, the final decision of the appointment committee should be explicitly motivated for the nominated as well as the non-nominated candidates. Each candidate is through this motivation fully informed of the reasons taken into account by the appointment committee when making decisions.

The only objective parameter to judge whether the appointment committee has exercised its duties in a responsible manner is therefore the number of non-nominated candidates that could put forward valid arguments for the Council of State to annul an appointment.

The following figures speak for themselves: The current appointment committee has heard since September 2012, regarding 471 vacancies within the judiciary, 2107 candidates and nominated the most suitable candidate for each of these jobs. Only 11 of the non-nominees submitted a claim for annulment of the appointment to the Council of State. The appointment was annulled in only one case.

b) Bulgaria

The reported scores earned on the basis of the responses to the questionnaire show good levels of independence and accountability. This score follows up from the established principles of the Constitution of the Republic of Bulgaria and the specific legislative framework.

Funding of the judiciary remains insufficient. By the last amendments to the Constitution, the court buildings management was assigned to the Supreme Judicial Council (SJC) and in this regard there will be new challenges and problems. In the future, for the settlement of those issues, SJC shall maintain persistent and committed dialogue with the executive and legislative branches.

SJC makes efforts to increase the public confidence in the work of the judiciary. Specific examples in this regard are the interaction with non-governmental organizations; improving the system for random allocation of cases; the ensured publicity of the issued judicial acts and an electronic portal.

Under discussion are the legislative amendments with an expectation of increasing the independence and accountability of the judiciary.

c) Denmark

The score based on the Danish answers to the questionnaire in the version from the 2014/2015 rapport is generally high on most indicators for independence as well as for accountability and indicates a generally well-functioning judiciary. The trust in the judiciary is high and the independence as perceived by judges - including lay judges - is very high.

The score on the indicator for legal basis is affected by the fact that the salary of judges is not determined or guaranteed by law or in the constitution. As to the involvement of the judiciary in judicial reform this is not formally guaranteed by law or in the constitution. None of these issues do however create actual problems, as the salary of judges generally keep pace with the average development of salaries in the country and inflation. Also the judiciary is in practice involved in judicial reforms and can suggest and hence initiate reforms via the Ministry of Justice.

The position of the Council for the Judiciary is guaranteed by law but not in the constitution, which is due to the fact that the Danish constitution is old and has not been changed for decades, and the Council for the Judiciary was founded in 1999.

Areas to be dealt with in the future could be allocation of cases to make this more transparent and the fact that external reviews does not happen on a regularly basis.

d) Italy

Scores earned on the basis of the responses to the questionnaire put in evidence, in general, the achievement of good levels of independence and accountability.

With reference to parameters of independence, however, funding of the judiciary and court management show the most obvious gaps.

However, these gaps do not seem to be overcome in the short term, because of the Constitution (art. 110): the ministry of justice has exclusive competence in managing the budget of the judiciary and, in general, in organizing all services related to justice.

It should become evident, too, that the positive data on the perception of the users could be further improved. In fact the related score does not excel because of the absence of detection tools of users' satisfaction.

High Council and the Ministry of Justice are still working to improve this lack, developing a detection system compatible with the rules on citizens' privacy.

Examining the results related to the parameter of accountability, all scores are, generally, very positive.

The least score - still well above the average – concerns external activities. In this field it should be noted, however, that the level of transparency is very high with regard to the full-time assignments for non-judicial activities.

The accessories functions are, on the contrary, only recorded in a register of the High Council. However, should be underlined that High Council checks the compatibility of the accessory functions with the independence and impartiality of the magistrate.

e) Netherlands

The scores of the Netherlands Judiciary about independence are relatively high. Still, there are possibilities for improvement. The Council has, for instance, proposed that the influence of judges on the appointment of members of the Council are increased. Legislation to achieve this is unfortunately delayed. Some high scores obscure that problems exist in practice. This is the case for the funding of the judiciary and it causes major concerns. The high score is based on the objective funding system that is in place. This system worked well for ten years, but in recent years the government did not always comply with the rules of the system, using specific clauses meant for extreme budgetary conditions of the government. The government now claims that the budget is leading. Consequently, there is little recognition anymore of the special position of the judiciary as one of the three state powers as is laid down in the Constitution and statutes concerning the funding of the Judiciary. The Council will continue to discuss these matters with government and, if necessary, Parliament.

The scores about accountability are uneven. While indicators about periodic reporting, relations with the press, judicial ethics and understandable procedures are maximal, some other indicators warrant attention. In particular, the allocation of cases is an issue. Policy concerning the allocation of cases is formulated at the level of each court, on the basis of a model developed by the assembly of court presidents. Consequently, case allocation policies differ between courts. The Council feels that a nation-wide, transparent case allocation system should be developed and implemented. At the urging of the presidents of the courts, this will be taken up within the context of the large-scale digitalisation program of the Dutch Judiciary (the Quality and Innovation-program).

f) Slovakia

Scores that arose from the questionnaire are low mainly in these areas: Funding of the judiciary, Confidence in judiciary, Independence perceived by clients/by judges, Management of the courts. In funding of the judiciary, the Judicial Council of Slovak republic has no competences and changing of this current state of play would require the changing of the legislature, even the amendment of the Constitution. This could be initiated only by a

gouvernement or the parliament. The Judicial Council does not have a competence to initiate the proposal of an act relating the judiciary. Now, the Judicial Council is trying to obtain the competence to initiate a proposal of a new act as the General prosecution has in the prosecution. Since the March 2016 (after the creation of a new government) the President of the Judicial Council has had several meetings with the representatives of the executive and legislative power and has showed a great interest to comment proposals of the new acts or proposals for an amendments of the old ones.

As for the confidence in judiciary, the latest survey has showed that the public confidence in judiciary of Slovak people is very low. But on the other hand this resulted from the survey that had only two simple questions. That's why the Judicial Council of Slovak republic would like to repeat the survey. Council intends to cooperate with the non-governmental organization called VIA IURIS (organization that is always very critical to functioning of the Slovak judiciary) on another alternative survey on public confidence in judiciary. This survey is going to focus not only on the public confidence but also on causes of non-confidence. As for the surveys of perceived independence of judges and clients, the score is low because to these days there haven't been any of the surveys organized in Slovakia concernig this topic. Last year the Judicial Council was working on and published the Analysis of the current state of play of the Slovak judiciary" according to which the Council recommends the measures to be adopted to change and improve the current state of play in Slovak judiciary (e.g. the backlogs, the workload of judges, to strenghten the competences of the Council). Another major step that was taken last year was an adoption of renewed Code of the judicial ethics which contains modern principles that comply with the ENCJ standards and other international documents as well.

On the recommendation of our ENCJ colleagues we are trying to improve the relations with media and public step by step mainly by informing them and providing them all necessary information.

g) Slovenia

The scores for Slovenia in general show relatively good levels of independence and accountability.

There has been a significant improvement in the field of objective accountability of the judge. In 2015 the Judiciary Council has adopted a Code of judicial ethics. The Council named a Commission for judicial ethics and Integrity. The Commission has been very active so far, because the judges are very interested in getting the opinions about the ethical conduct and activities.

The scores related to appointment of judges and appointment and dismissal of the President of Supreme Court are not as high as we would like, because the judges are appointed by the Parliament. It is difficult to expect relevant changes in this field, because changes would require an amendment of the relevant constitutional provisions.

Another area in which Slovenia scores low, is "subjective independence". It is to mention, that the perceptions of independence, of the corruption, of the trust in Judiciary doesn't really differ from the perceptions for the legislature, the executive, the health system, and other parts of the society. One of the reasons for low scores in the field of subjective independence could be relatively low scores in the field of relations with the press. There is a lot to be done in the field of contacts with the media and transparency. On the other hand to

achieve better perception, a lot could be done in the field of the quality of justice. In 2016 the Supreme Court has begun with the project, called "Improving the Quality of Justice, which has three sections: the judges, the staff and the procedure. These activities should be permanent.

h) Spain

The scores that reflect the answers provided by the Spanish Council for the Judiciary to the last version of the questionnaire may seem low in some areas, particularly those related to funding of the Judiciary, court management or to the perceptions by court users regarding the judicial system. Nevertheless it is difficult to have relevant changes in these specific fields of the questionnaire, since the respective responsibilities of the General Council for the Judiciary and Government (Ministry of Justice or regional administrations with competence over the justice system) as regards these areas of judicial governance are defined in the Spanish Constitution and any extension of responsibilities of the Council for the Judiciary would require an amendment of the relevant constitutional provisions.

On the other hand, there has been an important improvement concerning some areas of judicial accountability where the scores for Spain were particularly poor (judicial ethics and external activities of members of the Judiciary). The Spanish Council for the Judiciary has established a permanent working group for the drafting of a code of ethics for Spanish judges with the participation of all the associations of Spanish judges and experts in the field of judicial ethics. Furthermore, the Plenary of the Council for the Judiciary in its session held on the 25th of February 2016 decided to adopt the Ibero-american Model Code of Judicial Ethics as ethical guidelines applicable to Spanish judges until a national code of judicial ethics resulting from the discussions of the said permanent working group is specifically adopted by the Plenary of the Council. It has to be underlined that the Ibero-american Model Code of Judicial Ethics is fully consistent with the principles that inspire the ENCJ Judicial Ethics Report adopted by the so-called London Declaration of June 2010.

The Spanish General Council for the Judiciary already keeps an internal register of external activities developed by Spanish judges, which need to be authorized by the Standing Committee of the Council. In the context of the policy of the Council concerning transparency and accountability of the Judiciary, the relevant committees of the Council for the Judiciary are currently discussing whether the information contained in the internal register of external activities developed by Spanish judges should be made available to the public and displayed on the web-site of the Council.

i) United Kingdom-England and Wales

The survey among judges was regarded as both valuable and instructive. Although there was some surprise that Judges were being asked what they thought, the request was greeted positively. Coincidentally, we have now had the first ever Judicial Attitude Survey.

There was some surprise that a judge (a single judge whose identity was unknown) had thought that colleague(s) unnamed may have accepted a bribe. Bluntly, it was felt the suggestion that a bribe might have been accepted was likely the result of someone misreading the question asked.

As to the observers the following comments have been made:

a) Albania

The results of the Albanian scorecard, due to the low score received on some areas, clearly identifies that in Albania the main challenges regarding the Independence and Accountability are related to the following areas:

1. Trust in the Judiciary;
2. Independence as perceived by the clients of the Courts;
3. Independence as perceived by judges;
4. Relations with the press

Currently, Albania is under the process of Justice Reform. The Assembly of Albania has established an Ad Hoc Parliamentary Committee to analyze the current situation in the justice system, set out the objectives of the justice reform and propose the necessary constitutional and legal amendments for meeting these objectives. A Senior Level Experts Group (SLEG) has been set up attached to the parliamentary committee which is assisted by a technical secretariat. These structures were entrusted the task of preparing an analysis of the situation that the justice system currently is and the causes having brought about this situation. Reform in the justice system has been conceived on the basis of 7 main pillars that together constitute the complete establishment of the justice system in the country. Namely, these pillars are: I. The justice system according to the Constitution and the Constitutional Court, II. Judicial power, III. Criminal law, IV. Legal education and legal schooling, V. Legal services and free professions, VI. Measures in the fight against corruption, VII. Funding and infrastructural support for the system. These 7 pillars are also the main components of the analytical document "Justice System Analysis" in Albania. Since these elements contribute to the quality of constitutional justice therefore it's expected to contribute also in the perception and in strengthening public confidence regarding the independence and accountability of the Judiciary.

After the finalization of the draft constitutional amendments, the representatives of the High Council of Justice have participated in the expert groups to draft the legislation on judicial power. They have constantly discussed and provided input on the amendments of a legal character that will be undertaken in order to fulfill the objective of good governance of the judiciary. In this regard the representatives of the HCJ have presented and discussed some of the reports developed by the ENCJ, including the two reports developed in 2015, the minimum Judicial Standards V: disciplinary proceedings and the Independence and Accountability report.

b) Germany

The scores arising from Germany answers to the questionnaire may seem low in some parts. There are two main reasons for this:

The questionnaire didn't coincide with the German judiciary system. As a federal state, the Federal Republic of Germany is characterized by decentralized structures. Therefore the court system is also structured federally. Jurisdiction is exercised by federal courts and by the courts of the 16 federal states (Länder). The administration of justice lies chiefly with the Länder. The provided answers to the questionnaire are not representative for every Land

respectively every court - and the situation can differ from Land to Land or from court to court.

In addition, due to historical developments, the Federal Republic of Germany does not have a self-regulatory organizational system with councils for judicial administration. But the German justice system does include numerous elements of participation with sometimes far-reaching authority in the form of committees for the selection of judges, court presidia, and bodies for the representation of judges (councils of judges, councils for judicial appointments). These existing elements of participation serve to ensure the independence of judges.

With regard to the appointment of judges, the German Judiciary Act provides that the judiciary must be involved in the process via councils for judicial appointments [Präsidentialräte]. These have the task of representing the jurisdiction's interests in negotiations with the competent highest service authority and with the committee for the selection of judges which is likewise involved in the appointment of judges. Councils for judicial appointments must be established at the federal level and in the Länder. However, the legislation provides the Länder with leeway in terms of how these should be individually structured.

At the federal level, the appointment of judges is done with the participation of a committee for the selection of judges [Richterwahlausschuss]. This committee decides on the appointment of judges at the supreme federal courts (the Federal Court of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Labour Court, and the Federal Social Court) in conjunction with the Federal Minister competent for the respective court. In half of the 16 Länder, there are committees for the selection of judges which participate at the recruitment stage, and others which are not involved until the stage of appointment for life and promotion.

The councils of judges can be involved in matters concerning general and social issues. Their standing is different from Land to Land. For example, their participation is mandatory in some Länder in setting the organizational rules at the workplace, in determining the design and structure of the working environment, in the further training of judges, in drafting guidelines for the assessment of judges, in measures to reduce the workload, etc. Section 72 of the German Judiciary Act provides that councils of judges must be established in the individual Länder and that their members must be elected from the ranks of the judiciary in direct and secret elections. Each Land legislature is free to regulate the further particulars concerning the organization and formation of the councils of judges.

The presidium is established at every court and is composed of the court president and up to ten additional judges, depending on the size of the court. The presidium lays down the abstract rules for the allocation of cases in the court. The presidium and its members are not bound in their activities by instructions. It reaches its decisions with complete judicial independence. The presidium is tasked with determining the principles for the allocation of court business. The roster allocating court business is set for the duration of one year and automatically expires at the end of the year. The roster allocating court business distributes the duties on the basis of general and objective criteria. It is also authorized to redistribute the allocation of court business in the course of the business year if there is a particular objective reason to do so.

This system works out well.

c) Sweden

The scores arising from the Swedish answers to the questionnaire may seem low in some parts. The main reason for this is the fact that Sweden does not have a council for the Judiciary. Decisions regarding Human resources are divided between the court presidents, the courts, the Judges proposals board, the government, The National courts administration, The parliamentary ombudsman and the National disciplinary offence board. This system works out well and – from the perspective of the National courts administration – there seems to be no reason to change it. It must also be underlined that even if there is no specific complaints procedure within the judiciary this does not mean that anyone who is dissatisfied with for example how he or she has been treated during a court hearing have no possibility to raise a complaint. A complaint may instead be made to the parliamentary ombudsman, an institution with powers to initiate disciplinary actions against a judge or even a criminal charge if the misconduct is more severe. The National courts administration cannot see the point of having yet another complaints procedure within judiciary.

However some of the scores must be taken seriously. The National courts administrative will continue its efforts to support judges when it comes to contacts with the media. This will hopefully make judges more secure when it comes to deal with media. The National courts administration will also consider measures when it comes to the transparency regarding accessory functions and financial interests.

d) Norway

The Norwegian Scores reflect the general impression of high scores on important indicators for independence as well as accountability, indicating a generally well functioning judiciary. The general trust in in the judiciary is high, partly due to the transparency, timeliness and the use of lay judges.

As expected the scoring also reflects important challenges for the Norwegian judiciary.

On independence it should first be noted that the low scores for Norway on perceived corruption/perceived by clients is due to the lack of available information from Norway in the scoreboard due to Norway not being an EU member.

It is questionable whether the board of the Norwegian Courts Administration should be regarded a council for the judiciary, and the scoring on this indication may be too high. Although an independent Courts administration is established, there is no majority of judges on the board of the Courts Administration, and board are not elected by their peers, but appointed by the government/parliament.

It is furthermore a weakness that council has limited influence on the budget of the judiciary. The budget is decided by the government and form a part of the budget for the Ministry of Justice, based on input from the Courts administration. Together with the general perception in society that good quality justice is delivered in a timely manner has left the judiciary in a relatively weak negotiating position in consultations meth the Ministry of Justice. The result has been an underfinanced judiciary, without the financial strength to establish a much needed modernization of court buildings, IT-infrastructure, digitalization etc.

Other areas with substantial room for renewed focus and improvement are practice of case allocation and external review. Except for the Norwegian Supreme Court, the case allocation

in the lower courts is not randomized, and more problematic, not decided pursuant to an entirely transparent case allocation system.

Future focus should also be on the lack of external review, which so far has been seen good for the independence of the judiciary, but probably given to little attention with regard to the positive effect on the accountability.

Chapter 7

Dialogue groups

The purpose of the dialogue groups was to discuss the results of the survey among judges and the application of the indicators identifying the real problems facing the independence and accountability of the Judiciary in each country, and identifying remedies.

Last year's project team recommended that a continuation and expansion of the dialogue groups would be very useful. It was also recommended that a further experiment as to the composition of the dialogue groups was needed. The pilot dialogue group consisted of 4 countries from different legal systems which had the benefit of a clash of legal cultures and opportunities to learn a lot, but required more time to understand the diversity of the systems. Various models suggested to experiment with were a group from similar legal cultures, a group with four countries from two legal traditions and two mixed groups.

Four dialogue group meetings were organised in 2015-2016.

The first meeting took place on 20 November 2015 in Madrid and consisted of **Bulgaria, Portugal, Romania and Spain** (two and two model).

The second meeting took place in London on 11 January 2016 and consisted of **Belgium, England & Wales, France and Sweden** (similar legal cultures model).

The third meeting was organised in Paris on 19 February 2016 for **Albania, Ireland, Lithuania and Poland** (mixed group).

The fourth meeting was held in Rome on 18 March for **Hungary, Italy, the Netherlands and Slovakia** (mixed group).

7.1 The Format of the dialogue group meetings

The meetings all followed the same format:

The dialogue groups were held during a whole day, with a dinner on the evening before to get the participants acquainted with each other. Meetings started at 9:00 and ended at 17:00 hrs.

Participation was confined to one or two person(s) from the Council for the Judiciary or, in the case of the observers, the actual governing organization and/or person(s) from the national Judges Association. This was to make sure that the groups heard opinions on matters from different angles, while costs were kept at a minimum. Participants were to be appropriately authorised.

Each meeting was chaired by a moderator from another country than the countries participating in the dialogue.

7.1.1 Preparatory notes

The outcomes of the questionnaire (scorecards) and of the survey among judges for the participating members and observers were the basis for the discussion, as these highlighted the strengths and weaknesses of the individual judicial systems. The materials (scorecards, questionnaire and survey results) were distributed to the participating institutions in the dialogue group. Each of the participating institutions then sent a note to the moderator (through the ENCJ office) indicating which most serious problems or challenges its judicial system faced with respect to independence and/or accountability. The note also indicated what they thought the main challenge is in the other participating countries with respect to independence and/or accountability.

7.1.2 The meeting

Each of the four participating countries presented the most serious problems or challenges its judicial system faced with respect to independence and/or accountability in short presentations. The four participants would ask clarifications and critical questions about these and other issues identified.

An important part of the format is the search for remedies: For each of the challenges in the participating countries as many ideas for remedies as possible were generated from the (different) perspectives of the four countries. Not all of these remedies were immediately applicable in the context of the country concerned; still they may be relevant and provoke new ideas.

7.1.3 Confidentiality

The discussions in the dialogue group were confidential, except for the report as such which was shared with the other members of the project team.

7.2 Findings of the dialogue group meetings 2015-2016

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The various preparatory notes and the discussions in the dialogue group meetings showed that there are a number of challenges faces by a majority of the countries that participated.

In relation to **independence** the most frequently discussed issues were:

- Lack of public confidence surveys and low public confidence and high levels of perceived judicial corruption.
- Lack of recognition of the judiciary as the third state power and lack of respect for the independence of the judiciary by the executive and legislature.
- (Lack of) Funding and deficiencies in budgeting systems.
- Lack of competences in relation to Court management and lack of organisational autonomy/self-governance.
- Deficiencies in HRM systems for judges (selection, evaluation).
- Media pressure as experienced by judges.

In relation to the **accountability** of the judiciary the most frequently discussed issues were:

- Allocation of cases.
- Accessory functions of judges, registers in place and ways to be transparent about it.

Other issues that were discussed at the meetings were:

- Remuneration (no statutory increase foreseen in law / judicial pay too low to attract the best lawyers / difference in salary of judges at the same level)
- The role of Judges' Associations.
- Relations with the press.

- Tension between a call for more specialised judges and a need for a more flexible and mobile judiciary.

7.3 General conclusions

The judiciaries that participated in the dialogue groups share one or two major challenges which relate to a changing society and an emerging new class of politicians.

The first challenge is related to the accessibility and speed of most services through the use of IT, internet and social media. Justice systems and procedures are currently not designed to meet the expectations of a changing society (i.e. the facebook generation). The judicial proceedings are seen as too complex and too difficult to understand. The judiciary itself is seen as a closed shop that is not in touch with society. Ultimately this will lead to low public confidence. This challenge cannot be met by the judiciaries alone; investments in new technologies have to be supported by the executive (funding) and the legislature (new procedural law). However, the judiciary has to strive to become more accessible and explain itself better and be more open to the public. More than ever authority has to be earned by excellent performance in terms of independence, accountability and transparency and explaining the role and position of the judiciary.

The second challenge is related to the first challenge, but aimed at the changing relations between the executive, legislature and the judiciary. For the balance of powers between the three state powers to work there is a need for a certain level of trust between the powers. This trust in some countries has not been established yet. In some other countries this trust is not as self-evident any more. Public attacks on the judiciary by politicians are a threat to the independence as public confidence might come under pressure as a result. A low public confidence can be used by politicians to propose judicial reform that may affect judicial independence adversely. To remedy this the judiciaries have to better understand how to interact with the other state powers and how to interact with society.

One of the remedies mentioned for both challenges is a pro-active communication strategy, including outreach activities for all judiciaries.

7.4 Evaluation of the format

As mentioned before various compositions were tested this year. All meetings were evaluated as being extremely interesting and valuable. There is not a single composition that can be labelled as being more effective than the others.

The fact that at the meetings there were a maximum of 12 participants per meeting was evaluated as being very efficient. The informal setting of the meetings guaranteed open and frank discussions which contributed to mutual confidence.

Participants overall felt that they learned a lot about the judicial systems around the table and also felt supported in their own challenges and inspired to address them.

The project group concludes that the dialogue group format is a very successful way to address problems faced by Councils for the Judiciary and judicial governance structures. The project group recommends that further dialogue groups should be held after the revised indicators have been applied in all ENCJ members' and observers' countries next year, and after the survey has been undertaken once again in late 2016.

Chapter 8

Conclusions and Recommendations for the continuation of the project

Conclusions on the quality of justice

There are three minimum standards which are integral to any judgment. The first is that it is a judgment which is (subject to limited and appropriate exceptions) public; the second is that it is a decision which is reasoned; and the third is that the decision is expressed in language which is intelligible.

These minimum standards are reflected in the following factors which are essential elements of that internal quality:-

- (1) All court and judicial decisions should be easy to understand and properly explained.
- (2) All court and judicial decisions should be written in intelligible language.
- (3) All factual court and judicial decisions should be based on a proper fact-gathering or evidential process.
- (4) All court and judicial decisions should be adequately identified and referenced so that the parties, the date, the nature of the claim (or the charge in a criminal case) and the result or outcome can be clearly understood.
- (5) All court and judicial decisions should be sufficiently reasoned (except for a formal administrative decision), and should explain the reasons why the arguments of the losing party have been rejected.
- (6) Judicial decisions should state or make a clear reference to any applicable statute and case law or procedural rule that is relied upon in making the decision.
- (7) Courts and judges should adhere to transparent and publicly available time limits for the delivery of the decision after the case is filed and/or after the hearing.
- (8) All judgments should generally be available to the public in an appropriate medium (even if, in appropriate cases, anonymised).

A Council for the Judiciary or equivalent governance body should be involved in the process of evaluating the quality of justice by:-

- (1) defining a quality framework which sets out quality indicators including criteria for the assessment and evaluation of the quality of justice;
- (2) defining methods by which the quality of the judicial decision-making process can be evaluated, maintained and improved;
- (3) identifying and implementing good practices which increase the confidence of citizens in the judicial system; and

- (4) ensuring that these systems do not interfere with the independence of the judiciary, individually or collective, or the judicial system.

Recommendations as to the Quality of Justice

Next year, the project group should:-

- (1) establish indicators based on, but not necessarily limited to, the minimum standards and factors identified above;
- (2) establish standards, guidelines or best practices based on these indicators and designed to achieve their implementation;
- (3) consider how Councils for the Judiciary and equivalent bodies might evaluate the quality of decision-making.

In undertaking this process, particular regard should be paid to the need to weigh in the balance the following competing factors that will often apply to the evaluation of the quality of decision-making and of justice in different jurisdictions:-

- (1) the need for any court or judicial decision to be 'effective' in the sense that the dispute which comes before the court or judge is resolved, and can be enforced;
- (2) the need for any such resolution to be timely and not unduly delayed;
- (3) the appreciation that different types of dispute do not all require the same level of consideration or the same depth of reasoning, whether factual or legal;
- (4) the appreciation that in relation to some types of dispute there is less need for a speedy decision than in other cases (e.g. a criminal case where the defendant is in custody versus a complex commercial dispute where the parties are solvent);
- (5) the local or cultural expectations of the legal system in the state in which the decision is reached;
- (6) the fact that the internet age expects speedier outcomes than has previously been the case;
- (7) the requirement for justice to be seen to be done; and
- (8) the need for predictability of outcome in advance of decisions being made, without interfering with judicial independence.
- (9) the availability of informal or Alternative Dispute Resolution.
- (10) the rights of others and in particular victims and other court users.
- (11) the quality and independence of the prosecution.
- (12) the availability and quality of legal assistance for the parties.

Recommendations as to the Improvement of the Indicators, the Scoring Rules and the Survey

The project group recommends that the indicators as contained in Appendix 1 to this report are applied next year to each of the members and observers of the ENCJ

The project group recommends that an expert group should be set up next year to take charge of the scoring of the indicators in line with the scoring rules in Appendix 1 to this report.

The project group recommends that the survey as contained in Appendix 2 to this report should next year be launched for all judges in the countries of ENCJ members and observers.

Conclusions from the dialogue groups

The judiciaries that participated in the dialogue groups share the following major challenges which related to their changing societies and an emerging new class of politicians.

The first challenge related to the accessibility and speed of most services through the use of IT, internet and social media. Justice systems and procedures are currently not designed to meet the expectations of a changing society (i.e. the facebook generation). Judicial proceedings are seen as too complex and too difficult to understand. The judiciary itself is seen as a closed shop that is not in touch with society. Ultimately this will lead to low public confidence. This challenge cannot be met by the judiciaries alone; investments in new technologies have to be supported by the executive (funding) and the legislature (new procedural law). However, the judiciary has to strive to become more accessible and explain itself better and be more open to the public. More than ever authority has to be earned by excellent performance in terms of independence, accountability and transparency and explaining the role and position of the judiciary.

The second challenge relates to the changing relations between the executive, legislature and the judiciary. For the balance of powers between the three state powers to work there is a need for a certain level of trust between the powers. This trust in some countries has not yet been established. In other countries this trust is not as self-evident any more. Public attacks on the judiciary by politicians are a threat to the independence as public confidence might come under pressure as a result. Low public confidence can be used by politicians to propose judicial reform that may affect judicial independence adversely. To remedy this the judiciaries have to better understand how to interact with the other state powers and how to interact with society.

One of the remedies mentioned for both challenges is a pro-active communication strategy, including outreach activities for all judiciaries.

Recommendations as to the dialogue groups

The project group concludes that the dialogue group format is a very successful way to address problems faced by Councils for the Judiciary and judicial governance structures. The project group recommends that further dialogue groups should be held after the revised indicators have been applied in all ENCJ members' and observers' countries next year, and after the survey has been undertaken once again in late 2016.

Appendix 1: Revised questionnaire and scoring rules

Questionnaire including scoring rules May 2016

Note 1: The scoring rules will be added as an annex in the final report and will not be visible in the questionnaire.

Note 2: If indicators consist of distinct sub-indicators these sub-indicators are given equal weight.

Note 3: Some questions allow “other” as answer. This answer has been given a preliminary score. The expert group will examine whether for a specific answer the score is appropriate.

Questionnaire indicators independence and accountability of the Judiciary¹ Version May 2016

Please fill in your country of origin:

INDEPENDENCE INDICATORS

Objective Indicators

Objective independence of the Judiciary as a whole

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

1a. Is the independence of the Judiciary or the judge formally guaranteed²?

Yes

0 (possibility to score points at 1b)

No

0

² See question 1b.

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

- | | |
|--|----------|
| <input type="checkbox"/> The Constitution or equivalent documents ³ | 3 |
| <input type="checkbox"/> Law ⁴ | 2 |
| <input type="checkbox"/> Constitutional court | 1 |

1c. Are judges formally bound only by law?

- | | |
|------------------------------|--|
| <input type="checkbox"/> Yes | 0 (possibility to score points at 1d) |
| <input type="checkbox"/> No | 0 |

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

- | | |
|---|----------|
| <input type="checkbox"/> The Constitution or equivalent texts | 3 |
| <input type="checkbox"/> Law | 2 |
| <input type="checkbox"/> Jurisprudence | 1 |

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

- | | |
|------------------------------|--|
| <input type="checkbox"/> Yes | 0 (possibility to score points at 1f) |
| <input type="checkbox"/> No | 0 |

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

- | | |
|---|----------|
| <input type="checkbox"/> The Constitution or equivalent texts | 2 |
| <input type="checkbox"/> Law | 1 |

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

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

³ Equivalence means here specifically that the position of the Judiciary cannot be changed by simple majority.

⁴ That can be changed by simple majority.

1h. Is the involvement of the Judiciary in law and judicial reform⁵ formally guaranteed?

- Yes **0 (possibility to score points at 1i)**
 No **0**

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

- The Constitution or equivalent documents **3**
 Law **2**
 Constitutional court **1**

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

- The right to put forward a formal proposal to change a law **2**
 The right to advise on legislative proposals **1**

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

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

1l. Has the Judiciary initiated judicial reform?

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

Questions	Balanced Score	Maximum Score
a – d: x	a – d: $x.10/6$	a - d: 10
e – g: y	e - g : $y.10/3$	e – g: 10
h – l: z	h – l: $z.10/7$	h – l: 10
Total:	$x.10/6 + y.10/3 + z.10/7$	30

⁵ The objective of a judicial reform process should be to improve the quality of justice and the efficacy of the judiciary, while strengthening and protecting the independence of the judiciary, accompanied by measures to make more effective its responsibility and accountability. See the ENCJ Report on Judicial Reform 2011-2012.

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2. Organizational autonomy of the Judiciary

2a. Does your country have a Council for the Judiciary⁶?

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

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

- In the Constitution or equivalent documents **2**
 Law **1**
 No **0**

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

Yes = 1

No = 0

- At least 50% of the members of the Council are judges⁷ Yes No
- At least 50% of the members of the Council are judges
who are chosen by peers Yes No
- Minister of Justice is not a member of the Council Yes No
- The Council controls its own finances independently of
both the legislative and executive branches⁸ Yes No
- The Council controls its own activities independently of
both the legislative and executive branches Yes No

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

⁷ Only in case of a Council representing judges and prosecutors, please read magistrates.

⁸ The finances of the Council for the Judiciary refer to the budget of the Council itself and not to the budget of the Judiciary as a whole.

2d. Is the Council responsible⁹ for the following:

Yes = 1

No = 0

- The appointment and promotion of magistrates Yes No
- The training of magistrates Yes No
- Judicial discipline Yes No
- Judicial ethics Yes No
- Complaints against the Judiciary Yes No
- The performance management of the Judiciary Yes No
- The administration of courts Yes No
- The financing of the courts Yes No
- Proposing legislation concerning the courts and the Judiciary¹⁰ Yes No

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

Yes = 1

No = 0

- The appointment and promotion of magistrates Yes No
- The training of magistrates Yes No
- Judicial discipline Yes No
- Judicial ethics Yes No
- Complaints against the Judiciary Yes No
- The performance management of the Judiciary Yes No

⁹ Responsible implies that the Council executes these tasks. But it can also mean that the Council has delegated these tasks to a separate body.

¹⁰ To the Parliament or the Ministry of Justice.

- The administration of courts Yes No
- The financing of the courts Yes No
- Proposing legislation concerning the courts and the Judiciary¹¹ Yes No

3. Funding of the Judiciary

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

[several answers possible]

- To handle their caseload **1**
- To engage experts/translators/etc. in cases when necessary if fees paid by court **1**
- To keep the knowledge and skills of judges up to date **1**
- To keep the knowledge and skills of court staff up to date **1**
- To facilitate judges and other personnel in matters of IT-systems, buildings etc. **1**

3b. Who makes the decisions?

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

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

	a)	b)	c)	d)	e)
The Judiciary 2					
The executive ¹² 0					
The legislature 1					

¹¹ See footnote 9.

¹² Such as the Minister of Justice

4. Court management¹⁴

4a. Which authorities can take the following decisions?

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

- a) General management of a court
- b) Appointment of court staff (other than judges)
- c) Redeployment of judges to address temporary workload issues
- d) Other human resource management decisions on court staff
- e) Decisions regarding the implementation and use of Information and Communication Technology in courts
- f) Decisions regarding court buildings
- g) Decisions regarding court security
- h) Decisions regarding outreach activities¹⁵

		a)	b)	c)	d)	e)	f)	g)	h)
The Judiciary	2								
The executive	0								
The legislature	1								

Objective independence of the judge

¹⁴ Court management also refers to non-budgetary decisions with impact on the functioning of the courts.

¹⁵ This includes all communication and promotional activities aimed to inform society about the Judiciary.

5. Human resource decisions about judges

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

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

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

- a) Proposal of candidates¹⁶ for the appointment as judges (not supreme court judges)
- b) Decision¹⁷ on the appointment of a judge
- c) Proposal for the dismissal of a judge
- d) Decision on the dismissal of a judge
- e) Proposal of candidates for the appointment as court presidents
- f) Decision on the appointment of a court president
- g) Proposal for the dismissal of a court president
- h) Decision on the dismissal of a court president

	a)	b)	c)	d)	e)	f)	g)	h)
The Judiciary 2								
The executive 0								
The legislature 1								

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

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

- i) Proposal of candidates for the appointment as Supreme Court judges
- j) Decision¹⁸ on the appointment of a Supreme Court judge
- k) Proposal for the dismissal of a Supreme Court judge

¹⁶ The final proposal of candidate(s) which is transmitted to the body that appoints/elects them.

¹⁷ In the context of this question a decision includes a binding proposal addressed to the body which formally makes the relevant decision.

¹⁸ In the context of this question a decision includes a binding proposal addressed to the body which formally makes the relevant decision.

- l) Decision on the dismissal of a Supreme Court judge
- m) Proposal of the candidate(s) for the appointment of the President of the Supreme Court
- n) Decision on the appointment of the President of the Supreme Court
- o) Proposal for the dismissal of the President of the Supreme Court
- p) Decision on the dismissal of the President of the Supreme Court

	i)	j)	k)	l)	m)	n)	o)	p)
The Judiciary 2								
The executive 0								
The legislature 1								

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

Yes = 1 No = 0

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

5d. Evaluation, promotion¹⁹ and training of judges.

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

- a) Decision²⁰ on the evaluation of a judge
- b) Evaluation of the performance management of courts

¹⁹ Promotion of judges in the sense of this sub-question and sub-question 5e also covers applications by judges to a new judicial position within the judicial system.

²⁰ In the context of this question 5d) a decision includes a binding proposal addressed to the body which formally makes the relevant decision.

- c) Decision on the promotion of a judge
- d) Adoption of ethical standards
- e) Application of ethical standards
- f) Decision on the program/content of training for judges

	a)	b)	c)	d)	e)	f)
The Judiciary 2						
The executive 0						
The legislature 0						

5e. Is the promotion²¹ of judges in compliance with the ENCJ standards?

Yes = 1 No = 0

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

Questions	Balanced Score	Maximum Score
a	a.10/16	10
b	b.10/16	10
c	c.10/5	10
d	d.10/12	10
e	e.10/5	10
Total:	a.10/16 + b.10/16 + c.10/5 + d.10/12 + e.10/5	50

²¹ Promotion of judges in the sense of this sub-question and sub-question 5d also covers applications by judges to new judicial position within the judicial system.

6. Disciplinary measures

6a) Are disciplinary measures against judges in accordance with ENCJ standards, namely:

Yes = 1 No = 0

- Is there a list of types of judicial conducts/ethics the breach of which would be unacceptable? Yes No
- Is there a time limit for the conducting of the investigation, the making of a decision and the imposition of any sanction? Yes No
- Is the name of the judge withheld prior to any sanction being imposed? Yes No
- Does a judge have the right to be legally represented or assisted by a person of her/his choosing? Yes No
- Is there is a right of appeal by way of judicial review or cassation appeal? Yes No

6b) Which is the competent body to make the following decisions in the context of disciplinary procedures against judges?:

- (a) Proposal for the appointment of a member of the disciplinary body for judges
- (b) Decision on the appointment of a member of the disciplinary body for judges
- (c) Investigation of a complaint against a judge
- (d) Proposal for a disciplinary decision regarding a judge
- (e) Disciplinary decision regarding a judge
- (f) Decision on the follow-up to a complaint against the judiciary/a judge

	a)	b)	c)	d)	e)	f)
The Judiciary 2						
The executive 0						
The legislature 1						

Questions	Balanced Score	Maximum Score
a: x	a: x.10/5	a: 10
b: y	b : y.10/12	b: 10
Total:	x.10/5 + y.10/12	20

7. Non-transferability of judges²²

7a. Can a judge be transferred (temporarily or permanently) to another judicial office (to other judicial duties, court or location) without his/her consent?

- Yes **0** (If you have answered yes, continue at question 7c)
 No **15**

7b. If no, is the non-transferability guaranteed in:

- The Constitution or equivalent text **3**
 Law **2**
 Jurisprudence **1**

7c. If yes, which authority or body decides on a (temporary or permanent) transfer of a judge without his/her consent?

- The Judiciary **2**
 The executive **1**
 The legislature **0**

7d. For what reasons can a judge be transferred (temporarily or permanently) without his/her consent? [several answers possible]

For organizational reasons such as: **(lowest score counts)**

- Closure of a court **2**
 Redeployment of resources on the basis of workload **2**
 For other reasons (specify): ... **1**

7e. At what level are these reasons prescribed?

- In law **1**
 Other (specify): ... **0**

²² Not including neither a measure following disciplinary proceedings nor the situations of withdrawal, recusal and/or challenge of judges and of reallocation of cases.

7f. In case a judge is transferred (temporarily or permanently) without his/her consent is he/she guaranteed an equivalent post (in terms of a position, salary...)?

- Yes 1
 No 0

7g. Can a judge appeal if he/she is transferred (temporarily or permanently) without his/her consent?

- Yes 1
 No 0

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

- The Judiciary 2
 The executive 0
 The legislature 1
 Other (specify): ...

7i. Can a judge be taken off a case without his/her consent?

- Yes 1
 No 0

8. Internal independence

8a. In your system, can higher ranked judges change a verdict of a lower ranked judge (outside of an appeal system, the precedent doctrine or a preliminary ruling system)?

- Yes 0
 No 10

8b. What kind of decisions can higher ranked judges deliver on their own initiative to ensure the uniformity or consistency of judicial decisions (outside of an appeal system or the precedent doctrine)?

- None 5
 Non-binding guidelines 2

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Binding guidelines 0

8c. Can judges at the same level develop guidelines to ensure uniformity or consistency of judicial decisions?

None 5

Non-binding guidelines 2

Binding guidelines 0

8d. Can the management of the court exert pressure in individual cases on the way judges handle their cases with respect to the uniformity/consistency?

Yes 0

No 5

8e. Can the management of the court exert pressure in individual cases on the way judges handle their cases with respect to the timeliness/efficiency of judicial decisions?

Yes 0

No 3

Subjective independence

9. Independence as perceived by society

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

9a. Perceived independence according to Flash Eurobarometer 385, Justice in the EU, average across areas of law (Q5.2, Q6.2 and Q7.2). Percentage of respondents that rate very good or fairly good.....

9b. Perceived independence according to the World Economic Forum Competitiveness Report 2013-2014, item 1.06. Score on 7-point scale.....

9c. Perceived independence according to the World Justice Rule of Law Index 2014, item 1.2. Percentage of respondents.....

Scoring 9a, 9b and 9c: Total score is average of Percentage of 9a, Percentage of 9b (score on 7-points scale recalculated as percentage) and Percentage of 9c, divided by 10.

Minimum score: 0
Maximum score: 10

10. Trust in Judiciary

10a. Are national opinion surveys available of the past three years in which the trust in the Judiciary is compared with the executive (national government) and legislature (national parliament)?

- Yes 0 (points can be scored at 10b)
 No 0

10b. If yes, is the Judiciary:

- Ranked higher than the executive and legislature²³; 3
 Ranked approximately equal to the executive and legislature? 2
 Ranked below the executive and legislature? 1

11. Perceived Judicial corruption

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

11a. Perceived Judicial corruption according to EU Anti-Corruption report 2014 is. Percentage of respondents that believe corruption is widespread.

Scoring:

< 11	9
11-20	7
21-30	5
31-40	3
> 40	1

12. Independence as perceived by the clients of the courts

²³ The other two branches of government are Parliament and Executive.

12a. Are national client satisfaction surveys available of the past three years which contain a question with respect to the perceived independence of the Judiciary?

- Yes
- No

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

Scoring 12a and 12b:	No	0
	81-100	9
	61-80	7
	51-60	5
	< 50	3

13. Independence as perceived by judges

Please don't answer these questions if you replied the ENCJ Survey among professional judges about their independence. The data will be filled in by the secretary of the project group for each member and observer: question 13 of the survey.

13a. Are surveys available of the past three years which contain questions with respect to external and internal pressures judges experience during their daily work?

- Yes
- No

13b. If yes, please state the percentage of respondents that rate the perceived independence very good or fairly good.....

ACCOUNTABILITY INDICATORS

Objective accountability of the Judiciary as a whole

1. Allocation of cases

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

- Yes **0 (Points can be scored at 1b)**
- No **0**

1b. Deleted

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

[several answers possible] Highest score counts.

- In well-established practice of the court **1**

- In an act adopted by the court 2
- In implementing regulations 1
- In law 3
- Other (specify): 1

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

[several answers possible]

- Random-based 1
- Specialization 1
- Experience 1
- Workload 1
- Other (specify): 1

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

[several answers possible] highest score counts

- President of the court assigns cases 0
- A member of the court staff assigns cases (e.g. listing officer) 2
- A special chamber of the court assigns cases 3
- The cases are assigned randomly (e.g. through a computerized system) 4
- Other (specify): ... 1

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

- Yes 1
- No 0

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

- Yes 1
- No 0

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

- Yes 1
 No 0

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

- Yes 1
 No 0

1i. Is the motivation for any derogation recorded?

- Yes 1
 No 0

2. Complaints procedure

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

- Yes 1
 No 0

2b. If the answer on 2a. is yes, does this procedure provide for external participation in the complaint procedure²⁴:

- Yes 1
 No 0

2c. Is it admissible to complain about:

[several answers possible]

- Behaviour of the judge 1
 Timeliness 1
 Administrative mistakes 1
 Other (specify):... 1

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

- Yes 1
 No 0

²⁴ External participation in the complaints procedure refers to the participation of representatives of civil society in the said procedure.

3. Periodic reporting on the Judiciary

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

- Yes 1
 No 0

3b. If the answer to 3a is yes, who publishes the report?

- The Judiciary 2
 The Executive 1

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

[several answers possible]

- The number of completed cases? 1
 Duration of cases? 1
 Disciplinary measures 1
 (Successful) complaints 1
 (Successful) requests for recusal 1

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

- Yes 10
 No 0

4. Relations with the press

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

- Yes 1
 No 0

4b. Has the Judiciary established press guidelines?

- Yes 1
 No 0

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

- Yes 1
 No 0

5. External review

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

- Yes 1
 No 0

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

[several answers possible]

- The Judiciary 2
 The executive 1
 The legislature 1

Objective accountability of the judge

6. Code or guidelines of judicial ethics

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

- Yes 1
 No 0

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

- Yes 1
 No 0

6c. Is judicial training on judicial ethics available?

- Yes 1

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No 0

6d. Is there a body with responsibility to provide judges with guidance or advice on ethical issues?

Yes 1

No 0

7. Withdrawal and recusal

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

Yes 1

No 0

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

[one answer possible]

A well-established practice of judges 2

Set in an act adopted by a court 3

Set in an act adopted by the Council for the Judiciary 4

Set in an act adopted by the Minister of justice 1

Set in law 5

Other (specify): 2

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

[several answers possible]

Oral warning 1

Written warning 1

Suspension 1

Disciplinary dismissal 1

None 0

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

- The Judiciary 2
- The executive 0
- Other (specify): ... 1

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

- Yes 0 (points can be scored at 7f)
- No 0

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

- The Judiciary 3
- The executive 1
- Other (specify): ... 2

8. Admissibility of accessory functions and disclosure of interests

8a. Are judges allowed to have other functions?

- Yes 0
- No 10 (If you have answered no, continue at question 8f)

8b. Is an authorisation for the exercise of accessory functions by judges necessary?

- Yes 1
- No 0

8c. If the answer to 8b. is yes, who gives authorisation?

- The Judiciary 2
- The Executive 0
- The Legislature 1

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

- Yes 1
- No 0

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

- Yes 1
- No 0

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

- Yes, please specify the minimum amount which needs to be disclosed: 1
 No 0

8g. If the answer to 8f is yes, is this register public?

- Yes 1
 No 0

Questions	Balanced Score	Maximum Score
a: x	x	a: 10
b-e: y	y.10/5	b-e: 10
f-g: z	z.10/2	f-g: 10
Total:	x + z.10/2 if not allowed or y.10/5 + z.10/2 if allowed	20

9. Understandable proceedings

9a. Are judges obliged to assist parties and court users in understanding the proceedings?

- Yes 1
 No 0

9b. In providing the assistance referred to in question 9a, are judges required to have particular regard for any of the following categories of court users?:

- Children 1
 Youth 1
 Disabled people (physically/mentally) 1
 Victims 1
 Those for whom the national language is not their mother tongue 1
 Self-represented litigants 1

9c. Do judges get training in how to: [several answers possible]

- Conduct hearings in an understandable manner to court users? 1
 Explain the proceedings in an understandable manner to court users? 1
 Explain the decisions in an understandable manner to court users? 1
 Conduct hearings/explain the proceedings/explain the decisions in an understandable manner, in particular in relation to the categories identified in question 9b)? 1

Questions	Equal balance	Maximum Score
a: x	$x.10/1$	a: 10
b: y	$y.10/6$	b: 10
c: z	$z.10/4$	c: 10
Total:	$x.10/1 + y.10/6 + z.10/4$	30

Appendix 2: Revised survey among judges



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Survey among professional judges about their independence

PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY

- I. THE REFERENCE PERIOD FOR ANSWERING ALL QUESTIONS IS THE LAST TWO YEARS (i.e. since January 2014)**

- II. UNLESS STATED OTHERWISE, QUESTIONS ARE TO BE ANSWERED:**
 - Strongly disagree
 - Disagree
 - Not sure
 - Agree
 - Strongly agree

III. Your individual answers will be anonymous but please let us know the name of the country in which you sit as a judge. The survey data will be published on a country-by-country basis.

IV. Please note that the questionnaire is addressed to and is about the full-time and part-time professional judges in your country. All questions should therefore be answered only with the professional judges in mind.

PLEASE ANSWER ALL OF THE FOLLOWING QUESTIONS:

The country in which I sit as a judge is

My gender is..... MALE FEMALE I DO NOT WISH TO ANSWER THIS QUESTION

My judicial experience (years of service as a judge) is:

0-5

5-10

10-15

15-20

20-25

25-30

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

Strongly disagree

Disagree

Not sure

Agree

Strongly agree

1b. If you have been subject to inappropriate pressure, ¿which was the frequency of such pressure?

ENCJ Project on Independence and Accountability 2015-2016- adopted by the General Assembly 3rd June 2016

- 70 -

- Very rarely
- Occasionally
- Regularly

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

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

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

Strongly disagree/ Disagree/ Not sure/ Agree/ Strongly agree

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

- On a rare exception
- Occasionally
- Regularly

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

Strongly disagree/ Disagree/ Not sure/ Agree/ Strongly agree

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

Strongly disagree/ Disagree/ Not sure/ Agree/ Strongly agree

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

Strongly disagree/ Disagree/ Not sure/ Agree/ Strongly agree

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

Strongly disagree/ Disagree/ Not sure/ Agree/ Strongly agree

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

Strongly disagree/ Disagree/ Not sure/ Agree/ Strongly agree

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

Strongly disagree/ Disagree/ Not sure/ Agree/ Strongly agree

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

Strongly disagree/ Disagree/ Not sure/ Agree/ Strongly agree

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

	Strongly Agree	Agree	Not sure	Disagree	Strongly disagree	Not applicable
Government						
Parliament						
Court Management²⁵						
Council for the Judiciary						
Supreme Court						
Constitutional Court						
Association of Judges						
Media (i.e. press, television or radio)						
Social Media (for example Facebook, Twitter or LinkedIn)						

²⁵ Including the president of the court

8b. I believe that in my country the Council for the Judiciary has the appropriate mechanisms and procedures in order to defend judicial independence effectively.
Strongly disagree/ Disagree/ Not sure/ Agree/ Strongly agree

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

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

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

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

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

Retirement age
Strongly disagree

Disagree

Not sure

Agree

Strongly agree

Caseload
Strongly disagree

Disagree

Not sure

Agree

Strongly agree

Court resources
Strongly disagree

Disagree

Not sure

Agree

Strongly agree

I was moved to another function, section or court
Strongly disagree

Disagree

Not sure

Agree

Strongly agree

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

Strongly disagree/ Disagree/ Not sure/ Agree/ Strongly agree

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

Strongly disagree/ Disagree/ Not sure/ Agree/ Strongly agree

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

Strongly disagree/ Disagree/ Not sure/ Agree/ Strongly agree

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

The professional judges in my country are:

0 1 2 3 4 5 6 7 8 9 10

not independent at all

completely independent

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

As a judge I

0 1 2 3 4 5 6 7 8 9 10

do not feel independent at all

feel completely independent

15. What would, in your view, contribute most to the improvement of the independence of the judges in your country (tick three boxes)?

- A reduction of judicial corruption
- Less use of (the threat of) disciplinary action by judicial authorities
- Less use of (the threat of) claims for personal liability by parties
- A more objective allocation of cases to judges
- Appointment and promotion of judges strictly on the basis of ability and experience
- Less pressure from the media
- Less pressure from social media
- Less guidelines by judges of my own rank
- Less pressure from court management to decide cases in a particular way
- Less pressure from court management to decide cases within a particular time
- Better working conditions regarding pay including pensions and retirement age
- Better working conditions regarding case load
- Better working condition regarding court resources

THANK YOU FOR PARTICIPATING IN OUR SURVEY