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To Trust and to Be Trusted: Exploring Levels and Drivers of Trust in and Between Courts in the European Multilevel Judicial System

Monika Glavina*

Abstract

Recently, a research agenda emerged on trust between courts in Europe, predominantly in the context of the preliminary ruling procedure or the Protocol 16 to the European Convention on Human Rights (ECHR). However, little is known about how trust differs across the levels of judicial hierarchy in a complex multilevel judicial system such as Europe. Building on the insights from trust literature and based on empirical evidence from surveys and interviews conducted with Slovenian and Croatian judges, this article explores the divergences and drivers of trust in and between courts in Europe. More specifically, it explores reciprocal trust between first-instance, second-instance, Supreme Court and Constitutional Court judges in Slovenia and Croatia, as well as one-way trust of national judges in the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). The result show that courts are the most trusted among the political institutions and that the CJEU, the ECtHR and national Supreme Courts enjoy the highest levels of trust. Age, training in European law, knowledge of foreign languages and trust in national versus European institutions were found to be the most important drives of judicial trust in the CJEU and the ECtHR, while trust in national Supreme Courts and Constitutional Courts is driven by trust in national political institutions, age and type of court. The article also explores the concept of reciprocal trust and concludes that trust levels between the two courts in a reciprocal trust relationship are similar, which may suggest that trusting an actor in a reciprocal trust relationship may result in being trusted back.

Keywords: trust, courts, Europe, EU, CJEU, ECtHR, multilevel judicial governance, reciprocal trust.

1 Introduction

In a society governed by the rule of law, courts play an essential role. However, because the judiciary possesses ‘neither the purse nor the sword’ to enforce their decisions,¹ courts rely on (very often voluntary) public ac-

ceptance of and support for their role.² For this to happen, society expects citizens would make a ‘leap of faith’,³ that is, to trust in the judiciary. Citizens’ trust in courts not only increases their willingness to turn to courts but also their level of compliance with courts’ decisions. Trust between courts follows a similar logic. Trust in national and intra/supranational courts is an indispensable factor for cooperation and compliance with the law. An example is the preliminary ruling procedure under European Union (EU) law, which allows or, in some cases, requires national courts to send questions to the Court of Justice of the European Union (CJEU) on the interpretation and validity of EU law. Turning to the CJEU presupposes a certain level of trust in the supranational court.⁴ The same goes for national courts’ requests for an advisory opinion from the European Court of Human Rights (ECtHR) under Protocol 16, where, considering the low number of requests due to its very recent introduction, scholars portrayed the cooperation between the national courts and the ECtHR as being still in ‘a period of confidence building’.⁵ Yet, while public trust in courts has been extensively explored, especially in the US political science literature,⁶ this is less true for trust between courts.⁷ With notable

- 2 A. Wallace and J. Goodman-Delahunty, ‘Measuring Trust and Confidence in Courts’, 12 *International Journal for Court Administration* 3 (2021).
- 3 G. Möllering, *Trust: Reason, Routine, Reflexivity* (2006), at 111.
- 4 J.A. Mayoral Díaz-Asensio, ‘In the CJEU Judges Trust: A New Approach in the Judicial Construction of Europe’, 55 *Journal of Common Market Studies* 551 (2017); J.A. Mayoral Díaz-Asensio, ‘The Politics of Judging EU Law: A New Approach to National Courts in the Legal Integration of Europe’ (Thesis, European University Institute, 2013); M. Glavina, ‘To Refer or Not to Refer, That Is the (Preliminary) Question: Exploring Factors Which Influence the Participation of National Judges in the Preliminary Ruling Procedure’, 16 *Croatian Yearbook of European Law & Policy* 25 (2020).
- 5 L. Glas and J. Krommendijk, ‘A Strasbourg Story of Swords and Shields: National Courts’ Motives to Request an Advisory Opinion from the ECtHR under Protocol 16’, 3 *European Convention on Human Rights Law Review* 311 (2022).
- 6 W.F. Murphy and J. Tanenhaus, ‘Public Opinion and the United States Supreme Court – Mapping of Some Prerequisites for Court Legitimation of Regime Changes’, 2 *Law & Society Review* 357 (1967); W.F. Murphy and J. Tanenhaus, ‘Public Opinion and Supreme Court: The Goldwater Campaign’, 32 *Public Opinion Quarterly* 31 (1968); J.H. Kessel, ‘Public Perceptions of the Supreme Court’, 10 *Midwest Journal of Political Science* 167 (1966); R.H. Durr, A.D. Martin & C. Wolbrecht, ‘Ideological Divergence and Public Support for the Supreme Court’, 44 *American Journal of Political Science* 768 (2000).
- 7 Although research on citizens’ trust in courts is still much less present in Europe than in the US. See P. Popelier, M. Glavina, E. van Zimmeren &

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1 M. Callens and G. Bouckaert, *A Study on the Relationship between Effective Justice Institutions, Rule of Law and Trust in Justice* (2015), Internal report.

exceptions by Mayoral,⁸ Glavina and van Zimmeren,⁹ and Popelier et al.,¹⁰ exploring trust between courts in Europe has been limited, both theoretically and empirically. This is surprising as the European multilevel system of governance provides a more complex case study. The EU operates on at least two levels: the national one and the Union one.¹¹ In addition, all Member States of the EU are also signatory states to the European Convention on Human Rights (ECHR) and the Council of Europe (CoE) Treaty, which puts them under the jurisdiction of the ECtHR. This results in a complex and layered judicial system: with national judicial hierarchy, two supranational courts – the European Court of Justice (ECJ) and the General Court (GC) – and a regional human rights court – the ECtHR. There has been extensive research conducted on the conflicts and cooperation between the CJEU and ECtHR,¹² as well as between EU Member States' courts and the ECJ,¹³ most commonly in the context of the preliminary ruling procedure. However, what is the role of trust in this relationship is not yet entirely clear.

Why is research on trust between courts important, especially in a complex multilevel judicial system such as Europe? Looking at the EU judicial system of governance, the CJEU appears as an apex court at the top of the judicial hierarchy. On the one hand, the decisions of the CJEU are binding in their entirety for all national courts across all 27 EU Member States. Following the legal mandates that the CJEU developed for its national counterparts is necessary for the effective functioning of the Union's legal system. On the other hand, national courts (especially national Constitutional Courts) have at times issued noncompliance threats or established conditions under which the CJEU's jurisprudence will be respected. This includes the respect for fundamental

rights,¹⁴ the rule of law and national constitutional identity.¹⁵ These dynamics between the national and the EU Court created, in the words of Hinarejos, a system that rests upon the respect that national courts are willing to grant the CJEU and, in turn, their perception of the proper functioning of the CJEU as the EU's apex court.¹⁶ The result is a multilevel system of enforcement in which the CJEU depends on national courts' collaboration¹⁷ and in which national courts accept guidance from the CJEU.¹⁸

In such a system, trust acts as a salient structural factor in the functioning of the EU judicial system¹⁹ and is increasingly gaining attention in EU debates, especially at times when the CJEU is being repeatedly challenged by national courts.²⁰ The recent rule-of-law debates have jeopardised the proper functioning of the principle of mutual trust, whereby national courts of one Member State may refuse to execute the European Arrest Warrant out of distrust in the independence of other Member States' courts.²¹ Similarly, looking at the two regional courts, the CJEU and the ECtHR, the aftermath of the Opinion 2/13 and the (second) failed attempt of the EU's accession to the ECHR²² revealed tensions between the two courts and the CJEU's growing distrust in the ECtHR. This was especially visible from the official contacts between the CJEU and ECtHR, which only resumed in March 2016, whereby they would normally occur once or twice a year.²³

In light of such developments, trust between courts can serve as a factor that brings closer cooperation between the courts and better compliance with the law. Trust may encourage cooperation between the courts – wheth-

- G. Gentile, 'A Research Agenda for Trust and Distrust in a Multilevel Judicial System', 29 *Maastricht Journal of European and Comparative Law* (2022); M. Glavina, 'Trust in and between Courts in the Changing World of the 21st Century', 17 *Erasmus Law Review* 1 (2024).
- 8 Mayoral Díaz-Asensio (2017), above n. 4.
- 9 Glavina (2020), above n. 4; M. Glavina and E. van Zimmeren, 'Trust in Courts and Judicial Systems: A Conceptual and Methodological Review', in F. Six, J. Hamm, D. Latusek, E. van Zimmeren and K. Verhoest (eds.), *Handbook on Trust in Public Governance* (Edward Elgar Publishing Ltd, forthcoming 2024).
- 10 Popelier et al. (2022), above n. 7.
- 11 Federal countries such as Germany and Belgium add an additional level of complexity.
- 12 L. Garlicki, 'Cooperation of Courts: The Role of Supranational Jurisdictions in Europe', 6 *International Journal of Constitutional Law* 509 (2008); A. Voßkuhle, 'Multilevel Cooperation of the European Constitutional Courts: Der Europäische Verfassungsgerichtsverbund', 6 *European Constitutional Law Review* 175 (2010); T. Lock, 'The ECJ and the ECtHR: The Future Relationship between the Two European Courts', 8 *The Law & Practice of International Courts and Tribunals* 375 (2009).
- 13 A. Stone Sweet and T.L. Brunell, 'The European Court and the National Courts: A Statistical Analysis of Preliminary References, 1961–95', 5 *Journal of European Public Policy* 66 (1998); C.J. Carrubba and L. Murrain, 'Legal Integration and Use of the Preliminary Ruling Process in the European Union', 59 *International Organization* 399 (2005); G. Tridimas and T. Tridimas, 'National Courts and the European Court of Justice: A Public Choice Analysis of the Preliminary Reference Procedure', 24 *International Review of Law and Economics* 125 (2004).

- 14 For example, the German Federal Constitutional Court's (GFCC) acceptance of EU law's supremacy under the condition of the Court's imposing sufficient safeguards for the protection of fundamental rights. The case law known as the Solange doctrine. See BVerfGE 37, 271 2 BvL 52/71 Solange I-Beschluß; 29 May 1974.
- 15 For example, the GFCC's judgment concerning the Treaty of Lisbon, BVerfG, 2 BvE 2/08, 30 June 2009.
- 16 A. Hinarejos, *Judicial Control in the European Union: Reforming Jurisdiction in the Intergovernmental Pillars* (2009), in J.A. Mayoral, 'Impact through Trust: The CJEU as a Trust-Enhancing Institution', in M. Wind (ed.), *International Courts and Domestic Politics* 160 (2017).
- 17 Mayoral, above n. 16.
- 18 See the theoretical discussions on the team model of judicial behaviour. L.A. Kornhauser, 'Judicial Organization & Administration', in B. Bouckaert and G. de Geest (eds.), *Encyclopedia of Law and Economics* 27 (2000); A. Dyevre, M. Glavina & A. Atanasova, 'Who Refers Most? Institutional Incentives and Judicial Participation in the Preliminary Ruling System', 27 *Journal of European Public Policy* 912 (2019); Glavina (2020), above n. 4.
- 19 Mayoral, above n. 16.
- 20 Z. Wanat, 'Court Ruling Puts Poland on a Collision Course with the EU's Legal Order', *POLITICO* (Brussels, 7 October 2021), <https://www.politico.eu/article/poland-european-union-constitution-justice-treaties/> (accessed 28 October 2024).
- 21 P. Popelier, G. Gentile & E. Van Zimmeren, 'Bridging the Gap between Facts and Norms: Mutual Trust, the European Arrest Warrant and the Rule of Law in an Interdisciplinary Context', 27 *European Law Journal* 167 (2021); U. Jaremba and J. Krommendijk, 'How Much Trust in Times of Distrust: National Courts, the ECJ and Criminal Cooperation in an Era of Rule-of-Law Backsliding', 17 *Erasmus Law Review* 1 (2024).
- 22 Opinion 2/13 on EU Accession to the ECHR, 8 December 2014.
- 23 L.R. Glas and J. Krommendijk, 'From Opinion 2/13 to Avotiņš: Recent Developments in the Relationship between the Luxembourg and Strasbourg Courts', 17 *Human Rights Law Review* 567 (2017).

er in the context of the preliminary ruling procedure or EAW – even when there are no legal or political incentives to do so. Think of no legal obligation for lower national courts to refer questions to the CJEU. Trust may also help resolve judicial clashes.²⁴ Think of a potential competition between the CJEU and the ECtHR for referrals from national courts either under the preliminary ruling procedure or Protocol 16. This may be resolved if both courts trust that the other court will not overstep its powers and jurisdiction. There is also the situation of national courts encountering an opposing decision from the CJEU and their national Constitutional Court. National courts' trust in the CJEU may reduce the harmful consequences of competition between judicial bodies.²⁵ Yet, it is also true that we know very little about trust in courts in a complex multilevel judicial system such as Europe. Do national courts trust the CJEU and the ECtHR? Do they trust each other? Do national courts trust their Supreme Courts more than their Constitutional Courts? And to what extent is trust in national courts a driver of trust in supra/international courts? The present article aims to answer these questions by exploring trust in and between courts in the EU multilevel system of governance. More specifically, the article uncovers the variations in the level of trust between national courts (first-instance, second-instance, Supreme Courts and Constitutional Courts) (*reciprocal trust*) as well as the levels of trust of national courts in two regional courts in the EU: the CJEU and the ECtHR (*one-way trust*). In addition, the article borrows from trust literature with respect to the drivers of institutional trust and offers empirical evidence into the levels and drivers of trust between courts in the EU.

This article is organised as follows. Building on insights from trust literature and the literature on European judicial politics, Section 2 introduces a theoretical framework on trust in and between courts in the EU multilevel system of governance. Section 3 introduces the article's methodology. The present study builds on survey results with 485 judges and interview results with 34 judges from all court instances in Slovenia and Croatia. Section 4 introduces the results and is divided into two parts. The first part focuses on the one-way trust, that is, trust of national courts in the CJEU and the ECtHR. The reason why this part explores one-way trust rather than reciprocal trust is due to unavailability of data on the trust of the CJEU and the ECtHR judges in their national counterparts. This section makes use of survey and interview results and explores the variations in, and drivers of, national courts' trust in the two European courts. The second part moves to the concept of reciprocal trust between the courts in the national judicial hierarchy. More specifically, it offers explanation for the variations of trust between first-instance courts, second-instance courts, the Supreme Court and the Constitutional Court in Slovenia and Croatia. The final section concludes and offers recommendations for future research.

24 Mayoral, above n. 16.

25 *Ibid.*

The added value of this article is threefold. First, this article is a rare contribution that explores trust between courts. Citizens' trust in courts has been covered by numerous data sources and scholarly works. Yet, outside of the principle of mutual trust and criminal justice and apart from works by Mayoral²⁶ and Glavina,²⁷ trust between courts in Europe is still an underexplored topic. Second, this article borrows from the trust literature, specifically the literature on the institutional trust, and offers a theoretical framework for exploring trust between courts. Finally, the article makes an empirical contribution to legal and political science literature in Europe by exploring the variations and drivers of trust in and between courts.

2 Conceptualising Trust in and Between Courts in the EU Multilevel Judicial System

Trust has been studied by many different disciplines, which has, throughout the years, resulted in many different definitions of trust. The most widely accepted definition that this article also builds on is that offered by Rousseau et al., who defined trust as 'a psychological state comprising the intention to accept vulnerability based upon the positive expectations of the intentions or behaviour of another'.²⁸ Building on Rousseau et al.'s definition, Möllering developed it further to include one's decision to trust and the associated risk, defining trust as 'an ongoing process of building on reason, routine and reflexivity, suspending irreducible social vulnerability and uncertainty as if they were favourably resolved, and maintaining thereby a state of favourable expectation towards the actions and intentions of more or less specific others'.²⁹ Different definitions of trust, however, have the following elements in common. First, trust *involves the assessment of the other party's trustworthiness*. Mayer et al.'s ABI model is the most commonly used in that respect, referring to the competences of the other party to successfully complete its tasks (Ability), belief that the other party cares about one's interests and needs (Benevolence) and belief that the other party will act in a just and fair way (Integrity).³⁰ The second element of trust is determined by trustors' personality itself, that is, their *predisposition or propensity to trust others*.³¹

26 Mayoral Díaz-Asensio (2017), above n. 4.

27 Glavina (2020), above n. 4.

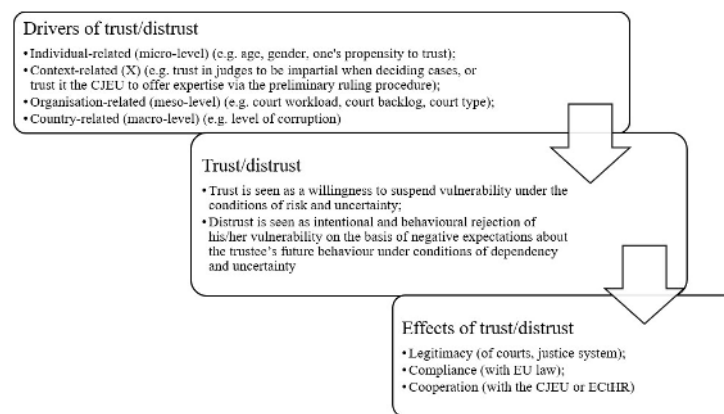
28 D.M. Rousseau, S. Sitkin, R.S. Burt & C.F. Camerer, 'Not So Different after All: A Cross-Discipline View of Trust', 23 *Academy of Management Review* 393, at 395 (1998).

29 Möllering, above n. 3, at 111.

30 R.G. Mayer, J.H. Davis & F.D. Schoorman, 'An Organizational Model of Organizational Trust', 20 *Academy of Management Review* 709 (1995).

31 *Ibid.*

Figure 1 Conceptualising (One-Way) Trust



Third, engaging in a trust relationship presupposes one's *willingness to suspend vulnerability* under the conditions of risk and uncertainty.³² Fourth, trust is a *relational concept*, meaning that one actor (trustor) trusts another one (trustee) with respect to a certain future behaviour (in other words, A trusts B to do X).³³ Finally, trust is a *context-specific concept*. This means that the trust relationship between A and B depends on whether actors involved are individuals (e.g. citizen, judge), organisations (e.g. parliament, court) or systems (e.g. political, judicial system).³⁴ The final element is a relatively new one and concerns the *relationship between trust and distrust*. While the dominant view until the 1990s was that distrust is a mirror opposite of trust,³⁵ recent scholarly efforts agree that trust needs to be distinguished from distrust, both conceptually and methodologically. Distrust is no longer seen as a mere absence of trust but rather as trustor's 'intentional and behavioural rejection of his/her vulnerability on the basis of negative expectations about the trustee's future behaviour under conditions of dependency and uncertainty'.³⁶

Trust relationship involves two parties: a trustor and a trustee. To identify these, trust literature organises both actors on three levels. First, there are three levels of trustor that can be identified: trustors as individuals (trust by an individual person or an individual judge), as organisations (the aggregated degree of trust shared by the members of an organisation, such as by all judges in one court) and as community (the aggregate degree of trust shared by all members of a community, such as the LGBTI+ community). There are also three levels of trustees: individuals (trust towards a specific person such as

one's neighbour, or a specific judge), organisations (trust towards a specific organisation, such as a country's Supreme Court) and systems (trust towards a system, such as a country's justice system or the EU [political or judicial] system).

Looking at the existing research on trust in courts in Europe, most attention has been given to individuals in their role as trustors. Most of the research in that respect is focused on citizens' trust in police officers,³⁷ criminal courts and criminal justice.³⁸ Some of the large-scale longitudinal surveys such as the EURO-JUSTIS Project³⁹ and the European Social Survey (ESS)⁴⁰ are also limited to citizens' trust in criminal justice. When it comes to citizens' trust in the EU multilevel system, Kelemen's study reveals that CJEU is by far the most trusted institution in Europe. In fact, citizens' trust levels in the CJEU are consistent and relatively stable and do not seem to decrease in response to the CJEU's controversial rulings.⁴¹

Besides exploring trends in citizens' trust in courts and justice, many of these studies aim to identify drivers of trust. These include, among others, one's identifying features (i.e. age, gender, place of residence),⁴² status (i.e. income, education, employment, relationship sta-

32 Möllering, above n. 3.

33 R. Hardin, *Trust and Trustworthiness* (2002); Bart Nooteboom, *Trust: Forms, Foundations, Functions, Failures, and Figures* (2002).

34 Popelier et al. (2022), above n. 7.

35 S.B. Sitkin and K.M. Bijlsma-Frankema, 'Distrust', in R.H. Searle, A.M.I. Nienaber & S.B. Sitkin (eds.), *The Routledge Companion to Trust 1939* (2018).

36 Popelier et al. (2022), above n. 7, at 358 based on P. Oomsels, M. Callens, J. Vanschoenwinkel & G. Bouckaert, 'Functions and Dysfunctions of Inter-organizational Trust and Distrust in the Public Sector', 51 *Administration & Society* 516 (2019); S. Van De Walle and F. Six, 'Trust and Distrust as Distinct Concepts: Why Studying Distrust in Institutions Is Important', 16 *Institutions and Governance in Comparative Policy Analysis Studies* 158 (2020).

37 M. Hough, 'Researching Trust in the Police and Trust in Justice: A UK Perspective', 22 *Policing and Society* 332 (2012); M. Hough, J. Jackson & B. Bradford, 'The Drivers of Police Legitimacy: Some European Research', 8 *Journal of Policing, Intelligence and Counter Terrorism* 144 (2013).

38 R. Sicurella, 'Fostering a European Criminal Law Culture: In Trust We Trust', 9 *New Journal of European Criminal Law* 308 (2018); A. Röder and P. Mühlau, 'What Determines the Trust of Immigrants in Criminal Justice Institutions in Europe?' 9 *European Journal of Criminology* 370 (2012); J. Jackson, M. Hough, B. Bradford, T. Pooler, K. Hohl & J. Kuha, *Trust in Justice: Topline Results from the Round 5 of the European Social Survey* (2011), ESS Topline Results Series.

39 M. Hough and M. Sato, 'Trust in Justice: Why It Is Important for Criminal Policy, and How It Can Be Measured', Final report of the Euro-Justis project, Publication Series No. 70.

40 Jackson et al., above n. 38.

41 R.D. Kelemen, 'The Political Foundations of Judicial Independence in the European Union', in S.K. Schmidt and D.R. Kelemen (eds.), *The Power of the European Court of Justice* 16 (2014).

42 C. Arnold, E. Sapir & G. Zapryanova, 'Trust in the Institutions of the European Union: A Cross-Country Examination', Beyond Euro-Skepticism: Understanding Attitudes towards the EU', *European Integration Online Papers* (2012), Special Mini.

tus),⁴³ beliefs (religion, political preferences, ideology),⁴⁴ past experiences (with courts or justice systems), as well as one's interpersonal trust (also known as 'particularised trust'), that is, trust in other citizens.⁴⁵ One's previous experience with courts and justice system is an interesting driver of trust, as it points out to the role of the boundary spanner, where experience with one court shapes citizens' perception of other courts or the justice system as a whole.⁴⁶ Similarly, citizens' trust in international and supranational courts is found to be correlated with trust in their national courts. Research shows that individuals who trust their national courts are also more likely to trust regional and international courts, such as the International Criminal Court (ICC), the International Court of Justice (ICJ)⁴⁷ and the CJEU.⁴⁸ Similar goes to the international organisations with which these courts are associated. For example, citizens who trust the EU are also more likely to trust the CJEU.⁴⁹

While the section above focused primarily on explaining *one-way trust* – whereby citizens are the trustors in the trust relationship – exploring trust between courts requires looking at judges (or courts) as both trustors and trustees. Important to note in that respect is that trust between courts and judges is inherently different from citizens' trust in courts for several reasons. First, because an average citizen seldom interacts with courts, they may have a rather abstract understanding of courts, especially the supra/international ones such as the CJEU and the ECtHR. Judges, by contrast, may have a more concrete understanding of what other courts do, yet their interactions with other national or supra/international courts may differ. In that sense, judicial experience with these courts or European law in general may be a useful driver of trust to explore. Moreover, while the trust relationship between lower national courts and apex courts, or between national and supra/international courts, is hierarchical (similar to what we see in the case of citizens' trust in courts), the trust relationship between the courts of the same level is one between peers.

When it comes to trust between judicial actors in the EU, the concept of *reciprocal trust* comes into play.⁵⁰ This ap-

proach to trust focuses on the interaction within the dyad, where two actors cooperate and interact as they build trust. It was first developed by Korsgaard, who conceptualised it as 'a dynamic process that describes the evolution of trust between two parties'.⁵¹ This process, according to Korsgaard, consists of repeated cycles of trust and voluntary exchanges, in which trust emerges and builds.⁵² Oomsels and Bouckaert further developed this idea, while also incorporating Möllering's concept of a leap of faith.⁵³ Based on the model, actor A acts based on their perception of actor B's trustworthiness. If a conclusion to trust is made, actor A makes a leap of faith and suspends vulnerability, which ultimately results in an observable risk-taking behaviour. Once actor B observes this change in the behaviour, they too will develop a positive perception of actor A's trustworthiness, bringing to leap of faith and risk-taking. In that sense, the two actors are caught in a self-reinforcing virtuous cycle of ever-increasing trust.⁵⁴

Exploring the relationship between the courts in the EU multilevel judicial system has most commonly been captured under the terms such as 'judicial cooperation' or 'dialogue', with the preliminary ruling procedure between national courts and the CJEU as the most commonly discussed relationship.⁵⁵ The question of what drives the number of referrals to the CJEU has been capturing scholars' attention for almost three decades. This has been attributed to several factors: from intra-EU trade⁵⁶ to public opinion about EU integration.⁵⁷

43 S. Machura, T. Love & A. Dwight, 'Law students' trust in the courts and the police', 42 *International Journal of Law, Crime and Justice* 287 (2014).

44 G.A. Caldeira and J.L. Gibson, 'The Legitimacy of the Court of Justice in the European Union: Models of Institutional Support', 89 *American Political Science Review* 356 (1995); Arnold et al., above n. 42.

45 A. Baier, 'Trust and Antitrust', 96 *Ethics* 231 (1986); Hardin, above n. 33; K.S. Cook, R. Hardin & M. Levi, *Cooperation without Trust?* (2005); T. Yamagishi and M. Yamagishi, 'Trust and Commitment in the United States and Japan', 18 *Motivation and Emotion* 129 (1994).

46 Popelier et al. (2022), above n. 7; Glavina and van Zimmeren, above n. 9.

47 Arnold et al., above n. 42; Erik Voeten, 'Public Opinion and the Legitimacy of International Courts', 14 *Theoretical Inquiries in Law* 411 (2013).

48 Mayoral Díaz-Asensio (2017), above n. 4; Glavina (2020), above n. 4.

49 Arnold et al., above n. 42.

50 Reciprocal trust is different from the principle of mutual trust, a legal principle developed by the CJEU, which presupposes the existence of mutual trust between the Member States as well as between Member States' authorities such as courts. In criminal law, the principle facilitates the surrender of sentenced or suspected persons among the EU Member States and, therefore, the execution of the European Arrest Warrant (EAW). And while the principle has been widely discussed in legal scholarship, refer-

ences to the trust literature or empirical insights into mutual trust are rare. See Popelier et al., above n. 21; Jaremba and Krommendijk, above n. 21.

51 M. Audrey Korsgaard, 'A Reciprocal Trust: A Self-Reinforcing Dynamic Process', in M. Audrey Korsgaard (ed.), *The Routledge Companion to Trust* 15 (2018).

52 *Ibid.*

53 P. Oomsels and G. Bouckaert, 'Studying Interorganizational Trust in Public Administration: A Conceptual and Analytical Framework for "Administrational Trust"', 37 *Public Performance & Management Review* 577 (2014).

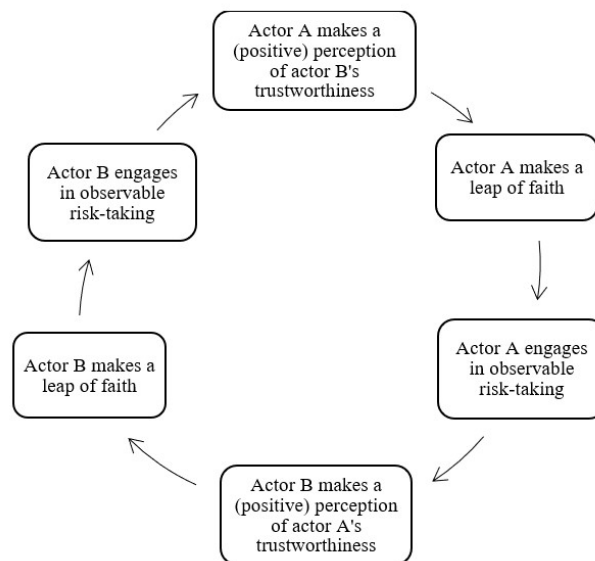
54 D. Levi-Faur et al., 'Report on Trust in Government, Politics, Policy and Regulatory Governance: Deliverable D1. 1' (Hebrew University of Jerusalem 2020), <https://www.tigre-project.eu/tigre-library/> (accessed 18 January 2024).

55 Much less has been written on the relationship between the national courts and the ECtHR. See Glas and Krommendijk (2022), above n. 5.

56 A. Stone Sweet and T.L. Brunell, 'The European Court and the National Courts: A Statistical Analysis of Preliminary References, 1961-95', 5 *Journal of European Public Policy* 66 (1998); N. Lampach and A. Dyevre, 'Choosing for Europe: Judicial Incentives and Legal Integration in the European Union', 50 *European Journal of Law and Economics* 65 (2019).

57 W. Mattli and A.M. Slaughter, 'Revisiting the European Court of Justice', 52 *International Organization* 177 (1998); Carrubba and Murrah, above n. 13; M. Vink, M. Claes & C. Arnold, *Explaining the Use of Preliminary References by Domestic Courts in EU Member States: A Mixed-Method Comparative Analysis* (2009).

Figure 2 Conceptualising Reciprocal Trust



Source: Oomsels and Bouckaert.⁵⁸

58 Oomsels and Bouckaert, above n. 53.

Contributions that link the referral rates to national courts' trust in the CJEU are still rare. One of the pioneers in the field is Mayoral who was the first to borrow from the trust literature, defining trust in the CJEU as 'national judges' belief about whether the CJEU will follow an expected course of action under conditions of uncertainty'.⁵⁹ Mayoral makes use of several elements of trust that were introduced above, including the assessment of one's trustworthiness, willingness to accept vulnerability and looking at trust as a relational and context-specific concept. For example, he defines the trustworthiness of the CJEU as the ability to fulfil the role ascribed to the Court by EU Treaties law such as Article 267 Treaty on the Functioning of the European Union (TFEU) on the preliminary ruling procedure. Mayoral offers theoretical and empirical insight into the role of trust as a functional principle that encourages national courts' participation in the preliminary ruling procedure, a finding that was later empirically confirmed by Glavina.⁶⁰ Based on survey results with national judges, Glavina demonstrates that judges who exhibit higher trust in the CJEU are more likely to send preliminary questions to the Luxembourg Court. Her finding further shows that national judges are more likely to request a preliminary ruling when they exhibit higher trust in EU institutions: the European Parliament, the Commission and the Council of the EU. By contrast, higher trust in national institutions (national Supreme Courts and Constitutional Courts, the Parliament and the Ministry of Justice) is connected to lower propensity to refer.⁶¹ This is contrary to the studies on citizens' trust (see above) where citizens' trust in national institutions is

positively correlated with their trust in international and supranational institutions.⁶²

Looking at other drivers of trust between courts in the EU, Arnold et al. uncovered the correlation between corruption and trust.⁶³ Their findings demonstrate that higher levels of perceived national corruption led to higher levels of trust in supranational institutions, namely the Parliament, the Commission and the Council. Lower levels of perceived national corruption, by contrast, are connected to higher trust in the CJEU and the European Central Bank (ECB).⁶⁴ Further research on the drivers of trust between courts is, however, missing. In addition, the abovementioned scholarly efforts look at trust between courts in Europe as a one-sided relationship, exploring, most commonly, national courts' trust in the CJEU or (although less common) in the ECtHR.⁶⁵ Exploring trust relationship from a reversed perspective – that is, the trust of the CJEU or the ECtHR towards their national counterparts – is rare mainly due to limited access to data and unwillingness of supra/international judges to participate in such studies. Some scholars resorted to using the mechanism of reasoned order, governed by the CJEU's Rules of Procedure (RoE), as a proxy for the CJEU's trust in national courts. The Court's RoE allow the CJEU to decide with a reasoned order in cases where a preliminary question has already been addressed in the past,⁶⁶ is manifestly inadmissible⁶⁷ or where the Court has no jurisdiction to hear the case.⁶⁸ Replying by a reasoned order could, for example,

62 Arnold et al., above n. 42; Voeten, above n. 47.

63 Arnold et al., above n. 42.

64 *Ibid.*

65 Glas and Krommendijk (2022), above n. 5.

66 Art. 99 Rules of Procedure of the Court of Justice.

67 Art. 53(2) Rules of Procedure of the Court of Justice.

68 Art. 53(2) Rules of Procedure of the Court of Justice.

59 Mayoral Díaz-Asensio (2017), above n. 4, at 552.

60 Glavina (2020), above n. 4.

61 *Ibid.*

suggests an existence of potential distrust of the CJEU towards national courts and points to the insufficient quality of submitted references.⁶⁹ López Zurita, by contrast, sees the reasoned order as an instrument of the CJEU's trust towards national courts, where the CJEU signals to national courts to apply EU law independently, without any need from the Luxembourg Court.⁷⁰ Contributions that explore trust between courts as a reciprocal relationship are even rarer. An example is a book by van Gestel and de Poorter who emphasise the role of competence, reliability and honesty as drivers of trust in a reciprocal trust in the preliminary ruling procedure, where the referring national court and the CJEU, respectively, act as a trustor and a trustee at the same time.⁷¹ The present article builds on the concept of reciprocal trust as a dynamic process of trust-building between two parties. Based on the Oomsels and Bouckaert's reciprocal and self-reinforcing model of building trust, once a court makes a positive perception of another court's trustworthiness and, ultimately, makes a leap of faith and takes risk, the other court will observe this and will too develop a positive perception of actor A's trustworthiness and will make a leap of faith and also take risk. The two trusting courts are, in that case, caught in a self-reinforcing cycle of reciprocal trust.

3 Methodology and Data

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The present study builds on results of survey and interview conducted with Slovenian and Croatian judges from all court instances. The survey was launched in 2017 and has covered the entire population of first- and second-instance court judges in Slovenia ($n = 857$) and Croatia ($n = 1,750$). A total of 290 judges from Croatia and 126 judges from Slovenia filled in the survey, resulting in a similar response rate of 16.6% in Croatia and 14.4% in Slovenia. In 2021, the research further covered the judges of the Supreme Courts ($n = 28$) and the Constitutional Courts ($n = 10$) in both countries. To complement the survey results, in-depth semi-structured interviews were conducted with twenty Croatian and fourteen Slovenian judges. Interview respondents were approached via the survey questionnaire, where participants were invited to participate in an interview in the continuation of the research. Based on the interest, a purposive sampling design was used, where at least one judge per type and level of the court was selected for an interview. To analyse interview results, thematic content analysis was used.

69 A. Dyevre, N. Lampach & M. Glavina, 'Chilling or Learning? The Effect of Negative Feedback on Interjudicial Cooperation in Nonhierarchical Referral Regimes', 10 *Journal of Law and Courts* 87 (2022).

70 L. López Zurita, 'Trust Issues? "Clear" EU Law and "Reversed" Trust', 17 *Erasmus Law Review* 1 (2024).

71 Rob Van Gestel and Jurgen de Poorter, *In the Court We Trust: Cooperation, Coordination and Collaboration between the ECJ and Supreme Administrative Courts* (2019).

The survey data were used to explore the trends in trust levels in the EU's multilevel judicial system. Judges were asked to what extent they trust other courts in the national judicial hierarchy (namely, the first-instance courts, the second-instance courts, the national Supreme Court and the Constitutional Court). In addition, they were also asked to what extent they trust the CJEU and the ECtHR. Other questions further explored judges' trust in their National Parliament and the Ministry of Justice, as well as the following EU institutions: the European Parliament, the Commission (the Commission) and the Council. Trust was measured on an 11-point scale with the following question: 'Can you indicate, on a score of 0-10, to what extent you trust the following institutions? 0 means you do not trust an institution at all, and 10 means you have complete trust.'

Furthermore, survey results were used to empirically test the drivers of trust between the courts. Linear regression models were used in that respect. In addition to trust questions (dependent variable), the regression makes use of the following questions (independent variables): age (categorical), gender (categorical), seniority (years working as a judge; numerical), court instance (categorical), court type (subject matter of the court; categorical), workload (number of cases decided in the past 12 months; numerical) and number of spoken foreign languages (numerical). In addition, to explore trust in the CJEU and the ECtHR, the following variables were used: EU law experience (number of cases with European law element decided in the past 12 months; numerical), European law training (number of hours spent on courses in European law; categorical), as well as attitudes towards the EU, which include (i) seeing EU membership beneficial for their country (categorical) and (ii) holding positive views of the EU (categorical).

One of the limitations of the data is that the data on trust of the CJEU and the ECHR in national courts are missing. I am, therefore, unable to draw conclusions on trust of supra/international courts towards their national counterparts. This is mainly due to not having access to survey participants sitting on these two European courts. The reciprocal element in these trust relationships is therefore missing. Furthermore, the analysis of this study excludes the concept of interpersonal trust (trust in other people) as the question was not included in the survey. However, I do acknowledge the importance of interpersonal trust as a driver of institutional trust, that is, trust in and between courts.

Further limitations of this study are low response rate (16.6% in Croatia and 14.4% in Slovenia), which may affect the generalisability of the data, as well as the age of the data: the survey on lower court judges was conducted in 2017, while the data on Supreme Courts' and Constitutional Courts' judges are of a newer date (from 2021). Furthermore, the data gathered in this study are not suitable for testing for macro-level variables such as the country's level of corruption, GDP or years of EU membership. This is also connected to the Member States' selection limitation, as the present study only covers two new Member States: Slovenia and Croatia.

The results of the study are, thus, not fully generalisable to older or Western Member States. Finally, this study relies on trust measured on the individual level, with individual judges as units of analysis, while visualisations rely on the aggregated trust on the level of courts (per instance). The 'results' section, therefore, looks at trust in and between courts rather than individual judges. In that sense, this study explores the concept of organisational trust where courts are trustees and trust levels are measured as the aggregated degree of trust shared by the members of a court.

4 Results

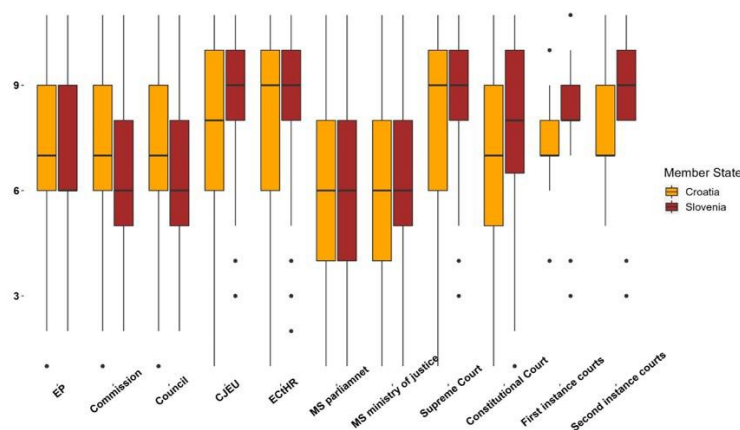
The result section is divided into two parts. The first part focuses on *one-way trust* and explores the levels and drivers of trust of national courts in the CJEU and the ECtHR and how these compare to their trust in other national courts. Trust in courts is further compared to trust in other political actors, the national and the Union

ones. The second part moves to the concept of *reciprocal trust* between the courts in the national judicial hierarchy and explores the variations of trust between the first-instance courts, the second-instance courts, the Supreme Court and the Constitutional Court in Slovenia and Croatia. Both parts make use of the survey and interview results to offer explanation for the variations and drivers of trust.

4.1 Institutional Trust: National Courts' Trust in National and Union's Political and Judicial Institutions

As can be seen from Figure 3, national political institutions – that is, the Parliament and the Ministry of Justice – enjoy the lowest levels of trust, with average trust of 5.8 and 6.2, respectively. EU political institutions, namely the European Parliament, the Commission and the Council, enjoy slightly higher levels of trust, with the average trust of 6.8, although there are some country-level variations. Croatian judges exhibit higher trust in all three EU political institutions as compared to their Slovenian counterparts.

Figure 3 National Judges' Trust in Different National and EU Political and Judicial Institutions



Boxplots are based on answers from judges across all instances: first instance (n = 279), second instance (n = 88), Supreme Courts (n = 28) and Constitutional Courts (n = 9). Trust in own court was not captured by the survey. Trust was measured on a scale from 0 to 10 where 0 means *no trust at all*, and 10 means *complete trust*.

Trust literature distinguishes between two different mechanisms when it comes to trust across different levels of the EU multilevel political system. First, based on the congruence mechanism, individuals who exhibit high levels of general trust tend to be high-trusting in any level of government.⁷² This would mean that judges exhibit similar levels of trust towards national and EU political institutions. While this seems to hold for Slovenian judges, it does not stand when it comes to Croatian judges, who exhibit higher trust in the EU institutions. Compensation mechanism may be at play here. Compensation posits that living in a country with weakly

trusted political institutions tend to put more trust in the EU institutions as a way of compensating for their low trust in national institutions.⁷³ Similar goes for the role of corruption. Following the findings by Arnold et al., higher levels of perceived national corruption led to higher levels of trust in supranational institutions, namely the European Parliament, the Commission and the Council.⁷⁴ Looking at the Corruption Perception Index, Slovenia performs much better than Croatia.⁷⁵ The results further show that, compared to other actors in the EU multilevel political and judicial system (EU

72 J. Muñoz, M. Torcal & E. Bonet, 'Institutional Trust and Multilevel Government in the European Union: Congruence or Compensation?' 12 *European Union Politics* 551 (2011); J. Muñoz, 'Political Trust and Multilevel Government', *Handbook on Political Trust* 69 (2017); E. Harteveld, T. van der Meer & C.E. De Vries, 'In Europe We Trust? Exploring Three Logics of Trust in the European Union', 14 *European Union Politics* 542 (2013).

73 I. Sánchez-Cuenca, 'The Political Basis of Support for European Integration', 1 *European Union Politics* 147 (2000); S. Kritzinger, 'The Influence of the Nation-State on Individual Support for the European Union', 4 *European Union Politics* 219 (2003).

74 Arnold et al., above n. 42.

75 Corruption Perceptions Index (source: Transparency International), Eurostat, https://ec.europa.eu/eurostat/databrowser/view/sdg_16_50/default/bar?lang=en (accessed 17 January 2023).

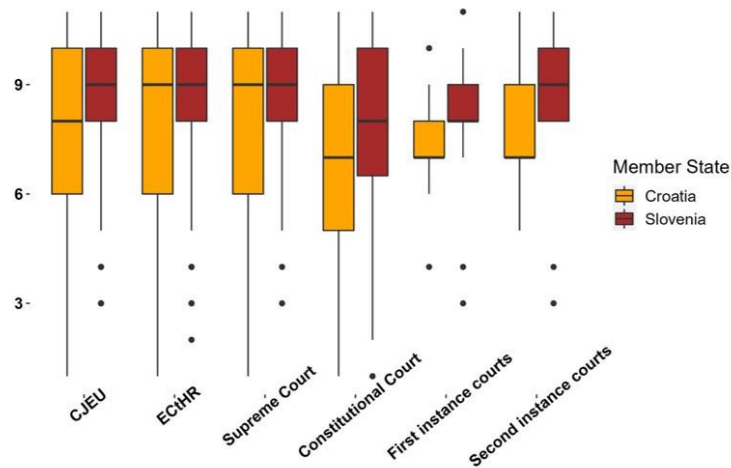
political institutions, national ministries, and the national parliaments), courts enjoy the highest trust. This holds for both national courts (across all levels of judicial hierarchy) and for European courts (the CJEU and the ECtHR). This finding is in line with the results of recent multi-actor, multilevel, multisector and cross-country survey on trust and distrust in European regulatory governance, conducted by TiGRE project.⁷⁶ This survey

76 T. Bach et al., *Large Multi-Actor, Multi-Level, Multi-Sector and Cross-Country Survey Database: Deliverable D2.1* (2021).

covered nine countries (Belgium, Denmark, Germany, Israel, the Netherlands, Norway, Poland, Spain and Switzerland) collecting data on citizens' trust and distrust in nine actors in regulatory regimes (regulatory agencies, EU regulatory bodies, ministries, parliaments, certification and accreditation bodies). Compared to all other studied actors, courts enjoyed the highest trust and the lowest distrust, a finding that holds across all covered counties.⁷⁷

77 *Ibid.*

Figure 4 National Judges Trust in Different Judicial Institutions



Boxplots are based on answers from judges across all instances: first instance (n = 279), second instance (n = 88), Supreme Courts (n = 28) and Constitutional Courts (n = 9). Trust in own court was not captured by the survey. Trust was measured on a scale from 0 to 10 where 0 means *no trust at all*, and 10 means *complete trust*.

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Figure 4 zooms in specifically on courts. Based on results from surveys among Slovenian and Croatian judges, the ECtHR and the national Supreme Courts enjoy the highest levels of trust, followed closely by the CJEU. There are, however, some country differences. Trust in both European courts, the ECtHR and the CJEU, is lower among Croatian (ECtHR mean = 8.2; CJEU mean = 7.9) than Slovenian judges (ECtHR mean = 8.9; CJEU mean = 8.7). For both countries, the national Constitutional Courts enjoy the lowest level of trust, although trust in the Croatian Constitutional Court is much lower among Croatian judges (mean = 6.9) than is the trust of Slovenian judges in the Slovenian Constitutional Court (mean = 8.0).

This once again confirms the finding by Arnold et al. on the correlation between corruption and trust. While higher levels of perceived national corruption led to higher levels of trust in supranational political institutions, namely, the European Parliament, the Commission and the Council, lower levels of perceived national corruption led to higher trust in the CJEU.⁷⁸ This may explain why Croatian judges exhibit higher trust in the EU political institutions, yet lower trust in the CJEU (and the ECtHR) compared to their Slovenian counterparts.

78 Arnold et al., above n. 42.

4.2 One-Way Trust: National Courts' Trust in the CJEU and the ECtHR

This section addressed one-way trust – that is, national courts' trust in two supra/international courts: the CJEU and the ECtHR. As was already visible from Figure 3, the CJEU and the ECtHR enjoy relatively high levels of trust among the studied national judiciaries. Yet, there are some important country-level differences. While the ECtHR and the CJEU enjoy equal level of trust among Slovenian judges, Croatian judges trust the CJEU less. One judge argues that this is not because of the existence of some distrust towards the CJEU but rather because

the European Court in Luxembourg is still unknown. The Court in Strasbourg has been there for 20 years now. We have been a signatory state to the Convention since the 1997. For 20 years, the ECtHR has been the eyesore for national judges. And this Court in Luxembourg is more a mystery.... And a huge legal corpus of those legal sources that are unknown to us. There is a fear and threat in terms that it will show us how much we do not know.⁷⁹

A Supreme Court judge similarly argues that

79 Croatian Judge 16.

we somehow got used to the judgments of the Strasbourg Court, because we have to apply its case law since 1997, and the Court in Luxembourg is something new. [Furthermore], at the CoE level, there is only one convention – the ECHR – that is very close to our constitutional law provisions. At the EU level, there is much more legislation.⁸⁰

Thus, lower trust in the CJEU seems to be connected to less familiarity and the perception of the complexity of EU law, a finding which was earlier confirmed by Glavina.⁸¹ However, this judge argues that the CJEU too will enjoy the same level of trust after a while ‘once it becomes more incorporated, and its case law becomes more incorporated into our legislation.’⁸²

A Slovenian judge, on the other hand, admits that while attitudes towards EU integration

can reduce the willingness of judges [to submit a preliminary question], I would say in general, when I see my colleagues, that the confidence in both courts is always on a high level. That the trust in the Luxem-

bourg Court and the Strasbourg Court is on a high level. Although these courts still seem for most people, which I believe to be unnecessarily and unfounded, too far away.⁸³

Table 1 presents regression results on the drivers of trust of national courts in the CJEU and the ECtHR. For both courts, age seems to be a driver of trust and is negatively associated with trust. Based on Model 1 for the CJEU and Model 2 for the ECtHR, older judges exhibit lower trust in the two European courts. The European politics literature does not offer conclusive evidence on the role of judge’s seniority. While Glavina’s research uncovers the existence of potential ‘generational gap’ between the judges, ‘where senior judges refuse to accept new things’,⁸⁴ Mayoral et al. posit that the desire to maintain a good reputation will inspire older judges to pursue higher interest for EU law.⁸⁵

80 Croatian Judge 20, Supreme Court.

81 Glavina (2020), above n. 4.

82 *Ibid.*

83 Slovenian Judge 13.

84 M. Glavina, *National Judges as European Union Law Judges? Evidence from Slovenia and Croatia* (2020).

85 J.A. Mayoral, U. Jaremba & T. Nowak, ‘Creating EU Law Judges, the Role of Generational Differences, Legal Education and Career Paths in National Judges’ Assessment Regarding EU Law Knowledge’, 8 *Journal of European Public Policy* 1120 (2014).

Table 1 Regression Analysis: National Courts’ Trust in the CJEU and the ECtHR

	Trust in the CJEU (Numerical)			Trust in the ECtHR (Numerical)		
	(1)	(2)	(3)	(1)	(2)	(3)
Age						
<i>Reference: 19-35</i>						
36-40	-0.748	-0.082		0.428	-0.965	
	(0.748)	(0.673)		(0.768)	(0.682)	
41-50	-1.152'	-0.606		-0.375	-1.385*	
	(0.696)	(0.631)		(0.718)	(0.633)	
51-60	-0.352	-0.067		-0.267	-0.646	
	(0.702)	(0.641)		(0.724)	(0.641)	
61+	-1.362'	0.083		0.157	-1.722*	
	(0.790)	(0.749)		(0.817)	(0.744)	
Instance						
<i>Reference: First</i>						
Second	0.229	0.073		0.463	0.288	
	(0.296)	(0.273)		(0.306)	(0.271)	
Supreme	0.311	-		1.397*	-	
	(0.540)			(0.541)		
Constitutional	-0.205	-		-0.060	-	
	(0.925)			(0.912)		

<i>Table 1</i> (continued)						
	Trust in the CJEU (Numerical)			Trust in the ECtHR (Numerical)		
	(1)	(2)	(3)	(1)	(2)	(3)
<i>European law training (hours)</i>						
Reference 0						
1-10	0.136	-0.0724		0.160	-0.078	
	(0.279)	(0.264)		(0.287)	(0.262)	
11-20	0.607	0.527		0.578	0.363	
	(0.373)	(0.373)		(0.373)	(0.362)	
21-30	0.207	0.535		0.329	0.428	
	(0.513)	(0.500)		(0.517)	(0.487)	
31-40	0.487	0.471		0.383	0.331	
	(0.561)	(0.521)		(0.580)	(0.523)	
40+	0.883*	0.661'		0.928*	0.490	
	(0.427)	(0.384)		(0.418)	(0.380)	
Number of foreign languages (numerical)	0.077	0.661'		0.314'	0.264'	
	(0.158)	(0.384)		(0.164)	(0.141)	
<i>Positive view of the EU</i>		0.968***				
(Likert scale 1-7)		(0.125)				
<i>Trust in national political institutions</i> (numerical)			-0.155***			-0.191***
			(0.036)			(0.044)
<i>Trust in national judicial institutions</i> (numerical)			0.255***			0.506***
			(0.039)			(0.046)
<i>Trust in EU political institutions</i> (numerical)			0.847***			0.564***
			(0.039)			(0.046)
Intercept	7.822	3.401	0.996	8.914	8.656	1.594
	(0.716)	(0.785)	(0.267)	(0.695)	(0.755)	(0.313)
Number of observations	163	158	117	163	158	117

Note: * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$.

The court instance plays a role as well. Although only significant for the ECtHR (Model 1), Supreme Court judges are more likely to trust the Strasbourg Court. The results further show a statistically significant and positive effect of training in European law on trust in the CJEU and the ECtHR. In other words, the more hours judges spend on judicial training in European law, the more trust they exhibit in the two European courts (see Model 1 and Model 2 for the CJEU and Model 1 for the ECtHR). This points out to the relevance of networking

or socialisation on trust. Attending trainings on EU or ECHR law allows national judges to enter into dialogue and socialise with other national judges or legal experts on topics such as Advocate Generals or référendaires and to exchange experiences. This can contribute to the creation of a common judicial community⁸⁶ and building

86 S. Benvenuti, 'The European Judicial Training Network and Its Role in the Strategy for the Europeanization of National Judges', 7(1) *International Journal for Court Administration* 59-67 (2015); M. Glavina, U. Jaremba, J.A. Mayoral & T. Nowak, 'A Europeanized Judiciary? Explaining National Judge

of positive attitudes towards the European judicial and political systems. Similar explanation could be offered for the role of foreign languages. The results of this research show that speaking more foreign languages is positively and significantly associated with higher trust in the CJEU and the ECtHR.

This research further finds a positive and significant effect of trust in national judicial institutions on judges' trust in the CJEU and the ECtHR. This finding supports previous research where individuals who trust their national courts are also more likely to trust regional and international courts.⁸⁷ This finding once again points out to the role of the boundary spanner, where judges' experience with one court shapes their perception of other courts or the justice system as a whole.⁸⁸ Similar goes to the international organisations with which supra/international courts are associated.⁸⁹ The recent research supports previous studies on citizens' trust and shows that judges who have a positive view of the EU (see Model 2 for the CJEU) and trust the supranational political institutions are also more likely to trust the CJEU (Model 3 CJEU) and the ECtHR (Model 3 ECtHR). By contrast, trust in national political institutions (the National Parliament and the Ministry of Justice) is negatively and significantly associated with trust in the two European courts.

5 Reciprocal Trust: Trust Between National Courts

I now turn to *reciprocal trust* between courts. As shown in Figure 3, the Constitutional Court is the least trusted court in both studied countries. Interview results with judges help to further interpret these results. When asked about low(er) levels of trust in the national Constitutional Court, Croatian judges argue that it is because the Croatian Constitutional Court is considered a political body. One judge concludes that these results are logical:

because the Supreme Court is elected ... by an independent body composed of judges, government representatives and law faculties: professors'.⁹⁰ Constitutional court judges, by contrast 'at least in Croatia and Slovenia and other similar states, are elected by political agreement'. Working at the Constitutional Court is based on 'a political trade' rather than what judges have deserved through their work.⁹¹

This notion of a political trade was repeated by several other interviewees, stating that 'the judges of the Constitutional Court are elected in the Parliament. Unfortunately, often through a political trade'⁹² and that 'it is very unfortunate to apply for the position of a Constitutional Court judge because you have to pass this political trade, and we are supposed to be independent from the politics. I think this is the biggest reason why we trust the Supreme Court more than the Constitutional Court.'⁹³ Another judge similarly argues that, when judges to the Constitutional Court are being elected 'you hear it in a parliamentary session how the candidates are spoken of ... You see that [the politicians] do not speak about [judges'] professional qualities, which is a bad thing because you get the idea that only the politics matters.'⁹⁴

Similar sentiment was shared among the Slovenian judges who argue that 'the Constitutional Court is sometimes politically motivated.'⁹⁵ One judge states that, although everyone knows that judgments of the Slovenian Constitutional Court are sometimes politically motivated,

there is very little criticism of it because nobody dares [to criticise]. Very recently, the Supreme Court judge criticised the Constitutional Court's decision, but instead of saying it was political, it argued that it was [legally] incorrect. When there is a conflict between the Supreme and the Constitutional court, and us first-instance judges read them, we think that the Constitutional Court decisions are not convincing or not as convincing as those of the Supreme Court. Because they calculate too much.⁹⁶

Some answers, however, suggest that levels of trust in the Constitutional Court can increase based on the trustor's improved assessment of its trustworthiness, particularly when it comes to the Constitutional Court's integrity and separation from politics. For example, a judge admits that 'the Constitutional Court has, based on its last couple of judgments, shown itself in a positive light. And I have faith that it is going in the right direction.... I have a couple of decisions in which I cite the Constitutional Court judgments. So, it is not all that bad as it seems.'⁹⁷ If, however, the impartiality of judges is questioned, trust will decline. As argued by a Slovenian judge, the Slovenian

Constitutional Court has recently been contaminated by some decisions [where it did not] observe its competences. [Because of that] lower instance judges have somehow distanced themselves from the Constitutional Court.... Lately, the quality of its decision

es' Perceptions of Their Role as EU Law Judges' (2021), *ECPR General Conference*.

87 Arnold et al., above n. 42; Voeten, above n. 47; Mayoral Diaz-Asensio (2017), above n. 4.

88 Popelier et al. (2022), above n. 7; Glavina and van Zimmeren, above n. 9.

89 Arnold et al., above n. 42.

90 Croatian Judge 1.

91 *Ibid.*

92 'Judges of the Constitutional Court are elected in the Parliament. Unfortunately, often through a political trade,' Croatian Judge 2.

93 Croatian Judge 3.

94 Croatian Judge 3.

95 Slovenian Judge 9.

96 Slovenian Judge 1, first instance.

97 Croatian Judge 3.

[has] been weaker [and] there was much higher trust in the Constitutional Court’s decisions.⁹⁸

Judges further argued that the distrust towards the Constitutional Court stems from judges’ lack of judicial experience. These judges ‘do not really have any legal experience, ... come from politics, and have no biography that would justify this position. It is not even required to have a law degree. Which is ridiculous.’ By contrast, to become a judge at the Supreme Court, he continues, ‘you still need to fulfil a certain number of years in the judiciary as a judge, have certain qualifications, references, etc.’⁹⁹ Another judge similarly argues that ‘there are more qualified lawyers on the Supreme Court than the Constitutional Court. Judges of the Supreme Court are certainly more professional.’¹⁰⁰ ‘At the Constitutional Court, [judges] do not have that judicial background.’ They come from the politics or the academia. ‘And you know, law from a point of view of a university professor is a bit different from our practical view. Because the academics look at something theoretically, and us [judges] look at it practically.’¹⁰¹

This sentiment was, however, not shared by one Slovenian judge, who argued that, in reality, there is no lower trust in Slovenian Constitutional Court as compared to the Supreme Court. He says, ‘It is not like in Croatia. The Croatian Constitutional Court has been discredited with political recruitment. This was not the case in Slovenia. [The Slovenian Constitutional Court judges] are good experts who have a good reputation. They are nominated by the President and appointed by the National Assembly.’¹⁰² Indeed, recent analysis of the Croatian Constitutional Court shows that Croatia remains one of the few countries in Europe where the Parliament is the only body responsible for electing the Constitutional Court judges.¹⁰³

Collegiality and judicial contacts seem to play a role too. One judge argues that ‘the Supreme Court judges are our colleagues who are my age and whom we know.... They have been in the system for 20, 30 years.’¹⁰⁴ Similar sentiment is shared among the Slovenian judges who argue that ‘maybe we feel that the Supreme Court is more a part of us. That most of the judges started their career at the lowest instance.’¹⁰⁵ ‘At the Constitutional Court, by contrast, there are those who skipped some levels.... There are people who were never judges. They have not even passed the bar exam.’¹⁰⁶ By contrast, ‘we trust [the Supreme Court] because this is the system in which we are in. We have trust in this growth process to become a Supreme Court judge.’¹⁰⁷ There is, thus, some feeling of unfairness regarding the criteria on the basis of which the Constitutional Court judges get appointed. These sentiments were confirmed by Supreme Court judges who also see themselves as

professional, career judges whose primary focus is decision making. We are not politicians and we do not belong to any political parties. By contrast to the German Federal Constitutional Court, the judges of the Constitutional Court in Croatia are elected based on the agreement of the majority and the opposition in the Parliament. At the Constitutional Court, you have people who never worked as judges before (they were prominent lawyers, members of the parliament, presiding officers of the parliament, ministers of the parliament) but they have never judged. Deciding cases at the Supreme Court and giving out political slaps at the Constitutional Court are two very different things: it’s like heaven and earth. It has nothing to do with each other. And that’s why the perception of my lower instance colleagues is that they trust the Supreme Court more. Because we do not decide cases based on what the politics expects.¹⁰⁸

98 Slovenian Judge 4.

99 Croatian Judge 3.

100 Croatian Judge 8.

101 Croatian Judge 5.

102 Slovenian Judge 2.

103 M. Glavina, ‘The Croatian Constitutional Court: From a Potentially Powerful Court to a Court of Rejections’, in K. Pócsa (ed.), *Constitutional Review in Central and Eastern Europe. Judicial-legislative Relations between 1990 and 2020* (2024); M. Glavina, ‘From a Potentially Powerful to a Polarised

Court: The Emergence of Dissenting Opinions on the Croatian Constitutional Court’, 25 *European Politics and Society* 518 (2023).

104 Croatian Judge 5.

105 Slovenian Judge 1.

106 Slovenian Judge 1.

107 Slovenian Judge 5.

108 Croatian Judge 20, Supreme Court.

Table 2 Regression Analysis: National Courts’ Trust in the Constitutional Court and the Supreme Court

	Trust in the Constitutional Court (Numerical)			Trust in the Supreme Court (Numerical)		
	(1)	(2)	(3)	(1)	(2)	(3)
Age						
Reference: 19-35						
36-40	0.116	-0.465	-0.315	-0.508	-0.994	-0.974
	(0.902)	(0.714)	(0.702)	(0.758)	(0.621)	(0.620)
41-50	-0.259	-0.830	-0.605	-0.581	-1.052	-0.868
	(0.839)	(0.664)	(0.655)	(0.707)	(0.579)	(0.581)

<i>Table 2</i>		<i>(continued)</i>				
	<i>Trust in the Constitutional Court (Numerical)</i>			<i>Trust in the Supreme Court (Numerical)</i>		
	(1)	(2)	(3)	(1)	(2)	(3)
51-60	0.584	-0.346	-0.095	-0.257	-0.987'	-0.781
	(0.847)	(0.673)	(0.665)	(0.714)	(0.586)	(0.589)
61+	-0.044	-0.917	-0.476	-0.776	-1.719*	-1.402*
	(0.968)	(0.673)	(0.764)	(0.839)	(0.7690)	(0.698)
Instance						
<i>Reference: First</i>						
Second	-0.015	0.457	0.230	0.098	0.356	0.240
	(0.424)	(0.316)	(0.334)	(0.357)	(0.292)	(0.293)
Supreme	0.563	1.388**	0.951'	-	-	-
	(0.683)	(0.528)	(0.547)			
Constitutional	-	-	-	0.190	-0.055	0.197
				(0.971)	(0.794)	(0.790)
Court type						
<i>Reference: Civil</i>						
Labour and social	0.358	-0.018	0.072	0.146	-0.031	-0.135
	(0.468)	(0.346)	(0.366)	(0.394)	(0.323)	(0.323)
Commercial	0.296	-0.216	-0.073	0.599	0.270	0.419
	(0.549)	(0.430)	(0.427)	(0.471)	(0.386)	(0.385)
Criminal	-0.289	-0.514	-0.646'	-0.068	-0.285	-0.267
	(0.440)	(0.336)	(0.343)	(0.371)	(0.304)	(0.303)
Other	0.444	0.134	0.028	0.185	-0.033	-0.152
	(0.476)	(0.364)	(0.370)	(0.401)	(0.328)	(0.328)
Workload (numerical)	-0.001'	0.0005	-0.0003	-0.0006	-0.0002	-0.0003
	(0.0007)	(0.0005)	(0.0005)	(0.0005)	(0.0004)	(0.0004)
Trust in National Parliament (numerical)		0.298***	-0.231***		0.520***	0.329***
		(0.060)	(0.062)		(0.041)	(0.045)
Trust in National Ministry of Justice (numerical)		0.363***	0.314***			0.291***
		(0.061)	(0.062)			(0.053)
Trust in the EU institutions (numerical)			0.231***			0.247***
			(0.066)			(0.059)
Intercept	7.258	3.823	2.678	8.876	6.231	7.010

Table 2 (continued)

	Trust in the Constitutional Court (Numerical)			Trust in the Supreme Court (Numerical)		
	(1)	(2)	(3)	(1)	(2)	(3)
	(0.820)	(0.691)	(0.755)	(0.691)	(0.602)	(0.615)
Number of observations	130	130	132	152	152	152

Note: * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$.

What, however, drives trust in national Constitutional Courts and Supreme Courts? Table 2 present the regression results. Age of judges seems to play a role, but only when it comes to trust in the Supreme Court. Based on Models 2 and 3, the results show that age is negatively associated with trust in the Supreme Court, meaning that older judges are less trusting in the Supreme Court. This finding, however, does not hold for trust in the Constitutional Court.

When it comes to the court instance, Supreme Court judges are found to be most trusting in the Constitutional Court. This finding is significant both in Models 2 and 3. Although not significant based on the regression analysis, Figure 2 shows that second-instance courts exhibit higher levels of trust in the Supreme Court compared to their first-instance-court counterparts. One explanation of this is the intensity of contacts between different courts. There is strong evidence in the trust literature that trust in and between judicial actors leads to more cooperation.¹⁰⁹ Regular contacts, whether formal or informal, are however also drivers of trust in courts. Parmentier and Vervaeke's research, for example, shows that one's past experiences with the (civil or criminal) justice systems is the most significant driver of the trust in justice.¹¹⁰ The same goes for trust between courts. Supreme Court and Constitutional Court judges have the most regular contacts as both of these are the peak courts in a national judicial hierarchy. Furthermore, the appellate courts decisions are appealed to the Supreme Court, leading to closer cooperation between these two levels and, ultimately, higher trust.

Interview results confirm this finding and suggest that judges trust the courts with which they have regular contacts. To explain the higher level of trust in the Supreme Court, a Slovenian judge argues that 'of course, we have more of the everyday contact with the decisions of the Supreme Court.'¹¹¹ Another judge says that the 'Supreme Court is more necessary for everyday practice, more important because it is an audit court.'¹¹² This un-

derstanding was once again confirmed in the interviews with the Supreme Court judges who argue that

the first instance courts rely a lot on the Supreme Court and our legal understandings. In this sea of regulatory changes, someone needs to fill the legal gap. And the lower courts have gotten used to the Supreme Court doing that. Which is ok on the one hand, because our goal is to unify the judicial practice. But on the other hand, it creates lower courts got too comfortable to wait for the Supreme Court to resolve [a legal issue].¹¹³

The more regular contacts between the second-instance and the third-instance courts could also explain higher trust levels of Supreme Court and Constitutional Court judges in the second-instance courts as compared to the first-instance courts (see Figure 3).

However, does trusting someone results in being trusted? Based on the model of reciprocal trust developed by Oomsels and Bouckaert, I posit that one court's positive perception of another court's trustworthiness will result in observable risk-taking behaviour that, once observed by another court, will create a positive perception of the first court's trustworthiness, creating a self-reinforcing cycle of reciprocal trust. In that sense, I argue that two courts in a reciprocal trust relationship should exhibit similar levels of trust. I split the results for Slovenia and Croatia due to different levels of trust between national courts. The pairs are illustrated in the same colour (see Tables 3 and 4).

Indeed, we see little variations in the levels of trust between two courts caught in the reciprocal trust relationship. This is most visible in the relationship between Croatian Constitutional Court and second-instance courts, where the difference in trust levels is less than 0.2 points. It seems that Constitutional Court judges trust their counterparts on the appeal level of judicial hierarchy, and they are equally trusted back. For other pairs, the difference in trust levels is also less than 0.5 points, which does suggest the existence of reciprocal trust. The most striking difference in reciprocal trust can be found between the judges of Croatian Constitutional Court and the first-instance court judges. While first-instance judges exhibit high trust in the Constitutional Court (average of 7.6), the same cannot be said about trust of Constitutional Court judges in their first-instance counterparts (6.83 on average). The same

109 Díaz-Asensio (2017), above n. 4; M. Callens and G. Bouckaert, 'Trustworthiness and Information Disclosure among Judicial Governmental Agencies', 42 *Public Performance & Management Review* 1112 (2019); Van Gestel and de Poorter, above n. 71.

110 S. Parmentier & G. Vervaeke, 'In criminal justice we trust? A decade of public opinion research in Belgium', 8 *European journal of criminology* 286 (2011).

111 Slovenian Judge 3.

112 Slovenian Judge 2.

113 Croatian Judge 21, Supreme Court.

observation holds for reciprocal trust between Slovenian Supreme Court and the first-instance courts in Slovenia. These results could be explained by the lack of regular contact between these two levels, a factor which was raised by the interviewees and which I explained in

detail above. Thus, while the present study's findings do point out to the existence of reciprocal trust (trust and be trusted), more research is needed into how to more effectively measure and visualise data on reciprocal trust between courts.

Table 3 Reciprocal Trust Between Croatian Courts

Trustee Trustor	First-instance Courts	Second-instance Courts	Croatian Supreme Court	Croatian Constitutional Court
First-instance courts	-	NA	8.09	6.83
Second-instance courts	NA	-	8.38	7.43
Croatian Supreme Court	7.56	7.87	-	6.62
Croatian Constitutional Court	7.6	7.6	7.2	-

Table 4 Reciprocal Trust Between Slovenian Courts

Trustee Trustor	First-instance Courts	Second-instance Courts	Slovenian Supreme Court	Slovenian Constitutional Court
First-instance courts	-	NA	8.95	8.01
Second-instance courts	NA	-	8.86	7.74
Slovenian Supreme Court	7.82	8.36	-	8.9
Slovenian Constitutional Court	8.5	8.5	8.5	-

6 Conclusion

Throughout this article, I argued that, while we know a lot on citizens' trust in political institutions, including courts, little has been written on trust between courts, particularly in the context of the complex multilevel judicial system in Europe. Building on the insights from trust literature and based on empirical evidence from surveys and interviews conducted with Slovenian and Croatian judges, this article offered empirical evidence on the divergences and drivers of trust in and between courts in Europe. More specifically, it focused on two types of trust relationships: *one-way trust* in the CJEU and the ECtHR and reciprocal trust between first-instance, second-instance, the Supreme Court and the Constitutional Court judges in Slovenia and Croatia. The result show that courts are the most trusted among the political institutions, which is in line with the findings of the recent large-scale TiGRE project. Zooming in on trust in courts, I further show that the CJEU, the ECtHR and national Supreme Courts enjoy the highest levels of trust, although judges tend to trust the ECtHR more than the CJEU. I explain this with three factors that came out of interview results: insufficient knowledge and experience with the working of the CJEU and judges' perception of EU law as more complex than the Convention law. Furthermore, I show that national Constitutional Courts are the least trusted of the judicial

institutions. This could be explained by Constitutional Court judges' political appointments, lack of judicial qualifications, as well as the lack of collegiality and judicial contacts between lower courts judges and their Constitutional Court.

Besides exploring the levels of trust, I use regression analysis on survey results to explore the drivers of trust. I find that age, training in European law, knowledge of foreign languages, and trust in national versus European institutions are the most important drives of judicial trust in the CJEU and the ECtHR. Trust in national versus European institutions is an interesting one: while trust in European political institutions has a positive effect on trust in the CJEU and the ECtHR, the opposite holds true for trust in national political institutions: they are negatively associated with the trust in the two European courts. Looking at trust in national Supreme Courts and Constitutional Courts, the most important drivers of trust are trust in national political institutions, age and court type.

Besides exploring the one-way trust, this article tried to make a theoretical and empirical contribution to exploring the concept of reciprocal trust, whereby two (judicial) actors are caught in a self-reinforcing virtuous cycle of ever-increasing trust. And while the results show that trust levels between the two courts in a reciprocal trust relationship are similar, confirming that the analogy of 'trust and be trusted' does hold, additional research is needed into operationalising, measuring and visual-

ising reciprocal trust to make more compelling research results.

Recent debates on the relationship between the courts in the multilevel system – the rule-of-law altercations between the CJEU and the Polish Constitutional Tribunal or national courts’ open defiance against the CJEU’s and the ECtHR’s judgments – are making the topic of reciprocal trust in a complex regional system such as Europe more important than ever. This article, thus, hopes to inspire future research in this area.

Future research may want to explore the reversed trust: trust of the CJEU and the ECtHR in national courts. Yet, access to data may be difficult as it is unlikely that the European courts’ judges would participate in the surveys on trust. And while recent research efforts have resorted to using proxies (such as the CJEU’s use of the reasoned order to reject preliminary references by national courts – see research by Dyevre et al. and López Zurita, which I cited above), the use of proxies may not be perfect, and we may need to resort to other data.