

Potential Nexus Between the Enforceability of Foreign Judgments and the Quality of Civil Justice in ASEAN

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Abstract

To leverage the full potential of the ASEAN single market, the free flow of commercial judgments amongst the Member States, like in the EU, would be desirable. However, according to the state of things in 2022, judgments in ASEAN cannot circulate entirely freely within the Member States. This paper deals with one of the potential aspects that a state may consider when it decides whether to enforce a foreign judgment: the quality of civil justice in the country from which the judgment originates. The aim of this research is to ascertain if there is any correlation (and if so, what) between the ASEAN Member States' stances regarding the enforceability of commercial judgments rendered by the courts of another Member State and the quality of civil judicial service of the latter.

Keywords

ASEAN Single Market; Quality of Civil Justice; Foreign Judgments; Mutual Trust; Southeast Asia.

1 Introduction

The Association of Southeast Asian Nations (“ASEAN”) is a regional integration of nations being the home of approximately 650 million people from different cultures, with different religious background, speaking

different languages.¹ The level of economic development of the ten ASEAN Members (i.e., Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam) and the legal traditions to which they belong (i.e., civil law, common law, Sharia law, and socialist law) also vary considerably.² Notwithstanding such diversity, by 2025, the ASEAN Economic Community aims to create a single market within which goods, services, and investments can freely circulate.³ Therefore, the volume of intra-ASEAN trade as well as the number of potential cross-border commercial disputes are expected to grow.

To leverage the full potential of the single market, the free flow of commercial judgments amongst the ASEAN Member States, like in the European Union (“EU”), would be desirable. However, according to the state of things in 2022, judgments in ASEAN cannot circulate entirely freely within the Member States. Although there are several Member States which recognise and enforce judgments rendered by the courts of other Member States, such liberal approach toward foreign judgments does not exist in many other Member States. In practice, the unenforceability of a foreign judgment leads to parallel legal proceedings, which easily duplicate, triplicate lawyer’s fees and other litigation costs, hence, increases the costs of doing business. The higher cost of doing business makes ASEAN less competitive than it could be.

¹ ASEAN Secretariat. ASEAN Key Figures 2021. *Association of Southeast Asian Nations* [online]. [cit. 30. 5. 2022]. Available at: <https://asean.org/book/asean-key-figures-2021/>

² Regarding the economic diversity of ASEAN Member States, we refer to the World Bank’s country classification by income level, wherein economies are classified into four income groups: low, lower-middle, upper-middle, and high income. This shows that amongst ASEAN economies, Brunei and Singapore are high-income countries, Malaysia and Thailand are upper-middle income countries and the remaining six economies, namely Cambodia, Indonesia, Laos, Myanmar, the Philippines, and Vietnam are lower-middle income countries. – World Bank Country and Lending Groups. *The World Bank* [online]. [cit. 30. 5. 2022]. Available at: <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519>. Regarding the diversity of the legal systems of ASEAN Member States we note that civil law, common law, Sharia law, and socialist law are all present. About the historical development of Southeast Asian legal systems, see, for instance, YASUDA, N. Law and Development in ASEAN Countries. *ASEAN Economic Bulletin*. 1993, Vol. 10, no. 2, pp. 144–154; HARDING, A. Global Doctrine and Local Knowledge: Law in Southeast Asia. *The International and Comparative Law Quarterly*. 2002, Vol. 51, no. 1, pp. 35–53; Legal System in ASEAN. *ASEAN Law Association* [online]. [cit. 30. 5. 2022]. Available at: <https://www.aseanlawassociation.org/legal-system-in-asean/>

³ ASEAN Secretariat. ASEAN Economic Community Blueprint 2025. *Association of Southeast Asian Nations* [online]. [cit. 30. 5. 2022]. Available at: <https://asean.org/book/asean-economic-community-blueprint-2025/>

This paper deals with one of the potential aspects that a state may consider when deciding whether to enforce a foreign judgment. Such potential aspect is the quality of civil justice in the country from which the judgment originates.⁴ Accordingly, the hypothesis of this research is that an ASEAN Member State having a higher quality of civil justice may be reluctant to recognise and enforce commercial judgments rendered by the courts of another Member State having a significantly lower quality of civil justice. Hence, the aim of this research is to ascertain if there is any connection (and if so, what) between the Member States' stances regarding the enforceability of commercial judgments rendered by the courts of another Member State and the quality of civil judicial service of the latter.

To answer this question, this paper provides an overview of the portability of foreign commercial judgments in ASEAN. This involves examining to what degree each Member State recognises and enforces commercial judgments from another Member State (Part 2). Considering the example of the EU, a regional integration of nations and a single market within which commercial judgments can freely circulate, we discuss the issue of mutual trust, which is the foundation of judicial cooperation in the EU (Part 3). Then, ASEAN-related data from global surveys, which indicate or can be associated with the quality of civil justice, will be explored. For such exercise, the EU Justice Scoreboard, which measures efficiency, quality of judicial service, and independence of the judiciary of each EU Member State, serves as a model (Part 4). Lastly, in the conclusion part, we respond to the question whether our hypothesis is true, i.e., whether an ASEAN Member State having a higher quality of civil justice is reluctant to recognise and enforce commercial judgments rendered by the courts of another Member State having a significantly lower quality of civil justice (Part 5).

2 Portability of Foreign Judgments Within ASEAN

There are several mechanisms through which the recognition and enforcement of foreign commercial judgments may be regulated. However, as will be shown, ASEAN is using such mechanisms only to a limited extent.

⁴ In this paper the term "civil justice" covers justice in civil and commercial cases.

Amongst multilateral conventions, there are at least two, namely the Convention of 30 June 2005 on Choice of Court Agreements (“HCCH 2005 Choice of Court Convention”) and the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (“HCCH 2019 Judgments Convention”), which deal with foreign commercial judgments. The HCCH 2005 Choice of Court Convention is aimed at ensuring the effectiveness of choice of court agreements (also known as “forum selection clauses”) between parties to international commercial transactions. By doing so, the HCCH 2005 Choice of Court Convention provides greater certainty to businesses engaging in cross-border activities and therefore creates a legal environment which is more amenable to international trade and investment.⁵ Amongst the ASEAN Member States, only Singapore is a signatory to this Convention. The HCCH 2019 Judgments Convention facilitates the effective international circulation of judgments in civil or commercial matters. By setting forth commonly accepted conditions for recognition and enforcement – and agreed grounds for refusal – the HCCH 2019 Judgments Convention provides legal certainty and predictability to parties involved in cross-border transactions, providing clarity as to whether and to what extent a judgment will be recognised and enforced in another jurisdiction. By ensuring the recognition and enforcement of foreign judgments, the HCCH 2019 Judgments Convention enhances access to justice by reducing legal timeframes, costs and risks in cross-border circumstances. It generally strengthens a positive national and international environment for multilateral trade, investment, and mobility.⁶ To date, however, there are only six countries which have signed the HCCH 2019 Judgments Convention. None of them is an ASEAN Member State.⁷ The recognition and enforcement of foreign commercial judgments can also be regulated at the level of an association of nations. For example,

⁵ Outline. HCCH 2005 Choice of Court Convention. *HCCH* [online]. [cit. 30. 5. 2022]. Available at: <https://assets.hcch.net/docs/89be0bce-36c7-4701-af9a-1f27be046125.pdf>

⁶ Outline. HCCH 2019 Judgments Convention. *HCCH* [online]. [cit. 30. 5. 2022]. Available at: <https://assets.hcch.net/docs/36b240ac-8228-481d-a33b-3716baf4c656.pdf>

⁷ Status Table. Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. *HCCH* [online]. [cit. 30. 5. 2022]. Available at: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=137>

in the EU, the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“Brussels I Regulation (recast)”) ensures the free portability of civil and commercial judgments. The Brussels I Regulation (recast) is a legal act that applies directly at the national level within EU countries and Member States do not need to create their own legislation to bring an EU regulation into force. It can happen since the Treaty of Amsterdam 1997 “communitised” judicial cooperation in civil matters. In other words, the EU has been empowered by the Member States to issue directly applicable regulations in the area of judicial cooperation in civil (including commercial) matters.⁸ In ASEAN, judicial cooperation is not “communitised”. This means that neither ASEAN as a whole nor any organisation of ASEAN have powers to regulate the question of recognition and enforcement of foreign judgments. Hence, should ASEAN intend to regulate this question uniformly on the level of the association of nations, as the EU has, it should do it based on mutual consent by a multilateral treaty that each Member State should sign. According to the state of things in 2022 in ASEAN, no such treaty exists. In other words, there is no ASEAN-wide treaty on the subject of recognition and enforcement of foreign judgments.

Bilateral treaties between ASEAN Member States can also be a potential level on which recognition and enforcement of foreign judgments could be regulated. However, it is not a frequently used method in ASEAN. This means that in 2022 there are only two bilateral treaties in ASEAN, which deal with the recognition and enforcement of civil and commercial judgments rendered by the courts of another ASEAN Member States. These are treaties between Vietnam and Laos, and Vietnam and Cambodia.⁹

In addition to bilateral treaties, there is another bilateral mechanism, known as the memorandum of guidance (“MOG”), through which

⁸ Judicial cooperation in civil matters. *EUR-Lex* [online]. [cit. 30.5.2022]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM;judicial_cooperation_civil_matters

⁹ Agreement on Legal Assistance in Civil Matters between the Socialist Republic of Vietnam and the Kingdom of Cambodia signed on 21 January 2013. Agreement on Legal Assistance in Civil and Criminal Matters between the Socialist Republic of Vietnam and the Lao People’s Democratic Republic signed on 6 July 1998.

the recognition and enforcement of foreign judgments can be regulated. There is one such MOG wherein both parties are ASEAN Member States, namely, the Memorandum of Guidance as to Enforcement of Money Judgments between the Supreme Court of the Union, Republic of the Union of Myanmar and the Supreme Court of the Republic of Singapore of 2020. As opposed to the above-mentioned bilateral treaties, MOGs are concluded by the Supreme Courts of the respective countries and not by the state governments. In addition, when compared with bilateral treaties after being ratified, MOGs are not binding legal sources. Nevertheless, MOGs are considered as an important source of soft law. *Anselmo Reyes*, the editor of *Recognition and Enforcement of Judgments in Civil and Commercial Matters*, a book published in 2019, analysing the applicable rules on the recognition and enforcement of foreign civil and commercial judgments in fifteen Asian jurisdictions, amongst which eight are ASEAN Member States, finds that: *“another method, one that may not be as time-consuming as entering into bilateral treaties, would be for judiciaries in different countries to enter into Memorandums of Guidance (MOGs) with one another, setting out in a non-legally binding document the criteria and procedures that a judiciary will apply when considering whether to recognise a judgement rendered by another judiciary. This method may be faster, because the MOGs are purely informal, being solely for the purpose of communicating information to members of the public interested in having a judgment recognised or enforced by the court of one or other party to an MOG. MOGs can therefore be entered into as between judiciaries on an administrative basis without need for government or legislative intervention or approval.”*¹⁰

Based on the above, we can conclude that neither multilateral, nor bilateral mechanisms cover ASEAN in a way from which we could assess the portability of foreign commercial judgments. It is therefore unavoidable to look into the ASEAN Member States’ internal laws. It is certainly not an easy exercise to assess ASEAN Member States’ internal laws considering the variety of languages in which such laws are written (e.g, Malay, Khmer, Bahasa, Burmese, Thai, Vietnamese, Laotian, and English). What makes the research more difficult is also that the legal traditions to which ASEAN

¹⁰ REYES, A. Introduction: Towards a System for the Recognition and Enforcement of Judgments. In: REYES, A. (ed.). *Recognition and Enforcement of Judgments in Civil and Commercial Matters*. Oxford: Hart Publishing, 2019, pp. 16–17.

Member States belong also vary. The researcher must be familiar with legal sources in each jurisdiction, amongst which there are common law and civil law jurisdictions, and understand the hierarchy of the sources. Therefore, such assessment remains beyond the scope of our research, and, for the rest, we entirely rely on the findings of the Foreign Judgments Project (“Project”) of the Singapore based Asian Business Law Institute (“ABLI”).

The Project was launched in 2016 and resulted in two highly important publications: a compendium on the Recognition and Enforcement of Foreign Judgments in Asia (“Compendium”) and the Asian Principles for the Recognition and Enforcement of Foreign Judgments (“Asian Principles”) released in 2017 and 2020, respectively. The Project was led by *Adeline Chong*, an Associate Professor of Law at the School of Law of the Singapore Management University, whose research area includes private international law. The Compendium and the Asian Principles are the outputs of the first and the second phase of the Project, respectively. In the first phase of the Project, jurisdictional reporters, each being experts on private international law of their respective countries, either legal professionals or academic researchers, provided a chapter on the applicable rules for the recognition and enforcement of foreign judgments in their country. As such, the Compendium gives a snapshot on the rules of recognition and enforcement of foreign judgments which were in effect in 2017 in each of the surveyed fifteen jurisdictions. More importantly, the territorial scope of the Project covered all ten ASEAN Member States. The second phase of the Project then made a huge step forward by proposing thirteen principles which, based on the findings of the Compendium, could be regarded as a common denominator of a potential harmonised set of rules applicable to the recognition and enforcement of foreign commercial judgments in Asia.

Following the ABLI’s Project’s finding, in particular the country reports on ASEAN Member States which have been included in the Compendium, and the ABLI’s publication released in February 2022 under the title “Ranking the Portability of ASEAN Judgments within ASEAN”, in Table 1 we set out whether a judgment rendered in an ASEAN Member State (“Country of Origin”) can be enforced in another ASEAN Member State (“Country

Addressed”), and if so, in which Member State it is enforceable.¹¹ In Table 1, a “tick sign” means that a judgment rendered by the courts of the Country of Origin is enforceable in the respective Country Addressed. Whereas an “x sign” means that a judgment rendered by the courts of the Country of Origin is not enforceable in the respective Country Addressed.

Table no. 1: Portability of foreign judgments amongst ASEAN Member States

Country of Origin	Number of ASEAN jurisdictions recognising judgments from the Country of Origin	Country Addressed									
		Brunei*	Cambodia	Indonesia	Laos	Malaysia*	Myanmar*	Philippines*	Singapore*	Thailand	Vietnam*
Brunei	5/9	–	×	×	×	✓	✓	✓	✓	×	✓
Cambodia	6/9	✓	–	×	×	✓	✓	✓	✓	×	✓
Indonesia	6/9	✓	×	–	×	✓	✓	✓	✓	×	✓
Laos	6/9	✓	×	×	–	✓	✓	✓	✓	×	✓
Malaysia	5/9	✓	×	×	×	–	✓	✓	✓	×	✓
Myanmar	5/9	✓	×	×	×	✓	–	✓	✓	×	✓
Philippines	5/9	✓	×	×	×	✓	✓	–	✓	×	✓
Singapore	5/9	✓	×	×	×	✓	✓	✓	–	×	✓
Thailand	6/9	✓	×	×	×	✓	✓	✓	✓	–	✓
Vietnam	7/9	✓	✓	×	✓	✓	✓	✓	✓	×	–

Source: Ranking the Portability of ASEAN Judgments within ASEAN. *Asian Business Law Institute* [online]. February 2022 [cit. 30. 5. 2022]. Available at: <https://payhip.com/b/OkhoH>

The second column of Table 1 indicates the number of ASEAN jurisdictions in which a judgment rendered in another ASEAN Member State is enforceable. Based on this indicator, it appears that Vietnamese judgments are the “most portable”, they can be enforced in seven out of the nine other ASEAN jurisdictions. Vietnamese judgments are followed

¹¹ Enforcement of Foreign Judgments in ASEAN: Ranking the Portability of ASEAN Judgments within ASEAN. *Asian Business Law Institute* [online]. February 2022 [cit. 30. 5. 2022]. Available at: <https://payhip.com/b/OkhoH>

by Cambodia, Indonesia, Laos, and Thailand, the judgments of which can be enforced in six ASEAN jurisdictions. Whereas judgments rendered by the courts of Brunei, Malaysia, Myanmar, the Philippines, and Singapore are only enforceable in five ASEAN jurisdictions.

When looking into the ten columns under the heading “Country Addressed”, it becomes apparent that there are six ASEAN Member States which take a “liberal” approach as to the enforceability of foreign judgments, meaning that they do recognise and enforce foreign judgments. Such countries are Brunei, Malaysia, Myanmar, the Philippines, Singapore, and Vietnam. The Member States belonging to such “liberal block” have been marked with an “asterisk sign” in Table 1. Whereas the remaining four Member States, namely, Cambodia, Indonesia, Laos, and Thailand take an “illiberal” stance by, with two exceptions, not enforcing foreign judgments.

Four of the Member States in the “liberal block”, namely Brunei, Malaysia, Myanmar and Singapore are former British colonies, and they follow the common law tradition. The Philippines is a mixed jurisdiction with common law roots, which is the result of its colonisation in the past by the United States. In common law, foreign money judgments are enforceable.¹² Vietnam is the only civil law jurisdiction in this block.

Amongst the ASEAN Member States which belong to the “illiberal block” there are two countries, Indonesia (a civil law country) and Thailand (a predominantly civil law legal system, but a hybrid of many influences), which do not recognise and enforce foreign judgments, because their laws do not allow for it. Whereas in principle, Cambodia and Laos do recognise and enforce foreign judgments, they interpret the prerequisite reciprocity in a restrictive manner. In practice, according to the Laos and Cambodia country reports embedded in ABLI’s Compendium, reciprocity can only be established if there is a treaty providing for the mutual recognition and enforcement of foreign judgments. Since Cambodia and Laos each has only one bilateral treaty with Vietnam, in Cambodia and Laos only Vietnamese judgments can be enforced.

¹² We must note, however, that in the Philippines the Rules of Civil Procedure of 1997 (i.e., a statutory source) provides for requirements which enable the enforcement of money judgments.

According to ABLI, there are two primary hurdles that prevent judgments rendered by the courts of one ASEAN Member State from being enforced by the courts of another ASEAN Member State. The first hurdle is the absence of laws for the enforcement of judgments. This is the case in Indonesia and Thailand which do not have laws that allow for the enforcement of foreign judgment from any country. The second hurdle is the rigid standard of reciprocity in Cambodia and Laos, which only enforce judgments from countries with which they have a bilateral agreement to do so.¹³

3 Mutual Trust: The Cornerstone of Judicial Cooperation in the EU

The principle of mutual trust means that one EU Member State can be sure that other Member States respect and ensure an equivalent level of certain common values, in particular the principles of freedom, democracy, respect for human rights, and the rule of law.¹⁴ Mutual trust has its roots in Article 2 of the Treaty on European Union (“TEU”), which provides that: *“the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”* The EU’s legal structure is based on the fundamental premise that each Member State shares with all the other Member States a set of common values on which the EU is founded, as stated in Article 2 of the TEU. That premise implies and justifies the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the law of the EU that implements them will be respected.

It can be said that mutual trust has become the cornerstone of the EU’s legal system and it has been assigned the status of a principle, arguably a structural principle of EU constitutional law. This transpires from Opinion 2/13 on the Accession of the EU to the European Convention on Human

¹³ Enforcement of Foreign Judgments in ASEAN: Ranking the Portability of ASEAN Judgments within ASEAN. *Asian Business Law Institute* [online]. February 2022 [cit. 30. 5. 2022]. Available at: <https://payhip.com/b/OkhoH>

¹⁴ PRECHAL, S. Mutual Trust Before the Court of Justice of the European Union. *European Papers*. 2017, Vol. 2, no. 1, p. 81.

Rights wherein the Court of Justice of the European Union has stressed that *“the principle of mutual trust between the Member States is of fundamental importance in EU law, given that it allows an area without internal borders to be created and maintained. That principle requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law [...]. Thus, when implementing EU law, the Member States may, under EU law, be required to presume that fundamental rights have been observed by the other Member States, so that not only may they not demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law, but, save in exceptional cases, they may not check whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the EU.”*¹⁵

Judicial cooperation in civil and commercial matters, including the issue of portability of civil and commercial judgments within the EU, is also based on the principle of mutual trust.¹⁶ It is noteworthy, however, that mutual trust in the field of judicial cooperation has not been born in a wink; it has been built up gradually.¹⁷ Such gradual development can be captured, amongst others, in the changes through which the Brussels Regime (i.e., the instruments regulating the issues of jurisdiction and the recognition and enforcement of foreign civil and commercial judgments in the EU) has gone through from the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (“Brussels Convention”) to the Brussels I Regulation (recast) of 2012.¹⁸ Recognition and enforcement of judgments in civil and commercial matters was

¹⁵ Opinion 2/13 of the Court of Justice of the European Union of 18 December 2014, para. 191–192.

¹⁶ GOMBOS, K. *A jog érvényesülésének térsége – Az Európai Unió nemzetközi magánjogi szabályainak XXI. századi kibívásai*. Budapest: Wolters Kluwer, 2020, p. 93.

¹⁷ KENGYEL, M. *Brüsszeltől – Brüsszelig. Tanulmányok az európai polgári eljárásjog köréből*. Budapest: Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, 2017, 288 p.

¹⁸ The Brussels Regime includes five legal instruments. All five legal instruments are broadly similar in content and application, with differences in their scope of application. They establish a general rule that individuals are to be sued in their state of domicile and then proceed to provide a list of exceptions. The instruments further provide for the recognition of judgments made in other countries.

originally accomplished within the European Communities by the Brussels Convention. The Brussels Convention was replaced by the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“Brussels I Regulation”), which was the primary piece of legislation in the Brussels framework from 2002 until January 2015. Unlike the Brussels Convention, which was entered into on a treaty basis (i.e., as a multilateral treaty), the Brussels I Regulation is a regulation issued by the European Council and as such was directly applicable in all EU Member States excluding Denmark, which has a full opt-out right from implementing regulations under the Area of Freedom, Security and Justice, which was introduced into the European law under the Treaty of Amsterdam of 1997.¹⁹ The Brussels I Regulation was considered a successful instrument on judicial cooperation in the EU. On 6 December 2012, however, the Council of the EU Justice Ministers adopted a recast of this regulation. The Brussels I Regulation (recast) has been applicable since 2015. It took a major step in the direction of abolishing the *exequatur* procedure (i.e., the procedure for the declaration of enforceability of a judgment in another Member State). Under the Brussels I Regulation (recast) a judgment given in a Member State that falls under the scope of its application (i.e., judgments rendered in civil and commercial matters) are recognised in the other Member States without any specific procedure, and, if enforceable in the Member State of origin, will be enforceable in the other Member States without any declaration of enforceability.²⁰

The Brussels Regime’s example above shows that EU Member States trust that fundamental rights are protected, and that the rule of law prevails in all other Member States. They have such trust in each other’s national legal systems and institutional frameworks, including the judiciaries of other Member States. The question arises then as to whether such mutual trust in other Member States’ judiciaries exists in ASEAN. Is there any basis

¹⁹ The area of freedom, security and justice is a collection of home affairs and justice policies designed to ensure security, rights and free movement within the EU.

²⁰ TIMMER, L. J. Abolition of Exequatur under the Brussels I Regulation: Ill Conceived and Premature? *Journal of Private International Law*. 2013, Vol. 9, no. 1, p. 129.

for it? To answer this question, we have tried to ascertain the quality of civil justice in ASEAN Member States.²¹

4 Quality of Civil Justice in ASEAN Member States

The first question which necessarily arises concerns the measurement of the quality of civil justice. How can the quality (in the broad sense) of justice systems be measured? There is no single answer for this. Nevertheless, this paper will present the option which is used in the EU: the EU Justice Scoreboard. The EU Justice Scoreboard is an annual comparative information tool which was created to assist the EU and Member States to improve the effectiveness of their national justice systems by providing objective, reliable and comparable data on several indicators relevant for the assessment of the efficiency, quality and independence of justice systems in all Member States. The EU Justice Scoreboard does not present an overall single ranking of the Member States' judiciaries but gives an overview of how all the justice systems function, based on indicators that are of common interest and relevant for all Member States.²² The main aspects of civil justice and the indicators thereof included in the EU Justice Scoreboard are summarised below in Table 2.

²¹ In this paper, quality is used in the broad sense by referring to the overall performance of the judiciary, covering aspects such as time, efficiency, and independence of the judicial body. This is opposed to the terminology of the EU Justice Scoreboard which measures the effectiveness of the national justice system of EU Member States based on (i) efficiency, (ii) quality (in the narrow sense) and (iii) independence thereof.

²² EU Justice Scoreboard 2021: digital tools help courts and prosecution services mitigate COVID-19 challenges [online]. *European Commission* [cit. 30. 5. 2022]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3523

Table no. 2: Aspects and indicators of civil justice in the EU Justice Scoreboard

Civil justice aspects		Indicators of civil justice	
(i)	Efficiency	Estimated length of proceedings	i.e., estimated average time in days needed to resolve a case
		Clearance rate	i.e., the ratio of the number of resolved cases to the number of incoming cases
		Number of pending cases	i.e., that remains to be dealt with at the end of the year
(ii)	Quality (in the narrow sense)	Accessibility	e.g., accessibility to legal aid, level of court fees and legal fees, the extent to which legal costs can be recovered, accessibility to alternative dispute resolution methods
		Resources	e.g., financial and human resources, availability of trainings
		Assessment tools	e.g., the use of surveys among court users and legal professionals
		Digitalisation	e.g., access to online information about the judicial system, use of digital tools by courts, online access to courts via secure electronic tools, online access to published judgments
(iii)	Independence	Perceived independence	e.g., perceived independence of courts and judges among the general public and among companies
		Structural independence	e.g., rules, particularly with regards to the composition of the court, the appointment of judges, length of service and grounds for abstention, rejection and dismissal of members of the judiciary

A comprehensive dataset on the quality of judicial services, such as the EU Justice Scoreboard, is not available in ASEAN. In other words, no “ASEAN Justice Scoreboard” exists. However, there are numerous global surveys which capture one or more indicators of judicial performance. Such global surveys are listed below in Table 3.

Table no. 3: Global surveys including indicators of civil justice

Publishing institution		Global survey (year of release) ²³
(i)	Transparency International	Corruption Perceptions Index (2021) ²⁴
(ii)	World Bank	Doing Business Index (2020) ²⁵
(iii)	World Bank	Worldwide Governance Indicators (2020) ²⁶
(iv)	World Economic Forum	Global Competitiveness Report (2019) ²⁷
(v)	World Justice Project	Rule of Law Index (2021) ²⁸

The global surveys listed in Table 3 cover most of the ASEAN Member States and they measure a wide range of civil justice aspects, such as (i) the length of proceedings, (ii) the accessibility and affordability of justice, (iii) the quality of judicial process (in a narrow sense), (iv) the efficiency of the legal framework in settling disputes, (v) the level of judicial independence, (vi) corruption, and (vii) the rule of law.²⁹ Such aspects of civil justice linked with the relevant indicators and global surveys can be seen below in Table 4.

²³ The data collection period of these surveys varies either because the survey has been discontinued (e.g., World Bank's Doing Business Project), or was not published in 2021. Nevertheless, we used the most recent data available with respect to each survey.

²⁴ Corruption Perceptions Index 2021. *Transparency International* [online]. [cit. 30. 5. 2022]. Available at: <https://www.transparency.org/en/cpi/2021>

²⁵ Doing Business 2020: Comparing Business Regulation in 190 Economies. *World Bank Group* [online]. [cit. 30. 5. 2022]. Available at: <https://openknowledge.worldbank.org/handle/10986/32436>; Doing Business. *The World Bank* [online]. [cit. 30. 5. 2022]. Available at: <https://archive.doingbusiness.org/en/doingbusiness>

²⁶ Worldwide Governance Indicators. *The World Bank* [online]. [cit. 30. 5. 2022]. Available at: <http://info.worldbank.org/governance/wgi/>; Worldwide Governance Indicators. Interactive Data Access. *The World Bank* [online]. [cit. 30. 5. 2022]. Available at: <http://info.worldbank.org/governance/wgi/Home/Reports>

²⁷ Global Competitiveness Report 2019. *World Economic Forum* [online]. [cit. 30. 5. 2022]. Available at: <http://reports.weforum.org/global-competitiveness-report-2019/competitiveness-rankings/#series=GCI4>

²⁸ Rule of Law Index 2021. *World Justice Project* [online]. [cit. 30. 5. 2022]. Available at: <https://worldjusticeproject.org/rule-of-law-index/global>

²⁹ Such exceptions are the indicators of the World Justice Project's Rule of Law Index (2021), which do not include data regarding Brunei and Laos; The World Economic Forum's Global Competitiveness Report, which lacks data regarding Myanmar; and the Transparency International's Corruption Perceptions Index, which does not cover Brunei.

Table no. 4: Aspects of civil justice captured by global surveys including data regarding ASEAN Member States

Aspects of civil justice		Indicators of global surveys capturing the respective aspect of civil justice
(i)	Length of proceedings	The World Bank's Doing Business Index's enforcing contracts indicators including sub-indicators on the time necessary for resolving a commercial dispute through a local first-instance court and the time necessary for compulsory enforcement
		The World Justice Project's Rule of Law Index's civil justice indicator's sub-indicator: "civil justice is not subject to unreasonable delay"
(ii)	Accessibility and affordability	The World Bank's Doing Business Index's enforcing contracts indicator's sub-indicator on the costs of resolving a commercial dispute through a local first-instance court and the costs of compulsory enforcement
		The World Justice Project's Rule of Law Index's civil justice indicator's sub-indicator: "people can access and afford civil justice"
(iii)	Quality (in the narrow sense) of judicial process	The World Bank's Doing Business Index's enforcing contracts indicator's sub-indicator on the quality of judicial process
(iv)	Efficiency of the legal framework in settling disputes	The World Economic Forum's Global Competitiveness Report's indicator on the efficiency of the legal framework in settling disputes
(v)	Judicial independence	The World Economic Forum's Global Competitiveness Report's indicator on judicial independence
		The World Justice Project's Rule of Law Index's civil justice indicator's sub-indicator: "civil justice is free of improper government influence"
(vi)	Corruption	The World Bank's Worldwide Governance Indicator's control of corruption indicator
		The World Justice Project's Rule of Law Index's civil justice indicator's sub-indicator: "civil justice is free of corruption"
		Transparency International's Corruption Perceptions Index indicator on the perceived level of corruption
(vii)	Rule of law	The World Bank's Worldwide Governance Indicator's rule of law indicator
		The World Justice Project's Rule of Law Index's rule of law indicator

Certain aspects of civil justice are captured by more than one global survey. For instance, the length of judicial proceedings is measured by the World Bank's Doing Business Index and the World Justice Project's Rule of Law Index, or corruption is measured by three global surveys: the World Bank's Doing Business Index, the World Justice Project's Rule of Law Index, and the Transparency International's Corruption Perceptions Index. While other aspects, such as the quality (in the narrow sense) of the judicial process and the efficiency of the legal framework in settling disputes are only captured by one survey, the World Bank's Doing Business Index, and the World Economic Forum's Global Competitiveness Report, respectively.

Multiple surveys capturing the same aspect of civil justice allow us to fill the gap of information (if any) and/or spot consistencies and inconsistencies between the surveys. For instance, regarding the aspect of the length of legal proceedings (respective data can be found in Table 5.1), the World Bank's Doing Business Index fills the information gap regarding Brunei and Laos, the two economies which have not been covered by the World Justice Project's Rule of Law Index. In many cases, the findings of the various rankings are consistent. For instance, regarding corruption, all three surveys which capture this aspect of civil justice place Singapore the most and Cambodia the least free of corruption amongst ASEAN Member States. However, in some cases, there are discrepancies between the findings of the surveys despite the fact that they touch upon the same or very similar issues. For instance, regarding the accessibility and affordability of civil justice (respective data can be found in Table 5.1), according to the "people can access and afford civil justice" component of the World Justice Project's Rule of Law Index, Cambodia and Myanmar score the same (i.e., both economies score 0.35), which makes us wonder how these two countries could get the same score when, according to the "enforcing contracts" component of the World Bank's Doing Business Index, the cost of enforcement of a contract compared to the amount in controversy (i.e., the amount that the plaintiff is trying to assert through litigation) in Myanmar and Cambodia are 51.5% and 103.4% of the claim amount, respectively. Under the World Bank's Doing Business Index, this means that the costs of the enforcement of a contractual claim of \$ 5,000, which arises from an order of custom-made furniture in respect of the quality of such furniture between

the seller and the buyer, in Myanmar and Cambodia amount to \$ 2,575 and \$ 5,170, respectively.³⁰ Such discrepancies make us draw conclusions from these surveys with cautiousness.

In Tables 5.1 and 5.2, we have gathered the scores achieved by each ASEAN Member States regarding the thirteen indicators of the global surveys listed in Table 3. For ease of reference, we indicate how such scores rank amongst the ASEAN Member States in Tables 5.1 and 5.2. The thirteen relevant indicators of the global surveys have been grouped into seven categories in accordance with Table 4, each corresponding to one aspect of civil justice.

Table no. 5.1: ASEAN Member States' ranks and scores in relevant global surveys³¹

ASEAN Member State	(i) Length of proceedings		(ii) Accessibility and affordability		(iii) Quality of judicial process	(iv) Efficiency of legal framework in settling disputes
	WB – DB 2020 Enforcing contracts – Time (Calendar days)	WJP – ROL 2021 – Civil justice is not subject to unreasonable delay (0–1)	WB – DB 2020 – Enforcing contracts – Cost/Claim value (%)	WJP – ROL 2021 – People can access and afford civil justice (0–1)	WB – DB 2020 – Enforcing contracts – Quality of judicial process (0–18)	WEF – GCR 2019 – Efficiency of legal framework in settling disputes (1–100)
Brunei	7 th (540)	N/A ³²	6 th (36.6)	N/A	3 rd (11.5)	6 th (49.9)
Cambodia	6 th (483)	7 th (0.29)	10 th (103.4)	7 th (0.35)	6 th (4.5)	8 th (33.8)
Indonesia	3 rd (403)	3 rd (0.52)	9 th (70.3)	5 th (0.5)	4 th (8.9)	5 th (51.1)
Laos	8 th (828)	N/A	5 th (31.6)	N/A	8 th (3.5)	4 th (52.2)
Malaysia	5 th (425)	2 nd (0.71)	7 th (37.9)	3 rd (0.57)	2 nd (13)	2 nd (69)
Myanmar	10 th (1160)	5 th (0.46)	8 th (51.5)	6 th (0.35)	8 th (4)	N/A
Philippines	9 th (962)	6 th (0.35)	4 th (31)	4 th (0.53)	6 th (7.5)	9 th (33.5)
Singapore	1 st (164)	1 st (0.91)	2 nd (25.8)	1 st (0.63)	1 st (15.5)	1 st (86.6)
Thailand	4 th (420)	8 th (0.26)	1 st (16.9)	2 nd (0.6)	5 th (8.5)	3 rd (53.5)
Vietnam	2 nd (400)	4 th (0.49)	3 rd (29)	5 th (0.5)	6 th (7.5)	7 th (43)

³⁰ Enforcing Contracts Methodology. *The World Bank* [online]. [cit. 30. 5. 2022]. Available at: <https://archive.doingbusiness.org/en/methodology/enforcing-contracts>

³¹ Abbreviations in Table 5.1: WB stands for World Bank; DB stands for Doing Business; WJP stands for World Justice Project; ROL stands for Rule of Law; WEF stands for World Economic Forum; and GCR stands for Global Competitiveness Report.

³² N/A means that data regarding a particular ASEAN Member State is “not available”.

Table no. 5.2: ASEAN Member States' ranks and scores in relevant global survey³³

ASEAN Member State	(v) Judicial independence		(vi) Corruption			(vii) Rule of law	
	WEF – GCR 2019 – Judicial Independence (1–100)	WJP – ROL 2021 – Civil justice is free of improper government influence (0–1)	WB – WGI 2020 – Control of corruption (1–100)	WJP – ROL 2021 – Civil justice is free of corruption (0–1)	TI – CPI 2021 (1–100)	WB – WGI 2020 – Rule of law (1–100)	WJP – ROL 2021 – Overall scores of rule of law (0–1)
Brunei	6 th (48.8)	N/A	2 nd (87)	N/A	N/A	2 nd (80.3)	N/A
Cambodia	9 th (28.6)	8 th (0.16)	10 th (11.1)	8 th (0.12)	9 th (23)	9 th (17.8)	8 th (0.32)
Indonesia	3 rd (52.2)	3 rd (0.49)	5 th (38.9)	5 th (0.4)	4 th (38)	6 th (41.8)	3 rd (0.52)
Laos	4 th (50.1)	N/A	9 th (14.9)	N/A	7 th (30)	8 th (20.7)	N/A
Malaysia	2 nd (68.7)	2 nd (0.55)	3 rd (62.5)	3 rd (0.7)	2 nd (48)	3 rd (73.1)	2 nd (0.57)
Myanmar	N/A	7 th (0.21)	8 th (27.9)	7 th (0,3)	8 th (28)	10 th (10.6)	7 th (0.39)
Philippines	8 th (32.2)	5 th (0.32)	7 th (34.1)	4 th (0.5)	6 th (33)	7 th (31.7)	6 th (0.46)
Singapore	1 st (77.4)	1 st (0.68)	1 st (99)	1 st (0.85)	1 st (85)	1 st (98.6)	1 st (0.78)
Thailand	5 th (49.7)	4 th (0.48)	6 th (38.5)	2 nd (0.72)	5 th (35)	4 th (57.7)	4 th (0.5)
Vietnam	7 th (40.9)	6 th (0.31)	4 th (42.3)	6 th (0.34)	3 rd (39)	5 th (48.6)	5 th (0.49)

Now we turn to the analysis of the data included in Tables 5.1 and 5.2. It appears that out of all the thirteen rankings examined, Singapore (a high-income country and a common-law jurisdiction) comes as the first or the second-best performer. In fact, Singapore has ranked twelve times as the best performer with respect to these indicators in ASEAN. The sole indicator under which Singapore has got the silver medal (and not gold) is the indicator by which the World Bank's Doing Business Index measures the costs of enforcement of a commercial contract. The enforcement of a commercial contract was found more affordable in Thailand (16.9% of the amount in controversy) than in Singapore (25.8% of the amount in controversy). However, if we compare the quality of the judicial process captured by the same survey in these countries, we find

³³ Abbreviations in Table 5.2: WEF stands for World Economic Forum; GCR stands for Global Competitiveness Report; WJP stands for World Justice Project; ROL stands for Rule of Law; WB stands for World Bank; WGI stands for Worldwide Governance Indicator; TI stands for Transparency International; and CPI stands for Corruption Perceptions Index.

that out of the 18 achievable scores, Singapore and Thailand got 15.5 and 8.5, respectively. In respect of Singapore and Thailand, therefore, it can be said that for a somewhat higher price one may get a judicial service of a significantly better quality.

Singapore's excellent performance in these aspects does not come as a surprise. Singapore is a high-income country, and it can certainly afford spending more on its judiciary than, for instance, the Least Developed Countries ("LDC") in ASEAN (i.e., Cambodia, Laos, and Myanmar). In addition, for a long time, Singapore has sought to position itself as a neutral venue for dispute resolution between parties from different jurisdictions. Accordingly, it has created the necessary legislative and institutional framework. For example, the Singapore International Arbitration Centre has become one of the most prominent arbitral institutions worldwide, the Singapore International Commercial Court has been established to attract international businesses to take advantage of the well-designed court-based mechanism.³⁴ Singapore's strategic geographical location together with its well-developed and respected legal system and legal infrastructure made it well placed to become the Asian dispute resolution hub to cater for the growth in cross-border, multi-jurisdictional disputes in Asia. As to the performance level of its judiciary, Singapore is clearly not an average ASEAN Member State. In numbers, it means that, in each ranking, Singapore scores significantly higher than the median performance level of ASEAN Member States.

Besides Singapore, Malaysia's scores are also noteworthy. In seven cases amongst the thirteen rankings, Malaysia, an upper-middle-income common law jurisdiction, scored the second-best.

On the lower end of the rankings, there are Cambodia and Myanmar. Amongst the indicators examined, Cambodia (a lower-middle income LDC, a civil law jurisdiction) and Myanmar (a lower-middle income LDC, a common law jurisdiction) ranked the last or the penultimate place eleven and six times, respectively.

³⁴ Arbitration in Singapore. *Singapore International Commercial Centre* [online]. [cit. 30. 5. 2022]. Available at: <https://www.siac.org.sg/about-us/why-siac/arbitration-in-singapore>; Establishment of the SICC. *Singapore International Commercial Court* [online]. [cit. 30. 5. 2022]. Available at: <https://www.sicc.gov.sg/about-the-sicc>

Considering the extreme historical burden that the country had to overcome, Cambodia's weak performance with regard to the indicators in question does not come as a surprise either. 17 April 1975 marked a brutal break in the development of Cambodia's fledgling legal and judicial system when the Pol Pot-led Khmer Rouge³⁵ marched into Phnom Penh and seized control of the country. The country's borders were subsequently closed, and Cambodia was isolated for years. For quite a while, the international community did not know what was happening inside Cambodia's borders. The Khmer Rouge's aim was to build a communist agrarian society based on peasant equality. The Khmer Rouge abolished private property, eliminated the circulation of money. The urban population was forced into labour camps, and people who were literate and spoke languages were considered enemies of the regime and executed. The education system was completely ripped apart, claiming that it was not needed for rice production. In less than four years of the Khmer Rouge regime (officially known as Democratic Kampuchea), UN experts estimate that 2–3 million people had died without the country being at war,³⁶ while the Yale University's Cambodian Genocide Program estimates the number of victims under the regime at 1.7 million.³⁷ According to our knowledge, around 200,000 people were executed for political reasons, while the rest died because of intolerable working conditions, general hunger, and a complete lack of medical care. The Khmer Rouge ideology considered law to be unnecessary. In Pol Pot's Democratic Cambodia, there was no justice system. The late Professor Jörg Menzel, of the University of Bonn, put it aptly when he said that: *"It seems misleading to qualify the time of the Khmer Rouge rule as a legal system of extreme communist or Maoist nature, as the Khmer Rouge did not operate under any kind of 'legal' system. Whereas other extreme dictatorships like the German National Socialists or the Soviet Union under Stalin abused and perverted the legal structure for their evil purposes, the Khmer Rouge simply abolished the law."*³⁸ Michael

³⁵ Khmer refers to the dominant ethnic Group In Cambodia, while Rouge (red) refers to leftism.

³⁶ BALOGH, A. *Délkelet-Ázsia történelme*. Budapest: ELTE Eötvös Kiadó, 2018, pp. 427–433.

³⁷ Cambodian Genocide Program. *Yale University* [online]. [cit. 30. 5. 2022]. Available at: <https://gsp.yale.edu/case-studies/cambodian-genocide-program>

³⁸ MENZEL, J. Cambodian Law: Some Comparative and International Perspectives. In: PENG, H., PHALLACK, K., MENZEL, J. (eds.). *Introduction to Cambodian Law*. Phnom Penh: Konrad Adenauer-Stiftung, 2012, p. 484.

Vickery described this situation as a complete “legal vacuum”.³⁹ San Francisco University Professor Emerita Dolores A. Donovan, who was involved in the rebuilding of Cambodia’s legal system as a consultant in the 1990s, said: “In 1975, the Khmer Rouge destroyed the Cambodian legal system. Legislators, prosecutors, judges, lawyers, and law professors were killed or forced to flee the country. Law books were destroyed and the buildings that had housed the courts and the law school were converted to other uses. At the end of the destruction and the massacres, an estimated six to ten legal professionals remained alive in Cambodia. The situation has improved only slightly since then. Cambodia now has laws, but they are few and far between. The country has established courts, but most of them are barely functioning. Likewise, persons have been appointed judges and prosecutors, but few of them are educated in the law. In one respect, the situation has deteriorated even further; because of attrition due to death, the number of fully trained legal professionals now present in Cambodia has declined to five. Moreover, Cambodia has no private lawyers.”⁴⁰ Since the 1990s, i.e., the period that Professor Donovan has described, Cambodia’s judiciary has made significant progress. Such development can be thanked in a large part to the Japan International Cooperation Agency which provided technical assistance to the Royal Government of the Kingdom of Cambodia in establishing the court system and drafting Cambodia’s new Code of Civil Procedure.⁴¹ According to the present state of things, the Cambodian court system consists of three levels: Provincial/Municipal Courts, Appellate Courts, and the Supreme Court; and the same courts try both commercial cases and non-commercial civil cases, such as family disputes.⁴² However, the Cambodian Ministry of Justice is currently working on the establishment

³⁹ VICKERY, M. *Kampuchea: Politics, Economics and Society*. London: 1986, referred to in PHALLACK, K. Overview of the Cambodian Legal and Judicial System. In: PENG, H., PHALLACK, K., MENZEL, J. (eds.). *Introduction to Cambodian Law*. Phnom Penh: Konrad Adenauer-Stiftung, 2012, p. 8.

⁴⁰ DONOVAN, D. A. Cambodia: Building a Legal System from Scratch. *The International Lawyer*. 1993, Vol. 27, no. 2, p. 445.

⁴¹ The Legal and Judicial Development Project (Phase 3). *Japan International Cooperation Agency* [online]. [cit. 30. 5. 2022]. Available at: <https://www.jica.go.jp/project/english/cambodia/0701047/outline/index.html>

⁴² Report of the International Bar Association’s Human Rights Institute. Justice versus corruption. Challenges to the independence of the judiciary in Cambodia. *International Bar Association* [online]. September 2015 [cit. 30. 5. 2022]. Available at: http://ticambodia.org/library/wp-content/files_mf/1443694998JusticevcorruptioninCambodiaAug2015.pdf

of separate commercial courts, which is expected to further enhance the Cambodian court's capability in handling commercial disputes in a just and professional way.⁴³

Despite the above analysis of the data included in Tables 5.1 and 5.2., it is to be noted that there are several weaknesses in the methods we used to compare the quality of civil justice in ASEAN Member States. For instance, aspects which have been captured by more indicators (e.g., indicators capturing corruption) are overrepresented when compared with equally important aspects which have been covered by only one survey (e.g., quality of justice in the narrow sense). Or, in some cases (albeit rare), there is a discrepancy between indicators measuring the same or very similar aspect of civil justice (e.g., regarding the aspect of accessibility and affordability of courts in Myanmar's and Cambodia's cases). This might be the result of the differences in the methodology adopted by the two global surveys that we have considered or the slight divergence in the surveys' sample taking period, which vary from 2019 to 2021. In addition, the World Justice Project's Rule of Law Index does not cover two ASEAN Member States, Brunei and Laos.

Further, it would be overly ambitious, and would most likely lead to an unfair result should we attempt to create an overall ranking of the ASEAN Member States based on the scores achieved regarding the indicators considered in Tables 5.1 and 5.2. This is because of the difficulty in determining the appropriate weight to be accorded to each aspect in a combined, single ranking, i.e., to decide, for instance, whether a perfect and unchallengeable judgment rendered in a very lengthy judicial proceeding is better than a judgment with slight errors rendered within a reasonable time. Or, whether it is better to have courts which are not accessible for all the citizens because of their high fees and costs or courts which are affordable and accessible in general, but occasionally apply corrupt practices.

⁴³ TITH, K. Labour and Commercial Court to be operational at the end of this year. *Khmer Times* [online]. 5. 4. 2022 [cit. 30. 5. 2022]. Available at: <https://www.khmertimeskh.com/501052967/labour-and-commercial-court-to-be-operational-at-the-end-of-this-year/>

Nevertheless, all indicators analysed in Tables 5.1 and 5.2 capture crucial aspects of civil justice. This is because a court, which (i) is unable to hand down a judgment in a reasonable time, or (ii) not affordable or accessible for people, or (iii) cannot provide a service of quality, or (iv) the legal framework within which it operates is inefficient, or (v) wherein judges cannot work independently, or (vi) its officials are corrupt, or (vii) it operates in a country the adherence of which to the rule of law is weak, cannot ensure the fundamental right to a fair trial. We further argue that the scores achieved by Singapore/Malaysia and Cambodia/Myanmar, the top and the weakest performers in Tables 5.1 and 5.2, are so salient that despite the weaknesses of our method we can safely take the opinion that people who seek justice in Singapore or Malaysia have a greater chance to get a judicial service of higher quality compared to the overall quality of judicial process in Cambodia or Myanmar.

5 Conclusion

It appears that the two ASEAN Member States that this paper considers having the highest quality of civil justice (i.e., Singapore and Malaysia) do recognise and enforce commercial judgments rendered by the courts of the Member States that this paper has identified as the weakest performers (i.e., Cambodia and Myanmar) according to the aspects and indicators of civil justice quality set out in Table 4. Therefore, we can conclude that our initial hypothesis, which assumed that ASEAN Member States with more effective judiciaries would be reluctant to enforce judgments coming from weaker performing Member States, is not true. In our analysis, the wide gap which exists between the top and the weakest performing ASEAN Member States in terms of quality of civil justice does not appear as an insurmountable obstacle to the free portability of judgments within ASEAN. For instance, Singapore, instead of raising fences through which judgments from Myanmar cannot flow in, by signing the Singapore-Myanmar MOG in 2020 just further strengthened its willingness to enforce Myanmar judgments.⁴⁴

⁴⁴ Memorandum of Guidance as the Enforcement of Money Judgments Between the Supreme Court of the Union, Republic of the Union of Myanmar and The Supreme Court of the Republic of Singapore, 2020.

There is no contradiction between ABLI's and our findings. According to ABLI, the two primary hurdles of the free circulation of commercial judgments within ASEAN are the absence of laws for the enforcement of judgments in Indonesia and Thailand, and the rigid standards of reciprocity (i.e., the necessity of a treaty guaranteeing reciprocity) in Cambodia and Laos. Indeed, the obstacle is certainly not, as we erroneously assumed in our hypothesis, that ASEAN Member States with more effective judiciaries would be reluctant to enforce judgments coming from weaker performing judiciaries of other Member States.

If we take Singapore's and Cambodia's examples, where one Member State sits at the top and the other at the bottom of the global surveys rankings which we have examined, the case is rather the contrary. It is Cambodia, the Member State ranked the last or the penultimate place eleven times in the thirteen rankings examined (in Tables 5.1 and 5.2), which does not recognise and enforce judgments rendered by the courts of Singapore, the Member State scoring the best or the second best in all the rankings (in Tables 5.1 and 5.2). Not the other way around. Staying with this example, the question mark remains as to why Cambodia does not allow for the enforcement of Singapore judgments.

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