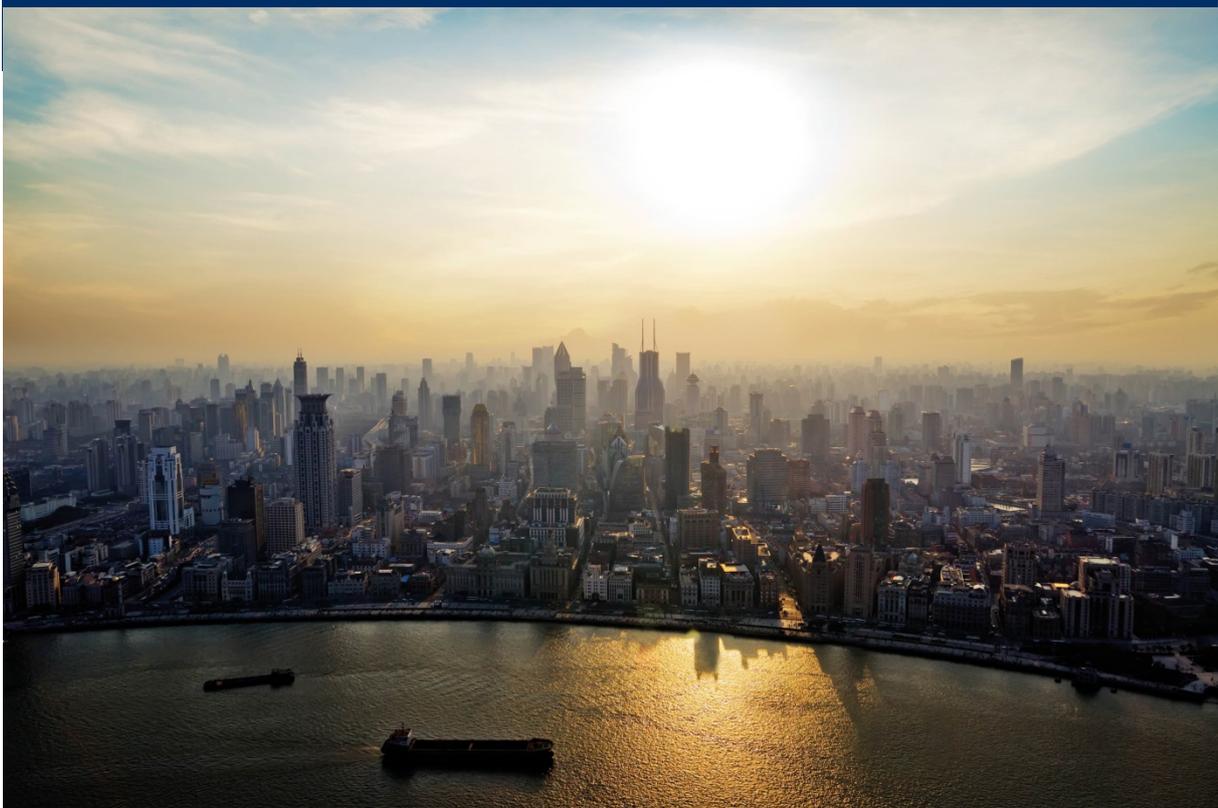


SGI Sustainable
Governance
Indicators

2015 Rule of Law Report

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



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 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 over a short period of time, produced some inconsistencies. Today, a consistent and transparent system ensuring legal certainty is in place.

Finland

Score 10

The rule of law is one of the basic pillars of Finnish society. When Sweden ceded Finland 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 that prioritizes legal certainty, condemns any conflation 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 do 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 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. In a report published in 2013, the Constitutional Advisory Panel found that although there is no broad support for a codified constitution, there is considerable support for entrenching elements of it.

Citation:

Annual Report of the Ombudsman 2012/2013 (Wellington: Office of the Ombudsman 2012/2013). Constitutional Advisory Panel, 2013. New Zealand's Constitution. A Report on a Conversation, http://www.ourconstitution.org.nz/store/doc/FR_Full_Report.pdf (accessed November 11, 2014).

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 expected 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. The main potential challenge to the entrenched value of the rule of law is the growing emphasis on efficiency objectives in the public administration. The tension between that goal and legal security is well-known but still looms large in the context of administrative reform.

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. Two recent cases highlighting this uncertainty are a 2013 High Court challenge of the constitutionality of the Minerals Resources Rent Tax (MRRT) introduced by the federal government in 2012 and a 2014 High Court challenge of the constitutionality of federal funding of school chaplains. The High Court ruled the MRRT constitutional, but ruled the chaplaincy program unconstitutional.

Citation:

Michael Crommelin, 'The MRRT Survives, For Now: Fortescue Metals Group Ltd v Commonwealth' on Opinions on High (16 September 2013)

Gabrielle Appleby 'Commonwealth left scrambling by school chaplaincy decision' The Conversation, 19 June 2014: <https://theconversation.com/commonwealth-left-scrambling-by-school-chaplaincy-decision-27935>

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 (Folketinget), 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

Icelandic state authorities and administration respect the rule of law, and their actions are generally predictable. However, there have been cases in which verdicts by Icelandic courts and government actions have been overruled on appeal 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 have dealt with journalists' free-speech rights.

A recent case of a different kind has a bearing on legal certainty. The Supreme Court ruled, first in June 2010 and more recently in April 2013, that bank loans indexed to foreign currencies were in violation of a 2001 law. This means that the asset portfolios of Icelandic banks contained invalid loans. These examples demonstrate that the banks acted contrary to the law. Neither the government nor any government institution, 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. Even after the Supreme Court ruled that these loans were null, the banks have been slow to recalculate the thousands of affected loans. Individual customers have had to sue the banks in an attempt to force them to follow the law.

A related issue that may arise relates to legislation that prohibits foreign ownership of Icelandic fishing quotas for more than one year. It is not known to what extent foreign creditors have accepted as collateral ownership of fishing quotas. This could be a complicated issue for the courts to resolve.

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_lemums.pdf, Last assessed: 21.05.2013

Poland

Score 9 Poland offers a high degree of legal certainty. 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.

Citation:

Zielona księga: system stanowienia prawa w Polsce [Green Book: Law-making system in Poland]. Office of the President of the Republic of Poland and Public Debate Forum, Warsaw 2013.

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.

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, requiring backing from detailed specific laws. However, points are gradually being

clarified as case law builds up, with regard to the freedom of information and general discrimination. Government bodies then learn to comply with established practices.

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 have been brought “back on board” – that is, their decisions were brought under ministerial responsibility and parliamentary oversight. Yet a small number of glaring miscarriages of justice, and in 2013 and 2014 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 erroneous argumentation of verdicts. 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 citizens and smaller companies access to legal dispute resolution has become unaffordable.

Spain

Score 8

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 lesser extent, the principle of transparency (although this particular dimension has improved during 2014, 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.

Apart from the aforementioned improvement on transparency, two other positive developments regarding legal certainty can be mentioned for the period under review. First, the introduction of a scheme by the central government (the so-called

Fund for Financing Payments to Suppliers, FFPP) to deal with the increasing arrears on the invoices that subnational administrations owe to public procurement suppliers since the beginning of the crisis (these arrears have caused great liquidity problems for small and medium-sized companies). Secondly, the drafting of a new bill on the reform of the general administrative procedure, which was still under discussion at the end of 2014. This new law may spell for a modernization of administrative law that is commensurate with this trend elsewhere in Europe.

Citation:

Wolfgang Rusch. 2009. Administrative procedures in EU member states. SIGMA (OECD/EU) at www.sigmaweb.org/publications/42754772.pdf

Belgium

Score 7

The rule of law is relatively 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 failed to actually implement many of its fiscal treaties with foreign partners (for a list, see the Belgian Service Public Federal Finances website). The main reason being that all levels of power (federal, regional, etc.) 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.

Chile

Score 7

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.

Greece

Score 7

After the onset of the economic crisis in the winter of 2009-2010, the government repeatedly adapted past legislation to changing circumstances because the conditions accompanying Greece's bailout required reforms in many policy sectors. Many changes have been made to areas such as taxation legislation which, though necessary, have not fostered an institutional environment conducive to attracting foreign investments.

Moreover, because of the need to effect reforms rapidly, the government resorted to governing by decree after passing legislation which left ample room for discretion. This is deplorable and attests to the nervousness and time pressure under which the government tries to abide by the conditions of the loan agreements granted to Greece in 2010 and 2012, in order to service its soaring public debt.

On the other hand, paradoxically, in certain respects (e.g., regarding privatizations) legal certainty may have been enhanced in Greece as a result of the austerity policy that 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 technology, environmental protection, and the conduct of professional sports championships (football and basketball), where legal uncertainty rises from the difficult compromises made among government coalition partners and from a lingering culture of unpredictability and ad hoc, if not whimsical, policy planning. The worst case of legal uncertainty was and remains taxation policy.

The state administration operates on the basis of a legal formalism and a complexity of legislation that is extensive, numerous and sometimes contradictory. In other words, while legal certainty may be provided through established rules and regulations, knowing what applies and under what conditions makes it difficult to apply legislation. Acts passed by parliament have often had seemingly extraneous items added, which only confuses things further.

In recent times, the politics of coalition government has fostered further uncertainty. 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. In fact, in June 2013, DIMAR split from the coalition government over the issue of the sudden closing down of the public broadcaster (ERT). This departure

may have left the coalition government in a more fragile state (commanding only 155 votes out of a total of 300 members of parliaments). Yet, the fact that the remaining coalition partners (ND and PASOK) have converged on most policy issues may be a sound basis on which to expect that - in contrast to the past - Greek public policy will feature fewer loopholes and contradictions.

Italy

Score 7

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 excessive burden of regulations requires too often that in order to face critical situations exceptional powers are granted to special authorities (“commissari”) who are not subject to oversight. This often results in arbitrary decisions being made and opens up opportunities for corruption.

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 pre-accession period, as well as by good compliance with EU law in the post-accession period. In the World Bank’s 2013 Worldwide Governance Indicators, Lithuania’s score for the issue of the rule of law was 73.9 out of 100 (up from 73 the previous year). Although the regional average was 66, the country’s score remained 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 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. The Ministry of Justice provides methodological advice on the legislative process, submits conclusions on draft legal acts, and coordinates

monitoring of existing legislation. The Public Management Improvement Program is designed to simplify legal acts and improve their quality.

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. In one of the most recent cases triggering public debate, the draft state budget for 2015 was adopted despite evaluations by the Central Bank and the National Audit Office stating that it violated the law on fiscal discipline.

Citation:

World Bank. <http://info.worldbank.org/governance/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, 2013 and 2014 budgets, which were subsequently deemed to be unconstitutional by the Constitutional Court. The accord Portugal signed with the EC-ECB-IMF Troika included a "reform of the state" to reduce public funding for various programs. 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 prosecution of former president Roh Moo-hyun. The biggest political scandal, since Park Geun-hye's inauguration, concerns a feud between Chung Yoon-hoi and Park Ji-man. Chung was Park's chief, while Park Ji-man is Park's younger brother. The scandal alleges that Chung met with key aides to Park in an attempt to win a power struggle between himself and Park Ji-man. The publicity of this scandal opinion, the surrounding circumstances and the insinuation of shadow interference in state affairs reflects a deterioration of the rule of law and undermines public trust in the prosecutors.

Citation:
Joong Ang Daily 9 April 2010

United States

Score 7 There is little arbitrary exercise of authority in the United States, but the legal process does not necessarily provide a great deal of certainty either. Some uncertainty arises as a consequence of the country's adversarial legal system. 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 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 – though he has limited his use of them. Nevertheless, 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. In 2014, Obama stated his intention to act unilaterally on immigration reform if Congress fails to enact legislation. He claims to have sufficient authority under existing statutes, but these claims are quite extravagant in relation to prior discussion in this policy area.

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.

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 problems. 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. A striking example is the most-debated law on housing adopted in 2013 under the initiative of a Green minister, Cecile Duflot. The implementation decrees have not been published and most of the law will never be applied given the strong criticisms it has received from all sides. 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.

Ireland

Score 6

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.

Since 2012, a controversy has centered on the allegation of widespread corruption in the administration of “penalty points” relating to driving offenses. Two Garda (police) whistleblowers alleged that these points were often annulled by members of the police force acting on the basis of favoritism or in response to political pressure. An internal Garda report on the allegations was published in May 2013. It played down the allegations of corruption, but its findings were questioned by members of the Oireachtas, and the ensuing controversy eventually led to the resignation of the Garda commissioner and ultimately to the resignation of the minister for justice in May 2014.

The Garda Síochána Ombudsman Commission (GSOC) was also at the center of a controversy during 2014. In February, newspaper accounts claimed that the commission suspected it was under surveillance, and had hired a UK counter-surveillance firm to investigate the possibility. Although no evidence of a genuine threat to security was found, the manner in which the incident was handled provoked serious criticism.

These controversies have dented the public’s perception of the integrity of policy force and the operation of the rule of law.

Citation:

The report of the Inquiry into the behavior of the police in relation to allegations of misconduct and corruption is available here:

<http://www.merriionstreet.ie/wp-content/uploads/2014/05/Final-Redacted-Guerin-Report-OCR.pdf>

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 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 a lack of respect for due process. The European Court of Human Rights in Strasbourg frequently criticizes Luxembourg for its lengthy legal procedures.

Citation:

Trausch, G. (2008), Die historische Entwicklung des Großherzogtums - ein Essay, in: Lorig, W. H./Hirsch, M. (Ed.), Das politische System Luxemburgs. Eine Einführung. VS Verlag für Sozialwissenschaften, Wiesbaden, pp13-30
http://www.forum.lu/pdf/artikel/7692_332_Camest.pdf

Malta

Score 6

The Maltese constitution states that the parliament may make laws with retrospective effect, although acts are not permitted to impose obligations on citizens retroactively. Court judgements upholding this principle have been particularly common in areas dealing with taxation and social services. However, governments do generally respect the principles of legal certainty, and the 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. In 2014, the National Audit Office further criticized a ministry's intervention in a tender process for a legal-services contract related to concessions for the operations of casinos. Since Malta joined the European Union, the predictability of the majority of decisions made by the executive has improved.

Citation:

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

Report by the Auditor General on the Public Accounts 2013

Report by the Auditor General on the Public Accounts 2013

Minister reacts as auditor criticises re ranking of bidding firms Times of Malta 5/03/14

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. A second problem has been the growing complexity of laws. As a result of frequent amendments, many laws have come opaque and inconsistent. Compared to the first Fico government, however, the second Fico government has shown greater respect for the law.

Bulgaria

Score 5 Bulgaria's government and administration refer heavily 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. First, the law gives the administration sizeable scope for discretion. Second, the existing legislation suffers from many internal inconsistencies and contradictions that make it possible to find formal legal justifications for widely varying 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 procedures, and frequently perceive the acts of administrative bodies to be arbitrary. With regard to the enforcement of business contracts, Croatia was ranked at 54th place out of 189 countries in the 2014 edition of the World Bank's Doing Business Index.

Citation:
World Bank Doing Business Survey 2014

Cyprus

Score 5 Cyprus inherited well-organized and functional administrative structures from the period of British colonial rule. Though the foundations of the state apparatus have been somewhat weakened over the years, operational capacities and adherence to the law have remained largely consistent. Some imbalances exist with regard to the powers of the executive and the parliament; this is in part due to peculiarities of the constitution initially designed to balance power between Greek and Turkish communities. This left a very powerful executive (president) when bi-communality collapsed in 1964.

The decisions of the Eurogroup following Cyprus' descent into financial crisis led to the bail-in and radical changes to the banking system, most of which lacked sound legal basis. The adoption of a number of laws required to meet MoU obligations produced tensions between the executive and the legislative powers. In several cases, deadlocks were referred to the Supreme Court for review. The effect on citizens has diminished legal certainty. For these reasons, the scope of discretion left to the government may be considered as being too broad vis-a-vis the parliament, but extremely narrow when seen in connection to fulfilling obligations toward the

country's debtors.

As in the past, government actions have sometimes avoided or delayed in ways inconsistent with the rule of law. Pressures on and/or the outright dismissal of state officials including the governor of the central bank, delays in appointments, the clientelistic selection of appointees, and other practices have affected state bodies' independence, decision-making capacities and efficiency. If legal certainty is to be achieved, more sustained efforts to abide by the principles of meritocracy and consistent law enforcement are necessary in various areas.

Israel

Score 5

The state comptroller, the attorney general and the Supreme Court (ruling as the High Court of Justice) conduct legal reviews of the actions of the government and administration. The attorney general represents the state in courts. The officeholder participates regularly in government meetings and is in charge of protecting the rule of law in the public's interest. His or her legal opinion is critical and even mandatory in some cases. The Supreme Court hears appeals from citizens and Palestinian residents of the West Bank and Gaza Strip (even though Israeli law is not officially applied in the latter). These petitions, as filed by individuals or civic organizations, constitute an important instrument by which to force the state to explain and justify its actions.

The judiciary in Israel is independent and regularly rules against the government. In 2014, the courts overturned a Knesset bill regarding administrative detention of illegal African immigrants, raising tensions around the courts active review of policy. 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.

Some legal arrangements provide for ad hoc state action when facing security threats. The Emergency Powers (Detention) Law of 1979 provides for indefinite administrative detention without trial. According to a human rights group, in 2014 there were 473 Palestinians incarcerated under such charges. 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)

“Administrative detention”, B’tselem 7.10.2014:

http://www.btselem.org/hebrew/administrative_detention/20141007_spike_in_number_of_administrative_detainees (Hebrew).

“Israel: 2014,” Freedom house website.

<http://www.freedomhouse.org/report/freedom-world/2014/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

Mexico

Score 4

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 – indeed, 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 degree of impunity, which seriously undermines the effectiveness of the rule of law and citizens’ trust in the legal system.

Romania

Score 4

Policymaking has continued to be haphazard, relying heavily on government emergency ordinances (OUG) as legal instruments. 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.

Turkey

Score 4

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, more than 10,400 applications from Turkey were pending before the European Court for Human Rights as of July 2014. As of the first quarter of 2014, the Constitutional Court had received 4,447

individual applications. At the same date, the Council of State, the highest administrative court, had received more than 350,000 files, and had completed review of less than half of this number.

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. Two major peculiar political and juridical developments during the period under review are worth noting. First, a number of legal actions since 2008 have targeted the clandestine “Ergenekon” group and alleged members of the so-called Operation Sledgehammer. More than 600 individuals – among them military officers and journalists critical of the government – have been accused in this process of attempting to remove or prevent the functioning of the government by force. With judgments finally rendered and sentences handed out in 2013, the incumbent government has been accused by critics of having exercised influence over the judiciary to eliminate political opponents. Secondly, following corruption allegations made against high-ranking members of the Council of Ministers on 17 and 25 December 2013, the government directed public attention to another clandestine group it called a “parallel state,” or a “parallel structure” within the state. A series of legal and administrative operations have since that time been conducted against hundreds of law-enforcement officers allegedly linked to the Gülen network.

Although judicial reform was one of the major objectives of the government during the review period, the independence of the judiciary as well as its professionalism, organization and ability to provide fair trials are all considered concerns. Following the December 2013 corruption allegations, a new judicial package was adopted by the parliament in February 2014. The Constitutional Court partially annulled this in April 2014. Subsequently, the government introduced another judicial package that limited the independence and impartiality of the judiciary; this was adopted by the parliament in June 2014. This legislation brought back into force legal provisions introduced in 2010, restoring the role of the Supreme Council of Justices and Prosecutors (HSYK) plenary with “more democratic” means. It further aimed to eliminate the influence of the “parallel structure” on the state by dismissing or replacing its personal from posts and offices in the judiciary, the security apparatus and other state institutions, and by imposing penalties or otherwise discriminating against persons, institutions and organizations allegedly linked to the Gülen network. Further, the “democratization package” adopted in February 2014 included an abolition of the Specially Authorized Courts (ÖYM) that tried the Ergenekon, Operation Sledgehammer and other cases, a move that cleared the way for hundreds of military officers, journalists and other detainees to be retried by regular criminal courts. Subsequently, Constitutional Court rulings highlighted the mishandling of the investigations and subsequent trials in the Ergenekon and Sledgehammer cases.

Citation:

European Commission, Turkey Progress Report, October 2014, http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf (accessed 5 November 2014)

Serdar Yılmaz and Ayşe Güner, Local Government Discretion and Accountability in Turkey, *Public Administration and Development*, V. 33, N. 2, 2013.

Selda Çağlar, *Hukuk Devletinin Hukuki Belirlik İlkesi Üzerinden Değerlendirilmesi*, Vedat Kitapçılık, 2013.

'Bir hakime yılda 907 dava düşüyor', *Hürriyet Daily News*, 2 August 2013, <http://www.hurriyet.com.tr/gundem/24444692.asp> (accessed 5 November 2014).

Radha Ivory, *Corruption, Asset Recovery, and the Protection of Property in Public International Law*, Cambridge: CUP, 2014.

Naim Karakaya, Hande Özhabes (2013) 'Judicial Reform Packages: Evaluating Their Effect on Rights and Freedoms', TESEV Democratization Program Policy Report No. 5, Istanbul: TESEV.

'A challenge to Erdoğan's rule', *The Economist*, 17 December 2013, <http://www.economist.com/blogs/charlemagne/2013/12/turkish-politics>, (accessed 5 November 2014).

The new Supreme Council of Judges and Prosecutors, *Hürriyet Daily News*, 17 October 2014, <http://www.hurriyetdailynews.com/the-new-supreme-council-of-judges-and-prosecutors.aspx?PageID=238&NID=73078&NewsCatID=458> (accessed 5 November 2014).

Hungary

Score 3

Legal certainty in Hungary has strongly suffered from chaotic, quickly changing legislation, which is sometimes even implemented retroactively. One case in point is the volatile electoral law. The Act on Local Government Elections (Act L of 2010), for example, was amended by Act XXIII of 2014 on 10 June 2014, just three months before the local elections. The degree of legal uncertainty is also indicated by the unprecedentedly large number of acts (859) and amendments (538) passed during the second Orbán government. The frequent, often surprising changes in the legal environment and the tax system have provoked fierce criticism by businesspeople and investors. As documented by the declining FDI figures, this environment has 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.

Recently, some discussion has arisen on whether politicians should comment on court decisions while there are still appeal options. The concern being that politicians may indirectly influence the independence of the courts.

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 composed of one level of county courts (4) and administrative courts (2), a higher second level of circuit courts (2) and the Supreme Court at the top level. The Supreme Court simultaneously serves as the highest court of general jurisdiction, the supreme administrative court, and the constitutional court. The Supreme Court is composed of several chambers, including an administrative law chamber. Administrative courts hear administrative matters. There are two administrative courts in Estonia, made up of 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; however, there are also BA and MA law programs in two public universities in Tallinn. In total, the national government recognizes nine 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 judges' independence are established by law (*Kohtuniku staatuse seadus*).

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

Germany

Score 10

Germany's judiciary works independently and effectively protects individuals against encroachments by the executive and legislature. The judiciary also inarguably has a 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 an 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 decisions made by the FCC are final; all other governmental and legislative institutions are bound to comply with its verdicts (Basic Law, Art. 93).

The FCC engages in its review function even in cases 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), Federal Court of Justice (the highest court for civil and criminal affairs, Bundesgerichtshof), Federal Administrative Court (Bundesverwaltungsgericht), Federal Finance Court (Bundesfinanzhof), Federal Labor Court (Bundesarbeitsgericht) and 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 reputation for independence both domestically and internationally. In the World Economic Forum's Global Competitiveness Report 2013 – 2014, Germany fell out of the top ten and was ranked thirteenth place among 148 countries on the issue of judicial independence. However, in absolute terms, Germany's court system achieves a very high score of 6 out of seven. 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/maori-land-court> (accessed October 9, 2014).

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

The predominance of the rule of law has been weakened by the lack of a constitutional court in Finland. The need for such a court has been repeatedly discussed, but left-wing parties have historically blocked plans for the creation of a constitutional court. The parliament's Constitutional Law Committee has assumed the position reserved in other countries for a constitutional court. The implication of this is that parliament is controlled by an inner-parliament, making 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 or public 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, the Council of State also serves as legal advisor 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 higher courts. 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.

In October 2013, a referendum proposing the creation of a new Court of Appeal was passed. This court began operations in October 2014. The new court is designed to enable cases appealed from the High Court to be heard in a timely fashion.

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.

Israel

Score 9

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 judicial review in recent years is over the activities of a rightist coalition and parliament, it is often criticized for being biased toward the political left. In 2013 and 2014, the Supreme Court was similarly criticized for overturning an "infiltration law" set up to implement policy regarding illegal immigration. Nevertheless, it is repeatedly ranked by Jewish citizens as one of the top four trustworthy governmental institutions and as the most trustworthy institution according to Arab-Israeli citizens in an annual survey conducted by the IDC (2013).

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 instruct governing judicial activity by requiring judgments to be made without prejudice, ensuring that judges receive full immunity, generally banning judges from serving in supplementary public or private positions, and more. Judges are regarded as public trustees, with an independent and impartial judicial authority considered as a critical part of the democratic order.

Citation:

Azulai, Moran and Ephraim, Omri, "Overruling the infiltration law: The Knesset goes into battle", Ynet 23.9.2014: <http://ynet.co.il.d4p.net/articles/0,7340,L-4574094,00.html> (Hebrew).

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, Atmore, Nir, Heller, Ella 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%D7%94%D7%93%D7%9E%D7%95%D7%A7%D7%A8%D7%98%D7%99%D7%94%D7%94%D7%99%D7%A9%D7%A8%D7%90%D7%9C%D7%99%D7%AA%202012.pdf>

Herman, Tamar, Ella Heller, Nir Atmore, and Yuval Lebel, "Israeli Democracy index 2013," The Israel Democracy Institute 2013:

<http://www.idi.org.il/media/2720078/Democracy%20Index%202013.pdf> (Hebrew)

"Israel 2014", Freedomhouse website:

<http://www.freedomhouse.org/report/freedom-world/2014/israel-0#.VEOZwCueWro>

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 the population trusts the courts (23.9% in September 2014), although the Constitutional Court is accorded a somewhat higher level of trust (35.7% in the same month).

Citation:

The EU Justice Scoreboard, see the Lithuanian case at http://ec.europa.eu/justice/effectiv-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 2012 to 2013 and 292 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:

Cour administrative du Grand-Duché du Luxembourg (2013), Partie III - Rapports d'activité des juridictions administratives, Luxembourg, <http://www.justice.public.lu/fr/publications/rapport-activites-administratives/rapports-juridictions-adm-2013.pdf>

Poland

Score 9

Polish courts are independent from the executive, and are relatively well-financed and adequately staffed. While the Constitutional Tribunal enjoys a good reputation among citizens and experts alike, the lower courts are widely considered to be less effective. A reform of the judiciary that followed the 2011 parliamentary elections

sought to expedite court procedures. Upon coming to office, Cezary Grabarczyk, the new minister of justice in the Kopacz government, announced further reforms. The country still lacks a comprehensive system of legal aid for those in need.

Citation:

R. Boguszewski, O przestrzeganiu prawa i funkcjonowaniu wymiaru sprawiedliwości w Polsce [On respecting the law and functioning of the judiciary in Poland], a report by CBOS [online]. Available online on: http://www.cbos.pl/SPISKOM.POL/2013/K_005_13.PDF (accessed on 03.18.2013).

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. Regional administrative courts have recently been established in each of the nine federal states (Bundesländer), which has strengthened the judicial review system.

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 at the federal, sub-national and

local levels. 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 it be affected by procedural delays. Well-organized and professional courts protect citizens’ rights through judicial review of administrative decisions. Decisions by trial courts, administrative bodies or other authorities can be reviewed by the First (Revisional) and Second (Appellate) Instance Supreme Court. Appeals are decided by panels three or five judges, with highly important cases requiring a full quorum (13 judges).

In a 2014 survey of lawyers and justices, 90% said they considered delays to be a severe problem. In January 2014, the government sent draft laws amending the constitution and creating an administrative court to the parliament. The draft, which aims at combating court delays, is still pending before the House of Representatives.

Citation:

1. Results of a survey on the judicial system of Cyprus, <http://www.cyprusbarassociation.org/v1/index.php/el/news/announcements/201-2014-10-15-12-43-55> (in Greek)

Czech Republic

Score 8 Czech courts have generally operated independently of the executive branch of government. The most active control on executive actions is the Constitutional Court, a body that has triggered much controversy with its judgments across the political spectrum. The most controversial case in the review period related to a law passed in November 2012, which returned property confiscated during the communist era and rewarded church bodies with substantial compensation. A ruling in 2013 upheld the law's constitutional validity, albeit with a requirement for minor wording changes. Former President Václav Klaus frequently came into conflict with Constitutional Court decisions; such tension has eased under President Miloš Zeman.

Italy

Score 8 Courts play an important, vital and decisive role in the Italian political system. 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, which have heavy caseloads, are independent from the government, and are able to effectively review and sanction government actions. The main problem is rather the length of judicial procedures, which sometimes reduces the effectiveness of judicial control.

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 governments have become more rare under successor governments.

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, the average Administrative District Court case in 2013 took 11 months to reach a decision, while for an average Administrative Regional Court case it took 13 months. Administrative Court backlogs are being addressed by measures, such as an increase in court fees and security deposits, that limit access to the court system. A Ministry of Justice working group has been convened in order to suggest other systemic improvements. Institutional reforms are underway in the Administrative Court, which would remove one layer from the system in the interests of efficiency.

The Constitutional Court reviews the constitutionality of laws and occasionally that of government or local government regulations. In 2013, 21 cases were presented on a broad range of issues, including rights of assembly, territorial planning and tenants' rights.

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_latvia, 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, 2013 and 2014 continued the high degree of judicial intervention, with the Constitutional Court rejecting key measures within the government's budget in both the 2013 and 2014 budgets 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 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 (Tribunal de Contas). This is a constitutionally prescribed body, and is defined as a court in the Portuguese legal system. It audits public funds, public revenue and expenditure, and public assets, with the aim of ensuring 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 facilitated by the fact that judges enjoy tenure. The independence of the courts became an issue in the Patria case trial, with many observers criticizing the judgment against opposition leader Janša (sentenced to two years in prison for bribery) as being politically motivated. The Cerar government has preserved the independence of the Prosecutor's Office, and announced it would strengthen the independence of the judiciary by expanding its funding.

South Korea

Score 8

The South Korean judiciary is highly professionalized and fairly independent, though not totally free from governmental pressure. The court delivered an ambivalent verdict on former National Intelligence Service (NIS) chief Won Sei-hoon, who was indicted for mobilizing the spy agency to manipulate public opinion in support of Park Geun-hye's 2012 presidential election campaign. The court ruled that the agency illegally interfered in politics on the orders of the former NIS director, but found Won and the other defendants not guilty of charges of violating the Public Official Election Act.

State prosecutors are from time to time ordered to launch investigations, particularly targeting tax issues, 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", who had been accused by the government of damaging the nation's credibility and destabilizing the currency market. However, there have also been cases that call the independence of the courts into question. For example, South 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. 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 or 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. The 19 December 2014 order for the Constitutional Court to dissolve the Unified Progressive Party, on the grounds that it was "pro-North Korea", triggered a public debate on role of the Constitutional Court in South Korea. The Constitutional Court ruled in favor of the argument for security rather than political liberty.

Citation:

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>

"NIS director found guilty of interfering in politics, but avoids more jail time", *The Hankyoreh*, Sep 12, 2014

The Guardian, <http://www.theguardian.com/world/2014/dec/19/south-korea-lefwing-unified-progressive-party-north>, 19 December 2014

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 have recourse. However, as a consequence of several recent high-profile ECHR decisions overturning government policies, some political figures have raised the possibility of withdrawing the United Kingdom from the court's jurisdiction.

In recent years, courts have strengthened their position in the political system; in cases of public concern over government action, public inquiries have often been held. However, implementation of any resulting recommendations is ultimately up to government, as the public lacks legal or judicial power. Many such inquiries tend to be ad hoc, and some (the Chilcot inquiry into the Iraq war, for example) drag on for so long that the public has all but forgotten their subject by the time their final reports are made.

In this regard, judge-led inquiries are seen by the public as having the highest degree of legitimacy, whereas investigations by members of the bureaucracy are prone to be regarded more cynically.

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 (Symvoulío 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 educational institution. The court system is self-managed. In a formal sense, courts in Greece are able to monitor 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.

Iceland

Score 7

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 conformed to the law is beyond question. According to opinion polls, confidence in the judicial system ranged between 50% and 60% before 2008. Although it collapsed to about 30% in 2011, it recovered to 39% in 2013 and 43% in spring 2014.

Many observers consider the courts biased, because almost all judges attend the same law school and have attended universities abroad. Of the six Supreme Court justices, who ruled that the constitutional assembly election of 2010 was null and void, five were appointed by ministers of justice belonging to the same party (the Independence Party) as the three individuals who filed the complaints.

Since the 2011 merger of the Ministry of Justice and Human Rights, and 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, some appointments to the Supreme Court and district courts have caused controversy.

In connection with Iceland's application for EU membership in 2009, the EU expressed concern over the recruitment procedures for judges. The constitutional bill, which was approved by 67% of voters in a non-binding 2012 referendum, proposed that judicial appointments should be approved by the president or by a majority of two-thirds in parliamentary vote.

In 2014, a recently retired Supreme Court Justice (one of the above-mentioned six judges) demanded publicly that the Minister of the Interior sue the Supreme Court Chief Justice for breaking the law and remove him from office.

Citation:

www.capacent.is

Malta

Score 7

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/effectiv-justice/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 (2014), *Governance and Politics of the Netherlands*. Houdmills, Basingstoke: Palgrave Macmillan (pages 203-2011).

Spain

Score 7

The judicial system is independent and it 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 20/2013), 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’ rights. During the period under review, different criminal cases related to several scandals have demonstrated that courts can indeed act as effective monitors of activities undertaken by public authorities (see “Corruption Prevention”).

The main factor that damages effective judicial review in Spain is not connected to independence but to a lack of adequate resources in the courts and, thus, to systematic delays. In addition to this, court fees were introduced in 2012 as part of the austerity plans. This prevents some citizens from initiating the judicial review of administrative acts, thus damaging the effectiveness of the enforcement and appeal mechanisms (although the new minister of justice, appointed in 2014, announced the decision to revisit those fees). Another problem has actually to do with the difficult combination of effective independence and ideological bias; that is to say, because of the confrontational style of Spanish policymaking and the fact that judges may be independent but are not politically neutral, the judiciary’s mandate to serve as a legal check on government actions can, in some cases, be deemed politically obstructive.

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.

In 2009, a lay judge system was introduced for serious criminal offences to better reflect the views of the population. In July 2014, the Supreme Court overturned the rulings of first and second instance courts, both involving lay judges, as the courts in question had not clearly explained why they chose to deviate from past sentencing standards. This has increased uncertainties about the lay judge system and its rulings, although repercussions on daily life seem limited.

Citation:

Sayuri Umeda, Japan: Supreme Court Strikes Down Sentence by Lay Judges, The Library of Congress/Global Legal Monitor, 04.09.2014, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_1205404111_text

Romania

Score 6

Standards within Romania's judiciary are systematically undermined by internal corruption scandals and government efforts to influence court rulings. A number of high-profile scandals in the period under review, including the corruption-related arrests of Prosecutor Angela Eugenia Nicolae from the High Court of Cassation and Justice (ICCJ) and Judge Stan Mustata, highlight the gravity of the problem but also suggest a positive development – insofar as such clientelistic networks can no longer function with the same impunity as in the past. Most importantly, a law eliminating special pensions for magistrates convicted of corruption (Law No. 303/2004) was promulgated in July 2014 following its adoption by the Senate with a 98-vote majority. The executive's persistent efforts to influence high-profile court cases represent another problem undermining judicial independence. Examples include Prime Minister Ponta's interference in the Lukoil tax-evasion and money-laundering case. Romanian prosecutors and police raided the offices at Lukoil's Petrotel refinery near Ploiesti, seizing the company's accounting documents on suspicion of losses nearing €230 million. When the firm threatened to close the refinery, Prime Minister Ponta urged prosecutors to halt the seizure procedure. He justified his intrusion by

making a reference to his responsibility to protect the approximately 3,500 employees who would march against the government if they lost their jobs.

Slovakia

Score 6 Even after the reforms of the judiciary under the Radičová government, the Slovakian court system has suffered from low-quality decisions, a high backlog of cases, rampant corruption and a high level of government intervention. The situation improved somewhat in May 2014 when Stefan Harabín, a close ally of Prime Minister Fico who held major positions in the Slovak judiciary, was not reelected as head of the Supreme Court and the Judicial Council, a body that oversees the operation of the judiciary. Harabín had long been criticized for exerting pressure on judges critical of the government, as well as for other dysfunctional developments in the court system. Andrej Kiska, the new Slovak president, spoke out publicly against Harabín the 2014 presidential election campaign.

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 sometimes influenced by outside factors, including informal political pressure and 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. Despite these issues, the practice of the administrative judiciary and especially the Supreme Administrative Court indicates that these bodies do have the capacity to review the executive power effectively. A number of significant decisions have been rendered in this regard.

Croatia

Score 5 With 42.8 justices per 100,000 inhabitants, compared to the EU-10 average of 27.15, Croatia has among Europe's highest level of judges and court personnel per capita. The independence and quality of the judiciary were a major issue in the negotiations over EU accession. Reforms in early 2013 changed the process by which justices of the highest regular courts (Supreme Court, High Commercial Court, High Misdemeanor Court and High Administrative Courts) were appointed, 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.

Citation:

World Bank, 2014: Public Finance Review Croatia: Restructuring Spending for Stability and Growth. Washington, D.C. (http://www-wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2014/12/12/000470435_20141212074111/Rendred/PDF/783200REVISED00PFR0final0report0ENG.pdf)

Hungary

Score 5

The independence of the Hungarian judiciary has drastically declined under the Orbán governments. While the lower courts still make independent decisions, the Constitutional Court and the Kúria (Curia, previously the Supreme Court) have increasingly come under government control. The curtailment of the competencies of the Constitutional Court began in 2010 – 2011, and continued with the decision that the Constitutional Court was no longer allowed to reject constitutional amendments on matters of substance, or to base its rulings on decisions made before the enactment of the new constitution in January 2012. Parallel to the weakening of the remit of Constitutional Court, the court itself has been staffed with Fidesz loyalists, some of whom are not even specialists in constitutional law. Three appointments in summer 2014 almost completed this process. Similarly, the Kúria has been very close to the government and has been widely criticized for making biased decisions.

Mexico

Score 5

The Supreme Court, having for years acted as a servant of the executive, has in recent years become much more independent, more legitimate 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. As a means of changing this situation, some states are experimenting with the Anglo-U.S. adversarial model for their courts, which has shown some capacity to improve conditions in Mexico.

Turkey

Score 5

Article 125 of the constitution states that all government administrative decisions and actions are subject to judicial review. Developments during the review period have shown that the Constitutional Court plays a vital and important role for safeguarding juridical review in Turkey.

However, acts by the president and other important institutions are generally excluded from judicial review. With Recep Tayyip Erdoğan now serving as the first directly elected president of the Turkish Republic, it is uncertain how much longer Kemalist principles, especially concerning Turkey's republicanism and laicism, will continue to guide political decisions.

Other institutions or decisions excluded from juridical review include the Supreme Military Council, whose decisions affect the individual rights of military personnel and are administrative in nature; parliamentary resolutions such as declarations of martial law or war, or the decision to send Turkish troops to a foreign country; and the Supreme Council of Judges and Public Prosecutors (HSYK), whose organization and working conditions are still in need of internal reform (as are the Court of Cassation and the Council of State), especially with regard to safeguarding the political independence of its members and bodies.

In addition, civilian oversight during the review period was weak with regard to investigations of human-rights abuses or acts by the gendarmerie. Under Article 148 of the constitution, the Constitutional Court cannot review legal amendments passed during a period of martial law or state of emergency. A Human Rights Compensation Commission has been established within the Ministry of Justice, and has demonstrated some positive results. As of August 2014, the commission had decided on 4,710 applications out of 5,925 claims. In total 1,180 decisions (about 25%) were appealed by the original applicant. The average time taken to complete examination of a case was 165 days.

Citation:

European Commission, Turkey Progress Report, October 2014, http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf (accessed 5 November 2014)

Mesut Hakan Benli, Turkish president sends AKP-linked lawyers to key judges and prosecutors council, *Hürriyet Daily News*, 27 October 2014, <http://www.hurriyetdailynews.com/turkish-president-sends-akp-linked-lawyers-to-key-judges-and-prosecutors-council.aspx?pageID=238&nID=73513&NewsCatID=338> (accessed 5 November 2014)

The new Supreme Council of Judges and Prosecutors, *Hürriyet Daily News*, 17 October 2014, <http://www.hurriyetdailynews.com/the-new-supreme-council-of-judges-and-prosecuto>

rs.aspx?PageID=238&NID=73078&NewsCatID=458 (accessed 5 November 2014).

Ergun Özbudun: Yargı paketini savunmak mümkün değil, 25 October 2014, <http://www.arcaajans.com/haber/guncel/ergun-ozbudun-yargi-paketini-savunmak-mumkun-degil/473975/> (accessed 5 November 2014).

HRW'den Yeni Yargı Paketi Değerlendirmesi, 3 November 2014, <http://www.ankarstrateji.org/haber/hrw-den-yeni-yargi-paketi-degerlendirmesi-1465/> (accessed 5 November 2014).

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.

“Dommerudnævnelserådet,”

<http://www.domstol.dk/om/organisation/Pages/Dommerudn%C3%A6vnelse%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 According to Israel's basic laws, all judges are to be appointed by the president after having been elected by a special 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.

The cooperative procedure balances various interests and institutions within the government in order to insure pluralism and protect the legitimacy of appointments. The process receives considerable media coverage and is 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.

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 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 president of the Supreme Court 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:

Rubinstein, Amnon, "The constitutional law of the state of Israel", Shoken, 2005.

"The Ombudsman on judges office: Annual report 2011," 2012. (Hebrew)

<http://index.justice.gov.il/Units/NezivutShoftim/pirsomeyhanaziv/Doch/Documents/2012.pdf>

"The Ombudsman of judges office: Annual report 2013", Jerusalem 2014 (Hebrew),

<http://index.justice.gov.il/Units/NezivutShoftim/MainDocs/Report2013.pdf>.

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 71st among 144 countries worldwide.

Citation:

See the 2014-2015 Global Competitiveness Report of the World Economic Forum: <http://www.weforum.org/reports/global-competitiveness-report-2014-2015>.

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:

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, Textes coordonnés Avril 2009

<http://www.forum.lu/constitution/index.php/dokumente/die-aktuelle-verfassung/>

<http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/Constitution.pdf>

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.

Portugal

Score 9 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 (Procurador-Geral da República). In October 2012, Portugal appointed its first female attorney general, Joana Marques Vidal.

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 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. Candidates are interviewed by the parliamentary committee tasked with proposing the list of candidates to the plenary session. There is a notable lack of consistency in this interview process, as the committee does not employ professional selection criteria. 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.

Czech Republic

Score 8

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. The process of appointing judges is transparent and adequately covered by public media. The involvement of both the president and the Senate increases the likelihood of balance in judges' political views and other characteristics. In December 2013, 10 judges (eight new judges and two second-term judges) of the 15-member Constitutional Court were nominated by President Zeman. Unlike the candidates nominated by Zeman's predecessor, Václav Klaus, the Senate did not reject any of Zeman's nominees. While Klaus was personally opposed to nominating younger judges, Zeman named 64 new judges in November and December 2013, most of whom are in their 30s. The most important task of the new judges is to decrease trial length, an issue often criticized by the European Court of Human Rights.

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 state ministers responsible for the sector and an equal number of members of the Bundestag. Federal Constitutional Court (FCC) judges are elected in accordance with the principle of federative equality (föderativer Parität), with half chosen by the Bundestag and half by the Bundesrat (the upper house of parliament). The FCC consists of sixteen judges, 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 judges directly and openly, the Bundestag delegates its decision to a committee in which the election takes place indirectly, secretly and opaquely. The composition of this 12 member committee reflects the various political parties' share of seats in the chamber. Decisions in both houses require a two-thirds majority.

In summary, in Germany judges are elected by several independent bodies. The election procedure is representative, because the two bodies involved do not interfere in each other's decisions. The 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 judges regardless of current majorities. However, the opaque election procedure of one-half of the judges is potentially problematic. Although the FCC has ruled that this procedure is in accordance with the

constitution, Bundestag President Norbert Lammert appealed in 2012 for a change to a more public and transparent election procedure. Further hampering transparency, the media does not cover the election of judges 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 (Symvoulío 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 promoted by the government and approved by the parliament. 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. While the parliament approves appointments, candidates are nominated by the minister of justice or the President of the Supreme Court based on advice from 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 justify refusing an appointment. In October 2010, a new Judicial Council was established in order to rebalance the relationship between the judiciary, the legislature and the executive branch. The Judicial Council has taken over the function of approving the transfer of judges between positions within the same court level. Formerly this function had also required parliamentary approval. While the delegation of further functions to the Judicial Council to further reduce political influence on the appointment of judges are being considered, they are yet to receive authorization from parliament.

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. Muizniece was initially suspended from the Constitutional Court pending judgment and then removed from office in 2014 after a final guilty verdict.

A new system for evaluating judges has been in place since January 2013, with the aim of strengthening judicial independence. While the government can comment, it does not have the power to make decisions. A judges' panel is responsible for evaluations, with the Court Administration providing administrative support in collecting data. The panel can evaluate a judge favorably or unfavorably and, as a consequence of this simple rating system, the panel has tended away from unfavorable assessments. In one case, a judge successfully appealed an unfavorable assessment on the grounds that the assessment could not be substantiated. The verdict concluded that the judges' panel is required to substantiate unfavorable assessments.

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?OpenDocument, 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 on the basis of state's rights.

Interestingly, there is not the same suggestion of judicial bias in Mexico's constitutional courts. The federal electoral machinery 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 but has not, as of February 2015, implemented reforms along these lines.

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: Toward a New Courts Act' (R126, Wellington, 2012).

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 have 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. In many states, judges are elected (under a variety of specific arrangements) and raise funds from private contributors for reelection campaigns. Although this practice may compromise judges' independence with respect to contributors, it does not generally reduce their independence from the legislative or executive branches.

Citation:

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

Cyprus

Score 7

The judicial system essentially functions on the basis of the 1960 constitution, albeit with modifications to reflect the circumstances prevailing after the collapse of the bi-communal system of government in 1964. The Supreme Council of Judicature, composed of all 13 judges of the Supreme Court, appoints, promotes and places justices, except those of the Supreme Court. The latter are appointed by the president of the republic 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 regarding the procedure, the selection criteria and the interaction between the Presidential Palace and the Supreme Court are not made available. The gender ratio within the judiciary as a whole is approximately 60% male to 40% female, but only three out of 13 Supreme Court justices are women.

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

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.

Toward the end of 2013, the minister for justice and equality invited interested parties to comment on an ongoing Department of Justice and Equality review of judicial-appointment procedures. In response to this request, a Judicial Appointments Review Committee was established by the chief justice and the presidents of the high,

circuit and district courts. This committee submitted a preliminary report in January 2014, which highlighted the unsatisfactory nature of the existing system and summarized systems prevailing in several other common-law jurisdictions. The government is committed to reforming the Irish system in response to these initiatives.

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 (2014), *Governance and Politics of the Netherlands*. Houdmills, Basingstoke: Palgrave Macmillan (page 210).

Poland

Score 7 Provisions governing the appointment of justices have not changed in the review period. Supreme Court and the Constitutional Tribunal justices 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, on the basis of an absolute majority of votes with at least one-half of all members present. The president of the republic selects the president and the vice-president of the Constitutional Tribunal from among the 15 justices, on the basis of proposals made by the justices themselves.

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, without any special majority requirements. In the period under review, a new Supreme Court chairman was elected. Controversial incumbent Stefan Harabín sought reelection, but failed, and was ultimately succeeded by Daniela Švecová. After the election, President Kiska proposed that the means of selecting new justices be reformed.

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 proposed by the president of the republic, and approved by the parliament on the basis of 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 based on proposals put forward by the Judicial Council, a body of 11 justices or other legal experts partly appointed by parliament and partly elected by the 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 show a long and successful career in the judiciary to be eligible for appointment.

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 6/2014 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. Although the current PP government announced a legal reform to reinforce the power of the members of the judiciary in the selection of the CGPJ, the idea was abandoned in 2013 through the decision to retain the current regulation that allows both legislative chambers to decide.

With the current regulation, these two processes for appointing justices in Spain 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 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. Thus, during the period under review (with the PP’s absolute majorities in Congress and Senate) the appointments of new members for both institutions have tended to favor the conservative justices that now enjoy (by a

narrow margin) the control of the TC and indirect influence for deciding future Supreme Court justices from a somewhat more conservative-inclined CGPJ.

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 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 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.

United Kingdom

Score 7

The judicial appointments system 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. However, there has never been a High Court judge from either South Australia or Tasmania, which has been a long-standing bone of contention. Considering the importance of the High Court for the settlement of Commonwealth-State relations, there has been concern that judges with a strong federal perspective are regularly being preferred. From the perspective of the public, the appointment process is secret and the public is rarely consulted when a vacancy occurs.

Citation:

<http://www.smh.com.au/federal-politics/political-opinion/easier-to-pick-a-melbourne-cup-winner-than-next-high-court-judge-20120312-1uwds.html>

Bulgaria

Score 5

The procedures for appointing constitutional court justices in Bulgaria do not include special majority requirements, thus enabling 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 on a simple majority basis. This council in turn consists of three groups; one includes ex-officio representatives, one is selected by parliament on a simple majority basis, and one is selected by simple majorities of the plenary assemblies of judges, prosecutors and investigators. One problem with this structure is that the representatives of prosecutors and investigators have a say on decisions regarding judges' career advancement. This creates an incentive structure that damages the independence of the court.

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.

Historically, there was little reason to believe that the current judicial-appointment process compromised judicial independence. This changed somewhat in 2014, when Prime Minister Harper appointed Marc Nadon – a man many observers believed was close to the prime minister’s political heart – to the Supreme Court. As a retired judge, Nadon’s eligibility was questioned early on, and the government even introduced legislative changes in its 2014 budget bill in an effort to make Nadon eligible as a former member of the Quebec bar. In an unprecedented move, the Supreme Court ruled that Nadon could not take his seat, blocking the appointment. Harper and Justice Minister Peter MacKay later publicly suggested that Supreme Court of Canada Chief Justice Beverley McLachlin had acted improperly in seeking to issue a warning about Nadon’s potential eligibility. The prime minister subsequently faced severe criticism for his treatment of the chief justice, both from the Canadian Bar Association and the International Commission of Jurists, who accused the government of intruding on the independence and integrity of Canada’s judiciary.

Citation:

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

International Commission of Jurists (2014), Response to concerns about interference with integrity and independence of the judiciary in Canada, posted at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/07/Canada-JudicialIndependenceAndIntegrity-CIJL-OpenLetter-2014.pdf>

Finland

Score 5

There are three levels of courts: local, appellate and supreme. The final court of appeal is the Supreme Court, while there is also a supreme administrative court and 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 receive much media coverage.

France

Score 5

Appointments to the Constitutional Council, 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.

Other supreme courts (penal, civil and administrative courts) are comprised of professional judges and the government has a limited role over their composition as the government can appoint only a presiding judge (Président), selecting this individual from the senior members of the judiciary.

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 qualified-majority requirements in either the Chamber of Deputies or the Senate, and since these appointments occur independently (i.e., they do not need to be approved by or coordinated with any other institution), this has meant that Constitutional Court justices are in practice appointed along partisan lines.

South Korea

Score 5

The appointment process for justices of the Constitutional Court 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, while all nine 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, with the exception of the chief justice. The process is formally transparent and adequately covered by public media, although judicial appointments do not receive significant public attention. 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 and 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.

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.

However, recruitment patterns in the past have highlighted the unimpeded politicization of the judiciary. In 2014, the regular elections for Supreme Council of

Judges and Prosecutors (HSYK) members were indicative of this problem, occurring as they did in the wake of the corruption proceedings against the government and the allegations of infiltration by the Fethullah Gülen network, and the government's subsequent hasty legislative changes. Four new members of the HSYK were not elected but appointed by President Recep Tayyip Erdoğan, thus challenging the principles of independence and impartiality. In support of the procedure, a newly elected member of the Supreme Council stated that "it is essential and correct that the administrative councils, such as the HSYK, operate in harmony with other public institutions, the legislative and executive powers." In sum, the amendments to the HSYK law and the subsequent dismissal of staff and numerous reassignments of judges and prosecutors raised serious concerns regarding both the independence and impartiality of the judiciary and the separation of powers.

Another new bill introduced in parliament in October 2014 would let Court of Cassation (Yargıtay) investigatory judges be elected solely by the HSYK, bypassing the Supreme Court Presidency Council.

Citation:

Bülent Serim, "İşte Anayasa Mahkemesinin Yeni Üyelerinin Bilinmeyenleri" , 17 October 2010, <http://www.odatv.com/n.php?n=iste-anayasa-mahkemesinin-yeni-uyelerinin-bilinmeyenleri-1710101200> (accessed 5 November 2014).

European Commission, Turkey Progress Report, October 2014, http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf (accessed 5 November 2014)

Onur Ant and Selcan Hacaoglu, Erdoğan Seeks to Exert Control Over Turkey Judges Amid Probe (2), 8 January 2014, Bloomberg News, <http://www.businessweek.com/news/2014-01-08/Erdoğan-party-seeks-to-cut-authority-of-turkish-judges-board>, (accessed 5 November 2014).

Iceland

Score 3

All Supreme Court and district court judges are appointed by the Minister of the Interior, without any involvement from or oversight by any other public agency. However, all vacancies on the Supreme Court are advertised and the appointment procedure is at least formally transparent. As part of the appointment process, a five person evaluation committee is appointed and tasked with recommending a single applicant. A 2010 change to the Act on Courts restricted the minister's ability to appoint any person not found to be sufficiently qualified by the committee, unless such an appointment is approved by the parliament. This represents some restriction to the minister's authority and introduces an external review.

Many appointments to the courts continue to be controversial. In many cases, the scrutiny of Supreme Court candidates seems to be superficial. For instance, little attention is given to how regularly rulings by lower court judges are overturned by the Supreme Court. Furthermore, a controversially appointed, but now retired, Supreme Court justice published a book in 2014 which criticizes his former court colleagues for their alleged opposition to his appointment as well as for some of their verdicts that he deemed misguided (Jón Steinar Gunnlaugsson, 2014).

Under the terms of the proposed constitutional bill, judicial appointments would have to be approved by the president or by a majority of two-thirds in parliamentary vote.

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).

Gunnlaugsson, Jón Steinar (2014), Í krafti sannfæringar, Forlagið, Reykjavík.

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 selecting members of the Constitutional Court untouched. Its justices are still elected by parliament with a two-thirds majority. However, given the strong Fidesz majority in parliament and the government's lack of self-restraint, this two-thirds threshold has failed to limit the government parties' control over the process. Fidesz has used its majority to appoint loyalists to the court, some of whom even lack any 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 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.

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 of experience as a practicing lawyer. Magistrates need to be similarly qualified, but are required to have only seven years of 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. In 2014, the European Council called on Malta to revise the appointment and dismissal procedures for judges in order to ensure transparency and selection based on merit.

During the review period, the prime minister made several new judicial appointments, but did not 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.

Citation:

European Council calls on Malta to improve transparency of Judicial Appointments. Independent 10/02/14

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 2014, Denmark was ranked first together with New Zealand, followed by Finland, Sweden, Norway and Switzerland. 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.

Transparency International, Corruption Perceptions Index 2014, <http://www.transparency.org/cpi2014/results> (accessed 14 December 2014).

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 Cooperation 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://freedomhouse.org/report/freedom-world/2014/new-zealand-0#.VDZaLVekzQ8> (accessed October 9, 2014).

Finland

Score 9

The overall level of corruption in Finland is low, which is reflected by Finland's respective first and third place rankings in the 2012 and 2013 Transparency International's Corruption Perceptions Index. The country offers a solid example of how the consolidation of advanced democratic institutions may 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; law-making 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 room for potential abuse. A 2014 European Commission report emphasized the need for making public procurement decisions and election funding more transparent. It is also, for instance, evident that political appointments are too common in Finland. Whereas only some 5% of citizens are party members, two-thirds of the state and municipal public servants are party members. During the assessment 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.

Sweden

Score 9

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. Regulatory systems safeguarding transparency and accountability, coupled with an overall administrative culture that strongly forbids corrupt behavior, prevent corruption. At the local government level, however, there have been an increasing number of reports of corruption and court decisions on related charges.

Citation:

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

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, incidents of financial corruption occasionally emerge both in the congressional and state-government spheres.

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 a New South Wales Independent Commission Against Corruption inquiry into corruption in the granting of such leases was in progress throughout the review period. This inquiry has led to the resignations of a number of members of the New South Wales parliament from both the Labor and Liberal parties.

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.

However, Australia has been reluctant to address cross-border corruption. A notable exception is the recent action of Australian federal police, which in October 2014 commenced to seize assets of allegedly corrupt Chinese officials. This joint operation with Chinese authorities has been a novelty.

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.

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

<http://www.theguardian.com/australia-news/2014/oct/23/australia-slow-to-tackle-international-corruption-with-just-one-case-in-court>

Austria

Score 8 Corruption has become an 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 is seen as a significant improvement on the earlier system, although it remains far from perfect with respect to political independence.

The more proactive approach taken by government, represented for example in the activities of the Korruptionsstaatsanwaltschaft, have yielded positive results. During the review period, for example, some prominent (former) politicians have been brought to trial and at least one very prominent individual (a former Minister of the Interior) has been convicted of corruption.

Belgium

Score 8 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 above a certain value must follow strict rules. This rule has, however, often been bypassed at the local level (as revealed by certain corruption cases, such as in Charleroi), by splitting the market into sufficiently small units. Overall, the fight against outright corruption seems to have gained in effectiveness over the last years.

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 Abuses of power and corruption have been the subject of considerable governmental and public concern. On the one hand, Estonia has succeeded in setting up a solid institutional and legal structure to prevent corruption, with the National Audit Office, the national parliament's Select Committee on the Application of Anticorruption Act, the Supervision Committee and the Anticorruption Act of 2013. On the other hand, cases of illegal conduct among high-level civil servants, municipality officials or political-party leaders do emerge from time to time. Such cases can be regarded as evidence of the efficiency of anticorruption policy. However, they also indicate that loopholes remain in the public procurement process and in party-financing regulations, for example.

In 2013, the number of registered corruption offences doubled as compared to 2012 (from 161 to 322). This can be seen as a reflection of improved efficiency in the relevant state authorities. It is important to note that corruption offences are often repeated acts committed by the same persons, and that the share of unique cases comprised less than half of the total. The highest number of unique corruption incidents occurred in educational institutions, where school heads have used public resources for private purposes. The largest number of corruption offences overall in 2013 was registered in connection with state agencies (ministries, inspectorates, boards, legal entities founded by the state), whereas corruption cases at the municipality level became less frequent. In all probability, the awareness-raising training provided by the state audit office to local government leaders, seeking to reduce the risk of corruption, contributed to this positive effect.

Germany

Score 8 Despite a series of corruption scandals, Germany performs better than most of its peers. 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).

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 current parliamentary term, members of the German Bundestag have to provide additional details about their ancillary income in a ten step income list. Auxillary income exceeding €250,000 is the uppermost category. Four Members of Parliament (all members of the conservative government party CDU/CSU) declared auxillary incomes exceeding €250,000. For example, Peter Gauweiler (CSU) declared 19 auxillary income sources, among them one of the highest category. The number of different sources reveals that this more precise system of declaration is flawed, too. Similar to party financing, it seems likely that, in order to avoid public attention, Members of Parliament will resort to the partitioning of their auxillary income. The current system is thus not apt to eradicate corruption via a transparent declaration regime. Instead, it sets incentives to declare auxillary income in slices of lesser amounts.

In 2013, Bavarian parties, particularly the governing Christian Social Union (CSU), were shaken by a scandal concerning the employment of legislators' family members in parliamentary offices.

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 revised text was signed by each minister and came into force in July 2014. Transparency International Luxembourg supports the code of conduct, giving credibility to the ministers. But steps need to be taken to ensure sanctions will be imposed on the parties concerned, and adjustments are still needed.

Citation:

<http://www.gouvernement.lu/3871867/Dossier-de-presse-Code-de-deontologie-22-7-14doc.pdf>

<http://www.gouvernement.lu/3870893/22-braz-code>

For further informations: www.transparency.lu

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. As a rule, corrupt officeholders are prosecuted under established laws. 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.

Ireland

Score 7

The legal framework and rules regarding standards in public office have been progressively tightened and extended over time in Ireland.

In January 2014, Public Service Reform Plan 2014 – 2016 was published. Its stated goal was to maintain momentum with regard to reducing costs and increasing efficiency in the public sector, “to deliver greater openness, transparency and accountability and to strengthen trust in government and public services.”

Many proposed reforms are still at the planning stage, and it is too early to assess their impact on the integrity of officeholders and public servants.

Citation:

The 2014 Public Services Reform Plan is available here:

<http://reformplan.per.gov.ie/>

Latvia

Score 7

Latvia's main integrity mechanism is the Corruption Combating and Prevention Bureau (Korupcijas novēršanas un apkarošanas birojs, KNAB). The Group of States Against Corruption 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 more than 10 years, KNAB has seen a number of controversial leadership changes and, despite a leadership change in 2011, remains plagued by a persistent state of internal management disarray. Internal conflicts have spilled into the public sphere. For example, the KNAB director and deputy director have been embroiled in a series of court cases over disciplinary measures. Yet, although the court found in favor of the deputy director in September 2014, the director continues to adopt an administrative approach that has resulted in a high turnover of qualified staff. Furthermore, these scandals have weakened public trust in the institution. The results of an April 2014 public opinion poll, commissioned by KNAB itself, found that public trust in KNAB had declined between 2007 and 2014, when public trust in other public institutions had increased.

The Conflict of Interest Law is the key piece of legislation relating to officeholder integrity. The Conflict of Interest Law created a comprehensive financial disclosure system and introduced a requirement for all violations to be publicly disclosed. In 2012, all Latvian citizens were required to make a one-time asset declaration in order to create a financial baseline against which the assets of public officeholders could be compared. This information is confidential and there is no publicly available evaluation of the efficacy of this policy.

Party financing regulations contain significant transparency requirements, limitations on donation sources and size, and campaign expenditure caps. In 2011, a major political party voluntarily dissolved in order to avoid paying a substantial fine for campaign financing violations, while electoral support for a second political party collapsed after they too had received a similar fine. Until the introduction of a public financing mechanism in 2012, political parties were privately financed. KNAB is charged with oversight of public financing for political parties. In 2012, violations of campaign-finance laws were criminalized, but no criminal cases have yet been presented.

The slow progress of cases through the court systems restricts an evaluation of the effectiveness of the system. For example, 104 new corruption cases reached trial in 2012, the largest number since 2008. Yet, these cases included the lowest proportion of cases against state officials (42) since 2004, when compilation of corruption data began. An unusually high number of cases against the traffic police (28) contribute to the high number of total cases in 2012. In 2011, officials of the Riga City Council Development Department were convicted of taking bribes exceeding €1 million. In 2012, by contrast, the largest bribe exposed was under €4,000.

Citation:

1. Corruption °C (2012), Updated Statistics on Convictions for Corruption Offences (2012 Data Added), Available at: <http://corruption-c.wikidot.com/>, Last assessed: 03.11.2014.

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

4. KNAB (2014), Attitudes toward Corruption in Latvia (in Latvian), Available at: http://www.knab.gov.lv/uploads/free/knab_lf_aptauja2014.pdf, Last assessed: 22.10.2014

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. Karsing and M. Zweegers (2009), Jaarboek Integriteit 2010, Bureau Integriteitsbevordering Openbare Sector (BIOS)

M. van Hulst, '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:

Heuvel, J.H.J. van den, L.W.J.C. Huberts & E.R. Muller (Red.) 2012. Integriteit: Integriteit en integriteitsbeleid in Nederland. Deventer: Kluwer

Poland

Score 7

Integrity mechanisms have functioned relatively well in Poland, and corruption at the top has been limited. As a result, Poland has scored relatively well in most corruption indexes. The last institutional reforms were implemented in 2011, when the office of the plenipotentiary for the fight against corruption was abolished and the tasks of the Central Anti-Corruption Bureau (CBA), established in 2006, were expanded. Spurred by the emergence of several corruption cases in the second half of 2013, the Ministry of the Interior initiated debate on a renewed anti-corruption strategy for the 2014 – 2019 period. The strategy, which was eventually adopted in April 2014, strengthens the coordinating role of the Ministry of the Interior and places greater emphasis on education and prevention. In 2014, the CBA worked on 477 cases and completed 214 investigations. Local administrative bodies have been the most vulnerable to corruption.

Citation:

Polityka antykorupcyjna. Ocena skuteczności polityki antykorupcyjnej polskich rządów prowadzonej w latach 2001–2011 [Anti-corruption Policy. Assessment of Effectiveness of Anti-corruption Policy of Polish Governments conducted from 2001 to 2011], edited by J. Winczorek, the Batory Foundation, Warsaw 2013.

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. On most international comparisons, the UK comes out with strong scores.

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 Defense 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. However, some regulatory decisions may be affected by the exercise of such influence.

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 was particularly problematic under the previous government, as many members of the Alianza – including Sebastián Piñera himself – were powerful businesspeople. This entanglement produces conflicts of interest in the policymaking process, for example in regulatory affairs. Furthermore, there are no regulations to monitor conflicts of personal economic interest for high-ranked politicians (for example the president and ministers).

Iceland

Score 6

Financial corruption in politics is not a serious problem in Iceland, but in-kind corruption – such as, granting favors and paying for personal goods with public funds – does occur. Regulatory amendments in 2006, which introduced requirements to disclose sources of political party financing, should reduce such corruption in the future.

In very rare cases, politicians are put on trial for corruption. Iceland has no policy framework specifically addressing corruption, because historically corruption has

been considered a peripheral subject. However, the appointment of unqualified persons to public office, a form of in-kind corruption, has been and remains a serious problem. Other, subtle forms of in-kind corruption, which are hard to quantify, also exist. The political scientist Gissur Ó. Erlingsson claims that corruption in mature democracies, including Iceland, is perhaps more of the character of nepotism, cronyism and "You scratch my back, I'll scratch yours."

The collapse of the Icelandic banks in 2008 and the subsequent investigation by the Special Investigation Committee, among other bodies, highlighted the weak attitude of government and public agencies toward the banks, including weak restraints and lax supervision before 2008. Moreover, three of the four main political parties, as well as individual politicians, accepted large donations from the banks and affiliated interests. When the banks crashed, 10 out of the 63 members of parliament owed the banks the equivalent of more than €1 million each. Indeed, these personal debts ranged from €1 million to €40 million, with the average debt of the 10 MPs standing at €9 million. The 10 highly indebted MPs include the current Minister of Finance and Minister of the Interior. The Special Investigation Committee did not report on legislators that owed the banks lesser sums, say €500,000. At the time of writing, it is not clear whether these loans have been or will be repaid or have been written off.

In May 2011, a former Ministry of Finance cabinet secretary 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. The ruling court found that the information the official had access to and through his job position and subsequently acted on constituted insider trading. The Supreme Court sentenced the cabinet secretary to two years in prison and ordered him to pay back the money he had saved as a result of his actions, but the ruling did not include the interest he earned on the money. In November 2011, parliament passed a law that obliges members of parliament 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.

Gallup (2013) reports that 67% of Icelandic respondents consider Icelandic politics corrupt compared with 14% in Sweden and 15% in Denmark.

Citation:

Erlingsson, Gissur Ó. (2014): CORRUPTION IN LOW CORRUPT COUNTRIES: THE CASE OF SWEDEN. Open lecture given at the University of Akureyri, Iceland 19th September 2014.

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.).

<http://www.gallup.com/poll/165476/government-corruption-viewed-pervasive-worldwide.aspx>

Israel

Score 6

A survey of the Israeli legal framework identifies three primary channels of a corruption-prevention strategy: 1) maintaining popular trust in public management (including bank managers and large public-oriented corporations' owners), 2) ensuring the proper conduct of public servants and 3) ensuring accountability within the civil service. Israel pursues these goals by various 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, adapted the civil-service commission's authority to manage human resources (e.g., appointments, salaries) and so forth. In 2005, Israel was one of 140 states to sign a national anti-corruption treaty and began implementing it in 2009, issuing annual progress reports.

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 some very powerful ministries with broad ability to engage in discretionary spending. These powers detract from accountability, leaving room for corruption.

Criminal inquiries into politicians are common. 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. In 2014, the courts issued a historical ruling, sentencing former Prime Minister Ehud Olmert to six years in prison for accepting bribes while serving as mayor of Jerusalem.

Citation:

Aliasuf, Itzak, "Ethics of public servants in Israel," 1991 (Hebrew)

<http://mishkenot.org.il/Hebrew/docs/ethics/%D7%9E%D7%90%D7%9E%D7%A8%D7%99%D7%9D-D7%90%D7%A8%D7%92%D7%95%D7%A0%D7%99%D7%9D%20%D7%A6%D7%99%D7%91%D7%95%D7%A8%D7%99%D7%99%D7%9D/%D7%90%D7%AA%D7%99%D7%A7%D7%94%20%D7%A9%D7%9C%20%D7%A2%D7%95%D7%91%D7%93%D7%99%20%D7%A6%D7%99%D7%91%D7%95%D7%A8%20%D7%91%D7%99%D7%A9%D7%A8%D7%90%D7%9C.pdf>

Hovel, Revital, "Former Israeli Prime Minister Ehud Olmert sentenced to 6 years in prison", *haaretz* 13.5.2014:

<http://www.haaretz.com/news/national/1.590298>

Knalfman, Ana, "Political corruption in Israel," IDC website 13.11.2010 (Hebrew)

"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/>

"Transparency International Report", 2014, <http://www.transparency.org/country/#ISR>

Fisher, Israel, "Israel ranks 37th in world corruption index", *Haaretz*, 3.12.2014, <http://www.haaretz.com/news/national/1.629851>.

Lithuania

Score 6

Corruption is not sufficiently contained in Lithuania. In the World Bank's 2013 Worldwide Governance Indicators, Lithuania's received a score of 67 out of 100 (up from 65.9 one year ago; slightly above the average of 63 for European and Central Asian countries) on the issue of corruption control stood at. The 2013 Eurobarometer poll revealed that Lithuania had the EU's highest percentage (29%) of respondents who claimed that had been asked or expected to pay a bribe for services over the past 12 months (with the EU average of 4 %). According to the Transparency International Corruption Perception index Lithuania was ranked 39th in 2014, up from being ranked 43rd in 2013.

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. Since state and municipal institutions often inadequately estimate the likelihood of corruption risks, not all corruption causes and conditions are addressed in anti-corruption action plans. The European Commission suggested that Lithuania should develop a strategy against informal payments in healthcare, and improve the control of declarations of conflicts of interest made by elected and appointed officials. The transparency of political party financing also requires additional efforts.

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.

The European Commission. Annex 15 to the EU Anti-Corruption Report: Lithuania. Brussels, 3.2.2014. COM (2014) 38 final.

Portugal

Score 6

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 2014, which placed Portugal 33rd worldwide in 2013 – the same rank as the previous year. 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 November 2014 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 not to adopt it, instead integrating the ethical issues into the reform of the administrative procedure code.

Croatia

Score 5 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 implementation of anti-corruption measures was gradually reinforced in 2013 and 2014. 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 investigated a significant number of prominent politicians. In October 2014, for example, Milan Bandić, a long-serving mayor of Zagreb, was arrested on suspicion of corruption.

Czech Republic

Score 5 Although all political actors have declared themselves to be against corruption, behavior across the political spectrum shows that use of political office for private gain is widespread and tolerated among the political elite. Most corrupt politicians can operate with impunity until exposed by investigative journalists or the police. Despite the high profile of government anti-corruption initiatives, recent governments have either delayed or implemented only partial measures for cleaning up the public administration, the police and politics in general. In December 2012, the Nečas government published a second strategy anti-corruption plan and goals were judged to have been partially achieved as of May 2013. Draft laws were prepared for government discussion on regulating the status of civil servants (with

the goal of reducing undesirable influences on officials charged with decision-making, increasing professionalism and stabilizing government), on ensuring the independence of state prosecutors, on increasing free access to the internal regulations that govern the activities of statutory bodies and on protecting whistleblowers. The most controversial proposal was the civil service law. After extensive political bargaining, a law was adopted by the Chamber of Deputies and subsequently by the Senate but was opposed by President Zeman. The biggest controversy surrounded the inclusion of politically nominated state secretaries. The fight against corruption also featured prominently in the program of the Sobotka government. Previous activities were criticized as excessively formalistic and ineffective. Yet, like its predecessors, the Sobotka government struggled to translate plans into action. It remains under pressure from a number of well-organized NGOs with clearly defined priorities for laws which seek commitment from and monitor the voting behavior of members of parliament and senators. This has ensured that a verbal political commitment is maintained even if a quick legislative process cannot be guaranteed.

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 mayors (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. Cases of corruption related to the

funding of political campaigns by foreign African states or through unchecked defence contracts are currently (at the time of this writing) before the courts. Moreover, the accounts of the Sarkozy campaign in 2012 were rejected by the Constitutional Council and the public funding granted to candidates refused as a consequence. Since then, the finances of his party are under investigation and some instances of malpractice have been identified. As long as legal codes to regulate conflicts of interest (beyond the case of ministers or parliamentarians) have not been adopted and seriously enforced, 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 Corruption Perception Index (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 areas: party financing and parliamentary integrity; corruption of civil servants; and 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; promising the immediate dismissal of civil servants who had been condemned by Civil Service Disciplinary Councils for having violated integrity legislation; and also preparing 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.

Some progress has been made 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

Corruption and bribery scandals have for decades frequently emerged in Japanese politics. These problems are deeply entrenched and are related to prevailing practices of representation and voter mobilization. Japanese politicians rely on local support networks to raise campaign funds and are expected to “deliver” to their constituencies and supporters in return. Scandals have involved politicians from most parties except for the few parties with genuine membership-based organizations (i.e., the Japanese Communist Party and the Komeito).

Financial or office-abuse scandals involving bureaucrats have, however, 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.

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 view that, at least at the regional level, collusive networks between authorities and companies still prevail and can involve corruption and bribery.

According to Transparency International’s 2013 Corruption Perceptions Index, Japan ranks 18th out of 177, one position ahead of the US.

Malta

Score 5

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.

Until recently, with the exception of the National Audit Office and the Ombudsman Office, these mechanisms provided insufficient guarantees against corruption. The Permanent Commission Against Corruption, which has the independent power to investigate incidents of alleged or suspected corruption, rarely does so before a

complaint has been lodged. Recent scandals associated with oil procurement by the state power station revealed that the commission had received calls from private individuals to investigate allegations of corruption, but that it had proved unable to do so effectively. The commission's report hinted that while suspicions of corruption existed, the authorities failed to call in the police to investigate the suspicions further. The government has promised a new round of reform of the commission by the end of the year.

The Public Service Commission has consistently lacked resources sufficient to allow it to work effectively. As the members of both commissions are appointed by the president on the sole advice of the prime minister, they lack public trust.

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

In 2013, the government strengthened the fight against corruption by reducing elected political figures' ability to evade corruption charges, and introduced a more effective Whistleblower Act.

Citation:

Transparency International: The 2014 Corruption Perceptions Index CPI. Transparency.org/

Romania

Score 5

In the period under review, corruption was a prominent issue in Romanian politics. The courts and the National Anti-Corruption Directorate (DNA) have been successful in prosecuting a number of high-profile cases, yet have faced strong opposition by the parliament. In 2014, the DNA uncovered a massive corruption scandal that revealed deep-rooted clientelistic networks stretching back across four governments. It concerned a complex bribery and money-laundering scheme whereby successive governments purchased Microsoft software licenses at 30% to 40% above market prices. The DNA opened investigations against nine former ministers, but when asked to revoke the immunity of the former ministers, the parliament gave priority to its holiday period, delaying the prosecutors' work. The parliament also continued to legislate legal loopholes that facilitate corrupt practices. For example, amendments made to Law 215/2001 in spring 2014 allowed mayors and county-council presidents to delegate official responsibilities such as the signing of contracts to their subordinates. This was a clear attempt to circumvent the ban on the participation of companies with links to elected officials in public-procurement contracts. Moreover, the legislation hampered the capacity of the National Integrity Agency and DNA to investigate mayors and county-council presidents on the basis of conflict-of-interest or abuse-of-office issues, as the responsibility for such contracts would fall on the shoulders of their subordinates.

Not surprisingly, the issue of corruption also featured prominently during the

presidential elections. Two persons close to Prime Minister Ponta (his father-in-law and his main business and law-firm partner) were under investigation by the DNA as the election campaign was unfolding, and the governing PSD had sponsored an amnesty bill would have benefited politicians recently convicted on corruption charges. Echoing the perspective of the two center-right parties, President-Elect Iohannis proposed a bipartisan compromise to reject the bill. Prime Minister Ponta's refusal to deliver on Iohannis' call may have been one of the causes of his defeat, and the bill was quasi-unanimously rejected immediately after the announcement of Iohannis' victory.

Slovakia

Score 5

Corruption continues to be a central problem in Slovakia, and is considered to be the most important obstacle to doing business efficiently. Both the judiciary and public administration suffer from excessive political interference. The Fico government has paid relatively little attention to the issue of corruption. Although the minister of health and speaker of parliament were replaced because of their alleged engagement in health care corruption, no general strengthening of integrity mechanisms has been attempted. An amendment to the public-procurement law seeking to prevent companies with undisclosed owners from taking a part in public-tender processes was proposed by the government, but did not pass. However, while the government has done little to fight corruption, NGOs and some portions of the business sector have joined forces to shine light on the issue. Several companies teamed up with the Fund for a Transparent Slovakia in 2013 and in 2014, while other firms formed the Slovak Compliance Circle.

Slovenia

Score 5

Corruption has been publicly perceived as one of the most serious problems in Slovenia ever since 2011. In the period under review, efforts to conclude a few longstanding, high-profile corruption investigations were intensified, and several business tycoons and their closest associates were convicted. The most high-profile figures were the former heads of Istrabenz and Brewery Laško, Igor Bavčar and Boško Šrot, who were respectively sentenced by the Ljubljana District Court in July 2014 to seven and nearly six years in prison for unlawful trading in Istrabenz stock. However, in November 2013, the three chairmen of the Commission for the Prevention of Corruption (CPC), the main anti-corruption watchdog that had played a major role in putting corruption on the agenda, resigned in protest over the government's inadequate anti-corruption efforts. The contrast between the comparatively strict sentence given to former Prime Minister Janša and the more lenient treatment of some left-wing politicians accused of corruption has also raised some concerns about the political selectivity of anti-corruption measures.

South Korea

Score 5

Corruption remains a major problem in South Korea and government attempts to curb the problem are seen as mostly ineffective by the population. The enforcement of the OECD anti-bribery convention is evaluated as “moderate.” The Tax Justice Network ranks South Korea at 28 in its Financial Secrecy Index, indicating a relatively small role in illicit financial activities. According to Transparency International’s Corruption Perceptions Index, (CPI), the perception of corruption in South Korea has increased relative to other countries. South Korea ranked 39 out of 177 countries in 2010, but ranked 46 in 2013.

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 three of the remaining six (non-permanent) members of ACRC 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.

In the aftermath of the Sewol ferry disaster in April 2014 in which the collusion between public officials and private enterprises has played a role the National Assembly has begun drafting new legislation that would impose severe punishments on former government officials engaged in lobbying or other similar activities that take advantage of their network in the public sector for private gain. However, bickering over the details of the legislation has already begun and the debate is expected to be protracted.

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>

“Ferry Tragedy: A Righteous and Overdue Rage Over Corruption”, The Diplomat, May 28, 2014

Spain

Score 5

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 less effective, a fact demonstrated by the numerous corruption scandals brought to light in the recent years.

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 such as Transparency International's CPI) 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 2013 and very few of them involve career civil servants abusing their positions. Corruption cases have usually involved 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 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), the Pujol case (the massive enrichment of a former Catalan regional president) and several other cases at both regional and local levels. A very shocking corruption case not directly linked to political parties involves the king's sister and brother-in-law (who are now on trial after earning millions by running charities until 2009 whose main business included cashing in on his status as Spanish royals).

Nevertheless, in parallel to these investigations promoted by a group of dedicated judges in Madrid, Seville, Barcelona, Valencia or Palma (just to mention the most important examples), the central government drafted during 2013 and 2014 two legal initiatives to improve the regulation of party funding and officeholders' responsibilities. The recently passed transparency law, in addition to an announced reform of the criminal code and public procurement law complete the government's anti-corruption plan that may provide more effective disincentive mechanisms.

Bulgaria

Score 4

As successive European Commission reports under the Cooperation and Verification Mechanism have shown, Bulgaria's 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 prepared and updated. However, the actual effects of these provisions and measures have been modest so far. While the executive and state prosecutors have initiated numerous criminal prosecutions against high-profile political actors, the conviction rate in those high-profile cases has been close to 0%. The highly controversial appointment of Delyan Peevski, a DPS parliamentarian and notorious oligarch, as director of the Bulgarian secret service following the 2013 elections raised strong doubts regarding the government's commitment to fighting corruption.

Cyprus

Score 4

The Auditor General's office, a respected and trusted institution, audits state expenditure and compliance with rules and procedures. A report on the public administration's accounts, including misdoings, is produced annually. Corrections in response to these comments, observations and recommendations are rare. However, in 2014, cases of corruption were brought before the courts.

Oversight rules and mechanisms dealing with issues such as income and asset declarations by public-office holders, public-procurement transparency, or the prosecution of attempted favoritism or bribery are either deficient or incompletely implemented. The concept of conflict of interest in public life has been given a prominent role by politicians or oversight bodies.

Generally, anti-corruption measures and the existing code of conduct for public servants (imposed in July 2013) appear either inadequate or not effectively implemented. Official investigations seeking responsibility for the economic crisis and additional parliamentary debates on the issue have done little to reestablish public trust.

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 (Corte dei Conti) 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. The Renzi government has initiated the discussion of some new measures, but their final approval in parliament is still pending

Hungary

- Score 3
- Corruption in Hungary became a major public issue in autumn 2014, when the U.S. government refused to issue visas for six high government officials, citing severe corruption as grounds for the decision. However, widespread corruption has been a systemic feature of the Orbán governments for some time, with benefits and influence accruing through Fidesz's informal political-business networks. Members of the Fidesz elite have been involved in a number of corruption scandals, with many accumulating substantial wealth in a short period of time. In the period under review, a number of scandals emerged. Confronted with media questions, the leader of the Fidesz parliamentary group, Antal Rogán, had to “amend” his property accounts several times. Péter Sziijártó, who became minister of foreign trade and foreign affairs after the 2014 parliamentary elections, failed to declare his luxurious villa. In autumn 2014, Lajos Kósa, the acting president of the Fidesz party, admitted that he had several big apartments and houses, some of which had gone unreported.

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.

Turkey

Score 3

Law 5018 regarding public financial management and oversight also touches on issues of legality, transparency and predictability. However, these concepts, as well as instruments such as the formation of strategic plans, performance budgets and regulatory impact assessments, are not effectively incorporated into government process. An amendment to the law on audit courts has limited the degree to which state expenditures can be audited. Public-procurement safeguards have deteriorated with legislation allowing municipalities to operate in a less than transparent fashion. There are no codes of conduct guiding members of the legislature or judiciary in their actions. Conflicts of interest are not broadly deemed a concern.

In this environment, corruption remains widespread, and unfair and partial treatment by the bureaucracy is common. Especially at the local level, corruption remains a systemic problem. While municipalities controlled by opposition parties are closely watched by law-enforcement authorities and government inspectors, municipalities controlled by the AKP are shielded from proper investigations.

In Transparency International’s 2014 Corruption Perceptions Index, Turkey ranks 64th out of 175 countries, dropping 11 places relative to 2013. A primary reason for Turkey’s decline was certainly the corruption investigations launched in December 2013 against four ministers, their relatives, one district mayor and various other public officials and businessmen. Several suspects were charged with bribery, tender-rigging, export fraud or misuse of state-owned land in real-estate deals and various other charges. However, Ekrem Aydiner, an Istanbul prosecutor specializing in organized crime, dropped proceedings against 53 suspects in a case that had targeted the inner circle of Recep Tayyip Erdoğan.

These latter corruption allegations were regarded by the government as a coup against itself by the Gülen network's "parallel structure." Results of a parliamentary commission's continuing investigations into these allegations will be of crucial importance. In general, no progress has been made in limiting the immunity of politicians and public officials with regard to corruption-related cases, and major concerns persist regarding transparency and accountability in funding for political parties and election campaigns. Under the government's 2010 – 2014 National Anti-Corruption Strategy, numerous working groups reported to an interministerial committee overseeing implementation. Turkey is no longer subject to FATF's monitoring process under its ongoing global AML/CFT compliance process. However, as of the time of writing, the outcome of the 2010 – 2014 National Anti-Corruption Strategy and Action Plan remained uncertain, and it was unclear whether authorities would reinstate the campaign. Turkey has not responded fully to GRECO's Third Round recommendations. The country will shortly be subject to assessments made under the U.N. Convention against Corruption (UNCAC).

Recent reports by the Audit Court were not addressed by parliament. However, the reports were published in the media and online, thus exposing a number of irregularities including hidden budget expenditures, housing procurements and tax compromises to the public.

In February 2014, an omnibus law amended various aspects of Turkish public-procurement legislation, introducing restrictive measures that make the previously optional domestic price advantage of up to 15% compulsory for "medium and high-technology industrial products." The law authorizes the Ministry of Science, Industry and Technology to determine the list of items for which a domestic price advantage will be compulsory; this gives considerable discretion to the administration.

The Council of Ethics for Public Officials lacks the power to enforce its decisions through disciplinary measures. Codes of ethics do not exist for military personnel or academics. Legal loopholes (regarding disclosure of gifts, financial interests and shares, foreign travel paid for by outside sources, etc.) in the code of ethics for parliamentarians remain in place.

Citation:

European Commission, Turkey Progress Report, October 2014, http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf (accessed 5 November 2014)

Mustafa Akyol, Was Turkey's corruption probe a 'coup attempt'? Al Monitor, 14 July 2014, <http://www.al-monitor.com/pulse/originals/2014/07/akyol-turkey-corruption-17-december-akp-coup-attempt-gulen.html#> (accessed 5 November 2014)

Daniel Dombay, Turkish prosecutor drops high-level corruption probe, Financial Times, 18 October 2014, <http://www.ft.com/cms/s/0/63cf5042-56cb-11e4-a0b2-00144feab7de.html#axzz3ITISPXG1> (accessed 5 November 2014)

İşte duman eden Sayıştay raporları, Taraf daily newspaper, 10 March 2014, <http://www.taraf.com.tr/haber-iste-duman-eden-sayistay-raporlari-150242/> (accessed 5 November 2014).

Transparency International (2014) 'Corruption Perception Index 2014', Berlin.

This country report is part of the Sustainable Governance Indicators 2015 project.

© 2015 Bertelsmann Stiftung

Contact:

Bertelsmann Stiftung
Carl-Bertelsmann-Straße 256
33311 Gütersloh

Dr. Daniel Schraad-Tischler
daniel.schraad-tischler@bertelsmann-stiftung.de

Dr. Christian Kroll
christian.kroll@bertelsmann-stiftung.de