



# Rule of Law Report

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

## Sustainable Governance Indicators 2019

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Indicator

## Legal Certainty

Question

To what extent do government and administration act on the basis of and in accordance with legal provisions to provide legal certainty?

41 OECD and EU countries are sorted according to their performance on a scale from 10 (best) to 1 (lowest). This scale is tied to four qualitative evaluation levels.

- 10-9 = Government and administration act predictably, on the basis of and in accordance with legal provisions. Legal regulations are consistent and transparent, ensuring legal certainty.
- 8-6 = Government and administration rarely make unpredictable decisions. Legal regulations are consistent, but leave a large scope of discretion to the government or administration.
- 5-3 = Government and administration sometimes make unpredictable decisions that go beyond given legal bases or do not conform to existing legal regulations. Some legal regulations are inconsistent and contradictory.
- 2-1 = Government and administration often make unpredictable decisions that lack a legal basis or ignore existing legal regulations. Legal regulations are inconsistent, full of loopholes and contradict each other.

### Estonia

Score 10

The rule of law is fundamental to Estonian government and administration. In the period of transition from communism to liberal democracy, most legal acts and regulations had to be amended or introduced for the first time. Joining the European Union in 2004 caused another major wave of legal reforms. These fast and radical changes, which occurred over a short period of time, produced some inconsistencies. Today, a consistent and transparent system ensuring legal certainty is in place.

### Finland

Score 10

The rule of law is a basic pillar of Finnish society. When Sweden ceded Finland to Russia in 1809, the strict observation of prevailing Swedish laws and legal regulations became one of the most important tools for avoiding and circumventing Russian interference in Finnish affairs. From this emerged a political culture that prioritizes legal certainty, condemns any conflation of public and private interest, and prevents public officeholders from abusing their position for private interests.

### Germany

Score 10

Germany's Basic Law (Art. 20 sec. 3) states that "the legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice." In reality, German authorities do live up to this high standard. In comparative perspective, the country generally scores very highly on the issue of rule of law in indices whose primary focus is placed on formal constitutional criteria.

In substantive terms, German citizens and foreigners appreciate the predictability and impartiality of the German legal system, regard Germany's system of contract enforcement and property rights as being of high quality, and put considerable trust in the police forces and courts. Germany's high courts have significant institutional power and a high degree of independence from political influence. The Federal Constitutional Court's final say on the interpretation of the Basic Law provides for a high degree of legal certainty. Concerning the rule of law index of the World Justice Report for 2017/18, Germany ranks 6 out of 113 countries, an improvement of two positions compared to the 2015/16 report.

Citation:

[https://worldjusticeproject.org/sites/default/files/documents/WJP\\_ROLI\\_2017-18\\_Online-Edition.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition.pdf)

## New Zealand

Score 10

New Zealand follows the British tradition and, therefore, its constitution is not found in a single constitutional text. Instead, the constitution includes a mix of conventions, statute laws and common laws within the framework of a largely unwritten constitution. In addition, the Treaty of Waitangi is increasingly seen as the founding document of New Zealand. The Constitution Act 1986 is a key formal statement of New Zealand's system of government, in particular the roles of the executive, legislature and the judiciary. Other important legislation includes the Electoral Act 1993, the State Sector Act 1988, the Supreme Court Act 2003, the Judicature Act 1908, the Treaty of Waitangi Act 1975, the Official Information Act 1982, the Ombudsmen Act 1975, the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993.

The scattered and incomplete nature of these documents notwithstanding, New Zealand constantly receives the highest scores in comparative measures of the quality, consistency and transparency of the rule of law.

Citation:

McLean, Janet and Alison Quentin-Baxter. 2018. *The Realm of New Zealand: The Sovereign, The Governor-General, The Crown*. Auckland: The University of Auckland Press.

## Norway

Score 10

Norway's government and administration act predictably and in accordance with the law. Norway has a sound and transparent legal system. Corruption within the legal system is a rather marginal problem. The state bureaucracy is regarded as both efficient and reliable. Norwegian citizens generally trust their institutions.

## Sweden

Score 10

The Swedish legal framework is deeply engrained and the rule of law is an overarching norm in Sweden. With a Weberian-style public administration, values of legal security, due process, transparency and impartiality remain key norms. The only disturbing observation in this context is the growing emphasis on efficiency in public administration that has arisen in the context of a recent public management reform. This focus on efficiency potentially jeopardizes the integrity of legal certainty and security, in particular with respect to migration processes. Recent media reports have shown that pressures on migration staff to process a given number of asylum applications within a specific timeframe undermines the legal certainty and fairness of case work.

There are now signs emerging that market-based administrative reforms may have peaked in Sweden; there is now a search for a “post-NPM” or “neo-Weberian” model of administration. Again, the tension between efficiency goals in public administration and legal security is well-known but still looms large in the context of administrative reform. Most recently, the red-green government announced plans to downplay New Public Management as a philosophy of public sector reform and to reemphasize trust (“tillit”) as a normative foundation of the public administration. A series of “experiments,” replacing performance management with various types of trust-based management were carried out in 2017 and 2018, primarily at the local and regional levels.

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

Different arrangements to protect and strengthen the position of whistleblowers came into force in 2017 and are now being implemented.

Citation:

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

## Australia

Score 9

There is strong judicial oversight of executive decisions. Judicial oversight occurs through a well-developed system of administrative courts, and through the High Court. That said, jurisdictional uncertainty between the federal and state governments continues to be an issue. Two recent cases highlighting this uncertainty are a 2013 High Court challenge to the constitutionality of the Minerals Resources Rent Tax (MRRT) introduced by the federal government in 2012, and a 2014 High

Court challenge to the constitutionality of federal funding of school chaplains. The High Court ruled the MRRT constitutional, but ruled the chaplaincy program unconstitutional.

Citation:

Michael Crommelin, 'The MRRT Survives, For Now: Fortescue Metals Group Ltd v Commonwealth' on Opinions on High (16 September 2013)

Gabrielle Appleby 'Commonwealth left scrambling by school chaplaincy decision' The Conversation, 19 June 2014: <https://theconversation.com/commonwealth-left-scrambling-by-school-chaplaincy-decision-27935>

## Denmark

Score 9

Denmark has a long tradition of a rule of law. No serious problems can be identified in respect to legal certainty in Denmark. The administration is based on a hierarchy of legal rules, which of course gives administrators certain discretion, but also a range of possibilities for citizens to appeal decisions. Much of the Danish administration is decentralized and interpretation of laws, rules and regulations can vary from one municipality or region to another. Acts passed by the parliament, as well as administrative regulations based on these acts, are all made public. They are now widely available on the internet. Openness and access to information, and various forms of appeal options, contribute to strengthening legal certainty in administration.

Citation:

Henning Jørgensen, *Consensus, Cooperation and Conflict: The Policy Making Process in Denmark*. Cheltenham: Edward Elgar, 2002.

## Latvia

Score 9

Latvia's government and administration generally act in a predictable manner. Government decisions have in some cases been challenged in court on the basis of a breach of the principle of legal certainty. For example, a group of Administrative Court judges approached the Constitutional Court to protest austerity measures targeting planned judicial-salary increases, arguing a breach of legal certainty. The Constitutional Court ruled against the judges in 2012.

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

The Foreign Investors' Council in their FICIL Sentiment Index 2015 noted two issues with legal certainty. First, the legal system delivers unpredictable results, which negatively affect the foreign investment climate in Latvia. Second, the

legislative environment and tax regime has been inconsistent since the 2008 crisis, undermining investor confidence. In 2018, the FICIL Sentiment Index highlighted similar issues and emphasized issues of uncertainty in bureaucratic bodies.

Citation:

1. The Constitutional Court of Latvia (2012), On Termination of Proceedings, Rulings available at: <http://www.satv.tiesa.gov.lv/en/press-release/the-constitutional-court-terminated-proceedings-in-the-case-on-judge-and-public-prosecutors-remuneration-reform/>, Last assessed: 04.01.2019

2. FICIL Sentiment Index 2015 and 2018. Available at: <https://www.sseriga.edu/centres/csb/sentiment-index>, Last assessed: 05.01.2019

## Switzerland

Score 9

Switzerland's federal government and administration act predictably. This predictability is partially reduced by the very pragmatic administrative culture at the cantonal and local levels. The country's division into small administrative districts, the tradition of decentralized local government and a partially non-professional administration system ("Milizverwaltung," militia administration: referencing the non-professional army) provide for a substantial amount of leeway in Switzerland's public administration activity. The pragmatic administrative culture ensures flexibility and efficiency, on the one hand, but reduces legal certainty, on the other.

## Austria

Score 8

The rule of law in Austria, defined by the independence of the judiciary and by the legal limits that political authorities must respect, is well established in the constitution as well as in the country's mainstream political understanding. The three high courts – the Constitutional Court (Verfassungsgerichtshof), which deals with all matters concerning the constitution and constitutional rights; the Administrative Court (Verwaltungsgerichtshof), the final authority in administrative matters; and the Supreme Court (Oberster Gerichtshof), the highest instance within the four-tier judicial system concerning disputes in civil or criminal law – all have good reputations. Judicial decisions, which are based solely on the interpretation of existing law, can in principle be seen predictable.

The role of public prosecutors (Staatsanwälte), who are subordinate to the minister of justice, has raised some controversy. The main argument in favor of this dependency is that the minister of justice is accountable to parliament, and therefore under public control. The argument to the contrary is that public prosecutors' bureaucratic position opens the door to political influence. To counter this possibility, a new branch of prosecutors dedicated to combating political corruption has been established, which is partially independent from the Ministry of Justice. However, this independence is limited only to certain aspects of their activities, leading some to argue that the possibility of political influence remains.

The rule of law also requires that government actions be self-binding and predictable. And indeed, there is broad acceptance in Austria that all government institutions must respect the legal norms passed by parliament and monitored by the courts.

The decision of the Austrian Constitutional Court to cancel the second round of the presidential election in the summer of 2016 is a clear example of how the rule of law is accepted. The decision has been widely criticized but nevertheless absolutely accepted. Similarly, respect for the rule of law was demonstrated by the widespread response to the government changes at the end of 2017, when one major party (the Social Democrats) moved from government to opposition and a (former) opposition party (the far-right FPÖ) joined the government in coalition with the conservative Austrian People's Party (ÖVP). There has been an occasionally heated debate concerning the impact of this significant change within the government's power structure. However, there is no fear that the new situation will have an impact on the independence of the judiciary. The rule of law in Austria does not seem to be influenced by political changes.

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

While all governments are interested in influencing the system of judicial appointments, especially concerning more senior positions within the court system, no government has yet crossed the line into political intervention and violated judicial independence.

## Canada

Score 8

Canada's government and administration rarely make unpredictable decisions. Legal regulations are generally consistent, but do sometimes leave scope for discretion. Of course, the government can be expected to be challenged in court if its executive actions are not consistent with the law, which provides an incentive to comply.

## Czechia

Score 8

Executive actions are predictable and undertaken in accordance with the law. Problems arise because of the incompleteness or ambiguity of some laws with general declarations, notably the Charter of Fundamental Rights and Freedoms, requiring backing from detailed specific laws. However, points are gradually being clarified as case law builds up on freedom of information and general discrimination. Government bodies then learn to comply with established practices.

## Iceland

**Score 8** Icelandic state authorities and administration respect the rule of law, and their actions are generally predictable. However, there have been cases in which verdicts by Icelandic courts and government actions have been overruled on appeal by the European Court of Human Rights. There have also been examples of Supreme Court verdicts that have been overruled by the European Court of Justice. Some of these cases have dealt with journalists' free speech rights – the latest example is the case of journalist Erla Hlynsdóttir.

A relatively recent case of a different kind has a bearing on legal certainty. The Supreme Court ruled, first in June 2010 and more recently in April 2013, that bank loans indexed to foreign currencies were in violation of a 2001 law. As such, the asset portfolios of Icelandic banks contained invalid loans. These examples demonstrate that the banks acted contrary to the law. Neither the government nor any government institution, including the central bank and the Financial Supervisory Authority, paid sufficient attention to this violation. A governor of the central bank was even among those who had drafted the 2001 legislation. Even after the Supreme Court ruled that these loans were null and void, the banks have been slow to recalculate the thousands of affected loans. Individual customers have had to sue the banks in an attempt to force them to follow the law.

Alleged violations of the law by public officials are less likely to be prosecuted than allegations involving private individuals. Several recent cases involve the decisions of central bank officials during and after the 2008 financial collapse, which were not investigated or prosecuted at the time. In particular, the authorities never investigated the dubious circumstances surrounding a €500 million loan, which was lent by the central bank to Kaupthing at the height of the financial crash. The dubious nature of the loan came to light following a leaked transcript of a telephone conversation between the central bank governor and the prime minister, which was kept secret until 2017. The statute of limitations for this alleged violation took effect in early October 2018.

Citation:

Lög um vexti og verðtryggingu (Law on interest and indexation) no. 38 2001.

European Court of Justice Verdict Against Iceland (Dómur MDE í máli Erlu Hlynsdóttur gegn Íslandi), <https://www.innanrikisraduneyti.is/raduneyti/starfssvid/mannrettindi/mannrettindadomstoll-evropu/nr/29388>.

Accessed 22 December 2018.

## Spain

**Score 8** The general administrative procedure in Spain is consistent and uniform, assuring regularity in the functioning of all administrative levels. In 2016, a new piece of legislation (Ley 39/2015) came into force aiming to modernize the country's basic administrative law and improve legal certainty. In theory, this policy holds across the

Spanish public sector, but it is also true that citizens and the business sector sometimes complain about unpredictable decisions. And even if the executive acts on the basis of and in accordance with the law, strict legal interpretations may in fact produce some inefficiency in certain aspects of the administration and government.

The events in Catalonia during the period under review (the unilateral declaration of independence by parties representing less than 50% of the population, against the recommendations of the clerks of the regional parliament and despite the prohibitions issued by the Spanish Constitutional Court) can be considered an outstanding example of an arbitrary decision that lacked legal basis and ignored the constitution. However, this was a quite exceptional and unusual development that the central institutions (the Senate, the government and the higher courts) managed with response based on the rule of law; direct rule in Catalonia was imposed, and secessionist leaders were prosecuted in connection with the breakaway bid. Even if this approach can be criticized as legalistic and lacking in political vision, it was explicitly designed with the aim of underlining that public authorities should act according to legal regulations.

Citation:

Ahumada, (coord.) (2018), Informe sobre la Democracia en España 2017, Fundación Alternativas. [http://www.fundacionalternativas.org/public/storage/publicaciones\\_archivos/c4ce50790447eaa82d49984032c55b91.pdf](http://www.fundacionalternativas.org/public/storage/publicaciones_archivos/c4ce50790447eaa82d49984032c55b91.pdf)

## Belgium

Score 7

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

For example, Belgium has since 2009 failed to implement many of its fiscal treaties with foreign partners (for a list, see the Belgian Service Public Federal Finances website). The discussions around the EU-Canada Comprehensive Economic and Trade Agreement (CETA), in which the Walloon government threatened to block the agreement, illustrated this issue quite clearly. The primary reason for this state of affairs is that all levels of power (federal, regional, etc.) must agree; when they do not, deadlock ensues.

## Chile

Score 7

Acts and decisions made by the government and official administrative bodies take place strictly in accordance with legislation. There are moderately effective autonomous institutions that play an oversight role with regard to government activity, including the Office of the General Comptroller (Contraloría General de la

República) and the monitoring functions of the Chamber of Deputies. Government actions are moderately predictable and conform largely to limitations and restrictions imposed by law.

## Greece

### Score 7

The state administration operates on the basis of a legal framework that is extensive, complex, fragmented and sometimes contradictory. Formalism dominates legislation. Legal regulations are often not consistently applied. Acts passed by parliament often have seemingly extraneous items added, which only confuses things further.

Since the start of the economic crisis, because of the pressing need to achieve fiscal consolidation, the government repeatedly adapted past legislation to changing circumstances. Many changes have been made to areas such as taxation which, though necessary, have not fostered an institutional environment conducive to attracting foreign investment. Moreover, because of the need to effect reforms rapidly, the government resorted to governing by decree after passing legislation which left ample room for discretion. This practice was exacerbated in 2014 by the ND-PASOK coalition government and has been vigorously continued by the Syriza-ANEL government since early 2015 (i.e., after the change in government). In short, the practice of frequent and further amendments to recently passed legislation and legislative amendments has continued unabated. On average, a new law is voted on by the Greek parliament every week (research by the Athens-based organization “Dianeosis”). Given such uncoordinated over-regulation, the legal framework in major policy sectors, such as taxation and foreign investments, still bears loopholes and contradictions that have negatively impacted legal certainty.

#### Citation:

The research report of the Athens-based privately owned research organization “Dianeosis” is available (in Greek) at [https://www.dianeosis.org/wp-content/uploads/2016/07/polynomia\\_final2.pdf](https://www.dianeosis.org/wp-content/uploads/2016/07/polynomia_final2.pdf)

## Ireland

### Score 7

Politicians are prohibited by law from interfering with the course of justice and attempts to do so appear to be very rare. Government and administrative units generally act predictably and in accordance with known rules. The use of ministerial orders can be to some extent arbitrary and unpredictable, but they are liable to judicial review. The third interim report of the Disclosures Tribunal by Judge Peter Charleton, on 11 October 2018, revealed a considerable amount of corruption and inappropriate behavior with respect to the handling of statements by police whistleblowers at the higher levels of the police force.

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

Following the collapse of the housing market in 2009, there has been much less scope for corruption in relation to development and public contracts; public concern about these issues has waned. This may change as activity in the construction industry gathers pace.

Citation:

The report of the Inquiry into the behavior of the police in relation to allegations of misconduct and corruption is available here:

<http://www.merriionstreet.ie/wp-content/uploads/2014/05/Final-Redacted-Guerin-Report-OCR.pdf>

The inquiry into the circumstances surrounding the resignation of the Garda Commissioner was conducted by a former Supreme Court judge, Justice Fennelly, and is available here:

<https://doc-0s-bs->

[docs.googleusercontent.com/docs/securesc/ha0ro937gcuc717deffksulhg5h7mbpl/bjfn1u1n4ifdcsekb8vsaf0a2nnd850m/1442836800000/10437822469195814790/\\*0B2B2HUQaR5vwUnpJRTZnMU1tbWc?e=download](https://docs.googleusercontent.com/docs/securesc/ha0ro937gcuc717deffksulhg5h7mbpl/bjfn1u1n4ifdcsekb8vsaf0a2nnd850m/1442836800000/10437822469195814790/*0B2B2HUQaR5vwUnpJRTZnMU1tbWc?e=download)

Disclosures Tribunal (Tribunal of Inquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matters following Resolutions). Third interim report by Mr. Justice Peter Charleton, October 11, 2018.

## Lithuania

### Score 7

Overall, the regulatory environment in Lithuania is regarded as satisfactory. Its attractiveness was increased by the harmonization of Lithuanian legislation with EU directives in the pre-accession period, as well as by good compliance with EU law in the post-accession period. In the World Bank's 2017 Worldwide Governance Indicators, Lithuania scored 81 out of 100 for rule of law, down from 82 in 2016. The Lithuanian authorities rarely make unpredictable decisions, but the administration has a considerable degree of discretion in implementation. Although administrative actions are based on existing legal provisions, legal certainty sometimes suffers from the mixed quality and complexity of legislation, as well as frequent legislative changes. For instance, during its 2012 to 2016 term, the parliament passed more than 2,500 legislative acts. A substantial number of laws (e.g., 40.4% of all the laws adopted by the 2012 to 2016 parliament) are deliberated according to the procedure of special urgency, which limits the possibility to thoroughly discuss proposals during the legislative process.

The unpredictability of laws regulating business activities, especially the country's tax regime, increased at the start of financial crisis in 2008 – 2009 when taxes were raised to increase budget receipts. However, since that time, successive governments have put considerable focus on creating a stable and predictable legal business environment. The 2015 OECD report on regulatory policy in Lithuania recommended several measures to improve the regulatory environment for businesses. In addition, the new coalition government has pledged to introduce more predictable policies, for example, by applying a six-month rule to any proposed tax regime changes.

Nevertheless, in some cases, laws are amended during the last stage of parliamentary voting, generally due to the influence of interest groups, a process that increases

legal uncertainty. In addition, state policies shift after each parliamentary election (e.g., in autumn 2016, the adoption of the new Labor Code was suspended), reducing predictability within the economic environment. This is particularly true for major infrastructural projects and social policy. For example, pension system rules are frequently amended, increasing uncertainty and reducing trust in the state. In addition, as parliamentary elections approach, legislators frequently become more active in initiating new, often poorly prepared legal changes meant to attract public attention rather than being serious attempts to address public issues. Although most such initiatives are rejected during the process of parliamentary deliberations, they often cause confusion among investors and the public. Furthermore, 80 out of 144 members of parliament were newly elected in October 2016. Their lack of experience and procedural expertise as well as lack of adequate understanding of responsibility is likely to undermine economic policymaking. The most controversial case in 2018 was a comment by the chairman of the Budgetary and Financial Committee of the parliament that one of the owners of the two biggest Swedish banks in the country should consider selling its shares because of the high concentration of Swedish banks in Lithuania. He was criticized by the president as incompetent and even the prime minister and head of the Farmers and Greens Union distanced themselves from his position.

Citation:

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

OECD, Regulatory Policy in Lithuania: Focusing on the Delivery Side, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, 2015 [http://www.oecd-ilibrary.org/governance/regulatory-policy-in-lithuania\\_9789264239340-en](http://www.oecd-ilibrary.org/governance/regulatory-policy-in-lithuania_9789264239340-en).

## Netherlands

### Score 7

Dutch governments and administrative authorities have to a great extent internalized legality and legal certainty on all levels in their decisions and actions in civil, penal and administrative law. In the World Justice Project Law Index 2016 – 2017, the Netherlands again ranked 5 out of 113 countries. However, this ranking curiously disregards warnings from legal experts that the situation is rapidly deteriorating and nearing crisis levels.

In a recent “stress test” (2015) examining the state’s performance on rule-of-law issues, former ombudsman Alex Brenninkmeijer argued after a comprehensive review that particularly in legislation, but also within the administrative and judicial systems, safeguards for compliance with rule-of-law requirements are no longer sufficiently in place. In legislative politics, appeal to a national Constitutional Court is impossible and contested among experts. The trend is to bypass new legislative measures’ rule-of-law implications with an appeal to the “primacy of politics” or simply “democracy,” and instead await possible appeals to European and other international legal bodies during policy implementation.

The country's major political party, the conservative-liberal People's Party for Freedom and Democracy (VVD), has proposed to abolish the upper house of the States General, and with it the legal assessment of Dutch laws on the basis of the legal obligations assumed under international treaties. Within the state administration, the departmental bureaucracy too often prioritizes managerial feasibility over political and legal requirements. For example, fiscal and social-security agencies have become exceptionally punitive toward ordinary citizens, not just in cases of suspected fraud, but also in cases of forgetfulness or error. There is evidence that the accumulation of so-called administrative sanctions has driven people into poverty.

The Council of Jurisprudence was established in 2002 as an independent boundary advisory commission between the Ministry of Justice, parliament and the supposedly politically independent judicial branch. As a boundary spanning mechanism the council proved to be an outspoken failure in 2017 to 2018. Its chair declared that the judiciary was outdated for a modern, rapidly changing society. Citizens and businesses both state that judicial procedures are too expensive, too complex, too time consuming and too uncertain in their outcome. Meanwhile, the digitalization of routine judicial procedures has been a failure and has cost the government dearly. Political debates on the issue of judicial reform focus on the budget for the judiciary (€900 million) and how to structurally reduce the deficit, for example, by "outsourcing" judicial tasks to private mediation. Judges have demanded the right to determine their own budget, but this appears politically unacceptable. In an exceptional move, lawyers, judges and prosecutors wrote a joint letter to the government expressing their "fear for the future of the judiciary branch."

Citation:

A. Brenninkmeijer, Stresstest rechtsstaat Nederland, in *Nederlands Juristenblad*, 16, 24 April 2015, pp. 1046-1055

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

NRC-Handelsblad, de financiële tekorten bij de rechtspraak zijn nog groter dan gedacht, 23 April 2018.

NRC-Handelsblad, De rechtspraak is terrein aan het verliezen, 6 October 2018

Volkskrant, Rechters willen voortaan eigen begroting, 27 March 2018

NOS, Nieuwsuur, Brandbrief rechters: wij vrezen voor de toekomst van de rechtspraak, 8 November 2018

<https://www.binnenlandsbestuur.nl/bestuur-en-organisatie/nieuws/algorithmes-kunnen-grondrechten-flink-aantasten.9595151.lynkx>

## Portugal

Score 7

Portugal is an extremely legalistic society. Legislation is abundant, prolix and complex. Moreover, combined with an ever-present pressure for reform arising from Portugal's structural problems and a political tradition for new governments to dismiss the measures of previous governments, legislation is also subject to frequent changes.

The combination of overabundant and changing legislation with comparatively weak mechanisms for policy implementation further accentuates legal uncertainty.

The passing of the law on legal certainty during the period under review will ultimately improve the predictability of executive actions.

Citation:

<https://dre.pt/home/-/dre/115475700/details/maximized>

## Slovenia

### Score 7

Legal certainty in Slovenia has suffered from contradictory legal provisions and frequent changes in legislation. The number of newly adopted regulations increased from 1,360 in 1991 to almost 20,000, including 800 laws, in December 2017. Many crucial laws are amended on a regular basis, and contradictions in legislation are frequently tested in front of the Constitutional Court. The procedures of rule-making are misused or side-stepped by making heavy use of the fast-track legislation procedure. In 2017, 48.4% of the 111 adopted legislative acts in the National Assembly were subjected to the fast-track or shortened legislation procedure (compared with 39.5% in 2016). In the vast majority of cases, however, government and administration act on the basis of and in accordance with the law, thereby ensuring legal certainty.

Citation:

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

## South Korea

### Score 7

While government actions are generally based on the law, the scope of discretion is quite large, and unpredictable decisions are not uncommon. When new laws are introduced, the way they are to be interpreted is often not clear until courts have made a decision. Foreign companies often complain about inconsistent interpretation of regulations, and “opaque regulatory decision-making remains a significant concern” according to the U.S. Department of State. Corruption also remains an impediment to improving legal certainty. After former President Park was jailed in 2017, her predecessor Lee Myung-bak was sentenced to 15 years in prison for corruption in October 2018. He is accused of collecting bribes from a variety of sources, including Samsung (for a total of about KRW 6.1 billion, or \$5.4 million). In Korea, personal relationships generally play an important role in decision-making, while legal rules are sometimes seen as an obstacle to flexibility and quick decisions.

## Citation:

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

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

Choe, Sang-hun. 2018. “Former South Korean President Gets 15 Years in Prison for Corruption”. The New York Times, October 5. Retrieved October 17, 2018 (<https://www.nytimes.com/2018/10/05/world/asia/lee-myung-bak-south-korea-convicted.html>)

US Department of State, Investment Climate Statements for 2018, Korea, Republic of

## France

### Score 6

Generally French authorities act according to legal rules and obligations set forth from national and supranational legislation. However, the legal system suffers still from a number of problems. Attitudes toward implementing rules and laws are rather lax. Frequent is the delay or even the unlimited postponement of implementation measures, which may reflect a political tactic for inaction or sometimes because pressure groups successfully impede the adoption of implementation measures. In addition, prosecutors enjoy the discretionary power to prosecute or not, if in their opinion the plaintiff’s complaint is minor and not worth taking to the court (e.g., a person complaining about a neighbor’s dog barking at night or, more seriously, some cases of marital violence). About one-third of all complaints do not trigger action from the public prosecutor’s office.

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

Finally, the most criticized issue of legal uncertainty derives from multiple and frequent legislative changes, particularly fiscal legislation. The business community has repeatedly voiced concerns over the instability of rules, impeding any rational long-term perspective or planning. These changes usually are legally solid, but economically debatable. It is not unusual that a fiscal measure adopted on the occasion of the vote of the annual budget is repealed or substantially modified one year later. A costly example is provided by the additional tax on dividends imposed in 2012 by the Hollande administration in spite of strong legal reservations. The measure was later struck down both by the European Court of Justice and the Constitutional Court in October 2017. The courts’ decisions imposed an unexpected expense of € billion – €10 billion, which the government will have to pay back to the companies. This has forced the government to set up an exceptional tax on those companies. At the end, the new tax will represent half of the due reimbursement.

## Israel

Score 6

Several institutions were established in Israel in order to review the activities of government and public administration. The State Comptroller, the Attorney General of Israel and the Supreme Court (ruling as the High Court of Justice) conduct legal reviews of the actions of the government and administration. The Attorney General represents the state in courts. The officeholder participates regularly in government meetings, and in charge of protecting the rule of law in the public's interest. His or her legal opinion is critical, and even mandatory in some cases. The Supreme Court hears appeals from citizens and Palestinian residents of the West Bank and Gaza Strip (even though Israeli law is not officially applied in the latter). These petitions, as filed by individuals or civic organizations, constitute an important instrument by which to force the state to explain and justify its actions.

The judiciary in Israel is independent and regularly rules against the government. For example, in September 2018, the High Court struck down the state's decision to refuse Lara Alqasem, a BDS supporter, entrance into Israel. However, regarding the dismissal of laws, Israel ranks relatively low compared to other countries.

Some legal arrangements provide for ad hoc state action to deal with security threats. The Emergency Powers (Detention) Law of 1979 provides for indefinite administrative detention without trial. According to a human rights group, at the end of August 2018, there were 465 Palestinians incarcerated under such charges. A temporary order in effect since 2006 permits the detention of suspects accused of security offenses for 96 hours without judicial oversight, compared with 24 hours for other detainees. Israel outlawed the use of torture to extract security information in 2000, but milder forms of coercion are permissible when the prisoner is believed to have vital information about impending terrorist attacks.

Citation:

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[https://www.transparency.org/news/pressrelease/tlisrael\\_releases\\_first\\_ever\\_national\\_integrity\\_system\\_report\\_on\\_israel\\_go](https://www.transparency.org/news/pressrelease/tlisrael_releases_first_ever_national_integrity_system_report_on_israel_go)

## Italy

### Score 6

The actions of the government and administration are systematically guided by detailed legal regulations. Multiple levels of oversight – from a powerful Constitutional Court to a system of local, regional and national administrative courts – exist to enforce the rule of law. Overall the government and the administration are careful to act according to the existing legal regulations and thus their actions are fundamentally predictable. However, the fact that legal regulations are plentiful, not always consistent and change frequently reduces somewhat the degree of legal certainty. The complexity of regulations (which are sometimes contradictory) creates opportunities for corruption.

The government has backed efforts to simplify and reduce the amount of legal regulation but has yet to obtain the results expected.

The excessive burden of regulations and inefficiency of local authorities too often requires that, in order to face critical situations, exceptional powers are granted to special authorities (“commissari”) who are not properly monitored. This often results in arbitrary decisions being made.

The increasing use by ministers of social media (e.g., Twitter and Facebook) to communicate decisions before they are formally announced creates a degree of legal uncertainty.

Recent announcements of the new government are questioning whether the government will always act in accordance with legal provisions.

## Japan

### Score 6

In their daily lives, citizens enjoy considerable predictability with respect to the rule of law. Bureaucratic formalities can sometimes be burdensome but also offer relative certainty. Nevertheless, regulations are often formulated in a way that gives considerable latitude to bureaucrats. For instance, needy citizens have often found it difficult to obtain welfare aid from local-government authorities. Such discretionary scope is deeply entrenched in the Japanese administrative system, and offers both advantages and disadvantages associated with pragmatism. The judiciary has usually upheld discretionary decisions by the executive. However, the events of 3/11 exposed the judicial system’s inability to protect the public from irresponsible regulation related to nuclear-power generation. Some observers fear that similar problems may emerge in other areas as well.

In a more abstract sense, the idea of the rule of law per se does not command much of a following in Japan. Following strict principles without accounting for changing circumstances and conditions would be seen as naïve and nonsensical. Rather, a balancing of societal interests is seen as demanding a pragmatic interpretation of the law and regulations. Laws, in this generally held view, are supposed to serve the common good, and are not meant as immutable norms to which one blindly adheres.

Citation:

Carl F. Goodman: *The Rule of Law in Japan: A Comparative Analysis*, The Hague: Kluwer Law International, 2003

## Luxembourg

Score 6

While Luxembourg is a constitutional state, citizens are sometimes confronted with judicial vagueness or even a lack of legal guidance in administrative issues. Luxembourg's administrative culture is based on pragmatism and common sense. This means that some matters are decided on an ad hoc basis, rather than with reference to official or established rules. Most people seem to accept this, trusting that the prevalent legal flexibility leads to regulations or compromises that favor their own interests. Thus, the interpretation of laws can vary.

The government is working on completely reforming the constitution. The text of the reform has already been published. During the current legislative period (2018 – 2023), a referendum is supposed to be held on the constitutional reform. Public consent for the reformed constitution is not certain. Nevertheless, it is true that a reform of the constitution is urgently needed. However, many Luxembourgers are concerned that the constitution is supposed to be written in French rather than in Luxembourgish, the national language of Luxembourg.

Courts are overloaded, understaffed and slow, taking far too long to settle cases brought before them. The government has begun to address this problem by hiring more judges. Since the creation of independent administrative courts and the Constitutional Court nearly 20 years ago, the number of pending cases has considerably increased. The European Court of Human Rights in Strasbourg frequently criticizes Luxembourg for its lengthy legal procedures.

Many citizens in Luxembourg are annoyed that they cannot understand the laws and procedures in court. Many Luxembourgers are not familiar with the Standard French used in court. Another major problem is the bad acoustic in Luxembourg City's courtrooms. Visitors and journalists regularly cannot understand what is being said in the hall because microphones are not used. This embarrassment was also taken up by the international press.

Citation:

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## Malta

Score 6

Since Malta joined the European Union, the predictability of the majority of decisions made by the executive has steadily improved, with discretionary actions becoming more constrained. Overall, legal certainty is robust, though there continue to be instances where the rule of law is misapplied by state institutions. However, governments do generally respect the principles of legal certainty, and the government administration generally follows legal obligations; the evidence for this comes from the number of court challenges in which government bodies have prevailed. The rule of law is what one might consider a work in progress. The judicial system has been strengthened and more legislation put into place. The Ombuds Office and the National Audit Office (NAO) continue to provide strong oversight over many aspects of public administration. After much delay, the officer who will be in charge of the Standards in Public Life Act was appointed with full agreement by both major political parties.

However, reports from public bodies such as the Ombuds Office and the National Audit Office demonstrate that government institutions do sometimes make unpredictable decisions, notably in the use of direct orders by ministries in concessions of public land to private business operators. Moreover, there is a lack of transparency in the allocation and terms of public contracts. In October 2018, the NAO issued a damning report on a 2011 concession of public land made to a consortium with plans to build a national aquarium. Parliament is also slow to legislate on articles of the law that have been declared unconstitutional and need to be revised. Several laws and practices enacted before EU membership are now in breach of the Maltese constitution or the European Convention on Human Rights, notably in the case of property acquired by the government decades before membership. There is no overarching sentencing policy that ensures legal certainty; instead, sentences that ignore clear provisions in the constitution and which are instead based on other laws still take place. The Coordination of Government Inspections Act 2017 restricts the number of inspections undertaken by government departments. The act does not exempt independent institutions such as the auditor general and data protection office, potentially restricting these institutions. The recent practice of placing members of parliament on regulatory boards is also unconstitutional.

Citation:

<http://www.timesofmalta.com/articles/view/20150224/local/210000-commission-paid-in-cafe-premier-buyback-audit-office-slams.557475>

<http://www.timesofmalta.com/articles/view/20150104/local/Dalli-case-prompts-Ombudsman-action.550497>

<http://www.timesofmalta.com/articles/view/20150813/local/updated-some-diabetes-patients-denied-treatment-ombudsman.580496>

Minister reacts as auditor criticizes re ranking of bidding firms Times of Malta 5/03/14

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

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Times of Malta 7/10/17 Ombudsman queries positions of trust  
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<https://www.timesofmalta.com/articles/view/20180911/local/maltas-whistleblower-laws-rank-second-in-the-eu-ngo.688903>

## Slovakia

### Score 6

Government and administration in Slovakia largely act on the basis of the law. However, legal certainty has suffered from frequent legal amendments and opaque laws. The high level of political polarization in Slovakia, combined with frequent changes in government, has made many laws rather short lived. As a result of frequent amendments, many laws have come opaque and inconsistent. This situation was widely criticized by many NGOs and watchdog organizations. In response, parliament in November 2015 approved two important amendments to improve things. First, it changed the act on lawmaking, introducing the public's right to participate in lawmaking and stipulating that each governmental legislative draft has to be submitted for public discussion. Second, the rules of procedure for parliament were changed to prohibit "legislative adjuncts," that is, the opportunity to change existing legislation by amending drafts that are currently under discussion, a practice often used to avoid lengthy parliamentary readings. Legal certainty has suffered also from the fact that the Constitutional Court has lacked a unifying normative background. While many court decisions have been inspired by the case law set by the European Court of Human Rights and the rulings of other European constitutional courts, particularly the German one, others have been based on specific and not always transparent views of individual justices.

## United Kingdom

### Score 6

In the United Kingdom, the government and public administration apparatus act in line with legal provisions. This is facilitated by the government's extensive control over the legislative process, which enables the government to alter provisions if they constitute a hindrance to government policy objectives. Media and other checks on executive action deter any deviation.

However, the government has struggled to implement Brexit and (at the time of concluding this assessment) uncertainty about how it will unfold persists, despite bold promises made in the immediate aftermath of the 2016 referendum. A "Great Repeal Bill," the European Union (Withdrawal) Act 2018 promises to bring all legislation derived from the European Union back into the UK legal system. However, parliament has still not approved the bill. Further, the act, being a national

British law, is limited to EU laws that apply only to UK territory and will therefore be unable to replace international deals previously included in the United Kingdom's EU membership. The uncertainty is a source of great concern for the business community and international investors in the United Kingdom. An unusually harsh remark came from Hiroaki Nakanishi, chairman of Keidanren the largest Japanese business association, who deplored the lack of clarity about what the UK government expects the future UK-EU relationship to be.

Similarly, the post-Brexit status of the three million EU citizens currently living and working in the European Union has still not been reliably clarified. Even though the UK government has signaled its willingness to uphold EU citizens' residential status beyond March 2019, no law has been passed to ensure the pledge. Statements given by Immigration Minister Caroline Nokes when questioned by the Home Affairs Committee have not helped to clarify the situation.

There is also a lack of legal certainty regarding the many statutory instruments still to be scrutinized by parliament that are necessary to give force to certain provisions of the EU Withdrawal Act. There are strong doubts that these statutory instruments will all be passed in time for the 29 March deadline for the United Kingdom to exit the European Union. More generally, the all-consuming nature of Brexit has inhibited the conduct of other areas of policy, including the roll-out of Universal Credit, and the necessary reforms of health and social care, and transport policies.

Citation:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

Fore Keidanren source: <https://www.ft.com/content/37e87630-a9eb-11e8-94bd-cba20d67390c>

## United States

Score 6

There is little arbitrary exercise of authority in the United States, but the legal process does not necessarily provide a great deal of certainty either. Some uncertainty arises as a consequence of the country's adversarial legal system. Policy implementation is one area that suffers. Adversarial tendencies have several negative effects, such as supplanting the authority of elective policymaking institutions, reducing administrative discretion, causing delay indecision-making, and increasing reliance on courts and judges to design policies and/or administrative arrangements. On important issues, a government agency will undertake a lengthy, highly formalized hearing before issuing a decision. The resulting action will be appealed (often by multiple affected parties) to at least one level of the federal courts, and firms may not know their obligations under the new regulation for several years.

Donald Trump and his associates have been criticized massively for their overt and sustained efforts to undermine investigations into possible misconduct. In the most important investigation, Special Counsel Robert Mueller investigated Russian interference in the 2016 election campaign, possible collusion with the Russian

interference by the Trump campaign, and possible obstruction of justice. In the course of the various investigations into his activities, Trump has fired the FBI director, threatened to fire Special Counsel Robert Mueller, leveled numerous false accusations against investigators, and repeatedly discussed offering presidential pardons to his associates whom he feared would testify against him. For the most part, Congressional Republicans have either supported Trump's conduct or have at least avoided engaging in a direct confrontation with him. Some Republicans, however, have managed to keep Trump from taking the most drastic steps (e.g., firing the Special Prosecutor).

Citation:

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

Milkis and Jacobs

## Bulgaria

Score 5

Bulgaria's government and administration refer heavily to the law and take pains to justify their actions in formal and legal terms. However, two features of the legal environment reduce legal certainty. First, the law gives the administration sizable scope for discretion. Second, the existing legislation suffers from many internal inconsistencies and contradictions that make it possible to find formal legal justifications for widely varying decisions. For both reasons, executive action is not only relatively unpredictable, but may involve applying the law differently to different citizens or firms, thus creating privileges for some and disadvantages for others. A clear example of such an abuse of discretion are two decisions by the Commission for the Protection of Competition in the summer of 2018 in which the commission stopped two acquisitions on the basis of mutually exclusive arguments.

## Croatia

Score 5

The Croatian legal system puts heavy emphasis on the rule of law. In practice, however, legal certainty is often limited. Regulation is sometimes inconsistent and changes often, administrative bodies frequently lack the necessary legal expertise, and executive ordinances do not always comply with the original legal mandate. As a result, citizens often lack confidence in administrative procedures and frequently perceive the acts of administrative bodies to be arbitrary.

The number of pending criminal cases in the court system can be used as an indicator of the efficiency and predictability of the court processing system. According to Eurostat data, this number was on the decline in the period leading up to EU accession, falling from 819 pending criminal cases per hundred thousand people to 456 in 2013. Since then, the number has crept back up to 578. This is far greater than in many other EU countries. For civil and commercial cases, the situation is even

worse with as many as 6,158 pending cases per hundred thousand people, which amounts to the second highest logjam in the EU.

## Cyprus

### Score 5

The sound foundations of the state apparatus have been weakened over the years, with an impact on adherence to the law. More serious are the effects of the collapse of bi-communality in 1964. The law of exception leaves a very strong executive and some independent officials with powers subject to very little or no control.

The legal soundness of some laws and policies to face the crisis are frequently contested. There are also frequent incidents where laws passed by the parliament are judged unconstitutional by the Supreme Court. Action on important matters is either delayed or has the character of semi-measures that are inefficient or unjust. Long overdue action on non-performing loans is promoted by the government plan ESTIA, which the European Commission and ECB warn of “moral hazard risks and fairness issues.”

Thus, delays and actions inconsistent with the rule of law persisted in 2018. Clashes with the auditor general and attorney general also continued. Specific practices resulted in undermining meritocracy, administrative efficiency and consistent law enforcement.

Citation:

EU green light expected for contentious bad loan payback scheme, Cyprus Mail, 29 October 2018, <https://cyprus-mail.com/2018/10/29/eu-green-light-expected-for-contentious-bad-loan-payback-scheme/>

## Poland

### Score 4

Under the PiS government, legal certainty has strongly declined. Some of the government’s many legal initiatives have been so half-baked that they had to be amended or suspended. On several occasions, high-ranking PiS politicians have shown their disrespect for the law. The protracted conflicts between the government and important parts of the judiciary have meant that justices and citizens have had to deal with opposing interpretations of the legal status quo. Frequent conflicts between the judges’ association and the new partisan Constitutional Tribunal have created a situation in which many citizens are simply bewildered in trying to assess which legal institutions are legitimate and which are not.

## Hungary

### Score 3

As the Orbán governments have taken a voluntarist approach toward lawmaking, legal certainty has strongly suffered from chaotic, rapidly changing legislation. The hasty legislative process has regularly violated the Act on Legislation, which calls for a process of social consultation if the government presents a draft law. Legal

certainty will be further weakened by the planned establishment of administrative courts, a new branch of the judiciary that is entirely under governmental control. As a result, Hungary is not characterized by the rule of law, but by rule by law.

## Mexico

**Score 3** The rule of law continues to be characterized by an ineffective judicial system. Violence and crime, corruption and impunity undermine the rule of law. In corruption-related crimes impunity reaches 98% and in homicides 97%. The adoption of a National Anti-Corruption System in July 2016 was seen by many observers as a major formal step toward improving the rule of law. The objective of the new system is to improve the coordination of anti-corruption efforts between all governmental bodies (on the federal, state and municipal levels), but implementation of the reform has been undermined by a lack of political will. More than two years after approval, key positions remain vacant, such as the special anti-corruption prosecutor.

Beyond the problem of corruption, the rule of law in Mexico has been seriously hampered by the increasing violence associated with the war on drugs. Criminal courts lack transparency, which further undermines trust and confidence in the judicial system. Overall, the system is particularly ineffective when it comes to prosecuting powerful individuals, such as former public officials. In this context, and also due to the security crisis, existing legal regulations often do not effectively constrain government and administration. This dramatic situation is not expected to change quickly under the new government.

## Romania

**Score 3** Legal certainty has strongly suffered from the tug-of-war over the reform of the judiciary between the government on the one hand and President Iohannis, Prosecutor General Augustin Lazar and the Supreme Council of Magistrates on the other. Moreover, the government has continued its widespread use of government emergency ordinances (OUG) Since Article 115 of the constitution provides for OUGs only in exceptional circumstances, their frequency represents an abuse of the government's constitutional powers and undermines legal certainty.

## Turkey

**Score 2** Simplifying administrative procedures and cutting red tape has been hindered by the absence of a law on general administrative procedures, which would provide citizens and businesses with greater legal certainty.

The main factors affecting legal certainty in the administration are a lack of regulations on particular issues, the misinterpretation of regulations by administrative authorities (mainly on political grounds), and unconstitutional regulations that are adopted by parliament or issued by the executive. In addition, the high frequency of amendments to some basic laws under certain circumstances lead to a lack of consistency. High-profile prosecutions can follow unpredictable courses. For example, after prisoners associated with the clandestine Ergenekon network were released, they were called back for a retrial. Legal as well as judicial instruments are sometimes used against government opponents, especially those in the media.

The 15 July 2016 failed coup attempt caused a major uncertainty in legal and practical terms. The governmental decrees issued during the state of emergency are not subject to judicial review. Moreover, over 130,000 public servants mainly from the military, judiciary, health sector and universities were dismissed. The restructuring of the public service will take time and lead to further uncertainty, especially given the need to harmonize the current legal framework and constitutional amendments. More importantly, the transition to a presidential institutional model was introduced by a series of decrees (i.e., state of emergency decrees and presidential decrees) rather than through legislation, as is required by the constitution. The restructuring of public administration will take some time and increase uncertainty.

Citation:

European Commission, Turkey 2018 Report, Brussels, 17.4.2018, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf> (accessed 1 November 2018)

World Justice Project, Rule of Law Index 2017-2018, [https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf) (accessed 1 November 2018)

M.Z. Sobacı et al., “Türkiye’nin Yeni Yönetim Modeli ve Cumhurbaşkanlığı Teşkilatı,” June 2018, <https://setav.org/assets/uploads/2018/06/206-t%C3%BCrkiyenin-Yeni-Y%C3%B6netim-Modeli.pdf> (accessed 1 November 2018)

Indicator

## Judicial Review

Question

To what extent do independent courts control whether government and administration act in conformity with the law?

41 OECD and EU countries are sorted according to their performance on a scale from 10 (best) to 1 (lowest). This scale is tied to four qualitative evaluation levels.

- 10-9 = Independent courts effectively review executive action and ensure that the government and administration act in conformity with the law.
- 8-6 = Independent courts usually manage to control whether the government and administration act in conformity with the law.
- 5-3 = Courts are independent, but often fail to ensure legal compliance.
- 2-1 = Courts are biased for or against the incumbent government and lack effective control.

### Australia

Score 10

There has been no significant change during the period under review. While the scope for judicial review of government actions is very much affected by legislation allowing for or denying such review, it is nonetheless the case that government and administrative decisions are frequently reviewed by courts. There is a strong tradition of independent judicial review of executive decisions. This tradition stems to a significant extent from the evolution of administrative law, which has spawned an administrative courts process through which complainants may seek a review of executive action. The executive branch generally has very little power to remove judges, which further contributes to the independence of the judiciary. Furthermore, there are many instances in which courts have ruled against the executive. The executive has in the past generally accepted the decisions of the courts or appealed to a higher court, rather than attempting to circumvent the decision.

### Denmark

Score 10

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

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

Citation:

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

## Estonia

Score 10

The structure of the Estonian court system is one of the simplest in Europe. The system is composed of one level of county courts (4) and administrative courts (2), a higher second level of circuit courts (2) and the Supreme Court at the top level. The Supreme Court simultaneously serves as the highest court of general jurisdiction, the supreme administrative court, and the constitutional court. The Supreme Court is composed of several chambers, including an administrative law chamber. Administrative courts hear administrative matters. There are two administrative courts in Estonia, made up of 27 judges (about 10% of all judges employed in Estonia's court system). Most judges in Estonia are graduates of the law school in Tartu University; however, there are also BA and MA law programs in two public universities in Tallinn. In total, the national government recognizes 11 study programs in law.

Judges are appointed by the national parliament or by the president of the republic for a lifetime, and they cannot hold any other elected or nominated position. The status of judges and guarantees of judicial independence are established by law.

Together with the Chancellor of Justice, courts effectively supervise the authorities' compliance with the law, and the legality of the executive and legislative powers' official acts.

## Germany

Score 10

Germany's judiciary works independently and effectively protects individuals against encroachments by the executive and legislature. The judiciary inarguably has a strong position in reviewing the legality of administrative acts. The Federal Constitutional Court (FCC) ensures that all institutions of the state obey the constitution. The court acts only when an appeal is made, but the court holds the right to declare laws unconstitutional and has exercised this power several times. In case of conflicting opinions, the decisions made by the FCC are final; all other governmental and legislative institutions are bound to comply with its verdicts (Basic Law, Art. 93).

Under the terms of the Basic Law (Art. 95 sec. 1), there are five supreme federal courts in Germany, including the Federal Constitutional Court (Bundesverfassungsgericht), Federal Court of Justice (the highest court for civil and criminal affairs, Bundesgerichtshof), Federal Administrative Court (Bundesverwaltungsgericht), Federal Finance Court (Bundesfinanzhof), Federal Labor Court (Bundesarbeitsgericht) and Federal Social Court (Bundessozialgericht). This division of tasks guarantees highly specialized independent courts with manageable workloads.

Germany's courts, in general, and the FCC, in particular, enjoy a high reputation for independence both domestically and internationally. In the World Economic Forum's Global Competitiveness Report 2017/18, Germany's relative performance on judicial independence has declined in recent years, with Germany now ranked 25th out of 138 countries after ranking 17th in previous years. However, the rule of law index of the World Justice Report that includes judicial review ranked Germany 6th out of 113 countries.

Citation:

<http://www3.weforum.org/docs/GCR2018/05FullReport/TheGlobalCompetitivenessReport2018.pdf>

## New Zealand

Score 10

New Zealand does not have a Constitutional Court with the absolute right of judicial review. While it is the role of the judiciary to interpret the laws and challenge the authority of the executive where it exceeds its parliamentary powers, the judiciary cannot declare parliamentary decisions unconstitutional. This is because under the Westminster system of which many Commonwealth countries are a part, parliament is sovereign. On the other hand, the courts may ask parliament to provide clarification of its decisions. The judicial system is hierarchical, with the possibility of appeal. Since 2003, New Zealand's highest court has been the Supreme Court, taking the place of the Judicial Committee of the Privy Council in London that had in the past heard appeals from New Zealand. Still, legislative action is not justiciable in the High Court under the existing constitutional arrangements; parliament remains supreme in law. Yet, there are reform discussions which refer to the enhancement of judicial power to consider the constitutionality of legislation, and to invalidate it where necessary. An institution specific to the country is the Māori Land Court, which hears cases relating to Māori land (about 5% of the total area of the country). Equally important is a strong culture of respect for the legal system.

Citation:

<http://www.justice.govt.nz/courts/māori-land-court> (accessed October 20, 2015).

Pohlmann, Martin. 2017. *The Development of Judicial Review* LLM RESEARCH PAPER LAWS 529: CONSTITUTIONAL CHANGE AND GOVERNMENT LAW. Victoria: University of Wellington. [https://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/6320/paper\\_access.pdf?sequence=2](https://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/6320/paper_access.pdf?sequence=2)

## Norway

Score 10

Norway's court system provides for the review of actions by the executive. The legal system is grounded in the principles of the so-called Scandinavian civil-law system. There is no general codification of private or public law, as in civil-law countries. Rather, there are comprehensive statutes codifying central aspects of the criminal law and the administration of justice, among other things.

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

At the top of the judicial hierarchy is the Supreme Court, which is followed by the High Court. The majority of criminal matters are settled summarily in the district courts (Forhoersrett). A Court of Impeachment is available to hear charges brought against government ministers, members of parliament and Supreme Court judges, although it is very rarely used. The courts are independent of any influence exerted by the executive. Professional standards and the quality of internal organization are high. The selection of judges is rarely disputed and is not seen as involving political issues.

## Sweden

Score 10

The Swedish system of judicial review works well and efficiently. Courts are allowed to question legislation that they find to be inconsistent with the constitution. In addition, Sweden has a system of judicial preview where the Council on Legislation ("lagrådet") is consulted on all legislation that potentially relates to constitutional matters. The institution's review (or preview) goes beyond that assignment and includes an overall assessment of the quality of the proposed legislation. The government and the parliament have the right to ignore the council's advice, however.

At the same time, critics have increasingly questioned this model of judicial review over the past few years. They argue it is part of a more general trend toward the judicialization of politics, where courts and lawyers acquire an inappropriate level of influence over political decisions. However, these criticisms are not particular to Sweden; they are observable in most European countries.

## Switzerland

- Score 10 The Swiss judicial system is guided by professional norms without political interference. The judicial system is based on professional training, though a mixture of lay and professionally trained judges serve at the local level in many cantons. Decisions by these judges are subject to review by higher professional courts. The Swiss judicial system varies substantially between cantons. This is due to Swiss federalism, which gives cantons great leeway in cantonal lawmaking and hence also in cantonal administration of justice. This also includes variations in the rules and examinations with regard to lawyers' admission to the bar.

## Canada

- Score 9 The scope of judicial review was greatly expanded with the enactment of the Canadian Charter of Rights and Freedoms in 1982, which constitutionally entrenched individual rights and freedoms. Today, the courts in Canada pursue their reasoning free from the influence of governments, powerful groups or individuals.

## Finland

- Score 9 The predominance of the rule of law has been somewhat weakened by the lack of a Constitutional Court in Finland. The need for such a court has been discussed at times, but left-wing parties in particular have historically blocked proposals for the creation of such a court. Instead, the parliament's Constitutional Law Committee has assumed the position taken in other countries by a constitutional court. The implication of this is that parliament is controlled by a kind of inner-parliament, an arrangement that constitutes a less than convincing compensation for a regular constitutional court. In addition, although courts are independent in Finland, they do not decide on the constitutionality or the conformity with law of acts of government or the public administration. Instead, the supreme supervisor of legality in Finland is the Office of the Chancellor of Justice. Together with the Parliamentary Ombudsman, this office monitors authorities' compliance with the law and the legality of the official acts of the government, its members, and the President of the Republic. The Chancellor is also charged with supervising the legal behavior of courts, authorities and civil servants.

The present Sipilä government has been criticized for not taking the concerns of the Chancellor of Justice into full account when preparing bills. In consequence, several bills put forth by the Sipilä government have been subject to heavy review by the Constitutional Law Committee.

Citation:

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

## France

**Score 9** Executive decisions are reviewed by courts that are charged with checking its norms and decisions. If a decision is to be challenged, the process is not difficult. Administrative courts are organized on three levels (administrative tribunals, courts of appeal and the Council of State, or Conseil d'Etat). The courts' independence is fully recognized, despite the fact that the Council of State also serves as legal adviser to the government for most administrative decrees and all government bills.

This independence has been strengthened by the Constitutional Council, as far such independence has been considered a general constitutional principle, despite the lack of a precise reference in the constitution itself. In addition, administrative courts can provide financial compensation and make public bodies financially accountable for errors or mistakes. Gradually, the Constitutional Council has become a full-fledged court, the role of which was dramatically increased through the constitutional reform of March 2008. Since then, any citizen can raise an issue of unconstitutionality before any lower court. The request is examined by the Supreme Court of Appeals or the Council of State and might be passed to the Constitutional Council. The council's case load has increased from around 25 cases to 70 cases per year (with a peak of more than 100 cases in 2011), allowing for a thorough review of past legislation. This "a posteriori control" complements the "a priori" control of constitutionality, which might be exerted by the council before the promulgation of the law, provided that 60 parliamentarians introduce such a request.

## Ireland

**Score 9** A wide range of public decisions made by administrative bodies and the decisions of the lower courts are subject to judicial review by higher courts. When undertaking a review, the court is generally concerned with the lawfulness of the decision-making process and the fairness of the decision. High Court decisions may be appealed to the Court of Appeal.

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

Between 1937 and 2015, the courts declared 93 cases unconstitutional (Hogan et al, 2015).

The cost of initiating a judicial review can be considerable. This acts as a deterrent and reduces the effectiveness of the provisions for judicial review.

The courts act independently and are free from political pressures.

## Lithuania

### Score 9

Lithuania's court system is divided into courts of general jurisdiction and courts of special jurisdiction. A differentiated system of independent courts allows monitoring of the legality of government and public administrative activities. The Constitutional Court rules on the constitutionality of laws and other legal acts adopted by the parliament or issued by the president or government. The supreme court reviews lower general-jurisdiction court judgments, decisions, rulings and orders. Disputes that arise in the sphere of public administration are considered within the system of administrative courts. These disputes can include the legality of measures passed and activities performed by administrative bodies, such as ministries, departments, inspections, services and commissions. The system of administrative courts consists of five regional administrative courts and the supreme administrative court.

The overall efficiency of the Lithuanian court system, in terms of disposition time and clearance rate, was assessed by the EU Justice Scoreboard as good. This indicates that the system is capable of dealing with the current volume of incoming cases. Lithuania is one of the leading countries in the European Union in terms of the length of proceedings: around 100 days is needed to resolve litigious civil and commercial cases in first instance courts. The consolidation of district and regional administrative courts will distribute cases more evenly. However, the number of cases dealing with the legality of administrative acts and judgments delivered by the administrative courts is increasing. The clearance rate of administrative cases and their disposition time increased between 2013 and 2014.

According to Vilmorus opinion surveys, public trust in the courts is low, but increasing modestly (27.7% in July 2016, increasing to 24.9% in September 2018 and 28.6% in December 2018). Public trust in the Constitutional Court is higher (46.5% in December 2018).

Citation:

The EU Justice Scoreboard, see [http://ec.europa.eu/justice/effective-justice/scoreboard/index\\_en.htm](http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm)

For opinion surveys see <http://www.vilmorus.lt/en>

## Luxembourg

### Score 9

Legal education, jurisprudence, the regulation of judicial appointments, rational proceedings, professionalism, channels of appeal and court administration are all well established and working. Independence is guaranteed. Citizens in Luxembourg cannot file a constitutional complaint, as citizens can in Germany.

Citation:

Pereira, João N./Zenthöfer, Jochen (2017): Einführung in das luxemburgische Recht. C.H.Beck, pp. 1-4, 86-87.

## United States

Score 9

The United States was the originator of expansive judicial review of legislative and executive decisions in democratic government. The Supreme Court's authority to overrule legislative or executive decisions at the state or federal level is virtually never questioned. In the U.S., however, judicial decisions often depend heavily on the ideological tendency of the courts at the given time. The U.S. federal courts have robust authority and independence but lack structures or practices to ensure moderation or stability in constitutional doctrine.

After the death of conservative Justice Antonin Scalia in early 2016, the Republican-controlled Senate, in a sharp break from past practice, refused to act on Obama's nomination of a replacement for more than a year. Since the 2016 election, President Trump has nominated, and the Senate confirmed two conservative Republican justices, Neil Gorsuch and Brett Kavanaugh. In the case of the latter, a full investigation of (decades-old) sexual assault accusations waged against Kavanaugh was not permitted. The Senate's handling of these appointments is an indicator of the partisan and ideological character of the federal judiciary in this era.

Judicial review remains vigorous. In 2015 and 2016, the federal courts struck down several expansive uses of executive power by the Obama administration and various Republican states' onerous voter registration requirements. During the Trump presidency, federal courts have blocked the Trump administration's Muslim travel ban and forced major modifications to its harsh treatment of asylum seeker, among other interventions.

## Austria

Score 8

Austrian laws can be reviewed by the Constitutional Court on the basis of their conformity with the constitution's basic principles. According to EU norms, European law is considered to be superior to Austrian law. This limits the sovereignty of Austrian law.

Within the Austrian legal system, all government or administrative decisions must be based on a specific law, and laws in turn must be based on the constitution. This is seen as a guarantee for the predictability of the administration. The three high courts (Constitutional Court, Administrative Court, Supreme Court) are seen as efficient watchdogs of this legality. Regional administrative courts have recently been established in each of the nine federal states (Bundesländer), which has strengthened the judicial review system.

The country's administrative courts effectively monitor the activities of the Austrian administration. Civil rights are guaranteed by Austrian civil courts. Access to

Austrian civil courts requires the payment of comparatively high fees, creating some bias toward the wealthier portions of the population. Notwithstanding the generally high standards of the Austrian judicial system, litigation proceedings take a rather long time (an average of 135 days for the first instance) with many cases ultimately being settled through compromises between the parties rather than by judicial ruling. Expert opinions play a very substantial role in civil litigations, broadening the perceived income bias, since such opinions can be very costly to obtain. The rationality and professionalism of proceedings very much depend on the judges in charge, as many judges, especially in first-instance courts, lack the necessary training to meet the standards expected of a modern judicial system, which might include basic knowledge of psychological conditions and illnesses.

Since 2015, the court system has had to deal with an increasing number of asylum-seekers. In principle, this is more a quantitative rather than a qualitative issue. However, within the government, the FPÖ's strict policy in dealing with migrants and asylum-seekers indirectly places additional pressure on the courts.

## Belgium

### Score 8

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

The Council of State is split into two linguistic chambers, with one being Dutch-speaking and the other French-speaking. These chambers are each responsible for reviewing the administrative acts of the regions and communities that fall under their respective linguistic auspices. This poses challenges with regard to government independence, especially when a case involves language policy or the balance of powers between different government levels.

Citation:

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

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

## Chile

**Score 8** Chile's judiciary is independent and performs its oversight functions appropriately. Mechanisms for judicial review of legislative and executive acts are in place. The 2005 reforms enhanced the Constitutional Tribunal's autonomy and jurisdiction concerning the constitutionality of laws and administrative acts. Arguably, the Tribunal is one of the most powerful such tribunals in the world, able to block and strike down government decrees and protect citizens' rights against powerful private entities. In November 2016, Law No. 20,968 was enacted which modified the competences of the military justice defined by Law No. 20,477. Henceforth, no civilian – perpetrator or victim – will be prosecuted by military courts. The new law also introduced the crime of torture into the criminal code.

During the current evaluation period, Chilean courts demonstrated their independence through their handling of the corruption scandals revealed over the past few years, which have included political parties and a large number of the country's politicians. Nevertheless, the sentences imposed thus far have tended to be rather light.

Citation:

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

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

## Cyprus

**Score 8** The operation of the Administrative Court in 2016 marked a positive step in the administration of justice; it alleviated the workload of the Supreme Court. This, however, had limited effect on lengthy court procedures. A functional review of courts found that some cases take up to 9.5 years. The study found serious problems in management and leadership, in institutional structures, and in procedures, processes, and infrastructure to support the efficient operation of the courts.

The government has various plans to resolve existing challenges. However, at present, judicial review is very problematic.

Judicial review of decisions by trial courts, administrative bodies or other authorities can be sought before the administrative and (appellate) Supreme Court. Appeals are decided by panels of three or five judges, with highly important cases requiring a full quorum (13 judges).

Citation:

1. Functional review of the Court system of Cyprus, <http://www.supremecourt.gov.cy/Judicial/SC.nsf/All/4FAD54FDA1155764C225825F003DC397?OpenDocument>

## Czechia

Score 8 Czech courts operate independently of the executive branch of government. The most active control over executive actions is exercised by the Constitutional Court and the Supreme Administrative Court. In the period under study, no major controversial cases were decided by the Constitutional Court. The Supreme Administrative Court rejected several minor complaints regarding the Senate and municipal elections. Some included minor administrative mishaps others, for example, by Andrej Babiš's ANO, questioned the number of invalid votes in the first round of 2018 Senate elections in one electoral district (Rokycany). The Court rejected the ANO complaint as well as the other six complaints and confirmed the validity of the elections.

Citation:

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

## Greece

Score 8 Courts are independent of the government and the legislature. Members of the judiciary are promoted through the internal hierarchy of the judiciary. There is an exception, namely the appointment of the presidents and vice-presidents of the highest civil law and criminal law court (Areios Pagos) and administrative law court (Symvoulío tis Epikrateias), for which a different process is followed. The heads of such courts are selected by the cabinet (the Council of Ministers) from a list supplied by the highest courts themselves. In the past, such higher judges were clearly supporters of the government of the day. Successive governments, including the incumbent left/far-right coalition government of Syriza-ANEL, have not resisted the temptation to handpick their favored candidates for the president posts of the highest courts. Notwithstanding, judges at all levels serve until retirement age and cannot be removed arbitrarily.

Judges are recruited through independent entrance examinations and then trained in a post-graduate level educational institution. The court system is self-managed. In a formal sense, courts in Greece are able to monitor whether government and administration act in conformity with the law.

Whether courts do so efficiently is another matter, because they cannot ensure legal compliance. They act with delays and pass contradictory judgments, owing to the plethora of laws and opaque character of regulations. In the period under review, prosecuting authorities followed the government's line to primarily, if not exclusively, investigate accusations of corruption against members of previous governments. For example, in February 2018, prosecutors submitted documentation

to parliament for launching criminal investigations for corruption against two former prime ministers and eight former ministers, all of whom had served before 2015 (i.e., before the rise of Syriza-ANEL). The evidence and legal basis of the accusations were too flimsy to allow for any investigation to actually take place. Also, the high courts did not toe the government line when they decided that major clauses of the latest pension law (passed in 2016) were unconstitutional. Furthermore, in the period under review, there was a tug-of-war between the government and justice system, rendering judicial review a sensitive and unpredictable process.

## Israel

### Score 8

The Supreme Court is generally viewed as a highly influential institution. It has repeatedly intervened in the political domain to review the legality of political agreements, decisions and allocations. Since a large part of the Supreme Court's judicial review in recent years is over the activities of a rightist coalition and parliament, it is often criticized for being biased toward the political left. During 2013 – 2014, the Supreme Court was similarly criticized for overturning an “infiltration law” set up to implement policy regarding illegal immigration. Nevertheless, it is ranked as one of the top four trustworthy governmental institutions in a 2016 survey conducted by the Israeli Democracy Institute.

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

Despite that, the current minister of justice, Ayelet Shaked, has presented several basic law amendments that undermine the judicial branch. Her recent attempts to advance a legal prescription, which allows the Knesset to override high court rulings, will weaken Israel's judicial review system.

#### Citation:

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

Bob, Yonah Jeremy “Ayelet Shaked To ‘Post’: High Court More Conservative Than Four Years Ago,” 28/10/18, JPOST, <https://www.jpost.com/Israel-News/Ayelet-Shaked-High-court-more-conservative-than-four-years-ago-570354>

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

Hovel, Revital, “Right-wing Israeli Ministers Introduce Plan Targeting High Court's Powers,” Haaretz, 15/9/2017,

<https://www.haaretz.com/israel-news/.premium-1.812425>.

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

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

## Italy

Score 8

Courts play an important and decisive role in Italy's political system. The judicial system is strongly autonomous from the government. Recruitment, nomination to different offices and careers of judges and prosecutors remain out of the control of the executive. The Superior Council of the Judiciary (Consiglio Superiore della Magistratura), a representative body elected by the members of the judiciary (and partially by the parliament), governs the system without significant influence by the government. Ordinary and administrative courts, which have heavy caseloads, are able to effectively review and sanction government actions. The main problem is rather the length of judicial procedures, which sometimes reduces the effectiveness of judicial control. Previous governments have made some efforts to increase the efficiency of the judicial system. Digitalization of procedures has been promoted and the Gentiloni government has introduced new measures to resolve civil proceedings faster as a way to affect proceedings related to economic activities. The 2017 report of the minister of justice suggests that these measures have had some success. The new government has yet to do anything substantial.

At the highest level the Constitutional Court ensures the conformity of laws with the national constitution. It has often rejected laws promoted by current and past governments. Access to the Constitutional Court is reserved for courts and regional authorities. Citizens can raise appeals on individual complaints only within the context of a judicial proceeding, and these appeals must be assessed by a judge as "not manifestly unfounded and irrelevant." The head of state, who has the power to block laws approved by the parliament that are seen to conflict with the constitution, adds another pre-emptive control.

Citation:

[https://www.giustizia.it/giustizia/it/mg\\_2\\_15\\_7.page](https://www.giustizia.it/giustizia/it/mg_2_15_7.page)

## Latvia

Score 8

Judicial oversight is provided by the administrative court and the Constitutional Court. The administrative court, created in 2004, reviews cases brought by individuals. The court is considered to be impartial; it pursues its own reasoning free from inappropriate influences.

However, the court system suffers from a considerable case overload, leading to substantial delays in proceedings. According to the court administration statistical

overviews, in 2017, 51% of administrative cases in a first instance court conclude within 6 months, although 36% require up to a year. In the appellate courts, the situation is worse, as 46% of cases require 6 to 12 months, 20% 12 to 18 months and 13% even longer. Administrative court backlogs are being addressed by limiting access to the court system through increases in court fees and security deposits. A Ministry of Justice working group has been convened to propose other systemic improvements. Institutional reforms are underway in the administrative court, which would remove an administrative layer to improve efficiency.

The Constitutional Court reviews the constitutionality of laws and occasionally that of government or local government regulations. In 2017, the court received 390 petitions, of which 207 were forwarded for consideration. The court initiated 35 cases, dealing with a wide range of issues, including calculation of pensions, use of official language, provision of education, remuneration of judges and the solidarity tax.

Citation:

1. Judicial Information System Database, Available at: [http://tis.ta.gov.lv/tisreal?FORM=TIS\\_STaT\\_O](http://tis.ta.gov.lv/tisreal?FORM=TIS_STaT_O)
2. The Constitutional Court Case Database, Available at: <http://www.satv.tiesa.gov.lv/?lang=1&mid=19>
3. Valts Kalniņš (2011), Assessment of National Integrity System, p.99, Published by DELNA, Available at: [http://www.transparency.org/whatwedo/pub/national\\_integrity\\_system\\_assessment\\_latvia](http://www.transparency.org/whatwedo/pub/national_integrity_system_assessment_latvia), Last assessed: 05.01.2019
4. Constitutional Court (2018). Overview of the work of the Constitutional Court 2017. Available at: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2018/01/P%C4%81rskats-2017\\_final-LV-13.03.2018..pdf/](http://www.satv.tiesa.gov.lv/wp-content/uploads/2018/01/P%C4%81rskats-2017_final-LV-13.03.2018..pdf/). Last assessed 05.01.2019

## Portugal

Score 8

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

The highest body in the Portuguese judicial system is the Supreme Court, which is made up of four civil chambers, two criminal chambers and one labor chamber. There is also a disputed-claims chamber, which tries appeals filed against the decisions issued by the Higher Judicial Council. The Supreme Court judges appeals on the basis of matters of law rather than on the facts of a case, and has a staff of 60 justices (*conselheiros*). There are also district courts, appeal courts and specialized courts, as well as a nine-member Constitutional Court that reviews the constitutionality of legislation. In addition, there is a Court of Auditors (*Tribunal de Contas*), which is also a constitutionally prescribed body and is defined as a court under the Portuguese legal system. This entity audits public funds, public revenues and expenditures and public assets, all with the aim of ensuring that “the administration of those resources complies with the legal order.”

The number of judges in 2017 stood at 1,771. This number has risen from the early 1990s (from around 1,000) to 2008 (1,712). Since 2008, the number of judges has

remained relatively stable, reaching a peak in 2013 (1,816). Nevertheless, there remains a shortage of judges in relationship to the number of outstanding cases, which creates delays within the system.

In October 2018, Portugal appointed its second female attorney general, Lucília Gago, who replaced Joana Marques Vidal. The latter oversaw a very dynamic period for the Public Prosecution Service of Portugal, with a number of high profile cases (detailed in question D4.4 below). There was pressure from the PSD and CDS for her to be appointed to a second six-year term, which the constitution allows though previous practice has avoided. However, the prime minister (who proposes a name for the office) and the president (who appoints the prime minister's nominee) chose not to renew her term, arguing that non-renewable single terms reinforce the office's independence from political power. For critics, however, the decision not to reappoint Joana Marques Vidal was due to political expediency.

Citation:

Pordata, "Magistrados judiciais: total e por sexo," available online at: <https://www.pordata.pt/Portugal/Magistrados+judiciais+total+e+por+sexo-1703>

## Slovenia

Score 8

While politicians try to influence court decisions and often publicly comment on the performance of particular courts and justices, Slovenian courts act largely independently. Independence is facilitated by the fact that judges enjoy tenure. The Cerar government has preserved the independence of the Prosecutor's Office and strengthened the independence of the judiciary by expanding its funding. The Constitutional Court has repeatedly demonstrated its independence by annulling controversial decisions by the governing coalition, for instance on the candidacy rights of former Prime Minister Janša and the referendum on same-sex marriages. However, the lower courts have sometimes been criticized for letting influential people off the hook. In a spectacular case, Zoran Janković, the incumbent mayor of Ljubljana which has faced a dozen corruption charges, avoided conviction in 2018. The same applies to the former mayor of Maribor, Franc Kangler, who was indicted in 21 cases, but has been acquitted in 16 cases and is yet to be convicted in any of the cases.

## South Korea

Score 8

In general, courts in South Korea are highly professional, and judges are well trained. The South Korean judiciary is fairly independent, though not totally free from governmental pressure. For example, the unpredictability of prosecutors' activities remains a problem. Unlike judges, prosecutors are not independent, and there have been cases in which they have used their power to harass political

opponents, even though independent courts later found the accusations to be groundless.

Under South Korea's version of centralized constitutional review, the Constitutional Court is the only body with the power to declare a legal norm unconstitutional. The Supreme Court, on the other hand, is responsible for reviewing ministerial and government decrees. However, in the past, there have been cases with little connection to ministerial or government decree in which the Supreme Court has also demanded the ability to rule on acts' constitutionality, hence interfering with the Constitutional Court's authority. This has contributed to legal battles between the Constitutional and Supreme courts on several occasions. On the whole, the Constitutional Court has become a very effective guardian of the constitution since its establishment in 1989. In March 2017, the Constitutional Court unanimously upheld the impeachment of President Park amid massive public protests, demonstrating its independence from government influence. That event also enhanced public awareness of the Constitutional Court's independent role.

## United Kingdom

Score 8

The United Kingdom has no written constitution and no Constitutional Court, although the supreme court fulfills this function. Consequently, the United Kingdom has no judicial review comparable to that in the United States or many other European countries. While courts have no power to declare parliamentary legislation unconstitutional, they scrutinize executive action to prevent public authorities from acting beyond their powers. A prominent example was the ruling of the High Court of Justice in November 2016 that the British government must not declare the United Kingdom's separation from the European Union without a parliamentary hearing. The United Kingdom has a sophisticated and well-developed legal system, which is highly regarded internationally and based on the regulated appointment of judges.

Additional judicial oversight is still provided by the European Court of Human Rights, to which UK citizens have recourse. However, as a consequence of several recent high-profile ECHR decisions overturning decisions made by the UK government, some political figures called for the United Kingdom's withdrawal from the court's jurisdiction even before the referendum. The role and powers of the ECHR in the British legal system in a post-EU United Kingdom remain unclear.

In recent years, courts have strengthened their position in the political system. In cases of public concern over government action, public inquiries have often been held. However, implementation of any resulting recommendations is ultimately up to government, as the public lacks legal power. Judge-led inquiries tend to be seen by the public as having the highest degree of legitimacy, whereas investigations by members of the bureaucracy are prone to be regarded more cynically. Many such inquiries tend to be ad hoc and some drag on for so long that there is limited public awareness of the subject by the time their final reports are published. The extensive

delay in publishing the Chilcot inquiry into the Iraq war, finally made public only in July 2016 several years after it was supposed to be completed, was widely criticized by the government, media and citizen groups.

## Malta

### Score 7

Malta has a strong tradition of judicial review, and the courts have traditionally exercised restraint on the government and its administration. In a 2017 case, Judge Wenzu Mintoff ruled against the ruling Labor party in a case involving the ombudsman. Judicial review is exercised through Article 469A of the Code of Organization and Civil Procedure and consists of a constitutional right to petition the courts to inquire into the validity of any administrative act or declare such act null, invalid or without effect. Recourse to judicial review is through the regular courts (i.e., the court of civil jurisdiction) assigned two or three judges or to the Administrative Review Tribunal and must be based on the following: that the act emanates from a public authority that is not authorized to perform it; or that a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon; or that the administrative act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or as a catch-all clause, when the administrative act is otherwise contrary to law.

There have been calls to reform certain aspects of the process. The minister for justice has agreed that reforms are needed with regard to the role of the attorney general, who serves both as the country's chief prosecutor and as a legal adviser to the government. These two roles should be decoupled, the minister has argued, with one individual serving as an independent prosecutor general, and a second taking on the role of the attorney general, acting as the government's advocate.

The process through which court experts are chosen should also be revised to be more transparent.

Recent judiciary reforms have included the establishment of a commercial section, the reform of the Family Court, and the creation of a new section in the Appeals Court to help speed up case processing.

The 2018 Justice Scoreboard noted that more cases were being dealt with, the time needed to resolve cases had fallen drastically, the percentage of resolved cases had increased and the number of pending cases had fallen. Of those surveyed (i.e., the public and firms), more than 40% rated the independence of the courts and the judiciary as good or very good. However, this was a decline from 50% in 2017; respondents cited perceived interference and pressure from the government and politicians, as well as from economic and other interests as the primary reason for the decline. However, the percentage of respondents to cite interference with court

decisions was relatively low, at 20%. In 2017, no judges were transferred except by decision of the Judiciary Council, and there were no dismissals. The number of serving judges has increased over the last four years, though the number of active lawyers seems to have fallen. Malta has the EU's third-highest rate of judges who are participating in training activities focused on EU law or the law of another member state. However Malta does not as yet provide training for judges in the areas of IT, judgecraft, ethics, court management, or communication with the press. Measures to deal with court backlogs remain weak. In the World Economic Forum's global score board for 2018 on the independence and impartiality of the judiciary, Malta achieved a 4.4 from 7 and retained 51st place. The appointment of more judges, improved planning processes and increased use of ICT have had a visible effect on the judicial process. Increased scrutiny of the bench by the Commission for the Administration of Justice should help to increase public confidence in the courts. The number of judges as a percentage of the population remains low, indicating difficulty in finding suitable candidates to take up the post; this may be linked to inadequate salaries (though in 2018 the judiciary received a substantial pay increase) or the responsibilities that judges bear. Online information on published judgments are available, but there is no online information on the preliminary stages of a case. Delays and deferments may count against the process, but have fallen in number in recent years.

Citation:

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

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

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

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

The 2016 EU Justice Score board

[http://www.maltatoday.com.mt/news/national/76165/maltese\\_perceive\\_judicial\\_independence\\_to\\_be\\_fairly\\_good#.WesFh1uCyM8a](http://www.maltatoday.com.mt/news/national/76165/maltese_perceive_judicial_independence_to_be_fairly_good#.WesFh1uCyM8a)'s Justice System Times of Malta 18/04/16

The 2018 EU Justice Score board

Times of Malta 19/07/18 Judiciary gets hefty pay rise spread over coming three years

Malta Independent 20/01/19 Government will have no say in judicial appointments in upcoming reform - Owen Bonnici

## Netherlands

### Score 7

Judicial review for civil and criminal law in the Netherlands involves a closed system of appeals with the Supreme Court as the final authority. Unlike the U.S. and German Supreme Court, the Dutch Supreme Court is barred from judging parliamentary laws in terms of their conformity with the constitution. A further constraint is that the Supreme Court must practice cassation justice – should it find the conduct of a case (as carried out by the defense and/or prosecution, but not the judge him/herself) wanting, it can only order the lower court to conduct a retrial.

Public doubts over the quality of justice in the Netherlands have been raised as a result of several glaring miscarriages of justice. This has led to renewed

opportunities to reopen tried cases in which questionable convictions have been delivered. In 2017, new concerns emerged. A deputy minister of legal affairs openly admitted that he cut back state-supported legal assistance to ordinary citizens to achieve more punitive court sentences. And in the drugs- and crime-ridden province of Brabant, police, mayors and fiscal authorities directly “harass” suspects rather than pursue legal procedures, which they perceive as a time-consuming nuisance. Judges have voiced concerns about the quality of the work of lawyers, and thus directly about professional practice and indirectly about legal education.

Whereas the Supreme Court is part of the judiciary and highly independent of politics, administrative appeals and review are allocated to three high councils of state (Hoge Colleges van Staat), which are subsumed under the executive, and thus not fully independent of politics: the Council of State (serves as an advisor to the government on all legislative affairs and is the highest court of appeal in matters of administrative law); the General Audit Chamber (reviews legality of government spending and its policy effectiveness and efficiency); and the ombudsman for research into the conduct of administration regarding individual citizens in particular. Members are nominated by the Council of Ministers and appointed for life (excepting the ombudsman, who serves only six years) by the States General. Appointments are never politically contentious. In international comparison, the Council of State holds a rather unique position. It advises government in its legislative capacity, and it also acts as an administrative judge of last appeal involving the same laws. This situation is only partly remedied by a division of labor between an advisory chamber and a judiciary chamber.

Citation:

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

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NRC-Handelsblad, Waarom rechters geen ‘bak bagger’ meer willen, 28 April 2018.

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

## Spain

Score 7

The Spanish judicial system is independent and has the capacity to control whether the government and administration act according to the law. Specialized courts can review actions taken and norms adopted by the executive, effectively ensuring legal compliance. The administrative jurisdiction is made up of a complex network of courts. In addition, the Constitutional Court may review governmental legislation (i.e., decree laws) and is the last resort in appeals to ensure that the government and administration respect citizens’ rights. During the period under review, the behavior

of the judiciary with regard to the Catalan crisis and a number of decisions related to corruption scandals demonstrated that courts can indeed act as effective monitors of activities undertaken by public authorities. This included a ruling in May 2018 that found Prime Minister Mariano Rajoy guilty of benefiting from a vast kickbacks scheme (as a result, the socialist opposition filed a motion of no confidence in Rajoy, who was finally ousted).

According to the 2018 GRECO report, there is no doubt as to the high quality and dedication of the country's judges and prosecutors. However, improvements leading to still greater judicial independence and efficiency were recommended. The 2018 EU Justice Scoreboard indicated that most respondents found the judicial system to be too slow. In May 2018, judges and prosecutors stopped work in an unprecedented strike to call for greater judicial independence and better working conditions. Moreover, some judges appear to have difficulties in reconciling their own ideological biases with a condition of effective independence; this may hinder the judiciary's mandate to serve as a legal and politically neutral check on government actions. Finally, the capacity of some powerful private interests (such as the banking system) to influence judicial decisions was the subject of extensive debate in October 2018, following a controversial ruling by the Supreme Court on taxation.

Citation:

EC(2018), "EU Justice Scoreboard"

[https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en)

GRECO (2018), Fourth evaluation round, Spain: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680779c4d>

## Iceland

### Score 6

Iceland's courts are not generally subject to pressure by either the government or powerful groups and individuals. The jurisdiction of the Supreme Court to rule on whether the government and administration have conformed to the law is beyond question. According to opinion polls, confidence in the judicial system ranged between 50% and 60% before 2008. After falling to about 30% in 2011, it recovered to 39% in 2013, remained around 40% in 2014 and 2015, and climbed to 43% in 2017. However, re-establishing trust in the judicial system will take time, as the reported rate of trust fell to 36% in 2018.

Many observers consider the courts biased, as almost all judges attended the same law school and few have attended universities abroad. Of the six Supreme Court justices who ruled that the constitutional assembly election of 2010 was null and void, five were appointed by ministers of justice belonging to the same party (Independence Party). Two political parties, the Independence Party and the Progressive Party, maintained control over the Ministry of Justice for 81 out of the 90 years between 1927 and 2008 – dictating judicial appointments and sowing distrust. The deputy state prosecutor publicly refers to non-existent left-wing conspiracies.

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

Citation:

<https://www.gallup.is/nidurstodur/thjodarpuls/traust-til-stofnana/>. Accessed 20 December 2018.

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

## Japan

Score 6

Courts are formally independent of governmental, administrative or legislative interference in their day-to-day business. The organization of the judicial system and the appointment of judges are responsibilities of the Supreme Court. Thus, the behavior of Supreme Court justices is of significant importance. Some critics have lamented a lack of transparency in Supreme Court actions. Moreover, the court has an incentive to avoid conflicts with the government, as these might endanger its independence in the long term. This implies that it tends to lean somewhat toward government positions so as to avoid unwanted political attention. Perhaps supporting this reasoning, the Supreme Court engages only in judicial review of specific cases, and does not perform a general review of laws or regulations. Some scholars say that a general judicial-review process could be justified by the constitution.

The conventional view is that courts tend to treat government decisions quite leniently, although recent evidence is more mixed. In early 2018, for example, the Supreme Court ruled that some information from documents related to the government's secret funds had to be disclosed.

Citation:

Kyodo, Supreme Court orders partial disclosure of documents detailing Japanese government's secret funds, The Japan Times, 19 January 2018, <https://www.japantimes.co.jp/news/2018/01/19/national/crime-legal/supreme-court-orders-partial-disclosure-documents-detailing-japanese-governments-secret-funds/>

## Slovakia

Score 6

The Slovakian court system has for long suffered from low-quality decisions, a high backlog of cases, rampant corruption and repeated government intervention. Positive changes were brought about from within the judiciary after the disempowerment of Stefan Harabín, a controversial figure who had held major positions in the Slovak judiciary for some time. Lucia Žitňanská, the minister of justice from March 2016 to March 2018 sought to foster transparency and fight corruption in the judicial system. Among other things, the ministry launched a new database to be used for improving the training of justices and their allocation to the courts. While the length

of court proceedings has been shortened, concerns over the independence of the judiciary persist. The EU Justice Scoreboard ranks Slovakia as the country with the worst perception of judicial independence. The Constitutional Court has generally operated independently of the executive branch of government. However, its performance has suffered from a high backlog of cases, aggravated by a long-standing stalemate between President Kiska and parliament over the appointment of new justices. In the period under review, a number of decisions by the Constitutional Court have been criticized for an inconsistent interpretation of the law. The murder of Kuciak and Kušnírová has further reduced citizens' low level of trust in their courts.

Citation:

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

## Bulgaria

Score 5

Courts in Bulgaria are formally independent from other branches of power and have large competencies to review the actions and normative acts of the executive. Court reasoning and decisions are sometimes influenced by outside factors, including informal political pressure and more importantly the influence of private sector groups and individuals through corruption and nepotism. The performance of the Bulgarian judicial system is considered to be relatively poor, and the country continues to be subject to a Cooperation and Verification Mechanism by its partner countries from the European Union.

Following a number of constitutional changes in 2015, judges have become formally more independent from prosecutors and investigators. The reform of the Supreme Judicial Council, the body governing the judicial branch, has raised hopes that politicization will decrease. However, despite the formal changes, the politicization of the Supreme Judicial Council remains high.

Citation:

European Commission (2018): Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism. COM(2018) 850 final, Brussels ([https://ec.europa.eu/info/files/progress-report-bulgaria-2018-com-2018-850\\_en](https://ec.europa.eu/info/files/progress-report-bulgaria-2018-com-2018-850_en)).

Vassileva, R. (2018): Sweet Like Sugar, Bitter Like a Lemon: Bulgaria's CVM Report. *Verfassungsblog*, November 16 (<https://verfassungsblog.de/sweet-like-sugar-bitter-like-a-lemon-bulgarias-cvm-report/>).

## Croatia

Score 5

Croatia has among Europe's highest per capita number of judges and court personnel. The independence and quality of the judiciary were a major issue in the negotiations over EU accession. The number of courts were substantially reduced in 2014 and 2015. The long duration of judicial procedures and the high backlog of cases continue to be a major problem in Croatia's judicial system. Subsequent

ministries of justice have dealt with it in vain. Dražen Bošnjaković, HDZ's incumbent minister, has also put it on the list of his main priorities, together with the digitalization of the judiciary. However, widespread skepticism regarding the Croatian judiciary's independence continues to be the major issue at hand. Within the EU, Croatia has the lowest percentage of citizens and the second lowest percentage of business stakeholders who see their judicial system as being independent. The fact that in recent years a number of prominent individuals accused of crimes were acquitted has underscored the Croatian court's lack of effectiveness and independence.

In Croatia, judges of ordinary courts are appointed by the National Judicial Council, an independent body consisting of 11 members – 7 judges, 2 university professors of law and two members of the parliament (one from the opposition). This composition has turned out to be debatable, because it is not certain whether this strategy can ensure the full independence of the judiciary branch in appointing judges. The problems with approach to appointing judges became clear in 2017, when a constitutional blockade of the National Judicial Council took place at one moment after the representatives of the government, and the opposition could not agree on the appointment of their respective members into this body. As a result, the work of the National Judicial Council was obstructed because reaching a majority required for decision-making became difficult. This is why legal experts suggest that citizens' representatives be included in the Council instead of members of the parliament. These representatives, trained lawyers, would be proposed by the parliamentary Judiciary Committee.

Citation:

Dallara, C. (2014): *Democracy and Judiciary Reforms in South-East Europe*. Cham: Springer.

## Mexico

### Score 5

The Supreme Court, having for years acted as a servant of the executive, has become substantially more independent since the transition to democracy in the 1990s. Court decisions are less independent at the lower level, particularly at the state and local level. At the local level, corruption and lack of training for court officials are other shortcomings. These problems are of particular concern because the vast majority of crimes fall under the purview of local authorities. There is widespread impunity and effective prosecution is the exception, rather than the rule.

Mexico is in the process of reforming the justice system from a paper-based inquisitorial system to a U.S.-style adversarial system with oral trials. Implementation of the new system will most likely take a generation since it involves the retraining of law enforcement and officers of the court. So far, law enforcement has often relied on forced confessions, rather than physical evidence, to ensure the conviction of suspects. To make the new system work, the investigative and evidence-gathering capacity of the police will have to be significantly strengthened.

Overall, the courts do a poor job of enforcing compliance with the law, especially when confronted with powerful or wealthy individuals. Improving the rule of law is a crucial challenge for the new government in the context of an ongoing security crisis.

Citation:

EFE México (2018). Sistema penal acusatorio en México, avance histórico frenado por corrupción. <https://www.efe.com/efe/usa/mexico/sistema-penal-acusatorio-en-mexico-avance-historico-frenado-por-corrupcion/50000100-3498116>

## Hungary

Score 4

The independence of the Hungarian judiciary has drastically declined under the Orbán governments, and the impact of the fourth Orbán government will probably limit it even further. While the lower courts in most cases still take independent decisions, the Constitutional Court, the Kúria (Curia, previously the Supreme Court) and the National Office of the Judiciary (OBH) have increasingly come under government control and have often been criticized for taking biased decisions. The same goes for Péter Polt, the Chief Public Prosecutor and a former Fidesz politician, who has persistently refrained from investigating the corrupt practices of prominent Fidesz oligarchs. The Alliance of Hungarian Judges (Magyar Bírói Egyesület) has repeatedly criticized President of National Judiciary Office (OBH) Tünde Handó who has no formal power to promote judges to a higher position but has in fact used her position to influence decisions. As a result of the declining independence and quality of the Hungarian judiciary, more and more court proceedings have ended up at the European Court of Human Rights (ECHR) in Strasbourg. Hungary is among the countries generating the most cases, and the Hungarian state often loses these lawsuits.

After the 2018 elections, the government launched a new round of judicial reforms. In June 2018, Prime Minister Orbán announced a long series of basic amendments to be made to the Fundamental Law, the Hungarian constitution, that have been prepared by a new constitutional committee. The first step was taken with the 7th constitutional amendment passed by parliament in June 2018. It has narrowed the sources of interpretation available to justices by making the reasoning of the proponents of a legal regulation a primary consideration in terms of interpretation. Moreover, it has paved the way for the creation of a separate administrative court system which is supposed to monitor state activity, but is under strong government control.

## Poland

### Score 4

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

In response to the PiS government's reform of the judiciary, the European Commission triggered an Article 7 procedure against Poland in December 2017. In October 2018, the European Court of Justice declared the retirement regulations for the Supreme Court to be invalid. While the Polish government initially stated that it would appeal the judgment, it eventually gave in and restored the old retirement rules in late November 2018. For the time being, at least, the Supreme Court has thus maintained its independence.

Concerns over judicial review trends in Poland also led the Irish High Court to stop the extradition of a Polish citizen to Poland, a decision that the European Court of Justice (ECJ) did not officially approve, but also did not reject. The ECJ issued a list of checks that the Irish court should make in assessing whether there were really systemic failures in the Polish judicial system. Eventually, the Irish court decided in November 2018 to surrender the suspect to Poland, as it did not have enough evidence that the accused would not be given a fair trial, and because there is still the option of appealing to the European Court of Human Rights if the suspect's rights were seen as not being properly protected during the trial.

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de La Baume, M., M. Duncan (2018): EU court damns Polish legal system, in: Politico, July 25 (<https://www.politico.eu/article/ecj-damns-poland-legal-system-drug-dealer-fair-trial-artur-celmer/>)

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

Machińska, H. (2018): Die Justizreform in Polen, in: Polen-Analysen Nr. 223, Darmstadt/ Bremen (<http://www.laender-analysen.de/polen/pdf/PolenAnalysen223.pdf>).

## Romania

### Score 4

The judicial reforms of the PSL/ALDE government have been aimed at increasing the governmental influence over the judiciary. While the Superior Council of the Magistracy has fiercely defended the independence of the judiciary, the Constitutional Court has often sided with the government. One major change has been the creation of a new prosecutorial section in charge of investigating offenses committed by justices and prosecutors which has been widely perceived as a disciplinary device. In July 2018, Minister of Justice Tudorel Toader eventually succeeded in bringing President Iohannis to dismiss Chief Prosecutor Laura Codruta Kövesi, the head of the National Anti-Corruption Directorate (DNA). In October 2018, Toader also initiated the dismissal of Prosecutor General Augustin Lazar, an outspoken critic of the government's attacks on the judiciary's independence and integrity. The governing coalition's attempts to strengthen its control over the judiciary have not only provoked massive protests in Romania but have been criticized by many outside observers as well. The European Commission, under the cooperation and verification mechanism, has warned the government against undoing the progress made in judicial reform.

#### Citation:

European Commission (2018): Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism. COM(2018) 851 final, Brussels ([https://ec.europa.eu/info/files/progress-report-romania-2018-com-2018-851\\_en](https://ec.europa.eu/info/files/progress-report-romania-2018-com-2018-851_en)).

Selejan Gutan, B. (2019): New Challenges against the Judiciary in Romania, in: Verfassungsblog, February 22 (<https://verfassungsblog.de/new-challenges-against-the-judiciary-in-romania/>).

## Turkey

### Score 3

Several articles in the Turkish constitution ensure that the government and public administration act in accordance with legal provisions, and that citizens are protected from the state. Article 36 guarantees citizens the freedom to claim rights and Article 37 concedes the guarantee of lawful judgment. According to Article 125, administrative procedures and actions are subject to administrative review. In 2017, the Council of State, which consists of 15 departments and the country's highest administrative court, reviewed 145,092 cases, while a further 206,185 cases remain pending. The average length of time spent on each case was estimated to be 407.3 days. Since 2015, no data about the number of cases before administrative courts has been available. The High Court of Appeals consists of 23 criminal and 23 civil departments. The criminal departments received 239,063 new criminal appeals. Of these cases, 277,058 were concluded and 342,806 remain pending. The civil departments received 247,384 new civil appeals. Of these cases, 351,530 were concluded and 322,941 remain pending. Despite the increasing number of criminal

and administrative judges and prosecutors, independent observers state that judicial performance has been slowing down. The World Justice Project's Rule of Law Index ranked Turkey 84 out of 113 countries, with a score of 0.44 for regulatory enforcement.

The Constitutional Court, as the Supreme Court, dealt with a total of 216 cases (annulments and objections) and concluded 176 cases in 2017. The court received 157 annulment cases, although only four out of 15 concluded cases were annulled. The court declined 115 objection cases, with 11 cases were annulled. The court concluded 770 cases related to the right to a fair trial and found a violation of at least one right in 880 cases. The reasoned decisions of the Supreme Court are publicized of late.

According to the amended constitution (Article 105), a parliamentary investigation can be opened against the president if an absolute majority in the parliament votes that the president has likely committed a crime. Criminal investigations against the general chief of staff and other army commanders can be initiated with the prime minister's approval. Moreover, the trial of the under-secretary of the National Intelligence Service (MİT) is subject to the approval of the president. Acts within the president's area of competence, decisions of the Supreme Military Council (excluding acts relating to promotion or retirement), and decisions of the Council of Judges and Public Prosecutors (except for dismissals of public officials) are open to judicial review.

According to Council of Higher Education data, there are 71 law schools in Turkey with 15,741 enrolled students in 2017. At the end of 2017, a total of 106,496 lawyers were registered. Pluralism in the appointment of judges was affected by the closure under the state of emergency of two important associations: the Association of Judges and Prosecutors, and the Judges Union. The largest association, the Association for Judicial Unity, has around 9,145 members and is perceived as being close to the government.

Citation:

European Commission, Turkey 2018 Report, Brussels, 17.4.2018, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf> (accessed 1 November 2018).

European Commission for Democracy Through Law (Venice Commission) Turkey Opinion on the Amendments to the Constitution Adopted By the Grand National Assembly on 21 January 2017 and to Be Submitted to A National Referendum on 16 April 2017, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2017\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e) (1 November 2018)

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[https://www.danistay.gov.tr/upload/09\\_04\\_2018\\_devreden\\_guncel.pdf](https://www.danistay.gov.tr/upload/09_04_2018_devreden_guncel.pdf) (accessed 1 November 2018)

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HSK 2017 Yılı Faaliyet Raporu, <http://www.hsk.gov.tr/Eklentiler/files/HSK%202017%20YILI%20FAAL%C4%B0YET%20RAPORU.pdf> (accessed 1 November 2018)

YOK, <https://istatistik.yok.gov.tr/> (accessed 1 November 2018)

Türkiye’de Avukat Sayıları, <http://www.turkiyehukuk.org/turkiyedeki-avukat-sayisi-2017/> (accessed 1 November 2018)

Indicator

## Appointment of Justices

Question

To what extent does the process of appointing (supreme or constitutional court) justices guarantee the independence of the judiciary?

41 OECD and EU countries are sorted according to their performance on a scale from 10 (best) to 1 (lowest). This scale is tied to four qualitative evaluation levels.

- 10-9 = Justices are appointed in a cooperative appointment process with special majority requirements.
- 8-6 = Justices are exclusively appointed by different bodies with special majority requirements or in a cooperative selection process without special majority requirements.
- 5-3 = Justices are exclusively appointed by different bodies without special majority requirements.
- 2-1 = All judges are appointed exclusively by a single body irrespective of other institutions.

### Denmark

Score 10

The Danish constitution (sections 3, 62 and 64) states that “judicial authority shall be vested in the courts of justice ... the administration of justice shall always remain independent of executive authority ... [and] judges shall be governed solely by the law. Judges shall not be dismissed except by judgment, nor shall they be transferred against their will, except in such cases where a rearrangement of the courts of justice is made.”

The judicial system is organized around a three-tier court system: 24 district courts, two high courts and the Supreme Court. Denmark does not have a special Constitutional Court. The Supreme Court functions as a civil and criminal appellate court for cases from subordinate courts.

The monarch appoints judges following a recommendation from the minister of justice on the advice of the Judicial Appointments Council (since 1999) to broaden the recruitment of judges and enhance transparency. In the case of the Supreme Court, a nominated judge first has to take part in four trial votes, where all Supreme Court judges take part, before he or she can be confirmed as a judge.

Citation:

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

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<http://www.domstol.dk/om/organisation/Pages/Dommerudn%C3%A6vnelsesr%C3%A5det.aspx> (accessed 17 April 2013).

## Austria

Score 9 Judges are appointed by the president, who is bound by the recommendations of the federal minister of justice. This minister in turn is bound by the recommendations of panels consisting of justices. This usually is seen as a sufficient guarantee to prevent direct government influence on the appointment process.

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

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

## Belgium

Score 9 The Constitutional Court is composed of 12 justices who are appointed for life by the king, who selects candidates from a list submitted alternately by the Chamber of Deputies and by the Senate (with a special two-thirds majority). Six of the justices must be Dutch-speaking, and the other six French-speaking. One must be fluent in German. Within each linguistic group, three justices must have worked in a parliamentary assembly, and three must have either taught law or have been a magistrate.

The appointment process is transparent yet attracts little media attention. Given the appointment procedure, there is a certain level of politicization by the main political parties, and indeed most justices have had close links to one of the parties or have previously held political mandates before being appointed to the court. However, once appointed, most justices act independently.

## Chile

**Score 9** Members of the Supreme and Constitutional Courts are appointed collaboratively by the executive and the Senate. During recent years, there have been several cases of confrontation between the executive power and the judiciary, for example in the area of environmental issues, where the Supreme Court has affirmed its autonomy and independence from political influences.

## Lithuania

**Score 9** The country's judicial appointments process protects the independence of courts. The parliament appoints justices to the Constitutional Court, with an equal number of candidates nominated by the president, the chairperson of the parliament and the president of the supreme court. Other justices are appointed according to the Law on Courts. For instance, the president appoints district-court justices from a list of candidates provided by the Selection Commission (which includes both judges and laypeople), after receiving advice from the 23-member Council of Judges. Therefore, appointment procedures require cooperation between democratically elected institutions (the parliament and the president) and include input from other bodies. The appointment process is transparent, even involving civil society at some stages, and – depending on the level involved – is covered by the media. In a recent World Economic Forum survey gauging the public's perception of judicial independence, Lithuania ranked 55 out of 140 countries. Based on the EU Justice Scoreboard, the perceived independence of courts and judges among the general public is around the EU average. Around 50% of Lithuanian respondents assessed the independence of courts and judges as very good or good in 2016 and 2017. Public trust was undermined by the perceived interference of government, politicians, and economic and other special interest groups, and respondents' opinion that the status and position of judges does not guarantee their independence.

Citation:

The 2018 Global Competitiveness Report of the World Economic Forum: <http://www3.weforum.org/docs/GCR2018/05FullReport/TheGlobalCompetitivenessReport2018.pdf>  
The EU Justice Scoreboard, see [http://ec.europa.eu/justice/effective-justice/scoreboard/index\\_en.htm](http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm)

## Luxembourg

**Score 9** The Constitutional Court of Luxembourg is composed of nine members, all professional judges. They are appointed by the Grand Duke on recommendation of members of the Superior Court of Justice and the Administrative Court of Appeals, who gather in a joint meeting, convened by the President of the Superior Court of Justice. These two jurisdictions are appointed by the Grand Duke on the

recommendation of the Court itself, so their recruitment is co-opted. This principle is enshrined in Article 90 of the constitution and has never been questioned. It gives a great degree of independence to the Constitutional Court, as well as to the Superior Court of Justice and the Administrative Court of Appeals.

Citation:

Loi du 27 juillet 1997 portant organisation de la Cour Constitutionnelle.

Loi du 7 novembre 1996 portant organisation des juridictions de l'ordre administratif.

Loi du 1er juillet 2005 arrêtant un programme pluriannuel de recrutement dans le cadre de l'organisation judiciaire.

Organisation judiciaire, Textes coordonnés Avril 2009.

“Neuer Präsident für das Verfassungsgericht.” *Tageblatt*, 14 June 2016. <http://www.tageblatt.lu/nachrichten/neuer-prasident-fur-das-verfassungsgericht-10763120/> Accessed 22 Feb. 2018.

## Norway

Score 9

Judges are formally appointed by the government. However, decisions are prepared by a special autonomous body called the *Instillingsrådet*. This independent body, composed of three judges, one lawyer, a legal expert from the public sector and two members who are not from the legal profession, provides recommendations that are almost always followed by the government. Supreme Court justices are not considered to be in any way political and have security of tenure guaranteed in the constitution. There is a firm tradition of autonomy in the Supreme Court. The appointment of judges attracts limited attention and rarely leads to public debate.

## Portugal

Score 9

The Constitutional Court is comprised of 13 judges, who serve for non-renewable nine-year terms. Of these, 10 are selected by parliament on the basis of a two-thirds parliamentary majority. This generally means that the selection of judges requires, at least, an agreement between the PS and PSD, as the two largest parties together make up more than two-thirds of parliament. Typically, there is no other parliamentary configuration that can secure a two-thirds majority. That said, the PS and PSD have voted for the appointment of other parties' nominees (e.g., Maria Clara Pereira de Sousa de Santiago Sottomayor, nominated by the BE in 2016; and Fátima Mata-Mouros, nominated by the CDS in 2012), depending on political equilibria. The remaining three Constitutional Court judges are co-opted by the 10 judges elected by parliament. Six of the 13 judges must be chosen from judges in other courts; the others can be jurists.

While criticisms of the Constitutional Court emerge whenever a decision goes against a particular faction or party, the general perception is that the court operates in a balanced and non-partisan manner. The manner of election of judges, with a two-thirds parliamentary majority, tends to help in this outcome.

It is, however, important to note that there is a new Judges' Statute, passed in July 2018, which has caused a great deal of tension between some judges and the government.

Citation:

Magalhães, P. C. (2003). *The limits to judicialization: Legislative politics and constitutional review in the Iberian democracies* (Doctoral dissertation, The Ohio State University).

<https://tvi24.iol.pt/.../estatutos/parlamento-aprova-proposta-que-altera-estatuto-dos-ma...>

## Sweden

Score 9

The cabinet appoints Supreme Court (“regeringsrätten”) justices. The appointments are strictly meritocratic and are not guided by political allegiances. Although the cabinet almost always makes unanimous decisions, there are no special majority requirements in place for these decisions.

There is only modest media coverage of the appointments, mainly because the Swedish Supreme Court is not a politically active body like the Supreme Court in countries such as Germany and the United States.

## Czechia

Score 8

The justices of the Constitutional Court, the Supreme Court and the Supreme Administrative Court are appointed by the Senate, the second chamber of the Czech parliament, on the basis of proposals made by the president. Within the Senate, no special majority requirement applies. The process of appointing judges is transparent and adequately covered by public media. The involvement of both the president and the Senate increases the likelihood of balance in judges' political views and other characteristics. President Zeman's proposals have continued to be uncontroversial.

## Germany

Score 8

Federal judges are jointly appointed by the minister overseeing the issue area and the Committee for the Election of Judges, which consists of state ministers responsible for the sector and an equal number of members of the Bundestag. Federal Constitutional Court (FCC) judges are elected in accordance with the principle of federative equality (föderativer Parität), with half chosen by the Bundestag and half by the Bundesrat (the upper house of parliament). The FCC consists of sixteen judges, who exercise their duties in two senates of eight members each. While the Bundesrat elects judges directly and openly, the Bundestag used to delegate its decision to a committee in which the election took place indirectly, secretly and

opaquely. In May 2015, the Bundestag unanimously decided to change this procedure. As a result, the Bundestag now elects judges directly following a proposal from its electoral committee (Wahlausschuss). Decisions in both houses require a two-thirds majority.

In summary, in Germany judges are elected by several independent bodies. The election procedure is representative, because the two bodies involved do not interfere in each other's decisions. The required majority in each chamber is a qualified two-thirds majority. By requiring a qualified majority, the political opposition is ensured a voice in the selection of judges regardless of current majorities. Recently, the election of the incoming FCC president, Stephan Harbarth, has attracted some media attention, which may indicate that the new and open procedure has had positive spillover effects in this regard.

## Israel

### Score 8

According to Israel's basic laws, all judges are to be appointed by the president after having been elected by a special committee. This committee consists of nine members, including the president of the Supreme Court, two other Supreme Court judges, the minister of justice (who also serves as the chairman) and another government-designated minister, two Knesset members, and two representatives of the Chamber of Advocates that have been elected by the National Council of the Chamber.

The cooperative procedure balances various interests and institutions within the government in order to ensure pluralism and protect the legitimacy of appointments. The process receives considerable media coverage and is subject to public criticism, which is usually concerned with whether justices' professional record or other considerations (e.g., social views, loyalties and political affiliation) should figure into their appointment.

The spirit of judicial independence is also evident in the procedure for nominating judges and in the establishment of the Ombudsman on the Israeli judiciary. This latter was created in 2003, with the aim of addressing issues of accountability inside the judicial system. It is an independent institution that investigates public complaints or special requests for review from the president of the Supreme Court or the secretary of justice. The Ombudsman issues an annual report detailing its work, investigations and findings from all judicial levels, including the rabbinic courts.

However, in 2018, the relative power of the justice minister in selecting judges was stronger than ever. In 2016, the Ministry of Justice approved the participation of a representative lawyer from the Bar Association in the process of nominating judges. Recently, Justice Minister Ayelet Shaked announced that – having appointed 40% of the serving justices – she had succeeded in making the courts more conservative.

Citation:

Four Years Ago,” 28/10/18, JPOST, <https://www.jpost.com/Israel-News/Ayelet-Shaked-High-court-more-conservative-than-four-years-ago-570354>

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

Hovel, Revital. “Minister, Chief Justice Agree on Israel’s Next Supreme Court President,” *Haaretz*, 10/7/2017: <https://www.haaretz.com/israel-news/.premium-1.800449>

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

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

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

## Italy

Score 8

According to the present constitution, members of the Constitutional Court are appointed from three different and reciprocally independent sources: the head of state, the parliament (with special majority requirements) and the top ranks of the judiciary (through an election). Members of this institution are typically prestigious legal scholars, experienced judges or lawyers. This appointment system has globally ensured a high degree of political independence and prestige for the Constitutional Court. The Constitutional Court has frequently rejected laws promoted by the government and approved by the parliament. The court’s most politically relevant decisions are widely publicized and discussed by the media.

## Latvia

Score 8

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

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

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

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

In 2018, amendments to the Law on Judicial Power reduced the influence of executive power on the organization of court work and extended the competence of the Council for the Judiciary in appointing chairs of the courts.

Nevertheless, a ENCJ survey of judges from 26 European countries found that Latvia scored relatively poorly in terms of Latvian judges' evaluation of judicial independence (scoring between 6.5 and 7 on a 10-point scale). 11% of Latvian judges reported being subjected to inappropriate pressure. In rank order, the main sources of pressure were the media, political parties and their lawyers, and court management (including a court president).

Citation:

1. The Constitutional Court of Latvia (2011), Ruling on Initiation of Prosecution against Constitutional Court Judge Vineta Muizniece, Available at: [http://titania.saeima.lv/LIVS11/saeimalivs\\_imp.nsf/0/AB89B4FC4C69868DC22579410042BEF9?OpenDocument](http://titania.saeima.lv/LIVS11/saeimalivs_imp.nsf/0/AB89B4FC4C69868DC22579410042BEF9?OpenDocument), Last assessed: 05.01.2019

2. Supreme Court Senate (2018), The competence of the Council for the Judiciary in appointing chairs of courts and in transfer of judges shall be expanded, Available at: <http://www.at.gov.lv/en/jaunumi/par-tieslietu-padomi/the-competence-of-the-council-for-the-judiciary-in-appointing-chairs-of-courts-and-in-transfer-of-judges-shall-be-expanded-9374?year=2018&>, Last assessed: 05.01.2019

## Mexico

Score 8

Mexican Supreme Court justices are nominated by the executive and approved by a two-thirds majority of Congress. Judicial appointments thus require a cross-party consensus since no party currently enjoys a two-thirds majority or is likely to have one in the near future. The system of federal electoral courts is generally respected

and more independent and professional than the criminal courts. The situation is worse in lower courts, as judges are implicated in corruption or clientelist networks.

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

Citation:

DW 2018. México: “El sistema anticorrupción está entrampado.” <https://www.dw.com/es/méxico-el-sistema-anticorrupción-está-entrampado/a-42567912>

## New Zealand

Score 8

All judicial appointments are made by the governor-general based on the recommendation of the attorney-general. The convention is that the attorney-general recommends new appointments, with the exception of the chief justice, Māori Land Court and court of appeal judges. Appointment of the chief justice is recommended by the prime minister.

The appointment process followed by the attorney-general is not formally regulated. That said, there is a strong constitutional convention in New Zealand that, in deciding who is to be appointed, the attorney-general acts independently of party political considerations. There is a prior process of consultation, however, that is likely to include senior members of the judiciary and legal profession. Judges enjoy security of tenure and great judicial independence. In 2012, a review by the New Zealand Law Commission recommended that greater transparency and accountability be given to the appointment process through the publication by the chief justice of an annual report, as well as the publication by the attorney-general of an explanation of the process by which members of the judiciary are appointed and the qualifications they are expected to hold. So far, however, the recommendations of the Law Commission have not been implemented.

Citation:

Paul Bellamy and John Henderson, *Democracy in New Zealand* (Christchurch: MacMillan Brown Centre for Pacific Studies, 2002).

New Zealand Law Commission, ‘Review of the Judicature Act 1908: Toward a New Courts Act’ (R126, Wellington, 2012).

Benjamin Sutter. 2015. Appointment, Discipline and Removal of Judges: A Comparison of the Swiss and New Zealand Judiciaries. 46 VUWLR, pp. 267-306.

Stuff. 2018. Justice Helen Winkelmann appointed Chief Justice. December 17. <https://www.stuff.co.nz/national/politics/109416961/justice-helen-winkelmann-appointed-chief-justice>

## Slovenia

Score 8

In Slovenia, both Supreme and Constitutional Court justices are appointed in a cooperative selection process. The Slovenian Constitutional Court is composed of nine justices who are proposed by the president of the republic and approved by the

parliament by absolute majority. The justices are appointed for a term of nine years and select the president of the Constitutional Court themselves. Supreme Court justices are appointed by parliament by a relative majority of votes based on proposals put forward by the Judicial Council, a body of 11 justices or other legal experts partly appointed by parliament and partly elected by the justices themselves. The Ministry of Justice can only propose candidates for the president of the Supreme Court. Candidates for both courts must meet stringent merit criteria and show a long and successful career in the judiciary to be eligible for appointment. In March 2017, four new Constitutional Court justices were appointed by the National Assembly, all with an overwhelming majority of votes, a rare example of party cooperation, and another Constitutional Court judge will be appointed in late 2018 to replace the current president of the court, Jadranka Sovdat.

## Croatia

### Score 7

The Constitutional Court of the Republic of Croatia has 13 judges who are elected for a term of eight years. Judges are appointed by the Croatian parliament (Sabor) on the basis of a qualified majority (two-thirds of all members of the Sabor). Prescribed by a constitutional law, the eligibility criteria are rather general and represent a minimum that candidates need to fulfill in order to apply. Candidates are interviewed by the parliamentary committee tasked with proposing the list of candidates to the plenary session. There is a notable lack of consistency in this interview process, as the committee does not employ professional selection criteria.

## Cyprus

### Score 7

The judicial system essentially functions on the basis of the 1960 constitution, albeit with modifications to reflect the circumstances prevailing after the collapse of bi-communal government in 1964. The Supreme Council of Judicature (SCJ), composed of all 13 judges of the Supreme Court, appoints, promotes and places justices, except those of the Supreme Court. The latter are appointed by the president of the republic upon the recommendation of the Supreme Court. By tradition, nominees are drawn from the ranks of the judiciary. A 2016 GRECO report recommended broader participation in SCJ to include judges of trial courts. It also recommended more transparency regarding the procedure and criteria for the selection of judges. GRECO noted in 2018 that its recommendations were only partly implemented.

The gender ratio within the judiciary as a whole is approximately 60% male to 40% female. Five of the 13 Supreme Court justices and five of the seven administrative court justices are female.

#### Citation:

Council of Europe, GRECO fourth evaluation round, published September 2018, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808d267b>

## Ireland

### Score 7

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

The key government actors involved in making senior appointments are the taoiseach, the minister for justice, the attorney general and (in the case of a coalition government) any other party leader(s). This means that paper qualifications are not enough; “a crucial factor is being known personally by one of the key players” (Gallagher 2018, citing MacNeill 2016). Until 1996, this was an informal procedure.

In theory this all changed following the creation in 1996 of the Judicial Appointments Advisory Board (JAAB), which acts in an advisory capacity in appointments to the Supreme Court. The government has the power to appoint a person who has not applied to, and has not been considered by, the JAAB. Nevertheless, the JAAB acts as a kind of short-listing committee. It has now become known that “within around five years of its establishment, the JAAB, perhaps over-cautiously, deferred to legal advice that it might be infringing on the government’s constitutional right to appoint judges by doing anything more than simply forwarding the entire list of applicants to the government minus those that it deems unsuitable” (Gallagher 2018, 72, citing MacNeill 2016, 33). Thus, the JAAB in practice has been about weeding out unappointable applicants. Suggested reforms, which would return the JAAB to its originally intended role, might involve requiring it to rank-order a short list of three or five names (see Cahillane 2017).

In May 2018, the Dáil passed a new bill to establish a Judicial Appointments Commission to replace the JAAB. The new body is to be composed of five judges, three lawyers representing the attorney general and nine lay members (The Irish Times, 31 May 2018). The proposal is that the new body would recommend three candidates to fill any judicial vacancy and the government would choose one of them. The bill has been supported by the minister for transport, Shane Ross, who argued it would help to end “cronyism” in appointments. The bill has attracted opposition from some judges and opposition politicians who claim that it may undermine judicial independence. As of December 2018, the bill has still not passed the Seanad. The bill had been at committee stage in the Seanad, where 191 amendments have been tabled (The Irish Times, 28 November 2018). An Irish Times story was titled: “Taoiseach slates ‘Seanad filibuster’ of judicial appointments law.”

While the process does not require cooperation between democratic institutions and does not have majority requirements, appointments have, in the past, not been seen as politically motivated and have not been controversial.

However, changes made in April 2012 to the system of regulating judges’ pay and pensions, and the appointment of judges provoked controversy. Judges’ pay and

pensions had been shielded from the cuts in public-sector pay implemented during the economic crisis, but a huge majority of voters in a referendum in October 2011 voted to remove this protection (almost 80% voted for this change). The Association of Judges of Ireland has called for the establishment of an independent body to establish the remuneration of judges, and improve lines of communication between the judiciary and the executive.

Citation:

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

Jennifer MacNeill (2016). *The Politics of Judicial Selection in Ireland*. Dublin: Four Courts Press.

Laura Cahillane (2017), 'Judicial Appointments in Ireland: the Potential for Reform,' in Laura Cahillane, James Gallen and Tom Hickey (eds), *Judges, Politics and the Irish Constitution*. Manchester University Press.

Michael Gallagher (2018), 'Politics, the Constitution and the Judiciary,' in John Coakley and Michael Gallagher (2018, eds) *Politics in the Republic of Ireland*, 6th edition. Routledge.

## Netherlands

Score 7

Justices, both in civil/criminal and in administrative courts, are appointed by different, though primarily legal and political, bodies in formally cooperative selection processes without special majority requirements. In the case of criminal/civil courts, judges are de facto appointed through peer co-optation. According to the Council for Jurisprudence (Raad voor de Rechtspraak) "...in the Netherlands political appointments don't exist. Selection of judges is a matter for judges themselves, of the courts and the Supreme Court, on the basis of expertise alone. You cannot even raise the issue of political or confessional convictions." This is also true for lower administrative courts.

But its highest court, the Council of State, is under fairly strong political influence, mainly expressed through appointing former politicians "in good standing," and through a considerable number of double appointments. Only state counselors working in the Administrative Jurisdiction Division (as opposed to the Legislative Advisory Division) are required to hold an academic degree in law. Appointments to the Supreme Court are for life (judges generally retire at 70). Appointments are generally determined by seniority and (partly) peer reputation. Formally, however, the Second Chamber (House of Representatives) of the States General selects the candidate from a shortlist presented by the Supreme Court. In selecting a candidate, the States General is said never to deviate from the top candidate.

Citation:

Andeweg, R.B. and G.A. Irwin (2014), *Governance and Politics of the Netherlands*. Houdmills, Basingstoke: Palgrave Macmillan (page 210).

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

## Spain

### Score 7

Under current regulations, appointments to both the Constitutional Court (the organ of last resort regarding the protection of fundamental rights and conflicts regarding institutional design) and the Supreme Court (the highest court in Spain for all legal issues except for constitutional matters) require special majorities in the parliament. These majorities can be reached only through difficult and politicized extra-parliamentary agreements between the major parties, which generally lack a cooperative attitude toward one another. In 2018, GRECO published a report stating that Spain's political authorities still have not established objective evaluation criteria for appointments to the higher judiciary ranks; this is needed in order to ensure that these appointments do not cast any doubt on the independence and transparency of this process. However, the problem lies not so much in the appointment of high court judges, but rather in their corporatist culture and the conservative mindset instilled by a specific professional career.

During the period under review, a “left-leaning” judicial association criticized the political bias of some Supreme Court appointments promoted by the right-wing president of the Supreme Court. At the political level, a parliamentary debate focused on a strategy aimed at enhancing the judiciary's impartiality, talent and efficiency. A code of conduct has been adopted, and a consultative Commission of Judicial Ethics has been established.

Citation:

GRECO (2018), Fourth evaluation round, Spain: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680779c4d>

Ahumada, (coord.) (2018), Informe sobre la Democracia, Fundación Alternativas. [http://www.fundacionalternativas.org/public/storage/publicaciones\\_archivos/c4ce50790447eaa82d49984032c55b91.pdf](http://www.fundacionalternativas.org/public/storage/publicaciones_archivos/c4ce50790447eaa82d49984032c55b91.pdf)

## United Kingdom

### Score 7

The judicial appointments system reflects the informality of the constitution, but it has undergone substantial changes in recent years, which formalize a cooperative process without a majority requirement. Since the Constitutional Reform Act 2005, the powers of the Lord Chancellor have been divided up. Furthermore, the supreme court of the United Kingdom has been established, which replaces the Appellate Committee of the House of Lords and relieves the second chamber of its judiciary role. The queen appoints 12 judges to the supreme court based on the recommendation of the prime minister who is advised by the Lord Chancellor in cooperation with a selection commission. It would be a surprise if the prime minister ignored the advice or the Lord Chancellor or selection commission or the queen ignored the recommendations of the prime minister. The queen has a formal, ceremonial role and she is bound to impartiality. In contrast, the Lord Chancellor has a highly influential role and consults with the legal profession.

There is no empirical basis on which to assess the actual independence of appointments, but there is every reason to believe that the appointment process will confirm the independence of the judiciary.

## United States

Score 7

Federal judges, including Supreme Court justices, are appointed for life by the president and must be confirmed by a majority vote in the Senate. Historically, they have generally reflected the political and legal views of the presidents who appointed them. Over the last 30 years, however, judicial appointments have become more politicized, with conflicts over Senate confirmation eventually becoming almost strictly partisan. In the early 2000s, the opposition party (i.e., the one not in control of the presidency) increasingly took advantage of the Senate filibuster to delay judicial appointments, even when in the Senate minority. In 2013, however, the Democratic-controlled Senate, seeking to facilitate President Obama's nominations, abolished the filibuster for most judicial appointments. In the next Congress, the Senate, controlled by Republicans, refused to even hold hearings on an Obama Supreme Court nomination for more than a year in order to delay the appointment until after the 2016 presidential election. In the end, the strategy succeeded in capturing a Supreme Court appointment for President Trump.

With one additional vacancy during his first two years, President Trump has appointed and the Senate confirmed two Supreme Court justices. With the obstacle of the filibuster removed, the Republican Senate has declared a firm commitment to confirming Trump-nominated conservative lower court judges.

Given life-time appointment of federal judges, the courts' independence from current elected officials is well protected. However, federal judges increasingly reflect the ideological preferences of the president and the Senate at the time of their appointment, often decades earlier.

## Australia

Score 6

The High Court is the final court of appeal for all federal and state courts. While the constitution lays out various rules for the positions of High Court justices, such as tenure and retirement, there are no guidelines for their appointment – apart from them being appointed by the head of state, the governor-general. Prior to 1979, the appointment of High Court justices was largely a matter for the federal government, with little or no consultation with the states and territories. The High Court Act 1979 introduced the requirement for consultation between the chief law officers in the states, the attorneys general and the federal attorney general. While the system is still not transparent, it does appear that there are opportunities for the states to nominate

candidates for a vacant position. However, there has never been a High Court judge from either South Australia or Tasmania, which has been a long-standing bone of contention. Considering the importance of the High Court for the settlement of federal-state relations, there has been concern that judges with a strong federal perspective are regularly being preferred. From the perspective of the public, the appointment process is secret and the public is rarely consulted when a vacancy occurs. In recent years, a debate has emerged whether diversity, as well as representativeness, should be considered during the selection of judges.

Citation:

<http://www.smh.com.au/federal-politics/political-opinion/easier-to-pick-a-melbourne-cup-winner-than-next-high-court-judge-20120312-1uwds.html>

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

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

## Canada

### Score 6

It can be argued that the current process for judicial appointments in Canada, which is at the complete discretion of the prime minister, does not represent good governance, since the appointment needs no approval by any legislative body (either the House of Commons or the Senate). Indeed, potential candidates are not even required to appear before a parliamentary committee for questioning on their views. The prime minister has the final say in appointing chief justices at the provincial level, as well as for Supreme Court justices. The appointment process is covered by the media.

Despite their almost absolute power regarding judicial appointments, however, prime ministers have consulted widely on Supreme Court nominees, although officeholders have clearly sought to put a personal political stamp on the court through their choices. Historically, therefore, there was little reason to believe that the current judicial-appointment process, in actuality, compromised judicial independence. The current Liberal government has set up an independent, non-partisan advisory board to identify eligible candidates for Supreme Court Justices in an effort to provide a more transparent and inclusive appointment process. The first Supreme Court Judge nominated by Prime Minister Trudeau through this process was Justice Malcolm Rowe of Newfoundland and the second was Sheilah Martin from Alberta. Both appointments were widely praised.

Citation:

Nadia Verrelli, ed. (2013) *The Democratic Dilemma: Reforming Canada's Supreme Court* (Montreal: McGill-Queen's University Press)

International Commission of Jurists (2014), Response to concerns about interference with integrity and independence of the judiciary in Canada, posted at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/07/Canada-JudicialIndependenceAndIntegrity-CIJL-OpenLetter-2014.pdf>

## Greece

### Score 6

Before the onset of the crisis, the appointment of justices was almost exclusively managed by the government. Today, candidates for the presidency of the highest civil law and criminal law court (Areios Pagos) and administrative law court (Symvoulío tis Epikrateias) as well as the audit office are nominated by justices themselves. Then the lists of candidates are submitted to a higher-ranking organ of the parliament, the Conference of the Presidents of the Greek parliament. This is an all-party institution which submits an opinion to the Cabinet of Ministers, the institution which appoints justices at the highest posts of the courts mentioned above. Between 2011 and 2014, the government applied the seniority principle in selecting justices to serve at the highest echelons of the justice system. In 2015, the principle of seniority was partly curbed as the new president of the Areios Pagos court was not the court's most senior member. The same occurred in fall 2017 when the same government appointed a new president, selecting a younger justice over older candidates for the presidency. Meanwhile, the previous president, who had been selected by the Syriza-ANEL government in 2015, had retired and in the summer of 2017 joined the office of Prime Minister Tsipras (the Prime Minister's Office) as a legal adviser. Under Syriza-ANEL's rule, the selection and appointment of judges has probably become more politicized.

#### Citation:

Law 2841/2010 stipulates that the appointment of presidents and vice-presidents of the highest courts requires the non-binding opinion of the high-ranking parliamentary committee titled Conference of the Presidents of the Greek parliament.

WJP Rule of Law Index 2017-8 <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018>

## Slovakia

### Score 6

The justices of the Constitutional Court (CC) and the Supreme Court (SC) are selected for 12 years by the president on the basis of proposals made by the parliament (National Council of the Slovak Republic), without any special majority requirement. From 2014 to the end of 2017, the selection of justices was paralyzed by a struggle between President Kiska, who had made judicial reform a priority in his successful presidential campaign in 2014, and the Smer-SD-dominated parliament. Ignoring a decision by the CC, Kiska blocked the appointment of new justices, arguing that the candidates greenlighted by the National Council lack the proper qualifications for Constitutional Court justices. As a result, three out of 19 seats in the CC remained vacant until Kiska eventually gave in in early December 2017. Kiska's retreat was favored by recommendations by the so-called Venice Commission (Council of Europe's European Commission for Democracy Through Law) in March 2017. While the latter criticized Kiska for blocking the appointments, it sided with him in calling for stricter criteria for nominated judges. Despite a broad

consensus on the need for changes, an amendment proposed by Justice Minister Gál failed to muster sufficient support in parliament in October 2018. As a result, the coming replacement of nine out of 13 CC judges in February 2019, which will have considerable influence on the Slovak judicial system in the next decade, will take place under the old rules.

Citation:

N.N. (2018): Parliament election of Constitutional Court judges will not change, in: Slovak Spectator, October 24 (<https://spectator.sme.sk/c/20945235/parliament-election-of-constitutional-judges-will-not-change.html>).

Ovádek, M. (2018): Drama or Serenity? Upcoming Judicial Appointments at the Slovak Constitutional Court, in: Verfassungsblog, January 29 (<https://verfassungsblog.de/drama-or-serenity-upcoming-judicial-appointments-at-the-slovak-constitutional-court/>).

## South Korea

Score 6

The appointment process for justices of the Constitutional Court generally guarantees the court's independence. Justices are exclusively appointed by different bodies without special majority requirements, although there is cooperation between the branches in the nomination process. The process is formally transparent and adequately covered by public media, although judicial appointments do not receive significant public attention. Three of the nine justices are selected by the president, three by the National Assembly and three by the judiciary, while all nine are appointed by the president. By custom, the opposition nominates one of the three justices appointed by the National Assembly. The head of the court is chosen by the president with the consent of the National Assembly. Justices serve renewable terms of six years, with the exception of the chief justice. The National Assembly holds nomination hearings on all nominees for the Supreme Court and the Constitutional Court.

Citation:

Article 111 of the Korean Constitution

Croissant, Aurel (2010) Provisions, Practices and Performances of Constitutional Review in Democratizing East Asia, in: *The Pacific Review* 23(5).

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

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

## Switzerland

Score 6

The judges of the Federal Supreme Court are elected for a period of six years in a joint session of both chambers of parliament, with approval requiring a majority of those voting. A parliamentary commission prepares the elections by screening the candidates. Unwritten rules stipulate a nearly proportional representation of the political parties then in parliament. By tradition, judges voluntarily pay part of their salary to the political party to which they are affiliated. This is considered a tax on

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

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

Comparative analyses found that Swiss Federal judges are at the bottom of international rankings with regard to formal independence, but at the top with regard to actual independence.

In 2018, collection of signatures for a popular initiative began, aiming to select Federal judges by lot rather than through election by parliament.

Citation:

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

Adrian Vatter and Maya Ackermann 2014: Richterwahlen in der Schweiz: Eine empirische Analyse der Wahlen an das Bundesgericht von 1848 bis 2013, *Zeitschrift für Schweizerisches Recht*, 133, 517-537.

## Bulgaria

### Score 5

The procedures for appointing Constitutional Court justices in Bulgaria do not include special majority requirements, thus enabling political appointments. However, political control over the judiciary is limited by the fact that three different bodies are involved and appointments are spread over time. The 12 justices of the Constitutional Court are appointed on an equal quota principle with simple majorities by the president, the National Assembly and a joint plenary of the justices of the two supreme courts (the Supreme Court of Cassation and the Supreme Administrative Court). Justices serve nine-year mandates, with four justices being replaced every three years. In 2018, there were four new appointments: one by parliament (a single candidate), one by the president, and two by the supreme courts (elected among 10 candidates).

The chairs and deputy chairs of two supreme courts are appointed with a qualified majority by the Supreme Judicial Council. Over recent years, these positions have been held by both people with highly dubious reputations and political dependencies, and people with very high reputations and capacity to maintain the independence of the court system.

## Finland

Score 5 There are three levels of courts: local, appellate and supreme. The final court of appeal is the Supreme Court, and there is also a Supreme Administrative Court and an Ombuds office. The judiciary is independent from the executive and legislative branches. Supreme Court judges are appointed to permanent positions by the president of the republic. They are not subject to political influence. Supreme Court justices appoint lower-court judges. The ombudsman is an independent official elected by parliament. The ombudsman and deputy ombudsman investigate complaints by citizens and conduct investigations. While formally transparent, the appointment processes do not receive much media coverage.

## France

Score 5 Appointments to the Constitutional Council, France's Supreme Court, have been highly politicized and controversial. The council's nine members serve nine-year terms. Three are nominated by the French president, who also chooses the council's president, and three each by the presidents of the Senate and of the National Assembly. Former presidents (at the time of writing, Valéry Giscard d'Estaing, Jacques Chirac, Nicolas Sarkozy and François Hollande) are *de jure* members of the council but do not usually attend meetings. Up to the Sarkozy administration, there were no checks over council appointments made by these three highest political authorities. Now respective committees of the two parliamentary chambers organize hearings to check the qualifications and capacity of proposed council appointments. From this point of view, the French procedure is now closer to the process in which Supreme Court justices are appointed in the United States, rather than to typical European practices. Contrary to U.S. practice, however, the French parliament has not yet exerted thorough control over these appointments, instead choosing a benevolent approach, in particular, when appointees are former politicians. In 2017, a Senate president nominee for the council (a senator and former minister of the justice department) was forced to resign, although he had passed all the necessary parliamentary checks. The nominee resigned after a newspaper had leaked the fact that he had recruited (and paid with public money) his children as personal assistants. While not forbidden by law, the information that came out of the Fillon scandal was a sufficient deterrent. The case underlined the leniency of parliamentary control *vis-à-vis* former politicians.

Other supreme courts (penal, civil and administrative courts) are comprised of professional judges and the government has a more limited influence on their composition as the government can appoint only a presiding judge (*président*), selecting this individual from the senior members of the judiciary.

## Romania

**Score 5** According to Article 142 of Romania's constitution, every three years three judges are appointed to the Constitutional Court for nine-year terms, with one judge each appointed by the Chamber of Deputies, the Senate and the president of Romania. Since there are no qualified-majority requirements in either the Chamber of Deputies or the Senate, and since these appointments occur independently (i.e., they do not need to be approved by or coordinated with any other institution), Constitutional Court justices are in practice appointed along partisan lines. The last round of appointments of justices took place in 2016.

## Malta

**Score 4** Superior Court judges and magistrates are appointed by the president, acting in accordance with the advice of the prime minister. The independence of the judiciary is safeguarded through a number of constitutional provisions. Until 2016 the prime minister enjoyed almost total discretion on judicial appointments; since that time, appointments have been made by the legislature, following recommendations from the Commission for the Administration of Justice. Other restraints are set in the constitution, which states that an appointee must be a law graduate from the University of Malta with no less than 12 years of experience as a practicing lawyer. Magistrates need to be similarly qualified, but are required to have only seven years of experience. Today, all candidates who apply for the post are vetted by the Commission for the Administration of Justice before they can be appointed. However, the lack either of formal calls to fill judicial positions or of a ranking system to assess applicants impedes the process. However, Justice Minister Owen Bonnici has recently stated that the government is planning further changes to the process, which will ensure that the executive is no longer be involved in the appointment of judges and magistrates. Instead, a reformed Judicial Appointments Committee will be empowered to act independently in the selection process. A recent law on the suspension of judges however has been criticized by the dean of the law faculty at the University of Malta on the basis that suspended judges have no right to challenge the suspension and that the removal or dismissal of a judge should not be done by a body that is part of the legislature.

### Citation:

European Council calls on Malta to improve transparency of Judicial Appointments. Independent 10/02/14

<http://www.timesofmalta.com/articles/view/20150517/local/government-ignored-bonello-commission-recommendations-on-appointments.568405>

<http://www.timesofmalta.com/articles/view/20150819/local/minister-warns-against-reforming-judicial-appointments-system-for-the.581166>

<http://www.timesofmalta.com/articles/view/20150518/local/bonnici-we-will-reform-way-judiciary-appointed.568596>

Judicial appointments and the executive: Government cannot continue to delay reform Independent 2/10/2015

<http://www.timesofmalta.com/articles/view/20160225/local/judicial-commission-to-vet-nominees-to-bench.603674>

<http://www.timesofmalta.com/articles/view/20160718/local/historic-constitutional-amendments-on-judicial-appointments-discipline.619296>

<http://www.timesofmalta.com/articles/view/20160720/local/judiciary-welcomes-judicial-reform-legislation.619498>  
Interview with Professor Kevin Aquilina  
Malta Independent 20/01/19 Government will have no say in judicial appointments in upcoming reform - Owen Bonnici

## Iceland

### Score 3

To date, all Supreme Court and district court judges have been appointed by the minister of the interior, without any involvement from or oversight by parliament or any other public agency. However, all vacancies on the Supreme Court were advertised and the appointment procedure was at least formally transparent. As part of the appointment process, a five-person evaluation committee was appointed and tasked with recommending a single applicant. A 2010 change to the Act on Courts restricted the minister's ability to appoint any person not found to be sufficiently qualified by the committee unless such an appointment is approved by the parliament. This aimed to restrain the minister's authority by introducing external oversight.

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

In 2009, the European Union expressed concern over the recruitment procedures for judges. The Group of States against Corruption (GRECO) has also criticized the process for appointing judges in Iceland. The 2011/2012 constitutional bill proposes that judicial appointments should be approved by the president or a parliamentary majority of two-thirds.

Many appointments to the courts continue to be controversial. In many cases, the scrutiny of Supreme Court candidates seems superficial. For instance, little attention is given to how often rulings by lower court judges have been overturned by the Supreme Court. Furthermore, a retired Supreme Court justice, whose own appointment was controversial, published a book in 2014 criticizing his former court colleagues for their alleged opposition to his appointment as well as for some of their verdicts that he deemed misguided. He has since directed further attacks at his former colleagues for violating rules regarding conflict of interest, among other things.

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

deemed less qualified than other available applicants according to the review committee's assessment of the applications. Two of the applicants who were bypassed sued and were awarded damages by the Supreme Court. A third applicant has announced that he will also sue for substantial damages. The Supreme Court has ruled that the minister of justice broke the law when she bypassed the recommendations of the review committee. The minister, from the Independence Party, appears likely to have to face a vote of no confidence in parliament but this has not happened yet.

For all but 10 years between 1927 and 2017, control of the Ministry of Justice and the authority to appoint judges alternated between the Independence Party and the Progressive Party. As part of the reorganization of ministries, the ministry became part of the Ministry of the Interior for a short while, although the name was subsequently changed back to the Ministry of Justice.

Citation:

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

Björgvinsdóttir, Áslaug (2016). Comment on proposed Act on Courts, presented to parliament 19 April 2016, <http://www.althingi.is/altext/erindi/145/145-1514.pdf>. Accessed 22 December 2018.

Change of the Act on Courts. (Lög um breyting á lögum um dómstóla nr. 15 1998 með síðari breytingum (skipun dómara) nr. 45 26. maí 2010).

Gunnlaugsson, Jón Steinar (2014), *Í krafti sannfæringar*, Forlagið, Reykjavík.

GRECO (2013), Report on Iceland, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ReportsRound4\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ReportsRound4_en.asp). Accessed 22 December 2018.

GERCO (2015), Report on Iceland, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/RC4/GrecoRC4\(2015\)3\\_Iceland\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/RC4/GrecoRC4(2015)3_Iceland_EN.pdf). Accessed 22 December 2018.

## Turkey

### Score 3

Recruitment patterns in the past have highlighted the politicization of the judiciary. Following the recently adopted constitutional amendments, four members of the new Council of Judges and Prosecutors (HSK) were appointed directly by the president, and seven members were elected by parliament. The HSK does not offer adequate safeguards for the independence of the judiciary and considerably increases political influence over the judiciary.

Following the July 2016 coup attempt, more than 4,000 judges and prosecutors have been removed. As of August 2018, 12,006 judges and 5,161 prosecutors were employed in the civil and administrative ordinary and higher (Court of Cassation and Council of State) courts. Of these, 1,085 judges and 140 prosecutors work in regional civil courts, and 1,237 judges and 336 prosecutors work in administrative courts. A total of 381 judges and prosecutors were reinstated in 2017 and 2018. In 2018, 2,119

judges and 1,464 prosecutors were newly appointed in the civil court system. In administrative jurisdictions, 151 judges and 35 investigating judges were appointed in 2018.

The Constitutional Court has 17 members, as outlined by Article 146 of the 2010 constitutional referendum, whose members are nominated or elected from other higher courts by the country's president, the parliament and professional groups. Nominees can include senior administrative officers, lawyers, first-degree judges, prosecutors or Constitutional Court rapporteurs who have served for at least five years.

To be appointed to the Constitutional Court, candidates must either be members of the teaching staff of institutions of higher education, senior administrative officers or lawyers; be over the age of 45; have completed higher education; and have worked for at least 20 years. Constitutional Court members serve 12-year terms and cannot be re-elected. The appointment of Constitutional Court judges does not take place on the basis of general liberal-democratic standards, such as cooperative appointment and special majority regulations. In addition, the armed forces continue to wield some civilian judicial influence, as two military judges are members of the Constitutional Court. A recent scholarly article stated that the Constitutional Court and judges are politicized, its reviews have an ideological bias, and the judiciary is not independent.

Citation:

European Commission, Turkey 2018 Report, Brussels, 17.4.2018, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf> (accessed 1 November 2018)

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

European Commission for Democracy Through Law (Venice Commission) Turkey Opinion on the Amendments to the Constitution Adopted By the Grand National Assembly on 21 January 2017 and to Be Submitted to A National Referendum on 16 April 2017, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cddl-ad\(2017\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cddl-ad(2017)005-e) (accessed 1 November 2018)

HSK 2017 Yılı Faaliyet Raporu, <http://www.hsk.gov.tr/Eklentiler/files/HSK%202017%20YILI%20FAAL%C4%B0YET%20RAPORU.pdf> (accessed 1 November 2018)

08.08.2018 Tarihi İtibariyle Hakim ve Savcılara İlişkin İstatistik Bilgiler, <https://www.hsk.gov.tr/Eklentiler/Dosyalar/5d7f48c3-7f89-4c3d-afc2-03923e3db661.pdf> (accessed 1 November 2018)

"Cumhurbaşkanlığı Sistemi'nde AYM ve HSK üyeleri nasıl belirleniyor?," 17 March 2017, <https://www.ahaber.com.tr/galeri/turkiye/cumhurbaskanligi-sisteminde-aym-ve-hsk-uyeleri-nasil-belirleniyor> (1 November 2018)

T. Çetin and A. Pişkin, "Judicial Independence under Political Conflict: An Empirical Investigation of Constitutional Review in Turkey," Researchgate, January 2018.

## Estonia

### Score 2

Justices of the Supreme Court are appointed by the national parliament, on the proposal of the chief justice of the Supreme Court. The chief justice of the Supreme Court is appointed to office by the national parliament on the proposal of the President of the Republic.

While formally transparent and legitimate, the appointment processes rarely receives public attention or media coverage.

## Hungary

**Score 2** The 2012 constitution left the rules for selecting members of the Constitutional Court untouched. Its justices are still elected by parliament with a two-thirds majority. The second Fidesz government (2010-2014) used its two-thirds majority to appoint loyalists to the court. The third Fidesz government initially enjoyed a two-thirds majority, but lost it during the term. It succeeded in getting the support of the opposition party Politics Can Be Different (LMP) for the nomination of four new justices in November 2016. The 2018 elections restored the government's two-thirds majority, thus restoring the Fidesz government's complete control over the appointment of the justices of the constitutional court.

## Japan

**Score 2** According to the constitution, Supreme Court justices are appointed by the cabinet, or in the case of the chief justice, named by the cabinet and appointed by the emperor. However, the actual process lacks transparency. Supreme Court justices are subject to a public vote in the Lower House elections following their appointment, and to a second review after 10 years if they have not retired in the meantime. These votes are of questionable value, as voters have little information enabling them to decide whether or not to approve a given justice's performance. In all of postwar history, no justice has ever been removed through public vote. In response to the call for more transparency, the Supreme Court has put more information on justices and their track record of decisions on its website.

Citation:

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

## Poland

**Score 2** The Constitutional Tribunal still has 15 judges, but the way they are now appointed has become a major political issue both within in Poland and externally. Indeed, this was one of the reasons that the European Commission triggered Article 7 of the Treaty on European Union, at that time an unprecedented procedure. The judges used to be elected individually by the Sejm for terms of nine years, on the basis of an absolute majority of votes with at least one-half of all members present. The president of the republic then selected the president and the vice-president of the Constitutional Tribunal from among the 15 justices, on the basis of proposals made by the justices themselves.

A law introduced by the previous PO-PSL government in June 2015 had tightened the deadline for proposing candidates to replace the Constitutional Tribunal judges whose terms were to expire later in the year, allowing the then-governing coalition to replace five justices in the final session of the Sejm before the parliamentary elections. This was used by the incoming PiS government to question the legitimacy of these newly appointed judges, and to start its assault on the judicial system as such. Whereas the PO and PSL argued that because the new Sejm would not have convened until 12 November 2015, and the vote had been necessary to preserve the Constitutional Tribunal's continuity, PiS saw it as a politically motivated action, and hence President Duda refused to swear in these judges. Until the end of the Constitutional Tribunal President Andrzej Rzepliński's term in December 2016, the body refused to accept three of the five new judges, while the government in turn refused to accept the Constitutional Tribunal's decision. When Rzepliński's term expired, the government succeeded in installing Julia Przyłębska as his successor by legally dubious means, thus bringing the court under control. Przyłębska's appointment and the composition of the Constitutional Tribunal have remained highly controversial, and have undermined the legitimacy of the court.

Citation:

Garlecki, L. (2019): Constitutional Court and Politics: The Polish Crisis, in: C. Landfried (ed.), *Judicial Power: How Constitutional Courts Affect Political Transformation*. Cambridge: Cambridge University Press, 141-162.

Sadurski, W. (2019): Polish Constitutional Tribunal Under PiS: From an Activist Court, to a Paralyzed Tribunal, to a Governmental Enabler, in: *Hague Journal on the Rule of Law* 11(1): 63-84.

Indicator

## Corruption Prevention

Question

To what extent are public officeholders prevented from abusing their position for private interests?

41 OECD and EU countries are sorted according to their performance on a scale from 10 (best) to 1 (lowest). This scale is tied to four qualitative evaluation levels.

- 10-9 = Legal, political and public integrity mechanisms effectively prevent public officeholders from abusing their positions.
- 8-6 = Most integrity mechanisms function effectively and provide disincentives for public officeholders willing to abuse their positions.
- 5-3 = Some integrity mechanisms function, but do not effectively prevent public officeholders from abusing their positions.
- 2-1 = Public officeholders can exploit their offices for private gain as they see fit without fear of legal consequences or adverse publicity.

### Denmark

Score 10

In Transparency International's Corruption Perception Index 2016, Denmark ranked second after New Zealand. Denmark is thus considered one of the least corrupt countries in the world. Norms against corruption are strong and the risk of media exposure is high. In the past, there was the occasional case of a local government official accepting "services" from business in exchange for contracts with the municipality, but such cases are rare. There have also occasionally been cases of officials using their representation accounts rather generously. Again, such cases are rare. A court case in 2017 led to the conviction of several employees of the IT vendor Atea A/S for bribery and embezzlement. The employees had offered electronic devices to government employees, some of whom were convicted for accepting these devices.

Citation:

Transparency International Corruption Perception Index 2017, [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017](https://www.transparency.org/news/feature/corruption_perceptions_index_2017) (Accessed 3 October 2018).  
GAN Business Anti-corruption Portal, "Denmark Corruption Report," <https://www.business-anti-corruption.com/country-profiles/denmark/> (Accessed 3 October 2018).

### New Zealand

Score 10

New Zealand's public sector is one of the least corrupt in the world. There is a very low risk of encountering corruption in the public service, police or the judicial system. Prevention of corruption is strongly safeguarded by such independent institutions as the auditor general and the Office of the Ombudsman. In addition, New Zealand has ratified all relevant international anti-bribery conventions of the

OECD and the United Nations. Corruption is also low in the private sector, though critical studies point to some problems, for example in the construction and housing markets. The Deloitte Bribery and Corruption Survey 2017 (the next survey will be published in early 2019) found that approximately 20% of New Zealand companies surveyed had detected some form of corruption – about the same level as the previous survey two years before.

Citation:

Matthewman S (2017) ‘Look no further than the exterior’: Corruption in New Zealand. *International Journal for Crime, Justice and Social Democracy* 6(4): 71-85. DOI: 10.5204/ijcjsd.v6i4.439.

Deloitte. 2017. One step ahead – Obtaining and maintaining the edge Deloitte Bribery and Corruption Survey 2017. Australia and New Zealand. <https://www2.deloitte.com/nz/bribery-corruption-survey>

## Estonia

### Score 9

Abuses of power and corruption have been the subject of considerable governmental and public concern. On the one hand, Estonia has established a solid institutional and legal structure to prevent corruption, with the National Audit Office, the parliamentary Select Committee on the Application of Anti-Corruption Act, the Supervision Committee and the Anti-Corruption Act. On the other hand, cases of illegal conduct among high-level civil servants, municipality officials or political-party leaders do emerge from time to time. Such cases can be regarded as evidence of efficient anti-corruption policy. However, they also indicate that loopholes remain in the public procurement process and in party-financing regulations, for example.

As a further step in fighting corruption and abuses of power, all legal persons have been required to make public their beneficial owners through the business register from 1 September 2018. Yet, lobbying remains unregulated, despite the Group of States against Corruption’s (GRECO) recommendations. In October 2018, the Ministry of Finance published “Codes of good conduct in accepting gifts and benefits,” which is intended to guide civil servants and public officeholders in avoiding corrupt behavior.

In 2017, the number of registered corruption offences was the lowest it had been for five years. Most corruption offences are related to bribery, with bribes most often paid during technical vehicle checks, although increasingly also in health care and public sector procurement. The number of corruption cases involving municipalities has decreased and now comprise only 7% of all corruption cases. This suggests that the governmental program to curb illegal behavior and prevent corruption at the local level has been effective.

Citation:

Ministry of Justice (2018). *Kuritegevus Eestis 2017. Crime in Estonia.* [http://www.kriminaalpoliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/kuritegevuseestis\\_2017\\_veebi01.pdf](http://www.kriminaalpoliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/kuritegevuseestis_2017_veebi01.pdf) (accessed 20.10. 2018)

## Finland

Score 9

The overall level of corruption in Finland is low, with the country offering a solid example of how the consolidation of advanced democratic institutions may lead to the reduction of corruption. The 2017 Corruption Perceptions Index by Transparency International ranked Finland 3 out of 180 countries. The country had ranked third in 2016 and second in 2015. Several individual mechanisms contribute to the Finnish success, including a strict auditing of state spending; new and more efficient regulations over party financing; legal provisions that criminalize the acceptance of bribes; full access by the media and the public to relevant information; public asset declarations; and consistent legal prosecution of corrupt acts. However, the various integrity mechanisms still leave some room for potential abuse, and a 2014 European Commission report emphasized the need to make public-procurement decisions and election funding more transparent. It is also evident that positions in Finland are still filled through political appointment. Whereas only about 5% of citizens are party members, two-thirds of the state and municipal public servants are party members. Recently, several political-corruption charges dealing with bribery and campaign financing have been brought to light and have attracted media attention.

Citation:

Hung-En Sung, "Democracy and Political Corruption: A Cross-National Comparison", *Crime, Law & Social Change*, Vol. 41, 2004, 179-194.

Transparency International, "Corruption Perceptions Index 2017", [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017](https://www.transparency.org/news/feature/corruption_perceptions_index_2017)

## Sweden

Score 9

Sweden has one of the lowest levels of corruption in the world. As a result, public trust in democratic institutions and public administration is comparatively high. There are, however, significant differences among government agencies in the level of trust they enjoy from citizens, with the National Tax Agency being the most trusted agency and the National Social Insurance Agency and the Labor Market Agency the least trusted.

Corruption at the state level remains extremely rare in Sweden. Regulatory systems safeguarding transparency and accountability, coupled with an overall administrative culture that strongly forbids corrupt behavior, prevent corruption. At the local government level, however, there have been an increasing number of reports of corruption and court decisions on related charges. This tendency has continued and some reports claim even accelerated during the review period.

Citation:

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

Bergh, Andreas, Gissur Ó. Erlingsson, Richard Öhrvall, Mats Sjölin (2016), *A Clean House? Studies of Corruption*

in Sweden (Lund: Nordic Academic Press).

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

## Switzerland

### Score 9

Corruption in Switzerland is rare according to international rankings. Indeed, Switzerland is consistently rated as being among the most successful countries with respect to corruption prevention. It is governed by the rule of law, offers high wages to public officials, and is based on a decentralized democracy with parties that efficiently control and audit public officials.

However, there are opportunities and incentives for political and societal elites to abuse their position for private interests. This is due to the country's small size and the correspondingly small number of persons interacting in elite positions; to the culture of amicable agreement; and to the very pragmatic problem-solving culture. In addition, holders of elite positions know that they are highly likely to meet again in the future (and probably in different roles). This creates opportunities for the creation of broad informal networks, a reluctance to engage in close mutual surveillance and incentives for the non-observance of formal rules.

Given the considerable overlap between economic and political elites, critics such as the Swiss office of Transparency International have pointed to processes in which politicians' economic interests may influence their decisions in parliament.

In 2018, there were scandals involving irregularities within the public bus system ("Postauto"). In addition, although formally correct, practices within the Swiss army have been criticized, including free flights in army helicopters for partners of high-ranking officers.

Citation:

NZZ, 13.11.2018,

Bundesamt für Justiz, Press statement 14.8.2018

## Australia

### Score 8

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

At the federal level, these bodies include the Australian crime commission, charged with combating organized crime and public corruption, the Australian securities and investments commission, the main corporate regulator and the Australian national audit office.

Nonetheless, significant potential for corruption persists, particularly at the state and territory level. There have been isolated cases of misconduct in anti-corruption commissions. Allegations of corruption in the granting of mining leases have sparked public outcry, and a New South Wales Independent Commission Against Corruption inquiry into corruption in the granting of such leases was in progress throughout the review period. This inquiry has led to the resignations of a number of members of the New South Wales parliament from both the Labor and Liberal parties.

Questions of propriety are also occasionally raised with respect to the awarding of government contracts. Tender processes are not always open, and “commercial-in-confidence” is often cited as the reason for non-disclosure of contracts with private sector firms, raising concerns of favorable treatment extended to friends or favored constituents. Questions of inappropriate personal gain have also been raised when ministers leave parliament to immediately take up positions in companies they had been responsible for regulating.

Australia has been reluctant to address cross-border corruption. A notable exception is the recent action of Australian federal police, which in October 2014 seized assets of allegedly corrupt Chinese officials. This joint operation with Chinese authorities has been a novelty.

Members of the Senate and the House of Representatives are required to report on their financial interests within 28 days of taking the oath of office. These registers were adopted by resolution of the House of Representatives on 8 October 1984 and the Senate on 17 March 1994. However, there have been instances of failure to comply with this requirement, usually with no consequences for the member concerned. Ministers are further subject to a ministerial code of conduct, introduced in 1996. However, this code has no legal standing, and is therefore unenforceable.

Citation:

<http://www.icac.nsw.gov.au/investigations/current-investigations>

<http://www.theguardian.com/australia-news/2014/oct/23/australia-slow-to-tackle-international-corruption-with-just-one-case-in-court>

<http://www.transparency.org/cpi2015>

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

## Austria

### Score 8

Corruption has become a major topic of discussion in Austria. In recent years, scandals concerning prominent politicians (including former cabinet members) and industries dependent on government decisions have been exposed in increasing numbers, and thoroughly investigated. In consequence, a special branch of the public prosecutor's office dealing especially with corruption

(Korruptionsstaatsanwaltschaft) has been established. This office is seen as a significant improvement on the earlier system, although it remains far from perfect with respect to political independence. The more proactive approach taken by government, represented for example in the activities of the Korruptionsstaatsanwaltschaft, have yielded positive results.

As a consequence of the bankruptcy of a major bank (Alpen-Adria Hypo), the links between politics and business are more than ever openly discussed. Parliamentary committees at the state and federal levels have been able to bring some light to the affair and courts have successfully prosecuted highly connected persons (including politicians). Compared with evidence from previous decades, the prevention of corruption has improved in Austria, but could of course be further improved.

In 2018, the Austrian parliament established two investigative committees. One of the committees deals with a case of alleged corruption dating back 18 years, which involved a decision to buy military hardware (“eurofighters”). The very existence of this committee confirms the sensitivity of issues regarding political corruption.

## Belgium

### Score 8

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

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

generous wage supplements to the mayor of Brussels, one of his main political allies, and some family members and close friends.

According to Cumuleo, an activist group seeking to improve the regulation and oversight of public offices, Belgium has joined Macedonia and Armenia among the lowest-ranked countries with regard to effective implementation of the Council of Europe's anti-corruption recommendations. Nevertheless, outright corruption, for instance within the public administration or in the police, is extremely rare in Belgium. For example, Transparency International ranked Belgium as the 15th cleanest nation out of 176 countries in its 2016 Corruption Perceptions Index. The cases noted above concern only the ability and propensity of some well-connected officeholders to abuse their position to accumulate wealth.

Citation:

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

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

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

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

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

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

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

## Canada

### Score 8

Canada has historically ranked very high for the extent to which public officeholders are prevented from abusing their position for private interests. Transparency International's Corruption Perceptions Index ranks Canada among the top 10 least corrupt countries in the world.

In recent years, however, the country saw a number of high profile corruption scandals. Perhaps the most consequential scandal revolves around an investigation (which started in 2012) of wrongful travel and living allowance expense claims made by four members of the Canadian Senate. All four senators were suspended and three of them were criminally charged. As a result, the Auditor General of Canada examined expense claims made by all the other senators, identifying in a 2015 report 30 whose claims were ineligible; of these, nine cases were referred for police investigation. The Senate expense scandal renewed calls to reform the Senate or abolish the upper house entirely. In early 2014, Liberal Party leader Justin Trudeau expelled all 32 Liberal senators to sit as Independents, part of a proposed plan to overhaul Senate appointments to ensure it is a non-partisan body.

Citation:

Report of the Auditor General of Canada to the Senate of Canada—Senators' Expenses, June 4, 2015, posted at [http://www.oag-bvg.gc.ca/internet/English/parl\\_otp\\_201506\\_e\\_40494.html](http://www.oag-bvg.gc.ca/internet/English/parl_otp_201506_e_40494.html)

## Germany

### Score 8

Despite several corruption scandals over the past decade, Germany performs better than most of its peers in controlling corruption. According to the World Bank's 2017 Worldwide Governance Indicators, Germany is in the top category in this area, outperforming countries including France, Japan and the United States, but falls behind Scandinavian countries, Singapore and New Zealand. Germany's overall performance has also improved relative to other countries. In 2017, Germany ranked 7th out of 215 countries compared to 15th in 2010.

The country's Federal Court of Audit (Bundesrechnungshof) provides for independent auditing of national spending under the terms of the Basic Law (Art. 114 sec. 2). According to various reports, the revenues and expenditures of the federal authorities were in general properly documented.

Financial transparency for office holders is another core issue in terms of corruption prevention. Provisions concerning income declarations by members of parliament have improved, but the required declarations still lack precision. Since 2013, members of the Bundestag have to provide details about any ancillary income in a 10-step income list. Since the last election in 2017, 154 out of 709 members of parliament (22%) declared additional income. Within the FDP parliamentary party, almost every other member (43.8%) has an additional income, while politicians with the highest incomes are members of the CDU. The Greens have the lowest percentage of additional income with only 7.5% of its members of parliament. The current system of parliamentary transparency remains inadequate. Instead, it incentivizes declaring auxiliary income in slices of lesser amounts.

Citation:

World Bank (2018):

<http://info.worldbank.org/governance/wgi/index.aspx#reports>

<https://www.abgeordnetenenwatch.de/blog/ebeneinkunfte-2018>

## Luxembourg

### Score 8

In general, corruption is not tolerated in Luxembourg. However, there seems to be some agreement in parts of the public administration that small gifts may be accepted. This applies in particular to high-quality alcoholic beverages. Consolidation between individual political parties, related officials and certain economic sectors (e.g., finance and construction) are common.

In addition, large-scale corruption cases partly developed into political affairs ("Wickrange/ Livange"). In general, however, it can be assumed that politicians are not very susceptible to corruption because, if the corruption were discovered, this would immediately lead to the resignation and social exclusion of the politician.

The political change of 2013 affected corruption, since the leading party was not part of the government for the first time in decades. After 2013, many top officials were exchanged.

Political party financing is regulated by law. The names of donors are published. Donations to political parties in Luxembourg are rather uncommon. However, public officials often donate part of their salary, such as ministers.

After a parliamentary inquiry into a large building project in Wickrange in 2012, in which the prime minister and other government ministers were suspected of improperly favoring a company, the government adopted a code of conduct in 2014. The code, which references existing codes such as a European Commission code, defines the types of gifts and favors a minister may or may not receive. It also outlines a range of professional activities a minister may undertake after their ministerial term. The overall objective is to avoid conflicts of interest.

Citation:

EU Anti-Corruption Report. European Commission, 2014. [www.ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014\\_acr\\_luxembourg\\_factsheet\\_en.pdf](http://www.ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_luxembourg_factsheet_en.pdf).

Accessed 22 Oct. 2018.

“Corruption Perceptions Index 2017.” Transparency International, [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017#table](https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table). Accessed 22 Oct. 2018.

“Luxembourg Corruption Report.” <https://www.business-anti-corruption.com/country-profiles/luxembourg/> Accessed 13 Nov. 2018.

GRECO: “The Fight against Corruption: A Priority for the Council of Europe.” <https://www.coe.int/en/web/greco/about-greco/priority-for-the-coe>. Accessed 17 Nov. 2018.

## Norway

Score 8

There are few well-known instances of corruption in Norway. The few cases of government corruption that have surfaced in recent years have primarily been at the regional or municipal level, or in various public bodies related to social aid. As a rule, corrupt officeholders are prosecuted under established laws. There is a great social stigma against corruption, even in its minor manifestations. However, there are concerns about government corruption in areas such as building permits. During the last few years, some incidences of corruption related to investments and overseas Norwegian business activities have been revealed.

## United Kingdom

Score 8

The United Kingdom is comparatively free of explicit corruption like bribery or fraud, and there is little evidence that explicit corruption influences decision-making at national level. Occasional episodes arise of limited and small-scale corruption at local level, usually around property development. The delinquents of recent scandals

in UK politics mostly acted within the law. However, these scandals point to a continuing gap between politicians' attitudes and the public's expectations. Regulations against corruption have already been formalized to strengthen them, with the 2004 Corruption Bill consolidating and updating regulations into one law. On most international comparisons, the United Kingdom comes out with strong scores.

The members of parliament expenses scandal of 2009 provoked a call for more transparency in this field, but is an example of an informal "British" approach to the political problem of not wanting to raise the salaries of members of parliament. Instead, there was a tacit understanding that they could claim generous expenses. The rules were tightened very substantially in the wake of the scandal, and an independent body was set up to regulate member of parliaments' expenses. Codes of practice, such as the Civil Service Code and the Ministerial Code, have been revised (the latter in October 2015, following the election) and are publicly available. The volume of material published has been overwhelming, with examples range from lists of dinner guests at Chequers (the prime minister's country residence) to details of spending on government credit cards. The most recent report (December 2016) from the independent adviser on ministerial interest appears to present a clean bill of health and notes that no reason to investigate any breaches of the ministerial code since 2012.

At a more subtle level, influence based on connections and friendships can occur, but rarely with direct financial implications. However, some regulatory decisions may be affected by the exercise of such influence.

Citation:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468255/Final\\_draft\\_ministerial\\_code\\_No\\_AMENDS\\_14\\_Oct.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468255/Final_draft_ministerial_code_No_AMENDS_14_Oct.pdf)

## France

### Score 7

Up to the 1990s, corruption plagued French administration. Much of the problem was linked to secret party financing, as political parties often sought out alternative methods of funding when member fees and/or public subsidies lacked. Judicial investigations revealed extraordinary scandals, which resulted in the conviction and imprisonment of industrial and political leaders. These cases were a key factor for the growing awareness of the prevalence of corruption in France, leading to substantive action to establish stricter rules, both over party financing and transparency in public purchases and concessions.

However, there are still too many opportunities and loopholes available to cheat, bypass or evade these rules. Though various scandals have provoked further legislation. Since a former minister of finance was accused of tax fraud and money laundering in March 2013, government ministers have been obliged to make their

personal finances public. Similarly, parliamentarians are also obliged to make their personal finances public, but their declarations are not made public and the media is forbidden from publishing them. Only individual citizens can consult these disclosures and only in the constituency where the member of parliament was elected. The legal anti-corruption framework was strengthened again by the “Sapin law” adopted at the end of 2016, which complements existing legislation on various fronts (conflict of interests, protection of whistleblowers).

Immediately after the 2017 elections, President Macron decided, as a symbol, to table a bill dealing with the “moralization of public affairs.” The new law introduces many additional restrictions, such as the prohibition on parliamentarians employing members of their family, or the suppression of “loose money” that members of parliament were able to distribute without constraint or control. The new legislation constitutes a major contribution to tackling conflict of interest issues and may help to clean the Augean stables. As a consequence of the new rules and of the activism of the press on these issues, the appointment of ministers is kept secret for a few days before being officially announced. This affords an independent authority the time to check and clear the legal, fiscal and financial background of the potential nominees.

This permanent re-enforcement of the rules is justified by recurrent scandals concerning cases of corruption related to the funding of political campaigns by foreign African states, irregularities in the accounts of Sarkozy’s 2012 electoral campaign, or the misuse of funds provided by the European Parliament discovered in 2017. These affairs are currently before the courts.

## Ireland

### Score 7

The legal framework and rules regarding standards in public office have been progressively tightened and extended over time in Ireland.

In January 2014, Public Service Reform Plan 2014 – 2016 was published. Its stated goal was to maintain momentum with regard to reducing costs and increasing efficiency in the public sector, “to deliver greater openness, transparency and accountability and to strengthen trust in government and public services.”

Many proposed reforms are still at the planning stage, and it is too early to assess their impact on the integrity of officeholders and public servants.

On 6 September 2017, Assistant Garda Commissioner Michael O’Sullivan published a report showing that of the 3,498,400 breath tests recorded on the Garda’s Pulse computer system only 2,040,179 were actually recorded using alcohol testing devices. This left a discrepancy of 1,458,221 fictive breath tests. Three causes for this glaring deficiency were presented: (1) systems failures, (2) difficulties in understanding Garda policy, and (3) oversight and governance failures. It is highly

regretful that the Department of Justice and Garda authorities have not seen fit to prosecute any member of the Garda force because of the massive over-reporting of alcohol breathalyzer tests.

On 11 October 2018, Justice Peter Charleton published the third interim report of the Disclosures Tribunal (Tribunal of Inquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matters following resolutions). In the report, Judge Charleton vindicated the behavior of Sergeant Gerry McCabe, a Garda whistleblower, who had been treated appallingly (including allegations of child sexual abuse) by certain sectors of the police force. The report also vindicated Garda Commissioner Noirin O’Sullivan and the former minister of justice, Frances Fitzgerald. It was highly critical of the behavior of former Commissioner Martin Callinan and former Garda press officer Superintendent David Taylor.

The saga of the two Garda whistleblowers, Gerry McCabe and John Wilson, showed a deep antagonism in the upper echelons of the police force toward disclosures (whistleblowing) by junior members of the force. More disturbingly, it showed that some police superiors were prepared to blacken the name of whistleblowers by making untruthful allegations about them to government ministers, politicians and members of the press.

Citation:

The 2014 Public Services Reform Plan is available here:

<http://reformplan.per.gov.ie/>

Mr Justice Peter Charleton, Third Interim Report of the Disclosures Tribunal, October 11, 2018

## Latvia

Score 7

Latvia’s main integrity mechanism is the Corruption Prevention and Combating Bureau (Korupcijas novēršanas un apkarošanas birojs, KNAB). The Group of States Against Corruption has recognized KNAB as an effective institution, though it has identified the need to further strengthen institutional independence to remove concerns of political interference.

In recent years, KNAB has experienced several controversial leadership changes and been plagued by a persistent state of internal management disarray. Internal conflicts have spilled into the public sphere. For example, the previous KNAB director and deputy director were embroiled in a series of court cases over disciplinary measures in 2015 and 2016. These court cases ended with the director dismissing two deputy directors in the summer of 2016. Both have appealed their dismissal. The director adopted an administrative approach that resulted in a high turnover of qualified staff. Furthermore, these scandals have weakened public trust in the institution. A new, well-qualified and seemingly independent director, who formerly worked in the military, was appointed in 2017.

The Conflict of Interest Law is the key piece of legislation relating to officeholder integrity. The Conflict of Interest Law created a comprehensive financial disclosure

system and introduced a requirement for all violations to be publicly disclosed. In 2012, all Latvian citizens were required to make a one-time asset declaration in order to create a financial baseline against which the assets of public officeholders could be compared. This information is confidential and there is no publicly available evaluation of the efficacy of this policy.

Party-financing regulations contain significant transparency requirements, limitations on donation sources and size, and campaign expenditure caps. KNAB is charged with oversight of public financing for political parties. In 2012, violations of campaign-finance laws were criminalized, but no criminal cases have yet been presented. In 2016, multiple parties were sanctioned for violations of public financing rules. Vienotība, a major parliamentary party, has had its public funding withdrawn due to violations of campaign finance restrictions.

The slow progress of cases through the court systems undermines efforts to assess the system's effectiveness. However, available statistics indicate some positive trends. In 2016, for example, the number of persons tried in the court of first instance increased to 34, from an all-time low of 23 in 2014. Defendants included police officers, customs officers, border guards and one judge. In five cases, sentencing included prison terms. In 2016, the largest bribery case involved a €68,560 bribe, offered to an official of KNAB. The outcome of this case is still pending.

In 2017, a high-profile corruption investigation, dismissed by the prosecutor's office, came under public scrutiny. A series of leaked recorded conversations of "oligarchs" colluding to manipulate political decision-making has forced the re-examination of this investigation and the reasons why it was dismissed. A parliamentary inquiry process ended inconclusively. In 2018, the Governor of the Latvian Central Bank was investigated following serious allegations of bribery. He has since been suspended, but has not stepped down from his position, although his six-year tenure will end in December 2019.

Overall, the Latvian government has taken efforts to fight corruption and money laundering in recent years, particularly following the U.S. FinCen report (which led to the liquidation of ABLV bank) and the Council of Europe's 2018 Moneyval report. Latvia's admission to the OECD in 2016 significantly raised the country's international credibility. However, the successes of the country's investigative and auditing bodies have remained limited.

Nevertheless, Transparency International's Corruption Perceptions Index in 2017 ranked Latvia 40 out of 180 countries, with one being the least corrupt country. Latvia's average ranking in the index was 53 between 1998 and 2017, from a record high rank of 71 in 1998 to a record low rank of 40 in 2015.

Citation:

1. Corruption °C (2017), Updated Statistics on Convictions for Corruption Offences (2016 Data Added), Available at: <http://providus.lv/article/jaunaka-statistika-par-korupcijas-lietu-iztiesasanu-latvija>, Last assessed: 05.01.2019

2. Group of States Against Corruption (GRECO)() (2012), Fourth Evaluation Round, Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors, Evaluation Report, Available at: [www.legislationline.org/documents/id/18945](http://www.legislationline.org/documents/id/18945), Last assessed: 05.01.2019

3. Freedom House (2018), Nations in Transit, Country Report, Available at: <https://freedomhouse.org/report/freedom-world/2018/latvia>, Last assessed: 05.01.2019

4. Corruption Perceptions Index 2017. Available at: <https://www.transparency.org/country/LVA>, Last assessed: 05.01.2019

5. KNAB (2014), Attitudes toward Corruption in Latvia (in Latvian), Available at: [http://www.knab.gov.lv/uploads/free/knab\\_lf\\_aptauja2014.pdf](http://www.knab.gov.lv/uploads/free/knab_lf_aptauja2014.pdf), Last assessed: 22.10.2019

## Netherlands

### Score 7

The Netherlands is considered a relatively corruption-free country. In Transparency International's Corruption Perception Index 2017, the Netherlands ranked 8 out of 180 countries. This may well explain why its anti-corruption policy is relatively underdeveloped. The Dutch prefer to talk about “committing fraud” rather than “corrupt practices,” and about improving “integrity” and “transparency” rather than talking of fighting or preventing corruption, which appears to be a taboo issue.

Research on corruption is mostly focused on the public sector and much more on petty corruption by civil servants than on arguably increasing mega-corruption by mayors, aldermen, top-level provincial administrators, elected representatives or ministers. Almost all public-sector organizations now have an integrity code of conduct. However, the soft law approach to integrity means that “hard” rules and sanctions against fraud, corruption and inappropriate use of administrative power are underdeveloped. In at least three (out of 17) areas, the Netherlands does not meet the standards for effective integrity policy as identified by Transparency International, with all three areas failing to prevent and appropriately sanction corruption. Experts attribute this to a highly fragmented and operationally inconsistent network of public and semi-public organizations tasked with fighting corruption and fraud.

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

In July 2016, a new law for the protection of whistle-blowers entered into force. Experts consider the law to be largely symbolic, with real legal protection remaining low and administrative costs high. A “house for whistle-blowers,” intended to protect and facilitate whistle-blowers, proved to be a failure.

## Citation:

Transparency International Nederland (2017), Nationaal Integriteitssysteem Landenstudie Nederland.

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

Volkskrant, Voltallig bestuur van het Huis voor de Klokkeluiders stapt op na kritisch rapport, 14 December 2017

## Additional references:

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

de Koning, B., 2018. Vriendjespolitiek. Fraude and corruptie in Nederland, Amsterdam University Press, Amsterdam

## Portugal

### Score 7

Under Portuguese law, abuse of position is criminalized. However, as elsewhere, corruption persists despite the legal framework. A 2012 assessment of the Portuguese Integrity System by the Portuguese branch of Transparency International concluded that the “political, cultural, social and economic climate in Portugal does not provide a solid ethical basis for the efficient fight against corruption,” and identified the political system and the enforcement system as the weakest links of the country’s integrity system.

While efforts have been made at the state level to tackle corruption – and it is an oft-discussed topic – there remains considerable room for improvement in terms of the implementation of anti-corruption plans.

Legislation was approved by the Assembly of the Republic in 2011 and 2015 regarding the illicit enrichment of public officeholders. However, in both instances, the legislation was deemed unconstitutional by the Constitutional Court. While the issue continued to be publicly discussed throughout the period under review, no new proposal has been made.

A survey by the national Council for the Prevention of Corruption, published in June 2015, noted that half of the country’s public entities admitted to having applied only portions of their corruption-prevention plans. The reasons given were largely related to a lack of human, technical and financial resources. A 2018 study by the council into the prevention of corruption in public management concluded that the existing weaknesses were “very similar to those previously identified.”

Equally, the Council of Europe’s Group of States against Corruption (GRECO) compliance report published in March 2018 found that Portugal had satisfactorily implemented only one of the fifteen recommendations published in 2016, with a further three partly implemented, while the remaining 11 had not been implemented. It concluded that “the current very low level of compliance with the recommendations is ‘globally unsatisfactory’.”

This is also consistent with the analysis of the outgoing attorney general, Joana Marques Vidal. In an interview in October 2018, she stated that the political response to corruption had not been effective and was very superficial, and noted the need for additional legal instruments to tackle corruption in Portugal.

Under the helm of Joana Marques Vidal, the Public Prosecution Service (PPS) was considerably more active in dealing with high profile corruption scandals. Former Prime Minister José Sócrates (2005 – 2011) remains under investigation for alleged corruption, money laundering and tax fraud, and was formally charged with 31 crimes in October 2017.

In the previous report we noted the beginning of a trial on the so-called Golden Visa case, which involves a number of high-ranking civil servants and a former minister of internal affairs, Miguel Macedo (2011 – 2014). The case was set to be sentenced in September 2018. However, the judge decided to postpone sentencing for a further six months.

During the period under review, other high-profile cases have included: the so-called Fizz case, involving a Portuguese judge and a former vice-president of Angola; the Lex case, involving another Portuguese judge; the e-toupeira case, involving the Benfica football club's alleged access to privileged judicial information; the BES case, involving a major banker and government officials; and a case involving the main energy company, EDP.

The greater dynamism of the PPS under Joana Marques Vidal is widely interpreted as indicating the important role of leadership in prosecuting corruption in Portugal. It will be relevant to assess how the PPS proceeds under the direction of the new attorney general, who took office in October 2018.

Citation:

Conselho de Prevenção da Corrupção (2018). "Prevenção da corrupção na gestão pública: mapeamento de áreas e fatores de risco," available online at: [http://www.cpc.tcontas.pt/documentos/outros/relatorio\\_mapeamento\\_riscos\\_2018.pdf](http://www.cpc.tcontas.pt/documentos/outros/relatorio_mapeamento_riscos_2018.pdf)

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[https://www.jornaldenegocios.pt/.../portugal\\_melhora\\_no\\_ranking\\_de\\_corrupcao\\_e\\_e](https://www.jornaldenegocios.pt/.../portugal_melhora_no_ranking_de_corrupcao_e_e).

## South Korea

### Score 7

After the massive corruption scandals involving the two previous governments, the situation in South Korea has improved, although the abuse of power for private gain remains a major problem. The Me Too movement has brought many abuse-of-power

cases to light. As demonstrated by the protests against President Park, the Korean public, civil society organizations and the media are vigilant and ready to protest top-level abuses of power effectively. Courts have also been tough on those involved in corruption scandals, handing down prison sentences to many involved. Park's predecessor received a 25-year jail sentence in October 2018, which means that the two most recently serving presidents are now in jail for bribery and corruption. President Moon promised to strengthen anti-corruption initiatives, and announced that members of the elite involved in corruption scandals would not be granted pardons as has been common practice in Korea in the past. Positive institutional changes made in past years, such as the Kim Young-ran Act, are now showing results, and have effectively limited Korean traditions of gift giving. Despite the strong campaign against corruption in the public sector, there has been less success in curbing corruption and influence peddling by big business groups. In February 2018, an appellate court reduced the five-year prison sentence originally given to Samsung Electronics Vice Chairman Lee Jae-yong to a suspended sentence of two and a half years. The controversial decision was seen as extremely lenient compared with the long jail sentences given to former public officials.

Citation:

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

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

"Samsung Heir Freed, to Dismay of South Korea's Anti-Corruption Campaigners", New York Times, February 5, 2018.

## Spain

Score 7

Corruption levels have declined in Spain since the real-estate bubble burst in the wake of the economic crisis, and also as a consequence of the criminal, political and social prosecution of corrupt officials. "Corruption is not in our cultural DNA," said a report published in 2018 by the *Círculo de Empresarios*; and the fact is that – political-party funding aside – few corruption cases have involved career civil servants. Everyday interactions between citizens and the administration are typically characterized by a high level of integrity. Nonetheless, perceived corruption levels and Spain's position in international indices such as Transparency International's CPI have worsened since the early 2000s. Spain was ranked at 20th place worldwide at the beginning of last decade, but has fallen to 41st place in 2018. This can be attributed to the fact that cases currently moving through the legal system are based on past events and activities that are now receiving considerable media attention.

In January 2018, a court in Barcelona ruled that the ruling party of Catalonia (the moderate nationalist CDC) had for many years received illegal commissions. In May, the Supreme Court found former PP officials guilty of tax evasion and of

having received illegal commissions for public contracts; this led to the fall of Mariano Rajoy as prime minister.

Several measures for preventing corruption have been put in place in recent years. In 2017, a parliamentary committee initiated a ongoing series of public hearings aimed at improving the financing of political parties. In March 2018, the Law 9/2017 on public procurement came into force. In addition, Directive 2014/23/EU, concerning application thresholds for contract-award procedures, was implemented into law. Although the new legal frameworks led to a certain degree of confusion during the period under review, they are intended to achieve greater transparency in public procurement.

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## United States

### Score 7

The first two years of the Trump presidency have brought an unprecedented disregard of established practices to prevent conflict of interest. The U.S. federal government has long had elaborate and extensive mechanisms for auditing financial transactions, investigating potential abuses and prosecuting criminal misconduct. The FBI has an ongoing, major focus on official corruption. Auditing of federal spending programs occurs through congressional oversight as well as independent control agencies such as the General Accountability Office (GAO) – which reports to Congress, rather than to the executive branch. The GAO also oversees federal public procurement. With all of these controls, executive-branch officials have been effectively deterred from using their authority for private gain and prosecutions for such offenses have been rare.

President Trump has openly flouted established practices with respect to conflict of interest. Trump has defended his refusal to move his assets into a blind trust on the grounds that (in contrast with other federal officials) there is no conflict-of-interest statute that pertains to the president. His son-in-law Jared Kushner and daughter Ivanka have continued to run separate business while performing White House roles. The administration has been heedless of conflict-of-interest in appointments to regulatory and other positions and refused to provide information to the Office of

Government Ethics concerning potential conflicts among appointees, prompting the respected nonpartisan director of the office to resign in protest. Several Trump officials have been embroiled in scandals involving abuse of public resources (such as using military aircraft for vacation travel). During the first two years of the Trump presidency, the Republican Congress, in a sharp departure from past practice, has failed to investigate or wage criticism of President Trump and his administration's corruption issues.

## Chile

### Score 6

In general terms, the integrity of the public sector is a given, especially on the national level. The most notable problem consists in the strong ties between high-level officials and the private sector. Political and economic elites overlap significantly, thus reinforcing privilege. In general terms, this phenomenon can be observed irrespective of the larger political parties' ideology, although it tends to be more evident in the current government of Sebastián Piñera as many members of the Alianza – including the president himself – are powerful businesspeople.

Such entanglements produce conflicts of interest in policymaking (e.g., in regulatory affairs). There are no regulations enabling the monitoring of conflicts of interest for high-ranking politicians (e.g., the president or government ministers). However, there are some independent projects emerging that aim to increase public awareness about this issue.

The scandals revealed in recent years have shown that corruption and abuses of power within Chile's political and economic elite, as well as some cases of higher ranked public servants (as in the case of the police and the military), is in fact more common than (international) indicators regarding corruption and transparency suggest. It is unclear how state institutions will confront these challenges.

In 2016, a minister and an undersecretary of state of the former government were convicted of corruption, while during the period under review several high-ranking military and police officials have been prosecuted for corruption. Due to these corruption scandals, discussions about making public a large number of secret laws, which relate to military budgets and spending, have been revived.

As a response to this crisis, former President Bachelet convoked a council (Consejo Asesor Presidencial contra los Conflictos de Interés, el Tráfico de Influencias y la Corrupción) that in its final report (April 2015) proposed several anti-corruption measures intended to prevent abuse of office. Due to their conclusions, restrictions on private campaign funding (Ley sobre Fortalecimiento y Transparencia de la Democracia) and the creation of a public register for all lobbyists were implemented in 2016. In August 2018, current President Piñera announced a draft law on transparency (Ley de Transparencia 2.0) in order to improve the existing regulation.

Citation:

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## Israel

### Score 6

A survey of the Israeli legal framework identifies three primary channels of a corruption-prevention strategy: 1) maintaining popular trust in public management (including bank managers and large public-oriented corporations' owners), 2) ensuring the proper conduct of public servants and 3) ensuring accountability within the civil service. Israel pursues these goals by various means: It established a legal and ethical framework to guide civil servants and the courts, reinforced the position of the State Comptroller through the passage of a basic law (1988) in order insure government accountability, adapted the civil service commission's authority to manage human resources (e.g., appointments, salaries) and so forth. In 2005, Israel was one of 140 states to sign a national anti-corruption treaty and began implementing it in 2009, issuing annual progress reports.

Annual opinion surveys demonstrate that Israeli citizens are concerned about high levels of corruption in their country. In Transparency International's Corruption Perception Index, out of 180 countries, Israel ranked 32 in 2017 and 34 in 2018. Criticism of Israel's centralized public-service structure have been mounting, in part because it is characterized by some very powerful ministries with broad discretionary spending powers. These powers undermine accountability, leaving room for corruption.

Criminal inquiries into politicians are common. In 2014, the courts issued an historic ruling, sentencing former prime minister Ehud Olmert to six years in prison for accepting bribes while serving as mayor of Jerusalem. Current Prime Minister Netanyahu has been going through a series of investigations regarding several corruption cases. Former foreign minister Avigdor Liberman was on trial for fraud, money laundering and breach of trust. Former tourism minister Stas Misezhnikov, of the Yisrael Beytenu party, was sentenced to a 15-month sentence for fraud and breach of trust. In addition, former deputy interior minister Faina Kirshenbaum and nine other officials linked to Yisrael Beytenu were indicted for a litany of corruption charges, including bribery, fraud and money laundering.

Citation:

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## Italy

### Score 6

The Italian legal system has a significant set of rules and judicial and administrative mechanisms (with ex ante and ex post controls) to prevent officeholders from abusing their position, but their effectiveness is doubtful. The Audit Court (Corte dei Conti) itself – one of the main institutions responsible for the fight against corruption – indicates in its annual reports that corruption remains one of the biggest problems of the Italian administration. The high number of cases exposed by the judiciary and the press indicates that the extent of corruption is high, and is particularly common in the areas of public works, procurement, and local building permits. It suggests also that existing instruments for the fight against corruption must be significantly reconsidered to make them less legalistic and more practically efficient. With the

reforms of previous governments, the Anti-Corruption Authority has been significantly strengthened and its anti-corruption activity progressively increased. The new Conte government has declared its willingness to step up the fight against corruption, but it is too early to judge its performance in this field.

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

Citation:

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## Lithuania

### Score 6

Corruption is not sufficiently contained in Lithuania. In the World Bank's 2017 Worldwide Governance Indicators, Lithuania scored 75 out of 100 on the issue of corruption control, down from 70 in 2016. The 2013 Eurobarometer poll revealed that Lithuania had the European Union's highest percentage (29%) of respondents who claimed that they had been asked for or expected to pay a bribe for services over the past 12 months, compared to an EU average of 4%. In the Transparency International Corruption Perception index, Lithuania scored 59 out of 100 and ranked 38 out of 180 countries in 2017, down from 32 in 2015. According to the new Index of Public Integrity, Lithuania was ranked 25 out of 105 countries overall, but only 85 out of 105 countries for budget transparency.

One of Lithuania's key corruption prevention measures is an anti-corruption assessment of draft legislation, which grants the Special Investigation Service the authority to carry out corruption tests. According to the Lithuanian Corruption Map of 2016, measured by the Special Investigation Service based on surveys, the institutions viewed as most corrupt were hospitals, the parliament, the court system, local authorities and political parties. Bribery is perceived to be the main form of corruption by most average Lithuanians, while businesspeople and civil servants respectively identified nepotism and party patronage as the most frequent forms of corruption. In September 2017, the Special Investigation Service investigated allegations of corruption involving Lithuania's Liberal Movement and Labor party. The parties are suspected of accepting bribes and selling political influence. For instance, two Liberal Movement members are alleged to have accepted bribes of more than €100,000 on behalf of the party from a vice president of a major business group in exchange for political decisions that benefited the corporation.

According to the World Economic Forum, Lithuanian firms perceive corruption as one of the most problematic factors for doing business in the country. Since state and municipal institutions often inadequately estimate the risk of corruption, not all corruption causes and conditions are addressed in anti-corruption action plans. The European Commission has suggested that Lithuania develop a strategy to tackle

informal payments in health care and improve the control of conflicts of interest declarations made by public officials. To advance its preparations for OECD membership, the country became a member of the OECD Anti-Bribery Convention in July 2017. Accession into the OECD in 2018 is likely to hold the focus on corruption prevention; also one of the key priorities during the two terms of President Dalia Grybauskaitė, the second of which will end in 2019.

Citation:

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## Croatia

### Score 5

Corruption ranked high on the agenda of the accession negotiations with the European Union. Despite the Anti-Corruption Strategy for 2015-2020 adopted by the Croatian parliament in early 2015 and the Anti-Corruption Action Plan for 2017-2018 passed by the Ministry of Justice in mid-2017, corruption remains one of the key issues facing the political system. During the period under review, a number of high-profile corruption cases surfaced or were under investigation, involving, among others, a close aide to former Prime Minister Milanović and the most powerful man in Croatian soccer. The Agrokor case has also exposed the extent to which economic and political interests in the country co-mingle. While the main anti-corruption office, the Croatian State Prosecutor's Office for the Suppression of Organized Crime and Corruption (Ured za Suzbijanje Korupcije i Organiziranog Kriminala, USKOK) and the parliament's commission for the conflict of interests have been quite active in opening and investigating cases, the courts have often failed to prosecute corruption either as a result of external pressure or a lack of competence. In most of the major corruption cases in which indictments were raised against high-ranking officials like former prime minister Sanader, incumbent Zagreb mayor Bandić and a number of former ministers and other officials, no final sentences have been brought yet. This fact has additionally shaken citizens' confidence in the judiciary system and the government's ability to prevent corruption.

## Czechia

### Score 5

In Czechia, corruption has remained widespread. Subsequent governments have emphasized their commitment to fight corruption but have done little to adequately address the issue. Two significant changes were implemented in 2017: amendments to the law on party finance and law on conflict of interest. Despite this apparent progress, the merging of business, political and media power in the hands of Prime Minister Babiš represents an escalation of past corruption to a new level. The most public controversy concerns the use of EU funds, intended for SME support, to finance a business temporarily separated from his conglomerate which was then returned to his control after the subsidy had been received. It emerged that nominal ownership had only been transferred to his family members, but police investigations reached no clear conclusions. A key barrier was that adult children, the temporary owners, were reportedly unfit to face a court owing to psychiatric problems. In November 2018 journalists from the relatively new online channel Seznam TV published an interview with Andrej Babiš's son Andrej Babiš jr who reported that he was willing to be interviewed by police but had been kidnapped by people working for his father and taken to Crimea from which he later escaped. Subsequently, Babiš gave a press conference denouncing the media on an "attempted coup" and informing the public that both of his adult children are mentally ill. Despite demands from the opposition for his resignation and public demonstrations in Prague and other cities, he was emboldened by the sympathetic treatment he received from the media outlets he controlled and thus remained in power, thanks to continuing support from Social Democrat coalition partners who feared that he would survive by creating a new coalition with Okamura's party. Further problems await him through action precipitated by Transparency International that challenge his control over media companies while an active politician, and by a possible action from the European Commission following a reported opinion that all subsidies for his businesses should be returned in view of conflict of interest as he was both a government minister and effectively a business owner, despite nominally putting ownership of his businesses into a trust fund.

## Greece

### Score 5

After Syriza's rise to power in January 2015, the earlier lack of resolve among political and administrative elites to control corruption was reversed. However, the Syriza-ANEL coalition was undecided on how to steer anti-corruption policy. In January 2015, a new post of Minister for Anti-Corruption was established; in September the post was abolished and a post of Deputy Minister for Anti-Corruption was created and subsumed under the supervision of the Minister of Justice. A new General Secretariat on Anti-Corruption was created under the aforementioned minister but remains understaffed.

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

After 2015, the justice system intensified its efforts, not so much to prevent as to punish corruption. In the most important trial, Akis Tsochatzopoulos, the former minister of defense and deputy prime minister of the PASOK governments of the 1990s, was accused of receiving large kickbacks for armament deals. In November 2017, he was sentenced to prison and received a very large fine from an Athens-based second-instance criminal court. In the period under review, Yannis Papantoniou, former minister of finance and former minister of defense, was arrested on charges of corruption (for bribes related to armaments deals).

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

Citation:

For the ranking of Greece by Transparency International in 2016 and 2017, see <https://www.transparency.org/country/GRC> and

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## Japan

### Score 5

Corruption and bribery scandals have emerged frequently in Japanese politics. These problems are deeply entrenched and are related to prevailing practices of representation and voter mobilization. Japanese politicians rely on local support networks to raise campaign funds and are expected to “deliver” to their constituencies and supporters in return. Scandals have involved politicians from most parties except for the few parties with genuine membership-based organizations (i.e., the Japanese Communist Party and the Komeito).

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

In the past, the country has had a reputation for weak enforcement with respect to anti-bribery enforcement abroad – an issue relevant for Japan’s multinational companies. In response, Japan decided in 2017 to join the UN Convention against Transnational Crime and the UN Convention against Corruption, which have respectively existed since 2000 and 2005.

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## Malta

### Score 5

The government generally implements anti-corruption laws effectively. Malta’s Criminal Code criminalizes active and passive bribery, extortion, embezzlement, trading in influence, abuse of office, and receiving and offering gifts. The penalty for bribery, whether in the private or public sector, can be up to eight years’ imprisonment. Money laundering is criminalized under the Prevention of Money Laundering Act, which stipulates procedures for the investigation and prosecution of money laundering, and establishes the Prevention of Money Laundering and Funding of Terrorism Regulations.

A number of institutions and processes work to prevent corruption and guarantee the integrity of government officials, including the Permanent Commission Against Corruption, the National Audit Office, the Ombuds Office and the Public Service Commission. The judiciary also plays an important part in ensuring accountability. The 2018 Malta Corruption Report (Business Anti-Corruption portal) states: “The Maltese judiciary carries a low corruption risk for companies. The courts are perceived as independent and the public generally believes that the courts are free from corruption. Businesses report that bribes in return for favorable court decisions are generally rare. Businesses also report confidence in the ability of the police to protect companies from crime and uphold the rule of law.” The government also abides by a separate Code of Ethics that applies to ministers, members of parliament and public servants. Ministers and members of parliament are also expected to make an annual asset declaration. The Public Accounts Committee of the unicameral House of Representatives can also investigate public-expenditure decisions to ensure that money spent or contracts awarded are transparent and conducted according to law and general financial regulations. Internal audit systems can also be found in every department and ministry, but it is difficult to assess their effectiveness.

In 2013, the government strengthened the fight against corruption by reducing elected political figures’ ability to evade corruption charges by removing statutes of limitation on such cases. It also introduced a more effective Whistleblower Act,

although this needs further reforms. More importantly, in 2016 the government passed a law on Standards in Public Life, and in 2018, the government and the opposition agreed on the appointment of the person who is to oversee the workings of this law.

Both the National Audit Office and the Ombuds Office are independent, but neither enjoys sufficient legal powers to allow them to follow up their investigations at the judicial level. In 2018, the NAO launched a five-year plan to improve governance across the public service. This office has frequently complained about non-compliance with financial regulations and fiscal obligations. In 2018, the ombudsman called for greater government transparency and accountability. The latter's 2017 recommendation that legislation to regulate lobbying be passed has not yet been addressed. The Permanent Commission Against Corruption, established in 1988, has proved ineffective despite having investigated some 300 cases of alleged corruption. The opposition's continued delay in naming its representatives has not helped matters. The Public Service Commission, which is tasked with ensuring fairness in recruitment and promotions in the public service, remains under-resourced.

Conflicts of interest remain prevalent. The 2018 GAN report states that the public-services sector carries a low corruption risk for businesses operating in Malta, while Malta's land administration suffers from moderate risks of corruption. It additionally says that corruption risks at Malta's border are moderate, but that Malta's public procurement sector carries a high corruption risk for business. Malta's Environment and Planning Authority (MEPA) has for decades been under scrutiny due to allegations of corruption and other irregularities in its decision-making process. This situation is exacerbated by the prevalence of the face-to-face relationships common in small countries, and the fact that most of Malta's parliamentarians aside from members of the government serve on a part-time basis, and thus maintain extensive private interests. According to a 2018 report by the European Greens, Malta loses 8.65% of its GDP to corruption. In comparison, the lowest figure in this respect is 0.76% in the Netherlands, while the highest is 15.6%, in Romania. Malta gained one point in the 2017 Corruption Perceptions Index, climbing from 55% to 56% (with 100% being the best possible score).

Citation:

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

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## Poland

### Score 5

Corruption remained a major political issue in the period under review. On the one hand, the PiS government has continued to accuse the previous government of corruption, and has emphasized its own commitment to the fight against corruption. On the other hand, the PiS government has itself been under fire for corruption and cronyism in state-owned enterprises. Thousands of PiS apparatchiks and followers have been placed in management positions, so that a widespread clientelistic network has emerged.

A new law on transparency in public life entered into force in March 2018. This ostensibly was passed to address and reduce corruption, but has itself been widely criticized. It requires employers to establish internal corruption-prevention mechanisms that critics say have been badly prepared, are too ambitious in their terminology and would create unnecessary burdens. It introduces the category of whistleblower into the law, and aims to protect such activity, while also tightening regulations governing public-sector employees' subsequent work in the private sector. However, it also allows enforcement agencies to collect citizens' personal data, enabling substantial violations of privacy.

#### Citation:

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## Slovakia

### Score 5

Corruption is the most sensitive political problem undermining political stability and quality of democracy in Slovakia. The previous two governments headed by Robert Fico did not pay much attention to anti-corruption efforts and were shaken by several corruption scandals. The government manifesto of the third Fico government contained some anti-corruption measures, and Lucia Žitňanská (Most-Híd), the minister of justice until her voluntary resignation in March 2018. The alleged

corruption case involving Minister of Interior Robert Kaliňák and Prime Minister Fico has continued to attract the most attention. Their links to Ladislav Basternak, a businessman involved in fraud, have led to several votes of no confidence. Thanks to the government's parliamentary majority, the interior minister survived all of them, and had to resign only after the murder of Ján Kuciak and Martina Kušnírová. The fact that Kuciak was murdered because of his investigations regarding links between the mafia, oligarchs and top politicians testifies to the pervasiveness of corruption in Slovakia, and so does the reluctant investigation of the two murders. In the wake of anti-corruption demonstrations, a new initiative Chceme Verit' (We Want to Believe) launched by leading NGOs (Fair-Play Alliance, Via Iuris, Slovak Governance Institute, Human Rights League, Open Society Foundation, Pontis Foundation and Stop Corruption foundation) has demanded that the new Pellegrini government implement more effective measures to combat corruption. These demands include installing trustworthy leadership in the police force and among prosecution efforts, strengthening police independence, and subjecting the Prosecutor's Office to mechanisms of public control.

## Slovenia

### Score 5

Corruption has been publicly perceived as one of the most serious problems in Slovenia since 2011. While the Commission for the Prevention of Corruption (CPC), the central anti-corruption body, managed to upgrade its Supervisor web platform and launch its successor Erar in July 2016, it has remained under fire for its lack of determination and professionalism, especially after the resignation of Alma Sedlar, one of the three-strong CPC leadership in September 2017, which was eventually replaced by Uroš Novak in March 2018. Allegations of corruption have featured prominently in the debates about the investment by Magna, the construction of the second railway line from Divača to the port of Koper and the health care system. The continuing failure of parliament to adopt an ethical code for members of parliament and the inability of the prosecution to present strong cases, which would enable courts to convict some major political players (e.g., Zoran Janković, mayor of Ljubljana), have further raised the doubts about the political elite's commitment to fighting corruption.

## Bulgaria

### Score 4

Bulgaria's formal legal anti-corruption framework is quite extensive, but has not proven very effective. Measurements of perceived corruption have remained stable over the last five years at levels indicating that corruption is a serious problem. While the executive and state prosecutors have initiated numerous criminal prosecutions against high-profile political actors, the conviction rate in those high-profile cases has been very small.

In line with recommendations by the European Commission and the Council of Europe, new legislation creating a unified anti-corruption agency was adopted by parliament in December 2017. While it is too early to assess its effectiveness, as of the end of 2018, the only publicly announced procedures to confiscate illicitly acquired property have been directed against people clearly identifiable with the opposition.

Citation:

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

## Iceland

### Score 4

Financial corruption in politics is not viewed as a serious problem in Iceland, but in-kind corruption – such as granting favors and paying for personal goods with public funds – does occur. Regulatory amendments in 2006, which introduced requirements to disclose sources of political party financing, should reduce such corruption in the future.

In very rare cases, politicians are put on trial for corruption. Iceland has no policy framework specifically addressing corruption because historically corruption has been considered a peripheral subject. However, the appointment of unqualified persons to public office, a form of in-kind corruption, even nepotism, has been and remains a serious concern. Other, subtle forms of in-kind corruption, which are hard to quantify, also exist. The political scientist Gissur Ó. Erlingsson claims that corruption in mature democracies, including Iceland, is perhaps more of the character of nepotism, cronyism, and “You scratch my back, I’ll scratch yours.” A recent article by Gissur and another Icelandic political scientist, Gunnar Helgi Kristinsson, concluded that “corruption is rare but still clearly discernible. Less serious types of corruption, such as favoritism in public appointments and failure to disclose information, are more common than more serious forms, such as extortion, bribes and embezzlement. Nonetheless, it should be noted that a sizable minority of experts still believe corruption is common, especially in the case of favoritism and fraud.”

The collapse of the Icelandic banks in 2008 and the subsequent investigation by the Special Investigation Committee (SIC), among other bodies, highlighted the weak attitude of government and public agencies toward the banks, including weak restraints and lax supervision before 2008. Moreover, three of the four main political parties, as well as individual politicians, accepted large donations from the banks and affiliated interests. When the banks crashed, 10 out of the 63 members of parliament owed the banks the equivalent of more than €1 million each. Indeed, these personal debts ranged from €1 million to €40 million, with the average debt of the 10 members of parliament standing at €9 million. Two out of the 10 members of

parliament in question still sit in parliament and the cabinet, one is the current finance minister, without having divulged whether they have settled their debts or not. Write-offs of bank debt are not made public information in Iceland. The SIC did not report on legislators that owed the banks lesser sums (e.g., €500,000). GRECO has repeatedly highlighted the need for Icelandic members of parliament to disclose all their debts beyond standard mortgage loans. In 2015, GRECO formally complained that Iceland had not responded to any of its recommendations in its 2013 report on Iceland.

In November 2011, parliament passed a law that obliges members of parliament to declare their financial interests, including salaries, means of financial support, assets, and jobs outside parliament. This information is publicly available on the parliament's website.

According to Transparency International's Corruption Perceptions Index 2017, which measures business corruption, Iceland scored 77 out of 100, where a score of 100 means absolutely no corruption. Although this score implies that Iceland is relatively free of corruption, it is still well behind the other Nordic countries, which score between 84 and 88. In an assessment of political corruption in 2012, Gallup reported that 67% of Icelandic respondents view corruption as being widespread in government compared with 14% to 15% in Sweden and Denmark. A 2018 poll from the Social Science Research Institute at the University of Iceland shows that 65% of respondents view many or nearly all Icelandic politicians as corrupt.

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

Citation:

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## Romania

### Score 4

Corruption has been a major political issue in Romania for some time and has become even more pronounced since the 2016 parliamentary elections. As early as in January 2017, the newly installed PSL/ALDE government launched legislation aimed at decriminalizing and pardoning certain offenses. Broadly understood as an attempt to help politicians and others either accused or convicted of corruption, including PSD leader Liviu Dragnea, these initiatives prompted an unexpectedly strong public outcry that led the government to retract them. Next, the governing coalition has sought to strengthen its influence in the judiciary and to discredit and weaken the much-acclaimed National Anti-Corruption Directorate (DNA), which has achieved many high-profile convictions. The PSD has attacked the DNA and its combative Chief Prosecutor Laura Codruta Kövesi, referring to her and the DNA as an illegitimate "parallel state." In a 36-page report in February 2018, Minister of Justice Tudorel Toader stated that the DNA engages in "excessively authoritarian behavior" and that it prioritizes "solving cases with a media impact." The minister also criticized the DNA for "daring" to comment on legislative proposals, of falsifying wiretap transcripts and failing to investigate abusive acts allegedly committed by prosecutors. After a tug-of-war with President Iohannis, and favored by a controversial Constitutional Court decision in May 2018, Minister Toader eventually succeeded in bringing the president to dismiss Kövesi in July 2018. The attacks on the DNA, combined with its cuts in funding, have limited its capacity to maintain the fight against corruption.

#### Citation:

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## Cyprus

### Score 3

The auditor general's office is constitutionally independent and assigned to audit the accounts of all state entities. The auditor general's findings have been very often ignored. However, numerous cases of corruption since 2014 have resulted in the

conviction of officials for corruption. Various policies are designed and promoted to serve transparency and fight corruption. However, the pace is slow.

GRECO observed in 2018 that only two out of 16 anti-corruption measures it recommended in 2016 were implemented, with a further eight partly implemented and six not implemented at all. In addition, measures adopted under previous reports, such as in party financing, have loopholes and deficient mechanisms that seriously affect their efficiency.

In 2018, the European Commission repeated its observation that the existing authority against corruption is inadequately resourced. We note also that no evaluation report is available on the implementation of public service and ministers codes of conduct established years ago.

Efforts against corruption suffered a serious blow in 2018 when most of the officials incarcerated for corruption were freed before completing even half of their sentences. Also, the citizenship-by-investment scheme is increasing the risk for corruption. These challenges explanation why corruption and impunity is perceived by the public as extremely high.

Citation:

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## Hungary

### Score 3

Widespread corruption has been a systemic feature of the Orbán governments, with benefits and influence growing through Fidesz informal political-business networks. Members of the Fidesz elite have been involved in a number of corruption scandals, with many people accumulating substantial wealth in a short period of time, most notably Lőrinc Mészáros, István Garancsi and István Tiborcz (the son in law of Orbán). According to Forbes Hungary, Mészáros, for example, has tripled his fortune in 2017. Corruption has become so pervasive that even some senior Fidesz figures have begun openly criticizing the Fidesz elite's rapid wealth accumulation. Corruption in Hungary has to be seen through the prism of oligarchic structures and is strongly linked to public procurement, often related to investments based on EU funds and facilitated by the new public procurement law of 2012. A general problem here is that there is comparably little competition in this field, in 36% of public procurements there has been just one contender, the second worst case in the EU. Its political power has allowed the Orbán government to keep corruption under the carpet. De-democratization and growing corruption are thus mutually reinforcing processes. As a result, the fight against corruption has largely rested with the political opposition and some independent NGOs. In addition to Transparency

International Hungary and Átlátszó (Transparent), Ákos Hadházy, the former co-president of the opposition party Politics Can Be Different (LMP), has been very active and effective in investigating the corruption by the leading Fidesz politicians and oligarchs, and he has recently begun collecting signatures to join the European Public Prosecutor's Office, refused by the Hungarian government.

## Mexico

### Score 3

Corruption is widespread in Mexican politics, the judiciary and the police. Anti-corruption efforts so far have failed. After pleading guilty in September 2018, 14 former governors accused of corruption – including the former governor of Veracruz, Javier Duarte – have been sentenced to nine years in prison, a small sign of hope. Most of these governors had been close allies of President Peña Nieto and were the public faces of his effort to re-launch the PRI in order to give the party a new start after its decades-long association with corruption and bribery. Beyond the governors, the former director of the state-owned oil company Pemex, another close Nieto ally, has also been accused of corruption in the fallout of the scandal surrounding the Brazilian engineering firm Odebrecht. The Odebrecht scandal has rattled several Latin American countries, and now also engulfs high-placed public officials in Mexico. Although Odebrecht admitted bribing Pemex with \$10.5 million, Mexican prosecutors refused to cooperate with Brazil authorities, delaying any clarification. These high-profile cases revealed the inability of the Mexican justice system to effectively deal with corruption, especially if the perpetrators are politically well connected.

At the same time that corruption scandals roiled the political arena, efforts to implement the National Anti-Corruption System (SNA), which had been signed into law by President Nieto in 2016, floundered. Neither the special anti-corruption prosecutor nor the judges for the specialized administrative tribunal have been appointed. At the subnational level, not even half of Mexico's states have approved the required secondary legislation to implement the SNA. According to a May 2017 study by Corpamex, the Mexican confederation of business owners, corruption costs Mexico around 10% of its GDP. In Transparency International's Corruption Perception Index, Mexico ranked 135 out of 175 countries in 2017, a significantly deterioration in the country's ranking compared to 2012.

The main positive development with regard to corruption is sustained pressure from civil society for more transparency and accountability, but in general there is little hope for quick change.

#### Citation:

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## Turkey

### Score 2

Turkey is a signatory of UNCAC, the OECD Anti-Bribery Convention, and the COE Civil and Criminal Law Conventions, and is a member of GRECO. Law No. 5018 regarding public financial management and control prioritize legality, transparency and predictability in public administration. However, these concepts, as well as instruments such as the formation of strategic plans, performance budgets and regulatory impact assessments, are not effectively incorporated into government oversight processes. An amendment to the law on audit court has limited the degree to which state expenditures can be audited. Public-procurement safeguards have deteriorated thanks to legislation allowing municipalities to operate in a less than transparent fashion. There are no codes of conduct guiding members of the legislature or judiciary in their actions. Conflicts of interest are not broadly deemed a concern, and there is no effective asset-declaration system in place for elected and appointed public officials.

The asset-declaration system was established in 1990 by Law 3628 on Asset Disclosure and Fighting Bribery and Corruption. All public officials (legislative, executive and judicial, including nationally and locally elected officials) must disclose their assets within one month of taking office and renew their declaration every five years. However, these declarations are not made public unless there is an administrative or judicial investigation. The Regulation on Procedure and Basis of Application of the Civil Servants Ethical Behavior Principles defines civil service restrictions, conflicts of interest and incompatibilities. The Council of Ethics for Public Officials, which was attached to the Presidency of the Republic of Turkey in July 2018, lacks the power to enforce its decisions through disciplinary measures. Codes of ethics do not exist for military personnel or academics. Legal loopholes (e.g., regarding disclosure of gifts, financial interests and holdings, and foreign travel paid for by outside sources) in the code of ethics for parliamentarians remain in place.

Corruption remains widespread, and unfair and biased bureaucratic treatment is common. Especially at the local level, corruption remains a systemic problem. Almost two out of five Turks believe local government officials are corrupt. While municipalities controlled by opposition parties are closely monitored by law-enforcement authorities and government inspectors, municipalities controlled by the AKP are shielded from close scrutiny. The Turkish Court of Accounts reported several improper transactions in the 2017 annual accounts of several municipalities. These reports emphasized the lack of improvement to issues such as undue process, corruption in municipal government and shortcomings in municipal public services, all of which have yet to be addressed by parliament. Though the reports were published in the media and online, publicly exposing hidden budget expenditures, housing-procurement abuses and tax compromises. Instead of prosecuting the

corrupt officials (including mayors), President Erdoğan simply removed them from office. Procedures for doing business in Turkey were recently improved, but enforcing a contract in Turkey is more time-consuming than the regional average, and bribes and irregular payments in return for favorable judicial decisions are perceived by companies to be fairly common. The public considers one-third of judges and judicial officers to be corrupt. Companies report very low confidence in the independence of the judiciary and the ability of the legal framework to settle disputes or challenge regulations. The Court of Cassation introduced a draft judicial code of conduct in late 2017. Corruption in the Turkish police is moderately high. Companies indicate that they perceive the police force as not adequately reliable. Impunity of corrupt officials is widespread. Turkey's land administration made progress in terms of corrupt processes – although most corruption allegations relate to construction projects, for which bids are rigged, permits are illegally awarded, and bribes are paid by developers to government officials. The public procurement legislation was amended 186 times in 16 years.

In late 2017, the main opposition party leader stated that the President Erdoğan's family members transferred millions of U.S. dollars to a company in the Isle of Man (a tax haven) in 2011 and 2012. In a counterattack, the minister of interior removed the mayor of Ataşehir, a town in Istanbul, from office following allegations of corruption. The chief public prosecutor of Ankara took the decision not to prosecute, before President Erdoğan sued for compensation. In July 2018, the ninth Anadolu Court of Istanbul ruled that Kılıçdaroğlu, the leader of the main opposition party, should pay pecuniary compensation to Erdoğan and others.

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