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A research agenda for trust and distrust in a multilevel judicial system

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Abstract

While public trust in the judicial system has been extensively explored in the US, this has been less common in Europe. The purpose of this paper is therefore to launch a research agenda on trust in courts. This is based on an overview of the empirical studies on trust/distrust in courts in Europe, which are assessed critically in light of the trust literature. We connect the concept of multilevel governance in which the EU operates to the concept of multilevel trust, which concerns the interrelations between interpersonal trust, interorganizational trust and system trust. Furthermore, we add structure to the existing literature on trust in and within courts in Europe by categorising it into two main categories: (1) studies that focus on trust in courts within one (national or European) legal system, and (2) those that explore the interaction of trust in and between courts at different levels of governance (multilevel governance). We further examine whether different relational and institutional aspects of trust in courts, their drivers, dynamics and effect, as well as the recent trend of specialization in court systems have been sufficiently covered in the literature.

Keywords

Trust, distrust, courts, multilevel governance, judicial actors, Europe

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1. Introduction: trust in courts as an understudied topic in Europe

The literature on trust can be traced back as far as to John Locke who saw trust as a societal bond and lubricant for social relations. Since then, trust as a concept has been widely studied across different disciplines and in relation to different fields. Most attention has undoubtedly been given to the role of trust in governance.⁵ As Ruscio points out, trust is ‘central to legitimate democratic government, to the formation of public policy, and to its implementation’.⁶ Scholars focused predominantly on citizens’ trust in political institutions,⁷ political actors,⁸ political parties,⁹ and public administration.¹⁰ Worth mentioning are also scholarly efforts that look at trust and distrust of government actors towards citizens,¹¹ between public organisations,¹² or in regulators.¹³

Trust in and within courts received much less attention. Yet, courts have largely expanded their visibility and impact on politics over the last few decades. For example, the Brexit decision caused considerable uncertainty regarding the jurisdiction of the Court of Justice of the

⁵ e.g., V. A. Braithwaite and M. Levi (eds.), *Trust and Governance* (Russell Sage Foundation, 1998); B. Nooteboom, H. Berger, and N. G. Noorderhaven, ‘Effects of Trust and Governance on Relational Risk’, 40 *Academy of Management Journal* (1997), p. 308; F. Six, ‘Trust in Regulatory Relations: How New Insights from Trust Research Improve Regulation Theory’, 15 *Public Management Review* (2013), p. 163; F. Six and K. Verhoest, ‘Trust in Regulatory Regimes: Scoping the Field’, in F. Six and K. Verhoest (eds.), *Trust in Regulatory Regimes* (Edward Elgar Publishing, 2017), p. 1.

⁶ K. P. Ruscio, ‘Trust, Democracy, and Public Management: A Theoretical Argument’, 6 *Journal of Public Administration Research and Theory* (1996), p. 462.

⁷ M. E. Warren, ‘Democratic Theory and Trust’, in M. E. Warren (ed.), *Democracy and Trust* (Cambridge University Press, 1999), p. 310; M. Levi and L. Stoker, ‘Political Trust and Trustworthiness’, 3 *Annual Review of Political Science* (2000), p. 475; O. Listhaug and T. G. Jakobsen, ‘Foundations of Political Trust’, in E. M. Uslaner (ed.), *The Oxford Handbook of Social and Political Trust* (2017), p. 559; S. Zmerli and T. W. G. Van der Meer, *Handbook on Political Trust* (Edward Elgar Publishing, 2017).

⁸ M. J. Hetherington, ‘The Political Relevance of Political Trust’, 92 *American Political Science Review* (1998), p. 791; O. Listhaug, ‘The Dynamics of Trust in Politicians’, 1 *Citizens and the State* (1995), p. 261.

⁹ O. Listhaug and K. Ringdal, ‘Trust in Political Institutions’, *Nordic Social Attitudes in a European Perspective* (2008), p. 131–51. See also measures used in large scale surveys such as Eurobarometer, European Value Studies, European Social Survey, World Values Survey.

¹⁰ P. Oomsels and G. Bouckaert, ‘Studying Interorganizational Trust in Public Administration: A Conceptual and Analytical Framework for Administrative Trust’, 37 *Public Performance & Management Review* (2014), p. 577–604; J. Marlowe, ‘Part of the Solution or Cogs in the System?: The Origins and Consequences of Trust in Public Administrators’, 6 *Public Integrity* (2004), p. 93–113.

¹¹ K. Yang, ‘Public Administrators’ Trust in Citizens: A Missing Link in Citizen Involvement Efforts’, 65 *Public Administration Review* (2005), p. 273; K. Yang, ‘Trust and Citizen Involvement Decisions: Trust in Citizens, Trust in Institutions, and Propensity to Trust’, 38 *Administration & Society* (2006), p. 573–595; M. Peel, ‘Trusting Disadvantaged Citizens’, in B. Braithwaite and M. Levi (eds.), *Trust and Governance* (Russell Sage Foundation, 1998), p. 315; P. Sztompka, *Trust: A Sociological Theory* (Cambridge University Press, 1999).

¹² J. Edelenbos and E. H. Klijn, ‘Trust in Complex Decision-Making Networks: A Theoretical and Empirical Exploration’, 39 *Administration & Society* (2007), p. 25; L. A. Van Oortmerssen, C. M. J. van Woerkum, and N. Aarts, ‘The Visibility of Trust: Exploring the Connection between Trust and Interaction in a Dutch Collaborative Governance Boardroom’, 16 *Public Management Review* (2014), p. 666; Oomsels and Bouckaert, 37 *Public Performance & Management Review* (2014), p. 577.; M. Callens, G. Bouckaert, and S. Parmentier, ‘Intra- and Interorganisational Trust in a Judicial Context: An Exploratory Case Study’, in A. Hondelghem, X. Rousseaux, F. Schoenaers (eds.), *Modernisation of the Criminal Justice Chain and the Judicial System* (Springer, 2016), p. 115.

¹³ F. Six, 15 *Public Management Review* (2013), p. 163; F. Six and K. Verhoest, *Trust in Regulatory Regimes*; I. Ayres and J. Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, 1992); N. Gunningham and D. Sinclair, ‘Regulation and the Role of Trust: Reflections from the Mining Industry’ 36 *Journal of Law and Society* (2009), p. 167; K. Murphy, ‘The Role of Trust in Nurturing Compliance: A Study of Accused Tax Avoiders’, 28 *Law and Human Behavior* (2004), p. 187.

European Union (CJEU)¹⁴ and judicial co-operation.¹⁵ The Hungarian and British public is openly supporting the withdrawal from the European Convention on Human Rights (ECHR) and their governments are publicly defying the jurisdiction of the European Court of Human Rights (ECtHR).¹⁶ Attacks on judicial independence have made Polish judges seek assistance from the Court of Justice (CJ) via the preliminary ruling procedure,¹⁷ and in turn the Polish Constitutional Tribunal dismissed the CJ's decision as *ultra vires*.¹⁸ Furthermore, the German Constitutional Court criticized the European Central Bank's (ECB) performance to deal with the financial crisis, but also the CJ's reticence in controlling the ECB.¹⁹ Events like these have intensified public scrutiny of courts, which increasingly have to take different opinions into account: of public, legislative, executive, and other powerful courts, when delivering their judgments. Yet, we still know surprisingly little about trust in, within and between courts.

The fact that trust in and within courts is frequently examined under different concepts sustains this gap in the literature. Scholars use terms such as legitimacy,²⁰ diffuse support,²¹ or confidence.²² For example, a study conveys that the ECtHR uses the European consensus doctrine to ensure that its rulings will not be counter-majoritarian in the sense of going against public opinion in the different Member States, reducing the likelihood of a strong public backlash.²³ However, as we will argue in this paper, legitimacy, support and trust are different concepts. Furthermore, large scale surveys, such as the European Social Survey (ESS) that

¹⁴ In this paper, we use the abbreviation CJEU when we talk about the Court in general or the Court as one of the EU institutions: the Court of Justice or the General Court. We use the abbreviation CJ to refer to the Court of Justice when we talk about the preliminary ruling procedure as requests for preliminary rulings are currently only dealt by the CJ (art. 267 TFEU, art. 256(3) TFEU).

¹⁵ D. Giannouloupoloulos, 'Fair Trial Rights in the UK Post Brexit: Out with the Charter and EU Law, in with the ECHR?', *7 New Journal of European Criminal Law* (2016) p. 387; A. Dyeve, 'Have British Judges Already Left the EU? The Impact of the Brexit Vote on EU Law in the UK', *EUROPP* (2018), <https://blogs.lse.ac.uk/europpblog/2018/11/13/have-british-judges-already-left-the-eu-the-impact-of-the-brexit-vote-on-eu-law-in-the-uk/>.

¹⁶ European Parliament, 'Hungary's Withdrawal from the European Convention on Human Rights', (2017), https://www.europarl.europa.eu/doceo/document/E-8-2017-002208_EN.html; Michael Peel and Laura Hughes, 'Data Case Defeat Increases Tory Pressure to Quit ECHR', *Financial Times*, February 13, 2020, <https://www.ft.com/content/7daf254e-4e5c-11ea-95a0-43d18ec715f5>.

¹⁷ E.g., Case C-522/18, ECLI:EU:C:2020:42; Case C-668/18, ECLI:EU:C:2019:1093; Joined Cases C-558/18 and C-563/18, ECLI:EU:C:2020:234; Joined Cases C-585/18, C-624/18 and C-625/18, ECLI:EU:C:2019:982; Case C-623/18, ECLI:EU:C:2020:800; Case C-824/18, ECLI:EU:C:2021:153.

¹⁸ P7/20 of 14 July 2021.

¹⁹ BVerfG, Judgment of the Second Senate of 05 May 2020 - 2 BvR 859/15, paras. 1-237.

²⁰ G.A. Caldeira and J.L. Gibson, 'The Legitimacy of the Court of Justice in the European Union: Models of Institutional Support' *89 American Political Science Review* (1995), p. 356; J.L. Gibson, G.A. Caldeira, and V. A. Baird, 'On the Legitimacy of National High Courts,' *92 American Political Science Review* (1998), p. 343; N. Grossman, 'The Normative Legitimacy of International Courts', *86 Temp. L. Rev.* (2013), p. 61.

²¹ G.A. Caldeira and J.L. Gibson, *89 American Political Science Review* (1995), p. 356; C.J. Carrubba and L. Murrah, 'Legal Integration and Use of the Preliminary Ruling Process in the European Union', *59 International Organization* 59 (2005), p. 399; W. Mattli and A.M. Slaughter, 'Revisiting the European Court of Justice', *52 International Organization* (1998), p. 177; N. Lampach and A. Dyeve, 'Choosing for Europe: Judicial Incentives and Legal Integration in the European Union,' *50 Eur J Law Econ* (2019), p.65.

²² O. Bassok, 'The European Consensus Doctrine and the ECtHR Quest for Public Confidence', in P. Kapotas and V. P. Tzevelekos (eds.) *Building Consensus on European Consensus: Judicial Interpretation of Human Rights in Europe and Beyond* (CUP, 2018), p. 236; R. Salzman and A. Ramsey, 'Judging the Judiciary: Understanding Public Confidence in Latin American Courts', *55 Latin American Politics and Society* (2013), p. 73; M. Urbániková and K. Šípulová, 'Failed Expectations: Does the Establishment of Judicial Councils Enhance Confidence in Courts?', *19 German Law Journal* (2018), p. 2105; J. Jackson *et al.*, 'Developing European Indicators of Trust in Justice', *8 European Journal of Criminology* (2011), p. 267.

²³ O. Bassok, in P. Kapotas and V. P. Tzevelekos (eds.) *Building Consensus on European Consensus: Judicial Interpretation of Human Rights in Europe and Beyond*, p. 236.

measures ‘trust in the legal system’ or the European Value Survey (EVS) that measures ‘confidence in courts’, do so descriptively and without further analysis.

Other studies analyse trust through indicators on the performance of courts and the attributes of judges. These studies ask respondents whether they think that courts protect citizen rights, that judges are honest, that court decisions are fair, and that the courts guarantee everyone a fair trial.²⁴ This approach is, however, problematic because it equates the concept of trust with the drivers of trust. This way, procedural fairness and performance become parts of the concept of trust, instead of independent variables that may explain trust. Contributions that do focus on the concept of trust as defined and operationalised in the trust literature, such as Mayoral,²⁵ are rare and limited.

Considering these gaps, this paper aims to give an overview of the empirical studies on trust/distrust in courts in Europe and to assess them critically in light of the trust literature. While public trust in the judicial system has been more extensively explored in the US, this has been less common in Europe. Yet, the European multilevel governance context provides a more complex and wider range of judicial attitudes,²⁶ institutional frameworks, and legal and political cultures, and adds two supranational courts. Therefore, different and challenging legal and empirical questions arise in the complex governance context.

The contribution of this paper is threefold.

First, we emphasise the multi-level context in which European courts operate. The European Union (EU) is a system of multilevel governance with a distribution of powers over at least two levels: the national and the European one. Subnational governments in multi-tiered member states such as Germany and Belgium add another layer of complexity to the system. Accordingly, the EU legal order is guarded by courts on two levels: national courts and the CJEU, with subnational courts and the ECHR (to which all EU member states are parties) again adding layers of complexity. While there has been extensive work done on the cooperation between the CJEU and ECtHR,²⁷ and between EU member states’ courts and the CJ,²⁸ the role of trust in this relationship is not yet entirely clear. This paper, therefore, examines to what extent trust and distrust in and between courts in the multilevel judicial system of the EU have been discussed in the literature.

²⁴ T. R. Tyler, ‘Public Trust and Confidence in Legal Authorities: What Do Majority and Minority Group Members Want from the Law and Legal Institutions?’, 19 *Behavioral Sciences & the Law* (2001), p. 215; S. Grimmelikhuijsen and A. Klijn, ‘The Effects of Judicial Transparency on Public Trust: Evidence from a Field Experiment’, 93 *Public Administration* (2015), p. 995.

²⁵ J. A. Mayoral Díaz-Asensio, ‘In the CJEU Judges Trust: A New Approach in the Judicial Construction of Europe’, 55 *Journal of Common Market Studies* (2017), p. 551.

²⁶ G. A. Caldeira and J. L. Gibson, 89 *American Political Science Review* (1995), p.365.

²⁷ L. Garlicki, ‘Cooperation of Courts: The Role of Supranational Jurisdictions in Europe’, 6 *International Journal of Constitutional Law* (2008), p. 509; A. Voßkuhle, ‘Multilevel Cooperation of the European Constitutional Courts: Der Europäische Verfassungsgerichtsverbund’, 6 *European Constitutional Law Review* (2010), p. 175; T. Lock, ‘The ECJ and the ECtHR: The Future Relationship between the Two European Courts’, 8 *The Law & Practice of International Courts and Tribunals* (2009), p. 375.

²⁸ A. Stone Sweet and T. L. Brunell, ‘The European Court and the National Courts: A Statistical Analysis of Preliminary References, 1961–95’, 5 *Journal of European Public Policy* (1998), p. 66; C. J. Carrubba and L. Murrah, 59 *International Organization* (2005), p. 399; G. Tridimas and T. Tridimas, ‘National Courts and the European Court of Justice: A Public Choice Analysis of the Preliminary Reference Procedure’, 24 *International Review of Law and Economics* (2004), p. 125.

We add to the existing theoretical literature by connecting this with the concept of multilevel trust. Consequently, this paper relies on two different dimensions: multilevel governance and multilevel trust. Multilevel governance is a system that disperses power both vertically, over territorial or task-specific jurisdictions, and horizontally, including non-government actors, markets and civil society.²⁹ Multilevel trust concerns the interrelations between interpersonal trust (in or between individuals), interorganizational trust (trust towards or between specific organizations, such as the parliament or the supreme court), and system trust (towards a system, such as the national law system or the political system).

The second contribution of our paper is that we look at both relational and institutional aspects of trust in courts, as well as their drivers, dynamics and effects. We examine whether they have been sufficiently covered in the literature and what we can learn from it.

Third, we observe a lack of research on trust in different types of courts and specialized courts in particular. The latter is especially surprising because of two reasons. First, there is a general trend of increased specialization, both at the European and national levels, resulting in specialized chambers within courts, specialized court sections and specialized courts.³⁰ Second, the benefits of specialization (effectiveness, efficiency and predictability), as well as the potential drawbacks (isolation, bias and capture), represent elements that may have an impact on the trust of judicial actors as well as citizens in the court. We aim to take this emergence of specialization in courts systems into account when exploring the literature on trust in courts.

This paper is structured as follows. Section two gives a brief overview of the concepts of trust and distrust, and explains the concept of multilevel trust. Section three and four add structure to the existing literature on trust in and within courts in Europe. Building on the concepts of multilevel governance and multilevel trust, we categorise the literature into (1) studies that focus on trust in courts within one, national or European, legal system, and (2) those that explore the interaction of trust in and between courts at different levels of governance (multilevel governance). Throughout both sections, we list different drivers, dynamics and effects of trust and distrust for different types of judicial actors, also taking into consideration specialization in courts. We finish with a discussion on how this paper and the structure it provides can be used in future research.

It is important to emphasise that, in our analysis, we focus on trust in courts, leaving out the literature that measures trust in other actors as part of the judicial system. For example, research on trust within the criminal justice system tends to also measure trust in police officers.³¹ When we refer to such papers, we focus only on findings related to courts. Yet, other judicial actors, such as public prosecutors, investigators and judicial support services, do play a role when

²⁹ K. A. Daniell and A. Kay, 'Multi-Level Governance: An Introduction,' in K. A. Daniell and A. Kay (eds.) *Multi-Level Governance* (ANU Press, 2017), p. 6; S. Piattoni, *The theory of multi-level governance* (Oxford University Press, 2010), p. 26.

³⁰ L. Baum, *Specializing the Courts* (University of Chicago Press, 2011).

³¹ S. Parmentier and G. Vervaeke, 'In Criminal Justice We Trust? A Decade of Public Opinion Research in Belgium', 8 *European Journal of Criminology* (2011), p. 286; L. W. Sherman, 'Trust and Confidence in Criminal Justice' 248 *National Institute of Justice Journal* (2002), p. 22; J. Vanschoenwinkel and A. Hondeghem, 'The Concepts of Trust and Distrust in the Belgian Criminal Justice Chain', in A. Hondeghem, X. Rousseaux and F. Schoenaers (eds.) *Modernisation of the Criminal Justice Chain and the Judicial System* (Springer, 2016), p. 97.

discussing inter-organizational trust, for example as a factor that improves the justice chain management.³²

2. Concepts of trust, distrust and multilevel trust

The concept of trust has been problematised and discussed across different disciplines and in many different ways, resulting in different definitions and operationalisations of trust.³³ Five elements are common to most definitions. The first is *the assessment of trustee's trustworthiness*, which means that trustors will trust another party if they expect that the other party has the competence to successfully complete its tasks (Ability), that cares about their interests and needs (Benevolence), and will act in a just and fair way (Integrity).³⁴ The second is *the trustor's general propensity to trust*, i.e. the willingness to be vulnerable under the conditions of risk and uncertainty.³⁵ Third, one's decision to trust another actor is determined by trustors' personality itself, that is, their *predisposition or propensity to trust others*.³⁶ Fourth, trust is a *relational concept*. This means that an actor trusts another actor with respect to a certain future behaviour (A trust B to do X).³⁷ It also means that we can talk about trust only in relation to actors we know. Finally, trust is *context-specific*: the development of the trust relationship between a trustor and the trustee changes based on whether the type of the actor involved is an individual (e.g. a citizen or a judge), organisation (e.g. court) or system (e.g. judicial system)- i.e. the multilevel trust dimension.

Related but different concepts are legitimacy, public support and confidence. They cannot be equated with trust, but they are closely linked.³⁸ Trust (together with obligation and shared goals) is one of the components of legitimacy.³⁹ Trust is, in that case, a precursor to legitimacy.⁴⁰ For an institution to be considered legitimate, one must first assess that institution as trustworthy (that is, belief that the institution is competent, benevolent and integer).⁴¹ In turn, legitimacy can be a precursor to institutional trust. Finally, while trust includes individual-level views (i.e. a citizen (trustor A) trusts the police (trustee B) to do what they are tasked to do (issue X)),

³² M. Callens and G. Bouckaert, 'Trustworthiness and Information Disclosure Among Judicial Governmental Agencies', 42 *Public Performance & Management Review* (2019), p. 1117; M. Callens, G. Bouckaert, and S. Parmentier, in A Hondeghem, X Rousseaux, F Schoenaers (eds.), *Modernisation of the Criminal Justice Chain and the Judicial System*, p. 115.

³³ D. M. Rousseau, S.B. Sitkin, S.B. Burt and C. Colin, 'Not so Different after All: A Cross-Discipline View of Trust', 23 *Academy of Management Review* (1998), p. 393; G. Möllering, *Trust: Reason, Routine, Reflexivity* (Emerald Group Publishing, 2006), p. 111.

³⁴ R. C. Mayer, J. H. Davis, and D. F. Schoorman, 'An Organizational Model of Organizational Trust', 20 *Academy of Management Review* (1995), p. 709.

³⁵ G. Möllering, *Trust: Reason, Routine, Reflexivity*, p. 111.

³⁶ C. Mayer, J. H. Davis, and D. F. Schoorman, 20 *Academy of Management Review* (1995), p. 709.

³⁷ R. Hardin, *Trust and Trustworthiness* (Russell Sage Foundation, 2002); B. Nooteboom, *Trust: Forms, Foundations, Functions, Failures and Figures* (Edward Elgar Publishing, 2002).

³⁸ E. M. Kearns, E. Ashooh, and B. Lowrey-Kinberg, 'Racial Differences in Conceptualizing Legitimacy and Trust in Police', 45 *American Journal of Criminal Justice* (2020), p. 190.

³⁹ T. R. Tyler and J. Jackson, 'Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement', 20 *Psychology, Public Policy, and Law* (2014), p. 78.

⁴⁰ M. Hough *et al.*, 'Procedural Justice, Trust, and Institutional Legitimacy' 4 *Policing: A Journal of Policy and Practice* (2010), p. 203.

⁴¹ V. Kaina, 'Legitimacy, Trust and Procedural Fairness: Remarks on Marcia Grimes' Study', 47 *European Journal of Political Research* (2008), p. 510; T. R. Tyler and J. Sevier, 'How Do the Courts Create Popular Legitimacy?: The Role of Establishing the Truth, Punishing Justly, and/or Acting Through Just Procedures', 77 *Albany Law Review* (2013), p. 44.

legitimacy involves institution's quality of possessing power and authority and a subsequent acceptance and deference to that authority.⁴²

An institution is considered legitimate when 'it is perceived as having the right or the authority to make decisions and when its decisions are viewed as worthy of respect or obedience'.⁴³ The extent to which courts are perceived as legitimate, therefore, depends on whether their decisions (even the unpopular ones) are respected, complied with and accepted by their constituents.⁴⁴ Legitimacy is of special concern in the literature on courts, because of the counter-majoritarian difficulty: while (most) courts are not elected, they can invalidate decisions from directly or indirectly representative authorities. A trust perspective puts this in a more positive light: some authors claim that the institutionalization of distrust advances trust in political institutions, by building in checks and balances.⁴⁵ This way, courts act as 'generators of meta-trust', which can be regarded as an acknowledgement of the dynamic multilevel nature of trust.⁴⁶

Public support is also an important focal point because courts are dependent upon other authorities to implement their decisions: courts adjudicate the law, but do not have the tools to enforce it, and, therefore, rely on citizen's support.⁴⁷ This is what ultimately determines the failure or success of the system.⁴⁸ If diffuse support is strongly correlated with the willingness to accept an unpopular judicial decision⁴⁹ and support for (international) courts drops abruptly with public controversy over unpopular decisions,⁵⁰ then this is also important for trust relations, which are known for being hard to build but easy to break.

Trust in courts is also often examined under the terms 'public attitudes towards the courts'⁵¹ or 'confidence in courts',⁵² with the ECtHR even explicitly recognising the role of 'public confidence' implied in the European consensus doctrine as the source of the judiciary's legitimacy.⁵³ Research on the US Supreme Court confirms that disagreement with specific

⁴² J. Jackson and J. M. Gau, 'Carving Up Concepts? Differentiating Between Trust and Legitimacy in Public Attitudes Towards Legal Authority', in E. Shockley, T. M. S. Neal, L. M. PytlikZillig, B. H. Bornstein (eds.) *Interdisciplinary Perspectives on Trust: Towards Theoretical and Methodological Integration*, (Springer International Publishing, 2016), p. 49; M. Hough, J. Jackson, and B. Bradford, 'Legitimacy, Trust and Compliance: An Empirical Test of Procedural Justice Theory Using the European Social Survey', in J. Tankebe and A. Liebling (eds.), *Legitimacy and criminal justice: An international exploration* (Oxford University press, 2013), p. 326.

⁴³ J. L. Gibson, 'Court: Definition, Functions, Structure, & Facts,' *Encyclopedia Britannica* (1998), <https://www.britannica.com/topic/court-law>.

⁴⁴ Ibid.

⁴⁵ A. Grosskopf, 'Explaining the Democratic Trust Conundrum: The Sources of Institutional Trust in the Reunited Germany' 83 *International Social Science Review* (2008), p. 3.

⁴⁶ S. Van de Walle, 'Trust in the Justice System: A Comparative View across Europe', 183 *Prison Service Journal* (2009), p. 22.

⁴⁷ G. Vanberg, *The Politics of Constitutional Review in Germany* (Cambridge University Press, 2004).

⁴⁸ M. Hough *et al.*, 4 *Policing: A Journal of Policy and Practice* (2010), p. 203; M. Callens, *The Interorganisational Trust Process in the Flemish Judicial Youth Care Chain: Perceived Trustworthiness, Its Inputs, and Willingness to Exchange Information* (Leuven, Belgium, KU Leuven, 2017), p. 5.

⁴⁹ J.L. Gibson, G.A. Caldeira and V.A. Baird, 92 *American Political Science Review* (1998), p. 343.

⁵⁰ E. Voeten, 'Public Opinion and the Legitimacy of International Courts', 14 *Theoretical Inquiries in Law* (2013), p. 411; but see R.D. Kelemen, 'The Political Foundations of Judicial Independence in the European Union', 19 *Journal of European Public Policy* (2012), p. 43.

⁵¹ G.A. Caldeira, 'Courts and Public Opinion', 303 *The American Courts: A Critical Assessment* (1991), p. 303.

⁵² R. Salzman and A. Ramsey, 55 *Latin American Politics and Society* (2013), p. 73; M. Urbániková and K. Šipulová, 19 *German Law Journal* (2018), p. 2105

⁵³ O. Bassok, in P. Kapotas and V. P. Tzevelekos (eds.) *Building Consensus on European Consensus: Judicial Interpretation of Human Rights in Europe and Beyond* (CUP, 2018), p. 236.

rulings reduces ‘confidence’ in the Court – whereas, conversely, agreement with decisions only marginally advances ‘confidence’.⁵⁴

Thus, legitimacy, support, confidence and trust are closely connected. In the absence of electoral accountability or public ability to assess legal reasonings, legitimacy is often seen as an outcome achieved through diffuse support, which, in turn, depends on trust.⁵⁵

Trust also needs to be distinguished from distrust. A dominant view until the 1990s was that distrust is a simple opposite or a mirror of trust. Terms such as low trust, mistrust or distrust were often used interchangeably.⁵⁶ Only recently scholars started emphasising that distrust as a concept is related but qualitatively distinct from trust. Distrust is, therefore, not the mere absence of trust but rather an intentional and behavioural rejection of one’s vulnerability on the basis of negative expectations about the trustees future behaviour under conditions of dependency and uncertainty.⁵⁷

Trust (or distrust) relationships involve two important actors: trustors and trustees. To identify these, trust literature makes a distinction between (1) levels of trust and (2) trust referents.⁵⁸ The first concept addresses the trustors. Three levels of trustors are typically distinguished: individuals (trust demonstrated by an individual person), organizations (the aggregated degree of trust shared by the members of an organization) and community (the aggregate degree of trust shared by all members of a community). The second concept distinguishes between three levels of trustees: individuals (trust towards a specific person), organizations (trust towards a specific organization, e.g. the parliament or the supreme court), and systems (trust towards a system, such as the legislative system or the justice system).⁵⁹

The most attention has undoubtedly been given to individuals as trustors. Scholars explored individuals’ levels of trust towards a particular person (also known as ‘particularised trust’),⁶⁰ their trust in organizations,⁶¹ and in systems.⁶² While some hold that only individuals, not

⁵⁴ A. Grosskopf and J. J. Mondak, ‘Do Attitudes toward Specific Supreme Court Decisions Matter? The Impact of Webster and Texas v. Johnson on Public Confidence in the Supreme Court’, 51 *Political Research Quarterly* (1998), p. 633.

⁵⁵ E. Voeten, 14 *Theoretical Inquiries in Law* (2013), p. 411; C. Arnold, E. Sapir, and G. Zapryanova, ‘Trust in the Institutions of the European Union: A Cross-Country Examination’, in L. Beaudonet and D. Di Mauro (eds), *Beyond Euro-Skepticism: Understanding Attitudes Towards the EU, European Integration Online Papers, Special Mini-Issue* (2012), <http://eiop.or.at/eiop/pdf/2012-008.pdf>, p.1.

⁵⁶ S. B. Sitkin and K. M. Bijlsma-Frankema, ‘Distrust’, in R.H. Searle, A.M.I. Nienaber, S.B. Sitkin (eds.), *The Routledge Companion to Trust* (Routledge, 2018), p. 50.

⁵⁷ P. Oomsels, M. Callens, J. Vanschoenwinkel and G. Bouckaert, ‘Functions and Dysfunctions of Interorganizational Trust and Distrust in the Public Sector’, 51 *Administration & Society* (2019), p. 516; S. Van De Walle and F. Six, ‘Trust and Distrust as Distinct Concepts: Why Studying Distrust in Institutions Is Important’, 16 *Journal of Comparative Policy Analysis: Research and Practice* (2014), p. 158.

⁵⁸ C. A. Fulmer and M. J. Gelfand, ‘At What Level (and in Whom) We Trust: Trust across Multiple Organizational Levels’, 38 *Journal of Management* (2012), p. 1167.

⁵⁹ Ibid; TiGRE Project: Trust in Governance and Regulation in Europe, ‘Trust and Distrust: Conceptual Issues’ (2020).

⁶⁰ See, for example, A. Baier, ‘Trust and Antitrust’, 96 *Ethics* (1986), p. 231; Hardin, *Trust and Trustworthiness*; K. S. Cook, R. Hardin, and M. Levi, *Cooperation without Trust?* (Russell Sage Foundation, 2005); T. Yamagishi and M. Yamagishi, ‘Trust and Commitment in the United States and Japan’, 18 *Motivation and Emotion* (1994), p. 129.

⁶¹ R. M. Kramer, ‘Trust and Distrust in Organizations: Emerging Perspectives, Enduring Questions’, 50 *Annual Review of Psychology* (1999), p. 569; R.M. Kramer and T. R. Tyler, *Trust in Organizations: Frontiers of Theory and Research* (Sage Publications, 1996); Möllering, Trust: Reason, Routine, Reflexivity, p. 111; F. Kroeger, ‘Trusting Organizations: The Institutionalization of Trust in Interorganizational Relationships’, 19 *Organization* (2012), p. 743.

⁶² F. Kroeger, ‘The Development, Escalation and Collapse of System Trust: From the Financial Crisis to Society at Large’, 33 *European Management Journal* (2015), p. 431; N. Luhmann, *Trust and Power* (John Wiley & Sons, 1979); P. Sztompka, *Trust: A Sociological Theory*.

collectives, can trust,⁶³ others did support the notion of trust between organisations.⁶⁴ Trust within and between organisations has been conceptualised as a collective phenomenon based upon sharing a membership with an organisation.⁶⁵ What distinguishes this trust from interpersonal trust is that it is less direct, less personal and less individuated.⁶⁶ Much less attention has been devoted to system trust, which is based on the trustor's assumption that a system is functioning. The trustor then places trust in that function rather than people.⁶⁷ The emphasis on interpersonal and interorganizational trust is also reflected in the literature on trust in courts. Therefore, most of the papers discussed here relate to either interpersonal or interorganizational trust. How these different trust levels mutually interact or complement each other is still a puzzle: the research on trust incorporating multiple levels of analysis remains limited, in the general literature and with regard to courts. Moreover, the research on trust at different levels of analysis continues to develop independently with little cross-fertilization. This isolation of trust at a single level of analysis ignoring drivers, effects and dynamics from other levels and the interaction with those other levels creates non-trivial gaps in our understanding of trust.⁶⁸

3. Trust in courts within one legal system

In this section, we turn to trust within one legal system, focusing on the European legal space. We first examine trust between judicial actors and then turn to citizen's trust in courts.

Trust between judicial actors

Judicial networks have specific characteristics that have an impact on trust relations. Judicial cooperation networks are generally not voluntary. Instead, they are closely interlinked, based on formal and long-term inter-organisational relationships and paired with checks and balances to ensure autonomy and impartial decision-making.⁶⁹ Empirical literature in this domain is scarce and confined to specific fields of the law.

Most prominent here is the research on the judicial youth system. Several studies examine the role of trust as a co-operation enhancing factor between different judicial actors in this sector, including the juvenile police, social services, the public prosecutor's office, and the juvenile courts. Callens and later Callens and Bouckaert, focus on one aspect of the trust relationship: the assessment of the trustee's trustworthiness. Building on Mayer's work, they define trustworthiness as the trustor's positive expectations about the trustee's ability, benevolence and integrity. These and related studies confirm the role of ability, benevolence and integrity as

⁶³ M. Janowicz-Panjaitan and R. Krishnan, 'Measures for Dealing with Competence and Integrity Violations of Interorganizational Trust at the Corporate and Operating Levels of Organizational Hierarchy', 46 *Journal of Management Studies* (2009), p. 245.

⁶⁴ G. Möllering and J. Sydow, 'Trust Trap? Self-Reinforcing Processes in the Constitution of Inter-Organizational Trust', in M. Sasaki (ed.) *Trust in Contemporary Society* (Brill, 2019), p. 141; J. Sydow, 'How Can Systems Trust Systems? A Structuration Perspective on Trust-Building in Inter-Organizational Relations,' in R. Bachmann and A. Zaheer (eds.), *Handbook of Trust Research* (2006), p. 377.

⁶⁵ R. M. Kramer, 'Collective Trust within Organizations: Conceptual Foundations and Empirical Insights', 13 *Corporate Reputation Review* (2010), p. 83.

⁶⁶ M. Kramer, *50 Annual Review of Psychology* (1999), p. 569.

⁶⁷ N. Luhmann, *Trust and Power*; P. Sztompka, *Trust: A Sociological Theory*.

⁶⁸ A. Fulmer and K. Dirks, 'Multilevel Trust: A Theoretical and Practical Imperative', 8 *Journal of Trust Research* (2018), p. 137.

⁶⁹ M. Callens, *The Interorganisational Trust Process in the Flemish Judicial Youth Care Chain: Perceived Trustworthiness, Its Inputs, and Willingness to Exchange Information*.

trustee-related drivers of trust.⁷⁰ Issue-related factors, however, also seem to play a role and the intensity of their impact varies depending on the type of cooperation (e.g., whether we are talking about sharing mandatory vs optional information, or receiving vs sending out information). The role of boundary spanners was also examined in youth care with a focus on information exchange, and including the juvenile police, supporting social services, the juvenile public prosecutor's office, and the juvenile court.⁷¹ Among several factors that affect the assessment of one's trustworthiness, the negative impact of workload on perceived ability⁷² is important for broader insights in trust in courts, considering the backlog many courts are struggling with. This research also points to the risk of too much trust, when it increases the willingness to share confidential information that may jeopardize the privacy of clients or the right to a fair trial.⁷³

Interestingly, a rare study of distrust within courts examines a court where conflicts arose between judges and administrators following judicial reform (so-called 'inter-group distrust').⁷⁴ This study of Callens reveals 'value incongruence' as a determinant of distrust, besides 'pervasive negative perceptions' and 'a self-amplifying circle'. In line with the trust literature discussed in section two, Callens' paper confirms that 'distrust' should conceptually be distinguished from 'low trust' and suggests that if value incongruence perceptions surpass a certain threshold, the cycle of distrust will further develop through amplifying mechanisms.⁷⁵

When it comes to trust between courts within national legal systems, scholars such as Jaremba⁷⁶ and Glavina⁷⁷ showed that judges of lower national courts tend to exhibit higher levels of trust in their supreme courts as compared to constitutional courts. One reason for this discrepancy, as Glavina reports, is that lower court judges see the supreme court judges as more 'equal' to them, while constitutional court judges are often described as 'politicians in robes'.⁷⁸

Arguably, this is just one example that emphasizes the need to pay more attention to trust in different types of courts. This applies especially to specialized courts. The main argument in favour of specialization is the enhancement of expertise in judicial decision-making. Expertise is fostered through the selection of judges with knowledge on the subject and/or through their continuous exposure to a particular legal field. Supporters of this trend argue that specialisation will contribute to more effective, efficient and predictable decision making.⁷⁹ On the other hand,

⁷⁰ M. Callens and G. Bouckaert, 42 *Public Performance & Management Review* (2019), p. 1112; M. Callens, G. Bouckaert, and S. Parmentier, in A Hondeghem, X Rousseaux, F Schoenaers (eds.), *Modernisation of the Criminal Justice Chain and the Judicial System*, p. 115.

⁷¹ M. Callens, *The Interorganisational Trust Process in the Flemish Judicial Youth Care Chain: Perceived Trustworthiness, Its Inputs, and Willingness to Exchange Information*, 150; M. Callens and G. Bouckaert, 42 *Public Performance & Management Review* (2019), p. 1132.

⁷² H. Fix-Fierro, *Courts, Justice, and Efficiency: A Socio-Legal Study of Economic Rationality in Adjudication* (Hart Publishing, 2003); J. Komárek, "In the Court(s) We Trust?" On the Need for Hierarchy and Differentiation in the Preliminary Ruling Procedure,' 32 *European Law Review* (2007), p. 467; M. Callens and G. Bouckaert, 42 *Public Performance & Management Review* (2019), p. 1112; M. Callens, *The Interorganisational Trust Process in the Flemish Judicial Youth Care Chain: Perceived Trustworthiness, Its Inputs, and Willingness to Exchange Information*, (KU Leuven, 2017), p.144.

⁷³ M. Callens and G. Bouckaert, 42 *Public Performance & Management Review* (2019), p. 1133.

⁷⁴ K. Bijlsma-Frankema, S.B. Sitkin, and A. Weibel, 'Distrust in the Balance: The Emergence and Development of Intergroup Distrust in a Court of Law', 26 *Organization Science* (2015), p. 1018–1039.

⁷⁵ M. Callens, (KU Leuven, 2017), p. 21.

⁷⁶ U. Jaremba, *National Judges as EU Law Judges: The Polish Civil Law System* (Martinus Nijhoff Publishers, 2014), p. 208.

⁷⁷ M. Glavina, *National Judges as European Union Judges: Evidence from Slovenia and Croatia* (KU Leuven, 2020), p. 209.

⁷⁸ *Ibid.*, p. 210.

⁷⁹ e.g. D.L. Schwartz, 'Practice Makes Perfect - An Empirical Study of Claim Construction Reversal Rates in Patent Cases', 107 *Michigan Law Review* (2008), p. 223–84; M.R. Baye and J.D. Wright, 'Is Antitrust Too Complicated for Generalist Judges

specialization is often connected to some potential drawbacks, such as isolation and the development of bias or the potential for capture. Judges who specialize in one legal field may develop a narrow perspective and disregard interests and values that are not connected to their specific area of expertise, including the broader opinion of the public.⁸⁰ In particular, a bias can develop as a result of the high concentration of cases in specialized courts as well as in relation to the ‘mission’ that the court is expected to accomplish. For example, intellectual property (IP) courts are often created with the aim of fostering innovation and commercial courts with the purpose of attracting businesses to a particular geographical area.⁸¹ Judges may be selected to sit on such specialized courts simply because they believe in the mission of the court.⁸² Consequently, they are more likely to interact with lawyers who represent a particular interest, thus enhancing the professional bias.⁸³ Judges who are immersed in a field of the law may further encounter the risk of developing stereotypes about the cases that they analyse. For instance, in the area of criminal law, judges may develop the impression that the great majority of defendants are guilty.⁸⁴ Thus, the higher the centralization of cases in the hands of a specialized court, the higher the risk that the judge will be influenced in her/his reasoning by stereotypes.⁸⁵

It is, therefore, worth analysing what impact specialization has on trust in courts. The perception that a specialized court operates in isolation and might be biased towards a particular field of the law may have an impact on the relationships between different judicial actors. In the US, the generalist Supreme Court on several occasions voiced its concern for the development of special rules and an isolated body of case law by the lower specialized courts.⁸⁶

The relationship between judicial and quasi-judicial bodies is another unexplored area from the perspective of specialisation within a legal system. Governmental agencies often entail specialized quasi-judicial bodies in charge of making binding decisions. Trust between the courts and the quasi-judicial actors may play a role in the development of a coherent body of decisions in a specific legal field. In fact, the expertise of a quasi-judicial body could be a trustee-related driver eventually leading to a relationship of cooperation (for instance, involving the exchange of evidence in parallel litigation or references to the decisions reached by the other actor) between the court and the quasi-judicial body.

Turning to judicial cooperation between judicial actors in different Member States, it is important to note that the EU has developed a principle of so-called ‘mutual trust’; a legal

- The Impact of Economic Complexity and Judicial Training on Appeals’, 54 *Journal of Law & Economics* (2011), p. 1; L. Baum, *Specializing the Courts*.

⁸⁰ L. Baum, *Specializing the Courts*, p. 36.

⁸¹ *Ibid.*, p. 192.

⁸² *Ibid.*, p. 40.

⁸³ Interested groups (e.g. stakeholders) often play a role in the process of selection of the judges. Some commentators believe that representatives of interest groups will try to ensure the appointment of judges which are favourable to an organized interest. See, e.g., L. Baum, *Specializing the Courts*, p. 37; S.V. Damle, ‘Specialize the Judge, Not the Court: A Lesson from the German Constitutional Court’, 91 *Virginia Law Review* (2005), p. 1283.

⁸⁴ L. Baum, *Specializing the Courts*, p. 36.

⁸⁵ *Ibid.*, p. 36.

⁸⁶ See, for instance, the decisions of the Supreme Court limiting patent ‘exceptionalism’ in *Dickinson, Acting Commissioner of Patents and Trademarks v. Zurko et al.*, 527 U.S. 150 (1999); *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826 (2002); *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (USSC 2006); *Medimmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007); and *Medtronic, Inc. v. Mirowski Family Ventures, LLC* 571 U.S. 191 (2014). See also Michael Goodman, ‘What’s So Special About Patent Law,’ *Fordham Intell. Prop. Media & Ent. LJ* 26 (2015): 797. Similarly, the Supreme Court rejected the special rules for tax litigation in *Mayo Foundation for Medical Education and Research et al. v. United States*, 562 U.S. 44, 131 S. Ct. 704, 178 L. Ed. 2d 588, 2011 BL 6645 (2011).

presumption of mutual trust between the Member States and between the authorities of different Member States. In criminal law, this facilitates the surrender of sentenced or suspected persons among EU countries.⁸⁷ In the field of EU private international law, specific EU instruments determine, on the basis of neutral criteria, the horizontal distribution of civil adjudicative power between the Member States. This horizontal distribution of powers is based on the trust that Member States accord to each other's legal systems and judicial institutions. Mutual trust has enabled a compulsory system of jurisdiction to be established preventing the Member States from exercising their territorial judicial jurisdiction. The legal grounds, implementation and consequences of the principle of mutual trust have been widely discussed in legal scholarship,⁸⁸ but scholars have only rarely referred to trust literature.⁸⁹ Empirical studies on mutual trust are lacking. A rare example by Efrat shows that despite the legal assumption of trust, judicial authorities are more willing to surrender to legal systems that have a better-quality criminal regime and a stronger human rights record.⁹⁰

Citizen trust

In Europe, research on trust in justice is often focused on crime control, trust in police officers and criminal courts.⁹¹ The EURO-JUSTIS Project, aimed at developing indicators for measuring trust, and the ESS, collecting survey data from Bulgaria, the Czech Republic, England, Wales, France, Italy and Lithuania, are also limited to criminal justice.⁹² The purpose of the cross-country collection of data was to enable comparative research. However, it was noticed that differences in data quality render comparison rather difficult.⁹³ The researchers behind the ESS program hold that although the surveys are 'likely to have a high ratio of noise', they can be treated as reasonable evidence where they present a coherent signal.⁹⁴ The European Network for Councils of the Judiciary (ENCJ) focuses more generally on the judiciary, but

⁸⁷ e.g. A. Efrat, 'Assessing Mutual Trust among EU Members: Evidence from the European Arrest Warrant', 26 *Journal of European Public Policy* (2019), p. 656.

⁸⁸ E. Herlin-Karnell, 'From Mutual Trust to the Full Effectiveness of EU Law: 10 Years of the European Arrest Warrant,' 38 *EL Rev* (2013), p. 79; C. Janssens, *The Principle of Mutual Recognition in EU Law* (Oxford University Press, 2013); K. Lenaerts, 'La Vie Après l'avis: Exploring the Principle of Mutual (Yet Not Blind) Trust', 54 *Common Market Law Review* (2017), p. 805; V. Mitsilegas, 'Constitutional Implications of Mutual Recognition in Criminal Matters in the EU', 43 *Common Market L. Rev.* (2006), p. 1277; A. Prechal, 'Mutual Trust before the Court of Justice of the European Union,' *European Papers* 2, no. 1 (2017), https://www.europeanpapers.eu/it/system/files/pdf_version/EP_eJ_2017_1_7_Article_Sacha_Prechal_00139.pdf, p. 75.

⁸⁹ For an attempt, see E.R. Brouwer, 'Mutual Trust and Judicial Control in the Area of Freedom, Security, and Justice: An Anatomy of Trust', in *Mapping Mutual Trust. Understanding and Framing the Role of Mutual Trust in EU Law, Florence: EUI Working Papers MWP 2016/1* (2016), https://cadmus.eui.eu/bitstream/handle/1814/41486/MWP_2016_13.pdf?sequence=1, p. 59..

⁹⁰ A. Efrat, 26 *Journal of European Public Policy* (2019).

⁹¹ M. Hough et al., 4 *Policing: A Journal of Policy and Practice* (2010); M. Hough, 'Researching Trust in the Police and Trust in Justice: A UK Perspective', 22 *Policing and Society* (2012), p. 332; M. Hough, J. Jackson, and B. Bradford, in J. Tankebe and A. Liebling (eds.), *Legitimacy and criminal justice: An international exploration*; M. Hough, J. Jackson and B. Bradford, 'Trust in Justice and the Legitimacy of Legal Authorities,' in S. Body-Gedrot et al. (eds), *The Routledge Handbook of European Criminology* (Routledge 2013), p. 243; S. Machura, T. Love, and A. Dwight, 'Law Students' Trust in the Courts and the Police,' 42 *International Journal of Law, Crime and Justice* (2014), p. 287; S. Parmentier and G. Vervaeke, 8 *European Journal of Criminology* (2011); T.R. Tyler, 'Trust within Organisations,' 32 *Personnel Review* (2003), p.556.

⁹² European Social Survey, *ESS-5 2010 Documentation Report* (European Social Survey Data Archive, Norwegian Social Science Data Services, 2014), <https://www.europeansocialsurvey.org/data/download.html?r=5>; M. Hough and M. Sato, *Trust in Justice: Why It Is Important for Criminal Policy, and How It Can Be Measured. Final Report of the Euro-Justis Project* (HEUNI, 2011); J. Jackson et al., 8 *European Journal of Criminology* (2011).

⁹³ M. Callens and G. Loosveldt, 'Don't Know' Responses to Survey Items on Trust in Police and Criminal Courts: A Word of Caution,' *Survey Methods: Insights from the Field* (2018), <https://surveyinsights.org/?p=9237>, p. 1.

⁹⁴ M. Hough, 22 *Policing and Society* (2012).

analyses in particular ‘public confidence’ from the perspective of communication and transparency.⁹⁵

Several trustor-related factors are identified as drivers for trust, related to identifying features (age, gender, region or place of residence), status (income, education, marital status, gainful employment), beliefs (political preferences, ideology), information sources (media, fiction)⁹⁶ and education (e.g. studying law).⁹⁷ Aydin Cakir and Sekercioglu, for example, study the interaction between individual and country-level factors in a comparative setting.⁹⁸ They find that while in advanced democracies people with low levels of political awareness exhibit low levels of confidence in the judiciary, in countries with certain democracy problems less informed people would fail to see the deficiencies of the political system and remain unduly confident in the judiciary. On the other hand, in countries with poor democratic performance, the more informed, interested and educated people are in a better position to see the system failure, which is well reflected in their low levels of confidence in the judiciary.⁹⁹

The most significant driver of the trust in justice, as shown by Parmentier and Vervaeke, is past experiences with the (civil or criminal) justice systems, with experience as a party leading to decreasing trust, and experience as a witness leading to higher trust.¹⁰⁰ Experiences of friends or family, as shown by Machyra et al., has a similar effect.¹⁰¹ This is where the notion of procedural justice comes in. Procedural justice refers to both personal experience – how has one been treated by judicial actors – and to perceived fairness – whether people think that judicial actors make their decisions fairly.¹⁰² It is, therefore, both a trustor-related and a trustee-related driver. People are more willing to consent and cooperate with judicial actors if they are treated fairly.¹⁰³ In turn, trust in the fairness of judicial actors is closely linked to the legitimacy of these actors.¹⁰⁴

Montinola’s study of local courts shows that individuals use the information on institutions with which they are familiar to make inferences regarding institutions about which they know very little.¹⁰⁵ For example, few if any citizens have information on the performance of each distinct institution within the government. Experience with one institution of some sort (e.g. local court) shapes an individual’s evaluations of other institutions (e.g. courts in general). It shows that in

⁹⁵ See ENCJ, Annual reports from the European Networks of Councils for the Judiciary, available at <https://www.encj.eu/annual-reports>.

⁹⁶ S. Machura et al., ‘How Studying Law, Media and Experience Influence Trust in the Courts and the Police A Comparison of Law and Language Students at Bangor University,’ in J. Estermann (ed), *Kampf Ums Recht: Akteure Und Interessen Im Blick Der Interdisziplinären Rechtsforschung* (Lit Verlag, 2012), p. 150; S. Parmentier and G. Vervaeke, 8 *European Journal of Criminology* (2011).

⁹⁷ S. Machura et al., in J. Estermann (ed), *Kampf Ums Recht: Akteure Und Interessen Im Blick Der Interdisziplinären Rechtsforschung*; S. Machura, T. Love, and A. Dwight, 42 *International Journal of Law, Crime and Justice*.

⁹⁸ A. Aydin Çakır and E. Şekercioglu, ‘Public Confidence in the Judiciary: The Interaction between Political Awareness and Level of Democracy,’ 23 *Democratization* (2016), p. 634.

⁹⁹ A. Aydin Çakır and E. Şekercioglu, 23 *Democratization* (2016), p. 646.

¹⁰⁰ S. Parmentier and G. Vervaeke, 8 *European Journal of Criminology* (2011), 290.

¹⁰¹ S. Machura et al., in J. Estermann (ed), *Kampf Ums Recht: Akteure Und Interessen Im Blick Der Interdisziplinären Rechtsforschung*, p.163.

¹⁰² T. R. Tyler, 19 *Behavioral Sciences & the Law* (2001).

¹⁰³ M. Hough, J. Jackson and B. Bradford, in S. Body-Gedrot et al. (eds), *The Routledge Handbook of European Criminology*; Hough; T. R. Tyler, 19 *Behavioral Sciences & the Law* (2001); Tom R. Tyler, ‘Legitimacy in Corrections: Policy Implications,’ 9 *Criminology & Pub. Pol’y* (2010), p. 127.

¹⁰⁴ M. Hough, J. Jackson and B. Bradford, in S. Body-Gedrot et al. (eds), *The Routledge Handbook of European Criminology*.

¹⁰⁵ G.R. Montinola, ‘Proxies and Experience as Bases of Trust in Courts,’ in K.S. Cook, M. Levi and R. Hardin (eds), *Whom Can We Trust?: How Groups, Networks, and Institutions Make Trust Possible* (New York: Russell Sage Foundation, 2009), p. 286.

forming opinions about collective entities, direct experience is more important than stereotypes if only individuals have an opportunity to gain this experience. It also suggests a connection between organisational and system trust: one organisation serves as a boundary spanner that determines the trustworthiness of the system as a whole, and in turn all the organisations within that system. Another remarkable finding related to past experiences is that distrust spills over; for example, one negative encounter with police or another actor may result in distrusting other public institutions.¹⁰⁶

With regard to the CJEU, perceptions of procedural justice did not seem to play an important role for diffuse support, but this could be explained by the fact that citizens at the time of that study had little experience with the CJEU.¹⁰⁷ The data, however, suggested that procedural perceptions are better treated as measures of diffuse support, rather than causal antecedents.¹⁰⁸ Research on other variables that could be related to citizen's trust in the CJEU is scarce. Apart from the linkage with trust in national courts and the level of corruption, discussed above, several personal attributes of trustors seem to be relevant to a certain extent. For example, women are less inclined to trust the CJEU than men,¹⁰⁹ which is in line with earlier research that found that some important CJEU decisions in favour of women's interest had had no impact on women's support for this court.¹¹⁰ The importance of other variables seems to evolve over time: ideology did not seem to influence support for the CJEU in the 1990s¹¹¹ but it did have an impact on trust in the EU institutions, including the CJEU, almost two decades later.¹¹² Early research did find correlations with fundamental values, rather than ideology: those who attach much value to the rule of law or individual rights are also more positively oriented towards the CJEU¹¹³ and more likely to accept unpopular decisions.¹¹⁴

There is a lack of empirical research of trust in European constitutional courts (with the exception of the German Federal Constitutional Court).¹¹⁵ This is striking for two reasons. First, where courts generally convey less trust than political institutions, both at the European and the national level,¹¹⁶ this is different for constitutional courts.¹¹⁷ Second, having the power to strike down Acts of Parliament, constitutional courts are political actors that are not democratically controlled. For this reason, the high trust put in constitutional courts is called a 'democratic trust conundrum'.¹¹⁸ The findings that result from this empirical study on trust in the German Constitutional Courts, are an excellent basis for more research in this area. Drivers for higher

¹⁰⁶ J. Kääriäinen and R. Sirén, 'Do the Police Trust in Citizens? European Comparisons', 9 *European Journal of Criminology* 9 (2012), p. 276.

¹⁰⁷ J.L. Gibson, G.A. Caldeira and V.A. Baird, 92 *American Political Science Review* (1998), p.343.

¹⁰⁸ *Ibid.*, p. 484.

¹⁰⁹ C. Arnold, E. Sapir, and G. Zapryanova, in L. Beaudonet and D. Di Mauro (eds), *Beyond Euro-Skepticism: Understanding Attitudes Towards the EU*, (2012), p.3.

¹¹⁰ G.A. Caldeira and J.L. Gibson, 89 *American Political Science Review* (1995), p. 359.

¹¹¹ *Ibid.*, p. 368.

¹¹² C. Arnold, E. Sapir, and G. Zapryanova, in L. Beaudonet and D. Di Mauro (eds), *Beyond Euro-Skepticism: Understanding Attitudes Towards the EU*, (2012), p. 27.

¹¹³ G.A. Caldeira and J.L. Gibson, 89 *American Political Science Review* (1995), p. 368.

¹¹⁴ J.L. Gibson, G.A. Caldeira and V.A. Baird, 92 *American Political Science Review* (1998), p. 479.

¹¹⁵ C. Hönnige et al., 'Constitutional Courts as Veto Players: Composition, Absorption and Decisions at the German Court,' in *ECPR General Conference* (Montreal, 2015); G. Vanberg, 'Establishing Judicial Independence in West Germany: The Impact of Opinion Leadership and the Separation of Powers', *Comparative Politics* (2000), p. 333.

¹¹⁶ S. Parmentier and G. Vervaeke, 8 *European Journal of Criminology* (2011); C. Arnold, E. Sapir, and G. Zapryanova, in L. Beaudonet and D. Di Mauro (eds), *Beyond Euro-Skepticism: Understanding Attitudes Towards the EU*; for a different stand, see R.D. Kelemen, 19 *Journal of European Public Policy* (2012).

¹¹⁷ A. Grosskopf, 83 *International Social Science Review* (2008), p.3.

¹¹⁸ *Ibid.*, p. 5.

or lower trust are trustor-related (policy satisfaction with the government; gauging attitudes of politicians), but also context-related (economic performance). Here, it is puzzling that lower evaluations of economic performance do not only decrease trust of the German public in all institutions of government but most significantly in the Constitutional Court, which is not responsible for economic performance.¹¹⁹ Focus group interviews suggest that trust in constitutional courts is based on their favourable process evaluation. Courts are deemed trustworthy because they are perceived as reactive institutions, that end political conflict but do not create policy, are not acting to gain power, and effectively produce output in the form of expert judgments.¹²⁰ This points to integrity and ability as trustee-related drivers. The link between trust in the Constitutional Court and the expectation of effective output in the form of expert judgments points to the importance of functional process evaluations that are not usually captured by surveys utilized for measuring public trust.¹²¹ This supports the idea that trust in courts is different from trust in political institutions because of the specific characteristics attributed to courts (trustee-related drivers), such as impartiality, independence and expertise.¹²²

This brings us to the issue of judicial independence. Trust is more likely to develop in political settings where institutions are impartial and fair.¹²³ Trust in the courts is connected to characteristics of a judicial system. In particular, trust in courts is linked to the guarantees ensuring that judges operate free from improper influence or interference by external sources (external judicial independence) as well as when judges are free of bias when deciding a case (internal judicial independence).¹²⁴ In a cross-national study, Bühlmann and Kunz use data from the World Values Survey from 1995 to 2002 to examine possible determinants of an individual's confidence in the judicial system in established democracies worldwide.¹²⁵ They emphasise the difference between *de jure* and *de facto* independence and conclude that the public's perception of independence does not depend on the formal guarantees entailed in legal instruments but rather on effective independence or independence in practice.

In a similar vein, Sapignoli explored the reasons why trust levels differentiate between European countries.¹²⁶ Based on crossing the Eurobarometer data in the period between 1997 and 2016 with the report of the World Economic Forum, Sapignoli concluded that diffuse perception of independence is also positively associated with higher trust in the national judiciary.¹²⁷

In a recent study, Garoupa and Magalhaes show that public trust in the judicial systems is positively related to fundamental institutional properties such as judicial independence and

¹¹⁹ Ibid., p. 10.

¹²⁰ Ibid., p. 20.

¹²¹ Ibid., p. 20.

¹²² S. Grimmelikhuijsen and A. Klijn, 93 *Public Administration* (2015).

¹²³ M. Freitag and M. Bühlmann, 'Crafting Trust: The Role of Political Institutions in a Comparative Perspective,' 42 *Comparative Political Studies* (2009), p. 1537; B. Rothstein and D. Stolle, 'The State and Social Capital: An Institutional Theory of Generalized Trust,' 40 *Comparative Politics* (2008), p. 441; M. Bühlmann and R. Kunz, 'Confidence in the Judiciary: Comparing the Independence and Legitimacy of Judicial Systems,' 34 *West European Politics* (2011), p. 317.

¹²⁴ See, for example, United Nations Office on Drugs and Crime, *Commentary on The Bangalore Principles of Judicial Conduct* (2007), https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf.

¹²⁵ M. Bühlmann and R. Kunz, 'Confidence in the Judiciary: Comparing the Independence and Legitimacy of Judicial Systems,' 34 *West European Politics* (2011), p.317.

¹²⁶ M. Sapignoli, 'Corti Di Giustizia e Opinione Pubblica: La Fiducia Nei Sistemi Giudiziari Europei,' in C.A. d'Alessandro and A. Marchese (eds) *Ius Dicere in a Globalized World*, vol. 1 (Roma-Tre Press, 2018), p. 205.

¹²⁷ However, in a few cases (e.g., in the case of France, Greece and Romania) this positive relationship is not confirmed.

judicial accountability.¹²⁸ Those properties matter most for particular profiles of respondents: those who are more educated are also more sensitive in their evaluations of the legal system to the extent the judiciary in their countries is independent.¹²⁹ Conversely, whether the legal system favours the accountability of judges for misconduct tends to matter only for those with the most exposure to information through the news media.¹³⁰ In addition, the justice budget is likely to have a positive and significant impact on an individual's trust in justice, as the budget may operate as a 'signal' when individuals face uncertainty regarding the judiciary.¹³¹

More research on trust in civil courts would also be desirable, with particular attention for (expected) performance and procedural justice, in particular the impact of backlogs on public trust. So far, the most relevant research in this domain focused on transparency defined as 'the availability of information about an organization or actor allowing external factors to monitor the internal workings or performance'.¹³² It shows that judicial transparency has a positive effect on trust, in particular on individuals with medium prior knowledge about the judiciary, but only a marginal effect in case of a higher predisposition to trust.¹³³

More research is needed to explore the link between independence and trust in specialized courts. Due to their specific features (e.g. their mission and potential for capture), the independence of specialized courts may be more at risk than that of generalist courts. The perception of judicial independence may influence the choice of litigants to start proceedings at a specialized court. Expertise may also represent a determinant for citizens' trust in specialized courts. In fact, differences in expertise influence the quality of decisions and may determine the preferences of forum by litigants.¹³⁴ In this context, the profile of both trustors and trustees may play a role in the level of trust. In fact, trust may be fostered when citizens and judges are part of the same epistemic community¹³⁵ by reason of their shared background, expertise and values.

4. Interaction of trust in courts at different levels (multi-level dynamics)

The European judicial system operates on different levels. EU member states have courts at the national level and in some member states such as Germany the subnational level as well. In addition, the European level includes the EU with the CJEU. As part of our analysis of the multilevel dynamics, we examine how trust in courts on one level may have an impact on trust in courts on another level, or how context-related drivers in one level change the level of trust in courts on another level.

¹²⁸ N. Garoupa and P.C. Magalhães, 'Public Trust in the European Legal Systems: Independence, Accountability and Awareness,' 44 *West European Politics* (2021), p. 708.

¹²⁹ *Ibid.*, p. 709.

¹³⁰ *Ibid.*, p. 709.

¹³¹ L. Roussey and B. Deffains, 'Trust in Judicial Institutions: An Empirical Approach,' 8 *Journal of Institutional Economics* (2012).

¹³² S. Grimmelikhuijsen and A. Klijn, 93 *Public Administration* (2015), p. 5; ENCJ, 'Annual Reports,' <https://www.encj.eu/annual-reports>.

¹³³ S. Grimmelikhuijsen and A. Klijn, 93 *Public Administration* (2015), p. 16.

¹³⁴ Forum shopping is a common practice in patent litigation. See S. Luginbuehl, *European Patent Law: Towards a Uniform Interpretation* (Edward Elgar Publishing, 2011).

¹³⁵ P.M. Haas, 'Introduction: Epistemic Communities and International Policy Coordination', 46 *International Organization* (1992), p. 1.

Trust between judicial actors

Exploring interdependencies among the courts in Europe has been captured under the term ‘judicial dialogue’¹³⁶ or ‘judicial conversations’,¹³⁷ with preliminary references as its most prominent tool, and the preliminary ruling procedure between national courts and the CJ as the most discussed relationship. Scholars have extensively examined why national courts and judges request preliminary rulings from the CJ, ascribing the divergences in referral rates among member states and their courts to, among others, intra-EU trade,¹³⁸ country size and population,¹³⁹ legal tradition,¹⁴⁰ and litigation rates.¹⁴¹ Yet, the literature on what drives referral rates to the CJ has only rarely been studied from the perspective of trust.¹⁴²

As mentioned, the concept of trust is often equated with the concept of diffuse support. The literature on European integration and the preliminary ruling procedure is no exemption. One factor that has proved to result in higher referral rates in a particular member state is public support for EU membership. Mattli and Slaughter found that, due to legitimacy constraints, courts in countries with a less favourable view towards European integration will be less eager to turn to the CJ by means of the preliminary ruling procedure.¹⁴³ Other scholars have confirmed the effect of public support for EU membership on the referral propensity of national courts.¹⁴⁴

Scholarly efforts that link the preliminary ruling procedure dynamics to trust conceptualisations have, however, been limited. Mayoral’s contribution is one of the most advanced studies on judicial trust in the EU. Building extensively on trust literature, Mayoral defines judicial trust in the CJ as ‘the subjective belief that national judges have about whether the CJ will follow an expected course of action under conditions of uncertainty.’¹⁴⁵ When this belief is strong, he argues, national judges will consider the CJ trustworthy. The CJ’s trustworthiness is defined by its ability to fulfil the role ascribed to it by EU law such as Article 267 TFEU on the preliminary ruling procedure.¹⁴⁶ Mayoral, thus, takes into account several elements of trust as defined above, including the assessment of the trustee’s trustworthiness, willingness to be vulnerable and the

¹³⁶ A. Meuwese and M. Snel, ‘Constitutional Dialogue: An Overview’, 9 *Utrecht L. Rev.* (2013), p. 123; A. Rosas, ‘The European Court of Justice in Context: Forms and Patterns of Judicial Dialogue’, 1 *Eur. J. Legal Stud.* (2007), p. 121.

¹³⁷ M. Claes, ‘Introduction: On Constitutional Conversations,’ in C. Van de Heyning and M. de Visser (eds.), *Constitutional Conversations in Europe: Actors, Topics and Procedures* (Intersentia, 2012), p. 1; M. Claes, *The National Courts’ Mandate in the European Constitution* (Hart Publishing, 2006); R. Van Gestel and J. De Poorter, *In the Court We Trust: Cooperation, Coordination and Collaboration Between the ECJ and Supreme Administrative Courts* (Cambridge University Press, 2019).

¹³⁸ W. Mattli and A.M. Slaughter, 52 *International Organization* (1998), p. 177; Stone Sweet and T. L. Brunell, 5 *Journal of European Public Policy* (1998), p. 66;

¹³⁹ Stone Sweet and T. L. Brunell, 5 *Journal of European Public Policy* (1998), p. 66; R. D. Kelemen and T. Pavone, ‘Mapping European Law’, 23 *Journal of European Public Policy* (2016), p. 1118; M. Vink, M. Claes, and C. Arnold, ‘Explaining the Use of Preliminary References by Domestic Courts in EU Member States: A Mixed-Method Comparative Analysis’, (2009), <http://aei.pitt.edu/33155/>, p.1.

¹⁴⁰ M. Wind, D. Sindbjerg Martinsen and G. Pons Rotger, ‘The Uneven Legal Push for Europe Questioning Variation When National Courts Go to Europe’, 10 *European Union Politics* (2009), p. 63.

¹⁴¹ L. Conant, ‘Europeanization and the Courts: Variable Patterns of Adaptation among National Judiciaries’, in M. Green Cowles, J. Caporaso and T. Risse (eds.), *Transforming Europe: Europeanization and Domestic Change* (Cornell University Press, 2001), p.97; Karen J. Alter and Jeannette Vargas, ‘Explaining Variation in the Use of European Litigation Strategies: European Community Law and British Gender Equality Policy’, 33 *Comparative Political Studies* (2000), p. 452.

¹⁴² R. Van Gestel and J. De Poorter, *In the Court We Trust: Cooperation, Coordination and Collaboration Between the ECJ and Supreme Administrative Courts*, for example, rely on the concept of trust and look at its role for the dialogue between courts, but use a rather limited set of trust literature.

¹⁴³ W. Mattli and A.M. Slaughter, 52 *International Organization* (1998), p. 406.

¹⁴⁴ C. J. Carrubba and L. Murrain, 59 *International Organization* 59 (2005), p. 399; M. Vink, M. Claes, and C. Arnold, ‘Explaining the Use of Preliminary References by Domestic Courts in EU Member States: A Mixed-Method Comparative Analysis’, (2009), <http://aei.pitt.edu/33155/>, p.1.

¹⁴⁵ A. Mayoral Díaz-Asensio, 55 *Journal of Common Market Studies* (2017), p. 556.

¹⁴⁶ *Ibid.*, pp. 556–557.

fact that trust is a relational and context-specific concept. One important prerequisite for a trust relationship that is missing from Mayoral's definition is a trustee's general propensity to trust. Furthermore, he does not distinguish trust from distrust nor discusses the concept of multilevel trust.

This unique empirical study suggests that national judges are more willing to co-operate with the CJ via the preliminary ruling procedure when they trust that the Courts' decisions offer clear guidance for the correct application of EU law and that they will not create a conflict with their national legal order.¹⁴⁷ Mayoral's study shows a series of relevant drivers of national courts' trust in the CJ. These are a deeper knowledge of EU law and trust in domestic judicial institutions, which is regarded as a 'corporist' factor. Support for the EU appears as an important driver of trust for lower courts, but interestingly not for higher domestic courts. A trustee-related driver is the perceived ability that the CJ will give clear guidance on matters of EU law. Mayoral further identifies one context-related driver of trust, which is the legal field in which the domestic courts operate, with a lower probability to trust the CJ in criminal law. Finally, the study reveals two country-related drivers. One is the domestic legal system's approach to the relation between national and EU law, in the form of a dualist tradition, or with the highest courts that take a critical stance towards the CJ. The other context-related driver is value-congruence of legal principles, which refers to the national courts' belief that the CJ's decisions are compatible with the principles and values of their national legal order.

Several later papers build on Mayoral's study, although their theoretical trust frameworks are less developed. Van Gestel & de Poorter, for example, emphasize the relevance of competence, reliability and honesty in a reciprocal sense, as national courts and the CJ both act respectively as trustor and trustee within the context of judicial dialogue through the preliminary ruling procedure.¹⁴⁸ In a similar vein, Glavina shows that national judges will be more likely to request a preliminary ruling from the CJ when they exhibit higher trust in EU institutions (the CJ, the European Parliament, the European Commission, and the Council of Ministers). If, by contrast, national judges exhibit higher trust in national institutions (national supreme court, constitutional court, national parliament and the ministry of justice), the opposite will hold.¹⁴⁹

Other studies suggest a different understanding of the role of preliminary references in the relationship between national courts and the CJEU: they are sometimes used precisely to lay bare a conflict between the domestic and the European regime,¹⁵⁰ as a strategy to depoliticize the domestic judicial decision,¹⁵¹ or as a weapon for lower national courts to expand their powers against the legislative branch¹⁵² or higher national courts.¹⁵³ This calls for a better

¹⁴⁷ Ibid., 652.

¹⁴⁸ R. Van Gestel and J. De Poorter, *In the Court We Trust: Cooperation, Coordination and Collaboration Between the ECJ and Supreme Administrative Courts*.

¹⁴⁹ M. Glavina, 'To Refer or Not to Refer, That Is the (Preliminary) Question', 16 *Croatian Yearbook of European Law and Policy* (2020), p.25.

¹⁵⁰ P. Popelier and C. Van De Heyning, 'Constitutional Dialogue as an Expression of Trust and Distrust in Multilevel Governance,' in M. Belov (ed.), *Judicial Dialogue* (Eleven International Publishing, 2019), p. 51; K. Leijon, 'National Courts and Preliminary References: Supporting Legal Integration, Protecting National Autonomy or Balancing Conflicting Demands?', 44 *West European Politics* (2020), p.510.

¹⁵¹ J. De Jaegere, 'The Deliberative Performance of the Belgian Constitutional Court in a Consociational System: An Empirical Analysis' (University of Antwerpen, 2017).

¹⁵² J. H. H. Weiler, 'A Quiet Revolution: 'The European Court of Justice and Its Interlocutors'', 26 *Comparative Political Studies* (1994), p. 510.

¹⁵³ R. Van Gestel and J. De Poorter, *In the Court We Trust: Cooperation, Coordination and Collaboration Between the ECJ and Supreme Administrative Courts*; K. J. Alter, 'Explaining National Court Acceptance of European Court Jurisprudence: A

understanding of performance as a driver for trust in courts. A public choice approach suggests that national courts will refer to the CJ when the expected benefits of referral outweigh costs, e.g. if delays are compensated by a ruling that is expected to align with the court's preferred policy outcome, thereby allowing it to bypass interpretations by higher domestic courts.¹⁵⁴ Research on the role of trust to resolve judicial conflicts, however, remains scarce.

Finally, several empirical studies on judicial trust outside of the preliminary ruling procedure deserve a mention. Various scholars explored judicial trust in different courts in the EU multi-level judicial system, asking national judges from Germany, the Netherlands, Poland, Spain, Slovenia and Croatia to rate their levels of trust in the CJEU, ECtHR, national supreme court, and national constitutional court.¹⁵⁵ Their results showed that the levels of judicial trust differ not only across different judicial levels but also across member states. For example, Dutch¹⁵⁶ and Polish¹⁵⁷ judges put the highest trust in the national Supreme Court, whereas the German judges mainly trust their Federal Constitutional Court but do not give much trust to the CJEU.¹⁵⁸ In turn, the ECtHR and national supreme courts enjoy a similarly high level of trust in Slovenia and Croatia, while the lowest trust is given to the national constitutional court.¹⁵⁹ These findings stress the importance of looking at the multilevel dynamics of trust and call for more research on the cross-country and cross-court drivers of trust.

Trust in a multi-level governance setting can also be influenced by the establishment of a specialized court at the international or supranational level. In the relationship between courts, a specialized lower court may trust a higher generalist court to review its decisions depending on its belief that the higher court is well-versed enough in a particular field of the law. This may be especially relevant in those systems where the lower specialized court has the discretion to refer an appeal or request a reference. In these cases, the lack of trust in the higher generalist court may influence the review process. This may happen in the field of patent law once the Unified Patent Court (UPC) will have been established,¹⁶⁰ but it also occurs with respect to constitutional courts that have a specific mandate to protect the national constitution. This may be crucial when, for example, a national constitutional court expects that the CJ, when called to

Critical Evaluation of Theories of Legal Integration', in A.M. Slaughter (ed.), *The European Court and National Courts: Doctrine and Jurisprudence : Legal Change in Its Social Context* (Oxford: Hart, 1998), p. 227; G. Tridimas and T. Tridimas, 24 *International Review of Law and Economics* (2004), p. 125.

¹⁵⁴ A.M. Slaughter (ed.), *The European Court and National Courts: Doctrine and Jurisprudence : Legal Change in Its Social Context*, p. 227; R. Van Gestel and J. De Poorter, *In the Court We Trust: Cooperation, Coordination and Collaboration Between the ECJ and Supreme Administrative Courts*.

¹⁵⁵ T. Nowak, F. Amtenbrink, M. L. M. Hertogh and M. H. Wissink, *National Judges as European Union Judges: Knowledge, Experiences and Attitudes of Lower Court Judges in Germany and the Netherlands* (Eleven International Pub, 2011), p.1; U. Jaremba, 'At the Crossroads of National and European Union Law. Experiences of National Judges in a Multi-Level Legal Order', 6 *Erasmus Law Review* (2013), p. 191; U. Jaremba, *National Judges as EU Law Judges: The Polish Civil Law System*; J.A. Mayoral Díaz-Asensio, 55 *Journal of Common Market Studies* (2017), p. 556; J. A. Mayoral Díaz-Asensio, 'The Politics of Judging EU Law: A New Approach to National Courts in the Legal Integration of Europe' (European University Institute, 2013); M. Glavina, *National Judges as European Union Judges: Evidence from Slovenia and Croatia* (KU Leuven, 2020).

¹⁵⁶ T. Nowak et al., *National Judges as European Union Judges: Knowledge, Experiences and Attitudes of Lower Court Judges in Germany and the Netherlands*, p.65.

¹⁵⁷ U. Jaremba, *National Judges as EU Law Judges: The Polish Civil Law System*, p.35.

¹⁵⁸ T. Nowak et al., *National Judges as European Union Judges: Knowledge, Experiences and Attitudes of Lower Court Judges in Germany and the Netherlands*.

¹⁵⁹ M. Glavina, *National Judges as European Union Judges: Evidence from Slovenia and Croatia*.

¹⁶⁰ The Unified Patent Court Agreement needs to be ratified before it can enter into force. The ratification process has been seriously delayed by the Brexit and several constitutional complaints at the German Constitutional Court. For now it is uncertain whether and, if so, when the UPC will enter into force. In fact, the UPC Court of First Instance holds a discretionary power whether to ask for a preliminary reference to the CJEU (Art. 21 Agreement on a Unified Patent Court [2013] OJ EU C 175/1).

apply the national identity clause, will not sufficiently value the national perspective (and thus not act in its interests).¹⁶¹

Judicial actors in multi-level governance systems may be inclined to trust or distrust a specialized court depending on whether they believe that the court fosters the effectiveness, efficiency and predictability in the decision making in a specific legal field or, rather, if its case law develops in isolation and may lead to bias or capture. One key element which may influence trust in specialized courts relates to the profile of the judges that are part of the court. International courts are often composed of judges from different legal cultures, with different educational backgrounds and professional experiences. They may have worked before in highly specialized courts or the private sector (in the case of technical judges) and may bring a professional bias with them. All these elements represent fascinating aspects to investigate in the study of trust in specialized courts.

Citizen trust

Citizens trust towards courts or judicial systems is specific, because citizens have little or no choice in the selection of the judicial system, which is generally geographically determined. In this subsection, we explore the literature on citizens trust in courts at different levels, focusing primarily on the multilevel judicial system in the EU. Research suggests that citizens' trust in supranational courts is correlated with their trust in national courts, as well as trust in supranational organizations with which these courts are associated (e.g. CJ – EU). Studies found that individuals who trust national courts are also more likely to trust European courts. This was first expressed by Voeten¹⁶² and was later empirically tested and confirmed by Arnold et al.¹⁶³ Moving from a general measure of public support for EU membership towards a more specific measure of trust in EU institutions, including the CJEU, Arnold et al. find that people reporting trust in their national judicial system are more likely to trust the CJEU.¹⁶⁴

Interestingly, some scholars seem to take a different position. Vanberg, for example, argues that the CJEU does not enjoy the same degree of 'public support' as national high courts.¹⁶⁵ Nonetheless, the first claim (that of Arnold et al.) seems to be more in line with general findings on citizen's trust in political institutions. Trusting national institutions (such as the national parliament, the government, political parties and justice system), Voeten et al. report, increases the odds of trusting the EU institutions by 10-70 per cent. This difference in percentage can be explained by citizens' familiarity with the functioning of the EU institutions. For example, while the European Parliament (EP) and the CJEU have clear domestic counterparts (national parliaments and national high courts), this is less clear for the European Commission (EC). When an institution has a clear national counterpart, it is easier for citizens to form opinions about them.¹⁶⁶

¹⁶¹ M. Belov (ed.), *Judicial Dialogue*, p. 51.

¹⁶² E. Voeten, 14 *Theoretical Inquiries in Law* (2013), p. 416.

¹⁶³ C. Arnold et al. (eds.), *Beyond Euro-Skepticism: Understanding Attitudes Towards the EU*.

¹⁶⁴ C. Arnold et al. (eds.), *Beyond Euro-Skepticism: Understanding Attitudes Towards the EU*, p. 24.

¹⁶⁵ G. Vanberg, 'Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review', 45 *American Journal of Political Science* (2001), p. 358.

¹⁶⁶ C. Arnold et al. (eds.), *Beyond Euro-Skepticism: Understanding Attitudes Towards the EU*, p. 32.

Besides the familiarity with the institution's work (which is a trustor-related driver of trust), several country-level factors play a role, too. First, Voeten et al. do not find significant differences between levels of trust between old and new EU member states, suggesting that the duration of EU membership is not an important country-level driver of trust. Furthermore, accounting for country-level characteristics revealed that the correlation between trust in national and EU institutions is a function of the level of national corruption. This effect is, however, different for political as compared to non-political institutions. While a high level of perceived national corruption leads to greater trust in supranational political institutions (the EP, the EC and the Council of Ministers), a lower level of perceived national corruption goes hand in hand with more trust in the CJEU, as well as the European Central Bank (ECB).¹⁶⁷ This means that a trustor-related driver of citizens' trust in the CJEU (trust in domestic courts) actually hides a context-related driver (perceived national corruption).

Yet, Kelemen, who assessed 'net trust' (the per cent of citizens who tend to trust the institution minus the per cent who tend not to trust it) in the CJEU relative to net trust in other governmental institutions, concluded that the CJEU is consistently and by far the most trusted institution in Europe. This is also the only trust relationship that has consistently positive net trust scores that are relatively stable and the evidence does not seem to suggest that these scores decrease in response to controversial CJEU rulings.¹⁶⁸

Finally, studies also reveal a positive correlation between trust in the supranational court and trust in the relevant supranational organization that houses the Court. Support for the country's membership in the EU seems to go hand in hand with the support of and trust in the CJEU.¹⁶⁹ Arnold et al., for example, found that people who considered the EU membership beneficial for their country were 2.6 times more likely to trust the CJEU.¹⁷⁰ This finding seems to also hold for support for the ECtHR, which is often confused with the CJEU.¹⁷¹

Another area that would be interesting to investigate relates to citizen trust in specialized courts in multi-level systems. Specialized courts may be associated with the development of a bias that leads them to favour some interests more than others. For this reason, some litigants may feel that their position would be more 'at risk' if they litigate their case with a specialized court rather than with a generalist one or the other way around depending on the interests concerned. Generally, it is not possible for citizens to decide in which forum they would like to litigate their case. However, this possibility is not excluded in multi-level governance systems, where international or supranational courts represent an additional level of jurisdiction and litigants have the possibility of choosing where and to what extent they wish to pursue litigation.

5. Discussion and conclusion

This overview shows that research on trust in courts is still very fragmented and incomplete. A comprehensive take would require more research on the following topics.

¹⁶⁷ Ibid., p. 30.

¹⁶⁸ R.D. Kelemen, 19 *Journal of European Public Policy* (2012).

¹⁶⁹ C. Arnold et al. (eds.), *Beyond Euro-Skepticism: Understanding Attitudes Towards the EU*; J.L. Gibson, G.A. Caldeira and V.A. Baird, 92 *American Political Science Review* (1998), p. 479.

¹⁷⁰ C. Arnold et al. (eds.), *Beyond Euro-Skepticism: Understanding Attitudes Towards the EU*, p. 24.

¹⁷¹ E. Voeten, 14 *Theoretical Inquiries in Law* (2013), p. 422.

First, most of the research on trust in and between courts fails to take into account the definition and operationalisation of trust offered by the trust literature developed in other disciplines. The concept of trust as well as distrust and what it means with regards to courts, needs more elaboration, especially to clarify the relationship with related notions such as legitimacy, support and confidence. Also, interdisciplinary research is needed to combine legal notions such as mutual trust, the European consensus doctrine, the margin of appreciation and judicial independence with the development of trust relations. Mutual trust is a legal obligation, but for this legal construct to be effective, more insights into how trust relationships work is required. The claims related to public confidence and the European consensus doctrine¹⁷² are not thoroughly embedded in the broader trust literature. The European consensus doctrine narrows the defending Contracting Party's margin of appreciation but it has not been investigated how this margin, in turn, impacts trust. Also, studies reveal that judicial independence is an important driver for trust but formal guarantees are not determinant to perceive courts as independent and fair; the effective independence or independence in practice appear to be more important. The kinships with legitimacy and support, and the relationship with legal notions, clearly expose why a research agenda for trust in courts is important for legal scholars as well.

Second, trust in courts should be examined from the angle of multilevel governance as well as multilevel trust. From the angle of multilevel governance, the impact of trust in courts and context-related variables within one level of authority on trust in courts in another level is examined. The European context is especially interesting in this respect, because of the complex multilevel governance setting. Scholarship has been interested in multilevel governance dynamics, but mainly with regard to the CJEU. It would also be particularly interesting to examine the multi-level dimensions of trust with regard to the ECtHR in order to assess the correlation with the decreasing support by national governments for the Strasbourg Court. Yet, at least to our knowledge, no comparative survey (such as the ESS or the EVS) measures trust in or support for the ECtHR.¹⁷³ Exploring multilevel trust would mean that the relationships between interpersonal, interorganisational trust and system trust are examined in more detail. This is only an emerging topic in general trust literature¹⁷⁴ and has not been addressed adequately in the literature on trust in courts. Nevertheless, the research discussed in the previous sections suggests an interesting connection.

Third, a wider approach should be taken as to the actors in the trust relationship – trustor and trustee – and the factors that determine the level of trust. As for trustors, legal research on trust in courts most often focuses on citizen's trust. Trust by judicial actors is examined in a more fragmented way, in the domain of criminal justice, or with regard to preliminary references to the CJ. Taking both individuals and courts into account, would provide a more accurate picture. For example, the results of studies discussed in this paper seem to suggest that constitutional courts are trusted more by citizens than by courts, but there are no comprehensive studies to confirm this, let alone explain the reasons for this difference. For the trustees, a wider variety of courts deserves further investigation. Criminal courts and the CJEU have been analysed, but probably the dynamics are different for subnational vs national vs European courts; lower vs

¹⁷² P. Kapotas and V. P. Tzevelekos (eds.), *Building Consensus on European Consensus: Judicial Interpretation of Human Rights in Europe and Beyond*, p. 236.

¹⁷³ E. Voeten, 14 *Theoretical Inquiries in Law* (2013), p. 411. Page 428, however, notices one exception: a limited number of Eurobarometer surveys for EU candidate countries, conducted in early 2000s.

¹⁷⁴ A. Fulmer and K. Dirks, 'Multilevel Trust: A Theoretical and Practical Imperative', 8 *Journal of Trust Research* (2018), p. 137.

superior courts; general vs specialized courts; ordinary vs administrative vs constitutional courts. Understanding how trust works for each type of court can teach us lessons for their institutional design. For example, trust in courts is based upon the positive expectation that courts have certain intentions or perform in a specific manner,¹⁷⁵ but bias and isolation that sometimes characterize specialized courts may influence this.

Finally, while previous studies have already identified important drivers for trust in courts, many important factors remain underexposed. For example, the profile of judges (education, background) seems likely to have an impact on trust in specialized or in constitutional courts. In particular, cross-country research is needed to reveal the dynamics of trust relationships: variety in trust in same-type courts may reveal factors that so far escaped attention. Attention should go to three independent variables, relating to individual attributes of the trustor, attributes of the trustee, its organization, and the system in which it operates, as well as contextual circumstances. More comprehensive research, as well as cross-fertilization of separate studies, is required to provide a full picture of drivers, effects and dynamics.

With this research agenda, we hope to stimulate more conceptual and empirical interdisciplinary research regarding trust in courts. A better, interdisciplinary understanding of the trust drivers, effects and dynamics will likely contribute to the critical debate required when new courts are being established or existing courts are under reform.

¹⁷⁵ D. M. Rousseau et al., 23 *Academy of Management Review* (1998), p. 395; see also R. Hardin, *Trust and Trustworthiness*; B. Nooteboom, *Trust: Forms, Foundations, Functions, Failures and Figures*.