

**THE LEGITIMACY OF THE EUROPEAN COURT OF
HUMAN RIGHTS:
THE VIEW FROM THE GROUND¹**

Dr. Başak Çalı, Anne Koch and Nicola Bruch

Department of Political Science, University College London

¹This research is funded by the Economic Social Research Council Grant No: RES-061-25-0029. We would like to thank all interviewees who participated in this project. Interviewees have consented to the public use of this data by way of anonymous quotations.

Outline of the Findings Report

“So I think on balance it’s hard to argue against a multi-lateral, external, non-threatening, non-interfering judge” (Irish politician)

“I don’t understand those people that doubt its legitimacy. The court is very efficient. A bargain, it doesn’t cost much in relation to its impact. It is a cost-effective court for 230 million people, I’ll put it like that.” (German politician)

1. What is this research about?
2. Why legitimacy?
3. How did we carry out the research?
4. Dimensions of Legitimacy
5. Overview of Findings
6. Cross-sectional and comparative analysis of legitimacy
 - a. Legitimacy perceptions of lawyers, judges and politicians
 - b. Legitimacy perceptions across countries
7. The View from Strasbourg
8. Conclusion

Annex 1: Legitimacy Tree Chart

Annex 2: Legitimacy Tree Chart with the Strasbourg Perspective

Annex 3: List of Interviewees

1. WHAT IS THIS RESEARCH ABOUT?

Most recent discussions about the European Court of Human Rights (the “Court”) have been about its caseload and its reform. These discussions not only had to confront questions about whether the current caseload of the Court is harmful to its legitimacy, but also whether the reforms proposed to alleviate the caseload have diminished or will diminish its legitimacy. Despite the fact that questions of legitimacy have been prevalent in these debates, we lack a systematic and overall understanding of the grounds of the legitimacy of the Court.

In a three-year long study funded by the Economic Social Research Council of the United Kingdom, Dr. Başak Çalı and her research team have taken a step back from reform debates and conducted an in-depth inquiry into the *perceptions* of legitimacy of the European Court of Human Rights amongst domestic stakeholders. The study has been designed to further our understanding of perceptions of legitimacy on the ground and focussed on key stakeholder groups whose perceptions of the Court’s legitimacy have a direct impact on its authority: domestic politicians, judges and lawyers who litigate before the Strasbourg Court. After over 100 interviews in five Council of Europe countries and in Strasbourg and a rigorous data analysis process, we are a little wiser than when we started and would like to share our findings with the Council of Europe community.

Based on our original dataset on the perceptions of the Court’s legitimacy, we present and open to discussion five areas to which our findings make a direct contribution.

- 1) What criteria of legitimacy do domestic actors employ in assessing the Court’s mission and performance?**
- 2) What factors are identified as legitimacy-eroding and legitimacy-boosting?**
- 3) How do politicians, judges and lawyers differ in assessing the Court’s legitimacy? What are the implications of such differences?**
- 4) Are there significant differences across the five countries and in Strasbourg in assessments of the Court’s legitimacy?**
- 5) What institutional reform proposals do these findings support or problematise?**

2. WHY LEGITIMACY?

‘Why are you asking about the legitimacy of the Court? Has anyone told you that it is not legitimate?’

(Bulgarian Lawyer)

Legitimacy is a complex concept and its use serves different purposes in our moral and political language. Despite the fact that it is complex – and even elusive to some – it is also a very important yardstick for assessing institutions, actions, or actors. This is because legitimacy assessments are about the *quality* of the authoritativeness of an institution, action or actor.² When an institution is deemed legitimate, this implies that the decisions of that institution ought to be respected, followed and honoured. Conversely, when an institution is thought to be illegitimate this opens up a range of concerns and questions about the authority of its decisions and the correlating duty to follow them. Legitimacy, therefore, is fundamentally different from ‘liking’ an institution or thinking that the institution is useful.

When the focus is on the legitimacy of institutions – rather than on actors or decisions – there are two distinct senses in which legitimacy is employed. We use legitimacy:

1. to assess whether an institution has a right to exist and demand obedience of others. If an institution does not meet pre-determined legitimacy criteria, people talk about a ‘legitimacy deficit’ and either demand major alterations to the constitutive foundations of an institution or withdraw support from the institution altogether. This is a yes/no use of legitimacy.
2. to assess whether an institution is ‘living up’ to the reasons for its existence through its everyday practices. When used in this way commentators talk about ‘eroding legitimacy’ or ‘increasing legitimacy’ by judging the actions of the institution against standards they deem appropriate. If an institution does not ‘live up’ to its purposes, actors criticise its decisions and propose reforms to modify the institution’s decision-making processes. According to this understanding, legitimacy is a question of degree.

These different understandings of legitimacy do not exist in isolation from each other. Apart from a perceived lack of constitutive legitimacy, extreme erosion of legitimacy by failing to live up to performance expectations is also likely to amount to loss of legitimacy altogether. Whichever way legitimacy is used, legitimacy **always** entails a **normative assessment** based on **some standard**.

Legitimacy thus encompasses attitudes in support of or against deference to an institution regardless of instances of case-specific agreement or disagreement. When an institution obtains legitimacy, it has a stable base of authority and this, in turn, makes an institution flexible³ in how it interprets its mandate. Discussing the legitimacy of an institution’s decisions is valuable also because instances of criticism

² M. Weber. 1978. *Economy and Society* 2 Vols (trans. And eds. H. H. Gerth and C. W. Mills) Oxford University Press, New York; D. Beetham. 1993. In Defence of Legitimacy. *Political Studies* XLI: 488-91.

³ T. R. Tyler, 1990. *Why People Obey the Law: Procedural Justice, Legitimacy, and Compliance*. New Haven: Yale University Press.

operate as early warning mechanisms that signal a need for reform. Legitimacy enables an institution to align itself with the *expectations* of its stakeholders.

Legitimacy can be no more important to any other institution than it is for the European Court of Human Rights. As a supranational human rights court, it does not have enforcement or sanctioning powers. Furthermore, its main task is to judge the actions of exactly those state authorities upon whose support it relies to enforce its judgments. Thus, it primarily relies on its legitimacy to gain respect and deference from domestic judges and politicians. Individual applicants turn to the Court because they trust that domestic actors perceive it as a legitimate institution and will therefore enforce and respect its judgments. As one interviewee aptly puts it:

‘It is accepted as legitimate in the sense that when they say you can’t send them back to Algeria they won’t go back to Algeria.’ (Lawyer, United Kingdom)

How then is the legitimacy of the European Court of Human Rights perceived? Does it start with a legitimacy credit or a legitimacy deficit? On what kinds of factors do stakeholders build their legitimacy accounts and how do they assess the Court?

3. HOW DID WE CARRY OUT THE RESEARCH?

This research is about *perceptions* of the legitimacy of the European Court of Human Rights with a focus on domestic elites. We identified three types of domestic actors whose views carry a special weight in understanding the perceptions of the Court's legitimacy and who are in a unique position to make assessments because their sphere of action and choice is affected by the Court's judgments:

- domestic politicians belonging to government and opposition parties (when in government positions, they have a duty to comply with the Court's judgments by changing government practices, laws or even Constitutional arrangements);⁴
- apex court judges, who have a duty to follow the Court's case-law and may have to divert from their domestic interpretations of rights, including at the Constitutional level, to align domestic case law with Strasbourg jurisprudence;
- lawyers litigating cases at the Court, who invest an important amount of time and knowledge in bringing cases with the expectation that their domestic politicians and judges will comply with the judgments.

We interviewed a total of 107 active members of these groups from the UK, Ireland, Germany, Turkey, and Bulgaria. These countries were selected to capture a reasonable diversity in domestic contexts in terms of the number of violation judgments delivered against them, length of time the right to individual petition had been in place, domestic legal and political systems and history, and status of European Union membership. Politician interviewees came from government and opposition parties, as well as upper houses in the case of Ireland and the UK. In Turkey and Bulgaria, apex court judges included judges from the tri-partite apex system, whereas in Germany, UK and Ireland, we focused on constitutional courts with the right to individual petition. Lawyers litigating in Strasbourg had a diverse range of experiences and included general Convention law practitioners as well as specialists in family law, care and custody proceedings, criminal law and rights of prisoners. In addition to the dataset with domestic stakeholders we carried out interviews at the European Court of Human Rights with the aim of comparing domestic legitimacy accounts with those from Strasbourg.

We asked interviewees the binary question whether they thought the Court was legitimate or not, and open-ended questions concerning the basis of the Court's legitimacy and what factors affected its legitimacy positively or negatively. The open-ended questions aimed to elicit respondents' points of view on appropriate standards to judge the Court's legitimacy. Our aim was to interpret the reasoning structure of the respondents in setting out legitimacy criteria for the Court, and their assessment of how the Court fared against these standards.

Three caveats are in order before we present the detailed findings of this study. First, it should be recognised that each stake-holder group comes with their own professional biases to the question of the Court's legitimacy. For example, lawyers have larger legitimacy concerns with respect to the procedures of the court, whereas politicians are more worried about intervention in their spheres of democratic authority. We address this bias by making it explicit and reflecting upon it in the empirical section below: We show how the Court is subject to different and at times incompatible criticisms due to both the built-in legitimacy biases in the way in which politicians, judges and lawyers approach the Court, and to the different legitimacy accounts prevalent in different country contexts.

⁴ Some of our interviewees who were then members of the opposition are now members of government and vice versa in the UK, Germany, Ireland and Bulgaria.

Second, even though domestic stakeholders are more knowledgeable about the Court than the general public, their performance assessments are dependent on the information they have about the Court's working mechanisms and case-law. For example, a lawyer who only litigates cases in Strasbourg concerning domestic criminal proceedings would focus on Articles 6 and 7 case-law in assessing whether the Court lives up to its mission. Politicians tend to know only 'high profile' or 'politically sensitive' cases that the Court delivers against their own state, and base some of their views of legitimacy on those cases. We suggest that in everyday life it is impossible to have actors with perfect information about the institution, and that legitimacy assessments are often based on incomplete information. Of all the stakeholders, non-specialised apex court judges have the most complete information about the Court's case-law. In our analysis of the empirical findings we differentiate and compare the different groups of stakeholders in order to gain an insight into how legitimacy accounts differ based on the information, experience and role endowments of respondents. Our country-based analysis further shows whether country contexts alter the legitimacy accounts.

Third, all interviews were conducted between May 2008 and January 2010. This timeframe necessarily omits any references to important recent developments concerning the Court's institutional landscape, namely the coming into force of Protocol 14 on 15 January 2010, and the process of the European Union accession to the European Convention on Human Rights and Fundamental Freedoms.

4. DIMENSIONS OF LEGITIMACY

In analysing the legitimacy accounts provided by our interviewees it became clear that respondents moved between three distinct dimensions of legitimacy: The constitutive dimension, the performance dimension, and the social (or ‘popular’) dimension. They interlock and overlap, each contributing to an overall understanding of legitimacy.

1. CONSTITUTIVE DIMENSION

The constitutive dimension speaks to concerns about whether there are good reasons for an institution to exist in the first place, and whether those reasons demand deference to that institution’s decisions in the future. Respondents appeal to foundational arguments that justify the Court’s right to take decisions against states in the field of human rights law.

We identified two overarching concepts on which the European Court of Human Rights’ constitutive legitimacy is based: legality, and political-normative standards.

A. Legality

International legality is understood as the consent of states to be bound by the jurisdiction of the Court, thus endowing it with legitimacy. It points to the voluntary nature of the obligations domestic actors have taken on in respect of this Court, and recognises the participation of domestic authorities in international decision-making as a legitimacy standard. In international law, legality is a standard yardstick for the legitimacy of international institutions, and our respondents confirmed the important appeal of this standard for the constitutive legitimacy of the Court.

B. Political-Normative Standards

Political-normative standards refer to perceptions that understand the Court’s constitutive legitimacy by way of political aspirations and normative expectations vested in it. That is, actors see a general need for an institution upholding a set of values without making an assessment of the degree to which the Court delivers on these expectations. Interviewees offer notions of both general contributions and of specific contributions to the advancement of important values that they expect from the Court. In particular, interviewees identify three *substantive* values the Court is expected to advance (human rights, democracy and equality), and two specific accounts of the Court as a *means* to advance these values: by acting as an external corrective and by empowering individuals against public power. These general and specific accounts take their cue from the weaknesses and the pitfalls of the domestic political system in protecting human rights, and from the universalistic aspiration that human rights standards should be applied equally to all individuals. It is, therefore, possible to talk about three logics prevalent in political-normative legitimacy accounts along the constitutive dimension: 1) **A logic of enhancement** of capacities and duties that belong primarily to the domestic realm (i.e. supranational human rights courts help states better protect human rights, better enforce democracy); 2) **A logic of prevention** of state failures, (i.e. supranational courts act as external corrective to domestic biases, protecting disempowered individuals before the domestic polity) 3) **A logic of harmonisation of human rights standards**, (i.e. forging of common standards of human rights across countries through interpretive (non-coercive) means ensures equality of application).

All political-normative standards applied to the Court are therefore firmly rooted in the instrumental role assigned to supranational human rights courts generally: That of legitimising the functions and performances of the states themselves. Supranational human rights courts do not act against states,

they help them be better states.

We categorised these political-normative standards as:

- a) **Human Rights Protection:** a general contribution argument
- b) **Democracy:** human rights as adding to or detracting from pluralist democracy
- c) **Common standards:** encompassing both the value of **harmonizing judicial human rights standards across Europe**, and of **historically shared values** that underlie the creation of the Court
- d) **External Corrective:** the value of having an outside body to act as an objective ‘check’ on domestic decisions
- e) **Individuals challenging the state:** empowerment of marginalized individuals who face hostility or indifference from majorities

2. PERFORMANCE DIMENSION

We identified two distinct standards through which the performance of the Court was assessed as either contributing to or taking away from its legitimacy: **Normative** performance and **managerial** performance.

A. Normative Performance

This standard focuses on the extent to which the Court has fulfilled the promise of its constitutive legitimacy through its decisions, and through the interpretive principles that guide its decision-making processes. How well is the Court perceived to *actually* protect human rights and how does this affect perceptions of its legitimacy? Whilst respondents made statements that amount to an ‘overall normative’ performance assessment, they also identified distinct issue-areas according to which they judged the Court’s normative performance. Five particular criteria emerged from the dataset:

- a) The appropriateness of the ‘**Living Instrument**’ doctrine that enables the Court to interpret the Convention as a dynamic text in the light of present day conditions
- b) **The degree of intervention** in the domestic legal, political and social context
- c) **The balance between law and politics**, specifically whether Court decisions have been too strongly influenced by domestic or international political considerations
- d) **Transformative quality of Strasbourg case-law:** the fact that the Court through its case law can lead to change of *mindsets* about what human rights are, what they entail and what they demand from the public power.
- e) **Effective resource for human rights protection:** the extent to which the Court successfully translates general principles to concrete entitlements and thereby makes rights real and tangible for applicants as well as for judges and politicians.

B. Managerial Performance

Managerial performance captures the views of interviewees about the ways in which the Court handles its judicial activities either overall or according to specific criteria. These specific managerial criteria included concerns about the ‘administrative’ efficiency of the Court, its composition, micro-level ‘quality’, and enforcement of its judgments. Eight particular sub-standards were raised and assessed:

- a) **Admissibility procedure**
- b) **Hearing procedure**
- c) **Length of proceedings**
- d) **Knowledge of domestic facts and law**
- e) **Reasoning structure of a judgment**
- f) **Case-law coherence**
- g) **Enforcement of judgments**
- h) **Qualification, independence and selection procedures for judges**

3. SOCIAL LEGITIMACY DIMENSION

Social legitimacy refers to the employment of standards that are directly tied to other people's views on the legitimacy of an institution. The dimension has both a social and a populist aspect as it treats legitimacy as being tied to the general public's perception of an institution's legitimacy. Social legitimacy can take various forms, either corresponding to the constitutive dimension of legitimacy or being a question of degree. The constitutive understanding would emphasize that the Court's legitimacy is from the outset dependent on popular support, and that an institution is fundamentally illegitimate (irrespective of its performance) if it does not enjoy this support. A more performance-based view would also tie the Court's legitimacy to popular support, but in a more contingent manner: Holding that a high level of popular support bolsters the Court's legitimacy, and a low level of popular support diminishes it. This contingent understanding allows for the possibility that the Court may be criticized for low levels of social legitimacy, but can still be perceived as fundamentally legitimate on the constitutive dimension. We identified three social-popular standards that were employed by interviewees:

1. **Social acceptance:** the level of the Court's acceptance as legitimate among the general domestic population.
2. **Social usage:** the fact that people are actually using the Court to seek redress for human rights violations.
3. **Social coverage:** a simple assessment that the sheer number of people within the Court's jurisdiction adds to its legitimacy.

Please See Annex I for the Legitimacy Tree Chart

5. OVERVIEW OF FINDINGS

In this section we present the overview of legitimacy perceptions along the constitutive, the performance and the social dimensions. This global overview of the data shows what the prevalent legitimacy standards are and how they interact with each other.

To arrive at the figures below, we counted the number of interviewees who referred to a particular standard, with increasing levels of detail. So if an interviewee made any kind of statement, either broadly in terms of the overarching dimension, or more specifically corresponding to factors further down our tree hierarchy, they were counted for the purpose of assessing the prevalence of each dimension. Later, a more fine-grained counting for each branch of our tree provides the prevalence of each more specified standard.

1. CONSTITUTIVE LEGITIMACY: LEGALITY PLUS

Constitutive legitimacy was the most commonly raised dimension of the three: 93% of all interviewees identified it as a central part of their legitimacy account. Of those who referred to the constitutive dimension, 72 (67%) referred to international legality. Legality, therefore, is the single most widely shared factor that respondents refer to as a basis for the Court's legitimacy. This is not in itself surprising and confirms that domestic actors are strongly socialized into thinking about international legitimacy in terms of legality. The opposite figure, however, also demands attention: 33% of the respondents offered legitimacy accounts that did not have legality in them. This shows that normative-political goals of international institutions offer an important source of legitimacy in the eyes of domestic actors.

More significantly, however, of the 72 who raised legality as a standard of legitimacy, only 12 (17%) anchor their constitutive legitimacy accounts *exclusively* in legality. This means that in 83% of cases where legality was perceived as a ground for the legitimacy of the European Court of Human Rights, some other notion of constitutive legitimacy is also in play. This shows that a normative-political understanding of what supranational human rights courts do, and the values they contribute to, are often conceptualised as a second layer add-on standard to legality. This finding is significant. It demonstrates that the overwhelming majority of respondents does not regard legality as an exclusive basis for the Court's legitimacy. Rather, respondents identify and draw from normative-political foundations of human rights courts as distinct sources for legitimacy alongside legality. This finding calls into question the view that international courts lack the 'presumption of legitimacy' domestic courts are thought to enjoy.⁵ Neither do respondents make an analogy with the basis of the legitimacy of domestic courts in their accounts. Instead, they ground the Court's legitimacy in the 'distinct' contribution it makes to political values.

Among the range of political-normative standards referred to by our respondents, the Court's function as an external corrective – corresponding to the logic of prevention – received the largest degree of support (48% of respondents). This was followed by references to development of common standards (34 %).

⁵Gibson and Caldeira. 1995. *Gibson*, James and Gregory Caldeira. The Legitimacy of Transnational Legal Institutions: Compliance, Support and the European Court of Justice. *American Journal of Political Science*. 39(2): 459-489.

Ranking: Political-Normative Standards

Standard	Respondents supporting it (%)
External Corrective	48
Common standards	34 ⁶
Human Rights protection	26
Democracy	24
Empowering individuals	23

2. PERFORMANCE LEGITIMACY

Of all the interviewees, 91% included performance legitimacy in their accounts. **A central finding of this research is that** domestic actors raise the relevance of normative performance factors more frequently than managerial performance factors (87% compared with 76%). This suggests that domestic actors are more likely to tolerate difficulties with how the Court and its judicial procedures are managed so long as they view the Court as normatively performing well.

On the normative side, the transformative quality of the Court and its degree of intervention into domestic legal and political processes are the most widely emphasised legitimacy standards (both mentioned by 44% of respondents), followed by finding the correct balance between law and politics (40%). This ordering of normative performance legitimacy standards shows that respondents view the Court as a pioneer institution changing mind-sets. They, however, are also concerned about the means with which the Court offers this transformative drive to domestic contexts. This is a curious finding. On one hand, respondents put strong emphasis on the logic of prevention for the constitutive legitimacy of the Court. On the other, they have higher normative expectations of the Court than of domestic authorities when it comes to interpretation of the human rights provisions, and expect the Court to set an example in expanding rights protections. The double emphasis on the balance between law and politics and on the degree of intervention therefore shows that the Court faces legitimacy standards that are pulling in different directions. This points to the fragmented nature of performance expectations: Respondents demand that the Court acts as a human rights pioneer, that it finds the right balance between law and politics, and that it intervenes just the right amount in domestic matters. This makes it all the more important to approach 'legitimacy crisis' analysis carefully. The fact that the Court is seen to be failing on one account, say for example too much intervention, may accompany a positive legitimacy assessment regarding another factor, e.g. the right balance between law and politics.

Surprisingly, the living instrument doctrine and effective human rights protection receive less attention as normative performance standards. Only 21% of respondents make a reference to the living instrument doctrine as a legitimacy issue and 19 % to effectiveness of human rights protection. These two findings have to be interpreted in light of the hierarchical ordering of performance criteria that is at work. This shows that the dialectic logic of transforming societies but also respecting their right to political autonomy is a more dominant legitimacy consideration in the eyes of the respondents than a conservative or progressive interpretation of the text of the treaty or concrete advancements in rights protection. In other words, respondents place more emphasis on long-term and diffuse outputs rather than on short term and specific ones when assessing the Court's performance legitimacy.

⁶ This figure comprises 22% for 'common judicial standards' and 12% for 'common European values'.

On the managerial side only the length of proceedings receives a similar degree of emphasis (43%), followed by the qualification and experience of judges (26%) and knowledge of domestic facts and law (20%). Enforcement of the judgments is low on the list (18%). This is partly due to the fact that respondents viewed enforcement separate from Court's legitimacy and placed more emphasis on the overall effects of Court's judgments in changing minds, legal cultures and political attitudes as opposed to enforcement of specific judgments.

Ranking: Performance Dimension

Normative		Managerial	
Standard	%	Standard	%
Transformative quality	44	Length of proceedings	43
Intervention ⁷	44	Judges: qualification, experience	26
Balance between law & politics	40	Knowledge of domestic fact/law	20
Living Instrument ⁸	21	Enforcement	18
Effective HR protection	19	Case-law coherence	16
		Judicial independence	16
		Admissibility procedure	12
		Reasoning of a judgment	6
		Judges: selection transparency	6
		Hearing procedure	4

These findings indicate that the normative performance of the Court plays a greater role in the assessment of its overall legitimacy than does its managerial performance. Despite the legal background of a large share of our respondents (be they lawyers or judges), procedural aspects of the Court's performance, except the length of proceedings, are considered less weighty than the Court's perceived independence from politics, its judgment in deciding on the appropriate degree of intervention into domestic legal or political decisions, and its impact on transforming both domestic laws and ways of thinking about human rights. As the well-known problem of the length of proceedings indicates, managerial aspects only move into the focus of legitimacy assessments once they reach a real point of crisis. Even then, the emphasis on length of proceedings does not overtake normative concerns in a considerable way. This finding calls for caution when equating the effectiveness of dealing with its caseload with the Court's legitimacy. It also calls into question assessments that view the caseload crisis as a legitimacy crisis proper.

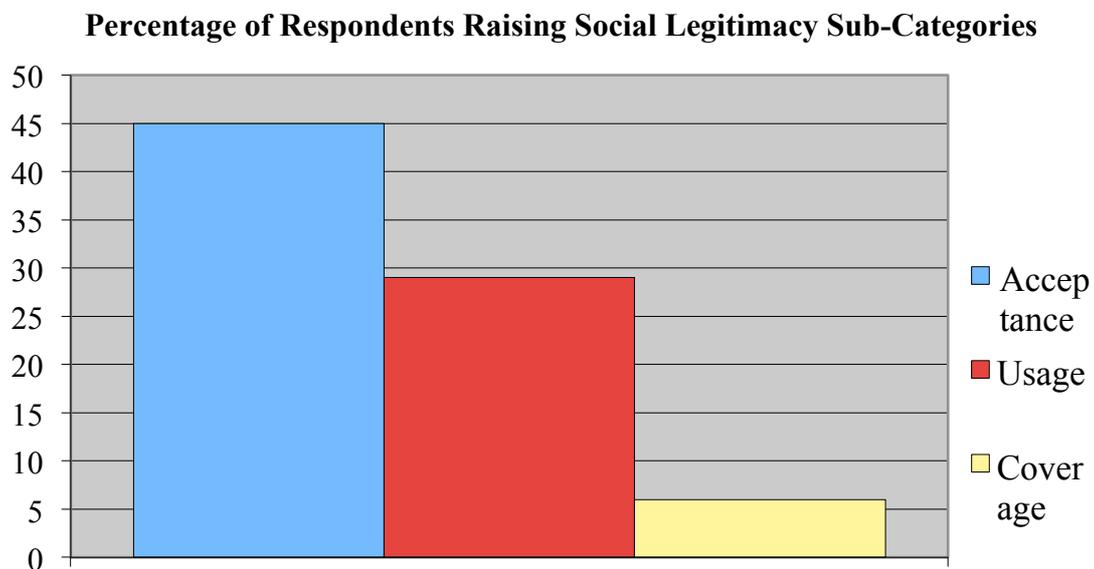
⁷ A further breakdown is that 32% of interviewees spoke in terms of a high degree of intervention, while 10% spoke in terms of a low degree of intervention.

⁸ A further breakdown is that 11% of interviewees spoke in terms of extensive use of the living instrument interpretive doctrine, and 7% of limited use.

3. SOCIAL LEGITIMACY

70 interviewees included social legitimacy in their legitimacy accounts (65% of the total). As such it was raised far less often than either constitutive (93%) or performance (91%) legitimacy. This suggests that social legitimacy is not viewed as a prevalent or sufficient ground for assessing the Court's legitimacy on its own.

We, however, also find that respondents understand social legitimacy itself differently. An important share of respondents (45%) operated with a traditional understanding of social legitimacy and considered social acceptance of the Court by the public at large to be relevant for the institution's legitimacy. However, 29% of respondents thought that usage of the Court by individuals was relevant to the social legitimacy of the Court. We also found that 6% accorded legitimacy in terms of coverage of a significant number of jurisdictions. This differentiated understanding of social legitimacy shows that legitimacy analysis through public opinion surveys would only capture one form of social legitimacy: the 'acceptance' form. It would miss the latter two dimensions, which we consider important for a full picture of social legitimacy and what it means.



4. POSITIVE AND NEGATIVE ASSESSMENTS OF LEGITIMACY: STRASBOURG IN CREDIT

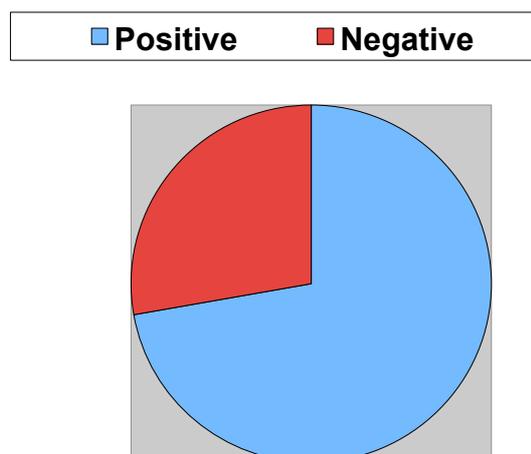
Our data differentiates between the aspects of legitimacy accounts that identify *relevant* standards, and those that in effect entail a *positive* or *negative* assessment of any of these factors. We refer to a positive or negative actual assessment made by an interviewee as its ‘polarity’.

Across the entirety of the data set, these assessments often amount to a mixed picture and it must be noted that none of the respondents makes these assessments under conditions of complete information either about the Court or about the entirety of its case-law. Nor did all respondents provide negative/positive assessments. Some interviewees gave an ‘all things considered’ assessment, some made their assessment with regard to a more specific standard. Some interviewees made both positive and negative statements regarding the same standard, but did not give an overall assessment. So, what is presented below is a self-selected group of respondents who not only identified legitimacy standards, but then also judged the Court against these standards. In the following sections on professional differences and country differences we shall further see how self-selection plays a role in negative and positive assessments.

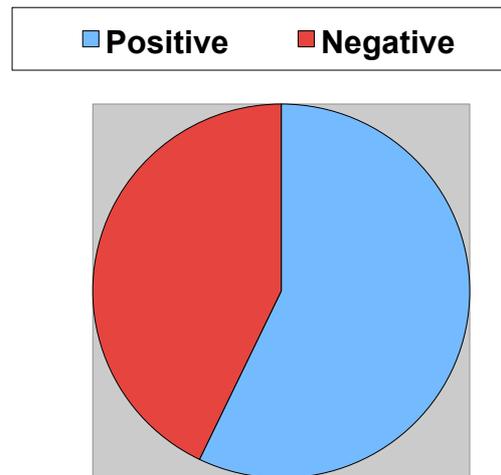
Despite not capturing the views of all interviewees, these ‘polarity’ findings are nevertheless valuable as they offer concrete insights into current stabilizing or destabilizing forces for the legitimacy of the Court and highlight areas in which the Court enjoys a ‘legitimacy credit’ or suffers from an ‘erosion of legitimacy’. An important finding regarding the polarity of assessments is that the overarching assessments of the Court’s performance (“normative performance”, “managerial performance”) tend to be more positive than the assessment of more detailed factors. This can be interpreted as an overall legitimacy credit from which the Court benefits, that to a certain degree remains untouched by more detailed concerns. It also speaks to a substantial degree of trust in the system’s proper working by people who do not have detailed knowledge of its exact working mechanisms or outputs.

The following charts show the split between ‘positive’ and ‘negative’ assessments, where interviewees made an ‘all things considered’ assessment.

Normative Performance Assessment



Managerial Performance Assessment



The legitimacy credit is nowhere more clear than in the constitutive dimension. **That is, out of 107 respondents only 1 called into question the constitutive legitimacy of the European Court of Human Rights.** Even those respondents who did not put emphasis on legal legitimacy considered the Court to be legitimate based on its normative-political foundations or its social legitimacy.

6. PREVALENT POSITIVE ASSESSMENTS OF PERFORMANCE LEGITIMACY: TRANSFORMATIVE QUALITY

Factors triggering the most uniformly positive assessment are the Court's transformative quality (43 of 46 assessments, or 40% of all respondents, considered this positive), its wide-spread usage (26 of 29 assessments were positive, or 24% of all respondents), and it being an effective resource for human rights protection (18 of 20 assessments were positive, or 17% of all respondents).

The value of its transformative potential indicates that boldness and determination in judgments may add rather than detract from the Court's overall legitimacy. The point on usage constitutes an interesting (albeit less prominent) counterpart to the wide-spread criticism of case overload: While the current excessive length of proceedings certainly constitutes a problem, dramatically decreasing the accessibility of the Court would not alone increase the overall legitimacy perceptions of the Court as the data shows that there is a legitimacy trade-off between stringent admissibility criteria and access to the Court.

A further important factor for assessing the Court's legitimacy renders more mixed results, yet overall increases the Court's legitimacy: 36% of respondents assess its overall normative performance as positive, whereas 14% find it negative. Similarly, respondents assess its social acceptance very differently, yet the positive assessments clearly outweigh the negative ones: 32% of all respondents were positive while 20% were negative.

7. PREVALENT NEGATIVE ASSESSMENTS OF LEGITIMACY: NO SUPPRISES

Prevalent negative assessments focus on length of proceedings, admissibility procedures and independence of judges.

The most prevalent negative assessment came from assessment of the length of proceedings. Of those who made an assessment, 43 out of 46 (40% of all respondents) indicated a negative view, whereas only 3 of the 46 (3% of all respondents) thought this was not to be exaggerated. This finding is hardly surprising. A more interesting finding came from those who assessed the admissibility procedure. All but one (11 out of 12, or 10% of all respondents) assessed the admissibility procedure negatively. All these respondents, however, were lawyers. Issues connected to the qualification, independence or selection of Court judges were assessed negatively by 33 (30%) of our respondents, and positively by only 16 (15%). A closer look at the data reveals that the most sharply negative assessment was made regarding judicial independence: out of 17 assessments, 13 were negative (12% of all respondents).

8. MIXED ASSESSMENTS

***'I mean, there is a hundred percent opposition of views on the European Court of Human rights decisions; one is completely positive, the other is completely negative.'** (Lawyer, Turkey)*

Leaving the prevalent negative and positive assessments aside, we find that most of the assessments of the Court's performance and social legitimacy are in essence mixed assessments in the overall dataset either tipping towards a negative or a positive assessment overall.

Standards that tipped more towards the negative side overall were the Court's management of its degree of intervention in domestic affairs (of 56 assessments, 38 were negative – amounting to 35% of all interviewees), knowledge of domestic facts and law (of 23 assessments, 16 were negative – 15% of the overall) and the judges qualification and experience (of 26 assessments, 16 were negative – again, 15% of the overall).

The Court's social acceptance is one area where the assessments tip towards the positive side. Whilst 34 of 55 assessments (32% of all respondents) think the acceptance is legitimacy boosting, only 21 of 55 (20% of all respondents) see it as legitimacy eroding.

There are also a few assessments that do not provide a clear picture. The assessments of the balance the court strikes between law and politics, and of the enforcement of judgments are the most striking instances of this (of 41 assessments regarding the balance between law and politics, 24 were negative and 17 positive, and of 22 assessments for enforcement, 13 were positive and 9 negative). In order to better understand these findings, we must engage in a more fine-grained analysis of our empirical data that looks at individual professional and national groups.

6. CROSS-SECTIONAL AND COMPARATIVE ANALYSIS OF LEGITIMACY ACCOUNTS

Our data set is made up of interviews with 30 judges, 42 politicians, and 35 lawyers. The country division of the interviewees is as follows: 24 from Bulgaria, 19 from Ireland, 18 from Germany, 25 from Turkey and 21 from the UK. In the overview of findings, the views of politicians and respondents from Turkey and Bulgaria are overrepresented. The high politician figure is due to our effort to include interviewees from both government and opposition parties. In countries where a large number of political parties are represented in Parliament (as part of coalitions or the opposition) as is the case in Germany, Turkey and Bulgaria, this requires a higher number of interviews with politicians. Alongside a high number of political parties in Parliament, the tri-partite apex court system and the larger pool of litigating lawyers in Bulgaria and Turkey increased interview numbers from these countries.

The following section is divided into two parts. The first part carries out a cross-sectional analysis by taking a closer look at legitimacy accounts across professional affiliation. It provides answers to the question whether or not there are uniform reasons for support or criticism, or whether a given professional group is more inclined towards supporting the Court than the others. This is followed by the second part where we look at the data through the lens of the legitimacy accounts emerging from country contexts. Part II counterbalances Part I. An analysis of the data both along cross-sectional and along comparative lines works as a safeguard against misguided country and professional stereotyping: First countries are not treated as homogeneous entities, but instead differentiated into a number of distinct voices. Second, sensitivities of judges, politicians and lawyers are highlighted as stakeholders in their own right and further investigated. Further, findings that identify certain legitimacy factors to be particularly relevant for one specific group or one country may lead to more targeted reform recommendations. Whereas lawyers may have a thorough understanding of the court's intricate working mechanisms and are able to point out important procedural shortcomings, the responses of politicians and judges are instructive for gauging the degree of sensitivities towards the Court's interference with domestic laws or policies. Conversely we can analyse why some legitimacy concerns are more salient in some countries and discuss the appropriate scope of action to address them.

1. LEGITIMACY PERCEPTIONS AMONST JUDGES, POLITICANS AND LAWYERS: VOICES FROM COURTROOMS AND PARLIAMENTS

A. Judges: Supportive, but demanding

It is important to start the analysis from the judges. As we discussed above judges are thought to have the most complete knowledge about the case-law of the Court in comparison to lawyers and politicians. They are also in a position to assess the legitimacy of an institution with which they identify at the professional level: As members of the judiciary they are assessing a court which watches them over their shoulders.

Our findings show that on average, judges draw upon a larger pool of legitimacy criteria than politicians and lawyers along all dimensions. Among the three groups, they pay the greatest attention to legality (83%) when grounding constitutive legitimacy. Yet 93% of those referring to legality also consider at least one other factor on the constitutive dimension relevant for the Court's legitimacy, giving strong support to the "legality plus" understanding: For the large majority of judges, legality by itself does not suffice for grounding the Court's legitimacy. In particular, judges attach a great degree of importance to the court's transformative quality (73%) when assessing the performance of the

Court. This points to their more intimate knowledge and acute awareness of the effect of the Strasbourg Court on domestic law and domestic legal culture. They further regard this effect overwhelmingly positively (of all the assessments made, 20 were positive versus 2 negative). In light of this it is also noteworthy that judges are divided when it comes to how they assess the balance the court strikes between law and politics (40% of judges regard this as a relevant factor, and the ten judges who make an assessment are equally divided between positive and negative). This is a significantly more balanced assessment than the corresponding assessment made by politicians (12 politicians see the balance as negative, and 6 positive). This finding calls for further attention to the persuasive reasoning of judgments to win more domestic judges' positive assessment.

Along the political-normative foundations, judges offer most support to the role of the court as constituting an external corrective (50% of all judges refer to this) and setting common judicial standards (40% of all judges). The high ranking of common judicial standards is significant insofar as it only ranks fourth for lawyers and fifth for politicians. Contrary to the image of apex court proudly protecting their particular legal traditions, this finding indicates that apex judges largely see a particular value in harmonizing judicial standards across Europe, and regard the Court as a welcome instrument for this. Even though "shared values" is not among the list of legitimacy factors most emphasized by judges, respondents from this group draw on it to a much greater extent (23%) than do politicians (7%) or lawyers (9%). This shows that apex court judges are strongly moved by the argument of equal application of human rights standards in all jurisdictions and this plays an important role in how they weigh competing legitimacy concerns.

60% of all judges regard the court's overall normative performance as relevant in terms of legitimacy. Of those that provide an assessment of that performance, 6 individuals are critical and 14 supportive. This tendency towards a positive assessment of the court's normative performance is reflected in the more detailed subcategories of normative performance: While this assessment is also mixed, and in particular entails criticism of too much intervention, positive assessments outweigh negative ones (in particular "transformative quality" and "effective resource for HR protection", the latter being considered relevant by 43% of all judges). The judges' uniform criticism of too much intervention (40% of all judges) seems to be at odds with the appreciation of the Court's transformative quality. However, it mirrors one of the "overview findings": The Court's general role or performance is generally perceived more favorably than the more detailed working mechanisms (cf. section on normative and managerial performance in the overview section above). One explanation of this contradiction may, therefore, be that judges appreciate the court's overall Europe-wide effect (in particular in terms of awareness-raising and changing mind-sets), but worry about concrete instances of intervention that they have witnessed in their own work.

One of the main factors distinguishing judges' legitimacy accounts from members of other professional groups is the emphasis placed on the Court's knowledge of domestic law and facts (50% of judges refer to this, but only 6% of lawyers and 10% of politicians). Seeing as the assessment of this aspect is mixed, but tilting towards the negative (11 negative, 7 positive) it is certainly a point for improvement that could significantly strengthen judges' perception of the Court's legitimacy.

The qualification/ experience of judges is not only a legitimacy criterion that judges emphasize more than politicians or lawyers (40% as opposed to an average of 26%), they also come to a more critical/negative assessment (8 negative, 3 positive) than members of the other professional groups: Only 3 out of 7 politicians and 5 out of 8 lawyers are concerned about the lack of qualification and

experience of European Court of Human Rights judges. It is difficult to say how this should be interpreted: Are domestic judges best placed to assess their supranational colleagues' qualifications, or do they feel particularly threatened or alienated by their activities and competencies? Domestic judges also have significant concerns about the independence of their Strasbourg counterparts: Out of the 23% mentioning this as a legitimacy factor, 7 come to a negative assessment and only 1 to a positive one. Judges further place far more emphasis on the two managerial performance factors "case law coherence" and "enforcement" (both 30%) than lawyers and politicians. Importantly, case law coherence receives an overall positive assessment by judges (3 negative, 6 positive), and opinions diverge on enforcement (5 negative, 5 positive). This contradicts the notion that domestic judges have an overall negative image of the Court's working mechanisms: Certain judicial aspects are appreciated and respected by a number of domestic judges.

Judges place less of an emphasis on social legitimacy than politicians, yet significantly more so than lawyers. Their assessment of the Court's social legitimacy is mixed (7 negative, 12 positive). Besides the most prevalent factor of social acceptance, the widespread usage of the court is also relevant to 40% of the judges, and is assessed mainly as a positive factor (2 negative, 9 positive).

B. Politicians: Welcoming and on guard

Politicians' references to legality (mentioned by 67%) as a basis for the Court's legitimacy show that the majority of politicians have a high degree of respect for procedures of international law-making as affording legitimacy to supranational courts. Out of those referring to legality, 95% also refer to a political-normative standard on the constitutive dimension ('legality plus'), indicating that the overwhelming majority considers the Court's legitimacy to be at least partially grounded through political-normative criteria. In comparison to lawyers and judges, they are more prone to making overarching statements about the political-normative foundations of the court, and regarding the court's legitimacy to be based on this (33% in comparison to a 19% average). Among the more detailed political-normative constitutive factors, politicians are the strongest proponents of the need for an external corrective (62% as compared to 50% among judges and 29% among lawyers). This finding shows support amongst politicians for a supranational court looking over the shoulder of the whole domestic process.

Politicians make fewer overarching statements about the Court's normative performance than lawyers and judges. This finding may be linked to the comparative lack of overall managerial statements by judges. The politicians' assessment of normative performance, however, is mixed. On the one hand, the use of living instrument is being criticized, while on the other hand the Court's transformative quality is regarded as its most positive feature.

The Court's degree of intervention (52%) and the balance it strikes between law and politics (43%) are both relevant factors for politicians. They receive mixed assessments, albeit the negative assessments outweigh the positive ones in both cases (two thirds negative, one third positive). The somewhat more mixed assessment of the degree of intervention (in comparison to the judges' more uniformly negative assessment) may be due to two different factors: (1) Judges and politicians have different concerns about the 'burdens' of intervention. Judges might find frequent intervention with domestic laws without corresponding changes in legislation brings instability to the coherent application of law. Whereas for politicians intervention can be either beneficial – i.e. because it supports their own point of view – or harmful – it puts them in a difficult position or they may altogether be indifferent to

intervention. (2) When looking at the politicians' data in more detail, it becomes clear that government politicians assess a lot of intervention uniformly negatively, whereas opposition and independent politicians have a more mixed assessment: About half of them welcome a lot of intervention.

Politicians refer to managerial performance less than the other elite members (60% compared to 77% for lawyers and 87% for judges). While the length of proceedings is a concern, it is less dominant than for the other groups (33% instead of 50% for judges, and 49% for lawyers). In addition, 2 out of the 14 politicians mentioning this factor make a positive assessment, as opposed to a uniformly negative assessment by the two other groups. Other factors may not be statistically significant, but add up to a mixed assessment of the Court's managerial performance with the admissibility procedure and the independence of judges falling on the negative side, whereas the court's enforcement capacities and the qualification of judges receive a more positive assessment on average.

Overall, politicians refer to the factors falling under the social dimension of legitimacy more frequently than other elite members (76% as compared to 67% of judges and 49% lawyers). Social acceptance in particular is emphasized by 50% of politicians.

C. Lawyers: Patient, but concerned

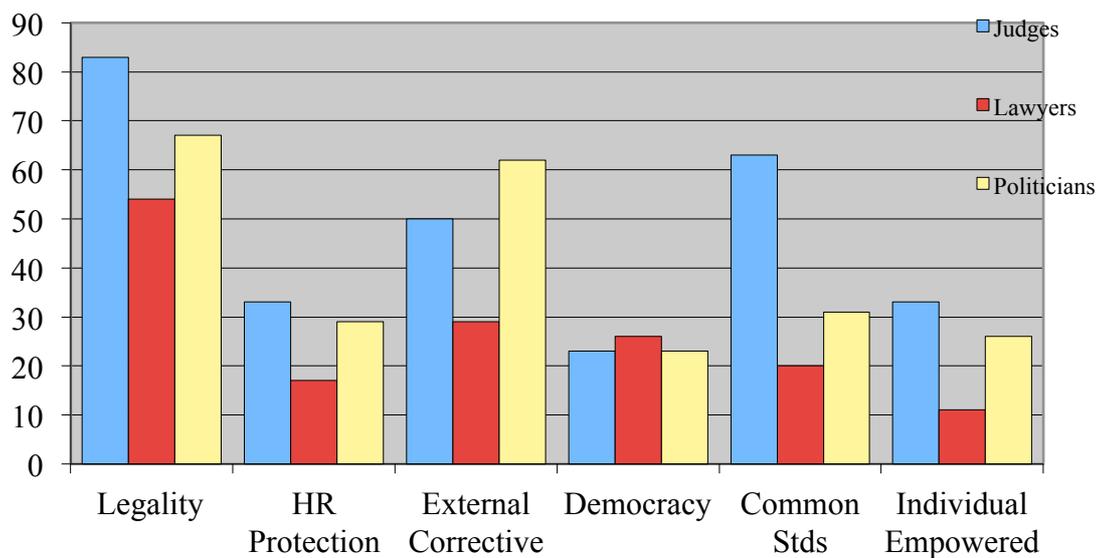
Legality is still one of the most significant aspects of the court's legitimacy for lawyers, but it is less pronounced than among the other two groups (54% in comparison to 67% for politicians and 83% for judges). However, since lawyers place less emphasis on the constitutive dimension of legitimacy overall, the 'legality plus' phenomenon is less prevalent than for the other two professional groups: 23% of all lawyers refer solely to legality on the constitutive dimension. Surprisingly there is less emphasis on the role of the Court as an external corrective (29% in comparison to 62% for politicians and 50% for judges), common judicial standards (11% in comparison to 19% for politicians and 40% for judges), and the right of the individual to challenge the state (11% in comparison to 26% for politicians and 33% for judges). The latter finding at first is puzzling, since it seems to contradict the purpose of human rights lawyers' profession. This, however, may be explained by the deep internalization of the European Court of Human Rights for human rights lawyers. For human right lawyers, the Strasbourg Court simply exists and there is no further need to dissect its foundations.

When providing an account of the normative performance of the Court, lawyers make as many statements about the overarching category as judges, and significantly more than politicians (63% as opposed to 60% among judges and 29% among politicians). Different from judges, this is not matched by an equally active engagement with the corresponding subcategories.

While the balance between law and politics is mentioned with about average frequency (and receives a very balanced assessment: 7 negative, 6 positive), lawyers put significantly less emphasis on normative performance subcategories (in particular regarding the Court's degree of intervention and its transformative quality). Whilst lawyers assess "a lot of intervention" in a balanced manner (2 positive, 2 negative), the observation "little intervention" is typically a type of criticism for lawyers: 7 out of 8 regard this as negative and would therefore like more intervention on the part of the Court. The strongest positive points for lawyers on the normative performance dimension are the Court's transformative quality and it being an effective resource for human rights protection.

Similar to their tendency to make general analyses of normative performance, lawyers also take issue with the Court's managerial performance in broad terms (37% in comparison to 14% among politicians and 7% among judges). Their professional bias in terms of having first-hand experience of the Court's procedures comes into play when admissibility is raised as a legitimacy factor (20% in comparison to 12% of politicians and 0% of judges, with a uniformly negative assessment). 42 out of 59 assessments made by lawyers about managerial performance aspects are negative, and 1 out of 35 lawyers regards it as a serious legitimacy crisis in that the admissibility procedures will stop lawyers from seeing Strasbourg as a court worth going to. This finding is contrasted with less emphasis on case law coherence and enforcement and independence of judges. The first points is better explained by the lack of precedent in Strasbourg in that lawyers see lack of coherence as an opportunity to test new cases. Lawyers also view enforcement in a narrower way: they are always paid their costs and expenses and applicants get their compensation. Finally, lawyers offer a mixed assessment of the independence and experience of judges. More lawyers recognize that the system needs improvement but this does not affect the overall normative and managerial performance of the Court itself. Social legitimacy receives the least amount of emphasis from lawyers. That said, 31% do consider social acceptance to be a relevant factor, and among these 5 come to a negative and 7 to a positive assessment of the Court's current social acceptance.

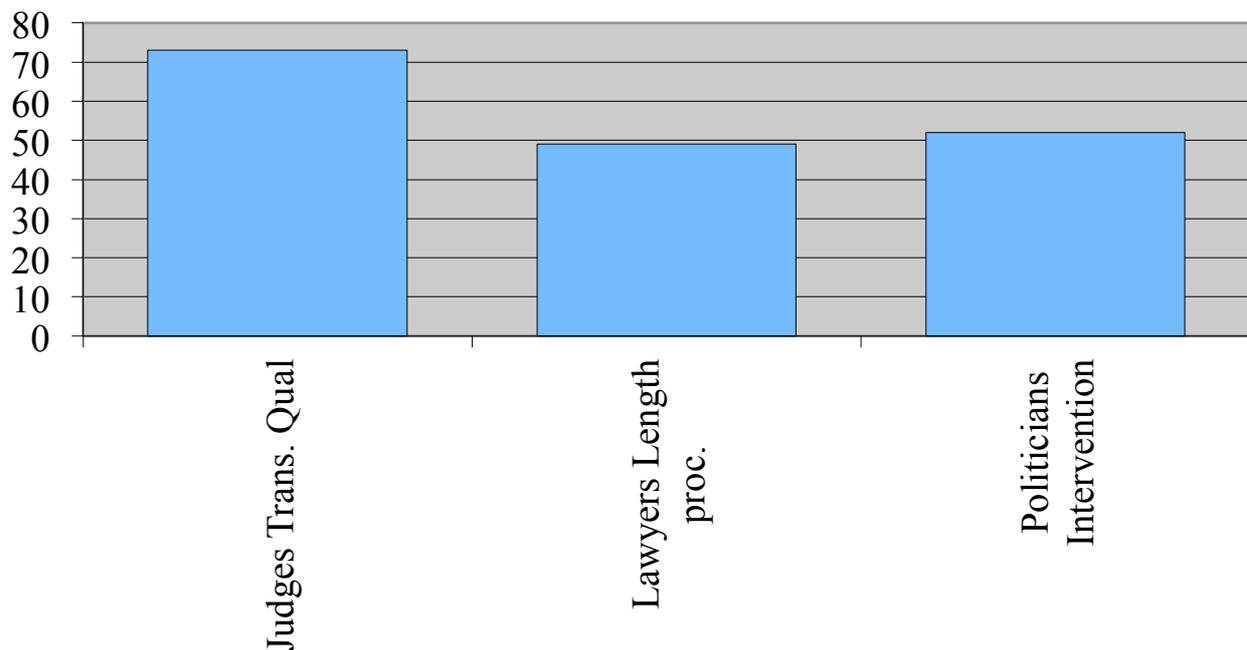
Emphasis on Constitutive Standards, By Profession



Emphasis on Performance Standards, By Profession

Performance Standard	Judges (%)	Lawyers (%)	Politicians (%)
Effective HR protection	43	14	5
Transformative quality	73	26	38
Balance between law and politics	40	37	43
Degree of Intervention	47	31	52
Use of Living Instrument approach	33	17	14
Admissibility Procedure	3	20	12
Hearing Procedure	7	6	0
Length of Proceedings	50	49	33
Knowledge of domestic fact or law	50	6	10
Reasoning of a judgment	10	9	0
Coherence of case-law	30	9	12
Enforcement	30	11	14
Judges' qualifications and experience	40	26	17
Judges' independence	23	11	14
Selection transparency for judges	3	3	10

Most Emphasised Performance Standard, by Profession



2. LEGITIMACY PERCEPTIONS ACROSS COUNTRIES

A. Turkey: The more the cases the stronger the legitimacy crisis?

Turkey is the country with the highest number of violation judgments in our data set in an exceptionally diverse range of issue-areas. Whilst Turkey's position as a EU candidate is unique to all other four countries in the dataset, the legitimacy perceptions coming from Turkey are nevertheless indicative of how countries with large numbers of violation judgments perceive the legitimacy of the Court.

Constitutive legitimacy: Emphasis on political-normative foundations

“I separate legality and legitimacy. It has fulfilled the conditions of legality, we know that. It is legitimate because it is the product of a common ideal. It is the product of an ideal concerning the protection of human rights and having common standards on human rights.” (Turkish lawyer)

Of the 25 Turkish interviewees, 14 (56%) refer to international legality grounding the constitutive legitimacy of the Court. This is lower than the dataset taken as a whole (67%). However, in 93% of cases where the Turkish interviewees anchor legitimacy in legality, they also enter political normative foundations of the legitimacy into their legitimacy accounts. This is significant, as it shows that the Court benefits from a legitimacy credit along the constitutive dimension. Amongst the normative-political foundations, the goal of protecting human rights scores the highest with 40 % of the Turkish respondents raising this as a factor. Turkish interviewees emphasise the pursuit of shared European values twice as much as it was emphasised in the dataset as a whole. Conversely the external corrective argument and individual challenging the state has received less emphasis in the Turkish context than the overall average (32 % compared to 47 % average overall in the case of the former and 16% compared to 23% average overall in the case of the latter). No interviewee thought that the Court lacked constitutive legitimacy.

Balance between law and politics in the lead

Of the Turkish interviewees, 23 out of 25 (92%) emphasised that normative performance was key to assessing the legitimacy of the Court. This is higher than the average of 87%. Respondents, however, disagreed about whether the normative performance of the Court was legitimacy boosting or legitimacy eroding. The mixed assessments in the case of Turkey, however, should be seen in the context of knowledge of case-law bias. There are simply too many cases and most interviewees only had knowledge of a small number of Turkish cases.

The single most raised factor in Turkey was the Court's balance between law and politics, with 64% of interviews identifying this as a legitimacy standard. This is significantly higher than the average across the dataset (40%). An explanation for this is large and diverse violation judgments delivered against Turkey. Interviewees drew from a variety of cases including inter-state cases, cases concerning freedom of religion, and actions of the security forces, in arguing that the Court was influenced by political considerations. At the same time 52% of the interviewees emphasised the Court's transformative quality as the second most important factor overall for assessing legitimacy. An important finding in this regard is the mixed assessment of how the Court strikes the balance between law and politics, and the exclusively positive assessment of how the Court transforms mindsets and

status quo. This finding is significant because whilst the Turkish interviewees perceived that its transformative quality was increasing the legitimacy of the Court, they also thought that the balance between law and politics was legitimacy-eroding in the Turkish context.

In contrast to the normative performance credit the Court enjoyed, by a ratio of 3 to 1 respondents viewed the Court as failing in terms of managerial performance. In addition to the common concern about the length of proceedings, Turkish interviewees were exclusively negative about the admissibility procedure, and the Court's knowledge of domestic facts or law. This finding indicates that the legitimacy crisis in terms of managing cases is strongly felt in the case of a country with one of the highest number of cases.

Further, Turkish respondents put greater emphasis on the reasoning of a particular judgment as a legitimacy-boosting factor than average. There was, however, less emphasis on the legitimacy concerns connected to the independence, experience and selection of judges than average: Only 16 % raised this as a factor, compared to an average 34%, but always in negative terms.

Turkish interviewees' stronger emphasis on admissibility criteria (20% compared to the average in the dataset of 12% shows that the interviewees firmly believe that the Court's judgments will, in the long run, have the transformative quality of improving the standards of human rights protection in Turkey. This is despite respondents noting that caseload and length of procedures in Strasbourg are eroding its legitimacy. This shows that, on balance, the focus is more on the long term outputs of legitimacy rather than on short-term outputs.

B. United Kingdom: Setting the Legitimacy Bar High

The United Kingdom is a founding member of the Court and a key drafter of the Convention. One of its constitutional principles, parliamentary sovereignty, means that the UK has a constitutionally weak court system and a constitutionally strong parliament. Historically the UK has faced high numbers of litigation in Strasbourg due to its lack of incorporation of the Convention into domestic law. A by-product of this is that a body of legal professionals has emerged in the UK that has an extensive knowledge of and expertise in Strasbourg case-law. The UK findings are helpful in understanding legitimacy concerns of jurisdictions with strong parliamentary traditions and weak courts.

The Dominance of Legality

UK interviewees emphasized legality more than any other country as the basis of constitutive legitimacy, in that there were more British interviewees who viewed legality as the sole basis of constitutive legitimacy (24%) than on average (17%) and fewer who introduced a legality 'plus' view. The most prevalent normative-political legitimacy ground in the UK was the external corrective argument (48%, which corresponds exactly to the average). Common judicial standards and democracy were prioritised (38% of interviewees, compared with 23% across the dataset) receiving slightly more emphasis as legitimacy anchors. The UK, however, was the only country where an interviewee also made a negative assessment of the constitutive legitimacy of the Court by arguing that the Court lacked democratic legitimacy. The UK, therefore, stood out as the only country where democracy was understood in opposite ways: both enhanced and deprived by the Court.

The normative performance of the Court was taken up as a performance legitimacy standard by *all* UK interviewees (the average across the dataset being 87%). For the UK this was clearly a vital part of the legitimacy account: did the Court adequately discharge its right to decide, given to it via the consent of states?

This emphasis on normative performance can be explained by the stronger emphasis given to legality in the UK along the constitutive dimension. Grounding the Court in legality on the constitutive dimension suggests that the Court does not start with a large legitimacy surplus but that it needs to gain legitimacy through its performance. Overall, positive statements connected with the normative performance dimension outweighed the negative ones by a factor of 2 to 1. There was further a strong emphasis on the positive impact of the Court's activities in terms of their transformative quality. However, the UK interviewees showed strong concern about the balance of intervention achieved by the Court. The most frequent assessment was that the Court intervened too much in domestic affairs, and that this erodes its legitimacy. There were, however, also assessments that pointed in the opposite direction: the failure of the Court to intervene enough in domestic affairs erodes its legitimacy. A common pattern, however, was that overall the UK interviewees agreed that the 'correct' balance was not achieved in terms of overall perceptions.

Judging the judges

Looking at the 90% of UK interviewees who made statements about the managerial performance of the Court reveals a stronger emphasis than average on factors connected to the judges themselves. This is so much so that 'length of proceedings' comes in second place.

Factor	UK	Average
Qualification/Experience of judges	43%	26%
Judicial independence	29%	16%
Transparency of selection	19%	6%

In the view of the UK interviewees, there are deficiencies in terms of the transparency of selection and judicial independence, though the figures are not high. Transparency of the judicial selection process garnered only four assessments, but three of those were negative. Of more concern is the negative assessment of judicial independence: of seven assessments, five were negative. In terms of the qualification and experience of the judges, the picture is harder to grasp: of eight assessments, half were positive and half negative.

With respect to social legitimacy we also find that the UK emphasis on this dimension is higher than the average (76% compared to an average of 65%). Within the UK, the 'coverage' aspect of legitimacy was more frequently raised (14%, compared to the average of 6%). The emphasis on social legitimacy in the UK context goes hand in hand with emphasis on the importance placed on the views of the electorate in the UK's parliamentary democracy.

For the UK, the stronger focus on legality in the constitutive dimension correlates with different types of emphasis along the performance dimension. It is not enough that the Court is legitimate legally: it must live up to its normative promise. The UK context highlights the degree of intervention and the qualification and experience of judges as two most salient factors to satisfy performance legitimacy.

C. Ireland: Legitimacy Between a Rock and a Hard Place

Ireland is the country with the lowest number of cases before the Court – although there is a high level of violation judgments in those cases. Ireland has a long-standing constitutional history and there is a right to individual petition before the Supreme Court. Due to the interpretive differences in the areas of right to privacy and family life between the Irish legal system and Strasbourg case-law, Ireland has the reputation of being guarded towards the authority of the Court. The Irish context offers important clues towards understanding legitimacy accounts in jurisdictions which see significant incompatibilities between their legal system and Strasbourg case-law.

In Ireland, legality as a constitutive ground of legitimacy was emphasised only slightly more than average (74%). The Legality ‘plus’ argument was higher than average: 93% of those mentioning legality also emphasised the importance of normative–political foundations compared with the average of 81%. Significantly, 95% of Irish interviewees referred to a political normative foundational factor to ground the legitimacy of the Court. This finding brings Ireland closer to Turkey than the United Kingdom in terms of the emphasis placed on constitutive legitimacy.

There are notable differences in the priority given to the political normative factors, compared to Turkey. First, the focus of the Irish was more on the specific reasons for having the Court than general reasons. The ‘external corrective’ category ranked first with 58% of Irish interviewees raising it. This shows the emphasis on the Court as being a force against parochialism in Ireland as opposed to advancement of important political values. The lack of emphasis on general accounts can also be explained by Ireland’s long-standing experience of domestic rights protections through its own Constitution. Only 16%, compared with the average of 26%, emphasised protection of human rights as a ground for constitutive legitimacy. Equally, concern for common judicial standards was significantly lower than the average (11% compared with 23%).

Originalism taking centre stage

A number of significant deviations arose in terms of the Irish assessment of the Court’s normative performance. They connected legitimacy to the effectiveness of the Court as a resource for human rights protection in 32% of cases, and of the two assessments made, both were positive. The Irish interviewees were more concerned than others regarding the degree of intervention: more interviewees (58% compared with the dataset average of 31%) raised the issue of a high degree of intervention when discussing the Court’s legitimacy. This was seen predominantly in a negative way: too much intervention is eroding the Court’s legitimacy (9 out of 11 assessments made this connection). Equally, the Court’s use of the living instrument doctrine was raised more often (26% of Irish interviews compared with 21% overall) and where a performance assessment was made, it was exclusively negative: the living instrument doctrine represents a departure from the original legality/consent and to the extent that this takes place it undermines the Court’s legitimacy.

Reflecting their focus on the normative-political foundations and normative performance legitimacy, the Irish raised fewer managerial performance dimension factors than average – only 58% of interviews referred to this dimension at all (compared with 76% across the dataset). The factors that

were raised did not deviate much from the dataset taken as a whole. However, in common with the UK, the Irish were more concerned with the assessment of the judges and the judicial outputs than average (32% of interviews, compared with a 26% average for judicial qualification and experience). Four out of six assessments about the Strasbourg judges were negative. The Irish interviewees were on the whole undecided about whether the Court's operation bolsters or erodes its legitimacy.

The emphasis in the Irish context lies on whether the Court strikes the right balance between intervening in domestic law and facts. In parallel to this they are also more critical about the use of the living instrument doctrine to interpret the Convention in present day conditions. Significantly, as opposed to Turkey, there is less emphasis on long-term gains. The interviewees, therefore, operate with more stringent and short-term criteria in putting together a legitimacy account to assess the Court despite the fact that they believe in the role it plays as an external corrective.

D. Germany: It is good to have this Court

“And this [human rights] interpretation may not be left to politics; I find it reassuring that we continue to try and define common standards for this in Europe.” (German politician)

Germany is the country with the second least number of cases in the dataset. It has a strong Constitutional Court with the right to individual petition and powers to strike down legislation. The German case constitutes an insightful example for countries with a strong judicial review tradition of the legislative and the executive branch.

In terms of the political normative foundations German interviewees emphasised the value of the 'external corrective' more (56% compared with 47% across the dataset), reflecting a strong degree of support for the logic of prevention of human rights violations domestically. On the opposite end the power of the individual to challenge the state received the least, with only 11% of interviewees raising this factor (the average being 23%). This lack of emphasis corresponds with the number of cases against Germany as well as the importance of the German Constitutional Court in protecting rights that was consistently raised throughout the interviews.

A significant deviation in the German context was the low degree of emphasis placed on the normative performance dimension, with 78% of them identifying these as factors relevant to legitimacy (compared with 87% across the whole dataset). Where an assessment was made, positive accounts outweighed the negative ones by a factor of 3 to 1, including throughout all sub-category assessments. This finding shows that the German interviewees viewed the Court as an institution generally good to have. In particular, the German interviewees less frequently raised the balance between law and politics as a factor (only 28% compared with 40% across all interviews). The Court as an effective resource for protection of human rights also received significantly less emphasis (11% compared with 26% on average). Where an assessment of this was made, it was always positive.

Managerial concerns are more prevalent

In contrast to the emphasis on normative performance, managerial performance factors received more emphasis in Germany than across the dataset average throughout. German interviewees approached the

legitimacy of the Court by reference to managerial performance factors more often than those from other countries (89% of German interviewees raised some element, compared with 76% as the average). The overall assessment tilted towards the negative: the Court's managerial performance was seen to be eroding its legitimacy. Setting aside the exclusively negative assessment of the length of proceedings, specific issues raised reflected a connection of the Court's output with a perception of the importance of the judges themselves: 33% of German interviewees raised the qualification and experience of the judges as a relevant point for the Court's legitimacy, and strikingly, where an assessment was made, it was exclusively negative (six assessments). Similarly, judicial independence received more attention as a legitimacy concern (22% compared with the average of 16%).

13 out of 18 interviewees (72%) in Germany emphasise social legitimacy as a legitimacy dimension. This is above the average of the dataset. The focus is on both acceptance and usage and on both occasions the assessments of the interviewees are predominantly positive. That is, they do not regard the Court having a popularity crisis and on the contrary, they associate social legitimacy with the positive usage of the Court. The references to social legitimacy, therefore, were dominantly invoked to boost the legitimacy of the Court.

E. Bulgaria: Legitimacy as moving on

Bulgaria has the second largest number of cases before the court and is the most recent member of the Council of Europe in this data set (joined in 1992). Bulgaria is important for helping us understand legitimacy accounts coming from post-Soviet transitional states with successful strategic litigation communities that have used Strasbourg case-law to effect domestic change, and transitional judicial and political elites who represent both new and old ideas of law and governance.

Legality as Authority

Bulgarian interviewees focussed more on the legality paradigm in their assessment of constitutive legitimacy than all the other respondents when the dataset is taken as a whole. Significantly, 4 out of 24 interviewees referred solely to legality as the basis of legitimacy. Of those who referred to legality, 75% also emphasised political normative foundations of the Court's legitimacy (compared to 81% average across the dataset). Furthermore, only 71% Bulgarian interviewees (compared with 87% across the whole dataset) made references to the political normative foundations in their legitimacy accounts. The specific factors emphasised reflected the average picture from the dataset.

This reduced emphasis on political normative factors, and enhanced focus on a solely legal constitutive foundation is further matched by the emphasis on overall normative performance alongside the performance dimension. Bulgarian interviewees in that respect showed similarities with Germany in that they did not emphasise or take issue with specific normative performance standards. Most assessments were of the 'overall kind' and they were predominantly positive. Significantly, the most common specific normative performance element across the dataset (the transformative quality of the Court's activities in terms of human rights standards) was raised in only 29% of cases. In each instance it was raised it was also positive. The application of the living instrument doctrine, too, was only emphasised in positive terms. The finding on the degree of intervention is further striking. In two assessments where a high degree of intervention was raised as a legitimacy standard it was assessed as positive. In another two cases where little intervention was raised as a legitimacy standard it was raised as negative. The balance between law and politics was uniformly assessed as negative. The assessment

of normative performance categories taken together by Bulgarian interviewees shows a strong influence of the Bulgarian political context, transition from totalitarianism to democracy, on the legitimacy accounts. This finding further begs a new question: when the broader concerns with transition are less relevant, what would be the basis of the legitimacy of the European Court of Human Rights in the Bulgarian context?

The lack of too specific or too negative views alongside the normative performance dimension indicates that the Bulgarian interviewees perceive legality differently from their British counterparts. Whereas in the latter case the emphasis on legality leads to stringent and detailed assessments of normative performance, in the case of Bulgaria, we have the opposite outcome: legality is correlated with general and positive assessments. This suggests that in the Bulgarian case legality is more strongly associated with the authority of the Court and the acceptance of its leadership in the field of human rights law.

The lack of emphasis on detail and short-term outcomes also goes over to the perceptions of managerial performance. Only 58% of Bulgarian interviewees raised this dimension (compared with 76% of the whole dataset) and again, except for the issue of the length of proceedings, Bulgarian interviewees were not offering assessments in specific terms. The clearest emphasis was placed on the dissatisfaction with the admissibility procedure. Interviewees assessed this as negative and as eroding the Court's legitimacy in the eyes of those who expect justice from it. Bulgarian lawyers further raised lack of reasons in inadmissibility decisions and the lack of clarity about the extent to which the admissibility decision prejudiced the merits of applications as legitimacy-eroding aspects of Court's management performance. The emphasis on admissibility procedures reflects the high expectations the Bulgarian lawyers have of the Court in aiding the reform of the Bulgarian system.

63% of the Bulgarian interviewees place an emphasis on the social legitimacy dimension. The views on social legitimacy are divided between acceptance of the Court (48%) and the usage of the Court (39%). The wide coverage of the Court does not receive any attention in the Bulgarian context. Overall, the interviewees both perceive the Court to be accepted by the public at large and believe that the willingness of the citizens to take their cases to Strasbourg boosts the social legitimacy of the Court.

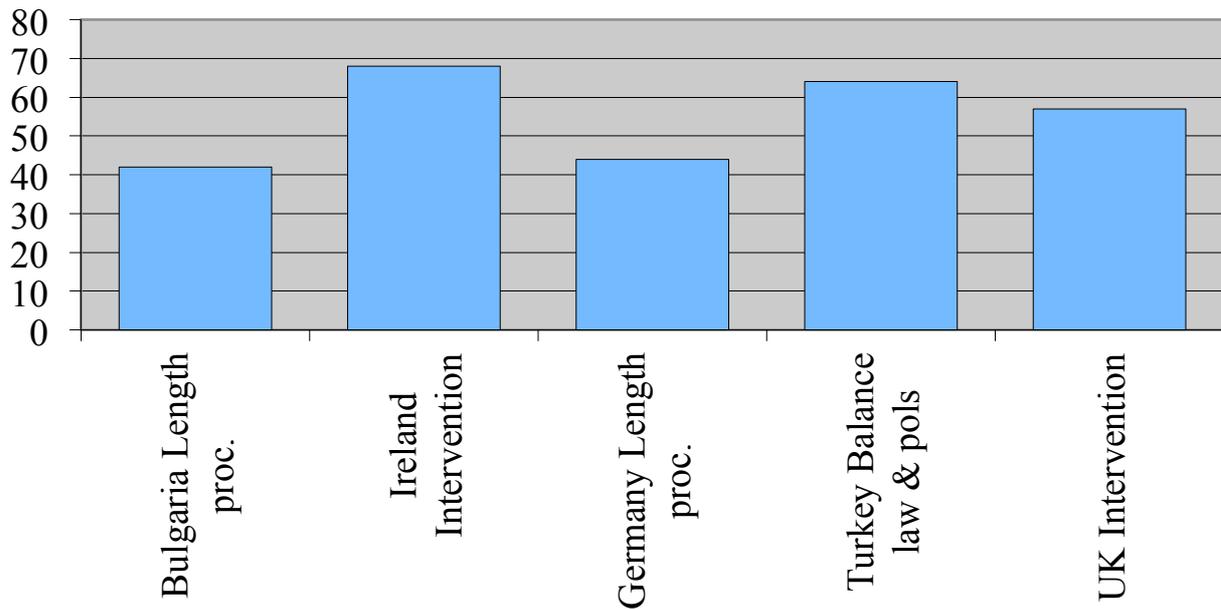
Emphasis on Constitutive Standards, by Country

Foundational Standard	Bulgaria %	Ireland %	Germany %	Turkey %	UK %
Legality	67	74	72	56	71
Human Rights Protection	17	16	28	40	29
External Corrective	50	58	56	32	48
Democracy	29	11	28	24	29
Common Standards	25	32	33	40	9
Individual Empowerment	29	26	11	16	33

Emphasis on Performance Standards, by Country

Performance Standard	Bulgaria %	Ireland %	Germany %	Turkey %	UK %
Effective HR protection	13	32	11	16	24
Transformative quality	29	53	39	52	48
Balance between law and politics	17	42	28	64	48
Degree of Intervention	25	68	28	44	57
Use of Living Instrument approach	17	32	17	8	33
Admissibility Procedure	13	5	0	20	19
Hearing Procedure	4	5	6	4	0
Length of Proceedings	42	47	44	44	38
Knowledge of domestic fact or law	13	21	22	20	24
Reasoning of a judgment	0	0	0	20	5
Coherence of case-law	8	26	11	12	24
Enforcement	13	16	17	20	24
Judges' qualifications and experience	13	32	33	16	43
Judges' independence	4	16	22	12	29
Selection transparency for judges	4	5	0	0	19

Most Emphasised Performance Standard, by Country



7. THE VIEW FROM STRASBOURG

In order to contrast our domestic level findings with the views of people who have an even greater proximity to the Court, we carried out an additional set of interviews with 4 judges and 6 senior members of the registry at the Court. Our research interest encompassed the following questions: Do jurists based in Strasbourg have a different understanding of the legitimacy of the European Court of Human Rights compared to the domestic stakeholders? Do they emphasise similar issues as legitimacy boosting or eroding? What kinds of legitimacy concerns are dominant in Strasbourg given that the interviewees are not linked to a national context? How do the loyalty to the Court and a more acute or detailed awareness of the institution's shortcomings shape legitimacy accounts? As in the previous section, we present the results in percentages for clarity of presentation. While our Strasbourg sample is not representative of the Court members or the judges, applying the scheme of analysis that was developed in response to the domestic scene to the Strasbourg level allows for a theoretically significant comparison between different ways of thinking about legitimacy.

With regard to the distribution of views and perceptions overall, we find that the domestic and Strasbourg-based legitimacy accounts show many parallels. That is, the legitimacy accounts are not built on radically different categories and there is strong evidence that both types of stake-holders are operating with similar notions of legitimacy. There are, however, a number of important differences, which we discuss below.

A. The constitutive dimension: Legality Plus Common Standards

“Our mission is to provide a common uniform basis for human rights in Europe. Of course the ceiling could be as high as you want but and I think that many observers from outside they forget this element that we are in charge of the uniform application of the convention.”
(Interviewee, Strasbourg)

All Strasbourg respondents without exception referred to the Court's legality as a basis of its legitimacy. This is significantly higher than the domestic average of 67%. However, this does not necessarily allow us to conclude that the Court employees are more focused on legality. Similar to domestic respondents, the overwhelming majority of respondents follow the notion of “legality plus” on the constitutive dimension: 90% of Strasbourg respondents ground the Court's constitutive legitimacy in political-normative standards alongside legality. In comparison to domestic respondents they place less emphasis on the role of the Court as an external corrective (30% as compared to 48% at the domestic level), yet refer to the building and upholding of common standards more often (60% as compared to 34% at the domestic level). This points to the self-perception by members of the Strasbourg in-group: the Court's ‘right to exist in the first place’ is based primarily on its role as a standard-setter, rather than on its role as a safeguard in extreme scenarios. It is clear that the role of the Court overlooking forty-seven states plays a central role in this emphasis in perception.

B. The Court's normative performance: A Long-Term Yardstick

All Strasbourg respondents included the institution's normative performance in their accounts of relevant legitimacy criteria (compared to 87% of domestic respondents). Most subcategories receive about equal consideration in both samples. Noteworthy differences are two criteria that are stressed and appreciated even more in Strasbourg than in our country case studies: The Court's transformative

quality is referred to by 80% of Strasbourg respondents as compared to 44% at the domestic level, and 60% point to it being an effective resource for human rights protection, compared to 19% of domestic respondents.

The more emphasis on these two categories points to the fact that Strasbourg employees primarily assess the Court's legitimacy based on its long-term impact on the human rights situation in member states. Along the same line, several respondents differentiated the role the Court is playing in different types of political systems:

“I would say new democracies this role is probably more important than in the old Europe you see I think, because it's really for them they have to build again or build for the first time a democratic regime so they know that they have to look at the Strasbourg case law because it's really the benchmark” (Interviewee, Strasbourg).

While the “balance between law and politics” received equal attention from respondents in Strasbourg and at the domestic level, the assessments of how this balance is achieved differed between domestic stakeholders and Strasbourg respondents. While domestic respondents referred to the balance both in terms of meddling in the domestic political affairs of a state and having biased views towards a particular state, Strasbourg respondents focused more specifically on the equal application of legal standards to all states and cases, the prevention of perceptions of bias and on the equality of states and individuals as claimants before the Court:

“If everybody has a clear impression that the states are not treated in an equal manner then that would be really, I think, a big risk for the authority and the credibility of the Court. I think the other thing would be to have judgments with insufficient reasoning” (Interviewee, Strasbourg).

Views on the degree of interference with national laws and policies also took on a different shape in the two samples. While similar percentages of domestic and the Strasbourg-based respondents referred to this as a criterion relevant for assessing the Court's legitimacy, the different subject positions amounted to distinct framings of the same concern. The domestic discussion of the “degree of intervention” was matched by a Strasbourg discussion of “**standards of judicial review**”.

In particular, Strasbourg respondents argued that standards of judicial review that were deferential to domestic judges and the legislature when the domestic decisions were not arbitrary and well-reasoned was the bedrock of the Court's normative performance legitimacy. This is an important finding as it shows a consensus between two levels as to the legitimacy assessment of the normative performance of the Court: Whilst both stakeholders identify an important transformative value to the content of the Court's judgment, at both levels this transformative value is qualified with procedural respect for domestic decision-making processes.

A further difference between Strasbourg and the domestic contexts was the emphasis of the former on **incremental advancement of human rights standards** through its careful development of case-law through the living instrument doctrine. Whilst domestic respondents assess the living instrument doctrine in terms of its case-by-case success, the Court interviewees use a long-term and overall assessment of this doctrine.

C. The Court's Managerial Performance: Harsh, Lenient or Well-Informed?

“You know, people criticize some of the qualifications here because they are very young from the new member states, but the end of the day there are not too many lunatic judgments produced!” (Interviewee, Strasbourg).

The Court's managerial performance received a high degree of attention, although less so than the constitutive and the normative performance dimensions: 90% of Strasbourg respondents referred to it in their legitimacy accounts (compared to 76% of domestic respondents). Corresponding to our findings from the domestic level, the majority of respondents from Strasbourg criticized the Court's managerial performance, yet praised its normative performance. This offers further support to the proposition that the Court's 'legitimacy credit' is grounded in normative criteria, be they constitutive or performance-based.

There were two striking differences in emphasis in assessing the managerial performance of the Court. First, Strasbourg interviewees were more concerned with the quality of judgments and the impact of the caseload on this quality. There was a particularly high degree of emphasis on the quality of reasoning of Court judgments (50% as compared to 6% of domestic respondents) and case law coherence (40% as compared to 16% of domestic respondents). These findings indicate a greater focus on the quality of proceedings on the part of Strasbourg respondents, whereas domestic stakeholders were more concerned about a speedy and efficient output (43% of domestic respondents worried about the length of proceedings, compared to 20% of Strasbourg respondents). This difference is further illustrated by the different framing of the same problem set: 40% of Strasbourg respondents expressed concerns about the Court's **caseload**, yet did not directly link this to the length of proceedings but to the Court's overall normative performance. A central legitimacy concern was that the high case load may prevent the Court from delivering the high quality judgments that it needs to deliver in order to prove its worth.

Second there was less emphasis on judges' qualifications, independence and selection. Respondents can hardly be expected to question and criticize their own role, and may be hesitant to criticize their immediate colleagues out of professional loyalty or for fear of the criticism also affecting their own standing. However, simply ignoring these answers on the part of Strasbourg-based respondents would be ill-advised: The comparative lack of concerns may also indicate that Court judges and registry staff truly perceive their colleagues as competent and properly selected.

D. The social dimension

Similar to the domestic level, the social dimension received less emphasis than the other dimensions – 80% of Strasbourg respondents referred to this, compared to 65% of domestic respondents. The most noteworthy aspect here is that those Strasbourg respondents who made an assessment were uniformly positive about the Court's usage and public acceptance, while domestic stakeholders' accounts were more mixed, albeit predominantly positive.

8. CONCLUSIONS AND KEY FINDINGS

Legitimacy accounts of the European Court of Human Rights are multi-dimensional. The ordering of the dimensions is further dependent on the standpoint from which the legitimacy of the Court is assessed. Participants in our study had an important stake in the legitimacy of the Court. Even amongst the stakeholders, however, the emphasis on various aspects of legitimacy shifted based on their role *vis á vis* the Court and the jurisdiction in which they were placed. The shifting character of legitimacy accounts makes it all the more difficult for the Court and those who aim to reform of the Court to order *their* priorities. Which voices should have the ear of the Court and its reformers? What institutional and normative practices of the Court should be carefully preserved and which need modification or alteration? Our study does not provide definitive answers to these questions. It does, however, show in which areas legitimacy costs are salient with respect to what types of stake-holders and what kinds of legitimacy trade-offs are at stake in any reform of the Court. Below we highlight the key findings of the research that offer a way forward for making these assessments:

- The most significant finding of this research is that the Court enjoys a high level of legitimacy-credit from domestic politicians, judges and lawyers. There is strong constitutive support for a human rights court above and beyond the state in actively intervening in states' domestic decisions in rights protections. **Of all 107 respondents only 1 of them thought that the Court did not enjoy constitutive legitimacy.** This shows that the legitimacy accounts of the Court proceed from credit to deficit in the eyes of the stakeholders and not the other way around.
- Domestic actors distinguish between the Court's popularity and legitimacy and accept that lack of popularity alone does not diminish the Court's legitimacy. Additionally, domestic actors value the usage of the Court and its coverage of 47 jurisdictions as important social assets of the Court. **This offers flexibility to the Court to deliver unpopular judgments without fearing for its legitimacy.**
- **Overarching assessments of the Court's performance are more positive than the assessment of more detailed factors. This finding gives further support that the Court is in 'legitimacy credit' and that its overall legitimacy is resilient to specific criticisms.** In particular, domestic actors who do not have detailed knowledge of Court's working mechanisms or outputs – predominantly politicians- nonetheless have trust in the system and its positive contribution to political values.
- There is an important consensus amongst all respondents that normative performance legitimacy of the Court is based on a delicate balance between preserving the transformative quality of the Court and respecting the decisions with 'relevant and sufficient reasons' taken at the domestic level.
- **The Court's normative performance plays a greater role in the assessment of its overall legitimacy than its managerial performance. Managerial performance moves into the focus of legitimacy accounts only when they reach a real point of crisis.** At the domestic level the length of proceedings in Strasbourg is identified as the most prominent concern. Even then it does not outweigh normative performance considerations. This suggests that domestic

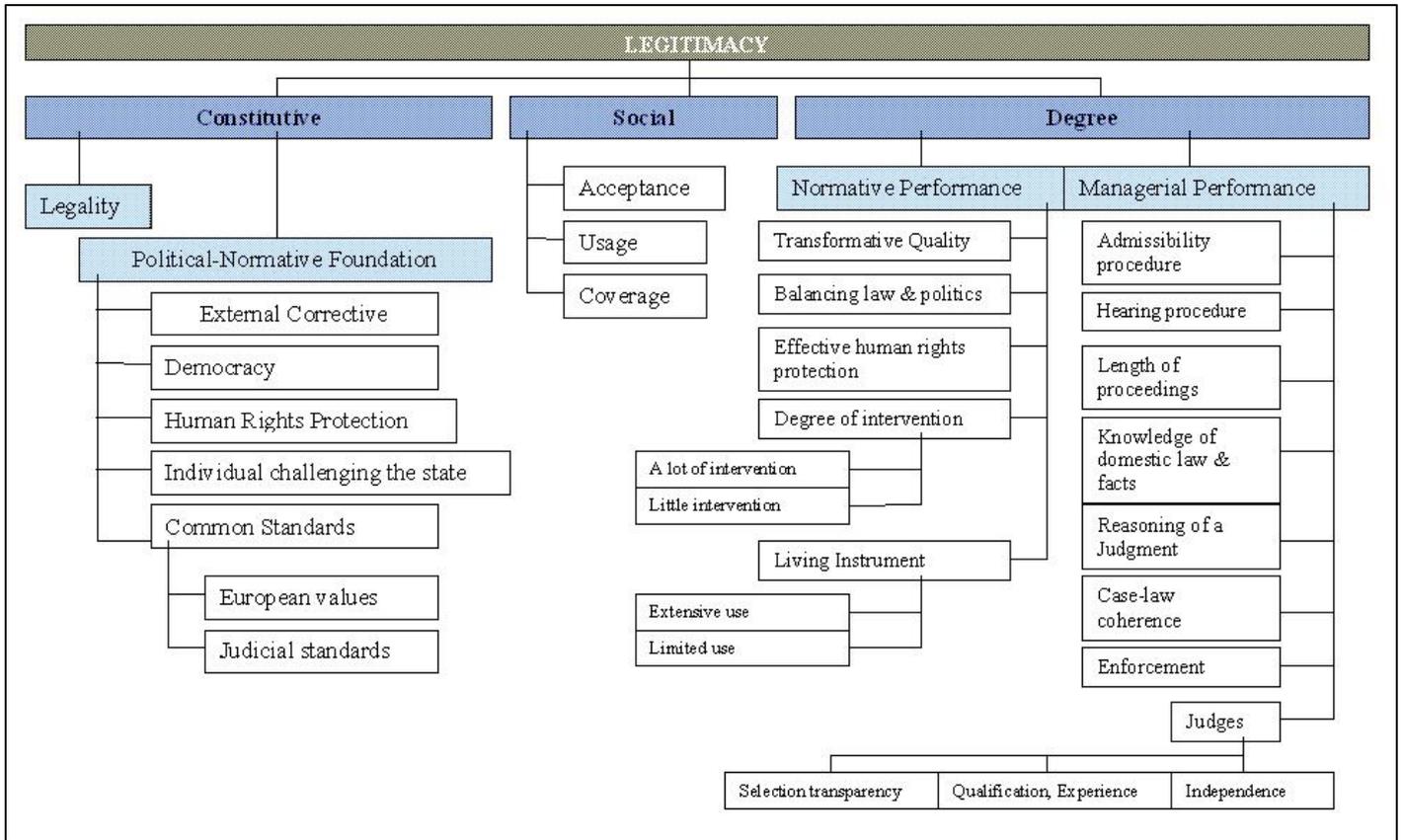
actors are prepared to receive ‘late justice’ so long as they receive justice ‘of high quality’. This finding also calls into question the view that the caseload crisis is a legitimacy crisis proper in the eyes of the domestic stakeholders. Further, dramatically decreasing the accessibility of the Court does not lead to an increase in the overall legitimacy perceptions. The data shows that there is a legitimacy trade-off between stringent admissibility criteria and access to Court.

- A further important finding comes in the area of enforcement of the Court’s judgments: domestic actors are patient and trust that changes will come about and that the legitimacy of the Court is an engine of enforcement rather than the other way around. Domestic actors identify problems with the execution of judgments as a separate issue from that of the legitimacy of the Court. **As far as legitimacy analysis goes delayed enforcement is not, in this dataset, viewed as having reached a real point of crisis. It remains to be seen, however, whether this perception will change with the increasing number of specific remedies laid out by the Court for execution and the new institutional role the Court enjoys in non-compliance procedures under Protocol 14.**
- The cross-sectional analysis shows that politicians, judges and lawyers place different legitimacy demands on the Court. The findings first question the stereotypical politician who is only concerned with popular support for their decisions. The dataset shows that the politicians support the Court as an external corrective more than lawyers and judges. **This general support *increases* the chances of compliance with judgments, even in cases when politicians disagree with them. It has to be borne in mind, however, that legitimacy is only *one* driver of compliance with Court’s judgments.** Judges need detailed and persuasive arguments from the Court in each and every case and **constant assurances** that the domestic law and facts have been understood and analysed adequately. **This calls for high levels of expertise in domestic legal systems and extra-care with complex facts and legislation in the Strasbourg decision-making process.** Lawyers need to be assured that the high numbers of inadmissibility decisions are outcomes of transparent and even-handed procedures. **It is important for the Court *not to be seen as* declaring cases inadmissible in order to cut down on its caseload.**
- **Country context analysis shows that emphasis on various legitimacy standards shifts, but not radically.** There are two clear messages from the data: **The western European members – the UK, Ireland and Germany - send a strong signal to the reformers of the Court to improve the selection processes of judges at the domestic level. Bulgaria and Turkey have a message for the Court itself: to keep the transformative potential alive and real.**
- Our findings from Strasbourg show that **greater proximity to the Court creates a double focus on high quality proceedings and the long-term transformative effect of the Court.** The most striking difference between the Strasbourg interviews and the domestic stakeholder interviews is the different emphasis on the improvement of the managerial performance of the Court. Strasbourg respondents are more concerned with the impact of the caseload on the quality of the judgments than the domestic stakeholders, but less concerned about the quality and experience of judges on the legitimacy of the Court. The different subject positions of domestic stakeholders and Strasbourg-based jurists amounts to different framings of common

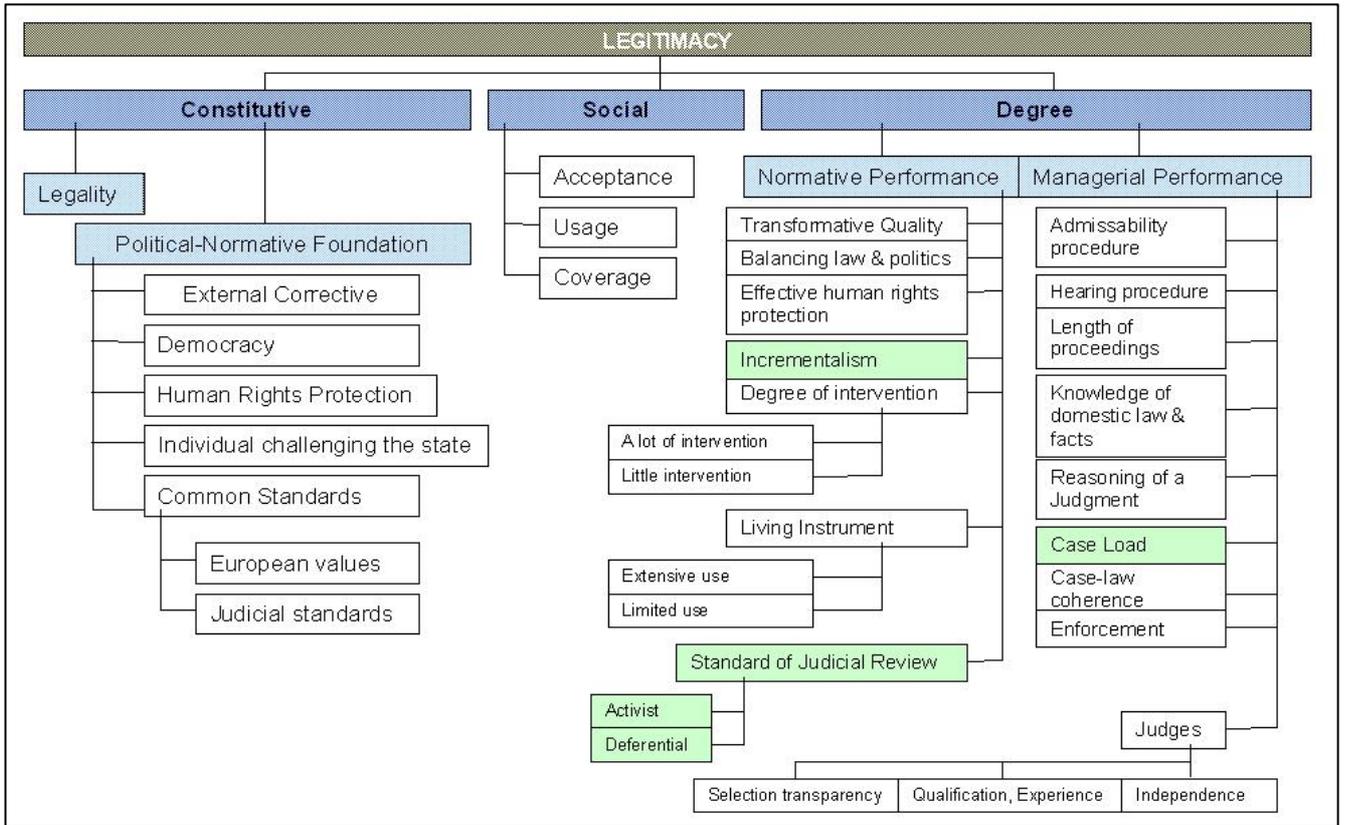
areas of concern: in particular, domestic stakeholders' preoccupation with the Court's degree of intervention is matched by Strasbourg-based recommendations for deferential judicial review, and domestic worries about excessive length of proceedings are matched by a concern about linkages between large case loads and the Court's overall normative performance on the part of Strasbourg jurists.

- The high degree of correspondence between domestic and Strasbourg-based legitimacy accounts, especially the simultaneous value attached to the Court's transformative role and to procedural respect for domestic decision-making processes shows that the Court is in tune with the legitimacy expectations of the stake-holders. This further confirms that the legitimacy of the Court is a source of healthy criticism and a key drive for respect for the judgments, even with the judgments domestic actors disagree with.

Annex One: Legitimacy Tree Chart



Annex Two: Legitimacy Tree Chart with the Strasbourg Perspective



Annex Three: List of Interviewees
--

Interviewee	Date of interview	Place of interview
BUL_J1	19-Jan-09	Bulgaria Sofia
BUL_J2	20-Oct-08	Bulgaria Sofia
BUL_J3	19-Jan-09	Bulgaria Sofia
BUL_J4	14-Oct-08	Bulgaria Sofia
BUL_J5	22-Oct-08	Bulgaria Sofia
BUL_J6	14-Oct-08	Bulgaria Sofia
BUL_J7	20-Oct-08	Bulgaria Sofia
BUL_J8	14-Oct-08	Bulgaria Sofia
BUL_L1	15-Oct-08	Bulgaria Plodiv
BUL_L2	15-Oct-08	Bulgaria Plodiv
BUL_L3	23-Oct-08	Bulgaria Sofia
BUL_L4	16-Oct-08	Bulgaria Sofia
BUL_L5	24-Oct-08	Bulgaria Sofia
BUL_L6	17-Oct-08	Bulgaria Sofia
BUL_L7	16-Oct-08	Bulgaria Sofia
BUL_P1	21-Oct-08	Bulgaria Sofia
BUL_P2	23-Oct-08	Bulgaria Sofia
BUL_P3	14-Oct-08	Bulgaria Sofia
BUL_P4	23-Oct-08	Bulgaria Sofia
BUL_P5	23-Oct-08	Bulgaria Sofia
BUL_P6	19-Jan-09	Bulgaria Sofia
BUL_P7	18-Feb-09	Bulgaria Sofia
BUL_P8	24-Oct-08	Bulgaria Sofia
BUL_P9	24-Oct-08	Bulgaria Sofia
GER_J1	27-Apr-09	Germany Karlsruhe
GER_J2	28-Apr-09	Germany Karlsruhe
GER_J3	28-Apr-09	Germany Karlsruhe
GER_J4	26-May-09	Germany Karlsruhe
GER_J5	27-May-09	Germany Karlsruhe
GER_L1	18-May-09	Germany Aachen
GER_L2	6-Feb-09	Germany Munich
GER_L3	4-May-09	Germany Berlin
GER_L4	13-Feb-09	Germany Berlin
GER_L5	5-Mar-09	Germany Heilbronn
GER_P1	26-Mar-09	Germany Berlin
GER_P2	11-Feb-09	Germany Berlin
GER_P3	10-Feb-09	Germany Berlin
GER_P4	26-Mar-09	Germany Berlin
GER_P5	26-Mar-09	Germany Berlin

GER_P6	12-Feb-09	Germany Berlin
GER_P7	10-Feb-09	Germany Berlin
GER_P8	6-May-09	Germany Berlin
IRE_J1	30-Mar-09	Ireland Dublin
IRE_J2	31-Mar-09	Ireland Dublin
IRE_J3	1-Apr-09	Ireland Dublin
IRE_J4	12-May-09	Ireland Dublin
IRE_J5	13-May-09	Ireland Dublin
IRE_L1	3-Apr-09	Ireland Dublin
IRE_L2	31-Mar-09	Ireland Dublin
IRE_L3	2-Apr-09	Ireland Dublin
IRE_L4	3-Apr-09	Ireland Dublin
IRE_L5	2-Apr-09	Ireland Dublin
IRE_L6	2-May-09	Ireland London
IRE_L7	2-Apr-09	Ireland Dublin
IRE_P1	1-Apr-09	Ireland Dublin
IRE_P2	30-Mar-09	Ireland Dublin
IRE_P3	1-Apr-09	Ireland Dublin
IRE_P4	31-Mar-09	Ireland Dublin
IRE_P5	30-Mar-09	Ireland Dublin
IRE_P6	1-Apr-09	Ireland Dublin
IRE_P7	30-Mar-09	Ireland Dublin
TUR_J1	19-Aug-08	Turkey Ankara
TUR_J2	22-Sep-08	Turkey Ankara
TUR_J3	20-Sep-08	Turkey Ankara
TUR_J4	19-Aug-08	Turkey Ankara
TUR_J5	19-Aug-08	Turkey Ankara
TUR_J6	20-Aug-08	Turkey Ankara
TUR_J7	21-Aug-08	Turkey Ankara
TUR_L1	11-Oct-08	Turkey Izmir
TUR_L2	11-Oct-08	Turkey Izmir
TUR_L3	28-Oct-08	Turkey Ankara
TUR_L4	10-Jul-08	Turkey Diyarbakir
TUR_L5	10-Jun-08	Turkey Ankara
TUR_L6	11-Oct-08	Turkey Izmir
TUR_L7	11-Oct-08	Turkey Izmir
TUR_L8	11-Oct-08	Turkey Izmir
TUR_P1	30-Oct-08	Turkey Ankara
TUR_P2	5-Nov-08	Turkey Ankara
TUR_P3	8-Oct-08	Turkey Ankara
TUR_P4	6-Nov-08	Turkey Ankara
TUR_P5	25-Sep-08	Turkey Ankara
TUR_P6	6-Nov-08	Turkey Ankara
TUR_P7	23-Sep-08	Turkey Ankara

TUR_P8	19-Sep-08	Turkey Ankara
TUR_P9	24-Sep-08	Turkey Ankara
TUR_P10	30-Oct-08	Turkey Ankara
UK_J1	6-Jun-08	UK London
UK_J2	16-Jun-08	UK London
UK_J3	19-Jun-08	UK London
UK_J4	1-Jul-08	UK London
UK_J5	29-Jul-08	UK London
UK_L1	9-Dec-08	UK London
UK_L2	18-Jul-08	UK London
UK_L3	28-Jul-08	UK London
UK_L4	3-Jun-08	UK London
UK_L5	23-Jul-08	UK London
UK_L6	5-Jun-08	UK London
UK_L7	4-Jun-08	UK London
UK_L8	12-May-08	UK London
UK_P1	15-Jul-08	UK London
UK_P2	15-Jul-08	UK London
UK_P3	10-Dec-08	UK London
UK_P4	20-May-08	UK London
UK_P5	3-Jul-08	UK London
UK_P6	11-Jun-08	UK London
UK_P7	8-Dec-08	UK London
UK_P8	1-Jul-08	UK London
ST_J1	4-Jun-09	Strasbourg
ST_J2	25-May-09	Strasbourg
ST_J3	4-Jun-09	Strasbourg
ST_J4	10-Sep-09	Strasbourg
ST_R1	22-Apr-09	Strasbourg
ST_R2	20-Apr-09	Strasbourg
ST_R3	22-Apr-09	Strasbourg
ST_R4	22-Apr-09	Strasbourg
ST_R5	20-Apr-09	Strasbourg
ST_R6	22-Apr-09	Strasbourg