



Rule of Law Report

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

Sustainable Governance Indicators 2018

©vege - stock.adobe.com

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. Concerning the rule of law index of the World Justice Report Germany ranked 8 out of 113 countries (World Justice Project 2016).

Citation:

World Justice Project 2016

https://worldjusticeproject.org/sites/default/files/documents/ROLIndex_2016_Germany_eng%20%282%29.pdf

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 responses to written constitutions, the level of public interest is low, being 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 (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.

There are now signs emerging that market-based administrative reforms may have peaked in Sweden; there is now a search for a “post-NPM” or “neo-Weberian” model of administration. 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 “experiments,” replacing performance management with various types of trust-based management, have been carried out in 2017, primarily at the local and regional level. A series of reforms is scheduled for 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 and strengthen the position of whistleblowers came into force in 2017 and are now being implemented.

Citation:

Petersson, O. (2014), *Den offentliga makten* (Lund: Studentlitteratur).

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, rules and regulations 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 latest example is the case of 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:

1. The Constitutional Court of Latvia (2012), On Termination of Proceedings, Ruling available at (in Latvian): http://www.satv.tiesa.gov.lv/upload/2011_10_01_lemums.pdf, Last assessed: 21.05.2013

2. FICIL Sentiment Index 2015. Available at: <http://www.sseriga.edu/en/centres/csb/sentiment-index/>. Last assessed: 20.11.2017.

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. Similarly, respect for the rule of law was demonstrated by the widespread

response to the government changes at the end of 2017, when one major party (the Social Democrats) moved from government to opposition and a (former) opposition party (the far-right FPÖ) joined the government in coalition with the conservative Austrian People's Party (ÖVP). There has been an occasionally heated debate concerning the impact of this significant change within the government's power structure. However, there is no fear that the new situation will have an impact on the independence of the judiciary. The rule of law in Austria does not seem to be influenced by political changes.

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 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 on freedom of information and general discrimination. Government bodies then learn to comply with established practices.

Spain

Score 8 The general administrative procedure in Spain is consistent and uniform, assuring regularity in the functioning of all administrative levels. During 2015, a new piece of legislation (Ley 39/2015, del Procedimiento Administrativo Común de las Administraciones Públicas) was passed with the aim of modernizing basic administrative law and improving legal certainty. In theory, this principle holds across the Spanish public sector, but it is also true that citizens and the business sector sometimes complain about unpredictable decisions. At the political level, for example, some policy reversals have undermined Spanish credibility among foreign investors (e.g., the government's changes in taxation and the decision to cut the regulated revenue rates received by renewable-energy generators). Within the administrative bureaucracy, however, there is still 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.

Within the Catalonia crisis, the government focused exclusively on the legal and constitutional framework to defend its point of view, failing to consider any political initiative other than lawsuits against the secessionists. Judicial action in the case of Catalonia has generated some confusion and legal uncertainty.

Citation:

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

Belgium

Score 7

The rule of law is relatively strong in Belgium. Officials and administrations typically act in accordance with the law. Nevertheless, the federalization of the Belgian state is not yet fully mature, and the authority of different government levels can overlap on many issues; this state of affairs renders the interpretation of some laws and regulations discretionary or unstable, and therefore less predictable than might be desired.

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 discussions around the EU-Canada Comprehensive Economic and Trade Agreement (CETA), in which the Walloon government threatened to block the agreement, illustrated this issue quite clearly. The primary reason for this state of affairs is that all levels of power (federal, regional, etc.) must agree; when they do not, deadlock ensues.

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 framework that is extensive, complex, fragmented and sometimes contradictory. Formalism dominates legislation. Legal regulations are often not consistently applied. Acts passed by parliament often have seemingly extraneous items added, which only confuses things further.

Since the start of the economic crisis, because of the pressing need to achieve fiscal consolidation, the government repeatedly adapted past legislation to changing circumstances. Many changes have been made to areas such as taxation 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. This practice, already used by previous governments, was exacerbated in 2014 by the ND-PASOK coalition government and has been vigorously continued by the Syriza-ANEL government since early 2015. In short, the practice of frequent and further amendments to recently passed legislation and legislative amendments has continued unabated. On average, a new law is voted on by the Greek parliament every week (research by the Athens-based organization “Dianeosis”). Because of such uncoordinated over-regulation, the legal framework in major policy sectors, such as taxation and foreign investments, still bears loopholes and contradictions.

Citation:

The research report of the Athens-based privately owned research organization “Dianeosis” is available (in Greek) at https://www.dianeosis.org/wp-content/uploads/2016/07/polynomia_final2.pdf, last accessed on 03.10.2017.

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

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 complexity of regulations (which are sometimes contradictory) opens up opportunities for corruption.

The excessive burden of regulations and inefficiency of local authorities too often requires 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.

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 2016 Worldwide Governance Indicators, Lithuania scored 85 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, during its 2012 to 2016 term, the parliament passed more than 2,500 legislative acts. A substantial number of laws (e.g., 40.4% of all the laws adopted by the 2012 to 2016 parliament) are deliberated

according to the procedure of special urgency, which limits the possibility to thoroughly discuss proposals during the legislative process.

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, state policies shift after each parliamentary election (e.g., in autumn 2016, the adoption of the new Labor Code was suspended), reducing predictability within the economic environment. This is particularly true for major infrastructural projects and social policy. For example, pension system rules are frequently amended, increasing uncertainty and reducing trust in the state. 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.

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 ranked 5 out of 113 countries in the 2016 rule of law index. However, experts have warned that the situation is deteriorating.

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 the Constitutional Court is possible, making the Netherlands (along with the United Kingdom) 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 appeals to European and other international 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 too often prioritizes managerial feasibility over political and legal requirements. 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 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, "De rechtsstaat is doof, blind, en 'alles zit vast'," 28 March 2017

NRC-Handelsblad, "De strafrechtspraak staat er niet goed voor," 21 April, 2017

NRC-Handleblad, "Vooral de VVD zet de grootste stap achteruit," 12 March 2017

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 structural problems and ongoing political change, this causes some legislative uncertainty. During the review period, this was evident in the Costa government's reversal of several measures passed by its predecessor, the Passos Coelho government.

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 20,000, including 800 laws, in February 2017. 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 years of the Cera government (September 2014 to December 2015), 61.1% of the 131 legislative acts proposed to the National Assembly were subjected to the fast-track or shortened legislation procedure. In 2016, 30 out of 76 legislative acts (39.5%) were adopted using fast-track or shortened 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 31 December 2016. Ljubljana (http://fotogalerija.dz-rs.si/datoteke/Publikacije/Letno_porocilo/Porocilo_o_delu_drzavnega_zbora_v_obdobju_2014_-_2018_-_drugo_letno_mandata_-_januar_2016_-_december_2016_Report_on_National_Assembly%E2%80%99s_work_in_the_Parliamentary_term_2014_-_2018_second_year_January_2016_-_December_2016.pdf).

Haček, M., S. Kukovič, M. Brezovšek (2017): *Slovenian Politics and the State*. Lanham, Boulder, New York, London: Lexington Books.

South Korea

Score 7

The Park Geun-hye scandal, and particularly the Choi Soon-sil scandal, revealed a level of collusion and a degree of rule through private networks that most Koreans believed they already left behind. 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, ultimately leading to President Park’s impeachment. President Moon is expected to return to a more predictable governance style based on the rule of law.

When it comes to the legal system more generally, courts in South 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 to be groundless.

Citation:

“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.

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, had been promised by the government and had reached the committee stage by November 2017 – now named “European Union (Withdrawal) Bill 2017-19.” The dispute over whether the executive was entitled to trigger Article 50, which initiated the process of leaving the European Union, or whether the decision had to be affirmed by the parliament was settled by the supreme court in January 2017. The supreme court ruled that parliament had to be heard before the government could start the EU negotiations, which the government accepted. Shortly afterwards the UK government introduced a bill which parliament accepted on 1 February 2017 and the House of Lords accepted in March 2017. However, the government’s majority remains precarious and will likely be prone to rebellions during the whole process.

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 or sometimes because pressure groups successfully impede the adoption of implementation measures.

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

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. A costly example is provided by the additional tax on dividends imposed in 2012 by the Hollande administration in spite of strong legal reservations. The measure was later struck down both by the European Court of Justice and the constitutional court in October 2017. The courts' decisions imposed an unexpected expense of € billion – 10 billion, which the government will have to pay back to the companies. This has forced the government to set up an exceptional tax on those companies, which are supposed to be paid back. At the end, the new tax will represent half of the due reimbursement.

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 the rule of law itself does not play a major role in Japan. Following strict principles without accounting for changing circumstances and conditions would be seen as naïve and nonsensical. Rather, a balancing of societal interests is seen as demanding a pragmatic interpretation of the law and regulations. Laws, in this generally held view, are supposed to serve the common good, and are not meant as immutable 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, has been delayed until after the 2018 elections.

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. Accessed 21 Feb. 2017.

Trausch, Gilbert. "Die historische Entwicklung des Großherzogtums – ein Essay." In: *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/. Accessed 21 Feb. 2017.

"Die Parteien haben Angst." Luxemburger Wort, 11 June 2017, <https://www.wort.lu/de/politik/zwei-jahre-nach-dem-referendum-die-parteien-haben-angst-593d6249a5e74263e13c1c74>. Accessed 21 Dec. 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. The use of direct orders in ministries has also been prevalent. In one instance from the first half of 2017, direct orders totaling €640,000 were made by the European Affairs Ministry. 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. Overall, legal certainty is robust, though there continue to be instances where the rule of law is misapplied by state institutions. Several laws and practices are in breach of the Maltese constitution or the European Convention on Human Rights: the Justice Sector Act 2016, Standards in Public Life Act 2017, continued use of direct orders by public administration, passing of subsidiary laws that breach primary laws, lack of a sentencing policy to ensure legal certainty in the application of punishment, and ignoring clear provisions in the constitution and instead basing judgments on inferior laws. The Coordination of Government Inspections Act 2017 restricts the number of inspections undertaken by government departments. The act does not exempt independent institutions such as the auditor general and data protection office, potentially restricting these institutions. The recent practice of placing members of parliament on regulatory boards is also unconstitutional.

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

http://www.maltatoday.com.mt/news/national/76165/maltese_perceive_judicial_independence_to_be_fairly_good#.WesFh1uCyM8

The Independent 20/12/17 Kevin Aquilina, The Rule of Law a La Maltese

Malta Today 9/10/17 Former Planning and lands minister is now lawyer for both planning and lands authority

Times of Malta 7/10/17 Ombudsman queries positions of trust

Times of Malta 11/11/17 Ministry spends almost 30,000 euros on Liquor for EU Presidency

Interview with Prof Kevin Aquilina Dean of Law 12/17

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.

United States

Score 6

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. In 2017, President Trump adopted an even more aggressive approach to unilateral action, canceling many Obama-era regulations, especially on the environment. Because these actions will be subject to judicial appeals, businesses and individuals will have difficulty assessing their regulatory obligations for at least several years.

Citation:

<https://www.degruyter.com/view/j/for.2017.15.issue-3/for-2017-0037/for-2017-0037.xml>

Milkis and Jacobs

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 sizable 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 not only relatively unpredictable, but may involve applying the law differently to different citizens or firms, thus creating privileges for some and disadvantages for others.

Croatia

Score 5 The Croatian legal system puts heavy emphasis on the rule of law. In practice, however, legal certainty is often limited. Regulation is sometimes inconsistent and changes often, administrative bodies frequently lack the necessary legal expertise, and 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 The foundations of the state apparatus inherited from the period of British colonial rule have been weakened over the years, but operational capacities and adherence to the law have remained consistent. Following the collapse of bi-communality in 1964 and exclusive exercise of power by Greek Cypriots, constitutional arrangements render a very strong executive (president).

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. Several laws passed by parliament in 2016 were subsequently referred by the president to the supreme court for review and many were found unconstitutional. Action on important matters (e.g., foreclosures) have been delayed, which undermines 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 2017. The executive clashed repeatedly and for long periods with the auditor general and attorney general. The clientelistic rather than meritocratic selections 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:

Cyprus Mail, Finance ministry accused of not respecting the public good, <http://cyprus-mail.com/2017/05/16/finance-ministry-accused-not-respecting-public-good/>

Israel

Score 5

A number of institutions are responsible for legal review of government and administration activities. 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 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. For example, in September 2017, the Supreme Court struck down the government's policy on recruiting ultra-orthodox Jewish citizens into the Israel Defense Forces (IDF). 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 OPT.

Some legal arrangements provide for ad hoc state action when security threats emerge. The Emergency Powers (Detention) Law of 1979 provides for indefinite administrative detention without trial. According to a human rights group, there were 475 Palestinians incarcerated under such charges at the end of May 2017. 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.

The current government has been criticized for seeking to weaken the so-called gatekeepers of democracy, both through verbal attacks on the entities most closely associated with maintaining the rule of law, and through legislative initiatives seeking to undermine these entities' powers in fact. In a speech at the opening of the winter session of the Knesset, Israeli President Reuven Rivlin stated that, "Today, we are witnessing the winds of a revolution... This time, the rule of the majority – is the sole ruler...everything is political – the media is political, the democratic institutions, all of them – from the professional clerks to the State Comptroller – are political, the Supreme Court is political, the security forces are political, and even the IDF, the Israel Defense Forces, is political. The entire country and its institutions – political. This revolution wants to finally tear the supposed masks of hypocrisy from the faces of all the gatekeepers."

Citation:

“Administrative detention,” B’tselem http://www.btselem.org/administrative_detention/statistics

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

Bob, Y. J. “Court orders Government to pass new law or draft all Haredim,” Jerusalem Post, 12.9.2017, <http://www.jpost.com/Israel-News/Politics-And-Diplomacy/Court-orders-govt-to-pass-new-law-or-draft-all-haredim-504901>

“Knesset opens Winter Assembly; Speaker Edelstein: “Parliament’s status eroded due to lack of separation of powers,” The Knesset Website, 23.10.2017: https://www.knesset.gov.il/spokesman/eng/PR_eng.asp?PRID=13599

Weitz, Gidi. “In Israel, No Gatekeepers to Stop Netanyahu’s War on Media,” Haaretz, 02.04.2017: <https://www.haaretz.com/israel-news/.premium-1.780680>

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. The protracted conflicts between the government and important parts of the judiciary have meant that justices and citizens have had to deal with opposing interpretations of the legal status quo.

Citation:

Szuleka, M., M. Wolny, M. Szwed (2016): *The Constitutional Crisis in Poland 2015-2016*. Warsaw: Helsinki Foundation for Human Rights.

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 in the period of review. 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 toward a harmonization of legislation.

Hungary

Score 3

As the Orbán government has taken a voluntaristic approach toward 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 Act on the Protection of Settlements' Images (Act CIV 2017 on 23 June 2017), since in order to ban the use of billboards by the other parties this act was passed as a simple majority law, even though most experts deemed a two-third majority necessary. As many laws are contradictory, it is increasingly difficult to implement them in the system of deconcentrated state administration and the institutions of municipal self-administration.

Mexico

Score 3

The rule of law continues to be undermined by an ineffective judicial system. This point was illustrated forcefully by Mexico's abysmal ranking in the 2017 Global Impunity Index. Mexico received the worst score of all Latin American countries included and fourth from the bottom globally.

Regarding the rule of law, Mexico faces continuous impediments due to violence and corruption. The adoption of a new National Anti-Corruption System in July 2016 was seen by many observers as a major formal step toward 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). Even though further legislation to regulate bribery by companies was approved this year, implementation of the reform has been undermined by a lack of political will. Key positions remain vacant, such as the special anti-corruption prosecutor.

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. Criminal courts lack transparency, which further undermines trust and confidence in the judicial system. Overall, the system is particularly ineffective when it comes to prosecuting powerful individuals, such as former public officials. In this context, and also due to the security crisis, existing legal regulations often do not effectively constrain government and administration.

Citation:

Latin American Regional Report: Mexico & Nafta (September 2017). "Mexico retains poor position in impunity rankings."

Turkey

Score 2

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 2016, the Council of State, the country's highest administrative court, received more than 272,211 files and reviewed 135,741 cases. There is no available data about the average length of time spent on each case or how many procedures and actions were annulled by administrative courts.

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, at least 110,000 public servants mainly from the military, judiciary, health sector and universities were dismissed. The restructuring of the public service will take time and lead to further uncertainty, especially given the need to harmonize the current legal framework and constitutional amendments. More importantly, the government regulated some public matters by the state of emergency decree instead of through legislation, as is required by the constitution. During the review period, the practice of detaining and releasing journalists and pro-Kurdish politicians without clear legal cause became a regularity. The State of Emergency Procedures Investigation Commission has been established and is expected to publicize its decisions by the end of 2017.

Citation:

European Commission, Turkey 2016 Report, Brussels, 9.11.2016, 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 (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)

"1 yıla damga vuran 26 KHK," 20 July 2017, <https://www.gazeteduvar.com.tr/gundem/2017/07/20/1-yila-damga-vuran-26-khk/> (accessed 1 November 2017)

"TÜSİAD Başkanı Bilecik: OHAL'in mümkün olan en kısa sürede sonlandırılması önemlidir," 5 February 2017, <https://www.ntv.com.tr/ekonomi/tusiad-baskani-bilecik-ohalin-mumkun-olan-en-kisa-surede-sonlandirilmesi-onemli,qgu1SW97uUqtTBH4lthayg> (accessed 1 November 2017)

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. However, the rule of law index of the World Justice Report that includes judicial review ranked Germany 8 out of 113 countries.

Citation:

<https://www.weforum.org/reports/the-global-competitiveness-report-2017-2018>

https://worldjusticeproject.org/sites/default/files/documents/ROLIndex_2016_Germany_eng%20%282%29.pdf

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 the Westminster system of which many Commonwealth countries are a part, 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, New Zealand's 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 is controlled by a kind of inner-parliament, an arrangement that constitutes 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 present Sipilä government was recently criticized for not taking the concerns of the Chancellor of Justice into full account when preparing bills. In consequence, several bills put forth by the Sipilä government have been subject to heavy review by the 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. Administrative courts are organized on three levels (administrative tribunals, courts of appeal and the Council of State, or Conseil d'Etat). The courts' independence is fully recognized, despite that, for instance, the Council of State also serves as legal adviser 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. Gradually, the Constitutional Council has become a full-fledged 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 per year, allowing for a thorough review of past legislation. This "a posteriori control" complements the "a priori" control of constitutionality, which might be exerted by the council before the promulgation of the law, provided that 60 parliamentarians introduce such a request.

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 the 2013 – 2014 period, the Supreme Court was similarly criticized for overturning an "infiltration law" set up to implement policy regarding illegal immigration. Nevertheless, it was ranked as one of the top four most-trustworthy governmental institutions in a 2016 survey conducted by the Israeli Democracy Institute.

The independence of the judiciary system is established in the basic law on the judiciary (1984), various individual laws, the ethical guidelines for judges (2007), numerous Supreme Court rulings and in the Israeli legal tradition more broadly. These instruct governing judicial activity by requiring judgments to be made without prejudice, ensuring that judges receive full immunity, generally banning judges from serving in supplementary public or private positions, and more. Judges are regarded as public trustees, with an independent and impartial judicial authority considered as a critical part of the democratic order.

During the period under review, Minister of Justice Ayelet Shaked and Minister of Education Naftali Bennett announced the introduction of a bill that would limit the Supreme Court's authority to strike down laws. The proposed basic law would include an override provision that would allow a Knesset majority to vote to bypass Supreme Court rulings.

Citation:

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

Herman, Tamar, "Israeli Democracy index 2016," The Israel Democracy Institute. (Hebrew) <https://www.idi.org.il/media/7799/democracy-index-2016.pdf>

Hovel, Revital, "Right-wing Israeli Ministers Introduce Plan Targeting High Court's Powers," Haaretz, 15.9.2017, <https://www.haaretz.com/israel-news/.premium-1.812425>.

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>

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 public administration are considered within the system of administrative courts. These disputes can include the legality of measures passed and activities performed by administrative bodies, such as ministries, departments, inspections, services and commissions. The system of administrative courts consists of five regional administrative courts and the supreme administrative court.

The overall efficiency of the Lithuanian court system, 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 current volume of incoming cases. Lithuania is one of the leading countries in the European Union in terms of the

length of proceedings: around 100 days is needed to resolve litigious civil and commercial cases in first instance courts. 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 increasing. The clearance rate of administrative cases and their disposition time increased between 2013 and 2014.

According to opinion surveys (i.e., Vilmorus surveys), public trust in the courts is low, but increasing modestly (27.7% in July 2016, increasing to 31% in May 2017 – the highest level since 1998). Public trust in the Constitutional Court is higher, according to Baltic Survey, at 65% in November 2016.

Citation:

The EU Justice Scoreboard, see http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm

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 about 1,100 judgments by the Administrative Court in 2016, as well as 277 judgments between 2015 and 2016 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. Accessed 21 Feb. 2017.

Rapport d’activité des juridictions administratives. La Justice Grand-Duché de Luxembourg, 2016. www.justice.public.lu/fr/publications/rapport-activites-administratives/Rapports-juridictions-administratives-2016.pdf. Accessed 21 Dec. 2017.

United States

Score 9

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. At least in the United States, however, judicial review does not simply ensure that legislative and executive decisions comply with “law,” in some neutral or consistent sense. The direction of judicial decisions depends heavily on the ideological tendency of the courts at the given time. The U.S. federal courts have robust authority and

independence but lack structures or practices to ensure moderation or stability in constitutional doctrine.

In recent years, the Supreme Court has been sharply divided, with a 5 to 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 to 4 liberal-conservative split, hindering its ability to rule on a considerable number of issues. In a sharp break from past practice, the Republican-controlled Senate refused to act on Obama's nomination of a replacement for more than a year. After the 2016 election, President Trump nominated and the Senate confirmed a conservative Republican justice. The Senate's handling of the appointment is an indicator of the partisan and ideological character of the federal judiciary in this era.

Judicial review remains vigorous. In 2015 and 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. During 2017, federal courts have blocked the Trump administration's constitutionally dubious travel ban affecting visitors from certain Muslim countries as well as Trump's executive decision to end the DACA program.

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, which might include basic knowledge of psychological conditions and illnesses.

Belgium

Score 8

The Constitutional Court (until 2007 called the Cour d'Arbitrage/Arbitragehof) is responsible for overseeing 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 the government, and often question or overturn executive-branch decisions at the federal, subnational and local levels. The most recent sources of contention have been the anti-terror measures passed by the government, along with measures restricting foreigners' rights. As in many countries, policymakers seeking to extend the police's powers of investigation have skirted the thin line between respecting and infringing upon fundamental civil rights. Consequently, government proposals in these areas have regularly been struck down or modified by these two courts.

The Council of State is split into two linguistic chambers, with one being Dutch-speaking and the other French-speaking. These chambers are each responsible for reviewing the administrative acts of the regions and communities that fall under their respective linguistic auspices. This 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. In November 2016, Law No. 20,968 was enacted which modified the competences of the military justice defined by Law No. 20,477. Henceforth, no civilian – perpetrator or victim – will be prosecuted by military courts. The new law also introduced the crime of torture into the criminal code.

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.

Citation:

<https://prensa.presidencia.cl/comunicado.aspx?id=56160>

<https://www.bcn.cl/leyfacil/recurso/delito-de-tortura>

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 (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. Brussels asks Cyprus to address inefficiencies in public sector, Cyprus Mail, 23 May, 2017, <http://cyprusbusinessmail.com/?p=45508>

2. Judicial system 'unacceptable', court buildings 'a disgrace' top judge says, Cyprus Mail, 26.10.2017, <http://cyprus-mail.com/2017/10/26/judicial-system-unacceptable-court-buildings-disgrace-top-judge-says/>

Czech Republic

Score 8

Czech courts operate 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. During the period under review, the Constitutional Court deliberated on 30 cases, of which 15 were proposed by a group of senators. In its most important decision in 2017, the

court upheld an amendment of the law on conflict of interest, against a constitutional complaint by President Zeman. In other high-profile decisions, the court declared the treatment of refugees in the detention facility in Bela unconstitutional and nullified provisions in the adoption law that discriminate against individuals living in same-sex registered partnership. Debates on the reform of the judiciary, as initiated by Minister of Justice Robert Pelikan in 2016, have largely focused on the training of candidates for judges. The justice minister announced his intention to change the rules on the selection of judges, so as to prevent candidates without trial experience from entering regional courts.

Pospíšil, I. (2018): Ein aktivistisches Verfassungsgericht als Korrektiv der Politik: Struktur, Besetzung und Rechtsprechung, in: A. Lorenz, H. Formánková (Hrsg.), Das politische System Tschechiens. Wiesbaden: Springer VS, 131-152.

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 radical left/far-right coalition government of Syriza-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, in October 2016, the supreme administrative court (Symvoulío tis Epikrateias) annulled the Syriza-ANEL government's effort to grant a government minister, rather than the appropriate independent regulatory authority, the power to award nationwide TV licenses. In the period under review, the same court proclaimed the Ministry of Finance's inspection and re-appraisal of household

and business tax declarations, which had been filed more than five years ago, unconstitutional. In October 2017, the court also declared unconstitutional the government's requirement that a large number of public officials, from higher-ranking judges to low-ranking firefighters, fill out and submit a new, very long and demanding personal asset declaration, including all kinds of property and bank accounts of officials and their family members. In short, courts' independence from government has increased.

Italy

Score 8

Courts play an important and decisive role in Italy's political 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), a representative body elected by the members of the judiciary (and partially by the parliament), governs the system without significant influence by the government. Ordinary and administrative courts, which have heavy caseloads, 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 Gentiloni government has continued the policies of the previous government to increase the efficiency of the judicial system. Digitalization of procedures has been promoted and the government has introduced new measures to resolve civil proceedings faster as a way to affect proceedings related to economic activities. The 2017 report of the Minister of Justice suggests that these measures have had some success.

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." The head of state, who has the power to block laws approved by the parliament that are seen to conflict with the constitution, adds another pre-emptive control.

Citation:

https://www.giustizia.it/giustizia/it/mg_2_15_7.page

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 2017, 51% of administrative cases in a first instance court conclude within 6 months, although 36% require up to a year. In the appellate courts, the situation is worse, as 46% of cases require 6 to 12 months, 20% 12 to 18 months and 13% even longer. 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 2016, the court received 479 petitions, of which 302 were forwarded for consideration. The court initiated 31 cases. The court dealt with a wide range of issues, including calculation of pensions, questions surrounding insolvency and personal data protection.

Citation:

1. Judicial Information System Database, Available at: http://tis.ta.gov.lv/tisreal?FORM=TIS_STaT_O
2. The Constitutional Court Case Database, Available at: <http://www.satv.tiesa.gov.lv/?lang=1&mid=19>
3. Valts Kalniņš (2011), Assessment of National Integrity System, p.99, Published by DELNA, Available at: http://www.transparency.org/whatwedo/pub/national_integrity_system_assessment_latvia, Last assessed: 21.05.2013.
4. Constitutional Court (2017). Overview of the work of the Constitutional Court 2016. Available at: <http://www.satv.tiesa.gov.lv/blog/2017/02/20/parskats-par-satversmes-tiesas-darbu-2016-gada/>. Last assessed 22.11.2017.

Portugal

Score 8

The judicial system is independent and works actively to ensure that the government conforms to the law.

The highest body in the Portuguese judicial system is the Supreme Court, which is made up of 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 judges appeals on the basis of matters of law rather than on the facts of a case, and has a staff of 60 justices (conselheiros). There are also district courts, appeal courts and specialized courts, as well as a nine-member Constitutional Court that reviews the constitutionality of legislation. In addition, there is a Court of Auditors (Tribunal de Contas), which is also a constitutionally prescribed body and is defined as a court under the Portuguese legal system. This entity audits public funds, public revenues

and expenditures, and public assets, all with the aim of ensuring that “the administration of those resources complies with the legal order.” In total, there are more than 500 courts in Portugal and 3,000 judges. Nevertheless, there is a shortage of judges in relationship to the number of outstanding cases, which creates delays within the system.

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. The Constitutional Court has repeatedly demonstrated its independence by annulling controversial decisions by the governing coalition, for instance on the candidacy rights of former Prime Minister Janša and the referendum on same-sex marriages. However, the lower courts have sometimes been criticized for letting influential people off the hook. In a spectacular case, Zoran Janković, the incumbent mayor of Zagreb which has faced a dozen of corruption charges, avoided conviction in 2017.

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. In March 2017, the Constitutional Court unanimously upheld the impeachment of President Park amid massive public protests, demonstrating its independence from government influence.

United Kingdom

Score 8

The United Kingdom has no written constitution and no constitutional court, although the supreme court fulfills this function. Consequently, the United Kingdom 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 United Kingdom'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.

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 and is currently at 43% (2017). 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).

In 2017, a sitting Supreme Court justice sued a former justice for libel. Another sitting justice speculated in a newspaper interview that the former justice may also have broken the law by seeking, while on the bench, to interfere in a case handled by another justice. Disputes between justices do not inspire confidence and trust, least of all when they trade accusations of illegal behavior.

Citation:

<http://www.gallup.is/nidurstodur/traust-til-stofnana/>

Gunnlaugsson, Jón Steinar, “Með lognið í fangið – um afgang Hæstaréttar eftir hrun“ (With the Stream – On the Blunders of the Supreme Court After the Crash), BP útgáfa, Reykjavík, 2017.

Malta

Score 7

Malta has a strong tradition of judicial review, and the courts have traditionally exercised restraint on the government and its administration. In a 2017 case, Judge Wenzu Mintoff ruled against the ruling Labor party in a case involving the ombudsman. 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.

There have been calls to reform certain aspects of the process. Changes have been recommended with regard to the role of the attorney general who is the chief prosecutor but also acts as a legal adviser to the government. These two roles would be decoupled and instead an individual would serve as an independent prosecutor general and a second individual would take on the role of the attorney general, acting as the government’s advocate. The process through which court experts are chosen should also be revised to be more transparent.

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 2017 Justice

Scoreboard noted that more cases were being dealt with, the time needed to resolve cases had fallen drastically, the percentage of resolved cases had increased and the number of pending cases had fallen. Of those surveyed, 50% rated the independence of the courts and the judiciary as good or very good, an improvement over 2016. In 2017, no judges were transferred except for by the judiciary council and there were no dismissals. In the World Economic Forum's global ranking for 2017 on the independence and impartiality of the judiciary, Malta was ranked in 51st place among 137 states, falling from 44th place in 2016. 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. The number of judges as a percentage of the population remains low, indicating difficulty in finding suitable candidates to take up the post; this may be linked to inadequate salaries and or the responsibilities that judges bear. Online information on published judgments are available, but there is no online information on the preliminary stages of a case. Delays and deferments may count against the process, but have fallen in number in recent years.

Citation:

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

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

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

<http://www.maltatoday.com.mt/news/national/76165/maltese-perceive-judicial-independence-to-be-fairly-good#.WesFh1uCyM8a>'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. Unlike the U.S. and German 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. In 2017, new concerns emerged. A deputy minister of legal affairs openly admitted that he cut back state-supported legal assistance to ordinary citizens to

achieve higher court sentences. And in the drugs- and crime-ridden province of Brabant, police, mayors and fiscal authorities directly “harass” suspects rather than pursue legal procedures, which they perceive as a time-consuming nuisance.

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

NRC-Handelsblad, “Teeven wilde strengere straffen via ‘afknippen’ van rechtsbijstand,” 19 May 2017

NRC-Handelsblad, “Crisis in Brabant dreigt strafrechter in te halen,” 27 May 2017

Pieter Tops and Jan Tromp, 2016. *De achterkant van Nederland. Leven onder de radar van de wet*, Balans

Spain

Score 7

The judicial system is independent and 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. The high number of

convictions imposed by the European Court of Human Rights for violating the right to a fair trial point to systematic problems in the Spanish justice system that must be addressed by public authorities. The Executive Opinion Survey published by the World Economic Forum and similar opinion polls show that most Spanish respondents find the judicial system to be too slow. 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. The situation in Catalonia may have put the independence of the judiciary to the test. Several judges at various levels have been implicated and the Constitutional Court has endorsed their decisions.

Citation:

April 2017, European Commission: "2017 EU Justice Scoreboard"
http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm

Bulgaria

Score 6

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. The changes involve the creation of two separate panels – one overseeing judges, the other overseeing prosecutors. The Supreme Judicial Council which stepped into office in September 2017 is widely considered to be an improvement over the previous council, especially with respect to the members of the judges' panel. It is expected that this will make courts more independent from outside influence.

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) 750 final, Brussels (https://ec.europa.eu/info/sites/info/files/comm-2017-750_en_0.pdf).

Japan

Score 6

Courts are formally independent of governmental, administrative or legislative interference in their day-to-day business. The organization of the judicial system and the appointment of judges are responsibilities of the Supreme Court, so the appointment and the behavior of Supreme Court justices are of significant importance. Some critics have lamented a lack of transparency in Supreme Court actions; moreover, 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 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 2017, the Supreme Court ruled that the use of GPS signals to locate a suspect or his belongings requires a warrant; the case, on which lower courts were divided, had involved police in Osaka doing so without a warrant. On the other hand, in 2016 the Supreme Court let a lower court ruling stand according to which Muslims can be surveilled because of their religion.

Citation:

Law Library of Congress (USA), Japan: Supreme Court Rules GPS-Based Investigation Requires Warrant, Global Legal Monitor, 21 March 2017, <http://www.loc.gov/law/foreign-news/article/japan-supreme-court-rules-gps-based-investigation-requires-warrant/>

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-green-lit-islamaphobia-a7109761.html>

Romania

Score 6

Romania's judiciary has become more professional and independent over time, as shown by the various indictments and convictions of prominent politicians and businessmen and the increasing assertiveness of the Supreme Council of Magistrates (CSM). The integrity of Romania's judiciary was tested in the period of review when the government coalition tried to push through controversial amendments to the Criminal Code as well as a broader judicial reform package threatening the independence of the courts. The CSM has strongly criticized the reforms. In September 2017, 4,000 (out of a total of about 7,000) judges signed a letter asking the government to withdraw its reform package.

Citation:

European Commission (2017): Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism. COM(2017) 751 final, Brussels (https://ec.europa.eu/info/files/progress-report-romania-2017-com-2017-751_en).

Slovakia

Score 6

The Slovakian court system has for long suffered from low-quality decisions, a high backlog of cases, rampant corruption and repeated government intervention. 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. Lucia Žitňanská, the minister of justice in the third Fico government, has sought to foster transparency and fight corruption in the judicial system. Among other things, the ministry has started to create a new database to be used for improving the training of justices and their allocation to the courts. The Constitutional Court has generally operated independently of the executive branch of government. However, its performance has suffered from a high backlog of cases, aggravated by a long-standing stalemate between President Kiska and parliament over the appointment of new justices. In its most important decision in the period under review, the court ruled that the amnesties granted by then-prime minister Mečiar in 1998 were not in line with his duty of restraint. This ruling has enabled the criminal prosecution of Mečiar for the kidnapping of Mr. Kováč, Jr., the son of the former president.

Citation:

Lalík, T. (2017): Tracing constitutional changes in Slovakia between 2008-2016, in: *Hungarian Journal of Legal Studies* 58(2): 117-138.

Croatia

Score 5

Croatia has among Europe's highest per capita number of judges and court personnel. The independence and quality of the judiciary were a major issue in the negotiations over EU accession. Reforms targeting improved judicial independence introduced 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. Justices are now selected by a formally independent council (the State Judicial Council, or SJC) that consists of their judicial peers (nominated and elected in a process in which judges of all courts participate), two legal experts from academia (elected by their peers) and two members of the Sabor (elected by a parliamentary majority). 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. Attempts at a further reform of the judiciary by Ante Šprlje, the MOST-nominated minister of justice in the first Plenković government, were abandoned after his dismissal and the change in the governing coalition in May 2017. During the period of review, a number of prominent individuals accused of crimes were acquitted, which underscores the Croatian court's lack of effectiveness and independence.

Mexico

Score 5 The Supreme Court, having for years acted as a servant of the executive, has become substantially more independent since the transition to democracy. Court decisions are less independent at the lower level, particularly at the state and local level. 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 U.S.-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 security crisis remains to be seen. Progress throughout 2017 has been limited, and implementation is significantly behind schedule.

Overall, the courts do a poor job of enforcing compliance with the law, especially when confronted with powerful individuals. The most prominent recent example is the inability of law enforcement to arrest several former governors wanted for corruption and money laundering.

Citation:

Angel, A. (11 July 2017) "Seis carencias que tiene el nuevo sistema penal acusatorio, según expertos" Blogpost available at <http://www.animalpolitico.com/2017/07/clave-nuevo-sistema-penal/>.

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, the Kúria (Curia, previously the Supreme Court) and the National Office of the Judiciary (OBH) have increasingly come under government control and haven often been criticized for making biased decisions. The same goes for Péter Polt, the Chief Public Prosecutor and a former Fidesz politician, who has persistently refrained from investigating the corrupt practices of prominent Fidesz oligarchs. As the Alliance of Hungarian Judges (Magyar Bírói Egyesület) has repeatedly criticized, OBH President Tünde Handó has no formal power to promote

judges to a higher position, but has in fact used her position to influence decisions. As a result of the declining independence and quality of the Hungarian judiciary, more and more court proceedings have ended up at the European Court of Human Rights (ECHR) in Strasbourg. Hungary is among the countries generating the most cases, and the Hungarian state often loses these lawsuits.

Poland

Score 4

Polish courts are relatively well-financed and adequately staffed, but have increasingly come under government influence. In 2017, the takeover of the Constitutional Tribunal in the PiS government's first year in office was followed by a series of reforms that aimed at limiting the independence of the courts. These reforms sparked massive international protests and were only slightly watered down after President Duda vetoed two out of four laws. The laws have given the minister of justice far-reaching powers to appoint and dismiss court presidents and justices, and have given the Sejm the right to select the 15 members of the National Council of the Judiciary by a simple majority. In addition, the composition of both the National Council of the Judiciary and the Supreme Court will soon change. Incumbent members of the National Council will lose their positions in March 2018, while the terms of the Supreme Court justices have been reduced indirectly by lowering the retirement age from 70 to 65 years. These legal changes, some of which are clearly unconstitutional, were accompanied by the dismissal of dozens of justices and a media campaign against the judiciary financed by public companies.

Citation:

Konieczny, T. T. (2017): Farewell to the Separation of Powers – On the Judicial Purge and the Capture in the Heart of Europe, *Verfassungsblog*, July 19, 2017 (<http://verfassungsblog.de/farewell-to-the-separation-of-powers-on-the-judicial-purge-and-the-capture-in-the-heart-of-europe>):

Machińska, H., R. Vetter (2017): Die PiS und der demokratische Rechtsstaat. *Polen-Analysen Nr. 204*, Bremen (<http://www.laender-analysen.de/polen/pdf/PolenAnalysen204.pdf>).

Turkey

Score 3

The constitution (Article 9) emphasizes judicial impartiality and independence. Moreover, the constitution (Article 125) 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.

According to the amended constitution (Article 105), a parliamentary investigation can be opened against the president if an absolute majority in the parliament votes that the president likely committed a crime. Criminal investigations against the

general chief of staff and other army commanders can be initiated with the prime minister's approval. Moreover, the trial of the under-secretary of the National Intelligence Service (MİT) is subject to the approval of the president. Acts within the president's area of competence, decisions of the Supreme Military Council (excluding acts relating to promotion or retirement) and decisions of the Council of Judges and Public Prosecutors (except for dismissals of public officials) are open to judicial review.

The Turkish judiciary is currently under severe pressure, given the substantial increase in cases. The effectiveness of the judiciary in the aftermath of the attempted coup was further compromised by the dismissal of 4,000 judges, prosecutors and judicial staff. In order to fill the large number of vacancies in the judiciary, the government launched 4,000 judges and 2,000 prosecutor cadres in mid-2017. However, independent observers state that judicial performance has been slowing down. In January 2017, the Court of Cassation had 804,344 appeal files to be reviewed, while the Council of State had 32,298 first instance court files and 219,977 appeal files. Since 2015, no data about the number of files before administrative courts has been available.

Judicial independence and impartiality has been undermined by the contradictory and unclear court indictments concerning several prisoners. The Cumhuriyet trial started on 11 September 2017, 300 days after executives and journalists of the Cumhuriyet daily newspaper were detained. The judiciary should be fair and neutral in politically oriented cases. However, since 2007, politicization of the judiciary has been increasing. Criminal investigations are not conducted effectively. Prosecutors' indictments do not provide concrete, reliable and objective documentation. Delays and postponements in trials are unreasonably widespread. Finally, courts are known to unfairly discriminate.

Citation:

European Commission, Turkey 2016 Report, Brussels, 9.11.2016, http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_turkey.pdf (accessed 1 November 2016).

European Commission for Democracy Through Law (Venice Commission) Turkey Opinion on the Amendments to the Constitution Adopted By the Grand National Assembly on 21 January 2017 and to Be Submitted to A National Referendum on 16 April 2017, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2017\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e) (1 November 2017)

World Justice Project, Rule of Law Index 2016, https://worldjusticeproject.org/sites/default/files/documents/RoLI_Final-Digital_0.pdf (accessed 1 November 2017)

WEF, The Global Competitiveness Report 2017–2018, 2017, <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf> (accessed 1 November 2017)

T.C. Yargıtay Başkanlığı 2016 Yılı Faaliyet Raporu, February 2017, https://www.yargitay.gov.tr/sayfa/faaliyet-raporu/documents/2016_faaliyet.pdf (accessed 1 November 2017)

T.C. Danıştay Başkanlığı, 2016 Yılı İdari Faaliyet Raporu, http://www.danistay.gov.tr/upload/17_03_2017_123330.pdf (accessed 1 November 2017)

“Askeri Yargıtay ve AYİM kaldırıldı,” Milliyet, 29 April 2017, <http://www.milliyet.com.tr/askeri-yargitay-ve-ayim-kaldirildi-gundem-2441186/> (accessed 1 November 2017)

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)

“CHP'den 1. yılında OHAL raporu: 50 bin tutuklu, 111 bin ihraç,” Cumhuriyet, 20 July 2017, http://www.cumhuriyet.com.tr/haber/turkiye/785737/CHP_den_1._yilinda_OHAL_raporu__50_bin_tutuklu__111_bin_ihrac.html (accessed 1 November 2017)

“2 bin hakim adayı ve 4 bin hakim kadrosu ihdas edildi,” 25 August 2017, <https://www.memurlar.net/haber/690129/2-bin-hakim-adayi-ve-4-bin-hakim-kadrosu-ihdas-edildi.html> (accessed 1 November 2017)

“Journalists Outside Initiative Calls for Solidarity for Next Hearing in Cumhuriyet Trial,” 28 August 2017, <https://bianet.org/english/media/189444-journalists-outside-initiative-calls-for-solidarity-for-next-hearing-in-cumhuriyet-trial> (accessed 1 November 2017)

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.”

The judicial system is organized around a three-tier court system: 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.

The elections of 2017 have resulted in a new governing majority. This may have an impact on the recruitment of Constitutional Court members. The rulings of the court, which have been seen over the last few years as more or less “liberal,” could become more “conservative.” However, there does not seem to be any expectation that the basic rules of the appointment of the court’s members will be changed.

Belgium

Score 9

The Constitutional Court is composed of 12 justices who are appointed for life by the king, who selects candidates from a list submitted alternately 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 Ministry of Justice recently approved the participation of a Bar Association representative in the more advanced judicial-nomination process.

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.

Justice Minister Ayelet Shaked recently unveiled a campaign to change the current seniority system, in which the most veteran Supreme Court justice is automatically selected as court president upon the previous officeholder's retirement. In a discussion in the Knesset Constitution, Law and Justice Committee, Shaked asserted that the seniority system diminished the authority of the Judicial Selection Committee. Arguing in opposition was former Supreme Court President Miriam Naor, who said, "Politicizing the Supreme Court will undermine its independence, the separation of powers, and the ability of the court to protect civil rights in Israel."

Naor added that “the point that must concern all of us is how the rulings of Supreme Court justices will be perceived by the public if the justices are in a race for the president’s post.” Eventually, the effort to change the seniority system proved unsuccessful.

Citation:

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>

Hovel, Revital. “Minister, Chief Justice Agree on Israel’s Next Supreme Court President,” *Haaretz*, 10.7.2017: <https://www.haaretz.com/israel-news/.premium-1.800449>

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

Shoken, 2005: “The Ombudsman on judges office: Annual report 2011,” 2012. (Hebrew) <http://index.justice.gov.il/Units/NezivutShoftim/pirsomeyhanaziv/Doch/Documents/2012.pdf>

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

Lithuania

Score 9

The country’s judicial appointments process protects the independence of courts. The 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 56 out of 137 countries. Based on the EU Justice Scoreboard, the perceived independence of courts and judges among the general public is around the EU average. Around 50% of Lithuanian respondents assessed the independence of courts and judges as very good or good in 2016 and 2017. Public trust was undermined by the perceived interference of government, politicians, and economic and other special interest groups, and respondents’ opinion that the status and position of judges does not guarantee their independence.

Citation:

The 2017 – 2018 Global Competitiveness Report of the World Economic Forum: [http://www3.weforum.org/docs/GCR2017-](http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf)

2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf

The EU Justice Scoreboard, see http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm

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. Due to the Law Project of 2013, the government plans to delegate the task of nominating and promoting judges to a standing body, the higher judicial council (Conseil supérieur de la magistrature, CSM), based on the French model. This decision is not likely to change the process 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. Accessed 21 Feb. 2017.

“Cour Constitutionnelle.” La justice Grand-Duché de Luxembourg, 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. Accessed 21 Feb. 2017.

“Die aktuelle Verfassung.” Forum.lu, 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.

In September 2017, a judges' strike was narrowly averted. The judges' union called off the strike, which was to begin on 3 October 2017, when it appeared that the parliament would be open to discussions.

Citation:

Diario de Noticias 20 September 2017 "Greve dos juizes foi desconvocada"

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.

Latvia

Score 8

Judges are appointed in a cooperative manner. While the parliament approves appointments, candidates are nominated by the minister of justice or the president of the supreme court based on advice from the Judicial Qualification Board. Initial appointments at the district court level are for a period of three years, followed either by an additional two years or a lifetime appointment upon parliamentary approval. Regional and supreme court judges are appointed for life (with a compulsory retirement age of 70). Promotion of a judge from one level to another level requires parliamentary approval.

Parliamentarians vote on the appointment of every judge and are not required to justify refusing an appointment. In October 2010, a new judicial council was established in order to rebalance the relationship between the judiciary, the legislature and the executive branch. The judicial council has taken over the function of approving the transfer of judges between positions within the same court level.

Judges are barred from political activity. In 2011, the Constitutional Court lifted immunity for one of its own judges, Vineta Muizniece, enabling the Prosecutor General to bring criminal charges for falsifying documents in her previous position as a member of parliament. Muizniece's appointment to the Constitutional Court was controversial because of her political engagement and profile as an active politician. The court has convicted Muizniece, but the case is under appeal. Muizniece was initially suspended from the Constitutional Court pending judgment and then removed from office in 2014 after a final guilty verdict.

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

Citation:

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

Mexico

Score 8

Mexican Supreme Court justices are nominated by the executive and approved by a two-thirds majority of Congress. Judicial appointments thus require a cross-party consensus since no party currently enjoys a two-thirds majority or is likely to have one in the near future. There are some accusations of judicial bias in the Supreme Court, but any bias is not flagrant and is more social than political. The system of federal electoral courts is generally respected and more independent and professional than the criminal courts.

In the case of the national anti-corruption system (SNA) a lack of cross-party consensus has led to stalemate and delayed implementation. The lack of agreement among major parties in Congress has created a situation where none of the 13 judges for the Specialized Administrative Justice Tribunal (TFJA) have been appointed. The TFJA was created to hear government corruption cases.

Citation:

Latin American Regional Report: Mexico & NAFTA (August 2017). “Anti-corruption reform fails to convince.”

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 by absolute majority. The justices are appointed for a term of nine years and select 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 March 2017, four new Constitutional Court justices were appointed by the National Assembly, all with an overwhelming majority of votes.

Croatia

Score 7 The Constitutional Court of the Republic of Croatia has 13 judges who are elected for a term of eight years. Judges are appointed by the Croatian parliament (Sabor) on the basis of a qualified majority (two-thirds of all members of the Sabor). Prescribed by a constitutional law, the eligibility 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. In 2016, for the first time since the 1990s, active politicians were elected judges of the Constitutional Court. The politicization of appointments continued in October 2017 as two of the three newly appointed judges, Miroslav Šeparović and Mato Arlović, have had strong political affiliations.

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. Five of the 13 supreme court justices are female.

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)

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 JAAB 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. According to the Council for Jurisprudence (Raad voor de Rechtspraak) "...in the Netherlands political appointments don't exist. Selection of judges is a matter for judges themselves, of the courts and the Supreme Court, on the basis of expertise alone. You cannot even raise the issue of political or confessional convictions." 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 appointing former politicians 'in good standing', and through a considerable number of double appointments. Only 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).

De Volkskrant, “Worden in andere EU-landen ook rechters door politici benoemd, zoals Polen beweert? Nou nee,” 23 July 2017

Spain

Score 7

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 politicized and typically long process. 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 Senate and 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. The problem lies not so much in the nomination of the judges of the high courts, but in their corporate culture and in the protection against pressures on their behavior.

Citation:

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>

April 2014, Pablo Oñate and Juan Rodríguez-Teruel: “The political recruitment to the Spanish Constitutional Court (1980-2014)”

http://www.academia.edu/8418599/R_eruitment_of_Spanish_Constitutional_Court_Members

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. In general, they are likely to reflect the political and legal views of the presidents who appointed them. Over the last 30 years, however, judicial appointments have become highly politicized. With the severe polarization of Congress in the 2000s, the opposition-controlled Senate has been increasingly willing to hold up confirmations for federal judgeships. When, however, the president's party controls the Senate, the president's nominees will receive casual scrutiny, with no requirement of ideological consensus. (Owing to a rule change introduced by the Democratic-controlled Senate in 2013, the Senate minority cannot filibuster most judicial appointments.) These arrangements fail to guarantee a politically "neutral" judiciary.

As of December 2017, Trump has nominated 59 people for federal judgeships. Among them, 19 have been confirmed by the Republican-controlled Senate: Neil Gorsuch to the Supreme Court, 12 circuit court judges and six district court judges. So far this year, four of Trump's nominees have been judged by the standing committee of the American Bar Association to be "not qualified." By comparison, no nominee received that rating from the ABA during President Obama's first two years in office. While the White House has suffered from disorganization in some areas, the judicial nominee process has been relatively efficient and analogous to those in past administrations.

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. In recent years, a debate has emerged whether diversity, as well as representativeness, should play a role in selecting judges.

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>

<http://www.hcourt.gov.au/justices/about-the-justices>

<https://www.ruleoflaw.org.au/australia-high-court-appointment/>

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 current Liberal government has set up an independent, non-partisan advisory board to identify eligible candidates for Supreme Court Justices in an effort to provide a more transparent and inclusive appointment process. The first Supreme Court Judge nominated by Prime Minister Trudeau through this process was Justice Malcolm Rowe of Newfoundland and the second was Sheilah Martin from Alberta. Both appointments were widely praised.

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>

Greece

Score 6

Before the onset of the crisis, the appointment of justices was almost exclusively managed 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, the principle of seniority was partly curbed as the new president of the Areios Pagos court was not the court's most senior member. The same occurred in fall 2017 when the same government appointed a new president, selecting a younger justice over older candidates for the presidency. Meanwhile, the previous president, who had been selected by the Syriza-ANEL government in 2015, had retired and in the summer of 2017 joined the office of Prime Minister Tsipras (the Prime Minister's Office) as a legal advisor. Under Syriza-ANEL's rule, the selection and appointment of judges has become more politicized.

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.

Slovakia

Score 6

The justices of the Constitutional Court (CC) and the Supreme Court (SC) are selected by the president on the basis of proposals made by the parliament (National

Council of the Slovak Republic), without any special majority requirement. Since 2014, 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. Ignoring a decision by the CC, Kiska blocked the appointment of new justices, arguing that the candidates greenlighted by the National Council do not fulfill the high requirements for Constitutional Court justices. As a result, three out of 19 seats in the CC remained vacant for about three years. Following recommendations by the so-called Venice Commission (Council of Europe's European Commission for Democracy Through Law) in March 2017, Kiska eventually gave in in early December 2017, so that the vacancies could be filled. Minister of Justice Lucia Žitňanská (Most-Híd) has clarified the rules on the selection of CC justices. In 2018, another nine justices will have to be replaced.

Citation:

Slovak Spectator (2017): President to appoint missing Constitutional Court justices, 13.12.2017 (<https://spectator.sme.sk/c/20717565/president-to-appoint-missing-constitutional-court-justices.html>).

South Korea

Score 6

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, although there is cooperation between the branches in the nomination process. The process is formally transparent and adequately covered by public media, although judicial appointments do not receive significant public attention. 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 National Assembly holds nomination hearings on all nominees for the Supreme Court and the Constitutional Court.

In September 2017, President Moon Jae-in's initial nominee to head the Constitutional Court was rejected by parliament, the first time such a rejection had taken place.

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

Korea Herald. "Moon names new nominee for Constitutional Court Chief." October 27, 2017. <http://www.koreaherald.com/view.php?ud=20171027000588>

Switzerland

Score 6 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. By tradition, judges voluntarily pay part of their salary to the political party to which they are affiliated. This is considered a tax on their salary, which they would not have without the support of their party. In 2017, a committee of the Council of Europe criticized this arrangement and recommended: “the system should be backed up by safeguards to ensure the quality and objectivity of the recruitment of federal judges. Once judges have been elected it is important to sever the ties with the political powers by doing away with the practice whereby judges pay part of their salary to their party.” (GRECO 2017:4)

Another unwritten rule demands representation of the various linguistic regions. There is no special majority requirement.

Citation:

Group of States against Corruption (GRECO/Council of Europe) 2017: Fourth Evaluation report. Corruption prevention in respect of Members of Parliament, Judges and Prosecutors. Switzerland, GRECO: Strasbourg, <https://www.coe.int/en/web/greco/evaluations/switzerland>

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.

The chairs of two supreme courts are appointed with a qualified majority by the Supreme Judicial Council. Over recent years, these positions have been held by both people with highly dubious reputations and political dependencies, and people with very high reputations and capacity to maintain the independence of the court system. The most recent appointment in October 2017 of a new chair of the Supreme Administrative Court falls in the former category.

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, Nicolas Sarkozy and François Hollande) 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 to 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 one of whom even acts as the court's 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 Stanciu (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.

Malta

Score 4

Superior Court judges and magistrates are appointed by the president, acting in accordance with the advice of the prime minister. The independence of the judiciary is safeguarded through a number of constitutional provisions. The prime minister enjoyed almost total discretion on judicial appointments. The only restraints are set in the constitution, which states that an appointee must 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. In 2015, a government-appointed commission recommended reforming the appointment process. In 2016, parliament unanimously passed a law reforming the process. The law did not fully take on board the commission proposal that a six-member autonomous authority carry out a selection process to choose and advise on suitable candidates for the bench, with the final decision remaining with the government. However, all candidates who apply for the post are now vetted by the Commission for the Administration of Justice. Notwithstanding, the absence of formal calls to fill judicial positions and ranking system to assess applicants impedes the process. A recent law on the suspension of judges has been criticized by the dean of the law faculty at the University of Malta on the basis that suspended judges have no right to challenge the suspension and that the removal or dismissal of a judge should not be done by a body that is part of the legislature.

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

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 European Union 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.

In 2017, the minister of justice appointed 15 new judges to a new intermediary court between the district court level and the Supreme Court, including four judges

deemed less qualified than other available applicants according to the review committee's assessment of the applications. Two of the applicants who were bypassed sued and were awarded damages by the Supreme Court. A third applicant has announced that he will also sue for substantial damages. The Supreme Court has ruled that the minister of justice broke the law when she bypassed the recommendations of the review committee. The minister, from the Independence Party, appears likely to have to face a vote of no confidence in parliament.

For all but ten years between 1926 and 2016, control of the Ministry of Justice and the authority to appoint judges alternated between the Independence Party and the Progressive Party. (As part of the reorganization of ministries, the ministry was named the Ministry of the Interior for a short while but the name was subsequently changed back to Ministry of Justice).

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

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

Turkey

Score 3

The 2015-2019 Judicial Reform Strategy continues 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. Following the recently adopted constitutional amendments, four members of the new Council of Judges and Prosecutors (HSK) were appointed directly by the president and seven members were elected by parliament. The HSK does not offer adequate safeguards for the independence of the judiciary and considerably increases political influence over the judiciary.

Citation:

European Commission, Turkey 2016 Report, Brussels, 9.11.2016, 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 (accessed 27 October 2015)

European Commission for Democracy Through Law (Venice Commission) Turkey Opinion on the Amendments to the Constitution Adopted By the Grand National Assembly on 21 January 2017 and to Be Submitted to A National Referendum on 16 April 2017, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdlad\(2017\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdlad(2017)005-e) (1 November 2017)

“Cumhurbaşkanlığı Sistemi’nde AYM ve HSK üyeleri nasıl belirleniyor?,” 17 March 2017, <https://www.ahaber.com.tr/galeri/turkiye/cumhurbaskanligi-sisteminde-aym-ve-hsk-uyeleri-nasil-belirleniyor> (1 November 2017)

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 February 2015 failed to limit the government parties’ control over the process. 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 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 opposition 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 the Lower House elections following their appointment, and to a second review after 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 all of postwar history, no justice has ever been removed through public vote. 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:

Supreme court justice national review looms on same day as Oct. 22 general election, The Mainichi, 16 October 2017, <https://mainichi.jp/english/articles/20171016/p2a/00m/0na/002000c>

Poland

Score 2

The 15 justices of the Constitutional Tribunal are 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 law 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 12 November 2015, 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 a protracted conflict between the government and the Constitutional Tribunal. Until the end of the presidency of

Andrzej Rzepliński in December 2016, the Constitutional Tribunal did not accept three of the five new judges, whereas the government failed to accept the Constitutional Tribunal's decision. When Rzepliński's term expired, the government by legally dubious means succeeded in installing Julia Przyłębska as his successor and in getting the court in line. Przyłębska's appointment and the composition of the Constitutional Tribunal remain highly controversial.

Citation:

Sadurski, W. (2018): How Democracy Dies (in Poland): A Case Study of Anti-Constitutional Populist Backsliding. Sydney Law School, Legal Studies Research Paper No. 18/01, Sydney ([https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3103491.##](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3103491)).

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 2016, Denmark was ranked first together with New Zealand, ahead of Finland and Sweden. Denmark is thus considered one of the least corrupt countries in the world.

This confirms 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. Recently, some officials have allegedly accepted gifts from IT companies.

Citation:
Transparency International, Corruption Perception Index 2016.
https://www.transparency.org/news/feature/corruption_perceptions_index_2016 (Accessed 16 October 2017).

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. Transparency International's

Corruption Perceptions Index 2016 found New Zealand to be the least corrupt country in the world, equal to Denmark.

Citation:

Freedom House: Freedom in the World 2016: <https://freedomhouse.org/report/freedom-world/freedom-world-2016> (accessed October 24, 2016).

Corruption Perceptions Index 2016. Transparency International. https://www.transparency.org/news/feature/corruption_perceptions_index_2016 (accessed 4th July 2017).

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. The 2016 Corruption Perceptions Index by Transparency International ranked Finland in 3rd place out of 176 countries; the country ranked 3rd place in 2014 and 2nd place in 2015. Several individual mechanisms contribute to the Finnish success, 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:

Andersson, U. et al. (eds.) (2017), *Larmar och gör sig till* (Gothenburg: The SOM Institute) (<https://som.gu.se/publicerat/bocker/70.-larmar-och-gor-sig-till>).

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.

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 more than ever openly discussed. 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). Compared with evidence from previous decades, the prevention of corruption has improved in Austria, but could of course be further improved.

Belgium

Score 8

While outright corruption is very uncommon in Belgium, several scandals involving abuse of public-office positions came to the fore in the 2016 – 2017 period. In most of these cases, the public officials involved actually did respect the letter of the law and thus could not be convicted by tribunals. But the scandals were so prominent in the press and shocking for the population that political parties expelled the individuals involved, and when possible also removed them from the positions they were holding. This was also followed by a number of announcements by prominent long-time politicians that they were about to end their political careers. This suggests that more cases existed, but were resolved through “honorable exits.” One consequence has been a decline in Belgium’s performance in the World Economic Forum’s ratings on issues including “public trust in politicians,” “diversion of public funds,” “favoritism in decisions of government officials,” and “efficiency of government spending.”

Most of these “almost legal” abuses involved a combination of very strict rules governing narrowly defined public-office positions with a number of private-public partnerships that legally transformed public entities into private ones. Among other provisions, regulations typically bar public officials from increasing their total earnings above 150% of their base salary by holding additional public positions. However, serving within institutions that have been transformed into private legal entities allow public officeholders to circumvent that law. One of the most shocking instances involved SAMU Social, an institution with the primary goal of “provid[ing] emergency help to the homeless and ... assist[ing] them to exit precariousness” (<http://samusocial.be/>). This institution found to be awarding generous wage supplements to the mayor of Brussels, one of his main political allies, and some family members and close friends.

According to Cumuleo, an activist group seeking to improve the regulation and oversight of public offices, Belgium has joined Macedonia and Armenia among the lowest-ranked countries with regard to effective implementation of the Council of

Europe's anti-corruption recommendations. Nevertheless, outright corruption, for instance within the public administration or in the police, is extremely rare in Belgium. For example, Transparency International ranked Belgium as the 15th cleanest nation out of 176 countries in its 2016 Corruption Perceptions Index. The cases noted above concern only the ability and propensity of some well-connected officeholders to abuse their position to accumulate wealth.

Citation:

WEF: Schwab, Klaus and Sala-i-Marti, Xavier (2017). The Global Competitiveness Report 2017–2018. World Economic Forum editor.

<http://plus.lesoir.be/archive/recup/1452484/article/soirmag/meilleur-du-soir-mag/2017-03-03/vrai-salaire-net-nos-elus>

<http://www.lalibre.be/dossier/scandale-au-samusocial-5938ec48cd702b5fbf08968a?page=1>

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

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

<http://www.brusselstimes.com/opinion/8047/is-belgium-fighting-hard-enough-against-corruption>

<https://www.cumuleo.be/>

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 were 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 30 whose claims were ineligible; of these, nine cases were referred for police investigation. The Senate expense scandal 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.

Citation:

Report of the Auditor General of Canada to the Senate of Canada—Senators' Expenses, June 4, 2015, posted at http://www.oag-bvg.gc.ca/internet/English/parl_otp_201506_e_40494.html

Estonia

Score 8

Abuses of power and corruption have been the subject of considerable governmental and public concern. On the one hand, Estonia has established 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 efficient anticorruption policy. However, they also indicate that loopholes remain in the public procurement process and in party-financing regulations, for example.

In 2016, the number of registered corruption offences increased by 18% compared to 2015 (from 450 to 550). At the same time, the number of criminal acts decreased (from 77 to 54), which shows that corruption offences are often committed by the same persons. Most corruption offences (65%) are related to bribery.

According to survey data, 16% of citizens and 5% employers report that they have been asked to give money, gifts, or take some illegal action for a public service. These figures have been decreasing since 2010. Although only a small percentage of citizens (23%) and civil servants (7%) view that laws can be bought, these figures have increased in recent years. Lobbying remains unregulated, despite Group of States against Corruption (GRECO) recommendations.

Citation:

Ministry of Justice (2017). Vabariigi Valitsuse korruptsioonivastase strateegia 2013-2020: 2016. aasta täitmise aruanne/Government's Anticorruption Strategy 2013-2020. Progress Report 2016/
https://www.korruptsioon.rik.ee/sites/www.korruptsioon.ee/files/elfinder/dokumentid/strateegia_aruanne_2016.pdf
(accessed 26.10. 2017)

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 2017).

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, 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 (2017): <http://info.worldbank.org/governance/wgi/index.aspx#reports>

<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.

On 6 September 2017, Assistant Garda Commissioner Michael O’Sullivan published a report showing that of the 3,498,400 breath tests recorded on the Garda’s Pulse computer system only 2,040,179 were actually recorded using alcohol testing devices. This left a discrepancy of 1,458,221 fictive breath tests. Three causes for this glaring deficiency were presented: (1) systems failures, (2) difficulties in understanding Garda policy, and (3) oversight and governance failures. It is highly regretful that the Department of Justice and Garda authorities have not seen fit to prosecute any member of the Garda force because of the massive over-reporting of alcohol breathalyzer tests.

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 adopted a code of conduct in 2014. 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 regulation came into force in December 2015. 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:

"2016 Corruption Perceptions Index." Transparency International, www.transparency.org/news/feature/corruption_perceptions_index_2016. Accessed 21 Dec. 2017.

EU Anti-Corruption Report. European Commission, 2014. www.ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_luxembourg_factsheet_en.pdf. Accessed 21 Dec. 2017.

"Corruption Perceptions Index 2016." Transparency International, www.transparency.org/news/feature/corruption_perceptions_index_2016#table. Accessed 21 Dec. 2017.

"Eurobarometer – Corruption." European Commission, <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/81007>. Accessed 21 Dec. 2017.

Arrêté grand-ducal du 14 novembre 2014 fixant les règles déontologiques des membres du Gouvernement et leurs devoirs et droits dans l'exercice de la fonction, 2015. www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1380565&fn=1380565.pdf. Accessed 21 Dec. 2017.

Transparency of lobbying in Member States. European Parliamentary Research Service, 2016. www.europarl.europa.eu/EPRS/Transparency_of_lobbying_in_Member_States.pdf. Accessed 21 Dec. 2017.

"Wenn der Staat seine Mitarbeiter belohnt." Luxemburger Wort, 9. Jan. 2015. www.wort.lu/de/business/verwaltungstraete-wenn-der-staat-seine-mitarbeiter-belohnt-54afb60d0c88b46a8ce51051. Accessed 21 Dec. 2017.

Norway

Score 8 There are few well-known 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 are concerns about government corruption in areas such as building permits. During the last few years, some incidences of corruption related to investments and overseas Norwegian business activities have been revealed.

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 United Kingdom 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 member of parliaments' 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 2016) 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

France

Score 7

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. 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 again 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 member of parliament was elected.

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 refused as a consequence. Since then, the finances of his party are under investigation and some instances of malpractice have been identified. The legal anti-corruption framework has recently been strengthened by the “Sapin law” adopted by the end of 2016, which complements existing legislation on various fronts (conflict of interests, protection of whistleblowers). The 2017 presidential campaign was plagued by a scandal involving the former prime minister and candidate of the right, François Fillon, who was initially considered the favorite after a very successful primary campaign. The media reported that his wife and children had been employed using public money as his parliamentary assistants for more than 10 years. While this dubious practice was not illegal, Fillon was unable to document any real work in spite of nearly €1 million paid over that period of time. In parallel, the leader of the National Front, Marine Le Pen, was accused of misusing funds provided by the European Parliament. Immediately after the elections, Macron and his new minister of justice (François Bayrou) decided, as a symbol, to table a bill dealing with the “moralization of public affairs” (“moralisation de la vie publique”). Unfortunately, the new minister and several other colleagues from the same party were suspected of the same bad practices as Marine Le Pen, which forced their resignations a few days after their appointment. Nevertheless, these scandals show the timeliness of the new

law which introduces many additional restrictions, such as the prohibition on parliamentarians employing members of their family, or the suppression of “loose money” that MPs were able to distribute without constraint or control. The new legislation constitutes a major contribution to tackling conflict of interest issues and may help to clean the Augean stables.

Latvia

Score 7

Latvia’s main integrity mechanism is the Corruption Prevention and Combating Bureau (Korupcijas novēršanas un apkarošanas birojs, KNAB). The Group of States Against Corruption has recognized KNAB as an effective institution, though it has identified the need to further strengthen institutional independence to remove concerns of political interference. KNAB has seen several controversial leadership changes and has been plagued by a persistent state of internal management disarray. Internal conflicts have spilled into the public sphere. For example, the previous KNAB director and deputy director were embroiled in a series of court cases over disciplinary measures in 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. Public trust has declined even further: from 41% in 2014 to 29% in 2016. The director’s term concluded in November 2016 and he was not reappointed for a second term. A new selection process was undertaken and a new well-qualified and seemingly independent director, coming from the military, appointed in 2017.

In 2017, a high-profile corruption investigation, dismissed by the prosecutor’s office, has come under public scrutiny. A series of leaked recorded conversations of “oligarchs” colluding to manipulate political decision-making has forced the re-examination of this investigation and the reasons why it failed to lead to prosecution. A parliamentary inquiry process is ongoing.

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. 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. Vienotība, 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 2016, for example, the number of persons tried in the court of first instance increased to 34, from an all-time low of 23 in 2014. Defendants included police officers, customs officers, border guards and one judge. In five cases, sentencing included prison terms. In 2016, the largest bribery case involved a €68,560 bribe, offered to an official of KNAB. The outcome of this case is still pending.

Citation:

1. Corruption °C (2017), Updated Statistics on Convictions for Corruption Offences (2016 Data Added), Available at: <http://providus.lv/article/jaunaka-statistika-par-korupcijas-lietu-iztiesasanu-latvija>, Last assessed: 29.11.2017.

2. Group of States Against Corruption (GRECO)(2012), Fourth Evaluation Round, Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors, Evaluation Report, Available at: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4%282012%293_Latvia_EN.pdf, Last assessed: 21.05.2013

3. Freedom House (2016), Nations in Transit, Country Report, Available at: <https://freedomhouse.org/report/nations-transit/2016/latvia>, Last assessed: 29.11.2017

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

Netherlands

Score 7

The Netherlands is considered a corruption-free country. In Transparency International's Corruption Perception Index 2016, the Netherlands ranked 8 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. 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. In at

least three (out of 17) areas, the Netherlands does not meet the standards for effective integrity policy as identified by Transparency International, with all three areas failing to prevent and appropriately sanction corruption. A good example is the case against a former alderman of the city of Roermond who, convicted for corruption, electoral fraud and violating secrecy rules, was not given the two-year prison sentence demanded by the public prosecution, but a light community service penalty. (Both the public prosecutor and the accused have appealed the verdict, with the latter seeking an acquittal arguing that “Everybody acts the way I did.”)

There have been more and more frequent prosecutions in major corruption scandals in the public sector involving top-executives – particularly in (government-commissioned) construction of infrastructure and housing, but also in education, health care and transport. Transparency problems in the public sector also involve lower ranks, job nominations salaries for top-level administrators. Recently, police and customs officers have been prosecuted for assisting criminal organizations. One high-level police officer in a lecture for the Police Academy used the term “Netherlands Narcostate” to characterize the dire state of affairs.

In July 2016, a new law for the protection of whistle-blowers entered into force. Experts consider the law to be largely symbolic, with real legal protection remaining low and administrative costs high.

Citation:

Transparency International Nederland (2016), Nationaal Integriteitssysteem Landenstudie Nederland.

RTL Nieuws, “Groot onderzoek naar corruptie bij politiek en douane,” 28 February 2017

NRC-Handelsblad, “Niet alleen de agent screenen, maar óók zijn partner en Facebookprofiel,” 16 September 2017

NRC.nl, “Nederland Narcostaat is helaas ook een feit,” 30 September 2017

NRC-Handelsblad, “Jos van Rey veroordeeld tot een taakstraf van 240 uur,” 12 July 2017

Juridisch Actueel, Klokkeluiderswet 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 2016

Corruption Perceptions Index ranked Portugal 29th out of 176 countries, a decrease of one position as compared to the previous year. 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 portions 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 weaknesses in various administrative and legal systems that facilitate corruption.

A GRECO report published in April 2017 stated that Portugal had satisfactorily implemented 10 of the 13 recommendations the body had made regarding the country in 2010, and that the remaining three had been partially implemented. However, this report also noted deficiencies in Portuguese legislation.

Former Prime Minister José Sócrates (2005 – 2011) remains under investigation for alleged corruption, money laundering and tax fraud, and was formally charged with 31 crimes in October 2017. The review period also saw the beginning of a trial on the so-called Golden Visa case, which involves a number of high-ranking civil servants and a former minister of internal affairs, Miguel Macedo (2011 – 2014).

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.

JN (2017), "GRECO: Portugal criticado na luta contra a corrupção," Jornal de Notícias online – 13/4/2017, available online at: <https://www.jn.pt/justica/interior/relatorio-insta-portugal-a-reforçar-criminalizacao-de-corrupcao-6219236.html>

Spain

Score 7

Corruption levels have 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 42nd place in 2017. 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.

Recent trials and public debate on corruption increased awareness among the public. The PP minority government survived a vote of no-confidence in June 2017 brought to parliament by Podemos to denounce rampant corruption. Also, President Rajoy was obliged to testify as a witness in a corruption case in August.

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.

Legislation intended to dissuade such behavior has produced first results. This anti-corruption legislation involves a change to party-funding regulations, a transparency law, and reforms to the criminal code and public-procurement law. In addition, systematic audits of public accounts are mandatory and officeholders must make an asset declaration. 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.

During 2017, the parliamentary Committee for the Auditing of Democratic Quality, created in 2016, initiated a series of public hearings aimed at gathering the knowledge of Spanish and foreign experts on the financing of political parties. As of November 2017, the committee has held 28 hearings and begun drafting its report. The Law 9/2017 (Contratos del Sector Público) on public procurement was approved in November. In addition, the Directive 2014/23/EU of 26 February, concerning application thresholds for the procedures for awarding contracts, was implemented into Spanish law. These new legal frameworks will come into force on 9 March 2018 and aim to achieve greater transparency in public procurement.

Transparency International, 2017, Global Corruption Barometer

https://www.transparency.org/news/feature/global_corruption_barometer_citizens_voices_from_around_the_world
August 2016, Pacto anticorrupción PP-Ciudadanos <http://estaticos.elmundo.es/documentos/2016/08/19/pactoaanticorrupcion.pdf>

GRECO, 2017, V. Fifth Evaluation Round, <https://www.coe.int/en/web/greco/evaluations#%22359946%3A%5B%5D>

United States

Score 7 The first year of the Trump presidency has brought a brazen and unprecedented disregard of established practices to prevent conflict of interest.

The U.S. federal government has long had 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 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 these controls, executive-branch officials have been effectively deterred from using their authority for private gain and prosecutions for such offenses have been rare.

President Trump has openly flouted established practices, if not the law, with respect to conflict of interest. Most obvious, he has refused to sell off his extensive domestic and international business interests (especially hotels, casinos, and resorts) and to put the proceeds in a blind trust to avoid the potential of his financial interests influencing presidential decisions. Many individuals and groups, including foreign governments, stay at or hold events in his hotels in Washington, D.C. and other locations, often at inflated prices – thus directly contributing revenue to Trump’s businesses. He visited his various properties 100 times in his first year. Trump has defended his refusal to move his assets into a blind trust on the grounds that (in contrast with other federal officials) there is no conflict-of-interest statute that pertains to the president. His son-in-law Jared Kushner and daughter Ivanka have continued to run separate business while performing White House roles. The administration has been heedless of conflict-of-interest in appointments to regulatory and other positions. The administration simply refused to provide information to the Office of Government Ethics concerning potential conflicts among appointees, prompting the respected nonpartisan director of the office to resign in protest. Several Trump officials have been embroiled in scandals involving abuse of public resources (such as using military aircraft for vacation travel).

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 of Sebastián Piñera, as many members of the Alianza – including President Sebastián Piñera himself – were powerful

businesspeople. The phenomenon can still be observed in the government of Michelle Bachelet, 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 in recent years have shown that corruption and abuses of power within Chile's political and economic elite, as well as some cases of higher ranked public servants (as in the case of the police and the military), 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 anti-corruption 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 adequately address the issue. Two significant changes were implemented in 2017: amendments to the law on party finance and law on conflict of interest. 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 key test of the law relates to Andrej Babiš. To comply, he transferred all his property into two blind trusts, although there is some doubt over their blindness as there are family members among the trustees. In August 2017, the Chamber of Deputies received a request from the police to lift the immunity of two ANO members of parliament – Andrej Babiš (ANO chairman) and Jaroslav Faltýnek (head of the ANO parliamentary faction) – for prosecution in connection with possible embezzlement of EU funds. Their parliamentary immunity was lifted in September 2017 but regained on their reelection in October 2017. The Czech police are awaiting the findings of the European Anti-Fraud Office (OLAF). In October

2017, prosecutors also charged Babiš's wife, brother-in-law, adult children and several other persons (11 in total) for their part in the fraud.

Citation:

Gotev, Georgi (2017): Czech police charge leading candidate with EU funding fraud, in: Euractiv.com, October 10, 2017 (<https://www.euractiv.com/section/elections/news/czech-police-charge-leading-candidate-with-eu-funding-fraud/>).

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 have 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 tried for fraud, money laundering and breach of trust, though ultimately acquitted. Former Tourism Minister Stas Misezhnikov, a member of the Yisrael Beytenu party, was sentenced to a 15-month sentence for fraud and breach of trust. In addition, former Deputy Interior Minister Faina Kirshenbaum and nine other officials linked to Yisrael Beytenu were indicted for a litany of corruption charges, including bribery, fraud and money laundering.

In 2014 the courts issued an historical ruling sentencing former Prime Minister Ehud Olmert to six years in prison for accepting bribes while serving as mayor of Jerusalem. Recently, Prime Minister Netanyahu has been suspected of involvement in several corruption affairs (the "submarine affair," the "expensive gifts affair," and an alleged attempt to negotiate sympathetic coverage in the Yediot Aharonot newspaper in return for support for legislation that would weaken Yediot competitor Israel Hayom).

According to Meni Yitzhaki, who heads the Israel Police's fraud investigations task force, Israel does not suffer from widespread corruption, but rather features "islands

of corruption.” Yitzhaki stated that the Israeli police address corruption as they would any criminal organization.

Citation:

Aliasuf, Itzak, “Ethics of public servants in Israel,” 1991 (Hebrew) <http://mishkenot.org>

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>

“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>

“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>

Ma’anit, Chen, Former tourism minister Stas Misezhnikov signs plea bargain, Globes, 31.10.2017: <http://www.globes.co.il/en/article-former-tourism-minister-stas-misezhnikov-signs-plea-bargain-1001209817>

Shahm, Udi “Former Netanyahu Aide to Provide Information in ‘Submarine Case,’” Jpost, 3.8.2017 <http://www.jpost.com/Israel-News/Benjamin-Netanyahu/Former-Netanyahu-aide-to-provide-information-in-Submarine-Case-501476>

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).

Transparency International: Corruption Perception Index 2016. http://www.transparency.org/news/feature/corruption_perceptions_index_2016

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. With the reforms of the Monti, Letta, Renzi and Gentiloni governments, the Anti-Corruption Authority has been significantly strengthened and its anti-corruption activity progressively increased (see 2017 ANAC Report).

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

Citation:

https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Attivita/Pubblicazioni/RelazioniAnnuali/2017/re1.anac.2016.doc.06.07.2017_.pdf

Lithuania

Score 6

Corruption is not sufficiently contained in Lithuania. In the World Bank's 2016 Worldwide Governance Indicators, Lithuania scored 73 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 59 out of 100 and ranked 38 out of 176 countries in 2016, down from 32 in 2015. 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. In September 2017, the Special Investigation Service investigated allegations of corruption involving Lithuania's Liberal Movement and Labor Party. The parties are suspected of accepting bribes and selling political influence. For instance, two Liberal Movement members are alleged to have accepted bribes of more than €100,000 on behalf of the party from a vice president of a major business group in exchange for political decisions that benefitted the corporation.

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 to tackle informal payments in health care, and improve the control of conflicts of interest declarations made by public officials. To advance its preparations for OECD membership, the country became a member of the OECD Anti-Bribery Convention in July 2017.

Citation:

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.

The 2017 – 2018 Global Competitiveness Report of the World Economic Forum: <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.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/cpi2016>

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.

Slovenia

Score 6

Corruption has been publicly perceived as one of the most serious problems in Slovenia since 2011. 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 for its lack of determination and professionalism, especially after the resignation of Alma Sedlar, one of the three-strong CPC leadership in September 2017. Allegations of corruption have featured prominently in the debates about the investment by Magna, the construction of the second railway track from Divača to the port of Koper and the health system. The continuing failure of parliament to adopt an ethical code for members of parliament and the re-election of Franc Kangler, the corrupt former mayor of Maribor, into the National Council, the second chamber of the Slovenian parliament, have further raised the doubts about the political elite's commitment to fight corruption.

South Korea

Score 6

The massive recent corruption and abuse-of-power scandal that led to the impeachment of President Park revealed systematic corruption and collusion between the government and big business groups. The scandal also revealed weaknesses in the country's integrity mechanisms and anti-corruption institutions, which failed to uncover these illegal activities taking place at the highest level. At the same time, the scandal showed that the Korean public, civil-society organizations and the media are vigilant and ready to effectively protest top-level abuses of power at the top.

Courts have also been tough on those involved in corruption scandals, handing down prison sentences to many involved. President Park's confidante Choi Soon-sil received three years in prison, and Samsung Vice-Chairman Lee Jae-yong, who is also the heir of the Samsung business group, received five years in prison for his involvement in the scandal. In the aftermath of the scandal, President Moon promised to strengthen anti-corruption initiatives and announced not to pardon members of the elite involved in corruption scandals, as has been common practice in Korea in the past. In September 2017, President Moon presided over the First

Anti-Corruption Policy Consultation Council. This council is tasked with establishing more systematic anti-corruption policies at the national level. The recent corruption scandals are mainly related to lobbying activities involving high-ranking officials, politicians and businesspeople. With an eye to reducing future potential corruption, a new lobbying act is being debated.

Another positive development is that the Kim Young-ran Act that came into effect in September 2016, also known as the anti-graft law (improper solicitation and graft act), has received largely positive feedback and might lead to a deeper cultural change to the gift-giving culture in Korea. The law bans public servants, teachers and journalists from receiving free meals valued over KRW 30,000 (₩30,000), gifts more than KRW 50,000 won, or congratulatory or condolence payments of more than KRW 100,000. In surveys, nearly nine out of 10 citizens have indicated that they believe the law to be effective, with 53% saying that the frequency of requests for job-related favors has declined, and 55.4% responding that their own exchanges of gifts have been reduced.

Citation:

Anti-Corruption and Civil Rights Commission. "President Moon says anti-corruption should be first priority of new government." September 26, 2017. <http://www.acrc.go.kr/en/board.do?command=searchDetail&method=searchDetailViewInc&menuId=020501&boardNum=67059>

Yonhap News. "South Korea moves away from corruption-prone culture." September 24, 2017. <http://english.yonhapnews.co.kr/news/2017/09/22/0200000000AEN20170922012400315.html>

Croatia

Score 5

Corruption ranked high on the agenda of the accession negotiations with the European Union and remains one of the key issues facing the political system. During the period under review, a number of high-profile corruption cases surfaced or were under investigation, involving, among others, a close aide to former Prime Minister Milanović and the most powerful man in Croatian soccer. The Agrokor case has also revealed the co-mingling of economic and political interests in the country. While the main anti-corruption office, the USKOK (Ured za Suzbijanje Korupcije i Organiziranog Kriminala, Croatian State Prosecutor's Office for the Suppression of Organized Crime and Corruption), and the parliament's commission for the conflict of interests have been quite active in opening and investigating cases, the courts have often failed to sanction corruption either as a result of external pressure or a lack of competence.

Greece

Score 5

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.

Instability has plagued anti-corruption mechanisms. In March 2017, the resignation and replacement of Greece's very experienced anti-corruption prosecutor (a new post established in 2011) was a setback for the government's anti-corruption policy. The prosecutor's resignation reflected tensions between the government and the judiciary, and complicated relations between the different prosecuting authorities entrusted with fighting corruption. Meanwhile, between 2016 and 2017, the laxity with which government ministers dealt with issues of corruption among members of the civil service sent the wrong message to past and future offenders.

Yet, in the period under review, the justice system intensified its efforts, not so much to prevent as to punish corruption. In the most important trial, Akis Tsochatzopoulos, the former minister of defense and deputy prime minister of the PASOK governments of the 1990s, was accused of receiving large kickbacks for armament deals. In November 2017, he was sentenced to prison and received a very large fine from an Athens-based second-instance criminal court. Meanwhile, throughout 2017, Greek authorities were preparing new anti-corruption legislation to abide by policy guidelines set by the European Commission and the Council of Europe.

According to a July 2017 report by the Hellenic Federation of Enterprises (SEV), the state has shown a fragmentary approach, and a lack of determination toward combating corruption and promoting transparency in six kinds of state bodies: ministries, town planning authorities, municipal authorities, courts, custom offices, and economic and trade offices at Greek embassies abroad.

Citation:

<https://www.transparency.org/country/GRC>, accessed on 17.11.2017.

http://www.sev.org.gr/Uploads/Documents/50462/Special_Report_25_7_2017.pdf, accessed on 11.12.2017.

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.” A recent article by Gissur and another Icelandic political scientist, Gunnar Helgi Kristinsson, concluded that “corruption is rare but still clearly discernible. Less serious types of corruption, such as favoritism in public appointments and failure to disclose information, are more common than more serious forms, such as extortion, bribes and embezzlement. Nonetheless, it should be noted that a sizable minority of experts still believe corruption is common, especially in the case of favoritism and fraud.”

The collapse of the Icelandic banks in 2008 and the subsequent investigation by the Special Investigation Committee (SIC), among other bodies, highlighted the weak attitude of government and public agencies toward the banks, including weak restraints and lax supervision before 2008. Moreover, three of the four main political parties, as well as individual politicians, accepted large donations from the banks and affiliated interests. When the banks crashed, 10 out of the 63 members of parliament owed the banks the equivalent of more than €1 million each. Indeed, these personal debts ranged from €1 million to €40 million, with the average debt of the 10 members of parliament 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 members of parliament 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 2016, 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 85 and 90. 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.

New information, including emails leaked from one of the failed banks, about corruption surrounding the crash of 2008 and involving the outgoing prime minister, has come to light. This information led to a gag order being imposed on the newspaper Stundin shortly before the election. The case will be heard in court in early 2018.

Citation:

Erlingsson, Gissur Ó. & Kristinsson, Gunnar H (2016): Measuring corruption: whose perceptions should we rely on? Evidence from Iceland. In "Icelandic Review of Politics and Administration" Vol. 12, Issue 2 (p. 215-236). <http://www.irpa.is/article/view/a.2016.12.2.2/pdf>

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

In recent decades, corruption and bribery scandals have emerged frequently 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).

However, financial and office-abuse scandals involving bureaucrats have been quite rare in recent years. This may be a consequence of stricter accountability rules devised after a string of ethics-related scandals came to light in the late 1990s and early 2000s. A new criminal-justice plea-bargaining system, slated for implementation in June 2018, will create additional pressure on companies to comply with anti-corruption laws.

In the past, the country has had a reputation for weak enforcement with respect to anti-bribery enforcement abroad, an issue relevant for Japan's multinational companies. The OECD urged Japan in 2016 to step up its efforts, and the government has promised to take a stiffer line, with the Ministry of Economy, Trade and Industry (METI) also issuing warnings to companies. In 2017, Japan decided to join the UN Convention against Transnational Crime and the UN Convention against Corruption, which have respectively existed since 2000 and 2005.

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:

UNODC Chief welcomes Japan's decision to join crime and corruption conventions, United Nations Office on Drugs and Crime, 12 July 2017, <https://www.unodc.org/unodc/en/press/releases/2017/July/unodc-chief-welcomes-japans-decision-to-join-crime-and-corruption-conventions.html>

Nagashima Ohno and Tsunematsu, New plea-bargaining system: a new compliance risk for companies with operations in Japan?, Lexology, 10 April 2017, <https://www.lexology.com/library/detail.aspx?g=fadf53ad-decf-45fa-9d66-e4f4cea9e19f>

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. Internal audit systems can also be found in every department and ministry, but it is difficult to assess their effectiveness. The 2016 report of the audit office also highlighted regulatory abuse regarding procurement, inventory inadequacies, and non-compliance with tender requirements and ministries' fiscal obligations. A recent academic report has shown decades long corruption at the planning authority. In the 2016 Corruption Perceptions Index, Malta slipped one point from 5.6 to 5.5. In the Global Competitiveness Index 2017, Malta obtained the following scores in a ranking of 1 to 7 (7 being the best score): public trust in politicians (2.9), irregular payments and bribes (4.7), and favoritism in decisions of government officials (2.8). However, the overall score for functioning institutions was 4.5, yielding an overall ranking of 38th out of 137. 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. The Permanent Commission Against Corruption was setup in 1988. Since then, over 300 cases has been investigated, though none have been prosecuted. Since the 2017 election, the commission has not been reconstituted as a result of the opposition party not yet having selected their candidate. In 2018, the ombudsman called for greater government transparency and accountability. The setting up of a new parliamentary committee to scrutinize public appointments is a move in the right direction, though it has been criticized for not going far enough and ensuring that all candidates be grilled by the board. The 2017

ombudsman's report mentioned the need for legislation to regulate lobbying and how this relates to the right of individuals to receive correct and timely information on the activities of government. This is especially important in light of the link between lobbying and corruption.

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 small countries and the fact that Malta's members of parliament work part-time and maintain private interests. Presently, a number of magisterial inquiries are ongoing on alleged cases of corruption in government.

Citation:

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

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

Audit office flags unauthorized 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-labor-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 2016

Study shows political corruption at the PA Times of Malta 29/10/17

The Global Competitiveness Report 2017-2018

Will the chickens come home to roost in 2018 Times of Malta 08/01/18

Ombudsman Report 2016

Poland

Score 5

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. Thousands of PiS apparatchiks and followers have been placed in management positions, so that a widespread clientelistic network has emerged.

Romania

Score 5

Corruption has been a major political issue in Romania for some time and became even more so in the period of review. As early as in January 2017, the newly installed government launched legislation aimed at decriminalizing and pardoning certain offenses. Broadly understood as an attempt to help politicians and others either accused or convicted of corruption, including PSD leader Liviu Dragnea, these initiatives prompted an unexpectedly strong public outcry that led the government to withdraw them. Next, the governing coalition has sought to discredit and weaken the much-acclaimed National Anti-Corruption Directorate (DNA) while strengthening its control over the judiciary, with limited success until the end of the year. Led by the combative Laura Codruta Kövesi, the DNA, which has achieved many high-profile convictions, continued its investigations in 2017. In June 2017, a new system for identifying conflicts of interest in public procurement went online. Because of weak regulation and enforcement, public procurement, which comprises sales worth more than 15bil Euros and more than 20,000 individual tendering procedures per year, has been prone to corruption.

Slovakia

Score 5

Corruption is the most sensitive political problem undermining political stability and quality of democracy in Slovakia. The previous two governments headed by Robert Fico did not pay much attention to anti-corruption efforts and were shaken by several corruption scandals. The government manifesto of the third Fico government contained some anti-corruption measures, and the new minister of justice, Lucia Žitňanská (Most-Híd) initiated several reforms to fight corruption. In the period under review, the alleged corruption case involving Minister of Interior Robert Kaliňák and Prime Minister Fico has continued to attract the most attention. Their links to Ladislav Basternak, a business man involved in fraud, have led to several votes of no confidence. Thanks to the government's parliamentary majority, the interior minister survived all of them. Given the governing coalition's intransigence on this issue, all attempts by the justice minister to introduce and strengthen transparency, the new rules to protect whistleblowers, the cooperation of the government with the OECD on combating corruption, and the establishment of the Department for the Prevention of Corruption at the Slovak Government Office have not achieved any substantial change.

Citation:

Šimalčík, M. (2017): Napriek zlepšeniu „veľké ryby“ stále nechytáme. November 11, 2017 (<http://transparency.sk/sk/napriek-zlepseniu-velke-ryby-stale-nechytame/>).

N.N. (2017) Slovaks are unsatisfied with police uncovering corruption, in: Slovak Spectator, December 11, 2017 (<https://spectator.sme.sk/c/20716114/five-embassies-call-on-slovak-cabinet-to-further-combat-corruption.html>).

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. After coming to office, the Borissov government, in line with recommendations by the European Commission and the Council of Europe, attempted to create a unified anti-corruption agency. The new legislation was adopted by parliament in December 2017.

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) 750 final, Brussels (https://ec.europa.eu/info/sites/info/files/comm-2017-750_en_0.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 from civil society organizations and media for more transparency have had some positive effects. However, the European Commission noted in 2017 that "the Coordinating Body against Corruption is not adequately staffed, and weaknesses in the disciplinary regime for public servants remain unaddressed." We note, for example, that no report is available on how a public service code of conduct has been implemented since 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. EU Commission recommendations, Cyprus, May 2017 https://ec.europa.eu/info/sites/info/files/2017-european-semester-country-specific-recommendations-commission-recommendations_-_cyprus.pdf

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. 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). According to Forbes Hungary, Mészáros, for example, has tripled his fortune in 2017. 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. A general problem here is that there is comparably little competition in this field, with Poland and Hungary ranking last. Its political power has allowed the Orbán government to keep corruption under the carpet. De-democratization and growing corruption are thus mutually reinforcing processes. As a result, the fight against corruption has largely rested with the political opposition and some independent NGOs. In addition to Transparency International Hungary and Átlátszó (Transparent), Á. Hadházy, the co-president of the opposition party Politics Can Be Different (LMP), has been very active and effective in investigating the corruption by the leading Fidesz politicians and oligarchs.

Citation:

Tóth, I., M. Hajdú (2016): Korrupciós kockázatok, átláthatóság, közbeszerzések. Magyar közbeszerzések 2009–2015 közötti adatainak elemzése, in: T. Kolosi, I.G. Tóth (eds.): Társadalmi szemle 2016, Budapest: Táarki, pp. 33-53.

Mexico

Score 3

Throughout 2017, Mexico has been rattled by a number of high-profile corruption cases. The cases of several former governors, who embezzled and laundered exorbitant amounts of public funds and left their states with financial troubles, were particularly notorious. The revelations about rampant, high-level corruption were all the more painful as some of these governors had been close allies of President Peña Nieto and were the public faces of his effort to re-launch the PRI in order to give the party a new start after its decades-long association with corruption and bribery. Beyond the governors, the former director of the state-owned oil company Pemex, another close Nieto ally, has also been accused of corruption in the fallout of the scandal surrounding the Brazilian engineering firm Odebrecht. The Odebrecht

scandal has rattled several Latin American countries, and now also engulfs high-placed public officials in Mexico. The aftermath of the September 19th earthquake also revealed evidence of corruption and negligence at lower levels of government. For instance, an apartment made of marble and including a jacuzzi had been added to the fourth floor of a primary school that collapsed during the quake, killing 27 students and staff. The expansion was commissioned by the school's director for personal use.

These high-profile cases revealed the inability of the Mexican justice system to effectively deal with corruption, especially if the perpetrators are politically well connected. In the Odebrecht scandal, Mexican prosecutors only sprang into action after Brazilian media broke the story, despite previous evidence of illicit transactions between Odebrecht and Pemex. Equally painful was the revelation that the electronic surveillance software "Pegasus," purchased by the Mexican government, has been used to spy on anti-corruption activists affiliated with the Instituto Mexicano para la Competividad (Imco). Overall, these cases illustrate the pervasiveness of corruption, and the inability and unwillingness of authorities to effectively deal with the issue, despite statements to the contrary.

At the same time that corruption scandals roiled the political arena, efforts to implement the National Anti-Corruption System (SNA), which had been signed into law by President Nieto in 2016, floundered. Neither the special anti-corruption prosecutor nor the judges for the specialized administrative tribunal have been appointed. At the subnational level, not even half of Mexico's states have approved the required secondary legislation to implement the SNA. According to a May 2017 study by Corparmex, the Mexican confederation of business owners, corruption costs Mexico around 10% of its GDP. The main positive development with regard to corruption is sustained pressure from civil society for more transparency and accountability.

Citation:

Latin American Regional Report: Mexico & Nafta (August 2017) "Anti-corruption reform fails to convince."

Latin American Regional Report: Mexico & Nafta (October 2017) "Evidence of corruption found amongst the rubble"

Turkey

Score 2

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 asset-declaration system was established in 1990 by Law 3628 on Asset Disclosure and Fighting Bribery and Corruption. All public officials (legislative, executive and judicial, including nationally and locally elected officials) must disclose their assets within one month of taking office and renew their declaration every five years. However, these declarations are not made public unless there is an administrative or judicial investigation. The Regulation on Procedure and Basis of Application of the Civil Servants Ethical Behavior Principles defines civil service restrictions, conflicts of interest and incompatibilities. 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 (e.g., regarding disclosure of gifts, financial interests and holdings, and foreign travel paid for by outside sources) in the code of ethics for parliamentarians remain in place. In 2016, a total of 1,792 public civil servants across 26 institutions were provided ethics training. The European Commission continued to sponsor ethics leadership training for Turkish civil society groups in 2017.

Political party finances are regulated by Law 2820. Parties that achieve 3% or more of the valid votes during the general election receive state aid, and those overcoming the 10% threshold receive higher sums proportionate to the share of votes received. Parties' accounts are reviewed annually by the Constitutional Court, although this process is not timely. In recent years, the court found that the main parties had received or spent money unlawfully.

In general, corruption remains widespread, and unfair and biased bureaucratic treatment 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 Turkish Court of Accounts reported several improper transactions in the 2016 annual accounts of several metropolitan municipalities, including Ankara, İstanbul, Gaziantep, Bursa, Ş.Urfa and Kocaeli. However, these reports have not been discussed by the parliament. Though the reports were published in the media and online, publicly exposing hidden budget expenditures, housing-procurement abuses and tax compromises. Instead of prosecuting the corrupt officials, President Erdoğan simply removed them from office.

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.

During the review period, corruption has deepened due to the rentier economy, the government's authoritarian tendencies, weakened parliamentary oversight, dysfunctional public administration and financial audit institutions, and impunity. Moreover, the gold trader Reza Zarrab's testimonies in the U.S. indicate that Zarrab bribed former AKP ministers with millions of U.S. dollars between 2011 and 2013. On 17 December 2015, the Bribery and Corruption Investigation decided not to prosecute four ministers and their relatives. In January 2015, due to the AKP's parliamentary majority, the Turkish parliament voted not to put the ministers on trial. Though these cases can be reopened in future. The main opposition party leader stated that the President Erdoğan's family members transferred millions of U.S. dollars to a company in the Isle of Man (a tax haven) in 2011 and 2012. In a counter attack, the Minister of Interior removed the mayor of Ataşehir, a town in İstanbul, from office following allegations of corruption.

Citation:

European Commission, Turkey 2016 Report, Brussels, 9.11.2016, http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_turkey.pdf (accessed 1 November 2016).

OECD, Risk Management by State-Owned Enterprises and their Ownership. OECD Publishing, Paris, 2016.

World Bank, Turkey Asset Declaration System, <https://star.worldbank.org/star/sites/star/files/turkey-ad-country-profile.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 (27 October 2015)

TBMM Yolsuzluk Soruşturma Komisyonu Raporu'nun tam metni, 12 January 2015, <http://odatv.com/tbmm-yolsuzluk-sorusturma-komisyonu-raporunun-tam-metni-1201151200.html> (accessed 1 November 2017)

Sayıştay'ın yayınladığı rapor AKP'li belediyelerin borçlarını ortaya çıkardı, 10 October 2017, <http://siyasihaber3.org/sayistay-in-yayinladigi-rapor-akp-li-belediyelerin-borclarini-ortaya-cikardi> (1 November 2017)

GRECO, Third Evaluation Round Third Interim Compliance Report on Turkey "Incriminations (ETS 173 and 191, GPC 2)" "Transparency of Party Funding," <https://rm.coe.int/third-evaluation-round-third-interim-compliance-report-on-turkey-incr/168072247a> (1 November 2017)

T.C. Başbakanlık Kamu Görevlileri Etik Kurulu, 2016 Yılı Faaliyet Raporu, 2016, http://etik.gov.tr/Portals/0/faaliyet_raporlari/faaliyetraporu_2016.pdf (1 November 2017)

Ö.Faruk Gençkaya, "New Public Management Approach and Ethical Issues in Local Administrations in Turkey" Y. Demirkaya, ed., New Public Management in Turkey: Local Government Reform, Routledge, 2016.

Ö. Faruk Gençkaya, "Financing of Political Parties and Electoral Campaigns in Turkey," S. ASayarı, P. Ayan-Musil and Ö. Demirkol, Party Politics in Turkey: A Comparative Perspective, Routledge, 2018.

Serkan Demirtaş, "The Zarrab case and corruption claims could bring Turkey's elections forward," Hürriyet Daily News, 2 December 2017, (accessed 2 December 2017)

Address | Contact

Bertelsmann Stiftung

Carl-Bertelsmann-Straße 256
33311 Gütersloh
Germany
Phone +49 5241 81-0

Dr. Daniel Schraad-Tischler

Phone +49 5241 81-81240
daniel.schraad-tischler@bertelsmann-stiftung.de

Dr. Christof Schiller

Phone +49 5241 81-81470
christof.schiller@bertelsmann-stiftung.de

Dr. Thorsten Hellmann

Phone +49 5241 81-81236
thorsten.hellmann@bertelsmann-stiftung.de

Pia Paulini

Phone +49 5241 81-81468
pia.paulini@bertelsmann-stiftung.de

www.bertelsmann-stiftung.de
www.sgi-network.org