



Rule of Law Report

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

Sustainable Governance
Indicators 2016

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 a basic pillar 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 2014/2015 (Wellington: Office of the Ombudsman 2014/2015).
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. With a Weberian-style 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. Most recently, the red-green government announced plans to empower the professions in public service delivery, thus downplaying New Public Management as a philosophy of public sector 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 relatively 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. As such, 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 violation. 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 and void, 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.

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. However, legislation is often incomprehensible, incoherent and unstable. One of the reasons for this situation is the fact that lawmaking is most often a bottom-up process involving several amendments introduced by members of parliament along the way, which disrupts the internal logic of bills.

Citation:

Markowski, R., M. Kotnarowski, M. Wenzel, M. Żerkowska-Balas. 2015. Democratic Audit of Poland 2014. Frankfurt: Peter Lang Edition.

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, the government and public administration apparatus act in line with legal provisions. This is facilitated by the government's extensive control over the legislative process, which enables the government 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.

Spain

Score 8 The general administrative procedure in Spain is consistent and uniform, assuring regularity in the functioning of all administrative levels. During 2015, a new piece of legislation (Ley 39/2015, del Procedimiento Administrativo Común de las Administraciones Públicas) was passed with the aim of modernizing basic administrative law and improving legal certainty. In theory, this principle holds across the Spanish public sector, but it is also true that citizens and the business sector sometimes complain about unpredictable decisions. At the political level, for

example, some policy reversals have undermined Spanish credibility among foreign investors (for example, the government's recent decision to cut the regulated revenue rates received by renewable-energy generators, or the moratorium on new hotels approved by local Barcelona authorities in 2015). At the bureaucratic level there is also some scope for discretion and less transparency than what one might infer from the formal provisions (see "Access to Government Information").

Additionally, even if the executive normally acts on the basis of and in accordance with the law, strict legal interpretations may in fact produce some inefficiency in certain aspects of the administration. This can be observed in 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; and the reliance on procedure regardless of output effectiveness, for example. This prevailing legalistic approach also serves to perpetuate abuses 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.

Citation:

http://cincodias.com/cincodias/2015/07/03/economia/1435944094_183698.html

Ley 39/2015, del Procedimiento Administrativo Común de las Administraciones Públicas. www.boe.es/diario_boe/txt.php?id=BOE-A-2015-10565

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 has since 2009 failed to implement many of its fiscal treaties with foreign partners (for a list, see the Belgian Service Public Federal Finances website). The main reason for this is that all levels of power (federal, regional, etc.) must agree; when they do not, deadlock ensues. Other instances of legal uncertainty include linguistic requirements, where 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. Moreover, taxation and pension policies 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 with regard 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 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, not knowing what applies and under what conditions makes it difficult to apply legislation. Acts passed by parliament often have seemingly extraneous items added, which only confuses things further.

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 investment. 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. The same practice was continued under the Syriza-ANEL government, which has been in power since January 2015. Indeed, in the period under review, changes in taxation legislation took a long time to be formulated, while government by decree was common. The politics of successive coalition governments has fostered further uncertainty and successive parliamentary elections in 2015 also complicated the situation.

Yet, the fact that in 2015 the Syriza-ANEL coalition government and the parties of the opposition (ND and PASOK) converged on the reforms contained in the third bailout package may be a sound basis from which to expect that – in contrast to the past – Greek public policy will feature fewer loopholes and contradictions in the future.

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 properly monitored. 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 2014 Worldwide Governance Indicators, Lithuania’s score for the issue of the rule of law was 78.4 out of 100 (up from 74 in the previous year). 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. For instance, by 7 July 2015, the 2012 – 2016 parliament had already adopted 1,424 laws since the start of its term.

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 2015 OECD report on regulatory policy in Lithuania recommended a number of measures for improving the regulatory environment faced by businesses.

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. In addition, as parliamentary elections approach, legislators frequently become more active in initiating new, often poorly prepared legal changes meant to attract public attention rather than being serious attempts to address public issues. Although most such initiatives are rejected during the process of parliamentary deliberations, they often cause confusion among investors and the general public.

Citation:

The Worldwide Governance Indicators of World Bank are available at <http://info.worldbank.org/governance/wgi/index.asp>.

OECD, *Regulatory Policy in Lithuania: Focusing on the Delivery Side*, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, 2015 http://www.oecd-ilibrary.org/governance/regulatory-policy-in-lithuania_9789264239340-en.

Netherlands

Score 7

Dutch governments and administrative authorities have to a great extent internalized legality and legal certainty on all levels in their decisions and actions in civil, penal and administrative law. In the World Justice Project the Netherlands ranks fifth in a rule of law index.

However, in a recent “stress test” examining the state’s performance on rule-of-law issues, former Ombudsman Alex Brenninkmeijer argued after a comprehensive review that particularly in legislation, but also within the administrative and judicial systems, safeguards for compliance with rule-of-law requirements are no longer sufficiently in place. In legislative politics, no appeal to a constitutional court is possible, making the Netherlands (along with the UK) an exception in Europe. The trend is to bypass new legislative measures’ rule-of-law implications with an appeal to the “primacy of politics” or simply “democracy”, and instead await possible legal action in the form of appeals to European and other international treaties long after political adoption, during policy implementation. The country’s major political party, the conservative-liberal People’s Party for Freedom and Democracy (VVD), has proposed to abolish the upper house of the States General, and with it the legal assessment of Dutch bills on the basis of the legal obligations assumed under international treaties. Within the state administration, the departmental bureaucracy submits far too often to managerial considerations while neglecting legal arguments against implementation. For example, even though the number of prosecuted crimes is relatively low, legal sanctions are rarely enforced. Paradoxically, fiscal and social-security agencies have become exceptionally punitive toward ordinary citizens, not just in cases of fraud, but also in cases of forgetfulness or error. There is evidence that in some cases the accumulation of so-called administrative sanctions has driven people into poverty. Within the judicial system, the lack of system-level support for normal application of the rule of law is apparent in the increase in court-registry fees for citizens seeking legal-dispute settlements, the considerable financial cutbacks and incoherent reforms throughout the entire judicial infrastructure, and the weak application of administrative-law criteria in areas where administrative agencies have

discretionary power. All in all, there are strong tendencies in the House of Representatives and within the political parties toward seeking to override, in the name of the primacy of politics and democracy, judges' right to veto or annul political decisions on the basis of rule-of-law principles.

Citation:

A. Brenninkmeijer, *Stresstest rechtsstaat Nederland*, in *Nederlands Juristenblad*, 16, 24 April 2015, pp. 1046-1055

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 the health, transport and education sectors, 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. The procedures of rule-making are misused or side-stepped by making heavy use of the fast-track legislation procedure. In the first year of Cerar's government (September 2014 to September 2015), 52% of the 156 legislative acts proposed to the National Assembly were subjected to 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, courts in Korea are highly professional and judges are well trained. 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. This is particularly important in South Korea's

“prosecutorial judicial system,” because it is the public prosecutors who initiate legal action. Prosecutors are the most politicized and least independent organization in Korea under the Park government.

The most prominent case of recent years in which critics argued that the prosecutor’s office acted as a “political weapon” for the executive branch was the prosecution of former President Roh Moo-hyun. Additionally, a major political scandal in the Blue House involving President Park’s former aid Chung Yoon-hoi and her brother Park Ji-man revealed that many staffing decisions are not made by elected or appointed officials, but rather on the basis of personal networks and connections. The surrounding circumstances and the insinuations of outside interference in state affairs reflect ongoing problems.

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. Citing Congress’s failure to resolve major issues, President Obama has acted unilaterally, taking an expansive view of executive discretion, in a variety of areas. In November 2015, a federal appeals court nullified Obama’s executive action on the issue of immigration and the administration is seeking review by the Supreme Court.

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 as well as town and rural planning. Following the collapse of the housing market in 2009, there has been much less scope for corruption in relation to development and public contracts; public concern about these issues has waned. This may change as activity in the construction industry gathers pace.

Two recent controversies dented the public’s perception of the integrity of the police force and the operationalization of the rule of law. These centered around the

administration of the law relating to driving offenses, on the one hand, and the Garda Síochána Ombudsman Commission (GSOC), on the other. Although neither has been satisfactorily resolved, attention shifted away from them over the course of 2015.

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.merriestreet.ie/wp-content/uploads/2014/05/Final-Redacted-Guerin-Report-OCR.pdf>

The inquiry into the circumstances surrounding the resignation of the Garda Commissioner was conducted by a former Supreme Court judge, Justice Fennelly, and is available here:

<https://doc-0s-bs->

docs.googleusercontent.com/docs/securesc/ha0ro937gcuc717deffksulhg5h7mbp1/bjfn1u1n4ifdcsekb8vsaf0a2nnd850m/1442836800000/10437822469195814790/*0B2B2HUQaR5vwUnpJRTZnMU1tbWc?e=download

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 bureaucrats. 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 similar problems may 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 sometimes 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. This means that some matters are decided on an ad hoc basis, rather than 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. Thus, the interpretation of laws can vary.

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. 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 Luxembourgs. 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 judgment 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. However, reports from public bodies, such as the Ombudsman and the Auditor General, demonstrate that government institutions do sometimes make unpredictable decisions. 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, however, the predictability of the majority of decisions made by the executive has improved.

Citation:

<http://www.timesofmalta.com/articles/view/20150224/local/210000-commission-paid-in-cafe-premier-buyback-audit-office-slams.557475>

<http://www.timesofmalta.com/articles/view/20150104/local/Dalli-case-prompts-Ombudsman-action.550497>

<http://www.timesofmalta.com/articles/view/20150813/local/updated-some-diabetes-patients-denied-treatment-ombudsman.580496>

Minister reacts as auditor criticizes 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. This situation was widely criticized by many NGOs and watchdog organizations (e.g., Via Iuris, TIS, SGI). Under this pressure, parliament in November 2015 approved two important amendments to improve things. First, it changed the act on lawmaking, introducing the public's right to participate in lawmaking and stipulating that each governmental legislative draft be submitted for public discussion. Second, the rules of procedure for parliament were changed to prohibit "legislative adjuncts," that is, the opportunity to change existing legislation by amending drafts that are currently under discussion, a practice often used to avoid lengthy parliamentary readings.

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.

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 caused by constitutional arrangements initially designed to balance power between the Greek and Turkish communities. The collapse of bi-communality in 1964 left a very powerful executive (president) in its wake.

A number of recent laws and policies passed and implemented in order to meet obligations toward the country's creditors, including radical banking-sector reforms and the banking bail-in, lacked sound legal basis. New cases emerged in 2015 in which conflicts between the parliament and the executive over adopted laws were referred to the Supreme Court for review. These trends have undermined citizens' perceptions of legal certainty. Thus, the government's constitutional margin of discretion appears to be too broad vis-a-vis the parliament, but extremely narrow with regard to fulfilling obligations toward the country's creditors.

As in the past, the government and administration have sometimes avoided and often delayed necessary actions or acted in ways inconsistent with the rule of law. Pressures on and conflicts with independent state officials including the new central-bank governor and the attorney general have continued, as has the clientelistic rather than meritocratic selection of appointees. These practices have negatively affected the independence of state bodies, decision-making capacities, administration efficiency and law-enforcement consistency.

Citation:

1. Press report on conflict between AG and the president <http://in-cyprus.com/cyprus-attorney-general-slams-the-president/>
2. Press comment on president's handling of CB governor case <http://cyprus-mail.com/2015/03/17/our-view-economic-stability-undermined-by-erratic-response-to-cb-governor/>

Israel

Score 5

Several institutions have been established during the short history of Israel to ensure the legal review of the government and administration. The State Comptroller, the Attorney General of Israel 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 Israeli-occupied 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).

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http://www.btselem.org/download/2011_annual_report_eng.pdf (English).

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 Institutional Revolutionary Party (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. The power vacuum in a number of municipalities after many local officials were removed from their positions on corruption charges revealed a legal void. In a prominent case, central government ignored a court decision, stepped in and started to appoint officials at the local level without a legal basis. To give the appointments the appearance of legality, the government then amended the law on local public administration so it that can now act freely by issuing emergency ordinances.

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 9,000 applications from Turkey were pending before the European Court for Human Rights as of October 2015. During the period under review, the Constitutional Court received 6,250 individual applications. In 2014, the Council of State, the country's highest administrative court, received more than 333,000 files, and completed its review of just 143,000 cases.

The main factors affecting legal certainty in the administration are a lack of regulations on particular issues, the misinterpretation of regulations by administrative authorities (mainly on political grounds), and unconstitutional regulations that are adopted by parliament or issued by the executive. In addition, the high frequency of amendments to some basic laws under certain circumstances lead to a lack of consistency. High-profile prosecutions can follow unpredictable courses. For example, after prisoners associated with the clandestine Ergenekon network were released, they were called back for a retrial. Mehmet Baransu, a journalist, was detained after a 12-hour-long search related to documents he submitted to prosecutors in 2010 about the so-called Sledgehammer (Balyoz) coup plot. Moreover, prosecutors launched a new trial against members of the "parallel structure" network allegedly linked to U.S.-based cleric Fethullah Gülen, who the government alleges supports terrorist activities. Some media outlets allegedly related to the network were seized by the police, and Savings Deposit Insurance Fund authorities and trustees were assigned to administer them. A prosecutor banned several TV channels from accessing Türksat (the Turkish satellite system) without a court decision. On the other hand, the corruption allegations of December 2013 and the Deniz Feneri case did not result in convictions. Legal as well as judicial instruments are sometimes used against government opponents, especially those in the media.

Although judicial reform was one of the major objectives of the government during the review period, the judiciary's independence, professionalism, organization and

ability to provide fair trials all remain serious concerns. The government issued a new Judicial Reform Strategy Document in April 2015. However, this does not specify detailed instruments for reaching objectives such as judicial independence and impartiality. The minister and undersecretary of justice are still members of the High Council of Judges and Prosecutors.

In May 2015, former Deputy Prime Minister Ali Babacan said, “If the rules are not clear and transparent, if they are not enforced on those who break the law, if the judiciary is not properly functioning, democracy will likely fail.” He also pointed out that prolonged court trials that are often reversed by higher courts damage the cause of legal certainty. However, critical voices within the executive such as Babacan have been increasingly silenced.

The average length of a case that reaches the Council of State, the supreme administrative court, is 480 days. In 2014, a total of 74,516 out of 167,559 administrative cases were annulled by the administrative courts, giving one indicator of the lack of certainty within the administration.

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Hungary

Score 3

As the Orbán government has taken a “trial and error” approach toward lawmaking, legal certainty has strongly suffered from chaotic, rapidly changing legislation that is, at times, even implemented retroactively. In the first half of 2015, 129 acts were passed or amended. The frequent, often surprising changes in the legal environment have provoked fierce criticism by business people and investors. When the government lost its two-thirds majority in parliament, at least the frequent changes of constitutional law and the instrumentalization of constitutional law for day-to-day politics came to an end.

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 in which courts have ruled 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:

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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 11 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).

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 2015 – 2016, Germany's relative performance on judicial independence has declined slightly in recent years, with Germany now ranked 17 out of 140 countries. However, the court system achieved a high overall score of 5.8 out of 7, while the average duration of a legal case fell 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 has been 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. An institution specific to the country 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.

:
<http://www.justice.govt.nz/courts/maori-land-court> (accessed October 20, 2015).

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 somewhat weakened by the lack of a constitutional court in Finland. The need for such a court has been discussed at times, but left-wing parties in particular have historically blocked proposals for the creation of such a court. Instead, the parliament's Constitutional Law Committee has assumed the position taken in other countries by a constitutional court. The implication of this is that parliament itself is controlled by a kind of inner-parliament, making the Constitutional Law Committee arrangement a less than convincing compensation for a regular constitutional court. In addition, although courts are independent in Finland, they do not decide on the constitutionality or the conformity with law of acts of government or the 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 monitors authorities' compliance with the law and the legality of the official acts of the government, its members, and 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 the lack of a precise reference in the constitution itself. 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. 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, allowing for a thorough review of legislation.

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 Israeli Democracy Institute.

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.

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<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> (Hebrew).

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

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

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., Vilmorius surveys), a comparatively small share of the population trusts the courts (25.0% in October 2015), although the Constitutional Court is accorded a somewhat higher level of trust (39.8% in the same month).

Citation:

The EU Justice Scoreboard, see the Lithuanian case at http://ec.europa.eu/justice/effecti-ve-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 heavy case loads; annual reports cite more than 1,000 judgments by the Administrative Court from 2013 to 2014 and 232 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:

<http://www.justice.public.lu/fr/publications/rapport-activites-administratives/rapports-juridictions-adm-2014.pdf>

https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-lu-de.do

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. The country still lacks a comprehensive system of legal aid for those in need and it takes too long time until a case is presented to court. In July 2015, the European Court of Human Rights released a pilot judgment against Poland demanding long-term efforts to improve the speed with which cases are handled within the judicial system. This decision was made just as a legal reform of Poland's criminal code went into effect on 1 July 2015. This reform makes it easier to use fines and penalties for speeding up lawsuits, but has been criticized for the constraints it places on the independence of courts and judges.

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/Arbitragehof) 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, subnational 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. During the current evaluation period, Chilean courts demonstrated their independence through their handling of the corruption scandals revealed over the past few years, which have included political parties and a large number of the country's politicians.

Cyprus

Score 8

Judicial review may be effective and efficient in all fields of the administration, but is gravely affected by procedural delays. Citizens can seek protection of their rights through judicial review of administrative decisions by well-organized and professional courts. 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 of three or five judges, with highly important cases requiring a full quorum (13 judges).

In a 2014 survey, 90% of justice-system respondents (primarily lawyers and judges) stated that delays were a severe problem. In January 2014, the government proposed draft laws amending the constitution and creating an administrative court, with the aim of eliminating or mitigating court delays. The proposal was approved by parliament in July 2015, but the creation of the court was still pending at the end of the review period.

Citation:

1. Law 131(I)/2015 for the establishment of an administrative court, in Greek, http://www.cylaw.org/nomoi/arith/2015_1_131.pdf
2. 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. Upon entering office in March 2015, Minister of Justice Robert Pelikan introduced a new bill on the Public Prosecutor's Office, the third within the last five years. Welcomed by most NGOs, the new bill aims at strengthening the independence and accountability of prosecutors by involving experts in the selection and recruitment of prosecutors, by replacing appointment for life with a seven-year tenure and by providing for a higher degree of specialization. As the bill has met with resistance even within the governing coalition, its fate is unclear.

Italy

Score 8 Courts play an important and decisive role in the political system. The just and fair functioning of the state is guaranteed by control of political decision-making not only by the president, but also by its judicial system. The 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. The Renzi government is attempting to streamline the court system by abolishing or merging smaller courts to form larger courts. The aim is to improve the distribution of personnel and increase efficiency.

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 an average Administrative Regional Court case required 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 propose 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 2014, 17 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 is very active in ensuring that the government conforms to the law. Indeed, the high degree of judicial intervention continued in 2014 and 2015, with the Constitutional Court deciding a number of measures against the government, such as allowing 35-hour weeks to be implemented in municipalities without central-government consent and overturning the teacher-assessment exams, as noted above. 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.

South Korea

Score 8

The South Korean judiciary is highly professionalized and fairly independent, though not totally free from governmental pressure. For example, the courts delivered an ambivalent verdict on former National Intelligence Service (NIS) chief Won Se-hoon, who was indicted for mobilizing the spy agency to manipulate public opinion in support of Park Geun-hye's 2012 presidential 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, a much more serious charge that might have undermined the legitimacy of the 2012 presidential elections.

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 decree in which the Supreme Court has also demanded the ability to rule on acts' constitutionality, hence interfering with the Constitutional Court's authority. This has contributed to legal battles between the Constitutional and Supreme courts on several occasions. On the whole, the Constitutional Court has become a very effective guardian of the constitution since its establishment in 1989. However, the 19 December 2014 order by the Constitutional Court to dissolve the Unified Progressive Party as requested by the government triggered a public debate on the role of the Constitutional Court in South Korea, as the court was accused of too readily following the government's position that the UPP was "pro-North Korean" and represented a grave danger to South Korean democracy. The personal political orientation of each constitutional justice has tended to influence his or her ruling more directly under the Park government.

On a positive note, on 21 October 2015, the Constitutional Court ruled that the State Defamation Act in place from 1972 – 1988 had been unconstitutional, thus rehabilitating those prosecuted on the basis of that law under the military regime.

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-pro-north>, 19 December 2014

United Kingdom

Score 8

The United Kingdom has no written constitution and no constitutional court. Consequently, the UK has no judicial review comparable to that in the United States or many other 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. Additional judicial

oversight is 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, which have overturned decisions made by the UK government, some political figures have raised the possibility of the UK's withdrawal 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, while some inquiries (notably the Chilcot inquiry into the Iraq war) drag on for so long that there is limited public awareness of the subject by the time their final reports are published.

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. However, the extensive delay in publishing the Chilcot inquiry into the Iraq war has been criticized by the government, media and citizen groups.

United States

Score 8

The United States was 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. However, judicial review does not simply ensure that legislative and executive decisions comply with "law." The direction of judicial decisions depends heavily on the ideological tendency of the courts at the given time. The federal courts have robust authority and independence but lack structures or practices to ensure moderation or stability in constitutional doctrine.

During the review period, the Supreme Court was sharply divided, with a 5-4 or larger conservative majority on most issues, while still providing narrow majorities for liberal decisions on some issues. Either way, the Court's decisions clearly go far beyond any well-established legal principles, and in effect impose the constitutional views or policy preferences of the court majority. A series of decisions on campaign finance, culminating in the notorious 2010 Citizens United decision, has rendered campaign-finance regulation almost without substantive effect. The Court has gradually undone much of the liberalization of abortion policy that the Court itself initiated in its famous 1973 *Roe v Wade* decision. The Court's 2015 decision requiring states to permit same-sex marriage set aside more than 200 years of U.S. public policy.

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. The heads of such courts are selected by the cabinet (the Council of Ministers) from a list supplied by the highest courts themselves. In the past, such higher judges were clearly supporters of the government of the day. Successive governments, including the incumbent coalition government of Syriza and ANEL, have not resisted the temptation to hand pick their favored candidates for the President posts of the highest courts.

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 judgments, 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.

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. After falling to about 30% in 2011, it recovered to 39% in 2013 and has remained at around 43% since spring 2014.

Many observers consider the courts biased, as almost all judges attended the same law school and few 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).

Citation:

<http://www.gallup.is/#/traust/>

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 inquire 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.

Both the 2013 and 2015 EU Justice Scoreboard ranked Malta's judicial system the least efficient in the EU with regard to the duration of cases. However, the appointment of more judges, improved planning processes and increased use of ICT are intended to reduce the duration of court cases. However, the arraignment of a senior judge for bribery has undermined public confidence in the courts.

Citation:

http://ec.europa.eu/justice/effecti-ve-justice/files/justice_scoreboard_communication_en.pdf

<http://www.timesofmalta.com/articles/view/2013-0506/local/european-commission-says-malta-judicial-reform-must-be-made-a-priority.468460>

Malta with the worst record in European Union justice score board Independent 23.03.2015

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. However, unlike the U.S. Supreme Court, the Dutch 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, its mandate extends only to 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 reopen 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 only six years) 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.

:
Andeweg, R.B. and G.A. Irwin (2014), *Governance and Politics of the Netherlands*. Houdmills, Basingstoke: Palgrave Macmillan (pages 203-2011).

Slovenia

Score 7

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 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. In the period under review, the Constitutional Court has demonstrated its independence by annulling decisions by the governing coalition on the candidacy rights of former Prime Minister Janša and the referendum on same-sex marriages. The quality and independence of the courts became a major issue in 2015 when higher courts annulled the high-profile convictions of Janša and the former CEO of Istrabenz holding Igor Bavčar because of a lack of evidence and procedural mistakes.

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. In addition, the Constitutional Court may review governmental legislation (i.e., decree laws) and is the last resort in appeals to ensure that the government and administration respect citizens' rights.

During the period under review, a number of criminal cases related to separate scandals demonstrated that courts can indeed act as effective monitors of activities undertaken by public authorities (see “Corruption Prevention”). Another important development in 2015 was the decision to eliminate court fees for natural persons; these fees had been introduced in 2012 as part of the austerity plans, and had prevented many citizens from seeking judicial review of administrative acts, thus damaging the effectiveness of the enforcement and appeal mechanisms.

Today, two important factors undermine the efficacy of judicial review in Spain. The first is the lack of adequate resources within the court system, leading to systematic delays (the Executive Opinion Survey published by the World Economic Forum and other similar opinion polls show that most Spanish respondents find the judicial system to be too slow, in such a way that benefits bad-faith competitors). The second problem is the difficulty some judges appear to experience in reconciling their own ideological biases (mostly conservative, given their generally upper-middle-class social origins) with a condition of effective independence; this may hinder the judiciary’s mandate to serve as a legal and politically neutral check on government actions.

Citation:

Spain Eliminates Judicial Fees for Natural Persons www.liberties.eu/en/short-news/3412

file:///C:/Users/Famosa/Downloads/WEF_GlobalCompetitivenessReport_2014-15%20(1)%20(1).pdf

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 somewhat stiffer line against the state. In 2015, the Supreme Court ruled that atomic-bomb victims (so-called hibakusha) cannot be excluded from medical subsidies under the Atomic Bomb Survivors’ Assistance Act simply because the victims now live abroad, a ruling that mainly concerns former

Korean workers.

In 2009, a lay-judge system was introduced for serious criminal offenses, with the aim of bettering reflect the views of the population. After similar decisions in 2014, the Supreme Court in 2015 again overturned lower-court rulings involving lay judges. In a murder case, the Supreme Court considered the imposition of the death penalty as being too harsh and unfounded. This has further increased uncertainty about the lay-judge system and its rulings, although repercussions on daily life seem limited.

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Tomohiro Osaki, Supreme Court rules hibakusha overseas are entitled to full medical expenses, *The Japan Times*, 8 September 2015, <http://www.japantimes.co.jp/news/2015/09/08/national/crime-legal/supreme-court-rules-hibakusha-overseas-entitled-full-medical-expenses/>

Kyodo News, Supreme Court nullifies two death sentences handed down by lay judges, *The Japan Times*, 5 February 2015, <http://www.japantimes.co.jp/news/2015/02/05/national/crime-legal/supreme-court-nullifies-two-death-sentences-handed-lay-judge-trials/>

Romania

Score 6

Standards within Romania's judiciary are undermined by internal corruption scandals and government efforts to influence court rulings. However, the judiciary has become more professional and independent. Despite strong political pressure on the judiciary, often exercised via the media, the courts have indicted and convicted prominent politicians, most notably Prime Minister Ponta (who, tellingly, alleged President Iohannis's involvement in the indictment). The Constitutional Court of Romania effectively repealed "big brother" legislation infringing on privacy and detention rights.

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European Commission 2016: Report from the Commission to the European Parliament and the Council On Progress in Romania under the Co-operation and Verification Mechanism. COM(2016) 41 final, Brussels (http://ec.europa.eu/cvm/docs/com_2016_41_en.pdf)

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. As a result, the judiciary is held in low esteem by the public, with only a quarter of Slovak citizens expressing trust in the courts. Whereas the Fico government has largely failed to address the weaknesses of the court system, there were some positive changes brought about from within the judiciary. Most notably, the disempowerment of Stefan Harabín, a controversial figure who had held major positions in the Slovak judiciary, continued when he eventually lost his position as head of the Supreme Court's penal college in September 2015.

Citation:

Via juris, Trust in the courts falls again, 7. October 2015; <http://www.viajuris.sk/en/news/568-trust-in-the-courts-falls-again.html>

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. In January 2015, the National Assembly endorsed a comprehensive blueprint for the reform of the judiciary. Its implementation was delayed by controversies over constitutional amendments necessary for reforming the Supreme Judicial Council, a body with wide-ranging powers over the appointment, appraisal, promotion, and disciplining of judges and prosecutors.

Citation:

European Commission (2016): Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism. COM(2016) 40, Brussels (http://ec.europa.eu/cvm/docs/com_2_016_40_en.pdf).

Croatia

Score 5

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. The Milanović government carried out a reform of the judiciary in 2014 and 2015 that succeeded in substantially reducing the number of courts and in overhauling misdemeanor law. However, the judiciary's structural problems have persisted. Courts still have to deal with too many cases, incomparably more than the European average. The procedures for out-of-court settlement are not sufficiently developed and the costs of litigation are so low that they stimulate a stalling of judicial proceedings. A number of controversial Supreme Court and Constitutional Court rulings in 2015 raised suspicions that the courts were repositioning themselves politically in view of the expected HDZ victory in the parliamentary elections.

Hungary

Score 5 The independence of the Hungarian judiciary has drastically declined under the Orbán governments. While the lower courts still make in most cases independent decisions, the Constitutional Court and the Kúria (Curia, previously the Supreme Court) have increasingly come under government control and haven't often been criticized for making biased decisions. When Tünde Handó, the spouse of a leading Fidesz politician, served as president of the National Office for Judiciary, the politicization of appointments of judges for the lower courts increased. For instance, in summer 2015, all members of the Szombathely Court council resigned after the National Office had annulled an appointment to this court.

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 Institutional Revolutionary Party. 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 demonstrated that the Constitutional Court plays a vital role in safeguarding judicial review in Turkey.

However, acts by the president and other important institutions are generally excluded from judicial review. The actions of some other institutions are also excluded from judicial review, including 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.

The Venice Commission, referring to some politically sensitive cases in Turkey, has expressed concern about violations of European and universal judicial-independence standards. A judicial-reform package adopted by the parliament in December 2014 allowed Court of Cassation (Yargıtay) investigatory judges be elected solely by the HSYK, bypassing the Supreme Court Presidency Council. During the review period, the HSYK also launched an investigation into the appointments of 5,000 judges and prosecutors on the basis of irregularities in the entrance exams conducted since 2010.

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 case-completion time has been 165 days.

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 European Commission, Turkey 2015 Report, 10.11.2015, ec.europa.eu/enlargement/pdf/key.../2015/20151110_report_turkey.pdf (accessed 10 November 2015)
 Yargı Reformu Strateji Belgesi 2015, http://www.sgb.adalet.gov.tr/yargi_reformu_stratejisi.pdf (accessed 27 October 2015)
 Venice Commission Declaration on Interference with Judicial Independence in Turkey, 20 June 2015, <http://venice.coe.int/files/turkish%20declaration%20June%202015.pdf> (accessed 27 October 2015)
 Cumhurbaşkanı Erdoğan 'yargı paketi'ni onayladı, 12 December 2015, <http://www.radikal.com.tr/turkiye/cumhurbaskani-erdogan-yargi-paketini-onayladi-1249956/> (accessed 27 October 2015)
 HSYK 5000 hakim ve savcı sınavını incelemeye aldı, 8 November 2015, <http://zete.com/hsyk-5000-hakim-ve-savci-sinavini-incelemeye-aldi/> (accessed 10 November 2015)
 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)
 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).

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.

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.

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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%A6vnelsesr%C3%A5det.aspx> (accessed 17 April 2013).

Austria

Score 9

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

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

Belgium

Score 9

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

The appointment process is transparent, yet attracts little media attention. Given the appointment procedure, there is a certain level of politicization by the main political parties, and indeed most justices, have had close links to one of the parties or have previously held political mandates before being appointed to the court. However, once appointed, most justices act independently.

Chile

Score 9

Members of the Supreme and Constitutional Courts are appointed collaboratively by the executive and the Senate. During recent years, there have been several cases of confrontation between the executive power and the judiciary, for example in the area of environmental issues, where the Supreme Court has 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," Ministry of Justice website, 2012, <http://index.justice.gov.il/Units/NezivutShoftim/pirsomeyhanaziv/Doch/Documents/2012.pdf> (Hebrew).

The Ombudsman of Judges, "The Ombudsman of judges office: Annual report 2013", Ministry of Justice, Jerusalem, 2014, <http://index.justice.gov.il/Units/NezivutShoftim/MainDocs/Report2013.pdf> (Hebrew).

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 68th among 140 countries worldwide.

Citation:

See the 2015-2016 Global Competitiveness Report of the World Economic Forum: http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf

Luxembourg

Score 9

The Constitutional Court is composed of nine members, all professional judges. They are appointed by the Grand Duke on the recommendation of the members of the Superior Court of Justice and the Administrative Court of Appeals, who gather in a joint meeting convened by the President of the Superior Court of Justice. These two jurisdictions are appointed by the Grand Duke on the recommendation of the Court itself, so their recruitment is co-opted. This principle is enshrined in Article 90 of the constitution and has never been questioned. It gives a great degree of independence to the Constitutional Court as well as to the Superior Court of Justice and the Administrative Court of Appeals. The government plans (through the Law Project of 2013) 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

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>

<http://www.gouvernement.lu/1719266/cours-tribunaux>

http://www.mj.public.lu/actualites/2013/02/Cour_supreme/APL_Conseil_national_de_la_Justice_25_fevrier_2013.pdf

<http://www.justice.public.lu/fr/organisation-justice/cour-constitutionnelle/index.html>

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, who remains in office.

Sweden

Score 9 The 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. President Zeman's proposals have continued to be uncontroversial.

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 elects judges directly and openly, the Bundestag used to delegate its decision to a committee in which the election took place indirectly, secretly and opaquely. In May 2015, the Bundestag unanimously decided to change this procedure. As a result, the Bundestag now elects judges directly following a proposal from its electoral committee (Wahlausschuss). 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.

Italy

Score 8 According to the present 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. The constitutional reform proposed by the Renzi government will only affect the selection of Constitutional Court judges moderately. Instead of the Chamber of Deputies and Senate selecting the five judges in a joint session, three judges will be nominated by the Chamber of Deputies and two by the Senate.

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 (with a compulsory retirement age of 70). 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.

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, has tended to avoid rendering 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 the opposition's justice spokesperson as well as civil-society groups. In 2012, a review by the New Zealand Law Commission recommended that greater transparency and accountability be given to the appointment process through the publication by the chief justice of an annual report, as well as the publication by the attorney general of an explanation of

the process by which members of the judiciary are appointed and the qualifications they are expected to hold. The government indicated that it intended to adopt a number of the Law Commission's recommendations, but as of October 2015, it had not yet 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. Over the last 30 years, however, judicial appointments have become highly politicized. With the severe polarization of Congress in the 2000s, the Senate opposition party has been increasingly willing to hold up confirmations for federal judgeships at all levels. After taking over control of the Senate, Republicans confirmed only six federal judges at all levels from January to October 2015, thus increasing the number of open judgeships from 43 to 67, and causing increasing difficulties dealing with cases.

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.

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 bi-communal 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; four out of 13 Supreme Court justices were women as of 2015.

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

Greece

Score 7

Before the onset of the crisis, the appointment of justices was to a large extent controlled by the government. After the Panhellenic 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. Between 2011 and 2014, the government applied the seniority principle in selecting justices to serve at the highest echelons of the justice system. In 2015, under the coalition government of the left-wing Syriza and the nationalist right-wing ANEL party, the principle of seniority was partly curbed as the new President of the Supreme Court was not the court's most senior member. On 30 June 2015 the person who was appointed for this post by the government was a well-known, high ranking judge who, functioning as a leader of the trade union of judges, had publicly denounced the austerity policies of New Democracy and PASOK.

Citation:

Law 2841/2010 stipulates that the appointment of presidents and vice-presidents of the highest courts requires the non-binding opinion of the high-ranking parliamentary committee titled Conference of the Presidents of the Greek parliament.

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. Judges' pay and pensions had been shielded from the cuts in public-sector pay implemented during the economic crisis, but a huge majority of voters in a referendum in October 2011 voted to remove this protection. The Association of Judges of Ireland has called 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. However, has been no progress on this over the review period.

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 generally determined by seniority and (partly) peer reputation. Formally, however, the Second Chamber (House of Representatives) of the States General selects the candidate from a shortlist presented by the Supreme Court. In selecting a candidate, the States General is said never to deviate from the top 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

Supreme Court and 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. A controversial amendment to the Law on the

Constitutional Tribunal, adopted in June 2015, tightened the deadline for proposing candidates to replace the Constitutional Tribunal judges whose terms were to expire later in the year. This allowed the PO-PSL majority to replace five justices in the final session of the Sejm in advance of the parliamentary elections. Whereas the PO and PSL argued that because the new Sejm would not convene until November 12, the vote was necessary to preserve the Constitutional Tribunal's continuity, the PiS saw it as a politically motivated attempt to prevent the new majority from electing the judges. President Duda refused to swear in the judges, and one of the first decisions of the new parliament was to provide for the election of new judges.

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.

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. Furthermore, the Supreme Court of the United Kingdom has been established, which replaces the Appellate Committee of the House of Lords and relieves the second chamber of its judiciary role. The Queen appoints 12 judges to the Supreme Court based on the recommendation of the prime minister who is advised by the Lord Chancellor in cooperation with a selection commission. It would be a surprise if the prime minister ignored the advice or the Lord Chancellor or selection commission or the Queen ignored the recommendations of the prime minister. The Queen has a formal, ceremonial role and she is bound to impartiality. In contrast, the Lord Chancellor has a highly influential role and consults 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>

Slovakia

Score 6 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 requirement. In the period under review, the selection of justices was paralyzed by a struggle between President Kiska, who had made judicial reform a priority in his successful presidential campaign, and the Smer-SD-dominated parliament. When in July 2015 Kiska appointed only one out six candidates proposed for the Constitutional Court by parliament, the five other candidates filed a complaint with the Constitutional Court. The latter eventually decided against the president, without really clarifying the powers of the president. Further conflicts between President Kiska and the parliament arose over the retirement of judges, with parliament rejecting Kiska's proposal to establish an age limit for judges in the constitution.

Citation:

-President: Constitutional Court's decision to drop my request is serious, in: Slovak Spectator, 29.10.2015; <http://spectator.sme.sk/c/20062708/president-constitutional-courts-decision-to-drop-my-request-is-serious.html>

Spain

Score 6

Appointments to the Spanish Constitutional Court (Tribunal Constitucional, TC), the organ of last resort regarding the protection of fundamental rights and conflicts regarding institutional design, take place through a highly politicized and usually long process. According to the constitution, the TC consists of 12 members. Of these, four are appointed by the Congress of Deputies, requiring a supermajority of three-fifths of this body's members, and four 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. One of the justices died in April 2015, and the politicized complexity of the appointments process impeded the selection of a successor.

Appointments to the Supreme Court – the highest court in Spain for all legal issues except for constitutional matters – can also lead to political maneuvering. The Supreme Court consists of five different specialized chambers, and all its members (around 90 in total) are appointed by the CGPJ, requiring a majority of three-fifths. The 20 members of this body (judges, lawyers and other experienced jurists), which is the governing authority of the judiciary, are themselves appointed to five-year terms by the Congress of Deputies and the Senate, and also require a three-fifths supermajority vote to be seated.

Under current regulations, appointments to both the TC and the CGPJ formally require special majorities. However, the fact that the various three-fifths majorities needed can be reached only through extra-parliamentary agreements between the major parties has not led to cooperative negotiations to identify the best candidates regarding judicial talent. On the contrary, even if there is a formal guarantee of independence, neutrality is not expected, and justices do not tend to be considered as being divorced from the ideology of the parties proposing their appointment. 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 parallel ideological shift in the TC and the CGPJ from progressive leftists to the right or vice versa. However, professional considerations in fact also play a very important role, with nominees always having extensive prior judicial experience.

During the period under review, the “progressive” judicial association criticized the political bias of some Supreme Court appointments promoted by the conservative-leaning president of the CGPJ. The same year, illustrating potential problems within this process, two National High Court justices whose appointments had been

suggested by the Popular Party were selected to preside over the most serious corruption scandal affecting this party's financing (the Gürtel case). However, the court ultimately decided to exclude these judges from hearing this controversial case, thus demonstrating that the system also contains some safeguards to protect itself against political influence.

Citation:

www.juecesdemocracia.es/txtComunicados/2015/ComsobreactuCGPC0615.pdf

www.cuatro.com/noticias/espana/Audiencia_Nacional-trama_Gurtel-Enrique_Lopez-Concepcion_Espejel_0_2075850053.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 and appointments are spread over time. 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). Justices serve nine-year mandates, with four justices being replaced every three years.

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. The appointment process is covered by the media.

Despite their almost absolute power regarding judicial appointments, however, prime ministers have consulted widely on Supreme Court nominees, although officeholders have clearly sought to put a personal political stamp on the court through their choices. Historically, therefore, there was little reason to believe that the current judicial-appointment process, in actuality, compromised judicial independence. This changed somewhat in 2014, when then 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 not subject to political influence. Supreme Court justices appoint lower-court judges. The ombudsman is an independent official elected by parliament. The ombudsman and deputy ombudsman investigate complaints by citizens and conduct investigations. While formally transparent, the appointment processes do not 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. Contrary to U.S. practice, however, the French parliament has not yet exerted a thorough control over these appointments, instead choosing a benevolent approach, in particular, when appointees are former politicians.

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 Romania's 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), 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.

Iceland

Score 4

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 aims to restrain the minister's authority by introducing external oversight. Even so, in a remarkable reversal, the Minister of the Interior proposed in a 2015 parliamentary bill that the Minister of the Interior should be able to directly appoint judges as before.

In 2009, the EU expressed concern over the recruitment procedures for judges. The Group of States against Corruption (GRECO) has also criticized the process for appointing judges in Iceland. The draft constitutional bill, approved by 67% of voters in a non-binding 2012 referendum, proposes that judicial appointments should be approved by the president or a parliamentary majority of two-thirds.

Many appointments to the courts continue to be controversial. In many cases, the scrutiny of Supreme Court candidates seems superficial. For instance, little attention is given to how regularly rulings by lower court judges are overturned by the Supreme Court. Furthermore, a retired Supreme Court justice, whose appointment was controversial, published a book in 2014 criticizing 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.

GRECO (2013), Report on Iceland, http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ReportsRound4_en.asp

GERCO (2015), Report on Iceland, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/RC4/GrecoRC4\(2015\)3_Iceland_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/RC4/GrecoRC4(2015)3_Iceland_EN.pdf)

Turkey

Score 4

The Constitutional Court has 17 members, as outlined by Article 146 of the 2010 constitutional referendum. These members are nominated or elected from other higher courts by the country's president, the parliament and professional groups made up of senior administrative officers, lawyers, first-degree judges, 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; have completed higher education; and have worked for at least 20 years. Constitutional Court members serve 12-year terms and cannot be reelected. The appointment of Constitutional Court judges does not take place on the basis of general liberal-democratic standards such as cooperative appointment and special majority regulations. In addition, the armed forces still wield some civilian judicial influence, as two military judges are members of the Constitutional Court.

Recruitment patterns in the past have highlighted the 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, the allegations of infiltration of the judiciary by the Fethullah Gülen network, and the government's subsequent hasty legislative changes. Instead of being elected, four new members of the HSYK were appointed by President Recep Tayyip Erdoğan, thus undermining the principles of independence and impartiality. In support of the procedure, a newly elected member of the Supreme Council stated: "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.

Citation:

European Commission, Turkey 2015 Report, 10.11.2015, ec.europa.eu/enlargement/pdf/key.../2015/20151110_report_turkey.pdf (accessed 10 November 2015)

Yargı Reformu Strateji Belgesi 2015, http://www.sgb.adalet.gov.tr/yargi_reformu_stratejisi.pdf (accessed 27 October 2015)

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 until recently failed to limit the government parties' control over the process. Fidesz used its two-thirds majority to appoint loyalists to the court. Parallel to the weakening of the remit of the Constitutional Court, the court was staffed with Fidesz loyalists, some of whom are not even specialists in constitutional law. Since Fidesz lost its two-thirds majority, no appointment of Constitutional Court justices has been on the agenda. In 2016, however, the terms of three judges will expire.

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. The system followed that used in the UK until it was reformed in 2006. Malta is the only EU member state in which the government appoints the judiciary 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. Within the last year, a government appointed commission recommended reforming the appointments process.

However, despite elections or changes 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

<http://www.timesofmalta.com/articles/view/20150517/local/government-ignored-bonello-commission-recommendations-on-appointments.568405>

<http://www.timesofmalta.com/articles/view/20150819/local/minister-warns-against-reforming-judicial-appointments-system-for-the.581166>

<http://www.timesofmalta.com/articles/view/20150518/local/bonnici-we-will-reform-way-judiciary-appointed.568596>

Judicial appointments and the executive: Government cannot continue to delay reform Independent 2/10/2015

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.

Citation:

Transparency International, Corruption Perceptions Index 2014, <http://www.transparency.org/cpi2014/results> (accessed 14 December 2014, re-accessed 8 October 2015).

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

Citation:

Freedom House: Freedom in the World 2015: <https://freedomhouse.org/report/freedom-world/freedom-world-2015#.VI28kuIXtc4> (accessed October 20, 2015).

Finland

Score 9 The overall level of corruption in Finland is low, with the country offering a solid example of how the consolidation of advanced democratic institutions may 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; legal provisions that criminalize the acceptance of bribes; full access by the media and the public to relevant information; public asset declarations; and consistent legal prosecution of corrupt acts. However, the various integrity mechanisms still leave some room for potential abuse, and a 2014 European Commission report emphasized the need to make public-procurement decisions and election funding more transparent. It is also evident that positions in Finland are filled through political appointment. Whereas only about 5% of citizens are party members, two-thirds of the state and municipal public servants are party members. Recently, several political-corruption charges dealing with bribery and campaign financing – particularly a case in which a former head of Helsinki police’s narcotics unit was judged guilty of bribery – have been brought to light and have 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. There are, however, significant differences among government agencies in the level of trust they enjoy from citizens, with the National Tax Agency being the most trusted agency and the National Social Insurance Agency and the Labor Market Agency the least trusted.

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. This tendency has continued during the period of review.

Citation:

Bergström, Annika et al. (eds.) (2014), *Fragment (SOM rapport 63)* (Göteborg: SOM).

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. In particular, the corruption affair involving Zurich-based FIFA has become a major issue. 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. In 2014, Transparency International placed Australia at rank 11 in its international Corruptions Perceptions Index, with a good overall score.

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. Tender processes are not always open, 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>
<http://www.transparency.org/cpi2014/infographic/compare>

Austria

Score 8

Corruption has become a major topic of discussion in Austria. In recent years, scandals concerning prominent politicians (including former cabinet members) and industries dependent on government decisions have been exposed in increasing numbers, and thoroughly investigated. In consequence, a special branch of the public prosecutor's office dealing especially with corruption (Korruptionsstaatsanwaltschaft) has been established. This office 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.

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 have been funded by public subsidies based on electoral results. Private donations by firms are not allowed. This practice is often criticized as a means of preserving 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. Transparency International's Corruption Perceptions Index ranks Canada among the top 10 least corrupt countries in the world.

In recent years, however, the country saw a number of high profile corruption scandals. In 2013, the Montreal-based company SNC Lavalin and its subsidiaries were blacklisted from bidding on the World Bank's global projects due to corruption charges related to its Padma Bridge project in Bangladesh. In 2014, the Charbonneau Commission on corruption in the construction industry in Quebec uncovered a series of long running and far-reaching corruption cases, including price rigging and bribery in the form of illegal donations to the province's major political parties from some of its biggest engineering firms. Perhaps the most consequential scandal, however, revolves around an investigation (which started in 2012) of wrongful travel and living allowance expense claims made by four members of the Canadian Senate. All four senators have since been suspended and three of them were criminally charged. As a result, the Auditor General of Canada examined expense claims made by all the other senators, identifying in a 2015 report thirty whose claims were ineligible; of these, nine cases were referred for police investigation. The Senate expense scandal has renewed calls to reform the Senate or abolish the upper house entirely. In early 2014, Liberal Party leader Justin Trudeau expelled all 32 Liberal senators to sit as Independents, part of a proposed plan to overhaul Senate appointments to ensure it is a non-partisan body.

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 2014, the number of registered corruption offences increased slightly as compared to 2013 (from 322 to 355). 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 largest number of corruption offences overall was registered in connection with state agencies (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 2014 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. Germany's overall performance has also improved relative to other countries. In 2014, Germany ranked 12 out of 215 countries compared to 15 out of 215 in 2010 (World Bank 2015).

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 income 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. Auxiliary income exceeding €250,000 is the uppermost category. Four Members of Parliament (all members of the conservative government party CDU/CSU) declared auxiliary incomes exceeding €250,000. For example, Peter Gauweiler (CSU) declared 19 auxiliary 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 auxiliary income. The current system is thus not apt to eradicate corruption via a transparent declaration regime. Instead, it sets incentives to declare auxiliary income in slices of lesser amounts.

Citation:

World Bank (2015): <http://info.worldbank.org/governance/wgi/index.aspx#home>

Luxembourg

Score 8 After a parliamentary inquiry into a large building project in Wickrange 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, an ethics committee will offer opinions concerning the interpretation of specific situations. The revised text was signed by each minister and came into force in December 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.

In the 2014 Eurobarometer survey (using data from 2013), three of 10 citizens said they believe that connections and personal favors promote access to certain public services in Luxembourg. In Transparency International's Corruption Perceptions Index 2014, Luxembourg improved two places compared to the previous year, falling at ninth place worldwide

In Luxembourg, the fourth European evaluation of the Group of States against Corruption (GRECO) called for the rapid implementation of the group's anti-corruption guidelines in order to prevent corruption within the public authorities. Only one of the group's 14 recommendations has been implemented into national law, and other directives have not been transposed or have been only partially implemented.

Citation:

http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_fact_lu_en.pdf

<http://www.transparency.org/cpi2014/results>

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

http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/RC4/GrecoRC4%282015%295_Luxembourg_EN.pdf

<http://www.legilux.public.lu/adm/b/archives/2014/0131/b131.pdf#page=7>

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

<http://www.transparency.lu>

<http://www.luxembourgforfinance.com/luxembourg-moves-two-spots-corruption-perceptions-index>

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. During the last few years, the incidence of corruption related to investments and overseas Norwegian business activities has increased. The government has had a significant ownership share in some of the firms involved.

United Kingdom

Score 8

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 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, and an independent body was set up to regulate MP's expenses. Codes of practice, such as the Civil Service Code and the Ministerial Code, have been revised (the latter in October 2015, following the election) and are publicly available. The volume of material published has been overwhelming, with examples range from lists of dinner guests at Chequers (the Prime Minister's country residence) to details of spending on government credit cards. The most recent report (December 2015) from the independent adviser on ministerial interest appears to present a clean bill of health and notes that no reason to investigate any breaches of the ministerial code since 2012.

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.

Citation:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468255/Final_draft_ministerial_code_No_AMENDS_14_Oct.pdf

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. KNAB has seen a number of controversial leadership changes and 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 that continued throughout 2015. 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 undermines efforts to assess the system's effectiveness. However, the available statistics indicate some positive

trends. In 2013, for example, the number of persons tried in the court of first instance decreased to 85 (compared to 108 in 2012), while only 20 public officials were convicted of misdeeds, the lowest such number since 2004. Cases brought in 2013 were few and simple, evidenced by the fact that most judgment had already come into force by mid-2014, and no defendant received a prison sentence. 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.

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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 “committing fraud” rather than “corrupt practices,” and 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 more and more frequently 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 and transport. 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 in a recent survey 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) notes that bribes and corruption by Dutch companies in foreign countries would amount to some €10 billion annually. In December 2014, the OECD urged the Dutch government to speed up the passage of rules and law-enforcement actions against Dutch companies that violate international anti-corruption rules in their international operations.

In at least three (out of 17) areas, the Netherlands does not meet the standards for effective integrity policy as identified by Transparency International. All three involve preventing corruption and taking sanctions against corruption. In 2015, the government published an Integrated Vision on Preventing and Tackling Corruption, and a bill was proposed for the protection of whistle-blowers.

Citation:

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M. van Hulten, ‘Nederland – corruptieland’, in Tijdschrift voor Politieke Filosofie en Cultuur Civis Mundi, <http://www.civismundi.nl/index.php>, digitaal nummer 13, 2012 onder thema 26.

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Poland

Score 7

Integrity mechanisms have functioned relatively well in Poland, and corruption at the top has been limited. The official anti-corruption strategy for the period from 2014-2019, as adopted in April 2014, strengthened the role of the Ministry of the Interior and placed greater emphasis on education and prevention. Corruption scandals in 2015 included the acting Minister of Justice Cezary Grabarzyk and the influential former interior Minister Krzysztof Janik. The cases identified or prosecuted in 2015 show that bodies tasked with oversight to monitor corruption generally carry out their duties. Three sectors seem to be especially prone to corruption: real estate (partly because of the boom in the construction of motorways during the last decade), the construction of sport stadiums and the health system.

Portugal

Score 7

Under Portuguese law, abuse of position is prohibited and criminalized. However, as elsewhere, corruption persists despite the 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's 2014 Corruption Perceptions Index, which placed Portugal 33rd worldwide – the same rank as the previous year. It must be noted, however, that Transparency International's ratings are based on perceptions by the population, and are thus entirely subjective.

A law was approved by the Assembly of the Republic in September 2011 on the illicit enrichment of public officeholders. However, this legislation was deemed unconstitutional by the Constitutional Court in April 2012. While practically all the parties that voted for the legislation declared that they would bring new legislation on this issue, no new legislation had been approved by the end of the review period.

Efforts have been made at the state level to impede corruption, although there remains room for improvement in terms of the implementation of anti-corruption plans. A survey by the Council for the Prevention of Corruption, published in June 2015, noted that half of the country's public entities admitted to having applied only parts of their corruption-prevention plans. The reasons given were largely related to a lack of human, technical and financial resources.

It should also be noted that a number of high-profile corruption cases were pursued during the period under review. Former Prime Minister (2005 – 2011) José Sócrates was put under house arrest after spending 10 months in jail awaiting trial for alleged corruption, money laundering, and tax fraud. Likewise, a number of top public officials – including the head of the immigration and border service – have been detained due to suspicions of corruption in the granting of visas.

Citation:

Maria Lopes (2015), "Entidades públicas têm de reforçar planos de prevenção da corrupção," Público online, 15/06/2015, available online at: <http://www.publico.pt/politica/noticia/entidades-publicas-tem-que-reforcar-planos-de-prevencao-da-corrupcao-1699049>

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 high-level officials and the private sector. Political and economic elites overlap significantly, 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 enabling monitoring of conflicts of personal economic interest for high-ranked politicians (for example the president and

ministers). In the period under review, repeated corruption scandals (involving numerous major companies, with one case even involving President Bachelet's son) showed corruption and abuses of power within Chilean's political and economic elite is in fact more common than (international) indicators regarding corruption and transparency tend to suggest. It is as yet unclear how state institutions will confront these issues.

As a response to this crisis, President Bachelet convoked a council that proposed several anticorruption measures intended to prevent abuse of office. These measures would include a restriction on private campaign funding and the creation of a public register of all lobbyists. However, as of the time of writing, the proposals that required changes to existing law had yet to pass parliament.

Citation:

<http://consejoanticorrupecion.cl/>

Iceland

Score 6

Financial corruption in politics is not viewed as 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 concern. 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 (SIC), 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 SIC did not report on legislators that owed the banks lesser sums, say €500,000. GRECO has repeatedly highlighted the need for Icelandic MPs to disclose all their debts beyond standard mortgage loans. In 2015,

GRECO formally complained that Iceland had not responded to any of its recommendations in its 2013 report on Iceland.

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.

According to Transparency International's Corruption Perceptions Index 2014, which measures business corruption, Iceland scored 78 out of 100, where a score of 100 means absolutely no corruption. Although this score implies that Iceland is relatively free of corruption, it is still well behind the other Nordic countries, which score between 86 and 91. In an assessment of political corruption in 2012, Gallup reported that 67% of Icelandic respondents view corruption as being widespread in government compared with 14% to 15% in Sweden and Denmark.

Citation:

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<http://www.transparency.org/cpi2014/results>

Gallup (2013), Government Corruption Viewed as Pervasive Worldwide, <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 historic ruling, sentencing former Prime Minister Ehud Olmert to six years in prison for accepting bribes while serving as mayor of Jerusalem.

According to Transparency International's Corruption Perception Index, Israel ranks 36th out of 175 countries in terms of corruption. Of the 34 OECD nations, Israel ranked 24th. One aspect of institutional corruption lies in bureaucracy. Studies have shown that corruption gets an extra institutional incentive where private businesses face the difficulties that bureaucracy raises. Where bureaucracy is complicated, corruption can thrive. Overall, few scandals of political corruption were revealed during 2015. Several senior figures from government ministries and local councils were accused of crimes including bribery, fraud, breach of trust, money laundering, falsifying documents, and obstruction of justice by funneling money to various organizations and foundations. According to the head of the Israel Police's fraud investigations task force, General Meni Yitzhaki, Israel does not suffer from widespread corruption but rather "islands of corruption." General Yitzhaki claimed that the Israeli police "treat corruption as criminal organizations."

Transparency International reports that "no information is made public about government discussions and ministerial committee proceedings." The government and the executive branch in particular do not cultivate a culture of accountability with regard to the public. The executive rarely issues reports and often eschews responsibility for its errors and failures. At times, according to Transparency International, ministers will publicly renounce government decisions that they themselves have been involved with, thereby fomenting conflicts and undermining integrity.

Citation:

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Strengths, Sustainability and Challenges.

http://www.transparency.org/whatwedo/publication/national_integrity_system_assessment_israel_english_executive_summary

Lithuania

Score 6

Corruption is not sufficiently contained in Lithuania. In the World Bank's 2014 Worldwide Governance Indicators, Lithuania's received a score of 68.8 out of 100 (up from 67 one year ago) on the issue of corruption control. 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.

Citation:

The Worldwide Governance Indicators of World Bank are available at <http://info.worldbank.org/governance/wgi/index.asp>.

The Lithuanian Corruption Map is available at http://transparency.lt/media/filer_public/2013/01/22/korupcijos_zemela_pis_2011.pdf.

See the 2015-2016 Global Competitiveness Report of the World Economic Forum:

http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf

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

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

Slovenia

Score 6

Corruption has been publicly perceived as one of the most serious problems in Slovenia ever since 2011. In the period under review, the development has been contradictory. On the one hand, the Commission for the Prevention of Corruption stabilized itself in 2015 after a difficult start and a problematic appointment of the chief commissioner and his deputies in 2014. Moreover, the Cerar government adopted a detailed new two-year anti-corruption action plan in January 2015 and finalized the legislative amendments to three judicial acts on the basis of the GRECO recommendations (Courts Act, Judicial Service Act, State Prosecutor Act). At the same time, however, two high-profile corruption cases - the case against the former Prime Minister Janša and the former CEO of Istrabenz holding Igor Bavčar - fell apart in 2015 in ways that undermined the judiciary's credibility.

Citation:

"The programme for government measures for combating corruption", Ministry of Public Administration, 28 January 2015, http://www.mju.gov.si/nc/en/media_room/news/article/1328/5855/.

Spain

Score 6

Corruption levels have plausibly declined in Spain since the real-estate bubble burst in the wake of the 2008 crisis. Massive spending cuts since that time 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 since the early 2000s. Spain was ranked at 20th place worldwide at the beginning of last decade, but fell over time to 40th place in 2013 and a somewhat better 36th place in 2015. This can be attributed to the fact that cases currently moving through the legal system are based on past events and activities that are now receiving considerable media attention. Spaniards are also showing a decreased tolerance for the abuse of public office.

The corruption cases now being investigated typically involve illegal donations by private companies to specific parties in exchange for favors from the administration, or simply personal enrichment on the part of officeholders. There have also been several cases of fraudulent subsidies received by individuals close to the governing political parties, and some "revolving door" conflict-of-interest cases involving politicians and industries affected by regulation. Nevertheless, the central government passed several legal initiatives in 2014 and 2015 intended to dissuade such behavior, including a change in party-funding legislation, a new transparency

law, and reforms of the criminal code and the public-procurement law. In addition, systematic audits of the public accounts are mandatory, and officeholders must make an asset declaration. Finally, a new anti-corruption agency was announced in October 2015.

Therefore, incentives for officeholders to exploit their positions for personal gain have arguably decreased, as public servants now face more serious legal consequences and/or adverse publicity. Moreover, very few corruption cases have involved career civil servants, and everyday interactions between citizens and the administration typically function on the basis of a high level of integrity.

Citation:

Spain's position in the corruption perception index (36/175)

<https://www.transparency.org/cpi2015/>

Political Parties anticipate TI-Spain its electoral commitments against Corruption

<http://transparencia.org.es/en/political-parties-anticipate-ti-spain-its-electoral-commitments-against-corruption/>

Spain to the EU Anti-corruption report (European Commission) http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_spain_chapter_en.pdf

El Gobierno aprueba la creación de una oficina contra la corrupción www.larazon.es/espana/el-gobierno-aprueba-la-creacion-de-una-oficina-contra-la-corrupcion-PD11032184

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. However, the fight against corruption lost ground in 2015, when major verdicts, most notably the conviction of former Prime Minister Sanader, were annulled for procedural reasons and prominent indicted political actors, including the mayor of Zagreb, were able to re-enter the political scene after having paid considerable bailout sums.

Czech Republic

Score 5

The fight against corruption has featured prominently in the program of the Sobotka government, which has criticized activities of previous governments as excessively formalistic and ineffective. In December 2014, the government presented an anti-corruption plan for the period 2015-2017. The new strategy features four key points: strengthening the executive's integrity through the adoption and implementation of the long-discussed civil service law and the preparation of a new law on the public prosecution office; increasing transparency through the electronic collection of laws

and legislative materials and an amendment to the law on the central register; a better use of state property through new rules for public procurement, greater transparency of ownership and an expansion of the powers of the Supreme Audit Office; and fostering civil society by providing whistleblowers better protection. However, the Sobotka government's present action plan has been the fifth anti-corruption strategy since 1999. With the exception of the civil service law, all bills are still under discussion, as there is a lack of political agreement within the governing coalition. There is still no protection planned against the conflicts of interest inherent to a business and media tycoon holding a high government position.

Citation:

Government Anti-Corruption Action Plan 2015. Available online <http://www.korupce.cz/assets/protikorupcni-strategie-vlady/na-leta-2015-2017/Akcni-plan-boje-s-korupci-na-rok-2015.pdf> (last visited 7.11.2015)

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 are also obliged to do so, but their declarations are not made public and media are forbidden from publishing them. Only individual citizens can consult these disclosures and only in the constituency where the MP was elected. 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, by themselves, do not constitute 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 defense 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 changed in the period under review. In 2011, Greece's Corruption Perception Index (CPI) score was far lower than that of all other EU member states, except for Bulgaria. In 2012, Greece's score fell below that of Bulgaria, but in 2014 Greece again caught up with Bulgaria and both countries were ranked at the 69th rank among 175 countries (Denmark was ranked first, as the least corrupt country, followed by other Scandinavian countries).

Between 2012 and 2014, the government passed extensive anti-corruption legislation, following the advice of the Troika and the Council of Europe. Yet, there still is an implementation gap in enforcing legislation on party financing, parliamentary integrity, the corruption of civil servants and tax evasion. After Syriza's rise to power in January 2015, the earlier lack of resolve among political and administrative elites to control corruption was reversed. However, the Syriza-ANEL coalition was undecided on how to steer anti-corruption policy. In January 2015, a new post of Minister for Anti-Corruption was established; in September the post was abolished and a post of Deputy Minister for Anti-Corruption was created and subsumed under the supervision of the Minister of Justice. A new General Secretariat on Anti-Corruption was created under the aforementioned Minister, but remains understaffed. In September 2015, the government transferred the 3,500 employees of the Economic Crime Unit (SDOE), who had been functioning under independent authority, to the General Secretariat of Public Revenue, a unit within the Ministry of Finance.

Regardless of such organizational turmoil, in the period under review visible progress has been made on most fronts. For instance, in March 2015 the trial of former Minister of Finance Giorgos Papakonstantinou, for misconduct, infidelity, and document falsification (for removing files from the Lagarde list that involved his relatives), ended with a guilty verdict. However, the court found that his offences were minor and he received a one year suspended prison sentence. Between April and November 2015 the competent anti-corruption prosecutors, entrusted with fighting corruption among public officials, intensified their efforts to unearth evidence of corruption and charged two well-known Greek arms dealers, Thomas Liakounakos and Costas Dafermos, with offences which led to their arrest. They are now awaiting trial.

The visible, though not always stable, progress in fighting corruption is associated with multiple factors: the plethora of legislative acts on corruption; the lack of expertise and resources available to institutions entrusted with the fight against corruption and the problematic coordination between these institutions; and the ongoing very generous immunity protection offered by the Constitution of Greece to serving and former ministers. Without constitutional reform, the effort to control corruption will always stumble into recurring legal impediments.

Citation:

<https://www.transparency.org/cpi2014/results>. Accessed on 05.11.2015. Law 4254/2014 (section IE), passed in April 2014, contains very strict penalties for public officials receiving bribes and also protects whistleblowers who help prosecuting authorities to fight corruption in the public sector. Law 4320/2015, passed in March 2015, re-organizes anti-corruption authorities, by assigning the relevant tasks to a new General Secretariat and a Minister of Anti-corruption.

Italy

Score 5

The Italian legal system has a significant set of rules and judicial and administrative mechanisms (with 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 corruption remains one of the biggest problems of the Italian administration. The high number of cases exposed by the judiciary and the press indicates 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. The Monti government introduced an important anti-corruption law (Legge 6, Novembre 2012, no. 190). In 2014, the Anti-Corruption Authority was significantly strengthened and its anti-corruption activity progressively increased. In 2015, new legislation proposed by the Renzi government was approved by parliament. The current reform of public administration could also contribute to tackling administrative abuses.

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. Prime Minister Abe has indicated that he will make corruption prevention a topic at the 2016 G-7 meeting hosted by Japan.

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.

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 2015 report of the audit office also highlighted regulatory abuse regarding procurement, inventory inadequacies, and non-compliance with tender requirements and ministries' fiscal obligations.

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/

Audit office finds lack of adherence to procurement regulations by the office of the prime minister Times of Malta 14/12 2015

Audit office flags unauthorised payments by science council Times of Malta 14/12/2015

No independent testing of concrete at child development center in Gozo Times of Malta 14/12/2015

Audit office calls for better verification of applications for social assistance Times of Malta 14/12/2015

Romania

Score 5

Corruption has been a major political issue in Romania. The demonstrations that took place in after the deadly fire in a nightclub in October 2015 targeted the entire political class with the slogan “Corruption Kills.” While the courts and the National Anti-Corruption Directorate (DNA) have been successful in prosecuting a number of high-profile cases, they have faced strong opposition by the parliament. In 2015, the DNA indicted over 1250 defendants, including the acting prime minister, former ministers, members of parliament, mayors, presidents of county councils, judges, prosecutors and a wide variety of senior officials. The Romanian parliament continued relentlessly in the disturbing habit of legislating loopholes that facilitate corrupt practices or delay prosecutorial work by postponing immunity-lifting for members of parliament. In the period under review, parliament refused about one-third of requests from DNA for the lifting of immunity of members of parliament to allow for the opening of investigations or the application of preventive detention measures, and it has done so in an unpredictable manner. Overall, despite robust inter-party competition, a consensus prevails that state oversight institutions and anti-corruption agencies should have their mandates curtailed to allow the political elite to retain opportunities for illicit enrichment.

Citation:

European Commission 2016: Report from the Commission to the European Parliament and the Council On Progress in Romania under the Co-operation and Verification Mechanism. COM(2016) 41 final, Brussels (http://ec.europa.eu/cvm/docs/com_2016_41_en.pdf)

Slovakia

Score 5

The Fico government has never paid proper attention to anti-corruption efforts. Despite spectacular corruption scandals in the period under review which, inter alia, involved the minister of health and the speaker of parliament, few attempts to strengthen integrity mechanisms were undertaken. An amendment to the public-procurement law seeking to prevent companies with undisclosed owners (so-called shell companies) from taking part in public-tender processes was widely criticized

for its restrictive remit. A proposal by the parliamentary opposition to make public officials personally accountable in public tenders was rejected by Smer-SD members of parliament. The state administration largely ignored an act granting protecting whistle-blowers, which became effective in January 2015.

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.” Recent major corruption scandals have involved the Defense Acquisition Program as well as two major investment projects mounted by the previous Lee administration – the Four Major Rivers Restoration Project, and the administration’s resources-diplomacy program.

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 April 2014 Sewol ferry disaster, in which collusion between public officials and private enterprises played a role, the National Assembly began drafting new legislation that would impose severe punishments on former government officials engaged in lobbying or other similar activities that took advantage of their network in the public sector for private gain. This was enacted in March 2015, as the Kim Young-ran Act. However, bickering over the details of the legislation has already begun and the debate over implementation 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.html

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

Bulgaria

Score 4

As successive European Commission reports under the Cooperation and Verification Mechanism have shown, Bulgaria's formal legal anti-corruption framework is quite extensive, but has not proven very effective. Despite some improvement in the standard corruption perception indices in the past three years, corruption has remained a serious problem. 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 very small. In 2015, the Borrisov government prepared a comprehensive national anti-corruption strategy which provided for the creation of a unified anti-corruption authority bundling the functions of three existing institutions and included new provisions on the control of conflicts of interests and private property of public officials. However, the new draft law failed to pass the first reading in the National Assembly in September 2015, thus raising doubts about the governing coalition's commitment to fighting corruption.

Citation:

European Commission (2016): Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism. COM(2016) 40, Brussels (http://ec.europa.eu/cvm/docs/com_2016_40_en.pdf).

Cyprus

Score 4

The Auditor General's office, a respected and trusted institution, audits state expenditure and compliance with rules and procedures, and produces an annual report. Policy corrections in response to the office's comments, observations and recommendations seem rare. However, in 2014 and 2015, a number of cases of corruption were brought before the courts.

Oversight rules and mechanisms aiming at creating transparency and preventing favoritism and bribery are either deficient or incompletely implemented. The concept of conflict of interest has gained public prominence since 2014, with civil-society organizations and the media pushing for more transparency; however, this pressure has still had little effect.

Anti-corruption measures, including a code of conduct for public servants (passed in July 2013), are generally either inadequate or have not been implemented effectively. New cases of corruption were exposed in 2015, but supervision mechanisms appear weakened overall. According to Transparency Cyprus, 81% of the public believes there is corruption at both the local and national levels, with 83% deeming it a serious problem.

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1. EU anti-corruption report, 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_cyprus_chapter_en.pdf
2. Press report, Interview with Ombudsperson, <http://in-cyprus.com/fight-against-cyprus-corruption/>
3. Survey on corruption by Transparency Cyprus, 2014-5, in Greek, <http://www.transparencycyprus.org/el/wordpress/wp-content/uploads/2015/09/RESEARCH-2014-2105.pdf>

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, 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. The third Orbán government has introduced new challenges for the Fidesz regime. During the third Orbán government, firms owned by Lőrinc Mészáros (a native of Orbán's home village of Felcsút) have won many public tenders, prompting allegations that he is simply a puppet behind the Orbán fortune. This suspicion has been supported by public outcries over the fact that Orbán's new son-in-law has become a multi-billionaire in a very short period of time. Corruption has become so pervasive that even some senior Fidesz figures have begun openly criticizing the Fidesz elite's fast-growing wealth.

Mexico

Score 3

Despite many attempts to deal with the issue, 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 remains widespread in Mexico, and although official data indicates that the level of corruption has decreased, the cost of bribery has remained high. 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 officially, 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 oversight processes. An amendment to the law on audit courts has limited the degree to which state expenditures can be audited. Public-procurement safeguards have deteriorated thanks to 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, and there is no effective asset-declaration system in place for elected and appointed public officials.

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 holdings, foreign travel paid for by outside sources, etc.) in the code of ethics for parliamentarians remain in place. In 2014, a total of 3,664 public civil servants across 48 institutions were provided with ethics training, and 130 of them were themselves assigned to serve as ethics trainers. Moreover, two separate modules dealing with the issue were placed online for further training purposes.

In general, corruption remains widespread, and unfair and biased treatment by the bureaucracy is common. Especially at the local level, corruption remains a systemic problem. While municipalities controlled by opposition parties are closely monitored by law-enforcement authorities and government inspectors, municipalities controlled by the AKP are shielded from close scrutiny. The Court of Audit reported a number of municipalities to the Ministry of Finance in 2014 on the basis of illegitimate practices. Recent reports by the Audit Court have not been addressed by parliament. However, the reports have been published in the media and online, thus publicly exposing a number of irregularities including hidden budget expenditures, housing-procurement abuses and tax compromises.

A major source of international concern during the review period were the corruption investigations launched in December 2013 against four ministers, their relatives, one district mayor and various other public officials and businessmen, along with the lack of credible investigation afterwards. In 2014, an Istanbul prosecutor specializing in organized crime, dropped proceedings against 53 suspects in a case that had targeted the inner circle of then-Prime Minister Erdoğan. The HSYK suspended four prosecutors who initiated the corruption investigation. About 50 of the AKP's 312 parliamentarians declined to support at least one of the four deputies who sought to

open a parliamentary graft investigation. Furthermore, journalists that wrote on the corruption cases were intimidated. The government of Erdoğan's successor as prime minister, Ahmet Davutoğlu, introduced a "transparency package" in January 2015. However, even Erdoğan, by this time president, considered this package to be ineffective.

In general, no progress has been made in limiting the impunity 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. Turkey is no longer subject to Financial Action Task Force (FATF) monitoring under that group's global anti-money laundering and combating the financing of terrorism (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. GRECO's third-round recommendations have not been fully implemented. In particular, the country's official definition of active bribery is not in compliance with the GRECO standards. Political funding and campaign-finance rules and procedures need to be more transparent. The first review of compliance with the U.N. Convention against Corruption (UNCAC) was published in June 2015.

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.

Despite some legal and institutional advances in the fight against corruption and organized crime, Turkey still needs to ensure that its investigatory units and law-enforcement agencies are independent of political interference, provide for effective enforcement of sanctions, and create a realistic action plan and independent anti-corruption unit to coordinate relevant agencies' activities, as required by the UNCAC.

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