DENTONS

European Bank
for Reconstruction and Development

Assessment report on readiness for the introduction of online courts

June 2023

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This assessment was conducted within the framework of the EBRD technical cooperation project: Cross-regional court performance assessment, funded by the EBRD Shareholder Special Fund.

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Acronyms

ADR	Alternative Dispute Resolution
EBRD	European Bank for Reconstruction and Development
eIDAS	Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC
CEPEJ	European Commission for the Efficiency of Justice
CMS	Case Management System
CoE	Council of Europe
CoOs	EBRD Countries of operations
CR	Clearance rate
DT	Disposition time
ICT	Information and Communication Technology
LTT	Legal Transition Team
MLAT	Maturity Level Assessment Tool
ODR	Online Dispute Resolution

Currencies conversion table

Country	Currency	ISO Code[1]	EUR/Local currency rate[2]
Albania	Albanian Lek	ALL	0.0085
Armenia	Armenian Dram	AMD	0.0025
Azerbaijan	Azerbaijanian Manat	AZN	0.60
Bulgaria	Bulgarian Lev	BGN	0.51
Estonia	Euro	EUR	1.00
Georgia	Lari	GEL	0.36
Kazakhstan	Tenge	KZT	0.0021
Kyrgyz Republic	Som	KGS	0.013
Moldova	Moldovan Leu	MDL	0.052
Mongolia	Tugrik	MNT	0.00031
Morocco	Moroccan Dirham	MAD	0.093
Poland	Zloty	PLN	0.21
Serbia	Serbian Dinar	RSD	0.0085
Tunisia	Tunisian Dinar	TND	0.31
Türkiye	Turkish Lira	TRY	0.055
Ukraine	Hryvnia	UAH	0.028
Uzbekistan	Uzbekistan Sum	UZS	0.000093

[1] Currencies ISO Codes are obtained from https://www.iban.com/currency-codes.

[2] Currency exchange rates and names are obtained from the Google currency converter on 4 October 2022.

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Executive Summary

In 2022, the European Bank for Reconstruction and Development (EBRD) carried out this Assessment to evaluate the degree to which 17 EBRD economies are ready to introduce, or have already developed, online courts for commercial disputes. The Assessment examines whether the key preconditions for the introduction of an online court initiative are in place. For the purposes of this assessment, **online courts** are defined as dispute resolution mechanisms conducted by default online, starting from the submission of the claim and ending with the delivery of the judgement, accessible directly to litigants and their representatives and augmented by services and tools to ease access to justice and litigant participation. Online courts hold a great promise due to their potential to build on the rapid development of information and communication technology with a view to providing easier and less costly access to justice. They are considered particularly suitable for civil and commercial justice and especially small claims where the pecuniary interest is not high and therefore parties need to be able to obtain quick resolution of their claim, at a reasonable cost, preferably without the need to engage a lawyer.

The Assessment has a broad scope and covers most EBRD regions of operations and several different areas of civil procedure. Specifically, it examines 17 EBRD economies across six EBRD regions of operation: Central Europe and Baltic States (Estonia and Poland), Central Asia (Kazakhstan, Kyrgyz Republic, Mongolia and Uzbekistan), Eastern Europe and the Caucasus (Armenia, Azerbaijan, Georgia, Moldova and Ukraine), South-eastern Europe (Albania, Bulgaria and Serbia), Southern and Eastern Mediterranean (Morocco and Tunisia), and Türkiye. The Assessment maps their current level of readiness for the introduction of online dispute resolution, while seeking to identify what the achievements are in terms of technical infrastructure and legislative framework as well as where further attention and investment may be needed. Furthermore, the Assessment examines several areas of civil procedure, namely commercial litigation, procedures for quick enforcement of uncontested claims and small claims procedures, to identify whether any of these areas display a higher level of readiness for the introduction of online dispute resolution so that they could serve as a stepping stone and testing ground for considering online courts.

In terms of methodology, a Maturity Level Assessment Tool (MLAT) specifically developed for this initiative has been employed. The MLAT evaluates four key dimensions, each of them playing an important role for the introduction of ODR for commercial justice. These dimensions are: (1) Policies and Infrastructure for E-justice; (2) Commercial Dispute Resolution; (3) Procedure for Uncontested Claims; and (4) Small Claims Procedures. To conduct the assessment, one or more local evaluators have been engaged in each assessed jurisdiction. Local evaluators were required to fill out an extensive questionnaire using a variety of information and data sources in the period March 2022 – September 2022. The results of the assessment point to varying levels of readiness for the introduction of online courts in the examined 17 CoOs across the explored dimensions.

Dimension 1, Policies and Infrastructure for E-justice examines the extent to which information technologies are used not only in the targeted jurisdictions' justice system but also in their public administration. It is the dimension that yields the highest score across all countries. In essence, this means that assessed countries overall have rather a robust ICT governance and infrastructure. However, in all of the assessed jurisdictions (apart from Estonia and to some extent Poland) stakeholder engagement appears weak and needs sustained effort to be strengthened. This means that to date, the effort made to both encourage users to use the available ICT solutions and to ease this process through accessible interactive tools and other types of instructions appear insufficient. This may be hampering the accessibility of the currently available e-justice tools.

Dimension 2. Commercial Dispute Resolution examines the level of specialisation of commercial justice in each targeted jurisdiction, its efficiency vis-a-vis standard civil litigation, as well as the availability and usefulness of tools for alternative dispute resolution (ADR) that may be applicable to commercial and civil cases. This dimension was introduced in the Assessment because the presence of a highly specialised and efficient commercial litigation track, coupled with well-functioning ADR mechanisms, indicates that this may be a well-delineated field of justice that is suitable for introducing online courts. **The results reveal rather big ranges among assessed jurisdictions.** Bulgaria and Serbia have consistently high scores, which means that in these countries commercial litigation may be one area where the introduction of online dispute resolution would be suitable, while the Kyrgyz Republic and Mongolia have consistently low scores which means that in these countries there is a particularly low level of commercial specialisation, and this area would not be a suitable starting point for the development of online courts. Overall, every jurisdiction makes its policy choice as to whether commercial litigation would be developed as a specialised area (e.g., in Estonia it is not separate from civil litigation). Where the policy choice is to keep commercial litigation as part and parcel of civil litigation, an online court project targeting civil litigation as a whole might be more appropriate.

Dimension 3. Procedure for Uncontested Claims examines the effectiveness and efficiency of the procedures for enforcing uncontested claims in targeted jurisdictions, as well as their level of digitisation. For the purposes of this assessment, uncontested claims procedures are understood as ones designed to give the creditor the opportunity to request an enforceable title for a pecuniary claim and the debtor – the opportunity to either object to that claim thus indicating that the claim is in fact contested or remain silent with the latter usually resulting in the enforceability of the claim. This dimension was introduced in the Assessment because due to their non-litigious nature uncontested claims procedures are usually prime candidates for full digitisation and can thus serve both as a testing ground and as a first outpost in introducing online courts. **This Dimension displays the most inconsistent results among the examined jurisdictions.** Results there range from excellent for countries like Estonia, Poland (only for its E-court), and Türkiye, to rather poor for countries like Morocco, Albania, Kyrgyz Republic and Georgia. Countries that have excellent results in this dimension display a high level of readiness to both continue to enhance digitisation in the area of enforcement of uncontested claims but also to expand such full digitisation of court processes to other areas. By contrast, countries that have low results in this Dimension, could first explore ways to employ ICT technologies in the sphere of uncontested claims, before proceeding to digitalising other procedures.

Dimension 4. Small Claims Procedures examines the availability and the characteristics of procedures designed to assist parties to low value disputes in resolving them quickly, affordably and less formally than regular proceedings in the court. This dimension was introduced in the Assessment because the availability of a small claims procedure is regarded as a good practice within a legal system since it improves access to justice; due to the procedural simplifications inherent in small claims procedures, they are also particularly suitable for online courts. **Examined jurisdictions display the lowest performance with regard to this dimension.** Small claims procedures are available in all but three jurisdictions (Bulgaria, Kyrgyz Republic and Mongolia do not have such

procedures), but they do not bring about sufficiently meaningful procedural simplifications and do not provide a substantially more economical or quicker route for resolving disputes of low value. This means that the current level of development of small claims procedures in targeted jurisdictions does not make them particularly suitable for full digitisation within the framework of an online court. Further specialisation and simplification of available procedures might be needed before they could be considered a good candidate for online dispute resolution.

Overall, in terms of levels of readiness for the introduction of online courts amongst the examined 17 CoOs, there are a few emerging regional patters. The region **Central Europe and Baltic States**, represented in this study by Estonia and Poland, obtains the highest scores across dimensions. **Türkiye** is classified as being in a region of its own; and it also displays rather good results as compared to the overall landscape, indicating an appropriate level of readiness for the initiation of online courts. In the region of **South-eastern Europe**, Bulgaria and Serbia are demonstrating a high level of readiness. Another region which displays inconsistent results is **Eastern Europe and the Caucasus**. The examined jurisdictions in this region include Armenia, Azerbaijan, Georgia, Moldova and Ukraine. Based on the MLAT results, Azerbaijan appears to have the highest level of readiness for the introduction of online courts in this region, followed closely by Ukraine. The region of **Central Asia** shows significant variation, with Kazakhstan and Uzbekistan receiving above average scores. Finally, the region of **Southern and Eastern Mediterranean** was represented in this assessment by Morocco and Tunisia, both of which have to undertake significant changes before introducing online courts.

1. Introduction

A properly functioning judiciary forms an important foundation for a vibrant market economy. By contrast, a poorly functioning justice system is a red flag for trade and commerce.

The lockdowns due to COVID-19 have exacerbated the pressures on court services in various European Bank for Reconstruction and Development (EBRD) countries of operations (CoOs). The problems are well-known, e.g., increasing caseloads, lengthy and highly complicated court proceedings, excessive reliance by court systems on the physical presence of parties at every stage of the procedure, including the hearing, inability of the layman to navigate court processes without using specialized and frequently expensive legal counsel, etc.

In order to alleviate the pressure on justice systems that stems from ever-increasing demand for justice services, many national governments and private organizations have been exploring the potential of Information and Communication Technology (ICT) to help improve the quality, effectiveness and efficiency of their justice systems. Thus, private organizations have forged their own dispute resolution platforms that test innovative techniques and study results thereof to help offer alternatives to traditional justice.[3] National governments, like Estonia[4] or Portugal,[5] have introduced extensive opportunities for speeding up justice by digitising many court processes, notably the filing of claims, service of process and case referencing. Finally, countries like Australia, Canada, the United Kingdom and Singapore have introduced online courts, which offer litigants a fully digital process that is able to spare the time and effort both of the parties and of the judicial system.[6]

The promising results of the initiatives referred to above and their potential to improve the experience of SMEs with the justice system have led EBRD to commence its own initiative in this area. In May 2020, the Legal Transition Team (LTT) of EBRD conducted a survey among law firms in 20 EBRD CoOs to explore their court digitisation processes. Based on the survey results, EBRD drafted and circulated a discussion paper outlining existing best practices and challenges on the way to establishing online courts.[7] To build on its research and activities in the area, in March 2021, EBRD announced its COVID-19 Response: Regional Framework Project on Digital Transformation of Courts - Development of Online Courts for Small Claims. This activity is divided into two components, as follows: (1) Cross-Regional Court Performance Assessment; (2) Online Court Development.

[3] See for example https://rechtwijzer.nl, https://www.scl.org/news/12344-lawtechuk-launches-feasibility-study-for-an-online-dispute-resolution-platform-for-smes.

[4] See https://e-estonia.com/wp-content/uploads/2019aug-facts-a4-v04-e-justice.pdf.

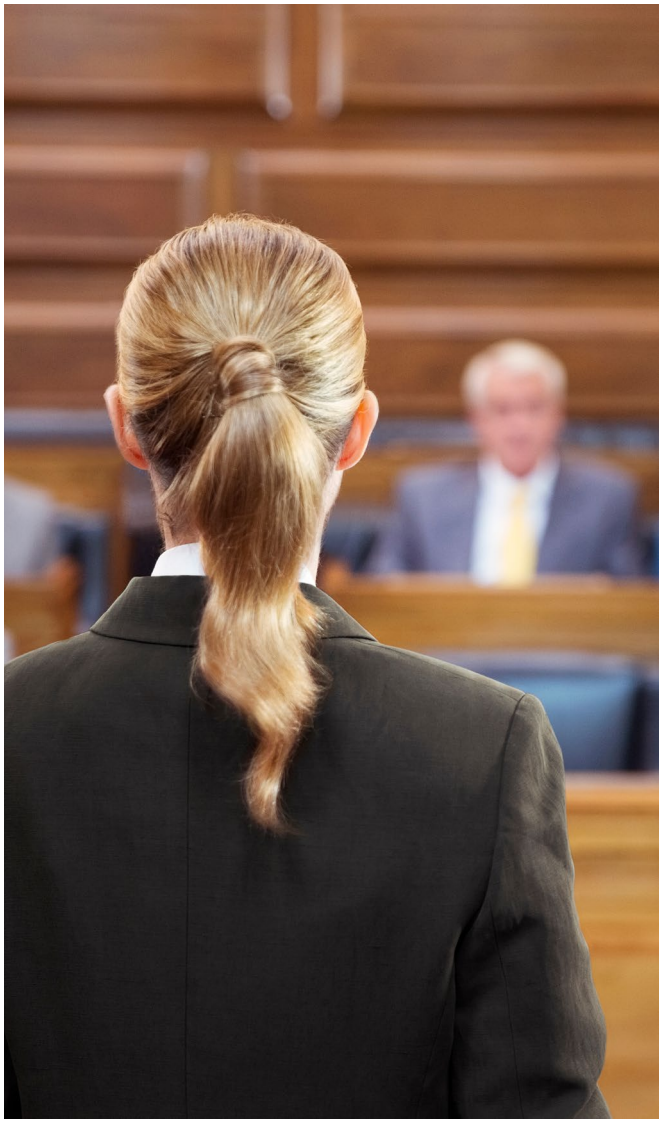
[5] See https://www.oecd-ilibrary.org/sites/184acf59-en/index.html?itemId=/content/publication/184acf59-en&_csp_=54b05e9f241772067d1094547836caad&itemIG0=oecd&itemContentType=book.

[6] See for example https://odr.info/courts-using-odr/.

[7] See Emerging Markets Embracing Online Courts – Commercial Courts for Small Value Claims, Law in Transition Journal 2021, Issue 5 at https://www.ebrd.com/documents/ogc/law-in-transition-2021-emerging-markets-embracing-online-courts-.pdf

List of Assessed Countries in this Report

- Albania
- Armenia
- Azerbaijan
- Bulgaria
- Estonia
- Georgia
- Kazakhstan
- Kyrgyz Republic
- Moldova
- Mongolia
- Morocco
- Poland
- Serbia
- Tunisia
- Türkije
- Ukraine
- Uzbekistan



Online courts are defined as dispute resolution services conducted by default online, starting from the submission of the claim and ending with the delivery of the judgment, accessible directly to litigants and their representatives and augmented by services and tools to ease access to justice and litigant participation. A key term used with reference to online courts is online dispute resolution (ODR). Initially, ODR was used to refer to forms of alternative dispute resolution (ADR) used in settings where the personal appearance of disputants before a dispute resolution body was impossible or overly expensive. In these settings, ODR sought to provide a mechanism for distance resolution of disputes by means of information and communication technologies and outside the framework of the formal justice systems organised by the state. An early example of this type of ODR is the Uniform Domain-Name Dispute-Resolution Policy (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) which has been in operation since 1999.[8] Other examples include the eBay/PayPal ODR process and the CyberSettle mechanism. A common feature of these types of ODR is that they are operated by private entities and are applied by large internet platforms connecting users from different parts of the world.

As a consequence of the functioning of dispute resolution platforms mentioned above, ODR's potential for the resolution of consumer disputes was acknowledged by some international organisations. In 2013, the European Union adopted its Regulation online dispute resolution for consumer disputes and in 2016, the UN Commission for International Trade Law (UNCITRAL) adopted its non-binding Technical Notes on Online Dispute Resolution. More recently, ODR made its way into state-managed justice systems. In this setting, rather than being a form of ADR, the term ODR refers to various techniques that modernise traditional justice by means of information and communications technology with a view to speeding up proceedings, reducing their cost and minimising the need for parties to appear in person before the dispute resolution body.[9] In its most developed form, ODR within the formal justice system allows for some categories of court cases to be processed entirely online, without the need for the appearance of parties in person and, in some instances, without the need to involve the efforts of a judge. Examples of ODR within the state justice systems include the British Columbia Civil Resolution Tribunal and the Money Claim Online and the Damages Claims Online Pilot in England and Wales. For the purposes of this assessment, ODR shall mean the possibility, within the formal justice system, to process certain litigious cases entirely online from the point of filing the claim up to the point of pronouncing a judgment, reaching a settlement or terminating the case in any other formal manner.

The current report implements the first component of the COVID-19 Response: Regional Framework Project on Digital Transformation of Courts - Development of Online Courts for Small Claims, namely the Cross-Regional Court Performance Assessment. In this framework, the objective of the report is to assess the degree of readiness of 17 EBRD CoOs for the introduction of online dispute resolution (ODR) in the area of commercial justice by examining whether the key preconditions for the introduction of an ODR initiative are in place.

[8] See Timeline for the Formulation and Implementation of the Uniform Domain-Name Dispute-Resolution Policy.

[9] See also Technical study on online dispute resolution mechanisms prepared by The European Committee on Legal Co-operation (CDCJ), 1 August 2018, Strasbourg, CDCJ(2018)5.

2. Methodology

Introduction

The assessment has been conducted in 17 EBRD CoOs encompassing four EBRD regions of operations, namely Central Europe and Baltic States (Estonia and Poland), Central Asia (Kazakhstan, Kyrgyz Republic, Mongolia and Uzbekistan), Eastern Europe and the Caucasus (Armenia, Azerbaijan, Georgia, Moldova and Ukraine), and South-eastern Europe (Albania, Bulgaria and Serbia), Southern and Eastern Mediterranean (Morocco and Tunisia) and Türkiye. Targeted jurisdictions have been selected seeking broad geographic distribution and a good mix in terms of digital development.

The assessment is executed by employing a Maturity Level Assessment Tool (MLAT) developed specifically for this initiative. The MLAT is designed to assess four key dimensions, each of them playing an important role in the introduction of ODR for commercial justice. These four dimensions are: (1) Policies and Infrastructure for E-justice; (2) Commercial Dispute Resolution; (3) Procedure for Uncontested Claims; and (4) Small Claims procedures. The MLAT is developed in the form of a questionnaire. Each of the MLAT's four dimension commences with several general questions which are not scored, and which are intended to provide the context of the examined topic in each jurisdiction. Furthermore, each dimension is divided into several indicators, which are scored and evaluate different aspects of the respective dimension. Each indicator, in turn, is divided into several sub-indicators, evaluating different aspects of the respective indicator. A detailed description of the MLAT approach is provided in a separately published paper, Assessment Methodology: Maturity Level Assessment Tool for Online Dispute Resolution. Below, only the key methodological aspects are highlighted.

Assessed dimensions

The first dimension, Policies and Infrastructure for E-justice, has the broadest scope. Firstly, it seeks to assess the level of digitisation of the jurisdiction as a whole, in terms of available infrastructure, regulatory framework and use of electronic tools in public administration as a whole. This approach recognises that the digitisation of court processes does not happen in a vacuum but is usually part of a holistic ecosystem of governmental incentives and infrastructure. As a second stage in the evaluation, this dimension of the MLAT looks into justice systems specifically, exploring levels of digitisation through aspects such as availability and quality of case management systems and availability and quality of information about the work of the justice system over the internet. A third aspect evaluated by this dimension is the digitisation of court processes, ranging from e-filing and e-service through videoconferences to enforcement based on an electronic enforceable title. The fourth and last aspect of this dimension assesses the manner in which the jurisdiction seeks to ensure that users of the justice system will increasingly engage in electronic as opposed to paper interactions with the court. It is important to note that the first dimension of the MLAT is an overarching one. Therefore, it does not look into any particular field of law (e.g., civil, criminal, commercial), the premise being that a high level of digitisation, even in a single type of court process, indicates a potential for quick roll-out to other judicial fields.

The second dimension, Commercial Dispute Resolution, examines commercial justice in particular. Not all jurisdictions have a specialised system of commercial courts, specialised court divisions for such cases or special procedural rules for commercial litigation. Therefore, the MLAT is designed to capture the level of disaggregation or specialisation of commercial litigation even in settings where such cases are examined by the courts of general jurisdiction rather than by specific commercial courts. In this regard, this assessment is based on the premise that the existence or absence of specialised commercial justice in a jurisdiction depends on its particular characteristics and is not indicative of the quality of litigation as a whole or of commercial litigation in particular. In other words, specialisation is not seen as an indicator of the quality of commercial litigation. Nevertheless, when a high level of specialisation is available, this may mean that the introduction of ODR for commercial litigation might be appropriate given that businesses are frequently more technology savvy than the lay citizen. Within this second dimension, the paper assesses also the availability of ADR tools. It is important to note that the ADR mechanisms being evaluated need not be applicable only to commercial cases; indeed, most of them would be applicable to all civil cases and possibly to other types of disputes as well.

The third dimension, Procedure for Uncontested Claims, examines the existence and development of procedures for enforcing uncontested claims (such as order for payment, enforcement based on authentic title, court order and similar) in the assessed jurisdictions. The rationale behind the inclusion of this element in the scope of the assessment is twofold. Firstly, the existence of effective mechanisms that allow creditors to quickly obtain enforceable titles for claims that are not contested by the debtor is key to the efficiency of the justice systems. If such procedures are not in place or are inefficient, increased volumes of cases would be directed to litigation using up valuable court resources. Secondly, uncontested claims procedures, due to their non-litigious nature are especially suitable for full digitisation. Thus, many European countries such as Germany, Estonia and Slovenia, have fully digitised these procedures making them a suitable testing grounds for environments similar to those of ODR. An efficient, highly digitised uncontested claims system is indicative of a jurisdiction's readiness' to expand digitisation to other procedures. In assessing uncontested claims procedures, the MLAT does not differentiate between commercial and civil claims since usually, the same procedure for uncontested claims would be applicable to both, regardless of whether it is a commercial court or the general civil court that examines it.

The fourth dimension, Small Claims Procedures, assesses the existence and efficiency of small claims procedures in targeted jurisdictions. The rationale is that small claims procedures are very often suitable testing grounds for innovative approaches, including technological innovations. Furthermore, the very existence of a differentiated small claims procedure may indicate that an ODR project could target it specifically. Like with uncontested claims, this dimension examines small claims procedures regardless of whether they are applicable to only commercial claims or to both commercial and civil ones.

The four dimensions of the MLAT have different functions in the assessment process. While the first one examines the overall readiness of the justice system for the introduction of ODR, the subsequent three dimensions seek to identify not only whether the level of development of certain judicial procedures indicates an overall readiness for digitisation, but also whether any specific area, due to its high level of specialisation, would be particularly suitable for implementing an ODR initiative.

Data collection and verification process

To conduct the assessment, one or more local evaluators have been engaged in each assessed jurisdiction. Given the subject-matter, local evaluators had a legal background with expertise in commercial and/or civil law and procedure, as well as knowledge of the local institutional and policy framework. To ensure consistency of approach and results, data collection was overseen by a project management team ensuring that the tool was well understood by local evaluators and that all concepts and terms were interpreted in an unambiguous manner.

Local evaluators were required to fill out an extensive questionnaire using a variety of information and data sources. Where the questionnaire sought information on the legal framework in targeted jurisdictions, local legislation was consulted. In cases where the information sought related to the implementation of certain rules or practices, local experts based their responses on observations from their own legal practice or interviews with legal practitioners. In some cases, international sources or indices (such as CEPEJ or the Speedtest Global Index) were consulted. Strategic governmental documents were used to provide the necessary information in areas relating to governmental policies.

Following the completion of the initial data collection, the questionnaires were presented to the project management team for review and verification. The verification was conducted by comparing the scoring results with the justification and the sources provided. Since 17 several jurisdictions were assessed in parallel, the project management team sought to ensure that the scoring criteria were applied consistently and uniformly across jurisdictions.

The local evaluators' assessments were conducted in the period March 2022 – September 2022. Furthermore, the draft of this report was reviewed by local evaluators in January 2023. Consequently, the assessment reflects the state of legislation in practice in 2022, with some updates on legislative developments that took place in January 2023. Since the examined areas are quite dynamic, changes may occur on an ongoing basis. The currency rates used in this report are as of the time of commencement of its drafting, namely October 2022 and are listed in a table at the beginning of the document. All links referred to in this report have been opened on January 15, 2023.

Scoring

The MLAT is defined in a manner that allows for numerical scoring of the level of readiness of targeted jurisdictions. As described above, the four Dimensions consist of several indicators. Each indicator, in turn, is divided into several sub-indicators. The sub-indicators are evaluated on a 1 to 3 scale, based on pre-defined scoring criteria. On the 1 to 3 scale, a score of 1 is considered negative, a score of 2 – neutral, and a score of 3 – positive. The sub-indicator scores cannot include fractions. The local evaluators were required to provide justification and sources for the scoring.

Once every sub-indicator has been assigned a score, these scores were averaged at the level of individual indicators. In this manner, the final score for every indicator represents a numerical value from 1 to 3, including fractions between these numbers, expressed in decimals. This allows for a wide range of numerical scores and corresponding comparisons among jurisdictions.

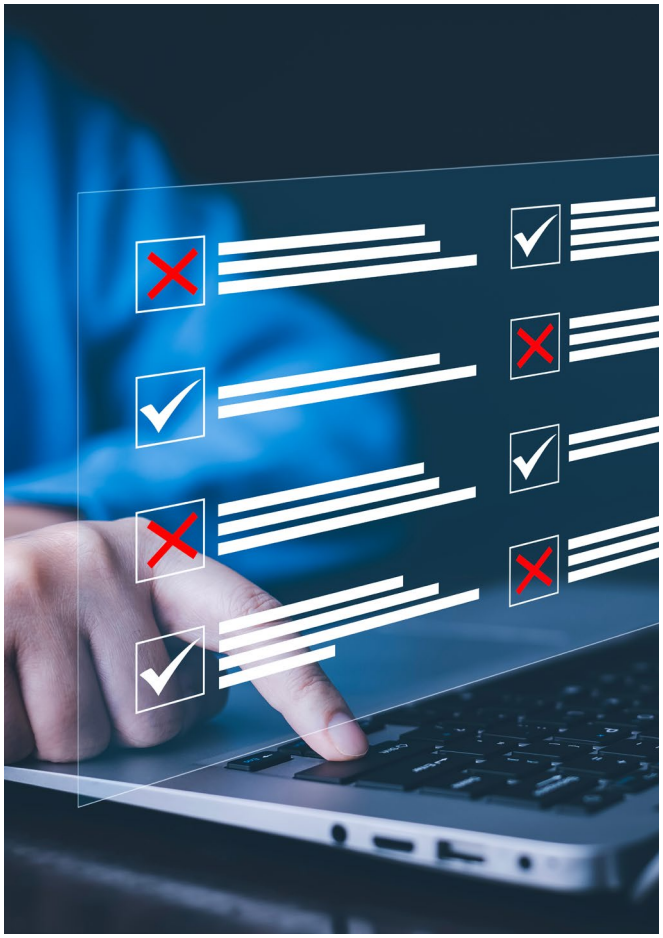
The sub-indicators are either qualitative or quantitative in nature.

The definitions and the scoring of the **quantitative** sub-indicators are based on several types of principles:

- When there is wide understanding of what negative, neutral and positive values are in a certain area, such as in the case of clearance rates, scoring definitions are based on numerical ranges (target values).
- Where appropriate, e.g., with regard to disposition times, median values identified by the CEPEJ Evaluation of Justice Systems are used as a standard, and negative, neutral and positive scores are defined based on that.
- When the sub-indicator seeks to compare the relative effectiveness of a certain type of specialised procedure (e.g., commercial or small claims as compared to general civil claims), the value applicable to general civil litigation is taken as a standard, and the sub-indicator reflects negative or positive deviations from it (e.g., in respect of disposition times).
- When development over time is explored, the definition of the sub-indicator is based on whether the trend over a three-year period is positive, negative or neutral.

The definitions and the scoring of the **qualitative** sub-indicators have been developed based on several types of principles:

- In the area of digitisation, qualitative sub-indicators seek to evaluate the situation on paper versus the situation in reality (de jure versus de facto). Thus, scoring definitions distinguish between situations where a certain topic is not regulated at all, or certain digitisation feature is not available at all (evaluated with a negative score); situations where regulation and/or digitisation are formally available but in practice they are not utilized (evaluated with a neutral score); and situations where digital solutions are both available and widely used in practice (evaluated with a positive score).
- In evaluating the level of specialization or simplification of certain types of procedures, qualitative sub-indicators propose illustrative lists of possible simplifications or adjustments[10], and evaluate to what extent these simplifications are available or not.



[10] Based on a review of existing good practices for the respective procedure.

3. Assessment of targeted jurisdictions

Dimension 1. Policies and Infrastructure for E-justice

The purpose of this dimension is to evaluate the level of development of strategic governance for e-justice, including the legal framework and the technological infrastructure in place.

The examination of this dimension commences with the answers provided by local evaluators to the general questions under Dimension 1, which establish the institutional and infrastructure context of e-Justice efforts in the examined jurisdictions. In accordance with the MLAT methodology, replies to general questions included for each Dimension are not scored.

Availability of a dedicated e-Justice strategy

Sixteen of the assessed jurisdictions have some type of strategy document addressing digitisation in the justice area. It usually covers e-Justice and/or digital transformation as an objective or as a thematic area of the overall justice or the overall digitisation strategy. For example, Tunisia has adopted a dedicated strategy called "Digital Justice 2020", implemented by the Ministry of Justice.[11] Some countries (Armenia,[12] Morocco,[13] and Uzbekistan[14]) have dedicated action plans on e-Justice. Other countries (Albania[15], Bulgaria[16], Serbia[17]) include detailed actions aimed at digital transformation within the broader action plans for the judiciary. Moldova has a Strategy on independence and integrity in the justice sector for 2022-2025 but is also currently in the process of drafting the “Digital Transformation Strategy of the Republic of Moldova for 2023-2030”, which covers some general aspects related to e-justice.[18] Some of the strategies, like the ones for Bulgaria, Georgia and Tunisia, have expired and there is no information on the development of follow-up documents for the current period. Morocco does not report having a strategy document that addresses digitisation of justice.

[11] See "Digital Justice 2020", implemented by the Ministry of Justice, within the framework of the joint European Union/Council of Europe programme entitled "Improvement of the functioning, performance and access to justice in Tunisia" (AP_JUST). https://www.coe.int/fr/web/tunis/ap-just#{%2246740964%22:[0]}

[12] See 2019-2023 strategy for Judicial and Legal Reforms (https://www.moj.am/storage/files/legal_acts/legal_acts_687232420741_Strategy_26_08_2019_ENG.pdf.), which has a separate Action Plan on setting up a unified e-justice system and ensuring accessibility of electronic databases and updating thereof (https://www.moj.am/storage/uploads/Action_Plan_E-Justice.pdf.)

[13] Morocco does not have a formally-adopted E-justice strategy although it plans to digitise all public services by 2025 according to article 25 of the law 55.19, relating to the simplification of administrative procedures of March 19, 2020. The document (in Arabic) outlining the steps that the Moroccan government intends to follow in order to digitise justice is provided here: المخطط-التوجيهي-للتحول-الرقمي-في-منظومة-القضاء-بالمغرب-.pptx (live.com)

[14] One of the recent documents is Resolution of the President of the Republic of Uzbekistan “On measures to digitalize the work of the judiciary” No. PP-4818 dated 03.09.2020. This document provides the Program “On digitalization of the judiciary in 2020 - 2023” (at https://lex.uz/docs/4979899). Furthermore, in May 2022, the document “On measures for the widespread introduction of modern information and communication technologies in the activities of the advocacy” No. PP-263 dated 30.05.2022 has been approved. The full text is available via https://lex.uz/en/pdfs/6039339 in Russian.

[15] See https://drejtesia.gov.al/plani-i-veprimit-te-strategjise-ndersektoriale-te-drejtesise/. The cross-cutting justice strategy and its action plan was approved through Council of Ministers decision no. 823, dated 24.12.2021, and it covers the period 2021 to 2025.

[16] Bulgaria’s Updated Strategy for Continued Justice Reform and the Roadmap for its implementation cover the period 2015 – 2021 and are available on the website of the Ministry of Justice: https://mjs.bg/home/index/9888d99d-1602-493e-a167-7491ede8543b. The National Recovery and Resilience Plan provides for a description of the judicial reform steps planned for the future: https://www.nextgeneration.bg/#modal-one

[17] 2020-2025 Judicial Development Strategy (Strategy), available on the following link: https://www.pars.rs/images/dokumenta/Poglavlje-23/Judicial-Development-Strategy-for-the-period-of-2020-2025.pdf

[18] https://www.legis.md/cautare/getResults?doc_id=129241&lang=ro.

Institutions responsible for digitisation of the judiciary

Different countries have different approaches to e-justice management. Efforts to digitise justice are a critical aspect of the broader digital transformation process, impacting the level of integration of e-justice infrastructure with the wider e-governance infrastructure. It is essential to manage these efforts effectively so as to ensure the seamless integration of digital tools and processes into the justice system. In some of the examined countries, the institutions responsible for e-justice belong to the executive, and in other cases – to the judicial power. The Ministry of Justice is in charge of designing and implementing e-Justice projects in the majority of countries (Armenia, Azerbaijan, Estonia, Moldova, Morocco, Poland, Serbia, and Türkiye). In several countries (Bulgaria, Georgia, and Mongolia) the national judicial council is responsible for the judiciary's digitisation. In Albania, the High Judicial Council has established a specialized Centre for that purpose (Textbox 1). Administrative bodies under the Supreme Court are responsible for digitisation initiatives in Kazakhstan and the Kyrgyz Republic. In Tunisia and Uzbekistan, the digitisation of the judiciary is a collaborative effort including multiple institutions.

Dedicated body for the digitisation of the judiciary in Albania

The institution in charge for the digitisation of the judiciary is the Centre for the Information Technology in the Justice System.[19] It is a budgetary public entity affiliated with the High Judicial Council, with two organs: the Executive Director and the Managing Board. The Centre's mission is to set standards and policies for the information technology systems of the justice system.

Institutions responsible for the digitisation in public administration

There is a specialised ministry for e-government and digital development in several countries (Armenia, Bulgaria, Mongolia, Ukraine, and Uzbekistan). In Morocco, a separate ministry of public administration oversees digitisation efforts. In some countries, e-government and digital transformation have been put in the portfolio of a ministry with a broader mandate (Azerbaijan[20], Kazakhstan[21], and Tunisia[22]). In other countries, an administrative body (agency) is responsible for the development and administration of information systems in the public administration (Albania[23], Estonia[24], Georgia[25], Moldova[26], Serbia[27], Türkiye[28]).

Availability of a formal coordination mechanism for digitisation projects in the judiciary and public administration

While digitisation efforts in the public administration and the judiciary can run in parallel, it is often more beneficial to ensure strategic coherence and a shared information architecture. Therefore, it is important to designate a coordination organization or mechanism for digital efforts between the broader public administration and the administration of the judiciary. The majority of the analysed countries do not have a structured coordination mechanism or body (Albania, Armenia, Azerbaijan, Estonia, Kazakhstan, Moldova, Mongolia, Morocco, Tunisia, and Uzbekistan). In some countries (Bulgaria, Georgia, Kyrgyz Republic, and Türkiye), the relevant ministry or agency in charge of e-governance is also responsible for the coordination process. There are particular working bodies in Serbia and Ukraine entrusted with coordinating the digital transformation of the courts with the broader public sector.

[19] QTI - Qendra për Teknologjinë e Informacionit, website: https://qti.al/

[20] Ministry of Digital Development and Transport of the Republic of Azerbaijan at https://mincom.gov.az/en/.

[21] The Ministry of Digital Development, Innovations and Aerospace Industry of the Republic of Kazakhstan.

[22] Ministry of Communication Technology and Digital Economy at https://www.mtc.gov.tn

[23] The institution in charge for the digitisation in the public administration is AKSHI (https://akshi.gov.al/) (Agjencia Kombëtare e Shoqërisë së Informacionit).

[24] The Information System Authority (RIA) coordinates the development and administration of information systems ensuring the interoperability of the state's information system, organises activities related to information security, and handles security incidents in Estonian computer networks. RIA is within the administrative area of the Ministry of Economic Affairs and Communications. https://www.ria.ee/en.html

[25] Legal Entity under Public Law ("LEPL") Digital Governance Agency (operating under the governance of the Ministry of Justice of Georgia).

[26] The e-Governance Agency is responsible for digitisation at the government level. https://www.egov.md/en.

[27] Office for Information Technologies and eGovernment (https://www.ite.gov.rs/).

[28] Digital Transformation Office of the Presidency.

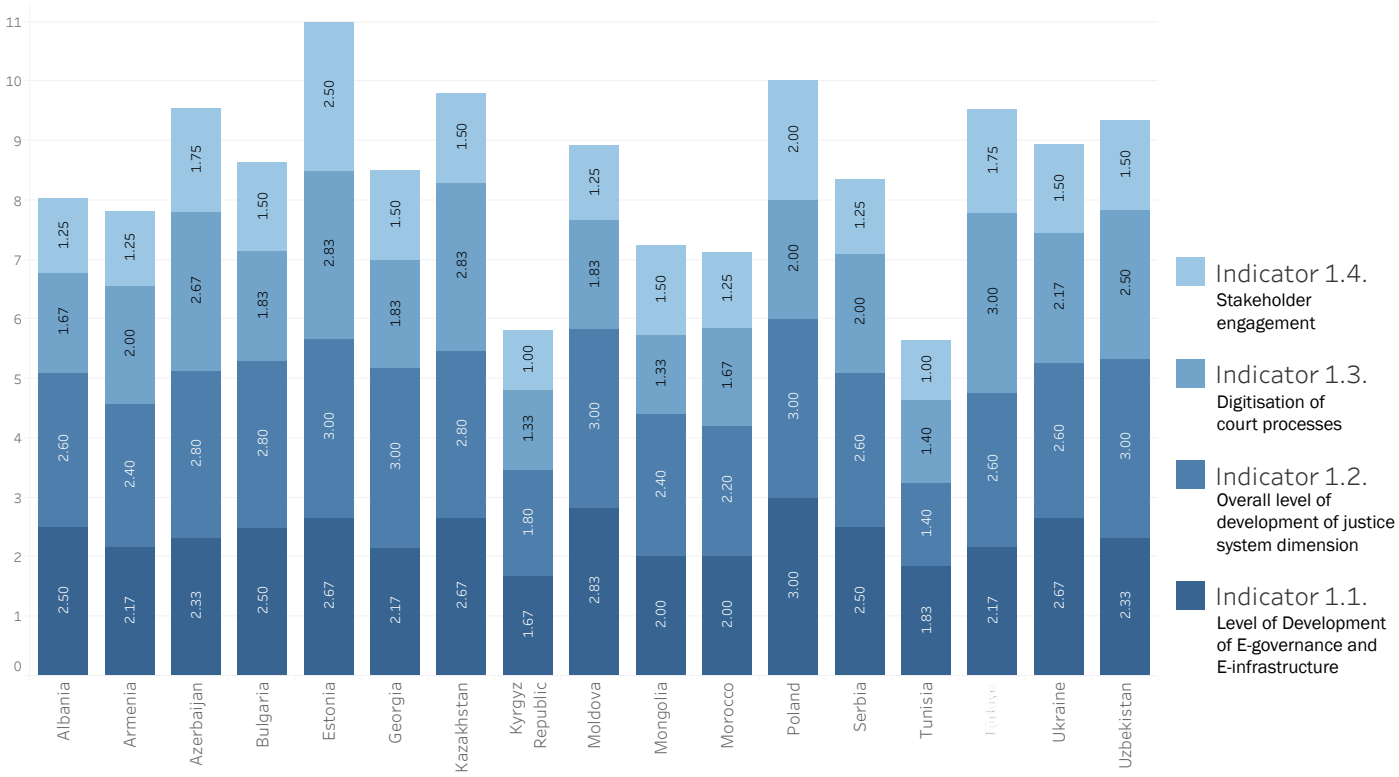
Functionalities of the Case Management System

Case management systems (CMS) represent software used for registering judicial proceedings and their management. CMS are at the core of court processes and can serve as the backbone of a larger information system that integrates or unifies some very sophisticated functions based on the import and export of data generated by other applications. Two critical features of CMS operation were investigated: whether CMS allow for auto-generation of parts of judicial acts and whether judges can operate remotely by accessing the relevant court's CMS. Auto-generation of judicial acts has several benefits: it saves judges' time, reduces errors, and can enable the automation of important processes in the framework of an online court. Remote access to the CMS improves the resilience of the judiciary because it allows judges to operate from a distance in critical situations such as the COVID-19 pandemic or other situations that prevent physical access to the court. In the context of an online court, it ensures asynchronous communication, i.e., communication that does not require all participants in the process to be available at the same time but allows them to interact with the court at their convenience.

CMS do not allow the **automatic generation of parts of the judicial acts** in most countries. In Moldova, Türkiye and Ukraine the CMS have such functionality for autocompleting certain parts of the acts. In Armenia and Estonia this is possible only for orders for payments. Thus, in Estonia, based on the information that the claimant enters into the order for payment electronic application, the information system generates a proposal for the content of the order for payment that the judge then has to just verify and sign.

Judges do not have **remote access to the CMS** in most assessed jurisdictions. Certain workarounds used by judges are being reported in some countries (e.g., sending certain files by email and working on personal computers at home). Remote access to the CMS is possible in Bulgaria, Estonia, Georgia, Kazakhstan, and Türkiye. However, several of these jurisdictions have introduced specific limitations on the functionalities available through remote access to the CMS.

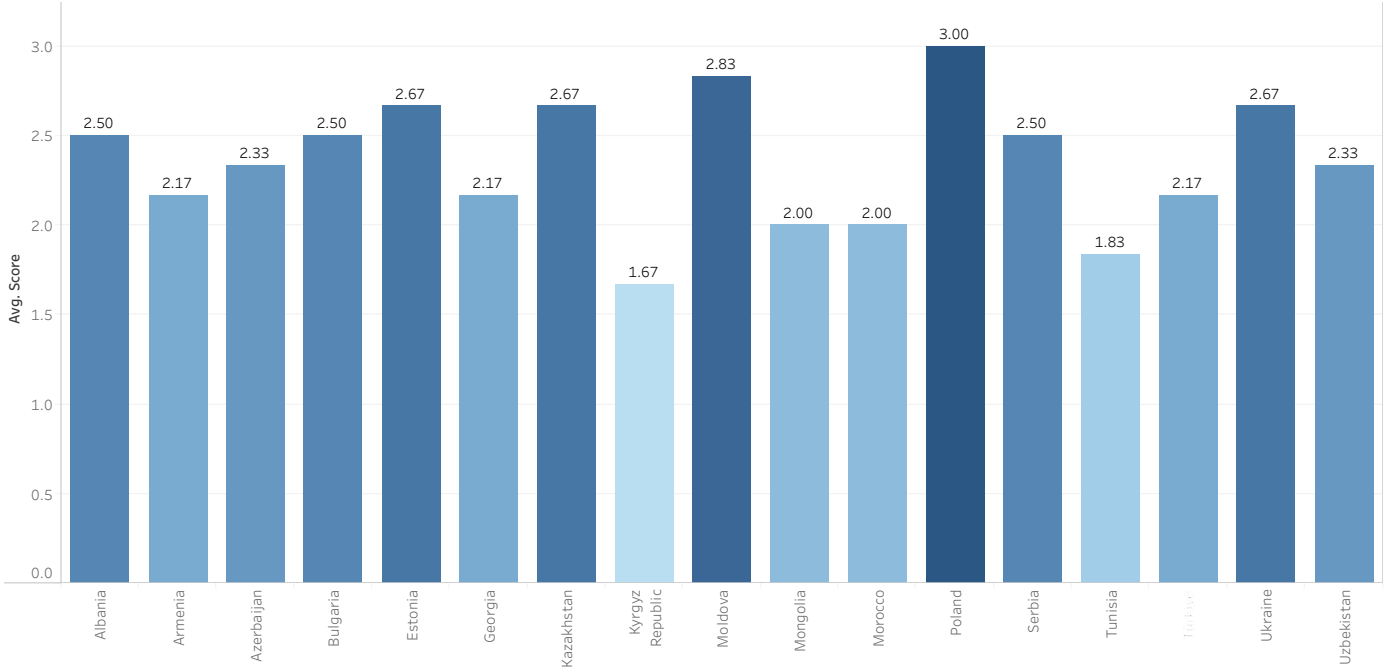
Overview of country performance under Dimension 1



The performance of countries under Dimension 1 is relatively consistent, with some clear trends observable in the data. In terms of relative performance under the four indicators, countries perform best under *Indicator 1.2. Overall level of development of justice system digitisation*, and worst under *Indicator 1.4. Stakeholder engagement*. Scores under *Indicator 1.1. Level of Development of E-governance and E-infrastructure* closely follow the scores under Indicator 1.2. Overall, Estonia, Poland and Kazakhstan have consistently high scores for the indicators included in Dimension 1, while the Kyrgyz Republic and Tunisia have consistently low scores.

When examining the thorough assessments of the Dimension 1 indicators and sub-indicators, one recurring finding is that the legislative framework and/or infrastructure for digitising court processes exists but is not being used in practice by courts and court users. This suggests that there is a strong demand in assessed jurisdictions for education and training on the benefits and application of ICT in the justice sector. This result is also related to jurisdictions' comparatively low stakeholder engagement scores, and the need to proactively engage court users and other stakeholders, promote current digital solutions and systems, and collect actionable feedback on their usability, functions, and other relevant concerns.

Indicator 1.1. Level of Development of E-governance and E-infrastructure



The majority of assessed jurisdictions have a level of e-governance development that is higher than the average score of 2 on a scale of 1 to 3, with 1 being the lowest and 3 being the highest. Poland is a leader in this indicator, receiving the best possible score for all examined sub-indicators. Other leaders include Moldova[29], and three countries with equal average scores – Estonia, Kazakhstan and Ukraine.[30] Albania, Bulgaria and Serbia are the third group with relatively high average scores.[31] On the other hand, two countries have much lower average scores – Tunisia (1.83) and the Kyrgyz Republic (1.67). The sub-indicators related to internet penetration (1.1.1.) and broadband internet access (1.1.6) have the greatest contribution to lower country scores for Indicator 1.1. Below the country scores for each sub-indicator are discussed in more detail.

[29] Average score for Indicator 1.1. – 2.83.

[30] Average score for Indicator 1.1. – 2.67.

[31] Average score for Indicator 1.1. – 2.5.

Scoreboard - Indicator 1.1. Level of Development of E-governance and E-infrastructure

Dimension/ Indicator / Sub-indicator	Albania	Armenia	Azerbaijan	Bulgaria	Estonia	Georgia	Kazakhstan	Kyrgyz Republic	Moldova	Mongolia	Morocco	Poland	Serbia	Tunisia	Türkiye	Ukraine	Uzbekistan
Level of broadband internet access	1	1	1	2	1	1	1	1	3	1	1	3	1	1	1	2	1
Level of development of electronic documents	3	2	3	3	3	2	3	2	3	2	1	3	3	2	3	3	3
Level of development of electronic signatures	3	2	3	3	3	2	3	2	3	2	2	3	3	2	3	3	3
Level of development of national electronic identif..	3	3	1	2	3	3	3	2	3	3	2	3	3	2	2	3	2
Level of internet penetration	2	2	3	2	3	2	3	1	2	1	3	3	2	2	2	2	2
Level of online access to administrative services	3	3	3	3	3	3	3	2	3	3	3	3	3	2	2	3	3

Score
1 3

Sub-indicator 1.1.1. Level of internet penetration

The level of internet penetration is indicative of the extent to which internet usage is widespread among the general population. The average level of internet penetration for the 17 assessed jurisdictions is 74.6%. However, there are significant variations within this sample. The level of internet penetration is above 82% in five jurisdictions (Azerbaijan, Estonia, Kazakhstan, Morocco and Poland). Notably, Morocco has an internet penetration of 84%, making it the country with the highest internet penetration in Africa. The largest group of countries have internet penetration between 70% and 81%, and are assigned an average score of 2. The level of internet penetration is significantly lower in Mongolia (63%), and particularly in the Kyrgyz Republic (38%). These results may be interpreted in light of the findings of comparative studies that per capita income, human capital, and foreign direct investment are key determinants of internet penetration.[32]

Sub-indicator 1.1.2. Level of development of electronic signatures

For citizens to make valid legal statements from a distance, the regulatory framework needs to recognise that confirming one's statements by electronic means may be equated with a handwritten signature. Most countries perform very well within this sub-indicator and are assigned the highest score (3) due to the availability of the relevant legal framework, ICT infrastructure, and widespread use of electronic signatures in practice.

Widespread availability and use of electronic signatures in Azerbaijan

Electronic signatures are extensively used and accessible to everyone. Some administrative services, such as those with tax authorities, require the use of electronic services. Furthermore, commercial disputes in Azerbaijan are processed through the use of the electronic court system (e-court system): filing the statement of claim, payment of the court duty, and submitting documents to the court must all be done through the e-court system. However, not all courts have completed the installation of the e-court system.

While the legal framework and infrastructure are generally available, the practical use of e-signatures is limited in six countries (Armenia, Georgia, the Kyrgyz Republic, Mongolia, Morocco, and Tunisia), and they are assigned an average score of 2.

[32] For more details see: Saba, C. S., & David, O. O. (2022). Identifying Convergence in Telecommunication Infrastructures and the Dynamics of Their Influencing Factors Across Countries. Journal of the Knowledge Economy, pp. 1-54.

Sub-indicator 1.1.3. Level of development of electronic documents

Because organizing and facilitating electronic document transmission and exchange is critical for online court proceedings, the level of development of electronic documents is critical for the adoption of online courts. The analysed jurisdictions' scores for this sub-indicator are similar to the previous sub-indicator on e-signature use. For this sub-indicator, the majority of nations (11 in total) achieve the highest score of 3.

Use of standardised electronic documents in Estonia

All Estonian public entities (including judicial authorities) are required to accept electronic documents. Regulation No. 59 of the Minister of Justice of 28 December 2005 "Procedure for submission of documents to the court"[33] defined the formal requirements for the submission of documents to the court. Electronic document submission methods include e-mail, the X-Road (a secure data exchange layer for sending and receiving data between private and public sector organizations), and a designated online information system (the e-File). Most documents are filed with the court electronically.

Five countries (Armenia, Georgia, Kyrgyz Republic, Mongolia, and Tunisia) received a score of 2, indicating that, while the legal framework and infrastructure are typically present, electronic documents are either not used or used infrequently in interactions with governmental/judicial authorities. Morocco has the lowest score of 1 because currently there is no legislation governing electronic documents (even though electronic signature is regulated).

[33] Available at https://www.riigiteataja.ee/akt/13341613?leiaKehtiv

[34] OECD, 2020. The OECD Digital Government Policy Framework: Six dimensions of a Digital Government at https://www.oecd.org/gov/the-oecd-digital-government-policy-framework-f64fed2a-en.htm, access: 31.01.2022

Sub-indicator 1.1.4. Level of development of national electronic identification

The implementation of a national electronic identification system (e-ID) is a critical step in improving people' access to an increasing number of integrated digital governmental services. The majority of analysed jurisdictions (10 in total) receive the highest score of 3, indicating that residents are provided e-ID and can use it to access administrative and/or other services. In six jurisdictions (Bulgaria, the Kyrgyz Republic, Morocco, Tunisia, Türkiye, and Uzbekistan), there is legislation governing personal electronic ID, but such e-ID is either not issued or, if issued, has no practical utility. In Azerbaijan, ID cards contain an electronic chip, but they cannot be used for electronic transactions or document signing.

Advanced e-ID system in Kazakhstan

Electronic IDs are issued in Kazakhstan with the physical ID of the citizen. The e-ID card has a microprocessor that stores digital information on the cardholder, such as demographics, facial images, and biometrics. Individuals can also add their e-signature to the microprocessor integrated in the e-ID card. Furthermore, Kazakhstan citizens can download their e-IDs (including national IDs, driver's licenses, vaccination passports, and children's IDs) via the eGovernment web-portal beginning in February 2021. On certain occasions, Kazakhstani nationals are permitted to use electronic IDs (rather than physical ones), such as driver's licenses when driving and national e-IDs when flying within the country.

[35] Available at https://e-albania.al/

[36] Available at: https://www.speedtest.net/global-index

[37] 62.5 Mbps as of 19 August 2022, which was used as a cut-off date. Data in the Speedtest Global Index fluctuate on an ongoing basis, but country ranks are relatively stable.

Sub-indicator 1.1.5. Level of online access to administrative services

The availability of fully interactive digital services is an overarching enabler of public sector transformation.[34] The average score of countries for this sub-indicator is the highest for the whole Indicator 1.1. Fourteen jurisdictions achieve the highest score of 3, meaning that they provide interactive online access to administrative services. Three countries (the Kyrgyz Republic, Tunisia and Türkiye) have a score of 2 due to certain limitations that currently do not allow for interactive access and use of online administrative services. Textbox 6. Widespread use of online administrative services in Albania.

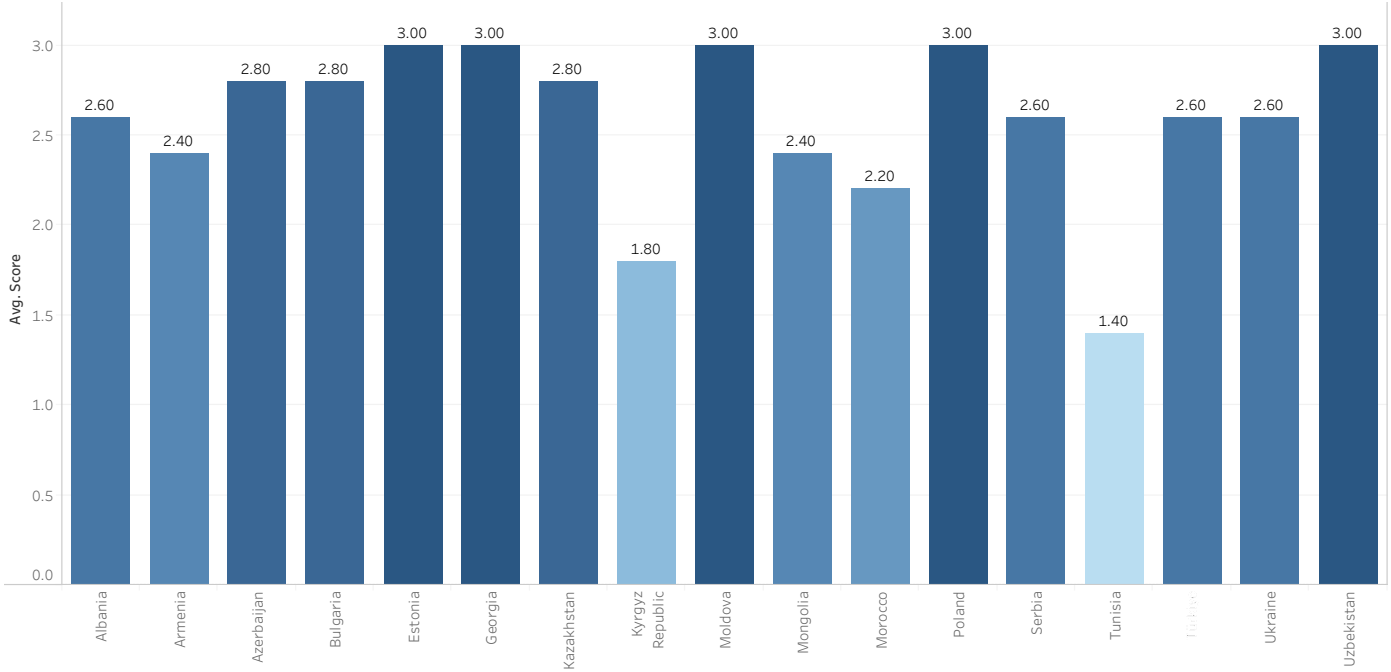
Widespread use of online administrative services in Albania

Since May 1, 2022, more than 95% of administrative services have been delivered online via e-Albania.[35] Citizens apply online and submit the relevant documentation via e-Albania (physical copies can be sent via postal services if necessary), and they obtain the relevant administrative service via the website. To assist citizens who are unable to use electronic services, Albania has established support centres in locations where physical services were formerly delivered.

Sub-indicator 1.1.6. Level of broadband internet access

The availability of broadband internet access is also an essential precondition for the successful implementation of e-justice solutions and tools. Here most jurisdictions (13 in total) received the lowest score of 1, meaning that their median fixed broadband download speed according to the Speedtest Global Index[36] is less than 55 Mbps. The download speed is particularly low in Azerbaijan, Georgia, Morocco, and Tunisia (less than 25 Mbps). Only two countries (Moldova and Poland) beat the global index median.[37]

Indicator 1.2. Overall level of development of justice system digitisation



This indicator assesses the overall level of development of justice system digitisation, including strategic governance, as well as the corresponding technological resources and capabilities that are important preconditions for further digital transformation. The assessed jurisdictions' average level of development of justice system digitisation is greater than the average score of 2 on a scale of 1 to 3. Estonia, Georgia, Moldova, Poland, and Uzbekistan lead in this indicator, achieving the highest possible score (3) for all sub-indicators assessed. With a mean score of 2.8, Azerbaijan, Bulgaria, and Kazakhstan are close behind the leaders. Indicator 1.2. scores for the Kyrgyz Republic (1.8) and Tunisia (1.4) are much lower than the average. While all sub-indicators have close average values, two sub-indicators – on the level of integration of CMS (1.2.3.), and on publication of court judgments and free online access to them (1.2.5.), have greater variability of country scores. The country scores for each sub-indicator are examined in greater detail below.

Scoreboard - Indicator 1.2. - Overall level of development of justice system digitisation

Dimension/ Indicator / Sub-indicator	Albania	Armenia	Azerbaijan	Bulgaria	Estonia	Georgia	Kazakhstan	Kyrgyz Republic	Moldova	Mongolia	Morocco	Poland	Serbia	Tunisia	Türkiye	Ukraine	Uzbekistan
Case management system (CMS) deployment rate	3	3	2	3	3	3	3	1	3	2	3	3	3	2	3	3	3
Level of integration of the Case Management System	2	2	3	3	3		3	1	3	2	3	3	2	1	3	2	3
Official information about the justice system availab..	3	2	3	3	3	3	3	2	3	3	3	3	2	1	2	3	3
Publication of court judgments and free online..	2	3	3	3	3	3	3	2	3	3	1	3	3	1	2	3	3
Status of e-Justice strategy	3	2	3	2	3	3	2	3	3	2	1	3	3	2	3	2	3

Score
1 3

Achieved e-Justice milestones in Azerbaijan

Azerbaijan's Justice Strategy includes various e-Justice system milestones, including the following, which have been met to a great extent:

- Improvements in the legislation on conducting of the clerical works in the courts and preparation of the e-court system user manuals;
- Ensuring the gradual application of the e-court system by components in the relevant courts (of Baku, Sumgayit, Shaki and Nakhchivan jurisdictions);
- Application of e-filing, holding the court proceedings in the electronic form and application of the electronic circulation of documents by studying the international experience;
- Improvement of the unified web-portal of the court system.

Sub-indicator 1.2.1. Status of e-Justice strategy

The digitisation of the judiciary requires guidelines and strategies for targeted and successful transformation.[38] The majority of countries (10 in total) earn the highest score of 3 for this sub-indicator, which means that such strategies are available and their implementation is on track.

Six jurisdictions (Armenia, Bulgaria, Kazakhstan, Mongolia, Tunisia, and Ukraine) achieved a score of 2, meaning that there is an e-Justice strategy but it is either not being implemented or its implementation largely does not comply with key milestones. In Bulgaria, the time period of the strategy has expired as early as 2021 (although some of its important milestones have not been met), and no new one has been adopted. Morocco does not have a formally announced e-Justice strategy although it plans to digitalize all public services by 2025.

[38] Bundesministerium Justiz, 2020. IT-Anwendungen in der österreichischen Justiz at https://www.justiz.gv.at/file/2c94848b6ff7074f017493349cf54406.de.0/it-anwendungen%20in%20der%20%C3%B6sterreichischen%20justiz%20stand%20august%202020.pdf, access: 31.01.2022


Armenia

Sub-indicator 1.2.2. Case management system (CMS) deployment rate

This sub-indicator evaluates the rate of deployment of CMS based on the latest available CEPEJ data[39] (where available). Due to the comprehensive deployment of CMS throughout their courts, the majority of countries (13 in total) perform very well in this sub-indicator and are granted the highest score (3). CMS deployment rates range from 50 to 99% in three jurisdictions (Azerbaijan, Mongolia, and Tunisia). The launch of CMS in the Kyrgyz Republic was planned for 2022.

Sub-indicator 1.2.3. Level of integration of the Case Management System

This sub-indicator assesses whether there are several different CMSs operating in the jurisdiction, or there is a unified CMS system for the whole judiciary. A unified national case management system enables an integrated approach towards the development of the IT infrastructure of the judiciary, as well as good interoperability among courts and effective use of investment in ICT for the judiciary. The average score under this sub-indicator across the assessed jurisdictions (2.44) is the lowest for Indicator 1.2. A greater variability of country scores is also observed. Nine jurisdictions earn the highest score of 3, indicating the presence of a unified CMS in the jurisdiction. Five countries (Albania, Armenia, Mongolia, Serbia, and Ukraine) have multiple CMSs in place, although work is being done to create a unified one. There is presently no CMS in operation in the Kyrgyz Republic.

Introduction of a unified CMS in Bulgaria

Several CMSs have been functioning in Bulgaria for a long time. They were replaced with a unified CMS in June 2020.[40] The system enables centralized electronic case file storage, which considerably decreases the time required to develop and manage an electronic case file. When a case transfers between court instances, the electronic case files are sent to the next instance, resulting in significant time savings in each successive court where the case is heard. It enables remote work from anywhere around the globe via a secure connection with a high level of security. The unified CMS is still being fully integrated with all court cases, and various additional upgrades have either been carried out or are expected.

Sub-indicator 1.2.4. Official information about the justice system available over the internet

This sub-indicator examines the availability and scope of information made available to the public via the justice system's official information portals (websites). The majority of countries (12 in total) received the highest score of 3 for this sub-indicator, indicating that the justice system's information portals include contact information for all courts, court hearing schedules, and forms that citizens and businesses can use for various filings with the court. This information is only partially available in four jurisdictions (Armenia, Kyrgyz Republic, Serbia, and Türkiye). In Tunisia, very limited information is available on the websites of the justice system.

Detailed information about court cases provided in Poland

The Informational Portal for Common Courts in Poland[41] provides the following categories of information about individual open cases: (1) the status of the case, (2) court hearing dates, (3) court actions (including orders and judgments issued by the court), (4) documents in the case generated by the court in electronic form, and (5) electronic protocols of court hearings. Contact information and templates/forms for various court filings are also available.

[39] See countries' responses for CEPEJ Evaluation Report, Question 63-1-1, 2020 Evaluation cycle at https://www.coe.int/en/web/cepej/replies-by-country.

[40] For more details see (in Bulgarian): https://www.is-bg.net/bg/news/204

[41] Available at: https://prs.ms.gov.pl/

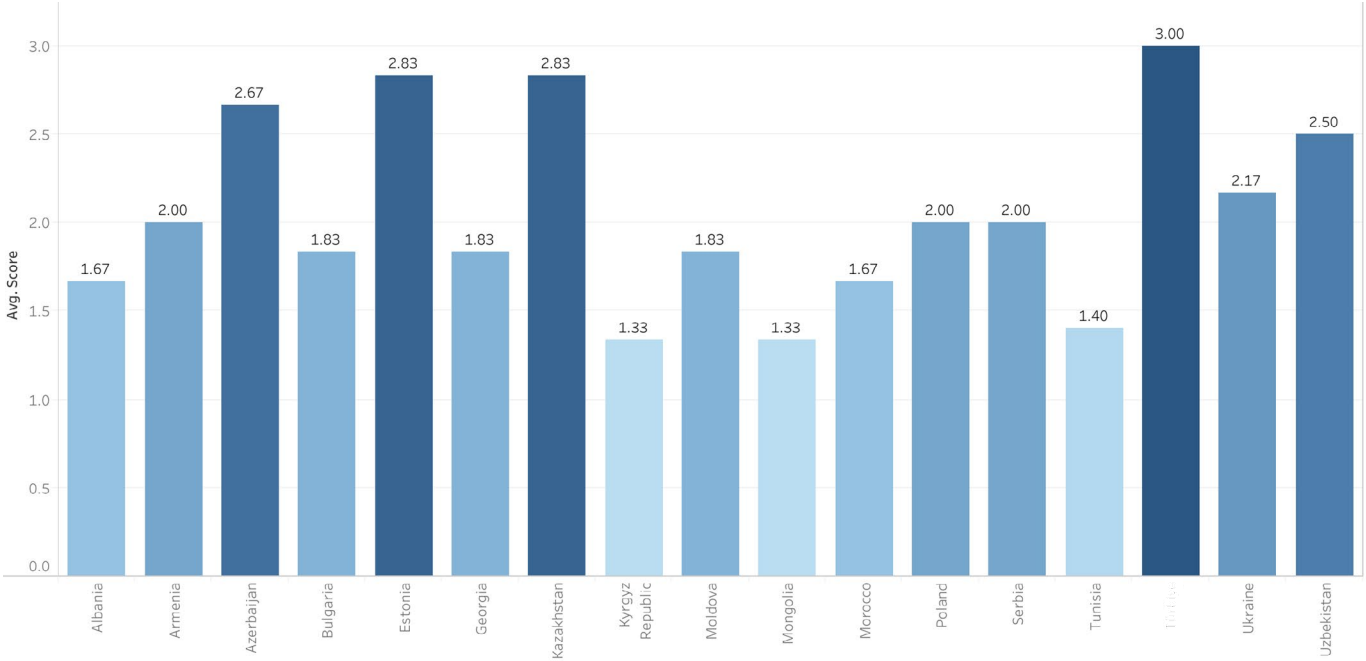
Sub-indicator 1.2.5. Publication of court judgments and free online access to them

The publication of court judgments in a reliable, timely, and thorough manner, as well as free online access to them, improves the judicial system's transparency and accountability. This sub-indicator is distinguished by greater variety in country scores, despite the fact that the average score across jurisdictions is rather high (2.59). Most countries (12 in total) receive the highest grade of 3 because decisions of both high courts and lower-level courts of all instances are widely published, with keyword search functionality available. In Albania, the Kyrgyz Republic, and Türkiye, none or very few lower-level court rulings are openly published online, with no options for keyword searches. In Morocco and Tunisia, there is no systematic publication of and access to court judgments on the internet.

Online publication of court judgements in Estonia

The first and second instance court judgments, which have entered into force, can be found in the Riigi Teataja[42] website. The Riigi Teataja[43] is Estonia's official online publication, where legislation, court judgments and other documents are published. On the search page, one can look for all first and second instance judgments released after 2006, as well as all Supreme Court decisions. Furthermore, all Supreme Court decisions are published on the Supreme Court's website.[44]

Indicator 1.3. Digitisation of court processes



This indicator assesses both the availability and use of critical e-justice solutions and tools, as well as the level of development of the necessary legislative framework for digitising court processes. The mean score for all analysed jurisdictions (2.05) is near the average score of 2, with individual country scores for the included sub-indicators varying widely. Only Türkiye achieves the highest score of 3, receiving the best possible score for all examined sub-indicators. Four jurisdictions (Azerbaijan, Estonia, Kazakhstan, and Uzbekistan) also have relatively high average scores for Indicator 1.3. (2.5 or higher). Notably, the majority of assessed jurisdictions (8 in total) earn an average score of less than 2, indicating weaknesses in either essential e-justice solutions and tools, or the maturity of the underlying legal framework. Below, a more thorough analysis of the country scores for each sub-indicator is presented.

[42] In English – State Gazette.

[43] Available at: https://www.riigiteataja.ee

[44] Available at: https://www.riigikohus.ee/

Scoreboard - Indicator 1.3. - Digitisation of court processes

Dimension/ Indicator / Sub-indicator	Albania	Armenia	Azerbaijan	Bulgaria	Estonia	Georgia	Kazakhstan	Kyrgyz Republic	Moldova	Mongolia	Morocco	Poland	Serbia	Tunisia	Türkiye	Ukraine	Uzbekistan
Ability to initiate enforcement based on ele..	1	3	2	2	3	1	3	1	1	1	1	1	2	1	3	1	3
Availability and use of e-filing	1	2	3	2	3	2	3	1	2	1	2	2	2	1	3	2	2
Availability and use of electronic service of proce..	2	1	3	2	3	2	3	1	2	1	1	3	2	1	3	2	2
Court fees	1	2	3	1	2	2	3	2	2	1	2	1	2		3	3	3
Possibility to check case files and track case progr..	2	2	3	2	3	2	2	1	2	2	2	2	2	2	3	2	2
Possibility to hold online / videoconference hearings..	3	2	2	2	3	2	3	2	2	2	2	3	2	2	3	3	3

Score
1 3

Sub-indicator 1.3.1. Availability and use of e-filing

E-filing refers to the submission of a case to courts by electronic means, as well as the possibility to make subsequent submissions to the court in an electronic form. Country scores for this sub-indicator identify e-filing as a potential important area for improvement. In only four jurisdictions (Azerbaijan, Estonia, Kazakhstan, and Türkiye), the necessary e-filing infrastructure is available; e-filing is commonly being used; and it is available also for commercial litigation. In nine countries, there is legislation governing electronic filing but such e-filing is either not being used or is used only in the form of filing via email or is used in procedures excluding commercial litigation (Armenia, Bulgaria, Georgia, Moldova, Morocco, Poland, Serbia, Ukraine, Uzbekistan). In four jurisdictions, there is no e-filing legislation (Albania, the Kyrgyz Republic, Mongolia, and Tunisia).

Mandatory e-filing for commercial disputes in Azerbaijan

The electronic court portal of Azerbaijan[45] offers e-filing. Preparation, sending, receiving, registration and circulation of applications, complaints and other documents in electronic form by the court and the parties is carried out in accordance with the rules of use of the Electronic Court Information System.[46] E-filing is required in commercial disputes, meaning that hardcopy statements of claim are not accepted.[47]

[45] Available at: http://www.e-mehkeme.gov.az/

[46] Article 10-1.2. of the Civil Procedure Code of the Republic of Azerbaijan.

[47] Article 10-1.3. of the Civil Procedure Code of the Republic of Azerbaijan.

Sub-indicator 1.3.2. Availability and use of electronic service of process (e-service)

Electronic service of process (e-service) means a formal notification to a person or company of the claim or other court documents or notices about court proceedings which is being carried out by electronic means. Sufficient e-service infrastructure is available in five jurisdictions (Azerbaijan, Estonia, Kazakhstan, Poland, and Türkiye) for a sizable number of court procedures. In these jurisdictions, the use of e-service is mandatory for some categories of parties/other participants.

Mandatory use of e-service for some court participants in Estonia

A court may serve procedural documents electronically through the e-File system. When the recipient opens a procedural document in the information system or acknowledges receipt, it is deemed to be served. Any person having an Estonian ID card or a Mobile ID can be a user of the portal. He/she receives a notice about the court case via e-mail, if the court has sent documents to him/her via the public e-File portal. The use of e-service is mandatory for attorneys, notaries, enforcement agents, trustees in bankruptcy, reorganisation advisers, trustees within the meaning of the Natural Persons Insolvency Act, and state or local government agencies. There is no need for any special registration for such professionals to the information system (e-File). E-File uses the e-mail address notified to the court. If there is a valid reason (e.g the e-File system does not work), professional users can also send documents via e-mail. Only with good reason may such professional users be served with procedural documents in any other manner than electronically.

The system instructions provide for the following sequence of actions to ensure delivery of the procedural documents: (1) an e-mail is automatically sent to the e-mail specified in e-File or in the court information system; (2) a reminder letter is sent explaining the legal obligation to confirm receipt of the document without delay; (3) a call is made, asking the recipient to check the e-mail address; (4) a second reminder letter is sent, explaining the legal obligation to confirm receipt of the document without delay and issuing a warning; (5) another call is made explaining the obligation to confirm receipt and the possibility to be fined; (6) a notification is sent to all possible e-mail addresses, including on the user account page in virtual social networks; (7) a presumption of service may apply, under circumstances specified in § 314[1] of the Civil Procedure Code.[48]

E-service to participants in court proceedings requires specific agreement/statement that the party accepts electronic service of documents in seven countries. There is no legislation governing e-service and/or there is no adequate infrastructure for e-service in Armenia, the Kyrgyz Republic, Mongolia, Morocco, and Tunisia.

Sub-indicator 1.3.3. Possibility to check case files and track case progress remotely

The possibility for court users to track the various stages of the court proceedings online by consulting a dedicated website or platform is an important and useful functionality for parties to the proceedings. Only three jurisdictions provide ongoing access to the whole digital case file via judicial system websites/information systems (Azerbaijan, Estonia, and Türkiye). Parties can only track the progress of the case and key procedural events remotely in the majority of countries (9 in total). In the Kyrgyz Republic, there is no possibility to track case progress remotely.

Digital access to case files in Türkiye

Professional court users and litigant citizens can track the status of all documents uploaded to case files via the UYAP system.[49] The online platform provides access to the whole digitised case file, practically all documentation, hearing dates, and schedules. There is a very limited number of exceptional cases for which there is no online access such as prosecution files, claims relating to minors, etc.

[48] See https://www.riigiteataja.ee/en/eli/522022023001/consolide.

[49] Available at: https://vatandas.uyap.gov.tr/

Sub-indicator 1.3.4. Possibility to hold online / videoconference hearings (for any type of case)

The possibility to hold online / audio / videoconference hearings refers to the official use of audio-visual devices and systems in the framework of judicial proceedings for the hearing of parties. Within Indicator 1.3., this sub-indicator has the highest average score (2.41). For most types of cases, it is possible to hold the entire hearing online, and in practice, such hearings are commonly held in seven jurisdictions (Albania, Estonia, Kazakhstan, Poland, Türkiye, Ukraine, and Uzbekistan), obtaining the highest score of 3. There is some infrastructure for online / audio / videoconference hearings in the remaining ten countries, albeit conducting hearings wholly online is either not done or done rarely.

Flexible rules for videoconference hearings in Estonia

It is possible to hold videoconference hearings in civil and administrative court proceedings. Court rooms are adequately equipped. Videoconferencing was successfully employed during the COVID-19 pandemic and is currently used in second instance courts as well. A hearing can be held in a hybrid format, with some judges or participants in the courtroom and others online. Nevertheless, if one party does not agree, a hearing in the courtroom must be held. The possibility to hold videoconference hearings for criminal cases is limited at first instance courts.

Sub-indicator 1.3.5. Court fees

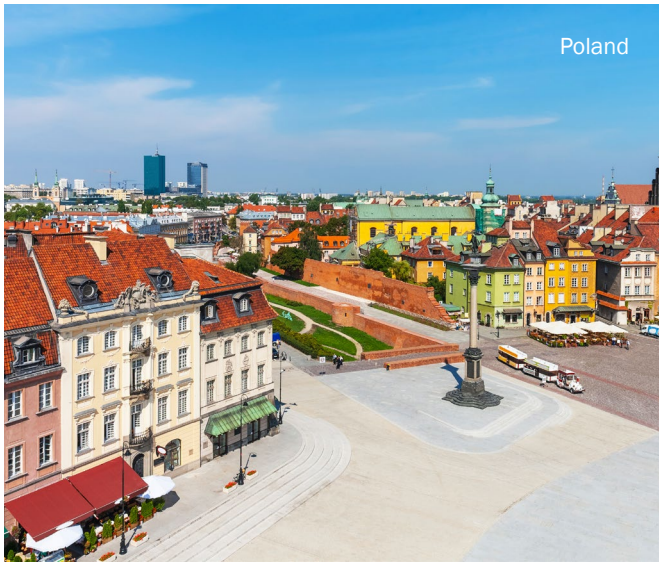
Officially administered court fee calculators allow parties to enter specific information about their court case and receive an online assessment of the court fee due. Electronic monetary transactions for court fees, fines, penalties, and judicial deposits are referred to as e-payment of court fees. The availability of both mechanisms is an indication of a higher level of maturity for the introduction of online courts. There are official online calculators for determining the amount of court fees due and available means for online payment of court fees in five jurisdictions (Azerbaijan, Kazakhstan, Türkiye, Ukraine, and Uzbekistan). There are either official online calculators for court fees or available options for online payment of court fees in the majority of jurisdictions (7 in total). There are no official online calculators or online payment options for court fees in four countries (Albania, Bulgaria, Mongolia, and Poland).

Streamlined online payment of court fees in Türkiye

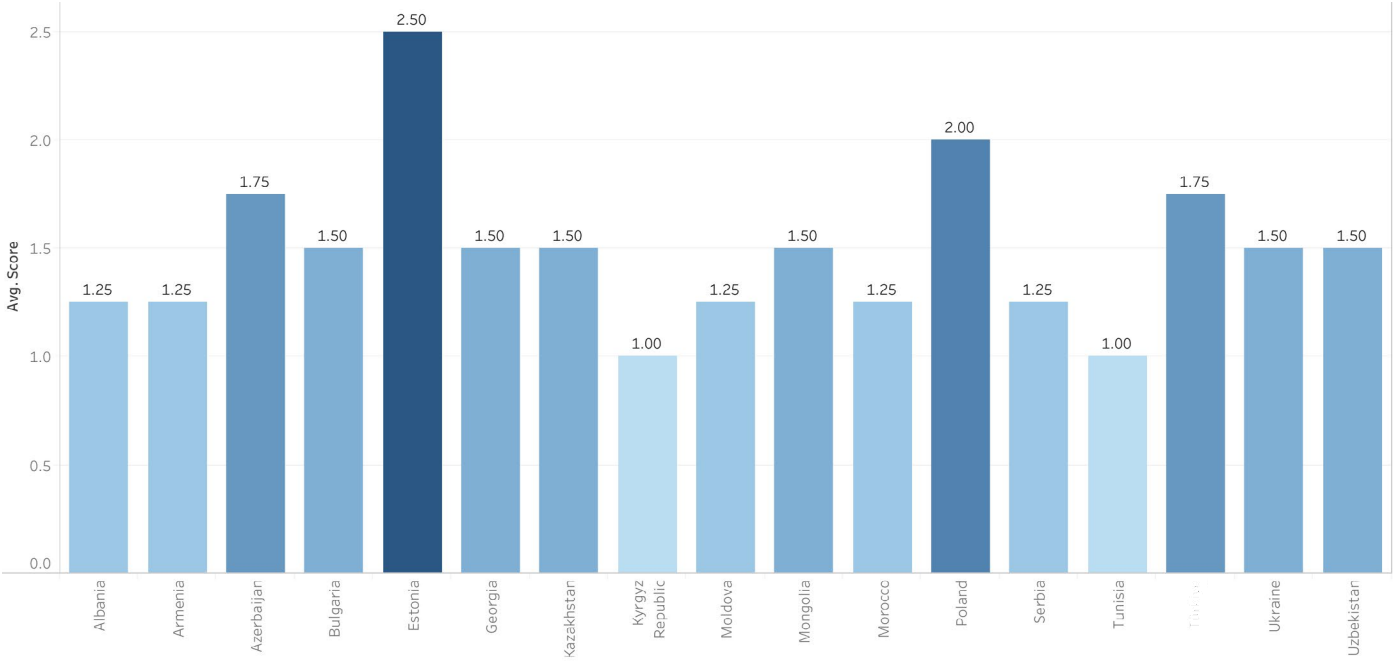
To promote predictability in the Turkish judicial system, official tariffs declare fixed fees and the rate of proportional fees every year. Online calculators are also available in the UYAP system and on the official website of the Union of Turkish Bar Associations. Thus, the amount of court fees owed can be calculated, and online payments can be made through the UYAP system, which is integrated with a Turkish bank (Vakıfbank). In this regard, payment methods are limited, and no payment can be made by credit card, PayPal, bank card, or in other ways.

Sub-indicator 1.3.6. Ability to initiate enforcement based on electronic enforceable titles

This sub-indicator explores whether the enforcement authority could initiate enforcement based on an electronic enforceable title. A prerequisite for this is the availability of relevant legislation. In five jurisdictions, the law allows for enforcement to be initiated based on an electronic enforceable title (Armenia, Estonia, Kazakhstan, Türkiye, and Uzbekistan). Despite having in place legislation governing electronic enforceable titles, Azerbaijan, Bulgaria and Serbia still use paper-based enforceable titles to initiate the enforcement process. There is no legislation governing electronic enforceable titles in the majority of analysed jurisdictions (9 in total).



Indicator 1.4. Stakeholder engagement



Introducing user-centered and establishing user-friendly and responsive system design for all types of users is a must for a successful digitisation initiative. This indicator focuses on a few key stakeholder engagement factors that would contribute to the successful implementation of online courts for commercial justice.

Within Dimension 1, countries have the poorest performance under Indicator 1.4. The average country score for Indicator 1.4 (1.49) is likewise the lowest for all indicators included in the MLAT, indicating significant deficiencies in stakeholder engagement initiatives across the analysed jurisdictions. Only two jurisdictions (Estonia and Poland) have mean scores of 2 or above. The majority of jurisdictions (13 in total) earn a mean score for Indicator 1.4. between 1.75 and 1.25. The Kyrgyz Republic and Tunisia have a mean score of 1. Country scores are particularly low for the sub-indicators on the availability of monetary incentives for conducting certain court actions electronically (1.4.2.), and on court user surveys (1.4.4.). The sub-indicator country scores are further analysed below.

Scoreboard - Indicator 1.4. Stakeholder engagement

Dimension/ Indicator / Sub-indicator	Albania	Armenia	Azerbaijan	Bulgaria	Estonia	Georgia	Kazakhstan	Kyrgyz Republic	Moldova	Mongolia	Morocco	Poland	Serbia	Tunisia	Türkiye	Ukraine	Uzbekistan
Availability of monetary incentives for conducting ..	1	1	1	2	1	1	1	1	1	1	1	3	1	1	1	1	1
Availability of user guides, help desk and guidance in ..	1	1	2	1	3	2	3	1	1	1	2	2	2	1	3	3	3
Existence of an obligation for professional court use..	1	2	3	2	3	1	1	1	2	1	1	2	1	1	2	1	1
Whether court user surveys are conducted by ..	2	1	1	1	3	2	1	1	1	3	1	1	1	1	1	1	1

Score
1 3

Sub-indicator 1.4.1. Existence of an obligation for professional court users to interact with the court only electronically

The obligation for professional court users to interact with the court only electronically is an important precondition for further digitisation of court processes, and successful ODR implementation. In Azerbaijan and Estonia, there is legislation requiring professional court users to interact with the court only online, and the requirement is enforced in practice. In Armenia, Bulgaria, Moldova, Poland, and Türkiye, there is legislation governing the obligation for professional court users to interact with the court entirely online, but it is not implemented or is only partially implemented. There is no legislation requiring any type of professional court user to communicate with the court only electronically in the majority of countries (10 in total).

Mandatory online interaction with courts for professional users in Estonia

Contractual representatives (such as an attorney, a person with a state-recognized master's degree in the field of study of law, a procurator, a public servant or employee of a party to proceedings), notaries, enforcement agents, trustees in bankruptcy, state and local government agencies must submit documents to the court electronically unless there is a good reason to do otherwise. If petitions and other documents can be submitted to the proceedings information system via a portal developed for that purpose, they must not be sent via e-mail unless there is a good justification for doing so.

Sub-indicator 1.4.2. Availability of monetary incentives for conducting certain court actions electronically

This sub-indicator has the lowest mean country score throughout the whole MLAT (1.18). In Poland, there are monetary incentives for conducting certain court actions electronically, and such incentives are commonly being used. Such monetary incentives are available in Bulgaria but are either not being used or used rarely. In all other 15 jurisdictions there are no monetary incentives for performing court actions electronically. This finding could be explained in part by concerns about the legality (or even constitutionality) of such monetary incentives (see Textbox 18 below).

Unconstitutionality of reduced court fees for e-filing in Estonia

Beginning on July 1, 2012, there was a difference in the court fee for electronic versus paper filing in Estonia. In December 2013, the Supreme Court's Constitutional Review Chamber ruled that corresponding provisions of the State Fees Act and Annex 1 thereto, in their current wording, were in conflict with the Constitution of Estonia in the part where there were different state fees for electronic filings of claims through the website www.e-toimik.ee and any other filing.

Sub-indicator 1.4.3. Availability of user guides, help desk and guidance in the e-filing system

The availability of user guides, help desk and guidance in the e-filing system is very important from the user's perspective. In five jurisdictions (Estonia, Kazakhstan, Türkiye, Ukraine, and Uzbekistan), at least two types of user support[50] are being provided in the e-filing system for a broad array of court procedures. At least one type of user support is available in five countries (Azerbaijan, Georgia, Morocco, Poland, and Serbia). In the remaining seven jurisdictions, e-filing is not available, and/or no user guidance for e-filing is provided.

Diversity of user support tools for court users in Kazakhstan

E-filing is offered in the Judicial Office system,[51] and the e-filing platform offers all three forms of court user support: user guides;[52] help desk;[53] and various types of user guidance (for example, detailed answers to frequently asked questions (FAQs)[54]).

Sub-indicator 1.4.4. Whether court user surveys are conducted by the courts/ the judicial system on a regular basis

Mechanisms for gathering user feedback are required for a strong commitment to fostering stakeholder engagement. Court user surveys are one of the most popular mechanisms for this type of stakeholder engagement. Court user surveys are conducted by the courts/ the judicial system on a regular basis, and key areas for improvement identified through the surveys are addressed in Estonia and Mongolia. Court user surveys are conducted on a regular basis in Albania and Georgia, however, significant areas for improvement are rarely addressed systematically. Court user surveys are conducted by the courts/ the judicial system sporadically or not at all in the majority of assessed jurisdictions (13 in total).

Regular use of court surveys in Mongolia

The judicial system conducts court user surveys on a regular basis. Every year, a survey named "Trust of citizens in courts" is undertaken.[55] The key areas for improvement identified in the surveys are generally addressed in the strategic planning process of courts, and the strategy's vision is titled "Strengthening public trust in the judiciary."

[50] The three categories of user support assessed for this sub-indicator are: user guides; help desk; other forms of user guidance (e.g., frequently asked questions (FAQs); tutorial videos; user notifications in online forms, etc.).

[51] Available at: https://office.sud.kz

[52] The instructions for working with the Judicial Office can be found at https://office.sud.kz/materials/help.xhtml

[53] Help desk can be reached by (1) a phone line or (2) by writing an email to office@sud.kz

[54] FAQs at the Judicial Office website. https://office.sud.kz/materials/faq.xhtml

[55] Conducted at least annually in 2017, 2018, 2019; no data is available for 2020 and 2021.

Dimension 2. Commercial Dispute Resolution

This Dimension seeks to assess the level of development of commercial dispute resolution[56] regardless of whether it is being conducted by specialised commercial courts, by specialised departments of the courts of general jurisdiction or by non-specialised judges.

The responses provided by local evaluators to the general questions[57] under Dimension 2 outline the institutional and infrastructural background of commercial dispute resolution in the jurisdictions under consideration.

Legal definition of a commercial case

The legal definition of a commercial case is critical for identifying the subject matter jurisdiction of commercial courts or departments, if such exist, as well as for defining the applicable procedural rules for examining commercial cases, if those differ from the general rules of civil procedure. Generally, the existence or non-existence of a definition of a commercial case in a jurisdiction is indicative of the desire of policy makers to disaggregate commercial cases from civil ones, for the purpose of specialisation or for another reason. There is a specific legal definition of commercial cases in Albania, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Moldova, Morocco, Poland, Serbia, Tunisia, Türkiye, Ukraine, and Uzbekistan. The specific definition of a commercial case varies by jurisdiction. There is no specific definition of commercial cases in Armenia[58], Estonia, the Kyrgyz Republic, and Mongolia.

Detailed legal definition of commercial cases in Bulgaria

Chapter 32 of Bulgaria's Civil Procedure Code introduces special rules in respect of the following types of disputes which it defines as commercial:

1. Commercial transactions, including the conclusion, interpretation, validity, execution, non-execution or termination thereof, the consequences of its termination, as well as for filling in gaps in a commercial transaction or its adjustment to new circumstances;
2. Privatization contract, contract for public procurement and concession contract;
3. Participation in a commercial company or in another legal entity-trader, as well as for establishing the inadmissibility or nullity of the entry and for non-existence of a circumstance, entered in the commercial register;
4. Filling in bankruptcy estate cases, including establishing the claims of the creditors;
5. Cartel agreements, decisions and concerted practices, concentration of economic activity, unfair competition and abuse of monopoly or dominant position.

The term "commercial transaction," in turn, is defined in the Commercial Act as:

1. Transactions between persons defined as merchants
2. The following transactions, regardless of who were the parties to them:

- purchase of goods or other items in order to resell them in their original, processed or processed form;
- sale of goods of own production;
- purchase of securities for the purpose of selling them;
- commercial representation and agency;
- commission, forwarding and transport transactions;
- insurance transactions;
- banking and foreign exchange transactions;
- bills of exchange, promissory notes and checks;
- warehousing transactions;
- licensing transactions;
- commodity control;
- transactions with intellectual property;
- hotel, tourist, advertising, information, program, impresario or other services;
- purchase, construction or furnishing of real estate for the purpose of sale
- leasing.

[56] For instance, disputes/cases regarding contracts between traders, between credit institutions or between traders and credit institutions, and disputes regarding commercial companies or commercial transactions.

[57] According the MLAT methodology, replies to general questions included for each Dimension are not scored.

[58] The only exception relates to insolvency cases that the specialised Insolvency court examines.

Recent significant reforms of commercial dispute resolution and ADR

Most assessed countries have implemented commercial dispute resolution and/or alternative dispute resolution (ADR) reforms in the recent three years. Specialised courts or court chambers have been established in some jurisdictions (Armenia, Kazakhstan, and Uzbekistan) to decide on commercial disputes and/or insolvency proceedings. Arbitration and/or mediation reforms have been implemented in Albania, Azerbaijan, Georgia, Moldova, Morocco, and Türkiye.

New law on arbitration and mediation in Morocco

A new law published in June 2022 in Morocco[59] provides for forms of alternative conflict resolution as a tool for investors who want to avoid lengthy and costly legal proceedings. This law amends the provisions governing alternative dispute resolution methods, with the goal of increasing flexibility and speed. The law provides definitions of concepts such as international arbitration, arbitral tribunal, and competent state court. The law is also notable for its flexibility in terms of local or international arbitration, the conditions of the arbitration agreement's validity, and the grounds for resorting to arbitration in administrative matters. It takes into consideration technical improvements that allow for the conclusion of arbitration agreements, the electronic exchange of claims and pleadings, and the possibility of making arbitral awards via the same means, as well as the holding of meetings and hearings via videoconference.

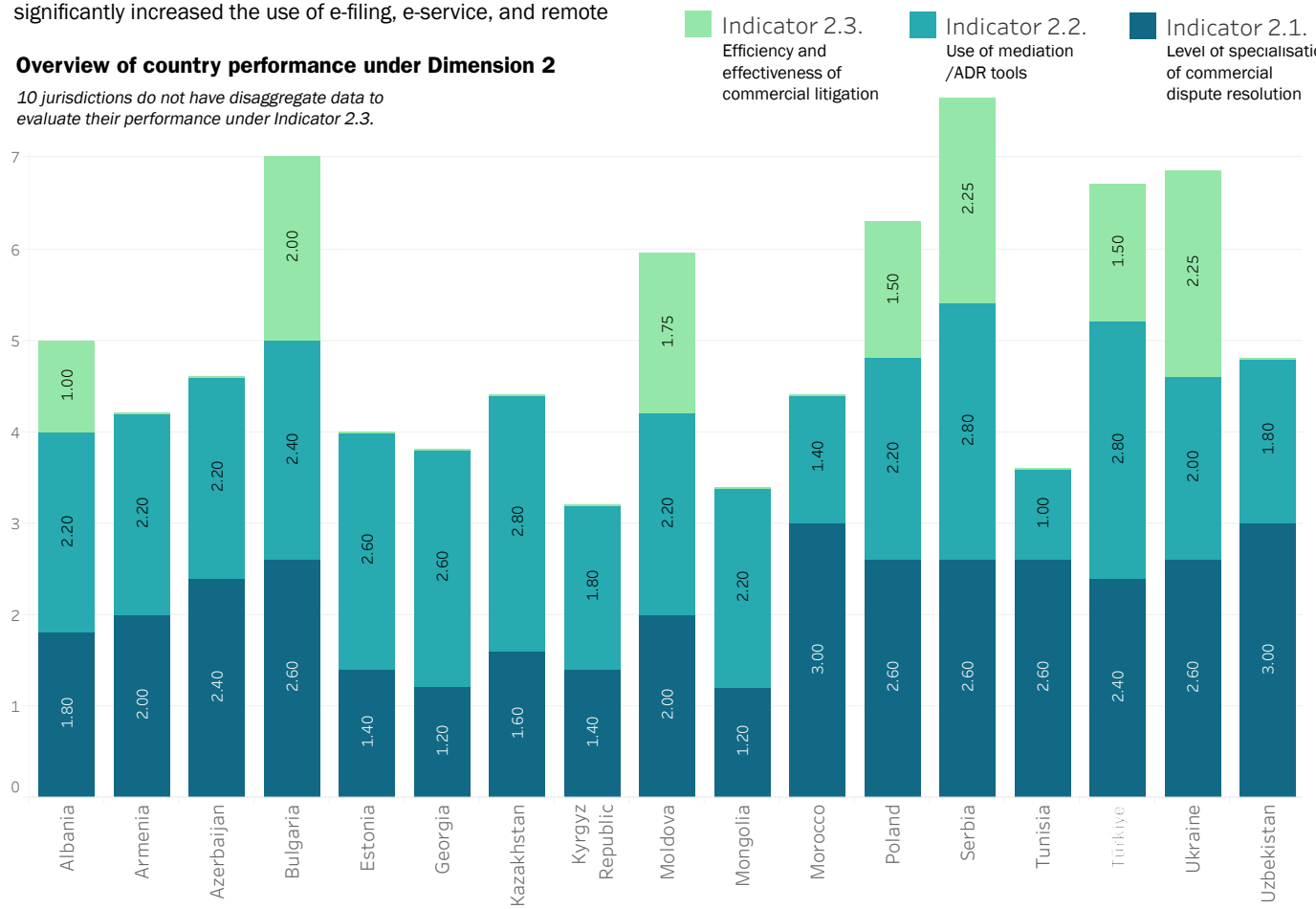
[59] Law No. 95-17 on arbitration and conventional mediation.

Impact of the COVID-19 pandemic on commercial litigation

The COVID-19 pandemic has had a significant impact on the functioning of courts around the world. Many courts in the analysed countries were forced to close or limit operations in order to reduce the spread of the virus, which led to delays in many cases and disrupted the normal functioning of the justice system. Most assessed jurisdictions relied on technology to continue hearing cases remotely. COVID-19 lockdowns significantly increased the use of e-filing, e-service, and remote court hearings via videoconferencing tools. As a result, the COVID-19 pandemic has expedited the digitisation of court processes in the majority of examined jurisdictions. However, in some jurisdictions (e.g., Albania) some court digital tools and solutions such as videoconferencing or e-filing were first launched during the peak of the pandemic and were later discontinued.

Overview of country performance under Dimension 2

10 jurisdictions do not have disaggregate data to evaluate their performance under Indicator 2.3.

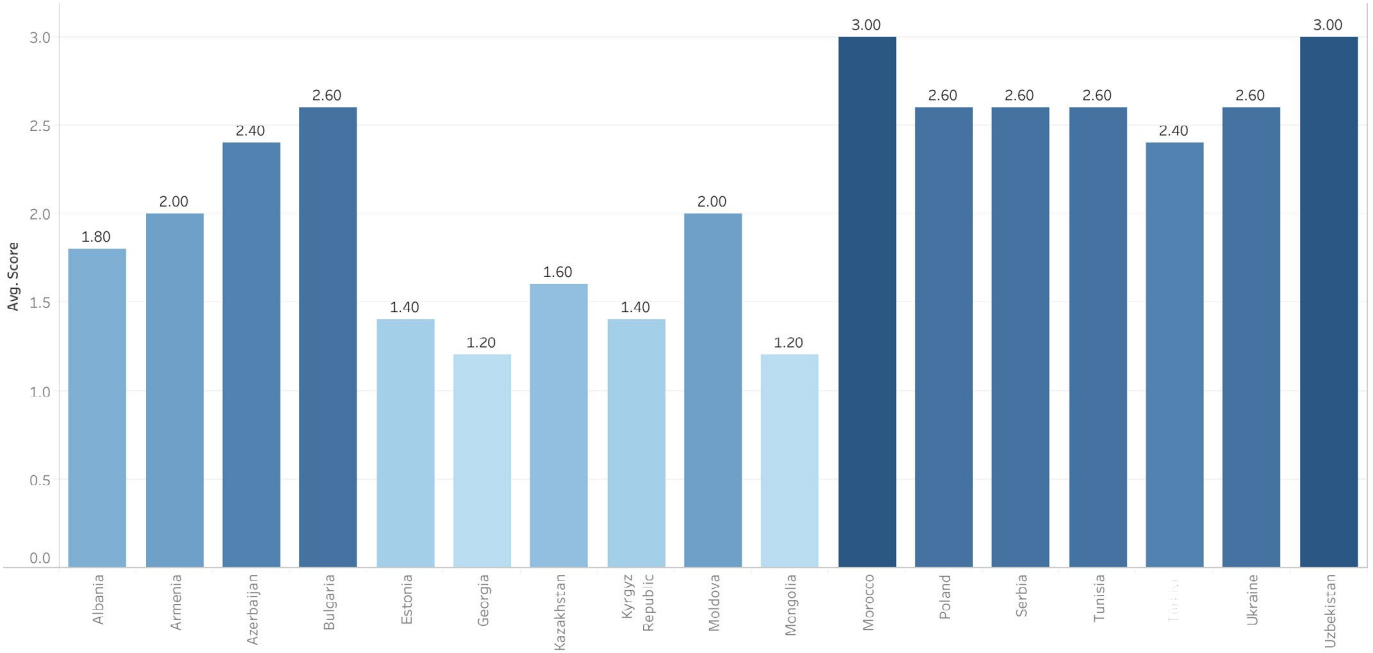


The average country scores differ significantly across Dimension 2. It should first be noted that data is not available for 10 countries[60] for Indicator 2.3. Efficiency and effectiveness of commercial litigation, and therefore these countries are not assigned a score for this indicator. Countries perform best under Indicator 2.2. Use of mediation/ADR tools, and worst under Indicator 2.3. Efficiency and effectiveness of commercial litigation (for the 7 countries where data is available).

Bulgaria and Serbia have consistently high scores for the indicators included in Dimension 2, while the Kyrgyz Republic and Mongolia have consistently low scores. Georgia and Tunisia each have higher than average scores for one indicator, but significantly lower scores for other indicators included in Dimension 2. Countries with mostly average scores (around 2) for the indicators of Dimension 2 include Armenia, Azerbaijan, Kazakhstan, Moldova, Morocco, Poland, Ukraine, and Uzbekistan.

The analysis of the sub-indicators and indicators included in Dimension 2 reveals that there is significant divergence in the average scores of the countries examined. This is particularly evident in the level of specialisation of commercial dispute resolution (Indicator 2.1) and the efficiency and effectiveness of commercial litigation (Indicator 2.3). The wide variation in these scores may be due to the complex interplay of the core values and objectives of the judicial systems in these countries, which can affect their decision-making around enhancing judges' specialisation in commercial dispute resolution. These values and objectives may include factors such as cost-effectiveness, delivering just outcomes, impartiality, public trust, access to justice, and procedural fairness.[61]

Indicator 2.1. Level of specialisation of commercial dispute resolution



This indicator seeks to assess the current level of specialisation of commercial dispute resolution in national courts. The mean score for all analysed jurisdictions (2.06) is near the average score of 2, with individual country scores for the included sub-indicators varying widely. Morocco and Uzbekistan have the highest average score of 3. It should be noted though that the high score for Uzbekistan may to a large extent be due to the fact that there was no publicly available information on the training of judges and judicial assistants and, as a result, regarding specialisation of commercial dispute resolution, Uzbekistan's score is based on only 2 sub-indicators.

Six countries (Azerbaijan, Bulgaria, Poland, Serbia, Tunisia, Türkiye, and Ukraine) have a mean score between 2 and 3, indicating a relatively high level of commercial dispute specialisation. Armenia and Moldova achieve a mean score of exactly 2. Seven jurisdictions (Albania, Estonia, Georgia, Kazakhstan, the Kyrgyz Republic and Mongolia) have a mean score for Indicator 2.1 that is less than 2, meaning that the courts have relatively low level of specialisation in commercial dispute resolution. A more detailed examination of the country scores for each sub-indicator can be found below.

[60] Armenia, Azerbaijan, Estonia, Georgia, Kazakhstan, the Kyrgyz Republic, Mongolia, Morocco, Tunisia, and Uzbekistan.

[61] See for more details Opeskin, B. (2022). The Relentless Rise of Judicial Specialisation and its Implications for Judicial Systems. Current Legal Problems, 75(1), 137-188.

Scoreboard - Indicator 2.1. Level of specialisation of commercial dispute resolution

Dimension/ Indicator / Sub-indicator	Albania	Armenia	Azerbaijan	Bulgaria	Estonia	Georgia	Kazakhstan	Kyrgyz Republic	Moldova	Mongolia	Morocco	Poland	Serbia	Tunisia	Türkiye	Ukraine	Uzbekistan
Availability of a specialised commercial court or speci..	2	1	3	2	1	1	3	1	1	1	3	2	3	2	3	3	3
Capacity building for commercial judges' judici..	2	2	2	3	2	2	2	2	2	2	3	3	3	3	2	3	
Continuous (regular) commercial law training f..	3	3	3	2	2	1	1	2	3	1	3	2	2	3	2	3	
Inception training in commercial law for comm..	1	3	3	3	1	1	1	1	3	1	3	3	2	3	3	1	
Modifications of the procedural rules in respec..	1	1	1	3	1	1	1	1	1	1	3	3	3	2	2	3	3

Score
1 3

Sub-indicator 2.1.1. Availability of a specialised commercial court or specialised commercial divisions in courts

To professionalise commercial justice, some countries establish specialised commercial courts. They have expertise and subject-matter jurisdiction to examine corporate disputes and business-to-business disputes stemming from commercial transactions[62]. This jurisdiction is usually exclusive. Specialised commercial courts are available in Azerbaijan, Kazakhstan, Morocco, Serbia, Türkiye, Ukraine, and Uzbekistan. Specialised commercial divisions or chambers[63] are established in some courts in Albania, Bulgaria, Poland, and Tunisia. There are neither commercial courts nor commercial divisions in Armenia, Estonia, Georgia, the Kyrgyz Republic, Moldova, and Mongolia. With the exception of the Kyrgyz Republic, the population of these countries is less than four million, which may partially explain why there are no such specialised commercial courts or divisions.

Economic courts in Uzbekistan

Uzbekistan's judicial system is based on a three-tier model, with courts established at the following levels: (i) district (city); (ii) regional, Tashkent city; and (iii) republic (national) level. The economic court has jurisdiction over economic disputes[64] at each of the aforementioned levels. At the district level, there are inter-district (district, city) economic courts. At the regional and Tashkent city levels, there is a judicial board on economic cases of the court of the Republic of Karakalpakstan, regional and Tashkent city courts. At the republic (national) level, there is a Judicial Board for Economic Affairs of the Supreme Court of the Republic of Uzbekistan.


Georgia

[62] E.g., disputes/cases regarding contracts between traders, between credit institutions or between traders and credit institutions, and disputes regarding commercial companies or commercial transactions. For the purposes of this sub-indicator, specialised courts/ divisions for examining only bankruptcies shall not be considered as specialised commercial courts/divisions.

[63] Specialised commercial divisions or chambers are usually part of courts and hear specific types of corporate (commercial) disputes.

[64] An economic (commercial) dispute is a conflict (disagreement) of an economic nature arising from a violation of the rights of legal entities and individuals in the economic sphere. See Article 25 of the Economic Procedure Code of the Republic of Uzbekistan (EPC) in connection with Article 2 of EPC.


Moldova

Sub-indicator 2.1.2. Modifications of the procedural rules in respect of commercial cases as compared to general civil cases

This sub-indicator focuses on modifications of the procedural rules for commercial cases as compared to the general civil cases procedures in four key areas:

- expedited court proceedings;
- special rules regarding evidence;
- special methods or procedures for organising and holding hearings;
- modifications of the general procedural rules aimed at improving quality.

There are at least two types of modifications to the general procedural rules in commercial cases in Bulgaria, Morocco, Poland, Serbia, Ukraine, and Uzbekistan. There is at least one modification of the general procedural rules for hearing commercial cases in Tunisia, and Türkiye. In the majority of countries, there are no significant differences in general procedural rules between commercial and general civil cases (9 in total).

Special procedural rules for commercial cases in Poland

The following modifications are available in respect of commercial cases under the Polish Civil Procedure Code:

- Time limitations for the parties in invoking statements and evidence: the claimant must invoke all statements and evidence in the lawsuit, and the defendant must invoke all statements and evidence in response to the lawsuit;
- Evidentiary limitations, which include the possibility of the parties in a lawsuit to contractually exclude particular evidence;
- Only a document can establish the acquisition, loss, or change of a party's right;
- Changes in the importance of evidence hierarchy: the primacy of evidence in the form of documents over witness testimonies.

Sub-indicator 2.1.3. Inception training in commercial law for commercial judges

This sub-indicator focuses on the training in commercial law provided to commercial judges upon entry/appointment. For the purposes of this sub-indicator, "commercial judges" shall mean judges in commercial courts, or commercial divisions or chambers of courts (where available). For countries that have no specialised commercial judges, this indicator examines whether commercial training is provided to civil judges or any other judges in the jurisdiction that may be tasked with hearing commercial cases. There is mandatory training in commercial law provided to judges upon entry/appointment in seven jurisdictions (Armenia, Azerbaijan, Bulgaria, Moldova, Morocco, Poland, Tunisia and Türkiye). In some cases, these target commercial judges specifically, whereas in countries where there are no dedicated commercial judges (e.g., Bulgaria, Moldova), there are commercial law topics included in the mandatory inception training for all judges. There is optional (voluntary) inception training for commercial judges in Serbia.[65] There is no mandatory or voluntary training in commercial law provided to commercial judges upon entry/appointment in Albania, Estonia, Georgia, Kazakhstan, the Kyrgyz Republic, Mongolia, and Ukraine.

Mandatory inception training for judges in Tunisia

The Higher Institute of the Judiciary is responsible for the inception training of professional magistrates.[66] For judges, initial training is mandatory. To be admitted to the Higher Institute of the Judiciary, any candidate for the position of judge shall pass an exam. Admitted candidates will then complete a two-year study cycle (1 year within the Institute and 1 year in apprenticeship in courts and administrations). Commercial law is taught as part of the curriculum. New judges must attend frequent trainings during their first five years in office.

[65] Before being appointed, judges must pass an exam organized by the High Judicial Council or undergo initial training organized by the Judicial Academy.

[66] According to Article 2 of Decree No. 2020-28 of 10 January 2020, which sets the powers of the Higher Institute of the Judiciary, the study and training regime.

Sub-indicator 2.1.4. Continuous (regular) commercial law training for commercial judges

This sub-indicator assesses the availability of mandatory or voluntary training in commercial law provided regularly (continuously) to commercial judges.[67] Commercial judges in Albania, Armenia, Azerbaijan, Moldova, Morocco, Tunisia, and Ukraine are required to have regular (continuous) training in commercial law. Only voluntary commercial law training is provided on a regular basis to commercial judges in Bulgaria, Estonia, the Kyrgyz Republic, Poland, Serbia, and Türkiye. No mandatory or voluntary training in commercial law is provided regularly to commercial judges in Georgia, Kazakhstan, and Mongolia.

Regular commercial law training in Armenia

The Academy of Justice in Armenia organises regular judge training sessions in two parts. The first part comprises of general professional courses that are held in person, while the second part consists of special professional courses that are held both in person and online (it depends on the choice of trainees). Civil law and procedure trainings cover both general and specialised topics. Annual training topics for 2022 include the following:

- Judicial ethics, skills for drafting a judicial act, etc.;
- Modern issues of insolvency procedure;
- Contemporary issues of civil procedure and civil law;
- Modern issues of corporate law;
- Issues related to contractual obligations;
- Contemporary issues of banking law;
- Modern issues of labour law;
- Issues related to non-pecuniary damage;
- Issues related to mediation.

Sub-indicator 2.1.5. Capacity building for commercial judges' judicial assistants or for other types of specialised judicial clerks engaged in commercial justice (e.g., rechtspflegers)

This sub-indicator assesses whether commercial judges[68] have judicial assistants or other specialised legal clerks, and whether those judicial assistants receive specialized commercial law training. Commercial judges have judicial assistants (or other specialised legal clerks), and these assistants receive specialized commercial law training in 6 jurisdictions – Bulgaria, Morocco, Poland, Serbia, Tunisia, and Ukraine. In the majority of jurisdictions (10 in total), commercial judges have judicial assistants, but the assistants do not receive specialized commercial law training.

Introduction of legal assistants at first instance courts in Albania

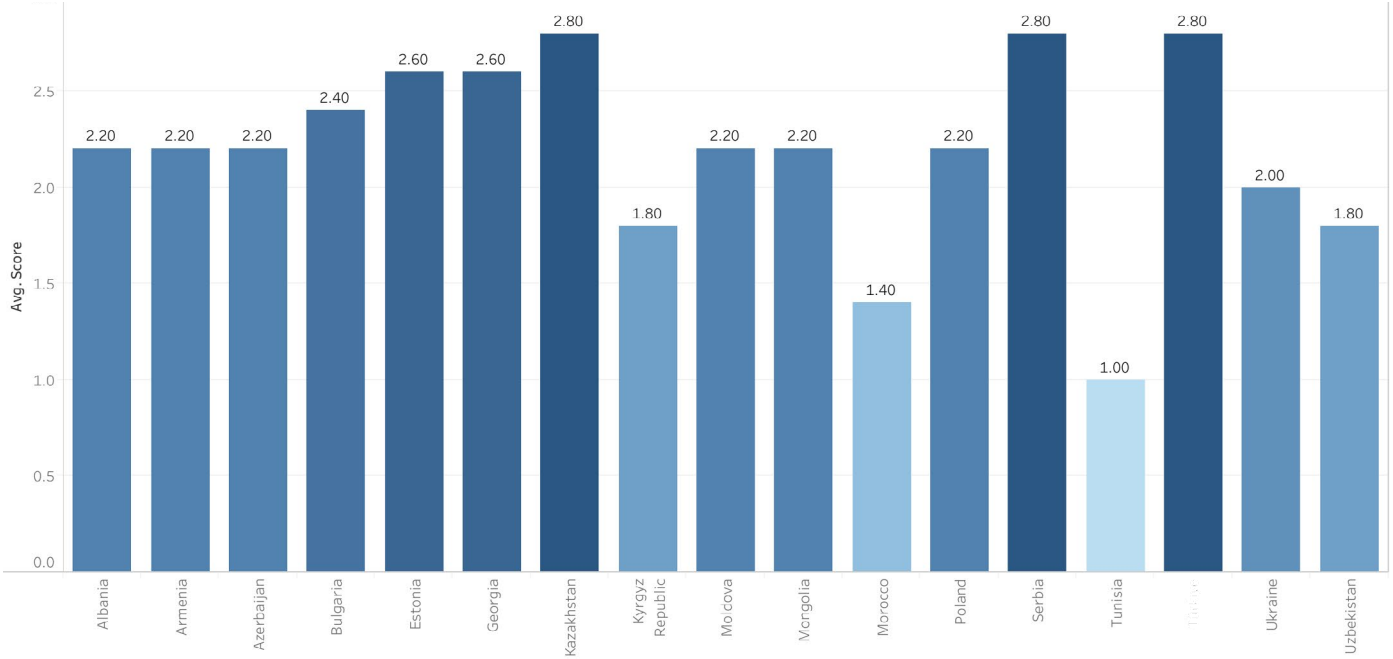
Judges have a judicial secretary and, following legal amendments introduced in 2021, first instance courts will also have legal assistants, organised in a legal service unit in the court. Legal assistants must complete a two-year training program at the School of Magistrates. Legal assistants are also instructed in commercial law during this training.


Ukraine

[67] Using the same definition of "commercial judges" as for Sub-indicator 2.1.3. above.

[68] Using the same definition of "commercial judges" as for Sub-indicator 2.1.3. above.

Indicator 2.2. Use of mediation/ADR tools



Alternative dispute resolution (ADR) encompasses a variety of services that include mediation, conciliation, arbitration, negotiated settlements, judicial settlement conferences, summary jury trials, mini trials, neutral evaluation, online dispute resolution (ODR), and others.[69] ADR has an important role to play in the context of online courts. Since the parties to such a case may never meet in person or before a judge, it is important that the electronic platform itself incorporate mechanisms that would encourage the parties to reach a settlement, e.g., by proposing options or connecting the parties to a mediator/facilitator who might aid their discussions.[70]

[69] See for more details Gramckow, H., Ebeid, O., Bosio, E., & Silva Mendez, J. L., 2016. Good Practices for Courts, The World Bank, at: https://openknowledge.worldbank.org/bitstream/handle/10986/25101/108234.pdf?sequence=4, access: 31.01.2022

[70] For example, the Civil Resolution Tribunal of British Columbia, which is one of only a few functioning online courts, incorporates both negotiation and facilitation through a case manager into its process. A settlement reached in such a manner can be turned into an enforceable order. See https://civilresolutionbc.ca/crt-process/.

Scoreboard - Indicator 2.2. Use of mediation/ADR tools

Dimension/ Indicator / Sub-indicator	Albania	Armenia	Azerbaijan	Bulgaria	Estonia	Georgia	Kazakhstan	Kyrgyz Republic	Moldova	Mongolia	Morocco	Poland	Serbia	Tunisia	Türkiye	Ukraine	Uzbekistan
Availability and use of online solutions for out-of..	1	1	1	2	3	2	2	1	1	1	1	1	2	1	3	1	1
Availability of an official register of mediators acc..	3	2	3	3	2	3	3	3	3	2	1	3	3	1	2	3	3
Availability of incentives for mediation	1	3	3	2	2	3	3	1	3	3	1	2	3	1	3	2	2
Availability of mediation in civil/commercial disputes	3	3	3	3	3	3	3	2	2	3	2	3	3	1	3	3	2
Enforceability of mediation settlement agreements	3	2	1	2	3	2	3	2	2	2	2	2	3	1	3	1	1

Score
1 3

This indicator focuses on the actual use of ADR, and mediation in particular, in commercial or civil disputes. The mean score (2.19) for all jurisdictions examined for Indicator 2.2 is above the average score of 2, with individual country scores for the included sub-indicators varying greatly. Kazakhstan, Serbia, and Türkiye receive an average score of 2.8, which is close to the highest score of 3, suggesting high levels of mediation and ADR development. Bulgaria, Estonia and Georgia are in the next group with relatively high average scores for this indicator (around 2.5). Albania, Armenia, Azerbaijan, Moldova, Mongolia, Poland, and Ukraine have mean scores that are equal to or slightly higher than 2. The remaining four countries (the Kyrgyz Republic, Morocco, Tunisia, and Uzbekistan) have a mean score of less than 2, with Tunisia obtaining the lowest possible score of 1 for all sub-indicators of Indicator 2.2. Country scores are particularly low for *Sub-indicator 2.2.5. Availability and use of online solutions for out-of-court settlement* (the average country score is 1.47). The sub-indicator country scores are examined in greater depth below.

Sub-indicator 2.2.1. Availability of mediation in civil/ commercial disputes

This sub-indicator focuses on the general availability of mediation in civil and/or commercial disputes. In the majority of analysed jurisdictions, there is legislation governing mediation in civil/commercial disputes, as well as procedures/projects implementing court-annexed mediation (12 in total). While there is legislation governing mediation in civil/commercial disputes, no court-annexed mediation is available in the Kyrgyz Republic, Moldova, Morocco, and Uzbekistan. In Tunisia, there is no legislation governing mediation in civil/commercial disputes.

Court-annexed mediation in Armenia

With the following regulations, Armenian legislation seeks to implement court-annexed mediation:

1) During the preliminary court session, the court of first instance is required to determine whether or not the parties to the dispute are willing to settle the dispute through mediation by clarifying the essence of mediation.[71]

2) If the judge considers that there is a strong possibility that the dispute can be resolved amicably, he or she may, on his or her own initiative, schedule a one-time free mediation session lasting not less than two hours and not more than four hours.[72]

3) At any stage of the proceedings, the Court of First Instance or the Court of Appeal may, with the consent of the parties or upon a motion filed by them, assign a mediation process involving a licensed mediator in order to reach reconciliation between the parties.[73]

[71] Article 167 (1-6) of the Civil Procedure Code of Armenia.

[72] Article 184 (2) of the Civil Procedure Code of Armenia.

[73] Article 184 (1) of the Civil Procedure Code of Armenia.

Sub-indicator 2.2.2. Availability of an official register of mediators accessible online

This sub-indicator assesses the availability of an official register of accredited mediators online. Accreditation of mediators is required and there is an official registry of mediators publicly available online in the majority of jurisdictions (11 in total). While accreditation of mediators is required, there is no official registry of mediators publicly available online in Armenia, Estonia, Mongolia, and Türkiye. No accreditation of mediators is required in Morocco and Tunisia.

Licensing of mediators in Serbia

In Serbia, articles 33-37 of the Law on Mediation in Dispute Resolution stipulate the conditions for licensing of mediators, including training, high education, and Serbian citizenship (except e.g., in international disputes). The Ministry of Justice is competent to issue licenses to mediators. The official registry of mediators is available online.[74] Further, the Law on Mediation in Dispute Resolution stipulates that judges may mediate only outside of working hours, and free of charge.

[74] Available at: https://www.mpravde.gov.rs/intermediaries.php

[75] It should be noted that in early 2023 Bulgaria adopted amendments to its Mediation Act and its Civil Procedure Code, which introduce a mandatory initial mediation session for a broad range of civil cases, at the stage where they have already been brought to court. The mediation shall be conducted by dedicated mediation centers established in courts. The amendment is due to enter into force on 1 July 2024.

[76] According to Article 74.5 of the Civil Procedure Code of Mongolia.

[77] Article 29.2 of the Law on Mediation states that mediation costs shall be borne by the state.

Sub-indicator 2.2.3. Availability of incentives for mediation

The availability of incentives for mediation in commercial disputes is a contributing factor for the successful implementation and take-up of mediation initiatives and programmes. Three types of incentives are assessed under this sub indicator:

- reduction of court fees upon successful settlement;
- one or more free mediation session(s);
- requirement for attempting mediation before litigating some types of disputes.

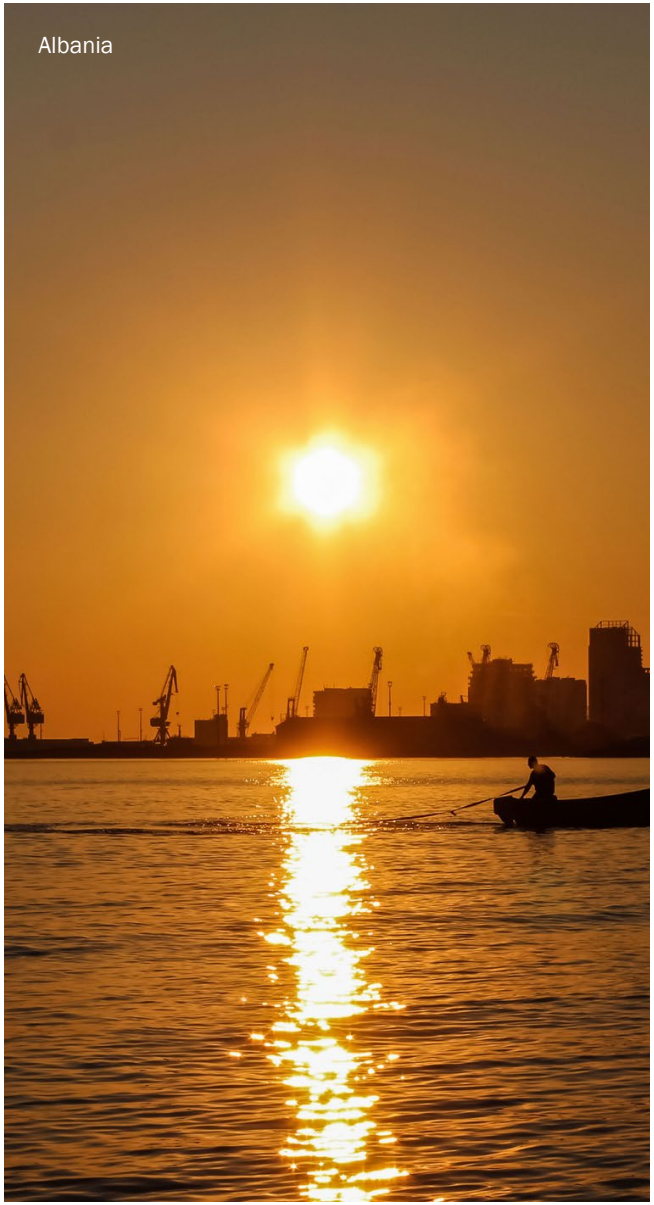
There are at least two types of incentives for the use of mediation in commercial disputes in eight jurisdictions (Armenia, Azerbaijan, Georgia, Kazakhstan, Moldova, Mongolia, Serbia, and Türkiye). At least one type of incentive for mediation is provided in Bulgaria,[75] Estonia, Poland, Ukraine, and Uzbekistan. There are no incentives for the use of mediation in commercial disputes in Albania, the Kyrgyz Republic, Morocco, and Tunisia.

Incentives for the use of mediation in commercial disputes in Mongolia

In Mongolia, the following incentives for using mediation in commercial disputes after filing a claim in court are provided:

- Reduction of court fees to 50% upon successful settlement;[76]
- One or more free mediation session(s);[77]
- Requirement to attempt mediation before litigating certain types of disputes (e.g., divorce cases).

Estonia



Sub-indicator 2.2.4. Enforceability of mediation settlement agreements

Mediation's added value in civil and commercial disputes can be strongly influenced by the enforceability of mediation settlement agreements, regardless of whether they are made out of court, within the framework of traditional litigation, or in an online court. This sub-indicator assesses the level of enforceability of mediation settlement agreements. At least some types of mediation settlement agreements[78] are deemed to have the force of a court judgment and are directly enforceable in Albania, Estonia, Kazakhstan, Serbia, and Türkiye. In the majority of jurisdictions, mediation settlement agreements are directly enforceable and have the legal force of a court judgment, subject to the approval of the competent court or a notary certification (8 in total). Mediation settlement agreements of commercial disputes are not directly enforceable in Azerbaijan, Tunisia, Ukraine, and Uzbekistan, in other words, they would be enforced like any other contract.

Direct enforceability of mediation settlement agreements in Albania

In Albania, when the parties agree on an acceptable resolution of their dispute together with the mediator, they sign the respective agreement, under the meaning and in accordance with the terms, cases, and procedures prescribed by law. This agreement, like the arbitration decisions, is binding and enforceable.[79] The agreement shall be considered an executive title, and the bailiff service shall be responsible for its execution. This rule also applies to out-of-court mediation.

Sub-indicator 2.2.5. Availability and use of online solutions for out-of-court settlement

The availability and use of online solutions for out-of-court settlement is significant for the speedy and efficient commercial dispute resolution, especially given the context of the COVID-19 pandemic and the fast development of supportive ICT infrastructure for dematerialised communication. By definition, it is very relevant for the implementation of any ODR initiative. Countries' average scores are particularly low for this sub-indicator. There is at least one state or private online mediation platform and it is commonly being used in civil/ commercial dispute resolution in Estonia and Türkiye. While at least one public or private online mediation platform exists, it is either not used or is used infrequently in Bulgaria, Georgia, Kazakhstan, and Serbia. No online solutions for out-of-court settlements of disputes are available in the majority of jurisdictions (11 in total).

State online mediation platform in Türkiye

There is a state online mediation platform functioning in Türkiye.[80] The Mediation Department of the Ministry of Justice, as well as the mediators, have access to the online mediation platform. The platform allows for the appointment of mediators from an official list, online application, document upload and storage, etc. Even if professional court users do not have direct access to the online mediation platform, they frequently use online application for mediation through the UYAP system.[81] Mediation meetings can be held by teleconference or videoconference (particularly in light of the COVID-19 pandemic). The protocol of the mediation session, including any settlement reached, can be prepared via e-mail correspondence and signed electronically by the parties and the mediator.

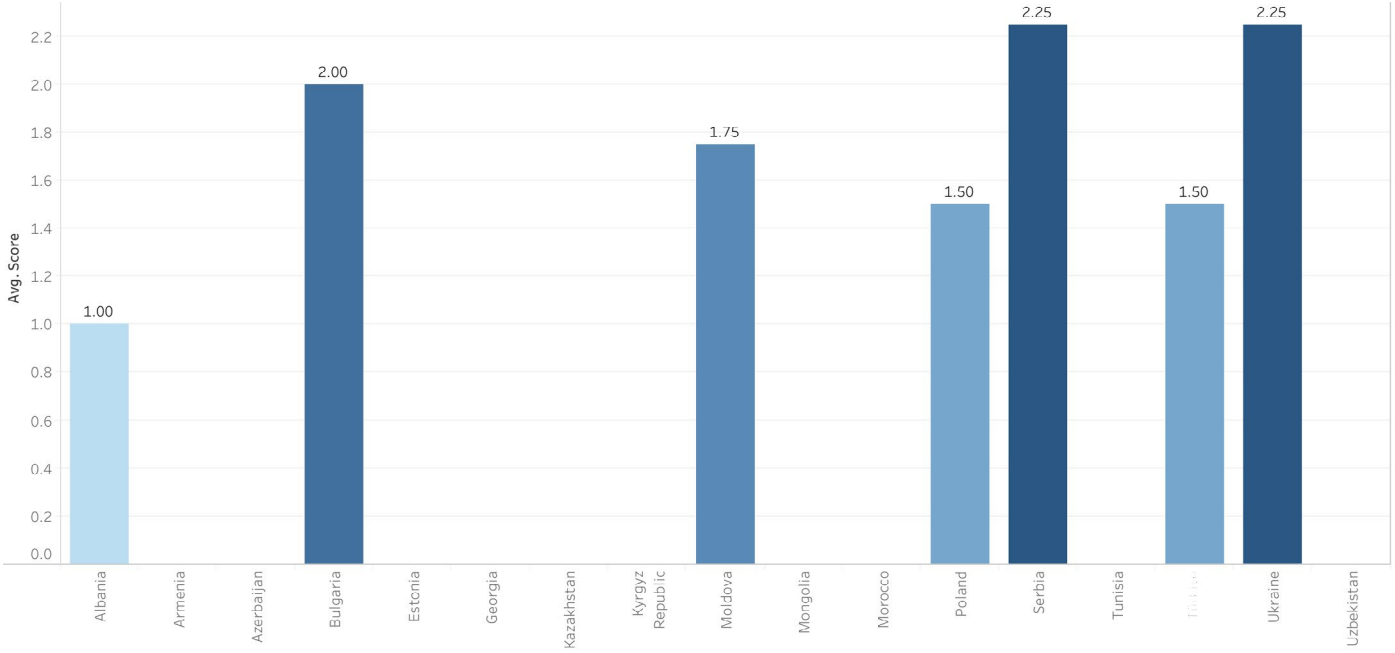
[78] Signed by the mediator and the parties (or their representatives).

[79] Article 22 and 23 of the Albanian Law on Mediation in Dispute Resolution.

[80] Established under Regulation on the Implementation of Law on Mediation published in Turkish Official Gazette numbered 30439 and dated 2 June 2018.

[81] See for more details Textbox 14 above.

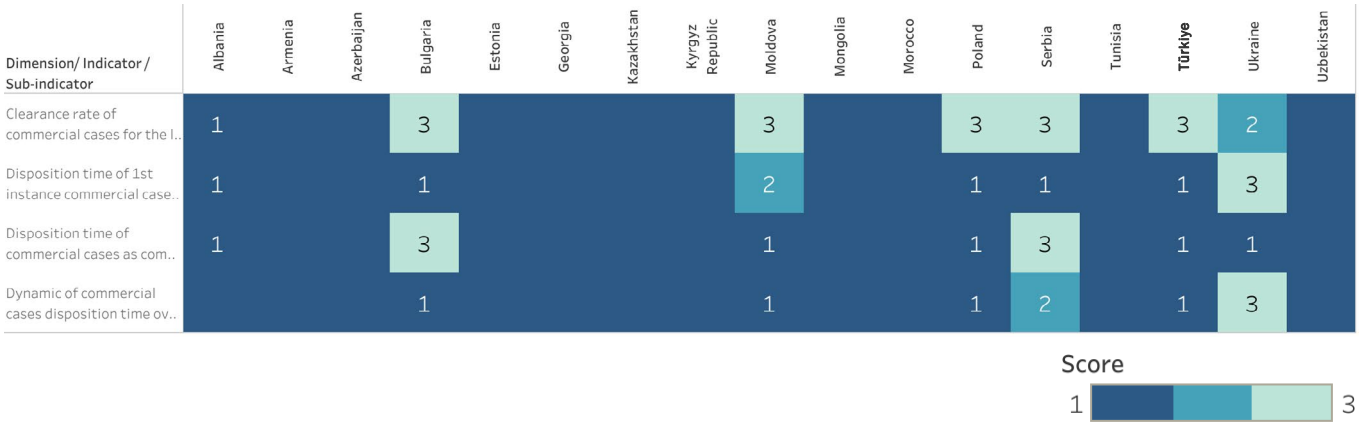
Indicator 2.3. Efficiency and effectiveness of commercial litigation



This indicator assesses key statistics for the efficiency and effectiveness of commercial litigation.[82] Ideally, such statistics should be available and should allow for a comparison between commercial and general civil cases in order to identify potential areas for improvement. However, the required disaggregated statistical data were not available in 10 countries (Armenia, Azerbaijan, Estonia, Georgia, Kazakhstan, the Kyrgyz Republic, Mongolia, Morocco, Tunisia, and Uzbekistan). For the seven jurisdictions where statistical data were available, the mean jurisdiction score is 1.53, which is lower than the average assessment score of 2, indicating that the efficiency and effectiveness of commercial litigation in those jurisdictions is relatively low on the average. This could be due to a variety of factors, including a lack of necessary resources (such as trained judges and court staff), complex commercial litigation procedures, rapidly growing number of commercial cases, or other country-specific obstacles that could impede effective and efficient commercial dispute resolution. Only Serbia and Ukraine have mean Indicator 2.3. scores greater than 2. Bulgaria has a mean score of 2, whilst Moldova, Poland, and Türkiye have scores ranging from 1.5 to 1.75. Albania's mean score for all sub-indicators covered in Indicator 2.3 is 1 (the lowest achievable).

[82] Efficiency is defined as the ability to accomplish something with the least amount of time, financial resources, and effort. In other words, it looks at the economy of the process. Effectiveness is defined as the degree to which a process is successful in producing a desired result/outcome.

Scoreboard - 2.3. Efficiency and effectiveness of commercial litigation



Jurisdictions receive the highest mean scores (2.57) for Sub-indicator 2.3.1 on the clearance rate of first-instance commercial cases. The lowest mean country scores for Indicator 2.3. are observed for *Sub-indicator 2.3.4. Dynamic of commercial cases disposition time over a 3-year period*. Countries with low mean scores for this sub-indicator may be experiencing a variety of challenges that are causing delays in commercial case resolution in recent years. An examination of the country scores for each sub-indicator can be found below.

Sub-indicator 2.3.1. Clearance rate of first-instance commercial cases for the latest year for which statistics is available

This sub-indicator seeks to explore the clearance rate (CR) of first-instance commercial cases. "Clearance rate" (CR) is the ratio between the number of resolved cases and the number of incoming cases over a specified period of time (usually 1 year). The indicator is calculated as follows:

Clearance rate (%)=((Resolved cases)/(Incoming cases))×100

CR above 100% means that backlog is decreasing, while a clearing rate below 100% means backlog is increasing.[83]

The majority of analysed jurisdictions have a CR of first-instance commercial cases greater than 100% (Bulgaria, Moldova, Poland, Serbia, and Türkiye). Ukraine has a CR of 96%. Albania has a far lower CR of 66%, indicating that the commercial case backlog is expanding quickly.

Sub-indicator 2.3.2. Disposition time of 1st instance commercial cases as compared to CoE median for first-instance civil/ commercial cases

For the purposes of this sub-indicator, "disposition time" (DT) shall be expressed in days and shall be calculated as the ratio between pending cases on 31 December of the respective year and the resolved cases during the same year, multiplied by 365. This measurement demonstrates how long it would take a court to clear its current backlog at its current level of productivity and assuming no new cases are coming in.

The indicator is calculated as follows:[84]

Disposition time=((Pending cases on December 31st)/(Resolved cases))×365

In Ukraine, disposition time is more than 10% lower than the median disposition times for 1st instance civil and commercial cases in CoE Member states. This suggests that this country is relatively efficient at resolving such cases. The disposition time in Moldova is comparable to the median disposition time in CoE Member states. Disposition time is more than 10% higher than the median disposition times for 1st instance civil and commercial cases in CoE Member states, in Albania, Bulgaria, Poland, Serbia and Türkiye. The disposition times are particularly long in Albania[85] (358 days) and Türkiye (586 days), indicating that these countries may be experiencing significant delays in the resolution of commercial cases.

[83] In 2018, the median CR for CoE states has been 101%, and average CR has been 101%. See European judicial systems CEPEJ Evaluation Report, 2020 Evaluation cycle, pp. 111-117: https://www.coe.int/en/web/cepej/special-file-publication-of-the-report-european-judicial-systems-cepej-evaluation-report-2020-evaluation-cycle-2018-data-

[84] Ibid. While there is no cross-jurisdictional standard for DT, the median DT for CoE states for civil and commercial litigious cases at the first instance in 2018 has been 201 days, and the average DT is 233 days.

[85] Currently, a vetting process of judges and prosecutors is underway in Albania. It started in 2018 and until December 2022, has led to the dismissal of around 50 percent of the judges and prosecutors. This factor has decreased the output of courts. However, this is a transitory period and the number of judges in the system is expected to increase significantly in the next 4 years. Therefore, it is expected that adjudication of cases would accelerate in the coming years.

Sub-indicator 2.3.3. Disposition time of commercial cases as compared to the disposition time of general 1st instance civil cases in the latest year for which statistics is available

This sub-indicator compares the disposition time for commercial cases with the average/median timelines for resolving civil disputes in the respective jurisdiction. This indicates whether the specialisation of commercial cases (where available) has led to speeding up the resolution of these disputes. Commercial case disposition times in Bulgaria and Serbia are more than 10% shorter than general civil case disposition times. This finding indicates that commercial litigation in those two countries is faster than general civil litigation. The disposition time of commercial cases is more than 10% longer than the disposition time of general civil cases in the majority of assessed jurisdictions where data is available (Albania, Moldova, Poland, Türkiye, and Ukraine). There is a large range in commercial case disposition times observed, indicating that the efficiency of commercial litigation varies greatly across the countries studied.

Sub-indicator 2.3.4. Dynamic of commercial cases disposition time over a 3-year period (the latest 3 years for which data is available)

This sub-indicator seeks to explore the dynamic of commercial cases disposition time over a 3-year period. In doing this, it assesses whether the disposition times are improving. Commercial cases disposition time has decreased in the last 3 years by more than 10% only in Ukraine. When all types of commercial cases are considered, the disposition time in Serbia has been stable during the last 3 years. Commercial cases disposition time has grown by more than 10% in the last three years in the other jurisdictions where data is available (Bulgaria, Moldova, Poland, and Türkiye) meaning that courts have been getting progressively slower in resolving commercial disputes.

Dimension 3. Procedure for Uncontested Claims

This Dimension explores the effectiveness and efficiency of the procedures for enforcing uncontested claims in targeted jurisdictions, as well as their level of digitisation.

The term 'uncontested claims'

The term 'uncontested claims' is used in several acts.

Firstly, it is used in Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims to *"cover all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor's express consent, be it a court settlement or an authentic instrument."*

Secondly, it is used in Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure. This act refers to EU member states' efforts *"to tackle the issue of mass recovery of uncontested claims, [...] by means of a simplified order for payment procedure"* and clarifies that in this procedure *"the claimant should be obliged to provide information that is sufficient to clearly identify and support the claim in order to place the defendant in a position to make a well-informed choice either to oppose the claim or to leave it uncontested."*

Based on the understanding enshrined in these two acts, this assessment treats uncontested claims procedures as ones designed to give the creditor the opportunity to request an enforceable title for a pecuniary claim and the debtor – the opportunity to either object to that claim thus indicating that the claim is in fact contested or remain silent with the latter usually resulting in the enforceability of the claim.

Typology of uncontested claims procedures and competent authorities

Each examined jurisdiction has some type of procedure that allows creditors to quickly obtain an enforceable title for claims against which the debtor does not object. These procedures may go under different names. In many countries, they would be called order for payment procedures (e.g., Armenia, Bulgaria, Estonia, Moldova, Morocco, Poland, Serbia). In other countries, the analogous mechanism may be referred to as court order proceeding (Kazakhstan, Kyrgyz Republic, Ukraine, Uzbekistan), or pre-judgment execution proceedings (Türkiye). These procedures are usually conducted by the courts (e.g., Azerbaijan, Bulgaria, Estonia, Kazakhstan, Kyrgyz Republic, Moldova, Morocco, Poland, Ukraine, Uzbekistan) but there are also countries where they are conducted by other authorities such as enforcement agents (Georgia, Türkiye).

Oftentimes, more than one procedure for obtaining an enforceable title for uncontested claims may be available in a jurisdiction, thus giving the creditor the opportunity to choose the most appropriate procedural route. Thus, in Poland, two court procedures are in place, order for payment proceeding and writ of payment proceeding. The former procedure can be conducted by common courts only, whereas the latter could be conducted both through the common courts and a through dedicated and fully digitised E-court.

In other countries where two procedures are available, these are conducted by different authorities. Thus, in Serbia, there is an order for payment procedure, conducted by the courts, as well as enforcement based on authentic title procedure conducted by enforcement agents (and, in some cases also by courts). The two procedures are regulated in two different laws and are similar but not identical in scope. In Armenia[86] and in the Kyrgyz Republic, there is a court procedure, as well as a notary procedure; and in Georgia, one of the available procedures is with enforcement agents and one with notaries.


Serbia

[86] In Armenia, even though the procedure for the issuance of writs of execution by notaries based on notarized contracts was introduced in 2016, it is still not being applied due to the lack of necessary supporting infrastructure.

Procedures applicable to uncontested claims in Serbia

In Serbia, there are two different procedures that the creditor can use to collect claims, for which he/she expects no objection from the debtor. These procedures are quite similar in scope and in respect of many types of claims the creditor can choose which one to apply.

(1) The order for payment procedure is regulated by the Civil Procedure Law. The procedure is applicable to monetary claims that are based on authentic titles such as public documents, private documents with certified signature of the debtor, bills of exchange and checks, excerpts from certified business books, invoices. The order for payment procedure is conducted by the courts (Basic Courts or Commercial Courts, depending on the nature of the claim). It can be used only against the main debtor.

(2) Enforcement based on authentic title is regulated by the Enforcement and Security Law. The procedure is applicable to monetary claims that are based on authentic titles, including bills of exchange and checks, invoices, excerpts from business books for utility services, public documents, bank guarantees, letters of credit, certified statements of the debtor, calculation of attorney's fees, etc. Enforcement based on authentic title can be conducted by courts or by public enforcement officers (*javni izvršitelj*). Public enforcement officers handle enforcement of monetary utility claims and enforcement of claims against public authorities and direct/indirect budget users,[87] while courts handle all other cases of enforcement based on authentic titles.[88]

Generally, enforcement based on authentic title is the quicker procedure since the statutory timeline is 8 days and it is complied with. By contrast, no timelines are set by law for the order for payment procedure and in practice it can exceed 3 months. In the framework of this assessment, the order for payment procedure was examined since, being a court procedure, it is more relevant for commercial ODR.

In all jurisdictions where courts are the competent authority to examine such requests for the issuance of enforceable titles, the general rules on territorial jurisdiction apply, with two exceptions. In Estonia, the procedure is fully centralised and all order for payment applications are examined by the Haapsalu Courthouse of Pärnu District Court.[89] In Poland, the electronic procedure with the E-court is centralised and all such applications are examined by one division of common court in Lublin. However, if parties wish to file on paper, the procedure develops through the common courts and the general rules of territorial jurisdiction apply.

[87] Article 3 in connection with Article 300 of the Enforcement and Security Law.

[88] Article 3 of the Enforcement and Security Law.

[89] Article 108 of the Code of Civil Procedure.

Scope of uncontested claims procedures

The scope of uncontested claims procedures varies from country to country. In some countries, this procedural route is available to a broad range of monetary claims and there is no special requirement to the form of the document that gives rise to the claim other than a simple written form (e.g., the creditor may base the claim on an invoice ensuing from a commercial contract). The procedure has very broad scope in Armenia, Azerbaijan, Bulgaria, Estonia, Georgia, Kyrgyz Republic, Moldova, Poland, Tunisia, Türkiye, Ukraine. By contrast, in other targeted jurisdictions, the scope of the procedure is much narrower and covers only claims ensuing from some very specific types of documents (e.g., notary deeds, bills off exchange, mediation settlements, utility claims or state claims). The latter can be observed in Kazakhstan, Morocco, Mongolia, Serbia, Uzbekistan.

In countries where the uncontested claims procedure has a narrower scope, it is not suitable for use with regard to commercial contracts. In such jurisdictions, even for straightforward monetary claims ensuing from commercial relationships, creditors must resort to the more complex, time-consuming and costly litigation route.

A final element that characterizes the scope of uncontested claims procedures is whether their applicability depends on the amount of the claim or whether, as long as the formal criteria are met, they can be used for any monetary amounts. Both approaches can be observed in targeted jurisdictions. Albania, Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Mongolia, Serbia, Türkiye and Uzbekistan do not introduce a ceiling for the applicability of the procedure. By contrast, in Bulgaria, Estonia, Morocco, Poland and Ukraine (with the exception of Morocco, these are all countries where the procedure has very broad scope), there is such a ceiling. Monetary ceilings for the applicability of uncontested claims procedures are usually introduced in jurisdictions, where the scope of the procedure is quite broad (e.g., it applies not only to authentic documents but also to simple monetary claims based on contracts). The intention behind such ceilings is to require a more in-depth examination of claims that have very high value, rather than apply to them the quick and easy route provided for orders for payment in general.

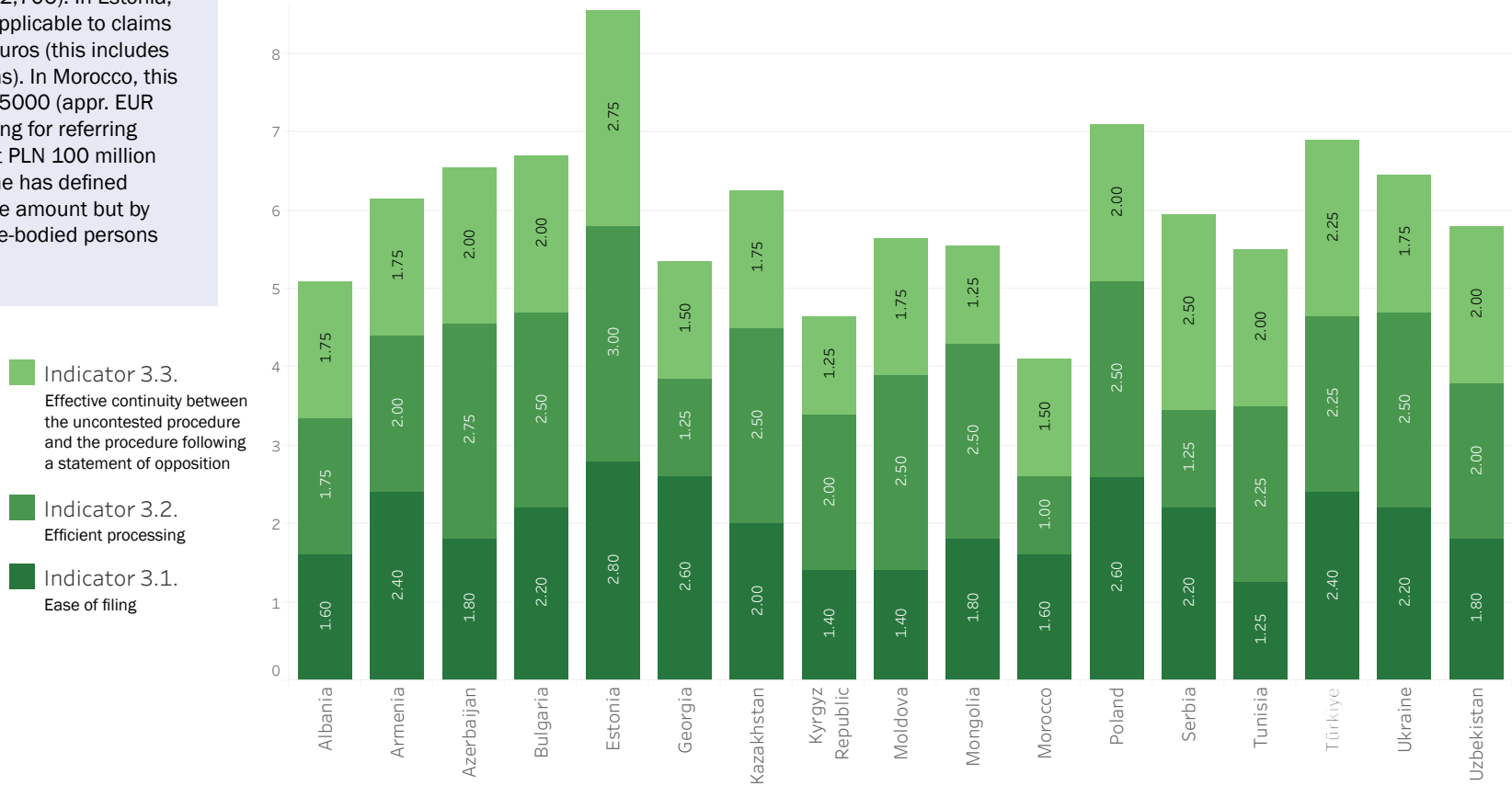
Monetary ceilings for the applicability of uncontested claims procedures

Countries that choose to introduce a ceiling for the applicability of their uncontested claims procedure may approach this matter in different manner. Thus, Bulgaria does not provide for a ceiling for orders for payment issued on the basis of authentic documents or excerpts from bank accounting documents; however, for other claims of private persons, there is a ceiling in the amount of BGN 25,000 (appr. EUR 12,706). In Estonia, the order for payment procedure is applicable to claims with an amount of up to EUR 8000 euros (this includes both the principal and ancillary claims). In Morocco, this ceiling is currently quite low, at MAD 5000 (appr. EUR 465); in Poland, by contrast, the ceiling for referring claims to the E-court is very high – at PLN 100 million (appr. EUR 21 million). Finally, Ukraine has defined the ceiling not in terms of an absolute amount but by reference to 100 living wages for able-bodied persons (approx. EUR 8500).

Overview of country performance under Dimension 3

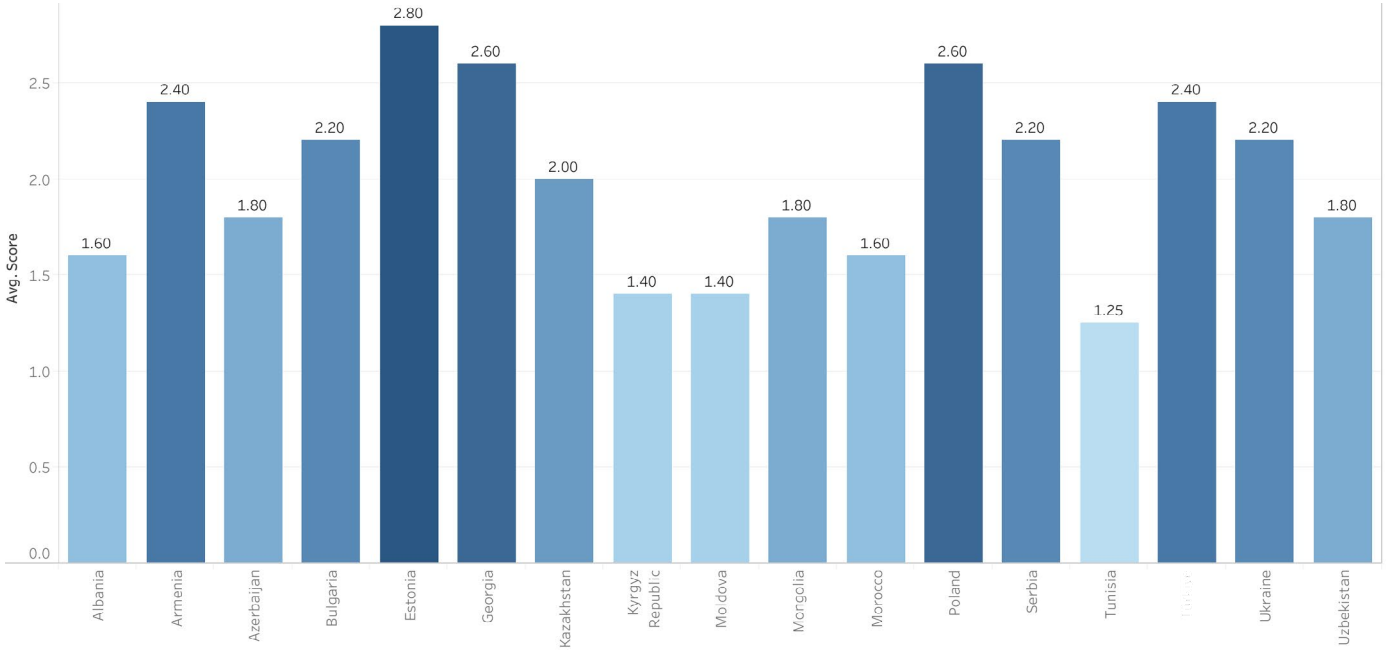
The performance of countries under Dimension 3 varies greatly. Countries perform best under Indicator 3.2. Efficient processing, and worst under Indicator 3.3. Effective continuity between the uncontested procedure and the procedure following a statement of opposition.

The clear leader is Estonia, which has an excellent performance under all three indicators explored within Dimension 3. The other targeted jurisdictions display quite inconsistent performance with Poland, for example, doing very well under Indicators 3.1. and 3.2. but lagging behind in Indicator 3.3. and Georgia, showing a good performance under Indicator 3.1. but lagging significantly behind in Indicators 3.2. and 3.3. Albania, Morocco and Uzbekistan display consistently low scores across all Indicators included in this Dimension.



Indicator 3.1. Ease of filing

This indicator seeks to assess the ease of filing the application for issuance of the enforceable title within the uncontested claims procedures. Due to the non-litigious nature of these procedures, no court hearings or evidence collection are required. As a result, filing the application is the only way for the claimant to formulate his or her request.



There is room for improvement of the ease of filing in many of the assessed jurisdictions. Estonia (2.8) is the leader in this indicator, followed closely by Poland (2.6, but only for its procedure at the E-court) and Armenia (2.4). Countries that display significantly lower scores include Albania (1.6), Kyrgyz Republic (1.4), Moldova (1.4), Morocco (1.6) and Tunisia (1.25). The sub-indicators related to the availability and use of forms for filing the claim (3.1.2.) and Simplified rules on attachment of evidence to the claim (3.1.5.) have the greatest contribution to lower country scores for Indicator 3.1. By contrast, the sub-indicators related to the level of court fees for filing the claim (3.1.4.) and to effective self-representation (3.1.1.) have high average scores across examined jurisdictions. Below the country performance for each sub-indicator is discussed in more detail.

Scoreboard - 3.1. Ease of filing

Dimension/ Indicator / Sub-indicator	Albania	Armenia	Azerbaijan	Bulgaria	Estonia	Georgia	Kazakhstan	Kyrgyz Republic	Moldova	Mongolia	Morocco	Poland	Serbia	Tunisia	Türkiye	Ukraine	Uzbekistan
Availability and use of forms for filing the claim	1	2	1	3	3	3	1	1	1	1	1	3	1	1	3	2	1
Availability and use of online filing	1	2	2	2	3	3	3	1	1	1	2	3	2	1	3	2	2
Effective self-representation	2	3	3	2	3	3	2	2	3	3	1	2	2	2	2	2	2
Level of court fees for filing a claim	3	3	1	2	2	2	2	2	1	3	3	3	3		2	3	2
Simplified rules on attachment of evidence t..	1	2	2	2	3	2	2	1	1	1	1	2	3	1	2	2	2

Score
1 3

Sub-indicator 3.1.1. Effective self-representation

In principle, formal requirements to the applications shall be simple enough, so that claimants are able to conduct the process themselves, without using legal services. This would also reduce the cost of the procedure. However, even if self-representation is allowed by law, it may be hard to implement in practice. The presence of a legal possibility for self-representation and the ease with which this can be done in practice are measured by this sub-indicator.

Amongst the examined jurisdictions, there is just one in which does not allow self-representation in the procedure. In Morocco, the assistance of a lawyer is mandatory for every written procedure, including this one.

All other examined jurisdictions allow for self-representation. While there is no statistics which allows to assess whether parties tend to use legal services or not in filing such applications, local evaluators in Armenia, Azerbaijan, Estonia, Georgia, Moldova and Mongolia are of the opinion that the process is simple enough so that most creditors do not engage a lawyer; whereas in Albania, Bulgaria, Kazakhstan, Kyrgyz Republic, Poland, Serbia, Tunisia, Türkiye, Ukraine and Uzbekistan, self-representation may be allowed but in practice it is difficult to conduct the process without professional help and most creditors tend to engage a lawyer.

Sub-indicator 3.1.2. Availability and use of forms for filing the claim

A well-organized filing process typically includes the use of well-structured forms. These aid both the claimants and the judges. At present, this mechanism for structuring the claims is not sufficiently utilised in targeted jurisdictions. The average score for this sub-indicator (at 1.71) is the lowest among all sub-indicators that contribute to Indicator 3.1. Ease of filing.

Numerous jurisdictions do not have forms at all and leave the claimants to choose how to structure their requests. This is the situation in Albania, Azerbaijan, Kazakhstan, Kyrgyz Republic, Moldova, Mongolia, Morocco, Serbia, Tunisia and Uzbekistan. Countries where forms exist but are either not mandatory or are not perceived as user-friendly include Armenia and Ukraine. In Armenia, a request for an order for payment can be submitted either online or on paper. There are no forms for filing the claim on paper. In Ukraine, there are forms but those are not perceived as user-friendly by judges and lawyers alike. Finally, forms are available, and they are perceived as user-friendly in Bulgaria, Estonia, Georgia, Poland and Türkiye.

Sub-indicator 3.1.3. Availability and use of online filing

The availability and encouragement of online filing (e-filing) is a common feature of most modern systems for uncontested claims. Since the claims in these procedures are highly standardised, they are particularly suitable for online filing. Furthermore, their electronic filing and processing speeds up the work of judges by allowing the automatic generation of the act.

Only five of the examined jurisdictions have effective online filing of the applications for this procedure (Estonia, Georgia, Kazakhstan, Poland and Türkiye). The largest number of countries allow for online filing, but this option is never or rarely used (Armenia, Azerbaijan, Bulgaria, Morocco, Serbia, Ukraine and Uzbekistan). Finally, in five of the targeted jurisdictions (Albania, Kyrgyz Republic, Moldova, Mongolia, Tunisia), the claim cannot be filed online.

Sub-indicator 3.1.4. Level of court fees for filing a claim

For the uncontested claims procedure to be accessible, court fees need to be low and certainly significantly lower than the fees for standard civil litigation so that creditors are encouraged to try this procedural route first rather than resort directly to classic litigation. Therefore, this sub-indicator examines the level of court fees for uncontested claims procedures by comparing them to the level of court fees for claims of the same value launched in a standard civil or commercial litigation procedure. This is the sub-indicator within Indicator 3.1. for ease of filing, for which the average score of all assessed jurisdictions is the highest (2.31).[90]

In seven of the assessed jurisdictions (Albania, Armenia, Mongolia, Morocco, Poland, Serbia, and Ukraine), court fees for this procedure are more than 50% lower than the fee for filing a general civil/commercial claim. In some countries, the fees for this procedure are merely symbolic, e.g., in Albania, there is a fixed fee of ALL 200 (appr. 1.70 EUR); in Armenia, the fixed fee for the first instance proceedings is AMD 1500 (appr. EUR 3.75). Furthermore, in other seven jurisdictions (Bulgaria, Estonia, Georgia, Kazakhstan, Kyrgyz Republic, Türkiye and Uzbekistan), the fee for filing the claim in this procedure is between 10% and 50% lower than the fee for filing a general civil/commercial claim. Finally, in Moldova, the fee for obtaining an enforceable title in this procedure is the same as for the general civil procedure, and in Azerbaijan, the fee for the court order procedure is set in such a manner that for relatively small claims (i.e., up to EUR 5000), the court order procedure is in fact more expensive than general litigation. This means that in the latter two countries, cost-wise, there is no incentive whatsoever for creditors to try out the non-litigious route before resorting to general litigation.[91]

Reform of the Order for Payment procedure in Armenia

The order for payment procedure in Armenia was reformed in 2021. Firstly, an online system for e-filing and examining these requests was introduced.[92] However, unlike Estonia and the E-court in Poland where only electronic filing is allowed, in Armenia claimants can choose whether to file electronically or on paper. Even though the use of electronic filing is growing, judges recognize that many applications are still filed on paper. Given that the vast majority of users of this procedure are mass claimants, it can be expected that the use of electronic filing will grow further.

Secondly, there used to be no state fees for this procedure until the 2021 amendments to the Law on State Fees, which set AMD 1500 (approx. EUR 3.75) state fee for requesting an order for payment and AMD 3000 (approx. EUR 7.5) state fee for the appeal. Judges interviewed for the purposes of this assessment noted that after introducing state fees for this procedure, the number of requests for orders for payments decreased. The fact that the introduction of even a symbolic fee affected demand may indicate that part of the claims, which used to be filed under the free procedure, may have been frivolous.

Thirdly, in December 2022 legislative amendments were made, which will enter into force after the electronic systems for notaries is in place. According to these amendments, notaries would have the right to issue order for payments, if parties have agreed on that in their contracts. These rules are expected to reduce the use of the court-based order for payment procedure further.

Sub-indicator 3.1.5. Simplified rules on attachment of evidence to the claim

Simplified rules on the attachment of evidence to the uncontested claim can further streamline the filing process. Many jurisdictions where this procedure is fully digitised do not require the attachment of evidence at all, based on the premise that evidence shall be examined in case the debtor objects and the procedure is transferred to the litigious route. When there is no requirement for the attachment of evidence, the filing and examination of the claim, especially by electronic means, can be very quick. Fully electronic systems,[93] akin to online courts, often do not require evidence at this early stage because its principal purpose is not to examine the substance of the claim but only to verify whether the debtor objects to it or not.

Of the examined jurisdictions, only Estonia does not require the attachment of evidence to the claim in its fully digitised procedure. In Serbia, the attachment of evidence is not mandatory if the monetary claim does not exceed EUR 2,000. In nine jurisdictions, documentary evidence is required but may be sent by electronic means (Armenia, Azerbaijan, Bulgaria[94], Georgia, Kazakhstan, Poland, Türkiye and Uzbekistan); and in the remaining six jurisdictions (Albania, Kyrgyz Republic, Moldova, Mongolia, Morocco and Tunisia), evidence must be presented on paper.

[90] Tunisia is not scored under this sub-indicator since no court fees are due both for the order for payment procedure and for general civil litigation.

[91] In Azerbaijan, there is such an incentive for claims that exceed EUR 5000.

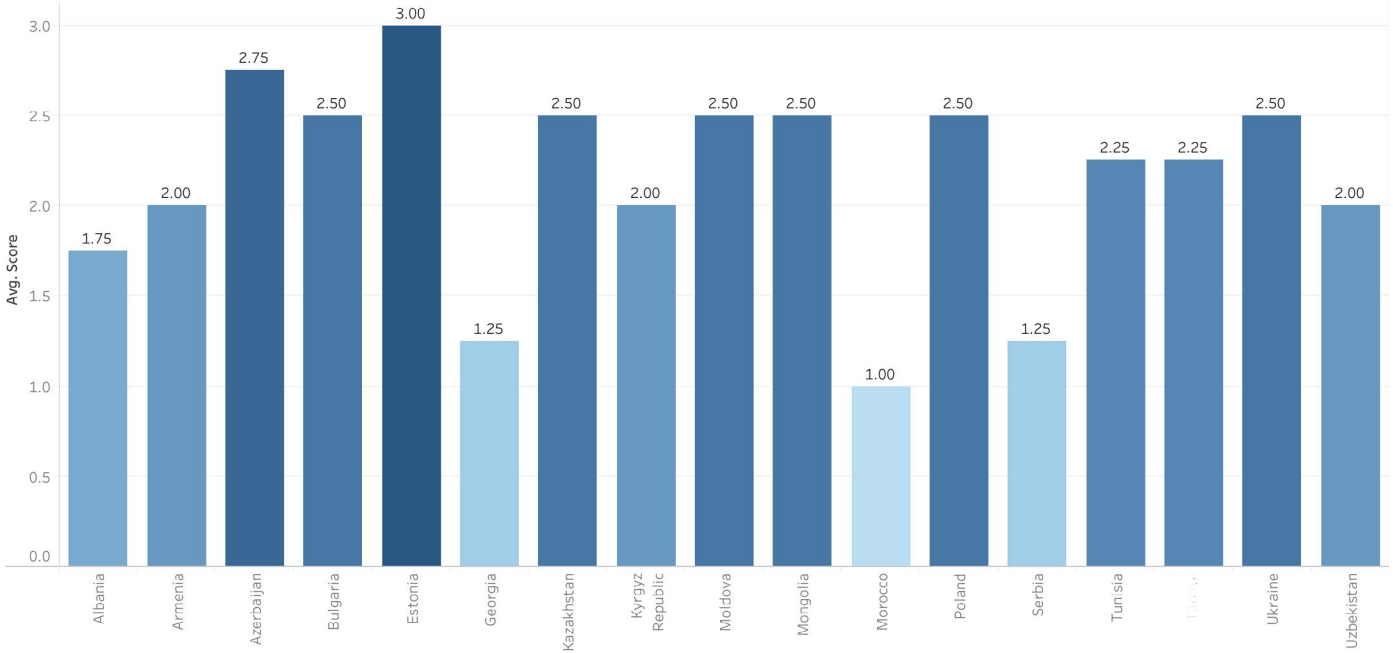
[92] See https://cabinet.armlex.am/.

[93] E.g., Germany, Hungary, Slovenia do not require the attachment of evidence.

[94] In Bulgaria, for orders for payment stemming from civil and commercial claims, evidence may be presented in electronic form; however, when the order for payment is issued based on an authentic document, the evidence must be presented in original so that upon the issuance of the enforcement title, the court can make a note on the document thus ensuring that it cannot be used twice.

Indicator 3.2. Efficient processing

This indicator assesses various aspects of the processing of the uncontested claim case after its initial filing, with an emphasis on the speed of processing. The overall score for this indicator of all assessed jurisdictions is slightly above the average of 2. The clear leader is again Estonia (3.00) followed by Azerbaijan (2.75), Kazakhstan (2.5), Mongolia (2.5), Poland's E-court (2.5) and Ukraine (2.5). Countries that appear to be lagging behind in respect of this indicator are Morocco (1.00), Georgia (1.25) and Serbia (1.25.)



The sub-indicators that display the highest score within this indicator are the one on means of service of process without proof of receipt and the one related to the actual timelines for pronouncement on the creditor's request. The latter means that overall, in most of the assessed jurisdictions, this is a rather quick procedure, even if it is not always electronic. The sub-indicator related to the ease of the debtor's objection has the lowest score across jurisdictions for this indicator. Below, the country performance for each sub-indicator is discussed in more detail.

Scoreboard - 3.2. Efficient processing

Score
1 3

Dimension/ Indicator / Sub-indicator	Albania	Armenia	Azerbaijan	Bulgaria	Estonia	Georgia	Kazakhstan	Kyrgyz Republic	Moldova	Mongolia	Morocco	Poland	Serbia	Tunisia	Türkiye	Ukraine	Uzbekistan
Availability of options for service to the debtor with..	3	1	3	3	3	1	3	2	3	3	1	3	2	3	2	3	1
Ease of debtor's objection	1	3	2	3	3	2	1	2	1	1	1	3	1	1	3	1	2
Length of timelines for pronouncement	2	2	3	2	3	1	3	2	3	3	1	2	1	3	3	3	3
Predictability of the timelines for pronouncem..	1	2	3	2	3	1	3	2	3	3	1	2	1	2	1	3	2

Sub-indicator 3.2.1. Predictability of the timelines for pronouncement

The timelines for pronouncement on the applications should be clear, identifiable and predictable. To assess whether this is indeed the case, this sub-indicator measures whether these timelines are set in law and, if they are, whether the statutory requirements are being complied with in practice.

In most examined jurisdictions, there are statutory timelines for pronouncement on the request to issue an enforceable title. In Azerbaijan, Estonia, Kazakhstan, Moldova, Mongolia and Ukraine, the local evaluators' assessment is that these timelines are generally complied with. By contrast, even though such timelines exist in the legislation of Armenia, Bulgaria, Kyrgyz Republic, Poland, Tunisia and Uzbekistan, these are frequently disregarded. Finally, in Albania, Georgia, Morocco, Serbia and Türkiye, there are no statutory timelines for such pronouncements.

Sub-indicator 3.2.2. Length of timelines for pronouncement

This sub-indicator explores the actual time it usually takes to obtain a pronouncement on a request for the issuance of an enforceable title. In well-functioning uncontested claims systems, orders for payment and similar documents in the uncontested claims procedure are typically issued in less than a month.

Pronouncement within a month is reported in eight of the examined jurisdictions (Azerbaijan, Estonia, Kazakhstan, Moldova, Mongolia, Tunisia, Türkiye[95], Ukraine and Uzbekistan). It should be noted that in some jurisdictions where pronouncement is quite quick, this may be due to the very low level of utilization of the procedure. Thus, in Uzbekistan, such cases account for less than one percent of all cases at economic courts, whereas in Estonia they account for more than half of all cases. In other six jurisdictions, the competent authority usually takes between one and three months to take action on the request (Albania, Armenia, Bulgaria, Kyrgyz Republic, and Poland). Finally, the timeline for issuance of the enforceable title may well exceed three months in Georgia, Morocco, and Serbia.

[95] In Türkiye, the review of applications by bailiffs for commencement of execution proceedings takes 1 – 3 business days. They review the application and as per the claimant's request, they issue payment orders for service on debtors within a few business days. However, professional court users should closely monitor the process and visit the relevant Bailiff Office given that bailiffs may, from time to time, overlook such requests sent by electronic medium and thus following up on the digital request by way of physically visiting the bailiff is preferable.

Sub-indicator 3.2.3. Availability of options for service to the debtor without proof of receipt

Once the court (or other competent authority) has reviewed the application and issued the document ordering the debtor to pay, the latter must be served with this document. This is an important stage of the procedure that is viewed as problematic in many jurisdictions since debtors may actively avoid service of process. The procedural laws of most legal systems provide for valid methods of service that can overcome a situation where a debtor with a known address is actively seeking to avoid service. The availability of such methods for valid service is important since without them, a debtor could very easily thwart the finalization of the procedure. At the same time, these methods must strike a fine balance between the need to protect the debtors' right to fair trial and the need to disincentivize debtors from avoiding service. To assess the availability of such methods and, by extension, the possibility to conduct an effective procedure even when the debtor is avoiding service or is otherwise unavailable at his or her address, the MLAT takes as a standard the rules on service without proof of receipt under Regulation (EC) No 1896/2006 creating a European order for payment procedure. Even though the regulation is not applicable in all EBRD CoOs, its development has been based on extensive research and consultation and it therefore sets a standard in this field.

Ten of the assessed jurisdictions (Albania, Azerbaijan, Bulgaria, Estonia, Kazakhstan, Moldova, Mongolia, Poland, Tunisia, Ukraine) provide for at least two of the methods of service without proof of receipt under Regulation (EC) No 1896/2006. The methods of service without proof of receipt which are most frequently allowed include (1) personal service at the defendant's personal address on persons who are living in the same household as the defendant or are employed there; (2) in the case of a self-employed defendant or a legal person, personal service at the defendant's business premises on persons who are employed by the defendant; and (3) deposit of the order at a post office or with competent public authorities and the placing in the defendant's mailbox of written notification of that deposit, provided that the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits. In three jurisdictions (Kyrgyz Republic, Serbia and Türkiye), only one such method is available. Finally, in four of the targeted countries (Armenia, Georgia, Morocco and Uzbekistan), valid service in this procedure can only be performed personally on the debtor.

Service to the Debtor in the Court Order Procedure of Uzbekistan

The court order procedure in respect of commercial entities is regulated in the Economic Procedure Code of Uzbekistan. Unlike most other similar procedures where the court or the other competent authority is tasked with serving the document to the debtor, in Uzbekistan the law stipulates that the creditor must deliver a copy of the application for a court order to the debtor and must present to the court a proof thereof. Moreover, the guiding explanation of the Plenum of the Supreme Economic Court of the Republic of Uzbekistan states that the proof of service to the debtor of the copy of the application for a court order must be evidenced by:

- For a legal entity – the signature of its head or employee, certified by a seal (if any) or a stamp;
- For a citizen – his/her personal signature.

In case of non-compliance with these requirements – lack of signature and (or) stamp of the debtor on a copy of the application – the application for a court order shall be returned to the applicant (creditor).[96]

The challenges to validly serve to a debtor in the framework of the court order procedure in Uzbekistan may be one reason why this procedure is becoming less and less popular. Thus, according to judicial statistics, in 2018, 15,216 cases (3.8% of the total number of cases) were heard in this procedure, in 2019 - 10,037 (5.1%), in 2020. - 1,340 (1.3%) and in 2021 - 1,080 (0.6%).[97]

[96] Articles 137 and 141 of the Economic Procedure Code of Uzbekistan and Paragraph 9 of Resolution of the Plenum of the Supreme Economic Court of the Republic of Uzbekistan No. 254 dated 05.12.2013.

[97] Statistics for 2018-2021 available on the website of the Supreme Court of Uzbekistan.

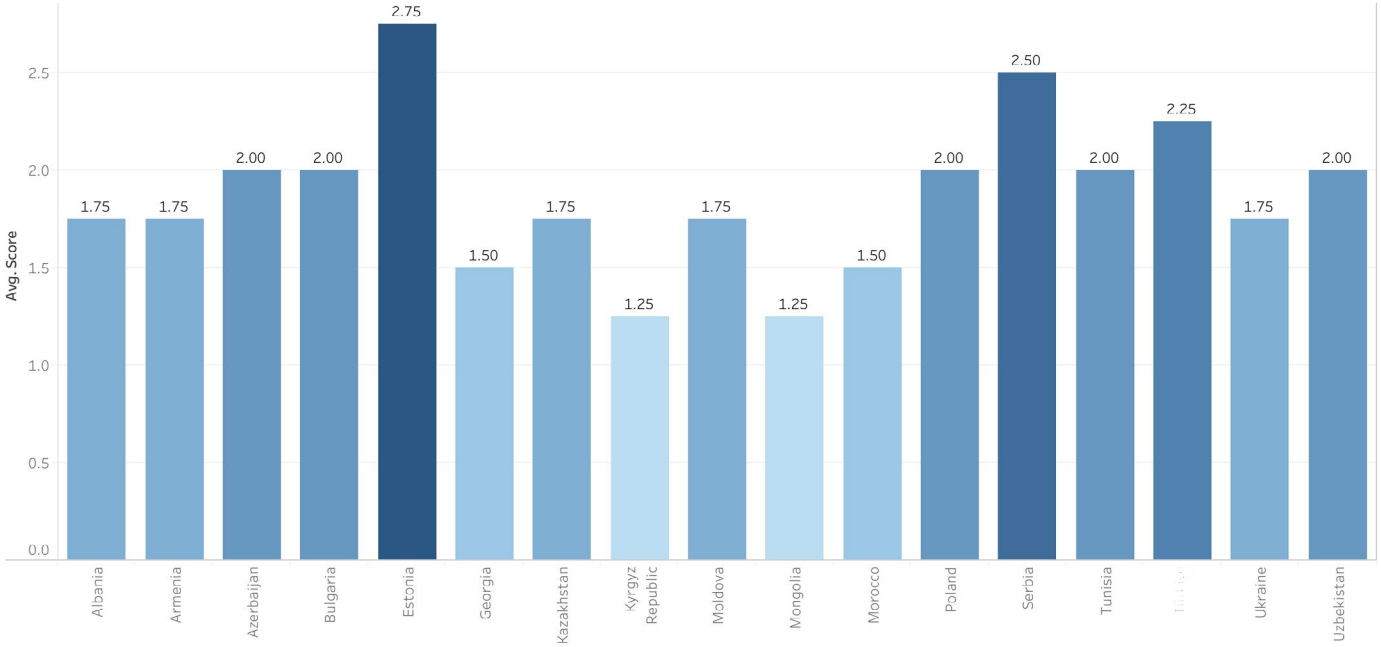
Sub-indicator 3.2.4. Ease of debtor's objection

Generally, procedures for enforcing uncontested claims provide a quick and easy way for creditors to obtain an enforceable title. In order to ensure equality of arms in this procedure, it is important that the debtor has an equally simple and quick way to object, thus indicating that the claim is not in fact uncontested and should be examined in classical litigation. The ease of objecting ensures the debtor's access to justice and right to defence. This simplicity is of less importance in jurisdictions where the procedure is applicable only to authentic instruments; however, in jurisdictions where the procedure applies to many other types of monetary claims, the simplicity of the objection is paramount. In essence, this means that a simple "I object" would be sufficient to indicate to the court (or the relevant authority) that the claim is in fact contested and needs to be examined in the framework of a litigation procedure. However, the conducted assessment indicates that this sub-indicator receives the lowest score within the framework of the indicator.

Only in five countries (Armenia, Bulgaria, Estonia, Poland and Türkiye), debtors can object without providing any explanations/justification thereof and they are provided with guidance as to the consequences of objecting/not objecting. In a further four countries (Azerbaijan, Georgia, Kyrgyz Republic and Uzbekistan), debtors can object to the claim without giving any explanations/justification thereof but are not provided with guidance as to the consequences of objecting/not objecting. Finally, in the remaining eight countries (Albania, Kazakhstan, Moldova, Mongolia, Morocco, Serbia, Tunisia and Ukraine), debtors need to justify their objection. The latter setup has two major implications. First, it complicates the procedure for the court (or the other relevant authority) because it requires it to examine, in the framework of this simple procedure, the content of the objection. Secondly, it complicates the procedure for the debtor, because she or he may need to engage a lawyer or otherwise make a more substantial effort to indicate that the claim is in fact contested.

Indicator 3.3. Effective continuity between the uncontested procedure and the procedure following a statement of opposition

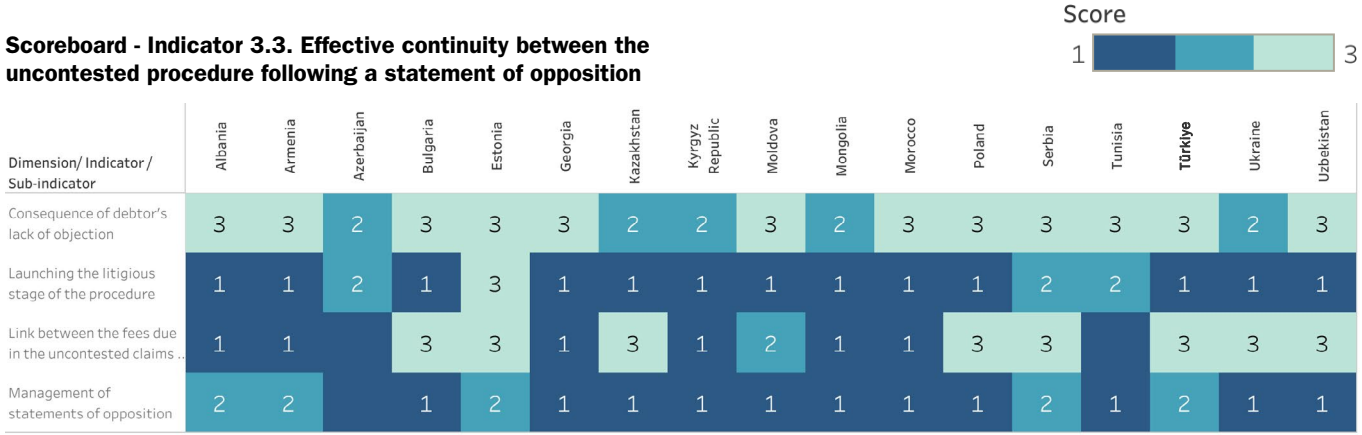
If the debtor files a statement of opposition (referred to also as an objection) against the claim, the order to pay/writ cannot enter into force or, in some jurisdictions where it has entered into force immediately, its enforcement would be suspended. Under such circumstances, the creditor must prove his claim in the framework of a litigious procedure. This indicator evaluates the rules governing how this litigious procedure commences and how closely it is linked to the uncontested one. Systems which have ensured a smooth transition between the uncontested and the contested claims procedures, one where the claimant need not file the same documents or carry out very similar procedural actions twice, would be able to more easily digitalise not only the uncontested claims procedure but also the litigious procedure that follows the uncontested claims one. This could enable the integration of both procedures into an online court process.



The overall score for this indicator of all assessed jurisdictions is below the average of 2. This means that generally, the level of integration of the uncontested claims procedure and the procedure which follows a statement of opposition is quite low. Like other indicators under this dimension, the leader is again Estonia (2.75) followed by Serbia (2. 5) and Türkiye (2.25). Countries that appear to be lagging behind in respect of this indicator are Kyrgyz Republic (1.25), Georgia (1.5) and Morocco (1.5).

The sub-indicator that displays the highest score (2.71) within this indicator is the one regarding the consequence of debtor's lack of objection, which means that in most countries, if the debtor does not object or objects only partially, the part of the claim against which there has been no objection is enforceable. The sub-indicators related to launching the litigious stage of the procedure (1.29) and the management of statements of opposition (1.31) have the lowest score. This means that in most jurisdictions the litigious case following a statement of opposition is completely separate from the uncontested claims procedure and has to be filed anew, as well as that most jurisdictions do not track how many of the procedures that started as uncontested ones continue as litigious procedures (either by reason of objection or for any other reason). Below the country performance for each sub-indicator is discussed in more detail.

Scoreboard - Indicator 3.3. Effective continuity between the uncontested procedure following a statement of opposition



The uncontested claims procedure in Albania

The uncontested claims procedure in Albania differs in its setup from all other examined procedures. Article 511 of Albania's Civil Procedure Code sets a procedural route for the issuance of a writ of execution based on a number of explicitly listed execution titles such as notary deeds, cheques, bills of exchange, and other documents with a high level of certainty. However, in 2000, Law No 8662 added electricity bills to those execution titles. In 2014, the Law on Late Payments in Commercial Transactions (Law No 48) provided that monetary obligations in commercial transactions shall also constitute such execution titles, if they are not paid within a specified time period.

The Albanian procedure for issuance of a writ of execution is peculiar in that it results in the direct issuance and entry into force of a writ of execution and enforcement can commence without the debtor being informed of it beforehand or having had the opportunity to object against it. The debtor finds out about it only at the point where the bailiff has started execution and has invited him/her to voluntarily perform the obligation. In this case, within 30 days, the debtor may ask the competent court to suspend execution and may launch a litigious case requesting that the court declare the execution title invalid or find that the obligation does not exist or that it exists for a smaller amount or has increased subsequently. This is a new case in that the debtor is the plaintiff.

While such immediate enforcement is typical for procedures stemming from authentic documents, it is highly unusual for late commercial payments or even for utility bills. The latter generally have a lower level of certainty than authentic documents and therefore the procedure for issuance of an execution title for them (usually the order for payment procedure) entails an opportunity for the debtor to object. The fact that Albania places the burden of launching the litigious case entirely on the debtor, even for such claims with a lower level of certainty, creates risks for the debtor's right to fair trial.

Sub-indicator 3.3.1. Consequence of debtor's lack of objection

This sub-indicator evaluates the impact of the debtor's silence on the development of the uncontested claims procedure. In a procedure which is designed to run its course smoothly and effectively, the silence of the debtor would be equated to a confirmation that he or she does not contest the claim and this would result in enforcement. This is, naturally, beneficial to the creditor who can enforce quickly but may also be beneficial to the debtor who is spared the expenses of the much more costly litigious procedure. Another aspect that the sub-indicator evaluates is whether a partial objection (i.e., an objection against only a part of the claim) would result in the enforceability of the part of the claim that has not been objected against or whether a litigious case for the whole amount would need to be launched, regardless of the fact that the debtor has in fact agreed with part of the debt. The former option is less costly, demonstrates a less rigid procedural approach and therefore warrants a higher score.

In most of the examined jurisdictions (Albania, Armenia, Bulgaria, Estonia, Georgia, Moldova, Morocco, Poland, Serbia, Tunisia, Türkiye, Uzbekistan), the silence of the debtor means that the claim would become enforceable and partial objections would lead to the enforceability of the portion of the claim which was not objected against. There are five jurisdictions where the filing of a partial objection would mean that the creditor would need to litigate for the entire claim (Azerbaijan, Kazakhstan, Kyrgyz Republic, Mongolia, Ukraine). None of the assessed jurisdictions require an explicit debtor confirmation in order to allow claim enforcement.

Sub-indicator 3.3.2. Launching the litigious stage of the procedure

This sub-indicator examines whether a debtor's objection during an uncontested claims procedure would automatically trigger a litigious procedure. The sub-indicator gives a higher score to jurisdictions where continuity are available, saving the claimant the time for filing a completely new lawsuit while also giving him/her the flexibility to choose how to proceed. A process where the launching of the litigious procedure is as automated as possible could more easily be adapted for the purposes of an online court.

Across most examined jurisdictions, the litigious procedure is completely separate from the uncontested one and it needs to be launched anew. Only in Azerbaijan, Serbia and Tunisia, it would commence automatically.[98] Finally, Estonia is the only country where the litigious procedure is launched automatically but the creditor has the option, upon filing the order for payment request, to explicitly ask for termination of the proceedings if an objection is filed.

Sub-indicator 3.3.3. Link between the fees due in the uncontested claims procedure and in the litigious procedure

To encourage creditors to try the uncontested claims procedure first, regulators may set court fees in such a way that a creditor who tried the uncontested claims route first and then proceeded to litigation would not end up paying more court fees than a creditor who went straight for the litigious procedure. Thus, this sub-indicator assesses whether the sum the fees for the uncontested and for the litigious procedure is equal or lower than the amount of the fee for the litigious procedure.

In seven of the examined jurisdictions (Bulgaria, Estonia, Kazakhstan, Poland[99], Serbia, Türkiye, Ukraine and Uzbekistan), the amount of the fee for the litigious procedure that follows a statement of opposition is reduced as compared to the fee that would have been due if the litigious procedure was launched without using the uncontested claims procedure first, and the sum the fees for the uncontested and for the litigious procedure is equal or lower than the amount of the fee for the litigious procedure, if used as a stand-alone mechanism. In just one jurisdiction, Moldova, the amount of the fee for the litigious procedure that follows a statement of opposition is reduced as compared to the fee that would have been due if the litigious procedure was launched without using the uncontested claims procedure first but still the sum of the fees for the uncontested and for the litigious procedure is higher than the amount of the fee for the litigious procedure, if used as a stand-alone mechanism. Finally, in seven jurisdictions (Albania, Armenia, Georgia, Kyrgyz Republic, Mongolia and Morocco), the fee due in a litigious procedure that follows a statement of opposition is of the same amount that would have been due if the litigious procedure was launched without using the uncontested claims procedure first. This means that in those seven jurisdictions, the creditors would actually have a financial disincentive to try collecting their claim through the uncontested procedure first.

Sub-indicator 3.3.4. Management of statements of opposition

The frequency with which debtors oppose issued orders/writs, as well as the percentage of cases that begin as uncontested claims but progress to a litigious case, are indicators of the effectiveness of the uncontested claims procedure. Such data can be used to identify areas for improvement of the uncontested claims procedure. This sub-indicator assesses whether the jurisdiction tracks and analyses the percentage of statements of opposition to claims filed in uncontested claims procedures.

Most examined jurisdictions do not track claims that continue as litigious procedures. This means that policy makers in these countries have no reliable way of knowing how effective their uncontested claims procedure is. Five jurisdictions (Albania, Armenia, Estonia, Poland and Tunisia) collect such statistical data. No jurisdiction currently analyses such data to improve the efficiency of the procedure or manage frivolous objections.

[98] It should be noted though, that in Tunisia, the objection takes the form of an appeal rather than a statement of opposition by the debtor. The examination of that appeal represents the litigation stage of the procedure. Se Chapter 3, Civil Procedure Code of Tunisia.

[99] In Poland, if the electronic writ of payment order is contested by the debtor, the creditor must lodge a litigation procedure within 3 months and must request the relevant common court to take into account that the 'electronic' fee has been already paid. The creditor would still have the obligation to pay the difference if the fee for the litigation is higher than in electronic writ of payment procedure. If after the period of 3 months no link is present, the creditor will have to pay the full fee.

Dimension 4. Small Claims Procedures

This Dimension focuses on the availability and elements of small claims procedures. The latter are intended to assist parties to low value disputes in resolving them quickly, affordably and less formally than regular court proceedings. In general, the availability of a small claims procedure is regarded as a good practice within a legal system since it improves access to justice.[100]

This Dimension does not aim to merely identify the existence or absence of a small claims procedure within the examined jurisdictions, but to assess its quality and effectiveness as well as its level or potential for digitisation. As a consequence, it comprises of two indicators – ease of filing (4.1.) and availability of meaningful procedural simplifications of the small claims procedure (4.2.).

The starting point of the analysis of this Dimension is the review of answers given to four contextual questions. They relate to (1) the overall presence of a small claims procedure in the respective jurisdiction and its name, (2) the positioning of the procedure within the judicial system (in particular, the presence of a special small claims court or a specialised division of the court of general jurisdiction), (3) the applicable monetary thresholds and (4) the scope of the procedure's applicability.

Availability of small claims procedures

All reviewed jurisdictions, except Bulgaria, Mongolia, and Kyrgyz Republic, have a small claims procedure or its equivalent. There are two small claims procedures in Armenia, namely the simplified procedure and the expedited (accelerated) procedure. The former is applicable to claims not exceeding 5,000 minimal monthly wages; the latter comprises of eight different types of cases encompassing inter alia claims for amounts not exceeding fifty times the minimum monthly wage.

Generally, the name of the small claims procedure refers to its low value (Albania, Moldova, Serbia, Ukraine) or it is focused on its simplified or written nature (Azerbaijan, Kazakhstan, Estonia, Türkiye, Poland, Uzbekistan).

Small claims procedure positioning within the judicial system

In common law countries, small claims procedures are often implemented by a specialised court or division. However, in all examined jurisdictions, which are generally based on the Roman law tradition, there are no separate small claims courts or divisions.

It should be noted that in Türkiye there are courts which are called civil courts for small claims (*Sulh Hukuk Mahkemeleri*), but distinguished from ordinary civil courts (*Asliye Hukuk Mahkemeleri*) based on the nature of the dispute rather than its amount, e.g. disputes arising from rental contracts, cases related to the physical possession of an immovable property or the division of civil rights on an immovable property, declaratory action relating to the collection of evidence and a number of undisputed claims. As a result, a "small claim" can also be tried by an ordinary civil court through the application of a simplified procedure which is equivalent to small claims one in Türkiye.

There could be also other institutional arrangements depending on the structure of a judicial system in the reviewed country, e.g., in the composition of the judges' panels. For instance, in Georgia, a single magistrate judge is allocated to small claims procedures.

Monetary thresholds for small claims procedure

The monetary thresholds for small claim procedure vary significantly among reviewed jurisdictions. However, there is a common feature which refers to the maximum threshold above which the case may not be tried under the small case procedure. Such a threshold is either fixed by the monetary ceiling (e.g., Poland, Türkiye, Estonia, Azerbaijan) or it is based on the minimum wage (Albania, Ukraine) or average salary (Moldova). In Kazakhstan, Serbia, Ukraine and Uzbekistan, there are different ranges of the threshold applicable to legal entities and to individuals. The monetary ranges for small claims procedure in reviewed jurisdictions are captured below.

Calculation of the small claim procedure threshold by reference to an indicator

In Uzbekistan and Kazakhstan, the threshold for the small claims procedure is calculated by means of an indicator and is updated annually.

Uzbekistan has developed its own calculation to measure the threshold by reference to the so-called basic unit which is adjusted periodically and currently amounts to UZS 270 000 UZS (appr. EUR 25.11). The value of the threshold is different depending on the parties involved in the dispute. Regarding legal entities, the value of a claim within the small claims procedure may not exceed twenty basic units whereas in the case of individual entrepreneurs it shall not exceed five basic units. In Uzbekistan, there are also cases where the court may apply the simplified procedure rules even in respect of cases the value of which is above this monetary threshold.

In the same vein, there is a monthly calculation index set up in Kazakhstan which is a coefficient for the calculation of penalties, taxes, social payments and similar, pursuant to the budgetary law established for the relevant year. Thus, the threshold for the applicability of the small claims procedure for legal entities in Kazakhstan is 2000 monthly calculation indices and for individual entrepreneurs and citizens - 1000 monthly calculation indices.

In Kazakhstan, Serbia, Ukraine and Uzbekistan, there are different ranges of the threshold applicable to legal entities and to individuals. The monetary ranges for small claims procedure in the reviewed jurisdictions are captured in the table below.

[100] See for more details World Bank, Enforcing Contracts, Good Practices at https://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts/good-practices.

Monetary thresholds applicable to small claims procedures (where available).[101]

NAME OF THE COUNTRY	NAME OF THE PROCEDURE AND MONETARY THRESHOLD IN THE LOCAL CURRENCY	MONETARY THRESHOLD EQUIVALENT IN EUR
POLAND	Less than **PLN 20,000**	Less than **4,200**
ALBANIA	20 times the minimum wage (currently the minimum wage is at ALL 32,000)	Less than **5,440**
TÜRKIYE	Less than **TRY 500,000**	Less than **27,500**
ESTONIA	Less than **EUR 3,500** (for the principal)	Less than **3,500**
	Less than **EUR 7,000** (together with any auxiliary claim)	Less than **7,000**
GEORGIA	Less than **GEL 5,000** (property disputes)	Less than **1,800**
ARMENIA	Less than **5,000,000 AMD** – simplified procedure	Less than **5,000**
	Less than **50,000 AMD** - expedited procedure	Less than **125**
AZERBAIJAN	Less than **5,000 AZN** in civil cases	Less than **3,000**
	Less than **10,000 AZN** in commercial cases	Less than **6,000**
KAZAKHSTAN	Recovery of money: - if the value of the claim does not exceed for legal entities 2,000 monthly calculation indices* **which is 6,126,000 KZT**; - for individual entrepreneurs and citizens - 1,000 monthly calculation indices which is now **3,063,000 KZT**.	Less than **12,864;** Less than **6,432;**
MOLDOVA	10 times the average salary	Less than **4,921**
MOROCCO	Less than **MAD 5,000**.	Less than **465**
SERBIA	**Less than RSD equivalent of EUR 3,000** at the middle exchange rate of the National Bank of Serbia on the day of filing the claim - in civil cases;	Less than **3,000**
	Less than RSD equivalent of EUR 30,000 at the middle exchange rate of the National Bank of Serbia on the day of filing the claim in civil cases - in commercial cases.	Less than **30,000**
TUNISIA	Less than **7,000 TND**	Less than **2,170**
UKRAINE	100 times the living wage for able-bodied persons **in civil cases**	Less than **8,500**
	500 times the living wage for able-bodied persons **in commercial cases**	Less than **42,500**
UZBEKISTAN* **	For simplified proceedings between legal entities, the threshold shall not exceed twenty (20) units** which amounts to **5,400,000 UZS**.	Less than **502**
	For simplified proceedings between individual entrepreneurs, the threshold shall not exceed five (5) units**** which amount to **1,350,000 UZS**.	Less than **125**

* 1 monthly calculation index for 2022 is **KZT 3,063**.[102]

** 1 basic calculated unit for 2022 equals **270,000 UZS**.[103]

*** Please note that the court may examine the case in simplified proceedings also in cases where the value of the claim exceeds the established amounts.

[101] The calculation of the EUR value of the threshold is based on the currency conversion table included in this report. These values change on an ongoing basis, therefore, the EUR equivalent specified herein is only approximate.

[102] In 2023, the monthly calculation index in Kazakhstan was increased to KZT 3,450

[103] In 2023, the basic calculated unit in Uzbekistan was increased from UZS 270,000 to 300,000.

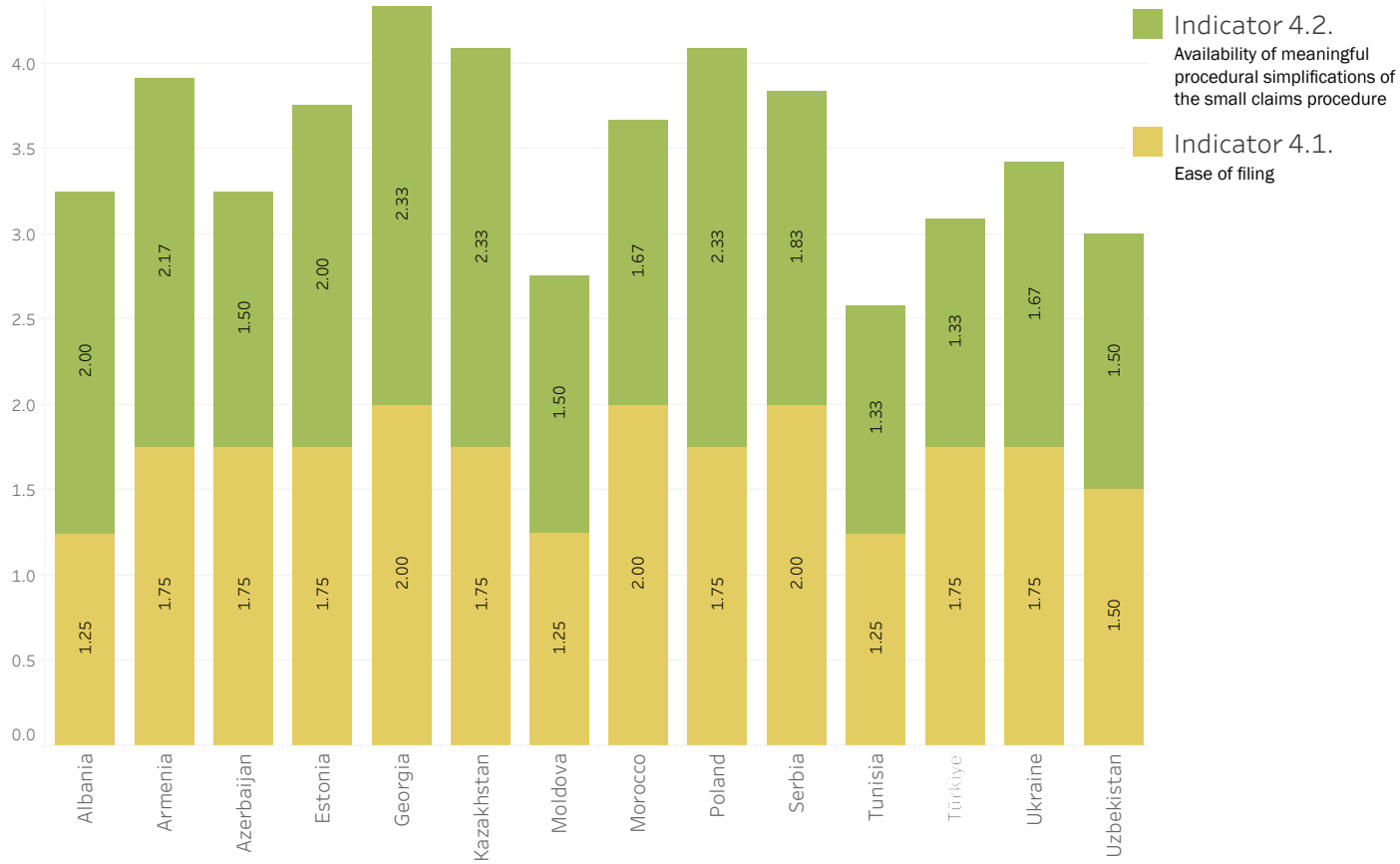
Scope of applicability for small claims procedure

The small claims procedure may be differently defined in various jurisdictions, but it usually covers contractual disputes among the commercial or civil parties. However, small claims procedure may not be limited to the action for payment of money only (as it is for example in Tunisia) as it may also cover other proprietary claims, e.g. arising from a warranty, guarantee, quality guarantee or non-compliance (Poland, Albania, Estonia). In other jurisdictions small claims procedure may also extend to simple employment and alimony disputes (Armenia).

Overview of country performance under Dimension 4

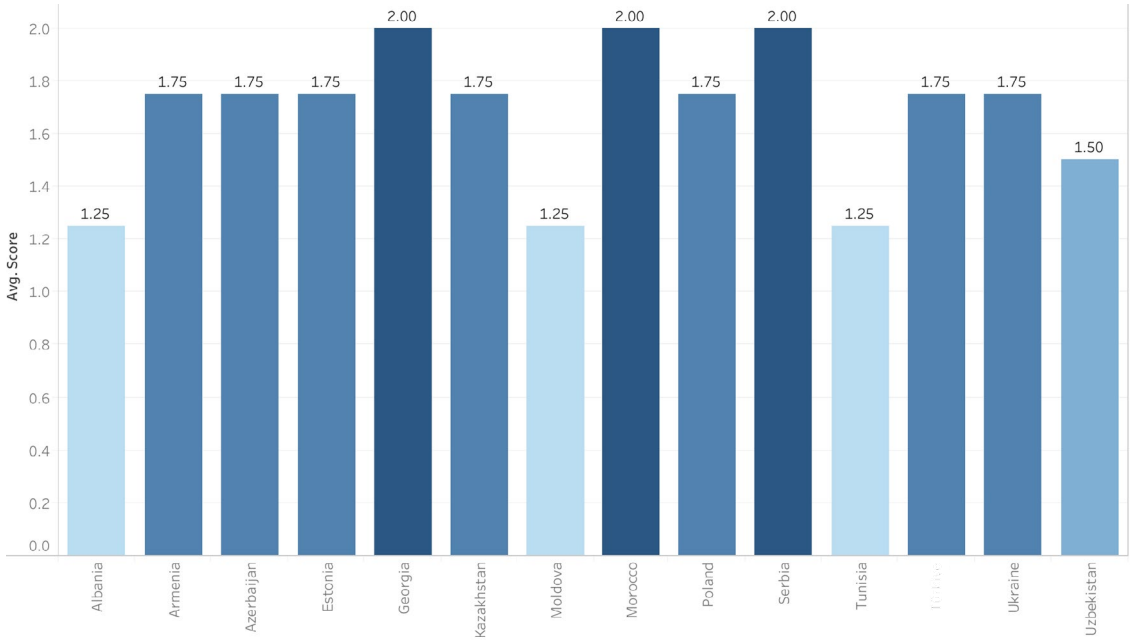
The performance of countries under the two indicators included in Dimension 4 is generally lower than the average score of 2. Countries perform only marginally better under Indicator 4.2. Availability of meaningful procedural simplifications of the small claims procedure (average score of 1.70) as compared to Indicator 4.1 Ease of filing (average score of 1.57).

Georgia appears to be performing the best under this Dimension. Morocco and Serbia perform relatively well under the first indicator and Armenia, Georgia, Kazakhstan and Poland perform relatively well under the second indicator included in this Dimension. Moldova, Tunisia and Uzbekistan display consistently low scores under the two Indicators included in this Dimension.



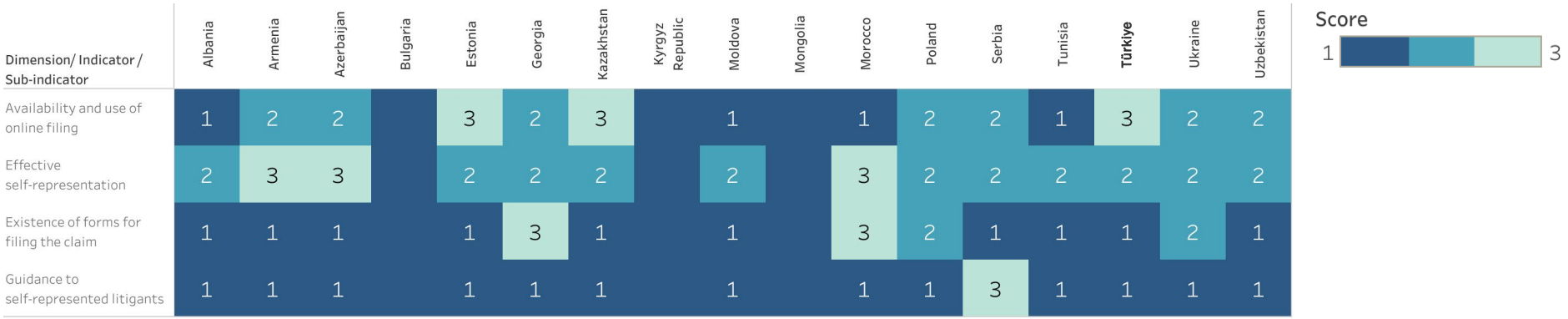
Indicator 4.1. Ease of filing

The ease of filling is without a doubt an essential feature of the small claims procedure as it is linked to access to justice. This feature relates to the possibility of self-representation, availability of structured forms, online filing and the availability of assistance for self-representing litigants. Such mechanisms shall not be evaluated only in terms of their formal presence, but also from the perspective of their implementation in practice. This indicator is assessed as an average of its four composite sub-indicators, in particular (1) effective self-representation, (2) existence of forms for filing the claim, (3) availability and use of online filing and (4) guidance for self-represented litigants.



There is room for improvement of the ease of filing in all of the assessed jurisdictions. The average score for this indicator, overall, is lower than 2 (1.57). Georgia, Morocco and Serbia are the leaders under this indicator, although each of these countries achieves only the average score of 2. Countries that display significantly lower scores include Albania, Moldova and Tunisia (each with a score of 1.25). The sub-indicator related to Guidance to self-represented litigants (4.1.4.) makes the greatest contribution to lower country scores for Indicator 4.1. By contrast, the sub-indicator related to effective self-representation (4.1.1.) has the highest average score across examined jurisdictions. Below the country performance for each sub-indicator is discussed in more detail.

Scoreboard - Indicator 4.1. Ease of filing



Sub-indicator 4.1.1. Effective self-representation

Ideally, if filing is indeed made easy, claimants should be able to do it themselves, without recourse to professional legal services. In assessing whether this is the case, one must take into account not only whether the law allows for self-representation but also whether this is possible from a practical perspective. None of the assessed jurisdiction requires mandatory legal representation in the small claims procedure. In most countries though, self-representation is allowed by law but in practice it is difficult to conduct the process without professional help and most parties tend to engage a lawyer. In the small claims procedures of Albania, Azerbaijan and Morocco, self-representation is not only allowed, but also the process is simple enough so that most parties do not engage a lawyer. It should be noted that in Morocco, the claim can also be filed orally and in this case court clerks would be available to record it. This is especially beneficial in countries with high levels of illiteracy or where a large portion of the population does not speak the official language.

Sub-indicator 4.1.2. Existence of forms for filing the claim

A well-organized filing process for small claims procedure typically includes the use of well-structured forms as well as instructions for the lay user. In most assessed jurisdictions, there are no standard forms for filing the claim and creditors are free to choose a format in which to do it (Albania, Armenia, Azerbaijan, Estonia, Kazakhstan, Moldova, Poland, Serbia, Tunisia, Türkiye and Uzbekistan). There are standard forms for filling a claim in Poland and Ukraine, but they are not perceived as user-friendly by either litigants or judges. By contrast, there are forms perceived as mostly user friendly in Morocco and Georgia.

Sub-indicator 4.1.3. Availability and use of online filing

The availability and encouragement of online filing (e-filing) is a common feature of advanced small claims procedures. Convenience, speed, and ease of use are some of the advantages of filing small claims online. E-filing can also help ensure that all necessary documentation is submitted properly and on time.

In most assessed jurisdictions, the law allows for e-filing but this option is never or rarely used. Furthermore, in Albania, Kyrgyz Republic, Morocco and Tunisia, it is not possible to file online at all. Only in three of the assessed jurisdictions, namely Estonia, Kazakhstan and Türkiye, online filing is not only available, but also used in all or the majority of cases.

Monetary disincentive for online filing in Georgia

Registration on the e-court system is free in Georgia. However, to use e-filing, one has to purchase a package allowing use of the e-filing system for a set number of times. Thus, monthly payments are set depending on the selected package, as follows:

For natural persons who are themselves a party to the dispute:

- 1 transaction in 30 working days – Free
- 60 transactions with no more than 2 transactions per day – 180 GEL (approx. EUR 64
- 150 transactions with no more than 5 transactions per day – 450 GEL (approx. EUR 162)
- 300 transactions with no more than 10 transactions per day – 900 GEL (approx. EUR 324)

For lawyers and legal persons:

- 2 transactions per day – 180 GEL (approx. EUR 64)
- 5 transactions per day – 450 GEL (approx. EUR 162)
- 10 transactions per day – 900 GEL (approx. EUR 324)

As a result, in Georgia, filing on paper proves to be the more economical option.

Sub-indicator 4.1.4. Guidance to self-represented litigants

The court's guidance provides litigants in small claims cases with a better understanding of their legal situation and causes them to have more realistic expectations about the likely outcome of their case in court. Self-represented litigants who have received guidance are better prepared, more confident, and better able to present their cases in court.[104] Nonetheless, such a feature is almost never available in the reviewed jurisdictions except in Serbia, where provisions in the law require judges to provide guidance to self-represented litigants.


Mongolia

Guidance to self-represented litigants in Serbia

The Civil Procedure Law (CPL) of Serbia requires judges to provide guidance to self-represented litigants in some cases. These rules apply in all civil cases, including small claim cases:

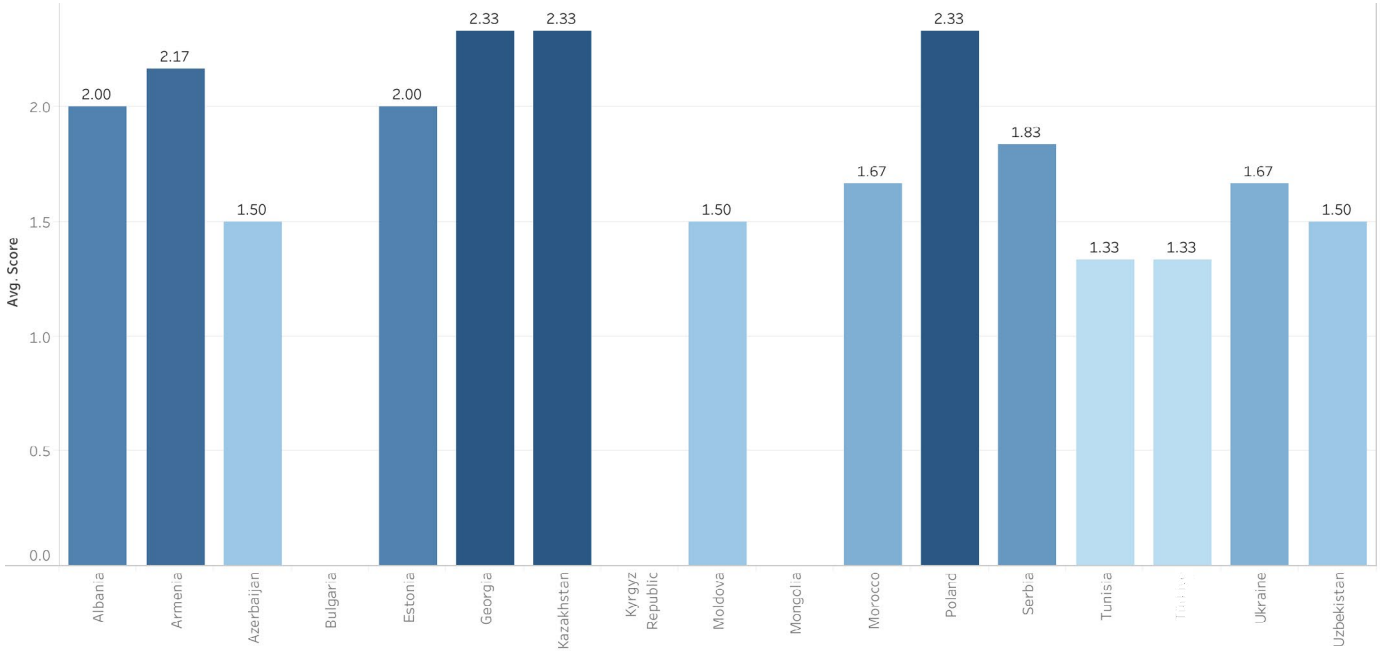
- under Article 85, the court is to inform the lay party that it has the right to an attorney;
- under Article 101, submission by a party without a representative shall not be dismissed if it is incomplete or incomprehensible but will be returned to the party for correction
- under Article 104, if a submission is filed on time but to an incompetent court, and reaches the competent court with delay, such submission shall be considered timely, if the submission to the incompetent court can be attributed to ignorance of the applicant;
- under Article 473, in the summons for the main hearing the court is to warn the parties of the legal consequences of absence from the hearing, the instructive deadline for presenting evidence, limitations regarding the right to appeal;
- under Article 477, when pronouncing the judgment, the court is to inform the parties of the conditions under which they can file an appeal.

[104] For more details see: Greacen, J. M. (2002). Self Represented Litigants and Court and Legal Services Responses to Their Needs What We Know. California: Center for Families, Children and the Courts.

Indicator 4.2. Availability of meaningful procedural simplifications of the small claims procedure

It is important not only that a small claims procedure exists, but also that it achieves its goals of simplifying the judicial process for both parties and judges. Indicator 4.2. seeks to assess this aspect of the procedure by examining the availability and features of a host of possible procedural simplifications.

This Indicator is made up of six composite sub-indicators, namely (1) statutory timelines, (2) simplified evidentiary rules, (3) simplified rules of hearings, (4) rules on encouraging conciliation or mediation, (5) simplified content of the judgement and (6) rules of appealing.



There is room for adding more meaningful simplifications to the small claims procedure in all of the assessed jurisdictions. The average score for this indicator, overall, is lower than 2 (1.70). Georgia, Kazakhstan and Poland (all with a score of 2.33) are the leaders under this indicator. Countries that display significantly lower scores include Azerbaijan, (1.50), Moldova (1.50), Tunisia (1.33) and Uzbekistan (1.50). The sub-indicator related to Simplified rules on hearings (4.2.3.) has the highest score (2.20) within Indicator 4.2. By contrast, the sub-indicator related to special rules for encouraging conciliation or mediation (4.2.4.) has the lowest average score (1.13) across examined jurisdictions. The country performance for each sub-indicator is discussed in more detail below.

Scoreboard - Indicator 4.2. Availability of meaningful procedural simplifications of the small claims procedure

Dimension/ Indicator / Sub-indicator	Albania	Armenia	Azerbaijan	Bulgaria	Estonia	Georgia	Kazakhstan	Kyrgyz Republic	Moldova	Mongolia	Morocco	Poland	Serbia	Tunisia	Türkiye	Ukraine	Uzbekistan
Modifications to the rules on appealing the judgmen..	2	3	1		2	3	3		2		2	3	3	1	1	1	1
Simplified content of the judgment	3	3	1		2	3	3		1		1	3	2	1	1	1	1
Simplified evidentiary rules	2	2	1		2	1	1		1		1	3	1	1	1	1	1
Simplified rules on hearings	3	2	2		3	3	3		2		1	3	2	2	2	3	2
Special rules on encouraging conciliation ..	1	1	1		1	3	1		1		2	1	1	1	1	1	1
Statutory timelines in the small claims procedure	1	2	3		2	1	3		2		3	1	2	2	2	3	3

Score
1 3

Sub-indicator 4.2.1. Statutory timelines in the small claims procedure

This sub-indicator assesses whether the statutory timelines in the small claims procedure are the same as the statutory timelines in the general civil/ commercial procedure, or whether at least some statutory timelines in the small claims procedure are shorter.

In six assessed jurisdictions (Armenia, Estonia, Moldova, Serbia, Tunisia and Türkiye), some statutory timelines in the small claims procedure are shorter than the statutory timelines in the general civil/commercial procedure but they are very few and they do not lead to a significantly shorter process overall. Thus, in the small claims procedure of Estonia, the court can shorten those statutory timelines, for which it is given discretion to decide (e.g., the timeline for the defendant's response to an action or the interval between the date of service of summonses and the date of the court session). In Türkiye, time extension for the defendant's submissions can be requested up to 2 weeks (rather than 1 month, under the general procedure). In Armenia, the evidence in a simplified procedure may be presented no later than within a month after receiving the ruling of the court on examining the case in the simplified procedure. Depending on the peculiarities of the case, upon the motion of a person participating in the case, the mentioned period may be extended based on a court ruling.

In five jurisdictions, some statutory timelines in the small claims procedure are shorter than the statutory timelines in the general civil/commercial procedure and they lead to a significantly shorter process overall. These include Azerbaijan, Kazakhstan, Morocco, Ukraine and Uzbekistan. Finally, in Albania, Georgia and Poland, the statutory timelines in the small claims procedure are the same as the statutory timelines in the general civil/ commercial procedure.

Examples of significant shortening of timelines in the small claims procedure

- In Azerbaijan, the small claims under the simplified proceedings must be considered within 30 days from the date of registration of the claim with the court; whereas the claims in the civil/commercial cases are reviewed within 2-4 months.
- In Kazakhstan, a case under simplified procedure must be resolved within 1 month after acceptance of the claim and this term cannot be extended while in the general civil procedure claims are resolved within 2-3 months and this term may be extended.
- In Morocco, the proximity judge shall pronounce the ruling within 30 days from the date of filing of the application.
- In Uzbekistan the case considered under simplified proceedings procedure must be considered within a period not exceeding 20 days from the date of the ruling on the acceptance of the statement of claim to proceedings and initiation of the case, after the expiration of the period established for the submission of a response to the statement of claim, evidence and other documents. The time limit for considering a case under simplified proceedings procedure may not be subject to extension.

Sub-indicator 4.2.2. Simplified evidentiary rules

Simplified evidentiary rules can further streamline the small claims procedure. Those simplifications can be associated with (1) stricter relevance assessment of evidence by the judge, (2) the required form of the evidence and/or (3) limitations to the use of expert witnesses. The absence of any of the above warrants a score of 1; the availability of just one – a score of 2 and the availability of at least two of those types of evidentiary simplifications – a score of 3.

In most of the examined jurisdictions, evidentiary rules in the small claims procedure are the same as the evidentiary rules in the general civil/commercial procedure. Just one of the explored evidentiary simplifications is available in the small claims systems of Albania (simplifications in the form of evidence), Armenia[105] (limitations on the use of expert witnesses) and Estonia (simplifications to the form of evidence).

The only examined country the small claims procedure of which includes more than one of the explored evidentiary simplifications is Poland. Within the small claims procedure, Polish judges may apply a stricter relevance assessment in respect of the expert assessments; the expert's opinion shall not be sought if its expected cost would exceed the value of the subject of the dispute, unless exceptional circumstances justify it. There is also an easing of the formal requirements towards the expert assessment and the expert him/herself.[106]

Impossibility of evidence collection in the small claims procedures of Armenia and Azerbaijan

While the small claims procedures of Armenia and Azerbaijan are rather quick, they deviate greatly from the classical approach in that they do not accommodate any collection of evidence and thus develop in a manner that is very similar to non-litigious procedures.

Thus, while in most other small claims procedures in the legal systems based on Roman law the hearing can be avoided but could also be held, if necessary, in the small claims procedures of Armenia and Azerbaijan, a hearing to collect evidence is never held. If, based on the initial submission of the parties it appears that any evidence needs to be collected or explanations heard, the court abandons the simplified procedure and examines the case in the framework of the ordinary procedure.

Sub-indicator 4.2.3. Simplified rules on hearings

Simplified rules on hearings are the cornerstone of small claims procedures. Such simplifications may include (1) omitting the preliminary/case management hearing or holding it by phone (as long as the general procedure includes such a hearing); (2) avoiding a hearing altogether and deciding the case based only on the written submissions of the parties; or (3) allowing courts to conduct hearings in the small claims procedures by using distance communication (e.g., videoconferencing). The absence of any of the above warrants a score of 1; the availability of just one – a score of 2 and the availability of at least two of those types of simplifications related to the court hearing – a score of 3. This is the sub-indicator, within the framework of Indicator 4.2., where the examined jurisdictions display the most significant procedural simplifications.

Seven of the examined jurisdictions have just one of the types of simplifications related to hearings listed above and receive a score of 2 under this sub-indicator. Thus, in Armenia, Azerbaijan, Moldova, Türkiye and Uzbekistan, the simplified procedure can develop fully in writing without holding any hearings whatsoever and Serbia and Tunisia allow for the omission of preliminary hearings. Five of the examined jurisdictions have more than one of the assessed simplifications related to hearings and receive a score of 3. These are Albania, Estonia, Georgia, Kazakhstan, Poland and Ukraine. Finally, in Morocco, none of the examined simplifications are available. Quite the contrary, similarly to the model of common law systems where the small claims courts rely on a fully oral procedure, in Morocco the parties are obliged to appear in person before the judge and defend themselves by answering his questions and giving details about their case.

[105] In Armenia, the small claims procedure is extremely simplified in that it does not allow for any evidence collection. In this procedure, the court will not question persons participating in the case, the witnesses, the expert or specialist, assign an expert examination, request evidence, or examine the evidence on-site. If such a necessity arises the simplified procedure will be discontinued and will be examined under the ordinary procedure. This extreme restriction to evidence collection distinguishes the Armenian simplified procedure from other such procedures and brings it closer to some models for uncontested claims procedures. It is because of this rigidity in the approach to evidence in the Armenian small claims procedure that it is assigned a score of 2 rather than 3. Rather than simplifying the form of evidence or introducing a stricter relevance assessment, any need to examine evidence becomes a reason to abandon the simplified procedure and examine the case in the framework of the ordinary procedure.

[106] The testimony by a witness would not preclude him/her from being consulted as an expert, also as to the facts testified as a witness, even if he/she has previously drawn up an opinion at the request of an entity other than a court.

Sub-indicator 4.2.4. Special rules on encouraging conciliation or mediation

The encouragement of conciliation or mediation in the framework of small claims can result in a more effective small claims process as such rules or practices can reduce the overall number of small claims cases that may be scheduled for trial.

In almost all of the examined jurisdictions, there are no special rules on encouraging conciliation or mediation in the framework of the small claims procedure. The only exceptions are Georgia and Morocco. Specifically, in Georgia, court annexed mediation may be conducted for every type of dispute, with the consent of the parties. In addition to that, the judge may also refer certain types of disputes, small claims included, to mediation even without the consent of the parties.

Sub-indicator 4.2.5. Simplified content of the judgment

In the interest of sparing judges' time, a simplified judgment can omit certain parts that are mandatory for the content of the judgment in the general civil/commercial procedures. The procedural rules may require only a brief explanation of the court's rationale, or the use of plain language in the judgment. In seven of the examined jurisdictions (Azerbaijan, Moldova, Morocco, Tunisia, Türkiye, Ukraine and Uzbekistan), the rules on the content of the judgment in the small claims procedure are the same as the rules on the content of the judgment in the general civil/commercial procedure. Furthermore, in two of the examined jurisdictions, Serbia and Estonia, there is a rule allowing the court to simplify the judgment in low-value cases but in practice it is not significantly simplified as compared to the judgment in the general civil/commercial procedure. Thus, in Estonia, it is permitted to make a judgement in a matter without the descriptive part and statement of reasons. However, the court has to set out the legal reasoning and the evidence on which the conclusions are based, and facts established by the court. Thus, in practice, the judgment is not significantly simplified as compared to a judgment in the general civil procedure. Finally, in five of the examined jurisdictions (Albania, Armenia, Georgia, Kazakhstan and Poland), the court is allowed to simplify the judgment in low-value cases and in practice it is significantly simplified as compared to the judgment in the general civil/commercial procedure.

Simplified judgments in Georgia and Armenia

In cases examined in Georgia by the magistrate judges, the latter may choose to announce the reasoned judgments in the form of the minutes of the hearing. Consequently, the magistrate judge does need not prepare a judgment in writing.

In the simplified proceedings in Armenia, the reasoning part of the judgment shall only contain a note on accepting the claimant's arguments as the court's reasoning and the court's ruling of the distribution of costs between parties with some minor exceptions. For instance, when an objection has been submitted against the claim during the proceedings, or the claim was dismissed (rejected) fully or in part, the following shall be indicated in the reasoning part of the judgment:

- circumstances of the case established by the court,
- the evidence on which the conclusions of the court are based, the arguments for dismissing this or that evidence, as well as the laws and other legal acts by which the court was governed when delivering the judgment,
- the court's ruling of the distribution of costs between the parties.[107]

Sub-indicator 4.2.6. Modifications to the rules on appealing the judgment in the small claims procedure

The rules on appealing the judgment in the small claims procedure can be simplified or streamlined in a number of ways. For the purposes of this sub-indicator, these modifications to appeal have been grouped in the following manner: (1) there are fewer grounds for appeal; (2) interlocutory appeal[108] is restricted (i.e., appeals against court rulings other than the final judgment); (3) there is no right of appeal for some/all judgments in the small claims procedure; (4) the second-instance court is empowered to impose cost sanctions if it finds that the appeal had been vexatious or frivolous; (5) the appellate procedure is simplified as compared to the appellate procedure for judgments made in the general civil/commercial procedure. If none of these modifications is available, the assessed jurisdiction is assigned a score of 1; if one modification are available – a score of 2, and if at least two of the above modifications are available - a score of 3.

In most of the examined jurisdictions, there are some modifications to the rules on appealing the judgment in the small claims procedure. Thus, Armenia, Georgia, Kazakhstan, Poland and Serbia, have at least two of these modifications. Albania, Estonia, Moldova and Morocco, have one modification.

Countries that have banned appeals altogether against judgments for a value below a certain monetary include Armenia[109] (for claims with a value of 50 times the minimum salary), Georgia (for disputes with a value under GEL 2,000, i.e., approx. EUR 720) and Morocco.

[107] Article 302 of the Civil Procedure Code of Armenia.

[108] I.e., appeal to court rulings other than the final judgment.

[109] There is an exception to this rule in Armenia; specifically, an appeal could be allowed if the person lodging the appeal provides justifications in his or her appeal that the Court of First Instance has made a judicial error distorting the essence of the right to a fair trial.

Annulling the small claims judgment in Morocco

Generally, judgments made in the small claims procedure of Morocco are not subject to appeal. However, by virtue of provision 9 of the law n°42-10, the judgment in small claims can be annulled based on eight grounds:

- If the judge did not respect his jurisdiction (lack of competence rationae personae);
- If the judge did not attempt to resolve the dispute through conciliation first;
- If the judge has failed to rule on one part of the plaintiff's claim or if his decision exceeded the claim of the plaintiff or if he adjudicated in something that was not in the plaintiff's claim;
- If the judge gave the judgment without verifying the identity of the parties;
- If the judge convicted the defendant without having proof that he was effectively summoned/notified to appear before court to the hearing;
- If there are contradictions in the same judgement;
- If, within the examination of the case, there was fraudulent misrepresentation;
- If the adjudicating judge was rightly recused by one of the parties.

Countries that provide fewer grounds for appeal include Poland and Serbia. Furthermore, the most typical simplification of the appellate procedure observed in the assessed jurisdictions provides that appeals against small claims judgments should be examined by a single judge. This is the rule in Albania, Armenia, Georgia, Kazakhstan and Poland.

Permission to appeal in Estonia

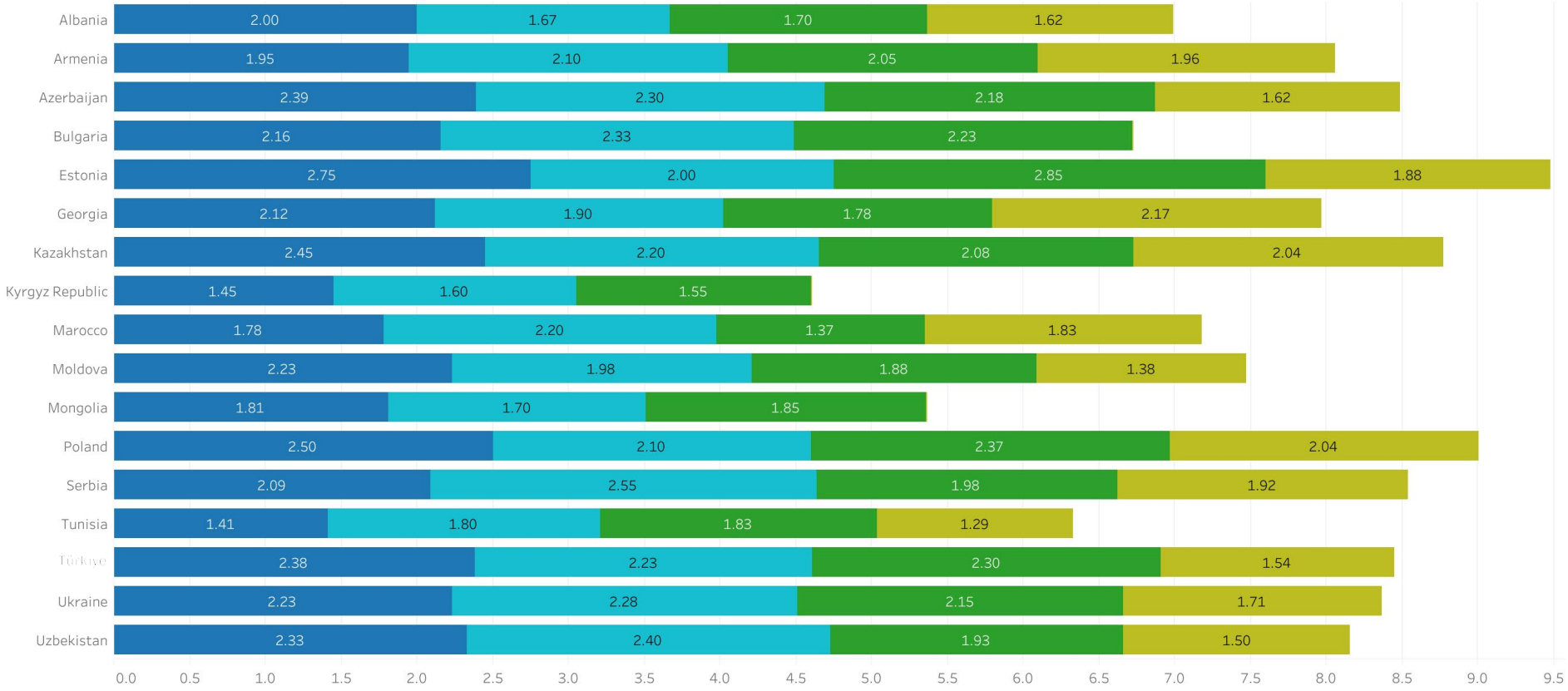
For the outcome of the simplified procedure of Estonia to be appealable, this must explicitly be allowed by the first-instance court in its judgment. The court grants such permission, if the decision of the court of appeal is necessary for the purpose of obtaining a position concerning a legal provision. The granting of a permission to appeal need not be reasoned in the judgment. If there is no such permission given by the first-instance court, the appellate court can refuse to accept an appeal. Therefore, in addition to general grounds for refusal to accept an appeal, the appeal filed in simplified proceedings is accepted only if a permission to file an appeal is granted in the judgment of the first-instance court or if, upon the making of the judgment of the county court, a provision of substantive law was clearly applied incorrectly or a provision of procedural law was clearly violated or evidence was clearly evaluated incorrectly and this could materially affect the decision. If the appellate court refuses to accept an appeal, the party can file the appeal against this ruling with the Supreme Court. Only a professional representative can appear before the Supreme Court in Estonia, i.e., self-representation would no longer be possible.

Finally, in Azerbaijan, Tunisia, Türkiye, Ukraine and Uzbekistan, the rules on the appealing the judgment in the small claims procedure are the same as the rules on appealing the judgment in the general civil/commercial procedure.


Tunisia

4. Conclusions

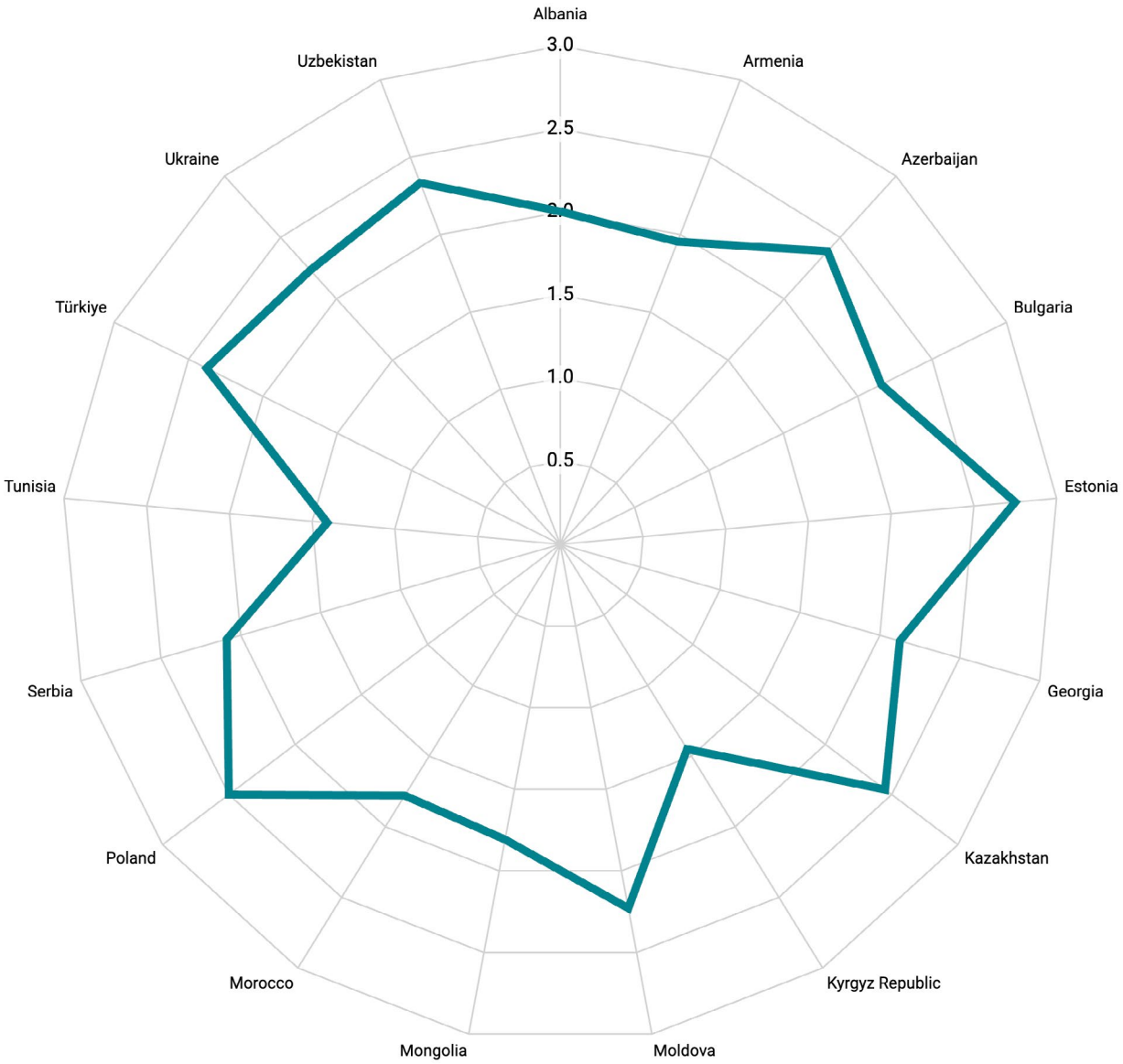
The conducted assessment evokes the rather nuanced landscape of the institutional and procedural environment of civil and commercial litigation across EBRD CoOs and their differing levels of readiness for the introduction of ODR. It indicates that there are areas where many EBRD CoOs have a high level of readiness for the introduction of ODR and potentially setting up online courts, as well as areas where the level of readiness is low. The MLAT employed in conducting this assessment sees digital transformation as an evolutionary process. In this process, ODR comes as a last stage, only after numerous prerequisites have been met, the necessary infrastructure has been put in place, and stakeholders are ready to seek and provide services electronically.



Bulgaria, Kyrgyz Republic and Mongolia are missing data on Dimension 4 as they do not have a small claims procedure.

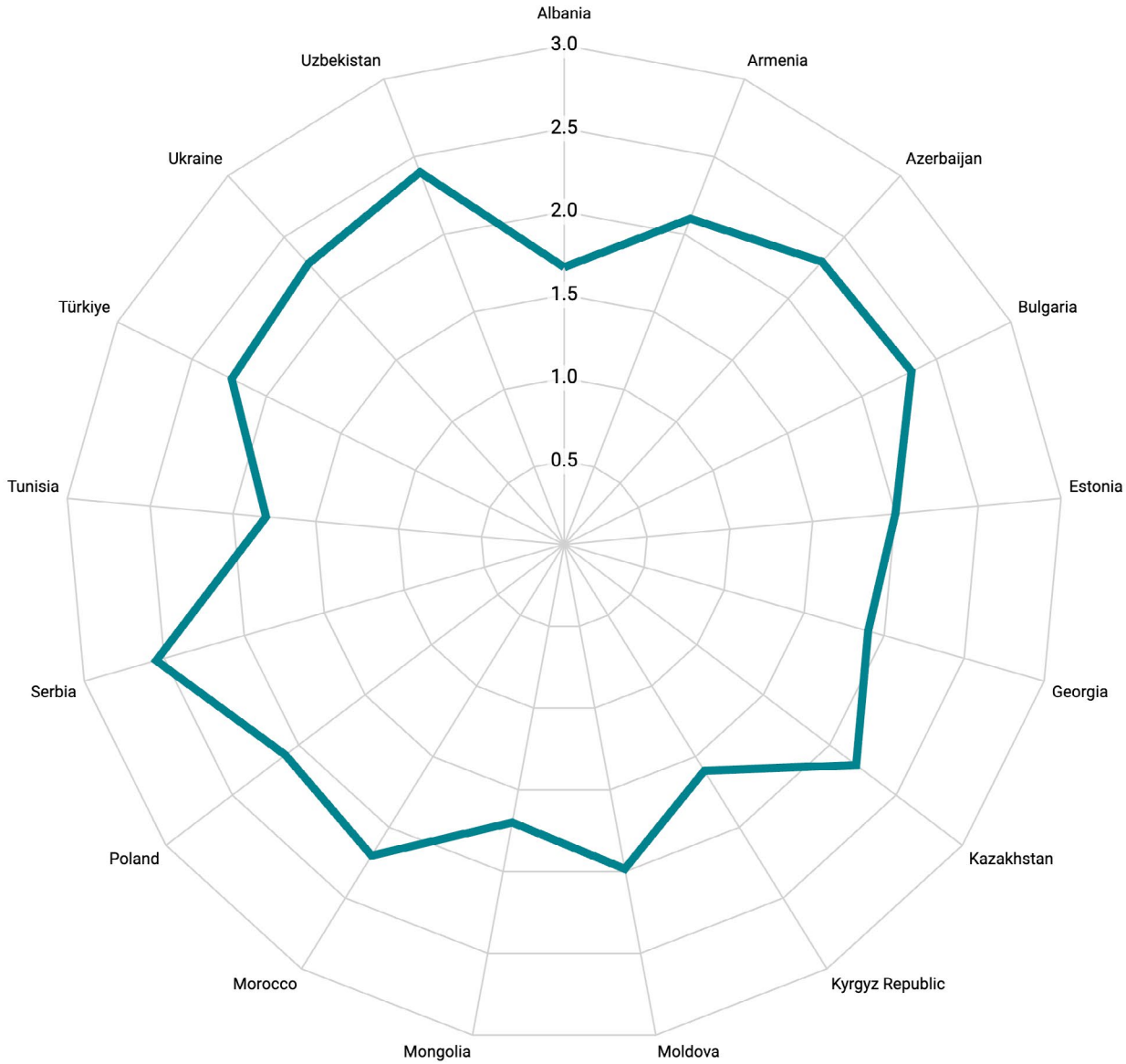
The analysis of **Dimension 1, Policies and Infrastructure for E-justice**, demonstrates that most assessed jurisdictions are well advanced on the way to the digital transformation both of their public sector and of justice in particular. Overall, Estonia, Poland and Kazakhstan have consistently high scores for the indicators included in Dimension 1, while the Kyrgyz Republic and Tunisia have consistently low scores. The area, within this dimension, under which examined countries display the best performance is *Indicator 1.2. Overall level of development of justice system digitisation*. The one where countries exhibit the poorest performance is *Indicator 1.4. Stakeholder Engagement*. One recurring finding within this dimension is that the legislative framework and/or infrastructure for digitising court processes exist but are frequently not being used in practice by courts and court users. This suggests that in assessed jurisdictions there is a strong demand for education and training on the benefits and application of ICT in the justice sector. This finding is also related to jurisdictions' low scores for the indicator related to stakeholder engagement. There is a clear need to proactively engage court users and other stakeholders, promote digital solutions and systems, and collect actionable feedback on their usability, functions, and other relevant concerns.

Charter 1 Dimension 1. Policies and Infrastructure for E-justice



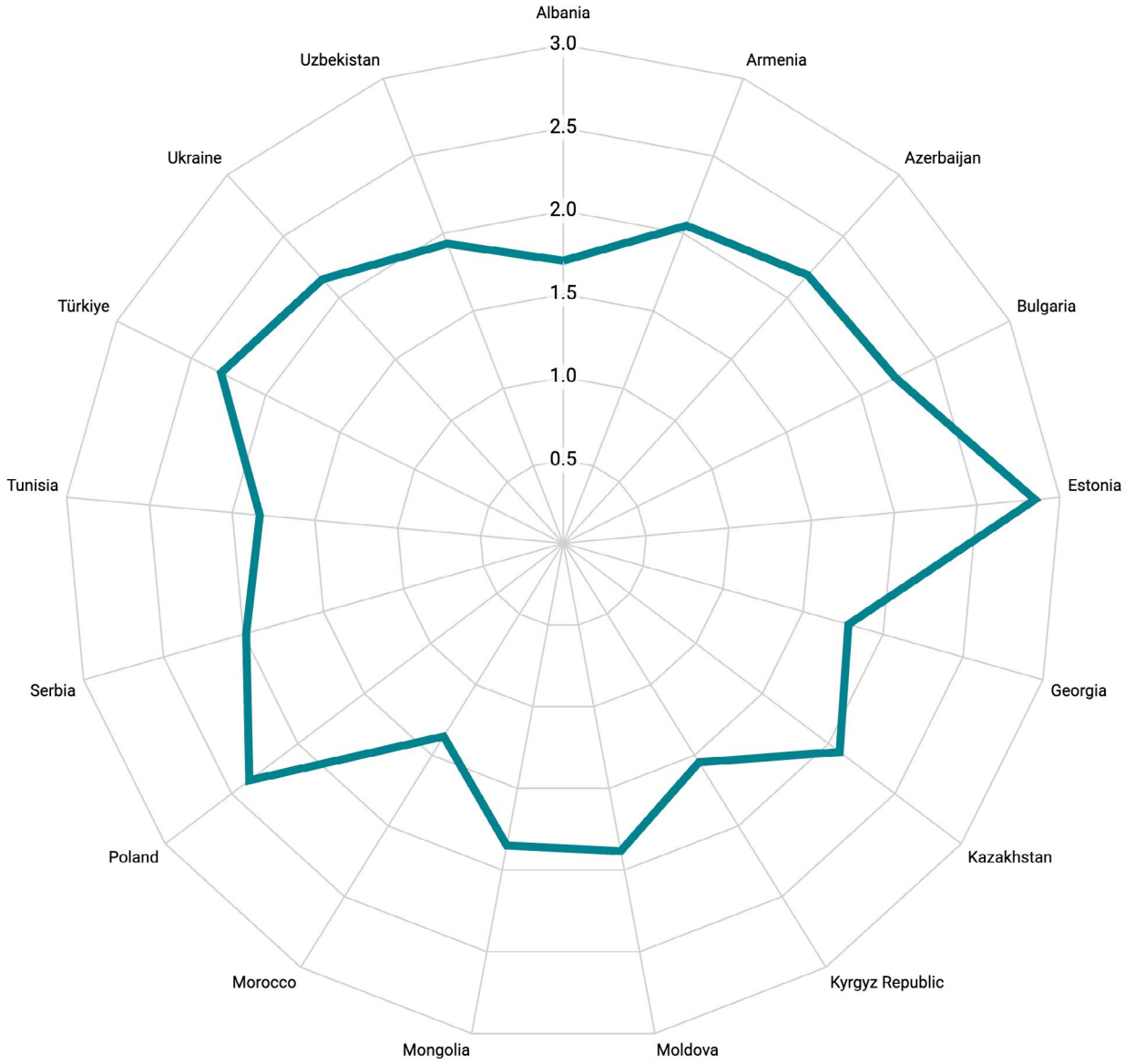
The assessment of **Dimension 2, Commercial Dispute Resolution**, indicates varied levels of specialisation and development of commercial litigation in targeted jurisdictions. Bulgaria and Serbia have consistently high scores for the indicators included in Dimension 2, while the Kyrgyz Republic and Mongolia have consistently low scores. Countries perform best under *Indicator 2.2. Use of mediation/ADR tools*, and worst under *Indicator 2.3. Efficiency and effectiveness of commercial litigation*. Furthermore, it is important to note that in ten countries there is no statistical data available that would allow for a comparison between the efficiency of civil and of commercial litigation. While in some cases the reason may be simply a lack of disaggregation between civil and commercial litigation (e.g., in Estonia), at other times the justice statistics of the respective country may either be not sufficiently granular in their methods, or the country might not be making collected data publicly available for research and analysis.

Charter 2 Dimension 2. Commercial Dispute Resolution



The performance of countries under **Dimension 3, Procedure for Uncontested Claims**, varies greatly. The clear leader is Estonia, which has fully digitised its order for payment procedure and has centralised it under a single court department responsible for the entire country. The other targeted jurisdictions display quite inconsistent performance with Poland's E-court, for example, doing very well under *Indicators 3.1. Ease of Filing* and *3.2. Efficient Processing* but lagging behind in *Indicator 3.3. Effective continuity between the uncontested procedure and the procedure following a statement of opposition*; and Georgia, showing a good performance under Indicator 3.1. but lagging significantly behind in Indicators 3.2. and 3.3. Albania, Morocco and Uzbekistan display consistently low scores across all Indicators included in this Dimension. Within this Dimension, countries perform best under Indicator *3.2. Efficient processing*, and worst under *Indicator 3.3. Effective continuity between the uncontested procedure and the procedure following a statement of opposition*.

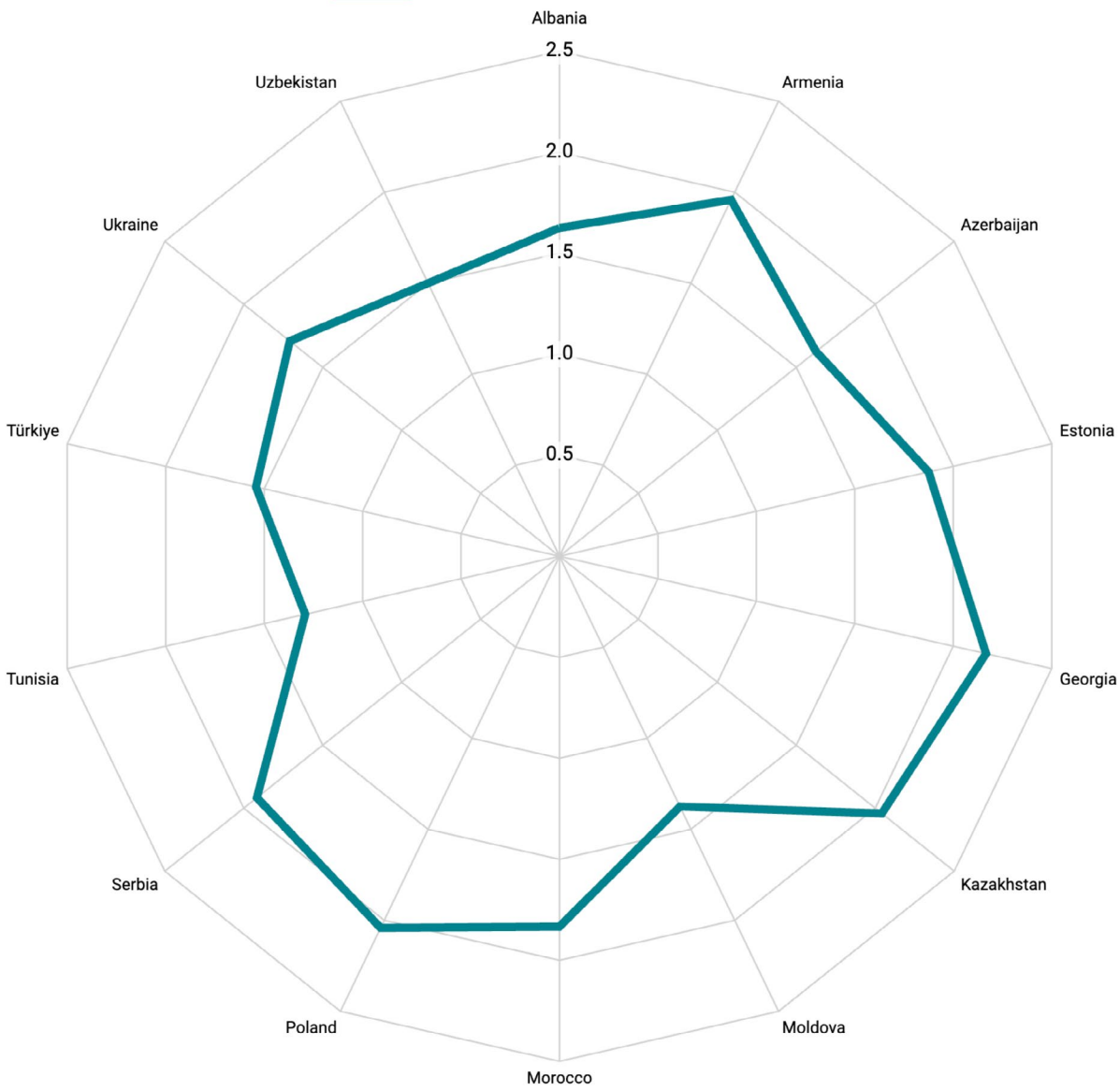
Charter 3 Dimension 3. Procedure for Uncontested Claims



The area where the assessed jurisdictions display the poorest performance is **Dimension 4, Small Claims Procedures**. Georgia appears to be performing the best under this Dimension. Morocco and Serbia perform relatively well under *Indicator 4.1 Ease of filing* and Armenia, Georgia, Kazakhstan and Poland perform relatively well under *Indicator 4.2. Availability of meaningful procedural simplifications of the small claims procedure*. Moldova, Tunisia and Uzbekistan display consistently low scores under both indicators included in this Dimension. Countries perform only marginally better under Indicator 4.2. as compared to Indicator 4.1. In essence, this means that the level of development of small claims procedures in the examined countries is low, and these are generally not able to ensure the cheaper and quicker justice that they are designed to dispense.

The conducted assessment points to the degrees to which the targeted jurisdictions are prepared to transition to fully digital processes but also to the types of court procedures which have the highest level of maturity in this respect and are thus most suitable for testing innovative practices, including the introduction of online courts. This provides valuable guidance as to where efforts should be directed so as to address deficiencies and improve performance thus paving the way for the introduction of online courts.

Charter 4 Dimension 4. Small Claims Procedures



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