

SGI Sustainable Governance
Indicators 2009

Democracy

Civil rights report



Indicator **Civil rights protection**

Question **Does the state respect and protect civil rights, with courts protecting against rights violations?**

30 OECD 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 = All state institutions respect and protect civil rights. Courts provide protection.*
- 8-6 = The state respects and protects rights, with few infringements. Courts provide protection.*
- 5-3 = Rights are protected, but infringements occur in practice. Court protection is not effective.*
- 2-1 = Rights are formally respected, but violations are frequent. Court protection is not effective.*

Canada

value 10

The Canadian Charter of Rights and Freedoms and the Canadian Human Rights Act together provide for an effective protection of all fundamental civil rights. The charter protects everyone in Canada regardless of whether they are a citizen, a permanent resident or a recent immigrant. Some rights (e.g., the right to vote) are reserved for citizens. Anyone who feels that their civil rights have been infringed upon may apply to a court of law to seek a remedy. Thus, Canada has a fairly positive record of effectively protecting civil rights. Most notably, when compared to other countries, Canada has made positive advances in protecting the rights of lesbian, gay, bisexual and transgender individuals.

According to the Freedom in the World survey, Canada exhibits the highest scores among electoral democracies in the categories of respect for civil liberties, the rule of law and individual rights. Nevertheless, some international organizations, such as Amnesty International, have criticized Canada for poorly protecting aboriginal rights and for cutting government funding allocated to groups that advocate women's rights. In addition, certain laws enacted after 9/11 have been criticized for being inconsistent with human rights standards.

Finland

value 10

Since the early 1980s, the Freedom House organization has given Finland the highest possible ranking for civil rights in the group's annual survey of international freedoms. Indeed, state institutions respect civil rights and courts effectively protect citizens. The law provides for freedom of speech, and this is respected in practice. Furthermore, Finns enjoy full property rights and the freedom of religion, with government officially recognizing 55 different religious groups. Freedoms of association and assembly are respected in law and practice; workers have the right to organize, bargain collectively and strike.

New Zealand

value 10

New Zealand authorities respect and actively protect civil rights. New Zealand does not have a written constitution, and thus no formal constitutional law protecting civil rights exists. However, civil and human rights protections are based on the 1990 Bill of Rights Act and the 1993 Human Rights Act, which define the tasks of the Human Rights Commission. Furthermore, New Zealand is a signatory to international treaties such as the 1978 International Covenant on Civil and Political Rights. In addition, civil rights are protected by a variety of court decisions and widely recognized practices.

The Human Rights Commission actively promotes compliance with civil and human rights by public bodies and more broadly in society. Recent activities concern the rights dimension of the Treaty of Waitangi and the release of the Human Rights Action Plan of 2005, which addressed violence against women and children and the maltreatment of inmates in prisons and mental institutions. Recommendations from this report have not to date been acted upon. Amnesty International has reported some problems with the detention of asylum seekers, and the High Court has ruled that these issues represent a breach of national and international human rights safeguards. The case is still pending, as the government has appealed the ruling.

Norway

value 10

State institutions respect and protect civil rights. Personal liberty is well-protected against abuse by either state or non-state actors. People cannot be detained without charge for more than 24 hours. A court decides whether or not the suspect should be held in prison during the investigation. The issue of civil rights receives considerable attention in the media and by intellectuals, as well as from the government bodies responsible for their protection.

Access to justice is free and easy, and the judiciary system is viewed as fair and efficient. There is full freedom of movement and of religion. Respect for civil rights extends to the issue of asylum seekers. One example is that of Mullah Krekar, a citizen of Iraq, who is the former leader of the terrorist group Ansar al-Islam. Krekar applied for asylum in Norway in 1991 but his application was denied on grounds of national security. Both Iraq and the United States have asked for him to be extradited. However, since these countries both practice the death penalty, Norway's government has not sent him out of the country so far.

Belgium

value 9

Civil rights are protected by articles 8 through 32 of the Belgian constitution, and are respected by all public institutions. There are, however, some limitations; one key rights issue is over legal procedures, which can be lengthy, especially in the Brussels

region. This is due to the sheer number of cases the courts must hear, and a shortage of French-speaking judicial personnel.

The treatment of certain groups, such as asylum seekers and prisoners, has been criticized by organizations such as Amnesty International or Human Rights Watch. Some asylum seekers, including families with children, are detained in prison-like facilities prior to their expulsion from the country.

There are also problems explicitly related to the country's linguistic divide. The matter of language is highly sensitive where there are significant "linguistic minority groups," such as in Brussels and its surrounding area. If "linguistic rights" are considered a component of civil rights, then it must be concluded that some civil rights are under challenge in Belgium.

Annotation: International Constitutional Law Project (ICL), Belgian constitution (in English), http://www.servat.unibe.ch/icl/be00000_.html (accessed February 16, 2008).

Germany

value 9

The German Basic Constitutional Law and catalogue of civil rights came as a direct result of the country's experiences under National Socialism and its regime of terror. Individual citizens are able to bring cases before the Federal Constitutional Court in Karlsruhe in order to guarantee that the rights contained in the German Constitution are adhered to.

This right is often exercised by citizens, but the court upholds the issue and investigates citizen complaints in only a very small number of cases. The majority of cases are inadmissible for formal reasons and therefore dismissed.

In the course of producing Germany's anti-terrorist policy, there has been widespread public debate over the extent to which basic civil rights can be abridged in the fight against fundamentalist Islamic terrorism. There is a conflict of opinion regarding this issue between the political parties, as well as within the incumbent coalition government.

The Federal Constitutional Court has consistently shown through its decisions that it takes its role as guardian of the Basic Constitutional Law and civil rights very seriously. Nevertheless, independent groups such as Amnesty International and Human Rights Watch often complain that suspected terrorists are not afforded adequate legal protection in the course of international anti-terrorism actions, in which Germany is involved.

Iceland

value 9

Civil rights are fully protected. However, two qualifications need to be made. First, in the wake of the recent wave of economic liberalization and privatization of state-

owned enterprises, the government, or specifically the largest political party, has been accused of undue interference in police and tax investigations of a business concern, the Baugur Group.

During the period under review, the incumbent foreign minister joined several independent observers in publicly demanding an official investigation of these accusations. Another recent problem concerns allegations of wiretapping of politicians and labor union leaders that took place two decades ago. A former foreign minister claims to have been wiretapped while in office, as recently as 1990. Witnesses, fearing to incriminate themselves, have not felt free to come forward, as the government has refused to absolve such witnesses of possible legal responsibility.

The government has not met demands for a full investigation and full disclosure. Instead, it has set up a committee to design rules governing researchers' access to classified documents pertaining to wiretappings.

Ireland

value 9

Citizens' civil rights are enumerated in and protected under the Irish Constitution, known as the Bunreacht na hÉireann. Articles 40-45 of the Constitution, which cover citizen's rights, guarantee the rights traditionally associated with liberal-democratic states.

Because Ireland has a common law system, its judges are empowered to interpret the text of the Constitution. In recent years, Irish judges have been very proactive and more and more "creative" in discovering a large number of rights not previously enumerated.

There has been some recent controversy with the findings of a special investigation focused on the conduct of the Irish police force. The revelations of this inquiry led to the Garda Síochána Act 2005, which effected very significant legislative changes for policing in Ireland and created an independent police ombudsman.

Annotation: For further information, see Michael Gallagher, "The Constitution and the Judiciary," in *Politics in the Republic of Ireland*, edited by John Coakley and Michael Gallagher, (London: Routledge, 2004), 72–102.

Luxembourg

value 9

Civil rights are effectively protected in Luxembourg and all state institutions respect these rights. There are four institutions in charge of civil rights protection: the Constitutional Court, an advisory board on human rights, the National Commission on Data Protection and a parliamentary ombudsman. However, the judiciary system's overload and subsequently slow case processing has triggered concerns over due process and equitable treatment. The European Court of Justice has

reprimanded the country on several occasions in recent years as a result of delays in the court system.

Netherlands

value 9

The Netherlands guarantees and protects individual liberties, and all state institutions respect and effectively protect civil rights. The Netherlands will publicly expose abuses and report them to either the UN Human Rights Council or the European Union. The Netherlands has signed the European Convention on Human Rights.

However, recent policy measures meant to react to newly perceived dangers of international terrorism have resulted in changes in criminal laws and laws on public safety. These changes include providing police with expanded rights to undertake surveillance with cameras in public spaces, to conduct bodily searches, and to wiretap communications.

Sweden

value 9

The Swedish constitution broadly protects human rights. These rights include not only the traditional rights associated with democracies, such as the right of personal liberty, but also some material rights. Furthermore, in international comparison, Sweden's public administration enjoys a very high level of trust from its citizens. This partially results from the fact that Sweden has been slow and cautious to implement market-driven administrative reform and, instead, continues to emphasize due process, legal security and the performance of swift, high-quality services.

The only sign of problems between individuals and the public administration is the very strong emphasis on increased efficiency, which will eventually jeopardize legal security and equal treatment. There is currently a priority to further develop e-government and the so-called "24-hour agency," so as to deliver better service, increase efficiency and cut costs.

The main reason why Sweden does not receive a top score on this assessment results from the numerous criticisms leveled against it by Amnesty International (AI) regarding prison conditions and a few conspicuous cases of the government's surrendering refugees to the CIA. AI has also repeatedly criticized cases in which inmates have had to wait an inordinately long time before standing trial. In its 2007 report, AI also criticized the Swedish authorities for multiple human rights violations in connection with a summary expulsion to Egypt in 2001.

Switzerland

value 9

Civil rights in Switzerland are guaranteed by the constitution. However, the country does not have a classic constitutional court to monitor the conformity of federal law with the constitution. The Federal Supreme Court in Lausanne monitors the

constitutional conformity of federal regulations and cantonal laws. In relation to basic civil rights, the European Court of Human Rights serves as a kind of Swiss constitutional court. Conflicts have risen from the reputed tension between civil rights and the use of direct democratic decision-making. For example, a 2004 referendum resulted in a policy stating that particularly dangerous criminal offenders should be imprisoned without the chance to have their cases reexamined. This rule contravened the European Convention on Human Rights. The outcome of a referendum on Switzerland's naturalization procedure also resulted in conflict, after the Federal Supreme Court held the policy to be unconstitutional in 2003.

Australia

value 8

Unlike most Westminster democracies, Australia lacks a legal instrument – a bill of rights or a constitutional clause – guaranteeing a codified list of individual rights. Attempts to introduce a bill of rights at the national level failed in two referendums, respectively in 1944 and 1988. In practice, respect for and protection of civil rights is reasonably high in Australia. Many protections simply derive from conventional practice which respects principles such as due process, natural justice and freedom of movement.

However, there are also legislated protections. Civil rights are protected by parliamentary action, taken in the name of responsible government, and by common law, in which certain individual rights are already recognized. The body of common law regards certain rights and freedoms as fundamental, and restricts legislators' ability to encroach on those freedoms. High Court judgments also protect civil rights, with decisions often based on general principles or accepted fundamental rights. Finally, as Australia has become a signatory to international conventions, the common law has been reinterpreted in the context of these obligations.

In line with many other countries, anti-terrorism legislation passed in 2005 with support of the opposition prohibits the advocacy of terrorism or financial support for terrorist organizations. It also allows for longer periods of detention than would otherwise be permitted, as long as police apply to the attorney general and approval is given by a judge. Also significant is that not all civil rights enjoyed by citizens are extended to non-citizens.

First, asylum seekers who arrive in Australia before being granted asylum are characterized as "illegal arrivals," and are usually held in prison-like detention centers, sometimes built in remote areas or in neighboring Pacific island countries, while they wait to hear if their asylum request is granted – which can last several years. Immigration laws are designed to minimize the grounds for appeal of decisions to deny asylum, and access to legal representation is also limited. Second, "legal" arrivals who do not hold permanent residency visas may be deported at the discretion of the immigration minister. Finally, even persons with permanent residency visas, such as convicted criminals, may be deported at the immigration minister's discretion on "character" grounds, sometimes after having lived in Australia since they were young children.

Austria

value 8

The Austrian constitution codifies extensive civil rights that apply to all state institutions at all levels. These rights are protected by the Constitutional Court. This protection of civil rights is further complemented by the European framework formed by the European Court of Justice and the European Court on Human Rights, both of which are effectively empowered to override legislation at the national level. Both the Constitutional Court and the European Court on Human Rights have been appealed to regarding immigration policy in cases in which certain restrictive policies toward non-citizens have conflicted with civil liberties and were consequently declared illegal.

Denmark

value 8

The Danish constitution protects the classic civil rights of personal liberty, inviolability of property, inviolability of dwellings, freedom of speech, freedom of association and freedom of assembly. Under normal circumstances, Danish authorities and courts protect these freedoms. However, Amnesty International's 2007 human rights report criticizes recent terrorism legislation, arguing that it has weakened judicial oversight of police access to private and confidential information, that the times permitted for keeping prisoners in solitary confinement are too long, and the alleged use of excessive force by the Danish police.

There are some cases of infringement of civil rights. The most serious criticisms focus on the legislation and administrative practices in Denmark relating to immigration and particularly on the immigration-related issue of the unification of families. For example, for an immigrant already residing in Denmark to bring a spouse into the country, both partners must be at least 24-years-old and must document that they together have stronger ties to Denmark than they do to any other country. Under this regime, for instance, a Danish woman who has lived several years in Israel could not bring her Israeli husband to Denmark because, as a couple, they are more bound to Israel than they are to Denmark, or an elderly mother could not come to Denmark to live with her children living there. In spite of some minor reforms, these rules have produced much hardship for many people. In addition, there is some evidence of cases in which public administrators have treated applicants unevenly by means of arbitrary enforcement of the rules. In fact, many experts have claimed that Denmark's legislation and administrative practices regarding immigration constitute a breach of Article 8 of the European Convention on Human Rights, which covers the right of living with one's family.

France

value 8

France has a long tradition of protecting its citizens' civil rights that predates the 1970s, when the Constitutional Council's powers were strengthened. Although the

courts generally serve to protect citizens and their rights, there have been some exceptions to this during times of war (e.g., World War II) and when the state perceived internal threats to abound (e.g., during the Algerian War). Today, the courts' ability to protect civil rights is hindered by the sheer number of complaints received. Insufficient personnel and other resources needed to process all of the complaints filed often result in lengthy case proceedings.

Hungary

value 8 Civil rights are protected by the constitution and other laws, and are widely respected by state institutions. Enforcement of civil rights through the courts has suffered from overly long proceedings. Moreover, many judges do not adequately consider the case law of the European Court of Human Rights. There are also major problems with regard to the protection of human dignity, because Hungarian law prohibits neither Holocaust denial nor hate speech.

Czech Republic

value 7 Civil rights are protected by the constitution and international commitments. The government produces an annual report on the state of human rights. Cases of alleged abuse can be taken to the European Court of Human Rights, which handed down 36 verdicts against the Czech government in 2006. Problems with private property rights have been raised by the former owners of nationalized property. Czech law has limited restitution rights to property nationalized after 1948. However, legal cases regarding property nationalized before that date have continued because, in accordance with the laws of the time, former owners may be entitled to financial compensation. Recent private-property issues have arisen in the context of road-building and preparing sites for inward investment. Land owners have felt pressured to sell and accept the conditions offered. There have also been some well-publicized cases of alleged police excesses. Attempts to brush off the accusations have led to bad publicity for the police.

Greece

value 7 Greece has a battery of constitutional provisions and laws guaranteeing civil rights. In Freedom House's 2007 survey of political rights and civil liberties, Greece earned the highest score possible on issues of political rights and only slightly lower for civil liberties. Protections are thus strong with regard to freedom of expression and belief, rule of law, personal autonomy and individual rights. However, despite progress over the years, the picture is less rosy for associational and organizational rights, particularly freedom of expression of religious beliefs for non-Christians, who

are outnumbered by the Orthodox majority.

According to Council of Europe reports in 2006, problems of police ill-treatment, infringements of detainees' basic rights, and poor conditions in many prisons and detention facilities persist. Prisons are overcrowded, and the quality of medical, social and psychological support offered to the incarcerated is generally low. In early 2007, the Greek press reported on instances of police abuse and physical brutality against migrants accused of various crimes and detained in police stations. Such civil rights infringements are compounded by long and tortuous court procedures, which undermine not only the protection of civil rights, but also the justice system as a whole. These processes may inhibit victims from seeking protection from the courts.

Annotation: Freedom House, "Freedom in the World 2007,"

http://www.freedomhouse.org/uploads/press_release/fiw07_charts.pdf (accessed August 25, 2007)

Italy

value 7

The protection of civil rights is ensured by detailed constitutional provisions and general laws, and by the action of the powerful Constitutional Court and an independent judicial system. However, the low efficiency of the judicial system – in particular its lengthy procedures – can significantly reduce just how effective the protection of civil rights are. The costs of drawn-out judicial procedures may in particular be more of a burden on the less well-off.

Italian citizens enjoy many personal liberties and freedoms. To the contrary, however, according to Amnesty International's 2007 report on the state of world's human rights, migrants – mostly irregular migrants – face considerable problems. State authorities in some cases have not granted migrants access to asylum procedures. Migrants also have been subject to expulsions without regular judicial oversight or authorization. Civil liberties are often not ensured for migrants, especially when they are illegally employed (in the agricultural sector, as one example). The question of irregular immigration, which is an issue in particular along the coast of southern Italy, may also have the added dimension of questions of right to life.

Police violence still seems to be an issue, as various authorities of public security in recent riots obviously violated civil rights (during the G8 summit in Genoa in 2001, or police strikes in football-related melees). International bodies such as the U.N. High Commissioner for Human Rights have offered the criticism that Italy has not yet entered torture as an offence into its penal code.

Japan

value 7

Basic civil rights are guaranteed by the constitution, and civil rights are well protected in principle. However, judicial processes are sometimes very slow, and the

criminal arrest rate is declining. The court system, and its ability to protect citizen rights through legal or administrative action, does not function well. In addition, courts have often been found unwilling to question government or parliamentary actions (or negligence) in order to protect citizens' rights through legal or administrative action.

The Supreme Court has been very reluctant to apply judicial review to actions by the government or Diet, doing so only under a model of concrete judicial review, although it is questionable whether the court is in fact limited in this way. Due to lower courts' dependency on the Supreme Court, this careful attitude characterizes the whole system. In 2007, for instance, the Supreme Court dismissed a case in which a daughter alleged incestuous abuse, without questioning the rather lax provisions of the Civil Procedure Law in such cases. As for the motivation behind court rulings, several observers have noted the incentives for judges to avoid reprisals from the government by avoiding conflict with the executive. The appointment system for judges seems to be a key factor in this respect. It should be noted that Japan has not abolished the death penalty and applies it in a rather cruel manner.

Portugal

value 7

Portugal held first place in Freedom House's 2007 civil liberties index, which is the highest score in terms of ranking the protection of civil liberties. Compared with other countries, Portugal's constitutional and legal protection of civil liberties are very advanced and, in practice, there are no reports of egregious violations (e.g., arbitrary arrests, unlawful, politically motivated killings or torture), nor of restrictions on the freedoms of religion, expression, movement, property or association.

Nevertheless, several problems persist, particularly when it comes to the disproportionate use of force by police officers and prison guards. Some related cases have been taken to trial, but the prosecution of such cases tends to be less than systematic and extremely slow. Over the last decade, however, the situation has significantly improved, particularly after the creation of the Inspectorate General of Home Affairs (IGAI), the agency in charge of auditing all state services under the Ministry of Internal Affairs, which has investigated complaints on such abuse of force.

Despite these improvements, the IGAI has still faced some criticism regarding its ability to respond to the large number of cases and its lack of independence vis-à-vis the government. Reports from Amnesty International (2005 and 2006) document some cases of the police – specifically, the PSP (the urban police force) and the Republican National Guard (GNR, the gendarmerie) – shooting and killing suspects as well as beating foreigners.

The second main problematic area relates to excessively lengthy pre-trial detention resulting from serious deficiencies in resources and organizational capacities at the police, prosecutorial and judiciary levels. About one-fourth of the prison population

is composed of individuals in preventive detention. Nevertheless, in recent years, average pre-trial detention periods have been decreasing. As far as the prisons themselves are concerned, they remain overcrowded and understaffed, and many have very poor living and health conditions.

Slovakia

value 7

Civil rights are protected by the Slovak constitution and other laws and are largely respected by state institutions. In addition to the courts, several other institutions, such as a public defender of rights, an ombudsperson, the Slovak National Human Rights Center and several influential NGOs (e.g., Charta 77, Helsinki Committee, Milan Simecka Foundation, Amnesty International) are actively engaged in civil rights protection.

Ordinary courts constitute the weakest link in the chain in protecting civil rights. Due to the heavy workload and the at times inadequate professional qualification of some judges, court proceedings are unduly protracted. The majority of complaints brought to Slovakia's Constitutional Court and the European Court of Human Rights are cases involving drawn-out proceedings that have violated citizens' constitutional right to a lawsuit without unnecessary delays. A further problem is the low public knowledge of, and concern for, civil rights. According to one survey, a majority of citizens believe that NGOs are the key player in the protection of civil rights and only 30 percent favor an involvement of state institutions in this field (Slovak National Center for Human Rights 2006).

Annotation: Slovak National Center for Human Rights, 2006: Representative survey of the observance of human rights and principles of equal treatment of citizens in Slovakia, Bratislava: Slovak National Center for Human Rights.

Spain

value 7

State institutions in Spain respect and protect civil rights, but infringements of civil rights occur in practice. Positive developments during the period studied include the granting of legal status to illegal immigrants directly after the government took office. This was an attempt to regularize the hundreds of thousands of illegal immigrants in Spain, to both protect their civil rights and to protect them from abuse. At the same time, however, there are negative points on Spain's record concerning the treatment of immigrants and asylum seekers. International organizations such as Amnesty International and Human Rights Watch have reported on clandestine expulsions of immigrants, illegal expulsions of asylum seekers and of under-aged persons, the disproportionate use of force against people trying to enter Spanish territory though the border at Ceuta and Melilla and the use of collective expulsion procedures in which individual cases are overlooked. Some cases of mistreatment of

nationals in detention or of illegal immigrants by the police during the deportation process have also been reported. In some specific instances, citizens may see their civil rights undermined as a consequence of court delays.

United Kingdom

value 7

The United Kingdom is proud of its long tradition of maintaining civil rights without the protection afforded by a written constitution. Access to justice and protection from arbitrary state rule is codified in law, but the cost of legal proceedings makes access to legal redress difficult for the poor, despite some aid provisions.

Since 9/11 and especially since the London attacks of July 2005, the government has changed the parameters of civil rights protection by emphasizing the protection of life over civil liberties. The 2001 Anti-Terrorism, Crime and Security Act permits the indefinite detention of foreign nationals suspected of being a threat to national security in cases where evidence is either insufficient to result in conviction or originates from wire-tapping or other unrevealed sources. The House of Lords ruled such detentions unlawful in 2004. However, the new 2005 Prevention of Terrorism Act enables the home secretary to request control orders on suspects, whether British or foreign. These can be used to prevent suspected terrorists from using the Internet, telephone or from leaving their homes.

Other political aims used to justify infringements of civil rights include the fight against crime and anti-social behavior. Magistrates can issue Anti-Social Behaviour Orders (ASBOS) at the request of the police or local authorities on slim evidence (including hearsay) for conduct leading or contributing to a general sense of harassment, alarm or distress. Individuals as young as ten years old can be banned from entering an area, prevented from wearing particular clothing or from uttering certain words. This policy has led to a high density of public surveillance and gives the police a quasi-judicial power of deciding what anti-social behavior means. However, most observers agree that the courts have become more assertive in protecting liberties in part by reprimanding administrative breaches of law.

United States

value 7

In general, the United States has an exceptionally robust system of protections for civil rights and an explicit Bill of Rights. The emphasis on civil rights has been somewhat compromised by U.S. anti-terror legislation following 9/11. There has been a basic clash between two very important goals of U.S. politics: strengthening national security and protecting civil liberties.

Departures from U.S. constitutional traditions and the corresponding suspension of civil rights have been especially severe for non-U.S. citizens. The administration has refused to either bring charges against or release suspected terrorists who have been seized abroad and detained in the facility at Guantanamo Bay. Furthermore, it has

insisted on trying such suspects in military commissions that lack many of the protections defendants enjoy in ordinary criminal trials. Although its official policy has remained unclear, the administration has allowed interrogation practices that are widely regarded as constituting torture, which is prohibited by the Geneva Conventions.

In 2006, Congress passed the Military Commissions Act after the Supreme Court ruled that the military commission created by President George W. Bush had no legal basis. The act authorizes the president to set up military commissions for “unlawful enemy combatants,” and disallows evidence secured under torture. However, the act does not allow the detainees to request a court to make a determination on the legality of their detention, as was mandated by a 2004 Supreme Court ruling. It also does not allow recourse to the rights guaranteed by the Geneva Conventions. However, a bill proposed by the Democrats in the U.S. Senate in early 2007 seeks to remedy these deficiencies.

The 2006 amendments to and renewal of the controversial USA Patriot Act of 2001 were basically a ratification of the status quo. The USA Patriot Act includes provisions for enhanced federal authority to demand records on individuals. Strong concerns about the protection of the civil liberties of Americans was raised when it became known that the National Security Agency (NSA) had spied on the contacts between Americans and suspected terrorists without a court warrant. This practice was not halted until January 2007 owing to pressure from the new Democratic majority in Congress. In August 2007, however, Congress passed emergency legislation making this type of wiretapping legal as long as it involves foreign suspects.

Annotation: On the Military Commission Act, see Congress Report, Vol. 21 (2006), No. 9-10, 1–3; and *ibid*, Vol. 22 (2007), No. 2, 7 f.; On the renewal of the USA Patriot Act, see Congress Report, Vo. 21 (2006). No. 2, 1–2.

South Korea

value 6

Civil rights such as the rights to life, security of person, equal treatment before the law, property ownership, freedom of thought, expression, assembly, association and speech are protected by the constitution and mostly respected. However, South Korea has not signed four of the basic conventions of the International Labor Organization (ILO), including two on the freedom of assembly. Moreover, despite ILO protests, the government has not recognized the Korean Government Employees Union, which was founded in 2001. It is very difficult to call a strike that would be legal under official definitions. In 2006, long-promised reforms of the labor laws aimed at improving labor union rights and independence, due to be implemented in 2007, were again postponed. These reforms would have included the introduction of trade union pluralism at the enterprise level.

The National Security Law (NSL) also allows civil rights to be restricted with respect to pro-North Korean activities. However, restrictions of the freedoms of

association and assembly on the basis of the NSL are today marginal, especially when compared to the situation in pre-democratic times.

Poland

value 5

The 1997 constitution and all relevant laws guarantee civil rights and provide sufficient means for protecting those rights. Problems have arisen from the situation surrounding the Polish court system and some measures taken by the PiS government. The courts suffer under inefficient and time-consuming procedures. According to the World Bank, enforcing a contract in Warsaw takes almost 1,000 days, while the OECD average is 350 days. Some measures enacted by the PiS government have also infringed upon civil rights. This first applies to the 2007 lustration law, which called for the lustration, or exposure and subsequent barring from public office individuals who were part of the former communist regime, of about 700,000 people in different professions. Other cases included the strong politicization of the office of public prosecutor and a heavy reliance on criminal law.

Annotation: World Bank, "Doing Business 2007,"

http://www.doingbusiness.org/documents/DoingBusiness2007_FullReport.pdf
(accessed May 14, 2008).

Mexico

value 4

Despite constitutional provisions and regulations guaranteeing basic civil rights, the reality of civil rights protection is still unsatisfactory in Mexico. State actors can only partially protect citizens from human rights abuses. Organized crime and especially drug trafficking pose a serious threat to safety in several of the northern states. In many urban areas, police forces cannot effectively protect citizens from robbery or other forms of violent crime. Even worse, corruption and the increasing infiltration of police forces by organized crime have often led to situations where the threat of bodily harm or civil rights abuses originated from state actors.

The Supreme Court has a range of instruments it can use to protect the rights of citizens, including the amparo process, an institution peculiar to Mexico. If the Court believes authorities have acted inappropriately, it can issue an amparo to stay the process currently underway (for example, a land expropriation). Amparo suits are common in Mexico, and the Supreme Court is a serious professional body. In addition, Mexico has institutionalized the role of ombudsman, whose role is to look at human rights cases. However, problems arise in lower courts, where poor training and corruption are common, and also with respect to issues that do not reach the courts at all. A major problem is that the military is used quite considerably for what in other countries would be ordinary policing roles, such as trying to check and control the drug trade. When soldiers or even policemen kill in the line of duty, there

is rarely a serious system of accountability. There is also extensive corruption within the police and the military.

Turkey

value 3

Civil rights, such as the right to security, access to justice, freedom of movement and settlement and freedom to own property, are by and large protected. However, members of the population that do not accurately match the image of an “ideal citizen” of the Turkish republic (ideologically defined as an individual who maintains a secular outlook, speaks Turkish as a native language and whose religious affiliation is Hanafi Muslim), suffer civil rights infringements.

Most often these infringements include those of freedom of religion, the free expression of cultural or linguistic identity, freedom of property ownership and general equal treatment before the law. People who speak Kurdish (or Arabic) as their native language, who are Alevi Muslim or belong to one of the small, non-Muslim minorities are most often targets of discrimination. Independent organizations have reported rights violations and even the torture or ill-treatment by state officers of these groups.

Article 42 of the Turkish constitution says that Turkish is the only language to be taught as a mother tongue to Turkish citizens. This prescription is understood not only as limiting state services but also outlawing private language courses. Kurdish or other languages related to the Muslim faith (excepting Arabic and Persian, which are taught in religious schools) are practically non-existent within the school system. Despite reforms enacted in May 2007 as part of the framework of the EU membership process, a municipal mayor and his council still were relieved of their posts by a court decision, as they had published information brochures in Kurdish and Aramaic, the language of Christian Assyrians in the country’s southeastern region.

The country’s small, native non-Muslim communities do not fully enjoy the religious and cultural freedoms that were granted to them by the Lausanne Treaty (1923) and have only limited disposition to property. Neither these groups nor Turkish Protestant church organizations constitute recognized legal bodies. Sunni Muslim women who wear the headscarf are denied the right to public education at the university level.

The situation of illegal immigrants and asylum seekers constitutes another area where civil rights are at issue. The judicial system has been strengthened by the adoption of structural reforms, and significant progress has been made with the passing into law a new code for criminal procedures, relating to the enforcement of sentences and establishing regional courts of appeal. In incorporating these new laws into the Turkish system, judges and prosecutors will play a considerable role.

Indicator Non-discrimination*Question* How effectively does the state protect against discrimination?

30 OECD 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 = State institutions actively prevent discrimination. Cases of discrimination are rare.*
- 8-6 = State anti-discrimination protections are moderately successful. Few cases are observed.*
- 5-3 = State anti-discrimination efforts show limited success. Many cases can be observed.*
- 2-1 = The state does not offer effective protection. Discrimination is widespread.*

Canada

value 9

The Canadian federal government is very committed to protecting its citizens against any form of discrimination. Most notably, Canada was one of the first countries in the world to constitutionally entrench both individual and group rights aimed at shielding disadvantaged persons and groups from discrimination. Depending on the policy area under consideration, there are a variety of measures in place meant to prevent discrimination, including affirmative action measures, special representation rights and autonomy rights.

The Canadian Human Rights Act (1985) extended the laws of Canada to protect Canadians from discriminatory practices based on race, national or ethnic origin, color, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offense for which a pardon has been granted. The Canadian Human Rights Commission (CHRC) is empowered by the Canadian Human Rights Act and the Employment Equity Act, which ensures equal access to employment for women, aboriginal peoples, persons with disabilities and members of visible minorities. The CHRC also investigates complaints and acts as an ombudsman for human rights in Canada.

The Supreme Court of Canada recently ruled in support of same-sex marriage, which forced Canada's government to accept it. The Employment Equity Act – which aims not only to eliminate current and future barriers to employment for women, persons with disabilities, aboriginal people and members of visible minorities, but also to remedy past discrimination and improve access and distribution throughout all occupations and at all levels – is the umbrella under which employment programs, including elements of affirmative action, are developed. Such programs are permitted by the Canadian Charter of Rights and Freedom and by the various human right acts at both the federal and provincial levels.

Finland

value 9

Rights of ethnic and religious minorities are as a rule well protected in Finland, and the criminal code covers ethnic agitation, penalizing anyone who threatens a racial, national, ethnic or religious group. The rights of the Swedish-speaking minority in Finland are widely respected, and Finnish and Swedish share a position as national languages. The Åland Islands, whose inhabitants speak Swedish, for historical reasons have extensive autonomy and their own parliament (as well as one seat in the national legislature).

Cases of discrimination are rare. However, ethnic minorities and asylum seekers do report occasional police discrimination, and according to the International Helsinki Federation for Human Rights, Finland was found on six occasions in 2005 to be in violation of article 6 of the European Convention on Human Rights and Fundamental Freedoms. Roma individuals, who make up a very small part of the population, are widely marginalized.

Iceland

value 9

Iceland's constitution states that every person should enjoy equal human rights irrespective of sex, religion, opinion, national origin, race, color, property, birth or other status. More specific provisions can be found in the penal code, the Administrative Procedure Act and the Equality Act. The Supreme Court can and has ruled based on those acts and the constitution. It is explicitly spelled out in the Equality Act that all societal rights are gender-neutral, and that gender-based discrimination in pay, hiring or promotions is against the law. The Center for Gender Equality is tasked with overseeing the law, and is obliged to refer all major cases to court. However, the reality is that discrimination occurs in Iceland, especially on the basis of gender and disabilities, and against foreigners.

In the public sector, women benefit from policies of positive discrimination. In comparative perspective, Iceland's anti-discrimination policies concerning gender, age, and class origin are among the world's strongest.

Ireland

value 9

National and EU-level equality legislation in Ireland outlaws discrimination in employment, vocational training, advertising, collective agreements, the provision of goods and services, and other opportunities to which the public generally has access on nine distinct grounds. These are: gender; marital status; family status; age; disability; race; sexual orientation; religious belief; and membership in the Traveller community (discussed below).

The Equality Authority is an independent statutory body that publicizes equality

legislation and provides legal assistance to those claiming discrimination under equality legislation. This assistance is, however, subject to those claimants fulfilling specified criteria to qualify for assistance.

Tensions exist between immigrant and native communities in areas where there are large concentrations of immigrants. In recent years, the issue of who is entitled to enroll in Catholic-owned schools in areas where the population is growing rapidly has become acute, with school management bodies claiming that they are entitled to favor members of the Catholic faith. This has raised the issue of whether these schools are exempt from the equality legislation.

The highest profile discrimination issue among the native Irish population revolves around the treatment and status of the Irish Traveller community (an itinerant people of Irish origin – about 0.5 percent of the total population – with a distinctive lifestyle ill-adapted to a modern urbanized society). Despite the high level of support by the educational and social services, its members remain very deprived in terms of health care, life expectancy, income, employment and educational attainment.

Netherlands

value 9

The Netherlands has signed the European Convention on Human Rights, which includes a prohibition of discrimination on any ground (Article 14) and that agrees with the European Constitution. In cases of alleged discrimination, appeal can be made to the Netherlands Commission on Equal Treatment (Commissie Gelijke Behandeling, or CGB) in accordance with the Equal Treatment Act (Algemene Wet Gelijke Behandeling). The prosecutor's office has established a National Centre on Discrimination that maintains a database of discrimination complaints, and it also provides training for prosecutors handling discrimination cases. The most recent CGB evaluation report indicates an increasing number of reports of unequal treatment between 2005 (621 reports) and 2006 (694 reports).

Approximately 3 million people in the Netherlands – or approximately 20 percent of the population – are foreign immigrants. This figure includes 1.7 million people who belong to ethnic minority groups. Incidents of physical assault against minorities were rare during the period of observation, but members of minority groups have reported being verbally abused and intimidated and at times being denied access to public venues, such as discotheques. Members of all immigrant groups have reported facing discrimination in housing and employment.

The government is actively pursuing a campaign aimed at increasing public awareness of racism and discrimination. It does not, however, have a policy of affirmative action. Nevertheless, Article 2.3 of the Equal Treatment Act stipulates that the prohibition of discrimination does not apply in the case of specific measures of affirmative action toward women or members of cultural minorities.

New Zealand

value 9

New Zealand has an active policy against any kind of discrimination. The Bill of Rights Act includes rights to life and security, voting rights, and rights to freedom of expression, peaceful assembly, association, thought, conscience, religion and belief. Furthermore, rights to freedom from discrimination and various rights relating to justice and criminal procedures are included.

Other laws, including the 1993 Privacy Act, also provide protection for specific rights. The 2001 Human Rights Amendment Act introduced additional safeguards against discrimination on grounds such as age, disability or sexual orientation in the policies and practices of government agencies. Cases of discrimination are rare, but they do occur. For instance, the United Nations Committee on the Elimination of Racial Discrimination (CERD) published a list of concerns in its latest report, mainly dealing with discrimination against the Maori population.

Annotation:

United Nations, “International Convention on the Elimination of all Forms of Racial Discrimination,” (Geneva: UN, 2007) <http://www.converge.org.nz/pma/CERD71-Obs.pdf> (accessed 2 April 2008).

Norway

value 9

Equality of opportunity and equality before the law are firmly established. There is an ombudsperson for civil rights. The Sami minority living in the north of the country has some limited self rule. Up until the 1980s, there was some open contention with the Sami over the use of natural resources in the north, but the issue has since subsided.

Men and women have essentially identical educational attainments. Labor force participation rate by women is very high, at 72 percent. There is some evidence of gender discrimination in wages, as women’s earnings are average just 84.7 percent of men’s. However, once the number of hours worked, occupation, education and experience are controlled for, there are no significant differences between the earnings of men and women. This evidence does not per se imply that there is no gender discrimination at all in the labor market (e.g., men may find it easier to be hired in high-paid occupations).

Day care services are widespread and heavily subsidized. One of the major achievements of the current government has been to lower the price of day care, and to provide full day care coverage for all parents seeking it. In 2006, a law went into effect introducing affirmative action in the selection of board members for publicly listed companies. Under this regulation, at least 40 percent of board members must be women.

Some discrimination against non-Western immigrants seems to persist. Immigrants earn lower wages and have substantially lower employment rates than native

Norwegians. Although discrimination against immigrants (including in the labor market) is illegal, in practice very few cases are prosecuted.

United Kingdom

value 9

In the past decade, much has been done to protect against discrimination, both in terms of policy and practice. However, legal regulations have yet to filter through and affect change in deeply rooted societal behavior. The Equality Act of 2006 dissolved the Equal Opportunities Commission, the Commission for Racial Equality (CRE) and the Disability Rights Commission, but gave birth to the Commission for Equality and Human Rights (CEHR), which has a wider brief than its predecessors. In action since October 2007, the CEHR is the key body charged with monitoring efforts to combat discrimination and handling complaints. It will also enforce equality legislation on age, disability, health, gender, race, religion or belief, sexual orientation or transgender status, and encourage compliance with the Human Rights Act of 1998.

In practice, the record on discrimination prevention is mixed. There are continued concerns about sexist, homophobic and racist attitudes – including instances of institutionalized racism such as the Stephen Lawrence Enquiry in 1999 – in sections of the national police force. It is generally believed that discrimination has grown since the London attacks of 2005. Legislation aimed at effectively promoting non-discrimination for the disabled shows an improving, but mixed record. The same is true for gender mainstreaming.

It is generally fair to say that state institutions effectively protect against discrimination and have a number of policy measures in place to prevent discrimination within society. Actively working to prevent discrimination, the British government cannot be blamed for residual discrimination throughout society.

United States

value 9

The Civil Rights Act prohibits discrimination in voting, employment, education and housing, and it lists several protected categories: race, ethnicity, religion, age, gender and disability. Efforts on the part of gay-rights groups to include sexual orientation as a protected category have succeeded in some states and localities but not at the federal level. After a major effort to enforce anti-discrimination policies – especially for voting – in the South from the 1960s to the 1990s, federal enforcement efforts have largely subsided and particularly so under the Bush administration.

Much of the effective enforcement on non-discrimination policies is undertaken by the schools, businesses and other institutions themselves under pressure from their own constituencies. Most of these institutions make active efforts to recruit women and members of minority groups. Today, minorities and women occupy a much larger share of employment positions in which they were hardly represented some 40

years ago. In this sense, anti-discrimination policy has been successful, but minorities and women have yet to secure equal representation and equal pay, which is the other area at which anti-discrimination policy is aimed. Large segments of the black and Hispanic populations have severe educational and economic disadvantages and live in poor, racially or ethnically homogeneous areas, especially in inner-city areas.

Belgium

value 8

Equality of all Belgian citizens is guaranteed by Article 10 of the country's constitution, while Article 11 forbids discrimination, especially of ideological or philosophical minorities. But as in many countries, discrimination exists in practice. A significant proportion of the population openly expresses feelings of racism. In daily life it is difficult to provide equal opportunities to the disabled, as just one example. The government, however, is proactive in addressing racial matters. Among other efforts, the government runs the Center for Equal Opportunities and Opposition to Racism, an agency that informs individuals on topics and issues related to discrimination. It provides legal counseling and is active in training, raising awareness and lobbying for policies. When in 2003 the federal parliament adopted EU anti-discrimination directives as national law, it at the same time extended the center's scope of action.

Belgian institutions have been at the forefront of initiatives to reduce discrimination based on gender or sexual preference. Homosexuals have been granted many rights, including the right to marry, and are especially protected against discrimination at work. Gender mainstreaming has made much progress over the last few decades. Nevertheless, women are in practice still disadvantaged in terms of job opportunities and salaries.

Of course, the issue of linguistic groups and their rights remains a permanent issue of contention. Policies of linguistic quotas as well as the imposition of "single-language" administrations in Flanders and Wallonia often result in instances of discrimination.

Annotation: Center for Equal Opportunities and Opposition to Racism,

http://www.diversiteit.be/CNTR/EN/about_the_center/mission/

http://www.diversiteit.be/CNTR/EN/about_the_center/history/ (accessed February 18, 2008).

Germany

value 8

Article 3 of the Basic Constitutional Law and the General Equal Treatment Act, introduced on the basis of four EU directives, together provide the legal framework prohibiting discrimination based on sex, age, race, religion and other specific

grounds. The implementation of the General Equal Treatment Act was strongly contested by the parties then in opposition – the CDU and the affiliated Christian Social Union (CSU), and the Free Democratic Party (FDP).

These parties, together with employers' associations, criticized the Gerhard Schröder government, and in particular the Green Party, for using European ideals as a pretext for creating regulations going beyond EU guidelines.

When compared internationally, the difference in wages received by men and women for doing the same job in Germany is still high. Experts also claim that there is a weak “anti-discrimination ethos” within the country, a phenomenon that has been shown in surveys made on the subject. A report published by the Council of Europe in 2007 highlighted that the rights of Sinti and Roma in Germany, as well as of the Sorbian minority (a small group of people in East Germany) should be improved.

Portugal

value 8

The Portuguese constitution guarantees freedom of religion. The 2001 Religious Freedom Act provides religious organizations with a number of benefits formerly reserved for the Catholic Church (e.g., tax exemptions and legal recognition of marriage and other rites), provided that they have been established in the country for at least 30 years or recognized internationally for at least 60 years. There have been no recent reports of religious discrimination. Likewise, academic freedom is fully respected, and there is freedom of assembly and association. National and international NGOs operate in the country without government interference. Workers have the right to organize, bargain collectively and strike for any reason, including political ones.

The constitution also guarantees equal treatment. The government has taken a number of steps to combat racism, for example, by passing anti-discrimination laws and launching initiatives to promote the integration of immigrants and Roma into Portuguese society. In 2007, the Migrant Integration Policy Index (MIPEX), which measures policies to integrate migrants in 25 EU member states and 3 non-EU countries using over 100 indicators in six policy areas, ranked Portugal second – behind Sweden – as the most-effective country. On the other hand, there have been few prosecutions in cases involving racial discrimination or the use of excessive force by the police toward immigrants and Roma.

The Portuguese constitution also forbids discrimination based on sexual orientation. This right does not yet extend to same-sex marriage, as became evident in February 2006, when the courts rejected a homosexual couple's attempt to get married on the grounds that Portuguese law only recognizes marriage between a man and a woman. There is also an active policy for gender equality. Nevertheless, domestic violence against women remains a problem in Portugal, and there were 39 reported cases of women dying as a result of domestic violence between November 2005 and November 2006. Nevertheless, few such cases are ever brought to trial. Proposed reforms to the penal code aim to broaden the definition of domestic violence to

include unmarried, same-sex and former couples, as well as abuse between parents and children. Discrimination against pregnant women in the workplace also seems to persist in some cases, particularly in low-paid, precarious jobs.

Although the constitution provides for an independent and comprehensive court system, there is a considerable backlog of pending trials. Furthermore, human rights groups have accused the system of certain abuses, including some unlawful police shootings (six in 2006) and poor prison conditions. Such conditions include overcrowding in an estimated 70 percent of the country's prisons, poor sanitary conditions and high rates of HIV/AIDS among prisoners. For example, of the 91 deaths in prison in 2006, 82 percent were due to illness or poor sanitary conditions.

Spain

value 8

In general terms, there are few cases of discrimination. However, the government has not always been effective in preventing discrimination, even if recently various laws and regulations have been passed specifically addressing groups such as women, same-sex couples or the disabled. Spain needs to work harder in order to close the gap between anti-discrimination measures de jure and de facto discriminatory behavior, but huge steps have been taken that move in this direction.

The office of the ombudsman annually reports on cases of discrimination and the government's inability to prevent such cases. For example, cases deal with ensuring that women receive equal pay and access to professional careers in the labor market, immigrants achieve better social integration, homosexuals are granted more visibility and equal civil rights, or the disabled are granted more facilities to increase their mobility in public buildings.

The fight against discrimination on gender, sexual orientation or ethnic origin has been at the center of the government's social policy program. In addition to legislative activities in these areas, in 2006 the Monitoring Center on Racism and Xenophobia was established. The incumbent PSOE government has increased the representation of women in government to 50 percent, setting an example of good practice concerning the representation of women in politics.

While a law that allows homosexual marriage has effectively reduced the levels of discrimination on the basis of sexual orientation, a law against gender violence has not reduced the registered levels of violence against women. Similarly, the levels of discrimination against women concerning access to the job market and wages are still high, and it is still early to see the effects of the law on equality.

Sweden

value 8

Discrimination clearly violates the constitution and all other laws and regulations. Nevertheless, the media regularly reports on immigrants having problems gaining access to the labor market and facing other forms of discrimination. In the courts,

cases of discrimination are generally decided in favor of the plaintiff, but it would appear that societal norms and values continue to give the typical Swede advantages over immigrants.

The main state institutions for preventing discrimination are the four ombudsman institutions. The Ombudsman against Ethnic Discrimination (DO) is an independent government authority responsible for responding to cases of discrimination related to ethnicity, religion or opinion in Swedish society. The Equal Opportunities Ombudsman is responsible for guaranteeing compliance with laws against gender discrimination. On July 1, 2005, legislation against gender discrimination was made more stringent as a result of changes in the Equal Opportunities Act and the introduction of revised definitions of unlawful discrimination into the Prohibition of Discriminations Act.

The Office of the Ombudsman against Discrimination on Grounds of Sexual Orientation is a public body established by parliament in 1999. Although publicly funded, the authority is an independent body that is able to comment freely on government policy. The Swedish Disability Ombudsman (HO) works for people with disabilities and aims to ensure that they enjoy rights equal to those enjoyed by the non-disabled.

Sweden's ombudsman institutions have been criticized for being too weak. For example, the ombudsman offices do not take many cases to court and do not win many convictions. Furthermore, in 2006, an official inquiry commission strongly criticized the high degree of ethnic discrimination in Swedish society, although there was much debate about the accuracy of the report.

Australia

value 7

Although not a significant issue in public discussion, there is little doubt that discrimination does exist in Australian society, and it is also true that state efforts to address discrimination have been limited. The Human Rights and Equal Opportunity Commission (HREOC), established in 1986, oversees the various acts seeking to eliminate discrimination on the basis of sex, race, disability, religion and political beliefs. While HREOC has played a role in reducing discrimination in a range of economic and social activities, it would be difficult to argue it has been completely effective. Studies conducted over the past 20 years evaluating the effectiveness of anti-discrimination legislation have generally agreed that the measures in place are very effective in providing redress for individual complaints, but less so in altering society-wide prejudices.

Positive discrimination measures are rare at the level of national public policy. The notable exceptions are a handful of programs available only to Indigenous Australians, such as a job-creation program for indigenous communities. However, indigenous citizens' circumstances remain so poor on almost all measures of economic, social and health well-being that these efforts must be considered a failure. Neither special representation nor autonomy rights exist. A body to represent indigenous persons and to administer government programs for indigenous

communities was established in 1990, but was abolished in 2005 after having been the target of allegations of corruption and mismanagement, with management returning to the Commonwealth government.

Austria

value 7

The Austrian constitution prohibits any form of legal and administrative racial discrimination. It has also been supplemented by EU regulations on non-discrimination.

In Austria, three public institutions serve to prevent discrimination: The Ombudsperson for the Equal Treatment of Men and Women in the Private Sector; the Ombudsperson for Equal Treatment Regardless of Ethnicity, Religion or Beliefs, Age or Sexual Orientation in the Private Sector; and the Ombudsperson for Equal Treatment Regardless of Ethnicity in Other Areas. These three offices, which can be approached by any citizen, report annually to the National Council, the lower house of the parliament.

The Austrian State Treaty includes special rights for the Slovenian and Croatian minorities in the states of Carinthia, Styria and Burgenland. The treatment of non-EU-citizens is described by some experts as being legalized discrimination, and there is also frequent discrimination against foreigners, especially black or Muslim immigrants. Incidents of discriminatory behavior by police officers have also been reported.

Denmark

value 7

Danish law forbids discrimination on the basis of many criteria, including gender and ethnic origin. It is also forbidden, for example, to speak about ethnic groups in an insulting way. However, there is de facto discrimination against immigrants – and especially Muslim immigrants – in the workplace. Although the government had been slow in implementing a proactive integration policy, it has taken a number of related actions over the last few years.

The fact that Denmark has always been very ethnically homogenous adds to the difficulties foreigners face in integrating into Danish society. These difficulties have been exacerbated by the tightening of immigration laws that has taken place since the current Liberal-Conservative government came to power in 2001 with the support of the “nationalist” Danish People’s Party (DF). These policies, which are widely criticized by Danish intellectuals and considered discriminatory by many Danes, include measures requiring Danes who want to marry foreigners and bring their partners to Denmark to be over 24 years of age and to satisfy certain economic criteria. As a result, many young Danes with foreign spouses live in southern Sweden and commute to work in Denmark.

France

value 7

Legal provisions concerning non-discrimination play an important role in France. The principle of equality among citizens provides a foundation for legitimacy and self-perception within the French Republic. Daily life in France shows that regulations and laws are not able to prevent discrimination against French citizens with immigrant backgrounds. This is apparent in both the employment and housing markets, as well as in many other areas where discrimination continues, *de facto*.

In theory, the state's legal assurance of equality for citizens should serve to prevent active discrimination toward specific groups. In practice, this has not proven effective. A High Authority was set up in 2004 to put the politics of non-discrimination into practice by working closely with local authorities and businesses. The increasing number of cases that the High Authority is confronted with (1,400 in 2005 and 4,000 in 2006) demonstrates the genuine need for its existence. The High Authority's impact on daily life in France remains to be seen, however.

Italy

value 7

A constitutional provision (article 3) guarantees – *de jure* – equal rights and assures the practice of non-discrimination. The Constitutional Court and a government department (Dipartimento per le pari opportunità) safeguard the practice of non-discrimination in Italy. In reality, the state of affairs here is mixed. The main linguistic minorities which are well-established in the country (such as German-speaking groups in southern Tirol and French-speaking groups in the Aosta Valley) have achieved over the years a very effective system of protection based on representation and autonomy rights. The same applies fundamentally for physical disabilities, although implementation in this area has been less effective. Protections are limited for new minority groups that are a result of recent (and to an extent, illegal) immigration.

Immigration is still quite a new phenomenon and shortcomings are evident in integrating newly arrived minorities (such as Chinese, Tamil or East Europeans). In northern Italy, there have been instances of strong discriminatory acts by right-wing politicians from the Northern League (Lega Nord) party. Another dimension is the continuous debate over the integration of Sinti and Romany minorities, groups which experience discrimination by individual citizens. With regard to gender, any discrimination is legally prohibited, but in practice policies vary significantly and positive discrimination policies have been rarely applied.

However, in Italy, the most common example of discrimination is one against women at work, as they tend to be treated less favorably in terms of salary and career prospects than male colleagues, in addition to having less job protection in general. Little has been done to improve this situation. Some levels of discrimination against homosexuals are often observed. Progressive political forces have experienced serious trouble in pursuing, for example, equal rights for same-sex unions.

Luxembourg

value 7

Luxembourg is a prosperous society and has a booming economy. Cases of manifest discrimination are rare, but do exist. Explicit discrimination, including legislation banning Roma from state territory, as well as more implicit or structural discrimination such as wage disparities between men and women, can be easily found, however.

The existence of a Ministry for Equal Opportunities cannot compensate for the lack of institutional protection against discrimination. Luxembourg was condemned by the European Court of Justice in June 2004 for not having adopted the EU directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Nevertheless, the Chamber of Deputies took another two years to transform this directive into national legislation. This was finally achieved on November 2006, but some of the law's important provisions have yet to be implemented.

Switzerland

value 7

In Switzerland, constitutional law and a system of political power-sharing ensure the autonomy, freedom from discrimination and rights to political participation of Swiss linguistic, ethnic and religious minorities. Additionally, Article 8 of the country's constitution states, "Nobody shall suffer discrimination, particularly on grounds of origin, race, sex, age, language, social position, lifestyle, philosophical or political conventions, or because of corporal or mental disability." Discrimination, particularly against women and foreigners, is nevertheless still present with respect to wage equality, career opportunities and the general respect and reputation afforded these individuals. Openly xenophobic and racist statements have been made by some political parties, in particular the Swiss People's Party (SVP). A commission to deal with discrimination against women and foreigners has been set up to address these issues.

Czech Republic

value 6

Legal regulations and approved public policies adhere to the principles of non-discrimination. However, the legal framework is incomplete and has not prevented discrimination from occurring. The propagation of racial hatred has been outlawed, but the laws have proved ineffective against discriminatory practices. A new labor code, which was passed in 2006 and meets EU requirements, requires equal treatment at work. However, a new anti-discrimination law has yet to be passed owing to disagreements between political parties about the precise meanings of terms

within the legislation. This failure has led to criticisms from the United Nations, and the European Union has threatened to impose penalties because of the Czech Republic's failure to comply with one of the conditions of EU accession. Despite the delay of the new legislation, existing law has provided a basis for few court cases. In 2006, one successful employment case was brought for race discrimination, and there was also the first case for discrimination based on sexual orientation.

State inspectors also found a few cases of discrimination against foreign workers. Discrimination against members of the Roma community, which is chronically disadvantaged in terms of its access to education and the labor market, is a persistent problem. The existing public policies attempting to ameliorate this problem have thus far had little impact on the living and working conditions of the Roma.

Greece

value 6

Greek state institutions generally protect against discrimination. However, measures taken by these institutions are not evenly implemented. For example, Roma individuals and members of religious minorities may face discrimination on the part of low-level civil servants. Local government officials, including municipal authorities in semi-rural and rural areas, have from time to time expressed hostility towards Roma and foreign migrants. Religious minorities also face specific restrictions. For example, the right to establish a place of worship is subject to the approval of the local Orthodox Church, which according to the Greek constitution enjoys the status of a prevailing religion.

Other issues remain as well. The obligation of conscientious objectors to perform military service has been problematic. The provision of education to the Turkish and Muslim minority in western Thrace has improved significantly since the early 1990s, but there are still prominent gaps. The majority of Turkish children in Thrace do not have access to a secondary school that teaches in their first language.

There is no discrimination based on social status or political views. However, women face discrimination in promotions to high-ranking posts in the public sector, and probably in private companies as well. Officially there is no discrimination based on physical ability. In practice, disabled peoples' freedom of movement in the streets of major Greek cities, as well as their physical access to public buildings, are blocked owing to the erratic and unpredictable use of pavements and streets by shop owners and vehicle drivers. Ramps and lifts at the entrance of buildings are rare

Hungary

value 6

The Hungarian constitution forbids discrimination on the grounds of race, color, sex, language, religion, political and other opinions, national or social origin, financial position or any other status. These protections apply to everyone living in Hungary. The 2003 Act on Equal Treatment and the Promotion of Equal Opportunities was

meant to ensure the effective application of these constitutional provisions. The institutions established to ensure equal treatment are functioning well. However, the subordination of the High Authority against Discrimination to the government is not in line with international recommendations.

Despite appropriate legal regulations and institutional provisions, considerable discrimination can be observed in practice. Women face career disadvantages, there is little done to make public buildings and public transport accessible to the disabled, and the Roma population continues to suffer from discrimination and social exclusion. A more recent phenomenon is right-wing intolerance against homosexuals.

Japan

value 6

Some minority groups face discrimination. Such issues have surfaced with respect to descendants of former colonial subjects, citizens in Okinawa, citizens of Ainu origin, citizens with so-called burakumin background (descendants of people in “impure” professions) and illegal immigrants. A 2006 UN Report argued that more should be done to recognize these groups’ special needs, but did not cite unfair treatment by legal institutions or executive agencies as a major problem.

While religious and ethnic discrimination are not very important due to Japan’s ethnic homogeneity and religious pluralism, gender discrimination is much discussed, and inequitable treatment of regular and nonregular workers is a widespread and very serious issue. In the past, working women were expected to leave employment in their mid-20s. Today, more women are able to pursue a business life. However, work patterns and social expectations about the role of women in society have not changed as quickly. This implies that many women still have to choose between a successful career or marrying and founding a family.

The treatment of foreign minorities such as ethnic Koreans or international refugees, legal or illegal, remains problematic. While illegal workers in Japan are informally accepted by enterprises, due to a severe labor shortage for dirty and low-paid jobs, such people do not receive adequate humanitarian protection if problems occur. There is a Basic Law for Persons with Disabilities that was revised and strengthened in 2004. However, the general attitude in the Japanese public towards those with disabilities seems to be rather passive and disinterested, so it is difficult to achieve de facto non-discrimination.

Slovakia

value 6

The constitution and related laws prohibit discrimination. In 2004, and after long political battles combined with strong pressure from NGOs and the European Union, an anti-discrimination law was adopted. However, the presence of profound legal loopholes have compromised the law, and there have been only a few cases brought

to court so far. In a controversial decision, the Constitutional Court declared unconstitutional part of the law's provisions on affirmative action for ethnic minorities.

The Dzurinda government demonstrated a narrow understanding of gender-related policies and was skeptical of cross-cutting gender mainstreaming policies. Existing legislation and institutions have failed to prevent much in the way of discrimination toward especially women, the Hungarian ethnic majority and, above all, the Roma.

Since the 2006 elections, the return to government of the Slovak National Party (SNS) and the People's Party-Movement for a Democratic Slovakia (ĽS-HZDS) – two parties with a strong anti-Hungarian, anti-Roma and homophobic record – has raised concerns about the Fico government's commitment to combating discrimination.

Mexico

value 5

The Mexican state attempts to guarantee and protect minorities' civil rights. Despite some advances, success remains limited. State actors are not able and sometimes not willing to protect the civil and human rights of ethnic minorities, children and women satisfactorily. Mexico is racially mixed, with a degree of social stratification by ethnic background. Business and political elites for the most part have European backgrounds, though there are exceptions.

By the same token, few poorer Mexicans are of obvious European descent. Formal discrimination on inappropriate grounds is not allowed, and overt racial or social discrimination is officially unacceptable. It nevertheless sometimes happens, and people of Indian descent face informal discrimination in some parts of Mexico. Poverty is the principal contributor to inequality, and poverty has a strong ethnic component in Mexico. Indigenous people (13 percent of the country's population) are the poorest among the poor. Strong efforts have been made against poverty in general, aiming to reduce the gap between the indigenous population and others, but inequality remains high.

In addition, violence against women is common in Mexico. Human rights organizations have for many years called for stronger punishments for domestic and sexual violence against women and children. In a national survey, 40 percent of women reported that they had experienced some kind of violence, 17 percent of it either physical or sexual. Life for disabled citizens is extraordinarily difficult in Mexico. Homophobia is prevalent. Mexico City's local legislature recently enacted a law allowing civil unions, but most states have not followed this lead.

Poland

value 5

The Polish legal system prevents discrimination. There is an ombudsman for civil rights, and ethnic-minority political parties do not have to pass the 5 percent

threshold to gain representation in the bicameral National Assembly. However, Poland has so far failed to implement the EU anti-discrimination directive. Moreover, the 2005 change in government brought a backlash in gender policy. As one of its first measures, the PiS government dissolved the Agency for Gender Equality. Some government members also became notorious for their rightist and homophobic speeches. Education Minister Roman Giertych (League of Polish Families, LPR) called for measures that would discriminate against homosexual teachers. In a number of cases, the government and the public prosecutor also took a lenient position toward anti-Semitic propaganda, mainly broadcast from the right-wing Catholic radio station Radio Maryja.

South Korea

value 5

The National Human Rights Commission of Korea (NHRC) was established in 2001 and has a much wider definition of discrimination than is stipulated in Article 11(1) of the constitution. However, the commission has no power to enforce these principles, and although legal protections have improved, discrimination in Korea remains common in practice.

Due to pressure from civil society, the government has become more responsive in protecting groups that face discrimination. The Equal Employment Act (EEA) formally guarantees equal treatment for men and women in the workplace. The Ministry of Gender Equality and Family was established in 2005, with the aim of enhancing gender equality.

Various policies have been implemented focusing on workplace promotions, sexual harassment, domestic violence, the sex trade and other gender-related issues. One of the more successful policies has been the revision of the family registration law, which used to give legal authority to the male head of a family, and was widely criticized as being biased toward male interests. In general, the policies supporting gender equality have been moderately successful.

Existing law officially bars any discrimination based on sexual orientation, but it nevertheless occurs frequently in workplaces. The NHRC is seeking to revise the anti-bias policy used in the workplace by adding a provision that lets the government impose correction orders or fines on companies that discriminate against gays or lesbians.

North Korean refugees also face social discrimination. In a recent survey conducted by the Institute of Unification Studies in Seoul National University, 63.8 percent of respondents said that they did not feel friendly toward North Korean refugees. Migrant workers too face substantial discrimination, often being treated as second-class human beings by their employers. The government has improved the rights of illegal migrant workers to sue employers for unpaid wages, but in reality their protection remains weak. There have been reports on children of migrant workers or bi-ethnic parents facing discrimination in school.

Turkey

value 3

The Turkish constitution guarantees equal treatment for all citizens and explicitly bans discrimination. Although Turkey does not have an all-encompassing act to assist in combating the many forms of discrimination, certain provisions to tackle discrimination are included in a number of laws, such as the labor law, the law on disabled people, and the penal code and so on. Nevertheless, in practice various forms of discrimination are frequently observed. There is little progress in improving the status of disadvantaged groups, such as women and children. Gender discrimination in the workplace is still a major issue.

The plight of street children has been a special agenda item for the state ministry for women and families. The situation of Alevis, Romany and some religious minorities officially accepted (Greek, Armenian and Jewish groups) have been repeatedly brought to attention through EU progress reports. The Turkish legal system does not abide by any special representation or autonomy rights.

The average wage for women is considerably lower than the average wage for men. Although the government, the private sector and a number of NGOs have made efforts to enroll more girls in school, cultural barriers still play a role in certain regions (particularly rural areas) in keeping girls out of school. The illiteracy rate is much higher among women when compared to that of men.

Very little is done for those who are physically disabled, and people who suffer from severe disabilities are in general unable to participate in social activities, and employment opportunities for this group are very limited. Religious minorities face discrimination and have little, if any, chance of occupying a bureaucratic or governmental post. Homosexuals are the object of not official or legal but rather of deep cultural and practical discrimination.

In tandem with the abuse of the rights of minorities is the extreme zealotry toward the protection of “Turkishness” (as outlined in paragraph 301 of the penal code). This code is still cited in the prosecution of writers, journalists and politicians.

This report is part of the Sustainable Governance Indicators 2009 project, which assesses and compares the reform capacities of the OECD member states.

More on the SGI 2009 at www.sgi-network.org

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