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RULE OF LAW IN THE SOUTHERN MEDITERRANEAN. FROM JUDICIAL INDEPENDENCE TO EFFICIENCY: AN INTERNAL - EXTERNAL EXPLANATORY APPROACH OF EU JUDICIAL SUPPORT IN MOROCCO AND JORDAN

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Rule of Law in the Southern Mediterranean.

From Judicial Independence to Efficiency:

an Internal-External Explanatory Approach of EU Judicial Support in Morocco and Jordan.

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List of abbreviations

CCJE: Consultative Council of European Judges

CEECs: Central and Eastern European Countries

CSM: Conseil Supérieur de la Magistrature

CSPJ: Conseil Supérieur du Pouvoir Judiciaire

EU: European Union

ICJ: International Commission of Jurists

ICT: Information Communication Technology

ISM: Institut Supérieur de la Magistrature

JHA: Justice and Home Affairs

MENA: Middle East and North Africa

NPM: New Public Management

US: United States

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Introduction

The European Union (EU) has, since the outset of the Euro-Mediterranean Partnership, developed instruments of foreign policy that promote and support democracy in countries of the Southern Neighbourhood. These programmes specifically address rule of law and the judiciary in order to support the strengthening of judicial independence and the enhancement of the efficiency of the courts. As the crisis of 2011, known as the Arab Spring, broke out, two monarchies in the region, Morocco and Jordan, faced the need to reform their judicial systems in order to preserve stability by means of constitutional reforms that would deliver both countries from poor guarantees of judicial independence and lack of transparency or efficiency.

In Southern Mediterranean countries, EU pressure for judicial reform supports both judicial independence and efficiency through programmes of budget support, training, legal drafting and institutional twinning, where different institutional and administrative set-ups are promoted without solid conditionality, instead relying only on socialisation mechanisms. Comparative scholars interested in external democratisation have emphasised the effects of rule of law promotion in the absence of credible conditionality (Schimmelfennig and Sedelmeier 2004, Grabbe 2004). The dynamic of European influence in supporting rule of law through judicial reforms in non-European countries is an empirical puzzle, a significant issue being the capacity of EU rule of law promotion to effect transformation in domestic institutions. The literature suggests that, when dealing with neighbouring countries, lack of membership perspective or credible conditionality leads to a weak domestic impact by the EU when compared to the experience of Eastern enlargement (Gawrich et al. 2009, Börzel 2011, Schimmelfennig and Sedelmeier 2005).

This research thesis will analyse the external and internal dynamics of judicial reforms adopted in Morocco and Jordan since 2011; in doing so we will rely on the findings of Morlino and Magen (2008) and Finnemore and Sikkink (1998), and their approach to norms dynamics. In particular, we have chosen an important empirical field where the two most similar countries receiving external support to judicial reforms show a variation on the judicial systemic level. This variation is still

unexplored and our knowledge of the dynamics of domestic veto players and external support to the judiciary could be further enhanced through comparative analysis of two most similar cases using a Most Similar Systems Design (Mill 1882).

Our evidence resonates with Russell and O'Brien's question on judicial independence and the tension between the minimal guarantees of judicial independence to be established in liberalising countries and the needs of judicial administrative capabilities in liberal democracies (Russell and O'Brien 2001)[1]. With this in mind, the main research question put forward is under which conditions external support is able to strengthen the independence of the judiciary as well as the administrative capabilities of the courts of transitioning countries. Indeed, a wave of reform in the sense of a more independent judiciary had already started in Morocco with the '*New Era*', launched by Mohammed VI at the beginning of the new century and finally inserted in the new Constitution of 2011. In Jordan, the King launched a comprehensive plan for the development of the country with the establishment of a Royal Committee for Judicial Development in 2000; from that moment, a number of achievements provided for the modernisation of the judiciary, enhancing the quality of the administration of the courts. The EU supported these two waves of reforms with programmes designed around the specific needs of the beneficiaries. Notwithstanding the similarities of the timing of the reforms and the institutional set-up, with two liberalising monarchies guiding democracy-oriented reforms, the stream of reforms that ensued did not converge toward a similar judicial governance pattern. We will show that domestic legacies have persisted through the changes, thus demonstrating a path-dependent effect on the institutional dimension of the judiciary and, conversely, that the administration of the courts was penetrated by external models promoted through support programmes. These findings corroborate the main literature that shows how, in the absence of resistance by veto players, beneficiary countries are open to externally-supported changes (see Morlino and Magen 2008, introductory chapter). We show that, while the judicial administrative dimension is open to external

[1] Russell and O'Brien in their book 'Judicial Independence in the Age of Democracy: Critical Perspectives from around the World' posit the following issue: in authoritarian regimes that are moving toward forms of liberalisation the question is what minimal guarantees of judicial independence are required to define those countries as truly liberal. Contrarily, in established liberal democracies, the issue of the growth of judicial power and judicial responsibilities is raising the opposite question, namely how much the judiciary should be actually limited (Russell and O'Brien 2001: 2-3)

incentives for change, the institutional dimension is resistant to any external model and rather moves along domestic paths of reform. The effect of European judicial promotion in the Southern Neighbourhood is in the hands of domestic rather than European actors.

In operationalising rule of law and judicial governance, we draw upon a multidimensional definition (Carothers 1998, Magen and Morlino 2008, Piana 2011) that recognises at least two dimensions as necessary conditions for the enforcement of rule of law: judicial independence and quality of justice. Indeed, while the paradigm of rule of law and its promotion is strictly interlaced with the pivotal aspect of judicial independence (Guarnieri and Piana 2011) and is centered on formal guarantees of judicial impartiality – which in the EU's promotion effort mostly means the introduction of an independent High Judicial Council (HJC) – the other dimension takes into account the efficiency of the court systems (Piana 2011). In light of this and for the sake of operationalisation, we will refer to an institutional and an administrative dimension.

Analytically we consider the cognitive component of the process of rule adoption, the set of beliefs considered the 'hard core' that underlies the choice of a policy (Capano 2003: 783). We maintain that policy adoption happens at the level of ideas of relevant political actors and not only at the structural level. As a consequence, the level of ideas, also defined as 'policy paradigms' (O'Sullivan 1999), has also been considered to have influenced policy change in external European policy (Schimmelfennig and Sedelmeier 2005:7). Therefore, given the impossibility of assessing the implementation of EU rules concerning the judiciary in Morocco and Jordan, we will focus on the first stage of the policy-making process, relying on the resistance encountered – or not – by EU rules and norms as they enter the domestic systems. This research is about the design of programmes of judicial support and the variations encountered at the level of institutional judicial accountability in Morocco and Jordan. In this way, we are offering a revision of previous research conducted on externally promoted judicial reforms in an under-investigated region.

The empirical Chapters 3, 4 and 5 are complemented by eight semi-structured interviews conducted between 2017 and 2018 with EU programme experts, beneficiary state representatives, magistrates and EU functionaries. The list of those interviewed can be found in the appendix.

'Qui le dirait! La vertu même a besoin de limites.'

Charles-Louis de Secondat, Baron de Montesquieu
The Spirit of the Laws, 1748

Chapter 1: Promoting Rule of Law and Judicial Independence in the Southern Mediterranean

Countries undergoing processes of transition toward democracy usually share a common and fundamental issue, which is the number of restrictions applied to judicial independence. This research will examine this central point in depth, in particular proposing an interpretive framework to explain whether external pressure – from international actors, in particular in this case the EU intended as an international normative actor promoting rule of law (Manners 2002) – plays a role in supporting the struggle towards the establishment of minimal guarantees of judicial independence, or whether external pressure might have a different impact. Therefore, the first chapter will engage in the necessary explanation of the dependent variable expressed in the title: judicial independence and judicial efficiency. The task thus comprises explaining why judicial independence is considered a fundamental achievement in liberal democracies, what the minimal conditions of judicial independence are and then explaining the other side of the democratic principle of accountability: efficiency, which we will define as the administrative dimension.

1.1 Judicial Independence in Western Liberal Democracies

The purpose of the first part of the chapter is to provide a descriptive analysis of judicial guarantees of independence, starting from the definition of rule of law and stressing the pivotal aspect of judicial independence. With this in mind, the chapter will then disclose the multidimensionality of the mechanisms that guarantee the judiciary to be independent and accountable at the same time (Russell and O'Brien 2001; see also Piana 2009, 2010), thus exemplifying what is promoted when we refer to

the external model of judicial governance and what we expect as a result of this process. The aforementioned analysis will provide a first step toward the operationalisation of the dependent variable that is the centre of this research on the quality of democracy in two transitioning countries of the MENA region: Morocco and Jordan.

The quest for democracy has always been linked to the necessity of controlling power. The search for a mechanism to bind political power found practical terms in Europe in the aftermath of the Second World War. After the fall of authoritarianisms reconstruction passed also through the institutional design of a stricter control on the work of governments. This notwithstanding, the need to limit power comes from far away in history. In this sense, the transition to modernism was marked by the steps men took toward the non-arbitrary use of political power and the shift from transcendent authority to rules made by men. Indeed, to limit the discretionary power of rulers, a new system of governance placed at its centre the idea of impersonal ruling and the division of powers into three branches – the executive, legislative and judiciary – that was based on the certainty of independence and at the same time of inter-institutional accountabilities. This kind of accountability has also been described as 'horizontal' (Schedler, Diamond and Plattner 1999), in the sense that actors which control each other are usually politically equal (Morlino 2010). In practical terms, this entails: the monitoring that non-majoritarian agencies do to the work of the political branch, and checks made by the courts, central banks and anti-corruption authorities. The establishment of a system of checks to the rulings of political institutions in modern democracies is understood to be fundamental for the protection of basic rights.

In order to understand the point of departure of this comparative research, it is necessary to outline that the establishment of checks and balances and the control exercised on power is a fundamental objective of international actors committed to supporting democracy in transitional countries. As Tamanaha rightly posited, democratic rule of law stands for a concept of respect for fundamental rights and limited state power (Tamanaha 2004: 114) and this is what is envisaged in programmes such as USAID and EU actions towards neighbouring countries.

It is this commitment of international actors such as the EU to the support of rule of law in transitioning countries which prompted this study to analyse the actions taken by countries of the Southern Neighbourhood of the EU and to develop a working hypothesis on the possible impact that EU external pressure for judicial reform might have. In accordance with this compelling issue, this study focuses on a procedural definition of rule of law (Trebilcock and Daniels 2008) and on the specific aspect of judicial governance.

1.1.1 The Idea of Rule of Law and Judicial Independence

In general terms, the concept of rule of law has at its heart the quest of keeping power accountable to the written law, or the constitution, as the term *constitutionalism* is best fitted for this purpose. Constitutionalism in fact better expresses the idea of holding accountable the exercise of any power, including judicial power (Piana 2009).

As Linz and Stepan argue, consolidated democracies must have in place a number of arenas that interact with each other in order to reinforce democratic institutions, and rule of law is referred to in their discourse precisely as the way in which government and state must respect and uphold the law (Linz and Stepan 1996). Therefore we maintain that the existence of a system of constraints to the action of the government is defined by the ideal of rule of law.

However this is not a complete definition; the term *rule of law* is open to a number of interpretations. Even if there is no single accepted definition, the concept to which we refer, in the most general way, describes the *equal application of laws, respect for political and civil liberties and the subordination of political power* (Carothers 2006). Rule of law in fact is considered to be the adequacy of political institutions to prevent the law from turning itself into a tool of domination (Palombella 2010). In this respect, the spirit of constitutionalism that is embedded in the concept of rule of law entails a commitment to self-binding procedures. It follows that the establishment of rule of law requires a hierarchy of laws interpreted by an independent judicial system (Linz and Stepan 1996).

In this brief, and possibly not complete, excursus on the notion of rule of law and self-binding institutions, our aim is to shed light on the critical position that the judicial branch occupies.
In fact, the judiciary, by putting into action the provision of the law (Bellamy 2005; Piana and Dallara 2015) keeps public officials accountable and is a key point for the establishment of the rule of law, but this is not all.

As a primary agency of legal accountability, the judiciary is able to exercise its functions in a situation of independence from undue government pressure, but at the same time, in performing its function of adjudication, the judiciary must also be held accountable. As Cappelletti argues, there is a 'human problem that is shared by modern countries […] power signifies not only legal authority but also legal duty' (Cappelletti 1985). This is even more evident if we take into consideration the expansion of the competences given to the judicial branch in the last century, where more powers for the judiciary mean more control on its power. The substantive power of modern judges has increased, especially post World War II. This trend is apparent in industrial and post-industrial nations, both in civil law and common law areas (Cappelletti 1985). The expansion of judges' procedural and substantive responsibilities in modern societies therefore raises awareness of the need to guarantee independence to judges in the execution of their duty of adjudication, while at the same time pointing to the problem of limiting judicial power.

Shapiro's contention about the political legitimacy of the judiciary and the administrative duties that courts take on (Shapiro 1980) leads us to the core puzzle of this research. In other words, our main point of departure is the double – at least – mechanism of judicial accountability, one that not only binds judicial power from the incursions of the political branch, but is also a way to hold courts accountable to standards of efficiency. We delve into this compelling issue and take into account, as a starting point for the development of our discourse, the variety of models of judicial governance exhibited in liberal democracies, the model promoted by the European Institutions – a European Constitutionalism – and the way in which we operationalise the judiciary in order to test whether the external promotion of rule of law has an impact, and to what extent, in transitioning states of the Southern Mediterranean.

The primary task is to provide an explanation of the first dimension of the puzzle: judicial independence, in particular asking why it represents a minimum condition for a regime to be seen as a liberal democracy and then, conversely, to what extent too much independence undermines democracy. This paves the way to the subsequent introduction of the concept of judicial accountability, being the second step for the construction of the dependent variable.

1.2 Why Build an Independent Judiciary?

'Judicial Independence is first and foremost a concept about connections- or, more precisely, the absence of certain connections- between the judiciary and other components of the political system' (P. Russell in Russell and O'Brien 2001: 2). With these words, Russell introduces his discourse on Judicial Independence in the Age of Democracy, providing a basic definition of judicial independence, i.e. the absence of pressures coming from other branches of power, and in the same way introduces the main issue of the judiciary, the existence of connections that somehow tend to downplay the concept of independence itself. In this way, the concept of independence is indeed the main characteristic of justice but cannot at the same time be taken as the sole feature. This notwithstanding, judicial independence is the primal concept to take into consideration, for its functions are to regulate the relations within a society according to written laws (this activity of regulation must be conducted by a third party adjudicator).

As Shapiro noted, the social logic of courts resides in the consensual *triad of conflict resolution* where two disputants call a third party for assistance. The legitimacy of the third party is threatened when it favours one of the two sides. In more complex societies this means that judicial independence is real when adjudicators are disinterested in the outcome of particular cases before them (Shapiro 1980).

The importance of an independent judiciary has also been addressed by scholars of the social sciences. Feld and Voigt have shown that an independent judiciary, *de facto* and not only *de jure*, is conducive to economic growth (Feld and Voigt 2003). Indeed, an independent judiciary could make

all actors better off and positively influence GDP growth. An independent judiciary, de facto, implies that judges can expect their decisions to be implemented regardless of whether they stand in the interest of the government, meaning judges do not have to anticipate negative results in the aftermath of a decision that might impact the interests of the political power. Moreover, it follows that an independent judiciary is a useful device that turns promises such as respect of property rights into commitments (Feld and Voigt 2003). Indeed, promotion by international actors is primarily linked to this ideal that rule of law, and specifically an independent and functioning judicial system, is tied to the respect of basic rights and economic growth. Therefore it follows that in states where rights are equally distributed a market economy is more likely to grow.

International actors have familiarised with this idea of the relationship between the power of the law and a country's stability and eventual economic growth. This gives the measure of the importance attached to the establishment in hybrid regimes – i.e. all those regimes preceded by a period of authoritarian rule and then followed by tolerance and partial liberalisation (Morlino and Palombella 2010) – of an independent judicial branch, an institution that tends to be absent or under governmental control in non-democratic countries. When considering hybrid regimes such as the empirical cases of this research, i.e. two authoritarian monarchies, it is possible to see that to some extent the government supported the functioning of a judiciary for civil disputes and legal obligations, thus one can maintain that laws are in any case respected. But if we look deeper, these governments are unwilling to submit any disputes regarding their own legal obligations to an independent judiciary, and are therefore not restrained in their actions. A defining feature of a liberal rule of law regime is hence that judges are not controlled by branches of power, and thus independent (Russell 2001: 10).

In the contemporary era, the very first round of programmes aimed at promoting rule of law and judicial independence started with the US initiative of Law and Development (L&D) movement (Trubek 2003) of the 1960s and 1970s. This movement was built around the basic notion that law is directly related to development; in practice, the group of experts focused mainly on the idea that rule of law is conducive to economic growth. In particular the L&D movement (Trubek 2003) that inspired actions in Latin American countries was engineered to help local judicial institutions to

operate in accordance with legal norms (Carothers 1999; Piana 2010). The guiding principle was that an independent judiciary would protect individual rights, preserve security and property rights and resolve commercial disputes in a predictable manner. As Carothers posited, during the early years of rule of law promotion, the US have 'acted on the assumption that a key obstacle to democratization in countries coming out of long periods of authoritarian rules (was) an overly strong executive' (Carothers 1999). For these reasons the first attempts recognised the need to establish an independent judicial institution, starting almost from scratch, and had in mind the fundamental concept that law would have been sufficient to trigger a country's development. In particular, experts appointed under the L&D movement programmes recognised the fundamental function of the legal dimension of judicial independence. The primacy of the law was thus foundational to rule of law promotion programmes, and experts and academics from Western universities met with local political elites to help them draft laws. The L&D movement alleged that by teaching law as an abstract system to be applied through a real copy of foreign models, rule of law would follow, not taking into consideration the study of peculiar social contexts (Trubek 2003). The movement was indeed built around the main pillar of the notion that democracy and human rights would have spillover effects on economic growth, but this did not lead to the results expected (Trubek 2003, Piana 2010) and by the 1970s this central pillar had already crumbled. Indeed, the great shortcoming was a lack of implementation or enforcement of the principles written in the texts due to a deficit in institutional infrastructure and organisational know-how. The lack of institutional infrastructure or managerial skills then set the basis for the construction of the forthcoming season of programmes headed by the World Bank.

1.3 From Independence to Efficiency

A general critique that is made of the first programmes of institution building – looking at the pitfalls in particular of the first L&D programmes and of the later *Washington Consensus* approach more generally – is related to the idea that having an independent judicial council automatically leads to the respect of rule of law and economic development. This proved not to be always true because, as

Bobek maintains looking at the Eastern European experience, judicial independence alone is not enough. The point in fact is that an independent judiciary is not only the form *per se*, meaning the institutions or the law, but is also about the practice (Bobek 2008). In other words, the ideals and values of individual judges and the administrative staff of the Ministry of Justice have to adhere to the idea of an independent judiciary. As noted by Shapiro, the independence of the judiciary can be a chimera; he suggests that judging is embedded in political authority and is not only an autonomous activity. He maintains that courts are unlikely to prosper without the support of the more political branches (Shapiro 1980). This idea, that courts' legitimacy resides in the importance of independence of adjudication, but at the same time on a more consensual element of the whole judicial process (Ibid.), adds the second level of analysis that we introduce, that of legitimacy in judicial proceedings. These ideas resonated in the New Public Management literature. The New Public Management (NPM) approach of the early 90s insisted on these same issues but with a view of the public sector in general. This body of studies is based on a series of findings generated by analysis of the private sector and subsequently imported to the public sector (Hood 1991, Larbi 1999, Cope Leishman and Starie 1997).

In the Public Management Literature and from a general Public Administration perspective, this approach looks attentively at markets as the guarantor of democracy. The government provides services to citizens who are considered clients, therefore NPM tools are labelled 'user-oriented' in the sense that policies must be designed in order to provide a service that citizens deem to be positive overall. In a general way, the idea behind the NPM approach is that citizens control the state through market mechanisms instead of being controlled by mandated bodies (Christensen and Laegreid 2009). Indeed, reforms inspired by the NPM idea are meant to use a market-style approach. In general terms, this entails the separation of bureaucratic structures into semi-autonomous agencies and the shifting of attention from inputs to outputs and the measurement of results (Muhhina 2017). In the same way in the judicial realm, NPM entails the shift toward a user-oriented concept of justice administration. In judicial administration, the NPM-inspired review entailed new standards being put forward, such as: equal access to justice, efficient financial management, effective communication (Fabri et al. 2005). The possibility of accessing the court system and the transparency of court management (Piana 2017)

are key principles in the efficient NPM-inspired new judicial reforms that permeate the EU, and are also exported outside its borders.

Studies on African post-authoritarian governments also recognise the need to depart from traditional methods of administration and to re-engineer the public sector with the infusion of new values based on professionalism, accountability and responsiveness, and focused on maximum efficiency in the economy (Omoyefa 2008). In practice, NPM focused on the need for greater public and managerial accountability, therefore political leaders had to be made accountable to electors. At the same time, NPM scholars stressed that 'what has been done has to be done also in an efficient way' (Christensen and Laegreid 2002). In other words, tasks have to be carried out according to certain criteria of performance.

1.4 Operationalising Judicial Independence

A necessary introductory remark should be made here. The following operationalisation identifies the difference between 'independence' and 'accountability', thus between what we call institutional and administrative dimensions of the judiciary, two distinct features that do not imply however that the two dimensions are set one against the other. We maintain that both features are necessary for a 'responsive law' (Cappelletti 1989) and thus that accountability does not damage to independence and vice versa. However, the following operationalisation allows us to test the hypothesis of an external input on judicial reforms. Indeed, as we will then show that they do, the two dimensions might respond in different ways to external pressure for change.

Several studies conducted in previous decades have shown how judicial decisions are not exclusively based on legal norms. The interpretation of norms by judges is indeed another aspect that impacts on the impartiality of adjudication. As mentioned when looking at the importance of independent adjudication, a number of shortcomings emerge from the concept of an independent judiciary based solely on the notion of the prominence of law and of independent institutions. Previous series of rule of law promotion programmes, in fact, suggest that judges' knowledge of laws alone does not

function as a binding system for preventing other forces from influencing the functioning of the judicial system. It also suggests that institutions alone do not cause a spillover effect toward rule of law as informal aspects also have to be taken into account. Moreover, as NPM scholars showed, a set of mechanisms of control should be enacted, a set of accountabilities that bind judges also to standards of efficiency or – using the words of Shapiro – it is the more consensual element of the judicial process that links it to the consensual triad (Shapiro 1980, see also Grossman 1984 on the review of the consensual triad).

In light of these findings in the literature it is becoming difficult to ignore the multidimensionality of the concept of guarantees of judicial independence.

In the following lines we will provide an operationalisation of what we conceive as being two dimensions of the judiciary. The first one is an 'Institutional Dimension' that pertains to independence in exercising power and the second an 'Administrative Dimension' that relates to the way in which the institution (conceiving also judges as human beings) provides for a service, thus calling back in the New Public Management notion of an efficient service.

This is indeed due to the peculiar dual concept of the judiciary, by which we intend both the agents of judges and the structure of the judicial institution. Therefore, when considering the concept of rule of law, we have to keep in mind that in order to limit power there must exist a set of norms and rules that are respected, and in this sense the judiciary is the institution that puts the law into motion. But in order to exercise its function to adjudicate, the judiciary must be independent and at the same time held accountable. The more power is given to the 'weakest institutional branch' (Finkel 2008), the more limits must also be established to its powers.

1.4.1 An Independent Judicial System: the Institutional Dimension

The formal way to keep judicial power independent is to provide for a restraining of power. For this reason, the first dimension that we recognise is the institutional one, because it pertains to the way in

which power is restrained, passing for instance from the government to an autonomous third institution: the Judicial Council. What powers do Judicial Councils have vis-à-vis the other branches of power? Is there a Constitutional Court? These questions help to measure the independence that judicial power has retained in a country.

Therefore the institutional dimension, the systemic governance of the judicial system, entails the powers assigned to the judicial councils or the ministry of justice. This dimension assures the ruled that the judges who adjudicate are indeed recruited, promoted, assigned and also trained according to established criteria (even though these are different in each ideal model).

Scholars argue that it is possible to distinguish between two main models of how Western democracies have organised their institutional judicial organisation. Looking at the variety of models of judicial governance in Europe, scholars have argued that there are two distinct ways of framing the power of the judicial councils or council for the magistrature: the South European and the North European one, which also follows a distinction between the Neo-Latin tradition and the Continental one (Guarnieri and Pederzoli 2002, Voermans and Pim Albers 2003). Other stances recognise the existence of hybrid models and socialist models, but here we provide only for a definition of the two general ways of organising judicial governance, also labelled Ministry of Justice Model and Judicial Council Model.

The Italian case, and the Southern European countries in general, display a strong bureaucratic judicial system. In the past, the task of taking decisions on the status of judges and public prosecutors and their recruitment, appointment, promotion, transfer and disciplinary proceedings was removed from the ministry of justice and concentrated in the judicial council.

In the French system, the judicial council has 'relatively narrow scope' (Guarnieri 2003), if compared to the Italian case. In fact, both the President of the Republic and the Minister of Justice are always present in some ways in the French CSM. In this sense, the set-up of the French judicial system is closer to the traditional civil law type if compared to the Italian one. The French CSM was established in 1946. This Council is structured according to the Southern European Model, but has some peculiarities when compared to the Councils of Southern European democracies that experienced

authoritarianism and that 'show a stronger insularity of the judiciary vis-à-vis other branches of the State' (Piana 2010: 20). The President of the Republic of France chairs the Council; half its members are appointed from judicial organisations and the Public Prosecutor's Office; one member is appointed by the President of the Republic and the rest by the Parliament. The French CSM appoints members of the judiciary, disciplines judicial procedures and promotes members of the judiciary. In contrast, the Spanish General Council is similar in its composition but has more discretionary power from the Government and the Ministry of Justice, such as training and supervision via inspection (Voermans 1999).

The difference that arises from this brief summary of two models however allows us to put in more general terms the Neo-Latin model that displays the following characteristics (Piana 2010):
1) the Judicial Council appoints, 2) promotes, 3) evaluates and 4) trains judges.
The second ideal model is closer to a German organisation system, in which the state is the depositary of the norms and the legal accountability of judges functions as a guarantee alone of judicial independence (Piana 2010). There is a strong constitutional mechanism of judicial review. Moreover, 1) training, 2) recruitment, 3) selection and 4) promotion is done by the Ministry of Justice (Piana 2011).

In both Neo-Latin and North European systems, judges are considered part of the state and their appointment, promotion, recruitment and also training is based on their general knowledge and seniority. These two ideal models therefore have two different ways of intending the role of the judicial council. To some extent, authors have also pointed to the fact that the judicial councils of North Europe have very different powers, for instance they do not pertain to the dismissal or appointment of judges. However, their actual power is more extensive in the administration of the judiciary.

This brief overview is useful to highlight the plurality of models of judicial independence in the Western world. At a very abstract level, countries share similar principles of *independence* and *accountability* of the judiciary, but the way in which the principle of judicial independence is balanced against the principle of judicial accountability is reached in different ways. A substantial

disagreement, as noted by Smilov, rests in the checks and balances with the executive and legislative power (Smilov 2006). As we have seen in the German model, the Ministry of Justice, or its equivalent, have powers to promote judges and sanction them while this competence pertains to the independent agency, the Judicial Council, in Neo-Latin models (Ibid.). The differences among European countries rely also on internal accountability, specifically in the ways continental countries have senior magistrates exercising a strong control in terms of the careers of younger judges (Smilov 2006, see also Guarnieri and Pederzoli 2002). Another differentiation among European judicial models is the degree of independence of the *budget*. In some systems the government and the legislative power have a strong influence on judicial funds while in other systems the independent authority, Judicial Councils, control the budget without external interference.

Different models show a number of ways in which countries have come to terms with the need to ensure judicial independence and legitimacy and, again, on the balance between the two. Without entering into the normative theory of judicial independence, and specifically explaining how and why certain countries follow a specific model of judicial independence, this research is interested in the existence of a European constitutional model as a starting point in order to analyse the reforms that non-Western countries have initiated as a consequence of European judicial support.

The European normative space, as scholars argued (see for instance the definition provided by Smilov 2006) is more a *myth* than a set of constitutional principles.

The European approach to judicial reform is the result of a joint effort between the Council of Europe, the European Commission and the number of organisations and agencies of member states that started monitoring Eastern European countries during the accession process. What appeared from that activity is what the literature calls the European judicial model or, as it is more fittingly named, European Constitutionalism (Piana 2010, Bobek and Kosar 2014, Preshova Damjanovski and Nechev 2017). Therefore, as the literature on Eastern enlargement shows, the EU relied widely on the expertise of the Council of Europe and on the international discourse elaborated in epistemic communities and policy networks (Haas 1993, Dimitrov 2003, Piana 2010). When referring to the

notion of a European Constitutionalism, or European model, we actually refer to the Council's public discourse.

The Council's organisations, such as the European Network of Councils for the Judiciary (ENCJ), the Consultative Council of European Judges (CCJE), the European Judicial Training Network (EJTN) and the European Judicial Network (EJN), have provided for recommendations that have created a European Constitutionalism, in other words a set of inputs for the governance of the judicial system and the courts, formalised in the recommendations of the Councils of Ministers. In 1998, the CCJE issued the European Charter on the Statute of Judges, which represents a model that was, and still is, exported by European and international institutions to transition countries (Bobek and Kosar 2013). The Charter indeed came from the multilateral meeting on the Status of European Judges of the Member States, together with the *Ecole Nationale de la Magistrature* and the European Association of Judges. The shared need was to set the framework for the elaboration of a draft to provide the guidelines of a European model of judicial organisation. As stated in the Charter, in order to ensure the best level of guarantees of independence:

In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.

In general, European Constitutionalism entails the construction of a self-governing judiciary with a strong bureaucratic judicial council, independent from the government with power over the careers of judges, their appointment and transfer. The European Union toward Centre and Eastern European Countries (CEECs) has put great pressure on the institutional reforms aspect and to a particular model of court administration, that of a strong judicial council (Bobek and Kosar 2013, Piana and Dallara 2015, Piana 2010).

Table 1: The Institutional Dimension

Institutional Dimension: Systemic Level	- Constitutional Court - High Judicial Council (HJC), prerogative: - HJC composed of a majority of judges - HJC appoints - ‘’ promotes - ‘’ transfer - ‘’ evaluates judges - HJC independent budget - Judicial School centralized - Extensive training in law on judges

Author’s elaboration of Piana 2010

1.4.2 The Administrative Dimension

The institutional dimension alone, the independence of the judiciary, does not involve an automatic spillover effect toward the establishment of rule of law, as other aspects have to be taken into account. The New Public Management literature shows that more mechanisms of accountability to bind judges should be established, such as standards of efficiency. The judiciary intended as the institution that puts the law into motion cannot be held only independent in order to provide for the respect of laws, but it must exercise its functions in an efficient way. In other words, it must also be held accountable to citizens who, from an NPM point of view, are seen as customers asking for a good and effective service. Indeed, the more powers are given to the ‘weakest institutional branch’ (Finkel 2008), the more limits must also be established to those powers. The concept of administrative accountability therefore enters the picture of the discourse, adding another dimension.

If we consider judges as public officials responsible to citizens for their actions, then accountability can be seen as independence and impartiality, but also the exercising of functions in an appropriate way, meaning efficacy in achieving objectives (Contini in Contini and Mohr 2007: 31). But then, how to measure administrative accountability is a straightforward question.

Authors suggest taking into account at least the following aspects of judicial accountability (Continu and Mohr 2007, Piana 2010). The *legal* aspect requires that judges have to respond only to the law

and are legally autonomous from political pressures. The *professional* aspect entails that judges are recognised to have a certain degree of freedom, therefore a check to their work is also made by their peers, ensuring that judges are competent according to a legal culture upheld by their peers. The *managerial* aspect pertains to the aforementioned efficiency, or NPM approach, meaning that the judiciary allocates resources in an efficient manner and exercises cost control.

Table 2: The Administrative Dimension

Administrative Dimension: Non-Systemic Level	- NPM conception of judicial governance: - Transparency - Efficiency - Court Manager - Performance Assessment for Judges and Clerks - Legal Training - Digitalization, ICT tools - Non Judicial Staff in courts - Legal Aid

Author's elaboration from Piana 2010

This operationalisation of judicial power builds on the need to apply constraints to power and adds the conceptual step of *accountability* as a way not only to limit power, but also to hold power accountable through a number of mechanisms. We identified two dimensions as necessary conditions for the enforcement of rule of law: judicial independence and quality of justice. Indeed, while the paradigm of rule of law and its promotion is strictly interlaced with the pivotal aspect of judicial independence (Guarnieri and Piana 2011) and is centered on formal guarantees of judicial impartiality – which in the EU's promotion effort mostly means the introduction of an independent High Judicial Council (HJC) – the other dimension takes into account the efficiency of the court systems (Piana 2010). In light of this and for the sake of operationalisation, we will refer from now on to an *institutional* and an *administrative* level.

The literature on rule of law and constitutionalism has provided more fine-tuned definitions of all the mechanisms of accountability applied to the exercise of judicial power, and this operationalisation is

clearly a simplification. The scope of the distinction between an institutional and an administrative dimension, which simplifies the analysis of judicial accountabilities to a great extent, is instrumental for testing the internal/external theory of rule of law promotion.

Our approach draws upon the rational choice institutional approach, in particular on studies on the EU as a democratisation actor. This strand of literature shows that the EU enables domestic change, shifting 'opportunity structures' (Börzel 2001: 396) for domestic actors and then taking veto powers to domestically adopt the external models offered (Börzel and Risse 2012). In the absence of resistance by veto players[2], the literature shows that beneficiary countries are open to externally-supported changes (Morlino and Magen 2008). Therefore, given the low conditionality and mechanism of socialisation in place, the EU is not able to curb changes on the systemic level of the judiciary in countries that are undergoing democratic reforms. In fact, the creation or enforcement of the independence of the Judicial Council (from now on HJC as a general definition of Judicial Councils or High Judicial Councils) is costly for veto players; at this level, we demonstrate that changes followed a path dependence more than external incentives for reforms. On the other hand, we show the positive reception of non-systemic judicial inputs in our case study that pertain to the administrative level, also given the lack of cost that this entails for veto players.

1.4.3 A First Lingering Question

The conflict between independence and efficiency, operationalised as the institutional and administrative dimensions, has been underlined in particular in Western countries. Indeed, it must be recognised that for the sake of this research we will take as an independent variable the European programmes of judicial support financed to strengthen rule of law and support judicial reforms in countries in transition in the Southern Neighbourhood. Interestingly, our case study countries – Morocco and Jordan – underwent a number of changes as a consequence of the Arab revolts and

[2] Veto players are defined here as individual actors who are *de facto* actors of judicial systems and whose agreement is required for a change in the status quo (Tsebelis 1995).

revolutions of 2011, known as the Arab Spring. In particular, their judicial sectors experienced drastic reforms in 2011 in order to respond to civil society protests for democratic change. We therefore asked: to what extent were European judicial standards able to curb domestic reforms in non-EU countries? Do judicial reforms adopted in Morocco and Jordan converge toward a similar model? Which EU standards of governance entered their domestic systems?

Before addressing the research design in a more structured way, we can first put forward a working hypothesis. We suspect that the institutional dimension of the judiciary, being systemic, is more resistant to change, in particular to external pressure for change, due to political costs in terms of the shift of political legitimacy this entails. This research falls within the field of studies that explores the EU's promotion of democracy beyond its borders and the interaction between European and domestic actors. This strand of literature notes that the lack of membership perspective hampers the capacity of the EU to promote transformation in neighbouring countries (Vachudova 2005; Schimmelfennig 2005; Börzel and Risse 2012). The main problem resides in what Börzel defines as 'prohibitive costs but little pressure for adaptation' (Börzel 2011: 403), meaning that the changes agreed by the EU and European Neighbourhood Policy (ENP) countries pose major costs to veto players (Börzel and Risse 2012) while the rewards might be too low, especially with no perspective of membership. The EU has, moreover, been very reluctant to use credible conditionality – such as simplified visa regimes and trade agreements – as well as negative conditionality (Lavenex and Schimmelfennig 2008, Youngs 2009). The issue of conditionality is best exemplified in a model proposed by Schimmelfennig and Sedelmeier. It distinguishes between an external incentives model, where change is expected because conditions are consistent and clear and adoption costs are low, and a social learning model, where norms and rules are adopted because they are deemed appropriate (Schimmelfennig and Sedelmeier 2005, Sasse 2008). In the peculiar relationship between the EU and European Neighbourhood Policy (ENP) countries, the main element of conditionality is vague and relies on the mechanism of socialisation. The conditionality element appears even less concrete in the judicial realm. In the absence of binding norms to be transposed, the EU has, over time, developed a number of standards

deployed in judicial support programmes that enact the mechanism of socialisation. Scholars who investigated EU-promoted judicial reforms in eastern European countries demonstrate how the effects of Europeanisation varied among policy sectors and countries. Notably, pre-accession institutional frameworks were not changed by the EU accession process (Coman 2013, see also Papadimitriou and Phinemore 2004, Grabbe 2001).

This study contributes to this strand of Europeanisation literature offering valuable insight on the trend that EU policies of judicial promotion have had in Southern Neighbourhood countries.
The self-restraining judiciary (Schedler, Diamond and Plattner 1999) involves that judicial prerogative has to be moved from a political branch to an independent authority. Here we are thus working in a high politics realm where external means of socialisation have possibly very little leverage. On the contrary, we suspect that the administrative dimension, being non-systemic, is more susceptible to external pressure for being this dimension of low politics, thus not pertaining to any loss of political legitimacy but to gains in effectiveness, budget controlling and also social accountability among other factors.

1.5 Western Experiences and European External Mechanisms

In the specific case of the EU being an international actor that supports judicial reforms in transitioning countries in the Neighbourhood, what are the means through which this action is carried out? Exploration of the literature on European judicial promotion enables us to provide a first tentative explanation of the internal/external model of promotion.

Having in mind the model of judicial governance as it appears through the inputs of the Council of Europe, we now present the tools used by the European Union during enlargement and in relation with Neighbourhood countries. In doing so, we aim to raise two points; the first one is to show that, due to the peculiar features of the judicial policy, the tools used to achieve norm transfer actually leave to EU member states the strategies on how to support the reforms. Therefore the Commission and its monitoring of reforms through the mechanism of positive conditionality toward

Neighbourhood countries does not veto the ways in which the mechanisms of judicial independence are adopted. Indeed, this is left to experts from member states engaged in judicial reform programmes, and those programmes conversely strengthen the mechanism of socialisation. The second point is that, through the programmes of judicial cooperation addressed toward the Southern Neighbourhood, we expect that all the judicial dimensions we have previously identified are somehow affected.

1.5.1 Judicial Support: Socialisation more than Conditionality

The process of Europeanisation towards the East aimed to transform national administrative and bureaucratic institutions relying on both conditionality and socialisation mechanisms that corresponded to the underlying institutionalist *logic of consequences* and the *logic of appropriateness*. The logic of consequences, as defined by March and Olsen, is the force that drives the actions that are considered based on an analysis where the actor is engaged in a calculation of choices between alternatives. In the realm of norms transfer, the adoption happened when it was considered indeed the best option, when the EU was able to attach strong promises to requests for reform. The logic of appropriateness, instead, maintains that actors choose what is appropriate according to their social role and social norms in a given situation. The mechanism that follows is that of socialisation (Kelley 2004), a process through which actors generate behavioural changes by creating reputational pressures through shaming or persuasion.

The main objective of the European Commission during the process of enlargement was that of the application of the *acqui communautaire* (Coman 2010). Despite being a crucial priority of the conditionality mechanism since the beginning, rule of law and judicial independence was proved in the CEECs to be hindered by the incoherence of EU demands (Epstein 2010). As Schimmelfennig and others pointed out, in the absence of credible commitments from the EU, or even in the absence of accession conditionality, social learning and lesson drawing were the two main mechanisms at play (Schimmelfennig and Sedelmeier 2004). Coman argued that the EU failed to provide a specific blueprint with regard to the implementation of the principles of judicial independence (Coman 2009).

Moreover, the Reports of the Commission, as suggested by Piana, did not mention specific suggestions, for instance, on how to deliver training, or on how to organise it. What happened was that the actual implementation was left to the initiatives of experts involved in the projects of judicial cooperation (Piana 2009) and through the use of non-compelling instruments.

The European Commission lacks mechanisms to bind other countries on models of judicial governance (Coman 2009, Grabbe 2004). The Commission provided reports identifying gaps but did not issue guidelines (Coman 2014). For these reasons the EU mostly relied on the expertise and standards of other institutions, such as those of the Council of Europe.

The Eastern enlargement in this sense was the momentum for the creation of standards regarding judicial governance. Indeed, the EU's inability to diffuse a common framework for guarantees of judicial independence or organisation of the judiciary resulted in the development of programmes with the main objective of financially and technically assisting CEECs in institution-building and infrastructural reforms (Dallara 2014). European judicial governance therefore appeared not through regulative tools, but through the normative inputs of a series of institutions and organisations that worked to provide inputs. Socialisation, more than conditionality, applies to judicial cooperation; this appears even more consistent if we take into account European policy toward the Neighbourhood.

Toward Southern Mediterranean countries, according to this framework, the EU employs the following policy instruments:

1) Twinning, a policy instrument developed in the 1990s during the German unification process. This instrument provides technical support from experts in the public administration of member states toward candidate countries. These programmes are specially designed to transfer best practice and export patterns of behaviour (Papadimitriou and Phinnemore 2004). Twinning, during Eastern enlargement particularly, was praised for its ability to reform the structures of public administrations in accessing countries, but it was also criticised for its lack of definition of what a successful reform is, and for its impossible objectives (Papadimitriou and Phinnemore 2004, EU Court of Auditors 2003, Roch 2017). Twinning became a policy instrument for the European Neighbourhood and has been used intensively. Since 2004, the year of the beginning of the Neighbourhood Policy instrument, more than 300 Twinnings have been launched, in both the east and south (European Commission

2014). In respect to North African countries, Twinning therefore functions in the wider policy framework of the ENP, which is 'a direct result of the EU's perceived success of its Eastern Enlargement' (Roch 2017).

We can imagine that, as has been acknowledged for the accessing countries, and also in non-accession perspective countries, the establishment of Twinnings impacts not only the formal design of judicial reforms but also the ways in which judicial actors interact with each other, and therefore on informal dimensions of judicial guarantees of independence (Piana 2010, 2009).

The European Union is also monitoring the implementation of Association Agreements with North African and Middle Eastern countries. The monitoring and reports issued by the European Commission constitute a way in which judicial issues are set in the agenda of domestic political elites.

2)The technical assistance and information exchange, TAIEX, another instrument used by the European Commission to support neighbouring countries in the Justice and Home Affairs sectors. Assistance provided through TAIEX can be distinguished in three ways: the organisation of workshops, where EU member state officials present to neighbouring state officials specific areas of European legislation. The organisation of expert missions concerns legal advice provided by one or more delegations of EU member state experts visiting receiving countries. Thirdly, the organisation of study visits where, conversely, delegates from receiving countries spend time in a EU member state in order to learn about a specific norm or practice.

The European Union also supports justice reforms in MENA countries through the organisation of training. This is indeed an instrument that has been established through the financing of training programmes on different subjects and aspects. For instance, training is done through 'Training of trainers', targeting high judicial performance and quality and administration of justice[3], and also by the establishment of Judicial Academies (Piana 2010). Lastly, the European Union and the Council of Europe have in the last two decades established a number of judicial networks, mainly composed of

[3] The 'Training of the trainers' refers to EuroMed Justice activities; see euromed-justice.eu.

judges and prosecutors, that set standards of quality of justice, as we have seen in the ENJC, for instance.

It is important at this point to stress that, despite the non-binding nature of inputs from European institutions, a potential impact of EU judicial soft power can be hypothesised on the countries of the European Neighbourhood, and in particular the MENA region.

Part 2. How Countries of North Africa Vary: the Case of Morocco and Jordan

The empirical cases in which the mechanism of the internal/external model will be tested and the dependent variables measured are the two most similar countries of the MENA region, Morocco and Jordan. The countries display a number of features that allow us to consider them in a *most similar case*s manner. However, interestingly, their institutional dimension presents some variances. Indeed, Morocco and Jordan show a variation on the dependent variable, namely their systemic judicial governance. This can be better appreciated if we take into consideration two aspects: the status of their judicial systemic governance before the reforms that followed the Arab Spring and, more specifically, the distribution of power between the sovereign, the executive and the judiciary. The degree of variation will thus be useful for testing the hypothesis of the internal/external model: the external inputs on judicial reforms do not prompt changes in the institutional dimension. The variation shows that EU programmes were not able to homogenise the reforming judiciaries according to a common model; instead, those countries followed a domestic logic for institutional reforms.

2.1 Before the Arab Spring, a Common Background

Before the advent of the revolts of 2011, countries in North Africa and the Middle East shared some peculiar aspects: political authoritarianism, lack of economic development and a dependent judiciary. As Nathan J. Brown noted in his study for the United Nations Development Programme (UNDP) 'despite divergent histories and forms of government there is surprising resemblance among the various judicial systems of the Arab World' (Brown 2001). In particular, widespread dependent magistracy can be seen as a direct consequence of authoritarianism. In authoritarian regimes, courts are subordinated to political power; there is a restriction of basic rights, an immunity enjoyed by human rights violators and unfair trials. Moreover, most countries of the MENA share the same legal tradition: the Roman-German tradition introduced under the Ottoman empire together with common and civil law traditions.

Another aspect shared between Arab countries that should be noticed here is the characterisation of the judiciary as an authority and not as a power (Brown 2010, Biagi 2013), that is, with a lesser degree of independence. This has to do with the traditional model of justice in Arab countries. In fact, during the modernisation of the legal system in Arab states the reforms were carried out in a way in which the judiciary was strictly under political control, therefore justice continued to operate as a delegated rather than an independent power. Scholars have shown how the modernisation of judicial systems in Arab countries generally did not break with the former status of delegated power of the judiciary (Lewis-Anthony and Mouaquit 2004). Indeed, in consolidated monarchies in the MENA (Middle East and North Africa), we assisted at cases in which the King pardoned individuals sentenced or waiting for trial, thus interfering with the working of judicial procedures[4].

Judiciaries in the Arab world are the result of the combination of Islamic and civil law families, while in some countries such as Jordan common law traditions have had an influence. Just as it is chimerical to develop a common standard of judicial independence in the world, it is equally difficult to provide for a common definition of judiciary in the heterogeneous Arab world.

The works of the UNDP and specifically those of N.J. Brown and colleagues help us to design a common set of indicators that, along with our judicial dimensions, justify the case selection of this research.

2.1.1 A Common Background: The Arab Family and the Cases of Jordan and Morocco

In this comparative analysis of judicial governance systems we will concentrate on two monarchies in the MENA region, namely Morocco and Jordan. These cases are indeed interesting because, despite a common set of conditions that might lead one to expect the same judicial reform path and the establishment of the same mechanisms of rights protections following 2011, the two countries are seen to have adopted different ways to organise their judicial systems.

[4] In January 2004 the King of Morocco pardoned more than thirty persons waiting for a trial. In Jordan the Constitution provides for death sentences to be confirmed by the King.

Morocco and Jordan show variation on the explanatory variable, namely the institutional dimension.

Table 3: Background Commonalities.

Arab families of law
- Insurance of judicial independence in written constitutions (*legal accountability*)
- Vague judicial protection in written constitutions (*legal accountability*)
- Strong executives over judiciaries dominating HJCs (*institutional accountability*)
Morocco
- Written constitution provides for JI - HJC, headed by the King, MoJ vice chair - MoJ involved in administrative affairs of the judiciary - Judicial Academy, under MoJ
Jordan
- Written constitution provides JI - HJC, headed by the King - MoJ involved in judicial matters - Judicial Academy, under MoJ

HJC: High Judicial Council, JI: Judicial Independence, MoJ: Ministry of Justice

Source: N.J. Brown, UNDP 2011, *Judicial Independence in the Arab World*

2.1.2 Most Similar Cases: EU Involvement in Support of Morocco and Jordan

Jordan and Morocco share a similar approach to the events of 2011: no revolution followed the revolts starting in 2011, but at the same time these two countries have traditionally been close allies of the EU.

Morocco is the first Arab state to be granted an 'Advanced Status' with the EU in 2000 (Burke 2013) and from that moment a number of EU funds entered the domestic arena, these programmes aimed at supporting reforms that would have led Morocco to meet the standards of the internal market (Ibid.). Jordan is the second country, following Morocco, to establish long-lasting relations with the EU, having negotiated an Advanced Status. Both countries represent important islands of stability in a turbulent region. This is an important aspect that limits the imposition of negative conditionality in favour of more compliant behaviour, in particular for EU member states that share historical legacies with Morocco, such as France and Spain, and given the important position of Jordan in a time when Syria and Libya are imploding and Lebanon is at serious risk.

Table 4: Overview: EU Economic Relations with Morocco and Jordan

Morocco	**Jordan**
1999: Advanced Status with the EU	2011 - 2012 EU lists set of conditional reforms for Jordan
2000: 75 Million Euros for budget amelioration and transparency in public administration	2011: First SPRING funding as positive conditionality
50 Million Euros for Justice sector reforms	2012: Second round SPRING, totalling 91 Million Euros
2011- 2013: SPRING project 115 Million Euros	
2011- 2015: Economic and Governance development projects 580 Million Euros	2011 - 2013: EU development assistance in Jordan, totalling 223 Million Euros

2.1.3 The Systemic Governance of the Judiciary: the Main Variance

After the wave of insurrections known as the 'Arab Spring' that spread across the region during 2011, the similarities in the judicial systems of the MENA region highlighted by Brown in 2001 were no longer recognisable. As a consequence of the number of reforms carried out in response to the

revolts of 2011, when most countries faced the threat of popular revolution (Yom and Gause 2012), the countries in which heads of state survived or a transition toward democracy was initiated, established or where it already existed, strengthened their judicial system. This led to a slight reconfiguration of the systemic governance of the judiciary. In particular, both Morocco and Jordan initiated reforms that aimed to strengthen the independence of the judiciary, granting more autonomy to the HJCs. One could therefore think of Judicial Councils in Arab countries as leeway to limit political power in the process of appointment, selection and also training of judges.

As Yom and Gause argue, Morocco and Jordan are, among the countries of North Africa and the Middle East, two most similar cases and have been grouped together and studied under a number of perspectives, in particular because of their similarity of response following the outbreak of the 2011 revolts (Yom and Gause 2012). Indeed, both the Hashemite crown of Jordan and the Alaouite crown of Morocco claim to be descendants of the Prophet Muhammad. When the revolts began in North Africa and the Middle East both King Mohammed VI and King Abdullah II responded by publicly addressing democratic reform with constitutional amendments. Both sovereigns also stressed the importance of fostering an independent judiciary as one of the main objectives of the democratisation process.

When looking at the broader picture of the post-Arab Spring, both Morocco and Jordan have been described by Biagi as 'surviving constitutionalism' (Biagi 2018), meaning that the adoption of a new constitution in Morocco, and the amendments of laws in Jordan, were carried out with the purpose of guaranteeing the survival of the monarchies and not with the objective of democratising the countries as protesters claimed. This point finds even more evidence in Yom's observation after the 2016 elections held in both countries that the regimes played an 'innovative long game' (Yom 2017: 133) since their objective was to show that their rulings were indispensable for order and stability since opposition forces could not be fully trusted (Yom 2017).

The two countries even share further similarities, such as the fact that a number of reforms were carried out by the two sovereigns as a way to calm the protests, and that both responded to major demands from civil society for an independent judiciary with a number of constitutional amendments.

The aforementioned set of evidence suggests that it is appropriate to treat Morocco and Jordan as two most similar cases when studying the outcomes of the Arab Spring, and in particular their judiciaries. This is indeed right when we consider their political structures; both countries are in fact constitutional monarchies (Stepan, Linz and Minoves 2014). Furthermore, the ability of the monarchies to stay in power and the means used to calm the democratic requests of political opponents and civil society also suggest that they are similar and can be treated in a comparative manner. Moreover, it is also true that in Morocco and Jordan protesters' requests were never directed toward overthrowing the sovereigns as head of state. Taking into account these commonalities between Morocco and Jordan that recent academic contributions have underlined (Biagi 2013, 2018, Yom and Gause 2012, Yom 2017), one would expect both countries to have followed a convergent path of judicial reforms and have designed convergent judicial models.

As our empirical data will show, however, the two countries have not followed a similar path of judicial reform and, moreover, are not converging toward similar governance systems. This can be better understood if we take into account the reallocation of political resources between the sovereign, the executive and the judiciary. In particular, we will show how the status of judicial governance pre-2011 and the participation of political powers in the reform process influenced the redistribution of power after the wave of reforms which started in the wake of the Arab Spring.

Following Ingram's reform index on Judicial Councils in Mexico, we will construct a similar dichotomous variable that captures the presence or absence of the properties of the Judicial Councils at two points, before and after the reforms, for each of the two countries. A standardised measure will then summarise the councils' strengths (Ingram 2012).

As Ingram proposes, due to their administrative role inside the judicial branch, Judicial Councils can be designed in different ways depending on the amount of power allocated to independent agencies vis-à-vis the other branches of power. Because of the number of ways in which Judicial Councils can be designed, we decided to create an index on the strengthening of the Judicial Councils in Morocco and Jordan before and after the main judicial reforms in order to account for the variations.

The selection of comparative cases is promising: Jordan had the most modern judicial system in the MENA region prior to 2011 (EMHRN 2004), with a functioning Judicial Council and a Constitutional Court that were highly controlled by the King. When calls for reform happened in Jordan, the King, in order to strengthen judicial independence, promised a number of reforms. It is noteworthy that the majority of innovations referred more to the legal than the institutional dimension. Indeed, in Jordan we do not witness constitutional reform, rather a more limited number of reforms promised in 2011 by the King in the aftermath of the revolts, but then implemented over a longer period of time. It must be noted that the constitutional amendments of 2011 were translated into organic laws at different speeds in the two countries, and the approval of laws in some cases only took place recently.
In the following section we will examine the distribution of power between the executive branch, the judiciary and the King prior to and after the great waves of reforms which started in 2011 in both countries.

Before King Hassan was succeeded by his son Mohammed VI, the governance of the judicial system in Morocco was characterised by tight control of the power to the executive and the sovereign over the judicial branch. In 1999, Mohammed VI came to power after the death of his father Hassan II. Among the changes introduced by the new King – such as the new family code and the creation of the first Truth Commission in the Arab World – the period from 1999 to 2011 was characterised by haggard reforms on one side, and the maintenance of the same judicial governance set-up on the other. There were no major constitutional amendments after that of 1996. As a result, the peculiar distribution of power among the actors of the judicial branch and the executive remained intact, presenting a clear shift toward the monarchy and the executive power. Indeed, the transition from authoritarianism to parliamentary monarchy has not freed the judiciary from the control of the executive power. Transfer of judges was widely used as blackmail, with judges being removed if the political authority could not rely upon them.

In Morocco, the Judicial Council, or *Conseil Supérieur de la Magistrature* (CSM), dated back to 1958. The original design of the independent body was in line with the delegated conception of judicial power and strictly under the control of the political branch (ICJ Report 2014). For a long

period, therefore, the CSM was not able to perform its functions, having a purely advisory role and leaving to the King the authority of accepting the Council's recommendations.

The power of the executive can be clearly seen in the fact that, from international observer reports dating back to 2001, the Ministry of Justice had authority over the budget of the courts and the Minister of Justice acted as Vice President of the Council of the Judiciary. Indeed, the pre-reform CSM was dominated by members of the executive and judges' careers were dependent on the goodwill of the executive (ICJ Report 2014). Moreover, the Minister of Justice and Freedom was in charge of overseeing the selection, appointment and promotion of judges. In a continuum where control is in the hands of the executive power or of the JC, this pre-reform governance system came in the direction of the Ministry of Justice. The Minister of Justice, in fact, had a wide role in the promotion and the career of judges and was responsible for the preparation and adoption – after consulting the CSM – of the roster of judges eligible for promotion. The Minister of Justice was also the President of the Board of Directors of the Institut Supérieur de la Magistrature (ISM), the Judicial Academy. In the same way, Public Prosecutors were also under the authority of the Minister of Justice. Moreover, the CSM had no office and no budget authority and its meetings were held at the Ministry of Justice (ICJ Report 2014).

In February 2011, Morocco underwent a significant change. Indeed, a new constitution was established as a consequence of the demonstrations and revolts named after the 20 February movement. Morocco displayed some distinguishing aspects as a consequence of the Arab Uprisings (Biagi 2014). As Biagi argues, Morocco demonstrated a peculiar aspect; the King managed to open up the adoption of a new constitution right after the beginning of the rebellion in order to keep protests under control (Biagi 2014). The transition from the reign of Hassan II to his son Mohammed VI in fact signals a movement from an autocratic regime to a hybrid form of regime. In this excursus toward a more open and inclusive process, the judicial system played an important role. As soon as the revolts started, the sovereign announced the decision to complete a 'global constitutional reform' (Biagi 2014: 50); the new Constitution was designed by a royal commission and with large-scale consultation among political parties, NGOs and trade unions. The regime, in fact, established contact

and audiences with major social actors (Biagi 2014), with the Prime Minister and Interior Minister meeting with, among others, representatives of the principal political parties and the Forum for Truth and Justice established in 2004 (Al-Marzouki 2016).

As Biagi reaffirms, in Morocco democratic reforms were only implemented when the monarchy, and not other political actors, was put under strong external pressure, be it from the military, the population or international actors. In this sense, the 2011 New Constitution was not on the agenda when Mohammed VI succeeded his father, and it was clearly not sponsored by any of the major political parties. Therefore, the changes introduced by the New Constitution in Morocco can be seen as proof of 'Top-Down Democratization' (Biagi 2014) and also bottom-up, this time due to strong pressure from civil society and also on the wave of the rising instability of 2011 across the whole of North Africa and the Middle East.

The Consultative Commission on Constitutional Reform appointed by the King was composed mostly of university professors and activists from human rights associations with an almost total lack of religious exponents, signalling the secular turn that the new Constitution was to mark (Biagi 2014). Moreover, all the political and social organisations were included in the process of constitutional change, being invited to submit proposals for constitutional amendments (Al-Marzouki 2016). It has been stressed that the momentum for democratisation, represented by the draft of the new Constitution in 2011, was driven by the sovereign, thus providing more evidence of the tendency for Moroccan *politics of consensus*, namely signifying the absolute role and powers of the King and conversely the lack of divergence among political parties, the latter being comfortable with leaving full control of the political game in the hands of the monarchy (Maghraoui 2011).

The role of the King in fact easily survived the riots and today remains very popular among citizens. At present, the King continues to chair the Council of Ministers and retains the power to appoint half of the members of the Constitutional Court (Constitution of Morocco Article 130). The King also continues to be the President of the Judicial Council (Constitution of Morocco Article 56), thus

enjoying constitutional supremacy. He also continues to be able to exercise his power through *dahirs*[5], which do not require the countersignature of the head of the government. *Dahirs* are also applied in important matters such as the approval of appointments of magistrates by the Higher Council of Judicial Power (Article 57) as well as the appointment of half of the members of the Constitutional Court (Article 130). As Biagi underlines, the role of the King is not limited to reigning, as it is in the British and Spanish monarchies. A second step in the process of judicial review was made in 2013 with the adoption of the Reform of the Judiciary after a year of national dialogue. The new Charter was adopted following an extensive participatory process (European Commission 2016; Al-Marzouki 2016) .The Charter approved in July 2013 was considered in line with the EU Strategy for an Independent Judicial Branch (EU Commission 2014 b) by the European Report on the Action Plan for the establishment of Advanced Status with Morocco.

In April 2016, the Government adopted two organic laws on the Reform of Justice, one on the establishment of the Conseil Supérieur du Pouvoir Judiciaire (CSPJ), replacing the former CSM, and the other on the Status of the Magistrates. Further reforms of systemic judicial governance entailed the replacement of the National Institute of Judicial Studies with a new Institut Supérieur de la Magistrature. Lastly, but nonetheless importantly, justice was elevated from having the status of 'authority' as the 1996 Constitution defined it, to a full-blown branch of state independent from the executive and legislative. A glimpse at the changes introduced by the new Constitution and the organic laws on the functioning of the judiciary point to a shift in the distribution of power between the executive power and the independent judicial authority, the newly established CSPJ, but maintaining the role of the King in the whole system of judicial governance. The Minister of Justice no longer sits as Vice President of the High Judicial Council. The absolute number of elected judges in the CSPJ has however increased – rising from 11 to 20 – but in percentage terms it has been reduced: in fact, 54% of elected judges were in the CSM and only 50% in the CSPJ. In a total of 20 members, including the King who maintains the presidency of the Council, the CSPJ has 10 judges elected by their peers, as well as the First President and Prosecutor-General to the Court of Cassation

[5] Royal decrees

who are appointed by virtue of their position. The Ombudsman and the President of the National Council for Human Rights, who are members of the CSPJ, are in office by royal appointment. This trend toward a limitation of executive power in the judicial realm finds support in the Indexes issued by international projects such as the World Justice Project. Indeed, looking at the Rule of Law index for Morocco in 2011 and in 2016 there is an increase in the scores assigned to the index 'Constraints on Government Powers', here used as a proxy for judicial independence. Morocco moved from a score of 0.51 in 2011 in the 'Limited Government Powers' index to 0.57 (WJP report 2011, 2016).

The Euro-Mediterranean Foundation of Support to Human Rights Defenders, EMHRF, salutes the new organic laws on the Supreme Council of the Judiciary as a way to remedy past abuses by the executive power vis-à-vis judges. The best illustration of the abuses of power perpetrated by the executive toward magistrates is in an exemplary case dating back to August 2010. The Minister of Justice suspended judges Jaafar Hassoune and Mohamed Amghar, accusing them of breaching the confidentiality of the Council's deliberations. As a response, a number of Moroccan NGOs and human rights associations signed a Memorandum for the Reform of the Judiciary underlining the unconstitutionality of the Minister's decision and therefore denouncing an attack on the principle of separation of powers perpetrated by the executive.

Despite the power and great independence provided to the new High Judicial Council, the ISM, the Judicial Academy of Morocco is still not independent from governmental power as well as the former Institute for Judicial Education, INEJ. However, stronger ties with France's Ecole Nationale de la Magistrature have been established in order to strengthen the effectiveness of training given to judicial trainees.

Table 5: Status Quo of the Judicial Council in Morocco Before and After the Reforms

Dimensions	Morocco pre-2011	Morocco post-2011

Composition Judicial Council	*CSM advisory role, headed by the King, MoJ vice president, majority members of the executive*	*CSPJ, headed by the King, President of the Court of Cassation acts as vice president, majority of judges elected by their peers*
Appointment	*MoJ*	*CSPJ, King*
Promotion	*MoJ*	*CSPJ, King*
Budget	*MoJ*	*Independent, special budget*
Judicial Academy	*INEJ under MoJ authority*	*ISM*
Training	*Optional*	*Compulsory*

Author's elaboration

As in Morocco, the popular demands for change and reform known as the Arab Spring have affected the Hashemite Kingdom of Jordan. In the same way, calls for change were also not directed toward a regime change. Indeed, a number of reforms were undertaken, specifically in the judicial field. It is noteworthy that, compared to the response of Morocco and its New Constitution, reforms in Jordan have not substantially altered the existing distribution of power between the executive and the judicial branch, thus leaving the country in a situation similar to the pre-2011 movements in terms of judicial systemic governance. It must be noted, however, that prior to 2011 the Jordanian judicial system was considered one of the most independent in the Arab world (HiiL 2012, IFES 2004).

Two major constitutional amendments have been adopted since the 2011 uprisings. In 2011, the sovereign appointed a committee for Constitutional Review that prepared 42 constitutional amendments (USAID 2013). The Constitutional Amendments of 2011 were implemented at a moderate pace. These amendments put in place potential innovations for judicial independence: the empowerment of the High Judicial Council, the establishment of a Constitutional Court to review draft legislation and enact laws, and limits to the King's authority to dissolve parliament.
In mid-2014 the Parliamentary Assembly discussed a draft law to add four elected members to the Judicial Council; the election of those members has however not yet occurred. The amendments of 2016 are considered a formalisation of the dominant powers of the King in practice (Yom 2017). These amendments were also made in haste, as reported by internal observers, and the process of constitutional revision was not open to civil society organisations (EBRD Jordan Commercial Law 2014, 2015). In practice the amendments are related to the way of exercising royal executive powers. According to the amendments the King, without any countersignature by the Prime Minister or Minister of Justice, has the power to appoint the Chair and members of the Constitutional Court and the Chief Justice.

The constitutional amendments, *de facto*, did not create any significant change in the allocation of judicial power between the executive and judicial branch, but they diminished executive powers in favour of the King's control over the judicial branch. It must be noted that, in Jordan, a Judicial Council existed before the Arab awakenings, representing the pinnacle of judicial authority (Bertelsmann BTI 2016, EMHRN 2004). However, the Ministry of Justice still represents the body controlling the judiciary (USAID 2014) as the constitution amendments of 2011 did not alter the existing distribution of power. The Judicial Council remains composed of 11 members, all civil judges: the President of the Court of Cassation is the Judicial Council President, the President of the High Court of Justice as Vice President, the Public Prosecutor of the Court of Cassation, the two most senior judges of the Court of Cassation, three Chief Justices of the Court of Appeals, the most senior inspector of civil courts, the Secretary-General of the Ministry of Justice and the President of the Amman Court of First Instance. The appointment of leading judges to the High Judicial Council is made by royal decree upon Ministry of Justice recommendation. The Supreme Court is composed of

seven members and the King, according to the constitutional amendment, appoints the Chief Justice and approves the others who are selected according to suggestions made by the Judicial Council. The Ministry of Justice intervenes in the appointment and selection of judges,; indeed, even if the official appointment is issued by the Judicial Council the Ministry recommends the secondment of any judge. Judges do not have permission to associate in clubs representing their rights or interests. Only the Minister of Justice has the power to supervise the works of Public Prosecutors.

Following the recommendations of the Royal Committee for the Development of the Judiciary and Rule of Law, 16 pieces of legislation were introduced. It must be noted that the Royal Committee was only formed in 2016 and its President is the former Prime Minister. The reports issued by the Committee were hailed by the King, who saw in the proposed changes a real engagement to give both citizens and investors the security that their rights will be further protected. In July 2017, new laws amendments of the judiciary redistributed power within the judicial branch, with Presidents of the Courts of First Instance now allowed to join the Judicial Council, thus reducing the members of the Court of Cassation and with the new law ensuring financial independence to the Judicial Council.

Table 6: Status Quo of the Judicial Council in Jordan Before and After Reforms

Dimensions	Jordan pre-2011	Jordan post-2011
Composition Judicial Council	*JC, 11 judges not elected, president of the court of cassation acts as JC president*	*JC, president appointed by the King, half of the judges elected by their peers*
Appointment	*JC upon MoJ recommendation*	*JC, MoJ recommendation*
Promotion	*JC, MoJ accountable*	*JC, King*

Budget	*No, President JC administrative power in supervising judges*	*Independent*
Judicial Academy	*JIJ governmental body*	*JIJ governmental body*
Training		*No mandatory continuing education*

Author's elaboration

The process of reform in Jordan in the aftermath of the Arab Spring proved to be less cutting in the redistribution of power. Jordan now ranks lower than Morocco in terms of judicial independence (WJP Rule of Law 2016 index) with Jordan at 0.53 and Morocco 0.57. However, for the purpose of this analysis, it is interesting to note the variation in Morocco's pre- and post-2011 score when compared to Jordan's scores in terms of strength of Judicial Councils. If we take into consideration international reports and primary literature used here as data for constructing the index of Judicial Councils, it is possible to appreciate how Jordan did not shift in the last decade in terms of government restraints while Morocco, through the reforms initiated after the February 2011 revolts, provided for a redistribution of power, only slightly, between the executive and the judiciary. In both cases, however, the control exercised by the King was not altered. Conversely, the King expanded his powers at the expense of the Council of Ministers (Hiil Report 2012).

Table 7: Measurement of the Judicial Councils' Strengths

Powers	**Morocco pre-2011**	**Jordan pre-2011**
Council Composition	0	1
Appointment	0	0.5

Promotion	0	0.5
Budget Power	0	0
Judicial Academy	1	1
Exams for Judges	0	0
Total/ Total Standardised	**1/0.1**	**3/0.50**

Author's elaboration

Powers	**Morocco after reforms**	**Jordan after reforms**
Council Composition	1	1
Appointment	1	0.5
Promotion	1	0.5
Budget Power	1	1
Judicial Academy	0.5	0.5
Exams for Judges	1	0
Total/ Total Standardised	**5.5/0.9**	**3.5/0.58**

Author's elaboration

Part 3: Why do Morocco and Jordan Vary in their Paths and Outcomes of Judicial Reforms? Accounting for the Dynamic of External Influence on Domestic Judicial Reforms

The institutional mechanisms of judicial independence in Morocco and Jordan have been underdeveloped since their independence (N.J. Brown 2001: 1). The reasons for this can be traced back to the desire of the political elite to maintain power and tight control against the internal threats and external instabilities that characterise the region. This led to great control by the executives vis-à-vis independent agencies. The reforms carried out following the Arab Spring opened up a stream of funding from the EU, the main international actor interested in keeping good relations with the stable kingdoms of Morocco and Jordan. These projects aimed to stabilise the countries, in particular supporting the establishment of the rule of law, judicial independence and efficiency.

The number of reforms undertaken by Morocco and Jordan since 2011 display an interesting and under-investigated variance on the institutional ways of keeping the judiciary independent and accountable. Are Morocco and Jordan copying the same guidance model promoted by programmes funded by the EU Commission in the ENP framework? The variance on the institutional guarantees of independence leads us to suspect that it is too costly to adopt certain measures that would limit the historical power of the executives versus the judicial councils.

The following sections will examine a number of explanations that the literature offers in order to understand such a puzzle. We will then present our main research question and working hypothesis.

3.1 The Substantive Puzzle

Our evidence shows that the court system and governance of the judiciary in Arab countries have shared a number of similarities over past decades. However, taking into consideration two most similar cases like Morocco and Jordan we account for the uneven path of reforms followed and the relative different strengths of judicial councils that raise substantive as well as theoretical concerns in the study of externally supported judicial reforms.

The main substantive puzzle that arises from this observation is the following: building on Morlino and Magen's criticism of international accounts of democracy promotion we also ask if 'external factors play different roles in different types of domestic and political outcomes' (Morlino and Magen 2009: 12). Put another way, the unevenness that emerges from analysis of the reforms in two countries subject to the same external pressure for rule of law reform and that display most similar conditions, demands an explanation that takes into consideration the actual external pressure exerted from the outside and whether this pressure actually impacts – and how – on the domestic set of guarantees of judicial independence. Therefore, this means that we believe urgent and still under investigated to disentangle the external action, in particular that coming from the EU, in order to evaluate the way in which it is impacting the judiciary of third countries and whether external pressure is strengthening judicial independence and at the same time, holding the judiciary accountable to standards of efficiency.

3.2 The Theoretical Puzzle

The point mentioned above also raises a theoretical puzzle. Indeed, looking at existing theoretical debates on judicial reforms in transitional countries we encounter few shortcomings in providing a comprehensive explanation of the phenomenon we are witnessing. In fact, the two main accounts for judicial reforms, namely Rational Choice and Historical Institutionalism, do not consider the external dimension and focus their analysis on actors not pertaining to the judicial branch. Moreover, the literature on democratic diffusion, that conversely takes into account long forgotten external pressure, does not provide empirical tools to assess the causality of external pressure on domestic changes (Magen and Morlino 2008). We will thus provide a comprehensive overview of the main theoretical approaches to judicial reforms in transitioning countries and external pressure for rule of law establishment.

At one end of the spectrum, the explanation for judicial reform is based on Historical Institutionalism. In this stream of research, studies on democratic transitions used the 'legacy of the

past' approach to explain judicial reform. This account considers both the cultural and social legacies of the past in present transitions (Linz and Stepan 1996, Morlino 1998). Moreover, it is worth mentioning that, according to this stream of research, the legacies of the authoritarian past persist into the organisation of new institutions and are also seen as shaping the organisational set-up of new democratic regimes. This approach surely illuminates the extent to which the legal, cultural and institutional traditions of the past might influence the present outcome of judicial governance in transitional countries. For instance, this view applied to the study of post-communist countries (Coman and Dallara 2010) shows how previous totalitarian experiences echo in the behaviour of actors, and with not inconsiderable interference in the new democratic institutional settings. Particularly in the judicial institutional dimension, this is perceived to be peculiar as it raises the question of whether judges who served during the authoritarian regime are able to become part of the new democratic state apparatus (Guarnieri, Magalhaes and Kaminis 2006, Piana 2009). However, as we will show, accounting only for the authoritarian legal past does not explain the variation we are witnessing in terms of judicial independence and accountability in post-Arab Spring monarchies in North Africa and the Middle East.

At the other end of the spectrum, Rational Choice accounts underline the fact that political actors, in a context of transition toward democratic consolidation, will try as much as possible to control the reform of the judiciary in order to prevent the judicial branch from becoming a threat to their future political survival. In particular, the theories developed by Ginsburg and Finkel (Ginsburg 2003, Finkel 2008, Dixon and Ginsburg 2017), amongst others, stress the importance of analysis of the party election variable in order to explain judicial reform in transitional regimes. Ginsburg and Finkel, in fact, argue that party systems are more prone to auto-limit their power through the institutionalisation of independent agencies, such as the Constitutional Courts, when the control exercised by the courts becomes convenient. In response to Finkel's question as to why politicians who used to enjoy decision-making powers decide to engage in reforms that put a limit on their own political power (Finkel 2008), the rational choice literature answers that this happens when parties in government become aware of their potential future loss in the next election. In this same situation Ginsburg, for

instance, proposes that an independent judiciary becomes an 'insurance' for the future existence of a political party – and that this is due to the fact that they will not then be declared illegal (Ginsburg 2003). Still in the rational choice realm, the veto players strand (Tsebelis 2002), conversely, accounts for a rather different explanation, affirming that competition blocks policy change – in other words, judicial reforms are easier in cases where there are fewer veto players.

The most accurate critique that can be made to the rational choice explanations of judicial reform in transitional countries is that these explanations concentrate exclusively on actors external to judicial institutions (Ingram 2009). As Ingram affirms, for instance, the rational choice strand of research has neglected the role played by judges, in particular their behaviour and their ideas that, as we will also maintain, play a crucial role in shaping the guarantees of independence of the judicial branch. In the same way, we maintain that only looking at the historical legacies of the authoritarian past in our case studies would not provide an exhaustive explanatory model.

We will show, contrarily, that both political actors and judges are indeed necessary to explain judicial reforms and that external pressure for judicial reforms might have had an impact on the non-systemic dimension of the judiciary, namely the administrative dimension.

In parallel to the growing interest in the role of international factors in democratisation transitions, in particular after 11 September 2001, a rising interest in the study of the role of international promotion of democracy in transitioning countries has emerged (Magen and Morlino 2008, Carothers 2004, Youngs 2004, Fukuyama and McFaul 2007, Levitsky and Way 2010). The main critique that is moved toward the study of international democracy promotion is the missing focus on internal-external relations, as rightly stressed by Morlino and Magen. In fact, theories of comparative politics, international relations and international law do not bridge the two dimensions and are thus more descriptive, rather than engaged in explaining causality. This notwithstanding, the existing literature on democracy promotion has in some respects shown a homogeneity in considering both external factors and internal changes (Magen and Morlino 2008).

In particular, our account on judicial reforms under the pressure of external promoters seeks to fill an important gap. The literature on Eastern Europeanisation has, for instance, recognised the pitfalls in

considering the 'one size fits all' approach (Borzel and Risse 2009: 28) of international promoters such as the EU. However, this homogeneous approach also emerges as an empirical lens through which to examine the phenomenon *per se.* This is indeed the main shortcoming that we can recognise in past studies on democracy promotion, that is to miss the fact that 'external factors play different roles in different types of domestic political outcomes' (Magen and Morlino 2008: 12).

Our main point draws upon the new phenomenon that characterises judicial promotion, as we have shown in the first part of the chapter, looking at different dimensions of judicial governance and the tools developed by international actors such as the EU. In fact, what the latest studies on judicial promotion toward Eastern European accessing countries (Piana 2009, 2010) and the Balkans (Coman and Dallara 2010) have shown is the expansion of the tools of judicial promotion. This is particularly relevant if we think that a brand new phenomenon has indeed characterised the field of justice administration, one which can no longer be neglected, in particular nowadays when looking at the Southern Neighborhood policy of the EU. This phenomenon can be better understood by looking at the use of tools such as monitoring, evaluation and training programmes like Twinnings and the number of judicial networks developed. The standards promoted through these epistemic activities are believed to affect the dimensions that pertain to the efficiency of the system more than the institutional set-up.

Having shown how, in order to explain variation, we deem it essential to take into account not only domestic variables but also the external pressure exerted in particular by the EU through mechanisms of soft conditionality and socialisation, we now propose our main research questions.

RQ1: To what degree were EU programmes of judicial support able to impact on the judicial systems of Morocco and Jordan?

RQ2: In the interplay between external and domestic variables, what accounted for the reforms of the judiciary in the two countries under study?

RQ3: Did the two dimensions identified responded in the same manner to external pressure for change?

3.3 Toward the Internal-External Model of Judicial Change

This research project will draw upon the explanatory framework envisaged by the school of comparative politics put forward by Magen and Morlino (Magen and Morlino 2008) as well as on the theory of norm dynamics proposed by Finnemore and Sikkink (Finnemore and Sikkink 1998), and will apply it to the analysis of a region still unexplored under this framework: the North African and Middle Eastern post-rebellion liberalising monarchies of Morocco and Jordan.

The starting point is to consider an explanatory model that combines domestic analysis of political costs, changes in the cost-benefits of domestic actors and that accounts for the role played by *change actors* or *norm entrepreneurs* (Magen and Morlino 2008, Finnemore and Sikkink 1998) and external pressure exerted by the European Union and the Council of Europe for judicial reforms.

In order to understand the external-internal model of judicial reforms it is necessary to recall the mechanisms that the EU uses to promote normative content toward candidate and third countries. The European Union strategy for the promotion of judicial cooperation in Southern Mediterranean countries is currently framed in the Neighbourhood Policy. However, the strategy of the EU relies to a great extent on the tools of the Council of Europe, a 'Partner for Prestige' (Piana 2010) in setting standards on judicial capacities. Apart from the Council of Europe, the European Commission also relies on other international actors engaged in the support of judicial reform in MENA countries for a longer period, such as the World Bank, USAID, the American Bar Association and the OECD.

The European Union uses two main channels to promote democratic norms in third countries: conditionality and socialisation. The literature on Eastern Europeanisation is useful here for a brief description of the method of influence that is also witnessed in the realm of judicial cooperation, showing how the mechanism at work in the realm of the Justice and Home Affairs field will provide our main assumption on the effectiveness of European mechanisms. As Morlino and Magen define it,

conditionality works as a pressure that generates a political change in the recipient country. However, as we have already stressed, the strength of conditionality lies in the prospect of reward, that is, the mechanism that ties third countries to actually commit to changes. The literature on European conditionality toward accessing countries stresses that the whole mechanism works on a 'carrot and stick' principle, or 'reinforcement by rewards' (Schimmelfennig and Sedelmeier 2004: 670) where the carrot was the funding and the final perspective of accession to the EU. With regard to EU conditionality toward the Southern Mediterranean countries, the literature suggests that we cannot actually refer to a negative conditionality but rather a positive one since it is in both the EU and beneficiary state's interest to establish ties with each other. However, the Association Agreements concluded in the framework of the European Mediterranean Policy, EMP, entailed a clause of negative conditionality, i.e. the suspension of aids, in cases in which the third country did not meet the fundamental principles of the Agreement, but the EU has never used negative conditionality toward Southern Mediterranean countries. It has in fact been highlighted that the EU relied on positive conditionality with neighbourhoods for a number of reasons such as, for instance, the fact that negative conditionality might isolate a country or distance those already reticent (Smith 1998).

After the 2004 Enlargement, the EU launched a brand new strategy for the new neighbourhoods. In the case of the Southern countries, the existent EMP was complemented by the new European Neighbourhood Policy (ENP). Kelly underlines how the EU has borrowed its tools from the Enlargement policy (Kelley 2006) and used them in the framework of the Neighbourhood Policy. The EU negotiated Action Plans with Southern Neighbourhood countries such as Jordan and Morocco, with short, medium and long term priorities, and compiles yearly Progress Reports and Country Strategy Papers that serve to monitor the application of the Agreement.

Recalling March and Olsen, positive and negative conditionality follow an actor-based rational logic of influence or *logic of consequences* (Magen and Morlino 2008: 33, March and Olsen 1998: 949). Moreover, the literature on Eastern Enlargement highlights how the power of conditionality depends on a number of factors such as the credibility of rewards, the relative bargaining power of actors and also the determinacy of the rules (Schimmelfennig and Sedelmeier 2005). However, the main difference in the European neighbourhood with the Enlargement process is a lack of

perspective of membership that reduces to a minimum the possibility of applying conditionality, both negative and positive.

The wide literature on Eastern Enlargement is thus useful because it provides us with the notion of socialisation as the mechanisms on which the EU broadly relies in its relations with neighbourhood countries and especially in the Justice and Home Affairs policy sector (Noutcheva and Aydin-Duzgit 2011, Borzel and Risse 2009, Schimmelfennig and Sedelmeier 2004, Youngs 2004).

Checkel stresses that the EU has good potential for socialisation because of its dense institutional and normative domain (Checkel 2001). This method of external influence in fact facilitates the internalisation of democratic norms and policies through the establishment of a number of linkages between international fora (Magen and Morlino 2008: 34) and state actors (Schimmelfennig and Sedelmeier 2005). As we have already pointed out, in the judicial field, due to a lack of binding norms to be transposed outside the border, the EU heavily relied on a number of Twinning projects, TAIEX projects and the creation of networks of experts where international officials interact with their peers (Slaughter 2004) that are funded by the ENPI instrument. These 'horizontal networks' (Slaughter 2004, Magen and Morlino 2008) represent the non-institutionalised mechanism of potential influence. The promotion of judicial independence and judicial capacity toward Eastern European countries has relied especially upon the terms of a transnational discourse elaborated within epistemic communities and policy networks (Dimitrov 2003, Piana 2010). Conditionality as a mechanism has to be taken out of the picture, in particular in the judicial realm where it does not imply legally binding norms to be transmitted (Coman 2009, Piana 2009), and the EU's *acquis* in the enlargement process proved to have very little guidance for addressing judicial reforms (Grabbe 2001). The lack of binding norms, coercive means, and fewer working rewards does not imply, however, that norm transfer as regards judicial policies cannot be assessed. Building on Piana's finding on Eastern European countries we also maintain that the absence of legal constraint indeed opens the doors to *entrepreneurship,* which happens at the level of epistemic networks. Moreover, as March and Olsen posit, all the strategies of conditionality follow an actor-based, rational bargaining logic of influence that underlines the existence of a utilitarian calculation in which domestic decision constituencies are affected by the costs and benefits of compliance (Magen and Morlino 2008, March

and Olsen 1998). Therefore we expect to show that socialisation is also able to enact changes, thus contrasting with an element of literature on Europeanisation which dismisses the capacity of socialisation to actually trigger reforms (Schimmelfennig 2005); the question is to show at what level socialisation is actually able to penetrate into the judicial realm of third countries.

3.4 The Explanatory Model: the Internal-External Account of Change

After highlighting the main shortcomings in previous approaches and stressing how European external pressure is exerted toward countries of the MENA region, and thus having in mind the typologies of external methods of influence that characterise judicial cooperation toward neighbourhood countries, we will present our framework for an empirical study that takes into account external and internal dimensions.

We believe that domestic actors play a dominant position in the design of judicial policies independently from the degree of external pressure. The degree of change is dependent on the domestic allocation of power that results after the transition from authoritarianism, where the judiciary enjoyed less independence from the control of the executive power.

We consider that external inputs become resources and opportunities handled by domestic actors, rather than driving domestic actors toward common patterns of norm and institutional settings. Drawing from the explanatory theory of Morlino and Magen and Finnemore and Sikkink we propose the main actors and the mechanisms of change.

We identify the main actors:

External Agents: as this model is drawn from that exemplified by Morlino and Magen we consider as external agents the European Union – in particular, the European Commission and the Council of Europe.

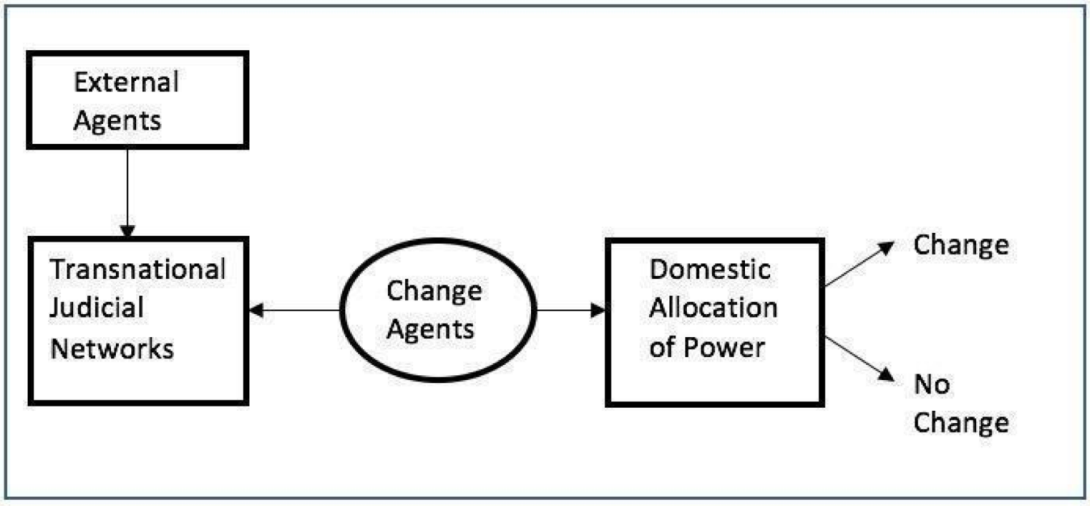
Change Agents: the agency is the key variable in the process of creation and selection of norms. Therefore when we refer to *change agents* (Magen and Morlino 2008) or use the definition of *norm entrepreneurs* (Finnemore and Sikkink 1998) we refer to those domestic actors that mobilise to pressure decision-makers to adopt rules, and also engage domestic decision-making in processes of persuasion and social learning to redefine their interests and identities. However, for the purpose of explaining our model, we must refine this key concept.

European non-legally binding norms are transferred into the organisation unit by individuals (Piana 2007, Radaelli 2005) who play the role of *change agents* or *norm entrepreneurs*, acting as bridges between the exogenous norms and the domestic working place. In the judicial realm these actors are located in the judicial offices, in the courts and Public Prosecutors' offices; they are usually high ranking agents such as Chief Justices and Chief Public Prosecutors (Piana and Dallara 2010).

What is, at this point, the driving force that triggers change? Stemming from the scholarly debate of agency versus structure we ask to what extent *change agents* become pivotal in a highly institutionalised context such as the judicial one (Giddens 1979). Can the *agent* be the driving force for change?

We argue that agency is actually able to pressure for change, but only if its action does not interfere with the existing allocation of political resources, as settled during the transition. As previous empirical evidence suggests from the preliminary analysis of judicial reforms conducted in our target countries, we suppose that general ideas promoted through judicial networks reach domestic levels.

Fig.1 The External-Internal Mechanism of Judicial Reforms as a Process



The main argument can be put in the following way: if one digs into the implementation and internalisation level one will see how the non-convergence of the institutional set-up of the judiciaries of two countries – Morocco and Jordan – depends on the redistribution of power that these changes would provide, namely between the political branch, the sovereign, and the judicial branch. The process that Figure 1 exemplifies comprises two stages: the external inputs that are captured by domestic actors, the *changing agents*, and at a second moment the leading role of the actors empowered during the transition in blocking or not the changes introduced by agents.

Therefore our first hypothesis:

H1: Domestic actors drive the process of design of judicial reforms, independently from external conditionality. If this holds true we expect to find non-convergent judicial reforms in countries subject to the same external European conditionality.

What does this mean if we take into account the different levels of guarantees of judicial independence presented in the first part of this chapter?

H2: *Because there was little or no change in the power of internal actors in Morocco and Jordan, we expect to find a low rate of innovation in the institutional dimension of justice, therefore the external model offered by the EU does not enter the domestic judicial set-up. The change we expect to encounter in the institutional dimension follows a path dependence.*

Contrarily, we expect that the models offered by the EU on the quality and efficiency of the courts were positively welcomed by Morocco and Jordan, therefore we expect to see the adoption of a model that pertains to changes in the administrative dimension.

3.5 Empirical Strategy

In order to test our hypothesis we will be focusing on primary and secondary literature, in particular we will rely on Country Reports drafted by international organisations and institutions promoting judicial cooperation parallel to the work of the EU, such as the Council of Europe, the International Commission of Jurists (ICJ), the European Commission for the Efficiency of Justice (CEPEJ), the Organisation for Economic Co-operation and Development (OECD), Freedom House, the World Justice Project, V-Dem dataset and also USAID and World Bank reports.

Notably, USAID funds rule of law programs that are directed to strengthen the independence and efficiency of justice in the MENA region. This notwithstanding, this research will focus on specific relations between the EU, particularly the European Commission that leads the ENP strategy, and the two MENA countries. Our interest is in EU-Mediterranean relations and the way in which the EU Commission and member states define and promote a model of justice in Morocco and Jordan. This research acknowledges the existence of a number of non-EU programmes with similar aims; however, our hypothesis and findings pertain to the external/internal dynamics of EU foreign policy in the MENA region.

As Nathan Brown correctly stressed in 2001, information on Arab judicial structures is still quite uneven even if in previous years most of the information began to appear on internet websites

(Brown 2001). For this reason, we will also rely on interviews with locally based experts in Jordan and Morocco. Lastly, semi-structured interviews were conducted between May 2017 and July 2018 with practitioners working in EU programmes of judicial support in Morocco and Jordan, with EU consultants and magistrates in the receiving countries.

Case selection has been made following the logic of most similar cases. We compare two cases, Morocco and Jordan, that are similar in being two consolidated constitutional monarchies in the MENA region. They reacted in a similar way to the turmoil in the region in 2011, and both countries enacted a series of reforms to meet the calls for liberalisation from civil society. The two cases however display a different distribution of power with regard to relations between the independent judicial institution, the political power and the sovereign.

The cases will be analysed using a qualitative approach. Extensive policy analysis will be used as a means to compare two competing explanations for the reforms of each country; text analysis will be performed in the second chapter in order to explore the independent variable and the role of the EU narrative in the construction of the programmes. The qualitative approach will be useful for an analysis that relies on the individual variables that characterise the actors we deem to be entrepreneurs of change.

3.5.1 *Empirical Contribution and Remarks on Data Collection*

The mapping of European normative inputs in the Justice and Home Affairs realm will be extensively addressed in Chapter 2. We will thus contribute empirically to the general knowledge of the number of programmes funded by the EU which specifically address judicial support in the MENA region, and will classify them according to the different dimensions of the judiciary to which they pertain. With a complete view of the normative inputs addressed toward the two countries we will be able to verify our first hypothesis which maintains that Jordan and Morocco have strengthened the insitutional or the administrative dimension according to a pre-reform setting. In

other words, in Morocco as a consequence of the revolts we see the strengthening of the independent judicial institution and all the subsequent reforms followed this path. Conversely, in Jordan in 2011 a functioning Judicial Council was already in place and subsequent reforms provided greater powers to the sovereign and Ministry of Justice.

In order to test Hypothesis 2 we will extensively analyse EU-funded programmes of judicial support in Morocco and Jordan and will compare this with the changes and reforms enacted as a consequence of EU programmes in the receiving countries. We will also control for reactions to the changes expressed by the political elite, stakeholders and civil society.

Indeed, the EU programmes of judicial support entail, from a substantial point of view, two very distinct inputs for change: the insitutional inputs directed toward the strenghtening of independent judicial councils and administrative inputs that involve a number of output-oriented reforms that strenghten the efficiency of the courts (see Table 6).

Table 8: The Two Dimensional Inputs for Change and Subsequent Beneficiary State Response

Beneficiary State Reform/ European Inputs	Input 1: Institutional Reforms	Input 2: Efficiency Reform
Change		X
No Change	X	

Author's elaboration

Our main assumption is that penetration of external inputs relating to the administrative dimension happens in countries of the southern ENP because this does not imply a change in the distribution of power but is based on the socialisation of actors and on a win-win situation. Legal actors gain cognitive resources through participation in epistemic communities and judicial networks.

This will be thus tested against the empirical evidence collected from the analysis of European programmes of judicial support in Morocco and Jordan enacted in a time frame between 2008 and 2017. In fact, if we consider the fact that the domestic judiciaries of countries in North Africa and the Middle East are entering into a dialogue through judicial networks with non-Arab political systems, it is possible to hypothesise that the dimension that pertains to a better management of the judiciary has been influenced by the external sources of normative inputs. However, we also believe that the strong legacy of the domestic institutional set-up – that in neither case has been removed since no revolution characterised the Arab Spring in Morocco and Jordan, but only limited reforms – has prevented the full penetration of the external inputs and thus a path dependence is expected in the institutional sets.

This research concerns the design of programmes of judicial support and the variations encountered at the level of institutional judicial accountability in Morocco and Jordan. This research is not therefore about implementation of reforms; instead we seek to explain the kind of inputs directed from the EU toward the southern ENP in the wake of the Arab stream of reforms and how those inputs were received by judicial actors in Morocco and Jordan. In doing so, we are offering a realaboration of previous research conducted on externally promoted judicial reforms in an underinvestigated region. This is a precise decision that follows the non-availability of data on the implementation of single projects of judicial support in Morocco and Jordan. In fact, interviews conducted with experts working on the projects were not able to open up the puzzle of implementation. We are keen to interpret this lack of information and unwillingness in actors as a validity of our main hypothesis on the difficulties encountered by these kind of programmes and projects in enacting real change on the institutional level of justice.

Chapter 2: The Nature of EU Judicial Support in the Southern Neighbourhood: Exploring Sectoral Cooperation

The European Union (EU) pays great attention to the support of rule of law (RoL) in the Southern Mediterranean countries. In the EU narrative, RoL appears as 'the backbone of modern constitutional democracies, ensures that power is subjected to the law under the control of independent courts' (European Commission c 2014). The promotion of RoL in European terms means providing support to institutional guarantees of judicial independence and enhancing the efficiency of the courts and public administration. Indeed, when examining the official EU discourse it appears that support to the RoL in the Southern Mediterranean countries is devoted to promoting institutional changes and administrative capacities. In particular, European judicial cooperation is designed to strengthen an independent judiciary as a way of stabilizing and securitizing transitioning countries and enhancing the efficiency of their judicial administrations.

The pillar of RoL, the establishment of independent courts, is thus paired with an efficient dimension that resonates in the public administration literature under the label of New Public Management (NPM).

This chapter will address two fundamental points; firstly, it will analyze the official texts of EU RoL support in the Southern Mediterranean. Two images appear from a discursive and content analysis of the EU's official documents and speeches addressing RoL promotion in the Southern Mediterranean: a political image that refers to the institutional dimension, namely the independence of the judicial branch, and an administrative one addressing the managerial dimension of the judiciary, those two images correspond to the dimension identified in Chapter 1. Secondly, the chapter will enter into policy analysis of the projects of judicial support in the Justice and Home Affairs (JHA) policy sector between the EU and the Southern Mediterranean. The analysis will focus on the European Neighbourhood Policy Instrument (ENPI)/ European Neighbourhood Instrument (ENI) of judicial

support toward the two case study –Jordan and Morocco. The analysis will show how the RoL and Judicial support was scattered and directed toward administrative objectives rather than political ones.

Second, the analysis will impinge on the micro project of technical assistance addressed toward the whole region highlighting how an output-oriented, NPM-inspired image permeates this action throughout the region, this analysis relies on the data provided to the author by the European Commission functionaries working on Twinning and TAIEX initiatives in January 2018 and these data are corroborated by two interviews, one with the project manager of the International Institute for Justice and Rule of Law working on a set of project directed to support the judiciary in the MENA region, the other with the coordinator of the Twinning and TAIEX instrument in Brussels, those insights provide for a more detailed picture of the nature of the programs that represent the independent variable of this research project and the pillar of the mechanism that we will put into test in the empirical chapters.

The contribution of this chapter is twofold. In the first instance, the analysis of the texts derived from European official documents and speeches serves to disentangle European judicial cooperation into two distinct facets showing how it is of interest for the EU to support the institutional and legal structure of judicial systems in the south ENP, as well as the quality of their judicial system and administrative capabilities from an official standpoint. Acknowledging this important dual aspect that permeates the concept of democracy and RoL promotion in the EU's narrative, the chapter will then move more deeply to analyze the aspect of the improvement of governance through technical aids (Muhhina, 2017). Indeed, the chapter recognizes that the literature on EU Mediterranean relations has not paid much attention to this latter aspect related to RoL promotion, that of functional cooperation of peer – to – peer programs toward which a great amount of EU funding is devoted. Only a few scholars were interested in the intersection between EU democratic governance promotion and administrative reform. Notably, studies dedicated their attention to the model of governance promoted through functional cooperation (Freyburg, Lavenex and Schimmelfennig 2009), (Lavenex and Wichmann 2008) and most recently (Panchuk, Bossuyt and Orbie 2017), highlighting the democratic potential of transgovernmental EU action. In particular, it has been emphasized how the EU was able

to socialize Arab civil servants toward positive attitudes towards democratic governance (Freyburg, Lavenex, Schimmelfennig, Skripka and Wetzel, 2011: 1028). Conversely, scholars engaged in the intersection between court management and the European judiciary have increased their interest in the process of European functional cooperation through judicial networks and stressed how the judicial model that appears in the project's reports signals a move toward New Public Management (NPM) tools, i.e. user-oriented inspired reforms, (Christensen and Laegreid 2002: 267-295), (Piana 2017: 758). Drawing from those two literature strands, external democratic governance, and European judicial policy, this chapter advances the hypothesis that programs of judicial support, ENPI/ENI and technical micro projects, Twinning and TAIEX, promote an output-oriented model of judiciary more than a political one. In particular the examination of the judicial support in the two case study supports the general hypothesis, but the analysis goes even further highlighting how the external action is not only divisible between an institutional and an administrative interpretation (see Cremona 2004 for this definition), but that using the former definition an administrative and apolitical interpretation of judicial reform is preferred not only by beneficiary countries but also by European member states.

This chapter will show how the EU official stances in RoL promotion differ from the actual inputs, quoting Bicchi on the European programs dedicated to democracy and human rights: 'the policy decisions taken tend to downsize the significance of democracy assistance in the area' (Bicchi 2010: 977). Indeed, EU official documents of RoL support and Judicial cooperation tell a different story from the actual design of RoL intervention, an action that diminishes the political dimension of the judiciary in favor of administrative NPM inspired actions.

2.1 Disclosing EU Judicial Reforms through Discursive and Content Analysis: Between Institutional Independence and Governance Capability.

As the analysis will show, European discourses of RoL promotion directed toward the southern neighborhood consider as a priority Judicial independence and Judicial efficiency, providing significant salience to the two concepts and depicting a hybridized model of Judicial governance.

A first step into the description of the European narrative and on the importance attached to the independence and efficiency of the judiciary must start by providing a digression on the importance that International Organizations – and to a great extent the Council of Europe – have attached in the past to this conception. In 1985 the United Nations basic principles on the Independence of the Judiciary opened the way recognizing the conditions under which justice had to be maintained, underlining the scope of independent justice as that of the necessary mean through which to assure the respect of human rights and fundamental freedoms and recognizing the differences that exist across countries in the ways in which the administration of justice is organized. The principles set the basic elements of a judicial system a being 'independent and efficient' (UN General Assembly 1985). The Council of Europe supported this view and has issued since the beginning of the 1990s a number of recommendations that underlined the importance of an independent and efficient judiciary for the existence of rule of law and quality of democracy. Judicial Independence and Efficiency, therefore, are here used as proxies of our two aspects of the judiciary: the Institutional and the Administrative dimension. The following sections will measure the extent to which those concepts and the related dimensions are present in the official discourses of the EU.

2.2 The Analysis of European Discourses of Judicial Promotion

Content Analysis is an empirical method that has been widely used to study political communication. According to Weber (1990) content analysis is a research method that uses a set of procedures to make valid inferences from the text. Further, the methodology allows for the conversion of raw phenomena into data, which can then be treated in a scientific manner (Devi 2008: 174-193). The study of the texts is in fact, according to Holsti (Holsti 1969): 'a technique for making inferences by systematically and objectively identifying characteristics of specified messages'.

For the purpose of analyzing political discourses and the salience given to Judicial independence and Judiciary efficiency narratives, the chapter adopts the software AntConc (Anthony 2011). The software provides useful data allowing to visualize the frequency of the categories and more broadly of the words used in the texts analyzed. It must be underlined that the main idea in content analysis is that the words expressed in the text can be classified into a number of categories and each category is usually composed of a group of words (Weber 1990). In order to make valid inferences from the text, the classification of the categories is supposed to be consistent and replicable. Krippendorff, for instance, stressed that content analysis is a research technique that allows for replicable and valid inferences from data to their context (Krippendorff 1980). For this purpose, the chapter developed a number of words around the categories of interest of the investigation: Judicial Independence and Judicial Efficiency. The selection of words related to the two categories was designed according to the definition provided by the literature on European Judiciary and on the author's elaboration of European official documents.

Table 9: Categories and Related Words for Text Analysis

Judicial Independence	**Judicial Efficiency**
Legal Certainty	*Transparent (application of the law)*
Judicial Guarantees	*Responsive*
Judicial Review	*Effective*
High Judicial Council	*Budget*
Independent	*Service*

Author's elaboration

Through the use of the software AntConc it was possible to operate a double level analysis. The first analysis was made on the wordlist, through the function 'wordlist' it was possible to calculate the number of times each word was pronounced in the discourses selected. The second level of analysis

was conducted on the categories, namely calculating the frequency of appearance of the two categories together with the percentage of appearance in the text of the words selected. The use of the software in content analysis, therefore, allows for a deeper analysis of the texts, in particular the frequency of the categories helps to understand the number of times Judicial Independence and Judicial Efficiency and the relative connected words have been pronounced in the official speeches and documents.

It must be stressed that in discourse analysis the context matters. The words used in a political discourse are in fact selected by the speaker according to the people it is addressed, to the message it carries and hence to the effects that the discourse wants to have. The next paragraph will provide an overview of the context in which the main documents are addressed and their relevance for the analysis.

2.2.1 The European Commission Official Statements on RoL and Judicial Support in the Southern Mediterranean

The text analysis is performed specifically on official documents issued by the European Commission in the aftermath of 2011. Starting with the 'Partnership for Democracy and Shared Prosperity with the Southern Mediterranean', a milestone document issued by the HR and the Commission as an immediate response of the Arab Uprisings, and all the responses that followed the first roadmap established following the events of 2011 that changed the EU response vis-à-vis the southern neighbourhood.

For what concern the definition of Judicial governance the analysis is conducted also on the definition provided by the EU Justice Commissioner Viviane Reding: 'The Union is a Community based on the Rule of Law where all member states need to be concerned if there are any deficiencies in the independence, efficiency or quality of the justice system in another member state' (European Commission c 2014). The EU is thus based on a concept of RoL that finds practical terms in an independent judiciary that is also efficient and of quality. The European Commission has narrated

judicial independence as a prerequisite of RoL: 'All public powers act within the constraints set out by law under the control of independent and impartial courts' (European Commission c, 2014) and envisioned the composition of the High Judicial Council with a majority of judges elected by their peers instead of being appointed by the Ministry of Justice. Another important definition of RoL and Judicial governance is provided in the Copenhagen Criteria, the set of key requirements for EU membership. Specifically Chapter 23 and 24 address the RoL. Chapter 23 states: the establishment of an independent and efficient judiciary is of paramount importance. Impartiality, integrity and a high standard of adjudication by the courts are essential for safeguarding the rule of law.

In the aftermath of the Arab uprisings, the High Representative of the Union for Foreign Affairs and Security Policy (HR) and the European Commission issued a Joint Communication for the purpose of designing a new response to the changing Southern Neighbourhood. The first document issued is the 'Partnership for Democracy and Shared Prosperity with the Southern Mediterranean' (European Commission a 2011), in this first communication the Judiciary is cited as one of the three elements of prosperity for the region, but without reference to its composition. In the subsequent official statement of the Commission 'A New Response to a Changing Neighbourhood' in the figure of the HR, the importance of committing to universal values is clearly addressed, which are also shared European values of democracy, human rights and RoL: 'In the contest of the Southern Mediterranean the Commission and the High Representative have already laid out their proposal for a partnership for Democracy and shared prosperity, this new approach aims to: provide greater support to partners engaged in building deep democracy - the kind that lasts because the right to vote is accompanied [..] to receive impartial justice from independent judges'. In the Joint Communication, RoL appears as a funding value on which relations with Southern Mediterranean countries should continue to be built and, in listing the expected results and impact of the new actions, the expected results are, amid democratic governance and respect for human rights, 'A more independent and efficient judiciary' (European Commission a 2011). Interestingly in the documents issued by the European Commission and the HR two years after the first milestone document, such as the 'European Neighbourhood Policy: Working towards a Stronger Partnership' (European Commission b 2013), the address made

to the judiciary is only about its independence stating that: benchmarks for democratic transition in the Southern Mediterranean have been set in the areas of freedom of expression and media; association and assembly; religion and belief; women's rights; transparent elections and the independence of the judiciary.

From this preliminary considerations of the EU Commission official documents addressing RoL in the southern neighbourhood after 2011 it is possible to observe that the judiciary is intended in its institutional facet, considering the importance of the independence vis à vis the other branches of power, but also its efficiency, namely the dimension that does not pertain to the political sphere, but rather to the service that it delivers.

The following text analysis will be performed on the aforementioned documents and all the annual Action Plans for the southern neighborhood countries. In particular, this chapter takes into account the annexes of the annual Action Plan with the southern neighborhood that address the support to good governance and RoL. The Action Plans with neighborhood countries are bilateral documents issued between the Commission and the beneficiary country where the agenda for political and economic reforms with short and medium-term priorities are set out in the mutual agreement.

2.2.2 Independence and Efficiency Frequencies

In this section, the analysis is performed on the number of times the words selected are mentioned in the texts taken into consideration. This level of analysis allows having a first visualization of the saliency of each word.

It appears striking evident from Graph 1 that Judicial Independence scores higher compared to all the other words identified. This must appear as no surprises, indeed, as mentioned in the previous section the EU identified as the main priority for southern neighborhood countries the independence of their judiciary. The administrative capabilities of the court system indeed did not appear in the 'European Neighbourhood Policy: Working towards a Stronger Partnership' showing how the establishment of a

self constrained judicial system was the main objective for the EU in the aftermath of the Arab revolutions.

The analysis of the texts is performed at two levels. It is possible to observe how often words, but also clusters of words, are addressed in selected texts. In this analysis it is possible to infer that the word '*Judicial Independence*' is the most salient, scoring significantly higher than the counterpart '*Judicial Efficiency*' (47% JI, 17% JE). However, the cluster of words for Judicial Efficiency appears high in the texts selected (45% cluster JE, 54 % cluster JI) and the words composing the cluster of Judicial Efficiency are evenly distributed among the texts of the analysis compared to the cluster of Judicial Independence where only the word JI is scoring significantly. Judicial Efficiency and its cluster of words are thus associated to a concept that is salient for the RoL discourse of the European Commission in its relations with the southern Mediterranean countries in the aftermath of the Arab Springs.

Table 10: Percentage for Each Word and Each Cluster of Words in Texts Analyzed

Words	Frequency	%	Categories
Judicial Independence (JI)	24	47%	54%
Legal certainty		/	
judicial guarantees		/	
judicial review	2	0.3%	
Judicial Council	2	0.3%	
Judicial Efficiency (JE)	9	17%	45%
transparent	4	0.7%	

procedures	3	0.5%	
efficacy	2	0.3%	
effectiveness	4	0.7%	
quality		/	
capacity	1	1%	

The EU judicial support pays attention to the institutional dimension of Judicial systems of beneficiary countries. This is due to the corroborated idea of the linkage between a functioning judiciary, stability and economic growth. This statement finds evidence in the analysis of the texts that were addressed toward Southern Mediterranean countries where *Judicial Independence* scores a high frequency as a word and also as a category. The idea at the base of these results is that the EU acts as a 'constituent actor' (Pavenhause 2002) where the states are not self-constrained, as for the Southern Mediterranean countries taken as a case study. In sum, the analysis corroborates the hypothesis that the EU holds judicial independence and administrative and managerial capacities in the realm of judicial governance of third countries to be fundamental conditions for the southern neighborhood countries.

2.2.3 Toward a Model of European Judicial Support: the Limits of an NPM Judicial Model in Transitioning Countries.

The images that appear from the official documents and speeches of RoL promotion is that of a dual level of judiciary. Indeed, '*independence*' and ' *efficiency*' are presented in official documents and Action Plans as two sides of the same coin: that of ensuring respect of the RoL. Even if the frequency scores lower for what concerns the word *Judicial Efficiency*, the cluster of words that comprises concepts related to the generally New Public Management (NPM) inspired reform is present in

official discourses and texts. A most interesting inference that can be drawn from the previous analysis is that the EU, one of the most significant actors of international democracy promotion, is supporting not only institution-building and legal reforms in order to strengthen and ensure the respect of RoL in the Southern Neighbourhood, but even more standards of quality.

Recent literature on the EU judicial model indicates that the creation of the European Commission for the Efficiency of Justice (CEPEJ) marked a turning point for the quality of justice in Europe. A number of indicators were issued, together with blueprints and recommendations that were introduced within the member states; since then, the whole idea of the new approach marked by the CEPEJ was that the judiciary is a public service and should, therefore, be held accountable from the point of view of providing a good service to citizens (Piana 2017). The quality of the judicial system resonates in the literature of the New Public Management that was extensively covered in the previous chapter however, what is interesting to note here is the downside that comes with NPM inspired reforms in countries that have not yet established strong guarantees of independence of third institutions like, for instance, an established Judicial Council.

The literature indicates an important downside that comes with this dual aspect of the judicial model in the countries of the Southern Mediterranean which, albeit at different levels, have not implemented strong guarantees of judicial independence. While RoL principles stressed in the official discourses and in the constitutional mindset of the EU underline the independence of judicial councils in several instances, the elements of the user-oriented tools of the NPM-inspired policy take the guarantees side for granted and diminish the importance given to third, independent institutions. The logic behind this relies on the fact that a strong set of judicial guarantees of independence is not efficient for a service delivery reforms-oriented judiciary. Moreover, the NPM literature stresses that the strengthening of managerial accountabilities in public administration reduces political responsibility over the public sphere (Christensen and Laegreid 2002, Muhhina 2017), and studies on performance management in transitioning countries suggest further interesting insights. The new democratic governments of Eastern Europe were able to change the general legal framework of their civil service but had limited success in reshaping its administrative culture and performance.

This is related to additional problems facing transitioning countries that make the development of public management tools even more questionable than in Western countries. First of all, it has been found that when the institutional base of a public administration, in general, is weak, management techniques have poor foundations (Randma-Liiv 2005). The Estonian case analyzed by Randma-Liiv tells of circumstances in which most Southern Mediterranean countries receiving the EU's judicial policies find themselves, namely that of having parliaments overloaded with the preparation of new legislation. Parliaments in Southern Mediterranean countries, characterized by frequent turnover and weak legislative power *vis-à-vis* stronger executives, are striving to exercise their power of control over the executives; this is coupled with a lack of resources that limits the scope and depth of parliamentary scrutiny. With this in mind, it appears that a crucial point for transitioning countries of the Southern Mediterranean is that an introduction of ambitious management techniques should happen incrementally and after the 'implementation and internalization' (Magen and Morlino 2008) of basic institutional settings that allow for the control of managerial inputs. The table summarizes the types of dimensions addressed by the EU in its official texts.

Table 11: European Model of Judicial Promotion

Dimension	**EU Definition**	**Inputs**

Institutional	Independent Judicial System	- Constitutional Court - Independent High Judicial Council (HJC) - HJC composed of majority of judges - HJC appoints, promotes, transfers and evaluates judges - HJC independent budget - Judicial School centralized and independent - Art 5 and 6 of EC Convention on Human Rights - Extensive training in law
Administrative	Efficiency and Quality of Judicial System	- NPM conception of judicial governance (Transparency, Efficiency, Fair Trial) - Court Manager - Performance Assessments for judges and clerks - Systems of e-filing - ICT tools - Non-judicial staff in the courts

Author's elaboration from Piana (2010)

2.3 The ENPI/ENI Actions in Morocco and Jordan: a Comparative Overview

As for the two case study of this research, Morocco, and Jordan, the European budget line that was directed toward RoL and Judicial support is the ENPI/ENI.

The tables show that the ENPI action to support Judicial Independence and Efficiency in Morocco provided for one disbursement in 2014, at the same time of the Judicial Reform announced by the government. The action of the ENI budget has been directed specifically to the penitentiary system

and in supporting the Criminal law reform. Only two Technical assistance projects were financed after the 2014 ENI project. One directed toward the support of the Judicial Academy and has, as main partner, the Judicial Academy of France. A second Twinning technical project started in 2018 on the High Judicial Council and is directed by the CSM of France.

In Jordan, conversely, the ENPI input was directed toward three main axes: the Juvenile Justice reform, Criminal Justice reform and Penitentiary system reform. The ENPI started in 2012 and was directed toward the reform of the Criminal Law and specifically of the Juvenile Justice reform, the second pillar is the Penitentiary reform. It is too early at this point to provide a conclusion on the impact of the EU project of judicial support in the two case studies, however, it is possible to make few inferences from this first overview of the ENPI/ENI budget lines.

1) The ENPI/ENI fundings have not been directed toward a homogeneous objective, conversely, the actions result to be scattered and limited to legal reforms and managerial capabilities of the judicial system.

2) Technical assistance represents a significant amount of the total budget of the ENPI/ENI in Judicial support.

Table 12: ENPI/ENI Programs of Judicial Support in Morocco

Type	Year	Title	Amount	Beneficiary
ENI	2014	**Programme D'appui à la réforme de la Justice**	70.000.000	Ministry of Justice
	2015	Programme d'appui à la reforme penitentiaire- within -Appui à la reforme de la justice-	5.000.000	
	2015	Programme d'appui à la reforme de la justice	5.500.000	
	2015	Technical Assistance: Judicial Academy	1.200.000	ISM, Rabat

2017	Technical Assistance: High Judicial Council	/	

Table 13: ENPI/ENI programs of Judicial support in Jordan

Type	Year	Title	Amount	Beneficiary
ENPI	2008	**Support to Justice Reform and Good Governance**	6.730.265	
		Support to Criminal Justice Reform	3.600.000	
		Support to Juvenile Justice Reform	5.000.000	
ENPI	2012	**Support to the Justice Reform**	30.000.000	
	2012	Support to the justice sector in meeting the budget criteria	2.613.056	
	2012	Juvenile Justice Reform	5.000.000	
	2012	Support to the Penitentiary Reform	1.500.000	Ministry of Interior

Author's elaboration from DG NEAR data and European Delegation in Morocco and Jordan's data.

The EU indeed does not rely on the engagement of conditionality when dealing with the support judicial governance, this was widely shown by the literature investigating Judicial cooperation with Eastern european countries and EU-Balkans (Piana, 2009; Coman, 2010: Dallara, Piana; 2016), the mechanism established in this policy sector is to create a number of venues for socialization on the appropriateness of European values of RoL.

This is also true in the realm of the southern mediterranean countries. Indeed when digging into the ENPI/ENI budget lines the amount of micro projects of technical aid directed to support judicial governance provide a significant amount of inputs that the following sections will analyse.

2. 4 The Peculiar Nature of Technical Assistance

Twinnings are midterm projects designed to improve institutional capacities, good governance and the RoL (Tulmets 2006). Introduced in 1997 to support capacity-building in candidate countries through mechanisms of socialization, the general aim is to make available the expertise of member states' practitioners to foreign administrations on specific issues. TAIEX (technical assistance and information exchange) is an instrument that differs from Twinning, especially regarding the length of the activity and the less structured approach of the projects (Interview 1). Indeed, while Twinning lasts between one and one and a half years, has a structured organization and affects the EU budget more, TAIEX is conversely an instrument designed for the realization of short-term activities and is based on a fast process, indeed from the beneficiary state's request to the official decision of the project's realization, the time lapse is usually 15 days (interview 1).

Both Twinning and TAIEX are requested by the beneficiary state and funded in total by the EU. The defining feature of Twinning and TAIEX is their approach to transmit good practices to third countries resembling the approach of the OMC. Both instruments, in fact, reach a cognitive convergence between member states and third states through 'discursive means of engagement' (Roccu & Voltolini 2018: 12), in other terms socialization. The first defining feature of the programs under analysis is their approach, that of socialization, that classifies EU judicial cooperation under the umbrella of soft power.

Another aspect of this approach is visible in their original design; indeed, in order to achieve their objectives, Twinning and TAIEX are designed to promote the entrepreneurship of applicant countries importing know-how where it is deemed most needed by the applicants themselves. It is noteworthy

at this point to take a look at how these instruments of external EU governance work and what distinguishes them in terms of structure.

TAIEX is based on spontaneous demands coming from the beneficiary third country. The public administration of an ENP country in need of EU assistance for a specific issue spontaneously decides to fill out an online form that is submitted to the EU Commission offices in Brussels. The request of a TAIEX program is then shared between the National Contact Point and the EU delegation in the beneficiary country, in order to verify that the inquiry is in line with the priorities expressed by the EU Action Plan. If the request is deemed appropriate, it then moves to the EU TAIEX office in Brussels, which shares the request with the competent Director General (DG), in the case of this study the DG JHA and DG NEAR (interview 1). It is then up to the competent DGs to find the expert who will provide the organization of the TAIEX event. TAIEX projects organize study visits, expert missions and workshops. Defining features of TAIEX are its 'demand-driven' approach and a rather flexible structure that allows for a fast organization of technical aid.

It is noteworthy at this point to highlight how this particular technical assistance is decided in total by the beneficiary country. It appears thus evident that due to this design programs organized and fully funded by the EU are biased toward the managerial dimension of judicial cooperation, indeed we expect to find a number of TAIEX programs that address output-oriented reforms rather than political ones.

Twinning is a more structured instrument compared to TAIEX. Its activities are detailed in the Twinning Manual, a document that is the result of consultations between EU member states, EU delegation in ENP countries and different DGs of the European Commission. The latest revision of the Manual dates back to 2017, where a major novelty introduced is the reduction of the time lapse between the launch of the *Fiche* and the actual start of activities (European Commission, Twinning Manual 2017).

Similarly to TAIEX, in Twinning projects the request and the input for technical aid arrive from the beneficiary country; it thus similarly follows a 'demand-driven' approach (Interview 1), however the

more structured process of the projects' organization places conditions on the beneficiary institutions, framing the demand into an EU-driven model. Put in other terms, Twinnings are designed to support the institutions of countries of the Southern ENP, thus it is the interested beneficiary country's public institution that decides, in the framework of the annual EU Plan for External Action and in accordance with the EU delegation, which priorities to tackle. In this sense, the Twinning exercise is more circumscribed within the EU Action Plan framework than TAIEX (Phinnemore and Papadimitriou, 2004). Indeed, to start a Twinning activity it is not simply a case of filling out an online form, it is the institution of the beneficiary country that, together with the EU delegation, within the annual EU financial assistance budget and in accordance with the priorities expressed in the ENP Action Plan, comes up with a *Fiche* (interview 1*).* This document comprises the set of strategies of the Twinning projects that are decided between the beneficiary public institution and the EU delegation in the country. *Fiches* clearly indicate the general objective, expected mandatory results, the budget and the indicators of performance (European Commission Twinning Manual 2017). Given that the elaboration of the *Fiche* of the project is made in accordance between the beneficiary country and the EU, we expect to find constitutive as well as instrumentalist dimensions in judicial technical cooperation programs.

In the framework of the priorities recognized by the EU, the beneficiary country decides where a technical aid is most needed. After receiving the request for the Twinning activity and the *Fiche,* the Commission opens a call to select who will conduct the project. Twinnings are also more complex than TAIEX in the way in which experts conduct their peer-to-peer actions, indeed a number of experts from member states engage in a series of actions such as legal transposition, training and institution-building. In Twinning programs a notion of partnership applies as well, that implies cooperation especially in the procedure that follows a progressive ownership of the program by the beneficiary country.

What underpins the 'exercises' of Twinning and TAIEX is thus the use that the European Union makes of the models and best practice of member states and of the expertise of actors to address the lack of shared European norms, procedures and good practices in the JHA policy field, the peculiar

structure of the 'exercises' (Papadimitriou & Phinnemore 2004) gives a lot of space for maneuver to beneficiary institutions and member states-mandated bodies.

2.5 The Distribution of JHA Projects in the Southern Mediterranean

From 2002, in the MED domain first and then in the ENPI and the ENI, 16 Twinnings and 282 TAIEX were launched within the JHA policy sector for the South Mediterranean. The priorities addressed, as defined in the objectives of the JHA projects, were Judicial Independence, Judicial Efficiency, Court Administration, Public Administration Management, Police Sector, Border Control, Security, Anti-Corruption, Migration, Counter Terrorism and Cyber Crime. Around 300 projects, hence, contributed to reinforcing existing legislation and to strengthening institutional and organizational structures in the realm of the JHA policy sector (Author's elaboration of DG NEAR data). Interestingly, both programs of public administration and those directed toward the support of the judicial sector touched upon an institutional and administrative dimension.

According to the approach identified in this chapter, the two main dimensions that coexist in the hybridized EU judicial model – the institutional dimension whit focus on the composition, and functioning of the Judicial Councils and independence of judges, and the administrative dimension, whit focus on the efficiency of procedures and of the organization of courts – are present in the JHA cooperation toward the Southern Neighbourhood. However, if one looks attentively at the technical instruments, an exposition of efficiency-driven projects can be appreciated.

The majority of programs were addressed toward the administrative dimension, in particular toward the strengthening of the operational capacities of the police sector and of the courts and a great number of activities are directed toward the support of good models of governance, concerning both the judicial sector and the public administration sector. In terms of the number of projects, TAIEX are more diffuse (Interview 2), which is due to the specifically speedy design of their activities and their short term objectives; in this sense it must be noted that from the data it emerges that the majority of

TAIEX activities were specifically addressed toward security and migration policies, in particular toward strengthening the efficacy of police capabilities.

It would be possible at this point to speculate that the action of RoL governance support given through technical tools is biased toward an efficientistic and output- oriented JHA. This notwithstanding, the next section will consider specifically those technical inputs directed toward the judicial sector and inspired by an NPM image.

Table 14: Justice and Home Affairs Twinnings and TAIEX Projects in the Southern Mediterranean

Dimensions	**Projects**	**Number of Projects**
Institutional	Guarantees of judicial independence	10
	Drafting administrative reforms	15
	Drafting of judicial reforms	12
Administrative	Court management	44
	ICT implementation and IT capacities	24
	Implementation of models of good governance	69
	Strengthening operational capacities (Police and Courts)	106

Author's elaboration of European Commission DG Near data covering 2007-2017 JHA policy sector

2.6 Programs of Judicial Cooperation: Twinning and TAIEX

The following section specifically analyses the Twinning and TAIEX inputs in the Southern ENP in light of the dimensions of judiciary recognized in the first part of the research in order to explore the actual substance of the EU's functional cooperation with the Southern Mediterranean countries receiving technical aids.

The general tendency recognized from the overview of the distribution of JHA projects in the Southern ENP finds corroboration when focusing in closer detail on the judicial programs. In particular, two distinctions can be made when considering separately Twinning and TAIEX projects. Indeed Twinning contains items of the hybridized model of the EU. As will be showed in the Tunisian *Fiche*, the objectives expressed in Twinning are directed toward the institutional dimension of judicial governance as well as toward the administrative side. Twinning recommendations and objectives stress the need to concentrate strength in more independent and efficient judicial institutions (*Fiches* Tunisia Twinning). TAIEX projects are more diffuse but their general aim tackles an efficient dimension of judicial governance.

Twinning

The Twinning projects enacted in the time frame 2007-2017 in the Southern ENP were directed toward the institutional dimension of judicial governance but more generally envisioning a hybridized model that contains elements of the institutional dimension of the judiciary as well as the efficient side. This section provides an overview of Twinnings enacted in the southern ENP region, in particular, the Tunisian case exemplifies the characteristics of the Twinning 'exercise'.

The institutional dimension is clearly contained in the project of 'Support to the Rule of Law' with Jordan of 2017, in the project with the objective of 'Reinforcing the Institutional Capacities of the Courts' and 'Strengthening structures and functionings of Training Centres for Judges and Prosecutors' in the *Ecole de la Magistrature* of Tunisia and the project of support to judicial reform

that contain as a stated objective the strengthening of independence (Author's elaboration of DG Near data). The institutional dimension is also tackled in programs of support for training.

Twinning with the Southern Mediterranean is also specifically directed toward good governance reforms (Twinning Jordan 2008), strengthening the capacities of the Ministry of Justice and strengthening data protection and ICT capabilities. Inputs that clearly resonate in the NPM reforms are 'Justice sector support to meet the budget criteria' (Jordan 2012) and 'Modernization of the Justice sector' (Egypt 2010). In the following lines, the exploration of two Twinning *Fiches* with Tunisia, one on the Ministry of Justice and one on the Training of Judges, provides an in-depth image of the democratic substance of the EU's Twinning programming for the Southern Neighbourhood. In the PARJ framework with Tunisia, the EU has organized two Twinnings directed toward the judiciary: '*Renforcement de Capacités du Ministère de la Justice et des jurisdictions*' and '*Appui à la formation des personnels de justice*', and support for the Institut Superieur de la Magistrature (ISM). In the *Fiche* on the ISM project, the non-autonomous administration and budget of the Tunisian ISM was recognised as a critical aspect that, in the EU's ideal view, is independent from the executive power and under the control of the High Judicial Council. This clearly targets an institutional dimension, providing a political input that calls back in the EU vision of independence from the executive power of training provided to magistrates. In Tunisia, the ISM has no administrative and financial autonomy from the Ministry of Justice, and according to the EU this 'creates important rigidities in putting into place the whole training' (Fiche Tunisia). Indeed the inputs directed toward the ISM concern 1) institutional capacities, new management tools and a new legal framework for the organization of the Institute and the selection of trainees based on a diagnosis made in comparison with the French ISM, and 2) new pedagogic competences. Through these inputs, the EU shows its lack of power to bind a third country to the adoption of an independent school; it can, however, only have an impact through socializing on the merits of the organizational scheme that EU member states have adopted – in the Tunisian case, the French ISM. The French model happens to be a bureaucratic institution dependent on the executive, therefore different from the European tradition that envisions the independence of the judicial school. In this way, institutional reform will eventually follow after the socialization in good practice and only if deemed appropriate in terms of the distribution of power and, even if it is

possible only to speculate at this point, is likely to follow the institutional setting of the French ISM model.

In the Twinning directed toward the Ministry of Justice of Tunisia, the peer review mission organized by the EU in 2011, after the fall of the regime, recognized the reconstruction of the Ministry of Justice as a main priority for the country. The inputs addressed in the program '*Renforcement des Capacitès du Ministère de la Justice et des Juridictions*', the framework envisioned for the reform of the Ministry of Justice of Tunisia, underline the importance of the legal basis since a review of the judicial map is listed as one of the expected results and of the administrative dimension attached to other components of the Twinnings: the empowerment of the staff, new human resources capacities, strengthening the evaluation and functions of the MoJ and the introduction of internal audit. The inputs are uncompromisingly NPM-inspired, thus underlining the importance of the administrative accountability of the Ministry of Justice in a stable country.

Table 15: Overview of Southern ENP Judicial support's Objectives: Twinning

Judicial dimensions tackled by Twinning programs in the Southern ENP 2007- 2017
Modernization of institutional capabilities of Courts
Data protection, ICT tools for courts
Strengthening good governance, support to judicial reforms
Rule of Law support
Training for judges, prosecutors and clerks
Support to the functioning of the Ministry of Justice

Source: Author's elaboration of DG Near data, January 2018

TAIEX

The judicial governance envisioned in TAIEX projects shows a predominantly NPM-inspired image and contains some elements of the institutional dimension.

Institutional and legal-driven inputs appear in the study visits on 'Functioning of the Council of State and function of the High Judicial Council', in the study visits toward 'Justice reforms favouring Judicial Independence in Tunisia' and lastly in the workshop on the 'Evaluation of Judges' (Author's elaboration of DG Near Data). Conversely, NPM-inspired actions permeate TAIEX judicial programs, building of IT capacities 'building capacities of digital media and IT tools', supporting the 'Quality management of courts' and the 'Administrative courts procedures'. In particular, the majority of TAIEX study visits and workshops are directed toward supporting IT tools and ICT capabilities, training judges, quality management of courts, court procedures, administrative capacities, modernization of the justice sector, enhancing capacities of judicial staff on different issues and management of courts and cases.

Table 16: General Overview of Southern ENP Judicial Support's Objectives: TAIEX

Judicial dimensions tackled by TAIEX action in the Southern neighbourhood
Digital capacities, media, IT tools, E-justice
Training Judges and Prosecutors
EU Law approximation
Seminars, functioning of the Council of State, HJC

Courts capacity building

Modernisation of the Judicial Sector

Workshops: judicial procedures

Workshops: organization of Courts

Seminars: Access to Justice

Source: Author's elaboration of DG Near data, January 2018

An image of NPM-inspired reforms appears from a look at Twinning delivered in the Southern ENP in general while a constitutive image permeates the official *Fiches* of the project with Tunisia. TAIEX, conversely, in the peer-to-peer format of workshops, expert mission and study visits, frames its action within the existing legislation, not pushing for changes but socializing into good practices.

These first insights are revealing of a few points, even if further analysis on the actual adoption and implementation of the projects must be taken into account.

1) The extreme flexibility and the 'demand-driven' approach of the TAIEX instrument allows beneficiary countries to choose the intervention needed from the EU and determines a significant downside of the political dimension of judicial governance, the institutional facet described in the first part of this chapter, in favour of efficientistic NPM output-oriented tools.

2) The more structured chain of the elaboration of a Twinning project, where the role of the European Delegation is needed for the elaboration of the *Fiche* and the recognition of the needs of the beneficiary country, allows Twinnings to tackle not only efficientistic needs but also the institutional dimension of a country's judicial governance.

The investigation of the programs of judicial support carried out in the Southern Mediterranean shows that the EU is projecting a hybridized model of RoL and judicial governance. However, it is possible to conclude that the structure of the projects of technical advice provides for a biased image of RoL that favours efficientistic dimension NPM-inspired reforms of judicial governance. This chapter also argued that it is the great role played by beneficiary countries in choosing where to direct the EU aid that actually influences the relevance of the efficientistic NPM-inspired elements.

In this chapter two main points were made. First, European RoL support in the southern mediterranean entails two different dimensions that combined together provide for the existence of RoL in a stable democratic country: the institutional dimension of independence from external pressure and the administrative dimension of managerial accountability that provides for an efficient judicial system. The analysis in the first part of the article demonstrates that a hybridized model is contained in the official documents and speeches, but giving a higher salience to the institutional dimension. This chapter maintained that the presence of a whole frame of guarantees of judicial independence is needed when dealing with transitioning countries, especially in the Southern Mediterranean region where independent institutions of judiciary are not always guaranteed and where parliamentary power is weak vis-à-vis strong executives. For this reason it is important to investigate the range of external inputs and to assess what dimension they envision.

Second, the nature of the programs of technical cooperation, that permeate the ENPI/ENI budget line and that provide for the approximation of neighbourhood countries with the *acquis,* is characterized by a 'demand-driven' approach, i.e. the beneficiary country is to ask for a technical aid. The chapter has also assessed the difference that exists between the more flexible and 'light' nature of TAIEX and the structured and EU-driven chain of Twinnings. We hypothesized that the beneficiary institution would opt for an efficientistic and non-institutional aid when inquiring for an EU action because of the political costs the latter entails. Indeed, the main expectation was met: the distribution of JHA policy Twinnings and TAIEX in the Southern ENP showed a bias toward the administrative dimension. Interestingly, it was found that Twinnings directed toward the judicial policy sector contained both an institutionalist and efficientistic dimension; this was corroborated by the analysis of

the *Fiche* Tunisia where both dimensions were considered as priorities by the EU to be addressed by the technical aid. TAIEX conversely showed a dominant image of the administrative and the NPM-inspired reforms, thus confirming the initial hypothesis advanced in this chapter.

Chapter 3: Judicial Reforms in Morocco and the European External Support

3.1 Judicial Independence, Administrative Accountabilities and the Role of Ideas

Rephrasing Russell's question on Judicial Independence in the Age of Democracies, this chapter starts with a reflection on the following evidence: if transitions of authoritarian regimes towards liberal democracies raised the issue of minimal guarantees of judicial independence to be established, in the same way, established liberal democracies with powerful judiciaries deal with limits to put to the sphere of action of judges, in other words the needs of legal and managerial accountabilities. This two-faced phenomenon is best exemplified in the empirical cases addressed in the following sections.

We see the EU making use of member states expertise to support Southern states transitioning toward democracies, where the aim of the support is to promote both independence and efficiency, but with a clear bias towards new administrative judicial accountabilities. Maintaining the existence of an interplay between judges impartiality and democracy accountability (Guarnieri et al. 2002) we ask whether the external support is able to strengthen the guarantees of independence as well as administrative accountabilities. Hence, we look at the way in which established liberal democracies of the EU are able to intercept and support the struggle towards judicial independence and the establishment of judicial accountabilities of transitioning countries, or whether the changes that we observe are domestically driven.

Analytically the objective of this chapter is to put into test the internal/external explanatory model of Judicial Promotion and to assess the mechanism through which Judicial reforms are implemented in countries of the South ENP that receive normative pressure from the EU. In particular, this chapter will try to assess the European impact on Morocco in supporting the judicial reform that started in 2011. The external pressure will also be taken into consideration in light of the analysis carried out in Chapter 2 on the different pressures the EU exerts with a bias towards an efficient dimension of

Justice. Indeed the second chapter provided with a clear understanding of the type of external pressure that is exerted toward the Southern ENP highlighting the 'logics of persuasion' (Magen and Morlino 2008: 39) applied through different kinds of programs of judicial support.

We consider here the cognitive component of the process of Rule adoption, the beliefs considered as being the 'Hard Core' that underlie the choice of a policy (Capano 2003: 783). We maintain that policy adoption is the result of a change that happens at the level of ideas and beliefs of relevant political actors – *de facto* actors – and not only at a structural level. Drawing from epistemology the cultural and ideational levels are defined as 'policy paradigms' (O'Sullivan 1999) and govern the process of policy adoption. Indeed the idea that cultural paradigms influence policy change has been addressed also for what concerns European external pressure. Shimmelfennig argued whether domestic legacies matters and supported the idea that, albeit in different ways, domestic paradigms influenced the adoption of European norms. When considering the adoption of external promoted judicial norms, the central aspect of the investigation is the domestic change (Hix and Goetz 2000: 2, Risse, Cowles and Caporaso 2001: 4, Schimmelfennig and Sedelmeier 2005: 7). Given the impossibility at this stage to provide an assessment of the adoption of EU Judicial supported rules in Morocco and Jordan due to the novelty of the projects and single programs, we focus on the first stage of the policy-making process, in particular to the resistance encountered – or not – by EU rules into domestic systems. As for the discursive conception of norms that indicates the adoption through positive reference by domestic actors (Schimmelfennig and Sedelmeier 2005: 8) we will concentrate on the impact that EU norms have at the cultural level in both case studies.

Following this stream of reasoning we will measure to what extent European supported judicial changes enacted reactions from the outset of the EU funded judicial support programs.

Rephrasing the initial explanatory process in light of the considerations expressed in the second chapter, it is possible to speculate that:

If the external pressure promotes a change that is close to the 'hard core' of the domestic political elite, we expect a great resistance to the change. Contrarily, change agents may provide for new 'paradigms' (Hall 1993) that meet the cognitive components of the *de facto* internal actors and thus we expect a positive reception from the outset.

The following sections emphasize the consequences of two variables, the first being the costs encountered by *de facto* internal actors in the judicial reforms, this is operationalized through the assessment of the pre-reform distribution of power between political actors. The second variable is the determinacy of the external incentive, this is operationalized taking into consideration the presence – or absence – of a European project of Judicial support and of a singular program.

As expected the Administrative inputs enter the domestic systems, thus meet the cognitive components of domestic actors and the presence of epistemic communities facilitates the enactment of reforms in the area under consideration. On the contrary, the Institutional dimension is resistant to external pressure, this chapter, in particular, will illustrate the case of Morocco that represents an anomaly of the model, where Judicial Institutional reform is present without a credible EU pressure. This gives the measure of the strength of domestically driven variables vis-à-vis external pressure for reforms that touch upon *high politic*s, i.e guarantees of judicial independence.

The process of reform in the sense of a more independent judiciary had already started in Morocco with the 'New Era' enacted by Mohammed VI and was finally inserted in the new Constitution as a consequence of the 2011 turmoils. The EU was only able to accelerate the process of rule adoption conditioning the disbursements to the passing of the organic law on the High Judicial Council, however, the institutional model exhibited in the Organic Law does not resemble European constitutionalism but rather a *Moroccan unique*. This suggests that in cases such as judicial reforms, the mobilization of strong veto players, civil society, political activists, enacts rule adoption even in absence of clear external incentives, but rather the reform can be read as an anticipation of EU Judicial cooperation.

Each of the two case study, Morocco and Jordan, cover the period before and after the judicial reforms that responded to the turmoils of 2011 Arab Springs and takes into consideration Action Plans, European Programs, single projects of Judicial Support together with interviews conducted with experts that take part, directly and indirectly, to European support programs. In the first section of the Moroccan case study, we will consider the adoption of Judicial reform under conditions where

the change would have been domestically driven because no specific judicial program or project was enacted at that point. In the second section, we consider what would be an EU-driven reform, a change that occurs after the beginning of the Twinning project. The chapter will thus make a simple distinction between the Institutional dimension – establishment of guarantees of independence – and the Administrative one, looking at the dependent variable not as Rule Adoption but as '*resistance – or not – to agenda setting*', the concluding lines will emphasize the fitness of the model and what instead might be seen as an anomaly.

3.2 Domestic Reforms: A Short Overview

The Judicial reform was the center of the Moroccan debate among several political actors since the post-independence period, indeed in that particular period, the judiciary was used as a mean through which opposition parties were deterred. The 1960s and 1970s saw a series of Constitutional reforms in Morocco that however never tackled the judiciary. A real discourse on judicial reform appears only in the 1990s, in particular during two major constitutional revisions of 1992 and 1996 (Al-Marzouki 2016: 4). In fact, the call for a substantial revision of the Judiciary interested public debates also prior to the February Movement of 2011. Indeed, Chapter 6 of the old Moroccan Constitution dealt with Judicial power but with only a few articles that mostly addressed the power of the King over the appointment of judges and the powers of the Ministry of Justice over administrative and financial resources of a not independent Judicial Council. Also the form of Chapter 6 and the related articles on Justice was meager if compared to those relates to the power of the Parliament and the Government (Ibid.). This notwithstanding demands for a comprehensive reform were growing both domestically and externally and in the meantime also the regime aimed at deepening the roots of legality in the country with a new constitutional reform (Ibid.).

It is thus possible to read the strive for judicial reform in Morocco as a transversal issue that passed through different ages of Moroccan politics, also the 'New era' announced by King Mohammed VI at the beginning of the new century saw a new call for judicial reforms but no real changes in the

distribution of powers between the legislative, executive and the judiciary happened, thus leaving the *status quo* to a lack of any meaningful checks and balances.

Calls for judicial reform in Morocco were issued by civil society and development stakeholders (Ibid.) that applied a strong pressure for the enhancement of both judicial capabilities and independence. The Judicial reform thus continued to be an issue at the center of political activists discourses, in particular since 2011 when another constitutional reform was finally put on the political agenda.

3.2.1 EU-Moroccan Judicial cooperation before 2011

In the first phase of pressure for judicial reform, we cannot point to any substantial use of EU programs throughout the whole period. Indeed when the 'New era' of Mohammed VI started the EU-Mediterranean policy was at a developing stage and Morocco appeared as one of the prominent partners since the start of the Barcelona Process.

The first Euro-Moroccan cooperation on the JHA matter starts with the MEDA program, a basic financial instrument established for the period 1995-2006 linked with the Euro Mediterranean Partnership launched at the Barcelona Process in 1995. The assistance provided to Morocco under the MEDA scored 1.6 billion Euros during the period 1995-2006 (Natorski 2008). However, it was only under MEDA II that a clear support to 'justice' appeared in the EU-Moroccan cooperation, the second tranche of financing for the period 2005-2006 of 15 million Euros clearly addressed the importance, among several issues, of JHA in the Mediterranean relations and in particular of controlling the borders, migration, fight against terrorism, the promotion of an independent judiciary and cooperation on penal and civil justice. In 2000 the Association Agreement between the EU and Morocco was signed, within this framework, the importance of an independent and efficient judiciary constituted the pillar of the cooperation, in particular, the respect of such fundamental pillars was conditioned to the cooperation itself and to the enhancement of the relationship with the EU.

The Action Plan between the European Commission and Morocco in 2011 recognized that year as being a turning point for the country, indeed the King's speech of 9th March was seen as a starting point for a comprehensive Constitutional reform that would have provided for democratic changes in the country. In particular the Annual Progress Report of the EU positively saw the new Constitution ' as putting in place a new legal framework that guarantees human rights and considers justice as a power and not only as an authority' (Morocco Progress Report 2011), the Commission also recognized that 'Justice remains a challenge in order to establish Rule of Law and consolidate the credibility of the reforms. The EU thus signaled that it stands ready to support the reform process once the content of the reform will be detailed' (Ibid.).

3.3 The Moroccan driven Adoption of a High Judicial Council

There is little doubt that for both case studies, and more in general for countries that are part of the European Neighborhood Policy Instrument (ENPI), and thus receive fundings conditioned upon democratic reforms, the EU pressure in the judicial policy area had some results. Indeed the Moroccan case best exemplifies a state that looks at western constitutional models, that is moving towards the establishment of RoL, separation of powers, judicial independence and efficiency as enshrined in the 2011 Constitutional reform that draws the lines towards democratic changes that were promised in the 'New era' of the kingdom of Mohammed VI. This image is indeed a useful starting point.

While for the political elite and the King reforms were sought in order to combat corruption and enhance judicial capabilities, for political activists, civil society stakeholders, political opponents as well as international observers the demand for reforms where focusing also on the establishment of minimal guarantees of Judicial Independence. These two different demands for judicial change converged in the aftermath of the February 2011 movements of protest.

The February Movement specifically addressed the need to combat the widespread corruption in the country, to achieve social justice and finally implement reforms within which a true revision of the

Judiciary was initiated. The immediate response of the King was the agreement for a comprehensive review of the Constitution and the creation of a Consultative Commission for the Revision of the Constitution. In this sense, the organic law for reforming the judiciary represented the first concrete outcome of a long process of the push for judicial reform that had already started a decade before 2011 (Terms of Reference: 3).

The gains acquired through the new Constitution gave food for thoughts to civil society that diagnosed more accurately the conditions of the judiciary in Morocco (Al-Marzouki 2016: 17). A first reaction was clearly addressed toward the delay on issuing an organic law for the establishment of the High Judicial Council. Other concerns were raised against the inefficiency of the judicial system as a whole: slow execution of sentences, poor preventive detention methods, the shortage in human resources as well as their redistribution. The inefficiency of the judicial system of Morocco was also highlighted by international observers (ICJ Report 2015) that recognized the need to amend the organic law on the CSPJ in order to meet international standards, in particular regarding the competences of the new Judicial Council over judicial administration and on the selection of training judges. This notwithstanding the Organic Law on the new CSPJ was adopted on 16 March 2016, also with pressure coming from the EU that conditioned the disbursement of the first tranche of the Judicial Support Program to the passing of the law.

Even if financial conditionality was applied by the EU to the legal drafting for a new Judicial Council (the CSPJ), the institutional set-up was internally driven. The high legitimacy of domestic political elite acted as the main actor for full adoption of an independent judicial council more than the EU cooperation. In fact, the Moroccan CSPJ was not modeled by European standards, rather the reform can be read as anticipation for further judicial cooperation that, as we will see, results as appealing to all the *de facto* internal actors interested in the judicial reform. Indeed the new law on the CSPJ provides for a Judicial Council that has not the same functions of the French CSM (Interview 4) nor the Spanish system, the two European countries being the most engaged in Judicial cooperation with Morocco.

Only certain features of the western models appear in the new constitutional amends, it is clear that some aspects appealed potential veto players while others were clearly downplayed. In fact, The King

remains the president of the High Judicial Council with the power to nominate and appoint judges. It is thus not possible however to observe a European model adopted in the new configuration of the CSPJ that is 'A singular Marocain Model' (Zaatit, La Tribune Politique, 4th April 2018). This is also in line with the aim of the EU's leading country supporting judicial reforms in the country: France; 'We defend the idea that judicial cooperation should start from the need expressed by Morocco and then to orient the strategy accordingly' (Interview 5), in particular it is evident that Morocco chose to move from the former CSM toward the CSPJ, a move inspired toward a more independent institution giving the judiciary the status of power from that of authority and not resembling the model of the French CSM (Interview 4 and 5).

The distribution of power between the institutional and administrative judicial dimensions that came out from the reforms of the post Arab Springs explains the subsequent rounds of organizational reforms. In this sense, the European external pressure is a leeway that strengthens a process of judicial reform that however responds to a domestic logic of action rather than an external one.

Table 17: Comparative Timeline – Morocco's Judicial Reforms and European Inputs

Date	**Judicial Reforms in Morocco**	**European Inputs**
Pre-2011	- Civil Society, Political Activists call for comprehensive Judicial Reforms	
	- New Legislation: Trade law, Competition law, Commercial Courts law, Industrial Properties law	- 18 March 2000: EU Association Agreement signed with Kingdom of Morocco

March 2011	- The King calls for Constitutional Review - Creation Consultative Commission for Constitutional Revision - Chapter 7 Revised - Creation CSPJ	
		- 2014: 'Programme d'appui sector de la Justice', conditionality for disbursement: CSPJ, Statut Magistrates
	- Passing Organic Law CSPJ	
		- November 2017: Twinning ISM

Author's elaboration.
EU: European Union, CSPJ: Conseil Supérieur du Pouvoir Judiciaire, ISM: Institut Supérieur de la Magistrature

These reforms, and in particular the creation of the CSPJ, seems to obey to a domestic need for changes even if they were implemented under the Agreement with the EU, but without programs of support. For this reason, the CSPJ reform can be read as an anticipation of future cooperation.

Morocco started its own judicial reform process in 2011 as a consequence of domestic requests to the Royame for changes and openness to a process of democratization of the country and the establishment of the RoL. Civil society organizations had engaged in pressuring for those reforms a decade before the 2011's changes. It is only in 2011 that the major judicial reform of the 'New Era' of Morocco happens. It is not possible to see this change as related to the European pressure for democratization enlisted in the Agreement signed with Morocco. However, in the following section, we will see that to some extent the European inputs entered the domestic system.

3.4 How European Inputs are Entering Morocco's Judicial Administrative Organization

The Judicial reform process in Morocco was, and at the moment is, a long process that is the result of the conjunction of a number of actors: The King, the Ministry of Justice and Finance, the High Committee appointed by the King for a National Dialogue on Reform and the Civil Society, notably Lawyers and Magistrates associations. In the realm of the new reform few texts of new laws have been approved: The Organic Law on the High Judicial Council, The Organic Law on the Basic Judges System and on the new Procedural codes.

For what concerns external inputs the substantial EU external pressure arrived only in 2014, when the programme of support to justice sector – *Convention de Financement d'appui à la réforme de la Justice* – was decided and finally signed in December 2015. From this moment European standards and good practices were able to enter the changing and porous judicial system of Morocco. The anchoring is made through the establishment of epistemic linkages between political actors concerned in the judicial reform process, magistrates and judicial practitioners that for the sake of our explanatory model we label *change agents*. Epistemic communities are intended in International Relations as networks of professionals with expertise and authoritative claims to policy-relevant knowledge in particular issue area (Haas 2008), in the judicial realms the EU established a number of epistemic communities where judges, prosecutors, and lawyers meet to exchange good practices, the programs of judicial support directed in the ENP region rely on this way to link peers and exchange standards of quality of justice. In this sense, the payload of the project, with a budget of 75,5 Million of Euros distributed in a period of 5 years represents the most significant attempt of support directed to the justice sector financed by the EU in Morocco.

The inputs coming from the west officially cover the European constitutional model addressing: Judicial Independence, Access to Justice, Judicial Protection and Human Rights, Efficiency and Efficacy of Justice (Terms of Reference). The condition for the disbursement of the fixed tranche of the project was the promulgation of the two organic laws establishing the creation of the Conseil Supérieur du Pouvoir Judiciaire and the one on the Statut des Magistrates (Ibid.). The condition was met when the Organic Law N 100-13 was finally adopted in March 2016 and in December the first tranche of financing was finally delivered. The Constitutional revision of Chapter 7, articles 107-112, established a system of constraints of judicial power: the provision of Judicial independence from

legislative and executive power (Art 107), the dismission and transfer of judges shall be made in accordance with the law (Art 108), the independence of judges must be respected and judges shall report injunctions to their responsibilities to the High Council of the Judicial Power (Art 109), judgments should be made in accordance with the law (110), Judges may join associations and establish professional unions (Art 111) and the statue of judges should be established by an organic law (Art 112).

The external European inputs entered the Moroccan domestic judiciary for what concerns the Judicial Academy (Administrative Dimension). In this realm, the 'supply side' of Judicial inputs (Piana, 2009: 102) in Morocco is captured by French legal experts and to some extent by the Spanish and Belgian practices. The support program of the EU to the judicial sector's main objective is to contribute to the judicial reform enacted by the Ministry of Justice in order to enhance the efficacy of the judicial system. With this program, the EU intends to provide expertise and technical aids to the MoJ, CSPJ, Public Prosecutor's office with a view to supporting the Ministry of Justice in putting into place all the actions planned in the judicial reform. In particular the expected results deal with a truly operational CSPJ, the establishment of a commission between the MoJ and CSPJ for all the questions regarding judicial administration respecting the separation of powers as written in the new constitution, strengthening access to justice, enhancing the efficiency, in particular through training professionals and technicians with modern techniques. Within this program, the first operational project is the technical assistance, Twinning, established in 2017 and directed towards the Ministry of Justice. This activity will last for 34 months and is divided between long technical missions, medium and short workshops, experts evaluations, and seminars. The inputs arrive from France, in the figure of the French Ministry of Justice and the JCI, Justice Cooperation Internationale, the operative institution of the French Ministry of Justice.

3.4.1 The French Support for an Efficient Judicial Academy

EU best practices in the realm of judicial governance do not rely on experts based at the European level but on the expertise of single member states (Piana 2009: 102), this is also the case of the Twinning program of support to the Institut Supérieur de la Magistrature, ISM, of Morocco. At the European level, there is not a single EU Judicial model addressing how judicial training is organized, but the main feature of western states is the high specialization of courses, in particular, the separation of training provided to magistrates, lawyers and administration officers or clerks.
In the Twinning project financed under the ENPI program on the ISM France is the leading country, with Spain and Belgium acting as junior partners.

Morocco represents, and more, in general, the Maghreb region, a prioritarian region for French's cooperation programs and in particular Judicial support is a fundamental pillar of French's international cooperation (JCI, Rapport D'Activitè 2017: 4). In particular, after 2015 the engagement of the operating agency of the French Ministry of Justice, the JCI, engaged in a number of projects aimed at accompanying reforms started in the region towards democratic transition and institutional reforms (JCI Rapport D'Activitè 2017).

The EU has pushed for the reinforcement of the capacities of the Judicial Academy, the ISM, in order to assure an effective judicial reform that is in line with the exigencies of the *Acquis,* an efficient and independent judiciary, and of good practices of the EU. Morocco in this sense had more to ask on the efficiency side given that comprehensive judicial changes had already started in 2011. Moreover, while some of the rules concerning judicial independence have already been adopted, the administrative dimension was ready to receive technical support from international donors.
The technical aid arrives only in 2017 and the European partners represented the channel through which a new organigramme, human resources, training curricula and communication of the new Judicial Academy are going to be introduced in the Moroccan judicial system.

The Judicial Academy model of western countries is characterized by a deep level of specialization. In particular two different schools provide for specialized and differentiated training to judges and clerks, this model appears as highly efficient and attracts the Minister of Justice and the King that, already in 2009 insisted on the need to 'upgrade human resources, training and evaluation of the

judicial system' (King Mohammed VI, 20 August 2009) of the Moroccan Judicial Academy. Indeed, with the creation of the CSPJ a new issue came across the legislator, it was proposed to move the Judicial Academy under the control of the new Judicial Council but it was immediately realized that a problem of efficiency characterized the ISM that trained not only judges but also clerks, notaries, and lawyers (Interview 6). The training provided to magistrates and clerks indeed was, before the judicial reform adopted in 2013, considered non sufficient also by international observers; the World Bank assessment on the Judiciary of Morocco (World Bank, 2003) addressed the need to reconsider the capacity of the *Institut Superieur de la Magistrature* in light of the limited capacities to provide for extensive training to judges and clerks. A new training system for Moroccan judges and clerks was also addressed by Civil Society stakeholders that, as soon as the Constitution was effective, started to examine the condition of the judiciary in Morocco and came up with a set of recommendations for reforming the judiciary in general but also the court system based on the new rights gained with the new Constitution.

Citing Cobb, Ross and Ross (1976) on the typology of Agenda Setting, the need for a more effective Judicial Academy in Morocco follows a truly 'mobilization model' (Cobb, Ross, and Ross 1976) were the issue enters the agenda not only through inner political circles, in this case, the Royal circle and the Minister of Justice, but also through a wider engagement of actors such a Civil Society activists as well as external collective observers. It is without any doubt that the issue of an efficient way of training magistrates was accepted and required by a wide range of political actors. In this sense, the functional cooperation of the Twinning programme is the means through which European standards of Judicial Academies enters the domestic system of Morocco.

The technical assistance is going to be organized through a number of meetings organized by French experts *sur place* that will directly address the needs expressed by the Moroccan Ministry of Justice that coordinates the activities of the ISM (Interview 6), the meetings will particularly be focusing on the best organizational set up of a more effective Judicial Academy, whether creating different schools for judges and clerks and providing different and more specialized course (Interview 6). Two senior experts and three non-main experts are designated by the Twinning project and they will be

working in closing cooperation in the office in the Ministry of Justice in Rabat and the Directorate of the ISM (Term of Reference), in particular in the first stage the aim of the experts is to support the changes taking place at the level of institutional set of the ISM as well as with the modernization of curriculum. Hence experts meetings and training the trainers are, in the first phase of the project, the activities organized by French legal experts in order to help structuring the organogram of the new Judicial Academy that will provide for a more specialized training to magistrates and clerks, as the main issue that appeared after the creation of the CSPJ was related to the low specialization of training (Interview 5 and 6). It is noteworthy to stress that the technical aid is not going to provide a copy of the Frem ISM model to Morocco, instead, counseling is provided on specific issues that are deemed compelling by the General Directorate of the Moroccan ISM (Interview 6). The changes introduced by the Twinning would not touch upon the distribution of power between the Ministry of Justice and the High Judicial Council for what concerns training, but the external inputs are able to enter the way in which the management of the Judicial Academy is organized in view of a more efficient way of dealing with training Judges, Prosecutors, and Clerks.

Tabel 18: Overview of the ISM Project

European dimensions of Support	Moroccan MoJ strategy 2016-2019	Change Agents
Beneficiary: *ISM* Dimension targeted: *Administrative* Objectives: - *Standards of Efficacy* - *Professional integrity*	Strengthening the Efficiency and Efficacy of Justice: - *Training Law professionals on judicial management techniques* - *Legal services managed according to modern techniques*	- *MoJ* - *CSPJ* - *Parquet Général (Public Prosecutor)*

Source: Termes de Référence, Technical Assistance to the Ministry of Justice, French Ministry of Justice. Note: the ISM Twinning Project is designed to assist the MoJ of Morocco in implementing the ISM reform, as part of the competences framed in the new organic law on the functioning of the CSPJ.

3.5 First Tentative Summary of the Internal-External Model

Table 19: The External/Internal Model Applied to Moroccan Judicial Reform

External pressure/ Changes	**No Institutional Change**	**Institutional Change**
Low External Incentives		The Organic Law CSPJ Model predicts change:(-) *Unlikely*
High External Incentives	The ISM Reform Model prediction change: (+) **Likelihood**	

Note: the *Italic type* indicates that the outcome is an anomaly of the model's prediction. the **Bold type** indicates a match with the model.

The Table noted in Italic type the anomaly of the CSPJ reform, a reform that is indeed costly in terms of political change, passing from Judicial Authority to Judicial Power and establishing a more independent High Judicial Council and this action is also matched with the absence of a direct external input, i.e. a program that directly addressed the structuring of an independent judicial council. This anomaly can thus be read as a case of domestically driven reform where the external pressure, in our case the program of judicial support financed by the EU has had no direct effect.

Conversely, the new ISM Reform matches the model, the new Judicial Academy meets the domestic paradigms of the de facto actor of justice and does not touch upon the distribution of power. Hence the model expected a positive outcome and indeed the broad mobilization for such a reform confirms

the positive acceptance of reforms where EU inputs entered the domestic judicial governance of the reforming Moroccan Judicial Academy.

If we consider the actors that are vested with the power to account for judicial training we can easily see how the changes that Twinning is introducing are not supposed to touch the situation that emerged with the Judicial reform of 2013, but only to enhance the effectiveness of the Academy, a paradigm that meets the cultural and cognitive positions of all the actors with a say in Morocco's judicial reform. The judicial reform, the establishment of an independent Judicial Council meeting European standards for guarantees of judicial independence can also be read as the tentative of anticipation of the funding of a program of judicial support that is touching upon the administrative dimension, because it concerns reforms that are not politically salient.

Chapter 4: Judicial Reforms in Jordan and the European Programmes of Support

4.1 Constitutional Reforms in Jordan: the Status of the Judiciary

Jordan has been defined the 'Presidential Monarchy' *par excellence* among the monarchies of the MENA region due to the prerogatives that the King was able to maintain despite democratic concessions given in the wake of the Arab Springs (Hammouri 2016:735, Biagi 2018: 387). Jordan typifies – better than others– the two main features of the Islamic states: an unchecked executive and a strong concentration of powers in the Head of the State, being in this case the King (Feldman 2008). Most interestingly Jordan was able to maintain those prerogatives through the regional destabilization of 2011 and through the subsequent Constitutional reform, thus signaling a great degree of continuity with the past when compared to Morocco. However, in this picture, Judicial power represents a discontinuity. Keeping in mind that Jordan's last wave of reform has to a great extent centralized even more powers in the hand of the King, it must be acknowledged that important steps were made in the judicial realm that saw a reinforcement of guarantees of independence as well as of efficiency.

As in the case of Morocco, Jordan established good relations with the EC first and later the EU, making the cooperation institutionalized as the process of integration of the EU's foreign policy developed.

In an internal/external discourse of reforms of the Judicial system, this chapter will maintain that Jordan's Judicial reforms are domestically driven and are thus the result of the regional context and the broad delegitimization of political elites of the Arab countries post-2011. On one hand the EU actively supported the efforts for Judicial reform and the Minister of Justice, Legal experts and Civil Society organizations acted as change agents arguing the need for a package of reforms that would have strengthened the efficiency of the institutions. On the other hand guarantees of independence of the judiciary were established only to the extent privileges of the *de facto* internal actors were not touched.

The first constitution of Jordan dates back to 1928, a grant issued by the ruler named 'Basic law' characterized by the sharing of power between the King and the British mandate and by granting legislative and executive authority to the King. The British mandate was abolished only in 1946 when Jordan became independent and from that period the executive started to gain power. The subsequent Constitution of 1952, the independence one, valid to this day and yet the most enduring and democratic, recognises the separation of powers, but still grants the executive authority extensive powers such as the dissolution of the House of Representatives and the authority to issue laws (Salameh and Ananzahf 2015). Notably the 1952 Constitution recognises the independence of the judicial power, being the first Arab constitution to formalize the recognition of independence to the judicial branch. This notwithstanding during the 70s the balance of power in Jordan was significantly shifted by an extreme control of the executive over the legislative and judicial power, the *de iure* checks and balances were not established since no limit was actually exercised to the power of the executive branch. In the same way the Judiciary worked in an independent manner only *de iure*, but not *de facto,* as it was the Prince together with the Legislative to nominate and appoint judges (Khair 1990). Despite obtaining independence from the British mandate and the establishment of the 1952 democratic Constitution, Jordan was characterized by the absence of democratic principles of accountability and by strong executives exercising power towards the legislative.

A real phase of modernization for Jordan began in 1999 with the death of King Hussein and the accession to the throne of King Abdullah II. This new phase was characterized by a progressive process of liberalization that, in the first phase of Abdullah's reign, only concerned economic policies whereas democratic inspired reforms and the establishment of the Rule of Law remained constrained (Salameh and Ananzah 2015: 144). The beginning of King Abdullah's reign therefore saw no genuine political reforms and this was also reflected in the innovation phase of the judicial governance inaugurated in 2000 .

On 29 August 2000 the King launched a comprehensive plan for the development of the country, in the judicial realm a Royal Committee for Judicial Development was established. The Committee draw

a plan that mostly consisted of efficiency inspired reforms (World Bank Legal Review 2014). The plan laid-out in 2000 was developed in two main tranches: the first one for the period 2004-2006, saw a number of achievements that provided for the modernization of the judicial system such as the automation and computerisation of the functions of the Ministry of Justice, the modernization of systemic procedures within the Executive branch and the enhancement of human resources in the administration of the courts. The second tranche, 2007-2009, saw in particular the revision of the Law of Independence of the Judiciary (JIL), the beginning of the works on the draft law of the Judicial Authority and the strengthening of computerisation and judges skills (Ministry of Justice Strategy 2014, 2016). Therefore, for what concerns the five years strategy prior to the Arab Spring, Jordan achieved a number of developments in the justice sector, in particular the modernization of judicial system with the adoption of efficientistic procedures, the increase of the number of judges and modern court's infrastructures, but also innovations on the institutional side such as the preparation of the draft law on the Constitutional Court, the Judicial Independence Law, the Independent Electoral Commission draft law and the Administrative Judicial Law. This notwithstanding, the Constitutional Court and the Judicial Council were only established after 2011.

In 2009 movements of workers started manifesting against the dire economic and labour conditions of the country. More in general, civil society demanded the implementation of basic rights such as the establishment of professional associations (Salameh and Ananzah 2015). The mixture of discontent and unrest reached the peak at the end of 2010, with the spreading in the whole region of manifestations and revolts that marked the beginning of the Arab Springs. The calls for reforms in Jordan also indicated a political system that, despite the new era of modernization and renovation launched by King Abdullah, never recovered from a systemic inefficiency, characterized by high corruption and lack of democratic guarantees. The regime responded to the spread of protests with the creation of a National Dialogue Committee. Following the suggestions of the National Dialogue the King appointed a Royal Committee with the aim of pursuing a comprehensive review of the Constitution.

It must be underlined that the literature around Jordan's Constitutional reform stress a main weakness of the 2011 process: a not transparent process within the Royal Committee where, for instance, only conservative expertes were appointed and whereas Jurists and legal experts did not participate. This notwithstanding, the proposals of the Committee were presented by the Government to the Parliament for approval, of a total 131 articles of the Jordanian Constitution 42 were amended and the Judiciary in particular was extensively shaped. Indeed the Judiciary was recognised as being 'independent' and the amendment of Article 98 finally provided for the establishment of the Judicial Council.

In 2011 Jordan went through the main reform of the judiciary of its modern history. The Royal letter sent to the president of the Court of Cassation by the King indeed recognized the efforts made for a more independent and efficient judiciary, but indicated as being the pillar of the reform in particular the need for amendments that shall strengthen the independence of the judicial branch and reinforce the status of the judiciary through the appointment of judges to be made solely through the Judicial Council (Judicial Authority Strategy 2011).

4.2 Pre-2011 Justice Sector Reform

4.2.1 The Judicial Independence Law and the JUST Strategy: Milestones in King Abdullah's Judicial Reform

The Judicial Independence Law (JIL) represents a great achievement for the judicial reform process of Jordan (Interview 7). It was approved firstly in 2001, although it went through a number of amendments that fine-tuned the guarantees aspect of the judiciary. In fact in its initial first version the JIL Law did not conceive the creation of an independent Judicial Council that was only created with the amendments of 2011 (Interview 7). The Judicial Council was thus created in the wake of the Arab Springs and saw most recent modifications in its composition and independence with further

amendments approved in 2017, the latest amendments in fact provide for a financial independence of the Judicial Council from the MoJ and a different composition.

The Judicial Upgrade Strategy (JUST) represented a direct response to the work of the first Royal Committee for Judicial Upgrading, in line with the attempts of King Abdullah II to install a comprehensive process of reforms in Jordan with his takeover of the throne (The World Bank Legal Review 2014: 247). The recommendations of the Royal Committee were in first instance directed toward the modernization of the Court Administration system of Jordan (Ibid.) Indeed, JUST followed the recommendations of the Committee that were directed towards efficientistic reforms such as: the increasement of the number of judges, automatization of case management procedures, simplification of court proceedings through legislative amendments, division between the courts in order to enhance the management of civil cases. Thus JUST was launched in 2004 for a two years period and covered the administrative enhancement and the meeting with international standards. The main objectives of JUST were related to the efficiency of the procedures: reducing the demand of court services, strengthening inspection and monitoring, improving the infrastructure of the courts and strengthening the courts' human resources. The JUST strategy was then relaunched in 2010 following the achievements of the previous strategy but adding equality and social justice in the picture of the MoJ priorities. The JUST 2010-2012 strongly indicated access to justice as a priority, but it also continued the prior strategic objectives in particular focusing on technology development, court infrastructures and the enhancement of the judicial services.

Also the National Agenda, launched by the MoJ for the period 2006-2015, included several goals such as the enhancement of transparency, the establishment of a state of laws and institutions and promotion of social justice.

4.2.2 The EU Enters Jordan's Reform Stream

As for Morocco, likewise Jordan established good relations with the EC first and EU then, making the cooperation institutionalized as the process of integration of the EU's foreign policy developed.

The contractual cooperation between Jordan and the European Community dates back to 1977; however it is only in 1997 – within the framework of the Barcelona Process– that the Association Agreement was signed and finally entered into force in 2002. The last step is ultimately reached with the inception of the ENP, when the European Union and Jordan adopt an Action Plan in 2005 marking the final milestone of their bilateral cooperation.
The European Commission started therefore to monitor the developments of the implementation of the pillars on which the Action Plan was built. In the Action Plan, it is stated that a key priority is ' the enhancement of independence and impartiality of the judiciary and its administrative capacity' (Jordan Action Plan 2005).

The EU began to actively support the judicial reforms of Jordan in 2008, with a first program designed to support the key priorities of the EU-Jordan cooperation is set out in the Action Plan. The European Union thus enacts the ENPI program of Judicial Support ' Support to Justice Reform and Good Governance in Jordan' in 2008. The program kicks off in a precise moment of the Jordanian's reform path. Indeed the EU recognised that the Jordanian government had undertaken a number of steps towards the establishment of Rule of Law and the enanchment of Good Governance practices such as 'the adoption and implementation of a judicial strategy JUST, the establishment of an Anti Corruption Commission and the adoption of the Amman Message to counter radicalisation' (Fiche ENPI, 2008). The EU recognized the positive path undertaken while acknowledging the need for further technical aids in particular to support the upgrade of legal and regulatory frameworks of criminal justice (Ibidem). The ENPI of 2008 was thus conditioned upon the implementation of the JUST strategy and of the National Agenda. The program was designed around few objectives: supporting the Ministry of Justice in implementing the criminal justice reform in line with international standards, strengthening the juvenile justice system, support to the newly established Anti Corruption Commission in implementing anti corruption strategy and support to the objectives of the Amman Message.

The European action of 2008 was thus specifically directed toward the support of the ongoing strategy of the Government and of the King's path toward modernization to enhance the efficiency of the judicial system, to provide for an efficient and effective administration of the courts and to support new legislation in criminal matters. Conversely, the European programme was not designed to act directly toward the institutional dimension of Jordan's judiciary that, in the pre 2011 era, was out of the radar of the reforms. Indeed, as it was briefly shown, the political debate in Jordan was concentrated toward the implementation of administrative and managerial accountabilities, notably in a system that had not yet established guarantees of independence. The Good Governance and Judicial Support Program was thus conditioned upon the implementation of the JUST Strategy, the National Agenda and within the scope of the ENP Action Plan (ENPI, Fiche). The EU's action did not touch upon the institutional dimension of Jordan's judiciary but assisted the ongoing domestic reform process of legislative and administrative enhancements.

It is possible to say at this point that the reform providing for a more independent judicial institution was domestically driven and was the outcome of a regional destabilized context, where both the monarchies of Jordan and Morocco responded with Constitutional revisions that envisioned a democratic response to the calls for changes coming from the societies in the wake of 2011's protests.

4.3 The Turning Point in Jordan's Reform Path

2011 was the year in which popular demands for the establishment of fundamental rights were strongly raised. The great crisis signed by the 2011 protests and revolutions brought about significant reforms in the political system of Jordan such as the establishment of the Constitutional Court and saw the guarantees of Independence strengthened through the creation of an independent Judicial Council (Interview 7).

The literature stresses how 2011 also signed a step to further strengthen the power in the hands of the King versus the Parliament, but also the prerogatives of the Government were increased not providing for a true separation of powers, indeed Biagi noted as emblematic that Chapter 4, Article 1 of the

amended Constitution dedicated to 'The King and His Prerogatives' was not altered (Biagi 2018: 389, Obeidat 2016). This notwithstanding it is unquestionable that major steps forward in the institutional prerogatives of judicial independence were made as a consequence of 2011 events.

It was high time for Jordan, as well as for Morocco, to provide for an independent judicial institution with the prerogatives of promotion, appointment, and evaluation detached from the political will. However, it is noteworthy to stress here that this will was specifically addressed by arab legal practitioners and experts of the judicial field. An example of the call for judicially independent inspired reform is the number of conferences organized at the regional level that have been organized addressing the issue of Judicial independence. In particular the Second Arab Conference on Justice in El Cairo in 2003 is most significant- specifically noting the interference of the Executive power in judicial matters impeding a truly establishment of an independent judiciary. The call for the establishment of independent judicial councils arrived from lawyers and judges that pressured for independence prerogatives as symbolized by the 2005 publication of a Judicial Ethic Code (FIDH 2009).

The regional instability of 2011 represented the turning point for judicial independence in Jordan. Article 98 of the Constitution provide for the establishment of a Judicial Council with the power to appoint, promote, relocate, assign pensions without the interference of the executive (Interview 7) . Moreover, by virtue of the amendment of Articles 58-61 the Constitutional Court was established. Public reactions to those milestone amendments were overall positive, the general will acknowledged the step made toward the respect of individual rights and the establishment of RoL. MPs saw the amendments as a radical change much needed toward the strengthening of political will (Salameh and Ananzah 2015). Many criticisms however were issued on the quasi null change of power between the King, executive power, legislative and judiciary, underlining the strict control that the monarchy still exercise on Judicial prerogatives.

The Table below illustrates the timing of the reforms that interested the judiciary in Jordan since King Abdullah's settlement. It is possible to observe how the European Union began its support

through the first Programme of Judicial Support when Jordan was undergoing a major stream of efficiency inspired reforms (notably JUST and National Agenda strategy). As the EU was engaged in supporting Jordan to meet international standards of quality of judicial administration, the turmoils started in the whole region and, as a consequence of the regional unrest and fear of neighbouring failing autocracies, the monarch encouraged a Constitutional reform.

Table 20: Timeline, Jordan's Judicial Reforms and European Inputs

Date	Judicial Reforms in Jordan	European Inputs
1999	Judicial Independence Law (JIL) adopted	
2004	JUST Strategy Approved	
2005		ENP Action Plan 'Advanced Status' Partnership
2006		TAIEX Workshops 'Money Laundering and Organized Crimes'
2007		TAIEX Workshop 'Anti-Corruption'
2008		ENPI Judicial Support Programme (Juvenile Justice, Criminal Law, Penitentiary Reform, Anti Corruption)
2011	New Constitution, High Judicial Council and Constitutional Court	

ENP: European Neighbourhood Policy, TAIEX: Technical Assistance and Information Exchange, ENPI: European Neighbourhood Policy Instrument, JIL: Judicial Independence Law

4.4 The European Supported Judicial Reforms in Jordan

The European Judicial Support programme was agreed in 2008 and designed for period 2010-2014, the program was approved before the reforms characterized by constitutional amendments of 2011, and in a period in which Jordan was undergoing a series of reforms that would have improved the quality of the judicial service but without real changes in the institutional set up. The 'umbrella' Programme has then generated 5 different Projects that have all touched upon the Administrative dimension, enhancing the efficiency and effectiveness of the justice sector thus improving the quality through legal drafting and training.

The timing of the identification phase of the Programme is relevant since it happened in a period in which judicial support had to deal with a domestic context not oriented to tackle politically driven reforms. This notwithstanding the Jordan's empirical exercise is of great importance to test the working hypothesis of this research which is the likability of externally efficiency inspired supported reforms in the judicial sphere and, as this case will show, the high success that legal drafting registered in beneficiary countries.

4.4.1 Inputs: One Program, Five Different Components

The Program of Judicial Support in Jordan titles ' Support to Justice Reform and Good Governance' with a budget of 6.8 million Euros and designed to assisting Jordan's reform, consisted of five Projects that were divided ideally into three main components a) the component supporting the criminal justice reform process developed three differentiated projects, b) the component supporting the Anti Corruption Commission (ACC) for an effective implementation of an anti-corruption strategy in line with international standards with one project and c) a third component developed in one project directed to support and the Amman Message, a document issued by the Jordan's government directed to fight all forms of Islamic radicalization. The ENPI Programme known as ' Support to Justice Reform and Good Governance in Jordan' can be considered as the first significant external action of support strictly directed to the judicial sector in the country. The programme has been characterized

by a high variability in terms of actors engaged, objectives of singular projects as well as the means through which the inputs have been directed, but at the same time all the projects dealt with support given in drafting new laws and training experts (Interview 8).

The Table below lists all the single projects into which the main Program of Judicial Support was declined and the type of intervention.

Table 21: Overview, Single Projects and Type of Intervention of Judicial Support in Jordan

Single Projects Titles and Duration	Type of Intervention
Support to the Juvenile Justice Reform in Jordan (2010), 32 Months	*Legal Review, Technical Assistance (CCTV)*
Support to Criminal Justice Reform in Jordan (2011), 35 Months	*Legal Drafting assistance*
Support to the Penitentiary Reform in Jordan (2012), 25 Months	*Training the Trainers, Study Visits, Technical Assistance (Legal Aid)*
Support to the implementation of the Anti Corruption Commission's Strategy in Jordan (2011), 22 Months	*Technical Assistance (ACCS), Training*
Support to the promotion of the Amman Message (2012), 24 Months	/

Source: Delegation of the European Union to the Hashemite Kingdom of Jordan's data

The 'Support to the Juvenile Justice Reform in Jordan' was implemented by the United Nations Office on Drugs and Crime (UNODC), the project ' Support to Criminal Justice Reform in Jordan' was implemented by the United Kingdom through the Northern Ireland Co-operation Overseas, while the 'Support to Penitentiary Reform in Jordan' was implemented by France and Germany respectively

through the JCI and the IRZ. The component on Anti-Corruption was implemented through a Twinning Project where Finland acted as member state leader, while the latter component on the Amman Message was implemented by the Royal Institute for Inter-Faith Studies of Amman, this last project is devoid of any European assessment report and therefore is not considered in further analysis.

4.5 Championing Legal Drafting

Under the umbrella Programme four projects had a significant impact for what is here defined as the Administrative dimension, in particular for what concerns the aspect of legal accountability. The Project 'Support to the Juvenile Justice Reform in Jordan' in fact consisted mostly of law revision strategies and training professionals, this project also had among its goals the direct delivery of technical facilities such a CCTV system for Juvenile Courts (EU Commission Fiche). The actions of the Juvenile Justice activities actually found a positive impact in drafting of a new legal text that is considered in line with international standards. Developments on the legal side were in fact positively recognized by international observers such as the International Labour Organization (ILO). The Law N. 32 of 2014 touched the standards of quality aligning Jordan to international standards by raising the minimum age of criminal responsibility from 7 to 12, it also prioritize alternatives to detention adopting a rehabilitative approach to juvenile justice versus a penal one (ILO, Natlex online database). The 2014 Law was also welcomed by the United Nations International Children's Emergency Fund (UNICEF) that stated that the new law generally allows for better protection for children who are in contact with the law. The new law on Juvenile Justice was also positively regarded by domestic experts such as the National Centre for Human Rights of Amman that had for a long time advocated the need of legislative interventions in order to improve the law on Juvenile Justice, they had proposed draft amendments to the previous Law and positively encountered some of the provisions inserted in the 2014 Draft Law (NCHR.org.jo/JuvenileLawProvision).

The Project 'Support to Criminal Justice Reform in Jordan' implemented by UK and the Northern Ireland Cooperation Overseas (NICO) – a public body specialized in supporting public institutions through trainings, capacity building and consultancy in building efficient and accountable institutions (NiCo.org.uk) – is also regarded with significant domestic and international reactions. The amendment of the Criminal Procedure Code Art. 158 that allows to use materials recorded by audio visual equipment at police stations to be used as evidence in the courts (UNODC) and the Amendment to the Criminal Procedure in fact can be seen as a positive reaction of the EU External support even if the actual passage of the amendments was not as smooth and direct as the Juvenile Justice Project. Indeed, only in 2017 a new law passed amending the Criminal Procedure Law of 1961. In the meantime Jordan went through parliamentary elections held in 2016 and the work of a new Royal Committee for Developing the Judiciary and enhancing Rule of Law recommended the package of reforms to the Criminal Procedure Law as well as Civil Society impulse for developments and the recommendations of International Observers such as Human Rights Watch. The new amendments allow free of charge legal assistance to a wider range of crimes (JordanTimes.com), moreover the new law prohibits discrimination against people with disabilities (Ibidem). Article 308 of the Penal Code was also repealed regarding violence against women, while other changes include the increase of limits to pre-trial detention.

The Legal Aid indeed can be seen as the most evoked change, both domestically and externally and in this sense it follows the inputs of the EU funded project. In fact in 2012 a case study by the Justice Centre for Legal Aid – a Jordanian non profit organization – published a report addressing the need to intervene on the Jordanian's Legal access to justice (Justice Centre for Legal Aid), this report represented the most comprehensive data on access to justice in Jordan.

The Project 'Support to Penitentiary Reform in Jordan' was in total developed through training the trainers and study visits conducted in France and Germany and interestingly did not resulted in a direct legal change. Only recently, in the aftermath of 2016 political elections, the Parliament started discussing a set of amendments to the penal code that would provide for alternative penalties to prison (JordanTimes, April 17, 2016). This notwithstanding the project developed by the German organization IRZ in cooperation with the French Justice Cooperation Internationale (JCI) focused on

few main axes such as the development of the structure and management of the Correctional Centre and Reinsertion Department (CRCD), the promotion of cooperation with Ministry of Justice in the framework of the penitentiary reform and the installation of new systems and equipments (JCI Annual Report 2015). Despite the support and the positive changes introduced to manage the Correctional Centre, the beneficiaries recognised the need for further fundings and the engagement of other ministries and non state actors (Schmit JCI 2015).

The 'Support the Anti-Corruption Commission (ACC)' consisted of a project that supported the Government to implement the National Anti-Corruption Strategy of Jordan 2013-2017. The Project was developed through a Twinning where the European supply side was represented by Finland's HAUS agency. The Twinning project started in 2011 on demand of the Ministry of Justice within the framework of the call for the enforcement of an anti-corruption regime of King Abdullah II. The Project came out with a detailed Action Plan that foresees to strengthen the ability of the Anti Corruption Commission of Jordan. In 2016 the Integrity and Anti Corruption Commission IACC came into force (Altamimi&Co, Web Portal 2016) the update of the anticorruption law adding definitions of criminal offences and improving the protection of witnesses and informants. The Anti Corruption Commission ACC was merged with the Ombudsman office becoming the Jordanian Integrity and Anti Corruption Commission (JIACC) (Ibid).

Table 22: European projects and observed domestic changes

Project/Date	European/International Actor Involved	Observed Jordanian Draft Laws/Amendments/Changes
Support Juvenile Justice Reform/2011	UNODC	Law N.32/2014

Support to Criminal Justice Reform in Jordan/2010-2014	UK, Northern Ireland Cooperation Overseas (Ni.Co)	Law Amendment Criminal Procedural Code, Art 158 on Legal Aid/2019
Support Penitentiary Reform in Jordan/2012-2015	IRZ (Germany) Leader, JCI (France) Junior Partner	Improved management of Amman's Correction Centre (Training) Indirect effect:Draft Law Penal Procedural Code/ 2016
Support Anti Corruption Commission ACC/2011	Twinning, Finland, Leader	New Integrity and Anti Corruption Commission law N.13/2016

Author's elaboration EUD In Jordan's data

A discrete amount of European practices and norms appealed Jordanian politicians that saw in the models offered not only a way to strengthen the efficiency of the judiciary and judicial institutions but also to ease the link with international donors. Indeed, it is interestingly to cite here that a new substantial Programme of Judicial support has been approved for Jordan in 2018, a more structured one as it consists of a Budget Support programme that is going to direct the fundings to the Ministry of Finances of Jordan directly. This brand new programme also confirms the hypothesis raised for the case of Morocco that a package of reforms is also undertaken as an anticipation of further cooperation.

It is possible to observe how the actions directed to support the amendments for new and 'better' norms had a direct and positive impact, in a survey conducted to assess the impact of the Programme of Judicial Support the respondent indeed identified the Judiciary more in line with international standards in particular for what concerned: the Amendment on the Law on Juvenile Justice,

Amendment on the Penal Code and Penal procedure law, Legal Aid, International Standards use on Anti Corruption and the Use of CCTV facilities to protect child in courts (EuropeAid, 2017).
Indeed the project on Criminal Justice Reform and Penitentiary reform has actively been implemented. The first milestone result being the creation of a 'National Committee on Criminal Justice' the project enacted a solid link that aims at improving criminal investigation techniques, the project had a positive reception among domestic actors and saw the participation of both civil society groups and the Bar Association (UNODC, 2018). The programme overall can be regarded as successful if the specific micro objective of each project are taken into consideration. Indeed it was specifically designed in line with the EU Jordan National Indicative Programme of 2007-2010. The main issues recognized by the EU in 2007 were particularly addressed toward the capacity-gap of public administration in general, and in particular of the judicial governance to implement reforms, in this way the orientation of the cooperation has been greatly directed towards the performance of the service and good governance (EU Strategy Paper, 2007).
However it must be taken into the picture the specificity of the Hashemite Kingdom in the regional context. This specific programme was designed in 2007 when, at the regional level Jordan represented a stable country, yet not a pivotal geopolitical actor in the region as it then became more evident with the events following the Arab Springs and new issues entering the picture of the EU Mediterranean relations. The Hashemite Kingdom of Jordan is, after the events unfolding in 2011, the strategic partner for the EU providing a stable ally where conflicts rage in Syria, Yemen, Iraq and Libya. The strategic position amid turmoils provide Jordan with the potential to become the prime facilitator for the efforts of the EU and EU member states to stabilize the region.

4.6 Testing the Hypothesis: Second Tentative Summary of the Internal/External Model

Table 23: The Internal-External Model Applied to Jordan's Judicial Reform

External pressure/ Changes observed	No Institutional Change	Institutional Change
Low External Incentives		- HJC established - Constitutional Court established *Unlikely*
High External Incentives	- Amendment Law Juvenile Justice - Amendment Penal Code and procedure Law - Anti-Corruption International Standards - CCTV Juvenile Courts facilities **Very Likely**	

Note: the *Italic type* indicates that the outcome is an anomaly of the model's prediction. the **Bold type** indicates a match with the model.

In Italic the model notes the apparent anomaly of the establishment of an independent Judicial Council and Constitutional Court. The anomaly rests in the fact that those reforms are highly costly in terms of political legitimacy and are also matched with low external incentives, thus this again can be read like for Morocco, as a domestically driven reform that happened as a consequence of a sudden change of equilibrium in the region to which the two monarchies have responded with unexpected openings.

The model correctly predicts Jordan's legal changes and administrative efforts to meet international standards on anti corruption. The number of the external incentives indeed is significant to provide for a change in a dimension that is not politically costly in terms of changes and moreover provides for a win-win situation bringing high legitimacy to domestic actors and simplifying the relation with international donors.

We maintain at this point legal drafting being a successful means through which norms- or parts of norms- are transferred and adopted, thus the covering hypothesis of the Administrative dimension

changes is here verified: domestic political elite adopt EU norms if the change does not entail a shift in the institutional legitimacy, in other words if the change does not require a shift in the distribution of power among the *de facto* judicial actors in this case the King and the Executive. It is possible to speculate at this point that political elite accept legal reforms because they know that the effects will be limited.

The copying of norms- or parts of- does not provide for a change of institutional legitimacy but conversely is positively received by civil society as well as practitioners thus being a win-win game for both donors and beneficiary.

The enhancement of capacities of Anti Corruption centres and new laws meeting international standard of child protection can be seen as a success story in terms of judicial reform in Jordan. The EU had supported the anti corruption effort of the Government and the King as well as law drafting that would provide for efficient legal procedures and as a consequence the improvements on the administrative dimension happened throughout the pre and post 2011 reform agenda.

In this case European socialization worked for a reason. The adoption of new legislation concerning Criminal law, Legal Aid and Anti Corruption was much easier because met the political agenda of the Government and the willingness of the King to a more transparent, functioning and accountable judiciary.

Chapter 5: A Comparative Analysis

5.1 Limitations of Externally Supported Judicial Reforms

Morocco and Jordan are two liberalising monarchies of the southern mediterranean region receiving financial support by international donors, among which the EU represents the pivotal external actor. Both Morocco and Jordan went through the turbulence of 2011, the year in which Arab protests and revolts shaked the order that had characterized the whole region until then. Both the Hashemite and the Alaouite monarchies were able to preserve the power by providing a number of concessions and changes in responses to protests. In particular the judicial systems of the two countries was shaped and the changes introduced characterised two distinctive dimensions: judicial independence and judicial efficiency.

Our initial question was to access whether the external support of the EU, through programs and single projects directed to support the judiciary in Morocco and Jordan in the past decade, was able to influence the domestic systems, in particular in the aftermath of the main Constitutional reforms of 2011. We hypothesized that external promoted judicial models were able to penetrate the domestic systems only to a certain extent. We operationalized Judicial Independence and Judicial Efficiency as Institutional and Administrative dimensions and we maintained that the reforms of the systemic levels would have been domestically driven, due to the high political costs associated to the Institutional dimension, such as the establishment of stronger guarantees of independence to the HJC.

The empirics confirm our initial hypothesis and the comparative analysis adds that the reforms undertaken at the systemic level were not only domestically driven, but followed a path dependence effect. Conversely, the two beneficiary countries were able to fully exploit EU funded programs of efficiency-inspired reforms support. This confirmed our working hypothesis of political elite accepting legal and administrative reforms knowing that their effects will be limited in terms of loss of power.

Morocco and Jordan are interesting cases to deepen our knowledge of the externally supported models of democracy because among the countries that underwent the turmoils and changes brought by the Arab Springs those were able to initiate a number of reforms that touched upon both the Institutional and Administrative dimensions of the judiciary. This research shed a light on those reforms undertaken in Morocco and Jordan, in particular, we showed that only some of the changes were externally driven.

The countries chosen for this analysis share a number of similarities but differ on the institutional set up of their judicial system. The two countries shared a common interesting feature among other things. Both monarchies had to come to terms with the need to reform their judiciaries, in particular popular demands asked for a more independent and efficient judiciary able to tackle the widespread corruption. The EU supported those claims with programs specifically designed to support judicial independence and efficiency, however what we observed is a significant differentiation of the reforms enacted in the two countries. What explains this variation is our main research question and we maintained that a great deal of explanation can be better grasp if judicial reforms are divided into Institutional and Administrative dimension. Indeed from the empirical findings we maintain that 1) while the EU offered support to the judicial reforms whilst not imposing any 'constitutional model' to adopt, the two beneficiary countries aptly engaged in programs that tackled the Administrative dimension rather than the institutional. This can be explained with the rationalist approach that underlines the high political costs that institutional reforms encounter vis à vis the non systemic administrative dimension. 2) The Institutional dimension followed a path dependence effect, in the two countries, the same institutional set-ups of the pre-revolts orders were maintained. We thus showed that the systemic dimension is impenetrable to external pressures, this meets the main hypothesis of the comparative politics approach and norm dynamics (Morlino and Magen 2009, Finnemore and Sikkink 1998).

The empirical cases share a number of similarities that allow for a most similar systems design, small N approach. Interestingly they show variation on the main dependent variable: the judicial systemic level of institutional dimension. This difference – as we maintain – is not due to the external pressure of the EU support to their judicial system, but is the effect of a path dependency. The countries maintained the same institutional setting as it appeared from the main constitutional and judicial reforms of 2011.

5.2 The High Politics

A first consideration that emerges from a comparative analysis of the two countries and their Judicial reforms is that the guarantees of Independence are not established in the same manner, hence showing an interesting variation. Our empirical findings support the comparative literature's stances that had previously engaged in the question of the impact that externally driven models of democracy have in beneficiary countries. In particular, our case studies deal with a peculiar condition – investigated in Chapter 1 and Chapter 2 – of the absence of credible EU conditionality, weak material incentives, and economic linkages if compared to the studies on Eastern enlargement (Kelley 2004, Schimmelfennig and Sedelmeier 2005, Vachudova 2005). In our cases, we expected that the impact of externally promoted models would be 'less complete' (Morlino and Magen 2008). Indeed from the comparative assessment of the Institutional Dimension of judiciary in Jordan and Morocco we are keen to support our initial and intermediates hypothesis. Moreover, the explanation for the outcomes of the judicial reforms in the two countries lays in the path dependency effect. In fact in a internal/external interplay of factors the institutional setting responded to a domestic logic of actions of the *de facto* actors.

Despite being called both Constitutional democracies and thus representing two most similar cases of the Southern Mediterranean Region, Morocco and Jordan differ to the extent to which the King

retains power and, most important, was able to maintain the prerogatives throughout 2011's main reforms.

Morocco adopts in 2011 a new Constitution that opens the way to a judicial reform that establishes a real independent judiciary. In particularly Articles 112-116 of the 2011 Constitution are the milestone for the new judicial system that have later been declined in the Organic Law of 2016.

The establishment of an truly independent judicial institution, firstly with the Constitutional provision of 2011, is a big leap forward for the establishment of fundamental guarantees of Judicial Independence, a step that Morocco had never experienced before 2011. The King maintains the presidency of the CSPJ but, by Royal Decree, established a number of guarantees that were not present before, this is not the case for Jordan.

Jordan's history is a history of monarchical power more than Morocco (Burgis 2007), at least for what concerns the King's prerogatives over the executive power. Indeed Jordan's 2011 Constitutional reforms did not represent a major turning point for Judicial Independence since the Law on Judicial Independence – JIL – was already adopted in 2001 establishing, *de iure*, the High Judicial Council that was then only later inserted in the Constitution within the 2011 reform. These distinctive features of the 2011 Constitutional reforms: the establishment of a number of Judicial Independence guarantees in Morocco vis à vis a continuity with former institutional setting, are maintained throughout the process of externally supported judicial reforms. See the table below for the Institutional shifts.

Table 24: Morocco and Jordan in Comparative Perspective: The Institutional Dimension

Morocco			**Jordan**	
Pre 2011	**Post 2011-Constitution and 2016 Justice Reform**		**Pre 2011-2011 JIL**	**Post 2011-Constitutional Amends**
CSM: vice president: MoJ Judges and MoJ	CSPJ: President Court of Cassation, majority of elected Judges		HJC: majority of Judges and 2 MoJ	HJC: majority of Judges

MoJ: - nominates - promotes - selects - disciplines Judges	CSPJ: - nominates - promotes - selects - disciplines Judges	HJC/MoJ: - appoints - transfers - promotes - dismisses Judges	HJC: - appoints - transfers - promotes - dismisses Judges
No Judges union organization	Art. 111: Judges association No union org.		
ISM: under MoJ	ISM: under MoJ	Budget: not Independent (MoJ)	HJC: independent Budget
Budget: under MoJ	CSPJ: independent Budget	Judicial Institution: MoJ and no ongoing legal training	Judicial Institution: MoJ no ongoing legal training
Secretariat: under MoJ	CSPJ: independent administration	Secretariat: under MoJ	Secretariat: under MoJ

MOJ: Ministry of Justice, JC: Judicial Council, CSM: Conseil Supérieur de la Magistrature, ISM: Institut Supérieur de la Magistrature, CSPJ: Conseil Supérieur du Pouvoir Judiciaire

Even if the two countries followed a most similar course of events in 2011, specifically with the Constitutional reforms that should have put checks to the unlimited powers of the Monarchies and the Executives hence opening to the protesters and political oppositions, their institutional judicial path is significantly different. The comparative analysis allows us to trace those differences as the effect of past legacies, this indeed appears from the comparison of two most similar cases and their variance at the institutional level (Table 24). A main difference can be observed in the quota of power shared

between the King and the Governmental power in the two countries that is hereafter taken into account.

5.3 A Matter of Power

The Moroccan Constitution of 1996 allowed the King to have full control over the executive power, in particular the Prime Minister was appointed under the King's discretion, with the 2011 reform the Sovereign appoints the Prime minister according to the party that won the election, as for the 2016 elections when the King appointed Abdelilah Benkirane, leader of the winning coalition party. It signifies, as a matter of fact, a process of power sharing between the Sovereign and the executive power as resulted from the 2011 Constitutional reforms. This notwithstanding Morocco is not transformed into a Parliamentary Monarchy, where the powers of the King are limited by the legislative, but is an executive monarchy with a 'bicephalous executive' where one head is the King that remains the ultimate leader of the country (Biagi 2018: 387).

The Amendments that marked the 2011 Constitutional reform process of Jordan are more limited if compared with the reforms in Morocco and the reduction of the Sovereign's influence. While it is true that in 2011 the King lost some power, in particular, the power to sovereign over the elections and the impossibility to postpone elections, his Majesty's prerogatives remain overall unaltered. In particular, in the Constitutional amendments of 2014 and 2016, we observe the strengthening of the power of the King vis à vis the executive. The King now appoints, among others, the President of the Judicial Council, the President and the members of the Constitutional Court (thereof established only in 2011) without the countersignature of the Prime Minister nor of the Minister of Justice.

While Morocco became, even more, an Executive Monarchy, Jordan turned into a Presidential Monarchy where powers of the executive are even more limited by the King's prerogatives if compared to the past (Biagi 2018: 389).

We maintain that the different distribution of power that emerged as a consequence of the main Constitutional reforms of 2011 explains the different ways the Institutional dimension of the judiciary

is set out. In Morocco the distribution of power between the King and the executive resulted in a more significant change at the systemic level while in Jordan, conversely, the Sovereign's prerogatives have grown vis à vis the government, this resulted in a less significant systemic change.

We can see the adoption of the Judicial Independence Law in Jordan and the establishment of an independent Judicial Council, CSPJ, in Morocco more as a strategic move inspired by the attempt to please external donors, i.e. the EU's financement of future support programs, rather than a real effect of the EU's external pressure for Judicial Independence.

5.4 Net Gains and Successfully Endorsed External Models

Our evidence is supporting the rationalist approach of resistance to changes that regards the Institutional dimension of the Judiciary, nonetheless even in the absence of external conditionality our evidence sheds light on a successful way in which external support for reforms enters the domestic systems. Yet again the rationalist approach explains why some reforms where endorsed in the two countries. As Morlino and Magen have shown, also our empirics demonstrate that where there is no resistance of veto players to prevent reform and even in absence of clear external conditionality, the Administrative dimension of beneficiary countries is open to changes. The comparative assessment of Jordan and Morocco's court's modernization reforms, in fact, suggest an interesting similar pattern. As the Table below shows a consistent reform of the Judicial Academy, in particular with new curricula and facilities in Morocco and the adoption of Courts management tools in Jordan, have been positively endorsed.

The changes that pertain to the Administrative dimension, in fact, respond to a different logic. The observation of the changes introduced by Morocco and Jordan in the Judicial Administrative dimension that pertains to a low politics area if compared to the Institutional dimension supports our initial hypothesis that expected an impact where no political costs associated to rule adaptation are encountered.

This is indeed an innovative observation that fills a gap in the empirical analysis of external normative pressure (Kelley 2004, Schimmelfennig and Sedelmeier 2005) that has never focused in depth on the programs of JHA of the EU towards the Southern ENP. The evidence gathered from mapping the JHA support in the two most similar cases of the southern Mediterranean showed indeed significant similarities. The EU acted in the same manner with Morocco and Jordan, being the two countries both good and strategic neighborhoods since the onset of the European Mediterranean policy, both Morocco and Jordan have negotiated and agreed on an Action Plan that foresees an independent and efficient Judiciary for the establishment of the rule of law.

The European programs and single projects analyzed in this research shows how the European action of Judicial support is specifically designed on the needs expressed by the singular donor. The 'demand driven' approach provides leeway to member states' experts and best practices, that are transmitted through epistemic communities, to enter the domestic systems through the empowering of change agents. These instruments of Soft Power rely on the mechanism of Socialization and, as our initial hypothesis maintained, are effective only to the extent the reform envisioned do not entail a systemic shift of power, thus do not touch upon the Institutional Dimension of the Judiciary.

As the empirics have shown the European programs of Judicial support are inspired by a New Public Management approach, reforms that are designed in order to establish new standards of quality in the judiciary such as equal access to justice and management techniques. In Jordan and Morocco, the interest for effective NPM approach judicial reforms appeared evident from the first enounced reforms promoted by the two newly Sovereigns at the beginning of the XXI century. It is possible to maintain at this point that those reforms indeed entailed a number of changes that would make all actors better off and, we speculate, also the external donors.

Table 25: Summary - Morocco and Jordan's Main Judicial Administrative Changes

MOROCCO	JORDAN

- Establishment Administrative Commission between MoJ and CSPJ	- Juvenile Justice Reform: Legal revision Training Professionals Tech Facilities CCTV
- Judicial Academy[6]: New Training Curricula Communication Techniques New Organigramme Human Resources Creation Clerk's School (Specialization of Courses)	- Criminal Justice Reform: Legal Aid limits pre trial detention CRCD management CRCD new systems and techniques Anti Corruption Comm.

The findings of our research support the initial hypothesis and more generally the theories of external methods of influence, in particular, those who consider the change in low politics area as the result of the externally supported model in an external-internal interplay of factors.

The Administrative dimension consists of low or null costs in terms of loss of power for veto players and we assume that to a great extent those reforms were perceived from the outset as a gain in Morocco and Jordan. As Morlino and Magen posited, a cost-benefit analysis has been made and the reforms have been easily accepted (Morlino and Magen 2008: 234). A glimpse at the Administrative Dimension related changes is the evidence of how socialization works even in the absence of conditionality. Conversely, where the political costs for change are high the likelihood of change, and in particular in the absence of strong conditionality, is null.

Final Remarks and Future Prospectives. What role for the EU-Mediterranean Judicial Support in light of the judicial developments in Morocco and Jordan?

[6] Expected new changes

The research presented allows for some observations that stem from the points raised throughout the study. Looking at the programs and projects funded by the EU to support Judicial reforms in the countries of the Southern Mediterranean the following points can be summed up:

1) Beneficiary countries show a preference for programs that support the non-system area of justice, and at the same time, it is also preferred by the donor.

2) The external intervention is designed on the needs expressed by beneficiary institutions – this is proved by the number of Twinings employed.

These two points characterize the EU's external action in the JHA policy sector towards the southern neighborhood, in particular toward stable countries that represent strategic allies on topical policies for the EU, not least on migration policy.

If the aim of the EU's foreign policy is to establish good relations with strategic stable neighborhoods, and we maintain that Jordan and Morocco represent two strategic partners for the salient EU Mediterranean policy, it appears evident the interest for an efficiency-biased approach of the Judicial policy.

With this conclusion drawn from the observation of the number of judicial managerial changes promoted in Jordan and Morocco through EU financed program we do not intend to move an accusation on the lack of political strength of the European external action toward the southern Mediterranean countries, on the contrary we recognize the practical limits of the external promotion of judicial independence. With this in mind, however, we also point the finger, yet again, to the issue of independence vs accountability and specifically to the constraints that the tension between the two dimensions represents for the actual improvement of judicial systems as a whole.

The preference for a managerial approach to Judicial support raises another question that this research was not able to address but that we believe requires further investigation.

The interest showed by North African courts for models that enhance the performance of the courts goes hand in hand with the development of new technologies related to the administration of courts: the digitalization of judicial processes. This interest was recently expressed by the Moroccan ministry

of justice that expressed the intention to continue on the path of reform of the justice sector, in particular aiming at the simplification judicial administration abandoning paper methods and implementing new technologies to speed up the communication process between litigants and citizens in the judicial system. Morocco is thus inserted in a new era of courts reforms that envisage the construction of an informatics infrastructure to reduce the time for processing legal affairs, and the objective is to put in place a real digital court by 2020.

This raises an immediate question on what the future might hold for the European organizations, such as the Commission but also COE and CEPEJ, working with norths African courts and their experts. The new challenges brought about the automatization of judicial processes is increasingly interesting a number of experts who reflect on the normative consequences that these reforms will entail. In light of the analysis carried out in this research and specifically on the role and success of governance by standards mastered by EU agencies vis-à-vis the southern neighborhood, we would raise the following issue.

A way to look at the EU- southern Mediterranean judicial relations in the new digital era is to highlight the number of professional expertise needed to implement the new digital tools. Yet, we would envisage that the external European soft power should not only go only in the direction of providing new tools, but also new expertise and competencies as well as ways to regulate the augmented knowledge that digital reforms bring into the judicial systems, therefore providing a regulative and professional framework within which domestic actors could implement new technologies. With this last hopeful remark, this preliminary study on EU Judicial supported reforms in transitioning countries of the southern Mediterranean, points to the need for further comparative analysis on the matter.

Appendix

List of Interviews

Interview 1: Dr. Paolo Gozzi, DG Enlargement - coordinator Twinning instrument, Brussels January 2018

Interview 2: Mrs. Maryam El Hajbi, former programme manager at the International Institute for Justice and the Rule of Law, Malta

Interview 3: Madame Frieh-Chevalier, director European Union Delegation in Morocco, skype interview, April 2018

Interview 4: Axel Gamet, director Justice Coopération internationale, Paris, May/June 2018

Interview 5: Elise Zahi, project manager Justice Coopération Internationale, Paris, May/June 2018

Interview 6: Hugo Plailly, Delegation international and European Affairs, Ministry of Justice of France, Paris, May 2018

Interview 7: Judge Dr Mohammed Gazwi, former member of the Jordanian Constitutional Court, skype interview June 2018

Interview 8: Dr. Giorgio Giorgi, European Union Delegation in Jordan, skype interview, May 2018

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