

SGI

Sustainable
Governance
Indicators

2014 Rule of Law Report

Legal Certainty, Judicial Review, Appointment of Justices,
Corruption Prevention



| Bertelsmann Stiftung

Indicator

Legal Certainty

Question

To what extent do government and administration act on the basis of and in accordance with legal provisions to provide legal certainty?

41 OECD and EU countries are sorted according to their performance on a scale from 10 (best) to 1 (lowest). This scale is tied to four qualitative evaluation levels.

- 10-9 = Government and administration act predictably, on the basis of and in accordance with legal provisions. Legal regulations are consistent and transparent, ensuring legal certainty.
- 8-6 = Government and administration rarely make unpredictable decisions. Legal regulations are consistent, but leave a large scope of discretion to the government or administration.
- 5-3 = Government and administration sometimes make unpredictable decisions that go beyond given legal bases or do not conform to existing legal regulations. Some legal regulations are inconsistent and contradictory.
- 2-1 = Government and administration often make unpredictable decisions that lack a legal basis or ignore existing legal regulations. Legal regulations are inconsistent, full of loopholes and contradict each other.

Estonia

Score 10

The rule of law is fundamental to Estonian government and administration. In the period of transition from communism to liberal democracy, most of the legal acts and regulations had to be amended or introduced for the first time. Joining the European Union in 2004 caused another major wave of legal reforms. These fast and radical changes, which occurred in a short timespan, caused some inconsistencies and unexpected legal amendments (for example the increase of the VAT in 2009). However, today, legal regulations form a consistent and transparent system ensuring legal certainty.

Finland

Score 10

The rule of law is one of the basic pillars of Finnish society. When Finland was ceded by Sweden to Russia in 1809, the strict observation of prevailing Swedish laws and legal regulations became one of the most important tools for avoiding and circumventing Russian interference in Finnish affairs. From this emerged a political culture which demands legal certainty, condemns any fusion of public and private interest and prevents public officeholders from abusing their position for private interests.

Germany

Score 10 Germany's Basic Law (Art. 20 sec. 3) states that "the legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice." In reality, German authorities live up to this high standard. In comparative perspective, the country generally scores very highly on the issue of rule of law in indices whose primary focus is placed on formal constitutional criteria.

In substantive terms, German citizens and foreigners appreciate the predictability and impartiality of the German legal system, regard Germany's system of contract enforcement and property rights as being of high quality, and put considerable trust in the police forces and the courts. Germany's high courts have significant institutional power and a high degree of independence from political influence. The Federal Constitutional Court's (FCC) final say on the interpretation of the Basic Law provides for a high degree of legal certainty.

In a nutshell, Germany's government and administration rarely make unpredictable decisions, and legal protection against unlawful administrative acts is effective.

New Zealand

Score 10 Although New Zealand, following the British tradition, does not have a codified constitution but instead a mix of conventions, statute law (Constitution Act 1986, Bill of Rights Act 1990, Electoral Act 1993 and the Treaty of Waitangi) and common law, the executive acts according to the principles of a constitutional state. A number of independent bodies, such as the Office of the Ombudsman, strengthen accountability.

Citation:
Annual Report of the Ombudsman 2011/2012 (Wellington: Office of the Ombudsman 2011/2012).

Norway

Score 10 Norway's government and administration act predictably and in accordance with the law. Norway has a sound and transparent legal system. Corruption within the legal system is not a significant problem. The state bureaucracy is regarded as both efficient and reliable. Norwegian citizens generally trust their institutions.

Sweden

Score 10

The Swedish legal framework is deeply engrained and the rule of law is an overarching norm in Sweden. Likewise, in the Weberian public administration, values of legal security, due process, transparency, and impartiality remain key norms.

The clients of the administration and the courts also expect and appreciate these values. The legal system is characterized by a high degree of transparency. The ombudsmen institution (a Swedish invention) remains an important channel for administrative complaints. The Ombudsman of Justice permanently surveys the rule of law in Sweden.

Different arrangements to protect whistleblowers in the public service are being considered or have been implemented.

During the most recent past, the government has intensified market-based administrative reforms. While similar developments in public administration are underway in many other European countries, it may undermine principles of legal certainty.

Australia

Score 9

There has been no change in the period under review in the strong judicial oversight over executive decisions. Judicial oversight occurs through a well-developed system of administrative courts, and through the High Court. However, jurisdictional uncertainty between the federal and state governments continues to be an issue, most recently highlighted by a High Court challenge of the constitutionality of the Minerals Resources Rent Tax (MRRT) introduced by the federal government in 2012. The basis of the challenge, brought by mining company Fortescue Metals Group, is that minerals are the property of the states. The case has yet to be heard as of the end of the review period.

Citation:

Michael Crommelin 'The mining tax court challenge explained' The Conversation, 8 March 2013: <http://theconversation.com/the-mining-tax-court-challenge-explained-12699>

Denmark

Score 9

Denmark has a long tradition of a rule of law. No serious problems can be identified in respect to legal certainty in Denmark. The administration is

based on a hierarchy of legal rules, which of course gives administrators certain discretion, but also a range of possibilities for citizens to appeal decisions. Much of the Danish administration is decentralized and interpretation of laws can vary from one municipality or region to another. Acts passed by the People's Assembly (Folketing), as well as administrative regulations based on these acts, are all made public. They are now widely available on the Internet. Openness and access to information, and various forms of appeal options, contribute to strengthening legal certainty in administration.

Citation:
Henning Jørgensen, *Consensus, Cooperation and Conflict: The Policy Making Process in Denmark*. Cheltenham: Edward Elgar, 2002.

Iceland

Score 9 The Icelandic state authorities and the state administration respect the rule of law, and as a rule make decisions accordingly. Therefore, their actions are generally predictable. However, there have been a number of cases in which court verdicts and government actions have been appealed to and overruled by the European Court of Human Rights. There have also been examples of Supreme Court verdicts that have been overruled by the European Court of Justice. Some of these cases, including recent ones, have dealt with journalists' free-speech rights.

A recent case of a different kind has a bearing on legal certainty. The Supreme Court has ruled several times – first in June 2010 and most recently in April 2013 – that bank loans indexed to foreign currencies rather than to domestic prices were in violation of a law passed by parliament in 2001. This means that the asset portfolios of the Icelandic banks that collapsed in 2008 contained loans that turned out to be illegal. These examples have demonstrated that the banks did not act according to the law. Neither the government or any government institutions, including the Central Bank and the Financial Supervisory Authority, paid sufficient attention to this problem while it was going on. A governor of the Central Bank was even among those who had drafted the 2001 legislation deeming foreign-currency-denominated loans illegal; yet the Central Bank turned a blind eye in the pre-crisis years. Even after the Supreme Court ruled these loans illegal, the banks have been slow to implement the ruling by recomputing the thousands of loans in question. Individual bank customers have had to sue the banks in an attempt to force them to follow the law.

Citation:
Lög um vexti og verðtryggingu (Law on interest and indexation) no. 38 2001.

Latvia

- Score 9 Latvia's government and administration generally act in a predictable manner. Government decisions have in some cases been challenged in court on the basis of a breach of the principle of legal certainty. For example, a group of administrative court judges approached the Constitutional Court to protest austerity measures targeting planned judicial-salary increases, arguing a breach of legal certainty. The Constitutional Court ruled against the judges in 2012. Problems may occur in small municipalities due to a lack of professionalism.

Citation:

The Constitutional Court of Latvia (2012), On Termination of Proceedings, Ruling available at (in Latvian): http://www.satv.tiesa.gov.lv/upload/2011_10_01_leums.pdf, Last assessed: 21.05.2013

Poland

- Score 9 Legal certainty in Poland is high. Both the government and its administration act predictably and in accordance with the law. Since the 2010 presidential elections, disagreements between the government and the president, which had reduced legal certainty in the past, have been rare. However, complex and contradictory regulations sometimes limit the predictability of administrative behavior.

Switzerland

- Score 9 Switzerland's federal government and administration act predictably. This predictability is partially reduced by the very pragmatic administrative culture at the cantonal and local levels. The country's division into small administrative districts, the tradition of decentralized local government and a partial "militia administration" system provide for a substantial amount of leeway in Switzerland's public administration activity. The pragmatic administrative culture ensures flexibility and efficiency on the one hand, but reduces legal certainty on the other.

United Kingdom

- Score 9 In the United Kingdom, government and administration act predictably and in line with legal provisions. This is facilitated by the fact that the government

has a large degree of control over the legislative process and therefore finds it easy to alter provisions if they constitute a hindrance to government policy objectives. Media and other checks on executive action deter any deviation.

Austria

Score 8 The rule of law in Austria, defined by the independence of the judiciary and by the legal limits that political authorities must respect, is well established in the constitution as well as in the country's mainstream political understanding. The three high courts – the Constitutional Court (Verfassungsgerichtshof), which deals with all matters concerning the constitution and constitutional rights; the Administrative Court (Verwaltungsgerichtshof), the final authority in administrative matters; and the Supreme Court (Oberster Gerichtshof), the highest instance within the four-tier judicial system concerning disputes in civil or criminal law – all have good reputations. Judicial decisions, which are based solely on the interpretation of existing law, can in principle be seen predictable.

The role of public prosecutors (Staatsanwälte), who are subordinate to the minister of justice, has raised some controversy. The main argument in favor of this dependency is that the minister of justice is accountable to parliament, and therefore under public control. The argument to the contrary is that public prosecutors' bureaucratic position opens the door to political influence. To counter this possibility, a new branch of prosecutors dedicated to combating political corruption has been established, which is partially independent from the Ministry of Justice. However, this independence is limited only to certain aspects of their activities, leading some to argue that the possibility of political influence remains.

The rule of law also requires that government actions be self-binding and predictable. And indeed, there is broad acceptance in Austria that all government institutions must respect the legal norms passed by parliament and monitored by the courts.

Canada

Score 8 Canada's government and administration rarely make unpredictable decisions. Legal regulations are generally consistent, but do sometimes leave scope for discretion. Of course, the government can be expected to be challenged in court if its executive actions are not consistent with the law, which provides an incentive to comply.

Chile

- Score 8 Acts and decisions made by the government and official administrative bodies take place strictly in accordance with legislation. There are moderately effective autonomous institutions that play an oversight role relative to government activity, including the Office of the General Comptroller (Contraloría General de la República) and the monitoring functions of the Chamber of Deputies. Government actions are moderately predictable, and conform largely to limitations and restrictions imposed by law.

Czech Republic

- Score 8 Executive actions are generally predictable and undertaken in accordance with the law. Problems arise because of the incompleteness or ambiguity of some laws with general declarations, notably the Charter of Fundamental Rights and Freedoms, which sometimes lacks backing from detailed, specific laws. There are also a number of ambiguities that have caused recent controversy in relation to the position of the president, who is required by the constitution to appoint judges, sign laws and ratify international treaties (among other activities). Václav Klaus interpreted the constitution as giving him considerable individual power that could be exercised without consultation, as demonstrated by the controversial amnesty of January 2013.

Greece

- Score 8 In 2011 – 2013 during the economic crisis, the government repeatedly adapted past legislation to changing circumstances because the conditions accompanying Greece's bailout required reforms in many policy sectors. There have been many alterations – e.g., in taxation legislation.

Because of the need to effect reforms rapidly, the government resorted to governing by decree, after passing legislation which left ample room for discretion. On the other hand, paradoxically, legal certainty may have been enhanced in Greece, because a stable austerity policy has been implemented since May 2010. Since then, in the context of Greece's bailout, legal certainty has been monitored by the EC–ECB–IMF Troika in income, fiscal, labor market, pension and public employment policy sectors.

There are, of course, other policy sectors, such as education, research and environmental protection, where legal uncertainty rises from the difficult

compromises made among government coalition partners. In Greece between November 2011 and May 2012, a caretaker government based on the trust of three parties was in power, and in June 2012 was replaced by a tripartite government. The latter consisted of the center-right party (New Democracy), the Pan-Hellenic Socialist Party (PASOK) and the pro-European left party Democratic Left (Dimokratiki Aristera, DIMAR). Legal certainty was somewhat negatively affected because the policy preferences of these coalition partners were not always predictable.

Netherlands

Score 8 Dutch governments and administrative authorities internalized legality and legal certainty on all levels in their decisions and actions in civil, penal and administrative law. Even the (quasi-)autonomous administrative agencies that threatened to become exceptions to the rule of law have been brought “back on board” – that is, their decisions were brought under ministerial responsibility and parliamentarian oversight. Yet a small number of glaring miscarriages of justice, and in 2013 open complaints by justices, have demonstrated that legal certainty is, in fact, traded off against, on the one hand, timeliness and efficiency in legal procedures and a desire to produce outcomes (convictions) and, on the other, the risk of incidental injustices. A heavy and growing case load and increased work pressure cultivates poor, incomplete and sometimes the erroneous argumentation of verdicts by judges. The significance of this is clear because only 3% to 4% of legal cases result in acquittals or release from prosecution. Finally, citizen fees for starting legal procedures have been raised so considerably that for many low-income citizens and smaller companies access to legal dispute resolution has become almost unaffordable. This means that for a considerable part of the citizenry legal certainty has in fact diminished.

Spain

Score 8 No important changes occurred regarding legal certainty in the period under review. The Spanish executive rarely makes unpredictable decisions, and normally acts on the basis of and in accordance with legal provisions. Spanish administrative law and practice is grounded in the principle of legal certainty (and, to a much lesser extent, the principle of transparency, as discussed under Access to Government Information). Strict legal interpretations may in fact produce some inefficiency in certain aspects of the administration, such as the rigid system of personnel recruitment; working methods that depend on clear departmental command rather than flexible cross-organization teams; a preference for formal hierarchy rather than skills

when making decisions; the reliance on procedure regardless of output effectiveness and other such effects. In addition, the legalistic approach is also a source of abuse in some cases, since citizens are generally reluctant to appeal administrative acts in the courts as a consequence of the high costs and long delays associated with this process. Nevertheless, basic administrative law is consistent and uniform, assuring regularity in the functioning of all administrative levels. The effects of the crisis have caused an increase in legal breaches of contract from the public administrations referred to the payment terms.

Belgium

Score 7

The rule of law is strong in Belgium. Officials and administrations usually act in accordance with legal requirements, and therefore actions are predictable in this sense. Nevertheless, the federalization of the Belgian state is not yet fully mature, and the authority of different government levels can overlap on many issues; a state of affairs which makes the interpretation of some laws and regulations discretionary or unstable and therefore less predictable than what would be desirable in an advanced economy.

For example, Belgium since 2009 did not ratify any of its fiscal treaties with its foreign partners, mainly because to do so, all levels of power must agree; when they do not, deadlock ensues. Other instances of legal uncertainty include: linguistic requirements, over which national and regional/community rules may conflict; regulation policy, where regulators' decisions are sometimes overruled by the government; and taxation policy, which is in the process of being devolved from the center to the regions. Yet taxation and pension policies both were modified hastily and without notice in 2012, in an attempt to reduce the public deficit.

Ireland

Score 7

Politicians are prohibited by law from interfering with the course of justice and attempts to do so appear to be very rare. Government and administrative units generally act predictably and in accordance with known rules. The use of ministerial orders can be to some extent arbitrary and unpredictable, but they are liable to judicial review.

A significant degree of discretion is vested in the hands of officials (elected and non-elected) in relation to infrastructure projects and town and rural planning. In the continuing economic crisis that followed the crash of 2008, there has been much less scope for corruption in relation to development and public contracts and public concern about these issues has waned.

Lithuania

Score 7

Overall, the regulatory environment in Lithuania is regarded as satisfactory. Its attractiveness was increased by the harmonization of Lithuanian legislation with EU directives in the preaccession period, as well as by good compliance with EU law in the post-accession period. In the World Bank's 2011 Worldwide Governance Indicators, Lithuania's score on the issue of the rule of law was 72.8 out of 100 (although the regional average was 66.1, the country's score was below that of most EU member states). The Lithuanian authorities rarely make unpredictable decisions, but the administration has a considerable degree of discretion in implementation. Although administrative actions are based on existing legal provisions, legal certainty sometimes suffers from the mixed quality and complexity of legislation, as well as frequent legislative changes.

The Ministry of Justice provides methodological advice on the lawmaking process, submits conclusions on draft legal acts and coordinates the monitoring of the existing legislation. The Public Management Improvement Program is designed to simplify legal acts and improve their quality. The unpredictability of laws regulating business activities, especially the country's tax regime, increased at the start of financial crisis in 2008 – 2009 when taxes were raised to increase budget receipts. However, since that time, successive governments have put considerable focus on creating a stable and predictable legal business environment.

Nevertheless, in some cases, laws are amended during the last stage of parliamentary voting, generally due to the influence of interest groups, a process that increases legal uncertainty. In addition, the fact that state policies shift after each parliamentary election, including the most recent one in autumn 2012, reduces predictability within the economic environment. This is particularly true with respect to major infrastructural projects such as the new nuclear-power plant, and threatens to undermine incentives to invest in long-term projects. Impact assessments for major legislative initiatives, especially those proposed by members of parliament, are often superficially conducted; this, along with insufficient monitoring of existing legislation, contributes to some uncertainty and contradictions in the legal environment.

Citation:

World Bank. <http://info.worldbank.org/governanc e/wgi/index.asp>

Portugal

Score 7 Portugal is an extremely legalistic society, and its legislation is prolix and complex. In combination with pressure for reform arising from Portugal's bailout and economic crisis, this causes some uncertainty as to what legislation will be applied, and how. This is best exemplified by some of the legal measures that the government proposed in its 2012 and 2013 budgets, which were subsequently deemed to be unconstitutional by the Constitutional Court.

The Accord Portugal made with the EC–ECB–IMF Troika included a “reform of the state” to reduce social costs. Therefore, a number of what were legally predictable programs including in health, transport, and education, are very likely to change as their funds are cut.

Slovenia

Score 7 Legal certainty in Slovenia has suffered from contradictory legal provisions and frequent changes in legislation. Many crucial laws are amended on a regular basis, and contradictions in legislation are frequently tested in front of the Constitutional Court. In almost one third of cases, the procedures of rule-making are misused or side-stepped by making heavy use of the fast-track legislation procedure. In the vast majority of cases, however, government and administration act on the basis of and in accordance with the law, thereby ensuring legal certainty.

South Korea

Score 7 There have been few changes in terms of legal certainty in the last two years, and signs of both improvement and deterioration can be found. On the one hand, there are fewer complaints from investors and businesses about government intervention, a trend that reflects the government's generally business-friendly attitude. On the other hand, the unpredictability of prosecutors' activities remains a problem. Unlike judges, prosecutors are not independent, and there have been cases when they have used their power to harass political opponents, even though independent courts later found the accusations groundless. In South Korea's “prosecutorial judicial system” this is particularly important, because it is the public prosecutor who initiates legal action. The most prominent case in recent years, in which critics argued that the prosecutor's office acted as a “political weapon” of the executive branch, was the case against former President Roh Moo-hyun.

Citation:
Joong Ang Daily 9 April 2010

United States

- Score 7 In the United States there is little arbitrary exercise of authority, but the rule of law in the United States does not necessarily provide a great deal of legal certainty either. Some uncertainty arises as a consequence of the adversarial nature of law in the United States. Policy implementation is one area that suffers. Adversarial tendencies have several negative effects, such as supplanting the authority of elective policymaking institutions, reducing administrative discretion, causing delay in decision-making, and increasing reliance on courts and judges to design policies and/or administrative arrangements. On important issues – for example, a significant environmental regulation – a government agency will undertake a lengthy, highly formalized hearing before issuing a decision. The resulting action will be appealed (often by multiple affected parties) to at least one level of the federal courts, and firms will not know their obligations under the new regulation for at least several years.

In recent years, certain constitutional issues have increased uncertainty across a range of issues. President Obama has continued, for example, to issue signing statements – comments issued by a president after signing a new bill into law – but has limited his use of them. Still, persons or organizations affected by statutory provisions that were the subject of presidential nullification through signing statements will not know where they stand legally, potentially for many years. On another front, the five conservative members of the Supreme Court have signaled a serious inclination to reverse eight decades of constitutional interpretation by returning to a much narrower reading of federal authority under the Commerce Clause of the constitution (granting Congress the authority to regulate interstate commerce). Indeed, in the Court's 2012 ruling upholding Obama's health care reform, all five of the conservatives held that the program would have failed the constitutional challenge if it had rested only on that authority. (Chief Justice Roberts upheld the most controversial feature of the reform – an individual mandate to purchase health insurance – as an exercise of the taxing power.)

France

- Score 6 Generally French authorities act according to legal rules and obligations set forth from national and supranational legislation. The legal system however

suffers still from a number of issues. Attitudes toward implementing rules and laws are rather lax. Following centuries of centralization and heavy top-down regulation, this attitude was described by political thinker Alexis de Tocqueville as “The rule is rigid, the practice is weak” (*La règle est rigide, la pratique est molle*). There are many examples of this attitude, common both at the central as well as at the local levels of government. Frequent is the delay or even the unlimited postponement of implementation measures, which may be used as a convenient political instrument for inaction: sometimes because pressure groups successfully impede the adoption of implementation measures, sometimes because the government has changed, and sometimes because the social, financial or administrative costs of the reform have been underestimated.

Another factor is the discretion left to the bureaucracy in interpreting existing regulations. In some cases, the administrative official circular, which is supposed to facilitate implementation of a law, actually restricts the impact or the meaning of existing legislation. In other cases, the correct interpretation of an applicable law results from a written or verbal reply by a minister in parliament. This is particularly true in the field of fiscal law, which is subject to detailed and changing interpretations by politicians as well as by the bureaucracy.

Finally, the most criticized issue of legal uncertainty derives from the multiple and frequent changes in legislation, in particular fiscal legislation. The business community has repeatedly voiced its concerns over the instability of rules, impeding any rational long-term perspective or planning. These changes usually are legally impeccable, but economically debatable.

Israel

Score 6

The State Comptroller, the Attorney General of Israel and the Supreme Court (ruling as the High Court of Justice when reviewing issues of this nature) are empowered to conduct legal reviews of the actions of the government and administration. The role, authority and responsibilities of these institutions are defined by law.

Though the Attorney General's exact job specifications are not delineated, he or she is the head of the state prosecution service, and represents the state in courts. The officeholder participates regularly in government meetings, and in charge of protecting the rule of law and the public interest. Therefore this office's legal opinion is critical, and even mandatory in many cases.

Every Israeli citizen has standing to file legal petitions. Thus, the Supreme Court hears direct petitions from citizens and Palestinian residents of the

West Bank and Gaza Strip (even though Israeli law has not been applied in these latter areas). These petitions, as filed by individuals or civic organizations, constitute an important instrument by which to force the state to explain and to justify its actions legally. Due to the large number of petitions filed to the High Court of Justice concerning the legal status of the territories occupied in 1967, the state has over the years released several legal opinions dealing with the problematic legal aspects of this issue.

The judiciary in Israel is independent and regularly rules against the government. Although the state generally adheres to court rulings, the Association for Civil Rights in Israel (ACRI) reported in 2009 that the state was in contempt of eight rulings handed down by the Supreme Court since 2006, including a 2006 rerouting of the West Bank security and separation barrier in the occupied Palestinian territories.

The Emergency Powers (Detention) Law of 1979 provides for indefinite administrative detention without trial. According to the human rights group B'Tselem, at the end of 2011 there were 4,281 Palestinians in Israeli jails. A temporary order in effect since 2006 permits the detention of suspects accused of security offenses for 96 hours without judicial oversight, compared with 24 hours for other detainees. Israel outlawed the use of torture to extract security information in 2000, but milder forms of coercion are permissible when the prisoner is believed to have vital information about impending terrorist attacks.

Citation:
Barzilay, Gad and David Nachmias," The Attorney General to the government: Authority and responsibility," IDI website September 1997 (Hebrew)
"Israel: 2013," Freedom house website.
<http://www.freedomhouse.org/report/freedom-world/2013/israel>
"B'Tselem's 2011 annual report on human rights in the Occupied Territories," 21.3.2012.
http://www.btselem.org/download/2011_annual_report_eng.pdf

Italy

Score 6 The actions of the government and administration are systematically guided by detailed legal regulations. Multiple levels of oversight – from a powerful Constitutional Court to a system of local, regional and national administrative courts – exist to enforce the rule of law. Overall the government and the administration are careful to act according to the existing legal regulations and thus their actions are fundamentally predictable. However, the fact that legal regulations are plentiful, not always consistent and change frequently reduces somewhat the degree of legal certainty. The government has backed efforts to simplify and reduce the amount of legal regulation but has yet to obtain the results expected. The difficult situation of public finance in the period under review led to spending cuts – especially under the Monti

government – which meant that local communities, municipalities, regions, their welfare systems, citizens and especially pensioners had to undergo unpredictable cuts which produced not only uncertainty but major heavy problems in the welfare system as a whole.

Japan

Score 6

In their daily lives, citizens enjoy considerable predictability with respect to the workings of the law and regulations. Bureaucratic formalities can sometimes be burdensome, but also offer relative certainty. Nevertheless, regulations are often formulated in a way that gives considerable latitude to administrators. For instance, needy citizens have often found it difficult to obtain welfare aid from local-government authorities. Such discretionary scope is deeply entrenched in the Japanese administrative system, and offers both advantages and disadvantages associated with pragmatism. The judiciary has usually upheld the discretionary decisions of the executive. However, the events of 3/11 exposed the judicial system's inability to protect the public from irresponsible regulation related to nuclear-power generation. Some observers fear that the same problems may ultimately emerge in other areas as well.

The idea of rule of law does not itself play a major role in Japan. Following strict principles without regard to changing circumstances and conditions would rather be seen as naïve and nonsensical. Rather, a balancing of societal interests is seen as demanding a pragmatic interpretation of law and regulation. Laws, in this generally held view, are supposed to serve the common good, and are not meant as immovable norms to which one blindly adheres.

Citation:

Carl F. Goodman: *The Rule of Law in Japan: A Comparative Analysis*, The Hague: Kluwer Law International, 2003

Luxembourg

Score
value_6

While Luxembourg is a constitutional state, citizens are often confronted with judicial vagueness or even a lack of legal guidance in administrative issues. Luxembourg's administrative culture is based on pragmatism and common sense rather than judicial subtleties, which means often that some matters are decided ad hoc and not necessarily with reference to official or established rules. Most people seem to accept this, trusting that the prevalent legal flexibility leads to accommodations or compromises that favor their own interests.

Courts are overloaded, understaffed and slow, taking far too long to settle cases brought before them. The government has begun to address this problem by hiring more judges. Since the creation of independent administrative courts and a constitutional court 15 years ago, the number of pending cases has increased considerably. This situation underlines Luxembourg's weak legal culture and lack of respect for due process, a key requirement for an effective judicial system per the European Court of Human Rights; Strasbourg frequently criticizes Luxembourg for its lengthy legal procedures.

Citation:

<http://www.tagesspiegel.de/politik/menschengerichtshof-eu-ruegt-deutschland-wegen-ueberlanger-verfahren/1917392.html>

Malta

Score 6

The Maltese constitution states that parliament may make laws with retrospective effect, a provision that does not encourage legal certainty. The government does however in general respect the principles of legal certainty, and government administration generally follows legal obligations; the evidence for this comes from the number of court challenges in which government bodies have prevailed. Other evidence suggests that government institutions sometimes make unpredictable decisions that go beyond given legal structures or are even in opposition to existing legal provisions, thus undermining the stability of the legal system and therefore the stability for a citizen. Documentation of this sort of behavior can be found in the reports of the National Audit Office, the Ombudsman Office and in some court decisions. In 2011, the National Audit Office severely criticized the methods by which decisions taken in the adjudication process for a major energy project had been taken, citing conflicts of interest involving top officials within the state corporation.

Court decisions have also highlighted certain deficiencies in executive decision-making. As a general rule, retroactivity may only be called upon if such an act does not impose obligations on citizens retroactively or does not have adverse effects on society. For example, in 2008 the Court of Appeal ruled for the plaintiff in a case (*Caruana Demajo v. Director of Social Security*) in which as a result of an amendment to the Social Security Act, the plaintiff received pension arrears for a period of four years in one lump sum and consequently, was taxed at the highest income tax bracket for that year.

Citation:

Report by the Auditor General on the Public Accounts 2011, National Audit Office, Malta.
Office of the Ombudsman, Malta, Annual Report 2011

Slovakia

- Score 6 Government and administration in Slovakia largely act on the basis of the law. However, legal certainty has suffered from frequent legal amendments and opaque laws. The high level of political polarization in Slovakia, combined with frequent changes in government, has made many laws rather short lived. One example is the law on inadequate conditions in retail chains which was adopted by the first Fico government to improve the position of domestic suppliers, abolished by the Radičová government and reenacted by the second Fico government in October 2012. A second case in point are the recurrent changes in the basic parameters of the pension system. Although fully in line with the constitution, changes such as these have led to uncertainty and confusion among the population and investors. A second problem has been the growing complexity of laws. As a result of frequent amendments, many laws have become opaque and inconsistent. Compared to the first Fico government, however, both the Radičová and the second Fico government have shown a greater respect for the law.

Bulgaria

- Score 5 Government and administration heavily refer to the law and take pains to justify their actions in formal and legal terms. However, two features of the legal environment reduce legal certainty. Firstly, the law gives the administration sizeable scope for discretion. Secondly, the existing legislation suffers from many internal inconsistencies and contradictions which make it possible to find formal legal justifications for rather different decisions. For both reasons, executive action is sometimes unpredictable.

Croatia

- Score 5 The Croatian legal system puts heavy emphasis on the rule of law. In practice, however, legal certainty is often limited. As regulation is sometimes inconsistent and administrative bodies frequently lack the necessary legal expertise, executive ordinances do not always comply with the original legal mandate. As a result, citizens often lack confidence in administrative procedure and frequently perceive acts of administrative bodies as arbitrary.

Cyprus

Score 5 Cyprus inherited administrative structures from British colonial rule that were well organized and functional. Though the foundations of the state apparatus have been somewhat weakened over the years, its operational capacities and adherence to the law have remained largely consistent. Some imbalances can be observed in the powers of the executive and the parliament due to peculiarities of the constitution; initially designed to share power in a two-community (Greek and Turkish) system, it led to a very powerful executive (president) when bi-communality collapsed in 1964. During the period under review, competition between the legislative and executive powers caused some strains, and led to the issuance of decisions and laws that the Supreme Court was called to review. In view of these factors, the scope of discretion left to the government may be considered as being too broad.

Indeed, while government actions are generally predictable, this margin of discretion does allow the government to make, avoid or delay decisions in a manner not consistent with the rule of law. Weak points have included the appointment process and compliance with proper law enforcement tactics. Delays in appointments or the selection of unqualified persons has resulted in some state bodies failing to carry out their missions. In addition, the state has failed to collect taxes and fines imposed on various occasions, thus undermining efforts to combat tax evasion and enforce the law.

A major issue of concern beyond simple predictability has been the slow pace of administrative activity. This has affected the smooth functioning of the state in various sectors, and has even led to disasters such as the Mari explosions and the degradation of the economy. Overall, these negative characteristics manifested by the public administration can be traced back to the widespread patterns of party clientelism, which undermine legal certainty.

Mexico

Score 5 To its credit, Mexico is in the process of changing – albeit slowly – from a society governed largely by the exercise of personal discretion to one based more on legal norms. This process is uneven, and has been seriously hampered by the increasing violence associated with the war on drugs. Both electoral law and ordinary justice have developed significantly since democratization got under way in the 1990s. It does not follow that the law is universally obeyed – that is far from being the case – but the authorities are much more constrained by the law than they once were. Correspondingly, the courts are much more powerful than they were just a few years ago.

Nevertheless, some scholars have claimed that the courts tend to be sympathetic to the ruling PRI. After all, a PRI government carried out Mexico's major judicial reform of 1994. Although the reform markedly professionalized the judiciary, it may have done less to alter its political bias. Moreover, the security problems caused by organized crime have led to a high level of impunity when it comes to organized crime.

Turkey

Score 5

Several articles in the Turkish constitution ensure that the government and administration act in accordance with legal provisions, and that citizens are protected from the despotism of the state. Article 36 guarantees citizens the freedom to claim rights, and Article 37 concedes the guarantee of lawful judgment. According to Article 125, administrative procedures and actions are subject to administrative review. Despite the existence of legal protections, some 16,879 applications from Turkey were pending before the European Court for Human Rights as of 31 December 2012. The main factors affecting legal certainty in the administration are a lack of regulation, the misinterpretation of regulations by administrative authorities (mainly on political grounds), and unconstitutional regulations that are adopted by parliament or issued by the executive. During ongoing trials concerning clandestine "Ergenekon" group and the alleged secular-military coup called "Operation Sledgehammer," more than 600 individuals – among them army officers and journalists critical of the government – were accused of allegedly attempting to remove or prevent the functioning of the government by force. In this context, the incumbent government is suspected to have exercised its influence on the judiciary to eliminate its political opponents.

Furthermore, the basic law on public administration, which failed to be enacted in 2004, aims at ensuring predictability and certainty in government. Law 5018 over public financial management and control also includes issues of legality, transparency and predictability. However, these concepts, as well as legal tools such as the formation of strategic plans, a performance budget and regulatory impact assessments, are not effectively incorporated in the government process. The government issued new guidelines to decrease bureaucracy and simplify procedures in 2012. And although the government introduced several anti-corruption policies during the period, unfair and partial treatment by the bureaucracy still exists. Some procedures and regulations such as an omnibus bill, additional provisions and provisional articles and so on can be considered legal obstacles against predictability.

Citation:

Serdar Yilmaz and Ayse Guner, Local Government Discretion and Accountability in Turkey, *Public Administration and Development*, V. 33, N. 2, 2013.
Selda Çağlar, *Hukuk Devletinin Hukuki Belirlilikl̄kesi Üzerinden Değerlendirilmesi*, Vedat Kitapçılık, 2013.

Romania

Score 4 Legal certainty declined considerably in the first half of 2012 when the country experienced multiple changes in governments (from Boc to Ungureanu to Ponta). The situation further deteriorated during the summer of 2012 as the Ponta government's campaign to impeach President Băsescu resulted in drastic and unpredictable changes to political institutions, as well as a number of significant policy U-turns in response to international pressures (e.g., regarding the change in the referendum threshold.) Even though the Social Liberal Union's (USL) comfortable majority following the December 2012 elections and the more cooperative relationship between the prime minister and the president should improve the prospects for legal certainty, policymaking has continued to be haphazard and to rely heavily on Government Emergency Ordinances (OUG) as legal instruments (53 in the first six months of 2013 following 95 OUGs in 2012). Since Article 115 of the constitution provides for OUGs only in exceptional circumstances, their frequency represents an abuse of the government's constitutional powers and undermines legal certainty.

Hungary

Score 3 Legal certainty in Hungary has strongly suffered from chaotic, rapidly changing and sometimes even retroactive legislation. In May 2013, the new Hungarian constitution, which went into effect on 1 January 2012, had already seen four rounds of extended amendments. In 2011, a total of 225 bills were passed. In 2012, the hectic pace continued with 213 bills passed. Some laws, for instance the Civil Service Act, were amended a dozen times. Poorly and hastily prepared draft bills have produced sub-standard laws that require subsequent amendments. Such legal activism has partly resulted from the frequent changes in the Fidesz government's political strategy. Moreover, the government has treated the law as an instrument for short-term fixes rather than a long-term institutional framework. The frequent and often surprising changes in the legal environment and in the tax system have provoked fierce criticism from businessmen and investors and, as documented by declining foreign direct investment figures, have dramatically reduced Hungary's attractiveness as a place for investment.

Indicator

Judicial Review

Question

To what extent do independent courts control whether government and administration act in conformity with the law?

41 OECD and EU countries are sorted according to their performance on a scale from 10 (best) to 1 (lowest). This scale is tied to four qualitative evaluation levels.

- 10-9 = Independent courts effectively review executive action and ensure that the government and administration act in conformity with the law.
- 8-6 = Independent courts usually manage to control whether the government and administration act in conformity with the law.
- 5-3 = Courts are independent, but often fail to ensure legal compliance.
- 2-1 = Courts are biased for or against the incumbent government and lack effective control.

Australia

Score 10

While the scope for judicial review of government actions is very much affected by legislation allowing for or denying such review, it is nonetheless the case that government and administrative decisions are frequently reviewed by courts. There is a strong tradition of independent judicial review of executive decisions. This tradition stems to a significant extent from the evolution of administrative law, which has spawned an administrative courts process through which complainants may seek a review of executive action. The executive branch generally has very little power to remove judges, which further contributes to the independence of the judiciary. Furthermore, there are many instances of courts ruling against the executive. The executive has in the past generally accepted the decisions of the courts or appealed to a higher court, rather than attempting to circumvent the decision.

There has been no significant change during the period under review.

Denmark

Score 10

There is judicial review in Denmark. Section 63 of the Danish constitution makes it clear that the courts can review executive action: "The courts of justice shall be empowered to decide on any question relating to the scope of the executive's authority." The judiciary is independent even though the government appoints judges, as explained in detail below. Section 64 of the constitution stipulates: "In the performance of their duties the judges shall be governed solely by the law. Judges shall not be dismissed except by

judgment, nor shall they be transferred against their will, except in such cases where a rearrangement of the courts of justice is made."

Administrative decisions can normally be appealed to higher administrative bodies first ,and after exhaustion of these possibilities, to the courts. The legal system has three levels with the possibility of appealing lower level judgments to high courts and eventually to the Supreme Court.

Citation:
Henrik Zahle, Dansk forfatningsret 2: Regering, forvaltning og dom. Copenhagen: Christian Ejlers' Forlag, 2004.

Estonia

Score 10 The structure of the Estonian court system is one of the simplest in Europe. The system is comprised, on one level, of county courts (4) and administrative courts (2), on the second of circuit courts (2) and at the top level is the Supreme Court. The Supreme Court simultaneously performs the functions of the highest court of general jurisdiction, of the supreme administrative court as well as of the constitutional court. The Supreme Court is composed of different chambers, the administrative law chamber being one of them. Administrative courts hear administrative matters. There are two administrative courts in Estonia with 27 judges (about 10% of all judges employed in Estonia's court system). Most judges in Estonia are graduates of the law school in Tartu University; there are also BA and MA law programs in two public universities in Tallinn. In total, the national government recognizes 14 study programs in law.

Judges are appointed by the national parliament or by the president of the republic for a lifetime, and they cannot hold any other elected or nominated position. Status, social guarantees and guarantees of the independence of judges are laid out in relevant legal acts (Kohtuniku staatuse seadus).

Together with the Chancellor of Justice, courts effectively supervise the authorities' compliance with the law and the legality of the official acts of the executive and legislative powers.

Germany

Score 10 Germany's judiciary works independently and effectively protects individuals against encroachments by the executive and legislature. The judiciary also has an inarguably strong position in reviewing the legality of administrative acts. The Federal Constitutional Court (FCC) ensures that all institutions of the state obey constitutional dictates. This Court acts only when application

is made to it, but it can declare laws to be unconstitutional and has exercised this power several times. In case of conflicting opinions, the decision made by the FCC is final; all other governmental and legislative institutions are bound to comply with its verdict (Basic Law, Art. 93).

The FCC engages in this review even in the case of policies that are extremely important to the government. For example, the court ruled that the provisions of the European Stability Mechanism (ESM) treaty were consonant with the German constitution, but set out requirements for the interpretation of the treaty. Most importantly, the FCC ruled that any payment obligations for Germany exceeding the €190 billion mentioned in the treaty must be approved by the German legislature. Moreover, the FCC strengthened the information rights of German parliamentarians, as government officials had been reluctant to provide the Bundestag with full information on this issue on the grounds of professional secrecy.

Under the terms of the Basic Law (Art.95 sec. 1), there are five supreme federal courts in Germany, including the Federal Constitutional Court (Bundesverfassungsgericht), the Federal Court of Justice (Bundesgerichtshof, BGH) as the highest court for civil and criminal affairs, the Federal Administrative Court (Bundesverwaltungsgericht), the Federal Finance Court (Bundesfinanzhof), the Federal Labor Court (Bundesarbeitsgericht) and the Federal Social Court (Bundessozialgericht). This division of tasks guarantees highly specialized independent courts with manageable workloads.

Germany's courts in general and the FCC in particular enjoy a high domestic and external reputation for independence. In the World Economic Forum's Global Competitiveness Report 2012 – 2013, Germany was ranked 7th place of 144 countries on the issue of judicial independence. Germany's court administration has also been successful in reducing the average duration of a lawsuit from 18.7 months in 2000 to 10.8 months in 2011 (Statistisches Bundesamt 2012).

New Zealand

Score 10

New Zealand does not have a constitutional court with concrete or abstract judicial review. While it is the role of the judiciary to interpret the laws and challenge the authority of the executive in the event that it exceeds its powers granted by Parliament, parliamentary decisions cannot be declared unconstitutional. The courts may, however, ask the House of Representatives to clarify clauses. There is an extended and professional hierarchical judicial system with the possibility of appeals. Since 2003, the highest court is the Supreme Court, taking the place of the Judicial

Committee of the Privy Council in London that had in the past heard appeals from New Zealand. A specific aspect is the Maori Land Court, which hears cases relating to Maori land (about 5% of the total area of the country). Equally important is a strong culture of respect for the legal system.

Citation:

http://www.justice.govt.nz/courts/m_aori-land-court (accessed May 11, 2013).

Norway

Score 10

Norway's court system provides for the review of actions by the executive. The legal system is grounded in the principles of the so-called Scandinavian civil-law system. There is no general codification of private or public law, as in civil-law countries. Rather, there are comprehensive statutes codifying central aspects of the criminal law and the administration of justice, among other things.

Norwegian courts do not attach the same weight to judicial precedents as does the judiciary in common-law countries. Court procedure is relatively informal and simple, and there is a strong lay influence in the judicial assessment of criminal cases.

At the top of the judicial hierarchy is the Supreme Court. Directly below the Supreme Court is the High Court. The majority of criminal matters are settled summarily in the district courts (Forhoersrett). A Court of Impeachment is available to hear charges brought against government ministers, members of parliament and Supreme Court judges, although it is very rarely used. The courts are independent of any influence exerted by the executive. Professional standards and the quality of the internal organization are regarded as high.

Sweden

Score 10

The Swedish system of judicial review works well and efficiently. Courts are allowed to question legislation that they find to be inconsistent with the constitution. In addition, Sweden has a system of judicial preview where the Council on Legislation ("lagrådet") is consulted on all legislation that potentially, or actually, relates to constitutional matters. The institution's review (or preview) goes beyond that assignment and includes an overall assessment of the quality of the proposed legislation. The government and the parliament have the right to ignore the council's advice, however.

At the same time, critics have increasingly questioned this model of judicial review over the past few years. They argue it is part of a more general trend toward the judicialization of politics, where courts and lawyers acquire an inappropriate level of influence over political decisions. However, these criticisms are not particular to Sweden; they are observable in most European countries.

Switzerland

- Score 10 The Swiss judicial system is guided by professional norms without political interference. The judicial system is based on professional training, though a mixture of lay and professionally trained judges serve at the local level in many cantons. Decisions by these judges are subject to review by higher professional courts. The Swiss judicial system varies substantially between cantons. This is due to Swiss federalism, which gives cantons great leeway in cantonal lawmaking and hence also in cantonal administration of justice. This also includes variations in the rules and examinations with regard to lawyers' admission to the bar.

Canada

- Score 9 The scope of judicial review was greatly expanded with the enactment of the Canadian Charter of Rights and Freedoms in 1982, which constitutionally entrenched individual rights and freedoms. Today, the courts in Canada pursue their reasoning free from the influence of governments, powerful groups or individuals.

Finland

- Score 9 Clearly, the predominance of the rule of law is weakened by the lack of a constitutional court in Finland. The need for such a court has been discussed from time to time, but plans have always been blocked by leftist parties. The parliament's Constitutional Law Committee has in fact assumed a position that resembles in essence that of a constitutional court as seen in other countries. The implication of this is that parliament is controlled by an inner-parliament, and this makes the Constitutional Law Committee arrangement poor compensation for a regular constitutional court. Also, although courts are independent in Finland, they do not decide on the constitutionality or the conformity with law of acts of government and government administration. Instead, the supreme supervisor of legality in Finland is the Office of the Chancellor of Justice. Together with the parliamentary ombudsman, this

office supervises authorities' compliance with the law and the legality of official acts of government, its members and of the president of the republic. The chancellor is also charged with supervising the legal behavior of courts, authorities and civil servants.

France

Score 9 Executive decisions are reviewed by courts that are charged with checking its norms and decisions. If a decision is to be challenged, the process is not difficult. Courts are organized on three levels (administrative tribunals, courts of appeal and the Council of State (Conseil d'Etat). The courts' independence is fully recognized, despite that, for instance, members of the Council of State serve as legal advisors to the government for most administrative decrees and all government bills.

This independence has been strengthened by the Constitutional Council, as far such independence has been considered a general constitutional principle, despite a lack of language as part of the constitution on the matter. In addition, administrative courts can provide financial compensation and make public bodies financially accountable for errors or mistakes. By transferring to public authorities the duty to compensate even when an error is made by a private individual (for instance, a doctor working for a public hospital) it ensures that financial compensation is delivered quickly and securely to the plaintiff. After this, it is up to the public authority to claim remuneration from the responsible party. Gradually, the Constitutional Council has become a fully functional court, the role of which was dramatically increased through the constitutional reform of March 2008. Since then, any citizen can raise an issue of unconstitutionality before any lower court. The request is examined by the Supreme Court of Appeals or the Council of State, and might be passed to the Constitutional Council. The council's case load has increased from around 25 cases to more than 100 cases a year.

Ireland

Score 9 A wide range of public decisions made by administrative bodies and the decisions of the lower courts are subject to judicial review by the high court. When undertaking a review, the court is generally concerned with the lawfulness of the decision-making process and the fairness of the decision. High court decisions may be appealed at the Supreme Court. The courts act independently and are free from political pressures.

The cost of initiating a judicial review can be considerable. This acts as a deterrent and reduces the effectiveness of the provisions for judicial review.

Lithuania

Score 9

Lithuania's court system is divided into courts of general jurisdiction and courts of special jurisdiction. A differentiated system of independent courts allows monitoring of the legality of government and public administrative activities. The Constitutional Court rules on the constitutionality of laws and other legal acts adopted by the Seimas or issued by the president or government. The Supreme Court of Lithuania reviews lower general-jurisdiction court judgments, decisions, rulings and orders.

Disputes that arise in the sphere of the public and internal administration (including the legality of measures passed, as well as activities performed by administrative bodies such as ministries, departments, inspections, services and commissions) are considered within the system of administrative courts. This consists of five regional administrative courts and the Supreme Administrative Court of Lithuania.

The overall efficiency of the Lithuanian court system, at least in terms of disposition time and clearance rate, was assessed by the EU Justice Scoreboard as good. This indicates that the system is capable of dealing with the volume of incoming cases. However, the number of cases dealing with the legality of administrative acts and judgments delivered by the administrative courts is constantly increasing. According to opinion surveys (i.e., Vilmorus surveys) a comparatively small share of population trusts the courts, although the Constitutional Court enjoys a high level of trust.

Citation:

The EU Justice Scoreboard, see the Lithuanian case at http://ec.europa.eu/justice/effective-justice/files/cepej_study_justice_scoreboard_en.pdf.

For opinion surveys see <http://www.vilmorus.lt/en>

Luxembourg

Score 9

The existence of administrative jurisdictions and the Constitutional Court guarantee an independent review of executive and administrative acts. The Administrative Court and the Administrative Court of Appeals are legal bodies with a heavy case load; annual reports quote more than 900 judgments by the Administrative Court from 2011 to 2012 and 269 judgments by the Administrative Court of Appeals in the same period. These judgments and appeals indicate that judicial review is actively pursued in Luxembourg.

Citation:
Rapport d'activité du Ministère de la Justice 2012:
http://www.gouvernement.lu/publikations/informations_gouvernementales/rapports_activite/rapports-activite-2012/15-justice/just.pdf

Poland

- Score 9 Judicial review has further improved during the review period. The Constitutional Tribunal enjoys a good reputation among citizens, and some 80% of respondents in a survey consider its work as positive. This stands in clear contrast to the lower courts, which are widely considered to work ineffectively. After the 2011 parliamentary elections, the newly appointed Justice Minister Jarosław Gowin launched a number of reforms aimed at increasing the effectiveness of courts. In 2011 court procedures were simplified, and then some 79 small regional courts were merged with larger courts, in an effort to distribute justices' workload more evenly. Finally, the criminal procedure code was reformed with the Anglo-Saxon model in mind, largely in order to expedite court procedures.

Austria

- Score 8 Austrian laws can be reviewed by the Constitutional Court on the basis of their conformity with the constitution's basic principles. According to EU norms, European law is considered to be superior to Austrian law. This limits the sovereignty of Austrian law.

Within the Austrian legal system, all government or administrative decisions must be based on a specific law, and laws in turn must be based on the constitution. This is seen as a guarantee for the predictability of the administration. The three high courts (Constitutional Court, Administrative Court, Supreme Court) are seen as efficient watchdogs of this legality.

The country's administrative courts effectively monitor the activities of the Austrian administration. Civil rights are guaranteed by Austrian civil courts. Access to Austrian civil courts requires the payment of comparatively high fees, creating some bias toward the wealthier portions of the population. Notwithstanding the generally high standards of the Austrian judicial system, litigation proceedings take a rather long time (an average of 135 days for the first instance) with many cases ultimately being settled through compromises between the parties rather than by judicial ruling. Expert opinions play a very substantial role in civil litigations, broadening the perceived income bias, since such opinions can be very costly to obtain. The rationality and professionalism of proceedings very much depend on the judges in charge,

as many judges, especially in first-instance courts, lack the necessary training to meet the standards expected of a modern judicial system.

Belgium

- Score 8 The Constitutional Court (until 2007 called the Cour d'Arbitrage) is responsible for controlling the validity of laws adopted by the executive branch. The Council of State (Conseil d'État/Raad van Staat) has supreme jurisdiction over the validity of administrative acts. These courts operate independently of government, often questioning or reverting executive branch decisions. For example, in March 2010 the Council of State invalidated a decision of the Flemish government to ban in schools all visible religious symbols, and forced the federal administration to allow a teacher suspected of "sympathy with terrorism" to teach Dutch to prisoners. That same month, the Constitutional Court declared legal a controversial €250 million tax levied by the federal government against electricity producers. However, the Council of State is split in two linguistic chambers, one Dutch-speaking and one French-speaking. These chambers are separately responsible for judging administrative acts of regions and communities, which poses challenges with regard to government independence, especially when a case involves language policy or the balance of powers between different government levels.

Chile

- Score 8 Chile's judiciary is independent and performs its oversight functions appropriately. Mechanisms for judicial review of legislative and executive acts are in place. The 2005 reforms enhanced the Constitutional Tribunal's autonomy and jurisdiction concerning the constitutionality of laws and administrative acts. Arguably, the Tribunal is one of the most powerful such tribunals in the world, able to block and strike down government decrees and protect citizens' rights against powerful private entities. But while the courts' independence has been consolidated since the return of democracy in 1990, military courts are still involved in certain domains of the law and in court cases involving military personnel and terrorists.

Cyprus

- Score 8 Judicial review is effective and efficient in all fields of administration, but can be affected by procedural delays. The organization and professionalism of courts do serve to protect citizens' rights, since administrative decisions

affecting citizens are subject to review by the courts. Decisions by trial courts and the administration can be reviewed by the Supreme Court. More particularly, decisions by the administration at various levels and by independent government organizations can be reviewed by the Supreme Court (First (Revisional) and Second (Appellate) Instance). Appeals are decided by three or five judges, with highly important cases needing a full quorum (13 judges).

The efficiency of judicial review has since 2006 been affected by delays attributable to insufficient staffing, limited resources and the high number of cases filed. This often gives authorities a considerable period of time to impose decisions despite appeals.

Czech Republic

Score 8 The Czech courts have generally operated independently of the executive. The most active control on executive actions is the Constitutional Court, which has triggered annoyance across much of the political spectrum with its judgments. Many of these judgments could be said to favor the political right, but the Constitutional Court also decided to annul from December 2011 new laws that cut some social security benefits on the grounds that they had been rushed through before the Senate elections, which were set to ensure a majority for the left. In the period under study, the political actor most in conflict with the Constitutional Court was the then President Václav Klaus.

Iceland

Score 8 With a few notable exceptions, Iceland's courts are not generally subject to pressure by either the government or powerful groups and individuals. The jurisdiction of the Supreme Court to rule on whether the government and administration have acted in conformity with the law is beyond question. According to opinion polls, confidence in the judicial system ranged between 50% and 60% before the economic collapse in 2008, before collapsing to about 30% in 2011. It has since recovered slightly, to around 40% in both 2012 and 2013.

Many observers consider the courts biased, partly because virtually all judges attended the same law school and few have chosen to supplement their education by attending universities abroad. Of the six Supreme Court justices who ruled the constitutional-assembly election of 2010 to be null and void, five were appointed by ministers of justice from the Independence Party, the party of the three individuals who filed the technical complaints about the election.

Since the 2011 merger of the Ministry of Justice and Human Rights into the Ministry of the Interior, judges have been appointed by the minister of the interior. All vacancies are advertised, and the hiring procedure is transparent. However, there have been cases in which the minister's reasoning behind Supreme Court or district court appointments has caused controversy.

In connection with Iceland's application for EU membership in 2009, the European Union expressed concern over the recruitment procedures for judges. The constitutional bill approved by 67% of the electorate in the 2012 referendum proposed that judicial appointments either be approved by the president or by a two-thirds vote of parliament.

Citation:
www.capacent.is

Israel

Score 8 The Supreme Court is generally viewed as a highly influential institution. It has repeatedly intervened in the political domain to review the legality of political agreements, decisions and allocations.

Since a large part of the Supreme Court's work has in recent years been devoted to exercising judicial review over the activities of a right-leaning government and parliament, it is often criticized for being biased toward the political left. However, the high court was ranked by Jewish citizens as among the top four most trustworthy governmental institutions, and as the most trustworthy institution according to Arab-Israeli citizens in an annual survey conducted by the IDC (2012).

The independence of the judiciary system is established in the basic law on the judiciary (1984), various individual laws, the ethical guidelines for judges (2007), numerous Supreme Court rulings, and in the Israeli legal tradition more broadly. These various sources of authority provide instructions governing judicial activity, require judgments to be made without prejudice, ensure that judges receive full immunity, bar judges from holding most other public or private positions, and more. Judges are regarded as public trustees, with an independent and impartial judicial authority regarded as a critical part of the democratic order.

The spirit of judicial independence is also evident in the procedure for nominating judges and in the establishment of the Ombudsman on the Israeli Judiciary. This latter office was created in 2003, with the aim of addressing issues of accountability inside the judicial system. It is an independent institution that investigates public complaints or special requests for review

from the Supreme Court president or the secretary of justice. The Ombudsman issues an annual report of its work, investigations and findings from all judicial levels, including the rabbinic courts.

Citation:

Kremnitzer, Mordechai, "Judicial Responsibility at its Best," IDI website 31.5.2012 (Hebrew).
Svorai, Moran, "Judicial Independence as a main feature in judicial ethics" (2010), . (Hebrew)
<http://www.mishpat.ac.il/files/650/3168/3185/3186.pdf>
Herman, Tamar, Nir Atmore, Ella Heller and Yuval Lebel, "Israeli Democracy index 2012," The Israel Democracy Institute 2012. (Hebrew)
<http://www.idi.org.il/media/1112579/%D7%9E%D7%93%D7%93%20%D7%94%D7%93%D7%9E%D7%95%D7%A7%D7%A8%D7%98%D7%99%D7%94%20%D7%94%D7%99%D7%A9%D7%A8%D7%90%D7%9C%D7%99%D7%AA%202012.pdf>
"The Ombudsman on judges office:Annual Report 2011," 2012. (Hebrew)
<http://index.justice.gov.il/Units/NezivutShoftim/pirsomeyhanaziv/Doch/Documents/2012.pdf>

Italy

Score 8

Courts play an important, vital and decisive role in the Italian political system. In the temporary absence of reliable governments, the just and fair functioning of the state is guaranteed by control of political decision-making not only by the president of the republic but also by courts and higher courts. The Italian judicial system is strongly autonomous from the government. Recruitment, nomination to different offices and careers of judges and prosecutors remain out of the control of the executive. The Superior Council of the Judiciary (Consiglio Superiore della Magistratura) governs the system as a representative body elected by the members of the judiciary without significant influence by the government. Ordinary and administrative courts are independent from the government, and are able to effectively review and sanction government actions. But often court decisions come late because of their length – especially in constitutional affairs. So it might happen that clearly unconstitutional provisions are effective for more than one year before being declared illicit.

At the highest level, the Constitutional Court ensures the conformity of laws with the national constitution. It has often rejected laws promoted by current and past governments. Access to the Constitutional Court is reserved for courts and regional authorities. Citizens can raise appeals on individual complaints only within the context of a judicial proceeding, and these appeals must be assessed by a judge as "not manifestly unfounded and irrelevant." Conflicts between executive and judiciary which were frequent under the Berlusconi government have become much more rare since December 2011 under the Monti government. The main problem is rather the length of judicial procedures, which sometimes reduces the effectiveness of judicial control.

Latvia

Score 8

Judicial oversight is provided by the Administrative Court and the Constitutional court. The Administrative Court, created in 2004, reviews cases brought by individuals. The court is considered to be impartial; it pursues its own reasoning free from inappropriate influences.

However, the court system suffers from a considerable case overload, leading to substantial delays in proceedings. According to the Court Administration statistical overviews, in 2011, 61% of Administrative District Court cases took over 12 months to resolve, of which 10% required over 24 months. In 2012, some improvement was noted, with 49% of cases exceeding 12 months, of which 8% exceeded 24 months. The Administrative Regional Court faced a similar backlog, with 36% of cases requiring over 12 months in 2011, and 45% in 2012.

The Constitutional Court reviews the constitutionality of laws and occasionally that of government or local-government regulations. In 2012, five cases were brought regarding government regulations, dealing respectively with tax-authority procedures, the number and remuneration of publicly held companies' board members, the applicability of Latvian language requirements to elected officials at the local government level, and (in two cases) the reimbursement of medical expenditures. Additionally, one case regarding local-government regulations was heard.

Citation:

1. Judicial Information System Database, Available at: http://tis.ta.gov.lv/tisreal?FORM=TIS_STaT_O
2. The Constitutional Court Case Database, Available at: <http://www.satv.tiesa.gov.lv/?lang=1&mid=19>
3. Valts Kalniņš (2011), Assessment of National Integrity System, p.99, Published by DELNA, Available at: http://www.transparency.org/whatwedo/pub/national_integrity_system_assessment_la_tvia, Last assessed: 21.05.2013.

Portugal

Score 8

The judicial system is independent and it is very active in ensuring that the government conforms to the law. Indeed, 2011 – 2013 marked a high point of judicial intervention, with the Constitutional Court rejecting the key measures of the government's budget in both 2012 and 2013 as unconstitutional.

In addition to the Constitutional Court, there are a number of other courts. The highest body in the Portuguese judicial system is the Supreme Court, constituted by four Civil Chambers, two Criminal Chambers, and one Labor Chamber. There is also a Disputed Claims Chamber, which tries appeals

filed against the decisions issued by the Higher Judicial Council. The Supreme Court determines appeals on matters of law and not on the facts of a case, and has a staff of 60 justices (Conselheiros).

There is an attorney general, who, while nominated by the Assembly of the Republic, is fully independent. There are, however, some tensions, or different understandings, which raise questions regarding the level of independence and effectiveness of the judicial system.

There are also district courts, appeal courts, and specialized courts plus a nine-member Constitutional Court that reviews the constitutionality of legislation. In addition, there is the Court of Auditors. This is a constitutionally prescribed body, and is defined as a court in the Portuguese legal system. It audits public funds, public revenue, assets and expenditure to ensure that “the administration of those resources complies with the legal order.” The Court of Auditors is active in auditing and controlling public accounts. In total, there are more than 500 courts in Portugal and 3,000 judges. Even so, there are shortages of judges in relationship to the number of cases and the delays in reaching judicial decisions are a problem.

Slovenia

- Score 8 While politicians try to influence court decisions and often publicly comment on the performance of particular courts and justices, Slovenian courts act largely independently. Independence is favored by the fact that judges enjoy tenure. However, courts are overrun by the inflow of new cases and suffer from a heavy backlog. In 2011, the Parliament passed various measures to make the work of the courts more effective and to improve the qualification of judges. In 2012, the transfer of the Prosecutor’s Office from the Justice Ministry to the Ministry of Interior raised some concerns about the separation of powers. The 2013 austerity measures infringed upon the effectiveness of the judiciary, as they reduced its public funding by 7.5%.

South Korea

- Score 8 The South Korean judiciary is highly professionalized and fairly independent, though not totally free from governmental pressure. In February 2012 a controversy arose about the dismissal of Judge Seo Ki-ho of the Seoul Northern District Court after he posted critical remarks on President Lee on his Twitter and Facebook accounts. He was allegedly dismissed because he failed a performance review, but many judges protested the move and suspected political interference. State prosecutors are from time to time ordered to launch investigations (especially into tax matters) aimed at

intimidating political foes or other actors not toeing the line. The Constitutional Court has underlined its independence through a number of remarkable cases in which courts have ruled against the government. For example, a court acquitted a blogger (called "Minerva") accused by the government of damaging the nation's credibility and destabilizing the currency market. In another case, the makers of a television program on the MBC channel which triggered protests against US beef imports, were found not guilty of defamation. Courts have also thrown out many (but not all) of the cases against protesters accused of organizing illegal protests. However, there have also been cases that call the independence of the courts into question. For example, Korean Supreme Court Justice Shin Young-chul used his position to influence the decisions of subordinate courts during the trials of protesters who had demonstrated against the import of US beef in 2008. Justice Shin was referred to the court's ethics commission, but did not step down. Under South Korea's version of centralized constitutional review, the Constitutional Court is the only body with the power to declare a legal norm unconstitutional. The Supreme Court, on the other hand, is responsible for reviewing ministerial and government decrees. However, in the past, there have been cases with little connection to ministerial and government decrees, in which the Supreme Court has also demanded the ability to rule on acts' constitutionality and, hence, interfered with the Constitutional Court's authority. This has contributed to legal battles between the constitutional and supreme courts on several occasions. Nevertheless, the Constitutional Court has become a very effective guardian of the constitution since its establishment in 1989.

Citation:
Korea Times 24 September 2009
Joong Ang Daily 2 April 2009
Korea Times 20 April 2009
Korea Times 20 January 2010
Croissant, Aurel (2010) Provisions, Practices and Performances of Constitutional Review in Democratizing East Asia, in: The Pacific Review (forthcoming).
Kim, J. (2009) „Government Reform, Judicialization, and the Development of Public Law in the Republic of Korea‘, in T. Ginsburg and A. H. Y. Chen (eds) Administrative Law and Governance in Asia: Comparative Perspectives, New York: Routledge, pp. 101-127.
„Constitutional Court upholds the death penalty“, The Hankyoreh, 27 February 2010,
<http://asiadeathpenalty.blogspot.com/2010/02/south-korea-news-report-on.html>

Spain

- Score 8 The judicial system is independent and it usually has the capacity to control whether the Spanish government and administration act according to the law. Specialized courts, regulated by the constitution and Law 29/1998 on the administrative-contentious jurisdiction (as last amended by Law 37/2011), can review actions taken and norms adopted by the executive, effectively ensuring legal compliance. The administrative jurisdiction is made up of a

complex network, including local, regional and national courts (the administrative chamber of the National High Court for special cases, and the administrative chamber of the Supreme Court, which is the last level of appeal). In addition, the Constitutional Court may review governmental legislation (i.e., decree-laws or “decretos-ley”) and is the last resort in appeals to ensure that the government and administration respect citizens’ fundamental rights. Because of the confrontational style of Spanish policymaking and the fact that judges may be independent but are not ideologically neutral, the judiciary’s mandate to serve as a legal check on government actions can at some points be deemed politically obstructive.

United Kingdom

Score 8 The United Kingdom has no written constitution and no constitutional court and therefore no judicial review which is comparable to that in the United States or many European countries. While courts have no power to declare parliamentary legislation unconstitutional, they scrutinize executive action to prevent public authorities from acting beyond their powers. The United Kingdom has a sophisticated and well-developed legal system which is highly regarded internationally and based on the regulated appointment of judges. Judicial oversight is in addition provided by the European Court of Human Rights, to which UK citizens can take recourse.

In recent years, courts have strengthened their position in the political system; in cases of public concern about government action, public enquiries have often been held, but the implementation of their recommendations is ultimately decided by government, as the public lacks legal or judicial power.

United States

Score 8 The United States is essentially the originator of expansive, efficacious judicial review of legislative and executive decisions in democratic government. The Supreme Court’s authority to overrule legislative or executive decisions at the state or federal level is virtually never questioned, although the Court does appear to avoid offending large majorities of the citizenry or officeholders too often or too severely. It would be simplistic, however, to conclude that judicial review ensures that legislative and executive decisions comply with “law.” It certainly does preclude blatant violations of law with adverse consequences for citizens, groups, or state or local governmental bodies that are capable of bringing lawsuits. But the direction of judicial decisions depends heavily on the ideological tendency of the courts at the given time.

Greece

Score 7

Courts are independent of the government and the legislature. Members of the judiciary are promoted through the internal hierarchy of the judiciary. There is an exception, namely the appointment of the presidents and vice-presidents of the highest civil law and criminal law court (Areios Pagos) and administrative law court (Symvoulio tis Epikrateias) for which a different process is followed.

Justices are recruited through independent entrance examinations and are then trained in a post-graduate level school. The court system is self-managed. In a formal sense, courts in Greece are able to control whether government and administration act in conformity with the law.

Whether courts do so efficiently is another matter, because they cannot ensure legal compliance. They act with delays and pass contradictory judgment, owing to the plethora of laws and the opaque character of regulations. One example of a law-infested policy sector is town planning, where courts have not managed to control the government and administration in a sustained manner.

In 2011 – 2013 justices showed an unprecedented level of judicial activism. Prompted by citizens challenging government policies, they issued court decisions on the constitutionality of migration laws, pension laws and public employment laws passed by the government in the context of Greece's fulfillment of the conditions set by the country's creditors. In the period under review, justices made their presence felt as never before.

Malta

Score
value_6

Malta has a strong tradition of judicial review, and the courts have traditionally exercised restraint on the government and its administration. Judicial review is exercised through Article 469A of the Code of Organization and Civil Procedure and consists of a constitutional right to petition the courts to enquire into the validity of any administrative act or declare such act null, invalid or without effect. Recourse to judicial review is through the regular courts (i.e., the court of civil jurisdiction) assigned two or three judges or to the Administrative Review Tribunal and must be based on the following: that the act emanates from a public authority that is not authorized to perform it; or that a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon; or that the administrative act constitutes an

abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or as a catch-all clause, when the administrative act is otherwise contrary to law.

Litigation in Malta is costly and court cases unnecessarily long, so consequently many citizens are deterred from seeking legal redress in the courts. The length of time taken to decide cases also creates uncertainty, allowing for a large degree of insecurity among individuals who challenge government or administrative decisions. Indeed, the EU Justice Scoreboard concluded that Malta has the least efficient judicial system in the European Union with regard to the duration of cases. Additionally, the arraignment on charges of bribery and corruption of a senior judge has undermined public confidence in the courts.

Citation:

http://ec.europa.eu/justice/effectivenessofjustice/files/justice_scoreboard_communication_en.pdf
<http://www.timesofmalta.com/articles/view/20130506/local/european-commission-says-malta-judicial-reform-must-be-made-a-priority.468460>

Netherlands

Score 7

Judicial review for civil and criminal law in the Netherlands involves a closed system of appeals with the Supreme Court as the final authority. The Dutch Supreme Court, however, unlike the US Supreme Court, is barred from judging parliamentary laws in terms of their conformity with the constitution. A further constraint is that the Supreme Court must practice cassation justice – that is, it is mandated with ensuring the procedural quality of lower court practices. Should it find the conduct of a case (as carried out by the defense and/or prosecution but not the judge him/herself) wanting, it can only order the lower court to conduct a retrial. It ignores the substance of lower courts' verdicts, since this would violate their judges' independence. Public doubts over the quality of justice in the Netherlands have been raised as a result of several glaring miscarriages of justice. This has led to renewed opportunities to re-open tried cases in which questionable convictions have been delivered. Whereas the Supreme Court is part of the judiciary and highly independent of politics, administrative appeals and review are allocated to three High Councils of State (Hoge Colleges van Staat), which are subsumed under the executive, and thus not independent of politics: the Council of State (serves as an advisor to the government on all legislative affairs and is the highest court of appeal in matters of administrative law); the General Audit Chamber (reviews legality of government spending and its policy effectiveness and efficiency); and the ombudsman for research into the conduct of administration regarding individual citizens in particular. Members are nominated by the Council of Ministers and appointed for life (excepting the ombudsman, who serves six years only) by the States General.

Appointments are never politically contentious. In international comparison, the Council of State holds a rather unique position. It advises government in its legislative capacity, and it also acts as an administrative judge of last appeal involving the same laws. This situation is only partly remedied by a division of labor between an advisory chamber and a judiciary chamber.

Citation:

Andeweg, R.B. and G.A. Irwin, Governance and Politics of the Netherlands. Hounds-mills, Basingstoke: Palgrave Macmillan (pages 183-190).

Japan

Score 6 Courts are formally independent of governmental, administrative or legislative interference in their day-to-day business. The organization of the judicial system and the appointment of judges are responsibilities of the Supreme Court, so the appointment and the behavior of Supreme Court justices are of ultimate importance. While some have lamented a lack of transparency in Supreme Court actions, the court has an incentive to avoid conflicts with the government, as these might endanger its independence in the long term. This implies that it tends to lean somewhat toward government positions so as to avoid unwanted political attention. Perhaps supporting this reasoning, the Supreme Court engages only in concrete judicial review of specific cases, and does not perform a general review of laws or regulations. Some scholars say that a general judicial-review process could be justified by the constitution.

The lenient way in which courts have treated the risks associated with nuclear power, widely discussed after the 3/11 events, also fits this appraisal. However, several courts have recently taken a stiffer line against parliament, which failed to create a revised electoral system for the December 2012 lower-house elections as ordered by a March 2011 Supreme Court verdict.

As one aspect of judicial reform, lay judges (saiban-in) have recently been introduced. The first cases handled by both professional and lay judges were heard in 2009. A significant share of the traditional judiciary still seems to be quite skeptical of lay judges, although a Supreme Court review in 2012 was largely positive.

Mexico

Score 6 The Supreme Court, having for years acted as a servant of the executive, has in recent years become much more independent and somewhat more assertive. Court decisions are less independent at the lower level, however,

where there is significant local variance and where judges are often sympathetic to the dominant ruling party, the PRI. At the local level, corruption and lack of training for court officials are other shortcomings. These problems are of particular concern because the vast majority of reported crime takes place at the state and local level – and few suspects are ever brought to trial.

Slovakia

- Score 6 The Slovakian court system has traditionally suffered from a low quality of decisions, a high backlog of cases, rampant corruption and a high level of government intervention. The Radičová government tried to address these problems by increasing transparency through public access to court proceedings and the publication of court decisions on the internet, as well as by changing the recruitment and promotion of lower court justices. Moreover, Justice Minister Lucia Žitňanská dismissed 14 regional and district justices for delaying court proceedings, bias and non-compliance with the random assignment of cases. Her changes were strongly opposed by Supreme Court Chair Stefan Harabin, a close ally of Robert Fico, the head of the previous government. This political polarization also shaped the role of the Constitutional Court. Slovak politics returned to a pattern of decision-making which was notorious in the mid-1990s, with the Court becoming a final arbiter settling political controversies.

Citation:
Bojarski, Lucasz/Köster, Werner Stemper, The Slovak judiciary: its current state and challenges. Report prepared for the Open Society Foundation, Bratislava 2012: 71-75, 90-95.

Bulgaria

- Score 5 Courts in Bulgaria are formally independent from other branches of power and have large competencies to review the actions and normative acts of the executive. In practice, however, court reasoning and decisions are frequently influenced by outside factors, including informal political pressure and, even more importantly, the influence of private sector groups and individuals through corruption and nepotism. The performance of the Bulgarian judicial system is considered to be relatively poor, both within the country and by the European Commission, which has regularly reported on this matter under the Cooperation and Verification Mechanism for Bulgaria.

Croatia

Score 5

The independence and quality of the judiciary were a major issue in the negotiations over EU accession. Reforms in early 2013 changed the process of appointing justices of the highest regular courts (Supreme Court, High Commercial Court, High Misdemeanor Court and High Administrative Courts) with a view to increasing judicial independence. Justices are now selected by an independent council (the State Judicial Council, or SJC) consisting of their judicial peers (nominated and elected in a process in which judges of all courts participate), two representatives of legal academia (elected within legal academia by their peers) and two members of the Sabor (elected by a parliamentary majority). The SJC has a mandate to elect judges on the basis of prescribed professional criteria and through a transparent procedure. Judges are appointed for life, and their appointment can be revoked only in extraordinary circumstances by the SJC. Despite these reforms, however, the system of administrative courts still shows significant signs of inefficiency. Because of the traditional formalistic understanding of their responsibilities, administrative courts tend to limit their decisions to a simple declaration of formal illegality of administrative acts while, at the same time, avoiding decisions that would resolve a dispute. Consequently, citizens are often referred back for a new decision to the same administrative bodies that violated their rights in the first place without any guarantees that the new decision will correct the original mistakes. As a result, administrative procedures frequently take an unreasonable length of time.

Hungary

Score 5

While the Constitutional Court and other courts have played an important balancing role and have decided against the government in a number of cases, the role and the independence of the Hungarian judiciary have declined under the Orbán-led government. A controversial constitutional amendment in March 2013 continued the curtailment of competencies of the Constitutional Court that started in 2010 and 2011. The Constitutional Court is now no longer allowed to reject constitutional amendments on matters of substance or to base its rulings on its decisions before the enactment of the new constitution in January 2012. Parallel to the weakening of the Constitutional Court, the government's decision to staff the Constitutional Court with Fidesz loyalists, sometimes not even specialists in constitutional law, has continued. Concerns about the independence of the judiciary were also raised by a temporary decrease in the retirement age for justices, which resulted in the forced retirement of 194 justices in March 2012 and their subsequent replacement with justices close to Fidesz. Moreover, the presidents of the National Judicial Office (OBH) and of the Kúria (Curia, the

earlier Supreme Court), the two bodies in charge of appointing justices and overseeing the court system since January 2012, have been very close to the government and have been widely criticized for taking biased decisions. The European Commission has strongly criticized the OBH's right to shift proceedings from one court to another.

Romania

Score 5 The Constitutional Court is charged with ruling whether legislative acts comply with constitutional provisions and in past years it has generally performed this function fairly independently. However, the Constitutional Court has come under intense pressure in the past year, particularly in the run-up to the July 2012 impeachment referendum, when the government threatened to remove pro-Băsescu justices and then reduced the Court's jurisdiction. Following the failure of the referendum to reach the 50% turnout, the ruling Social Liberal Union (USL) pressured the Court to ratify the referendum anyway on grounds that the voter lists were inaccurate but the Court eventually ruled that the referendum was invalid and the government eventually backed down under international pressure. While the frontal attacks on the Constitutional Court have abated, the campaign against judicial independence by the government and its mass media allies has continued even after the December 2012 elections, at least in part because the new Romanian Parliament has 23 members of parliament either under investigations, in pending trials or awaiting sentence. On the other hand, corruption plagues the judiciary as well, as illustrated by the recent arrests of two judges of the Bucharest Tribunal for influence peddling and bribery in exchange for favorable decisions. Combined with the inadequate training of judges (particularly in the lower courts) this judicial corruption undermines the legitimacy of the legal system and thus makes it more vulnerable to political pressure.

Citation:
Council of Europe (2013) The Romanian Judiciary http://www.coe.int/t/dghl/cooperation/cepej/profiles/CourtSystemRomania_en.pdf

Turkey

Score 5 Article 125 of the constitution states that all decisions and actions of the government administration are subject to judicial review. However, acts of the president and the decisions of the Supreme Military Council are excluded from judicial review. The institution of the president is considered to be the Kemalist "conscience" of the Republic (Article 104, paragraph 1 of the constitution). The main responsibilities and powers of the president are

centralistic and aim to protect the supremacy of Kemalism (the founding ideology of the modern state of Turkey) in all aspects, for example in education. Some presidential acts, such as the appointment of university rectors or members of the Supreme Council for Higher Education, are part of the education administration.

Although judicial reform was one of the major objectives of the government during the review period, the independence of the judiciary, as well as professionalism, organization and fair trials, are considered to be basic judicial issues. The organization and working conditions of the Supreme Council of Judges and Prosecutors need to be revised.

The decisions of the Supreme Military Council are administrative in nature and affect the individual rights of military personnel. According to Article 159 of the constitution, decisions by the Supreme Council of Judges and Public Prosecutors are not subject to judicial review. Parliamentary resolutions, such as declarations of martial Law or war, or the decision to send Turkish troops to a foreign country, are not subject to judicial review. Finally, under Article 148 of the constitution, the Constitutional Court cannot review ordinances to amend laws that are passed during a period of martial law or during a state of emergency.

The Supreme Council of Judges and Prosecutors' procedure for electing members to the Court of Cassation and the Council of State is in need of reform. While the ex officio membership of the undersecretary in Justice Ministry should be ended, the justice minister could still continue to sit as president of the Supreme Council, provided that his influence was reduced to the exercise of representative functions.

According to Article 2 of Law 2461, the justice minister and the ministry's undersecretary are members of the Supreme Council of Judges and Public Prosecutors; this involvement of the executive in judiciary matters undermines the separation of powers. All Supreme Council decisions which potentially interfere with the independence, the impartiality or the individual rights of judges or public prosecutors should be subject to judicial review.

Civilian oversight during the review period was still lacking in investigations of human rights abuses or of acts by the Gendarmerie. Furthermore, legal provisions that deal with the composition and powers of the Supreme Military Council need reforming, to ensure appropriate civilian control. The debate over reforms of the military's internal service law is at the time of writing still ongoing.

Indicator

Appointment of Justices

Question

To what extent does the process of appointing (supreme or constitutional court) justices guarantee the independence of the judiciary?

41 OECD and EU countries are sorted according to their performance on a scale from 10 (best) to 1 (lowest). This scale is tied to four qualitative evaluation levels.

- 10-9 = Justices are appointed in a cooperative appointment process with special majority requirements.
- 8-6 = Justices are exclusively appointed by different bodies with special majority requirements or in a cooperative selection process without special majority requirements.
- 5-3 = Justices are exclusively appointed by different bodies without special majority requirements.
- 2-1 = All judges are appointed exclusively by a single body irrespective of other institutions.

Denmark

Score 10

According to section 3 of the Danish constitution, “Judicial authority shall be vested in the courts of justice.” Further, section 62 stipulates: “The administration of justice shall always remain independent of executive authority. Rules to this effect shall be laid down by statute.” Finally section 64 stipulates, *inter alia*: “In the performance of their duties the judges shall be governed solely by the law. Judges shall not be dismissed except by judgment, nor shall they be transferred against their will, except in such cases where a rearrangement of the courts of justice is made.”

There are basically three levels of courts in Denmark: 24 district courts, two high courts and the Supreme Court. Denmark does not have a special constitutional court. The Supreme Court functions as a civil and criminal appellate court for cases from subordinate courts.

The monarch appoints judges following a recommendation from the minister of justice on the advice of the Judicial Appointments Council. This latter council was formed in 1999. The purpose was to secure a broader recruitment of judges and greater transparency. The council consists of a judge from the Supreme Court, a judge from one of the high courts, a judge from a district court, a lawyer and two representatives from the public. They have a four-year mandate and cannot be reappointed.

Appointed judges are highly educated with several years of law studies. Many had experience working in the Ministry of Justice before becoming

judges, and some moved from lower courts to higher courts. In recent years there has been an effort also to recruit distinguished lawyers from outside the ministry.

In the case of the Supreme Court, a nominated judge first has to take part in four trial votes, where all Supreme Court judges take part, before he or she can be confirmed as a judge.

Citation:
Henrik Zahle, Dansk forfatningsret 2: Regering, forvaltning og dom. Copenhagen: Christian Ejlers' Forlag, 2004, p. 88;
"Dommerudnævnelsesrådet,"
<http://www.domstol.dk/om/organisation/Pages/Dommerudn%C3%A6vnelsesr%C3%A5det.aspx> (accessed 17 April 2013)

Austria

Score 9 Judges are appointed by the president, who is bound by the recommendations of the federal minister of justice. This minister in turn is bound by the recommendations of panels consisting of justices. This usually is seen as a sufficient guarantee to prevent direct government influence on the appointment process.

The situation is different for the Constitutional Court and the Administrative Court. In these two cases, the president makes appointments following recommendations by the federal government or one of the two houses of parliament. Nonetheless, members of the Constitutional Court must be completely independent from political parties (under Art. 147/4). They can neither represent a political party in parliament nor be an official of a political party. In addition to this rule, the constitution allows only highly skilled persons who have pursued a career in specific legal professions to be appointed to this court. This is seen as guaranteeing a balanced and professional appointment procedure.

Belgium

Score 9 The Constitutional Court is composed of 12 justices who are appointed for life by the king, from a list that is submitted alternatively by the Chamber of Deputies and by the Senate (with a special two-thirds majority). Six of the justices must be Dutch-speaking, and the other six French-speaking. One must be fluent in German. Within each linguistic group, three justices must have worked in a parliamentary assembly, and three must have either taught law or have been a magistrate.

The appointment process is transparent, yet attracts little media attention.

Given the appointment procedure, there is a certain level of politicization by the main political parties. However, most justices, once appointed, act independently.

Chile

- Score 9 Members of the Supreme and Constitutional Courts are appointed collaboratively by the executive and the Senate. In a broader sense, the National Congress does not have the absolute independence to appoint candidates, as Chile's binomial election system restricts congressional representation to the two main coalitions. During recent years there have been some cases of confrontation between the executive power and the judiciary regarding, for example, environmental issues, where the Supreme Court affirmed its autonomy and independence from political influences.

Israel

- Score 9 The appointment process for judges is a crucial factor contributing to the judiciary's independence. According to Israel's basic laws, all judges are to be appointed by the president after having been elected by a judges' election committee. This committee consists of nine members, including the president of the Supreme Court, two other Supreme Court judges, the minister of justice (who also serves as the chairman) and another government-designated minister, two Knesset members, and two representatives of the Chamber of Advocates that have been elected by the National Council of the Chamber.

This arrangement balances various interests and institutions within the government in the interest of promoting pluralism. The procedure effectively ensures cooperation and therefore the legitimacy of the appointment. Appointment processes receive considerable media coverage and are subjected to public criticism, which is usually concerned with whether justices' professional record or other considerations (social views, loyalties and political affiliation) should figure into their appointment.

Citation:
Rubinstein, Amnon, *The Constitutional Law of the State of Israel*, Shoken, 2005.

Lithuania

- Score 9 The country's judicial appointments process protects the independence of courts. The Seimas appoints justices to the Constitutional Court, with an

equal number of candidates nominated by the president, the chairperson of the Seimas and the president of the Supreme Court. Other justices are appointed according to the Law on Courts. For instance, the president appoints district-court justices from a list of candidates provided by the Selection Commission (which includes both judges and laypeople), after receiving advice from the 23-member Council of Judges. Therefore, appointment procedures require cooperation between democratically elected institutions (the Seimas and the president) and include input from other bodies. The appointment process is transparent, even involving civil society at some stages, and – depending on the level involved – is covered by the media. However, in a recent World Economic Forum survey gauging the public's perception of judicial independence, Lithuania was ranked only 82nd among 144 countries worldwide.

Citation:
See the 2012-2013 Global Competitiveness Report of the World Economic Forum:
http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf

Luxembourg

Score 9 The Constitutional Court is composed of nine members, all professional judges. They are appointed by the Grand Duke on the recommendation of the members of the Superior Court of Justice and the Administrative Court of Appeals, who gather in a joint meeting convened by the President of the Superior Court of Justice. These two jurisdictions are appointed by the Grand Duke on the recommendation of the Court itself, so their recruitment is co-opted. This principle is enshrined in Article 90 of the constitution and has never been questioned. It gives a great degree of independence to the Constitutional Court as well as to the Superior Court of Justice and the Administrative Court of Appeals. The government plans to delegate the task of nominating and promoting judges to a standing body, the higher judicial council (Conseil supérieur de la magistrature, CSM), based on the French model. This decision is not likely to change the process from the present ad hoc system, since the composition of the CSM is likely to reflect existing practices which have ensured a high degree of independence and transparency in the selection process.

Citation:
Constitution du Grand-Duché de Luxembourg 2009:
<http://www.gouvernement.lu/gouvernement/constitution-luxembourgoise.pdf>
Loi du 27 juillet 1997 portant organisation de la Cour Constitutionnelle
Loi du 7 novembre 1996 portant organisation des juridictions de l'ordre administratif
Loi du 1er juillet 2005 arrêtant un programme pluriannuel de recrutement dans le cadre de l'organisation judiciaire.
Organisation judiciaire, Textes coordonnés Avril 2009

Norway

- Score 9 Judges are formally appointed by the government. However, decisions are prepared by a special autonomous body called the Instillingsrådet. This independent body, composed of three judges, one lawyer, a legal expert from the public sector and two members who are not from the legal profession, provides recommendations that are almost always followed by the government. Supreme Court justices are not considered to be in any way political and have security of tenure guaranteed in the constitution. There is a firm tradition of autonomy in the Supreme Court. The appointment of judges attracts limited attention and rarely leads to public debate.

Sweden

- Score 9 Cabinet appoints Supreme Court ("regeringsrätten") justices. The appointments are strictly meritocratic and are not guided by political allegiances. Although the Cabinet almost always makes unanimous decisions, there are no special majority requirements in place for these decisions.

There is only modest media coverage of the appointments, mainly because the Swedish Supreme Court is not a politically active body like the Supreme Court in other countries like Germany and the United States.

Croatia

- Score 8 Constitutional Court Justices are appointed by the parliament or Sabor on the basis of a qualified majority (two thirds of all members of the Sabor). The eligibility criteria are prescribed by the Constitutional Law on the Constitutional Court. The criteria are rather general and represent a minimum that candidates need to fulfill in order to apply to the public call issued by the Sabor. Candidates are interviewed by the parliamentary committee suggesting the list of candidates to the plenary session. There is a noticeable lack of consistency in the interviewing process related to the absence of professional selection criteria used by the relevant committee. Constitutional Court Justices are appointed to the Court for a period of eight years. Their mandate can be revoked by the Sabor only in extraordinary circumstances related to their involvement in criminal acts.

Germany

- Score 8 Federal judges are jointly appointed by the minister overseeing the issue area and the Committee for the Election of Judges, which consists of federal-state ministers responsible for the sector and an equal number of members of the Bundestag. Federal Constitutional Court (FCC) justices are elected in accordance with the principle of federative equality (föderativer Parität), with half chosen by the Bundestag and half by the Bundesrat. The FCC consists of sixteen justices, who exercise their duties in two senates, or panels, of eight members each. While the Bundesrat, in accordance with the provisions of the Basic Law, elects justices directly and openly, the Bundestag delegates its decision to a committee, in which the election takes place indirectly, secretly and non-transparently. The composition of this 12-member committee reflects the various political parties' strengths in the chamber. Decisions in both houses require a two-thirds majority. To sum up, in Germany justices are 1) elected by 2) several independent bodies. The election procedure is 3) representative, because the two bodies involved do not interfere in one another's decisions. The 4) required majority in each chamber is a qualified two-thirds majority. By requiring a qualified majority, the political opposition is ensured a voice in the selection of justices regardless of current majorities. However, the non-transparent election procedure of one-half of the justices is potentially problematic. Although the FCC has ruled that this procedure is in accord with the constitution, Bundestag President Norbert Lammert appealed in 2012 for a change to a more public and transparent election procedure. Further hampering the interests of transparency, the media does not cover the election of justices in great detail.

Greece

- Score 8 Before the onset of the crisis, the appointment of justices was to a large extent controlled by the government. After the Pan-Hellenic Socialist Party (PASOK) came to power in October 2009, the government made the process of appointing higher ranking justices more transparent. Today, candidates for the presidency of the highest civil law and criminal law court (Areios Pagos) and administrative law court (Symvoulio tis Epikrateias) as well as the audit office are nominated by justices themselves. Then the lists of candidates are submitted to a higher-ranking organ of the parliament, the Conference of the Presidents of the Greek Parliament. This is an all-party institution which submits an opinion to the Cabinet of Ministers, the institution which appoints justices at the highest posts of the courts mentioned above. In 2011 – 2013 the government applied the seniority principle in selecting justices to serve at the highest echelons of the justice system.

Italy

Score 8

According to the Constitution, members of the Constitutional Court are appointed from three different and reciprocally independent sources: the head of state, the parliament (with special majority requirements) and the top ranks of the judiciary (through an election). Members of this institution are typically prestigious legal scholars, experienced judges or lawyers. This appointment system has globally ensured a high degree of political independence and prestige for the Constitutional Court. The Constitutional Court has frequently rejected laws approved by the parliament and promoted by the government. The court's most politically relevant decisions are widely publicized and discussed by the media. Contrary to past situations, the government in office for most of the period of this report was careful to avoid any criticism of the Constitutional Court.

Latvia

Score 8

Judges are appointed in a cooperative manner. Appointments are made by the Saeima, but nominations come either from the minister of justice or the president of the Supreme Court, and are based on opinions provided by the Judicial Qualification Board. Initial appointments at the district-court level are for a period of three years, followed either by an additional two years or a lifetime appointment upon parliamentary approval. Regional and Supreme Court judges are appointed for life. Promotion of a judge from one level to another level requires parliamentary approval.

Parliamentarians vote on the appointment of every judge, and are not required to give reasons for the denial of appointments. In October 2010, a new Judicial Council was established with the goal of rebalancing the relationship between the judiciary, the legislature and the executive branch. The Judicial Council has taken over the function of approving transfers of judges from one position to another within the same court level, which formerly also required parliamentary approval. Further transfers of functions to the Judicial Council are under consideration in order to limit undue political influence on the appointment of judges. For example, it has been proposed that all decisions after the initial appointment of district judges should be removed from the Saeima, including the promotion of judges from one level of the court system to another.

Judges are barred from political activity. In 2011, the Constitutional Court lifted immunity for one of its own judges, Vineta Muizniece, enabling the Prosecutor General to bring criminal charges for falsifying documents in her

previous position as a member of parliament. Muizniece's appointment to the Constitutional Court was controversial because of her political engagement and profile as an active politician. The court has convicted Muizniece, but the case is under appeal. As of the time of writing, Muizniece had been suspended from the Constitutional Court pending final resolution of her case.

A new system for evaluating judges has been put into place as of January 2013. The government's role has been limited, granting an ability to comment, but not make decisions. Decision-making will rest with a judges' panel, thus strengthening judiciary independence.

Citation:
The Constitutional Court of Latvia (2011), Ruling on Initiation of Prosecution against Constitutional Court Judge Vineta Muizniece, Available at: [http://titania.saeima.lv/LIVS11/saeimalivs_Imp.nsf/0/DF2F0B6EFEB0A281C225793C0042A314?OpenDoc](http://titania.saeima.lv/LIVS11/saeimalivs_Imp.nsf/0/DF2F0B6EFEB0A281C225793C0042A314?OpenDocument) ument, Last assessed: 21.05.2013

Mexico

Score 8 Mexican Supreme Court justices are nominated by the executive and approved by a two-thirds majority of Congress. Judicial appointments thus require a cross-party consensus since no party currently enjoys a two-thirds majority or is likely to have one in the near future. There are some accusations of judicial bias in the Supreme Court, but any bias is not flagrant and is more social than political. For example, the Court showed a marked reluctance to allow abortion though in the end it was persuaded to allow the Federal District to introduce it under state's rights provisions.

Interestingly, there is not the same suggestion of judicial bias in Mexico's constitutional courts. The federal electoral tribunal is fully respected and largely vindicated itself when faced with the difficult 2006 election.

New Zealand

Score 8 Although judicial appointments are made by the executive, it is a strong constitutional convention in New Zealand that, in deciding who is to be appointed, the attorney general acts independently of political party considerations. Judges are appointed according to their qualifications, personal qualities and relevant experience. The convention is that the attorney general mentions appointments at Cabinet meetings after they have been determined. The appointments are not discussed or approved by the Cabinet. The appointment process followed by the attorney general is not formally regulated. There have been discussions of how to widen the search for potential candidates beyond the conventional career paths, but not with

regard to a formal appointment procedure, as there is a widespread belief that the system has worked exceptionally well. In practice a number of people are consulted before appointments are made, including not only the opposition justice spokesperson but also civic society groups. In 2012, a review by the New Zealand Law Commission recommended that greater transparency and accountability be given to the appointments process through the publication by the chief justice of an annual report and the publication by the attorney general of an explanation as to the process by which members of the judiciary are appointed and the qualifications they are expected to hold. The government indicated that it was its intention to adopt a number of the Law Commission's recommendations.

Citation:
Paul Bellamy and John Henderson, Democracy in New Zealand (Christchurch: MacMillan Brown Centre for Pacific Studies, 2002).

New Zealand Law Commission, 'Review of the Judicature Act 1908: Towards a New Courts Act' (R126, Wellington, 2012).

Portugal

Score 8 The High Council of the Public Prosecution Department (Conselho Superior do Ministério Público), which oversees the appointment of judges, consists of 19 members, including the attorney general. In October 2012, Portugal appointed its first female attorney general, Joana Marques Vidal.

United States

Score 8 Federal judges, including Supreme Court justices, are appointed for life by the president, with advice and consent (endorsement by a majority vote) by the Senate. Although judges are likely to reflect the political views of the presidents who appointed them, they are not obliged to remain faithful to the legal or ideological positions for which the president selected them. In any case, the justices certainly do not necessarily represent the views of the current presidential administration. Nor can the president or Congress provide rewards, penalties, or side payments to influence judicial decisions. Despite this independence, appointments have become highly politicized. Supreme Court decisions have always reflected the political and ideological views of the justices and had profound importance for the direction of policy. The severe polarization of Congress in the 2000s has made judicial confirmation processes even less deliberative and more conflicted. Furthermore, the Senate minority has been increasingly willing to filibuster confirmations for federal judgeships at all levels.

Citation:

Joel B. Grossman, Paths to the bench: Selecting Supreme Court Justices in a “juristocratic” world, in Kermit L. Hall/Kevin T. McGuire (eds.), *The Judicial Branch*, Oxford, New York 2005, 142-173.

Cyprus

- Score 7 Cyprus’ judicial system essentially continues to function on the basis of the 1960 constitution, albeit with modifications to reflect the circumstances prevailing after the collapse of the constitution of 1963. The Supreme Council of Judicature, which is composed of all 13 judges of the Supreme Court, appoints, promotes and places justices, except those of the Supreme Court. The members of the Supreme Court are appointed by the president upon the recommendation of the Supreme Court. By tradition, nominees are drawn from the ranks of the judiciary. The judicial appointment process in general raises questions of transparency, as details on the procedure and the interaction between the Presidential Palace and the Supreme Court are not made available.

The retirement age is 68 for Supreme Court justices and 63 for other judges.

Czech Republic

- Score 7 The justices of the Constitutional Court, the Supreme Court and the Supreme Administrative Court are appointed by the Senate (the second chamber of the Czech Parliament) on the basis of proposals made by the president. Within the Senate, no special majority requirement applies. During the presidency of Václav Klaus (2003 – 2013), there were disputes leading to a high media profile for judicial appointments, with the Senate refusing to approve two candidates proposed by the president in 2011 and 2012 (Jan Svacek and Zdenek Koudelka respectively). Both candidates were accused of participating in a “legal mafia” that had facilitated the appointment of favorable prosecutors to halt the investigation of corruption charges against former Deputy Prime Minister Jiri Cunek in 2007. Because of the lack of cooperation between Klaus and the Senate, the number of Constitutional Court judges fell to 13 in summer 2012. The new President Milos Zeman made the filling of the vacant positions one of his priorities, and in early May 2013 four new judges were approved by the Senate.

Ireland

- Score 7 The Judicial Appointments Advisory Board (JAAB) acts in an advisory capacity in appointments to the Supreme Court. The president of Ireland

formally makes appointments. The Oireachtas (a term that encompasses both parliament and president) has the power to appoint a person who has not applied to, and has not been considered by, the JAAB.

While the process does not require cooperation between democratic institutions and does not have majority requirements, appointments have, in the past, not been seen as politically motivated and have not been controversial. However, changes made in April 2012 to the system of regulating judges' pay and pensions and the appointment of judges provoked controversy. Although judges' pay and pensions had been shielded from the cuts in public sector pay implemented during the economic crisis, a huge majority voted in a referendum in October 2011 to remove this protection. This, combined with changes in the manner of appointment of insolvency judges, led the Association of Judges of Ireland to call for the establishment of an independent body to establish the remuneration of judges and create improved lines of communication between the judiciary and the executive.

The Supreme Court has been relatively infrequently involved in major social issues where a political or ideological division could emerge. The court's interpretation of the constitutional provisions that narrowly restrict access to abortion have been widely accepted by all sides to the acrimonious debate on this issue. The problem of incorporating these provisions into positive legislation has been left to the Oireachtas.

Netherlands

Score 7

Justices, both in civil/criminal and in administrative courts, are appointed by different, though primarily legal and political, bodies in formally cooperative selection processes without special majority requirements. In the case of criminal/civil courts, judges are *de facto* appointed through peer co-optation. This is also true for lower administrative courts, but its highest court, the Council of State, is under fairly strong political influence, mainly expressed through a considerable number of double appointments. State counselors working in the Administrative Jurisdiction Division (as opposed to the Legislative Advisory Division) are required to hold an academic degree in law. Appointments to the Supreme Court are for life (judges generally retire at 70). Appointments are in fact judicial cooptations determined by seniority and (partly) peer reputation. Formally, however, the Second Chamber of the States General selects the candidate from a shortlist presented by the Supreme Court. In selecting a candidate, the States General is said to never deviate from the number one candidate.

Citation:

Andeweg, R.B. and G.A. Irwin, Governance and Politics of the Netherlands. Hounds-mills, Basingstoke: Palgrave Macmillan (page 190).

Poland

Score 7

Provisions for the appointment of justices have not changed in the review period. The justices of the Supreme Court and the Constitutional Tribunal are chosen on the basis of different rules. In the case of the Supreme Court, the ultimate decision is made by the National Council of the Judiciary, a constitutional body consisting of representatives of all three branches of power. The 15 justices of the Constitutional Tribunal are by contrast elected individually by the Sejm for terms of nine years by an absolute majority of votes in the presence of at least one-half of all members. The president of the republic, then, selects the president and the vice-president of the court out of the 15 justices and on the basis of proposals made by the justices themselves. In the period under review, two new justices were appointed to the Constitutional Tribunal. Unlike in the case of past appointments, the professional qualifications of the two new justices were uncontroversial.

Slovakia

Score 7

The justices of the Constitutional Court and the Supreme Court are selected by the president on the basis of proposals made by the National Council and without special majority requirements. In the period under review, no new constitutional court justices were appointed.

Slovenia

Score 7

In Slovenia, both Supreme and Constitutional Court justices are appointed in a cooperative selection process. The Slovenian Constitutional Court is composed of nine justices who are appointed on the proposal of the president of the republic by the Parliament with an absolute majority. The justices are appointed for a term of nine years and choose the president of the Constitutional Court themselves. Supreme Court justices are appointed by Parliament by a relative majority of votes upon a proposal put forward by the Judicial Council, a body of 11 justices or other legal experts partly appointed by Parliament – partly elected by justices themselves. The Ministry of Justice can only propose candidates for the president of the Supreme Court. Candidates for both courts must meet stringent merit criteria and must show a long and successful career in the judiciary to be eligible for the position.

Spain

Score 7

The renewal of the Spanish Constitutional Court (Tribunal Constitucional, TC), the organ of last resort regarding the protection of fundamental rights and the conflicts on institutional design, is a highly politicized process. To a lesser extent, the judicial appointments for the Supreme Court – the highest court in Spain for all legal issues except for constitutional matters – are also decisions that can lead to political maneuvering.

The process for appointing TC justices is regulated by the Spanish Constitution and by specific legislation in that court (Organic Law 2/1979, amended eight times – Organic Law 8/2010 was the last amendment). The TC consists of 12 members. Of these, four members are appointed by the Congress of Deputies, requiring a supermajority of three fifths of its members, and four members by the Senate, requiring the same supermajority vote (following a selection process in which each of the 17 regional parliaments formally nominate two candidates). Additionally, two members are directly appointed by the government, and two by the General Council of the Judiciary (Consejo General del Poder Judicial, CGPJ). All 12 TC members have a tenure period of nine years, with one third of the court membership renewed every three years. The appointment process for Supreme Court justices is regulated in the legislation on the judiciary (Organic Law 6/1985, amended several times – Organic Law 4/2013 was the last important amendment). The Supreme Court consists of five different specialized chambers, and all its members (around 90 in total) are appointed, requiring a majority of three fifths, by the aforementioned CGPJ – the governing authority of the judiciary, whose 20 members (judges, lawyers and other experienced jurists) are appointed by the Congress of Deputies and the Senate also by a three fifths supermajority vote, and have a tenure period of five years.

Thus these processes formally include special majority requirements. However, the fact that the various three fifths majorities needed to select TC or CGPJ members can be reached only through extra-parliamentary agreements between the two major parties (the Spanish Socialist Workers Party or Partido Socialista Obrero Español, PSOE and the Popular Party or Partido Popular, PP) has not led to cooperative negotiations to identify the best candidates regarding judicial talent. On the contrary, there is a strong and growing politicization both among the members of the TC and the CGPJ. All TC justices and most members of the Supreme Court are quickly labeled as “conservative” or “progressive” justices by the media and politicians depending on the party that pushed for their appointment. Even worse, changes in government normally produce a subsequent ideological shift in the TC or the CGPJ from progressive leftists to the right or vice versa. Even if

there is some formal guarantee of independence, neutrality is not expected and justices tend not to be considered to be divorced from the ideology – or even the tactics – of the parties that suggested their appointment. As a matter of fact, and even if membership of the Constitutional Court is incompatible with any other office, some of its current justices have held previous important political positions. The president himself, who maintained his PP membership after being appointed as a member of the TC, has recently stated that he does not see incompatibility between his post and rank-and-file party affiliation on the basis that the law only prohibits a magistrate from holding a responsibility within a political group.

The complete independence of the Supreme Court is not guaranteed either (and, much less, its neutrality, considering the conservative social origins of most judges in Spain) but the truth is that professional considerations play a very important role, with nominees always having extensive prior judicial experience. It is interesting to mention a recent reform of the CGPJ, the organ which appoints Supreme Court justices. The reform is formally oriented to reinforce individual judges and weaken judicial associations (which in the previous regulation nominated the candidates to the CGPJ) by devolving the complete decision to the three fifths votes in the two chambers of the General Courts. As the PP alone enjoys a supermajority in the Senate, the conservative government will be able to assume control of half of the CGPJ, without even negotiating with the PSOE, and thus increasing its indirect influence for deciding future Supreme Court justices.

United Kingdom

Score 7

The judicial appointments system reflects reflects the informality of the constitution, but it has undergone substantial changes in recent years, which formalize a cooperative process without a majority requirement. Since the Constitutional Reform Act 2005, the powers of the lord chancellor have been divided up, and the Supreme Court of the United Kingdom has been established. The latter replaces the Appellate Committee of the House of Lords and relieves the second chamber of its judiciary role. The 12 judges are appointed by the queen upon recommendation by the prime minister who in turn acts on advice from the lord chancellor in cooperation with the selection commission. It would, nevertheless, be a surprise if the prime minister over-rode the recommendations. The queen's role is purely formal rubber-stamping and she is bound to impartiality, whereas the lord chancellor has a highly influential role in consultation with the legal profession.

There is no empirical basis on which to assess the actual independence of appointments, but there is every reason to believe that the appointment process will confirm the independence of the judiciary.

Australia

Score 6 The High Court is the final court of appeal for all federal and state courts. While the constitution lays out various rules for the positions of High Court justices, such as tenure and retirement, there are no guidelines for their appointment – apart from them being appointed by the head of state, the Governor-General. Prior to 1979, the appointment of High Court justices was largely a matter for the federal government, with little or no consultation with the states and territories. The High Court Act 1979 introduced the requirement for consultation between the chief law officers in the states, the attorneys general, and the federal Attorney General. While the system is still not transparent, it does appear that there are opportunities for the states to nominate candidates for a vacant position. From the perspective of the public, the appointment process is secret and the public is rarely consulted when a vacancy occurs.

Bulgaria

Score 5 The procedures for appointing constitutional court justices in Bulgaria do not include special majority requirements, thus favoring political appointments. However, political control over the judiciary is limited by the fact that three different bodies are involved. The 12 justices of the Constitutional Court are appointed on an equal quota principle with simple majorities by the president, the National Assembly and a joint plenary of the justices of the two supreme courts: the Supreme Court of Cassation and the Supreme Administrative Court. The justices of the two supreme courts, in turn, are appointed by the Supreme Judicial Council. The latter consists of three groups, of which one includes ex-officio representatives, one is selected by parliament with a simple majority, and one is selected by simple majorities of the plenary assemblies of, respectively, judges, prosecutors and investigators. Once it is constituted, the Supreme Judicial Council appoints justices in the supreme courts with a simple majority.

Canada

Score 5 It can be argued that the current process for judicial appointments in Canada, which is at the complete discretion of the prime minister, does not represent good governance, since the appointment needs no approval by any legislative body (either the House of Commons or the Senate). Indeed, potential candidates are not even required to appear before a parliamentary

committee for questioning on their views. The prime minister has the final say in appointing chief justices at the provincial level, as well as for Supreme Court justices. Despite this almost absolute power, however, prime ministers do consult widely on Supreme Court appointments, although officeholders have clearly sought to put a personal political stamp on the court through their choices. The appointment process is covered by the media. It is not evident that the current judicial appointment process has compromised judicial independence. Indeed, appointments to the Supreme Court have historically been of high quality.

Citation:
Nadia Verrelli, ed. (2013) *The Democratic Dilemma: Reforming Canada's Supreme Court* (Montreal: McGill-Queen's University Press)

Finland

Score 5 There are three levels of courts: local, appellate and supreme. The final court of appeal is the Supreme Court; there is also a supreme administrative court, as well as an ombuds office. The judiciary is independent from the executive and legislative branches. Supreme Court judges are appointed to permanent positions by the president of the republic; they are independent of political control. Supreme Court justices appoint lower court judges. The ombudsman is an independent official elected by parliament. The ombudsman and deputy ombudsman investigate complaints by citizens and conduct investigations. While formally transparent, the appointment processes do not stir up much attention and are not fully covered by the media.

France

Score
value_6 Appointments to the Constitutional Council, essentially France's supreme court, have been highly politicized and controversial. The council's nine members, elected for nine years, are nominated by the French president (who also chooses the council's president), and the presidents of the Senate and the National Assembly. Former presidents (at the time of writing, Valéry Giscard d'Estaing, Jacques Chirac and Nicolas Sarkozy) are de jure members of the council but do not usually attend meetings. Up until the Sarkozy administration, there were no checks over council appointments made by these three highest political authorities. Now respective committees of the two parliamentary chambers organize hearings to check the qualifications and capacity of proposed council appointments. From this point of view, the French procedure is now closer to the process in which Supreme Court justices are appointed in the United States, rather than typical European practices. During the review period, President Hollande

announced a constitutional reform that cancels the right of former French presidents to become ex-officio members of the council.

Romania

Score 5 According to Article 142 of the Romanian Constitution, every three years three judges are appointed to the Constitutional Court for nine year terms, with one judge each appointed by the Chamber of Deputies, the Senate, and the president of Romania. Since there are no greater majority requirements in either the Chamber of Deputies or the Senate, and since these appointments occur independently (i.e., do not need to be approved by or coordinated with any other institution) this has meant that in practice Constitutional Court justices are appointed along partisan lines. As a result, the media have stressed the partisan nature of the appointments and political actors tend to attack Constitutional Court decisions as driven by partisan loyalties rather than legal merit (as happened during the disputes surrounding the July 2012 referendum).

South Korea

Score 5 The appointment process for Constitutional Court justices generally guarantees the court's independence. Justices are exclusively appointed by different bodies without special majority requirements. Three of the nine justices are selected by the president, three by the National Assembly and three by the judiciary, and all are appointed by the president. By custom, the opposition nominates one of the three justices appointed by the National Assembly. The head of the court is chosen by the president with the consent of the National Assembly. Justices serve renewable terms of six years (except for the chief justice). The process is formally transparent and adequately covered by public media, although it seems fair to say that judicial appointments are not a top issue for public attention in South Korea. Courts below the Supreme Court are staffed by the national judiciary. Judges throughout the system must pass a rigorous training course including a two-year program and two-year apprenticeship. The Judicial Research and Training Institute performs all judicial training; only those who have passed the National Judicial Examination may receive appointments.

Citation:
Article 111 of the Korean Constitution
Croissant, Aurel (2010) Provisions, Practices and Performances of Constitutional Review in Democratizing East Asia, in: The Pacific Review.

Switzerland

- Score 5 The judges of the Federal Supreme Court are elected for a period of six years in a joint session of both chambers of parliament, with approval requiring a majority of those voting. A parliamentary commission prepares the elections by screening the candidates. Unwritten rules stipulate a nearly proportional representation of the political parties then in parliament. Another unwritten rule demands representation of the various linguistic regions. There is no special majority requirement.

Iceland

- Score 4 All judges, both in the Supreme Court and in district courts, are appointed by the minister of the interior alone, without any cooperation with or oversight by other government bodies. However, all vacancies on the Supreme Court are advertised, and the appointment procedure is at least formally transparent. As part of the appointment process, an evaluation committee of five persons is appointed and is tasked with recommending a single applicant. A change to the Act on Courts in 2010 barred the minister from appointing any other persons than those found most qualified by the committee unless such an appointment is approved by the parliament. This represented an improvement in the sense that the minister could no longer appoint judges on his or her own authority, without external review.

Many appointments to the courts continue to be controversial. In many cases, the scrutiny of Supreme Court candidates is superficial, for instance failing to review the frequency with which the lower-court judge's verdicts have been overturned by the Supreme Court. This is one of several factors that has undermined popular confidence in the Supreme Court. As another example, a retired Supreme Court justice whose appointment aroused serious controversy some years ago has recently published a book criticizing his former court colleagues for their alleged opposition to his appointment, as well as for some of their verdicts that he deemed misguided.

Under the terms of the constitutional bill drafted during the period under review, judicial appointments would have been either approved by the president or by a two-thirds parliamentary majority.

Citation:
Act on Courts. (Lög um dómstóla nr. 15 25. mars 1998).
Change of the Act on Courts. (Lög um breyting á lögum um dómstóla nr. 15 1998 með síðari breytingum (skipun dómara) nr. 45 26. maí 2010).

Turkey

Score 4 The Constitutional Court is made up of 17 members, as outlined by Article 146 of the 2010 constitutional referendum. Parliament elects two members by secret vote from three candidates nominated by a plenary of the Court of Accounts, and one member from three candidates nominated by the chairmen of Turkey's bar associations. In these elections, a two-thirds parliamentary majority for the first round, and an absolute majority for the second round, is necessary to secure a seat on the court. In a third round, a simple majority is sufficient.

Turkey's president appoints to the court three regular members from the High Court of Appeals, two regular members from the Council of State and one member each from the Military High Court of Appeals and the High Military Administrative Court. Three candidates are nominated for each vacancy by a plenary of each court. The president also appoints one member from a list of three candidates nominated by the Higher Education Council. Four additional members are drawn from the ranks of senior administrative officers, Lawyers, first-degree judges and prosecutors, or Constitutional Court rapporteurs, who have served for at least five years.

To be appointed to the Constitutional Court, candidates must either be members of the teaching staff of institutions of higher education, senior administrative officers or Lawyers, be over the age of 45, completed higher education and have worked for at least 20 years. Constitutional Court members serve for 12-year terms and cannot be re-elected. The appointment of Constitutional Court judges does not match general liberal-democratic requirements, such as cooperative appointment and special majority regulations. In addition, the armed forces still carry some influence in civilian jurisdiction, as two military judges are members of the Constitutional Court.

Estonia

Score 2 Justices of the Supreme Court are appointed by the national parliament, on the proposal of the chief justice of the Supreme Court. The chief justice of the Supreme Court is appointed to office by the national parliament on the proposal of the President of the Republic.

While formally transparent and legitimate, the appointment processes rarely receives public attention or media coverage.

Hungary

- Score 2 The new constitution left the rules for the selection of Constitutional Court justices untouched. Justices are still elected by the National Assembly with a two-thirds majority. Given the strong Fidesz majority in the legislature and the government's lack of self-restraint, however, the two-thirds threshold has failed to limit the political control of parties over judicial appointments. Fidesz has used its parliamentary majority to appoint loyalists, individuals who sometimes are even without special expertise in constitutional law.

Japan

- Score 2 According to the constitution, Supreme Court justices are appointed by the Cabinet, or in the case of the chief justice, named by the Cabinet and appointed by the emperor. However, the actual process lacks transparency. Supreme Court justices are subject to a public vote in the lower-house elections following their appointment, and to a second review after the passage of 10 years, if they have not retired in the meantime. These votes are of questionable value, as voters have little information enabling them to decide whether or not to approve a given justice's performance. In response to the call for more transparency, the Supreme Court has put more information on justices and their track record of decisions on its website. During the period under review, there were no new developments in this area.

Malta

- Score 2 Superior Court judges are appointed by the president, acting in accordance with the advice of the prime minister. Malta is the only state in Europe where the judiciary is appointed by the government, and the prime minister enjoys almost total discretion on judicial appointments. The only restraints are set in the constitution, which state that an appointee has to be a law graduate from the University of Malta with no less than 12 years experience as a practicing lawyer. Magistrates need to be similarly qualified, but require only seven years' experience. The prime minister may seek, although he is not legally or constitutionally obliged to do so, the advice of the Commission for the Administration of Justice for its opinion on the suitability of his nominees, but the final decision lies with the prime minister.

During the review period, the prime minister made several new judicial appointments yet not once did he seek advice from the commission.

However, despite elections or a change in government, the independence of the judiciary is safeguarded through a number of constitutional provisions. First, a judge may only be removed (aside from retirement at age 65) from the bench by the president and a two-thirds majority of parliament on the grounds of a proved inability to perform the functions of office or of proved malfeasance. Second, a judge's remuneration is charged to the consolidated fund and therefore constitutionally protected. Appointment does not entail a process, which in turn does not involve media coverage; the media simply publishes the names of those elected. Within the last decade, there have been three judges (one a chief justice) charged and convicted with bribery.

Indicator

Corruption Prevention

Question

To what extent are public officeholders prevented from abusing their position for private interests?

41 OECD and EU countries are sorted according to their performance on a scale from 10 (best) to 1 (lowest). This scale is tied to four qualitative evaluation levels.

- 10-9 = Legal, political and public integrity mechanisms effectively prevent public officeholders from abusing their positions.
- 8-6 = Most integrity mechanisms function effectively and provide disincentives for public officeholders willing to abuse their positions.
- 5-3 = Some integrity mechanisms function, but do not effectively prevent public officeholders from abusing their positions.
- 2-1 = Public officeholders can exploit their offices for private gain as they see fit without fear of legal consequences or adverse publicity.

Denmark

Score 10

In Transparency International's Corruption Perception Index 2012, Denmark was ranked first together with Finland and New Zealand, followed by Sweden and Singapore. Denmark is thus considered one of the least corrupt countries in the world.

We can therefore safely say that there is practically no corruption in Denmark. Norms are strong against corruption, and the risk of exposure by an active press is high. In the past, there was the occasional case of a local government official accepting "services" from business in exchange for contracts with the municipality, but such cases are rare. There have also occasionally been cases of officials using their representation accounts rather generously. Again, such cases are rare.

Citation:
 Transparency International, Corruption Perceptions Index 2012,
http://cpi.transparency.org/cpi2012/in_detail/ (accessed 17 April 2013).

New Zealand

Score 10

New Zealand is one of the least corrupt countries in the world. Prevention of corruption is strongly safeguarded by such independent institutions as the auditor general and the Office of the Ombudsman. In addition, New Zealand has ratified all relevant international anti-bribery conventions of the Organization for Economic Co-operation and Development (OECD) and the

United Nations. All available indices confirm that New Zealand scores particularly high regarding corruption prevention, including in the private sector.

Citation:

<http://www.freedomhouse.org/report/freedom-world/2013/new-zealand-0> (accessed April 9, 2013).

Sweden

Score 10

Sweden has one of the lowest levels of corruption in the world. As a result, public trust in democratic institutions and public administration is comparatively high.

Corruption at the state level remains extremely unusual in Sweden. Yet, in local government, there have been an increasing number of reports of corruption and court decisions on related charges. At the central government level, regulatory systems safeguarding transparency and accountability, coupled with an overall administrative culture that strongly forbids corrupt behavior, prevent corruption.

Citation:

Weibull, L., H. Oscarsson and A. Bergström (2013), Vägskäl (Göteborg: SOM-Institutet)

Finland

Score 9

The overall level of corruption in Finland is low. The country too offers a solid example of how the consolidation of advanced democratic institutions can often lead to the reduction of corruption. Several individual mechanisms contribute, including: a strict auditing of state spending; new and more efficient regulations over party financing; lawmaking that criminalizes the acceptance of bribes; full access of the media and the public to relevant information; public asset declarations; and consistent legal prosecution of corrupt acts. However, the various integrity mechanisms still leave some room for potential abuse. It is, for instance, evident that political appointments are much too common in Finland. Whereas only some 5% of citizens are party members, two-thirds of the state and municipal public servants are appointed from among party members. During the review period, however, several political corruption charges dealing with bribery and campaign financing were brought to light and attracted media attention.

Citation:

Hung-En Sung, "Democracy and Political Corruption: A Cross-National Comparison", *Crime, Law & Social Change*, Vol. 41, 2004, 179-194.

Switzerland

Score 9 Corruption in Switzerland is rare according to international rankings. Indeed, Switzerland is consistently rated as being among the most successful countries with respect to corruption prevention. It is governed by the rule of law, offers high wages to public officials, and is based on a decentralized democracy with parties that efficiently control and audit public officials.

However, there are opportunities and incentives for political and societal elites to abuse their position for private interests. This is due to the country's small size and the correspondingly small number of persons interacting in elite positions; to the culture of amicable agreement; and to the very pragmatic problem-solving culture. In addition, holders of elite positions know that they are highly likely to meet again in the future (and probably in different roles). This creates opportunities for the creation of broad informal networks, a reluctance to engage in close mutual surveillance and incentives for the non-observance of formal rules.

Given the considerable overlap between economic and political elites, critics such as the Swiss office of Transparency International have pointed to processes in which politicians' economic interests may influence their decisions in parliament.

As host to 65 international sports bodies, Switzerland is very concerned with corruption in sports. After the release of a report on the issue in December 2012, the federal government began to consider legal changes aimed at fighting corruption in sports more effectively.

United States

Score 9 The U.S. federal government has elaborate and extensive mechanisms for auditing financial transactions, investigating potential abuses, and prosecuting criminal misconduct. The Federal Bureau of Investigation (FBI) has an ongoing, major focus on official corruption. Auditing of federal spending programs occurs through congressional oversight as well as through independent control agencies such as the General Accountability Office (GAO) – which reports to Congress, rather than to the executive branch. The GAO also oversees federal public procurement. With all of the controls, executive branch officials are effectively deterred from using their authority for private gain, and prosecutions for such offenses are rare. Still, both Congress and state governments are occasionally subject to financial corruption. With 100 senators and 435 representatives, there are occasional prosecutions of members for bribery or misuse of campaign funds,

particularly use of campaign donations as personal income. In 2011, former Illinois governor Rod Blagojevich was convicted on multiple corruption charges and sentenced to 14 years in federal prison.

Australia

Score 8 Corruption prevention is reasonably effective. Federal and state governments have established a variety of bodies to investigate corruption by politicians and public officials. Many of these bodies have the powers of royal commissions, which means that they can summon witnesses to testify.

At the federal level, these bodies include the Australian Crime Commission, charged with combating organized crime and public corruption, the Australian Securities and Investments Commission, the main corporate regulator, and the Australian National Audit Office.

Nonetheless, significant potential for corruption persists, particularly at the state and territory level. Allegations of corruption in the granting of mining leases have sparked public outcry, and at the end of the review period a New South Wales Independent Commission Against Corruption inquiry into corruption in the granting of such leases was in progress. Questions of propriety are also occasionally raised with respect to the awarding of government contracts. Open tender processes are not always used and “commercial-in-confidence” is often cited as the reason for non-disclosure of contracts with private-sector firms, raising concerns of favorable treatment extended to friends or favored constituents. Questions of inappropriate personal gain have also been raised when ministers leave Parliament to immediately take up positions in companies they had been responsible for regulating.

Members of the Senate and the House of Representatives are required to report on their financial interests within 28 days of taking the oath of office. These registers were adopted by resolution of the House of Representatives on 8 October 1984 and the Senate on 17 March 1994. However, there have been instances of failure to comply with this requirement, usually with no consequences for the member concerned. Ministers are further subject to a Ministerial Code of Conduct, introduced in 1996, which articulates guidelines for ministerial conduct. However, this code has no legal standing, and is therefore unenforceable.

Citation:

<http://www.icac.nsw.gov.au/investigations/current-investigations>

Austria

- Score 8 Corruption has become a major topic of discussion in Austria. In recent years, scandals concerning prominent politicians (including former cabinet members) and industries dependent on government decisions have been exposed in increasing numbers, and thoroughly investigated. In consequence, a special branch of the public prosecutor's office dealing especially with corruption (Korruptionsstaatsanwaltschaft) has been established. This office has already been responsible for some prominent convictions and is seen as a significant improvement on the earlier system, although it remains far from perfect with respect to political independence.

Canada

- Score 8 Canada has historically ranked very high for the extent to which public officeholders are prevented from abusing their position for private interests. To be sure, there have been many instances in recent Canadian history in which officeholders or their associates have benefited from access to influence. Most recently, municipal and provincial government officials accepted bribes in relation to procurement in Quebec, as was revealed by the Charbonneau Commission on corruption in the construction industry in Quebec. The media closely monitor the expense claims of politicians, and great public ire is aroused when perceived abuses are found. There is a strong public perception, rightly or wrongly, that public officeholders abuse their positions for private gain.

Estonia

- Score 8 Abuse of the power position and corruption have been issues very much in the center of government and public concern. On the one hand, Estonia has succeeded in setting up a solid institutional and legal structure to avoid corruption through The National Audit Office, the Select Committee on the Application of Anticorruption Act by the national parliament, the Supervision Committee and the Anticorruption Act of 2013. On the other hand, from time to time cases of illegal conduct of high level civil servants, municipality officials or political party leaders appear. Such cases can be regarded as evidence of efficiency of anticorruption policy, but at the same it also demonstrates that there are still loopholes in, for example, the public procurement process and in regulation of party financing. In fact, the non-transparent system of party financing was one of the major topics of debate in media and politics in 2012. The Supervision Committee verifies whether

political parties, election coalitions and independent candidates adhere to the requirements provided for in the Political Parties Act. During the 2011 parliamentary elections, the Supervision Committee discovered several violations of campaign financing rules and issued precepts in these cases. The Select Committee on the Application of Anticorruption Act by the national parliament keeps the economic interest declarations of high officials and members of the parliament.

Corruption cases at the municipality level are another matter of concern. Local government officials often fail to perform transactions properly; they use local government assets to conduct transactions with companies that they have invested in. The interest of local government leaders in preventing the risk of corruption is small and awareness in this area very low. Thus, as the end of review period the state audit office was planning provide them with more assistance.

Citation:

Fourth Evaluation Round by GRECO on Corruption prevention in respect of members of parliament, judges and prosecutors. January 2013. [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEva_I4\(2012\)5_Estonia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEva_I4(2012)5_Estonia_EN.pdf)

Luxembourg

Score 8 After a parliamentary inquiry into a large building project in Wicrange in 2012 where government ministers and the prime minister were suspected of improperly favoring a bidding company, the government proposed in April 2013 a deontological code, with reference to existing codes such as that of European Commission. The text defines the type of gifts or favors a minister is allowed to receive and those which might influence his decision-making and are thus prohibited. The text also outlines what type of professional activity a minister can take up at the end of his mandate. The overall objective is to avoid conflicts of interests.

Additionally, a “comité d’éthique” or ethics committee will offer opinions concerning the interpretation of specific situations. The text is to be signed by each minister and go into force in January 2014.

Citation:

Dossier de presse: http://www.gouvernement.lu/salle_presse/communiques/2013/03-mars/12-biltgen/

Norway

- Score 8 There are few instances of corruption in Norway. The few cases of government corruption that have surfaced in recent years have primarily been at the regional or municipal level, or in various public bodies related to social aid. However, a recent official inquiry uncovered various excessive claims on parliamentary pensions by previous members, some substantial and some criminal. This was in part the result of ambiguous rules, and in part related to lax enforcement of claims. As a rule, corrupt officeholders are prosecuted under established laws. The income declarations of all Norwegian taxpayers are available online. Newspapers often publicize such information, especially in the cases of members of parliament and figures holding influential public administration positions. There is a great social stigma against corruption, even in its minor manifestations. However, there has been growing concern over government corruption in specific areas such as building permits.

Belgium

- Score 7 A number of corruption cases and issues of conflicts of interest, widely covered by the media, has pushed government reforms toward a higher level of regulation of public officers. Since 2006, the federal auditing commission of state spending is responsible for publicizing the mandates of all public officeholders, after some officeholders held a significant plurality of offices. Assets held before and after a period in public office also have to be declared. Although the asset information is not published, the information does have legal value as it can be used in the event of a legal case (public officeholders therefore complete comprehensive declarations); such a practice appears to be effective (and various politicians have been investigated, after the financial crisis and bailout plans). Since 1993, political parties are funded by public subsidies based on electoral results. Private donations by firms are not allowed. This practice is often criticized as one way to preserve the political status quo, as the system makes it difficult for an outsider to enter the political scene. To prevent further corruption scandals, public procurements over a certain value must be advertised in a standardized fashion, in order to make the process as transparent as possible. This rule has, however, often been bypassed (as revealed by certain corruption cases, such as in Charleroi), by splitting the market into sufficiently small units. Overall, corruption prevention mechanisms remain more difficult to fully implement at the local (municipal) level.

Germany

Score 7

Despite a series of corruption scandals and abuse revelations that has unfolded in recent years, Germany performs better than most of its peers in this issue. According to the World Bank's Worldwide Governance Indicators, Germany is in the top category in this area, outperforming countries including France, Japan and the United States, but falls behind Scandinavian countries, Singapore and New Zealand (World Bank 2011). In 2012, Germany was ranked 13th, with a score of 79 out of 100 possible points, in the Transparency International Corruption Perceptions Index (CPI) (TI 2012).

The country's Federal Court of Audit (Bundesrechnungshof) provides for independent auditing of national spending under the terms of the Basic Law (Art. 114 sec. 2). According to the 2011 Audit Report, the revenues and expenditures of the federal authorities were in general properly documented.

Financial transparency for office holders is another core issue in terms of corruption prevention. Until very recently, provisions concerning required asset declarations by members of parliament have been comparatively loose. For example, various NGOs have criticized the requirements for MPs in documenting extra income which merely stipulate that they identify which of the three tax rate intervals they fall under. This procedure provides no clarity with respect to potential external influences related to politicians' financial interests. However, beginning with the 2013 parliamentary term, members of the German Bundestag will have to provide additional details about their ancillary income.

In recent months, Bavarian parties, particularly the governing Christian Social Union (CSU), were shaken by a scandal concerning the employment of legislators' family members in parliamentary offices.

But the most notorious case of potential office abuse during the period under review took place at the topmost level of the German political system. Federal President Christian Wulff reluctantly resigned in February 2012 after two months of well-publicized allegations of bribery and corrupt behavior. Prosecutors in Hannover asked parliament to lift Wulff's immunity. They argued that an initial suspicion of bribery and corruption existed, and that Wulff had improperly accepted gifts, vacation trips and loans with favorable conditions, and had in turn granted benefits to friends and business associates. The outcry provoked by these practices also demonstrated the German public's decreasing tolerance even for this grey area close to corruption. The incident also indicated that effective sanctions for detected abuses do exist, including a sudden end to a political career.

Iceland

Score 7

Corruption among officeholders in the narrow sense of financial corruption has not been considered a serious problem in Iceland. Even so, it does occur in the form of politicians granting favors, and in some instances, paying for personal goods with public funds. Post-2006 regulations on political-party support might help contain such problems in the future, as political parties are today required by law to disclose the sources of their funds. In very rare cases, officeholders in Iceland are put on trial for corruption. The state has no policy specifically addressing corruption, under the premise that no such policy is necessary. Appointment corruption – the appointment of unqualified persons to public office – remains a serious problem. While other, more subtle forms of corruption are harder to quantify, they almost surely also exist.

The collapse of the Icelandic banks in 2008 and the subsequent investigation by the parliament's Special Investigation Committee (SIC), among other bodies, brought to light the subservience of the government and state administration to the banks. This was expressed through weak restraints on the financial sector's phenomenally rapid growth, as well in the form of lax supervision during the boom period. Moreover, it has come to light that three of the four main political parties, as well as individual politicians, accepted large donations from the banks and affiliated concerns. When the banks crashed, 10 out of the 63 members of parliament owed the banks more than €1 million euro each based on the pre-crash value of the króna; indeed, these personal debts to the failed banks ranged from €1 million to €40 million, with the average debt of the 10 MPs standing at €9 million. The SIC did not report on legislators that owed the banks lesser sums – say, only €500,000. Nor, as of the time of writing, was it clear whether the loans of the failed banks to politicians, including the new minister of finance, have been or will be repaid or written off.

In May 2011, a former cabinet secretary in the Ministry of Financial Affairs was found guilty of insider trading (*innherjaviðskipti*) as a result of having sold his stock in Landsbanki just before the economic collapse in October 2008. Courts ruled that the information the official had been privy to through his job constituted insider information on the serious situation of the bank, which failed in the collapse. The Supreme Court sentenced the cabinet secretary to two years in prison and ordered him to pay back the large sum of money he had saved as a result of his actions (but not the interest he earned on the money). In November 2011, parliament approved rules which obliged serving members to declare their financial interests, including salaries, means of financial support, assets and jobs outside parliament. This information is publicly available on the parliament's website.

Citation:

Special Investigation Committee (SIC) (2010), "Report of the Special Investigation Commission (SIC)," report delivered to Althing, the Icelandic Parliament, on 12 April.

Rules on registration of parliamentarians financial interests. (Reglur um skráningu á fjárhagslegum hagsmunum alþingismanna og trúnaðarstörfum utan þings. Samþykkt í forsætisnefnd Alþingis 28 nóvember 2011.).

Ireland

Score 7

The legal framework and rules regarding standards in public office have been progressively tightened and extended over time in Ireland. Nonetheless, and perhaps because of the scale of the economic crisis that broke in 2008, perceptions of corruption have, if anything, increased – especially concerning the banking sector. This impression is borne out by the Corruption Perceptions Index compiled by Transparency International. In 2008 Ireland ranked at 16th out of 179 nations in terms of perceived corruption. The methodology used to calculate the index was changed in 2012 and Ireland was demoted to 25th place. This may be accountable for by public frustration with the prolonged economic crisis and the slow pace of criminal prosecution of those suspected of corrupt banking practices.

Latvia

Score 7

Latvia's main integrity mechanism is the Corruption Combating and Prevention Bureau (Korupcijas novēršanas un apkarošanas birojs, KNAB). GRECO has recognized KNAB as an effective institution, yet has identified the need to further strengthen institutional independence in order to remove concerns of political interference. Over its 10-year history, KNAB has seen a number of controversial leadership changes. Despite its most recent leadership change in 2011, the institution remains plagued by a persistent state of internal management disarray.

The Conflict of Interest Law is the key piece of legislation relating to officeholder integrity. The law creates a comprehensive financial-disclosure system for public officials. In 2012, all Latvian citizens were required to make a one-time asset declaration in order to create a financial baseline in support of efforts to monitor officeholder assets. The Conflict of Interest law also requires public disclosure of all violations.

Party financing regulations contain significant transparency requirements, limitations on donation sources and size, and campaign-expenditure caps. In 2011, after several parties had been given substantial administrative fines for campaign violations, two major parties in Latvia left the political scene, either

dissolving themselves, thus avoiding payment of the fine, or failing to gather sufficient voter support in the 2011 elections. Political parties were entirely financed from the private sector until 2012, when a public funding mechanism was introduced. In 2012 violations of campaign-finance laws were criminalized.

The effectiveness of prosecution is difficult to assess due to the slow movement of cases through the court system. In 2011, of a total of 149 cases investigated by KNAB, 26 cases had not yet been concluded, including cases from 2003, 2006 and 2008. Also in 2011, 105 cases against 181 individuals had reached conclusion. The most significant corruption conviction to date came in 2011, when officials of the Development Department of the Riga City Council were convicted of taking bribes in an amount that exceeded €1 million.

Citation:

1. Corruption °C (2012), Trial Statistics for Offences Committed in Public Service in Latvia 2004 - 2011, Available at: <http://corruption-c.wikidot.com/statistics-on-trials-of-corruption-cases>, Last assessed: 21.05.2013.
2. Group of States Against Corruption (GRECO)(2012), Fourth Evaluation Round, Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors, Evaluation Report, Available at: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4%282012%293_Latvia_EN.pdf, Last assessed: 21.05.2013
3. Freedom House (2012), Nations in Transit, Country Report, Available at: http://www.freedomhouse.org/sites/default/files/NIT2012Latvia_final.pdf, Last assessed: 21.05.2013

Netherlands

Score 7

The Netherlands is considered a corruption-free country. This may well explain why its anti-corruption policy is relatively underdeveloped. The Dutch prefer to talk about improving “integrity” and “transparency” rather than openly talking of fighting or preventing corruption, which appears to be a taboo issue.

Research on corruption is mostly focused on the public sector and much more on petty corruption by civil servants than on mega-corruption by mayors, aldermen, top-level provincial administrators, elected representatives or ministers. The private sector and civil society associations are largely left out of the picture. Almost all public sector organizations now have an integrity code of conduct. However, the soft law approach to integrity means that “hard” rules and sanctions against fraud, corruption and inappropriate use of administrative power are underdeveloped.

There have been major corruption scandals in the public sector involving top-executives – particularly in (government-commissioned) construction of infrastructure and housing, but also in schools and health care. Transparency

problems in the public sector concern job nominations, and salaries for top-level administrators and additional jobs.

In the private sector, 26% of respondents were convinced of the occurrence of corruption in the Netherlands. In dealing with foreign governments or companies, a majority considered bribes inevitable and “normal.” Van Hulten (2012) mentions that bribes and corruption by Dutch companies in foreign countries would amount to some €10 billion. The OECD urged the Dutch government to speed up rules and law enforcement against Dutch companies that violate international anti-corruption rules in their international operations.

In at least three (out of 17) areas, the Netherlands is not living up to the guidelines for effective integrity policy as identified by Transparency International. All three involve preventing corruption and taking sanctions against corruption: the Netherlands has no independent bodies for corruption monitoring, prevention and prosecution; corruption prevention in the private sector is left unattended; and there is no clear financial disclosure regulation for politicians and civil servants. In addition, there is no transparent overview of how many disciplinary or civil court cases pertaining to corruption in a given year are actually conducted.

Citation:

Transparency International Nederland (2012), Nationaal Integriteitssysteem Landenstudie Nederland.
E. Karssing and M. Zweegers (2009), Jaarboek Integriteit 2010, Bureau Integriteitsbevordering Openbare Sector (BIOS)
M. van Hulten, ‘Nederland – corruptieland’, in Tijdschrift voor Politieke Filosofie en Cultuur Civis Mundi, <http://www.civismundi.nl/index.php>, digitaal nummer 13, 2012 onder thema 26.

Additional references:

Zevel, J.H.J. van den, L.W.J.C. Huberts & E.R. Muller (Red.) 2012. Integriteit: Integriteit en integriteitsbeleid in Nederland. Deventer: Kluwer
Heuvel, J.H.J. van den, L.W.J.C. Huberts, Z. van der Wal, & K. Steenbergen, 2010. Integriteit van het lokaal bestuur. Raadsgriffiers en gemeentesecretarissen over integriteit. Den Haag: Boom Lemma.
Huberts, Leo W.J.C., Jeroen Maesschalck & Carole L. Jurkiewicz (Eds.) 2008. Ethics and Integrity of Governance. Perspectives across Frontiers. Cheltenham UK Edward Elgar.
Huberts, Leo, Frank Anechiarico & Frédérique Six (Eds.) 2008. Local Integrity Systems. The Hague: BJU Legal Publishers.
Huberts, L.W.J.C., Montfort, A.J.G.M. van & Doig, A. (2006). Setting a good example? Rule breaking by government in the Netherlands and the United Kingdom. The Hague: BJU Law Publishers.
Huberts, L.W.J.C. & J.M. Nelen 2005. Corruptie in het Nederlandse openbaar bestuur. Omvang, aard en afdoening. Utrecht: Lemma.

Poland

Score 7

After the 2011 elections, the institutional framework for combating corruption was again changed. The office of the plenipotentiary for the fight against corruption was abolished and the tasks of the Central Anti-Corruption Bureau (CBA) were expanded. Integrity mechanisms have functioned relatively well. While some corruption cases have surfaced, involving, among others, the

son of Prime Minister Tusk and the president of the Polish Soccer Association, corruption at the top has been limited. At the same time, however, the flow of significant EU funds has created new opportunities for corruption at the subnational level.

Portugal

Score 7

In law, abuse of position is prohibited and criminalized. However, corruption persists despite this legal framework. A 2012 assessment of the Portuguese Integrity System by the Portuguese branch of Transparency International concluded that the “political, cultural, social and economic climate in Portugal does not provide a solid ethical basis for the efficient fight against corruption,” and identified the political system and the enforcement system as the most fragile elements of the country’s integrity system. This assessment is corroborated by the Transparency International Corruption Perception Index of 2012, which placed Portugal 33rd worldwide – one place lower than in 2011.

A law was approved by the Assembly of the Republic in September 2011 on illicit enrichment of holders of public office. However, this legislation was deemed unconstitutional by the Constitutional Court in April 2012. While practically all the parties that approved the legislation declared they would bring new legislation on this issue, as of May 2013 no new legislation had been approved.

In December 2011, the government announced it would present an Ethics Code for Public Administration. However, by late April 2013 the document had not been approved and it was revealed that the government had decided to not adopt it, instead integrating the ethical issues into the reform of the administrative procedure code.

United Kingdom

Score 7

The United Kingdom is comparatively free of explicit corruption like bribery or fraud, and there is little evidence that explicit corruption influences decision-making at national level. Occasional episodes arise of limited and small-scale corruption at local level, usually around property development. The delinquents of recent scandals in UK politics mostly acted within the law; however, these scandals point to a continuing gap between politicians’ attitudes and the public’s expectations. Regulations against corruption have already been formalized to strengthen them, with the 2004 Corruption Bill consolidating and updating regulations into one law.

The MPs' expenses scandal of 2009 has provoked a call for more transparency in this field, but is an example of an informal "British" approach to the political problem of not wanting to raise MPs' salaries. Instead, there was a tacit understanding that they could claim generous expenses. The rules were tightened very substantially in the wake of the scandal. It has become evident that traditional values and ethics are no longer sufficient and that positive regulation is required. The News of the World scandal as well as the resignation of Defence Secretary Liam Fox have been recent indications of the necessity of further action in this field. Codes of practice are being revised, and the "independent adviser on ministers' interests" has recommended a new and independent office to control public officeholders' possible conflicts of interest.

At a more subtle level, influence based on connections and friendships can occur, but rarely with direct financial implications.

Chile

Score 6 In general terms, the integrity of the public sector is a given, especially on the national level. The most notable problem consists in the strong ties between higher officials and the private sector. Political and economic elites converge, thus reinforcing privilege. This phenomenon has become more problematic in recent years since many members of the ruling Alianza coalition are powerful businesspeople. This entanglement causes difficulties in the policymaking process – for example, when it comes to regulation.

Furthermore, there are no regulations to monitor conflicts of personal economic interest for high-ranked politicians (for example the president and ministers).

Israel

Score 6 In a paper discussing a proposed penal code amendment on the issue of bribery, itself part of the implementation of the OCED corruption-prevention plan (2005), a survey of the Israeli legal framework identified three primary channels of a corruption-prevention strategy: 1) maintaining popular trust in public management (including bank managers and large public-oriented corporation owners), 2) ensuring the proper conduct of public servants and 3) ensuring accountability within the civil service. Through 2005, Israel pursued these goals independently by a variety means: It established a legal and ethical framework to guide civil servants and the courts, reinforced the position of the State Comptroller through the passage of a basic law (1988) in order insure government accountability, and adapted the civil-service

commission's authority to manage human resources (e.g., appointments, salaries), among other activities. During the 1990s, Israel initiated an overall reform of professional nomination procedures, as well as standards of professionalism, accountability and efficiency. In 2005, Israel was one of 140 states to sign a national treaty on the issue of controlling corruption. It began implementing this treaty in 2009, and has issued annual progress reports since. Reforms to date have largely been judiciary, although a few structural changes have been made as well.

Annual opinion surveys demonstrate that Israeli citizens are concerned about high levels of corruption in their country, but this belief is not empirically supported. Nevertheless, criticism of Israel's centralized public-service structure have been mounting, in part because it is characterized by a very powerful Finance Ministry and a Ministry of Defense with broad ability to engage in discretionary spending. These powers detract from accountability, and thus leave room for corruption.

In Transparency International's Corruption Perceptions Index 2012, Israel was ranked at 39th place out of 176 countries, dropping six spots in the index compared to the previous year. As Transparency International reports, Israel has made little progress in reducing the problem of corruption and performed poorly against the world's most developed economies. Israel's score of 60 gave it a rank of 24th among the 34 OECD countries.

The Israeli public is becoming increasingly frustrated with what they regard to be shady dealings on the part of their elected officials. As of the time of writing, former Foreign Minister Avigdor Liberman was on trial for fraud, money laundering and breach of trust. Former Finance Minister Avraham Hirschson was indicted for a number of crimes including aggravated fraud, theft, breach of trust and money laundering.

Citation:

Aliasuf, Itzak, "Ethics of public servants in Israel," 1991 (Hebrew)
Knalfman, Ana , "Political corruption in Israel," IDC website 13.11.2010 (Hebrew)
"Israel," Transparency International, <http://www.transparency.org/country#ISR>
"Israel-phase 2," Ministry of Justice, December 2009
"85% of Israelis think corruption is widespread in business," The Times of Israel, 12.5.2012.
<http://www.timesofisrael.com/85-of-israelis-think-corruption-widespread-in-business/>

Lithuania

- Score 6 Corruption is not sufficiently contained in Lithuania. In the World Bank's 2011 Worldwide Governance Indicators, Lithuania's received a score of 65.9 out of 100 (slightly above the average of 62.8 for European and Central Asian countries) on the issue of corruption control stood at. The 2011 Eurobarometer poll on corruption revealed that 89% of Lithuanians consider

corruption to be a major problem in their country, while 47% believe that corruption has worsened in the last three years.

Anti-corruption policy is based on the National Program on the Fight Against Corruption (2011 – 2014), which has two primary building blocks: eliminating or minimizing conditions that enable corruption, and enforcing penalties in cases of identified corruption. According to the Lithuanian Corruption Map of 2011, the most corrupt institutions were the health care sector, the parliament, the courts, the police, and the local authorities. Bribery is perceived to be the main form of corruption by most average Lithuanians, while businesspeople and civil servants respectively identified nepotism and party patronage as the most frequent forms of corruption. According to the World Economic Forum, Lithuanian firms perceive corruption as one of the most problematic factors for doing business in the country. Although many integrity mechanisms are in place, in theory dissuading politicians, state officials, and civil and public servants from abusing their positions, the efficacy of these provisions is mixed.

Citation:
The Worldwide Governance Indicators of World Bank are available at <http://info.worldbank.org/governance/wgi/index.asp>
The Lithuanian Corruption Map is available at http://transparency.lt/media/filer_public/2013/01/22/korupcijos_zemela_pis_2011.pdf
The 2012-2013 Global Competitiveness Report of the World Economic Forum is available at http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf

France

Score 5

Up to the 1990s, corruption plagued French administration. Much of the problem was linked to secret party financing, as political parties often sought out alternative methods of funding when member fees and/or public subsidies lacked. Methods included on the national level weapons sales to brokering lucrative contracts with multinational companies, or on the local level, public purchasing to the awarding of long-term concessions for local public services. Judicial investigations revealed extraordinary scandals, which resulted in the conviction and imprisonment of industrial and political leaders. The cases themselves were a key factor for the growing awareness of the prevalence of corruption in France. This led to substantive action to establish stricter rules, both over party financing and transparency in public purchases and concessions. The opportunities to cheat, bypass or evade these rules however are still too many, and too many loopholes still exist. A scandal in March 2013 involving a minister of finance who is accused of alleged tax fraud and money laundering has put the issues of corruption, fiscal evasion and conflict of interest on the public agenda. In reaction, government ministers have been obliged to make public their personal finances; parliamentarians may be obliged to do so as well in the future.

However, these hastily adopted measures are still incomplete and do not tackle critical problems related to corruption, such as the huge and largely unchecked powers of mayor (who are responsible for land planning and public tenders), the rather superficial and lax controls of regional courts of accounts, the intertwining of public and private elites, the holding by one person of many different political offices or political mandates simultaneously (*cumul des mandats*). All these factors granted do not constitute by themselves acts of corruption, but can lead to it – particularly as the legal definition of corruption is narrow and thus reduces the possibility to effectively sanction any malpractice. As long as legal codes to regulate conflicts of interest have not been adopted, corruption will continue, unimpeded by sanctions.

Greece

Score 5

Public officeholders are not efficiently prevented from exploiting their offices for private gain, but things have been changing since 2011. In 2011 Greece's CPI score was far lower than that of all other EU member states, except for Bulgaria, and in 2012 Greece's score fell below that of Bulgaria. There is extensive anti-corruption legislation but the implementation gap in enforcing it is a recurring problem. The implementation gap is visible in three outstanding issues: party financing and parliamentary integrity; corruption of civil servants; tax evasion. All three issues are related to the fact that Greece was at the brink of default in 2010 and even today has not completely avoided this danger.

In 2011 – 2013 the government reacted to pressures from the country's creditors and from Greek society by pressing the prosecuting authorities to furnish evidence on politicians whose names appeared on lists of those allegedly engaged in money laundering; promised the immediate dismissal of civil servants who had been condemned by Civil Service Disciplinary Councils for having violated integrity legislation; and also prepared a new tax law aiming not only to increase property and income tax, but also to reduce tax evasion among the self-employed and liberal professions.

There is some progress on all these fronts. For instance, a former vice president of the Greek socialist governments of the 1980s and the 1990s, Akis Tsochatzopoulos, was arrested in April 2012 and a year later was brought to trial on charges of corruption. In the meantime, persons belonging to high income groups, such as businessmen and celebrities who have evaded taxes, have been called in by tax authorities to pay fines.

The visible but relatively small progress in fighting corruption is associated with multiple factors: the plethora of legislative acts on corruption and the

remaining loopholes in the relevant legislation; the lack of expertise and resources available to institutions entrusted with the fight against corruption and the problematic coordination between these institutions; and at least until 2011, the lack of resolve among political and administrative elites to control corruption.

Citation:

<http://www.transparency.org/research/cpi/overview>. Accessed on 12.06.2012.

Japan

Score 5

Reports of corruption and bribery scandals have emerged periodically in Japanese politics for decades. These problems are deeply entrenched, and are related to the country's organization of politics. Japanese politicians rely on local support networks to raise campaign funds, and are expected to "deliver" for their constituencies in return. Scandals have affected members of all major parties.

The period under review was dominated by a lingering, major scandal involving the influential politician Ichiro Ozawa. Ozawa himself was acquitted in 2012, but a high court upheld guilty verdicts for three aides in early 2013.

This said, new financial or office-abuse scandals involving bureaucrats have been quite rare in recent years. This may be a consequence of stricter accountability rules devised after a string of ethics-related scandals came to light in the late 1990s and early 2000s.

Particularly following the 3/11 disasters, the public debate on regulatory failures with respect to the planning and execution of nuclear power projects supported a widely held conjecture that at least on a regional level, collusive networks between authorities and companies still seem to be prevalent, and may involve corruption and bribery.

In a report released in January 2012, the OECD expressed serious concerns about Japan's enforcement of the Foreign Bribery Law.

Romania

Score 5

While two thirds of Romanians believe that the level of corruption in the country has increased in recent years, anti-corruption measures have in fact become more effective since Romania's EU accession. The National Anti-Corruption Directorate (DNA), the National Integrity Agency (ANI) and the Anti-Corruption General Directorate (DGA) are the three main institutions

responsible for combating corruption. Despite some political attempts over the years to dismantle the DNA, the organization continues to be the leading institution in the investigation and prosecution of high-level officials. Its performance throughout the years has shown consistent signs of improvement in the number of indictments and investigations carried out against high-profile offenders. Recent statistics released in February 2013 reveal that in 2012 the number of definitive sentences rose by 150% compared to 2011. Because of its activities, the ANI, which is responsible for combating and preventing unjustified enrichment, conflict of interests and incompatibilities, has been a target of political pressure. These pressures range from a continuous rhetoric on DNA's and ANI's partisan nature to suggestions that the institutions are restructured. The discrepancy between these genuine improvements and the public perceptions of worsening corruption may be due to the high salience of corruption in the mass media political discussions which tend to focus primarily on valence issues (such as corruption) rather than concrete policy proposals.

Slovakia

Score 5

The reduction of corruption featured prominently on the agenda of the Radičová government. In August 2011, the government passed the Strategic Plan for Combating Corruption. Even though the plan could not be fully implemented because of the collapse of the government, a number of important improvements were achieved, including judicial reform, the mandatory disclosure of government contracts, greater transparency on grants given by the Government Office and new rules on public procurement (Transparency International 2012). The activities of the government were complemented by initiatives by NGOs. Transparency International Slovakia, for example, designed the Open Municipality project in order to reveal and compare levels of transparency, the quality of anti-corruption mechanisms and municipalities' openness toward citizens. Two other organizations – Fair-Play Alliance and Via Iuris – set up the White Crow award to recognize people who fight corruption and suffered significant personal consequences. In contrast, the Fico government has paid little attention to the issue of corruption. However, the new government has justified the centralization of the public procurement system as a way to limit both public expenses and corruption.

Citation:

Transparency International, "Radicova's government successfully restarted the fight against corruption";
<http://www.transparency.sk/en/vlada-i-radicovej-uspesne-restartovala-boj-proti-korupcii/>
Corruption Risks in the Visegrad Countries, Visegrad Integrity System Study Hungary 2012;
http://www.transparency.org/files/content/pressrelease/20120726_Visegrad_integrity_system_study.pdf

Slovenia

Score 5

Corruption is publicly perceived as one of the most important problems in Slovenia. In the period under review, the Court of Audit and the Commission for the Prevention of Corruption (CPC) – newly established after the 2011 parliamentary elections in which the wealth and the assets of major politicians became subject to significant public attention – stepped up their monitoring activities. In August 2011, a report by the Court of Audit led to the resignation of the minister of the interior. In January 2013, the CPC presented the findings of a year-long investigation revealing that two of the seven main party leaders, including Prime Minister Janez Janša, had systematically violated the law by failing to properly report their assets. While the CPC had no mandate to demand legal actions, the political consequences of the report were severe. As a result of the latter, the ruling coalition fell apart and the leader of the main opposition party stepped down. In August 2012, the CPC also set up a comprehensive online database called Supervizor, which monitors all financial transactions of public bodies and allows the public to search government spending records dating back to 2003.

South Korea

Score 5

Corruption remains a major problem in Korea, and government attempts to curb the problem are seen as mostly ineffective by the population. In early 2013, President Lee's older brother Lee Sang-deuk was sentenced to two years' imprisonment for corruption. The enforcement of the OECD anti-bribery convention is evaluated as "moderate." The Tax Justice Network ranks Korea 28th in its Financial Secrecy Index, indicating a relatively small Korean role in illicit financial activities.

Vigilant civil society organizations regularly conduct surveys of how parliamentarians fulfill their duties. Blacklisted candidates running for office face problems in parliamentary elections. Though far from perfect, the blacklisting system has helped to increase voters' awareness of problems. However, lawmakers who have been convicted for illegal fund-raising and other illicit activities sometimes benefit from the presidential amnesties that are granted every year, as was the case in August 2009, when President Lee pardoned 341,000 business executives, politicians and bureaucrats convicted of crimes that included fraud and embezzlement. In December 2009, President Lee pardoned Samsung Electronics chairman Lee Kun-hee, who had been convicted of tax evasion. In January 2013, the outgoing President Lee pardoned 55 people. Most of them were his political confidants.

The Lee administration's business-friendly policies have also been criticized for undermining anti-corruption measures. On 29 February, 2008, the Anti-Corruption and Civil Rights Commission (ACRC) was launched following the merger of the Ombudsman of Korea, the Korean Independent Commission against Corruption, and the Administrative Appeals Commission. Before February 2012, ACRC commissioners were appointed exclusively by the president, a provision that critics had argued undermined its independence. As a consequence of legislative reform, the president's prerogative to appoint the members of the commission is now limited to nine out of 15 commissioners, whereas of the remaining six (non-permanent) members of ACRC, three are appointed by parliament and three by the Chief Justice of the Supreme Court.

The ACRC has no power to investigate corruption scandals. The prosecutor's offices that hold this power are not free of corruption in their own right. Proposals to create an independent institution to be in charge of corruption scandals involving high-ranking officials – including prosecutors – failed due to resistance on the part of the prosecutor's office and some conservative politicians.

Citation:
The Economist 2 February 2013, Pardon Me, <http://www.economist.com/news/asia/ 21571192-departing-president-proves -extravagantly-forgiving-pardon-me>

Act on Anti-Corruption and the Foundation of the Anti-Corruption & Civil Rights Commission, 2008, http://www.acrc.go.kr/eng_index.htm
Transparency International 2013, Country Page Korea, <http://www.transparency.org/country #KOR>

Spain

Score
value_6

Spanish law broadly regulates the obligations and responsibilities of politicians and other civil servants. It encompasses state spending audits, legislation regarding conflicts of interest, the declaration of assets and the criminal prosecution of corruption. The Spanish legal framework is generally successful in curbing corruption and everyday interactions between citizens and civil servants function on the basis of integrity. Other anti-corruption mechanisms such as party financing rules, public procurement guarantees and access to information systems are nonetheless ineffective, a fact demonstrated by the numerous corruption scandals brought to light from 2011 to 2013. Corruption levels have plausibly declined since the country's real estate bubble burst in the wake of the 2008 financial crisis and the 2010 sovereign debt crisis. Massive spending cuts since then have also arguably helped bring down corruption levels. Nonetheless, perceived corruption levels (and Spain's position in international indices) have worsened. This can be attributed to the fact that past cases currently under inquiry are now

receiving considerable media attention and a decreased tolerance among Spaniards for the abuse of public office. The disincentives for officeholders to exploit their office have arguably increased as public servants now face more stringent legal consequences and/or adverse publicity.

Most scandals under investigation refer to events and activities prior to 2010. Most of these corruption scandals involve private companies' illegal donations to specific parties in exchange for favors from the administration or personal enrichment. There have also been several fraudulent subsidies received by individuals close to the governing political parties. These include corruption scandals such as the Bárcenas case, the Gürtel plot (which implicated the Popular Party or Partido Popular, PP), the ERE case (involving the Spanish Socialist Workers Party or Partido Socialista Obrero Español, PSOE) and several other scandals involving parties at both regional and local levels (the regions of Andalusia, the Balearics, Catalonia, Galicia, Madrid and Valencia being affected in particular). Other important scandals not directly linked to political parties involve the king's son-in-law (who is now on trial after earning millions by running charities from 2003 to 2009 whose main business included cashing in on his status as a Spanish royal) and the president of the Supreme Court (who resigned in 2012 after being accused of claiming vacations as business expenses). The Operación Pitis, a data-trafficking network selling citizens' information to private investigation companies has been the only significant case of corruption involving career civil servants.

Turkey

Score 5

During the period, the government made progress on anti-corruption policy, for example in the financing of political parties. In January 2012, a law dealing with transparency in election financing for presidential candidates was adopted. However, there are still legal loopholes related to the financing of politics. There still is no legal framework for the auditing of election campaigns of individual candidates. The review and controls over asset declarations made by politicians and public officials remains weak. Little to no progress has been made in limiting the immunity of politicians and public officials with regard to corruption-related cases.

The implementation of a national anti-corruption strategy however is still delayed. A third judicial reform package includes recommendations from the Group of States against Corruption (GRECO), with deal with, among other issues, a redefinition of the scope of bribery.

Since the end of 2011, the new Public Oversight, Accounting and Auditing Standards authority was established to set codes of conduct and auditing

standards. The body approves and monitors statutory auditors and audit firms.

According to Transparency International's Corruption Perception Index, Turkey has made progress in tackling corruption; however, local corruption remains a systemic problem. While municipalities that are controlled by opposition parties are under the surveillance of law enforcement authorities and government inspectors, the municipalities that are controlled by the government party are too a source of corruption.

A recent amendment to the law on audit courts limits the scope of auditing measures over state expenditures. Safeguards over public procurement have deteriorated as the passing of several amendments to the original law have allowed municipalities to operate in a less than transparent fashion. There are no codes of conduct to guide members of the legislature or judiciary in their actions; and conflict of interest is perceived as the convergence of interests (of provider and receiver) among public officials.

Citation:

U4 Expert Answer, Overview of corruption and anti-corruption in Turkey, 17 January 2012 Number: 313, <http://www.u4.no/publications/overview-of-corruption-and-anti-corruption-in-turkey/>.

GRECO, Third Evaluation Round Evaluation Report on Turkey on Transparency of Party Funding (Theme II), <http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaluationReportTurkey2009.pdf>.

Ö.F. Gençkaya, Conflict of Interest in Turkish Public Administration, Ethics for the Prevention of Corruption in Turkey Academic Research Report, V. I, Ankara: Fersa, 2009.

Bulgaria

Score 4

The GERB government (2009 – 2013) foregrounded the struggle against corruption. As subsequent European Commission reports under the Cooperation and Verification Mechanism show, the formal legal framework is quite extensive and has become more consistent over the years. The various branches of power are subject to auditing by the audit office, whose reports are made public. Parties are required to submit detailed reports on their financing and spending. Individual members of the legislative and the higher levels of the executive branches are required to disclose information about their personal property and income and to declare conflicts of interest, while codes of conduct exist for various officeholders. Specialized agencies for fighting corruption exist in all three branches, and there is an additional comprehensive anti-corruption taskforce within the State Agency for National Security. Programs and action plans are being prepared and updated. However, the actual effects of these provisions and measures have been modest so far. Ironically, the apparent slight decline in actual corruption has gone hand in hand with an increased perception of corruption.

Croatia

Score 4 Corruption is one of the key issues facing the Croatian political system and ranked high on the agenda of the accession negotiations with the European Union. Upon coming to office in 2009, Prime Minister Kosor made the fight against corruption one of her priorities and succeeded in improving the legal framework and its enforcement. The Bureau for Combating Corruption and Organized Crime (Ured za suzbijanje korupcije i organiziranog kriminaliteta, USKOK), a specialized prosecution unit attached to the State Attorney's Office, has intensified its fight against corruption and has uncovered and investigated a number of high-level corruption cases (Kuris 2013). Charges of financial violations filed a month before the December 2011 parliamentary elections contributed to the defeat of the governing Croatian Democratic Union (Hrvatska demokratska zajednica, HDZ). In November 2012, Ivo Sanader, the Croatian prime minister from 2003 – 2009, was convicted after a two-year trial. USKOK's investigative activities have been complemented by preventive and educational activities by the Ministry of Justice's Independent Anti-Corruption Sector and an interministerial anti-corruption committee that was chaired by the prime minister until fall 2012.

Citation:
Kuris, Gabriel, 2013: Cleaning House: Croatia Mops Up High-Level Corruption, 2005 – 2012. Princeton University
(http://www.princeton.edu/successfulsocieties/content/data/policy_note/PN_id226/Policy_Note_ID226.pdf)

Cyprus

Score 4 State expenditure and compliance with rules and procedures are audited by the office of the Auditor General, a respected and trusted institution. The Auditor produces annual reports on the public administration's accounts and misdoings. Public-sector institutions rarely make corrections in response to comments, observations or recommendations.

Other reporting rules and mechanisms also exist. For example, public-office holders must declare their income and assets to the president of the parliament. Rules also seek to ensure the transparency of the public procurement system, and provide for prosecution of persons attempting to influence administrative decisions through favoritism or financial means. Conflicts of interest in public life can be observed, often without those concerned feeling the need to declare such conflicts or take remedial action. During the period under review, the presidential palace exhibited a modicum of favoritism and abuse of power.

Generally, anti-corruption measures are not effectively implemented; indeed, public opinion holds that a condition of wide-ranging impunity exists. This situation was reflected in the government's crisis management in 2012, when it became obvious that high-ranking figures in the administration were able to withdraw their money from the banks at which deposit cuts were expected, thus underlining the fact that officeholders use their position to further their own private interests.

Czech Republic

- Score 4 Although all political actors declare themselves to be against corruption, behavior across the political spectrum shows that use of political office for private gain is widespread and tolerated within the political elite, meaning that corrupt politicians can operate until trapped by investigative journalists or police investigations. There have been, or are ongoing, court proceedings against a former Prague mayor, the Czech Social Democratic Party (Česká strana sociálně demokratická, ČSSD) head of a regional authority and various government ministers. Governments have continued to produce plans for tackling corruption, often including measures that they have failed to implement in the past. A 2012 strategy included such priorities as a law to ensure the civil service's independence from political control – a measure discussed and delayed over many years and promised to the European Commission at the time of accession to the European Union. It would limit the power of politicians to control and appoint state officials and would thereby restrict the scope for corrupt politicians to operate. Among measures omitted and frequently called for is openness in politicians' personal finances.

Hungary

- Score 4 The government under Prime Minister Orbán has done a lot to fight – real or alleged – corruption under previous governments, but has done little to improve deficient legislation. Moreover, it has been involved in a number of questionable deals with investors and persons with close ties to the ruling political elite. Two cases, which have attracted particular public attention, have been the large-scale lease of public land in 2012 and the tender for public licenses to sell tobacco in 2013. In both cases, valuable rights went to a small number of bidders close to Fidesz and did so in a very non-transparent way. The land-lease scandal led to the resignation of József Ángyán, state secretary in the Ministry of Agriculture, who criticized the government for its cronyism. As a reaction to the tobacco lease scandal, Transparency International and other NGOs resigned from the government's anti-corruption working group.

Italy

Score 4 The Italian legal system has a significant set of rules and judicial and administrative mechanisms (both ex ante and ex post controls) to prevent officeholders from abusing their position, but their effectiveness is doubtful. The Audit Court itself – one of the main institutions responsible for the fight against corruption – indicates in its annual reports that this remains one of the biggest problems of the Italian administration. The high number of cases exposed by the judiciary and the press suggests that the extent of corruption is high, and is particularly common in the areas of public works, procurement, and local building permits. It suggests also that existing instruments for the fight against corruption must be significantly reconsidered to make them less legalistic and more practically efficient. Under the Monti government some efforts have been made to improve the situation through a new anti-corruption law (Legge 6, Novembre 2012, no. 190), but these efforts have faced significant opposition in the parliament and had been interrupted by the end of this government.

Malta

Score 4 A number of institutions and processes work to prevent corruption and guarantee the integrity of government officials, including the Permanent Commission Against Corruption, the National Audit Office, the Ombudsman Office and the Public Service Commission. The government also abides by a separate Code of Ethics, set out for ministers, members of parliament and public servants. Ministers and members of parliament are also expected to make an annual asset declaration. The Public Accounts Committee of the unicameral House of Representatives can also investigate public expenditure decisions to ensure that money spent or contracts awarded are transparent and conducted according to law and general financial regulations.

An independent media also plays a part in highlighting corruption in government and administration. Nevertheless, with the exception of the National Audit Office and the Ombudsman Office, these mechanisms provide insufficient guarantees against corruption. In the case of both the Permanent Commission against Corruption and the Public Service Commission, a lack of resources prevents these bodies from working effectively. And as their members are appointed by the president on the sole advice of the prime minister, there is a lack of public trust in their work. Although the Commission against Corruption has the power to investigate incidents independent from government influence, the commission often waits for a complaint before

launching an investigation. Recent scandals associated with oil procurement for the state power station revealed that the commission had received calls from private individuals to investigate allegations of corruption, but that it had proved unfit for the task. The commission's report hinted that while suspicions of corruption existed, the authorities failed to call in the police to further investigate the suspicions.

Both the National Audit Office and the Ombudsman Office are independent, but neither enjoys the necessary executive powers to follow up on their investigations.

Mexico

Score 3 Despite several regulations and policies, there are severe and persistent corruption problems in Mexico. In the years after the Revolution, social peace was bought largely through a series of semi-official payoffs. This carried through to the 1970s and beyond. Bribery is widespread in Mexico, and even though the level of corruption has decreased, the cost of bribery has increased during the last few years. A case in point was a prominent politician, Carlos Hank Gonzalez, who famously stated, "a politician who is poor is a poor politician." The culture has changed somewhat in that those who enrich themselves from public office are, at least, no longer admired.

But there are regions of Mexico where the culture of corruption persists, though efforts have been made to combat the problem. Measures have included increasing the professionalism of the civil service and considerably strengthening the legal framework. Such efforts had some positive effect, but at the price of creating new problems, such as introducing paralyzing bureaucratic procedures. Another problem is that federal and state definitions of illegal and corrupt practices are often contradictory or inconsistent, the latter being more lax. Particularly troubling is that the worst victims of corruption are the poor, who, unlike the wealthy, lack the resources to pay off corrupt officials. In addition, it should be noted that drug cartels systematically influence local and regional politics through corrupt practices.

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