



# Rule of Law Report

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

Sustainable Governance  
Indicators 2017

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 Constitution for Aotearoa New Zealand," former prime minister Sir Geoffrey Palmer proposed a codified constitution for New Zealand. As of the end of September 2016, comments on the proposals were being sought from the public. However, based on previous public responses to written constitutions, it is likely that commentary will be restricted largely to the legal and academic communities.

Citation:

Annual Report of the Ombudsman 2015/2016 (Wellington: Office of the Ombudsman 2015/2016).

Constitutional Advisory Panel, 2013. New Zealand's Constitution. A Report on a Conversation, [http://www.ourconstitution.org.nz/store/doc/FR\\_Full\\_Report.pdf](http://www.ourconstitution.org.nz/store/doc/FR_Full_Report.pdf) (accessed November 11, 2014).

Draft Constitution for New Zealand proposed in new book. The Constitution Unit. UCL. 27 September 2016. <https://constitution-unit.com/2016/09/27/draft-constitution-for-new-zealand-proposed-in-new-book/> (accessed 28 September, 2016).

## 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 a rather marginal 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 only disturbing observation in this context is the growing emphasis on efficiency in public administration that has arisen in the context of a recent public management reform. This focus on efficiency potentially jeopardizes the integrity of legal certainty and security, in particular with respect to migration processes. Recent media reports have shown that pressures on migration staff to process a given number of asylum applications within a specific timeframe undermines the legal certainty and fairness of case work.

During the most recent past, the government has intensified market-based administrative reforms which, though similar to developments in other European countries, can undermine principles of legal certainty. Again, the tension between efficiency goals in public administration 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 downplay New Public Management as a philosophy of public sector reform and to re-emphasize trust (“tillit”) as a normative foundation of the public administration. A series of reforms to this effect are scheduled for 2017 and 2018.

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

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

## Australia

### Score 9

There is strong judicial oversight of executive decisions. Judicial oversight occurs through a well-developed system of administrative courts, and through the High Court. That said, 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.

Though a relatively minor development, in 2016, the Attorney General issued a direction blocking the Solicitor-General, who advises the government on legal questions, from providing legal advice to anyone in the government without the permission of the Attorney General. This has compromised the independence of the Solicitor-General and contributed to resignation of the Solicitor-General in October 2016.

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>

<http://www.abc.net.au/news/2016-10-24/justin-gleeson-resigns-as-solicitor-general/7960632>

## 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 parliament, 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 - the last example is the case of the journalist Erla Hlynsdóttir.

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.

<https://www.innanrikisraduneyti.is/raduneyti/starfssvid/mannrettindi/mannrettindadomstoll-evropu/nr/29388>

## 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.

Dissenting judges of the constitutional court published an opinion in 2014 indicating that the majority had erred in applying the principle of legal certainty during the financial crisis. They emphasized that legal certainty can be applied differently in different settings.

The Foreign Investors' Council in their FICIL Sentiment Index 2015 noted two issues with legal certainty. First, the legal system delivers unpredictable results, which negatively affect the foreign investment climate in Latvia. Second, the legislative environment and tax regime has been inconsistent since the 2008 crisis, undermining investor confidence.

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](http://www.satv.tiesa.gov.lv/upload/2011_10_01_lemums.pdf), Last assessed: 21.05.2013

## Switzerland

Score 9

Switzerland's federal government and administration act predictably. This predictability is partially reduced by the very pragmatic administrative culture at the cantonal and local levels. The country's division into small administrative districts, the tradition of decentralized local government and a partially non-professional administration system ("Milizverwaltung," militia administration, referencing the

non-professional army) 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.

## 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.

The decision of the Austrian Constitutional Court to cancel the second round of the presidential election in the summer of 2016 is a clear example of how the rule of law is accepted. The decision has been widely criticized but nevertheless absolutely accepted.

On the other hand, laws are becoming so complex that even renowned experts struggle to understand them. This relates in particular to issues of immigration and asylum (Fremdenrecht).

## 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. President Zeman has continued to show a disrespect for the law. Ordered to pay a fine and apologize to the granddaughter of the Czech journalist and writer Ferdinand Peroutka in a high-profile libel case in 2016, Zeman has not stopped his slander.

## 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 changes in taxation, the 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). Within the administrative bureaucracy, however, there is some scope for discretion and less transparency than what one might infer from the formal provisions (see "Access to Government Information"). Furthermore, even if the executive 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:

Ley 39/2015, del Procedimiento Administrativo Común de las Administraciones Públicas  
[www.boe.es/diario\\_boe/txt.php?id=BOE-A-2015-10565](http://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 typically 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, tax and pension policies are being hastily modified and without notice in the days before the government's budget is published.

## 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.

Because of the pressing need to achieve fiscal consolidation in 2010-2015, the government repeatedly adapted past legislation to changing circumstances. 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 reproduced after January 2015 and continued under the Syriza-ANEL government in the period under review.

Whatever progress was made in 2010-2015 with regard to legal certainty was probably owed to Greece's lenders who have provided financial assistance under strict conditionality. Even though, in the period under review, the Syriza-ANEL government and the parties of the opposition (ND and PASOK) converged on the reforms contained in Greece's Third Economic Adjustment Programme, the legal framework in major policy sectors, such as taxation and foreign investments, still bears loopholes and contradictions.

## Ireland

### Score 7

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

A significant degree of discretion is vested in the hands of officials (elected and non-elected) in relation to infrastructure projects 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.

#### 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.merrionstreet.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](https://docs.googleusercontent.com/docs/securesc/ha0ro937gcuc717deffksulhg5h7mbp1/bjfn1u1n4ifdcsekb8vsaf0a2nnd850m/1442836800000/10437822469195814790/*0B2B2HUQaR5vwUnpJRTZnMU1tbWc?e=download)

## 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 2015 Worldwide Governance Indicators, Lithuania scored 81.3 out of 100 for the rule of law, up from 78.4 in 2014. 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 30 June 2016, the 2012 to 2016 parliament had already adopted 1,948 laws.

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 and monitoring existing legislation. The 2015 OECD report on regulatory policy in Lithuania recommended several measures to improve the regulatory environment for businesses. In addition, the new coalition government has pledged to introduce more predictable policies, for example, by applying a six-month rule to any proposed tax regime changes.

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 public. Furthermore, 80 out of 144 members of parliament were newly elected in October 2016. Their lack of experience and procedural expertise is likely to undermine economic policymaking.

Citation:

The Worldwide Governance Indicators of World Bank are available at <http://info.worldbank.org/governance/wgi/#home>  
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](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 2016 rule of law index. However, experts are concerned about some early signs of deterioration.

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. The High Court has been accused of systematically disregarding cases of complaints by individual citizens. 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

*NRC-Handelsblad*, Kamer: hoogste bestuursrechter kan niet zomaar verdwijnen, 6 October 2016

*NRC-Handelsblad*, Forse kritiek Raad van State op aftapwet, 29 October 2016

*NRC-Handelsblad*, Een Hoge Raad die alles wegwuift is vrij nutteloos, 22 October 2016

## Portugal

Score 7

Portugal is an extremely legalistic society, and legislation is often tedious, long and complex. In combination with pressure for reform arising from Portugal's bailout and economic crisis, this causes some legislative uncertainty. For example, some legal measures proposed in the 2012, 2013 and 2014 government budgets were subsequently deemed unconstitutional by the Constitutional Court. Since 2014, there has been a broad understanding that if international sanctions on Portugal's public debt to GDP ratio are not applied then reforms of the state will be necessary. Consequently, previously stable policy sector, such as health care, transport and education, may be reformed. Moreover, the Costa government has reversed several measures of the previous Coelho government. This pattern of successive governments overturning legislation introduced by the previous government further exacerbates political instability.

## Slovenia

Score 7

Legal certainty in Slovenia has suffered from contradictory legal provisions and frequent changes in legislation. The number of newly adopted regulations increased from 1,360 in 1991 to almost 19,000, including 800 acts, in 2014. 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 first half of 2016, 32% of the 47 legislative acts adopted in this period 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.

Citation:

National Assembly, Research Department (2016): Report on the parliamentary work between 1 January 2016 and 21 July 2016. Ljubljana (www.dz-rs.si. ).

## United Kingdom

Score 7

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.

Nevertheless, current political events around the United Kingdom's planned withdrawal from the European Union have led to some uncertainty about how it will unfold. A "Great Repeal Bill," which will in the first instance bring all legislation derived from the European Union back into the UK legal order is promised. A dispute about whether the executive is entitled to trigger Article 50, which would begin the process of leaving the European Union, or has to secure the approval of parliament is now before the supreme court. Somewhat paradoxically, this shows the executive being bound by law.

## 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 2015 and 2016, federal courts nullified Obama's expansive executive actions on undocumented immigrants and coal-fired power plants, indicating that unilateral presidential action can result in legal uncertainty.

## 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. Frequent is the delay or even the unlimited postponement of implementation measures, which may reflect a political tactic for inaction: sometimes because pressure groups successfully impede the adoption of implementation measures, sometimes because ministers change frequently (for instance the Hollande presidency had three ministers for Housing or five ministers of Education in five years), 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, Cécile 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 multiple and frequent legislative changes, particularly fiscal legislation. The business community has repeatedly voiced concerns over the instability of rules, impeding any rational long-term perspective or planning. These changes usually are legally solid, but economically debatable. It is not unusual that a fiscal measure adopted on the occasion of the vote of the annual budget is repealed or substantially modified one year later.

## 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 discretionary decisions by 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 regulations or compromises that favor their own interests. Thus, the interpretation of laws can vary.

The government is working on completely reforming the constitution. In 2009, the Christian Social People's Party had stated in its election program that they would submit the constitutional reform "to the people by a referendum." The referendum on the constitutional reform, which was initially planned for 2012, but will now likely be delayed until 2019.

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 the



constitutional court nearly 20 years ago, the number of pending cases has considerably increased. The European Court of Human Rights in Strasbourg frequently criticizes Luxembourg for its lengthy legal procedures.

Citation:

Cames, Michel. "Pragmatisch, flexibel, schnell - Wirtschaftspolitische Besonderheiten von Kleinstaaten am Beispiel Luxemburg." Forum.lu, Sept. 2013, [www.forum.lu/pdf/artikel/7692\\_332\\_Camest.pdf](http://www.forum.lu/pdf/artikel/7692_332_Camest.pdf). Accessed 21 Feb. 2017.

"Die historische Entwicklung des Großherzogtums - ein Essay." Das politische System Luxemburgs: Eine Einführung, edited by Wolfgang H. Lorig and Mario Hirsch, VS Verlag für Sozialwissenschaften, 2008, pp. 13 – 30.

"Referendum." Forum.lu, [www.forum.lu/constitution/index.php/reformprojekt/referendum/](http://www.forum.lu/constitution/index.php/reformprojekt/referendum/). Accessed 21 Feb. 2017.

"Verfassungsreferendum wohl erst Anfang 2019." Luxemburger Wort, 10 Oct. 2016, [www.wort.lu/de/politik/alex-bodry-reagiert-auf-csv-vorstoss-verfassungsreferendum-wohl-erst-anfang-2019-57fb493b5061e01abe83a141](http://www.wort.lu/de/politik/alex-bodry-reagiert-auf-csv-vorstoss-verfassungsreferendum-wohl-erst-anfang-2019-57fb493b5061e01abe83a141). Accessed 21 Feb. 2017.

## 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. Parliament is also slow to legislate on articles of the law that have been declared unconstitutional and need to be revised. Since Malta joined the European Union, however, the predictability of the majority of decisions made by the executive continues to improve as discretion becomes more constrained.

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

Updated; Government asks AG to amend unconstitutional industrial tribunal law Independent 12/02/16

## 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). In response, 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 has to 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.

## South Korea

### Score 6

There have been few changes in terms of legal certainty in the last year, 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.

Informal decision-making procedures based on personal networks remain a problem with regard to the rule of law and the predictability of government decisions. For example, following the 2015 scandal in the Blue House involving President Park's former aid Chung Yoon-hoi and her brother Park Ji-man, the administration was rocked by another major scandal involving Chung's former wife Choi Soon-sil. In October 2016, it was revealed that Choi – a longtime friend of President Park – apparently wielded substantial influence over government affairs despite having no formal office. Although the degree of her influence was still not fully clear by the close of the review period, the scandal further undermined the administration's credibility. The personalization of state affairs by an individual without any official credentials brought South Koreans to the streets to protest in large numbers, demanding that Park resign.

#### Citation:

Joong Ang Daily 9 April 2010

"South Korean Leader Says She Will Submit to Scandal Inquiry", New York Times, Nov. 3, 2016

Sang-young Rhyu, "Catastrophe 2016 in South Korea: A Tale of Dynamic History and Resilient Democracy," EAF Policy Debates, No.63, November 22, 2016.

## 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. Constitutional arrangements initially designed to balance power between Greek Cypriots and Turkish Cypriots left an imbalance, with a very strong executive (president), after the collapse of bi-communality in 1964.

The legal soundness of some laws and policies, either aimed at meeting obligations toward the country's creditors or regulating other issues, is often contested. In 2016, many laws passed by parliament were referred to the Supreme Court by the President for review. In other cases, action on important matters (ex. foreclosures) has been delayed. These trends undermine citizens' perceptions of legal certainty.

Avoidance or delays of action by the government and administration, or actions in ways inconsistent with the rule of law, persisted in 2016. Pressures on and conflicts with independent state officials have continued, mainly with the Auditor General in 2016. The clientelistic rather than meritocratic selection of appointees has continued. These practices undermine the powers of, independence of and trust in state bodies' decision-making capacities, administrative efficiency and law-enforcement consistency.

Citation:

Interior minister hits back over auditor general report, Cyprus Mail, 8.12.2015, <http://cyprus-mail.com/2015/12/08/interior-minisgeneral-report/?hilite=auditor+general>

## 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 2016, the court overturned several components of a Knesset bill that imposed a pay cap on executives in the financial services industry (the "Banker Salary Limitation Law"). 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.

Several legal arrangements provide for ad hoc state action when facing security threats. The Emergency Powers (Detention) Law of 1979 provides for indefinite administrative detention without trial. According to a human rights group, in 2014 there were 473 Palestinians incarcerated under such charges. A temporary order in effect since 2006 permits the detention of suspects accused of security offenses for 96 hours without judicial oversight, compared with 24 hours for other detainees. Israel outlawed the use of torture to extract security information in 2000, but milder forms of coercion are permissible when the prisoner is believed to have vital information about impending terrorist attacks.

Citation:

Barzilay, Gad and David Nachmias, "The Attorney General to the government: Authority and responsibility," IDI website September 1997 (Hebrew)

"Administrative detention", B'tselem 7.10.2014:

[http://www.btselem.org/hebrew/administrative\\_detention/20141007\\_spike\\_in\\_number\\_of\\_administrative\\_detainees](http://www.btselem.org/hebrew/administrative_detention/20141007_spike_in_number_of_administrative_detainees) (Hebrew).

"Israel: 2014," Freedom house website.

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

"B'Tselem's 2011 annual report on human rights in the Occupied Territories," 21.3.2012.

[http://www.btselem.org/download/2011\\_annual\\_report\\_eng.pdf](http://www.btselem.org/download/2011_annual_report_eng.pdf)

Avishar, Irit, "Supreme Court: The Banker Salary Limitation Law will not apply on Past Privileges": <http://www.globes.co.il/news/article.aspx?did=1001155087>

## Mexico

Score 4 Regarding the rule of law, Mexico faces continuous impediments due to violence and corruption. In this context, the adoption of a new National Anti-Corruption System in July 2016 has been seen by many observers as a major formal step towards improving the rule of law. The objective of the new system is to improve the coordination of anti-corruption efforts of all governmental bodies (on the federal, state and municipal levels). The new legislation applies to public officials and the private sector, including companies and their directors, officers, and employees. Despite this legislative progress, it remains to be seen whether these legal improvements have a major impact. One reason to remain skeptical is the austerity budget proposed by the current administration, which essentially leaves the system underfunded from the start.

Beyond the problem of corruption, the rule of law in Mexico has been seriously hampered by the increasing violence associated with the war on drugs. Even though there has been a process of judicial reform, the justice system continues to work in opaque and Kafkaesque ways. The courts are much more powerful than they were in the past, but the criminal courts lack transparency. 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.

## Poland

Score 4 Under the PiS government, legal certainty has strongly declined. Some of the government's many legal initiatives have been so half-baked that they had to be amended or suspended. On several occasions, high-ranking PiS politicians have shown their disrespect for the law, including the pardoning of the former director of the anti-corruption office KBA, Mariusz Kamiński, by President Andrzej Duda in November 2015 and the protracted conflict between the government and the Constitutional Tribunal. The latter conflict has led to a situation in which the courts can either follow the interpretation offered by the government or that by the Constitutional Tribunal and other important judicial institutions.

## Romania

Score 4 In order to make the law more consistent, the High Court of Cassation and Justice introduced two new mechanisms in 2015, namely preliminary rulings and appeals in the interest of the law. However, legal certainty has continued to suffer from frequent changes in the judiciary and frequent amendments to the law, as well as from the

widespread use of government emergency ordinances (OUG), which continued under the Ciolos government. 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. In some cases, however, OUGs have helped to clarify the situation and have served as the first step towards a harmonization of legislation.

## Hungary

### Score 3

As the Orbán government has taken a voluntaristic approach towards lawmaking, legal certainty has strongly suffered from chaotic, rapidly changing legislation. The hasty legislative process has regularly violated the Act on Legislation, which calls for a process of social consultation if the government presents a draft law. The government's instrumental use of the law is illustrated by the curtailment of the competences of the Hungarian National Olympic Committee in November 2016. In order to promote its project to hold the Olympics in 2024 in Budapest, the government suddenly launched a sweeping reform of Hungary's long-standing sports law.

## Turkey

### Score 3

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. In 2014, the Council of State, the country's highest administrative court, received more than 187,176 files, and completed its review of 159,358 cases. The average length of time a case takes to reach 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, indicating a lack of certainty within the system.

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. Legal as well as judicial instruments are sometimes used against government opponents, especially those in the media.

The 15 July failed coup attempt caused a major uncertainty in legal and practical terms. The governmental decrees issued during the state of emergency are not subject to judicial review. Moreover, thousands of public servants mainly from the military, the judiciary, health sector and universities were dismissed. Although some ministers addressed that new personnel shall be employed in public service, the minister of finance did not prove it. The restructuring the public service may take time and lead to further uncertainty.

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 (HSYK).

The Constitutional Court found the prohibition of teaching staff working beyond regular working hours (full-time work regulation) contradictory to the principles of legal security and certainty granted under the rule of law, and annulled the relevant provisions of Law 2955 in November 2015.

Citation:

European Commission, Turkey 2016 Report, Brussels, 9.11.2016, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2016/20161109\\_report\\_turkey.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_turkey.pdf) (accessed 1 November 2016).

Yargı Reformu Strateji Belgesi 2015, [http://www.sgb.adalet.gov.tr/yargi\\_reformu\\_stratejisi.pdf](http://www.sgb.adalet.gov.tr/yargi_reformu_stratejisi.pdf) (accessed 27 October 2015)

'Turksat to remove opposition channels', Broadband TV News, 23 October 2015, <http://www.broadbandtvnews.com/2015/10/21/turksat-to-remove-opposition-channels/>, (accessed 13 November 2015)

Turkey's economy tsar warns of deteriorating rule of law, Hürriyet Daily News, 14 May 2015, <http://www.hurriyetdailynews.com/turkeys-economy-tsar-warns-of-deteriorating-rule-of-law.aspx?pageID=238&nID=82394&NewsCatID=338> (accessed 27 October 2015)

Danıştay Açılan ve Sonuçlanan Dava Sayıları Bakımından Son On Yıl, [http://www.danistay.gov.tr/upload/2015\\_sononyil.pdf](http://www.danistay.gov.tr/upload/2015_sononyil.pdf)

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

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

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

### Denmark

Score 10

There is judicial review in Denmark. Section 63 of the Danish constitution makes it clear that the courts can review executive action: “The courts of justice shall be empowered to decide on any question relating to the scope of the executive’s authority.” The judiciary is independent even though the government appoints judges, as explained in detail below. Section 64 of the constitution stipulates: “In the performance of their duties the judges shall be governed solely by the law. Judges shall not be dismissed except by judgment, nor shall they be transferred against their will, except in such cases where a rearrangement of the courts of justice is made.”



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

Citation:

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

## Estonia

Score 10

The structure of the Estonian court system is one of the simplest in Europe. The system is 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.

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 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 the constitution. The court acts only when an appeal is made, but the court holds the right to declare laws 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 2016 – 2017, Germany's relative performance on judicial independence has declined in recent years, with Germany now ranked 24th out of 138 countries after ranking 17th in the previous year.

## 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 where it exceeds its parliamentary powers, the judiciary cannot declare parliamentary decisions unconstitutional. This is because under a Westminster system, parliament is sovereign. 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.

Citation:

<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, which is followed by 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 internal organization are high. The selection of judges is rarely disputed and is not seen as involving political issues.

## 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, perhaps 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.

The Sipilä government has recently been criticized for not taking the concerns of the Chancellor of Justice into account when preparing bills. As a result, a large number of bills put forth by the Sipilä government have been subject to heavy review by the parliament's Constitutional Law Committee.

#### Citation:

"Hallituksen painostus jyräsi oikeuskanslerin pyrkimykset korjata ongelmallisia lakiesityksiä – oikeustieteen professorit tyrmistyivät"; <http://www.hs.fi/politiikka/art-2000005011266.html>

## 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 to the Court of Appeal.

In October 2013, a referendum proposing the creation of a new Court of Appeal was passed. The new court, which was established in October 2014, will hear cases appealing decisions of the High Court .

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.

The courts act independently and are free from political pressures.

## 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 was ranked among the four most trustworthy governmental institutions in a 2015 survey conducted by the Israeli Democracy Institute. The same survey reported that a majority of respondents disagreed with the statement: "The Supreme Court's authority to rescind laws passed in the Knesset by the elected representatives of the people should be revoked."

The independence of the judiciary system is established in the basic law on the judiciary (1984), various individual laws, the ethical guidelines for judges (2007), numerous Supreme Court rulings, and in the Israeli legal tradition more broadly. These instruct governing judicial activity by requiring judgments to be made without

prejudice, ensuring that judges receive full immunity, generally banning judges from serving in supplementary public or private positions, and more. Judges are regarded as public trustees, with an independent and impartial judicial authority considered as a critical part of the democratic order.

Citation:

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

Kremnitzer, Mordechai, "Judicial Responsibility at its Best," IDI website 31.5.2012 (Hebrew).

Svorai, Moran, "Judicial independence as a main feature in judicial ethics" (2010), . (Hebrew) <http://www.mishpat.ac.il/files/650/3168/3185/3186.pdf>

Herman, Tamar, Atmore, Nir, Heller, Ella and Yuval Lebel, "Israeli Democracy index 2012," The Israel Democracy Institute 2012. (Hebrew)

<http://www.idi.org.il/media/1112579/%D7%9E%D7%93%D7%93%D7%94%D7%93%D7%9E%D7%95%D7%A7%D7%A8%D7%98%D7%99%D7%94%D7%94%D7%99%D7%A9%D7%A8%D7%90%D7%9C%D7%99%D7%AA%202012.pdf>

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

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

"Israel 2014", Freedomhouse website:

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

Herman, Tamar, Ella Heller, Chanan Cohen and Dana Bublil, "Israeli Democracy index 2015," The Israel Democracy Institute 2015:

[http://www.idi.org.il/media/4254068/democracy\\_index\\_2015.pdf](http://www.idi.org.il/media/4254068/democracy_index_2015.pdf)

Hermann, Tamar et.al., The Israeli Democracy Index 2016, The Israel Democracy Institute, Jerusalem 2016.

<https://en.idi.org.il/media/7811/democracy-index-2016-eng.pdf>

## 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 parliament or issued by the president or government. The supreme court 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.

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. The consolidation of district and regional administrative courts will distribute cases more evenly. However, the number of cases dealing with the legality of administrative acts and judgments delivered by the administrative courts is constantly increasing. The clearance rate of administrative cases and their disposition time increased between 2013 and 2014. According to opinion surveys (i.e. Vilmoren

surveys), public trust in the courts is low (27.7% in July 2016). Though public trust in the constitutional court is somewhat higher (41.0% in July 2016) and, according to Baltic Survey, has increased (65% in November 2016).

Citation:

The EU Justice Scoreboard, see the Lithuanian case at [http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_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 between 2014 and 2015, as well as 288 judgments by the Administrative Court of Appeals. These judgments and appeals indicate that judicial review is actively pursued in Luxembourg.

Citation:

“Gerichtsorganisation der Mitgliedstaaten - Luxemburg.” Portail e-Justice européen, 4 Feb. 2015, [e-justice.europa.eu/content\\_judicial\\_systems\\_in\\_member\\_states-16-lu-de.do](http://e-justice.europa.eu/content_judicial_systems_in_member_states-16-lu-de.do). Accessed 21 Feb. 2017.

Rapport d'activité des juridictions administratives. La Justice Grand-Duché de Luxembourg, 2015. [www.justice.public.lu/fr/publications/rapport-activites-administratives/rapports-juridictions-adm-2015.pdf](http://www.justice.public.lu/fr/publications/rapport-activites-administratives/rapports-juridictions-adm-2015.pdf). Accessed 21 Feb. 2017.

## 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 all visible religious symbols from schools, 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.

Citation:

<http://www.lexadin.nl/wlg/courts/nofr/eur/1xctbel.htm>

<http://www.business-anti-corruption.com/country-profiles/belgium>

## 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. Nevertheless, the sentences imposed thus far have tended to be rather light.

## Cyprus

Score 8

The operation of the Administrative Court in 2016 marked a positive step in the administration of justice; it is expected to alleviate the workload of the Supreme Court and fight long delays in decision-making, with, however, limited effect on lengthy court procedures. Indeed, the acknowledged efficiency of judicial review has been suffering from procedural delays. In a 2014 survey, 90% of justice system respondents (primarily lawyers and judges) stated that delays were a severe problem.

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 Administrative and the (Appellate) Supreme Court. Appeals are decided by panels of three or five judges, with highly important cases requiring a full quorum (13 judges).

Citation:

1. Administrative court to start in December, Cyprus Mail, 13.08.2015, <http://cyprus-mail.com/2015/08/13/administrative-court-to-start-in-december>
2. Court system 'in distress' top judge says, Cyprus Mail, 26.10.2016, <http://cyprus-mail.com/2016/10/26/courts-system-distress-top-judge-says/>
3. 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. In the period under review, the Constitutional Court set limits for undercover operations by the police, restricted sanctions against parents who refused to have their children vaccinated and declared the repeated police custody for the members of a leftist group accused of preparing a terrorist attack unconstitutional. In August 2016, the Constitutional Court also reversed part of a Supreme Court ruling that would have led to retrospective wage increases for judges.

In January 2016, Minister of Justice Robert Pelikan presented his much-awaited plans for a reform of the judiciary along German lines. As his proposals remained vague and met resistance from all major figures within the judiciary, the reform was postponed indefinitely. Another issue in the period under review has been the slow

generational change within the Czech judiciary. In November 2016, the Union of Judges announced its intention to challenge re-nominations of chairpersons and vice-chairpersons of courts of every level, including the Constitutional Court.

## Greece

### Score 8

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 handpick their favored candidates for the president posts of the highest courts.

Judges 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. However, in the period under review, the courts showed remarkable independence from the incumbent government. For example, courts annulled unconstitutional salary cuts for Greek armed forces personnel (May 2016) and also annulled the government's effort to grant a government minister, rather than the appropriate independent regulatory authority, the power to award nationwide TV licenses (October 2016).

## 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. The aim is to improve the distribution of personnel and increase efficiency. The government has given special attention to improving civil proceedings as a way to affect proceedings related to economic activities. In March 2016, the government introduced a reform of the civil judicial process, which is currently awaiting final approval by the senate. A more nuanced examination of the efficiency of courts is being conducted by the Ministry of Justice.

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.”

## 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, at the time of writing in 2016, 59% of administrative cases in a first instance court conclude within 6 months, although 30% require a year. In the appellate courts, the situation is worse, as 53% of cases require 12 to 18 months and 20% require 18 to 24 months. Administrative court backlogs are being addressed by limiting access to the court system through increases in court fees and security deposits. A Ministry of Justice working group has been convened to propose other systemic improvements. Institutional reforms are underway in the administrative court, which would remove an administrative layer to improve efficiency.

The constitutional court reviews the constitutionality of laws and occasionally that of government or local government regulations. In 2015, the court received 269 petitions, of which 116 were considered outside the jurisdiction of the court and dismissed. The court dealt with a wide range of issues, including constitutionality of tax legislation, the role of the state flag in constitutional identity, electricity price policy, status of state officials and freedom of expression.

## Citation:

1. Judicial Information System Database, Available at: [http://tis.ta.gov.lv/tisreal?FORM=TIS\\_STaT\\_O](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](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 several 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.

## Citation:

Lei da Organização do Sistema Judiciário - Lei # 62/2013 of 26 August.

## Slovenia

### Score 8

While politicians try to influence court decisions and often publicly comment on the performance of particular courts and justices, Slovenian courts act largely independently. Independence is facilitated by the fact that judges enjoy tenure. The Cerar government has preserved the independence of the Prosecutor’s Office and strengthened the independence of the judiciary by expanding its funding. In 2014 and

2015, the Constitutional Court has demonstrated its independence by annulling controversial decisions by the governing coalition on the candidacy rights of former Prime Minister Janša and the referendum on same-sex marriages. In 2016, the delay in processing the case against Igor Bavčar, the former CEO of Istrabenz Holding, became a major issue prompting an attack by Minister of Justice Klemenčič on the judiciary in September.

## South Korea

Score 8

The South Korean judiciary is highly professionalized and fairly independent, though not totally free from governmental pressure. 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 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* 23(5).

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, although the supreme court fulfills this function. 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. A prominent example was the ruling of the High Court of Justice in November 2016 that the British government must not declare the United Kingdom's separation from the European Union without a parliamentary hearing. 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 still provided by the European Court of Human Rights, to which UK citizens have recourse. However, as a consequence of several recent high-profile ECHR decisions overturning decisions made by the UK government, some political figures called for the UK's withdrawal from the court's jurisdiction even before the referendum. The role and powers of the ECHR in the British legal system in a post-EU United Kingdom remain unclear.

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 power. Judge-led inquiries tend to be 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. Many such inquiries tend to be ad hoc and some drag on for so long that there is limited public awareness of the subject by the time their final reports are published. The extensive delay in publishing the Chilcot inquiry into the Iraq war, finally made public only in July 2016 several years after it was supposed to be completed, was widely 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's 2015 decision requiring states to permit same-sex marriage set aside more than 200 years of U.S. public policy. The death of conservative Justice Antonin Scalia in early 2016 left the court with a 4-4 liberal-conservative split, hindering its ability to rule on a considerable number of issues. The Obama administration was not able to fill the vacant Supreme Court seat because of Republican opposition.

Judicial review remains vigorous. During 2015-2016, the federal courts struck down several expansive uses of executive power by the Obama administration as well as potentially discriminatory voter registration requirements in a number of states.

## 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 remained at around 40% in 2014 and 2015, but then dropped to 32% in 2016. Recovering trust in the judicial system seems to be taking time.

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 (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. The justice scoreboard (JS2016) stated that only 42% of the public perceive the judiciary as independent. At the same time, the number of cases in need of resolution has fallen substantially, and the rate of resolved cases versus incoming cases remained constant, except for administrative cases where a vast improvement was recorded. Online procedures for small claims was greatly improved as was access to judgments online. Malta was one of the few states where no specialized training occurs for judges. Malta climbed three steps from 40th to 37th place in the World Economic Forum global ranking on the independence and impartiality of the judiciary. The appointment of more judges, improved planning processes and increased use of ICT have had a visible effect on the judicial process. Increased scrutiny of the bench by the Commission for the Administration of Justice has helped increase public confidence in the courts.

Citation:

[http://ec.europa.eu/justice/effectieve-justice/files/justice\\_scoreboard\\_communication\\_en.pdf](http://ec.europa.eu/justice/effectieve-justice/files/justice_scoreboard_communication_en.pdf)

<http://www.timesofmalta.com/articles/view/20130506/local/european-commission-says-malta-judicial-reform-must-be-made-a-priority.468460>

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

<http://www.timesofmalta.com/articles/view/20160411/local/european-commission-justice-scoreboard-results-welcomed.608529>

The 2016 EU Justice Score board

Malta's Justice System Times of Malta 18/04/16

## 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.

Citation:

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

NRC-Handelsblad, Een Hoge Raad die alles wegwuift is vrij nutteloos, 22 October 2016

## 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 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").

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.

## 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 conventional view is that courts tend to treat government decisions quite leniently, although recent evidence is more mixed. In 2015, the Supreme Court ruled that atomic-bomb victims, including affected Korean workers, cannot be excluded from medical subsidies under the Atomic Bomb Survivors' Assistance Act simply because the victims now live abroad. On the other hand, in 2016 the Supreme Court did not overturn a lower court judgment according to which Muslims can be surveilled because of their religion.

Citation:

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/>

Matt Payton, Japan's top court has approved blanket surveillance of the country's Muslims, *The Independent*, 29 June 2016, <http://www.independent.co.uk/news/world/asia/muslims-japan-government-surveillance-top-court-greenlit-islamaphobia-a7109761.html>

## Romania

Score 6

The judiciary has become more professional and independent as shown by the various indictments and convictions of prominent politicians and businessmen and the increasing assertiveness of the Supreme Council of Magistrates (CSM). However, vying for influence continued. The appointments to the High Court of Cassation and Justice, the General Prosecutor's Office, the Constitutional Court and the CSM were tainted by political bias, and the decision of the Constitutional Court to decriminalize malfeasance in office in June 2016 was criticized as a concession to corrupt elites. Little progress has been made to balance the workload between and within courts.

European Commission (2017): Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism. COM(2017) 44, Brussels ([https://ec.europa.eu/info/sites/info/files/com-2017-44\\_en\\_1.pdf](https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf)).

## Slovakia

**Score 6** The Slovakian court system has for long suffered from low-quality decisions, a high backlog of cases, rampant corruption and a repeated government intervention. In the period under review, citizens' trust in the Slovak courts and judicial system has substantially increased, even though still more than 60% of respondents do not trust courts. The main reason for this development have been positive changes brought about from within the judiciary after the disempowerment of Stefan Harabín, a controversial figure who had held major positions in the Slovak judiciary for some time. Moreover, unlike its predecessor, the Minister of Justice in the third Fico government, Lucia Žitňanská, has sought to foster transparency and fight corruption in the judicial system.

Citation:

Slovak Spectator (2016): Poll: The rate of trust in Slovak justice increased 11 percent, October 20 (<http://spectator.sme.sk/c/20362164/poll-the-rate-of-trust-in-slovak-justice-increased-11-percent.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.

Since December 2015, some important constitutional changes have been made that affect the structure and activity of the Supreme Judicial Council, which heads the judicial branch. Intended to eradicate the system of prosecutors' capacity to influence judges, the changes involve the creation of two separate panels – one overseeing judges, the other prosecutors. As of late 2016 it seems that these changes have indeed resulted in greater independent action among judges. However, there has been little progress in making the Prosecutor's Office more accountable, in establishing fairness and transparency in the disciplinary proceedings of the Supreme Judicial Council, and in reforming criminal procedures. Controversies over the reform of the Prosecutor's Office led to the resignation of Minister of Justice Hristo Ivanov in December 2015.

Citation:

European Commission (2017): Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism. COM(2017) 43, Brussels ([https://ec.europa.eu/info/sites/info/files/com-2017-43\\_en.pdf](https://ec.europa.eu/info/sites/info/files/com-2017-43_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. 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. Every county now has a single municipal court, misdemeanor court and municipal State Attorney's Office.

Despite these reforms, the judiciary suffers from a number of structural problems. The procedures for out-of-court settlement are not sufficiently developed and costs of litigation low. As a consequence, the number of cases brought before judges far exceeds the EU average. Judicial procedures are very complicated and the judiciary remains underequipped when it comes to IT and electronic communication. Many judges are not familiar with EU law and corruption in the system remains relatively widespread.

## 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. 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 crimes fall under the purview of local authorities. There is widespread impunity and effective prosecution is the exception, rather than the rule.

Mexico is currently in the process of a major reform of the justice system. Specifically, it is seeking to transition from a paper-based inquisitorial system to a US-style adversarial system with oral trials. In 2016, the legal reform took a major step forward. However, implementation of the new system will most likely take a

generation since it involves the retraining of law enforcement and officers of the court. So far, law enforcement has often relied on forced confessions, rather than physical evidence, to ensure the conviction of suspects. To make the new system work, the investigative and evidence-gathering capacity of the police will have to be significantly strengthened. Whether this is feasible in the context of an ongoing public security crisis remains to be seen.

Overall, the courts do a poor job of enforcing compliance with the law, especially when confronted with powerful politicians. The most prominent recent example is the inability of law enforcement to arrest three governors wanted for corruption charges. While one turned himself in, the other two are in hiding and – despite their prominence – officials have been unable to locate them and bring them to trial.

## Poland

### Score 5

Polish courts are relatively well-financed and adequately staffed, but have become less independent from the executive under the PiS government. First, by recombining the office of the minister of justice with the prosecutor general, the PiS government strengthened the political influence over the judicial system. Second, in its tug-of-war with the Constitutional Tribunal, the government has sought to limit the power of the court by changing court decision rules making it increasingly difficult, if not outright impossible, for it to reach decisions. However, these changes, which provoked massive criticism inside the judiciary, by the European Commission and the Venice Commission of the Council of Europe, have not been accepted by the Constitutional Court.

## Hungary

### Score 4

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. Moreover, Péter Polt, the powerful Prosecutor General and former Fidesz politician, has acted in a rather partisan fashion. As a result, more and more court proceedings have ended up at the European Court of Human Rights (ECHR) in Strasbourg. With more than 4,000 new cases in both 2015 and 2016, Hungary is among the countries generating the most cases, and the Hungarian state often loses its cases. The pending replacement of the Hungarian representative at the ECHR court has also been very embarrassing for the Hungarian government. The three candidates suggested by the government were refused by the court due to the lack of a proper selection process among qualified lawyers. Further concerns about the quality and independence of judicial review have been raised by

the government's plans to establish a separate Court of Public Administration. According to the plans, about half of the judges would not be selected from professional judges in other courts, but from the public administration in general, including people without any legal background and expertise, most probably loyal civil servants. Even Tünde Handó, the pro-Fidesz President of the National Office for Judiciary, has publicly protested against the government's plan.

## Turkey

### Score 3

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, the president of the Republic is not accountable for his actions except for "high reason". 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.

The Turkish judiciary is currently under severe pressure to handle the influx of cases in a timely manner. The ability of the judiciary to effectively perform its tasks in the aftermath of the attempted coup is in question as a result of the large-scale dismissals. Around 5,000 positions remain to be filled.

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, the latter in force since the failed coup attempt. A Human Rights Compensation Commission has been established within the Ministry of Justice and has demonstrated some positive results.

## Citation:

European Commission, Turkey 2016 Report, Brussels, 9.11.2016, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2016/20161109\\_report\\_turkey.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_turkey.pdf) (accessed 1 November 2016).

Yargı Reformu Strateji Belgesi 2015, [http://www.sgb.adalet.gov.tr/yargi\\_reformu\\_stratejisi.pdf](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-inceleme-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.



## Citation:

Henrik Zahle, *Dansk forfatningsret 2: Regering, forvaltning og dom*. Copenhagen: Christian Ejlers' Forlag, 2004, p. 88.

“Dommerudnævnelserådet,”

<http://www.domstol.dk/om/organisation/Pages/Dommerudn%C3%A6vnelse%C3%A5det.aspx> (accessed 17 April 2013).

## Austria

Score 9

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

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

## Belgium

Score 9

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

The appointment process is transparent, yet attracts little media attention. Given the appointment procedure, there is a certain level of politicization by the main political parties, 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.

Recently, the Ministry of Justice approved the participation of a lawyer from the Bar Association in the more advanced judge nomination process.

#### Citation:

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

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

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

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

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

Gueta, Yasmin and Efrat Newman, "Like the 'Big Brother': The Procedure to Judge Nomination", The Marker, 15.2.2016: <http://www.themarker.com/law/1.2851297>

## Lithuania

### Score 9

The country's judicial appointments process protects the independence of courts. The parliament appoints justices to the constitutional court, with an equal number of candidates nominated by the president, the chairperson of the parliament 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 parliament 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. In a recent World Economic Forum survey gauging the public’s perception of judicial independence, Lithuania ranked 58 out of 138 countries.

Citation:

See the 2016 - 2017 Global Competitiveness Report of the World Economic Forum: [http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017\\_FINAL.pdf](http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf)

## Luxembourg

Score 9

The Constitutional Court of Luxembourg is composed of nine members, all professional judges. They are appointed by the Grand Duke on recommendation of 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 (due to 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 of 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

Constitution. Ministère d’État - Service central de législation, 2016. [data.legilux.public.lu/file/eli-etat-leg-recueil-constitution-20161020-fr-pdf.pdf](http://data.legilux.public.lu/file/eli-etat-leg-recueil-constitution-20161020-fr-pdf.pdf). Accessed 21 Feb. 2017.

“Cour Constitutionnelle.” La justice Grand-Duché de Luxembourg, [www.justice.public.lu/fr/organisation-justice/cour-constitutionnelle/index.html](http://www.justice.public.lu/fr/organisation-justice/cour-constitutionnelle/index.html). Accessed 21 Feb. 2017.

“Cours et tribunaux.” Le portal de l’actualité gouvernementale, 10 Sept. 2014, [www.gouvernement.lu/1719266/cours-tribunaux](http://www.gouvernement.lu/1719266/cours-tribunaux). Accessed 21 Feb. 2017.

“Die aktuelle Verfassung.” Forum.lu, [www.forum.lu/constitution/index.php/dokumente/die-aktuelle-verfassung/](http://www.forum.lu/constitution/index.php/dokumente/die-aktuelle-verfassung/). Accessed 21 Feb. 2017.

## 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.

## 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 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, in the past the media has not covered the election of judges in great detail and it remains to be seen whether the new and open procedure will have positive spillover effects in this regard.

## 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 and awaiting for the final approval by

referendum in December 2016 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](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 system of federal electoral courts is generally respected and more independent and professional than the criminal courts.

## 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. These have yet to be implemented.

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).

## Slovenia

Score 8

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. In July 2016, two new Constitutional Court justices were appointed by the National Assembly, both with an overwhelming majority of votes. Four more will be appointed in 2017, meaning in just 18 months, six out of nine Constitutional Court justices will be replaced.

## Croatia

Score 7

The Constitutional Court of the Republic of Croatia has 13 judges, elected for a term of eight years. Judges 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.

In mid-2016, the functioning of the Croatian Constitutional Court was threatened because no replacements had been appointed for the 10 outgoing judges. Eventually, the judges were elected on the basis of a political agreement between HDZ and SDP, the two biggest political parties. There were three members of these parties among the elected judges. It was the first time since the 1990s that active politicians were elected judges of the constitutional court and tarnished its image.



## 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 (SCJ), 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 above questions, the composition of the SCJ and other issues are raised also by a 2016 GRECO report. The gender ratio within the judiciary as a whole is approximately 60% male to 40% female and 13 to 4 for Supreme Court justices.

Citation:

CoE, GRECO fourth evaluation round, July 2016  
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep\(2016\)7\\_Cyprus\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep(2016)7_Cyprus_EN.pdf)

## Greece

### Score 7

Before the onset of the crisis, the appointment of justices was to a large extent controlled by the government. 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 Syriza-ANEL coalition government, the principle of seniority was partly curbed as the new president of the Supreme Court was not the court's most senior member. Under Syriza-ANEL rule, the selection and appointment of judges has probably become more politicized. On 30 June 2015 the person 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. On the other hand, in June 2016, the government hand-picked a judge whose initiatives betrayed a tendency to converge with Syriza-ANEL priorities for the post of Greece's top-ranking prosecutor (prosecutor of the Areios Pagos).

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 Constitution states that judges are appointed by the president on the advice of the government (Articles 13.9 and 35.1).

The Judicial Appointments Advisory Board (JAAB) acts in an advisory capacity in appointments to the Supreme Court. The government has the power to appoint a person who has not applied to, and has not been considered by, the JAAB. Nevertheless, the JABB acts as a kind of short-listing committee.

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.

Citation:

David Gwynn Morgan (2012), 'Government and the Courts', in Eoin O'Malley and Muiris (eds) *Governing Ireland: From Cabinet Government to Delegated Governance*. Dublin: IPA.

## 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).

## 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.

## United States

Score 7

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. Then, in a major departure from past practice, the Republican Senate in 2016 refused for most of a year to take any action to confirm President Obama's appointment to replace the deceased Supreme Court justice Antonin Scalia – claiming the appointment should be reserved for the president elected in November. The refusal represented a major escalation in the partisan nature of judicial appointments.

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.

## 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>

## Canada

Score 6

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. The new Liberal government has set up an independent, non-partisan advisory board to select eligible candidates for Supreme Court Justices in an effort to provide a more transparent appointment process. This can be seen as a considerable improvement over past practices. The first Supreme Court Judge nominated by Prime Minister Trudeau through this process is Justice Malcolm Rowe of Newfoundland.

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>

## 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. Since 2015, the selection of justices has been paralyzed by a struggle between President Kiska, who had made judicial reform a priority in his successful presidential campaign in 2014, 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 Kiska, without really clarifying the powers of the president. Despite the Court's decision, Kiska has continued to block the appointment of new justices, arguing that the candidates greenlighted by the National Council do not fulfil the high requirements for Constitutional Court justices. As the governing coalition has stuck to its position, too, 3 out of 13 seats in the Constitutional Court are now vacant.

Citation:

Slovak Spectator (2016): Appointment of constitutional judges still in question, in: Slovak Spectator, November 8 (<http://spectator.sme.sk/c/20378245/appointment-of-constitutional-judges-still-in-question.html>).

Slovak Spectator (2016): No new Constitutional Court's candidates proposed for now, October 6 (<http://spectator.sme.sk/c/20343392/no-new-constitutional-courts-candidates-proposed-for-now.html>).

Slovak Spectator (2016): Kiska again rejects Constitutional Court candidates, July 7 (<http://spectator.sme.sk/c/20209757/kiska-again-refuses-constitutional-court-candidates.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. Selecting and appointing a successor to a justice who had died in April 2015 proved impossible during the review period as a result of the politicized nature of the appointment process and the presence of a caretaker government. 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. During the period under review, a “progressive” judicial association criticized the political bias of some Supreme Court appointments promoted by the conservative-leaning president of the CGPJ.

Citation:

Noviembre 2016, Jueces para la Democracia: “Comunicado en relación con nombramientos para órganos técnicos del CGPJ”

<http://juecesparalademocracia.blogspot.be/2016/11/comunicado-en-relacion-con.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.

## Finland

**Score 5** There are three levels of courts: local, appellate and supreme. The final court of appeal is the Supreme Court, and 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 serve nine year terms. Three are nominated by the French president, who also chooses the council's president, three by the presidents of the Senate, and three by 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 thorough control over these appointments, instead choosing a benevolent approach, in particular, when appointees are former politicians. Presently, the Court includes two former prime ministers, including its president.

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 (CCR) 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. In 2016, the terms of three justices appointed in 2007 expired: CCR president Augustin Zegrean (appointed by former President Basescu), Valentin-Zoltán Puskás (appointed by the Senate at the suggestion of the Democratic Union of Magyars in Romania), and Tudorel Toader (appointed by the Chamber of Deputies at the suggestion of the National Liberal Party). They were replaced on July 14 by Livia Stannic (proposed by President Iohannis), Attila Varga (proposed by the Chamber of Deputies at the suggestion of the Democratic Union of Magyars), and Marian Enache (proposed by the Senate at the suggestion of the Social Democrats). The following day, Valeriu Dorneanu (supported by the socialist PSD) was elected the new president of the CCR.

## 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* 23(5).

Jongcheol Kim, *The Rule of Law and Democracy in South Korea: Ideal and Reality*, EAF Policy Debates, No.26, may 12, 2015



## 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 3** To date, all Supreme Court and district court judges have been appointed by the Minister of the Interior, without any involvement from or oversight by parliament or any other public agency. However, all vacancies on the Supreme Court were advertised and the appointment procedure was at least formally transparent. As part of the appointment process, a five-person evaluation committee was 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 aimed to restrain the minister's authority by introducing external oversight.

A new Act on Courts was passed by parliament in June 2016, authorizing the minister to ask parliament to authorize the appointment of judges other than those recommended by the evaluation committee. The act was criticized, among other things, for taking inadequate steps concerning the Minister of the Interior's ability to make judicial appointments subject to significantly weaker restraints than those stipulated in the constitutional bill approved in the 2012 referendum. One academic and former judge stated in testimony to a parliamentary committee that the bill does not address the public's declining confidence in the court system (Björgvinsdóttir, 2016).

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 2011/2012 constitutional bill 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 often rulings by lower court judges have been overturned by the Supreme Court. Furthermore, a retired Supreme Court justice, whose own

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). He has since directed further attacks at his former colleagues for violating rules regarding conflict of interest, among other things.

Citation:

Act on Courts. (Lög um dómstóla nr. 15 25 March 1998, revised 7 June 2017).

Björgvinsdóttir, Áslaug (2016). Comment on proposed Act on Courts, presented to parliament 19 April 2016, <http://www.althingi.is/altext/erindi/145/145-1514.pdf>.

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](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)

## Malta

### Score 3

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 independence of the judiciary is safeguarded through a number of constitutional provisions.

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. In 2015, a government-appointed commission recommended reforming the appointment process. In 2016, Parliament unanimously passed a law reforming the process, however the absence of formal calls to fill judicial positions, and the absence of a ranking system to assess applicants impede the process.

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  
<http://www.timesofmalta.com/articles/view/20160225/local/judicial-commission-to-vet-nominees-to-bench.603674>  
<http://www.timesofmalta.com/articles/view/20160718/local/historic-constitutional-amendments-on-judicial-appointments-discipline.619296>  
<http://www.timesofmalta.com/articles/view/20160720/local/judiciary-welcomes-judicial-reform-legislation.619498>  
Interview with Professor Kevin Aquilina

## Turkey

### Score 3

The 2015-2019 Judicial Reform Strategy continued to be implemented. However, no measures were taken to tackle key shortcomings on independence and impartiality. It is crucial that the strategy is revised to address key outstanding problems and is implemented with the involvement of all relevant stakeholders, including civil society.

The structure of the so called Gülenist parallel state in the judiciary came to attention beginning in 2013 and has undermined the judiciary's credibility. While the number of court cases is increasing – not least after 15 July 2016 and the dismissal of thousands of judges and prosecutors allegedly linked to Gülenist networks – the lack of professional judicial personnel creates further deadlocks.

The Constitutional Court has 17 members, as outlined by Article 146 of the 2010 constitutional referendum, whose 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 FETO 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 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 2016 Report, Brussels, 9.11.2016, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2016/20161109\\_report\\_turkey.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_turkey.pdf) (accessed 1 November 2016).  
Yargı Reformu Strateji Belgesi 2015, [http://www.sgb.adalet.gov.tr/yargi\\_reformu\\_stratejisi.pdf](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 2012 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. When the loss of its two-thirds majority in February 2015 made it impossible for Fidesz to select justices unilaterally, four court positions remained vacant for some time. In November 2016, Fidesz succeeded in getting the support of the green-liberal party Politics Can Be Different (LMP) for the nomination of four new justices.

## 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 2016, there was a minor procedural change about pre-poll voting rule alignment. 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.

Citation:

Kyodo News, Japanese gov't to extend early voting period for top court judges, 5 September 2016, <http://kyodonews.net/news/2016/09/05/78209>

## Poland

### Score 2

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 since only three of five judges' terms of office had ended before the parliamentary elections. President Duda refused to swear in the judges, and one of the first decisions of the new parliament was to provide for the re-election of all five new judges, including the three whose term had expired before the elections. This decision led to conflict between the government and the Constitutional Tribunal that has not been resolved.

Citation:

Sadurski, W. (2016): What Makes Kaczyński Tick? International Journal of Constitutional Law Blog (<http://www.iconnectblog.com/2016/01/what-makes-kaczynski-tick>).

Śledzińska-Simon, A. (2015): Midnight Judges: Poland's Constitutional Tribunal Caught Between Political Fronts. Verfassungsblog, November 23 (<http://verfassungsblog.de/midnight-judges-polands-constitutional-tribunal-caught-between-political-fronts/>).

## 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. In the index for 2015, Denmark was number one ahead of Finland and Sweden. 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).

Transparency International, Corruption Perception Index 2015, <http://www.transparency.org/cpi2015#results-table> (Accessed 17 October 2016)

## 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 2016: <https://freedomhouse.org/report/freedom-world/freedom-world-2016> (accessed October 24, 2016).

## 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 still 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 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 rare 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:

Olsson, J., H. Ekengren Oscarsson and M. Solevid (eds.) (2016), *Equilibrium* (Gothenburg: The SOM Institute).

## 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.

## 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.

In 2016, the Supreme Court's ruling overturning the corruption conviction of a former governor of Virginia may potentially weaken anti-corruption efforts. While the governor had accepted loans and gifts from a businessman and had promoted his business interests in various ways while in office, the court relied on a finding that he had not acted out of corrupt motives in any official act.



## Australia

### Score 8

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

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

Nonetheless, significant potential for corruption persists, particularly at the state and territory level. There have been isolated cases of misconduct in anti-corruption commissions. 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.

Citation:

<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/cpi2015>

<http://www.abc.net.au/news/2015-06-17/systemic-corruption-inside-ccc-watchdog-finds/6554220>

## 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.

As a consequence of the bankruptcy of a major bank (Alpen-Adria Hypo), the links between politics and business are openly discussed more than ever. Parliamentary committees at the state and federal levels have been able to bring some light to the affair and courts have successfully prosecuted highly connected persons (including politicians).

## 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. 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 procurement above a certain value must follow strict rules. Overall, the fight against outright corruption gained in

effectiveness over the last years, as data from Transparency International demonstrate.

Citation:

<http://www.business-anti-corruption.com/country-profiles/belgium>

<http://www.tradingeconomics.com/belgium/corruption-rank>

## 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. Perhaps the most consequential scandal 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 2015, the number of registered corruption offences increased by 21% as compared to 2014 (from 355 to 450). It is important to note that corruption offences are often repeated acts committed by the same persons, and one court case can include a number of criminal acts. Currently, two large court cases include 30% of all criminal offences registered in 2015. Thus, while the number of criminal offences increases,

the number of court cases decreases. Most corruption offences (188) were registered in connection with state agencies (inspectors, boards, legal entities founded by the state), whereas corruption cases at the municipality level continued to decrease (24).

Citation:  
Ministry of Justice (2016). Kuritegevus Eestis (Crime in Estonia)  
[http://www.kriminaalpoliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/kuritegevus\\_eestis\\_2015.pdf](http://www.kriminaalpoliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/kuritegevus_eestis_2015.pdf)  
(accessed 31.Oct. 2016)

## Germany

### Score 8

Despite several corruption scandals over the past decade, Germany performs better than most of its peers. According to the World Bank's 2016 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 2016, Germany ranked 10th out of 215 countries compared to 15th in 2010 (World Bank 2016).

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. A total of 164 members of parliament declared additional income. Since the last general election, the auxiliary incomes of four parliament members (all members of the conservative party in government, CDU/CSU) exceeded €1,000,000. In addition, 40 parliamentarians declared additional income of at least €100,000. According to [abgeordnetenwatch.de](http://abgeordnetenwatch.de), the 10-step system is also flawed. It appears likely that, in order to avoid public attention, members of parliament may resort to partitioning their auxiliary income. Thus, the current system remains an insufficient transparency regime unable to eradicate corruption or conflict of interests. Instead, it incentivizes declaring auxiliary income in slices of lesser amounts.

Citation:  
World Bank (2016): <http://info.worldbank.org/governance/wgi/index.aspx#home>  
<https://www.abgeordnetenwatch.de/blog/nebeneinkuenfte2016>

## Ireland

Score 8 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/>

## Luxembourg

Score 8 After a parliamentary inquiry into a large building project in Wickrange in 2012, in which the prime minister and other government ministers were suspected of improperly favoring a company, the government proposed a code of conduct in April 2013. The code, which references existing codes such as a European Commission code, defines the types of gifts or favors a minister may or may not receive. It also outlines a range of professional activities a minister may undertake after their ministerial term. The overall objective is to avoid conflicts of interests. In addition, 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.

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 so far and other directives have not been transposed or have been only partially implemented yet.

Citation:

“2014 Corruption Perceptions Index.” Transparency International, [www.transparency.org/cpi2014/results](http://www.transparency.org/cpi2014/results). Accessed 21 Feb. 2017.

“Corruption Perceptions Index 2012.” Transparency International, [www.transparency.org/cpi2012](http://www.transparency.org/cpi2012). Accessed 21 Feb. 2017.

“Eurobarometer - Corruption.” European Commission, [ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_397\\_fact\\_lu\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_fact_lu_en.pdf). Accessed 21 Feb. 2017.

“Félix Braz présente le nouveau Code de déontologie pour les ministres.” Le portal de l’actualité gouvernementale, 22 July 2014, [www.gouvernement.lu/3870893/22-braz-code](http://www.gouvernement.lu/3870893/22-braz-code). Accessed 21 Feb. 2017.

“Luxembourg moves up two spots in Corruption Perceptions Index.” Luxembourg for Finance, 3 Dec. 2014, [www.luxembourgforfinance.com/en/news/luxembourg-moves-two-spots-corruption-perceptions-index](http://www.luxembourgforfinance.com/en/news/luxembourg-moves-two-spots-corruption-perceptions-index). Accessed 21 Feb. 2017.

Projet de règlement grand-ducal fixant les règles déontologiques des membres du Gouvernement et leurs devoirs et droits dans l’exercice de la fonction. Le Ministère de la Justice du Grand-Duché de Luxembourg, 2014. [www.gouvernement.lu/3871867/Dossier-de-presse-Code-de-deontologie-22-7-14doc.pdf](http://www.gouvernement.lu/3871867/Dossier-de-presse-Code-de-deontologie-22-7-14doc.pdf). Accessed 21 Feb. 2017.

Transparency International Luxembourg, [www.transparency.lu](http://www.transparency.lu). Accessed 21 Feb. 2017.

Transparency of lobbying in Member States. European Parliamentary Research Service, 2016. [www.europarl.europa.eu/EPRS/Transparency\\_of\\_lobbying\\_in\\_Member\\_States.pdf](http://www.europarl.europa.eu/EPRS/Transparency_of_lobbying_in_Member_States.pdf). Accessed 21 Feb. 2017.

## 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468255/Final_draft_ministerial_code_No_AMENDS_14_Oct.pdf)

## 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 to remove concerns of political interference. KNAB has seen several 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, which continued through 2015 and 2016. These court cases ended with the director dismissing two deputy directors in the summer of 2016. Both have appealed their dismissal. The director adopted an administrative approach that 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 director's term concluded in November 2016 and he has not been offered a second term. The selection process for a new KNAB director has become problematic, as the first advertised competitive procedure yielded no results. As of November 2016, a second selection procedure has yet to be announced.

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 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. In 2016, multiple parties were sanctioned for violations of public financing rules. Vienotiba, a major parliamentary party, has had its public funding withdrawn due to violations of campaign finance restrictions.

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.

Citation:

1. Corruption °C (2012), Updated Statistics on Convictions for Corruption Offences (2013 Data Added), Available at: <http://corruption-c.wikidot.com/>, Last assessed: 16.11.2015.
2. Group of States Against Corruption (GRECO)(2012), Fourth Evaluation Round, Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors, Evaluation Report, Available at: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4%282012%293\\_Latvia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4%282012%293_Latvia_EN.pdf), Last assessed: 21.05.2013
3. Freedom House (2012), Nations in Transit, Country Report, Available at: [http://www.freedomhouse.org/sites/default/files/NIT2012Latvia\\_final.pdf](http://www.freedomhouse.org/sites/default/files/NIT2012Latvia_final.pdf), Last assessed: 21.05.2013
4. KNAB (2014), Attitudes toward Corruption in Latvia (in Latvian), Available at: [http://www.knab.gov.lv/uploads/free/knab\\_lf\\_aptauja2014.pdf](http://www.knab.gov.lv/uploads/free/knab_lf_aptauja2014.pdf), Last assessed: 22.10.2014

## Netherlands

### Score 7

The Netherlands is considered a corruption-free country. In Transparency International's Corruption Perception Index 2015, the Netherlands ranked joint 5 out of 168 countries. 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 July 2016, a new law for the protection of whistle-blowers went into force. Experts consider the law to be largely symbolic, with real legal protection remaining low and administrative costs high.

Citation:

Transparency International Nederland (2015), Nationaal Integriteitssysteem Landenstudie Nederland.

A.J.P. Tiller, Ontwikkelingen rond corruptiebestrijding in Nederland, 2015 (transparency.nl, consulted 2 November 2015)

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.

“Crimineel weet welke agent hij hebben wil”, in NRC-Handelsblad, 11 October 2015

Juridisch Actueel, Klokkenluiderswet is een feit, 15 March 2016 (juridischactueel.nl, consulted 9 November 2016)

Additional references:

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

## 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. Transparency International’s 2015 Corruption Perceptions Index ranked Portugal 28 out of 168 countries, an improvement of five positions on the last two years. However, Transparency International’s ratings are based on public perceptions and are entirely subjective. Therefore, either recent laws are taking effect, the prosecution of high-profile corruption cases has affected public perceptions or other countries have become more corrupt.

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.

In October 2016, the Council of Europe’s Group of States against Corruption (GRECO) released a report focusing on corruption involving deputies, judges and district attorneys. It analyzed the weaknesses in various administrative and legal systems which facilitate corruption.

Former prime minister José Sócrates (2005-2011) remains under investigation for alleged corruption, money laundering and tax fraud, as do other important government officials from the Socrates government. Some of these officials have been detained due to suspicions of corruption in the granting 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-reforçar-planos-de-prevencao-da-corrupcao-1699049>

Patricia Pires, “Europa quer mais medidas contra a corrupcao em Portugal,” Reuters 2 October 2016.

## 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 President Sebastián Piñera himself – were powerful businesspeople. The phenomenon can still be observed in the current government, though at a less extreme level. Such entanglements produce conflicts of interest in the policymaking process (e.g., in regulatory affairs). There are no regulations enabling monitoring of conflicts of interest for high-ranking politicians (e.g., the president and ministers). However, there are some independent projects on the rise to arouse public awareness on this issue.

The scandals revealed during the last two years have shown that corruption and abuses of power within Chile's political and economic elite is in fact more common than (international) indicators regarding corruption and transparency suggest. It is unclear how state institutions will confront these challenges. During the period under review, a minister and an undersecretary of state of the former government were convicted of corruption. As a response to this crisis, President Bachelet convoked a council (Consejo Asesor Presidencial contra los Conflictos de Interés, el Tráfico de Influencias y la Corrupción) that in its final report (April 2015) proposed several anticorruption measures intended to prevent abuse of office. Due to their conclusions, restrictions on private campaign funding (Ley sobre Fortalecimiento y Transparencia de la Democracia) and the creation of a public register for all lobbyists were implemented in 2016.

Citation:

<http://consejoanticorruccion.cl/>

<http://consejoanticorruccion.cl/lanzamiento-final/>

<https://www.leylobby.gob.cl/>

<http://www.latercera.com/noticia/estas-son-las-normas-que-fija-la-nueva-ley-para-regular-el-financiamiento-de-campanas-politicas/>

## Czech Republic

### Score 6

In the Czech Republic, corruption has remained widespread. Subsequent governments have emphasized their commitment to fight corruption, but have done little to effectively address the issue. Two major changes were adopted in 2016, the amendment to the law on party finance and the amendment to the law on conflict of interest, the so-called Lex Babiš in September 2016. In addition to making media ownership and governmental positions incompatible, the latter law prevents companies in which members of government hold more than 25% of shares from

participating in public procurement processes and from receiving public subsidies. The adoption of this law, which was supported by all parliamentary parties excluding Babiš's ANO, followed allegations that companies owned by Babiš's holding Agrofert, the largest beneficiary of EU funding and state subsidies in the Czech Republic, had misused subsidies. At the same time, however, the controversial merger of organized crime and anticorruption police units announced in June 2016 has raised some doubts about the government's commitment to fight corruption.

## France

### Score 6

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. The legal anti-corruption framework has recently been strengthened by the “Sapin law” adopted by the end of 2016, which complements present legislation on various fronts (conflict of interests, protection of whistleblowers).

## 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. Criticism of Israel’s centralized public-service structure has been mounting, in part because it is characterized by several 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 court issued an historic ruling, sentencing former PM Ehud Olmert to six years in prison for accepting bribes while serving as mayor of Jerusalem. Recently, Natanya’s Maor, Miriam Fireberg, was arrested on suspicion of receiving bribes and several top Yisrael Beytenu leaders will face indictments for bribery, fraud, money-laundering and, in one case, drug offenses.

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. In 2016, PM Netanyahu and several other politicians are in the center of an ongoing investigation, accused of corruption and bribery attempts. According to the head of the 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 a criminal organization.”

## Citation:

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

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

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

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

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

Shahar Levi, Zohar, "The head of the Israel Police fraud investigations task force: We have number corruption affairs in line", *Calcalist* 19.5.2015:

<http://www.calcalist.co.il/local/articles/0,7340,L-3659694,00.html> (Hebrew).

"Israel-phase 2," Ministry of Justice, December 2009

"85% of Israelis think corruption is widespread in business," *The Times of Israel*, 12.5.2012.

<http://www.timesofisrael.com/85-of-israelis-think-corruption-widespread-in-business/>

"Massive scope of Yisrael Beiteinu corruption scandal revealed", *Ynet* 25.12.2014:

<http://www.ynetnews.com/articles/0,7340,L-4607728,00.html>

"Corruption investigation explores bribe attempts from Netanyahu", *The Jerusalem Post*, 9/9/2016,

<http://www.jpost.com/Israel-News/Benjamin-Netanyahu/Corruption-investigation-explores-bribe-attempts-from-Netanyahu-467347>

Transparency International: Corruption Perception Index 2016.

[http://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](http://www.transparency.org/news/feature/corruption_perceptions_index_2016)

Ariel, Omri, New poll shows 72% view Israel as a corrupt country, 08.01.2016,

<http://www.jerusalemonline.com/news/in-israel/local/poll-72-see-israel-as-corrupt-18361>

## Italy

### Score 6

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 (see 2015 ANAC Report). In 2015, new legislation proposed by the Renzi government was approved by parliament. The legislative decree of 18 April 2016, n. 50 on public tenders should reduce the impact of corruption in one of the economy's most delicate sectors.

In general, the ongoing reform of public administration should also contribute to tackling administrative abuses.

## Citation:

[http://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital Assets/anacdocs/Attivita/Pubblicazioni](http://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Attivita/Pubblicazioni)

## Lithuania

### Score 6

Corruption is not sufficiently contained in Lithuania. In the World Bank's 2015 Worldwide Governance Indicators, Lithuania scored 70.2 out of 100 on the issue of corruption control, up from 68.8 in 2014. The 2013 Eurobarometer poll revealed that Lithuania had the European Union's highest percentage (29%) of respondents who claimed that they had been asked for or expected to pay a bribe for services over the past 12 months, compared to an EU average of 4%. In the Transparency International Corruption Perception index, Lithuania scored 62 out of 100 and ranked 32 out of 168 countries in 2015, up 43 in 2013. According to the new Index of Public Integrity, Lithuania was ranked 25 out of 105 countries overall, but only 85 out of 105 countries for budget transparency.

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. One of Lithuania's key corruption prevention measures is an anti-corruption assessment of draft legislation, which grants the Special Investigation Service the authority to carry out corruption tests. 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 has 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, as illustrated by the recent investigation into the former leader of the Liberal Movement for allegedly accepting a €106,000 bribe from a vice-president of a major business group for "certain decisions that benefit the corporation."

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

The Lithuanian Corruption Map is available at [http://transparency.lt/media/filer\\_public/2013/01/22/korupcijos\\_zemela\\_pis\\_2011.pdf](http://transparency.lt/media/filer_public/2013/01/22/korupcijos_zemela_pis_2011.pdf).

See the 2016 - 2017 Global Competitiveness Report of the World Economic Forum: [http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017\\_FINAL.pdf](http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf)

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

the Transparency International Corruption Perception index is available at <http://www.transparency.org/cpi2015>

The Index of Public Integrity is available at <http://integrity-index.org/>

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

## Poland

Score 6 Corruption has been a major political issue in the period under review. On the one hand, the PiS government has accused the previous government of corruption. However, the evidence for this claim provided in the government's May 2016 report on the wrongdoings of the PO-PSL governments has been meager. The report has not yet led to many investigations and arrests. On the other hand, the PiS government has itself been under fire for corruption and cronyism in state-owned enterprises. In September 2016, Minister of the Treasury Dawid Jackiewicz lost his job for filling major positions in state-owned enterprises with PiS acolytes with limited qualification. The director of the Central Anti-Corruption Bureau (CBA), Paweł Wojtunik, who had come into office after the arrest of its controversial former head Mariusz Kamiński in 2010, was forced to resign in November 2016 when Kamiński, who had become the new coordinator of the secret services, questioned his security certificate. Wojtunik was replaced by Ernest Bejda, a close collaborator of Kamiński.

## Slovenia

Score 6 Corruption has been publicly perceived as one of the most serious problems in Slovenia since 2011. The incoming Cerar government adopted a detailed new two year anti-corruption action plan in January 2015. In 2016, the number of corruption cases investigated increased, indicating increased attention by and effectiveness of the police. While the Commission for the Prevention of Corruption (CPC), the central anti-corruption body, managed to upgrade its Supervisor web-platform and launch its successor Erar in July 2016, it has remained under fire. At the end of February 2016, the OECD working group on Bribery joined domestic critics and criticized the CPC's lack of autonomy and resources, as well as Slovenia's limited implementation of the Anti-Bribery Convention. The failure of parliament to adopt an ethical code for members of parliament and strengthen whistleblower protection has further raised the doubts about the political elite's commitment to fight corruption.

Citation:

OECD Working Group on Bribery (2016): Statement on Slovenia's limited implementation of the Anti-Bribery Convention. February 24 (<http://www.oecd.org/corruption/public-statement-on-slovenia-s-implementation-of-the-anti-bribery-convention-2016.htm>).

## 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 has fallen to 41st place in 2016. 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, new legislation intended to dissuade such behavior has been introduced recently. This legislation involves a change made to party-funding regulations, a new transparency law, and reforms of the criminal code and the public-procurement law. In addition, systematic audits of public accounts are mandatory, and officeholders must make an asset declaration. Moreover, very few corruption cases have involved career civil servants, and everyday interactions between citizens and the administration are typically characterized by a high level of integrity.

Citation:

November 2016, Global Corruption Barometer

<https://www.transparency.org/whatwedo/publication/7493>

Corruption Perceptions Index

<https://www.transparency.org/country/ESP>

October 2016, Group of States against Corruption, Council of Europe

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/RC4/GrecoRC4\(2016\)1\\_Spain\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/RC4/GrecoRC4(2016)1_Spain_EN.pdf)

## 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. Under the Orešković government, HDZ and MOST struggled over control of USKOK (Ured za Suzbijanje Korupcije i Organiziranog Kriminala, Croatian State Prosecutor's Office for the Suppression of Organized Crime and Corruption). In June 2016, the HDZ chairman and vice deputy

prime minister, Tomislav Karamarko, eventually resigned after the parliament's commission for the conflict of interests ruled that there was a conflict of interest given his connections to a lobbyist for oil company MOL.

## 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).

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.

Still, in the period under review, the justice system intensified its efforts, not so much to prevent, as to punish corruption. In June 2016 in Thessaloniki a top prosecutor started investigated cases of fraud by civil servants. And, in October 2016, a court in Xanthi (a city in northern Greece) imposed a life sentence to a former general manager of a municipal company for having stolen/embezzled 1.4 million euros. In short, there has been some visible progress in anti-corruption.

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.

## Iceland

### Score 5

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 Commission (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. Two of the ten members of parliament in question are still in parliament and the cabinet without having divulged whether they have settled their debts or not. The SIC did not report on legislators that owed the banks lesser sums, e.g., €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:

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

Special Investigation Committee (SIC) (2010), “Report of the Special Investigation Commission (SIC),” report delivered to parliament 12 April.

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

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

Gallup (2013), Government Corruption Viewed as Pervasive Worldwide, <http://www.gallup.com/poll/165476/government-corruption-viewed-pervasive-worldwide.aspx>

Gylfason, Thorvaldur (2015), "Social Capital, Inequality, and Economic Crisis," *Challenge* 58, No. 4, July, 326-342.

## 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.

With respect to anti-bribery enforcement abroad, relevant for Japan's multinational companies, the country in the past had a reputation for weak enforcement. However, the government has used the 2016 G-7 Summit and the London 2016 Anti-Corruption Summit to formulate a stiffer line, with the industry ministry (METI) also warning companies. Results still need to be evaluated.

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.

Citation:

Ananda Martin and Jianxiong Wu, Japanese Companies Face Growing Anti-Corruption Enforcement Risk The FCPA Report, Vol. 5, No. 2, 27 January 2016, Download from <http://www.fcpareport.com/archive>

## 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 remains ineffective and, despite declarations to this effect, unreformed. 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. Both the National Audit Office and the Ombudsman Office are independent, but neither enjoys the necessary executive powers to follow up on their investigations. The Public Service Commission has consistently lacked sufficient resources for it to work effectively.

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. Nonetheless, conflicts of interest remain prevalent. These are a result of the face-to-face relationships common in micro-states and the fact that Malta's members of parliament work part-time and have private interests.

Citation:

Transparency International: The 2014 Corruption Perceptions Index CPI. [Transparency.org/](http://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

<http://www.timesofmalta.com/articles/view/20160503/local/minister-to-keep-pressure-on-mfsa-independent-regulator.610814>

<http://www.timesofmalta.com/articles/view/20160928/local/government-statement-pm-has-no-clue-if-chief-of-staff-will-benefit.626373>

<http://www.timesofmalta.com/articles/view/20160510/local/zammit-dimech-cachia-caruana-deny-panama-papers-links.611633>

<http://www.timesofmalta.com/articles/view/20151129/local/minister-tells-his-business-partners-to-obey-the-law.593836>

<http://www.timesofmalta.com/articles/view/20160407/local/konrad-mizzi-to-address-labour-conference-as-pressure-over-panama.608123>

<http://www.timesofmalta.com/articles/view/20161008/local/does-keith-schembris-opm-contract-contain-conflict-of-interest-rules.627308>

Canvasser made delivery of 9 million euros in checks Sunday Times of Malta 11/12/16

Transparency International Corruption perception index 2015

## Romania

### Score 5

Corruption has been a major political issue in Romania for some time. After all, the Ciolos government came to office after Prime Minister Victor Ponta resigned in the midst of corruption scandals. The National Anti-Corruption Directorate (DNA), led by Laura Codruta Kövesi (reelected in 2016), continued its much acclaimed anti-

corruption fight. By mid-2016, the DNA had achieved nearly 500 convictions, of which 170 were final convictions of party leaders, lawmakers, businessmen, magistrates and generals. High-profile corruption cases investigated by DNA in 2016 involved former Deputy Prime Minister Gabriel Oprea, Senator Dan Sova, Senator and former Foreign Minister Titus Corlăteanu, businessman Remus Truica and the former owners of the Colectiv club, where the deadly nightclub fire occurred, killing 64 people and leading to mass anti-corruption protests in 2015. However, parliament has continued to deny many requests to lift immunity. The Constitutional Court, in a ruling in February 2016, reduced the possibilities of the DNA to cooperate with the Romanian Secret Service (SRI). The fight against corruption suffered a further setback when the Constitutional Court decriminalized malfeasance in office in June 2016. This decision was criticized by the DNA as a way to help roughly 800 indicted politicians and civil servants with their legal problems, while the Constitutional Court defended the decision as a much needed clarification of the Criminal Code. In 2016, the conservative-national PNL remained the only party to demand strict integrity criteria for its candidates.

In August 2016, public consultations on the 2016-2020 National Anticorruption Strategy began. Informed by inputs from 90 public organizations, NGOs, business associations, state companies and private firms, it emphasized the shared responsibility of the state and citizens to address anti-corruption, provided a framework for handling plagiarism and singled out education and health care as key areas for the future fight against corruption.

Citation:

European Commission (2017): Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism. COM(2017) 44, Brussels ([https://ec.europa.eu/info/sites/info/files/com-2017-44\\_en\\_1.pdf](https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf)).

## Slovakia

### Score 5

The second Fico government was shaken by several corruption scandals and has not paid much attention to anti-corruption efforts. Few attempts to strengthen integrity mechanisms have been undertaken by the Fico government, and influential politicians and business persons have not been convicted and sentenced thus far. The government manifesto of the third Fico government contained some anti-corruption measures, and the new minister of justice, Lucia Žitňanská, representing one of Smer-SD's coalition partners, has paid more attention than her predecessors to the fight against corruption. In September 2016, however, the coalition joined ranks in a no-confidence vote against Minister of Interior Robert Kaliňák and Prime Minister Fico that was fueled by the parliamentary opposition with their links to Ladislav Basternak, a fraudulent business man.

Citation:

Slovak Spectator (2016): PM Fico, Minister Kaliňák survive no-confidence vote, September 26 (<http://spectator.sme.sk/c/20286161/pm-fico-minister-kalinak-survive-no-confidence-vote.html>).

## 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. 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.

The year 2016 saw several major institutional improvements with regard to fighting corruption. 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 penalties for former government officials who took advantage of their public-sector networks for private gain through lobbying or other similar activities. This was passed in March 2015 as the Kim Young-ran Act, and came into effect in September 2016. Among other provisions, it bars public servants, journalists and teachers from accepting a meal worth more than KRW 30,000 (about €24) if there is a potential conflict of interest. In addition to the restrictions on meals, the law bars people in the targeted professions and their spouses — estimated to be 4 million people out of a total national population of 51 million — from accepting any gift worth more than KRW 50,000 if a conflict of interest could exist. Unfortunately lawmakers and politicians were excluded from the law’s provisions.

Despite these institutional improvements, a major corruption scandal undermined the Park administration during the review period, after it emerged that President Park’s longtime friend Choi Soon-sil had not simply wielded influence within the administration, but had also used her connection to the president to strong-arm companies into donating to two foundations (Mir and K-Sports). She was also accused of embezzling foundation money to buy a hotel in Germany, and of using her influence to get her daughter into a prestigious university in Seoul.

#### 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](http://www.acrc.go.kr/eng_index.html)

Transparency International 2013, Country Page Korea, <http://www.transparency.org/country#KOR>

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

“Antigraft Law Stirs Up Wariness Over South Koreans Bearing Gifts,” New York Times, September 29, 2016.

[http://www.nytimes.com/2016/09/30/world/asia/south-korea-bribery-law.html?\\_r=0](http://www.nytimes.com/2016/09/30/world/asia/south-korea-bribery-law.html?_r=0)

## 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, an attempt to pass a comprehensive national anti-corruption strategy and to create a unified anti-corruption agency with powers to conduct administrative inquiries, check conflicts of interest and inventory high-level officials' assets eventually failed in the National Assembly when two junior coalition partners, the ABV and the Patriotic Front joined the parliamentary opposition. Until the end of 2016, parliament effectively delayed further discussion.

Citation:

Avdjiiski, L. (2016): Why Does the Fight Against Corruption in Bulgaria not Give Results. Institute for Market Economics, Sofia (<http://ime.bg/en/articles/why-does-the-fight-against-corruption-in-bulgaria-not-give-results/>).

European Commission (2017): Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism. COM(2017) 43, Brussels ([https://ec.europa.eu/info/sites/info/files/com-2017-43\\_en.pdf](https://ec.europa.eu/info/sites/info/files/com-2017-43_en.pdf)).

## Cyprus

**Score 4** The Auditor General's office is constitutionally independent and assigned to audit state accounts and legal compliance. Adequate responses to the office's observations have been rare. However, numerous prosecutions for notable cases of corruption have occurred since 2014. The privacy constitutional clause (Art. 15) was amended (2016) to serve transparency and fight corruption. A new national anti-corruption strategy is currently being designed.

A Transparency Cyprus survey showed 81% of the public considers corruption to be present at both the local and national levels, with 83% deem it a serious problem. The numerous relevant recommendations by GRECO are indicative of the problem.

Pressures for more transparency by civil society organizations and media, appear to have no decisive effect yet. Anti-corruption measures, ensuring transparency, and preventing favoritism and bribery appear generally either inadequate or lacking proper oversight and implementation mechanisms; cases of either deficient or partially implemented measures also exist. For example, no report is available on the implementation of a public service code of conduct (2013).



## Citation:

1. Corruption levels 'more than expected', says Auditor General, Cyprus Mail, 16.08.2016, <http://cyprus-mail.com/2016/08/16/corruption-levels-expected-says-auditor-general>

2. Survey on corruption by Transparency Cyprus, 2014-5, in Greek, <http://transparencycyprus.org/προγραμματα/ερευνα/ερευνα-για-τη-διαφθορα-2015>

## Hungary

### Score 3

Widespread corruption has been a systemic feature of the Orbán governments, with benefits and influence growing through Fidesz's informal political-business networks. Members of the Fidesz elite have been involved in a number of corruption scandals, with many people accumulating substantial wealth in a short period of time. Corruption has become so pervasive that even some senior Fidesz figures have begun openly criticizing the Fidesz elite's rapid wealth accumulation. Corruption in Hungary has to be seen through the prism of oligarchic structures and is strongly linked to public procurement, often related to investments based on EU funds and facilitated by the new public procurement law of 2012. After the conflict with Lajos Simicska, the previous "Czar" of business and media, Orbán has made a radical rearrangement in the camp of the Fidesz-linked oligarchs by pushing out all Simicska-related businessmen from public procurement and promoting new oligarchs, most notably Lőrinc Mészáros, István Garancsi and István Tiborcz (the son in law of Orbán). Thus, a system of government-regulated corruption has been built.

## Citation:

Tóth, I. J., M. Hajdu 2016): Korrupciós kockázatok, átláthatóság, közbeszerzések. Magyar közbeszerzések 2009–2015 közötti adatainak elemzése, in: T. Kolosi, I.G. Tóth, István György (eds.): Társadalmi riport 2016. Budapest: Tárki, 33-53.

## 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.

However, 2016 also saw a major step forward in the fight against corruption as President Peña Nieto signed into law Mexico's new National Anti-Corruption System. The extent to which this new system is effective at fighting corruption remains to be seen.

## 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 court 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 2014 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.

Citation:

European Commission, Turkey 2016 Report, Brussels, 9.11.2016, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2016/20161109\\_report\\_turkey.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_turkey.pdf) (accessed 1 November 2016).

Turkey’s top judicial body suspends graft probe prosecutors: agency, 30 December 2014, <http://www.reuters.com/article/2014/12/30/us-turkey-corruption-prosecutors-idUSKBN0K80WC20141230#MAC1r24rc4pB862h.97> (27 October 2015)

Daniel Donbay, Turkish parliament votes against graft trial for former ministers, Financial Times, 21 January 2015, <http://www.ft.com/cms/s/0/7f805574-a14a-11e4-8d19-00144feab7de.html#ixzz3rrWV7tpq> (27 October 2015)

Çiğdem Toker, Sayıştay yeni soygunu belgeledi, Cumhuriyet daily newspaper, 7 October 2015, [http://www.cumhuriyet.com.tr/koseyazisi/382949/Sayistay\\_yeni\\_soygunu\\_belgeledi.html](http://www.cumhuriyet.com.tr/koseyazisi/382949/Sayistay_yeni_soygunu_belgeledi.html) (27 October 2015)

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

Transparency International (2015) ‘Corruption Perception Index 2015’, <https://www.transparency.org/cpi2015/#results-table>. (1 November 2016)

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