

**SGI** Sustainable Governance  
Indicators 2009

Resource Efficiency

## Veto player report



*Indicator* **Second chamber veto***Question* **How many government-sponsored bills were rejected by a second parliamentary chamber?**

*30 OECD countries are sorted according to their performance from best to lowest.*

*Column “Bills submitted” lists the total number of government-initiated and/or government-supported bills submitted to parliament.*

*Column “rejected” lists total number of government-sponsored bills rejected by the second chamber of parliament.*

*Column “percent” is the ratio of the two preceding numbers.*

**Australia**

Bills submitted: 378                      rejected: 0                      percent: 0

As of the 2004 federal election, the government gained control of the upper house, the Senate. Since party discipline is high, the Senate has not rejected any government bills. There have been a small number of amendments to government bills.

**Canada**

Bills submitted: 145                      rejected: 0                      percent: 0

It is extremely rare for Canada’s Senate to reject bills approved by the House of Commons. Nevertheless, the Senate will occasionally amend proposed bills and return them to the House for consideration.

During both sessions of parliament, the Senate approved all House bills (145). This was the case even during the first session of the 39th parliament, when the Conservative minority government did not command a majority of the seats. This is a good indication that – due to its outdated mode of appointing its members – the Canadian Senate is not an effective veto player, even despite its constitutional legislative competence.

## France

Bills submitted: 15                      rejected: 0                      percent: 0

Technically, the Senate (or second chamber) can be overruled by a majority in the National Assembly. The only cases where the Senate's role is more substantial are related to the adoption of constitutional bylaws.

In practice, the Senate has gained power and influence thanks to the quality of its legislative work and its influence as stronghold of local government. Despite its weak powers, the Senate has become in fact a quasi-"federal" chamber, unable to impede the adoption of legislative bills but capable of changing considerably the substance of proposed texts.

## Ireland

Bills submitted: 87                      rejected: 0                      percent: 0

In Ireland, the second chamber – or “upper house” – of Parliament is called the Seanad Éireann, or the Senate. The Senate's powers are limited to delaying bills (although not money bills) and to petitioning the president – with the support of one-third of the members of House of Representatives – to not sign a bill but to submit it to a referendum. Neither of these powers was exercised during the last parliament. In fact, the Senate has not rejected a government bill since July 1964.

Senate elections take place after the House elections. They do not involve direct franchise but rather an obscure (at least to most of the public) system of corporatist representation that includes rather arbitrary and archaic institutional entitlements, and the prime minister is entitled to appoint 11 out of its 60 members.

The difference between the number of bills adopted and the total number of bills within “Anticipation of veto players” is due to the extension of the period of observation under “Bills adopted.” For “Anticipation” the period of observation was adhered to.

## Netherlands

Bills submitted: 182                      rejected: 0                      percent: 0

Regarding the period of observation, please see “Bills adopted.” According to an employee of the Parliamentary Information Office no government-sponsored bills have been rejected by the Second Chamber of parliament in this period.

## United States

Bills submitted: 8154      rejected: 0      percent: 0

The Senate is regarded as an upper house owing to the powers it has in a few areas, such as confirming appointments and ratifying treaties. Its role in the legislative process is strictly parallel to that of the House of Representatives. Neither one necessarily or conventionally acts first on legislation. The number given above indicates the total number of bills and resolutions introduced in the House of Representatives during the 109th Congress in 2005 and 2006. It is unclear how many had presidential support. It is also unclear how many died in the House alone, on the one hand, and how many died over differences with the Senate, on the other. What is clear is that the House and Senate agreed on 483 bills, which were sent by Congress to the president for enactment with his signature.

## Poland

Bills submitted: 339      rejected: 1      percent: 0.29

The Senate, the upper chamber of the Polish National Assembly, is allowed only a suspensive veto, which can be overruled by an absolute majority in the Sejm, or lower chamber. During the period under analysis, the governing coalition had a majority in the Senate as well. In the case of the rejected bill, an amendment to the law on craftsmen, the Sejm accepted the rejection by the Senate. In addition to rejections, the Senate also proposed amendments to 172 bills. As in sections “Bills adopted in parliament,” “Head of state veto” and “Court veto,” the figures cited refer to the period from Oct. 19, 2005 to July 10, 2007, and the total number of government-sponsored bills submitted to the National Assembly includes only government-submitted bills.

## Japan

Bills submitted: 216      rejected: 1      percent: 0.46

Although data from the Diet shows that no cabinet proposal was rejected, there is the important case of the Koizumi-backed Postal Privatization Bill, which only narrowly passed the lower house in mid-2005 due to opposition within the LDP, and was rejected by the House of Councilors. As Koizumi could not muster a two-thirds majority in the House of Representatives to overrule this vote, he called snap lower house elections, and gained a landslide victory. Eventually, the Postal Bill was enacted, albeit in a watered-down version.

## Spain

Bills submitted: 106                      rejected: 1                      percent: 0.94

The country's constitution sets that the Congress of Deputies holds stronger decision-making powers than does the Senate. When the Senate either vetoes or includes amendments to a bill already approved in Congress, Congress can ratify the original approval with an absolute majority or even with a simple majority if an absolute majority is not achieved within two months. In practice, this has rarely been used, as a Senate majority has traditionally (from 1979 to 2004) reinforced decisions made by Congress. The Popular Party enjoyed a majority in the Senate, yet only one Spanish Socialist Worker's Party government-sponsored bill was rejected.

## Germany

Bills submitted: 64                      rejected: 2                      percent: 3.13

As a matter of principle, the Federal Council (the Bundesrat), as the German parliament's second chamber, participates in the passage of every law adopted by the Federal Assembly (the Bundestag). However, the extent of participation depends on the bill in question. Some bills simply allow the Council to lodge an objection, while others require the Council's consent. As a consequence, the Council is only able to veto bills which are in need of the body's consent, as outlined in the country's Basic Law – about 65 percent of proposed legislation.

However, the failure rate for legislation is very low. Since the 1990s, no more than 10 bills in a single legislative period have been ultimately blocked. Even in periods of differing party majorities in the two chambers, the percentage of rejection never rose above 3 percent.

## Italy

Bills submitted: 109                      rejected: 5                      percent: 4.59

The impact of a second chamber (which in Italy can either be the Chamber of Deputies or the Senate, as the two chambers have exactly the same legislative powers and lawmaking is initiated alternatively in one or the other of the two branches) is felt more often in its delaying tactics rather than its outright rejection of bills. Given the short evaluation period for the present government (less than a year), it is difficult to say how many government bills submitted so far will be rejected, significantly delayed (and in fact shelved) or temporarily put on hold. The formal rejection rate, as can be seen from the figures, is very low. There is however a

significant probability that among the number of bills submitted and still pending in parliament (78), a good number although not formally rejected by one chamber will in the end be rejected because of the difficulty in finding majority support in both chambers of parliament.

## Belgium

Bills submitted: 402                      rejected: 25                      percent: 6.22

The data provided here is from Senate data for the period from 2003 to 2007; the Senate did not publish data specifically for 2006 – 2007. A total of 578 law bills were adopted, as well as 13 proposals to revise the constitution, 60 proposals for resolutions and three proposals for the modification of Senate rules. The lower chamber transmitted 402 proposals to the Senate that were open to amendment. In 25 cases, the proposals were amended by the Senate and then returned to Parliament. Twice, the Chamber of Deputies amended the text again and returned it to the Senate. Most of the disputed texts had to do with religious, cultural or linguistic issues. It should be noted that the Senate is seen to be a rather “reflexive chamber.”

## Czech Republic

Bills submitted: 134                      rejected: 9                      percent: 6.72

The Czech parliament consists of two chambers, the Chamber of Deputies and the Senate. The Senate is a permanent institution. Every second year, elections take place in one-third of the constituencies. The Senate can either reject bills outright or propose amendments to them. In either case, the Senate can be overruled by the Chamber of Deputies by a vote with an absolute majority of all members of parliament. As with “Bills adopted in parliament,” “Head of state veto” and “Court veto,” these figures only apply to the center-left government, that is, to the period from January 2005 to August 2006, and they do not include bills initiated by MPs from the governing coalition. During this period, the Senate was dominated by the oppositional ODS.

## Switzerland

Bills submitted: 114                      rejected: 15                      percent: 13.16

Theoretically, each chamber can “veto” the other. However, this happens only rarely. Instead, in cases of difference, the two chambers of the Federal Assembly seek compromise.

The composition of the Council of States is different from that of the National

Council (the Council of States draws an equal number of representatives from small and big cantons, and has fewer representatives of the political left). Consequently, in the Council of States, the interests of small cantons and of the political right have a better chance of success, leading in turn to different ways of drafting proposals for the same law.

These differences are eliminated through a process in which the law is passed several times from one chamber to the other, with the aim of settling on a compromise product. This may finish with the creation of a smaller conference committee that brings representatives of both chambers together in a quest for compromise. This final step is necessary in about 20 percent of all legislative projects, and is successful in most cases. If this committee fails to bring out a common product, there is no new bill. These cases are very rare.

## Austria

Bills submitted: 185                      rejected: 30                      percent: 16.22

In 2005, the Federal Council, which is the upper house of the Federal Assembly, was receiving unexpected media attention. After the Alliance for the Future of Austria (BZÖ) split from the Freedom Party of Austria (FPÖ) and the commitment of only one of the five FPÖ members of the Federal Council to the BZÖ (two stayed in the FPÖ, and two declared themselves to be nonaffiliated), the governing parties lost their majority in the upper house for the first time since 1987. In October 2005, the situation became clearer when electoral gains of the opposition parties, the Social Democratic Party of Austria (SPÖ) and the Greens, in the state elections in Styria and Vienna established a SPÖ-Green majority in the Federal Council. Although this did not have dramatic consequences for the government-opposition relationship – as the upper house only exercises a suspensive veto in almost all legislative matters – it was still symbolized that the government had lost its majority. Nevertheless, none of the 30 vetoes decided by the Federal Council majority in the following months prevented the enactment of a law.

## United Kingdom

Bills submitted: 84                      rejected: 17                      percent: 20.24

Whereas the House of Lords as the second chamber of Parliament can repeatedly vote against a bill and thus return it to the House of Commons, the House of Lords cannot reject a bill outright. It is the House of Commons which always has final say if it so wishes. Government managers sometimes let legislation lapse if they believe there is neither the requisite political capital nor time to overcome objections. In such cases, the issue of a second chamber veto is a moot point. Informed observers estimate the actual rejection ratio at roughly one in five.

## Mexico

Bills submitted: 103                      rejected: 44                      percent: 42.72

The figures reported here are for the 2003 – 2006 legislative period, as well as the first session of the legislature elected in 2006. It was impossible to disaggregate the data covering 2005 and 2006. It should also be noted that the number of bills explicitly rejected does not directly reflect all the second chamber's potential veto activity. It is a common practice to impede the approval of a bill by simply delaying its transit through the legislative process.

## Denmark

n/a: Denmark has no second chamber.

## Finland

n/a: Finland does not have a second legislative chamber.

## Greece

n/a: Greece's parliament is unicameral.

## Hungary

n/a: The Hungarian National Assembly does not have a second chamber.

## Iceland

n/a: Iceland's parliament is unicameral.

## Luxembourg

n/a: The Council of State, sometimes considered a second chamber, is only a

consultative body. It does not have the power to reject a bill.

## New Zealand

n/a: The New Zealand Parliament is unicameral, and does not have an upper house.

## Norway

n/a: Finland dos not have a second legislative chamber.

## Portugal

n/a: There is no second chamber, as the Assembly of the Republic is unicameral.

## Slovakia

n/a: The National Council of the Slovak Republic is a unicameral legislative body and does not have a second chamber.

## South Korea

n/a: There is no second chamber of parliament.

## Sweden

n/a: The Swedish parliament has no second chamber.

## Turkey

n/a: The Grand National Assembly of Turkey is unicameral.

*Indicator* Head of state veto*Question* How many government-sponsored bills were rejected by the head of state?

*30 OECD countries are sorted according to their performance from best to lowest.*

*Column "Bills adopted" lists the total number of government-initiated and/or government-supported bills adopted in parliament.*

*Column "rejected" lists total number of government-sponsored bills rejected by the head of state.*

*Column "percent" is the ratio of the two preceding numbers.*

## South Korea

Bills adopted: 459                      rejected: 0                      percent: 0

The presidential veto is a political instrument rarely used in Korea. President Roh Moo-hyun had vetoed five bills by the close of this period of analysis. All of them were in 2003 or 2004, when the governing Uri Party was in a parliamentary minority.

## Turkey

Bills adopted: 346                      rejected: 61                      percent: 17.63

According to the constitution, the president may return laws to the Grand National Assembly to be reconsidered. President Ahmed Necdet Sezer, especially in the period of the AKP government, vetoed a record number of bills adopted by the Assembly. This was partially because of his legal background, as he insisted on basic principles on which the Turkish state was founded to be explicitly protected in the law, and partially because of his ideological clash with the AKP government.

While many of his veto decisions seemed justified, constitutionally few of them were without legal or objective support. President Sezer often was accused of rejecting government bills on ideological concerns, and he often substantiated his decisions with legal arguments and ventured deeply into the substance of the concerned laws.

## Germany

Bills adopted: 315                      rejected: 2                      percent: 0.63

Germany's head of state, the president, only has the right to veto a bill if he or she has drastic doubts about its constitutionality. In the case of strong doubts, the president will typically promulgate and publicize the law, but will simultaneously write letters pointing out his or her constitutional concerns to the federal chancellor and the presidents of the Federal Assembly and Federal Council. Normally, the opposition or one of the institutions of the governmental system will then apply to the Constitutional Court for legal review. This was the case with the Aviation Security Act, which President Horst Köhler signed despite strong constitutional doubts. The opposition subsequently appealed to the Federal Constitutional Court, which declared the law unconstitutional.

However, Köhler recently refused to sign two adopted laws, a law for the regulation of flight safety on October 24, 2006, and a law on the regulation of consumer information on December 8, 2006. This represents the highest rate of refused bills for any government in the postwar period.

## Hungary

Bills adopted: 288                      rejected: 11                      percent: 3.82

The Hungarian president has only a suspensive veto. If a bill appears unconstitutional, he or she can send it back to the National Assembly or ask the Constitutional Court to review it. During the period under review, the president returned four bills to the National Assembly and sent seven bills for review to the Constitutional Court.

## Poland

Bills adopted: 283                      rejected: 1                      percent: 0.35

The president is allowed only a suspensive veto. According to the 1997 constitution, the Sejm can overrule the president's veto with a 60 percent majority. In case of a rejected bill, the Sejm also accepted its rejection. The low number of presidential vetoes reflects the fact that the government and the president were from the same political party. As in sections "Bills adopted in parliament," "Head of state veto" and "Court veto," the figures cited refer to the period from Oct. 19, 2005 to July 10, 2007, and the total number of government-sponsored bills submitted to the National Assembly includes only government-submitted bills.

## Austria

Bills adopted: 185                      rejected: 0                      percent: 0

The presence of Austria's signature is an indispensable requirement for federal laws to become enacted. However, his or her power is limited to a verification of the constitutionality of the lawmaking process. Constitutional lawyers agree that he or she is not entitled to verify a law's content, as this task belongs to the Constitutional Court. For this reason, the president has not refused to sign a single law since 1945.

Annotation: Müller, Wolfgang C., "Austria," in *Semi-Presidentialism in Europe*, edited by Robert Elgie, (Oxford, 1999), 22–47.

Müller, Wolfgang C., "Der Bundespräsident," in *Politik in Österreich: Das Handbuch*, edited by Herbert Dachs et al, (Vienna: Manz Verlag, 2006), 188–200.

## Slovakia

Bills adopted: 146                      rejected: 15                      percent: 10.27

The Slovak president has only a suspensive veto which can be overruled by an absolute majority of MPs. President Ivan Gašparovič (2004-), who was nominated and backed by oppositional parties during the Dzurinda government's tenure, vetoed bills proposed by the government for political reasons. Since the change in government, Gašparovič has largely refrained from vetoing bills. The figures provided refer to the Dzurinda government during the period from January 2005 to July 2006 only. The first figure does not include bills initiated by MPs from the governing coalition.

## Czech Republic

Bills adopted: 121                      rejected: 17                      percent: 14.05

The president has only a limited formal role in the legislative process. He or she has only a suspensive veto, which can be overruled by an absolute majority of MPs in the lower house. Václav Klaus, the long-standing leader of the oppositional ODS, has held the office of the president since March 2003 and has used his veto right more often than his predecessor, Václav Havel. From January 2005 to August 2006, Klaus vetoed 17 bills, most of which related to issues of economic and social policy and were overruled by the governing coalition. As with "Bills adopted in parliament," "Second chamber veto" and "Court veto," these figures only apply to

the center-left government, that is, to the period from January 2005 to August 2006, and they do not include bills initiated by MPs from the governing coalition.

## Greece

Bills adopted: 120                      rejected: 0                      percent: 0

Greece's president rarely rejects a bill sponsored by the government, although the constitution allows him or her to do so. The president's reluctance to use these powers is rooted in the government-centered nature of the country's political system. Political power is centered in the incumbent government, with little balance provided by the president. The president is elected by the parliament, rather than in national presidential elections, and depends on the votes cast by the deputies of the largest party. Thus, compared to the government, which is formed after national parliamentary elections taking place every four years, the president has less legitimacy to intervene in substantive policy-making.

## Ireland

Bills adopted: 87                      rejected: 1                      percent: 1.15

Given the lack of formal and de facto power exercised by its president, Ireland is usually characterized as having a parliamentary system. The Irish president does not have the power to veto legislation passed in Parliament, although he or she may refer it to the Supreme Court for a judgment on its constitutionality. This happens only after he or she convenes and consults with the Council of State and thereafter feels that the legislation may contradict provisions of the Constitution.

## Portugal

Bills adopted: 65                      rejected: 2                      percent: 3.08

As the new president, Anibal Cavaco Silva, has only been in office between March 2006 and September 2006, the period considered here is limited to that period. During that period, the president vetoed two bills that had been approved in the Assembly of the Republic. One of the vetoed bills would have required parties to have at least one-third of the candidates on its lists of candidates for elections (local, national and to the European Parliament) to be women.

## Italy

Bills adopted: 26

rejected: 0

percent: 0

The Italian head of state has the power once a government- or parliament-sponsored bill has been approved by parliament to send it back for new deliberations if he thinks the bill has serious faults. The current analysis is restricted to government-sponsored bills approved by parliament that had connections to the Prodi II government. So far, there have been no rejections of bills by the head of state.

## France

Bills adopted: 15

rejected: 1

percent: 6.67

Article 10 of the French constitution gives the president the right to veto a bill, which, in effect, simply postpones the bill. Since normally the president is the effective head of government (as was the case in 2005-2007) this situation does not occur often and did not occur during the period under review. One exception includes action over the CPE (Contrat première embauche) bill, which presented new work regulations for France's youth. The bill was presented by the prime minister and adopted by parliament, but it was not applied as law in response to serious social unrest.

Annotation: The one example (the CPE bill) was not strictly a veto per the terms of article 10 of the constitution.

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## Australia

n/a: Australia's head of state is the Queen of England, who is represented by the governor general. The governor general is in effect appointed by the government. By convention, the role of the governor general is merely ceremonial, and the exercise of the position's veto power is unheard of. Indeed, there is debate over whether such a veto power in fact exists.

## Belgium

n/a: According to the Belgian constitution, the king is not supposed to refuse to sign a law. The king (or head of state) therefore refrains from exerting any veto powers, as in "the king reigns but does not govern." He simply signs all bills presented to him. The ministers and the government, not the king, are politically accountable for bills passed into law.

## Canada

n/a: This question does not apply to Canada.

## Denmark

n/a: Denmark is a constitutional monarchy. The monarch does not veto bills, as it would be against the prevailing norms.

## Finland

n/a: The president, Finland's head of state, does not have the right to reject bills.

## Iceland

n/a: The head of state has very little political influence, and rarely uses it.

## Japan

n/a: The head of state, the emperor, cannot reject bills. Under the terms of the postwar constitution, he is only a symbol of the state.

## Luxembourg

n/a: The Grand Duke does not have effective veto power. The last time a sitting Grand Duke attempted to veto a measure, in 1919, the resulting controversy ended with his resignation.

## Mexico

n/a

## Netherlands

n/a: In the Netherlands, the queen is not in a position to reject bills, and there are no

known instances in which the queen has rejected a government-sponsored bill.

## New Zealand

n/a: The governor-general has to sign a bill to make it law, a process called Royal assent. The governor-general has the legal power to reject bills, but has never used it.

## Norway

n/a: Norway is a constitutional monarchy, with the king serving as head of state. Legislation does constitutionally require his consent but this is now a mere formality. He can not refuse consent to a bill passed by the legislature.

## Spain

n/a: Spain is a parliamentary monarchy. The head of state in Spain is the king, who cannot veto legislation.

## Sweden

n/a: The head of state, Sweden's king, has no formal veto power.

## Switzerland

n/a: Switzerland's head of state does not hold veto power.

## United Kingdom

n/a: As the head of state, the Queen of England signs all bills passed by Parliament and has the right of veto, but does not exercise this right.

## United States

n/a: The United States does not have a head of state other than the president.

*Indicator* Court veto

*Question* How many bills or laws were declared unconstitutional (completely or in part) by a constitutional court?

*30 OECD countries are sorted according to their performance from best to lowest.*

*Column "Bills adopted" lists the total number of bills adopted in parliament.*

*Column "declared unconstitutional" lists total number of bills declared unconstitutional.*

*Column "percent" is the ratio of the two preceding numbers.*

## Canada

Bills adopted: 82                      declared unconstitutional: 0                      percent: 0

The functions of the Supreme Court of Canada are twofold. First, the Court acts as the final court of appeal. Most importantly, however, it serves as interpreter of the Canadian Constitution as well as the Charter of Rights and Freedoms by means of references and judgments regarding the meaning and content of basic individual (and collective) rights, the constitutionality of federal and provincial legislation, and the division of powers between the federal and provincial governments. Since the 1982 passage of the Charter of Rights and Freedoms, the position of courts in general and that of the Supreme Court of Canada in particular vis-à-vis the legislatures and the governments on both federal levels have been strengthened. Before tabling any legislation, however, the government will put it on hold until the Supreme Court has published a ruling on the relevant issue (e.g., same-sex marriage).

## Czech Republic

Bills adopted: 151                      declared unconstitutional: 0                      percent: 0

The Czech Constitutional Court can exercise constitutional review only after the fact, ruling either on complaints by citizens directly affected by a law or on complaints by the president or groups of members of parliament. In 2005 and 2006, about 6,500 cases were filed. The Czech Constitutional Court has practiced judicial self-restraint. As with "Bills adopted in parliament," "Second chamber veto" and "Head of state

veto,” these figures only apply to the center-left government, that is, the period from January 2005 to August 2006.

## United States

Bills adopted: 483                      declared unconstitutional: 0                      percent: 0

None of the 482 laws passed by the 109th Congress in 2005 and 2006 was declared unconstitutional by the Supreme Court.

There are very few federal laws that are declared unconstitutional by the Supreme Court, in whole or in part, in any short period, and there have only been a little more than 120 such instances in the entire history of the country. In any case, it takes at least several years for a law to be challenged and for the case to arrive before the Supreme Court, and the period is highly variable.

## Australia

Bills adopted: 378                      declared unconstitutional: 1                      percent: 0.26

The High Court of Australia has jurisdiction over constitutional matters. It does not take an active role in determining the constitutionality of legislation, but rather hears challenges to the constitutionality of laws brought by other parties, such as the state governments. During the period of this review, only a single law, which denied the vote to prisoners serving terms of less than three years, was ruled unconstitutional.

## Japan

Bills adopted: 216                      declared unconstitutional: 1                      percent: 0.46

Of the seven postwar cases in which the Supreme Court ruled a law unconstitutional, only one occurred in the review period. However, this 2005 decision referred to an older law, which barred Japanese citizens abroad from voting. In general, the Supreme Court has supported government policies, even in rather extreme cases. In a famous mid-2005 judgment, the Supreme Court ruled that the 2004 upper house election had been constitutional even though the weight of individual votes had diverged by a factor of as much as 5 to 1, depending on the region.

## Germany

Bills adopted: 249                      declared unconstitutional: 2                      percent: 0.80

During the period under analysis, the Federal Constitutional Court declared two laws passed by the grand coalition to be unconstitutional. The first was a provision of the Aviation Security Act which allowed the armed forces to shoot down aircraft under

the control of terrorists, and which were likely to be used as weapons. The second dealt with television and radio license fees, and allowed state authorities to set the fees instead of an authorized commission. Other grand coalition bills are still under review.

## Poland

Bills adopted: 353                      declared unconstitutional: 3                      percent: 0.85

The Polish Constitutional Tribunal enjoys a good reputation. The 1997 constitution strengthened its position, most notably by abolishing the power of the Sejm to overrule court decisions. While ex ante legislative review can only be initiated by the president, a relatively broad range of actors – the president, the marshals of the Sejm and the Senate, the prime minister, the first president of the Supreme Court, the president of the Supreme Administrative Court, the public prosecutor general (under present regulations, this function is performed by the justice minister), the president of the Supreme Chamber of Control, the commissioner for citizens' rights, as well as a group of 50 Sejm members or 30 Senate members – can call for an abstract judicial review.

The figures cover only court decisions on bills adopted in the period under analysis. The three bills include: the media law with new provisions for the National Council of Radio and Television (March 2006); the election law with newly strengthened requirements on the filing of financial statements by local representatives (March 2007); and the lustration law (May 2007). As in sections “Bills adopted in parliament,” “Head of state veto” and “Court veto,” the figures cited refer to the period from Oct. 19, 2005 to July 10, 2007.

## Ireland

Bills adopted: 87                      declared unconstitutional: 1                      percent: 1.15

The Supreme Court can only veto a bill prior to its enactment if the bill is referred to it by the president. If this occurs, the Supreme Court makes one decision and that decision is final. This means that a bill declared constitutional at this stage cannot later be challenged on the grounds of its constitutionality. However, if a bill is declared unconstitutional, it cannot be enacted without significant changes to it or to the Constitution. Although this occurs quite rarely, it did occur once during the period under observation (in February 2005), when the Supreme Court found sections of the Health (Amendment) (No. 2) Bill 2004 unconstitutional. This legislation cannot be enacted now.

## Mexico

Bills adopted: 239                      declared unconstitutional: 3                      percent: 1.26

In only very few cases has the Supreme Court of Justice overturned legislation approved by the National Congress. Some of these rejected bills were not initiated by the federal government, as in the case of the media law initiated by the Senate, and approved by Congress. The court did not abrogate this law completely, but did overturn very specific clauses and paragraphs. This was a highly publicized case in which the court enhanced its reputation among the general public and political actors, because the law was perceived as having been the result of media pressure.

The Supreme Court has been very active in addressing unconstitutional legislation coming from the autonomous subnational levels. This shows the important role it has played as a mediator among subnational powers rather than as an arbiter among the federal branches. It also speaks to difficulties in the Mexican federal system, in which local legislators or governors consistently pass unconstitutional bills, most of them on electoral matters.

## Luxembourg

Bills adopted: 130                      declared unconstitutional: 4                      percent: 3.08

The Constitutional Court, established just 15 years ago, is still in the process of defining its doctrine. But judging from its performance so far, it is bound to play a powerful corrective role in the policy-making process.

## Portugal

Bills adopted: 65                      declared unconstitutional: 2                      percent: 3.08

Portugal's Constitutional Court has declared two of the bills approved by the Assembly of the Republic during the period in question unconstitutional. Two specific characteristics of the court should be mentioned here. First, it judges articles of laws rather than laws in their entirety. Second, most of its activity is driven by what in Portuguese legal terms is called "concrete fiscalization." In other terms, the court does not pass judgment on the "preventive or abstract fiscalization" of bills approved by the Assembly of the Republic. Instead, it judges the constitutionality of a law based on concrete cases arising from the lower courts brought against specific, concrete effects arising from a given law.

## Turkey

Bills adopted: 364                      declared unconstitutional: 12                      percent: 3.47

The Constitutional Court examines the constitutionality, in both form and substance, of laws, decrees which have the force of law and the rules of procedure of the Grand National Assembly. Constitutional amendments are examined and verified only with regard to form.

During a state of emergency, martial law or in time of war, however, no decree or other government action having the force of law can be brought before the Constitutional Court if a question of unconstitutionality arises. Verification as to the form of a law or decree may be requested by the president or by one-fifth of the members of the Grand National Assembly. Applications for annulment on the grounds of defect in the form of a law or decree cannot be made more than 10 days after the date on which the law was promulgated; nor shall any objection be raised. The Court may take the decision of stay of execution before a final decision.

The figures include 27 partial (one or two provisions or paragraphs of a law) annulments and two stay of execution decisions before the final judgments on the cases. In three cases, the court either annulled the laws fully or essential parts of the law.

## Slovakia

Bills adopted: 192                      declared unconstitutional: 11                      percent: 5.73

Slovakia's 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. Faced with a large number of cases and a relative small number of requests to review new laws, the Court exercises judicial review to a limited extent only. Two long-standing vacancies resulting from disagreement between the government and opposition have kept the Court from operating at full capacity. The figures provided refer to the Dzurinda government during the period from January 2005 to July 2006 only.

## Greece

Bills adopted: 120                      declared unconstitutional: 9                      percent: 7.50

Greece has no constitutional court, and laws passed by the parliament are rarely declared unconstitutional in their totality. Any court, including courts of first and second instance, may decide that one or more clauses of a certain law are unconstitutional. The case may then be transferred to a court of higher instance such

as the Council of State, which is the supreme administrative court. Since there is no constitutional court as such in Greece, all courts are deemed competent to decide upon the constitutionality of a provision. This represents a so-called diffused control of constitutionality, as opposed to concentrated control. This also means there is no list of unconstitutional laws.

Annotation: Research using the Greek press (TO BHMA, KATHIMERINI, ELEYTHEROTYPIA, and [www.in.gr](http://www.in.gr)) suggests that nine bills were declared unconstitutional in 2006 – 2007 time period. Five bills were declared unconstitutional in 2006 (3301/04; 3388/05; 3320/05; 3371/05; 3429/05) and four in 2007 through the end of March, the close of this period of analysis (3260/04; 2084/92; 2717/99; 3044/02).

## South Korea

Bills adopted: 459                      declared unconstitutional: 46                      percent: 10.02

Between January 2005 and March 2007, the Constitutional Court declared 46 bills to be unconstitutional. However, due to the lag associated with the legal process, these bills were not necessarily adopted in parliament during that period. One important feature in recent South Korean politics has been the Constitutional Court's increasing political influence, with those opposed to a bill tending to rely on the court as a last resort. The court has already ruled on some politically very sensitive issues, including the impeachment of President Roh and the proposed relocation of the capital city.

## Austria

Bills adopted: 294                      declared unconstitutional: 33                      percent: 11.22

Because it verifies the constitutionality of laws, the Constitutional Court is a major veto player against the government in the Austrian political system. The court can initiate a verification procedure on its own, but it can also be appealed to by opposition parties comprising at least one-third (i.e., 61) of the MPs in the National Council. In this way, the Social Democratic Party of Austria (SPÖ) – which in the periods 1999–2002 and 2002–2006 had 65 and 69 seats in the National Council, respectively – took advantage of this opportunity to bring several laws of the ÖVP-FPÖ government before the court. The court declared some of these laws unconstitutional, such as a new asylum law and the laws concerning the reorganization of the central social-insurance institution, the obligation of profitable health-insurance companies to grant credits to an equalization fund and the forced early retirement of civil servants. On the other hand, the court decided that the constitution had not been violated in other cases, such as those concerning new

regulations for employees during the reorganization of the federal railway company (ÖBB), a new statute for the public broadcasting corporation (ORF) and the 2003 pension reform.

Annotation: Home page of the Federal Assembly: [www.parlinkom.gv.at](http://www.parlinkom.gv.at)  
Proceedings of the Constitutional Court 2005: [http://www.vfgh.gv.at/cms/vfg\\_h-site/attachments/5/6/9/CH001](http://www.vfgh.gv.at/cms/vfg_h-site/attachments/5/6/9/CH001)

## Hungary

Bills adopted: 353                      declared unconstitutional: 41                      percent: 11.61

The Hungarian Constitutional Court has been a powerful player since its establishment in 1989. Its position is strengthened by the fact that citizens and legal entities can lodge constitutional complaints even if they are not directly affected by the law or regulation 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. In 2005 and 2006, almost 2500 complaints or petitions were registered by the Constitutional Court. Several court decisions touched upon highly politicized issues such as education and health care reform.

## Italy

Bills adopted: 78                      declared unconstitutional: 10                      percent: 12.82

Figures reflect the number of court decisions that have decided on the unconstitutionality of one or more articles within a law. Also, as the Constitutional Court is also required to analyze the constitutionality of very old bills, we have taken into account only the Court's decisions referring to government-originated bills approved during the period under review.

## Belgium

Bills adopted: 518                      declared unconstitutional: 83                      percent: 16.02

From 2005 to 2007, 518 cases were referred to the Constitutional Court. These cases covered laws voted on either in recent years (from 2005 to 2007) or later. In 83 cases, the court declared that a law was (fully or partially) unconstitutional. In other cases, the court declared that a law can either be considered "constitutional or unconstitutional depending on the interpretation." These instances were not considered constitutional infringements.

Annotation: Please note that the figure provided under “Total number of bills adopted in parliament” refers to the number of laws that were referred to the Constitutional Court from 2005 to 2007. Therefore, this figure does not correspond to the number of bills adopted during that period.

## France

Bills adopted: 128                      declared unconstitutional: 23                      percent: 17.97

The Constitutional Council plays an important role for the parliamentary opposition. In appealing to the council, the opposition may hinder the application of a law or some of its parts adopted by the majority. Sometimes specific (minor or major) parts of a law are declared unconstitutional and have to be amended. According to the French constitution, the Constitutional Council may only meet after a parliamentary vote or before the president puts a law into effect, which limits the council’s time window for action. Once a law is promulgated it cannot be vetoed ex post by the council.

Annotation: The statistics given come from the Constitutional Council and differ from the number of laws considered above. For 128 texts adopted, the Constitutional Council has been appealed to in 39 cases. In 23 cases, a bill or parts of bills have been declared unconstitutional.

## Spain

Bills adopted: 106                      declared unconstitutional: 28                      percent: 26.42

Data previously shown only includes bills passed by the national parliament, without considering legislative activity by regional parliaments. The bills declared unconstitutional refer to those declared so by the Constitutional Court during the period under review; nevertheless, these bills were passed earlier. No bill adopted in parliament has yet been declared unconstitutional.

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## Denmark

n/a: In principle, the courts can declare laws unconstitutional. Traditionally, however, the courts have deferred to the popularly elected People’s Assembly. There has only been one case (i.e., the so-called Tvind case of 1999) in which the Supreme Court declared a law unconstitutional. Denmark has no separate constitutional court.

## Finland

n/a: Finland does not have a constitutional court.

## Iceland

n/a: The Supreme Court has at times intervened, but did not do so during the period of this analysis.

## Netherlands

n/a: There is no constitutional review of laws in the Netherlands.

## New Zealand

n/a: The New Zealand constitution does not exist as a single written document, but is understood as a collection of statutes, treaties, court decisions and unwritten constitutional conventions. There is no constitutional court which could declare bills unconstitutional; the Supreme Court of New Zealand is the country's highest appellate court.

## Norway

n/a: This issue cannot be addressed in statistical terms. Norway has no constitutional court and no provision in the constitution for legislation to be declared unconstitutional. Judicial review is in the hands of ordinary courts at all levels. Rulings that make reference to the constitution do result in legislation being set aside or not implemented, but not or hardly ever in the sense that it is quashed for ever as unconstitutional.

## Sweden

n/a: Sweden does not have a constitutional court. There is a so-called "legal council" that reviews cabinet bills to guarantee their consistency with the constitution, but the council reviews proposed legislation in a different way than a constitutional court typically would.

## Switzerland

n/a: The Federal Supreme Court can veto cantonal laws as unconstitutional. However, the court does not have the power to declare entire federal bills to be unconstitutional. Rather, it can only revise the application of federal laws.

## United Kingdom

n/a: There is no Constitutional Court per se in the UK judicial system that can strike down legislation as unconstitutional. Instead, it is the second chamber of Parliament, the House of Lords, that serves as the highest court.

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

More on the SGI 2009 at [www.sgi-network.org](http://www.sgi-network.org)

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