

SGI Sustainable Governance
Indicators 2009

Democracy

Rule of law report



Indicator **Legal certainty**

Question **Does government act on the basis of and in accordance with law, providing legal certainty?**

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 = Government acts predictably, on the basis of consistent, transparent legal regulation.*
- 8-6 = Actions are rarely unpredictable. Regulation is consistent, but leaves scope for discretion.*
- 5-3 = Some actions are unpredictable, stretching legal basis. Some regulation is inconsistent.*
- 2-1 = Actions are often unpredictable, lacking legal basis. Regulation is contradictory.*

Finland

value 10 The rule of law is one of the basic pillars of Finnish society. When Finland was ceded by Sweden to Russia in 1809, the strict observation of prevailing Swedish laws and legal regulations became one of the most important tools for circumventing Russian interference in Finnish affairs. From this has emerged a political culture which demands legal certainty and does not accept any degree of legal uncertainty.

Germany

value 10 The German state has long been based on the principle that every act of its authorities must have a legal basis. Should this not be the case, a complaint can be brought before the German courts against the act in question. The principle of the rule of law effectively has two consequences: the limitation and legitimization of state/federal actions.

This principle is codified in the German Basic Constitutional Law, and affects every act of the German state, both in theory and in practice. The high level of foreign investment in Germany is due to the substantial level of legal security within the country. However, debates over regulatory policy have been going on for years, caused by concerns that levels of regulation are excessive and cause unnecessary delays in public development plans.

This is due to the constant stream of complaints submitted by citizens, which can delay or prevent government projects. There are also discussions over whether the costs associated with legal security and the high level of bureaucracy actually dissuade potential investors. As a result, the federal government and the European Union each have developed programs aimed at reducing the level of bureaucracy. Nevertheless, the principle of legal security is highly valued, and is something no one really wants to change.

New Zealand

value 10 The government and administration act predictably on the basis of and in accordance with legal provisions. Although New Zealand, following the British tradition, does not have a codified constitution but a mix of conventions, statute law (including the Constitution Act, the Bill of Rights Act, the Electoral Act 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 Ombudsmen increase accountability. Public bills affect the whole country, whereas local bills affect only a certain part of the country. Local bills are usually put forward by district or city councils. The government introduces government bills. Hence, there is a great deal of transparency in legislation, including at the level of local bodies.

Norway

value 10 Norway's government and administration act predictably and in accordance with the law. Norway has a sound and transparent legal system. Corruption within the legal system is not a significant problem. The state bureaucracy is regarded as both efficient and reliable. Norwegian citizens generally trust their institutions.

Sweden

value 10 Sweden still strongly subscribes to the notion of a constitutional state in which lawfulness, due process and predictability are the core values in governance and public administration. Corruption is all but non-existent, government transparency is exemplary, and actions of the state bureaucracy are predictable and can be appealed to the legal system.

Australia

value 9 At the Commonwealth, state and territory levels, government and administrative bodies act predictably, on the basis of and in accordance with legal provisions. The High Court, the supreme judicial body, has become increasingly activist in its decisions over the past two decades, and has become the ultimate arbitrator of government decisions. Legal regulations are consistent and transparent, ensuring legal certainty. The main recurring issue arises from jurisdictional uncertainty, generally involving federal legislation that encroaches on state jurisdiction. There

have been many disputes between the states and the federal government over the constitutionality of federal legislation, with most eventually settled by the High Court. Most recently, several state governments unsuccessfully challenged the legality of the industrial relations reforms of 2005. In these reforms, the federal government substantially changed the powers of the Industrial Relations Commission, with significant consequences for the wages and working conditions of Australian employees.

Denmark

value 9 When it comes to legal certainty in Denmark, no serious problems can be detected. Government activities are based on law, which naturally gives it a certain degree of discretion. Much of the apparatus of Denmark's government is decentralized, and the interpretation of particular laws can vary from one municipality or region (or county, before the 2007 reforms) to another. Moreover, the Danish government tends to approach issues in a rather commonsensical and pragmatic way.

Iceland

value 9 The Icelandic government and administration ground all their actions on law, so in that sense all their actions are very predictable. Nevertheless, government actions and court verdicts have in a few instances been appealed to and overruled by the European Court of Human Rights. The legal profession is heavily politicized, as the media used to be. Partly as a result of this, the court system, like the political establishment as represented by parliament, enjoys the confidence of only about 30 percent of the population according to opinion surveys..

Netherlands

value 9 In general, the government and administration act in a predictable manner and in accordance with legal provisions. Consistent and transparent regulations provide for legal certainty. All bodies of the central, provincial and municipal governments are legally obliged to be transparent about their actions, so as to allow for increased control and to enhance accountability and legal certainty. However, the accountability of independent agencies (known as the “Zelfstandige Bestuursorganen”) remains a point of concern, especially since a report of the Dutch Court of Audit recently concluded that there is a lack of political control over these agencies and a lack of knowledge regarding their internal proceedings.

Switzerland

value 9 Switzerland's federal government and administration act predictably. However, this predictability is partially reduced by the very pragmatic administrative culture at the cantonal level. The country's division into small administrative districts, the tradition of decentralized local government, and a partial "militia administration" provide for a substantial amount of leeway in the activity of Switzerland's public administration. The pragmatic administrative culture ensures flexibility and efficiency on the one hand, but reduces legal certainty on the other.

United Kingdom

value 9 The absence of a written constitution in the United Kingdom can sometimes mean that government is less constrained in its use of discretion. Government also has a large degree of control over the legislative process and can therefore change legal provisions relatively easily should these constitute obstacles to the government's policy objectives. However, the government does not act outside the law and is usually predictable in its actions. This can also be said of the way public administration conducts its business, although recently – and especially in connection with terrorism – there appears to be a growing tendency to make use of discretion.

While government and its administration are grounded in the rule of law, there are "royal prerogatives" affecting the selection of the prime minister, constitutional issues and foreign policy issues, such as the declaration of war, the commitment of forces to armed conflict, treaty making or recognizing foreign governments. In most cases, the prime minister's use of such prerogatives follows established traditions and is therefore predictable as well.

Austria

value 8 In principle, legal certainty is guaranteed by the Austrian constitution's specific understanding of legality, which is dictated by the legal gradation ("Stufenbau des Rechts"). According to this principle, any administrative act has to be based on law, and any law has to be based on the constitution. According to Article 18 of the Austrian constitution, any administrative act must be based on a specific legal authorization, which has to be "sufficiently determined." This definition leaves a certain degree of discretion to the government and administration. Claims against arbitrariness in action or law can be filed with the Constitutional Court and the Administrative Court.

In recent years, the Constitutional Court has nullified a number of newly adopted laws owing to their perceived lack of clarity and transparency. In general, however,

legal certainty is provided for extensively, with Austria ranking seventh among the OECD's 30 countries in the World Bank Governance Indicator for the rule of law. Austria's civil laws allow sovereign public bodies to act as civil entities on matters for which they do not exercise sovereignty.

Belgium

value 8

Article 159 of the Belgian constitution guarantees the rule of law. The government and its administration act predictably on the basis of legal provisions, and there is a high degree of legal certainty. However, some government laws are so complex or are modified so often and haphazardly that they fail to meet rules over transparency and coherence. Many bills are held in limbo while waiting for an executive decree (“arrêts d’exécution”), needed before a bill becomes active. In practice this implies that the government and its administration maintain a broad scope of discretion, which decreases legal certainty.

Another difficulty relates to the country's linguistic divide. With issues over linguistic rights, certain terms used in a bill may not be interpreted by both sides similarly. For example, a “reasonable knowledge” of the Flemish language by a French-speaker could be interpreted by Flemish authorities as the ability to understand technical terms on Flemish-only administrative forms. Such conflicting interpretations of legal provisions decrease legal certainty and are even sometimes heard by the Constitutional Court. Additionally, in some policy fields, jurisdiction is shared among the central government, regional governments and linguistic communities, a situation that is certainly detrimental to legal certainty.

Canada

value 8

Canada has a sophisticated legal system whose rulings are generally predictable and consistent. Legal regulations do not change often and, despite being a bit complex for the average citizen, they are consistent and transparent. The government and its bureaucracy act predictably and follow legal procedures when appropriate. One could argue that there are some small impediments to legal certainty. While governments do comply with the rule of law, there is nevertheless a certain scope for unexpected – but by no means illegal – behavior. This is mainly due to the ambivalence the Constitution has regarding certain aspects of federal jurisdictions. Among other things, it does not spell out the exact limits of federal spending powers. Another well-known, small impediment is the “notwithstanding clause,” which allows federal and provincial legislatures to declare part of a law out of the reach of judicial review for a period of five years, even though it might contradict certain sections of the Canadian Charter of Rights and Freedoms. Although this clause can be re-enacted indefinitely, it is rarely used in practices, and its five-year expiry date imposes a strong democratic check on its use.

Czech Republic

value 8 In general, executive actions are predictable and comply with the law. However, problems can arise when the legal framework is incomplete or ambiguous. This especially applies to cases related to the Charter of Fundamental Rights and Freedoms, the implications of which have yet to be fully incorporated into Czech law. As a result, there is some inconsistency in legal regulations. There is, however, a gradual accumulation of case law, as the courts resolve ambiguities. For example, the right to strike has not been covered by a comprehensive legal framework, but the courts have interpreted it as a fundamental right unless and until specific laws indicate restrictions on this right.

Hungary

value 8 The government and administration largely act in accordance with the law. In some cases, however, legal certainty suffers from a lack of legal cohesion and the effects of low-quality legislation. For instance, some of the reforms adopted after the 2006 parliamentary elections were poorly prepared and badly communicated. In addition, civil servants, some of whom act as they did in communist times, sometimes fail to provide all services and information envisaged by law.

Ireland

value 8 Ireland has a tradition of a strong independent judiciary that has been relatively active in amending or interpreting legislation in the judicial review process. Apart from the freedom of information legislation currently in place, there is also an Office of the Ombudsman, which was established in 1984 and is charged with investigating complaints from members of the public who feel that they have been unfairly treated by public bodies or officials (see “Access to government information”). Legislation widening the role and enhancing the powers of this office is envisioned for 2007 but was not brought forward within the period under review. The government and administration act on the basis of and in accordance with legal provisions to provide legal certainty. Nevertheless, ministers do have the discretion to issue ministerial orders that might be regarded as being arbitrary or unpredictable. In relation to infrastructure projects and town and rural planning, a significant degree of discretion is vested in the hands of both elected and non-elected officials. In some cases, decisions regarding land use may be unduly influenced by negotiations and bargaining between vested interests rather than by the outcome of the application of objective rules and regulations.

Spain

value 8

The Spanish government and state administration act on the basis of and in accordance with legal provisions to provide legal certainty. Spanish administrative law is the bedrock of the policy process and of administrative procedures, granting regularity and certainty in government and public administration. A legalistic approach guides all governmental decisions. The trend has been toward increasing levels of legal certainty since the early 1980s. However, in extraordinary circumstances such as the fight against terrorism, the government at the time of writing has used too much discretionary power.

In its attempt to forge a peace agreement with the terrorist organization ETA, the Spanish government has taken measures that, although legal in a strict sense, do not provide legal certainty and show the discretionary power of the executive with regards to the application of the law. The first of these decisions concerned the participation of ETA-supporting political forces in the local elections of May 2007. The second concerned the reaction of the government to the hunger strike initiated by ETA member José Ignacio de Juana Chaos while in prison. This reaction was seen by many to be inconsistent and to provide legal uncertainty.

United States

value 8

The United States is exceptionally legalistic, litigious and adversarial. Highly detailed statutes govern most programs, and there are opportunities to appeal most administrative decisions to various appeals boards or the courts, which can often simply overturn administrative decisions. The problem regarding certainty in the U.S. system is mainly one of there being too many laws and regulations and too much legal enforcement rather than too few or too little. Major regulatory policies may be in litigation for many years.

By world standards, the tax code is extraordinarily complex and subject to frequent changes by Congress and the Internal Revenue Service (IRS). As a result, legal certainty in economic life can also be seen as having been impaired by the several changes in the tax code during the presidency of George W. Bush. In general, according to the World Bank governance indicators for 2006, the United States ranked only 16th out of 30 OECD countries when it comes to the security of the rule of law.

France

value 7

Since the 1970s, France has increasingly abided by the rule of law. This process has been strongly influenced by the European Community and the increasing role of the Constitutional Council. Nonetheless, there are discrepancies between the actual

content of laws and how they are put into practice to be noted. Because legal provisions are often not applied as they should be, laws can end up having little effect – a situation which has long been the case in France. The historian and 19th century political thinker Alexis de Tocqueville once remarked upon this already-established fact, saying: “La regle est rigide, la pratique est molle.”

Italy

value 7

The government and its administration tend to act on the basis of legal certainty, but this is often effectively undermined by corruption and the presence of a well-established shadow economy (Italy’s National Institute of Statistics (Istat) estimates that tax evasion amounts to about 18 percent of GDP; the Department of Fiscal Policies goes further to say 27 percent). In almost all cases, the country’s complex framework of laws should leave little room for discretion, but often – and paradoxically – the excess of regulations and technicalities creates a fertile ground for a larger degree of discretion and a general lack of transparency, therefore increasing the possibility of corruption and evasion.

With Italy, it is more useful to assess exclusively the government on a national level, as local and regional levels tend sometimes to be not quite predictable with regard to executive actions. Furthermore, predictability depends strongly on the government’s party affiliation. The former Berlusconi government, for example, displayed a high degree of inconsistency and some of its legal actions were blocked or reviewed by the president or the Constitutional Court. This situation changed after the Prodi II government came into office.

Japan

value 7

While in everyday life citizens can in general rely on the rule of law, sometimes even in what appears an overly bureaucratized way, the government still has considerable leeway to apply the law as it considers fit. This has two consequences. One is that government authorities have frequently been able to go beyond the law to achieve strategic purposes. The most well-known example is that of “administrative guidance,” in which the bureaucracy tries to influence non-state actors, particularly businesses, when no law or formal regulation applies. Second, when applying the law, government authorities are frequently given liberty to consider the general circumstances of a case. This is particularly noticeable in the fact that even courts take these wider points into consideration.

However, in recent years there have been efforts to make rules more transparent and to enforce them more consistently. In 2006, the Anti-Monopoly Law was revised to give more powers to the Fair Trade Commission, increasing the penalties against bid-rigging, for instance. Public opinion has hardened against such practices, and major companies have become concerned about the negative publicity that follows

exposure of their activity. In the more provincial areas, so-called dumpling (“dango”) bid-rigging still seems to be fairly wide-spread, however.

These problems with the predictability of the rule of law should not imply that the general predictability of government behavior is low. Rather, enterprises and individuals have a fairly good impression of what to expect. In a sense, recent scandals are an indication that such “collusive predictability” is declining in a positive sense.

Portugal

value 7

Overall, the government and administration in Portugal can be said to act in accordance with legislation and in a predictable fashion. However, although a large part of Portuguese legislation emulates the standards of European democracies, its administrative authorities lack the resources and capabilities to implement it. These deficiencies exist in a vast number of areas, particularly when it comes to providing all sorts of public services, access to information, environmental regulation, protection of individuals with disabilities and policy evaluation. As a result, very advanced legislation is approved, but specific regulation of how such legislation is to be enacted is frequently postponed, thereby rendering it obsolete in practice.

Legislation in the fields of both criminal and civil law also tends to be extremely detailed and complex, which renders it opaque to the general public. As a result, it fosters inequalities in terms of de facto access to justice and allows administrative authorities to evade accountability vis-à-vis their principals. Most damaging of all is the poor performance of the judicial system. As a result of being understaffed and poorly organized as well as lacking in resources at all levels, the courts are very inefficient, respond too slowly to demands for justice, and accumulate huge case backlogs. The fact that judges are effectively not accountable for their performance and are evaluated by their peers admittedly allows for some degree of independence vis-à-vis political authorities and contributes to the judicial system’s inefficiency. Consequently, there is a general perception that “law in books” and “law in action” are two different things. This perception undermines the degree of public trust in the Portuguese judicial system, which Eurobarometer surveys already rank among the lowest in Europe.

Slovakia

value 7

Government and administration have largely acted on the basis of the law. In contrast to past governments, both the Dzurinda and the Fico governments have, for the most part, followed legislative procedures and have refrained from circumventing parliament by making use of “fast-track” procedures introduced to harmonize legislation with the European Union in the late 1990s. However, legal certainty has suffered from contradictory legal provisions and frequent amendments (Procházka et

al. 2006). The Social Insurance Act, for instance, was amended 17 times from 2004 to 2006. In some cases, catering to investors, such as the car manufacturer KIA, has been associated with violations of the law in that the interests of investors have been given priority over acquired rights and the principle of equality before the law. Respect for the law has diminished in government and administration offices under the Fico government (Procházka et al. 2007).

Annotation: Radoslav Procházka, Andrea Földesová, Marek Kaľavský, and Ladislav Orosz, "Rule of Law, Legislation and Application of Law," in Slovakia 2005. A Global Report on the State and of Society, ed. Martin Bútora, Miroslav Kollár, and Grigorij Mesežnikov (Bratislava: Institute for Public Affairs, 2006), 89–117.

Radoslav Procházka, Marek Kaľavský, and Ladislav Orosz, "Rule of Law, Legislation and Application of Law," in Slovakia 2006. A Global Report on the State and of Society (see above), 125–149.

South Korea

value 7

Generally speaking, legal regulations are consistent. All in all, government and administration act predictably, on the basis of and in accordance with legal provisions. The Board of Audit and Inspection regularly monitors government officials' activities. The staffing policy, appointments and promotions of senior civil servants are screened by the Civil Service Commission. To enhance transparency, online public tender systems have recently been introduced by the Public Procurement Service and many other governmental bodies, including Seoul's metropolitan government.

The national government tries hard to improve legal certainty and cannot be accused of deliberate or systematically unpredictable actions. However, corruption and the abuse of power, especially in local governments, sometimes takes place. For example, staffing on all levels including the national government is highly influenced by cronyism, even if policy decisions are mostly guided by law.

Furthermore, foreign investors often complain that their investments do not enjoy the necessary legal certainty in Korea, and that they are discriminated against by the Korean government. Some attribute this to the growth of public sentiment against foreign investment in the last two years, and charge that the government too often bends to public opinion. The most prominent example has been the acquisition of Korea Exchange Bank (KEB) by the U.S. investment fund Lone Star.

The government has been accused of utilizing public prosecutions for political reasons, but the systematic political bias of the past is gone. Judges today do not blindly follow the claims of prosecutors. However, the greater independence of judges has not necessarily led to more legal certainty. In 2007, appeals courts commuted prison sentences for two important business leaders because of their importance for the Korean economy.

Luxembourg

value 6

Luxembourg has a long-standing tradition of a lawful state. Nevertheless, citizens are too often confronted with judicial vagueness or even a lack of legal guidance. Luxembourg's administrative culture is based on pragmatism and common sense rather than judicial subtleties. This means that many matters cannot be decided with reference to well-known and established rules. Administrative decisions are sometimes arrived at in a decidedly ad hoc manner. Still, most people accept this mode of operation for government and administrative matters, trusting that the legal flexibility in any given situation may result in a compromise favoring their own interests.

Greece

value 5

Executive actions are guided by law, and the government and administration function within the boundaries set by law. The 2007 Freedom House annual survey of political rights and civil liberties awarded Greece a relatively high score of 10 out of 12 for the functioning of government (including administration). However, Greece's legal regulations are not necessarily consistent, owing to the large number and frequent amendment of laws, decrees and ministerial decisions guiding administrative action and transactions between individuals and businesses. As a result, few officials in any given policy area have a complete picture of existing legislation. The majority of officials have only a limited and narrow knowledge and understanding of the regulations covering their field of competence. This pattern hampers legal certainty and transparency.

Public administration has a culture of embedded legalism and hierarchy. Processes are often slow and subject to multiple authorizations and checks. However, corruption within the public bureaucracy is endemic, reducing legal certainty. Low-ranking officials often accept bribes on small issues to speed up or instigate a process, or to overlook planning regulations. At senior levels there are occasional reports of officials acting in a non-transparent fashion and circumventing established procedures, as with allegations about the purchases of "structured bonds" in spring 2007.

Mexico

value 5

Mexico displays several features of an illiberal democracy. High levels of political and administrative corruption, an antiquated and ineffective judicial system and only modest reform dynamics during recent years are the major contributors to legal uncertainty. Overcrowded jails and unequal access to justice due to socioeconomic and ethnic cleavages exacerbate these problems. Legal certainty in Mexico is accessible only with the help of expensive lawyers and considerable persistence.

Strong calls for system reform have surfaced in recent years, and some states have in fact initiated legal reforms, but at the federal level almost nothing has been done. However, the Supreme Court recently hosted a set of serious public consultations that produced a detailed document outlining major reform possibilities. This will likely be the basis for expected legal reforms.

Poland

value 5

Actions of the government and its administration are largely guided by law. However, the predictability of executive actions is sometimes limited by complex and contradictory regulations. Tax issues, for instance, tend to be solved differently in different regions, even if the Ministry of Finance offers uniform guidelines. In addition, the PiS government's open disrespect of the law and long-standing institutional arrangements reduced legal certainty. A major case in point were the interventions of Minister of Justice Zbigniew Ziobro into the workings of the judiciary. His enthusiasm for setting his prosecutors on to political opponents showed little regard for the separation of powers or for due process.

Turkey

value 4

According to the constitution, all administrative procedures and actions must comply with constitutional guidelines and legal principles and are subject to administrative review. However, the government may exercise a considerable amount of discretion in implementing procedures, through decrees which carry the force of law, circulars or statutes. Yet it is important to note that there are still certain double-standards in the implementation of laws. Bureaucratic malpractice is sometimes neglected by higher authorities and is not subject to legal inquiries, or the prosecution of bureaucratic ill-treatment is inconclusive. The number of appeals to the European Court of Human Rights (ECHR) which resulted in rulings against the Turkish state is clear evidence of the existence of administrative malpractice. In 2005, the ECHR ruled against the Turkish government in 269 out of 290 cases.

A basic issue is the limited nature of government transparency and accountability. Contradictory decisions are often made but remain under the radar; yet when such decisions do come to light (often through media coverage), the legal system can neither quickly nor efficiently address the issue. In most areas, and especially with respect to legal regulations, the situation is one of overregulation rather than underregulation. Usually strict or rigid rules encourage administrators to look for loopholes, sometimes with good intentions (to get things done) yet sometimes not (to seek favoritism or illegitimate gains). It is commonly asserted that it is impossible to get anything done in or with the Turkish government unless one finds a way around the established rules.

Indicator **Judicial review**

Question **To what extent do independent courts control whether the government and administration act legally?**

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 = Independent courts review executive actions, ensuring legal compliance.*
- 8-6 = Independent courts can usually ensure legal compliance by government.*
- 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

value 10

Although the Australian legal system is based on common law, since the 1970s a substantial body of administrative law has also developed. Unlike in many other common law systems, the decision was taken to ensure that this too would be subject to judicial review. This resulted in the establishment of an administrative court, from which complainants may seek a review of executive action. The administrative courts, if they rule against the executive, substitute one government decision for another. Common law is also subject to review by the judiciary, although this is less common than administrative court review. The senior judicial officers of the courts are independently selected. Overall, the courts are strongly independent and have sufficient powers and authority to curb executive action. There are many instances of courts overturning an executive action. The executive has in the past generally accepted the decision of the court, or appealed to a higher court (where available), rather than attempting to circumvent the decision.

Denmark

value 10

The courts in Denmark have a strong and independent position. This has particularly been the case since the 1999 reforms (“domstolsreformen”), which many experts believe have given Denmark a rather unique position among Western European countries. By means of a gradual process of court decisions, the courts have developed a set of juridical principles that substantially impact not only legal interpretations but also the concrete judgments of civil servants. Moreover, as part of an increasing important trend, the courts have also exerted more control when it comes to issues of whether the government has respected international rules that Denmark has agreed to follow. With two decision related to the Maastricht treaty (in

1996 and 1998) as well as the so-called Tvind decision, it was clearly established that the Supreme Court is the main guardian of the constitution and has supremacy over the People's Assembly in this respect. Moreover, the courts also hold a supreme and controlling position when it comes to the state apparatus.

Furthermore, in Denmark, political interference or bribery is virtually unknown. The juridical expertise of judges is also very high, and the system works rather efficiently. Administrative decisions can normally first be appealed to higher administrative bodies and thereafter to the courts. The legal system has three levels: Lower level court judgments can be appealed to High Courts and thereafter, if necessary, to the Supreme Court.

Germany

value 10

The organization of the legal system is characterized by the principle of federalism. Courts and jurisprudence exist on both the state and the federal level. Only the highest courts, such as the Federal Court of Justice and the Federal Employment Court, are federal institutions. Courts at the middle and lower levels are state bodies. Further features of the German legal system include the complete independence of its judges, the separation of specific subject matter into different courts (i.e., administrative, employment and social courts) and the strict election criteria for judges, which leads to a high level of professionalism. At the pinnacle of the system is the Federal Constitutional Court, which is regarded as one of the strongest constitutional courts internationally.

Through its numerous decisions, this court has led to modifications being made in federal government policy, earning it considerable respect throughout the country. Its strong position results from the independence of its judges. They are elected for a period of 12 years by a committee of the Federal Assembly or Federal Council with a two-thirds majority.

Judges cannot be re-elected, preventing them from tailoring decisions to ensure their own reelection. It also shields their decisions from political pressure. One problem recently discussed in the public sphere is the excessive workload faced by courts at all levels, and a corresponding lack of personnel and financial resources.

Ireland

value 10

The courts in Ireland exercise a high degree of control over whether the government and administration act in conformity with the law. Firstly, the operations of the judiciary are de jure and de facto independent from the control of the legislature. While Article 35.4 of the Constitution empowers the upper and lower houses of Parliament to dismiss a judge by majority joint vote for "stated misbehavior or incapacity," this option has only been considered in exceptional circumstances.

The Irish judiciary has been increasingly active since the 1960s, especially with

regard to the “discovery” of rights not previously enumerated within the Constitution. This has led to major legislative changes in areas such as contraception and abortion. Further judgments have led to the requirement of a referendum prior to the ratification of several EU treaties and the prohibition of the government’s use of public funds to promote the side it favors in a referendum.

While judges are appointed by the government (and typically selected from a short list compiled by the Judicial Appointments Advisory Board), the courts are typically viewed as being “above politics,” and allegations of politically motivated judicial decisions are very rare.

Luxembourg

value 10

The existence of an administrative jurisdiction and the Constitutional Court guarantee an independent review of executive and administrative acts. The Administrative Court and the Administrative Court of Appeals are very busy. The annual report covering the period from September 2005 to September 2006 counts 949 judgments, indicating that judicial review is actively pursued in Luxembourg.

Netherlands

value 10

It is clear that the Dutch judicial branch acts independently of the government. Judges are appointed for life and are nominated by royal decision on appointment proposals by the court of justice.

Administrative law allows citizens to appeal any government decision to an independent judge. With some exceptions, appeals can also be filed with a higher court. For cases of administrative law, the appellate court is the Council of State, which consists of members of the royal family and individuals appointed by the Crown and has a secondary function as an advisory body to the national government.

New Zealand

value 10

New Zealand’s legal system is based on common law. Since 2003, the Supreme Court has been the country’s highest court and presides over the Court of Appeal. Subordinated to the latter is the High Court, which is present in many centers in the country. Below the High Court, district courts can be found in most towns. Courts are independent, and appointments to most judicial positions are made by New Zealand’s governor-general on the recommendation of the attorney general. The standards for appointment are high, both in terms of qualifications and a candidate’s quality of character.

While this legal system is very transparent in its nature, there are many additional authorities, boards and commissions with decision-making powers. Since these

bodies make quasi-legal decisions, their influence is considerable. For example, the Waitangi Tribunal deals with claims made under the terms of the Treaty of Waitangi. This treaty, signed between the English and the indigenous Maori in 1840, is now seen as the foundation of New Zealand's nationhood, and the Maori regard the document as a guarantee of their rights. The tribunal's recommendations, although not legally binding for the government, have a strong influence on legislation. Executive action is subject to external and independent review by the courts, by parliamentary officers and their offices (including the Office of the Ombudsmen, the Parliamentary Commissioner for the Environment, and the controller and auditor-general) and by the privacy commissioner. Parliamentary select committees also exercise broad powers of inquiry. Officers of Parliament were created under standing orders of the legislature to provide a check on the use of executive power.

Norway

value 10

The Norwegian legal system is grounded in the principles of the so-called Scandinavian civil law system. On the one hand, there is no general codification of private or public law, as in civil law countries. Rather, there are comprehensive statutes codifying, among other things, central aspects of the criminal law and the administration of justice.

On the other hand, Norwegian courts do not attach the same weight to judicial precedents as do members of the judiciary in common law countries. Court procedure is relatively informal and simple, and there is a strong lay influence in the judicial assessment of criminal cases.

At the top of the judicial hierarchy is the Supreme Court. Directly below the Supreme Court is the High Court. The majority of criminal matters are settled summarily in the so-called "Forhoersrett." A Court of Impeachment hears criminal charges brought against government ministers, members of parliament and Supreme Court judges, although it is rarely used. The courts are strongly independent of any influence exerted by the executive. Professional standards and the quality of the internal organization are regarded as high.

Sweden

value 10

Sweden's system of judicial review functions well. Members of the courts have an independent and professional education, and the courts face no pressure from the government, political parties or other groups. Actions taken by the administration can be appealed, and administrative decisions can be reversed by the courts.

There is also a special ombudsman, the Ombudsmen of Justice (JO), elected by the Swedish parliament, which guarantees that public authorities and their staffs comply with the laws and other statutes governing their actions. The JO exercises this supervision by evaluating and investigating complaints from the general public, by

making its own inspections of the various authorities, and by conducting other forms of self-initiated inquiry.

Nevertheless, Sweden lacks an effective constitutional court. Instead, laws proposed by the government are considered and sometimes considerably changed by parliamentary commissions and decided upon by the Swedish parliament, and there is not always a process of judicial review. When a judicial review is made, it is conducted by the Council on Legislation, which is composed of judges from the Supreme Court and the Administrative Supreme Court. Despite this review, the government can opt to ignore the council's advice, provided it does so with a written justification, and the parliament may decide against the council's advice.

Switzerland

value 10

The Swiss legal system is characterized by a high level of professionalism, and is independent from any political, social or economic actors. The court system differs widely between cantons as a result of cantonal self-determination, a feature of Switzerland's federal system.

United Kingdom

value 10

Due to the absence of a written constitution and a Constitutional Court, there is no judicial review in the United Kingdom in the classical sense of the term – no court can legitimately declare legislation adopted by Parliament unconstitutional. However, courts have become increasingly assertive in subjecting executive action to judicial review in the sense that they have prevented public authorities from acting against the law or outside their statutory authority. The number of respective cases went up from 160 in 1974 to 3800 in 1996. The growing jurisdiction of European Union law and the Human Rights Act of 1988 are driving forces behind this trend, which is likely to continue.

There are currently four situations that can prompt a form of judicial review in the United Kingdom: illegality, in which public authorities take action beyond their statutory authority; procedural impropriety, in which statutory procedures have not been followed; irrationality; and proportionality – this last item being derived from EU influence. New institutions for reviewing government decisions, such as tribunals and ombudsmen, have also been created to help guarantee the rule of law.

United States

value 10

Judicial review of administrative action is well-established in the U.S. system, either through the general court system or through special administrative courts. All decisions are subject to review by the United States Supreme Court, whose decisions

are accepted, even when they are controversial. Federal judges are appointed for life, which gives them a substantial degree of independence from the president, Congress or other officials.

Since the 1980s, federal judicial appointments have become increasingly controversial and politicized, which constitutes a development that tends to compromise judicial independence. At that time, conservatives concluded that liberal judges had brought about sweeping changes in policy in the 1960s and 1970s, and they made it a leading priority to ensure the appointment of conservative, supposedly “strict constructionist” judges.

Statistical analysis of decision patterns demonstrates that Bush’s appointees have, in fact, sided with conservative interests fairly consistently. Despite the buffering effect of life-time appointments, this politicization increases pressure on judges to make decisions consistent with the ideological objectives of the appointing president.

Austria

value 9

The Austrian judiciary exercises independent and effective control of governmental and administrative actions. Two courts of last resort ensure an effective review of executive action. The Constitutional Court reviews decisions by the legislature and is entitled to nullify laws when they do not agree with provisions in the Austrian constitution. The Constitutional Court can be appealed to by other courts, by the administration, by members of parliament and by private individuals. The Administrative Court has jurisdiction over the executive branch of government and is authorized to nullify any administrative action not in conformity with the law.

The constitution makes the judiciary independent from the executive branch, and all judges enjoy the constitutional privileges of freedom from instruction, relocation and dismissal.

Canada

value 9

The Constitution of Canada guarantees that the judiciary is independent in security of tenure, security of financial remuneration and institutional administration. In addition to being independent, the courts have the authority to limit executive action. During the drafting of a proposed bill, the Department of Justice reviews its legality and constitutionality. The deputy minister of justice reviews the bill to ensure that it meets the requirements of the Constitution, including the Charter of Rights and Freedoms. If the executive is aware that a proposed bill will be deemed unconstitutional, it will generally not support it.

For example, in 2003, prior to submitting the Civil Marriage Act (Bill C-38), the prime minister sought the advice of the Supreme Court of Canada on whether limiting marriage to heterosexual couples would be unconstitutional. The court ruled that it would be unconstitutional, so the legislation was not submitted. Even though

Canada's legislature does not generally support bills deemed unconstitutional, it does have the capacity to do so. Moreover, the legislature could technically curtail judicial review by using the notwithstanding clause mentioned above.

Finland

value 9

As there is no constitutional court in Finland, judicial review does not exist in the strict sense of the term. Courts do not decide on the constitutionality or legality of government or administration acts. Instead, the supreme supervisor of legality in Finland is the Office of the Chancellor of Justice. Together with the Parliamentary Ombudsman, this office supervises authorities' compliance with the law and the legality of the official acts of the government, its members and of the president of the Republic.

The chancellor is also charged with supervising the legal behavior of courts, authorities and civil servants. Additionally, the parliament's Constitutional Law Committee issues statements on the constitutionality of bills and other matters. Judicial review is thus organized and realized in a pluralistic and independent way. There are no examples of political parties or government having any influence on courts' independence.

Hungary

value 9

Hungarian courts act independently of the influence of the government or administration. This particularly applies to the Constitutional Court, which has a broad jurisdictional range and enjoys a high professional reputation. Its position is strengthened by the fact that citizens and legal entities can lodge complaints even if they are not directly affected by the laws or decisions at issue. Moreover, the president can ask the Constitutional Court to examine the constitutionality of bills adopted by the National Assembly but not yet promulgated. While there are no separate administrative courts in Hungary, complaints about administrative behavior can be lodged in the ordinary courts. The effective functioning of these lower courts suffers from delays and lengthy proceedings.

Iceland

value 9

Courts operate free of pressure from the government, powerful groups or individuals. The Supreme Court's power to rule on the legality of government and administration actions is respected. Judges are appointed by the minister of justice and ecclesiastical affairs. All vacancies are advertised and the hiring procedure is transparent. However, the separation of powers in Iceland is weak. The executive branch of government calls the shots. The legislative branch, the unicameral parliament, is

institutionally weaker, as virtually all legislation is drafted and passed by the parliamentary majority of the government in power. Some members of parliament have publicly described their institution as a rubber-stamp legislature. This imbalance between the executive and legislative branches can to some extent be traced to the fact that cabinet ministers are almost invariably selected from among the members of parliament and retain their parliamentary seats even as cabinet ministers. Opposition legislators' proposals only rarely become law. The judicial branch is also widely perceived to be weak and somewhat subservient to the government. But even if there is no clear separation of powers in Iceland, as is the case in many parliamentary democracies, the courts are independent from the government.

Belgium

value 8

The Belgian constitution guarantees the division of powers in articles 33 to 40 and the independence of judges in articles 152 and 155. Courts are independent from government, economic or individual influence. Judges are appointed for life by the king. Nevertheless, the judiciary remains in some respects insufficiently funded. The degree of professionalism of support staff, as well as the quality of infrastructure, logistics and so on, still lags despite recent significant budgetary efforts.

Another limitation to independent judicial review was, until recently, that the nomination of judges remained an area where some political influence could be exerted and party influence and patronage did exist. The situation has been much improved through the revision of nomination procedures, but some concern remains as to the effective independence of magistrates.

Despite these reservations, Belgian courts are regarded as largely effective in the review of the legality of government and administrative actions.

Czech Republic

value 8

Although they have been widely accused of acting slowly and of reaching sometimes surprising decisions, the courts have generally operated independently of the executive. The Constitutional Court enjoys high repute, as it has been active in reviewing legislation and in forcing the reversal of executive acts. There have, however, been some questions regarding the objectivity and independence of the legal system. For example, the president has the power to make appointments and to pardon convicted criminals without explanation. Between 2003 and 2007, this power was used 161 times. Other grounds for questioning the existence of full judicial independence and objectivity include one major case of judges having been associated with corrupt business practices. State prosecutors are also ultimately answerable to the government, which may occasionally become important when it comes to judicial independence.

France

value 8

The Constitutional Council has grown increasingly active in ensuring that French law conforms to the French constitution. If 60 members of parliament or senators call upon the Council to verify the conformity of a law passed by parliament with the constitution, this can potentially lead to the revocation of the law. Research has shown that in more than half of the investigations carried out by the Council, laws or parts of laws have been held not to be in conformity with the constitution – a fact which has resulted in “complaints of unconstitutionality” often being used by the opposition party as a method of control.

A problem linked with judgments made by administrative courts is that they must be implemented by local authorities, which does not always happen. As this has occurred so frequently, the Constitutional Council has set up its own committee to deal with such problems.

Greece

value 8

The courts normally review actions taken and norms adopted by the executive, but only with great delay. Particularly in the large urban centers, courts are understaffed and provided with inadequate resources. At the same time, citizens often resort to legal action. This social pattern, of turning almost automatically to the state (in this case, to the justice system) in order to resolve ordinary social tensions and conflicts, can be considered a cultural particularity of Greek society (arguably resulting from a long tradition of preserving state, church and family hierarchies, along with expectations for the state to run society in a paternalistic fashion).

Courts have generally been able to act independently of the influence of incumbent governments, powerful groups or individuals. However, the law gives governments some leverage, as they make appointments to the top posts of the Supreme Judicial Court (the top civil and criminal court) and the Council of State (the top administrative court). For example, when the president and vice presidents of the Supreme Judicial Court or the Council of State retire, the incumbent government can select their successors from a short list of candidates, such as high-ranking judges, who have comparable qualifications. Once selected, these top court officials can influence the promotion of other judges in the justice system.

Portugal

value 8

The judicial system is totally independent and is extremely active in ensuring that government actions conform with the law. Portuguese courts are largely insulated from potential interference by incumbent parties. Most relevant professional aspects

of the activity of judges (e.g., evaluation, promotion and detachment) are managed by judicial councils composed of both judges elected by their peers and political appointees (including members elected by a qualified parliamentary majority), although the judges exert de facto dominance. Judges do not feel that political parties in general or the government in particular can reward their behavior, and they are organized in a more-or-less traditional, hierarchical structure predominantly free of the possibility of political control.

Owing to the fact that the Assembly of the Republic, Portugal's unicameral parliament, elects most of the justices of the nine-member Constitutional Court, politicization is far more prevalent in that judicial body. However, the practice of using qualified majority rule to appoint these members has led to negotiations between parties that have resulted in preventing a single party from appointing the majority of the court's justices. Moreover, although some individual justices tend to behave in a more politicized manner, which leads some cases to fall predictably along party lines, the overall balanced composition of the court has rendered the majority of its decisions unpredictable from a political-partisan point of view. This fact has contributed to the court's being viewed as independent and legitimate.

South Korea

value 8

The South Korean judiciary is highly professionalized and fairly independent, though not wholly free from governmental pressure. State prosecutors in particular are periodically ordered to launch investigations (especially into tax matters) in order to intimidate political foes or other actors.

The Constitutional Court has underlined its independence though a number of landmark rulings, most recently in November 2005 on the constitutionality of the government's plan to build a new administrative city. Rulings by the Constitutional Court are accepted by all political actors. However, judicial review works better at the constitutional court level than on lower levels of the judiciary. The quality of the lower courts has nevertheless improved, and experts point to the judicial reform of the Roh administration as one of its major successes.

Courts have become less willing to rubber stamp claims made by police and prosecutors. Witness reports and court investigations have gained importance. A major judicial reform passed in 2007 introduced a jury system to criminal courts. Later that same year, the Roh administration passed a law that will introduce American-style law schools in Korea in 2009. This will further professionalize the education of lawyers and judges.

Spain

value 8

The system of judicial review is independent and has sufficient capacity to control the government. The Spanish judicial system is independent and has the jurisdiction

to make governmental and administrative bodies operate according to strict regulations. Administrative acts by executive bodies or authorities may be reviewed through a specific jurisdiction within the judicial system, called the administrative-contentious process (*jurisdicción contencioso-administrativa*).

Nevertheless, the struggle between the two main political forces has excessively politicized the main judicial bodies, thus weakening its capacity for action - as demonstrated in current difficulties over the reorganization of judicial bodies.

As a consequence, the judiciary's mandate to serve as a check on government actions may be deemed obstructive at some point, as conservative judges who side with the opposition party PP may be eager to stymie the actions of a socialist government.

Japan

value 7

Courts are generally understood to act independently of public interference. The Supreme Court, which traditionally is in charge of supervising the judicial system and making appointments, carefully safeguards its independence. However, the Supreme Court has in general been very reluctant to apply judicial review. Through the dependency of lower courts on the Supreme Court – the Supreme Court has been in charge of personnel decisions affecting the lower courts – this cautious attitude characterizes the whole system. The role of the courts in dealing with situations of administrative guidance has also been problematic. In recent decades, judges taking a strict line toward government policy have found themselves sent to obscure provincial areas, derailing their career prospects.

However, the Law System Reform of 2002 shifted the judiciary's traditional role. Lay judges were introduced in some cases, the appointment of judges was given to regional committees, and different types of legal education were introduced. It is too early to determine whether judicial independence has been significantly affected as a result. In some recent cases, courts have taken issue with the state, although in others they have defended government positions. In a 2007 decision, the Kumamoto District Court ordered the state to pay compensation to sufferers of black lung disease, because the government had neglected to set up workable laws against construction work that might lead to that disease.

Mexico

value 7

Judicial review emerged in Mexico only in 1994, as part of a major reform. Since the presidency of Ernesto Zedillo (1995 – 2000), the judicial branch's independence and judicial review powers have increased substantially. The Supreme Court, the country's highest court since 2003, has the authority to overturn laws it deems unconstitutional. Its role is increasing, and it does not hesitate to rule against the government when it thinks this is necessary. This is an area where recent change is evident. The top court has played an important role both in solving controversies among different levels of government, and in reviewing important legislation, primarily local reform legislation that was ultimately ruled unconstitutional.

The Supreme Electoral Tribunal, which has the limited but crucial role of judging local and national elections' fairness, has also played an important part. The electoral tribunal has annulled important state elections in the past, and levied heavy fines on national parties for breaches of the law. However, while formally independent, the judiciary often does not adequately monitor and review actions undertaken by the executive. The performance of local courts in controlling local and state government is highly variable. Administrative courts often rule against important government decisions, but the scope of these rulings is limited. These courts are not allowed to abrogate the law, but can only exempt certain individuals from the laws' application with the issuance of an amparo (a type of habeas corpus resource).

Poland

value 7

The quality of the court system is variable. The Constitutional Tribunal, the Supreme Court and the State Tribunal (which decides on violations of the constitution by top officials) work well and largely fulfill their functions of controlling government and government administration. The performance of the administrative courts is weak, as they tend to adopt a very formal approach (Galligan et al., 2005). The biggest problem, however, is with the common courts at the district and regional level, which suffer under inefficient and time-consuming procedures; instances of corruption too have given the courts a very bad reputation. Under the PiS government, the judiciary was politicized. The Ministry of Justice used its position as prosecutor general in influencing prosecutors' activities.

Annotation: Denis Galligan and Marcin Matczak, "Strategies of Judicial Review," Ernst & Young,

[http://webapp01.ey.com.pl/EYP/WEB/eycom_download.nsf/resources/Strategies_of_Judicial_Review.pdf/\\$FILE/Strategies_of_Judicial_Review.pdf](http://webapp01.ey.com.pl/EYP/WEB/eycom_download.nsf/resources/Strategies_of_Judicial_Review.pdf/$FILE/Strategies_of_Judicial_Review.pdf) (accessed May 14, 2008).

Slovakia

value 7

Since the collapse of communism, Slovakia's judicial system has found new footing and has been undergoing gradual modernization. Essentially free from unconstitutional interference by other institutions, the Constitutional Court is highly respected and enjoys a strong reputation, not the least because of its clear commitment to democracy and the rule of law during the Mečiar period.

With a large number of cases to handle and a small number of requests to review new laws, the Court does not engage heavily in judicial review. The National Council's indecision on candidates for the Court have left it with two long-standing vacancies, which have kept it from operating at full capacity. The functional ability of ordinary courts is in part limited by overload and corruption. According to a 2006 study by Transparency International in Slovakia, 47 percent of the population

believes that corruption is very frequent in the judiciary system. Only the health system was held to be more corrupt by the respondents.

Since the 2006 change in government, Justice Minister Štefan Harabin's plans to abolish the new special court and special attorney for cases of corruption, organized crime and improper public procurement practices, as well as his attacks on the personal and professional integrity of Milan Karabín, the chief justice of the Supreme Court, have raised some concerns about the judiciary's independence.

Italy

value 6

The court system has achieved a high level of independence from the government and is therefore, in principle, fully able to control the conformity of executive actions with the law. The president acts as an underwriter of legislation and has the right to send back bills to parliament for a new round of voting. The Constitutional Court ensures the conformity of laws to the state constitution. Italian citizens however cannot appeal directly to the Constitutional Court on individual complaints.

Administrative jurisdiction is based principally on administrative regional tribunals (Tribunali amministrativi regionali, or TAR) which operate under the Council of State (Consiglio di Stato) as the court of appeal and supreme administrative court.

A structural problem weakening the effectiveness of the courts' powers of control is the lengthy average duration of proceedings which de facto delay the examination of government and administrative action and could discourage citizens from taking legal action in the first place.

Turkey

value 5

The courts are to a large extent independent, and are vested with the power of reviewing all administrative decisions. Laws enacted by the Grand National Assembly can be reviewed by the Constitutional Court (not by individual request, however, but rather by parliamentary political parties, by certain deputies or the president). It is not unusual for the courts to overturn administrative decisions or rulings.

However, the composition of the Supreme Council of Judges and Prosecutors, in which the justice minister and ministry undersecretary are members, stands as one major obstacle against the independence of the courts. The question of judicial independence has also been reviewed at the time of writing by the head of the Court of Cassation, Turkey's higher court of appeal. Therefore courts have little recourse to ensure the conformity of executive actions within the letter of the law. It was observed that some prosecutors and judges were appointed by the Ministry of Justice to district courts while they were prosecuting or reviewing important cases. Yet judge appointment procedures to higher courts in which the Turkish president has influence, including the Constitutional Court, has also been disputed.

Indicator Corruption prevention

Question Are public officeholders prevented from abusing their positions for private interests?

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 = Legal, political and public integrity mechanisms prevent abuse.*
- 8-6 = Most integrity mechanisms function effectively, creating disincentives to abuse.*
- 5-3 = Some integrity mechanisms function, but do not effectively prevent abuse.*
- 2-1 = Officeholders can exploit offices for private gain without legal consequences.*

Finland

value 10 Since 2000, Transparency International's annual Corruption Perceptions Index has ranked Finland as the country with the lowest level of perceived corruption. In May 2005, the national parliament passed a law criminalizing the acceptance of bribes. Auditing of state spending is strict, as is regulation of party financing. The country's political culture strongly condemns any fusion of public and private interest. In the economic sector, too, corruption rarely occurs.

New Zealand

value 10 New Zealand is said to be one of the least corrupt countries in the world, and its society has little tolerance for corruption. The few allegations of (relatively small-scale) corruption are taken seriously by media, politicians, and Parliament. The Office of the Auditor-General monitors use of public monies and reports to Parliament through several means, including annual financial audits and audits of service performance statements, special investigations, and the controller's authorization of release of public money. The controller must be satisfied that the release of funds complies with the law – that is, that there is a warrant signed by the governor-general, that there is an appropriation and that the money is to be spent lawfully. The controller can prevent the release of funds if these criteria are not met, and has done so on occasion. MPs and political parties are required to declare financial and other interests and sources of income. Tighter legislation regarding donations to political parties and party campaign expenditures is under consideration.

Sweden

value 10

Corruption in Sweden is rare both in the state bureaucracy and among politicians. Studies conducted by the World Bank and Transparency International confirm that Sweden has very few or no problems with corruption. Cases of political or administrative malfeasance are also rare and typically involve the unlawful expenditure of public funds.

In compliance with EU regulations, a special national institution designed to handle cases of suspected corruption crimes was founded in Sweden in 2003. This institution is called the National Anti-Corruption Unit and is a part of the Swedish Prosecution Authority.

Denmark

value 9

There is practically no corruption in Denmark. Public norms are strongly against corruption, and the risk of exposure by an active press is high. In the past, there have occasionally been cases of local government officials accepting so-called “services” from businesses in exchange for being awarded municipal contracts, but such cases are rare. From time to time, there have also been cases of officials using their government-financed accounts rather generously, but such cases are likewise rare.

Iceland

value 9

There is no serious corruption in Iceland. However, there are some irregularities, and the fact that there is a new law regulating political party support might foster corruption in the future. In the past, political parties were not required by law to disclose the sources of their funds. However, in 2006 they reached agreement on a set of more transparent rules for financial contributions to electoral campaigns, which are now in force, but were not retroactive. Serious corruption among officeholders in Iceland is not a problem. Some minor issues do arise in the form of favors and personal goods purchased using public funds. A 1993 law on public administration provides ample protection against abuse.

Officeholders are very rarely held responsible for corruption. In May 2007, shortly before an election, it came to the media’s attention that the girlfriend of the foreign minister’s son had been granted Icelandic citizenship on a fast track. Valgerður Sverrisdóttir, the foreign minister, stated that she had no knowledge of the situation, and remained in office.

Netherlands

value 9

In general, legal, political and public-integrity mechanisms effectively prevent public officeholders from abusing their positions. There is also a law on party financing that attempts to ensure transparency when it comes to political donations. In October 2007, another bill was under review that would set a maximum value for gifts that a politician or member of the government's administrative branch may receive in order to prevent conflicts of interest for both politicians and public administrators.

Article 125 of the Officials Act regulates the accountability of officeholders. The act obliges public office holders to take an oath of office, to publicly declare – and forego – any additional employment that could possibly conflict with official duties, and to publicly declare any personal assets or financial interests.

Norway

value 9

Corruption is rare in Norway. The few cases of government corruption that have surfaced recently have been at the municipal level. As a rule, corrupt office-holders are prosecuted under established laws. The income declarations of all Norwegian taxpayers are available online. Newspapers often publicize such information, especially in the cases of members of parliament and figures holding influential public administration positions. There is a great social stigma against corruption, even in its minor manifestations. However, there has been a growing concern over government corruption in specific areas such as building permits.

Switzerland

value 9

Corruption in Switzerland is relatively rare. When compared internationally, the country's corruption control is ranked consistently as among the highest in the world. However, the composition of its political system provides opportunities for corruption to occur, as a result of the relatively low number of persons in positions of political leadership, the system's pragmatic approach to solving problems and the country's culture of amicable agreements.

Australia

value 8

A variety of measures have been put in place to avoid any conflict between the public duty and private interests of officeholders. In the Federal Parliament, a ministerial code of conduct was introduced in 1996. However, it has no formal standing, so enforcement and sanctions are a matter for the prime minister. There is no code of conduct for members of parliament; their legislative conduct is guided by

standing orders, while corruption and bribery on the part of members is prohibited under the Commonwealth criminal code. Members of parliament are required to report on their financial interests within 28 days of making their oath or affirmation of allegiance as a member or senator. These rules were adopted by the House of Representatives in 1984 and by the Senate in 1994. However, there have been numerous instances of failure to comply with this requirement, usually with no consequences for the member concerned. Questions of inappropriate personal gain have been raised in the case of ministers leaving Parliament and immediately taking up positions in companies they had been responsible for regulating. Specifically, concerns have been raised as to whether these ministers had made decisions favorable to their future employers prior to leaving office, and whether confidential information on government policy, business competitors or other matters was used inappropriately.

Party finances are monitored by the Australian Electoral Commission, but contributor identities face minimal disclosure requirements. Only for annual contributions in excess of AUD 10,000 (approx. €6,000) do donors' identities need to be disclosed.

Open tender processes are not always used for government contracts, and "commercial in confidence" status is often cited as the reason for nondisclosure of contracts with private-sector firms, raising concerns about the propriety of the dealings. However, contracts are subject to audit processes, which limit the scope for explicit bribery. Questions of propriety in respect to such contracts focus more on favorable treatment extended to friends or favored constituents (often for political gain, or party financial gain), rather than personal gain.

Annotation: S. Young and J. Tham, "Political finance in Australia: A skewed and secret system" (report prepared for the Democratic Audit of Australia, The Australian National University, Canberra, 2006).

Canada

value 8

In Canada, there are many mechanisms that provide strong disincentives for public officeholders to abuse their positions for their private interests. The Access to Information Act provides transparency, the Office of the Auditor General provides an effective and thorough audit of government spending, and party financing comes primarily either from public sources or from private individuals (with there being strict contribution limits for businesses and interests groups). Moreover, ministers and senior public servants are required to post quarterly on their respective departmental Web sites all travel expenses incurred in the course of program-related business.

In 2006, the current minority government of Prime Minister Stephen Harper introduced the Federal Accountability Act, which contained measures to improve conflict-of-interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability. The new legislation

provides protection to civil servants wishing to “blow the whistle” on wrongdoing inside the government and imposes new restrictions on public officeholders wishing to become lobbyists.

The legislation also banned so-called secret donations to political parties, strengthened the role of Canada’s ethics commissioner, introduced new and more-demanding requirements on government procurements, and also strengthened auditing and accountability within government departments by designating the department’s permanent head the “accounting officer” and directing that he or she answer directly to a parliamentary committee on issues of “management within the framework of ministerial responsibility.”

In 2006, the World Bank ranked Canada 12th among OECD countries for its control of corruption. In terms of Transparency International’s Corruption Perceptions Index, Canada ranked 14th on a scale of 1 to 163 with 1 being the least corrupt country.

Germany

value 8

Corruption and bribery of officials and politicians in Germany is kept within limits by legislation, investigative media reporting and a political culture which holds that those in official positions should be incorruptible. However, when compared on this issue to other countries, Germany has only a middle-ranking position. On the Corruption Perception Index (CPI) published in 2006, Germany was placed 16th.

The country has signed the U.N. Convention against Corruption (UNCAC), but has not yet ratified it, due in part to apparent conflict with certain regulations in the German Criminal Code relating to the bribery of civil servants.

In the 2006 – 2007 time period, the Federal Constitutional Court dealt with nine complaints against members of the German Federal Assembly who failed to publish the amount of income they had earned beyond their official wages. The court held in favor of the defendants, stating that the Federal Assembly’s regulations on behavior were compatible with the country’s Basic Constitutional Law.

In 2005, when Chancellor Gerhard Schröder ended his term in office and took a top position at Russian gas producer Gazprom, the action triggered public debate over whether a cooling-off period should be required for politicians who leave a term in office to take up a position at private firms.

Ireland

value 8

Recent years have witnessed a dramatic increase in the passage of legislation aimed at discouraging political corruption. A series of public enquiries or tribunals into various aspects of public life – including payments to politicians, the planning process for property development involving high ranking Cabinet members, and allegations of corruption in the police force – have brought standards in public life to

the top of the agenda in Irish political discourse.

Ethics legislation – including the Ethics in Public Office Act (1995) and the Standards in Public Office Act (2001) – provide for the disclosure of interests by parliamentarians and public servants and for the investigation of possible non-compliance with the requirements of the legislation. The 2001 act established the Standards in Public Office Commission (SIPO), which is responsible for coordinating enforcement of the ethics and party-funding legislation. It also includes provisions for the publication of codes of conduct for individuals holding high government office, ordinary members of both houses of Parliament and public servants. During the period under review, the number of civil service agencies covered under this legislation gradually expanded.

In 2003, a code of practice for officeholders was drawn up that lists and defines guidelines for the conduct of individuals holding political office as well as civil servants. The guidelines cover several areas, including impartiality, the avoidance of conflicts of interest, the acceptance of gifts and post-employment work.

Reforms have also been made regarding the funding of political parties. These reforms limit the size of the donations that a candidate can receive from a single source and require that donations to candidates and parties exceeding a given threshold be reported to the SIPO. Furthermore, donations from outside of Ireland cannot be received unless they are made by an Irish citizen or a body that maintains an office in Ireland. Spending limits on electoral campaigns have also been introduced. However, in a recent report, the SIPO chairman argued that the narrow time frame within which these restrictions apply restricts the effectiveness of this legislation by allowing candidates to “front-load” their campaigns and thereby circumvent spending limits.

United Kingdom

value 8

Corruption among officeholders is an occasional, but not dominant feature of politics in the United Kingdom. There have been several efforts to prevent misconduct on all levels of government and to prevent abuses of party finance. The Commission on Standards in Public Life was established as a response to misconduct among MPs. Its first report in 1995 prompted the creation of the House of Commons Standards and Privileges Committee (CSPL) to report on MPs’ interests and conduct.

In 1997, the CSPL’s terms of reference were extended to cover political funding. In 2000, the Political Parties Election and Referenda Act (PPERA) established the Electoral Commission to regulate party spending at the national level and donations to parties. While there is no limit on the size of donations, PPERA requires parties to publish annual accounts that exceed a specified limit.

There is a Code of Conduct for MPs spelling out the rules for ethical behavior. The code prohibits MPs from raising issues in Parliament or from introducing a delegation to a minister or civil servant in exchange of payment. Members of parliament are also required to register and declare donations, gifts and benefits. Although there are no binding rules on potential conflicts of interest for ministers,

there is a Ministerial Code of Conduct, especially with regard to transparency rules, that was confirmed and renewed when Gordon Brown became prime minister in 2007.

To fight the patronage effects associated with the government's wide power of appointment, a Commissioner for Public Appointments was established with the support of an administrative staff. The commissioner oversees more than 10,000 government appointments each year. The civil service is also subject to anti-corruption regulations enforcing the values of integrity, honesty, impartiality and objectivity that were specified for the first time in 1996 and again in 2006 through the Civil Service Code.

The Local Government Act 2000 aims to secure the integrity of local government by stipulating that all new councilors must state they have understood the register of interests, which entails declaring any interest and withdrawing from any proceedings in which this might be an issue. There is also a code of ethics for council officers. While many observers argue that corruption is still a problem in the United Kingdom, and that public procurement is the greatest single source of corruption, the large number of anti-corruption measures taken by the government should be respected.

Austria

value 7

Austria does not have a significantly high level of corruption. Its extensive patronage system, which was closely associated with its strong tradition of being a party state, has been weakened as a result of the privatization of most former nationalized industries and of the EU regime for public contracts.

Although their efficacy is limited, there are control mechanisms against corruption. The Party Law lacks strict rules regarding the transparency of income, and parties are not obliged to declare donations to associations under their control. Members of parliament only have to declare additional sources of income if the earnings from those sources exceed 14 percent of their parliamentary income. Furthermore, they do not have to specify the amount of those earnings, and income from "private activity" is exempted from this obligation. Moreover, even public prosecutors at the highest level are obliged to obey the instructions of their superiors.

With the establishment of a special public prosecutor's office against corruption and white-collar crime (KStA), however, a new prosecutorial body has entered into operation, and its prosecutors are not bound by directives.

Belgium

value 7

With regard to corruption prevention, the overall situation has improved over the last two decades. Prior to this, corruption was widespread, and not least linked to party financing and the bribing of officeholders. With regard to political parties, much

stricter regulations and effective financial controls by a parliamentary committee have led to a drastic reduction of unusual financial practices within parties. Today political parties are not allowed to receive more than €500 in donations from a single individual. In exchange for lowered private contributions, there was a significant increase of public funding for political parties.

At the level of individual officeholders (public servants and politicians), some forms of corruption continue, often in the form of the exchange of goods between political “friends.” One might, for example, trade a political favor for the leaking of useful information. Although there are general codes of conduct, such practices are seldom accompanied by obligatory procedures or concrete measures if an instance of corrupt behavior in fact occurs. Existing formal obligations, such as publicly posting information on all salaried public offices with income details, are not necessarily adhered to.

There are few mechanisms in place to prevent corruption in public administration. The most important mechanism is stipulated in article 17 of staff regulations and requires individuals seeking a government position particularly susceptible to corruption to supply a certificate of good conduct and moral standing or to pass an integrity test. There is to date, however, no proactive anti-corruption policy in public administration. In sum, the process of fighting corruption effectively has not reached a satisfactory end. Belgium needs more thorough institutional safeguards against corruption.

Annotation: The score lies just outside the range of the expert scores because of the near complete lack of institutional precautions against corruption in Belgium. Even though there is relatively little corruption in Belgium, the lack of institutional mechanisms constitutes a problem insofar as corruption must be proactively prevented before it occurs.

France

value 7

French bureaucracy is based on a public service ethic that aims to assure that services are available to all citizens equally and in the same form, as well as being corruption-free. This notion can also be witnessed through similar values held internationally. In practice, these principles are not always adhered to in France. This is particularly the case at the local level where there are often conflicts of interest, such as when mayors are bribed during public procurement or construction projects. Changes in domestic laws resulting from guidelines created by the European Union have not yet brought about the basic changes that were hoped for. Cases of conflict of interest and corruption within local government have been increasingly discussed by the media and public. This indicates an increasing awareness of these problems, which is much greater than during the 1990s.

Luxembourg

value 7

According to Transparency International, Luxembourg is among the countries with the lowest level of corruption. However, despite the fact that Luxembourg's Court of Auditors has recently seen an increase in power and responsibility, there still is a lack of formal institutionalized controls. One may argue that in a country as small as Luxembourg, where "everybody knows everybody," especially in the rather undersized circle of civil servants, social control is the best means of preventing corruption. Indeed, these mechanisms seem to work rather well, except for some instances of nepotism. However, the lack of institutional controls is a detriment to the overall cause of corruption prevention.

United States

value 7

Compared to other OECD countries, the United States is not in a leading position in terms of preventing public officeholders from abusing their positions to promote their private interests. According to the World Bank governance indicators for 2006, when it comes to countering corruption, the United States ranked only 19th out of 30 OECD countries. For this reason, it would appear that the rules for fighting corruption are either not very effective or not as effectively enforced as they are in most other OECD countries.

On the other hand, it is true, for example, that the president, vice president, members of the administration and members of Congress are obliged to disclose the sources and amounts of their other income. Parties and their candidates for elections must also disclose the sources and the amounts of their campaign funding.

Anti-corruption laws for civil servants are in place and enforced. Government spending is audited by an independent agency, the U.S. Government Accountability Office (GAO). There is regulation for public procurement, and it is transparent.

There are, however, two important general limitations on the systems for preventing corruption. First, political campaigns are mostly privately funded, and business and professional groups and others with interests in government decisions frequently make large contributions to candidates, political parties or both. Second, Congress has been lax about applying conflict-of-interest laws to its own members and their staffs. Within the last three years, for example, several Republican members of Congress have been convicted, indicted or intensively investigated on corruption charges. In 2007, Congress passed a major ethics- and lobbying-reform bill, which restricts earmarks and eliminates most gifts to members of Congress and their staffs.

Japan

value 6

Japanese politics has seen a decades-long string of corruption scandals, perhaps climaxing in late 2006, when governors of three of Japan's prefectures (Fukushima,

Wakayama, Miyazaki) all were arrested within a space of weeks. However, some of these recent problems can be understood as an improvement, indicating that regional public prosecutors have become more active. This is due to a revision of the Anti-Monopoly Act in early 2006, which increased penalties and gave regional prosecutors more power. Since mid-2006, revised legal provisions have also allowed prefectural audit committees to have more than four members, improving supervision. All these measures are part of a government effort at administrative decentralization, which will however be unmanageable unless bid-rigging practices in the provinces can be limited further.

Campaign finance has long been provided both by government and by civil society, including businesses, a system that has proven susceptible to abuse. The electoral reform of 1993 – 1994 attempted to address some of the problems. For instance, politicians were barred from receiving funds earmarked to them individually. However, the ability to form “financial administration organizations” provided persistent loopholes. In recent years, the public has reacted much more strongly to politicians’ financial misbehavior, a trend which may have a benign effect. Companies too have begun to realize that unethical practices can be detrimental to their public standing, and have begun including anticorruption components in their corporate social responsibility policies.

Portugal

value 6

During the period under consideration, the only area in which the fight against corruption seems to have made significant improvements is that regarding the financing of political parties. The creation of the Entity for Political Accounts and Financing and the Constitutional Court’s ongoing examinations of campaign finances have led to the public disclosure of several irregularities in party accounts and some cases of blatant violations of existing legislation on campaign support limits and indirect party financing. The Court of Accounts has also displayed a high level of independence in terms of its reporting and sanctioning of irregular and wasteful spending by the public administration. At the same time, no cases of corruption in the executive or legislative branches have emerged.

Despite these generally positive indicators, the 2007 Transparency International Corruption Perceptions Index ranked Portugal 28th out of 179 countries, which places it below the average position for EU member states and indicates a relative degree of deterioration compared with its 2006 ranking. Incentives for corruption at different levels remain in place. Low wages for most civil servants, inefficient bureaucracies and excessively complex legislation and regulations fuel most of the everyday cases of small-time corruption. Although its effectiveness is uncertain, the government has organized a campaign aimed at encouraging citizens and civil servants to denounce such cases.

On a slightly larger scale, there is a widespread suspicion among the Portuguese public and the media that corruption is rampant at the level of local government, particularly when it comes to the relationship between mayors, real estate developers

and football clubs. Although several such cases have been investigated and brought to trial, the slowness of the procedures and the fact that few of those cases have resulted in actual sentences has increased a general feeling of impotence.

Spain

value 6

Different norms and regulations set up limits for corruption in governmental and administrative bodies. Also, politicians and senior officials face important constraints derived from public opinion as well as practices of transparency and accountability. Public servants and politicians must follow regulations to preserve the public trust. However, existing mechanisms to prevent corruption have not been effective, although the government is slowly adopting measures to put an end to the rise in corruption. According to a 2006 report by Transparency International, less than 2 percent of Spaniards paid a bribe to an official during the last 12 months. However, around 50 percent of people think that corruption affects political life to a large extent and 36 percent think that the government does not fight corruption effectively. The most corrupt institutions are thought to be political parties, business and the private sector and the media. The medical and education systems as well as NGOs are considered less corrupt.

During the legislative term at the time of writing, local corruption scandals were rampant in construction and urban planning in Spain. Some local officials that are being prosecuted for their participation in these corruption scandals have presented their candidacy for local elections in May 2007, and nobody has prevented them from doing so.

Czech Republic

value 5

There is widespread corruption in the Czech business community, as is indicated by international comparisons and surveys of businesses within the country. These sources indicate that public officials are frequently bribed so as to overcome bureaucratic problems and politicians are bribed to win public contracts. Networks of corruption are quick to take shape and make connections with the central government, but it cannot be said that the central government is controlled by corrupt business elements. Many leading politicians have been accused of corruption, but investigations have often been inconclusive, thereby leaving behind an atmosphere of uncertainty and distrust. The fact that there has been some political resistance to laws aimed at reducing corruption suggests that much of the political spectrum is not worried by the phenomenon.

A 1992 law on conflict of interests required public representatives at the national level to declare their sources of income. In 2005, this requirement was extended to regional and some municipal government officials. Penalties were specified for failure to provide accurate information, but important loopholes remained, including

a degree of uncertainty regarding how the information was to be provided while assuring confidentiality for the affairs of the politician's spouse. A 1992 tax law included a general provision regarding the declaration of wealth above a certain level, but it was repealed in 1994. The right has opposed the reintroduction of the provision, arguing that it is ineffective in practice and that other methods exist for overcoming tax evasion and other forms of illegal activity.

Hungary

value 5

The fight against corruption has been a major issue on the political agenda, heightened by a number of scandals and mutual accusations between the two contending political camps. In 2006, the Ferenc Gyurcsány government amended the existing legal framework by adopting new regulations on lobbying and on the means of monitoring the use of EU funds. It also established an Anti-Corruption Coordinating Board tasked with initiating, coordinating and evaluating anti-corruption activities. The effects of these measures have yet to be seen. In other spheres, party financing has remained nontransparent, and the monitoring of legislators has suffered from loopholes.

Slovakia

value 5

There have been several anti-corruption measures adopted since 2002, including more transparent rules on public procurement, and mandatory asset and property declarations. In 2005, the Dzurinda government passed a new act affecting political parties and political movements that included special anti-corruption provisions while establishing a special court and a special prosecutor's office for corruption cases to improve enforcement. Further measures, including a bill on lobbying, were prepared, but did not pass because of the lack of support in the National Council at the end of the term.

Although the legal framework for battling corruption has improved, the implementation and enforcement of these laws have remained weak. From January 2005 to October 2006, although the police investigated 530 cases and investigators made 167 charges, the courts sentenced a mere 16 people for corruption. Citizens have been reluctant to cooperate with the police and the courts, and the evidence gathered by the police has often been weak. While three ministers were forced out of cabinet after being accused of corrupt behavior, Prime Minister Dzurinda himself failed to refute allegations of illegal party financing and improper deals with non-affiliated members of the National Council. The Fico government has so far paid little attention to the fight against corruption.

South Korea

value 5

Pressured by a popular anti-corruption movement, the Korean government enacted an anti-corruption law in June 2001. In May 2003, a general code of conduct for public officials went into force at central and local administrative organs and among education authorities. The Korea Independent Commission Against Corruption (KICAC), established under the Anti-Corruption Act, handles whistle-blowing reports, recommends policies and legislation for combating corruption and also examines the integrity of public institutions. The Public Service Ethics Act is designed to prevent high-ranking public officials from accruing financial gains related to their duties during and after their time of employment.

While there is thus political will at the highest echelons of the state to root out corruption, much remains to be done in practice. Abuse of officeholders' positions and influence, though not rampant, still exists. Corruption scandals implicating individual politicians sometimes occur. Vigilant civil society organizations regularly conduct surveys of how parliamentarians fulfill their duties. "Blacklisted" candidates face problems in parliamentary elections.

Though far from perfect, the blacklisting system has helped to increase voters' awareness of problems. On the other hand, lawmakers who have been convicted for illegal fundraising and other illicit activities sometimes benefit from presidential amnesties granted every year, as was the case with six serving and former members of parliament in 2005.

Corruption within the bureaucracy is worse on the local level than on the national level. In May 2007 a citizen recall was introduced that allows citizens to recall governors, mayors or local council members who engage in corrupt practices or waste public resources. Politicians are also vulnerable to corruption, as elections and maintaining an elected office are expensive.

Corruption in the private sector is common. In the last couple of years, the government has become more aggressive in prosecuting corrupt managers. The most prominent case has been Hyundai Motors Chairman Chung Mong-koo, who was sentenced to three years in prison in February 2007 for embezzling corporate money and creating a secret fund.

Greece

value 4

In its 2006 report, Transparency International ranked Greece 54th among 163 countries. Indeed, several departments of public administration have been considered susceptible to corruption. Hospitals and the tax department are certainly among these, but town planning agencies, customs and transport authorities, and local governments are not immune. A common form of petty corruption consists in bribing employees of such departments in order to secure a service to which the citizen is already entitled (e.g., the issuance of a document), or in order to secure preferential treatment, as when a doctor issues a medical certificate, an inspector gives a building

permit, or an employee of the Ministry of Transport awards a driver's license. In these instances, mechanisms intended to maintain integrity do not work. Such oversight mechanisms have traditionally been weak, with insufficient administrative personnel, expertise, funds, guidance and coordination devoted to the problem. Prosecution of corruption is similarly ineffective. Investigations are carried out, but only a small number of cases are forwarded to prosecutors. These problems are even larger when it comes to party financing and public procurement systems. Both sectors are highly regulated, but the lack of effective oversight mechanisms, the domination of all political and administrative institutions by the major political parties, and a societal norm of toleration for economic crimes all contribute to a situation in which public office holders abuse their positions for private interests to an extent unacceptable for an advanced Western democracy.

Annotation: Transparency International, "Corruptions Perceptions Index 2007," http://www.transparency.org/policy_research/surveys_indices/cpi (accessed August 26, 2007).

Group of States Against Corruption (GRECO) Council of Europe. Directorate General 1: Legal Affairs Department of Crime problems, Greco Eval 1 Rep (2001) 15E, <http://www.coe.int/t/dg1/greco/pdf> (accessed August 26, 2007)

Italy

value 4

Corruption is widespread in Italy. Only recently did investigations of the state university system bring to light that students were allowed university admission through bribes. There are regulations for the public financing of political parties, but informal structures established during the First Republic did not solidify rules over asset declarations or issues of conflict of interest. Such issues are still not resolved, as witnessed in former PM Silvio Berlusconi's mixed role as leader of the opposition and influential entrepreneur involved with the largest media group in Italy.

The state has introduced over the years a number of integrity mechanisms (the systematic auditing of state spending, regulations over party financing, public procurement rules and so on). The effectiveness of such measures in preventing corruption varies in terms of geography (efforts are less effective in southern Italy as compared to the rest of the country) and are still not fully satisfactory. The number of corruption cases that have come under the scrutiny of the courts suggests that prevention mechanisms are not as effective as they should be.

In tandem with certain international agreements Italy passed a law (Law 3/2003) to establish a High Commissioner in the fight against corruption. This institution has so far achieved very limited results, a situation that is commonly agreed upon and pointed out by the press.

Mexico

value 4

Formally, Mexico has made strong improvements with regard to corruption control. The Office of the Auditor General (established in 2003), the ombudsman, the IFAI and the ratification of international anti-bribery conventions are supposed to be formal safeguards against bribery. The government and courts do what they can to combat corruption, but it must be said that corruption is mostly winning.

The reasons for this are complex. One is that Mexico is a major transit point for the export of illegal drugs to the United States. This smuggling likely generates at least \$10 billion in annual income, and much of this is returned to Mexico in the form of bribes of military, police and political figures. Corruption in the form of outright theft from the public treasury is probably in decline. Until a generation ago it was not merely uncontrolled but positively accepted, however. Today the government is publicly committed to fighting corruption. There is also an anticorruption agency with some teeth.

Nevertheless, islands of corruption remain where corrupt practices are condoned and protected by broader interests. Corruption in the state oil company Pemex, for example, is strongly protected by the Pemex union. Finally, small scale corruption by traffic police, customs officers, local judges and the like is endemic. This is particularly oppressive to poorer Mexicans, who may not be as worried about broader issues such as the illegal drugs trade. Corruption at all levels of government not only negatively affects the consolidation of democracy but is one of the most important barriers to dynamic and inclusive economic development.

Poland

value 4

Poland has sophisticated anti-corruption legislation with regular audits of public finances, a code of conduct for civil servants, strict regulations on the financing of political parties and mandatory asset declarations for thousands of holders of public offices. However, enforcement of these regulations has remained problematic. In an attempt to capitalize on the frustration resulting from the frequent corruption scandals of its predecessor, the incoming PiS government placed the fight against corruption high on its official agenda. In July 2006, it founded the Anti-Corruption Office (Centralne Biuro Antykorupcyjne, CBA) to control the implementation of existing anti-corruption laws. The CBA received investigative responsibilities comparable to those of the police and the intelligence service, such as the authorization to inspect personal data, interrogate or even arrest suspects as well as to carry weapons. However, the office was not independent from government, lacked transparency in its operations and was frequently misused in discrediting political competitors. Moreover, the PiS leadership itself was involved in a major bribery scandal. In September 2006, Adam Lipinski, a close ally of Prime Minister Jarosław Kaczyński and high-ranking member of PiS, was filmed while offering money and a job to Samoobrona party member Renata Beger if she would switch her allegiance to the PiS.

Turkey

value 4

Most measures to prevent the abuse of power or corruption are either non-existent or ineffective. For example, party finances are largely unregulated. Asset declarations are required from public officials, but they are strictly confidential and submitted in sealed envelopes which cannot be opened unless a court order is obtained. Public procurement systems are highly regulated but still face charges of corruption. Citizens in general have little access to information and the media must make a special effort to gain access to information in the prosecution of corruption cases. Furthermore, there are political (or partisan) influences in the dealings over charges of corruption. The accountability of government officials and of members of parliament is seriously compromised.

Article 83 of the constitution is much disputed, as it grants legal immunity to all MPs, which means deputies are free from prosecution or trial over any and all offenses while serving a parliamentary term. To remove this immunity requires a vote by the Grand National Assembly and is extremely unusual. Therefore, a good number of charges brought against deputies cannot be taken up by the courts.

In addition, bureaucrats also have varying degrees of legal immunity. However, beginning a judicial process against a bureaucrat is much easier and is usually dependent on the permission of a supervisor or departmental director. Inquiries against a mayor require the permission of the interior minister, while inquiries against high-ranking bureaucrats require the permission of the Prime Minister's Office or respective ministry.

In 2006, the chief prosecutor of the High Court of Appeals (Yargitay) said that he had asked permission to inquire about 58 high-ranking officials, yet in not one case had permission been granted. At the same time, 209 cases against members of parliament were pending. There is no transparency with regard to the actions of the country's security forces, which includes the military, the police, the gendarmerie, the coastal police and the so-called village militia, which is often used in the fight against the Kurdish PKK.

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

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