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de la Justice (RECJ)

Independence, Accountability and Quality of the Judiciary

Performance Indicators 2017

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Content

- Independence & Accountability: Frans van Dijk

- I&A expert group: Colin Tyre

- Quality: Alain Lacabarats

- Quality pilot: Simon Picken

- Recommendations: Kees Sterk

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Independence & Accountability of the Judiciary

1. Performance Indicators 2017
2. Survey among professional judges about their independence

Performance Indicators 2017

Objective: identify strengths and weaknesses of Judiciaries

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

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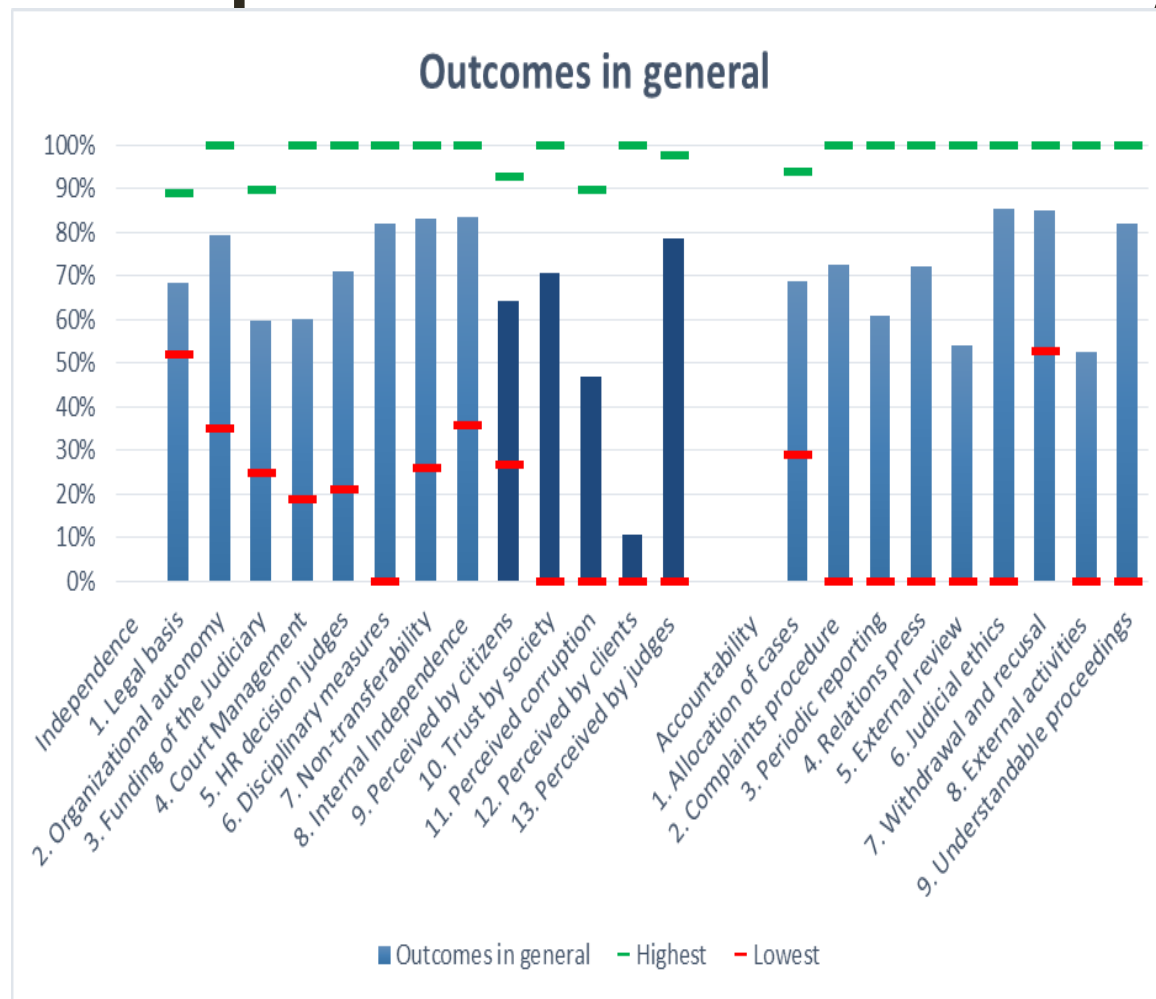de la Justice (RECJ)

Expert Group
by Colin Tyre

1. All replies to the questionnaire and the scoring were observed and discussed.

2. Answers have been checked on completeness and consistency. Members and observers were consulted when necessary.

3. Recommendations and findings of the Expert group were discussed with the project group.

State of Independence & Accountability in Europe

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Objective independence

Low scores funding and court management

- Funding is not well arranged: Judiciaries are dependent on discretionary decisions by the government;
- Court management still often in the hands of ministries of Justice

State of Independence & Accountability in Europe

Subjective independence:

- Most judiciaries do not have court user surveys
- Perceptions of judicial corruption among citizens are not positive
- In nearly all countries the trust in the Judiciary is higher than the trust in other state organisations (16 of the 18 countries).

And:

State of Independence & Accountability in Europe

Independence as perceived by citizens and by judges

- Citizens and judges are positive about judicial independence

- Correlation between indicator and the perceived independence by judges is high

- Perceptions of judges are fairly in agreement with citizens

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State of Independence & Accountability in Europe

Diverse outcomes about accountability

- Outcomes vary among countries: half of the countries score very low on periodic reporting, whilst the others score very high;

- External review and (the disclosure of) get low scores

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General Conclusions from performance indicators 2017

1. Many possibilities for improvement of independence and accountability

2. Objective independence: funding for the Judiciary and court management score lowest.

3. Subjective independence: perspective of court users is largely lacking. Trust in Judiciary is higher than in the other state powers.

4. Accountability: external review and disclosure of external functions get low scores.

Survey among professional judges about their perceptions of independence

- 11.712 judges from 26 countries participated

- Personal characteristics: gender and experience

- Gender has no impact on independence

- The impact of experience is overall small, but in some countries substantial. Very experienced judges score their independence higher than less experienced judges.

Respondents as percentage of total number of judges per country 2016*
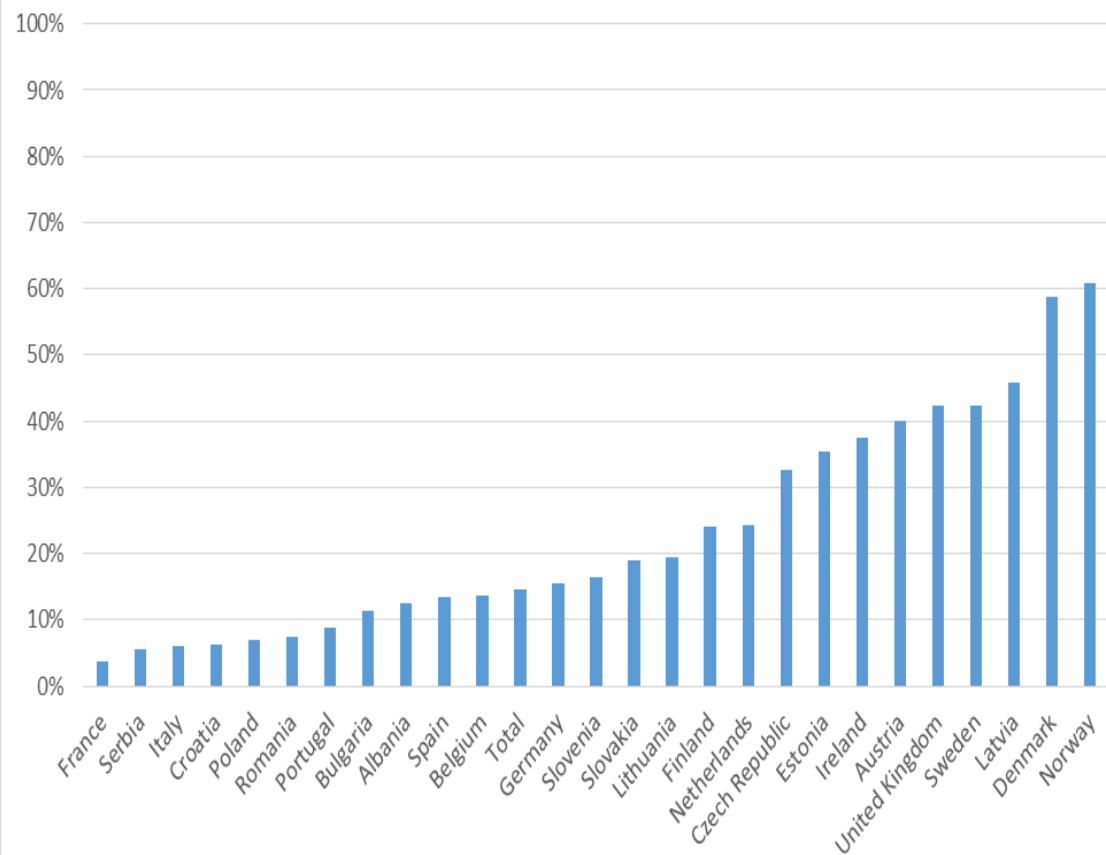
Overall perception of independence
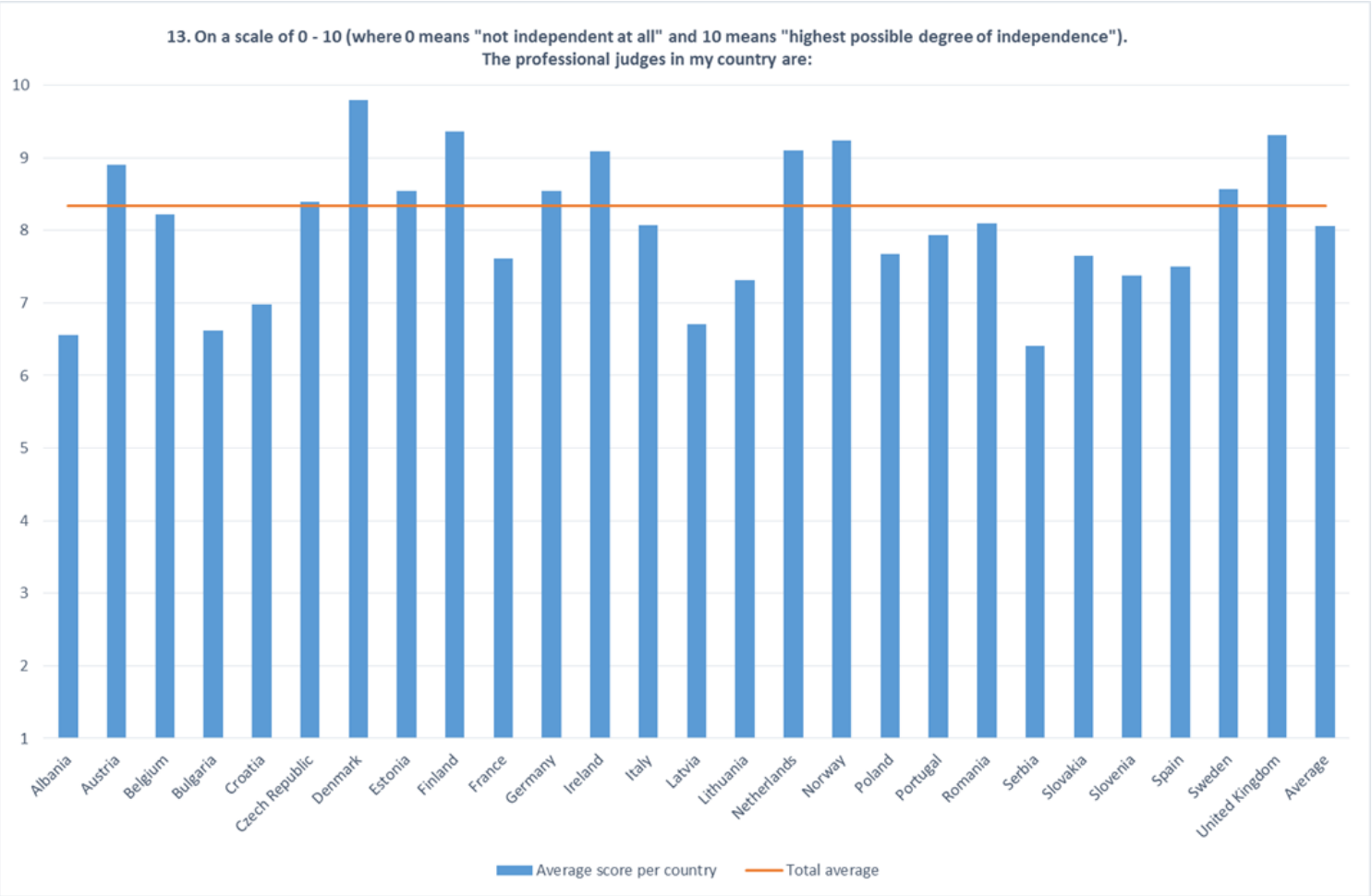
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Corruption

2.1 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. 2.2 If you agree or strongly agree, did this occur:

Legend: ■ Regularly ■ Occasionally ■ On a rare exception ■ Not sure - Not applicable ■ Disagree - Strongly disagree

Appointment and Promotion

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

Legend: Agree - Strongly agree | Not sure - Not applicable | Disagree - Strongly disagree
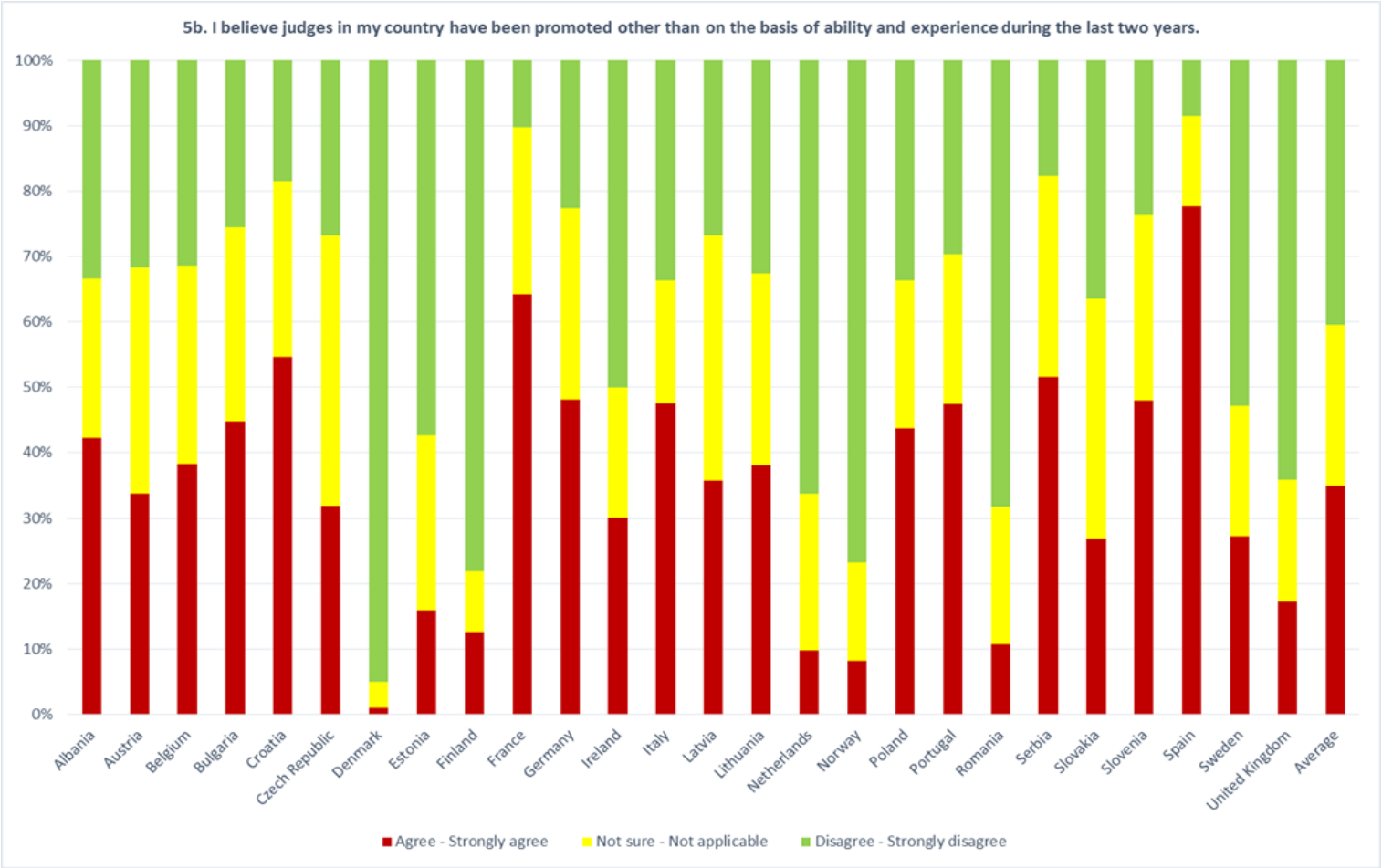
Impact of the media

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

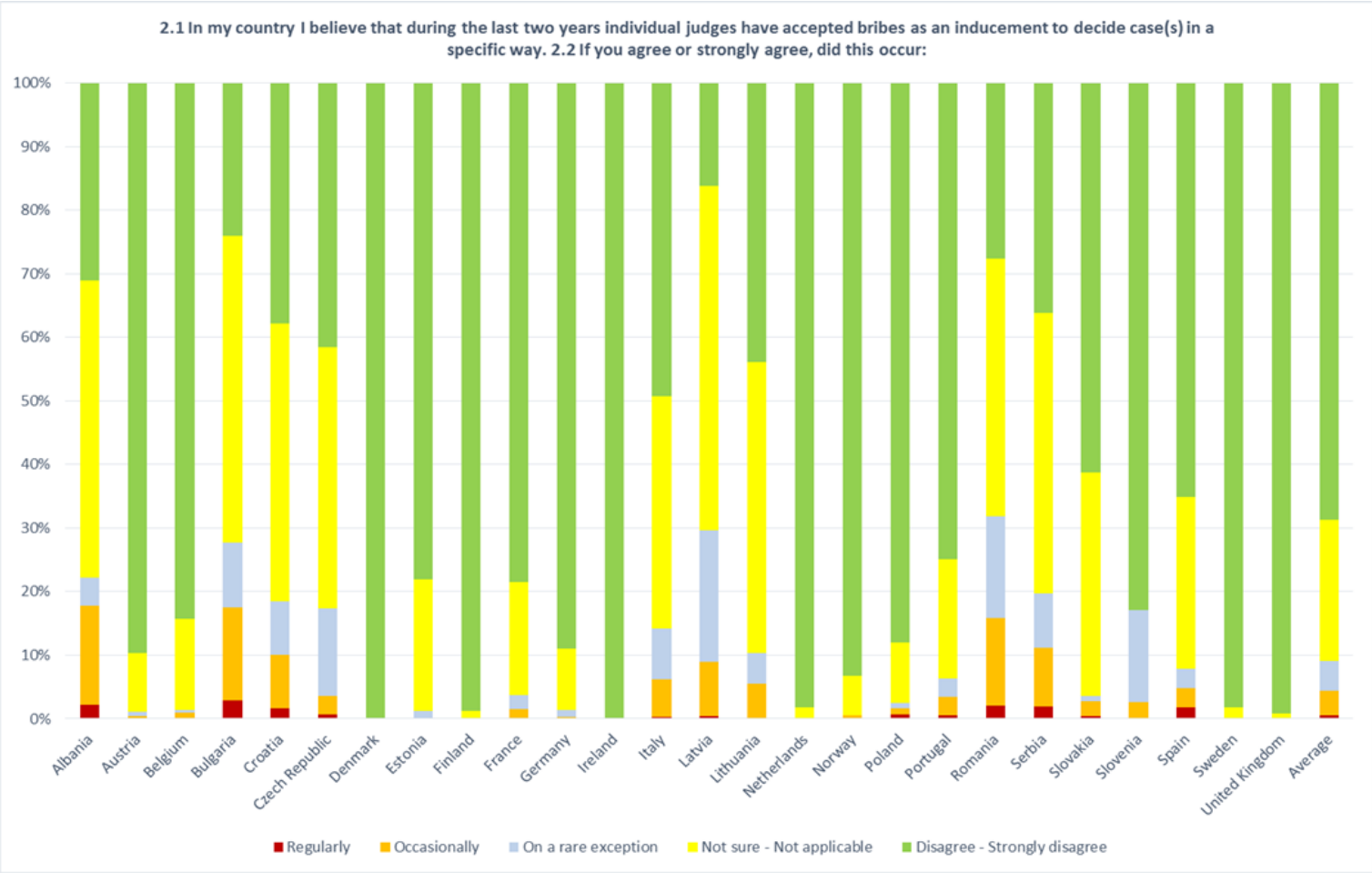■ Agree - Strongly agree   ■ Not sure - Not applicable   ■ Disagree - Strongly disagree
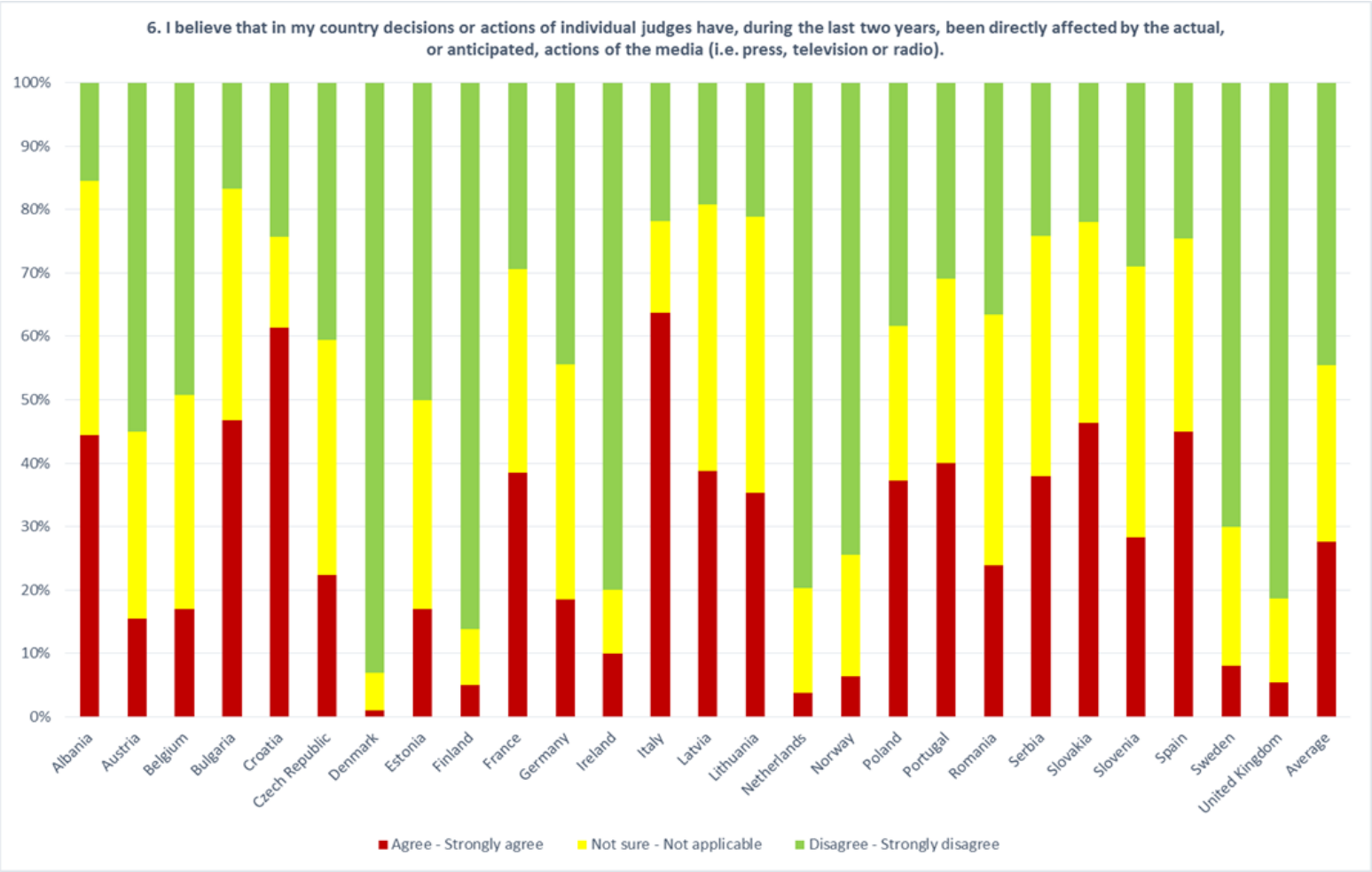
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Respect for the Judiciary

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

■ Disagree - Strongly disagree   ■ Not sure - Not applicable   ■ Agree - Strongly agree

Mechanisms available to Councils to defend judicial independence

8j. I believe that in my country the Council for the Judiciary has the approriate mechanisms and procedures in order to defend judicial independence effectively. *

Legend: ■ Disagree - Strongly disagree ■ Not sure - Not applicable ■ Agree - Strongly agree

Possibilities for improvement

1. Better working conditions regarding work load was mentioned most often (6,575 times)

2. Working conditions regarding pay including pensions and retirement age (5,737)

3. Appointment and promotion based on ability and experience in third place (5,241)
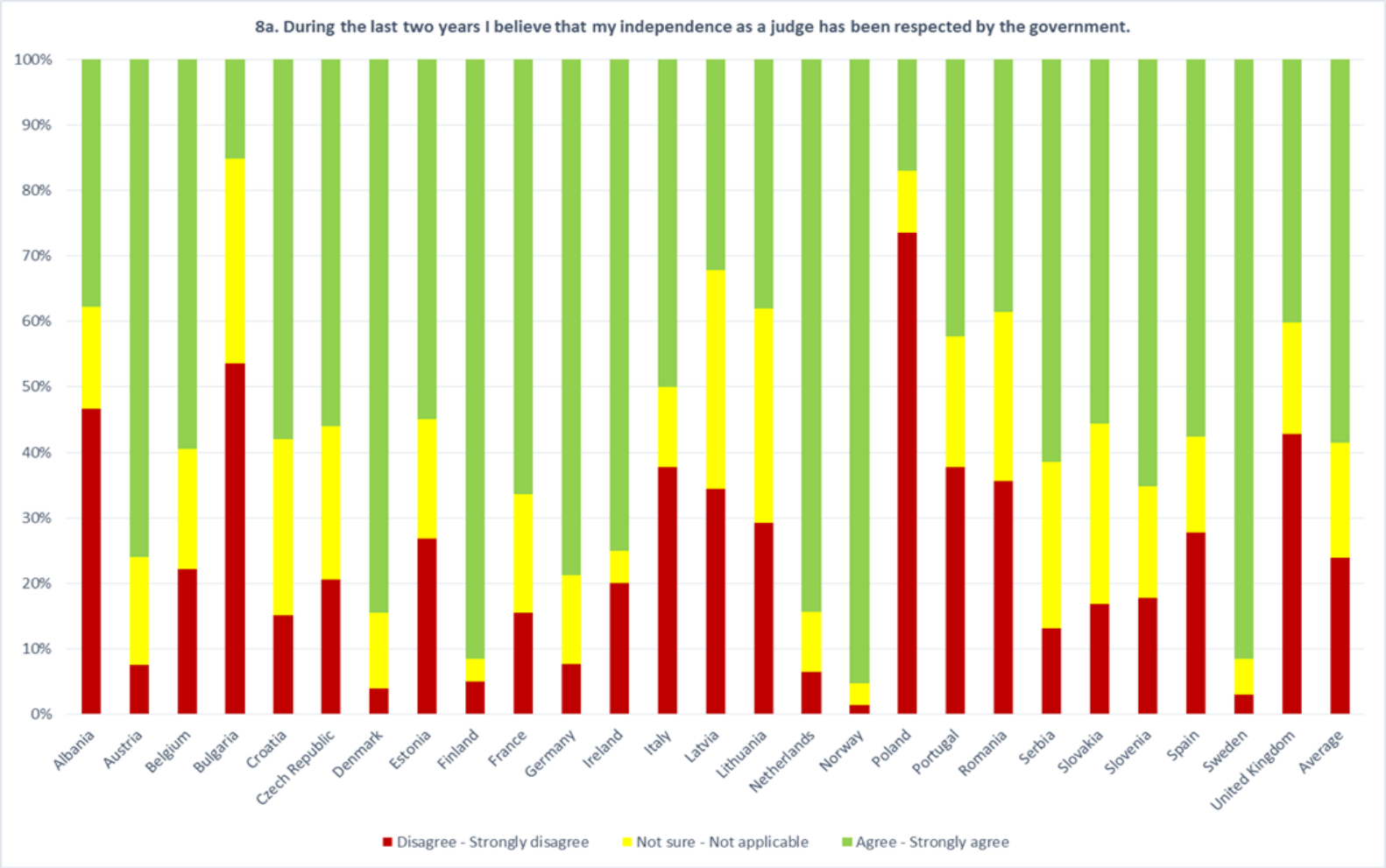
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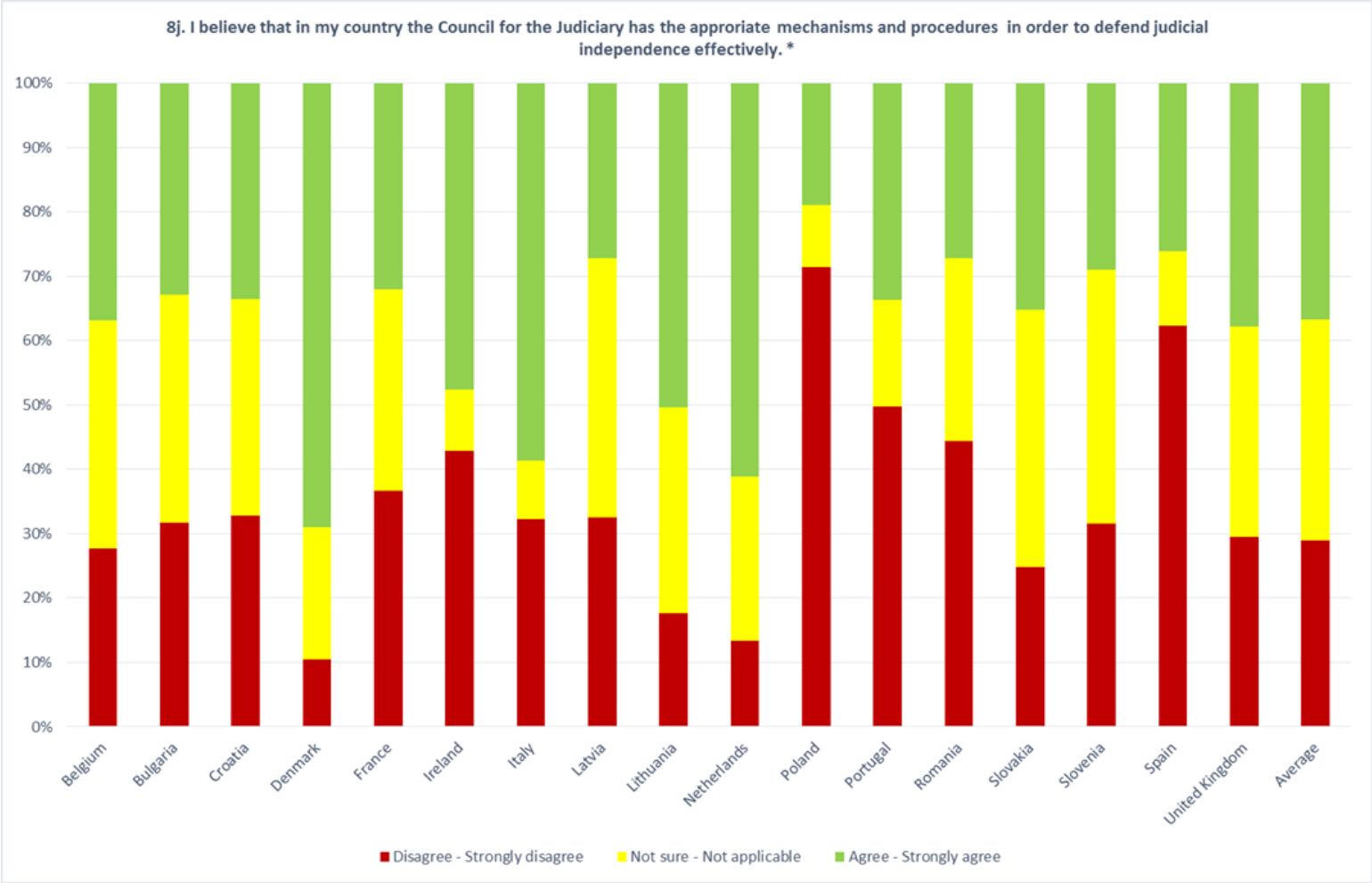de la Justice (RECJ)

Quality of the Judiciary

By Alain Lacabarats

Independence   Accountability

Quality

Quality of the Judiciary

- Logical follow-up: indicators for the quality of justice
- Objective of independent and accountable Judiciary is to produce quality justice for the citizens
- Extension of the Independende & Accountability project

Selected areas of quality of the Judiciary

1. Delivering judicial decisions
2. Adjudicating cases in a timely and effective manner
3. Guaranteeing due process from the perspective of accessibility
4. Providing public access to the law to guide society

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Delivering judicial decisions

Indicators:

- Reasoning of judgments
- Clarity of judgments
- Concise judgments
- Effective judgments
- Assessment of quality of judicial decisions

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Adjudicating cases in a timely and effective manner

Indicators:

- Standards for the duration of cases
- Authority of judges to determine procedures
- Summary procedures
- Digital case filing and digital procedures
- Specialization of courts and judges

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Guaranteeing due process from the perspective of accessibility

Indicators:

- Equality of arms: legal representation
- Equality of arms: funding and costs
- Commensurate effort of judges
- Transparency of proceedings
- Dealing with abusive conduct
- Availability of appeal
- Communication
- Access for people with disabilities

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Providing public access to the law to guide society

Indicators:

- Access to case law
- Opening up to the public
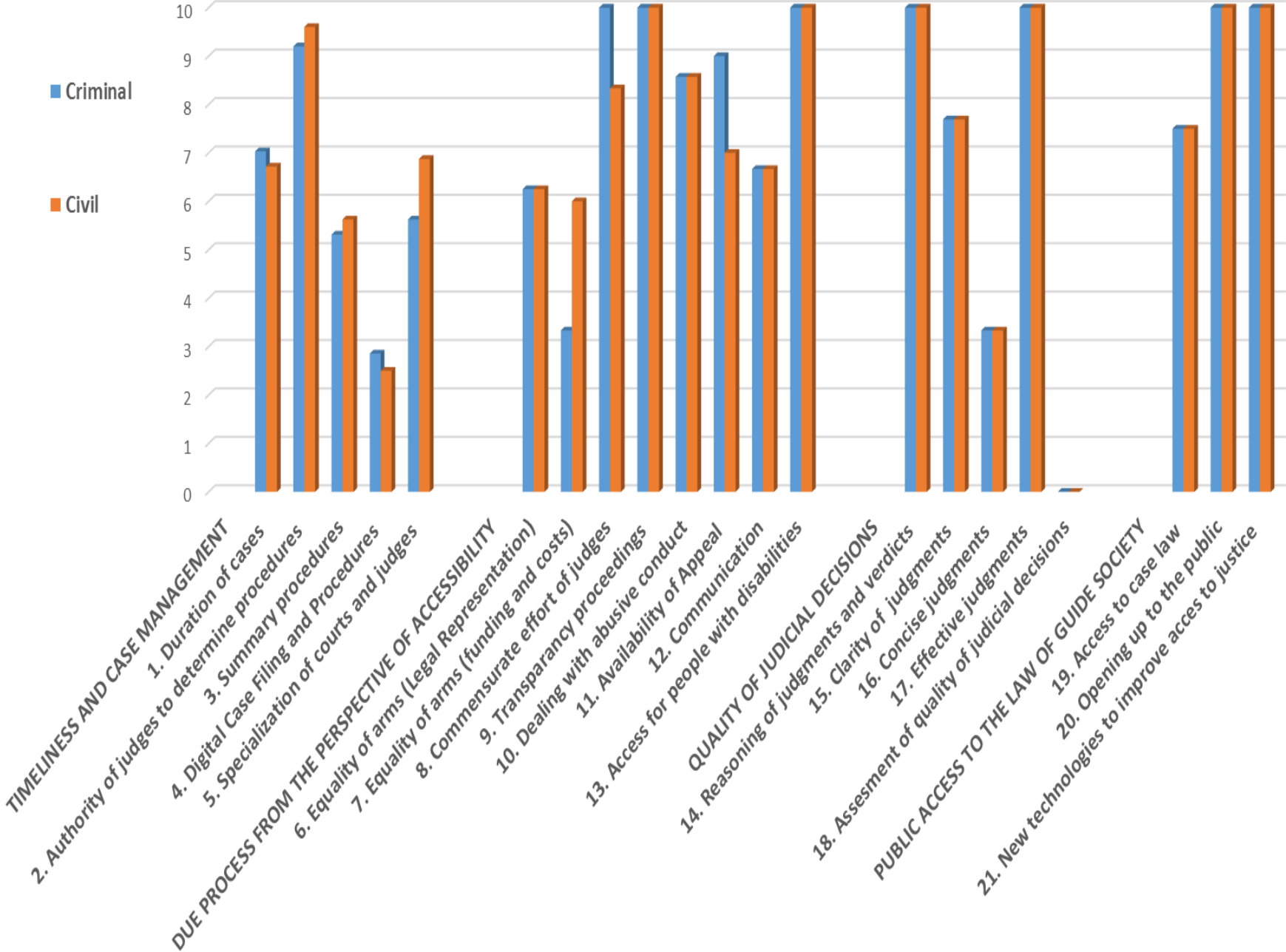- New technologies to improve access to justice

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Quality Pilot

by Simon Picken – England and Wales

England and Wales Quality Pilot 2017

Legend:
- Criminal (blue)
- Civil (orange)

X-axis categories:
- TIMELINESS AND CASE MANAGEMENT
- 1. Duration of cases
- 2. Authority of judges to determine procedures
- 3. Summary procedures
- 4. Digital Case Filing and Procedures
- 5. Specialization of courts and judges
- DUE PROCESS FROM THE PERSPECTIVE OF ACCESSIBILITY
- 6. Equality of arms (Legal Representation)
- 7. Equality of arms (funding and costs)
- 8. Commensurate effort of judges
- 9. Transparancy proceedings
- 10. Dealing with abusive conduct
- 11. Availability of Appeal
- 12. Communication
- 13. Access for people with disabilities
- QUALITY OF JUDICIAL DECISIONS
- 14. Reasoning of judgments and verdicts
- 15. Clarity of judgments
- 16. Concise judgments
- 17. Effective judgments
- 18. Assesment of quality of judicial decisions
- PUBLIC ACCESS TO THE LAW OF GUIDE SOCIETY
- 19. Access to case law
- 20. Opening up to the public
- 21. New technologies to improve acces to justice

			Criminal	Civil
TIMELINESS AND CASE MANAGEMENT				
1. Duration of cases			**7,0**	**6,7**
2. Authority of judges to determine procedures			**9,2**	**9,6**
3. Summary procedures			**5,3**	**5,6**
4. Digital Case Filing and Procedures			**2,9**	**2,5**
5. Specialization of courts and judges			**5,6**	**6,9**
DUE PROCESS FROM THE PERSPECTIVE OF ACCESSIBILITY				
6. Equality of arms (Legal Representation)			**6,3**	**6,3**
7. Equality of arms (funding and costs)			**3,3**	**6,0**
8. Commensurate effort of judges			**10,0**	**8,3**
9. Transparancy proceedings			**10,0**	**10,0**
10. Dealing with abusive conduct			**8,6**	**8,6**
11. Availability of Appeal			**9,0**	**7,0**
12. Communication			**6,7**	**6,7**
13. Access for people with disabilities			**10,0**	**10,0**

QUALITY OF JUDICIAL DECISIONS		
14. Reasoning of judgments and verdicts	10,0	10,0
15. Clarity of judgments	7,7	7,7
16. Concise judgments	3,3	3,3
17. Effective judgments	10,0	10,0
18. Assesment of quality of judicial decisions	0,0	0,0
PUBLIC ACCESS TO THE LAW OF GUIDE SOCIETY		
19. Access to case law	7,5	7,5
20. Opening up to the public	10,0	10,0
21. New technologies to improve acces to justice	10,0	10,0

Conclusions from pilot quality indicators

- It is doable and useful
- Refinements are necessary
- Resolve some conceptual issues

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Recommendations Independence & Accountability and Quality

By Kees Sterk - Council Member Netherlands Council for the Judiciary

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Recommendations I&A: Use of outcomes

To all councils and other governing bodies:

- Study the outcomes for your judiciaries
- **Set concrete priorities for change**
- Develop plans
- Inform the ENCJ about the plans
- Participate in ENCJ Dialogue Groups

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Recommendations I & A: Use of outcomes

To ENCJ:

Discuss and work on the challenges:

1. The lack of confidence of judges in appointment and promotion procedures

2. The relationships between the political system and the media, on the one hand, and the Judiciary, on the other hand;

3. The lack of insight into the experiences of court users.

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Recommendations I&A: Further development

- Next survey will be conducted in 2018/2019.
- External review first part of 2018:
  - Scientific community
  - Partners ENCJ
- conduct a survey among the lay judges of Europe
- Explore the need and possibilities for additional surveys

Recommendations Quality: further development of the system

- Refine the indicators: more precise concepts, definitions and explanations
- All members and observers Implement quality Indicators
- Take up other areas of quality
- Councils should take responsibility for quality of Justice!!

Overall conclusions

1. Councils should take responsibility for independence, accountability and quality

2. Indicators are for change, not for research

3. Moral leadership is needed