

# Independence of judges perceptions and indicators

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# Indicators and survey

Formal safeguards of independence	Perceived independence	Formal accountability
<ul style="list-style-type: none"> <li>• Legal basis of independence</li> <li>• Organizational autonomy</li> <li>• Funding</li> <li>• Management of court system</li> <li>• Human resource decisions about judges</li> <li>• Non-transferability of judges</li> <li>• Internal independence</li> </ul>	<ul style="list-style-type: none"> <li>• Independence as perceived by citizens</li> <li>• Trust in Judiciary, relative to trust in other state powers by citizens in general</li> <li>• Judicial corruption as perceived by citizens in general</li> <li>• Independence as perceived by court users</li> <li>• <b>Independence as perceived by judges</b></li> </ul>	<ul style="list-style-type: none"> <li>• Allocation of cases</li> <li>• Complaints procedure</li> <li>• Periodic reporting by the Judiciary</li> <li>• Relations with the press</li> <li>• External review</li> <li>• Code of Judicial ethics</li> <li>• Withdrawal and recusal</li> <li>• Admissibility of external functions and disclosure of external functions and financial interests</li> <li>• Understandable procedures</li> </ul>

# Policy questions

1. Do perceptions of citizens and judges differ about judicial independence?
2. Which aspects of judicial practice do judges consider important for their independence?
3. What is the relationship between perceived independence and formal safeguards?

# Methodology

Central variable: how independent are the judges in my country on a scale of 0 - 10 (question 13 of the survey)

Multiple regression analysis of relationships between this variable and:

- Views of aspects of independence from survey
- Indicators of independence and accountability (allocation of cases)

# Elaboration of method

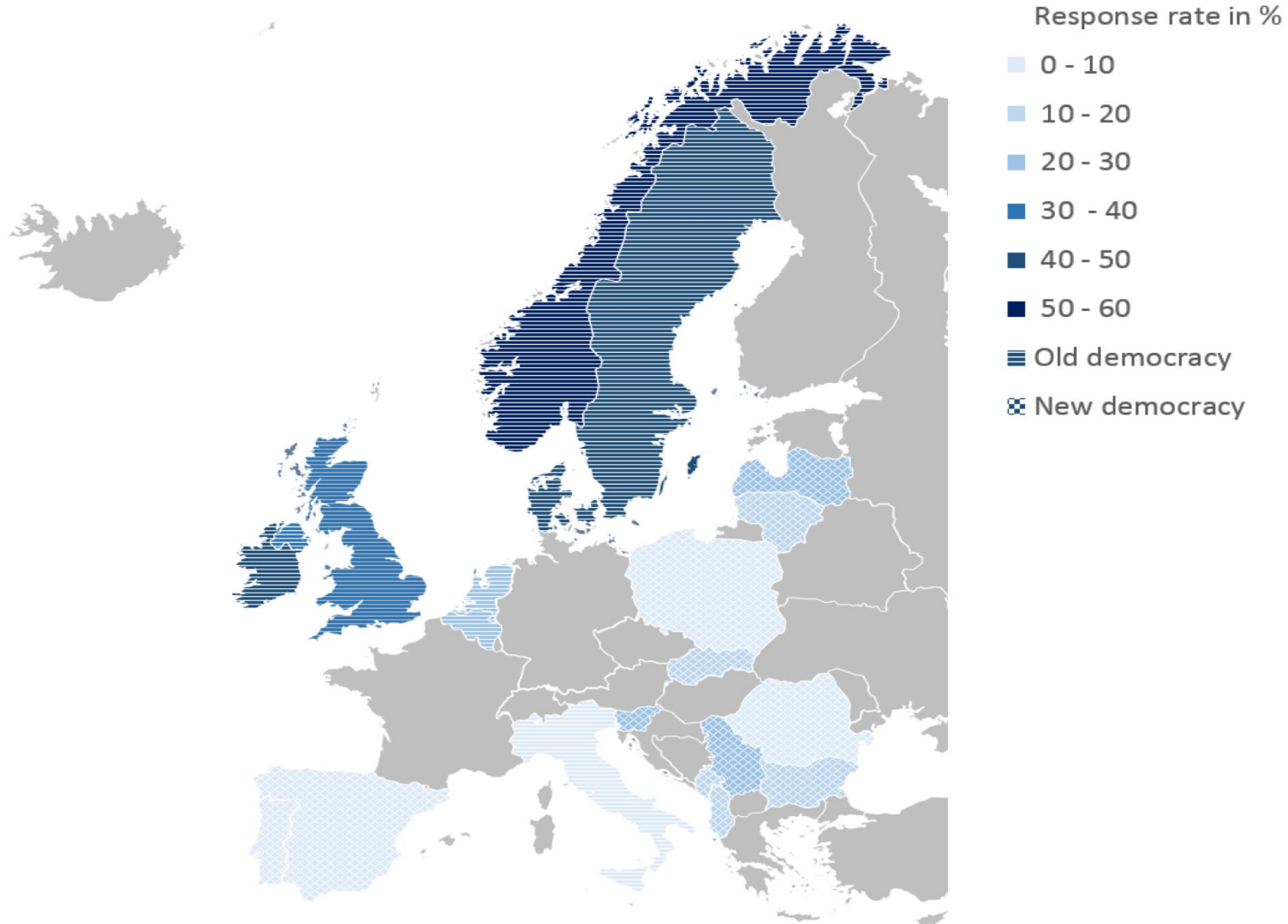
Perceived independence = f (aspects of independence, indicators as perceived)



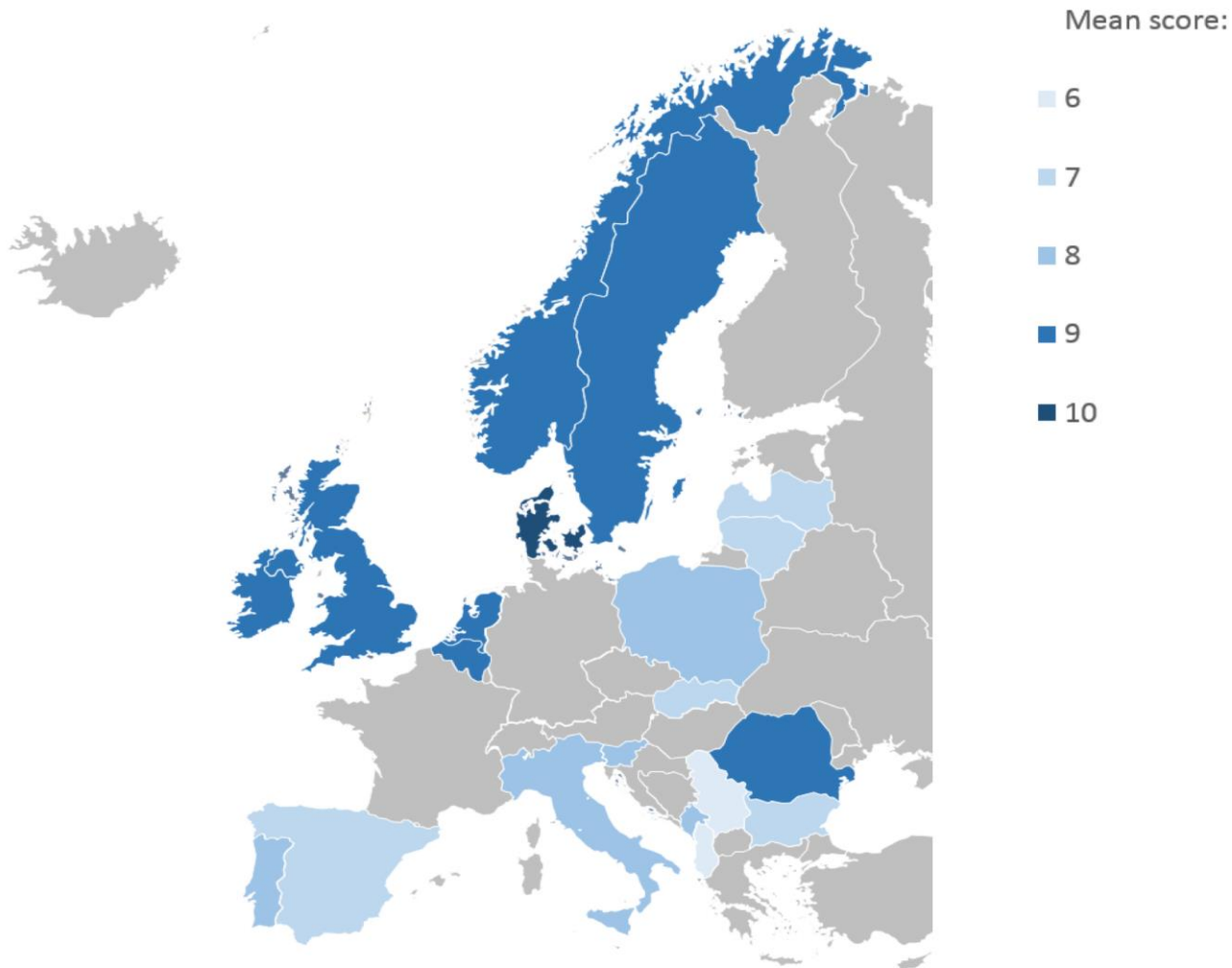
Actual independence = f (actual state, formal safeguards of aspects)

Actual independence is approximated by the views of judges!

# Survey: participation and response



# Independence of judges



# General observation

Answers differ for the “old” and “new” democracies:

- Outcomes of indicators and of survey differ

**More importantly:**

- Underlying mechanisms and relations are different

Definition of “old”: democracy right after WW II



# Do judges and citizens (dis)agree about actual judicial independence?

In essence they agree, but more so in “old” than in “new”:

	all	old	new
Score citizens	6.0	7.8	4.5
Score judges	8.1	8.9	7.1
Correlation	0.85	0.77	0.49
Number of countries	22	10	12

Note: scales of scores differ

# Which aspects of independence are important for judges?

Method: which aspects of survey correlate with the central variable?

	<b>“Old” democracies</b>	<b>“New” democracies</b>
<b>Three factors that have most impact</b>	Improper allocation of cases Pay, pension, retirement age Personal liability	Improper appointments Inappropriate pressure Media influence
<b>Insignificant factors</b>	Acceptance of bribes Disciplinary action Transfers	Transfers Guidelines by peers

Note: all other factors are significant

Conclusion: issues in “new” democracies are more existential

# What is the impact of formal safeguards?

Hypotheses:

1. Positive correlation:

strong safeguards → high actual independ

2. No connection;

strong safeguards may or may not be applied

3. Negative correlation:

low actual independ → strong safeguards

# What is the impact of formal safeguards really?

- Weak connections between survey and indicators, in general and per aspect
- Relationship found between perceived independence and:

	<b>“Old” democracies</b>	<b>“New” democracies</b>
<b>Formal legal position</b>	Not related	Positively related
<b>Financial arrangements</b>	Positively related	Not related
<b>Human resource decisions</b>	Not related	Positively related
<b>Case allocation</b>	Positively related	Positively related

# What is behind the limited effects?

Formal safeguards are unevenly distributed:

Indicator	Average score (%)		
	Total	'old'	'new'
<b>Legal basis of independence</b>	68	62	74
<b>Funding of the Judiciary</b>	52	59	47
<b>Human Resource decisions</b>	74	65	81
<b>Non transferability of judges</b>	81	75	86
<b>Internal independence</b>	79	82	77
<b>Allocation of cases</b>	70	58	79
<b>Organizational autonomy</b>	76	75	76
<b>Court management</b>	62	63	61

# Resistance against independence

	Percentage agree / strongly agree	
	'old'	'new'
During the last two years I believe that my independence as a judge has been respected by:		
- Government	55	41
- Parliament	51	42
- Court Management (including the president of the court)	84	81
- Council for the Judiciary	86	74
- Supreme Court	92	85
- Constitutional Court	89	73
- Association of Judges	89	85
- Media (i.e. press, television or radio)	48	26
- Social Media (for example Facebook, Twitter or LinkedIn)	42	26

Pattern is the same, but more extreme in “new”

# Conclusions

1. Perceived independence is a meaningful yardstick of actual judicial independence
2. Independence is about more fundamental issues in the “new” than in the “old” democracies, and judges see this
3. Strong formal legal position of judiciary supports perceived independence in “new”
4. Strong financial arrangements supports perceived independence in “old”

# Practical implications

- Indicators provide an essential framework
- Key issue is self-reporting: should external scrutiny be organized?
- Survey among judges is a very important tool
- Key issue is broadening of participation
- Survey among citizens should be repeated