

Germany

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CULTURAL EXPERTISE IN EUROPE: WHAT IS IT USEFUL FOR? (EURO-EXPERT)

PI: LIVIA HOLDEN | Post-Doc: ANNA TSALAPATANIS | Data Collector: EDUARD BUZILA

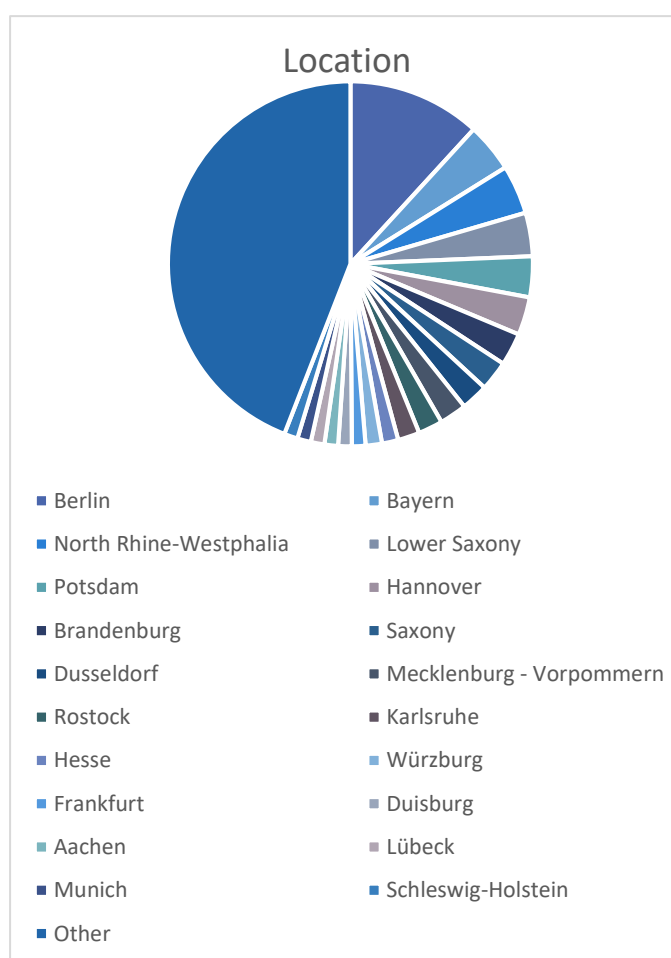
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Sample

There were 497 responses to the German survey, 483 of which were Judges (97%), 11 were Lawyers (2%), 2 were experts (0.4%) and 1 was a beneficiary (0.2%).

Of the 84% of respondents (415) who indicated a location, 12% (49) indicated Berlin, 4% (18) selected Bayern, 4% (18) North Rhine-Westphalia, 4% (16) for Lower Saxony, and 4% (15) for Potsdam. Hannover, Brandenburg and Saxony each received 3% (14,12, 11 respectively), with Dusseldorf, Mecklenburg – Vorpommern, Rostock, and Karlsruhe each with 2% (10, 10, 9, 8 respectively). There were 8 locations that were listed by between 5 and 6 respondents (1%), these are Hesse, Würzburg, Frankfurt, Duisburg, Aachen, Lübeck, Munich Schleswig-Holstein. The remaining 44% listed other locations.

Location	%	Count
Berlin	12%	49
Bayern	4%	18
North Rhine-Westphalia	4%	18
Lower Saxony	4%	16
Potsdam	4%	15
Hannover	3%	14
Brandenburg	3%	12
Saxony	3%	11
Dusseldorf	2%	10
Mecklenburg - Vorpommern	2%	10
Rostock	2%	9
Karlsruhe	2%	8
Hesse	1%	6
Würzburg	1%	6
Frankfurt	1%	5
Duisburg	1%	5
Aachen	1%	5
Lübeck	1%	5
Munich	1%	5
Schleswig-Holstein	1%	5
Other	44%	183
Total	100%	415



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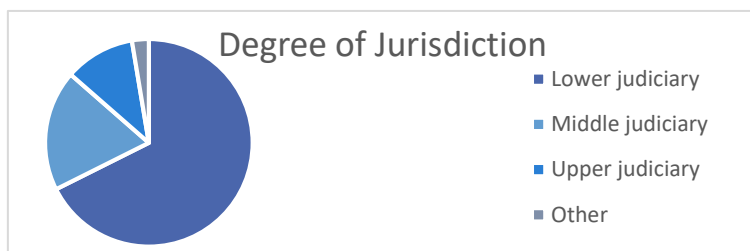
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Judges

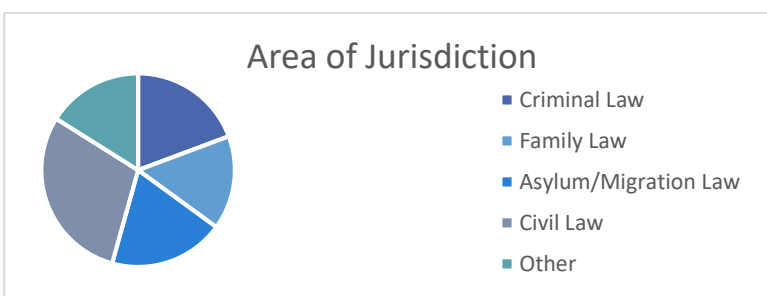
Of the 483 Judges that responded, 457 indicated their degree of Jurisdiction. 68% (309) indicated that they were part of the Lower Judiciary, 19% (86) the Middle Judiciary, and 11% (50) the Upper Judiciary. Of the remaining 12 (3%) who selected other, 7 specified that they worked in Labour Tribunals and 2 that they worked in Social Tribunals.

Degree of Jurisdiction	%	Count
Lower judiciary	68%	309
Middle judiciary	19%	86
Upper judiciary	11%	50
Other	3%	12
Total	100%	457



When asked about their area of jurisdiction, 'Civil Law' accounted for 30% overall (162), followed by 'Criminal Law' and 'Asylum/Migration Law' both on 19% each (107). 'Family Law' and 'Other' both received 16% (87 and 89 respectively). Of those who specified 'Other', 19 specified social law or social assistance, 18 specified administrative law, 14 indicated care or care and housing law, 3 employment law, 2 tax law, and the remaining single responses specified other areas of law.

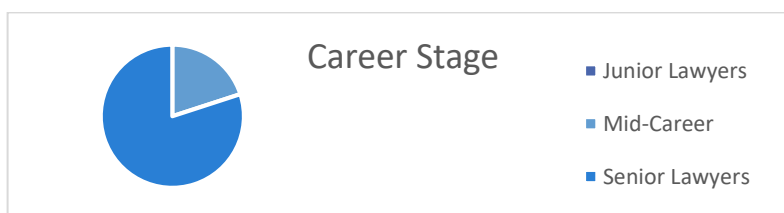
Area of Jurisdiction	%	Count
Criminal Law	19%	107
Family Law	16%	87
Asylum/Migration Law	19%	107
Civil Law	30%	164
Other	16%	89
Total	100%	554



Lawyers

Of the 11 Lawyers who responded, 10 indicated their career stage with 8 of those indicating that they were Senior Lawyers and 2 selected Mid-Career.

Career Stage	%	Count
Junior Lawyers	0%	0
Mid-Career	20%	2
Senior Lawyers	80%	8
Total	100%	10



When indicating the areas of law in which they worked, 'Other' was selected 5 times, 'Family Law' and 'Labour Law' 4 times, 'Contracts and Obligations' was chosen 3 times, 'Health Law', 'Inheritance Law' and 'Medical and Bio Law' were selected twice each, and 'Administrative Law', 'Banking, Bankruptcy and Insolvency Law', 'Business and commercial Law', 'Financial Law', 'Immigration Law', 'Private International Law', 'Property Law' and 'Refugee and Asylum Law' each were chosen once. Of those who selected 'Other', 3 specified 'Social Law', and 1 each for 'Construction Law' and 'Insurance Law'.

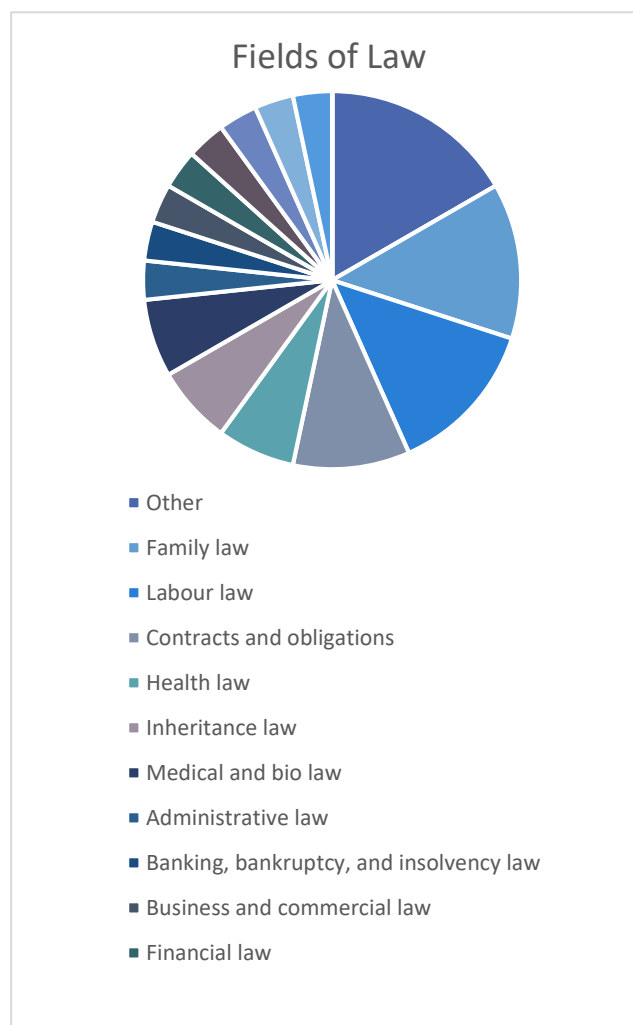


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Areas of Law	%	Count
Administrative law	3%	1
Banking, bankruptcy, and insolvency law	3%	1
Business and commercial law	3%	1
Constitutional law	0%	0
Contracts and obligations	10%	3
Criminal law	0%	0
Environmental law	0%	0
European law	0%	0
Family law	13%	4
Financial law	3%	1
Health law	7%	2
Immigration law	3%	1
Inheritance law	7%	2
Intellectual and patent law	0%	0
International human rights law	0%	0
Labour law	13%	4
Medical and bio law	7%	2
Private international law	3%	1
Property law	3%	1
Refugee and asylum law	3%	1
Sports law	0%	0
Other	17%	5
Total	100%	30



Experts

Of the two experts that responded to the survey, both did not clarify their expert type, and only one indicated their area of expertise, which was North Africa.

Frequency

Numeric Frequency

Only one expert responded to the question regarding the number of cases that they had provided expert opinions for. They indicated that they had provided expert evidence in both written and oral format for between 20 and 50 cases.

Overall, most of the judges and lawyers had indicated that they had instructed less than 10 cultural experts (56% overall, 239). 42% (177) of respondents selected 'Other', of those, all but two clarified that they had never instructed a cultural expert. Of the remaining 'Other' responses, one clarified that they had instructed 100 experts and the other 200.

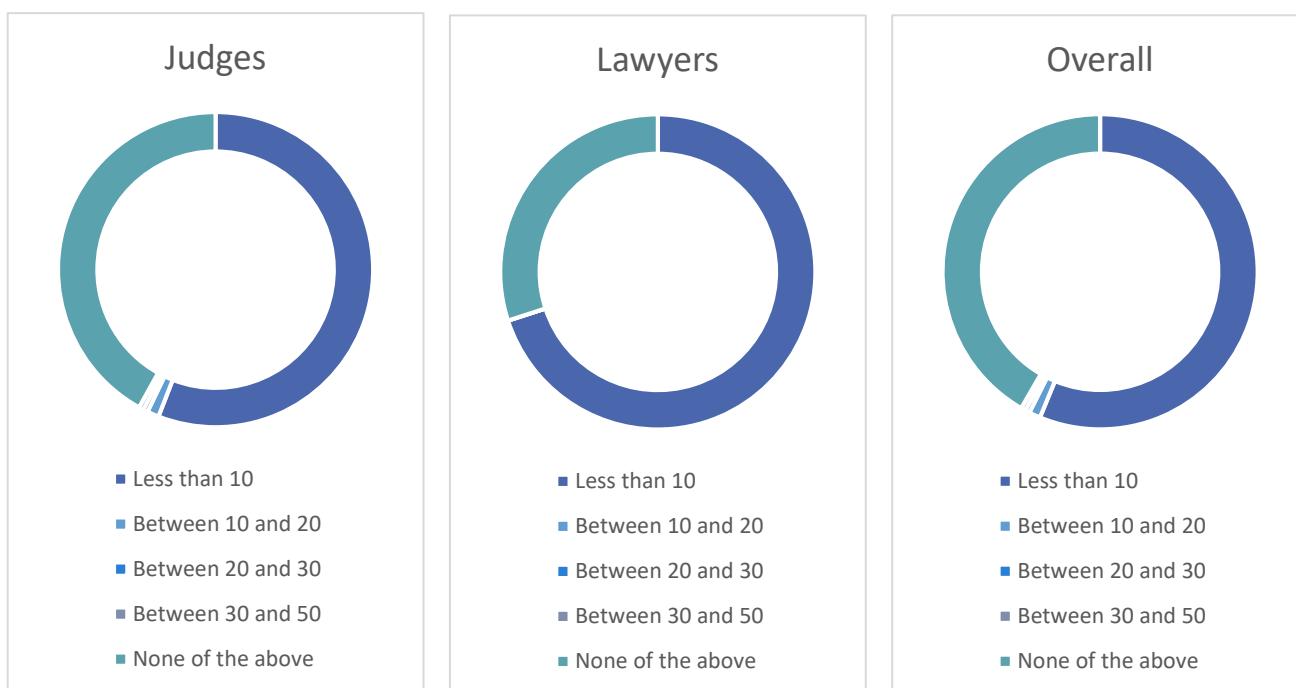


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Number of cases	Judges		Lawyers		Totals	
	%	Count	%	Count	%	Count
Less than 10	56%	232	70%	7	56%	239
Between 10 and 20	1%	5	0%	0	1%	5
Between 20 and 30	0%	2	0%	0	0%	2
Between 30 and 50	0%	2	0%	0	0%	2
None of the above	42%	174	30%	3	42%	177
Totals	100%	415	100%	10	100%	425



The single beneficiary who responded did not indicate the frequency of their use of these services.

Fields of law

The most common field of law where cultural expertise was used in Germany is 'Refugee and Asylum Law' 16% (203) followed by 'Family Law' 14% (184), 'Immigration Law' 14% (173) and 'Criminal Law' 11% (138). The remaining options all accounted for less than 10% including 'Administrative Law' 9% (119), 'International Human Rights Law' 7% (91), 'Inheritance Law' 5% (65), and 'Private International Law' 5% (58). Of the 2% (26) who indicated 'Other' most clarified that they had not come across cultural expertise so where not aware of what fields it was used in.



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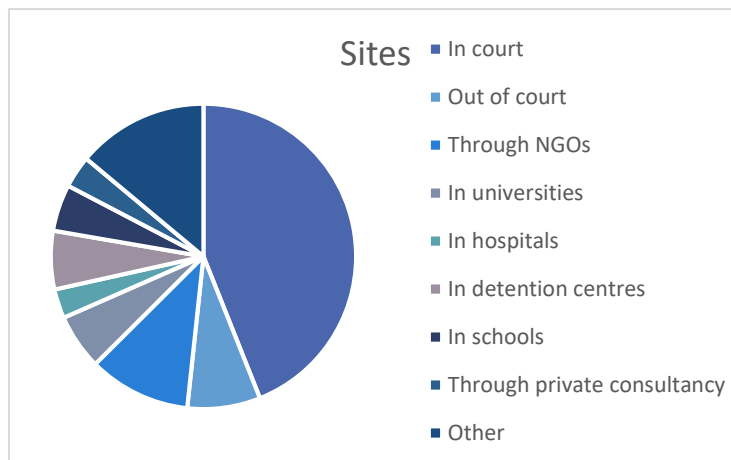
Fields of Law	%	Count
Refugee and asylum law	16%	203
Family law	14%	184
Immigration law	14%	173
Criminal law	11%	138
Administrative law	9%	119
International human rights law	7%	91
Inheritance law	5%	65
Private international law	5%	58
European law	3%	41
Constitutional law	3%	38
Contracts and obligations	2%	30
Other	2%	26
Labour law	2%	23
Intellectual and patent law	1%	17
Business and commercial law	1%	15
Health law	1%	14
Medical and bio law	1%	12
Environmental law	1%	8
Banking, bankruptcy, and insolvency law	1%	7
Property law	0%	6
Sports law	0%	6
Financial law	0%	5
Total	100%	1279



Sites

The most common site for cultural expertise was 'in court' which accounted for 142 responses or 44%, followed by 'Other' on 14% (45), 'Through NGOs' 11% (35) and 'Out of Court' 8% (25). Those who selected other indicated almost universally that they had no experience with cultural expertise.

Sites	%	Total
In court	44%	142
Out of court	8%	25
Through NGOs	11%	35
In universities	6%	19
In hospitals	3%	10
In detention centres	6%	20
In schools	5%	16
Through private consultancy	3%	11
Other	14%	45
Total	100%	323



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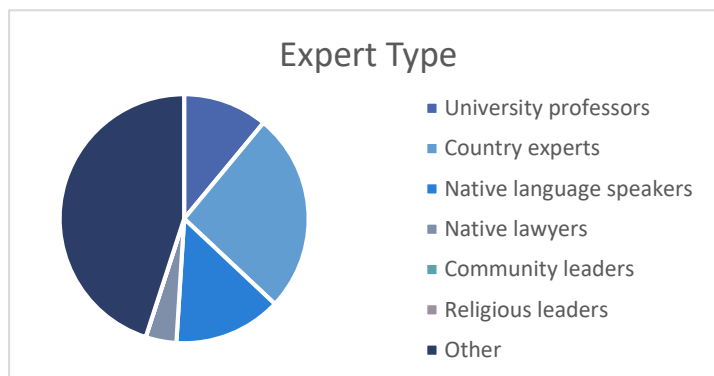
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Typology of Experts

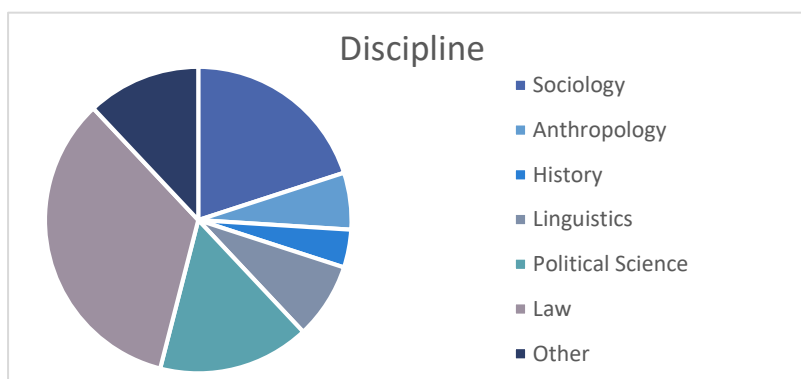
The most frequent response to the question regarding expert typology was 'Other' 45% (132), followed by 'Country Experts' 26% (77), then 'Native Language Speakers' 14% (42) and 'University Professors' 11% (33). For those who selected 'Other' and clarified, all but five of these responses indicated that they were not aware of or had not used an expert and were unable to respond.

Expert Type	%	Count
University professors	11%	33
Country experts	26%	77
Native language speakers	14%	42
Native lawyers	4%	11
Community leaders	0%	0
Religious leaders	0%	0
Other	45%	132
Total	100%	295



When asked to clarify which discipline these professors were from, the most common response was Law with 34% (17), followed by Sociology 20% (10), Political Science 16% (8), then 'Other' 12% (6). Some of the clarifications of the 'Other' option included medicine, psychology and cultural studies.

Discipline	%	Count
Sociology	20%	10
Anthropology	6%	3
History	4%	2
Linguistics	8%	4
Political Science	16%	8
Law	34%	17
Other	12%	6
Total	100%	50



Only one expert responded to the question regarding the fields of law in which they had provided cultural expertise and they indicated that they had done so in EU Law and Sports Law.

Modalities

Appointment of Experts

The most common factor to influence the decision to appoint an expert was that the appointment of experts was advised by the court (19%, 132), followed by the law allowing the instruction/appointment of experts (18%, 121), then the court is keen to hear cultural arguments (11%, 75), time (11%, 72), experts facilitate successful legal outcomes (8%, 52), and the reputation of the expert (7%, 47), with all remaining responses accounting for 6% or less. Of those who responded other (4%, 24) and specified, six indicated that they did not know, four clarified that it depended on the procedural law in the court and three indicated that it is used when the court recognises that it does not have the necessary expertise.



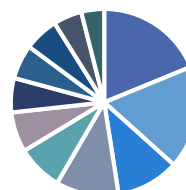
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Factor	%	Count
The appointment/instruction of experts is advised by the court	19%	132
The law allows the appointment/instruction of experts	18%	121
The court is keen to hear cultural arguments	11%	75
Time	11%	72
Experts facilitate successful legal outcomes	8%	52
The reputation of the expert	7%	47
The court/ prosecutor/ Home Office have already appointed their expert	6%	44
Cost	6%	42
Expertise can also be used for an out of court settlement	6%	42
Client/ Defendant/ Claimant/ Applicant's request	5%	31
Other	4%	24
Total	100%	682

Factors influencing decision



- The appointment/instruction of experts is advised by the court
- The law allows the appointment/instruction of experts
- The court is keen to hear cultural arguments
- Time
- Experts facilitate successful legal outcomes
- The reputation of the expert
- The court/ prosecutor/ Home Office have already appointed their expert
- Cost

Experts were chosen due to their competence (43%, 250) followed by from professional expert registers (17%, 98), then reputation of expert (15%, 88), from expert registers at law courts (11%, 62), and other (9%, 54), with all remaining categories accounting for 3% or less. Of those who selected other and specified, eighteen indicated that they had yet to commission an expert and therefore did not know, three mentioned the recommendations of colleagues, three the availability of the expert and one mentioned the role of fees.

Reason	%	Count
Competence	43%	250
From professional expert registers	17%	98
Reputation of expert	15%	88
From expert registers at law courts	11%	62
Other	9%	54
Balance between competence and cost	3%	18
Litigant/ Applicant/ Defendant/ Claimant's choice	2%	14
Convenient hourly quote	0%	2
Total	100%	586

Factors in choosing the appropriate expert



- Competence
- From professional expert registers
- Reputation of expert
- From expert registers at law courts
- Other
- Balance between competence and cost
- Litigant/Applicant/Defendant/Claimant's choice
- Convenient hourly quote

There was only one response to the question regarding how experts started providing expert opinions. This response indicated that they were contacted by a court.



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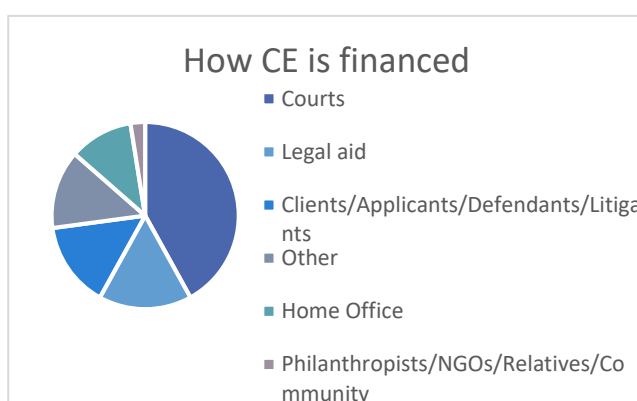
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There was only one response to the question regarding how experts were instructed or appointed. This response indicated that they were instructed/appointed by a court.

Cost of Cultural Expertise

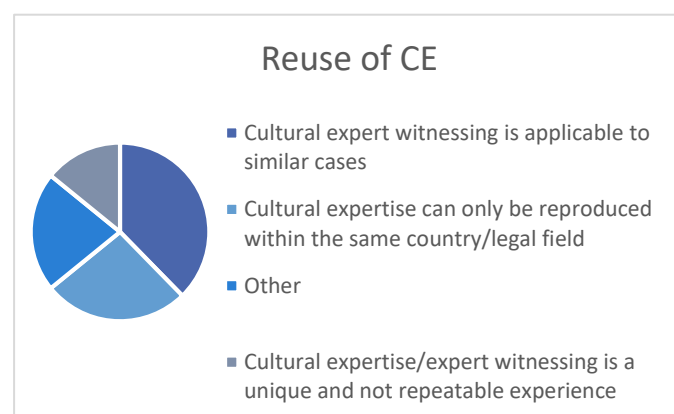
Cultural expertise was most commonly financed by courts (42%, 133), followed by legal aid (16%, 51), then Clients/ Applicants/ Defendants/ Litigants (15%, 47), other (14%, 43), and the Federal Ministry of the Interior (11%, 35), with the remaining answer accounting for 3%. For those who selected other and specified, 23 indicated that they did not know, five clarified that it depended on the particular context, three specified the parties and two the state treasury.

Answer	%	Count
Courts	42%	133
Legal aid	16%	51
Clients/ Applicants/ Defendants/ Litigants	15%	47
Other	14%	43
Federal Ministry of Interior	11%	35
Philanthropists/ NGOs/ Relatives/ Community	3%	8
Total	100%	317



With regards to the question of the re-use of cultural expertise, more than a third indicated that cultural expertise was applicable to similar cases (38%, 104), followed by that cultural expertise can only be reproduced in the same country/field (26%, 73), then 'other' (22%, 60), and finally that cultural expertise is a unique and not repeatable experience (14%, 39). Of those who selected other and specified, 41 indicated that they either did not know or did not have expertise in this area, five that it is very context specific, and two that there are issues around copyright.

Answer	%	Count
Cultural expert witnessing is applicable to similar cases	38%	104
Cultural expertise can only be reproduced within the same country/legal field	26%	73
Other	22%	60
Cultural expertise/expert witnessing is a unique and not repeatable experience	14%	39
Total	100%	276



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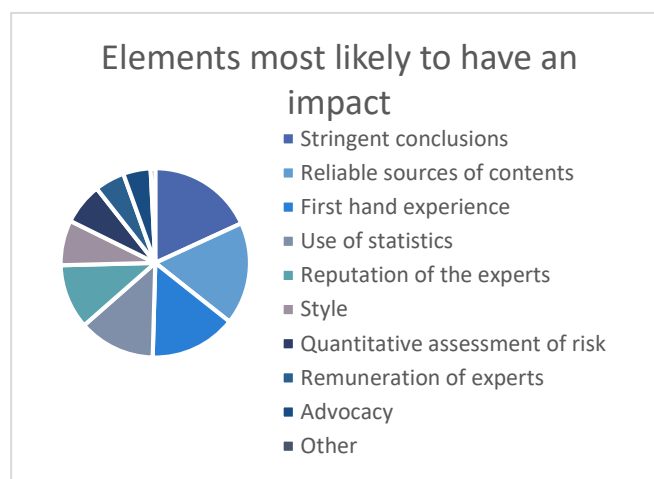
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Impact

Components of Impact

The elements of expertise that were most likely to have an impact were stringent conclusions (18%, 205), followed by reliable sources of contents (18%, 198), then first-hand experience (15%, 167), use of statistics (13%, 148), reputation of experts (11%, 125), style (8%, 87) and quantitative assessment of risk (7%, 80), with all remaining responses accounting for 5% or less. For those who selected other and specified, one indicated that it depends on the particular case, another that the opinions should support rather than influence decision making and finally the position of the expert as a state authority.

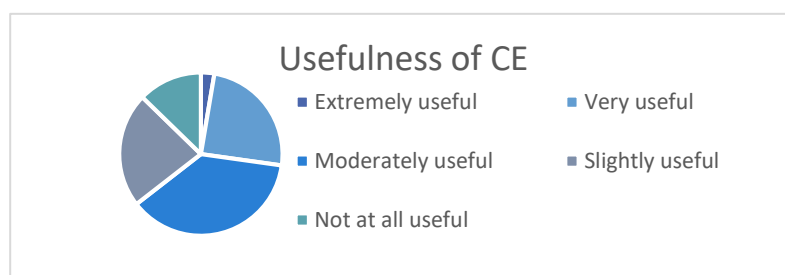
Field	%	Count
Stringent conclusions	18%	205
Reliable sources of contents	18%	198
First-hand experience	15%	167
Use of statistics	13%	148
Reputation of the experts	11%	125
Style	8%	87
Quantitative assessment of risk	7%	80
Remuneration of experts	5%	58
Advocacy	5%	53
Other	1%	9
Total	100%	1130



Usefulness

With regards to the usefulness of cultural expertise, the most common response was that it was moderately useful (37%, 126), followed by very useful (25%, 83), then slightly useful (23%, 77), not at all useful (13%, 43) and extremely useful (3%, 9).

Answer	%	Count
Extremely useful	3%	9
Very useful	25%	83
Moderately useful	37%	126
Slightly useful	23%	77
Not at all useful	13%	43
Total	100%	338



Cultural expertise is most useful in immigration law (42%, 133), followed by other (37%, 119), then is more useful in criminal law than civil law (18%, 57), and finally, more useful in civil law than in criminal law (3%, 11). Of those who selected other and specified, nine indicated that they did not know, nine clarified family law, four indicated asylum law, three clarified that it can be used in multiple legal fields, one mentioned inheritance law, and another specified the retransfer of formerly Jewish property.



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Answer	%	Count
Cultural expertise is most useful in immigration law	42%	133
Cultural expertise is most useful in...	37%	119
Cultural expertise is more useful in criminal law than in civil law	18%	57
Cultural expertise is more useful in civil law than in criminal law	3%	11
Total	100%	320



Competitiveness

There were no responses to the question to experts regarding why they thought their services were competitive.

Reputation of Experts

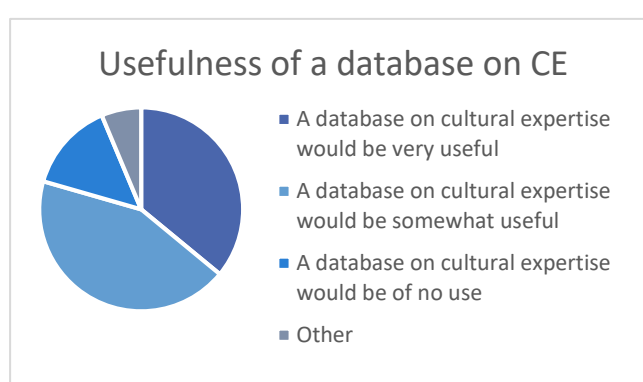
There were no responses to the question to experts regarding how they managed to build their reputation.

Improved Access

Database

With regards to the usefulness of a database, the most common response was that a database would be somewhat useful (43%, 110), followed by very useful (36%, 91), then of no use (14%, 36) and other (6%, 16). Of those who selected other and specified, seven clarified that they did not know, and six indicated that databases already existed.

Answer	%	Count
A database on cultural expertise would be very useful	36%	91
A database on cultural expertise would be somewhat useful	43%	110
A database on cultural expertise would be of no use	14%	36
Other	6%	16
Total	100%	253



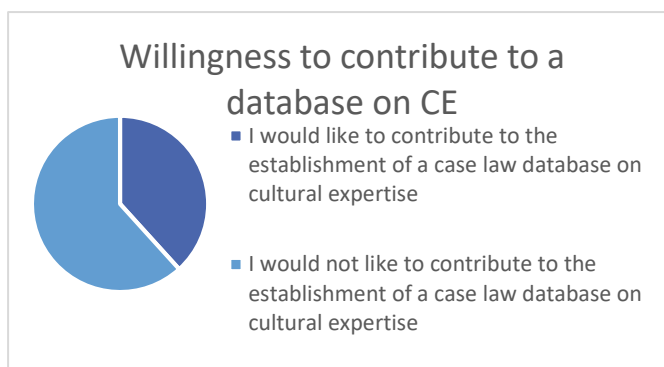
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Most respondents indicated that they would not like to contribute to the establishment of a database on cultural expertise (62%, 79), and a little over a third indicated that they would like to contribute (38%, 49).

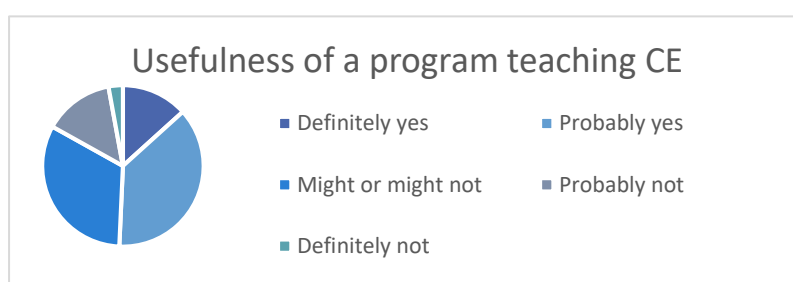
Answer	%	Count
I would like to contribute to the establishment of a case law database on cultural expertise	38%	49
I would not like to contribute to the establishment of a case law database on cultural expertise	62%	79
Total	100%	128



Capacity Building

With regards to the usefulness of a program teaching cultural expertise, over a third indicated that such a program would be useful (37%, 104), followed by might or might not (32%, 90), then probably not (14%, 39), definitely yes (13%, 37) and definitely not (3%, 8).

Answer	%	Count
Definitely yes	13%	37
Probably yes	37%	104
Might or might not	32%	90
Probably not	14%	39
Definitely not	3%	8
Total	100%	278



The most common response to the question regarding the knowledge of organisations that may be interested in teaching cultural expertise was other (91%, 89), followed by schools or universities (6%, 6), and professional organisations (3%, 3). Of those who selected other and specified, sixteen indicated that they did not know, and two clarified that there were likely interested organisations, but were unable to clarify.

Answer	%	Count
I know of schools, universities or organisations that may be interested in teaching cultural expertise	6%	6
I know of professional organisations that may be interested in capacity building on the use of cultural expertise	3%	3
I would be interested in teaching cultural expertise	0%	0
Other	91%	89
Total	100%	98

